THE ALL INDIA DIGEST, CRIMINAL

1836—1915.

SANJIVA ROW'S

ALL INDIA DIGEST

SECTION I—CRIMINAL: 1836—1915

REVISED AND BROUGHT UP-TO-DATE

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AT THE LAWYER'S COMPANION OFFICE, TRICHINOPOLY AND MADRAS.

SECOND EDITION: IN TWO VOLUMES

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1915

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To

THE HON'BLE SIR CHARLES ARNOLD WHITE, Kt.,

BARRISTER-AT-LAW,

FORMERLY CHIEF JUSTICE OF THE HIGH COURT OF JUDICATURE, MADRAS,
AND NOW MEMBER, COUNCIL OF THE SECRETARY OF STATE FOR INDIA,

THIS WORK

IS

BY KIND PERMISSION
MOST RESPECTFULLY AND GRATEFULLY

DEDICATED.

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PREFACE TO THE SECOND EDITION.

Copies of the first edition of the Criminal Section of the late Mr. Sanjiva Row's All India Digest having been rapidly exhausted, it has been found necessary to bring out a second edition to satisfy the constant demand of the learned profession for the work.

In the preparation of this edition, opportunity has been taken to correct the few errors and to remove the few repetitions that were found in, and to make good the omissions of some cases unwittingly left out from, the first edition, and generally to revise the whole work in an exhaustive manner. The cross-references have been in several cases re-written, and have been made fuller. The notes of subsequent cases appended to each main case at its end have been brought completely up-to-date.

The names of parties to all the cases have, in this edition, been cited at the close of each main case in the body of the Digest. Also, two tables of cases, one containing the names of parties in their alphabetical order and the other containing, in numerical order, the volumes and pages of the Reports wherefrom the cases have been taken, are furnished at the end of the second volume.

The cases have been brought down to the end of 1915. A few cases, however, that appeared too late for insertion in the body of the Digest have been collected at the end of the second volume in the form of a supplement.

The Lawyer's Companion Office,
Trichinopoly and Madras.
Dated 8th November, 1915.

P. RAMANATHA IYER.
P. HARI RAO.

PREFACE TO THE FIRST EDITION.

In the year 1905, at the earnest call of many members of the legal profession, I undertook the issue of my Current Index. It has now run through a course of five years and has started upon the sixth year of its existence. I am glad to state that, since the publication was launched into existence, it has been acquiring a widely increasing popularity throughout the length and breadth of India and Burma. It focuses within its pages decisions of each and every province in India, so that the use of the book is not confined to this province or that, but extends to all the provinces in India, in short, wherever the laws of the country are administered; so much so that I have often had requisitions from my esteemed constituents in the various provinces to send them type-written copies of the cases to be found in some of the rarer original reports, which cannot be had in the libraries of their own provinces. While the profession appreciate the utility of the publication as keeping them in easy touch with all the latest case-law of the country, they have, for the last few years, been feeling, and justly, that, as the numbers of these annual digests increase, the task of hunting up references is becoming more and more troublesome and laborious, as it involves the consultation of a number of stray volumes—a trouble which the profession would always like to see as far minimised as possible. My constituents have, on the one hand, been asking me for the consolidation of my Current Indexes from the year 1905. On the other hand, they have been asking me to bring out a consolidated Digest from the earliest times up to date, since Woodman's Digest stops with 1900 and there has been no consolidation since then. In order, therefore, to minimise, to some extent at least, this inconvenience, I published in 1908 my "Triennial Key," which was intended to serve the purpose of the consolidation of the Current Indexes for the years 1905 to 1907, and had an idea of consolidating this "Triennial Key" from time to time as years rolled by. But, partly as the "Triennial Key" removed the difficulty, a small consolidation for three years went but a little way towards meeting this widely felt need.

The want of a consolidated Digest from the earliest times up to date being thus a standing grievance among the profession, I have, for some time past, been earnestly urged to bring out one on the lines of my Current Index. The only publication that professes to supply the place

of a comprehensive digest is the time-honoured and well-renowned Digest of Woodman, not to speak of many other minor Digests of a limited and varying scope. But Woodman's Digest, great as may be its merits, is antiquated in many ways. In the first place, the consolidated edition of Woodman's Digest stops with 1900. And, though separate Digests have been, from time to time, published for the subsequent years, they stand isolated and without consolidation and there seems to be but little prospect of these Digests being consolidated and brought down to date. Besides, Woodman's Digest was compiled when Acts XIV of 1882, XV of 1877 and III of 1877, were in force; and the cases have been grouped under the sections of these old Acts. A practitioner, therefore, who has now to prepare his cases under Act V of 1908, Act IX of 1908 and Act XVI of 1908 will experience no small difficulty when he finds for his guide a book in which the cases have been arranged under the sections of the older and repealed Acts.

Again, Woodman's publication digests only a few of the reports that now form the available sources of information for the modern lawyer in respect of the Chartered High Courts. Reports, like the Madras Law Journal, the Madras Law Times, the Allahabad Law Journal, the Calcutta Law Journal and the Bombay Law Reporter, do not find a place in Woodman's Digest, not to mention works like Weir's Criminal Rulings and Ratanlal's Unreported Criminal Cases.

There is yet another point in which Woodman's Digest is also defective. Standard commentators of great renown embody in their works cases from the Punjab Record, the Oudh Cases, the Central Provinces and the Nagpur Law Reports and the Burma Law Reports. Of late years, a practice is also coming into existence for Judges of the Chartered High Courts to hear cited, in the arguments before them, decisions of the Chief Courts and the Courts of the Judicial Commissioners of the various provinces and to refer to them in their judgments. *Vide* I.L.R. 30 A. 334 (342), I.L.R. 34 C. 216 (220), 4 M.L.T. 404 (410), where cases of the highest Courts other than the Chartered High Courts have been referred to by the learned Judges of the several High Courts. Woodman's Digest has altogether left out of consideration cases decided by these Courts which find no place in it. The ever-increasing popularity of my Current Index is proof positive of the recognition of the above fact.

With the object of satisfying all these requirements, I set about, more than a year ago, compiling an "ALL INDIA DIGEST" from the earliest times up to date. Considering the gigantic nature of the task as well as the inadvisability of jumbling up the criminal and the civil cases together in one and the same volume or volumes, I have thought it expedient to

separate the criminal from the civil cases and to issue separate volumes dealing with these distinct subjects, such of the cases having a two-fold aspect being given in both the criminal and the civil sections as well. The advantages of such a separation are obvious. The criminal cases will be contained in one handy and portable volume; the entire field of Criminal Law will be ready before the practitioner when he is conducting a case in the Criminal Courts. Such of the members of the profession as confine their practice to the Criminal Courts only, Magistrates, members of the Police Department and others similarly circumstanced, will be saved the expense of having to purchase the volumes containing the civil cases also.

It is but a small part of the work of a practitioner preparing his case to get at an authority for a certain position. To fix its exact value with reference to the case-law on the particular point is the next, but a more important and difficult, task. The value of the decisions of one High Court, in a case argued in a different High Court, by way of supporting or distinguishing a decision of the latter High Court, is incalculable. Even a mere observation, unconnected with the facts of the case, of a single Judge of the High Courts acquires very much the weight of a decided case, when such observation is cited with approval by their Lordships of the Privy Council. Again, even the Full Bench case of a particular High Court loses much of its value, when it has been constantly dissented from by all the other High Courts and distinguished in later cases by the same High Court. It has, therefore, been deemed essential to indicate, at the end of almost every case, whether it has been *followed, referred to, or distinguished, etc.*, in subsequent cases. For similar reasons, it has also been found desirable to give, wherever possible, a list of such of the earlier cases as the later case has *followed, referred to, distinguished, &c.*

A rectangular bracket at the end of a case contains the subsequent cases, wherein such case has been *followed, referred to, &c.*, whereas a circular bracket at the end of a case contains the previous cases which have been dealt with by such case. **Examples** :—1 B. 15 [*D.*, 19 B. 105] means 1 B. 15 has been *distinguished* in 19 B. 105, see column 9; 15 P. R. 1901, Cr., (16 A. 437, 21 A. 263, *F.*), means that 16 A. 437 and 21 A. 263 have been *followed* by 15 P.R. 1901, Cr., see column 15; and 8 A. 18 (A.W.N., 1884, 37, A.W.N., 1885, 30, 7 B. 82, *R.*). [*F.*, 7 C.P.L.R. 21, Cr.] means that A.W.N., 1884, 37, A.W.N., 1885, 30 and 7 B. 82 have been *referred to* in 8 A. 18 and that 8 A. 18 has been *followed* in 7 C.P.L. R. 21, Cr. The reader will thus be pleased to see the immense advantages offered by this publication. If he should light upon any one case on any subject, he will be able to understand the development of the case-law

on the subject from the earliest times down to the present date—an advantage not to be had in any other publication known hitherto.

The cases will be brought down to June, 1910, and the "ALL INDIA DIGEST," as its title indicates, will contain all the cases from all the reports, official and non-official, in the country. (*Vide* list of Reports digested.)

Numerous cross-references have been given to facilitate the task of picking up authorities on any particular subject. The cases decided under an Act have been arranged under the sections of the latest Act on the subject, the corresponding sections of the older and repealed Acts being also given within brackets at the commencement of the sections.

I trust I have done almost everything that ingenuity can devise to make this book a work of ready reference and I believe I have spared no labour in achieving this end. I would consider my labours amply rewarded if the profession should generously appreciate the publication and humbly hope that it will also be of use to the Government in its great work of Legislation.

"MADHWA VILAS."
TEPPAKULAM P.O., TRICHINOPOLY.
Dated 19th April, 1910.

T. V. SANJIVA ROW.

POSTSCRIPT TO THE FIRST EDITION.

A WORD of explanation may be deemed necessary regarding the arrangement of the cases herein collected under the several headings and sub-headings. It was the desire of the late Mr. T. V. Sanjiva Row that the ALL INDIA DIGEST should be modelled on the lines of his Current Index of Indian Cases. The main principle which he endeavoured to follow in the compilation of this Digest has been to group all the cases coming under a legal conception, say **Abetment**, under that particular heading alone, and to give cross-references to the other headings under which such cases may fall, so that the reader may have the whole case-law on that conception at one and the same place in the Digest. But this, he found, was not always quite practicable. Owing to the nature of the subject, it has been considered desirable to group the cases dealing with the same subject, some under one heading and some under another, and to give cross-references to the other heading ; for instance, cases dealing with the subject, "**Dispute as to possession of immoveable property,**" have been put, some under the heading "**Criminal Procedure Code, 1898, s. 145,**" and some under the heading "**Dispute as to possession of immoveable property,**" and *vice versa,* with cross-references to each

other. The reader, therefore, who wishes to be exhaustive in his researches, will find the case or cases he may require by searching for them under all the headings under which they may be expected to appear.

The cases will be brought down to the end of the year 1910, though the original intention was to bring them only down to the end of June, 1910. An appendix will be added, which will contain all the cases that may appear too late to be inserted in the body of the Digest. The quantity of the Mss. having far exceeded the original estimate, the Criminal Section of the Digest has to be issued in two volumes.

For the sake of thoroughness and to help the reader in his investigations, it will be seen that, in the case of the various legislative enactments, a short historical survey, showing the effect of the later enactments on the earlier ones under consideration, has been appended to the Acts, Imperial and Local, wherever possible. In the preparation of this historical note, the latest Government editions of the Unrepealed Acts of the Imperial and the Local Legislatures have furnished the main guidance.

Two tables of cases have been given. One gives the list of the cases digested by the number and page of the volumes of the Reports in their chronological order and the other gives the list in the alphabetical order of the names of the cases.

"MADHWA VILAS,"
TEPPAKULAM P.O, TRICHINOPOLY.
Dated 26th November, 1910.

P. RAMANATHA IYER.
P. HARI RAO.

LIST OF REPORTS DIGESTED IN THE ALL INDIA DIGEST SECTION I—CRIMINAL.

No. of Volumes.	NAMES OF REPORTS.	Period.
3	Agra High Court Reports	1866—1868
1	Agra High Court Reports, Full Bench Volume	1866—1868
13	Allahabad Law Journal	1904—1915
28	Allahabad Weekly Notes	1881—1908
15	Bengal Law Reports	1868—1875
1	Bengal Law Reports Supplemental Volume	1862—1868
12	Bombay High Court Reports	1862—1875
3	Bombay Criminal Cases	1913—1915
17	Bombay Law Reporter	1899—1915
1	Bourke's Reports	1865
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19	Calcutta Weekly Notes	1896—1915
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16	Criminal Law Journal of India...	1904—1915
31	Criminal Rulings of the Bombay High Court	...
2	Hay's Reports	1862—1863
2	Hyde's Reports	1863—1864
29	Indian Cases	1909—1915
2	Indian Jurist, New Series	1862
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37	Indian Law Reports, Allahabad Series	1876—1915
39	Indian Law Reports, Bombay Series	1876—1915
42	Indian Law Reports, Calcutta Series	1876—1915
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7	North-West Provinces High Court Reports...	1869—1875
18	Oudh Cases	1898—1915
1	Oudh Select Cases	...
16	Punjab Law Reporter	1900—1915
50	Punjab Record	1866—1915
10	Punjab Weekly Reporter	1906—1915
1	Ratanlal's Unreported Criminal Cases	1862—1898
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2	Sutherland's Privy Council Judgments	1831—1874
26	Sutherland's Weekly Reporter	1864—1876
1	Sutherland's Weekly Reporter Full Bench Volume	1862—1863
1	Sutherland's Weekly Reporter Gap Number	1864
1	Upper Burma Rulings	1892—1896
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12	Upper Burma Rulings	1904—1915
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ABBREVIATIONS EXPLAINED.

REPORTS.

A.	Indian Law Reports, Allahabad Series.
Agra.	Agra High Court Reports.
A. L. J.	Allahabad Law Journal.
A. W. N.	Allahabad Weekly Notes.
B.	Indian Law Reports, Bombay Series.
B. H. C.	Bombay High Court Reports.
B. L. R.	Bengal Law Reports.
Bom. Cr. C.	Bombay Criminal Cases.
Bom. L. R.	Bombay Law Reporter.
Bourke.	Bourke's Reports.
Bur. L. R.	Burma Law Reports.
Bur. L. T.	Burma Law Times.
C.	Indian Law Reports, Calcutta Series.
C. L. J.	Calcutta Law Journal.
C. L. R.	Calcutta Law Reports.
C. P. L. R.	Central Provinces Law Reports.
C. W. N.	Calcutta Weekly Notes.
Cor.	Coryton's Reports.
Cr. Rg.	Bombay Criminal Rulings.
Cr. L. J.	Criminal Law Journal.
Hay.	Hay's Reports.
Hyde.	Hyde's Reports.
I. A.	Law Reports, Indian Appeals.
Ind. Cas. or I. C.	Indian Cases.
Ind. Jur. N. S.	Indian Jurist, New Series.
Ind. Jur. O. S.	Indian Jurist, Old Series.
J. G.	Joy Gobind Shome's Reports.
Knapp.	Knapp's Reports.
L. B. R.	Lower Burma Rulings.
L. W.	Law Weekly.
M.	Indian Law Reports, Madras Series.
Marsh.	Marshall's Reports.
M. H. C.	Madras High Court Reports.
M. I. A.	Moore's Indian Appeals.
M. J.	Madras Jurist.
M. L. J.	Madras Law Journal.
M. L. T.	Madras Law Times.
Moo. P. C. C.	Moore's Privy Council Cases.
M. W. N.	Madras Weekly Notes.
N. L. R.	Nagpur Law Reports.
N. W. P. H. C. or N. W. P.	North-West Provinces High Court Reports.
O. C.	Oudh Cases.
O. L. J.	Oudh Law Journal.
P. L. R.	Punjab Law Reporter.
P. R.	Punjab Record.
P. W. R.	Punjab Weekly Reporter.
Rat. Un. Cr. C.	Ratanlal's Unreported Criminal Cases.
Sar.	Saraswati's Privy Council Judgments.
S. C. Oudh.	Select Cases, Oudh.
S. L. R.	Sind Law Reporter.
Suth.	Sutherland's Privy Council Judgments.
U. B. R.	Upper Burma Rulings.
W. R.	Sutherland's Weekly Reporter.
Weir.	Weir's Criminal Rulings.

OTHER ABBREVIATIONS.

Appl.	Applied.
Appr.	Approved.
Cons.	Considered.

D. or Distd.	Distinguished.
Disc.	Discussed.
Diss.	Dissented from.
Exp.	Explained.
F.	Followed.
(F. B.)	Full Bench.
Obs.	Observed on.
(P. C.)	Privy Council.
R. or Refd. to.	Referred to.
Rel. on.	Relied on.
(S. B.)	Special Bench.

N.B.— In the Punjab Record and the Punjab Law Reporter, and also in the Punjab Weekly Reporter, the cases are known by their numbers and not by the pages where they are printed; (*e.g.*) 4 P. R. 1910, Cr., would mean Case No. 4 Cr., in the Punjab Record of 1910. The same explanation applies to the Punjab Law Reporter as well as to the Punjab Weekly Reporter also. It has also to be remarked that the Punjab Record, the Punjab Law Reporter and the Punjab Weekly Reporter, have been divided into two sections, Civil and Criminal.

TABLE
OF
HEADINGS, SUB-HEADINGS AND CROSS-REFERENCES.

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SANJIVA ROW'S
ALL INDIA DIGEST
1836—1915.

Section I.—Criminal—Vol. I.

Abandonment of Children.

(1)—*When abandonment is offence—Penal Code, s.* 317—*Object of section.*—The real object of s. 317, Penal Code, is the prevention of the abandonment or desertion by a parent of his or her children of tender years in such a manner that children, not being able to take care of themselves, may run the risk of dying or being injured. CRIMINAL REVISION OF PROCEEDINGS IN THE CASE OF FELANI HARIANI, **16 W.R. Cr. 12.** [*R.*, 24 M. 662].

(2)—*Intention of wholly abandoning child is gist of offence.*—The gist of the offence, under s. 317, Penal Code, is the exposure or leaving of the child in any place with the intention of wholly abandoning it; and the manner of exposure or leaving and the consequences likely to ensue from it are not essential ingredients of the offence under the Indian Law, though they may often be properly taken into consideration in estimating its gravity and in apportioning the sentence. KING-EMPEROR v. ANTAKKEE, **24 M. 662 = 1 Weir 332.** (16 W.R. Cr. 12, 18 A. 364, *R.*)

(3)—*Intention of abandoning child.*—Under s. 317, Penal Code, the only intention required to complete the offence is an intention of wholly abandoning the child. It is not necessary that there should be an intention to abandon the child so as to endanger its life. *In re* BOYA SUNKULAMMA, **1 Weir 331.**

(4)—*Leaving child near place of public resort—Penal Code, ss.* 307 *and* 317—*Attempt to murder.*—A mother would be liable to be punished under s 317, and not under s. 307, Penal Code, although she left her child in a place which was quite close to a village and also near a public road where it was, in fact, shortly after discovered. EMPEROR v. KUNDAN, **A.W.N. 1903, 43.**

(5)—*Leaving child near a road—Murder.*—A newly-born child was left by its mother in an enclosure near a road not far from the village, was there discovered by a passer-by and shortly after breathed its last. *Held* that the mother could not be convicted of murder, the child not having been left on a barren heath or in an unfrequented place, but of an offence under s. 317, Penal Code. MOSST. NANKEE v. CROWN, **23 P.R. 1866, Cr.**

(6)—*Death remotely due to exposure.*—Where a child does not die on account of the exposure except in a remote degree, the mother that exposed the child would not be guilty of murder, but only of an offence under s. 317, Penal Code, which contemplates cases in which death is caused from cold or from some other result of exposure. QUEEN v. KHODABUX FAKEER *alias* KHUDIRAM FAKEER, **10 W.R Cr. 52.**

(7)—*Penal Code, ss.* 304, 317—*Exposure of child knowing that death was likely to ensue.*—Where a mother exposed an infant child, knowing that such abandonment by her was likely to cause its death, and death ensued in consequence thereof, *held* that she could properly be convicted of culpable homicide under s. 304, and not under both s. 304 and s. 317. EMPRESS OF INDIA v. BANNI, **2 A. 349.**

(8)—*Penal Code, ss.* 300, 304, 317—*Starving child to death.*—An accused person who caused the death of her infant child by deliberately starving it, but did not either abandon or part with it, was held to have been wrongly convicted under s. 317, Penal Code, and it was pointed out that the Sessions Judge, in convicting the mother under s. 304, ought to have specified the exception under s. 300, which covered the case. MUSSAMMAT RAM DAI v. CROWN, **18 P.R. 1870, Cr.**

(9)—*When no offence—Penal Code, s.* 317—*Leaving children under care of others.*—The mother of an illegitimate child, aged 6 months, made over the child to a blind woman in whose company she was, and promised to return with food which she said she was going to beg; she went off to another village and probably had no intention whatever of returning. *Held* (*per* Blair and Aikman, JJ., Knox, J., *dissenting*) that she was not guilty of an offence under s. 317, Penal Code. QUEEN-EMPRESS v. MIRCHIA, **18 A. 364 = A.W.N. 1896, 117.** [*Rel.*, 4 Ind. Cas. 801 = 5 N.L.R. 189; *R.*, 24 M. 662].

(10)—*Newly-born babe left in charge of husband's sister.*—Where a woman left her

Abandonment of Children—*concluded.*

daughter's newly-born babe with the sister of her son-in-law, who was then absent from the place, saying that it was her brother's child, and the infant died shortly after her departure, *held* that the woman was not guilty of an offence under s. 317 and that her daughter had not abetted any such offence. CROWN v. MUSSUMAT KHAIRO, **33 P.R. 1872, Cr.**

(11)—*Woman eloping leaving infant under husband's care.*—A married woman, who eloped leaving her suckling baby a month and a half old in the house of her husband, was *held* not to be guilty of an offence under s. 317, Penal Code, as she knew that her husband would surely take care of it. CROWN v. BHURAN, **5 P.R 1878, Cr.** [*R.*, 4 P.R. 1879, Cr.]

(12)—*Child being taken care of by husband.*—A married woman quarrelled with her husband and left for her parent's home when he had gone out, leaving her child six months old in his house. The husband took charge of the crying infant on his return home; *held* that the woman was not guilty of an offence under s. 317, Penal Code. EMPRESS v. BHAGAN, **4 P.R. 1879, Cr.** (5 P.R. 1878, Cr., *Appr.*)

(13)—*Charge to jury in a case of—Duty of Sessions Judge in summing up.*—Where the Jury doubted whether a woman had abandoned her child at all, or whether she was the mother of it, although the Sessions Judge had no reasonable doubt from the evidence on these points, it was pointed out that it was his duty in summing up the evidence to lay before the Jury all the facts requiring to be determined by them. **1 W.R. Cr Letters, 10.**

(14)—*Circumstances mitigating crime.*—In this case which was one of abandonment of child, the circumstances which were revealed in evidence precluded the idea, that appellant intended to do more than abandon her illegitimate child, and even this was done in a way to give the child every chance of being rescued. *Held* that under such circumstances the finding and sentence of the Sessions Judge must be modified. MOSST. NANKEE v. CROWN, **23 P.R. 1866, Cr.**

Abatement of Appeal.

(1)—*Death of appellant, effect of.*—The death of the appellant during the pendency of the appeal causes the appeal to abate. AMIR SINGH v. CROWN, **16 P R. 1878 Cr.** [*Diss*, 9 Cr. L.J. 103=24 P.R. 1908, Cr.; *R.*, 6 P.R. 1893, Cr.]

(2)—*Crim. Pro. Code* (1872), ss. 283, 297—*Death of convict who appealed—Revision.*—The Crim. Pro. Code has not made any provision for the continuance of an appeal either by the heir, devisee, or executor of a deceased convict, or by any other person, an appeal lodged by such convict abating on his death. The High Court has, however, the right to call for the record and make such order thereon as it may deem to be due to justice. IMPERATRIX v. DONGAJI ANDAJI, **2 B. 564.**

Abatement of Appeal—*concluded.*

(3)—*Crim. Pro. Code* (1882), s. 431—*Remedy of deceased appellant's legal representatives.*—Case where the High Court *held* that the appeal of a deceased appellant abated on his death and declined to take it up under its revisional powers as the decision depended on the appreciation of evidence. The legal representatives of the deceased appellant were, however, referred to the Government for redress. *In re* NABI SHAH, **19 B. 714=Rat. Un. Cr. C. 707=Cr. Rg. 40 of 1894.**

See APPEAL—APPEAL—PRACTICE AND PROCEDURE, 2 B. 564.

See REVISION—MATTERS PERTAINING TO EVIDENCE, 19 B. 714=Rat. Un. Cr. C. 707 =Cr. Rg. 40 of 1894.

Abatement of Nuisance.

See BEN. ACT III OF 1899, s. 3, cl. 29, and s. 632, 8 Ind. Cas. 530=15 C.W.N. 316.

Arising from privy on public road—*See* CRIM. PRO. CODE (1898), Ch. X and s. 133, 4 Bom. L.R. 882.

See PENAL CODE, ss. 99, 141, 425, 2 C.L. R. 62.

Abatement of Prosecution.

(1)—*Effect of complainant's death on prosecution.*—*Crim. Pro. Code* (1898), s. 198.—The death of the complainant, during the course of criminal proceedings for defamation, necessarily terminates those proceedings. ISHAR DAS v. KING-EMPEROR, **8 P.W.R. 1908=7 Cr. L.J. 290=10 P.R. 1908, Cr.=112 P.L.R. 1908.** (31 C. 993, F.B., *F.*)

(2)—*Penal Code, s.* 497—*Adultery—Husband's death.*—A prosecution for adultery, under s. 497, Penal Code, is not necessarily put an end to by the death of the husband. HIGH COURT PROCEEDINGS, 13th July 1869, No. 1261, **4 M.H.C App. 55=2 Weir 235.**

Abatement of Revision.

Death of applicant during pendency of revision—Crim. Pro. Code (1882), *s.* 431.—The death, during the pendency of revision proceedings, of the applicant for revision causes, by analogy to s. 431, Crim. Pro. Code, the revision to abate. KHAZANA v. EMPRESS, **6 P.R. 1893, Cr.** [*R.*, 9 Cr. L.J. 103=24 P.R. 1908, Cr.]

Abduction.

See KIDNAPPING.

See PENAL CODE, ss. 359—369, 494, 498.

(1) *When punishable—Penal Code, ss.* 362, 363.—Bare abduction, without the intention pointed out in the different sections dealing with the subject, is not *per se* an offence. Where persons charged for abduction and also for rioting with the common object of abducting a certain woman were acquitted of the former charge but convicted on the latter charge, *held*, that the conviction was bad, as

Abduction—*continued.*

the common object which made the act punishable was not proved. KHALIL NASYA v. EMPEROR, **6 C.W.N. 208.** (15 W.R. Cr. 4=6 B.L.R. 121, *F.*)

(2)—*Force or deceit not practised.*—A conviction of abduction was quashed, no force or deceit having been practised on the person abducted. QUEEN v. KOMUL DASS, **2 W.R. Cr. 7.**

(3)—*Promise of marriage not fulfilled.*—Where a man by a promise of marriage induces a woman to leave her house, but does not marry her or get her married, he is guilty of deceiving her within the meaning of s. 362, Penal Code. MAHCUB v. KING-EMPEROR, **4 A.L.J. 482.**

(4)—*Penal Code, ss 362, 366—Marrying girl with idea of prostituting her.*—Where an accused person dishonestly induced a girl to marry him and leave her home with the view of causing her to prostitute herself, *held* that the fact of such marriage did not exculpate him from being guilty of abduction under s. 362, Penal Code, or of an offence under s. 366. BAHADUR v. EMPRESS, **7 P.R. 1881, Cr.**

(5)—*Penal Code, ss. 362, 368, 498, 116—Enticing by procuress.*—The conviction of a procuress was changed from abduction to enticing, where the woman alleged to have been abducted was of mature age and a free agent, and the conviction of the other prisoners was also changed from abetting wrongful concealment under s. 368, to abetment under s. 116, Penal Code. QUEEN v. SRIMOTEE PODDEE, **1 W.R. Cr. 45.**

(6)—*Magistrate to take evidence of marriage and not to refer complainant to civil suit—Penal Code, s.* 498.—The procedure of a Magistrate discharging an accused person, charged with enticing away a married woman, on the ground that she denied having been married to the complainant and referring the complainant to a civil suit was *held* to be irregular; the Magistrate being under an obligation to take evidence as to the fact of the marriage. In cases under s. 498, Penal Code, marriage could not be proved by the evidence given in a civil suit. EMPRESS v. ALI BAKSH, **3 P.R. 1881, Cr.** [*R.*, 40 P.R. 1882, Cr.]

(7)—*Married woman, if can abet her own abduction.*—Neither under the Penal Code nor under the Frontier Regulations is it an offence for a married woman to abet her own abduction. JHUNDOO v. AHMED DEEN, **40 P.R. 1866. Cr.** *See also* PHALLA v JIWAN SINGH, **6 P.R. 1871, Cr.**; CROWN v. MUSSUMMAT WAHABJI, **14 P.R. 1875, Cr.**; NATHA SINGH v. EMPRESS, **11 P.R. 1883, Cr.**

Women abetting her own—*See* ABETMENT, Colm. Dig. Cr. No. 4 (1871).

See COMPLAINT — DISMISSAL OF COMPLAINT, 17 P.R. 1874, Cr.

See CRIM. PRO. CODE (1898), ss. 188, 537, 4 P.R. 1902, Cr=21 P.L.R. 1902. **F.B.**

See CRIM. PRO. CODE (1898), ss. 199, 238, 27 M. 61=2 Weir 236.

Abduction—*concluded.*

See CRIM. PRO. CODE (1898), ss. 248, 345, 8 P.R. 1871, Cr.

With intent to hold up to ransom—*See* PENAL CODE, ss. 71, 364, 365, 383, 111 (*b*) and 387, 6 L.B.R. 160=19 Ind. Cas. 167=14 Cr. L.J. 167=6 Bur. L.T. 77.

Carrying off a woman by force—When punishable.—*See* PENAL CODE, ss. 142, 299, 302, 304, 325, 366, 12 P.W.R. 1911, Cr.=193 P.L.R. 1911=12 Cr. L.J. 393=11 Ind. Cas. 577.

See SENTENCE—GENERAL, 7 M.H.C. 375.

Abetment of—and wrongful confinement—Penal Code, ss. 343, 498.—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, W. R. 1864, Cr. 21.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 8 W.R. Cr. 84.

Abetment.

See PENAL CODE, ss. 107—114.

(1)—*Abetment, what constitutes—Penal Code. ss.* 109, 114 *and* 118.—To substantiate a charge under s. 109, I.P.C., it is necessary to show intentional aid by some act or illegal omission. Where a person admittedly conceals the existence of a design to commit an offence which he is bound to disclose, and by this concealment intentionally facilitates or is likely to facilitate the commission of the offence, he is guilty of abetment under s. 118, I.P.C. A conspirator, who stands out of a house while his friends enter inside and loot it and watches out in pursuance of the common design, is, if he is near enough to render assistance, guilty of abetment under s. 114, I.P.C. QUEEN-EMPRESS v. KHANDU VISHNU SATHE, **1 Bom.L.R. 351.**

(2)—*Test of abetment—Guilty knowledge of abettor.*—The test of culpability, in cases of abetment, must always be whether, having regard to the immediate object of the instigation or conspiracy, the act done by the principal is one which, according to ordinary experience and common sense, the abettor must have foreseen as probable. QUEEN-EMPRESS v. MATHURA DAS. **6 A. 491=A.W.N. 1884, 251.** [*R.*, 11 A.L.J. 997=U.B.R. 1897--1901, Vol. I, 249].

(3)—*Penal Code, s.* 108—*Abetment—Concert—Intention.*—To constitute a man the abettor of another's crime, it must be clearly established that both intended to commit or to further the same crime. REG. v. HAMAL, **Rat. Un. Cr. C. 93=Cr. Rg. 47 of 1875.**

(4)—*Presence at offence, how far abetment.*—To be present and aware that an offence is about to be committed does not constitute an abetment, unless the person present holds some position of rank or influence such that his countenancing what takes place may, under the circumstances, be held to be a direct encouragement, or unless some specific duty of prevention rests on him, which he leaves unfulfilled, in such wise that he may be safely taken as having joined in a conspiracy for the perpetration of the offence. QUEEN-EMPRESS

Abetment—*continued.*

v. LAKSHMI, **Rat. Un. Cr. C. 303 = Cr. Rg. 51 of 1886.**

(5)—*Abetment — Presence — Inaction—Criminality—Probability compatible with innocence—Conviction, justification for.*—Where, in a murder case, a co-accused stated that she remained an unwilling spectator while the offence was being committed by the other accused. *Held*, that the alleged omission of a co-accused to intervene or raise an alarm did not constitute an abetment of murder, inasmuch as her inaction did not constitute criminality. Where the circumstances of a case point to the conclusion that the accused committed the offence, but there is also a reasonable probability compatible with his innocence, there is no sufficient justification for the conviction of the accused. SARJU PRASAD v. EMPEROR, **15 Cr. L.J. 617 = 25 Ind. Cas. 625.**

(6)—*Mere presence—No offence.*—The mere presence at the commission of a crime of a person, who has no authority to interfere, will not constitute an abetment of the offence. QUEEN-EMPRESS v. SHIDLINGAPPA, **Rat. Un. Cr. C. 844 = Cr. Rg. 13 of 1896.**

(7)—*Commission of offence in presence of Village Chowkidar.*—The mere fact of the commission of the offence of extortion in the presence of the Village Chowkidar, without any disapproval on his part, will not constitute him an abettor. GOPAL CHUNDER SIRDAR v. FOOLMONI BEWA, **8 C. 728 = 11 C.L.R. 223.**

(8)—*Penal Code, s. 114—Abetment of offences under ss. 330, 348, I. P. C., by constable—Evidence of active instigation, whether necessary.*—Where a Village Magistrate, being present on an occasion in which a police constable was causing hurt to and wrongfully confining a person, did not attempt to interfere with, or stop the criminal acts of the constable, committed in his presence, nor did he report them to the Magistrate, *held*, that he was guilty of the abetment of offences punishable under ss. 330 and 348, Penal Code, although there was no evidence that he actively instigated the police to commit the offence, which they committed. *In re* APPANNA HEGADE AND ALI BEARY, **1 Weir 52.**

(9)—*Policeman present at beating of prisoner—Penal Code, s. 330.*—A policeman, who is present at the beating of a prisoner by another policeman for the purpose of extorting a confession and does not remonstrate with him, is guilty of the abetment of an offence under s. 330, Penal Code. QUEEN-EMPRESS v. LATIFKHAN, **20 B. 394.**

(10)—*By intentionally aiding.*—Where A gave a *dao* to B, who had given out his intention to coerce the party against whom he was acting and who inflicted grievous hurt on such party with the *dao*, A was held to be guilty of abetment within the second head of the 3rd clause of s. 107, Penal Code. QUEEN v. ESHAN MEAH, **12 W. R. Cr. 52.** [*R.*, 1 Bom. L.R. 351].

(11)—*Abetment by instigation—Depends on abettor's intention.*—The offence of abetment by instigation depends upon the intention of the person who abets, and not upon the act which is actually committed by the person whom he abets. QUEEN v. IMAMDI BHOOZAH, **21 W. R. Cr. 8.**

(12)—*Instigation by means of letter sent by post—Place of trial.*—Where a person sends a letter to another through the post, inviting him to the commission of a criminal offence, he is guilty of the offence of abetment as soon as the letter is received by, and the contents become known to, the addressee, and is triable at the place where the letter is received. QUEEN-EMPRESS v. SHEO DIAL MAL, **16 A. 389 = A. W.N. 1894, 135.** [*F.*, 2 C.W.N. 606; *R.*, 36 B. 524 = 14 Bom L.R. 147 = 13 Cr. L J. 426 = 14 Ind. Cas. 970.]

(13)—*Doctor supplying woman with medicine to poison her son-in-law—Instigation.*—Where an accused person asked a native doctor to supply her with medicine for poisoning her son-in-law, *held* that it was no attempt to murder, it being simply an act by way of preparation to commit an offence and not being a transaction which would necessarily have ended in murder if not interrupted; but that it amounted to an instigation by the native doctor to abet the accused in committing murder, punishable, with reference to s. 108, Expln. 4, Penal Code, under ss. 116 and 302 of the Code. EMPRESS v. BHAKHTAWAR, **24 P.R. 1882, Cr.**

(14)—*Sympathy with an unlawful assembly, if abetment.*—The mere fact that persons of influence, being aware of the objects of an unlawful assembly, deliberately absented themselves from the locality, would not make them guilty of instigation within the meaning of s. 107, Penal Code, or abetment of an offence under s. 143, Penal Code. ETIM ALI MAJUMDAR v. EMPRESS, **4 C.W.N. 500.**

(15)—*Act abetted should result from abetment—Penal Code, s. 109.*—The act abetted should, under s. 109, Penal Code, be committed as the result of the abetment. QUEEN v. RAJCOOMAR BANERJEE, **1 Ind. Jur. O.S. 105.**

(16)—*Commission of act abetted unnecessary.*—It is not necessary, to constitute the offence of abetment, that the act abetted should be committed. *In the case of* DINONATH BUROOA, **18 W.R. Cr. 32.**

(17)—*Abetment of abetment.*—To constitute the offence of abetment of an abetment of an offence, the original offence need not have been actually committed. EMPRESS v. TROYLUKHO NATH CHOWDHRY, **4 C. 366 = 3 C.L.R. 525.**

(18)—*Abetment where offence not committed—When conviction will be quashed—Crim. Pro Code (1861), ss. 404, 405.*—Notwithstanding that the offence abetted has not been committed, there may be an abetment of it; but the Chief Court will, on appeal or revision, quash the conviction of the alleged abettors, where the principal offender is acquitted, if the following rule of the Sudder Court of Agra be applicable:—" In any case in which a person convicted of an offence is acquitted on appeal on

Abetment—*continued.*

grounds of fact and the decision of the appellate Court proceeds on grounds common to other convicted persons in the same case who have not appealed, the appellate Court is competent to acquit such persons also; it being held that. under the finding of the appellate Court which has reversed the general finding of the lower Court common to the appellant and other persons, the sentence on the non-appellant convicted person has become inconsistent with the finding, and by consequence, is contrary to law and is, therefore, reversible under s. 404 or s. 405, Crim Pro. Code (1861), as the case may be." LAL KHAN v. KUREEM KHAN, **71 P.R. 1866, Cr.**

(19)—*Intention of accused to employ means physically incapable of producing effect—Penal Code, ss.* 108, 109 *and* 511.—Under s. 108, Expl. (2), and s. 511, Penal Code, the abetment of an offence is possible, even though the means intended to be employed are such that they are physically incapable of producing the effect essential to constitute the offence. SAHIB DITTA v. EMPRESS, **20 P.R 1885, Cr.** *See, also,* REG. v. PESTANJI DINSHA, **10 B H C. 75.**

(20)—*Of act after its commission, if abetment.*—There is no abetment of an act *after* it has been committed. A person cannot be convicted of the abetment of a false charge, merely because he gave evidence in support of it. That offence must be committed either before or at the time when the act was committed. JUGUT MOHINI DASSEE v. MODHU SUDHAN DUT, **10 C.L.R. 4.**

(21)—*Abetment of offence after its commission impossible.*—A young man, sent out of his paternal house for criminal intimacy with a woman, carried away from his father's house things, which he presented to her; on his conviction for house trespass in order to commit theft and the woman's for abetting him, *held* that the latter's conviction was bad, as no act subsequent to the commission of an offence could be construed as an abetment. CROWN v. LOODDUN, **11 P.R. 1869, Cr.**

(22)—*Attempt to abet offence—Penal Code, ss.* 40, 109, 511.—The attempt to abet an offence is not legally impossible, and such an offence is punishable; for, the abetment of an offence, as defined in s. 40, Penal Code, is itself an offence punishable by the Penal Code under s. 109 and other sections of Ch. V and an attempt to commit the offence of abetment is provided for by s. 511, Penal Code. SPIER v. EMPRESS, **49 P.R. 1887, Cr.**

(23)—*Charge of attempting and abetting same offence.*—Where a person was charged and convicted of attempting as well abetting the same offence, the High Court set aside the conviction and sentence on one of the counts EMPEROR v. FATEHKHAN BAHADURKHAN, **8 Bom. L. R. 855 = 4 Cr. L.J. 450.** (23 B. 706 = 1 Bom. L.R. 142; 17 M. 235 F.B., *R.*)

(24)—*Cumulative charges of abetment of offence and commission of offence—Penal Code, ss.* 109 *and* 114.—A man cannot be charged as an abettor by conspiracy as well as a perpetrator of the offence abetted cumulatively. KING-EMPEROR v. THIRUMALAI REDDI, **24 M. 523 = 2 Weir 340 = 1 Weir 340.**

(25)—*Woman abetting her own abduction.*—A woman cannot be convicted with the abetment of her own abduction. POLICE v. UMRAO LODI, **Colm. Dig. Cr. No. 4 (1871).**

(26)—*Abettor when punishable as principal—Penal Code, s.* 114.—An accused, who, when absent, is liable to be punished as abettor, is liable to be punished as principal, if he is present at the time of committing the offence. EMPRESS v. MINDAI LAL, **A.W.N. 1883, 39.**

(27)—*Abettor present at commission of offence punishable as principal*—An abettor, when present at the commission of the offence, must be reckoned as a principal party. **1 W.R. Cr. Letters, 2.**

(28)—*Penal Code, ss.* 109 *and* 114—*Abettor when liable as principal.*—*Held* that to bring a prisoner within s. 114, I.P.C., it is necessary first to make out the circumstances which constitute an abetment, so that, if absent, the person charged with abetment would have been liable to be punished as an abettor, and then to show that he was also present when the offence was committed. Instigation, engaging in a conspiracy, and intentionally aiding by an act or illegal omission make a person an abettor, even though he is not present when the offence, the commission of which he has instigated, conspired to effect, or intentionally aided by an act or illegal omission, is committed; and if he is present, though merely as a spectator, he is punishable as a principal, under s. 114, I.P.C. *Held*, further that, when no conspiracy, instigation, act or illegal omission is proved and the abetment consists only of participation in the actual commission of the offence, s. 109 is the section applicable. ABDULLA KHAN v, QUEEN-EMPRESS, **5 P.R. 1900, Cr. = 15 P.R. 1899, Cr.** (7 W.R. Cr. 9, *F.*)

(29)—*Principal's acquittal no bar to abettor's conviction.*—The offence of abetment under the Penal Code is a substantive offence. Its punishment, when the culprit has been present at the commission of the principal offence, is the same as for that offence; and the trial of it is not, in any way, dependent on the conviction of the person charged with the principal offence. An abettor may be convicted before the principal is arrested. REG. v. MARUTI DADA, **1 B. 15.** [*D.*, 19 B. 105.]

(30)—*Cognisance of offence under s.* 494, *Penal Code.*—A Magistrate should not take cognisance of the abetment of an offence under s. 494, Penal Code, without a complaint. JITMAL v. EMPRESS, **4 P R, 1888, Cr.** [*F.*, 12 Cr. L.J. 50 = 8 Ind. Cas. 1160 = 32 P.R. 1910 = 39 P.L. R. 1911, 51 P.W.R. 1910, Cr.]

(31)—*Abetment beyond territorial jurisdiction of a Magistrate—Crim. Pro. Code* (1898) s. 180.—Although the abetment of an offence might have taken place beyond the territorial jurisdiction of a Magistrate, yet under s. 180, Crim. Pro. Code, the abettor can be tried by a Magistrate within whose territorial jurisdiction the

Abetment—*continued.*

offence abetted was committed. *In re* CHENNANNA GOWD, **1 Weir 155.**

(32)—*Abetment in British India of offence committed outside British India—Penal Code,* ss. 109, 115, 148, 302—*Crim. Pro. Code* (1882), s. 188.—Where a British subject abets in British India an offence committed outside British India, he is not charged with an offence punishable under the Penal Code, and cannot, therefore, be tried by British Courts. S. 188, Crim. Pro. Code, does not apply to such a case. QUEEN-EMPRESS v. GANPATRAO RAMACHANDRA, **19 B. 105.** (7 B.H.C. Cr. 89, 5 M. 338, *F.*) [*R.*, 22 B. 54 ; *D.*, 24 B. 287.]

(33)—*When triable by Jury.*—Abetments are triable by Jury only when they relate to offences which are themselves so triable. **1 W.R. Cr. Letters, 2.**

(34)—*Joint trial of principal and abettor—Penal Code,* s. 114—*Evidence Act,* s. 30.—Two persons, jointly tried, the one for committing a theft and the other for having abetted it previously and of being present at its commission, were held to be jointly tried for the same offence within the meaning of s. 30, Evidence Act ; a person answering the description given in s. 114, Penal Code, cannot be properly called an abettor, he being, for practical purposes, identical with a principal. BAG SHAH v. CROWN, **3 P.R. 1879, Cr.** [*F.*, 32 P.R. 1882, **Cr.**]

(35)—*Whether abettor and principal tried for same offence.*—Two persons jointly tried, one for committing an offence and the other for abetting it, were held not to be tried for the same offence within the meaning of s. 30, Evidence Act. But see s. 4 of Act III of 1891 or the explanation to s. 30, Evidence Act, which enacts that "offence, as used in this section, includes the abetment of, or attempt to commit, the offence." NUR AHMED v. CROWN, **8 P.R. 1874, Cr.** [*F.*, 39 P.R. 1885, Cr. ; *R.*, 3 P.R. 1879, Cr.]

(36)—*Act* XXI *of* 1856 (*Excise*).—The Excise Act, XXI of 1856, makes no provision for punishing abetment. QUEEN v. KULLIMOODDEEN, **7 W.R. Cr. 53.**

(37)—*Act* XIV *of* 1866—*Scope of s.* 109, *Penal Code.*—Act XIV of 1866 does not provide for the punishment of abetting an offence under that Act. Under s. 109, Penal Code, the abetment must be of an offence punishable under that Act, and not of an offence punishable under a distinct and special law. QUEEN v. RAMLUGUN LALL MOONSHEE, **7 W.R. Cr. 54.**

(38)—*Abetment of assault—Unlawful assembly.*—Of several persons constituting an unlawful assembly, some only were armed with sticks, and A, one of them, was not so armed but picked up a stick and used it ; B the master of A, who gave a general order to beat, was held to be guilty of abetting the assault made by A. QUEEN v. RASOOKOOLLAH, **12 W.R. Cr. 51.**

Abetment—*continued.*

(39)—*Abetment of bigamy — Penal Code,* ss. 368, 494, 109, 420.—Case where the Court acquitted the accused holding that they had not committed the offence of concealing a kidnapped person but that there was sufficient *prima facie* evidence that they had committed the offences of cheating (s 420) and of abetment of bigamy (ss. 109 and 494), and leaving the District Magistrate to act as he thought fit. IBRAHIM v. EMPRESS, **7 P.R. 1894, Cr.**

(40)—*Abetment of bigamy—Mahomedan Law.*—To establish a charge of abetment, the accused must be proved either to have instigated or aided some other person, or to have conspired with another for the commission of an offence. Therefore, a Mahomedan guardian of a married female infant, who, during her husband's life-time causes a marriage ceremony to be performed in her name with another man, but without her taking any part in the transaction, does not commit the offence of abetment of bigamy, because, in doing the act, he is the sole actor, and the act, though illegal, is not, if done by one person alone, an offence provided for by the Penal Code. An act of the above description, instead of being the subject of a criminal prosecution, ought properly to be decided in a Civil Court. EMPRESS v. ABDOOL KURREEM, **4 C. 10=3 C.L.R. 81.** [*D.*, 6 C. W.N. 343.]

(41)—*Offering bribe to public servant to drop prosecutions under Opium and Excise Acts—Trial for graver offence under s.* 161, *Penal Code—Penal Code,* ss. 214, 161, 116.—An accused person offered a bribe of Rs. 90 to an Excise Officer not to prosecute him under the Opium and Excise Acts, the offence under the former Act being the possession of 4 annas weight of opium and that under the Excise Act being the possession of 12 bottles of *seinye.* For the former offence the sentence inflicted was a fine of Rs. 10, and for the latter Rs. 75. The Magistrate, besides sentencing the accused to pay a fine of Rs. 50, also ordered the confiscation of the ninety rupees offered as bribe. *Held* that, as the accused offered an illegal gratification to a public servant whose duty it was to prosecute for offences against the Excise Act, the accused should have been tried for the more serious offence of abetting an offence under s. 161, Penal Code, but that the gravity of the offence rather depended upon the gravity of the offences he wished to conceal than upon the amount he offered, though the amount offered, as representing the degree of temptation, ought also be taken into consideration. QUEEN-EMPRESS v. RE BAW, **L.B.R. 1893-1900, 338.**

(42)—*Giving bribe to public servant.*—Even if a public servant is corrupt and solicits a bribe directly or indirectly, the giving him a bribe is none the less an abetment of his offence. QUEEN-EMPRESS v. MA KA, **U.B.R. 1892-1896, Vol. I, 158.**

(43)—*Abetment of cheating.*—Where an accused person, in possession of a double pice,

Abetment—*continued.*

quicksilvered it so as to cause it to resemble a rupee and subsequently gave it to B to get copper changes for it, *held* that the accused was not guilty under s. 241, Penal Code, nor under s. 232, unless *at the time of whitening the coin* he intended thereby to practise deception or knew it to be likely that deception would thereby be practised; if the idea of uttering the white coin as a rupee was an afterthought, the accused might be convicted of abetting B to cheat the person to whom he was sent with the counterfeit rupee, under ss. 116 and 420, Penal Code. EMPRESS v. MIHARBAN, **9 P.R. 1884, Cr.**

(44)—*Penal Code, ss.* 417 *and* 419.—Where an accused person, by falsely representing to the prosecutor that a notorious and well-skilled gambler was a rich *seth*, who would fall an easy prey, induced the prosecutor to gamble with such expert and the prosecutor lost all his property thereby, *held* that the accused was guilty of the abetment of cheating under ss. 417 and 419, Penal Code. JAHANA v. EMPEROR, **4 P.R. 1905, Cr. = 125 P.L.R. 1905.**

(45)—*Of cock fighting.*—A person, who is present at a cock fight in a public place, and encourages it by his presence, being present not against his will or accidentally, is guilty of aiding and abetting the fight. QUEEN-EMPRESS v. NGA SHWE KYA, **U.B R. 1892-1896, Vol. I, 119.**

(46)—*Conspiracy under English and Indian Laws—Penal Code, s.* 169.—Under the Indian Criminal Law, conspiracy, except in certain cases, is a mere species of abetment, when an act or an illegal omission takes place in pursuance of the conspiracy and amounts to a distinct offence for each distinct offence abetted by the conspiracy. But, under the English Law, the agreement or combination to do an unlawful thing by unlawful means amounts, in itself, to a criminal offence. The Penal Code follows the English Law of conspiracy only in a few exceptional cases, which are made punishable under ss. 311, 400, 401, 402 and 121-A. In these cases, whether an act is done or not or an offence committed in furtherance of the conspiracy, the conspirator is punishable, and he can also be punished separately for every offence committed in furtherance of the conspiracy. In all other cases, conspiracy is only one species of "abetment of an offence" and stands on the same footing as abetment by "intentional aiding." KING-EMPEROR v. THIRUMALAI REDDI, **24 M. 523 = 2 Weir 340 = 1 Weir 340 = 2 Weir 712.** [*R.*, 8 Cr. L.J. 393, 13 Cr. L.J. 39 = 16 C.W.N. 69 = 13 Ind. Cas. 279, 11 O.C. 328.]

(47)—*Conspiracy—Penal Code, s.* 108, *exp.* 5.—Under Expln. 5, s. 108, Penal Code, it is not necessary to the commission of the offence of abetment by conspiracy that the abettor shall concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed. QUEEN v. GOBIND DOBEY, **21 W.R. Cr. 35.**

Abetment—*continued.*

(48)—*Penal Code, ss.* 107, 109, 379, 382 *and* 393—*General intention to commit robbery* — The conviction under ss. 109, 382, Penal Code, of the resident of a foreign territory, found concealed with three others in a deserted house, for assembling to steal certain Government camels that were grazing in the village or any other property that may be available was altered by the confirming Court to one under s. 393, but the Chief Court quashed it as unsustainable. *Held (per Smyth, J.)*—The mere fact that a number of persons assembled together with the general intention of committing theft, and not a specific theft or theft of specific property, does not amount to the abetment of an offence of theft, so as to be punishable under ss 116 and 379, Penal Code, or under ss 116 and 382, Penal Code. A design to commit a specific offence must be proved before holding a person guilty of the abetment of such an offence by having conspired with others to commit it. *Per Elsmie, J. (contra)* That the case was covered by the 2nd clause of s. 107, Penal Code, and that the conviction was proper. *Per Plowden, J.*—On a charge of abetment of conspiracy, it is necessary to allege and prove not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence (specifying the offence), but also that some act or illegal omission (specifying the act on omission) took place in pursuance of that conspiracy, and in order to the commission of the said offence. *Held,* further *(per Plowden, J.)* that a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft) as opportunity should offer within a determinate area (as, for instance, a village) would not be improper as being too vague. KARM ILAHI v. MORRISON, **16 P.R. 1879, Cr.**

(49)—*Of criminal breach of trust by servant, proof of.*—In order to sustain a conviction for the abetment of criminal breach of trust by a servant, it must be proved that the transaction was a dishonest one and that the accused knew that, in respect of such transaction, the servant was acting dishonestly and was committing a breach of trust, and that the accused abetted the servant in doing it. BAL GOBIND SHAHA v. EMPRESS, **4 C.W.N. 309.**

(50)—*Criminal breach of trust by servant—Misappropriation.*—The accused, appointed as the treasurer of the Punjab Bank at Mooltan, shortly afterwards introduced X as his agent or his gumastah and removed himself to Amritsar on some other duty of the Bank. X misappropriated some of the Bank's money and absconded. The accused, being convicted of criminal breach of trust as a servant and of abetting the same, as he had, according to the Sessions Court's finding, received some of the misappropriated money and had connived at X's embezzlement, appealed, on the ground that he had no control over the Bank's property, being only treasurer in name, that he had not abetted X, and, that, X being the Bank's and not his

Abetment—*continued.*

servant, he, the accused, had not committed criminal breach of trust. *Found* by the Chief Court, that the accused and X were servants of the Bank, that X had committed breach of trust as such, and that the accused had received the misappropriated money from X with a guilty knowledge, and *held* that, although no act done by the accused *after* X's offence was committed would make the former guilty as an abettor, yet as the accused, who was, as the Bank's treasurer, bound to disclose the fact that he had irregularly received the Bank's money on the first defalcation, did not do so, he was guilty of an illegal omission, by which he voluntarily caused the safe abstraction and transmission to himself of the second sum and had thereby abetted the breach of trust by a servant. KALOO RAM v. CROWN, **30 P.R. 1868, Cr.**

(51)—*Of criminal trespass and theft—Penal Code, ss.* 107 *and* 108—*Execution of document giving lease over property not belonging to the lessor—Lessor's liability as abettor for criminal trespass and theft of crops by lessee.*—It is necessary to satisfy the requirements of ss. 107 and 108, Penal Code, that the act done should aid the commission of an offence or the commission of an act, which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor. The accused gave a lease of the pepper on certain hills, described to be the property of his *tarwad.* The lease granted comprised within the boundaries stated, not only land belonging to the accused, but also other land stated to be the property of the Government. The lessee conveyed his right to others, and, under the color of the lease, the sub-lessees entered upon the Government land comprised therein and took the pepper. The accused was convicted of the abetment of criminal trespass and of theft. *Held* that the essential ingredient of criminal trespass and theft being unlawful entry and unlawful taking, the mere execution of a document cannot be said to aid either the entry or the taking, and was, by itself, consistent with an intention that the person in whose favour the document was executed should assert his claim thereunder in due course of law. *Held,* also, that, as there was no evidence that the accused suggested the entry on the land or the taking of the pepper, the accused was not guilty of the charge of abetment. PARAPRAVANBAVOTHI HADGI v. HENRY RHODES MORGAN, **1 Weir 48.**

(52)—*Abetment of dacoity, what constitutes.—Per Fulton, J.*—If A asks B and others to come with him to commit dacoity, he instigates these men to dacoity just as much as if he asks them to go under some other leader. Similarly, if he asks B to ask C and others to join a dacoity, he abets the abetment of dacoity. An instigation to wage war against the Government includes an instigation to dacoity as such was necessarily includes robbery. QUEEN-EMPRESS v. ANANT PURANIK, **25 B. 90=2 Bom. L.R. 653.**

Abetment—*continued.*

(53)—*Penal Code, s.* 107—*Abetment of dacoity.*—An accused person, who was present when a dacoity was planned, from whose hut the dacoits set out and to which they subsequently returned with their booty, was held to have been properly convicted of abetment of dacoity. EMPEROR v. SHAM LAL, **A.W.N. 1903, 2.**

(54)—*Penal Code, ss.* 109. 395 *and* 397—*Abetment—Dacoity.*—Where certain persons simply pointed out to the dacoits the house to be robbed or actively participated in planning the dacoity and in taking charge of the camels used by the party during the commission of the offence, the abettors should be punished under ss. 109 and 395, Penal Code, and not s. 397, which applies only to persons actually committing a dacoity in which one of the acts specified is done. CHATAR SINGH v. EMPEROR, **15 P. R. 1901, Cr.** (16 A. 437, 21 A. 263, *F.*)

(55)—*Giving evidence in support of a false charge—Abetment of such charge.*—A person cannot be convicted of the abetment of a false charge solely on the ground of his having given evidence in support of such charge. QUEEN v. RAM PANDA, **9 B.L.R. Ap. 16.**

(56)—*Giving evidence in support of false charge—Abetment* —The lower Criminal Courts cannot punish, as abettors, persons who gave evidence in support of false charges, or other charges found by such Courts to be false. S. 108, Penal Code, does not contemplate any acts of subsequent abetment, or provide for the punishment of such offences, except when they are such as are defined in ss. 212 to 218. QUEEN v. PAUN PUNDHAH, **18 W. R. Cr. 28.**

(57)—*Penal Code, ss.* 109, 211—*False charge—Abetment* —The offence of making a false charge before the police falls within the first portion of s. 211, Penal Code. Where, in a quarrel between one of the accused and the complainant, the other accused, espousing the cause of the former, beat the complainant and lodged a false complaint of theft against him acting on the former's advice, *held* that the first accused was guilty of abetting an offence under s. 211, and that his conviction for the substantive offence, instead of for abetment, had not prejudiced him. RAM LOGAN LAL v. EMPEROR, **7 C.W.N. 556** (14 C. 633, *F.*) [*R.*, 32 C. 180.]

(58)—*Abetment of giving false evidence—Proof—Intention.*—In order to convict a person of abetting the commission of a crime, it is not only necessary to prove that he has taken part in those steps of the transaction which are innocent, but, in some way or other, it is absolutely necessary to connect him with those steps of the transaction which are criminal. There can be no offence of the abetment of giving false evidence, unless the person charged with abetment intended, not only that the statement should be made, but also that the statement should be made falsely. QUEEN v. NIMCHAND MOOKERJEE, **20 W R.Cr. 41.** [*F.*, 8 C.L.R. 236; *R.*, 1 Bom. L.R. 351].

Abetment—*continued.*

(59)—*Penal Code, ss.* 181 *and* 193—*Accused inducing a witness to suppress certain facts—Abetment of giving false evidence.*—Where an accused person asked a witness to suppress mention of certain facts in giving evidence against him before a Magistrate in reference to a charge of defamation, *held* that the act of the accused constituted an abetment of giving false evidence in a judicial proceeding and not of an offence under s. 181. *In re* ANDI CHETTI, **1 Weir 114=2 M.H.C. 438=1 Weir 156.**

(60)—*Of preparation of false record.*—A, who was in the habit of preparing records from certain abstracts made and read to him by B was made to prepare an incorrect record by B who made and read false abstracts. *Held* that B was guilty of the abetment of the offence described in s. 218, Penal Code, even though A had no guilty intention or knowledge in the matter. QUEEN v. BRIJ MOHAN LALL, **7 N.W.P. 134.**

(61)—*Knowledge of pleader—Client not an abettor but principal—Common intent—Penal Code, s.* 471.—The fact that the document filed by a pleader was known by him to be forged must be established before he can be convicted of an offence under s. 471, Penal Code. In such a case, the client who gave the document is liable to be punished, not as an abettor, but as a principal, under s. 471, Penal Code. EMPRESS v. JIWAN, **A.W.N. 1887, 195.**

(62)—*Of causing grievous hurt.*—A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured as to have died in consequence. *Held* that A was guilty at least of abetting the commission of voluntarily causing grievous hurt. QUEEN v. DOORGESSUR SURMAH, **7 W.R. Cr. 61**

(63)—*Abetment of house trespass by woman with whom adultery committed.*—Where a person entered another's house and committed adultery with his wife, *held* that he could be severally convicted and punished for the house trespass and the adultery but that the woman could not be convicted of abetting the house trespass. CROWN v. SHEIKH MUNGLI, **5 P.R. 1871, Cr**

(64)—*Use of house for illegal marriage, if abetment.*—The mere act of allowing an illegal marriage to take place at one's house does not amount to the abetment of an illegal marriage. QUEEN v. KUDUM, **W. R. 1864, Cr. 13.**

(65)—*Illegal marriage—What constitutes abetment.*—Where persons simply consent to be present at an illegal marriage, or are present thereat in pursuance of such consent, or grant the accommodation of a house for the marriage, they do not necessarily abet such marriage. EMPRESS v. UMI, **6 B. 126.** [*R.*, 19 B. 363.]

(66)—*Kidnapping from lawful guardianship—Penal Code, ss.* 366, 109—*Kidnapping not a continuing offence.*—The offence of kidnapping a minor is complete as soon as he or she is enticed or taken out of the keeping of his or her lawful guardian. The *taking* of a minor from lawful custody is not the same as *keeping* the minor out of such custody, and, therefore, during the time the minor is kept out of the custody of his or her guardian, the offence of kidnapping does not continue; consequently, a person who assists a kidnapper after the enticement in keeping the minor, cannot be convicted of the abetment of kidnapping, unless the kidnapping was itself the outcome of a preconcert. EMPEROR v. TIKA, **26 A. 197=A. W. N. 1903, 233** (1 M. 173, 19 A. 109, 2 C.W.N. 81, *R.*) [*R.*, 15 O C. 351.]

(67)—*Penal Code, s.* 363—*Carrying kidnapped girl from place to place*—On a charge of kidnapping a minor girl out of her lawful guardianship, two of the accused were convicted under s. 363, Penal Code, but the third was, on proof, of having conveyed the girl from place to place, though he was not connected with the "taking," convicted of the abetment of an offence under s. 363, I.P.C. *Held* that the conviction was bad, as kidnapping from lawful guardianship was not an offence which continued so long as the minor was kept out of the lawful custody and as conduct, which commences only after the custody of the lawful guardian is put an end to by the minor once for all being fully removed from such custody, cannot amount to an abetment of "taking." *Held*, also, that, as the third accused's acts were distinct from those of the rest and formed a different offence, if at all any was committed, his trial jointly with them was wrong. CHANDA v. EMPRESS, **13 P. R. 1893, Cr.** (1 M. 173, *Not F.*) *See also* CHANDA v. QUEEN-EMPRESS, **6 P.R. 1894 Cr.**

(68)—*Woman kidnapped to be compelled to marriage—Penal Code, ss.* 109, 366—*Crim. Pro. Code*, 1882, *s.* 182—*Continuing offence.*—Kidnapping being complete as soon as the kidnapped is taken out of the lawful guardian's custody, no abetment of it is possible under the law after the kidnapped has once been so removed and it is not a continuing offence under s. 182, Crim. Pro. Code. MUHAMMAD BAKHSH v. EMPRESS, **8 P. R. 1894, Cr.** (6 P. R. 1894, Cr., 7 P.R. 1894, Cr., *F.*) [*R.*, 12 Cr. L.J. 91 =9 Ind. Cas. 511=56 P.L.R. 19]

(69)—*Conspiracy—Abetment of kidnapping—Evidence Act, s.* 10.—Where a child was kidnapped after a visit to the accused's house by the servants of the person whose paramour the accused was, and she was charged with abetment of kidnapping and it was proved that she was very fond of the child, *held*, that the evidence was insufficient to establish the charge of abetment, or that, if there was any conspiracy, she was a party to it. A conspiracy, within the terms of s. 10, Evidence Act, contemplates something more than the joint act of two or more persons to commit an offence. S. 10, Evidence Act, could not be properly applied so as to convict the woman by admitting evidence as to what had been said, done or written by others. NOGENDRABALA DEBEE v. EMPRESS, **4 C.W.N. 528.**

Abetment—*continued.*

(70)—*Abetment of murder—Proof of murder.* —There can be no conviction for abetment of murder without proof of murder. QUEEN v. ASKUR, **W. R. 1864, Cr. 12.**

(71)—*Abetment of murder by impossible means — Sorcery.*—As to whether the abetment of murder by sorcery or other impossible means is an offence under the Penal Code. REG PESTONJI DINSHA **10 B.H.C. 75.**

(72)—*Penal Code, s.* 108, *Expl.* 3—*Abetment of murder.*—Under s. 108, Expl. 3, it makes no difference in the guilt of the abettor that the agent carries out the desired object under a mistaken belief that the act which he is employed to do is an innocent act. This is clear from the 3rd Explanation to s. 108, I.P.C. The offence consists in the abetment; the consequences are only material as effecting the punishment. EMPEROR v. DHANIRAM, **14 C.P.L.R. 192.**

(73)—*Penal Code*, ss. 109, 111—*Murder—Abetment—Different Act.*—The accused accompanied his brother who was taking a child to murder it; after accompanying him for a while, he refused to go further along with his brother, but at the same time, though knowing full well that the child was being taken to be murdered, he made no attempt to take the child back with him: and the child was subsequently murdered. *Held* that, under ss. 109 and 111, Penal Code, the accused was guilty of murder. QUEEN-EMPRESS v. SADHU, **Rat. Un. Cr. C. 207.**

(74)—*Of murder—Punishment—Penal Code,* ss. 302, 109, 114.—A sentence less than transportation for life is not a legal sentence for the abetment of murder under ss. 302, 109, Penal Code, when the offence of murder is actually committed in consequence of the abetment. The legal punishment for such abetment is the punishment provided for murder, that is, death or transportation for life. Where the abettor is present when the offence abetted is committed, the abettor should be charged and convicted as a principle under s. 114, Penal Code. NGA KYAW DIN v. QUEEN-EMPRESS, **L B R. (1893—1900), 269.**

(75)—*Informing husband against intriguing wife and her lover—Murder—Abetment.*—A person informed a certain husband, who had been for some time suspecting his wife, that she had arranged to meet her paramour at a certain place, to which the husband, armed with a stick, and the informant went together and caught them committing adultery. The husband pursued the paramour and killed him with his stick and then mortally struck his wife, who had been detained by the informant but who escaped severely thrashed. The Sessions Court convicted the husband of murder and the informant of abetting it, but the Chief Court quashed the latter's conviction, holding that he had not committed any crime and altered the husband's to one of culpable homicide not amounting to murder. HUSSUN v. CROWN, **30 P.R. 1872, Cr.**

Abetment—*continued.*

(76)—*Assisting in suicide.*—Persons who assisted a leper in the ceremonies connected with the performance by the leper of the sacrificial act preparatory to suicide were held (*Pearson, J., dissenting*) to have been rightly convicted of the abetment of suicide. GOVERNMENT v. GOPAL SINGH, **1 Agra 21, Cr.**

(77)—*Penal Code*, ss. 107, 306—*Conspiracy to commit suicide—Suttee.*—Where there was evidence that a woman prepared herself for suicide in the accused's presence and that they followed her to the pyre and stood by her, her step sons crying "Ram Ram" and one of the accused admitted that he exhorted her to say "Ram, Ram," and told her that she would then become *suttee*, *held* that the evidence was sufficient to prove active connivance and unequivocal countenance on their part, and to justify the inference that they had engaged with her in a conspiracy for the commission of *suttee.* QUEEN v. MOHIT PANDEY, **3 N.W.P. 316.** [*R.*, 11 A.L.J. 997.]

(78)—*Omission to inform police when an offence had been committed, if abetment.*—A person omitting to give information that a crime has been committed does not abet the crime, unless such omission involves the breach of a legal obligation. A private individual is not bound by any law to give information of any offence which he has seen committed. QUEEN v. KHADIM SHEIKH, **4 B.L.R.A. Cr. 7.**

(79)—*Abetment by illegal omission, proof of.* —To prove abetment under s. 107, I.P.C., by "illegal omission," it would be necessary to show that the accused intentionally aided the commission of the offence by his non-interference. KHAJAH NOORUL HOSSEIN *alias* KHAJAH WAHEED JAN v. MR. C. FABRE TONNERRE, **24 W.R. Cr. 26.**

(80)—*Penal Code*, ss. 107 *and* 109—*Abetment by omission—Bombay Motor Vehicles Act* (II *of* 1904), ss. 9 *and* 13—*Infringement of rules—Master and servant.*—It is not an abetment of the offence for the master to omit to give information to his servant, unless the omission were illegal, that is to say, in disobedience of an obligation imposed upon him by law. EMPEROR v. COOVERJI NASARWANJI, **9 Bom. L.R. 161 = 5 Cr. L.J. 176.**

(81)—*Penal Code*, s. 109—*Abetment by omission—Bombay Motor Vehicles Act* (II *of* 1904), s. 12—*Rules under the Act—Omission of the owner to give information of the rules to the driver.*—Abetment by omission is punishable, only if the omission is an illegal omission. The owner of a motor car cannot, therefore, be held guilty of abetment, in merely omitting to give information to his employees as to the rules framed under the Bombay Motor Vehicles Act, 1904. EMPEROR v. COOVERJI NASARWANJI, **9 Bom. L.R. 159 = 5 Cr. L J. 173.**

(82)—*Of rash navigation—Penal Code*, ss. 280, 109—*Omission to load ballast.*—A ferry boat contractor was convicted under ss. 280 and 109 Penal Code, of abetting the rash navigation of

Abetment—*continued.*

a vessel on the evidence that the boat hired by him in fulfilment of the contract was upset from not containing sufficient ballast. *Held* that, there being no evidence to show that the contractor intentionally omitted to provide the ferry boat with what he knew to be necessary for safe navigation, the conviction for abetment was untenable. REG. v. SAKARAM GOVIND, **Rat. Un. Cr. C. 35 = Cr. Rg. 28-7-1870.**

(83)—*Abetment of sale of printed defamatory matter.*—The principles of the Criminal Law as to the allegations required to be made and proved in a complaint, under s. 198, Crim. Pro. Code (1882), of the offence of abetting the sale of a newspaper containing defamatory matter discussed. SARDAR DYAL SINGH v. EMPRESS, **8 P R. 1891, Cr.** (12 P.R. 1883, Cr., 18 P.R. 1889, Cr., *R.*)

(84)—*Penal Code, s. 107 - Abetment—Supplying food to a person known to be engaged in crime.*—The supplying of food to a person known to be engaged in crime is not *per se* criminal; but, if food were supplied in order that the criminal may go on a journey to the intended scene of the crime, or conceal himself while waiting for an opportunity to commit the crime, the supplying of food would be in order to facilitate the crime and might facilitate it. *In re* LINGAM RAMANNA, **2 M. 137 = 1 Weir. 46.** [*R.*, 1 Bom. L.R. 351.]

(85)—*Penal Code, s. 107, Expl. 1.—Abetment of theft.*—A person can be convicted of the abetment of theft under the 1st Explanation to s. 107, Penal Code, only if he either procures or attempts to procure the commission of the theft. Mere subsequent knowledge of the offence is insufficient. QUEEN v. SHUMEERUDDEEN, **2 W R.Cr. 40.**

(86)—*Abetment of theft.*—The carrying off of certain buffaloes, belonging to the complainant, by order of the accused and the retention of them in the custody of the latter's servant were held to amount to an abetment of theft as defined in the Penal Code. *In the matter of the petition of* TARINEE PROSAUD BANERJEE, **18 W.R. Cr. 8.** [*Cons.*, 22 C. 669; *R.*, 22 C. 1017, F.B.]

(87)—*Abetment of theft—Presence at commission of offence after resiling—Penal Code, s.107, cls. 2 and 3, 109.* — A prisoner, who consented to form one of a party that committed theft and resiled from his agreement but was present at the commission of the theft, does not come within cl 2, s. 107, Penal Code, and ought not to be convicted of the theft, but of the abetment thereof under cl. 3, s. 107, and s. 109, Penal Code, read together. QUEEN v. BOODHUN MOOSHUR, **8 W.R.Cr. 78.**

(88)—*Zemindar lending house to police officer—Police officer putting illegal pressure in extorting confession—Knowledge of zemindar of that purpose—Zemindar an abettor—Penal Code, ss.* 107, 330.—Where a zemindar, who had lodged a complaint of theft, lent his house to the police officer conducting the investigation into the theft case, knowing that it was likely to be used for the purpose of putting illegal pressure upon persons suspected of complicity in or knowledge of the theft, and he was present at times while the police officer was engaged in actual torturing, *held*, that, under the above circumstances, the zemindar was properly convicted, under s. 107, Expl. 2, Penal Code, of doing an act in order to facilitate the commission of an offence, namely, the offence punishable under s. 330 of the Code. QUEEN-EMPRESS v. FAIYAZ HUSAIN, **A.W.N. 1896, 194.**

(89)—*Constable keeping out of way knowing that offence is likely to be committed.*—Where a Head-Constable, who knew that certain persons were likely to be tortured for the purpose of extorting confessions, purposely kept out of the way, *held* that he was guilty of abetment under the words of s. 107, Expl. 2, Penal Code. QUEEN v. KALI CHURN GANGOOLY, **21 W.R. Cr. 11.** [*R.*, 20 B. 394.]

(90)—*Persons all engaged in torture, if abettors.*—Where several prisoners were all concerned in a case of torture and were prosecuting a common object, *held*, each was as guilty as a principal, and not as an abettor of the others. QUEEN v. TARINEE CHURN CHUTTOPADHYA, **7 W.R.Cr. 3.** [*Appr.*, 1 C.L.R. 275, 20 W.R. Cr. 41, Rat. Un. Cr. C. 222, 254, 850, 10 B. 506, 20 B. 394, 26 C. 863, 3 C.W.N. 653.]

(91)—*Riot, abetment of.*—As to whether there can be an abetment of a riot, *see* DADAN GAZI v. EMPEROR, **33 C. 1023 = 10 C.W.N. 890 = 4 Cr. L J. 79.**

(92)—*Unlawful assembly— Right of private defence* —A person, who obtained a decree against some others, sent four of his men to take possession of the property from the defendants, who opposed the assailants with the result that one of the defendants' men died. In an appeal by the first party against their conviction for being members of an unlawful assembly and for culpable homicide, *held* that there was no common object on the part of the two factions, the second party having merely exercised their right of private defence and that the first party, being less than five, were not unlawful, but that the person, who gave the fatal blow among them, was guilty of culpable homicide and the rest of abetting him. KULLAN v. CROWN, **13 P.R. 1870, Cr.**

(93)—*Penal Code, ss. 114, 379— Unlawful assembly for the commission of theft—Liability of a member who did not commit theft.*—Where the accused was a member of an unlawful assembly, the common object of which was to commit theft, but he was not proved to have himself committed any theft by removing any property, or to have made any previous preparation for committing any theft, or to have aided any one in the commission of theft, *held* that he could not be convicted under s. 379 read with s. 114. HANSA PATHAK v. BANSI LAL DAS, **8 C.W.N. 519.** (27 C. 566, R. 16 C. 442, F.B., *D.*) [*D.*, 7 C.L.J. 172 = 7 Cr. L.J. 200.]

(94)—*Penal Code, s. 107—Acceptance of unstamped receipt, if abetment.*—The mere accept-

Abetment—*continued.*

ance by the payer of an unstamped receipt does not constitute an abetment of the execution of the document within the definition of the term "abetment" in s. 107, Penal Code. EMPRESS v. MADAN SINGH, **7 C.P.L R. 21 Cr.** (8 A. 18, 7 B. 82, *F.*)

(95)—*Stamp Act*, 1879, s. 61.—A *Mahajan*, who gets a promise from a debtor to pay interest added to an acknowledgment of debt in his account book without a proper stamp, abets an offence under s. 61 of Act I of 1879. EMPRESS v. BHANSIDHUR DEORIA, **10 C.P. L.R. 1, Cr.** (7 B. 82, *D.*)

(96)—*Stamp Act — Receiving unstamped instrument* — It is not an abetment of the execution of an unstamped instrument to receive it, any more than the acceptance of stolen property is abetment of theft. EMPRESS v JANKI, **7 B. 82.** [*R.*, 8 A. 18=A.W.N. 1885, 317, 20 A. 440=A.W.N. 1898, 108, 7 C.P.L.R. 21, 1 N.L.R. 163; *R.*, U.B.R. 1904, II qr. Stamp, 1; *D.*, 10 C.P.L R. 1.]

(97)—*Stamp Act*, 1879, s. 61—"*Accepting*" *meaning of.*—The term "accepting" in s. 61—Stamp Act, 1879, does not mean "receiving" but "executing as an acceptor." The mere receiver of a pro-note not duly stamped does not render himself liable to the penalties under the section. QUEEN-EMPRESS v. NIHAL CHAND, **20 A. 440=A W.N. 1898, 108.** (7 M. 71, 24 W.R. Cr. 1, 7 B. 82, A.W.N. 1883, 145, *R.*) [*R.*, U.B.R. 1904, II. qr., Stamp, p. 1.]

(98)—*Stamp Act*, 1879, s. 61—*Receipt of insufficiently stamped instrument— Abetment—Penal Code, ss.* 40, 109.—The mere fact of the acceptance of an insufficiently stamped instrument cannot amount to an abetment of the offence under s. 61 of the Stamp Act. EMPRESS v. GOPALDAS, **A.W.N. 1883, 145.** [*R.*, 20 A. 440,] *See also* NAUBAT RAM v. HARNAM DASS, **A.W.N. 1888, 37.**

(99)—*Receiving pronote executed on plain paper —Want of stamp.*—The conviction of a person, who merely received a promissory note executed on plain paper in his favour, of the abetment of an offence under s. 62 of the Stamp Act, 1899, is bad in law. The person, who *makes* an unstamped instrument, and not the person in whose favour it is made, commits the offence, and the receiving by the latter of the unstamped instrument made by the former does not constitute an abetment of the execution of it, EMPEROR v. RAJLINGAM, **1 N.L.R. 163** (24 W.R. Cr. 1, 7 M. 71, 20 A. 440, *F.*; 7 B. 82, 10 C.P L.R. 1 Cr., *R.*)

(100)—*Abetment of making an unstamped receipt.*—Where an accused person paid a sum of money to his creditor, accepted a receipt from the latter without a stamp, and promised himself to affix one, *held*, that the accused was not guilty of abetting the offence of making an unstamped receipt, as he did not aid the offence by an act, nor omitted to do anything which he was bound by law to do QUEEN-EMPRESS v. MUTTHA LALL, **8 A. 18=A. W. N. 1885, 317.** (A. W. N. 1884, 37, A. W. N. 1885, 30, 7 B. 82, *R.*) [*F.*, 7 C.P.L.R. 21, Cr.]

(101)—*Penal Code, ss* 213 *and* 347—*Wrongful confinement by chowkidars sent by Head Constable for getting money extorted from arrested person.*—A Head Constable in charge of an outpost agreed to drop proceedings against a certain person, arrested on a charge of illicit possession or manufacture of country liquor, on payment of a sum of money. For this purpose, the Head Constable sent that person in charge of chowkidars to procure the money. The chowkidars, in effecting this object, confined the person, ducked him in a pond and beat him. *Held*, that it would be impossible to hold that the Head Constable was guilty of abetting an offence under s. 347 in the absence of proof that he gave definite orders. EMPEROR v. LUCHMUN SINGH, **31 C. 710.** [*D.*, 13 Cr. L.J. 457= 15 Ind. Cas. 89=U. B. R. 1911, 100.]

See ABANDONMENT OF CHILDREN, 33 P. R. 1872, Cr.

See ABDUCTION, 40 P.R. 1866, Cr.

See ACT XIV OF 1866, 7 W.R.Cr. 54.

See ACT XX OF 1866, s. 91, 23 P.R. 1869, Cr.

See ACT XVIII OF 1869, 23 P.R. 1876, Cr.

See ACT XXVI OF 1870, 4 N.W.P. 4.

Of false personation—*See* ACT III OF 1877, 7 W. R. Cr. 63.

Punishment for—*See* ACT III OF 1877, s. 82, 8 W.R. Cr. 16.

See ACT III OF 1877, s. 82 (c), 5 Bom. L. R. 138.

See ACT I OF 1878, s. 9 (c), A.W N. 1901, 117.

Of making an unstamped receipt — *See* ACT I OF 1879, s. 61, 18 P. R. 1895, Cr.

See ACT XXII OF 1881, ss. 42, 49, L.B.R. 1872-1892, 373.

See ACT IX OF 1890, s. 126, 1 Bom. L. R. 682.

See ACT XII OF 1896, s. 49, 55 P.R. 1905, Cr.=201 P. L. R. 1905=3 Cr.L.J. 135.

See ACT XII OF 1896, s. 52, U.B.R. 1892—1896, Vol. I, 100.

Mere receipt of an unstamped instrument does not constitute—of an offence—*See* ACT II OF 1899, s. 62, 1 N.L.R. 163.

See ACT II OF 1899, s. 62, U.B.R. 1904, 2nd Qr., Stamp, 1.

See BEN. ACT XXI OF 1856, 7 W.R. Cr. 53.

See BOM. ACT IV OF 1890, ss. 44, 68, 71, Rat. Un. Cr. Cas. 708=Cr. Rg. 41 of 1894.

See BOM. ACT IV OF 1890, s. 52, 20 B. 394.

See BUR. ACT I OF 1899, s. 10, U.B.R. 1892, —1896, Vol. I, 117, 119.

See ATTEMPT, 24 B. 287=1 Bom. L.R. 678.

See BIGAMY, 6 C.W.N. 343.

Forgery—Using false document—of forgery—*See* CHARGE—GENERAL, 6 W.R. Cr. 20.

Abetment—*continued.*

See [CHARGE—GENERAL, 1 W. R. Cr. Letters, 9.

See COCK-FIGHTING, L.B.R. 1872—1892, 163.

See CONSPIRACY, A.W.N. 1902, 143, 28 C. 797.

Of criminal breach of trust by servant—*See* CRIMINAL BREACH OF TRUST, 4 C.W.N. 309.

Manager of Provident Institution permitting proprietor to receive monies which should have been in deposit in Bank—Contract so to permit —Manager not guilty of breach of trust or—*See* CRIMINAL BREACH OF TRUST, 5 M.L.T. 141.

Conviction of abettor on the uncorroborated confession of the principal offender—*See* CRIMINAL BREACH OF TRUST, 5 C W.N. 294.

Of commission of offence involving a breach of the peace by a zemindar—*See* CRIM. PRO. CODE, 1898, s. 110, 31 C. 419.

Of an offence specified in S. 195 (*c*), Crim. Pro. Code—Abettor not party—No sanction necessary—*See* CRIM. PRO. CODE, 1898, s. 195 (1) (*c*), (3), 4 Ind. Cas. 105=6 A.L.J. 983=32 A. 74.

Party to proceeding—Witness—of forgery—*See* CRIM. PRO. CODE, 1898, s. 195, cl. (1) (*c*) and cl. (3), 12 Cr. L.J. 101=9 Ind. Cas. 577= 15 C.W.N. 565.

Women charged with—of bigamy. Vague complaint—No allegation of specific acts—Exemption from personal attendance—Right to be allowed—*See* CRIM PRO. CODE, 1898, s. 205, 7 S.L.R. 161=15 Cr. L.J. 539=24 Ind. Cas. 947.

See CRIM. PRO. CODE, 1898, Ss. 423, 247 238, 7 M.L.T. 79.

Appellate Court whether entitled to alter conviction for principal offence into one of abetment—Abettor present at commission of offence whether can be convicted of principal offence—*See* CRIM. PRO. CODE, 1898, s. 424, 15 Cr. L.J. 694=26 Ind. Cas. 142.

Whether "offence" in s. 30, Evidence Act, includes abetment also—*See* EVIDENCE ACT, 1872, s. 30, S.C. 143, Oudh.

Of framing incorrect record by public servant —*See* FALSE EVIDENCE, 7 N.W.P. 134.

See FALSE EVIDENCE, U.B.R. 1892—1896, Vol. I, 191, 7 W.R. Cr. 49.

See FORGERY, 25 C. 207=1 C.W.N. 681, 3 M. 4=1 Weir 543.

Of prosecution—*See* HUSBAND AND WIFE, 2 Weir 235=4 M.H.C. App. 55.

See JOINDER OF CHARGES—MISJOINDER OF CHARGES, 9 C.W.N. 1027=2 Cr.L.J. 847.

Abetment of waging war against Queen—*See* JURISDICTION OF CRIMINAL COURTS —GENERAL, 9 B.L.R. 36=17 W.R. Cr. 15.

See JURISDICTION OF CRIMINAL COURTS —GENERAL, 24 B. 287=1 Bom.L.R. 678.

See KIDNAPPING, 8 C. 969=11 C.L.R. 6, 1 M. 173=1 Weir 353, 26 M. 463=1 Weir

Abetment—*continued.*

574, A.W.N. 1902, 143, 2 C.W.N. 81, 6 P. R. 1894, Cr., 13 P.R. 1904, Cr,=114 P.L.R. 1904.

See MURDER, A W.N. 1892, 233.

See OFFENCE, 24 B. 287=1 Bom. L.R. 678.

Conspiracy at Cambay—of forgery—Forgery committed accordingly in British India—Trial for abetment in British Indian Court—Jurisdiction—Place of trial—Offence continued and completed in British India though initiated in foreign territory--Abetment—*See* PENAL CODE, ss. 4, 34, 107, 14 Bom. L.R. 147=14 Ind. Cas. 970=13 Cr.L J. 426=1 Bom. Cr. C. 88=36 B. 524.

See PENAL CODE, s. 34, 14 B. 115.

See PENAL CODE, ss. 34, 111, 149, 395, L.B.R. 1893-1900, 150.

Person causing disappearance of evidence of his own crime—*See* PENAL CODE, s. 201, 8 A. 252.

See PENAL CODE, s. 218, 7 N.W.P. 134.

See PENAL CODE, s. 302, 1 U.B.R. 1902—1903, Penal Code, 5.

Of a negligent act — *See* PENAL CODE, s. 304-A, 13 C W.N. 362=36 C. 202=9 C.L.J. 204=9 Cr. L J. 393=1 Ind. Cas. 894.

See PENAL CODE, s. 318, Rat. Un. Cr. C. 775=Cr. Rg. 40 of 1895.

See PENAL CODE, ss. 352, 114, 34, 4 L.B. R. 271.

See PENAL CODE, s. 362, 11 P.R. 1883, Cr.,

Of the offence of kidnapping from lawful guardianship—*See* PENAL CODE, ss. 362, 361. 15 O.C. 351=14 Cr. L.J. 93=18 Ind. Cas. 653.

Kidnapping—Continuing offence — Mother can be guilty of kidnapping her own child—*See* PENAL CODE, ss. 363, 498, 9 Ind. Cas. 511 =56 P.L.R. 1911=12 Cr L.J. 94.

See PENAL CODE, ss. 366, 372, 419, 420, 114 P.L.R. 1904=13 P.R. 1904, Cr.

See PENAL CODE, s. 471, A.W.N. 1887, 195.

See PENAL CODE, s. 498, 11 P.R. 1883, Cr.

See POLICE OFFICER, 20 B. 394.

See PREVIOUS CONVICTION, 10 Bom. L.R. 26=3 M.L.T. 122=7 Cr. L.J. 32.

Power of appellate Court to sanction for prosecution of—Offence committed before lower Court—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, 15 W.R. 352.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION —NECESSITY, SUFFICIENCY AND VALIDITY OF SANCTION, 30 C. 905.

Sanction to prosecute for—of the offence of preferring a false charge. *See* SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 2 Weir 167=2 Weir 243.

Abetment—*concluded.*

See SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 6 A.L.J. 337=2 Ind. Cas. 467, 55 P.R. 1887, Cr.

See SENTENCE—GENERAL, 4 W.R. Cr. 23.

Of abduction and wrongful confinement—Penal Code, ss. 343, 498, *See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, W.R. 1864, Cr. 21

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 16 C. 725.

See THEFT — MISCELLANEOUS, 2 A.L.J. 53=2 Cr. L.J. 22.

See UNLAWFUL ASSEMBLY, 5 C.W.N. 250.

Abettor.

See ABETMENT.

See PENAL CODE, ss. 107—114.

(1)—*When person an abettor*—To constitute a man the abettor of another's crime, it must be clearly established that both intended to commit or to further the same crime. REG v. HAMAL, **Rat. Un. Cr. C. 93=Cr. Rg. 47 of 1875.**

(2)—*Who are not abettors*—Persons, who are present at the scene of offence against their will, or accidentally or for a legitimate purpose, are not persons that aid or abet the commission of the offence. CRIMINAL REVISION CASE, NO. 301 OF 1892, **U. B. R. 1892—1896, Vol. I, 117.**

(3)—*Employing innocent agent, effect of.*—An abettor's guilt is not affected by the circumstances of his employing an innocent agent for carrying out his object. EMPRESS v. DHANIRAM, **14 C.P.L.R. 192.**

(4)—*Abettor guilty when principal innocent.*—An abettor may be guilty, though the principal has committed no offence. KING-EMPEROR v. MUKHTAR KHAN, **55 P.R. 1905=201 P.L.R. 1905=3 Cr. L.J. 135.**

(5)—*Treasure Trove Act* VI *of* 1878, ss. 20 *and* 21, *liability of abettors under.*—The mere fact that s. 21 of Act VI of 1878 makes the owner of a land, where treasure is found, liable to a special penalty does not exclude the punishment, under the Penal Code, of persons who abet an offence under s. 20 of Act VI of 1878. *In re* KASIM BEE, **1 Weir 919.**

(6)—*Abettor more serverely punished than principal—Registration Act*, 1866, *s.* 94.—Under s. 94 of the Registration Act (XX of 1866), an abettor may be punished more severely than his principal can be. QUEEN v. GOPAL PROSAUD SEIN, **8 W.R. Cr. 16.**

See BEN. ACT V OF 1909, ss. 54, 56, 15 C.L.J. 692=13 Cr. L.J. 255=14 Ind. Cas. 607.

Joint trial of principal and—Prejudice—Retrial by another Judge—*See* CRIM. PRO. CODE, 1898, s. 239, 19 C.W.N. 121.

See EVIDENCE ACT, 1872, s. 30, 39 P.R. 1885, Cr.

See PENAL CODE, ss. 34, 114, 3 L.B.R. 264 =5 Cr. L.J. 414.

Abkari.

1.—Abkari Acts.

See 1. BENGAL ACT XI OF 1849.
2. BENGAL ACT XXI OF 1856.
3. BOMBAY ACT V OF 1878.
4. MADRAS ACT III OF 1864.
5. MADRAS ACT I OF 1886.

2.—Excise Acts.

See 1. ACT X OF 1871.
2. ACT XXII OF 1881.
3. BENGAL ACT VII OF 1878.

3.—Opium Acts.

See 1. ACT XIII OF 1857.
2. ACT I OF 1878.

4.—Spirituous Liquors Act.

See 1. BOMBAY ACT III OF 1852.

Akbari Officer.

Peon, whether an—*See* MAD. ACT I OF 1886, s. 62, 4 M.L.T. 107=18 M.L.J. 455.

Absconding.

See ABSCONDING OFFENDER.

Effect of—Presumption—*See* CONVICTION, 31 P.W.R. 1913, Cr.=314 P.L.R. 1913=21 Ind. Cas. 473=14 Cr. L.J. 601.

Not incompatible with innocence, omission to point out—Retrial by a new Judge—*See* MISDIRECTION, 18 C.W.N. 180.

In order to avoid being served with a summons, notice or order—Running away to avoid an arrest under a warrant—*See* PENAL CODE, s. 172, 2 C.L.J. 625=3 Cr.L.J. 117.

Absconding Offender.

See CRIM. PRO. CODE, 1898, ss. 87, 88, 89.

See PENAL CODE, s. 172.

(1)—"*Abscond*," *meaning of the term—Penal Code, s.* 172.—The term "abscond" is not to be understood as implying necessarily that a person leaves the place in which he is. Its etymological and its ordinary sense are to hide one-self; and it matters not whether a person departs from a place or remains in it, if he conceals himself; nor does the term apply to the commencement of the concealment. If a person, having concealed himself before process issues, continues to do so, after it has issued, he absconds. SRINIVASA IYENGAR v. QUEEN, **4 M. 393=1 Weir 76=1 Weir 891.**

(2)—*Crim. Pro. Code*, 1882, *s.* 87—*Absconder, meaning of.*—It should not be laid down as law that no person can be deemed an absconder until he has been proclaimed as such under s. 87 of the Code; but an absent person should not be too readily assumed to be an absconder without due enquiry and notice. HIGH COURT PROCEEDINGS, 18TH OCT. 1886, NO. 522, JUDICIAL, **2 Weir 40.**

(3)—*Evidentiary value of absconding*—Absconding is but slight evidence of guilt usually. QUEEN v. SOROB ROY, **5 W.R. Cr. 28.**

Absconding Offender—*continued.*

(4)—*Procedure for trial of.*—Absconding by a person against whom a warrant has been issued must be dealt with in the manner provided for by the Code of Criminal Procedure and not under s. 172, I.P.C. QUEEN v. AMIRJAN, 7 **N.W.P. 302.** [*F.*, 2 C.L.J. 625.]

(5)—*Contempt of Court due to absconding, whether solved by striking out case.*—An order striking off a case, on account of the little prospect of bringing the guilty parties to trial, cannot dispose of the question of contempt of Court arising out of the fact of the accused having absconded to evade justice. QUEEN v. MADHOOSURUN, **7 W.R. Cr. 40.**

(6)— *Proclamation against an absconding offender, effect of.*—An accused person, against whom a proclamation has been issued, until he has come in and surrendered, must be regarded as in contempt; and no petition will be entertained on his behalf, until he has surrendered. QUEEN v. BISHESHUR PERSHAD, 2 **N.W P. 441.**

(7)—*Absconder appearing before attachment—Effect on proclamation and attachment.*—Where the accused did not appear on the date mentioned in the proclamation, but appeared before the attachment, *held*, that, as attachment of property under s. 88 is intended to enforce the attendance, required by a proclamation issued under s. 87, within the time therein specified, it was illegal to wait till that period was over and to order attachment because the proclamation has not been obeyed. EMPRESS v. MULCHAND PEMRAJ, **6 C.P.L.R. 38, Cr.**

(8)—*Proclamation and attachment authorized for what offences.*—Ss. 183, 184, Crim. Pro. Code (1861) (proclamation and attachment of property of absconding parties) do not apply to offences punishable with imprisonment extending to six months only. There is no rule which requires a Magistrate to satisfy himself that a party has absconded, before issuing a proclamation ; but the party, on suing to recover his property, may prove by evidence that he had not absconded. Before a Magistrate proceeds to declare attached property forfeited, he should take evidence to prove compliance with the formalities laid down by law with regard to proclamation. QUEEN v. MUDDUN MOHUN PODAR, **3 W.R. Cr. 34.**

(9)—*Essentials for issuing proclamation for appearance—Appearance after fixed time—Attachment—Crim. Pro. Code* (1861), *ss.* 183, 184.—In order to lay a sufficient foundation for the issue of a proclamation under s. 183, and the accompanying order of attachment under s. 194, Crim. Pro. Code (1861), the Magistrate must, upon some sufficient materials, find judicially that the person against whom the proclamation is to be issued has absconded or concealed himself for the purpose of avoiding service of the warrant of arrest previously against him. The period of thirty days, which is prescribed in s. 183 as the minimum period within which the person is to be required by the proclamation to appear, was intended by the Legislature to run from the date on which the publication, in the mode prescribed by the same section, should be effected. The declaration of forfeiture directed to be made in s. 184, if not made before the person affected by the proclamation has come in, ought not to be made at all. *In re* RAM KISHORE SEIN, **19 W.R. Cr. 12 = 10 B L.R. Ap 14.** *See also* KING-EMPEROR v. PO NI, **3 L.B.R. 116.**

(10)—*Proceedings of Magistrate under s.* 88, *Crim. Pro. Code* (1882), *whether judicial—Attachment.*—The law makes no provision for investigation by a Magistrate of the claims of third persons to property which has been attached under s. 88 of the Code. Therefore, the proceedings of the Magistrate under s. 88 are not "judicial proceedings" in the sense of s. 4 (*d*) of that Code. QUEEN-EMPRESS v. SHEODHIAL RAI, **6 A. 487 = A.W.N. 1884, 214.** [*F.*, 4 L.B.R. 109 = 7 Cr. L.J. 81; *R.*, 9 P.R. 1908 = 29 P.W.R. 1908 = 3 P.L.R. 1908.]

(11)—*Order for attachment to be issued with proclamation—Crim. Pro. Code* (1861), *s.* 184. —The words "order the attachment of any moveable and immoveable property" of an absconding party in s. 184 are enabling and not restrictive. The Magistrate may attach both kinds of property. But the words "at the same time" must be taken in their literal sense, and he must issue his warrant of attachment simultaneously with the proclamation if he thinks fit to resort to attachment at all. HIGH COURT PROCEEDINGS, 12TH MAY 1869, **4 M. H. C. App. 48.**

(12)—*Attachment of undivided interest in a joint family of an absconding party—Crim. Pro Code* (1898), *ss.* 87, 88.—S. 88 is not intended to apply to the undivided property of a Hindu family, for it cannot be seized, being unascertained. A receiver cannot be appointed, nor can an order be made prohibiting the payment of rent or delivery of the property to the managing member of the family. Nor can the undivided interest of the absconding person be sold under sub-section 7 of s. 88. *In re* CHINNIYAN, **2 Weir 43.**

(13)—*Attachment of interest of member of undivided family.*—There is nothing in the language of s. 88 to restrict the meaning of the word "property" and it includes the rights and interests of persons who, as members of an undivided family, are jointly entitled to the property of the family. CRIMINAL REVISION CASE, NO. 560 OF 1883, **2 Weir 43, Foot Note.**

(14)—*Irregularity in the proclamation—Attachment of property, effect on—Crim. Pro. Code* (1882), *ss.* 87, 88, 89.—On a person, for whose arrest a warrant was issued, absconding, a proclamation under s. 87, Crim. Pro. Code, was issued on the 6th of November, the date fixed for the appearance of the accused being the 11th of December, 1893. The proclamation was published by affixing of a copy on the court house on the 6th of November, but it was not

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published in the place where the accused resided until the 15th of November. The accused surrendered on the 25th June, 1894, and applied for the property attached under s. 88, which was refused by the Magistrate. *Held*, that there was no legal proclamation under the Code and the attachment of the property was void. QUEEN-EMPRESS v. SUBBARAYAR, **19 M. 3 = 2 Weir 40 = 1 Weir 86.** [*R.*, 1 Bom. Cr. Cas. 104 = 14 Bom. L.R. 163 = 13 Cr. L.J. 293 = 14 Ind. Cas. 757.]

(15)—*Crim. Pro. Code* (1882), *ss.* 87, 88, 90, 436, 437—*District Magistrate issuing a warrant before setting aside order of discharge.*—On the discharge of an accused person, the District Magistrate issued a notice to him to appear and show cause why he should not be retried and, on the same day, before setting aside the order of discharge, issued a warrant against him requiring him to execute a bond with sureties for his presence till the decision of the case, but, learning that the accused had absconded, issued a proclamation under s. 87, Crim. Pro. Code, and, after some months, ordered the accused's property to be attached under s. 88, Crim. Pro. Code. *Held* that the proceedings of the District Magistrate, calling upon the accused to appear and show cause, were legal but that the subsequent proceedings, issuing the warrant, the proclamation and the attachment order were without jurisdiction. KANWAR SINGH v. EMPRESS, **15 P.R. 1893, Cr.** [*R.*, 17 P.R. 1895, Cr.]

(16)—*Crim. Pro. Code* (1898), *ss.* 87, 88 *and* 190—*Overawing police officer—Attachment of property of absconders—Penal Code, ss.* 99, 143 *and* 183.—A Magistrate issued a proclamation under s. 87 of the Code and an order for attachment of the property of certain persons who, being accused of an offence, had absconded. In the course of the attachment, an objection was raised by another person that the property, which the police had attached, did not belong to the absconders. The Police Officer, being informed by the *patwari*, that it was the property of the absconders, proceeded to make the attachment. Then, certain persons, among whom were the accused, combined to overawe the police officer in the execution of his duty, by threatening language and attitude. *Held*, that the accused were rightly convicted under ss. 143 and 183 of the Penal Code. *Held*, also, that, under the circumstances of the case, the rightful owner had no right of private defence of his property, even supposing that the absconders, were not the rightful owners, inasmuch as the Police Officer was acting in good faith and under colour of his office. Where, in the case mentioned, the attaching Police Officer sent a person to inform the Magistrate of what had taken place, and the latter, thereupon sent the Senior Inspector to the spot to take up the case, instructing him, in order to comply with the law, that he should take the statement of the attaching Police Officer as the first information of the occurrence and send it to him, *held*, that the proceedings, instituted under such

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circumstances, were properly instituted. BHAI LAL CHOWDHRY v. EMPEROR, **29 C. 417 = 6 C.W.N. 680.** [*R.*, 9 C.W.N. 125.]

(17)—*Forfeiture of property.*—Procedure by Magistrate before declaring a forfeiture of the property of an absconded offender indicated. SHEODOYAL SINGH v. GRIBAN SINGH, **6 W.R. Cr. 79.**

(18)—*Forfeiture of property.*—Before passing an order declaring the property of an accused person, who cannot be found, to be at the disposal of the Government, there must be a proclamation under s. 183, Code of Criminal Procedure, 1861, fixing a time within which such person should appear. But, before a Magistrate can issue such a proclamation, he must be satisfied that such person had absconded or was concealing himself for the purpose of avoiding the service of the warrant. SHEWDYAL SINGH v. GRIBAN SINGH, **6 W.R. Cr. 73.**

(19)—*Enquiry to precede order of forfeiture.*—Where an absconding offender appears within two years from the attachment of his property, the order for forfeiture of his property should not be carried into effect until after a regular enquiry into the causes of the offender's absence. *In re* BISHONATH SIRCAR, **3 W.R. Cr. 63.**

(20)—*Irregular enquiry into other charges.*—When an accused person was arrested as an absconding offender, and, without evidence being gone into that charge, an enquiry was made into his mode of livelihood without any summons being issued under s. 306, Crim. Pro. Code, 1861, such proceedings were held to be irregular. QUEEN v. HUTTOOA, **3 N.W.P. 2.**

(21)—*Title given by Magistrate's sale superior to other titles.*—Where property belonging to an absconding accused was attached, under s. 172, Crim. Pro. Code, and subsequently sold, and the same property was in the meantime also attached and sold in execution of money-decree, *held*, the title conferred on the purchaser in the Magistrate's sale was the superior one. So long as the attachment by the Magistrate continued, no title could be conferred by any attachment subsequently made. GOLAM ABED v. TOOLSEERAM BERA, **9 C. 861 = 12 C.L.R. 411 = 8 Ind. Jur. 40.**

(22)—*Attachment—Effect on purchaser's title.*—Where the property of an absconder had been attached and sold and had vested in a third person, the purchaser, *held*, that the sale could not be set aside on the ground of irregularity in the proclamation, as the property had vested in a person who was not a party to the proceedings in which the proclamation was made. ABDULLAH v. JITU, **22 A. 216 = A.W.N. 1900, 28.** [*R.*, 8 Cr. L.J. 260 = 9 P.R. 1908 = 29 P.W.R. 1908 (Cr.) = 12 Cr. L.J. 142 = 9 Ind. Cas. 826 = 8 P.R. 1911 = 104 P.L.R. 1911 = 13 P.W.R 1911 Cr.]

(23)—*Court if can investigate claim of third parties to attached property.*—Ss. 184 and 185 of the Code of Criminal Procedure (1861) make no provision for any investigation

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by a Magistrate of the claims of third persons to property which has been attached. The claimants are not barred by the sale and may bring a suit in a Civil Court against the purchasers to establish their rights. QUEEN v. CHUMROO ROY, **7 W.R.Cr. 35** [*F.*, 17 W.R. Cr. 10, 6 A. 487.] *See also* GOLAB SINGH v. ABDUL RASHID, **L B.R. 1893–1900, 324.**

(24)—*Claims to attached property—Remedy by civil suit.*—The proper remedy of claimants to the property attached, as belonging to an absconding offender, is by a civil suit. *In re* CHUNDER BHON SINGH, **17 W R.Cr. 10**

(25)—*Crim. Pro. Code* (1882), *ss* 88 *and* 386—*Claims to attached property.*—Where property is attached under s. 88 of the Code of Criminal Procedure as belonging to a person absconding to avoid a warrant and where a claim by another person is made to such property, the Magistrate should stay the sale of the property seized to give the claimant time to establish his right. If the Magistrate errs in not giving the claimant an opportunity of proving his case, the remedy of the aggrieved party is by civil suit. The same applies to s. 386, Crim Pro. Code, QUEEN-EMPRESS v KANDAPPA GOUNDAN, **20 M. 88=2 Weir 42.** [*F.*, 7 Cr.L.J. 81=4 L.B.R. 109, Rat. Un. Cr. Cas. 976; *R.*, 8 Cr. L.J. 260, 12 Cr. L.J. 392=11 I C. 256=U.B.R. 1910, I. 66, 29 P.W.R 1908, Cr.=9 P.R. 1908, Cr.] See, also, *In re* JHUNDOO SING, **5 W.R. Cr. 8.**

(26)—*High Court's power to make order about absconder's property at Government's disposal.*—The High Court cancelled a previous order made by it (under an error of law caused by a misrepresentation of facts) directing the restoration of the moveable property of a prisoner which was under attachment : the Court not having been informed at the time that the property in question had, under s. 184, Crim. Pro. Code (1861), been declared to be at the disposal of the Government. Property so declared to be at the disposal of the Government can only be restored by the Government. *In the matter of the petition of the* GOVERNMENT OF BENGAL, **9 B.L.R. 342=18 W.R. Cr. 33.**

(27)—*Burden of proof as to manner of proclamation—Crim. Pro. Code* (1882), ss. 45, 87, 88—*Omission by zamindar to give information of presence of proclaimed offender—Proof of proclamation.*—Where a zemindar was convicted of having intentionally omitted to inform a public servant, of the resort to the village of a proclaimed offender, and the fact of his being a proclaimed offender was presumed from the fact that the property belonging to him was attached and sold under the provisions of s. 88, Crim. Pro. Code, *held*, that the conviction was bad, as it was on the prosecution to prove that the proclamation was made in the manner prescribed by s. 87, Crim. Pro. Code. *In the matter of the petition of* PANDYA NAYAK, **7 M. 436=1 Weir 102.**

(28)—*Admissibility of evidence recorded in accused's absence—S.327, Crim. Pro.Code*, 1872.

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—The conditions laid down in s. 327, Crim. Pro. Code, 1872, should be strictly complied with before admitting against an accused person the record of depositions taken in his absence, and, hence, without a finding, by the Court making the record, that the accused absconded and could not, after due pursuit, be arrested and without any evidence upon which the Court could base such a finding, such record should not be used against the accused. WAHID v. EMPRESS, **21 P.R. 1883, Cr.** [*R.*, 26 P. R. 1885, Cr.]

(29)—*Absconding to avoid service of summons—Gist of the offence—Penal Code*, s. 172.—In order to prove the commission of an offence under s. 172, Penal Code, the existence of a summons, notice or order is necessary. It is not sufficient to show that a person apprehended that a process will be issued, and has, therefore, absconded. It must also be shown that the accused knew or had reason to believe that the process had issued. SRINIVASA IYENGAR v. QUEEN, **1 M. 393=1 Weir 76=1 Weir 891.**

(30)—*Penal Code, s* 172—*Absconding by person against whom warrant issued, if covered by* s. 172, *I P. C.*—A warrant is not a summons, notice or order within the meaning of s. 172, I. P. C., and, therefore, the offence of absconding by an offender, against whom a warrant has been issued, is not punishable under the above section of the Code. QUEEN-EMPRESS v LAKSHMI, **Rat. Un. Cr. C. 152=Cr. Rg. 24 of 1881**, (5 W.R. Cr. 71, *F.*)

See ACCUSED PERSON, 1 L.B.R. 60.

See FORFEITURE OF PROPERTY, 7 W.R. P.C. 18=11 M.I.A. 223.

See PENAL CODE, s. 172, 7 N.W.P. 302, 5 W.R. Cr. 71, 9 W.R. Cr. 70.

See PENAL CODE, s. 174, 1 Weir 69=7 M. H.C. App. 43.

See SECURITY FOR GOOD BEHAVIOUR, 3 N.W.P. 2.

Time to be given for appearance of person against whom proclamation issued under s. 87, Crim. Pro. Code (1898).—*See* SECURITY PROCEEDINGS, 17 M.L.J. 438=6 Cr. L J. 332.

Absence.

Of some of the members at the adjourned trial, effect of—*See* BENCH OF MAGISTRATES, 2 C.L.R. 348.

Bench of Magistrates—of one of them during a portion of the trial—*See* BENCH OF MAGISTRATES, 13 C.L.R. 212.

Absentee Co-sharer.

See PENAL CODE, S. 155, 8 C.W.N. 908.

Abuse.

Whether obstruction—*See* PENAL CODE, s. 186, 1 Weir 134=1 Weir 621.

Suit for damages for, not barred by failure to prosecute—*See* RIGHT OF SUIT, 16 W.R. 83.

Abusive Language.

Acquittal on an erroneous view of the law—Using abusive language.—*See* CRIM. PRO. CODE (1898), s. 258, 11 C.L.J. 113.

See PENAL CODE, S. 294, L.B.R. 1872—1892, 309.

See MAD. REG. XI OF 1816, s. 10, 5 M.H.C. App. 33.

Two Magistrates engaged jointly in Magisterial duty—Use of, by one against the other—Sanction—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION—NECESSITY, SUFFICIENCY AND VALIDITY OF SANCTION, 2 Bom. L.R. 1079.

Accepting Instrument not duly stamped.

See ABETMENT.

(1) — *Act* II *of* 1899, *s.* 62—"*Accepting*," *meaning of.*—The term "accepting," in s. 62 (1), Act II of 1899, does not mean receiving, but executing, as an acceptor; and the mere fact that a person receives from another a promissory note without the same being duly stamped does not make him guilty under that section. QUEEN-EMPRESS v. JADU MAL, **4 O.C. 168**. (20 A. 440, *F.*).

(2)—*Act* XVIII *of* 1869, *s.* 28—*Acceptor of unstamped receipt.*—The acceptor of an unstamped receipt is not punishable, unless it can be shown that he abetted the making of the receipt, but the maker of such receipt is. SHAMBHU SINGH v. RAGHUBAR, **S.C. 33, Oudh.**

Accessory

See ABETMENT.

See PENAL CODE, ss. 107—114.

Accessory after the fact— Punishment, liability to.—Under the Indian Law, an accessory after the fact is not liable to be punished. RAKHAL NIKARI v. QUEEN-EMPRESS, **2 C.W.N. 81.**

Accident.

See PENAL CODE, ss. 80, 304-A, 3 Bom. L.R. 678.

Attempt at murder—Liability for act done—Consequences intended not happening —*See* REFERENCE TO HIGH COURT, 9 C.L.J. 432 = 2 Ind. Cas. 593.

Accident, Fatal.

See ACT VII OF 1854.

Accomplice.

1.—GENERAL.

2.—ACCOMPLICE EVIDENCE — JUDGE'S CHARGE TO JURY.

3.—ACCOMPLICE EVIDENCE — NECESSITY FOR CORROBORATION.

——**1.—General.**

See ACCUSED PERSON.

See APPROVER.

See CONFESSION.

Accomplice—continued.

——**1.—General**—*continued.*

See CRIM. PRO. CODE, 1898, s. 337.

See EVIDENCE ACT, 1872 ss. 30, 114, 133.

(1)—*Meaning and definition of.*—The term "accomplice" signifies a guilty associate in crime. *Per* Subrahmania Ayyar, J. Where the witness sustains such a relation to the criminal act that he could be jointly indicated with the defendant, he is an accomplice. Where a witness is not concerned in the commission of the crime for which the accused is charged, he cannot be said to be an accomplice in the crime. RAMASAMI GOUNDEN v. EMPEROR, **27 M. 271 = 2 Weir 803 = 14 M.L.J. 226.**

(2)—*Accomplice, how differs from spy.*—An accomplice confesses himself a criminal and may have a motive for giving information, as it may purchase immunity for his offence. A spy, on the other hand, may be an honest man; he may think that the course he pursues is absolutely essential for the protection of his own interests and those of society: and, if he does so, if he believes that there is no other method of counteracting the designs of wicked men, there can be no impropriety in his taking upon himself the character of an accomplice. QUEEN-EMPRESS v. JAVECHARAM, **19 B. 363.**

(3)—*Spy or detective, not accomplice.*—Spies do not partake of the criminal contamination of accomplices, who enter into "communication with the conspirators with an original purpose of discovering their secret designs and disclosing them for the benefit of the public." QUEEN-EMPRESS v. JAVECHARAM, **19 B. 363,**

(4)—*Person supplying marked money if accomplice.*—The act of a detective in supplying marked money for the detection of a crime cannot be treated as that of an accomplice. QUEEN-EMPRESS v. JAVECHARAM, **19 B. 363.** (16 B. 661, *F.*)

(5)—*Person charged with offence by police but discharged by Magistrate if accomplice.*—A person charged with an offence by the police, but discharged by the Magistrate after the examination of the witnesses for the prosecution, because he found that no case had been made out which, if unrebutted, would warrant his conviction, cannot be said to be an accomplice, simply because he had been sent up by the police for trial. Not being an accomplice, his evidence should not be considered as insufficient for a conviction. NGA MAUNG v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 467** (L.B.R. 1872-1892, 322, *R*).

(6)—*Accused discharged by Magistrate for want of evidence if accomplice.*—There is no law or principle which prevents a person who has been suspected and charged with an offence, but discharged by the Magistrate for want of evidence, being afterwards admitted as a witness for the prosecution. QUEEN v. BEHARY LALL BOSE, **7 W.R. Cr. 44.** [*D.*, 2 A. 260; *R.*, 16 B. 661, 33 C. 1353 = 4 Cr. L.J. 145 = 10 C.W.N. 962.]

Accomplice—continued.

——1.—**General**—*continued.*

(7)—*Treating person as accomplice on mere suspicion.*—An accomplice confesses himself a criminal. No man ought to be treated as an accomplice on mere suspicion, unless he confesses that he had a conscious hand in the crime or makes admissions of facts showing that he had such hand. If the evidence of a witness falls short of these tests, he is not an accomplice; and his testimony must be judged on principles applicable to ordinary witnesses. EMPEROR v. N. PERCY HENRY BURN, **11 Bom. L.R. 1153 =4 Ind. Cas. 268=10 Cr. L.J. 530.**

(8)—*Who are accomplices—Person offering bribe to public officer.*—A person offering a bribe to a public officer is an accomplice. No distinction can be drawn between accomplices who volunteer to assist in the receipt of illegal gratifications and those who assist under compulsion. QUEEN-EMPRESS v. MAGANLAL, **14 B. 115.** [*F.*, 26 B. 193=3 Bom. L. R. 694; *R.*, 27 C. 144, 33 C. 649=10 C.W N. 669.]

(9)—*Offer to give bribe to public servant.*—Witnesses, who, in order to avoid pecuniary injury or personal molestation, offer or give bribes to a public servant are abettors of the offence of taking an illegal gratification, and their evidence should be treated as that of accomplices. QUEEN-EMPRESS v. CHAGAN DAYARAM, **14 B. 331** [*R.*, 19 B. 51, 20. B. 394, 26 B. 193, 35 M. 247=13 Cr. L.J. 305= 14 Ind. Cas. 849=22 M.L.J. 490=11 M.L.T. Sup. 1=1912 M.W.N. 207, 13 Cr. L.J. 352=14 Ind. Cas. 896=12 M.L.T. 1=1912 M.W.N. 549, Rat. Un Cr. C. 720, 746; *D.*, 27 C. 144.]

(10)—*Offer to give bribe.*—A person, who gives bribes, is an accomplice of the person who receives them; and, while it is usually unsafe to convict an officer on the uncorroborated testimony of a person or persons who say that he or they have given them bribes, the question as to the amount of corroboration depends upon the circumstances of each case. KING-EMPEROR v. MALHAR, **26 B. 193=3 Bom. L.R. 694.** [*R.*, 33 C. 649=10 C.W.N. 669=3 Cr. L.J. 452, 35 M. 247=13 Cr. L J. 305=14 Ind. Cas. 849=22 M.L.J. 390=11 M.L.T. Sup. 1=1912 M.W.N. 207, 35 M. 397=13 Cr. L.J. 352=14 Ind. Cas. 896=12 M.L.T. 1=1912 M.W.N. 549, 6 Bom. L.R. 443.]

(11)—*Persons present during the giving of bribes.*—Where a person gave bribes to a salt officer for the purpose of obtaining due deliveries of the salt he was purchasing from the Government, on being threatened by the salt officer that his weighments would not be done properly if rupees were not paid, *held*, that there was not such a threat as would excuse the person from the offence he was committing in giving bribes to a public servant. He was, therefore, an accomplice and his evidence given against the salt officer would require corroboration. So, also, the person who had actually paid the bribe to the officer would also be an accomplice and his evidence would require also material corroboration. But persons, who were merely present on the occasion but took no part in the transaction and another who merely cooked the account after the transaction was over, were not accomplices. The degree of credit to be attached to the evidence of such witnesses would depend on all the facts and circumstances of the particular case. EMPEROR v. EDWARD WILLIAM SMITHER, **26 M. 1=2 Weir 521.** [*R.*, 35 M. 397=1912, M.W.N. 549 =12 M.L.T. 1=13 Cr. L.J. 352=14 Ind. Cas. 896, 22 M.L.J. 490=1912 M.W.N 207.]

(12)—*Persons accompanying another to witness payment of bribe.*—Persons who accompany another, who is entrusted with and carries the money intended to be given as a bribe, are accomplices, if they know that the money is to be paid as a bribe and if they go to see and assist, although they do not actually carry the money or tender it RAJONI KANT BOSE v. ASAN MULLICK, **2 C.W.N. 672.** [*D.*, 27 C. 144.]

(13)—*Who are not accomplices—Witnesses to payment of bribes.*—Witnesses to payment of bribes are not accomplices, unless they co-operate in the payment of the bribes, or are instrumental in the negotiation for the payment of the same, DEO NANDAN PERSHAD v. EMPEROR, **33 C 649=10 C.W.N. 669=3 Cr. L.J. 452.** [*R.*, 35 M. 247=22 M.L.J. 390=11 M.L.T. 1, Sup=1912 M.W.N. 207=14 Ind. Cas. 849=13 Cr. L.J. 305, 35 M. 397=12 M.L.T. 1=1912 M.W N. 549=14 Ind. Cas. 896=13 Cr. L.J. 352, 12 Cr. L.J. 150=9 Ind. Cas. 897=21 M. L.J 283=10 M.L.T. 84=(1911) 1 M.W.N. 327]

(14)—*Being present on the occasion of giving bribe.*—The mere presence of a person on the occasion of giving bribes and his omission to inform the authorities will not make him an accomplice, unless it is shown that he somehow co-operated in the payment of the bribes or was instrumental in the negotiations for their payment. QUEEN-EMPRESS v. DEODHAR SINGH, **27 C. 144.** (24 W.R. Cr. 55, 14 B. 115,14 B. 331, 17 C. 642 21, C. 328, 2 C.W.N. 55, 2 C.W.N. 672, 23 C, 361, *D.*)

(15)—*Wrongful confinement—Money paid to obtain release—Receiving illegal gratification—Extortion.*—Where money was paid to a Police Sub-Inspector by a money-lender for obtaining the release of a person wrongfully confined, the money not being voluntarily given nor given in consideration of the Sub-Inspector not proceeding against the person so confined for the purpose of bringing him to legal punishment, *held*, that such payment was not an illegal gratification, but money extorted and that the money-lender advancing the money could not be regarded as an accomplice of the Police Officer. AKHOY KUMAR CHUCKERBUTTY v.

Accomplice—continued.

— 1.—General - *continued.*

JAGAT CHUNDER CHUCKERBUTTY, **27 C. 925 =4 C.W.N. 755.** [*Appr.*, 33 C. 649=10 C.W. N. 669; *R.*, 12 Cr.L.J. 150=9 Ind. Cas. 897=21 M.L.J. 283=10 M.L.T. 84=(1911) 2 M.W. N. 327.]

(16)—*Accomplice, whether a competent witness —Person under trial in same case—Crim. Pro. Code* (1898), s. 494.—An accomplice, if he is not an accused under trial in the same case, is a competent witness and may be examined on oath. So, if the prosecution be withdrawn and the accused discharged under s. 494, Crim. Pro. Code (1898), he would be a competent witness. Where, however, the Court, purporting to act under s. 494, Crim. Pro. Code (1898), sanctioned the withdrawal of the prosecution but omitted to record an order of discharge and the accused continued to be kept in custody, *held* that his position was in no way changed from that of an accused. BANU SINGH v. EMPEROR, **33 C. 1353=10 C.W N, 962=4 Cr. L.J. 145.** (1 B. 610, 11 A. 260, 16 B. 661, 23 B. 213, 1 Q B. 289, 1 C.C.R. 349, 7 W.R. 44, 10 C.L.R. 553, 20 A. 426, 3 B.H.C. 59, Cowp. 331, 10 C.W.N. 847, *R.*) [*R.*, 37 C. 340=14 C.W.N. 422=11 Cr.L J. 121=5 Ind. Cas. 365, 7 A.L.J. 86=5 Ind. Cas. 21, 18 C.W.N. 1213, 9 Cr. L. J. 370=4 L.B.R. 362.]

(17)—*Accused person, when can be examined as witness.*—Unless an accused person is convicted or acquitted, he should not, except in the case where he is made queen's evidence, be examined as a witness touching the matter of which he is accused. EMPRESS v. SHAKUR, **5 C.P.L.R. 1, Cr.**

(18)—*Accomplice to whom the Local Government has made a promise not to prosecute.*—An accomplice, to whom the local Government has made a promise not to prosecute him and by whom the promise has been accepted, after the commencement of the trial, is not a competent witness. Such grant of pardon does not alter the position of the accomplice as an accused person and make him cease to be an accused person. No oath could be administered to him. ALLADAD v. KING-EMPEROR, **9 P.R. 1906, Cr.=4 Cr L.J 282=113 P.L.R. 1907.** (12 P.R. 1902, Cr., *R.*; 21 P.R. 1904, Cr., *D.*)

(19)—*Power of Local Government to tender conditional pardon to accomplice.*—A Local Government in India has no power to tender a conditional pardon to an accomplice for the purpose of his being examined as a competent witness against others accused with him. BANU SINGH v. KING-EMPEROR, **10 C.W.N. 962=4 Cr.L.J. 145=33 C. 1353.** (10 C.W.N. 874, 1 B. 610, *R.*)

(20)—*Person arrested by police as accomplice.*—A person arrested by the Police as an accomplice in an alleged burglary sent up to a Magistrate for trial under s. 457, Penal Code, and examined by him as a witness, was held to be an accused person, having been neither discharged nor acquitted, who could not be examined as a witness. NABI BUKSH v. EMPEROR, **12 P R. 1902. Cr.** (38 P.R. 1887, Cr., 1 B. 610, 2 A. 260, 10 B. 190, *R.*; 16 B. 661=10 C.L R. 553, *D.*) [*F.* 9 P.R. 1906, Cr; *R.*, 21 P.R. 1904, Cr.; *D.*, 8 P.R. 1904, Cr.]

Accomplice—continued.

——1.—General—*concluded.*

(21)—*Application for sanction to prosecute approver, how to be made—Crim. Pro. Code* (1898), s 339.—Sanction to prosecute an approver for giving false evidence should be applied for by motion on behalf of the Crown in open Court and not by a letter of reference. CROWN v BULAKA SINGH, **10 P.R. 1904, Cr.** (24 C. 492, *R.*) [*F.*, 230 P.L.R. 1912, Cr.=30 P.W.R. 1912 Cr.=175 P L.R. 1912=15 Ind. Cas. 83=13 Cr.L.J. 451.]

(22)—*Evidence Act, s.* 30—*Statement of co-prisoner, value of.*—The statement of one prisoner cannot be taken as evidence against another prisoner under s. 30. Evidence Act, unless the confessing prisoner implicates himself to the full, as much as his co-prisoner whom he incriminates. QUEEN v. BAIJOO CHOWDHURY, **25 W.R.Cr. 43.**

(23)—*Admissibility of evidence of bribing person.*—The evidence of the person who bribes is admissible against the person bribed. QUEEN v. OBHOY CHURN CHUCKERBUTTY, **3 W.R. Cr. 19.**

(24)—*Persons paying illegal gratification under compulsion—Evidentiary value of their testimony — Probative force.*—The testimony of persons who have been compelled to pay illegal gratification has much greater probative force than that of ordinary accomplices. DEPUTY LEGAL REMEMBRANCER v. UPENDRA KUMAR GHOSE, **12 C.W.N. 140=6 Cr. L.J. 434.**

Trial for murder— Conditional pardon to accomplice—King's witness— Contradictory statement before Magistrate—Sanction to prosecute—*See* CRIM. PRO. CODE (1898), s. 339 (3) 11 A.L.J. 964.

Summary dismissal of appeal—Discretion, exercise of— Circumstantial evidence, conviction based on —Revision by High Court v—Evidence Act, s. 27—Statements made by accomplice elsewhere than before the Court, admissibility of— *See* CRIM. PRO. CODE, 1898. s. 421, 13 O C. 309=8 Ind. Cas. 379=11 Cr. L. J. 631.

English practice as to evidence of—*See* EVIDENCE ACT, 1872, ss. 114 (*h*), 133, A.W N. 1882, 13.

Informer—Difference--Need for corroboration —*See* INFORMER, Rat. Un. Cr. Cas. 428=Cr. Rg. 91 of 1888.

Evidence—Necessary for corroboration—*See* PENAL CODE, s. 400, A.W.N. 1886, 65.

See SPY, 19 B. 363.

Accomplice—continued.

——2.—Accomplice Evidence — Judge's Charge to Jury.

See CHARGE TO JURY—MISDIRECTION.

(1)—*Judge's charge to Jury as to accomplice evidence.*—The Legislature intended to lay down in s. 114, Evidence Act, the rule that the testimony of an accomplice is unworthy of credit so far as it implicates an accused person unless it is corroborated in material particulars in respect to that person; and it is the duty of a Court which has to deal with an accomplice's testimony to consider whether this maxim applies to exclude that testimony or not, and, in a case tried by jury, to draw the attention of the jury to the principles relative to the reception of an accomplice's testimony. The Court should charge the Jury that the mere confessions of the prisoners tried simultaneously with the accused for the same offence are only to be rated as evidence of a defective character and that they require a specially careful scrutiny before they can be safely relied on. QUEEN v. SADHU MUNDUL, **21 W.R. Cr. 69.**

(2)—*Points of law and fact that a Judge should lay before jury.*—The Judge should inform the Jury or assessors (1) that there is no rule of law prohibiting the conviction of an offender upon the uncorroborated evidence of an accomplice; (2) that, as a general rule of practice, it is considered unsafe to convict upon such evidence; and (3) to point out any circumstances in the particular case which, in the opinion of the Judge, afford a sufficient reason for relying upon the evidence. HIGH COURT PROCEEDINGS, 20th March 1868, No. 496, **2 Weir 798 = 4 M.H.C. App. 7.**

(3)—*Improper advice given by Judge to Jury—Omission to give proper advice—Judge to make proper observations on accomplice's testimony—Error in law—High Court, interference of.*—Improper advice given by a Judge to the Jury upon a question of fact, or the omission of the Judge to give that advice which he, in the exercise of a sound judicial discretion, ought to give the Jury upon questions of fact, amounts to such an error in law in summing up as to justify the High Court, on appeal or revision, in setting aside a verdict of guilty. The evidence of accomplices should not be left to a Jury without such directions and observations from the Judge as the circumstances of the case may require. *In re* ELAHEE BUKSH, **5 W. R. Cr. 80 = B.L.R. Sup. Vol. 459.**

(4)—*Practice, where accomplice's testimony uncorroborated—Judge's charge to Jury.*—Where the evidence of an accomplice is uncorroborated, the correct practice requires Sessions Judges not merely to tell the Jury that it is *unusual* to convict on such evidence, but also to tell them that it is *unsafe*, and contrary both to prudence and practice to do so. But his omission to state the above particulars does not amount to an error in law REG. v. GANU BIN DHAROJIET AL, **6 B. H. C. Cr. 57.** (3 B. H. C. Cr. 57, *Commented on*). [*R.*, 14 B. 331]

Accomplice—continued.

——2.—Accomplice Evidence — Judge's Charge to Jury—*continued.*

(5)—*Assessors.*—As a general rule, Courts ought not to convict upon an accomplice's testimony, unless confirmed not only as to the offence, but also as to the identity of the individual prisoner as the person or one of the persons who participated in the offence, and juries ought to be so advised and directed. But it cannot be laid down that, if a Judge, aided by assessors, considered an accomplice entitled to credit, though unconfirmed in both these respects, the conviction must be set aside on appeal. *In re* PALAVASAM, **2 Weir 796.**

(6)—*Judge's charge to Jury—What it should contain—Omission, effect of.*—On a trial by Jury, the Sessions Judge, in summing up, should give a full and detailed statement of the evidence on both sides; he should point out the legal bearing of it, and what weight the Jury ought to attach to its several parts. His omission to do so, if the accused is thereby prejudiced, amounts to such an error in law as would justify a Court of Appeal in setting aside the verdict. REG. v. FATTECHAND VASTACHAND, **5 B.H.C. Cr. 85.** [*F.*, 5 Bom, L.R. 207; *R.*, 6 B.H.C. 47; 16 A. 84. F.B., 19 B. 741, 19 B. 749, 23 B. 316, 3 S.L.R. 102 Rat. Un, Cr. C. 644, 719, 720, 748, 806, 850, 917,]

(7)—*Admissibility at Sessions trial of accomplice's deposition taken at the preliminary enquiry—Crim. Pro. Code* (1882), *s.* 288.—If an accomplice who has accepted an offer of pardon is examined as a witness at the sessions trial, he is a witness for the purposes of s. 288, Crim. Pro. Code, and his deposition at the preliminary enquiry can be used as evidence at the trial, Though it is not a rule of law, it is yet correct to say that the evidence of an accomplice requires just as much corroboration or as little corroboration as is needed to convince a prudent person of the truth of the facts alleged against the accused. MAMUN v. EMPRESS, **14 P.R. 1894, Cr.**

See CONFESION—CONFESSIONS BY CO-ACCUSED—ADMISSIBILITY. 9 C. P. L. R. Cr. 35.

See CONFESSION—CONFESSIONS MADE TO POLICE OFFICERS, 19 B. 363.

See CRIM. PRO. CODE, 1898, s. 288, 2 L.B. R. 214.

Evidence of illegally pardoned accomplice—*See* CRIM. PRO. CODE, 1898, s. 337, L.B.R. 1893—1900, 51.

See DISTRICT MAGISTRATE, L.B.R. 1893. 1900, 323.

See EVIDENCE ACT. 1872. s. 30, Rat. Unr. Cr. Cas. 771 = Cr. Rg. 35 of 1895.

See EVIDENCE ACT, 1872, s. 114, 22 M. 491 = 2 Weir 746.

See EVIDENCE ACT, 1872. ss. 114, 133, 14 B. 331, 6 Bom. L.R. 1091 = 29 B. 264.

See EVIDENCE ACT, 1872, ss. 114, ill. (*b*) and 133, 14 B. 115.

Accomplice—continued.

——2.—**Accomplice Evidence Judge's Charge to Jury**—*concluded.*

See EVIDENCE ACT, 1872, s. 133, L.B.R. 1872-1892, 322.

Rule as to—*See* ILLEGALITY, Rat. Unr. Cr. Cas. 466=Cr. Rg. 21 of 1889.

When can be proceeded against—*See* PARDON, 13 C.P.L.R. Cr. 123.

——3.—**Accomplice Evidence—Necessity for Corroboration.**

See EVIDENCE ACT, 1872, ss. 114, 133.

(1)—*Conviction based on uncorroborated testimony of accomplice, legality of—Evidence Act, s.* 133.—S. 133, Evidence Act, in unmistakeable terms lays it down that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice, and to hold that corroboration is necessary is to refuse to give effect to this provision. REG. v. RAMASWAMI PADAYACHI, **1 M. 394=2 Weir 799,** *Appr.*, 35 M. 247=1912. M.W.N. 207=22 M. L.J. 490=11 M.L.T 1=14 Ind. Cas. 849=13 Cr. L.J. 305, 35 M. 397=13 Cr. L J. 352=14 Ind. Cas. 896=1912 M.W.N. 549=12 M.L.T. 1.] QUEEN v. LUCHMEE PERSHAD. **19 W.R. Cr. 43.** QUEEN v. KOA, **19 W.R. Cr. 48.**

(2)—*Conviction based upon uncorroborated testimony of accomplice.*—A conviction founded upon the uncorroborated evidence of one or more accomplices alone is valid in law. *In re* ELAHEE BUKHSH, APPELLANT, **5 W.R. Cr. 80=B.L.R. Sup. Vol. 459.**

(3)—*Conviction based on uncorroborated testimony of accomplice.*—A conviction based on the totally uncorroborated story of an accomplice is bad in law. QUEEN EMPRESS v. SHIDLINGAPPA. **Rat Un. Cr. C. 844=Cr. Rg. 13 of 1896.**

(3-*a*)—*Conviction based on uncorroborated testimony of accomplice.*—The tardily obtained evidence of an approver would not, if unsupported, warrant the conviction of the accused. CROWN v. HEERA MAHAR, **74 P.R. 1866, Cr.**

(3-*b*)—*Conviction based on uncorroborated testimony of accomplice.*—The evidence of an approver should be received with caution CROWN v. MOTUM, **11 P.R. 1867, Cr.**

(4)—*Conviction based on uncorroborated testimony of accomplice.*—The uncorroborated testimony of an accomplice will not by itself suffice to support a conviction. ATOI v. QUEEN-EMPRESS, **U.B.R. 1892-1896, Vol. I, 103.**

(5)—*Conviction on uncorroborated evidence of accomplice improper.*—A Magistrate should not convict a person upon the evidence of witnesses who are no better than accomplices and whose evidence is not corroborated in material respects by other independent evidence in the case. JOGENDRA NATH BHAWMICK v. SANGAP GARO, **2 C.W.N. 55.** [*D.*, 27 C. 144.]

(6)—*Conviction based on uncorroborated testimony of accomplice.*—Case where the conviction based solely on the evidence of an accomplice, whose story itself was not altogether satisfactory and was not corroborated in any material point connecting and identifying the accused with the offence, was held bad. Although s. 133, Evidence Act, enacts that "a conviction is not illegal, merely because it proceeds upon the uncorroborated testimony of an accomplice," a conviction solely based on such testimony will be upheld only under very exceptional circumstances. WAZIR KHAN v. EMPEROR, **5 P.R. 1902=57 P.L.R. 1902.**

(7)—*Approver — Evidence — Corroboration required—Penal Code, s.* 397—Lathi, *whether a deadly weapon.*—An approver's evidence cannot be accepted unless it is corroborated in material particulars by other and independent evidence. Doubted whether a *lathi* can be rightly described as a deadly weapon within the meaning and for the purposes of s. 397 of the Penal Code. LAD KHAN v. CROWN, **19 P.W. R. 1912 Cr., =13 Ind. Cas. 998=13 Cr. L. J. 182=17 P.L.R 1912.**

(8) *Accomplice evidence—Necessity for corroboration in important particulars—Reason of the rule.*—It is an established rule of practice that an accomplice must be corroborated by independent evidence as to the identity of every person he impeaches. The value of the rule is due to this. The accomplice may know every circumstance of the crime, and, while relating all the other facts truly, may, in order to save a friend or gratify animosity, name some person as one of the criminals who was innocent of the crime. QUEEN-EMPRESS v. KRISHNABHAT, **10 B. 319,** (11 B.H.C. 196, 1 B. 475, *F.*) [*R.*, 35 M. 247=13 Cr.L.J. 305=14 Ind. Cas. 849=22 M.L J. 490=11 M.L.T. Sup.1=1912M. W.N. 207, 35 M. 397=13 Cr.L.J. 352=14 Ind. Cas. 896=12 M.L.T. 1=1912 M.W.N. 549.]

(9) *Evidence — Accomplice — Corroboration necessary—Conviction thereon.*—Though it had been held in recent cases that a conviction based upon the evidence of an accomplice or even on the confession of a co-accused is not illegal, it has been also repeatedly and uniformly laid down that it is quite unsafe to convict a man on such testimony unless there is reliable corroborative evidence in material particulars. P. S. NARAYANA IYER v. EMPEROR, **(1914) M. W.N. 363=15 Cr.L.J. 417=24 Ind. Cas. 153.**

(10) *Value of accomplice evidence—Nature of corroboration.*—Generally an accomplice must be corroborated by independent evidence, though a conviction based on the uncorroborated testimony of an accomplice is not illegal. It has been said that the evidence of one accomplice does not really corroborate that of another accomplice, and that the confession of an accused person, taken into consideration under s. 30, Evidence Act, should not be regarded as corroborative of the accomplice's evidence. But this must be taken as a general rule only and not as applicable in all cases. A confession must be considered and the accomplice's evidence must be weighed, and the Court cannot be prevented from taking into account

Accomplice—continued.

——3.—**Accomplice Evidence—Necessity for Corroboration**—*continued.*

their bearing on each other. QUEEN-EMPRESS v. NGA TUN BAW, **U.B.R. 1897-1901, Vol. I, 173.** (21 W.R.Cr. 69, 9 A. 528, *R.*)

(11)—*Nature and extent of corroboration required.*—*Per* Edge, C.J., *and* Straight, J.—As a general rule, it would be most unsafe to convict an accused person on the uncorroborated evidence of an accomplice. But such evidence must like the evidence of any other witness, be considered and weighed by the Judge, who, in doing so, should not overlook the position in which the accomplice, at the time of giving his evidence, may stand, and the motives which he may have for stating what is false. If the Judge, after making due allowance for these considerations and the probabilities of the story, comes to the conclusion that the evidence of the accomplice, although uncorroborated, is true, it is his duty to act upon the strength of his convictions. Every case, as it arises, must be decided on its own facts, and not on supposed analogies to other cases. *Per* Brodhurst, J.—*Held*, on the analogy of decided cases, that the corroboration, in the case before the Court, of the evidence of an accomplice, was not sufficient to convict the accused. QUEEN-EMPRESS v. GOBARDHAN, **9 A. 528 =A.W.N. 1887, 156.** (1 M. 394, A.W.N. 1884, 286, 8 A. 306, *R.*) [*Rel. on*, 12 Cr.L.J. 170=9 Ind. Cas. 978=9 M.L.T. 503; *R.*, 35 M. 247=22 M.L.J. 490=11 M.L.T. 1 Sup.=1912 M.W.N. 207=14 Ind. Cas. 849=13 Cr.L.J. 305, 35 M. 397=1912 M.W.N. 549=12 M.L.T. 1=13 Cr. L.J. 352=14 Ind. Cas. 896, 11 Cr.L.J. 71=4 Ind. Cas. 884=12 O.C. 418, 10 M L.T. 84=21 M.L.J. 283=(1911) 1 M.W.N. 327=12 Cr.L.J. 150=9 Ind. Cas. 897, Rat. Un. Cr. C 750, U.B. R. 1897—1901, Vol. I, 173.]

(12)—*Nature of corroboration required.*—Not only as to the persons spoken of by an accomplice must there be corroborative evidence, but also as to the *corpus delicti* there must be some *prima facie* evidence pointing to the same direction. REG. v. CHATUR, **Rat. Un. Cr. C. 102=Cr. Rg. 17-1-1876.**

(13)—*Nature of corroboration required.*—There must be independent corroboration with respect to the identification of the persons whom accomplices charge and with respect to the facts they state; and their testimony ought to be confirmed by other evidence against each person they name. GUNDA SINGH v. CROWN, **21 P.R. 1866. Cr.** *See, also*, ESUR SINGH v. CROWN, **1 P.R. 1868, Cr.**

(14)—*Nature of corroboration required.*—The confirmation usually required of an accomplice must be not merely as to the circumstances of the crime, but as to the identity of the accused persons also. QUEEN-EMPRESS v. DHONDI BIN RAOJI, **Rat. Un. Cr. C. 840.**

(15)—*Nature of corroboration required.*—The testimony of an accomplice is not alone sufficient for a conviction. The corroboration must be on matters directly connecting the prisoner with the offence of which he is accused; and the evidence of two or more accomplices requires confirmation equally with the testimony of one. QUEEN v. DWARKA, **3 W.R. Cr. 18 =1 Ind. Jur. N.S. 100.** [*R.*, 5 W.R. Cr. 80].

(16)—*Nature of corroboration required.*—Although a conviction based on the uncorroborated testimony of an accomplice is legal, yet having regard to human conduct, credence should not be given to it unless corroborated as to some material facts which go to prove that the prisoner was connected with the crime charged. QUEEN-EMPRESS v. KUNJAN MENON, **1 M.L.J. 397.**

(17)—*Nature of corroboration required.*—A conviction cannot be ordered merely on the testimony of an accomplice. There should be corroboration on matters directly connecting the prisoner with the offence of which he is accused. Even the evidence of two or more accomplices requires confirmation equally with the testimony of one. QUEEN-EMPRESS v. SHIDLINGAPPA, **Rat. Un. Cr. C. 844=Cr. Rg. 13 of 1896.**

(18)—*Accomplice, competency of, as witness—Corroboration required, nature of.*—An accomplice is a competent witness and there is no absolute rule of law which enacts that the conviction on the evidence of an accomplice is bad, but there is an established practice, founded on the judicial experience of generations, which requires corroboration by some untainted evidence and that in a material particular pointing not only to the crime but to the participation of the accused in that crime. SIAR NONIA v. KING-EMPEROR, **18 C.W.N. 550=15 Cr. L.J. 438=24 Ind. Cas. 174.**

(19)—*Evidence of several accomplices also requires corroboration.*—The evidence of several accomplices requires corroboration equally with that of a single accomplice. The mere statements of a confessing co-prisoner are of still less value than that of an accomplice, especially where any improper motive for confession exists. NGA PAW v. QUEEN-EMPRESS, **L.B. R. 1872-1892, 54.**

(20)—*Amount of corroboration—English practice to be followed.*—The English practice should be followed as to the amount of corroboration required to support the evidence of an accomplice. According to such practice, when an accomplice speaks as to two or more persons having been concerned in the same offence, his testimony should be confirmed, not only as to the circumstances of the case, but also as to the identity of the prisoners; and any prisoner as to whom his testimony is not supported should be acquitted. REG v. IMAM VALAD BABAN, **3 B.H.C. Cr. 57.** [*R.*, 14 B. 331, 6 B.H.C. Cr. 57, 13 Cr. L.J. 305=14 Ind. Cas. 849= 1912 M.W.N. 207=22 M.L.J. 490=11 **M.L.T. Sup. 1, Rat. Un. Cr. C. 840, 848.**]

Accomplice—continued.

——**3.—Accomplice Evidence—Necessity for Corroboration**—*continued.*

(21)—*Amount of criminality to be considered.*—In dealing with the question what amount of corroboration is required in the case of testimony given by an accomplice, the Court must exercise careful discrimination and look at all the surrounding circumstances in order to arrive at a conclusion, whether the facts deposed to by the person alleged to be an accomplice are borne out by those circumstances, or whether the circumstances are of such a nature that the evidence purporting to be given by the alleged accomplice should be supported in essential and material particulars by evidence *aliunde* as to the facts deposed to by that accomplice. The amount of criminality is a matter for consideration, and when a person is only an accomplice by implication or in a secondary sense, his evidence does not require the same amount of corroboration as that of a person who is an actual perpetrator with the principal offender. [*R.*, 7 Bom. L.R. 969.] Although a conviction is not illegal, merely, because it proceeds upon the uncorroborated testimony of an accomplice, the evidence of an accomplice, ordinarily speaking, should be corroborated in material particulars, and such evidence should be accepted with a great deal of caution and scrutiny. KAMALA PRASAD v. SITAL PRASAD, **5 C.W.N. 517 = 28 C. 339.**

(22 and 23)—*Nature and attributes of corroboration required — Previous statements by accomplice, if corroboration.*— Previous statements made by the accomplice himself, though consistent with the evidence given by him at the trial, are insufficient for the corroboration of the evidence of the accomplice. The evidence requisite for the corroboration of the testimony of an accomplice must proceed from an independent and reliable source. REG. v. MALAPA BIN KAPANA, **11 B.H.C.A.C. 196.** [*F.*, 10 B. 319, Rat. Un. Cr. C. 840, 6 Bom. L. R. 481. 35 M. 247 = 22 M.L.J. 490 = 11 M.L.T. Sup. 1 = M.W.N. 1912, 207 = 13 Cr. L J. 305 = 14 Ind. Cas. 849, 36 M. 501 = 2 Bom. Cr. Cas. 123 = 15 Bom. L.R. 910 = 18 C.L.J, 365 = 14 Cr.L.J. 577 = 17 C.W.N. 1110 = 20 Ind. Cas. 369 = 25 M.L.J. 518 = 14 M.L.T. 263 = M.W.N. 1913, 806, 35 M. 397 = 13 Cr. L.J. 352 = 14 Ind. Cas. 896 = 12 M.L.T. 1 = M.W.N. 1912, 549, 12 Cr. L.J. 150 = 9 Ind. Cas. 897 = 21 M.L.J. 283 = 10 M.L.T. 84 = (1911) 2 M.W.N. 327.]

(24)—*Corroboration must be of material particulars.*—The corroboration of the evidence of an accomplice, when required, should be such corroboration in material particulars as would induce a prudent man, on the consideration of all the circumstances, to believe that the evidence is true, not only as the narrative of the offence committed, but also so far as it affects each person thereby implicated. EMPEROR v. SHRINIVAS KRISHNA, **7 Bom. L.R. 969 = 3 Cr. L.J. 33.** [*Rel.*, 12 Cr. L J. 170 = 9 M.L.T. 503 = 9 Ind. Cas. 978; *R.*, 35 M. 397 = 13 Cr. L.J. 352 = 14 Ind. Cas. 896 = 12 M.L.T. 1 = (1912) M.W.N. 549, 11 Cr. L.J. 71 = 4 Ind. Cas. 884 = 12 O.C. 418, 12 Cr. L.J. 150 = 9 Ind. Cas. 897 = 21 M.L.J. 283 = 10 M.L.T. 84 = (1911) 2 M.W.N. 327, 22 M.L.J. 490 = (1912) M.W. N. 207.]

(25)—*Confession of one prisoner cannot corroborate accomplice evidence.*—The confession of one of the prisoners cannot be used to corroborate the evidence of an accomplice against the others. REG. v. MALAPA BIN KAPANA, **11 B.H.C.A.C. 196,** (19 W.R. Cr. 68, *R.*). [*R.*, 1 B. 475, 10 C. 970, Rat. Un. Cr. C. 750].

(26)—*Tainted evidence cannot corroborate another tainted evidence.*—Tainted evidence is not made better by being corroborated by other tainted evidence. QUEEN v. BAIJOO CHOWDHRY, **25 W.R. Cr. 43.** QUEEN EMPRESS v. RAM SARAN, **8 A. 306 = A.W.N. 1885, 311.** QUEEN v. DWARKA, **5 W.R. Cr. 18 = 1 Ind. Jur N. S. 100.**

(27)—*Caution in using approver's evidence.*—The utmost caution is necessary in admitting or using the evidence of an approver. It not only requires corroboration in material particulars for its use, but its evidentiary value depends considerably upon the circumstances under which his evidence is tendered. BANU SINGH v. KING-EMPEROR, **10 C.W.N. 962 = 4 Cr. L.J. 145 = 33 C. 1353.**

(28)—*Rule of practice regarding testimony of accomplice—Corroboration.*—It is unsafe to convict a person on the uncorroborated testimony of an accomplice. QUEEN-EMPRESS v. IMDAD KHAN, **8 A. 120 = A.W.N. 1886, 7.** (8 A. 306 = A.W N. 1885, 311, *F.*)

(29)—*Law and practice in England and India.*—The law as expressed in ss. 114 (*b*) and 133 of the Evidence Act is in no respect different from the law of England, but simply reproduces a rule of practice, *viz.*, that a conviction based on the uncorroborated testimony of an accomplice is not illegal, that is, it is not unlawful. But experience teaches that it is not safe to rely upon the evidence of an accomplice, unless it is corroborated, and hence, it is the practice of the Judges, both in England and in India, when sitting alone, to guard their minds carefully against acting upon such evidence when uncorroborated; and, when trying a case with a Jury, to warn them that such a course is unsafe. Not only is it necessary that evidence should be corroborated in material particulars, but the corroboration should extend to the identity of the accused person. There must be some corroboration independent of the accomplice, or of the accomplice and the co-confessing prisoner, to show that the party accused was actually engaged directly in the commission of the crime charged against him. It is of no value and makes no difference if there are two accomplices. A second accomplice does not improve the position of the first, nor does the fact that there are two make it unnecessary that both

Accomplice—continued.

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should be corroborated. The accomplice must be corroborated not only as to one, but as to all, of the persons affected by the evidence; corroboration of his evidence as to one prisoner would not justify his evidence against another being accepted without corroboration. QUEEN-EMPRESS v. RAM SARAN, **8 A. 306 = A.W.N. 1885, 31.** [*F.*, 8 A. 120, 8 A. 509,1 L B.R. 29; *Appr.*, 1 A L J. 110; *R.*, 21 C. 612, Rat. Un Cr. C. 750, 11 Cr. L.J. 71=4 Ind. Cas. 884=12 O.C. 418, 14 Cr. L.J. 225=15 Bom. L R. 288=19 Ind. Cas. 321=2 Bom. Cr Cas. 39, 35 M. 397=M.W.N. 1912, 549=12 M.L.T. 1=13 Cr. L.J. 352=14 Ind. Cas. 896, 13 Cr. L.J. 305=14 Ind. Cas. 849=1912 M.W.N. 207=22 M.L.J. 490=11 M.L.T. Sup. 1=35 M. 7.]

(30)—*Evidence Act*, s. 114, *rule as to accomplice evidence— English Law and Practice.*—The rule as laid down in s. 114 corresponds with the rule observed in England. Although the tainted evidence of an accomplice should be carefully scanned and received with caution, and may be treated as unworthy of credit, yet, if the Jury or the Court credit the evidence, a conviction proceeding upon it is not illegal. REG. v. RAMASAMI PADAYACHI, **1 M. 394=2 Weir 799=2 Ind. Jur. 600.** [*Appr.*, 35 M. 247=1912, M.W.N. 207=22 M.L J. 490=11 M.L.T. Sup. 1=14 Ind. Cas. 849=13 Cr. L.J. 305, 35 M. 397=13 Cr.L J. 352=14 Ind. Cas. 896=1912 M.W.N. 549=12 M.L.T. 1.]

(31)—*Evidence Act*, ss. 114, 133—*Presumption as to accomplice testimony.*—The substantive rule of law is (s. 133, Evidence Act), that a conviction is not illegal, merely because it proceeds upon the uncorroborated testimony of an accomplice. But the approved rule of practice is that a Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars (s. 114, Evidence Act, ill. (*b*)). The initial presumption, therefore, is that the evidence of accomplices is unworthy of credit, and it is so only where there are any special circumstances that rebut this presumption and leave no reasonable doubt that the evidence of the accomplices is worthy of belief. NGA WA GYI v. KING-EMPEROR, **1 U.B.R. 1902-1903, Evidence, 1.**

(32)—*Evidence Act*, ss. 114. *ill.* (*b*), 133, 155—*Presumption regarding accomplice evidence.*—According to the provision of the law (s. 133, Evidence Act) an accomplice is a competent witness against an accused person and a conviction based on the uncorroborated testimony of an accomplice is not illegal. But the Court, having regard to human conduct, may presume that an accomplice is unworthy of credit, unless corroborated in material particulars. [s. 114, ill. (*b*).] As an accomplice is a competent witness, it follows, as an inevitable consequence, that, if credit is given to his evidence, it requires no confirmation from another witness. But it has now come to be considered, as a general rule of practice, that the Judge ought to advice the Jury to acquit unless the evidence of the accomplice is corroborated in some material part by unimpeachable evidence. If some part of his evidence is satisfactorily corroborated, there is good ground for believing him in other parts in which there is no corroboration. Under s. 155, independent evidence of facts unconnected with the crime itself may be given in corroboration of the statement of an accomplice. It is, however, well established that an accomplice must be corroborated as to some material facts which go to prove that the prisoner was connected with the crime charged. In this case, it was *held* that the evidence of the giver of a bribe was sufficiently corroborated by the evidence adduced in the case so as to justify the conviction of the accused under s. 164, Penal Code. QUEEN-EMPRESS v. KUNJAN MENON, **1 M.L.J. 397, F B.** [*R.*, 35 M. 397=13 Cr. L.J. 352=14 Ind Cas. 896=12 M.L.T. 1=1912, M.W.N. 549, 22 M.L.J. 490=1912, M.W.N. 207.]

(33)—*Persons accompanying to witness bribery —Rule regarding corroboration—Presumption of law—Evidence of one accomplice not sufficient corroboration of that of another—Evidence Act*, s. 114, *ill.* (*b*).—A person, who accompanies another in order to witness the payment of a bribe, must be treated as an accomplice. (2 C. W.N. 672, *F.*) Further, the evidence of a person, who was a witness to the payment of a bribe in April or May, but who did not give information about it till the 21st June following, must be treated in the same way as that of an accomplice. (21 C. 328, *F.*) The rule regarding the evidence of accomplices is that it must be carefully scrutinized before it is accepted. In dealing with such evidence, a Judge or Jury must start with the rule stated in illustration (*b*) to s. 114, Evidence Act, and presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. There may be circumstances in particular cases which are sufficient to overcome such presumption, and, in such cases, a conviction is not illegal. Such cases are provided for by s. 133, Evidence Act, but, in the case of a Judge who has to give reasons for his decision, the reasons which have led him to believe the uncorroborated evidence of an accomplice should be clearly and fully set out. (14 B. 331, *F.*) The evidence of one accomplice is ordinarily not sufficient corroboration of that of another. NGA PO THET v. QUEEN-EMPRESS, **1 L.B.R. 29.** (8 A. 306, *F.*)

(34)—*Presumption regarding accomplice testimony.*—Though, before convicting on the evidence of an accomplice, corroboration is not legally necessary, a Court should follow the maxim that an accomplice is unworthy of credit if not corroborated in material particulars (s. 114, Evidence Act), unless circumstances justifying a disregard of such maxim exist. ILAHI BAKHSH v. EMPRESS, **16 P.R. 1886, Cr.**

(35)—*Amount of corroboration varies in different cases— Compulsory payment of bribe—*

Accomplice—continued.

——3.—**Accomplice Evidence—Necessity for Corroboration**—*continued.*

Persons paying bribes whether accomplices—Value of their testimony.—When the accomplices were persons who paid a bribe to a public servant, accused under s 161, Penal Code, not of their free will but rather of necessity, and particularly when they did not strive to save themselves by throwing the blame for the offence on the accused but were rather doing the reverse and their guilt, such as it was, plainly not being used as an instrument to induce them to give evidence, *held*, that their testimony even without corroboration might justify the conviction of the accused; at any rate, their evidence would require a much slighter degree of corroboration to establish their credit than would be the case, if they were entirely voluntary accomplices in the offence which they spoke to. It is generally unsafe to convict an accused person on the testimony of an accomplice, unless it is corroborated in material particulars connecting the accused with the offence. But, in considering whether this rule applies to any particular case, it must be remembered that all persons coming technically within the category of accomplices cannot be treated as precisely on the same footing, and no general rule on the subject can be laid down. DEO NANDAN PERSHAD v. EMPEROR, **33 C. 649=10 C.W.N. 669=3 Cr. L.J. 452.** (27 C. 925, 27 C. 144, *Appr.*; 26 B. 193, *R.*; 24 W.R. 55, *D.*) [*R.*, 35 M. 247=22 M.L.J. 390=11 M.L T. 1, Sup=1912 M. W.N. 207=14 Ind. Cas. 849=13 Cr. L. J. 305, 35 M. 397=12 M.L.T. 1=1912 M.W.N. 549=14 Ind. Cas. 896=13 Cr. L.J. 352, 12 Cr. L.J. 150=9 Ind. Cas. 897=21 M.L.J. 283=10 M.L. T. 84=(1911) 1 M.W.N. 327.]

(36 & 37)—*Evidence Act, ss.* 114, *ill.* (*b*), 133 —*Corroboration, rule as to, a rule more of prudence.*—It is not a rule of law but one of mere practice and prudence that an accomplice is unworthy of credit unless he is corroborated in material particulars. The High Court will not disturb a conviction under its revisional jurisdiction, simply because this rule of practice has not been observed by the convicting Court, unless there are exceptional circumstances calling for the exercise of that jurisdiction in the interests of justice. EMPEROR v. LALLUBHAI PRANBHAI, **11 Bom. L.R. 858=3 Ind. Cas. 963=10 Cr. L.J. 433.**

(38)—*Infringement of rule of practice, if error of law.*—The omission to follow the established rule of practice as to the corroboration of accomplice evidence does not constitute an error in law; but, where the evidence of an accomplice is not of a character to warrant the refusal of a Court to apply to it the maxim enunciated in ill. (*b*) of s. 114, Evidence Act, a conviction based on such evidence alone would be of questionable propriety. QUEEN-EMPRESS v. CHAGAN DAYARAM, **14 B. 331.**

(39)—*Reason for requiring corroboration—Person bribing if requires corroboration.*—The evidence of an accomplice requires to be accepted with a great deal of caution and scrutiny, because, among other things, he is likely to swear falsely in order to shift the guilt from himself. But this consideration hardly applies to the evidence of one, who testifies that he has bribed the accused; for, by his own testimony, so far from shifting the offence from himself, he, in fact, thereby fastens it upon himself, for it is by making himself out to be a briber that he shows another has been bribed. EMPEROR v. SHRINIVAS KRISHNA, **7 Bom. L.R. 969=3 Cr. L.J. 33.** [*Rel.*, 12 Cr. L.J. 170=9 M.L.T. 503=9 Ind. Cas. 978; *R.*, 25 M. 397=13 Cr. L.J 352=14 Ind. Cas. 896=12 M.L.T. 1=1912 M.W.N. 549, 11 Cr. L.J. 71=4 Ind. Cas. 884=12 O.C. 418, 12 Cr. L.J. 150=9 Ind. Cas. 897=21 M.L.J. 283=10 M.L.T. 84=(1911) 2 M.W.N. 327, 22 M.L.J. 490=1912 M.W.N. 207.]

(40)—*Principle applies to persons receiving conditional pardon.*—*Held*, that the rule that an accomplice, unless corroborated by evidence other than that of another accomplice, is unworthy of belief, applies to persons to whom a pardon has been tendered on condition of their making a full and true disclosure of all the circumstances of the crime in which they profess themselves to have been participators and subject to the penalty of being themselves placed upon their trial if, in the opinion of the Court, they have spoken falsely or kept back anything important. It does not apply to a case in which the question is as to the degree of reliance to be placed upon the evidence of accomplices who have been convicted of the offence and have undergone the full term of imprisonment inflicted upon them for their share in it. The evidence of such witnesses, if corroborated by the statements made by them at the time of their trial, is good corroborative evidence under s. 157, Evidence Act. EMPRESS v. TANTIA BHIL, **4 C.P.L.R. 1.**

(41)—*Evidence of person cognizant of crime.*—Where a witness admits that he was cognizant of the crime as to which he testifies and took no means to prevent or disclose it, his evidence must be considered as no better than that of an accomplice and consequently requires corroboration. QUEEN v. CHANDO CHANDALINEE, **24 W.R. Cr. 55.** [*D*, 27 C. 144; *Expl.*, 26 M. 1; *Diss.*, 26 M. 271.]

(42)—*Accomplice, who is an—Person cognizant of crime.*—The mere fact that a person is cognisant of an offence and omitted to disclose it for six days is not sufficient to constitute him an accomplice, when it does not appear that he helped in the commission of the offence. But the testimony of such person will not be sufficient to justify a conviction except when he is corroborated. ISHAN CHANDRA CHANDRA v. QUEEN-EMPRESS, **21 C. 328** [*Diss.*, 27 M. 271=2 Weir 803=14 M.L.J. 226; *R.*, 27 C. 144, 1 L.B R. 29; *Com.*, 26 M. 1=2 Weir 521.]

(43)—*Spy, whether requires to be corroborated.*—The Government are justified in employing

Accomplice—continued.

——3.—**Accomplice Evidence—Necessity for Corroboration**—*continued.*

spies and a person so employed does not deserve to be blamed if he instigates offences no further than by pretending to concur with the perpetrators. They are entirely to be distinguished in fact and in principle from accomplices, and, although their evidence is entirely for the Jury to judge of, yet, they are not such persons as would require their evidence to be corroborated. QUEEN-EMPRESS v. JAVECHARAM, **19 B. 363.**

(44)—*Accomplice—Spy or detective—Difference between—Evidence of spy—Corroboration.*—One, who, as a spy or a detective, associates with criminals solely for the purpose of discovering and making known their crimes, and who acts throughout with this purpose and without any criminal intent, is not an accomplice, and it is immaterial that he encouraged or aided the commission of the crime. If a witness has made himself an agent for the prosecution before associating with the wrong doers or before the actual perpetration of the offence, he is not an accomplice, and his evidence does not stand in need of corroboration; but he may be an accomplice if he extends no aid to the prosecution until after the offence has been committed. An Excise Deputy Collector deputed B to purchase cocaine from the accused, and B purchased it with money supplied by the Excise Sub-Inspector and handed the same over to the Deputy Collector. The accused was tried for illicit sale of cocaine. B in his evidence deposed to the purchase of cocaine from the accused under instructions from the Excise Deputy Collector, who stated that he gave such instructions, and received the cocaine from him. The accused was convicted upon the uncorroborated testimony of B: *Held*, that B was not an accomplice and the conviction was good. Although the testimony of a spy does not stand in need of corroboration in order to be acted upon, it is entirely for the Judge of facts to decide in each particular case what weight he will attach to this kind of evidence, the question depending upon the character of each individual witness. EMPEROR v. CHATURBHUJ SAHU, **8 Ind. Cas. 119 = 11 Cr. L. J. 560 = 15 C.W.N. 171.** (19 B. 363, *R.*)

(45)—*Witnesses proved to have participated in offence.*—Where, from the facts of the case, it appeared that certain witnesses took an active part in carrying away the person, whose death the accused had been charged with having caused, after he had been grievously assaulted and left him in a field where he was subsequently found dead, *held* that the evidence of the witnesses was no better than that of accomplices; at any rate it would be unsafe for the Court to rely upon their evidence, unless corroborated in some material respects, in convicting the accused. ALIMUDDIN v. QUEEN-EMPRESS, **23 C. 361.** [*R.*, 27 M. 271 = 14 M.L.J. 226 = 2 Weir 804; *D.*, 27 C. 144.]

(46)—*Retracted confession—Conviction of co-accused based on such confession, whether proper—Admissibility of accomplice's confession against co-accused.*—A conviction on an uncorroborated and retracted confession of an accomplice is improper and bad. The accusation made by an accomplice in a confession may be considered against a co-accused, if that statement is put in evidence against him, but its evidential value would be very slight. YASIN v. KING-EMPEROR, **28 C. 689 = 5 C.W.N 670** [*R.*, 38 C. 559 = 15 C.W.N. 98 = 8 Ind. Cas. 1059 = 12 Cr. L.J. 2, 12 Cr. L.J. 286 = 15 C.W.N. 593 = 10 Ind. Cas. 582.]

(47)—*Evidence of accomplice previously convicted on her confession.*—Case where the Court refused to convict on the uncorroborated testimony of an accomplice, who had previously been convicted of the same offence on her own confession. (*Per* Mitter and Pontifex, JJ., Glover, J., *dissenting.*) QUEEN v. RAMSODOY CHUCKERBUTTY, **20 W. R. Cr. 19.**

(48)—*Evidence of persons pleading guilty, if sufficent for corroboration.*—Four accused, B, C, M and T, being committed for trial, B was made an approver, M and T pleaded guilty, and the trial proceeded against C alone. *Held* that the statement of M and T could not be used against C to corroborate the evidence of B. *Held*, further, that, as M and T pleaded guilty and as the trial was against C alone, he was not being tried together with them and s. 30, Evidence Act, had no application. QUEEN-EMPRESS v. CHAND, **Rat. Un. Cr. C. 400 = Cr. Rg. 60 of 1888.**

(49)—*Evidence of accomplice made witness after pardon tendered.*—A prisoner should not be convicted on the sole and uncorroborated evidence of an accomplice, who was made a witness after a pardon was granted to him. QUEEN v. NUNHOO, **9 W.R. Cr 28.**

(50)—*Evidence of pardoned accomplice.*—The evidence of a pardoned accomplice, taken with that of an unpardoned co-prisoner, is not sufficient by itself to warrant the conviction of one who never confessed. QUEEN-EMPRESS v. BHAGYA, **Rat. Un. Cr. C. 750.**

(51)—*Evidence of accomplice promised not to be prosecuted—Crim. Pro. Code* (1898), *ss.* 337—339 *and* 342.—*Held*, that an accomplice, whom the Local Government had promised not to prosecute in respect of an offence to which ss. 337-339, Crim. Pro. Code, did not apply, was not an accused person within the meaning of s. 342, Crim. Pro. Code, that an oath could be administered to him, and that his evidence was, therefore, admissible against his accomplices. SARDAR KHAN v. EMPEROR, **21 P.R. 1904, Cr.** (12 P.R. 1902, Cr., 38 P.R. 1887, Cr., *R. & D.*; 16 B. 661, 23 C. 493, *F.*) [*D.*, 9 P.R. 1906, Cr.]

(52)—*Admissibility of statement made as an approver after withdrawal of pardon.*—Should the pardon granted to an approver be withdrawn for the reason that he has not told the truth, his evidence is admissible against him or

Accomplice—continued.

—3.—**Accomplice Evidence—Necessity for Corroboration**—*continued.*

any one else. HARGALAL v. EMPEROR, **24 P. R. 1902, Cr.** [*R.*, 4 P.R. 1903, Cr: *Disc.*, 41 P. R. 1905, Cr.; *Doubted*, 31 P.R. 1904, Cr.] *See, also*, SUBA v. KING-EMPEROR, **41 P.R. 1905, Cr., F.B.**

(53)—*Pardon tendered by Police Superintendent to accomplice.*—Where an accomplice is tendered a pardon by the District Superintendent of Police under the orders of the District Magistrate, the evidence of such accomplice was held admissible. *In the matter of* NGA PO AUNG, **L.B.R. 1872-1892, 246.**

(54)—*Policeman procuring illegal sale of liquor to obtain conviction—Excise Act.*—Where a policeman procures an illegal sale of liquor in order to obtain a conviction, *held* that he was to be considered an accomplice and that his evidence ought not to be believed in without corroboration. MI THE U v. QUEEN-EMPRESS, **L.B.R. 1872-1892, 146.**

(55)—*Policeman procuring sale of liquor to obtain conviction, if an accomplice—Spy or informer distinguished from—Corroboration—Evidence Act, ss.* 144, 133.—A policeman or other person procuring an illegal sale of liquor in order to obtain a conviction is not an accomplice, whose evidence, if uncorroborated, ought not to be accepted as sufficient for conviction. QUEEN-EMPRESS v. BASTIN, **L.B.R. 1893-1900, 365.** (L.B.R. 1872-1892, 146, *Overruled*; 19 B. 363, *R.*) [*F.*, U.B.R. 1897-1901, Vol. I, 176.]

(56)—*Accomplice-Conviction based on uncorroborated evidence of—Legality—Corroboration—Necessity—Excise cases.*—A conviction may be upheld when it is based on the uncorroborated evidence of accomplice, even although a Court should, especially in excise cases, require corroboration. AH TAT v. KING-EMPEROR, **U.B.R (1911) 3rd Qr. 96 = 14 Ind. Cas. 968 = 13 Cr.L. J. 424.** (6 L.B.R 4, *F.*)

(57)—*Murder—Uncorroborated evidence of accomplices.*—Case of murder where the prisoners, whose conviction depended on the uncorroborated evidence of accomplices and an accessory after the fact, were acquitted. QUEEN v. CHUTTERDHAREE SINGH, **5 W.R. Cr. 59**; QUEEN v. BAIKANTHA NATH BANERJEE, **3 B.L.R. F.B., 2, note.**

(58)—*Confession—Corroboration.*—The accused was convicted of offences under ss. 392, 109 and 411, Penal Code. The case against the accused rested (1) on the confession of a co-accused; (2) on his confession before a *lumbardar*; and (3) on his production of stolen property. It was proved that there was enmity between the accused and the *lumbardar* who took an active part in the investigation and the confession before him was made in the presence of the Deputy Inspector of Police. The property found was such as could not be identified. *Held*, that the confession made by the accused was inadmissible in evidence and the other evidence against him

Accomplice—continued.

—3.—**Accomplice Evidence—Necessity for Corroboration**—*continued.*

was insufficient and that he must be acquitted. DASU v. EMPEROR, **11 P.L.R. 1904.**

(59)—*Evidence Act, s.* 24—*Crim. Pro. Code* (1898), *s.* 339—*Admissibility of approver's statement where pardon withdrawn before completion of trial—Statement made by suspected persons.*—An approver's statement, where the pardon is withdrawn before the trial is completed, could not be used against him or against any one with whom he was being jointly tried, such statement being inadmissible under s. 24, Evidence Act, notwithstanding the special provisions of cl. (2) of s. 339, Crim. Pro. Code. It is unsafe to implicitly rely on statements made by men who knew themselves to be under a suspicion, and to whom it is represented that their only hope of escape consists in telling a story by which each may throw the blame chiefly on the other, while the corroborative evidence, which, coming after the disclosures, is necessarily of a questionable nature when it follows closely on conventional lines. GHULAM MAHOMED v. CROWN, **4 P.R. 1903, Cr.** (23 B. 493, 20 A. 529, 5 P.R. 1899, Cr., 24 P.R. 1902, Cr., *R.*) [*R.*, 41 P.R. 1905, Cr.]

(60)—*Accomplice's deposition taken prior to commitment—Crim. Pro. Code* (1898), *s.* 288—*Evidence Act, s.* 157. Where an accomplice, produced before the District Magistrate previous to his commitment and accepting an offer of pardon, made, in the accused's absence, a statement, part of which he retracted before the committing Magistrate; but the Sessions Court admitted in evidence the approver's first statement; *held* that the statement made in the absence of the accused could not be admitted in evidence against them, under s. 288, Crim. Pro. Code, and was not admissible under s. 157, Evidence Act, to contradict the retraction before the committing Magistrate. Although the mere repetition of a statement, without contradiction or material discrepancy, is, under s. 157, Evidence Act, some corroboration of the truthfulness of that statement, that section does not justify the use against accused persons of a previous statement by an approver relevant to contradict his retraction. PATHANA v. EMPEROR, **3 P.R. 1904, Cr.** (10 C. 970, *R.*)

(61)—*Person under arrest pending appeal—Admissibility of his evidence against persons concerned in the same offence.—Per Stuart, C. J.*—Where a person accused of an offence was discharged by the Sessions Judge but he was rearrested by the Magistrate, pending an appeal from the acquittal to the High Court and before the appeal was admitted, *held*, that the re-arrest was lawful and absolutely necessary in the interests of justice, and his statement, after his re-arrest and pending his appeal, was admissible in the trial of another person who was arrested subsequently to the arrest of the former as being concerned in the same offence. *Per Spankie, J.*—Assuming that the re-apprehension after an acquittal and on the same charge was unlawful, his statement and

Accomplice—continued.

——3. Accomplice Evidence - Necessity for Corroboration—*continued.*

evidence although admissible, was not such evidence, as the Court would place much reliance upon. If his re arrest was lawful, he was in the position of an accused person and the Magistrate should not have examined him as a witness in the trial of the other accused. EMPRESS OF INDIA v. KARIM BAKSH, **2 A. 386.**

(62)—*Admissibility of evidence of accomplice whose appeal against his conviction dismissed.*—When a convicted person, whose appeal against his conviction has been dismissed, is tendered as a witness in a further enquiry ordered to be held as regards other persons jointly tried with him who had been discharged, he is, in no sense, an accused person and his evidence is admissible against those discharged. KING-EMPEROR v. SOBHA RAM, **8 P R. 1904, Cr. = 70 P.L.R. 1904 = 1 Cr L J. 514.** (12 P.R. 1902, 45 P.R 1885, Cr. *D.*) [*F.*, 12 Cr. L.J. 50 = 8 Ind. Cas. 1161 = 33 P.R. 1910 Cr., 50 P. W.R. 1910, Cr.]

(63)—*Corroboration, when not necessary.*—Corroboration is not necessary in the case of persons apparently accomplices, who have entered into communication with conspirators, but who have disclosed the conspiracy to the public authorities, under whose direction they continue to act, till the matter can be so far matured as to ensure a conviction. To such persons the rule as to corroboration does not apply. The early disclosure is considered as binding the party to his duty and though a great degree of disfavour may attach to him for the part he has acted as an informer, yet his case is not treated as that of an accomplice. *In re* SHANKER SHOBAG, **Rat. Un. Cr. C. 428 = Cr. Rg. 91 of 1888.** [*F.*, 19 B. 363; *Appr.*, 38 C. 96 = 8 Ind. Cas. 119 = 11 Cr. L.J. 560.]

(64)—*Case where corroboration may be unnecessary — Revision.*—There may be cases of an exceptional charactor in which the accomplice evidence alone convinces a Judge, and, if he acts on that conviction, with the character of the witnesses clearly present to his mind, a Revisional Court ought not to interfere in the absence of other circumstances showing a want of judicial discretion. QUEEN-EMPRESS v. MOGANLAL, **14 B. 115.** [*R.*, 16 B 580 = Rat. Un. Cr. C. 577.]

(65)—*Judge's duty to convict where corroboration exists.*—Although it would generally be most unsafe to convict an accused, on the uncorroborated evidence of an accomplice, yet, if the Judge, after considering and weighing the evidence, thinks that it is true, and, if believed, establishes the guilt of the prisoner, it is his duty to convict. QUEEN-EMPRESS v. GOBARDHAN, **9 A 528 = A.W.N 1887, 156.** (1 M. 394, A W.N. 1884, 286, 8 A. 306, *R.*) [*Rel. on*, 12 Cr. L.J. 170 = 9 Ind. Cas. 978 = 9 M.L.T. 503; *R.*, 35 M. 247 = 22 M.L.J 490 = 11 M.L.T. 1, Sup = 1912 M.W.N. 207 = 14 Ind. Cas. 849 = 13 Cr. L.J. 305, 35 M. 397 = 1912 M.W N. 549 = 12 M.L T. 1 = 13 Cr. L J 352 = 14 Ind. Cas. 896, 11 Cr. L.J. 71 = 4 Ind. Cas. 884 = 12 O.C. 418, 10 M.L T. 84 = 21 M.L.J. 283 = (1911) 1 M.W.N. 327 = 12 Cr. L J. 150 = 9 Ind. Cas. 897.]

Accomplice—continued.

——3.—Accomplice Evidence—Necessity for Corroboration—*continued.*

(66)—*Judge and Jury when may act on accomplice evidence.*—A Jury may convict upon the evidence of an accomplice, though not corroborated so as to show the prisoner's actual participation in the offence. QUEEN v. GODAI RAOUT, **5 W.R.Cr. 11**

(67)—*Magistrate erroneously treating a witness as accomplice* —Where a Magistrate erroneously treats a witness as an accomplice and grants him a conditional pardon, his evidence does not require corroboration. REG. v. FATTECHAND VASTACHAND, **5 B.H.C.Cr. 85.** [*R.*, 35 M. 397 = 13 Cr. L J. 352 = 14 Ind. Cas. 896 = 12 M.L.T 1 = M.W N 1912, 549, 22 M. L.J. 490 = 1912 M.W.N. 207.]

(68)—*Further investigation ordered without reversing conviction based on accomplice's evidence.*—Case where the Chief Court declined to reverse the conviction of an accused person based on the statement of a co-accused, but ordered a further investigation to be made on the ground that other evidence would be forthcoming. CROWN v. HOOSAINEE, **27 P.R. 1869, Cr.**

(69)—*Validity of separate trial of accomplice.*—The evidence of an accomplice is insufficient without corroboration to support the conviction of another accused. An accomplice should be tried along with the other accused and not tried separately and examined as a witness. EMPRESS v. SHAKUR, **5 C.P L.R. 1, Cr.**

(70)—*Rule of practice prior to the evidence Act*, 1872—Prior to the Evidence Act, the rule, not of law, but of practice was that a conviction could not be based on the unsupported evidence of an accomplice, that the accused person's statement was no evidence against a fellow-prisoner or one tried jointly with the person making the statement and that such statement was only admissible in evidence when made in the witness-box. CROWN v. NIHAL SINGH, **31 P.R. 1866, Cr.** *See also* GHAZOO v. CROWN, QUEEN v. JUMEEYUTA. **124 P.R. 1866, Cr.** QUEEN v. BOORA, **125 P.R. 1866, Cr.** DEWA SINGH v. CROWN, **27 P.R. 1867, Cr.** CROWN v. JAI RAM, **28 P.R 1867, Cr.** CROWN v. MUSSUMMAT RUHEEMEE, **38 P.R. 1867, Cr.**

(71)—*Evidence of accomplice—Practice—S.* 28 *of Act* II *of* 1855.—S. 28, Act II of 1855, applied only to the old Supreme Courts and the rules and practice prevailing in them and does not show that, in the Courts of the Mofussil, corroborative evidence is legally requisite to support the testimony of an accomplice. QUEEN v. GODAI RAOUT, **5 W.R. Cr. 11.**

(72)—*Evidence—Conviction on—of a man sent by Police officer with marked money to purchase Liquor.*—The accused was convicted on the evidence of a man who was sent by a

Accomplice—continued.

—— 3.—**Accomplice Evidence—Necessity for Corroboration**—*continued.*

Police Officer with marked money to purchase liquor. The District Magistrate considered that it was improper to obtain convictions in this way and directed the discontinuance of the practice. *Held* that a Policeman or other person procuring an illegal sale of liquor to obtain a conviction is not an accomplice whose evidence, if uncorroborated, ought not to be accepted as sufficient for conviction. QUEEN EMPRESS v. NGA SWE, **U.B.R. 1897—1931, Vol. I, 176.**

Who is or who is not an—*See* BEN. ACT V OF 1909, ss. 54, 56. 15 C.L.J. 692=13 Cr. L. J. 255=14 Ind. Cas. 607.

Evidence of—*See* CONSPIRACY, 16 C.W.N. 1105=16 Ind. Cas. 257.

Accomplice evidence — Not corroborated —Conviction—Legality—*See* CRIM. PRO. CODE, 1898, s. 257, 21 M.L.J. 283=9 Ind. Cas. 897=12 Cr. L.J. 150=10 M.L.T. 84=(1911) 1 M.W.N. 327.

Sanction of High Court for prosecution of, how to be obtained—Practice—*See* CRIM. PRO. CODE, 1898, ss. 337, 339 (3). 30 P.W.R. 1912, Cr.=175 P.L.R. 1912=15 Ind. Cas. 83=13 Cr. L.J. 451=230 P.L R. 1912.

Breaking conditions of pardon— Discharge of his co-accused—Subsequent trial of—Committal of, to Sessions—Order of fresh enquiry against discharged accused—Joint trial with — *See* CRIM. PRO. CODE. 1898, ss. 337, sub-s. 3, 339, 437, 209, 14 Bom. L.R. 897, 1 Bom. Cr. Cas. 193=13 Cr. L.J. 842=17 Ind. Cas. 714 =37 B. 146.

Evidence of—Value—Bribery—Evidence of persons from whom money was extorted—Credibility—*See* EVIDENCE ACT, 1872, ss. 3, 34, 114 (*b*), 133, 6 S.L.R. 195=14 Cr. L.J. 262=19 Ind. Cas. 534.

Position of—*See* EVIDENCE ACT, 1872, ss. 24, 30, 133, 166 P.L.R. 1911=10 Ind. Cas. 340 =9 P.R. 1911, Cr.=22 P.W.R. 1911, Cr.=12 Cr. L.J. 267.

Evidence of — Presumption of untrustworthiness—Whether corroboration necessary —Extent and nature of corroboration—Former statements of, whether amount to corroboration—*See* EVIDENCE ACT, 1872, ss. 25, 26, 114, ill. (*b*), 133, 157. 1912 M.W.N. 549=12 M.L.T. 1=13 Cr. L.J. 352=14 Ind. Cas. 896= 35 M. 397.

Uncorroborated and retracted confession of—Conviction based thereon—Legality—*See* EVIDENCE ACT (1872), ss. 30, 14, 113, 14 Cr. L.J. 179=19 Ind. Cas. 179=6 Bur. L.T. 47.

Testimony of—Corroboration—Witness being relation of accused—Effect—*See* EVIDENCE ACT, 1872, ss. 30, 114, ill. (*a*), (*b*), 19 P.L.R. 1911=1 P.W.R. 1911, Cr.=9 Ind. Cas. 39=12 Cr. L.J. 5.

Evidence of an—What is not corroboration —*See* MURDER (1911), 2 M.W.N. 375=12 Cr. L.J. 562.

Accomplice—concluded.

——3.—**Accomplice Evidence—Necessity for Corroboration**—*concluded.*

In murder cases—Who is—*See* PENAL CODE, ss 39, 94, 1912 M.W.N. 1108=19 Ind. Cas. 207=14 Cr. L.J. 207.

Evidence of—Value and admissibility—*See* PENAL CODE, s. 121-*a*. 15 C.W.N. 593=10 Ind. Cas. 582=12 Cr. L.J. 286.

Evidence of—Necessity for corroboration—Kind of corroboration required—*See* PENAL CODE, s. 121-*a*, 1912 M.W.N. 207=13 Cr. L. J. 305=22 M.L.J. 490=11 M.L.T. Sup. 1=35 M. 247=14 Ind. Cas. 849.

and spy—Distinction —*See* PENAL CODE, ss 121-*a*, 123, 15 C.L J. 517=16 Ind. Cas. 257 =13 Cr. L.J. 609.

See PENAL CODE, s. 400, 1 Bom. L.R. 156.

Account Books.

Entries of loans in—*See* ACT XVIII OF 1869, s. 3, 2 N.W.P. 453.

See CRIM. PRO. CODE, 1898, ss. 96, 99, 104, Rat. Un. Cr. C. 880=Cr. Rg. 2 of 1897.

See EVIDENCE ACT, 1872, s 34, 10 C. 1024.

Accounts.

See EVIDENCE ACT, 1872, s. 34.

(1) *Account books relevant as admissions.*—Though certain account books are proved not to have been regularly kept in course of business, yet if they are proved to have been kept on behalf of a firm of contractors by its servant or agent appointed for that purpose, they are relevant as admissions against the firm. REG. v. HANMANTA, **1 B. 610.**

See ACT I OF 1878, s. 9, 1 Weir 831.

Evidentiary value of kabuliyats, chittas—receipts and survey maps — *See* EVIDENCE (GENERAL), 29 C. 187=29 I.A. 24=6 C.W.N. 386, P.C.

'Books of account' in s. 34, Evidence Act, what are—*See* EVIDENCE ACT, 1872, ss. 3, 34, 114 (*b*), 133, 6 S.L.R. 195=14 Cr. L.J. 262= 19 Ind. Cas. 534.

Falsification of accounts—Fraudulent intent necessary—*See* PENAL CODE. ss. 465, 471, 477-*a*, 36 C. 955.

Accused Person.

See ACCOMPLICE.

See APPROVER.

See CO-ACCUSED.

See COMPENSATION—TO ACCUSED.

See CONFESSION.

See DETENTION BY POLICE OF ACCUSED.

See DISCHARGE OF ACCUSED.

See EXAMINATION OF ACCUSED.

See REVISION—DISCHARGE OF ACCUSED.

(1)—*Definition of.*—The word "accused" has not been defined in the Criminal Procedure Code, and, in ordinary parlance, it means any person against whom an allegation has been made requiring the action of a Criminal Court.

Accused Person—*continued.*

MUHAMMAD KHAN v. THE CROWN, **131 P. L. R. 1905 = 42 P.R. 1905, Cr.** (21 A. 107, *Diss.*; 27 C. 662, *F.*)

(2)—*Meaning of term.*—The word "accused" does not necessarily mean and include any person over whom a Magistrate or other Court is exercising jurisdiction. HIRANANDA OJHA v. EMPEROR, **2 C.L.J. 149 = 9 C.W.N. 983 = 2 Cr. L.J. 575.** (16 B. 661, 23 C. 493 and 21 A. 107, *D.*)

(3)—*Meaning of the term.*—By "accused" is meant a person over whom the Magistrate or other Court is exercising jurisdiction. QUEEN-EMPRESS v. MONA PUNA, **16 B 661.** [*F.*, 23 C. 493, 21 A. 107 = A.W.N. 1898, 185 ; *R.*, 23 B. 213, 15 P.R. 1900, Cr. = P.L.R. 1900, 59, 5 C.W.N. 749 = 28 C. 709, 15 C.P L.R. 112. 24 P.R 1903, Cr., 21 P R. 1904, Cr. = 135 P.L.R. 1904, 131 P.L.R. 1905 = 42 P.R. 1905, Cr., 13 C.W.N. 151 = 36 C. 163 = 8 C.L J. 565, 4 N.L.R. 81 = 8 Cr. L.J. 20; *D.*, 9 C.W.N. 983.]

(4)—*Person required to furnish security to keep the peace—Crim.Pro.Code* (1898), *s.* 107.—The party against whom proceedings under s. 107, Crim. Pro. Code, are instituted is in the position of an accused person. HOPCROFT v. EMPEROR, **13 C.W.N. 151 = 36 C. 163 = 8 C.L J. 565 = 9 Cr. L.J. 36 = 9 Cr. L J 359 = 1 Ind. Cas. 737.**

(5)—*Person required to furnish security for good behaviour.*—A person called upon to furnish security for good behaviour is an accused person, and a District Magistrate is competent under s. 437, Crim. Pro. Code, 1882, to order further enquiry in cases where the subordinate Magistrate has discharged the person under s. 119, Crim. Pro. Code. QUEEN-EMPRESS v. MUTASADDI LALL, **21 A. 107 = A.W.N. 1898, 185.** (16 B. 661, 23 C. 493. *F.*) [*Diss.*, 42 P.R. 1905, Cr. = 131 P.L.R. 1905; *F.*, 35 B. 401 = 13 Bom. L.R. 505 = 1 Bom. Cr. Cas. 49 = 12 Cr. L.J. 430 = 11 Ind. Cas. 614, 36 C. 163 = 8 C.L.J. 565 = 13 C.W.N. 151 = 9 Cr. L.J. 36 = 1 Ind. Cas. 717 ; *Appl.*, 25 A. 375 = A.W.N. 1903. 79 ; *R.*, 24 A. 148 = A.W.N. 1901, 206, 34 A. 533 = 10 A.L.J 27 = 13 Cr. L.J. 452 = 15 Ind Cas. 84, 36 A. 147 = 12 A.L.J. 167 = 15 Cr. L.J 39 = 22 Ind. Cas. 183, 28 C. 709 = 5 C.W.N. 749, 36 M. 315 = 14 Cr. L.J. 559 = 21 Ind. Cas. 159.]

(6)—*Person called upon to furnish security.*—Although a person, who is called upon to furnish security for good behaviour, is not accused of an offence, yet, he is an accused person, as the word "accused" means a person over whom the Magistrate or other Court is exercising jurisdiction. JHOJA SINGH v. QUEEN-EMPRESS, **23 C. 493.** [*F.*, 21 A 107 = A.W.N. 1898, 185; *R.*, 34 A. 533 = 10 A.L.J. 27 = 13 Cr. L.J. 452 = 15 Ind. Cas. 84, 28 C. 709 = 5 C.W. N. 749, 36 C. 163 = 13 C.W.N. 151 = 8 C.L.J. 565 = 1 Ind. Cas. 737 = 9 Cr. L.J. 36 = 9 Cr. L. J. 359, 2 L.B.R. 80, 135 P.L.R. 1904 = 21 P.R. 1904, Cr., 131 P.L.R. 1905 = 42 P.R. 1905, Cr., 8 Cr. L.J. 20 = 4 N.L.R. 81, 11 Cr. L.J. 501 = 7 Ind. Cas. 606 = 4 S.L.R. 49 ; *D.*, 2 C.L.J. 149 = 9 C.W.N. 983.]

(7)—*Person against whom security proceedings are taken.*—An accused person, within the meaning of s. 437, Crim. Pro. Code, includes also a person against whom proceedings are taken under s. 110, Crim. Pro. Code. MANNA v. EMPEROR, **24 P.R. 1903, Cr.** [*Overruled*, 30 P.W.R. 1911 = 6 P.R. 1911 = 10 Ind. Cas. 178 = 12 Cr.L.J. 232 = 153 P.L.R. 1911.] *See, also*, CHETU v. GOKHA SINGH, **33 P.R. 1905, Cr.** MUHAMMAD KHAN v. KING-EMPEROR, **42 P.R. 1905, Cr.**

(8)—*Accused pleading guilty, but neither convicted nor acquitted—When accused becomes competent witness against co-accused.*—Until an accused person, who has pleaded guilty, is convicted or acquitted, he is still an accused person and is, therefore, not a competent witness against the co-accused. It is open to the Court to refuse to accept the plea of guilty returned by an accused and to try the question of the accused's guilt. Where one of two accused pleaded guilty, but the Magistrate took no action on the plea, but, proceeding to try the case as against the other accused, directed his mind and his judgment entirely to the case as it stood on independent testimony (as he was of opinion that, if the second accused was not guilty, the plea of the first was valueless), *held*, the trial was good. SUKDEL TEWARI v. KING EMPEROR, **9 C.L.J. 291 = 13 C.W.N. 552.** (23 A. 53, 30 A. 540, 19 B. 195, *D.*)

(9)—*Convicted person, if accused.*—A convicted person is not an accused person within the meaning of s. 390 of Act X of 1872. QUEEN v. THAKUR PARSHAD, **1 A. 151, F.B.**

(10)—*Person who has been convicted under s.* 411, *Penal Code, if accused person.*—The words "accused person" in s. 436, Penal Code, are inapplicable to a person who has been convicted by the Magistrate under s. 411, from whose sentence no appeal lies. BAGDEE MANJEE v. MOHINDRO NARAIN, **10 W.R. Cr. 16.**

(11)—*Person discharged under s.* 119, *Crim. Pro. Code*, 1898 —A person discharged under s. 119, Crim. Pro. Code, 1898, is not an accused person within the meaning of s. 437, Crim. Pro. Code. 1898, and a District Magistrate is, therefore, not competent to pass an order for further inquiry into the case of such a person. MUHAMMAD KHAN v. EMPEROR, **42 P.R. 1905, Cr. = 131 P.L.R. 1905.** (21 A. 107, *Not F.*; 27 C. 662, *F.* ; 24 C. 395, 20 C. 729, *R.*) [*F.*, 30 P.W.R. 1911, Cr. = 6 P.R. 1911 = 10 Ind. Cas. 178 = 12 Cr. L.J. 232, 154 P.L.R. 1914; *Appr.*, 5 P.R. 1914, Cr., 153 P.L.R. 1911, *R.*, 36 A. 147 = 12 A.L.J. 167 = 15 Cr. L.J. 39 = 22 Ind. Cas. 183.]

(12)—*Party to proceeding under s.* 133, *Crim. Pro. Code*, 1898.—Proceedings under s. 133, Crim. Pro. Code, are more of the nature of civil than of criminal proceedings and a party to such a proceeding is not an accused person within the meaning of s. 369 of the Code; there is nothing to prevent his being examined on oath, and, if such a person gives false evidence, he may be prosecuted for an offence

Accused Person—*continued.*

under s. 193, Penal Code. HIRANANDA OJHA v. EMPEROR, 2 **C.L.J. 149 = 9 C.W.N. 983 = 2 Cr. L.J. 575.**

(13)—*Manner of describing accused persons.*—Accused persons must be designated by name and not by number. QUEEN v. BIDADHUR BISWAS, **7 W.R Cr. 53.**

(14)—*Identification of accused.*—In serious cases triable by the Court of Session, the witness should not be allowed to identify the numerous persons in a body, and such statement as "I identify all the prisoners as having taken part in the dacoity" are inadmissible. The witness should be called on to identify each individual prisoner, and the identification of each should be separately recorded. Moreover, when the witness has pointed out each individual prisoner to the Judge, it is not sufficient for the Judge to make a note that the witness has done so. He should record the words in which the witness identifies the prisoners as part of the witness's deposition. SHANKAR v. QUEEN-EMPRESS, **3 O.C. 72.**

(15)—*Accused— His position in a criminal case.*—The accused in a criminal case is merely on the defensive, and, unless there is any positive admission of a fact by him, any omission on his part to explain what indeed can be explained without his explanation, should not be pressed against him. EMPEROR v. BANKATRAM LACHIRAM, **28 B. 533 = 6 Bom. L.R. 379.**

(16)—*Court importing its own knowledge into case.*—In a dacoity case, the Magistrate stated in his judgment that the identification at the jail was carried out in his presence in such a manner "as to admit of no fraud." *Held* that the Magistrate could not import his own knowledge into the case except as a witness. SRI KISHEN v. KING-EMPEROR, **6 O.C. 204** [*Diss.*, 11 O.C. 328 ; *R.*, 8 Cr. L.J. 393.]

(17)—*Accused being a pardanashin woman—Personal attendance.*— Where a pardanashin woman, of good position, is accused of an offence, the Magistrate should dispense with her personal attendance and permit her to appear by pleader, until such time as he has before him clear, direct, and reliable *prima facie* proof that the accused has a real charge to answer. *In the matter of the petition of* RAHIM BIBI, **6 A. 59 = A.W.N. 1883, 207.** [*R.*, 20 P.W R. 1908, Cr.]

(18)—*Incapability of accused to understand proceedings—Deaf and dumb accused—Crim. Pro. Code* (1898), s. 341. Where an accused, being deaf and dumb, cannot be made to understand the proceedings against him, and it becomes impossible to say that he knew the nature of the act committed or that he acted with any dishonest intention therein, he must be acquitted and discharged. KING-EMPEROR v. MONYA, **4 Bom. L.R. 296.**

(19)—*Deaf and dumb accused.*—The conviction, under s. 457, Penal Code, of an accused person, proved to have been deaf and dumb from his birth, in consequence of which he could not understand the nature of the proceedings taken against him, was set aside and he was ordered to be discharged, under s. 341, Crim. Pro. Code, 1882, although the Court below found that the complainant's stolen property was produced by the accused after his arrest and the prosecution evidence established the offence against him. ATU RAM v. EMPRESS, **34 P R. 1885, Cr.** (22 W.R. Cr., 35, *F.*) [*Diss.*, 12 Cr. L.J. 386 = 11 Ind Cas. 250 = U B.R. 1910, I, 57; *D.*, 12 Cr. L. J. 613 = 12 Ind. Cas. 989 = 13 P.R. 1911, Cr. = 39 P.W.R. 1911, Cr.]

(20)—*Crim. Pro. Code*, 1872, *s.* 186 — *Deaf and dumb accused* —Where a person aged nearly 16 years, whose understanding was of the most limited kind, and who had been deaf and dumb from his birth, was convicted of house breaking by night, the High Court, considering the facts stated above and considering also that sheer hunger had driven him to break into the house and that he had never been in arrest before, recommended that he should be made over to his father. QUEEN v. GANGA, **7 N.W.P. 131.**

(21)—*Deaf and dumb person.*—The inability of the accused, a deaf and dumb woman, to understand the proceedings is not a ground for refraining from passing sentence on her. EMPRESS v. MATHURIA, **A.W.N. 1881, 54.**

(22)—*Crim. Pro. Code*, 1872, *s.* 186—*Deaf and dumb accused.*—Where a deaf and dumb accused is charged with an offence, the Judge should proceed with the trial, and if he considered that the accused had not understood the proceedings and the trial resulted in conviction, the case should be reported. EMPRESS v. MATHURIA, **A.W.N. 1881, 15.**

(23)—*Crim. Pro. Code* (1882), *ss.* 341, 471—*Deaf and dumb person* —A Magistrate should not, after convicting a deaf and dumb person of an offence charged against him, proceed to pass sentence on him, but should submit the matter for the orders of the High Court, and, in the absence of any clear and specific provision in the Code, should treat such accused as a lunatic and report the matter to the Local Government. EMPRESS v. GAHNA, **37 P.R. 1889, Cr.** [*Diss.*, 12 Cr.L J. 386 = 11 Ind. Cas. 250 = U.B.R. 1910, I, 57 ; *F.*, 12 Cr. L J. 613 = 12 Ind. Cas. 989 = 13 P.R. 1911, Cr. = 39 P.W. R. 1911.]

(24)—*Attempt to communicate with deaf and dumb accused essential—Effect of failure to do so.*—Where a deaf and dumb person was tried without any attempt being made to communicate with the prisoner, *held*, that the accused was prejudiced by the irregularity. HIGH COURT PROCEEDINGS, 5th December 1870, No. 2190, **2 Weir 403 = 6 M.H.C. App. 7.**

(25)—*Crim.Pro.Code* (1861), s. 186 (3) (*s.* 341 *of the Code of* 1898)—*Dumb accused—Procedure.*—Where a dumb person is placed on his trial, some means of communicating with him should be adopted. The omission to do so will

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not invalidate the trial, unless the accused has been prejudiced thereby. HIGH COURT PROCEEDINGS, 24TH MAY 1870, NO. 1024, 2 **Weir 402.**

(26)—*Accused found to be insane—Enquiry into his state of mind to be held.*—When an accused is found to be insane at the trial, the Court ought to make a proper enquiry into the state of the mind of the accused at the time of the commission of the offences charged. KIMG-EMPEROR v SHEODIN, **A.W N. 1902, 131.** [*R.*, 14 Cr. L.J. 81=18 Ind. Cas. 640=15 O. C. 321.]

(27)—*Crim. Pro. Code* (1882), *s.* 464—*When enquiry can be held by Magistrate having reason to believe that accused is of unsound mind and incapable of making defence.*—Chap. XXXIV of Crim. Pro. Code, 1882, contains only subsidiary provisions for dealing with an exceptional class of persons charged with offences. These provisions are not to be construed so as to override the general rules of procedure, except in so far as any special provision is clearly incompatible with the general provisions. *Held*, that, in the case of a charge of an offence under Ch. XVIII Crim. Pro. Code, 1882, made before a Magistrate, he ought to make an enquiry into the truth of the charge, and it is only when the Magistrate is satisfied after such enquiry that a *prima facie* case is made out against the accused, that he can hold the enquiry prescribed by s. 464, into the question whether the accused is unsound in mind, and consequently cannot make his defence. QUEEN-EMPRESS v. MAKHAN SINGH, **11 P.R. 1894, Cr.**

(28)—*Crim. Pro. Code*, *ss.* 464, 466, 439—*Lunacy of accused—Procedure.—Detention in asylum—Appeal—Revision — Penal Code, s.* 326.—A Magistrate who finds that an accused person was of unsound mind both when he committed the offence and at the time of the trial, should not continue the trial but pass orders under ss. 464 and 466 of the Crim. Pro. Code. It is not a trial in which a verdict of guilty or not guilty could be legally pronounced. Where, in the above case, the Magistrate finished the trial and finding the accused guilty of an offence under s. 326, I.P.C., ordered his detention in the lunatic asylum, *held* that the order being a non-appealable one was open to revision under s. 439 of the Crim. Pro. Code. EMPRESS v. CHADAMI LAL, **A W.N. 1900, 47.**

(29)—*Crim. Pro. Code* (1872), *ss* 186, 297, 423—*Accused being of unsound mind.*—S. 186, Crim. Pro. Code, 1872, is intended to provide for cases in which the accused person is deaf and dumb, or, from ignorance of the language of the country and the want of an interpreter, is unable to understand, or make himself understood. In such cases, the High Court would probably order the prisoner to be detained during Her Majesty's pleasure. But when the accused is unable to understand the proceedings owing to unsoundness of mind, the Magistrate should adopt the procedure provided in Chap.XXXI. Where an imbecile, who was, consequently, unable to understand the proceedings and was incapable of making any defence. was convicted by the Magistrate, the High Court, under s. 297, directed that the accused should be released on sufficient security being given that he would be properly taken care of and would be prevented from doing injury to himself or to any other person and for his appearance when required; and that, in default of such security being given, the case should be reported for the orders of the Government. EMPRESS v. HUSEN, **5 B. 262.** [*R.*, 7 B. 15, Rat. Un. Cr. C. 696, U.B.R. 1892-1896, 38, Cr.]

(30)—*Crim. Pro. Code, Act* X *of* 1872, *s.* 426—*Accused lunatic—Procedure.*—Where a Magistrate finds that the accused under trial is of unsound mind, but, instead of staying the trial and acting under s. 426 of the Crim. Pro. Code, proceeds with it and acquits him under s. 84 of the Penal Code, *held* that the procedure was irregular. EMPRESS v. RATTI, **A.W. N. 1882, 106.**

(31)—*Proceedings against persons of unsound mind*—De novo *trial.*—Where the trial of an accused person, who was remanded to custody on the ground of insanity, was resumed upon receipt of a letter from the Zillah Surgeon, at the point at which it had been stopped, *held*, that the trial should have been commenced *de novo* after finding with the aid of assessors that he was capable of making his defence, and that the Judge should not have acted on the letter of the Zillah Surgeon, which was not legal evidence. ACTING GOVERNMENT PLEADER v. KUNNUKAN CHETTI, **2 Weir 582.**

(32)—*Crim. Pro. Code* (1872), *s.* 186 (3) (*s.* 341 *of the Code of* 1898)—*Conviction, when accused does not understand the proceedings.*—Where the Magistrate was uncertain whether the accused understood the proceedings, *held*, that he would not be justified in convicting and sentencing the accused. HIGH COURT PROCEEDINGS, 18TH NOV. 1875, NO. 285, **2 Weir 403.**

(33)—*Penal Code*, *s.* 84—*Accused killing his own children when ill with fever—Insanity—Homicidal mania — Reduction of sentence—Pardon.*—The accused killed his two young children with a hatchet. The reason given for the murder was that, being ill with fever for several days, he was vexed with the crying of the children. It was alleged that during fever he was very irritable, sensitive to noise, and confused in his thoughts, but that he did not become delirious. His manner was quiet, when questioned, and there was no attempt at concealment. He fully confessed, but showed no signs of sorrow or remorse. *Held* that the evidence was not sufficient to prove that he was not conscious of its nature. If he was conscious of its nature, he should be presumed to have been conscious of its criminality. *Held*, therefore, that s. 84, I.P.C., did not apply to the case and that he was punishable under s. 302, I.P.C. But the High Court

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forwarded the proceedings to H.E. the Governor in Council, observing that "there is good ground for classing the case with those of *Greensmith* and *Brixey*, as to which so high an authority as Dr. Taylor has observed that they fairly establish the occasional existence of homicidal mania, in which the mental condition of the accused persons at the time of perpetrating the acts of murder is such as to justify their acquittal on the ground of insanity." The case is one where future symptoms may, perhaps, throw more light on the accused's state of mind, and possibly justify a commutation or reduction of sentence, if not pardon. QUEEN-EMPRESS v. LAKSHMAN DAGDU, **10 B. 512.** [*F.*, 23 C. 604; *Appr.*, 12 M. 459=1 Weir 43, 11 Cr.L.J. 105=4 Ind. Cas. 985=6 M.L.T. 101=94 P.L.R. 1909=16 P.W.R. 1909; *R.*, 17 C.P.L.R. 113, 13 Cr.L.J. 164=13 Ind. Cas. 916=7 N.L.R. 185, Rat. Un. Cr. C. 698, Rat. Un. Cr. C. 818; *D.*, 14 B. 564, Rat. Un. Cr. C. 279.]

(34)—*Substantially defective criminal proceedings cannot be cured by accused's waiver.*—Criminal proceedings, which are substantially bad, cannot be cured by any amount of waiver or consent on the part of the accused not personal to the latter. QUEEN v. BHOLANATH SEN, **2 C 23.** [*F.*, 12 C.W.N. 140=6 Cr.L.J. 434; *R.*, 6 C. 96, 4 Bom. L.R. 53, 7 Bom. L. R. 527, 15 C.P.L.R. 66; *D.*, 6 C. 83=6 C.L.R. 463.]

(35)—*Waiver of irregularity.*—Where criminal proceedings are substantially bad in themselves, defect will not be cured by any waiver or consent of the accused or their pleaders. HOSSAIN BUKSH v. EMPRESS, **6 C. 96=6 C. L.R. 521.** (2 C. 23, *R.*)

(36)—*Waiver of irregularity.*—If criminal proceedings are substantially bad, they will not be cured by any waiver or consent of the prisoner. EMPEROR v. KASIM, **15 C.P.L.R. 66.** (2 C. 23, *R.*).

(37-38)—*Waiver of irregularity by—If throwing one-self on Court's mercy amounts to a plea of guilty.*—Except where the law expressly permits waiver, the right of an accused person should not be held to be lost by his consent to a procedure, or to the admission of evidence which the law does not authorize. The prisoner on his trial can consent to nothing. It is the duty of Magistrates and all Criminal Courts to follow the procedure prescribed by law, and the consent of the accused cannot be invoked against irregularity in procedure. [*Not F.*, 39 C. 781=13 Cr. L. J. 218=14 Ind. Cas. 314; *Diss.*, 35 C. 457=7 C. L. J. 488=7 Cr. L.J. 220=12 C.W.N. 216; *Appr.*, 32 M. 218=5 M.L.T. 218=9 Cr. L.J. 146=1 Ind. Cas. 54.] Where the accused did not formally plead guilty, the fact that he threw himself on the mercy of the Court should not prejudice him. The testimony of persons, who have been compelled to pay illegal gratification, has much greater probative force than that of ordinary accomplices. DEPUTY LEGAL REMEMBRANCER v. UPENDRA KUMAR GHOSE, **12 C.W.N. 140=6 Cr. L.J. 434.** (24 W.R. Cr. 53, 10 C.W.N. 669=33 C. 649, *F.*; 13 W.R. Cr. 40, *Not F.*)

(39)—*Plea of guilty when offence was not correctly stated—Effect.*—The plea of guilty of an accused person cannot be accepted, when it is not clear that the offence was correctly stated to him. NGA PYO v. KING-EMPEROR, **U. B. R. 1907, 3rd Qr, Penal Code, 9=7 Cr. L.J. 208=14 Bur L. R. 216.**

(40)—*Joint trial of accused—Discharge of co-accused—Co-accused called as witness—Same transaction.*—The police sent up two accused, A and B, separately, A charged under s. 324, Penal Code, with causing hurt to B, and B under s. 326 with causing grievous hurt to A. The Magistrate inquired into the case against both the accused jointly, and, finding that the evidence against B was insufficient, discharged him and examined him as a witness against A, who was convicted. *Held* that, as it was proper to take the evidence of A against B, as well as that of B against A, the different offences were not committed in the same transaction, and that there should have been separate inquiries against each accused. NGA THA DUN AUNG v. KING-EMPEROR, **2 L.B.R. 106** (1 L. B. R. 56, 20 C. 537, 5 C.L.R. 574, L.B.R. 1893-1900, 536, *R.*)

(41)—*Joint trial of two or more persons—Competency of one of them to be witness against another.*—When two or more persons are jointly tried, one of such persons cannot be called as a witness either for or against another of such persons. EMPEROR v. VINAYAK JAGESHWAR, **15 C. P. L. R. 112.** (5 C. L. R. 574, 1 B. 610, 2 A. 260, 7 W.R. Cr. 44, 16 B. 661, 23 B. 213, *R.*)

(42)—*Examination of accused, object of—Crim. Pro. Code* (1882), *ss.* 342, 364.—The object of the examination of an accused person contemplated by ss. 342 and 364, Crim. Pro. Code (1882), is to enable him "to explain the circumstances appearing in evidence against him" and it is not to empower a Judge, before any evidence has been given, to extract damaging admissions from him, upon which to build up the case for the prosecution. EMPRESS v. BUDHA, **A.W.N. 1884, 106**; QUEEN-EMPRESS v. HARGOBIND SINGH, **14 A. 242=A.W.N. 1892, 83.**

(43)—*Crim. Pro. Code, ss.* 342, 362—*Examination of accused.*—The examination referred to in s. 364, Crim. Pro. Code, is subject to the purpose referred in s. 342, that is, to explain any circumstances appearing against the prisoner, but not to fasten the guilt on him. A Judge should not so examine an accused person as to enable him to supplement the case for the prosecution and show that he is guilty. QUEEN-EMPRESS v. RANGI, **10 M. 295=2 Weir 361=2 Weir 407.**

(44)—*Object of examining accused.*—The object of the examination of the accused is to

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enable him to explain circumstances appearing in the evidence against him and not to supply defects in the evidence. THA ZAN v. CROWN, **1 L.B.R. 292.**

(45)—*Examination of accused.*—It is the duty of the Magistrate, both in summons and warrant cases, after the witnesses for the prosecution have been examined, to examine the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him. QUEEN EMPRESS v NGA PYAUNG, **U.B.R. 1897—1901, Vol. I, 82.**

(46)—*Entrapping accused to give incriminating answer, impropriety of.*—The sole object of the examination of the accused should be to enable him to explain the evidence which has been given against him. Courts ought not to try to entrap the accused into giving some incriminating answer. Failure to prove an *alibi*, or even proof that an *alibi* is false can rarely be safely regarded as evidence supporting the case for the prosecution. ALI HUSSAN v. QUEEN-EMPRESS, **L.B R. 1893—1900, 349.**

(47)—*Accused not bound to make admissions against himself.*—No man charged with any criminal offence is bound or is under any obligation to make any admission injurious to his own interest, nor should any judicial officer attempt to compel any accused person to make any admission detrimental to his interest. *In the matter of the petition of* GUDAR SINGH, **19 A. 291=A.W.N. 1897, 52.**

(48)—*Examination of accused — Admission of previous conviction — Value of such admission—Crim. Pro. Code* (1898), *ss.* 342 (1) *and* 511.—Under s. 342, cl. (1), Crim. Pro. Code, the purpose of the examination of an accused person is to enable him to explain any circumstance appearing in the evidence against him. The accused should not, in his examination, be asked if there was against him a previous conviction of which there is no evidence; nor, without proof of the authorized kind of previous conviction, does the mere admission of an accused person justify the use of the conviction to affect the punishment to be inflicted. QUEEN-EMPRESS v. NGA PO THET, **1 L.B.R. 8.**

(49)—*Examination of accused—Practice.*—To put accused persons through severe examinations is unfair to them. The examination of the accused should be conducted with the object of enabling them to explain matters appearing in the evidence against them and not of endeavouring to prove the charge against them by their admissions and contradictory statements. EMPRESS v. NAGIA, **5 C.P.L.R. 9, Cr.** *See, also,* HURRY CHURN CHUCKERBUTTY v. EMPRESS, **10 C. 140=13 C.L R. 358.**

(50)—*Examination of the accused by a Sessions Judge—S.* 250, *Crim. Pro. Code of* 1872.—A Sessions Court, by the exercise of the power under s. 250, ought not to establish a Court of Inquisition and to force a prisoner to convict himself by making some criminating admissions, after a series of searching questions, the exact effect of which he may not readily comprehend. The real object of the power granted by the section is to enable a Judge to ascertain from time to time from a prisoner, particularly, if he is undefended, what explanation he may offer regarding any fact stated by a witness, or after the close of the case, how he can meet what the Judge may consider to be damnatory evidence against him. HOSSEIN BUKSH v. EMPRESS, **6 C. 96=6 C.L.R. 521.** [*R.*, 10 M. 295=2 Weir 373.]

(51)—*Examination of accused—Opportunity to explain circumstances.*—The accused should be given an opportunity of explaining all circumstances of importance appearing in the evidence against him. QUEEN EMPRESS v. NGA THA DIN, **U.B.R., 1892—1896, Vol. I, 144.**

(52)—*Examination of accused—Confession by accused before evidence recorded.*—Courts should not make an accused person, before any evidence is recorded, confess his guilt and admit facts that may go to incriminate him. QUEEN-EMPRESS v. BHAIRAB CHUNDER CHUCKERBUTTY, **2 C.W.N 702.**

(53)—*Nature of the question to be put to accused.*—The questions put to the accused by the Court must be strictly limited to the purpose of enabling him to explain any circumstances appearing in the evidence against him. QUEEN-EMPRESS v. HARGOBIND SINGH, **14 A. 242=A.W.N. 1892, 83**; HURRY CHURN CHUCKERBUTTY v. EMPRESS, **10 C. 140=13 C.L.R. 358.** [*R.*, 4 N.L.R. 163=9 Cr. L.J. 56.]

(54)—*Examination of accused—Object of legislature.*—The Legislature did not intend that, under the colour of an examination, under s. 342, Crim. Pro. Code, an accused person should make statements such as he might make if he were being examined as an approver. SRI KISHEN v. KING-EMPEROR, **6 O.C. 204.** [*Diss.*, 11 O.C. 328, 8 Cr. L.J. 393.]

(55)—*Examination of accused.*—The examination of an accused person must not be made with a view to eliciting, by constant questions, the truth out of his mouth, as though he was a witness. EMPRESS v. BAJI, **5 C.P.L R. 13, Cr.**

(56)—*Examination of accused—Practice.*—The discretion given by the law for questioning a prisoner has not been allowed for the purpose of driving him to make statements criminatory of himself. This discretion can only be properly exercised for ascertaining from a prisoner how he may be able to meet facts in the evidence appearing against him, so that these facts should not stand unexplained. It is declaredly within the competency of the accused to decline answering any question, while the Court is at liberty to weigh his answers whether they tell for him or against him. *Ex parte* VIRABUTHRA GOUD, **2 Weir 253=1 M.H.C. 199.** [*F.*, 10 M. 295=2 Weir 361, 1 C.L.R. 436, 2 C.W.N. 702.]

(57)—*Accused not to be cross-examined.*—It is opposed to the principles of English justice to

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commence proceedings by subjecting an accused person, who has not offered to make a confession, to a searching cross-examination ; thus, in examining an accused under s. 364, Crim. Pro. Code, it would not be fair to put him such a question as, "If you did not commit the murder, who did?" CHEDAN v. KING-EMPEROR, **7 O.C. 191.**

(58)—*Eliciting admission by cross-examining accused* —To obtain an admission by putting it into the accused's mouth by cross-examining the accused and trying to prove the charge out of their mouths is unfair. EMPRESS v. MUSSAMMAT BHURA, **5 C.P.L.R. 11, Cr.**

(59)—*When accused's examination should be made.*—An accused person, according to s. 342, Crim. Pro. Code, should be examined by the Court before he is put on his defence. QUEEN-EMPRESS v. BAVA CHELA, **Rat Un. Cr. C 227.**

(60) *Crim. Pro. Code*, 1872, *s.* 250—*Examination of accused person.*—A Sessions Judge should examine an accused person, whether defended or undefended, before he is called on for his defence, the terms of s. 250, being in this respect mandatory. In the event of non-response on the part of the accused, that fact should be recorded before proceeding with the trial. EMPRESS v. BAIJU, **A.W.N. 1881, 99.**

(61)—*Examination of accused—Crim. Pro. Code, s.* 342.—S. 342, Crim. Pro. Code, 1882, imposes an obligation on the Magistrate that he should question an accused generally on the case, after the prosecution witnesses have been examined and before he is called on for his defence. QUEEN EMPRESS v. MANCHI, **Rat. Un. Cr. C. 625 = Cr. Rg. 50 of 1892.**

(62)—*Examination of accused—Crim. Pro. Code* (1882), *s.* 342, *nature and scope of.*—It is obligatory on the Court to examine an accused at the close of the case for the prosecution, s. 342. Crim. Pro. Code, 1882, being imperative, as it is a means of enabling the accused to explain what appears against him. QUEEN-EMPRESS v. MAHADHU, **Rat. Un. Cr. C. 720 = Cr. Rg. 46 of 1894.**

(63)—*Magistrate questioning accused—Practice.*—A Magistrate cannot, before evidence is taken for the prosecution, put questions to the accused of the nature of cross-examination. If such questions are put, the procedure is illegal, as it could not be said that the questions are put "for the purpose of enabling the accused to explain any circumstances appearing against him in the evidence" within the meaning of s. 342 of the Code of Criminal Procedure. QUEEN-EMPRESS v. HOWTHORNE, **13 A. 345 = A.W.N. 1891, 102.** [*R.*, 9 Cr. L.J. 56 = 4 N. L.R. 163, Rat. Un. Cr. C. 679.]

(64)—*Crim. Pro. Code* (1882), *s.* 342—*Magistrate's authority to question the accused in the absence of evidence against him.*—Where there is no evidence on the record against the accused, a Magistrate will not be justified, under s. 342, in putting any question at all to him, since it is only for the purpose of enabling an accused

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person to explain the circumstances appearing against him that a question even can be put; and, still less, is a Magistrate justified in putting questions for the purpose of incriminating the accused, a procedure which s. 342 was specially designed to prevent. *Per Parker, J.* QUEEN-EMPRESS v. VIRAN, **9 M. 224 = 2 Weir 125 = 2 Weir 705.** [*F.*, 7 O.C. 191 ; *R*, 9 Cr. L. J. 56 = 4 N.L.R. 163, 2 C.W.N. 702.]

(65)—*Examination of accused persons by Magistrate immediately after making confessional statements—Crim. Pro. Code* (1882), *s.* 344.—The practice of pressing for the examination of accused persons by Magistrates, immediately after they have made confessional statements, is most undesirable and is calculated to defeat the objects which the police have in view. If there is any suspicion that the accused has been sent to the Magistrate with the express object of securing from him a reiteration of statements made by him while in police custody or previously the statements cannot be entitled to the same weight as when it is clear that they were voluntarily made in the first instance by the accused. REFERRED TRIAL NO. 54 OF 1885, **2 Weir 414.**

(66)—*Questioning accused at close of prosecution for explaining circumstances appearing against him, when essential.*—Where it does not appear on the record that a prisoner leaves his case entirely in the hands of his legal adviser, the Judge is bound, under s. 342, Crim. Pro. Code, after the conclusion of the case for the prosecution, to ask the accused to explain any circumstances appearing in evidence against him. *In the matter of* GANDI TATAIYA *alias* VENKAIYA, **2 Weir 405.**

(67)—*Accused cannot be examined as witness in his own case.*—Unless an accused person has been convicted or acquitted, he should not, except in the case where he is made Queen's evidence, be examined as a witness touching the matter of which he is accused. EMPRESS v. SHAKUR, **5 C.P.L.R. 1, Cr.**

(68) — *Difference between accused making statement under s* 342, *Crim. Pro. Code* (1898) *and as witness—Evidence Act, s.* 132 *and Crim. Pro. Code* (1898), *s.* 342.—When an accused person is making a statement under s. 342, Crim. Pro. Code, he can refuse to answer any question. But, as a witness, he is not excused from answering any question as to any matter relevant to the matter in issue. There is, however, an important proviso that no such answer which a witness shall be compelled to give shall be proved against him in any criminal proceeding except a prosecution for giving false evidence by such answer. EMPRESS v. DURANT, **23 B. 213.**

(69)—*Written statement by accused cannot take the place of examination of accused—Written statement, if can be put in at Sessions trial.*—It is doubtful whether, in a trial before a Court of Session, the accused may put in a written statement of defence. But it is certain

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that such a statement cannot be allowed to take the place of the examination of the accused, which s. 342, Crim. Pro. Code, imperatively orders to be made. EMPEROR v. ANSUIYA, **A.W.N. 1903, 1.**

(70)—*Sessions trial—Accused's examination before committing Magistrate — Confessional statement signed by accused—Admissibility before Sessions Judge—Crim. Pro. Code*, s. 205.—Where the accused makes a confessional statement when examined by the Magistrate, the mere signing of the statement by the Magistrate would not be sufficient to make the examination legal evidence in the Sessions Court. The certificate under the Magistrate's hand required by s. 205 of the Code of Criminal Procedure should be attached. A confession should be recorded in the language in which it was made. The question must be put to him in a language which the accused understands, and his answers are to be recorded in full. They are to be shown and to be read to him. It is obvious that a Magistrate who shows or reads a confession, taken in English, to a Native who does not understand English, cannot be said to comply with the provisions of the law in s. 205, Crim. Pro. Code. Or if the Magistrate translates both the questions and answers, this cannot be said to be a showing or reading of the questions actually put, or the answers actually given. QUEEN v. BHEEBEEKEE, **4 N.W.P. 16.**

(71)—*Record of accused's statement—Absence of questions—Admissibility.*—The mere absence of the questions in a prisoner's statement does not render it inadmissible. EMPRESS v. SAGAMBUR, **12 C.L.R. 120.** [*R.*, 9 Cr. L. J. 250=1 S L.R. Cr. 6]

(72)—*Examination of accused, record of.*—The omission of a Magistrate to have recorded in the vernacular the questions asked in the examination of the accused person does not necessarily render that examination inadmissible as evidence. TITU MAYA v. QUEEN, **8 C. 618, Note=1 C.L.R. 1, F.B.** [*F.*, 14 C. 539.]

(73)—*Sessions Judge—Trial—Examination of accused.*—The provisions of s. 342, apply to the case of an accused tried before a Sessions Judge, even when he has been questioned on the case generally by the Committing Magistrate. EMPEROR v. RAJU AHILAJI, **9 Bom. L.R. 730=6 Cr.L J. 74.**

(74)—*Irregularity in examining accused—Evidence Act*, ss. 21, 29.—Where a trying Magistrate examined the accused under s. 342, Crim. Pro. Code (1882), prematurely at a time when no evidence sufficient to connect them with the crime, with the commission of which they were charged, had been recorded against them, *held* that, although the Magistrate was wrong in examining the accused under s. 342, Crim. Pro. Code, when it was impossible that they could have been questioned for the purpose of enabling them to explain any circumstances appearing in evidence against them, still their statements actually made cannot, if apparently freely and voluntarily given, be rejected as inadmissible in evidence on account of this irregularity of procedure; and that *prima facie*, as admissions, these statements were relevant under s. 21, Evidence Act, there being no other section to exclude them, s. 29 of the Evidence Act going to show that the mere fact of a statement being made in answer to questions is by itself no ground for exclusion. QUEEN-EMPRESS v. NARAYAN, **Rat. Un. Cr. C. 679=Cr. Rg 45 of 1893** (13 A. 345, *R.*) [*F.*, 37 C. 467=11 Cr.L J. 453=7 Ind. Cas. 359.]

(75)—*Accused's statements whether evidence—Cross-examination by co-accused—Evidence Act*, ss. 3, 133 *and* 30.—Statements made by an accused person are not evidence within the definition of "evidence," given in s. 3, Evidence Act. An accused person does not make these statements on oath or solemn affirmation and cannot be cross-examined by his co-accused. S 133, Evidence Act, does not apply to such statements. They can only be taken into consideration under s. 30, Evidence Act. NGA THA NYAN v. QUEEN-EMPRESS, **L B R. 1893—1900, 368.** (1 M. 163, 15 B. 66, 4 C. 483, *F.*)

(76)—*Accused's statements to be taken as a whole—Evidence.*—The statements of the accused persons should be taken in their entirety, and not in part, even as against those who made it. Such statements are no evidence against any of the accused other than those who made or adopted it. WAFADAR KHAN v. QUEEN-EMPRESS, **21 C. 955.**

(77)—*Confession, how recorded.*—A confession should be recorded in the language in which it is made. QUEEN v. BHEEBEEKEE, **4 N.W.P. 16.**

(78)—*Certificate attesting statement by accused person.*—A certificate, when attesting the statement of an accused person recorded under s. 364 of the Code of Criminal Procedure, need not be appended in the Court's own handwriting; it is enough if it is signed by the presiding officer of the Court before which the statement is made. QUEEN-EMPRESS v. RAIZ ALI, **A. W.N. 1900, 203.** (8 W.R. Cr. 55, *R.*).

(79)—*Statement of accused to Magistrate—Language of record.*—The Magistrate need not record the statement of an accused in the words of the very language in which it is made, when it is a foreign language; the record must be in the language in which it is interpreted. EMPRESS v. VAIMBILEE, **5 C. 826.**

(80)—*Crim. Pro. Code* (1861), ss. 426 *and* 439—*Omission to record* in extenso *statement made by prisoner.*—The omission to record *in extenso* the statement made by a prisoner was held not to have prejudiced the accused, inasmuch as the substance of his statement was recorded and considered by the Magistrate. HIGH COURT PROCEEDINGS, 10TH NOV. 1871, **6 M.H.C. App. 45.** [*D.*, 2 Weir 612.]

Accused Person—*continued.*

(81)—*Recording of statement of accused before evidence for prosecution taken down.*—It is contrary to law to record the statement of an accused person under s. 164, Crim. Pro. Code, 1898, before any sort of evidence for the prosecution has been taken. CHEDAN v. KING-EMPEROR, **7 O.C. 191.**

(82)—*Crim. Pro. Code* (1882), s. 364—*Procedure—Recording statement by accused.*—In this case a *Bhil* accused was examined by a Magistrate in the *Marathi* language and the accused's answers were given in *Marathi* with a very large sprinkling of *Bhil* terms. The Magistrate recorded the accused's statement in English. *Held* that the Magistrate's procedure was irregular, as he should have recorded the accused's statements in *Marathi*. QUEEN-EMPRESS v. SURMAL, **Rat. Un. Cr C. 633=Cr. Rg. 4 of 1893.**

(83)—*Signature of accused person to statement recorded under s. 364, Crim. Pro. Code.*—A Magistrate ought to see that the signature of an accused person to a statement recorded under s. 364, Crim. Pro. Code, is made in the immediate presence and under the careful control of the Magistrate himself. Taking the signature of the accused in an adjoining room before a clerk and not in the immediate presence of the Magistrate, is not what is intended by the section. QUEEN-EMPRESS v. BHIKA, **Rat. Un. Cr. C. 687=Cr. Rg. 8 of 1894.**

(84)—*Duty of Court towards accused—Undefended prisoner.*—Where a prisoner is not defended, the Court ought, in the interests of justice, to test the accuracy of the statements made by witnesses, by questions in the nature of cross-examination. QUEEN-EMPRESS v. KALLU, **7 A. 160=A.W.N. 1884, 314.**

(85)—*Presumption—Duty of Court towards accused—Punishment of accused person.*—When an accused person is brought before a Magistrate charged with the commission of a certain act which makes him liable to be dealt with as an offender, the Court, in dealing with him, is bound to take into consideration all the circumstances before it which may affect the measure of punishment awarded, and must be taken to have considered them, whether it has in fact done so or not. *In the matter of* PARBUTTI CHURN BOSE, **3 C.L.R. 406.**

(86)—*Right of accused—Accused should be given opportunity to be heard.*—Although a question may be very clear to a Magistrate, yet he ought to give the accused already discharged an opportunity to be heard. JOY GOPAL BANERJEE v. EMPEROR, **11 C.W.N. 173=5 Cr. L.J. 16.**

(87)—*Opportunity for, being heard.*—No order should be passed against an accused person, without giving him an opportunity of being heard. BRIJ KISHORE GHOSE v. GOPAL RAI, **11 C.W.N. 316=5 Cr.L J. 112.**

(88)—*Prosecution for false charge—Necessity for opportunity to accused to prove his case.*—It is illegal to put a man on his trial, without giving him an opportunity to prove his case. BHOKTERAM v. HEERA KOLITA, **5 C. 184.** [*R.*, 6 C. 496=7 C.L R. 467.]

(89)—*Crim. Pro. Code* (1898), s. 242—*Opportunity to be given to accused to defend himself.*—When a case has been begun as a warrant case, it must be continued as such. A charge should be framed when there is a *prima facie* case against the accused and the accused should be given an opportunity of pleading and defending themselves. CROWN v. LA PYU, **1 L.B.R. 308.**

(90)—*Right of accused to know the charge.*—An accused is entitled to know, with certainty, the matter with which he is charged and, unless he has this knowledge, he cannot but be seriously prejudiced in his defence. EMPEROR v. VINAYAK JAGESHWAR, **15 C.P.L.R. 112.**

(91)—*Sessions trial—Accused's right to have information of the case he has to answer.*—The law contemplates that, in the serious cases of which a Court of Sessions may take cognisance, the accused should have some information of the case he has to answer. QUEEN v. CHINNA VEDAGIRI CHETTI, **4 M. 227=2 Weir 584.**

(92)—*Right of, to services of pleader.*—A Sessions Judge ought, under s. 340, Crim. Pro. Code, 1898, to hear the pleader appointed by a person ordered to give security under s. 118. CROWN v. IDA, **15 P.R. 1900, Cr.=P.L.R. 1900, Cr., 59.** (9 C. 878, 16 B. 661, 23 C. 493, *F.*)

(93)—*Right of accused to be heard by pleader.*—In an appeal from a conviction by a Sessions Court, the Chief Court ought to hear the appellant's counsel, and the Public Prosecutor, if he appears (s. 423, Crim. Pro. Code, 1882) but, beyond this, it is not incumbent upon the Court to hear any one. AKBAR v. EMPRESS, **29 P.R. 1886, Cr.**

(94)—*Right of accused to appear by pleader.*—A District Magistrate, having refused to allow a pleader to appear on behalf of two accused persons under trial in his Court, the Chief Court directed him to allow the accused to be defended by counsel or pleader, with liberty to re-summon witnesses, and afterwards to record a fresh judgment. NANAK v. CROWN, **9 P.R. 1877, Cr.**

(95)—*Admissions by pleader of accused, accused not bound by.*—The admissions made by a pleader who is appointed by the Court to help the accused in his defence are not binding on the accused. QUEEN-EMPRESS v. SANGAYA, **2 Bom. L.R. 751.**

(96)—*Right of accused to have evidence against him recorded as early as possible—Detention of accused person in jail for inordinate period, grounds for.*—An accused person has a right to have the evidence against him recorded at as early a period as possible, and the fact that there

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is or may be a great body of evidence forthcoming against him is not a good ground for detention for an inordinate period. MANIKAM MUDALI v. QUEEN, **6 M. 63** = **2 Weir 409** = **2 Weir 656** = **2 Weir 577.** [*R.*, 11 M. 98.]

(97)—*Magistrate bound to question accused when brought before him—Accused's right to have evidence recorded — Crim. Pro. Code,* (1898), *ss.* 242, 344.—The trial of a case should not be adjourned till all the absconders are found. An accused has the right to have the evidence against him recorded at as early a period as possible. The absence of some of the men suspected is not a reasonable cause for adjourning the enquiry into the guilt of the accused who appear before the Magistrate. QUEEN-EMPRESS v NGA TUN HLA, **1 L.B. R. 60.** (6 M. 63, *F.*)

(98)—*Accused whether bound to produce any evidence.*—There is no obligation whatever imposed on an accused person to produce any evidence, and no inference could be drawn against him from non-production of such evidence until a strong case is made out against him. QUEEN-EMPRESS v. NARAYAN NATHU, **Rat. Un. Cr. C. 779** = **Cr. Rg. 43 of 1893.** (16 B. 423, 19 C. 65, *R.*)

(99)—*Quantity of evidence to be placed before the Jury—Right of accused to decide.*—It is for the accused person and not for the Judge to say what amount of evidence it would be proper to place before the Jury in order to establish the case for the defence. The Sessions Judge should not refuse to enforce the attendance of certain witnesses for the defence, on the ground that there was ample record in the evidence about the matter for which they were summoned. BROJENDRA LAL SIRKAR v. KING-EMPEROR, **7 C.W.N. 188.**

(100)—*Right of accused to recall witness after charge—Record of evidence—Crim. Pro. Code* (1898), *ss.* 350, 256, 356 and 357.—Although the law does not speficially require it, yet, in the case of accused persons, who are undefended, and who are probably ignorant of their strict rights, it is desirable that the Magistrate, who continues a trial, under s. 350, Crim. Pro. Code, should inform the accused of their rights under that section and should record the fact that he has done so and the reply of the accused. After having pleaded to the charge, the accused should be asked whether they wished to cross-examine any of the witnesses for the prosecution. S. 256, Crim. Pro. Code, requires this to be done. In this case, again, the Code does not explicitly require the Magistrate to record that he has observed the provisions of the section. But it is a safe and sound rule that, when the law requires anything to be done, the fact that this thing has been done should be recorded. The omission to record compliance with s. 256, Crim. Pro. Code, is not an irregularity of procedure, in the absence of any express provision on the subject. It is not a sufficient compliance with the provisions of the Crim. Pro. Code, whether s. 356 or 357 is applicable, to record that a witness corroborates another. That is a deduction from a comparison of the depositions. The evidence of each witness must be recorded as it is given. CHIT TUN v. CROWN, **1 L.B.R. 238.**

(101)—*Right of accused to recall prosecution witnesses—Omission to give accused opportunity to recall—Effect.*—The omission of the Magistrate, who tried a case under s. 353, I.P.C., after framing a charge, to ask the accused whether he wished to recall all or any of the prosecution witnesses, and the rejection by the Magistrate of an application made by the accused with that object on the ground that it was too late, was held to be an irregularity that might have caused the accused substantial injury in his defence. QUEEN-EMPRESS v. HENRY C. KAPS, **A.W.N, 1902, 5.**

(102)—*Refusal to allow accused to cross-examine prosecution witnesses before framing of charge—Transfer, grounds for.*—In a case under s. 380, Penal Code, the Magistrate should at once give the accused an opportunity to cross-examine the prosecution witnesses, if they should so desire, even though the charge may not be framed. But a refusal to give such opportunity is not, when the Magistrate acts *bona fide* from a mistaken view of the law, a good ground for transferring the case. ASHIRBAD MUCHI v. MAJU MUCHINI **8 C.W.N. 838.**

(103)—*Crim. Pro. Code* (1882), *ss.* 256, 257 —*Right of accused to have the case postponed for adducing evidence.*—Under ss. 256, 257, Crim. Pro. Code, the accused is entitled, as a matter of right, to ask that the case might be postponed to some other day, so as to allow him an opportunity to adduce evidence in support of his defence. SHEIKH EMTAZ ALI v. JAGAT CHANDRA BANERJEE, **1 C.W.N. 313.**

(104)—*Right of accused to make a statement.*—Where the accused wants to make a statement, a Magistrate is not competent to refuse it. *In the matter of* ABDUL GUFFOOR, **10 C.L.R. 54.**

(105)—*Movements of accused at the time of offence, when to be accounted for by him.*—Unless there has been *prima facie* sufficient legal evidence to convict an accused of an offence, he would not be bound to account for his movements at or about the time of the commission of the offence. QUEEN-EMPRESS v. BEPIN BISWAS, **10 C. 970.**

(106)—*Crim. Pro. Code* (1898), *s.* 342—*Right of accused to refuse to answer questions.*—An accused person does not render himself liable to punishment by refusing to answer questions put to him by a Magistrate, and the same rule applies to his examination before the Police patel. QUEEN-EMPRESS v. JAYAPA NAGAPPA DESAI, **1 Bom. L R. 435.**

(107)—*Right of re-trial by Jury where conviction set aside for misdirection.*—When a case has been tried before a Jury and the conviction is set aside on the ground of misdirection, the

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accused is entitled to have his case re-tried before a Jury. *Quære*—Whether in setting aside a conviction on the ground of misdirection to the Jury, the High Court has any power to re-try the case having regard to s. 423, Crim. Pro. Code. SADHU SHEIKH v. EMPRESS, **4 C.W N. 576.**

(108)—*Disobedience by accused already bound to appear before a Magistrate—Disobedience to an oral order given by police officer to remain at a certain place —Proper course to be followed by the police, Crim. Pro. Code* (1882), *s.* 160.—An accused person arrested by the police and bound to appear before a Magistrate on and from a particular date was on the next day orally directed by the police not to leave a place, K. He disobeyed these directions. *Held* that an accused person is not legally bound to obey an oral order given by a police officer to appear at a certain place, nor are the police authorised to give such an order; nor are they authorised to require the attendance of an accused person by an order in writing under s. 160, Crim. Pro. Code, 1882. The proper course for the police to follow is to take bonds from the accused for his appearance before the District Superintendent of Police at K, in lieu of the bonds for their appearance before the Magistrate. NGA KWE v. QUEEN-EMPRESS. **L.B.R. 1893—1900, 317.** (7 M. 274, *F.*)

(109)—*Special diary—Right of accused person or his agent to see it or have copies of it.*—A Criminal Court may permit the police officer, who made the special diary, to look at it for the purpose of refreshing his memory, or may use it for the purpose of contradicting such police officer. [*F.*, 4 A.L.J. 811 = A.W.N 1908, 22; *R.*, 21 A. 159.] Where the Police Officer does look at an entry in the diary for the purpose of refreshing his memory, the provisions of s. 161 of the Evidence Act apply, and the accused or his agent is entitled to see such diary and to cross-examine such police officer thereupon. A special diary cannot be used to enable any witness other than the Police Officer who made it to refresh his memory by looking at it, and it cannot be used to contradict any witness other than such Police Officer. It is the Court which is entitled to use the special diary for the purpose of seeking for sources and lines of enquiry, and for the names of persons who may be in a position to give material evidence. Neither the accused nor his agent is entitled to see the special diary for any purpose, unless it has been used by the Court for enabling the Police Officer who made it to refresh his memory for the purpose of contradicting him. In no case is an accused person or his agent entitled to a copy of the special diary or of any part of it. His right is limited to that of inspection in certain cases. QUEEN-EMPRESS v. MANNU, **19 A. 390, F B. = A W.N, 1897, 174.**

(110)—*Occurrence reports — Charge sheet—Public documents—Evidence Act, s.* 74—*Right of accused to copies before trial.*—*Held*, by the Full Bench (*Subramania Ayyar, J., dissenting*):— An occurrence report made by a subordinate police officer under s. 157, Crim. Pro. Code, is not a public document within the meaning of s. 74, Evidence Act, and the accused is not entitled to a copy of such report before trial *Held*, by *Collins, C.J.*, and *Benson, J.* (*Shephard* and *Subramania Ayyar, JJ., dissenting*).—The charge sheet referred to in s. 173, Crim. Pro. Code, is not a "public document" within the meaning of s. 74 of the Evidence Act, and an accused person is not entitled to a copy of the charge sheet before trial. As to whether an accused person is entitled to call for the occurrence report under s. 157, Crim. Pro. Code (1882), the report by a subordinate police officer under s. 168, Crim. Pro. Code (1882), and the police charge sheet under s. 173, Crim. Pro. Code (1882), at the trial, *See* QUEEN-EMPRESS v. ARUMUGAM, **20 M. 189 = 2 Weir 763, F.B = 2 Weir 120 = 2 Weir 142 = 2 Weir 144 = 7 M L J. 167.** [*R.*, 17 M.L.J. 471 = 3 M.L.T. 14 = 6 Cr. L.J. 346 = 30 M. 466.]

(111)—*Police charge sheet—Right of accused to a copy at the commencement of the inquiry* —A Presidency Magistrate is entitled to refuse to give the accused a copy of the police charge sheet at the commencement of the trial, as such charge sheets put in by the Madras City Police, contain a good deal of information for the use of the Magistrate, and are extracts from, if not copies of the police diary. QUEEN-EMPRESS v. VENKATARATNAM PANTULU, **19 M. 14 = 2 Weir 143.** [*R.*, 20 M. 189 = 2 Weir 763, F.B.]

(112)—*Accused, right of, to inspect documents filed as exhibits.*—An accused person is entitled to the inspection of all the documents filed as exhibits in the case. *In re* FRANCIS DOMINGO FERNANDES, **1 Bom. L.R. 433.**

(113)—*Confession of co-accused, whether sufficient for conviction of accused.*—An accused person ought not to be convicted where the only evidence against him is the confession of a co-accused and circumstantial evidence, which, although true, would not itself support a conviction. SRI KISHEN v. KING-EMPEROR, **6 O.C. 204.** [*Diss.*, 11 O. C. 328; *R.*, 8 Cr. L J. 393.]

(114)—*Co-accused — Punishment of some, whether an excuse for refusal to try others.*—If a body of men commit an offence, the Magistrate cannot say that he considers the punishment on some of them to be sufficient in regard to others who may be equally guilty, though probably in a different degree. BISHEN DOYAL RAI v. CHEDIKHAN, **4 C.W.N. 560.**

(115)—*Character of accused—Measure of punishment.*—The character of an accused person may fitly be taken into consideration in fixing the measure of punishment, but there must be discretion in the matter. QUEEN-EMPRESS v. NGA SEIK, **U B.R. 1897—1901, Vol. I, 318.**

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(116)—*Youthful accused.—Sentence.*—Courts may take into consideration the youth of the accused in awarding sentence NGA KYA MYIN v. QUEEN-EMPRESS, **U B.R. 1892—1896, Vol. I, 209.**

(117)—*Appearing without summons—Practice—Absence of summons or complaint.*—If an accused appears voluntarily in order to answer a charge, the absence of summons, or the want of a complaint antecedent to the issue of a summons, is immaterial. REG. v. SUDASEVAPPA, **Rat Un. Cr. C. 8.**

(118)—*Doubt leading to acquittal must be reasonable.*—The doubt, which entitles an accused person to an acquittal, is a reasonable doubt and no other. QUEEN-EMPRESS v. DAYA, **S.C. 221, Oudh.**

Bribing a public servant punishable as abettor—*See* ABETMENT, L.B.R. 1893—1900, 338.

Evidence taken in absence of—*See* ABSCONDING OFFENDER, 21 P.R. 1883, Cr.

See U P. ACT I OF 1900, s. 88, 9 O C. 29=3 Cr. L.J. 205.

Appeal by accused in jail and by those not in jail—*See* APPEAL—GENERAL, 2 Weir 467.

Change of place of hearing of appeal—Notice to—or his pleader—*See* APPEAL—GENERAL, 7 P.R. 1891, Cr.

Right of accused person to know the exact value of the charge brought against him—*See* CHARGE—EXPLANATION OF CHARGE, 11 C. 106.

Accused's privilege of recalling prosecution witnesses—*See* CRIM. PRO. CODE, 1898, ss. 35, 256, 14 Cr. L.J. 388=20 Ind. Cas. 212=6 Bur. L T. 67.

See CRIM. PRO. CODE, 1898, ss. 94, 96, 342, 36 P.R. 1914, Cr.

See CRIM. PRO. CODE, 1898, ss. 106, 226, 354, 7 M.L.T. 104.

Whether a person from whom security has been demanded is an accused person—*See* CRIM. PRO. CODE, 1898, ss. 107, 119, 437, 153 P.L.R. 1911=6 P.R. 1911 Cr.=10 Ind. Cas. 178=12 Cr.L.J. 232=30 P.W.R. 1911.

See CRIM. PRO. CODE, 1898, ss. 110, 118, 437, 20 P.L.R. 1904.

Person proceeded against under s. 110, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 123, 340, 25 A. 375=A.W.N. 1903, 79.

See CRIM. PRO. CODE, 1898, ss. 133, 342, 488, 9 C.W.N. 983=2 C.L.J. 149.

'Accused person,' who is—*See* CRIM. PRO. CODE, 1898, ss. 145, 526, 10 A.L.J. 27=13 Cr.L.J. 452=15 Ind. Cas. 84=34 A. 533.

Accused's disobedience to Police Officer's requisition to appear—*See* CRIM. PRO. CODE, 1898, s. 160, 4 Bom. L. R. 644.

Accused Person—*continued.*

Statements made by witnesses before the investigating officer—Right of accused to call for and inspect such statements—*See* CRIM. PRO. CODE, 1898, ss. 161, 172, 537, 16 C. 612, note.

Statements recorded by Magistrate — Right of accused person to have copies of such statements—Evidence Act, ss. 74, 76—*See* CRIM. PRO. CODE, 1898, ss. 162, 164, 173, 30 M. 466=17 M.L J. 471=3 M.L.T. 14=6 Cr.L.J. 346.

See CRIM. PRO. CODE, 1898, s. 167, 23 B. 32.

Omission of Magistrate to inform accused of his right to be tried by another Court—*See* CRIM. PRO. CODE, 1898, ss. 190, 191, 537, 28 A. 212=A.W.N. 1905, 258=2 A.L.J. 745=2 Cr.L.J. 809.

See CRIM. PRO. CODE, 1898, ss. 195 and 477, S.C. 303, Oudh.

See CRIM. PRO. CODE, 1898, s. 202, 14 C. 141.

Right of accused to reserve cross-examination of prosecution witnesses—Refusal to grant leave to reserve—Revision—*See* CRIM PRO. CODE, 1898, s. 208, sub-s. (2), 14 M.L.T. 532.

Remand of accused to jail without examining witness—*See* CRIM. PRO. CODE, 1898, ss. 208, 252 and 344, 6 M. 63=2 Weir 409=2 Weir. 577=2 Weir 656.

Fined by the Magistrate without notice or summons and proceedings recorded subsequently to trial, validity of—*See* CRIM. PRO. CODE, 1898, ss. 243, 262, 263, 555, 15 M. 83=2 Weir 326=2 Weir 729.

Right of accused to cross-examine prosecution witnesses after charge framed—Duty of Magistrate—See CRIM. PRO. CODE, 1898, s. 256, 11 P.R. 1914 (Cr.).

See CRIM. PRO. CODE, 1898, s. 256, U.B.R. 1897—1901, Vol. I, p. 74.

Examination of the accused, whether allowed, when no evidence has been recorded, and whether can be in the nature of cross-examination—*See* CRIM. PRO. CODE, 1898, ss. 271 (2), 342 (1), 439, 494, 5 M.L T. 216.

See CRIM. PRO. CODE, 1898, ss. 287, 289, 342, 1 O.C. 85.

Right of accused to cross-examine witnesses before commitment and to communicate with pleader—*See* CRIM. PRO. CODE, 1898, ss. 288, 342, 21 C. 642.

Examination of accused at Sessions trial—*See* CRIM. PRO. CODE, 1898, s. 289, S.C. 95, Oudh.

Right of accused to examine as witness any person in Court and use as evidence any document in Court—*See* CRIM. PRO. CODE, 1898, s. 291, 16 C. 610.

Deaf and dumb accused unable to understand proceedings—See CRIM. PRO. CODE, 1898, s. 341, 9 C.P.L.R 38 Cr.

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See CRIM. PRO. CODE, 1898, s. 341, 3 Bom. L.R. 371.

Object of examination of accused — *See* CRIM. PRO. CODE, 1898, s. 342, 9 Bom. L.R. 356=5 Cr. L.J. 332.

Examination of—*See* CRIM. PRO. CODE, 1898, s. 342, L.B.R. 1872—1892, 320.

Ill health of—High Court's power to dispense with the attendance of—*See* CRIM. PRO. CODE, 1898, s. 353, 14 Bom. L. R. 236=15 Ind. Cas. 96=13 Cr. L.J. 464=1 Bom. Cr. C 111.

Right of accused to refuse to disclose witnesses to be examined by him in Sessions Court —*See* CRIM. PRO. CODE, 1898, s. 364, 14 A. 242=A.W.N. 1892, 83.

Examination of accused before a Magistrate —Admissibility in Court of Sessions—*See* CRIM. PRO. CODE, 1898, s. 364, 5 M.H.C. App 4.

Right to examine accused —Nature of such, examination—*See* CRIM. PRO CODE, 1898. s. 364, 15 C.L J. 323=14 Ind. Cas. 667=13 Cr.L.J 283

Refusing to sign record—*See* CRIM. PRO. CODE, 1898, s. 364 (2), 4 Cr.L.J. 205=3 L.B. R. 199.

Legality of trying accused twice on same facts—*See* CRIM. PRO. CODE, 1898, s. 403, 3 L.B.R. 253=5 Cr.L J. 412.

See CRIM. PRO. CODE, 1898, s. 437, A.W. N. 1891, 106.

See CRIM. PRO. CODE, 1898, ss. 439, 464, 466, A.W.N. 1900, 47.

See CRIM PRO. CODE, 1898, ss. 464, 466, 2 Weir 581.

See CRIM. PRO. CODE, 1898, ss. 464, 466, 470, 2 Weir 580.

See CRIM. PRO. CODE, 1898, s. 470, 2 Weir 583.

Crime committed while suffering from temporary insanity—*See* CRIM. PRO. CODE, 1898, ss. 470, 471 (1 and 2), 2 Weir 582.

Prosecution against one of two accused withdrawn—Such accused if competent witness —Confession and prior statement of such accused if should be produced for cross-examination and contradiction—*See* CRIM. PRO. CODE, 1898, s. 494, 18 C.W.N. 1213=15 Cr.L J. 693=26 Ind. Cas. 141.

Proper place for accused persons in Courts—Allowing accused to remain outside the dock—*See* CRIM. PRO. CODE, 1898, s. 526 (8), 13 Cr.L.J. 584=15 Ind. Cas. 1000=5 Bur.L.T. 137.

Omission to call upon the accused to enter upon his defence, whether cured by s. 537, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 537, 23 C, 252.

Sessions trial for murder—Application by defence counsel for postponement of cross-examination till next-day—Refusal by Sessions

Accused Person—*continued.*

Court—Effect—Accused prejudiced — Re-trial by another Sessions Court ordered—*See* CROSS-EXAMINATION. 41 C. 299=15 Cr.L.J. 596=25 Ind. Cas. 348.

See DEAF AND DUMB PERSON, 27 C. 368 =4 C.W.N. 421.

Defended by Counsel making defamatory statements about a witness—*See* DEFAMATION, 15 M. 414=1 Weir 588=2 M.L.J. 142.

Statements by—*See* EVIDENCE—GENERAL, 2 N.W.P. 336.

Deposition of — Admissibility in evidence against him in subsequent proceedings, condition of—*See* EVIDENCE—ADMISSIBILITY OF EVIDENCE, 11 C. 580.

Record in the presence of the—*See* EVIDENCE—DYING DECLARATION, 8 C. 211= 10 C.L.R. 11.

See EVIDENCE ACT, 1872, s. 132, 23 B. 213.

See FALSE CHARGE, 6 C. 496=7 C.L.R. 467.

Judge's notes of evidence and proceedings—Right of accused—*See* HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 1 M.H.C. 138.

See INSANITY, 2 C. 356.

Entitled to benefit of doubt—*See* INTENTION, U.B.R. 1897—1901, Vol. I, 316.

See IRREGULARITY, 16 C.P.L.R. 9.

Voluntary statement by—Statement of witness under compulsion — Distinction — *See* PENAL CODE, ss. 2, 499, 500, 17 C.W.N. 297=14 Cr. L.J. 100=18 Ind. Cas. 660=40 C. 433.

Re-calling of warrant after acquittal of co-accused—Jurisdiction of District Magistrate to issue fresh warrant on same materials—*See* PENAL CODE, ss. 34, 107, 18 C.W.N. 580=15 Cr. L.J. 402=41 C. 754=23 Ind. Cas. 1002.

Under 12 years—Duty of Magistrate—*See* PENAL CODE, s. 83, 27 C. 133.

Examination of accused before completion of prosecution evidence—Legality—*See* PENAL CODE, ss. 99, 105, 147, 378, 15 Cr.L J. 436= 24 Ind. Cas. 172.

Explanation consistent with innocence of accused—Duty of prosecution—*See* PENAL CODE, ss. 192, 196, 1 P.R. 1914 Cr.=139 P.L. R. 1914=15 Cr.L.J. 344=23 Ind. Cas. 696.

Lengthy examination of, before prosecution evidence is over—Legality—*See* PENAL CODE, s. 307, 1 P.W.R. 1910 Cr.

Nature of defence which accused can set up —Duty of Court—Deficiency in prosecution evidence—Defence not bound to fill up—Right of defence to comment on such deficiency—Case of fraud set up by defence—Opportunity of explanation to prosecution—*See* PENAL CODE, ss. 399, 402, 18 C.W.N. 498=41 C. 350=15 Cr. L.J. 385=23 Ind. Cas. 985.

Accused Person—*concluded.*

Cross-examination of accused, with a view to induce him to incriminate himself—Legality—*See* PENAL CODE, ss. 464, 465, 467, 17 C.W.N. 354 = 18 Ind. Cas. 881 = 14 Cr. L.J. 129.

Accused adopting false line of defence—Doubt as to offence—Conviction—Legality—*See* RAPE, 12 Cr. L.J. 584 = 12 Ind. Cas. 848 = 4 Bur. L.T. 136.

See REMAND, 11 M. 98 = 2 Weir 142.

Accused's right to be restored to property on acquittal—*See* RESTORATION OF PROPERTY, 27 A. 415 = A.W.N. 1905, 19 = 2 A.L.J. 64 = 2 Cr. L.J. 24.

See SECURITY FOR GOOD BEHAVIOUR, 27 C. 656, 6 O.C. 262.

Whether person required to furnish security is—*See* SECURITY TO KEEP THE PEACE—EVIDENCE AND PROCEDURE, 9 A 452 = A.W.N. 1887, 111.

Good character of the accused—Mitigation of punishment—*See* SENTENCE—GENERAL, 16 C. 310.

See SESSIONS JUDGE, JURISDICTION OF, 1 M.H.C. 4.

Failure by accused to call material witnesses if unfavourable to accused—*See* WITNESS—EXAMINATION OF WITNESSES, 8 C. 121.

See WITNESS—EXAMINATION OF WITNESSES, 20 C. 469.

See WITNESS — MISCELLANEOUS CASES, 2 N.W.P. 49.

Acknowledgment.

Stamp duty on mere—*See* ACT X OF 1862, 43 P.R. 1867, Cr.

Refusal to deliver a receipt—Money sent by money-order—Acknowledgment signed—Second receipt refused—Whether person refusing guilty—*See* ACT II OF 1899, s. 65, 9 A.L.J. 97 = 13 Cr. L.J. 122 = 13 Ind. Cas. 778 = 34 A. 192.

Acknowledgment of Debt.

See ACT I OF 1879, sch. I, art. 1, 10 C. P. L. R. 7 Cr.

Acquiescence.

Acquiescence of accused will not cure irregularity.—Mere acquiescence on the part of the accused in an irregularity committed by the Court will not cure the defect. If criminal proceedings are substantially bad, they are not cured by any waiver or consent of the accused. EMPEROR v. KASIM, **15 C.P L.R. 66.**

Substantial by defective criminal proceedings cannot be cured by accused's waiver—*See* ACCUSED PERSON, 2 C. 23, 6 C. 96, 12 C.W.N. 140.

Order of demolition—Acceptance of rates in respect of the premises pending negotiation, if—*See* BEN. ACT III OF 1899, s. 449, 14 C.W.N. 912 = 6 Ind. Cas. 800 = 11 Cr.L.J. 406 = 37 C. 883.

Acquisition of Land for Public Purposes.

See ACT VI OF 1857.

Acquittal.

See APPEAL—APPEAL FROM ACQUITTAL.

See AUTREFOIS ACQUIT, PLEA OF.

See COMPLAINT.

See CRIM. PRO. CODE, 1898, s. 403.

See REVISION.

(1)—*Discharge, whether amounts to acquittal—Crim. Pro. Code* (1861), s. 250.—A discharge under s. 250, Crim. Pro. Code, 1861, does not amount to an acquittal. QUEEN v. HUR PERSHAD, **4 N.W.P. 23.**

(2)—*Discharge whether amounts to acquittal—Crim. Pro. Code* (1898), ss. 259, 403.—The order of discharge under s. 259 is not an acquittal under s. 403 and has not the effect of an acquittal. CHINNATHAMBI MUDALI v. SALLA GURUSAWMY CHETTY, **28 M. 310 = 2 Weir 325-A = 2 Cr. L J. 758.**

(3)—*When acquittal bars a fresh trial—Crim. Pro. Code,* (1861), ss 250, 255—Under s. 250, Crim. Pro. Code, 1861, the mere discharge of a person accused of an offence, after his examination by the Magistrate, but before the preparation of the charge, would not enable the accused to plead any previous acquittal, if fresh proceedings be taken against him for the same crime on other evidence before the same authority. In order to plead *autrefois acquit* successfully, the accused must have been once before formally put on his trial after the charge had been legally drawn up, and formally acquitted under s. 255, Crim Pro. Code. CRIMINAL CIRCULAR NO. 1099 OF 1864, **1 W. R. Cr. Letters 10.**

(4)—*When previous acquittal bars subsequent trial—Acquittal on previous charge if bars subsequent trial for different offence—Prisons Act, s.* 45—*Per Stuart, C. J.*—Where a person charged with the offence of criminal trespass in having taken food to an under-trial prisoner in a *havalat* against the orders of the officer guarding it was acquitted, *held* that a subsequent trial for an offence under s. 45, Prisons Act, was not barred. EMPRESS OF INDIA v. LALAI, **2 A. 301.**

(5)—*Acquittal, effect of—Acquittal on charge of conspiracy under s.* 121-*A, Penal Code (Act XLV of* 1860)—*Subsequent trial of others on identical charge—Evidence in latter trial of what acquitted prisoner had said or done, if admissible.*—It would be a dangerous principle to adopt to regard a verdict of not guilty as not fully establishing the innocence of the person to whom it relates. (2 K.B. 339, *Relied upon*). One I was charged with conspiracy to wage war against the King under s. 121-A, I.P.C., and acquitted. In a subsequent trial of others on an identical charge, it was held that what he said or did cannot be admitted in evidence at such trial in view of his acquittal. EMPEROR v. NONI GOPAL GUPTA, **15 C.W. N. 646 = 11 Ind. Cas. 580 = 12 Cr. L.J. 396.**

(6)—*Crim. Pro. Code* (1898), s. 403—*Previous acquittal when does not bar subsequent trial.*—The acquittal of the accused for preparation to

Acquittal—*continued.*

commit dacoity is no bar to a subsequent trial on the same facts for collecting men and arms to wage war against the King, under s 403 (1), Crim. Pro. Code. SANBAW v. CROWN, **1 L.B. R. 340.**

(7)—*Crim. Pro. Code* (1898), s. 403 (1)—*No complaint—Order of acquittal If fresh complaint barred* —A soldier from Burma (complainant) sent an intimation to the District Magistrate that he had authorised his brother to file a complaint against the accused for enticing away his wife. When the case came on for hearing, it appeared that the brother had no such authority and the Magistrate acquitted the accused. The complainant then filed a complaint personally. *Held*, that the previous acquittal was no bar to the trial of the present complaint, inasmuch as the finding of the Magistrate amounted to this, that there was no complaint before him. UMER-UD-DIN v. KING-EMPEROR, **6 A.L.J. 262=31 A. 317=9 Cr. L.J. 526=2 Ind. Cas. 219.** (9 A. 134, F.B., *R.*).

(8)—*Acquittal of some of the accused—Revival of proceedings against others, validity of.*—Where only some of the persons charged with having committed an offence were sent up for trial and acquitted, and an application to issue process against the other persons charged was refused by the magistrate, on the ground that the case against them was false, *held* that, until this decision was set aside, no order for the prosecution of those persons could be made. KEDAR NATH BISWAS v. ADHIN MANJI, **7 C.W N. 711.** (4 C. W. N. 346, 7 C.W.N. 493, *F.*) [*F.*, 34 M. 253=9 M. L. T. 93=9 Ind. Cas. 253= 12 Cr. L. J. 41.]

(9)—*Appellate Court hearing appeal against acquittal.*—Principles which should guide an appellate Court hearing an appeal against an acquittal indicated. QUEEN EMPRESS v. MAUNG BAW, **L.B.R 1893—1900, 42.**

(10)—*Revision by High Court of order of acquittal.*—The High Court will not interfere in revision, with an order of acquittal. MUNICIPAL COMMITTEE OF DACCA v. HANGOO RAJ, **8 C. 895.** [*F.*, 5 N L.R. 4=9 Cr.L.J. 211=1 Ind. Cas. 238; *R.*, 9 Cr. L. J. 437, L. B. R. 1893—1900, 41. U.B.R. 1897—1901, Vol. I, 91.]

(11)—*Revision by Chief Court of order of acquittal.*—The Chief Court will generally not interfere with an acquittal, simply because the accused's witnesses were unworthy of credit, but, if it finds that the Court below erred on a point of law, it will revise such order. SAUNDERSON v. WILSON, **10 P. R. 1900, Cr** [*R.*, 157 P.L.R. 1908, Cr.]

(12)—*Power of High Court to revise order of—Right of appeal by Local Government—Crim. Pro. Code*, (1882), *ss.*417,439.—The High Court ordinarily does not interfere with an order of acquittal in the exercise of its revisional jurisdiction, because an appeal can always be made by the Local Government under s. 417 of the Code. QUEEN-EMPRESS v. A. HAUNG, **L.B. R. 1893—1900, 126.** (15 B. 349, *F.*)

(13)—*Revision—Penal Code*, s. 447—*Crim. Pro. Code* (1898), *ss.*438, 439.—Where no appeal has been preferred to the Government, it is very rarely correct to interfere, on revision, with an acquittal. MUNSHI v. CROWN, **13 P.W.R. 1907, Cr.=72 P.L.R. 1908=5 Cr. L.J. 438.** (13 P. R. 1905, Cr. *Overruled* ; 12 P.R. 1906, Cr. *R.*)

(14)—*Order of acquittal based on incorrect view of law—Revision.*—When an acquittal proceeds on a mistaken view of the law the High Court can interfere in revision. The complainant agreed to receive money which the accused charged with criminal misappropriation, promised to pay in three days. The Magistrate thereupon acquitted the accused. *Held*, that the acquittal was illegal. MUSSAMMAT NANHI BAHU v. DHUNDE, **6 A.L.J. 758.**

(15)—*High Court — Revision—Acquittal—Practice and procedure—Crim. Pro. Code* (1898), *s.* 439.—Although the High Court does not ordinarily interfere with orders of acquittal in revision, yet, it cannot be expected that it would hesitate to do so, where the acquittal is based, not upon an appreciation of doubtful evidence, but upon a manifest error in law appearing on the face of the judgment. It is not open to the Courts to question the discretion of public bodies, vested in them by law. AHMEDABAD MUNICIPALITY v. MAGANLAL KUSHALDAS, **9 Bom. L.R. 156=5 Cr L.J. 171.**

(16)—*High Court's power to remedy improper acquittals.*—The last clause of s. 439, Crim. Pro. Code, 1882, contains nothing to prevent the High Courts from remedying improper acquittals in the exercise of their jurisdiction under this section. For instance, they may reverse an acquittal and order a retrial. SAIYID HASSAN RAZA KHAN v. MIR MASHHADI HUSAIN, **S.C. 191, Oudh.**

(17)—*Acquittal on appeal to Sessions Court—Revision and order for retrial—Proper tribunal for retrying the case—Crim. Pro. Code* (1882), *s.* 439.—With reference to a person convicted by a Magistrate, but acquitted by the Court of Sessions in appeal, such order of acquittal being reversed by the High Court under s. 439, the order of the High Court must be one directing the re-trial of the proceedings wherein the final order has been found to be bad, and the Sessions Court of appeal is the proper tribunal for the re-trial of the appeal, or such other Court of equal jurisdiction as the High Court might entrust with the trial of the appeal. QUEEN-EMPRESS v. BALWANT, **9 A. 134, F.B.=A. W.N. 1886, 322.**

(18)—*Power of Sessions Judge to set aside an order of acquittal—Crim. Pro. Code* (1898), *s.* 437.—Where an accused person is acquitted without any charge being framed or any witnesses being produced for the defence, the

Acquittal—*continued.*

Sessions Judge is not competent to set aside the order of acquittal. SAYID KHAN v. KING-EMPEROR, **1 A L J. 415.**

(19)—*Power of District Magistrate to set aside acquittal.*—The power of setting aside an order of acquittal is not conferred on District Magistrates by the Upper Burma Criminal Justice Regulation. QUEEN-EMPRESS v. NGA CHIN, **U.B.R. 1892–1896, Vol. I, 11.** [*R.*, 12 Cr. L. J. 383=11 Ind Cas. 247=U.B.R. 1910, Vol. I, p. 70].

(20)—*Magistrate to explain circumstances under which confessing prisoner was acquitted.*—Where a confessing prisoner was acquitted, the officer acquitting him should be called upon to explain under what circumstances he acquitted the prisoner for the information of the Court. **1 W.R. Cr. Letters, 2.**

(21)—*Grounds of commitment to be reported to High Court in cases of acquittals by Jury.*—Case where Sessions Judges and Judicial Commissioners were directed to enter, in the column of "Remarks" of Sessions Statement No. 3, whether, in cases of acquittal by a Jury, the verdicts have their approval, and, if they have, or where the trial has been "with Assessors," whether the committing officers had good grounds for making the commitment, a special report of the circumstances being made in any case which appears to call for particular notice. CRIMINAL CIRCULAR No. 2 OF 1869, **11 W R. Cr. Cir. 1.**

(22)—*Acquittal of one of a number of accused the rest of whom have not appealed—Procedure.*—If an appellate Court acquits an accused person on a question of fact on grounds common to the appellant and other accused persons who have not appealed, the Chief Court should acquit the latter on its revision side. CROWN v. ACHHUR SINGH, **6 P.R. 1867, Cr.**; LAL KHAN v. KUREEM KHAN, **71 P.R. 1866, Cr**

(23)—*Of an accused person on the ground of insanity, procedure in case of.*—The finding of a Court should state specially whether the accused committed the act charged or not, if he be acquitted on the ground that, at the time at which he was charged to have committed the offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act charged, or that he was doing what was wrong or contrary to law. CRIMINAL CIRCULAR No. 22, 10th DECEMBER 1864, **1 W.R. Cr. Cir. 9.**

(24)—*Crim. Pro. Code* (1898), *s.* 495—*Officer appointed to conduct prosecution—Withdrawal of case by Police Inspector not specifically permitted to conduct the prosecution—Acquittal of accused—Illegality.*—Criminal Courts have no jurisdiction to acquit accused persons, on a motion for withdrawal of the case by a Police Inspector, who is not specifically permitted to conduct the prosecution under s. 495, Crim. Pro. Code. CHOCKANADA GOUNDAN v. SALAMBURA GOUNDAN, **4 Ind. Cas. 132.**

See ABETMENT, 71 P.R. 1866, Cr.

Acquittal—*continued.*

High Court when will interfere in revision with an order of acquittal—*See* ACT IX OF 1890, ss. 3, cl. (4), 122, 138, (1914) M.W.N. 124 =15 Cr. L.J. 225=23 Ind. Cas. 177.

Order of—Revision—*See* BEN. ACT III OF 1899, ss. 3, cls. 35, 361, 416 (1) (5), 419, 17 C.W.N. 1250=14 Cr. L.J. 511=20 Ind. Cas. 991.

See BOM. ACT III OF 1888, ss. 308, 309, 342, 4 Bom. L.R. 575.

See APPEAL—APPEAL FROM ACQUITTAL, 29 P.R. 1885 Cr., 10 P R. 1897 Cr.

See COMPLAINT — DISMISSAL OF COMPLAINT, 5 C.L R. 359, 7 M. 356=2 Weir. 309.

See COMPOUNDING OFFENCE, L.B.R. 1893 —1900, 240.

Effect of—*See* CONSPIRACY, 16 C.W.N. 1105=16 Ind. Cas. 257.

Legality of order of acquittal where accused not directed to appear at all—*See* CRIM. PRO. CODE, 1898, ss. 107, 112, 117, 118, 119, 145, 253, 403, 495, 36 M. 315=14 Cr. L.J. 559=21 Ind. Cas. 159.

Summons case tried as warrant case—Discharge of accused, effect of—*See* CRIM. PRO. CODE, 1898, ss. 245, 253, 437, 6 Ind. Cas. 385 =8 M.L.T. 78=11 Cr. L.J. 350.

Order of acquittal on account of complainant's absence, passed on a date not fixed for hearing of the case—Effect—*See* CRIM. PRO. CODE, 1898, s. 247, 18 C.W.N. 1180.

Summons case—Non-appearance of complainant on date fixed for argument and consequent acquittal of accused if proper—*See* CRIM. PRO. CODE, 1898, s. 247, and Ch. XX, 18 C. W.N. 584=15 Cr. L.J. 163=22 Ind. Cas. 739.

Complaint by servant on behalf of master —Acquittal on death of complainant—Complaint of same offence by another servant—Previous acquittal if bar to Magistrates taking cognizance of second complaint—*See* CRIM. PRO. CODE, 1898, ss. 247, 203=18 C.W.N. 1211=15 Cr. L.J. 726=26 Ind. Cas. 174.

Acquittal of accused under s. 247, Crim. Pro. Code, procured by his own trick—Whether a revision or appeal lies against the acquittal—Admission of additional evidence in appeals—Powers of Court—Grounds for setting aside order of acquittal—English and Indian Law—*See* CRIM. PRO. CODE, 1898, ss. 247, 403, 417, 435, 439, 26 M.L.J. 160=1914 M.W.N. 273 =15 Cr. L.J. 236=23 Ind. Cas. 188.

Report of process-server—Prosecution instituted by District Judge on such report—Acquittal of accused—Process-server—Liability to pay compensation—*See* CRIM. PRO. CODE, 1898, s. 250, 25 P.R. 1910, Cr. =8 Ind. Cas. 382=11 Cr. L.J. 634=195 P.L.R. 1910.

On an erroneous view of the law—Interference by High Court at the instance of a private prosecutor—*See* CRIM. PRO. CODE (1898), s. 258, 11 C.L.J. 113.

Acquittal—*continued.*

Setting aside of acquittal in revision on application of complainant—Powers of High Court—*See* CRIM. PRO. CODE (1898), ss. 258, 417, 439, 19 C.W.N. 184.

Order of acquittal set aside by High Court in revision on merits, on the application of the complainant—*See* CRIM. PRO. CODE, 1898, ss. 258, 439, 18 C.W.N. 1244=15 Cr. L J. 722=26 Ind Cas. 170.

Power of High Court to set aside order of—*See* CRIM. PRO. CODE, 1898, ss. 260, 439, 13 Cr. L.J. 771=17 Ind. Cas. 403.

Upon the result of local inspection and without taking oral evidence—Order of, if may be set aside on revision—*See* CRIM. PRO. CODE, 1898, ss. 263, 417, 16 C.W.N. 984=39 C. 931=17 Ind. Cas. 71=13 Cr L J 759.

See CRIM. PRO. CODE (1898), ss. 287, 289, 342, 1 O.C. 85.

Fighting in the course of which a person was killed—Accused charged under s. 325, I.P.C.—Compounding of the offence by the relations of the deceased—Order of acquittal—Legality—Revision—Re-trial—*See* CRIM. PRO. CODE, 1898, ss 345 (2), 439 (5), 7 S.L.R. 200 =15 Cr. L.J. 553=24 Ind. Cas. 961.

Acquittal on charge of murder if bar to trial on charge of culpable homicide—Acquittal on charge under s. 302/34, I.P.C. if bar to trial on charge under s. 302/114, or 302/109, I.P C.—*See* CRIM. PRO. CODE, 1898, ss. 403, 305, 308, 271, 272, 18 C.W.N. 723=15 Cr. L.J. 460=24 Ind. Cas. 340=41 C. 1072.

Order of—Bar to subsequent proceedings until order set aside—*See* CRIM. PRO. CODE, 1898, ss. 403, 423, 530, 556, 8 A.L J. 1129=12 Cr. L. J. 575=12 Ind. Cas 839.

Power of appellate Court—Altering finding of acquittal into one of conviction—*See* CRIM. PRO. CODE, 1898, s. 423, 8 A.L.J. 1239=12 Ind. Cas. 836=12 Cr. L.J. 572.

See CRIM. PRO. CODE, 1898, s. 423, 26 M. 478=2 Weir 483=13 M.L.J. 263.

Appeal not preferred by Government from—Revision—*See* CRIM. PRO. CODE, 1898, ss. 435, 438, 439, 24 A. 316=A.W.N. 1902, 89.

Revision against—*See* CRIM. PRO. CODE, 1898, s. 438, 25 A. 128=A.W.N. 1902, 200.

Interference with an order of—Revisional powers of High Court—*See* CRIM. PRO. CODE, 1898, s. 439, L B.R. 1893—1900, 41.

High Court's powers of revision—*See* CRIM. PRO. CODE, 1898, s. 439, 27 A. 359=A.W.N. 1904, 278.

Accused when entitled to acquittal on revision—*See* CRIM. PRO. CODE, s. 439, 28 P.W. R. 1914 Cr.=168 P.L.R. 1914=15 Cr. L.J. 591=25 Ind. Cas. 343.

Of accused, when illegal — *See* CRIM. PRO. CODE, 1898, s. 495, 4 Ind. Cas. 132.

Acquittal—*concluded.*

See CRIM. PRO. CODE, 1898, ss. 535, 258, A.W.N. 1881, 142.

Accused's failure to exercise right of appeal—High Court's power to acquit—*See* CRIM. PRO. CODE, 1898, s. 550, 14 P.W.R. 1909 Cr.

Effect on acquittal of omission to prepare charge—*See* DISCHARGE OF ACCUSED, 3 A. 129.

See DISCHARGE OF ACCUSED, 5 M.H.C. App. 2, 3 P.R. 1874, Cr.

Previous—Bar to trial—*See* JOINDER OF CHARGES—GENERAL, 12 Bom. L.R. 226.

Acquittal by District Magistrate — *See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT, 2 N.W.P. 132.

See MURDER, 3 Ind. Cas. 622=8 P.W.R. 1909 Cr.

Re-calling of warrant after acquittal of co-accused—Jurisdiction of District Magistrate to issue fresh warrant on same materials — *See* PENAL CODE, ss. 34, 107, 18 C.W.N. 580=15 CR. L.J. 402=41 C. 754=23 Ind. Cas. 1002.

Erroneous interpretation of law—Acquittal—Interference of High Court—*See* PENAL CODE, ss. 97, 101, 354, 13 Cr. L.J. 53=13 Ind. Cas. 389=4 Bur. L.T. 268.

Acquittal—Appeal by Local Government—Interference when justifiable — *See* PENAL CODE, ss. 318, 302, 26 P.W.R. 1913, Cr.=20 Ind. Cas. 1005 =14 Cr.L.J. 525.

High Court's power to alter acquittal on one of two alternative charges into conviction—*See* PENAL CODE, ss. 399, 402, 18 C.W.N. 498=41 C. 350=15 Cr. L.J. 385=23 Ind. Cas. 985.

Effect of—*See* PENAL CODE, s. 400, 16 C. W. N. 69.

Value of first report to Police—Report falsifying prosecution story—Acquittal—*See* PENAL CODE, s. 498, 29 P.W.R. 1911 Cr.=12 Cr. L.J. 500=224 P.L.R. 1911=12 Ind. Cas. 220.

See PRACTICE AND PROCEDURE, U. B. R. 1897—1901, Vol. I, 91.

Accused's right to be restored to property on—*See* RESTORATION OF PROPERTY, 27 A. 415=A.W.N. 1905, 19=2 A.L.J. 64=2 Cr. L. J. 24.

When retrial ordered in case of—*See* RE-TRIAL, 6 C.P.L.R. 15 Cr.

On a charge under s. 211, I.P.C.—Subsequent sanction for perjury by the same Magistrate under s. 193, I. P. C.—*See* SANCTION TO PROSECUTIE—CONDITIONS REQUISITE FOR GRANT OF SANCTION — NECESSITY, SUFFICIENCY AND VALIDITY OF SANCTION, 1 A.L.J. 388.

See SESSIONS JUDGE, JURISDICTION OF, 4 L.B.R. 49=6 Cr. L. J. 287.

See SUMMARY TRIAL, 1 L. B. R. 9.

Acts.

1.—IMPERIAL ACTS.
2.—BENGAL ACTS.
3.—BOMBAY ACTS.
4.—BURMA ACTS.
5—CENTRAL PROVINCES ACTS.
6.—MADRAS ACTS.
7.—PUNJAB ACTS.
8.—UNITED PROVINCES ACTS.

I.—Imperial Acts.

Act II of 1839 (Fines by Magistrates).

[REP. ACT XVII OF 1862].

See ACT XVIII OF 1850, 3 B.H.C. App. 1.

See ACT XXVI OF 1850, s. 7, Rat. Un. Cr. C. 58=Cr. Rg. 7-12-1871.

Act V of 1840 (Oaths).

[REP. ACT X OF 1873.]

See OATH.

See SOLEMN AFFIRMATION.

(1)—"*Oath,*" *meaning of*—" Oath " means a solemn affirmation under Act V of 1840, taken instead of an oath. **1 W. R. Cr. Letters, 13.**

Act X of 1841 (Indian Registration of Ships).

[SHORT TITLE GIVEN, ACT XIV OF 1897. REP. IN PT. ACT XVI OF 1874. REP. IN PT. AND AM,—ACT XI OF 1850; ACT VII OF 1891. AM., ACT V OF 1883. S. 38, DECLARED IN FORCE THROUGHOUT B. I. EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3.]

Temporary additions to open vessels — " Strake "— Meaning of the term— Rule of measurement made by the Marine Department in 1873.—As there is no express provision applicable to temporary additions to open vessels either in the Indian Acts XIX of 1838 or X of 1841, or in the Merchant Shipping Act of 1854, the rules of measurement issued in 1873 by the Marine Department are *ultra vires*, so far as they require the measurement being taken from the top of a temporary addition to the upper strake. An additional structure of a temporary character to the bulwarks, to be removed at the end of the voyage, does not come within the meaning of "strake," which is a structural portion of the vessel, defined as a "continuous line of planking or plates on a vessel's side reaching from stem to stern." QUEEN-EMPRESS v. JAMUDIN *valad* MAHOMED, **14 B. 170**.

Act XI of 1841 (Military Courts of Requests).

[REP. ACT VIII OF 1887.]

(1)—*Ss.* 2 *and* 17 — *Military Court of Requests, jurisdiction of.*—Act XI of 1841 does not confer jurisdiction on a Military Court of Requests to entertain a suit against the Cantonment Magistrate as representing the Government. It only provides for the trial of suits brought against persons subject to the Articles of War and against settlers, camp followers, and other persons, who may reside and carry on business in a Military bazaar, and who are subject to certain Military regulations. In this sense, the Government cannot be said to reside and to carry on business in the Cantonment. JODHRAJ v. CANTONMENT MAGISTRATE OF MORAR, **1 N.W P. 253.**

(2)—S. 17—*See* No. 1, *supra*.

Act XIV of 1843 (Inland Customs—Agra).

[REP., ACT VIII OF 1875.]

And Act XXXVI *of* 1855—*Possession of unlawfully manufactured salt—Rules of Administration Board.*—Rule 32, of the Rules issued by the Punjab Board of Administration, dated 29th May, 1851, for the protection of the salt revenue, makes it an offence to be in possession of more than one seer of unlawfully manufactured salt. CROWN v. VELAYAT, **9 P. R. 1872 Cr.**

Act XXIX of 1845 (Joint Zilla and Sessions Judges).

[REP., ACT X OF 1872.]

S. 5—*Appointment of Joint Judge.*—The consent of the Governor-General in Council required by Act XXIX of 1845 for the appointment of a Joint Judge must be a *previous* consent. The subsequent ratification of the appointment by the Governor-General in Council would not validate all intervening judicial acts of the Joint Judge appointed by the Local Government. REG v. RAMA GOPAL, **1 B.H.C. 107.** [*R.*, 9 B. 288, 10 B. 263, 6 Bom. L.R. 131.]

Act I of 1846 (Legal Practitioners).

[SHORT TITLE GIVEN, ACT XIV OF 1897. REP. IN PT., ACT XVI OF 1874; ACT XII OF 1876. REP. IN PT. AND AM., ACT XII OF 1891. AM., ACT XX OF 1853, S. 4 REP. (LOCALLY), ACT XX OF 1865; ACT XVIII OF 1879, S. 42 (INSERTED BY ACT IX OF 1884, S. 9). REP. (IN BURMA), ACT XIII OF 1898, S. 18. DECLARED IN FORCE THROUGHOUT THE PRESIDENCIES OF MADRAS AND BOMBAY, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, SS. 4, 5.]

See LEGAL PRACTITIONERS— PLEADER, 7 B.H.C.A.C. 102.

Act XX of 1847 (Indian Copyright).

[SHORT TITLE GIVEN, ACT XIV OF 1897; REP IN PT., ACT XVII OF 1862; ACT XIV OF 1870; ACT IX OF 1871; ACT XVI OF 1874; ACT XII OF 1876; ACT I OF 1879. DECLARED IN FORCE THROUGHOUT BRITISH INDIA EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3 IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

I.—Imperial Acts—continued.

Act XX of 1847 (Indian Copyright)—*concld.*

See ACT XXV OF 1867.

See ST. 5 AND 6 VIC. C. 45.

(1)—*Ss.* 3 *and* 6—*Expunging entry from the catalogue of books kept in Bombay—Jurisdiction of High Court of Calcutta* —By s. 6 of the Act, the only Court having jurisdiction to deal with the Register of Copyright for the purpose of varying or expunging an entry was the Supreme Court in Calcutta. It had, therefore, jurisdiction over the Book of Registry wherever it happened to be kept. By s. 9 of St. 24 and 25 Vic. Cap. 104, the High Court of Calcutta took over all the powers of the Supreme Court, including the powers exercised absolutely in respect of any copyright register. *Held* that the Calcutta High Court, therefore, has jurisdiction to order the expunging of an entry in the catalogue of books kept in Bombay under s. 18 of Act XXV of 1867. ISMAIL *bin* SHAIK BADAL v. ALI BHOY SARAFALI, **9 C.W.N. 591 = 1 C.L.J. 278.**

(2)—S. 6—*See* No. 1, *supra.*

Act XXI of 1848 (Wagers).

[REP. ACT IX OF 1872].

See TAZI MANDI CHITTIS, 8 B.L.R. 412.

Act I of 1849 (Offences in Foreign States).

[REP., ACT XI OF 1872].

(1)—*Arrest in British territory by H. H. the Nizam's authorities.*—H. H. the Nizam's authorities have no power to make an arrest in British territory. Unless it is clearly alleged by the complainant that the accused had been resident in British India for six months before the offence was committed, the accused should not be imprisoned. In any case, he should not be detained in custody without the orders of Government obtained under Act I of 1849. KALADGI MAGISTRATE'S QUARTERLY RETURN, **Rat. Un. Cr. C. 35.**

(2)—*Ss.* 2, 3 *and* 9—*Jurisdiction over offences committed in foreign territory.*—When the accused, who has been living in a foreign territory for six months, is apprehended in foreign territory and delivered to a British Magistrate, *held*, that the Magistrate was competent to hold the preliminary enquiry, but, before trial, he should report the case to the Deputy Commissioner of the Division and obey his orders. CROWN v. RAM SAHAI, **19 P.R. 1868 Cr.**

(3)—S. 3—*See* CHARGE—AMENDMENT OF CHARGE, Rat. Un. Cr. C. 33.

(4)—S. 3—*See* No. 2, *supra.*

(5)—*S.* 9—*Breach of trust committed in Goa tried by Sessions Judge of Mangalore, but no order being recorded—New trial.*—Where a tindal of a small vessel had been convicted of criminal breach of trust, which appeared to have been committed in Goa, but no order was recorded by the Sessions Judge of Mangalore who tried the case under s. 9 of Act I of 1849, it was held that there ought to be a new trial. HIGH COURT PROCEEDINGS, 10th Jan. 1870, **5 M.H C. App. 13.**

(6)—S. 9.—*See* No. 2, *supra.*

Act XVIII of 1850 (Judicial Officers' Protection).

[SHORT TITLE GIVEN, ACT XIV OF 1897. DECLARED IN FORCE THROUGHOUT BRITISH INDIA EXCEPT AS REGARDS THE SCHEDULED DISTRICT ACT XV OF 1874, S. 3: IN THE SONTHAL PARGANNAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3; IN THE CHITTAGONG HILL TRACTS, REG. I OF 1900, S. 4; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4; IN CERTAIN TRACTS IN THE CHIN HILLS, REG. V OF 1896, S. 3; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3.]

(1)—*Liability of judicial officers—"Jurisdiction," scope of.*—Act XVIII of 1850, not only protects a Judicial Officer from suits for acts done or ordered to be done by him in the discharge of judicial duties within the limits of his jurisdiction, although the act is done maliciously, with gross and culpable irregularity and without believing, in good faith, that he had jurisdiction to do the act complained of, but also protects him from suits for acts done or ordered to be done in the discharge of judicial duties, without the limits of his jurisdiction, provided that he, at the time of doing the act or ordering it to be done, believed himself, in good faith, to have jurisdiction to do or order the act complained of. The term "jurisdiction" means authority or power to act in a matter, and not authority or power to do an act in a particular manner. In the matter of warrants, the protection afforded by the section is not against suits for executing lawful warrants or orders, but against suit for executing warrants or orders, not lawful, provided that such warrants or orders have been issued by a judicial officer in a matter within his jurisdiction, and not merely in a matter in which such judicial officer has authority or power to issue the particular warrant. The term "jurisdiction" should not be construed as meaning authority or power to issue the warrant in a particular matter and in the particular manner in which it is issued. TEYEN v. RAM LAL, **12 A. 115 = A.W.N. 1890, 32.** (2 M.I.A 293, *R.*) [*Diss.*, 10 M.L J. 232; *R.*, 59 P.W.R. 1908.]

(2)—*Magistrate, acting in "good faith."—Suit for damages against Magistrate for false imprisonment.*—A Magistrate, who fails to act reasonably, carefully, and circumspectly, cannot be said to have "in good faith believed himself to have jurisdiction" within the meaning of Act XVIII of 1850; and consequently he cannot claim the protection of that Act in an action brought

I.—Imperial Acts—continued.

Act XVIII of 1850 (Judicial Officers' Protection)—*continued.*

against him in a Civil Court. Where an action in trespass for damages was brought against a Magistrate who had ordered the imprisonment of the plaintiff under Reg. I of 1874, while the plaintiff was not a domestic servant falling under the scope of the Regulation, while there was no crime imputed to him and while he had entered a defence of not guilty, *held* that the Magistrate had not acted in good faith believing himself to have jurisdiction, but carelessly, precipitately and without caution, and that Act XVIII of 1850 did not protect him from liability. VITHOBA MALHARI v. ARTHUR KING CORFIELD, **3 B.H.C. App. 1.**

(3)—*Judicial Officers—Person* bona fide *believed to be dangerously insane*—Bona fide *detention by public servant—Liability.*—The Act is for the protection of judicial officers, acting judicially, and officers acting under their orders, and never for the protection of the Police or a Magistrate in the exercise of Police duties. There is no law which authorises the Police or a Magistrate in the exercise of of Police duties, or an officer in command of a cantonment, in consequence of a *bona fide* belief that a person is dangerous by reason of actual lunacy to put him into confinement, in order that he may be visited and examined by medical officers, and to keep him in confinement, until such officers can feel themselves justified in reporting whether the person is a dangerous lunatic or not; *a fortiori*, this cannot be done in the case of a *bona fide* belief of danger from impending lunacy; so that such officer would not be protected from liability in respect of such acts. E. D. SINCLAIR, v. L. P. D. BROUGHTON, **9 C. 341 = 3 C.L.R. 185, P.C. = 9 I. A. 152 = 5 Shome L.R. 136 = 4 Sar. 387 = Rafique & Jackson's P. C. No. 69.**

(4)—*Policy and scope of Act.*—The protection afforded to judicial officers rests on public policy. And though thereby a malicious Judge or Magistrate may be given a protection designed not for him, but for the public interest, it does not follow that he can exercise his malice with impunity. His conduct can be investigated elsewhere and due punishment awarded. GIRJASHANKAR NARSIRAM v. GOPALJI GULABBHAI, **7 Bom. L. R. 951.**

(5)—*Local nuisance—Jurisdiction of Magistrate.*—A Magistrate is not warranted in convicting and imprisoning a person for disobeying an order, the legality of which was then properly under the consideration of an appellate Court. REG. v. DALSUKRAM HARIBHAI, **2 B H.C. 384.**

(6)—Bona fide *discharge of duty by Judicial Officers—Liability of Secretary of State.*—A Magistrate, acting *bona fide*, is not liable for anything done by him in the exercise of his duty, however wrong the Act may be. The Legislature, by Act XVIII of 1850, while freeing the agent, the person who actually commits the tort complained of, and who would be the person primarily responsible, from all responsibility, could not have intended to leave the principal liable. MOTI LAL GHOSE v. SECRETARY OF STATE FOR INDIA, **9 C. W. N. 495 = 1 C.L.J. 385.** (4 M. 344, 1 C. 11, *R*)

(7, 8)—*Liability of Magistrate—Order under Crim Pro. Code* (1861), *ss.* 62, 308.—Act XVIII of 1850 does not protect a Magistrate who has not acted with due care and attention. The mere absence of *mala fides* is no defence. A Magistrate cannot be said to have "in good faith" believed himself to have jurisdiction to do or order the act complained of, unless he, in arriving at that belief, acted reasonably, circumspectly, and carefully. A Magistrate would not be personally liable for an act done by him under a misconstruction or misinterpretation of the law, if his proceeding were in other respects regular, and if the misconstruction or misrepresentation were one which might have been put upon the law by reasonable man, acting with ordinary care and attention. But a Magistrate is not protected by saying he misconstrued the law, unless his proceedings have been in other respects regular, and the view of the law taken by him is such as a reasonable and careful man might take. [*Expl.*, 15 W.R. 293; *R.*, 16 W.R. 63.] When a Magistrate violates the plain language of the law and the very first principles of judicial inquiry, his proceedings presumably are characterized by want of care. TARAKNATH MOOKHOPADHYA v. COLLECTOR OF HOOGHLY, **4 B. L. R. A. C. 37 = 13 W. R. 13**; COLLECTOR OF HOOGHLY v. TARAKNATH MUKHOPADHYA, **7 B.L.R. 449 = 16 W. R. 63.**

(9)—*Crim. Pro. Code* (1861), *ss.* 68, 212—*Liability of Magistrate.*—In a suit for damages against a Magistrate who had ordered the search of the plaintiff's house and detained plaintiff (woman) till she furnished bail, without any proof of the commission of any offence by her *held* that neither Act XVIII of 1850 nor ss. 68, 212 of the Crim. Pro. Code (1861), protected the Magistrate who had failed to act reasonably, carefully and circumspectly in taking the steps complained of in the discharge of his duty as a Magistrate, since such conduct was inconsistent with good faith. VINAYAK DIVAKAR v. BAI ITCHA, **3 B.H.C.A.C. 36**; (3 B.H.C. App. 1, *F.*) [*R.*, 12 A. 115, 6 Bom. L. R. 131, 13 W. R. 13.]

(10) *Magistrate acting* bona fide *without jurisdiction—" Jurisdiction"—Order for compensation to the accused—Warrant to bring complainant to hear judgment.*—Where a Magistrate acts without jurisdiction in the *bona fide* belief that he has jurisdiction, he is protected by Act XVIII of 1850, and no suit will lie. The act of issuing a warrant for the arrest of the complainant to hear an order, which directed him to pay compensation to the accused is not an act within the " jurisdiction " of the

I.—Imperial Acts—continued.

Act XVIII of 1850 (Judicial Officers' Protection)—*concluded.*

Magistrate within the meaning of that word, as used in Act XVIII of 1850. MAHALINGA AIYAR v. RAJAM AIYAR, **10 M.L.J. 232.**

(11)—*Cantonment officer making* bona fide *mistake in discharging duty.*—The Commanding Officer in a Cantonment is vested, within the cantonment, with all the police powers which a District Magistrate can have in his district and any *bona fide* mistake committed by him in the performance of his duty is excusable in law. L. P. D. BROUGHTON v. E. D. SINCLAIR, **S. C. 19, Oudh.** [*Reversed*, 9 C. 341, P.C.]

(12)—*Negligent and wrongful payment of money by a Judge—Cause of action not disclosed*—Locus standi.—A Judge knowingly pronouncing illegal orders is responsible to the State only, and cannot be sued so long as he keeps within his jurisdiction, though he may, in certain cases and by a particular procedure, be held criminally responsible. A contrary system would produce great inconvenience by allowing "every losing party of whom there must be one in every suit, to bring an action against the Judge, and the Judge in his turn, if unsuccessful, suing the other Judge who had pronounced against him. MAUNG MYAT MIN v. MAUNG WAIK, **L. B. R. 1872—1892, 83.**

(13)—*Delay in trial of prisoners—Civil action for damages—S. 22, Crim. Pro Code* (1861).—A Deputy Magistrate, who, without reasonable cause, delays proceeding with the trial of persons whom he keeps in jail, is liable, notwithstanding the above Act, to an action in damages if the prisoners are eventually acquitted. By s. 22, Crim Pro. Code (1861), a Magistrate may, by a written order, from time to time, adjourn an enquiry for a period not exceeding 15 days. QUEEN v. SAHOO, **11 W.R. Cr. 19.**

(14)—*See* BAIL, 2 M.H.C. 396.

(15)—*See* DEFAMATION, 4 P.W.R. 1910, Cr.

(16)—S. 1—*See* ACT XI OF 1878, s. 25, 8 C. L. J. 75.

(17)—S. 1—*See* CRIM. PRO. CODE, 1898, ss. 96, 105, 165, 13 C.W.N. 458=9 C.L J. 298=36 C. 433=5 M.L.T. 367.

Act XXI of 1850 (Caste Disabilities Removal).

[SHORT TITLE GIVEN, ACT XIV OF 1897. DECLARED IN FORCE--THROUGHOUT BRITISH INDIA EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ARAKAN HILL DISTRICT (WITH MODIFICATIONS), REG. IX OF 1874, S 3.]

(1)—*Exclusion from caste.*—Exclusion from caste is, after the passing of Act XXI of 1850, not a ground for exclusion from inheritance. BHUJJAN LAL v. GYA PERSHAD, **2 N.W.P. 446.**

(2)—*Ss. 49 and 90 — Intoxicating drug—"Post."*—"Post" or the poppy head in which

I.—Imperial Acts—continued.

Act XXI of 1850 (Caste Disabilities Removal)—*concluded.*

opium has been allowed to ripen, and which is expressly grown for the purpose of mixing with water to drink, is an "intoxicating drug." CROWN v. GUNGA RAM, **9 P.R. 1870, Cr.**

(3)—S. 90 – *See* No. 2, *supra.*

Act XXVI of 1850 (Improvements in Towns).

[REP. IN PART, ACT XIV OF 1870. REP. (IN AGRA), ACT VI OF 1868, S. 5; (IN PUNJAB), ACT IV OF 1873; (IN BOMBAY), BOM. ACT VI OF 1873; (IN BENGAL, EASTERN BENGAL AND ASSAM), BEN. ACT V OF 1876; (IN SINDH), BOM. ACT I OF 1879; (LOCALLY IN MADRAS), MAD. ACT X OF 1865.]

(1)—*Municipal Commissioner, if public servant.*—A Municipal Commissioner, appointed under the above Act, is a public servant within the meaning of Reg. II of 1827, s. 43 GREANES v. BHAGVAN TULSI, **4 B H.C.A.C.J. 93.** [*Appr.*, 1 B. 628; *D.*, 14 B. 286.]

(2)—*Municipal Chairman, if a public servant—Penal Code, s.* 174.—The Chairman of the Municipal Commission, appointed under Act XXVI of 1850, although a public servant, is not legally competent as such to issue an order for attendance before him. Hence, disobedience to such an order is not an offence within s. 174, I.P.C. REG. v. PURUSHOTAM VALJI, **5 B H. C. Cr. 33.** [*R.*, Rat. Un Cr. C. 488.]

(3)—*Fine by pound-keeper whether bars trial under this Act.*—A fine levied by a pound-keeper is not a punishment imposed on conviction for an offence, and it is an error to hold that a person cannot be tried for an offence under the above Act, because he has paid a fine under s. 6 of Act III of 1857. REG. v. DURGARAM MADHAV RAM, **7 B H.C. Cr. 55.**

(4)—*Order forbidding nuisance—Power of Magistrate.*—A Magistrate, as the President of a Municipal Committee, has no power to issue an order forbidding as a nuisance, an act not included in the rules passed under Act XXVI of 1850. GOVERNMENT v. SHAM SOONDER, **1 Agra 34, Cr.**

(4-*a*)—*Right of Subordinate Magistrate to take cognizance of offence against Municipal rules.*—By virtue of the last para. of the schedule, headed "Offences against other laws," added to the Code of Criminal Procedure by Act VIII of 1869, a Subordinate Magistrate, second class, can take cognizance of the offence of a breach of the Municipal rules promulgated under the above Act. REG. v. DHARMAYA *valad* SANGAPA, **8 B.H.C. Cr. 12.** [*Appr.*, 8 B.H.C. Cr. 39, F.B.]

(4-*b*) — *Jurisdiction of Magistrates to try offenders against such rules.*—The authority to try offenders against such Rules or Bye-laws is vested in the Magistrate of the country, and subordinate as well as other Magistrates have

I.—Imperial Acts—continued.

Act XXVI of 1850 (Improvements in Towns) *—continued.*

jurisdiction to try such offenders. REG. v. YENKU BAPUJI, **8 B H.C. Cr. 39, F.B.** (8 B. H.C. Cr. 12, *Appr.*)

(5)—*See* CONTEMPT OF COURT, 5 B.H.C. Cr. 33.

(6)—*See* MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, 8 B.H.C. Cr. 39, F.B.

(7)—*See* POUND-KEEPER, 7 B.H.C. Cr. 55.

(8)—*S.* 7—*Prospective fine.* — Where the accused, being convicted of disobedience to the order of the Municipal Commissioner, was ordered to pay a fine of Rs. 20, and was allowed 8 days within which to comply with the order, but failing to do so, a fine of Rs. 2 was imposed upon him for each day during which such disobedience should be wilfully continued, *held* that the latter portion of the order was not legal. REG. v. JAGANNATHBHAT *bin* APPABHAT, **5 B.H.C. Cr. 103.**

(9)—*S.* 7—*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 61—*Conviction under Act* XXVI *of* 1850—*Act* II *of* 1839—*Fines.*—The provision in s. 61, Crim. Pro. Code, 1861, for imprisonment in default of fine is not applicable to a penalty imposed under the Rules framed under s. 7 of Act XXVI of 1850, since such fines are to be levied under Act II of 1839. It is illegal to pass a sentence of imprisonment until a warrant for distress and sale has been returned unsatisfied. REG. v. TUKARAM KALU, **Rat. Un. Cr. C. 58 = Cr. Rg. 7-12-1871.**

(10)—*S.* 7, *cl.* 5—*Rules passed by Town Commissioners—Jurisdiction of Sub-Magistrates.*—A Subordinate Magistrate has no jurisdiction to impose a fine for breach of a rule passed by Town Commissioners under cl. 5 of s. 7 of Act XXVI of 1850. REG. v. MALHARJI *bin* NAULOJI, **3 B.H.C. Cr. 36.**

(11)—Ss. 7 (5), 10—*See* PENALTY, Rat. Un. Cr. C. 77.

(12, 13, 14)—*Ss.* 7, 10, 12—*Municipal Commissioners, if can assume jurisdiction—Rules empowering Municipal Managing Committee to try offenders*—Ultra vires—*How far rule* ultra vires.— Municipal Commissioners, appointed under the above Act, have not, by that Act, conferred upon them, nor are they entitled to assume judicial powers with reference to the breach of Rules or Bye-law made by them under that Act. (5 B.H.C. Cr. 10, *F.*) [*R.*, 8 B.H.C.A.C.J. 213.] Rules made under the above Act, which purported to give the Managing Committee of such Municipal Commissioners power to try offenders against such Rules, or to levy fines upon them are *ultra vires* and illegal. Rules of the Municipalities of Balsad, Surat, Malcolmpet and Ahmedabad referred to and commented on. How far a rule, partially *ultra vires* and partially *intra vires*, can be enforced as to the latter portion, considered. REG. v. YENKU BAPUJI, **8 B.H.C. Cr. 39.**

I.—Imperial Acts—continued.

Act XXVI of 1850 (Improvements in Towns) *—concluded.*

(15)—*S.* 10—*Power of Managing Committee of Municipal Commissioners to fine for breach of rules* —The Managing Committee of the Municipal Commission has no power to try and convict a person for breach of the rules made under the Act. S. 10 of Act has provided for the recovery of fines by Magistrates. REG. v. MAVJI DAYAL, **5 B.H.C. Cr. 10.** [*F.*, 8 B.H.C. Cr. 39, 8 B.H.C. Cr. 213.]

(16)—S. 10—*See* Nos. 11, 12, *supra.*

(17)—S. 12—*See* No. 12, *supra.*

Act XXXIV of 1850 (State Prisoners).

[SHORT TITLE GIVEN, ACT XIV OF 1897. REP. IN PART, ACT XII OF 1891. SUPPLEMENTED, ACT III OF 1858. DECLARED IN FORCE—THROUGHOUT BRITISH INDIA EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3; IN THE CHITTAGONG HILL-TRACTS, REG. I OF 1900, S. 4; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3.]

Sse BEN. REG. III OF 1818, 6 B.L.R. 392.

Act XXXVII of 1850 (Public Servant Inquiries).

[SHORT TITLE GIVEN, ACT I OF 1897. REP. IN PART, ACT XIV OF 1870; ACT XVI OF 1874; ACT XII OF 1876; (LOCALLY), ACT XVI OF 1868. AMENDED, ACT I OF 1897. DECLARED IN FORCE — THROUGHOUT BRITISH INDIA EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S 3; IN THE ARAKAN HILL DISTRICT (SS. 2 TO 22 AND 25), REG. IX OF 1874, S. 3, AS AMENDED BY ACT XIII OF 1898, S. 16; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, NECESSITY, SUFFICIENCY AND VALIDITY OF SANCTION, 18 P.R. 1898, Cr.

Act VIII of 1851 (Indian Tolls).

[SHORT TITLE GIVEN, ACT XIV OF 1897. REP. IN PART, ACT XIV OF 1870; REP., IN PART, ACT XII OF 1876; REP. IN PART, ACT II OF 1901; REP. IN PART, AMENDED, AND SUPPLEMENTED, ACT VIII OF 1888; AMEND-ACT XV OF 1864; SUPPLEMENTED, ACT ED LOCALLY), VIII OF 1892; REP. (IN BOMBAY), BOM. ACT III OF 1875. DECLARED

I.—Imperial Acts—continued.

Act VIII of 1851 (Indian Tolls)—*concluded.*

IN FORCE--IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), WITH A MODIFICATION, ACT XIII OF 1898, S. 4; IN THE CENTRAL PROVINCES AND THE SAMBALPUR DISTRICT (EXCEPT S. 1 AND THE SCHEDULE), ACT XX OF 1875, S. 3; IN THE PUNJAB, ACT VIII OF 1888, S. 1.]

(1)—Ss. 2, 3, 6—*See* TOLLS, 22 W.R. Cr. 76.

(2)—Ss. 2 and 6—*See* TOLLS, 6 W.R. Cr. 48.

(3)—S. 3—*See* No. 1, *supra.*

(4)—S. 6—*See* Nos. 1 and 2, *supra.*

Act VII of 1853 (Jurisdiction of Magistrates).

[REP., ACT X OF 1872.]

(1)—*Jurisdiction—British-born subject—Justice of the Peace—Imprisonment in default of payment of fine.*—A Magistrate being also a Justice of the Peace has no jurisdiction to try a British-born subject under the Penal Code. His jurisdiction in the trial of such subjects is governed and limited by 53 Geo. III, c. 155, s. 105, and Act VII of 1853, neither of which gives him power to award imprisonment in default of payment of a fine. REG. v. DIXON, **6 B.H.C. Cr. 14**.

(2)—*See* JUSTICE OF THE PEACE, 6 B.H.C. Cr. 14.

Act XIX of 1853 (Recusant Witnesses).

[SHORT TITLE GIVEN, ACT V OF 1897; S. 40, REP., ACT X OF 1855; SS. 1 TO 18, 20 TO 25, 27 TO 39, 41 TO 44 REP., ACT X OF 1861; S. 19 REP., ACT I OF 1872; S. 26 REP. IN PT., ACT XII OF 1891; REP. (EXCEPT IN ASSAM), ACT I OF 1903.]

S. 28—*See* WITNESS—SUMMONS TO WITNESS, 1 B.L.R.A. Cr. 186 = 10 W.R. 233.

Act VII of 1854 (Fugitive Foreign Offenders).

[REP., ACT XI OF 1872.]

(1)—The Act does not govern the procedure relating to the surrender of persons charged with the commission of "heinous offences" within Act VII of 1854 in Independent States conterminous with the Punjab who took refuge in British territory. The rules of the Chief Commissioner of the Punjab framed in 1856 and declared applicable to the States mentioned by the Judicial Commissioner's circular apply to such words. CROWN v. TOKHA, **4 P.R. 1870, Cr.** [*R.*, 21 P.R. 1886, Cr.]

(2)—*S. 23—Act* XVII *of* 1862—*Warrants—Repeal—Treaty with Gaikwar—Arrest of accused.*—S. 23 of Act VII of 1854 was not repealed by Act XVII of 1862. The section applies to cases of delivery of accused persons upon requisition by the Gaikwar of Baroda

I.—Imperial Acts—continued.

Act VII of 1854 (Fugitive Foreign Offenders)—*concluded.*

and the British Government would not be justified in delivering up such persons without holding a preliminary inquiry into his guilt. A warrant, therefore, issued under the section, directing an accused person to be produced before the British Resident at Baroda, should state whether such an inquiry has been held or is about to be held. But it may be presumed in the case of such a warrant that the intention was that the Resident might institute such an inquiry as is required by the section. REG. v. SOUTER, **8 B.H.C. Cr. 13.**

Act XVII of 1854 (Post Offices).

[REP., ACT XIV OF 1866.]

(1)—*S.* 50 (= *s.* 52 *of the Post Office Act* VI *of* 1898)—*Jurisdiction of Magistrate.*—A conviction and sentence recorded by a Magistrate, F.P., under s. 50 of the Post Office Act XVII of 1854 (corresponding with s. 48 of the Act of 1866) were held to be illegal, as the Magistrate had no jurisdiction finally to dispose of the case, but was bound to have committed it for trial before the Court of Session. REG. v. ATMARAM WAMAN BHANDARKAR, **3 B.H.C. Cr. 8.**

(2)—*Separate sentences for offences arising out of the same transaction.*—Where a person had been previously committed and sentenced on a charge of fraudulently secreting a letter under s. 50 of the above Act, his subsequent conviction upon the charge of having fraudulently made away with the same letter upon the same occasion was held to be invalid. QUEEN v. DALAPATI RAU, **2 Weir 454 = 1 M.H.C. 83.** [*R.*, 1 Bom. L.R. 15.]

Act XVIII of 1854 (Railways).

[REP., ACT IV OF 1879.]

(1)—*Railway passenger travelling in higher class--Act* XVII *of* 1854 (*Railways*)—*Penal Code, s.* 417.—A railway passenger travelling in a class higher than that for which he had paid his fare is not liable to be convicted of cheating under s. 417, I.P.C. REG. v. DAYABHAI PARJARAM, **1 B.H.C. 140.**

(1-*a*)--Attempt to evade railway fare--Attempt to cheat—Attempt to evade payment of railway fare, when amounts to an attempt to cheat—*See* ATTEMPT, 6 P.R. 1868, Cr.

(2)—*See* COMPLAINT — INSTITUTION OF COMPLAINT—PRELIMINARIES, 4 B.H.C. Cr. 4.

(3)—*S.* 3—*Return ticket—Transfer—Attempt.*—The act of buying the unused half of a return ticket does not in itself amount to attempt to travel within the meaning of the Indian Railways Act, 1854. *Quære*:—Whether it is fraud in A to travel with a ticket purchased by B—albeit the words "not transferable" are printed thereon? QUEEN-EMPRESS v. MUGGAN, **Rat. Un. Cr. C. 123.**

(4)—*S.* 17—*Jurisdiction of Subordinate Magistrate.*—A Subordinate Magistrate (First Class)

I.—Imperial Acts—continued.

Act XVIII of 1854 (Railways)—*continued.*

has no jurisdiction to punish for an offence under s. 17 of Act XVIII of 1854. It was suggested that the Act in this respect required amendment so as to give Subordinate Magistrates such jurisdiction. REG. v. TRIBHUVAN ISHVAR, **3 B. H. C. Cr. 54.**

(5)—*S. 25—Jurisdiction of Magistrates.*—Accused was tried and convicted by a Magistrate of an offence under s. 25 of Act XVIII of 1854, punishable with transportation for life or imprisonment for any term not exceeding seven years. Upon a reference, held that by virtue of Madras Act III of 1865, the Sub-Magistrate had jurisdiction, that Act not being repealed by the schedule attached to Act VIII of 1869. HIGH COURT PROCEEDINGS, 29TH JUNE 1872, **7 M.H.C. App. 8.**

(6)—*S. 26—Jurisdiction.*—A full power Magistrate has no jurisdiction to convict a person of an offence punishable under s. 26 of Act XVIII of 1854. REG. v. LAKSHMAN BALAJI, **3 B.H.C. Cr. 10.**

(7)—*S. 26—Jurisdiction of Magistrates—Madras Act* III *of* 1865, *s.* 1.—Although all offences under s. 26 of the Railways Act (XVIII of 1854), should, under that Act, be committed to the Sessions, yet s. 1 of the Madras Act III of 1865 operates to remove this bar to the Magistrate's jurisdiction and renders every Magistrate competent to take cognisance of offences against any special or local law, notwithstanding any provision to the contrary in any Act or Regulation, provided only that the several grades of Magistrates do not exceed the limits of their ordinary jurisdiction as to the amount of punishment they may inflict. HIGH COURT PROCEEDINGS, 2ND APRIL 1868, **4 M.H C. App. 9.**

(8)—*S. 26—Crim. Pro. Code* (1861), *s.* 435.—A Sessions Judge has no authority to direct a fresh trial of a charge of an offence under s. 26 of the Railway Act which has been dismissed by the Magistrate. HIGH COURT PROCEEDINGS, 20TH NOVEMBER 1871, **6 M. H.C. App. 41.**

(9)—*S. 27—Railway police—Neglect of duty.*—The Railway Police, who are in the pay of a Railway Company, are amenable for neglect of duty to the provisions of the above section, notwithstanding that they hold commissions from the Commissioner of Police under s. 9 Bom. Act VII of 1867. REG. v. SAYAD KAZI, **Rat. Un. Cr. C. 51=Cr. Rg. 15-6-1871.**

(10)—*S. 27—See* ACT XVIII OF 1862, s. 35, 1 M.H.C. 193.

(11)—*S. 27—See* BOM. ACT VII OF 1867, s. 9, Rat. Un. Cr. C. 51=Cr. Rg. 15-6-1871.

(12) *S. 29 — Railway accidents — Duty of guard.*—Where some coolies were employed in assisting a ballast train into motion at a Railway station, and one of them, after pushing the train or in attempting to do so, fell and was so injured that he afterwards lost his life, held that the evidence did not show that it was the duty of the guard to see that no one got up on the train, when in motion. QUEEN v. R. FLOOD, **8 W.R. Cr. 43.**

(13)—*Ss.* 30, 35—*Crim. Pro. Code, Act* X *of* 1872, *s* 2—*Jurisdiction.*—S. 30 of Act XVIII of 1854, and s. 2 of the Crim. Pro. Code, show that offences under the former Act, punishable with fine exceeding twenty rupees, are not triable by Magistrates inferior to a First-class Magistrate. REG. v. MIRZA MAHOMED, **Rat. Un. Cr. C. 83=Cr. Rg. 28-7-1874.**

(14)—*S. 34—Fine, how to be recovered.*—S. 34 of Act XVIII of 1854 prescribes the mode in which fines are to be recovered by distress and sale. It is only on the return of the warrant of distress unsatisfied, or on the Magistrate being otherwise satisfied that no sufficient distress exists, that imprisonment can be imposed. HIGH COURT PROCEEDINGS, 13TH NOVEMBER 1871, **6 M.H.C. App. 37.**

(15)—*S. 35—Jurisdiction*—By s. 35 of the Act, District Police Officers in the Presidency of Bombay could punish, to the extent of the powers conferred upon them, in petty offences, any offence made punishable under the Act, by fine not exceeding Rs. 20. But s. 5 of Reg. II of 1827 (authorising the appointment of District Police Officers), and s. 41 of the same Reg. (defining the limits of their jurisdiction) being both repealed by Act XVII of 1862, *held* that a Subordinate Magistrate had no jurisdiction to impose a fine under s. 17 of the Railways Act. REG. v. TRIBHUVAN ISHWAR, **3 B.H.C. Cr. 54.**

(16)—S. 35—*See* No. 13, *supra.*

Act II of 1855 (Evidence).

[REP., ACT I OF 1872.]

See EVIDENCE.

See EVIDENCE ACT, 1872.

(1)—*See* LEGAL PRACTITIONERS—PLEADER AND CLIENT, 3 B.H.C.Cr. 126.

(2)—*See* PRIVILEGED COMMUNICATION, 15 W.R. 340.

(3)—Ss 6 and 8—*See* EVIDENCE—GENERAL, 7 B.L.R. 63=15 W.R. Cr. 25.

(4)—S. 8—*See* No. 3, *supra.*

(5)—S. 24—*See* PRIVILEGED COMMUNICATION, 1 B.L.R. A Cr. 8=10 W.R. Cr. 14.

(6)—S. 32—*See* CONFESSION—GENERAL, 8 B.H.C. Cr. 103.

(7)—S. 48—*See* EVIDENCE—GENERAL, 6 W.R. Cr. 5.

(8)—S. 67—*See* EVIDENCE—GENERAL, 6 W. R. Cr. 41.

I.—Imperial Acts—continued.

Act XIII of 1855 (Indian Fatal Accidents).

[SHORT TITLE GIVEN, ACT XIV OF 1897. REP. IN PART, ACT IX OF 1871. DECLARED IN FORCE—THROUGHOUT BRITISH INDIA EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S.3; IN THE SANTHAL PARGANAS, REG. III OF 1872, S.3, AS AMENDED BY REG. III OF 1899, S 3; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3.]

See COMPENSATION — TO COMPLAINANT AND HIS RELATIVES, 7 P.R. 1877, 17 P.R. 1898, Cr., F.B.

Act XXII of 1855 (Ports and Port-dues).

[REP., ACT XII OF 1875.]

(1)—*Ss.* 46, 62—"*Magistrate*"—*Jurisdiction.*—The word "Magistrate" in s. 62 of Act XXII of 1855 may be construed as including a Subordinate Magistrate. He has, therefore, jurisdiction to try the master of a vessel for an offence under s. 46 of the Act REG. v. TUNGA TUKA, **5 B.H.C. Cr. 14.**

(2)—S. 62—*See* No. 1, *supra.*

Act XXXVI of 1855 (Contraband Salt).

[REP., ACT VIII OF 1875.]

See ACT XIV OF 1843, 9 P.R. 1872, Cr.

Act XV of 1856 (Hindu Widows' Re-marriage).

[SHORT TITLE GIVEN, ACT XIV OF 1897. DECLARED IN FORCE—THROUGHOUT BRITISH INDIA EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3.]

See DEFAMATION, 6 M. 381=1 Weir 595.

Act III of 1857 (Cattle Trespass).

[REP., ACT I OF 1871.]

See ACT I OF 1871.

See CATTLE TRESPASS.

(1)—*Repeal of Act by Act I of 1871—Procedure.*—Where a prisoner was properly convicted on the evidence of illegally seizing cattle, but was sentenced under the old law (III of 1867), but that Act had been repealed by Act I of 1871, the High Court declined to interfere with the sentence as the latter Act was in force at the time of the conviction and sentence, and no injustice had been done. MOHESH NATH v. HURRO MOHUN GHOSAL, **16 W. R. Cr. 12.**

(2)—*See* NUISANCE UNDER PENAL CODE, 9 W.R. Cr. 70.

(3)—*See* SENTENCE—POWERS OF APPELLATE COURT—GENERAL, 16 W.R. Cr. 12.

I.—Imperial Acts—continued.

Act III of 1857 (Cattle Trespass)—*continued.*

(4)—S. 6—*See* ACT XXVI OF 1850, 7 B.H. C. Cr. 55.

(5)—S. 6—*See* POUND-KEEPER, 7 B.H.C. Cr. 55.

(6)—*S. 13—Act XVII of 1862—Effect of repeal.*—The latter portion of s. 13 of Act III of 1857 having been repealed by Act XVII of 1862, the offences created by that section can be dealt with by the ordinary criminal tribunals subject to the Crim. Pro. Code. REG. v. MATHUR PURSHOTAM, **4 B.H.C.Cr. 13.**

(7)—*Jurisdiction of Magistrate.*—A Magistrate has no jurisdiction, under this section, to punish, except for an act of forcible opposition to the seizure of cattle-damage feasant. JAMES HILLS v. SREE HUREE ROY, **7 W.R. 155.**

(8)—*Procedure—Witness for defence—S. 262, Crim. Pro. Code* (1861).—In a case of forcibly rescuing cattle under this section of the Act, in which the accused did not summon any witnesses, it was held that, even if the accused wanted them summoned, the Magistrate under s. 262, Crim. Pro. Code (1861), need not have summoned them, unless persuaded that they were likely to give material evidence, and that they would not attend voluntarily. AKBAR TAGUDGEER v. PUNCHOO BISWAS, **10 W.R. Cr. 42.**

(9)—*Imprisonment in default of payment of fine.*—Although s. 13 of Act III of 1857 had not provided for awarding imprisonment in default of payment of fine, the High Court refused to interfere with a sentence of 15 days' imprisonment and fine or in default additional imprisonment for seven days, as unconditional imprisonment for six months in addition to fine would have been valid under the Act. HIGH COURT PROCEEDINGS, 9TH MARCH 1870, **5 M.H.C. App. 21.** [*Overruled*, 7 M.H.C. App. 22.]

(10)—S. 13—*See* ACT XVII OF 1862, 1 B.H. C. 100.

(11)—*S. 14—Illegal seizure of cattle and detention of cattle—Complaint—Stamp.*—The illegal seizure and detention of cattle, to which s. 14 of Act III of 1857, refers, is not an "offence" within the meaning of s. 31 and Sch. II, No. 1, cl. (*b*), of the Court Fees Act, VII of 1870. Complaints of such illegal seizure and detention do not require a stamp. If such complaints be stamped, it is not competent for the Court to direct that the accused shall repay the amount of such stamp to the complainant. REG. v. AVJI NARU, **8 B.H C. Cr. 22.**

(12)—*S. 17—Mischief — Cattle-trespass — S. 425, I.P.C.*—S. 425, I.P.C., supposes that the destruction was caused with the intention to cause wrongful loss or damage, and does not apply to cases of mere carelessness; and s. 17 of Act III of 1857 supposes the mischief (cattle-trespass) was done intentionally, and not by negligence. *In the matter of* ARAZ SIRCAR, **10 W.R. Cr. 29.**

I.—Imperial Acts—continued.

Act III of 1857 (Cattle Trespass)—*concluded.*

(13)—*S.* 18—*Jurisdiction of first-class Magistrate.*—By virtue of s. 21, Crim. Pro. Code, 1861, a Sub-Magistrate of the first class has jurisdiction to try an offence under s. 18 of the above Act, there being no provision in that Act as to the authorities by which offences committed under it are to be tried. REG. v. GANGA *kom* MHASU, **5 B.H.C. Cr. 13.**

(14)—*S.* 18—*Pigs—Public road—Damage—Trespass—Mischief.*—Where a person, through neglect, permitted a public road to be damaged, by allowing his pigs to trespass thereon, it was held that it amounted to an offence under s. 18 of Act III of 1857. *Held*, also, that the conviction was not illegal, because the land damaged was a public road, and that the right to use a public read is limited to the purposes for which the road is dedicated. REG. v. LINGANA GIUBANA, **4 B.H.C. Cr. 14.**

Act V of 1857 (Oriental Gas Company).

[EXTENSION AUTHORIZED, WITH AMENDMENTS IN SS. 3, 7 AND 22, ACT XI OF 1867.]

S. 11—*See* RIOTING, W.R. 1864, Cr. 21.

Act VI of 1857 (Acquisition of Land for Public purposes).

[REP., ACT X OF 1870.]

S. 2—*See* MANDAMUS, 2 Ind. Jur. N.S. 24.

Act XI of 1857 (State Offences).

[SHORT TITLE GIVEN, ACT XIV OF 1897. REP. IN PART, ACT XVII OF 1862; ACT XII OF 1876. DECLARED IN FORCE—THROUGHOUT BRITISH INDIA EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3; IN KACHIN HILL-TRACTS AS REGARDS HILL TRIBES, REG. I OF 1895, S. 3; IN CERTAIN TRACTS CHIN HILLS, REG. V OF 1896, S. 3; IN CHITTAGONG HILL-TRACTS, REG. I OF 1900, S. 4.]

(1)—*Abetting the waging of war against the Queen—Forfeiture, Retrospective effect of—Act XXV of 1857, s. 3.*—The property of a judgment-debtor convicted of an offence under Act XI of 1857, which has been attached intermediately between the time of the commission of the offence and the time of conviction, is property forfeited to the Crown under s. 3 of Act XXV of 1857. The forfeiture relates back to the time of the commission of the offence. GUNNESH LALL v. AMEERKHAN, **17 W.R. 80 = 8 B.L R. 83.**

(2)—*S.* 1—*Conviction for rebellion—Remission of punishment—Effect of Queen's Proclamation.*—Where two persons were convicted of rebellion under Act XI of 1857, s. 1, and sentenced, the former to be transported for life and have all his property confiscated, and the latter to have all his property confiscated, held that the sentence of confiscation, was absolute, and did not depend upon the amount of punishment, and the fact of the punishment being remitted by the Governor-General did not restore the property. The Government having left the property of the convicts in the hands of the Administrator-General as administrator to the estate of the convicts' father whence it was derived, in whose hands it was allowed to accumulate pending a separate litigation in respect of that estate, while it asserted its right by virtue of the confiscation to the other property of the convicts the title to which was undisputed, held that the Government had sufficiently declared and acted upon its intention to enforce the confiscation. The Queen's proclamation of amnesty (November 1858), coming after the conviction and confiscation, was held not to have the effect of re-vesting in the convicts the property confiscated. *Held*, also, that the property in question, being Government paper, was liable to confiscation; and lastly, that the widow of the first convict was not entitled to maintenance out of the property confiscated by the State. GUNGA BAEE v. HOGG, **2 Ind. Jur. N.S. 124** [*R.*, 1 C. 365.]

(3)—S. 1—*See* FORFEITURE OF PROPERTY, 8 B.L.R. 83 = 17 W.R. 80.

Act XIII of 1857 (Opium).

[SHORT TITLE GIVEN, ACT I OF 1903. S. 1 REP., ACT XIV OF 1870; S. 2. REP., ACT I OF 1878; PREAMBLE REP. IN PART, ACT XII OF 1891; REP. (IN ASSAM), ACT V OF 1897). DECLARED IN FORCE—THROUGHOUT BENGAL (EXCEPT THE SAMBALPUR DISTRICT), EASTERN BENGAL AND AGRA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS. ACT XV OF 1874, SS. 6 AND 7; IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE CENTRAL PROVINCES AND THE SAMBALPUR DISTRICT (SS. 21 TO 23, 25 TO 29), ACT XX OF 1875, S. 3; IN OUDH (WITH MODIFICATIONS), ACT XVIII OF 1876, S. 3, AS AMENDED BY ACT XII OF 1891.]

(1)—*S.* 24—*Crim.Pro.Code* (1882), ss 4, 155, 156, 165—*Non-cognizable offence—Offence under s. 9, Opium Act (I of 1878)—Illegal search—Act XIII of 1857, s 24—Power of arrest.*—An offence under s. 9 of the Opium Act is not one for which a Police Officer may arrest without a warrant, as it is a non-cognizable offence. He cannot, therefore, investigate the case without the order of a Magistrate, nor can he make a search in respect of it. Therefore a Police Officer making a search under s. 9 of Act I of 1878, without being authorized to investigate into the offence, is liable to be sued for damages. S. 24 of Act XIII of 1857 does not authorize a Police Officer, unconditionally to arrest a person against whom the information mentioned in

I.—Imperial Acts—continued.

Act XIII of 1857 (Opium)—*concluded.*

that section has been received. It only authorizes a Police Officer to take security from the person informed against, and the power to take such person into custody arises only upon his default in giving security that may be demanded of him. But the power of arrest, under s. 4 (*g*), Crim. Pro. Code, is an unqualified power. BAHABAL SHAH v. TARAK NATH CHOWDHRY, **24 C. 691.**

(2) S. 26 —*See* HIGH COURT, JURISDICTION OF—GENERAL, 8 B.L.R. App. 7 = 16 W.R.Cr. 65.

Act XXV of 1857 (Forfeiture).

[SHORT TITLE GIVEN, ACT XIV OF 1897, REP. IN PART, ACT V OF 1869; ACT IX OF 1871. REP. IN PART AND AMENDED, ACT XII OF 1891. SUPPLEMENTED, ACT IX OF 1859. DECLARED IN FORCE—THROUGHOUT BRITISH INDIA EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Attachment against forfeited property.*—A judgment-creditor, who has *bona fide* attached property, at the time when the property of the debtor become forfeited to Government under the above Act, is entitled in priority to Government. OODIT DAS v. GOVERNMENT, **2 Hay 117 = Marsh. 259.**

(2)—*See* FORFEITURE OF PROPERTY, 14 W.R. 114.

(3)—*Ss. 2 and 7—Forfeiture of rebel's property—Annuity.*—The plaintiff joined with the rebels and took a leading part with them. A reward was set upon him as a rebel leader and, after a time, he was captured; no formal proceedings were taken, under ss. 2 and 7 of the Act, for adjudicating his property (which consisted of little more than annuity) to be forfeited. The property charged with the annuity was in the hands of the Collector as the Manager under the Court of Wards, the annuity was withheld and was no longer regarded as a charge on the estate but was treated as merged. *Held* that the mere withdrawal of the payment of annuity by these who had the management of the estate which was charged with the payment would be an illegal act in no way affecting the plaintiff's right, but, as the withholding of the payment was under the authority and direction of the official who was authorized to make the attachment of the rebel's property, it was with reference to the nature of the property equivalent to an attachment or seizure and could not be questioned except under the provisions of s. 18 of Act IX of 1859, nothwithstanding there had been no adjudication of forfeiture. CHUNDA v. ROOP SINGH, **3 Agra 281.**

(4)—*S. 3*—*See* ACT XI of 1857, 17 W.R. 80 = 8 B.L.R. 83.

I.—Imperial Acts—continued.

Act XXV of 1857 (Forfeiture)—*concluded.*

(5)—*Ss. 3 and 9—Grants for maintenance—Mitakshara Law—Impartible estates—Limitation—Infants—Custom.*—A person who was in possession of an estate was found to be guilty of rebellion. All his property was forfeited to the Government, and he was subsequently sentenced to death and executed. A suit was eventually instituted on behalf of his infaut son for the restoration of the land and the house which had been confiscated. The case made had two aspects:—One, that the estate, which had been granted towards maintaining the title and dignity of the Thakur was inalienable; the other, that it was subject to the Mitakshara Law, modified by the family custom of primogeniture, and that the plaintiff became, on his birth, a co-sharer with his father: *Held* that the grant being for maintenance, and the descent being to the heirs male, did not make the estate inalienable. So long as their was an heir male, the grantor or his heirs could not resume such an estate; but a particular law or custom is necessary to convert an estate, which is conditional upon there being an heir male, into an estate which cannot be aliened: *Held* that the Mitakshara, by which each son has by birth a property in the ancestral estate, is inconsistent with the custom that the estate is impartible, and descends to the eldest son, and was not applicable to this estate: *Held* that the suit was barred by s. 9 of Act XXV of 1857, which contains no exception in favour of infants, and that the right of action, having been extinguished, was not revived by the repeal of the Act. THAKUR KOPILNATH SAHI DEO v. GOVERNMENT, **22 W.R. 17 = 13 B.L.R. 445.** [*Appr.*, 3 C. 331; *F.*, 4 C. 283, 13 M. 197; *R.*, 22 M. 383, 1 C.L.J. 557; *D.*, 3 C.L.J. 521.]

(6)—*S. 7—Seizure and attachment of the property of rebels—Procedure.*—The procedure in regard to the seizure and attachment of property under Act XXV of 1857, and the adjudication of claims to such property under Act IX of 1859, pointed out. *Held* that it was not incumbent on a party aggrieved by acts done under these laws to bring a suit at all; but if he brought a suit, it must be brought within a year of the attachment of seizure complained of. A seizure within the meaning of s. 20, Act IX of 1859, meant such a taking possession of the property forfeited, as was referred to in s. 7, Act XXV of 1857—not only formal but actual. BYJNATH SINGH v. MESSRS. E. R. SOLANO, **14 W.R. 114.**

(7)—S. 7—*See* No. 3, *supra.*

(8)—*S. 8—Order under the section—Cancellation.*—If a Special Commissioner appointed under the Act makes an order under s. 8 acquitting a person and directing the release of his property, he cannot afterwards on his own motion cancel such order. JANKI PRASAD v. RAI PARTAP CHAND BAHADUR, **A.W.N. 1897, 129.**

(9)—S. 9—*See* No. 5, *supra.*

I.—Imperial Acts—continued.

Act X of 1858 (Confiscation, etc., for Rebellion).

[REP., ACT VIII OF 1868.]

Effect of forfeiture.—The confiscation of a village under the above Act cancels the right of the tenants, and the fact that they were permitted to retain their holding on rent and enjoy the produce of the trees for some years subsequent to the confiscation does not revive the rights which are absolutely avoided by the confiscation. TEEKUM SINGH v. DULLO, **2 Agra 324.**

Act XXXVI of 1858 (Indian Lunatic Asylums).

[SHORT TITLE GIVEN, ACT XIV OF 1897, REP. IN PART, ACT XVI OF 1874. REP. IN PART AND AMENDED, ACT XX OF 1889. AMENDED ACT XVIII OF 1886, S. 17 B. AMENDED IN BENGAL, BENGAL ACT I OF 1909. DECLARED IN FORCE—THROUGHOUT BRITISH INDIA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN THE SANTHAL PARGANAS, REG. III OF 1872, S 3; AS AMENDED BY REG. III OF 1899, S. 3; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3.]

(1)—*Duty of Magistrate—Illegal confinement—Safeguards against designing people.* — A Magistrate has no power to consign a lunatic to an asylum or a jail on his own mere unprofessional opinion. He must have before him the deliberate statements of a Medical Officer. Even then he has to form his own judicial opinion on the question of lunacy; and if he commits, the lunatic comes at once into a custody superintended by the Chief Commissioner. A long experience has shown that, if these safeguards are lost sight of, designing or careless people will use the Court's process against the alleged lunatic for nefarious purposes. In the case of females, the hardship and danger are more to be feared than in the case of men. QUEEN-EMPRESS v. MOI LAN, **L.B.R. 1872 -1892, 87.**

(2)—S 4—*See* ACT XXII OF 1864, s. 11, 9 C. 341 = 13 C.L.R. 185 = 9 I.A. 152 = R. and J. No. 69, P.C.

Act I of 1859 (Merchant Shipping).

[SHORT TITLE GIVEN, ACT XIV OF 1897; REP. IN PART., ACT XV OF 1863; REP. IN PART. ACT XIV OF 1870; REP. IN PART. ACT XVI OF 1874; REP. IN PART. ACT IV OF 1875; REP. IN PART, ACT XII OF 1876; AM. ACT XIII OF 1876, SS. 9, 10; AM., ACT V OF 1883, SS. 34—37; AM., ACT VI OF 1891, SS. 1—5; AM., ACT XII OF 1891; SS. 23, 24 A; AM., ACT VI OF 1906. DECLARED IN FORCE THROUGHOUT B.I., EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3.]

I.—Imperial Acts—continued.

Act I of 1859 (Merchant Shipping)—*concluded.*

(1)—*Crim. Pro. Code* (1861), s. 409 (s. 408, *proviso of the Code of* 1898)—*Sentences under Merchant Seamen's Act—Appeal.*—Sentences of Justices of the Peace under the Merchant Seamen's Act (I of 1859) are appealable, and the Courts of Sessions are, therefore, competent to entertain such appeals. *In re* W. M. EVANS, **2 Weir 461 = 2 M.H.C. 473.**

(2)—*See* EUROPEAN BRITISH SUBJECT, 2 Weir 578 = 7 M.H.C. App. 32.

(3)—*S.* 83, *cls* 1 *and* 2 —*Liability of seamen in Calcutta to imprisonment for desertion.*—The amendment of cls. 1 and 2 of s. 243 of the Merchant Shipping Act, 1854, by 43 and 44 Vic., c. 16, does not affect the liability of seamen in Calcutta, under s. 83 of Act I of 1859, to imprisonment. J. BRUCE v. C. CRONIN, **12 C. 438.**

(4)—*S.* 83 (4)—*Magistrate of Cochin—Justice of the Peace—Jurisdiction.*—Where the Magistrate of Cochin, a Justice of the Peace but not a European British subject, convicted and sentenced a merchant seaman, a European British subject, for the offence of wilful disobedience to orders under cl. 4, s. 83 of the Act, it was held that, by force of s. 72 of the Crim. Pro. Code, 1872, the Magistrate had no jurisdiction. HIGH COURT PROCEEDINGS, 18TH DEC. 1872, No. 2243, **2 Weir 578 = 7 M.H.C. App. 32.**

(5)—*S.* 83 (5)—*European British subjects—Jurisdiction of Magistrate.*—A Magistrate has no jurisdiction to try an European British subject for an offence under s. 83 (5) of Act I of 1859. The jurisdiction to try the case vests only in the High Court. HIGH COURT PROCEEDINGS, 22ND DEC. 1868, **4 M.H.C. App. 23.**

(6)—*S.* 83 (5)—*Applicability of Merchant Shipping Act*, 17 *and* 18 *Vic., Ch.* 104, *to India.*—The Merchant Shipping Act, 17 and 18 Vic., Ch. 104 has no application to British India. Where the offence mentioned in that section is committed in India, the punishment must be under s. 83 (5) of Act I of 1859. *In re* WILLIAM JOHN REARDON, **1 Weir 898 = 8 M. H.C. 85.**

(7)—*S.* 83 (5) (7)—*Combining to disobey.*—Where two or more persons wilfully disobey lawful commands, they cannot be convicted both of combining to disobey and also of disobedience, under cls. 5 and 7 of s. 83 of Act I of 1859, the transaction being one and the same. KING-EMPEROR v. PHILIP, C. L., **3 Bom. L. R. 539.**

(8)—*S.* 111—*Deposition of absent witness.*—The deposition of a person, other than a merchant seaman, is not admissible in evidence under the above section of the Act. QUEEN v. RAMCOMAL MITTER, **1 Hyde 195.**

Act VIII of 1859 (Code of Civil Procedure).

[REP., ACT X OF 1877.]

(1)—S. 81—*See* RIGHT OF SUIT, 18 W.R. 27.

I.—Imperial Acts—continued.

Act VIII of 1859 (Code of Civil Procedure) —*concluded.*

(2)—Ss. 276, 278—*See* SUBSISTENCE—MONEY, 5 B.L.R. Ap. 79.

(3)—S. 278—*See* No. 2, *supra.*

Act IX of 1859 (Forfeiture).

[SHORT TITLE GIVEN, ACT XIV OF 1897; REP. IN PART, ACT VIII OF 1868; REP. IN PART, ACT XII OF 1891; SS. 16 TO 18 AND 20 DECLARED IN FORCE—THROUGHOUT B.I., EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN BRITISH BALUCHISTAN (EXCEPT THE LAST PARA. OF S. 18), REG. I OF 1890, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—S. 18—*See* ACT XXV OF 1857, SS. 2 and 7, 3 Agra 281.

(2)—S. 18—*See* FORFEITURE OF PROPERTY, 3 Agra 281.

(3)—S. 20—*See* ACT XXV OF 1857, S. 7, 14 W.R. 114.

Act XIII of 1859 (Workman's Breach of Contract).

[SHORT TITLE GIVEN, ACT XIV OF 1897; REP. IN PART, ACT XVI OF 1874, APPLICATION SUSPENDED IN CERTAIN CASES, MAD. ACT I OF 1903, S. 2.]

(1)—*Strict construction of the Act—Advance essential.*—Act XIII of 1859 being a Penal Act must be construed strictly. An advance of *money* is an essential preliminary to the creation of an obligation under the Act. *In re* CHINNABATHUDU, **1 Weir 693.**

(2)—*Advance essential for operation of Act.*—Unless it is shown that money has been received in advance from the complainant, no case arises to which the provisions of the Act can become applicable. The supply of material with which work is to be done cannot be treated as equivalent to payment of money and the fact that the material was a precious one cannot make any difference. *In re* MATHURAIMUTHU ASARY, **1 Weir 692.**

(3)—*Application of the Act — Advance of money essential.*—Act XIII of 1859 only applies where there has been "an advance of money on account of any work," which words do not include mere loans or old debts, and the language used shows plainly that the interference of the Magistrate is limited to cases where the neglect or refusal to perform is wilful and without lawful and reasonable excuse. As a rule, a mere breach of contract ought not to be an offence, but only to be the subject of a civil action. Act XIII of 1859 is, like Ch. 19 I.P.

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

C., an exception. But the Magistrate has to use a judicial discretion and to consider whether any excuse averred is lawful and reasonable. And a man cannot be treated as a criminal for not performing a contract which could not be enforced against him by civil process. QUEEN-EMPRESS v. RAJAB, **16 B. 368.** (8 W.R. 69, Cr., 9 B.H.C. 271, 2 M.H.C. 427, 11 A. 262, 14 W.R. Cr. 29, 18 W.R. Cr. 53, 7 B. 379, 7 M. 131, 3 A. 744, 11 M. 362, *R.*) [*F.*, 11 Cr. L.J. 329=5 Ind. Cas. 914=9 P.R. 1910 Cr.= 12 P.W.R. 1910, Cr., 23 P.R. 1913 Cr.=15 Cr. L.J. 166=22 Ind. Cas. 742, Rat. Un. Cr. C. 874.]

(4 & 5)—*Advance to labourer must be on account of work*—Under Act XIII of 1859, there must be an advance of money on account of work which a labourer has contracted to perform; though the labourer might lawfully consent to take paddy in lieu of money, it is essential that the advance should be on account of the work to be performed. *In re* THOLEGA RAMA, **1 Weir 683.**

(6)—*Advance must be in payment of work.*—Where sovereigns were advanced to the accused, not in payment of the work, but as material to be worked up, *held*, that there was no advance within the meaning of Act XIII of 1859. *In re* KOTHIATH CHOYI, **1 Weir 693.**

(7)—*Advance must be in payment of work to be done*—Where money is advanced to a workman, not in payment of work to be done, but merely to be used as raw material, the money advanced is an advance within the meaning of Act XIII of 1859. HIGH COURT PROCEEDINGS, 26TH APRIL 1871, **1 Weir 701=6 M.H.C. App. 24.** [*R.*, 1 Weir 692.]

(8)—*There must be some balance left in the advance for which work has not been done.*—This Act relates to fraudulent breaches of contract, and does not apply where an advance has not only been worked off by a labourer, but an actual balance is due to him. TARA DOSS BHUTTACHARJEE v. BHALOO SHEIKH, **8 W.R. 69. Cr.** [*Diss.*, 11 A. 262; *R.*, 16 B. 368.]

(9)—*Advance immediately returned*—Where the accused, who owed a certain sum to the complainant, agreed to work upon the complainant's estate for a certain period, and the complainant, in order to make the contract a valid one, advanced the amount to the accused, who received it and immediately returned it to the complainant, *held*, that there was no advance within the meaning of the Act. INNASI MAISTRY v. THOMAS MURRAY, **1 Weir 685.**

(10)—*Bond—Repayment of sum advanced by instalments.*—Where the money was not advanced on account of work contracted to be done,

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

but was a mere loan to be repaid by monthly instalments out of the wages earned during the contracted period of service, such a contract was held to be not one within the provisions of the Act. QUEEN-EMPRESS v. NINGAPPA, **Rat. Un. Cr. C. 754.**

(11)—*Agreement to repay advance by deduction from wages accruing due.*—Where in an agreement for work there was a clause that the advance was to be repaid by a deduction from wages that were to accrue due for services, *held*, that there was nothing oppressive in the contract, as the clause for re-payments by deduction from wages was controlled by the agreement to work only for a specific number of months in the aggregate, and as a breach of the agreement, at a time when the wages due were in excess of the advance remaining unpaid, would not be fraudulent though wrongful. *In re* CHOWRI MUTHU, **1 Weir. 707.**

(12)—*Contract providing for portion of wages going periodically in reduction of advance—Effect.*—A contract to the effect that the workman shall work for wages, deducting from his wages a certain sum periodically to make good an advance, is within the Act XIII of 1859. JELAGAN SUBRAMANIA NAIDU v. SINGARA MUDALI, **27 M L.J. 616.** (7 M. 131, 23 M. 208, *F.*)

(13)—*Advance made to labourer for marriage expenses.*—Where a certain amount of money was advanced to the accused for marriage and other expenses, but not for work to be performed, *held*, that the advance was not one within the meaning of Act XIII of 1859. *In re* GOPALA PADAYACHI, **1 Weir. 684.**

(14)—*Advance in the nature of debt.*—The provisions of the Workman's Breach of Contract Act, 1859, do not apply where the advance is literally or practically in the nature of a debt, and where, even assuming that the advance is not in the nature of a debt, the conditions are inequitable. The Act does not apply where the advance is not to be paid off by the work done but out of the wages the workman was to receive. *In re* ABDUL RASUL ISMAILJI, **13 Bom. L.R. 548 = 11 Ind. Cas. 586 = 12 Cr. L.J. 402.** [*R.*, 14 Bom. L.R. 956 = 13 Cr. L.J. 853 = 17 Ind. Cas. 789, 15 Cr. L.J. 383 = 23 Ind. Cas. 751 = 7 S.L.R. 100.]

(15)—*Advance by way of loan.*—The provisions of the Act in question can only apply to the case of a workman, who has received from his employer an advance of money on account *of any work* which he has contracted to perform; they do not apply to a case, in which the workman has only received a loan from his master or employer, without any reference to his wages for the work which he has agreed to do, and the loan has to be repaid by monthly instalments extending over a certain period, without any deductions being made from the wages in respect of those instalments. The Act (XIII of 1859) which is of a penal nature has to be construed very strictly. GANESHI LAL v. SHUGAN CHAND, **9 P. R. 1910, Cr. = 5 Ind. Cas. 914 = 12 P.W.R. 1910, Cr. = 11 Cr. L. J. 329.** (3 A. 744, *F.*; 16 B. 368, 17 P.R. 1890, Cr., *R.*) [*R.*, 23 P. R. 1913, Cr.]

(16)—*Contract to work in consideration of previous debt.*—Where the accused agreed to serve the complainant for 972 months in consideration of money due to the complainant on account of former debts, but left the service after three months, *held* that there was no fraudulent breach of contract within the meaning of Act XIII of 1859, so as to render the accused liable to be dealt with criminally, and that the Act was not applicable, as no money was received in advance, the consideration for the agreement to work being an old debt. REG v. JETHYA *valad* VESTYA, **9 B. H. C. 171.** [*F.*, 16 B. 368, 11 Cr. L. J. 329 = 5 Ind. Cas. 914 = 9 P. R. 1910 = 12 P.W.R. 1910 Cr.]

(17)—*Agreement to work until re-payment of personal and ancestral debts.*—Where the accused bound himself to work for the complainant, until the repayment of a sum found due to the complainant on a settlement of accounts in respect to certain personal and ancestral debts, *held*, that such a contract did not come under the provisions of Act XIII of 1859. HIGH COURT PROCEEDINGS, 2ND NOV. 1880, No. 2197, **1 Weir. 680.**

(18)—*Advance without interest, but not on account of work to be performed.*—Where an advance without interest was made to the accused, on condition that he should perform service, but not on account of work to be performed, *held*, that the provisions of Act XIII of 1859 were not applicable to that contract. *In re* KALI, **1 Weir. 684.**

(19)—*Advance of money to be repaid without interest.*—Where an employer advanced a sum of Rs. 100 to the accused, who bound himself to work for the complainant with his wife for a certain period, during which he received wages both for himself and for his wife and after which the loan was to be repaid without interest, *held*, that the contract was not one contemplated by Act XIII of 1859. HIGH COURT PROCEEDINGS, 9TH JAN. 1880, No. 39, **1 Weir 681.** [*F.*, 23 M. 203 = 1 Weir 687 = 1 Weir 682, 1 Weir 683.]

(20)—*Advance to induce workman to enter into contract of service.*—Where an advance is made to a person to induce him to enter into a contract of service, but not for work which such person contracts to perform, the contract is not one within the meaning of Act XIII of 1859. *In re* RAJAH SAHIB, **1 Weir. 684.**

(21)—*Loan given to labourer on condition that the latter should enter into a contract of service.*—Where, by a written agreement entered into with the proprietors of certain estate,

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

a number of workmen agreed to work on that estate for a period of four years and one month for an initial advance of one rupee each, in respect of which it was expressly stipulated that it should not be repaid till after the expiration of the agreement, *held*, that the sum of one rupee given on the date of the agreement was not "money advanced on account of work to be performed," but rather a loan, made without interest, on the condition that the defendants would enter into a contract of service for the duration of the loan, namely, four years and one month. The provisions of Act XIII of 1859 were, therefore, held to be inapplicable to that loan TANGI JOGHI v. HALL, 23 **M. 203 = 1 Weir 687.** [*F.*, 17 Ind. Cas. 420 = 23 M. L. J. 513 = 1912 M. W. N. 1152; *R.*, 22 Ind. Cas. 742 = 23 P. R. 1913, 14 Cr. L. J. 400 = 20 Ind. Cas. 224.]

(22)—*Receipt of advance—Contract of loan on condition that debtor will work for complainant.*—Where an accused received an advance from the complainant and contracted that he would work for a year under the complainant and would then repay the advance, *held*, that the Act does not apply to a contract of this nature. The contract was a loan, with a condition attached that the borrower should work for the complainant. The Act applies only where there has been a contract for work, with money given as wages in advance. EMPEROR v. GOOROOMOONDIAN. **4 Cr. L. J. 200 = 3 L. B. R. 187.** (3 A. 774, *F.*)

(23)—*Receipt advance—Contract to work until repayment—Construction of the Act.*—Such a construction of the Act as would enforce a contract in violation of law of a more stringent nature must not be adopted. Where a labourer agreed, in consideration of an advance of money received from the complainant, to work for the latter until the repayment of the amount advanced, *held*, that the contract was not within the Act. HIGH COURT PROCEEDINGS 12TH DEC. 1873, No. 2181, **1 Weir 680 = 7 M. H. C. App. 30.** [*F.*, Rat. Un. Cr. Cas. 754, 1 Weir 680, 681; *D.*, 1 Weir 686.]

(24)—*Advance of money by employer.*—In consideration of the accused agreeing to work for wages in a tannery, the proprietor advanced to him Rs. 10, which was to be worked off, annas 8 *per* week being deducted from the wages which would accrue due. *Held*, that the provisions of Act XIII of 1859 would apply to such a case. QUEEN v. TULUKANAM, **7 M. 131 = 1 Weir 685.** [*F.*, 14 Cr. L. J. 400 = 20 Ind. Cas. 224; *R.*, 16 B. 368 (370), 23 M. 203, 22 Ind. Cas. 742 = 23 P. R. 1913.]

(25)—*Advance of money by employer to be repaid out of wages.*—Where an employer advanced a sum of Rs. 10 to a workman, which was to be repaid out of the wages earned by instalments of 1 rupee in each month, *held* that the money should be regarded as money advanced on account of work to be performed and the provisions of Act XIII of 1859 were applicable to the case. TANGI JOGHI v. HALL, **23 M. 203 = 1 Weir 687.** [*F.*, 17 Ind. Cas. 420 = 23 M.L J. 513 = 1912 M W.N. 1152; *R.*, 22 Ind. Cas. 742 = 23 P.R. 1913, 14 Cr.L.J. 400 = 20 Ind. Cas. 224.]

(26)—*Application of Act—Specific work—Advance for work which workman was already doing.*—The loans that can be recovered under Act XIII of 1859, are the loans which are advanced by employers to their workmen for doing specific work. When the money was advanced, not for doing any particular work, but for the work which the workman was already doing, and the work was finished by the time of prosecution, *held* that the Act did not apply. **Giga v. Muhammad Amin, 10 A.L.J. 468 = 13 Cr. L.J. 863 = 17 Ind. Cas. 799 = 35 A. 61.**

(27)—*Order for immediate repayment of advance.*—An order to repay the advance on the spot is not absolutely illegal, provided the Magistrate has passed the order in accordance with the option of the complainant. *In re* PULLENCHERI HYDER, **1 Weir. 699.**

(28)—*Certain cases that do or do not fall within the scope of this Act—Contract to supply labour.*—A person who merely undertakes to supply labour, but does not undertake to be present and see the work done, is not a labourer within the meaning of the Act. *In re* KOLANTHAI GOUNDAN, **1 Weir. 678.**

(29)—*Contract to supply labour and to get labour performed.*—A contract to supply labourers and to get labour performed, although the nature and extent of the work to be performed are not clearly specified, comes under the provisions of Act XIII of 1859. ROWSON v. HANAMA MESTRI, **1 M. 280 = 1 Weir 675.**

(30)—*Contract to supply goods.*—Where the accused did not undertake to give his personal labour to the complainant, but only agreed to supply lime for him, *held*, that his contract did not fall within the scope of Act XIII of 1859. *In re* LAL KHAN, **1 Weir. 691.**

(31)—*Contract to do or get work done on supply of materials.*—An agreement to do or get done a specific work within a given time, and to do that work with the tools supplied by the employer, falls within the scope of the Act. *In re* VARADA CHETTI, **1 Weir. 686.**

(32)—*Contract for the bringing and letting of carts.*—The letting of carts, whether at the place where the bargain is made or elsewhere, at a specified rate for the journey is not a contract for the employing of an artificer, workman, or labourer, within the meaning of the Act. *In re* KESHAV RAMACHANDRA, **Rat. Un. Cr. C. 349 = Cr. Rg. 39 of 1887.** [*F.*, Rat. Un. Cr. Cas. 537.]

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

(33)—*Contract to perform agricultural work—Stipulation to pay penalty in the event of non-performance — Applicability of the Act.*—The preamble and the other provisions of the Act show that it was not intended to apply to a contract to perform agricultural service (7 B. 379, *R.*). Where a contract prescribes a penalty for its breach, the remedy prescribed by this Act cannot be availed of. CROWN v. KHUDA BAKSH, **38 P.R. 1914 Cr.** (96 P.L.R. 1914, *R.*)

(34)—*Contract to carry salt by boat.*—A contractor for the transport of salt from certain factories entered into an agreement with another to convey salt by boat taking an advance. *Held*, that the contract did not fall within the provisions of Act XIII of 1859, as there was nothing to show that the defendant pledged himself to render personal labour, nor the complainant could be considered as an employer of labour. CALURAM v. CHENGAPPA, **13 M. 351 = 1 Weir. 691.** [*F.*, Rat. Un. Cr. Cas. 537 ; *R.*, 9 Cr. L.J. 107 = 28 P.R. 1908, Cr. = 16 M.L.T. 235 = 1914 M.W.N. 651.]

(35)—*Liability of contractor.*—As the Act applies to cases in which a workman has undertaken to get work performed, as well as to cases in which he undertakes personally to perform it, there may be cases in which a contractor is liable to proceedings under the Act. But the contractor must himself be a workman. A person whose ordinary business is that of a contracting bricklayer, and who does not himself work, is not a workman within the meaning of the Act with reference to the contract for earthwork. GIBLY v. SUBBU PILLAI, **7 M. 100 = 1 Weir. 690.** [*F.*, 10 B. 96, U.B.R. 1903, 4th Qr., W.B. of Contract, 3 ; *R.*, U.B.R. 1904, 1st Qr. W. B. of Contract 1, 15 Cr. L.J. 235 = 23 Ind. Cas. 187 = 7 L.B.R. 82 = 16 M.L.T. 235 = 1914 M.W.N. 651.]

(36)—*Contractor.*—Act XIII of 1859 applies to cases in which the workman has undertaken to *get work performed*, as well as to cases in which he undertakes *personally to perform* it, so that there may be cases in which a contractor is liable to proceedings under the Act. But, in such cases the contractor must be himself a workman. The Act does not apply to a contract made by a person who is not himself an artificer, workman, or labourer, but merely a contractor ASGAR ALI v. SWAMI, **U.B.R. 1902—1903, Vol. I, W. Br. Cont. 3.** (7 M. 100, *R.*) [*R.*, 4 Ind. Cas. 827 = U.B.R. 1909, Vol. II, W. Br. of Contract, 1.]

(37)—*Artificer, labourer or workman.* — A person who, in the ordinary course, would himself take part in the work he contracted for, is an artificer, labourer or workman, within the scope of the Workman's Breach of Contract Act, 1859. The terms of a contract were as follows : "The petitioner should provide the materials and labour and the sum was fixed at Rs. 269. Out of this sum Rs. 100 had already been paid and Rs. 50 were to be paid when the payment of the ghat contracted to be done was begun. The work was to be completed within a month ; and if it should be washed away in the monsoon, the petitioner was to re-build it. If the complainant herself had to finish the work, the petitioner would pay her." *Held* that the petitioner came within the scope of the Act. QUEEN-EMPRESS v. AMIR KHAN, **Rat. Un. Cr. C. 204 = Cr. Rg. 24-7-1884.**

(38)—*Artificer, workman or labourer—Head-carpenter—Whether falls under the term — Liability to prosecution.*—A person who is a 'carpenter-contractor' or 'head-carpenter' under whose supervision and direction the house was to be built by journeyman-carpenter, is 'an artificer, workman or labourer' within the meaning of the Workmen's Breach of Contract Act, and is not exempted from liability to prosecution under the Act. SEIN YIN v. AH MOON SHOOKE, **7 L.B.R. 82 = 15 Cr. L.J. 235 = 23 Ind. Cas. 187.** (7 M. 100, *D.*)

(39)—*Employer—Broker or middleman is not employer—Construction.*—A person, who does not himself employ labour, but is a mere broker or middleman supplying labour to an employer or master, is not entitled to take proceedings as an employer against the workman under the Workmen's Breach of Contract Act. The Workmen's Breach of Contract Act should be strictly construed. EMPEROR v. NAGA TIMA, **14 Bom. L.R. 956 = 1 Bom. Cr. C. 200 = 13 Cr.L.J. 853 = 17 Ind. Cas. 789.** [*R.*, 15 Cr. L. J. 383 = 23 Ind. Cas. 751 = 7 S.L.R. 100].

(40)—*Cooly.*—Where a cooly received from the complainant, a maistry, a certain sum, and agreed to work for nine months in an estate, receiving four annas a day for his wages and to repay the money advanced after the fulfilment of the contract, *held*, that the sum of money paid to the accused was not money advanced on account of work to be performed, but it was a payment made on condition that the defendant would enter into a contract of service for nine months, to which the Act was not applicable. *In re* KANDAPPA GOUNDAN, **1 Weir 682.** [*F.*, 1 Weir 683, 1 Weir 687 = 23 M. 203.]

(41)—*Coolies in Assam.*—Coolies in Assam, who have received advances in contemplation of work to be done, may be proceeded against under the Act. QUEEN v. GAUB GORAH CACHAREE, **8 W.R. Cr. 6.**

(42)—*Cooly gaung.*—A cooly gaung may be a workman or labourer within the terms of the above Act, even though such cooly does none of the work with his own hands. MAUNG TUN v. FASIL KADRE, **U.B.R. 1904, 1 Quarter Workman's Breach of Contract 1.** [*R.*, 11 Cr. L.J. 58 = 4 Ind. Cas. 827 = U.B.R. 1907—1909, Vol. II, Work man's Breach of Contract 1.]

(43)—*Agreement to collect coolies—Agreement for personal service in default.*—An agreement

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

by a person, in consideration of an advance of money, to collect coolies to work on a coffee-estate, and to pay penalty for every day's delay in supplying labour and to serve as a cooly for five years in the event of the contract not being fulfilled, was held to be an agreement within the scope of Act XIII of 1859. The penalty prescribing personal service would not take the case out of the scope of the Act, inasmuch as, even if that part of the agreement was invalid, the complainant was still entitled to claim the performance of the substantive agreement, if still capable of performance, or the re-payment of the advance. RAMASWAMI v. KANDASAMI, **8 M. 379=1 Weir. 679.** [*R.*, 3 L.B.R. 33, 1 Weir 686.]

(44)—*Cobblers.*—The accused, cobblers, received from the complainant an advance of Rs. 25, promising to work under him till the sum advanced was worked off by deducting the value of the shoes stitched by him, *held*, that the contract was within the purview of Act XIII of 1859. *In re* VEERAN, **1 Weir. 687.**

(45)—*Applicability of Act to domestic servants.*—Act XIII of 1859 does not apply to private domestic servants, *e.g.*, a horsekeeper, but applies only to artificers, workmen or labourers. *In re* SULLIMON KHAN, **1 Weir 688.** [*F.*, 1 Weir 689].

(46)—*Factory labourer.*—A labourer, who contracted with the manager of a silk-factory for a money consideration to work at the factory for four months in a year for a period of three years, and broke the terms of the contract, was held liable to a prosecution under the Act, and the order of the Magistrate, holding that such a contract was an unreasonable one, and, therefore, one which ought not to be enforced by him, was set aside. KOONJOBEHARRY LALL v. RAJAH DOOMNEY and KOONJOBEHARRY LALL v. RUGHOONATH DOME, **14 W.R. Cr. 29.** [*R.*, 16 B 368.]

(47)—*Contract to work at factory.*—Case where the High Court declined to exercise its powers of revision, on the ground that Act did not apply to this contract, which was a contract to work at a certain factory. JAMES LYALL AND CO. v. RAM CHANDER BAGDEE, **18 W.R. Cr. 53.** [*R.*, 16 B. 368.]

(48)—*Surety of workmen.*—Act XIII of 1859 does not extend to a surety for the "artificer, workman or labourer." QUEEN-EMPRESS v. BHILA NANA SHET, **1 Bom. L.R. 523.**

(49)—*Agreement to convey clay within the Act.*—A conveyance of clay by the personal labour of the person who undertakes the same is '*work*' within the meaning of the Workmen's Breach of Contract Act. The requirements to make the Act applicable discussed. MAMU BEARI v. EMPEROR, **16 M.L.T. 235=(1914) M.W.N. 651=27 M.L.J. 392=15 Cr. L. J. 651=25 Ind. Cas. 979.**

(50)—*Where work is actualy completed at time of complaint, Act does not apply.*—The Act has no application to cases in which the work has actually been completed at the time of the complaint. HIGH COURT PROCEEDINGS, 29TH MAR. 1865, **1 Weir. 670.** [*F.*, 23 M. 37=2 Cr. L.J. 149=1 Weir. 671, A].

(51)—*Contract for work—Indefinite terms, effect of.*—Where the accused engaged to cut a channel and received advance in money and grains, but the contract did not contain any definite term in accordance with which the work was to be executed, *held* that there was no contract for the breach of which the accused would be liable under Act XIII of 1859. *In re* ANNAMALAI, **1 Weir. 692.**

(52)—*Agreement to complete a specific work within a specified time.*—Where a carpenter agreed to build, in a month's time, a bandy out of the materials to be supplied to him, and a Magistrate, on default being made, ordered him to perform the contract 8 months afterwards, *held*, that the order was legal, inasmuch as the essential part of the agreement was that a certain specific article should be made within a reasonable time, the month being fixed as a guide to what would be a reasonable period. *In re* MADURAI CHETTI, **1 Weir. 705.**

(53)—*Contract of service for limited period.*—Where the defendant received an advance of Rs. 6 and agreed to work as an agricultural labourer for a period of one year, *held*, that there was nothing illegal in the contract, because the period was a limited one. *In re* KADAPANATHAM MUNIGADU, **1 Weir. 706.**

(54)—*Contract to work for a specific period and for a further period in case of default.*—Where the accused receiving an advance, agreed to work with a cooly on the plaintiff's estate from the 4th June, 1884 to the 30th April, 1885, and to continue to work for as many days after the 30th April as he should have made default in working during the term, *held*, that the special agreement to work for an additional number of days after the 30th April, 1885, in case of default was not bad in law. A Magistrate, on such default occurring, should specify the number of days the accused was bound to work after the 30th April, 1885. *In re* CHOURI MUTHU, **1 Weir. 707.**

(55)—*Contract to work for twelve years.*—A contract to work 8 hours a day for 12 years, for wages not shown to be above the market-rate, and to live in any house that may be provided, being otherwise a form of slavery, is illegal. Where an advance made to a workman is merely a loan, Act XIII of 1859 does not apply. *In re* AMBU, **15 Cr. L.J. 384=23 Ind. Cas. 752.**

(56)—*Contract of service for a long period, not within scope of the Act.*—The Act does not contemplate a contract involving a service extending over a long period, in the circumstances which would probably leave the contractor, at the close of the period, indebted to

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the employer and make it necessary for him to re-arrange himself for a further period, a result which would practically countenance a kind of slavery. HIGH COURT PROCEEDINGS, 9TH JAN. 1880, No. 39, **1 Weir. 681.**

(57)—*Inquiry under the Act, nature of.*—When a complaint has been made against an artificer, workman, labourer, under Act XIII of 1859, that, having received an advance, he has failed without reasonable excuse to perform his contract, the inquiry to be made under the first part of the second section of the Act is not an inquiry into an offence which may be tried summarily. It is an inquiry of a special character, which, in some cases, may require to be conducted with much care and patience. POLLARD v. MOTHIAL, **4 M. 234=1 Weir 695=2 Weir 325.** [*F.*, 33 B. 22 (24)=6 Bom. L.R. 255=1 Ind. Cas. 378, 2 L.B.R. 163 (164), U.B.R. 1902, 3rd Qr.. Workman's Breach of Contract Act 1 ; *R.*, 27 C. 131 (132)].

(58)—*Inquiry under the Act—Terms of contract should be ascertained.*—In a proceeding under the Workman's Breach of Contract Act, 1859, the first thing to be ascertained is, whether the artificer, workman or labourer entered into a valid contract, and if so, has, wilfully and without lawful or reasonable excuse, neglected or refused to perform work according to the terms of the contract. In order that this may be ascertained, it is quite clear that the terms and circumstances of the contract must be accurately ascertained. EMPEROR v. NAMDEO SAKHARAM, **12 Bom. L.R. 135.**

(59)—*Several contracts—Procedure.*—Where the contracts are several, each defendant should be proceeded against separately. *In re* RAYA, **1 Weir. 707.**

(60)—*Summary trial under the Act.*—An offence under the Workman's Breach of contract Act, cannot be tried summarily. EMPEROR v. DHONDU KRISHNA KAMBLYA, **6 Bom. L.R. 255.** (4 M. 234, *F.*; 1 Weir. [494, 11 A. 262, *N.F.*) [*F.*, 33 B. 25=10 Bom. L.R. 1126=8 Cr. L.J. 409.]

(61)—*Summary punishment—Practice.*—An offence under the Workman's Breach of Contract Act, 1859, cannot be punished summarily. EMPEROR v. BALU SALAJI, **10 Bom. L R. 1126=33 B. 25=8 Cr. L.J. 409=1 Ind. Cas. 387.** (6 Bom. L.R. 255, *F.*).

(62)—*Madras Act* III *of* 1865 — *Extent of punishment.*—Madras Act III of 1865 authorises any Magistrate to take cognizance of any offence against any special or local law in force, notwithstanding any provision to the contrary in any existing Act or Regulation, and *inter alia* of offences under Act XIII of 1859. But as to the amount of punishment, he shall be restrained within the limits of his ordinary jurisdiction. HIGH COURT PROCEEDINGS, 9th August 1869, **4 M.H.C. App. 64.**

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract) – *continued.*

(63, 64)—*Proceedings under the Act—Jurisdiction of Magistrate, condition precedent, for issuing a warrant.*—Either the Court within whose local limits, a workman, labourer or an artificer resides, or the Court within whose local limits the refusal to perform his contract occurs has jurisdiction to hear the complaint. The warrant issued by the latter Court may be executed outside its local jurisdiction. Before a warrant is issued under Act XIII of 1859, a Magistrate should inquire into the fact and satisfy himself that a good *prima facie case* is made out. When such case is made out, the Magistrate is bound to issue process and should not refer the complainant to a Civil Court. MANA LAL v. VAHIA, **17 P.R. 1896, Cr.** [*Foll, & Appr.*, 6 Ind. Cas. 618=12 P.R. 1910 Cr.=13 P.W.R. 1910 Cr.=11 Cr. L.J. 380.]

(65)—*Issue of warrant—Power of Magistrate.*—Act XIII of 1859 authorises the Magistrates, on a complaint being made, to issue a warrant, and the provisions of the Crim. Pro. Code apply to that warrant. Therefore, s. 83 of the Crim. Pro. Code (1882) is applicable to warrants issued under the provisions of Act XIII of 1859. QUEEN-EMPRESS v. KATTAYAN, **20 M. 235=2 Weir. 40=1 Weir. 697.** QUEEN-EMPRESS v. MUTTIAYYA, **20 M. 457.** [*F.*, 20 A. 124=A.W. N. 1897, 220; *R.*, 6 Bom.L.R. 255=33 B. 22=1 Ind. Cas. 378.]

(66)—*Applicability of* s. 83, *Crim. Pro. Code* (1882), *to warrants under Act* XIII *of* 1859.—S. 83, Crim. Pro. Code, is applicable to warrants issued under the provisions of Act XIII of 1859. GAURI SHANKAR v. MATA PRASAD, **20 A. 124 =A.W.N. 1897, 220.**

(67)—*By whom this Act is to be put in motion—Magistrate—Power to take proceeding under.*—Act XIII of 1859 can only be put in motion by the employer, and a Magistrate has no jurisdiction to pass orders under that Act, when the case before him is one under the Penal Code. CHEDDI v. MAHOMED ALI, **11 A.L J. 117=18 Ind. Cas. 885=14 Cr. L.J. 133=35 A. 143.**

(68)—*Provision for payment of penalty, no bar to Act's operation.*—The provision for payment of penalty in the contract does not bar the operation of Act XIII of 1859. HIGH COURT PROCEEDINGS, 15TH MARCH 1877, No. 673, **1 Weir. 674.**

(69)—*Breaches of contract under the Act, whether offences.*—The term "offences" must be construed according to its natural meaning, in the absence of any clause restricting the meaning. Act XIII of 1859 is intended to provide for breaches of contract and to inflict penalties. The matter to which these penalties are attached are offences. HIGH COURT PROCEEDINGS, 16TH NOV. 1874, No. 1810, **1 Weir. 697.**

(70)—*Power of Magistrate to enforce a contract to labour outside British India.*—Although a contract for work is made in British India, the

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

Courts in British India have no power to proceed under Act XIII of 1859, if the work contracted for is to be performed in a foreign territory. HIGH COURT PROCEEDINGS, 15TH DEC. 1876, No. 2940, **1 Weir. 671.** [*F.*, 10 M. 21=1 Weir 671].

(71)—*Case where work was to be performed in foreign territory.*—Where a Magistrate had directed a man, who had contracted for work in Travancore, to pay up a sum under Act XIII of 1859, and, in default, ordered him to be kept in rigorous imprisonment for one month, *held*, that the order was illegal, inasmuch as the work was to be performed in a foreign territory. GREGORY v. VADAKASI KANGANI, **10 M 21 =1 Weir. 671.** [*R.*, 11 Cr. L.J. 380 (381)= 6 Ind. Cas. 618=12 P.R. 1910, Cr.=185 P.L.R. 1910, Cr.=13 P.W.R. 1910, Cr.].

(72)—*Contract to be performed in foreign territory—Applicability of the Act.*—An order cannot be passed under Act XIII of 1859 to enforce the performance of a contract, if such performance is to take place in foreign territory. SINNA KARUPPAN, **16 M.L.T. 303.** (10 M. 21, *R.*)

(73)—*Enforcement of contract—Extent of enforcement.*—A contract coming under Act XIII of 1859 can only be enforced according to its term. Where the defendant agreed with the complainant, receiving an advance, to work with four coolies on the complainant's estate for ten months between a specified period, and on default being made, the Magistrate ordered the defendant to work with the four coolies for ten months from the date of his order, *held*, that, as the agreement was not to do work for any ten months, but for a specific season, the order of the Magistrate should be confined to directing the accused to work for the residue of the period originally contracted for, remaining after the date of his order. *In re* CHIKKA PUTTA, **1 Weir. 704.** [*F.*, 1 Weir. 705; *R.*, 35 C. 1028=8 C.L.J. 312=8 Cr. L J. 134=12 C. W.N. 869]. *In re* MATHA GOUNDAN, **1 Weir 705.** [*R.*, 35 C. 1028=8 C.L.J. 312=8 Cr. L J. 134=12 C.W.N. 869; *D.*, 1 Weir 705].

(74)—*Claim barred in Civil Court—Prosecution also barred.*—Where a bond to work as weaver for 13 months or in default to pay back the sum advanced could not be enforced in a Civil Court on account of lapse of time, it cannot be made the basis of a prosecution under Act XIII of 1859. QUEEN-EMPRESS v. GOVIND *valad* LAKSHMAN, **Rat. Un. Cr. C. 874=Cr. Rg. 50 of 1896.**

(75)—*Imprisonment of defendant by order of Magistrate whether bars jurisdiction of Civil Court.*—An order of a Magistrate for the repayment of the money advanced under Act XIII of 1859 is not so satisfied by the subsequent imprisonment of the defendant, as to deprive the plaintiff of his remedy by a civil suit. VERNEDE, C. A. A. v. ABDUL GIRI CHINNA SWAMI, **2 M. H. C. 427.** [*R.*, 16 B. 368].

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

(76)—*Crim. Pro. Code* (1882), s. 545—*Compensation for costs of suit.*—An order calling on the accused to pay the complainant a sum of money for his costs cannot be made in a case under Act XIII of 1859. QUEEN-EMPRESS v. BHAGOOJI, **Rat. Un. Cr. C. 625=Cr. Rg. 52 of 1892.**

(77)—*Order by Magistrate for extra work in anticipation of default—Illegal.*—Where a Magistrate ordered a person, who had made default in fulfilling his contract to work, to work from the date of the order to a certain date, and, in case of default, during that period, to work for an extra number of days for such default, *held*, that it was not competent for the Magistrate to make the order in anticipation of a default. *In re* CHOURI MUTHU, **1 Weir. 707.**

(78)—*Preamble—Scope of preamble.*—Where the language of the enacting sections of a statute is clear, the terms of a preamble cannot be called in aid to restrict their operation or to cut them down. The purpose for which a preamble to a statute is framed is to indicate what in general terms was the object of the Legislature in passing the Act, but it may well happen that these general terms will not indicate or cover all the mischief which in the enacting portions of the Act itself is found to be provided for. QUEEN-EMPRESS v. INDRAJIT, **11 A. 262 =A.W N. 1889, 85.** [*R.*, 26 B. 757, 16 C.P. L.R. 99.]

(79)—*Preamble and s. 5—Application of the Act to City of Mirzapur* —Where, in a suit under the Act by an employer at Mirzapur City against certain workmen, it was found that the money advanced by him was by way of loan and had no reference to the wages of such workman, and that no deduction on account of such advance was ever made from their wages or the payments made to them; *held* that the contract between the parties was not one contemplated by the Act, which, therefore, was inapplicable to the case. *Held*, also that it was not certain whether the Act applied to the City of Mirzapur, as the Local Government had extended the Act only to the "station" of Mirzapur. RAMPRASAD v. DIRGPAL, **3 A. 744=A. W.N. 1881, 50.** [*F.*, 15 C.W.N. 15=8 Ind. Cas. 123=11 Cr. L.J. 564, 11 Cr. L.J. 329=5 Ind. Cas. 914=9 P.R. 1910, Cr.=12 P.W.R. 1910, Cr., 3 L.B.R. 187=4 Cr. L.J. 200; *R.*, 16 B. 368, 15 Cr. L.J. 166=23 P.R. 1913, Cr.=22 Ind. Cas. 742, 96 P.L.R. 1914.]

(80)—*S. 1—Loan—Agreement to serve—Interpretation of agreement.*—The accused took, from the applicant, Rs. 170 in advance under a written agreement, whereby he agreed, in consideration of the loan, to work at the latter's factory as a shoe-maker for three years. The Magistrate discharged the accused on the ground that the contract was not for work to be done, but was in order to bind the accused down to

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

work for a period of three years. *Held*, setting aside the order of discharge, that the terms of the contract were clear and brought it within the provisions of the Act. *In re* SHEAMBER RAM TEHAL, **9 Bom. L.R. 362 = 5 Cr. L.J. 337.**

(81)—*S.* 1—*Whether proceedings under Act are "trial."*—The proceedings of the Magistrate up to and inclusive of the passing by him of an order for either the repayment of the advance or the performance of the contract do not constitute a "trial" for any offence as defined in Crim. Pro. Code. EMPEROR v. DHONDU KRISHNA KAMBLYA, **6 Bom. L R. 255.**

(82)—*S.* 1—*Joint advance to three labourers.*—S. 1 of Act XIII of 1859 deals with advances to individuals, not with cases of advances to several persons jointly. BHAW ABAJI v. RAMA MARUTI, **2 Bom. L.R. 545.**

(83)—*S.* 1—*Fraud, whether an essential ingredient of an offence under the section.*—It is the wilful, and without lawful and reasonable excuse, neglecting or refusing to perform the contract entered into by the persons whom the Act concerns, that constitutes the offence under s. 2 of the Act. Notwithstanding the preamble of the Act, which speaks of "fraudulent breach of contract," fraud is not an essential ingredient of that offence. QUEEN-EMPRESS v. INDRAJIT, **11 A. 262 = A.W N. 1889, 85.** (8 W.R. Cr. 69, *Diss.*) [*R.*, 16 B. 368, 27 C. 131.]

(84)—*S.* 1—*Case which was held not to be within the scope of the Act—Fraudulent breach of contract—Condition precedent to application of the Act.*—A entered into an agreement with K to work for K as a grinder and polisher of surgical instruments, on a salary of Rs. 30. He was entitled to get the work done by contract. He was also entitled to get a statement of accounts annually, and to receive a certain percentage of the profits, and in the event of the company being wound up, to a percentage of the reserve fund. A left his employment, as, according to him, his employers failed to perform their part of the agreement. *Held*, that A was entitled to privileges far above those of an ordinary artificer or labourer, and that the Act (XIII of 1859) had no application. That a *fraudulent* breach is a condition precedent to the operation of the Act, and that the breach was not fraudulent in this case. The preamble shows that the Act aims at the prevention of fraudulent breaches of contract. Though the preamble is not to be considered as part of the Act, yet the words "shall wilfully and without lawful or reasonable excuse—etc." in s. 1 are, for all practical purposes, equivalent to the expression "fraudulent breach," in the preamble. PURNA CHANDRA NANDAN v. TARACK NATH CHANDRA, **36 C. 917.** [*R.*, 7 S.L.R. 100.]

(85)—*S.* 1—*Jurisdiction—S.* 177 *of Act* V *of* 1898.—The proceedings under Act XIII of 1859 can be instituted either in the Court of the

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

Magistrate within the limits of whose local jurisdiction the defendant resides, or in a Court within whose local limits the refusal to perform the contract has taken place, and not where the contract has been actually made and money received. GANESHA SINGH v. KARM DIN, **13 P.W.R. 1910. Cr. = 12 P R. 1910, Cr. = 6 Ind. Cas. 618 = 11 Cr. L J. 380 = 185 P.L. R. 1910.** (17 P.R. Cr. 1896, 10 M. 21, *F. and Appr.*; 25 C. 637, 24 M. 660, 28 M. 37, 4 C.W. N. 253, *D.*)

(86)—*S.* 1—*Jurisdiction of Magistrate—Conditions—Labourer's failure to perform—Work finished through others—Effect.*—In order to give jurisdiction to a Magistrate under Act XIII of 1859, there are only two conditions required by the Act, namely, an advance of money and a wilful failure to perform the work. If these conditions are fulfilled, the Magistrate is bound either to order the repayment of the advance or so much of it as remains due, or to order the work to be performed. The only effect of the work having been performed by the agency of others is to leave open the one alternative of recovering the advance or so much as is still due, because the work cannot be ordered to be done over again and the law will not compel the performance of the impossible HABIBULLAH v. SUMAR *wd.* USMAN, **3 S.L.R 223, Cr. = 6 Ind. Cas. 879 = 11 Cr. L.J. 414.** (28 M. 37, *Diss.*)

(87)—*S.* 1—*Jurisdiction—Where proceedings under this Act to be instituted.*—Proceedings under the Act can be instituted either in the Court of the Magistrate, within the limits of whose local jurisdiction the defendant resides, or in a Court within whose local limits the refusal to perform the contract has taken place, and not where the contract has been actually made and money received. GANESHA SINGH v. KARM DIN, **13 P.W R. 1910, Cr** (17 P.R. 1896 Cr., 10 M. 21, *F.*; 25 C. 637, 24 M. 660, 28 M. 37, 4 C.W.N. 253, *D.*)

(88)—*S.* 1—*Contract entered into with Secretary of State to work in Government rubber plantations, Burma—Neglect of labourer to do work contracted for—Right of Secretary of State to proceed under the Act.*—Certain persons were proceeded against under the Workman's Breach of Contract Act, 1859, for having neglected to perform work which they had contracted to do in Government rubber plantations, Burma, under contracts entered into by them in Madras Town with the Secretary of State for India in Council, represented by an Extra Assistant Conservator of Forests in Burma. The following question was referred to the Full Bench for decision. "Is the Secretary of State for India or the Government of India or the Local Government of any Province of India a master or employer resident or carrying on business in any place to which the Act applies within the meaning of s. 1 of that Act?" *Held* (*per Thirkell White, C.J.*).—The words "any

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

master or employer" in the enacting part of the statute should not be construed so as to limit them to masters or employers of the classes specified in the preamble. The fact that the Government cannot be considered as a person or entity of the same class as a manufacturer or tradesman does not preclude it from being a master or employer within the meaning of the section. Further, in conducting the rubber plantations on commercial principles, the Secretary of State is carrying on business for gain, not of course for his personal gain, but for the pecuniary gain of the State which he represents. Consequently, the reference should be answered in the affirmative. *Per Fox and Birks, JJ.*—No doubt the Secretary of State is a "master or employer" within the meaning of the Act, but he does not carry on the business in a place to which the Act extends. For, in dealing with matters relating to the general public, statutes are presumed to use words in their popular sense. The words "carrying on business" mean, in ordinary language, that the person, who is engaged in the business, does it with the object of acquiring gain or profit for himself or for himself and those jointly concerned with him. This view is strengthend by the preamble to the Act. Therefore, the question referred to should be answered in the negative. KING-EMPEROR v. RAMIAH, **3 L.B R. 33 F.B** (Bourke A.O.C. 166, 5 B.H.C. App. 11, 1 M.H C. 286, 1 Hyde 37, 8 M. 379, 14 C. 256, *R.*) [*Diss.*, 11 Cr. L.J. 58=4 Ind. Cas. 827=U.B.R. 1909, 2nd Qr., Workman's Breach of Contract, p. 1.]

(89) *S.* 1—*Advance of money to be reimbursed by monthly deductions from wages—Applicability of the Act.*—An advance of money paid to a workman on condition of its being reimbursed by monthly deductions from his wages is 'an advance of money on account of any work which he shall have contracted to perform, etc.,' within the meaning of Act XIII of 1859. GOVINDA CHETTY v. MUNNOANY NAIK, **14 Cr. L.J. 400=20 Ind. Cas. 224.** (23 M. 203, 7 M. 131, *F.*)

(90) *S.* 1—*Effect of dismissal for default of application—Crim. Pro. Code, ss.* 247, 403.—An application under s. 1 of the Workman's Breach of Contract Act was dismissed for default before any order was passed by the Magistrate under s. 2 of the Act. Three years later, when the offender was found by the applicant, the application was renewed but dismissed by the Magistrate, who held that there was no sufficient ground for going on with a case determined so long ago. *Held*, (1) that no "offences" against the Act having yet been committed, there was no "acquittal," and s. 403 of the Code of Criminal Procedure did not bar the re-opening of the proceedings; (2) that, as the delay was due to the applicant's inability to find the offender, there was no ground for refusing to continue the inquiry. KRISHNA

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

PARDAN v. PASAND, **7 L B.R. 35=20 Ind. Cas. 228=14 Cr. L.J. 404=6 Bur. L.T. 108.** (24 M. 660, *F.*; 15 Ind.Cas. 996=6 L.B.R 89=5 Bur.L.T. 133=13 Cr.L.J. 580, *R.*)

(91)—*S.* 1—*Complaint under s.* 1, *Workman's Breach of Contract Act*, 1859—*Complaint dismissed—Prosecution for false charge.*—The preference of a complaint to a Magistrate under s. 1 of the Workman's Breach of Contract Act amounts in law to bringing a false charge of an offence or to the institution of criminal proceedings. Proceedings under the first paragraph of s. 2 of the Workman's Breach of Contract Act, 1859, are criminal proceedings; and a prosecution under s. 211 of the Penal Code, for instituting proceedings without just cause under s. 1 of that Act, will lie. V. KARUPPANNA v. MADANADAN, **2 L B R. 300.** (4 C.W. N. 253, 201, 2 L.B R. 163, *R.*)

(92)—S. 1—*See* CRIM PRO. CODE (1898), ss. 5, 83, 11 P.R. 1898, Cr.

(93)—*Ss.* 1 *and* 2—*Gist of the offence created by the Act.*—The offence created by the Workman's Breach of Contract Act is not a neglect or refusal of the workman to perform his contract, but the failure by the workman to comply with an order made by the Magistrate that the workman do re-pay the money advanced or perform the contract. KING-EMPEROR v. TAKASI NUKAYYA, **24 M. 660=1 Weir 673.** [*F.*, 28 M. 37=2 Cr. L.J. 149=1 Weir 671-B.; *R.*, 8 Cr. L.J. 134=12 C.W.N. 869=8 C.L J. 312=35 C. 1028, 11 Cr. L.J. 380=6 Ind. Cas. 618=185 P.L.R. 1910=13 P. W.R. 1910=12 P R. 1910, 14 Cr. L J. 404=20 Ind. Cas. 228=7 L.B.R. 35.]

(94)—*Ss.* 1 *and* 2—*Summary trial of an offence under sections—Crim. Pro. Code* (1882), *s.* 260.—A Magistrate has jurisdiction to try a case under s. 2 of Act XIII of 1859 summarily. QUEEN-EMPRESS v. INDRAJIT, **11 A. 262=A. W.N. 1889, 85.** [*R.*, 16 B. 368, 33 B. 22, 6 Bom. L.R. 255, 1 Ind. Cas. 378, 27 C. 131, 11 Cr.L.J. 58=4 Ind. Cas. 827=U.B.R. 1909, Workman's Breach of Contract, p. 1, U. B. R. 1902, 3rd Qr., Workman's Breach of Contract, p. 1.]

(95)—*Ss.* 1 *and* 2—*Summary trial.*—Proceedings under ss. 1 and 2 of the Act should not be tried summarily. KING-EMPEROR v. PERIASAMY ACHARI, **2 L.B.R. 163.** (4 M. 234, *F.*; 11 A. 262, *Diss.*)

(96)—*Ss* 1, 2—*Jurisdiction after the expiration of term of contract or completion of work—Preamble—Object of the Act to punish workmen who receive advances and then break their contracts to work.*—In a case under the Workman's Breach of Contract Act, where either the work has been completed or the term of the contract has expired, a Magistrate has jurisdiction to entertain a complaint under s. 1 and to order re-payment of the advance under s. 2 of that

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

Act. (28 M. 37, 2 Cr. L.J. 149, *Diss*). One object of the Act may have been to provide against workmen a speedy remedy for employers who have made advances on account of work; but the main object was, as the preamble shows, to provide for the punishment of workmen who have taken advances and have fraudulently broken their contracts to work. The impossibility of a master being able to exercise the option of demanding an order from a Magistrate ordering a workman to perform the work, does not affect his right to ask for an order for the re-payment of the advance and subsequently for an order for the workman's punishment by imprisonment if he fails to comply with the order. GURUDEEN TAILY v. MUTTU SERVAI, **13 Cr. L.J. 580, F.B.=15 Ind. Cas. 996=5 Bur. L.T. 133=6 L.B.R. 89.** [*R.*, 14 Cr. L.J. 404=20 Ind. Cas. 228=7 L.B.R. 35.]

(97)—*Ss.* 1, 2 (1)—*Whether Government officer is 'person carrying on business'—Competency to prefer complaint—Construction of preamble—Object of the Act.*—*Held*, that the provisions of the Workman's Breach of Contract Act are applicable to a contract made with the Government, and that the Deputy Conservator of Forests was carrying on forest business on behalf of Government in the locality in question, and was competent under s. 1 of the Act to prefer a complaint as an employer under the Act. The preamble of the Act cannot be construed as limiting the operation of the Act to (private) manufacturers, etc., carrying on business (for their private gain). The mischief aimed at is the breach of contract by workmen, artificers and labourers, who have received money in advance for work they have contracted to perform, and the insufficiency of the remedy open to the master or employer by way of civil suit. Proceedings under s. 2 (1) of the Act are not in the nature of a regular case at all, but of miscellaneous proceedings, in which the appropriate order would be one dismissing the complaint. KING-EMPEROR v. NGAN TUN ZAN, **U.B.R. 1909, 2nd Qr., W. B. of Contract Act, 1.** (3 L.B.R. 33, *Diss.*; 11 A. 262, U.B.R. 1902-1903, I, W.B. of Contract 1, U.B.R. 1904-1906, I, Crim. Pro. Code 19, U.B.R. 1904-1906, I, W.B. of Contract 1, *R.*)

(98)—*Ss.* 1, 2, 4—*Accused bound himself to work until re-payment of amount advanced—No advance on account of any work—Advance as loan.*—Where the accused, in consideration of an advance received from the complainant, bound himself to work for the complainant until the re-payment of the amount advanced: *Held* that the advance was made, not on account of any work contracted to be performed, but as a loan, and that the accused could not be proceeded against under the Workman's Breach of Contract Act for breach of the contract. GOBINDA RAJWAR v. H. J. APKAR, **8 Ind. Cas. 123.**

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

(99)—*Ss.* 1, 2 *and* 5—*Applicability of the Act.*—Employer resident or carrying on business at any place outside Presidency Towns. *Held* that the Act applies to cases in which money has been advanced by masters or employers, resident or carrying on business in the Punjab and not in one of the places, specified in the first section of the Act. The object of s. 5 of that Act is not merely to enable employers, resident or carrying on business in places specified in s. 1, to prosecute, at other places, persons who have received advances, but to extend all the provisions of the Act to other places and to confer a remedy on employers, resident or carrying on business in such other places; and the effect of the section is to interpolate into s. 1 of the Act the name of any place to which the Act is extended. CROWN BY MUHAMMAD ISHAQ v. MUHAMMAD SHAFI, **66 P.L.R. 1902, F.B.**

(100)—*Ss.* 1, 4—*Jurisdiction of Presidency Magistrate—Breach of contract beyond jurisdiction—Crim. Pro. Code* (1882), *s.* 3.—Under s. 3, Crim. Pro. Code, the expression "Magistrate of Police" in s. 1, Act XIII of 1859, shall be deemed to mean Presidency Magistrate. A Presidency Magistrate of Calcutta has jurisdiction, under s. 1 of Act XIII of 1859, in respect of a contract made in Calcutta, but the breach of which has taken place beyond his local jurisdiction. LAL MOHAN CHOWBEY v. HARI CHARAN DAS BAIRAGI, **25 C. 637.**

(101)—*S.* 2—*Contract in foreign territory for labour in British territory—Arrest of the person in foreign territory—Jurisdiction of British Courts.*—Where a person, having contracted in a foreign territory to work for the complainant in British territory, and, having been arrested in the foreign territory and brought into British territory, was convicted under s. 2 of Act XIII of 1859 and was ordered to do the work contracted for, *held*, that the Court had no jurisdiction over him. SIDDHA v. BILIGIRI, **7 M. 354=1 Weir 672.**

(102)—*S.* 2—*Contract to get work performed.*—Where the accused agreed to get performed three weeks' plantation work with 25 coolies, *held*, that the contract was not merely one for the supply of coolies, but was one for the performance of a specific work and, therefore, would be covered by the provisions of s. 2 of the Act. HIGH COURT PROCEEDINGS, 13TH JULY 1867, **1 Weir 675=3 M.H.C. App. 25.** [*F.*, 1 M. 280=1 Weir 675.]

(103)—*S.* 2—*Contract to serve as domestic servants.*—This Act does not apply to contracts to serve as domestic servants, but to contracts to serve as an artificer, workman, or labourer. *In the matter of* DOMESTIC SERVANTS, **2 B. L. R. A. Cr. 32.** QUEEN v. SOOBHOI, **12 W. R. Cr. 26.**

(104)—*S.* 2—*Domestic servant.*—Act XIII of 1859 does not apply to domestic servants, *e.g.*, a cook. *In re* MURUGAN, **1 Weir 689.**

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

(105)—*S.* 2—*Domestic servant.*—The words "an artificer, workman or labourer" in s. 492, I.P.C., do not apply to domestic servants. CROWN v. KALLU, **20 P. R. 1876, Cr.**

(106)—*S.* 2—*Clerk.*—A clerk, who has executed a bond to work as such, under the complainant, does not come within the provisions of Act XIII of 1859. *In re* GOLLA HANUMANTHA, **1 Weir 689.**

(107)—*S.* 2—*Temple servants.*—The Act is not applicable to temple servants holding the positions of *stanik* and *othuvar* in the temple. *In re* MUTHU PANDIYA GURUKKAL, **1 Weir 689.**

(108)—S. 2—*Butchers.*—A butcher contracting to supply skins is not within the Act. HIGH COURT PROCEEDINGS, 26TH NOV. 1872, No. 2028, **1 Weir 690=7 M.H.C App. xii.**

(109) *S.* 2—*Contract to serve as actor in theatrical company.*— The words "artificer, workman or labourer," in s. 492, I.P.C., and in s. 2, Act XIII of 1859, have reference to the occupations in which manual labour, *i.e.*, the use of muscles and sinews, is an essential element, and this is most, if not exclusively so, in the connotation of "labourer," less so in "workman," which has the most extended signification of all, and least so in "artificer," which connotes a special class of work requiring skill and power of contrivance. Further, the word "artificer" has reference to the industrial arts and not to the fine arts. Hence, a contract to serve as an actor in a theatrical company does not fall within the purview of the Act. IMAMUDDIN v. HURMAZJEE, **28 P.R. 1904, Cr.** (12 W.R. 76, Cr., 4 B.L.R. App. 1, 7 B. 379, 14 W.R. Cr. 29, *R.*)

(110) *S.* 2.—*Cooly sirdar or recruiter, whether an artificer, workman or labourer*--A cooly sirdar or recruiter is not an artificer, workman or labourer within the meaning of s. 2 of Act XIII of 1859. KHETO DAFADAR v. FREDERICK DIXON, **6 C.L.J. 180=6 Cr. L.J. 191.**

(111)—*S.* 2.— *Contract to supply coolies.*—A contract to bring labour to a certain estate is not a contract within the provisions of Act XIII of 1859. HIGH COURT PROCEEDINGS, 23RD FEB. 1876, NO. 628, **1 Weir 676.** [*D.*, 1 Weir 676= 1 M. 280.]

(112)—*S.* 2—*Contract to supply coolies.*—Only a contract to supply coolies which amounts also to a contract to work or to get certain work performed, comes within the provision of s. 2 of Act XIII of 1859. HIGH COURT PROCEEDINGS, 11TH OCT. 1879, NO. 1747. **1 Weir 677.**

(113)—S. 2—*Receipt of advance of money on promise to supply coolies—Penal Code*, ss. 406 *and* 450.—Where the accused received an advance from the complainant for the purpose of bringing a number of coolies to the complainant's estate, but failed to bring the coolies and also denied that he had ever received the money. *Held*, that the accused was neither guilty under s. 2 of Act XIII of 1859, nor, under s. 406 of the Penal Code, of criminal breach of trust, but would be guilty of cheating under s. 415 of the Penal Code. HIGH COURT PROCEEDINGS, 11TH OCT. 1879, NO. 1747, **1 Weir 677.**

(114)—*S.* 2—*Sub-contractor.*—A sub-contractor, who does not actually work, is not a workman, labourer or artificer within the meaning of s. 2 of Act XIII of 1859. *In re* BALKRISHNA SHALIGRAM, **10 B. 96.**

(115)—*S.*2—*Breach of contract to supply wood.*—A breach of contract to supply wood does not fall within the purview of the Act, the contractor being not an artificer, a workman or labourer. UPPER ASSAM TEA COMPANY v. THOPOOR, **4 B.L.R, App. 1=13 W R. Cr. 1.** [*F.*, 20 W.R. Cr. 23, 10 C.W.N. 775, *R.*, 6 M. 63, 18 A. 380.]

(116)—*S.* 2—*Contract to carry wood—Workman.*—A person who contracts only to convey wood is not an artificer, workman, or labourer within the meaning of the Workman's Breach of Contract Act. QUEEN-EMPRESS v. HANMA, **Rat. Un.Cr. C. 537=Cr. Rg. 9 of 1891.** (13 M. 351, Rat. Un. Cr. C. 349, *F.*)

(117)—*S.* 2—*Contractor or commission agent.*—A person undertaking to do work as a contractor or a commission agent does not make himself amenable to the penal provisions of Act XIII of 1859, and it makes no difference that he was seen, on occasions, taking part in the work contracted to be done. *In re* CHINTO, **2 Bom. L.R. 801.**

(118)—*S.* 2—*Cart-men.*—A cart-man does not come under any of the three clauses, *viz.*, artificers, workmen, and labourers, and the Act is not, therefore, applicable to him. HIGH COURT PROCEEDINGS 13TH JULY 1877, NO. 1427, **1 Weir 690.** [*F.*, 13 M. 351=1 Weir 691.]

(119)—*S.* 2—Lambardar *owning cart.*—An agreement by a village *lambardar* owning a cart, which he worked through his son or a servant and not personally, to cart certain bricks but not by personal labour, was held not to fall within the purview of s. 2, Workman's Breach of Contract Act, 1859, as such *lambardar* would not be a workman or labourer within the section. PIR BAKSH v. IMAM DIN, **28 P.R. 1908, Cr.=9 Cr. L.J. 107.** (13 M. 351, *F.*)

(120)—*S.* 2—*Mahout, whether an artificer.*—A mahout or elephant driver does not come within the provisions of Act XIII of 1859. MUNI CHUNDRA v. HARIRAM AHOM, **8 C.L.R. 254.**

(121)—*S.* 2—*Contract of service for agricultural and other purposes.*—A contract by which a person, in consideration of receiving Rs. 45, bound himself to render service for

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

agricultural and other purposes for a period of one year, was held not to be covered by the provisions of Act XIII of 1859. EMPRESS v. BHAGVAN BHIVSAN, **7 B. 379.** [*R.*, 9 B. 100, 16 B. 368, 28 P.R. 1904, Cr.]

(122)—*Contract to work as weaver*—The defendant executed a deed of contract, whereby he agreed, in consideration of Rs. 62 paid in advance, to work as a weaver for 31 months repaying each month Rs. 2 out of the wages he might earn, and the bond extended the time of service in case of default of payment. For a breach of this contract without repaying the amount, the Magistrate directed the defendant to perform the work according to the terms of the contract, under s. 2 of Act XIII of 1859. *Held* that the contract was not within the Act, as the sum of Rs. 62 was not money advanced on account of work contracted to be performed; it was a loan to be repaid by monthly instalments of Rs. 2 each, out of the wages earned during the contracted period of service. In case of any default, the time of service was extended. The case came within the purview of such a case as that reported in 7 M.H.C. App 30. QUEEN-EMPRESS v. NINGAPPA, **Rat. Un. Cr. C. 754 = Cr. Rg. 18 of 1895.**

(123)—*S. 2—Enquiry under the Act, nature of*—The enquiry to be made, under s. 2 of Act XIII of 1859, is not an enquiry into an offence triable summarily. *In re* GOVINTHAN, **1 Weir 696.**

(124)—*S. 2—Summary trial.*—The offence of criminal breach of contract under Act XIII of 1859 is triable summarily. *In re* HIGGINS, **1 Weir 694.**

(125)—*S. 2—Proceedings under—Not trial—Summary procedure—Applicability—Crim. Pro. Code, s. 260.*—The proceedings of a Magistrate up to the order under s. 2, Workman's Breach of Contract Act, do not constitute a trial, and, therefore, the procedure under s. 260, Crim. Pro. Code, is not applicable. THE CROWN v. SOHRAB, **6 S.L.R. 165 = 14 Cr. L.J. 256 = 19 Ind. Cas. 512.** (33 B. 22 and 33 B. 25, *R.*) [*R.*, 15 Cr. L.J. 372 = 23 Ind. Cas. 740 = 7 S.L. R. 80.]

(126)—*S. 2—Nature of the offence created by the section.*—The offence created by the Act is not the neglect or refusal of the workman to perform his contract, but the failure of the workman to comply with an order made by the Magistrate that the workman do re-pay the money advanced or perform the contract. *In the matter of* ANUSOORI SANYASI, **28 M. 37 = 1 Weir 671-A = 2 Cr. L J. 149.** [*Diss.*, 11 Cr. L.J. 414 = 6 Ind. Cas. 879 = 3 S.L.R. 223, 13 Cr. L. J. 580 = 15 Ind. Cas. 996; *R.*, 11 Cr. L.J. 380 = 6 Ind. Cas. 618 = 185 P.L.R. 1910 = 12 P.R. 1910 = 13 P.W.R. 1910; 13 Cr. L.J. 863 = 17 Ind. Cas. 799 = 10 A.L.J. 468, 13 Cr. L.J. 853 = 17 Ind. Cas. 789 = 14 Bom. L.R. 956.]

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

(127)—*S. 2—Written agreement—Contract of service for two years—No reference to manual labour—Re-payment of advance out of last 2 months' wages—No 'workman' within the meaning of the Act—No 'advance'—Applicability of the Act—Proceeding under s. 2, Part 1 of the Act—Not a criminal proceeding—No jurisdiction to interfere.*—R entered into a written agreement which made no reference to manual labour to serve S at his butcher's shop for two years on a monthly wages of Rs.30, receiving Rs. 60 in advance for which he agreed to give credit from the pay of the last 2 months. The only service expressed in the contract was that of sales and rendering account of sales. R left service without lawful excuse in the third month and the Magistrate ordered him to re-pay the advance of Rs. 60 under s. 2 of the Workman's Breach of Contract Act. *Held*, that R was not a workman within the meaning of the Act, and that the act did not apply. (14 Bom. L.R 956, 36 C. 917, *R.*) *Held* also, that the sum of Rs. 60 was only a loan re-payable out of wages and not an advance made on account of any work which the workman shall have contracted to perform. (13 Bom. L.R. 548, *R.*) A proceeding under the first part of s. 2 of the Act is not a criminal proceeding and the Judicial Commissioner has no jurisdiction to interfere with such a proceeding. (33 B. 25, *R.*) *Held, per Kemp, A.J.C.*, that, in this case, though R might have left service without lawful excuse, there was no 'wilful' refusal by him to perform. RAMZAN v. NOOR MAHOMED YACUB, **7 S.L.R. 100 = 15 Cr. L J 383 = 23 Ind. Cas. 751.**

(128)—*S. 2—Scope of the section.*—S. 2 of the Act empowers a Magistrate at the option of the complainant, either to order that the money advanced to a labourer be re-paid, or that the work be performed. The section only applies when the work is uncompleted when the complaint is made. If the work has been completed when the complaint is made the Magistrate has no jurisdiction under this section. In other words, an employer, by doing the work himself, or employing a third party to do it for him, loses his right to proceed under the section. In such a case the employer's civil remedy is, of course, open to him, but he cannot avail himself of the penal enactment. *In the matter of* ANSOORI SANYASI, **28 M. 37 = 1 Weir 671 = 2 Cr.L.J. 149.** [*Diss*, 11 Cr. L.J. 414 = 6 Ind. Cas. 879 = 3 S.L.R. 223, 13 Cr. L J. 580 = 15 Ind. Cas. 996, *R.* 11 Cr. L J. 380 = 6 Ind. Cas. 618 = 185 P.L.R. 1910 = 12 P.R. 1910 = 13 P. W.R. 1910, 13 Cr. L.J. 863 = 17 Ind. Cas. 799 = 10 A L J. 468, 13 Cr. L.J. 853 = 17 Ind. Cas. 789 = 14 Bom. L.R. 956.]

(129)—*S. 2—Ascertainment of complainant's wishes*—Under s. 2, the Magistrate should ascertain from the complainant which of two orders, *viz.*, either to finish the work or to repay the advance, he desires, and should pass that order. The complainant has the option. In

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

an enquiry under s. 2 of the Act, the procedure for trying offences in a summary trial should not be adopted, especially in Upper Burma, where the Act has been recently brought into force. PHOOL SINGH v. NGA SAN HLA, **1 U.B.R. 1902–03, Workman's Breach of Contract, 1.** (11 A. 262, 27 C. 131, 4 M. 234, *R.*) [*Relied upon*, 11 Cr.L J. 58=4 Ind. Cas. 827=U.B.R. 1907-09, Workman's Breach of Contract, 1.]

(130)—*S. 2—Breach of contract of service—Previous conviction—Further conviction for not returning to service on the same contract.*—A servant, who has once been convicted for a breach of contract of service under Act XIII of 1859, cannot be again convicted on the same contract for a further breach for not returning to service. In cases under the Act, a Magistrate's order should, at the option of the complainant, be either for repayment of the advances made in whole or in part at the Magistrate's discretion, or performance of the contract, and it is only on failure to comply with such order that a sentence of imprisonment can be passed. GRIFFITHS v. TEZIA DOSADH, **21 C. 262.**

(131)—*S.2—Award of imprisonment without interval for obeying Magistrate's order.*—S. 2 clearly implies that, after the order is passed for re-payment under the first part thereof, an interval should occur in order to see whether he should comply with it or not. The imposition of punishment without any such opportunity being afforded is illegal, inasmuch as no offence was committed at the time of the passing of the order. Per *Pargiter, J.* The order which was passed under the second clause of s. 2 concurrently with an ordor under the first portion of the section is within the jurisdiction of the High Court to deal with. Per *Woodroffe, J.* SEW BALAK RAUT v. BANWARI SINGH, **35 C. 1036, note=9 Cr. L.J. 188.** (5 M. 376, *F.* ; 27 C. 131, *D.* ; 23 C. 121, *R*)

(132)—*S. 2—Order for re-payment of advance and simultaneous sentence in default.*—A Magistrate ordering an artificer, workman or labourer to repay the money advanced, or any part thereof or to perform or get performed the work according to the terms of the contract, under s, 2 of the Workman's Breach of Contract Act, cannot at the same time sentence him to imprisonment in case he should fail to comply with the order. Such a sentence cannot be passed until the failure is proved to have occurred. QUEEN-EMPRESS v. SAKHARAM, **Rat. Un. Cr. C. 380=Cr. Rg. 31 of 1888.**

(133)—*S. 2—Power of Magistrate—Imprisonment and order for performing the work and repay advance.*—A Magistrate has no power to order a workman both to repay the advance made by the employer and to perform the work and to suffer imprisonment. He can only pass an order for imprisonment when the workman neither repays the advance nor performs the work according to his contract. TIRKHA v. ITWARI, **12 A.L. J. 678=15 Cr. L J 592=25 Ind. Cas. 344.**

(134)—*S. 2.—Sentence for default in anticipation.*—A Magistrate, in convicting a person under s. 2 of Act XIII of 1859 for neglecting to perform work, and ordering him to work for a certain period, has no jurisdiction to add that, in case he fails to do so, he should suffer rigorous imprisonment for some time, for the failure has not occurred and has not been proved. REG. v. JOMA *bin* BALU, **4 B.H.C. Cr. 37** [*F.*, Rat. Un. Cr. C. 375 ; *R.*, 18 B. 636.]

(135)—*S. 2—Sentence for default in anticipation.*—A Magistrate can, under s. 2 of the Workman's Breach of Contract Act, only order a person to perform the work undertaken ; he cannot, then, also order that, in default, the workman should suffer a sentence. QUEEN-EMPRESS v. BABAJI, **Rat. Un. Cr. C 375=Cr. Rg. 24 of 1888.**

(136)—*S. 2—Sentence for default in anticipation.*—Where an order has been passed for repayment of the advance, an order for imprisonment in default can only be passed on a complaint of non-compliance and after allowing the defendant to make any defence which he may have. HIGH COURT PROCEEDINGS, 26TH APRIL 1871, **1 Weir 701=6 M.H.C. App. 24.**

(137)—*S. 2—Sentence for default in anticipation.*—S. 2, Act XIII of 1859, does not authorise a Magistrate to order imprisonment in anticipation of non-compliance with an order to perform work. The sentence of imprisionment can only be passed on a complaint of non-compliance with the Magistrate's order, after hearing any defence which the accused may have to make. HIGH COURT PROCEEDINGS, 27TH JULY 1877, NO. 1583, **1 Weir 702.**

(138)—*S. 2—Conviction without complaint and without taking statements from accused, validity of.*—Upon complaint that the accused refused to perform work for which they had received advances from the complainant, an order was made by a Magistrate, under s. 2 of Act XIII of 1859 that the work should be performed, the order being made upon the last day on which the work under the contract should be performed. The accused in their defence having stated their inability to perform the work, the Magistrate, without complaint having been made that his order had been disobeyed, and without taking any statement from the accused, sentenced them to 10 days' rigorous imprisonment. *Held*, that the procedure of the Magistrate was irregular and illegal. SRINIVASA MUDALI v. PONNAMBALAM, **5 M. 376=1 Weir 702.** [*F.*, 35 C. 1036, N.=9 Cr. L.J. 188.]

(139)—*S. 2—Order for imprisonment without directing the repayment of the advance or completion of work.*—Where a Magistrate sentenced

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

the accused to imprisonment, without first ordering the accused, at the option of the complainant, to pay the sum advanced to him or to work, *held*, that the order was bad and that the Magistrate should be directed, after giving due notice to both parties, to pass a fresh order according to law. *In re* KRISHNASWAMI, **1 Weir 703.**

(140)—*S.* 2—*Order under the section without notice to the accused—Harsh terms in a contract, effect of.*—The accused agreed to work for five years, receiving an advance of Rs. 15 and getting nothing more in the way of wages than his food. He worked for 18 months and then left working, because his son was beaten by the complainant. The Magistrate passed an order under s. 2 directing him to work for the remaining period without giving the accused an opportunity of proving his defence. *Held*, that the accused was entitled to have an opportunity of proving his defence. *Held*, also, that the contract, though harsh in its terms, should be enforced for the Act, did not confer any discretion on the Magistrate with reference to the terms of the contract, but he could, in dealing with such a contract, take the terms into consideration in framing the order against the defendant. *In re* KUPPAN, **1 Weir 703.**

(141)—*S.* 2—*Nature of order as to imprisonment under s.* 2.—Where an order for repayment of money advanced has not been complied with, the Magistrate in sentencing the accused to imprisonment for a certain term under s. 2, Act XIII of 1859, should also specify that the imprisonment is to continue "until the amount ordered to be repaid be sooner repaid." *In re* PELLENCHERI HYDER, **1 Weir 699.**

(142)—*S.* 2—*Order subsequent to the expiry of period of contract—Right of employer to repayment of advance.*—On the 7th January, 1907, the respondent received an advance from the petitioner, and signed an agreement to work for him up to the 8th January, 1908. On the 20th December, 1907, petitioner applied to the Magistrate for a warrant under s. 2 of the Act, alleging that the respondent had worked for about 15 days only and had subsequently absconded, and the petitioner had "now" learned where he was hiding. The warrant was issued the same day, and the case fixed for the 30th December, but, on that day, it was adjourned to 7th January at the request of the respondent's pleader, *i.e.*, the last day of the period of contract. On the 8th January, the case was dismissed on the ground that no order could be made after the expiry of the term for which the respondent had engaged to work. *Held* that the delay in the disposal of the case did not defeat the petitioner's right to compel the refund of the money advanced. RAMASWAMI PILLAI v. AMANADAR, **4 L.B.R. 270.** (11 C. W. N. 247, *Diss.*) [*R.*, 13 Cr. L.J. 580 =15 Ind. Cas. 996=5 Bur. L. T. 133.]

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

(143)—*S.* 2.—*Order for compensation, validity of—Part performance of contract—Order for refund of money.*—An order for payment of compensation made under Act XIII of 1859 is illegal. In the terms of s. 2, there is no provision as to what is to be done in case the contract has been partly performed and partly not performed. It appears to be left to the discretion of the Magistrate to say whether it is just and proper that the whole sum advanced or any and what part thereof ought to be paid. But such portion of the money advanced as has been appropriated to the fulfilment of the contract or as could justly be set off against a part fulfilment of the contract, ought not to be ordered to be refunded. HIGH COURT PROCEEDINGS, 17TH AUGUST 1869, **1 Weir 698=4 M.H.C. App. 67.**

(144)—*S.* 2—*Advance by employer of grain and money—Order for repayment of advance received in kind.*—Where an employer of labour offers the advance to a labourer in money and the labourer asks to have part of the advance in grain as the equivalent of money, there will be a sufficient compliance with the requirements of the Act, inasmuch as the advance may in such case be treated as an advance in money, part of which was exchanged for grain supplied by the employer at the request of the labourer where the facts of the case do not warrant such an inference, the Court is bound to adhere to a strict interpretation of the Act, which is of a penal character. Where there was not sufficient evidence to justify the Court in holding that there was an actual offer, by the employer, of the money equivalent to the grain accepted in advance, *held*, that it was not competent for a Magistrate on failure by the labourer to complete the work, to direct repayment of the balance of the advance (not worked off by the labourer inclusive of the advance) in grain. He could only order a repayment of the advance in money. KONDADU v. RAMUDU, **8 M. 294=1 Weir 700.**

(145)—*S.* 2—*Stores received as advance—Inapplicability of the section—Stores not 'money.'*—Where a workman received advance in the shape of stores and not in cash, it cannot be said that he received 'money' as required by s. 2, Act XIII of 1859, and that section is therefore inapplicable to such a case. CROWN v. CHIRAGH, **23 P.R. 1914, Cr.=15 Cr. L.J. 603 =25 Ind. Cas. 515.**

(146)—*S.* 2—*Order for return of money advanced and of goods.*—The payment of the money advanced to a workman and the return of the goods given to be worked on are not provided for in the Act directly. It is only by an order to perform the contract and enforcing the performance that the return of the goods and money can be got. HIGH COURT PROCEEDINGS, 29TH OCT. 1880, NO. 2169, **1 Weir 700.**

(147)—*S.* 2—*Order for refund of stamp-duty and process-fees.*—A Magistrate, convicting a

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

person under s. 2 of Act XIII of 1859, should pass an order for the refund of stamp-duty and process-fees. HIGH COURT PROCEEDINGS, 17TH MARCH 1879, NO. 466, **1 Weir 697.**

(148)—*S. 2—Liability of workman to pay Court-fee in addition to the penalty imposed—Court Fees Act, s. 31.*—The punishment under the Act is for the disobedience of the Magistrate's order and not for the fraudulent breach. So, where the workman admits the advance and repays the same, it is not open to the Magistrate to make him pay to the complainant the Court fee paid on the petition of complaint; for, no penalty can be imposed till the person complained against had disobeyed the order for the payment of the sum advanced to him by the complainant. EMPEROR v. DHONDU KRISHNA KAMBLYA, **6 Bom. L. R. 255.** (20 M. 235, *R.*) [*R.*, 33 B. 25=10 Bom. L.R. 1126=8 Cr. L.J. 409.]

(149)—*S. 2—Re-payment of sum advanced and of Court-fee.*—An accused person ordered, under s. 2 of the Act, to repay the sum advanced to him, cannot also be ordered to pay the Court-fee on the complaint under s. 31 (1) of the Court Fees Act, since such an order could be made only in addition to a penalty imposed while none had been imposed in the case. QUEEN-EMPRESS v. BUDHU **Rat. Un. Cr. C. 534=Cr. Rg. 2 of 1891.**

(150)—*S. 2—Breach of contract whether amounts to an offence—Order for compensation—Crim. Pro. Code* (1898), *ss.* 4 *and* 250.—A breach of contract under the first part of s. 2 of Act XIII of 1859, is not an offence within the meaning of s. 4, Crim. Pro. Code. No compensation can, therefore, be legally awarded. *In the matter of* RAM SARUP BHAKAT, **4 C.W.N 253.** [*R.*, 11 Cr.L.J. 380=6 Ind. Cas. 618=12 P.R. 1910, Cr.=185 P.L.R. 1910=13 P.W.R. 1910, Cr.]

(151)—*S. 2—Order for compensation.*—An order directing compensation under the Act is illegal. Such portion of the money advanced to the defendant as has been appropriated to the fulfilment of the contract, or as could be justly set off against a part fulfilment of the contract, ought not to be ordered to be refunded. HIGH COURT PROCEEDINGS, 17TH AUG. 1869, **4 M.H.C. App. 67=1 Weir 698.**

(152)—*S. 2—Jurisdiction of Magistrate, to what confined—Power to order delivery of jewel.*—Under s. 2 of Act XIII of 1859, a Magistrate has only power to order the repayment of the money advanced or to order the performance of the work. He has no power to order the delivery of a jewel contracted to be made. MUNUSWAMI BUTHAR v. STREENIVASALU CHETTY, **3 M.L.T. 292=7 Cr. L J. 359.**

(153)—*S. 2—Applicability of Limitation Act.*—Act XIII of 1859 is a penal enactment, and the Limitation Act is no bar to the enforcement of a penal provision. A plea of limitation, which is available only in civil suits, cannot be taken to bar punishment for what is an offence. The Limitation Act is not, therefore, a bar to recover an advance made to a labourer. *In the matter of* KITTU, **11 M. 332=1 Weir 672=1 Weir 789** [*Diss.*, Rat. Un. Cr. C. 874; *R.*, 16 B. 368, 1 Weir 671 (*a*)=28 M. 37]

(154)—*S. 2—Advances paid to labourers—Application for recovery of same—Limitation.*—The mere fact that an advance was made to a labourer so long ago that the money could not be recovered by a civil action is no sufficient ground for refusing altogether to give effect to the penal provisions of the Act. QUEEN-EMPRESS v. KONDA, **16 M. 347=1 Weir 672=3 M. L J. 180.** [*R.*, 8 C.L J. 312=8 Cr. L.J. 134=12 C.W.N. 869.]

(155)—*S. 2—Contract under the Act—Liability of third parties*—Where a contract for labour is made with one, who dies before the fulfilment of the contract, persons, who are not parties to the contract, cannot be made liable under Act XIII of 1859, even though they acknowledge a joint responsibility with the deceased for the money advanced. *In re* HIGGINS, **1 Weir 694.**

(156) *S. 2—Liability of undivided co-parcener of the workman*—Where a person, who had received an advance of a sum and agreed to perform certain work, died before he could complete the agreement, *held*, that the deceased's undivided brother could not be proceeded against under s. 2 of Act XIII of 1859, although he had undertaken to complete the work. HIGH COURT PROCEEDINGS, 24TH OCT. 1879, NO. 1858, **1 Weir 693.**

(157)—*S. 2—Magistrate's power to reconsider order*—Where a Magistrate has made an order in the first stage of a proceeding under s. 2 of the above Act for the repayment of the money advanced to the workman by the complainant, it must always be open to him to reconsider the legality of his order when it becomes necessary for him to inflict a penalty for failure to obey the first order. QUEEN-EMPRESS v. HANMA, **Rat. Un. Cr. C. 537=Cr. Rg. 9 of 1891.**

(158)—*S. 2—Order directing payment of money advanced without fixing time.*—An order directing the payment of the sums of money received by the workman in advance, without specifying any time within which those sums were to be paid back, is bad for uncertainty. *In re* GOVINTHAN, **1 Weir 695.**

(159)—*S. 2—Time for repayment.*—It is not competent to a Magistrate, under s. 2 of Act XIII of 1859, to fix a time within which the money advanced is to be paid. QUEEN-EMPRESS v. BHAU, **Rat. Un. Cr. C. 418=Cr. Rg. 85 of 1888.**

(160)—*S. 2—Submission of calendar.*—A calendar should be submitted to the appellate authority immediately after an order under the first part of s. 2 of Act XIII of 1859 is passed.

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

When further proceedings under the latter part of the section are taken, it will suffice to send a simple copy of the order containing a reference to the calendar. HIGH COURT PROCEEDINGS, 5TH JANUARY 1872, **7 M.H C. App. 1.**

(161)—*S. 2—Order directing performance of work after period fixed in the contract—Illegality.*—A Magistrate cannot, under s. 2 of Act XIII of 1859, order work to be performed after the expiry of the term fixed in the contract of the parties. BALLA v. THE DISTRICT MAGISTRATE OF SOUTH CANARA, **8 Ind. Cas. 163 =9 M.L T. 81=1910 M.W.N. 854.**

(162)—*S. 2—Contract to work for a year after reasonable time from the date of the contract.*—Where the defendant contracted to do plantation work for a year, such year to commence at or within a reasonable time after the date of the contract, *held*, that an order under s. 2 of Act XIII of 1859, made three years after the date of the contract was illegal, since the time contracted for had expired. *In re* BETTAY, **1 Weir. 706.** [*F.*, 35 C. 1028 =8 C.L.J. 312=8 Cr.L.J. 134=12 C.W.N. 869.]

(163)—*S. 2—Order under the Act, whether appealable.*—An order, under Act XIII of 1859, directing the repayment of money advanced is appealable, for, although no sentence in the proper sense has been passed, yet, it is open to the Magistrate, if default is made in the payment of the money, to pass a final sentence. *In re* HIGGINS, **1 Weir 694.**

(164)—*S. 2, order under—Right of appeal from the order—Proper orders to be made under s. 2.*—No appeal lies to the Sessions Court from the order of the Magistrate under s. 2 of Act XIII of 1859. The Magistrate, while making an order under s. 2 of Act XIII of 1859, cannot make an order of imprisonment in default, but such an order could be made after there has been non-compliance with the order of re-payment or carrying out the contract. ANUKUL CHANDRA ROY v. KAMARALI SARDAR, **18 C.W.N. 1271=15 Cr. L.J. 697=26 Ind. Cas. 145.**

(165)—*S. 2—Orders passed under s. 2 (1) part 1 or part 2—No appeal lies against either order.*—Where a Magistrate ordered the appellant, under the first part of s. 2 (1) of the Workman's Breach of Contract Act, to repay a sum of money received by him as advance, and where, on his failure to comply with that order, the Magistrate sentenced him, under the second part of s. 2 (1) of the Act, to a term of imprisonment, *held*, that no appeal lies from either of the orders. THAIRIO WD. FAIZO v THE CROWN, **7 S.L.R. 80=15 Cr. L.J 372=23 Ind. Cas. 740.** (33 B. 25, 6 S.L.R. 165, 9 C. 878, *R.*)

(166)—*S. 2—Workman told not to do any more work—Settlement to repay balance advanced—Failure to pay—Workman, liability of.*—If an employer tells his workman not to do any more work and arrives at a settlement with him for the re-payment of the balance due, the case is taken out of the Workman's Breach of Contract Act, the liability of the workman becomes purely a civil liability and his failure to act on the settlement cannot bring the case back under the Act. JUGARAM v. NGA TUN BAW, **U.B R. (1914), 2nd Qr., 18=25 Ind. Cas. 990=15 Cr. L.J. 662.** (4 L.B.R. 365, *D.*)

(167)—S. 2—*See* Nos. 93 to 99, *supra* and No. 182, *infra.*

(168)—*Ss. 2 and 3—Period of imprisonment exceeding period of contract—Contract upheld against weight of evidence.*—Where the period of imprisonment imposed under s. 2 of the Act exceeds the period for which the accused is under a contract to work, and where no interval is granted for the order to be complied with, such order is illegal. On the District Magistrate referring to the circumstance that the contract was upheld in spite of the evidence against it, *held* that it was unnecessary to say the point.—*Per Stephen, J.*, that the contract was illegally upheld and that circumstance also occasioned a serious miscarriage of justice.—*Per Holmwood, J.* NARWANJI PRASAD SINGH v. LACHMAN HAJAM, **35 C. 1035=9 Cr. L.J. 187.**

(169)—*Ss. 2 and 3—Contract, breach of—Expiry of term—Recovery of advance and enforcement of contract after term expired—Successive complaints, dismissal of—Effect.*—When the term of a contract coming within Act XIII of 1859 expires, the contract cannot be specifically enforced, nor can the money advanced be recovered, by a proceeding before the Magistrate under that Act. When successive complaints against a workman were dismissed, *held*, that any remedy the complainant might have had under the Act was barred. KHODA BUKSH v. MOTI LAL JOHORI, **11 C.W.N. 247=5 Cr. L J. 66.** [*Diss.*, 35 C. 1028=8 C L J. 312=12 C.W.N. 869=8 Cr. L.J. 134, 4 L.B.R. 270=8 Cr. L.J. 470 ; *R.*, 5 Bur. L.T. 133=13 Cr. L. J. 580=15 Ind. Cas. 996.]

(170)—*Ss.2,3—Crim.Pro.Code. Act X of 1882, s. 560.*—Act XIII of 1859 makes punishable, not the failure to do work according to contract, but the failure to obey the Magistrate's order. A complaint under the Act is not a complaint of an offence, and an order for compensation under s. 560 of the Crim. Pro. Code. is illegal. QUEEN-EMPRESS v. NAMDEO, **Rat. Un. Cr. C. 617=Cr. Rg. 40 of 1892.**

(171)—*Ss. 2, 3—Summary trial not allowed —Order for imprisonment, when to be made.* A case under the Workman's Breach of Contract Act is not triable summarily. An order directing the labourer to re-pay the money within a certain time or in default to undergo imprisonment is bad in law. An order for imprisonment in default can only be made *after* the labourer has failed to comply with

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

the order calling on him to refund the money or get the work performed as the case may be. EMPEROR v. HAR LAL, **13 Cr. L. J. 194=14 Ind. Cas. 194=5 P.R. 1912 Cr.** (33 B. 22, 1 Ind. Cas. 378, 6 Bom L. R. 225, 1 Cr. L. J. 263, *R.*).

(172)—*Ss.* 2, 3—*Contract to work for more than three years—Effect of* s. 21 (*g*), *Specific Relief Act—Contracts under Act* XIII *of* 1859 *when not enforceable—Contract providing a penalty for breach—Effect.*—The accused accepted an advance from the proprietor of a factory and promised to work there for 5 years and so executed an agreement in 1910 but left away the work in 1912. *Held* that, by s. 21 (*g*) of the Specific Relief Act, no contract can be specifically enforced, the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date. As such contracts cannot be enforced at all, neither the civil nor the criminal Courts would have any discretion to enforce them even up to the limit of three years. However, ingeniously the terms of contract may have been framed, where the advances cannot be treated as anything more than loans, subject to the condition that the borrowers should work for the factory and not transfer their services elsewhere until the money has been repaid, *held*, that such a contract was not enforceable under the Act. In the contracts in this case there was a distinct provision of a penalty to be recovered by the employer in case of breach of the contract by the workmen concerned. *Held* that, though the penalty may be unenforceable by a civil suit owing to the fact that the contracts themselves cannot be specifically enforced, yet, as they prescribed a definite penalty for breach, the employer could not, under any circumstances, adopt an alternative remedy by proceeding in terms of Act XIII of 1859. CROWN (THROUGH JHANDA SINGH) v. MUHAMMAD DIN, **23 P. R. 1913 Cr.=96 P. L. R. 1914=15 Cr.L. J. 166=22 Ind. Cas. 742.** (9 P. R. 1910 Cr., 3 A. 744, 16 B. 368, *R.*) [*F.*, 22 P. W. R. 1914=61 P.L.R. 1914, Cr.]

(173)—*Ss.* 2, 3—*Contract, breach of—Form of order by Criminal Court—Case of civil nature.*—The Magistrate, upon a complaint under Act XIII of 1859, gave the option to the debtor of paying off the debt or working it off. *Held*, that the irregularity was one of which the creditor and not the debtor could complain. The contract provided for re-payment of advance made to the debtor in a period over three years, and the debt was to be worked off by work, and the debtor was not to pay by cash or taking money from any other shop-keeper. And the contract prohibited the debtor from selling his work to any other person. *Held* that the contract bound down the debtor to work for the creditor and for no other person until the loan was paid off, and it could not be enforced under

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*continued.*

the Act. THE CROWN v. AMIR BAKHSH, **61 P.L R. 1914=22 P W.R. 1914 Cr.=15 Cr. L.J. 423=24 Ind. Cas. 159.** (23 P.R. 1913, *F.*)

(174)—*Ss.* 2, 3—*Workman, agreement by, to work for a fixed period in lieu of advance made to him by the employer—Contract contemplated by the Act.*—*Held*, that an agreement by a workman at Mirzapore to do work in a certain factory for a fixed period of time and until repayment in a particular manner of an advance made to him by the owner of the factory, is a contract contemplated by Act XIII of 1859, and the accused must continue to work until he has worked for the period stipulated for and paid up the sum taken in advance ; he is also liable to the penalties imposed upon a workman under s. 3 of the Act. C. J. LUCAS v. RAMAI SINGH, **12 A.L.J. 152=23 Ind. Cas. 185=15 Cr. L.J. 233.**

(175)—*S.* 2, *cl.* 1 *and s.* 3—*Nature of the trial under the Act—Crim. Pro. Code* (1898), *s.* 370.—A proceeding under the first clause of s. 2 and under s. 3 of Act XIII of 1859 is not a criminal proceeding. Therefore, s. 370 of the Crim. Pro. Code does not apply to a case under those sections, because no offence has been committed and there is no accused ; and a Presidency Magistrate is not bound to frame his record in such a case in accordance with the provision of s. 370 of the Code. AVERAM DAS MOCHI v. ABDUL RAHIM, **27 C. 131=4 C. W.N. 201.** [*R.*, U.B.R. 1902, 3rd Quarter, Workman's Breach of Contract, 1.]

(176)—*Ss.* 2, 5—*Contract to do some work, by a workman earning his living by laying and burning bricks—Criminal breach of contract—Workman—Expiry of the term of contract—Magistrate's power to order refund.*—A contract to do some work by one who is a workman earning his living by laying and burning bricks is not a contract to supply bricks and falls within the purview of Act XIII of 1859. Where a workman, or labourer neglects or refuses to perform the work which he has contracted for, the mere fact that the time for which the contract was entered into has elapsed is no bar to a Magistrate passing an order for the refund of the money that may have been advanced to him by his master or employer. BHAROSA V. KING-EMPEROR, **12 A.L.J. 490=15 Cr. L.J. 599=25 Ind. Cas. 351.** (11 C.W.N. 247, 35 C. 1028, *R.*)

(177)—*S.* 3—*Order for bail for repayment of money advanced—Scope of section*—S. 3 refers only to finding bail for compliance with an order directing an artificer, workman, or labourer to perform or cause to be performed the work for which he has contracted. An order, therefore, directing a workman to enter into recognisances for the repayment of the money advanced is illegal. HIGH COURT PROCEEDINGS, 21ST AUG. 1880, No. 1484, **1 Weir 699.**

I.—Imperial Acts—continued.

Act XIII of 1859 (Workman's Breach of Contract)—*concluded.*

(178)—S. 3—*See* Nos. 168 to 174, *supra.*

(179)—S. 4—*See* Nos. 98, 100, *supra.*

(180)—*S. 5—Scope of the Act.*—The Act applies to cases where money has been advanced by employers resident or carrying on business in the Punjab. It is not necessary that they should reside in any of the places specified in the first section. CROWN v. MUHAMMAD SHAFFI, **11 P.R. 1902, Cr. F.B.** (11 P.R. 1898, Cr. *R.*)

(181)—*S. 5—Exercise of powers under Act outside the Presidency towns.*—Powers under Act XIII of 1859, outside the Presidency towns can only be exercised under s. 5 by officers who have been specially appointed. QUEEN-EMPRESS v. CHONIA, **Rat. Un. Cr. C. 701 = Cr. Rg. 32 of 1894.**

(181-*a*)—S. 5—*See* Nos. 99, 176, *supra.*

(182)—*Ss. 5 and 2—Extension of the Act under s. 5—Effect—Money advanced, whether recoverable when contract expired.*—When Act XIII of 1859 is extended to a certain place under the provisions of s. 5 of the Act, a master or employer residing or carrying on business in the place has the same rights as are conferred by the Act on masters or employers resident or carrying on business in any Presidency town. *Per Stephen, J.*—Under s. 2 of Act XIII of 1859, a master or employer can enforce the repayment of the money advanced, by a proceeding under the Act, even after the term of the contract has expired. *Per Holmwood, J.* (*contra*)—When the term of the contract has expired, a master or employer cannot enforce the repayment of the money advanced by a proceeding under Act XIII of 1859. NARSING PROSAD SINGH v. EMPEROR, **35 C. 1028 = 8 C.L.J. 312 = 12 C.W.N. 869 = 8 Cr L J. 134.** (16 M. 347, 11 C.W.N. 247, 1 Weir 704, 705, 706, *F.*) [*R.*, 35 C. 1035 = 9 Cr. L. J. 187.]

Act XIV of 1859 (Limitation).

[REP. (EXCEPT PART OF S. 15), ACT IX OF 1871. RESIDUE REP. (EXCEPT AS TO SCHEDULED DISTRICTS), ACT I OF 1877. THE UNREPEALED PART OF S. 15 DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

(1)—S. 1, cl. 7—*See* ACT XV OF 1877, art. 47, 3 N.W.P. 171.

(2)—S. 15—Possessory suit under section barred by award under Crim. Pro. Code.—*See* ACT I OF 1877, 20 W.R. 12.

Act XXVII of 1860 (Collection of Debts on Successions).

[REP., ACT VII OF 1889.]

(1)—*Jurisdiction—Dispute as to succession to a mutt—Certificate.*—A Magistrate cannot proceed under s. 318, Crim. Pro. Code, 1861, in case of a dispute arising out of a right of succession to a *mutt* and its appurtenances, but should apply to the Judge, under the provisions of Act XIX of 1841 (Succession, Property Protection) to appoint a curator, or make some order with regard to the property, till the right of succession is determined. The grant of a certificate under this Act does not decide the title to such land QUEEN v. SREEPUTT GIRI GOSSAIN, **11 W.R. Cr. 23.**

(2)—*Certificate of administration—Crim. Pro. Code* (1872), *s.* 530.—The grant of a certificate under Act XXVII of 1860 is not sufficient proof of possession to entitle the holder to an order under Crim. Pro. Code (1872), s. 530, declaring him to be in possession. MUSSAMMAT ANURAGEE KOOWAR v. RAMRUCHAYA DASS, **25 W.R. Cr. 16.**

(3)—*See* CERTIFICATE, 2 B.L.R. A. Cr. 27.

Act XXXI of 1860 (Arms).

[REP., ACT XI OF 1878.]

See ACT XI OF 1878.

(1)—*Ss. 5 and 35—Jurisdiction to try an offence under s. 5 of the Act.*—Under s. 35, Arms Act, a Sub-Magistrate of the First Class has no jurisdiction to try an offence under s. 5 of the Act. CROWN v. BHOOPA, **3 P.R. 1869 Cr.**

(2)—*Ss. 5, 44—Manufacturing and selling gunpowder without license—Imprisonment in default of payment of fine.*—As s. 5 Act XXXI of 1860, gives the power to imprison or fine a person for manufacturing or selling gunpowder without a license, a Magistrate can legally pass a sentence of fine or imprisonment in default. HIGH COURT PROCEEDINGS, 1ST JUNE 1870, **5 M.H.C. App. 23.** [*Overruled*, 7 M.H.C. App. 22.]

(3)—*Ss. 19 (f), 29 and 32 (2)—S. 32 (2) not extended to Lower Burma—Prosecution for possessing arms—Sanction of District Magistrate essential.*—No prosecution can be instituted for the possession of arms under s. 19, cl. (*f*) of the Indian Arms Act, without the previous sanction of the District Magistrate. The mere passession of arms, other than those mentioned in s. 14, is not a punishable offence. QUEEN-EMPRESS v. NGA PO KA, **L.B.R. 1872—1892, 536.**

(4)—S. 26—*See* PENAL CODE, s. 188, 3 B.L.R. Ap. 149.

(4-*a*)—S. 29—*See* No. 3, *supra.*

(5)—*S. 32—Possession of arms without a license.*—The proceedings of the Magistrate directing the issue of a summons to appear, and of a warrant of arrest, against a person for the possession of arms without a license under the Act were held to be illegal. The mere possession of certain arms without a license would be an offence, only if the provisions of s. 32, Act XXXI of 1860, had been extended to and were

I.—Imperial Acts—continued.

Act XXXI of 1860 (Arms)—*continued.*

still in operation in the district. *In the matter of the petition of* BABOO RAMESHAR PRASAD NARAYAN SING, **9 B.L.R. Ap. 34=13 W.R. Cr. 1.**

(6)—*S. 32—Possession of arms without license.*—The mere possession of arms without a license is no offence whatever under the Arms Act, where the provisions of s. 32 have not been extended to a district. *In re* MODNARAIN PURI, **18 W.R. Cr. 26.**

(7)—*S. 32—Conviction in a place where the provisions of the section were in force.*—In a place where the prohibitory and penal clauses of s. 32, Act XXXI of 1860, were not in force, a conviction under that section was set aside. QUEEN v. MOHAN LALL, **119 P.R. 1866 Cr.**

(8)—*S.* 32 (1 *and* 2)—XI *of* 1878, *ss.* 15, 19—*Unlicensed possession of arms.*—S. 32 (2) of Act XXXI of 1860 can be said to apply, in any specific sense, to a certain Taluka, only if one or other of these conditions has been fulfilled, that is, if either :—(*a*) an order of disarmament has been duly published, or (*b*) a general search for arms has been ordered. If there is also no notification in the local official gazette extending s. 15 of Act XI of 1878 to the Taluka, the possession of arms without a license in that place is not punishable under s. 19. GOVERNMENT OF BOMBAY v. DODYAMA *bin* BASAPA, **9 B. 478.**

(9)—*S.* 32 (2)—*Unlicensed possession of saltpetre.*—The unlicensed possession of saltpetre is not an offence under the Arms Act, as it is not an ammunition within the meaning of the Act, notwithstanding the rules of the Chief Commissioner to the contrary. CROWN v. RAM RUTTUN, **25 P.R. 1869 Cr.**

(10)—S. 32 (2)—*See* ACT XI OF 1878, s. 19 (*f*) and 29, 1 Weir 663.

(11)—*S.* 32 (6)—*Possession of arms—Illegality of search.*—When the mere possession of arms was made an offence in a certain district, the accused would be punished for the illegality of their possession if there were satisfactory evidence that the prisoners were in possession of arms, notwithstanding that the police might have also committed an illegality in their procedure in conducting the search. QUEEN v. SHEOPERSHUN RAE, **2 N.W.P. 57.**

(12)—*S.* 32 (6)—*Fine—Imprisonment.*—A sentence of fine only, or imprisonment only, under s. 32 (6) is a legal sentence. REG v. BHISTA *bin* MADANNA, **1 B. 308, F.B.** [*R.*, 16 B. 689.]

(12-*a*)—S. 32 (2)—*See* No. 3, *supra.*

(13)—*S.* 35—*Jurisdiction of Magistrate—Crim. Pro. Code,* (1872), s. 2.—The term "Magistrate," in s. 35 of Act XXXI of 1860, applies only to the Magistrate of a District as defined in s. 2 of the Crim. Pro. Code. REG. v. BASAPA, **Rat. Un. Cr. C. 80=Cr. Rg. 15-1-1874.**

I.—Imperial Acts—continued.

Act XXXI of 1860 (Arms)—*concluded.*

(14)—S. 35—*See* No. 1, *supra.*

(15)—S. 44—*See* No. 2, *supra.*

(16)—*S.* 46—*Imprisonment in default of fine.*—Only when it has been ascertained in the manner provided in s. 46, that no sufficient distress can be had, can an order for imprisonment in default of fine be passed. QUEEN v. GHOLAM HOSSAIN, **120 P.R. 1866 Cr.**

(17)—S. 46—*See* SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC , 120 P.R. 1866, Cr.

Act XXXII of 1860 (Income-tax).

[REP., ACT VIII OF 1868.]

See ACT IX OF 1869, ss. 24, 25, 2 N.W.P. 113.

Act XXXVI of 1860 (Stamps).

[REP., ACT X OF 1862.]

(1)—*Act* X *of* 1862—*Unstamped instrument made in Australia, dated 26th May,* 1862. *sought to be used in Madras—Penalty under Act* I *of* 1879.—An unstamped instrument, comprising an assignment by will and also a power of attorney executed in Australia and dated 26th May, 1862, is not chargeable either under Act XXXVI of 1860 or Act X of 1862 with stamp duty. Consequently no penalty can be levied under Act I of 1879. REFERENCE UNDER STAMP ACT, S. 46, **14 M. 255.**

(2)—Ss. 26, 37—*See* CONVICTION, 3 B.H.C. Cr. 34.

(2-*a*)—S. 37—*See* No. 2, *supra.*

(3)—*S.* 52—*Non-compliance—Irregularity.*—A conviction under the Stamp Act is illegal where the procedure under s. 52 is not complied with. REG v. CHINTO ATMARAM, **3 B. H. C. Cr. 36 (Note).**

Act V of 1861 (Police).

[SHORT TITLE GIVEN, ACT XIV OF 1897. REP. IN PART, ACT IX OF 1871; ACT XVI OF 1874; ACT X OF 1882. REP. IN PART (IN BENGAL) (EXCEPT THE SAMBALPORE DISTRICT, AND EASTERN BENGAL, BEN. ACT VII OF 1869; REP. (IN PART IN RANGOON), BUR. ACT IV OF 1899, S. 2, WHEN NOTIFIED (AND SEE SS. 3 AND 4). REP. IN PART AND AMENDED, IN NORTH WEST FRONTIER PROVINCES, REG. 7 OF 1901, SS. 3, 13. AMENDED, ACT III OF 1888; ACT VIII OF 1895; S. 34 AMENDED ACT I OF 1903; SUPPLEMENTED, BEN. ACT VII OF 1869. PORTIONS EXTENDED TO CALCUTTA AND SUBURBS, WITH MODIFICATIONS, BEN. ACT I OF 1898. DECLARED IN FORCE IN—SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; THE ARAKAN HILL DISTRICT, EXCEPT S. 11, REG. IX OF 1874, S. 3; UPPER

I.—Imperial Acts—continued.

Act V of 1861 (Police)—*continued.*

BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4; BRITISH BALUCHISTAN, REG. I OF 1890, S 3; THE ANGUL DISTRICT REG. I OF 1894, S. 3; THE CHITTAGONG HILL-TRACTS, REG. I OF 1900, S 4.]

(1)—*Penal Code, ss.* 99, 351 *and* 353—*Assault on a police officer—Police officer trying to secure thumb impression of a surveille—Assault to deter the police officer from taking the impression —Police Code—Rule regarding surveille.*—A rule of the Police Code, to the effect that when any *surveille* is at home, proof of his presence can be secured by taking a thumb impression on the report, does not impose an obligation upon him to give a thumb impression when required, and he cannot be forced to do so, if he objects. Where a *surveille*, on a domiciliary visit to him by a Sub-Inspector of Police, object to the taking of the impression, and when the Police officer extended his hand to take the impression, he produced a *lathi* and said that he would not allow the impression to be taken and that, if any one asked for it, he would break his head, *held*, that the act did not amount to an offence under s. 351, Penal Code, and that, had the act amounted to an offence by itself, s. 99 would have been applicable. BIRBAL KHALIFA v. EMPEROR, **30 C. 97 = 6 C.W.N. 342.**

(2)—*Society for the Prevention of Cruelty to Animals, officers of—Public servants—Penal Code, s.* 21.—Officers of the Society for the Prevention of Cruelty to Animals, appointed under Act V of 1861, are public servants within the meaning of the Indian Penal Code. The mere fact that the certificates of appointment given to such officers are not strictly in conformity with the form prescribed in the Schedule to Act V of 1861, does not invalidate their appointment or take them out of the category of public servants. UPENDRA KUMAR GHOSE v. KING-EMPEROR, **3 C L J 475 = 10 C.W.N. 727 = 3 Cr.L J. 420.**

(3)—*Appeal from convictions under Police Code.*—Convictions under this Act are appealable like other convictions. Where the appellants were convicted by an officer exercising the powers of a Magistrate and sentenced to imprisonment exceeding the limit prescribed by s. 411, Crim. Pro. Code, 1861, the appeal lies to the Sessions Court. THAKOOR DASS and GODAI SHEK, **5 W.R. Cr. 22.**

(4)—*Appeal.*—Act V of 1861 is a special law on the subject of police, and persons charged with offences punishable under that law must be tried under the provisions of the Crim. Pro. Code. Convictions under Act V of 1861 are appealable in the same way as other convictions. CRL. CIR NO. 2, 7TH FEBRY, 1866, **5 W.R Cr. Cir. 1.**

(5)—*Jurisdiction of Magistrate to direct enquiry by Police officer.*—A Magistrate is competent, under s. 133, Crim. Pro. Code, (1861), to direct an enquiry to be made by a police officer into an offence punishable under a Local Act, such as the Police Act. QUEEN v. PRANKISTO PAL. **14 W.R. Cr. 41.**

(6)—*Police officer committing offence, while not on duty.*—A Police constable is liable to be punished under the Penal Code, and not under the Police Act if he commits any offence when not on duty. AUTAR v. NARAIN SINGH, **96 P R. 1866, Cr.**

(7)—*Applicability to unauthorised playing of music at night.*—Where it does not appear that an occasion such as that furnished by playing music at midnight on a marriage ceremony without permission, required any intervention or interference on his part, or that he issued any direction or gave any order in the matter of the playing of music, the Police Act does not apply. EMPRESS v. PURAN, **5 C P.L.R. 92.**

(8)—*See* APPEAL—ACTS, 5 W.R Cr. 22.

(9)—*See* MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, 14 W.R. Cr. 41.

(10)—*See* PENAL CODE, ss. 167, 188, 47 P. R. 1867, Cr.

(11)—S. 4—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION—REFUSAL TO GRANT SANCTION, ETC., 6 P.R. 1910 Cr.

(12)—Ss. 4, 7, 24 and 42—*See* DEFAMATION, 4 P.W.R. 1910 Cr.

(13)—*Ss.* 5 *and* 36—*Crim. Pro. Code* (1898), *ss.* 195, 439—*Complaint to the Inspector-General, Police—Investigation by District Superintendent of Police—Its dismissal—Sanction to prosecute —Revision.*—Where H D. sent to the Inspector-General of Police a few specific charges of bribery against the Sub-Inspector of Police and asked for investigation, the Inspector-General, who is a Magistrate under s. 5 of Act V of 1861 and is empowered by s. 36 of the Act to enquire into and determine as a Magistrate any charge against a police officer above the rank of a constable, ordered the District Superintendent of Police to investigate, and that officer forwarded the result of his investigation to the District Magistrate, *held* that a false charge of an offence, preferred to a person empowered to order investigation by the Police, though not followed by further proceedings in any Court, brings the matter of the charge within the 1st part of s. 211, I.P.C. HAMAYUN v. KING-EMPEROR, **9 P.W R. 1908 Cr. = 7 Cr. L.J. 291.** (14 P.R. 1879 Cr., 3 P.R. 1888 Cr., *F*; 5 C. 281, 6 C 620, *R.*; 5 P.R. 1888 Cr., 17 C. 574, *D.*).

(14)—S. 7—*See* No. 12, *supra.*

(15)—*Ss.* 7 *and* 29—*Suspension and confinement for unlimited term—Cumulative punishment, legality of*—An order for the suspension and confinement of a police officer for an unlimited period of time exceeding the limits laid down in cl. (*b*) of s. 7 of Act V of 1861, is

I.—Imperial Acts—continued.

Act V of 1861 (Police)—*continued.*

illegal, and is not such an order as a District Superintendent of Police can legally pass at all, nor one which he can pass in the alternative under s. 7 of the Act; and no conviction under s. 29, for disobeying such order, is maintainable. RAM GOPAL GHOSH v. KING-EMPEROR, **2 C.L.J. 616=3 Cr. L.J. 110.**

(16)—*Ss.* 13 *and* 15—*Levy of cost of Police from individuals.*—A Magistrate has no power to realize the cost of a constable from an individual. QUEEN v. ROHIMKANT GHOSE, **1 W.R. Cr. 15.**

(17)—S. 15—*See* No. 16, *supra.*

(18)—*S.* 17—*Object of appointing special constables—Refusal to serve—Penal Code, s.* 173.—The only legitimate object for appointing special constables is to strengthen the ordinary Police force by the addition of suitable persons to their number, when the ordinary force find themselves too few to meet an emergency. In a case of dispute as to proprietary rights, it is an abuse of the law and an act of oppression to appoint active men on one side as special constables, in order to prevent their asserting their alleged rights and so to give an advantage to the other party. A refusal to serve as such is no offence under s. 173, I.P.C., and proceedings could not be taken under that section. GOPINATH PARYAH v. EMPRESS, **10 C.W.N. 82=2 C.L.J. 555=3 Cr. L.J. 169.** [*R.*, 10 C.W.N. 322, 12 C.W.N. 727.]

(19)—S. 17—*See* SUPERINTENDENCE OF HIGH COURT. 10 B.L.R. App. 4=18 W.R. Cr. 67.

(20)—*Ss.* 17 *and* 19—*Penal Code, ss.* 147, 149 *and* 353—*Refusal to accompany a police officer to police station to receive appointments and badges of special constables—Resistance to police-officers in the arrest of such men.*—Refusal to accompany a police officer to the Police Station, situated at some distance, not for any purpose of police duty, but simply to obtain the authority of appointment to serve as special constables and the necessary badges and arms, does not amount to a refusal to serve as special constables, and it does not, therefore, constitute an offence under s. 19 of the Police Act. An arrest made by a police officer on such a refusal is not lawful, and any resistance offered to such an arrest does not amount to an offence under s. 353, although it may amount to an offence under s. 147. RAMAN SINGH v. QUEEN-EMPRESS, **28 C. 411=5 C.W.N. 134.** (18 A. 246, *Appr*; 3 C.W.N. 605, *D.*). [*R.*, 16 P.R. 1913, Cr.=155 P.L.R. 1913=14 Cr. L.J. 142=18 Ind. Cas. 894=20 P.W.R. 1913, Cr.].

(21)—*Ss.* 17 *and* 19—*Special constables—Appointment, circumstances justifying—Disobedience of order under s.* 17—*No offence under s.* 19.—The circumstances which justify the appointment of special constables under s. 17 of Act VI of 1861 are that a disturbance of the peace is apprehended and that the police force available is insufficient to preserve the peace and protect the inhabitants of the place where the disturbance is apprehended. In the absence of those circumstances an order under s. 17 of Act V of 1861 is improper and there should be no conviction of the persons appointed special constables for disobedience of the same. NANDA KISHORE SINGH v. EMPEROR, **35 C. 454=12 C.W.N. 366=7 Cr. L.J. 186.** [*R.*, 8 C.L.J. 66=12 C.W.N. 727=7 Cr. L.J. 507.]

(22)—*Ss.* 17 *and* 19—*Appointment of Special Constables—Circumstances justifying appointment—Refusal to comply with an improper order of appointment.*—The circumstances which justify an order under s. 17 of Act V of 1861 are that a disturbance of the peace is apprehended and that the police force available is insufficient to preserve the peace, and protect the inhabitants of the village where disturbances are apprehended. In a case where it was not clear that there was any danger of a disturbance of the peace or that, if there was such a danger, the ordinary police force available was not sufficient to cope with it, *held* that the appointment of the petitioner as a special constable was unnecessary and inexpedient, *held,* further, that the petitioner should not be prosecuted under s. 19 of Act V of 1861 for his refusal to act in accordance with such appointment. RADAKANTA LAL v. EMPEROR, **12 C.W.N. 727=8 C.L.J. 66=7 Cr. L.J. 507.** (12 C.W.N. 366, 10 C.W.N. 82=2 C.L.J. 555, *F.*).

(23)—*Ss.* 18, 19, 29—*Special constables—Order of appointment—Interference by High Court on revision—Object of appointment—Executive order—Refusal to act—Punishment—Prosecution.*—A person, who has refused to act as a special constable, cannot be prosecuted under s. 29 of the Police Act. The provisions of that section were not intended to apply to special constables and cannot be interpreted as so applying by the operation of the provisions of s. 18. UMES CHANDRA GUPTA v. EMPEROR, **10 C.W.N. 322.**

(24)—S. 19—*See* NOS. 20, 21, 22, 23, *supra.*

(25)—*S.* 20—*Crim. Pro. Code* (1882), *s.* 14—*Power of police officers to exercise Magisterial authority — Local Government should confer special power.*—S. 20 of the Police Act and the last part of s. 14 of the Code of Criminal Procedure preclude police officers from exercising authority as Magistrates. Paragraph III of the Schedule of the Criminal Justice Regulation enables the Local Government to confer Magisterial powers on police officers notwithstanding these provisions, but such powers would have to be specially conferred and for particular purposes. QUEEN EMPRESS v. TUKAUNG, **U. B. R 1892—1896, Vol. I, 10.**

(26)—*S.* 23—*Arrest—Duty of police officer.*—Under this section a police officer is not bound to arrest a person against whom no proceedings

I.—Imperial Acts—continued.

Act V of 1861 (Police)—*continued.*

have been directed, if he believes that he has not sufficient grounds for apprehending him. *In re* GRISH CHUNDER NUNDEE, **26 W. R. Cr. 8.**

(27)—*Order to purchase material for repairing thana, if an order under section.*—Where money was given to a police constable by the assistant *moharir* of his *thana* to purchase rafter and bamboos for repair of the *thana*, *held* that the order to purchase rafters, etc., was not an order of the kind contemplated by this section. *In the matter of the petition of* DIDAR KHAN, **A.W.N. 1891, 179** (12 C. 427, *R.*).

(28)—S. 24—*See* CRIM. PRO. CODE, 1898, ss. 190 (1) (*b*) and 4 (1) (*h*), 1 L.B.R. 18.

(29)—S. 24—*See* No. 12, *supra.*

(30)—*S.* 25—*Timber washed on to an estate—Unclaimed property.*—Timber claimed by a landowner as having been washed on to his estate by a river is not unclaimed property within the meaning of s. 25 and the following sections of the Act. CHUTTER LALL SINGH v. GOVERNMENT, **9 W. R. 97.**

(31)—Ss. 25, 26—Claim of creditor to attach right, title and interest of—judgment-debtor—Whether covered by s 26—*See* CRIM. PRO. CODE, 1898, ss. 87, 88, 435, 439, 512, 6 L.B.R. 57=13 Cr. L.J. 568=15 Ind. Cas. 984=5 Bur. L.T. 113.

(32)—S. 26—*See* No. 31, *supra.*

(33)—*S.* 29—*Scope of section*—S. 29 of the Police Act has no application to persons who are not police officers. *In the matter of* RAM KUMAR, **10 C.L.R. 521.**

(34)—*S.* 29—*Scope of section.*—The section deals with offences constituted either by any violation of duty, or wilful breach, or neglect of any rule or regulation, or lawful order, made by competent authority on the part of a police officer. Any neglect of duty short of a violation of duty does not amount to an offence under the section. *In the matter of the petition of* BHOLANATH DAS, **12 C. 427.**

(35)—*S.* 29—*Applicability of.*—The framers of s. 29 of Act V of 1861 could never have intended it to apply to a case, where the offence charged is absence from special constable's parade on certain dates without permission. The section is an exceedingly stringent provision of the law which should not be put in force except in extreme cases, and where milder remedies have been tried and failed. KASH MAHOMED v. EMPRESS, **10 C.W.N. 79=2 C.L.J. 565=3 Cr. L.J. 178.**

(36)—*S.* 29—*Offence under section, if cognisable.*—An offence under the above section is not a cognizable offence. QUEEN-EMPRESS v. NGA PO THIN, **U.B.R. 1892—1896, Vol. I, 295.**

(37)—*S.* 29—*"Lawful order," construction of.*—The words "lawful order" in s. 29 of the Police Act mean an order which the authority mentioned therein is competent to make; so that they would not cover an order for *extra drill* given by a District Superintendent of Police to his constables, for their failing to cut down the jungle in the vicinity of their lines as per his orders. *In the matter of* BHOLANATH DAS, **12 C. 427.**

(38)—*S.* 29—*Violation of duty must be deliberate.*—Before a police officer can be convicted of an offence under s. 29 of the Act, it must be found that he is guilty, not of mere neglect, but of deliberate and intentional violation of duty. *In re* RADHOO SINGH, **17 W R. Cr. 34=8 B. L.R. Ap. 60.** [*F.*, 19 W.R. Cr. 7.].

(39)—*S.* 29—*Gist of offence.*—It is wilful neglect or violation duty only, that is a criminal offence in the sense of the Police Act, 1861. Mere indiscretion and even carelessness with negligence in the conduct of inquiries preliminary to trial could not be held to be a criminal offence. EMPRESS v MUHAMMAD HUSAIN, **A.W.N. 1883, 42.**

(40)—*S* 29—*Gist of offence.*—Mere rashness or negligence on the part of a police officer, before ordering the search of a man's house for stolen property, does not constitute an offence amounting to a violation of duty under s. 29 of the Act. The violation there intended must be wilful, intentional violation of some clear duty, or other. QUEEN v. BOLAKI LALL, **19 W.R. Cr. 7.** (17 W.R. 34 Cr.=8 B.L.R. App. 60, *F.*)

(41)—*S.* 29—*Acts or omissions punishable under the Act.*—Acts or omissions punishable under s. 29 of the Act, come within the category of "offences punishable under any law other than the Indian Penal Code" and those offences likewise fall within the terms of s. 148 of the same Code. QUEEN v. GOLAM ARABEE, **25 W R. Cr. 20.**

(42)—*S.* 29—*Violation of constable's duty—Offence.*—A constable who refused to turn out to drill on being ordered to do so by a Head Constable in charge of the *thana* committed an offence under s. 29 of the Police Act of 1861. EMPRESS v. YAR MUHAMMAD KHAN, **A.W.N. 1896, 105.** (15 C. 194, 12 C. 427, 17 W.R. Cr 34, *R.*)

(43)—*S.* 29—*Overstaying of leave by a constable.*—Where a constable obtained leave of absence for one month, a substitute being appointed, and overstayed his leave by 29 days, *held*, that such overstaying of one's leave would not amount to a "withdrawal from the duties of his office," within the meaning of s. 29 of Act V of 1861. QUEEN-EMPRESS v. SALIG RAM, **6 A. 495=A.W.N. 1884, 215.** [*D.*, Rat. Un. Cr. C. 279.]

(44)—*S.* 29—*Police constable overstaying his leave.*—A police constable overstaying his leave without permission cannot be convicted under s. 29 of the Police Act. EMPRESS v. JANOKINATH GUPTA, **6 C. 625=8 C.L.R. 56.**

I.—Imperial Acts—continued.

Act V of 1861 (Police)—*continued.*

(45)—*S.* 29—*Deputing subordinate if amounts to neglect of duty.*—When a police officer is authorised by law to depute his subordinate to proceed to a place where a crime is reported to have been committed, he cannot be supposed to have contravened the law by not proceeding to the spot himself; under such circumstances, the conviction of the prisoner on a charge of wilful violation of duty is illegal. GOVERNMENT v. KARAMUT KHAN, **1 Agra Cr. 1.**

(46)—*S.* 29—*Police officer under suspension if can be convicted for withdrawing from duty without leave.*—A police officer under suspension cannot be convicted, under s. 29, of withdrawing from the duties of his office without permission. QUEEN v. DINANATH GANGOOLY, **17 W.R. Cr. 12=8 B.L.R. App. 58.** [*F.*, 10 A. 459.]

(47)—*S.* 29—*Scope of.*—The provisions contained in s. 29 of Act V of 1861 contemplates that the person, to be charged with an offence under that section, must have been, at the time of his doing the act in respect of which the charge is preferred, a police constable within the meaning of that statute. A suspended police officer ceases to be a police officer. Where a police constable was suspended, and was ordered to remain in the lines during the suspension, *held*, that he was not guilty under s. 29, for absenting himself therefrom without leave. QUEEN-EMPRESS v. DURGA, **10 A 459=A.W.N. 1888, 169.** (8 B.L.R. App. 58, *F.*).

(48)—*Police officer making negligent or incorrect report of local investigation.*—A police officer negligently or improperly submitting an incorrect report of a local investigation may be punished under s. 29 of the Act in cases where the proof is sufficient to bring the case under s. 218 of the Penal Code. *In the case of* BARODAKANT MOOKHOPADHYA, **15 W.R.Cr. 17.**

(49)—*S.* 29—*Jurisdiction over police officers of Deputy Magistrate exercising full powers of Magistrate.*—A Deputy Magistrate exercising the full powers of a Magistrate has jurisdiction under this section, to fine police officers for violation of duty. REFERENCE UNDER S. 434 OF CRIM. PRO. CODE, **4 W.R. Cr. 2.**

(50)—*S.* 29—*Jurisdiction of Magistrate to try cases under Act.*—A Magistrate only, and not a Sessions Judge, has power to try cases under the above section. S. 152, Crim. Pro. Code, (1861), does not apply to cases in which there has not been a continuous detention for 24 hours. *In re* INDROBEER THABA, **1 W.R. Cr. 5.** [*R.*, 19 A. 465.]

(51)—*S.* 29—*Jurisdiction of Cantonment Magistrate.*—A Cantonment Magistrate has power to try cases, under this section without complaint. GOVERNMENT v. GIRDHAREE LALL, **1 Agra Cr. 24.**

(52)—*S.* 29—*Crim. Pro. Code* (1898), *s.* 556—*Trial by a District Magistrate of cases of breach of order of Inspector.*—*Held*, that a District Magistrate is not precluded under s. 556, Crim. Pro. Code, on account of his being the head of the Police in the District, from trying a person under s. 29 of Act V of 1861, for a breach of an order issued by a Reserve Inspector. QUEEN-EMPRESS v. NARAIN SINGH, **22 A. 340=A.W.N. 1900, 110.** [*E.*, 24 M. 238=2 Weir. 238.]

(53)—*S.* 29—*Jurisdiction over European British subjects.*—S. 29 of Act V of 1861 does not give a Magistrate jurisdiction over European British subjects. Where, in a prosecution under s. 29, the plea of being an European British subject is raised by the accused, the Magistrate is bound to enquire into and determine that plea. QUEEN v. HEARN, **3 N W.P. 128.**

(54)—*S.* 29—*Crim. Pro. Code* (1898), *s.* 263—*Summary trial of an offence under s.* 29—*Duty of Magistrate.*—In a summary trial of an offence under s. 29 of Act V of 1861, it is not sufficient to state that it consisted in the absence from special constable's parade on certain dates without permission, but it is necessary to state that the act consisted of a breach of duty lawfully imposed, and to specify how the duty was created, and in what act or omission the breach consisted. KASH MAHOMED v. EMPRESS, **10 C.W.N. 79=2 C L J. 565=3 Cr. L J. 178.**

(55)—*S.* 29—*Summary conviction and punishment.*—The summary conviction and punishment of two police officers under this section, by a Cantonment Magistrate, without formal trial, was held to be irregular and illegal. GOVERNMENT v. GIRDHAREE LALL, **1 Agra Cr. 24.**

(56-57)—*S.* 29—*Power to make rules*—*General rules issued by District Superintendent*—*Validity*—*Disobedience to such rules*—*Special rule by the District Superintendent of police.*—There is no express power given by the Act to any officer, save the Inspector-General of Police, to make rules; he can do so under s. 12 for, amongst other purposes, preventing abuse or neglect of duty. Such rules must be made subject to the approval of the Local Government. Therefore, a disobedience of an order of the District Superintendent to the effect that constables are to be within the lines at 9 P.M. is not an offence under s. 29 of the Act. *Semble*, such a general rule made by a District Superintendent would not come under the Act; probably a special order requiring the presence of an officer or of certain officers within the Police lines, issued expressly to him or each of them "would come under s. 29" as being not a "rule or regulation," but "a lawful order," made by a competent authority and relating to the duties of the officer, one of which is to be at hand when required for service. *In the matter of the petition of* ABDUL HOSSEIN, QUEEN-EMPRESS v. ABDUL HOSSEIN, **15 C. 194.**

(58)—*S.* 29—*Police rules*—*Table of punishment*—*Extra fatigue duty*—*Scope of a police*

I.—Imperial Acts—continued.

Act V of 1861 (Police)—*continued.*

constable's duties—Departmental punishment how far affects punishment by Courts.—The petitioner, a police-constable, was ordered by his officers to join a fatigue party for the purpose of removing certain furniture from the office of the Inspector-General of Police. He refused to do the work, and was, therefore, convicted upon a summary trial of an offence under s. 29 of the Police Act (V of 1861). On application for revision to the Chief Court, it was contended on his behalf that the order given was not lawful, because fatigue duty was really a punishment, and that a constable who had committed no offence or been guilty of no dereliction of duty could not legally be required to do work of a penal character. *Held* that *per se* there was nothing unreasonable or unlawful in an order of this kind, nor was it outside the scope of a constable's duties to perform work of this nature when necessary. In "extra guard, fatigue or other duties" in the table of punishments given in Chap. XVI of the Police rules, against serial No. 8, the word 'extra' qualifies all the subsequent words. It is not fatigue duty as such which is penal, but extra fatigue duty. Summary procedure should not be employed in cases in which Government servants, no matter what their rank, are concerned as accused persons. The power of a Court to punish a public servant for an offence against the law is not taken away, simply because the offender has also been punished by his departmental superiors. SOHAN SINGH v. EMPEROR, **9 Ind. Cas. 831 = 12 Cr. L.J 143 = 15 P.W.R. 1911 = 184 P.L.R. 1911.**

(59)—S. 29—*See* CONVICTION, 8 W.R. Cr. 55.

(60)—S. 29—*See* PENAL CODE, s. 221, 11 P.R. 1874 Cr.

(61)—S. 29—*See* PENAL CODE, s. 463, U.B. R. 1897—1901, Vol. 1, 356.

(62)—S. 29—*See* POLICE, L.B.R. 1872—1892, 150.

(63)—S. 29—*See* SESSIONS JUDGE, JURISDICTION OF, 9 W.R. Cr. 36.

(64)—S. 29—*See* NO. 15, *supra* and No. 83, *infra.*

(65)—*Ss.* 29, 42—*Prosecution of police officer under the Act—Sanction—Notice.*—Any person aggrieved by the acts of police officers can prefer a charge under s. 29 of Act V of 1861, without the sanction of the Government or other competent authority and without any previous notice in writing as required by s. 42, that section being applicable only to civil actions. DOOLOO MULL v. DEWA SINGH, **2 P.R. 1868, Cr.**

(66)—S. 30—*See* PENAL CODE, s. 153, 29 A. 569 = A.W.N. 1907, 171.

(67)—*Ss.* 30 *and* 31—*Singing in the streets at night.*—S. 30 of the Police Act, 1861, as amended by Act VIII of 1895, only authorises the police to regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies. Neither s. 30 nor s. 31 empowers the police to issue a general order prohibiting any singing in the streets at night. QUEEN-EMPRESS v. ANTONY, **L.B.R. 1893—1900, 394.**

(68)—S. 31—*See* No. 67, *supra.*

(69)—*S.* 34—*Placing* tanbans *in a public thoroughfare.*—Persons placing *tanbans* in a public thoroughfare are guilty of an offence under s. 34 of Act V of 1861. But a Magistrate is not competent on his own motion to set on foot a prosecution. QUEEN v. AMEER, **2 N. W P. 5.**

(70)—*S.* 34—*Penal Code, ss.* 268 *and* 290—*Public nuisance—Definition—Temporary obstruction of public thoroughfare.*—M placed a board in front of his house over the water channel and a considerable portion of the roadway, leaving only a small space by which persons could pass by his house. On this board he sat writing and delivering to a large crowd of persons vouchers for bets which they had made with him about the Government opium sales. *Held*, that, under these circumstances, although M could not properly be convicted under s. 34 of Act V of 1861, he was liable to a conviction under ss. 268 and 390 of the Penal Code. EMPEROR v. MADHO RAM, **4 A.L.J. 44 = A.W.N. 1906, 317 = 4 Cr. L.J. 492.**

(71)—*S.* 34—*Slaughtering of cow in open verandah—Meaning of the term "open place."*—The words "open place," coupled with "road," "street" or "thoroughfare" must not be interpreted *ejusdem generis.* The addition of the words "open place" by the Amending Act (VIII of 1895) gives the section a wider significance, and this is shown by another amendment in the same section made at the same time, in which the annoyance, etc., caused must not be to the "residents *and* passengers," but to "residents *or* passengers." The intention of the Legislature was, therefore, to extend the Act not only to passengers who would be on such a road, street or thoroughfare, but also to residents, who are not passengers. The slaughtering of a cow in an open verandah, so as to cause annoyance to the residents of that locality, and in spite of their remonstrances, constitutes a breach of s. 34 of the Act. KHAN BAPUTI DEWAN v. BISPATI PUNDIT, **27 C. 655.**

(72) *S.* 34—*Overloading an* ekka.—Having in an *ekka* six persons besides the accused, the *ekka* driver, was held not necessarily an offence punishable under s. 34, Act V of 1861. MUKANDA v. EMPRESS, **28 P.R. 1885, Cr.**

(73)—*S.* 34—*Imprisonment imposed under the above section, nature of.*—Imprisonment imposed substantively under the above section must be simple. It follows, under s. 66 of the Penal Code, that imprisonment in default of

I.—Imperial Acts—continued.

Act V of 1861 (Police)—*continued.*

payment of fine under the same section must also be simple. QUEEN-EMPRESS v. NGA IN, **U.B.R. 1897—1901, Vol. I, 363.**

(74)—*S.* 34—*Nature of imprisonment under the section.*– A sentence of imprisonment under s. 34, whether substantive or in default of payment of fine, must be simple. QUEEN-EMPRESS v. NGA THA DUN U, **L.B.C.R. 1872—1892, 434.**

(75)—*S.* 34—*Riot in a Municipal bazaar* — The Municipal bazaar, though it is not a street or a road, is possibly a thoroughfare, and a riot committed in the bazaar comes under the above section. QUEEN-EMPRESS v. MI SHWE MI, **U.B.R. 1892—1896, Vol. I. 296.**

(76)—S. 34—*See* CRIM. PRO. CODE, 1898, s. 250, A.W.N. 1901, 142.

(77)—*S.* 34, *cl.* (2)—*Cruelty to animals.*—The attention of one of the petitioners had been called by the District Superintendent of Police to the condition of two horses and he had been warned not to drive them. Evidence was let in to show that they were bleeding from collar galls badly galled and bleeding from both shoulders, and also suffering from running *barseti* sores and that the attention of the petitioners had been called to it. The petitioners were convicted of an offence under s. 34 of the Act. *Held*, on revision, that the conviction was proper on the ground that the using of the horses was a cruel one and that the *barseti* sores and the matter running from them were likely to be productive of damage and risk to the public and would cause annoyance to any person who saw them being driven. EMPRESS v. RAI BISHEN CHAND, **A.W.N. 1887, 67.**

(78)—S. 34, cl. 5—*See* OBSTRUCTION TO PUBLIC THOROUGHFARE, A.W.N. 1881, 61.

(79)—*S.* 34 (7)—*Retrial of offender discharged of offence under s.* 277, *Penal Code.*—Where an offender is discharged on a complaint under s. 277 of the Penal Code, he cannot be retried on the same facts under s. 34, cl. 7, of Act V of 1861. POLICE v. DEBI, **Colm. Dig Cr. 50 of 1876.**

(80)—*Ss.* 34, 37 *to* 40—*Imprisonment in default of payment of fine.*—The accused in this case was convicted of an offence under s. 34, Act V of 1861 and sentenced to pay a fine of Rs. 2, or in default to 4 days' rigorous imprisonment. *Held* that the sentence of imprisonment in default was illegal and must be set aside. The Police Act lays down a special procedure for realization of fines imposed under the Act. NGA THA GAUNG v. QUEEN-EMPRESS, **L.B. R. 1872—1892, 473.**

(81)—S. 36—*See* No. 13, *supra.*

(82)—S. 37—*See* No. 80, *supra.*

(83)—S. 38—*See* No. 80, *supra.*

I.—Imperial Acts—continued.

Act V of 1861 (Police)—*concluded.*

(84)—S. 39—*See* No. 80, *supra.*

(85)—S. 40—*See* No. 80, *supra.*

(86)—*S.* 42—*Scope of.*—The prosecutions referred to in this section are for acts done or purporting to be done by a police officer, in the execution of his duty as a police officer, and not for acts done apart from the execution of his duty. QUEEN-EMPRESS v. NGAO, **U.B.R. 1897—1901. Vol. I, 365.** (7 N W.P. 237, *R.*)

(87)—S 42—*See* NOS. 19, 65, *supra.*

(88)—*Ss.* 42, 29 — *Scope.*—S. 42 has no bearing or connection with s. 29 of the Act. QUEEN v. HAZAR MIRKHAN, **7 N. W. P. 237,** [*R.*, U.B.R 1897—1901, Vol. I, 365.]

(89)—*S.* 42—*Detention in custody for more than* 24 *hours—Crim Pro Code* (1861), *s.* 152.—Three police officers detained a person, suspected of having committed theft, in custody without a special order for more than 24 hours for the purpose of enabling the officer in charge of the police station, who was absent, to go into the case. He was further detained in contravention of the provisions of s. 152, Crim. Pro. Code. *Held, per Cunningham and Campbell, JJ.* that they were answerable for detention only until the return of the superior officer. *Held, per Lindsay, J., dissenting*, that the prosecution instituted, more than three months after the detention, was barred by s. 42, Act V of 1861. SEWARAM v. CROWN, **36 P. R. 1870, Cr.**

(90)—*S.* 42—*Suit against police officer.*—In a suit against a police officer, the objection under this section, that one month's notice has not been given, must be taken in the lower Court; and the objection, if not taken advantage of and pleaded in the first instance, cannot be made use of as a ground of appeal. NARAIN DEEN TEWAREE v. RAJA RAM DASS, **8 W.R. 425.**

(91) — *S.* 44—*Police officer—Penal Code, s.* 177—*Omission to give information.*—Under the above Act, a police officer is bound to communicate information to his superior officer regarding the commission of a riot affecting the public peace, and to make an entry thereof in the diary which he is required by s. 44 to keep, and the omission to give such information brings him within the purview of s. 177, Penal Code. *In re* SYED FUTTEH MAHOMED, **21 W R. Cr. 30.**

Act IX of 1861 (Minors).

[REP., ACT VIII OF 1890.]

See MINOR—CUSTODY OF MINOR.

(1)—*Girl of sixteen, whether can legally consent to leave guardian's protection.*—A girl under sixteen years of age has not such a discretion as enables her, by giving her consent, to protect any one from the criminal consequences of inducing her to leave the protection of a lawful guardian; but where the return to the writ of *habeas corpus* stated that a girl was above the

I.—Imperial Acts—continued.

Act IX of 1861 (Minors)—*concluded.*

age of 16 (though her mother stated her to be of the age of thirteen years and nine months), the Court held that she was of years of discretion to choose for herself under whose protection she would remain. QUEEN v. VAUGHAN, **5 B.L.R O. Cr. 418.** [*R.*, 5 B.L.R. 557, 9 M. 391.]

(2)—*Pegu—European British minors.*—This Act applied to Pegu, and also to minors, the lawful children of European natural-born British subjects. *In re* W.H. HUTTON, **3 W. R. Rec. Ref. 5.**

Act X of 1861 (Repealing Enactments relating to Civil Procedure).

[REP., ACT XIV OF 1870.]

See WITNESS—SUMMONS TO WITNESSES, 1 B.L.R A. Cr. 186 = 10 W.R. 233.

Act XVI of 1861 (Stage Carriages).

[SHORT TITLE GIVEN ACT XIV OF 1897. REP. IN PART, ACT XIV OF 1870. AMENDED ACT XVI OF 1876 REP. IN PART AND AMENDED ACT I OF 1898.]

(1)—*Scope of Act.*—The Act does not apply to a carriage which is not ordinarily used for a journey of a greater distance than 20 miles. QUEEN-EMPRESS v. RAMCHANDRA, **Rat. Un. Cr. C. 364 = Cr. Rg. 7 of 1888.**

(2)—*S. 7—Carriages plying in a town—Bom. Act* VI *of* 1863 (*Public Conveyances Act*).—The Stage Carriages Act, 1861, does not apply to a carriage plying only within a town and its suburbs, to which the Bombay Public Conveyances Act would apply if extended thereto. QUEEN-EMPRESS v. DAU, **Rat. Un. Cr. C. 327 = Cr. Rg. 17 of 1887.**

(3)—*Ss 7, 9, 21—References, under ss. 7 and 9—Crim. Pro. Code* (1882), *s.* 29—*Jurisdiction of Magistrate to try offences under Act.*—Reading the first para. of s. 29, Crim. Pro. Code, with s. 21 of Act XVI of 1861, it will be seen that all Magistrates have jurisdiction to try offences against ss. 7 and 9 of the Act. QUEEN-EMPRESS v. RAMCHANDRA, **Rat. Un. Cr. C. 364 = Cr. Rg. 7 of 1888.**

(4)—*S. 8—Running a horse not passed by the police or permitting stage carriages to be drawn by coolies not an offence.*—Running a horse which had not been passed by the police in breach of a rule made by the District Magistrate or permitting a stage carriage to be drawn by coolies was not an offence under s. 8 of the Act. EMPRESS v. MCMULLEN, **A.W.N 1883, 228.**

(5)—*Ss. 8, 9—Jurisdiction of second class Magistrate.*—A Magistrate of the second class has no jurisdiction to try an offence under ss. 8 and 9 of Act XVI of 1861. The offence is triable only by Magistrate of the District or a Magistrate of the first class. EMPRESS v. MOTI RAM, **7 P.R. 1879, Cr.**

(6)—S. 9—*See* NOS. 3, 5, *supra.*

I.—Imperial Acts—continued.

Act XVI of 1861 (Stage Carriages)—*concld.*

(7)—Ss. 9, 10—*Owner driving horse—Rules framed under Act.*—A rule framed under Act XIV of 1861, as amended by Act XVI of 1876, to the effect "that a person who drives a horse more than two stages of a certain distance within twenty-four hours shall be considered to have overdriven the horse," was *ultra vires.* Whether or not a horse used in a stage carriage has been overdriven is a question of fact in each case. *In the matter of the petition of* NIAZ AHMAD, **A.W.N. 1897, 27.**

(8)—S. 10—*See* NO. 7, *supra.*

(9)—S. 21—*See* NO. 3, *supra.*

Act XXIII of 1861 (Code of Civil Procedure).

[REP. ACT X OF 1877.]

See ACT X OF 1877.

See ACT XIV OF 1882.

(1)—S. 16—*See* CRIM. PRO. CODE (1898), s. 478, 7 B.H.C. Cr. 29.

(2)—Ss. 16, 19—*See* JURISDICTION OF CIVIL COURTS, 7 W.R. 482.

(3)—S. 19—*See* No. 2, *supra.*

Act XXIX of 1861 (Native Articles of War).

[REP., ACT V OF 1869.]

Art. 85—*Summary power of flogging.*—Enlisted store *lascars* attached to the Royal Artillery are not a native detachment within the meaning of art. 85 of Act XXIX of 1861; so that the officer commanding the Artillery is not competent to inflict upon them summary flogging under that Act. FAIZ KHAN v. BAYLEY, **11 P.R. 1868, Cr.**

Act X of 1862 (Stamp-duties).

[REP., ACT VII OF 1870.]

See ACT VII OF 1870.

(1)—*Stamp duty on mere acknowledgment.*—An acknowledgment that a sum of money was due, without any express promise to pay, need not be stamped. CROWN v. JETHOO MULL, **43 P.R. 1867, Cr.**

(2)—*Unstamped instrument—Liability of parties.*—The writer of a document, if he is not a party to it, and the witnesses to the document are not liable, if the document is not properly stamped. The person, in whose favour the document is made, is not also liable, if he was not a party to its execution. KESRA SINGH v. CROWN, **15 P.R. 1869, Cr.**

(3)—*Reward to informer as to improperly stamped document.*—A reward cannot be given to the reader or other ministerial officer of a Court who brings to notice that a document is improperly stamped. He is not an informer within the meaning of the Stamp Act. CROWN v. HAMEER CHAND, **13 P.R. 1875, Cr.**

(4)—*See* ACT I OF 1868, s. 6, 1 Weir 781 = 7 M.H.C. App. 8.

I.—Imperial Acts—continued.

Act X of 1862 (Stamp-duties)—*continued.*

(5)—*See* PENAL CODE, ss. 21 (9), 161, Rat. Un. Cr. C. 36 = Cr. Rg. 28-7-1870.

(6)—*S.* 3—*Scope of the section.*—The restrictive words in s. 3 "unless in any case in which a higher penalty is imposed by this Act" mean "unless a penalty higher than that imposed by this section is imposed by some other part of this Act" and they apply both to a penalty exceeding Rs. 100 and to one higher than ten times the value of the omitted stamp. HIGH COURT PROCEEDINGS, 15TH FEB. 1867, **3 M. H. C. App. 27.**

(7)—*S.* 3—*Engrossing deed on unstamped paper.*—The mere engrossing of a deed on an unstamped paper does not constitute an offence under s. 3 of Act X of 1862. REG. v JETHA MOTI; REG v. VIRJI KUVARSI, **2 B.H.C. 129.**

(8)—*S.* 3—*Liability of attesting witnesses for deficient stamp.*—Attesting witnesses to the execution of a document and persons who draft it do not come within the words "make, execute, sign, or be a party to," as used in s. 3. HIGH COURT PROCEEDINGS, 15TH FEB. 1867, **3 M.H.C. App. 27.**

(9)—S. 3—*See* COMPLAINT--PROCEDURE ON RECEIPT OF COMPLAINTS, 5 B.H.C. 48, Cr.

(10)—*S.* 3 (*a*)—*Signing unstamped deed as witness.*—The mere signing of an unstamped deed as a witness does not constitute an offence under s. 3 (*a*) of Act X of 1862. REG. v. JETHA MOTI; REG. v. VIRJI KUVARSI, **2 B. H.C. 129.**

(11)—*Ss.* 3 *and* 52—*Prosecution under s.* 3 *when may be instituted.*—A prosecution under s. 3 of Act X of 1862, if it is not authorized by the Collector, or by any other officer specially authorized by Government to direct a prosecution, is irregular under the provisions of s. 52 of the Act. QUEEN v. ADJOODHYA PERSHAD, **2 N.W.P. 188.**

(12)—*Ss.* 3 *and* 54—*Engrossing document on unstamped paper.*—Persons who have merely engrossed documents liable to stamp duty on unstamped papers are not liable to be fined under s. 54, Act X of 1862. REG. v. JOTI *bin* SATU, **1 B.H.C. 37.**

(13)—*S.* 11—*Copies of records of criminal trial—Stamp—Authentication of copies.*—With the exception of the depositions of witnesses and the documentary evidence and final sentences or orders in the cases falling within the Governor-General's notification of 8th January 1863, copies of any part of the record of a criminal trial, whether authenticated or unauthenticated, can only be furnished to applicants on stamp paper. Copies of documents which the law requires to be on stamp paper, copies of orders which fall within the exemption of the Governor-General's notification, and copies which the law requires Courts to furnish to the parties, must in all cases be authenticated. HIGH COURT PROCEEDINGS 26TH JULY, 1869, **4 M H.C. App. 57.**

I.—Imperial Acts—continued.

Act X of 1862 (Stamp-duties)—*concluded.*

(14)—S. 15—*See* ACT XXXVI OF 1860, 14 M. 255.

(15)—*S.* 50—*Procedure—Collector—Sanction of Civil Court.*—A Collector, to whom an application is made for a new stamp under cl. 2 of this section, is not a Court, Civil and Criminal, and the application, therefore, not being a document given in evidence in any proceeding of a Court, s. 170, Crim. Pro. Code, does not cover such a case. QUEEN v. GOUR MOHUN SEIN, **11 W.R.Cr. 48 = 3 B.L.R.A.Cr. 6.**

(16)—S. 52—*See* No. 11, *supra.*

(17)—S. 54—*See* No. 12, *supra.*

Act XV of 1862 (Amending the Code of Criminal Procedure).

[REP., ACT VIII OF 1869.]

See ACT VIII OF 1869.

(1)—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 22 P.R. 1867, Cr.

(2)—*S.* 1—*Imprisonment—Transportation—Penal Code, s.* 59—An officer, exercising the powers described in s. 1 of the Act, is competent, under the provisions of s. 59 of the Penal Code, to pass a sentence of transportation for seven years instead of awarding a sentence of imprisonment. *In the case of* BOODHOOA, **9 W.R Cr. 6 = B.L.R. Sup. Vol. 869.**

(3)—S. 1—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 32 P.R. 1868, Cr.

Act XVII of 1862 (Repealing Enactments relating to Criminal Law).

[REP., ACT X OF 1872.]

See CRIM. PRO. CODE.

(1)—*Jurisdiction of Subordinate Magistrate—Act* III *of* 1857, *s.* 13.—The repealing section of Act XVII of 1862 does not affect the power of a Subordinate Magistrate under s. 13 of Act III of 1857. REG. v. MIR SAHEB KASSAMIA, **1 B.H.C. 100.**

(2)—*Legality of conviction—Offences committed before Act* XVII *of* 1862.—In the case of a conviction in 1876 of a prisoner, under Regulation IV of 1797, for an offence of culpable homicide committed in 1861, before the Penal Code came into operation, *held*, the conviction was illegal, inasmuch as Reg. IV of 1797 was repealed by Act XVII of 1862 and the latter Act was wholly repealed by Acts VIII of 1868 and X of 1872 and inasmuch as s. 6 of Act I of 1868, which provided that the repeal of any Act or Regulation shall not affect any offence committed before the Repealing Act came into force was not applicable to the case. EMPRESS OF INDIA v. DILJOUR MISSER, **2 C. 225, F B.** [*Appr.*, 1 A. 599.]

I.—Imperial Acts—continued.

Act XVII of 1862 (Repealing Enactments relating to Criminal Law)—*concluded.*

(3)—*See* ACT VII OF 1854, s. 23, 8 B.H.C. Cr. 13.

(3-*a*)—*See* ACT XVIII OF 1854, s. 35, 3 B.H.C. Cr. 54.

(4)—*See* ACT III OF 1857, s. 13, 4 B.H.C. Cr. 13.

(5)—*S.* 1—*Scope.*—S. 23 of Act VII of 1854 is not repealed by the schedule to Act XVII of 1862. REG v. SOUTER, **8 B.H.C. Cr. 13.**

(6)—*Ss.* 1, 2, 4—*General Clauses Act* (I *of* 1868)—*Penal Code—Offences committed prior to* 1*st January*, 1862.—A person could not be convicted of an offence committed prior to the 1st January, 1862, under Act XVII of 1862, because that Act was a repealing Act and not an Act providing for the punishment of such offences. But it is another question whether persons who have committed offences prior to 1st January, 1862, are not amenable to punishment under the Regulations. To the several repealing Acts, passed since the General Clauses Act came into operation, the provisions of s. 6 of the General Clauses Act apply, and the repeal of a Regulation subsequently to the passing of the Act does not relieve offenders from the penalties to which they were liable under the Regulations. It is a more difficult question whether the right of reference given by s. 3 of Reg. IV of 1797 remains after the repeal of Act XVII of 1862, if that right had not accrued before the Act was repealed, and the conviction had not taken place till after the repeal of the Act. EMPRESS OF INDIA v. MULUA, **1 A.599.** (2 C. 225, F.B., *Appr.*)

(7)—S. 2—*See* No. 6, *supra.*

(8)—S. 4—*See* REVISION—SENTENCES, 15 W.R. Cr. 48.

(9)—S. 4—*See* SESSIONS JUDGE, JURISDICTION OF, 14 W.R. Cr. 76.

(10)—S. 4—*See* NO. 6, *supra.*

Act XVIII of 1862 (Criminal Procedure Supreme Courts).

[REP., ACT X OF 1882.]

(1)—*S.* 1—*Amendment of charge—Prisoner prejudiced on merits.*—Under s. 1 of this Act, the Court has power to order the amendment of a charge involving a change in the ownership of stolen property, provided such amendment does not prejudice the accused in his defence upon the merits. In cases where there is a doubt as to whether an amendment of a charge will or will not prejudice the accused in his defence upon the merits, the amendment ought not to be made. REG. v. GOVINDAS HARIDAS, **6 B. H. C. Cr. 76.** [*R.*, 22 C. 391.]

(2)—S. 1—*See* CHARGE—AMENDMENT OF CHARGE, 6 B.H.C. Cr. 76.

I.—Imperial Acts—continued.

Act XVIII of 1862 (Criminal Procedure Supreme Courts)—*continued.*

(3)—*S.* 27—*Defamation—Good faith*—Onus probandi.—This Act refers only to the High Court in its original criminal jurisdiction, and is not applicable to mofussil Courts. S. 27 of the Act requires proof of the existence of the circumstances relied on as a defence, before good faith can be presumed in a case of defamation. The *onus* of proving good faith is on the person making the imputation. Before such person can claim the benefit of exception 9, s. 499, Penal Code, he must show that he has exercised due care and caution. MR. SEALY v. RAMNARAIN BOSE, **4 W.R. 22. Cr.** [*R.*, A.W. N. 1907, 235, 4 A.L.J. 605.]

(4)—*S.* 35—*Scope of the section—Drunkenness whilst on duty.*—The proper construction and effect of s. 35 of Act XVIII of 1862 is, that, if a person is accused of an offence committed whilst on a journey or voyage, he may be tried, if a part of the journey or voyage, during which the offence which the person accused is alleged to have committed, is within the local limits of the Court's jurisdiction. The offence of drunkenness of a guard in charge of a train, whilst on duty, is one of the offences contemplated by s. 35 of Act XVIII of 1862. REGINA v. MALONY, **1 M.H.C. 193.**

(5)—*S.* 41—*Omission in the charge to state that property obtained was property of complainant.*—Under s. 41, Crim. Pro. Code, 1861, an omission to state, in an indictment for an offence under ss. 415 and 420 of the Penal Code, that the money, which, it was alleged, the prisoner had, by deceit, fraudulently induced the prosecutor, to pay to him, was the property of the prosecutor, was held to be defective for uncertainty. The objection to such indictment, in order to be valid, should be taken before the jury was sworn. QUEEN v. WILLAMS, **1 Weir. 471=1 M. H. C. 31.**

(6)—*S.* 41—*Charge—Ground for arrest of judgment—Act* XIII *of* 1865.—It ought to appear on the face of the charge that it had been delivered to the Clerk of the Crown, by a Justice of the Peace or by a Magistrate, but its not so appearing is a formal defect only, to which the objection could only be taken under s. 41 of Act XVIII of 1862 before the jury has been sworn, and it was not a ground for arrest of judgment. QUEEN v. THOMPSON, **1 B.L.R. O. Cr. 1.**

(7)—*S.* 41—*Caption of charge.*—Where the High Court could have directed the preliminary investigation of a charge against N by a Deputy Magistrate, but it did not appear in the caption of the charge or in evidence that the Court had so directed it, *held* that it was no ground for arrest of judgment, but the objection might have been raised before the jury was sworn under s. 41 of Act XVIII of 1862. QUEEN v. NAVADWIP CHANDRA GOSHWAMI, **1 B.L.R.O. Cr. 15=15 W. R. Cr. 71, Note.** [*R.*, 16 W.R. Cr. 21, 17 W.R. Cr. 35, 19 A. 390, F. B.].

I.—Imperial Acts—continued.

Act XVIII of 1862 (Criminal Procedure Supreme Courts)—*concluded.*

(8)—*S.* 41—*Amendment of charge.*—The indictment may be amended at any stage of trial. QUEEN v. WILLIAMS, **1 Ind. Jur. O. S. 94.**

(9)—S. 41—*See* CHARGE—AMENDMENT OF CHARGE, 1 M.H.C. 31=1 Weir 471.

Act XX of 1863 (Religious Endowments).

[SHORT TITLE GIVEN ACT XIV OF 1897. REP. IN PART, ACT VII OF 1870; ACT XIV OF 1870; ACT XVI OF 1874. S. 3, AMENDED, ACT XII OF 1891. EXTENDED TO THE KANARA DISTRICT, BOM. ACT VII OF 1865.]

(1)—Suit for trespass—Expenses of criminal proceedings—*See* DAMAGES, 4 M.H.C. 410.

(2)—*S.* 20—*Reg.* VII *of* 1817, *s* 16—*Jurisdiction of ordinary Criminal Courts—Criminal breach of trust by trustee of temple—Permission of committee, whether necessary before prosecution.*—The ordinary criminal law is not excluded by Reg. VII of 1817 or by Act XX of 1863.—The permission of the Board of Revenue or the Committee of a temple is required only for the procedure prescribed in the special Acts, and the special provisions cannot be taken out of the Acts and applied as restrictions to the ordinary operation of the Criminal Law. Therefore, the trustee and manager of a temple can be prosecuted for criminal breach of trust, and the permission of the Committee appointed under Act XX of 1863 is not necessary. HIGH COURT PROCEEDINGS, 22ND FEBRUARY 1876, **1 M. 55=1 Weir 755.**

Act III of 1864 (Foreigners).

[SHORT TITLE GIVEN ACT XIV OF 1897. REP. IN PART, ACT XII OF 1876. S. 24, AMENDED, ACT XII OF 1891. DECLARED IN FORCE—THROUGHOUT BRITISH INDIA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3; IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3.]

(1)—*Cantonment Act* III *of* 1864, *Ch.* III, *r.* 50—*Lattice work to keep fowl.*—A structure of lattice work erected in the compound of a house, to keep fowl in, is not a house or hut within the meaning of r. 50, Ch. III of the Cantonment Act. QUEEN-EMPRESS v. CHARLES MACLVOR, **Rat. Un. Cr. C. 609=Cr. Rg.** 29 of **1892.**

(2)—*Ss.* 3 *and* 4—*Validity and scope of Act—Warrant under section—Form.*—Act III of 1864 was not *ultra vires* of the Governor-General of India in Council. *Per Bayley, J.*—The Act applies to all foreigners, although their residence in Bombay may not be likely to affect or endanger the peace and security of British India. *Per Starling, J.*—The Government would be the sole judges of what was necessary for the peace and security of British India, and if they acted in accordance with the letter of the Act, the High Court could not enquire into the sufficiency or otherwise of their reasons for so acting. A warrant issued under ss. 3 and 4 of Act III of 1864, should not comprise two distinct orders, one to the foreigner to remove himself from British India, the other to arrest him in case it is not duly obeyed. There should be a separate order directing him to remove himself from British India which should be duly served upon him. Then, in case of his refusal or neglect to comply with its terms, there should be a further order by the Governor in Council authorizing his arrest and detention in jail. The persons named in the warrant should be described with sufficient certainty and particularity. The particular route to be specified in the order referred to in s. 3 of Act III of 1864, is intended to be a route in British India and not a route beyond the High Seas. In the absence of statutory provision, the absence of a seal will render a warrant void. ALTER CAUFMAN v. GOVERNMENT OF BOMBAY, **18 B. 636.**

(3)—S. 4—*See* No. 2, *supra.*

Act VI of 1864 (Whipping).

[SHORT TITLE GIVEN ACT XIV OF 1897. REP. IN PART, ACT X OF 1872; ACT XVI OF 1874; ACT X OF 1882. REP. IN PART AND AMENDED, ACT V OF 1900. AMENDED ACT III OF 1895, S. 5. REP. EXCEPT IN THE ANGUL DISTRICT THE CHITTAGONG HILL TRACTS, KACHIN HILL TRACTS, AND THE CHIN HILLS, ACT IV OF 1909. DECLARED IN FORCE, IN THE ANGUL DISTRICTS, REG. I OF 1894, S. 3, IN THE CHITTAGONG HILL TRACTS (WITH A MODIFICATION), REG. I OF 1900, S. 4; IN KACHIN HILL TRACTS AS REGARDS HILL TRIBES (WITH A MODIFICATION), REG. I OF 1895, S. 3, IN CERTAIN TRACTS IN THE CHIN HILLS (WITH A MODIFICATION), REG. V OF 1896, S. 3].

See CRIM. PRO. CODE (1898), SS. 390 TO 395.

See JUVENILE OFFENDERS.

See SENTENCE—WHIPPING.

(1)—*Limit as to number of stripes.*—The number of stripes cannot exceed thirty and the punishment cannot be executed by instalments. BAMJUS v. SOOKHRAM, **82 P.R. 1866, Cr.**

(2)—*Time limit for executing sentence of whipping.*—It is imperative to carry out a sentence of whipping in addition to imprisonment immediately on the expiry of 15 days from the date on which it was passed, unless an appeal be made within that time. CROWN v. RANJA, **31 P.R. 1878, Cr.** *See, also*, CROWN v. GOOLAB, **54 P.R. 1866, Cr.** EMPRESS v. MAN, **34 P.R. 1880, Cr.**

I.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

(3)—*Postponement of sentence of whipping.*—It is not competent to a Judge to postpone the sentence of whipping till after the expiry of sentence of imprisonment imposed upon the accused. EMPEROR v. JAGANNATH SAGAR, **4 Bom. L.R. 929.**

(4)—*Postponement of sentence of whipping.*—It is illegal to order a sentence of whipping to be inflicted on the prisoner at the time of release from jail. CROWN v. GOOLAB, **54 P.R. 1866, Cr.** *See, also,* CROWN v. RANJA, **31 P.R. 1878, Cr.** EMPRESS v. MAN, **34 P.R. 1880, Cr.**

(5)—*Postponement of sentence of whipping.*—In passing a sentence of whipping in addition to six months' imprisonment, a Deputy Magistrate ordered that the prisoner should be brought before him at the termination of the imprisonment, and that the sentence of whipping should then be carried out. *Held* that the sentence of whipping should be cancelled as having become inoperative and incapable of being carried out. HURCHANDRA KULAL v. JAFER ALI, **20 W.R. Cr. 72.** (6 M.H.C. App. 36, *F.*)

(6)—*Crim. Pro. Code* (1898), *ss.* 391 *and* 407—*Sentence of whipping by a Magistrate—Application for postponement of sentence until hearing of appeal.*—The Code makes no provision whereby a Magistrate imposing a sentence of whipping only can suspend its execution, nor does it provide for the detention of a person so sentenced to allow of his appealing, nor for his re-arrest to undergo the whipping if the sentence is confirmed on appeal. It is only when whipping is added to imprisonment in an appealable case, that whipping may, and ought to, be postponed. MEYYAN v. EMPEROR, **26 M. 465 = 2 Weir 447.**

(7)—*Expiry of the term fixed for whipping.*—Where the term specified for the execution of a sentence of whipping has expired, and the punishment has not been inflicted, the sentence is no longer operative and should be cancelled. EMPRESS v. MAN, **34 P.R. 1880, Cr.** *See, also,* CROWN v. GOOLAB, **54 P.R. 1866, Cr.** CROWN v. RANJA, **31 P.R. 1878 Cr.**

(8)—*District Magistrate, interference of, in cases of whipping—Crim. Pro. Code* (1898), *s.* 395.—The words, "the Court which passed the sentence," in s. 395, Crim. Pro. Code (1898) do not mean the same officer who inflicted the punishment of whipping originally and, in the absence of the officer who originally passed the sentence, the District Magistrate can be held to be "the Court" which passed the sentence. CHHAJJU v. EMPEROR, **33 P.R. 1901, Cr.** (10 P.R. 1889 Cr., *R. & Expl.*)

(9)—*Jurisdiction of Second Class Magistrate to pass sentence of whipping.*—A person, appointed as a Magistrate of the Second Class under Act X of 1872, is incompetent, since the coming into force of Act X of 1882, to pass a sentence of whipping, unless he is specially empowered so to do according to the provisions of s. 32 of the latter Act. EMPRESS v. BHAGVANTA RAVJI, **7 B. 303.**

(10)—*Whipping in default of payment of fine.*—Whipping cannot be awarded in default of payment of fine. BUDHU v. BAHU, **5 P.R. 1866 Cr.**

(11)—*Appeal—Crim. Pro. Code* (1861).—Appeals from sentences of whipping are regulated by the Crim. Pro. Code, and not by the Whipping Act. CROWN v. ESHREE, **29 P.R. 1866, Cr.**

(12)—*Whipping not authorized by the Act in cases of—S. 75, Penal Code, inapplicable to offences punishable under s.* 511.—The Whipping Act does not deal with attempts to commit offences punishable with whipping, and s. 75 is not applicable to offences punishable under s. 511 which appears in Chapter XXIII of the Code and not in either of the chapters referred to in s. 75. QUEEN-EMPRESS v. NGA PO HLAING, **L.B.R. 1872—1892, 531.** (3 A. 773, *R.*)

(13)—*Sentence in lieu of whipping, Magistrate's power to award.*—A Magistrate cannot inflict a sentence in lieu of whipping, when that sentence, together with the substituted sentence, is in excess of the maximum which he is competent to inflict. CROWN v. BARKAT ALI, **87 P.L.R. 1901 = 11 P.R. 1901, Cr.** (21 A. 25, *F.*)

(14)—*Solitary confinement, legality of—Imprisonment in lieu of whipping.*—An award of solitary confinement to a person sentenced to rigorous imprisonment in lieu of whipping is not illegal. QUEEN-EMPRESS v. GAMAN, **14 P.R. 1899, Cr.**

(15)—*Simultaneous conviction for two offences—Sentence of whipping.*—A simultaneous conviction for two offences of the same character does not warrant the sentence of whipping in addition to other punishment for one of them. EMPRESS v. SEWAK, **8 P.R. 1885, Cr.** (22 P.R. 1872, Cr., *R.*) [*R.*, 20 P.R. 1886, Cr.] *See, also,* EMPRESS v. JHANDU, **9 P.R. 1885. Cr.**

(16)—*Conviction for theft after previous conviction for same offence—Whipping.*—A sentence of whipping can legally be awarded in a case where the accused, who has been previously convicted of theft, is subsequently convicted of theft in a building. JEEWUN v. BOODHA, **51 P.R. 1867, Cr.** [*F.*, 41 P.R. 1880, Cr.]

(17)—*Evidence of previous conviction necessary for awarding whipping.*—As a rule, before flogging is given as an additional punishment, there ought to be formal evidence upon the record of the previous convictions relied on. The conviction and the identity of the prisoner ought to be proved in the regular way. A mere kyfeut is no evidence whatever. QUEEN v. NUZEE NUSHYO, **15 W.R. Cr. 52.**

I.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

(18)—*Crim. Pro. Code* (1882), s. 221—*Previous conviction to be set out in charge.*—If it is intended to use a previous conviction for the purpose of applying the Whipping Act, it must be set out in the charge. QUEEN-EMPRESS v. PO THAUNG, **L.B.R. 1872—1892, 337.**

(19)—*Previous conviction for dishonestly receiving stolen property.*—A previous conviction for dishonestly receiving stolen property does not justify the infliction of whipping in addition to a sentence of imprisonment on a subsequent conviction for theft. KOURI v. EMPRESS, **39 P.R. 1880, Cr.**

(20)—*Previous conviction necessary.*—The law does not authorize the infliction of whipping in addition to another punishment, unless where the offence has been committed after a previous conviction for the same offence. EMPRESS v. HAVAT, **20 P.R. 1886, Cr.** (8 P.R. 1885, Cr., 9 P.R. 1885, Cr., *R.*)

(21)—*Previous conviction for theft in foreign territory—Subsequent conviction for theft in British India.*—A previous conviction of theft in a foreign territory does not justify a sentence of whipping in addition to imprisonment on a conviction for the same offence in British India. EMPRESS v. MATHLA, **4 P.R. 1881, Cr.**

(22)—*Previous conviction quashed by appellate Court.*—Where a previous conviction was reversed on appeal and, a few days after, the subsequent conviction was upheld on appeal, the sentence of imprisonment and whipping inflicted by the lower Court being also upheld, *held* that the appellate Court should not have upheld the sentence of whipping, as there was no previous conviction on the date of the appellate Court's judgment. As the sentence of whipping had been inflicted, *held*, that the sentence of imprisonment should be quashed. KALU BEG v. CROWN, **16 P.R. 1875, Cr.**

(23)—*Crim. Pro. Code* (1861), s. 46—*Previous conviction.*—Unless there has been a previous conviction, whipping cannot be awarded as one of two or more punishments awarded under s. 46, Crim. Pro. Code, 1861. CROWN v. PHEENA, **17 P.R. 1870, Cr.**

(24)—*Previous convictions in Berar.*—Previous convictions had in Berar cannot be taken into consideration for the purpose of affecting the punishment, which a Court would be competent to award on a second conviction, either under the provisions of s. 75, of the Penal Code or under those of the Whipping Act. EMPRESS v. LAL SINGH, **7 C.P L.R. Cr. 24.** [*R.*, 9 Cr. L. J. 97=4 N.L.R. 177.]

(25)—*Offence must be same in both convictions.*—In order to legalize whipping in addition to imprisonment in the case of a second conviction the offence must be the same in both cases. QUEEN v. AMARUT SHEIKH, **4 W.R. Cr. 20.**

(26)—*And not merely similar—Dacoity committed prior to previous conviction.*—Under the above section, a sentence of whipping in addition to imprisonment is not legal where the conviction was in respect of a dacoity committed prior to the previous conviction for a similar offence. KING-EMPEROR v. BABYA BHIVA, **3 Bom. L.R. 419=25 B. 712, F.B.**, (12 W.R. Cr. 68, 3 B.H.C. 38, *R.*)

(27)—*Conviction for two or more offences—Whipping whether awardable as punishment for one of them.*—The effect of the Whipping Act is to make whipping a punishment under the Penal Code, and it is, therefore, competent to the Magistrate on a second conviction at the same trial to award a sentence of whipping either in substitution for, or in addition to, imprisonment, subject to the restrictions in the Whipping Act, itself. Therefore, a Court is not precluded from sentencing a prisoner, convicted at one time of two or more offences punishable under the Penal Code, to rigorous imprisonment in one case and to whipping in the other. HIGH COURT. PROCEEDINGS 18TH FEB. 1870, **5M H C. App. 18.** [*F.*, 2 L.B R. 14.]

(28)—*Cases where whipping can be awarded in addition to other punishments.*—Only in cases where a person is convicted a second time for the *same* offence, and not merely of a *similar* offence, can whipping be awarded in addition to imprisonment. BUDHU v. BAHU, **5 P.R. 1866, Cr.**, CROWN v. GOOLAB, **54 P.R. 1866. Cr.**; IMRAT v. BHOOMIA, **95 P. R. 1866, Cr.**; SOORAJOODDEEN v. SAMUN, **35 P.R. 1869. Cr.**

(29)—*Whipping on conviction for two offences at the same time.*—When the accused is convicted at the same time of two offences, he may be punished with whipping. CROWN v. DURRAB, **22 P.R. 1872, Cr.** [*R.*, 21 P.R. 1879, 8 P.R. 1885, 20 P.R. 1886.] *See, also*, EMPRESS v. SEWAK, **8 P.R. 1885, Cr.**; EMPRESS v. JHANDU, **9 P.R. 1885, Cr.** EMPRESS v. HAVAT, **20 P.R. 1886, Cr.**

(30)—*When whipping cannot be awarded in addition to other punishments—Whipping—Cumulative sentence.*—In this case, the Magistrate in exercise of the powers conferred by s. 46 of the Crim. Pro. Code, 1861, passed a cumulative sentence against a person convicted at one and the same time of two or more offences punishable under the Indian Penal Code; *held* that he cannot, in addition to the penalties prescribed by the Penal Code, sentence the prisoner to whipping under the above Act, nor can he exceed twice the extent of his ordinary jurisdiction as defined by s. 22 of the Crim. Pro. Code. (*Per Peacock, C.J.*; *Phear and Seaton-Karr, JJ*). In the case of hardened offenders, a Magistrate can award whipping in addition to the maximum of imprisonment which he is competent to award. (*Per Seaton-Karr, J.* The Magistrate may, in such a case, in addition to awarding double the punishment which may be awarded for a single offence, award the punishment of whipping; but only

I.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

one whipping can be awarded. (*Per Macpherson and Jackson, JJ*). NASSIR v. CHUNDER, **B.L.R. Sup. Vol. 951=9 W.R. Cr. 41.** [*F.*, Rat. Un. Cr. C. 564, 955, 14 W.R. Cr. 7, 16 B. 357.]

(31)—*Illegal punishment of whipping—Chief Court's power.*—Where whipping is illegally inflicted in addition to other punishments, the Chief Court should remit the latter punishment. QUEEN v. JOWIND SINGH, **121 P.R. 1866, Cr.** *See, also,* SOORAJOODDEEN v. SAMUN, **35 P.R. 1869, Cr.**; KALU BEG v. CROWN, **16 P. R. 1875, Cr.**

(32)—Liability to whipping — Grounds of liability to be stated both in charge and judgment—*See* CRIM. PRO. CODE (1898), s. 221, 5 **M. 158.**

(33)—*See* OFFENCE, L. B. R. 1893—1900, 315.

(34)—*S.* 1—*Application of the Act.*—The Whipping Act applies to offences under the Penal Code only. QUEEN-EMPRESS v. NGA TAW THA, **U.B.R. 1897—1901, Vol. I, 392.**

(35)—*S.* 1—*Penal Code and Crim. Pro. Code to be read with Act* VI *of* 1864.—The Penal Code and the Code of Criminal Procedure must be read as if the Whipping Act formed a part of the Penal Code from the date of its enactment, and s. 46 of the Code of Criminal Procedure (1861) is applicable to all offences and punishments as prescribed by the Penal Code in its present and amended form. MONIRUDDEEN SHAMADAR v. GOUR CHUNDER SHAMADAR, **15 W.R. Cr. 89=7 B.L.R. F.B. 165.**

(36)—*S* 2—*Scope.*—S. 2 of the Act refers to the commission of the offences, not to attempts to commit offences. EMPRESS v. JAGROO CHAMAR, **12 C.P.L.R. 1, Cr.**

(37) *S.* 2—*Whipping only in lieu of other punishment.*—In the case of adults on a first conviction, or in the case of juvenile offenders, whether for a first or for any other offence, whipping can only be *in lieu* of any other punishment. QUEEN v. ABDOOL KHIDMUTGAR, **W.R. 1864, Cr. 38.** [*R.*, 13 W.R. Cr. 40.]

(38)—*S.* 2—*Whipping whether can be inflicted for offences under s.* 2 *in additon to other punishments.*—The law does not authorise the sentence of whipping for offences specified in s. 2 of the Whipping Act, *in addition to* any other punishment to which the offender may be liable under the Penal Code, unless where the offence has been committed after a previous conviction for the same offence. REG. v. SURXA *bin* KRISHNA MANDAVRAD, **3 B H.C. Cr. 38.** [*F.*, 25 B. 712=3 Bom. L.R. 419; 7 B.H.C. 70; *D.*, 2 L.B.R. 14.]

(39)—*S.* 2—*Whipping in addition to imprisonment, when legal.*—In this case, the question was referred to the Full Bench, whether a sentence of whipping and imprisonment would be legal on a finding that the accused committed "house breaking by night and theft of property," an offence punishable under s. 457 of the Penal Code and had been previously convicted of theft under s. 380. *Held*, though, under the circumstances, it was open to the Magistrate to have selected s. 380 or s. 457 for convicting the accused under, and, if he had selected the former, he could have imposed both imprisonment and whipping on account of the previous conviction under s. 380, yet, since the conviction in question, as it stood, was solely one under s. 457, for the reasons stated in 1 L.B.R. 149, the sentence of imprisonment and whipping in this case is illegal. (*Irwin, J., dissenting*). KING-EMPEROR v. NGA TO, **3 L.B.R. 161, F.B.** (1 L.B.R. 362 149, 279, *R.*)

(40)—*S.* 2—*Fine or imprisonment in addition to whipping.*—A sentence of fine or imprisonment in addition to whipping under s. 2 is illegal. QUEEN-EMPRESS v. NGA THA SIN, **U B.R. 1897—1901, Vol. I, 391.** (16 B. 357, *R.*)

(41)—*S.* 2—*Whipping and fine—Legality of sentence.*—Where an accused person is sentenced to whipping, it is not legal to sentence him also to pay a fine, the sentence being opposed to s. 2 of the Whipping Act. QUEEN-EMPRESS v. DAGDU, **Rat. Un. Cr. C. 564.** (5 B.H.C. 83, Cr., *R.*)

(42)—*S.* 2—*Penal Code, ss.* 380, 379, 411—*Whipping in addition to imprisonment*—In order to justify a sentence of whipping in addition to a sentence of imprisonment under s. 380, I.P.C., for any of the offences mentioned in s. 2 of the Act, the previous conviction must have been for the same offence. QUEEN-EMPRESS v. NGA PO SIN, **L.B.R. 1872—1892, 336.**

(43)—*S.* 2—*When whipping may be awarded in addition to other punishments.*—*Held* (*Kemp and Phear, JJ., dissenting*) that, notwithstanding s. 46 of the Code of Criminal Procedure, 1861, a person convicted at the same time of two or more offences punishable under the Penal Code, may, in addition to the punishments prescribed by the Penal Code, be sentenced to whipping under Act VI of 1864. MONIRUDDIN SHAMADAR v. GOUR CHUNDER SHAMADAR, **15 W.R. Cr. 89=7 B.L.R. F.B. 165.**

(44)—*S.* 2—*Penal Code, ss.* 456, 457—*Whipping in addition to imprisonment.*—Where an accused, previously convicted of an offence under s. 456 of the Penal Code, is again convicted of an offence under s. 457 of the Indian Penal Code, he is not liable to whipping in addition to the imprisonment. EMPRESS v. TITROO *alias* KISHNOO *alias* BHURA GOND, **14 C.P.L.R. 16.**

(45)—*S.* 2—*Validity of adding fine or imprisonment to sentence of whipping.*—In a case where an accused person is sentenced to whipping under the Act, the punishment of fine, or imprisonment, or both cannot be legally inflicted under the Penal Code in addition to

I.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

the whipping. QUEEN-EMPRESS v. DAGADU, **16 B. 357.** [*F.*, 11 C.P.L.R. 13, Cr., U.B.R. 1897—1901, Vol. I, 391, 5 L.B.R. 22 ; *Appl.*, 6 C.P.L.R. 34, Cr.]

(46)—*S.* 2—"*Punishment*," *meaning of.*—The word "punishment" as used in s. 2 of the Act means the total of punishments awardable for the offence ; otherwise, it would be possible to substitute a whipping for the fine and to inflict imprisonment in addition. EMPRESS v. KIRPAL PATHARI, **11 C.P.L R. 13, Cr.** (16 B. 357, *F.*) .

(47)—*S.* 2—"*Punishment.*"—In s. 2 of the Whipping Act, which contains no mention of s. 53, I.P.C., the word "punishment" is used in a different sense from the word "punishments" in the preceding section, and may be interpreted to mean the total punishment awardable, *i.e.*, in a case under s. 379, I.P.C., imprisonment and whipping. So, if the sentence of whipping is inflicted under s. 2 of the Whipping Act, no other punishment as prescribed by the Penal Code, either imprisonment, or fine or both, can be legally inflicted. QUEEN-EMPRESS v. DAGADU, **16 B. 357.** [*F.*, 11 C.P.L. R. 13, Cr., 10 Cr.L.J. 120=2 Ind. Cas. 620=5 L.B.R. 22, U.B.R. 1897—1901, 391, Cr. ; *Appl.*, 6 C.P.L.R. 34.]

(48)—*S.* 2—*Theft in dwelling-house, etc.*—*Whipping.*—Whipping may be substituted for any other punishment for the offence of theft in a dwelling-house, etc. QUEEN v. JUNGHOO KHAN, **3 W.R. Cr. 36.**

(49)—*S.* 2—*House-breaking in order to commit theft—Theft—Separate sentences.*—In this case the prisoner was convicted of "house-breaking in order to commit theft," and of "theft," both offences being portions of one continuous criminal act, and was sentenced, on the first charge to one year's rigorous imprisonment, under s. 457 of the Indian Penal Code, and, on the second charge, to receive twenty stripes, under s. 2 of the Whipping Act. The separate sentences, though not illegal, were disapproved of as being contrary to the spirit and intention of the Whipping Act. REG. v. GENU *bin* AKU, **5 B.H.C. Cr. 83.** [*R.*, 16 B. 357=Rat. Un. Cr. C. 564, 4 Ind. Cas. 597= 3 S. L.R. 102.]

(50)—*S.* 2—*Groups A and D—Previous conviction of offence of same group—House-theft—Subsequent house-breaking.*—In s. 2 of the Whipping Act, an offence under Group D is distinguished from that under Group A, though lurking house-trespass or house-breaking is not punishable with whipping under s. 2, unless committed with a view to commit an offence punishable with whipping such as theft. In the case of a previous conviction for house-theft, a subsequent conviction for house-breaking will not render the offender liable to whipping, though the house-theft was included in the house-breaking. CROWN v. SHAN BYU, **1 L.B.R. 149.** [*F.*, 3 L.B.R. 161, F.B.]

I.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

(51)—*S.* 2—*Attempt to commit offence.*—Attempts to commit offences, punishable under s. 2 of Act VI of 1864, not being also offences specified in the second schedule to the Burma Laws Act, 1886, are not punishable with whipping. QUEEN-EMPRESS v. NGA NAUNG, **U. B.R. 1892—1896, Vol. I, 332.** (S.J.L.B. 399, *R.*)

(52)—*S.* 2—*Attempt* *Whipping.*—A sentence of whipping may not be passed for an attempt to commit an offence which is punishable with whipping under that Act. QUEEN-EMPRESS v. NGA PO HLE, **L.B.R. 1872—1892, 399.**

(53)—*S.* 2—*S.* 5 *of Act III of* 1895—*Crim. Pro. Code, s.* 390—*Whipping.*— Where a sentence of whipping is passed as a sole punishment under the section (Act III of 1895, s. 5), it is not necessary first to pass a sentence provided for the offence under the Penal Code, and then to convert such sentence into one of whipping. S. 390, Crim. Pro. Code, authorises the Court passing a sentence of whipping, only to fix the place and time and for its execution, but it does not contemplate a postponement of the execution of the sentence to a future day. QUEEN-EMPRESS v. MEDULLA, **Rat. Un. Cr. C. 906=Cr. Rg. 17 of 1897.**

(54)—*Ss.* 2 *and* 3—*Condition for whipping to be in addition to imprisonment.*—A person convicted under s. 457, Penal Code, cannot be punished with whipping in addition to imprisonment, if he has not been previously convicted either of the same offence or of any offence falling under the group of offences specified in s. 2, Act VI of 1864. GAJJU v. KING-EMPEROR, **2 A.L.J. 173=2 Cr. L.J. 105.**

(55)—*Ss.* 2, 3—*Penal Code, ss.* 378, 411.—*Held*, that, on conviction for dishonestly receiving stolen property, the accused could not be sentenced to be whipped in addition to rigorous imprisonment, on the ground that he had been twice previously convicted of theft, as the offence of theft, is not the same as that of dishonestly receiving stolen property. EMPRESS OF INDIA v. PARTAB, **1 A. 666.**

(56)—*Ss.* 2 *to* 5—*Juvenile offenders.*—S. 5 of Act VI of 1864 is not meant to supersede ss. 3 and 4, but to be applied in the proper cases alternately with those sections. Ss. 2 to 4 apply also to juvenile offenders. REG. v. JEYKISON, **Rat. Un. Cr. C. 78.**

(57)—*S.* 3—*Object of the section.*—The addition of whipping for a second offence is apparently intended as a further deterrent to otherwise incorrigible offenders, for whose reform imprisonment alone had already proved insufficient. Whipping cannot be awarded on a second conviction, when the latter is for an offence committed previous to the former conviction. HIGH COURT PROCEEDINGS, 11TH AUG. 1881, No. 1556, **1 Weir 931.**

(58)—*S.* 3—*Penal Code, Act* XLV *of* 1860, s. 511 — *Attempt.*—A sentence of whipping

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Act VI of 1864 (Whipping)—*continued.*

cannot be passed on a conviction for an attempt to commit house-breaking with intent to commit theft. REG. v. YELLA *valad* PARSHIA, **3 B.H.C. Cr. 37.**

(59)—*S.* 3—*Meaning of the expression "the same offence."*—The words "the same offence" in s. 3 of the Act are to be construed literally. EMPRESS v. PEAREY, **6 C.P.L.R. 19, Cr.**

(60)—*S.* 3—"*Previously convicted," meaning.*—The expression "previously convicted" in s. 3 of the Act is used in the sense of "convicted before the commission of the second offence." KING-EMPEROR v. LA SAING, **U. B.R. 1907, 3rd Qr., Whipping 1=7 Cr.L.J. 212 =14 Bur. L.R. 186.** (U.B.R. 1892—1896, I, 146, U.B.R. 1897—1901, I, 247, 4 B.L.R. App. Cr. 5, 2 L.B.R. 14, *Diss.*)

(61)—*S.* 3—*Previous conviction, meaning of.*—A previous conviction for the purpose of s. 75, Penal Code, and s. 3 of Act VI of 1864, is a conviction the penalty following which had been undergone by the accused (in whole or in part) at the time when he committed the offence for which he is being tried. EMPRESS v. BENI CHAMAR, **8 C.P.L.R.Cr. 17.**

(62)—*S.* 3—*Offence committed before previous conviction.*—S. 3 of the Act is inapplicable when the second conviction is for an offence committed before the conviction. REG. v. KUSA LAKSHMAN, **7 B.H.C. Cr. 70.** (3 B.H.C. Cr. 38, *F.*) [*Diss.*, 2 L.B.R. 14; *F.*, 3 Bom.L.R. 419=25 B. 712.]

(63)—*S.* 3—*Juvenile offender — Offence committed before previous conviction.*—S. 3 of the Whipping Act applies to juvenile as well as adult offenders. S. 3 of the Act is inapplicable when the second conviction is for an offence committed before conviction. REG. v. KUSA LAKSHMAN, **7 B.H.C.Cr. 70.** (3 B.H.C. Cr. 38, *F.*) [*Diss.*, 2 L.B.R. 14; *F.*, 3 Bom.L.R. 419 =25 B. 712.]

(64)—*S.* 3—*Imprisonment and whipping.*—When the accused is convicted of two offences, for one of which he is sentenced to imprisonment and for the other to whipping, it is not permissible to postpone the whipping, merely because the accused appeals against the conviction of the first sentence. EMPEROR v. JAIWANT, **4 Bom.L.R. 436.**

(65)—*S.* 3—*When whipping awardable in addition to imprisonment.*—In order to warrant a sentence of whipping in addition to imprisonment, the previous conviction should have been for the same specific offence as the subsequent conviction. HIGH COURT PROCEEDINGS, 25TH OCT. 1869, **5 M.H.C. App. 1.**

(66)—*S.* 3—*Whipping in addition to imprisonment or fine.*—To justify the award of whipping in addition to imprisonment or fine, the previous conviction must have been for the same offence. HIGH COURT PROCEEDINGS, 28TH OCT. 1870, **5 M.H.C. App. 38.** [*Rel.*, 11 Cr. L.J. 57=4 Ind. Cas. 826=U.B.R. 1909, Penal Code, p. 25.]

(67)—*S.* 3—*Cases in which whipping in addition to other punishment cannot be awarded.*—Whipping cannot be added to a sentence of imprisonment in the case of a first conviction for the offence under punishment. QUEEN v. KANTERAM, **1 W.R. Cr. 24.**

(68)—*S.* 3—*Whipping and imprisonment.*—This section does not allow of whipping in addition to imprisonment in the case of a fresh conviction. QUEEN v. TONAOKOCH, **2 W.R. Cr. 63.**

(69)—*S.* 3—*Whipping and imprisonment.*—The sentence of whipping passed in addition to imprisonment under s. 457 of the Indian Penal Code, on an accused person who was previously convicted under s. 380, Penal Code, is illegal. EMPRESS v. PEAREY, **6 C.P.L.R. 19 Cr.**

(70)—*S.* 3—*Previous conviction of house-breaking—Subsequent conviction for attempt to commit house-breaking—Whipping and imprisonment.*—A person, previously convicted of house-breaking and subsequently convicted of an attempt to commit the same offence, should not be sentenced to whipping in addition to imprisonment. EMPRESS v. MANSUKH, **42 P.R. 1880, Cr.**

(71)—*S.* 3—*Penal Code, ss.* 379, 380—*Previous conviction—Whipping and imprisonment.*—An attempt to commit the offence of theft is not punishable with whipping. A conviction first of an attempt under s. 379, I.P.C., and then a conviction of an effected theft under s. 379, I.P.C., will not justify a double sentence of imprisonment and whipping. QUEEN-EMPRESS v. ABDUL MASJID, **L.B.R. 1872—1892, 338.**

(72)—*S.* 3—*Previous conviction for theft —Whipping and imprisonment.*—It is doubtful when a previous conviction for theft that had occurred 14 days after the date of the theft for which the accused was subsequently charged would come within the provisions of s. 3, Act VI of 1864, so as to render a sentence of whipping in addition to imprisonment legal. GOBIND v. EMPRESS, **39 P.R. 1882, Cr.** (19 P.R. 1872 Cr., F.B., *R.*)

(73)—*S.* 3—*Subsequent conviction for an offence prior to that on which accused was convicted—Whipping and imprisonment.*—Whipping in addition to imprisonment is awardable when the second conviction is for an offence committed prior to the offence on which the accused was first convicted. CROWN v. OOMRAH, **19 P.R. 1872, Cr.** (41 P.R. 1867, Cr.; 29 P.R. 1869, Cr., *Overruled*).

(74)—*S.* 3—*Previous conviction subsequent to commission of offence—Whipping in addition to imprisonment, legal.*—A sentence of whipping, in addition to imprisonment under S. 3 of the Act, is lawful when the previous conviction is subsequent to the commission of the offence for

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Act VI of 1864 (Whipping)—*continued.*

which the prisoner is being tried. KING-EMPEROR v. NGA PO SEIN *alias* NGA THA YWE, **2 L B R. 14.** (5 M.H.C. App. 18, *F.*; 3 B.H.C. Cr. 38, 7 B.H.C. Cr. 70, 4 B.L.R.A. Cr. 5, *Diss.*) [*Diss.*, U.B.R, 1907, Whipping, 1; *R.*, 14 Bur. L R. 186, 14 Bur. L.R. 67 = 7 Cr. L.J. 464 = 4 L.B.R. 199, 7 Cr. L.J. 212.]

(75)—*S.* 3—*Whether previous punishment for same offence necessary for awarding whipping in addition to imprisonment.*—There is nothing in the language of the Act to support the contention that, in order that a person may be liable to whipping in addition to imprisonment, he should once before have been not only convicted of, but actually punished for, the same offence. The Act does not even require that the offence should have been committed after previous conviction, and certainly not that the sentence, which followed upon the conviction, shall have been undergone. HIGH COURT PROCEEDINGS, 26TH NOV. 1864, **1 Weir 932, Foot Note.** [*Overruled*, 1 Weir 931.]

(76)—*S.* 3.—*House-breaking by night—Previous convictions of theft—Double sentence of imprisonment and whipping, legality of—Power of Appellate Court to alter findings so as to legalise the sentence.*—The accused was found in possession of stolen property, and, in consequence, was convicted of house-breaking by night with intent to commit theft. On his admitting two previous convictions for theft, he was sentenced to eighteen months' rigorous imprisonment and twenty lashes. On appeal the sentence of whipping was set aside by the Sessions Judge as illegal. *Held*, on revision, the double sentence of imprisonment and whipping was quite illegal as a sentence under s. 457, I.P.C., because the previous convictions were of theft; but, on the facts of the particular case it was obviously open to the Sessions Judge to alter the convictions and to convict the accused of both house-breaking by night and theft in a house. The double sentence would then be legal as a sentence for theft. KING-EMPEROR v. KYAW HLA AUNG, **3 L B.R. 112 = 3 Cr. L.J. 348.**

(77)—*S.* 3—*Penal Code. ss.* 378, 380—*Theft in a dwelling-house and simple theft.*— An offence under s. 378 is distinct from one under s. 380, and a person convicted of theft in a dwelling-house, who has been previously convicted of simple theft is not liable to whipping. REG. v. CHANGIA *valad* SHUMIA, **7 B.H.C. Cr. 68.**

(78)—*S.* 3—*Sentence of whipping when the period of imprisonment is less than three months—Legality of.*—This section as amended by Act III of 1895, is to be read subject to the provisions of s. 391 (3) of the Crim. Pro. Code; so a sentence of whipping, when imprisonment for less than three months is given, is illegal. EMPEROR v. JAIWANT, **4 Bom. L R. 436.**

(79)—*S.* 3—*Suspension of sentence.*—A Sessions Judge has no authority to suspend a sentence in the absence of an appeal. HIGH COURT PROCEEDINGS, 25TH OCT. 1869, **5 M.H.C. App. 1.**

(80)—S. 3—*See* CRIM. PRO. CODE, 1898, s. 222, 2 Weir 267.

(81)—S. 3—*See* CRIM. PRO. CODE, 1898, s. 391 (3), 4 Bom. L.R. 436.

(82)—S. 3—*See* PENAL CODE, s. 382, Rat. Un. Cr. C. 537 = Cr. Rg. 8 of 1891.

(83)—S. 3—*See* PREVIOUS CONVICTION, 8 C.P.L.R. 17, Cr.

(84)—S. 3—*See* SENTENCE — ENHANCEMENT OF SENTENCE, L.B.R. 1893—1900, 315, 378.

(85)—S. 3—*See* Nos. 54, 55, and 56, *supra.*

(86)—Ss 3, 4—*See* PREVIOUS CONVICTION, L.B.R. 1893—1900, 315.

(87)—Ss. 3 and 4—*See* BUR. REG. XIV OF 1887, s. 6, U.B.R. 1897—1901, Vol. I, 388.

(88)—*Ss.* 3 *and* 5—*Juvenile offender, if liable to whipping and imprisonment.*—No sentence of whipping on a juvenile offender can be passed with imprisonment under s. 5 of the Act. But such a combined sentence may be passed under s. 3. QUEEN-EMPRESS v. NGA NWE, **U.B. R. 1892—1896, Vol. I, 331.**

(89)—*S.* 4—*Previous conviction essential for ordering whipping.*—No whipping can be ordered where the accused had not been previously convicted of the same offence, in the case of an offence under s. 4 of the Whipping Act. REG. v. BABAJI *valad* BAPU, **4 B.H.C. Cr. 5.**

(90)—*S* 4—*Previous conviction necessary.*—A sentence of whipping under s. 4 can only be inflicted in addition to other punishment on a second conviction of the offences specified therein, when the first offence was committed sometime previous to the second conviction, though after the passing of the Indian Penal Code. QUEEN v. UDOZ PUTNAICK, **12 W.R. Cr. 68 = 4 B.L.R.A. Cr. 5.**

(91)—*S.* 4—*Previous conviction.*—When a person, who has been previously convicted, is a second time convicted at one time of two or more offences, he may be punished with only one whipping in addition to any other punishment to which, under s. 46 of the Code of Criminal Procedure, 1861, he may be liable. RUTTUN BEWA v. BUHUR; JHOWLA v. BUHUR, **14 W.R. Cr. 7.** [*R.*, Rat. Un. Cr. C. 955.]

(91-*a*)—S. 4—*See* Nos. 56, 86 and 87, *supra.*

(92)—*S.* 5—*Scope—Penal Code—Special Act.*—This section applies only to cases of offences under the Penal Code and not to cases under any special law and a sentence of whipping in these cases is illegal. QUEEN-EMPRESS v. DAYA KASHIRAM, **Rat. Un. Cr. C. 190 = Cr. Rg. 16th Aug. 1883.**

I.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

(93)—*S.* 5—*Scope and application of.*— S. 5 of the Act applies only to offences punishable under the Indian Penal Code, and not to those punishable under the Railway Act. EMPRESS v. RAGIA, **11 C.P.L.R. 8, Cr.**

(94)—*S.* 5—*Crim. Pro. Code* (1882), s 392 —*Act* IX *of* 1875 (*Majority Act*), ss. 3 *and* 4.—The words "juvenile offender" in s. 5 of the Act mean an offender under 16 years of age. QUEEN-EMPRESS v. NGA PU, **L.B.R. 1872—1892, 355.**

(95)—*S.* 5—"*Juvenile offender.*"—The words "juvenile offender" mean a person under sixteen years of age. EMPRESS v. LALJI KORI, **7 C. P.L.R. 32, Cr.**

(96)—*S.* 5—*Whipping can be awarded only in lieu of other sentences in case of juvenile offenders.*—In the case of juvenile offenders, whipping can be awarded in *lieu* of the other punishment and not in *addition* to it. EMPRESS v. KASHI, **A.W.N. 1885, 178.**

(97)—*S.* 5—*Fine in addition to whipping.*—Under s. 5 of Act VI of 1864, the punishment of whipping is inflicted on a juvenile offender "in lieu of any other punishment to which he may, for such offence, be liable" under the Indian Penal Code. Hence, a sentence of fine in addition to whipping is illegal. EMPRESS v. THUSKU, **6 C.P.L.R. 34, Cr.** (16 B. 357, *R.*)

(98)—*S.* 5—*Substitution of whipping for imprisonment in cases of juvenile offenders.*—When the accused, a lad of fourteen years was convicted of an unnatural offence under s. 377, I.P.C., and sentenced to imprisonment, the Chief Court held that the punishment of whipping was far more suitable for a juvenile offender, convicted of bestiality, than the sentence of imprisonment which had been inflicted and that it was competent to the Appellate Court to alter the nature of the sentence by setting aside the sentence of imprisonment and substituting whipping for the same. JIWAN v. EMPRESS, **3 P.R. 1884, Cr.**

(99) *S.* 5—"*In lieu of any other punishment,*" *meaning of—Commutation of other sentence one of whipping.*—Under the Whipping Act, the Court cannot, after passing a sentence of imprisonment, commute it to a sentence of whipping, which ought to be passed directly. Under s. 5, a juvenile offender may be punished with whipping in lieu of any other punishment to which he may be liable, but the words "in lieu of—" mean in lieu of the whole of the punishment to which he is liable. So, it is illegal to pass a sentence of whipping, in lieu of imprisonment, under the Whipping Act, and, at the same time, to pass a sentence of fine under the I.P.C. KING-EMPEROR v. THA KIN, **5 L.B.R. 22=2 Ind. Cas. 620.**

(100)—S. 5—*See* Nos. 56 and 88, *supra.*

I.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*continued.*

(101)—*Ss.* 5, 10—*Meaning of juvenile offender.*—A juvenile offender under Act VI of 1864 is a person under sixteen years of age. REG. v. MUHAMMAD ALI *valad* ABDUL ALI, **8 B.H. C. Cr. 9.** [*R.*, 6 A. 482, L.B.R. 1893—1900, 79.]

(102)—*Ss.* 5, 10—"*Juvenile offender.*"—Unless an accused person is found to be under sixteen years of age, he cannot be punished as a "juvenile offender" under the provisions of s. 5 of Act VI of 1864. QUEEN-EMPRESS v. DIN ALI, **6 A. 482=A W.N. 1884, 213.** [*F.*, 7 C P.L.R. 32, Cr., L.B.R. 1893—1900, 79.]

(103)—*S.* 7—*Scope.*—A sentence of whipping cannot, with reference to Act VI of 1864, s. 7, be passed on a conviction for theft, as s. 7, only provides for sentences of imprisonment for a term not exceeding three years. QUEEN v. ESAN CHUNDER DEY, **21 W.R. Cr. 40.**

(104)—*S.* 7—*Scope and construction of.*—The meaning of the law in s. 7 of the Whipping Act is that the status of women and that of persons under the sentence of death or of transportation or of penal servitude or of imprisonment for more than five years render it illegal to inflict the punishment of whipping. The words of the section are perfectly general. They do not touch the legality of the sentence, but only the legality of the punishment. If the sentence of whipping is passed before the sentences mentioned in the section, it might be a legal sentence; but the subsequent passing of the latter sentences renders the infliction of the punishment of whipping illegal. HIGH COURT PROCEEDINGS, 19TH APRIL 1876, **1 M. 56=2 Weir 448.**

(105 and 106)—S. 7—*See* PUN. ACT IV OF 1887, 45 P.R. 1888, Cr.

(107 to 109)—*S.* 9—*Time when it can be inflicted.*—Whipping cannot be inflicted until after the expiry of 15 days from the date of the sentence and must be inflicted immediately on the expiry of 15 days. HIGH COURT PROCEEDINGS, 13TH NOV. 1871. **6 M.H.C. App. 38.** [*Appl.*, 7 M.H.C. App. 29.]

(110)—*S.* 9—*Crim. Pro. Code*, 1872, *s.* 310 —*Whipping after expiry of sentence of imprisonment.*—The accused was convicted on a trial before a Magistrate of theft under s. 379, I.P.C., for two years, and "to receive thirty stripes on the day of his release from prison." *Held*, that the portion of the Magistrate's order directing the postponement of the whipping was altogether illegal and improper. EMPRESS v. JIWA RAM, **A.W.N. 1881, 138.**

(111)—*S.* 9—*Appeal—Carrying out of the sentence.*—When a Court, whose sentence is open to revision, pronounces a sentence awarding whipping in addition to imprisonment, it must be carried out immediately after the expiry

I.—Imperial Acts—continued.

Act VI of 1864 (Whipping)—*concluded.*

of 15 days from the date of the sentence, or, if an appeal be made within that time, then, immediately on the receipt of the order of the appellate Court confirming the sentence, if such order shall not be received within 15 days. It is illegal to direct in the sentence that the whipping shall be carried out at the expiration of the term of imprisonment. REG. v. SHEKH HUSEN, **Rat. Un. Cr. C. 68.**

(112)—*S. 9—Crim. Pro. Code* (1872), *s.* 310.—The rule that a sentence of whipping could not be postponed beyond the terms specified in s. 9 of Act VI of 1864 was held to be applicable to s. 310, Crim. Pro. Code, 1872. HIGH COURT PROCEEDINGS, 10TH DEC. 1873, **7 M.H.C. App. 29** [*R.*, 13 Cr. L.J. 710=16 Ind. Cas. 518=23 M.L.J. 371=12 M.L.T. 350.]

(113)—*S. 10—House-trespass when punishable with whipping.*—Whipping can be inflicted under s. 2, sub-ss. 9 and 10 of the above Act, only when the house trespass or house-breaking is in order to the committing of an offence punishable with whipping under that section. QUEEN-EMPRESS v. NGA TUN BYE, **U.B.R. 1897—1901, Vol. I. 354.**

(114)—S. 10—*See* Nos. 101 and 102, *supra.*

(115)—*Ss.* 11 *and* 12—*Scope of the sections.*—Under ss. 11 and 12, a man, though sentenced to whipping, is not to be whipped unless in a fit state to suffer that punishment. The whipping is not to be commenced, if he is unfit to bear it at all, and then he is to be kept in custody, till the Court can revise the sentence. But if it be commenced, it is not to be continued longer than the man is fit to bear it, and when the man has had all he can bear, in the opinion of the Medical Officer, the whipping is to be stopped, and the sentence has been fully satisfied, for it cannot be executed by instalments. HIGH COURT PROCEEDINGS, 25TH JULY 1864, **3 M.H.C. App. 1.**

(116)—S. 12—*See* No. 115, *supra.*

Act XIII of 1864 (Emigration of Native Labourers).

[REP., ACT VII OF 1871.]

(1)—*Contract to carry coolies by ship.*—Where a contract is entered into for the carriage of coolies, the shipowner would be held guilty of breach of contract if he appoints a master who was prohibited by an order of Government from commanding a ship carrying emigrants. EALES v. RUTTONJEE EDULJEE, **1 Ind. Jur. N.S. 131.**

(2)—*S.* 71—*False pretence by recruiters of emigrants—Jurisdiction—Place of trial.*—The offence of holding out false pretences to the labourers and thereby inducing them to enter into a contract, by recruiters of emigrants, must be tried in the place wherein such inducement was made. HIGH COURT PROCEEDINGS, 16TH MARCH 1868, **4 M.H.C. App. 4.**

I.—Imperial Acts—continued.

Act XIII of 1864 (Emigration of Native Labourers)—*concluded.*

Act XXII of 1864 (Military Cantonments).

[REP., ACT III OF 1880.]

See ACT III OF 1880.

See ACT XIII OF 1889.

See BOM. ACT III OF 1867.

See MAD. ACT I OF 1866.

See CANTONMENT CODE (1899).

(1)—*See* PUN. ACT XV OF 1867, ss 2, 3, 43 P.R. 1888, Cr.

(2)—*Ss.* 3, 5, 17 *and* 20—*Assistant Cantonment Magistrate officiating as Cantonment Magistrate with second class powers—Trial of Breaches of Cantonment Rules.*—An Assistant Cantonment Magistrate appointed to act as Cantonment Magistrate, with second class powers, is only an Assistant Cantonment Magistrate under s. 5. He has, therefore, no jurisdiction under s. 20 to try persons for breaches of Cantonment Rules. J. A. KEOUGH v. CROWN, **17 P.R. 1878, Cr.** [*R.*, 136 P.L.R. 1908, Cr.=1 P.R. 1908=4 P.W.R. 1908=7 Cr. L.J. 274; *D.*, 1 P.R. 1908, Cr.]

(3) S. 5—*See* No. 2, *supra.*

(4)—*S.* 11—*Lunatic Asylums Act* (XXXVI *of* 1858), *s.* 4, *direction of proceedings under.*—Acting *bona fide* in the discharge of a public duty and under the belief that a person was dangerous by reason of lunacy, the commanding officer of a cantonment, who has control and direction of the police, would be justified in directing proceedings to be taken by the Police under s. 4, Act XXXVI of 1858. E. D. SINCLAIR v. L.P.D. BROUGHTON, **9 C. 341=13 C.L.R. 185=9 I.A. 152, P.C.=R & J. No. 69=5 Shome L.R. 136=4 Sar. 387.**

(5)—*S.* 17—*Compound not a "public place."*—A compound is not a public place within the meaning of Rule 63 of Chapter III of the Cantonment Rules made under s. 17 of Act XXII of 1864 and kept in force by s. 2 of Act III of 1880. Consequently, convicting a person for being drunk and riotous in his master's compound is unsustainable. EMPRESS v. KALLAN KHAN, **A.W.N. 1887, 19.**

(6)—*See* CRIM. PRO. CODE, 1898, s. 438, A.W.N. 1887, 219.

(7)—S. 17—*See* No. 2, *supra.*

(8)—*Ss.* 17 *and* 19 (*f*)—*Rules* 6 *and* 29 *framed under the sections—Unregistered prostitutes.*—Where certain women, arrested by the police on the Railway platform on a charge of having contravened the provisions of Rule 6 (that no woman not being a registered prostitute

I.—Imperial Acts—continued.

Act XXII of 1864 (Military Cantonments) —*concluded.*

shall practice public prostitution within the limits of Cantonments), were fined by the Deputy Commissioner with a direction to have their names entered in the register and for their examination by the Civil Surgeon, *held* that the arrest was not proper, as it did not conform to the provisions of Rule 29 and that the Deputy Commissioner had no authority to direct the examination of the women after their receipt of tickets. MUSSUMAT BAHORO v. CROWN, **25 P.R. 1870, Cr.**

(9)—*Ss.* 17, 19 *and* 25—*Extension of rules framed under cl.* 7 *of s* 19 *outside cantonment limits—Jurisdiction of ordinary criminal Courts.*—Where rules made under cl. 7 of s. 19, Act XXII of 1864, are extended to places outside the limits of cantonments by the Governor-General in Council under s. 25 of that Act, trials of breaches of rules should be conducted by the Criminal Courts under the general jurisdiction conferred by the Crim. Pro. Code, there being no authority specially mentioned in the above Act for holding such trials. MUSST. SURDAREE v CROWN, **12 P.R. 1870, Cr.** [*Appr.*, 2 P.R. 1885, Cr.]

(10)—*Ss.* 17, 20—*Jurisdiction of Magistrate.*—A District Magistrate, not being a Cantonment Magistrate, has no jurisdiction to try for breaches of rules made under s. 17 of Act XXII of 1864. EMPRESS v. F. TODD, **A.W. N. 1882, 52.**

(11)—S. 20—*See* Nos. 2 and 10, *supra.*

(12)—S. 25—*See* No. 9, *supra.*

(13)—*S.* 29—*Unauthorized sale of spirituous liquor to an apothecary.*—The sale of spirituous liquor to an apothecary in a Military Hospital, without the permission of the Commanding Officer, is not an offence. RAJ KISHAN v. CROWN, **23 P.R. 1870, Cr.**

(14)—*Ss.* 29, 30—*Previous conviction—Confiscation of liquor.*—Where a person had not been previously convicted, an order directing the confiscation of wine and liquor in his possession would be illegal and must be quashed PESTONJEE v. CROWN, **20 P R. 1872. Cr.**

(15) Ss. 29 and 30—*See* CONFISCATION, 20 P.R. 1872, Cr.

(16)—S. 30—*See* Nos. 14 and 15, *supra.*

Act V of 1865 (Indian Marriage).

[REP. (EXCEPT AS TO STRAITS SETTLEMENTS), ACT XV OF 1872. NOT IN FORCE IN BRITISH INDIA.]

(1)—*Ss.* 6 *and* 56—*Hindu priest solemnising marriage between parties, one of whom being Christian.*—A Hindu priest solemnising a marriage between parties, one of whom admittedly professes the Christian religion, is *prima facie*, liable under s. 56 of the Act. HIGH COURT PROCEEDINGS, 21ST MARCH 1871, NO. 596, **1 Weir 801=6 M.H.C. App. 20.** [*F.*, 1 Weir 813=17 M. 391.]

I.—Imperial Acts—continued.

Act VII of 1865 (Government Forests).

[REP., ACT XII OF 1891.]

(1)—*Ss.* 3 *and* 5—*Confiscation—Fine—Legality.*—It is illegal to impose a fine where the Forest Act provides the penalty of confiscation. CROWN v. PUNSADIN, **Col. Dig. Cr. 69 of 1877.**

(2)—*S* 5—*Felling or removing trees from forest, whether punishable under Penal Code.*—Felling or removing trees from a forest is either punishable under the Forest Act, or not punishable at all. The provision of the Penal Code relating to theft and mischief does not apply to such cases. CROWN v. JANG KHAN, **22 P. R. 1876, Cr.** [*Disappr.*, 10 P.R. 1885, Cr.]

(3)—*S.* 5—*Penalty not provided for—Punishment under Penal Code.*—Where the Local Government had framed no rule, as contemplated by the Forest Act, 1865, for punishing infringement of the rules, *held* that the accused should be tried under the Penal Code. CROWN v. JHUNDOO, **4 P R. 1869, Cr.**

(4)—S. 5—*See* No. 1, *supra.*

Act XI of 1865 (Mofussal Small Cause Courts).

[REP., ACT IX OF 1887.]

(1)—S. 21—*See* FALSE EVIDENCE, 2 B.L. R.A. Cr. 1=10 W.R Cr. 31.

Act XIII of 1865 (High Courts' Criminal Procedure Code Amendment).

[REP., ACT X OF 1875.]

(1)—*See* HIGH SEAS. OFFENCES COMMITTED IN, 1 B.L.R.O. Cr 1.

(2)—*S.* 3—*Duty of committing Magistrate or justice of the peace.*—A justice of the peace or Magistrate, committing a prisoner for trial before the High Court was bound, under the above section, to frame and send up, with the depositions, a specific charge against the prisoner REG. v. JEETARAM SHAW, **1 Ind. Jur. N.S. 404.**

(3)—*Ss.* 22 *to* 46—*Sessions Judges and Magistrates to pay attention to these.*—Sessions Judges and Magistrates should pay attention to ss. 22 to 46 of the Act, which have reference to the sittings under a commission of a Judge of the High Court, either alone or with an associate Judge, in the exercise of Original Criminal Jurisdiction, in places other than the usual places of the sitting of such Court; and especially, the attention of the Sessions Judge to ss. 35 and 41, and of Magistrates to ss. 28, 30 and 31 of the same law CRIMINAL CIRCULAR NO. 3, 13TH MAY 1865, **3 W R. Cr. Cir. 1.**

(4)—Ss. 23 to 46—*See* No. 3, *supra.*

Act XX of 1865 (Pleaders, Mookteears and Revenue Agents).

[REP., ACT XVIII OF 1879.]

See LEGAL PRACTITIONERS.

I.—Imperial Acts—continued.

Act XX of 1865 (Pleaders, Mookteârs and Revenue Agents)—*continued.*

(1)—*Dismissal of mooktears — Powers of Magistrate.*—A Magistrate has no power to dismiss a mooktear generally, unless he be convicted of an offence involving moral turpitude or infamy. QUEEN v. SHAM CHAND CHOWDRY, **1 W.R. Cr. 34.**

(2)—*Evidence to justify removal of mooktear from profession.*—Evidence, which does not support a conviction on a criminal charge, cannot justify a removal from the profession of a mooktear. *In the matter of* NIL KUNT BISWAS, MUKTEAR, **9 W.R. Cr. 29.**

(3)—*S.* 5—"*Act,*" *meaning of.*—The word "act" in this section signifies the doing something as the agent of the principal party which shall be recognized or taken notice of by the Court as the act of that principal. Nothing in the words of the Act or in its spirit prevents a person as a private agent from going between the prisoner or the duly authorized vakil upon whom the real responsibility of the defence rests. *In re* FUZZLE ALI, **19 W.R. Cr. 8.** [*R.*, 6 C. 585, 14 C. 556, F.B., 26 A. 380.]

(4)—*S.* 11—*Mooktear "acting" in Criminal Court.*—The mere writing of a petition for a party, who afterwards presents that petition himself, is not "acting" as a mooktear in a Criminal Court within the meaning of this section. *In re* KALI CHARAN CHUND, **9 B.L.R. App. 18=18 W.R.Cr. 27.** [*R.*, 16 C. 585, 14 C. 556, F.B.]

(5)—*S.* 14—*Charge against pleader—Nature of enquiry.*—When conduct is charged against any pleader of a Subordinate Court which, if proved, would amount to an offence, the conduct should be enquired into, not simply as improper conduct, but as an offence to be made the ground (if established) of his dismissal under the above section. *In the matter of* GANESH CHUNDER GANGOOLY, **13 W.R. 456.**

(6)—*S.* 14—*Unprofessional conduct—Commission to mooktears—Criminal offence.*—If a mooktear, who is paid for his services by his employer, were to receive in addition, without the knowledge of his employer, a percentage or commission from the pleader, he would be answerable, not only in the Civil Court, but also in the Criminal Court, to a charge of obtaining money improperly from his employer. *In the matter of* PEARY MOHUN GOOHO, **11 B.L.R. 312.**

(7)—*S.* 15—"*For any other reasonable cause,*" *meaning of.*—A *mooktear* may be suspended or dismissed for any reasonable cause, the words "for any other reasonable cause" in s. 15 referring to cases of other than professional misconduct. When a mooktear is alleged to have committed some impropriety for which he could not be criminally prosecuted, and which does not come under the denomination of professional misconduct, the High Court may institute inquiries *suo motu*, and, if it thinks that any reasonable cause other than professional has been established, may suspend or dismiss the mooktear without the necessity of either a written charge or notice, so long as the *mooktear* had every facility for knowing what he was charged with and for making his answer. *In re* GOLABKHAN, MOOKHTEAR, **16 W.R. Cr. 15=7 B.L.R. 179.** [*F.*, 27 C. 1023; *R.*, 29 C. 890.]

(8)—*S.* 16—*Charge of misconduct against pleaders and mooktears—Report to High Court.*—Any charge of misconduct against a pleader or mooktear holding a certificate under the Act, other than a recorded conviction of a criminal offence, must be made and substantiated, and a report submitted to the High Court as provided by s. 16. *In re* SUDUROODDEN MAHOMED, MOOKTEAR, **7 W.R. 316.**

(9)—*S.* 16—*Initiating proceedings against pleader—Jurisdiction of Zillah Judge—Place of inquiry.*—A Zillah Judge is incompetent to initiate proceedings against a pleader of the lower grade under the above section, which requires that the inquiry should be made by the Court in which the pleader committed the act of misconduct. *In the matter of* KOMLA KANT DEGHAL, **11 W.R. 127.**

(10)—*S.* 16—*Power of Zillah Judge to dismiss pleaders.*—A Zillah Judge has no power, after the 1st January, 1866, to make an order under Act XVIII of 1852 dismissing a pleader. He should proceed under s. 16 of Act XX of 1865, and refer the matter, with his report, to the High Court. Even under Act XVIII of 1852, under which the Judge erroneously acted in this case, a pleader was liable to dismissal, only on proof of conviction of a criminal offence by a competent Court, or on proof of a declaration or finding by a competent Court (in a suit or proceeding to which the pleader was a party) that he was guilty of a breach of trust, or for fraudulent or dishonest conduct in the discharge of his professional duty; and this, also, after notice and adjudication as prescribed by s. 4. *In the matter of the petition of* AHMEENOODDEEN AHMED, **6 W.R. Mis. 5.** [*F.*, 27 C. 1023.]

(11)—*S.* 16—*Power of Magistrate to suspend mooktear.*—Where a Magistrate suspended a mooktear for three months for wilfully making a false statement, it was held that the Magistrate had no power to suspend the mooktear under the Act, and his suspension was set aside. *In re* BANCHANIDHI MAHANTY, **17 W.R. Cr. 6.**

(12)—*S.* 16—*Power of Magistrate to suspend mooktear.*—*Held* that a Magistrate had no power to suspend a mooktear under the Act. ROOPO BEWA v. KEKAROO, **21 W.R. Cr. 41.** [*F.*, 7 C.L.R. 168.]

(13)—*S.* 16—*Suspension or dismissal of mooktears—Procedure.*—The procedure under

I.—Imperial Acts—continued.

Act XX of 1865 (Pleaders, Mooktears and Revenue Agents)—*continued.*

s. 16 refers only to cases of professional misconduct, the words " any such misconduct as aforesaid " being connected with the words "grossly improper conduct in the discharge of his professional duty." *In re* GOLAB KHAN, **16 W.R. Cr. 15=7 B.L.R. 179.**

(14)—*S.* 16—*Notice before suspending mooktear.*—Before a Magistrate can suspend a mooktear from practice, he must observe the requirements of the above section, and furnish the mooktear with a copy of the charge against him, and a notice fixing a day on which such charge will be taken into consideration. *In the matter of* GOLABKHAN, MOOKHTEAR, **15 W.R. 171=6 B.L.R. App. 83.** [*R.*, 16 W.R. Cr. 15.]

(15)—*S.* 16—*Using improper expressions during argument—Procedure.*—In this case the High Court declined to strike a pleader off the rolls for using improper expressions during the argument of a case before a Zilla Judge, who recommended, after observing the requirements of s. 16 of the Act, that such punishment should be awarded. The Zillah Judge should have called the pleader to order, and required him to apologize. *In the matter of* CRUISE, PLEADER OF THE JUDGE'S COURT, PURNEAH, **14 W.R.Cr. 53.**

(16)—*S.* 16—*Acquittal of pleader.*—In a case tried under the provisions of the above section, where the Subordinate Court is of opinion that the pleader should be acquitted, it is not necessary that there should be any report to the Judge. *In the matter of* RAM KINKUR SEIN, **13 W.R. 67.**

(17)—*S.* 16—*Omission to examine record before applying for stay of execution proceedings—Not verifying statement of parties.*—The omission of a pleader to examine the record of the case before making an application to stay execution proceedings upon the ground of a compromise was held not to amount to grossly improper conduct. But his not verifying the statement of the parties who came to him and made their statements (one of them being a mooktear) was considered, at the most, to amount to carelessness but not grossly improper conduct; whilst his omission to obtain the authority or concurrence of the senior pleader in the case could not be said to be improper conduct within the meaning of the Act—certainly not such grossly improper conduct as called for the punishment of suspension for six months. *In the case of* SREENATH ROY, PLEADER, **17 W.R. 405.**

(18)—S. 34—*See* MAGISTRATE, DUTY OF, 5 B.L.R. Ap. 89.

(19)—*Ss.* 44, 45—*Suspension of High Court pleader by Zilla Judge.*—A Zilla Judge has no power under the Act to suspend a pleader of the High Court from practising in the Courts of his district on the ground of incompetency.

I.—Imperial Acts—continued.

Act XX of 1865 (Pleaders, Mooktears and Revenue Agents)—*concluded.*

His proper course is to make a representation to the High Court. *In the matter of* BABOO KISHOREE LALL SIRCAR, **14 W.R. 217.**

(20)—S. 45—*See* No. 19, *supra.*

Act VIII of 1866 (Criminal Procedure).

[REP., ACT VIII OF 1869.]

See MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, 7 W.R. Cr. 11.

Act XIV of 1866 (Indian Post Office).

[REP., ACT VI OF 1898.]

See ACT VI OF 1898.

(1)—*Abetment—Penal Code, s.* 109.— This Act does not provide for the punishment of abetting an offence under it. Under s. 109, I.P.C., the abetment must be of an offence punishable under that Act, and not of an offence punishable under a distinct and special law. QUEEN v. RAMLUGAN LALL MOONSHEE, **7 W.R. Cr. 54.**

(2)—*See* ABETMENT, 7 W.R. Cr. 54.

(3)—Sentence under Post Office Act— *See* REVISION—SENTENCES, 17 W.R. Cr. 50.

(4)—*Ss.* 2, 47, 53—*Jurisdiction over offences under s.* 47.—Under the provisions of s. 53 of Act XIV of 1866, with the interpretation given in s. 2 of that Act, a subordinate Magistrate is competent to convict of an offence under s. 47. REG. v. VITHU *bin* MALLU, **5 B.H.C. Cr. 36.**

(5)—*S.* 37—*Postage stamps issued by the Government for the purpose of Revenue—Twice using them if an offence—Penal Code, s.* 262.—Under the provisions of s. 37 of the above Act, postage stamps are stamps issued by Government for the purpose of revenue within the meaning of the Penal Code. Hence, a person is punishable under s. 262, I.P.C., for using a postage stamp twice. EMPRESS v. SITARAM, **5 C.P.L.R. 43, Cr.**

(6)—*S.* 47—*Jurisdiction of Subordinate Magistrate.*—A Subordinate Magistrate has jurisdiction to try a prisoner for an offence under the above section. REG v. VITHU *bin* MALLU, **5 B.H.C. Cr. 36.**

(7)—*S.* 47—*Penal Code, s.* 166—*Post-master absenting himself from the station without notice.*—A post-master, absenting himself from the station without giving notice and thereby causing delay in the despatch of the mail, is guilty of an offence under s. 47 of the Post Office Act, and not under s. 166, Penal Code. *In re* VIRASWAMI NAICK, **1 Weir 72.** *See, also,* REVISION CASE NO. 1 OF 1877, **1 Weir 860.**

(8)—S. 47—*See* No. 4, *supra.*

(8-*a*)—*S.* 48—*Opening of a newspaper by a person employed in the Post Office—Fraudulent intention.*—The opening of a newspaper by a

I.—Imperial Acts—continued.

Act XIV of 1866 (Indian Post Office)—*concld.*

person employed in the Post Office and replacing it in its envelope, does not constitute an offence under the above section as it could not be said that the accused stole, fraudulently appropriated, wilfully secreted, destroyed or threw away any letter or other article sent by post. There must be a fraudulent intention in the act of the accused before he can be convicted under the above section. *In re* PANNA LALL MOOKERJI, **19 W.R. Cr. 4.**

(9)—*S.* 48—*Person assisting sorting clerk secreting bearing letters to be given to delivery peon for the purpose of sharing the bearing postage—Penal Code, ss.* 378 *and* 403.—The accused, being in the employ of a Post Office, assisted the sorting clerk in sorting letters, and secreted two bearing letters with the intention of giving them to the delivery peon and to share with him the bearing postage which the latter would collect. *Held*, that the accused did not intend to wilfully secrete the letter within the meaning of s. 48, Indian Post Office Act, as there was not such secreting or concealment of letters as would frustrate or tend to frustrate their delivery to the addressees. *Held*, further, that he was guilty of stealing and of fraudulently appropriating the letters within the meaning of that section, and also of theft and of attempt to commit dishonest misappropriation of property within the meaning of the Penal Code. QUEEN-EMPRESS v. VENKATASAMI, **14 M. 229 = 1 Weir. 860.**

(10)—*S.* 48—*Solitary confinement if can be awarded as part of sentence.*—Solitary confinement cannot be awarded as part of a sentence passed under s. 48, Post Office Act. EMPRESS v. MUKH RAM, **24 P.R. 1879, Cr.**

(11)—S. 48—*See* ACT XVII OF 1854, s. 50, 3 B.H.C. Cr. 8.

(12)—*S.* 50 (=*s.* 55 *of Act* VI *of* 1898)—*Scope of the section.*—The word "prepare" in s. 50 of the Act includes the obtaining of signatures to a book that a postman is bound to keep in proof of his having visited the villages in his capacity as postman. PUBLIC PROSECUTOR v. VEERABADRAN SERVAI, **1 Weir. 862.**

(13)—S. 53—*See* No. 4, *supra.*

Act XX of 1866 (Indian Registration).

[REP., ACT VIII OF 1871.]

See ACT VIII OF 1871.

See ACT III OF 1877.

(1)—*See* FALSE EVIDENCE, 6 W.R. Cr. 81.

(2)—*S.* 91 (=s. 82, *Act* III *of* 1877)—*Offence under section not triable by Jury.*—An offence under the above section ought not to be tried with the assistance of a Jury. Where, however, such offence was tried with the assistance of a Jury, and the verdict of the Jury, who were unanimous in convicting the prisoner, was approved of by the Sessions Judge, the High Court considered it unnecessary to quash the proceedings. QUEEN v. ABDOOL KAREEM, **14 W.R. Cr. 32.**

I.—Imperial Acts—continued.

Act XX of 1866 (Indian Registration)—*ctd.*

(3)—*S.* 91—*False statement before Sub-Registrar—Penal Code, s.* 423.—A vendor, to defeat the claims of pre-emptors, stated in the sale-deed that the purchase-money was more than he actually received, but contradicted himself before the Sub-Registrar and admitted what he really received. The vendee, however, stated he was in fault, and, on the same day, brought the rest of the money to the Sub-Registrar, who refused either to receive it, or to register the deed. *Held* that the vendor was guilty of an offence under the section and that the vendee, though he had neither committed an offence under the section nor abetted one, was guilty of an offence under s. 423, Penal Code. CROWN v. SAUDAGUR, **23 P.R. 1869, Cr.** [*R.*, 10 P.R. 1902, 34 P.W.R. 1908 = 16 P.R. 1908, Cr. = 8 Cr. L.J. 486.]

(4)—*Ss.* 91, 95 (=*ss.* 82 *and* 83, *Act* III *of* 1877)—*Commitment to Sessions.*—The commitment to the sessions of a case of an offence under s. 91 of the Act is not illegal. REG. v. RAVLOJIRAV *bin* HANMANTRAV, **5 B.H.C. Cr. 7.**

(5)—*Ss.* 93 *and* 94 (=*ss.* 82 *and* 83, *Act* III *of* 1877)—*Cheating by personation—Registering document.*—Where A intended to register a deed, but was too ill to do so, and B, who was known to A, personated A, and had the deed registered in her name, it was held that, in the absence of anything to prove that it was intended to defraud anybody, A was not guilty of cheating by personation under s. 419, Indian Penal Code but of an offence under s. 93 of the Registration Act. C and D, who abetted A, were convicted of an offence under s. 94 of the Act. *In the case of* LOOTHY BEWA, **11 W.R. Cr 24 = 2 B.L.R. 25, Cr.** [*R.*, 13 B. 506, 32 C. 775 = 1 C.L.J. 469 = 9 C.W.N. 807 ; *F.*, 5 Bom. L. R. 138.]

(6)—*Ss.* 93, 94—*False personation.*— Three persons, who put up a fourth to personate one whose authority was required to complete a conveyance of immoveable property, were held guilty under the above section. QUEEN v. SOLEEMOODDEEN, **7 W.R. Cr. 63.**

(7)—Ss. 93 and 95—*See* ACT III OF 1877, s. 82, 8 B.L.R. 422 = 17 W.R. Cr. 39.

(8)—S. 94—*See* Nos. 5 and 6, *supra.*

(9)—*Ss.* 94, 95 (=*ss.* 82 *and* 83 *of Act* III *of* 1877)—*False personation before registering officer triable exclusively by Court of Session.*—The offence of abetting false personation before a registering officer, punishable under s. 94 of the Act with imprisonment for a term which may extend to seven years, is triable exclusively by a Court of Session. REG. v. SUPDU, **Rat. Un. Cr. C. 51.**

(10)—*Ss.* 94, 95—*Punishment for abettor.*—Under the above section, an abettor may be

I.—*Imperial Acts*—continued.

Act XX of 1866 (Indian Registration)—*cld.*

punished more severely than his principal can be. QUEEN v. GOPAL PROSAUD SEIN, **8 W. R. Cr. 16.**

(11)—*S.* 95 (=*s.* 83, *Act* III *of* 1877)—*Offence.*—A Sub-Registrar under the Act has no power to investigate into the committal of an offence committed before him in the registration of any document, but should cause the complainant to proceed, under s. 66, Crim. Pro. Code (1861), before the Magistrate, or before an officer authorised to receive such complaint. The sanction of the Registrar, under the above Act, relates to a prosecution to be instituted by the Sub-Registrar for an offence under the Act. QUEEN v. HARIDAS KUNDU, **4 B.L.R. App. 69=13 W.R. Cr. 21.**

(12)—S. 95—*See* ACT III OF 1877, s. 83, 10 W.R.Cr. 21=6 B.L.R 693, note.

(13)—S. 95—*See* SESSIONS JUDGE, JURISDICTION OF, 6 B.L.R. 692=15 W.R. Cr. 58.

(14)—S. 95—*See* Nos. 4, 7, 9 and 10, *supra.*

Act III of 1867 (Public Gambling).

[SHORT TITLE GIVEN, ACT V OF 1897. S. 18 REP., ACT XVI OF 1874. PREAMBLE AND S. 2 AMENDED, ACT XII OF 1891. TITLE, PREAMBLE AND S. 1 AMENDED, ACT I OF 1903. REP. (IN BURMA), BUR. ACT I OF 1899. DECLARED IN FORCE IN CERTAIN RAILWAY LANDS, ACT XIV OF 1874 S. 10; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3.]

See BEN. ACT II OF 1867.

See BOM. ACT III OF 1866.

See BOM. ACT IV OF 1887.

See BOM. ACT I OF 1890.

See BUR. ACT XVI OF 1884.

See BUR. ACT I OF 1899.

(1)—*Construction of Act.*—The Gambling Act is a penal law, and one of a very stringent character, and so its provisions are to be very closely interpreted; and are not to be extended so as to meet cases which do not strictly fall within them. QUEEN-EMPRESS v. NGA SO GYI, **L.B.R. 1872—1892, 53.** QUEEN-EMPRESS v. NGA TU, **L.B.R. 1872—1892, 86.**

(2)—*Gambling, when punishable.*—Gambling is not ordinarily punishable as an offence. It is only so punishable when carried on in a common gaming house, or in a public street or place. QUEEN v. SHEOSHUNKUR SINGH, **3 N.W.P. 1.**

(3)—*Gambling, when punishable.*—Gambling is not punishable by law, unless it be carried on in public places or thoroughfares or in common gaming-houses. QUEEN v. SUJJAD ALI, **3 N.W.P. 134.**

(4)—*What is common gaming house.*—Common gaming-houses are houses, etc., in which instruments of gambling are kept or used for the profit or gain of the owner or occupier,

I.—*Imperial Acts*—continued.

Act III of 1867 (Public Gambling)—*continued.*

whether by way of charge for the use of the instruments of gaming or of the house, or otherwise howsoever. QUEEN v. SUJJAD ALI, **3 N.W.P. 134.**

(5)—*S.* 1—*Common gaming house defined.*—Where the occupier of a house, wherein games of chance are played, derives his profits, not from any charge for the use of the house, or of the instruments of gaming or in any manner *ejusdem generis,* but from the game itself, the house is a common gaming house. EMPEROR v. ABDUL SATTAR, **27 A. 567=2 A.L.J. 414=A.W.N. 1905, 106=2 Cr. L.J. 245.**

(6)—*Ss.* 1 *and* 3—*Garden enclossed with hedge.*—A garden enclosed with a hedge or ditch, where gambling takes place, cannot be considered as a "common gaming house." ABBI v. QUEEN-EMPRESS, **14 P.R. 1896, Cr.**

(7)—*Ss.* 1 *and* 4—*Lottery-tickets if instruments of gaming.*—Lottery-tickets, by reference to which it is to be decided whether the holder or purchaser wins the whole, or any part, of any stakes, are instruments of gaming within the above sections; and they are instruments of gaming of a nature similar to cards. ANONYMOUS, **12 W R. Cr. 34.**

(8)—*Ss.* 1, 4—*Issuing a warrant of search on information given in general terms*—*Illegal.*—A Magistrate, on a report made by the police that a great deal of gambling was going on and that it gave rise to numerous offences, issued a warrant directing the search of a certain house which the police report did not state was used as a common gaming house, and the owner of which was only accused of gambling. On searching the house, the accused was found with other persons seated round the board and dice. The accused was convicted under s. 4 of the Act. *Held* that the Magistrate was wrong in issuing a warrant upon the information given by the police in general terms and that there was nothing to show that the house was a common gaming house as defined in s. 1 of the same Act. QUEEN-EMPRESS v. YUSUF HUSAIN, **A.W.N. 1889, 162.** [*R.*, 30 A. 60=5 A.L.J. 59=A.W.N. 1908, 9=7 Cr. L.J. 19.]

(9)—*S.* 2—*Limits within which Act in force*—*Municipal boundaries — Subsequent alteration of Municipal boundaries.*—Where the Lieutenant-Governor, under the powers conferred by Act III of 1867, declared by notification that the Act should be in force within the boundaries of the Municipality of Mirzapur and those boundaries were subsequently revised, and an offence was committed within the boundaries as existing at the time of the notification under Act III of 1867, but without the boundaries as revised, *held*, that the boundaries for the purpose of Act III of 1867 must be taken to be those as existing at the time of the notification under that Act. JANAK v. KING-EMPEROR, **A.W.N. 1906, 133=3 Cr.L.J. 439.**

(10)—*S.* 2—*Notification extending provisions of the Act*—*Validity.*—The Notification in the

I.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

Punjab Gazette extending the whole of the provisions of the Act to a town, are not ineffectual by reason of their defining the limits of the town. ELLAHI BAKHSH v. EMPRESS, **12 P.R. 1886, Cr.**

(11)—*S.* 2—*Notification extending the provisions of Act to a town—Cantonment not included.*—A notification, extending the provisions of the Act to a "town" cannot be held to include an extension of the Act to the cantonment. BAJA v. EMPRESS, **23 P.R. 1887, Cr.**

(12)—*Ss.* 2, 3 *and* 4—*Extending provisions of Act to a place — Notification in one issue of Gazette.*—The Act, or any of its provisions, cannot be extended to a town or place, to which the Act does not *ipso facto* apply under the terms of s. 2, by the mere publication of a notification in one issue of the Gazette only. BHAN v. EMPRESS, **3 P.R. 1885, Cr.**

(13)—*Ss.* 2, 13—*Gambling—'Limits aforesaid' meaning of.*—Gambling on a *kachcha* public road outside the limits of a Municipality, to which the provisions of the Gambling Act have been extended, is an offence under s. 13 of that Act, because the words "limits aforesaid" in that section refer to the whole of the territories under the administration of a Lieutenant Governor. RADHE v. EMPEROR, **12 Cr. L.J. 107 = 9 Ind. Cas. 630.**

(14)—*S.* 3—*Evidence of use of instruments of gaming essential for conviction.*—In order to support a conviction under s. 3, Act III of 1867, of keeping a common gaming house as defined by s. 1 of that Act, there must be evidence that instruments of gaming were kept or used. AH KYI v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 532.**

(15)—*S.* 3—The mere finding of cards, dice, etc., is not evidence that the house is a common gaming house. The owner or tenant must derive profit or gain from the gambling. CROWN v. CHUNNI MULL, **19 P.R. 1871, Cr.** [*R.*, 9 P.R. 1876, 29 P.R. 1881; *Commented on*, 7 P.R. 1882.]

(16)—S. 3—*See* CRIM. PRO. CODE, 1898, s. 556, U.B.R. 1897—1901, Vol. I, 125.

(17)—S. 3—*See* Nos. 6 and 12, *supra.*

(18)—*Ss.* 3 *and* 4—*Common gambling-houses—Keeping such houses and gambling in them by owner — Separate convictions.*—A man, who keeps a common gaming house and gambles in it himself, cannot be convicted and separately sentenced under ss. 3 and 4 of the Act. QUEEN-EMPRESS v. NGA NGUE HLAING, **L B.R. 1893—1900, 459.**

(19)—*Ss.* 3, 4—*Right of house-owner.*—In a case under ss. 3 and 4 of the Gambling Act, the owner of the house should be allowed to prove that the house was not used as a common-gaming house. QUEEN-EMPRESS v. NGA SO GYI, **L.B.R. 1872—1892, 53.**

(20)—*Ss.* 3, 4— *Convictions under sections, essential for.*—In order to sustain a conviction under ss. 3 and 4 of Act III of 1867, it must be shown that the house in which the alleged offence was committed was a common gaming house within the meaning of s. 1 of the Act. CROWN v. FUTTAH, **46 P.R. 1867, Cr.**

(21)—*Ss.* 3, 4—*Misjoinder of charges—Discretion of Chief Court to hear pleader in revision.*—*Held*, that, a person accused under s. 3 of the Gambling Act cannot be tried together with the persons accused under s. 4 of the Act, on the ground of misjoinder of charges. *Obiter*:—When the District Magistrate has refused to appoint a legal practitioner to represent the Crown in revision, the Chief Court must decline to hear him. MAKHAN v. CROWN, **5 P.W.R. 1910, Cr. = 5 Ind. Cas. 720.** [*R.*, 9 N.L.R. 68.]

(22)—*Ss.* 3, 4—*Conviction when sustainable.*—Before a conviction could be had under s. 3 or s. 4 of Act III of 1867, it should be proved that cards, dice, tables or other instruments of gaming were "kept or used for the profit or gain of the person owning, occupying, using or keeping the house." EMPRESS v. MUSSAMMAT KASHI, **6 C.L.R. 17, Cr.** [*Rel.*, 12 Cr. L.J. 28 = 8 Ind. Cas. 1127 = 6 N.L.R. 168.]

(23)—*Ss.* 3, 4—*Sentence of imprisonment and fine.*—A sentence of imprisonment and fine under s. 3 or s. 4 of Act III of 1867 is illegal. QUEEN-EMPRESS v. NGA THA DINU, **L.B.R. 1872—1892, 434.**

(24)—*Ss.* 3, 4.—Fine is a more appropriate form of punishment for a first offence under s. 4 than imprisonment. A Magistrate should strongly mark the distinction between offences under s. 3 and s. 4 of this Act. QUEEN-EMPRESS v. NGA PO TU, **L B.R. 1872—1892, 428.**

(25)—*Ss.* 3 *and* 4—*Presumption.*—A warrant issued for the search of 'any house' which the Police officer to whom it was issued might consider proper to search was an illegal warrant within the meaning of the Gambling Act, and any search made under it was not such as was contemplated by the Act. The result of the illegal act, however, is that no presumption whatsoever can be drawn in accordance with the Act such as is allowed by the terms thereof to be drawn in the case of a legal search. Evidence can be given to show that the house is a gambling house. HARGOBIND v. KING-EMPEROR, **10 A.L.J. 355 = 17 Ind Cas. 576 = 35 A. 1 = 13 Cr L.J. 832.** [*Appl.*, 15 Cr. L.J. 19 = 22 Ind. Cas. 163 = 11 A.L.J. 933.]

(26)—Ss. 3, 4—Offences under—Joint trial—Legality—*See* CRIM. PRO. CODE, 1898, s. 239, 35 P.R. 1914, Cr.

(27)—*Ss.* 3, 4, 5 *and* 6—*Gambling not an offence* per se.—Gambling in itself is not an offence, and only becomes punishable as an offence, when it takes place in a common gaming house or in a public place. QUEEN-EMPRESS v. NIAZ AHMED, **S C. 203, Oudh.**

I.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

(28)—*Ss.* 3, 4, 5, 6, 10—*Joint trial—One accused charged with keeping a common gaming house and the other, with gambling—Same transaction—Nature of offences—Legality of the trial—Crim. Pro. Code, s.* 239—*Search warrant under s.* 5, *Act* III *of* 1867—*Credible information—Presumption—Some gamblers cited as witnesses for prosecution—Legality—Effect and scope of s.* 10 *of the Act—Offences under the Act—Sentences of imprisonment—Impropriety of awarding such sentence.*—In execution of a warrant issued by a Magistrate, H's house was raided. A number of persons among whom M was one were discovered gambling with, or in the presence of H, the owner of the house, who, if not gambling, was found engaged in levying his toll for the use of the house for purposes of gaming. H, M and some others found in the house during the raid were placed before the Magistrate for trial and certain others were taken as witnesses. In a joint trial, M was convicted under s. 4 of Act III of 1867, sentenced to undergo 15 days' rigorous imprisonment, and H was convicted under s. 4 and also under s. 3 of the said Act, for keeping a common gaming house in which M's offence was committed, and sentenced to undergo 15 days' rigorous imprisonment for each of his offences. *Held* that the joint trial of H and M was not illegal. The offences of the keeper and players arise out of facts so inseparably connected together as to form a single transaction, and therefore the house keeper who commits one offence in the transaction, and his customer who commits another (the house keeper in substance being an abettor of the gambling) are clearly within the purview of s. 239, Crim. Pro. Code, for joint trial as persons accused of different offences committed in the same transaction. It must be presumed that a warrant issued by a Magistrate under s. 5 of Act III of 1867 had been issued on credible information. If the prosecution choose to proceed only against some of the persons found gaming or present in a common gaming house, that does not prevent the officer conducting the prosecution from calling as witnesses persons who are not proceeded against. S. 10 has no application to such persons. It is an enabling section which empowers the Magistrate, out of the persons brought before him for trial, to convert any he may think fit into witnesses, and upon his doing so, and subject to their deposing truthfully, such persons are treated as approvers, and pardoned under s. 11 of the Act. *Held*, that the sentences of imprisonment inflicted upon the accused were improper. The wording of ss. 3 and 4, where, contrary to the usual rule, the punishment of fine *precedes* the alternative of imprisonment, suggests that the legislature intended that primarily fine should be used as the mode of punishment, and imprisonment only inflicted in aggravated cases. An offence under s. 3 is more serious than one under s. 4; but in any case under this Act, a Magistrate must have and must state, in his judgment, special reasons for inflicting a substantive sentence of imprisonment. SHEIKH MOTI v. EMPEROR, **9 N.L R. 68 = 14 Cr. L.J. 293 = 19 Ind. Cas. 949.** (95 P.W.R. 1910, Cr., *Not appr.*)

(29)—*Ss.* 3, 4 *and* 6 — *Search warrant — Credible information—Presumption.*—When a search warrant purported to be issued upon credible information and after enquiry signed by the District Superintendent of Police, *held*, that it was open to the Magistrate to presume, until the contrary was made to appear, that the warrant was issued on credible information after sufficient enquiry and that the prosecution need not give evidence, in the first instance, of the information laid, and of enquiry, if any, held thereupon. EMPRESS v. MAZHAR ALI, **29 P.R. 1881, Cr.** (19 P.R. 1871, Cr., 9 P.R. 1876, Cr., *R.*)

(30)—*Ss.* 3, 4, 5 *and* 14—*Jurisdiction of Magistrate—Act* XVI *of* 1884 (*Gaming*), *s.* 5 —*Crim. Pro. Code* (1882), *ss.* 33 *and* 201.—Although a Second-Class Magistrate may not have been empowered under s. 5 of the Gaming Act, 1884, to proceed under s. 5 of the Gambling Act, 1867, there is no doubt that he has power, under s. 14 of the Gambling Act, 1867, and s. 201, Crim. Pro. Code (1882), on information given to him that an offence had been committed under ss. 3 and 4 of the Gambling Act (1867), to take cognizance of the same and to issue a summons upon the accused. QUEEN-EMPRESS v. NGA SON GAUNG, **L.B.R. 1872—1892, 486.**

(31)—*Ss.* 3, 4, 13, 16—*Rewards to informers.* —There is no justification in s. 16 for the payment of any portion of a fine imposed under s. 13 to the informer. There is no authority for rewarding an arresting officer out of the fine imposed under ss. 3 and 4 of the Act, or out of the moneys or sale proceeds of articles seized and ordered to be forfeited under the Act. QUEEN-EMPRESS v. NGA THA ZAN, **L.B.R. 1872—1892, 407.**

(32)—*Ss.* 3, 4 *and* 15 — *Question of what provision of the Act has been extended to a particular locality—Whether a question of law or fact—Evidence Act, s.* 44.—Whether or not portions of the Act had been extended to a particular locality, and whether the steps taken in this view were sufficient in law to effect it, are questions of law and fact, which the Criminal Court has to decide for itself before convicting the accused. When once a decision has been arrived at, the point cannot be reopened in a subsequent case, except where the facts of a particular case bring it within s. 44, Evidence Act. GANGA v. EMPRESS, **41 P.R. 1885, Cr.**

(33)—*Ss.* 3, 4 *and* 16—*Fines — Rewards— Magistrate, Jurisdiction of.*—When fines are inflicted under s. 3 or s. 4 and moneys or articles are forfeited, the Magistrate trying the case may

I.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

award part or all of either the fines recovered, or the moneys or sale proceeds of articles forfeited, to the informer, but he cannot award both the fines and the moneys and sale proceeds of articles forfeited. The use of the disjunctive "or" in s. 16 puts it out of the power of the Magistrate to award both the fine and the confiscated property to the informer. QUEEN-EMPRESS v. NGA PO, **L.B.R. 1872—1892, 378.**

(34)—*Ss.* 3 *and* 5—*Common gaming-house—Seizure of money on the persons of gamblers—Confiscation.*—The order of a Magistrate confiscating the money found on the accused, while gambling in a common gaming-house, is illegal, if there is no evidence to show that there was reasonable ground for suspecting that such money was used, or was intended to be used, for the purpose of gaming. QUEEN-EMPRESS v. NGA SHWE TE, **L.B.R. 1872—1892, 281.**

(35)—*Ss.* 3, 5, 6—*Common gambling house, presumption as to—Search warrant — Judge importing his own knowledge into case—Signing warrant with pencil — Credible information, warrant issued on receipt of.*—A person was convicted under s. 3, with seven others under s. 4 of the same Act. His house was entered and searched under a warrant, signed by the Magistrate with a pencil, reciting that the Magistrate had reason to believe upon credible information that the house was used as a common gaming-house, and authorising a police officer to enter and search it. The police officer was examined as a witness, and, in cross-examination, deposed that he informed the Magistrate that he had received "credible information that gambling was going on." The Magistrate in his judgment stated that "the search warrant obtained by the City Inspector was signed by me on credible information received from him to the effect that the house was used as a common gaming house." *Held* that "a Judge ought not, without giving evidence as a witness in the usual way, import into a case his own knowledge of particular facts" and that, therefore, the Magistrate ought not to have imported into the case his own knowledge as to the circumstances under which the warrant was issued ; also, that there was evidence that the warrant was legally issued, for, it stated that it was issued upon information that the house was used as a common gaming house, and there was a presumption that such statement was true ; further, that the statement of the police officer in cross-examination did not necessarily convey the meaning that he gave the Magistrate such information only ; and the presumption that the statement in the warrant was true was not rebutted by the statement ; *held*, further, that the absence of circumstances under which alone the presumption referred to in s. 5 can be drawn, is a ground for holding that the presumption cannot properly be drawn, but the absence of such circumstances has not the effect of making all the evidence taken in the case inadmissible and of vitiating and rendering the conviction illegal ; *held*, also, that it was objectionable to sign search warrants with a pencil. NARAIN DAS v. KING-EMPEROR, **5 O.C. 37.**

(36)—*Ss.* 3, 5, 6—*Conditions for issue of warrant.*—Where a warrant for search was issued under s. 5 of Act III of 1867 in the absence of any record to show that the officer who issued it had reason to entertain a belief that the house was used as a public gambling house or that such belief was based on credible information, *held* that the warrant was defective and that the convictions consequent on such search were illegal. EMPRESS v. CHIRANJI, **A.W.N. 1891, 111.** [*R.*, 30 A. 60=5 A.L.J. 59=A.W. N. 1908, 9=7 Cr. L.J. 19.]

(37)—*Ss.* 3, 5, 6—*Construction—Information—Warrant for search.*—The provisions of Act III of 1867, which is an extremely severe Act, must be construed strictly. A search warrant issued without credible information that a house was used as a common gambling house within the meaning of the Act, but merely on a report that gambling frequently took place there, is informal, and where a conviction is based on the ground that materials of gambling were found in such search, the finding cannot be used as presumptive proof under s. 6 and the conviction is illegal. EMPRESS v. RAM BHAROSE, **A.W.N. 1890, 226.** [*R.*, 30 A. 60=5 A. L.J. 59=A.W.N, 1908, 9=7 Cr. L.J. 19, A.W. N. 1891 ; 111.]

(38)—*Ss.* 3, 6—*Imperfect description of house to be searched.*—A warrant was issued under Act III of 1867, for the search of "house No. 169 belonging to Jhunni Bakkal, *mohalla* Baniapara." The house in fact searched was a house in the occupation of Jhunni Bakkal, bearing No. 169, but in *mohalla* Shahnathan. But Shahnathan and Baniapara were adjoining *mohallas* and in *mohalla* Baniapara there was no No. 169. There was further evidence to show that the house which was searched under this warrant was the house concerning which information had been given and the house which the police intended to search. *Held*, that the wrong description given to the house, namely, that it was a house in *mohalla* Baniapara, was merely a misdescription which did not vitiate the warrant, nor prevent the presumption provided for by s. 6 of the Act from arising. EMPEROR v. JHUNNI, **A.W.N. 1905, 105=2 Cr.L.J. 243.**

(39)—*Ss.* 3 *and* 15—*Magistrate incompetent to pass sentence exceeding Rs.* 400, *or six months' rigorous imprisonment.*—Under ss. 3 and 15 of the Act, a Magistrate is incompetent to pass any sentence exceeding Rs. 400, or six months' rigorous imprisonment, and a sentence of fine of Rs. 600 or imprisonment for one year cannot be passed on the accused, until he had been convicted at one trial of two or more offences. EMPRESS v. CHUNNI, **A.W.N. 1881, 111.** [*R.*, A.W.N. 1881, 129.]

I.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

(40)—*S.* 4—*Accused not found in the gaming house.*—A conviction under this section is unsound, when the accused is not found in a common gaming house. POLICE v. LACHMIDAS, **Colm. Dig. Cr. 63 of 1876.**

(41)—*S.* 4—"*Being found in a common gaming house.*"—A person seen actually in a gaming house by the officer executing the warrant and his subordinates, at the time of their reaching the house is "found" in the house within the meaning of s. 4. It is not necessary that he should be actually arrested in the house. VIR SINGH v. EMPRESS, **22 P.R. 1895, Cr.** (35 P. **R.** 1894 Cr., *Expl.*).

(42)—*S.* 4—*Imprisonment in default of fine—Penal Code, s.* 65—*General Clauses Act* (1897), *s.* 25.—As the maximum term of imprisonment under s. 4 of the Gambling Act is one month, the accused could not, under s. 65, I.P.C., be sentenced to more than one week's imprisonment in default of payment of fine. S. 65 has been made applicable to fines imposed under the Gambling Act by s. 25 of the General Clauses Act, 1897. QUEEN-EMPRESS v. AH HEIN, **L.B.R. 1893—1900, 385.**

(43)—S. 4—*See* Nos. 7, 8, 12, 18 to 33, *supra.*

(44)—*Ss.* 4, 5—*Gambler being found in a common gaming-house—Magistrate acting upon information supplied by private individual.*—In order to make a person punishable under s. 4, it is not necessary either that he should be found by a Magistrate or by a police officer acting in the manner provided by s. 5, or that information should be given by a police officer. A Magistrate may take action under s. 4 upon information given by a private individual, and may convict upon the evidence of a private individual. QUEEN-EMPRESS v. NGA BA, **L. B.R. 1893—1900, 321.** (L.B.R. 1872—1892, 486, L.B R. 1893—1900, 251, *D.*).

(45)—*Ss.* 4 *and* 5—*Conviction of owner or keeper of a common gaming-house when there is illegality in warrant* —A charge of being the owner or keeper of a common gaming house may be proved and conviction on it sustained, even if there has been no legal warrant and search. VIR SINGH v. EMPRESS, **22 P.R. 1895, Cr.**

(46)—*Ss.* 4, 5—*Search-warrant—Conditions for issuing.*—Before issuing a search-warrant under s. 5, the officer, whether Magistrate or Police, shall have, upon credible information, reason to believe that the premises to be searched are used as a common gaming-house. It is not necessary that the informant should be examined upon oath or affirmation, or that further enquiry should be made or that a record should be prepared. KADA v. EMPRESS, **7 P. R. 1882, Cr., F.B.** (19 P.R. 1871, Cr., 9 P.R. 1876, Cr. *R.*).

(47)—*Ss.* 4, 5—*Search by officer other than the one named in the search-warrant.*—The only person authorized to make a search is the officer named in the warrant. The officer named in the warrant is not competent to authorize any one else to make the search. VIR SINGH v. EMPRESS, **22 P.R. 1895, Cr.**

(48)—*Ss.* 4, 5 *and* 6—*Common gaming-house—Evidence—"Credible information."*—*Held*, that when a house is searched by the Police on information that it is a common gaming-house, the finding of instruments of gaming will be admissible evidence that the house is used as a common gaming-house, notwithstanding that the warrant under which the search is conducted is defective, though the finding of such articles may not be evidence to the extent mentioned in s. 6 of Act III of 1867. *Held*, also, that the words "credible information" as used in s. 5 of Act III of 1867 have not the same meaning as "credible evidence." The "credible information" there mentioned need not be in writing. EMPEROR v. ABDUS SAMAD, **A.W. N. 1905, 257=28 A. 210.** [*R.*, 30 A. 60=5 A. L.J. 59=A.W.N. 1908, 9=7 Cr. L.J. 19.]

(49)—*Ss.* 4 *and* 6—*Gambling in a common gaming-house.*—Persons who were not found in a common gaming-house, but in another house, under circumstances which warranted a presumption that they had been gambling in the common-gaming house were held not liable to be convicted under ss. 4 and 6. In order to support a conviction, the accused must actually be found in the house when search was made. FAZAL AHMAD v. EMPRESS, **35 P.R. 1894, Cr.**

(50)—*Ss.* 4 *and* 13—*Gambling in a private house.*—S. 13 punishes gambling in a public street or place. S. 4 punishes gambling in a common gaming-house. Gambling in a private house is not an offence under the Act. QUEEN v. KHAYROO, **2 N.W.P. 289.**

(51)—*Ss* 4 *and* 15—*Limit of sentence.*—A person who had been seven times previously convicted under the Gambling Act was convicted of the offence of being found in a gaming house and was sentenced, under ss. 4 and 15 of the Act, to rigorous imprisonment for six months. *Held* that the utmost punishment allowed by the law being a fine of Rs. 200 or rigorous imprisonment for two months, the sentence passed was illegal. EMPRESS v. GANAPAT, **A.W N. 1881, 129.**

(52)—*S.* 5—*Jurisdiction of Magistrate to leave execution of warrant to discretion of police.*—A Magistrate cannot issue a warrant of search under s. 5, leaving it to the discretion of the police to determine whether it shall or shall not be executed. QUEEN-EMPRESS v. NGA TU, **L.B.R. 1872—1892, 86.**

(53)—*S.* 5—*Search of two or more houses—Warrant addressed to several Police Officers—Signing a warrant—Meaning.*—Two or more houses may be specified in one warrant, provided that they are clearly disunited in it. A warrant in the alternative to different police

I.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

officers is not bad. When a warrant, signed by a District Superintendent of Police, contained the following words "there is reason to believe," *held*, that the signatory had reason to believe, and acted upon credible information, within the meaning of s. 5 of the Gambling Act. BASANTA MAL v. EMPRESS, **17 P.R. 1897, Cr.** (A.W.N. 1891, 111, *D.*).

(54)—*S.* 5—*Illegal warrant, what is.*—*Held*, that a warrant issued in the particular case, was bad for the following defects—(1) that it was not signed by a Magistrate or a District Superintendent of Police; (2) that, notwithstanding the presence of a Deputy Inspector of Police, it was addressed to a sargeant; (3) that there was no proof that the warrant was issued on credible information or upon enquiry; (4) and that it was a general warrant. BENWARI v. EMPRESS, **11 P.R. 1895, Cr.** [*F.*, 11 Cr. L. J. 570=8 Ind. Cas. 137=85 P.L.R 1910=23 P.R. 1910, Cr.=65 P.W.R. 1910, Cr.]

(55)—*S.* 5—*Credible information, whether should be taken upon oath or affirmation.*—The term "credible information" includes any information which, in the judgment of the officer to whom it is given, appears entitled to credit and which he believes. It is not necessary that such information should be taken upon oath or affirmation. KADA v. EMPRESS, **7 P.R. 1882, Cr. F.B.** (19 P.R. 1871, Cr., 9 P.R. 1876, Cr., *R.*).

(56)—*S.* 5—*Search-warrant, whether can be issued on police report.*—A search-warrant cannot be issued on the mere report or information of a police officer, as such information does not amount to "credible information." SANDHI v. CROWN, **9 P.R. 1876, Cr.** [*R.*, 29 P.R. 1881; *Commented on*, 7 P.R. 1882, Cr.]

(57)—*S.* 5—*Entry and search under the section, when justified.*—To justify action under the section, the Magistrate must have "credible information" and reason to believe that the house is used as a "common gaming house" within the meaning of the term. QUEEN v. SUBSOOKH, **2 N.W.P. 476.** [*R.*, 9 Bom. L.R. 695=31 B. 438.]

(58)—*S.* 5—*Finding of cards, etc., without search warrant, whether evidence.*—The mere finding of cards, dice, etc., without the house being searched under the provision of s. 5, Act III of 1867, is not evidence that the house is a common gaming house. A search warrant can only be issued on credible information that the house is a common gaming house. CROWN v. CHUNNI MULL, **19 P.R. 1871 Cr.** *See, also*, SANDHI v. CROWN, **9 P.R. 1876, Cr.** [*R.*, 9 P.R. 1876, 29 P.R. 1881; *Commented on*, 7 P.R. 1882].

(59)—*S.* 5—*Finding of cards when* prima facie *evidence.*—Only when a house is entered and searched under the provisions of s. 5 is the finding of cards, dice, etc., sufficient evidence against the accused, until the contrary is made to appear. QUEEN v. SUBSOOKH, **2 N.W.P. 476.**

(60)—*S.* 5—*Search-warrant issued without affixing Court-seal—Warrant signed by Magistrate outside his jurisdiction—Legality—Ss.* 75, 537, *Crim. Pro. Code* (1898).—Even granting that the law required that a search-warrant issued under the Gambling Act should be sealed with the seal of the Court, the omission to affix the seal is a mere irregularity cured by s. 537, Crim. Pro Code. But the search-warrant, having been signed by the Magistrate at a place outside the local limits of his jurisdiction, is illegal. A warrant that is not legal warrant is no warrant at all for the purposes of the Gambling Act. GIRDHARI LAL v. CROWN, **23 P.R. 1910, Cr =85 P.L R. 1910=8 Ind. Cas. 137.** (18 B. 636, *Diss.*; 11 P.R. 1895, Cr., *R.*; 1 B. 340, *D.*)

(61)—*S.* 5—*Power to issue search-warrant—'Officer invested with the full powers of a Magistrate.'*—The expression "the Magistrate of a district or other officer invested with the full powers of a Magistrate" used in s. 5 of the Public Gambling Act of 1867, means a Magistrate of the first class. The appointment of a Magistrate of the first class as sub-divisional officer gives the officer in question certain additional powers in that particular area, but does not deprive him of all his powers as a Magistrate. Hence, a search-warrant issued by such an officer for the search of a house outside the *tahsil* of which he was sub-divisional officer, was not illegal. ABBU SINGH v. KING-EMPEROR, **10 A.L J. 169=34 A. 597=16 Ind. Cas. 524=13 Cr.L.J. 716.**

(62)—S. 5—*See* Nos. 27, 28, 30, 34, 35, 36, 37, 44 to 48, *supra* and No. 78, *infra.*

(63)—*Ss.* 5 *and* 6—*Non-compliance with the provisions of s.* 5—*Finding of money.*—Where the provisions of s. 5 of the above Act had not been complied with, the simple fact that some money in a small earthen pan and some cowries were found in the house of the accused is not sufficient evidence, under s. 6 of the fact that the house was a common gaming house. EMPEROR v. SHAKAR CHAND. **A W.N. 1882, 132** [*R.*; 18 A. 23; *D.*, 16 A. 420.]

(64)—*Ss.* 5, 6—*Search warrant issued to Police Officer by Magistrate—Such Police Officer endorsing it for execution to another Police Officer—Legality of execution of search by the Police Officer.*—Search warrants issued under Act III of 1867 (Gambling Act) are governed by those provisions of the Code of Criminal Procedure which provided for the issue of the warrants in general. Consequently, a search warrant may be endorsed by a Police Officer, to whom it was originally directed, to another who is not of a rank below that authorized under the Act to enter and search. EMPEROR v. KASHI NATH, **5 A.L J. 59=A.W.N. 1908, 9=30 A. 60=7 Cr.L.J. 19.** (28 A. 210=A.W.N. 1905, 257, *R.*)

I.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

(65)—*Ss.* 5, 6—It is only when the house is searched under the provisions of s. 5 that the presumption allowed by s. 6 arises. QUEEN-EMPRESS v. NGA SO GYI, **L.B.R. 1872—1892, 53.**

(66)—*Ss.* 5, 6—*Search under s. 5—Irregularity—Presumptions under s. 6—Conviction on the strength of such presumptions, when sustainable.*—Irregularity in a warrant issued under s. 5 of the Act will not *per se* vitiate a conviction following on a search made under it, if there is evidence on which such conviction can be supported without invoking the presumptions prescribed by s. 6 of the Act. But those presumptions only arise when a search has been duly made under s. 5, and a conviction cannot be sustained, merely on the strength of such presumptions, in a case where the search was not duly made. EMPEROR v. UMERKHAN, **6 N.L R. 168.** (A.W.N. 1881, 286, 4 C. 710, 4 C. 659, *F.*; 14 A.W.N. 291, *Disc.*)

(67)—*Ss.* 5, 6—*Common gambling house.—Presumptive evidence* —It is only in the case of a house searched under the provisions of s. 5 of the Gambling Act that a presumption arises, under s. 6, from the mere discovery of cards, dice, or other instruments of gaming, that it is a common gaming house. QUEEN-EMPRESS v. NGA SIT SHWE, **L.B.R. 1872—1892, 548.**

(68)—*S.* 6—*Sub-Inspector of Police—Crim. Pro. Code, Act* X *of* 1882, *s.* 537.—The entrustment of a search warrant to a Sub-Inspector of Police at a station where there is an Inspector, though not proper under s. 6 of Act III of 1867, is an irregularity that could be covered by s. 537 of the Crim. Pro. Code, and cannot have the effect of nullifying the evidence of the Sub-Inspector. EMPRESS v. MUSA, **A.W.N. 1884, 59.** [*R.*, A.W.N. 1884, 286.]

(69)—*S.* 6—*Search by Sub-Inspector—Effect.*—The entrustment of a search-warrant issued under Act III of 1867, to a police officer of a rank not competent to execute such warrants under s. 5 and the rules framed by the Government, is an irregularity which renders the special rule of evidence in s. 6 inapplicable to the case. The word "evidence" in the latter section means "proof." The irregularity, however, is not such as to vitiate the whole trial, under s. 537 of the Crim. Pro. Code. EMPRESS v. HARDEO DAS, **A.W.N. 1884, 286.** (4 C. 710, *R.*) [*F.*, 12 Cr. L.J. 28=8 Ind. Cas. 1127=6 N.L.R. 168.]

(70)—*S.* 6—*Defect in warrant of search—Effect.*—The defect in the form of a warrant of search under Act III of 1867 in that it did not direct the search of a house but only the arrest of a person, is an irregularity that renders the rule of evidence in s. 6 of the Act inapplicable. But it does not vitiate the conviction if it had not caused any failure of justice and if the presumption ordinarily raised under s. 114 of the Evidence Act by the evidence as to search and the other evidence in the case support the conviction. EMPRESS v. MAN SINGH, **A.W.N. 1884. 291** [*F.*, 12 Cr.L.J. 28=8 Ind. Cas. 1127=6 N. L.R. 168.]

(71)—*S.* 6—*Prsumption under the section, when arises.*—It is only when a house is duly entered and searched, under the provisions of s. 5, under a warrant signed by an officer having authority to issue it, that the presumption referred to in s. 6 arises. But the fact of a certain house being a gaming house can be proved *aliunde*. RAM SARUP v. KING-EMPEROR, **1 A.L.J. 115.**

(72)—*S.* 6—"*Cowries,*" *whether instruments of gaming.*—Although cowries can be used for the purpose of gambling, they are not "instruments of gaming" within the meaning of s. 6, Act III of 1867. QUEEN-EMPRESS v. BHAWANI, **18 A. 23=A.W.N. 1895, 139.**

(73)—*S.* 6—*Cowries—Instruments of gaming.*—Although cowries are not, ordinarily, instruments of gaming, yet, if they are used in a particular case as instruments of gaming, they are instruments of gaming; that is to say, the mere finding of cowries in a house would not raise the presumption that the house was used as a common gaming-house, but evidence that cowries were used in a particular house as a means whereby to carry on gaming would bring the case within the section. QUEEN-EMPRESS v. BALA MISRA, **19 A. 311=A.W.N. 1897, 117.** (A.W.N. 1895, 139, *R.*) [*R.*, 25 C. 432, 10 O.C. 225.]

(74)—*S.* 6—*Instruments of gaming—Cowries.*—Cowries are not instruments of gaming. GANDA v. EMPRESS, **3 P.R. 1896, Cr.**

(75)—*S.* 6—Cowries cannot be taken to be instruments of gaming for the purpose of s. 6 of the Act. EMPRESS v. MUSSAMMAT KASHI, **6 C. P.L R. 17 Cr.** [*Rel.*, 12 Cr. L.J. 28=8 Ind. Cas. 1127=6 N.L.R. 168.] *See, also,* QUEEN-EMPRESS v. BHAWANI, **18 A. 23=15 A.W.N. 139.**

(76)—*S.* 6—*Issue of search warrant, condition for.*—It is an absolutely necessary preliminary to the issue of a search warrant under s. 6 of the Act, that the Magistrate or the District Superintendent of Police should have reason to believe on credible information that the house which it is proposed to search is used as a "common gaming-house." QUEEN-EMPRESS v. NIAZ AHMAD, **S.C. 203, Oudh.**

(77)—S. 6—*See* Nos. 27 to 30, 35 to 38, 48, 49 and 63 to 67, *supra.*

(78)—*Ss.* 6 *and* 5—*When presumption under section arises.*—The presumption of s. 6 does not arise, unless the search is conducted in strict accordance with s. 5 of the Act. QUEEN-EMPRESS v. NGA SHAN GYI, **L.B.R. 1872—1892, 407.**

(79)—*Ss.* 8 *and* 11—*Confiscation of property, when can be ordered.*—Forfeiture of property can

I.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

be ordered only in cases where there is a conviction and is restricted to property belonging to convicted persons. JIWAN v. EMPRESS, **5 P.R. 1898, Cr.**

(80)—S. 10—*See* No. 28, *supra.*

(81)—*Ss.* 10, 11—*One of the accused examined as a witness against others.*—Where the police, in making a search under Act III of 1867, were merely trespassers, owing to the warrant of search not being a legal one, *held*, that one of the co-accused could not be examined as a witness, as the entry into the house was not under the provisions of the Act. RAM SARUP v. KING-EMPEROR, **1 A.L J. 115.**

(82)—S. 11—*See* Nos. 79 and 81, *supra.*

(83)—*S.* 13—*Tharra.*—A *tharra*, part of a private house by the side of but outside, a public street, is not a public place. MUL SINGH v. EMPRESS, **11 P.R. 1890, Cr.**

(84)—*S.* 13—The accused were found to have gambled in an open piece of ground outside a town and far away from the road. Though, in general, people were allowed to make use of the place without interference, it had not been dedicated to the public. It was, further, the private property of a particular individual. The accused were convicted of an offence under s. 13 of the Act. *Held*, under the circumstances, the conviction could not stand, the reason being that the land had not been dedicated to the public. KING-EMPEROR v. FAJJA, **9 P.R. 1905, Cr = 2 Cr.L.J. 46 = 123 P.L.R. 1905.** (17 P.R. 1882 Cr., 8 C.W.N. 592, 31 C. 542, *R.*)

(85)—*S.* 13—*Gambling in a grove.*—A person found gambling in a grove which is private property cannot be convicted under s. 13, as that section only refers to gambling in a public street, place or thoroughfare. AHMAD ALI v. KING-EMPEROR, **1 A.L J. 129.**

(86)—*S.* 13—*Gambling in zamindar's grove —Public place.*—Gambling in a zamindar's grove near a village, the gambling taking place of the footpath running through the grove and commonly used by the tacit permission of the zamindars as a public way, was not gambling in a "public place" within the meaning of s. 13 of Act III of 1867. EMPEROR v. AJUDHIA PRASAD, **A.W.N. 1904, 92.**

(87)—*S.* 13—*What are public places—Kwin.* —A "kwin," or field from which the crops have been reaped, is a "public place" within the meaning of s. 13. Act III of 1867, as amended by s. 6, Act XVI of 1884. QUEEN-EMPRESS v. NGA HMAT GYI, **L.B.R. 1872—1892, 317.**

(88)—*S.* 13—Chabutra *of a temple.*—The *Chabutra* of a temple, to which all classes of the public except the lowest classes have access is a public place within the meaning of s. 13 of the Act. QUEEN-EMPRESS v. CHOTE LALL, **A.W.N. 1895, 127.**

(89)—*S.* 13—*Fighting cocks not instruments of gaming.*—Fighting cocks are not instruments of gaming within the meaning of s. 13 of the Act. QUEEN-EMPRESS v. NGA THA ZAN, **L. B.R. 1872—1892, 407.** (L.B.R. 1872—1892, 317, *F.*)

(90)—*S.* 13—*Fighting birds, bulls, or any other animals.*—Fighting birds, bulls, or any other animals are not "instruments of gaming" and Magistrates cannot order their destruction. QUEEN-EMPRESS v. NGA HMAT GYI, **L.B.R. 1872—1892, 317.**

(91)—*S.* 13—*Tossing for pice—Instrument of gaming.*—An instrument of gaming means an implement devised or intended for that purpose. Coins are not instruments of gaming within the meaning of s. 13 of the Gambling Act. In this case, a conviction for tossing for pice on a public road was set aside. QUEEN-EMPRESS v. SIT TUN, **L.B.R. 1872—1892, 155.** (6 B. 19, *F.*)

(92)—*S.* 13—*Bullock race not an offence under the Act.*—Holding a bullock race and betting thereon is not an offence punishable under s. 13 of the Gambling Act. QUEEN-EMPRESS v. NGA SHWE TON, **L B.R. 1872—1892, 541.**

(93)—*S.*13—*Hindu temple.*—A Hindu temple does not fall under the definition of "place." although the temple is situated in a thoroughfare and can be looked at from the road. GHODDU v. EMPRESS, **13 P.R. 1882, Cr.**

(94)—*S.* 13—"*Public place,*" *meaning.*—A place to which persons are in the habit of going, even without having any strict legal right to do so, is a public place. QUEEN-EMPRESS v. MAHABIR, **S.C. 91, Oudh.**

(95)—*S.* 13—The words "any public street, place or thoroughfare" in s. 13 of Act III of 1867 does not include the verandah of a private house facing such street, place, or thoroughfare. POLICE v. DHONDIA, **Colm. Dig. Cr. 1 of 1871.**

(96)—*S.* 13.—A "public place" is a place appropriated to the use of the public. A place near a public road and exposed to public view is not a public place. KASHI RAM v. EMPRESS, **17 P.R. 1882, Cr.** [*R.*, 9 P.R. 1905, Cr.]

(97)—*S.* 13—*What are not public places—Verandah attached to a room.*—A verandah attached to the room of a private house, looking on an alley, is not a 'public place" within the meaning of s. 13. EMPRESS v. BHAGWAN, **A.W N. 1881, 17.**

(98)—*S.* 13—*The* chabutra *of a shop.*—The *chabutra* of the shop of one of the accused, which was a part of his own premises, is not a "public place" within the meaning of s. 13 of the Act. EMPRESS v. RATAN, **A.W N. 1881, 8.** *See, also,* EMPRESS v. KALANDAR KHAN, **A.W.N. 1887, 75.**

(99)—*S.* 13—*Gambling when punishable.*—Gambling is not punishable under s 13 of the above, if it is not shown to have been carried on in any public street, place or thoroughfare. QUEEN-EMPRESS v. ANANT, **S.C. 63, Oudh.**

I.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*continued.*

(100)—*S.* 13—*Magisterial proceedings against persons not apprehended by the police on the spot.*—Although a Magistrate is not restrained from trying an offence punishable under s. 13 of the Act when the police have failed to exercise the power of arrest without warrant conferred upon them in respect of offences punishable under s. 13, yet it is not indiscreet and ill-advised for a Magistrate to issue a warrant of arrest against a person found gambling, who was apprehended by the police on the spot. QUEEN-EMPRESS v. SHWE THEIN, **L.B.R. 1893—1900, 251.**

(101)—*S.* 13—*Money found with gamblers—Confiscation of instruments of gaming.*—Though a Magistrate is empowered by s. 13 to order any instruments of gaming that may have been seized by the police to be destroyed forthwith, he is not authorized to confiscate all the money the gamblers may have about them. QUEEN-EMPRESS v. ANANT, **S.C. 63, Oudh.**

(102)—*S.* 13—*Forfeiture of money and payment of reward.*—In convicting the accused under s. 13 for gambling of a public thoroughfare, *held*, that the Magistrate was not competent to order the forfeiture of money found on the spot, and to direct the payment of certain rewards out of the fine. SANT v. EMPRESS, **18 P.R 1891, Cr.**

(103)—*S.* 13—*Instruments of gaming, seizure of.*—On a conviction under s. 13, the Magistrate may order all instruments of gaming found in a public place, or on the persons of those arrested to be forthwith destroyed, but that section contains no provision such as is found in s. 8, authorising the forfeiture of money seized. EMPEROR v. TOTA, **26 A. 270=A.W.N. 1904, 11.**

(104)—*S.* 13—*Order for award to Police.*—An order for award to the Police Officer, who arrested, of half the fine imposed under s. 13, Act III of 1867, is illegal. POLICE v. CHHOTA, **Colm. Dig. Cr. 93 of 1877.**

(105)—*S.* 13—*Fine and imprisonment.*—Under s. 13 of Act III of 1867, it is not legal to impose double punishment of fine and imprisonment. EMPRESS v. GOKAL, **25 P.R. 1880, Cr.**

(106)—*S.* 13—*Mere game of skill—Game of chance.*—A game which consists of throwing a ring over a pin is a game of chance and not a mere game of skill, and is consequently punishable under s. 13 of the Public Gambling Act. AHMAD KHAN v. KING-EMPEROR, **8 A. L.J. 1262=12 Ind. Cas. 988=12 Cr. L.J. 512.** (6 C.L.J. 708, *R.*) [*R.*, 15 Cr. L.J. 276=23 Ind. Cas. 484.]

(107)—*S.* 13—*Meaning of "public place"—Private property when to be deemed as 'public place'—Intention of accused simply to conceal themselves—Whether accused can be convicted of gambling in public place.*—A place may be a public place though it is the private property of an individual. The expression 'public place' in s. 13, Public Gambling Act, must be interpreted in connection with the expressions

I.—Imperial Acts—continued.

Act III of 1867 (Public Gambling)—*concluded.*

'public street' and 'public thoroughfare' with which it is joined. Where a place is owned privately, and has not been in any way dedicated to the use of the public, the question whether it is a public place depends on the character of the place itself and the use actually made of it. Where the, time place and circumstances connected with the alleged offence show that it was not the intention of the accused to obtrude themselves upon the members of the public, but it was their intention to conceal themselves, *held*, they cannot be treated as having gambled in a public place. VITHU v. EMPEROR, **9 N.L.R. 164=14 Cr. L.J. 670=21 Ind. Cas. 910.** (31 C. 542, 29 B. 386, 6 C.W. N. 33, 30 B. 348, *R.*; (1864) 33 L.J. M.C. 58, (1885) 54 L.J.M.C. 14, *D.*)

(108)—S. 13—*See* ARREST, L.B.R. 1893—1900, 256.

(109)—S. 13—*See* COCK-FIGHTING, L.B.R. 1872—1892, 163.

(110)—S. 13—*See* SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1906, 13=3 Cr. L.J. 91.

(111)—S. 13—*See* Nos. 13 31 and 50, *supra.*

(112)—S. 14—*See* No. 30, *supra.*

(113)—S. 15—*See* Nos. 32, 39 and 51, *supra.*

(114)—*S.* 16—*Fine—Payment out of it to police officer of his efforts.*—*Held* that a Magistrate was not competent to order payment of a portion of the fine imposed upon the accused, on conviction under s. 13 to the police officer for his efforts in the case. CROWN v. RAM SURN, **2 P.R. 1870, Cr.**

(115)—S. 16—*See* Nos. 31 and 33, *supra.*

Act XII of 1867 (Presidency Jails).

[REP., ACT V OF 1871.]

(1)—*S.* 14—*Procedure on warrants.*—Where a prisoner was arrested by a sheriff under a writ of *ca. sa.*, it was held that it was necessary to bring him before the Court without delay, under this section. *In re* RAM COOMAR DUTT, **2 Ind. Jur. N. S. 340.** [*Doubted*, 7 C. 421, 12 C. 629.]

Act XXI of 1867 (Licensing Professions and Trades).

[REP., ACT IX OF 1868]

(1)—*S.* 15—*Imprisonment in default of payment of fine.*—Where a Magistrate sentenced a person, who had neglected to take license, under the above section of the Act and Act XXIX of 1867, s. 3, to pay a fine of ten rupees, and in default of payment, to suffer seven days' simple imprisonment, *held* that so much of the sentence as awarded imprisonment should be reversed as the trying Magistrate had, under the Act, no power to make such an order. REG. v. CHENAPPA *valad* NAGAPPA, **5 B.H.C. Cr. 44.**

I.—Imperial Acts—continued.

Act XXV of 1867 (Press and Registration of Books).

[SHORT TITLE GIVEN, ACT XIV OF 1897. REP. IN PART, ACT XIV OF 1870 ; REP. IN PART AND AMENDED, ACT X OF 1890 ; ACT XII OF 1891. LOCAL GOVERNMENT EMPOWERED TO ANNUL DECLARATIONS MADE UNDER, AND S. 15, EXT. ACT VII OF 1908, SS. 7, 8, DECLARED IN FORCE—THROUGHOUT BRITISH INDIA, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 3 ; IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3 ; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Copyright whether infringed by translation.*—A person by translating a book into another language does not render himself guilty of an infringement of copyright. MUNSHI SHAIK ABDUR RAHAMAN v. MIRZA MAHOMED SHIRAZI, **14 B. 586.** [*F.*, 19 B. 557.]

(2)—*Translation not copy.*—Translations are not copies and a person by translating a book does not infringe the author's copyright. MACMILLAN v. KHAN BAHADUR SHAMSUL ULAMA M. ZAKA. **19 B. 557.**

(3)—*Ss.* 1, 3 *and* 12—"*Publisher,*" *who is*—*Penal Code, ss.* 484, 486—*Crim. Pro. Code* (1882), *s.* 439—*Revisional powers of High Court.*—In this case, the accused caused to be printed copies of certain books, which previously had been printed at the Government Press, Allahabad, and offered them for sale and sold some of them. Some of these books did not contain the name of the printer and the place of printing, or the name of the publisher and the place of publication. Other books had printed upon them the words "Government Press, Allahabad." *Held*, that, in respect of the former set of books, the accused was properly convicted of an offence under s. 12 of the Act, for, a man who causes a book to be printed and offers it to the public for sale is a publisher within the meaning of ss. 3 and 12 of the Act. *Held* further, that, in respect of the latter set of books the prisoner was guilty of an offence under s. 12, but not under s. 486, I.P.C. The High Court is competent, in revision, to alter a finding of conviction, maintaining the sentence. EMPRESS v. JOTI PRASAD, **A.W.N. 1887, 95.**

(4)—*S.* 3—*Scope of the section.*—The intention of the section, in requiring that the name of the printer and the place of printing and the name of the publisher and the place of the publication should be printed legibly on every book or paper was to inform the public who the responsible printer or publisher was and to convey that information on the face of the paper. Words, which contained no such information, would not amount to a sufficient compliance with the requirements of s. 3. The intention was not simply to provide some facility or other, but to provide a specific facility on the face of the paper. Where a newspaper was printed and published bearing the following words, "printed and published at Cochin for the Malabar Economic Company at the said Company's Goshree Vilasam Press," *held*, that these words were not a sufficient compliance with the requirements of s. 3, inasmuch as there was no name of the printer as required by the Act.—*Per Collins, C. J., and Muttusamy Ayyar, J.* Under s. 3 of Act XXV of 1867, it is not necessary that the actual name of the printer should be given. So long as a name or style, which sufficiently designates the printer, is given, it does not matter that it is not the actual name of the printer. It is sufficient that it is the name under which he chooses to do business and is generally known. Unless it can be said that the words do not convey to an ordinary reader the information required by the Act, the conviction for a non-compliance of the provisions of s. 3 cannot be supported—*Per Shephard, J.* QUEEN-EMPRESS v. HARI SHENOY, **16 M. 443 = 3 M.L.J. 201 = 1 Weir 862.**

I.—Imperial Acts—continued.

Act XXV of 1867 (Press and Registration of Books)—*continued.*

(5)—*S.* 3—*Printer — Imprint of name — Printer of a portion of the book should have his imprint.*—The printer of a book is bound to imprint his name and the place of printing, under the provisions of s. 3 of the Printing Presses ane Books Act, 1867, even if he has printed only a portion of the book. EMPEROR v. HARI, **14 Bom. L.R. 40 = 13 Ind. Cas. 827 = 13 Cr.L.J. 139 = 1 Bom. Cr. C. 70.**

(5-*a*)—S. 3—*See* No. 3, *supra.*

(6)—Ss. 3, 5—*See* ACT I OF 1910, ss. 4 (i), 8, 9, 25, 6 P.W.R. 1913, Cr.

(7)—*Ss.* 3 *and* 12—*Meaning of* "*publisher*"—*Booksellers.*—The word "publisher" has been used in the Act in a restricted sense, and does not include a vendor of a newspaper or book. S. 12 read with s. 3 clearly indicates that such persons are not included in the word "publisher," for s. 3 enjoins the printing of the names of the printer and publisher. QUEEN-EMPRESS v. BANKA PATNI, **23 C. 414.**

(8)—*Ss.* 3, 12—*Names of printer and publisher, not printed as such.*—Where a copy of a vernacular newspaper contained the following words printed on the margin of the front page "*ba ihtimam Ram Saran Datt printer, Hindustan Steam Press, Lahore men, Lala Bhawani Das Manager ke liye chapa.*" *Held* that they do not contain a clear intimation as to the publisher, as required by s. 3 of Act XXV of 1867. The rule in s. 3 of the Act requires that every paper printed and published in British India shall have legibly printed on it the name of the printer and the place of printing and the name of the publisher and place of publication, as such. An omission to comply with s. 3 is punishable under s. 12. Ss. 3 and 12 do not deal with intention. Printers and publishers cannot be allowed to select for themselves the description to be used in professing to comply

I.—Imperial Acts—continued.

Act XXV of 1867 (Press and Registration of Books)—*continued.*

with the Act, but they must use the descriptions prescribed by the Act. CROWN v. BHAWANI DAS, **5 P.R. 1909, Cr. = 15 P.W.R. 1909 = 10 Cr. L.J. 195 = 2 Ind. Cas. 978.**

(9)—*S. 4—Change of place of printing press —New declaration.*—The Act does not require a new declaration in cases where a press, as to which the printer has made the declaration prescribed by s. 4, is changed to another locality within the same local jurisdiction as the former place. BAWA NARAIN SINGH v. EMPRESS, **9 P.R. 1889, Cr.**

(10)—S. 4—*See* PENAL CODE, s. 124-A, 12 Bom. L.R. 675.

(11)—Ss. 4, 5—*See* ACT I OF 1910, ss. 3, 5, 23 (1), 16 Bom. L.R. 87 = 2 Bom. Cr. C. 186 = 16 Cr. L J. 297 = 23 Ind. Cas. 505.

(12)—*Ss. 4, 5, 13—Offence of keeping printing press without making required declaration, if triable summarily—Necessity for a new declaration under s. 4, on change of place of printing.* —Where an accused person convicted on a summary trial of an offence under s. 13, Act XXV of 1867, had removed his press, as to which he had made the declaration prescribed by s. 4 of the Act, from the building, in which it was originally kept, to another building and had not made a fresh declaration under s. 4 as to the new premises, on the ground that no fresh declaration was necessary, *held*, that the offence was not triable summarily, and that where the new place of business is within the same local jurisdiction as the former place, a fresh declaration was unnecessary ; there is no clause in s. 4 of the Act (corresponding to the provision in s. 5) requiring a new declaration as often as a change of place takes place. BAWA NARAIN SINGH v. EMPRESS, **9 P.R. 1889, Cr.**

(13)—*S. 5—Penal Code, ss. 499 and 500—Defamation by newspaper—Liability of printer and publisher—Presumption—Burden of proof.* —Although s. 499 requires proof of publication in order to support a conviction for defamation, the intention of Act XXV of 1867 was to constitute the declarations made by a person that he was the printer and publisher of a newspaper into *prima facie* evidence of publication and to throw on the accused the burden of showing that the actual publisher of the libel was not the person mentioned in the declaration. The presumption could be rebutted if such person showed that he entrusted in good faith the temporary management of the newspaper to a competent person during his absence, and that the libel was published without his authority, knowledge or consent. RAMASWAMI v. LOKANADA, **9 M. 387 = 1 Weir 576 = 1 Weir 865.** [*F.*, 2 Ind. Cas. 193 (194); *R.*, 22 B. 152 (158), 35 C. 945 = 8 Cr. L. J. 438, 32 M. 338 (340) = 9 Cr. L. J. 506 = 5 M.L.T. 415].

(14)—S. 5—*See* Nos. 6, 11, 12, *supra.*

I.—Imperial Acts—continued.

Act XXV of 1867 (Press and Registration of Books)—*continued.*

(15)—*S. 7—Declaration by printer—Liability of printer.*—A person, who subscribes to the declaration under the Printing Presses and Newspapers Act, must be presumed, under this section, to be cognisant of all that he was printing and publishing and, in the absence of any evidence to the contrary, his liability in the matter cannot be gainsaid. APURBA KRISHNA BOSE v. EMPEROR, **7 C.L.J 49 = 7 Cr. L.J. 10 = 35 C. 141 = 2 M.L.T. 500.**

(16)—*S. 7—Liability of printer or publisher for seditious matter appearing in his newspaper.* —This section, which applies both to civil and criminal proceedings, makes the printer or publisher responsible for whatever may appear in a newspaper, whoever the writer of the article in it may be ; and, therefore, a prosecution may proceed against the printer, unless he can prove absence from the newspaper office in good faith and without knowledge that the seditious articles would be published during his absence. But it is not absence in good faith for a printer, to go away knowing very well what is going to happen in his absence, and for the purpose of shirking his liability. EMPEROR v. PHANENDRA NATH MITTER, **35 C. 945 = 8 Cr. L.J. 438.** [*R.*, 32 M. 3 = 5 M.L.T. 1 = 1 Ind. Cas. 22 = 9 Cr. L. J. 108.]

(17)—*S. 7—Responsibility of printer—Publication of seditious matter—Want of knowledge or intention, or absence not a good defence.*—The registered printer of a paper, so long as he continues such printer, cannot escape from criminal liability for publication therein, of a seditious article, by the plea that he was temporarily absent from the station when the article was printed, or that he was ignorant of the contents thereof, or that he had no intention of committing any offence. RAM DITTA v. KING-EMPEROR, **1 P.R. 1905, Cr = 2 Cr.L.J. 31 = 69 P.L.R. 1905.** (22 B. 112, *D.*).

(18)—*S. 7—Liability of declared printer and publisher when absent during the period of publication of seditious articles.*—Where certain articles appearing in a newspaper are seditious, the declared printer would be responsible for the said articles, unless he can make out on sufficient evidence, that he had in fact nothing to do with them. The editor of a paper was convicted under S. 124 A, I.P.C., and sentenced to one year's imprisonment on 22nd December, 1907. After his release from jail, however, he resumed his work as editor. The declared printer and publisher of the paper made his declaration under Act XXV of 1867 on the 16th June, 1908. He left the town of publication of the paper on 28th August, 1909, and returned on the 29th November, during which period he was engaged in his own business as a photographer and general dealer elsewhere. He did not take any interest in the paper, but his name still appeared therein as its printer and publisher. He was tried with the editor for two seditious

I.—Imperial Acts—continued.

Act XXV of 1867 (Press and Registration of Books)—*concluded.*

articles appearing on the 10th September and 26th November, 1909, during his absence and was convicted. *Held* that, as he allowed his name to remain on the record as the printer, and as he did not make out the *bona fides* of his absence from the place of publication, he was legally responsible for the articles. SURENDRA PROSAD LAHIRI v. EMPEROR, **38 C. 227=10 Ind. Cas. 954=12 Cr. L.J. 354.**

(19)—S. 7—*See* PENAL CODE, s. 124-A, 5 M. L.T. 415=32 M. 338=9 Cr. L.J. 506=2 Ind. Cas. 193, 69 P.L.R. 1905=1 P.R. 1905, Cr.=2 Cr. L.J. 31.

(20)—S. 12—*See* Nos. 3, 7, 8, *supra.*

(21)—S. 13—*See* No. 12, *supra.*

(22)—S. 18—*See* ACT XX OF 1847, ss. 3, 6, 9 C.W.N. 591=1 C.L.J. 278.

Act XXIX of 1867 (Amending Act XXI of 1867).

[REP., ACT IX OF 1868.]

See ACT XXI OF 1867.

See ACT IX OF 1868.

(1)—*S.* 3—*Illegal assessment—Jurisdiction of Criminal Courts.*—If a person thinks that he has been illegally assessed or assessed twice over for the same period with income and license tax, his remedy is first to pay the tax and then to take proceedings in the Revenue Department for its refund. Proceedings can only be taken in the Criminal Court, when a person fails or refuses to take out or pay for a license. The only points which the Magistrate is competent to consider, in such proceedings, are whether the accused has been assessed for license tax, whether he has been served with the prescribed notice and whether, thereupon, he has failed to take out license. He is not competent to enquire whether the assessment has been rightly or wrongly made. CROWN v. KINGSCOTE, **29 P. R. 1868, Cr.**

(2)—*S.* 3—*Person once fined, if liable to further fine or demand.*—Under the above section, a person once fined for not taking out a license is not liable to a second fine or to any further demand for the tax. *In the matter of* DOORGACHURN GIREE, 9 **W.R. Cr. 64.** [*R.*, 18 W.R. Cr. 11, 7 C. 385].

(3)—*See* ACT XXI OF 1867, s. 15, 5 B.H.C. Cr. 44.

(4)—*S.* 15—*Fine, Amount of—Examination of accused.*—Under the above section, the fine to be imposed for non-payment of the tax cannot be less than the amount stated in the notice. A Deputy Magistrate is bound to examine the accused under s. 266 of the Code of Criminal Procedure (1861), in answer to the charge brought against them. QUEEN v. BISSESSUR SEIN, **9 W.R. Cr. 62.**

I.—Imperial Acts—continued.

Act I of 1868 (General Clauses).

[REP., ACT X OF 1897.]

See ACT X OF 1897.

(1)—S. 1, *cl.* 13—*Village Munsiff, whether Magistrate—Evidence Act, s.* 26.—The word "include" in cl. 13 and other clauses of s. 1 of Act I of 1868 is intended to be enumerative, and not exhaustive. When it is intended to exhaust the significance of the word interpreted, the word "mean" is used. Therefore, there is nothing in Act I of 1868 to restrict the meaning of the word 'Magistrate' to a Magistrate within the meaning of the Crim. Pro. Code, in force at the date of its enactment. The provisions of s. 26 of the Evidence Act are to the same effect. A Village Munsiff in the Madras Presidency is, therefore, a "Magistrate." EMPRESS v. RAMANJIYYA, **2 M. 5=2 Weir 123.** [*R.*, 22 B. 235; *D.*, 17 B. 485.]

(2)—*S.* 2 (8)—*Upper Tanamal — British India.*—Upper Tanamal is an integral part of British India within the meaning cl. 8 of s. 2 of Act I of 1868. CROWN v. FAZL NUR, **6 P.R, 1878, Cr.**

(3)—*S.* 2 (18)—*Crim. Pro. Code,* 1882, *s.* 488—*Imprisonment, nature of.*—Looking to the terms of s. 2 (18) of the General Clauses Act, "imprisonment" in s. 488, Crim. Pro Code, (1882), may be either "simple or rigorous." QUEEN-EMPRESS v. NARAIN, **9 A. 240= A. W.N. 1887. 54.** [*R.*, U.B.R. 1892—1896, Vol. I, 70.]

(4)—S. 2 (18)—*See* ACT XXII OF 1881, s. 35, 17 P.R. 1889, Cr.

(5)—S. 2 (18)—*See* SENTENCE—IMPRISONMENT—GENERAL, 18 W.R. Cr. 3.

(6)—*S.* 5—*Application of.*—S. 5 of the General Clauses Act applies only to offences and sentences passed under Acts which came into force after the General Clauses Act came into force. NGA THA GAUNG v. QUEEN-EMPRESS, **L.B. R. 1872—1892, 475.**

(7)—*S.* 5—*Crim. Pro. Code, Act* XXV *of* 1861, *ss.* 21, 61—*Fines.*—S. 5 of the General Clauses Act does not apply to fines levied under Regulations and Acts passed prior to the passing of that Act. But s. 21 of the Crim. Pro. Code, 1861, has the effect of making s. 61 thereof applicable to the levy of such fines whether imposed under the Penal Code or under any special or local law, unless such law prescribed a method of levying of such fine. REG. v. GOVIND JHILGA, **Rat. Un. Cr. C. 57=Cr. Rg. 5-10-1871.**

(8)—S. 5—*See* ACT IX OF 1869, 7 B.H.C. Cr. 76.

(9)—S. 5—*See* ACT IX OF 1890, s. 113, Rat. Un. Cr. C. 871=Cr. Rg. 43 of 1896.

(10)—S. 5—*See* BUR. ACT III OF 1889, s. 13, L.B.R. 1893—1900, 141.

(11)—S. 5—*See* MAD. ACT I OF 1866, s. 22, 8 M. 350.

I.—Imperial Acts—continued.

Act I of 1868 (General Clauses)—*concluded.*

(12)—*S.* 6—*Crim. Pro. Code* (1882), *s.* 555—*Person charged with offences, some triable by jury, others by assessors under the Code of* 1872 —*Change of procedure, effect of, on pending trial.*—Where a person was tried, under the Code of 1872, by a Sessions Court, with the aid of assessors on charges some of which were triable by assessors, others by jury, and before the conclusion of the trial, the Code of Criminal Procedure, 1882, making such cases triable by jury, came into force, *held*, that reading s. 6 of the General Clauses Act with s. 555, Crim. Pro. Code, 1882, the functions of the assessors appointed at the commencement of the trial should continue to be those of assessors and were not converted into those of jurors and that the Judge was wrong in having treated the case as having been tried by a jury. SRINIVASA CHARI v. QUEEN, **6 M. 336=7 Ind. Jur. 301.**

(13)—*S.* 6—*Offence under Stamp Act*, X *of* 1862—*Repeal of a repealing enactment, effect of.* —An offence committed under the Stamp Act (X of 1862), while it was in force (but since repealed), is still an offence and may be tried under that Act. The mere repeal of a Repealing Act or the repealing portion of a Repealing Act does not by itself, revive the original Act or the repealed portion thereof. HIGH COURT PROCEEDINGS, 30TH JULY, 1872, No. 1368, **1 Weir 781=7 M.H.C. App. 8.**

(14)—S. 6—*See* ACT XVII OF 1862, 2 C. 225.

(15)—*See* ACT XVII OF 1862, ss. 1, 2, 4, 1 A. 599.

(16)—*See* ACT VIII OF 1871, s. 80, 18 W.R. Cr. 3.

Act VIII of 1868 (Repealing Act, 1868).

[REP., ACT XIV OF 1870].

See ACT XVII OF 1862, 2 C. 225, F.B.

Act IX of 1868 (Taxing Professions and Trades).

[REP., ACT IX OF 1869].

See ACT IX OF 1869.

(1)—*Ss.* 13 *and* 17— *Dismissing complaint owing to want of evidence that accused's names were included in list—Procedure.*—A Magistrate was held to have acted rightly in dismissing a complaint under s. 17 of the Act, because there was no evidence that the names of the accused were included in the list mentioned in s. 13. In prosecutions under this Act, a Magistrate must proceed in the manner laid down in Ch. XV of the Code of Criminal Procedure (1861), and must require proof of all the facts which go to constitute the offence. QUEEN v. KHETTAR NATH GHOSE, **11 W.R. Cr. 56.**

(2)—*S.* 17—*Fine, amount and remission of—License— Service of notice.*—A Magistrate is bound, under the above section, to impose on every offender, on conviction for not taking out a license, after notice served on him, a fine

I.—Imperial Acts—continued.

Act IX of 1868 (Taxing Professions and Trades)—*concluded.*

equal to twice the sum mentioned in the notice and cannot remit any portion of the fine. The service under the Act must be personal, wherever personal service is practicable. QUEEN v. RAMGOBIND CHUCKERBUTTY, 2 **B.L.R. App. 40=11 W.R. Cr. 13.**

(3)—*S.* 17—*Jurisdiction of Collector where penalty levied.*—If it is sought to recover the penalty described by s. 17 of Act IX of 1868 from any person who omits to take out a certificate, the Collector, who issued the notice, should prefer a complaint before a Magistrate, but should not prefer the complaint before himself in his capacity as a Magistrate. HIGH COURT PROCEEDINGS, 26TH JULY, 1869, **4 M.H.C. App. 61.**

(4)—S. 17—*See* TAX, 2 B.L.R. Ap. 40=11 W.R. Cr. 13.

(5)—S. 17—*See* No. 1, *supra.*

Act XIV of 1868 (Contagious Diseases).

[REP., ACT IX OF 1888.]

(1)—*Common prostitute registered under the Contagious Diseases Act—Right to have name removed from the register on desire to discontinue business.*—Every woman registered as a common prostitute under the Contagious Diseases Act has an absolute right to have her name removed "from the book," if she is desirous of ceasing to carry on such business; and any rule or portion of a rule, purporting to be made under the Act, which raises any obstacle to the exercise of such right is *ultra vires.* EMPRESS v. NISTAR RAUR, **6 C. 163=7 C.L.R. 197.**

(2)—*S.* 11—*Prosecution of prostitute for non-attendance for examination—Plea of application for removal of name from register.*—A woman prosecuted under s. 11 of the Act is not precluded from pleading that she has ceased to carry on the business of a common prostitute and that she has taken the proper steps to have her name removed from the register. EMPRESS v. NISTAR RAUR, **6 C. 163=7 C.L.R. 197.** (3 B. L.R.A. Cr. 70, *Appr.*)

(3)—*S.* 11—*No appeal.*—There is no appeal from a conviction under the above section for a registered prostitute neglecting to appear for examination. QUEEN v. BOYDONATH MOOKERJEE, **17 W.R. Cr. 11.**

(4)—*Ss.* 11 *and* 21—*Registration of prostitutes when to be made.*—Under this Act, the police are not empowered to put a woman on the register of "common prostitutes" against her will. The penalty prescribed by s. 11, for disobedience of any of its rules is for a "woman who *voluntarily* registers herself as a common prostitute." The mere possession of a registration ticket, under the Act, does not necessarily make the holder of it a registered public prostitute under it, or the rules framed by the Government under the Act. The registration must be voluntary, and the mere fact that a

I.—Imperial Acts—continued.

Act XIV of 1868 (Contagious Diseases)—*cld.*

woman appears in answer to a summons issued by the police, and answers questions put to her, is not sufficient to bring her within the Act. QUEEN v. SUKHIMONEE RAUR, **12 W.R.Cr. 55=3 B L.R. A.Cr. 70.**

(5)—Ss. 11 and 21—*See* PROSTITUTION, 3 B.L.R. A. Cr. 70=12 W.R. Cr. 55.

(6)—S. 21—*See* Nos. 4, 5, *supra.*

Act IV of 1869 (Divorce).

[REP. IN PT., ACT VII OF 1870; REP. IN PT. ACT XII OF 1873; REP. IN PT. (IN PUNJAB), ACT XVIII OF 1884; REP IN PT., (IN THE CENTRAL PROVINCES AND THE DISTRICT OF SAMBALPUR). ACT IV OF 1901, S. 8. AM. (IN LOWER BURMA), ACT XI OF 1889. S. 97 (REP. BY ACT VI OF 1900), AND ACT VI OF 1900, S. 47. DECLARED IN FORCE—IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3; IN THE ARAKAN HILL DISTRICT (EXCEPT SO MUCH OF SS. 47 AND 49 AS RELATES TO STAMPS), REG. IX OF 1874, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3.]

(1)—S. 14—*See* ADULTERY, 3 C. 688.

(2)—S. 17—Decree *nisi* by District Judge for dissolution of marriage—Direction to deliver up child to husband — Removal of child from husband's custody before confirmation of decree by High Court, if offence—*See* PENAL CODE, s. 363, 18 C.W.N. 484=15 Cr. L.J. 72=22 Ind. Cas. 424=41 C. 714.

Act VIII of 1869 (Code of Criminal Procedure Amendment).

[REP., ACT X OF 1872].

See CODE OF CRIMINAL PROCEDURE.

(1)—*See* ACT XVIII OF 1854, s. 25, 7 M.H.C. App. 8.

(1-*a*)—*See* BEN. ACT XXI OF 1856, 17 W.R. Cr. 7.

(2)—*See* APPEAL—CASES WHERE APPEAL DOES NOT LIE, 6 B.H.C. Cr. 64.

(3)—*See* CRIM. PRO. CODE, 1861, s. 237, 16 W.R. Cr. Cir. 1.

(4)—*See* CRIM. PRO. CODE, 1898, ss. 436, 437, 438 (1), 7 B.H.C. Cr. 72.

(5)—*See* MAGISTRATE, JURISDICTION OF —MISCELLANEOUS, 8 B.H.C. Cr. 39, F.B.

(6)—Ss. 203, 209, 211—See CONFESSION—GENERAL, 8 B.H.C. Cr. 103.

(7)—S. 209—*See* No. 6, *supra.*

(8)—S. 211—*See* No. 6, *supra.*

(9)—S. 435—*See* DISCHARGE OF ACCUSED, 4 B.L.R. A. Cr. 1=12 W.R. Cr. 65.

(10)—S. 445-B—*See* COMMITMENT TO SESSIONS COURT, 30 P.R. 1869, Cr.

I.—Imperial Acts—continued.

Act IX of 1869 (Income-Tax).

[REP., ACT XVI OF 1870].

(1)—*Income-Tax Act* IX *of* 1869 *and* XXIII *of* 1869—*General Clauses Act.* I *of* 1868, s. 5 —*Imprisonment in default of fine.*—The Income-Tax Act being one passed after Act I of 1868, s. 5 of the latter authorizes the infliction of imprisonment in default of payment of fine for not paying the additional tax imposed on a person by the Income-Tax Act. REG v. SANGAPA *bin* BASHIAPA, **7 B.H C.Cr. 76.**

(2)—Ss. 3, 25—*Non-payment—Jurisdiction —Magistrate.*—Under ss. 3 and 25 of the Income-Tax Act, a subordinate Magistrate of the second class has no jurisdiction to convict a person for non-payment of the income-tax. REG v. TAPEE POONJA, **Rat. Un. Cr.C. 37.**

(3)—*S.* 19—*False statement—Penal Code*, s. 193.—The accused, who was assessed with an income-tax of Rs. 500-0-0, objected to the tax on the ground that the tax which he paid for the previous years was only Rs. 225, that there was no increase in the income in the year in question. When asked to produce evidence in support of his statement, he withdrew his objection. His books, when examined, showed that the accused had lent between Rs. 5,000 and Rs. 6,000 to various villagers, but there was nothing to show the rate of interest. *Held*, that as the accused had failed to prove his allegation that his income was not more than Rs. 225, and that as his books showed that he had lent a large sum for interest, the usual rate ranging between 12 and 24 per cent. the accused was rightly convicted under s. 193. RAMPERSHAD v. CROWN, **7 P.R. 1870, Cr.**

(4)—*S.* 19—*Power of Tahsildar to hear petition under s.* 19—*False statements in that petition.*—*Held*, that a Tahsildar was not an officer empowered to receive a petition under s. 19 of Act IX of 1869, and, therefore, a person making a false statement in such a petition cannot be convicted of perjury. *In re* MOONEAPPA OODIAN, **5 M.H.C. 326.**

(5)—*Ss.* 24, 25—*Conviction under the section —Appeal—Duty of appellate Court.*—Although there are grounds for holding that the Legislature intended that convictions under ss. 24 and 25, Act IX of 1869, should be summarily disposed of by the Magistrate, the right of appeal conferred by the Crim. Pro. Code is not taken from persons convicted under the Income-Tax Act. It is not competent to judge, on appeal from a conviction under ss. 24 and 25 of Act IX of 1869, to reverse the conviction merely because he regards it as one of hardship, nor has he to determine whether or not the failure to pay the tax was in pursuance of an intention to avoid payment. Where the tax-payer fails to pay the amount within the time specified by the notice, he is guilty of an offence within the terms of s. 25 of Act IX of 1869, and subsequent payment would not take the case out of the provision of s. 25. QUEEN v. CHEIT RAM, **2 N.W.P. 113.**

I.—Imperial Acts—continued.

Act IX of 1869 (Income-Tax)—*concluded.*

(6)—*S. 25—Imprisonment in default of payment of fine—Competency of Magistrate to award.*—A Magistrate has no power under the above section to sentence to imprisonment in default of the payment of fine imposed for not paying the income-tax. QUEEN v. NODIA CHAND KOONDOO, **14 W.R.Cr. 70.** [*F.*, 22 W. R. Cr. 51; 19 A. 462.]

(7)—*S. 25—Appeal against fine to Sessions Court.*—No appeal lies to a Sessions Judge from the order of a Magistrate fining a defaulter under s. 25 of the Act. QUEEN v. MUDHOO DUTT, **14 W.R. Cr. 71.**

(8)—S. 25—*See* Nos. 2, 5, *supra.*

(9)—*Ss.* 25, 27—*Prosecution under s. 25—Collector's duty to institute prosecution.*—The provisions of s. 27 seem to imply that the Collector ought in each case to exercise his discretion as to whether a prosecution should be instituted. The mere sending of the Tahsildar's report, containing an expression of the Collector's general desire to prosecute defaulters, cannot be held to tantamount to the institution of a prosecution at the instance of the Collector. QUEEN v. CHEIT RAM, **2 N. W.P. 113.**

(10)—S. 27—*See* No. 9, *supra.*

Act XV of 1869 (Prisoners' Testimony).

[REP., ACT III OF 1900.]

(1)—*Applicability of Act—Evidence Act, s. 118—Conviction for theft—Subsequent trial of witnesses for receiving stolen property—Evidence of person convicted of theft.*—Two *sonars* A and B were convicted of theft and duly sentenced. R and G, who had given evidence as witnesses against them, were afterwards prosecuted under s. 411, I.P.C., in connection with the same property, and convicted on the evidence of A and B. *Held* (1) that the Prisoners' Testimony Act had no bearing on the point for decision and the two convicts were competent and compellable witnesses, there being no exclusion of them, nor privilege given them by law; (2) that, in the absence of any pardon or suggestion by any judicial authority of pardon, R and G had no privilege against prosecution or against the evidence of any admissible witness being used against them. Even if, as witnesses against A and B, they made full confessions of crime as being dishonest receivers, they would have no privilege, which can only be conferred by a special enactment of the legislature as in the case of confessing Mamlatdars by Act XIV of 1889. QUEEN EMPRESS v. RAMACHANDRA SAWAIRAM, **Rat. Un. Cr. C. 776 = Cr. Rg. 41 of 1895.**

(2)—*See* SMALL CAUSE COURT, MOFUSSIL, 5 B.L.R. 215 = 13 W.R. 278.

(3)—*S. 3—Convict—Attendance as accused.*—A Magistrate can, under s. 3 of Act XV of 1869, procure the attendance of a convict as an accused person without the intervention of the High Court. If the convict is in a jail in a District other than that in which he is required, the procedure to be adopted is under s. 3 of the Act. NASICK DIST. MAGISTRATE'S LETTER NO. 2619, **Rat. Un. Cr. C. 66.**

I.—Imperial Acts—continued.

Act XV of 1869 (Prisoners' Testimony)—*cld.*

(3-*a*)—*Ss* 3, 4, 7—*Prisoners confined in jail within High Court's Ordinary Original Civil Jurisdiction.—Power to take them out to answer charges.*—No Court subordinate to the High Court has power to take away a prisoner, confined in a jail within the local limits of its Ordinary Original Civil Jurisdiction, to answer a criminal charge. *In re* LINGAM LAKSHMAJI PANDIT, **1 Weir 866.**

(4)—S. 4—*See* No. 4, *supra.*

(5)—S. 7—*See* No. 4, *supra.*

(6)—*Ss.* 15, 16—*Prisoners' Testimony Act, XV of 1869, ss. 15 and 16—Act XV of 1869, s. 16—Signature of jailer—Judicial notice.*—The Court will take judicial notice of the signature of the jailer under s. 16, Act XV of 1869, Prisoners' Testimony Act. TAMOR SINGH v. KALIDAS ROY, **4 B.L.R.O C. 51.**

(7)—S. 16—*See* No. 6, *supra.*

Act XVIII of 1869 (General Stamps).

[REP., ACT I OF 1879.]

See ACT I OF 1879.

See ACT II OF 1899.

(1)—*Intention to evade duty.*—Omitting to stamp an instrument is not punishable under the Stamp Act, if there is no intention to evade payment of the proper duty. When a Court, before which an unstamped instrument is produced, decides the question of intention to evade payment, that decision is final. If the decision is against the party, the Collector is bound to prosecute, and in such prosecution the question cannot be again considered. And the debtor who acknowledges a debt in his creditor's book is liable, in such cases, to be prosecuted as a principal and the other party as an abettor. CROWN v. PREMSINGH, **23 P.R. 1876, Cr.**

(2)—*See* PENAL CODE, ss. 21 (9), 161, Rat. Un. Cr. C. 36 = Cr. Rg. 28-7-1870.

(3)—*S. 3—Entries of loans in account books.*—Entries of loans in account books cannot be treated as bonds within the meaning of cl. 5, s. 3 of Act XVIII of 1869. QUEEN v. BULDEO, **2 N.W.P. 453.**

(4)—*Ss. 20 and 29—Scope of the section—Intention to evade payment—Liability of donee under insufficiently stamped document.*—S. 20 of Act XVIII of 1869 has reference only to civil Court, and its provisions are purely fiscal and inapplicable to a criminal prosecution. Intention to evade payment is not an essential ingredient in the offences described by s. 29 of Act XVIII of 1869. A donee under an insufficiently stamped deed of gift is not liable to

I.—Imperial Acts—continued.

Act XVIII of 1869 (General Stamps)—*contd.*

punishment under s. 29 of the Act. HIGH COURT PROCEEDINGS, 28TH NOVEMBER, 1870, **6 M H.C. App. 5=1 Weir 900.**

(5)—*Ss.* 24, 29 *and* 44—*Procedure.*—That which the Magistrate has to adjudicate upon, on a prosecution coming before him under s. 24 of the Stamp Act, is whether an offence against the Act has been committed, and whether the prosecution has been brought before him by the proper officer. Any person who makes himself liable by committing an offence within the terms of s. 29 and the following sections, and who is prosecuted by the Collector or other officer duly empowered, may be convicted by the Magistrate under s. 44. If an instrument called a promissory note or other document of that kind, and as such liable to the duty imposed by the Act, is not duly stamped, the person subject to penalty is the person who makes it, and not the person in whose favour it is made. The Magistrate of the District should not himself try a case in which he instituted the prosecution as Collector. QUEEN v. NADI CHAND PODDAR, **24 W. R. Cr. 1.** [*F.*, 3 C. 622 ; *R.*, 20 A. 440.]

(6)—*S.* 28 *Acceptor of unstamped receipt.*—The maker of an unstamped receipt is punishable, but not the acceptor unless it can be shown that he abetted the making of the receipt. SHAMBHU SINGH v. RAGHUBAR, **S. C. 33, Oudh.**

(7)—*S.* 29—*Art.* 38 (=*Art.* 31 *of Act of* 1899) —*Intention to evade s.* 29.—Where, out of lands bought by a certain person under a sale-deed, he transferred to the vendors some portions, getting, in lieu of such portions, certain other lands of the vendors and executed an instrument reciting the said transfer on a stamp paper of 8 annas, it was *held* that such document was an instrument of exchange chargeable under this article. For the purpose of ascertaining whether any and what penalty should be imposed, a Magistrate is bound to consider the question whether a person, prosecuted under this section, had any intention to defraud the Government by evading payment of stamp duty. EMPRESS v. DWARKANATH CHOWDHRY **2 C. 399, F.B.**, [*D.*, 12 M. 231.]

(8)—*S.* 29—*Intention to evade payment—Liability of donee under an insufficiently stamped document.*—Intention to evade payment is not an essential ingredient to the offences described by s. 29 of Act XVIII of 1869. A donee under insufficiently stamped deed of gift is not liable to punishment under s. 29. HIGH COURT PROCEEDINGS, 28TH NOVEMBER, 1870, NO. 2153, **1 Weir 900=6 M.H C. App. 5.**

(8-*a*)—S. 29—*See* Nos. 4, 5, *supra.*

(9)—*S.* 43—*Competency of prosecuting Magistrate to try offenders — Procedure.*—A Magistrate, authorised by the Collector of a district to prosecute offenders against the Stamp law, is not competent to try them for the same offence. The Collector should employ the Government Pleader or some person other than a Magistrate to conduct the prosecution under s. 43 of the Stamp Act. EMPRESS v. GANGADHUR BHUNJO, **3 C. 622=2 C L R. 179.** (24 W.R. Cr. 1, *F.*). [*F.*, 9 C.P.L.R. Cr. 26.]

I.—Imperial Acts—continued.

Act XVIII of 1869 (General stamps)—*concld.*

(10)—*S.* 43—*Offence against the Stamp Act—Jurisdiction.*—As the Stamp Acts of 1869 and 1879 recognise the Collector as primarily responsible for the institution of prosecutions for offences against them, he should not himself try, in his capacity as a Magistrate, a person charged with an offence under that Act. EMPRESS OF INDIA v. DEOKI NANDAN LAL, **2 A. 806.** [*D.*, L.B.R. (1872-1892) 400.]

(11)—S. 44—*See* No. 5, *supra.*

(12)—S. 48—Sale of Court-fee stamps without a license—*See* ACT I OF 1879, s. 68, 4 A. 216, F.B.

Act XXII of 1869 (Garo Hills).

[REP., ACT XIV OF 1874.]

S. 9—*See* LEGISLATURE, POWERS OF, 3 C. 63, F.B.=1 C.L.R. 161, 4 C. 172, P.C.=5 I.A. 178=3 C.L.R. 197.

Act XXIII of 1869 (Income-tax).

[REP., ACT XVI OF 1870.]

See ACT IX OF 1869, 7 B.H C. Cr. 76.

Act VII of 1870 (Court Fees).

[REP., IN PT., ACT XIV OF 1870 ; REP. IN PT., ACT VIII OF 1871 ; REP. IN PT., ACT XIII OF 1889; REP. IN PT., ACT VIII OF 1890; REP. IN PT., (IN PUNJAB), ACT XVII OF 1887 ; REP. IN PT. AND AM. ACT XX OF 1870 ; ACT VI OF 1889, S. 18 ; ACT XII OF 1891 ; S. 16, SCH. II, ART. 15, REP., SCH. I, ART. 1, SCH. II, ART. 9, AM., SCH. II, ART. 11, REP. IN PT., ACT V OF 1908 ; AM., ACT XV OF 1872, S. 2 ; AM., ACT XIII OF 1875, S. 6 AM., ACT VII OF 1889, S. 13 ; AM., ACT XI OF 1899, SS. 2, 3 ; AM., ACT X OF 1901 ; S. 7 (XI) AM., ACT VI OF 1905 ; AM. (IN PUNJAB) ACT XVIII OF 1884, S. 71 (AS AMENDED BY ACT XXV OF 1899, S. 6, AND BY ACT IX OF 1900); AM. (IN LOWER BURMA)—ACT XI OF 1889, S. 84, AND ACT VI OF 1900, S. 47 ; AM. (IN UPPER BURMA), REG. I OF 1896. S. 36 (PARTIALLY REP. BY REG. V OF 1903, S. 4); AM., IN BENGAL (EXCEPT THE SAMBALPUR DISTRICT) AND EASTERN BENGAL, BEN. ACT III OF 1898, SS. 7, (105 (3)). DECLARED IN FORCE IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3 ; IN THE ANGUL SUB-DIVISION, REG. I OF 1894, S. 3 ; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S 4 ; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3.]

(1) S. 18 (16)—*See* COGNISABLE OFFENCE, Rat. Un. Cr. C. 70.

(1-*a*)—S. 18—*See* No. 38, *infra.*

I.—Imperial Acts—continued.

Act VII of 1870 (Court Fees)—*continued.*

(2)—*S.* 19 (*xvii*)—*Petition by accused in his defence—Charge of Court fee—Summons case.*—Clause (xvii) of s. 19 of the Court Fees Act exempts from the charge of a fee a " petition " by a prisoner, or other person in duress or under restraint of any Court " or its officers," but otherwise a petition from an accused person in his defence, at least in summons cases, appears to be liable to the payment of a Court-fee. QUEEN EMPRESS v. KARIMPUDEIN, **U. B. R. 1892-1896, Vol. I, 9.**

(3)—S. 19—*See* SURETY BOND, Rat. Un. Cr. C. 126.

(4)—*Ss.* 19 *and* 31—*Court fees on complaint by Municipal Officers.*—S. 31 of the Court Fees Act must be read with s. 19. No process fee is leviable under s. 19 on complaints made by Municipal officers, and the accused are not liable to refund what was illegally levied from the complainants as such fees. QUEEN-EMPRESS v. KHAJABHOY, **16 M. 423 = 1 Weir. 723.**

(5)—S. 20, cl. 2—*See* MAINTENANCE, 16 M. 234 = 2 Weir 252.

(6) *S.* 31—*Ss.* 22, 20, *Act I of 1871—Penal Code, s.* 186—*Nazir delegating the authority to execute a warrant to peon—Obstruction—Civ. Pro. Code, s.* 251.—Under the law and practice obtaining in the mofussil, a Nazir has authority to execute processes addressed to him through his deputies and subordinates. He is not debarred from delegating the authority to execute a warrant of attachment to a peon. The endorsement of the peon's name on the back of the warrant is sufficient *prima facie* evidence of the delegation, although the authority might well be conferred in more clear and explicit terms. A person obstructing the execution of attachment by such peon will be guilty of an offence under s. 186 of the Penal Code. The Court Fees Act distinctly contemplates that the peons are to be employed, not only for the service of summonses, notices or orders, but for the execution of other processes, such as warrants of arrest of attachment and distress. The number of the peons to be employed for the service and execution of processes in each district is, by s. 22, Court Fees Act, fixed by the District Judge and the remuneration is, by s. 20, settled by the High Court. The words " to be executed " in s. 251 of the Civ. Pro. Code (1882), would seem to imply that it was not intended that the " proper officer " should himself execute all warrants sent to him. There is nothing in the Code which indicates in any way that warrants of arrests, or of attachment or for distress and sale are to be executed by the " proper officer " in any manner different from the service of summonses. DHARAM CHAND LAL v. QUEEN-EMPRESS, **22 C. 596.** [*F.*, 22 C. 759; *D.*, 40 C. 849 = 17 C.W. N. 941 = 19 Ind. Cas. 706 = 14 Cr.L.J. 274.]

(7)—*S.* 31—*Cattle Trespass Act* (I *of* 1871), *s.* 22—*Award of compensation and costs of the prosecution.*—The words in s. 22 of Act I of 1871, " compensation for the loss caused by seizure and detention " do not necessarily refer only to such special damage as is sustained by the seizure and detention prior to the release of the cattle, but also include all expenses necessarily incurred by reason of such seizure and detention, though it may be after such release. The language is wide enough to include the Court and process fees necessarily paid on account of the refusal to make compensation or refund the fine paid. Where a Magistrate, on convicting two persons under s. 22, Cattle Trespass Act, directed the accused to pay not only the sum which the complainant had paid to procure the release of his cattle, but also the Court and process fees paid by the complainant in prosecuting the case under s. 31, Court Fees Act, *held* that the order for costs could not be made under s. 31, Court Fees Act, but was valid under s. 22, Cattle Trespass Act. SHAIK HUSSAIN v. SANJIVI, **7 M. 345 = 1 Weir 113.** [*R.*, 22 C. 139 (142), 11 C.P.L.R. 10 (11), Cr.; L.B.R. 1872-1892, 515 (516).]

(8)—*S.* 31—*Scope of the section.*—S. 31 of the Act is applicable to cases in which an offence other than the one, for which police officers may arrest without warrant, is the subject of complaint. SHAIK HUSSAIN v. SANJIVI, **7 M. 345 = 1 Weir 713.**

(9)—*S.* 31—*Applicability of the section to criminal trespass under s.* 447, *Penal Code.*—Criminal trespass under s. 447, Penal Code, is an offence for which the arrest may be made without warrant, and, therefore, s. 31, Act VII of 1870, does not apply. *In re* ALAGA PILLAI, **1 Weir** 721.

(10)—*S.* 31—*Magistrate bound to award complainant the cost of the fee paid on the complaint—Crim. Pro. Code* (1882), s. 545.—Under s. 31, Court Fees Act, a Magistrate is bound to award to a complainant the cost of the fee paid on the complaint and the fees paid for the processes, and to direct the accused to pay the amount in addition to the fine. He can recover the amount as if it were a fine, but has no authority to order imprisonment in default. If, in addition to these costs, he wishes to award compensation to the complainant, he can only do so by awarding it out of the fine imposed. QUEEN-EMPRESS v. NGA TUN, **L.B.R. 1872-1892, 595.**

(11)—*S.* 31—*Court fee and the process fee to be paid in addition to fine imposed.—Crim. Pro. Code* (1898), s. 545 —Under s. 31 of the Act, the payment of the Court fees on the complaint and of the process fees incurred by the complainant should be made *in addition* to the fine imposed and not *out of* the fine imposed on the accused. The other Costs of the prosecution incurred by the complainant may, under s. 545, Crim. Pro. Code, be ordered to be paid *out of* the fine. CROWN v. PO HLAW, **1 L.B.R. 209. (L.B.R. 1872-1892, 595,** *F.*)

(12)—*S.* 31—*Crim. Pro. Code, s.* 545—*Order for re-payment of Court and process fees.*—In cases to which s. 31 of the Court Fees Act

I.—Imperial Acts—continued.

Act VII of 1870 (Court Fees)—*continued.*

applies, there ought to be an order for the repayment to the complainant of the fee paid by him in addition to the fine. The direction for the application of the fine, when realized, to the purposes indicated in s. 545, Crim. Pro. Code, is a matter of discretion with the Court. *In re* PAVADAI PILLAI, **1 Weir 722.**

(13)—*S.* 31—*Conviction for cognizable offence —Court-fees of complainant—Crim. Pro. Code* (1882), *s.* 545.—Where a person accused of a non-cognizable offence is convicted of a cognizable offence, the Court cannot legally direct him to pay the expenses incurred by the complainant under s. 31, Court Fees Act, as that section applies only to cases where the accused has been convicted of a non-cognizable offence. The expenses so incurred can, however, be awarded to the complainant as compensation under s. 545, Crim. Pro. Code. QUEEN-EMPRESS v. LIMBA, **Rat. Un. Cr. C. 397=Cr. Rg. 56 of 1888.**

(14)—*S.* 31—*Court-fee on power of attorney—Subsistence allowance and travelling expenses of witnesses—Accused not liable to be charged—Magistrate cannot award costs — Crim. Pro. Code* (1898), *s.* 545.—An accused convicted under s. 352, I.P.C., and sentenced to pay a fine cannot be ordered to pay the costs of the prosecution. If the Magistrate desires to make the accused pay for the expenses for the prosecution, he should impose a sufficient fine out of which compensation can be awarded under s. 545, Crim. Pro. Code. Neither the amount of Court-fee on a power of attorney, nor the subsistence allowances and travelling expenses of witnesses could be charged to the accused. The former is not allowable under s. 31 of the Court Fees Act, and there is no authority for charging the latter. QUEEN-EMPRESS v. NGA LU GALE, **U.B.R. 1892-1896, Vol. I, 7.**

(15)—*S.* 31—*Complaint of cognizable offence—Order for costs.*—Where a complaint is made of a cognizable offence, a Magistrate is not competent to direct the accused, on conviction, to pay the amount expended by the complainant on Court fees. NEELA KANTAM v. VENKATASUBRAMANYAM, **1 Weir 721.**

(16)—*S.* 31—*Order for repayment of fees.*—S. 31 permits the Magistrate to order repayment of fees in non-cognizable cases "in addition to the penalty imposed." Therefore, a Magistrate should not order the repayment of fees out of the fine realized. *In re* KESAVA MUDALI, **1 Weir 723.**

(17)—*S.* 31—*Crim. Pro. Code* (1898), *s.* 545 —*Order for costs of the complainant.*—The duty of a Magistrate to order payment of Court and process fees under s. 31 of the Court Fees Act is imperative; whereas under s. 545 of the Code of Criminal Procedure, he has a discretion to award the expenses of the prosecution or to refuse to do so. It follows that s. 545 of the Crim. Pro. Code must be taken to exclude those expenses in regard which the Court has no discretion. A Magistrate, on convicting a person and sentencing him to pay a fine, ordered the accused to pay the complainant's costs of the prosecution. The Magistrate issued a warrant for the collection of a sum of Rs. 2-4, Court and process fees paid to the complainant, and Rs. 10 paid to a medical officer for a certificate and for giving evidence in the case, from the accused. *Held*, that the order of the Magistrate, as regards the Court and process fees, was properly made under s. 31 of the Court Fees Act, but that the order as to Rs. 10 was unsustainable, for, although the medical officer's fees were expenses properly incurred in the prosecution, they could only be awarded to the complainant out of the fine levied from the accused and could not be levied from the accused in addition to the fine. QUEEN-EMPRESS v. YAMANA RAO, **24 M. 305=2 Weir 722=1 Weir 723.**

(18)—*S.* 31—*Order to pay fine under section —When payable to complainant under s.* 144, *Crim. Pro. Code of* 1861 (*s.* 545 *of* 1898).—A fee, which a Court may order to be repaid to a complainant under s. 31, Court Fees Act, is an integral part of the sentence and must be treated as a fine imposed by the Court under s. 144, Crim. Pro. Code, 1861; and such fines must be in deposit pending an appeal, where an appeal lies. HIGH COURT PROCEEDINGS, 20TH JULY 1870. **5 M H.C. App. 28=2 Weir 724.** [*F.*, 22 M. 153=1 Weir 724; *D.*, 26 M. 421=2 Weir 488].

(19)—*S.* 31—*Order to repay fees.*—An order to repay the fees, under s. 31, Court Fees Act, is an integral part of the sentence, and the fee should be treated as a fine imposed by the Court. HIGH COURT PROCEEDINGS, 29TH JULY 1869, **1 Weir 724=5 M.H.C. App. 28.** [*F.*, 22 M. 153=1 Weir 724; *D.*, 26 M. 421=2 Weir 488.]

(20)—*S.* 31—*Crim. Pro. Code* (1882), *s.* 423, *cl.* (*b*)—*Order of appellate Court awarding further costs, if fine.*—Where a Magistrate convicting the accused persons directed, out of the fines imposed upon them, the payment of Rs. 2 to the complainant as process fees, and, on appeal, the Deputy Magistrate directed the accused to pay a further sum in addition to the fine already imposed on them as being the expenses incurred by the complainant for process fees, etc., under s. 31 of the Court Fees Act, *held*, that, an order to pay a fee under s. 31 being an integral part of the sentence, such fee should be treated as a fine imposed by the Court and the Deputy Magistrate had, therefore, enhanced the sentence which was illegal. QUEEN-EMPRESS v. TANGAVELU CHETTY, **22 M. 153=1 Weir 724.** [*Diss.*, 26 M. 421; 29 M. 188=3 Cr. L.J. 460.]

(21)—*S.* 31—*Fees ordered to be repaid under the section, nature of.*—The fees ordered to be repaid under s. 31, Court Fees Act, are not fines within the meaning of s. 413, Crim. Pro. Code.

I.—Imperial Acts—continued.

Act VII of 1870 (Court Fees)—*continued.*

Nor can they be held to be fines, in default of payment of which, imprisonment can be awarded under s. 33, Crim. Pro. Code. *In re* PARA MUNIYAN, **1 Weir 724.**

(22)—*S.* 31—*Crim. Pro. Code* (1898), s. 423—*Conviction of two persons with order to pay Court and process fees in equal shares to the complainant—Acquittal of one of them on appeal—Enhancement of sentence.*—Where two persons were sentenced and were also ordered to pay a certain sum in equal proportion on account of Court and process fees and, on appeal, the Magistrate altered the conviction in the case of one of them, but confirmed the sentence, and quashed the conviction of the other, the whole amount of the Court and process fees being ordered to be paid by the person whose conviction was confirmed, *held*, that the action of the appellate Magistrate was legal under s. 423, cl. (*b*), Crim. Pro. Code, and it did not amount to an enhancement of sentence within the meaning of s. 423 (*b*). Under s. 31, cl. 4 of the Court Fees Act, the fees ordered to be repaid under the section are to be recovered as if they were fines imposed by the Court, but there is no warrant for treating the same as part of the fine imposed as a punishment for the offences. *In re* VEMURI SESHANNA, **26 M. 421=2 Weir 488.** (5 M.H.C. App. 28=22 M. 153, *D.*).

(23)—*S.* 31—*Crim. Pro. Code* (1882), s. 413—*Order directing the accused to pay Court-fee, if a fine.*—An order under s. 31 of the Court Fees Act directing an accused person to pay the complainant the Court-fee paid on his petition is no part of the sentence so as to make it a sentence of fine within the terms of s. 413 of the Crim. Pro. Code. MADAN MANDUL v. HARAN GHOSE, **20 C. 687.** [*F.*, 1 Weir 724; *Appl.*, 11 Cr.L.J. 194=4 Ind. Cas. 1130=5 M.L.T. 223 =31 M. 547=9 Cr.L.J. 83; *Appr.*, 29 M. 188 =3 Cr.L.J. 460.]

(24)—*S.* 31—*Two accused—Order for refund of fees on one only.*—Where two persons are convicted of an offence, the Magistrate cannot order one only of the two persons to refund the fee paid on the petition of complaint. The repayment should be ordered to be made by both jointly. REG. v. SANKARA, **Rat. Un. Cr. C. 61=Cr.Rg. 11-1-1872.**

(25)—*S.* 31—*Sessions Court—Order for repayment to complainant.*—When a case to which s. 31 of the Court Fees Act applies is disposed of by a Court of Session, such Court and not the committing Magistrate is the proper authority to order re-payment to the complainant of the fee paid by him for his petition of complaint. KHANDESH MAGISTRATE'S LETTER, NO. 19, **Rat.Un.Cr.C 49.**

(26)—*S.* 31—*Power of appellate Court to order payment of fees.*—The fees under s. 31 should be awarded by the Court of first instance. But a Court of appeal cannot make such an order. But the High Court, in revision can make the order that ought to have been made by the Court of the first instance. *In re* SENTHILATHIPATHIA PILLAI: *In re* ATHOOKUDA POGUNDAN, **1 Weir 723.**

(27)—S. 31—*See* ACT XIII OF 1859, s. 2, 6 Bom. L.R. 255, Rat. Un. Cr. C. 534=Cr. Rg. 2 of 1891.

(28)—*See* ACT VII OF 1878, ss. 25, 63, Rat. Un. Cr. C. 695=Cr. Rg. 25 of 1894.

(29)—*See* ACT XIII OF 1880, s. 18, 6 Cr. L. J. 124=4 L.B.R. 12.

(30)—S. 31—*See* ACT IX OF 1890, ss. 113, 132 and 133, U.B.R. 1892—1896, Vol. I, 300.

(31)—S. 31—*See* APPELLATE COURT, 31 M. 547=5 M.L.T. 223=9 Cr. L.J. 83.

(31-*a*)—S. 31—*See* COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINT, Rat. Un. Cr. C. 79=Cr. Rg. 27-11-1873.

(32)—S. 31—Court fees and process fees to be paid in addition to fine—*See* COSTS, L.B.R. 1872—1892, 616.

(33)—S. 31—*See* CRIM. PRO. CODE, 1898, s. 423, 29 M. 188=3 Cr. L.J. 460.

(34)—S. 31—*See* CRIM. PRO. CODE, 1898, s. 545, L.B.R. 1878—1892, 409.

(35)—S. 31—*See* MAINTENANCE, 11 C.P.L. R. 14 Cr.

(36)—S. 31—*See* REFUND, Rat. Un. Cr. C. 79=Cr. Rg. 27-11-1873.

(37)—S. 31—*See* No. 4, *supra.*

(38)—*Ss.* 31, 18—*Complaint of offence of wrongful restraint—Order for Court fees, validity of.*—S. 31, Court Fees Act, does not apply to the offence of wrongful restraint, as the offence is an offence in which the police may arrest without a warrant, notwithstanding the fact that s. 18 makes specific mention of that offence. NAGIREDDI v. CHENNAMMA, **1 Weir 721.**

(39)—*S.* 31 *and sch.* II, *No.* 1, *cl.* (*b*)—*Complaint of seizure of cattle—Act* III *of* 1857, *s.* 14.—A complaint of illegal seizure and detention of cattle such as is referred to in s. 14 of Act III of 1857 is not an offence referred to in s. 31 and sch. II, No. 1, cl. (*b*) of the Court Fees Act. The complaint does not require a stamp, as the words "plain paper" in the section are not repealed by the Court Fees Act. REG. v. RAVJI NARU, **8 B.H.C. Cr. 22.**

(39-*a*)—S. 31, sch. II, art. 1 (*b*)—*See* MAINTENANCE, Rat. Un. Cr. C. 488=Cr. Rg. 56 of 1889.

(40)—*S.* 34—*Stamp Act* II *of* 1899, *s.* 69—*Sale by thief of stolen stamps.*—The words "sells or offers to sell" in s. 69 of Act II of 1899, and s. 34 of Act VII of 1870, include the case of a thief, who exchanges a stolen stamp for a sum of money, although such person cannot

I.—Imperial Acts—continued.

Act VII of 1870 (Court Fees)—*concluded.*

give a legal title in regard to the stamp stolen by him. QUEEN-EMPRESS v. VIRASAWMI, **24 M. 319 = 1 Weir 725.**

(41)—*S.* 34—*Stamp given on promise that another of equal value would be returned—Transaction, whether amounts to sale.*—A mukhtear, not having any use for a Court-fee stamp of eight annas, which he had purchased for a client, transferred it to another client who promised to return him another Court-fee stamp of the same value. *Held*, that the mukhtear had not sold a stamp within the meaning of s. 34 of the Court Fees Act and could not be convicted under that section. KEDAR NATH SHAHA v. EMPEROR, **30 C. 921 = 7 C.W.N. 704.**

(41-*a*)—*S.* 34—*Act* XVIII *of* 1869 (*General Stamps*), *s.* 48—*Act* I *of* 1879 (*General Stamps*), *s.* 68—*Sale of Court fee stamps without license.*—The sale of Court-fee stamps without a license is not an offence. EMPRESS v. JALLU, **4 A. 216, F.B.**

(42)—S. 34—Sale of Court-fee stamps without a license—*See* ACT I OF 1879, s. 68, 4 A. 216, F.B.

(43)—Sch. II, art. 1, cl. (*b*)—*See* Nos. 39, 39-*a*, *supra.*

(44)—*Sch.* II, *art.* 10—*One* vakalathnama *by several persons—One case—Fee of eight annas only.*—Art. 10 of sch. II of the Act requires a fee of eight annas for each *mukhtearnama* or *vakalathnama* presented for the conduct of any one case to any of the Courts or officers mentioned in cl (*a*). The *mukhtearnama* or *vakalathnama* may be executed by one person or by several persons, but, if it is only for the conduct of one case, it only requires a fee of eight annas. QUEEN EMPRESS v. AH HEIN, **L.B.R. 1893—1900, 385.**

Act VIII of 1870 (Female Infanticide Prevention).

[SHORT TITLE GIVEN, ACT XIV OF 1897, AMENDED IN BOMBAY PRESIDENCY, AND DECLARED TO EXTEND TO THAT PRESIDENCY, BOM. ACT III OF 1897.]

(1)—*S.* 2—*Rule* VI *of Rules framed by N.W.P. Government—Liability of heads of families.*—Though Rule VI of the Rules framed under s. 2, Act VIII of 1870, requires the *chowkidar* of a village to immediately report to the officer in charge of a police station, among other things, "also...on the occasion of his periodical visit to the police station other deaths, removals and arrivals," the last duty, *viz.*, of reporting "other deaths, removals and arrivals is, though it may be a duty cast upon him under s. 8 (3) (*f*) of Act XVI of 1873 (Village and Rural Police), not a duty cast upon him by the provisions of Act VIII of 1870 and Rule VI is not, on this point, consistent with the Act. The heads of proclaimed families are not bound, by any of the rules framed under the Act, to give information

I.—Imperial Acts—continued.

Act VIII of 1870 (Female Infanticide Prevention)—*concluded.*

to the *chowkidar* regarding the departure of the women of their families. QUEEN-EMPRESS v. BHUPAL, **6 A. 380 = A.W.N. 1884, 132.**

Act XI of 1870 (Indian Weights and Measures).

[REP., ACT XII OF 1873.]

(1)—*S.* 2—*Act* X *of* 1871, *ss.* 19, 63—*Selling spirituous liquor retail—* Ser, *meaning of.*—S. 19 of Act X of 1871 provides that the quantity of country liquor, which unlicensed vendors may sell, should not be more than one "*ser.*" Regarding the weight of one "*ser*," it was held that the weight of one *ser* as given in Act XI of 1870, s. 2, *viz.*, a weight of metal in the possession of the Government of India, which weight when weighed in vacuum is equal to the weight known in France as the "*Kilogrammedes Archives*" was not very intelligible, and the contention of the Government that a *ser* was equivalent to 80 tolas, would not supersede the customary weight of a *ser* weight, which was 95 tolas. Therefore, when an unlicensed vendor was in possession of only 96 tolas of country liquor, *held*, that the excess of one tola over the local weight is not sufficient to warrant the presumption of the accused's guilt. EMPRESS OF INDIA v. HAIT RAM, **3 A. 404.**

Act XII of 1870 (Native Passenger Ships).

[REP., ACT VIII OF 1876.]

S. 70—*See* MISCHIEF, A.W.N. 1908, 55 = 5 A.L.J. 159 = 7 Cr. L. J. 296.

Act XXVI of 1870 (Prisons).

[REP., ACT IX OF 1894.]

See ACT IX OF 1894.

(1)—*Act* XXVI *of* 1870 *and Reg.* XIV *of* 1816—*Power of Superintendent of jail to convict watchman for aiding escape of a prisoner.*—A Superintendent of a jail has no power under Act XXVI of 1870 to convict a night watchman on a charge of aiding and abetting the escape of a prisoner. QUEEN v. SHEOUMBER LAL, **4 N.W.P. 4.**

(2)—*Lock-up not a prison.*—A lock-up is not a prison within the meaning of Act XXVI of 1870. QUEEN-EMPRESS v. NGA SHWE KUN, **L.B.R. 1872 1892, 596.**

(3)—*S.* 3—Havalat, *whether a prison.*—*Held* by Spankie and Oldfield, JJ. (Stuart, C.J., *dissenting*) that a *havalat* or lock up, in which prisoners under trial are confined, is a prison within the meaning of that term in s. 3 of the Act. EMPRESS OF INDIA v. LALAI, **2 A. 301.**

(4)—*Ss* 45, 54—*Taking food for an undertrial prisoner—Penal Code, s* 442—*House trespass.*—*Per* Stuart, C. J.—Food is not an article within the meaning of s. 45. *Per* Stuart, C.J., and Oldfield, J. (Spankie, J., *dissenting*).—The act

I.—Imperial Acts—continued.

Act XXVI of 1870 (Prisons)—*concluded.*

of conveying or attempting to convey food to a man confined in the *havalat* and under trial, does not amount either to house-trespass or to an offence punishable under s. 45 of the Prisons Act. EMPRESS OF INDIA v. LALAI, **2 A. 301.**

(5)—*Ss.* 47, 48—*Penal Code,* s. 224—*Attempt to escape by prisoner at work outside jail*—The accused, a prisoner in the Gorakhpur jail, was employed in some brickfield outside the jail. While so employed, he endeavoured to escape, but, after he had got some little distance, was re-captured. Subsequently, after a form of trial of a very summary nature, he was sentenced for this offence by the Inspector-General of Prisons to receive thirty stripes, apparently under s. 47 of the Prisons Act. *Held* that, under the above circumstances, the offence committed was that punishable under s. 224, I.P.C., and was not punishable under s. 47 of Act XXVI of 1870, nor, if the Inspector-General of Prisons was acting in his Magisterial capacity, was the offence triable summarily under s. 260, Crim. Pro. Code, if indeed the offence was committed within the limits of the Inspector-General's jurisdiction as a Magistrate. In any event, if the offence was triable by the Inspector-General as a Magistrate, it should have been duly tried according to the procedure laid down in the Code of Criminal Procedure for the trial of warrant cases. EMPRESS v. HASAN ALI, **A.W.N. 1894, 176.**

(6)—S. 48—*See* No. 5, *supra.*

(7)—S. 54—*See* No. 4, *supra.*

Act XXVII of 1870 (Indian Penal Code Amendment).

[SHORT TITLE ACT XIV OF 1897, REP. IN PT. ACT X OF 1872; REP. IN PART AND AMENDED, ACT XII OF 1891; ACT IV OF 1898, S. 5, REPEALED ACT I OF 1903; VIRTUALLY AMENDED—ACT VIII OF 1882; ACT X OF 1886, SS. 21 (1) AND 24 (1); DECLARED IN FORCE IN THE SONTHAL PARGANNAS, REG. III OF 1872, S 3, AS AMENDED BY REG. III OF 1899, S. 3. IN THE ARAKHAN HILLS DISTRICTS, REG. IX OF 1874, S. 3]

(1)—*Agreement to secure payment under Kuri — Penal Code, s.* 294-*A*—VASUDEVAN NAMBUDRI v. MAMMOD, **22 M. 212.**

(2)—*Penal Code, s.* 294-*A*—*Lottery—Scope—"Publisher," meaning of*—QUEEN EMPRESS v. MANCHERJI KAVASJI SHAPURJI, **10 B. 97.**

(3)—*S.* 10—*Sanction of Government—Lottery office.*—The sanction of the Local Government is necessary before a charge for keeping a lottery office under s. 10, Act XXVII of 1870, can be instituted. GOVERNMENT v. NGA CHO, **15 W.R. Cr. 2=6 B.L.R. Ap. 98.**

Act I of 1871 (Cattle-Trespass).

[AM., ACT I OF 1891. DECLARED IN FORCE IN THE SONTHAL PARGANAS, REG. III OF 1872, S 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ANGUL DISTRICT, REG. 1 OF 1894, S. 3; IN THE ARAKAN HILL DISTRICTS, REG. IX OF 1874, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES, ACT XIII OF 1898 S. 4; IN BRITISH BALUCHISTAN, REG. 1 OF 1890, S. 3]

See ACT III OF 1857. (CATTLE TRESPASS).

(1)—*Crim. Pro. Code* (1882), *s* 250—*Frivolous complaint of illegal seizure of cattle—Compensation.*—The illegal seizure of cattle under colour of Act 1 of 1871 is not constituted an offence under that Act or otherwise, and, therefore, a Magistrate is not competent to award compensation, under s. 250, Crim. Pro. Code, to the accused on a frivolous and vexatious complaint in respect of such alleged illegal seizure. PITCHI v. ANKAPPA, **9 M. 102=2 Weir. 315.** [*F.*, 13 C. 304, 23 C. 248; *R.*, 18 A. 353=16 A.W.N. 98.]

(1-*a*)—*See* SENTENCE—POWERS OF APPELLATE COURT—GENERAL, 16 W.R. Cr. 12.

(2)—*S.* 10—*Persons having power to seize cattle.*—Where an indigo factory supplies the seeds, pays for the labour of sowing, and gives compensation to raiyats growing indigo on their own land, but no advance in cash has been made, *held,* that, although the indigo is grown for the factory, a servant of the factory is not a person authorized under s. 10 of the Act, to seize cattle doing damage to the indigo. RAM KARAN THAKUR v. EMPEROR, **9 C.W.N. 624=2 Cr. L.J. 345.**

(3)—*Ss.* 10 *and* 20—*Seizure of cattle, when legal.*—Where a cattle, which trespasses on another's land, is not doing any damage, the owner of the land is not entitled to impound the cattle. *In re* CHINNAYA GOUNDAN, **1 Weir 709.**

(4)—*Ss.* 10 *and* 20—*Impounding of cattle.*—It is only when cattle are actually trespassing that they can be seized and impounded under s. 10. *In re* DASARI, **1 Weir 709.**

(5)—S. 11—*See* ACT VII OF 1878, s. 69, 22 B. 933.

(6)—*Ss.* 11 *and* 24—*Rescue of cattle seized under s.* 11.—It is not necessary that a person, who seizes or causes cattle to be seized, must take them in person, to the pound, in order that the rescuing of the cattle may amount to an offence under s. 24 of the Act. BASSAWA SINGH v. EMPRESS, **12 P.R. 1882, Cr.**

(7)—S. 12—*See* ACT VII OF 1878, ss. 25 and 66, 19 P.R. 1885, Cr.

(8)—*S.* 18—*Jurisdiction—Crim. Pro. Code* (1861), s. 21.—As no special provision is made in Act III of 1857 as to the authority by which offences under s. 18 of that Act are to be tried, s. 21, Crim. Pro. Code, 1861, gives jurisdiction to the First Class Subordinate Magistrate. REG v. GANGA *kom* MHASU, **5. B.H.C. Cr. 13.**

I.—Imperial Acts—continued.

Act I of 1871 Cattle Trespass)—*continued.*

(9)—S. 19—*See* CRIMINAL BREACH OF TRUST, 8 B.L.R. Ap. 1=16 W.R. Cr. 52.

(10)—*S.* 20—*Illegal seizure of cattle, complaint of—No claim for compensation—Refund of fee paid on complaint and process fees.*—The complainant, who makes no claim for compensation for loss caused by the illegal seizure of cattle, is not entitled to any compensation. But he is entitled to a refund of the expenses incurred in procuring the release of the cattle from the pound-keeper and is also entitled under s. 31, Court Fees Act, to the refund of the fees paid on the complaint and the process fees which he had paid, because the word "offence" in the Crim. Pro. Code, includes any act, in respect of which a complaint may be made under s. 20 of the Cattle Trespass Act. KING-EMPEROR v. THA NYO U T U, **4 L.B.R. 11=6 Cr. L.J. 122.**

(11)—*S.* 20—*Complaint of illegal seizure of cattle—Compensation to accused, whether can be ordered—Crim. Pro. Code* (1882), *ss.* 4 (*a*) *and* 250.—The illegal seizure of cattle is not an offence within the meaning of the Crim. Pro. Code, and the order for compensation to the accused, under s. 250 of the Code, cannot be made. KOTTALANADA v. MUTHAYA, **9 M. 374=2 Weir 315.** [*F.*, 23 C. 248; *R.*, 18 A. 353=16 A.W.N. 98, 23 C. 442.]

(12)—*S.* 20—"*Charges*"—*Meaning of.*—The term "charges" in s. 20 of the above Act is used as equivalent to "complaint." KARIM KHAN v. NATHOOSA, **11 C.P.L.R. 10, Cr.**

(13)—S. 20—*See* COMPENSATION—GENERAL, 18 A. 353=A.W.N. 1896, 98.

(14)—S. 20—*See* COMPENSATION—TO ACCUSED, 13 C. 304.

(15)—S. 20—*See* OFFENCE, 29 M. 517=5 Cr. L.J. 86.

(16)—S. 20—*See* Nos. 3, 4, *supra.*

(17)—*Ss.* 20, 21, 22, 23—*Illegal seizure of cattle not a criminal offence.*—The illegal seizure of cattle under the Act is not a criminal offence. QUEEN-EMPRESS v. MI MIN KAUNG, **L.B.R. 1872-1892, 515.**

(18)—*Ss.* 20 *to* 23—*Nature of jurisdiction—Applicability of Crim. Pro. Code—Crim. Pro. Code, ss.* 1 *and* 192—*Transfer of cases—Appeal in cases under the sections.*—The jurisdiction conferred by ss. 20 to 23 of Act I of 1871 is a special jurisdiction and as such, it is by s. 1, Crim. Pro. Code, unaffected by the provisions of the Code. S. 192 of the Code does not, therefore, authorize the transfer of a case to which ss. 20 to 23 of Act I of 1871 apply. [*R.*, 11 C.P.L.R. 10 Cr.; *D.*, 31 C. 350.] There is no provision for an appeal in a case to which ss. 20 to 23 of Act I of 1871 apply, which is *quasi* civil, the jurisdiction being intended to be limited to the Magistrate specially referred to. SHAMA v. LECHHU SHEKH, **23 C. 300.** [*Overruled*, 34 C. 926=6 Cr. L. J. 633.]

(19)—*Ss.* 20 *to* 23—*Illegal seizure of cattle—Summary trial—Crim. Pro. Code* (1882), *s.* 4 (*p*) *and chap.* XXII.—The illegal seizure and detention alluded to in ss. 20 to 23 of Act I of 1871 are not offences within the meaning of s. 4 (*p*) of the Crim. Pro. Code, and the cases connected therewith are accordingly not triable by the summary procedure described in chap. XXII of the Code. Where the accused charged under s. 22, Act I of 1871, was tried summarily and sentenced by a First-Class Magistrate, the High Court declined to interfere, as the defendant had had an adequate trial, and Act I of 1871 had not prescribed any particular procedure. NEDARAM THAKUR v. JOONAB, **23 C. 248.** [*R.*, 18 A. 353, 11 C.P.L R. 10, Cr.]

(20) *Ss.* 20 *to* 23—*Special jurisdiction—Illegal seizure of cattle*—"*Offence*"—*Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 4 (*o*) 192 (1), *and last clause sch.* II—*Power of District or specially empowered Magistrate to transfer such cases—Power of subordinate Magistrate to try the same.*—The illegal seizure of cattle, mentioned in s. 20 of the Cattle Trespass Act (I of 1871), is an "offence" under s. 4, cl. (*o*) of the Crim. Pro. Code, and, according to the last clause of sch. II thereof, any offence, punishable with imprisonment for less than one year or with fine only, is triable by any Magistrate. Though a complaint under s. 20 of the Cattle Trespass Act must be entertained either by a District Magistrate or a Magistrate specially authorized, such Magistrate has no power under s. 192, sub-s. (1) to transfer the case, after taking cognizance of it, to any Subordinate Magistrate. BUDHAN MAHTO v. ISSUR SINGH, **34 C. 926=6 Cr. L J. 263.** (23 C. 300, 23 C. 442, *Overruled.*)

(21)—*Ss.* 20 *and* 22—*Compensation awarded by Magistrate not qualified—Crim. Pro. Code* (1882), *ss.* 529 *and* 537.—An order awarding compensation under s. 22 of the Act by a Magistrate not coming under s. 20 of the Act is illegal, and is not protected by s. 529 of the Code, as the illegal seizure of cattle does not amount to an offence; nor is it covered by s. 537 as the action of the Magistrate amounts to an illegality and as the Magistrate is not a Court of competent jurisdiction. RAGHU SINGH v. ABDUL WAHAB, **23 C. 442.** [*Overruled*, 34 C. 926; *R.*, 11 C.P.L.R. 10, Cr.; *D.*, 31 C. 350.]

(22)—Ss. 20 and 22—*See* CRIM. PRO. CODE, 1898, ss. 4 (*o*), 250, 29 M. 517=5 Cr. L.J. 86.

(23)—*Ss.* 20 *and* 23—*Transfer of case under s.* 20 *of the Act—Crim. Pro. Code* (1872), *ss.* 44 *and* 141.—A Magistrate receiving a complaint under s. 20 of Act I of 1871 may transfer the case to a Subordinate Magistrate for disposal.

I.—Imperial Acts—continued.

Act I of 1871 (Cattle-Trespass)—*continued.*

There is nothing in the provisions of Act I of 1871, which excludes the operation of ss. 44 and 141, Crim. Pro. Code (1872). LUCHMAN DAS v. ALA SINGH, **26 P.R. 1879, Cr.**

(24)—*S. 21—Complaint of seizure of cattle, by whom to be made.*—The person entitled to complain, under s. 21 of the Cattle Trespass Act, 1871, is either the complainant in person or an agent personally acquainted with the circumstances; hence, where the cattle belonging to one person are in the custody of another, and are seized from his custody, the owner, if he is not personally acquainted with the circumstances, is not entitled to institute a complaint under s. 21 of the Cattle Trespass Act, 1871. EMPEROR v. DHANJISHA DADABHOY, **5 Bom. L.R. 205.**

(25)—*S. 21—Illegal seizure of cattle—Sentence of imprisonment in default of payment of fine.*—A sentence of fine for illegal seizure of cattle and a sentence of imprisonment in default of payment of fine or compensation awarded for illegal seizure is illegal. QUEEN-EMPRESS v. MI MIN KAUNG, **L.B.R. 1872—1892, 515.**

(25-*a*)—S. 21—*See* Nos. 17 to 20, *supra.*

(26)—*Ss. 21, 22—Illegal seizure of cattle, whether a criminal offence—Compensation—Fine—Imprisonment in default of payment of compensation.*—Illegal seizure of cattle is not an ordinary criminal offence. Jurisdiction is given to certain Magistrates to adjudicate compensation to any person complaining of, and proving such, seizure for the loss caused by the seizure and detention, as well as any fines and expenses incurred by the complainant in procuring the release of the cattle. Court-fees paid by the complainant may form part of such compensation. [*R.*, 23 C. 300, 23 C. 442.] The person illegally seizing cattle cannot be subjected to a fine, nor can he be imprisoned in default of payment of the compensation. *In the matter of* KETABDI MUNDUL, **2 C.L.R. 507.** [*F.*, 22 C. 189.]

(27)—*Ss. 21 and 23—Illegal seizure of cattle—Compensation.*—In awarding compensation for illegal seizure of cattle, the complainant's costs incurred in prosecuting his complaint may be included in the compensation awarded. QUEEN-EMPRESS v. MI MIN KAUNG, **L.B.R. 1872—1892, 515.**

(28)—*S. 22—Compensation—Appeal.*—No appeal lies from an award of compensation passed under s. 22, Cattle Trespass Act. *In re* GUNESH PERSHAD, **3 N.W.P. 200.** [*F.*, 15 C. 712.]

(29)—*S 22—Order awarding compensation—Appeal.*—No appeal lies from an order awarding compensation under s. 22 of the Act, for wrongful seizure of cattle. DHIKU v. DENO NATH DEB, **15 C. 712.** (10 B. 230, 3 N.W.P. 200, *F.*) [F., 19 M. 238.]

(30)—*S. 22—Compensation for illegal seizure of cattle—Appeal.*—No appeal lies from an order passed under s. 22 of Act I of 1871, awarding compensation for illegal seizure of cattle. QUEEN-EMPRESS v. SADASHIV, **Rat. Un. Cr. C. 520=Cr. Rg. 44 of 1890.** (10 B. 230, *R.*)

(31)—*S. 22—Penal Code, ss. 40 and 67.*—When the accused is not convicted of an "offence" within the meaning of s. 40 of the Penal Code, the provisions of s. 67 thereof do not apply to it. S. 22 of the Act does not provide a punishment for an offence, and therefore a compensation order made under that section cannot be followed by a sentence of imprisonment in default under s. 67, I.P.C. QUEEN-EMPRESS v. PAUNG TIN, **L.B.R. 1872—1892, 429.**

(32)—*S. 22—Nature of proceedings—Joint liability to pay fine.*—A proceeding under s. 22 of the Act is not a regular criminal proceeding but a *quasi* civil proceeding in which a Magistrate is authorized to assess and enforce, in a summary manner, compensation for an injury, for which a civil action might be brought. Where such compensation is ordered to be paid by two persons, without specifying the proportionate amount payable by each, they are jointly and severally liable to pay it. NEAZ v. MONSOR, **14 C. 175.**

(33)—*S. 22—Illegal seizure of cattle—Fine on conviction, legality of—Compensation—Imprisonment in default, whether proper.*—A Magistrate is not competent, under s. 22 of the Cattle Trespass Act, to pass any sentence of fine. He can only award compensation for an illegal seizure of cattle. An award of imprisonment, in default of payment of fine, is also illegal. BHAGIRATHI NAIK v. GANGADAR MAHANTY, **27 C. 992=5 C.W.N. 32.**

(34)—*S. 22—Illegal seizure of cattle—Penal Code, ss. 378 and 379—Theft.*—Where an accused person was found to have loosened the complainant's cattle at night and to have driven them to the pound with the object of sharing with the pound-keeper the fees to be paid for the release, *held*, that the accused was not liable under s. 22 of the Cattle Trespass Act, inasmuch as there was no illegal seizure and detention of the cattle. The accused was ordered to be charged and tried for theft. PARYAG RAI v. ARJU MIAN, **22 C. 139.** [*R.*, 22 C. 669.]

(35)—*S. 22—Compensation, amount of.*—Compensation for wrongful seizure of cattle, under s. 22 of Act I of 1871, should be by way of reasonable compensation for the costs caused by the seizure and detention of cattle; and not by way of penalty, or of an award of general damages to the complainant. GULZARI MALL v. MALLA, **25 P.R. 1878, Cr.**

(36)—*S. 22— Compensation, amount of—Dàmage to reputation.*—S. 22, Act I of 1871, does not contemplate the award of compensation for damages to the reputation of the

I.—Imperial Acts—continued.

Act I of 1871 (Cattle-Trespass)—*continued.*

complainant, nor does it warrant the infliction of a penalty upon the person complained against, in addition to the compensation awarded. SULTAN v. RUKAN DIN, **37 P.R. 1878, Cr.**

(37)—*S.* 22—*Compensation, amount of.*—The imposition of a penalty, in excess of the sum awarded to the complainant as compensation, is legal. WAZIRA v. DULLA, **36 P.R. 1878, Cr.** [*F.*, 5 P.R. 1880, Cr.]

(38)—*S.* 22—*Penalty, amount of.*—A Magistrate has no power to impose any penalty under s. 22 in excess of the sum which he has awarded to the complainant as compensation. JAHANA v. RAJA, **5 P.R. 1880, Cr.**

(39)—*S.* 22—*Appeal from order under the section.*—A person against whom an order is passed under s. 22 of the Act, directing payment of compensation for illegal seizure of cattle, is not a person convicted on a trial, and, therefore, no appeal lies from the order. QUEEN-EMPRESS v. RAYA LAKHMA, **10 B. 230.** [*F.*, 15 C. 712, 19 M. 238, Rat. Un. Cr. C. 520.]

(40)—*S.* 22—*Order for compensation—Appeal.*—No appeal lies against an order made under s. 22 of Act I of 1871. *In re* KHADAR KHAN, **11 M. 359=1 Weir 712.**

(41)—*S.* 22—*Order for compensation—Appeal—Crim. Pro. Code* (1882), *s.* 404.—No appeal lies against an order under s. 22 of the Cattle Trespass Act. Where, in a case, there was evidence that the seizure of cattle was illegal and the trying Magistrate believed it, the High Court, as a Court of Revision, refused to interfere with the order of the Magistrate awarding compensation, for, the effect of weighing evidence in such a case would, in effect, be to admit an appeal, where the law did not allow it. QUEEN-EMPRESS v. LAKSHMI NAYAKAN, **19 M. 238=2 Weir 461.** [*R.*, 31 M. 133=7 Cr. L.J. 267=18 M.L.J. 57=3 M.L.T. 230, 11 C. P.L.R. 10, 9 Cr. L.J. 192=5 M.L.T. 233.]

(42)—*S.* 22—*Default in payment of compensation—Order for imprisonment, validity of*—Order for imprisonment in default of payment of compensation awarded, under s. 22, Cattle Trespass Act, is illegal. QUEEN-EMPRESS v. LAKSHMI NAYAKAN, **19 M. 238=2 Weir 461.** [*R.*, 11 C.P.L.R. 10, Cr.]

(43)—*S* 22—*Fine in addition to compensation.*—S. 22 does not provide for a fine in addition to compensation. HIGH COURT PROCEEDINGS, 1ST AUGUST 1873, NO. 1379, **1 Weir 710=7 M.H.C. App. 24.**

(44)—*S.* 22—*Fine, whether leviable under the section.*—A Magistrate is not authorised under s. 22 to fine, but only to award compensation. But he is also authorized to add to the compensation, fines and expenses paid to the pound-keeper by the owner on releasing the cattle, and order them to be paid by the party who made the seizure. *In re* KULANTHASWAMY PILLAI, **1 Weir 710.**

(44-*a*)—*S.* 22—*Power of Magistrate—Seizure of cattle and dispute as to ownership of land.*—Where there was a dispute as to the ownership of land on which the complainant's cattle were found, the complainant stating the land belonged to A, who gave him the right to graze his cattle there, and the party charged (who had seized and impounded the cattle) claiming the land as his own, it was held that the order of the Magistrate referring the parties to the Civil Court was illegal, and that he should have disposed of the case himself under the Cattle Trespass Act, I of 1871, s. 22. SHEIK TUNNOO v. KUREEM BUKSH, **23 W.R. Cr. 2.**

(45)—*S.* 22—*Illegal seizure of cattle — Offence.*—The illegal seizure of cattle under Act I of 1879 is not an offence. (But now, according to the Crim. Pro. Code, s. 4, sub-s. (*o*), the term "offence" includes also illegal seizure of cattle). HIGH COURT PROCEEDINGS, 18TH FEB. 1879, NO. 227, **1 Weir 710.** [*F.*, 1 Weir 711.]

(46)—*S.* 22—*Illegal seizure of cattle—Offence*—An illegal seizure of cattle is not an offence. HIGH COURT PROCEEDINGS, 27TH NOV. 1879, NO. 2113, **1 Weir 711.** [*D.*, 1 Weir 712.]

(47)—*S.* 22—*Order for compensation for illegal seizure of cattle—Appeal—Crim. Pro. Code*, ss. 4 (*o*), 241, 243, 245, 246, 407, 439.—Under s. 22, Cattle Trespass Act, an order for compensation for wrongful seizure of cattle is a conviction within the meaning of the Crim. Pro. Code and under s. 407 of the Code, an appeal lies against the order. KING-EMPEROR v MI HARI MA, **4 L.B.R. 10=6 Cr. L.J. 121.**

(48)—*S.* 22—*Imprisonment in default of payment of compensation.*—A Magistrate is not competent to direct the imprisonment of the defendant in default of payment of compensation awarded under s. 22 of Act I of 1871. *In re* CHETTI VENKIAH, **1 Weir 712.**

(49)—*S.* 22—*Complaint under s.* 20 *of the Act—Offence—Appeal—Crim. Pro. Code*, 1898, *ss.* 4 (*o*), 250—*Applicability of the section to compensation awarded to the complainant under s.* 22 *of Act* I *of* 1871.—By s. 4 of the Code of Criminal Procedure, 1898, the word "offence" includes an act in respect of which a complaint may be made under s. 20 of the Cattle Trespass Act. It follows, therefore, that a person against whom an order under s. 22 of the Cattle Trespass Act is made is a "person convicted on a trial" An appeal against the conviction lies, therefore, under s. 407, Crim. Pro. Code. S. 250, Crim. Pro Code, applies to a case in which the compensation is awarded to an accused person, because a frivolous complaint has been made against him. But where compensation is awarded not to the accused but to the complainant under s. 22 of the Cattle

I.—Imperial Acts—continued.

Act I of 1871 (Cattle-Trespass)—*continued.*

Trespass Act, s. 250, Crim. Pro. Code, is not applicable. *In re* PONNUSAMI, **1 Weir 712=2 Weir 320.**

(50)—*S.* 22—*Order for compensation—Court and Process Fees.*—Under the head of compensation for the loss caused by the seizure and detention of cattle, it is open to a Magistrate to include the Court and process fees. *In re* PASUPULETI GOVINDU, **1 Weir 713.**

(51)—*S.* 22—*Compensation in addition to sum allowed on account of fines paid and expenses incurred in procuring release of cattle—Sufficiency of the amount allowed.* — Where some compensation was awarded in addition to the sum allowed on account of the fines and "expenses" or other charges incurred in procuring the release of the cattle, *held*, that the High Court would not consider the sufficiency or insufficiency of the amount allowed. *In re* MATTEPU CHENDRAIYA, **1 Weir 715.**

(52)—*S.* 22—*Order under s.* 22—*Verbal irregularity in naming the order, effect of.*—Where an order under s. 22 directed that the amount mentioned be paid to the complainant as compensation for the cost and damages incurred by him, and the words with which the decretal part of the judgment began was, namely, "I therefore fine the accused," *held*, that the latter portion was a mere surplusage and that, although the order was inaccurately worded, the intention to award compensation was clear. *In re* MATTEPU CHENDRAIYA, **1 Weir 715.**

(53)—*S.* 22—*Crim. Pro. Code, Act* X *of* 1882, *Ch.* XXII—*Applicability to Act* I *of* 1871 (*Cattle Trespass*), *s.* 22.—The summary procedure laid down in Ch. XXII of the Crim. Pro. Code, is applicable to the trial of offences under s. 22 of the Cattle Trespass Act. QUEEN-EMPRESS v. JAWAHIR, **A.W.N. 1896, 136.**

(54)—S. 22—*See* ACT VII OF 1870, 7 M. 345 =1 Weir 713.

(55)—S. 22—*See* APPEAL—ACTS, 10 B. 230, 3 N.W.P. 200.

(55-*a*)—S. 22—*See* COMPENSATION — TO COMPLAINANT AND HIS RELATIVES, 1 Weir 710=7 M.H.C. App. 24.

(56)—S. 22—*See* CRIM. PRO. CODE, 1898, ss. 4 (*o*) 250, 29 M. 517=5 Cr. L.J. 86.

(57)—S. 22—*See* Nos. 17 to 22 and 26, *supra.*

(58)—*Ss.* 23 *and* 27—*Imprisonment in default of payment of compensation, validity of.*—S. 23 of the Cattle Trespass Act provides that the compensation awarded under s. 22 may be recovered in the same manner as fines imposed by a Magistrate. The procedure which should be adopted, in default of payment of the compensation, is, therefore, the procedure described in s. 307, Crim. Pro. Code, 1872 (s. 386 of the Code of 1898). Therefore, a Magistrate is not competent to pass a sentence of imprisonment in default of payment of fine. But where a Magistrate passes such an illegal sentence, no appeal lies against it. HIGH COURT PROCEEDINGS, 27TH NOV. 1879, NO. 2113, **1 Weir 711.** [*F.*, 1 Weir 712.]

(59)—*S.* 23—*Appeal from compensation order.*—No appeal lies against an order, under s. 23, Ch. V, Act I of 1871, awarding compensation for the illegal seizure of cattle. EMPRESS v. BAKHSH, **22 P.R. 1886, Cr.**

(60)—S. 23—*See* Nos. 17, to 20, 23 and 27, *supra.*

(61)—*S.* 24—*Seizure of cattle escaped from pound.*—Certain cattle impounded in a cattle pound escaped: the next day they were found grazing in charge of their owner. The Police patel attempted to seize them again, when the owner resisted. The Police patel, thereupon, instead of attempting to seize the cattle, lodged a complaint before a Magistrate, who under s. 24 of the Cattle Trespass Act, fined the accused. *Held* that to resist the seizure of the cattle under the circumstances was not an offence punishable under s. 24 of the Act. QUEEN-EMPRESS v. KAOJI, **Rat. Un. Cr. C. 294=Cr. Rg. 38 of 1886.**

(62)—*S.* 24—*Opposition to unlawful seizure of cattle.*—Where the complainant was induced by a lie to refrain from seizing cattle grazing within the precincts of *a rakh*, and was opposed in his attempt to seize the cattle, which had meanwhile left the *rakh* and were at a private well, *held*, that the accused was not guilty of an offence under s. 24, Act I of 1871. HADU v. EMPRESS, **4 P.R. 1891, Cr.**

(63)—*S.* 24—*Forest Act* VII *of* 1878, *s.* 25 (*d*)—*Trespass, meaning.*—The word "trespass" in s. 24 of the Cattle Trespass Act does not mean that the cattle should enter into the forest themselves and not be driven into it by some person. GOVERNMENT OF BOMBAY v. KALLAPA, **Rat. Un. Cr. C. 602=Cr. Rg. 22 of 1892.**

(64)—*S.* 24—*Frivolous and vexatious complaint of illegal seizure of cattle—Compensation to accused.*—In cases of frivolus and vexatious complaints of illegal seizure of cattle compensation may be awarded to accused. ALLA DITTA v SHERE MAHOMED, **1 P.R. 1872, Cr.**

(65)—*S.* 24—*Removing of cattle from a pound with intention of returning it to the owner.*—Where a person removed cattle from a cattle-pound and returned them to their true owner, *held* that the accused was guilty under s. 24. Act, I of 1871 but not of theft in a building. *In re* PACHA SAHIB, **1 Weir 716.**

(66)—*S.* 24—*Rescue of cattle, when amounts to an offence.*—A conviction under s. 24 of Act I of 1871 can only be supported if the cattle were "liable to be seized" under the Act. If not, their rescue is no offence. Where the officers of the Public Works Department seized

I.—Imperial Acts—continued.

Act I of 1871 (Cattle-Trespass)—*concluded.*

certain cattle and there was no evidence that the land on which the cattle were seized was public property in charge of that Department, *held*, that the person rescuing such cattle could not be convicted under s. 24 of the Act. QUEEN-EMPRESS v. LAKSHMANNA, **24 M. 318=1 Weir 716.**

(67)—S. 24—*See* COMPENSATION—GENERAL, 5 M. 381=2 Weir 316.

(68)—S. 24—*See* No. 6, *supra.*

(69)—Ss. 25, 26—*See* MISCHIEF, 7 B. 126.

(70)—*S.* 26—*Proof of neglect of owner.*—There can be no conviction under s. 26 of the Cattle Trespass Act, unless it is proved or can be inferred from the circumstances of the case that the owner has been guilty of neglect. QUEEN-EMPRESS v. RAMZAN SHAKEBHAI, **Rat. Un. Cr. C. 867=Cr. Rg. 36 of 1896.**

(70-*a*)—S. 26—*See* MISCHIEF, Rat. Un. Cr. C. 60=Cr. Rg. 11-1-1872.

(70-*b*)—S. 26—*See* No. 69, *supra.*

(71)—*S.* 27—*Penal Code, ss.* 409, 511—*Pound-keeper—Falsifying accounts.*—Where a pound-keeper having levied a charge of Rs. 5, gave receipt for only Rs. 4 and entered only the latter figure in the account, but, before the money was paid into the Treasury, altered the figure in the account into Rs. 5, *held* that no offence was committed under s. 27 of the Cattle Trespass Act, but that the conviction should be for an offence under ss. 409 and 511 of the Penal Code. QUEEN-EMPRESS v. BHULA, **Rat. Un. Cr. C. 632=Cr. Rg. 2 of 1893.**

(72)—*S.* 27—*Pound-keeper.*—A person, who was not himself a pound-keeper, but had been merely entertained, by a Police Patel, who was *ex officio* the pound-keeper, was not a pound-keeper within the meaning of s. 27 of Act I of 1871, and could not, therefore, be convicted under that section. REG. v. VAKTA *valad* LAKHU, **9 B.H.C.A.C. 164.**

(73)—S. 27—*See* COMPENSATION—GENERAL, 1 P.R. 1872, Cr.

(74)—S. 27—*See* No. 58, *supra.*

Act IV of 1871 (Coroners).

[S. 42 REP. IN. PT., ACT IX OF 1871; S. 7 REP., S. 38 REP. IN. PT, ACT X OF 1873; S. 2, SCH. I REP., ACT XII OF 1873; S. 1 REP. IN. PT., ACT XVI OF 1874; S. 1 REP. IN. PT., SS. 8, 17, 20, AM., ACT X OF 1881; S. 3 AM., ACT V OF 1889; S. 4 REP. IN. PT., ACT XII OF 1891; SS. 9, 11, 15, 17, 21, 25, 26, 28, SCH. II AM., S. 18A INS., S. 27 REP., ACT IV OF 1908.]

(1)—*Coroner's Act* IV *of* 1871—*Inquiry by Coroner—Jurisdiction of Presidency Magistrate.*—The jurisdiction of a Presidency Magistrate is not ousted by an inquiry having been conducted by the Coroner under Act IV of 1871. QUEEN-EMPRESS v. JOHN PAUL, **Rat. Un. Cr. C. 540=Cr. Rg. 14 of 1891.**

I.—Imperial Acts—continued.

Act IV of 1871 (Coroners)—*concluded.*

(2, 3)—*Ss.* 24, 25, 26 *and* 29—*Coroner's inquisition—Commitment to High Court Sessions—Jurisdiction of Presidency Magistrate to try or enquire a case committed by Coroner—Effect of discharge or acquittal by Magistrate—Crim. Pro. Code* (1898), *ss.* 213, 214, 215, 477, 478 *and* 498.—*Prisoners Act* III *of* 1900, *ss.* 2, 11—*Commitment to jail after inquisition—Bail, power to grant.*—An inquisition drawn up by a Coroner, though it may have the effect of a valid commitment, upon which the High Court, in the exercise of its Original Criminal Jurisdiction, may act, has not that effect, until it has been accepted by the High Court, and the Officers of the Crown have drawn up a charge in accordance with it. Therefore, the mere drawing up of an inquisition by the Coroner does not of itself oust the jurisdiction of a Presidency Magistrate to enquire into or try the case of an accused person. Any order of acquittal or discharge made by him will be operative, subject to the discretion of the High Court, when the time comes for it to consider whether it should take action upon the Coroner's inquisition as an effective commitment. If, in any case, the accused person objects to the Magistrate proceeding with the case on the ground of his being already committed to the High Court, in the exercise of its Original Criminal Jurisdiction by virtue of the inquisition drawn up by the Coroner, an inquisition which has the chance of being accepted as a valid commitment, and which, if so accepted, might subject him to a second trial, notwithstanding that the Magistrate might try and acquit him, the difficulty raised would be one that could be solved only by a proper application to the High Court, which, having regard to the circumstances of the individual case, will make such order as it thinks fit, as to whether the commitment by the Coroner is to be acted upon, or whether it is proper for the Magistrate to proceed with the case. (16 B. 159, *R.*) After a Coroner has drawn up an inquisition and committed a person to jail refusing bail, the only Court which has power to grant bail is the High Court. EMPEROR v. JOGESHWAR PASSI, **31 C. 1=7 C.W.N. 889.**

(4)—*S.* 25—*Commitment by Coroner—Jurisdiction of Presidency Magistrate to hold preliminary enquiry.*—A Presidency Magistrate is not ousted of his jurisdiction to hold a preliminary enquiry into a charge of murder, because the Coroner has held an enquiry into the cause of death and has committed the accused to the High Court under Act IV of 1871, s. 25. QUEEN-EMPRESS v. MAHOMED RAJUDIN, **16 B. 159.** [*R.*, 31 C. 1=7 C.W.N. 889.]

(5)—S. 25—*See* No. 2, *supra.*

(6)—S. 26—*See* No. 2, *supra.*

(7)—S. 29—*See* No. 2, *supra.*

I.—Imperial Acts—continued.

Act V of 1871 (Prisoner's).

[REP. (EXCEPT S. 15), ACT III OF 1900. DECLARED IN FORCE IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES) ACT XIII OF 1898, S. 4; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3.]

See ACT III OF 1900.

See LOCAL GOVERNMENT, Rat. Un. Cr. C. 827=Cr. Rg. 70 of 1895.

Act VIII of 1871 (Registration).

[REP., ACT III OF 1877.]

See ACT XX OF 1866.

See ACT III OF 1877.

(1)—*S.* 80 - *Nature of imprisonment to be specified in conviction.*—*Held* that, under Act I of 1868, s. 2, cl. 18, the Sessions Judge should have specified in his warrant whether the imprisonment awarded to a person convicted under s. 80, Act VIII of 1871, should be simple or rigorous, but that, as he had omitted this at the proper time, simple imprisonment should now be set forth in the sentence and warrant. LEGAL REMEMBRANCER v. RADHOO CHURN ASH, **18 W.R. Cr. 3.** [*R.*, 11 C.W.N. 740; *F.*, 5 C.L.J. 445.]

(2)—*S.* 80—*Offence of making a false statement.*—The offence of making a false statement under s. 80 of this Act was held not at all to have been committed by parties, who, when presenting a mortgage-deed before the Sub-Registrar for registration, first alleged that the money, recited by the deed to have been paid, had been paid; but who, on being further questioned, stated that a portion of the money had been adjusted in discharge of a former debt and that the balance still remained unpaid. CROWN v. ISHUR DASS, **17 P.R. 1871, Cr.** [*R.*, 32 P.R. 1879.]

(3)—S. 80—*See* SENTENCE — IMPRISONMENT—GENERAL, 18 W.R. Cr. 3.

(4)—S. 82—*See* EVIDENCE ACT, 1872, s. 3, 13 B.L.R. App. 40=22 W.R. Cr. 10.

Act IX of 1871 (Limitation).

[REP., ACT XV OF 1877.]

See ACT XV OF 1877.

See APPEAL.

See LIMITATION.

(1)—Sch. II, art. 46—*See* ACT XV OF 1877, art. 47, 7 N.W.P. 35, 6 C.L.R. 93, 1 M. 309.

(2)—Art. 152—*See* APPEAL—APPEAL, PRACTICE AND PROCEDURE, 1 M. 304=2 Weir 469.

I.—Imperial Acts—continued.

Act X of 1871 (Excise).

[REP., ACT XXII OF 1881.]

See ACT XXII OF 1881.

See ACT XII OF 1896.

(*a*)—*See* ACT I OF 1878, s. 45, Book Cir. 3 of 1872, Oudh.

(*b*)—S. 2—*See* BEN. ACT XXI OF 1856, 22 W. R. 31, Cr.

(1)—*Ss.* 12, 57 *and* 62—*Illicit sale of liquor—License.*—Where a license for the sale of spirituous and fermented liquors by retail expired on a certain date, and the accused did not attempt to renew it, till after he had been convicted before the Magistrate for selling spirituous liquors, *held*, that the case was distinguishable from 1 A. 630, and that he was properly convicted as he violated s. 12 of the Act. EMPRESS OF INDIA v. DHARAM DAS, **1 A. 635.** (1 A. 630, *D.*) [*R.*, 1 A. 638.]

(2)—Ss. 19 and 63—*See* ACT XI OF 1870, s. 2, 3 A. 404.

(3)—*Ss.* 32, 57, 62—*Illicit sale of liquor.*—Where the lapsing of a first license for the sale of spirituous and fermented liquors, was not noticed by the authorities, and was only brought to their knowledge by the accused going to the Collector's office ten days after, and they simply renewed the license, and accepted the whole fee, for the new period, *held*, that the accused was not guilty, as he had given no notice of his intention not to renew the license, nor had the Collector recalled it. EMPRESS OF INDIA v. SEYMOUR, **1 A. 630.** [*F.*, 1 A. 638; *D.*, 1 A. 635.]

(4)—*Ss.* 32, 57, 62—*Illicit sale of liquor—License.*—Where a license for the sale of spirituous and fermented liquors by retail expired and the license-holder gave no notice of his intention not to renew the license, nor had the license been recalled by the Collector, but, liquor being sold without the renewal of the license for a week, the license holder's servants were prosecuted, *held*, that they could not be convicted under the provisions of s. 22, but only under s. 57, for not paying the monthly license fee in advance. EMPRESS OF INDIA v. MAHINDRA LAL, **1 A. 638.** (1 A. 630, *F.*)

(5)—*Ss.* 45, 46, 63—*Illegal search—Liability for prosecution.*—The Excise Act contains no provision, which would relieve any person from liability to prosecution under the Act, because the offence had been discovered by an illegal search. RUSSELL v. HIRA GIR SAHD, **37 P.R. 1880, Cr.** [*F.*, 11 P.R. 1906, Cr.]

(5-*a*)—S. 46—*See* No. 5, *supra.*

(6)—S. 57—*See* Nos. 1, 3 *and* 4, *supra.*

(7)—*Ss.* 57, 62—*Breach of the conditions of the license by servant of licensed vendor.*—The servant of a licensed vendor is not liable to be convicted under s. 57, for the offence of selling liquor contrary to the conditions of the license.

I.—Imperial Acts—continued.

Act X of 1871 (Excise)—*concluded.*

But he may be liable to be convicted under s. 62. EMPRESS v. GAHLA, **4 P.R. 1882, Cr., F.B.** (19 P.R. 1878, *R.*)

(8)—S. 62—*See* Nos. 1, 3, 4 and 7, *supra.*

(9)—*S.* 63—*License to sell opium—Transferability—Licensed vendor—Importing opium from foreign country.*—The license granted to a licensed retail vendor of drugs is not transferable, but such vendor may employ agents and servants in his own business, and, if a transfer be made in good faith, the offence of the transferee, in being in possession of unauthorized quantities of opium and drugs, is not one calling for severe punishment. A licensed vendor cannot be convicted under ss. 63 and 65, Act X of 1871, for importing opium or *charas* without a pass from foreign territory. PURAN v. CROWN, **12 P.R. 1878, Cr.**

(10)—S. 63—*See* Nos. 2 and 5, *supra.*

(10-*a*)—*S.* 65—*Imprisonment in default of payment of fine.*—When a fine is imposed under s. 65, the Court is competent to award imprisonment in default under s. 5 of Act I of 1868. CROWN v. POLU, **6 P.R. 1872, Cr.**

(11)—*S.* 65—*Scope of the section* —The words "like offence" in s. 65 of Act X of 1871, include an offence committed prior to the passing of the Act and are not applicable only to a previous offence against the Act. CROWN v. POLU, **6 P.R. 1872, Cr.**

(12)—*S.* 66—"*Traveller.*"—Where a sepoy, who had come to his home on leave, had in his possession opium for his own use, but not for the use of others, *held*, that the sepoy was not a traveller within the meaning of s. 66 (*b*). CROWN v. BUR SINGH, **23 P.R. 1873, Cr.**

(13)—*Ss. 78 and 79—Punjab-grown opium—Reward to informer.*—Certain sections of Act X of 1871 are modified by Act XXVI of 1872, regarding Punjab-grown opium, but ss. 78 and 79 of Act X of 1871 are not repealed by Act XXVI of 1872. Therefore, an award to an informer of a portion of the fines imposed, on a conviction for unlawful possession of Punjab-grown opium, was held not to be illegal. CROWN v. NIHAL SINGH, **6 P.R. 1877, Cr.**

(14)—*S.* 79—*Breach of opium rule--Informer's claim for half the fines, when not allowable.*—On a conviction of the accused, who cultivated poppy under cultivator's licenses, under Rule No. 14 of Rules framed under s. 49 of Act IV of 1872, for not entering in their licenses the actual turn out of opium, the Magistrate directed the payment of the proceeds of sale of confiscated opium to the informer, but refused to order the payment of half of the fines imposed on the accused. *Held*, that, as the conviction was not a conviction for unlawful possession of opium within the meaning of s. 79, Act X of 1871, the Magistrate's order was legal. MOLUK RAM v. CROWN, **23 P.R. 1879, Cr.**

(15)—S. 79—***See*** No. 13, ***supra.***

I.—Imperial Acts—continued.

Act XXV of 1871 (Railway Act Amendment).

[REP., ACT IV OF 1879.]

(1)—*S.* 19 (s. 125, *cl.* 1 *of Act* IX *of* 1890)—*Allowing cattle to stray on a Railway line.*—The defendant was convicted of being the owner of a cow which strayed on a railway provided with fences. On the date of the offence, no rules had been published under s. 1 of the Railway Act Amendment Act (XXV of 1871) determining what kind of fences should be deemed to be suitable for the exclusion of the cattle. No evidence was offered as to the state of the fences, and the conviction proceeded solely on the confession of the prisoner that he was the owner of the cow. *Held*, that the conviction was wrong, as the state of the fences was in this case matter requiring specific proof. HIGH COURT PROCEEDINGS, 18TH JAN. 1875, **1 Weir 874 = 8 M.H.C. Ap. 1.**

(2)—*S.* 29—*Gist of the offence.*—The prisoner was convicted under s. 29 of Act XXV of 1871 of endangering the safety of persons in a certain goods train by negligence. Although he was shown to have neglected his duty, there was no evidence whatever of the safety of any person in any train having been endangered by his neglect of duty ; *held*, that he could not be convicted under s. 29 of Act XXV of 1871, as it was plainly apparent that, by reason of the precautions taken by other persons any possible danger which might have resulted from his neglect was avoided. QUEEN v. MANPHOOL, **5 N.W. P. 240.** [*F.*, 11 Cr. L.J. 362 = 6 Ind. Cas. 483 = 8 P.L.R. 1910, 7 Bur. L.T. 101; *Rel.*, 15 Cr. L.J. 17 = 7 L.B.R. 72 = 22 Ind. Cas. 161 ; *D.*, 59 P.L.R. 1907 = 13 P.R. 1906, Cr. = 5 Cr. L.J. 81, 11 C.W.N. 173 = 5 Cr. L.J. 16.]

Act XXVII of 1871 (Criminal Tribes).

[S. 1 REP. IN PT., ACT XVI OF 1874 ; SS. 1, 18, 21, 22 AM., ACT VII OF 1876 ; S. 23 REP., ACT XII OF 1876 ; SS. 1, 19 AM., SS. 1A, 17A, 19A, 19B INS., SCH. ADDED, ACT II OF 1897 ; ACTION IN SIND VALIDATED, AND S.14 AM. (IN BOMBAY PRESIDENCY), BOM. ACT I OF 1909.]

(*a*) *See* SECURITY FOR GOOD BEHAVIOUR, 1 P.R. 1895, Cr.

(1)—*S.* 18 (7), *Rule* 13—*Roll-calls of registered persons—Power of calling roll-calls—Delegation—Superintendent of Police—Further delegation.*—Under Rule 13 framed under s. 18 (7) of the Criminal Tribes Act, 1871, the only persons who can order a roll-call are the District Magistrate, and, if specially authorised by the District Magistrate, the District Superintendent of Police ; and the latter, when so authorized cannot delegate his powers to his subordinates, as, for instance, by giving general authority to Sub-Inspectors to order roll-calls. Such an order would be *ultra vires.* CHARNUN v. KING-EMPEROR, **23 P. R. 1908, Cr. = 9 Cr. L.J. 94.**

(2)—*S.* 19 (1) *as amended by Act* II *of* 1897—*Absence from village without leave—Sentence—Revision.*—A member of a declared criminal

I.—Imperial Acts—continued.

Act XXVII of 1871 (Criminal Tribes)—*concld.*

tribe was convicted under s. 19 (1) of the Act and sentenced only to whipping for being absent from his village without leave and thereby committing a breach of the rules. The District Magistrate reported the case to the Chief Court on the ground that the sentence was illegal, because, under s. 19 (1) of the Act as amended by Act II of 1897, a sentence of imprisonment must form part of the substantive sentence and the accused having two previous convictions against him deserved no consideration. The Chief Court declined to interfere on the ground that, though under s. 5, as amended, of the Act, imprisonment should have been awarded, the convicting Magistrate might have considered a sentence of imprisonment only sufficient and, the sentence of whipping being carried out, no enhancement was desirable. CROWN v. JHANDU, **166 P.L.R. 1905=3 Cr. L J. 77.**

(3)—*Rule* 7 *framed under cl.* 4, *s.* 18 *of Act as amended by notification No.* 249 *of the Punjab Government, dated* 12*th August*, 1907—*Liability of registered persons, absent without permission from their village, to punishment.*—Rule 7 of the Rules framed by the Local Government, under s. 18, cl. 4 of the Criminal Tribes Act, 1871, as amended by the Punjab Government Notification No. 249, dated 12th August, 1907, is perfectly valid and *intra vires*. Therefore, a registered person who should, without permission, leave or be absent from the village in which he resides, is liable to conviction. KING-EMPEROR v. UDMI, **20 P.R. 1908, Cr.=9 Cr. L.J. 1.**

Act XXXI of 1871 (Weights and Measures of Capacity).

(1) *Fraudulent possession of false weights and measures, what amounts to— S.* 266. *Penal Code—Joint trial of* 68 *persons—Legality.*—The petitioners (68 in number) were shopkeepers and traders who were convicted under s. 266, I.P.C., of using short weights. The Magistrate who tried the 68 cases took the prosecution evidence in one case only, and a joint reply purporting to be on behalf of all the accused was then put in, headed as being a statement on solemn affirmation with reference to the weights found by the police to be wrong. The Magistrate treated this joint statement of all the accused as being a confession of guilt and thereupon proceeded to conviction and sentence. No Goverment Notifications were issued under Act XXXI of 1871, nor were there any standard weights in the place in question, and it did not appear against which weights the Police weighed the weights of the accused. There was no evidence of fraud or that the accused knew that their weights were false. *Held* that fraudulent intent was an essential element in s. 266, I.P.C., that the joint statement of all the accused could not be read as an admission of such an intent, that the method of joint trial was irregular and the conviction could not be upheld. *Held* also that until a set of standard weights is provided for purposes of

I.—Imperial Acts—continued.

Act XXXI of 1871 (Weights and Measures of Capacity)—*concluded.*

comparison, it is impossible to say with accuracy whether any particular set of bazaar weights differs so widely from that standard as to justify an inference of fraud CROWN v. NANAK CHAND, **20 P.R. 1913, Cr.=36 P.L.R. 1914=15 Cr. L.J. 11=22 Ind. Cas. 155.**

Act I of 1872.

See EVIDENCE ACT, 1872.

Act VI of 1872 (Oaths).

[REP., ACT X OF 1873.]

(1)—*S.* 5—*Evidence—Oath—Municipal Commissioner—Illegality.*—Under the above section, the omission to take any oath, or any other irregularity in the form in which it is administered, does not invalidate the proceedings. The High Court declined to interfere, under s. 296, Act X of 1872, with the order of a Municipal Commissioner, who was the editor of a newspaper, who had, prior to the disposal of the case, made very strong remarks on the case in the newspaper of which he was editor, holding that there was nothing illegal in his order, though he would have exercised a wise discretion if he had refused to sit as one of the Commissioners in the case. QUEEN v. TARINEE CHURN BOSE, **21 W.R. Cr. 31.** [*F.*, 25 W.R. Cr. 6.]

Act IX of 1872 (Contract).

[REP. IN PART, ACT I OF 1877; REP. IN PART AND AMENDED, ACT VI OF 1899; AMENDED, ACT IV OF 1886; ACT XII OF 1891.]

(1)—*Crim. Pro. Code* (1898), *s.* 145—*Partnership property—Claim of exclusive possession by a partner as manager.*—Where there are several partners, the claim of one of them to exclusive possession of the partnership property, as manager, is a question outside the purview of s. 145, Crim. Pro. Code. RADHA RAMAN GHOSE v. BALIRAM, **32 C. 249=8 C. W. N. 885.** [*R.*, 10 C.W.N. 1088.]

(2)—*S.* 23—*Part of consideration being the withdrawal of prosecution, effect of.*—Where a plaintiff, who claimed with two of the defendants to be entitled to the office of the *archaka* of a temple, sued for a declaration of his title and for a declaration that an agreement previously entered into by them with the other defendants was void as being the result of coercion and as part of its consideration was the stifling of a prosecution for criminal trespass and theft pending against them, the agreement was held to be void, notwithstanding that such stifling formed only a part of its consideration. SRIRANGACHARIAR v. RAMASWAMI AYYANGAR, **18 M. 189=4 M.L J. 106.** (*Lound* v. *Grimwade*, 39 Ch. D. 605, *R.*) [*Diss.*, 8 A.L. J. 498=10 Ind. Cas. 216; *F.*, 29 M. 195, F.B.= 16 M.L.J. 41=1 M.L.T. 25=3 L.B.R. 42, 54.

I.—Imperial Acts—continued.

Act IX of 1872 (Contract)—*continued.*

P.R. 1904 ; *R.*, 22 A. 224, 8 Ind. Cas. 1117 = 6 N.L.R. 148, 11 Ind. Cas. 321 = 31 P.R. 1911 = 192 P.L.R. 1911, 16 Ind. Cas. 555 = 8 N.L.R. 97, 82 P.R. 1904, 41 P.L.R. 1901 ; *Cons.*, 24 M. 444 ; *D.*, 1 S.L.R. 47.]

(3)—*S.* 23—*Consideration for agreement used for suppressing prosecution for criminal breach of trust—Validity of agreement—Penal Code, s.* 214, *excep.*—A person suing for possession of property would not be disentitled to a decree, simply because the sale to him was made to raise money for suppressing a criminal prosecution, if there is no evidence to show the plaintiff's knowledge of such unlawful purpose or of any money having been paid in pursuance thereof. Under the exception to s. 214, Penal Code, it is not every compromise of a criminal prosecution out of Court which is a breach of the positive law. RAJ KRISTO MOITRO v. KOYLASH CHUNDER BHUTTACHARJEE, **8 C. 24.**

(4)—*S.* 23—*Validity of Kobala executed for forbearance from criminal proceedings.*—A contract whereby the defendant agreed to execute a *Kobala* of certain lands in favour of the plaintiff in consideration of the latter's not taking criminal proceedings against the former in regard to a compoundable offence is neither to be deemed as forbidden by law nor as against public policy and might be enforced. AMIR-KHAN v. AMIR JAN, **3 C.W.N. 5.**

(5)—*S.* 23—*Burden of proof where contract is based on condonation of criminal complaint.*—Where, in a suit to enforce the performance of a contract, the defendant pleads that it was based on the condonation of a criminal complaint against the plaintiff which might have been of a nature not condonable by law and that the contract was, therefore, void, the burden of proof is on him to show the nature of the offence complained of. KUMOLANATH SEIN v. BEHAREE KANT ROY, **11 W.R. 313.**

(6)—*S.* 23—*Validity of transfer of property to complainant, by accused after conviction, as compensation.*—Certain parties convicted of a criminal offence, in order to avoid apprehension, entered into a compromise with the complainant, who agreed to accept a sum of money as costs and as compensation for the disgrace he had suffered. They accordingly sold him some property in lieu of cash. *Held* that the sale was not made under illegal pressure. Though the offence was one in which a compromise could not be legally admitted, yet, as the Magistrate did admit it, and the parties acted in good faith, the position of the latter was held not to have been affected. SHEIKH NUBBEE BUKSH v. MUSSAMMUT BEBEE HINGON, **8 W.R. 412.**

(7)—*S.* 23—*Legality of contract to pay money for suppressing prosecution for causing death accidentally.*—Where, to suppress a criminal prosecution for having accidentally caused the death of his wife, the plaintiff voluntarily paid money to the defendant, knowing the defendant to be the nearest relative of the deceased who could take a part in the prosecution, the contract was held to be void as against morality and public policy, and the plaintiff was held not entitled to sue for the money so paid. JEETOO MAHATO v. MONEERAM MAHATO, **17 W.R. 84.**

(8)—*S.* 23—*Suit to recover consideration for compounding charge of wrongful restraint.*—Where A was criminally prosecuted by B for wrongful restraint, and he came to terms with B to pay him for the withdrawal of the complaint, or to deposit money or property with C to be paid over to B on the disposal of the case according to B's petition of withdrawal ; and the Magistrate, instead of allowing the with drawal of the charge, punished A criminally, *held* that A could sue for the recovery of the money or property, as the charge was not one which it could have been illegal for A to withdraw with the consent of the Magistrate, the offence charged consisting of an act for which B might have sued for damages in the Civil Court. MOTHOORANATH BHOOMICK v. KENARAM KURMOKAR, **7 W.R. 33.**

(9)—*S.* 23—*Validity of agreement to stifle prosecution—Non-compoundable offence.*—An agreement, the object of which is to stifle a prosecution, *e.g.*, to compound an offence which cannot by law be compounded, is against public policy and cannot be recognized in any way by a Court of law. DALSUKRAM HARGOVINDAS v. CHARLES DEBRETTON, **6 Bom. L.R. 73.**

(10)—*S.* 23—*Whether guarantee given for not taking criminal proceedings enforceable.*—A guarantee which a surety gave to the creditors of D, for the payment of the debts due to them by D, on consideration that they were to abstain from taking criminal proceedings against D, for criminal breach of trust for 15 days and by implication to abstain from taking such proceedings altogether if the said debts were paid within that time, was held not to be enforceable by the creditors. A man, to whom a civil debt is due, may take securities for that debt from his debtor, even though the debt arises out of a criminal offence and he threatens to prosecute for that offence provided he does not, in consideration of such securities, agree not to prosecute. He must not, however, by stifling a prosecution obtain a guarantee from third parties. KESSOWJI TULSIDAS v. HURJIVAN MULJI, **11 B. 566.** [*R.*, 28 A. 718 = 3 A.L.J. 506 = A.W.N. 1906, 212, 11 C.L.J. 131 = 5 Ind. Cas. 98, 11 Ind. Cas. 321 = 31 P.R. 1911 = 192 P.L.R. 1911, 16 Ind. Cas. 555 = 8 N.L.R. 97, 57 P.W.R. 1914 = 39 P.R. 1914, 17 O.C. 213 ; *D.*, 9 P.R. 1906 = 19 P.L.R. 1906, 1 S.L.R. 47.]

(11)—*S.* 23—*Agreement not to prosecute for giving false evidence.*—It is essential to the well-being of society that persons who commit offences which are of a public nature, and

I.—Imperial Acts—continued.

Act IX of 1872 (Contract)—*continued.*

which are punishable as crimes, should be brought to justice. Therefore, a Court cannot take cognizance of a bargain to abstain from the prosecution of a person for such an offence as that of wilfully giving the false evidence. QUEEN v. BAL KISHAN, 3 **N.W.P. 166 = Agra F.B. Ed., 1871, 252.**

(12)—*S.* 23—*Contract to pay money for forbearing from criminal prosecution.*—A contract to pay money in consideration of foregoing a criminal prosecution is opposed to public policy and will not be enforced; the consideration to support the promise in such a contract being a vicious consideration. KANDAN CHETTI v. COORJEE SEIT, **2 M.H.C. 187.** (6 Q.B. 208, E.C. in error, 9 Q.B. 371, *Observed.*)

(13)—*S.* 23—*Contract compounding assault.*—A contract compounding an assault is not illegal, and may be sued upon. The fact of two of the defendants being Mahomedans does not affect the principle of the decision. MOTHOORANATH DEY v. GOPAL ROY, **5 W. R.S.C.C.R. 16.**

(14)—*S.* 23—*Compounding prosecution for fraudulent abstraction of documents.*—The plaintiff, a resident of Pondicherry, held a bond from one of the defendants (the 2nd) for a certain sum of money. This bond the plaintiff charged the said defendant before the French legal authorities with having fraudulently abstracted from his house in Pondicherry and he obtained the arrest and the extradition from British territory of the 2nd defendant, as also of his brother the 1st defendant. The latter on his way to Pondicherry met the plaintiff, and a settlement of accounts took place. The 5th, 6th, 7th and the 8th defendants made themselves liable by executing the bond sued on for the sum found due to the plaintiff, and took indemnity bonds to themselves from the 1st defendant, the consideration being the agreement of the plaintiff to discontinue further proceedings on the criminal charge. The Court at Pondicherry sanctioned the agreement as a compromise by Civil redress, and suspended further proceedings in accordance with the law in force in the settlement. *Held*, that the contract was enforceable, the facts of the case not showing the compromise to be in its nature prejudicial as being in contravention of public policy under the Government of British India, or injurious to the good order and interest of society, in regard to the administration of public justice. The English Common Law rule, that contracts for the compounding or suppression of criminal charges of offences of a public nature are illegal and void, has no application to a contract for compounding the prosecution of criminal proceedings for an offence against the Municipal Law of a foreign country. The rule of International law that the law of the place of a contract governs its validity is subject to the qualification that every state may refuse to enforce a contract when it is for the fraudulent evasion of

I.—Imperial Acts—continued.

Act IX of 1872 (Contract)—*concluded.*

its laws, or injurious to its public institutions of interests. SUBRAYA PILLAI v. SUBRAYA MUDALI, **4 M.H.C. 14.**

(15)—S. 23—*See* WITHDRAWAL OF CASE, Old S. C. 43, Oudh.

(16)—*Ss.* 23 *and* 24—*Illegal contract—Contract to indemnify surety for his bail bond—Crim. Pro. Code (Act* V *of* 1898), s. 513—*Whole consideration—Part of one single consideration cannot be separated to validate an agreement.*—Pending a criminal charge against L, his pleader stood bail for him; and as an indemnity for the bail took from him a sale-deed and a rent note regarding his house, in the name of the plaintiff. The consideration for the sale-deed was a sum of Rs. 8,000, of which Rs. 5,000 were the indemnity for the bail-bond, and the remaining Rs. 3,000 represented the advances to be made thereafter by the plaintiff. The plaintiff sued on the rent note to recover from L the sum of Rs. 2,000 as rent. *Held* that the contract for indemnifying this pleader for his bail-bond was illegal; and this illegality rendered the sale-deed void in law; that the rent note was tainted with the same illegality which affected the sale-deed and could not stand on any separate footing; that the agreement was an indivisible agreement; part of a single consideration for one object was unlawful and, therefore, the whole agreement was void under s. 24 of the Indian Contract Act, 1872. *Held*, further, that the deposit allowed under s. 513, Crim. Pro. Code, is allowed in substitution only of the bond which the principal himself would otherwise execute, not in substitution of any bond which his surety executes. LAXIMAN LAL K. PANDIT v. MULSHANKAR PITAMBARDAS, **10 Bom. L.R. 553.** [*R.*, 10 Cr. L.J. 410 = 3 Ind. Cas. 895 = 3 S.L.R. 88.]

(17)—S. 24—*See* No. 16, *supra.*

(18)—*Ss.* 76, 108—*Government currency notes whether "goods."*—The change of a Government currency note for money is not a contract for sale and the transaction being the exchange of money in one form for money in another is not governed by the Contract Act. EMPRESS v. JOGGESSUR MOCHI, **3 C. 379 = 1 C.L.R. 339.** [*Dist.*, 25 B. 702 = 3 Bom. L.R. 392; *R.*, 115 P.L.R. 1904 = 18 P.R. 1905.]

(19)—S. 108—*See* RESTORATION OF PROPERTY, 2 P.R. 1908, Cr. = 6 P.W.R. 1908 = 140 P.L.R. 1908 = 7 Cr.L.J. 279.

(20)—S. 108—*See* STOLEN PROPERTY, L.B.R. 1872—1892, 84.

(21)—S. 108—*See* No. 18, *supra.*

(22)—S. 178—*See* JURISDICTION OF CIVIL AND CRIMINAL COURTS, 4 L.B.R. 25 = 6 Cr. L.J. 135.

(23)—S. 178, proviso 2—*See* RESTORATION OF PROPERTY, 4 L.B.R. 13 = 6 Cr.L.J. 125.

I.—Imperial Acts—continued.

Act X of 1872 (Crim. Pro. Code).

See CRIM. PRO. CODE.

Act XI of 1872 (Foreign Jurisdiction and Extradition).

[REP., ACT XXI OF 1879.]

See ACT XXI OF 1879.

(1)—Ss. 3, 9—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 2 A. 218, F.B.

(2)—*Ss.* 3, *cl.* (2) *and* 9—*Native State.*—Amenability of Native Indian subjects to British Courts for offences committed beyond India. CROWN v. DAD GAL, **29 P.R. 1878.**

(3)—*S.* 9—*Act* XXI *of* 1879, *s.* 9—*Offence by British subject in Native State—Extradition—Native subject.*—S 9, Act XI of 1872, runs thus: —"All British subjects, European and Native, in British India, may be dealt with, in respect of offences committed in any Native State, as if such offences had been committed in any place within British India in which such subject may be or may be found." In re-enacting the provision in s. 9 of Act XXI of 1879, the Legislature omitted "may be" and retained only "may be found." *Held* that, looking to the purposes of these Acts and to the fact that the words "may be," "may be found," really mean one and the same thing, the alteration in the recent Act was merely to avoid redundancy, and the expression "found" used in it must be taken to mean, not where a person is discovered, but where he is actually present. Where a person charged with the offence of theft in a dwelling house in Rajputana, being found in Sirdhi territory, another Native State, was brought from that place to Ahmedabad, and was charged before the Courts there, *held* that those Courts had jurisdiction to try him. Where it was proved that a place in British territory was the home of the accused's parents, and that he himself was born and educated there, and that he only went 1½ years previously to a Native State for purposes of trade, living, during that time, sometimes in British territory and sometimes in the Native State, *held* that there was a legal presumption in favour of the accused being a Native Indian subject of Her Majesty, and, therefore, amenable to the jurisdiction of the British Courts. EMPRESS v. MAGAN LAL, **6 B. 622.** [*F.*, 13 B. 147 ; *R.*, 35 B. 225 = 13 Bom.L.R. 296 = 1 Bom. Cr. Cas. 26 = 12 Cr.L.J. 356 = 10 Ind. Cas. 956, 12 Cr.L.J. 113 = 9 Ind. Cas. 677 = 1 P.R. 1911, Cr. = 84 P.L. R. 1911 = 4 P.W.R. 1911, Cr.]

(4)—S. 9—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 1 M. 171.

(5)—S. 9—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, Rat. Un. Cr.C. 79 = Cr. Rg. 18-11-1875.

(6)—S. 9—*See* Nos. 1 and 2, *supra.*

(7)—S. 11—*Receiving property stolen in Indore State.*—An accused person who received in British territory property stolen in the commission of a dacoity in the Indore State cannot be surrendered under the warrant of the Political Agent at Indore. HUKAM CHAND v. CROWN, **14 P.R. 1873, Cr.**

Act XV of 1872 (Christian Marriage).

[REP. IN PART, ACT XVI OF 1874 ; REP. IN PART AND AMENDED, ACT XII OF 1891. AMENDED, ACT VI OF 1886, S. 30; ACT II OF 1891; ACT I OF 1903.]

(1)—*Ss* 3 *and* 68—*Unauthorised marriage of a Christian child.*—The words "person who professes the Christian religion," as used in Act XV of 1872, mean not only adults who profess that religion, but also their children, who are in law presumed to follow their father's religion. Where an unauthorised person solemnised the marriage of a child of the age of three years born to a Christian who was baptized, *held*, that the person was guilty of an offence under s. 68 of the Act. QUEEN-EMPRESS v. VEERADU, **18 M. 230 = 1 Weir 813.**

(2)—*Ss.* 5, 10, 12, 13, 38, 68, 70 *and* 73—*Solemnisation of marriage by an Episcopally ordained person without publishing notice of such marriage.*—Where a Syrian Priest, who had received an Episcopal ordination, solemnised a marriage according to the Roman ritual, being so authorised by the Patriarch of Antioch, under whose jurisdiction he was, without the notice of the banns of marriage as required by Part 3 of the Act, and where there was nothing to show that a marriage solemnised with the Roman ritual under the sanction of the Bishop of a Syrian Church was not solemnised according to the rules, rites or ceremonies and customs of the Syrian Church, *held*, that the priest was not liable to be convicted for an offence under s. 73 of the Act. REV. FATHER CAUSASEL v. REV. SAUREZ, **19 M. 273 = 1 Weir 814.**

(3)—*Ss.* 5, 68 — *Celebration of Christian marriage by unauthorised person—Presence of Marriage Registrar.*—Where the Lay Trustee of a Church, not coming within one of the four classes of persons mentioned in clauses 1, 2, 3 and 5 of s. 5 of the Act, solemnised a marriage between Christians, according to the rights of the Church of England in the presence of the Marriage Registrar, who was present, not in his official capacity as Marriage Registrar, but as a relative of the bride, during the absence of the incumbent of the Church and of the Native Pastor, who had previously published the banns of marriage, *held*, that the Lay Trustee was properly convicted under s. 68 of Act XV of 1872. QUEEN-EMPRESS v. FISCHER, **14 M. 342 = 1 M.L J. 458 = 1 Weir 802, F.B.**

(4)—S. 10—*See* No. 2, *supra.*

(5)—S. 12—*See* No. 2, *supra.*

(6)—S. 13—*See* No. 2, *supra.*

I.—Imperial Acts—continued.

Act XV of 1872 (Christian Marriage)—*contd.*

(7)—*Ss.* 18, 66—" *Ignorantia juris non excusat,*" *applicability of, to a false declaration under s.* 18.—Inasmuch as the declaration required by s. 18 is one as to the best of the deponent's belief and as s. 66 only makes penal the " intentionally making a false oath," the doctrine " *ignorantia juris non excusat* " is not applicable to a declaration, alleged to be false, but only made to the best of the deponent's belief. QUEEN-EMPRESS v. ROBINSON, **16 A. 212 = A.W.N. 1894, 49.**

(8)—S. 33—*See* No. 2, *supra.*

(8-*a*)—S. 66—*See* No. 7, *supra.*

(9)—*Ss.* 66 *to* 76—*Scope of the sections.*—Ss. 66 to 76 apply to all persons, who are not authorised to do so, solemnising a marriage between Christians, and do not apply simply to marriages that are to take place before a Marriage Registrar. QUEEN-EMPRESS v. FISCHER, **14 M. 342 = 1 M.L.J. 458 = 1 Weir 802, F.B.**

(10)—S. 67—*See* No. 9, *supra.*

(11)—*S.* 68—*Requisites for convicting a person under the section.*—The only facts necessary to support a conviction under s. 68 are these :—first, it must be proved that the accused was not authorised under the Act to solemnise a marriage in the absence of a Marriage Registrar, and secondly, that he knowingly solemnised the marriage in the absence of such Registrar between persons, one or both of whom was or were a Christian or Christians. The word " knowingly " only applies to the fact that the person so solemnising the marriage is aware that he is solemnising it and that the person or persons he is professing to marry is or are a Christian or Christians. QUEEN-EMPRESS v. FISCHER, **14 M 342 = 1 M.L.J. 458 = 1 Weir 802 = 1 Weir 40 ; F.B.**

(12)—*S.* 68—*Unauthorised persons solemnising marriage when one of the parties is a Christian.*—S. 68, as amended by s. 6, Act II of 1891, makes punishable the solemnisation of a marriage between persons of whom one is a Christian, unless the person solemnising such a marriage has been authorised for that purpose under s. 5. Where a Hindu celebrated the ceremony of marriage according to the Hindu form between a Native Christian and a Hindu girl, *held*, that the person performing the ceremony was liable to be convicted of an offence under s. 68 inasmuch as he was not authorised under s. 5. QUEEN-EMPRESS v. YOHAN, **17 M. 391 = 1 Weir 813.** (6 M.H.C. App. 20, *R.*)

(13)—*S.* 68—*Meaning of the term* " *solemnise.*"—The term " solemnise " in s. 68 of Act XV of 1872 means " conduct, celebrate or perform " and should not be limited as applying to only such marriage ceremonies as are performed by some person possessing, or claiming authority to perform them by virtue of ecclesiastical authority. Therefore, an unauthorised person, not being the persons being married, who actually takes part in performing the marriage, that is, in doing any act that is supposed to be material to constitute the marriage, is guilty under s. 68 as a party either solemnising a marriage or professing to do so. QUEEN-EMPRESS v. PAUL, **20 M. 12 = 1 Weir 820.**

(14)—S. 68—*See* Nos. 1, 2, 3 and 9, *supra.*

(15)—S. 69—*See* No. 9, *supra.*

(16)—S. 70—*See* No. 9, *supra.*

(17)—S. 71—*See* No. 9, *supra.*

(18)—S. 72—*See* No. 9, *supra.*

(19)—*S.* 73—*Scope of the section—Notice of marriage whether to be given by an Episcopally ordained person.*—S. 73 is a highly penal section, and must be construed strictly and in favour of the liberty of the subject. The section does not require that a person, who has received Episcopal ordination, and who is not one of the classes specially excepted by that section, should publish a notice of any marriage which he intends to solemnise. REV. FATHER CAUSASEL v. REV. SAUREZ, **19 M. 273 = 1 Weir 814.**

(20)—S. 73—*See* No. 9, *supra.*

(21)—Ss. 74 to 76—*See* No. 9, *supra.*

(22)—*Part* 3—*Applicability to Episcopally ordained persons.*—Part 3 of the Act only applies to Ministers of religion licensed under the Act, and not to Episcopally ordained persons. REV. FATHER CAUSASEL v. REV. SAUREZ, **19 M. 273 = 1 Weir 814.**

Act XIX of 1872 (Penal Code Amendment).

[SHORT TITLE GIVEN, ACT XIV OF 1897. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3 ; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874, S. 3.]

(1)—*Penal Code, s.* 230—" *Coin* " *defined.*—It is not necessary, to satisfy the ordinary definition of money, that coins should be alegal tender receivable at a value in rupees fixed by the law. Gold Mohurs having no absolutely fixed value, but having a current value, which is not ascertained merely by weighing them as lumps of gold, but attaching to them as coin, are " coins " for the time being used as money. QUEEN v. KUNJ BEHAREE, **3 N.W.P. 187.** [*D.*, 29 A. 141 = 4 A.L.J. 43 = A.W.N. 1906, 308 = 4 Cr.L.J. 453.]

Act VIII of 1873 (Northern India Canal and Drainage).

[REP. IN PART, ACT XII OF 1873 ; ACT XVI OF 1874. REP. IN PART (IN PUNJAB), ACT XVI OF 1887. AMENDED ACT XII OF 1891 ; ACT XVI OF 1899, (IN PUNJAB), REG. IV OF 1898.]

I.—Imperial Acts—continued.

Act VIII of 1873 (Northern India Canal and Drainage)—*concluded.*

(1)—Ss. 7, 70—Cutting walls of canal—Punishment—Law applicable—*See* PENAL CODE, s. 426, 9 A.L.J. 162=13 Ind. Cas. 829=13 Cr. L.J. 141=34 A. 210.

(2)—*S.* 45—*Resistance to a Naib Nazir—Distraint for canal dues under Act—Order for distraint not formally drawn up—Penal Code,* s. 186.—S. 47 of Act VIII of 1873 refers to the recovery of canal dues by the Collector from the *lambardars* who have been required under that Act to collect and pay such dues. But, under s. 45, the Collector may recover dues from such persons as have actually used canal water, although a *lambardar* has been appointed. Hence, where a Naib Nazir who was a public servant proceeded to distrain certain crops for an amount due on account of canal rates, under an order from an Assistant Collector, and the persons against whom distraint was issued offered resistance to the Naib Nazir in the discharge of his duties, *held*, that they were guilty of the offence under s. 186, I.P.C., although the order of the Assistant Collector might not have been formally drawn up. EMPEROR v. ABDULLAH, **27 A. 499=A. W.N. 1905, 74=2 A.L.J. 219=2 Cr. L.J. 183.** (21 M. 296, *R.*)

(3)—*S.* 70 (4)—*Authorized distribution means distribution expressly made by canal authorities —Private arrangement of water, disturbance of —Offence — Civil remedy.*—The 'authorized distribution' spoken of in s. 70 (4), Canals Act, 1873, refers only to such distribution as has been expressly made by the canal authorities, and any further distribution between a landlord and his tenant is a matter of private contract which merely entitles the tenant to bring a civil claim. BASAN v. EMPEROR, **217 P.L.R. 1913=19 Ind. Cas. 713=21 P.W.R. 1913, Cr. =14 Cr. L.J. 281=19 P.R. 1913 Cr.**

(4)—S. 70—*See* CRIM. PRO. CODE, 1898, s. 33, 1 A. 461, F.B.

(4-*a*)—S. 70—*See* No. 1, *supra.*

(5)—*Ss.* 70 *and* 74—*Definition of "Canal"—Damage to trees growing on canal banks.*—*Held*, that damage to trees growing on a canal bank is damage to a canal within the meaning of s. 70, cl. (1), read with s. 74 of Act VIII of 1873. EMPEROR v. UMRAO SINGH, **A.W.N. 1907, 18=4 A.L.J. 204=5 Cr. L.J. 196.**

(6)—S. 74—*See* No. 5, *supra.*

Act X of 1873 (Oaths).

[REP. IN PART, ACT XII OF 1873; ACT XII OF 1876; ACT VI OF 1900, S. 48.]

See ACT VI OF 1872.

(1)—*Oath not to be administered to person, whose statements are recorded under s.* 164.—A Magistrate has no power to administer an oath or affirmation to any person whose statements he records under s. 164, Crim. Pro. Code. His function is to prepare a record in the manner and subject to the conditions prescribed in s. 164. LALU v. EMPRESS, **2 P.R. 1893, Cr.**

I.—Imperial Acts—continued.

Act X of 1873 (Oaths)—*continued.*

(2)—Omission to record the fact that oath was administered—Presumption—*See* ACT XII OF 1896, s. 60, 11 A.L.J. 933.

(3)—*S.* 4—*Crim. Pro. Code,* s. 122—*Inquiry as to the fitness of surety—Recording evidence on oath.*—A Magistrate holding an enquiry as to the fitness of a surety has power to record evidence on oath in the exercise of the power and duty conferred and imposed by s. 122. EMPEROR v. GHULAM MUSTAFA, **26 A 371=A.W.N. 1904, 52.** (A.W.N. 1898, 154, A.W.N. 1903, 36, *R.*) [*R.*, 10 Cr. L. J. 225=2 S.L.R. 11.]

(4)—S. 4—Investigation into collision by a Special Court—Examination on oath of Serang of colliding vessel—*See* ACT VI OF 1884, ss. 31 to 35, 12 Cr. L.J. 577=12 Ind. Cas. 841=4 Bur. L.T. 130.

(5)—S. 4—*See* FALSE EVIDENCE, 2 L.B.R. 272.

(6)—S. 4—*See* PERJURY, 29 M. 89=3 Cr. L. J. 370.

(7)—*Ss.* 4, 5, 6, 7, 13, 14, 15—*Omission to take oath or affirmation.*—The evidence of a boy aged 10, to whom no oath or affirmation was advisedly administered, was held to be admissible. The provisions of the Oaths Act and of s. 108, Evidence Act, were discussed in this case. BUDHA v. EMPRESS, **31 P.R. 1889, Cr.** (10 A. 207, *Diss.*)

(8)—*Ss.* 4, 5 *and* 14—*Crim. Pro. Code,* 1882, *s.* 164—*Person making a statement under s.* 164, *whether can be bound by an oath—Evidence Act, s.* 3.—The direction in s. 164, Crim. Pro. Code, that the statement shall be recorded in one of the manners prescribed for recording evidence is merely a direction as to procedure. The statement itself is one which the law permits to be made before the Court by a witness, and is, therefore, evidence within the definition of s. 3 of the Indian Evidence Act. The person making it is a witness within the meaning of s. 5 of the Oaths Act, and therefore one to whom an oath or affirmation might be administered. A charge under s. 193, Penal Code, can, therefore, be framed as regards a statement under s. 164, made on oath before a Magistrate, in a stage of inquiry which he was authorised to conduct under the Code of Criminal Procedure. QUEEN-EMPRESS v. ALAGU KONE, **16 M. 421 =1 Weir 175=2 Weir 142=1 Weir 822.** [*F.*, 29 M. 89=3 Cr. L.J. 370, 8 Bom. L.R. 589=4 Cr. L.J. 183; *R.*, 14 Bom. L.R. 753=13 Cr.L. J. 709=16 Ind. Cas. 517; *D.*, 13 Cr. L.J. 33= 13 Ind. Cas. 273=5 S.L.R. 174.]

(9)—Ss. 4, 14—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION—NECESSITY, SUFFICIENCY AND VALIDITY OF SANCTION, 18 P.R. 1898, Cr.

I.—Imperial Acts—continued.

Act X of 1873 (Oaths)—*continued.*

(10)—*S.* 5—*S.* 164, *Crim. Pro. Code*, 1882—*Evidence Act*, s. 80.—A confession recorded under s. 164, Crim. Pro. Code, purporting to have been taken on oath in violation of the express provisions of the Act is not a confession recorded in accordance with law and, therefore, the record is not admissible under s. 80, Evidence Act, to prove that confession. EMPRESS v. BANKO BIHARI, **10 C.P.L.R. Cr. 16.**

(11)—*S.* 5—*Penal Code, ss* 191 *and* 193—*Examination of a person for obtaining information for the purpose of taking proceedings—Contradictory statements made by such person as a witness at the trial—Crim. Pro. Code* (1898), *s.* 190 (*c*).—Although a Magistrate might examine a person for the sake of obtaining information upon which a case might be started against some person not before the Court, he cannot examine him on oath as such person is not a witness. There is no authority, that, being so examined, such person is bound, by any express provision of law, to state the truth. Consequently any charge for giving false evidence founded on such statement is bad and it, therefore, follows that a conviction based on the statement, as being contrary to another statement made at the regular trial without any proof or finding that the second statement was false cannot be maintained. HARI CHARAN SINGH v. QUEEN-EMPRESS, **27 C. 455=4 C. W.N. 249.** [*Diss.*, 8 Bom. L.R. 589; *Rel. on*, 12 Cr. L.J. 326=10 Ind. Cas. 622=7 N.L.R. 65.]

(12)—*S.* 5—*Examination of child without affirmation—Evidence Act*, s. 118.—Whether a child understands the nature of an oath or not, he should, when examined as a witness, be examined on oath or affirmation. QUEEN-EMPRESS v. SHEORATAN, **S.C 242, Oudh.** (16 M. 105, *R.*)

(13)—*Ss.* 5, 67—*Oath—Solemn affirmation—to whom to be administered—Omission.*—All witnesses whether they are men or only boys aged 6 or 7, if they are competent witnesses under s. 118 of the Evidence Act, *i.e.*, if they are able to understand what goes on in Court, must be affirmed under s. 5 of the above Act. The word "omission" in the above section includes any omission and is not limited to accidental or negligent omission. EMPRESS v. SAMBHIA MAHAR, **11 C.P.L.R.Cr. 16.** (16 B. 359, 14 B L.R. 294, *Appr.*; 10 A. 207, *Contra*; 16 M. 105, *R.*)

(14)—S. 5—*See* Nos. 7 and 8, *supra*.

(15)—*Ss.* 5, 6, 7 *and* 13—*Evidence Act*, s. 118—*Evidence of children taken without affirmation—Admissibility.*—Where a Sessions Judge, after being fully satisfied himself of the intellectual capacity of a child to give evidence, intentionally omitted to administer an affirmation, as it appeared to him that the child was of too tender years to render any attempt to bind his conscience expedient or practically operating but enjoined the child to tell the truth and admitted his evidence, *held*, (*Per Collins, C.J.*) that the action of the Sessions Judge in not administering an oath or affirmation was irregular and that the irregularity was not cured by s. 13 of the Oaths Act and that the evidence of the child was, therefore, inadmissible. *Held, per Parker, J.* (*contra*), that such intentional omission to administer an oath or to affirm the child, when the child was otherwise competent to give evidence, was cured by s. 13 of the Oaths Act and the evidence was admissible. QUEEN-EMPRESS v. VIRAPERUMAL, **16 M. 105=1 Weir 823.** [*R.*, 7 Cr. L.J. 89=10 O.C. 337, 41 C. 406=14 Cr. L.J. 485=20 Ind. Cas. 741=18 C.L.J. 582 =18 C.W.N. 147, 11 C.P.L.R. 16, Cr., 15 Cr. L.J. 161=22 Ind. Cas. 737.]

(16)—*Ss.* 5, 6, 13—*Evidence Act, s.* 118—*Competency to give evidence—Persons of tender years—Omission to take evidence on oath or affirmation.*—Whilst the limit of age as to the competency of witnesses has been removed, the general principle that they should be competent to give "rational answers" to questions has been affirmed, as shown by s. 118 of the Evidence Act. The necessity of oaths or solemn affirmations has been maintained and imperatively required, as shown by s. 6 of the Oaths Act. The omissions or irregularities in the administration of oaths or solemn affirmations are to be overlooked in certain cases contemplated by s. 13 of the Oaths Act. The evidence of a child of eight or nine years of age, who has not attained such maturity of mind as would enable him to realize the solemnity or obligation of an oath or affirmation, is inadmissible, if it has been deliberately and advisedly taken without any oath or affirmation, and s. 13 of the Oaths Act does not apply to it. An inability, from tender years, to comprehend either the spiritual or legal obligations of an oath or solemn affirmation is intellectual incompetency, and makes the child incompetent to be examined as a witness at all. QUEEN-EMPRESS v. MARU, **10 A. 207=A.W.N. 1888, 86.** (14 B L.R. 294, *Diss.*) [*Diss.*, 16 B. 359, 15 Cr. L.J. 161=22 Ind. Cas. 737, 31 P.R. 1889, Cr.; *R*, 11 A. 183=A.W.N. 1889, 65, 41 C. 406=18 C.W.N. 147=18 C.L.J. 582=14 Cr. L.J. 485=20 Ind. Cas. 741, 16 M. 105=1 Weir 826, 11 C.P.L.R. 16, 2 L.B.R. 322, 7 Cr. L.J. 89=10 O.C. 337, 20 P.R. 1902, Cr.]

(17)—*Ss.* 5, 6 *and* 13—*Evidence Act, s.* 118—*Competency to be a witness, of old men and young children.*—There is no direction or intimation in s. 118 to a Court, which has to deal with the question whether a person should or should not be examined, that it is to enter upon enquiries as to his religious belief or to open such a field of speculation as is involved in the *query* "What will be the consequence here or hereafter, if you will not tell the truth?" But a Court is to ascertain, in the best way it can, whether, from the amount of intellectual capacity and understanding of a young or old

I.—Imperial Acts—continued.

Act X of 1873 (Oaths)—*continued.*

person, that the person is able to give a rational and intelligent account of what he has seen, heard, or done on a particular occasion; and if the Court is satisfied that a child of twelve years or an old man or woman of a very advanced age can satisfy those requirements, the competency of the witness is established. (10 A. 207, *R.*) [*Appr.*, 16 B. 359; *R.*, 16 M. 105 = 1 Weir 826.] Having regard to the language of the Oaths Act, neither a Judge nor a Magistrate has any option, when once he has elected to take the statements of a person as evidence, but to administer either an oath or an affirmation to such a person as the case may require. QUEEN-EMPRESS v. LAL SAHAI, **11 A. 183 = A.W.N. 1889, 65.** [*R.*, 16 B. 359, 41 C. 406 = 18 C.L.J. 582 = 18 C.W.N. 147 = 14 Cr.L.J. 485 = 20 Ind. Cas. 741, 16 M. 105 = 1 Weir 823, 11 C.P.L.R. 16, 7 Cr.L.J. 89 = 10 O.C. 337.]

(18)—Ss. 5, 6 and 13—*See* EVIDENCE ACT, 1872, s. 118, 10 O.C. 337 = 7 Cr. L.J. 89.

(19)—*Ss.* 5, 13—*Evidence Act,* s. 118—*Child witness—Failure to administer oath—Evidence, whether inadmissible—Insanity of accused, plea of—Time.*—A child's evidence is not inadmissible merely because no oath was administered to it. Although s. 5 of Oaths Act is imperative, still s. 13 of the Act governs cases of this sort. (16 M. 105, 1 Weir 823, *F.*; 10 A. 207, *Diss*). Where an accused pleads insanity, the evidence relating to it must refer to the time when he committed the offence and not to the state of his mind long afterwards. GOLLA CHINNA VENKADU v. EMPEROR, **15 Cr. L. J. 161 = 22 Ind. Cas. 737.**

(20)—Ss. 5 and 13—*See* DEFAMATION, 30 M. 222 = 6 Cr. L.J. 130.

(21)—Ss. 5, 13—*See* SANCTION TO PROSECUTE—NOTICE OF SANCTION, 9 C.L J. 690 = 13 C.W.N. 942 = 10 Cr.L. J. 150 = 36 C. 808 = 2 Ind. Cas. 697.

(22)—*S.* 6—*Penal Code,* ss. 191, 193—*Offence of giving false evidence.*—The offence of giving false evidence may be committed, although the person giving evidence has been neither sworn nor affirmed. GOBIND CHANDRA LAL v. QUEEN-EMPRESS, **19 C. 355.**

(23)—S 6—*See* Nos. 7, 15, 16, 17 and 18, *supra.*

(24)—*Ss.* 6 *and* 7—*Exemption from taking oath—Muhammadan required to repeat kalma—Refusal—Penal Code,* s. 173—Witnesses, interpreters and jurors, who are Hindus or Mahomedans, are exempt from taking oath. As repeating of the Kalma, by a Muhammadan witness, is not in accordance with the form prescribed by the Chief Court under s. 7 of the Act, his refusal to do so cannot be punished under s. 173, I. P.C. BHAI KHAN v. EMPEROR, **20 P.R. 1902, Cr. = 47 P.L R. 1902.** (10 A. 207, *R.*)

(25)—S. 7—*See* Nos. 7, 24, *supra.*

(26)—*Ss.* 8 *to* 11—*Applicability to criminal proceedings.*—The term "party to any judicial proceedings" in s. 8 of the Oaths Act does not include the complainant in a criminal proceeding nor the accused, ss. 8—11 of the Oaths Act do not apply to criminal proceedings. A prisoner on his trial can consent to nothing. Where the pleaders for the prosecution and the defence in a case of assault agreed that, if the principal witness would give his evidence on an oath specially binding on him—to wit, on the *Gita*—they would, under ss. 8 to 11, Oaths Act, accept the evidence as conclusive proof of the matter stated, *held,* that the Magistrate was not bound to decide the case on such evidence. QUEEN-EMPRESS v. MURARJI GOKUL DAS, **13 B. 389.** [*Rel.*, 13 Cr. L J. 23 = 13 Ind. Cas. 215 = 5 S.L.R. 129; *R.*, 33 C. 386 = 10 C.W.N. 501, 3 Bur. L. T. 124 = 11 Cr. L. J. 738 = 8 Ind. Cas. 952 = 5 L.B.R. 241, 4 Cr L.J. 471 = 3 L.B.R. 208, 6 Cr. L. J. 434 = 12 C.W.N. 140.]

(27)—*Ss.* 8, 9, 10, 11—*Criminal proceedings—Applicability.*—The provisions of Ss. 8—11 of the Oaths Act, do not apply to criminal proceedings. IMPERATOR v. HAJI ALU, **5 S.L.R. 129 = 13 Ind. Cas. 215 = 13 Cr. L J. 23.** (13 B. 389, *F.*)

(28)—S. 9—*See* Nos. 26 and 27, *supra.*

(29)—*Ss.* 9, 10 *and* 11.—The provisions of Ss. 9 to 11 of the Oaths Act are inapplicable to criminal proceedings. They are appropriate to proceedings in which the matters litigated are civil rights which the parties are at liberty to forego and of which the Courts are competent to enforce a renunciation. HIGH COURT PROCEEDINGS, 1ST MARCH, 1881, NO. 398, **1 Weir 822.**

(30)—S. 10—*See* Nos. 26, 27 and 29, *supra.*

(31)—S. 11—*See* Nos. 26, 27 and 29, *supra.*

(32)—*S.* 13—*Oaths Act,* X *of* 1873—*Child-witness—Procedure.*—In the case of a child-witness, the Judge is bound first to ascertain by questioning the child whether it is by tender years prevented from understanding the questions put or from giving rational answers to those questions. Then, if the Judge elects to take the statements of the child as evidence, he should proceed to administer the affirmation; but if he deliberately refrains from so doing, on the ground that the child cannot understand the nature of a solemn affirmation, under s. 13 of the Oaths Act, the deposition of the child will be admissible. The ignorance of a child on such a matter as the nature of a solemn affirmation is not necessarily equivalent to an inability to understand ordinary questions and give rational answers. EMPEROR v. KUSHA YAMAJI SUTAR, **5 Bom. L.R. 551.** (16 B. 359, *F.*)

(33)—*Evidence given on simple affirmation.*—*Held,* by the majority (*Jackson J*, *dissenting*), that the evidence of a witness who was examined on simple affirmation under the direction

I.—Imperial Acts—continued.

Act X of 1873 (Oaths)—*continued.*

of the Judge is admissible as evidence. The word "omission" in s. 13 of the Oaths Act (X of 1873) includes any omission, and is not limited to accidental or negligent omissions. QUEEN v. SEWA BHOGTA, **23 W.R. Cr. 12 = 14 B.L.R. F.B., 294.**

(34)—*S.* 13—*Intentional omission to administer oath or affirmation to a witness.*—The omission referred to in s. 13 of Act X of 1873 is not limited to accidental or negligent omissions to administer an oath, but also to deliberate omissions. But having regard to the language of the Oaths Act, neither a Judge nor a Magistrate has any option when once he has elected to take the statement of a person as evidence, but to administer either the oath or the solemn affirmation to such persons as the case may require. Where in a charge of murder, the Judge allowed one of the witnesses, a girl of about ten years of age to be examined without any oath or affirmation being administered to her, as it was found that she did not understand the nature of either, *held* that the girl's evidence was admissible under s. 13, Oaths Act, if she was not by tender years prevented from understanding the questions put to her and from giving rational answers to those questions. QUEEN-EMPRESS v. SHAVA, **16 B. 359.** (14 B.L.R. 294 = 23 W.R. 1, *Appr.*; 10 A. 207, *Diss.*) [*F.*, 16 M. 105 = 1 Weir 826, 5 Bom. L R. 551, 7 Cr. L.J. 89 = 10 O. C. 337, *R.*, 41 C. 406 = 18 C.L.J. 582 = 18 C.W.N. 147 = 14 Cr. L.J. 485 = 20 Ind. Cas. 741, 11 C.P. L.R. 16, Cr., 1 Cr. L.J. 1131 = 2 L.B.R. 322.]

(35)—*S.* 13—*Evidence of child of nine years of age examined without oath.*—The Court in this case declined to act on the evidence of a child, 9 years old, who had been examined without oath, although she was a competent witness under s. 118 of the Evidence Act, I of 1872, inclining to the opinion that s. 13 of the Oaths Act, by which the evidence of a witness may be received in evidence, although no oath was administered, did not render the deposition of a child of nine years, whose deposition had been taken advisedly, and not by omission, without oath or solemn affirmation, admissible as evidence. QUEEN v. ANUNTO CHUCKERBUTTY, **22 W.R.Cr. 1 = 14 B.L.R. 295, Note.** [*R.*, 16 M. 105, 10 A. 207.]

(36)—*S.* 13—*Omission to administer oath to an infant witness.*—Where a Sessions Judge omitted deliberately to administer an oath to a prosecution witness on the ground that the witness was of too tender years to render any attempt to bind her conscience expedient, *held*, that she ought not to have been examined as a witness until she had made the necessary affirmation. But the irregularity was saved by s. 13 of Act X of 1873, as the section would include any omission. QUEEN-EMPRESS v. PERUMAL, **1 Weir 827, Foot-note.** [*R.*, 16 M. 105 = 1 Weir 823.]

I.—Imperial Acts—continued.

Act X of 1873 (Oaths)—*continued.*

(37)—*S.* 13—*Evidence of child taken on simple affirmation.*—The evidence of a child of immature age—who the Sessions Judge considered understood the questions which were put to her, and who was, therefore, a competent witness under s. 118 of the Evidence Act,—taken by the Sessions Judge on a simple affirmation, because she was not aware of the responsibility of an oath, was held to be admissible as evidence under s. 13 of the Oaths Act, X of 1873. QUEEN v. MUSSAMUT ITWARYA, **22 W.R.Cr. 14 = 14 B.L.R. 54.** [*R.*, 16 M. 105, 16 B. 359.]

(38)—*S.* 13—*Evidence of child witness—Oath—Affirmation—Practice.*—When a Judge or Magistrate has elected to take the statements of a person as evidence, he has no option but to administer either the oath or affirmation to such a person as the case may require. The proper course in such case is to record the questions and answers put to the witness to ascertain whether he is competent to testify under s. 118 and, if the Court comes to the conclusion that he is competent, an oath or affirmation should be administered. A child is generally competent, if it is old enough to understand that it ought to speak the truth. PWA NYUN v. KING-EMPEROR, **2 L.B.R. 322.** (10 A. 207, *R.*; 14 B.L.R. 294, 16 B. 359, *Diss.*)

(39)—*S.* 13—*Omission to swear jury.*—As to whether if the jury in a Sessions trial are not sworn, the omission is one which could be covered by s. 13 of the Oaths Act, X of 1873. QUEEN v. RAMSODOY CHUCKERBUTTY, **20 W.R. Cr. 19.**

(40)—S. 13—Omission to record deposition as on solemn oaths or affirmation—Effect—*See* CRIM. PRO. CODE, 1898, s. 195, 18 C.W.N. 1323.

(41)—S. 13—Applicability—*See* CRIM. PRO. CODE, 1898, s. 422, 14 Cr. L.J. 485 = 20 Ind. Cas. 741 = 18 C.L.J. 582 = 18 C.W.N. 147.

(42)—S. 13—*See* Nos. 7 and 15 to 21, *supra.*

(43)—*S.* 14—*Crim Pro. Code, s.* 282—*Order for trial of a witness for giving false evidence in a Sessions trial*—De novo *trial of the Sessions case owing to the incompetency of one of the jurors, effect of—Penal Code, s.* 193—During the trial of a dacoity case, a person was examined as a witness, and the Sessions Judge, considering his evidence to be false, committed him for trial before his own Court under s. 193, Penal Code. Subsequently the dacoity case was tried *de novo* owing to the incapacity of a juror who was found to be deaf and partly blind. *Held*, that there was nothing in the retrial of the dacoity case to absolve the witness from the obligation under which he lay to speak the truth when examined as a witness in the first trial, although such trial became null and void owing to the incapacity of a juror. QUEEN-EMPRESS v. VIRASAWMI, **19 M. 375 = 2 Weir 680 = 6 M.L.J. 195 = 1 Weir 154 = 1 Weir 831.** [*F.*, 6 C.W.N. 717].

I.—Imperial Acts—continued.

Act X of 1873 (Oaths)—*concluded.*

(44)—S. 14—*See* CRIM. PRO. CODE, 1898, s. 282, 19 M. 375=2 Weir 680=6 M.L.J. 195.

(45)—S. 14—*See* EVIDENCE ACT, 1872, s. 132, 12 B. 440=Rat. Un. Cr. C. 360= Cr. Rg. 2 of 1888.

(46)—S. 14—*See* Nos. 7 8 and 9, *supra.*

Act IV of 1874 (Foreign Recruiting).

[REP. IN PART, ACT XII OF 1876.]

See BOM. ACT XI OF 1846, s. 3, 25 B. 637.

Act XI of 1874 (Criminal Procedure Amending Act X of 1872).

[REP., ACT X OF 1882.]

(1)—*S. 6—Withdrawal of case by District Magistrate—Crim Pro. Code (Act X of 1872), ss.* 47, 491 *and Act* XI *of* 1874, *s.* 6 —Under s.47 of the Crim. Pro.Code (1872) as amended by Act XI of 1874, a District Magistrate may withdraw a case falling under s. 491 of the same Code (= s. 107 of the Code of 1898). *In the matter of* DINENDRO NATH SHANIAL, 8 C. 851. [*R.*, 31 C. 350.]

(2)—S. 23—*See* APPEAL—CASES WHERE APPEAL DOES NOT LIE, 11 B.H.C.A.C.J. 117.

(3)—*S.* 26—*Power of appellate Court rejecting appeal to enhance sentence.*—When the appellate Court rejects an appeal, under s. 278, Crim. Pro. Code, 1872, it has, by s. 26, Act XI of 1874, no power of enhancing the sentence. AKOOL SIRCAR v. PARTAMA, **24 W.R. Cr. 29.** [*R.*, 10 C.L.R. 57, 23 B. 221.]

(4)—S. 26—*See* APPEAL—GENERAL, 24 W. R. Cr. 29.

(5)—*S.* 28—*Power of High Court to order retrial under Crim. Pro. Code* (1872), *s.* 280.—The High Court has full power, as a Court of Revision, to order a re-trial when necessary; it can, as a Court of Appeal, also exercise the like power under Act XI of 1874, s. 28, in cases tried with assessors. *In re* LUCKHY NARAIN NAGORY, **24 W.R. Cr. 24.** (5 W.R.F.B. 80, *F.*)

(6)—*S.* 28—*Power of Sessions Judge.*—An appellate Court has the power to order a case to be retried, if it thinks fit to do so. A Sessions Judge is competent to order the re-trial of a case, which is before him on appeal, *In the matter of* SHER MAHOMED, **2 C.L.R. 511.**

Act XIV of 1874 (Scheduled Districts).

[REP. IN PART, ACT XIX OF 1879; ACT XIV OF 1881, S. 14; ACT XXV OF 1881; ACT VIII OF 1883; ACT VII OF 1885; ACT XX OF 1890, S. 8 (1); ACT VI OF 1902; REG. I OF 1900. REP. IN PART AND AMENDED, ACT XII OF 1891. AMENDED, ACT II OF 1893].

(1)—*Jurisdiction of High Court to transfer cases from Agent to Governor in Agency Tracts*

I.—Imperial Acts—continued.

Act XIV of 1874 (Schedules Districts)—*contd.*

of Ganjam and Vizagapatam—Scheduled Districts Act (XIV *of* 1874)—*Crim.Pro. Code,* 1882 —*Letters Patent, s.* 28—*Madras Act* XXIV *of* 1839, *s.* 3.—On the coming into force of Crim. Pro. Code of 1861, the state of affairs in the Agency Tracts of Ganjam and Vizagapatam, which are scheduled districts, was that a special jurisdiction and a special procedure were created by Madras Act XXIV of 1839. But after the passing of the Crim. Pro. Code, the Government of Madras, by notifications dated 29th January and 17th February, 1862, issued under s. 445, Crim. Pro. Code, 1861, extended the Code to the Agency Tracts. By an order dated 6th January, 1863, the Government of Madras withdrew the rules,there to fore regulating the administration of criminal justice in the Agencies, constituted the Agent a Sessions Judge under the Code and substituted, for the rules then in force, all the rules and conditions under which Sessions Judges exercise the powers conferred on them by the Code. Where the High Court set aside the conviction of an accused person by the Agent to the Governor in Vizagapatam on the charge of culpable homicide not amounting to murder, and directed the re-trial of the accused before the Sessions Court of Vizagapatam, *held,* that the High Court had jurisidiction to make such an order both under the Crim. Pro. Code and the Letters Patent, s. 28. QUEEN-EMPRESS v. BUDARI JANNI, **14 M. 21=2 Weir 7.**

(2)—*See* BOM. ACT XI OF 1846, s. 3, 15 B. 505.

(3)—*See* APPEAL—ACTS, 15 B. 505.

(4)—*Ss.* 1 *to* 7 *and* 11—*Laws Local Extent Act* (XV *of* 1874), *ss.* 3 *and* 4—*Applicability of Penal and Crim. Pro. Codes to the Laccadive Islands.*—The Penal Code and the Crim. Pro. Code, not having been, by any notification under s. 3 of the Scheduled Districts Act, expressly declared to be inapplicable to the Laccadive Islands are in force in such Islands. Any act done in these Islands contrary to the provisions of the Penal Code can, therefore, under the provisions of s. 2 of that Code and of s. 5 of the Crim. Pro. Code, be inquired into and tried only in accordance with the provisions of the latter Code. QUEEN-EMPRESS v. CHERIA KOYA, **13 M. 353=2 Weir 1.** [*D.*, 14 M. 121=2 Weir 7.]

(5)—S. 2—*See* No. 4, *supra.*

(6)—*S.* 3—*Act comes into force in Scheduled Districts only on notification by the Government.*—The Scheduled Districts Act comes into force in each of the scheduled districts only on the issue of the notification under s. 3 of the Act; and under s. 4, it is only on the issue of such a notification that the enactments notified shall be deemed to be or not to be in force, and the notification thereof is binding on all Courts of law. The effect of the notification issued by the Madras Government under s. 3, dated 19th

I.—Imperial Acts—continued.

Act XIV of 1874 (Scheduled Districts)—*ctd.*

February, 1889, is to place all the Madras scheduled districts in a position to be operated on by further notifications under s. 3 of the Act, declaring that such and such Acts are in force or are not in force in such districts. To those places regarding which no such further notification or notifications are issued, laws applicable to British India generally, and not specially excluded from operation by the mere fact of a district being a scheduled district, are applicable. QUEEN-EMPRESS v. CHERIA KOYA, **13 M. 353=2 Weir 1.** [*D.*, 14 M. 121=2 Weir 7.]

(6-*a*)—S. 3—*See* No. 4, *supra.*

(7)—*Ss.* 3, 5, 6—*Crim. Pro. Code, s.* 526—*Power of High Court to transfer cases—Aden Act* II *of* 1864.—Per *Jardine, J.*—After the High Court had annulled the proceedings in the Court of the Resident at Aden as being without jurisdiction, the case could not be treated as pending in his Court, as there was no Court of Session in existence to which the Magistrate could send the case, and the case remained in the Magistrate's Court. Whether the case be pending in the Court of the Resident or of a Sessions Judge or of a Magistrate, the High Court had the power to transfer the case, if the circumstances of the case would justify such transfer. Per *Birdwood, J.*—The Government of Bombay in exercise of the powers conferred by ss. 3 and 5 of Act XIV of 1884, and with the previous sanction of the Government of India, declared that Act to be in force in the island of Perim, and extended to the island the whole of Act II of 1864 with the exceptions of ss 2, 17 and 23 At the same time, the Resident at Aden should "exercise the same jurisdiction and powers in respect of the trial of persons by the Court of Sessions for the island of Perim as are vested in him at Aden by the said Act." *Held* that this extension of Act II of 1864 to Perim must be practically inoperative. The Act contains no provision for its extension and it makes only provision for litigation in certain Courts constituted for a certain local area. It follows that the Code of Criminal Procedure is still in force at Perim unaffected by Act II of 1864, just as it was before the notification. *Held* also that, by appointing the Resident at Aden to be "Sessions Judge for Perim, the Government made an appointment under clause (*a*) of s. 6 of Act XIV of 1874 (Scheduled Districts). That portion of the notification which regulates, presumably under clause (*c*) of the section, the exercise by the Resident of his power with reference to Act II of 1864, is ineffectual. The appointment made under clause (*a*) of the section must be held to be effectual with reference only to the provisions of the Code. So, after the annulling of the proceeding in the Court of the Resident (see previous case), and after the establishment of the Court of the Resident as the Court of Session for Perim by the Government Notification of 1885, the commitment to that Court originally made by the Magistrate of Perim may be held to have been accepted. The High Court may legally transfer the case as the case is now properly before a Criminal Court subordinate, under the Crim. Pro. Code, to the authority of the High Court, to any other Criminal Court of equal or superior jurisdiction, or to itself. [*R.*, Rat. Un. Cr. C. 825, 96 P.L.R. 1901.] The transfer of a case can only be directed from a Court having jurisdiction to receive and try it. QUEEN-EMPRESS v. MANGAL TEKCHAND, **10 B. 274.**

(8)—S. 4—*See* No. 4, *supra.*

(9)—S. 5—*See* Nos. 4, 7, *supra.*

(10)—*S.* 6—*Assam Frontier Tracts Regulation,* 1880, *s.* 2—*Withdrawal of the operation of Crim. Pro. Code—Power of High Court.*—The effect of the rules laid down under s. 6 of Act XIV of 1874, and under the notification of 6th May, 1884, issued by the Chief Commissioner of Assam under s. 2 of Assam Frontier Tracts Regulation directing that the Crim. Pro. Code should cease to be in force in the North Cachar Hills from the date of the notification, is to supersede in that place all previously existing criminal revisional authority by that of the Chief Commissioner. SOONDERJEE NANJEE v. MAYLON, **26 C. 874=3 C.W.N. 564.**

(11)—S. 6—*See* Nos. 4, 7, *supra.*

(12)—S. 7—*See* No. 4, *supra.*

(13)—S. 11—*See* No. 4, *supra.*

Act XV of 1874 (Laws Local Extent).

[REP. IN PART, ACT VIII OF 1875; ACT XII OF 1876; ACT XVIII OF 1877; ACT VI OF 1878; ACT XI OF 1878; ACT XIX OF 1879; ACT XIV OF 1881, S. 14; ACT XXVI OF 1881; ACT X OF 1882; ACT VIII OF 1883; ACT VII OF 1885; ACT VIII OF 1887; ACT IX OF 1887; ACT VII OF 1889; ACT XIII OF 1889; ACT VIII OF 1890; ACT XX OF 1890; S. 8 (1); ACT IV OF 1891; ACT IX OF 1891; ACT XI OF 1901, S. 3; ACT I OF 1903; REP. IN PART AND AMENDED ACT XIV OF 1881, S. 15; ACT XII OF 1891; DECLARED (EXCEPT SS. 4 TO 7) TO BE IN FORCE IN THE ARAKHAN HILL DISTRICT, REG. IX OF 1874, S. 3, AS AMENDED BY ACT XIII OF 1898, S. 16.]

(1)—Ss. 3 and 4—Applicability of Penal and Crim. Pro. Codes to the Laccadive Islands—*See* ACT XIV OF 1874, ss. 1 to 7 and 11, 13 M. 353=2 Weir 1.

(2)—S. 4—*See* No. 1, *supra*,

Act XVI of 1874 (Repealing Act).

[REP., ACT XII OF 1876; REPEALED AS TO ACT XXIII OF 1867 (IN BRITISH BALUCHISTAN), REG. IV OF 1901, 16].

(1)—*Jurisdiction of Magistrate—Effect of the repeal of Madras Act* III *of* 1865 *(Offences against special and local laws) by Act* XVI *of* 1874.—Although Act III of 1865 is repealed by

I.—Imperial Acts—continued.

Act XVI of 1874 (Repealing Act)—*concluded.*

Act XVI of 1874, a Magistrate has jurisdiction over offences created by special and local laws given to him by Madras Act III of 1865. REG. v. KANDAKORA, **1 M. 223.**

(2)—*Jurisdiction of Magistrates—Madras Act, III of 1865—Act XVI of 1874—Crim. Pro. Code* (1872), *s.* 8.—The jurisdiction conferred on Magistrates by the Madras Act III of 1865 is controlled by the provisions of s. 8 of the General Act of the Government of India, *viz.*, the Crim. Pro. Code of 1882. That Act while it declared that offences punishable under any law other than the Penal Code containing no distinct provision as to the Court or officer before which or before whom they are to be tried may be inquired into and tried by the Criminal Court appointed by such Act, also provided that Magistrate of third class should be incompetent to try offences punishable with imprisonment extending to one year, and a second-class Magistrate incompetent to try offences punishable with imprisonment extending to three years. Act XVI of 1874 repealing Act III of 1865 has left unaffected the jurisdiction of Magistrates under that Act so far as it remained in existence at the time of the passing of the Act, second and third class Magistrates whose jurisdiction was already restricted by Act X of 1872 cannot have their jurisdiction extended by reason of Act XVI of 1874 as it was before the passing of Act X of 1872. EMPRESS v. ACHI, **2 M. 161 = 1 Weir 887.**

(3)—S. 1—*See* MAD. ACT III OF 1865, 1 Weir 886, F B.

Act IX of 1875 (Indian Majority).

[AMENDED ACT VIII OF 1890, S. 52, DECLARED IN FORCE IN THE ARAKHAN HILL DISTRICT, REG. IX OF 1874, S. 3, AS AMENDED BY ACT XIII OF 1898, S. 16, IN UPPER BURMA (EXCEPT THE SHAN STATES) ACT XIII OF 1898, S. 4.]

(1)—Ss. 2 and 3 — *See* COMPOUNDING OFFENCE, 17 P.R. 1891, Cr.

(2)—S. 3 — Minority when ceases — *See* PENAL CODE, s. 363, 37 M. 567.

(3)—S. 3—*See* No. 1, *supra.*

(4)—Ss. 3 and 4—*See* ACT VI OF 1864, s. 5, L B R. 1872—1892, 355.

(5)—S. 4—*See* No. 4, *supra.*

Act X of 1875 (Advocate General's Powers).

[REP. ACT V OF 1898. SHORT TITLE GIVEN ACT XIV OF 1897.]

See CRIM. PRO. CODE (1898), Ch. XXIII, ss. 266—336.

(1)—*S.* 14—*High Court, Jurisdiction of.*—Applications under s. 14 of the Act should be disposed of by the High Court in its ordinary original criminal jurisdiction. CHAROO CHUNDER MULLICK v. EMPRESS, **9 C. 397.**

I.—Imperial Acts—continued.

Act X of 1875 (Advocate General's Powers)—*continued.*

(2)—Ss. 32 to 37—*See* JURY, 1 B. 232.

(3)—*S.* 33—*Selection of jury.*—The nine persons, who are to be chosen by lot to form the jury, ought to be selected from the entire number of persons summoned to act as jurors, and the selection, which is to be by lot, ought to be made from one box. REG. v. VITHALDAS PRANJIVAN DAS, **1 B. 462.**

(4)—Ss. 33 to 37—*See* No. 2, *supra.*

(5)—S. 76—*See* COMMISSION, 6 B. 285.

(6) — S. 101 —*See* LETTERS PATENT—LETTERS PATENT, 1865—BOMBAY, cl. 25, 2 B. 61.

(7)—*Ss.* 115, 147—*Power of High Court to issue* certiorari.—*Order for delivery of property.*—The term "case" mentioned in s. 147 of Act X of 1875 refers to some question in the nature of a criminal proceeding, and could not refer to a matter of *quasi*-civil character, of which a reference under s. 115 to the Police Magistrate partakes. But the jurisdiction of the High Court to issue writs of *certiorari* can only be taken away by express enactment, and the High Court has still jurisdiction to issue the writ in cases to which s. 147 does not apply. [*R.*, 19 C. 52.] The word "property" in s. 115 of Act X of 1875 includes not only property that has been seized by the police or has been found on the person of the prisoner, but also property produced before the Police Magistrate by a witness. Proceedings before a Magistrate under s. 115 of Act X of 1875 were not intended to take the form of a regular trial, wherein the rights of the parties were to be finally determined, but rather of a preliminary proceeding wherein the Magistrate, upon the statements of the respective cases of the rival claimants, should make an order for delivery of property to the one, who he considered had made out a *prima facie* case. If the correctness of the Magistrate's decision be impugned, that may be done in a civil suit. It was not, therefore, incumbent upon the Magistrate to hear the applicant's witnesses, nor was it competent to the High Court, to review the decision of the Magistrate, even when the Court was of opinion that the Magistrate had come to a wrong conclusion as to the disposal of the property upon the statements before him of the cases of the respective claimants. REG. v. RAMDAS SAMALDAS, **12 B H.C. 217.**

(8)—*S.* 147—*High Court's power to order refund of fine on quashing a conviction.*—Held that the Court had no power, under s. 147 of the Act, to order the repayment of a fine on quashing a conviction. QUEEN v. HADJEE JEEBUN BUX, **1 C. 354.** (15 B.L.R. Ap. 14, *R.*)

(9)—*S.* 147—*Transfer of case without notice to Crown—Practice—Penal Code, ss 292 and 294.*—Where an application is made for the transfer of a case under s. 147, Act X of 1875, in which the prisoner has been convicted and

I.—Imperial Acts—continued.

Act X of 1875 (Advocate General's Powers) —*continued.*

is undergoing imprisonment, the Court has the discretion to order, if a sufficient *prima facie* cause be shown, that the case be removed, without notice to the Crown. *Semble*:—A charge in respect of offences under ss. 292 and 294, Penal Code, must be specific in regard to the representations and words alleged to have been exhibited and uttered and to have been obscene. It is desirable, also, that the Magistrate should state, in his judgment, the representations and words he adjudges to be obscene. In the absence of any such specific decision, the High Court, when the case has been transferred under s. 147, Act X of 1875, may either try the case *de novo*, or dismiss it on the ground that the Magistrate has come to no finding on which the conviction can be sustained. QUEEN v. UPENDRONATH DOSS, **1 C. 356.**

(10)—*S.* 147—*High Court—Power to issue* mandamus—*To transfer case.*—The High Court had no power, under Act X of 1875, to issue a *mandamus* to a Presidency Magistrate to commit to the High Court for trial, an accused person acquitted by such Magistrate, when the Magistrate did not decline jurisdiction but, having exercised jurisdiction, committed an error of law: nor could the High Court, under s. 147 of the above Act, order a transfer of a case of the above description to itself. EMPRESS OF INDIA v. GASPER, **2 C. 278.** [*R.*, 9 C. 317.]

(11)—*S.* 147—*Commitment, application to quash.*—The words "or other proceeding," in s. 147 of Act X of 1875, do not include a commitment; and no application to have a commitment quashed can be entertained under the section. CHAROO CHUNDER MULLICK v. EMPRESS, **9 C. 397.** (2 C. 278, *R.*)

(12)—*S.* 147—*Transfer of case to High Court —Costs.*—In a case transferred to the High Court under s. 147, the Court has no power to give costs. The case may be transferred after final determination by the Magistrate. Notes of the proceedings before them should be taken in all cases by the Judicial Officers of all Criminal Courts subject to the Act. *In the matter of* J. LOUIS, **15 B.L.R. Ap. 14.**

(13)—*S.* 147—*High Court's Criminal Procedure Act* (X *of* 1875), *s.* 147—*Powers of a Division Bench of the High Court over matters arising within its original territorial jurisdiction.* —A Division Bench of the High Court, engaged for the time being upon appellate work, is not disqualified from exercising jurisdiction in matters within the cognisance of the High Court arising within its original territorial jurisdiction, whether they be of civil or criminal nature. The powers to be exercised under s. 147 which replaces the old writ of *certiorari*, are very similar, if not identical, with the revisional power conferred by the Code of Criminal Procedure; and the exercise of them is not confined to any particular branch of the High Court. *In the matter of* JOTHARAM DAVAY, **2 M. 30 = 1 Weir 525.**

I.—Imperial Acts—continued.

Act X of 1873 (Advocate General's Powers) —*concluded.*

(14)—S. 147—*See* TRANSFER OF CRIMINAL CASES—MISCELLANEOUS CASES, 2 C. 290.

(15)—S. 147—*See* NO. 7, *supra.*

Act XII of 1875 (Indian Ports).

[REP., ACT X OF 1889.]

(1)—*S.* 22—*Master, non-liability of, for servant's criminal acts.*—Where the servants of a contractor committed an offence under s. 22 of the Indian Ports Act, by throwing ballast from a ship into a river within the limits of the port, *held* that the contractor was not liable, in the absence of proof of abetment, for his servants' acts. CHUNDI CHURN MOOKERJEE v. EMPRESS, **9 C. 849 = 12 C.L.R. 508.**

Act V of 1876 (Reformatory Schools).

[REP., ACT VIII OF 1897.]

See ACT VIII OF 1897.

See JUVENILE OFFENDER.

(1)—*Accused directed to be placed in Reformatory Schools—Validity of order—Penal Code, s.* 379.—After convicting the accused of theft under s. 379, Penal Code, a Magistrate ordered him to be placed in a Reformatory School for five years, but the Chief Court, in revision, set aside the order as not authorised by law, for Act V of 1876 was not in force in the Punjab, under s. 1 of the Act. EMPRESS v. MUHAMDU, **6 P.R. 1882, Cr.**

(2)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 399—*Repeal by Reformatory Schools Act* V *of* 1876.—S. 399 of the Crim. Pro. Code was repealed in Bombay in 1889 by the introduction of Act X of 1876 into that Presidency. QUEEN-EMPRESS v. TUKARAM KESHAV SONAR, **Rat. Un. Cr. C. 864 = Cr. Rg. 28 of 1896.**

(3)—*See* ACT VIII OF 1897, Rat. Un. Cr. C. 936 = Cr. Rg. 45 of 1897.

(4)—*See* CRIM. PRO CODE, 1898, s. 399 (1, 2) Rat. Un. Cr. C. 929 = Cr. Rg. 38 of 1897.

(5)—S. 1—*See* CRIM. PRO. CODE (1898), s. 399 (1, 2), Rat. Un. Cr. C. 180.

(6)—*Ss.* 2 *and* 7—*Crim. Pro. Code, s.* 399—*Power of Second Class Magistrate to send a youthful offender to reformatory.*—The introduction of the Reformatory Schools Act, 1876, repeals the operation of s. 399, Crim. Pro. Code, "so far as may be practicable." Under ss. 7 and 8 of the former Act, only a first-class Magistrate can send a male youthful offender to a reformatory school. Therefore, an order by a second-class Magistrate sentencing a male juvenile offender to rigorous imprisonment to be sent to reformatory instead of being imprisoned in the criminal jail was held to be not valid inasmuch as only the first-class Magistrate should pass an order for sending such person to the reformatory schools and as only reformatory

I.—Imperial Acts—continued.

Act V of 1876 (Reformatory Schools)—*contd.*

schools have been established and not reformatories. QUEEN-EMPRESS v. MADASAMI, **12 M. 94 = 1 Weir 875 = 2 Weir 11 = 2 Weir 454.** [*R.*, 25 C. 333.]

(7)—Ss. 2 and 7—Order of detention in Reformatory Schools—*See* ACT VIII OF 1897, ss. 1, 2, 3 and 8, 25 C. 333 = 2 C.W.N. 11.

(8)—Ss. 2 and 7—Repeal by Act V of 1876 of s. 318, Crim. Pro. Code, 1872—*See* CRIM. PRO. CODE, 1898, s. 399, 25 C. 333 = 2 C.W.N. 11.

(9)—*Ss.* 3 *and* 7—*Minor—Furnishing security—Youthful offender.*—A minor called upon to furnish security is not a youthful offender within the meaning of ss. 3 and 7, because failure to furnish the security ordered is not an offence under Chapter VIII of the Crim. Pro. Code. QUEEN EMPRESS v. NGA SHAN, **L.B. R. 1893-1900, 129.** (4 M H.C. Ap. 46, 2 C. 384, L.B.R. 1872-1892, 364, *F.*)

(10)—*S.* 7—*Procedure as to order.*—In the case of a juvenile offender whom it is desirable to confine in a Reformatory, a Magistrate must first sentence him according to law and on sentencing him to imprisonment whether rigorous or simple, he may then make a further order such as is contemplated in s. 7 of the Reformatory Schools Act. QUEEN-EMPRESS v. PURSHOTAM, QUEEN-EMPRESS v. LALL, **Rat. Un. Cr. Cas. 518 = Cr., Rg. 41 of 1890.**

(11)—*S.* 7—*Sentence—Procedure.*—Where it is deemed necessary to have a convicted person sent to the Reformatory, the proper procedure is, not to order him, on conviction, to be detained there for some period, but to impose a substantive sentence and order that, in lieu thereof, he be detained in a Reformatory. QUEEN EMPRESS v. BABU RAM, **A.W N. 1896, 27.**

(12)—*S.* 7—*Power of High Court to interfere—Boy—Murder—Sentence.*—The High Court has no power to interfere with an order under s. 7 of Act V of 1876, directing detention in a Reformatory in lieu of some substantive sentence. The proper punishment to be imposed on a boy convicted of having murdered another boy for the purpose of taking his jewels, is transportation for life and not detention in a Reformatory. QUEEN-EMPRESS v. ANRUDH SINGH, **A.W.N. 1896, 43.**

(12-*a*)—S. 7—*See* Nos. 6, 7, 8, 9, *supra.*

(13)—*Ss.* 7, 8—*Jurisdiction.*—Where a youthful offender was sentenced to two years' rigorous imprisonment and in appeal the Sessions Judge, acting under s. 7 of the Reformatory Schools Act, ordered the offender's detention in a Reformatory School for two years and 8 months, *held* that s. 7 applies only to the Court by which the offender is sentenced and that the procedure which should have been adopted was that laid down in s. 8. QUEEN-EMPRESS v. LALLUBHAI, **Rat. Un. Cr. C. 536 = Cr. Rg. 6 of 1891.**

I.—Imperial Acts—continued.

Act V of 1876 (Reformatory Schools)—*contd.*

(14)—*Ss.* 7, 8 *and* 10—*Confinement in Reformatory School.*—A direction to confine a prisoner in a Reformatory School could only be made under s. 7 of Act V of 1876, and that only after a sentence of transportation or imprisonment. In cases under ss. 7 and 8, the age of the prisoner should be ascertained in order that the limit of age provided by s. 10 be not exceeded. It is not every juvenile offender in respect of whom the order under ss. 7 and 8 should be made, and the inmates of the Reformatory ought not to be obliged to associate with a person convicted of a serious offence under the Penal Code. QUEEN-EMPRESS v. GOPALA, **Rat. Un. Cr. C. 726 = Cr. Rg. 54 of 1894.**

(15)—*S.* 8—*Determination of age.*—It is necessary that a Magistrate passing an order under s. 8 of the Reformatory Schools Act should determine the age of the convict, and it is not enough to state that he is under 16 years of age. QUEEN-EMPRESS v. MANAJI, QUEEN-EMPRESS v. LAL, **Rat. Un. Cr. C. 494.**

(16)—*S.* 8—*Changing sentence passed on juvenile offender—Procedure.*—If a District Magistrate is of opinion that the sentence upon any juvenile offender should be changed into one of detention in a Reformatory, he should communicate with the officer in charge of the jail and request him to send the juvenile offender to be dealt with under s. 8. If he refuses to comply with such request, the District Magistrate should bring the matter to the notice of the Inspector-General of Prisons or before Government. NARYA *valad* KHANDU, **Cr. Rg. 55 of 1889.**

(17)—*S.* 8—*Proceedings under the section—Judicial proceedings—Crim. Pro Code.* ss. 4, 435.—Under s. 8 of the Reformatory Schools Act, evidence should be taken by the Magistrate as to the age of the offender. This would seem therefore a judicial proceeding. The proceeding, moreover, involves the alteration of the sentence of a competent Court. The alteration can only be made after he is satisfied on two points which are submitted for his decision, and in arriving at a decision, he must exercise a judicial discretion. Therefore, such proceeding is a judicial proceeding within the meaning of ss. 4, 435, Crim. Pro. Code. The High Court is, therefore, competent to revise the proceedings. QUEEN EMPRESS v. MANAJI, **14 B. 381.** [*F.*, 25 C. 333; Rat. Un. Cr., 726, 13 P.R. 1891, Cr.]

(18)—*S.* 8—*Judicial proceeding—Crim. Pro. Code*, 1882, ss. 4, 435—*High Court—Revision—Letters Patent, s.* 28 "*Case.*"—Though it is doubtful whether the order of a Magistrate under s. 8 of the Reformatory Schools Act is a "case" within the meaning of s. 28 of the Amended Letters Patent, it is clear that it is a "judicial proceeding" within the meaning of s. 435 of the Crim. Pro. Code and the High Court has jurisdiction to revise such an order. QUEEN-EMPRESS v. MANAJI, **Rat. Un. Cr. C. 494.**

I.—Imperial Acts—continued.

Act V of 1876 (Reformatory Schools)—*concld.*

(19)—S. 8—*See* SENTENCE — JUVENILE OFFENDERS, SENTENCES ON, A.W.N. 1889, 131.

(20)—S. 8—*See* Nos. 13 and 14, *supra.*

(21)—S. 10—*See* No. 14, *supra.*

(22)—*S.* 22—*Act* VIII *of* 1897, *s.* 8—*Rules framed under the old Act, whether in force, after the passing of the new Act.*—Rules framed by the Governor-General in Council under s. 22 of Act V of 1876 must be deemed to have been passed under the existing Act (Act VIII of 1897). A Magistrate acting under the new Act must order the detention of a juvenile offender in a Reformatory School until he attains the age of 18. QUEEN EMPRESS v. RAMALINGAM, **21 M. 430=1 Weir 880.** [*R.*, 21 A. 391=A.W.N. 1899, 138.]

(23)—*S.* 22—*Rule by Government as to sending youthful offenders to Reformatory Schools.*—Under a Rule published under s. 22 of the Act by the Governor-General in Council "no boy shall be sent to a Reformatory School, if under 10 years of age, for a less period than 7 years, if over 10 years of age, for a less period than 5 years, unless he shall sooner attain the age of 18 years." Where a boy over 14, but whose exact age was not ascertained, was sent to the Reformatory School to be detained therein for a period of two years, *held*, that such an order was illegal, and that the proper procedure would be for the Magistrate to ascertain the precise age of the boy at the date of his order, and to make an order that he be detained for such period as would be equivalent to the period intervening between his then age and eighteen. QUEEN-EMPRESS v. NARAIN, **15 A. 208=A. W.N. 1893, 107.** [*R.*, Rat. Un. Cr. C. 708).]

(24)—*Ss.* 22 *and* 78—*Rule made by Governor-General in Council under the Act—Minium period of detention in a Reformatory School—Youthful offender.*—A rule made by the Governor-General in Council on the 14th March, 1889, directs that the minimum period for which boys shall be sent to a Reformatory School shall be, in the case of boys under 10 years of age, 7 years and in the case of boys over 10 years of age, 5 years, unless the boys shall sooner attain the age of 18 years. It is not every boy that is convicted of an offence that can be sent to the Reformatory Schools, but only such boys as are found to be proper persons to be inmates of such a school. As a rule, no boy should be sent to a Reformatory on a first conviction, unless there is reasonable cause for supposing that he is likely again to lapse into crime. *In re* ABDUL GAFFAR, **1 Weir 878.**

(25)—S. 78—*See* No. 24, *supra.*

Act XVI of 1876 (Stage Carriages Act, 1861, Amendment).

[SHORT TITLE GIVEN, ACT XIV OF 1897, S. 2, REP. ACT I OF 1891.]

See ACT XVI OF 1861, ss. 9, 10, A.W.N. 1897, 27.

I.—Imperial Acts—continued.

Act XIX of 1876 (Dramatic Performances).

[DECLARED IN FORCE IN UPPER BURMA, EXCEPT THE SHAN STATES (WITH THE EXCEPTION OF S. 12), ACT XIII OF 1898, S. 4.]

S. 10—*See* PWES, U. B. R. 1897—1901, Vol. I, 368.

Act I of 1877 (Specific Relief).

[REP. IN PART, ACT XII OF 1891, REP. IN PART (LOCALLY)—ACT II OF 1882; ACT IV OF 1882, S. 21: APPLICATION RESTRICTED AND DECLARED IN FORCE IN UPPER BURMA EXCEPT THE (SHAN STATES) ACT XIII OF 1898; S. 4, S. 9 DECLARED IN FORCE IN BRITISH BALOOCHISTAN, REG. I OF 1890 S. 3; REPEALED IN IT (LOCALLY), ACT IX OF 1899, SS. 3, 21,]

(1)—Ss. 7 and 45—*See* ACT IV OF 1877, s. 170, 8 C. 166=10 C.L.R. 190.

(2)—*S.* 9—"*Dispossessed otherwise than in due course of law,*" *meaning of—Crim. Pro. Code* (*Act* V *of* 1898), *s.* 145, *effect of an order under—If dispossession within the meaning of s.* 9, *Act* I *of* 1877.—The plaintiff sued for recovery of possession of a mica mine under s. 9 of the Specific Relief Act, on the allegation that he was dispossessed by the defendant therefrom on the 13th February, 1907, in consequence of the final order of the Magistrate of Giridih, passed under s. 145 of the Crim. Pro. Code, on the 11th February, 1907, after the property had been in attachment under the proviso to cl. (4) of the section. *Held*, that, under these circumstances, the plaintiff could not be said to have been dispossessed otherwise than in due course of law and the plaintiff is, therefore, not entitled to maintain an action under s. 9 of the Specific Relief Act. Although s. 145 of the Crim. Pro. Code does not expressly authorize the Court to put the successful party into possession, the effect of which is to entitle him to take it. Per *Mookerjee*:—A matter may be considered to have happened in due course of law, if it is the result of operation of the law, invoked by the ordinary method of any judicial proceeding. The view that the effect of an order under s. 145 of the Crim. Pro. Code. is to entitle the successful party to take possession is consistent with the observations of the Judicial Committee. LEO MOORE v. MANORANJAN GUHA, **7 C.L.J. 547.** (26 B. 353, 20 W.R. 12, *D.*; 29 B. 213, *Cons. & Rel.*; 29 C. 187, 9 W.R. 602, *R.*)

(3)—*S.* 9—*Suit for possession under s.* 15, *Act* XIV *of* 1859 (*Limitation*)—*S.* 318, *Crim. Pro. Code* (1862).—The object of s. 15, Act XIV of 1859, is not to maintain, but to restore a party to possession; the object of s. 318, Crim. Pro. Code (1861) being to maintain a party in possession temporarily at least, whether that possession is a wrongful one or not, while s. 15, Act XIV of 1859, is to restore to possession parties dispossessed otherwise than by due

I.—Imperial Acts—continued.

Act I of 1877 (Specific Relief)—*continued.*

course of law ; and an award under s. 318, Crim. Pro. Code, is, therefore, no bar to a possessory action under s. 15, Act XIV of 1859. CHYTUN CHUNDER ROY v. BROJO KANT ROY, **20 W.R. 12.** [*R.*, 26 B. 353=3 Bom. L.R. 919.]

(4)—S. 9—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 5 A.L.J. 297=A.W.N. (1908) 142=30 A. 331 ; 13 C. W. N. 530=36 C. 370=9 Cr. L. J. 399=1 Ind. Cas. 817.

(5)—S. 9—*See* PENAL CODE, ss. 441, 447, 3 L.B.R. 278=5 Cr.L.J. 415.

(6)—S. 9—*See* PENAL CODE, s. 488, 138 P.L.R. 1904.

(7)—*S.* 42—*Suit by the plaintiff for a declaration that the defendant is not his lawful wife—Crim. Pro. Code* (*Act* V *of* 1898), *s.* 488.—A suit by a person against whom an order for maintenance in favour of defendant has been made by a Magistrate under s. 488 of the Crim. Pro. Code, is maintainable in a Civil Court for a declaration that the defendant is not his wife. MUSSAMMAT BAKHAN v. ALA BAKSH, **100 P.L.R. 1903.** (21 P.R. 1894, Cr., 18 A. 29, 20 W.R. 58, Cr., 6 B.L.R 243, 41 P.R. 1876, *R.*)

(8)—*S.* 42—*Suit to declare property found by Criminal Court to be plaintiff's to belong to plaintiff exclusively.*—After criminal proceedings had been successfully taken against plaintiff's tenants for mischief done in respect to a nullah, coming under either s. 430, or 432, Crim. Pro. Code, 1872, plaintiff sued for a declaration that the nullah was his own exclusive property, and therefore not such a stream as could come under either of those sections. *Held* that the Court had discretion under s. 15, Civ. Pro. Code, 1859, to allow such a suit to be brought. KARTICK PARAMANICK v. KISHEN MOHUN MITTER, **22 W.R. 329.**

(9)—*S.* 42—*Dispute among rival* haut-*holders—Right of party aggrieved by order of Magistrate to declaratory decree on certain allegations.*—Where a plaintiff alleges that he had been holding a *haut* on his own land for many years, that the defendant's setting up a rival *haut* on the same days led to disturbances, which ended in an order by the Magistrate, prohibiting him from holding the *haut* on those days, and that he has suffered loss in consequence, he would, if the facts are true, be entitled to a decree declaring his right, as against the defendant, to hold the *haut* on the days. GOPI MOHUN MULLICK v. TARAMONI CHOWDHRANI, **5 C. 7=4 C.L.R. 309 F.B.=2 Shome L.R. 217. F.B.** (6 B.L.R. 74, 10 B.L.R. 434=18 W.R. Cr. 47, 2 C. 293, 6 N.W.P. 104, *Referred to.*)

(10)—*S.* 42—*Suit for declaratory decree against order removing alleged obstruction—Crim. Pro. Code* (1882), *s.* 133—*Effect of order under section.*—In a suit for a declaration that certain land on which the plaintiff had erected an *otta* was his property and not that of the Government, where it appeared that the Magistrate had made an order, under s. 133, Crim. Pro. Code (1882), for the removal of the *otta* as an obstruction to the public way, *held* that the plaintiff (subject to the discretion of the Court) was entitled to a declaration as against the Government of his right to the land, without having to wait until the Government had taken possession of the land. *Held, further*, with regard to the contention that the jurisdiction of the Court was taken away by s. 133, Crim. Pro. Code, which provides that "no order duly made by a Magistrate under this section shall be called in question in any civil Court," that the Magistrate's order under this section was not a conclusive determination of the question of title. SECRETARY OF STATE FOR INDIA IN COUNCIL v. JETHABHAI KALIDAS, **17 B. 293.** (15 C. 460, *R.*) [*R.*, 22 B. 230.]

(11)—*S.* 42—*Magistrate removing bridge in proceedings under Ch.* XX, *Crim Pro. Code* (1861)—*Declaratory suit to set aside the order of removal.*—Where a Magistrate in proceedings under Ch. XX. Crim. Pro. Code, 1861, removed a bridge, held that no suit would lie for a bare declaration of right without any consequential relief against persons no further interested in the matter than that they had put the Magistrate in motion. MADHUB CHUNDER GOOHO v. KUMLA KANT CHUCKERBUTTY, **15 W.R. 293=6 B.L R. 643,** (13 W. R. 13, *R.*)

(12)—*S.* 42—*Whether order under s.* 137, *Crim. Pro. Code* (1882), *a bar to suit under s.* 42, *Specific Relief.*—A suit by an owner under s. 42, Specific Relief Act, is not barred by an order of a Criminal Court under s. 137, Crim. Pro. Code (1882). CHUNILAL v. RAM KISHEN SAHU, **15 C. 460.** (14 C. 60, *Overruled.*) [*F.*, 17 B 293, *R.*, 15 C. 564.]

(13)—*S.* 42—*Right to declaratory decree if affected by order under s.* 321, *Crim. Pro. Code* (1861), *not being carried out.*—A plaintiff is entitled to a declaratory decree as to the erroneousness of a Magistrate's order under s. 321, Crim. Pro. Code, 1861, though the order has not been put into force. MEGHRAJ SINGH v. RASHDHAREE SINGH, **17 W.R. 281.**

(14)—*S.* 42—*Right to declaratory decree—Crim. Pro. Code* (1872), *Ch.* 40.—Where a person, whose right to land is contested, obtained an order under Ch. 40, Crim. Pro. Code, 1872, from a Magistrate, declaring him entitled to retain possession, *held* he could sue for a declaration of his right to the land. NARASIMMACHARYA v. RAGHUPATHYACHARYA, **6 M. 176.**

(14-*a*)—Claim of private right by plaintiff over land—Claim of public right by defendants—Cause of action—Parties—Persons claiming public right are alone necessary parties—Civ. Pro. Code (Act XIV of 1882), s. 30—Irregularity in not recording formal order—*See* CRIM. PRO. CODE, 1898, s. 133, 6 Ind. Cas. 46.

I.—Imperial Acts—continued.

Act I of 1877 (Specific Relief)—*concluded.*

(14-b)—S. 45—*See* BEN. ACT II OF 1888, s. 31, 22 C. 717.

(15)—S. 45—*See* BOM. ACT XLVIII OF 1860, ss. 11, 12, 3 Bom. L.R. 653, 4 Bom. L.R. 1=26 B. 396.

(16)—S. 45—*See* BOM. ACT VI OF 1863, s. 6, 4 Bom. L.R. 768.

(17)—S. 45—*See* BOM. ACT IV OF 1902, ss. 28, 129, 7 Bom. L.R. 161.

(18)—S. 45—*See* No. 1, *supra.*

Act III of 1877 (Registration).

[REP. BY ACT XVI OF 1908.]

See ACT XX OF 1866.

See ACT VIII OF 1871.

(1)—*False statement made to a Sub-Registrar in identifying a person.*—Where a person was charged with having made a false statement before a Sub-Registrar, in having identified an unknown person who had borrowed money and executed a mortgage bond, as his neighbour to whom the mortgagee had agreed to advance the money on the mortgage, it was sought to prove a statement made by the mortgagee, who was not alive, at the time of the institution of proceedings, to a third person about a conversation which the mortgagee had with the accused. This was admitted in evidence, although objected to by the pleader for the accused. Further a memorandum of an alleged approval of the mortgage bond by the accused, a pleader, was tendered and received in evidence, without proof of its being in the hand-writing of the accused, but upon a mere comparison of the handwriting. *Held*, that both the statements and the memorandum were inadmissible and irrelevant. *Held* also, upon the oral evidence in the case, that the accused was guilty of an offence of having made the false statement alleged against him. NOBIN KRISHNA MOOKERJEE v. RASSICK LALL LAHA, **10 C. 1047.** [*R.*, 38 C. 309=12 C. L.J. 625=12 Cr.L.J. 22=8 Ind. Cas. 1103=15 C.W.N. 357; 11 M L.T. 424=14 Ind. Cas. 741.]

(2)—*See* CRIM. PRO. CODE, 1898, s. 29, 2 Weir 25.

(3)—Ss. 6 to 14, 69 and 84—*See* PENAL CODE, ss. 21 and 161, 32 C. 664=2 Cr. L.J. 512.

(4)—Ss. 7 to 14—*See* No. 3, *supra.*

(5)—*S. 34—Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute—Registration Act* (III *of* 1877), *s.* 34—*Sub-Registrar, whether a "Court".*—A Sub-Registrar, acting under s. 34 of Act III of 1877, is not a "Court" within the meaning of s. 195, Crim. Pro. Code. QUEEN-EMPRESS v. SUBBA, **11 M. 3.** [*F.*, 4 M.L.J. 189, *R.*, 12 M. 201.]

I.—Imperial Acts—continued.

Act III of 1877 (Registration)—*continued.*

(6)—*Ss.* 34, 35, 41—*Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute—Presentation of forged document for registration — Sanction of Sub-Registrar whether necessary* —A Sub-Registrar acting under ss. 34 and 35 of the Registration Act cannot determine whether a document was executed or not, and if execution is denied, he is obliged to refuse registration. The document cannot be said to be given in evidence before him by a party to the proceeding; whereas in the case of a will, s. 41 makes it incumbent upon the Sub-Registrar to satisfy himself that the document has been really executed by the testator, and the document has to be given in evidence before him in a proceeding in which the Sub-Registrar has to determine whether it shall or shall not be registered. In the former case the sanction of the Sub-Registrar is not necessary for a prosecution of a party to the transaction on a charge of forgery. QUEEN-EMPRESS v. SOBHANDRI, **12 M. 201.** (10 M. 154, 11 M. 3, *Expl.*) [*F.*, 4 M.L.J. 189.]

(7)—*Ss.* 34 (*b*) *and* 82 (*a*)—*Inquiry as to the identity of the executant of a document—Power of Sub-Registrar to take deposition on affirmation—False statement.*—A Sub-Registrar, after commencing the proceeding of registration, should enter into evidence as to the identity of the persons appearing before him and alleging that they have executed the document. He is authorised, in such proceedings, to take depositions on affirmation or otherwise from the witnesses, and if any of the statements made therein is false, the deponents are guilty of an offence under s. 82 of the Act. *In re* POLURI BASAVARAZU, **1 Weir 884.**

(7-*a*)—S. 35—*See* No. 6, *supra.*

(8)—*S.* 41—*Crim. Pro. Code*, *s.* 195—*Sanction to prosecute—Sub-Registrar acting under s.* 41 *of the Registration Act, whether a "Court"* —The term "Court" in s. 195, Crim. Pro. Code, is not restricted to a "Court of Justice," as defined in the Indian Penal Code, s. 6 of the Code of Criminal Procedure clearly contemplates the existence of Courts under other laws, and the Legislature has seen fit to use the general expression "Court" to the more restricted description "Court of Justice." A Sub-Registrar is, therefore, when acting under s. 41 of Act III of 1877, a "Court" within the meaning of s. 195, Crim. Pro. Code. *In re*, VENKATACHELA PILLAI, **10 M. 154=2 Weir 120=11 Ind. Jur. 140.** [*Appl.*, 15 M. 138, F.B.; *D.*, 12 M. 201, 4 M.L.J. 189.]

(9)—S. 41—*See* No. 6, *supra.*

(10)—S. 69—*See* No. 3, *supra.*

(11)—*Ss.* 72 *and* 73—*False statement before Registrar—Irregularities in proceedings—Effect with respect to jurisdiction of Criminal Courts.* —In a criminal trial for making a false statement before a Registrar, the fact that the proceedings before the Registrar were under

I.—Imperial Acts—continued.

Act III of 1877 (Registration)—*continued.*

s. 72 instead of under s. 73, of the Registration Act, would not matter, where no objection had been taken by the accused to the form of the proceedings before the Registrar. Nor would the want of verification of a petition of appeal, as provided in s. 73 of the Registration Act, interfere with the jurisdiction of the Criminal Court. QUEEN-EMPRESS v. BATESAR MANDAL, **10 C. 604.** (15 B.L.R. 157, 28 L.J.M.C. 86=8 Cox. C.C. 121, L.R 1 C.C.R. 320, 5 B. and S. 756; 4 Q.B.D. 614=1 14 Cox. C.C. 285, 1 C.C.R. 110=11 Cox. Cc. 10, *F.*)

(12)—*Ss.* 72, 73, 74 *and* 75—*Registrar whether a "Court" within the meaning of s.* 195, *Crim. Pro. Code* (1882).—A Registrar acting under ss. 72 to 75 is a Court for the purposes of s. 195, Crim. Pro. Code. ATCHAYYA v. GANGAYYA, **15 M. 138=2 M.L.J. 64, F.B.** [*Diss*, 15 A. 141 =13 A.W.N. 59; *R.*, 13 Cr. L.J. 508=15 Ind. Cas. 652=23 M.L.J. 50=(1912) M.W.N. 473, 10 Cr. L.J. 395=3 Ind. Cas. 886=3 S.L.R. 66; *D.*, 2 M.L.J. 286, 4 M.L.J. 189.]

(13)—Ss. 72 to 75—*See* CRIM. PRO. CODE, 1898, s. 195, 15 A. 141=A.W N. 1883, 59.

(14)—S. 73—*See* Nos. 11, 12, 13, *supra.*

(15)—S. 74—*See* Nos. 12, 13, *supra.*

(16)—*Ss.* 74 *and* 82—*District Registrar's power to delegate to Sub-Registrar, functions prescribed by s.* 74.—The functions prescribed by s. 74 are entirely in the Registrar himself. He cannot delegate them to the Sub-Registrar. Therefore, a Sub-Registrar, holding an enquiry under s. 74, acting under the orders of the Registrar cannot be said to be acting within the meaning of s. 82 of the Act. Where a witness makes a false statement before the Sub-Registrar in such a case, he cannot be prosecuted under s. 82 of the Act. MATA DAYAL v. QUEEN-EMPRESS, **24 C. 755.**

(17)—S. 75—*See* Nos. 12, 13, *supra.*

(18)—*Ss.* 80 *and* 82—*Enquiry by a clerk of Registry office.*—Where the clerk of a Registrar's office made inquiry, with a view to ascertain whether the person who brought a receipt to take back a document, which could not be returned in the first instance, and for which a receipt was accordingly given, was the person in whose possession the receipt ought to be, such enquiry is an enquiry within the meaning of Registration Act of 1871, s. 80. *In re* BUNWARY PODDAR, **23 W.R. Cr. 55.**

(19)—*S.* 81—*Previous acquittal, plea of, in a criminal trial upon the same facts—Crim. Pro. Code,* s. 403—*False certificate by Registrar—False declaration—Indian Penal Code,* s. 197—*General Clauses Act,* s. 26—*Criminal Revision —Crim. Pro Code,* s. 439.—The accused was a Sub-Registrar. He registered a document on the back of which he certified that it was presented for registration by the executant who was personally known to him and who admitted its execution. This was a false certificate, as the accused admittedly had not actually seen and had no conversation with him. He was tried and convicted on a charge under s. 81, Act III of 1877, which alleged that he registered and endorsed the document in a manner which he knew to be incorrect, knowing at the time that he would thereby be likely to cause injury to certain persons. He was acquitted on this charge on the ground that it was not proved that he knew that it was likely that he would cause injury to any one by his act. He was subsequently tried and convicted on a charge under s. 197, I.P.C. He pleaded his previous acquittal as a bar to his conviction under s. 197, I.P.C., but his plea was disallowed. *Held*, that the accused's plea of previous acquittal was a valid plea and that effect should have been given to it. S. 26 of the General Clauses Act was only intended to enact that, provided that he is not twice punished for the act or omission, the offender may be prosecuted and punished at one and the same trial under either or any of the enactments and the accused's case was not taken out of sub-s. (1) of s. 403, Crim. Pro. Code, by that section. It was failure to prove that the accused endorsed a false certificate with the knowledge that he was likely to cause injury to certain persons which brought about his acquittal, and not doubt as to whether the facts alleged against him constituted an offence under s. 81, Act III of 1877. *Held*, therefore, that the last part of sub-s. (1) of s. 403 of Crim. Pro. Code, was not applicable. RAGHUBAR DAYAL v. KING-EMPEROR, **6 O.C. 153.**

(20)—*S.* 82—*Sanction to prosecute.*—No sanction is necessary before instituting a charge under s. 82 of the Act. GOPINATH v. KULDIP SINGH, **11 C. 586, F.B.** [*R.*, 11 M. 500.]

(21)—*S.* 82—*Crim. Pro. Code* (1882), s. 195—*Sanction to prosecute for forgery under s.* 82, *Registration Act, whether necessary.*—The sanction of a Sub-Registrar is not necessary for instituting a charge of forgery against a person presenting a forged document for registration, inasmuch as the forged document is not given in evidence in any proceeding before a Court. The provisions of s. 195, Crim. Pro. Code, do not apply to such a case. QUEEN-EMPRESS v. VYTHILINGA, **11 M. 500.**

(22)—*S.* 82—*Prosecution under the Registration Act—Frame of charge by Magistrate on his own motion.*—Except as directed by s. 82 of the Registration Act, a Magistrate cannot, on his own motion, frame a charge against the accused from the evidence of the registering officer before him, in respect of statements made to such officer in the course of the registration proceedings. QUEEN-EMPRESS v. BATESAR MANDAL, **10 C. 604.**

(23)—*S.* 82—*False statement—Delegation of powers of District Registrar—Penal Code,* s. 193.—S. 82 of the Registration Act only applies to a false statement intentionally made before any

I.—Imperial Acts—continued.

Act III of 1877 (Registration)—*continued.*

officer acting in execution of the Registration Act. A Deputy Magistrate directed by a District Registrar to enquire into certain matters regarding the registration of a document is not such an officer. RADHIKA MOHAN KURI v. LAL MOHAN SHA, 20 C. 719.

(24)—S. 82—*Prosecution for denial of execution—Stay of proceedings pending civil suit to declare the deed to be forged.*—Where the accused denied the execution of a mortgage-bond, but the special Sub-Registrar held that he had executed it and directed a prosecution under s. 82 of the Act, upon which the petitioner sued for a declaration that the bond was a forgery, *held*, that the Criminal proceeding should be stayed, inasmuch as the proceedings in the Civil suit were much more likely to result in a proper conclusion than the summary proceeding taken before the Registration Officers. GOBERDHONE PRAMANICK v. ISWAR CHUNDER PRAMANICK **5 C.W.N. 44.** [*R.*, 31 C. 858, 13 Cr.L.J. 175 =13 Ind. Cas. 927, 115 P.L.R. 1912, 21 P.W. R. 1912, Cr.]

(25)—S. 82—*Prosecution under—Time for ordering prosecution—Denial of execution of a document—Refusal to register—Appeal from the refusal—Limitation.*—On the petitioner denying the execution of a document in favour of A, before the Sub-Registrar, that officer refused to register the document. Thereupon A lodged a complaint against the petitioner for cheating under s.417, I.P.C., which was dismissed under s. 203, Crim. Pro. Code, on the 26th March, 1906. On the 27th April, 1906, A appealed to the special Sub-Registrar who rejected the appeal for not having been preferred within the prescribed period of 30 days from the Sub-Registrar's refusal to register, but at the same time submitted a report to the District Registrar which ultimately led to an enquiry with the result that a proceeding was drawn up against the petitioner under s. 82 of the Registration Act. *Held*, that under the circumstances the petitioner should not be prosecuted under s. 82 of the Registration Act. That the presentation of an appeal to the special Registrar after the time limited therefor, against the refusal of the Sub-Registrar to register a document on denial of execution, does not give any *locus standi* for the institution of a proceeding for inquiry as to the execution of the document. SAKANBARI DEBI v. ADAITYA GANGULI, **12 C.W.N. 47.**

(26)—S. 82—*Falsely personating a party before the registering officer, dishonest intention not essential for the offence of—Silence not an omission constituting abetment.*—S. 82 of the Act having been enacted with a view to punish acts, which are not offences under the Penal Code, a fraudulent or dishonest intent is not essential for the offence of falsely personating a party under the section before the registering officer. In the present case, there was nothing to create the presumption of common dishonest intent between the parties to the deed, sought to be registered, nor was there anything on the record, from which instigation or conspiracy was inferable; *held*, that, under such circumstances, the parties, other than the personators, who silently, stood by and saw the personation committed, could not be held guilty of abetment of any offence committed by the personators. KING-EMPEROR v. TUN AUNG GYAW, **3 L.B. R 222=4 Cr L.J. 483.** (11 W.R. 24, 5 Bom. L.R. 138, *R.*)

(27)—S. 82 (c) — *False personation.* — To complete the offence of false personation, under s. 82 (c) of the Registration Act, fraudulent intent is not necessary. Hence, where a person at the instance of another goes to the Registrar and demands the return of a document which had been presented for registration, representing that he is that other person, he commits the offence of false personation within the meaning of s. 82. EMPEROR v. KALYA NAVA PATIL **5 Bom L.R. 138** [*R.*, 4 Cr. L. J. 483=3 L B.R. 222.]

(28)—S. 82 (c)—*Sub-Registrar trying case against his clerk in capacity of Magistrate.*—A Sub-Registrar, also a Magistrate is not competent to investigate a case against one of his subordinates in his Registry Office, and afterwards himself try and convict him. *In re* BHARUT CHUNDER SEIN, **14 W.R.Cr. 74=8 B. L.R. 423, Note.**

(29)—S. 82 (c)—*Trial by Magistrate of charge instituted by him as Sub-Registrar.*—Where a Magistrate tried prisoners charged with having committed offences under ss. 93 and 94, Registration Act, 1866, the proceedings are not illegal, and without jurisdiction or otherwise bad, merely because the prosecution was (with the sanction of the Registrar to whom he is subordinate) instituted against the accused by the same Magistrate in his capacity of Sub-Registrar, but where it can be done, it would be better if the case were tried by some other person. *In the matter of the petition of the* GOVERNMENT OF BENGAL. QUEEN v. HIRA LAL DAL, **8 B.L R. 422=17 W.R. Cr. 39.** (13 W.R. Cr. 66, *R.*) [*R.*, 25 W.R. 57, Cr.]

(30)—S. 82 (c)—*Magistrate, jurisdiction of, to try offence committed before himself in judicial proceeding.*—A Magistrate in whose presence the offence of intentionally giving false evidence in a judicial proceeding is committed may himself try and commit the persons so offending. QUEEN v. RAMLOCHUN SINGH, **18 W.R. Cr. 15.** [*Doubted*, 12 B.L.R O.Cr. 35.] *In the matter of* RAMDYAL SINGH, **5 B.L.R App. 89.**

(31)—S 82 (c)—*Abetment of false personation.*—Where three persons put up a fourth to personate one, whose authority was required to complete a certain conveyance of some immoveable property, they were held to be guilty under s. 94, Act XX of 1866. QUEEN v. SOLEEMOODDEEN, **7 W.R.Cr. 63.**

(32)—S. 82 (c)—*Abetment, punishment for.*—Under Act XX of 1866, s. 94, the Legislature

I.—Imperial Acts—continued.

Act III of 1877 (Registration)—*continued.*

intended that the Court should have power in certain cases (as for instance when he is the chief offender, the person really pulling the strings, and for whose benefit the offence is, in fact, committed) to punish the abetter more severely than the person who actually commits the substantive offence. QUEEN v. GOPAL PROSAUD SEIN, **8 W.R.Cr. 16.**

(33)—S. 82—*See* CRIM. PRO. CODE, 1898, s. 487, A.W.N. 1896, 181.

(34) *S.* 82—*See* PENAL CODE, ss. 109, 417, 457, 468, 471 and 511, 30 C. 22=7 C.W.N. 639.

(35)—S. 82—*See* SANCTION TO PROSECUTE —CONDITIONS REQUISITE FOR GRANT OF SANCTION—NECESSITY, SUFFICIENCY AND VALIDITY OF SANCTION, 11 C. 566, F.B., 11 O.C. 358=9 Cr.L.J. 54.

(36) S. 82—*See* SANCTION TO PROSECUTE —NOTICE OF SANCTION, 12 C.W.N. 822=8 C.L.J. 73=8 Cr. L.J. 51.

(37)—*S.* 82 (*a*)—" *Acting in execution of the Act,*" *what amounts to.*—A District Registrar is not "acting in execution of the Act" in questioning the parties who have signed a document and presented it for registration, as to the circumstances under which they signed it. A false statement made in such inquiry is not an offence punishable under s. 82. QUEEN-EMPRESS v. BABAJI RAGHUNATH, **1 Bom. L.R. 686.** [*D.*, 14 Cr. L. J. 102=18 Ind. Cas. 662=12 M.L.J. 376=1912 M.W.N. 1107.]

(38)—S. 82 (*a*)—*See* PENAL CODE, ss. 471 and 474, 5 C.L J. 233=5 Cr. L.J. 199.

(38-*a*)—S. 82—*See* Nos. 7, 16 and 18, *supra.*

(39)—*Ss.* 82 *and* 83 — *Crim. Pro. Code* (1882), *s.* 29 — *Jurisdiction of Second-Class Magistrate over offences under Registration Act.* —Under s. 83 of the Registration Act, an offence falling under s. 82 of the Act is cognisable by a second-class Magistrate, and such jurisdiction is not affected by the provisions of s. 29, Crim. Pro. Code. QUEEN-EMPRESS v. KRISHNA, **7 M. 347=2 Weir 24=1 Weir 885.** [*F.*, 2 Weir 25.]

(40)—Ss. 82, 83—*See* ACT XX OF 1866, ss. 91, 95, 5 B.H.C. Cr. 7.

(41)—*S* 83—*Competency of Registrar to institute prosecution under offence and under Act.*—A Registrar under Act XX of 1866 is competent under s. 95, to institute a prosecution for any offence under that Act. QUEEN v. RAMDHARRY SINGH, **10 W.R. Cr. 5.**

(42)—*S.* 83—*Charge under Registration Act whether Magistrate bound to commit to sessions —Registrar transferring complaint to Magistrate and then as Magistrate transferring to police.*—Under Crim. Pro. Code, a Magistrate has only jurisdiction, to entertain a criminal charge, either when a complaint is made before him by a person properly qualified to complain and prosecute, or when he himself of his own knowledge and discretion starts the proceedings in cases in which he has such power given him. Where, therefore, a Registrar under Act XX of 1866, transferred a complaint made before him to the Magistrate's Court, and afterwards himself sitting as Magistrate, ordered the matter to be made over to the Police, it was held that this did not amount to the institution of a criminal charge under Crim. Pro. Code. In the case of a prosecution under Act XX of 1866, a Magistrate has full power to entertain and finally adjudicate on the charge, and is not bound to commit to the Sessions; the words in s. 95 of that Act, "all prosecutions under this Act shall be instituted before a person exercising the powers of a Magistrate," being interpreted to mean that the whole of a criminal trial from complaint to adjudication shall be carried out before and by the same person. *In re* ASHANOOLLAH, **10 W.R. Cr. 21=6 B.L.R. 693, Note**

I.—Imperial Acts—continued.

Act III of 1877 (Registration)—*concluded.*

(43)—*S.* 83—*Jurisdiction of Sessions Judge to try offences under Registration Act.*—The Sessions Judge can try a case of abetting false personation of a witness before a Registrar of Assurances, under s. 95, Registration Act, 1866. The word "instituted" in that section should be construed to mean "commenced." QUEEN v. SHEOGOLAM DAS, **15 W.R. Cr. 58=6 B. L. R. F.B. 692.**

(44)—*S.* 83—*Power of Sub-Registrar to investigate—Crim. Pro. Code* (1861), *s.* 66—*Sanction to prosecute.*—A Sub-Registrar under Act XX of 1866, has no power to investigate regarding the committal of an offence committed before him for registration of any document, but should cause the complainant to proceed, under s. 66, Crim. Pro. Code, before the Magistrate, or before an officer authorized to receive such complaint. QUEEN v. HARIDAS KUNDU, **4 B.L.R. App. 69=13 W.R. Cr. 21.**

(45)—S. 83—*See* Nos. 39 and 40, *supra.*

(46)—*S.* 84—*Sub-Registrar's office if a Court —Jurisdiction of Magistrate—Crim. Pro. Code* (1872), ss. 435 *and* 436—*Penal Code, s.* 228—*Evidence Act, s.* 3—A Sub-Registrar is a public officer; his proceedings are judicial proceedings within the meaning of s. 228, Penal Code; and his Court is a Court within the meaning of that word in the Evidence Act. Where, in a case under s. 228, the Sub-Registrar, before whom the offence was committed, did not proceed under s. 435 or 436, Crim. Pro. Code (1872), it was held that a Magistrate had no jurisdiction. *In re* SARDHAREE LALL, **22 W.R. Cr. 10=13 B.L.R. App. 40.**

(47)—S. 84—*See* No. 3, *supra.*

Act IV of 1877 (Presidency Magistrate's Court-fees).

[SHORT TITLE GIVEN, ACT XIV OF 1897. REP. (EXCEPT s. 57), ACT X OF 1882.]

I.—Imperial Acts—continued.

Act IV of 1877 (Presidency Magistrate's Court-fees)—*continued.*

(1)—*S.* 39—*Municipal corporation not a public servant—Preliminary sanction of Government not necessary.*—A municipal corporation not being a public servant within the meaning of s. 39 of Act IV of 1877 may be prosecuted under the Penal Code without the preliminary sanction of the Government required by that section. *In re* MUNICIPAL CORPORATION OF THE TOWN OF CALCUTTA, **1 J.G. 70.**

(2)—*S.* 39 —*Municipal corporation not a public servant.*—A Corporation, like the Calcutta Municipality, is not a public servant, so as to require the previous sanction of the Government for the purpose of its being prosecuted under the Penal Code. EMPRESS v. MUNICIPAL CORPORATION OF THE TOWN OF CALCUTTA, **3 C. 758=2 C.L.R. 520.**

(3)—*S.* 41—*Appeal.*—Held that there was no appeal from the order of a Judge of the High Court directing a prosecution under s. 41 of the Presidency Magistrates Act. *In the matter of* JANOKEY NATH ROY, **2 C. 466.**

(4)—*S.* 87—*Discharge of accused by Presidency Magistrate, effect of—Malicious prosecution.*—The discharge of an accused person by a Presidency Magistrate under s. 87 of the Act is such a termination of the prosecution as entitles the accused to maintain an action for malicious prosecution. VENU v. COORYA NARAYAN, **6 B. 376=6 Ind. Jur. 535=Chitty's S.C.C.R. 106.** [*R.*, 19 B. 717.]

(5)—*S.* 87, *expl.* 2—*Examination of witnesses upon revival of prosecution.*—Upon the revival of a prosecution in which the accused has been discharged, all the witnesses, on whose evidence the prosecutor intends to rely, as justifying the committal of the accused, must be examined before the Magistrate ; and, if any of them were examined at the time of the original prosecution, they must be examined *de novo.* A revival of a prosecution is not a continuation of the original prosecution, from which the accused has been discharged. EMPRESS v. CHUNDER NATH DUTT, **5 C. 121=4 C.L.R. 305**

(6)—*S.* 124—*Dismissal of complaint for default after partial hearing by Presidency Magistrate—Institution of fresh proceedings.*—An order of dismissal under s. 124 of the Presidency Magistrates' Act (IV of 1877) does not operate as an acquittal and is no bar to the revival of fresh proceedings. EMPRESS v. THOMPSON, **6 C 523=8 C.L.R. 106=4 Shome L.R. 85.** [*R.*, 9 C. 397, Rat. Un. Cr. C. 422=13 B. 384.]

(7)—*S.* 129—*Prosecution by Advocate or Attorney before Presidency Magistrate.*—With the exception of certain officers, such as the Advocate-General, Standing Counsel, Government Solicitor, &c., no counsel for attorney can claim the right of conduct of a prosecution before the Presidency Magistrate without his permission. EMPRESS v. BUTOKRISTO DASS, **6 C. 59=6 C.L.R. 374.**

(8)—S. 129—*See* LEGAL PRACTITIONERS—ADVOCATE, 6 C. 59=6 C.L.R. 374.

(9)—S. 129—*See* LEGAL PRACTITIONERS—ATTORNEY, 6 C. 59=6 C.L.R 374.

(10)—*S.* 167—*Plea of guilty—Appeal.*—The proviso to s. 161 of Act IV of 1877 provides that, when an accused person has been convicted on his own plea, no appeal shall lie, except as to the extent or legality of the sentence, although he is sentenced for a term exceeding six months or to fine exceeding Rs. 200. The object of this proviso, construed in its plain and obvious sense, is to limit the right of appeal, when the accused has pleaded guilty, to such matter as may be a special ground of complaint with respect to the sentence as distinguished from the conviction itself, whether on the ground that the extent of the sentence is beyond what the circumstances of the case required, or that the sentence is illegal as not authorized by law. EMPRESS v. JAFAR M. TALAB, **5 B. 85=5 Ind. Jur. 428.**

(11)—*S.* 167—*Sentences by Presidency Magistrate when appealable.*—S. 167 which gives jurisdiction to the High Court to entertain an appeal from the sentence of a Presidency Magistrate refers in terms to a sentence of imprisonment exceeding six months or fine exceeding Rs 200. It does not refer either to a sentence which awards imprisonment and fine or to any alternative imprisonments in default of payment of fine. The words of the section are confined in their meaning to substantive sentences and cannot be extended to include an award of imprisonment in default of payment of fine, the operation of which is contingent only on the fine not being paid. *In the matter of* JOTHARAM DAVAY, **2 M. 30=1 Weir 525.** [*F.*, 16 C. 799 ; *R.*, 33 C. 1036=4 C.L.J. 408.]

(12)—*S.* 168—*Discharge by Presidency Magistrate—Setting aside.*—The only course to be taken in seeking to set aside an order of discharge by a Presidency Magistrate having been laid down in s. 168 of the Presidency Magistrates' Act, which confines the right of appeal to Government, a complainant, who is a private individual, cannot indirectly obtain what is denied to him by the law, by invoking the aid of the High Court's extraordinary powers under s. 15 of the Charter. *In the matter of* POONA CHURN PAL, **7 C 447.** [*F.*, Rat. Un. Cr. C. 335 ; *R.*, 9 C. 397.]

(13)—*S.* 170—*Copies of order by, and depositions before, Presidency Magistrates, right to—Refusal by Presidency Magistrate to grant copies—Interference of High Court—S.* 15 *of the Charter Act—Specific Relief Act*, 1877, *ss.* 7, 45.—All prosecutors whose charges are dismissed by the Presidency Magistrate, are affected,

I.—Imperial Acts—continued.

Act IV of 1877 (Presidency Magistrate's Court-fees)—*concluded.*

within the meaning of s. 170 of the Presidency Magistrates' Act, by the order of discharge, so as to entitle them to obtain copies of the order made by the Magistrate and the depositions. On a refusal by a Presidency Magistrate to grant copies of his order of dismissal and depositions to a prosecutor, the High Court can, certainly under s. 15 of the High Courts Charter Act, and also under s. 45 of the Specific Relief Act, compel the Magistrate to grant such copies. EMPRESS v. DINONATH ROY; BANK OF BENGAL v. DINONATH ROY, **8 C. 166 = 10 C.L.R. 190.**

(14)—S. 234—*See* HUSBAND AND WIFE, 7 B. 180.

Act X of 1877 (Code of Civil Procedure).

[REP., ACT XIV OF 1882.]

(1)—Ss. 182, 183 — *See* EVIDENCE ACT, 1872, s. 91, 6 C. 762 = 8 C.L.R. 292.

(2)—S. 183—*See* No. 1, *supra*.

(3)—Ss. 341 and 342—*See* CONTEMPT OF COURT, 4 C. 655.

(4)—S. 342—*See* No. 3, *supra*.

(5)—*S.* 651—*"Revenue Court," whether a Court of Civil Jurisdiction.*—The term "any Court of Civil jurisdiction" in s. 651, is used for the purpose of including all Courts of Civil, in contradistinction to Criminal Courts. A Revenue Court being, therefore, a Court of Civil jurisdiction, the provisions of s. 651 are applicable to a person, who escapes from custody under the warrant of a Revenue Court. EMPRESS OF INDIA v. HARAKH NATH SINGH, **4 A. 27.**

Act XV of 1877 (Limitation).

[REP., ACT IX OF 1908.]

(1)—*S.* 5, *sch.* II, *art.* 155 (=*s.* 4, *art.* 155 *of* 1908)—*Criminal appeal.*—The provisions of the Limitation Act are to be applied with as much strictness in criminal cases as they are in civil cases. That the appellant did not know that he had a right of appeal or that he thought his relatives would prefer an appeal is not a sufficient cause under s. 5 of Act XV of 1877 for not presenting his appeal in time. QUEEN-EMPRESS v. BHONI RAM, **A.W.N. 1891, 10.**

(2)—*S.* 5, *art.* 157—*Delay in filing appeal—Excuse of delay.*—S. 5 of the Limitation Act gives the Courts a discretion, which, in respect of jurisdiction, is to be exercised in the way in which judicial power and discretion ought to be exercised, upon principles which are well understood; the words "sufficient cause" receiving a liberal construction, so as to advance substantial justice, when no negligence, nor inaction, nor want of *bona fides* is imputable to the appellant. Delay in the filing of an appeal ought not to be excused, unless there

I.—Imperial Acts—continued.

Act XV of 1877 (Limitation)—*continued.*

are special circumstances, namely, a misleading by the other side or a mistake in the office itself or some sudden accident which could not be foreseen. EMPEROR v. SHIVA ADAR, **9 Bom. L.R. 893 = 6 Cr. L.J. 221.** (13 M. 269, *R.*)

(3)—*S.* 5, *art.* 157—*Appeal by Government from acquittal— Limitation.*— Art. 157 of the Limitation Act, which provides a period of six months for appeals by Government from acquittal is subject to the provisions of s. 5 of the same Act, which allows the Court to receive an appeal after the time limited when the appellant satisfies the Court that he had sufficient cause for not presenting the appeal in due time. *In re* GOVERNMENT PLEADER, **1 Weir 791 = 2 Weir 462.**

(4)—*S.* 12 (=*s.* 12 *of* 1908)—*Exclusion of time in obtaining copy of judgment.*—The time taken in obtaining a copy of the judgment must be excluded in an appeal by the accused, in computing the period of limitation. *In the matter of* JHABBU SINGH, **10 C 642.**

(5)—S. 12 — *See* APPEAL— GENERAL, 5 P. R. 1888, Cr.

(6)—S. 12—*See* SANCTION TO PROSECUTE —EXPIRY OF SANCTION AND LIMITATION, 1 Weir 789 = 2 Weir 200.

(7) *S.* 12, *sch. II*, *art.* 154—*Appeal by persons in jail—Time taken in obtaining copies of judgment.*—For the purpose of computing the period of limitation for an appeal from a sentence of criminal Court by a person in jail, the time taken in forwarding applications for copies and in transmission of such copies to the jail, as well as the time occupied in the actual preparation of copies in the office of the Court, by which the judgment or order was passed, is to be included in "the time requisite for obtaining a copy," within the meaning of s. 12 of the Limitation Act. QUEEN-EMPRESS v. LINGAYA, **9 M. 258 = 1 Weir 789.**

(8)—S. 18 (=s. 18 of 1908)—*See* ACT XII OF 1882, s. 11, 20 B. 543.

(9)—S. 26 (=s. 26 of 1908)—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 13 C.W.N. 859 = 3 Ind. Cas. 468.

(10)—S. 28—*See* CRIM. PRO. CODE (1898), s. 146, 26 M. 410.

(10-*a*)—S. 28, art. 47—*See* CRIM. PRO. CODE (1898), s. 145, 9 M.L.T. 91 = 12 Cr. L. J. 47 = 9 Ind. Cas. 285.

(11)—*Art.* 47 (=*art.* 47 *of* 1908)—*Order of attachment under Crim.Pro.Code* (1861), *s.* 318 *nature of.*—The plaintiff sued for the establishment of his proprietary right to, and possession of, a certain ghat or bathing place. The lower Courts held that the suit was barred by limitation under cl. 46, sch. II, Act IX of 1871, the suit not having been brought within three years from the date on which the Magistrate, acting under Ch. XVIII of Act XXV of 1861, passed

I.—Imperial Acts—continued.

Act XV of 1877 (Limitation)—*continued.*

an order directing that the plaintiff and one of the defendants to the suits should put in personal recognizances of Rs. 500 each and that the Tahsildar should warn the parties not to go near the bathing place until a competent Court had settled the quarrel between them, the lower Courts being of opinion that the latter portion of the order amounted to an attachment of the property in dispute under s. 319, Act XXV of 1861. It was held that the order to the Tahsildar was not an attachment contemplated by that section. DURGA v. MANGAL, **7 N.W.P. 35.**

(12)—*Art.* 47 (*s.* 1, *cl.* 7 *of Act* XIV *of* 1859) —*Magistrate's order of attachment.*—Where a Magistrate passed an order for attachment on the finding that neither of the parties then at issue was in possession, *held* that it was an order respecting possession within the meaning of cl. (7), s. 1, Act XIV of 1859, and, therefore, the limitation provided by the clause was not applicable. CHUJ MULL v. KHYRATEE, **3 Agra 65.** [*R.*, 2 Bom. L.R. 93.]

(13)—*Art.* 47—*Order as to possession under Crim. Pro. Code* (1861), *s.* 318.—*Held*, that s. 1, cl. (7), Act XIV of 1859, was not applicable to an order passed under s. 318, Crim. Pro. Code, 1861. DOORJUN SINGH v. SHIBBA, **3 N.W.P. 171.**

(14)—*Art.* 47—*Verbal order of Magistrate under Act* IV *of* 1840.—A verbal order of the Magistrate under Act IV of 1840 cannot be regarded as an order, or award within the meaning of the term of cl. 7, s. 1, Act XIV of 1859. ALTAF HOSSEIN v. TASUD-DOOK HOSSEIN, **2 Agra 87.**

(15)—*Art.* 47—*Act XIV of* 1859, *s.* 1 (7)—*Limitation for suits for possession—Crim. Pro. Code* (1861), *s.* 318.—The provisions of s. 318, Crim. Pro. Code (1861), differ from those of Act IV of 1840 in many important respects. No period of limitation is prescribed in s. 318, Crim. Pro. Code, within which a suit must be brought to set aside the Magistrate's award made under that section. GOBIND CHANDER SHAHA v. ASHRUF ALI MEAH, **8 W.R. 490.**

(16)—*Art.* 47—*Dispossession under s.* 318, *Crim. Pro. Code* (1861).—A plaintiff was found to have been dispossessed from land by a Magistrate's order under s. 318, Crim. Pro. Code. *Held* that his right of suit for possession was not barred, under cl. 7, s. 1, Act XIV of 1859, by the lapse of more than three years from the date of the Magistrate's order. UNDHOOB NARAIN v. CHUTTAR DHAREE SINGH, **9 W.R. 480.** [*F.*, 17 W.R. 281.]

(17)—*Art.* 47—*Order to record letter ending proceedings.*—Where, in consequence of certain proceedings, under Act IV of 1840, a letter was written by a Judge directing the Magistrate to leave certain *maliks* not in possession of certain *derah* in dispute to their civil remedy, and the Magistrate ordered the Judge's letter to be put with the record, *held* that such order was not an order in the sense of Act XIV of 1859, s. 1, cl. 7. MOSHAHEB ALI v. NUND KISHORE, **20 W.R. 316.**

(18)—*Art.* 47—*Order dismissing complaint under Act* IV *of* 1840.—Where a Magistrate passed an order dismissing a complaint under Act IV of 1840, on the ground that the complainant had not been forcibly dispossessed, it is not a binding award to which cl. 7, s. 1, Act XIV of 1859, would apply. HURRONATH CHOWDHRY v. HUREE LALL SHAHA, **11 W.R. 477.**

(19)—*Art.* 47—*Act* IX *of* 1871, *art.* 46.—*Held* that art. 47 can only apply between the parties whose possession has been confirmed by the Magistrate and each one of the parties to that proceeding who claimed against them. It does not apply in favour of one of the parties who has subsequently succeeded by regular suit in ousting the parties put in possession by the Magistrate. AUKHIL CHUNDER CHOWDHRY v. MIRSA DELAWAR HOSSEIN, **6 C.L.R. 93.** (2 B. L.R. A.C. 254, 3 B.L.R. Appx. 122, *cited*) [*D.*, 23 C. 731.]

(20)—*Art.* 47—*Possession of property—Order by Magistrate—Suit to recover.*—The period of limitation (three years prescribed by art. 47, Limitation Act, 1877, for a suit to recover property that was the subject of an order under s. 530, Crim. Pro. Code, counts from the date of the Magistrate's order, and not from that of a confirmation order by the Sessions Judge. The above article has reference to immoveable as well as to moveable property. KANGALI CHURN SHA v. ZOMURRUDONNISSA KHATOON, **6 C. 709=8 C.L.R. 151.** (1 M. 309, *Appr.*)

(21)—*Art.* 47—*Act* IX *of* 1871, *sch.* II, *cl.* 46. —The three years rule prescribed by art. 46 does not apply to a case where attachment proceedings are recorded and properties put in the charge of the Sub-Magistrate because the previous possessor is unascertained. AKILANDAMMAL v. PERIASAMI PILLAI, **1 M. 309=2 Ind. Jur. 98.** [*Appr.*, 6 C. 709 (711); *R.*, 26 M. 410 (413); 20 A. 120 (123)=17 A.W.N. 214.]

(22)—*Art.* 47—*Order under s.* 145, *Crim. Pro. Code.*—Art. 47 applies to all the persons bound by, or parties to, an order under s. 145, Crim. Pro. Code, and to any other persons claiming under or through any such persons under the title derived subsequent to the order. JOGENDRA KISHORE ROY CHOWDHRY v. BROJENDRA KISHORE ROY CHOWDHRY, **23 C. 731, F.B.** (6 C.L.R. 93, *D.*) [*R.*, 28 B. 215 =5 Bom. L.R. 932.]

(23)—*Art.* 47—*Scope of article—Scope of order by Magistrate, the order being under s.* 145, *Crim. Pro. Code,* 1882 (*corresponding with s.* 530, *Crim. Pro. Code,* 1872).—Art. 47 contemplates a right to sue in ejectment being in existence at the time of the passing of an order under s. 145, Crim. Pro. Code, 1882; that is, it only bars

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Act XV of 1877 (Limitation)—*continued.*

those parties to the order, who, at the date of it, had a right to eject the successful party in the proceedings in the Criminal Court. BOLAI CHAND GHOSAL v. SAMIRUDDIN MANDAL, **19 C. 646.** [*R.*, 14 M L.T. 392=1913 M.W. N. 871=21 Ind. Cas. 564.]

(23-*a*)—Art. 47—*See* No. 10*a*, *supra.*

(24)—*Arts.* 47, 142, 144 (=*arts.* 47, 142, 144 *of* 1908)—*Crim. Pro. Code*, 1882, *s.* 146—*Property attached under the section—Suit for possession.*—A suit for possession of immoveable property attached under s. 146, Crim. Pro. Code, is not governed either by art. 47 or art. 120, but is governed either by art. 142 or art. 144. GOSWAMI RANCHOR LALJI v. SRI GIRDHARIJI, **20 A. 120=A.W.N. 1897, 214.** (3 Agra 65, 1 M. 309, *R.*) [*Rel. on*, 16 C.W.N. 1073=16 Ind. Cas. 620; *Cons.*, 26 M. 410.]

(25)—Art. 142—*See* No. 24, *supra.*

(26)—*Art.* 144 (=*art.* 144 *of* 1908)—*Possession—Lands under attachment by Magistrate—S.*146, *Crim. Pro. Code.*—Lands under attachment by a Magistrate under s. 146, Crim. Pro. Code, are presumed to continue in possession of the person, who is afterwards found to have title thereto. Where a person, who is, afterwards, found to have a title to a property, receives from the Magistrate the rents and profits thereof for the period during which it was held under attachment by the latter, under s. 146, Crim. Pro. Code, he is held to be in constructive possession thereof, until withdrawal of such attachment. Limitation does not run against him during such period. JAGABANDHU BHATTACHARJEE v. HARIMOHAN ROY, **1 C.W.N. 369.** [*R.*, 3 A.L.J. 680=A.W.N. 1906, 286, 29 A. 90.]

(27)—Art. 144—*See* No. 24, *supra.*

(28)—Art. 154—*See* No. 7, *supra.*

(29)—*Art.* 155 (=*art.* 155 *of* 1908)—*Appeal from the Resident's Court, Bangalore—Limitation.*—Where a person defended by counsel on a criminal charge interfered in the examination of a witness and made a defamatory statement with regard to his character was charged with defamation and convicted in the Resident's Court, Bangalore, *held*, an appeal to the High Court, preferred more than sixty days after the conviction, should be admitted. HAYES v. CHRISTIAN, **15 M. 414=1 Weir 588=2 M.L.J. 142.** [*R.*, 17 B. 573, 36 M. 216=14 Ind. Cas. 659=11 M.L.T. 416=13 Cr. L.J. 275=23 M. L.J. 39=1912 M.W.N. 476, 9 Cr., L.J. 276=5 M.L.T. 256, 9 Cr.L.J. 385=19 M.L.J. 217=6 M.L.T. 15, 1 Ind. Cas. 799, 248, 3 L.B.R. 255, 1 Weir 519.]

(30)—*See* APPEAL—APPEAL FROM ACQUITTAL, 2 C. 436, F.B.

(31)—Art. 155—*See* No. 1, *supra.*

(32)—Art. 157—*See* Nos. 2 and 3, *supra.*

I.—Imperial Acts—continued.

Act XV of 1877 (Limitation)—*concluded.*

(33)—*Art.* 178 (=*art.* 181 *of* 1908)—*Crim. Pro. Code* (1882), *s.* 195—*Application for sanction to prosecute—Limitation.*—Rules of limitation are foreign to the administration of criminal justice, and it is only by express statutory provision that any rule of limitation can be made applicable to criminal cases. There is no fixed period of limitation for making an application for sanction under s. 195, Crim. Pro. Code. Art. 178, Limitation Act, has no reference to applications arising out of proceedings under the Code of Criminal Procedure. QUEEN-EMPRESS v. AJUDHIA SINGH, **10 A. 350=A.W.N. 1888, 92=13 Ind. Jur. 36.** [*Appl.*, 20 B. 543; *R.*, 11 C. P.L.R. 141, 13 Cr. L.J. 209=14 Ind. Cas. 305=22 M.L.J. 419=11 M.L.T. 367=1912 M. W.N. 499.]

Act I of 1878 (Opium).

[REP. IN PART, ACT IV OF 1894; REP. IN PART, AND AMENDED, ACT XII OF 1891. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Opium cases—Undue severity of sentence—Measure of reward.*—Rewards in opium cases should not, in the absence of exceptional circumstances, usually exceed Rs. 5 for each ½ tola of opium found. Magistrates should be careful so to limit a reward as to leave no doubt that it can be paid out of the fine and value of the opium combined. QUEEN-EMPRESS v. AH KYIN, **L.B.R. 1872—1892, 568.**

(2)—*Opium cases—Undue severity of sentence—Court to be guided by sound principles—Measure of reward.*—In dealing with opium cases the Courts must be guided by sound principles, and must not, by the imposition of ruinous fines for petty offences, render the administration of the law unbearable. Rewards in such cases must be regulated by the quantity discovered and the amount of the fine which it is reasonable to inflict. QUEEN-EMPRESS v. MIHET PU, **L.B.R. 1872—1892, 567.** (L.B.R. 1872-1892, 368, 425, 546, *R.*)

(3)—*Possession of opium with intention of selling.*—The accused kept $2\frac{10}{16}$ tolas of opium in his possession with the intention of selling it. *Held* that he did not thereby contravene any rule under the Opium Act. QUEEN-EMPRESS v. LALU KHEM CHUND, **Rat. Un. Cr. C. 287=Cr. Rg. 23 of 1886.**

(4)—*S.* 3—*Crim. Pro. Code* (1882), *s.* 191—*Importing opium into British India without license—Jurisdiction.*— A Second-Class Magistrate cannot refuse to take up a case of importing opium into British India without a license, although empowered, under s. 191, Crim. Pro. Code, and s. 3 of the Opium Act, to take

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Act I of 1878 (Opium)—*continued.*

cognizance of the offence and try the case, merely on the ground that the gravity of the offence required severer punishment than he was competent to inflict. QUEEN-EMPRESS v. GEMA, **Rat. Un. Cr. C. 375 = Cr. Rg. 23 of 1888.**

(5)—*S. 3—License to possess opium—Right to have opium transported from one place to another.*—The accused, having a license for possession of opium as a medical practitioner limited to one seer, or eight pallams, sent his servant to another place to buy four pallams of opium from a licensed vendor of opium. The servant purchased the opium and took it to the accused at Madras. *Held*, that the accused was guilty of the offence of transporting opium by sending his servant to bring opium to Madras, which was illegal, except under Rules VIII to XIII of the Opium Act, and the license, which the accused held, did not authorise such transport either expressly or impliedly. *Quære.*—Whether, if the accused had carried the opium himself, the license to possess the opium would necessarily imply a right to transport it with him and so override the prohibition of transport? QUEEN-EMPRESS v. RAMANUJAM, **13 M. 191 = 1 Weir 834.**

(6)—*S. 3—Investiture of powers—Crim. Pro. Code, s 39—Magistrate—'Specially empowered'—Notification by Government empowering all second-class Magistrates to try cases under the Opium Act, if amounts to 'specially empowered'—Jurisdiction.*—The word 'specially' in 'specially empowered' occurring in s. 3 of the Opium Act, is used in speaking of individuals and in contrast with the word 'generally.' When, by a notification of the Government, a class of officials is invested with powers to try certain offences, such officials are only 'generally empowered' and not 'specially empowered.' The language of s. 39 of the Crim. Pro. Code compared. Per *Seshagiri Aiyar, J.*—The notification empowering all second-class Magistrates to try such offences is *ultra vires* of the powers given by the Act, as its effect is to enlarge the definition of 'Magistrate' as given therein. MAHOMED KASIM v. KING-EMPEROR, **2 L. W. 233.**

(7)—*Ss. 3 and 4—Beinchi removed from pipe and reserved for further use is a preparation.*—**Beinchi** or **Pyaungchi** which is the refuse of the opium pipe is, when removed, from the pipe and reserved for further use, a preparation of opium within the meaning of s. 3 of the Opium Act, and its possession is illegal under s. 4, inasmuch as it is not permitted by the rules framed under the Act. QUEEN-EMPRESS v. NGA PAW GALE, **L.B.R. 1872—1892, 617.**

(8)—*Ss. 3, 4, 9—Illicit possession of opium—Jurisdiction—Extradition Act* (XXI *of* 1879), ss. 4, 5—*Government of India Notification No.* 1007-1, *dated* 18*th March*, 1884.—In this case the accused was convicted by the District Magistrate of Gurgaon, under s. 9 on a charge of illicit possession of opium. The case for the prosecution was that the accused took delivery of four maunds of poppy heads, at the Railway Station of Bawal on the Rajputana-Malwa Railway. The Sessions Judge, on appeal, acquitted the accused, on the ground that he had been convicted of an offence against No. 32 of the rules framed under s. 5 and s. 13 of the Act, which forbids the importation of opium "into the Punjab," and that, conceding that I of 1878 was in force in Bawal, yet Bawal was not "in the Punjab" within the meaning of the Rules under the Act. *Held*, on an appeal by the Local Government, that, under s. 9 of the Act, the possession of opium in contravention of the Act being penal, as well as possession in contravention of rules made under s. 5 of the Act, it was (assuming the possession to be proved) for the accused, and not for the prosecutor, to establish that possession of four maunds of opium was permitted by the rules made under the Act. *Held*, also that the fact that the said rules were not in force at Bawal was of no avail to the accused, if it were sound. The order of acquittal was reserved, and the appeal of the accused returned to the Sessions Judge for disposal upon the merits. EMPRESS v. BHOLA LAL, **8 P.R. 1887, Cr.**

(9)—*Ss.* 3, 5, 9, 14, 19—*Power of Magistrate issuing a search warrant to conduct search.*—A Magistrate who has the power to issue a search warrant has the power himself to search. EMPRESS v. GANESHI, **A.W.N. 1884, 213.**

(10)—*Ss.* 3 *and* 9—*Illegal manufacture of* chandu *an offence under s.* 9.—With reference to ss. 3 and 9 of the Act the illegal manufacture or preparation of *chandu* was an offence under s. 9 of the Act. EMPRESS v. GANESHI, **A.W. N. 1884, 213.**

(11)—*Ss.* 3, 9—*Licensed cultivator transporting opium without pass.*—Where a licensed cultivator transported opium from one district to another without a pass, *held*, that the accused, not being either a farmer, or a licensed vendor, or a whole sale licenced vendor, was not competent to transport opium from one district into another. *Held, further*, that, even supposing a licensed cultivator could be held to be a licenced vendor, that the accused was liable to be punished under s. 9, Act I of 1878, as he had not complied with the provisions of the rules by obtaining a pass. MEGHA v. EMPRESS, **13 P.R. 1884, Cr.**

(12) *S.* 4—*Admixtures of opium — Rules under the Act.*—"Opium," as defined in the Opium Act, includes admixtures of it. *Kunbon* being an admixture of opium, the possession of it is not allowed by the rules under the Act. Hence, the possession of *kunbon* is, under the above section, illegal, irrespective of the method in which it was obtained. QUEEN-EMPRESS v. NGA LU HLA, **L.B.R. 1872-1892, 619.**

(13)—S. 4—*See* PENAL CODE, s. 353, **105 P. L.R. 1904.**

I.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

(14)—S. 4—*See* Nos. 7 and 8, *supra.*

(15)—*Ss* 4 (*c*) *and* 9 (*c*)—*Possession of opium—Burden of proof.*—Under the Opium Act, the possession of opium is *prima facie* illegal, and the person in possession must shew that, in fact, his possession is legal. Rule III of rules framed under the Act provides that a person may possess 3 tolas of raw opium "provided such opium has been purchased from Government or from a farmer or licensed vendor or medical practitioner." In order, therefore, that a person in possession of opium may have the benefit of r. III, he must show that it was purchased as provided by the Rule. If he fails to do so, his possession is illegal by virtue of s. 4, and he is liable to punishment under s. 9 (*c*). *In re* RANGAN CHETTI, **1 Weir 832.**

(16)—*S* 5—*Omission to keep regular account of opium.*—The accused was convicted of the offence of contravening a rule made and notified under s. 5 of the Opium Act, 1878, by not keeping a regular account of the opium in his possession in accordance with the stipulation in his license. *Held* that the person who contravenes a condition of a license imposed under a rule may be considered guilty of a breach of the rule. QUEEN-EMPRESS v. JETHALAL, **Rat. Un. Cr. C. 297 = Cr. Rg. 44 of 1886.**

(17)—*S.* 5—*Registered consumer—Presumption.*—The ordinary presumption would be that a person producing a certificate and asserting or implying that he was the person named in the certificate was the registered consumer to whom the certificate had been granted, and, unless it was proved that the vendor had reason to believe that the person producing the certificate was not the person named in it, the vendor should reasonably be held to be permitted by the rules to sell opium to the person producing the certificate. QUEEN-EMPRESS v. A WE SHOKE, **L B R. 1893—1900, 419.**

(18)—*S.* 5, *r.* 9—*Holder of cultivator's license—Consumption of opium.*—The holder of a cultivator's license is not prohibited, by r. 9 of the rules framed under s. 5, read in connection with the other rules, from consuming the opium of which he is lawfully possessed under his license. CHANDA SINGH v. EMPRESS, **12 P.R. 1884, Cr.**

(19)—*S.* 5, *rr.* 11, 21—Patwari's *omission to furnish cultivator's license—Liability of cultivator.*—Poppy cultivators, who were without licenses only because the *Patwari* has failed to furnish them, are not liable under r. 21. SOCHET SINGH v. EMPRESS, **46 P.R. 1885, Cr.**

(20)—*S.* 5, *r.* 16—*Scope of the rule.*—The intention of r. 16 of rules framed under s. 5 of Act I of 1878, is to permit possession of either opium not exceeding 3 tolas or of intoxicating drugs not exceeding that quantity, or of both not exceeding 3 tolas in the aggregate. NABI BAKSH v. EMPRESS, **22 P.R. 1890, Cr.**

I.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

(21)—S 5—*See* No. 9, *supra.*

(22)—*Ss.* 5, 8, 9 (*f*)—*Terms of license whether to be regarded as part of the rules.*—The terms of a license issued under rules promulgated under ss. 5 and 8 of the Opium Act, 1878, are not to be regarded as part of the rules themselves; and consequently, an infraction of any of the conditions of a license issued under the said rules cannot be considered an infraction of the rules and punishable under s. 9 (*f*) of the Act. QUEEN-EMPRESS v. MAHOMED, **Rat. Un. Cr. C. 332 = Cr. Rg. 23 of 1887.**

(23)—*Ss.* 5, 9—*Opium—Chundul.*—Chundul is opium dissolved in water and boiled so as to be smoked. A man cannot be said to make a preparation or admixture of opium within the meaning of ss. 5 and 9 of the Opium Act of 1878 and s. 35 of the rules framed under that Act, for which a license would be required, by merely dissolving in water the opium which he has legally purchased for his own use in smoking. QUEEN-EMPRESS v. SHEKH HUSEN **Rat. Un. Cr. C. 284 = Cr. Rg. 20 of 1886.**

(24)—*Ss.* 5, 9—*Rules framed under the Act—Rules 34 to 50—Form E, referred to in r. 39—Words "or in such other form as the Commissioner from time to time prescribes."*—Ultra vires—Delegata potestas non potest delegari—*Breach of conditions of a Commissioner's license, whether a breach of a rule under the Opium Act and an offence.*—S. 5 (*f*) gives the Local Government power to make rules to permit absolutely or subject to conditions the sale of opium and to regulate its sale. Rule 39 of the rules so framed, *inter alia*, enacts that "such licenses shall be in the Form E hereto annexed or in such other form as the Commissioner from time to time prescribes." S. 9 (*f*) makes it an offence to sell opium in contravention of the Act or Rules. A holder of a license in form E would, if he committed a breach of the license, be selling in contravention of r. 39 and could be dealt with under s. 9 of the Act. The words "or in such other form as the Commissioner from time to time prescribes," in r. 39 are *ultra vires* The rule-making power is a power delegated by the Government of India to the Local Government and the Local Government cannot delegate it to the Commissioner, for *delegata potestas non potest delegari.* The conditions of a form of license prescribed by the Commissioner are, therefore, not rules under the Opium Act. Breach of the conditions of a Commissioner's license which is not in form E but in the form approved of by the Commissioner in Sind, is, therefore, not a breach of a rule under the Opium Act, even where the breach is committed by a person, and *a fortiori* he is not guilty of an offence under s. 9 when the breach is committed by his servant. CROWN v. VELGI LAKHAMSI, **1 S L.R. Cr. 70 = 8 Cr. L J. 188.**

(25)—*Ss.* 5 *and* 9—*Allowing sale of opium by an unauthorised person.*—A person who has

I.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

taken a license for the sale of opium is guilty of an offence under s. 9 of Act I of 1878, if he allows another person to sell it on his behalf, when that salesman's name is not endorsed on the license under the rules framed by the Local Government and published in the N.W.P. and Oudh Government Gazette, dated 11th June, 1898. MOHAMMAD YASIN v. KING-EMPEROR, **1 A.L.J. 245.**

(26)—*Ss. 5 and 9—Preparation of incorrect account—Licensed vendor of opium—Keeping incorrect accounts—Liability under s. 9.*—There is nothing in any of the rules made by the Bengal Government under s. 5 of the Act, which would make the preparation of incorrect accounts punishable under s. 9. S. 5 of the Act declares that the Local Government, with the previous sanction of the Governor-General in Council, may make rules consistent with the Act regulating the sale of opium. The Bengal Government in r. 15 (i) framed under s. 5, and art. 13, form No. 1, framed under r. 15 (1) has provided for the retail sale of opium in accordance with the conditions specified in the license and requires that the licensee is to keep an account showing the quantity of opium received and sold and other particulars. *Held*, that r. 15 (1) is not regularly made, and a licensee, who keeps an incorrect account in contravention of the above rule, is not liable to be punished under s. 9 of the Act. UMESH CHUNDER GHOSE v. QUEEN-EMPRESS, **26 C. 571=3 C.W.N 365.** [*D.*, 1 A.L.J. 245.]

(27)—*Ss. 5 and 9—Master and servant—Liability of master for act of servant.*—Contrary to the conditions of his master's opium license, the salesman sold opium to a person under the age of fourteen years, in the absence of the master. Both the master and the salesman were convicted. *Held*, that the conviction of the master was legal, for the mere selling of opium in contravention of the conditions of his license constituted the offence. It was not a question of intention, of *mens rea* or of knowledge. BABU LAL v. KING-EMPEROR, **9 A.L.J. 288 =14 Ind. Cas. 666=13 Cr. L.J. 282=34 A. 319.** (24 B. 423, *F.*)

(28)—*Ss. 5 and 9.—Contravention of rules by licensed vendor—Vendor not being present when rules were contravened—Effect—Liability of master for acts of his servant.*—The licensed vendor of madak was fined Rs. 25 under s. 9 of the above Act for contravening a rule made and notified under s. 5 of the Act and embodied in his license which provided that he "shall not allow any of the drug to be consumed on his premises." The Magistrate found that the vendor was not present at the time when the drug was consumed on his premises, but punished him on the ground of his direct responsibility to the Government for the fulfilment of the condition of his license and the obligation which lay upon him, if he chose to delegate the charge of his shop to a servant, to take precautions in order to secure that the rules under which he held the license should be observed. *Held*, that, although a master is not generally speaking criminally responsible for the acts of his servants, unless he expressly command, or personally co-operate in, them, still the vendor was under the circumstances liable for the breach committed by his servant. EMPRESS v. SHRIKISSEN MISRA, **7 C.P.L.R. Cr. 41.**

(29)—*Ss. 5 and 9—R. 9 (f)—Licensed cultivation—Entry of outturn of cultivation.*—The omission by a licensed cultivator to have the outturn of his cultivation entered upon his license, is not a contravention of r. 9 (*f*). BUR SINGH v. EMPRESS, **10 P.R. 1893, Cr.**

(30)—*Ss. 5 (r. 38), 9—Selling opium in a quantity in excess of that allowed by law.*—The act of selling opium by a licensed vendor in a quantity in excess of that permitted by law, is not a mere breach of the license, but is an offence under the Rules framed under the Abkari Act, and can be punished under s. 9 QUEEN-EMPRESS v. CHHOTALAL VARAJLAL, **1 Bom. L.R. 677.**

(31)—*Ss. 5 and 9—R. 24—Illegal transport of opium.*—The accused, licensed retail vendors of opium in one district, instructed a wholesale contractor of drugs in another district, to send them 2 maunds of poppy-heads. The latter did accordingly after obtaining a *rowana* from the Collector of his district, but without the permission of the Collector of the other district. The accused were convicted of violations of rule 24. *Held*, that the conviction was wrong, as it could not be supposed that the accused authorized or intended to authorize their vendor to transport the poppy-heads otherwise than in accordance with law and rules in force, and as the obligation of getting a pass for transport of opium is imposed upon the transporting farmer. BAKHU RAM v. EMPRESS, **40 P.R. 1887.**

(32)—*Ss. 5 and 9—R. 4* (iii) (*c*) *framed under s. 5—Possession of opium of more than prescribed quantity in a den—Every member guilty of breach of rule*—Ultra vires.—R. 4 (iii) (*c*) of the rules framed under s. 5 as provided by s. 9 (*c*) of the Opium Act, which enacts that if, in an opium den where a number of persons are gathered, opium is found in excess of the quantity allowed to be possessed by the Act, then each of such persons so present shall be deemed to have committed a breach of this rule, is a rule of evidence and not a rule strictly under s. 5 of the Opium Act and is therefore *ultra vires* GANDALAL MURARJI v. THE CROWN, **8 S.L R. 138.**

(33)—*Ss. 5, 9 and 13—Omission by poppy cultivator to inform patwari of outturn of poppy cultivation.*—There is nothing in the rules framed under the Opium Act requiring a poppy cultivator to inform the patwari of the outturn of poppy heads from the area under cultivation, as in the rules opium is distinguished from

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poppy heads. GURDIT SINGH v. EMPRESS, **16 P.R. 1883, Cr.**

(33-*a*)—S. 8—*See* No. 22, *supra*.

(34)—*S.* 9—*Possession of illicit opium, what amounts to.*—The accused was a shop-keeper, and his neighbour was a licensed opium seller. The latter not being in the habit of sleeping in his shop used, when he went home, to put the opium with the books and license in a box, which he locked himself, and of which he kept the key, and to make it over to the accused for safe custody during the night. *Held*, that such custody did not amount to possession by accused of the opium which was locked in the box and that he could not, therefore, be held to be guilty of having opium in his possession in contravention of the Opium Act and the rules made thereunder. EMPEROR v. GAJADHAR, **25 A. 262=A.W.N. 1903, 29.** [*Rel.*, 11 Cr. L.J. 55=4 Ind. Cas. 823=U.B.R. 1909, Opium, p. 1; *R.*, 2 L.B.R. 136.]

(35)—*S.* 9—"*Possession*"—*Meaning of.*—The "possession" referred to in s. 9 of the Act is possession with knowledge, and no presumption arises unless and until such possession is proved. EMPEROR v. KALU, **16 C.P.L.R. 13.** [*R.*, 17 C.P.L.R. 75.]

(36)—*S.* 9—*R.* 16—*Possession of three tolas of opium—Plea of joint possession.*—In order to succeed on a defence of joint possession in a charge of possession of more than one tola of opium, it must be conclusively shown that the possession of the accused was the joint possession of the accused and others and that he held on behalf and for the use of all. KING-EMPEROR v. BUTA SINGH, **34 P.R. 1905, Cr. =147 P.L.R. 1905.** (13 P.R. 1879, Cr., 31 P.R. 1902, Cr., *F.*)

(37)—*S.* 9—*Joint possession.*—Where the defence of joint possession of more than one tola of opium is pleaded, it is not only essential to know that a certain number of people are living in the house, but that they all joined in the purchase, and that it was held by one for the use of all. CROWN v. SADIQ, **31 P.R. 1902, Cr.** (13 P.R. 1879, Cr., *R.*) [*F.*, 34 P.R. 1905, Cr.; *D.*, 52 P.R. 1905, Cr.]

(38)—*S.* 9—*Possession by several persons.*—As it is the possession of more than one tola of intoxicating drugs that constitutes the offence under r. 16, and not the amount that the person in possession may himself own, the accused who was in possession of 2½ tolas was held to be rightly convicted under s 9, although there had been three other persons each using a fourth of it, and the accused's own share may have been one fourth. QUEEN-EMPRESS v. SALARU, **13 P.R. 1897, Cr.** [*F.*, 31 P.R. 1902, Cr.]

(39)—*S.* 9—*Opium, unlawful possession of, by member of joint family—Crim. Pro. Code, s.* 103 (1)—*Search by Police—Appeal, new plea taken in.*—An accused person, who was convicted of being in unlawful possession of crude opium, contended that the witnesses, called on to attend the search, were not respectable inhabitants of the locality, in which the place searched was situated, and also, for the first time in appeal, that his father, who was alive, being the master of the house, he (the accused) was entitled to an acquittal, in the absence of good evidence as to exclusive possession by a junior member of the joint family. *Held*, that, in prosecutions under s. 9, Act I of 1878, against a member of a joint-family, the prosecution is bound to prove that the opium, found in the common room of the joint-family house, was in the exclusive possession and control of the particular member of the joint family charged with its possession, that such a defence could not be discarded simply because it was for the first time put forward in appeal, and that, under s. 103 (1), Crim. Pro. Code, it was the duty of the police officer to call two or more respectable inhabitants of the locality, in which the place searched was situated, to attend and witness the search. GANESHI v. CROWN, **2 O. C. 99.** (15 A. 129, *R.*)

(40) *S.* 9—*Possession of a railway receipt for parcel containing opium.*—Where it was found that the accused had in his possession a railway receipt for a parcel containing opium. *Held (dubitante).*—That the possession of the railway receipt constituted possession of the opium to which the receipt related within s. 9 of the Opium Act. ASHRUF ALI v EMPEROR, **36 C. 1016=14 C.W.N. 233.** (32 C. 557. *F.*) [*D.*, 41 C. 537=18 C.L.J. 514=18 C.W.N. 309 =15 Cr. L.J. 4=22 Ind. Cas. 148.]

(41)—*S.* 9—*Possession of railway receipt for opium parcel.*—Where a railway receipt for a parcel which contained opium addressed to the accused was found, on search made in his house, carefully locked up and secreted in his box, *held*, that the possession of the railway receipt should be taken as possession of the opium within s. 9 of the Opium Act, inasmuch as the conduct of the accused showed that he was aware of the contents of the parcel and that it was sent to him with his full knowledge. KASHI NATH BANIA v. EMPEROR, **32 C. 557 =9 C.W N. 719=2 Cr. L.J. 470.** (1 Den. C. C. 453, 2 Den. C. C. 37, *R.*) [*F.*, 36 C. 1016=14 C.W.N. 233=11 Cr. L J. 29=4 Ind. Cas. 699; *R.*, 40 C. 990=14 Cr. L.J. 318=19 Ind Cas. 1006; *D*, 41 C. 537=18 C.L.J. 514=18 C.W.N. 309=15 Cr. L.J. 4=22 Ind. Cas. 148.]

(42)—*S.* 9—*Possession of opium without license—Legality of arrest—Conviction.*—For a conviction under this Act it matters not, so far as the legality of a conviction goes, by whom the accused was arrested or found in possession of the opium. NGA PO THA v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 239.**

(43)—*S.* 9—*Illicit possession — Desire of Magistrate to induce accused to give up opium.*—The desire of the Magistrate to induce an accused

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person to give up opium smoking is not in itself a sufficient ground for passing on him a sentence of imprisonment. QUEEN-EMPRESS v. THAUK KRA PYU, **L.B.R. 1872—1892, 370.**

(44)—*S. 9—Summary trial—Offence punishable with one year's rigorous imprisonment—Subsequent regular trial without summary trial being quashed*—Ultra vires—*Crim. Pro. Code*, s. 530.—The accused was prosecuted for an offence under s. 9 of the Opium Act punishable with one year's rigorous imprisonment. The additional township Magistrate tried the case in a summary manner and imposed a sentence of four months' rigorous imprisonment. The District Magistrate having declared the trial void, the Magistrate re-tried the case in the regular manner and imposed the same punishment. *Held*, that both the trials were void *ab initio*. The summary trial was *ultra vires*, as the offence being punishable with one year's rigorous imprisonment, the Magistrate had no jurisdiction to try the case summarily. The regular trial was *ultra vires*, as the former proceedings not having been quashed by the High Court, the accused could not be tried over again. The whole proceedings were quashed and a re-trial ordered. EMPEROR v. NGA SIT CHO, **13 Cr. L.J. 58=13 Ind. Cas. 394=4 Bur. L.T. 271.**

(45)—*S. 9—Crim. Pro. Code, ss.* 239 *and* 537 *—Joint trial—Misjoinder of parties, not mere irregularity — Possession, illicit, of opium—Opium found in accused's house during his absence, effect of — Suggestion by accused's pleader, whether Court can in its judgment pass remarks upon.*—On a certain day A was arrested and found in possession of a seer of opium alleged to have been purchased by B, A's companion, from C's shop. On A's information D's house was searched on the same day and 6 seers of opium were found there in D's absence. These four persons and D's wife were jointly tried on the following four charges: The *first* charging all with having on that day engaged in illicit transport of opium, the *second* and the *third* charging A and B and D and his wife, with having been on that day in unlawful possession of one and six seers of opium, respectively, and the *fourth* charging C with having on that day sold opium against the contract terms of the license: *Held*, that the above joint trial was illegal and contrary to the provisions of s. 239, Crim. Pro. Code, inasmuch as the accused did not commit the same offence or different offences in the same transaction. A trial which takes place in defiance of the express provisions of s. 239, Crim. Pro. Code, must be held to be a void trial, and a misjoinder of parties thus taking place is not a mere irregularity which can be cured by applying the provisions of s. 537, Crim. Pro. Code. (25 M. 61=11 M.L.J. 233=3 Bom. L. R. 540=5 C.W.N. 866=28 I.A. 257 (P.C.)=2 Weir 271, *F.*) Where a person was convicted on a charge of being in illicit possession of opium, while the opium was found in his house during his absence: *Held*, that the conviction could not be sustained, inasmuch as the possession of the opium could not be attributed to him in the sense required by law. Where the lower Courts described a suggestion made by the accused's pleader as a daring attempt to mislead the Court, and it was found that the pleader was justified in making the suggestion. *Held*, that the lower Courts, apart from their own opinion upon it, ought not to have made the remark, which should be expunged from the record. LACHCHU v. EMPEROR, **15 Cr.L.J. 420=24 Ind. Cas. 156.**

(46)—*S. 9—Proof necessary for conviction.*—The accused was charged with purchasing opium from unlicensed persons on the statement made by the accused to an Excise Darogha, who was directed by the Collector to question opium eaters in order to elicit information for the purpose of prosecuting unlicensed vendors, the accused did not admit the statement, *held* that the accused could not be convicted, as it had not been ascertained that the offence was actually committed. ATMAN SINGH v. EMPRESS, **19 P.R. 1890, Cr.** [*R.*, 13 P.R. 1894, Cr.]

(47)—*S. 9—Manufacture of opium.*—The conversion of opium into "*Chandu*," another form of intoxicating drug, is not the manufacture of opium. EMPRESS v. PIRANDITTA, **9 P.R. 1881, Cr.**

(48)—*S. 9—Illicit sale of opium—Evidence of sale.*—Several persons were found in a house, and one of them was smoking *chandu*. On the premises were also found three pipes, two iron needles, one pair of tongs and a smoking pillow. The quantity of opium, however, found in the house was within the limit allowed by law. *Held* that the circumstances were not strong enough to warrant the presumption that *chandu* was being sold on the premises. MUSSAMMAT AJUBA v. KING-EMPEROR, **7 A.L.J. 25=11 Cr. L.J. 133=5 Ind. Cas. 450.**

(49)—*S. 9—Possession by one of excess quantity purchased for several persons—Legality of.*—There is no rule allowing a person to possess opium purchased by another person, nor to possess opium in excess of the three tolas' weight which has been purchased for other persons or which has been handed over to him to carry. The law must be strictly construed and followed or its ends will be easily defeated. QUEEN-EMPRESS v. TAW WA, **U.P.R. 1892—1896, Vol. 1, 137.**

(50)—*S. 9—Sentence for illegal possession of opium—Excessive.*—It was not the intention of the Legislature to punish with severity trifling breaches of Opium Law. In this case a fine of Rs. 50, and in default one month's imprisonment for the illegal possession of one tola of opium was considered to be a very excessive sentence. QUEEN-EMPRESS v. NGA KAING, **L.B.R. 1872-1892, 425.**

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(51)—*S. 9—Necessity for moderate punishment in certain cases.*—On a conviction under this section, the punishment should, on considerations of fairness and common sense, be moderate in cases of confirmed opium-smokes from Burmese times for the continuance of a habit which has only recently been prohibited by a different Government. QUEEN-EMPRESS v. NGA SO, **U.B.R. 1892—1896, Vol. I, 136.**

(52)—*S. 9—Moderate punishment, necessity for.*—The accused was found in illegal possession of four tolas of opium and was sentenced to one month's rigorous imprisonment and to a fine of Rs. 100 and in default to a further period of three months' rigorous imprisonment. *Held*, the punishment was needlessly severe. QUEEN-EMPRESS v. NGA SHIVE LIN, **L.B.R. 1872—1892, 368.**

(53)—*S. 9—Mere contemplation of violating a rule, whether punishable.*—A person can be convicted for a breach of the rules framed under S. 9 of the Opium Act only when he does some act in contravention of such rule and not merely for contemplating such violation. *In re* P. VENKATACHALLAM CHETTI, **15 Cr. L.J. 667 = 25 Ind. Cas. 995.**

(54)—*S. 9—Rules 3 and 4 (1)—Manufacture of* chandul *by purchaser or opium for domestic use.*—Reading rr. 3 and 4 (1) together, the intention must be held to permit the manufacture of *chandul* by a purchaser of opium from a licensed vender for his own (the purchaser's) domestic use from opium obtained from a licensed vendor. QUEEN-EMPRESS v. KAGLO, **Rat. Un. Cr. C. 676 = Cr. Rg. 42 of 1893.**

(55)—*S. 9—Illegal making over of opium—Selling of opium—Abetment of illegal possession of opium—Penal Code, s. 40.*—The licensed cultivators of poppy employed another to prepare opium for them, giving him as remuneration $\frac{1}{4}$ of the juice extracted from the poppy-heads. The latter was thus in possession of $32\frac{1}{2}$ tolas of opium and was rightly convicted under s. 9. The licensed cultivators were convicted under s. 9 for selling opium. *Held*, that they could not be considered to have sold opium and were therefore not liable to be convicted under s. 9. *Held*, further that they were not liable to be convicted of abetment of possession of opium, as they were cultivators independent of each other, and as there was nothing to show the quantity made over by each of them. SHANKAR v. EMPRESS, **4 P.R. 1884, Cr.**

(56)—*S. 9—Sale of opium by servant of licensee.*—In the absence of any prohibition in a license to sell opium granted under this Act against the employment of a servant to sell the same, a sale by a servant of the licensee on behalf of his master is not properly a sale of opium without a license, punishable under s. 9 of the Act. QUEEN-EMPRESS v. ZALIM, **S.C. 285, Oudh.**

(57)—*S. 9—Liability of master for acts of servant.*—Where the servant of a licensed opium vendor sold opium after sunset, contrary to the conditions of his master's license in his master's absence, and there was no evidence to show that the master had directly or otherwise authorised the illegal sale, the master was not liable to pay the penalty under s. 9 of Act I of 1878. *In the matter of* BHOOBUN CHUNDER SHAW, **11 C L.R. 464.** [*D.*, 1 N.L.R. 81; *R.*, 13 C.L.R 336.]

(58)—*S. 9—Neglect to keep accounts.*—The rules made under the Opium Act do not make the neglect to keep accounts an offence punishable under the Act. *In re* TANGADU MARUO PATRO, **1 Weir 831.**

(59)—*S. 9—Breach of condition of license—Offence.*—An infraction of a condition of a license cannot be considered an infraction of the rules and punishable under s. 9 of the Opium Act. QUEEN-EMPRESS v. DATTER *bin* BALA, **Rat. Un. Cr. C. 860 = Cr. Rg. 24 of 1896.**

(60)—*S. 9—Form of charge.*—In a charge under s. 9 of Act I of 1878, the rule under which the accused is charged should be specified clearly so that the accused may know precisely with what he is charged and may not be misled in his defence. MAJA SINGH v. EMPRESS, **10 P.R. 1888, Cr.** MAHMUD v. QUEEN-EMPRESS, **19 P.R. 1891, Cr.**

(61)—*S. 9—Commitment for an offence under s. 9 of the Act to the Sessions—Crim. Pro. Code* (1882), s. 29—A Sessions Judge has no jurisdiction over an offence under s. 9 of the Opium Act. The conviction under that section must be by a Magistrate. The latter is not, therefore, competent to commit the case to the Sessions. QUEEN-EMPRESS v. SCHADE, **19 A. 465 = A.W.N. 1897 115.** (1 W.R. 5, Cr., 5 M.H.C. 277, *R.*).

(62)—*S. 9—Charges under s. 9—Specification of rule.*—In framing charges under the Opium Act, the particular rule, alleged to have been infringed by the accused, rendering him liable to punishment under s. 9, should also be specified, no less than s. 9, which lays down the punishment for the breach of the several rules framed under the Act. MAHMUD v. QUEEN-EMPRESS, **19 P.R. 1891, Cr.**

(63)—S. 9—*See* ACT XIII OF 1857, s. 24, 24 C. 691.

(64)—S. 9—*See* CRIM. PRO. CODE, 1898, ss. 252, 243, 29 M. 372 = 4 Cr.L.J. 231.

(65)—S. 9—*See* CRIM. PRO. CODE, 1898, s. 555, 15 A. 192, F.B = A.W.N. 1893, 79.

(66)—S. 9—*See* CRIM. PRO. CODE, 1898, s. 556, L.B.R. 1872—1892, 400.

(67)—S. 9—*See* JOINT TRIAL, 113 P.L.R. 1906 = 4 Cr.L.J. 178.

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(68)—*S.* 9—*See* SENTENCE — JUVENILE OFFENDER, SENTENCES ON, L.B.R. 1872—1892, 330.

(69)—*S.* 9 (2)—*Liability of cartman carrying opium seed.*—Where accused No. 1 engaged accused No. 2 to carry illicit opium in his cart, *held* that, in the absence of proof that the accused knew that opium was transported in his cart, he was not guilty. QUEEN EMPRESS v. NARSIDAS, **Rat. Un. Cr. C. 378 = Cr. Rg. 28 of 1888.**

(70)—*S.* 9 (c)—*Possession of opium beyond the prescribed quantity.*—Any possession of opium beyond the prescribed quantity amounts to an offence under the Opium Act and Rules. It cannot be said that, when possession is on behalf of another, it is not possession within the meaning of the Opium Act and Rules. The offence consists in the possession of an amount beyond the prescribed amount, without reference to any question or to any alleged proprietary right to any portion of the opium. PUBLIC PROSECUTOR v. PELLURI RAMAYYA, **1 Weir 832.**

(71)—*S.* 9, *cl.* (c)—*Nature of possession of opium in contravention of Excise Law.*—S. 9 (c) contemplates a criminal or guilty possession. In the case of a person charged with being in illicit possession of opium under this section, the fact that the opium was found in that portion of his dwelling-house, which was in his sole occupation, gives rise to a *prima facie* presumption of his guilty possession. QUEEN-EMPRESS v. SALIM, **S C. 236, Oudh.** (S. C. 161, Oudh, *F.*)

(72)—*S.* 9 (c)—*Presence in chandu den—Abetment of possessing more than the prescribed quantity of opium.*—The fact of the presence of a person in a "*chandu* den" where several persons were smoking *chandu*, or even of his being found smoking there, could not warrant his conviction for abetment of the offence on the part of the master of the establishment of possessing *chandu* to a larger amount than that allowed by law. KING-EMPEROR v. CHOTE LAL, **A.W N. 1901, 117.**

(73)—*S.* 9, *cl.* (c)—*Possession of opium, ingredients necessary to constitute—Whether crew of boat in which opium was found, could be said to be in possession of the opium.*—For the purposes of an offence under s. 9, cl. (c) of the Opium Act (I of 1878), nothing is necessary beyond possession of the opium; no particular frame of mind of the person found in possession is necessary to constitute the offence. The mere fact that the accused were two of the crew of the boat in which contraband opium was found, is not sufficient to attribute to them possession within the meaning of s. 9 of the Opium Act. EMPEROR v. HAMID ALI, **37 C. 24 = 14 C.W.N. 308.**

(74)—*S.* 9 (c)—*Illegal possession—Severe punishments inadvisable.*—Severe punishments for an offence under cl. (c) of this section are unsuitable in cases of possession by a Burman woman of a small quantity for her own use and in cases when Excise officers abet the commission of such offences. CRIMINAL REVISION CASE NO. 593 OF 1892, **U.B.R. 1892—1896, Vol. I, 135.**

(75)—*S.* 9 (c)—*Smuggling—Necessity for fine and imprisonment.*—When an accused person is convicted of an offence under the Opium Act under the conditions which lead the Magistrate to conclude that he is engaged in traffic in opium on a large scale or in transporting opium in considerable quantities, a substantive term of imprisonment may appropriately be awarded in addition to a substantial fine. When opium is smuggled or sold in large quantities, the profits are probably such that the prospect of a sentence of fine only does not act as a deterrent. QUEEN-EMPRESS v. KUEIN KWUN, **U B.R 1897—1901, Vol. I, 241.** (U.B.R. 1892-1896, Vol. I, 139, *D.*).

(76 & 77)—*S.* 9 (c)—*Burden of proof.*—Where opium of any kind, and whether or not in excess of the prescribed maximum, is found in the possession of any person, and the legality of such possession is challenged by the Crown, the burden of proving that the possession was lawfully obtained lies on the person with whom the opium is found. EMPEROR v MUSSAMMAT GULBI, **17 C P.L.R. 75.** (16 C.P.L.R 13, *R.*)

(78)—*S.* 9, *cl.* (c)—*Possession of 'Beinchi' illegal.*—'*Beinchi*' (or half-consumed opium), i.e, the remnant left in an opium pipe after once smoking, is itself a preparation of opium when retained for further use and its possession is therefore illegal under s. 9. QUEEN-EMPRESS v. NGA THILA, **U.B.R. 1892—1896, Vol. I, 133.**

(79) *S.* 9 (c)—*Opium Rules,* 1910—Beinchi—*Possession of three tolas legal, if bought from licensed vendor.*—The Opium Rules, 1910, include *beinchi* in what is there called "defined opium," and allow the possession of such opium by a non-Burman up to three tolas in weight if brought by him from a licensed vendor. The ruling in *Queen-Empress* v. *Thila* (U.B.R. 1892—1896, Vol. I, 133, *R.*) no longer applies. EMPEROR v. AH PEIN SHOK, **U.B.R. 1914, 1st Qr., 1 = 24 Ind. Cas. 844 = 15 Cr. L.J. 532.**

(80)—*S.* 9 (c)—*Servant's possession of opium, on master's behalf—Whether illegal—Conviction under s.* 9 (c), *Opium Act—Sustainability.*—Mere possession by a Burman servant, on behalf of his master, a Chinaman, of three tolas of opium, is not illegal, and the servant cannot be convicted under the terms of s. 9 (c), Opium Act. KING-EMPEROR v. NGA PYA GYI, **U.B.R. 1909, 2nd Qr., Opium, 1** (15 A. 27, 25 A. 262, 2 L.B.R. 136, U.B.R. 1897—1901, I, 1, 232, *R*)

(81)—*S.* 9 (c)—*Servant's possession—Opium rules—Joint possession.*—If the accused, a

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Act I of 1878 (Opium)—*continued.*

Burman servant, had had the custody of no more than three tolas of opium, which his master was entitled to possess, it might have been found that he, although a Burman, had committed no breach of the Opium Rules on the ground that he was not in possession within the meaning of the law. But it is otherwise if the quantity of opium be more than three tolas. There is no provision in the Opium Rules for the possession of more than three tolas of opium by one man, nor for the joint possession of more than that quantity by several persons. QUEEN-EMPRESS v. NGA KYAW GAUNG, **U.B.R. 1897—1901, Vol. I, 232.**

(82)—*S.* 9 (*c*)—*Excessive opium found in a boat—Liability of the master and the crew.*—Where 50 tolas of opium were found in a boat and there was nothing to show how the opium came there, the master of the boat was liable to be convicted under s. 9, but not the crew. CHEDI MALA v. KING-EMPEROR, **8 C.W.N. 349.**

(83)—*S.* 9 (*c*) *Possession—Opium found in accused's house.*—Possession to be punishable must be possession with knowledge and assent. Where opium is found in an accused person's house, it must be shown that he was in possession of it, before he can be called upon to account for it under s. 10 of the Opium Act, in other words, that it was in his house with his knowledge and assent NGU PU v. EMPEROR, **13 Cr. L.J. 122 = 13 Ind Cas. 778 = 4 Bur. L.T. 270.** (U.B.R. 1892—1896. I, 159; U.B.R. 1907—1909, 3rd Qr., Excise 1, 4 Ind. Cas. 898, 11 Cr. L.J. 77, *F.*)

(84)—*S.* 9 (*c*)—*Possession—Person left in custody of a box—Knowledge that it contained opium.*—Being in custody of a box of another, with knowledge that it contained opium, is to 'possess opium' within the meaning of s. 9 (*c*) of Act I of 1878. VENKATA VIZYAMMAL v. EMPEROR, **1911 M.W.N. 361.**

(85)—S. 9 (*c*)—*See* MASTER AND SERVANT, U.B.R. 1897—1901, Vol. I, 232.

(86)—S. 9—*See* Nos. 8 to 11, 15 and 22 to 33, *supra.*

(87)—*Ss.* 9 (*c*) *and* 10—*Possession of certain quantity of opium several days after last purchase, as recorded in consumption slip--Presumption of illegal possession of opium—Insufficient evidence.*—An accused person was found in possession of only 3 tolas of opium on the 9th June, and it was proved, from his consumption slip, that he had purchased 3 tolas on the 4th June. It was presumed by the Magistrate that he must have consumed ½ a tola a day and that the 3 tolas found in his possession could not be opium bought from the Government. His defence was that he had borrowed opium from his friends, so that he had not consumed the opium he had bought from the shop on the 4th June. *Held*, that the presumption, under s. 10 of the Act, did not apply to a case of this kind, and that the Magistrate was not justified in drawing the inference, which he drew from the proved facts. KING-EMPEROR v. PAW YAN, **4 L.B.R 314.** [*R.*, 3 Bur.L.T. 82 = 11 Cr.L.J. 658 = 8 Ind. Cas. 461.]

(88)—*Ss.* 9 (*c*), 10—*Holder of a mate's receipt—Constructive possession.*—The holder of a mate's receipt is presumed, till the contrary is proved, to be in possession of the consignment covered by it. Under s. 10 where the accused is found in constructive possession of a package containing opium, he is bound to account satisfactorily for it and to prove that no offence is committed by him in respect of it. WAING SHWAN v. QUEEN-EMPRESS, **U B.R., 1897—1901, Vol. I, 242.** (U.B.R. 1892—1896, Vol. I, 339, U.B.R. 1897—1901, Vol. I, 232, S J.L.B. 573, *R.*)

(89)—*S.* 9 (*d*)—*Rule* VIII *of the Opium Rules,* 1893—*Taluqs formed separately—Transporting of opium—Pass from proper authorities.*—Under Rule VIII of the Opium Rules of 1893, a farmer desiring to transport opium from one taluq to another of the same district must "when the taluqs of the district are farmed to different farmers" obtain a pass for each consignment from the officer in charge of the excise revenue of the district or from the Tahsildar of the Taluq. Where the taluqs of the districs are separately farmed, but only one person is the farmer of two of the taluqs, a person transporting opium from one of the taluqs to the other with permits signed by the farmer, and being found, in the course of transporating, in a place outside both the taluqs, has transgressed the rule. *In re* SARWARKHAN, **1 Weir 833.**

(90)—*S.* 9 (*e*)—*Importing opium.*—The accused went on business into foreign territory and, while there. purchased one anna's worth of opium. He ate a portion of it there. and brought the rest in his turban into British territory. The Magistrate convicted him under s. 9 (*e*), Opium Act. The High Court reversed the conviction. QUEEN-EMPRESS v. DHONDOO, **Rat. Un. Cr 969 = Cr. C. Rg. 25 of 1898.**

(91)—*S.* 9 (*e*)—*Exporting opium—Parcel of opium tendered at Post Office—Seizure by Post Office—Not amounting to 'export'—Attempt to export—S.* 511, *I P.C.. not applicable.*—B tendered a parcel containing opium at the Post Office at H for being despatched to Burma. The parcel was opened by the Postal authorities, marked 'doubtful' with a view to the identification of the consignee, and despatched it to Burma. The parcel not having been claimed was sent back to H. *Held*, that the parcel, having been seized by the Postal Officials before despatch, ceased to be in their hands on B's behalf and that it was not 'exported' by B. *Held*, also, that, though B doubtless attempted to export the parcel, that attempt was not punishable under s. 511, I.P.C. BOSTON v. CROWN, **2 P R. 1911, Cr. = 6 P.W.R. 1911 = 9 Ind. Cas. 682 = 12 Cr.L.J. 116 = 108 P.L.R. 1911.**

I.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

(92)—*Ss.* 9 *and* 10—*Scope of the section.*—The section provides that opium in respect of which an offence under the section is committed must be opium in the possession of the accused, although the possession need not be to the knowledge of the accused. The section is a penal one and must therefore be read plainly; the plain meaning is that if excessive opium is found in a man's possession, he is liable to be punished, unless he is able to account for it satisfactorily. CHEDI MALA v. KING-EMPEROR, **8 C.W.N. 349.**

(93)—*Ss.* 9 *and* 10—*Opium in the luggage of a child in charge of an adult—Presumption—Extent of punishment.*—Where opium is found in the luggage of a child in charge of an adult, the presumption is that it is in the possession of the person in *loco parentis* to the child until the contrary is proved. The presumption under s. 10 should be imposed on the accused, only after giving him an opportunity to account for the possession of opium, and if he is then unable to account for it satisfactorily; and the punishment awarded under the Act should not be one beyond what the public interest demands. PIN YE v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 139.** (S.J.L.B. 573, *R.*) [*F.*, 11 Cr. L.J. 77=4 Ind. Cas. 898=U.B.R. 1909, III, Excise, p. 1, 13 Cr. L.J. 122=13 Ind. Cas. 778 =4 Bur. L.T. 270.]

(94)—*Ss.* 9 *and* 10—*Presumption of guilt, rule of, in s* 10—*Meaning of—Circumstantial evidence of guilt.*—In construing s. 10, Opium Act, some limitation must be placed upon the general words of the section, namely, "it shall be presumed, until the contrary is proved, that all opium for which the accused person is unable to account satisfactorily is opium in respect of which he has committed an offence under this Act." The effect of ss. 9 and 10 of the Opium Act seems to be that, when once it is proved that an accused person has dealt with opium in any of the ways described in s. 9, the *onus* of proving that he had a right so to deal with it is thrown upon the accused by s. 10. But the commission of an act which may be an offence must be proved before the presumption under s. 10 comes into play and the presumption cannot be used to establish the fact. Where the accused, after having purchased opium on behalf of his master, did not send it to the master's shop, but falsely said, when asked as to it, that the opium had been stolen. *Held*, these circumstances, though they raise a suspicion that the accused sold the opium, are not sufficient to prove that he had done so; and the rule of statutory presumption embodied in s. 10 of the Act does not apply and cannot be used to establish that fact. But as, on the facts proved, the accused might have been convicted of unlawful transport of opium, the conviction and sentence were not interfered with. ISHWAR CHANDRA SINGH v. EMPEROR, **37 C. 581=12 C.L.J. 19 =14 C.W.N. 710=6 Ind. Cas. 173=11 Cr.L.J. 256.**

(95)—*Ss.* 9, 13—*Fine—Power of Magistrate to distribute it among persons concerned in the detection.*—A Magistrate is not competent to distribute fines among persons who may have been concerned in the detection of an offence under the Act. Rule No. 67, so far as it authorizes such payment is *ultra vires.* QUEEN-EMPRESS v. GANPAT, **13 P.R. 1894, Cr.**

(96)—*S.* 9, *Rule* 16 *and s.* 14—*Illegality of search, as a defence.*—In this case the accused was prosecuted for being in possession of opium in excess of the quantity allowed by law. The accused pleaded that the discovery of the excess quantity was the result of an illegal search. *Held*, the fact that the discovery was the result of an illegal search cannot exonerate the accused from the criminal liability. CROWN v. NAHU, **11 P.R. 1906, Cr.=4 Cr. L J. 290=118 P.L.R. 1907.** (37 P.R. 1880, Cr., *R.*).

(97)—*S.* 10—*Interpretation of—"Possession," definition of the term—Proof of possession essential.*—The terms "possession" implies knowledge on the part of the alleged possessor. A man has not the possession of that, of the existence of which he is unaware. Before an accused person is required to account for opium, there must be proof that such opium has been in his possession or under his control. QUEEN-EMPERSS v. CHIT AUNG, **L.B.R. 1872—1892, 573.**

(98)—*S.* 10—*Satisfactory explanation of possession—Accused discharged of* onus probandi.—Where an accused person gives an account of his possession of the opium, which, if true, is satisfactory, and there is no evidence to show that it is untrue, the burden of proving how he became possessed of the opium in question does not fall on him. QUEEN-EMPRESS v. NGA CHAN E, **L.B.R. 1872—1892, 597.**

(99)—*S.* 10—*Presumption* — Onus.— Accused was tried for illegal possession of opium found on him on the 18th May, 1909. He counted for it by saying that he had purchased it from a licensed vendor. This fact was accepted by the prosecution, but they alleged that the date of his purchase was such that this explanation was not satisfactory. *Held*, that it lay upon the prosecution to prove that date, and only then, upon the accused failing to satisfactorily account for the large quantity of opium still in his possession on the date of his arrest, could any presumption be drawn against him under s. 10 of the Opium Act. EMPEROR v. PA, **8 Ind. Cas. 461=11 Cr. L.J. 658=3 Bur. L.T. 82.** (4 L.B.R. 314, 9 Cr. L.J. 16, *Cons.*)

(100)—*S.* 10—*Presumption in case of unlawful possession of opium.*—Where a person, convicted of attempting to smuggle $5\frac{1}{2}$ seers of opium into the city of Lucknow for sale, was sentenced to two months' simple imprisonment and a fine of Rs. 50, the sentence was enhanced to two months' additional rigorous imprisonment, the Court pointing out that, although

I.—Imperial Acts—continued.

Act I of 1878 (Opium)—*continued.*

s. 10 of the Act threw on the accused the burden of satisfactorily accounting for opium in his possession contrary to the provisions of the Act, the presumption against the accused is only a presumption which may be rebutted and that possession must be proved, as opium is not unfrequently maliciously placed in or upon a person's premises by an enemy, who, then, brings down the police to the spot where the opium is found, and as such finding does not prove the possession contemplated by law. QUEEN-EMPRESS v. RAMDIN, **S.C. 161, Oudh.** [*F.*, S.C. 236, Oudh.]

(101)—*S. 10—Liability of common carriers under the section.*—S.10 contains no reservation in favour of common carriers. One of the objects of enactments such as s. 10 is to induce persons like carriers, to exercise special vigilance in carrying on their business, and this would apply as much to a common carrier as to a carrier under a special contract. CHEDI MALA v. KING-EMPEROR, **8 C.W.N. 349.**

(101-*a*)—S. 10—*See* Nos. 87, 88, 92, 93 and 94, *supra.*

(102)—*S. 11— Confiscation of property—Proof—Appeal from order of confiscation.*—Where a cart was hired by the accused and in the cart was found a bag containing opium belonging to the accused, *held*, that, the order for the confiscation of the cart was not legal, in the absence of evidence to show that the carter knew that the accused's bag contained opium and, even if he knew that there was opium in the bag, that the accused had no right to transport it. No appeal lies against an order of confiscation passed under s. 11 of the Opium Act. *In re* RAMANNA, **1 Weir, 835.**

(103)—*S. 11—Boat, unlawful user by hirer—Confiscation, without hearing owner.*—An order of the Magistrate confiscating a boat under s. 11 of the Opium Act was set aside when such order was passed without giving the owner of the boat an opportunity of being heard. S. 11 of the Opium Act does not seem to contemplate that every receptacle in the nature of a ship or a house or a carriage in which a small quantity of opium may happen to be found is liable to confiscation ; liability arises from the owner of such conveyance using the conveyance for the purpose of transporting opium. SHAIKH ABDUL RAHMAN v. KING-EMPEROR, **15 C.W.N. 296 = 9 Ind. Cas. 587 = 12 Cr. L.J. 103.**

(104)—S. 13—*See* Nos. 33 and 95, *supra.*

(105)—S. 14—*See* Nos. 9 and 96, *supra.*

(106)—*Ss. 14, 15 and 16—Excise Act, s. 38—Crim. Pro. Code, ss. 102 and 103—Search—Witnesses to search—Written information—Evidence.*—S. 16 of the Opium Act lays down that searches under ss. 14 and 15 of that Act shall be made in accordance with the provisions of the Code of Criminal Procedure. Under the Excise Act, it would appear from the wording of s. 38 of that Act, that it is not necessary for an Excise officer to conduct the search under the provisions of the Code of Criminal Procedure. It is objectionable to be constantly calling the same person to witness the search, and to do so is likely to prejudice the mind of a trying Magistrate against the prosecution. When searches are undertaken under the provisions of the Opium Act, neighbours or respectable houseowners near to the house searched, should be called in to witness the search. A written information is not evidence. If it is desired to make the matter contained in it evidence, a person who could directly testify to such matter should be produced as witness. MI HAUK v. KING-EMPEROR, **4 L.B.R. 121 = 14 Bur. L.R. 202 = 7 Cr. L J. 87.** [*R.*, 14 Bur. L.R. 81 = 7 Cr. L.J. 479 = 4 L.B.R. 213.]

(107)—S. 15—*See* No. 106, *supra.*

(108)—*Ss. 15 and 19—Entry and search of boat between sunset and sunrise without warrant—Seizure of opium—Whether authorised—"In transit," meaning of—S. 15.*—Opium which is being carried about from place to place in a boat is "in transit", although the boat is temporarily anchored or otherwise fastened. But, s. 15 of the Act does not authorise an officer to enter and search a boat, between sunset and sunrise, against the will of the person in charge of it, without a warrant from another officer authorised under s. 19 of the Act. KING-EMPEROR v. NAWZU, **5 L.B R. 56, F.B. = 2 Ind. Cas 546.**

(109)—*S. 19—Search—How to be made—Irregularity in search—Effect of evidence.*—In conducting a search under this Act of premises occupied by the accused, the provisions of s. 103 of Code of Criminal Procedure are to be observed. The residents of the locality must be asked to be present and a list of property found should be made. The irregularity of the search will impair the value of the evidence regarding the discovery of opium. CRIMINAL REVISION NO. 871 OF 1892, **U.B.R. 1892—1896, Vol. I, 135.**

(110)—S. 16—*See* No. 106, *supra.*

(111)—S. 19—*See* Nos. 9 and 108, *supra.*

(111-*a*)—*S. 39—License to sell* muddut—*Bengal Act* IV *of* 1866.—The sale of *muddut* is regulated by Act I of 1878. Therefore, any license granted for the sale of *muddut*, will not be a license under ss. 36 and 37, Act IV of 1866. s. 39 of the Act applies, and, therefore, a license, from the Commissioner of Police is necessary for the sale of *muddut.* R. DAVIS v. KOYLAS CHUNDER GHOSE, **13 C.L.R. 336.** (11 C.L.R. 464, *R.*)

(111-*b*)—*S. 45—Strict compliance with legal preliminaries necessary before the search of house.*—Before the house of a man is searched for the discovery of illicit opium, all the necessary preliminaries imposed by law must be strictly complied with, as opium cultivators are as much entitled to the possession of less than

I.—Imperial Acts—continued.

Act I of 1878 (Opium)—*concluded.*

five tolas of opium as any other person. GOVERNMENT v. DHUNNOO, **Book Cir. 3 of 1872.**

(112)—*Direction* 71 - *Obtaining opium by personation in excess of amount allowed by Excise Officer—Fraudulent act.*—Where a person licensed to buy opium obtains from the licensed vendor, by personating a real or imaginary person, more opium than he would have got without such personation, he cannot be said to act dishonestly, as there would have been no wrongful gain or loss had the opium been sold to him. He does, however, act fraudulently, as his intention was to deceive the vendor and thereby obtain an advantage or privilege, which without such deception could not have been obtained. EMPEROR v. TAN KEP SI, **8 Ind. Cas. 596=3 Bur. L.T. 11.**

(113)—*Rule* I, *cl.* XX—*Presumption as to Burman when to be raised*—Onus.—If the law declares that under certain conditions the burden of proof shall be shifted from the prosecution to the accused, the presence of all those conditions should be strictly proved. Before a presumption that a person is a Burman can be raised, it should be shown that he *ordinarily* wears Burman clothes and speaks Burmese as his *vernacular*. QUEEN-EMPRESS v. NGA THA DUN, **U.B.R. 1892—1896, Vol. I. 144.**

Act VI of 1878 (Treasure Trove).

[REP. IN PT., ACT XII OF 1891. DECLARED IN FORCE—IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S 4.]

(1)—*Ss.* 4, 20—*Coolies engaged by employer—Discovery by them of treasure in the course of performance of their work—Liability as 'finders'—Conviction under* s. 20 *of the Act - Validity—'Finder'—Meaning of the term.*—Where two coolies, while engaged by their employers in the cutting of a tree, discovered, in the presence of their employers and several others, a box which, when opened before them, revealed treasure of value, and the box was removed by one of their employers who secretly disposed of them, and the coolies were prosecuted under s. 20 of the Treasure Trove Act and convicted. *Held*, that the coolies were 'finders' within the meaning of s. 4 of Act VI of 1878 and that they were rightly convicted under s. 20 of the same Act. *In re* MALA NAICKER, **27 M. L. J. 477=15 Cr.L.J. 632=25 Ind. Cas. 640.**

(2)—*S.* 20—*Crim. Pro. Code* (1882), *s.* 28—*Offences under the Act—Jurisdiction of the third-class Magistrates.*—Third-class Magistrates have no jurisdiction to try offences punishable under s. 20 of this Act. CRIMINAL REVISION CASE NO. 328 OF 1882, **2 Weir 23.**

(3)—S. 20—*See* No. 1, *supra.*

(4)—Ss. 20, 21—*See* ABETTOR, 1 Weir 919.

(5)—S. 21—*See* No. 4, *supra.*

I.—Imperial Acts—continued.

Act VII of 1878 (Forest).

[REP. IN PT. (LOCALLY), ACT VI OF 1879; AM., ACT V OF 1890, SS. 2—14; AM., ACT XII OF 1891; REP. IN PT. AND AM., ACT V OF 1901; REP. (IN ASSAM), REG. VII OF 1891. DECLARED IN FORCE—IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3; IN THE CHITTAGONG HILL-TRACTS, REG. I OF 1900, S. 4.]

(1)—*Conviction—Reward—Crim. Pro Code, Act* X *of* 1882, *s.* 545.—Where a conviction and sentence proceeds under the provisions of the Indian Forest Act, it is not competent to a Magistrate to pass an order of reward to the complainant for detecting the offence. QUEEN-EMPRESS v. VITHU *valad* RAMJI, **Rat. Un. Cr. C. 873=Cr. Rg. 48 of 1896.**

(2-4)—*Rules framed under the Act by Local Government—Conservator notifying periods and localities left unascertained by Government—Closing of forest for indefinite period—Misquoting of the section—Appeal.*—A misquoting of the section of the Act under which a rule otherwise valid has been framed, does not render the rule void. When the Local Government has framed rules under the Forest Act, prohibiting hunting and shooting in reserved forests during such periods and in such portions as the Conservator may appoint, the Conservator, in notifying periods and localities left unascertained by the Local Government cannot be said to be exercising the authority delegated to the Local Government by the Act. A notification closing a forest for an indefinite period is not bad for indefiniteness, when it is not known at that time, how long it may be necessary to close the forest. BATES v. EMPRESS, **19 P.R. 1880, Cr.**

(5)—Case challaned by Forest Department—Proceeding stopped by Magistrate—Effect—Further inquiry ordered by District Magistrate—*See* CRIM. PRO. CODE. 1898, ss. 249, 403, 437, 13 Cr.L.J. 860=9 P.R. 1913, Cr.=163 P.L.R. 1913.

(6)—*S.* 5—*Trees cut from waste—Conviction—Land Revenue Code.*—Where a person *cuts* trees in a plot marked as waste number, the prosecution should lie, not under the Forest Act, but under the Land Revenue Code or the Rules framed thereunder. QUEEN-EMPRESS v. KOYA MAVJI, **Rat. Un. Cr. C. 873=Cr. Rg. 49 of 1896.**

(6-*a*)—S. 16—*See* MISCHIEF, 1 Weir 492.

(7)—*S.* 25—*Summons case — Acquittal — Further enquiry—Revision—Crim. Pro. Codé* (1898), *s.* 437.—In this case the accused was tried and acquitted by a Tahsildar of the offence under s. 25. The District Magistrate disagreeing with the decision of the Tahsildar sent the case for further enquiry to the Assistant Commissioner, Attock, who convicted the accused. The Sessions Judge declined to submit the case to the Chief Court for revision holding

I.—Imperial Acts—continued.

Act VII of 1878 (Forest)—*continued*

that the accused was tried in a summons case and could only be discharged, but could not be acquitted, and that the order directing further enquiry was not illegal. *Held,* that the order of the District Magistrate was illegal and that the view of the law taken by the Sessions Judge was erroneous. A case under s. 25 of the Forest Act is a "Summons case" and the Tahsildar, if he did not find the accused guilty, was bound to acquit him, and no order under s. 437, Crim. Pro. Code, directing further enquiry, could be passed. The order of the District Magistrate and conviction and sentence were set aside. AMIR KHAN v. EMPRESS, **P.L.R. 1900, Cr., p. 50=19 P.R. 1900, Cr.**

(8)—S 25—*Levy of pound fines under Act* I *of* 1871—*Prosecution for an offence under s.* 25, *Forest Act.*—The levy of pound fines under Act I of 1871, s. 12, in respect of an offence of allowing cattle to trespass in a reserved forest is not a punishment, and does not, therefore, bar a prosecution, under s. 25 of the Forest Act. EMPRESS v. GHAZI, **19 P.R 1885, Cr.** [*R.*, 19 P.R. 1900, Cr.]

(9)—S 25—*See* CRIM. PRO. CODE, 1898, s. 437, 19 P.R. 1900, Cr.=P.L.R. 1900, p. 50.

(10)—*S.* 25 (1) – *Shooting in reserved forest.*—A conviction recorded under s. 25 (1) of the Forest Act, for shooting in a reserved forest in contravention of any rules which the Local Government from time to time prescribes, is illegal where no such rules have been passed by the Government. QUEEN-EMPRESS v. HANMANTA, **Rat. Un. Cr. C. 684=Cr. Rg. 50 of 1893.**

(11)—*S.* 25, *cl.* (*b*)—*Permitting cattle to trespass — What amounts to trespass punishable under the Act—Test.*—The question whether the owner of cattle, whose animals trespass in a reserved forest, is criminally liable for committing an offence under s. 25, cl. (*b*), Forest Act, 1878, depends upon the whole circumstances of each particular case. In a great many cases, the question will resolve itself into, 'did he or did he not take proper precautions to prevent such trespass,' and it does not depend upon the presence or absence of the owner at the moment. CROWN v. SAMANDAR NATHU, **16 P R. 1909, Cr.=40 P.W.R 1909, Cr =4 Ind. Cas. 866.**

(12)—*S.* 25 (*c*)—*Possession of flint or steel.*—The mere possession of a flint or steel within forest limits does not constitute an offence under s. 25 (*c*) of Act VII of 1878. EMPEROR v. RANCHHOD KHUSAL, **4 Bom L R 935.**

(13)—*S.* 25 (*d*)—*Trespass in reserved forest—Human being*—The trespass of a human being in a reserved forest is punishable under s 25 (*d*) of the Indian Forest Act. QUEEN-EMPRESS v. UMDYA, **Rat. Un. Cr. C. 602=Cr. Rg. 21 of 1892.**

(14)—*S.* 25, *cl.* (*i*)—*Hunt—Interpretation.*—The accused was sitting in a reserved forest in a *bhoja*, or specially prepared screen devised for hunting, and had by his side a loaded gun. He was sitting there with the intention of hunting. Upon these facts he was proceeded against under s. 25, cl. (*i*), Forest Act, 1878, for hunting in a reserved forest without a license:—*Held*, that the accused was hunting within the meaning of s. 25, cl (*i*), Forest Act, 1878. The word "hunt" is used intransitively in s. 25, cl (*i*) of the Act. EMPEROR v. MALU HIRU BAGARA, **12 Bom. L. R. 520=7 Ind. Cas. 450 =11 Cr. L. J. 486.**

(15)—*Ss.* 25, 32 (*a*)—*Protected forest—Felling a tree without permission—Damage to the protected forest—Compensation for the damage.*—There is no provision, either in the Act or the rules framed thereunder, to award compensation for damages in respect of the protected forest. EMPEROR v. KARIANNA HULIANNA, **8 Bom. L. R. 987=5 Cr.L.J. 9.**

(16)—*Ss.* 25 *and* 54—*Conviction under the Act—Order for confiscation.*—An order for confiscation cannot be regarded as an order incidental on a conviction under the Act. The confiscation is by the terms of s. 54 declared to be a punishment, for it is in addition to any other punishment prescribed for the offence. Being a punishment, the order for confiscation should be passed simultaneously with the punishment for the offence. AINUDDI SHEIKH v. QUEEN-EMPRESS, **27 C. 450.** (4 A. 417, *R.*)

(17)—*Ss.* 25 *and* 63—*Forest offence—Court-fees—Court Fees Act,* s. 31.—Where persons convicted of an offence under the Forest Act, were each sentenced to pay a fine of thirteen annas, or in default to suffer one day's simple imprisonment, and all of them were ordered to pay annas five as compensation for the loss of Forest fuel or wood and Re. 1-4 as Court fee expenses under s. 31 of the Court Fees Act, *held* that the order as to payment of Court-fees was not a valid order, as offences under s. 25 of Act VII of 1878 are, under s. 63, of the kind for which Police officers may arrest without warrant. QUEEN-EMPRESS v. GOPAL, **Rat. Un. Cr. C. 695=Cr. Rg. 25 of 1894.**

(18)—*Ss* 25 *and* 66—*Theft of wood from Government Forest, to which Forest Act does not apply*—*Penal Code, s.* 379—In the absence of anything in a Special Act (like the Forest Act) to exclude the operation of the general criminal law, an intention on the part of the legislature to exclude it should not be inferred. Further s. 66 negatives any such intention. Theft of wood from a Government forest, to which the Forest Act had not been applied, is punishable under the Penal Code. EMPRESS v. IMAN BAKSH, **10 P.R. 1885, Cr.** (22 P.R. 1876, Cr., *disappr.*)

(19)—*Ss.* 25, 75—*Sentence—Payments of rewards out of fines and confiscations.*—The payment of rewards out of fines and confiscations is not a part of the sentence, but is a matter for the Executive Government to deal with, in the

I.—Imperial Acts—continued.

Act VII of 1878 (Forest)—*continued.*

exercise of the power vested in them by the rules framed under the Act. These rules give the Government the power to pay one half of the proceeds of fines and confiscations by way of reward without any order of the convicting Court, but more than one half cannot, however, be paid unless the Magistrate so directs. QUEEN-EMPRESS v. MOGHJI KUKA, **Rat. Un. Cr. C. 960 = Cr. Rg. 13 of 1898.**

(20)—*Ss.* 28, 29-*a*, 31, 32, 34—*Cutting trees reserved in protected forest.*—In acquitting an accused convicted of cutting trees reserved in a protected forest under s. 29-*a*, *held* that a protected forest may be notified either under s. 28 or s. 34, but the powers under both those sections are restricted to lands which are forest or waste lands. Whatever liability the accused might be under in regard to the provisions of any other law, he could not be convicted under s. 32 of the Act, for, the land which formed part of a survey number in an occupant's holding and which was assessed, was not shown to be within the class of lands to which the powers of Government under ss. 28, 29 and 34 of the Forest Act applied. EMPEROR v. SHESHAGIRI RAO VITHAL RAO, **7 Bom. L.R. 462 = 2 Cr.L. J. 437.**

(20-*a*)—S. 29—*See* No. 20, *supra.*

(20-*b*)—S. 31—*See* No. 20, *supra.*

(21)—*S.* 32—*Notification No.* 58, *dated the 26th January,* 1897.—*Held*, that the Forest Act, 1878, is one curtailing the proprietary rights of individuals, and the Act and the notifications under it must be construed strictly where the rights of individuals are trenched upon. CHATAR SINGH v. EMPEROR, **55 P.L. R. 1901.**

(22)—S. 32—Cutting down forest trees—Conviction under forest Act and under s. 447, I.P.C.—Legality—*See* PENAL CODE, s. 447, **11 A.L.J. 340 = 14 Cr.L.J. 424 = 20 Ind. Cas. 408.**

(23)—S. 32 (*a*), (*b*), (*c*)—Protected forest—Quarrying stone under orders of Public Works Department — Offence — *See* PENAL CODE, ss. 79, 40, 114, **14 Bom. L. R. 365 = 15 Ind. Cas. 802 = 13 Cr.L.J. 530 = 1 Bom. Cr. Cas. 128.**

(24)—S. 32—*See* No. 15, *supra.*

(25)—*Ss.* 32, 54, 55—*Theft of timber or forest produce—Conviction for—Order of confiscation—Legality—Sale proceeds to be credited to Forest Department—Handing over of stolen property to Forest Officer* in specie—*Proper procedure.*—Where certain persons were convicted of a forest offence under s. 32, Act VII of 1878, with respect to certain timber or forest produce which was not wholly Government property, and where the timber or forest produce with reference to which the offence was committed was ordered to be confiscated and sold and the sale-proceeds credited to the Government. *Held*, that the order of confiscation was quite legal under s. 54 of the Forest Act, that, under s. 55, the sale-proceeds must go to the Government in the Forest Department, and that the Magistrates should always make over the timber or forest produce *in specie* to the Forest Officer. CROWN v. SADAPUR, **1 P R. 1912 (Cr.) = 37 P.L.R. 1912 = 13 Cr. L.J. 172 = 13 Ind. Cas. 924.**

(26)—S. 34—*See* No. 20, *supra.*

(27)—*S.* 41 — *Omission to return pass—Offence.*—There is no rule made under s. 41 of the Forest Act, for the Khandesh District, which requires holders of passes to return them, and the omission to return a pass is not therefore an offence. QUEEN-EMPRESS v. UMEDA, **Rat. Un. Cr. C. 500.**

(28)—*S.* 41 (*Rules* 21, 26)—*Compensation in addition to imprisonment—Crim. Pro. Code, s.* 545 (1).—Where a person is convicted of an offence under rules 21, 26, framed under s. 41, Forest Act, 1878, compensation cannot be awarded in addition to the imposition of fine. EMPEROR v. RAJUBHAI CHANDBHAI, **5 Bom. L.R. 126.**

(29)—*Ss.* 45 *and* 51— *Conviction under s.* 51, *when can be had.* — Before a person can be legally convicted of a breach of the rules framed under s. 51, it must be shown that the timber of which he was found in possession, was timber that has gone below the catching places, that is to say, drift or stranded timber. Though the possession of unmarked timber within the area specified by the Local Government under s. 45 may be sufficient to establish that the timber was the property of the Government, yet it would not be sufficient to convict a person under s. 51. CHOGHUTTA v. EMPRESS, **13 P.R. 1883, Cr.**

(30)—S. 51—*See* CRIM. PRO. CODE, 1898, s. 260, 128 P.L.R. 1902.

(31)—S. 51—*See* No. 29, *supra.*

(32)—*Ss.* 52, 73—*Sub- Assistant Conservator of Forests—Seizure and detention of timber—Want of a valid pass.*—Where a Sub-Assistant Conservator of Forest seized timber under the suspicion that it was property stolen from the Government forests, *held* that he could justify the seizure on the ground of the commission of a forest offence arising from the want of a valid pass. According to s. 52, Forest Act (VII of 1878), a forest officer cannot justify the detention of goods on the ground of an offence against the forest laws, where he had not taken the course which that section prescribes of taking the matter before a Magistrate. WAMAN RAMCHANDRA GAUNDE v. DIPCHAND BALKISHAN, **15 B. 229.**

(33)—S. 54—*See* Nos. 16 and 25, *supra.*

(34)—*Ss.* 54 *and* 55—*Confiscation of forest produce, the property of Government—Power to confiscate.*—No confiscation order is necessary,

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Act VII of 1878 (Forest)—*continued.*

or can be made, in respect of forest produce, which is the property of Government, and regarding which a forest offence has been committed. All that need be done is, to direct that it should be taken by some forest officer. It is only in respect of forest produce with regard to which an offence has been committed, that power to direct confiscation is given by law. Such an order, regarding forest produce not belonging to Government, can only be made at the time when the offender is convicted. EMPRESS OF INDIA v. NATHU KHAN, **4 A. 417 = A.W.N. 1882, 93.** [*F.*, 27 C. 450.]

(35)—*Ss.* 54, 76—*Reward—Forest produce.*—Since there can be no legal confiscation of Government property, a reward cannot be paid out of such property. QUEEN-EMPRESS v. TULAJI, **Rat. Un. Cr. C. 620 = Cr. Rg. 44 of 1892.**

(36)—*S.* 55—*Disposal of property.*—Under s. 55, Forest Act, the property, regarding which an offence is committed, should be awarded to Government. EMPEROR v. MAHOMMED SHEKUBHAI, **5 Bom. L.R. 124.**

(37)—*S.* 55—*Government Forest produce, offence relating to—Proper order.*—When the forest produce, in respect of which an offence is committed, is found to be the property of Government, the only order which the Magistrate can legally make regarding it, under s. 55 of the Indian Forest Act, is that it should be taken charge of by a Forest Officer. An order for its sale and the payment of a reward to the informer from its proceeds is therefore illegal. QUEEN-EMPRESS v. RAMAJI, **Rat. Un. Cr. C. 361 = Cr. Rg. 3 of 1888.**

(38)—S. 55—*See* Nos. 25 and 34, *supra.*

(38-*a*)—*S.* 56—*Forfeiture for forest offence when a good title has vested in a third person.*—Under the orders issued by the Collector of Kandesh, certain Bhils entered the forest, brought from it teak logs under the customary passes, and sold them in open market to applicants who purchased in good faith. The Government sought to forfeit them on the ground that a forest offence had been committed in respect of them, inasmuch as the permission under which the Bhils acted, only allowed them to cut deadwood and the logs did not fall under the description. *Held*, ordering the logs to be restored to the custody of purchasers, that it was clear from the terms of s. 56 that a forfeiture was not a consequence of a forest offence, under the conditions stated in that section, where a good title has vested in a third person. QUEEN-EMPRESS v. BHAU VEDU PATIL, **2 Bom. L.R. 675.**

(39)—*S.* 58—*Crim. Pro. Code* (1872), *s.* 297—*Revision by High Court of an order of a subordinate tribunal under s.* 58 *of Forests Act*, VII *of* 1878.—The terms of s. 58 of the Forests Act do not exclude the ordinary revisional powers of the High Court over a subordinate tribunal in the exercise of its criminal jurisdiction, where there had been a judicial proceeding. EMPRESS OF INDIA v. NATHU KHAN, **4 A. 417 = A.W.N. 1882, 93.**

(40)—S. 63—*See* No. 17, *supra.*

(41)—*Ss.* 64, 41, *r.* 26—*Crim. Pro. Code*, 1882, *ss.* 222, 223—*Pass for forest produce belonging to Government—General charge.*—An inamdar, the owner of a forest, obtained in October 1891, a book of passes authorising him to issue the same for the transit of forest produce belonging to himself. Between October 1891 and March 1892, he issued 50 of these passes covering forest produce exceeding altogether 10 khandis; of these, about one khandi may have belonged to the inamdar and the rest, it was presumed, belonged to Government, but it could not be made out what particular pass or passes covered the produce belonging to the inamdar. He was convicted, in respect of forest produce over and above his own, under ss. 411 and 109, I.P.C., and r. 26 of the Rules passed under s. 41 of the Forest Act, the charge being framed in general terms with reference to all the transactions between October 1891 and March 1892. *Held* that the conviction under r. 26 could not be sustained, there being no express prohibition in r. 3 against issuing such passes for forest produce belonging to Government, and r. 13 not applying to the case. *Held*, further, that the general charge as framed by the Magistrate was correct. QUEEN-EMPRESS v. WAMAN, **Rat. Un. Cr. C. 659 = Cr. Rg. 24 of 1893.**

(42)—S. 66—*See* No. 18, *supra.*

(43)—*S.* 67 (2) *Receipt of compensation by officer not empowered—Legality of prosecution.*—Where compensation for grazing cattle in a reserved forest is received by an officer not empowered to do so, such receipt does not in strict law bar a prosecution for the offence. "Such officer" in s. 67 (2) of the Forest Act means an officer empowered. QUEEN-EMPRESS v. GANU, **Rat. Un. Cr. C. 591 = Cr. Rg. 6 of 1892.**

(44)—*S.* 69—*Cattle Trespass Act*, I *of* 1871, *s.* 11—*Cattle straying in reserved forest.*—If cattle were found straying in a reserved forest, the seizure of the same would be legal even if no damage had actually been done, inasmuch as s. 69 of the Forest Act makes s. 11 of the Cattle Trespass Act applicable to forests. QUEEN-EMPRESS v. BABAJI LAXMAN, **22 B. 933.**

(45)—S. 73—*See* No. 32, *supra.*

(46)—*S.* 75, *interpretation of—Excise law—Confiscation in the owner's absence.*—The boat, in which excisable articles are carried in contravention of the excise law, should not be confiscated under the provisions of s. 75, unless it is found that the owner of the boat was in some way implicated in the offence under the excise law. GOLAP SAHA v. EMPEROR, **12 C.W.N. 139.**

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Act VII of 1878 (Forest)—*continued.*

(47)—*S.* 75, *r.* 1—*Order of Court.*—Under Rule 1 of the rules framed under s. 75 of the Forest Act, one half of the fine imposed is payable as reward without any order of the convicting Court. QUEEN-EMPRESS v. ADIVAYA, **Rat. Un. Cr. C. 622=Cr. Rg. 46 of 1892.**

(47-*a*)—*S.* 75, *r.* (1)—*Apportionment of reward.*—It is not competent to a Magistrate to order a reward to be less than half the amount of the fine. When the reward is to be distributed among more than one person, the apportionment vests in the Conservator of Forests. QUEEN-EMPRESS v. ADEVEPPA, **Rat. Un. Cr. C. 610=Cr. Rg. 31 of 1892.**

(48)—*S.* 75, *rr.* 3, 13, 26—*Pass-book—Contractor—Authority.*—Of the rules framed under the Forest Act, r. 3, prohibits the removal of forest produce beyond certain limits without a pass from the Conservator or some person duly authorised in that behalf under r. 13. *Held* that a contractor under the Forest Department, to whom the Forest officer has given a pass-book containing passes bearing the office seal with an endorsement that he might thereby remove timber, was sufficiently authorised under r. 13 to issue passes. QUEEN-EMPRESS v. BALVANTRAO, **Rat. Un. Cr. C. 424=Cr. Rg. 88 of 1888.**

(49)—S. 75—*See* No. 19, *supra.*

(50)—*Ss.* 75, 76—*Offence under the section, what constitutes.*—The offence under s. 75 of the Forest Act is only committed, under the express terms of the Act and rules, when the trees cut are the property of Government. The Court, before convicting, is bound to satisfy itself of Government proprietary rights in the usual modes and by means of the usual materials recognised in Courts of Justice. The declared opinion of the Executive Government merely as such can have no more weight with the Court than that of the humblest of Her Majesty's subjects. *In re* ANTAJI KESHAV TAMBE, **18 B. 670.** [*F.*, Rat. Un. Cr. C. 828.]

(51)—S. 76—*See* Nos. 35 and 50, *supra.*

(52)—*S.* 78—*Penal Code, s.* 187—*Refusal to serve as member of* panch.—A person refusing to serve as member of a *panch* appointed for the purpose of drawing a *panchnama* with reference to certain wood alleged to have been illegally cut in the reserved forests, was held not to be liable to be convicted under s. 187, I.P.C., as he was not shown to be a person contemplated in the provisions of the first three paragraphs of s. 78 of Act VII of 1878, and as the purpose for which he was called upon to give his assistance was also not one of the purposes mentioned in clauses (*a*) and (*b*) of that section. QUEEN-EMPRESS v. BABAJI, **22 B. 769.**

(53)—S. 78—Duty of malguzar—Public servant—Assault—*See* PENAL CODE, ss. 21, 353, 9 Ind. Cas. 669.

I.—Imperial Acts—continued.

Act VII of 1878 (Forest)—*concluded.*

(54)—*S.* 172—*Forest officer, whether a public servant—Penal Code, s.* 182.—Under s. 172, Forest Act, the Forest officer is a public servant within the meaning of the Indian Penal Code. Any false information given to him with the intent mentioned in s. 182, I.P.C., is punishable under that section, whether that information is volunteered by the informant, or given in answer to questions put to him by that officer. QUEEN-EMPRESS v. RAMJI SAJABA RAO, **10 B. 124.**

Act VIII of 1878 (Sea Customs).

[AM., ACT IX OF 1885, SS. 5, 6; AM., ACT II OF 1887, SS. 1—4; AM., ACT IV OF 1889, S. 10 (AS AMENDED BY ACT IX OF 1891, S. 3 AND S. 11); AM., ACT VIII OF 1889, SS. 1, 2; AM., ACT IX OF 1891, S. 3; AM., ACT XII OF 1891; AM., ACT VIII OF 1894, S. 11; S. 18 (E) REP. IN PT., ACT XVI OF 1904; SUPPLEMENTED, ACT VIII OF 1896; APPLIED WITH MODIFICATIONS, ACT II OF 1896; APPLICATION OF S. 150 EXTENDED, ACT XIII OF 1890, S. 9; DECLARED IN FORCE—(SS. 144—154) IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—Ss. 8, 18 (*d*)—*See* TRADE MARK, 4 C. L J. 268=10 C.W.N. 107.

(2)—S. 18—*See* TRADE MARK, 1 Weir 557=1 Weir 821.

(3)—S. 18—*See* No. 1, *supra.*

(4)—S. 19—*See* BOM. ACT V OF 1878, ss. 3 (10), 9 and 43, 11 Bom. L.R. 221=33 B. 380=1 Ind. Cas. 343.

(5)—*Ss.* 76, 167 (30)—*Master of ship allowing boat-load to leave vessel without boat-note.*—On reading ss. 76 and 167 (30) together, there is no doubt as to its being the duty of the master to see that each boat-load is accompanied by a boat-note specifying the number of packages sent and the marks and numbers or other descriptions thereof. It is further provided that each such note shall be signed "by an officer of the vessel." A duty is thus on the master of the vessel to see that no boat-load leaves his vessel without a boat-note. Failure to discharge this duty is punishable under s. 167 (30). *In re* EUSOOF, **1 Weir 897.**

(6)—*S.* 79—*Cargo Boat rules of the Rangoon Port, r.* I—*License for Cargo Boats*—'*Plying,*' *meaning of*—"*Plying for landing and shipping of merchandise within the port.*"—The word "ply" in r. I, of the Cargo Boat Rules of the Rangoon Port does not necessarily mean 'to ply for hire' but it means 'to do an action repeatedly.' The words in the rule "cargo boats which ply for the landing and shipping of merchandise within the port" need not be restricted in meaning to both landing and shipping merchandise within the port. They mean

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Act VIII of 1878 (Sea Customs)—*concluded.*

boats which ply for the landing and boats which ply for shipping, or both. MAUNG PO HLA v. EMPEROR, **12 Cr.L.J. 476=12 Ind. Cas. 84.**

(7)—S. 167—*See* No. 5, *supra.*

Act XI of 1878 (Arms).

[REP. IN PT., ACT XII OF 1891. DECLARED IN FORCE—IN THE SONTHAL PARGANNAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 5; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XII OF 1898, S. 4.]

See ACT XXXI OF 1860.

(1)—*Air-gun not adapted for use with explosives—Whether it comes under definition of arms—Tariff Act* (*No* XI *of* 1882).—Where an air-gun was found to be similar to the 'gem' air gun which are not adapted for use with explosive substances and which have been classed as toys by the Government for the purposes of the Tariff Act, *held*, that the air-gun in this case was a toy and did not come under the definition of arms within the meaning of the Arms Act. EMPEROR v. MAUNG SHWE THET, **4 Cr. L.J. 239.**

(2)— *Sub Inspector, not of the 1st grade, presented by Government with a revolver, going armed with dagger—Whether offence.*—A Sub-Inspector of Police, not of the 1st grade, who has been presented by Government with a six chambered revolver, was charged under the Arms Act of going armed with a dagger without a license. *Held*, that the exemption under cl. (18) of paragraph 1 of Notification No. 518 of 1879 covered a dagger also and that the Sub-Inspector committed no offence by the possession of the dagger. NGA KAING v. KING-EMPEROR, **U.B.R. 1907, 4th Qr., Arms, 1.** (U. B.R. 1897-1901, I, 1, *R.*)

(3)—*Case not tried under Arms Act or Explosives Act—Re-trial not asked for—Conviction under either of the Acts—Legality.*—Where a case might properly have been tried under the Arms Act or the Explosives Act, but the public prosecutor did not ask the High Court to order a re-trial, the High Court cannot convict the accused under either of those two enactments without a fresh trial. EMPEROR v. JOSEPH KANGANI, 8 **M.L.T. 296=8 Ind. Cas. 397=11 Cr.L.J. 645.**

(4)—*See* C. P. ACT II OF 1904, s. 8, sub-s. 1 (*a*) and sub-s. 3, 4 N.L.R. 134.

(5)—*S.* 1, *cl.* (*b*) *and s.* 5—*Sale of arms by public servant in execution of decree whether covered by s.* 1, *cl.* (*b*), *Arms Act—Act* XIV *of* 1882, *Crim. Pro. Code, s.* 226.—*Held* that the sale of arms by the Nazir of the Court, in execution of a decree, is a sale by a public servant in discharge of his duty, and, therefore, excluded by s. 1, cl. (*b*), from the operation of the Arms Act, XI of 1878; it would be a proper thing for the Court ordering the sale to give

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Act XI of 1878 (Arms)—*continued.*

notice of the sale and of the purchaser's name and address contemplated by s. 5 of the Act. WALA HIRAJI v. HIRA PATEL, **9 B. 518.**

(6)—*S.* 4—*Term "Arms" defined—Parts of arms—Chavies.*—There is no exhaustive definition in the Arms Act, of the expression "arms" which, though necessarily including the articles specified in the section, may also be held to apply to other instruments or weapons. Where the circumstances of a case show that a weapon or instrument is carried or possessed for the purpose of offence or defence and not as an article of domestic or agricultural utility, there is no reason why such weapon or instrument should not be held to fall within the category of "Arms." The word "arms" in s. 4 includes parts of arms and, therefore, *chavies* may be "arms" within the meaning of the Arms Act. EMPRESS v. KESAR SINGH, **20 P.R. 1900, Cr. =33 P.L.R. 1901.**

(7)—*S.* 4—*Arms, definition of—Sword-stick if sword.*—A sword-stick is a sword sheathed in a cane-stick and comes within the definition of arms in s. 4 of the Indian Arms Act. Whatever can be used as an instrument of attack or defence, for cutting as well as for thrusting, and is not an ordinary implement for domestic purposes, comes within the meaning of the statute. EMPEROR v. SATISH CHANDRA ROY, **34 C. 749=6 C.L.J. 751=11 C.W.N. 971=6 Cr. L.J. 227.** [*F.*, 16 P.R. 1910, Cr.=91 P.L.R. 1910=23 P.W.R. 1910, Cr.=6 Ind. Cas. 952= 11 Cr. L.J. 421.]

(8)—*S.* 4— *"Arms," definition of—Cook's knife, whether an arm.*—The purpose for which an implement is primarily intended regulates whether it should be considered an arm or not. A cook's knife is not an arm. The accused's conduct in manufacturing a sheath for the knife to enable him to conveniently carry it about with him, does not convert it into an arm, unless the character of the knife is altered, *e.g.*, by grinding it so as to make it double edged. KING-EMPEROR v. AUNG BA, **5 L.B.R. 130.** (1 L.B.R. 271, 3 L.B.R. 1, *F.*)

(9)—*S.* 4—*Empty cartridge case—Ammunition.*—Empty cartridge case is ammunition as defined by s. 4 of the Arms Act, the possession of which is an offence. BALDEO SINGH v. KING-EMPEROR. **7 A L J. 102=4 Ind. Cas. 405=10 Cr L.J. 573=32 A. 152.** (7 Bom. L.R. 474, *F.*) [*F.*, 17 O.C. 92.]

(10)—*S.* 4—*Revolver, with its trigger out of order, if fire-arm*—A revolver, the trigger of which is out of order, is a fire-arm within the meaning of the Arms Act. In such cases, the question is not so much whether the particular weapon is serviceable as a fire-arm, but whether it has lost its specific character and has so ceased to be a fire-arm. Whether, in any particular case, the instrument is a fire-arm or not is a question of fact to be determined according

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Act XI of 1878 (Arms)—*continued.*

to the circumstances. QUEEN EMPRESS v. JAYARAMU REDDI, **21 M. 360=1 Weir 659, F.B.** [*F*, 148 P.L.R. 1908=6 P R. 1908, Cr. =14 P.W.R. 1908, Cr., 5 Cr. L.J. 435=3 N.L. R. 53 ; *R.*, 11 Cr. L. J. 421=6 Ind. Cas. 952= 16 P.R. 1910=91 P.L.R. 1910=23 P.W R. 1910, Cr., 72 P.W.R. 1910, 1 S.L.R. 18=9 Cr. L. J. 259.]

(11)—*S.* 4 — *Possession of gun-barrel and nipple.*—The term "arms" includes part of arms. Therefore, the possession of a gun-barrel and nipple without a license, in serviceable condition, is an offence under s. 19 (*f*). QUEEN v. VYAPURI KANGANI, **7 M. 70=1 Weir 658.** [*R.*, 12 C.P.L.R. 8, Cr., 3 N.L.R. 53.]

(12)—*S.* 4—Dashi-upyat, *whether an arm.*—It is the intention of the manufacturer, and not of the possessor of a weapon as to the use to which it is to be put, which determines whether a weapon is an arm or not. A *dashe-upyat* of the usual type is primarily intended for domestic and agricultural purposes and is not an arm within the meaning of the Arms Act. KING-EMPEROR v. HAMYIT, **5 L.B.R. 207=3 Bur. L. T. 91=8 Ind. Cas. 972.**

(13)—*S.* 4 (3)—*Battle-axe, whether an arm.*—The word "includes" in s. 4 (3) is clearly not intended to be exhaustive. A battle-axe is an arm for the purposes of Act XI of 1878. HIGH COURT PROCEEDINGS, 4TH SEPT. 1879, NO. 1424, **1 Weir 654.**

(14)—*Ss.* 4, 5 *and* 9—*Manufacture or possession of fire-work—Rockets.*—The manufacture or possession of fire works, including rockets which are mere fire-works, does not come within the prohibition of s. 5 of the Arms Act. The rockets referred to in s. 4 under the definition "ammunition" are war-rockets QUEEN v. SUPPI, **5 M. 159=1 Weir 655.** [*D.*, 8 M. 202.]

(15)—*Ss.* 4, 13—"*Going armed*" *meaning of.*—A person, who appears in a public place or issues from his own property or abode, having about his person a weapon of the sort described in s. 4, and not covered by a license, goes armed within the meaning of s. 13 of the said Act. The phrase "*going armed*" is not to be restricted to the meaning, carrying or bearing arms in the manner usual for the particular weapon in view. QUEEN-EMPRESS v. NGA SHWE TON, **L.B.R. 1893—1900, 284.**

(16)—*Ss.* 4, 14—*Gun-barrel in good order is a fire-arm.*—An old-fashioned muzzle-loading gun-barrel in good condition and with the touch-hole in good order is a fire-arm within the meaning of s. 14. There is nothing in s. 14 inconsistent with s. 4. "Fire-arms" in s. 14 includes parts of fire-arms. EMPEROR v. DHANSINGH, **3 N L.R. 53=5 Cr. L.J. 435.** (12 C.P.L.R. 10, *Diss.*)

(17)—*Ss.* 4, 14 *and* 19 (*f*)—*Gun-barrel.*—A gun-barrel, so long as it can be used as a gun-barrel, is an arm within the definition of the Arms Act, s. 4, because it is a part of a fire-arm. But it is not a "fire-arm" within the meaning of s. 14 of this Act, nor is it one of the other articles mentioned in the section. EMPRESS v. BARWAR TELI, **12 C.P.L.R. Cr. 10.**

(17-*a*)—*Ss.* 4, 14, 19 (6), 20—'*Fire-arms,*' *whether includes parts of fire-arms—Possession of part of fire arms—Manufacture of fire-arms—Penal Code, ss.* 109, 116, 120-*B*—*Punishment on conviction under s.* 120-*B* — *Abetment* — *Joinder of charges—Transaction—Crim. Pro. Code, s.* 239.—Unless there is something repugnant in the subject or context, wherever the word "arms" occurs in the Indian Arms Act, it has got to be read as including "parts of arms." By s. 4 of the Act the word "arms" also includes "fire-arms" Therefore, the word "fire-arms" as used in s. 14 includes "parts of fire-arms." The word "fire-arms" only means "arms that are fired by means of gun-powder or other explosive." Possession of parts of fire-arms is prohibited by s. 14 read with s. 4, Arms Act. (27 C. 692=4 C.W.N. 750, 5 Cr. L.J. 435=3 N L.R. 53, *F.*) An offence under s. 20, Arms Act, is different from an offence mentioned in s. 19 (6). The only additional element necessary to constitute an offence under s. 20 is that the possession should be in such manner as to indicate an intention that such act may not be known to any public servant. The keeping of arms under s. 19 (*a*), Arms Act, must be a keeping for sale, not keeping only. The term "transaction" in s 239 of the Crim. Pro. Code is not synonymous with the term "offence." A "transaction" cannot be said to be complete as soon as the offence is committed. It is clear that so long as the conspiracy continues the transaction which began with the forming of the common intention continues. (26 Ind. Cas. 307, *F.*) For an offence under s. 120-B, Penal Code, punishment is provided by s. 109 of the Code, if an offence has been committed ; but if an offence has not been committed, punishment is limited to the extent provided by s. 116. Perhaps, strictly speaking, in the former case there should not be a conviction for conspiracy but for abetment of an offence, for conspiracy followed by an act done to carry out the purpose of the conspiracy amounts to abetment. HARASH NATH CHATTERJEE v. EMPEROR, **16 Cr. L.J. 9=26 Ind. Cas. 313.**

(18)—*Ss.* 4 *and* 19—*Sword hilt, whether* "*arm.*"—The expression "arms" includes "parts of arms." Sword hilts are, therefore, "arms" within the meaning of the Act. NURDIN v. EMPRESS, **38 P.R.1889, Cr** [*R.*, 148 P.L.R. 1908, Cr.=14 P.W.R. 1908=6 P.R. 1908=7 Cr. L.J. 350.]

(19)—*Ss.* 4, 19—*Revolver out of repair, whether an arm within Act—Possession of such weapon without license, whether an offence under Act.*—A revolver, even if it is out of repair, is none the less an arm, within the definition of

I.—Imperial Acts—continued.

Act XI of 1878 (Arms)—*continued.*

s. 4 of the Arms Act, and a person in possession of such a weapon, without a license, is guilty of an offence under s. 19 of the Act. KING-EMPEROR v. SAMIULLAH, **6 P.R. 1908, Cr. =14 P.W R 1908, Cr. =7 Cr. L.J. 350=148 P.L.R. 1908.** (38 P.R. 1889, Cr., 6 M. 60, F.B., *R.*; 21 M. 360, F.B., *F.*; 24 A. 454, *D.*)

(20)—*Ss.* 4, 19—*Unserviceable fire-arms, possession of, without license.*—In including parts of arms in the meaning of arms, the Legislature intended to provide against the importation and retention of arms in parts which might be put together any moment and used as fire-arms. A fire-arm, which is defective and otherwise unserviceable, is not within the meaning of the Act. Therefore, possession of a gun rendered unserviceable by the loss of the trigger is not an offence under s. 19 (1) of Arms Act. QUEEN v. SIDDAPPA, **6 M. 60, F.B. =1 Weir 657.** [*Overruled*, 21 M. 360, F.B. = 1 Weir 659; *Diss.*, 3 N.L.R. 53 (55), 6 P.R. 1908, Cr.; *F.*. 9 Cr. L.J. 259 (260) = 1 S.L.R. 18, Cr., 12 C.P.L.R. 8 (10), 7 Cr.L.J. 350=148 P.L.R. 1908, Cr. = 6 P.R. 1908, Cr. =14 P.W.R. 1908 Cr.]

(21)—*Ss.* 4, 19—*Broken and unserviceable gun.*—A broken and unserviceable gun will not fall under the designation of "parts of arms" within the meaning of s. 4, Act XI of 1878. *In re* RASOOL SAHIB, **1 Weir 658.**

(22)—*Ss.* 4, 19—*Ammunition—Lead moulded into bullets—Sentence for technical offences.*—*Held*, that, although lead is exempt from the operation of s. 4 of the Indian Arms Act (XI of 1878), yet when it is moulded into bullets of 20 to 24 bore, it is ammunition within the meaning of the said section. The definition of ammunition given in the said s. 4 is not exhaustive, and the question whether a certain article falls within its purview is to be decided according to the circumstances of each case. (20 P.R. 1890, 21 M. 360, F.B. *R.*) *Held*, also, that, in a case of technical offence, a nominal sentence is always quite sufficient to meet the ends of justice. SANT SINGH v. CROWN. **23 P.W.R. 1910, Cr. =16 P.R. 1910=6 Ind. Cas. 952=11 Cr.L.J. 421=191 P.L R, 1910.** (7 Bom. L.R. 474, 24 C. 749, *F.*)

(23)—*Ss.* 4, 19 (*a*)—*Ammunition, definition of—Empty cartridge cases, possession of.*—Empty cartridge cases fall within the definition of ammunition given in s. 4 of the Arms Act. Therefore, a conviction under s. 19 (*a*) of the Act for the possession of such cases is legal. *In re* RANGASAWMY AIYAR, **4 Ind. Cas. 405.**

(24)—*Ss.* 4 *and* 19 (*e*)—"*Going armed,*" *meaning of—Clasp-knife not an arm.*—The offence punishable under s. 19 (*e*) of the Act consists in going armed with a weapon falling within the meaning and definition of the term "arm" as used in the Act. No weapon can be held to be an arm within the Act, unless it is a weapon which would ordinarily be spoken of as an "arm." The purpose for which an implement is primarily intended regulates whether it would, in ordinary parlance, be spoken of as an arm, and if it is not designed for use as a weapon of offence and defence, although it may be used as such, then it is not an "arm." A clasp-knife does not fall within the ordinary natural meaning of the word arm. CROWN v. HMAT KYAN, **1 L.B.R. 271.** (L.B.R 1893-1900, 416, 487, *Commented on*). [*F.*, 11 Cr. L.J. 153 =4 Ind. Cas. 1028=5 L.B.R. 130.]

(25)—Ss. 4 and 19 (*f*)—*See* ACT IV OF 1884, ss. 5 and 7, U.B.R. 1897—1901, Vol. I, 193.

(26)—*Ss.* 4, 19, *cl.* (*f*) (*a*)—*Empty cartridge cases.*—The expression "all parts of ammunition" as used in s. 4 of the Arms Act includes empty cartridge cases. EMPEROR v. EBRAHIM ALIBHOZ, **7 Bom. L.R. 474=2 Cr. L J. 449.** [*F.*, 32 A. 152=7 A.L.J. 102=10 Cr. L.J. 573 =4 Ind. Cas. 405, 11 Cr. L J. 421=6 Ind. Cas. 952=16 P.R. 1910=91 P.L.R. 1910=23 P.W.R 1910.]

(27)—*Ss.* 4, 20—"*Arms,*" *definition of—Weapon, dangerous and likely to cause death if used—Pole-axe.*—The definition of "arms" in the Arms Act is neither exhaustive nor altogether happy. (34 C. 749=11 C.W.N. 971 =6 C.L.J. 227=6 C L.J. 751, *R.*) The mere fact that a weapon is dangerous, and, if used, may probably cause death, does not make it "arms" within the meaning of s. 4 of the Arms Act. A weapon consisting of a plain *lathi*, a blade and two moveable screws, and so contrived that by loosing the screws the blade may be detached from the shaft made up of the *lathi*, is not "arms" as defined in s. 4 of the Arms Act, although the weapon may be described as a pole-axe. GAJJA v. EMPEROR, **15 Cr. L.J. 685=26 Ind. Cas. 133.**

(28)—*Ss.* 4 *and* 27—*Arms, definition of—Power of Government to exclude—Opinion of the Court—*"*Das.*"—The word "*arms*," except so far as the definition expressly includes other weapons, must be understood to mean weapons of offence, suitable for use in warfare. The Government of India have, under s. 27, the power of excluding any description of arms from the operation of the Act. But the Act does not empower the Government to define what is an arm within the meaning of the Act. If anything is not, in the opinion of the Court, an arm within the meaning of the Arms Act, it is immaterial whether Government have or have not excluded it from the operation of the Act. *Das* of the kind described in the Government of India, Home Department Notification No. 827, dated 15th June, 1893, as excluded from the operation of the Act, are not arms within the meaning of the Act, and it is, therefore, unnecessary to exclude them from the operation of Act. QUEEN-EMPRESS v. NGA NE U, **L.B.R. 1893—1900, 416.** (L.B.R. 1893—1900, 320, *overruled.*)

(29)—*S.* 5—*Keeping arms for sale—Dagger-shaped clasp-knives, whether 'arms' within the definition of.*—The appellant in this case was

I.—Imperial Acts—continued.

Act XI of 1878 (Arms)—*continued.*

convicted of having kept arms for sale in contravention of the provisions of s. 5 of the Act. The question for decision was whether the dagger-shaped-knives, known as clasp-knives, fell within the definition of 'arms' in the Act. *Held*, the purpose for which an implement is primarily intended regulates whether it would, in ordinary parlance, be spoken of as an arm. Applying this test, there could be no doubt that the manufacturer of the knives before the Court intended to supply weapons to persons who wanted efficient stabbing instruments. They could not be likely to serve any domestic purpose. Under the circumstances, the knives fell within the definition of 'arms.' EBRAHIM DAWOODJI BABI BAWA v. KING-EMPEROR, **3 L.B.R. 1=2 Cr. L J. 372=11 Bur. L.R. 183.** [*F.*, 11 Cr. L.J 153=4 Ind. Cas. 1028=5 L B.R. 130; *R.*, 7 Bur. L.T. 165, 5 L.B.R. 129.]

(29-1)—S. 5—*See* Nos. 5, 14, *supra.*

(29-*a*)—*Ss.* 5 *and* 19—*License for match-lock—License converting it into percussion-gun.*—There is no distinction drawn in the Act between the various kinds of explosive fire-arms; and, if reference is had to sch. II, it will be seen that a distinction is there drawn, not between the different kinds of gun, as for example, a rifle and a smooth-bore, but between fire-arms and fire-arm barrels and pistols and pistol-barrels. Where a person was charged with possessing a percussion-gun, while his license covered only a match-lock, and the defence was that, for convenience sake, he had the original gun altered from match-lock to a percussion gun after he obtained license, *held*, that the accused could not be convicted under s. 19 of the Act. QUEEN-EMPRESS v. BODAPPA, **10 M. 131=1 Weir. 665.**

(29-*b*)—*Ss.* 5, 19 (*a*)—*Repairing arms without license.*—In the Arms Act, the word "repair" appears neither in the provision prescribing a license, nor in the provision prescribing a penalty, the word "convert" being used in substitution therefor. The term "manufacture" cannot be construed to include "repair." HIGH COURT PROCEEDINGS, 4th Mar. 1879, No. 356, **1 Weir. 653.**

(30)—*Ss.* 5, 19 (*a*)—*Repairer of arms.*—A repairer of arms is not within the purview of ss. 5 and 19 (*a*) of the Arms Act. *In re* YAGANTIAH, **1 Weir. 656**

(31)—*Ss.* 5 *and* 19 (*b*)—*Sale of gun used for private purpose, after notice, but before permission.*—The sale of a gun, used for one's private purpose, after giving notice to the Magistrate, but before the receipt of his permission, is not an offence under s. 19 (*b*) of the Act. *In re* VENKIAH, **1 Weir. 657.**

(31-*a*)—S. 9—*See* No. 14, *supra.*

(31-*b*)—S. 13—*See* No. 15, *supra.*

(32)—*Ss.* 13 *and* 14—*Servant carrying arms under orders of master.*—A person licensed to carry a gun, lent one of his servants his gun to shoot game with it. *Held* that the servant should not be convicted for carrying a gun without a license and that the gun should not be confiscated. *In re* HURLEY, **A.W.N. 1881, 7.** [*R.*, 22 A. 118.]

(33)—*Ss.* 13, 14, 19 *and* 22—*Master and servant—Delivery of gun to servant for shooting—Meaning of "possession" in s.* 22—From s. 22 (1) of the Act, it is clear that the transfer of possession contemplated is something more than the entrusting of an arm to a servant. Moreover, in ss. 14 and 19, the Act deals with possession and control as distinct matters. A servant using a gun belonging to his master would no doubt have the weapon under his control, so long as the use continued, but the weapon would remain in the master's possession. Throughout the Arms Act the word "possession" must be taken to mean something different from mere "control." EMPEROR v. MUKUNDA, **4 N.L.R. 78=8 Cr. L J. 18.** [*R.*, 8 Cr. L.J. 406=4 N L.R. 146.]

(34)—*Ss.* 13,16 *and* 19—*Unlicensed possession of a double barrelled gun by a reservist.*—The notification of Government of India exempts all soldiers, in the service of Her Majesty the Queen-Empress of India, from the operation of certain provisions of ss. 13 to 16 of the Arms Act. The term "soldiers" includes reservists. *Held*, therefore, that a reservist of the 45th sikhs found in possession of double-barrelled gun without a license was not guilty under s. 19 of the Arms Act. EMPEROR v. BISHEN SINGH, **1 P.R. 1902, Cr.=5 P.L.R. 1902.**

(35)—*Ss.* 13 *and* 19—*License to carry arms covering one retainer—Failure to produce it on being required to do so.*—The law does not require, nor the license provide, that a license to carry arms shall always be on the person of the bearer of arms. If, on being required to Show his license, the bearer of arms is prepared to produce it, on being given a reasonable opportunity to get it, and such license exists, he should not be prosecuted. The production of the license at the trial is a sufficient answer to the charge of infringing the Arms Act. [*F.*, 3 C.W.N. 394.] A license to carry arms including a retainer authorises any retainer to carry the arms specified in the license with the permission of his master. The license should not be so construed as to restrict the retainer to carry the arms only in the presence of the master. QUEEN-EMPRESS v. KISHUNWA, **20 C. 444.**

(36)—*Ss.* 13, 19—*Failure to take license.*—S. 19 makes it punishable to go armed, in contravention of the provisions of s. 13 which prohibits any person from going armed except under license. These words cannot be held to mean that the licensee is bound to take his license with him whenever he goes armed. *In re* KORAGA, **1 Weir 661.**

(37)—*Ss.* 13, 19, *cl.* (*e*)—*Meaning of the term "going armed."*—Term "going armed" in

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Act XI of 1878 (Arms)—*continued.*

s. 13 of the Act means "carrying arms." *In re* VENKATARAYADU, **1 Weir 663.**

(38)—*Ss. 13 and 19 (e)—Going armed in contravention of s. 13—Gun carried by a servant for a master who is legally entitled to possess and go armed.—Carrying arms does not necessarily equal going armed.*—It must constantly happen that sportsmen on their way to and from the field hand over their guns to their servants to avoid unnecessary fatigue to themselves, and by doing so it does not appear that the servants should be considered as going armed when they have no control over the use of the gun so far as intended, and are simply bearers of the gun as a load. If the gun were taken to pieces before being handed to the servant, it would be difficult to hold that he could be armed with it; and the moral restriction of the servant's duty to make no use of the gun seems in effect to make the same difficulty when the gun is left complete. QUEEN-EMPRESS v. NGA MYAT AUNG, **U.B.R. 1897—1901, Vol. I, 1.** (15 A. 27, *R.*) [*R.*, 7 Cr. L.J. 243, 10 Cr. L.J 361 = 3 Ind. Cas. 712 = 5 L.B.R. 83, U.B.R. 1907, 1, Arms 1; *Relied upon*, 11 Cr L.J. 55 = 4 Ind. Cas. 823 = U.B.R. 1907-1909, Vol. II, Opium p. 1.]

(39)—*Ss. 13, 19 (e)—Going armed in contravention of s. 13.*—In this case the accused was found in another man's house wearing dagger. He did not allege that the dagger was not his or that he had not brought it to the house. On the contrary, he specified the purpose for which the dagger was used. *Held*, that under the above circumstances the accused had committed the offence of "going armed with a dagger in contravention of s. 13." QUEEN-EMPRESS v. NGA THA BYAUNG, **U.B.R. 1897—1901, Vol. I, 4.**

(40)—S. 14—*See* Nos. 16, 17, 17-*a*, 32, 33, *supra.*

(41)—*Ss. 14 and 15—Order appointing an officer as commissioned officer with retrospective effect—Effect.*—The petitioner, who was promoted from the rank of Haveldar to the rank of Jamadar on 30th August, with retrospective effect from the 1st June, was held to be a commissioned fficer from the 1st June, and therefore was held to fall within one of the classes exempted by the Government of India from the operation of the prohibitions contained in ss. 14 and 15 of the Arms Act. The possession of his gun by his servant without a license on the 22nd June was held not to be an offence. NARAIN SINGH v. EMPRESS, **27 P.R. 1885, Cr.**

(42)—*Ss. 14, 15 and 19 (f)—Possession of sword or dagger.*—The possession of a sword or dagger without a license in a place to which s. 15 has not been rendered applicable, is not punishable under s. 19 (*f*). *In re* PAKIR AHMED, **1 Weir 666.**

(43)—*Ss. 14, 15 and 19, cl. (f)—Person liable to punishment under cl. (f) of s. 19.*—Where the petitioner, having been in possession of a gun for sometime, made it over a year and a half ago to another person in whose possession the gun was without a license: *Held*, the petitioner could not be convicted of an offence under s. 19, cl. (*f*), Arms Act. The only person who can be punished under cl. (*f*) is the person who has in his possession or under his control any arm in contravention of the provisions of ss 14 and 15. AKHIL NATH DAT v. KING-EMPEROR, **13 C.W.N. 440 = 10 Ind. Cas. 688 = 12 Cr. L.J. 197.**

(44)—*Ss. 14 and 19—Dalwes—Spears—Forks.*—Dalwes, spears, and forks do not come within the term "military stores" in s. 14, and the mere possession of such weapons is not a punishable offence in Burma under s. 19 of Arms Act. But going armed with swords or spears without a license is punishable under s. 13. QUEEN-EMPRESS v. NGA PO TEIN, **U B.R. 1892—1896, Vol. I, 1.**

(45)—*Ss. 14 and 19 (f)—Fire-arm.*—The unserviceable remains of a gun could not be fairly described as a 'fire-arm' within the meaning of s. 14 of the above Act and do not require to be protected by a license under that section. EMPRESS v. CHAITOO GOND, **12 C. P.L.R. Cr. 8.** (6 M. 60, 7 M. 70, *R.*)

(46)—*Ss. 14, 19 and 28—Being in possession of arms without license—Sanction of Collector to prosecute.*—In order to prosecute a person for being in possession of guns without license, the Collector's sanction for the prosecution should be obtained under s. 28. QUEEN v. BOMMAYA CHETTY, **5 M. 26 = 1 Weir 662.**

(47)—*S. 15—Possession of bayonets.*—The possession of bayonets without a license is not an offence punishable under the Arms Act except in districts proclaimed under s. 15 of that Act. QUEEN-EMPRESS v. NGA SHWE HLWA, **L.B.R 1872—1892, 426.**

(48)—S. 15—*See* Nos. 41, 42, 43, *supra.*

(49)—*S. 16—Confiscation—Possession of gun without obtaining renewed license—Confiscation of gun illegal—Fine and detention of gun, proper punishment.*—An order confiscating a gun because of mere delay in renewing the license to possess it is illegal. The imposition of a fine and detention of the gun in the Police Station till the production of the license would be a proper order. *In re* KATTUVA ROWTHEN, **15 Cr. L.J. 21 = 22 Ind. Cas. 165.**

(50)—S. 16—*See* No. 34, *supra.*

(51)—*Ss. 17 and 19—License to kill wild beasts—Killing wild beast for sport without sporting license.*—Persons who are granted license to carry arms, under Form XI, Rule 16 of the Arms Act, to kill bisons which are notoriously in the habit of injuring crops, will be justified in going armed for the purposes of sport and no separate license under Form VIII, Rule 13, s 17, is necessary. QUEEN v. BOMMAYA CHETTY, **5 M. 26 = 1 Weir 662.**

I.—Imperial Acts—continued.

Act XI of 1878 (Arms)—*continued.*

(52)—*S.* 19—*Temporary possession of arms* — The temporary possession of a gun by a servant who carries it from his master's house to the blacksmith's for repairs, and by the blacksmith for the purpose of repair, without a license, is not punishable under s. 19 of the Act. QUEEN-EMPRESS v. TOTA RAM, **16 A. 276 = A.W N. 1894, 82.** (A.W.N. 1891, 208, A.W.N. 1892, 221, *R.*) [*F.*, 41 C. 11 = 17 C.W.N. 979 = 14 Cr. L.J. 377 = 20 Ind. Cas. 137 ; *R.*, 4 N.L.R. 78, 8 Cr.L J. 406 = 4 N.L.R. 146.]

(53)—*S.* 19—" *Going armed*"—*Meaning.*— The term " going armed " in s. 19 of the Arms Act of 1878 means only carrying arms with intention to use such arms should occasion arise, and does not include taking arms for the purpose of repair. QUEEN-EMPRESS v. ALEXANDER WILLIAM, **A W N. 1891, 208.** [*Expl.*, 15 A. 27 ; *R.*, 16 A 276 = A.W N. 1894, 82, 24 A. 454.]

(54)—*S.* 19—"*Going armed*" *what amounts to.* —The mere temporary possession, without a license, of arms for purposes other than their use as such, is not an offence within the meaning of s. 19 of the Arms Act. The above principle is not confined to the case of a servant carrying his master's gun, but applies also to a friend performing the same office to a friend. The essence of the offence is the going armed, *i.e.*, carrying a weapon with the intention of using it as a weapon, when the necessity or opportunity arises. EMPEROR v. HARPAL RAI, **24 A. 454 = A.W.N. 1902, 123.** (A.W.N. 1891, 208, A.W.N. 1892, 221, A.W.N. 1894, 82, *R.*) [*F.*, 37 B. 181 = 1 Bom. Cr. Cas. 208 = 14 Bom.L R. 964 = 13 Cr.L J. 860 = 17 Ind. Cas. 796, 12 Cr L J. 122 = 9 Ind Cas. 720 = 4 S.L.R. 214 ; *R*, 5 L.B.R. 83, 4 N.L.R. 146 = 8 Cr.L.J. 406, 7 Cr L.J. 350 = 148 P.L R. 1908 = 6 P.R. 1908, Cr. = 14 P.W.R. 1908, Cr., 5 L.B.R. 83 = 10 Cr.L.J. 361 = 3 Ind. Cas. 712.]

(55)—*S.* 19—*Spear exempted.*—The carrying of a spear is not an offence under s. 19 (*e*) of the Arms Act, because, under cl. (*j*) of s. 2 of the Rules under s. 27 of the Act, spears are exempted from the operation of ss. 13 to 16 of the Act. QUEEN-EMPRESS v. GANPAT, **Rat. Un. Cr.C. 507 = Cr. Rg. 25 of 1890.** QUEEN-EMPRESS v. NUR MAHOMED, **Rat.Un.Cr.C. 507 = Cr.Rg. 25 of 1890.**

(56)—*S.* 19—*Saltpetre in the Khandesh District.*—As Khandesh is neither a district on the external land frontier of British India nor a seaboard District of British Burma, cl. IV of the Notification of the Government of India, No. 578 of 6th March, 1879, has no application to it and as the Government of India has not, by any other notification, extended s. 19 of the Act to saltpetre in the Khandesh District, a person cannot be convicted under s. 19 of the Arms Act, for keeping saltpetre without a license. QUEEN-EMPRESS v. SAKHARAM, **Rat.Un.Cr. C. 227 = Cr. Rg. 1 of 1886.**

I.—Imperial Acts—continued.

Act XI of 1878 (Arms)—*continued.*

(57)—*S.* 19—*Extension of time before renewal of license, effect of.*—An order extending the time for renewal of a license has the effect of keeping a license previously granted practically in force. *In re* KALINATH SINGH, **3 C.W.N. 394.**

(58)—*S.* 19—*Sentence.*—Under the provisions of s. 19 of the Arms Act, a Magistrate, on finding the accused guilty, is bound to pass some sentence, though, of course, it is open to him to pass a nominal sentence. *In re* GANGAMMA, **1 Weir 654.**

(59)—*S.* 19—*Offence not triable summarily.*— An offence under s. 19 of the Arms Act is not triable summarily. HIGH COURT PROCEEDINGS, 13th Oct. 1879, No. 1757, **1 Weir 654.**

(60)—*S.* 19—*Possession of gunpowder without license.*—The term "ammunition" is defined by the Act as meaning, among other things, any explosive material. Read in combination with the terms "arms and military stores," it is not unreasonable to infer that the intention of the Act was to deal with an explosive material capable of being used for purposes of warfare. Therefore, a person, in possession of a quantity of gunpowder without license is liable to be convicted under s. 19, although he may intend to employ the powder in the manufacture of fireworks or other harmless purposes, inasmuch as gunpowder is a material capable of being used for purposes of warfare. QUEEN-EMPRESS v. KHASIM SAHIB, **8 M. 202 = 1 Weir 664.** (5 M. 159, *D.*)

(61)—*S.* 19—*Possession of room in which arms are found—Possession not shown to be exclusive.*—When it is not shown that the accused had exclusive possession of the room in which arms are found, or that arms were placed there by him, or belonged to him, or that he knew they were there, the accused cannot be convicted of the offence under s. 19 of the Arms Act. SUNDER SINGH v. EMPRESS, **75 P.L.R. 1901.** (25 P.R. 1883, *F.*)

(62)—*S.* 19—*Arms—Possession without license —Possession must be exclusive.*—A dagger was found in a room in a house. The room and the house were jointly occupied by a father and his adult son. There was no evidence to show that either of them was aware of its existence, *Held*, that neither of them could be convicted of an offence under s. 19 of the Act. KING-EMPEROR v. SHER ZAMAN, **158 P.L.R. 1905 = 52 P.R. 1905, Cr. = 3 Cr.L.J. 71.**

(63)—*S.* 19—*Servant carrying arms belonging to his master.*—Exemption from the operation of the Act applies to the possession of a gun, so long as it is the property of the licensee, and the mere fact that it happened at the time to be carried by a servant, does not make the servant liable for not having himself a license under the Act. *In the matter of* KALINATH SINGH, **3 C.W.N. 394.** [*Rel on.*, 1 Bom. Cr. C. 208 = 14 Bom. L.R. 964 = 13 Cr. L. J. 860 = 17 Ind. Cas. 796; *R.*, 13 C.W.N. 124 = 10 Cr.L. J. 555 = 4 Ind. Cas. 333.]

I.—Imperial Acts—continued.

Act XI of 1878 (Arms)—*continued.*

(64)—*S.* 19 (*a*)—*Persons licensed under the Explosive Act—Manufacture of fire-works with gunpowder at an unlicensed place.*—Where the accused, who had a license under the Explosive Act to manufacture and sell gunpowder and fire-works on certain premises, manufactured fire works at a different place, *held*, that the accused could not be convicted under the Arms Act. *In re* RAMASWAMI PILLAY, **1 Weir 656 = 1 Weir 756.**

(65)—*S.* 19 (*a*)—*Sale of fire works without license.*—The mere possession or sale of fire-works, without a license, is no offence under the Arms Act. But the possession of gunpowder without a license, even though for the innocent purpose of making fire-works, is an offence. *In re* BOYINAPALLI VENKATARAJU, **1 Weir. 655.**

(66)—*S.* 19 (*a*)—*Sale by agent of license-holder.*—There is nothing in Act XI of 1878 or the rules, which renders a sale of sulphur and ammunition by the agent of a license holder illegal. QUEEN-EMPRESS v. SITHARAMAYYA, **12 M. 473 = 1 Weir 655.**

(67)—*S.* 19 (*a*)—*Clasp knives with the outer edge narrowing—For what use primarily intended—Can they be called arms in ordinary parlance?*—Though the exhibit knives were stout formidable ones, the outer edge narrowing as the end of the blade is reached, they cannot be called arms as they could not, from their appearance, be said to have been primarily manufactured with the intention of using them—for offence or defence. They are useful for domestic use or for cutting sticks. KING-EMPEROR v. ME THIN, **7 Bur. L.T. 165 = 15 Cr. L.J. 585 = 25 Ind. Cas. 337.**

(68)—*S.* 19 (*c*)—*Person carrying arms—Presumption.*—A man who is found going about with a pistol, gun, sword or other weapon within the definition of "arms" in s. 4 of the Act must, in the absence of proof to the contrary, be presumed to be carrying it with the intention of using it, should an opportunity for using it arise, and, unless he is licensed to carry the weapon and is not exceeding the terms of his license, he may be properly convicted under s. 19 (*c*) of the Act. QUEEN-EMPRESS v. BHURE, **15 A. 27 = A W N. 1892, 221.** (A. W.N. 1891, 208 *R.*) [*Rel*, 11 Cr. L J. 55 = 4 Ind. Cas. 823 = U.B.R. 1909. 2nd Qr Opium 1; *R.*, 8 Cr. L.J. 406 = 4 N.L.R. 146, 10 Cr. L.J. 361 = 3 Ind. Cas 712 = 5 L.B.R. 83; U.B.R. 1897—1901, Vol. I, 1.]

(69)—*S.* 19 (*c*)—*Landing in British India—Possession of revolver—Completion of offence—Intention.*—As soon as a person lands in British India with a revolver, which he was not lawfully entitled to possess in this country, he commits technically an offence under s. 19 (*c*) of the Arms Act. It is not necessary that there should be any particular intention in the mind of an offender to complete the offence punishable under this section. *In re* MAHOMED ISMAIL ROWTHER, **35 M. 596.**

I.—Imperial Acts—continued.

Act XI of 1878 (Arms)—*continued.*

(70)—*S.* 19 (*c*)—*Offence under the clause, whether triable by the second-class Magistrate.*—No Magistrate of the second class has the power to try an offence under s. 19 (*e*) of the Arms Act. *In re* SHEIK MOWLA SAHIB, **1 Weir. 660.**

(71)—*S.* 19 (*e*) — *Exemption if extends to servants and retainers of persons exempted.*—The privilege conferred by the exemption referred to in Notification No. 518, dated 6th March, 1879, as amended by Notification No. 458, dated 18th March, 1898, is of a personal nature and protects only persons carrying fire-arms for their own personal use, and does not extend to the servants and retainers of the persons exempted. EMPRESS v. SONIA TELI, **14 C.P.L R. 112.** (22 A. 118, *Diss.*) [*R*, 8 Cr. L.J. 406 = 4 N L.R. 146.]

(72)—*S* 19 (*e*)—"*Going armed*"—*Dagger*—"*Dahmyaung,*" *meaning of.*—The meaning of *Dahmyaung*, in the Burmese translation of the Arms Act must be limited to the meaning of dagger. QUEEN-EMPRESS v. NGA TUM BAU, **L.B.R. 1893-1900, 320.**

(73)—*S.* 19 (*e*), *and Rangoon Police Act, s.* 30, *two convictions under, for same act of offender, illegality of.*—The case against the accused was founded on facts, which constituted an offence under the Arms Act, as well as under s. 30 of the Rangoon Police Act. *Held*, that the accused should not have been charged and convicted twice as for two offences under each of the said Acts. The above s. 30 is a special provision for punishing a person, who may be found, under certain circumstances, raising the suspicion of his intending to commit certain offences and, so, when an offence has been actually committed by such a person, his prosecution for such offence and, at the same time, for an offence under the Police Act, would be illegal. Also, according to s. 26 of the General Clauses Act (X of 1897), when an act constitutes an offence under two or more enactments, the offender will not be liable to be punished twice for the same act. Further, a person, who has rendered himself liable under more than one clause of s. 30 of the Police Act, is to be held guilty of only one offence under the entire section and not of an offence under each of the clauses. (*Per Hartnoll J.*). KING-EMPEROR v. PO KA, **3. L.B.R. 218, F.B.**

(74)—*S.* 19 (*e*)—*Test whether a weapon is an arm—Clasp-knife not an arm.*—The purpose for which a weapon is carried cannot be a sufficient test of whether it is an "arm" or not. A clasp-knife is not a dagger and is not designed or suitable, for warfare. Therefore, it does not come within the definition of "arms." QUEEN EMPRESS v. NGA PO THIN, **L.B.R. 1893—1900, 487.** (L.B.R. 1893—1900, 417, *F.*)

(75)—*S.* 19-*c*—*License to go armed for special purpose.*—Where a license to go armed is granted

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for protection only, the licensee cannot use it for sport or display. *In re* VENKATARAYADU, **1 Weir 663.**

(76)—S. 19 (*e*)—*See* CRIM. PRO. CODE, 1898, ss. 35, 123, 5 Bom. L.R. 26.

(77)—*S.* 19, *cls.* (*e*) *and* (*f*)—*Possession of spear without license.*—Under rule II-A of the notification of the Government of India, dated 6th March, 1879, spears of all kinds are, so far as regards the Presidency of Madras, excluded from the operation of any prohibition and direction contained in the Arms Act. *In re* BAPI NAICKEN, **1 Weir 660.**

(78)—*S.* 19 (*e*) (*f*)—*Possession of gun without ammunition.*—The possession of a gun without ammunition, in the absence of a license, is not punishable under s. 19 (*e*); nor can the accused be convicted under s. 19 (*f*), in the absence of the previous sanction of the District Magistrate. *In re* TENKURAMAN BASSVAN, **1 Weir 662.**

(79)—*S.* 19, (*e*) (*f*)—*Guns without ammunition.*—The carrying of a gun without ammunition, by an unlicensed person, is an offence under s. 19 (*f*), but not under s. 19 (*e*). HIGH COURT PROCEEDINGS, 31st Aug, 1881, No. 1761, **1 Weir 661.** [*F.*, 1 Weir 662.]

(80)—*S.* 19 (*f*), *prosecution under—Sanction.*—A prosecution under s 19, cl. (*f*) requires the sanction of the District Magistrate. QUEEN-EMPRESS v. NGA SHWE HLWA, **L.B.R. 1872—1892. 426.**

(81)—*S.* 19 (*f*)—*Prosecution—Sanction.*—The sanction of the District Magistrate is necessary before a prosecution under s. 19 (*f*), can be instituted. QUEEN-EMPRESS v. NGA PO TEIN, **U.B.R. 1892—1896, Vol I, 1.**

(82)—*S.* 19 (*f*)—*Prosecution—Sanction.*—A prosecution under cl. (*f*) of s. 19 of the Act requires the previous sanction of the District Magistrate. EMPRESS v. KISAN KOHALEE, **9 C P.L.R. Cr. 26.** (3 C. 622, 2 A. 405, 10 C. 1030, *R.*) [*R.*, 14 Cr. L.J. 385=9 N.L.R. 81=20 Ind. Cas. 209.]

(83)—*S.* 19 (*f*)—*Prosecution—Sanction.*—The sanction of the District Magistrate is only required for proceeding under cl. (*f*) of s. 19. *In re* SHEIK MOWLA SAHIB, **1 Weir 660.**

(84)—*S.* 19 (*f*) — *Volunteers — Exemption from the operations of Arms Act, effect of.*—The exemption of volunteers from the operation of the Arms Act, by Government of India Notification No. 458, dated 18th March, 1898, is not confined merely to purposes of volunteering. A volunteer is, by virtue of such exemption, entitled to keep fowling pieces and to use them for the purpose of protecting his cultivation. QUEEN-EMPRESS v. SAMUEL LURE, **22 A. 323 =A.W.N. 1900, 92.**

(85)—*S.*19 (*f*)—*Reservist in possession of gun.*—*Held*, that the possession of a double barrelled gun by the accused, who was a reservist, did not constitute any offence against the provisions of the Indian Arms Act. EMPRESS OF INDIA v. BISHEN SINGH, **5 P.L R. 1902=1 P.R. 1902, Cr.**

(86)—*S.* 19 (*f*)—*Temporary possession by servant if amounts to "possession" or "control"*—Where a person who apparently had a license to go armed had come to shoot to a village wherein his cousin's servant was, feeling thirsty, went to get a drink, leaving the gun with the servant (a person not holding a license under the Arms Act), *held*, that such a temporary custody of the gun by the servant did not amount to the "possession" or "control" contemplated by cl. (*f*) of s. 19. EMPEROR v. KHUDDA GOND, **4 N.L R. 146.** (15 A. 27, 16 A. 276, 24 A. 451, 35 C. 219, 4 N.L.R. 78, *R.*)

(87)—*S.* 19 (*f*)—*Servant using master's gun.*—Where the accused, a servant, was found using a gun which was lent to him by his master who had a license for the gun for his own purpose. *Held*, that the act of the accused was an infringement of the provisions of s. 19, cl. (*f*) of the Arms Act. MADHO LAL v. EMPEROR, **13 C W.N. 124=4 Ind Cas. 333.** (3 C.W. N. 394, 35 C. 219=12 C.W.N. 272, 22 A. 118, *R. & D.*) [*R.*, 12 Cr. L.J. 122=9 Ind. Cas. 720 =4 S.L.R. 214.]

(88)—*S.* 19 (*f*)—*Servant's temporary possession of master's gun.*—Where the license-holder left a gun with his servant, temporarily, *held*, that the servant could not be convicted under s. 19 (*f*). *In re* GURUVAN BOYI, **1 Weir 664.**

(89)—*S.*19 (*f*)—*Arms without licenses collected for worship in a temple—Arms Act* (XI *of* 1878), *s.* 19, *cl.* (*f*), *conviction under—Legality.*—There is nothing in the Arms Act to exempt the custodians of a temple, which had a collection of fire-arms used as objects of worship, from complying with the requirements of the Act either by taking out a license or obtaining exemption under s 27, so that a conviction under s. 19, cl. (*f*), for neglect to take out license in respect of such arms, is not illegal. EMPRESS v. TEGHA SINGH, **8 C. 473.**

(90)—*S.* 19 (*f*)—*Possession of unserviceable fire arms.*—A fire-arm, which is defective and otherwise unserviceable, is not within the meaning of the Arms Act, and, consequently, not one for which a license need be taken out, although it might be capable of being rendered serviceable by being repaired. *In re* KULLAPPA GRAMANI, **1 Weir 658.**

(91)—*S.* 19 (*f*)—*Possession of sword without license.*—In a District which has not been disarmed, the possession of a sword without a license is not an offence under the Act, unless the person in possession goes armed with it. *In re* KUNJAN ASARI, **1 Weir 666.**

(92)—*S.* 19 (*f*)—*Gun—Possession of—Liability of servant.*—The accused kept a gun as the servant of C, who was licensed to bear it. After C's death, the accused continued in the employ

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of C's undivided brother V, who succeeded C in the management of the property. The accused was convicted under s. 19(*f*) of the Indian Arms Act for having been in possession of an unlicensed gun. On appeal, it was contended that the liability, if any, was that of V, who had neglected to renew the license. *Held*, that the accused was rightly convicted, for he was the only person who had the possession and the control of the weapon. EMPEROR v. JAFU BABU, **14 Bom. L.R. 501 = 13 Cr L.J. 525 = 15 Ind. Cas. 797 = 1 Bom. Cr. Cas. 146.**

(93)—*S.* 19 (*f*)—*Arms—Possession of a Quackenbush rifle in the Kohat District without a license—Government of India, Home Department, Notification No.* 3031, *dated* 16*th November*, 1900.—The accused was found in possession of a Quackenbush rifle of 22 bore, with an eighteen inch steel barrel, firing a small cartridge charged with gunpowder and a miniature bullet, without a license, was convicted of an offence under s. 19 (*f*) of the Arms Act, and was sentenced to pay a fine of Rs. 10. He admitted his ownership and possession of a rifle, but pleaded that a license was not required for this weapon, as another man had applied twice to the Deputy Commissioner of Kohat for a license for a similar weapon in 1900 and 1904, but was informed that it was not necessary to take out a license for such a weapon. *Held*, that, as the Quackenbush rifle fired a cartridge charged with an explosive substance and a miniature bullet, which might prove deadly, and as it was neither a spring air gun nor a mere toy, it came within the general expression of "arms of the kind known as rifles," the possession of which, without a license, in the Kohat District, was illegal; and that the conviction must therefore stand; but, as the offence was of a technical rather than of an intentional kind, a nominal penalty would suffice. Fine reduced to four annas equivalent to the stamp duty chargeable upon a license for the weapon. HARNAM SINGH v. CROWN, **1 P.W.R. 1913 N.W.F.P. (Cr.) = 159 P.L.R. 1913.**

(94)—*S.*19 (6)—*Servant, temporary possession by, on behalf of master.*—The petitioner was carrying a gun on behalf of his master, with the license to the Magistrate for the purpose of a renewal of the license. It was admitted that the object of the petitioner was merely to carry the gun to the Magistrate. The petitioner was convicted under s. 19 (6) of the Act for possessing a gun in contravention of the provisions of the Act:—*Held*, that the conviction of the petitioner cannot be upheld. CHARU CHANDRA GHOSE v. KING-EMPEROR, **17 C.W.N. 979 = 14 Cr.L.J. 377 = 20 Ind. Cas 137 = 41 C. 11.** (16 A. 276, 35 C. 219 = 12 C.W.N. 272, *F.*)

(95)—*S.* 19, *cl.* (*i*)—*Offence under the clause, whether triable by the second class Magistrate—Crim. Pro. Code*, X *of* 1872, *s.* 8.—*Held*, that the offence of failing to deposit arms under cl. (*i*) of s. 19 was not triable by a second-class Magistrate under s. 8, Crim. Pro. Code, 1872. HIGH COURT PROCEEDINGS, 30th Aug. 1879, No. 1382, **1 Weir 660.**

(96)—S. 19—*See* Nos. 17 to 26, 28 to 31, 33 to 39, 42 to 46 and 51, *supra.*

(97)—*Ss.* 19, 13—*Arms—License—Possession of gun—Servant fetching a gun left by his master.*—M, who was licensed to keep a gun, and his servant left Broach and went to a neighbouring village. They returned forgetting the gun behind them. M sent his servant to fetch the gun, and the latter, while so returning with it, was arrested by the Police at Broach for going armed in contravention of the provisions of s. 13, Arms Act. The servant was convicted and sentenced under s. 19 (*e*) of the Act. *Held*, acquitting the servant, that the mere temporary possession, without a license of arms, for purposes other than their use as such, was not an offence within the meaning of s. 19 of the Act. EMPEROR v. KOYA HANSJI, **14 Bom. L R. 964 = 1 Bom. Cr. Cas. 208 = 13 Cr. L.J. 860 = 17 Ind. Cas. 796 = 37 B. 181.** (24 A. 454, *F.*)

(98)—*Ss.* 19 (*f*) *and* 14—*Possession of a gun, meaning of—Interpretation of s.*19 (*f*).—The provisions of s. 19 (*f*) of the Arms Act do not make the mere possession of a gun punishable; they make possession contrary to the provisions of s. 14 of that Act punishable. The snatching up of a gun, which was in the hand of another, and firing it at a mad dog, do not constitute the possession contemplated by s. 14 of the Arms Act. PRABHAT CHANDRA CHOWDHRY v. EMPEROR, **35 C 219 = 12 C W.N. 272 = 7 Cr. L.J. 242 = 7 Cr. L.J. 112 = 3 M.L.T. 190** [*F.*, 41 C. 11 = 17 C.W.N. 979 = 14 Cr. L.J. 377 = 20 Ind. Cas. 137; *R.*, 4 N.L.R. 146 = 8 Cr. L.J. 406.]

(99)—*Ss.* 19 *and* 20—*Definition—Concealment of arms on search being made by the police—Mere denial of possession not concealment—Possession of unlicensed arms*—*Held*, that the mere denial, on the part of a person, whose house is being searched by the Police for unlicensed arms, that he has any such arms in his possession does not constitute a concealment or attempt to conceal arms on search being made by the police within the meaning of the second paragraph of s. 20 of Act XI of 1878. *Held*, also, that where unlicensed arms are found concealed upon premises which, though legally the joint property of a joint Hindu family, are in fact, at the time of the finding, in the exclusive possession and control of one member of the family, that member of the family, can properly be held to be in possession of such arms. EMPEROR v. RAM SARUP, **A.W.N. 1906, 11 = 3 Cr. L.J. 88 = 3 A. L.J. 833 = 28 A. 302.** (15 A. 129, *D.*)

(100)—*Ss.* 19, 20—*Ammunition — Empty cartridge cases—Machinery for manufacture.*—Empty cartridge cases with exploded caps are

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not "ammunitions" as defined in the Arms Act. An instrument for re-capping cartridge cases of the Martini-Hurry rifles is not machinery for manufacturing ammunition within the meaning of the Act. JAMAN KHAN v. EMPRESS, **20 P.R. 1890, Cr.** [*N.F.*, 10 Cr. L.J. 573=4 Ind. Cas. 405; *R.*, 23 P.W.R. 1910=16 P.R. 1910=91 P.L.R. 1910=11 Cr. L.J. 427=6 Ind. Cas. 952.]

(101)—*Ss.* 19 (*a*), 20—Chhavi *defined—Its possession by keeping it hidden—Question of exclusive possession raised for the first time in appeal.*—Everything is *chhavi* which has a large axelike blade, curved or otherwise, with an arrangement of rings or rings for binding it to the handle, and a handle of a considerable length. Being in possession of a *chhavi* and keeping it hidden is simply punishable under s. 19, cl. (*a*) of Act XI of 1878. S. 20 is applicable only to those cases where the import or export of an arm is attempted. (9 P.R. 1912=44 P.W.R. 1912, Cr. *F.*) The question of exclusive possession of an arm cannot be raised for the first time in appeal. GAHNA v. CROWN, **1 P.W.R. 1914, Cr.=33 P.L.R. 1914=15 Cr. L.J. 505=24 Ind. Cas. 591.**

(102)—*Ss.* 19, *cl.* (*f*) *and* 20—*Unserviceable firearm, possession of* —Whether in any particular instance an instrument is a fire-arm or not, is a question to be determined according to the facts of each case, and the circumstance that it is in an unserviceable condition is not sufficient to take it out of the category of fire-arms. Where certain fire-arms had been found from the possession of the accused, who had concealed them under a heap of straw, in order that visitors in his house should not see them: *held*, that the concealment was not with the intention specified in s. 20, and the accused could, therefore, be convicted only under s. 19, cl. (*f*) of the Arms Act. CROWN v. WAZU *walad* BANGAR, **9 Cr. L.J. 259, F.B.=1 S.L.R. 18, Cr.** [*F.*, 128 P.L.R. 1913=44 P.W.R. 1912=9 P.R. 1912=18 Ind. Cas. 265=14 Cr.L.J. 41.]

(103)—*Ss.* 19 (*f*), 20, 25 *and* 29—*Having in possession or control arms and ammunitions without license—Search for arms—Legality of the search—Crim. Pro. Code* (1898), *ss.* 55 *and* 165.—Where, on a search made by a Magistrate with a number of Police Officers into the house of the accused person, who, after his license for possession of arms and ammunitions had been concealed, was suspected of being in possession of them, and who was, preliminary to the search, arrested some arms and ammunition were found on the premises, and the accused, was committed to the Sessions and convicted of offences under ss. 19 and 20 of the Arms Act, *held*, that the conviction under s. 20 of the Act was not legal, but that the accused should be taken to have had, in his possession or under his control, arms and ammunitions, as defined by the Arms Act, within the meaning of sub-s. (*f*) of s. 19, and, therefore, the conviction under that section should be confirmed. *Held*, also, that the search, under the circumstances of the case, was not properly made, as it was not covered by the provisions of s. 25 of the Arms Act or s. 165 of the Code of Criminal Procedure. AHMED HOSSEIN v. QUEEN-EMPRESS, **27 C. 692=4 C.W.N. 750.** [*F.*, 14 Cr. L.J. 41=18 Ind. Cas. 265=9 P.R. 1912, Cr.=128 P.L.R. 1913=44 P.W.R. 1912, Cr.]

(104)—*Ss.* 19, 20 *and* 29—*Sanction to prosecute, whether necessary for an offence under* s. 20.—Ss. 19 and 20 of the Act are so interwoven that it is difficult to see how an offence can be committed under the first paragraph of s. 20, unless an offence under one of the enumerated sub-sections in s. 19 has also been committed: Therefore, before prosecuting a person under s. 20 of the Act, previous sanction should be obtained. AHMED HOSSEIN v. QUEEN-EMPRESS, **27 C. 692=4 C.W.N. 750.**

(105)—*Ss.* 19 (*f*), 20, 29—*Person arrested for being in possession of revolver—Concealment of arms after arrest—No offence under s.* 20—*Offence under s.* 19 (*f*)—*Necessity of District Magistrate's sanction before institution of proceedings under s.* 19 (*f*)—*Absence of such sanction—Proceedings null and void.*—The first part of s. 20, Arms Act, does not apply to cases of concealments or of attempts at concealment made by a man who has arms on his person or in a bag which he is carrying or which is otherwise in his immediate personal possession, only on being arrested. It is meant to deal with cases of concealment before arrest. Where a man, finding himself arrested for being in possession of a revolver, attempts to throw it away, the act of such person would only come under s. 19, cl. (*f*). Where an offence under s. 19 (*f*) has been committed, no proceedings shall be instituted without the previous sanction of the District Magistrate (*vide* s. 29). If no such sanction has been obtained, all proceedings for an offence under s. 19 (*f*) must be null and void, and the absence of such sanction could not be treated as a mere irregularity in trial. GOPALAKRISHNA IYER v. EMPEROR, **9 M.L.T. 475=12 Cr. L.J. 234=10 Ind. Cas. 261=(1911) 1 M.W.N. 271.**

(106)—*Ss.* 19 (*f*), 25—*Search warrant, form of.*—Magistrates before they issue search warrants, under the Arms Act, should record the grounds of their belief, that there are in the house, which it is proposed to search, weapons kept for an unlawful purpose. QUEEN-EMPRESS v. SANGAM LAL, **15 A. 129=A.W.N. 1893, 48.**

(107)—*Ss.* 19 (*f*), 25, 29—*District Magistrate's sanction necessary for trial under Act—Conviction without sanction not mere error of procedure—No failure of justice necessary to set aside conviction—Fresh sanction may be ordered—Illegal procedure in search, effect of.*—The trial of an offender under s. 19 (*f*), Arms Act, without the District Magistrate's sanction under s. 29, is not merely an error of procedure. The

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Court has no power to allow proceedings to be instituted without such sanction. No failure of justice is necessary to set aside a conviction under the section made in proceedings without such sanction. The District Magistrate, in such a case, may, however, order a fresh sanction of the offence if he wishes to do so. Where the offence has been undoubtedly committed by the accused, who was in possession of arms, the fact that the legal procedure (s. 25) was not followed in making the search would not, by itself, be sufficient ground to acquit the accused. QUEEN-EMPRESS v. PA TWE WA, **U.B.R. 1892–1896, Vol. I, 2.** [*F.*, 8 Cr. L J. 65 = 4 L.B.R. 247.]

(108)—*Ss.* 19 *(f)*, 25, 30—*Scope and application of the section.*—The Act appears to refer to cases in which the Magistrate considers that arms, whether under a license or not, are possessed "for an illegal purpose," or under circumstances such as to endanger the public peace. EMPRESS v. TEGHA SINGH, **8 C. 473.**

(109)—*Ss.* 19, 27—*Exemption from the provisions of the Act in the case of certain classes of persons—Government of India Notifications,* 518 *of* 1879, *and* 458 *of* 1898—*Arms carried by servants of exempted persons—Their liability.*—By Government of India Notifications, Nos. 518 of 1879 and 458 of 1898, framed under the provisions of s. 27 of the Arms Act, certain classes of persons are exempted from the operation of the prohibitions and directions contained in ss. 13, 14, 15 and 16 of the Arms Act, "subject to the proviso that the arms and ammunitions carried or possessed by such persons shall be for their own personal use, etc., etc." *Held*, that the servant of a master so exempted was not liable to be convicted under s. 19 of the Act for being found carrying a gun and ammunition and using them for the purpose of shooting game for his master, as the use of the arms by the servant for that purpose should be considered to be within the meaning of the words "personal use." QUEEN-EMPRESS v. GANGA DIN, **22 A. 118 = A.W.N. 1899, 213.** [*Diss.*, 12 Cr. L.J. 122 = 9 Ind. Cas. 720 = 4 S.L.R. 214, 4 S.L.R. 211; *R.*, 13 C.W.N. 124 = 10 Cr. L.J. 555 = 4 Ind. Cas. 333.]

(110)—*S.* 19 *(e)*, *rules under s.* 27, *r.* 3, *sch.* I—*Servant going about with master's gun—Shooting duck for master—Whether for master's 'own personal use'—Offence under s.* 19 *(e)*—*Interpretation of statutes.*—*Held*, that the accused was going armed without a license within the meaning of s. 19 (e) and was not covered by his master's exemption under ch. I (r. 3) of the rules framed under s. 27. The words for his own personal use in sch. I (r. 3) are clear and unambiguous and cannot be interpreted to mean the use of the gun by a servant or any one else except the person exempted. (22 A. 118, *Diss.*; 24 A. 454, *R.*). Where the meaning of the words of the statute is clear and unambiguous, a Court is not at liberty to speculate as to the intention and to decline to give effect to the strict sense because of some apparent or supposed hardship. CROWN v. HATIMTAI WD. MEHRKHAN, **4 S.L.R. 214 = 9 Ind. Cas. 720 = 12 Cr. L.J. 122.**

(111)—*Ss.* 19 *and* 29—*Illegal possession of arms—Illegality—Going armed—Prosecution—Previous sanction of District Magistrate—Institution of proceedings—Framing of charge—Crim. Pro. Code, ss.* 190, 195, 535 *and* 537 *(b).*—An accused person was prosecuted by the police under s. 19 (e) of the Arms Act for going armed with a revolver. On taking the evidence, the Magistrate doubted whether a person could be said to go armed with an unloaded revolver wrapped up in a cloth. He, therefore, charged the accused in the alternative with going armed under cl. (e) or with possessing the revolver under cl. (f) of s. 19. After the framing of the charge the Magistrate submitted the record to the District Magistrate, owing to an objection being taken, for his previous sanction under s. 29 of the Arms Act. The District Magistrate wrote upon the diary, "I sanction the institution of proceedings under s. 19 (f) of the Arms Act against Kaka." The trial proceeded, and the accused was convicted under cl. (f). *Held*, that, the police having submitted a report in which it was stated that the accused was found carrying the revolver, and that being described as an offence under cl. (e) of s. 19, proceedings under cl. (f) were instituted only when the Magistrate framed the charge under that clause. Although the framing of the charge when the Magistrate did frame it, was without jurisdiction, yet, if the Magistrate had followed the proper course of amending the charge, and then obtained sanction as he did, there would be nothing to prevent him from again framing a charge under cl. (f), and proceeding with the trial. The Magistrate cannot be said to be without jurisdiction to try the case merely because he framed the charge before receiving sanction, and did not frame a fresh charge after receiving it. At the time when he took the evidence for the prosecution, no sanction was required, because proceedings in respect of an offence under cl. (f) had not then been instituted, and, under s. 256, Crim. Pro. Code, the accused had the right to recall all the witnesses for the prosecution after the charge was framed. He was, therefore, in no way prejudiced by the Magistrate's procedure. The Magistrate, therefore, had jurisdiction, notwithstanding the word 'previous' in s. 29, because, in the circumstances set forth, the proceedings in respect of the offence under cl. (f) cannot be said to have been instituted when the Magistrate received the police report. Considering the terms of the District Magistrate's order, it was held that proceedings in respect of the offence under cl. (f) were instituted again after the sanction was received, and the absence of a charge framed after sanction, in that case, is cured by s. 535 of the Code of Criminal Procedure. S. 29, Arms Act, must be read with s. 190, Crim. Pro. Code, under the provisions of s. 1

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and s. 5 (2) of the same Code. Misuse of the word "prejudice" pointed out. S. 537 (*b*) does not cure the want of sanction in any case, except when the sanction is required under s. 195, Crim. Pro. Code. KAKA v. KING-EMPEROR, **4 L.B.R. 247=8 Cr. L.J. 65.**

(112)—*Ss.* 19 (*f*) *and* 29—*Sanction, necessity for—Legality of conviction where no sanction obtained till after commitment—Crim. Pro. Code, ss.* 532 *and* 537.—A conviction under s. 19 (*f*), Act XI of 1878, is illegal, where no previous sanction of the District Magistrate under s. 29 was obtained. Where sanction is obtained after commitment, neither s. 532 nor s. 537, Crim. Pro. Code, can cure the omission. *In re* ABDUL KADIR SAHIB, **5 M.L.T. 162.**

(113)—*Ss.* 19 (*f*), 29—*Sanction of District Magistrate for prosecution under s.* 19 (*f*), *Arms Act,* XXXI *of* 1860, *s.* 32 (2).—Where there has been no proclamation or order under s. 32, cl. (2) of the Arms Act of 1860, for a general disarmament or search for arms, the sanction of the District Magistrate is necessary, under s. 29, Act XI of 1878, for the institution of proceedings against any person for an offence punishable under s. 19 (*f*). *In re* PERUMAL CHETTI, **1 Weir 663.**

(114)—*Ss.* 19 (*f*), 29—*Previous sanction of District Magistrate or other authority when necessary for prosecution for offence under s.* 19 (*f*).—S. 29 of the present Arms Act (XI of 1878) provides that, where an offence punishable under s. 19 (*f*) has been committed, in any place to which s. 32, cl. 2, of Act XXXI of 1860 applies, within 3 months from the date on which Act XI of 1878 comes into force, the previous sanction of the Magistrate of the District, or in a Presidency town, the Commissioner of the Police, is a condition precedent to a prosecution for such offence. By Punjab Government, Home Department Notification No. 826 of the 26th February 1875, it was notified that the provisions of s. 32 of the Arms Act (XXXI of 1860), as modified by Act VI of 1866, were in force in the greater part of the Punjab, including the Karnal District. So, where a person resident in the Karnal District was found in possession of a double barrelled gun without a license, and this offence was committed many years after the Arms Act of 1878 came into force, *held*, there was no necessity for sanction for prosecution for an offence under s. 19 (*f*) of the Act. SUNDER SINGH v. CROWN, **24 P.R. 1913, Cr.=14 Cr. L.J. 688=21 Ind. Cas. 1008=274 P.L.R. 1914.**

(115)—*S.* 20—*Offence, by whom triable.*—An offence under s. 20 is not triable by a first-class Magistrate. SHUNSHANISA v. KING-EMPEROR, **2 L.B.R. 244.**

(116)—*S.* 20—*Elements to constitute offence—Attempts to export or import arms—Ordinary concealment of arms—Not covered by section.*—S. 20, Arms Act, directly applies only to cases where the import or export of arms is attempted. It does not apply to ordinary cases of concealment of arms. IBRAHIM v. CROWN, **9 P. R. 1912, Cr.=44 P.W.R. 1912, Cr.=18 Ind. Cas. 265=14 Cr. L.J. 41=128 P.L.R. 1913.** (9 Cr. L.J. 259, F.B. and 27 C. 692, *F*) [*F.*, 33 P. L.R. 1914=1 P.W.R. 1914, Cr.=15 Cr. L.J. 506=24 Ind. Cas. 594.]

(117)—S. 20—*See* Nos. 17*a*, 27, 99, 100, 101, 102, 103, 104, 105, *supra.*

(118)—*S.* 22—*Selling military stores to unauthorized person by manager of licensed vendor of arms.*—If the manager of a licensed vendor of arms and ammunition sells military stores to a person, without previously ascertaining that he is legally authorised to possess the same, the licensee becomes liable to punishment under s. 22; and it is no defence to plead that the delivery by the man in charge is not a delivery by the owner of the shop. The rule "whatever a servant does in the course of his employment with which he is entrusted and as a part of it, is his master's act" is applicable to certain criminal proceedings also. QUEEN-EMPRESS v. TYAB ALLI, **24 B. 423=2 Bom. L.R. 52.** [*R.*, 4 N.L.R. 78=8 Cr. L.J. 18.]

(119)—*S* 22—*Rifle—Delivery into the custody of servant not authorized to possess—Whether amounts to delivery into possession—Conviction under s.* 22 — *Maintainability.*—A and his servant N, while out on a shooting excursion, came across a deer recently killed by a tiger. A fixed his rifle over the killed deer so as to form a trap for the tiger and went home leaving the trap in charge of N. A was charged under s. 22 of the Arms Act, with having delivered the rifle into the possession of an unauthorized person. *Held*, that the delivery into possession contemplated by s. 22 of the Arms Act is such a delivery as gives the person into whose possession the arm is delivered control over the arm and authority to use it as an arm and that therefore A cannot be convicted for an offence under s. 22. ADAMS v. KING-EMPEROR, **5 L. B.R. 83.** (U.B. R. 1897—1901, 1, 15 A. 27, 24 A. 454, *R.*)

(120)—S. 22—*See* No. 33, *supra.*

(121)—*S.* 24—*Order for confiscation.*—S. 24 shows that the order for confiscation is in addition to any sentence which may be passed. Therefore without the sentence, an order for confiscation cannot be passed. *In re* GANGAMA, **1 Weir 654.**

(122)—*S.* 25—*Arms found in house occupied by a Hindu joint family—Evidence of possession.*—Although it is not laid down as an invariable rule that where weapons are found in a house occupied by the Hindu family living jointly, possession is necessarily that of the managing member only, yet in all such cases, where it is sought to establish that possession and control are with some member of the family other than the managing member, there

I.—Imperial Acts—continued.

Act XI of 1878 (Arms)—*continued.*

must be good and clear evidence of the fact before the Court can arrive at such a conclusion. The Act is one highly penal and must be strictly construed. QUEEN-EMPRESS v. SANGAM LALL, **15 A. 129 = A.W.N. 1893, 48.** [*Rel. on*, 16 C.W.N. 145 = 13 Cr. L.J. 65 = 13 Ind. Cas. 771; *Appl.*, 9 C.L.J. 663 = 13 C.W.N 861 = 10 Cr. L.J. 125 = 3 Ind. Cas. 681, 2 O.C. 99; *R.*, 29 A. 598 = A.W.N. 1907, 187 = 6 Cr L.J. 23; *D.*, 28 A. 302 = 3 A.L.J. 833 = A.W.N. 1906, 11 = 3 Cr. L.J. 83, 3 Cr. L.J. 71 = 52 P.R. 1905, Cr. = 158 P.L.R. 1905.]

(123)—*S. 25—House-search—Code of Criminal Procedure (Act V of 1898), ss. 94, 105 and 165—Judicial Officers Protection Act (XVIII of 1850), s. 1.*—The defendant, who did not, before causing the search of the plaintiff's house to be made, first record the grounds of his belief as provided for by s. 25 of the Arms Act, could not justify the search under the provisions of the said Act. As there was no proceeding pending before him, the defendant was not a 'Court' within the meaning of s. 94 of the Code of Criminal Procedure, and, therefore, the defendant could not direct a search to be made in his presence under the provisions of s. 105 of the Code. The search having been for the purposes of discovering arms generally, s. 165 of the Code did not apply. Conducting a search for arms is not an act done in the discharge of a judicial duty. Act XVIII of 1850 (Judicial Officers Protection Act) does not apply to such a case. Even where a defendant's *bona fides*, in conducting a search, is established, it does not release him from the obligation the law casts upon him, as being in supreme control of the search party, of seeing that the search was conducted in a proper and reasonable manner. In such a case, the damages should be substantial, and not merely nominal. BRAJENDRA KISHORE ROY CHOWDHURY v. CLARKE, **8 C. L.J. 75 = 12 C.W.N. 973.**

(124)—*S. 25—Search for arms, when legal*—Search for arms would be illegal if it was not ordered by a Magistrate in pursuance of s. 25, Arms Act. QUEEN-EMPRESS v. NGA PO TEIN, **U.B.R. 1892—1896, Vol. I, 1.**

(125)—S. 25 — *See* CRIM. PRO. CODE, 1898, ss 96, 105, 165, 13 C.W.N. 458 = 9 C.L. J. 298 = 36 C. 433 = 5 M.L.T. 367.

(126)—S. 25—*See* PENAL CODE, ss. 224, 225, 332, 353, 114 P.L.R. 1903.

(127)—S. 25—*See* Nos. 103, 106, 107, 108, *supra.*

(128)—*S. 27—Army Regulations, effect of, on powers of Governor-General in Council.*—The Army Regulation, India, cannot restrict the powers exercised by the Governor-General in Council under s. 27 of the Arms Act. EMPEROR v. BISHEN SINGH, **1 P.R. 1902, Cr. = 5 P.L.R. 1902.**

(129)—S. 27—*See* Nos. 28, 109, 110, *supra.*

(130)—S. 28—*See* No. 46, *supra.*

I.—Imperial Acts—continued.

Act XI of 1878 (Arms)—*concluded.*

(131)—S. 29—*See* Nos. 103, 104, 105, 107, 111, 112, 113, 114, *supra.*

(132)—*S. 30—Search under the Act—Procedure.*—The Act appears to contemplate the presence of some specially empowered officer besides the officer conducting the search. EMPRESS v. TEGHA SINGH, **8 C. 473.**

(133)—S. 30—*See* No. 103, *supra.*

Act XVII of 1878 (Northern India Ferries).

[SS. 8, 12 (*b*), 13, 15, 26 AM., ACT III OF 1886; S 36 REP., ACT XII OF 1891; S. 15 REP. IN PART, ACT II OF 1901; REP. IN PART IN N.W. FRONTIER PROVINCES, REG. VII OF 1901, S. 3, AM. (IN THE CENTRAL PROVINCES AND THE SAMBALPUR DISTRICT), ACT I OF 1883, SS. 43, 44; AM., (IN UNITED PROVINCES), U. P. ACT II OF 1906, S. 22; AM. (IN PUNJAB), ACT XX OF 1883, SS 78, 79; AM. (IN THE CENTRAL PROVINCES, THE SAMBALPUR DISTRICT AND THE PUNJAB), ACT XII OF 1891; S. 17 AM. (IN THE CENTRAL PROVINCES), ACT IV OF 1907.]

(1)—*S 2—Public Ferry—Bengal Reg. VI of 1819, cl. 2—Right of District Magistrate to grant exemptions from payment of tolls.*—An order by a District Magistrate declaring certain persons exempt from the payment of tolls for the use of a certain public ferry, is a valid order under s. 52 of Act XVII of 1878 and cl. 2 of Bengal Reg. VI of 1819. BUDH RAM v. SECRETARY OF STATE FOR INDIA IN COUNCIL, **A.W.N. 1891, 135.**

(2)—*Ss. 4, 26—Change in course of river—No limit fixed by Government—Conviction—Illegal.*—Where there has been a change in the course of a river and there has been no specification of limits under s. 4 of the Ferries Act subsequent to the change, a conviction under s. 26 of the Act for working a Ferry within the previously prohibited limits cannot be sustained. BANSI DHAR v. EMPEROR, **8 Ind. Cas. 221 = 11 Cr. L.J. 595.**

(3)—*Ss. 13 and 26—Government Notification No. 536, dated the 14th February, 1883—Ferry—Limits of public ferry.*—A notification of Government published under the Northern India Ferries Act, 1878, laid down the limits of various public ferries in one column and in another column the distances within which a private ferry was not allowed to ply for hire. In the case of some ferries, very wide limits were assigned, and the prohibited distance was defined as the limits given in the column laying down the limits of the ferry. In other cases, where the limits of the ferry were not so wide, the prohibited distance was described with reference to s. 13 of the Act as two miles. *Held*, that in the former case the very wide limits given were deemed sufficient by the Local Government to guard the interests of the lessee of the ferry, and consequently the prohibited area was reduced to the space contained

I.—Imperial Acts—continued.

Act XVII of 1878 (Northern India Ferries) —*concluded.*

within these limits. EMPEROR v. BABAN, **A. W.N. 1905, 262=3 Cr. L.J. 50.**

(4)—*S.* 22—*Lessee taking less than lawful toll.*—It is not an offence under Act XVII of 1878, on the part of lessee, to ask or take less than the authorized toll either once or habitually. But it is an offence to ask or take more than the lawful toll. SOBHA RAM v. EMPRESS, **65 P.R. 1887, Cr.**

(5)—*S.* 22—*Lessee of ferry—Servants exacting unauthorised tolls from passengers—Conviction of master illegal*—Mens rea.—Where the servants of certain lessees of a ferry are guilty of exacting unauthorised tolls from passengers, the lessees not being present and taking no part in the extortion, *held*, that the conviction of the masters was illegal, inasmuch as the servants doing the act complained of had done something which was outside the scope of their employment. BEHARI LAL v. KING-EMPEROR, **8 A.L.J. 1324.**

(6)—S. 26—*See* Nos. 2 and 3, *supra.*

Act I of 1879 (Stamp).

[REP., ACT II OF 1899.]

See ACT XXXVI OF 1860.

See ACT X OF 1862.

See ACT II OF 1899.

(1)—*S.* 3 (4) (*b*)—*Bonds—Acknowledgment of debt attested by witnesses.*—No document can be a bond, unless it is one which itself creates an obligation to pay money. But acknowledgments of advances, or of the purchase and receipt of goods, the obligation to pay for which is not created by the instrument, but arises from the promises to re-pay advances and to pay for goods, which the law always implies when the money is borrowed or goods are purchased, are not bonds. Documents which are, in form, aknowledgments only are not converted into bonds by the mere fact that they contain memoranda as to the rate of interest at which the loan is made, and are attested by witnesses. HIRA LAL SIRCAR v. QUEEN-EMPRESS, **22 C. 757.** [*F.*, 14 Bur.L.R. 287=4 L.B.R 330; *R.*, 35 P.R 1903=101 P.L.R. 1903; *D.*, 10 C.P.L.R 1.]

(2)—*S.* 3, *cl.* 10—*Promissory note on* Hundi *impressed stamp.*—When a person was fined for accepting promissory notes payable on demand and written on *Hundi* impressed stamps instead of on paper to which adhesive stamps had been affixed, it was held that the promissory notes were "duly stamped" under the above section. QUEEN-EMPRESS v. HARDEO DASS, **S.C. 201, Oudh.**

(3)—*S.* 3, *sub-s.* 13—*Mortgage—Definition for purposes of stamp duty—Transfer of Property Act*, s. 54.—For the purpose of ascertaining what stamp duty is payable on an instrument, alleged to be a mortgage, the definition of mortgage as given in the Stamp Act and not that in the Transfer of Property Act is to be referred to. QUEEN-EMPRESS v. DEBENDRA KRISHNA MITTER, **27 C. 587=4 C.W.N. 524.** [*R.*, 4 L.B.R. 2.]

I.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*continued.*

(4)—*S.* 3 (17)—*Essentials of a receipt.*—The chief essential of a receipt is an acknowledgment. A mere statement of the fact of the receipt of money is not enough. Where, at the request of a person who made a payment of money to another, a third person drew up a mere memorandum stating that money was received by that other, *held* that the memorandum was not a receipt. JAMNA DAS v. HARINARAIN, **23 B. 54.** *See, also, In re* V. SUBRAMANIEN, **1 Weir. 901.**

(5)—*Ss.* 3, 61 — *Mortgage-deed.*— A mere memorandum of a mortgage by a mortgagee in his accounts and signed by witnesses, but not so under the authority of the mortgagor, is not a "mortgage-deed" as defined in s. 3 of the Act; nor is such an instrument chargeable with stamp duty under any other section of the Act. EMPRESS v. MAYA MAL, **31 P. R. 1883, Cr.**

(6)—*S.* 3 (10), 61—*Absence of certificate as required by r.* 5 (*b*) *of the Rules made by the Governor-General in Council—"Duly stamped" instrument.*—The absence of the certificate, required by r. 5 (*b*) of the Rules, dated 3rd March, 1882, issued by the Governor-General in Council, under the Stamp Act, does not make a document "not duly stamped" within the intention of the Act, and the person executing the document has not committed any offence punishable under s. 61 of the Act. The non-compliance by the treasury officer or the stamp vendor with the direction to give such a certificate is not an act for which the person purchasing the stamp from him can be punished by the invalidation of the stamps innocently brought by him. QUEEN-EMPRESS v. TRAILAKYA NATH BARAL, **18 C. 39.**

(7)—*Ss.* 3 (17), 61—*Receipt, what amounts to.*—Certain ornaments were pledged by the accused to his creditor. They were given back by the creditor and were sold by the accused, and the proceeds were paid by him to the creditor, and the debt due by the accused was thus satisfied. A memorandum of the circumstances was made in the creditor's book and signed by the accused. The accused was subsequently charged with and convicted of, an offence under s. 61 of the Indian Stamp Act, 1879:—*Held*, reversing the conviction, that, although, in the memorandum, the receipt of the ornaments was acknowledged, it was not a receipt within the definition contained in cl. 17 of s. 3 of Act I of 1879, as the ornaments were not by it acknowledged to have been received in "satisfaction of a debt." QUEEN-EMPRESS v. SHANKARLAL, **Rat. Un Cr. C. 356=Cr. Rg. 46 of 1887.**

(8)—*S.* 3, *sub-s.* 13, *arts.* 29 *and* 44.—An instrument evidencing an agreement to secure

I.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*continued.*

the repayment of a loan of a certain sum of money with interest, for which a certain promissory note payable on demand was given as collateral security is a mortgage-deed as defined by s. 3, sub-s. 13 of the Stamp Act, and the Stamp duty on it is payable under art. 44 of the Act and not under art. 29. QUEEN-EMPRESS v. DEBENDRA KRISHNA MITTER, **27 C. 587=4 C.W.N. 524.**

(9)—*S.* 3 (17). *arts.* 52, 54—*Release—Receipt.*—Where A sold some of his lands to B for Rs. 5,499, instead of paying in cash Rs. 4,994, which was found due to the latter on accounts being settled, and A obtained from B the surplus amount in cash and a receipt for the sum of Rs. 4, 994, for the purchase money, the receipt containing the following words" the said amount I have received in full, there now remains this day nothing due by you to me in any manner whatsoever,"—*held* that the document was not a release as it was not a renunciation of a claim. The language used in the document brought it within the definition of " receipt " which includes an acknowledgment of satisfaction of a debt. The fact that a separate document was used rather than an endorsement on the sale deed of the same date did not distinguish this from 10 M. 64. QUEEN-EMPRESS v. PANDURANG, **Rat. Un. Cr. C. 732=Cr. Rg. 61 of 1894.**

(10)—*Ss.* 11, 16, 17, 18, 61, 62, 69—*Stamp.*—A salary bill of a Government official sent to the treasury for payment was discovered to have an one-anna receipt stamp, affixed thereto, uncancelled. The Collector convicted the official of abetment of an offence under s. 62, read with s. 11. *Held,* that no offence was committed under s. 62, since the instrument in question was one required to be stamped at or before the time of execution, to which s. 11 did not apply—it being applicable to cases in which the instrument chargeable with duty may be stamped after execution—but that the offence committed was one under the second para of s. 61. But as in this case no sanction had been given by the Collector, under s. 69, for a prosecution under s. 61, the High Court merely set aside the conviction under s. 62, without making any further order. QUEEN-EMPRESS v. RAHMAT ALI KHAN, **9 A. 210=A.W.N. 1887, 5.** [*R.*, 1 L. B. R. 281.]

(11)—S. 16—*See* No. 10, *supra.*

(12)—S. 17—*See* No. 10, *supra.*

(13)—S. 18—*See* No. 10, *supra.*

(14)—*Ss.* 33, 62—*Defrauding Government of stamp duty—Abetment—Sanction of collector.*—The accused, a money lender, was convicted under s. 67 (2), Stamp Act, and fined Rs. 200 in respect of a document which the Magistrate considered to be a contrivance or device on the part of the accused to defraud Government of the stamp duty. *Held,* that, as the document was not executed by the accused who provided the blank printed form and got another to sign it without a stamp, the conviction was altered to one of abetment of an offence under s. 62 of the Stamp Act. Again it is not necessary in proceedings under the Act, that the document should be impounded under s. 33 of the Stamp Act. The only requisite to a prosecution is the sanction of the Collector or other officer authorized in that behalf. PERIANEN CHETTY S. R. M. M. v. QUEEN-EMPRESS, **U.B R. 1892—1896, Vol. I, 313.** (24 W.R. Cr. 1, *R.*)

(15)—S. 34—*See* ACT XXXVI OF 1860, 14 M. 255.

(16)—*S.* 37 (*b*)—*Scope of the clause* —S. 37 (*b*) of the Stamp Act applies to the case of a document not duly stamped. In cases in which the omission to stamp at all or to stamp duly arises from negligence, inadvertence or ignorance of the provisions of the Stamp Law, it is the duty of the Collector to compel the payment of the duty. But where the stamp affixed to a document is, according to the valuation of the property set forth therein, correct, the Collector has no duty to perform under s. 37. QUEEN-EMPRESS v. VENKATARAYUDU, **12 M. 231=1 Weir 903.**

(17)—*Ss.* 37 *and* 40—*Sanction for prosecution under the Act—Recording of a proceeding, whether necessary.*—The Act does not require intention to be proved as a part of an offence under it, but, in order to prevent indiscriminate prosecutions, it confines the power of instituting the prosecutions to the Collector, and instructs him to exercise it only when it appears to him that the offence had been committed with an intention to evade payment of the proper duty. He is not required to make a formal enquiry or to record a proceeding when he gives a sanction in writing for a prosecution. It is to be presumed he has governed his decision by the rule prescribed. QUEEN-EMPRESS v. PALANI, **7 M. 537=1 Weir 899.**

(18)—*Ss.* 37, 40—*Evading payment of stamp duty.*—The Stamp Act is a fiscal enactment, and must be strictly construed; and before any person can be punished for an offence relating to the stamp revenue, the procedure prescribed by the Act must be strictly followed. On the discovery of a not duly stamped instrument, the procedure laid down in s. 37 of the Act should be followed ; the severer proceeding of a criminal prosecution under s. 40 is only intended for those cases where there is an intention to evade the stamp law. EMPRESS v. SODDANUND MAHANTY, **8 C. 259=10 C L.R. 365.** [*Appr.*, L.B. R. 1872—1892, 623; *Cons.*, 12 M. 231 ; *R.*, U.B.R. 1892—1896, Vol. I, 307.]

(19)—*Ss.* 37 (*b*), 40, 61 *and* 63—*Defrauding Government by understating the value of property in a deed—Prosecution.*—A District Court having, under s. 33 of the Stamp Act, impounded a partition deed produced before it, forwarded it under s. 35 to the Collector, being of opinion that the executant of the deed had committed an offence under s. 63 of the Act,

I.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*continued.*

the accused not having properly valued the property with the intent to defraud Government. The Collector, under the provisions of s. 69, sanctioned the prosecution of the executant, who was punished under s. 63. The Sessions Judge reversed the sentence on the ground that the Collector had omitted to collect the deficient stamp duty before sanctioning the prosecution. *Held*, that the acquittal was wrong, because s. 37 (*b*) did not apply to the case, and because the conviction would not be bad, simply because the Collector failed to record proceedings under s. 40 to the effect that he had satisfied himself that there was an intention to evade payment of the proper duty. QUEEN EMPRESS v. VENKATARAYUDU, **12 M. 231 = 1 Weir 903.** [*R.*, U.B.R. 1892—1896, 307.]

(20)—*Ss.* 37, 40, 69—*Execution of unstamped instrument—Scope of sections.*—The effect of ss. 37, 40, Stamp Act, is that every one must be allowed an opportunity of paying the penalty before the Collector exercises his discretion under s. 69. In many cases, there may be a reasonable question as to whether any penalty is payable or not, and the duty may be recovered by an order which would be lost by a prosecution. He ought, at any rate, to do what the law commands as his duty before exercising a mere discretion. EMPRESS v. JANKI, **7 B. 82.** [*Appr.*, L.B.R. 1872—1892, 623; *R.*, 12 M. 231, U.B.R. 1892—1896, 307.]

(21)—*Ss.* 37, 61—*Holder of insufficiently stamped instrument.*—No prosecution lies under s. 61, Stamp Act, against the holder of an insufficiently stamped pro-note. But the Collector, on the bond being impounded and sent to him, can levy the penalty under s. 37. EMPRESS v. MURAD ALI, **40 P. R. 1880, Cr.**

(22)—*Ss.* 39 *and* 69—*Charter-party, counterpart or duplicate of—Stamp duty, immaterial for purpose of securing a conviction—Sanction for prosecution by Collector when valid.*—There is nothing in the law which renders it obligatory to execute a charter party in duplicate; but when the parties think proper to execute it in duplicate, they commit an offence punishable under s. 61 of the Stamp Act if they fail to stamp the counterpart as prescribed in the schedule. The mere fact that they may have intended it to be used merely as a private copy cannot alter its nature or make it any less a duplicate or counterpart if it is duly signed. Provided that the prosecution be duly instituted, the intention of the party prosecuted to evade the stamp-duty or otherwise is immaterial for the purpose of securing his conviction.—When a Collector without first calling on the party to pay the duty and penalty grants sanction to prosecute before the time had arrived for the exercise of his discretion under s. 40, his sanction is not a valid sanction. QUEEN-EMPRESS v. NAWSEE DEWRAJ, **L B.R. 1872—1892, 623.**

I.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*continued.*

(23)—*S.* 40—*Scope of the section.*—S. 40 only refers to cases in which a prosecution is instituted after penalty has been paid. It confines the power of instituting prosecutions to the Collector, and instructs him to exercise it only when it appears that the offence was committed with the intention to evade payment of the proper duty. QUEEN-EMPRESS v. VENKATARAYUDU, **12 M. 231 = 1 Weir 903.**

(23-*a*)—S. 40—*See* Nos. 17, 18, 19, 20, *supra.*

(24)—*S.* 46—*Rule of Governor-General, 3rd March,* 1882, 5 (*e*)—*Construction—Stamped paper—Writing on reverse.*—The rule is an enabling rule, authorising parties to use plain papers in addition to a stamp paper, where the whole of an instrument cannot be written on the side of the stamp paper which bears the stamp. The rule, while favouring the writing of an instrument only on that side, does not prohibit the writing on the reverse side, so as to make it an offence under s. 61, if they did so write. REFERENCE FROM THE BOARD OF REVENUE UNDER S. 46 OF THE INDIAN STAMP ACT 1879, **7 M. 176, F. B.**

(25)—*S.* 51—*Allowance for spoiled stamps—Power of Collector to delegate authority—False statement in enquiry before Deputy Collector—Penal Code, s.* 193.—Under s. 51, and the rules made thereunder, the Collector himself, and none other, is the officer, to whom power is given by law to make enquiries into applications for allowance for spoiled stamps, to take the necessary evidence on oath, and to grant or refuse such application; and it is illegal and incompetent for him to delegate his authority in the matter where a Collector made over such an application to the Deputy Collector for enquiry, *held*, that, he being incompetent to put the witnesses produced by the applicant on their oaths, no charge under s. 181 or 193 could be framed against the witnesses in reference to their statements made before him. EMPRESS OF INDIA v. NIAZ ALI, **5 A. 17 = A.W.N. 1882, 161.**

(26)—*Ss.* 58 *and* 64—*Proof of demand of stamped receipt.*—In order to bring home a charge under s. 64, it must be shown that the person accused had been required under s. 58 to give a properly stamped receipt and had refused to give it. QUEEN-EMPRESS v. KHETTER MOHUN CHOWDHRY, **27 C. 324 = 4 C.W.N. 440.**

(27)—*Ss.* 60 *and* 63—*Intention to avoid payment of stamp.*—Intention to avoid payment of stamp is not an essential ingredient of the offence described in s. 60 of Act I of 1879. But such intention is the essential ingredient of the offence made punishable by s. 63 of that Act. QUEEN-EMPRESS v. VENKATARAYUDU, **12 M. 231 = 1 Weir 903.**

(28)—*S.* 61—*Penal Code, s.* 107—*Abetment of making an unstamped receipt.*—Where the accused paid a sum of money to his creditor

I.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*continued.*

and when the money was paid and he was to receive a receipt, the creditor said that he could not give a stamped receipt, as he had no stamp and the accused, thereupon, accepted the receipt without a stamp, and promised himself to affix one, *held*, that the accused was not guilty of abetment of the offence of making an unstamped receipt, as he did not aid the offence by an act, nor did he omit to do anything which he was bound by law to do. QUEEN-EMPRESS v. MITTHA LALL, **8 A. 18 = A.W.N. 1885, 317.** (A.W.N. 1885, 30, 7 B. 82, A.W.N. 1884, 37, *R.*) [*F.*, 7 C.P.L.R. 21, Cr.]

(29)—*S.* 61—*Receipt of insufficiently stamped instrument—Abetment—Penal Code*, ss. 40, 109. —The mere fact of the acceptance of an insufficiently stamped instrument cannot amount to an abetment of the offence under s. 61 of the Stamp Act. EMPRESS v. GOPAL DAS, **A.W.N. 1883, 145.** [*R.*, 20 A. 440.] *See, also,* EMPRESS v. BEHARI LAL, **A.W.N. 1884, 37.**

(30)—*S.* 61—*Receiver of an unstamped instrument*—"*Accepting.*"—The term "accepting" in s. 61 of the Stamp Act does not mean "receiving" but "executing as an acceptor." The mere receiver of a pro-note not duly stamped does not render himself liable to the penalties under the section. QUEEN-EMPRESS v. NIHAL CHAND, **20 A. 440 = A.W N. 1898, 108.** (7 M. 71, 24 W.R. Cr. 1, 7 B 82, A.W.N. 1883, 145, *R.*) [*R.*, U.B.R. 1904, 2nd Qr., Stamp, p. 1].

(31)—*S.* 61—*Receiving unstamped instrument*—"*Accepting.*"—The mere receiving of a pronote not duly stamped and suing upon it is not "accepting" within the meaning of s. 61 and is, therefore, not an offence under the section. EMPRESS v. SRIKISHAN DAS, **12 P R. 1887, Cr.** [*R.*, 18 P.R. 1895, Cr.]

(32)—*S.* 61—"*Accepting*" *meaning of.*—The term "accepting" in s. 61 does not mean receiving but executing as an acceptor. A person receiving a promissory note insufficiently stamped and subsequently putting it in a suit would not be guilty of an offence under s. 61. QUEEN v. GULAM HUSSAIN SAHEB, **7 M. 71 = 1 Weir 302.** [*F.*, 1 N.L.R. 163 (164), 11 P.R. 1891, Cr. Rat. Un. Cr. Cas. 682; *R.*, 20 A. 440 (441) = 18 A.W.N. 108, U.B.R. 1892—1896, 312, Cr.]

(33)—*S.* 61—*Accepting.*—An accused person, who had merely accepted an unstamped receipt without having either executed or signed it, commits neither an offence under s. 61, Stamp Act, nor does he, by such bare acceptance, become guilty of abetting its execution. HIRA v. EMPRESS, **18 P.R. 1895, Cr.**

(34)—*S.* 61—*Receiving unstamped instrument—Not abetment.*—It is not abetment of the execution of an unstamped instrument to receive it, any more than acceptance of stolen property is abetment of theft. EMPRESS v. JANKI, **7 B. 82.** [*F.*, 8 A. 18 = A.W.N. 1885, 317, 20 A. 440 = A.W.N. 1888, 108, 7 C.P.L.R. 21, 1 N.L.R. 163; *R.*, U.B.R. 1904, 2nd Qr., Stamp 1; *D.*, 10 C.P.L.R. 1.]

(35)—*S.* 61—*Receiving unstamped* Khata—The mere receipt of an unstamped *khata* does not constitute an offence under s. 61, Stamp Act. QUEEN-EMPRESS v. KASAM, **Rat. Un. Cr. C. 682 = Cr. Rg. 47 of 1893.** (7 M. 71, *F.*)

(36)—*S.* 61—*Meaning of the term* '*Signing otherwise than as a witness*"—*Agent authorised to sign on behalf of a firm—Liability of agent for granting unstamped receipt.*—The words "signing otherwise than as a witness" in s. 61 of the Act includes the writing of a person's name by himself, or by his authority, with the intention of authenticating a document as being that of the person whose name is so written. An ordinary agent authorised to sign on behalf of his principal comes within the purview of the section. Where a clerk signs a firm's name under the authority of the firm, it makes little difference that he wrote the letters to the dictation of the Manager and he may be properly convicted under s. 61 of the Act. QUEEN-EMPRESS v. KHETTER MOHUN CHOWDHRY, **27 C. 324 = 4 C.W.N. 440.**

(37)—*S.* 61—*Acknowledgment of receipt of debt due by letter—Failure to properly stamp it.*—Where a person acknowledges by letter the receipt of money in satisfaction of a debt for more than Rs. 20, the letter is a receipt and is as such chargeable with duty and the person signing it otherwise than as a witness without its being properly stamped is liable to be convicted under s. 61 of the Act. REFERENCE UNDER STAMP ACT, s. 46, **8 M. 11, F.B. = 1 Weir 902.**

(38)—*S.* 61—*Amount of fine.*—Where a person is convicted of the abetment of an offence under s. 61 of the Stamp Act for not fixing a stamp to an acknowledgment signed by a debtor in his account, books, the amount of fine inflicted should not be excessive but proportionate to the fraudulent intent of the offender. EMPRESS v. BAHADUR SINGH, **A. W N. 1885, 30.** [*D.*, 8 A. 18].

(39)—*S.* 61—*Signing unstamped receipt.*—Where the evidence shows that an unstamped receipt was granted for the acquittance of a debt due from the payer to the grantor's principal, the grantor would be guilty of an offence under s. 61 of the Stamp Act by signing such receipt otherwise than as a witness. EMPRESS v. ASHUTOSH, **A.W.N 1885, 266.**

(40)—*S.* 61—*Gist of offence—Dishonest intention.*—To constitute an offence under s. 61, Stamp Act, a dishonest intention must be made out. EMPRESS v. CHUNNI LAL, **A.W. N. 1883, 239.**

(41)—*S.* 61—*Penal Code*, s. 109, *receipt of unstamped receipt.*—Mere receipt of an unstamped instrument is not an abetment of an offence

I.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*continued.*

under s. 61 of the Stamp Act of 1879. EMPRESS v. BHAIRON, **A.W.N. 1884, 37.** (7 B. 82, *F.*) [*F.*, 8 A. 18.]

(42)—S. 61—*See* ABETMENT, 20 A. 440=A.W.N. 1898, 108, 10 C.P.L.R. Cr. 1.

(43)—S. 61—*See* CRIM. PRO. CODE, 1898, s. 190, U.B.R. 1897—1901, Vol. I, 55.

(44)—S. 61—*See* EVIDENCE — GENERAL, L.B.R. 1893—1900, 119.

(45)—S. 61—*See* Nos. 5, 6, 10, 17, 19, 21, *supra.*

(46)—*Ss.* 61 *and* 62—*An unstamped letter acknowledging receipt of a cheque for Rs.* 100—*Chargeability of duty on, under s.* 61—*Conviction for not stamping, under s.* 62—*Legality.*—A cheque for Rs. 100, was sent to the accused. He acknowledged its receipt by means of a letter which ran thus "Your cheque for Rs. 100 to hand," *held*, such a letter is an instrument chargeable with the stamp duty of one anna within the meaning of s. 61 of the Stamp Act I of 1879 and that the accused was rightly convicted under s. 62 of the same Act. QUEEN-EMPRESS v. MUTTIRULANDI, **1 Weir 903= 11 M. 329.**

(47)—*Ss.* 61 *and* 64—*What constitutes an offence under s.* 64.—Where a person neither refuses nor neglects to give a receipt, nor does he with intent to defraud the revenue give a receipt for less than Rs. 20 when he has received more, nor does he with like intent separate or divide the money or property paid or delivered, he cannot be convicted under s 64 of the Act. REFERENCE UNDER STAMP ACT, S. 46, **8 M. 11, F.B.=1 Weir 902.**

(48)—*Ss.* 61, 64—*Refusal to grant stamped receipt by a firm—Liability of the members of the firm.*—The term "person" used in ss. 61 64 of the Stamp Act includes the members of a trading partnership. Where a firm carrying on business in Calcutta as general dealers acknowledged the receipt of certain sums from a customer, but refused to give a properly stamped receipt, *held*, that the members of the firm were liable to be prosecuted under ss. 61 and 64 of the Act, and that an enquiry as to the presence or the absence of the partners from Calcutta at the time the letters were written or their knowledge of the grant of an improper receipt or of the refusal to grant a proper receipt was immaterial, since they were, in the contemplation of law, the persons who signed the letters of acknowledgment and refused to give a proper receipt. QUEEN-EMPRESS v. KHETTER MOHUN CHOWDHRY, **27 C. 324=4 C.W.N. 440.**

(49)—*Ss.* 61 *and* 67—*Execution of document requiring to be stamped but not stamped.*—The execution of a document, which on its face requires to be, and is not stamped, cannot be said to be an "act, contrivance, or device not specially provided for" within the meaning of s. 67 of Act, because where the document is what on its face it purports to be, the act of the executant, if punishable at all, is provided for under s. 61 of the Act and cannot, therefore, fall under s. 67. The Act of the person receiving the unstamped document may amount to abetment of an offence, under s. 61, and would then be 'an act provided for by any other law for the time being in force,' namely, the Penal Code, and is, therefore, beyond the scope of s. 67 of the Act. The recipient and the writer of a letter requesting the granting of a loan to a certain person, the writer holding himself responsible for the amount of the loan, if the borrower does not repay it, cannot be prosecuted for an offence under s. 67 of the Stamp Act. QUEEN-EMPRESS v. SOMASUNDARAM CHETTI, **23 M. 155=1 Weir 1907.**

(50)—*Ss.* 61 *and* 69—*Irregularity in mode of reference.*—Criminal proceedings taken under the above Act are not invalidated by the mere fact that there was irregularity in the mode of reference by a Civil Court, provided the prosecution is instituted by the Collector or such other officer as the Local Government generally or the Collector specially authorized in that behalf. EMPRESS v. BHANSIDHUR DEORIA, **10 C.P.L.R. Cr. 1.**

(51)—*Ss.* 61, 69—*Crim. Pro. Code, Act* X *of* 1882, *s.* 555—*Unstamped receipt—Jurisdiction of Magistrate—Interest of Magistrate in case.*—Where a Deputy Magistrate who was also the officer in charge of the Treasury, convicted a person for having given an unstamped receipt, *held* that the conviction was illegal both for want of the sanction required by s. 69 of Act I of 1879, and under s. 555 of the Crim. Pro. Code. EMPRESS v. BEHARI LAL, **A.W.N. 1884, 37.**

(52)—*Ss.* 61, 69—*Prosecution in respect of offence against stamp law—Sanction.*—The prisoner in this case was convicted by the District Magistrate of an offence under s. 61 of the Stamp Act, but the prosecution was not instituted with the sanction of the Collector. *Held* that this was an irregularity and not a mere technical objection, because the prosecution could not be conducted by the officer granting the sanction (if sanction had been granted by the Collector who was also the Magistrate). EMPRESS v DEO SAHAI, **A.W.N. 1883, 98.**

(53)—S. 62—*See* Nos. 10, 14, 46, *supra.*

(54)—*Ss.* 62, 30—*Term "receipt" explained.*—A receipt is something more than a document merely purporting to acknowledge the payment of money. It means a note or the like, whereby money, a debt or the like is intended to be acknowledged to have been actually paid or discharged. If there is no intention to acknowledge payment of satisfaction a man cannot be held to have given a receipt. *In re* SUBRAMANIEN, **1 Weir 901.**

I.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*continued.*

(55)—*S.* 63 (*b*)—*Scope of the section.*—S. 63 (*b*), being a penal one, must be construed strictly. If so construed, a purchaser or grantee under a conveyance cannot, without straining the meaning of the language, be held to be a person employed or concerned in or about the preparation of the document of conveyance. The language of the clause appears to point to the case of a person in whom trust and confidence has been reposed in connection with the preparation, writing, etc., of an instrument and who abuses such trust and confidence, *e.g.*, an attorney's clerk or professional writer, and not to the case of a person materially interested or concerned in the instrument, when executed, such as a purchaser or grantee. *In re* SENGODA GOUNDAN, **1 Weir 905.**

(56)—S. 63—*See* Nos. 19, 27, *supra.*

(57)—*S.* 64 (=s 65 *of Act* II *of* 1899)—*Failure to grant receipt when demanded.*—The failure to grant a receipt for money paid, though demanded, is an offence punishable, under s. 64 of Act I of 1879, with fine which may extend to Rs. 100. It is therefore not excluded by cl. (*a*) of s. 216 of the Crim. Pro. Code from the category of offences triable summarily. *In re* NAVOO ROUTHAN, **1 Weir 205=2 Weir 326.**

(58)—*S.* 64—*Four conditions to co-exist to bring an instrument under s.* 64.—In order to bring an instrument within the terms of s.64, Stamp Act, four points are necessary and must co-exist or else the instrument is not liable:—(1) The debt must exceed Rs. 20, (2) The instrument must be signed by or on behalf of the debtor, and (3) In order to supply evidence of a debt, (4) The instrument must have been left with the creditor. Wherever a balance of account is struck, no stamp need be affixed unless the debtor signs an acknowledgment. The failure of the creditor to affix such stamp is not an offence under s. 64 of the Stamp Act. EMPEROR v. BANSIDHAR, **A.W.N. 1884, 164.**

(59)—S. 64—*See* Nos. 26, 47, 48, *supra.*

(60)—*Ss.* 64, 69—*Prosecution under the former section—Collector's sanction.*—To prosecute a person for having committed an offence under s. 64 of the Stamp Act, the previous sanction of the Collector as laid down in s. 69, is necessary. It is, therefore, essential that the record of conviction should evidence such sanction. QUEEN-EMPRESS v. JETHMAL JAYRAJ, **9 B. 27.**

(61)—*S.*67 (=*s.* 68 *of Act* II *of* 1899)—*Execution of separate instruments in respect of single transaction.*—The act, device, or contrivance which is referred to in s.67 must be either improper or prohibited. There is no provision in the Stamp Act which prohibits the execution of separate instruments and requires the execution of a single instrument in respect of a single transaction. Where a person executed as a security for a loan of Rs. 1,300, two mortgage deeds, one on a stamp of Rs. 10 for Rs. 1,000, and another on a stamp of Rs. 3 for Rs. 300 instead, of executing a single deed on a stamp of Rs. 15 for the whole amount, *held* that he was not guilty of an offence under s. 67 of the Act. *In re* HURRIBUNDHO DOSS, **1 Weir 907.**

(62)—*S.* 67—*Scope of.*—The second clause in s. 67, Stamp Act, is not controlled by the first so as to restrict its application to negotiable instruments. The clause is of general application, and covers all cases in which a document is executed with the intention of defrauding the Government of its stamp duty. REFERENCE UNDER THE STAMP ACT, S. 46, **9 M. 138, F.B.**

(63)—S. 67—*See* No. 49, *supra.*

(64)—*S.* 68—*Act* VII *of* 1870 (*Court-fees Act*), *s.* 34—*Act* XVIII *of* 1869 (*General Stamp Act*), *s* 48—*Sale of Court fee stamps without a license.*—The sale of Court fee stamps without license was no offence under Act XVIII of 1869, but was specially made so under s. 68 Act I of 1879. EMPRESS OF INDIA v. JALLU, **4 A. 216, F.B.**

(65)—*S.* 68—*Selling stamps without license.*—The selling of a stamped paper previously brought from a licensed vendor, because the seller did not require it, is an offence under s. 68, as the accused was not "a person appointed to sell stamps." QUEEN-EMPRESS v. SHOBHARAM, **Rat. Un. Cr. C. 317=Cr. Rg. 3 of 1887.**

(66)—S. 69—*See* Nos. 10, 20, 22, 50, 51, 52, 60, *supra.*

(67)—*Acknowledgment — Mercantile usage, sch.* 1, *art.* 1.—The prosecution in this case related to the fact that certain entries in a Mahajan's cash book were signed by the person affected by these entries and it was contended that the mere fact that they were signed by the customers converted them into acknowledgments, though the entries in question were not in form acknowledgments of debt as contemplated by art. 1, sch. I, of the Stamp Act. *Held* that such a fact did not convert the document into an acknowledgment under art. 1, sch. I of the Stamp Act, unless it was established that according to mercantile usage or by the use actually made of the entry, it had the effect of such an acknowledgment. QUEEN-EMPRESS v. KHALAK SINGH, **10 C.P.L.R. Cr., 7.**

(68)—*Sch.* I, *art.* 5, *cl.* (*c*)—*Promise to pay interest.*—A promise by a debtor to pay interest in an acknowledgment of a debt in a Mahajan's accounts, is an agreement chargeable under art. 5, cl. (*c*), sch. I of the Act. EMPRESS v. BHANSIDHUR DEORIA, **10 C.P.L.R. Cr. 1.** (4 B. 366, 22 C. 757, *Diss.*; 23 W.R. 403, 15 C. 150, *R.*)

(69)—*Sch.* I, *art.* 13—*Guarantee bonds.*—The material part of a document was as follows:—"If T and Z fail to redeem the paddy

I.—Imperial Acts—continued.

Act I of 1879 (Stamp)—*concluded.*

lands they mortgaged to P.I. L.G.N. will redeem them by paying the original mortgagee money and interest. *Held*, that this was not a security bond, but a guarantee bond, coming under art. 13, sch. (1), Stamp Act, 1879. QUEEN-EMPRESS v. NGA LU GALE NGE, **L. B. R. 1893—1900, 119.**

(70)—*Art.* 29—*Scope of the article.*—Art. 29 applies to an instrument evidencing an agreement to secure the re-payment of a loan, which means an instrument executed at the time the loan is made, and not to the case of an assignment by way of mortgage of a valuable security to secure a pre-existing debt. The article contemplates an instrument contemporaneous with the advance and with the deposit. QUEEN-EMPRESS v. DEBENDRA KRISHNA MITTER, **27 C. 587 = 4 C.W.N. 524.**

(71)—Art. 29—*See* No. 8, *supra.*

(72)—Art. 44—*See* No. 8, *supra.*

(73 & 74)—*Art.* 52—*Crim. Pro. Code* (1898), s. 432—*Reference under Stamp Act* (1879)—*Entry by creditor in debtor's book.*—An entry recording the payment of the amount due made by the creditor in the debit side of the debtor's *khatta* book, and signed by him, is a "receipt" within the meaning of s. 3 (17) of the Stamp Act, and, as such, requires to be stamped under art. 52, sch. I of the Act. To decide questions of this kind, the Court must look to the intention of the parties. QUEEN-EMPRESS v. JUGGER NATH, **11 C. 267.** [*R.*, 2 L.B.R. 307.]

(75)—Art. 52—*See* No. 9, *supra.*

(76)—Art. 54—*See* No. 9, *supra.*

(77)—*Chap.* VIII—*Realization of penalty levied by Collector—Power of criminal Court.*—A criminal Court trying an offence punishable under Chap. VIII of the Act cannot realise a penalty previously directed to be paid by the Collector under Chap. IV of that Act. EMPRESS v. BHANSIDHAR DEORIA, **10 C.P. L.R. Cr. 1.**

Act IV of 1879 (Railways).

[REP., ACT IX OF 1890.]

See ACT XVIII OF 1854.

See ACT IX OF 1890.

See CARRIERS.

See RAILWAY COMPANY.

(1)—*Ss.* 15, 29—*False accounts of goods despatched.*—The duty imposed by s. 15, that of giving an account of the quantity or description of property sought to be despatched by rail being limited to the case of a demand being made, *held*, that a person giving false account of goods despatched without being so demanded by railway authorities could not be convicted under s. 29. HARYA v. EMPRESS, **36 P.R. 1885, Cr.**

(2)—*Ss.* 17 *and* 31—*Duty of passengers and their liability.*—Under ss. 17 and 31, Railway Act, no passenger is to travel without a proper ticket (an ordinary one for the particular journey or a season ticket) furnished by the company. Every passenger is to show or deliver up his ticket when called upon; and any passenger, who fails in either of these points, is liable, whether a season-ticket holder or not to pay the ordinary fare for his journey, or if he cannot show where he got into the train, the ordinary fare from the starting point of the train. *In the matter of the petition of* E. G. BUSKIN; *In the matter of the petition of* C. F. THOMAS: E. W. HART v. E. G. BUSKIN, **12 C. 192.**

(3)—*S.* 26—*Liability under section when arises.*—Persons are liable to conviction under s. 26 of the Act not by reason of consequences directly referable to default in observing the rules, but by reason of the danger or risk which it entails. Where it was required by a rule sanctioned and notified as required by law that the guard and driver of a ballast-train should, on a line worked on the block-system, stop the train at a station and should not leave the station till the guard has received from the Station Master and delivered to the driver a "line clear certificate," disobedience, of such rule by the guard and driver which endangered the safety of persons, was held to make them liable to be punished under s. 62. CHARLES SMELL v. QUEEN, **6 M. 201 = 1 Weir 867 = 7 Ind. Jur. 246.** [*R.*, 37 B. 685 = 15 Bom. L.R. 702 = 14 Cr. L.J. 460 = 20 Ind. Cas. 620, 7 Cr. L.J. 417 = 4 L.B.R. 139, 11 Cr. L.J. 362 = 6 Ind. Cas. 483 = 8 P.L.R. 1910 = 39 P.W.R. 1910.]

(4)—S. 29—*See* No. 1, *supra* and No. 14, *infra.*

(5)—*S.* 31—*Order under, nature of—Season ticket holder travelling without ticket.*—The order under s. 31 of the Railway Act, in case of a refusal by a passenger, travelling without a proper ticket, to pay the fare, should be one merely for the recovery of the amount due *as the fare*, and not an order to pay the sum as if it were a fine. [*R.*, Rat. Un. Cr. C. 435.] A passenger, who has a season ticket, which is still in force and in his possession, cannot be said to be travelling without a ticket within the meaning of s. 31 of the Railway Act, merely by reason of his inability to produce it when called upon, on account of his not happening to have the ticket with him: but he will be considered not to have shown the ticket, and will have to pay the ordinary fare. *In the matter of the petition of* E. G. BUSKIN; *In the matter of the petition of* C.F. THOMAS; E.W. HART v. E.G. BUSKIN, **12 C. 192.**

(6)—S. 31—*See* No. 2, *supra.*

(7)—*Ss.* 31, 32—*Fine — Fare—Fraudulent act.*—S. 32, unlike s. 31 of the Railways Act, applies only to fraudulent acts, and requires the imposition of fine in addition to the fare.

I.—Imperial Acts—continued.

Act IV of 1879 (Railways)—*concluded.*

Where there is no intent to defraud, the conviction should be under s. 31. QUEEN-EMPRESS v. HUSSENDIN, **Rat. Un. Cr. C. 435 = Cr. Rg. 7 of 1889.** (12 C. 192, *R.*)

(8)—S. 32—*See* ACT IX OF 1890, s. 112, 1 Weir 869, F.B.

(9)—S. 32—*See* No. 7, *supra.*

(10)—*S. 45—Knowledge— Act likely to endanger safety of passengers.*—Where there is no evidence that a Station Master, in sending a train without previously obtaining a line clear message, knew that his act was likely to endanger the safety of the passengers travelling therein, a conviction under s. 45 of the Act is illegal. EMPRESS v. SRIKISHEN, **A.W.N. 1882, 172.**

(11)—*Ss. 45, 46—Placing obstruction on the rails.*—Where the accused was charged with pulling up an iron mail post and placing it across the rails on a dark-night, *held* that the act being wrongful in itself, rashness cannot be usually predicated, and that the offence, falling within s. 45 of the Railways Act, should be committed to the Sessions Court and not tried by a Magistrate as falling within s. 46. QUEEN-EMPRESS v. SHIVAPA, **Rat. Un. Cr. C. 458 = Cr. Rg. 14 of 1889.**

(12)—*S. 46—Failure to remove stone from rail.*—A person who fails to remove a stone from a rail is not guilty of negligently doing an act which is likely to endanger the safety of persons travelling upon the railway, under s. 46, unless it be proved that he was legally bound to remove it. QUEEN-EMPRESS v. PHAKEERA, **Rat Un. Cr. C. 394 = Cr. Rg. 50 of 1888.**

(13)—S. 46—*See* No. 11, *supra.*

(14)—*Ss. 101 and 29—Negligence of Railway servant—Lives lost—Punishment.*—Where a Railway servant was convicted under s. 29 of Act IV of 1879 for his gross negligence by which an accident happened in which several lives were lost, *held* that three months' simple imprisonment was too light a sentence. QUEEN-EMPRESS v. JAGANNATH, **A.W.N. 1890, 171.**

Act XIV of 1879 (Hackney Carriage).

[S. 4.—REP IN PART, ACT XIII OF 1889; S. 3, AMENDED ACT I OF 1903, DECLARED IN FORCE IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Ss. 3 and 7—Advertisement as to the hire of carriage—Hackney carriage— Liability under the Act.*—A published an advertisement in a newspaper that he would supply carriages for hire and for sale. He was charged under s 7 of the Hackney Carriage Act, for hiring hackney carriages, without obtaining a license from the Municipality, in contravention of Rule 1 of the Rules framed by the Rangoon Municipal Committee under s. 3 of the said Act. *Held*:—

I.—Imperial Acts—continued.

Act XIV of 1879 (Hackney Carriage)—*cld.*

(1) that a conviction cannot be up held under the section, if it is not proved that the accused had carriages in his possession to which it might be held that the advertisement referred, and that a mere insertion of a notice cannot be sufficient for a conviction; (2) and that it must also be shown that the accused also meant to offer his carriages for the conveyance generally of that portion of the public who are "passengers," and that the terms and conditions of the hiring must also be clear. GARSTIN, H A v. KING-EMPEROR, **4 L.B R. 80 = 7 Cr.L J. 71.**

(2)—*Ss. 6 and 7—Rule 1—Driving unlicensed carriage.*—Rule 1 of the rules framed under Act XIV of 1879 for the Umballa Cantonment does not render driving an unlicensed carriage punishable under s. 7 of the Act. MAHA NAND v. EMPRESS, **7 P.R. 1892, Cr.** [*D.*, 39 P.W.R. 1910 = 8 P.L.R. 1910 = 6 Ind. Cas. 483 = 11 Cr.L.J. 362.]

(3)—*Ss. 6, 7—Insein Rules, r. 15—Refusal of driver to ply hackney carriage for hire—Liability of driver and owner for such refusal.*—The driver of a hackney carriage who refuses to ply it for hire is not punishable for infringement of r. 15 of the Insein Rules under the Hackney Carriages Act, because he cannot properly be said to "keep" the carriage which he happens to be driving. And the "owner" or keeper of a carriage is not punishable for the refusal of his servant, *i. e.*, the driver. It must be shown that the hirer applied to the "owner" or "keeper" and was refused by him. EMPEROR v. KAMALI KHAN, **15 Cr. L.J. 552 = 24 Ind. Cas. 960.**

(4)—*S. 7—Breach of condition of license.*—Breach of the condition of a license as set out in r. 7 of the above Act, not being a breach of a rule, is not punishable under s. 7. RAHIMAN SAHIB v. MUNICIPAL SECRETARY, **U B. R. 1892--1896, Vol. I, 125.**

(5)—S. 7—*See* Nos. 1, 2, 3, *supra.*

(6)—*S. 9—Summary and not exclusive remedy.*—The above section is merely intended to provide a simple and summary means of settling disputes between the hirers and letters of hackney carriages, and parties are not thereby excluded from having recourse to the Civil Courts. RAHIM BAKHSH v. P.C. WHEELER, **A.W.N. 1893, 203.**

Act XVIII of 1879 (Legal Practitioners).

[AM., ACT IX OF 1884; AM., ACT XI OF 1896; AM., (IN LOWER BURMA) ACT VI OF 1900, S. 47; S. 42 AM., ACT I OF 1903; SS 4, 7, 25, 38, AM., ACT I OF 1908; REP. IN N.W. FRONTIER PROVINCE (EXCEPT S. 36 AS SUBSTITUTED BY S. 4 OF ACT XI OF 1896), REG. VII OF 1901, S. 5; DECLARED IN FORCE IN THE ANGUL DISTRICT, REG. I OF 1894, S.3.]

See LEGAL PRACTITIONERS.

(1)—*Unprofessional conduct — Suspicion — Muktear—Renewal of license.*—The renewal of the license of a legal practitioner cannot be

I.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners) *—continued.*

refused on the mere suspicion that he was implicated in, and privy to, the sending of anonymous petitions making serious allegations against a Sub-divisional officer and other Government officers. *In re* BABU NIRAJAN PROSAD MOHANTY, **12 C.W.N. 919 = 8 Cr. L.J. 155 = 4 M.L.T. 155.**

(2)—*Nature of the enquiry under the Act—Judicial proceeding—False statements by witnesses on solemn affirmation — Penal Code, ss. 181, 193—False statements of the accused person made after being solemnly affirmed.*—An enquiry under the Legal Practitioners' Act is a judicial proceeding, and false statements on solemn affirmation made by the witnesses therein should be charged as offences under s. 193, Penal Code, and the persons so charged should be tried separately. [*F.*, 13 Ind. Cas. 215 = 5 S.L R. 129; *D.*, 4 Bur. L.T. 130 = 12 Cr. L.J. 577 (578) = 12 Ind. Cas. 841 (842).] Where a pleader is called upon, in an enquiry under the Legal Practitioners' Act, to explain his conduct, it is not competent to the Court conducting the enquiry to take a statement from him on solemn affirmation. He is not, therefore, in such proceeding legally bound by an oath to speak the truth, and, if he states what is false, does not render himself amenable to the charge of making a false statement under s. 181 or giving false evidence under s. 193, Penal Code. KOTHA SUBBA CHETTI v. QUEEN, **6 M. 252 = 1 Weir 116 = 1 Weir 156 = 1 Weir 785 = 7 Ind. Jur. 247.** [*D.*, 12 Ind. Cas. 841 = 4 Bur. L.T. 130 = 12 Cr. L. J. 577.]

(3)—*See* FALSE EVIDENCE, 6 M. 252 = 1 Weir 116 = 1 Weir 156 = 1 Weir 785 = 7 Ind. Jur. 247.

(4)—*Ss. 3 and 36—District Magistrate declaring a person to be a tout—Procedure—Personal inquiry necessary—Opportunity to show cause.*—Before proceeding to declare a person to be a tout, the District Magistrate should himself make an inquiry as to the person's antecedents and give him an opportunity to show cause. Where a Sub-divisional officer called on a person to show cause why he should not be declared a tout and he showed cause and the Sub-divisional officer after recording evidence on both sides submitted the proceedings with his report to the District Magistrate, and the latter after perusing them passed an order declaring the person to be a tout, the order was set aside. *In re* CHANDI CHARAN DEY, **12 C.W.N. 842** (6 C.W.N. 289, *F.*) [*F.*, 13 Cr. L.J. 510 = 15 Ind. Cas. 654; *R*, 11 Cr. L.J. 320 = 6 Ind. Cas. 327.]

(5)—Ss. 3 and 36—*See* TOUT, 27 P W.R. 1909, Cr. = 4 Ind. Cas. 1022 = 11 Cr. L.J. 148.

(6)—*Ss. 6, 8—Scheduled Districts Act, ss. 3, 5, 6—Enrolment of vakils in the province of Kumaun and Garhwal — Jurisdiction.* — The Commissioner of Kumaun is the High Court of that province and Garhwal for the purposes of the Legal Practitioners' Act. Therefore, a person enrolled as a vakil of the High Court of Judicature at Allahabad is not entitled, by virtue of such enrolment, to practise in the Courts of Kumaun and Garhwal. Where the Commissioner of Kumaun refuses to enroll a person as entitled to practise in the Courts of Kumaun and Garhwal, the High Court of Judicature at Allahabad has no right to interfere. *In the matter of the petition of* PADMA DAT JOSHI, **24 A. 348, F.B. = A.W.N. 1902, 86.**

(7)—S. 8—*See* No. 6, *supra.*

(8)—S. 9—*See* CRIM. PRO. CODE, 1898, s 4 (*r*), 5 A.L J. 40 = A.W.N. 1908, 11 = 30 A. 66 = 7 Cr. L.J. 21.

(9)—*S. 10—Pleader or Mukhtear—Power to practise.*—Unless a pleader or mukhtear comes within the exceptions to s. 10, Act XVIII of 1879, or within the proviso, he acts in contravention of the provisions of the section, if he performs, even on a single occasion, the functions of a pleader or *mukhtear* in a Court not established by Royal Charter. EMPRESS v. BAGI RAM **44 P.R. 1887, Cr.**

(10)—*Ss. 10, 32—Illegal practising by a pleader—Jurisdiction.*—A pleader or mukhtear practising in the Court of a Subordinate Magistrate, in contravention of the provisions of s. 10 of the Act, is only punishable under s. 32, by such Magistrate, and not by the District Magistrate. *In the matter of the petition of* GANGA DYAL, **4 A. 375 = A W.N. 1882, 67.**

(11)—*S. 12—Conviction of pleader for cheating—Report to High Court—Arguments allowed to show that facts did not amount to offence.*—Where, on a pleader being convicted of cheating under s. 417, I.P.C., the District Judge reported the case to the High Court under the Legal Practitioners' Act, Counsel for the pleader was allowed to go behind the conviction and show that his acts did not in law amount to the offence of cheating. *In the matter of* DURGA CHARAN, PLEADER, AND S. 12 OF ACT XVIII OF 1879, **7 A. 290, F.B = A.W.N. 1885, 48.** [*Diss*, 18 A. 174; *R.*, 11 Cr. L.J. 503 = 7 Ind. Cas. 622, 22 A. 49, P C.]

(12)—*S. 13—Grossly unprofessional conduct.*—Where certain parties to a suit executed an agreement in which it was stated that, as they were unable to pay the pleader's fees owing to poverty, a certain sum shall be paid to the vakil, in consideration of his conducting the case, when the case was won, *held* that it was, in effect, an agreement by which the pleader became entitled to a share of the property in suit in payment of his services as pleader in the suit, and that, in accepting such an agreement, the pleader was guilty of grossly unprofessional conduct. *In the matter of the* CONDUCT OF A PLEADER, UNDER S. 13 OF ACT XVIII OF 1879, LEGAL PRACTITIONERS ACT, **4 O.C. 229.** (4 C.W.N. 104, 5 C.W.N. 184, *R.*)

I.—Imperial Acts—continued.

Act XVIII of 1379 (Legal Practitioners) —*continued.*

(13)—*S.* 13—*Pleader taking sides against former client—Grossly improper conduct.*—A pleader, after his dismissal without misconduct on his part, or after the close of the business, is at liberty to take sides against his former employer, provided always that he has no secrets to carry with him that can be used to his former client's prejudice. But he is not competent to do so when he is neither discharged by his client nor has the business, for which he was retained, closed. Where a *mukhtear* retained by the complainant defended the accused when the latter was retried after the order of his discharge was set aside on revision, *held*, that the conduct of the *mukhtear* was grossly improper. ALIMUHAMMAD v. BABU SHAM LAL, **45 P.L. R. 1904 = 2 P.R. 1904, Cr.** (6 C. 79, 12 B. 95, *R.*)

(14) *S.* 13—*Pleader taking sides against former client.*—A pleader, after his dismissal without misconduct on his part, or after the close of the business, is at liberty to take sides against his former employer, provided always, that he has no secrets to carry with him that can be used to his former client's prejudice. "The Court will require a strong case to be made out as a ground for an order restraining a pleader from acting in any particular case; but from the nature of the thing it will, in general, be satisfied with the affidavit of a person who says he made confidential communication pertinent to the now pending suit, without requiring him to go into details, the statement of which would be a disclosure of the very matters which it is his purpose to keep concealed. *In the matter of* DANIEL, MR. J. **L.B.R. 1893—1900, 18.** (12 B. 91, *F.*)

(15)—*S.* 13—*Pleader—Professional misconduct—Enquiry — Strict proof necessary.*—In order to secure his own fee a pleader was an active party to placing his client in the hands of a money-lender who made a wholly unscrupulous and extortionate bargain with the pleader's client. The pleader knew the terms of that bargain: yet he did not advise or warn his client but permitted him to enter into the bargain. *Held*, that it was a professional misconduct of a grave kind: of a kind which, if permitted would tend to corrupt and demoralise the legal profession. A high standard of rectitude, diligence, duty and zeal is required of pleaders in the interests of the Bar. An enquiry into the professional misconduct of a pleader being of a *quasi-judicial* nature, the Court must have a strict proof of the pleader's misbehaviour. GOVERNMENT PLEADER v. RAGUNATH S. SULE, **10 Cr. L.J. 526 = 11 Bom. L.R. 1150 = 4 Ind. Cas. 266.**

(16)—*S.* 13—*Unprofessional conduct what amounts to—Interference by Privy Council with the punishment passed on a pleader by the High Court.*—Where a certificated pleader, after his employment as a pleader by a Bank had ceased, commenced a correspondence with a suitor against whom the Bank had taken proceedings to recover a debt, which showed that he was guilty of grave improprieties in his professional conduct, *held*, such conduct amounted to a "reasonable cause" for suspending him under s. 13 of the Act. Where the *quantum* of punishment imposed on a pleader for conduct which amounted to a "reasonable cause" for suspending him under s. 13 of the Act, was neither unreasonable, nor excessive, the Privy Council declined to interfere with the decision of the High Court as to the punishment. *In the matter of* QUARY, F. W. **13 A. 93. P.C. = 17 I.A. 199 = 5 Sar. 638.** [*R.*, 29 C. 893 = 6 C.W.N. 556; 34 M. 29 = 8 M.L.T. 22 = 6 Ind. Cas. 313 = M. M.N., 1910, 163 = 11 Cr.L.J. 310 = 20 M.L.J. 500.]

(17)—*S.* 13—"*Other reasonable cause*"—*Writing of an anonymous letter by pleader.*—Where a pleader wrote a letter, which he did not sign, to an officer, who was conducting an enquiry into a charge of bribery against a Revenue Inspector, the letter making allegations, which were intended to prejudice the mind of the officer in connection with the matter, which he was investigating, *held*, that the pleader was guilty of misconduct and that he should be suspended "for other reasonable cause" under s. 13, cl. (*f*), Legal Practitioners Act. SUB COLLECTOR OF NORTH ARCOT v. C. SESHACHARIAR, **13 M.L.J. 65 = 26 M. 448.**

(18)—*S.* 13—*Professional misconduct, what amounts to.*—A legal practitioner who, believing himself to be under a pecuniary liability to his client, endeavours to get the client to accept a less amount than that for which he is liable, is not guilty of grossly improper conduct within the meaning of s. 13 of the Legal Practitioners' Act. *In the matter of* AHSAN ALI, **5 A.L.J. 126 = A.W.N. 1908, 70.**

(19)—*S.* 13—*Essentials of a charge under—*Munshiana.—In order to sustain a charge under cl. (*c*) of s. 13 of the Act, the gratification paid to the tout must be "out of any fee paid or payable to a pleader," but does not include a payment made out of the *Munshiana* of a pleader's *Munshi*. AMOLAK RAM v. CROWN, **31 P.W.R. 1909, Cr. = 4 Ind. Cas. 1022 = 11 Cr. L.J. 143.** (15 C. 152, P.C., 27 C. 1023, *D.*) [*R.*, 11 Cr. L.J. 396 = 6 Ind. Cas. 736 = 22 P.W.R. 1910.]

(20)—*S.* 13—*Professional misconduct—Advocate—Grave moral turpitude—Instituting false case and supporting it by gross perjury—Evidence—Conviction—Interference of High Court in such cases.*—Where an Advocate was found guilty of having committed gross perjury and where the course of his conduct displayed great moral turpitude in having instituted a false case and having supported it by false statement. *Held*, that he was unfit to remain an Advocate any longer, and should be ordered to be struck off the rolls. In proceedings under the Legal Practitioners' Act, the High Court will not go

I.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners) —*continued.*

into the merits of the conviction, but will ordinarily accept the findings of Criminal Courts as final. *In the matter of* M.M.J., **13 Cr. L.J. 875=17 Ind. Cas. 811=5 Bur. L.T. 191.**

(21)—*S.* 13—*Professional misconduct— High Court Rules, chap.* XV *r.* 25—*General Civil Courts Rules,* 1911, *chap.* XXI, *r.* 37—*Civ. Pro. Code,* 1908, *O.* XXI, *r.* 73.—If a pleader, acting for a decree-holder, purchases the property sold in execution of his client's decree, he is guilty of professional misconduct. The evil is equally great if he purchases the property for other persons. Therefore, where, in execution of his client's decree, a pleader made a purchase on behalf of his father, the Court *held* him guilty of misconduct. *Per Chamier, J.*—Rule 37 of Chap. XXI of the General Rules, Civil, 1911, applies even to a pleader of the High Court, when he is practising in the Subordinate Courts. *In the matter of* HAR PRASAD SINGH, **13 Cr. L.J. 795=17 Ind. Cas. 539, F.B.**

(22)—*S.* 13—*Pleader — Misconduct.*—Every practitioner is bound to see, before he accepts a *vakalatnama*, that he has not been already engaged on the other side. To recklessly sign *vakalatnamas* without making proper note thereof, is very nearly approaching misconduct on the part of a pleader. IMAMUL HAQ v. FAIZUL HASAN, **14 Cr. L J. 44=18 Ind. Cas. 268, F.B.**

(23)—S. 13—Rule 27 of the rules framed under—Neglect of pleader to appear after receipt of fees—Pleader engaging in trade—Actionable claim—Purchase by pleader—Position of vakil--Professional misconduct—High Courts disciplinary powers—*See* LEGAL PRACTITIONERS—PLEADER AND CLIENT, 23 M.L.J. 447=1912, M.W.N. 1029=12 M.L.T. 615=37 M. 238=13 Cr. L.J. 800=17 Ind. Cas. 544.

(24)—S. 13—*See* LEGAL PRACTITIONERS—PLEADER AND CLIENT, 4 Ind. Cas. 176.

(25)—*S.* 13 (*b*)—*Misconduct*—Mukhtar's *writing an objectionable letter to the presiding officer of a Court—Apology—Suspension.—Held*, that the conduct of a *mukhtar*, who writes for another person a letter to the address of the presiding officer of a Court, on the supervision of Courts subordinate to his Court, and uses highly objectionable language in it, came within the terms of s. 13 (*b*) of the Legal Practitioners' Act. For such misconduct the Chief Court suspended a *mukhtar* from practice for a period of three months and declined to accept an apology tendered by him before the presiding officer of the Court concerned and the Chief Court. *In the matter of* A MUKHTAR, **166 P.L. R. 1901.**

(26)—*S.* 13, *cls.* (*b*) *and* (*f*)—*Evidence Act, s.* 126—*Pleader refusing to disclose professional communication on being questioned by Court—Professional misconduct.*—A pleader, during the course of the examination of a witness, asked the Court to make a note of what he represented the witness had stated and also his demeanour, but the Court observed that it did not hear what the witness had said. Thereupon the pleader left the Court-room saying that he would withdraw from the case. Afterwards he returned with an application stating that the Court had not noted the statement and demeanour of the witness, and got it presented by his client. The pleader, on being asked by the Court whether he was instructed by his client to write the application, declined to answer relying on s. 126 of the Evidence Act. *Held*, (1) that an action against the pleader under cls. (*b*) and (*f*) of s. 13 of the Legal Practitioners' Act could not be sustained, as it was not necessary for him to consult his client before drafting the petition, if the facts took place within his own cognizance and were such as to endanger his client's interest; (2) that, in relying upon s. 126 of the Evidence Act, the pleader showed no disregard to the Court's authority. SATGUR PRASAD v. EMPEROR, **14 Cr. L.J. 438=20 Ind. Cas. 598.**

(27)—*S.* 13 (*c*) (*d*)—*Payment by pleader out of his Munshi's fee to a person who brings a case to him—Misconduct.—Held* by the Full Bench that *Munshiana* (Clerk's fee) does not mean the fee paid or payable to a pleader for his services, within the term of s. 13 (*c*) of Act XVIII of 1879 as amended; paying wholly or in part *Munshiana* to a person, who introduces a client to a pleader, is not objectionable under the said s. 13 (*c*), provided it is not done in pursuance of any previous arrangement between that person and the pleader, for the procuring by the former of clients for the latter. *Obiter*: —The *Munshiana* system is very similar to that in force in England, where a Counsel's clerk is paid by his employer and receives fees as well from that employer's clients. On receiving back the case from the Full Bench, the Division Bench (Johnstone and Williams, JJ.), after remarking as follows:—*Held*, that a pleader, who himself pays a sum of money to a procurer of clients or allows him to take his clerk's *Munshiana* in whole or in part as a gratification for having procured him a client, is as liable to be dealt with under s. 13 (*c*) of Act XVIII of 1879 as if he has paid out of his own fee. Remarks—"In referring the aforesaid question regarding it (s. 13-c) to the Full Bench, we rather assumed that the words "out of any fee...services" qualified "tenders" or "gives" as well as consents to the retention of; but examination of the structure of the clauses shows that this assumption was hardly correct —the real meaning of the clause is this:—"Who tenders or gives any gratification for procuring or having procured the employment, etc., or consents to the retention out of any fee paid or payable to him for his services, or any gratification for procuring, etc." *In the case*

I.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners) —*continued.*

of AMOLAK RAM, PLEADER, **22 P.W.R. 1910, Cr.** = **6 Ind. Cas. 736** = **11 Cr. L J. 396** = **27 P.R. 1910, Cr.** = **69 P.L.R. 1910.**

(28)—*S.* 13, *cl.* (*f*)—*Pleader retaining in his service a man convicted of cheating and who was to be declared a tout, &c. and after his enrolment as a pleader's clerk was refused—Making false statement.*—*Held*, that, a charge of the following description against a pleader constitutes a professional misconduct under s. 13, cl. (*f*) of Act XVIII of 1879, for which he is liable to be either dismissed or suspended for a certain period (which was six months in the present case). (1) That Mr. M, after having given a very clear promise to the Bar Council to dismiss N, whose name had been entered in the list of suspected touts and to whom notice had been issued to show cause why he should not be proclaimed as a tout, retained N, in his service and that he made a distinctly false promise in order to escape the further action of the Council. (2) That Mr. M in the 1st instance made a definite promise to escape further action of the Bar Council and he broke that promise, and subsequently when an enquiry was made from him he deliberately made a false statement false to his knowledge, regarding the employment and notice, &c., of dismissal of N. *In the matter of* MR. M., **49 P.W.R. 1914, Cr., F.B.**

(29)—*Ss.* 13, 14—*Power of High Court to transfer proceedings.*—The Chief Court has no power, either under s. 25, Civ. Pro. Code, or under s. 526, Crim. Pro. Code, or under the provisions of the Punjab Chief Court's Act, or under its general powers of superintendence, to order the transfer of a proceeding under s. 14 of the Legal Practitioners Act. But the general powers of superintendence and control enables the Chief Court to look at the charge, and, if it appears that the allegations made do not establish a case justifying suspension or dismissal, to direct proceedings to be stayed. JAIMAL SINGH v. LALA BHAGWAN DAS, **41 P.R. 1888, Cr.** [*R.*, 11 P.R. 1909, Cr. = 115 P. L R. 1909, 28 P.W.R. 1909, 18 P.R. 1914, 3 P.R. 1900, Cr.]

(30)—*Ss.* 13, 14—*Jurisdiction of Subordinate Courts.*—The words, "any such misconduct as aforesaid," in s. 14, relate to all the cases set out in s. 13. A Court subordinate to the High Court, is, therefore, competent to try offences falling under cls. (*c*) to (*f*) of s. 13. *In the matter of the petition of* MUHAMMAD ABDUL HAI, PLEADER, **29 A. 61** = **3 A.L J. 811** = **A.W.N. 1906, 268.** (27 C. 1023, 15 C. 152, 26 M. 448, *R.*) [*R.*, 11 C.L.J. 164 = 11 Cr. L.J. 214 = 5 Ind. Cas. 727.]

(31)—*Ss.* 13, 14—*As amended by Act* XI *of* 1896—*Competency of District Judge to enquire into a charge of misconduct—Toutism—Chief Court's power of revision.*—*Held*, that:—S. 14 of Act XVIII of 1879 applies to all clauses of s. 13 as amended by Act XI of 1896, when any of the charges mentioned in s. 13 of the said Act is brought to the notice of any Court within whose local limits the pleader is ordinarily practising, the presiding officer has jurisdiction to proceed against him (pleader) under its s. 14 and can report, in the manner prescribed thereunder, to the High Court for suspending or dismissing such pleader in case the charge is made out; in acting under s. 14 of the said Act the Court is bound to hold a preliminary inquiry in order to find out distinctly what is the charge, and after satisfying itself that it is *prima facie* a true one, but not before, the Court can proceed to issue notice required in paras. 1 and 2 of the same section. Such a notice if issued on a vague report is liable to be set aside on revision by the High Court; in order to sustain a charge under clause (*c*) of s. 13 of the Act, the gratification paid to the tout must be "out of any fee paid or payable to a pleader," but does not include a payment made out of the *Munshiana* of a pleader's *Munshi*. AMOLAK RAM v. CROWN, **31 P.W.R. 1909, Cr.** = **4 Ind. Cas. 1022.** (15 C. 152, P.C., 27 C. 1023, *D.*) [*R.*, 11 Cr. L.J. 396 = 6 Ind. Cas. 736 = 22 P.W.R. 1910, *R.*]

(32)—*Ss.* 13, 14—*Conduct of pleader as suitor.*—A petition couched in disrespectful and improper language, drafted and presented by a Pleader to a Court not in his professional capacity but as a party, will not render him liable to the penalties provided in the Act for a professional man, as it is possible to take notice of his behaviour in any other way, *viz.*, as one committed by a suitor. *In the matter of a* FIRST GRADE PLEADER, **24 M. 17.** [*F.*, 7 Cr. L.J. 333 = 18 M.L.J. 184 = 3 M.L.T. 237; *R.*, 11 Cr.L.J. 310 = 6 Ind. Cas. 313 = 1910, M. W.N. 163.]

(33)—*Ss.* 13, 14—*Pleader—Unprofessional conduct—Refusal of brief for political reasons—Right to refuse—Reasons for refusal if must be stated—Right to move High Court to quash proceedings when called upon to show cause.*—A pleader is not bound to accept a brief offered to him, nor to state his reasons, for refusing to accept it. A pleader, having refused a brief offered to him, was subjected to a stringent examination to disclose his reasons, and, on its appearing that his reasons were political, proceedings were started against him under the Legal Practitioners' Act and he was called upon to show cause why he should not be reported to the High Court for unprofessional conduct. Without waiting to show cause, the pleader at once moved the High Court to quash the proceedings. *Held* that he was entitled to do so, that there was no rule of procedure to justify the examination to which he was subjected. *In the matter of* NABIN CHANDRA DAS GUPTA, **12 C.W.N. 381.**

(34)—*Ss.* 13, 14—*As amended by Act* XI *of* 1896—*Meaning of expression any 'other reasonable cause'—Misconduct prior to enrolment*

I.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners) —*continued.*

Permanent defect of character—Power of subordinate Court to proceed under s. 14.—Held, per Hill, J., (*agreeing* with Rampini, J., and *dissenting* from Ghose, J). Each of the clauses of s. 13 which precedes cl. (*f*) is generally distinct from the rest and is exhaustive of its own genus, and, where this is so, the principle of *ejusdem generis* can hardly apply. Cl. (*f*) was intended to cover misconduct, other than professional misconduct, and to embrace all clauses other than those previously enumerated in the section, which might reasonably be regarded as disqualifying a person from retaining the office of a pleader or *mukhtear*. S. 13 (*f*) was also intended to provide for causes disqualifying a person for retaining the office of pleader or mukhtear, and that a moral defect of character may be one of such causes. An offence committed prior to admission as legal practitioner may be made the foundation of a proceeding under s. 13, provided it is of such a nature as to imply a permanent defect of character of a disqualifying kind. *Per* Ghose, J., *contra.*—The words "or for any other reasonable cause" in cl. (*f*) of s. 13 should be construed according to the well-known canon of construction, that when general words follow particular words of the same nature, they are presumed to be restricted to the same genus as those words unless it can be shown from an inspection of the scope of the legislation that the general words were meant in a wider sense. It is extremely doubtful whether the words "any other reasonable cause" are intended to apply to any act other than professional misconduct, and occurring before or after the enrolment of a person as a pleader or mukhtear. As bearing upon the question, s. 12 which authorizes the suspension or dismissal of a pleader or mukhtear on conviction of a criminal offence may be referred to. The section could only refer to a conviction subsequent to his enrolment as a pleader or mukhtear. (7 B.L. R. 179, *Relied on.*) [*F.*, 29 C. 890, F.B., 13 M. L.J. 65=26 M. 448; *R.*, 166 P.L.R. 1901.] A reference was made by a Sessions Judge, under s. 14 of the Legal Practitioners' Act, recommending that a certain mukhtear, who has been practising as such in the criminal Courts, should be dismissed. The grounds for this recommendation were that the mukhtear was dismissed from the office of Sub-Inspector of Police, which he held previously, for gross misconduct and that, subsequently, he procured a certificate of good moral character from a pleader by concealing his previous history, and, by means of that certificate, thus improperly obtained, he gained admission to the examination of mukhtears. *Held per* Hill, J. (*agreeing* with Ghose, J. and *dissenting* from Rampini, J.), that the mukhtear ought not to be dismissed or suspended in consequence simply of his dismissal from the Police, specially in the absence of any "legal proof" of disqualification given in the presence of the mukhtear and that no case, either for dismissal or suspension, had been made out against him. (6 W.R Mis. 5, *R.*) *Per* Hill, J.—S 13 authorizes the High Court, after such enquiry, as it thinks fit, to suspend or dismiss a pleader or mukhtear for any of the causes specified in the section, but the power of Subordinate Courts is much more restricted under s. 14. The "taking of instructions" and "misconduct" referred to in s. 14 relates to cls. (*a*) and (*b*) respectively of s. 13, and it is only in such cases that a Subordinate Court is authorized to proceed under s. 14. *In the matter of* PURNA CHUNDER PAL, 27 C. 1023=4 C.W.N. 389. (15 C. 152, 14 I.A. 154, *R.*) [*Diss.*, 29 A. 61=A.W.N. 1906, 268=3 A.L. J. 811; *F.*, 11 Cr.L.J. 615=8 Ind. Cas. 282 =6 N.L.R. 129: *R.*, 4 C.L.J. 229=10 C.W. N. 1059, 11 C.L.J. 164=11 Cr. L.J. 214=5 Ind. Cas. 727; *D.*, 11 Cr. L.J. 148=4 Ind. Cas. 1022=31 P.W.R. 1909, Cr.]

(35)—*Ss.* 13, 14—*Unprofessional conduct—Entering deliberately into false defences in suits with intention to defraud.*—Entering deliberately into false defences with the intention to defraud others of their just claims, is a ground for action under ss. 13 and 14 of the Legal Practitioners Act. Therefore, where a *Mukhtear* made defences which were deliberately false, and colluded with third parties, with a view to injure and defraud his opponents who were other members of the same family; *held*, that this was a reasonable cause for taking action against the *Muktear*. *In re* AKHOY NARAIN, **12 Cr. L.J, 67=9 Ind. Cas. 362.**

(36)—Ss. 13, 14—Pleader abandoning client's case in midst of client's examination in Court, to attend another case—Professional misconduct. *See* LEGAL PRACTITIONERS—PLEADER AND CLIENT, 14 Cr.L.J. 379=20 Ind. Cas. 139.

(37)—*Ss.* 13, 40—*"Other reasonable cause," meaning of, in s.* 13—*Not restricted to matters* ejusdem generis *with matters in cls.* (*a*) *to* (*e*)—*Charge, necessity to formulate with particularity —Evidence Act* (*I of* 1872), *s.* 132—*Answers not objected to—No privilege.*—An order under s. 13 of the Legal Practitioner's Act can only be made, after notice has been given to the pleader to show cause why he should not be suspended or dismissed. The notice must formulate the charges with sufficient precision, to enable the pleader to know the charge which he is called upon to meet. The words "other reasonable cause" in s. 13. cl. (*f*) are not restricted to matters *ejusdem generis* with the matters mentioned in cls. (*a*) to (*e*). Two pleaders organized a political meeting and one of the speakers at the meeting was convicted of sedition. The two pleaders were also charged with having published a leaflet to honour B.C. Pal. *Held*, these circumstances did not constitute "reasonable cause" for their suspension or dismissal. The evidence given by witnesses can be used against them in a subsequent proceeding, if they did

I.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners) *—continued.*

not claim privilege or object to answer any of the questions which were put to them. *In re* GANAPATHY SASTRY, A. G. 6 M L.T. 253, F.B. =19 M.L.J. 504=3 Ind. Cas. 344=11 Cr. L J. 274.

(38)—*Ss.* 13, 40—*Proceedings by subordinate Court against pleader—High Court's power of transfer.*—S. 13, Act XVIII of 1879, does not contain in itself any power enabling the High Court to transfer proceedings taken in or by a Court Subordinate to it against a pleader for unprofessional conduct before such Subordinate Court. Whether the High Court has the power or not, it is obviously expedient, in all disciplinary matters, that the Court before which contempt or misconduct takes place should itself deal with the contempt or misconduct. The section contains in itself special provisions whereby the High Court can deal with the report when it has been made; in other words, the section is full and complete and independent of s. 13. *In the matter of the petition of* PIRTHI NATH, A.W.N. 1893, 33.

(39)— *S.* 14 — *Professional misconduct by pleader—Charge before a Joint Magistrate—Transfer of the Magistrate—Right of District Magistrate— Pleader accusing Magistrate as acting maliciously, vexatiously, and with a vindictive spirit, whether amounts to professional misconduct.*—A pleader was charged with professional misconduct in connection with the alteration of the date in a certain petition, which was presented to a Sub-Magistrate. The case came before the Joint Magistrate of that division for inquiry. The Joint Magistrate, before the date of the inquiry, was transferred to another division. The District Magistrate made an order transferring the charge to the same Joint Magistrate, on the ground that he had dealt with the matter in the first instance. *Held*, that the order of the District Magistrate transferring the charge to the Joint Magistrate of a different division was unauthorized, and that it should accordingly be set aside. There is no provision of law which authorizes the issue of either a summons or a warrant against a pleader who fails to appear in answer to a charge preferred against him under s. 14 of the Legal Practitioners' Act. Where a Magistrate issued a warrant against a pleader in such a case, and the pleader attached a written statement to the warrant in which he stated that the Magistrate, in issuing the warrant, had acted maliciously, vexatiously and with a vindictive spirit, it was held, that such language, though to the last degree improper, did not amount to fraudulent or grossly improper conduct in the discharge of his professional duty, within the meaning of s. 14 of the Legal Practitioners' Act. *In re* K.R. RAM CHANDRA IYER, 3 M.L.T. 237=7 Cr. L J. 333=18 M L.J. 184.

(40)—*S.* 14—*Mukhtears practising in Civil and Criminal Courts—Charge of misconduct with reference to matters pending in the Civil Court—Power of Sub-Divisional Magistrate to frame charge—Jurisdiction.*—When a Sub-Divisional Magistrate framed charges under s. 14 of the Act against certain mukhtears, who were authorized by their certificates to practise in both Civil and Criminal Courts, with reference to conduct relating to suits pending before the Court of the Munsiff: *Held*, that the Sub-Divisional Magistrate had acted illegally and without jurisdiction. *In re* RADHA CHURN CHUCKERBUTTY, 10 C.W.N. 1059=4 C.L.J. 229=4 Cr. L.J. 160. (4 C.W.N. 389=27 C. 1024, *R.*)

(41)—*S.* 14—*Jurisdiction.*—The Judge or Magistrate, who prefers a charge of misconduct against a *mukhtear* need not necessarily try it. CHARN DASS v. EMPRESS, 24 P.R. 1881, Cr.

(42)—*S.* 14—*Proceedings under the section—Offence punishable under the Penal Code—*Interim *order of suspension.*—Recourse should not generally be had to the special and summary jurisdiction provided by s. 14, where the misconduct imputed to a pleader or mukhtear amounts to an offence under the general and criminal law. No *interim* order of suspension can be made in a proceeding under s. 14, Act XVIII of 1879 by a subordinate Court. Only after the proceedings have been completed and a charge is made and a report is submitted either for the suspension or dismissal of the pleader or *mukhtear*, the subordinate Court can order suspension. BEECHEY v. COMMISSIONER OF RAWALPINDI, 26 P R. 1884, Cr.

(43)—*S.* 14 — *Unprofessional conduct of a practitioner — Institution of proceedings by a Magistrate.*—If an officer presiding in a Subordinate Court comes to learn that one of the practitioners before the Court has been guilty of unprofessional conduct, it will be within the scope of his duties, under s. 14 of the Act, to take steps for having the matter adjudicated upon. The presiding officer is to send him a copy of the charge, and also a notice that, on a day to be thereby appointed, such charge will be taken into consideration. Ultimately, it becomes the duty of such officer, if he finds the charge established, and considers that the pleader should be suspended or dismissed in consequence, to record his findings and the grounds thereof, and to report the same to the High Court, and the High Court may acquit, or suspend, or dismiss the pleader or mukhtear. *In the matter of* SOUTHIKAL KRISHNA RAO, 15 C. 152, P.C.=14 I.A. 154=5 Sar. 96. [*R.*, 29 A. 61=A.W.N. 1906, 268=3 A.L.J. 811, 27 C. 1023=4 C.W.N. 389; *D.*, 11 Cr. L J. 148= 4 Ind. Cas. 1022=31 P.W.R. 1909, Cr.]

(44)—S. 14—*See* SANCTION TO PROSECUTE —AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., A.W.N. 1908, 273=5 A.L. J. 749=31 A. 38=9 Cr. L.J. 29=1 Ind. Cas. 569.

I.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners) —*continued.*

(45)—S. 14—*See* Nos. 29 to 36, *supra.*

(46)—*Ss.* 14, 40—Mukhtear—*Suspension by District Magistrate. before report to High Court —Right to be heard before suspension—Order for prosecution—Crim. Pro. Code*, *s.* 476.—A legal practitioner cannot be provisionally suspended, pending investigation (under s. 14 of the Legal Practitioners Act) of a charge of misconduct brought against him, without being heard in defence under s. 40 of the Act, and before a report has been submitted to the High Court in terms of s. 14. The "investigation" referred to in the section is investigation by the High Court. Where upon a reference by the Sub-Divisional Officer relating to the conduct of a *Mukhtear* in a case tried before that officer, the District Magistrate suspended the *Mukhtear*, and on a perusal of the records directed his prosecution under s. 182, Penal Code: *Held*—That the order of suspension was without jurisdiction. *Per Woodroffe, J.*—That the order for prosecution could not be passed by the District Magistrate under s. 476, Crim. Pro. Code, as the proceeding, not being properly before him, was not a judicial proceeding *Per Carnduff, J.* —The District Magistrate was not acting in the course of a judicial proceeding. *In the matter of an application of* BAJRANGI SAHAI, MUKHTEAR. **15 C.W.N. 269=9 Ind. Cas. 225 =12 Cr. L.J. 33=13 C.L.J. 457.**

(47)—S. 23—Enquiry by Magistrate under—Whether such Magistrate a Court—*See* CRIM. PRO. CODE, 1898, s. 476, 9 A.L.J. 156=13 Cr. L.J. 190=13 Ind. Cas. 1006.

(48)—*S.* 32—*Practising as pleader by unauthorized person.*—The term practising in s. 32, Legal Practitioners' Act, does not connote the doing of acts habitually or often, but signifies the performance of an act by a person as a professional man which, as a private individual, he could not do. EMPEROR *v.* BENI BAHADUR, **26 A. 380=A.W.N. 1904, 56.**

(49)—*S.* 32—Mukhtear *practising without a certificate.*—A *mukhtear* found to have practised for a number of years without renewing his certificate but to have paid to his clerk, year after year, the sum requisite for a renewal of the certificate, was fined a sum covering the value of the stamps requisite for the renewal of the certificate for the years during which he was so practising. *In the matter of* MUKHTEAR, **A.W.N. 1897, 8.**

(50)—S. 32—*See* No. 10, *supra.*

(51)—*Ss.* 32 *and* 14—*R.* 452 *of rules of Court of* 4*th April*, 1898—*Refusal to renew certificate of* mukhtear *on account of pendency of proceedings under s.* 193, *I.P.C.*—The fact that criminal proceedings in connection with an offence under s. 193, I.P.C., are pending against a *mukhtear* is not a sufficient reason within the meaning of r. 452 of the Rules of the Court of 4th April, 1898, for refusing to renew his certificate, unless the District Judge also takes action under s. 14 of the Legal Practitioners' Act. *In the matter of the petition of* ALAMDAR HUSAIN, **A.W.N. 1901, 60.**

(52)—*S.* 36—*Tout—Court competent to declare—Punjab Courts Act* (XVIII *of* 1884), *s.* 23.—A District Judge in the Punjab is not competent to declare a person a law-tout under s. 36 of the Legal Practitioners' Act, for under the Punjab Courts Act, s. 23, the Local Government has notified the Divisional Judge to be the District Court for purposes of the Legal Practitioners' Act. BAWA LACHMAN DAS *v.* DISTRICT JUDGE, GURDASPUR, **108 P.L.R. 1904=22 P.R. 1904.**

(53)—*S.* 36—*Act* XI *of* 1896—*Touts—Practice.*—Where it appeared to the High Court, on evidence, that certain persons habitually acted as touts, they were asked to show cause why an order should not be made under s. 36 of Act XVIII of 1876, and, on their failing to give evidence that they were living by honest and legitimate means, they were included in the list of touts and a copy thereof ordered to be hung up in every Court. *In the matter of* KUAR BAHADUR, **A.W.N. 1896, 107.** [*R.*, 11 Cr. L.J. 320=6 Ind. Cas. 327.]

(54)—*S.* 36—*High Court's power of interference —Crim. Pro Code, s.* 439—*High Courts Act, s.* 15.—The only provision under which the High Court would interfere with the order of a subordinate Court under s. 36 of the Legal Practitioners' Act is s. 15 of the High Courts Act. The High Court ought not to interfere, on the ground that the finding of the Sessions Judge was against the weight of the evidence, with the order of the latter under s. 36 of the Legal Practitioner's Act. *In the matter of the petition of* MADHO RAM, **21 A. 181=A.W.N. 1899, 15.** [*R.*, 31 A. 59=6 A.L.J. 22=A.W.N. 1908, 279=1 Ind. Cas. 143, 11 C.L.J. 513=11 Cr. L.J. 320=6 Ind. Cas. 327, 10 Cr. L.J. 443=3 Ind. Cas. 977=11 P.R. 1909=115 P.L.R. 1909=28 P.W.R. 1909, Cr., P.L.R. 1900, 17 Cr., 22 P.R. 1904=108 P.L.R. 1904.]

(55)—*S.* 36—*Illegal gratification for furnishing cases—Letters Patent* (*N.W.P. High Court*), *s.* 8.—A letter written by a High Court Vakil to another practising in the mofussil, asking the latter to send up cases to him and agreeing to share the fees, renders him culpable under s. 36 of Act XVIII of 1879, and the High Court has jurisdiction to take up the case, and suspend the pleader, as his conduct amounts to a "reasonable cause" within s. 8 of the Letters Patent of March 17th, 1866. *In the matter of* PARBATI CHARAN CHATTERJI, **17 A. 498=22 I.A. 193. P.C.=6 Sar. 635.** [*R.*, 29 A. 95=4 A.L.J. 34=9 Bom. L.R. 9=5 C.L.J. 130=11 C.W.N. 273=17 M.L.J. 74=2 M.L.T. 1, P.C., 32 B. 106=10 Bom. L.R. 21=3 M.L.T. 131=34 M. 29=20 M.L.J. 500=8 M.L.T. 22=1910 M.W.N. 163=6 Ind. Cas. 313=11 Cr. L.J. 310, 3 N.L.R. 40.]

I.—Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners) *—continued.*

(56)—*S.* 36—*Order declaring certain persons to be touts—Revision—Jurisdiction—Practice—Statutes* 24 *and* 25 *Vict., Cap. CIV*, s. 15—*Rules of High Court of the* 18*th January*, 1898, *rr.* 1 *(xiii) and* 4.—The District and Sessions Judge of Meerut held an inquiry under s. 36 of the Legal Practitioners' Act, 1879, as the result of which he ordered certain persons to be proclaimed to be touts and excluded from the precincts of the Courts in the provincial division. The parties affected applied to the High Court against the Judge's order under s. 15 of Statutes 24 and 25 Vict., Cap. CIV. On this application being laid before a Division Bench for disposal, it was *held* :—(*Per Karamat Husain, J.*) that the disciplinary powers of the High Court, under s. 15 of the Statute, being exerciseable only by the full Court, a bench of two Judges had no jurisdiction to adjudicate upon the application, neither had a single Judge jurisdiction to admit it. (*Per Aikman, J.*,) that the Court had inherent power to delegate to one or more of its members the power to deal with applications such as the present, and r. 1 (xiii) of the rules of Court of the 18th January, 1898, effected such a delegation. But the powers of the Court under s. 15 of the Statute were limited, and in this instance no case for their exercise had been shown. *In the matter of* KEDAR NATH, **A.W.N. 1908, 279 = 6 A.L.J. 22 = 31 A. 59 = 9 Cr. L.J. 59 = 1 Ind. Cas. 143.** (1 A. 101, 9 A. 104, *R.*) [*Diss.*, 28 P.W.R. 1909 Cr ; *R.*, 10 Cr. L.J. 443 = 3 Ind. Cas. 977 = 115 P.L.R. 1909 = 11 P.R. 1909 Cr., 11 Cr. L.J. 320 = 6 Ind. Cas. 327, 18 P.R. 1914 Cr.]

(57)—*S.* 36—*Punjab Courts Act* (XVIII *of* 1884), *ss.* 13, 70—*Revision—Order declaring a person to be a tout.*—Though, by virtue of the powers vested in the Chief Court, under s. 13 of the Punjab Courts Act, it is competent to the Court to revise an order passed by a subordinate Court under s. 36 of the Legal Practitioners' Act declaring a person to be a tout, yet, as very considerable discretion in the matter of preparing and publishing its list of touts is afforded to the subordinate Courts, the Chief Court will not interfere with any order passed under s. 36, unless it can be shown that the provisions of that section have not been duly complied with, or for other good and substantial reason ; for example, it would be a good ground for a petition to the Chief Court that the petitioner's name was included in a list of touts without any opportunity being given to him of showing cause against such inclusion. Similarly, the Chief Court will in a proper case interfere, if it finds that there is no evidence whatever to support the finding of the subordinate Court, or that the evidence, such as it is, cannot legally be accepted as proving that the petitioner is a tout. In this case, the Chief Court set aside the order passed by the Divisional Judge, on the ground that there was absolutely no evidence to the effect that the petitioner was a tout. MAN SINGH v. KING-EMPEROR OF INDIA, **115 P.L.R. 1909 = 11 P.R. 1909, Cr. = 28 P.W.R. 1909 = 3 Ind. Cas. 977.** (3 P.R. 1900, Cr. = P.L.R. 1900, p. 17, Cr., 21 A. 182, 14 P.R. 1888, Cr., *R.*) [*R.*, 11 Cr. L.J. 320 = 6 Ind Cas. 327.]

(58)—*S.* 36—*Tout—Declaration of person as—Revision, powers of Chief Court—Evidence—Personal knowledge of Judge.*—An order declaring a person to be a tout is one which very seriously affects the character and prospects of the person against whom it is passed. It is therefore competent to the Chief Court, in the exercise of its revisional jurisdiction, to scrutinize such orders, with the object of satisfying itself that there has been a compliance with the provisions of law, and that the person affected has been given full opportunity of meeting the charge brought against him. The District Judge is bound to examine witnesses named by him and summon them for the purpose, after the evidence against the person has been produced. Where the District Judge declined to do so, the Chief Court on revision set aside the order, and directed him to summon witnesses named by the person declared as a tout and record the evidence and pass orders on the whole evidence on the record. The District Judge ought not to impart his own personal knowledge in a case, unless he informs the person of the nature and source of his information and allows himself to be cross-examined thereupon —a process which is fraught with grave inconvenience. Where statements by certain pleaders made on a previous occasion were read to them by the District Judge and the persons against whom proceedings were held were allowed opportunity to cross-examine them. *Held*, that the irregularity in the procedure adopted by the District Judge was not a sufficient ground for interference by the Chief Court on revision. If a number of respectable pleaders in a particular District are found to be of opinion that a person is a tout, the fact is sufficient to justify the District Judge in holding that the person charged is by general repute a tout. The law was framed as it is, with the distinct object of evading the difficulty of compelling witnesses to give the specific grounds upon which their opinions were based, and in cross-examination the witnesses cannot be compelled to give particulars regarding specific instances, though no doubt it is open to the person charged to show that a particular witness has an *animus* against him or that for other reasons his testimony should not be accepted without demur. BUTE KHAN v. CROWN, **120 P.L.R. 1909 = 29 P.W.R. 1909, Cr. = 3 Ind. Cas. 982.** [*R.*, 11 Cr. L.J. 320 = 6 Ind. Cas. 327.]

(59)—*S.* 36—*Order proclaiming a person "tout"—Power of Chief Court to interfere.*—The Chief Court has jurisdiction, in pursuance of its general powers of general superintendence

I.--Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners) —*continued.*

and control under s. 13, of Punjab Courts Act, 1884, to interfere with an order of a District Magistrate holding a person to be a "tout" where he has so held without considering the definition of the term "tout" as defined in s. 1 of Act XI of 1896. CHANNAN DAS v. EMPRESS, **3 P.R. 1900, Cr.** [*Cited*, 22 P.R. 1904, Cr.; *R.*, 11 Cr. L.J. 148=4 Ind. Cas. 1022=27 P.W.R. 1909 Cr., 3 Ind. Cas. 977=11 P R. 1909 Cr.=10 Cr. L.J. 443=115 P.L.R 1909; *Disapproved*, 18 P.R. 1914, Cr.]

(60)—*S.* 36—*Tout—Declaration without legal proof.*—S. 36 of Act XVIII of 1879 requires proof by general repute or otherwise, before a man can be dubbed a tout. Such evidence must be taken in presence of the accused as in other criminal cases, and without doing so a declaration made is liable to be set aside on revision. SHANKER SINGH v. THE CROWN, **12 P.W.R. 1912 Cr.=112 P.L.R. 1912=15 Ind. Cas. 307=13 Cr. L.J. 467.**

(61)—*S.* 36—*Tout—Inquiry to be made by Magistrate himself—Power not to be delegated—Evidence to be recorded—Opportunity of cross-examination of witnesses to be given to alleged tout.*—An inquiry, under s. 36 of the Legal Practitioners' Act, must be made by the District Magistrate himself, and he cannot delegate his powers to any subordinate officer. (12 C.W.N. 842, 12 C.W.N. 843, *Note, F.*) The decision of at Court determining that a person is a tout must be based on substantial legal evidence. (4 C.W.N. 36, *Rel.*) The person against whom the evidence is directed must have an opportunity of cross-examining the witnesses. *In re* HARI PADA MUKHERJI, **13 Cr. L.J. 510=15 Ind. Cas. 654.**

(62)—*S.* 36—*S.* 3 (*as amended by Act* XI *of* 1896)—*Order of District Magistrate framing a list of touts—Chief Court's power to revise the order—S.* 13, *Act* XVIII *of* 1884 (*Punjab Courts*).—A District Magistrate, purporting to act under s. 36 of the Legal Practitioners' Act, directed that the names of certain persons specified in his order should be included in a list of 'touts' to be hung up in his Court and in Courts subordinate to him. *Held*, the Chief Court has no jurisdiction to revise the Magistrate's order. Proceedings under s. 36 of the Legal Practitioners Act are neither Civil Proceedings governed by the provisions of the Code of Civil Procedure, nor Criminal Proceedings governed by the Crim. Pro. Code, and as a result neither the Civil nor the Criminal jurisdiction of the High, or Chief, Court can be invoked for the purpose of revising orders passed under that section (21 A 181, 31 A. 59, 11 C.L.J. 513, 16 Ind. Cas. 895, 11 P.R. 1909, Cr., 41 P.R. 1888, Cr., *R.*)—S. 13 of the Punjab Courts Act gives the Chief Court a power of superintendence and control only over Civil Courts, and the provisions of that section are not relevant to a case such as the present where the Chief Court is asked to revise the order of a *District Magistrate*

I.--Imperial Acts—continued.

Act XVIII of 1879 (Legal Practitioners) —*concluded.*

who has, in that capacity, taken action under s. 36 of the Legal Practitioners' Act. With such an order the Chief Court is not empowered by any provision of law to interfere. SADAR DIN v. CROWN, **18 P.R. 1914, Cr.=266 P.L.R. 1914=15 Cr. L.J. 601=25 Ind. Cas. 513=51 P.W.R. 1914, Cr**, (3 P.R. 1900, Cr., *Diss.*).

(63)—S. 36—*See* SESSIONS JUDGE, JURISDICTION OF, 26 M. 596=13 M.L.J. 272.

(64)—S. 36—*See* TOUT, 108 P.L.R. 1904=22 P.R. 1904, Cr.

(65)—S. 36—*See* Nos 4, 5, *supra.*

(66)—*S.* 40—*Unprofessional conduct of practitioner—Opportunity to defend himself.*—The High Court, to whom a Subordinate Court makes a report on the unprofessional conduct of a pleader, could not suspend or dismiss a practitioner, without allowing him an opportunity of defending himself, under s. 14 of the Act, before that Court, merely on the evidence recorded by the Subordinate Court. *In the matter of* SOUTHEKAL KRISHNA RAO, **15 C. 152, P.C.=14 I A. 154=5 Sar. 96.** [*R.*, 24 M 83, 34 M. 29=11 Cr. L.J. 310=6 Ind. Cas. 313=20 M.L.J. 500=1910 M.W.N. 163.]

(67)—S. 40—*See* Nos. 37, 38, 46, *supra.*

(68)—*S.* 41—*Duty of Advocates.*—An advocate is bound to use his judgment, experience and discretion in the presentation of his client's case and, whatever be his instructions, to exclude all topics and observations of which the case does not properly admit. An advocate cannot shelter himself behind his clients, when he allows himself to be made the medium of reckless imputations on a Court of Justice. The publication of a libel on a Court of Justice is an aggravated misdemeanour. *In the matter of* PEN NELL A.P., **2 L.B.R. 130.**

(69)—*S.* 41—*Improper conduct—Advocate—Privilege as a suitor.*—Although any action clearly taken as a private individual in the prosecution of a case, or the setting up of a defence would not, under ordinary circumstances, justify the High Court in taking notice of such action as a breach of professional good conduct, merely because the individual concerned happened to be an advocate, yet conduct, which is in itself indefensible and amounts to gross misconduct in an advocate, is not taken out of the purview of s. 41 of the Legal Practitioners' Act by a mere colourable pretence that it was the conduct of a suitor, defendant, or accused in that capacity. *In the matter of* MR. BARRISTER-AT-LAW, **143 P.L.R. 1901 F.B.**

(70)—S. 41—*See* CONTEMPT OF COURT, 5 P R. 1902.

Act XXI of 1879 (Foreign Jurisdiction and Extradition).

[REP. ACT XV OF 1903.]

See ACT XI OF 1872.

I.—Imperial Acts—continued.

Act XXI of 1879 (Foreign Jurisdiction and Extradition)—*continued.*

(1)—*Dacoity committed by foreign subjects in foreign territory—Jurisdiction of British Court.*—Where the accused, foreign subjects, but who had only resided for about three years in British territory, committed dacoity in a foreign state, *held*, that they were not liable to be tried by British Courts. EMPRESS v. NAWABJI, 37 P.R. 1881, Cr. [*R.*, 1 P.R. 1885, Cr.]

(2)—*Offences committed outside British India —Jurisdiction of British Courts.*—Act XXI of 1879 admits of proceedings being taken, in British India, regarding offences committed in Foreign States only on condition that the person charged is a Native Indian subject of Her Majesty and that the Political Agent of the Foreign State has given his sanction to proceedings being taken in British territory. BAPU DALDI v. QUEEN, **5 M 23 = 1 Weir 1.** [*R.*, 13 M. 423, 24 B. 287, 1 Bom. L.R. 678, 2 Weir 148.]

(3)—*Competency of Justice of Peace at Mysore to commit a person to the High Court for an offence under Mysore Law—Obiter.*—Where a person is charged with an offence against the Mysore Mines Regulation, 1897, a Justice of the Peace appointed under the Act of 1879, has jurisdiction to commit him for trial to the High Court under the powers conferred by s. 6 of the Act and the notification of the Government of India, dated July 21. 1881. ADAMS v. EMPEROR, **26 M. 607 = 1 Weir 13 = 1 Weir 757.**

(4)—*Civil and Military Station, Bangalore—Civil and Sessions Judge and District Magistrate of Bangalore—Justices of Peace for Mysore —Jurisdiction of High Court—Applicability of Crim. Pro. Code.*—The Civil and Sessions Judge, as well as the District Magistrate, of the Civil and Military Station, Bangalore, though they are appointed justices of the peace in the state of Mysore, are, by virtue of their office, justices of the peace in the Civil and Military Station of Bangalore, by virtue of Act XXI of 1879 ; they are also Magistrates of the first class, and both their Courts are subordinate to the High Court under the same enactment. The Civil and Military Station of Bangalore is not British territory, but a foreign territory belonging to Mysore. The Code of Criminal Procedure is in force there in common with other Acts by virtue of declarations made by the Governor-General in Council in exercise of the powers conferred upon him by Act XXI of 1879. *In re* HAYES, **12 M. 39 = 1 Weir 10.**

(5)—*Ss.* 1, 11, 12 *and* 18—*Validity of warrant issued by Political Agent of Native State against British Indian subject.*—Excepting in the case of a European British subject, the Political Agent for the Bhopal State may, at the request of the State, issue a warrant for the arrest of any person who has committed, or is supposed to have committed in the Bhopal State an offence under s. 409, Penal Code, (which is one of the offences mentioned in the schedule), and, on such person being forwarded, it will be the duty of the Political Agent to decide whether the accused shall be tried by him or be made over to the State Court for trial. It matters not whether a complaint against the accused has been made in the Political Agent's Court or not, and the Magistrate, to whom the warrant is directed, is bound, under the provisions of s. 12 of the Act, to execute it and has no authority to question the authority or discretion of the Political Agent to issue it ; a Deputy Commissioner, therefore, was held to have acted legally in ordering a warrant for the arrest of a Native Indian subject of His Majesty, issued by the Political Agent for the Bhopal State, to be executed. KABIR AHMAD v. BHOPAL STATE, **5 O.C. 55**

(6)—Ss. 3 and 11—*See* PENAL CODE, s. 224, 21 P.R. 1885, Cr.

(7)—Ss. 4, 5—*See* ACT I OF 1878, ss. 3, 4, 9, 8 P.R. 1887, Cr.

(8)—*Ss.* 4 *and* 6—*Power of Justice of the Peace to try an European British subject for an offence purely under Mysore Mines Regulations.* —A Justice of the Peace, appointed under s. 6 of the Foreign Jurisdiction and Extradition Act, 1879, has power to try an European British subject for an offence against the provisions of the Mysore Mines Regulations, the offence being solely against the law of Mysore, but not coming within any of the provisions of the Penal Code. ADAMS v. EMPEROR, **26 M. 607 = 1 Weir. 13 = 1 Weir. 757.**

(9)—S. 5—*See* No. 7, *supra.*

(10)—*S.* 6—"*Offences*" *under the Act.*—The word "offences" as used in s. 6 of the Act of 1879 is not restricted to offences as defined by s. 40, Penal Code, nor to offences as defined in the Code of Criminal Procedure.—(*Per White, C.J.*) ADAMS v. EMPEROR, **26 M. 607 = 1 Weir 13 = 1 Weir 757.**

(11)—S. 6—*See* No. 8, *supra.*

(12)—*S.* 8—*Scope of the section.*—S. 8 of the Act of 1879 extends to European British subjects in States in India in alliance with His Majesty the law relating to offences and the Criminal Procedure for the time being in force in British India. This section, as distinguished from s. 4, is an enactment and not a declaration. It is an entirely independent provision and ought not to be read so as to restrict the powers of the Governor-General which are declared by s. 4 and which may be delegated to his officers under s. 6. It is by virtue of s. 8 that an European British subject can be tried in Mysore for an offence against the I.P.C. The law which is extended to European British subjects in Mysore by virtue of s. 8 is not so extended to the exclusion of all other law. ADAMS v. EMPEROR, **26 M. 607 = 1 Weir 13 = 1 Weir. 757.**

I.—Imperial Acts—continued.

Act XXI of 1879 (Foreign Jurisdiction and Extradition)—*continued.*

(13)—*S.* 8 —*High Court, jurisdiction of—European British subjects in Native States—Crim. Pro. Code*, s. 526—*Transfer.*—S. 8 of Act XXI of 1879 extends, to all British subjects, Native or European, in Native States, the law relating to offences and criminal procedure for the time being in British India. The High Court of Bombay has the power, in the case of a European British subject, of transferring a case from the Cantonment Magistrate acting either as a Justice of the Peace and as a first-class Magistrate, or as a District Magistrate; with the increased powers given to him by Act III of 1884, to itself or to any criminal Court of equal or superior jurisdiction. QUEEN-EMPRESS v. EDWARDS, W D., **9 B. 333.** [*R.*, 14 B. 160, 20 B. 480.]

(14)—*S.* 9 *Conviction in British India for offence committed outside.*—A conviction in British India for an offence committed outside its limits is good under s. 9 of Act XXI of 1879.—(*Per Garth, C.J., Pontifex and Morris, JJ.*) EMPRESS v. KESHUB MOHAJAN, EMPRESS v. UDIT PRASAD, **8 C. 985, F.B.** = **11 C.L R. 241** = **7 Ind. Jur. 136.** [*R.*, 9 C. 288, 16 C. 667].

(15)—S. 9—*See* ACT XI OF 1872, s. 9, 6 B. 622.

(16)—S. 11—*See* Nos. 5, 6, *supra.*

(17)—S. 12—*See* No. 5, *supra.*

(18)—*S.* 14, *enquiry under—High Court's power to transfer enquiry to another Magistrate or to control the procedure therein.*—The High Court had no power to order the transfer of an enquiry under s. 14 of the Extradition Act from the Court of the Magistrate specially authorised to hold the enquiry, because the competency of the Magistrate to hold the enquiry depended on the authorisation of the Executive Government. The law also did not empower the High Court to request the Government to appoint another Magistrate to enable it to transfer the enquiry to that Magistrate if appointed. The High Court refused to direct by what procedure the Magistrate should be guided in the further conduct of the enquiry, as it did not possess any power to control or interfere in the conduct of an enquiry held under s. 14 of the Act. *In the matter of an application of* MOHUNT DEVDAS, **15 C.W.N. 735** = **12 Cr. L.J. 346** = **10 Ind. Cas. 946** = **38 C. 550** (Note). [*R.*, 12 Cr. L.J. 322 = 10 Ind. Cas. 618, 15 C.W.N. 737.]

(19)—S. 18—*See* No. 5, *supra.*

(20)—*Rule No.* 3, *Book Circular* XXXIV (*c*) —*Jurisdiction of District Magistrate.*—Rule No. 3 of the "Rules for the apprehension, demand and surrender of persons charged with heinous crimes" contained in the treaty with Jumna State, published in the Chief Court's Book Circular XXXIV (*c*) does not confer a lawful authority upon the District Magistrate as such, to take proceedings and pass an order upon an application by a foreign State for

I.—Imperial Acts—continued.

Act XXI of 1879 (Foreign Jurisdiction and Extradition—*concluded.*

extradition of a subject of that State. Under that rule, it is competent for the Government to give direction to its executive officers, notwithstanding that they may be Magistrates. *In re* A HADJU, **21 P.R. 1886, Cr.** (4 P.R. 1870, Cr., *R.*) [*F.*, 18 C.W.N. 869 = 41 C. 400 = 14 Cr. L.J. 673; *Rel.*, 21 Ind. Cas. 993.]

Act III of 1880 (Cantonment).

[REP., ACT XIII OF 1889.]

See ACT XIII OF 1889.

See BOM. ACT III OF 1867.

See MAD. ACT I OF 1866.

See CANTONMENT CODE, 1899.

(1)—*Extension of Cantonment rules outside Cantonment limits—Jurisdiction of Criminal Courts.*—Rules made under cl. 7 of s. 19 have been extended in Delhi outside the Cantonment limits. *Held* that an ordinary Magistrate is competent to exercise his jurisdiction, under the above rules, in a case which has come before him on complaint, and not on a report by the Police. MUSSAMMAT ALLADAI v. EMPRESS, **2 P.R. 1885, Cr. F.B.** (12 P.R. 1870 Cr., *Appr.*)

(2)—*S.* 14—*Sub-Conductor in the Commissariat Department, whether a "soldier."*—A Sub-Conductor in the Commissariat Department is not a "soldier" within the meaning of s. 14 of Act III of 1880. EMPRESS OF INDIA v. DOSABHOY FRAMJI, **3 A. 214.**

(3)—*S* 14—*Bengal Excise Act* VII *of* 1878, s. 14—*Power to cancel license.*—In his judicial capacity, a Cantonement Magistrate has no authority to cancel the license of a person convicted upon an offence under this section, as the power to cancel licenses belongs to the Revenue authorities. QUEEN-EMPRESS v. RAMDHANI PASSI, **15 C. 452.**

(4)—*S.* 14—"*European soldier*," *meaning of.*—Where a European soldier gets pay from the Civil Department for the discharge of Civil duties, as Telegraph Master, in which he is continuously employed, and lives in the Telegraph Office outside the Cantonment boundary and attends no drill, he is not a "European soldier," within the meaning of s. 14; and he cannot be convicted for selling liquor for the use of a European soldier. *In the matter of* JAHANGIR SHAH, **S.C. 104, Oudh.**

(5)—*S.* 20, *cl. VII—Rules under section—Registration of woman as prostitute without her consent.*—Where it was found that the name of the accused had been registered as a public prostitute without her consent, and that she was not carrying on the occupation of a prostitute, *held* that she was not liable to be convicted for not presenting herself for medical examination as directed. EMPRESS v. LATIFAN, **A.W.N. 1887, 219.**

I.—Imperial Acts—continued.

Act III of 1880 (Cantonment)—*continued.*

(6)—*S.* 22—*Bombay Municipal Act* III *of* 1872, *s.* 226—*License fee — Tax.*—A license fee imposed under the rules framed under s. 22 of the Cantonment Act is not a tax. Even if it were so, s. 22 of that Act does not empower the Government to extend s. 226 of Bombay Act III of 1872—which merely imposes a penalty for the use of stables without a license and does not provide for the assessment and recovery of a tax—to a Cantonment. A Regulation thus extending the provision is *ultra vires* and inoperative. QUEEN-EMPRESS v. MARUTI, **Rat. Un. Cr. C. 413=Cr. Rg 80 of 1888.**

(7)—*Ss.* 25 *and* 27—*Rules framed under s.* 25 —*Valid rules.*—The rule that "every person shall keep in proper repair the boundary wall, fence or other enclosures of his estate or premises" was held to be *ultra vires* of s. 25, read with s. 27. A breach of such a rule is not, therefore, punishable under s. 28. CHARDE v. EMPRESS, **40 P.R. 1884, Cr.** [*Appr.*, 48 P.R. 1887; *R.*, 3 P.R. 1895 Cr.]

(8)—*Ss.* 25, 28—*Rules framed under s.* 28, *breaches of—Jurisdiction of Magistrate acting as Cantonment Magistrate without Government's sanction to try case.*—*Held*, that a Magistrate who was temporarily doing the Magisterial work of the Cantonment Magistrate, who was absent a few days from the cantonment, was not competent to try a breach of the rules under s. 28 of Act III of 1880, unless the sanction of the Government had been previously obtained to his officiating as Cantonment Magistrate. EMPRESS v. DEOKINANDAN, **A.W.N. 1886, 289.**

(9)—*S.* 27—*Rules framed under s.* 27—Ultra vires.—R. 68 of the Rules framed under s. 27 of Act III of 1880 requires owners of house or other property within Cantonment limits but residing outside such limits to appoint an agent to carry out the orders of the Cantonment Committee, the agent being answerable for the observance of all the present rules and regulations which refer to the owners of houses or other property. *Held*, that the rule was *ultra vires* requiring as it does the performance of an impossible act by the house-owner, *viz.*, the appointing of an agent answerable in the sense contemplated by the section. *Held*, further, that the rule was not a valid rule, inasmuch as a rule which requires a person to do an act which merely facilitates the observance by, or enforcement against, another person of rules for maintaining the cantonment in a sanitary condition is not a rule for maintaining the cantonment in a sanitary condition within the meaning of cl. 6 of s. 27. RAI BAHADUR MELA RAM v. EMPRESS, **48 P.R. 1887, Cr.**

(10)—S. 27—*See* No. 7, *supra.*

(10 *a*)—*S.* 28 — *Disqualification of Cantonment Magistrate.*—In every case where it is urged that there is a disqualification in the Judge, the circumstances creating the disqualification must be clearly determined before effect could be given to the objection, and they ought, therefore, to be specified in the objection. RAI BAHADUR MELA RAM v. EMPRESS, **48 P.R. 1887, Cr.** (40 P.R. 1884, *Appr.*) [*R.*, 3 P.R. 1895, Cr.].

I.—Imperial Acts—continued.

Act III of 1880 (Cantonment)—*concluded.*

(11)—*S.* 28—*Conviction under the section, not appealable —. Revision allowed. — Crim. Pro. Code* (1882), *ss.* 408, 413, 416.—There is no appeal by any person, whether a European British Subject or not, in any case tried under s. 28 of the Act, by whomsoever it has been tried. The proceedings of a Cantonment Magistrate under s. 28 are liable to be reversed by the Chief Court on the revision side on the ground of a disqualification in the Cantonment Magistrate in a particular case owing to personal or pecuniary interest or bias. CHARDE v. EMPRESS, **40 P.R. 1884, Cr.**

(12)—S. 28—*See* No. 8, *supra.*

(13)—*Ss.* 28 *and* 29—*Imprisonment in default of payment of fine.*—Imprisonment in default of payment of fine levied under s. 28 of Act III of 1880 is not valid, as the act provides for the consequences of non-payment in s. 29. CHARDE v. EMPRESS, **40 P.R. 1884, Cr.**

(14)—S. 29—*See* No. 13, *supra.*

(15)—*Cantonment Rule, chap.* III, *r.* II —*Omission to report a case of cholera.*—Omission to report an attack of cholera, notwithstanding a proclamation by the Cantonment Magistrate in the *bazaars* for two days that, whenever any grievous illness, especially diarrhœa occurred, the relations of the patient were at once to give warning to the police, was not a criminal offence, nor did it amount to a breach of r. II. RAMPERSHAD v. EMPRESS, **9 P.R. 1895 Cr.**

Act IV of 1880 (Portuguese Treaty).

[REP. ACT I OF 1903].

(1)—*Offence committed on High seas—Jurisdiction—Statutes* 37 *and* 38 *Vict., c.* 27, *and* 30 *and* 31 *Vict., c.* 124, *s.* 11.—The rule in *Regina* v. *Elmstone* (7 B H.C. Cr. 89) to the effect that English, not Indian Law, is applicable to offences committed on the high seas and tried in India, is altered by Statute 37 and 38 Vict., c. 27. The accused, the captain of a native craft, was charged with having dishonestly sold his cargo at Sukeri, close to Goa, and scuttled his ship some three miles on the coast of Goa in the course of a voyage from Aleppy to Bombay. The accused was arrested in the Ratnagiri District and convicted by the Sessions Judge of Ratnagiri. The accused contended that the Sessions Judge had no jurisdiction, as the offence was committed within the territorial waters of Goa, and as, even if the offence was committed on the high seas, the English law and not the Indian law would apply. *Held* that, if the offence were committed within three miles of Goa, the Treaty Act IV of 1880 between England and Portugal as regard the

I.—Imperial Acts—continued.

Act IV of 1880 (Portuguese Treaty)—*cld.*

Goa territory, conferred the right to try such cases in British India. *Held*, also, that, if the offence were committed on the high seas beyond the territorial limits of three miles from the shore, the Sessions Court at Ratnagiri had jurisdiction, and the Indian Penal Code applied under the provisions of Statutes 30 and 31 Vict., c. 124, s. 11, and 37 and 38 Vict., c. 27. QUEEN-EMPRESS v. SHEIK ABDOOL RAHIMAN, **14 B. 227.** [*Diss.*, 39 C. 487 = 16 C. W.N. 471 = 13 Cr. L. J. 276 = 14 Ind.Cas. 598; *R.*, 4 Bur. L. T. 58 = 10 Ind. Cas. 705 = 5 L.B. R. 221.]

Act XII of 1880 (Kazis).

(1)—*Right of Kaziz appointed by Government to perform religious service in mosque.*—Act XII of 1880 does not declare that only the Kazi appointed by Government is authorised to perform the religious service in the mosques within a given area. Such right, if it exists, must be established by a regular suit brought for that purpose in due course of law. MUHAMMAD MUSALIAR v. KUNJI CHEK MUSALIAR, **11 M. 323 = 2 Weir 117.**

Act XIII of 1880 (Vaccination).

[SUPPLEMENTED (IN BURMA), BUR. ACT. II OF 1900; TITLE, PREAMBLE, ss. 1, 2 (b), REP. IN PT. AND AM., SS. 3A. 19A INS., SS. 5, 21, 22 (c), 23 AM., IN PROVINCE OF AGRA, U.P. ACT II OF 1907; DEFINITION OF "VACCINATOR" AM., DEFINITION OF "SUPERINTENDENT OF VACCINATION" ENACTED (FOR BURMA), BUR. ACT VI OF 1908, S. 5 (WHEN NOTIFIED). S. 9, PARA. 2, AND SS. 10—22 APPLIED TO MUNICIPALITIES, BUR. ACT I OF 1909, S. 4 (2) (WHEN NOTIFIED). SS. 15, 16, 19, 21 APPLIED, BUR. ACT I OF 1909, S. 12 (WHEN NOTIFIED). DECLARED IN FORCE IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—S. 6—*See* INOCULATION, L.B.R. 1893—1900, 545.

(2)—*S.* 17—*As amended by Burma Vaccination Law—Amendment Act of* 1900.—Failure to comply with a notice for the vaccination of a child issued under s. 17 of the Vaccination Act, 1880, is not punishable under s. 7 of the Burma Law Amendment Act, 1900. The Burma Act of 1900 is supplementary to the Act of 1880, and deals with quite different matters. It provides for matters not contained in the Act of 1880. It is not intended to provide a summary procedure for cases already provided for in the earlier Act. KING-EMPEROR v. ON ME, **2 L. B.R. 279.**

(3)—*S.* 18—*Order for costs and for refund of Court-fees—S.* 31, *Court-fees Act.*—Disobedience to the notice issued by the vaccinating authorities is not an offence, and such officers' report to the Magistrate is not a complaint of any offence. A Magistrate, therefore, who makes an order under s. 18 of that Act for compliance with such notice, cannot order the payment of costs, as there is no authority for it in the Vaccination Act, and cannot direct the refund of Court-fees, as s. 31, Court Fees Act, does not apply. KING-EMPEROR v. PO KAN, **4 L.B.R. 12 = 6 Cr. L J. 124.**

I.—Imperial Acts—continued.

Act XIII of 1880 (Vaccination)—*concluded.*

Act V of 1881 (Probate and Administration).

[REP. IN PT. ACT VII OF 1889; REP. IN PT. AND AM., ACT XII OF 1891; AM., ACT VI OF 1889, SS 11—17; AM., ACT II OF 1890, S. 16; AM., (IN LOWER BURMA), ACT VI OF 1900, S. 47; SS. 59, 60, 62, 64, 69 AM., ACT VIII OF 1903, S. 3; S. 156, REP., ACT IX OF 1908. DECLARED IN FORCE—IN THE SONTHAL PARGANAS (S. 154), REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN BRITISH BALUCHISTAN, IN REG. I OF 1890, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—S. 89—*See* DEFAMATION, 8 P.W R. 1908, Cr. = 7 Cr. L.J. 290 = 112 P.L.R. 1908 = 10 P.R. 1908 Cr.

(2)—*S.* 98, *cls.* 3 *and* 4—*Sanction to prosecute, without finding if omission to file accounts is intentional or accounts intentionally false.*—N., was the executor to an estate. The probate was revoked. He had not filed an account during his executorship. After the revocation of the probate he was ordered to submit accounts. He failed to do so within the time appointed. Sanction was given to prosecute him under s. 98, cl. (*c*), Act V of 1881. The accounts were subsequently filed, whereupon the Court kept the order in abeyance; but after the examination of the accounts and suspecting its genuineness the Court restored the sanction for prosecution. *Held*, that the Judge was not right in making the order depend on the examination of the accounts themselves and that the Judge ought not to have made an order sanctioning the prosecution under s. 176 without an enquiry whether the omission to produce the accounts was intentional, or the accounts filed were intentionally false. NABA CHUNDRA CHOWDHURY v. TRIPURA CHARAN CHOWDHURY, **2 C.W N. 597.**

Act XV of 1881 (Indian Factories).

[REP. IN PART AND AMENDED, ACT XI OF 1891.]

See ACT XI OF 1891.

(1)—*S.* 2—*Factory, definition of.*—To constitute a 'factory,' certain processes must be carried on "for not less than four months in the whole in any year." LOCAL GOVERNMENT v. GOVIND RAO DESHMUKH, **1 N.L.R. 115.**

(2)—*Ss.* 14, 15 *and* 17—*Factory—Occupier—Notice under s.* 14, *effect of—Liability of the occupier for breach of the Act—Successor of the occupier.*—The substance and import of s. 14 of the Indian Factories Act, 1881, are that the occupier of a factory shall send the notice prescribed, within one month after his occupation

I.—Imperial Acts—continued.

Act XV of 1881 (Indian Factories)—*continued.*

has commenced. If any individual sends such a notice, that is evidence of a representation by him that he is the occupier; but there is nothing in the Act which makes it necessarily conclusive evidence. The Court may treat the evidence of the notice as sufficient to discharge the *onus* of proof lying on the prosecution at the outset, and to shift the burden on to the person who gave the notice. The Court is not bound to treat it as such. Whether it should so treat it or not must depend on the circumstances of each case. There is nothing in the Act to make the mere successor in office of a person who has given notice under s. 14 an occupier himself, unless he is legally in occupation: What is an occupation is a question of fact in each case, to be determined with reference to some well-known principles of law. The question who is the occupier of a factory must depend among others, upon these considerations, namely:—who alone has the right of using the factory for the purposes for which it is constructed and worked; who has the right of regulating and controlling it; whose is the predominant possession of and general superintendence over it. EMPEROR v. TAYLOR, **10 Bom. L.R. 38 = 7 Cr. L.J. 44.**

(3)—*Ss.* 14, 15, 17—*Meaning of "occupier."*—The words "occupier" is not defined in the Factory Act. The proprietor of a factory who lives for the greater part of the year in a house on the factory premises is an occupier for the purposes of the Act. In the case of a factory started before the Act of 1881 came into force, no notice as required by s. 14 is necessary, and an occupier is none the less so for not having given the notice. QUEEN-EMPRESS v. MANORDAS HARAKHCHAND, **Rat. Un. Cr. C. 902 = Cr. Rg. 11 of 1897.** [*D.*, 29 B. 423 = 7 Bom. L.R. 454].

(4)—*S.* 15 (1)—*Intentional omission to give information, liability for.* — The intentional omission to give any information required by the form of notice prescribed by Government would render the person bound to send the notice liable to punishment under s. 15 (1). QUEEN-EMPRESS v. JOHAR ENALT, **L.B.R. 1893—1900, 407.**

(5)—*S.* 15 (1) (*e*)—*Manager residing on premises—Occupier.*—The manager of a factory who resides in a part of the premises in which the factory is, is not an occupier of the factory within the meaning of the Act. EMPEROR v. RAMPRATAP MAGNIRAM, **29 B. 423 = 7 Bom L.R. 454 = 2 Cr. L.J. 428.**

(6)—S. 15—*See* Nos. 2, 3, *supra* and No. 11, *infra.*

(7)—*Ss.* 15, *cl.* (*g*) *and proviso* (i) *and* 17—*Liability for keeping factory in a filthy state—Bengal Municipal Act* (III *of* 1884 *B.C.*)—*Liability of Municipality.*—In order to fix liability on any person other than the occupier of a factory, it is incumbent upon the latter to give the strictest proof of circumstances exonerating himself, and it is plain on the face of the

I.—Imperial Acts—continued,

Act XV of 1881 (Indian Factories)—*concluded.*

section that the burden of proving absence of knowledge or consent on his part lies entirely upon him. The mere fact that a Municipality and the Factory were jointly responsible to keep a factory in a cleanly state will not discharge the occupier from his liability under s. 15 of the Factories Act and fix the liability on the Municipality under s. 17. The provision of s. 17 is of a highly penal character, and must be construed strictly in favour of the accused. CHAIRMAN, OF THE SERAMPORE MUNICIPALITY v. INSPECTOR OF FACTORIES, HOOGLY, **25 C. 454.** [*R.*, 29 B. 423 = 7 Bom. L.R. 454].

(8)—*S.* 15 (1) (*c*), *r.* 19 — *Factory — Occupier of factory—Register of children—Duty to keep register — Personal responsibility — Delegation of duty, no defence.*—The provisions of s. 15 (1) (*c*) of the Factories Act, 1881, throw upon the occupier the responsibility of keeping the register. The responsibility is personal; and he cannot get rid of it by saying that he had delegated the duty to another person. EMPEROR v. MANILAL BHOGILAL, **11 Bom. L.R. 12 = 9 Cr. L.J. 160 = 1 Ind. Cas. 102.**

(9)—*S.* 15 (1) (*e*), *r.* 22 (iii) — *Unfenced machinery—Ring frames with tail-ends unfenced.*—It is not necessary that an order or notice from the Inspector of Factories should be issued to a person, who has not conformed to the rules made under the Act, before he can be charged for any offence under it. It is the duty of such person to obey the rules, and, in case of his disobedience, he becomes liable to conviction, whether there was any order or not from the Inspector, calling upon him to obey the rules. EMPEROR v. BANOOMIAN PIRBHAI, **12 Bom. L.R. 225.**

(10)—*S.* 15 (1) (*e*), *r.* 22 (iii)—*Disobedience of rules— Notice from Inspector not necessary before charge—Conviction —Liability for.*—An order or notice from the Inspector of Factories is not necessary, before a person, who has not conformed to the rules made under the Act, can be charged for any offence under it. It is the duty of such person to obey the rules, and, in case of his disobedience, he becomes liable to conviction, whether there was any order or not from the Inspector calling upon him to obey the rules. EMPEROR v. BANOOMIAN PIRBHAI, **9 M.L T. (Suppl. B.), 17.**

(11)—*Ss.* 17, 15 (*g*)—*Occupier of factory—Owner is occupier.*—The term 'occupier' as used in s. 17, Factories Act, means a person who controls the factory or workshop and the work that is done there, and includes the owner of the factory. EMPEROR v. DHANJI GOVINDJI BHATE, **15 Bom L.R. 328 = 20 Ind. Cas. 144 = 14 Cr. L J. 384 = 2 Bom. Cr. C. 71.**

(12)—Rule 19—*See* No. 8, *supra.*

(13)—Rule 22—*See* Nos. 9, 10, *supra.*

I.—Imperial Acts—continued.

Act XVI of 1881 (Obstructions in Fairways).

See COMPENSATION TO COMPLAINANT AND HIS RELATIVES, Rat. Un. Cr. C. 241 = Cr. Rg. 8 of 1886.

Act XXII of 1881 (Excise).

[REP., ACT XII OF 1896.]

See ACT X OF 1871.

See ACT XII OF 1896.

See BEN. ACT III OF 1873.

See BEN. ACT II OF 1876.

See BEN. ACT VII OF 1878.

See MAD. ACT VI OF 1871.

(1)—*Meaning of the term 'dispose of' in Excise License Form No.* VII.—The expression "dispose of" in Excise License Form No. VII refers and was intended to refer to a disposition of the nature of a sale. There is nothing to indicate that a wider meaning was intended. PIR MAHOMED v. QUEEN-EMPRESS, **U.B.R. 1897-1901, Vol. I, 178.**

(2)—*Punishment of fine under the Act.*—It was not intended that greater severity should be used towards persons infringing in an ordinary way the provisions of the Excise Act and a fine will suffice in such cases. EMPRESS v. SUMERE, **5 C.P.L R. 44, Cr.**

(3)—*Illegal sale of liquor to a Burman alleged to be a servant of person entitled to buy.*—If the Burman was the agent of a disclosed principal, the sale should be considered to be made to the principal and not to the agent. QUEEN-EMPRESS v. A. FUT, **U.B.R. 1897—1901, Vol. I, 187.** (U.B.R. 1892—1896, 100, U.B.R. 1897—1901, 184, *R.*)

(4)—*See* ACCOMPLICE—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, L.B.R. 1872—1892, 146.

(5)—*See* PENAL CODE, s. 186, L.B.R. 1872—1892, 152.

(6)—*Ss.* 3, 12, 39—*Unlicensed sale of* Tari.—*Tari* or juice extracted from palm trees cannot be said to be "fermented" in the sense of s. 39, or s. 3 of the Excise Act, and a person selling it to passers-by cannot be convicted under ss. 12 and 39 of the Act. EMPRESS v. AJAIB, **A.W.N. 1883, 238.**

(7)—*Ss.* 3, 21, 41—*Country and foreign liquor—Rum manufactured in India.*—The words "country" and "foreign" liquor refers rather to the manner than the place of manufacture. Rum manufactured in the foreign method at a distillery in India, comes, for the purposes of Act XXII of 1881, under the definition of foreign spirit. EMPRESS v. HORMASJI, **24 P.R. 1885, Cr.**

(8)—*Ss.* 3, 22, 41, 42—*Rule* 13—*Illegal purchase of* charas *by a licensed vendor.*—The accused, a licensed vendor of *charas*, purchased *charas* in contravention of r. 13 of the Rules in force under Act XXII of 1881, without

I—Imperial Acts—continued.

Act XXII of 1881 (Excise)—*continued.*

a permit from the Collector and was convicted under s. 41. *Held*, that the conviction was illegal as he did not come under s. 22, and, therefore, did not come under s. 41. *Held, further*, that it was doubtful whether r. 13, which refers to farmers of the excise or intoxicating drugs, applied to the accused. *Held, also*, that the accused was liable to be punished under s. 42. BAKHU RAM v. EMPRESS, **40 P.R. 1887, Cr.**

(9)—*Ss.* 3 *and* 38—*Opium Act* I *of* 1878, ss. 3, 5, 9, 14 *and* 19—*Rules under Act—Search—Jurisdiction of Magistrate.*—Though *Chandu* is not a drug referred to in s. 38 read with s. 3, cl. (*h*) of Act I of 1878, yet, it is a prohibited drug under the Rules framed by the Local Government under s. 5 of the Act, and an authorized preparation of the same is an offence, under s. 9 of the Act, though not under s. 38 of Act XXII of 1881. Though an Honorary Magistrate is not a person authorized to conduct a search under s. 14 of the Opium Act, he possesses the powers given by s. 19, and he can himself conduct a search on the analogy of s. 65 of the Crim. Pro. Code. An irregularity in the conduct of a search, unless it causes a failure of justice, is not material under s. 537 of the Crim Pro. Code. EMPRESS v. GANESHI, **A.W.N. 1884, 213.**

(10)—*Ss.* 3 (*b*) *and* 41—*Yeast balls not intoxicating drugs, etc.—Possession prior to utilization not an offence.*—Yeast balls not being intoxicating drugs, or spirit, or fermented liquor, their possession prior to their utilization for the manufacture of liquor is not punishable under s. 41 or any other section of the Act. QUEEN-EMPRESS v. NGA LU GALE, **L.B.R. 1872—1892, 571.**

(11)—S. 12—*See* No. 6, *supra.*

(12)—S. 21—*See* No. 7, *supra.*

(13)—S. 22—*See* No. 8, *supra.*

(14)—*Ss.* 27, 28, 29, 30, 34, 47—*Act* XII *of* 1896, ss. 36, 37, 38, 41, 57—*Excise officer.*—An officer, who before the coming into force of Act XII of 1896, is one of the class of officers on whom had been conferred powers to act as Excise Officer under ss. 27, 28, 29, Act XXII of 1881, and who had therefore power in certain events to take a case before a Magistrate under s. 32, is an Excise Officer within the meaning of s. 47, Act XXII of 1881. QUEEN-EMPRESS v. MAKUNDA, **20 A. 70 = A.W N. 1897, 162.** (A.W.N. 1896, 105, *Overruled*). [*F.*, 30 A. 377 = 5, A.L.J. 444 = A.W.N. 1908, 157 = 8 Cr. L.J. 5, 15 Cr. L.J. 336 = 23 Ind. Cas. 688 = 2 P.R. 1914, Cr. = 138 P.L.R. 1914; *R.*, 103 P.L.R. 1903.]

(15)—S. 28—*See* No. 14, *supra.*

(16)—S. 29—*See* No. 14, *supra.*

(17)—S. 30—*See* No. 14, *supra.*

(18)—S. 34—*See* No. 14, *supra.*

I.—Imperial Acts—continued.

Act XXII of 1881 (Excise)—*continued.*

(19)—*Ss.* 34-*a*, 36 *and* 47—*Complaint by police officer invested with powers of an Excise Officer.*—A Magistrate may take cognizance of an offence under s. 36 of Act XXII of 1881, upon the report of a police officer invested under the authority of s. 34-*a* of Act XXII of 1881, as amended by Act VI of 1885, with the powers of Excise officer specified in that section, as such officer must be deemed an Excise Officer for the purpose of s. 47. CHATRA v. EMPEROR, **15 P.R. 1887, Cr.** (28 P.R. 1883, Cr., *R.*) [*F.*, 4 P.R. 1893, Cr.; 8 P.R. 1901; *R.*, 7 P.R. 1888, 9 P.R. 1897, Cr.]

(20)—*Ss.* 34, 47—*Powers of police officer—Trial by investigating Excise officer.*—A police officer invested by the Local Government with some of the powers under s. 34 of the Excise Act of 1881 is not authorized to make a complaint or report of the nature referred to in s. 47. [*Overruled*, 20 A. 70=A.W.N. 1897, 162.] An Excise-officer who himself took proceedings against the accused should not try him in respect of the offence for which he instituted the proceedings QUEEN-EMPRESS v. RAM CHARAN, **A.W.N. 1896, 105.** (2 A. 806, *R.*) [*Overruled*, 20 A. 70=A.W.N. 1897, 162.]

(21)—*S.* 35—*Conviction—Solitary confinement—Act* I *of* 1868, *s.* 2 (18), *Penal Code, s.* 70.—A person, convicted under s. 65 of Act XXII of 1881, is liable only to imprisonment, simple or rigorous, but not to solitary confinement. EMPRESS v. GURDIT SINGH, **17 P.R. 1889, Cr.**

(22)—*Ss.* 35, 47 *and* 49—*Petition by Excise* Darogah.—The petition of an Excise *Darogah* containing allegation of an offence under ss. 35 and 49, Act XXII of 1881, and presented by the *Darogah* in person to the Magistrate, who tried the case, was held to be the complaint of an Excise-officer within the meaning of s. 47, Excise Act. MUHAMMAD BAKHSH v. EMPRESS, **8 P.R. 1894, Cr.** (6 & 7 P.R. 1894, Cr., *R.*) [*R.*, 12 Cr. L.J. 94=9 Ind. Cas. 511=56 P.L.R. 1911.]

(23)—*Ss.* 35 *and* 49—*Preparation of* "Lahan."—"*Lahan*" is not a fermented liquor within the meaning of the Excise Act. The inference that can possibly be made from the possession of the vessels smelling of *lahan* is that that the accused had made preparations towards manufacturing liquor, but falling short of an attempt to commit an offence under s. 35. PARTAB SINGH v. EMPRESS, **29 P.R. 1884, Cr.**

(24)—S. 36—*See* No. 19, *supra.*

(25)—S. 38—*See* No. 9, *supra.*

(26)—S. 39—*See* No. 6, *supra.*

(27)—*Ss.* 39 *and* 41—*Penal Code, s.* 71—*Illegal possession and sale.*—A person cannot be convicted of illegal possession as well as of illegal sale of the same spirit. QUEEN EMPRESS v. NGA TA LOK, **L.B.R. 1872—1892, 350.**

(28)—*S.* 41—*Selling of surplus drugs to new contractor just before expiry of contract.*—When a contractor of drugs sold, just before the expiry of his contract, his remaining stock or *bhang* to the newly appointed contractor for the ensuing year, *held*, that he had not infringed any of the Rules under the Excise Act. EMPRESS v. MUHAMMAD RAHIM, **26 P. R. 1883, Cr.**

(29)—*S.* 41—*Conviction for one offence by Magistrate altered into one for another offence by Sessions Court—High Court—Acquittal.*—A conviction by a Magistrate of the offence of selling illicit opium and *charas* was altered by the lower appellate Court into one for possession of opium and *charas*. The Chief Court set aside the conviction and acquitted the accused, on the ground that there was no sufficient evidence to convict the accused. RAHIM BAKHSH v. EMPRESS, **1 P.R. 1894, Cr.**

(30)—*S.* 41—*Convictions on evidence of informer.*—The Chief Court, on revision, set aside a conviction for an illicit sale of opium, which depended for proof upon the bare statement of a hired informer of the cooly class without any corroboration. GHANTE SHAH v. LALJI PERSHAD, **2 P.R 1894, Cr.**

(31)—*S.* 41—*Power to arrest and send accused before Magistrate—Illegal arrest if invalidates trial.*—Under this section the power to arrest includes the power to send the accused before a Magistrate. Prosecutions can, therefore, be instituted on the report of an officer empowered under ss. 37 and 38 in cases in which he has arrested or caused the arrest of the accused. *Held*, also, that an illegal arrest does not invalidate the trial. AH HIN v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 182.**

(32)—S. 41—*See* Nos. 7, 8, 10, 27, *supra.*

(33)—*Ss.* 41 *and* 47—*Offence under the Act—Complaint by whom to be made.*—No offence under the Excise Act, Chap. VII, is cognizable by the police, within the meaning of s. 4, Crim. Pro. Code, and no information by the police or by a person other than the Collector or Excise officer can give a criminal Court jurisdiction to enquire into an alleged offence under the Act. The absence of a complaint either by the Collector or Excise officer is a defect to which the provisions of s. 537 does not apply. KIRPAL SINGH v. EMPRESS, **28 P.R. 1883, Cr.** [*R.*, 7 P.R 1888, Cr.]

(34)—S. 42—*See* No. 8, *supra.*

(35)—*Ss.* 42 *and* 49—*Abetment — Sale in breach of license by servant.*—A servant of a licensed liquor vendor sold liquor in contravention of the conditions of the license without his master's knowledge. *Held*, the master cannot be convicted under s. 42 of the Act for the breach of the conditions of the license. AH SHEIN v. QUEEN-EMPRESS, **L.B R. 1872—1892, 373.**

I.—Imperial Acts—continued.

Act XXII of 1881 (Excise)—*concluded.*

(36)—*S.* 47—*Possession and sale of* Chandu—*Evidence of sale.*—Several persons were found together in a room, some of them smoking *chandu*, and jars containing about 5 tolas of *chandu*, seven head rests, and the usual paraphernalia of the *chandu* den were also found in the room. *Held* that the circumstances disclosed led up to one inference only, namely, that the *chandu* found was exposed for sale, and that the persons found in the den were persons to whom it was being sold for smoking purposes. KING EMPEROR v. BAKIR, **A.W.N. 1902, 17.** [*Dist.*, 7 A.L.J. 25 = 11 Cr. L.J. 138 = 5 Ind. Cas. 450.]

(37)—*S.* 47—*Court taking cognizance of offence on report of Excise officer—Police officer invested with certain powers of Excise officer—Court acting on report of such officer.* DEWA SINGH v. EMPRESS, **4 P.R. 1893, Cr.** (15 P.R. 1887, Cr., *R*) [*F.*, 8 P.R. 1901 Cr.] *See also* MANGAL SINGH v. EMPRESS, **8 P.R. 1884, Cr.**

(38)—S. 47—*See* Nos. 14, 19, 20, 22, 23, *supra.*

(39)—*S.* 49—*Sale of liquor in breach of license to European soldier.*—It is only when the licensee knows that the vendee is a European soldier or a Burman that he is forbidden to sell to him. QUEEN-EMPRESS v. AHYU (1) **Private P Tiernay (2) U.B.R 1897—1901, Vol. I, 184.**

(40)—S. 49—*See* Nos. 22, 23 35, *supra.*

(41)—*Ss.* 49 *and* 52—*Holder of out-still license leaving shops in charge of servant.*—Where the holder of an out-still license left his servant in charge of his shop during his temporary absence to sell his liquor to customers, which the servant accordingly did, *held*, that neither the licensee nor his servant was guilty of any offence under Act XXII of 1881. QUEEN-EMPRESS v. GUMNAN, **A.W.N. 1894, 201.**

(42)—*Ss.* 49, 52—*License to sell liquor*—Tari.—There is no license in Upper Burma to sell any liquor, except *tari*, to a Burman, and consequently any person, whether a licensee or not, who sells foreign spirit etc., to a Burman, sells in contravention of s. 21 and thereby commits the offence defined in s. 49. Therefore, as a penalty is provided in s 49, that section and not s. 52 is applicable to such illicit sale. A. HEIN v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol I, 189.**

(43)—S. 52—*See* Nos. 41, 42, *supra.*

Act IV of 1882 (Transfer of Property).

[AM., ACT III OF 1885; REP. IN PT. AND AM., ACT II OF 1900; SS. 1, 59, 69, 107, 117 AM., ACT VI OF 1904; SS. 85—90, 92—94, 96, 97, 99 REP. S. 100 REP. IN PT., ACT V OF 1908. APPLICATION OF CERTAIN SECTIONS EXT., ACT XIII OF 1889, S. 32 (1); REP. AS TO CROWN GRANTS, ACT XV OF 1895.]

I.—Imperial Acts—continued.

Act IV of 1882 (Transfer of Property)—*concld.*

(1) Ss. 3, 136—Actionable claim—Purchase by pleader — Professional misconduct—*See* LEGAL PRACTITIONERS — PLEADER AND CLIENT, 37 M. 238 = 23 M L.J. 447 = 1912, M.W.N. 1029 = 12 M.L.T. 615 = 13 Cr. L.J. 800 = 17 Ind. Cas. 544.

(2)—S. 54—*See* ACT I OF 1879, s. 3, sub-s. 13, 27 C. 587 = 4 C.W.N. 524.

(3)—S. 55—*See* CHEATING—GENERAL, 27 A. 561 = A.W.N. 1905, 98 = 2 A.L.J. 268 = 2 Cr. L.J. 218.

(4)—S. 83—*See* SANCTION TO PROSECUTE — CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., A.W.N. 1895, 145.

(5)—S. 136—*See* No. 1, *supra.*

Act V of 1882 (Easements).

[S. 14 AMENDED ACT XII OF 1891, EXTENDED TO BOMBAY AND THE U. P. ACT VIII OF 1891.]

S. 24—Entry on Railway premises by dominant owner to effect necessary repairs, if an offence—*See* ACT IX OF 1890, s. 122, 22 B. 525.

Act VI of 1882 (Companies).

[REP. ACT VII OF 1913.]

(1)—*Construction of words.* — The Indian Companies Act cannot be properly resorted to for determining the meaning of words in the Municipal Act, as the two Acts are not in *pari materia.* MYLAPORE HINDU PERMANENT FUND v. CORPORATION OF MADRAS, **3 M.L.T. 400 = 18 M.L.J. 349 = 31 M. 408.**

(2)—*Table A—Banking Companies limited by shares—Payment of dividends from deposits.*—Banking Companies limited by shares, when they do not register articles of association of their own, shall be bound by Table A of Act VI of 1882. The business of the Company is under the sole and exclusive management of the Directors. The Directors are bound not to pay dividends out of anything except the profits of the Company. They are not entitled to pay dividends to share-holders out of deposits, because when a Bank takes a deposit, it takes it on the understanding that the deposit is not to be used to pay dividends to share-holders at the time when the Bank is insolvent and cannot lawfully pay dividends. If the Directors pay dividends out of such deposits they are guilty under s. 409, as the money so deposited is "property" of the Bank within the meaning of s. 309, though not of the depositors, they being not entitled to receive the specific rupees they have paid and as the share-holders including the Directors have wrongfully gained, though it is doubtful whether such payment can be regarded as causing wrongful loss to the Bank. But the Manager, Assistant Manager and Accountant, although, not being entrusted with such property, they may not be directly guilty of an offence under s. 409, may yet be guilty o

I.—Imperial Acts—continued,

Act VI of 1882 (Companies)—*continued.*

abetment, by conspiring with the Directors in the illegal payment of the dividend. QUEEN-EMPRESS v. MOSS, **16 A. 88 = A.W.N. 1894,23.**

(3)—*See* MAD. ACT III OF 1904, sch. V, 3 M.L.T. 400 = 18 M.L.J. 349 = 31 M. 408 = 9 Cr. L.J. 68.

(4, 5)—*S.* 35—*Fine to be levied under the section —Crim. Pro. Code* (1882), *s.* 32—*Omission to duly stamp share warrants—Distinction between "forfeit" and "penalty"*.—If an offence under s. 35 of the Act is proved, the Magistrate is bound to impose a fine of Rs. 500 in respect of each offence of issuing a share warrant not duly stamped. The fact that s. 32 of the Crim. Pro. Code, gives the Magistrate power only to inflict a fine of Rs. 1,000 will not affect the Magistrate's jurisdiction to impose a fine of more than Rs. 1,000 in a case where more than two share warrants not duly stamped have been issued. An omission to stamp a share warrant is an offence under the Act, punishable by a penalty. A Magistrate has jurisdiction to enforce its payment. No distinction can be drawn between the word "forfeit" in s. 35 and the word "penalty" in the other section of the Act. QUEEN-EMPRESS v. MOORE, 20 C. 676. [*R.*, 35 A. 173 = 11 A.L.J. 196 = 18 Ind. Cas. 665 = 14 Cr. L.J. 105.]

(6)—*Ss.* 48 *and* 50—*Officers of Company resigning their positions as such without resigning directorships—Liability under s.* 50 *not affected —Plea of ignorance of law.*—Where a paid Managing Director and the Chief Secretary of a Company were prosecuted for an offence under s. 48, and convicted under s. 50, Companies Act. *Held*, that the fact of their having resigned their positions as Managing Director and Chief Secretary, before the prosecution was started, without resigning thereby their posts as directors, would not free them from their liability under s. 50 of the Act. The plea of ignorance of law cannot be accepted. CHHABIL DAS v. EMPEROR, **164 P.L.R. 1914 = 15 Cr. L.J. 300 = 23 Ind. Cas. 508 = 38 P.W.R. 1914, Cr.**

(7)—S. 50—*See* No. 6, *supra.*

(8)—*Ss.* 55, 56—*Right of share-holders to inspect the register of share-holders.*—Under s. 55, every share-holder, without payment, and every member of the public, on payment, is entitled to inspect the register of members of the company during business-hours, except when the register is closed under s. 56, and "subject to such reasonable restriction as the company in general meeting may impose." Where the share-holders, in general meeting, have not placed any restriction on the right of inspection, even a temporary refusal to allow the inspection, on the ground that the meeting of the directors was going on, will render the director responsible for such refusal liable to pay the penalty prescribed by s. 55. QUEEN-EMPRESS v. BEER, **20 A. 126 = A.W.N. 1897, 223.**

I.—Imperial Acts—continued.

Act VI of 1882 (Companies)—*continued.*

(9)—S. 56—*See* No. 8, *supra.*

(10)—*S.* 74 *and Regulations under s.* 220 (*b*) *—Failure to file balance-sheet—Registrar only competent to prosecute—Power of High Court to interfere in a pending case—S.* 439 *of the Crim. Pro. Code.*—(1) *Held*, that, under the regulations framed by the Local Government under s. 220 (*b*) of Act VI of 1882, the Registrar is the only officer authorised for instituting and conducting all prosecutions under the Act, specially where the prosecutions are in connection with breach of the rules relating to submission of balance-sheets and other periodical returns. So a complaint under s. 74 of the Indian Companies Act for wilful default in filing a balance-sheet, not brought by the Registrar but by a Clerk of his office and countersigned by the Public Prosecutor, is bad in law and not entertainable by a Criminal Court. (2) *Held*, also that, where, by any law or regulation, a certain person is only authorized to complain about a particular offence, the proceedings of a Magistrate based on a complaint relating to that offence, made by any unauthorized person, are *ultra vires* and liable to be set aside on revision by the High Court at any time during the pendency of the case. SHIB DAS v. SANGAM LAL, **35 P.W.R. 1910, Cr. = 8 Ind. Cas. 190.** (20 P.W.R. 1908, Cr., 1 P.W.R. 1909, Cr., 3 P.W.R. 1909, Cr., *R.*)

(11)—*S.* 74—*Complaint against Director for failure to file accounts—Jurisdiction of Magistrate.*—A Magistrate has jurisdiction to entertain a complaint under s. 74 of the Companies Act against a director of a Company for failure to comply with the provisions of that section and for misappropriation of money or falsification of accounts, but ordinarily a Magistrate ought to be chary of proceeding except after reference to the Registrar or on the complaint of responsible persons. SIDHESHWAR GHOSE v. KING-EMPEROR, **8 A.L.J. 1260 = 12 Ind. Cas. 972 = 12 Cr. L.J. 596.**

(12)—*S* 74—*Filing balance-sheet within year —Director resigning before expiry of year—Not liable for failure to file—Mere ceasing to hold necessary qualification shares, effect of—Vacation of office of Directorship.*—A Company is not by law obliged to file a balance-sheet till a year from its registration is complete, and a Director of the Company who resigns office before the expiry of the year cannot be fixed with liability under s. 74, Companies Act, for failure to file a balance-sheet with the Registrar of Joint Stock Companies. Act VI of 1882 is not precise on the point, but under English Law the mere ceasing to hold the necessary qualification shares involves vacation of his office by a Director, and this is made clear by s. 85 (2) of the new Act VII of 1913. CHANDAR BHAN v. EMPEROR, **15 Cr. L J. 380 = 23 Ind. Cas. 748 = 17 P.R. 1914, Cr. = 39 P.W.R. 1914, Cr. = 250 P.L.R. 1914.**

I.—Imperial Acts—continued.

Act VI of 1882 (Companies)—*continued.*

(13)—*S.* 74—*Penalty—Crim.Pro.Code, s* 439 —*Revision—Criminal case—Sentence. enhancement of—Discretion of Chief Court.*—*Held*, that the penalty provided by s. 74 of the Companies Act, 1882, is a fixed and not a maximum penalty. The Magistrate sentenced the accused to a fine of Rs. 300 under s. 74 of the Companies Act. The Crown moved for enhancement of the fine. *Held*, also, that, though the Chief Court had discretion to refuse to enhance a sentence, yet the present case was one in which enhancement was necessary. CROWN v. LALA HARKISHAN LAL, **37 P.L R. 1914=16 P W.R. 1914, Cr.=15 Cr. L J 260=23 Ind. Cas. 468 =19 P.R. 1914. Cr.** (35 A. 173, *F.*; 19 P.W.R. 1910=63 P.L R. 1910, 29 P.W.R, 1913=58 P.L.R. 1913. 7 P.R 1859. 17 P.R. 1898, 19 P.R. 1905, Cr.=78 P.L.R. 1905, *R.*)

(14)—S. 74—Summary trial of case under—Penalty fixed—Lesser penalty—Powers of Magistrate—*See* CRIM.PRO.CODE, 1898, s. 260, 11 A.L J. 196=18 Ind. Cas. 665=14 Cr. L.J. 105=35 A. 173.

(15)—*S.* 82—*Petition under s.* 82 *of the Act —Power of Magistrate to issue warrant—Crim. Pro. Code* (1898), *s.* 190.—A petition supported by an affidavit was presented to a District Magistrate under s. 82 of the Indian Companies Act. The Magistrate did not deal with the petition as an application under the Indian Companies Act, but having the petition and the affidavit before him and having examined the petitioner and purporting to exercise the powers conferred upon him by s. 190, Crim. Pro. Code, issued warrants for arrest and search. *Held* that, as there was no allegation either in the petition or affidavit that any offence, as defined by s. 4 (o), Crim Pro. Code, had been committed, nor anything to show that the Magistrate had information, knowledge or suspicion that any such offence had been committed, it was not competent for the Magistrate to proceed under s. 190 of the Crim. Pro. Code. *In re* PALAVESAM PILLAI, **1 Weir 720=2 Weir 46=2 Weir 149.**

(16)—*S.* 215—*False statements in balance sheet before winding up of Company—Balance sheet under the Companies Act, nature of.*—S. 215 of Act VI of 1882 does not apply to false statements contained in a balance-sheet published before the commencement of the winding up of a Company. QUEEN-EMPRESS v. MOSS, **16 A. 88=A.W.N. 1894, 23.**

(17)—*Balance-sheet under the Indian Companies Act, nature of.*—The balance-sheet of a Company coming under the Indian Companies Act, in order to represent the assets and liabilities of the Company, must be a true balance-sheet. It must show the actual condition of the Company. It is not sufficient if it should accurately show the state of the account books; it must, to be a true balance-sheet, show the actual state of the Company. If the books are false and th ebalance-sheet represents the books, the balance-sheet is also false. QUEEN-EMPRESS v. MOSS, **16 A 88=A.W.N. 1894, 23.** [*D.*, 9 M.L.T. 20=8 Ind. Cas. 325=11 Cr. L.J. 624.]

Act VIII of 1882 (Indian Penal Code Amendment).

[SHORT TITLE GIVEN, ACT XIV OF 1897; VIRTUALLY AMENDED, ACT X OF 1886, S. 21, DECLARED IN FORCE, IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

(1)—*See* SENTENCE—IMPRISONMENT —IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC., 6 A. 61.

(2)—S. 1—*See* PENAL CODE, s. 64, **L.B.R. 1872—1892, 473.**

Act XI of 1882 (Indian Tariff).

[REP., ACT VIII OF 1894.]

See ACT XI OF 1878, 4 Cr. L J. 239.

Act XII of 1882 (Salt).

[REP. IN PT., ACT XX OF 1884; REP. IN PT., ACT XII OF 1891; REP. IN PT., AND AM., ACT XIX OF 1890. DECLARED IN FORCE—IN THE SONTHAL PARGANAS (EXCEPT S. 31), REG.III OF 1872, S 3, AS AMENDED BY REG. III OF 1899, S. 3; IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES) (SS. 1, 2, 6, 7 AND 8 AND CH. IV), ACT XIII OF 1898, S. 4.]

(1)—*S.* 9—*Evasion of salt duty—Law under which punishable—Lower Burma Land and Revenue Act* (II *of* 1876), *s.* 39, *cl.* (*c*).—When salt-duty imposed under the Salt Act has not been compounded under any rules made under clause (*c*) of s. 39 of the Lower Burma Land and Revenue Act (II of 1876), and payment of such duty is evaded, the prosecution and conviction may be under s. 9 of the Salt Act (XII of 1882), under which the duty is primarily imposed, or under s. 39 of the Land Revenue Act (II of 1876), with reference to any rules made under s. 39, clause (*c*) of the Land Revenue Act, for composition with licensees. QUEEN EMPRESS v. SHWE THEIN, **L.B R. 1893—1900, 252.**

(2)—*S.* 9—*Liability of licensee of salt factory.*—The licensee of a salt factory is criminally liable for any evasion of payment of salt duty, unless he can show not only that he is personally unaware of the evasion but that he has exercised all proper precautions against such an event happening in his factory. *In the matter of the petition of* LATI RAM, **A.W.N. 1891, 181.**

(3)—*S.* 11—*Limitation.*—The general law of limitation and its schedules are chiefly intended for civil matters. The complaint of a criminal offence is not a suit or application within the meaning of s. 18, Limitation Act, and the peremptory terms of s. 11 of Act XII of 1882 are not affected by that section. QUEEN-EMPRESS v. NAGESHAPPA PAI, **20 B. 543.**

I.—Imperial Acts—continued.

Act XIV of 1882 (Code of Civil Procedure).

[REP., ACT V OF 1908.]

(1)—*Decree ordering wife to return to husband—Enforcing decree under a suit for restitution of conjugal rights against wife—Imprisonment.—Quære*:—Whether, under the present procedure the Court can enforce its order upon a wife to return to her husband's by giving her over bodily into her husband's hands. Such disobedience would seem to fall within s. 200 of the Code, and to be enforceable only by imprisonment, or attachment of property, or both. MOONSHEE BUZLOOR RUHEEM v. SHUMSOONNISSA BEGUM, *and* JUDOONATH BOSE v. SHUMSOONNISSA BEGUM, 8 **W.R.P.C. 3 = 11 M.I.A. 551.**

(1-*a*)—Depositions before Land Registration Deputy Collector to be taken as directed in the Civ. Pro. Code—*See* BEN. ACT VII OF 1876, s. 88, 11 C.W.N. 470 = 5 Cr. L.J. 281.

(2)—*See* CRIM. PRO. CODE, 1898, ss. 439, 476, 26 A. 249 = A.W.N. 1904, 15.

(3)—*See* WARRANT, 3 C.W.N. 605.

(4)—S. 13—*See* RES JUDICATA, 14 Bur. L. R. 259 = 4 L.B.R. 337.

(5)—S. 25—*See* ACT XVIII OF 1879, ss. 13, 14, 41 P.R. 1888, Cr.

(6)—S. 30—Specific Relief Act (I of 1877), s. 42—Claim of private right by plaintiff over land—Claim of public right by defendants—Cause of action—Parties—Persons claiming public right are alone necessary parties—Civ. Pro. Code (Act XIV of 1882), s. 30—Irregularity in not recording formal order—*See* CRIM. PRO. CODE, 1898, s. 133, 6 Ind. Cas. 46.

(7)—Ss. 51, 115—*See* FALSE EVIDENCE, 6 A. 626.

(8)—S. 52—*See* FALSE EVIDENCE, 27 P. R. 1894, Cr.

(9)—S. 70—*See* CRIM. PRO. CODE (1898), s. 332, A.W.N. 1899, 13.

(9-*a*)—S. 115—*See* No. 7, *supra*.

(10)—S. 174—*See* CONTEMPT OF COURT, 12 B. 63.

(11)—Ss. 194, 195 and 647—*See* SESSIONS JUDGE, JURISDICTION OF, 26 M. 596 = 13 M. L.J. 272.

(11-*a*)—S. 195—*See* No. 11, *supra*.

(12)—S. 251—*See* PENAL CODE, ss. 353, 149, 31 C. 424.

(13)—S. 258—*See* FALSE EVIDENCE, 10 B. 288.

(14)—S. 258—*See* PENAL CODE, s. 210, 16 C. 126.

(15)—Ss. 258, 643—*See* PENAL CODE, s. 210, 4 M. 325.

(16)—S. 268—*See* PENAL CODE, s. 188, U.B.R. 1909, 2nd Quarter, Penal Code, 23.

I.—Imperial Acts—continued.

Act XIV of 1882 (Code of Civil Procedure) —*continued.*

(17)—S. 269—*See* PENAL CODE, s. 186, L.B. R. 1872—1892, 336.

(18)—S. 274—*See* CRIMINAL MISAPPROPRIATION, 22 M. 151 = 1 Weir 424.

(19)—S. 318—*See* CRIMINAL TRESPASS, 1 C.L.J. 104.

(20)—*Civ. Pro. Code, s.* 337 (*a*)—*Scope of the section*—The accused, a judgment-debtor, was arrested and produced before the District Munsiff, who granted him five days' time for the payment of the judgment-debt, and also ordered the process-server to keep him in custody till then. The accused escaped from the custody. *Held*, that the language of s. 337 (*a*) would be wide enough to cover the case and that, under cl. 3 of the section, the District Munsiff was authorized to leave the judgment-debtor in the custody of the process server. The accused, therefore, was guilty of escaping from lawful custody. *In re* ARIYAPPA MUDALI, **1 Weir 717.**

(21)—*Ss.* 350 *and* 359—*Power of Court to send insolvent to Magistrate on an enquiry independent of that under s.* 350, *Civ. Pro. Code*, 1882.—Where, on an application for declaring the petitioner an insolvent, an enquiry is held under s. 350, and an order is passed under s. 351, declaring the petitioner an insolvent, the Court has no jurisdiction to make a fresh enquiry under s. 359 and to send the petitioner to a Magistrate upon the basis of such fresh enquiry. Though s. 359 does not say "that an application under that section must be made at the hearing under s. 350 or soon thereafter, any order, under that section (s. 359), must be based on the findings arrived at in an enquiry under s. 350 No new enquiry is contemplated by s. 359. NARASAYYA v. SUBBAYYA, **15 M.L.J. 12.**

(22, 23)—*S.* 359—*Misconduct of debtor—Offence—Imprisonment by Civil Court, nature of.*—Although the misconduct of a debtor is rendered punishable by the Civil Court only at the instance of a creditor, it is none the less a criminal offence, and the offender, when sentenced to be imprisoned, should be confined in the criminal, not in the civil, jail. Civil Courts, when sentencing an offender to imprisonment under s. 359 of the Civ. Pro. Code, should specify in the warrant, which should be addressed to the officer in charge of the criminal jail, whether the imprisonment awarded is simple or rigorous. The imprisonment which the Civil Court is empowered to award under s. 359, Civ. Pro. Code, may be either rigorous or simple. HIGH COURT PROCEEDINGS, 22nd Sept. 1879, No. 1572, **1 Weir 718.**

(24)—S. 359—*See* No. 21, *supra*.

(25)—*Ss.* 359 *and* 662—*Imprisonment of debtor under s.* 359, *Civ. Pro. Code—Power of High Court to order the creditor to provide for maintenance.*—The High Court has no power

I.—Imperial Acts—continued.

Act XIV of 1882 (Code of Civil Procedure) *—continued.*

under s. 652, Civ. Pro. Code, to frame a rule imposing on a creditor the obligation to provide for the maintenance of a debtor imprisoned, under s. 359, Civ. Pro. Code, the powers conferred by s. 652 being restricted to matters of procedure. HIGH COURT PROCEEDINGS, 22nd Sept. 1879, No. 1572, **1 Weir 718.**

(26)—S. 366 — *See* PRIVATE DEFENCE, RIGHT OF, 2 C.P.L.R. 73.

(27)—Ss. 475, 481—*See* WRONGFUL CONFINEMENT, 4 L.B.R. 253=8 Cr. L.J. 68.

(27-*a*)—S. 481—*See* No. 27, *supra.*

(28)—Ss. 503, 505—*See* CRIM. PRO. CODE, s. 145, 22 A. 214=A.W.N. 1900, 22.

(29)—S. 505—*See* No. 28, *supra.*

(29-*a*)—S. 568—*See* No. 36, *supra.*

(29-*b*)—S. 569—*See* No. 36, *supra.*

(30)—*Ss.* 588 (29), 651—*Conviction for escape from lawful custody—Appeal.*—Whether a person who has been convicted under s. 651, for escaping from lawful custody and has been sentenced for one month, has the right of appeal under s. 588 (29), Civ. Pro. Code. EMPRESS OF INDIA v. AMAR NATH, **5 A. 318.** [*F.*, 27 A. 258=1 A.L.J. 595=A.W.N. 1904, 229.]

(31)—S. 591—*See* CONTEMPT OF COURT, 7 B. 5.

(32)—S. 622—*See* HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 1 A. L. J. 481=A. W. N. 1904, 170, 8 C.W N. 73.

(33)—S. 622—High Court's power of revision of District Judge's appellate order granting sanction to prosecute—*See* SANCTION TO PROSECUTE — AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., **6 O.C.** 216.

(34)—S. 622—*See* SANCTION TO PROSECUTE —AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 3 A. 508, 30 A. 38=9 Cr. L.J. 39=1 Ind. Cas. 569=5 A.L.J. 749= A.W.N. 1908, 273, 26 M. 139=2 Weir 197= 2 Weir 577, 3 A.L.J. 394=A.W.N 1906, 103= 3 Cr.L.J. 400=1 M.L.T. 219=28 A. 554.

(35)—S. 622—*See* SANCTION TO PROSECUTE —REVOCATION OF SANCTION, 10 C.W.N. 1026 =4 Cr.L.J. 168.

(36)—Ss. 622, 647, 568, 569— Revisibility of proceedings under s. 195, Crim. Pro. Code, before Judges of Civil Courts—See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 2 M.L.T. 84=17 M.L.J. 123=5 Cr.L.J. 288=30 M. 311.

(37)—*S.* 640—*Commission toexamine witnesses.*—In an application to examine the plaintiff under commission, it was admitted that she had appeared personally in the Police Court and had been examined by the Magistrate. Ordered that a commission do issue to examine the

I.—Imperial Acts—continued.

Act XIV of 1882 (Code of Civil Procedure) *—concluded.*

plaintiff. PROVAT KUMAREE DASSEE v. OPURA KISSEN SETT, **3 C.WN. 753.**

(37-*a*)—S. 642—*See* ARREST, 4 A. 27.

(38)—S. 643—*See* CRIM. PRO. CODE (1898), ss. 435, 476, 4 O.C. 96.

(38-*a*)—S. 643—*See* CRIM. PRO.CODE (1898), s. 476, 1 C. 450.

(39)—S. 643—*See* FALSE EVIDENCE, 30 P. R. 1888, Cr.

(40)—S. 643—*See* HIGH COURT, JURISDICTION OF—GENERAL, 23 C. 532.

(41)—S. 643—*See* SANCTION TO PROSECUTE — CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 23 C. 532.

(42)—S. 643—*See* SANCTION TO PROSECUTE —EXPIRY OF SANCTION AND LIMITATION, 7 A. 871, F.B.=A.W.N. 1885, 267.

(42-*a*)—S. 643—*See* No. 15, *supra.*

(43)—*S.* 647—*Effect of.*—The effect of s. 647, Civ. Pro. Code, is not to make the provisions of the Civ. Pro. Code applicable to proceedings under s. 195, Crim. Pro. Code, which are of a criminal, rather than a civil, nature. RAMA AIYAR v VENKATACHALA PADAYACHI, **30 M. 311=2 M.L.T. 84=17 M.L.J. 123=5 Cr.L J.** 288. [*Appl.*, 11 Cr.L J 280=5 Ind. Cas. 881= 20 M.L.J. 102=7 M.L.T. 128=33 M. 90.]

(44)—S. 647—*See* Nos. 11 and 36, *supra.*

(45)—*S.* 651—*Arrest of judgment-debtor—Warrant.*— The officer arresting a judgment-debtor must have the warrant of arrest in his possession at the time of making the arrest, otherwise it is illegal. The escape of the judgment-debtor from the custody of the person apprehending without the warrant is not punishable under s. 651 of the Civ. Pro. Code, EMPRESS OF INDIA v. AMAR NATH, **5 A. 318 =A.W.N. 1883, 54.** [*F.*, 27 A. 258=1 A.L.J. 595=A.W.N. 1904, 229.]

(46)—S. 651—*See* PENAL CODE, ss. 224 and 225, 1 Weir 211.

(47)—S. 651—*See* No. 30, *supra.*

Act XV of 1882 (Presidency Small Causes Courts).

[REP. IN PART, ACT XII OF 1891; ACT VII OF 1896; REP. IN PART AND AMENDED, ACT I OF 1895; AMENDED; ACT VII OF 1892, S. 12; ACT III OF 1899, SS. 28, 39 (2), 69; AMENDED ACT IV OF 1906, S. 3, LAST PARA REPEALING ACT V OF 1908.]

(1)—S. 35—*See* SANCTION TO PROSECUTE —REVOCATION OF SANCTION, 27 B. 130=4 Bom. L.R. 940.

(2)—*S.* 56—*Room in* chawl *rented by a particular person—Dwelling.*—Whether a room in a

I.—Imperial Acts—continued.

Act XV of 1882 (Presidency Small Causes Courts)—*concluded.*

chawl rented by a particular person is the dwelling house of that person, and its outer door an outer door which a bailiff who has entered the *chawl* cannot break open under s. 56 QUEEN-EMPRESS v. KAIKHUSRO CURSEDJI, **Rat. Un. Cr. C. 949.**

Act XX of 1882 (Indian Paper Currency).

[REP., ACT III OF 1905.]

(1)—*S.* 16—*Contract Act* (IX *of* 1872), *s.* 108 —*Currency note* — *Legal tender* — Bona fide *transfer.*—Under s. 16 of the Paper Currency Act, 1882, currency notes are legal tender within the circles of issue and cannot be treated as ordinary articles of moveable property. Transfer of a currency note for money cannot be called a sale of the note within the meaning of the Contract Act. Where the Criminal Court directed the plaintiff, a *bona fide* holder of a currency note stolen from the complainant, to make over the same to him and the plaintiff sued the defendant who had passed the note to the plaintiff. *Held*, that the defendant being a *bona fide* holder the suit did not lie. The order of the Criminal Court was wrong but it did not give a claim to the plaintiff which he did not possess. DASAUNDHI v. IMAMUDDIN, **115 P.L.R. 1904=18 P.R. 1905, Civ.**

Act XXI of 1883 (Emigration).

[REP. IN PT. AND AM., ACT XVIII OF 1890, AM., ACT I OF 1896; AM., ACT VII OF 1897. PREAMBLE AND S. 6 AM., S. 105, PROVISO(*a*); REP. CH. XIV ADDED, ACT X OF 1902. S. 108; AM., S. 112-A, INS., ACT XII OF 1904. MEANING OF "INDIA" DECLARED, S. 6 (2), PROV. REP., S. 6A, INS., S. 18 (1) AM., 80 (1) REP; IN PT. AND AM., ACT XII OF 1908; REP. (EXCEPT IN SONTHAL PARGANAS), ACT XVII OF 1908; DECLARED IN FORCE IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG III OF 1899, S. 3]

(1)—*As amended by Act* (X *of* 1902), *ss.* 6, 107, 111—*Magistrate—Magistrate, First Class, in s.* 111, *includes Presidency Magistrate—Agreement with native of India to depart out of India by sea to work as an artizan—Agreement made without the permission of the Protector of Emigrants—Liability of master for criminal acts done by servant on the master's behalf—Master liable for agreements entered into on his behalf by his servant in violation of s.* 111—*Protector of Emigrants has power to impose reasonable terms before issuing permission—Summons, issue of—Fresh summons issued on the same information—Irregularity in procedure—Crim. Pro. Code* (1898), *s.* 537.—The term "Magistrate of the first class" used in s. 111 of the Emigration Act, 1883, means a Magistrate appointed to exercise the highest Magisterial powers, ordinarily prescribed by the Crim. Pro. Code, within his jurisdiction and includes a Presidency Magistrate. Where, on an information, a summons is issued to the

I.—Imperial Acts—continued.

Act XXI of 1883 (Emigration)—*continued.*

accused, and owing to its disclosing no offence, a fresh summons is issued without any fresh or supplemental information, the error, omission or irregularity in the fresh summons, is not sufficient, under s. 537 of the Crim. Pro. Code, to upset the finding and sentence, unless it has in *fact* occasioned "a failure of justice," that is, unless it has unfairly affected the accused's defence on the merits. Sub-section 1 of s. 111 of the Emigration Act hits at not merely entering into an agreement, but also at any attempt to enter into it. An attempt consists in some external act, which shows that progress is made in the direction of it, or towards maturing and effecting it, that is, something tangible and ostensible, of which the law can take hold, which can be alleged and proved. Where a penal statute has been infringed by servants, and criminal proceedings are taken against the master, although it lies upon the prosecutor to establish the master's liability, yet the question whether he is liable turns necessarily upon what is the true construction to be placed upon the statute. The statute should be construed not merely with reference to its language, but also its subject-matter and object. Sub section 1 of s. 111 of the Emigration Act, 1883, does not break in upon the rule of law embodied in the maxim *qui per alium facit per seipsum facre videtur* (he who does an act through another is deemed in law to do it himself). The word "whoever" in the clause is 'whoever either by himself or through his agent.' In other words, the Act leaves untouched the right of every person to enter into such agreements through an agent. It merely provides that such agreements shall not be entered into, without the previous permission of the Local Government. The intention of the section is to hold the master liable for his servant's act, provided the act was done by the servant so as to bind the master according to the law of contract. The coupling of the word "conditions" with the word "terms" in s. 107 of the Act makes out the intention of the Legislature to be that the officer authorised to grant the permission should have power to impose any reasonable terms and conditions he thinks proper as conditions precedent to the grant, whether they relate to the terms of the agreement itself, or being extraneous to it, relate to the execution, or other considerations, which have to be taken into account, in order to protect the interests of the native of India departing out of it by sea. S. 29 of the Emigration Act, 1883, makes the execution of the agreement referred to there, in the presence of the protector, compulsory. In s. 108 of the Act, the power conferred on the Local Government, who have delegated their power to the protector, is discretionary, and it is left to that Government to decide whether in any particular case any agreement referred to in s. 107 shall be executed or not in its presence, that is, in the presence of the Protector acting as its delegated authority. The two sections being

I.—Imperial Acts—continued.

Act XXI of 1883 (Emigration)—*concluded.*

thus distinguishable, the language of one cannot be invoked to aid the construction of the other, especially, where the language of each is plain. EMPEROR v. JEEWANJI, **A. M. 9 Bom. L.R. 967=31 B. 611=6 Cr. L J. 240.** [*F.*, 32 B. 10=9 Bom. L.R. 1059=7 Cr. L.J. 238.]

(2)—*S.* 107—*Master and servant—Servant violating the provisions of the Emigration Act in the course of his employment—Knowledge or consent of the master—Master's liability for servant's act—Artizan—Engine-driver on board a steamer.*—If a servant, having been appointed as an agent for a particular business by his master, enters into an agreement in connection with that business, everything which he does within the scope of his employment, for that purpose, will be binding upon the master, and the master will be criminally liable for such acts of the servant under the Indian Emigration Act. In such a case, the master's express knowledge or consent to the act is not necessary, because, from the very fact of the appointment of the servant as an agent in such a business, the master's knowledge of, or consent to, every act done by the servant or agent, within the scope of his employment, is implied by law. A person engaged to drive an engine on board a steamer, is an artizan within the meaning of the Indian Emigration Act. EMPEROR v. HAJI SHAIK MAHOMED SHUSTARI, **9 Bom. L.R. 1059=32 B. 10=7 Cr. L.J. 238.** [*R.*, 39 C. 344=15 C. L.J. 401=16 C.W.N. 551=13 Cr. L.J. 591=15 Ind. Cas. 1007.]

Act III of 1884 (Criminal Procedure Code Amendment).

[REP., ACT V OF 1898.]

(1)—*S.* 8 (6)—*Trial by District Magistrate of European British subject with a jury—Power of District Magistrate to refer case to High Court on dissenting from verdict of jury—Crim Pro. Code* (1882), *ss.* 307, 418, 423—*Powers of High Court, s.* 307.—What is contemplated by s. 8 (6) of Act III of 1884 is to confer upon a District Magistrate trying an European British subject with the aid of a jury, precisely the same authority as the Sessions Judge had under s. 307 of the Code; and if he disagrees with the verdict of a jury so completely that he considers it necessary to submit the case to the High Court, he ought to do so, and the High Court should deal with the reference by the Magistrate in exactly the same way as it can upon a reference by a Sessions Judge, pure and simple, under s. 307. The expression "trial by jury" in s. 8 (6) of Act III of 1884 should not be limited to that period of time at which the jury pronounce their verdict. It refers, as in the similar case of s. 307, Crim. Pro. Code, to trial by jury as contradistinguished from trial with the help of assessors, or in any other manner mentioned in the Code. A trial by

I.—Imperial Acts—continued.

Act III of 1884 (Criminal Procedure Code Amendment)—*concluded.*

jury or any other trial cannot be, legally speaking, concluded until judgment and sentence are passed; in those cases in which the Sessions Judge trying with the help of a jury differs from the verdict of the jury, and suspending judgment, refers the case to the High Court, the trial cannot be said to have concluded, but remains open for the High Court, upon the reference, to conclude and complete it, either by maintaining the verdict of the jury and causing judgment of acquittal to be recorded, or by setting aside the verdict of acquittal, and causing conviction and sentence to be entered against the accused. The clear provisions of s. 307 are not in any way curtailed by ss. 418, 423. The High Court's jurisdiction to deal with a case referred under s. 307, Crim. Pro. Code, are not limited only to cases, where there has been an error in law in the proceedings below. In cases where the jury delivers a perverse or obtuse verdict, the District Judge should be afforded an opportunity of reporting to the High Court. The same applies to a reference by a District Magistrate under s. 8 (6) of Act III of 1884. QUEEN-EMPRESS v. CARTHY, **9 A. 420=A.W.N. 1887, 39.** [*R.*, 14 B. 160.]

Act IV of 1884 (Explosives).

[REP. IN PT. ACT X OF 1889; ACT XII OF 1891; DECLARED IN FORCE IN THE SANTHAL PARGANAS REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—"Patakhas" *or crackers, whether "fireworks"—License, whether necessary for sale.*—*Patakhas*, which are small packets, wrapped in a paper, of coloured potash mixed with small pieces of *kankar*, and which explode with a slight report when thrown with force against a wall or *other* hard surface, are not *fire works* within the meaning of the Explosives Act, and so no license is necessary for the manufacture or sale of "*Patakhas.*" CROWN v BANSIDHAR, **8 P.R. 1910, Cr.=9 P.W.R. 1910, Cr.=5 Ind. Cas. 911.**

(2)—*S.* 5—*License for manufacture of explosives.*—A licensee for the manufacture of explosives is not at liberty to associate other persons with himself in the manufacture and sale of explosives without such other persons being approved of by the authorities and being provided with licenses. *In re* SAMINADA PILLAI, **1 Weir 756.**

(3)—*Ss.* 5 *and* 7—*Rules framed under the sections—Possession of explosives.*—Accused's house was searched for opium and in it were found three cartridges of blasting powder and three detonators. He was convicted under s. 5 of the rules for the manufacture, possession and sale of explosives in Burma, for possessing an explosive without a license. *Held* that licenses under these rules are not required for

I.—Imperial Acts—continued.

Act IV of 1884 (Explosives)—*concluded.*

the possession of explosives of this nature in moderate quantities. The rules are not applicable to the case. But cartridges and detonators are "ammunition" as defined in s. 4, Indian Arms Act and the accused might properly have been convicted under s. 19 (*f*) of that Act. QUEEN-EMPRESS v. NGA YE, **U. B.R. 1897—1901, Vol. I, 193.**

(4)—S. 7—*See* No. 3, *supra.*

(5)—Rules 32 (1) (*b*) framed under—Search for explosives in the presence of superior police officers—Legality—*See* JURISDICTION- GENERAL, 39 C. 119=15 Ind. Cas. 65=13 Cr. L.J. 433.

Act VI of 1884 (Steam-Vessels).

[S. 39 (2) (AS TO LOWER BURMA) REP., ACT VI OF 1900, S. 48. REP. IN PT. and AM. —ACT III OF 1890, SS 1—8, 12—14; ACT XII OF 1891 AM., ACT XIII OF 1891; AM., ACT VII OF 1899. S. 68A INS., ACT I OF 1909, S. 2. DECLARED IN FORCE IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—Ss. 31, 32, 33, 34, 35—*Rules under the Act, force of—Investigation into collision by a Special Court—Examination on oath of Serang of colliding vessel—Oaths Act* (X of 1873), s. 4—*Serang charged with incompetency or misconduct—Sanction to prosecute for perjury.*—A serang of a launch, which collided with and sank another vessel, was examined on the 4th July 1910 as a witness in an investigation under ss. 31 and 32 of the Inland Steam Vessels Act, 1884. He was then charged with incompetency or misconduct, and again examined on the 18th July. On both occasions he was put on solemn affirmation. The District Magistrate, Rangoon, considering that the Serang has given false evidence on both occasions, ordered his prosecution for perjury before the Sub Divisional Magistrate, who, however, discharged the accused, holding that the District Magistrate had no power under the Rules framed under the Act to administer as oath or affirmation to a party: *Held*, that the Sub-Divisional Magistrate was right as regards the statements made on the 18th July, as the Serang was then in the position of an accused person under s. 342, Crim. Pro. Code—but wrong as regards the statements made on the 4th July (6 M. 252, *D.*). The rules for the guidance of Special Courts under the Inland Steam Vessels Act have not the force of law. EMPEROR v. LAL MEAH, **12 Cr. L J. 577=12 Ind. Cas. 841=4 Bur. L. T. 130.**

(2)—S. 32—*See* No. 1, *supra.*

(3)—S. 33—*See* No. 1, *supra.*

(4)—S. 34—*See* No. 1, *supra.*

(5)—S. 35—*See* No. 1, *supra.*

I.—Imperial Acts—continued.

Act VI of 1885 (Excise Amending Act XXII of 1881).

[REP., ACT XII OF 1896].

See ACT XXII OF 1881, ss. 34 A, 36, 47, 15 P.R. 1887, Cr.

Act XIII of 1885 (Telegraph).

[AMENDED, ACT XI OF 1888, DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S 3, AS AMENDED BY REG. III OF 1899, S. 3, IN BRITISH BELOOCHISTAN REG. I OF 1890, S. 3, IN UPPER BURMA (EXCEPT THE SHAN STATES) ACT XIII OF 1898, S. 4.]

(1)—S. 29—*Penal Code*, ss. 71, 420, 465, 511—*Attempt to cheat by means of forged telegram—Separate punishment.*—Where, with the object of ultimately obtaining payment to the sender of a large sum of money to which he was not entitled, a false telegram was despatched under a fictitious name addressed to the person under whose authority the claim, if just, might have been discharged, *held* that the sender of such telegram might be properly convicted of an offence under s. 29, Act XIII of 1885, as well as of an attempt to cheat under s. 420, read with s. 511, and possibly also of forgery under s. 465; but that, at all events, as regards the two former offences, s. 71, I.P.C., applied, and he could not be punished for more than one such offence. EMPEROR v. SOHAN LAL, **A.W. N. 1903, 26.**

Act II of 1886 (Income Tax).

[SHORT TITLE GIVEN, ACT XIV OF 1897. REP. IN PT., ACT XII OF 1891; REP. IN PT., ACT VI OF 1902. SS. 5, 41 AND SCH II. AM., ACT XI OF 1903. DECLARED IN FORCE—IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S 4.]

(1)—Powers of Board of Revenue over Divisional Officers—Jurisdiction of High Court over proceedings of Divisional Officers under the—*See* CERTIORARI, WRIT OF, 1912, M.W.N. 1012=23 M L J. 393=16 Ind. Cas. 755=13 Cr. L.J. 723.

(2)—S. 25—*Collector hearing objections—Revenue Court—Judicial proceedings—Power of Collector to order prosecution of the objector under s. 476, Crim. Pro. Code.*—Accused put in an application objecting to his assessment as to Income-Tax. The Collector, who enquired into the matter, decided that the accused had made a false declaration, within the meaning of s. 25 of the Income Tax Act and ordered his prosecution for an offence under s. 177, Penal Code. The Magistrate, who tried the case, convicted the accused of an offence under s. 193, Penal Code. The Sessions Judge, on appeal, set aside the conviction for the reason, among others, that the Collector's order was not "an order under s. 476, Crim. Pro. Code, because

I.—Imperial Acts—continued.

Act II of 1886 (Income Tax)—*concluded.*

the Collector, acting under the Income Tax Act, was not a Revenue Court," and that the proceeding wherein he ordered the prosecution was not a 'judicial proceeding' within the meaning of s. 476, Crim. Pro. Code. On appeal, from the acquittal on behalf of the Crown, *held*, that the Collector, hearing objections to assessment under the Income Tax Act was a Revenue Court and his proceedings were judicial proceedings so that it was competent for him to pass an order under s. 476, Crim. Pro. Code, for prosecution of the objector. EMPEROR v. RUP SINGH, **44 P R. 1905, Cr. = 187 P.L R. 1905 = 3 Cr. L J 128.** (24 M. 121, *R.*; 27 C. 820, *D.*) [*R* , 22 Ind. Cas. 146 = 15 Cr. L.J. 2.]

(3)—Ss. 25 and 28—*See* MAD. ACT III OF 1878, ss. 14 and 15, 1 Weir 782.

(4)—S. 28—See No. 3, *supra.*

(5)—*Ss. 35 and 36—Prosecution for making false statement not to be ordered except at the instance of Collector—The form of the order to indicate that it has been passed by the Collector.* —A person who has committed an offence under s 35 of the Income Tax Act cannot be proceeded against except at the instance of the Collector, and where it does not appear from the order that it was passed by the officer concerned in his capacity as a Collector, it is not legal. BANKAT LAL v. KING-EMPEROR, **12 A.L.J. 258 = 15 Cr. L.J. 296 = 23 Ind. Cas. 504.**

(6)—S. 36—Collector's order under, whether falls within s. 435, Crim. Pro. Code—Collector deciding objections to assessment of income-tax as Revenue Court—Prosecution ordered for false statement in declaration—*See* CRIM. PRO. CODE, 1898, ss. 435, 476, 15 Cr. L.J. 2 = 22 Ind. Cas. 146.

(7)—S. 36—*See* No. 5, *supra.*

Act XI of 1886 (Tramways).

[REP. IN PT. ACT IX OF 1890, DECLARED IN FORCE IN UPPER BURMA (EXCEPT THE SHAN STATES) ACT XIII OF 1898, s. 4.]

(1)—*Bye-laws framed under the Act—Break of journey—Necessity for purchase of fresh ticket.* —A passenger on a tramcar took and paid for a ticket entitling him to travel for a certain distance ; he alighted at an intermediate stopping place, and boarded another tramcar, which was performing the same journey, in order to get to the point which he might have travelled by the first car. He refused to pay the fare demanded of him on the second car, contending that he was entitled to complete his journey with his original ticket: *Held*, that the contract of carriage had been determined by the passenger's own act and that he was rightly convicted for travelling on the second tramcar without paying his fare. NGA BA THIN v. RANGOON ELECTRIC TRAMWAY CO , **14 Cr. L J 564 = 21 Ind. Cas. 164 = 7 L.B.R. 53 = 6 Bur. L.T.**

I.—Imperial Acts—continued.

Act XI of 1886 (Tramways)—*concluded.*

193. ((1906) 2 K.B. 288 = 75 L.J. K.B. 670 = 70 J.P. 343 = 4 L.G.R. 1073, (1904) 2 K.B. 313 = 73 L J K.B. 701 = 52 W.R. 655 = 20 T.L.R. 482 = 91 L.T. 349, *R.*)

Act XII of 1886 (Petroleum).

[REP., ACT VIII OF 1899.]

(1)—Ss. 2 (2), 10, 15—*See* ACT VII OF 1899, ss. 1 (3), 11 and 15, 7 C.W.N. 658.

(2)—*S. 8, Rule 3—Importation of petroleum.* —Rule 3 of the Rules framed for the regulation of the importation of petroleum, refers only to importation of petroleum from any *port* beyond the limits of British India and not from any place which is not a port. QUEEN-EMPRESS v. CHUNI LAL, **Rat. Un. Cr. C. 643 = Cr. Rg. 16 of 1893.**

(3)—S. 10—*See* No. 1, *supra.*

(4)—S. 15—*See* No. 1, *supra.*

Act I of 1887 (General Clauses).

[REP., ACT X OF 1897].

See ACT X OF 1897.

(1)—*Ss. 2 and 7—Crim. Pro. Code* (1882), *s.* 195—*Sanction to prosecute—Prosecution commenced six months after granting of the sanction—Intervention of holidays.*—A sanction to prosecute can remain in force only for six months from the date on which it was given ; and the period for such sanction cannot be extended by reason of the period expiring during the Court holidays. S. 7 of the General Clauses Act will have no application to such a case, as the Code of Criminal Procedure was passed before the passing of the former Act. RAJ CHUNDER MOZUMDAR v. GOUR CHUNDER MOZUMDAR, **22 C. 176.** [*R.*, Rat. Un. Cr. C. 803; *D.*, 2 Weir 200.]

(2)—S. 7—*See* No. 1, *supra.*

Act IX of 1887 (Provincial Small Causes Courts).

[REP. IN PT., ACT X OF 1888 ; REP. IN PT. ACT XII OF 1891 ; REP. IN PT., (IN AGRA), U P. ACT II OF 1901. S. 36 REP., ACT IX OF 1908. DECLARED IN FORCE—IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—S. 25—Order passed by Small Cause Court under s. 476, Crim. Pro. Code—Revision—Power of High Court—*See* CRIM. PRO. CODE, 1898, ss. 439, 476 = 14 Cr. L. J. 496 = 20 Ind. Cas. 752 = 7 L.B.R. 76 = 6 Bur. L.T. 144.

Act IV of 1889 (Merchandise Marks).

[REP. IN PT. AND AMENDED, ACT IX OF 1891 ; S. 10 REP. IN PT., ACT XVI OF 1904 ; DECLARED IN FORCE IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

I.—Imperial Acts—continued.

Act IV of 1889 (Merchandise Marks)—*contd.*

(1)—*S.* 2 (*c*)—*Penal Code, s.* 482—*False property mark—Books, whether goods—False trade description—Crim. Pro. Code* (1898), *s.* 203.—The case against the accused was that he printed and published, in another press, without the complainant's permission, an unauthorised edition of a book known as "A Manual of Telugu Grammar by P. Abboy Naidu" with the contents and title page and outer cover exactly the same as in the authorised edition. The Magistrate dismissed the complaint under s. 203 of the Code of Criminal Procedure. On a Revision Petition to the High Court, *held*, that books are goods within the meaning of the Merchandise Marks Act (Act IV of 1889). *Held*, also, that the phrase "All rights reserved" in the outer cover of the spurious edition is a trade description under s. 2 (*c*) of the Merchandise Marks Act, and may be untrue, but the complainant should prove that it is untrue in a material respect. In order that the case may come under s. 482 of the Penal Code, the question will be, whether the accused has marked the book in a manner reasonably calculated to cause it to be believed that it is the manufacture or merchandise, which it is not, or belongs to one to whom it does not belong. In order to show that the name "P. Abboy Naidu" is a property mark, the complainant should prove that the buyers ask for and believe that they are getting not merely a work of which P. Abboy Naidu is the author, but a work of which the complainant is the proprietor. RAGHAVALU NAIDU, P. v. SUNDARAMURTI MUDALIAR, **17 M.L.J. 490 = 6 Cr.L.J. 374.**

(2)—S. 2 (4)—*Penal Code, s.* 486—*Selling books with counterfeit property mark.*—Books are the subject of trade and are covered by the word "goods" in s. 2, cl. (4), Act IV of 1889. Therefore, a person selling a book with a counterfeit property mark is liable to be convicted under s. 486, Penal Code. KANAI DAS BAIRAGI v. RADHA SHYAM BASACK, **26 C. 232 = 3 C.W.N. 97.** [*F.*, 17 M.L J. 490; *R.*, 3 Bom. L.R. 883 = 26 B. 289.]

(3)—Ss. 2 (2), 4, 7—Design or pattern covering the whole goods—Not a trade description—Copying such design—No offence—*See* TRADE MARK, 8 S L.R. 39 = 15 Cr. L.J. 670 = 25 Ind. Cas. 998.

(3-*a*)—S. 3—*See* PENAL CODE, ss. 485, 486, 27 C. 776 = 4 C.W.N. 423.

(4)—S. 4—*See* No. 3, *supra.*

(5)—Ss. 4 and 6—Using title of book—Trade mark—Trade description—*See* PENAL CODE, ss. 478, 482, 26 B. 289 = 3 Bom. L.R. 883.

(6)—S. 6—*See* No. 5, *supra.*

(7)—*Ss.* 6 *and* 7—*Bengal Excise Act* (VII *of* 1878), *s.* 61—*Manufacturing and selling exciseable article without a license—Putting false trade marks upon cases containing exciseable articles—Penal Code, ss.* 486 *and* 487—*Distinct offences—Crim. Pro. Code* (1882), *s.* 403.—The offences of manufacturing and selling exciseable articles without a license, and being in possession of such articles without a license (ss. 53 and 61, Excise Act), and the offences of putting false trade mark upon cases containing exciseable articles, and making use of such false trade marks (ss. 486, 487, Penal Code, and 6 and 7, Merchandise Marks Act) are distinct offences, and, therefore, a previous conviction or acquittal on the former offences will not bar a trial on the latter offences. QUEEN-EMPRESS v. CROFT, **23 C. 174.**

(8)—Ss. 6, 7—*See* PENAL CODE, ss. 482, 485, 486, 17 C.W.N. 227 = 18 Ind. Cas. 404 = 14 Cr. L.J. 68 = 40 C. 281.

(9)—Ss. 6, 7—Liability of limited company to be convicted and punished—Meanings of words 'he,' 'person,' 'whoever'—*See* PENAL CODE, ss. 482, 486, 15 Cr. L.J. 337 = 23 Ind. Cas. 689 = 7 Bur. L.T. 116.

(10)—Ss. 6 and 7—*See* TRADE MARK, 31 C. 411.

(11)—S. 7—*See* TRADE MARK, 32 P.R. 1902, Cr.

(12)—S. 7—*See* Nos. 3, 7, 8, 9, 10, *supra.*

(13)—S. 14—Counterfeiting trade-mark—Costs of successful party—Costs in appeal—*See* PENAL CODE, s. 486, 16 Bom. L.R. 78 = 2 Bom. Cr. C. 177 = 15 Cr. L.J. 522 = 24 Ind. Cas. 834.

(14)—*S.* 15—*Penal Code, ss.* 482 *and* 486—*Using counterfeit-trade mark— Prosecution—Limitation.*—S. 15 of Act IV of 1889 enacts that no prosecution for an infringement of a trade mark shall be commenced after the expiration of one year after the discovery of the offence by the prosecution. The reason for this limitation is obvious. Ordinarily the infringement of a trade mark is rather a civil than a criminal wrong, but as civil proceedings may require much time and expenditure to bring them to a conclusion, the Legislature, in its anxiety to protect trades, has allowed resort to the Criminal Courts to provide a speedy remedy in cases when the aggrieved party is diligent and does not by his own conduct show that the case is not one of urgency. If, therefore, the person aggrieved fails to resort to Criminal Courts within a year of the offence coming to his knowledge, the law assumes that the case is not one of urgency, and it leaves him to his civil remedy by an action for injunction. RUPPELL v. PONNUSAMI TEVAN, **22 M. 488 = 1 Weir 821 = 1 Weir 558.** [*F.*, 4 Bur. L.T. 83 = 12 Cr. L.J. 246 = 10 Ind. Cas. 787.]

(15)—S. 15—Prosecution time-barred—Interpretation of statutes—*See* PENAL CODE, s. 482, 12 Cr. L.J. 246 = 10 Ind. Cas. 787.

(16)—S. 19 (*a*)—*See* TRADE MARK, 4 C.L.J. 268 = 10 C.W.N. 107.

I.—Imperial Acts—continued.

Act X of 1889 (Ports).

[REP. ACT XV OF 1908.]

(1)—*S. 6, cl. (k)—Rules 1 to 23 framed thereunder—Order making it obligatory on boat owners to ply for hire, validity of.*—Rules 1 to 23 framed by the Government under s. 6 of the Act, in so far as they purport to make it obligatory on boat owners to ply for hire, are *ultra vires*, and therefore void and of no effect. It is only with regard to boats plying for hire that s. 6 of the Act leaves to the Government authorities to make rules. QUEEN-EMPRESS v. THOMMAYYA CHETTI, **17 M. 397 = 1 Weir 859.**

(2)—*S. 6 (k)—Rule 15—Causing impediment to service of boat.*—When a tindal, or boatman in charge of a boat belonging to the agents of a steamer declines to wait for a letter which the Port officer desires to send to the captain of the steamer, the tindal or boatman does not, by wilful misconduct, cause an impediment to the service of a boat within the meaning of Rule 15 of Rules framed under the Act. *In re* BODE ERRAYYA, **1 Weir 860.**

(3, 4)—*Ss. 6 and 8—Rule VIII framed under s. 6—Validity of the Rule—Delegation of powers—Disobedience of order of conservator of ports*—Rule VIII, made by the Government under s. 6 cl. (*k*) of the Act, requires boat owners to "carry out at all times all orders issued by the Conservator of Ports in connection with the plying of their boats which are not inconsistent with the regulations issued by Government." The rule, in so far as it purports to give the Conservator the power to make rules, is *ultra vires*, and therefore void. In the case of power being given by statute to the Government or other public body to make rules having the force of law, the maxim *delegatus non potest delegare* must be applied. When the Legislature entrusts to some public body, it may be the Executive Government or a corporation, the duty of making rules, such public bodies cannot relieve themselves of the responsibility and depute other agencies to discharge the duty. Where the accused, owners and tindals of two licensed cargo boats, were convicted under s. 8, cl. 2, by the Conservator for disobedience to an order issued under s. 6, cl. (*k*). Rule VIII, by the Port Conservator prohibiting the bringing in of boats into the Negapatam river while a certain flag was flying, *held*, that the order was *ultra vires* and that the conviction was illegal. QUEEN-EMPRESS v. MARIAN CHETTY, **17 M. 118 = 1 Weir 857 = 4 M L J. 38.**

(5)—S. 8—*See* Nos. 3 and 4, *supra*.

Act XIII of 1889 (Cantonments).

[REP. IN PART, ACT XII OF 1896; ACT V OF 1898. REP. IN PART AS TO BURMA ACT XIII OF 1898. S. 18. REP. IN PART AND AMENDED, ACT XII OF 1891. AMENDED, ACT I OF 1891, S 11; ACT XV OF 1897; S. 6 (1) AMENDED ACT I OF 1903; SS. 13, 15 (1) AMENDED ACT V OF 1909. DECLARED IN FORCE—IN BRITISH BALUCHISTAN (WITH ADDITIONS). REG. I OF 1890, SS. 3 AND 4, AS AMENDED BY REG. V OF 1890, S. 45; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4]

See ACT III OF 1880.

See BOM. ACT III OF 1867.

See MAD. ACT I OF 1866.

See CANTONMENT CODE, 1899.

(1)—*Ss. 2, 5 and 7—Appeal against convictions for offences punishable under Cantonment Rules—Rule 35, under Act XXII of 1864.*—S. 7. Cantonment Act, 1889. has abrogated Rule 35 of the Rules framed under the Cantonment Act XXII of 1864, and appeals against convictions by Cantonment Magistrates of offences punishable under Cantonment Rules lie to the same extent as convictions by other Magistrates of the same class. QUEEN-EMPRESS v. MAULA BAKHSH, **1 P.R. 1897, Cr.**

(2)—S. 5—*See* No. 1, *supra*.

(3)—*S. 7—Crim. Pro. Code, Act X of 1882, s. 528—Jurisdiction of District Magistrate over Cantonment Magistrate.*—S. 7 of Act XIII of 1889 makes the Cantonment Magistrate subordinate to the District Magistrate, and the latter can therefore decide, under s. 528 of the Crim. Pro. Code, whether a case pending before the former should be transferred or not. QUEEN-EMPRESS v RAMJI BAPUJI, **Rat. Un. Cr. C. 849 = Cr. Rg. 16 of 1896.** (9 B. 100, *R.*)

(4)—*S. 7—See* No. 2, *supra*.

(5)—*S. 13—Intoxicating drug—Supply—Interpretation.*—The word "supply" in s. 13 of the Cantonments Act, 1889, must have a restricted meaning put upon it. Its context "barters or sells" indicates that it has the same idea underlying it in common with the words preceding it. It relates to a transaction between two persons dealing at arm's length and, therefore, independent of each other for its purposes. Hence, the servant of a soldier, who buys liquor on his master's behalf and gives it to his master cannot be said to have "supplied" the liquor to his master within the meaning of s. 13 of the Cantonments Act, 1889. EMPEROR v. PASCAL SHIMAU, **9 Bom L R. 703 = 31 B. 523 = 6 Cr. L.J. 67.**

(6)—*S. 26—Rule 2—Additional fine for continuing offence, validity of.*—The additional fine mentioned in r. 2 of the General Order of the Government of India framed under s. 26 of the Cantonments Act (XIII of 1889), is not only to be after the first conviction, but is to follow proof that the failure is persisted in. It cannot be imposed as a threat against possible persistence, which, being in the future, cannot be matter of present proof. The continuing failure must, therefore, be matter of later and separate enquiry and proof. QUEEN-EMPRESS v. WILLIAM PLUMNER, **22 B. 841.** (22 B. 766, *F.*)

I.—Imperial Acts—continued.

Act XIII of 1889 (Cantonments)—*concluded.*

(7)—*S. 27—Penal Code, ss. 64 to 67—Applicability.*—Ss. 13 and 14 of Bombay Act, III of 1867, having been repealed by the Cantonment Act of 1889, the provisions in ss. 64 to 67 of the Penal Code apply to sentences passed under s. 27 of the Cantonment Act. QUEEN-EMPRESS v. PEDRU, **Rat. Un. Cr. C. 563= Cr. Rg. 36 of 1891.**

Act XV of 1889 (Official Secrets).

(REP. IN PART AND AMENEED, ACT V OF 1904. DECLARED IN FORCE— IN BRITISH BALUCHISTAN, REG. I OF 1890, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Ss. 3 and 4—Disclosure of Government departmental examination papers.*—The disclosure of Government Departmental Examination papers may be an offence under the Indian Official Secrets Act. AUNG THEIN v. CROWN, **1 L.B.R. 133.**

(2)—S. 4—*See* No. 1, *supra.*

Act VIII of 1890 (Guardian and Wards).

[REP. IN PART AS TO BURMA ACT XIII OF 1898, S. 18; ACT VI OF 1900, S 48, S. 53, ACT V OF 1908. (IN SAMBALPURE DISTRICT, AND CENTRAL PROVINCES), ACT XXIV OF 1899. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872; S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ANGUL DISTRICT, REG. 1 OF 1894, S. 3; IN UPPER BURMA(EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Custody of minor*—Habeas Corpus—*Act* VIII *of* 1890.—The petitioner, an ayah earning only eight annas a month as wages, a poor woman of very feeble intellect, obtained under s. 491, Crim. Pro. Code, a rule in the nature of a *Habeas Corpus* calling on the respondent, the Superintendent of the Methodist Episcopal Girls' School, Bombay, to show cause why a certain minor, named *Saithri,* alleged to be illegally and improperly detained by her, should not be delivered to the petitioner, the mother of the girl. The girl was aged 15 years. She was a boarder from the age of eight in the Zenana Mission School. At her tenth year, she was removed to the respondent's school. The petitioner never contributed anything whatever towards the expenses of such education, after she became a boarder. The girl, in the meantime, become a convert to Christianity and would soon be in a position, if allowed to complete her education, to earn a decent livelihood. *Held* that assuming, but by no means admitting, that the rule that a Hindu girl under sixteen would be too young to be able to decide where she could reside, was applicable, it was the duty of the Court to refuse the present application, not being satisfied that it was made *bona fide* by the petitioner. *Held,* further, that having regard to the principles of Courts of Equity to be gathered from a consideration of English cases which were decided as well before as after the coming into operation of the Judicature Act of 1873, and the High Court since its establishment in 1862, being a Court governed by the doctrines of Courts of Equity, the petitioner by her conduct during the last eight years had precluded herself from demanding that her child should now be given up to her, to do which would be manifestly so detrimental to the welfare of the girl. *Held,* further, that, acting upon the doctrine laid down in the case of *Skinner* v. *Orde* (L.R. 4. P.C. 60), which, if applicable, the High Court was bound to follow, and not losing sight of the analogy furnished by the provisions of the Gaurdians and Wards Act, VIII of 1890, as it was clearly for the present and future welfare of the girl that she should remain where she was and that she should not be delivered over to the petitioner, the application should be refused. The girl was discharged from all restraint with liberty to go where she liked. *In the matter of* SAITHRI, **16 B. 307.** [*R.*, 25 C. 881=2 C.W N. 379, 15 M. L.T. 1=1914 M.W.N. 1=25 M.L.J. 661; 84 P. R. 1894, U.B.R. 1892, 1896, Vol. II, 415, U.B. R. 1897—1901, Vol. II, 435.]

(2)—*See* PENAL CODE, s. 188, 14 C.P.L.R. 174.

(3)—Lawful guardian setting up adverse title to property of minor, whether entitled to guardianship of the person of the minor—*See* PENAL CODE, s. 361, 15 Cr. L.J. 640=25 Ind. Cas. 840.

(4)—S. 25—*See* CRIM. PRO. CODE, 1898, s. 100, 2 S.L.R. 2, Cr.=10 Cr. L.J. 219.

Act IX of 1890 (Railways).

[REP IN PART (AS TO BURMA) ACT XIII OF 1898, S. 18 REP. IN PART AND AMENDED, ACT IX OF 1896, SUPPLEMENTED ACT IV OF 1905; DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

See ACT XVIII OF 1854.

See ACT XXV OF 1871.

See ACT IV OF 1879.

(1)—*Ss. 3, cl. (4), 122, 138—Railway, meaning of—Staff and Residential quarters, not included—Employees holding over—Ejectment—Procedure—Ss. 138 and 122, when applicable—Penal Code, s. 27—Servant's possession—Master's, how far so—S. 141—Use of force—By less than five—Assertion of right, not legalised—Crim. Pro. Code, ss. 55 and 439—Revision against acquittal—High Court will interfere only in clear interests of justice.*—Although s. 3, cl. (4) of the Railways Act is wide, staff quarters are not part of the Railway. A summary procedure is laid down, in s. 138, for the recovery,

I.—Imperial Acts—continued.

Act IX of 1890 (Railways)—*continued.*

by the Railway, of properties improperly held by the employees who are dismissed or discharged. This section is not concurrent with s. 122 which is intended merely for the administration of the Railway and for removing trespassers on the Railway. Where there is lawful entry, s. 122 cannot be applied. S. 27 of the Penal Code is not applicable, as the use by the employee of the premises, as his private residence cannot be said to be on account of his master. It is wrong to contend that when an act is not a civil wrong, it cannot be a criminal offence. Neither English nor Indian Law supports such a contention. S. 141 of the Penal Code cannot be read to lay down the measure of violence which a true owner may use in the assertion of his real right. It only provides for a special remedy in aggravated circumstances. The High Court will not interfere with an acquittal on revision, except in the clear interests of justice. MARGAM AIYAR v. MERCER, **(1914) M.W.N. 124 = 15 Cr.L.J. 225 = 23 Ind. Cas. 177.**

(2)—*S. 7—City of Bombay Municipal Act* (*Bom. Act* III *of* 1888), *s.* 394—*Railway Company storing sleepers on their premises—License from the Municipal Commissioner for the use of premises not necessary.*—The G. I. P. Railway Company used certain plots of land in Bombay for the purpose of storing sleepers (timber) for the use of their line. In the Presidency Magistrate's Court, the Agent of the Company was charged, under s. 394 (i) (*d*) of the City of Bombay Municipal Act, with having used the plots for storing timber without a license from the Municipal Commissioners. *Held*, (1) that no license was necessary, as s. 7 (1) of the Indian Railways Act, IX of 1890, enabled the Railway Company to do all acts necessary for making, maintaining, altering or repairing and using the Railway, notwithstanding anything in any other enactment for the time being in force; (2) that the storing of sleepers was necessary for the maintenance, repairing, etc., of the railway line; (3) that, under sub-s. (2) to s. 7, the exclusive control of the Railway administration was vested in the Governor-General in Council, and if the Company was exercising its statutory powers in a manner inconsistent with the health of the inhabitants of Bombay or the safety of property therein, it was open to the Municipal Commissioners to make a representation to that effect to the Governor-General in Council. MUNICIPAL COMMISSIONER OF BOMBAY v. AGENT, G I.P. RAILWAY COMPANY, **11 Bom. L.R. 1181 = 34 B. 252 = 10 Cr.L.J. 543 = 4 Ind. Cas. 281.**

(3)—*S.* 47 *and rules thereunder—Criminal offences if created.*—Neither s. 47 of the Railways Act, nor the rules made by a Railway Company under that section, create any criminal offence. The section merely gives to the Company power to frame rules and to enforce them by imposing fines on its own officers. *In re* BASANTA KUMAR BANERJI, **11 C.W N. 583 = 5 Cr. L J. 463.** [*R.*, 15 Cr.L.J. 468 = 24 Ind. Cas. 348 = 4 P.R. 1914, Cr. = 155 P.L.R 1914.]

(4)—*S.* 47 — *General Rules—Great Indian Peninsula Railway Working Time Table, O* VII —*Rules not invalid*— Ultra vires—*Guard's duty to see the pair of points to ensure the safety of his train* —The rules in O. VII of the G. I. P. Railway Working Time Table, though not made under s. 47 of the Indian Railways Act, are yet absolutely within the power of the Company to impose, so long as they are not inconsistent with the Railways Act or with the General Rules made under that Act. The rules in O VII are merely administrative orders or executive directions; nevertheless, the Company's servants are bound to obey them There is no inconsistency between the rules in O. VII and the Railways Act or the General Rules made under that Act. The object of r. 1, O. VII, is that the guard of a train waiting at a station on a loop line, in order to enable another train running in the opposite direction to cross at the station, is to prevent a collision with his own train, in other words, he is to secure the safety of his own train by seeing to the particular pair of points which lead into the line occupied by his train. EMPEROR v. DONALD BRUCE WEIR, **12 Bom. L R. 930 = 8 Ind Cas. 134.**

(4-*a*)—S. 47—*See* No. 60, *infra.*

(5)—*Ss.* 47, 68 *and* 112-*a*—*Railway ticket not used on the day of issue.*—One of the rules made by a Railway Company under s. 47 of Act IX of 1890 is that tickets are only available on the day of issue. Therefore, a ticket not so availed of is not a proper ticket within the meaning of s. 68 of the Act. VEERARAGHAVACHARI v. FRENCH, **1 Weir 870.**

(6)—S. 68—*See* No. 5, *supra.*

(7)—*Ss.* 68, 112—*Travelling without ticket—Attempt to cheat—Penal Code, ss.* 417, 511—*Dishonest or fraudulent intention—Offence—Separate sentence—Construction of Statute—General and Special Acts—Repeal by implication—General Clauses Act* (X *of* 1897), *s.* 26.—The essence of an offence under s. 112 of the Indian Railway Act is dishonest or fraudulent intention, the intention to defraud the Railway Administration of its just dues. Merely travelling without a ticket is not an offence under the section. Travelling with a false and entirely irrelevant ticket with fraudulent or dishonest intention is an offence under s. 112 (*a*) of the Railways Act. Facts which form the basis of a conviction and sentence under one charge cannot form the basis of a conviction and also a separate sentence under another charge. There cannot be cumulative sentences though a conviction might take place on an alternative charge or even both charges. It is ordinarily desirable that when an act or omission is made penal by two Acts, one general and the other

I.—Imperial Acts—continued.

Act IX of 1890 (Railways)—*continued.*

special, the sentence should be passed under the Special Act. *Quære.*—Whether in this country a special penal law repeals by implication, in every case, a previously existing general law relating to an offence of the same nature. KULODA PROSAD MAJUMDAR v. EMPEROR, **11 C W.N. 100=4 Cr. L.J. 439=5 C.L J. 47.** (3 Q B.D. 289, 20 A. 95, *R.*).

(8)—*Ss.* 68 *and* 112 *(a)—Conviction under s.* 112 *(a) when sustainable*—To justify a conviction under s. 112 (*a*) of the Railway Act, the prosecution must prove entry into a carriage in contravention of s. 68, that is, without a ticket and fraudulent intent in so doing. The mere fact that a man having a ticket travels beyond the station named on it does not necessarily warrant the inference that he entered the carriage with a fraudulent intent. *In re* SUBRAYA ASARI, **1 Weir 870.**

(9)—*Ss.* 68, 112 *and* 113 — *Intentionally travelling beyond place of ticket.*—S. 112 does not apply to the case of a person, who, having entered a carriage with a proper ticket, travels on the strength of that ticket beyond the place authorised by it. The Act contains no provision for the judicial punishment of a person who intentionally travels beyond the place for which he has "a proper pass or ticket" and the only course open to the Railway officers is to proceed, in such cases, under s. 113 of the Act, which provides for a specially high "excess charge" where the passenger has not, before being detected by a Railway servant, notified to the Railway servant on duty with the train the fact of the charge having been incurred. BENGAL NAGPUR RAILWAY COMPANY v. DEVIDUTT, **9 C.P.L.R. Cr. 1.**

(10)—*Ss.* 70 *and* 114— *Sale or transfer of single ticket.*—Ss. 17 and 114 of the Act apply only to return or season tickets. The sale or transfer of single tickets is neither prohibited nor rendered penal by the Act. Where the accused bought a large number of tickets from the Railway Company during a festival and sold one of them at a rate higher than those for which he had bought them, *held*, that the accused was not guilty of cheating under s. 417, Penal Code, inasmuch as the person who bought the ticket admitted that he was aware of the higher rate and was not misled. *In re* RAMASWAMI NAIDU, **1 Weir 872.**

(11)—*S.* 100 —*Charged and tried under the first part of the section—Procedure as in summons cases—Convicted, under the latter part, of a different offence—Procedure in warrant case—Not followed, effect of.*—A Magistrate proceeded in the first instance as if the case fell under the first part of s. 100 of the Railways Act and adopted the procedure for summons cases. Eventually the accused was convicted of an offence, under the latter part of the section, which contemplates a warrant case. *Held*, that the action of the Magistrate was illegal. *In re* W. P. TROUSDELL, **5 M. L.T. 204.**

(12)—*S.* 101—*Disobedience of Railway rules and endangering the safety of any person, consequence of—Station-Master, duty and responsibility of.*—Rule 247 of the Railway rules, throws on a Station Master the responsibility for ensuring that all points are correctly set and all facing points securely locked for the passage of trains. So, where a Station-Master omitted to inspect the points and satisfy himself that they were correctly set, before he ordered the signal to be lowered, and allowed the mail to enter the station, and the mail in consequence came in on a side line and collided with the goods train there, *held*, he disobeyed the rule which he was bound to obey and thereby endangered the safety of many persons, and that he therefore committed an offence under cl. (*b*), s. 101 of the Railway Act. KING-EMPEROR v. M N. ATCHATA RAMAYYA, **4 L. B.R 350=9 Cr.L.J. 352.** (4 L.B R. 139, *F.*; 32 C. 73, *D.*) [*R.*, 7 Bur.L T. 101=15 Cr.L.J. 17 =22 Ind. Cas. 161=7 L.B.R. 72].

(13)—*S.* 101—*Disobedience of railway rules—Endangering safety of any person – Station master, duties and responsibilities of.*—An Assistant Station-Master, after he gave a line-clear ticket to the guard of a down train waiting at his station, received information from the next station to cancel the line-clear so given, in order to allow an up train proceeding from that station. He at once gave line-clear for the up train to come, but without first taking back the line-clear he had already issued to the guard of the down train. So, before he went out to look for the guard, the down train had started and afterwards met the up train between the two stations, though the driver was able to stop the train in time and avoided a collision. *Held*, the act of giving a line-clear for the up train without first getting back the line clear he had given to the guard of the down train, was a flagrant disobedience of the Railway rules, and that he committed an offence under s. 101 of the Railway Act by endangering the safety of many persons by disobeying a rule which he was bound to obey. KING-EMPEROR v. PO GYI, **4 L.B.R 353=9 Cr.L.J. 348.** (32 C. 73, *D.*) [*D.*, 7 Bur. L.T. 101=7 L.B.R. 72=15 Cr. L.J. 17=22 Ind. Cas. 161.]

(14)—*S.* 101—*Collision—Negligence of station master – Offence.*—Where, in consequence of the omission of a Station-Master to take down the line-clear signal, a mixed train was run into the station and a collision took place, in which one waggon was derailed, but as the train was moving slowly no person was injured, *held*, that the omission on the part of the Station-Master constituted an offence under s. 101, Railways Act. JOY GOPAL BANERJEE v. EMPEROR, **11 C.W.N. 173=5 Cr. L J 16.** (5 N.W.P. 240, *D.*) [*D.*, 11 Cr L.J. 362=6 Ind. Cas. 483=8 P.L.R. 1910.]

(15) -*S.* 101—*Engine-driver starting train without 'line-clear' ticket—No immediate danger — Whether driver guilty — Meaning of "danger."*—A fireman (accused) in charge of a

I.—Imperial Acts—continued.

Act IX of 1890 (Railways)—*continued.*

train breaks the rules of his service and does a rash and negligent act, in starting the train at all, and in driving it down the line, without having been given "line-clear." Although, owing to the distance of the other goods train, running in the opposite direction, and owing to the precautions taken by the drivers of both the trains, the danger was remote, yet a state of danger was created when the accused took his train on to, and proceeded to drive it down, the line. By so doing he "endangered" the 'safety' of the persons on the two trains within the meaning of s. 101. Danger, which means the risk of loss or injury, is a relative term. It may be immediate or remote, but it is none the less danger, because it is remote and there is, therefore, a better chance of avoiding it. Although the danger had been averted by the two trains being brought to a standstill at a distance of some 300 yards from one another, that is practically equivalent to an admission that, up to the time of stopping the trains, there had been danger. FAZAL DIN v. EMPEROR, **13 P.R. 1906, Cr = 59 P.L.R. 1907 = 5 Cr. L.J. 81.** (5 N. W.P. 240, *D.*) [*R.*, 39 P.W.R 1910 = 8 P.L. R. 1910 = 6 Ind. Cas. 483 = 11 Cr. L.J. 362.]

(16)—*S.* 101—*Railway guard failing to give engine driver necessary signal — Consequent injury and death to a boy—Negligence—Penal Code*, s. 304—*Negligence.*—A Railway guard failed to give to the engine-driver a signal to sound his whistle before starting the engine, which he was bound to do under s. 244 of the Railway Rules. The engine having been put in motion, caused a boy, who was painting a waggon on the line, injury which resulted in his death. The Magistrate convicted him, under s. 101, Railways Act, of endangering the safety of persons by a rash and negligent act, and sentenced him to undergo simple imprisonment for one day and to pay a fine of Rs. 20. *Held*, ordering a new trial, that, as the trying Magistrate had found that the injury on the deceased boy was caused by the negligence of the accused and that the boy died thereupon, s. 304-A, I.P.C., appeared more applicable, specially as the trial under it must take place before a higher tribunal. QUEEN-EMPRESS v. FRANCIS THOMPSON, **Rat. Un. Cr. C. 721 = Cr. Rg. 47 of 1894.**

(17)—*S.* 101—*Driver running his train at full speed with danger signals against him—Closed gate.*—Where a driver ran his train at full speed with danger signals against him through a closed gate, *held*, that his act endangered the safety of himself and other persons in the train which he was driving and that the act, therefore, amounted to an offence under s. 101. *In re* APPASAMY, **1 Weir 869**

(18)—*S.* 101—*Railway driver passing danger signal—Gatekeeper sleeping and omitting to open gate.*—For a Railway driver to pass a danger-signal and go when the line is not clear must necessarily endanger the lives of all persons crossing the line as well as those in the train. For a gate-keeper to go to sleep and omit to open the gates is productive of a similar danger. PUBLIC PROSECUTOR v. BENTLEY, **1 Weir 868.**

(19)—*S.* 101—*Gateman being absent not opening gate at the approach of train.*—Where a gateman, being absent on duty, did not open a gate, when the train was approaching, *held* that he was liable to be convicted under s. 101, Act IX of 1890, and that he could not escape conviction because of the contributory negligence of engine driver. QUEEN EMPRESS v. FATHI, **9 P.R. 1892, Cr.**

(20)—*S.* 101—*Endangering life and property by disobedience to rules—Substantial conviction.*—An Assistant Station-Master was charged with an offence under s. 101 of the Indian Railways Act. The offence consisted in the disobedience to the Railway rules, and thereby endangering the safety of persons travelling in a train, which collided with another train containing waggons. The Assistant Station-Master's duty under the rules was, to inspect all facing points over which the train would run, and he was personally responsible that all such points were correctly set and locked for the running through train. He was also responsible that the signals were not lowered, to admit a train, until all facing points over which the train would pass, were correctly set and secured, and the keys of all facing points over which the train would pass were in his possession. The Assistant Station-Master in the case, allowed the signal to be given for a train to run through his station without satisfying himself, that all the prescribed precautions had been taken by an official subordinate to him. Hence the collision. He was convicted and fined Rs. 30 by a Magistrate, who viewed the offence as a mere technical one, considering that the collision was the result of acts and omissions on the part of a subordinate official, the jamadar. *Held*, the Magistrate's opinion as to the offence of the Station-Master being a mere technical one, was wrong and that the station-master, considering the responsibility thrown on him by the rules, and considering also the extent of the danger to life and property, merited a more substantial punishment than the mere fine. *Held*, also that the essence of the offence consisted, not in the consequences directly referable to the default of the Station-Master, but in the danger of risk which it entailed. KING EMPEROR v. DASS **4 L B.R. 139 = 7 Cr. L.J. 417.** [*R.*, 9 Cr. L J. 352 = 4 L.B R. 350; *D*, 15 Cr. L J. 17 = 22 Ind. Cas. 161 = 7 L.B.R. 72 = 7 Bur. L.T. 101.]

(21)—*S.* 101 — *Sanction.*—No sanction is necessary to the institution of a complaint of an offence punishable under s. 101. QUEEN-EMPRESS v. FATTU, **9 P.R. 1892, Cr.**

(22)—*S* 101—*Railway—Rash or negligent act—Act endangering safety of a person.*—Under s. 101 of the Railways Act, the offence consists

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Act IX of 1890 (Railways)—*continued.*

in (1) disobeying rules or doing any rash or negligent act and (2) thereby endangering the safety of any person. It is not sufficient to show that the act of the accused or any omission on his part was likely to endanger the safety of any person. It must be proved affirmatively that it did, in point of fact, so endanger any person's safety. The Assistant Station-Master of Talwandi allowed a goods train to proceed to the next station Dogra, without informing the staff of the latter station of his doing so, and without previously obtaining a line-clear message from that station. A passenger train was nearing Dogra from the opposite direction, and the goods train was detained at the distant signal of the Dogra station till line was clear to receive the goods train. *Held*, that the Assistant Station-Master could not be convicted of the offence under s. 101 of the Railways Act. CROWN v. GANESH DAS, **8 P.L R. 1910, Cr. = 39 P.W.R. 1910 Cr. = 6 Ind Cas. 483.** (13 P R. 1906, Cr. = 59 P.L.R 1907, 4 Bur L.R. 354, 6 M. 201, 4 Bur. L.R. 139, 11 C.W.N. 173, 32 C. 79, 7 P.R. 1892, *R.*)

(23)—*S.* 101—*Conviction under, when sustainable—Mere possibility of endangering safety of some person whether sufficient for conviction.*—A conviction under s. 101 of the Act would not be sustainable unless the Railway servant has, by his disobedience to the rules, *actually* endangered the safety of persons, s. 101 of the Act does not provide for cases in which the disobedience of a rule is merely *likely* or *calculated* to endanger the safety of any person. The intention of the legislature was apparently to leave it to the Railway authorities to deal departmentally with disobediences involving risk of danger without entailing actual danger. BA LIN v. KING-EMPEROR, **7 L.B.R. 72 = 22 Ind. Cas. 161 = 15 Cr. L.J. 17 = 7 Bur. L.T. 101.** (5 N.W.P.H.C. 240, 6 Ind. Cas, 483, *F.*; 4 L.B.R. 139, 4 L.B.R. 350, 4 L.B.R. 353, *D.*)

(24)—*S.* 101—*See* PENAL CODE, s. 304-A, 32 C. 73 = 8 C.W.N. 645.

(25)—*S.* 101, *sub-ss* (*a*), (*b*), (*c*)—"*General Rules and Regulations*" *applied to all Railways in India, r.* 86—*G.I.P.Ry. Working Instructions in force on and after 1st July* 1911—*Rule* 9 *applying General Rule* 86 *for protection of trains standing outside distant signal—Whether charge for breach of r.* 9 *should be under sub-s.* (*a*) *or* (*b*) *of* s. 101 *of the Railways Act—Construction and application of working rules framed by Railway.*—Where a train is stopped outside a distant signal at danger, the omission of the guard to place detonators to protect the train is a disobedience of Rule 9 of G.I.P. Ry. Working Instructions and is punishable under s. 101 (*b*) and not under s. 101 (*a*) of the Railways Act. When the guard of a train charged under s. 101 (*b*) of the Railways Act, the burden of proof that he did not place the requisite number of detonators, as required by General Rule 86, read with rule 9 of the G.I.P. Ry. Working Instructions, is upon the prosecution. That burden can be discharged by the Railway authorities concerned inspecting the line, soon after the accident, and examining whether there were no matellic remnants of a detonator left near the place stated by the accused. The evidence of a District Traffic Superintendent that, under the circumstances of a case, a guard sufficiently complied with the said General Rule 86 (read with the G.I.P. Ry. Rule 9) when, instead of placing all the detonators as required thereby, he placed only one, cannot affect the interpretation of a rule which must be interpreted according to the ordinary rules of interpretation. But the opinion of such a witness will have to be taken into consideration when deciding the question of punishment. The standing of a train outside a distant signal at danger is an "authorised" detention and not on account of any "accident, failure, or obstruction." When the signals are lowered the delay or "stoppage" for nearly ten minutes in attempting to climb up a steep gradient is an "incidental" one within the meaning of General Rule 86. The wording of the G.I P. Ry. Rule 9, sub-rule 4, is somewhat inappropriate. When the Court finds that a man in the position of a District Traffic Superintendent mis-reads a rule, it should make allowance for an uneducated man, and infer that there may have been an error of judgment on the part of the accused. BEZANJI v. EMPEROR, **14 Cr. L.J. 676 = 21 Ind. Cas. 996.**

(26)—*S.* 101, *Rules* 99 (*c*), 100—*Endangering safety of passengers—Station Master—Line clear—Shunting on the line—Derailment of a waggon in shunting—Driver of the approaching train rushing in against danger signals—Collision—Liability of Station Master.*—The accused, the Station Master of Kodabgoan, admitted a goods train on the chord line of his station. He then asked the driver of the goods train to detach his engine and shunt nine waggons from the loop line where they were standing to a dead end siding to make room for the down mail. On being asked for line clear from the next station for an up passenger train, the accused gave line clear. The nine waggons were taken from the loop to the main line, and whilst they were being shunted into the dead end siding, one of the waggons got derailed at the point where the siding joined the main line. At this time the distant and home signal were up against the passenger train. The driver of the passenger train however disregarded both danger signals and dashed into the derailed waggon causing injury to two of the passengers and the guard. The accused was on these facts tried under s. 101, Railways Act, for having endangered the safety of persons by breach of the rr. 99 (*c*) and 100. The Magistrate acquitted the accused on the ground that the act which led to the collision was the act of the driver of the up passenger train in disregarding the signals. On appeal by the Government: *Held*, setting aside the order of acquittal, (1) that the object of

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r. 100 being to lessen the risk of accidents through shunting on a through line after line clear had been given, the disregard of the rule enhanced the danger to passengers, and the risk thus entailed rendered the rule-breaker liable to punishment. (2) That, as regards punishment, the gravity of the offence should be estimated not by the actual ultimate consequences but by the risk involved, for the rule-breaker might be punished even though no accident occurred. EMPEROR v. RAMACHANDRA HARI, **15 Bom. L.R. 702 = 2 Bom. Cr C. 109 = 14 Cr.L.J. 460** = 20 Ind. Cas. 620 = **37 B. 685**.

(27)—Ss. 102, 108, 109, 120— *Passenger defined—Resisting an attempt by a Railway servant to put into carriage more passengers—Assault—Indian Penal Code (Act* XLV *of* 1860), s. 352.—*Held*, that, if a person objects to the coming in of more passengers, and stands against the door, he commits an offence falling under ss. 109 (2) and 120 (*c*) of Act IX of 1890, and is liable to removal, not only from the carriage, but also from the Railway by any Railway servant, and the latter does not commit an offence of assault under s. 352, I.P.C., or any other offence, if, in ejecting the passenger, he does not use more force or violence than is actually necessary for the purpose. *Held*, also, that, for the purposes of various sections of the said Act, *e.g.*, 102, 108 and 109, a person who is a ticket-holder is regarded as a passenger, even before he has actually boarded the train. HARI SARUP SALEKH CHAND ABDUL BASIT v. CROWN, **31 P.W.R. 1910, Cr. = 7 Ind. Cas. 355 = 11 Cr.L.J. 451 = 26 P.R. 1910, Cr. = 200 P.L.R. 1910.**

(28)—S. 107—*See* RASH AND NEGLIGENT ACT, CAUSING DEATH BY, 24 P.L.R. 1905 = 2 Cr.L.J. 207 = 22 P.R. 1905, Cr.

(29)—Ss. 107 and 134—Jurisdiction of Criminal Court - Goods sent by Railway from Karachi to Lahore—Goods falsely described—Loss in freight caused to Railway Administration—Cheating—Penal Code, s. 415—Abetment—Penal Code, s. 107—*See* GULAM ALI v. EMPRESS, **7 P.R. 1900. Cr.** [*F.*, 18 P.W.R. 1908, Cr.; *R.*, 172 P.L.R. 1910 = 7 P.R. 1910 = 7 P.W.R. 1910 = 5 Ind. Cas. 830 = 11 Cr.L.J. 253.]

(30)—S. 108 – *See* No. 27, *supra*.

(31)—S. 109—*See* No. 27, *supra*.

(32)—S. 110—" *Compartment*," *meaning of Smoking in compartment.—Per Jenkins, C. J., and Candy, J.*—The term "compartment" in s. 110, Indian Railways Act, 1890, means a division of a Railway carriage, separated from the other divisions by partitions right up to the roof of the carriage; each such division being completely screened off from its adjoining divisions. *Per Ranade, J., contra* :—The word "compartment" is used in s. 110, Act IX of 1890, in the sense in which it is used throughout the Act, and does not necessarily mean a completely partitioned division. *In re* DADABHAI JAMSEDJI, **24 B. 293 = 1 Bom. L.R. 688.**

(33)—*S.* 112—*Entry into Railway carriage without ticket.*—The mere entry into a Railway carriage without ticket, without any intent to defraud the Company, does not constitute an offence under s. 112, Act IX of 1890. KING-EMPEROR v. ATTA ULLAH, **27 P R. 1905, Cr. = 124 P.L.R. 1905.**

(34)—*S.* 112—*Act* IV *of* 1879, *s.* 32—*Father travelling with son aged six years without paying latter's fare.*—Where the accused travelled in company with his son, aged six years, from one station to another station on a railway line without paying the half fare due to his son, *held*, that, even though the accused was not guilty as the principal offender, he was clearly liable as an abettor, to be punished under s. 32. HIGH COURT PROCEEDINGS, 15TH DEC. 1879, **1 Weir 869, F.B.**

(35)—S. 112—*Railway fare — Fine.*—The reference in s. 112 of the Railways Act to the amount of the single fare does not mean that the payment of such fare may be ordered in addition to the fine but that the total fine imposed shall not exceed Rs. 100 *plus* the fare referred to. EMPEROR v. ABDUL, **17 C.P.L.R. 32.**

(36)—S. 112 (*a*)—Travelling with forged pass —*See* PENAL CODE, ss. 419, 511, 21 M L.J. 748 = 11 Ind. Cas. 590.

(37)—S. 112—*See* Nos. 5, 7, 8, and 9, *supra*.

(38)—*S.* 113—*Excess charge and fare, how recoverable—Imprisonment in default.*—S. 113, sub-s. 4 of the Railways Act, which direct that on failure to pay on demand excess charge and fare when due, the amount shall, on application, be recovered by a Magistrate as if it were a fine, does not authorize him to impose imprisonment in default. QUEEN-EMPRESS v. JAMES CROWSON, **1 Bom. L.R. 166.** (18 B. 440, 20 M. 1, *F.*) [*F.*, 10 Cr. L.J. 519 = 4 Ind. Cas. 236 = 5 N.L R. 151.]

(39)—S. 113—*Scope of.*—The provision in s. 113 of the Railway Act, which directs that, on failure to pay on demand excess charge and fare when due, the amount shall, on application, be recovered by a Magistrate as if it were a fine, does not authorize the Magistrate to impose imprisonment on default. The excess charge and fare referred to in s. 113 is not a fine, though it may be recovered as such. QUEEN-EMPRESS v. KUTRAPA, **18 B. 440.** [*F.*, 20 M. 385, 1 Bom.L.R. 166, 5 N.L.R. 151; *R.*, 21 C. 985.]

(40)—*S.* 113—*Scope of*,—S. 113 of the Railway Act directs that on failure to pay on demand excess charge and fare, when due, the amount shall, on application, be recovered by

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a Magistrate as if it were a fine. The excess charge and fare referred to in s. 113 is not a fine, though it may be recovered as such. A Magistrate is not authorised to impose imprisonment in default of payment of the excess charge and fare. QUEEN-EMPRESS v. SUBRAMANIA AIYAR, **20 M. 385 = 1 Weir 871.** [*F.*, 10 Cr. L.J. 519 = 4 Ind. Cas. 236 = 5 N.L. R. 151.]

(41)—*S.* 113—*Application to recover excess fare—Magistrate not to exercise judicial functions—Procedure*—A Magistrate is not to exercise judicial functions when an application is made to him by a duly authorized Railway servant to recover the amount of excess fare claimed, but is merely to take the necessary steps to recover it. QUEEN EMPRESS v. ALEXANDER AUGUSTUS ST. CLAIR MILLER, **L.B.R 1872—1892, 606.**

(42)—*S.* 113—*Excess fare and charge—Applicability of s.* 64, *Penal Code.*—S. 5 of the General Clauses Act makes s. 64 of the Penal Code applicable to the recovery of excess charge and fare ordered to be paid under s. 113 of the Indian Railways Act. QUEEN EMPRESS v. VAIDYALINGAM, **Rat. Un. Cr. C. 871 = Cr. Rg 43 of 1896.**

(43)—*S.* 113—*Magistrate's order under the section—Revision.*—A Magistrate's proceedings under s. 113, are open to revision under s. 435, Crim. Pro. Code. A. GREY v. NORTH-WESTERN RAILWAY, **13 P R. 1891 Cr.** (14 B. 381, *R.*) [*R.*, 11 Cr. L.J. 577 = 8 Ind. Cas. 190 = 35 P.W.R. 1910. Cr.]

(44)—*S.* 113, *sub-s.* 1—*Travelling without a ticket.*—Under s. 113, sub-s. 1 of the Act, it is an offence to travel without a ticket. It is immaterial to consider how many tickets were issued on that particular date. PANCHABIKESA AIYAR v. BONJOUR, **1 Weir, 871.**

(45)—S. 113—*See* No. 9, *supra.*

(46)—*Ss.* 113, 118, 122—*Amount recoverable under s.* 113—' *Should be recovered as if it were a fine* '—*Imprisonment in default of payment—Legality—Travelling on the footboard without ticket—Applicability of ss.* 118, 122.—B was found travelling without a ticket on the footboard of the brake-van of a goods train. Under s. 113, Railways Act. he was ordered to pay Rs. 1-10-0 and to suffer, in default of payment seven days' simple imprisonment. *Held* (1) that the words ' shall be recovered as if it were a fine ' in s. 113 of the Act only authorize recovery by attachment and sale of moveable property, and not the infliction of imprisonment in default of payment. *Obiter.*—If B persisted in riding on the footboard after prohibition, he is liable to prosecution under the second clause of s. 118 of the Railways Act, whilst, if there was no such prohibition before he was finally discovered and removed, but he entered on the railway unlawfully, he is liable to prosecution under s. 122. EMPEROR v. BULLAKHI. **5 N.L R. 151.** (1 Bom. L.R. 166. 20 M 385, *F.*)

(47)—*Ss.* 113, 132—*Travelling without ticket—Imprisonment in default of payment of fine.*—Travelling in a train by a passenger without having a proper ticket with him is not an offence under the Railways Act of 1890. A Magistrate is not, therefore, competent to sentence the accused to imprisonment in default of payment of the excess charge and penalty ordered to be paid. QUEEN-EMPRESS v. RAM PAL, **20 A. 95 = A W.N. 1897. 196.** [*R.*, 5 C.L.J. 47 = 11 C.W.N. 100 ; 11 Cr. L.J. 577 = 8 Ind. Cas. 190 = 35 P.W.R. 1910. Cr.]

(48)—*Ss.* 113, 132 *and* 133—*Application of s,* 133—*Court Fees Act, s.* 31—A person failing or refusing to pay an excess charge under s. 113 does not become guilty of an offence, and cannot be punished by a Magistrate, whose duty it is to recover a sum payable by a passenger as if it were a fine. S. 133 does not apply to proceedings under s. 113 ; neither does s. 31 of the Court Fees Act. QUEEN-EMPRESS v. NGA KYAN SWA, **U.B.R. 1892—1896, Vol. I, 300.** (L.B.R. 1872—1892, 606, *R.*)

(49) S. 114—*See* No. 10, *supra.*

(50)—*S.* 118 (*Railways Act*, V *of* 1879, *s.* 33)—*Applicability of the section to non-passengers.*—Where the accused, a seller of fruit at the platform of a railway station, stood on the footboard of the carriage selling fruit to the passengers and continued so to stand after the bell for the departure of the train had been rung, *held* that the accused, not being a passenger, was not punishable under s. 33 of Act IV of 1879. HIGH COURT PROCEEDINGS, 15TH DEC. 1879, No. 2274, **1 Weir 873.**

(51)—*S.* 118—*Passenger—Licensed sweetmeat seller—Standing on foot-board of a carriage in motion to recover dues.*—The accused a licensed sweetmeat seller at a railway station, stepped a foot board of a carriage in motion, to recover the price of some sweets he had sold to a passenger, and got down shortly after. For this act, he was convicted under s. 118 (2), Railways Act. The accused having applied to the High Court : *Held*, reversing the conviction and sentence, that the accused was not a passenger within the meaning of s 118, Railways Act ; and that the word "passenger" in the section denoted a person who, without the permission of a railway servant, entered any carriage of a railway for the purpose of travelling therein as a passenger. EMPEROR v. LADHU RAMJI JESSA, **15 Bom. L.R. 996 = 2 Bom. Cr. C. 163 = 14 Cr. L.J. 654 = 21 Ind. Cas. 894.**

(52)—S. 118 (2)—*See* CHEATING—GENERAL, 25 P.R. 1903, Cr.

(53)—S. 118 (2)—*See* PASSENGER, 31 P.R. 1905, Cr = 2 Cr. L.J. 711.

(54)—S. 118—*See* No. 46, *supra.*

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(55)—S. 120—*See* PENAL CODE, s. 95, 1 N. L.R. 139.

(56)—S. 120—*See* No. 27, *supra.*

(57)—*S.* 121 — *Right of way claimed by accused, charged with obstructing a Railway servant.*—A Railway Company, cannot any more than a private individual, by their orders, make it the duty of their agent to interfere with an existing right of way. Where the accused was convicted under s. 121, Railway Act, with having obstructed the Resident Engineer in putting down a line for a fence, which the accused alleged would have interfered with his right of way. *held* that the conviction of the accused without deciding whether or not the alleged right of way existed, was not proper. QUEEN-EMPRESS v. BOMANJI, **Rat. Un. Cr. C. 675** = **Cr. Rg. 41 of 1893.**

(57-*a*) Ss. 121, 122—*See* PENAL CODE, S. 186, 1 C.W.N. 74.

(58) – *S.* 122—*Easements Act, s.* 24 – *Entry on railway premises by dominant owner to effect necessary repairs.*—The Company, whose servants the accused were, had a mill on one side of the Railway line and a ginning factory on the other, and to bring water from the one to the other, there was a pipe laid beneath the Railway line and brick reservoirs at each side to preserve the proper level of the water. The Magistrate had convicted the accused under s. 122, Railway Act, because they entered on the railway premises to do some repairs to the pipe and reservoirs, without having first obtained the permission of the Railway Company to their entry. There was evidence to show that the repairs were necessary. *Held* that as the pipe and reservoirs belonged to the Company, and were kept in repair by them, they, as the dominant owners, would have a right to enter on the premises of the Railway Company, the servient owners, to effect any repairs that might be necessary. The conviction was, therefore, wrong. IMPERATRIX v. VANMALI, 22 **B. 525.** [*R.*, 30 B. 348 = 8 Bom. L.R. 22 = 2 Cr. L.J. 216.]

(59)—S. 122 – *See* Nos. 1, 46 ane 57-*a*, *supra*

(60)—*Ss.* 122, 47—*Crossing railway lines without permission—Offence under s.* 122—' *Unlawfully in s.* 122—*Meaning—Absence of by-law under s.* 47 (1)(*g*)—*Effect—S.* 122 *not affected by s.* 47.—Where a person crossed the railway lines without permission, in order to go to the goods shed after transacting business with the Station Master, *Held*, that his entry was unlawful within the meaning of s. 122 of the Railways Act and that he was guilty of the offence specified in the first part of the section. The word ' unlawful,' as used in s. 122, means ' without the leave of the Railway Administration.' S. 47 of the Railways Act has no bearing on the question and no by-law properly made under cl. (*g*), sub-s. 1 of s. 47, would have reference to a trespass by a member of the general public upon Railway lines as contemplated by s. 122. MOHAN MALICK v. CROWN, **4 P.R. 1914, Cr. = 155 P.L.R. 1914 = 15 Cr. L. J. 468 = 24 Ind. Cas. 348.**

(61)—*S.* 125—*Cattle left in charge of keeper—Permitting them to stray on a Railway—Liability of owner.*—The owner of cattle, which have been allowed to stray upon a railway in consequence of the negligence of their keeper, is not liable to punishment. GUR PRASAD GIR v. KING-EMPEROR, **8 A L J. 1249 = 12 Ind. Cas. 990 = 34 A. 91 = 12 Cr. L.J. 614.** (18 M. 228, *F.*)

(62)—*S.* 125, *cls.* 1 *and* 2—*Permitting cattle to stray upon Railway—Respective liability of the owner and of person in charge of the cattle—Direction of Magistrate.*—Where, owing to the negligence of the person in charge of any cattle, the cattle is allowed to stray upon a Railway, there is nothing in cl. 1 of s. 125 to restrict the discretion of the Court in ascertaining whether the owner or the person in charge is guilty, and awarding punishment accordingly. But, under the second clause of the section, which makes punishable wilful acts of driving or knowingly permitting cattle to be upon a Railway line, the Railway authorities are given the option to prosecute the owner instead of the person in charge. This provision is of a very penal character, and removes the discretion as to the person to be held liable to punishment from the Court to the Railway authorities. QUEEN-EMPRESS v. ANDI, **18 M. 228 = 1 Weir 874.** [*F.*, 34 A 91 = 8 A.L.J. 1249 = 12 Cr. L J. 614 = 12 Ind. Cas. 990.]

(63)—*S.* 126—*Offence under the section, what constitutes.*—Where the accused unlocked and turned the turn-table at a railway station, *held*, that the accused was guilty of an offence under s. 126, although, in the circumstances of the case, there was little likelihood of injury being caused by him, no engines being on either side of the line just then. *In re* MUNISAMI, **1 Weir 875.**

(64)—*S.* 126—*Placing stones on rails—Defence.*—A person charged with having placed a stone on the rails under s. 126 of the Railways Act cannot be allowed to plead that no train was due at the time. QUEEN-EMPRESS v. KESHOW VIRUPAKSH, **Rat. Un. Cr. C. 829** = **Cr. Rg. 72 of 1895.** (19 B. 716, *F.*)

(65)—*S.* 126—*Abetment of the offence.*—Where a person confessed that he knew of the plot to remove the rails and that he kept watch while the act was being done, *held* that he was guilty of abetment of the offence mentioned in s. 126, Railways Act. QUEEN-EMPRESS v. KALIA KATIA, **1 Bom. L.R. 682.**

(66)—*Ss.* 126 *and* 130—*Throwing stones at a railway train.*—An offence under s. 126 cannot be tried by a Magistrate of the first class. All such cases should be sent to the District Magistrate for trial. Provision for the whipping of

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minors under the Act pointed out. QUEEN-EMPRESS v. NGA PO SAW, U.B.R. 1892-1896, **Vol. I, 302.**

(67)—S. 127—*See* ACT VI OF 1864, s. 5, 11 C.P.L.R. 8, Cr.

(68)—*Ss.* 127 *and* 130—*Offences under—Jurisdiction to try.*—An offence under s. 127 of the Railways Act is punishable with transportation for life, or with imprisonment for a term which may extend to ten years, and is triable only by a Court of Session, or by a Magistrate invested with special powers under s. 30 of Crim. Pro. Code. EMPEROR v. MANGLIA, **14 C.P.L.R. 176.**

(69)—S. 128—*See* CRIM. PRO. CODE, 1898, ss. 235, 239, 537, 29 C. 385=6 C.W.N. 468.

(70)—S. 130—*See* Nos. 66 and 68, *supra.*

(71)—*S.* 131—*Crim. Pro. Code* (1898), s. 190 (1) (*h*).—This section is not one of those mentioned in s. 131 which confers the power of arresting without warrant for certain offences under the Act, and the procedure applicable to non-cognizable cases must be followed QUEEN-EMPRESS v. JARGISSA, **U B.R. 1897—1901, Vol. I, 54.** (U.B.R. 1897—1906, Vol. I, 28, 328, *R*)

(72)—S. 132—*See* Nos. 47 and 48, *supra.*

(73)—*S.* 133—*Offences under section by whom triable.*—Under s. 133 of the Railways Act, offences under that Act cannot be tried by Magistrates of the third class. QUEEN EMPRESS v. MI KIN, **U.B.R. 1897—1901, Vol. I, 374.**

(74)—S. 133—*See* No. 48, *supra.*

(75)—S. 134—*See* No. 29, *supra.*

(76)—S. 138—*See* No. 1, *supra.*

(77)—R. 99—*See* No. 26, *supra.*

(78)—R. 100—*See* No. 26, *supra.*

Act XI of 1890 (Prevention of Cruelty to Animals).

[DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3; AS AMENDED BY REG. III OF 1899, S. 3, IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Ss.* 2 *and* 3—*Scope of the Act—Crabs.*—The provisions of the act apply to cruelty exercised towards any animal which is either domestic or which being *feræ naturæ* has been captured and is in captivity. A crab being an animal, it may be presumed, in the absence of proof to the contrary, that to pull the legs of a living crab and to crush its shell are acts, which must necessarily cause pain to it. So long as an animal is *feræ naturæ*, and it is not brought under subjection and control of man, it is not protected by the Act. But when it is captured or domesticated, the law protects it from cruelty, if such cruelty is practised at

I.—Imperial Acts—continued.

Act XI of 1890 (Prevention of Cruelty to Animals)—*continued.*

a place, or in the manner, laid down in the Act. *In the matter of* TULSI BEWA, **1 C.W.N. 642.**

(2)—*Ss.* 2 *and* 3—*Scope of the Act—Crabs.*—The provisions of Act XI of 1890 applied to cruelty exercised towards any animal which is either "domestic" or which being *feræ naturæ* has been "captured" and is in captivity. The word 'animal' ordinarily means an organised or living being having sensation and power of voluntary motion, an inferior or irrational being as distinguished from man, and crabs are "animals" within the definition of s. 2 of the Act. Where a person exposed live crabs for sale with all their legs pulled off, and broke the backs of some living crabs with the shell of a dead crab, *held*, that he was guilty under s. 3 of the Act. TULSI BEWAH v. SWEENEY, **24 C. 881.**

(3)—*S.* 3—*Whether the offence must be committed within sight of any person—Preparation of 'piri' dye from cow's urine.*—Where it was found that the petitioner tortured his cows by depriving them of water and these cows were tied up and where the sufferings of the animals could be witnessed by persons from the lane on which the house of the petitioner was situated. *Held*, that the offence comes within the purview of s. 3 of the Prevention of Cruelty to Animals Act. MISRI GOPE v. ABDUL LATIFF, **17 C.W.N. 332=18 Ind. Cas. 884=14 Cr. L.J. 132.**

(4)—*S.* 3, *cls.* (*a*), (*c*)—*Starving a calf to death—Ill-treatment, if includes starvation.*—The mere starving a calf to death is not an offence within the meaning of s. 3, cl. (*c*) of the Act, which applies only where a person offers, exposes or has in his possession, for sale, any live animal. Starvation, however, is, in view of the collocation of words in the said section, one kind of ill-treatment, and the words "otherwise ill-treats any animal" in s. 3, cl. (*a*) include starvation of an animal. MALUKA GOALA v. EMPEROR, **2 C.L.J. 624=3 Cr. L J. 116.**

(5)—*S.* 3 (*b*)—*Town Police Act,* XLVIII *of* 1860, *s.* 21—*Cruelty to animals by servants of Railway Company—Liability of Company.*—Act XI of 1890 is aimed at the individual who actually practises the cruelty and was not intended by the Legislature to make a master penally liable for the act of his servant done in the course of the servant's employment, and certainly not when the act is done contrary to the orders of the master. When a Railway Company's servant inflicts cruelty to animals in spite of the Company's instructions to the contrary, the Company cannot be prosecuted for the acts of their servant under s. 3 (*b*) of Act XI of 1890. CAWASJI MERWANJI SHROFF v. THE GREAT INDIAN PENINSULA RAILWAY COMPANY, **26 B. 609=4 Bom. L.R. 209.**

I.—Imperial Acts—continued.

Act XI of 1890 (Prevention of Cruelty to Animals)—*concluded.*

(5-*a*)—S. 3—*See* Nos. 1 and 2, *supra.*

(6)—S. 5 — *See* CRIM. PRO. CODE. 1898, ss. 190, 191, 260 and 537, 31 P.L.R. 1905=2 Cr. L.J. 187.

(7)—*S.* 6 (1)—" *Permit,*" *explained.*— The word "permit" in s. 6 (1) of Act XI of 1890, implies knowledge of that which is permitted. QUEEN-EMPRESS v. LALTA PRASAD, **20 A. 186=A.W.N 1898, 20.** [*R.*, 9 A.L.J. 262=14 Ind. Cas. 658=13 Cr. L.J. 274.]

(8)—*S.* 6 (1)—"*Permit,*" *meaning of—Act done in spite of precautions.*—Where a man takes all precautions to prevent the doing of an act and in spite of his precautions such act is done, it cannot be said that he has permitted the doing of that act. BAIJNATH DUBE v. KING-EMPEROR, **9 A.L.J. 262=14 Ind. Cas. 658=13 Cr. L.J. 274.**

(9)—*S.* 6 (1)—*Charge against both coachman and owner, whether illegal.*—There is nothing in s. 6 (1) of Act XI of 1890 restricting the prosecution of either the "coachman or the owner." The prosecution of both or one after another is not illegal. A conviction of one does not operate as a bar to the trial of the other. EMPEROR v. RICE, **15 Cr. L.J. 695=26 Ind. Cas. 143.**

Act IV of 1891 (Crim. Pro. Code, 1882, Amendment Act).

[SHORT TITLE GIVEN, ACT XIV OF 1897. REP., ACT V OF 1898.]

(1)—*Crim. Pro. Code* (1882), *ss.* 250 *and* 560 —*Order of compensation—Person not really the complainant.*—A Civil Court peon was sent by a Munsiff to attach the property of a judgment-debtor. The peon reported to the Munsiff that he had been obstructed. The Munsiff sent the case to a Deputy Magistrate for investigation and trial. The Magistrate dismissed the case and directed the peon to pay compensation to the accused. *Held*, that the award of compensation was illegal, as the peon was not the real complainant, nor could the proceedings properly be said to have been instituted before the Magistrate upon his information. BHARUT CHUNDER NATH v. JABED ALI BISWAS, **20 C. 481.** [*F.*, 26 A. 183=A.W.N. 1903, 216; 11 Cr. L.J. 634=8 Ind. Cas. 382=25 P.R. 1910, Cr.=195 P.L R. 1910, 52 P.W.R. 1910, Cr.; *R.*, 1 Bom. Cr. C. 237=14 Bom. L.R. 1166=14 Cr. L.J. 1=18 Ind. Cas. 145.]

(2)—*See* COMPENSATION—TO COMPLAINANT AND HIS RELATIVES, A.W.N. 1891, 120.

Act IX of 1891 (Merchandise Marks and Sea Customs Acts Amendment).

[SHORT TITLE GIVEN, ACT XIV OF 1897.]

See ACT IV OF 1889.

See TRADE MARK, 31 C. 411.

I.—Imperial Acts—continued.

Act XVIII of 1891 (Banker's Books Evidence).

[AMENDED, ACT I OF 1893, ACT XII of 1900. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1899; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Ss.* 2 *and* 4—*Companies not coming under the Act—Admissibility of certified copies of entries.*—Certified copies of entries in the books of a Bank are not admissible in evidence, if the Bank does not come within the definition of a "company" as defined in sub s. 2 of the Act. EMPRESS v. PATRICK MCGUIRE, **4 C. W.N. 433 F.B.**

(2)—S. 4—*See* No. 1, *supra.*

Act I of 1894 (Land Acquisition).

[APPLIED TO THE CALCUTTA MUNICIPALITY, WITH MODIFICATIONS. BEN. ACT III OF 1899, S. 557. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XII OF 1898, S. 4.]

(1)—*See* CRIM. PRO. CODE, 1898, s. 476, 27 C. 820.

(2)—*See* PENAL CODE, s. 193, 27 C. 820.

(3)—*Ss.* 9 *and* 10—*Penal Code, s.* 177—*False information to Collector in proceedings under Act I of* 1894.—A Deputy Collector made a complaint against the lessor and the lessee, claiming to hold a portion of the land taken up, under the Land Acquisition Act, that they had given false information within the terms of s. 177, Penal Code and s. 10 of the Land Acquisition Act in certain written statements that they had made to the Collector in response to a call from him under s. 9. But, neither in the complaint made by the Deputy Collector nor in his examination by the Magistrate was there any reference to any particular statement made by either of the accused as being a false statement. The complaint was that the written statements put in were false and they contained more than one statement. Further, the Deputy Collector did not put in the written statements upon which he desired to proceed, either with his written complaint or at the time of his examination by the Magistrate. *Held*, that the Magistrate had acted without proper discretion in issuing process for the attendance of the accused. He was bound to require from the complainant the particular statement or statements on which the accusation was made. DURGA DAS RAKHIT v. UMESH CHANDRA SEN, **27 C. 985=5 C.W.N. 131.**

(4)—S. 10—*See* No. 3, *supra.*

(5)—*S.* 53—*Collector acting under the Act, whether a* "*Court*"—*Power of Collector to administer oath.*—S. 53 of the Act declares that the provisions of the Code of Civil Procedure applies to the proceedings before the Court

I.—Imperial Acts—continued.

Act I of 1894 (Land Acquisition)—*concluded.*

under that Act. But the context clearly shows that by the expression "the Court" a Collector is not included. The whole of Part VIII of the Act in which s. 53 appears distinguishes between orders by or before a Collector and those by or before a Judge or Court. There is no authority given to the Collector to administer an oath or to require a verification. The nature of his duties also shows this, as he can pass no final order save with the consent of parties. DURGA DAS RUKHIT v. QUEEN EMPRESS, **27 C. 820.**

Act IX of 1894 (Prisons).

[REP. IN PT., ACT XIII OF 1898, S. 18. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

See ACT XXVI OF 1870.

(1)—S. 42—*See* SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC., 14 P.R. 1895, Cr.

(2)—*Ss. 45 and 52—Separate sentences*— Separate sentences should not be passed under ss. 45 and 52 at the same trial. CRIMINAL REVISION CASE No. 984 OF 1892, **U.B.R. 1892—1896, Vol. I, 298.**

(3)—*S. 52—Trial — Procedure.*— Where a Magistrate deals with an offence under s. 52 of the Prisons Act, he must frame a charge and record the examination of the accused under s. 364 of the Crim. Pro. Code and proceed otherwise in a regular manner. QUEEN-EMPRESS v. JAGANNATH, **A W N. 1900, 183.**

(4)—*S. 52—Presidency Magistrate, whether a "District Magistrate" or "Magistrate of the First Class" under—Jurisdiction to try offences under the Act.*—*Held*, that ordinarily a Presidency Magistrate would not be included in the terms "District Magistrate" or "Magistrate of the First Class," and that therefore a Presidency Magistrate has no jurisdiction to try offences under s. 52, Act IX of 1894. EMPEROR v. CHOTA SINGH, **32 M. 303.**

(5)—S. 52—*See* No. 2, *supra.*

(6)—*S. 54—Conviction of prison warder—Rule 217 of Jail Manual.*—The Magistrate convicted a prison warder under s. 54 read with Rule 217 of the Jail Manual. But the accused was not a constable of the jail police guard and jail police guards became obsolete in 1884. As the accused was convicted under a rule not applied to him, the conviction was quashed. CRIMINAL REVISION CASE No. 521 OF 1892, **U.B.R. 1892-1896, Vol. I, 299.**

(7)—*S. 54—Disobedience of rules in Jail Manual—Whether penal—Duty of medical subordinate to submit to search—Refusal to submit whether offence.*—The accused was a subordinate medical officer in a jail. He was suspected of having conveyed a letter to the relation of a prisoner. The jailor ordered him to

I.—Imperial Acts—continued.

Act IX of 1894 (Prisons)—*concluded.*

submit to be searched and he refused. *Held* that breach or disobedience of the rules in the Jail Manual is no doubt made penal by s. 54 of the Prison's Act; but it is no part of the duty of a medical subordinate to submit to search, and there is no rule which imposes upon an officer of prison any duty to submit to search *qua* prison officer, and in refusing to submit, the medical subordinate did not commit any offence under s 54 of the Act. IMPERATOR v. GOBINDRAM KIRPARAM, **7 S. L.R. 49 = 14 Cr. L J. 619 = 21 Ind. Cas. 667.**

(8)—S. 60 (*t*)—*See* LOCAL GOVERNMENT, Rat. Un. Cr. C 827 = Cr. Rg. 70 of 1895.

Act III of 1895 (Criminal Law Amendment).

[SHORT TITLE GIVEN, ACT XIV OF 1897; S 5, REP., ACT IV OF 1909; S. 6 REP., ACT V OF 1900; S. 7, REP., ACT VI OF 1898. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3. AS AMENDED BY REG. III OF 1899, S. 3.]

(1)—*Sentence of whipping when to be executed.*—It is not competent to a Judge to postpone a sentence of whipping till after the expiry of a sentence of imprisonment imposed upon the accused. EMPEROR v. JAGANNATH SAGAR, **4 Bom.L.R. 929.**

(2)—*See* ACT VI OF 1864, 4 Bom. L.R. 436.

(3)—CRIM. PRO. CODE, s. 391 (3), 4 Bom. L.R. 436.

(4)—*S. 4—Whipping in addition to imprisonment in case of dacoity.*—Under s. 4 of the Whipping Act, 1895, a sentence of whipping in addition to imprisonment is not legal in the case of a conviction for dacoity which was committed prior to the previous conviction for a similar offence. KING-EMPEROR v. BABYA BHIVA, **25 B. 712 = 3 Bom. L.R. 419, F.B.** (3 B.H.C. Cr. 38, 7 B.H.C. Cr. 70, *F.*)

Act VIII of 1895 [Police Act (1861) Amendment.]

[SHORT TITLE GIVEN, ACT XIV OF 1897. REP. IN. PT. (IN RANGOON), BUR. ACT IV OF 1899, S 2 (WHEN NOTIFIED). PORTIONS EXTENDED TO CALCUTTA AND SUBURBS, WITH MODIFICATIONS, BEN ACT I OF 1898, S. 5. REP. IN. PT. IN N.W. FRONTIER PROVINCE, REG. VII OF 1901, S. 3. DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, s. 3.]

(1)—*See* ACT V. OF 1861, ss. 30, 31, L.B.R. 1893—1900, 394.

(2)—S. 34—*See* ACT V OF 1861, s. 34, 27 C. 655.

I.—Imperial Acts—continued.

Act VI of 1896 (Penal Code Amendment).

[SHORT TITLE GIVEN, ACT XIV OF 1897. DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

See PENAL CODE, ss. 28, 230, 235, 47 P.L. R. 1903.

Act XI of 1896 (Legal Practitioners).

[SHORT TITLE GIVEN, ACT XIV OF 1897.]

See ACT XVIII OF 1879.

(1) — *See* REVISION — MISCELLANEOUS CASES, P.L.R. 1900, p. 17, Cr.

(2)—*See* TOUT, 27 P.W.R. 1909, Cr. = 4 Ind. Cas. 1022 = 11 Cr. L.J. 148.

Act XII of 1896 (Excise).

[S. 1 (2) REP. IN PT. (AS TO BURMA), ACT XIII OF 1898; S. 18 REP. IN PT. AND AM. IN N.-W. FRONTIER PROVINCES, REG. VII OF 1901, S. 3; SS. 3, 65 SUPPLEMENTED IN BURMA, BUR. ACT III OF 1904; SS. 3. 18, 21 AM., ACT VII OF 1906. DECLARED IN FORCE IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*Possession of intoxicating drug, when punishable under—Possession of hemp whether punishable under*—Majum, *whether an intoxicating drug—Evidence Act, s. 25—Incriminating statement made by the accused to Police officer, whether admissible in evidence.*—Possession of an intoxicating drug to be punishable must be possession with knowledge and assent. The Excise Act does not render the possession of hemp punishable, but only the possession of *ganja, bhang* or *charas* or any preparation or admixture of the same. *Ganja, bhang* and *charas* are the narcotic products of hemp. Unless *ganja, bhang* and *charas* represent all the parts or products of the hemp plant from which *majum* can be prepared, it is obvious that *majum* might not be an intoxicating drug within the meaning of the Excise Act. S. 25, Evidence Act, absolutely bars proof of an incriminating statement made by an accused person to a Police officer. V. R. VENKATARAMAN CHETTY v. KING-EMPEROR, **U.B.R. 1909, 3rd Quarter, Excise, 1.** (U.B.R. 1892—1896, I, 139, *F.*) [*F.*, 13 Cr.L.J. 122 = 13 Ind. Cas. 778 = 4 Bur.L.T. 270.]

(2)—*Penal Code, s.* 201—" *Offence,* " *if includes breach of provisions of Excise Act.*—The term " offence " in s. 201, Penal Code, does not include a breach of the provisions of the Excise Act, as such breach is not punishable with imprisonment for a term of six months or upwards. CROWN v. LA PYU, **1 L.B.R. 308.**

(3)—Magistrate giving information to the police and directing an enquiry—No such connection with proceedings as to oust jurisdiction—*See* CRIM. PRO. CODE, 1898, s. 556, 11 A.L.J. 852.

(4)—*Ss.* 2 (2), 37, 41 *and* 57—*Excise officers—Arrest—Report—Jurisdiction to try accused.*—An Inspector of police is authorized by Punjab

I.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued*

Government Notification No. 735½, dated the 26th March, 1885, which in force under s. 2 (2) of Act XII of 1896 to arrest persons for possession of prohibited articles under s. 37 of the Act. Under s. 41 such Inspector is required to report the arrest to his official superior and to take the accused with all convenient despatch to the Magistrate for trial. It is a sufficient compliance with s. 41 if the officer sends the accused to the Magistrate and a delay in sending the accused does not affect the jurisdiction of the Magistrate to hear the case. *Held* that under s. 57 of Act XII of 1896 a Magistrate is competent to try an offence upon a police report made by a Deputy Inspector of Police. EMPRESS OF INDIA v. CHET SINGH, **46 P.L. R. 1901 = 22 P.R. 1900, Cr.** (9 P.R. 1897, *D.*) [*R.*, 181 P.L.R. 1910 = 27 P.W.R. 1910 = 13 P.R. 1910 = 6 Ind. Cas. 717 = 11 Cr.L.J. 394.]

(5)—*S.* 3—*Presumption as to spirits.*—Ordinarily the presumption with respect to spirits, which were not imported and for the sale of which the license did not provide, found in the possession of a person other than a licensed vendor of distillery spirits was that such spirits were country spirits. AH YIN v. QUEEN-EMPRESS, **U.B R. 1892—1896, Vol. I, 87.**

(6)—*S.* 3—*Joint possession—Father and son—Owner of house deemed in possession—"Spirit"—Accidental admixture of* lahan *with "spirit" ignored.*—Where over one seer of liquor, being country spirit which had been added to by the boiling over of the *lahan* employed in distillation, was found in accused's house in which house also resided his son and his wife. *Held* (i) that the defence of joint possession was not set up, and on the facts disclosed the possession must be deemed to be of the owner of the house, and the head of the family, the presence of a son of 17 years of age making no difference; (ii) that the accidental admixture was a negligible element, as the whole was a " liquor containing alcohol obtained by distillation," which is the definition of "spirit" in s. 3 (1) (2) of the Act. EMPEROR v. WAZIR SINGH, **10 P.R. 1901, Cr.** (13 P.R. 1897, Cr., *F.*) [*D.*, 31 P.R. 1902, Cr., 52 P.R. 1902, Cr.]

(7)—*Ss.* 3, 30 *and* 38—*Possession of liquor.*—S. 3, cl. (*k*) of the above Act says that a person can legally possess 2 imperial gallons or 12 reputed quart-bottles of foreign liquor or fermented liquor, and Finance and Commerce Notification No. 42, dated 26-6-1890 says that beer manufactured at Mandalay Brewery shall be deemed to be foreign fermented liquor. Hence possession of the same within the said limits was no offence. QUEEN-EMPRESS v. MI CHO AND NGA SAN BU, **U.B.R. 1892—1896, Vol. I, 92.**

(8)—*Ss.* 3 (1) (*n*), 30, 51—*Illegal possession of larger quantity of liquor—Possession for private use—Burden of proof, on the accused—Evidence Act, ss* 105 *and* 106.—Where a person is charged with having in his possession any

I.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued.*

quantity of fermented liquor larger than that specified in s. 3 (1) (*n*) of the Excise Act, and pleads that he purchased it for his private use and not for sale, the burden of proving such special exception lies on him under s. 105 or s. 106. Evidence Act. KING-EMPEROR v. MAUNG PWA, **5 L B R 52, F.B.=2 Ind. Cas. 543.** (U.B R. 1904—1906, Excise, 7, 11 Bur. L.R. 227, *overruled.*)

(9)—*Ss.* 3 (1) (*n*). 51, 52—*Scope—Quantity of liquor which may be possessed by a license—Penalty for excess* —A licensee may possess liquor in excess of the amount specified in s. 3 (1) (*n*), and up to the amount specified in his license or pass, and, if he is in possession of more than the latter quantity, he is punishable under s. 51, which applies to "any person," s. 52 providing a penalty for certain offences not punishable by s. 51, the words for the breach of which rule, or condition, no other penalty is hereby provided" being clear and meaning that s. 52 does not apply to cases for which a penalty is provided by some other part of the Act. MANGAL SINGH v. CROWN, **21 P R. 1910, Cr.=7 Ind. Cas. 491=155 P.L. R. 1910=11 Cr. L J. 495.**

(10)—*Ss.* 5 *and* 30—*Manufacture and possession of liquor.*—Manufacture and possession of fermented liquor form different offences under s. 33 of Excise Act, 1896. Hence s. 71 of I.P.C. is not necessarily applicable to these. It is possible for a person to contravene s. 5. without contravening s. 21 and to contravence s. 21 without contravening s. 5 of the above Act, and there seems to be no reason why he should not contravene both at the same time. S. 65, I.P.C., applies where an offence is punishable, not with imprisonment or fine, but with imprisonment as well as fine, which an offence under s. 33 of the Excise Act is. QUEEN-EMPRESS v. PO TU, **U.B.R. 1892—1896, Vol. I, 93.** (S.J.L. B., p. 350, *R*)

(11)—*S.* 21—*Sale—Not for profit.*—P, who held no license under the Excise Act, obtained some methylated spirits from a shop for the Secretary of a club, sent it from there to the Club, but made no profit on the transaction; *held*, that the transaction did not amount to a sale within the meaning of s. 21 of the Act. PANNA LAL v KING EMPEROR, **6 A.L J. 238 =31 A 293=9 Cr. L.J. 503=2 Ind. Cas. 192.**

(11-*a*)—S. 21—*See* No. 28, *supra.*

(11-*b*)—S. 22—*See* No. 28, *supra.*

(12)—*S.* 30—*Possession of foreign spirits.*—Foreign spirits found in the accused possession and purchased by him for his private use and not for sale, is no cause of offence under s. 30 of the Act. QUEEN-EMPRESS v. HIN WUN, **U.B R. 1892—1896, Vol. I, 97.**

(13)—*Ss.* 30 (1), 30 (2) (*a*)—*Meaning of the section—Possession of permissible quantity of each foreign spirit or liquor—Possession of large quantities of brandy and beer—Accused a well-to-do Chinaman—Presumption of possession for private consumption.*—The meaning of s. 30 (1) of the Excise Act is that a man may possess 12 quarts of foreign spirit without reference to any other kind of spirit or liquor in his possession. The section permits a man to possess without pass or license 12 reputed quart bottles of foreign spirit, 12 reputed quart bottles of foreign fermented liquor, one reputed quart bottle of country spirit and 4 reputed quart bottles of country fermented liquor all at the same time. Cl. (*a*) of s. 30 (2) cannot mean that a man may keep foreign spirit for his private use without a pass or license, only if he has no foreign fermented liquor in his possession at the same time. The accused, a well-to-do Chinaman, who could afford to buy one to two hundred rupees worth of liquor for festive occasions, was charged with possessing a large quantity of brandy and beer when the annual Chinese festival was in fact near at hand: *Held*, that the accused was *prima facie* entitled to the benefit of the exception contained in cl. (*a*) of s. 30 (2). EMPEROR v. GU WA, **12 Cr. L.J. 581=12 Ind. Cas. 845=4 Bur. L.T. 146.**

(14)—S. 30—*See* Nos. 7, 8 and 10, *supra* and No. 41, *infra.*

(15)—*Ss.* 30 *and* 46, *cl.* (*c*)—*Introduction of foreign spirit into places to which the Act is applicable.*—S. 46, cl. (*c*) of the Excise Act makes the bringing of any quantity of foreign spirits into any territory to which the Act extends, illegal and punishable under the Act, irrespective of the quantity or of the purpose for which it may have been brought. SHER SINGH v KING-EMPEROR, **14 P.R. 1907, Cr.= 41 P.W.R. 1907, Cr.**

(16)—*Ss.* 30 *and* 51—*What constitutes possession.*—The Collection of toddy in pots on a tree is held to constitute possession, although the owner may have the pots hanging on the tree, till it suits him to remove them. If the contents of the pot exceed four reputed quart bottles, he will be liable to punishment under s. 30 of the Excise Act. QUEEN-EMPRESS v. NGA ON CHO, **U.B.R. 1892—1896, Vol. I, 98.**

(16-*a*)—S. 36—*See* No. 32, *infra.*

(17)—*Ss.* 36, 37, 38, 41, 57—*Excise Act* (XXII *of* 1881), *ss.* 27, 28, 29, 30, 34, 47—*Excise officer.*—An officer, who, before the coming into force of Act No. XII of 1896, is one of the class of officers on whom had been conferred powers to act as Excise officer under ss. 27, 28, 29 of Act XXII of 1881, and who had therefore power in certain events to take a case before a Magistrate under s. 32. is an Excise officer within the meaning of s. 47 of Act XXII of 1881. QUEEN-EMPRESS v. MAKUNDA, **20 A. 70=A.W N. 1897, 162.** (A.W.N. 1896, 105 *overruled.*) [*F*, 30 A. 377=5 A.L.J. 444=A. W.N. 1908, 157=8 Cr.L.J. 5, 15 Cr.L J. 336 =23 Ind. Cas 683=2 P.R. 1914, Cr.=138 P. L.R. 1914; *R.*, 103 P.L.R. 1903.]

I.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued.*

(18)—*Ss.* 36, 37, 38, 44, 47, 49 *and* 52—*Police officer invested with powers under s.* 44, *whether Excise officer—His authority to make a complaint of an offence under s.* 52 *or* 49.—A Police officer invested with powers under s. 44 can only be treated as an Excise officer for the purpose of ss. 36 to 38, but he is not an Excise officer within the meaning of s. 57, so as to be competent to make a complaint or report of an offence punishable under ss. 49 or 52 of the Act. CROWN v. NAIDER SINGH, **13 P.R. 1910, Cr.=27 P.W.R. 1910, Cr.=6 Ind. Cas. 717=11 Cr L.J. 394.** (9 P.R. 1897, Cr., *R.*; 22 P.R. 1900, Cr., 8 P.R. 1901, Cr., *D.*) [*D.*, 138 P.L.R. 1914=2 P.R. 1914, Cr.]

(19)—*Ss.* 36, 38, 45 *and* 57—*Absence of complaint—Police report.*—*Held*, that a Magistrate is competent to take cognizance of an offence under s. 45, Act XII of 1896, on the *chalan* of a Deputy Inspector of Police under s. 190 (*b*), Crim. Pro. Code. Under the Punjab Government Notification 735, dated 26th March, 1885, which, under s. 2 (2) of the Act, is still in force, Deputy Inspectors of Police are Excise officers with powers under ss. 36 and 38 of the Excise Act XII of 1896. EMPRESS OF INDIA v. SUNDAR SINGH, **76 P.L.R. 1901=8 P.R. 1901, Cr.** (9 P.R. 1897, Cr., *D.*; 22 P R. 1900, Cr., 15 P.R. 1887, Cr., 4 P.R. 1893, Cr., *F.*)

(20)—S. 37—*See* Nos. 4, 17 and 18, *supra*, and No. 32, *infra*.

(21)—*Ss.* 37 *and* 41—*Charas, possession of, in contravention of rules—Jurisdiction of Magistrate—Report—Complaint.*—The accused was convicted for being in possession in contravention of rules of 'Charas' under s. 48 of Act XII of 1896. He was arrested by a Sergeant of Police, who reported the case at the Police Station. The case was investigated by a Sergeant of Police attached to the Police Station, who challaned the accused on the third day after his arrest to the District Magistrate, through the District Seperintendent of Police. The District Magistrate made the case over for trial to one of the Magistrates subordinate to him. The order sending the case for trial only bore the initials of the District Magistrate without any designation of his office. It was contended for the accused that the Magistrate was not competent to try the case, as there was no complaint or report of the Collector or an Excise officer to give the Magistrate jurisdiction. *Held*, that the contention was not valid. As the District Magistrate was the same individual as the Collector, and as the case would be reported to him in the same way by the Police whether as District Magistrate or Collector, it would be reasonable to hold that the order was passed by him in his capacity of Collector, as well as in his capacity of District Magistrate, and that the Magistrate had jurisdiction to try the accused. *Held*, further, that the Magistrate had jurisdiction under s. 41 of Act XII of 1896. MOTAN DAS v. EMPEROR, **103 P.L.R. 1903=9 P.R. 1903, Cr.** (8 P.R. 1901, Cr.=76 P.L R. 1901, 20 A. 70, 22 P.R. 1900, Cr.=46 P.L.R. 1901, *R.*)

(22)—*Ss.* 37, 44 *and* 57—*Court taking cognizance of an Excise offence on Police Chalan, Crim. Pro. Code* (1898), s. 190 (6).—A Magistrate is competent to try a person accused under s. 57 of Act XII of 1896, on the report or Chalan of a Deputy Inspector of Police, authorised to make the report under the Notification under s. 44 of the Act on an arrest made by a Police Inspector who has, under Punjab Notification No. 735½, dated 26th March, 1885 (which notification under s. 2 (2) is still in force) to arrest the accused. The police chalan is a police report of the fact constituting an offence. EMPRESS v. CHET SINGH, **22 P. R. 1900, Cr=46 P.L.R. 1901.** (9 P. R 1897, Cr., *D.*) [*F.*, 8 P. R. 1901, Cr., 9 P.R. 1903, Cr., 15 Cr. L. J. 336=23 Ind. Cas. 688=2 P. R. 1914, Cr.=188 P.L.R. 1914 ; *R.*, 181 P. L. R. 1910=13 P.R. 1910=27 P.W.R. 1910=6 Ind. Cas. 717=11 Cr. L.J. 394.]

(23)—S. 38—*See* ACT I OF 1878, ss. 14, 15 and 16, 4 L.B.R. 121=14 Bur. L.R. 202=7 Cr. L.J. 87.

(24)—S. 38—*See* Nos. 7, 17, 18 and 19, *supra*.

(25)—*S.* 39—*Sale of liquor by licensed vendor's relative or servant.*—Where an accused person, the aunt of the retail licensed vendor, sold liquor during his temporary absence to a customer, though she had no license in her name, *held* that she acted in every way as his servant, the license not prohibiting the employment of servants by a licensed vendor. QUEEN-EMPRESS v. MUSSAMMAT BHAGANA, **S. C. 179, Oudh.**

(26)—*S.* 41—*Accused being taken before Magistrate.*—Under s. 41 of the Act it is not essential for an Excise officer that he should himself take the person arrested before the Magistrate; it is enough if an accused was with all convenient despatch taken before a Magistrate, by the ordinary procedure by which the accused are brought before the Magistracy. MOTAN DAS v. EMPEROR, **9 P.R. 1903, Cr. =103 P L.R. 1903.** (8 P.R. 1901, Cr., 22 P. R. 1900, Cr., 20 A. 70, *R.*) [*R.*, 11 Cr. L J. 394=6 Ind. Cas. 717=13 P.R. 1910, Cr.=181 P.L R. 1910=27 P.W.R. 1910, Cr.]

(27)—S. 41—*See* Nos. 4, 17 and 21, *supra*.

(28)—*Ss.* 41, 21, 22 *and* 3 (*k*)—*What constitutes offence under s.* 41.—Possession of liquor or spirit within the quantity allowed by s. 3, cl. (*k*), not punishable. To be punishable under s. 41, it must be proved or admitted that the person accused has contravened either s. 21 or s. 22. The possession of a quantity of liquor or spirit, illicitly manufactured or obtained within the quantity allowed by s. 3, cl. (*k*), does not contravene s. 21 and is not punishable under s. 41. QUEEN-EMPRESS v. KYA BAN, **L.B.R. 1893—1900, 121.**

I.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued.*

(29)—S. 44—*See* Nos. 18 and 22, *supra.*

(30)—*Ss.* 44 (1), (2), 46 *and* 57—*Report by police officer invested with powers under s.* 44 (1).—Police officer invested with powers under s. 44 (1) of Act XII of 1896 cannot be regarded as Excise officers, except for purposes strictly connected with the exercise of those powers. A licensed vendor of liquor cannot be prosecuted for the breach of his license on the report of a Deputy Inspector of Police. PIRAG v. EMPRESS, **9 P. R. 1897, Cr.** [*R.*, 181 P.L.R. 1910=13 P.R. 1910=27 P.W.R. 1910=6 Ind. Cas. 717=11 Cr. L.J. 394, 11 Cr. L.J. 67=4 Ind. Cas. 866=16 P.R. 1909, Cr.; *D* . 23 Ind. Cas. 688=2 P.R. 1914, Cr.=15 Cr. L.J. 336=138 P.L R 1914, 40 P.W.R. 1909, Cr., 22 P.R. 1900, Cr., 8 P.R. 1901, Cr.]

(31)—*Ss.* 44 (2), 48 *and* 57 — *Definition — Excise officer—Jurisdiction.—Held,* that a head constable is an Excise officer with the meaning of s. 57 of the Excise Act, 1896. EMPEROR v. LACHMI NARAIN, **A.W.N. 1908, 157=30 A. 377 =5 A.L.J. 444=8 Cr. L J. 5.** (20 A. 70, *F.*) [*F.*, 15 Cr. L.J. 336=23 Ind. Cas. 688=2 P. R. 1914, Cr.=138 P.L.R. 1914.]

(32)—*Ss.* 44, 57, 36, 37, 38—*Notifications of Government under s.* 44—*Police officer whether an Excise officer for purposes of s.* 57.—Under the notifications of the Local Government made under s. 44 of the Excise Act, a Sub-Inspector of Police is an Excise Officer for all purposes connected with the excise power conferred on Excise officers, by ss. 36, 37 and 38 of the Act. And a Police officer, invested with powers of an Excise officer under s. 44, is to be deemed also an Excise officer for the purposes of s. 57. CROWN v. SHIBBAN, **2 P. R. 1914, Cr.=138 P.L.R. 1914=15 Cr. L.J. 336=23 Ind. Cas. 688.** (22 P. R. 1900, Cr., 20 A. 70, 30 A. 377, 8 P.R. 1901, *F.*; 13 P.R. 1910, Cr., 9 P.R. 1897, Cr., *D*)

(33)—*S.* 45—*Extracting* tari, *if an offence.*—Extracting the sap of a *tari* tree is not manufacturing fermented liquor and is not an offence punishable under s. 45 of the Act. QUEEN-EMPRESS v. NGA SHWE HMAN, **L.B.R. 1893—1900, 336.**

(34)—*S.* 45—*Illegal search— Conviction of offence—Reward.*—An accused may be convicted of an offence under s. 45 of the Excise Act, 1896, though his house was entered and searched without legal authority. Persons, who make a search illegally, render themselves liable to be sued for damages, but their illegal action does not affect the question whether the person whose house is illegally searched has committed an offence against the Excise Law. It may, however, properly be made a ground for not granting a reward upon a conviction, which would be improper under such circumstances. QUEEN-EMPRESS v. NGA TAU AUNG, **L.B.R. 1893—1900, 369.**

(35)—*S.*45—*Hastening fermentation by artificial means is not " manufacturing " fermented liquor.*—The use of artificial means to hasten the fermentation of what is already fermented liquor, and to preserve it or make it more palatable, does not amount to "making or manufacturing" fermented liquor within the meaning of s. 45. To manufacture is to convert, by some artificial process, raw material into something else. KING-EMPEROR v. NGA BEIK KYI, **U.B.R. 1905, 4 Qr., Excise, 5.** (U.B.R. 1905, Excise, p. 3, *R.*)

(36)—*S.* 45—*Tapping* tari *tree or leaving sweet* tari *to ferment, whether, amounts to manufacturing* tari (*Burma*).—The accused was convicted of manufacturing fermented *tari*. *Held,* that tapping a *tari* tree is not manufacturing *tari* and that leaving sweet *tari* to ferment is not manufacturing either, as sweet *tari* the moment it is tapped, is fermented liquor within the meaning of the Act. The offence of manufacturing fermented *tari* is a physical impossibility. Conviction set aside. KING-EMPEROR v. MIR THIT, **U.B R. 1905, Excise, 3=2 Cr. L.J. 470.** (1 L.B.R. 214, U.B.R. 1892—1896, 98, *R.*)

(37)—*S.* 45—*Liquor — Country fermented liquor* — Seinbat — Seinye — *Preparation and attempt.*—An accused found in possession of three *viss* of *Seinbat*, which is not country fermented liquor, intended for the manufacture of *Seinye*, which is a kind of country fermented liquor, cannot be punished under s. 45 of the Excise Act for the mere intention of manufacturing fermented liquor. Nor can he be punished for an attempt to manufacture as his act has not proceeded beyond the stage of mere preparation. EMPEROR v NGA KYAW, **14 Cr.L. J. 489=20 Ind. Cas. 745=6 Bur. L.T. 140.**

(38)—S. 45—*See* REVISION—QUESTION OF FACT, 121 P.L.R. 1904.

(38-*a*)—S. 45—*See* No. 19, *supra.*

(39)—*Ss.* 45 *and* 51—*Illicit working or possession of still—Illicit possession of spirits—Double conviction and sentence—Crim. Pro. Code* (1898), ss. 235 *and* 35—*Penal Code, s.* 71.—*Distinct and separable offences.*—Separate convictions under ss. 45 and 51 of the Act for illicitly keeping a still and for being in possession of spirits manufactured in that still, are premissible but separate sentences under the same sections are illegal. QUEEN-EMPRESS v. AW WA, **1 L.B.R. 33.** [*F.*, 19 Ind. Cas. 167=6 L.B.R. 160=14 Cr.L.J. 167.]

(40)—*Ss.* 45 *and* 51—*Emptying a vessel containing* lahan—*Evidence of general repute not admissible.*—*Held,* that B was neither guilty under s. 45 nor under s. 51 of the Excise Act, 1896, where the implements for preparing fermented liquor were found in the house of M and everything that happened took place on his premises and the only fact found against B, was that he assisted M to empty a vessel containing *lahan* especially when there was no proof of this fact independent of the evidence of the *Darogah* and two constables ; *held,* also, that the evidence of general rupute that B was in the

I.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued.*

habit of selling illicit liquor was not admissible against him. BHAGAT SINGH v. CROWN, 2 **P.W.R. 1907, Cr.**

(41) — *Ss.* 45, 51 *and* 30 —*Tapping tree—Drawing* tari—*Possession of more than four quarts without license, whether an offence.*—Although a person may tap and draw *tari* from his own toddy-tree without committing an offence punishable under s. 45 of the Act, yet the moment that a quantity of it larger than four quarts is in his possession, he commits an offence punishable under s. 51 of the Act, unless he has a license contemplated by s. 30 of the Act. CROWN v. THAN NYIN, **1 L.B.R. 214.**

(42)—S. 46 (*c*)—*See* REVISION — ACQUITTALS, 1 P.L.R. 1904.

(43) —S. 46 —*See* Nos. 15 and 30, *supra.*

(44)—S. 48—Trial under, when liable to be set aside—*See* CRIM. PRO. CODE, 1898, s. 556, 5 P.W.R. 1912, Cr. = 64 P.L.R. 1912 = 14 Ind. Cas. 758 = 13 Cr. L.J. 294.

(45) – *S.* 48 (*c*) —*Importing cocaine—Inference from facts—Presumption — Intention.*—A registered postal parcel containing cocaine addressed to accused's daughter aged 10 years to a house, in which accused was not living, was received by appointment by the accused from the postman in charge; the parcel remained unopened for about 10 minutes when the Excise Officers entered and arrested the accused for importing cocaine. She pleaded that she had ordered some toys for her girl, that she took delivery of the parcel thinking it to be the expected one containing toys, that she had asked the parcel to be addressed at her friend's house as she contemplated moving from her own house, and that she hesitated to open the parcel as she could not identify the sender's name as being that of the person whom she had ordered the toys from, but offered no proof of any of these facts which were peculiarly within her sole knowledge: *Held*, that, in the absence of evidence that the accused was at the time expecting a parcel, addressed identically with that seized but with different contents, the inference was that the parcel seized was the one expected and it contained what she had ordered. EMPEROR v. STELLA. **14 Cr. L J. 440 = 20 Ind. Cas. 600 = 6 Bur. L.T. 129.**

(46)—S. 48 (*e*)—*See* SENTENCE—FINE, 1 L. B.R. 89.

(47)—S. 48—*See* No. 31, *supra.*

(47-*a*)—*Ss.* 48, 53—*Crim. Pro. Code, s.* 239—*Excise Act, ss.* 48, 53—*Joint trial of persons separately accused of offences under the two sections—Conviction to be set aside—Accused raising no objection to joint trial—Possession by mistress in house furnished by her protector—Presumption—Possession on account of protector—Penal Code, s.* 27—*What proof necessary to raise presumption.*—Where the illicit possession of cocaine by A, is unconnected with its illicit sale by B, the joint trial of A and B under ss. 48 and 53 of Act XII of 1896, is illegal and a conviction based upon such trial will be set aside, notwithstanding that the accused raised no objection to the joint trial. (25 M. 61 = 11 M L J. 233 = 3 Bom. L.R. 540 = 5 C.W.N. 866 = 28 I A. 257, P.C. = 2 Weir 271, *F.*) When a man furnishes a house for his mistress' occupation, he may reasonably be presumed to be in possession of all articles therein which can reasonably be inferred to belong to him or to be in the possession of his mistress on his behalf. But the inference must be inapplicable to articles of which the mistress is in possession illegally or contrary to the provisions of law, especially when the article in question is such that he might well remain in ignorance that it was in his mistress' possession. To raise the presumption under s. 27, Penal Code, something more than mere possession by the wife or mistress must be proved. BANWAR LAL v. EMPEROR, **97 P.L.R. 1914 = 15 Cr. L. J. 172 = 25 P.W.R. 1814, Cr. = 22 Ind. Cas. 748 = 20 P.R. 1914, Cr.**

(48)—*S.* 49—*License, nature of.*—A license is a personal grant, largely made for personal reasons, and it does not, after death of the licensee, attach itself in any way to his property or devolve upon his heirs, during the unexpired portion of the period mentioned in the license. *In the matter of* MADHO PERSHAD, **22 A. 441 = A.W.N. 1900, 151.** [*R.*, 32 B. 157.]

(49)—*S.* 49—*Sale of liquor to Burmans.*—Under the excise rules at present in force, the sale of liquor to Burmans is punishable under s. 49 of the Excise Act. QUEEN-EMPRESS v. AHYU SHOK, **U.B.R. 1892—1896, Vol. I, 95.**

(50) —*S.* 49 —*Sale of* charas *to unlicensed person*—Charas *in custody of Excise authorities—Delivery agreed to be taken by vendee after obtaining license—No offence—' Sale '—What it is under the Act.*—Where the accused, who held a 'sale-in-bond' *charas* license, sold certain *charas*, which remained in bond in the custody of the Excise authorities, to another who had no license for purchase or sale of the drug, on the understanding that the vendee could not obtain delivery and possession of the goods without taking a license, and where the vendee did not obtain delivery of the goods. *Held*, that the accused could not be convicted under s. 49, Excise Act, for selling *charas* in bond to one having no license. For the purposes of the Act, the sale would not be complete until delivery of the *charas* to the purchaser or some one on his behalf, and to an unlicensed person, delivery was not effected by retention-in-bond in the hands of Excise authorities on behalf of a person who could not obtain delivery until he took out a license. DHANPAT MAL v. CROWN, **4 P.R. 1911, Cr. = 5 P.W.R. 1911 = 89 P.L.R. 1911 = 9 Ind. Cas. 1082 = 12 Cr.L.J. 192 = 10 Ind. Cas. 682.**

I.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued.*

(51)—*S.* 49 — *Medical Practitioner putting brandy into medicine and selling it to a patient —Whether guilty under s.* 49.—A Medical Practitioner who put a little brandy into one of the medicines prescribed and sold by him to a patient does not thereby contravene the provisions of the Excise Law. CROWN v. BHAGWAN DAS, **33 P.R. 1914, Cr.**

(52)—S. 49—There is no legal presumption that a seller of *tari* is a seller of *gin.* Further an uncorroborated testimony of an accomplice is of very little value in evidence. ATOI v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 103.**

(53)—*S.* 49—*Revision.*—To interfere without necessity on revision where there is evidence to support the conviction, would be practically to grant an appeal where the law says there shall be none. ASHE v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 101.**

(54)—*S.* 49—*Illegal sale by servant of manager or agent of a licensed liquor shop—Privity of manager or agent to such sales.*—The manager or agent of a licensed liquor shop, who is not in any way privy to the illegal sale of liquor by his servant, or present at such sale cannot properly be convicted under s. 49. AH SIN or AH SAI v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 489.** (L.B.R. 1893—1900, 373, *Diss.*).

(55)—*S.* 49—*Causing a licensed vendor to contravene his license—Abetment—Abettor guilty though principal has committed no offence—Penal Code, s.* 108.—The accused, in this case, purchased a bottle of liquor from a licensed vendor, for the use of a soldier and handed it to the latter in contravention of the vendor's license. The vendor sold it in good faith, not being aware of the intended use by the soldier. The lower Court acquitted the accused, holding that, as the vendor committed no offence, it could not be said that the accused abetted the commission of an offence. *Held*, on appeal, that, under s. 108, Penal Code, read with the exp. iii and illustration (*d*), the accused must be found guilty of abetment of the breach of the vendor's license, though the vendor himself might, under the circumstances, have committed no offence. KING-EMPEROR v. MUKHTAR KHAN, **55 P.R. 1905, Cr. = 201 P.L. R. 1905 = 3 Cr.L.J. 135.**

(56)—S. 49—*See* CRIM. PRO. CODE, 1898, ss. 202, 204, 242, 244, 439, 1 P.W.R 1908, Cr. = 4 P.R. 1908, Cr. = 86 P.L.R. 1908 = 7 Cr. L. J. 202.

(57)—S. 49—*See* No. 18, *supra.*

(58)—*Ss* 49 *and* 52—*Selling liquor to European soldier under officers permission.*—To supply liquor to European soldiers travelling under the command of an officer, as provided in art, 542, or to soldiers travelling alone or in small parties without an officer, as provided in art. 543, Army Regulations, India, Vol. X, up to the amount allowed in that article, is not a breach of the condition of license, Form VIII, by which the sale of liquor to European soldiers is forbidden. ABDOOL v. KING-EMPEROR, **1 U.B.R. 1902—1903, Excise, 1.**

(59)—*Ss.* 49, 59—*Possession of spirit within the quantity allowed by law—Not an offence—Extorting admission from accused—New charge by Magistrate in the absence of evidence.*—Possession of half a bottle of spirit is no offence and a man is not bound to account for such mere possession. Where no offence was committed and the accused was illegally arrested, the Magistrate should at once discharge him instead of proceeding to get him to plead guilty to the charge of committing an offence of which there was no evidence before the Magistrate. In the abesence of any evidence against the accused, it is improper on the part of a Magistrate to proceed to make a new charge against the accused. An admission of guilt should not be extorted from an accused person. QUEEN-EMPRESS v. TUN E, **1 L.B.R. 43.**

(60)—*Ss.* 49 *and* 59—*Sale of liquor to a Burman by a person without a license.*—A native of India who buys liquor for a Burman from the liquor shop-keeper does not commit the offence of abetment of sale of liquor to a Burman since the purchase was legal, but commits an offence under s. 49 of selling liquor without a license. QUEEN-EMPRESS v. APALU, **U.B.R. 1892—1896, Vol. I, 105.**

(61)—*S.* 51—*Liability to confiscation.*—Animals and conveyances liable to confiscation under the Excise Act are those on which illicit liquor is loaded and an animal on which a man is merely riding with such liquor in his pockets does not come under that description. JAT SINGH v. EMPRESS, **10 P.R. 1898, Cr.**

(62)—*S.* 51—*Fermented liquor, meaning of Kazawye, if included in the definition of.*—Kazawye, a generic term for fermented liquor, has not been declared to be included in the term "fermented liquor" as defined in s. 3 (*h*) of the Excise Act. In convictions under that Act for the illegal possession of fermented liquor, it is necessary to prove that the fermented liquor is one of those within the meaning of the term as used in the Act. CROWN v. PYA GYI, **1 L.B. R. 172.**

(63)—*S* 51—*Interpretation of the concluding words in the section.*—The concluding words of s. 51, *viz.*, that "the vessel or conveyance used in carrying the liquor shall be liable to confiscation" have not received judicial interpretation. The question of confiscation is a matter for the discretion of the Magistrate in each case. QUEEN-EMPRESS v. NGA BA O, **L.B.R, 1893—1900, 632.** (L.B.R. 1893—1900, 405, *R.*)

(64)—*S.* 51—Bona fide *custody of liquor.*—A *bona fide* custodian of liqour is not liable to be convicted of unlawful possession under s. 51 of the Act. MA PI v. KING-EMPEROR, **2 L.B.R. 136** (25 A. 262, *R.*) [*R.*, 4 Ind. Cas. 823 = 11 Cr. L.J. 55 = U.B.R. 1909, Opium, p. 1.]

I.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*continued.*

(65)—*S. 51—Liquor, joint possession of.*—S. 51 of the Excise Act must be held to prohibit the joint possession by several persons of more spirit or liquor than may be sold retail to one person. The words "no person" in s. 51 are to be read in the plural as well as in the singular. QUEEN-EMPRESS v. RAJIA, **L B.R. 1893—1900, 405.**

(66)—*S. 51—Punishment for illegal possession of liquor.*—A Burman who possesses Malt liquor such does not commit any offence merely because liquor may not be sold to him. QUEEN-EMPRESS v. NGA PO KYWE, **U.B.R. 1892—1896, Vol. I, 107.**

(67)—*S. 51—Illegal possession of liquor, burden of proof of legality on the accused.*—The possession of more than a prescribed number of quarts of beer being *prima facie* illegal under the Act, it was *held* that the *onus* lay on the accused, charged with such illegal possession, to prove that he purchased the beer for his private use and not for sale. KING-EMPEROR *v.* NGA CHI, **U.B.R. 1906, Excise, 7.** (U.B.R. 1892—1896, I, 107, U.B.R. 1897 1901, 1, 184, U.B R 1892—1896, I, 100, *R*, [*F*, 10 Cr. L.J. 80 = 5 L.B.R. 52 = 2 Ind. Cas. 543.]

(68)—*S. 51—Finding of lahan, etc., in a person's premises outside the village under suspicious circumstances—Benefit of doubt—Revision under s. 439, Code of Criminal Procedure.*—*Held*, that the finding of certain articles, *viz.*, lahan, distilling pipe, bottle and glass containing liquor (which suggest illicit distillation) in an easily accessible part (such as ordinary cattle shed which usally remains open) of a person's enclosure belonging to that person and another man, and situate outside the village, raises a great doubt about the case and consequently is not sufficient for convicting that person under s. 51 of Act XII of 1896, particularly where the search has taken place at the instigation of that person's enemy and no other in criminating article has been found in any part of his dwelling house. *Held*, also, that in such a case unappealable sentence is not proper. In case of doubt even the concurrent finding of the Courts below are liable to be set aside on revision under s. 439, Crim. Pro. Code. WASAKHI v. CROWN, **43 P.W.R. 1913, Cr. = 98 P.L R. 1914 = 22 Ind. Cas. 257 = 15 Cr. L.J. 176.**

(69)—*S. 51—See* CONFISCATION, 1 L. B. R. 3.

(70)—*S. 51—See* Nos. 8, 9, 16, 39, 40 and 41, *supra.*

(71)—*S. 52—Licensee letting a Burman have liquor through a third person, not Burman.*—If a license lets a Burman have liquor at all on payment of money through a third person not a Burman, he runs a risk of being charged under s. 52 of the Act along with the abettor, the Burman who purchased it. CRIMINAL REVISION CASE, NO. 1617 OF 1892, **U B.R. 1892—1896, Vol. I, 100.**

(72)—*S. 52—"Any person, etc., a," meaning of—License—Breach of condition by servant—License-holder, liability of Servant acting in the course of management—Master's liability.*—The words "any person who breaks.........any condition of license granted under this Act" refer only to the actual licensee. A licensee, deputing a servant to manage a retail liquor shop, is responsible for the acts of the latter done within the scope of his employment, and is punishable for any breach of condition committed by him, even if he has expressly forbidden the servant to commit the same. The test of the master's liability in such cases is whether the servant's act was done in the course of management and within the scope of his authority. EMPEROR v. RUSTOMJI PESTOMJI, **1 N.L.R. 81 = 2 Cr. L.J. 659.** (7 C.P.L.R. 41, *F.*)

(73)—*S. 52—Scope of section—Master and servant.*—It is not necessary for the purpose of convicting the accused under s. 52 that he should himself have sold the liquor in contravention of the terms of his license or that his servant should have done so with his knowledge or by his direction. The act of the servant, if within the scope of his authority, is the act of the master, and a breach of the terms of the license by the former under such circumstances is tantamount to a breach by the latter. PIRAG v. EMPRESS, **9 P R 1897, Cr.** [*R.*, 181 P.L.R. 1910 = 13 P.R. 1910 = 27 P.W.R. 1910 = 6 Ind Cas. 717 = 11 Cr. L.J. 394, 11 Cr. L.J. 67 = 4 Ind. Cas. 866 = 16 P.R. 1909, Cr.; *D.*, 23 Ind. Cas. 688 = 2 P.R. 1914, Cr. = 15 Cr. L.J. 336 = 138 P.L.R. 1914, 40 P.W.R. 1909, Cr.]

(74)—*S. 52—Master and servant.*—A master is not ordinarily liable for the criminal acts of his servant. There must be some evidence to show instigation or complicity before the master can be held liable. TSANG WAW v. QUEEN-EMPRESS, **U.P.R. 1892—1896, Vol. I, 109.**

(75)—S. 52—*See* CRIM. PRO. CODE, s. 556, A.W.N. 1908, 95 = 5 A.L.J. 357 = 7 Cr. L.J. 393.

(76)—S. 52—*See* Nos. 9, 18 and 58, *supra.*

(77)—S. 53—*See* No. 47, *supra.*

(78)—*S. 57—Cognizance of certain offences on complaint or report of the Collector or an Excise officer only.*—All offences falling under the above section must be instituted by means of a complaint or a police report, or a report from the Excise officer. Otherwise the Court trying the offence has no jurisdiction, and all its proceedings are therefore void. QUEEN-EMPRESS v. MA MIN THON, **U.B.R 1892—1896, Vol. I, 111.** [*R.*, U.B.R. 1910, 4th Qr., 70.]

(79)—*S. 57—Institution of complaint.*—A prosecution of a licensed vendor, for a breach of the conditions of his license, instituted by a Deputy Inspector of Police was held to be not maintainable, as it was not instituted by a

I.—Imperial Acts—continued.

Act XII of 1896 (Excise)—*concluded.*

competent authority. PIRAG v. EMPRESS, **9 P.R. 1897, Cr.** [*R.*, 181 P.L.R. 1910=13 P.R. 1910=27 P.W.R. 1910=6 Ind. Cas. 717 =11 Cr. L J. 394, 11 Cr L.J. 67=4 Ind Cas. 866=16 P.R. 1909, Cr. ; *D.*, 23 Ind. Cas. 688= 2 P.R. 1914, Cr.=15 Cr. L.J. 336=138 P.L.R. 1914, 40 P.W.R. 1909, Cr., 22 P.R. 1900, Cr., 8 P.R. 1901, Cr.]

(80)—S. 57—*See* Nos. 4, 17, 18, 19, 22, 30, 31 and 32, *supra.*

(81)—S. 59—*See* Nos. 59 and 60, *supra.*

(82)—*S.* 60 — *Absence of search warrant — Legality of conviction—Oaths Act* (*X of* 1873)—*Omission to record the fact that oath was administered—No presumption that it was not administered.*—Absence of a search-warrant does not affect the legality of the trial of a case under the Excise Act. Where an Excise Inspector made a search without a search warrant and cocaine was found, *held*, that whether the search was legal or not, the conviction of the accused depended, not on the legality of the search, but on the fact that the cocaine was found illegally in his possession. There is no analogy between the Excise Act and the Gambling Act. (10 A.L J. 355, *Appl.*; 11 A.L. J. 442, *R.*) Where it does not appear from the record that oath was administered to a witness, the reasonable presumption would be, in the absence of any suggestion to the contrary, that the proper procedure in respect to the administering of oath to a witness was followed. There is no provision of law which requires a Court examining a witness to record the fact that an oath was administered. SYED AHMAD v. KING-EMPEROR, **11 A.L.J. 933=35 A. 575=22 Ind. Cas. 163=15 Cr. L.J. 19.**

Act II of 1897 (Criminal Tribes Amendment).

[S. 1 REP. IN PT, ACT I OF 1903.]

See ACT XXVII OF 1871, s. 19 (1), 166 P.L. R. 1905=3 Cr. L.J. 77.

Act III of 1897 (Epidemic Diseases).

[REP. IN PT. (AS TO BURMA), ACT XIII OF 1898, S 18. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

(1)—*See* MAD. ACT IV OF 1884, BYE LAW NO. 48, 23 M. 213=1 Weir 750.

(2)—*See* PENAL CODE, s. 183, 1 Bom. L.R. 223.

(3)—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 24 M. 70=2 Weir 158.

(4)—Ss. 2 and 3—*See* QUARANTINE, Rat. Un. Cr. C. 966.

(5)—*S.* 3—*Power of Local Government — Delegation to Collector—Delegation by Collector*

I.—Imperial Acts—continued.

Act III of 1897 (Epidemic Diseases)—*concld.*

—Ultra vires—*Offence how proved—Rules under the Act — Meaning of 'taking measures.'*—Under s. 3 of the Epidemic Diseases Act, it is unnecessary for the prosecution to prove in cases of disobedience that the accused's disobedience was likely to cause danger. The only important question is whether the disobeyed order was a lawful order made under that Act. In cases of offence under this Act, where the accused pleads not guilty, it is not necessary for the accused to deny the passing of the order or contest its legal validity. It lies on the prosecution to prove both the passing of the order and its legal validity. Under the Act, the Government itself can give power to an officer or officers to take measures, but it cannot give powers under the Act to any person so as to enable the latter to give such powers to others, unless such powers by their very nature can be exercised only through agents. The Collector has no power to delegate his own power, and the Local Government has no right to empower the Collector to delegate the power which the Local Government gave to the Collector, except in respect of performance of acts which by their very nature are or can be usually done only through agents and sub agents. The power '*to take measures*' under the Act. which power may be granted to any person by the Local Government, is a different thing (though closely connected with the effective carrying on of the measures taken under the power) from the Regulations or orders which have to be observed or obeyed by the public or a person or class of persons in respect of those measures. A direction to the public to vacate their houses can only be made by a Regulation passed by the Government. A power given to the Collector to call on the people to evacuate a house cannot be delegated to the Divisional Officer. NAGAPPA THEVAN v. EMPEROR, **1913 M.W.N. 928= 14 M.L.T. 443.**

(6)—S. 3—*See* No. 4, *supra.*

(7)—Rule 2 (Proviso)—*See* PENAL CODE, s. 188, 1 Bom. L.R. 51.

(8)—*Rule* 6—*Information as to plague patient.*—Rule 6, framed under the Epidemic Diseases Act, does not require the person who is himself attacked with plague to give information of his own sickness, *albeit* he is an occupant of the house in which he is attacked. Looking at the language in which the rule is worded, it refers to third persons only. QUEEN-EMPRESS v. MAHADEV GOPAL, **Rat. Un. Cr. C. 978.**

Act IV of 1897 (Fisheries).

See BOM. ACT XXXV OF 1850.

See BOM. ACT II OF 1868.

See BUR. ACT VII OF 1875.

(1)—S. 6—*See* MISCHIEF, 28 A. 204=2 A. L.J. 826=A.W.N. 1905, 255=2 Cr.L.J. 801.

I.—Imperial Acts—continued.

Act IV of 1897 (Fisheries)—*concluded.*

(2)—*Ss.* 7, 8—*Erecting obstructions in fishery without permission—Lessee, if criminally responsible for acts of sub-lessee—Burma Fisheries Act and Rules, ss.* 7 *and* 30—Rule 30 made under s. 8, cl. (c) of the Burma Fisheries Act does not extend the scope of s. 7 of the same Act, and, therefore, does not give authority for holding the lessee criminally responsible for the acts of the sub-lessee. QUEEN-EMPRESS v. NGA PO LWIN, **L B.R. 1893-1900, 594.**

(3)—S. 8—*See* No. 2, *supra.*

Act VIII of 1897 (Reformatory Schools).

[S. 30, REP., ACT III OF 1900. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S 3, AS AMENDED BY REG. III OF 1899, S. 3; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

See ACT V OF 1876.

(1)—*Reformatory Schools Act* V *of* 1876 *and* VIII *of* 1897—*Persons empowered under old Act—Jurisdiction under new Act.*—After the repeal of Act V of 1876, by Act VIII of 1897, persons who were empowered to act under the Reformatory Schools Act, 1876, were held, unless they had been specially empowered by the Local Government, under s. 8 (2) of the Act of 1897, to be not competent to act under the latter Act. QUEEN-EMPRESS v. BHUJIA GUJIA, **Rat. Un. Cr. C. 936 = Cr. Rg. 45 of 1897.**

(2)—*Application of the Act.* — A youthful offender convicted of murder and sentenced to transportation for life, is eligible for despatch to the Reformatory School. But he should not ordinarily be sent to such a school, *e.g.*, where the conduct of the accused argued great depravity. RAMA v. EMPEROR, **4 N.L.R. 180 = 9 Cr. L J. 99.**

(3)—Youthful offender—Detention in Reformatory—Period of detention to be fixed—*See* CRIM. PRO. CODE. 1898, s. 399, 15 Bom. L.R. 306 = 2 Bom. Cr. C. 57 = 19 Ind. Cas. 512 = 14 **Cr. L J. 256.**

(4)—*Ss.* 1, 2, 3 *and* 8—*Reformatory Schools Act* (V *of* 1876), *ss.* 2 *and* 7—*Order of detention in Reformatory Schools—Valid order.*—The High Court set aside as contrary to law an order of a Magistrate substituting detention in a Reformatory School for two years for a sentence of imprisonment, on the ground that the order could not be sustained under s. 7 of Act V of 1876, as that Act had been repealed before the date of the order and the commission of the offence, nor under s. 8 of Act VIII of 1897 as the order did not comply with the provisions of the latter Act, the least period of detention being three years according to that Act. DEPUTY LEGAL REMEMBRANCER v. AHMAD ALI, **25 C. 333 = 2 C.W.N. 11** [*R.*, 19 A.W.N. 138 = 21 A. 391, F.B., 1 L.B.R. 68.] (12 M. 94, 14 B. 381, *R.*)

I.—Imperial Acts—continued.

Act VIII of 1897 (Reformatory Schools)—*ctd.*

(5)—*Ss.* 1 *and* 16—*Detention in Reformatory School in lieu of sentence of imprisonment—Jurisdiction of High Court to alter or set aside the sentence.*—S. 16 of Act VIII of 1897 does not in any way take away the jurisdiction of the High Court, as a Court of revision, to alter or set aside the sentence in substitution of which an order for detention in a reformatory school is made. The power of the Court remains intact to consider the propriety or legality of any sentence passed upon a youthful offender. Where a young lad who was found abstracting a piece of coal from a waggon, was, on conviction for theft, sentenced to a month's rigorous imprisonment and ordered, in lieu thereof, to be detained in a reformatory school for 4 years, *held*, that, as the accused was a young lad and the offence was his first offence, the sentence of one month's imprisonment was improper The accused was directed to under-go a whipping of 5 stripes by way of school discipline. REASUT v. COURTNEY, **28 C. 423 = 5 C.W.N. 211.**

(6)—S. 2—*See* No. 4, *supra.*

(7)—S. 3—*See* No. 4, *supra.*

(8)—*S.* 4 (*a*)—*Youthful offenders—Proof.*—Although a Magistrate is not incompetent to find from the appearance of a person convicted by him that he is a youthful offender within the definition given in the Act, yet, it is generally desirable that, when it is procurable, there should be some reliable evidence on the point, and especially when it may be necessary to determine the period of the detention, which is limited to his attaining 18 years of age. QUEEN-EMPRESS v. MAKIMUDDIN, **27 C. 133.**

(9)—*S.* 4 (*a*)—*Person over* 15 *years of age.*—A Magistrate had no jurisdiction to order a person not under 15 years of age, to be confined in a Reformatory School, on and after the 11th March, 1897, when the Act came into force. QUEEN-EMPRESS v. BHAVSING, **Rat. Un. Cr. C. 905 = Cr. Rg. 15 of 1897.**

(10)—*Ss.* 4, 8, 16—*Powers of High Court.*—S. 16 of Act VIII of 1897 precludes the High Court from interfering in appeal or revision with an order for detention in a Reformatory School, passed in substitution for an order of transportation or imprisonment. QUEEN-EMPRESS v. HIMAI, **20 A. 158 = A.W.N. 1897, 230.** QUEEN-EMPRESS v. GOBINDA, **20 A. 159 = A.W.N. 1897, 230.** [*Overruled*, 21 A. 391, F.B.; *Diss*, L B.R. 1893-1900, 441.]

(11)—*Ss.* 4 *and* 11—*Jurisdiction of Magistrates.*—In order that a Magistrate should have jurisdiction under the Reformatory Schools Act, it is necessary that the offender should be under 15 years of age at the time of the conviction. Unless the Magistrate is satisfied as to this matter, he should not proceed under the Act. S. 11 of the Act further requires a Magistrate before sending an offender to a Reformatory to make an enquiry, and record a finding, as to the

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exact age of the offender as nearly as may be. *In re* NACHI, **1 Weir. 879.**

(12)—*S.* 8—*Power to order detention in Reformatory.*—Where an accused, who was convicted of offences under ss. 454 and 380, I.P.C., was sentenced to one year's rigorous imprisonment, but being fourteen years old was directed to be detained in the Reformatory for the period; the High Court reversed this latter direction on the grounds that the Magistrate had not been specially authorised and that the order was opposed to the provisions of s. 8 of the Act. QUEEN-EMPRESS v. RHAGIA BHAOO, **Rat. Un. Cr. C. 947 = Cr. Rg. 53 of 1897.**

(13)—*S.* 8—*Procedure under s.* 8.—A Magistrate should first pass a sentence of imprisonment and then direct that, instead of undergoing the sentence, the offender should be sent to a Reformatory School for such period as the Act and the Rules framed thereunder direct. *In re* NACHI, **1 Weir 879.**

(14)—*S.* 8—*Procedure.*—Under s. 8 of the Act, it is irregular for a Magistrate to sentence an accused between 15 and 16 years of age to be detained in a Reformatory for 4 years without first sentencing him to imprisonment. QUEEN-EMPRESS v. NGA PO PE, **L.B.R. 1893-1900, 648.** (L.B.R. 1893-1900, 242, *R.*)

(15)—*S.* 8—*Imprisonment in a reformatory passed in lieu of sentence of fine—Imprisonment as a substantive sentence and imprisonment in default of payment of fine—Crim. Pro. Code* (1898), *s.* 398.—S. 8 of the Reformatory Schools Act does not refer to imprisonment awarded in default of payment of fine to which an offender has been sentenced. There is no authority for directing that imprisonment in a reformatory shall terminate on payment of a fine. QUEEN-EMPRESS v. NGA PO SIN, **L.B R. 1893-1900, 491.**

(16) *S.* 8—'*Youthful offender,' definition of —Detention in Reformatory School in lieu of imprisonment—Term of such detention.*—A youthful offender was sentenced to 3 years' detention in a Reformatory School in lieu of 3 months' rigorous imprisonment. The boy was over 13 years of age. *Held*, s. 8 of the Act, combined with the Judicial Department Notification No. 237, dated 12th June, 1897, and Rule 1, cl. (*iii*), provides that, if a youthful offender is over 13 years of age, he should be sent to a Reformatory School for such period as will bring him to the age of eighteen. Notice was issued to the accused to show cause why he should not be detained in the Reformatory School till he attains eighteen. SAN HLAING v. KING-EMPEROR, **3 L.B.R 46.**

(17)—*S.* 8—*Applicability of the section to cases where fine alone is inflicted.*—Where a boy under 12 years was convicted of stabbing a companion with a knife and sentenced to pay a fine of Rs. 100 or in default of payment to go to the Reformatory school for three years: *Held*, the order was illegal. Under s. 8 of the Reformatory Schools Act, before such an order is passed, the offender must have been sentenced to transportation or imprisonment and not to mere fine. NGA PO TOK v. EMPEROR, **12 Cr. L.J. 244 = 10 Ind Cas. 773.**

(18)—S. 8—Rules framed under the old Act, whether in force, after the passing of the new Act—*See* ACT V OF 1876, s. 22, 21 M. 430 = 1 Weir 880.

(19)—S. 8—*See* CRIM. PRO. CODE, 1898, s. 399, Rat. Un. Cr. C. 915 = Cr. Rg. 21 of 1897.

(20)—S. 8—Procedure to be adopted under section — *See* PRACTICE AND PROCEDURE, 2 L.B.R. 216.

(21)—S. 8—*See* Nos. 4, 10, *supra.*

(22)—*Ss.* 8 *and* 9—*Order for detention in Reformatory School, when can be made.*—An order for the detention of a youthful offender in a Reformatory School, when no sentence of imprisonment or of transportation has been passed, is bad in law. RADHA KRISTO BARAT v. GOKULA NUT, **5 C.W.N. 210.**

(22-*a*)—*Ss.* 8, 9 (1), (2) — *Magistrate not empowered under s.* 8 *of Act—Procedure—Case to be submitted to District Magistrate and not to his immediate appellate Magistrate.*—A second class Magistrate, not empowered to act under s. 8 of the Reformatory Schools Act should, after convicting the accused, submit the case to the District Magistrate for passing sentence under s. 9 (2) of the Act, and not to the joint Magistrate to whom the second class Magistrate may be immediately subordinate. KANUKAYYA v. EMPEROR, **16 Cr. L J. 32 = 26 Ind. Cas. 336.**

(23)—*Ss.* 8, 9 *and* 11—*Power of appellate Court to pass order for detention in a Reformatory School.*—An appellate Court is competent to pass an order for detention in a reformatory in supersession of the order for imprisonment, if he has sufficient materials before him on which such an order can be founded. If there is no evidence as to the age of the accused or to show that he is a youthful offender within the terms of the Act, or to indicate the period of detention in the Reformatory which he might be ordered to undergo, he must take evidence within the terms of s. 11 regarding these points before passing the order. DEPUTY LEGAL REMEMBRANCER v. KOPIL KAHAR, **4 C.W.N 225.**

(24)—*Ss.* 8, 9, 11, 13 *and* 16—*Omission of Magistrate to mention the exact period of detention.*—*Magistrate to decide age of youthful offender.*—Where a Magistrate, who sentenced a youthful offender for six months, and directed that, in lieu of the imprisonment, he should be detained in a Reformatory School, unless he shall attain the age of 18 years at an earlier date, *held*, that the order directing the detention of the boy in a Reformatory School was not properly made, inasmuch as it had not fixed

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the exact period. In some cases under the Act, it may not be necessary for the Magistrate, to ascertain the exact age of the boy. So long as he is not over 15, the Magistrate may rightly fix a period of 3 years, or if the boy is not over 11, he may fix a period of 7 years without further inquiry. But if inquiry is necessary in order to fix the period, as it would be when the boy is over 11 and the Magistrate wishes to make the period as long as possible, then the Magistrate must find, as well as he can, the exact age of the boy, and he is not at liberty to leave the decision of the question to Reformatory officials QUEEN-EMPRESS v RAMA, **24 M. 13=1 Weir 882.** [*F.*, 2 Bom. Cr. Cas. 57=15 Bom. L.R. 306=14 Cr. L.J. 256=19 Ind. Cas. 512.]

(25)—*Ss.* 8, 9 *and* 16—*Accused to be sentenced before being sent to Reformatory School.*—The language of ss. 8 and 9 of the Reformatory Schools Act shows that a sentence must be passed and then a direction given that instead of undergoing the sentence, the youthful offender shall be sent to a Reformatory School. QUEEN-EMPRESS v. KAIDYA HUSSAIN, **1 Bom. L.R. 162.** [*R.*, 21 A. 391, F.B.]

(26)—*Ss.* 8, 9 *and* 16—*Youthful offender—Absence of sentence of imprisonment—Order sending him to Reformatory—Illegality—Order under the Act—No bar to appeal against conviction—Effect of s.* 16.—No order sending a youthful offender to the Reformatory School can be passed under Act VIII of 1897, unless a definite sentence of imprisonment has been passed on him. There is nothing in Act VIII of 1897 which deprives a convict of his right of appeal against his conviction. All that is provided by s. 16 of that Act is that, where proceedings on trial are complete up to and including the stage of a sentence of imprisonment, there can be no interference with a subsequent order directing him to be sent to a reformatory. CROWN v. BAKHTAWAR, **34 P.R. 1910, Cr.=8 Ind. Cas. 1166.** (18 P.R. 1907, Cr., *R.*)

(27)—*Ss.* 8 (2), 11 (1)—*Application of Act.*—In this case the Sub-divisional Magistrate ordered the accused to furnish security for good behaviour under s. 110, Crim. Pro. Code, and in default to be rigorously imprisoned for one year. The accused appealed to the District Magistrate, who dismissed the appeal, but in his order stated that the Superintendent of the jail had pointed out that the accused prisoner should be confined in a Reformatory, and the District Magistrate added that "a revised warrant should be sent." Accordingly the Sub-divisional Magistrate issued another warrant directing that, instead of undergoing his sentence, the accused should be detained for a period of one year in a Reformatory School. *Held* that the order was illegal for the following reasons :—(1) The prisoner was 16 years old and was therefore not a youthful offender as defined in the Reformatory Schools Act, not being under the age of 15. (2) That the period of detention shall not be less than three years and the Magistrate ordered detention for one year. (3) The Magistrate had not been specially empowered to exercise the powers under the Act. (4) The accused had not been sentenced to imprisonment within the meaning of s. 8 of the Act. An order for imprisonment in default of furnishing security is not a sentence of imprisonment. QUEEN-EMPRESS v. NGA PO SU, **U.B.R. 1897-1901, Vol. I, 375.**

(28)—*Ss.* 8, 11, 16 *and* 31—*Order under the Act—High Court's power of revision.*—The High Court is not debarred from altering or revising an order for detention in a Reformatory School in substitution for transportation or imprisonment, if such order is not properly passed, *i.e.*, if it does not conform to the rules made by the Local Government, under s. 8 of the Act. Where a youthful offender was convicted for stealing a *lota* from the side of a sleeping man, and where it was admitted that it was a first offence, *held*, that the accused did not come within the definition of "youthful offenders" and that the case should have been dealt with under s. 31 of the Act. QUEEN-EMPRESS v. MAKIMUDDIN, **27 C. 133.** [*F.*, 1 L.B.R. 68, 5 M.L.T. 296=9 Cr. L.J. 392=1 Ind. Cas. 807.]

(29)—*Ss.* 8 *and* 16—*Order for detention in a reformatory in lieu of a sentence of whipping—Power of High Court to deal with such an order passed without authority.*—S. 8 of the Reformatory Schools Act permits an order for detention in a Reformatory instead of the offender undergoing a sentence of transportation or imprisonment. Where there is no such sentence except one of whipping, no order for detention in a reformatory could legally be passed, in lieu of the whipping. Where the Magistrate has no authority to order detention in a reformatory, the provisions of s. 16 of the Act do not bar the jurisdiction of the Court of the Judicial Commissioner, acting as a High Court, to alter, on revision, the order of detention. PUTTU v. QUEEN-EMPRESS, **L.B.R. 1893-1900, 493.** (L.B.R. 1893-1900, 441, *F.*)

(30)—S. 9—*See* Nos. 22, 22-*a*, 23, 24, 26, *supra.*

(31)—*Ss.* 9 *and* 16—*Reference to District Magistrate—Transfer to Sub-divisional Magistrate—Proper procedure.*—Under s. 9 of the Act, the District Magistrate alone has power to pass orders. The Sub-Divisional Magistrate has no jurisdiction to make any such order. He is empowered under s. 8, not under s. 9, of the Act. S. 16 does not prevent the exercise by the High Court of its revisional powers in cases where orders have been passed without jurisdiction. The proper procedure is that the District Magistrate should proceed to dispose of the case under s. 9, sub-s. (2) of the Act. KING-EMPEROR v. NGA PO KYAW, **2 L.B.R. 121.**

(32)—*S.* 10—*Enquiry into youthful offender's age*—An inquiry must be made into the age of

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a youthful offender. S. 10 of the Act is inapplicable to the case of an accused who is not a youthful offender within the definition, and even if the accused is a youthful offender, a District Magistrate cannot without an appeal alter the nature of the sentence. EMPEROR v. JAGAN, **15 C.P.L.R. 151.**

(33)—*S. 11 — Definition of "youthful offender"—Finding as to age of accused to be recorded before order of detention.*—A youthful offender, under the Reformatory Schools Act, is one who is *under* the age of 15 years. By s. 11 (1) the Court, before directing any youthful offender to be sent to a Reformatory School, must inquire into his age and record a finding, and by s. 11 (2), a similar inquiry and finding must be made and recorded before the offender is sent by the trying Magistrate to the District Magistrate for his orders. The inquiry and finding under s. 11 must be held before the order of detention is made. Merely asking the accused his age and recording his reply is not a compliance with the provisions of s. 11, unless it happens that no further inquiry is possible. CROWN v. PO SEIN, **1 L.B.R. 126.**

(34)—S. 11—*See* Nos. 8, 23, 24, 27, 28, *supra.*

(35)—*Ss. 11 and 13—Rules for detaining a youthful offender in Reformatory School.*—In respect to the time of detention of youthful offenders in Reformatory Schools, the Act lays down three rules :—first, the youthful offender must be a boy under the age of 15 years at the date of his conviction ; secondly, the period of detention in the school should not be less than three years ; and, lastly, that the period must not exceed seven years. In order to give effect to these rules, the Magistrate is directed (s. 11) to inquire into the question of age and the age so ascertained must be stated in his order of detention. The effect of the Government Notification regulating the period of detention of youthful offenders is only to fix a minimum of 5 years for all cases in which such a period is legally possible, and it does not prevent the Magistrate from fixing a period short of 5 years, but not short of 3 years, in the case of a boy over 13. QUEEN EMPRESS v. RAMA, **24 M. 13=1 Weir 882.**

(36)—S. 13—*See* Nos. 24, 35, *supra.*

(37)—*S. 16—"Imprisonment," meaning of.*—Imprisonment in s. 16 means a legal sentence of imprisonment. When there has been no sentence of imprisonment at all, the High Court may give effect to its finding on that point by declaring the order for substitution void. MAHOMED KASIM v. QUEEN-EMPRESS, **1 L.B.R. 42.**

(38)—*S. 16—Scope of the section—Revisional powers of the High Court.*—S. 16 of the Act does not authorise the appellate court or the Court of revision to interfere with the finding of the Magistrate as to the age of a youthful offender, or to alter or modify an order of detention in substitution of imprisonment or transportation. But it does not affect the High Court's jurisdiction, to consider the legality or the propriety of the sentence or of any order other than that mentioned in that section. RADHA KRISHTO BARAT v. GOKULA NUT, **5 C.W.N. 210.**

(39)—*S. 16—Appellate Court, duty of—Revisional powers.*—Under s. 16 of the Act, a Court of appeal is not authorised to alter or reverse, in appeal or revision, any order passed by the lower Court with respect to the age of a youthful offender, or the substitution of an order for detention in a Reformatory School, for transportation or imprisonment. But that section does not relieve an appellate Court of the duty of seeing whether a conviction or sentence passed on a youthful offender is maintainable according to law. RAM SINGH v. KING EMPEROR, **18 P.R. 1907, Cr.=43 P.W.R. 1907 =55 P.L.R. 1908.** [*R.*, 12 Cr.L.J. 56=8 Ind. Cas. 1166, 34 P.R. 1910, Cr.=49 P.W.R. 1910.]

(40)—*S. 16—Order under the section, alteration of, in appeal or revision.*—An order passed by a competent Magistrate relating to a youthful offender, contravening any rules made by the Local Government, though illegal, is yet an order made under the Reformatory Schools Act and cannot be altered in appeal or revision. When the Magistrate finds an accused to be 15 years of age and therefore not a youthful offender under the Reformatory Schools Act, the Act gives him no authority to order his detention in a Reformatory School. The Court of the Judicial Commissioner, as a High Court, is not barred from altering the order of detention passed against accused persons, who are not youthful offenders. S. 16 of the Reformatory Schools Act is a bar only in the case of an order passed by a competent Magistrate as to a youthful offender. QUEEN EMPRESS v. NGA NYAN WUN, **L.B.R. 1893—1900, 441.** (20 A. 158, *Diss.*; 20 I.A. 165, *Appl.*)

(41)—*S. 16—Appellate or revisional jurisdiction.*—S. 16 of the Reformatory Schools Act does not exclude the exercise of appellate or revisional jurisdiction in all cases where a subordinate Court has ordered an offender to be detained in a Reformatory School. The exclusion is limited to the question of determination of the age of a youthful offender. EMPEROR v. AMIR BHIKAN, **6 Bom.L.R. 550.**

(42)—*S. 16—Substitution of imprisonment for an order of detention in Reformatory Schools by appellate Court—Object of Reformatory.*—Under s. 16 of the Act, an appellate Court cannot convert an order of detention in a Reformatory School into one of imprisonment. It is to avoid contamination by association with the inmates of a jail that detention in a Reformatory School has been introduced by the Legislature. Before passing an order for detention of a boy in a Reformatory School, there should

I.—Imperial Acts—continued.

Act VIII of 1897 (Reformatory Schools)—*ctd.*

be a definite finding as to the age of the boy. EMPRESS v. HARIDAS MUKHERJEE, **3 C.W.N. 576.**

(43)—*S. 16—Age of accused—Order for detention in a Reformatory in lieu of imprisonment—Power of High Court to interfere—Magistrate's order to be precise and definite.*—Where an accused gave his age as 14 years, and the Magistrate, though apparently having reasons to suspect his statement as being below the mark, accepted it and sentenced him, in lieu of imprisonment, to be detained in a Reformatory until he attained the age of 18 years, *held* that the Magistrate should not have ordered the accused to be detained in prison until he attained the age of 18. S. 16 of the Reformatory Schools Act clearly debarred the High Court from altering the order passed by the Magistrate with respect to the age of the offender or from substituting an order for detention in a Reformatory School for imprisonment, and that the order of the Magistrate, not being illegal on the face of it or made without jurisdiction, the High Court had no power to interfere with such an order. A sentence or order by a Magistrate must be as precise and definite as possible and should not leave the term of detention to be ascertained by the authorities of the Reformatory School. CROWN v. VALU, **1 L.B.R. 63.**

(44)—*S. 16—Jurisdiction to interfere with orders under the section.*—The exclusion of the exercise of revisional or appellate jurisdiction by s. 16 of Act VIII of 1897, in cases where a Subordinate Court has ordered an offender to be detained in a Reformatory School is limited to two specified matters. The first of these is the age of the youthful offender and the second is the substitution of an order for detention in a Reformatory School for transportation or imprisonment. If such substitution is made in the absence of jurisdiction, or is not made in compliance with the provisions of the Act, the High Court has jurisdiction, both in appeal and in revision, to interfere with the order. QUEEN EMPRESS v. HARI, **21 A. 391, F.B.=A.W.N. 1899, 138.** (20 A. 158, 20 A. 159, 20 A. 160, 1 Bom.L.R. 162, 25 C. 333, 21 M. 430, 2 C.W.N. 572, 25 C. 852, *R.*) [*F.*, 1 L.B.R. 68, 6 Bom. L.R. 550; *Rel.*, 13 Cr.L.J. 44=13 Ind.Cas. 284 =5 S.L.R. 173; *R.*, 3 L.B.R. 30]

(45)—*S. 16—Finding of Magistrate as to age of a youthful offender, nature of.*—The finding of a Magistrate regarding the age of a youthful offender ordered to be detained in a Reformatory School is final in the sense that it cannot be altered on appeal or in revision. But in case the Magistrate should have made a mistake and understated the age in the order for detention, it is competent to the Local Government, on the motion and report of the commission of visitors or the Board of management to order the removal of the boy, if and when he is found to have attained the age of 18 years. QUEEN-EMPRESS v. RAMA, **24 M. 13=1 Weir 882.**

I.—Imperial Acts—continued.

Act VIII of 1897 (Reformatory Schools)—*ctd.*

(46)—*S.16—Reformatory—Order of detention improperly passed—High Court, powers of, to interfere—Term of detention, enhancement of.*—A High Court has power to interfere in appeal or revision, when an order of detention in a Reformatory is opposed to the rules framed by the Local Government under Act VIII of 1897. If an order for detention in a Reformatory School is not properly passed, that is, if it does not conform to the rules made by the Local Government, the High Court is not debarred by s. 16 of the Act from altering or reversing such order. CROWN v. DAWOOD SAHIB, **1 L B.R. 68** (21 A. 391, 27 C. 133, *F.*; 25 C. 333, *Diss.*)

(47)—*S. 16—Sentence of imprisonment—Substitution of detention in a reformatory—Alteration of sentence into whipping—Effect—Court's power.*—Under S. 16, Reformatory Schools Act, 1897, the Court cannot interfere with an order substituting detention in a reformatory for imprisonment; but that does not preclude the Court from altering the sentence of imprisonment to one of whipping, in which case the order for detention in a reformatory which could not be passed in substitution of a sentence of whipping would fall to the ground. IMPERATOR v. RAJABALI, **5 S.L.R. 173=13 Ind. Cas. 284 =13 Cr. L.J. 44.** (21 A. 391, *R.*)

(48)—S. 16—*See* Nos. 5, 10, 24, 25, 26, 28, 29, 31, *supra.*

(49)—*Ss. 16 and 8—Powers of High Court.*—Where an order for detention in a Reformatory School is not passed in substitution for an order for transportation or imprisonment, but is passed when the person to whom it relates has not been convicted of any offence, *held*, the High Court is not precluded from dealing with the order. QUEEN-EMPRESS v. BILLAR, **20 A. 160=A.W.N. 1897, 231.** [*R.*, 21 A. 391, F.B.].

(50)—*S. 31—Accused sentenced to whipping—Applicability of.*—A boy aged 14 was convicted of causing hurt with a dangerous weapon and was sentenced, under s. 5 of the Whipping Act, to 15 stripes with a light rattan. The question for decision in the case was whether, under s. 31 of the Reformatory Schools Act, the boy could be delivered to his parents on their giving a bond. *Held*, that the section did not permit a bond being given after a whipping had been inflicted. KING-EMPEROR v. HA TAW, **3 L.B.R. 30.**

(51)—S. 31—*See* HOUSE TRESPASS, 1 L.B. R. 279.

(52)—S. 31—*See* No. 28, *supra.*

(53)—*S. 47—Youthful offender over 10 years of age.*—The notification of the Government of India, dated 30th June, 1887, does not require that a youthful offender over 10 years of age shall be detained in the Reformatory, until he is 18 years of age in every case. It only requires that he should be detained for a period of at

I.—Imperial Acts—continued.

Act VIII of 1897 (Reformatory Schools)—*cld.*

least five years, unless he would, before the expiration of that period, attain the age of eighteen. In the latter case his detention should be ordered only for such a shorter period as would bring him up to eighteen years of age. PUBLIC PROSECUTOR v. BANTOO, **1 Weir. 884.**

Act X of 1897 (General Clauses).

[SS. 3, 20, 21, 24, AMENDED S. 2 AND SCHEDULE, REP. ACT I OF 1903. DECLARED IN FORCE—IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE CHITTAGONG HILL TRACTS, REG. I OF 1900, S. 4; IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4.]

See ACT I OF 1868.

See BOM. ACT III OF 1886.

(1)—Doors whether immoveable property—*See* MAD. ACT V OF 1884, s. 81 (2), 16 M.L.T. 429=15 Cr. L.J. 637=25 Ind. Cas. 837.

(1-*a*)—*See* VILLAGE MAGISTRATE, 27 M. 223=2 Weir 208=14 M.L.J. 74=2 Weir 577.

(2)—*S.3 (2)—Applicability to Bombay Abkari Act.*—The General Clauses Act has no application to the Bombay Abkari Act, passed by the Governor of Bombay in Council. QUEEN-EMPRESS v. PHEROJSHAH HORMUSJEE, **1 Bom. L.R. 164.** (16 B. 669, *F.*)

(3)—S. 3 (27)—*See* EVIDENCE, GENERAL, 7 C.W.N. 635.

(4)—S. 3 (52)—*See* CRIM. PRO. CODE 1898, s. 164, 32 C. 550=2 Cr.L.J. 405.

(5)—Ss. 3, 21, 29—Government established by law, etc.—What it includes—*See* ACT I OF 1910, ss. 4 (1), 8, 9, 25, 6 P.W.R. 1913, Cr.

(6)—*S. 7—Repeal of statute repealing another statute—Effect.*—The repeal of a statute repealing a certain enactment does not revive the repealed enactment. The law on this point, as embodied in s. 7 of Act X of 1897, is the same as in England. DEPUTY LEGAL REMEMBRANCER v. AHMAD ALI, **25 C. 333=2 C.W.N. 11.** (12 M. 94, 14 B. 381, *R. & Appr.*)

(7)—S. 10—*See* SANCTION TO PROSECUTE—EXPIRY OF SANCTION AND LIMITATION, 2 Weir 200.

(8)—*S. 13—Words in singular number.*—The General Clauses Act provides that words in the singular shall include the plural and *vice versa*; this provision applies only where there is nothing repugnant in the subject or context. BUDHAI SHEIKH v. EMPEROR, **33 C. 292=10 C.W.N. 32=3 Cr.L.J. 126.**

(9)—S. 13—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 10 C.W.N. 32=33 C. 292=3 Cr. L.J. 126.

(9-*a*)—S. 21—*See* No. 5, *supra.*

I.—Imperial Acts—continued.

Act X of 1897 (General Clauses)—*concluded.*

(10)—S. 25—*See* ACT III OF 1867, s. 4, L.B.R. 1893—1900, 385.

(11)—S. 25—*See* PENAL CODE, s. 65, L. B. B. 1893—1900, 494.

(12)—S. 25—*See* SENTENCE — IMPRISONMENT—IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC., 1 L.B.R. 150.

(13)—S. 26—*See* ACT XI OF 1878, s. 19 (*e*), 3 L.B.R. 218, F.B.

(14)—S. 26—*See* ACT IX OF 1890, ss. 68, 112, 11 C.W.N. 100=4 Cr.L.J. 439=5 C.L.J. 47.

(15)—S. 29—*See* No. 5, *supra.*

Act VI of 1898 (Post Offices).

[REP. IN PT. (AS TO BURMA), ACT XIII OF 1898, S. 18, S. 2 AM., ACT II OF 1903. DECLARED IN FORCE—IN THE SONTHAL PARGANAS, REG. III OF 1872, AS AMENDED BY REG. III OF 1899, S. 3, IN THE CHITTAGONG HILL TRACTS, REG. I OF 1900, S. 4, IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII of 1898, S. 4.]

See ACT XVII OF 1854.

See ACT XIV OF 1866.

(1)—Alternative charges for offences under the Penal Code and under the Post Office Act—*See* CRIM. PRO. CODE, 1898, s. 236, 10 Ind. Cas. 168=12 Cr. L.J. 224=5 S.L.R. 16.

(2)—*Ss. 20 and 61—Obscene advertisements through post cards.*—The circulation, by post, of a postcard containing an advertisement regarding a patent medicine in language of an obscene character is an offence under s. 61, Post Office Act. SARAT CHANDRA GHOSE v. KING-EMPEROR, **32 C. 247=2 Cr. L.J. 201.** (L.R. 3 Q.B. 360, 3 A. 837, 20 B. 193, *Rel.*)

(2-*a*)—*S. 52—Misappropriation of Postal money order—Evidence, value of—Mere suspicion, whether sufficient evidence—Oral or documentary evidence to prove statements made in departmental inquiry whether admissible.*—Where the only evidence against the accused, charged with misappropriating a Telegraphic money order, is that the postal account contained entries of delivery on dates different from those on which the actual deliveries were made, that merely creates a suspicion and is not sufficient to prove misappropriation. Oral or documentary evidence as to the statements made by a Postman in the course of a departmental inquiry are not admissible in evidence in his absence. *In re* KUPPILI PRAKASAROW, **16 Cr.L.J. 3=26 Ind. Cas. 307.**

(3)—S. 52—*See* ACT XVII OF 1854, s. 50, 2 Weir 454=1 M.H.C. 83; 3 B.H.C. Cr. 8.

(4)—S. 55—*See* ACT XIV OF 1866, s. 50, 1 Weir 862.

(5)—S. 61—*See* No. 2, *supra.*

***I.—Imperial Acts*—continued.**

Act VI of 1898 (Post Offices)—*continued.*

(6)—*Ss.* 61 *and* 72—*Transmission of obscene article—Prosecution—Complaint — Crim. Pro. Code, s.* 4, *cl.* (*h*).—A prosecution under s. 61 of the Act, although authorized by the Post-master-General, is illegal, unless such prosecution takes place on a complaint as defined in s. 4, cl. (*h*) of the Code. EMPEROR v. ROHINI KUMAR SEN, **10 C.W N. 1029=4 Cr. L.J. 170.**

(7)—*S.* 64—*Order to send a parcel by value payable post insured*—Bona fides *of sender—Rule* 133.—G ordered the accused to send her a parcel of clothes insured for a certain amount. The accused sent the parcel by value payable post uninsured and certified that it was sent in execution of a *bona fide* order. The Magistrate convicted him under the Post Office Act under s. 64, Rule 133. *Held*, that the *bona fide* order contemplated by Rule 133, is an order to send, without regard to the manner of sending, and that the accused could not be convicted under s. 64 of the Post Office Act. GHULAM RABBANI v. KING-EMPEROR, **6 A.L.J. 481= 9 Cr. L.J. 537=2 Ind. Cas. 228.** [*R.*, 33 M. 511=11 Cr. L.J. 215=5 Ind. Cas. 738=20 M. L.J. 402=7 M.L.T. 62.]

(8)—*S.* 64—*V.P. Post—Rule framed under the Act requiring declaration as to existence of* bona fide *order - Signing false declaration — Whether offence under s* 64 — *Rules framed under the Act effective as the Act itself.*—K sent a copy of his magazine by V.P. post to W, signing a declaration to the effect that the article was sent in execution of a *bona fide* order received by him ; without which declaration the Post Office would not, by reason of the rule issued under the Post Office Act (VI of 1898), have accepted the article for transmission by V.P. post. The accused was charged under s. 64 of the Act for making a false declaration in violation of the terms of the Act. It was found that the accused had received no order from W and that the declaration signed by him was false. But the Magistrate thought that the prosecution must fail, because the Post Office Act itself, that is, the sections in the body of the Act do not require such a declaration to be made and the rule framed under the Act is not part of the Act. *Held* that the Magistrate's view was wrong, and that the rules and bye-laws framed for the purpose of carrying out the objects of an Act under the powers conferred by it, shall have effect as if enacted by the Act. An order to send the article cannot be inferred merely because the addressee did not refuse to receive, nor returned by post any of the previous issues sent to him, and did not make a protest even after he received intimation that he had been enrolled as a subscriber and that the issue in question would be sent by V.P. post. But, if the addressee had paid for the issue sent to him by V.P., and continued to receive further issues, say for about an year, and then an issue was sent to him V.P. for the amount of subscription for that year, it might be well that one could infer an order under such circumstances. CROWN PROSECUTOR v. G. KOTHANDARAMIAH, **7 M.L.T. 69.**

***I.—Imperial Acts*—continued.**

Act VI of 1898 (Post Offices)—*concluded.*

(9)—S. 72—*See* No. 6, *supra.*

Act II of 1899 (Stamp).

[AM. IN LOWER BURMA, ACT VI OF 1900, S. 47. SS. 2, 26, 29 (*a*), 40 (*b*), 56 (1), SCH. I ; AM., S 23A ADDED, ACT XV OF 1904. S. 2 (19) REP IN PT., SS 11, 29, 30, 32, 35, 40, 41, 51, 69, 74 AM., SCH. I, ARTS. 24, 41, 47, 53 AM., ACT V OF 1906. DECLARED IN FORCE IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3. DECLARED NOT TO EXTEND TO THE HILL DISTRICT OF ARAKAN, REG. II OF 1901]

See ACCEPTING INSTRUMENT NOT DULY STAMPED.

(1)—*Ss.* 2 (24), 3, 11, 27, 31, 62, 64, *sch.* I, *arts* 33, 58—*Instrument of gift or settlement—Execution.* QUEEN EMPRESS v. MI NAN THA, **U.B.R. 1892—1896, Vol. I, 303.**

(2)—*Ss.* 2 (23), 62 *and* 63—*Sarkhat—Memorandum of account—Receipt—Several items of over Rs.* 20—*Each item to be stamped—Adhesive stamp to be cancelled.*—Where a sarkhat, in which entries of payments and receipts were made from time to time, in order to act as an acknowledgment thereof, showed on one side sums of money advanced, and on the other various sums of money re-paid, including certain items of more than Rs. 20, *held*, that each item of over Rs. 20 required to be stamped as a receipt. TULSHI RAM v. KING-EMPEROR, **11 A.L.J. 309=35 A. 390=14 Cr. L.J. 392=20 Ind. Cas. 216.**

(3)—S. 3—*See* No. 1, *supra.*

(4)—S. 11—*See* No. 1, *supra.*

(5)—S. 27—*See* No. 1, *supra.*

(6)—*Ss.* 30 *and* 65—*Refusing or neglecting to give a receipt when required to do so.*—Where the accused had sent the complainant a stamped and receipted bill for a certain amount, and, on the complainant paying a portion of the bill by cheque, declined to give a receipt for the cheque, *held* that the accused had failed to comply with the requirements of the law and had been properly convicted under s. 30 of the above Act. JOHANNES, J.N. v QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 378.**

(7)—S. 31—*See* No. 1, *supra*,

(8)—*S.* 33—*Initiation of criminal proceedings under the Act—Impounding not necessary —Sanction of Collector.*—The impounding of a document under s. 33 of the Indian Stamp Act was not requisite to the initiation of proceedings under the Act. The only requisite to a prosecution was the sanction of the Collector or other officer authorized in that behalf. S. R. M. M. PERIANEN CHETTY v. QUEEN-EMPRESS, **U. B R. 1892—1896, Vol. I, 313.** (24 W.R. Cr., 1, *R.*)

I.—Imperial Acts—continued.

Act II of 1899 (Stamp)—*continued.*

(9)—*Ss.* 33, 38 (2), 40—*Documents produced under search warrants—Disposal of impounded documents.*—The words "comes in the performance of his function" in s. 33, sub-s. 1 are sufficiently wide to include documents produced before a Magistrate under a search warrant. Where certain documents had been impounded and forwarded to the Collector under s. 38 (2), *held*, that the Collector should return them to the impounding officer under s. 40, sub-s. 3 and, when they have been so returned, the latter officer might dispose of them according to law. KING-EMPEROR v. BALU KUPPAYYAN, **25 M. 525 = 2 Weir 670.**

(10)—*Ss.* 35 (*b*), 42—*Stamp and penalty—Admission of receipt—Endorsement.*—In applying the proviso (*b*) of s. 35 of Act II of 1899, the Court should not levy the duty of one anna as well as the penalty of one rupee. When a receipt is admitted under the proviso, it should be endorsed in the manner provided for in s. 42. REFERENCE UNDER S. 57 OF ACT NO. II OF 1899, **24 A. 374 = A.W.N 1902, 72.**

(11)—S. 38—*See* No. 9, *supra.*

(12)—S. 40—*See* No. 9, *supra.*

(13)—*Ss.* 40 *and* 70—*Fraud—Offence—Procedure.*—Where the essential ingredient of the offence is to defraud, it is not necessary nor possible for the Collector to collect any duty until it has been decided in a proper enquiry what was the real value of the property. Hence, if there is fraud, no action need be taken by the Collector under s. 40 before a prosecution is sanctioned under s. 70 of the Act. QUEEN-EMPRESS v. NGA SET YO, **U.B.R. 1892—1896, Vol. I, 307.** (7 B. 82, 8 C. 259, 12 M. 231, *R.*)

(14)—S. 42—*See* No. 10, *supra.*

(15)—*Ss.* 43, 62—*Offence under s.* 62, *necessity for intent to evade law—Crim. Pro. Code, s.* 556—*Magistrate disqualified under, is debarred from interfering in revision to prejudice of accused.*—A Collector sanctioned a prosecution under s. 62 of the Stamp Act, after the deficient duty and penalty had been levied by a Civil Court. The Magistrate, who tried the case, discharged the accused on the ground that the object of the accused was not evasion of duty. But the District Magistrate, in revision convicted the accused and sentenced them to pay fine. *Held*, in a summons case, the accused must be either convicted or acquitted, and the accused having pleaded guilty to the offence, in which intent is not an ingredient, the Magistrate was bound to convict. In consideration of the absence of intent to evade the law, he might have inflicted a merely nominal penalty. *Held*, further, that the District Magistrate, having as Collector, directed the prosecution of the accused, was not competent to try them. If he was disqualified from trying the case, he was equally disqualified from interfering in revision to the prejudice of the accused. EMPEROR v. NATARAJ AYAR, **U.B.R. 1905, Crim. Pro. Code 37 = 2 Cr.L.J. 468.** (23 C. 44, U.B.R. 1897—1901, 133, *F.*)

(16)—*S.* 62—"*Accepting*"—"*Presenting*"—*Meaning.*—"Accepting" is a technical term and does not apply to the mere taking of a promissory note in one's favour from the debtor. 'Presenting' like 'accepting' is a technical term and is so used in s. 62 of the Act. It would be straining the provisions of s. 61 of the Act to apply them to the demand for payment of a promissory note made through the instrumentality of the Court in a suit. CRIMINAL REVISION CASE NO. 637 OF 1892, **U.B.R. 1892—1896, Vol. I, 312.** (32 B. 753, 7 M. 71, *F.*)

(17)—*S.* 62—"*Accepting*" *meaning of—Held*, that, 'accepting' does not mean 'receiving' but 'executing as acceptor.' QUEEN-EMPRESS v. NGA KWET GYI, **U.B.R. 1892—1896, Vol. I, 311.** (7 M. 71, *R.*)

(18)—*S.* 62—*Offence under—Bond—Promissory note.*—A document written on a paper, bearing a one anna stamp, whereby the maker promises to pay to the accused or to his order a certain sum of money, which he (the maker), had borrowed from the accused, cannot be treated as a bond, merely because it was attested by witnesses. QUEEN-EMPRESS v. NGA PEIN, **U.B.R. 1897—1901, Vol. I, 380.**

(19)—*S.* 62—*Mere receipt of an unstamped instrument does not constitute abetment of an offence.*—The conviction of a person, who merely received a promissory note executed on plain paper, in his favour, of abetment of the offence under s. 62 of the Act is bad in law. The person, who makes an unstamped instrument, and not the person in whose favour it is made, commits the offence and the receiving by the latter of the unstamped instrument made by the former does not constitute abetment of the execution of it. EMPEROR v. RAJLINGAM, G., **1 N.L.R. 163.**

(20)—*S.* 62—*Mere receipt of unstamped instrument.*—The mere receipt of an unstamped instrument does not constitute the offence of abetment of the execution of the instrument. KING-EMPEROR v. NGA SHWE BWIN, **U.B.R. 1904, 2nd Quarter, Stamp I.** (7 B. 82, 20 A. 440, U.B.R. 1892—1896, 313, *R.*)

(21)—*S.* 62—*Accepting instrument not duly stamped*—"*Accepting*" *meaning of.*—The term "accepting," in s. 62 (1), Act II of 1899, does not mean receiving, but executing, as an acceptor; and the mere fact that a person receives from another a promissory note without the same being duly stamped does not make him guilty under that section. QUEEN-EMPRESS, v. JADU MAL, **4 O C. 168.** (20 A. 440, *F.*)

(22)—*S.* 62—*Arbitration award—Parties signing otherwise than as witnesses—Meaning of—Construction of Statute in favour of subject.*—

I.—Imperial Acts—continued.

Act II of 1899 (**Stamp**)—*continued.*

A penal Act must be read as favourably as possible to the subject. A dispute was referred to arbitration and an award was passed. The parties to the proceedings signed the award and acted upon it. The award not being stamped, the parties had to pay the duty and penalty. They were then criminally prosecuted. *Held* that the only person liable to sign the award was the arbitrator, and the other parties who signed it could not be said to have signed it otherwise than as witnesses within the meaning of s. 62 of Act II of 1899. BIRJI PAL SARAN v. KING-EMPEROR, 7 **A.L J. 180 = 32 A. 198 = 11 Cr. L J. 52 = 5 Ind. Cas 180.**

(23)—*S.* 62 (*b*)—*Unstamped receipt issued by an unauthorised gomastha.*—Where an unstamped receipt was issued by a gomastha of a firm evidencing payment of money to the firm, and the accused, the sole surviving member of the firm, admitted the receipt of the money paid, but there was no proof that the receipt was written or granted by the gomastha in the presence or under the authority of the accused, *held*, that he could not be convicted of an offence under cl. (*b*) of s. 62. GOLAM HOSSAIN ARIFFS v. EMPEROR, **8 C.W.N. 378.** [*F.*, 13 C. W.N. 188.]

(24)—*S.* 62 (1) (*a*)—*Entry in creditor's book —Promissory note.* — An entry of receipt of money made by a debtor in his creditor's book, with the addicn that the amount borrowed would be paid on a certain date, but to whom it did not appear, is not executing a promissory note without the necessary stamp, for, the entry does not amount to a promissory note. EMPEROR v. GULZARI MAL; EMPEROR v. KALLU MAL, **A.W.N. 1903, 174.**

(25)—S. 62—*See* Nos. 1, 2 and 15, *supra.*

(26)—*Ss.* 62 (1) (*b*), 64 (*c*)—*Entry in account book made by debtor.* — A money-lender and cloth-seller, being illiterate, kept a register divided into columns, in which his customers used to make or caused to be made entries of the loan taken or purchases made by them. They also noted or caused to be noted in the book the payments made by them. A pleader, who owed him a sum of Rs. 90-2-0, paid this sum, and caused his clerk to enter in the column of remarks in the account book with reference to this payment a note to the effect that the full amount had been repaid. No receipt for money paid was asked for. *Held* that the money-lender could not be convicted either under s. 62 (1) (*b*), Act II of 1899, as the entry was not made by the accused, or under s. 64 (*c*), of the commission of "any other act calculated to deprive the Government of any duty" under the Act. EMPEROR v. KALLU MAL, **A.W.N. 1903, 173.**

(27)—S. 63—*See* No. 2, *supra.*

(28)—*S.* 64 (*a*)—*Non-disclosure of certain facts, liability for.*—R purchased certain property for Rs. 20,000 paying Rs. 1,000 in cash

I.—Imperial Acts—continued.

Act II of 1899 (**Stamp**)—*concluded.*

and leaving Rs. 19,000 with the vendors to be drawn upon whenever necessary, but which was never paid. Subsequently R re-transferred the property to the vendors by a deed for Rs. 1,000, making no mention of the Rs 19,000 The Sub-Registrar impounded the document. *Held* that the real consideration was Rs. 1,000 *plus* an oral agreement cancelling the liability of the vendors for payment of Rs. 19,000, and that the omission in the sale-deed to make any reference whatever to the unpaid consideration could only have been intended to avoid the question of stamp duty being raised. The vendor therefore committed an offence under s. 64 (*a*) of the Stamp Act. RAMESHAR DAS v. KING-EMPEROR, **7 A.L.J. 110 = 32 A. 171 = 11 Cr. L J. 204 = 5 Ind. Cas. 697.**

(29)—S. 64—*See* Nos. 1 and 26, *supra.*

(30)—*S* 65—*Refusal to deliver a receipt—Money sent by money order—Acknowledgment signed—Second receipt refused—Whether person refusing guilty.*—One G sent more than Rs. 20 by money order to B. B signed the money order acknowledgment and handed it over to the Post Office official. G demanded a stamped receipt which B refused to give. Notification No. 785, S.R., dated 17th February, 1899, had exempted postal acknowledgment from being stamped. *Held*, that the conviction of B was illegal, inasmuch as B, having signed a receipt which was exempt from stamp duty and handed it over to the Post Office which was an agent of G for the purpose, B was not bound to give a second receipt, and his refusal to give a fresh receipt was not a refusal within the meaning of s. 65, Stamp Act. BALMAKUND v. KING-EMPEROR, **9 A.L.J. 97 = 13 Cr. L.J. 122 = 13 Ind. Cas. 778 = 34 A. 192.**

(31)—S. 65—*See* ACT I OF 1879, s. 64, 1 Weir 906 = 2 Weir 326.

(32)—S. 65—*See* No. 6, *supra.*

(33)—S. 68—*See* ACT I OF 1879, s. 67, 1 Weir 907.

(34)—S. 69—*See* ACT VII OF 1870, s. 34, 24 M. 319 = 1 Weir 725.

(35)—S. 70—*See* No. 13, *supra.*

(36)—Sch. I, art. 33—*See* No. 1, *supra.*

(37)—*Sch.* I, *art.* 53 (*c*)—*Stamp—Receipt for rent—Receipt for money paid out of Court in satisfaction of a decree for rent.*—Although a receipt for the rent of an agricultural holding is exempt from a payment of stamp under art. 53 (*c*) of the Act, a receipt for payment out of Court, of money due under a decree for such rent is not so exempt. EMPEROR v. DUNGHAR, **A.W.N. 1908, 272 = 5 A.L J. 747 = 9 Cr.L.J. 37 = 31 A. 36 = 1 Ind Cas. 568.**

(38)—Sch. I, art. 58—*See* No. 1, *supra.*

I.—Imperial Acts—continued.

Act VIII of 1899 (Petroleum).

[S. 5 (1) REP IN PART, ACT XI OF 1901, SCH. III. SO MUCH AS RELATES TO DANGEROUS PETROLEUM AND THE IMPORTATION OF PETROLEUM DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

See ACT XII OF 1886.

(1)—*Ss.* 1 (3), 11 *and* 15—*Repealed Act* XII *of* 1886, *ss.* 2 (2), 10 *and* 15—*Notification in Gazette extending repealed Act to Cuttack—New Act not expressly preserving the same—General Clauses Act, ss.* 8, 24.—A notification in the Calcutta Gazette extending the operation of the Act XII of 1886 to Cuttack was held to have been preserved under Act VIII of 1899 by the operation of ss. 8 and 24 of the General Clauses Act, although the Act of 1886 itself was repealed and there was no provision in the present Act expressly preserving the notifications issued under the provisions of the repealed Act. PADAN SAHA v. EMPEROR, 7 C.W.N. 658.

(1-*a*)—S. 11—*See* No. 1, *supra.*

(2) *Ss.* 11, 15 (*a*)—*Transporting at a time more than the maximum quantity of petroleum allowed by law—Liability of principal for acts done by agent or servant—Excise Act* (*V, B. C. of* 1909)—*Motor Cars Act* (*III, B. C. of* 1903) —There is nothing in the Indian Petroleum Act, as there is in the Excise Act and in the Motor Cars Act, which makes the principal responsible for the acts of his agents or servants, and nothing can be read into the law which is not to be found in the law. Where one S.B., who was an agent of the petitioner and also of several other persons for the sale of petroleum, transported more than 150 tins, *i.e.*, more than 500 gallons of petroleum at a time, and the petitioner took commission or profit of one pice per tin on every tin sold, but there was no finding that the petitioner knew that more than 150 tins were being transported at one time on his license and that he allowed this to take place with such knowledge: *Held* that the petitioner was not in any way responsible for his illegal proceeding. GANPAT RAI v. KING-EMPEROR, **17 C.W.N. 207 = 17 C.L.J. 390 = 13 Cr. L.J. 732 = 17 Ind. Cas. 536 = 40 C. 356.**

(3)—*S.* 15—*See* Nos. 1 and 2, *supra.*

Act III of 1900 (Prisoners).

[S. 49 (2) (3) (AS TO LOWER BURMA) REP., ACT VI OF 1900, S. 48; S. 29 AMENDED, S. 31 REPEALED ACT I OF 1903; S. 11 AMENDED, ACT IV OF 1908, S. 13.]

See ACT V OF 1871.

See ACT XV OF 1869.

(1)—Ss. 2, 11—*See* ACT IV OF 1871, 31 C. 1 = 7 C.W.N. 889.

(2)—Ss. 7, 8, 9—*See* CRIM. PRO. CODE (1898), s. 307, 29 C. 286 = 6 C.W.N. 254.

I.—Imperial Acts—continued.

Act III of 1900 (Prisoners)—*concluded.*

(3)—S. 8—*See* No. 2, *supra.*

(4)—S. 9—*See* No. 2, *supra.*

(5)—S. 11—*See* No. 1, *supra.*

(6)—*S.* 40—*Scope—Accused in British territory being prisoner in Native State.*—The High Court of Bombay refused to address a letter to the Government of Bombay, under s. 40 of Act III of 1900, requesting them to ask the Kolhapur Durbar to permit a prisoner, who was in prison in that State, to come out of jail to answer charges in a criminal proceeding pending against him in British territory. EMPEROR v. RAJASAHEB IMAMSAHEB, **7 Bom. L. R. 566 = 2 Cr. L. J. 504.**

Act V of 1900 (Whipping).

[REP., ACT IV OF 1909.]

See ACT VI OF 1864.

See WHIPPING.

(1)—*S.* 3—*Accused not being juvenile offender—Whipping—Illegal.*—Under s. 3 of the Whipping Act, juvenile offenders are liable to whipping for attempts to commit offences not punishable with death under the Penal Code or any other law. Therefore, a sentence of whipping for an attempt to commit an offence when the accused is not a juvenile offender is illegal. KING-EMPEROR v. NGA PO, **2 L.B.R. 123.**

Act XV of 1903 (Extradition).

(1)—*S.* 3—*Bail, High Court if may order.*—As regards allowing bail to a prisoner, against whom proceedings are pending under the Extradition Act of 1903, the High Court has the fullest discretion, having regard to the provisions relating to bail in the Crim. Pro. Code, by which the matter must be regulated. RUDOLF STALLMAN v. EMPEROR, **15 C.W.N. 736 = 12 Cr. L.J. 358 = 10 Ind. Cas. 958.**

(2)—*Ss* 3 *and* 4—*Proceeding under, if may be quashed by the High Court—High Courts Act* (24 *and* 25 *Vict.,* c. 104), *s.* 15—*Magistrate's jurisdiction, if may be questioned.*—The Magistrate, who is authorized to hold an enquiry under the Extradition Act of 1903, is not subject to the appellate jurisdiction of the High Court. When, therefore, a person, against whom proceedings under S. 3 of the Act were pending in the Court of the District Magistrate of Alipur, moved the High Court for quashing the proceedings, on the ground that the Magistrate had no jurisdiction in the matter, and that there was no legal evidence before him to justify the detention of the prisoner:—*Held* that the High Court would not interfere under s. 15 of the Charter Act. RUDOLF STALLMAN v. KING-EMPEROR, **15 C.W.N. 737 = 38 C. 547 = 10 Ind. Cas. 618 = 12 Cr. L.J. 322.** [*R.*, 27 M.L.J. 227 = 16 M.L.T. 128; *D.*, 39 C. 164 = 14 C.L.J. 375 = 15 C.W.N. 1053 = 12 Cr. L.J. 505 = 12 Ind. Cas. 273.]

I.—*Imperial Acts*—continued.

Act XV of 1903 (Extradition)—*continued.*

(3)—Ss. 3. 4 (1), 11, 14, 15—If excludes jurisdiction of High Court in *habeas corpus*—*See* HABEAS CORPUS, 15 C.W.N. 1053 = 14 C.L.J. 375 = 12 Cr. L. J. 505.

(4)—S. 4—*See* Nos. 2 and 3, *supra.*

(5)—S. 7—*Power of Political Agent—Incompetency of Chief Court to interfere—Revision—Crim. Pro. Code, Act V of 1898, s 439.*—*Held*, that the Chief Court has no power to interfere in respect of a warrant issued by a Political Agent of a Native State under s. 7 of Act XV of 1903, on the grounds either (1) that there is no *prima facie* case against the petitioner or (2) that the circumstances, under which that officer was originally moved, do not justify him to exercise his power under the said section. GIYAN CHAND v. CROWN. **36 P.W.R. 1908, Cr = 9 Cr.L J. 3 = 3 P.R. 1909, Cr.**

(6)—S. 7 — Political Agent — Warrant — Accused surrendering—Certificate by Political Agent for trial of accused in British India—Recalling the certificate and allowing the Native State to try the accused—Practice and procedure—*See* CRIM PRO CODE, 1898, s. 188, 14 Bom. L R. 377 = 15 Ind. Cas. 809 = 13 Cr. L.J. 537 = 1 Bom. Cr. C. 140.

(7)—*Ss 7 and 8—Magistrate's jurisdiction to hold to bail the person arrested to appear before a tribunal in a Foreign State*—Neither Code of Criminal Procedure nor any provision in the Extradition Act authorizes a Magistrate to hold a person to bail to appear before a tribunal in a State to which the Act applies. The Magistrate could bind over the prisoner to appear before himself, and then, when the prisoner had surrendered to his bail, after receiving the warrant from the Political Agent for the State, could proceed to execute it under S. 7, cl. (2), or, if the warrant had been duly endorsed by the Political Agent under s. 8(1) could bind the prisoner over to appear at the time and place indicated in the warrant. In this case, the warrant had not been so endorsed by the Political Agent. BALTHASAR v. EMPEROR, **33 C. 1032 = 4 Cr. L J. 366.**

(8)—*Ss. 7, 10 15—High Court—Jurisdiction—Propriety of warrant — Warrant issued without evidence—No report to political Agent—Inquiry without warrant issued by Political Agent—Procedure unknown to Extradition Act.*—Notwithstanding that s. 15 of the Extradition Act, 1903, ousts the jurisdiction of the High Court to inquire into the propriety of a warrant issued under Chap III of the Act, yet, where it is sought to justify the order of a Magistrate under an authority supposed to be derived from the law but which order was, in fact, made without jurisdiction, it must be assumed that the Magistrate has acted in his general jurisdiction and as such his order is open to revision by the High Court at the instance of the party whose liberty is affected by it. (7 Bom. L R 463, 2 Cr L.J 439, 21 P.R. 1886, Cr., *Rel.*) The Sub-Inspector of a Police station in British India sent an inquiry-slip through the Sub Divisional Officer of Madhubani to the Sub Divisional Officer of Hanumannagar in Nepal territory, inquiring if a certain person (Gulli Sahu) was wanted by the Nepal authorities in connection with a murder case. The Sub-Divisional officer of H. replied that he was and asked for his arrest, promising to send proof of criminality and nationality. The Sub Divisional Magistrate of Madhubani caused the person to be arrested and released him on bail. With the evidence of criminality and nationality was received a request for the arrest of another person, who also was arrested and released on bail. After examining witnesses for the prosecution and the defence, the Sub-Divisional Magistrate directed the surrender of both the accused to the Nepal authorities: *Held*, on a reference by the Sessions Judge, that the order of the Magistrate was bad, *firstly*, because he issued the warrant at least in the case of Gulli Sahu on mere information without any evidence, contrary to the provision of cl. (1), s. 10 of the Extradition Act, 1903; *secondly* because he did not report the issue of the warrants to the Political Agent in Nepal, as he ought to have done under cl. (2) of the same section; *thirdly*, because he made an inquiry into the case without a warrant or warrants issued by the Political Agent in or for the Nepal State as required by s. 7 of the Act; and *fourthly*, because he ordered the surrender of the accused on a procedure unknown to the Extradition Act. EMPEROR v. GULLI SAHU, **14 Cr. L.J. 673 = 21 Ind. Cas. 993.**

(9)—*Ss. 7, 15— Preliminary enquiry by Magistrate—Warrant by Political Agent—High Court, jurisdiction of.*—*Per Russel, J.*—In all cases where enquiries are held by Magistrates with a view of extraditing accused persons, it would be desirable that the accused should, if possible, be present thereat. S. 15 of Act XV of 1903 ousts the jurisdiction of the High Court to enquire into the propriety of a warrant, but leaves open the question of the High Court's power to intefere with a Magistrate's action, if it was proved that such action was consquent upon a warrant issued by a Political Agent which was plainly illegal. *Per Aston, J.*—There is no provision in Act XV of 1903, or in the Code of Criminal Procedure or in any other law, making an enquiry by a competent British Court in British India into the truth of the accusation, whether, in the presence of the accused or otherwise a condition precedent to the issue and execution of the warrant of a Political Agent under s. 7 of Act XV of 1903. EMPEROR v. HUSEIN ALLY NIAZALLY, **7 Bom. L.R. 463 = 2 Cr L J. 439.** [*F.*, 41 C. 400 = 18 C.W.N. 869 = 14 Cr. L.J. 673 = 21 Ind. Cas. 993.]

(9-a)—*Ss. 7, 15—Surrender of fugitive criminal to State other than Foreign State—Execution by District Magistrate of warrant issued by*

I.—Imperial Acts—continued.

Act XV of 1903 (Extradition)—*concluded.*

Political Agent if a judicial act—Jurisdiction of High Court—Crim. Pro. Code, s. 491.—Where a warrant is issued by a Political Agent under s. 7, Act XV of 1903, its execution by the District Magistrate in accordance with the Act is an executive act, and the High Court cannot interfere in revision with such execution. The power of the Court to interfere otherwise than by way of revision, *e.g.*, under s. 491, Crim. Pro. Code, is untouched by this decision, GULLI SAHU v. EMPEROR, **19 C.W.N. 221.**

(10)—*S.* 8--*Warrant issued by Political Agent, endorsement in—Jurisdiction of Magistrate to release arrested person on bail, where no such endorsement* —Where a person was arrested upon a warrant issued by a Political Agent, under the Indian Extradition Act, and was placed before a Magistrate, and such Magistrate passed an order releasing him on bail and directing him to appear before the Political Agent on a certain date, although there was no endorsement on the warrant, giving the Magistrate power to pass such an order. *Held*, that in the absence of such an endorsement under s. 8 of the Act, the Magistrate had no authority to pass such an order. RAJ KUMAR DUTT v. TOTHAL SIJO, **7 C L.J. 171=12 C.W N. 602=7 Cr. L.J. 198.**

(11)—S. 8—*See* No. 7, *supra.*

(12)—*S* 10—*Scope of section.*—Under s. 10 of the Act, jurisdiction is distinctly conferred on the Magistrates in British India to make preliminary enquiries and to take evidence on the information given or complaint laid in regard to offences alleged to have been committed by Native Indian or British Subjects of His Majesty, within and beyond the limits of British India, not being in a Foreign State, as defined in that Act and to order warrant to issue for the arrest of such accused persons. EMPEROR v. MAHAMAD BUKSH KARIM BUKSH, **8 Bom. L. R. 507=4 Cr. L. J. 49.**

(13)—S. 10—*See* No. 8, *supra.*

(14)—S. 11—*See* No. 3, *supra.*

(15)—S. 14—*See* No. 3, *supra.*

(16)—S. 15—*See* Nos. 3, 8, 9 and 9-*a*, *supra.*

(17)—S. 19 (c)—*See* ST. 44 AND 45, VICT., c. 49, s. 13. 8 M.L.T. 352=8 Ind. Cas. 301=11 Cr. L.J. 622=1910 M.W.N. 568.

Act III of 1907 (Provincial Insolvency).

(1)—*S.* 43—*Bad faith of a debtor. Judge's power to take cognizance of—Act of bad faith, effect of.*—Under s. 43 of the Provincial Insolvency Act, a Judge can take cognizance of the bad faith of a debtor at any time, whether before or after the making of the order of adjudication, although it may be that the Court has no power to refuse to make an order of adjudication merely because an act of bad faith is proved. NANHE MAL v. KING-EMPEROR, THROUGH RAGHUBIR PRASAD, **17 O.C. 138.** (13 O.C. 94, 15 C.W.N. 213, *D.*)

I.—Imperial Acts—continued.

Act III of 1907 (Provincial Insolvency)—*cld.*

(2)—*S.* 46 (1)—*Additional Judge—Whether subordinate to District Court—Appeal—Order convicting the insolvent—Civil appeal—Practice—Interference with order in appeal* —*Held* (*by Richards, C. J., and Banerji, J., Knox, J., dissenting*) that a Court of an Additional District Judge is not a Court subordinate to the District Court within the meaning of s. 46 (1) of the Provincial Insolvency Act and an appeal from the order of the Additional Judge lies to the High Court and not to the District Court. (34 A. 382, *F.*) *Held* by the Full Bench that an appeal from an order of an Additional Judge convicting the insolvent of concealing his account books is a Civil appeal. Where an insolvent knew that an enquiry was being made as to whether he had concealed his account books and he did not show to the Court that he had not done so and the Court convicted him, *held* that the High Court will not interfere in appeal, even though no proper charge had been made against him. CHIRANJI LAL v. KING-EMPEROR, **12 A.L.J. 1105=36 A. 576=15 Cr. L.J. 658=25 Ind. Cas. 986 F.B.** (19 C.L.J. 430, 7 A.L.J. 602, *R.*)

Act V of 1908 (Code of Civil Procedure).

[S. 120 (2) REP., ACT III OF 1909, FROM 1ST JANY., 1910. SOME LOCAL MODIFICATIONS IN FORMER CODES, WHICH ARE TO BE READ INTO THE PRESENT CODE BY VIRTUE OF S. 158 OF THE LATTER:—AJMERE, REG. I OF 1877, S. 28; BOMBAY PRESIDENCY, BOM. ACT IV OF 1903, S. 10 (2); CENTRAL PROVINCES, ACT XX OF 1875. SS. 11, 12 (ADDED BY ACT II OF 1879, S. 2); COORG, REG. I OF 1901, SS. 11, 12; LOWER BURMA, ACT VI OF 1900, S. 16 (3); N.-W.FRONTIER PROVINCE, REG. VII OF 1901, SS. 46, 78. 84 (3); OUDH, ACT XVIII OF 1876, SS. 19, 20, 22; PUNJAB, ACT XVIII OF 1884, SS. 68. 70 (3), (INS., ACT XXV OF 1899, SS. 5, 6); SANTHAL PARGANAS, REG. V OF 1893, S. 10.]

See ACT XIV OF 1882.

(1)—S. 11—*See* MAINTENANCE, 32 C. 479=13 C.W.N. 150.

(2)—S. 114, O. XLVII, r. 1—High Court's power to grant leave to appeal to Privy Council against order under cl. 10 of Letters Patent—Order granting leave whether may be reviewed at instance of Public Prosecutor—*See* LETTERS PATENT—LETTERS PATENT, 1865 — CALCUTTA, cls. 10, 39, 15 Cr. L.J. 52=22 Ind. Cas. 324=41 C. 734.

(3)—S. 115—Interference in revision when its effect will be to perpetuate wrong order—Dismissal for default—Restoration—Revision —*See* CRIM. PRO. CODE, 1898, s. 195, 15 Cr. L. J. 71=22 Ind. Cas. 423.

(4)—S. 115—*See* CRIM. PRO. CODE, 1898, s. 476, 7 S.L.R, 187=15 Cr. L.J. 541=24 Ind. Cas. 949.

I.—Imperial Acts—continued.

Act V of 1908 (Code of Civil Procedure)—*cld.*

(5)—S. 115—Small Cause Court directing prosecution of a person under s. 476, Crim. Pro. Code—Revision—Powers of High Court—*See* CRIM. PRO. CODE, 1898, ss 476, 435, 17 O.C. 25 = 15 Cr. L.J. 217 = 22 Ind. Cas. 1001.

(6)—S. 115—Order passed by Civil or Revenue Court under s. 476, Crim. Pro. Code—Revision—Jurisdiction of High Court—*See* CRIM. PRO. CODE, 1898, ss. 476, 439, 17 C.L J. 245 = 17 C. W.N. 647 = 19 Ind. Cas. 197 = 14 Cr. L.J. 197 = 40 C. 477, F.B.

(7)—S. 115—*See* PROSECUTION, 8 A.L.J. 537 = 12 Cr. L.J. 432.

(8)—S. 115—*See* SANCTION TO PROSECUTE — AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 13 C.W.N. 1038 = 37 C. 13.

(9)—Ss. 122, 151, O. XVIII, r. 5—Witness refusing to thumb-mark his deposition—Powers of Court—*See* PENAL CODE, s. 180, 8 P.R. 1912 Cr., = 37 P.W.R 1912. Cr., = 245 P.L.R. 1912 = 16 Ind. Cas 521 = 13 Cr. L.J. 713.

(10)—S. 148—*See* CRIM. PRO. CODE, 1898, s. 195, cl. (6), 1914 M.W.N. 347 = 15 Cr.L.J. 359 = 23 Ind. Cas. 727.

(11)—S. 151—*See* No. 9, *supra.*

(12)—O. XVIII, r. 5—*See* No. 9, *supra.*

(13)—O. XXI. r. 24—*See* PENAL CODE, s. 186, 14 C.W.N. 282 = 37 C. 122.

(14)—O. XXI, r. 25—Warrant issued by Civil Court to bailiff—Effect of endorsement by Nazir—Execution by peon beyond time fixed by Nazir but within date when warrant returnable—Peon's custody if lawful—Rescuing from such custody if offence—*See* PENAL CODE, s. 147, 17 C.W.N. 941 = 14 Cr. L.J. 274 = 19 Ind. Cas. 706.

(15)—O. XXI, r. 52—Issue of attachment under—Property seized by Police—Effect of attachment — *See* CRIM. PRO. CODE, 1898, ss. 87, 88, 435, 439, 512, 6 L.B.R. 57 = 13 Cr. L.J. 568 = 15 Ind. Cas. 984 = 5 Bur.L T. 113.

(16)—O. XLVII, r. 1—*See* No. 2, *supra.*

Act VI of 1908 (Explosives).

(1)—Ss. 3, 5—*See* PENAL CODE, s. 302, 7 M.L.T. 314 = 6 Ind. Cas. 51 = 11 Cr. L.J. 322 = 20 M.L.J. 657.

(2)—Ss. 4 (*b*), 7—S. 399, I.P.C.—Magistrate—Cognizance of offence under s. 399, I.P.C.—Facts disclosing also an offence under s. 4 (*b*), Explosives Act (VI of 1908) — Jurisdiction—Scope of s. 399, I.P.C., and s. 4 (*b*), Act VI of 1908—Distinction — *See* JURISDICTION — GENERAL, 39 C. 119 = 15 Ind. Cas. 65 = 13 Cr. L.J. 433.

(3)—S. 5—Bomb found in joint family house — Presumption—Liability of members—*See* CRIM. PRO. CODE, 1898, ss. 154, 167, 172, 13 Cr. L.J. 65 = 16 C.W.N. 145 = 13 Ind. Cas. 721.

I.—Imperial Acts—continued.

Act VI of 1908 (Explosives)—*concluded.*

(4)—S. 5—*See* No. 1, *supra.*

(5)—S. 7—*See* No. 2, *supra.*

Act VII of 1908 (Newspapers, Incitements to Offences).

(1)—'*Incitement,*' *meaning of, need not be direct—Liability of newspaper, how to construe—Printing Press, confiscation of.*—Under Act VII of 1908, no question as to the criminality of any 'person' arises and there need not necessarily be any 'direct' incitement to murder or any other act of violence. Nor need the incitement be addressed to any particular person or persons. The only question is, whether the newspaper contains any incitement to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence, *i.e.*, whether the article in question is caculated directly or indirectly to move to action, to stir up, to stimulate, to instigate or to encourage to murder or acts of violence. The word "incitement" bears the plain dictionary meaning. *Per Ryves, J.*—There can be no hard and fast canon to decide what words or whether a given set of words constitute an "incitement." The article must be read as a whole and read, as far as possible, in the sense in which it was read by that section of the public to whom it was addressed, bearing in mind the occasion and place of its publication and the class or status of persons who are likely to be affected by it. GIRIJA SUNDAR CHUCKERBUTTY v. EMPEROR, **36 C. 405 = 13 C.W.N 672 = 9 C.L. J. 143 = 9 Cr. L.J. 545 = 2 Ind. Cas. 285.**

(2)—*S. 3—Order—Forfeiture of press.*—S. 3 of the Newspaper (Incitement to Offences) Act 1908, provides for the making of a conditional order, declaring the printing press used for the purpose of printing or publishing the offending newspaper to be forfeited. The section refers to the whole of the press, and no order could be made under it limited only to such portions of the press as were employed in printing the offending newspaper. *In re* DHONDO KASHI NATH PHADKE, **12 Bom.L.R. 120.**

Act IX of 1908 (Limitation).

[AMENDED IN BRITISH BELOOCHISTAN, REG. IX OF 1896, S 95, AND SEE ACT X OF 1897, S. 8.]

See ACT XV OF 1877.

(1)—Not applicable to applications under s. 195 (6), Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 195 (6), 8 S.L.R. 49 = 15 Cr. L. J. 654 = 25 Ind. Cas. 982.

(2)—S. 5—Applicability—*See* ACT I OF 1910 s. 17, 126 P.L.R. 1914 = 15 Cr. L.J. 222 = 32 P. W.R. 1914, Cr. = 22 Ind. Cas. 1006 = 16 P.R. 1914, Cr., S.B.

(3)—S. 12—*See* APPEAL—GENERAL, U.B. R. 1892—1896, Vol. I, 129, 130.

I.—Imperial Acts—continued.

Act IX of 1908 (Limitation)—*concluded.*

(4)—S. 28, art. 47—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 9 M.L.T. 91.

(5)—Art. 47—*See* No. 4, *supra.*

Act XIV of 1908 (Criminal Law Amendment).

(1)—*Barristers—Right of exclusive audience—Special Tribunal.*—Barristers have the right of exclusive audience before the Special Tribunal formed to try cases sent up for trial to the High Court under the provisions of the Criminal Procedure Amendment Act, 1908. *In re* BARRISTERS AND VAKILS, **13 C.W.N. 605.**

(2)—Trial under, subject to cl. 26, Letters Patent—*See* EVIDENCE ACT, 1872, Ss. 25, 26, 114, ill. (*b*), 133, 157, 1912 M.W.N. 549=12 M L.T. 1=13 Cr. L.J. 352=14 Ind. Cas. 896=35 M. 397.

(3)—Procedure under—Its object and applicability—*See* PENAL CODE, s. 121-A, 15 C.W.N. 593=10 Ind. Cas. 582=12 Cr. L.J. 286.

(4)—*Ss.* 12, 14 (1)—*High Court's power to grant bail to accused tried under the Act—Crim. Pro. Code (Act V of 1898), ss. 498, 497—Discretion, exercise of—Cognizance, taking, what amounts to.*—The power of the High Court to grant bail to an accused person under s. 498, Crim. Pro. Code, is untouched by the provisions of the Criminal Law Amendment Act (XIV of 1908). But, in exercising its discretionary power under that section, the High Court will take into consideration the terms of s. 12 of the Act, whereby the powers of Courts; other than the High Court and the Sessions Court, of releasing the accused on bail, given by s. 497, Crim. Pro. Code, have been made subject to the proviso that no person remanded to custody in the course of proceedings under the Act shall be released on bail, if there appear to be sufficient grounds for enquiry into his guilt. Taking cognizance of an offence does not involve any formal action or indeed any action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of the offence. SOURINDRA MOHAN CHUCKERBUTTY v. EMPEROR, **14 C W.N 512=6 Ind. Cas. 8=37 C. 412=11 Cr. L.J. 217.** [*R.*, 37 C. 439=14 C.W.N. 516=11 Cr. L J. 219=6 Ind. Cas. 10; *D*, 13 Cr. L.J. 433=39 C. 119=15 Ind. Cas. 65.]

(5)—*S.* 14 (1)—*Sessions Judge's power to grant bail—Crim. Pro. Code (Act V of 1898), s. 498—Sessions Court, superior to District Magistrate—District Magistrate's duty to send records to Sessions Judge when called for.*—Where the provisions of Part I of the Criminal Law Amendment Act have been applied to proceedings before a Magistrate in respect of an offence, the Sessions Judge ceases to have jurisdiction to grant bail under s. 498, Crim. Pro. Code, the exercise of such jurisdiction being inconsistent with the special procedure prescribed in the said Part. The proper Court to apply to for bail in such a case is the High Court, whose power to admit to bail is not affected by the Act. The District Magistrate acted improperly in not sending the records to the Sessions Judge, when he called for them. EMPEROR v. LALIT KUMAR CHATTERJEE, **14 C.W.N. 516=37 C. 439=11 Cr. L J. 219.** (14 C.W.N. 516, *R.*)

(6)—S. 14 (1)—*See* No. 4, *supra.*

Act III of 1909 (Presidency Towns Insolvency Act).

(1)—*Ss.* 17, 103—*Adjudged insolvent—"Suit or other legal proceedings" against the insolvent—Penal Code (Act XLV of 1860), s. 421—Fraudulent transfer of property—Magistrate's jurisdiction to try the offence.*—M applied to the Insolvent Debtors Court at Bombay for relief under the Presidency Towns Insolvency Act, 1909, and was adjudicated an insolvent the same day. Ten days latter, a creditor of his filed a complaint in the Magistrate's Court, against him for an offence under S. 421, Penal Code, and against two others for abetment of the offence. M contended that the Magistrate's jurisdiction to entertain the complaint under s. 421 was excluded by the Insolvency Act, 1909, and that only the Insolvency Court at Bombay, had jurisdiction to entertain the complaint: *Held*, that the Magistrate's jurisdiction to try an adjudged insolvent for an offence under s. 421, Penal Code, was not taken away by the Insolvency Act, 1909. The expression "or other legal proceedings" in s. 17 of the Insolvency Act, 1909, following as it does the word "suit," a word of more limited application must be construed on the principle of *ejusdem generis.* Where the Insolvency Act, 1909, creates an offence, it is the Insolvency Court which has jurisdiction as to it. But as to offences under the Indian Penal Code, the ordinary jurisdiction of the criminal courts cannot be held to be excluded, unless expressly or by necessary implication the Act repeals the Code for the purposes of those offences. S. 103 of the Act does not substantially interfere with s. 421 of the Code. As its essential ingredient shows, it is more or less a new offence, created by the Act in addition to the offence under the Code. One statute may be impliedly repealed by a subsequent statute necessarily incosistent with it; but the inconsistency must be so great that they cannot both be to their full extent obeyed. EMPEROR v. MULSHANKAR HARINAND BHAT, **12 Bom. L.R. 750, Cr.=7 Ind. Cas. 963=11 Cr. L J. 548.**

(2)—*S.* 103—*Offence under—Presidency Magistrate—No jurisdiction to try.*—A Presidency Magistrate has no jurisdiction to try a person accused of an offence under s. 103 of the Presidency Towns Insolvency Act. The offence is created by the Act and the Insolvency Court is constituted into a special tribunal to

I.—Imperial Acts—continued.

Act IV of 1909 (Presidency Towns Insolvency Act)—*concluded.*

try that offence. LAKSHMI NARASAYYA v. NARASIMHACHARI, 25 **M L J. 577 = 1913 M. W.N. 1010 = 14 Cr. L.J. 637 = 21 Ind. Cas. 683.**

(3)—S. 103—*See* No. 1, *supra.*

Act IV of 1909 (Whipping).

See ACT VI OF 1864.

See WHIPPING.

(1)—*See* CRIM. PRO. CODE, 1898, s. 565, 12 Bom. L.R 901 = 8 Ind. Cas. 623.

(2)—*See* HABITUAL OFFENDER, 12 Bom. L.R. 901 = 8 Ind. Cas. 623.

(3)—*Ss* 3, 4, 5—*Abetment—Abbettor whether punishable with whipping—Ss.* 40, 41, *Penal Code—Meaning of 'Special laws'—Scope and construction of Whipping Act.*—The special laws contemplated in ss. 40 and 41 of the Penal Code are only laws, such as the Excise, Opium and Cattle Trespass Acts, creating fresh offences, that is, laws making punishable certain things which are not already punishable under the general Penal Code. The Whipping Act is not a special law in this sense; it creates no fresh offences, but merely provides a supplementary or alternative form of punishment for offences which are already punishable primarily under the Penal Code or (in the case or juvenile offenders) other enactments. Persons convicted of abetment of theft or abetment of any of the other offences mentioned in s. 3 of the Whipping Act, 1909, are not liable to the punishment of whipping. As the Whipping Act is a highly penal enactment, it must be construed in the sense most favourable to the subject. KING EMPEROR v. PO HAN, **7 L B. R. 63 = 22 Ind. Cas 147 = 15 Cr.L.J. 3 = 7 Bur. L.T. 99.**

(4)—S. 4—*See* No. 3, *supra.*

(5)—*S. 5—Finding as to age final—Sentence of whipping inadequate but carried out—Other punishment, whether can be awarded.*—The finding of a Magistrate as to the age of the accused is final under s. 5 (Explanation) of the Whipping Act. Where the sentence of whipping has been carried out, no other punishment can be awarded, even if the sentence was inadequate. EMPEROR v. PO BA, **15 Cr.L.J. 538 = 24 Ind. Cas. 946.**

(6)—S. 5—*See* No. 3, *supra,*

Act I of 1910 (Press).

(1)—*S.* 3. *Printing Press—Deposit—Failure to make the deposit—Period of lodging security not expressed—Reasonable time.*—S. 3, sub-s. 2 of the Press Act, makes no provision for the specification of any time within which the deposits required has to be made. On the 13th September, 1912, the Government of Bombay issued to the applicant a notice calling upon him under s. 3, sub s. 2 of the Act, to deposit with the District Magistrate security to the amount of Rs. 3,000. This notice was served upon the applicant on the 28th which was a Saturday. On the 30th the applicant forwarded by post letters to Government and the District Magistrate stating that he had closed the press. On the 2nd October, the applicant sold the press; and the next day had his declaration in respect of the press cancelled On the 5th October proceedings were taken against the applicant under s. 23 (1) of the Act, for keeping a press without having made a deposit. He was convicted of the offence. On appeal:—*Held*, (1) that, as no limit of time was given to the applicant within which to make the deposit ordered, the notice under S. 3 of the Act, must be construed as meaning that the deposit ordered should be made within a reasonable time. (2) That, under the circumstances of the case, the interval which elapsed between the 28th September and 3rd October could not be regarded as an unreasonable time. EMPEROR v. FULCHAND BAPUJI SHAH, **15 Bom, L R. 580 = 2 Bom. Cr. C. 92 = 14 Cr. L.J. 448 = 20 Ind. Cas. 608 = 37 B. 555.**

I.—Imperial Acts—continued.

Act I of 1910 (Press)—*continued.*

(2)—*Ss.* 3, 5, 23 (1)—*Order asking for security—Exemption from security—Cancelment of exemption—Press Act* (XXV *of* 1867), *ss.* 4, 5. —The accused, the proprietor of a printing press and the printer of a newspaper, in making declarations under ss. 4 and 5 of Act XXV of 1867, was exempted by the Magistrate from giving any security under s. 3, cl. (1) of Act I of 1910. Later on, the Magistrate rescinded the order and called upon the accused to furnish security in respect of the newspaper The accused thereupon did not any more print the newspaper and did not furnish the security demanded. He, however, continue to use the press for other work. He was for such user convicted under s. 23, cl. (1) of the Press Act, 1910. The accused having applied in revision: *Held*, that the conviction could not be upheld; for cl. (1) of s. 23 only covered the disobedience of an order under s. 3 or s. 5, of the Press Act, 1910; and that the order disobeyed was not such an order. EMPEROR v. PANDURANG BALKRISHNA PATHAK, **16 Bom. L.R. 87 = 2 Bom. Cr. C. 186 = 15 Cr. L J. 297 = 23 Ind. Cas 505.**

(3)—*Ss.* 4 (*Exp.* II), 6, 17, 19—*Question to be decided—Articles of which the result is not to allay excitement, but to stir up fresh trouble —Vernacular Press—Government to determine how far real danger arises from such articles—Court's power to interfere—Application for interference to be rejected or accepted as a whole.* —Under s. 19 of the Press Act, the question before the Chief Court would be, whether the Government, in view of the results which are likely to follow in India from violent agitation in the Vernacular Press, is fairly entitled to take exception to writings in the Vernacular newspapers in India, of which the result is not to allay excitement but to stir up fresh trouble. Where it appears impossible for the Chief Court to say that the Local Government, with

I.—Imperial Acts—continued.

Act I of 1910 (Press)—*continued.*

which the responsibility rests for determining how far real danger arises from articles of the kind in question, has acted wrongly in taking those articles as ground for issuing orders of forfeiture, it will not set aside the order under s. 19 of the Act. Expressions of loyalty used by the paper in previous issues are not relevant as an excuse. According to the terms of s. 19 of the Press Act it is not open to the Chief Court, even if it should desire to do so, to do anything more than either reject the application or set aside the order of forfeiture as a whole. The Court can make no discrimination between the forfeiture of security and the additional forfeiture of the Press which is permitted by the terms of s. 9. GHULAM QADIR KHAN v. EMPEROR, **211 P.L.R. 1914 = 15 Cr. L.J. 493 = 24 Ind. Cas. 581 = 37 P.W. R. 1914, Cr. = 28 P.R. 1914, Cr.**

(4)—*Ss.* 4 (1), 8, 9, 25—*Ss.* 3 *and* 5 *of Act* XXV *of* 1867—X *of* 1897, *s.* 3 (21) *and* (29)—*Notice when need not contain specific objectionable words—No right to show cause against notice under s.* 9 (2) *of Act* I *of* 1910—*Truth of allegations immaterial—Government established by law in British India, &c., defined—Forfeiture of security under S. 8 of the Act.*—A notice issued under S. 9, Press Act (I of 1910), is not defective, simply because it does not contain the specification of the words alleged to be objectionable within the terms of s. 4 (1) (*c*) of the said Act, if full particulars as to the identification of the objectionable letter, communication or article in a newspaper are given, as the letter, communication or article is to be considered as a whole. The question whether the objectionable allegations made therein are true or false is immaterial in the proceedings under s. 17 of the said Act. All that the Court is to decide is whether the passages objected to are of the nature specified in s. 4 (1) of the Act. Under s. 3 (21) and (29) of Act X of 1897, the words "Government established by law in British India or the administration of justice in British India" do not apply only to the Supreme Government of India, but are equally applicable to Local Governments such as the Government of the N.W. Frontier Province. After the expiry of ten days from the date of issue of the notice under s. 9 (1) of the said Press Act, the declaration made by the Publisher of the Newspaper under s. 5 of Act XXV of 1867 becomes annulled, whether it is served or not within those ten days, as the Act does not provide for an opportunity being given to the Publisher for showing cause against the said notice. KARAM CHAND v. CROWN, **6 P. W.R. 1913, Cr = 18 Ind. Cas. 347 = 14 Cr. L.J. 59 = 37 P.L.R. 1913 = 14 P.R. 1913, Cr., F.B.** [*R.*, 36 P.W.R. 1914, Cr. = 210 P.L.R. 1914 = 15 Cr. L.J. 490 = 24 Ind. Cas. 578.]

(5)—*Ss.* 4, 12, 17, 19, 22—*Whether mandatory or directory for Local Government to state grounds of opinion—Declaration of forfeiture to be conclusive evidence of forfeiture—Declaration illegal—High Court cannot question legality of forfeiture, High Court, power of—Press Act, scope of—Extension beyond criminal law—Words describing atrocities committed by Christians upon the Mahomedans—Tendency to make Mahomedans hate Christians.*—The provision in s. 12 of the Press Act, 1910, that the grounds of the opinion on which the Local Government have acted in declaring any document to be forfeited to His Majesty, must be stated, is mandatory and not directory; and the Legislature has imposed on the Local Government an imperative obligation to state the grounds of its opinion. A notification under s. 12 of the Press Act, was to be effect that "whereas it appeared to the Local Government that a certain pamphlet contained words of the nature described in s. 4, sub-s. 1, of the Press Act, 1910, inasmuch as they are likely to bring into hatred or contempt certain classes of His Majesty's subjects in British India, therefore, the Government declared all copies of the pamphlet forfeited to His Majesty." *Held*, (1) that no grounds of the Local Government's opinion were stated in the notification, nothing in the nature of a fact was set forth therein, but that there was merely a citation of those words of the section which were invoked; (2) that the citation could not be its grounds; and that the notification was, therefore, insufficient and defective in form and not in compliance with the Act; (3) that the High Court was barred under s. 22 of the Act from questioning the legality of the forfeiture which the notification purported to declare. The provisions of the Press Act extended far beyond the criminal law. A pamphlet may not be seditious; but, as the burden of proof is cast on the applicant, if he cannot establish the negative that Act requires, his application must fail. He must show that it is impossible for the words in the pamphlet to have the tendency to bring into hatred or contempt any class or section of His Majesty's subjects in British India, either directly or indirectly and whether by way of inference, suggestion, allusion, metaphor, implication or otherwise. The object of the writers of a prescribed pamphlet was to put an end to the horrible atrocities which they alleged to have been committed by the Cristian Balkan States on Mahomedans. They told Englishman what was being done by their fellow Christians and appealed to them as Christians to stop it. In conclusion, the readers were informed that the Government of England would do nothing to stop the outrages unless forced by public opinion. Throughout the whole of the pamphlet, the outrages mentioned were imputed to the Allies whose Christianity was constantly referred to; and the almost avowed object of the pamphlet was to excite the indignation of Christians in England against the conduct of Christians in Macedonia so as to induce them to bring it to an end. *Held*, that the pamphlet would bring into hatred the unchristian Christians whose deeds of atrocity were described, that is, it was likely to make Mahomedans hate Christians,

I.—Imperial Acts—continued.

Act I of 1910 (Press)—*continued.*

and that, under s. 19 of the Press Act, the High Court could not set aside the order of forfeiture. MAHOMED ALI v. EMPEROR, **14 Cr. L J. 497 = 20 Ind. Cas 977 = 18 C.W N. 1 = 41 C. 466.** [*R.*, 15 Cr. L.J. 590 = 210 P.L.R. 1914 = 24 Ind. Cas. 578 = 36 P.W.R. 1914, Cr.]

(6)—Ss 4 (1) (*c*), 17, 19.—*Whole tone and nature of article going beyond fair comment—Government established by Law in British India includes Local Governments—Court not concerned with motives but with results—Professions of loyalty on other occasions immaterial.*—Where the whole tone of an article in a newspaper and the nature of the allegations made went much beyond any legitimate comment on the action of Government and was directly intended to bring Government into hatred and contempt. *Held*, that under the circumstances the Chief Court will not interfere under s. 19 of the Press Act with the order of forfeiture of security made by the Government in respect of the Press publishing the newspaper. The terms 'Government established by law in British India' used in s. 4 (1) (*c*) of the Press Act include Local Government as well as the Government of India. (18 Ind. Cas. 347 = 14 P.R. 1913, Cr. = 6 P.W. R. 1913, Cr. = 14 Cr. L.J. 59 = 37 P.L.R. 1913, *R.*) The Court is not concerned with motives, but with results. Whatever the ostensible motives for an article in a newspaper may have been, if the effect of the article would be to excite either hatred or contempt against any class or section of the subjects of His Majesty in British India, the Government cannot be said to have misapplied the Press Act in forfeiting the security of the Press publishing the paper. No amount of professed loyalty on other occasions can be taken as nullifying the probable effects of the violent writings contained in the particular articles dealt with under the Press Act, and the order of forfeiture must stand or fall by the terms of those particular articles. GHULAM QADIR KHAN v. EMPEROR, **210 P.L.R. 1914 = 36 P.W.R. 1914. Cr. = 15 Cr. L.J. 490 = 24 Ind. Cas. 578 = 27 P.R. 1914, Cr., F.B.**

(7)—S. 5—*See* No. 2, *supra.*

(8)—S. 6—*See* No. 3, *supra.*

(9)—*S.* 8—*Order for security if revisable by High Court.*—An order under s. 8, Press Act, for the deposit of secuirty by the Publisher of a newspaper, is not revisable by the High Court. AGA SYED JALALUDDIN HASSAIN v. KING-EMPEROR, **17 C W.N. 1245 = 15 Cr.L.J. 145 = 22 Ind. Cas. 721.**

(10)—S. 8—*See* No. 4, *supra.*

(11)—S. 9—*See* No. 4, *supra.*

(12)—S. 12—*See* No. 5, *supra.*

(13)—*S.* 17—" *Within two months from the date of such order,*" *meaning of—Limitation Act.* 1908, s. 5, *not applicable.*—The words " within two months from the date of such order " in s. 17 of the Press Act, mean within two months

I.—Imperial Acts—concluded.

Act I of 1910 (Press)—*concluded.*

from the date of the order of forfeiture, and cannot be read as meaning within two months from the date on which notice of the order was served. Under this Act, the remedy given is by way of application and not of appeal, and in the absence of any specific provision in the Act giving the benefit of s. 5 of the Limitation Act to that application, it is not in the power of the High Court to extend the prescribed period, even if the Court held that sufficient cause for delay had been established. MOULVI ABDUL HAQ v. EMPEROR, **126 P.L R. 1914 = 15 Cr.L. J. 222 = 32 P W.R 1914. Cr. = 22 Ind. Cas. 1006 = 16 P.R. 1914 Cr. S.B.**

(14)—S 17—*See* Nos. 3, 5 and 6, *supra.*

(15)—S. 19—*See* Nos. 3, 5 and 6, *supra.*

(16)—S. 22—*See* No. 5, *supra.*

(17)—S 25—*See* No. 4, *supra.*

Act II of 1911 (Patents and Designs).

(1)—S. 2 (5)—Design or pattern covering whole goods—No 'design' within the terms of the section—*See* TRADE MARK, 8 S L.R. 39 = 15 Cr. L.J. 670 = 25 Ind. Cas. 998.

Act V of 1912 (Provident Insurance Societies).

(1)—*S.* 2, *sub-s.* (8), *ss.* 6, 21—*Registration if necessary of company with its share capital divided into shares.*—A company under the name and style of the New King Insurance Co., Ltd., was started for the purpose of carrying on business as a provident insurance society. Two of the directors of the company were prosecuted for having failed to apply for registration under s. 6 of the Provident Insurance Societies Act of 1912 and thereby having committed an offence under s. 21 of the Act. The Chief Presidency Magistrate acquitted the accused on the ground that the company was one which had its share capital divided into shares and the provisions of the Act did not apply to such a company:—*Held* (*on appeal by the Local Government*).—That the Provident Insurance Societies Act was intended to prevent a company from embarking in the business of life insurance unless and until it had been registered under the Act and s. 2, sub-s. (8) clearly lays down that, whether the society already in existence is a corporate company before or whether its share capital is divided into shares or not, registration under the Act is necessary before business can be carried on under the conditions laid down in the Act. DEPUTY SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. SITAL CHANDRA PAL, **18 C W.N. 1182.** (40 C. 570, *R.*)

(2)—S. 6—*See* No. 1, *supra.*

(3)—S. 21—*See* No. 1, *supra.*

Act VII of 1913 (Companies).

See ACT VI OF 1882.

S. 85 (2)—*See* ACT VI OF 1882, S. 74, 15 C. L.J. 380.

2.—Bengal Acts.

***Act IV of 1840 (Affrays, Bengal).**

[REP., ACT XVII OF 1862.]

See ACT XV OF 1877, Art. 47.

(1)—Nature and effect of Magistrate's decision order under—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 1 Agra 120.

(2)—*See* EVIDENCE—GENERAL, 7 W.R. 141.

(3)—S. 3—*See* BURDEN OF PROOF, W.R. F.B. 7, 1 Ind. Cas. O.S. 35.

***Act I of 1848 (Forgery, Bengal).**

[REP., ACT XVII OF 1862.]

(1)—*Forgery committed before January 1st, 1862—Procedure.*—A case of perjury of forgery, alleged to have been committed in a case before a Civil Court before the 1st January, 1862, can be dealt with only under the Old Procedure Law (Act I of 1848), according to which the sanction of the Court, before which the offence is alleged to have been committed, is necessary before criminal proceedings can be instituted. *In re* RADHAJEEBUN MOOSTAFFEE, **5 W R. Cr. 8 = 1 Ind. Jur. N.S. 97.** [*F*, 5 W.R. Cr. 43.]

***Act XI of 1849 (Abkari, Calcutta).**

[REP., BEN. ACT VII OF 1878.]

See BEN. ACT XXI OF 1856.

See BOM. ACT V OF 1878.

See MAD. ACT III OF 1864.

See MAD. ACT I OF 1886.

(1)—*S. 9—License to sell liquor—Matter concerning revenue—Jurisdiction of High Court*—Under s. 9 of the above Act as amended by Bengal Act III of 1878, s. 1, whenever a license was granted for the retail sale of intoxicating liquors, the Collector was authorized to demand, such fee, tax, or duty as may, from time to time, be fixed with the sanction of the Board of Revenue, or a fee, tax or duty, adjusted or regulated in such manner, and in accordance with such rules as the Board of Revenue might prescribe. In a case where the matter related wholly to revenue, it was held that, under 21 Geo. III, c. 70, s. 8, the High Court had no jurisdiction to interfere with the action of the Board of Revenue. *In the matter of* AUDHUR CHUNDRA SHAW, **11 B.L.R. 250.**

Act XVIII of 1852 (Pleaders, Lower Provinces).

[REP., ACT XX OF 1865.]

See ACT XX OF 1865, 6 W. R. Mis. 5.

Act XXXVII of 1855 (Santhal Parganas).

[SHORT TITLE GIVEN, ACT I OF 1903, S. 6; ACT XIV OF 1870; S. 1 REP. IN PART, ACT XII OF 1891; S. 3, REP. IN PART, SS. 4, 5 REP., REG. V OF 1893. SCHEDULE AMENDED, ACT X OF 1857. SUPPLEMENTED, REG V OF 1893. REP., ACT XIV OF 1874 (WHEN NOTIFIED). SS. 1, 2 AND 3

* These local Acts were passed by the Imperial Legislature.

2.—Bengal Acts—continued.

Act XXXVII of 1855 (Santhal Parganas) —*concluded.*

DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

(1)—*Act* XXXVII *of* 1855—*Appeal—Conviction—Sonthal Parganahs.*—No appeal lies to the High Court, under the above Act from a conviction by the Deputy Commissioner of the Sonthal Pargannahs. QUEEN v. BOYDONATH MUKERJEE, **17 W.R. Cr. 11.**

(2)—*See* CRIM. PRO. CODE, 1898, s. 526, 18 C. 247.

(3)—*S* 4 (1) *(Scheduled Districts)—Sentence of imprisonment—Revision.*—Under s. 4, cl. 1, all sentences in criminal cases are final; so that an order, under the Act, sentencing an accused to imprisonment is not open to revision under chapter 32 of the Crim. Pro. Code, 1882. DULAR DAT RAI v. NIJABAT HOSEIN, **12 C. 536.**

*** Act XXI of 1856 (Abkari, Bengal).**

[REP. (EXCEPT IN BENGAL, EASTERN BENGAL AND ASSAM), ACT X OF 1871; (IN BENGAL AND ASSAM), BEN, ACT VII OF 1878.]

See BEN. ACT XI OF 1849.

See BOM. ACT V OF 1878.

See MAD. ACT III OF 1864.

See MAD. ACT I OF 1886.

(1)—*Realization of fine—Act* VIII *of* 1869—*Crim. Pro. Code* (1861), *s.* 61.—The provisions of s. 61, Crim. Pro. Code, 1861, did not apply to fines imposed under the Act; such fines cannot be levied by distress and sale of the offender's property. QUEEN v. JUNGLI BELDUR, **8 B.L R. App. 47.**

(2)—*Cultivation of ganja, if offence.*—Cultivation of ganja without a license is not punishable under this Act. POLICE v. MILAN DHOBI, **Colm. Dig. Crim. No. 2, 1871.**

(3)—*Act* XXI *of* 1856—*Abetment.*—This Act contains no provision for the punishment of abetment. QUEEN v. KULLIMOODDEEN, **7 W.R. Cr. 53.**

(4)—*Power of Magistrate—Fine under the Act.*—A Magistrate may impose a fine exceeding Rs. 1,000 under the above Act, s. 22 of the Crim. Pro. Code, notwithstanding. QUEEN v. SURROOP CHUNDER DUTT, **7 W.R. Cr. 29.**

(5)—*Levy of fines and forfeitures—Simultaneous imprisonment and distress* The provisions of s. 61, Crim. Pro. Code, 1861, as amended by Act VII of 1869, are not applicable to fines and forfeitures under the Act, so as to allow of imprisonment and distress going on simultaneously. GOVERNMENT v. JUNGLEE BELDAR, **17 W.R. Cr. 7.**

(6)—*Effect of Act X of* 1871.—This Act has not been repealed, so far as it relates to the

* This Local Act was passed by the Imperial Legislature.

2.—Bengal Acts—continued.

Act XXI of 1856 (Abkari, Bengal)—*continued.*

Lower Provinces of Bengal, by Act X of 1871. QUEEN v. KHETTAR NATH SHAHA, **22 W.R. Cr. 31.**

(7)—*Ganja sale in excess of license—Responsibility of owner of shop.*—Where a sale of an excess quantity of ganja took place, and the man effecting the sale pleaded that he was only a servant, while the owner contended that he did not conduct the shop, and gave no authority to his servant to sell ganja in excess of his license, *held*, that the owner of the shop was responsible for the offence committed, and liable to the fine which had been imposed on him. QUEEN v. SRISTIDHUR SHAHA, **25 W. R. Cr. 42.**

(8)—*Act* XXI *of* 1856, *s.* 38—*Revocation of license.*—According to s. 38, Act XXI of 1856, a person whose license has not been recalled, cannot be convicted under s. 50. *In the case of* RAMDASS, **16 W.R. Cr. 59.**

(9)—*S.* 43—*Abkari licenses.*—Under the above section only persons holding licenses, and not their servants, are subject to the penalties specified in the section. QUEEN v. RAM KISHEN, **8 W.R. Cr. 4.** [*R.*, 25 W.R. Cr. 42.]

(10)—*S.* 43—*License—Liquor—Agent.*—Where a person sells liquor in contravention, and under color of, a license which stands, not in his own name, but in that of the person for whom he is the recognized agent, he cannot be allowed to evade the provisions of s. 43 by setting up that it is not a license to himself. *In re* ISHUR CHUNDER SHAHA, **19 W.R. Cr. 34.** [*F.*, 8 C. 207, 9 C. 847; *R.*, 17 C. 566, 2 Bom. L.R. 663; *Expl*, 29 C. 606, F.B.]

(10-*a*)—*Ss.* 48 *and* 51—*District in which acreage on poppy cultivation had been introduced—Unlicensed vendors.*—The prohibition of the possession of opium by other than licensed vendors contained in s. 51 was held not to be in force in districts in which an acreage on poppy cultivation had been introduced; *held* also, that s. 48 applied to such cases; but that the provision of the latter section which made it an offence, for a person authorized to supply licensed vendors, to sell opium to any person other than a licensed vendor was applicable to such area. MAYA v. CROWN, **14 P.R 1869, Cr.**

(11)—*Ss.* 48 *and* 90—*Abkari—Country-spirit.*—To warrant a conviction under s. 48, the accused must have manufactured some country-spirit made by the native process of distillation as described in s. 90 of the Act, or they must have sold spirituous or fermented liquors or intoxicating drugs. QUEEN v. KOYLASH BOONA, **22 W.R. Cr. 8.**

(12)—*S.* 49—*Offences, convictions for which are allowed by confiscation—Summary trial—Crim. Pro. Code* (*Act* X *of* 1872), *s.* 222 = *s.* 260 *of the present Code.*—Where fine is prescribed as a punishment for an offence, and confiscation of the accused's property follows as a consequence, the fact that such confiscation follows cannot alter the nature of the case as regards the mode of trial that may be adopted,

2.—Bengal Acts—continued.

Act XXI of 1856 (Abkari, Bengal)—*concluded.*

(*e.g.*), an offence under s. 49, Act XXI of 1856, which is punishable with fine, can be tried summarily, though confiscation follows the sentence of fine as a necessary consequence. EMPRESS v. BAIDANATH DAS, **3 C. 366 = 1 C.L.R. 442.**

(12-*a*)—*Abkari Law.*—S. 51 of Act XXI of 1856 (Abkari Law) which prohibits the possession of more than 5 tolas weight of opium by any person other than a licensed vendor, has no effect in districts of the Punjab in which an acreage duty on poppy cultivation has been introduced. CROWN v. GOLAB SINGH, **35 P R. 1867, Cr.**

(13)—*S.* 53—*Opium—Possession.*—Where opium was found in the possession of a person who was a servant of the accused, and who alleged that he obtained it from the accused's wife who bought it from an opium cultivator, it was held that the accused could not be convicted under this section as it had not been shown that the purchase by his wife was authorized by the accused, and, therefore, her possession of the opium or that of the servant could not be considered as the possession of the accused. QUEEN v. GUNESH MANA, **20 W.R. Cr. 54.**

(14)—S. 90—*See* No. 11, *supra.*

*** Act XXI of 1857 (Howrah Offences).**

[SHORT TITLE GIVEN, ACT I OF 1903; TITLE, PREAMBLE, S 1 AND SCH REP. IN PT., ACT XVI OF 1874; S. 54 REP. IN PT., S. 58 REP., ACT XII OF 1891; SS 25—32, 38, 40—45, 47—50 REP., BEN. ACT V OF 1876; SS. 4—6, 8, 9, 16, 17, 24, 33—37, 39, 46 REP., BEN. ACT III OF 1884; S. 59 AM., BEN. ACT III OF 1897, S. 3; SS. 54, 57, 59 REP. IN PT., S. 55 REP., ACT I OF 1903.]

(1) *S.* 2 (1)—*Suburbs of Calcutta—Station of Howrah—Order and good government—Reasonable suspicion—Accused found to be in possession of cement—No evidence that cement missing from complainant's premises—Penal Code, s.* 411—*Difference between s.* 411 *and s* 2, *cl.* 1 *of Act* XXI *of* 1857—*Stolen article—Possession.*—The accused was convicted for being in possession of a certain quantity of cement; and because there was a heap of cement lying on the premises of the East India Railway Company, at L and because the accused was a *mistry* in the employ of the Company at L, it was assumed that the cement was stolen from the Company. *Held*, that, in the absence of any evidence that shortly or immediately previous to the finding of the cement in the possession of the accused, a quantity of cement belonging to the Company had been missing, there could not be any reasonable suspicion which would bring the case within s. 2 of Act XXI of 1857. The only difference which s 2 of this Act makes between an offence under this Act and one under s. 411, Penal Code, is that it is not necessary under this

* This local Act was passed by the Imperial Legislature.

2.—Bengal Acts—continued.

Act XXI of 1857 (Howrah Offences)—*cld.*

Act to offer proof that the stolen property has been in the hands of a third person who actually stole it, as is the case under s 411. ABDUL KARIM v. EMPEROR, **13 Cr. L.J. 492 = 15 Ind. Cas. 492.**

(2)—*S.* 12—*Rules under the Act.*—This Act not being in force in the Punjab, the conviction of an accused under the above section was held to be illegal. ALI HASSAN v. KING-EMPEROR, **17 P.R. 1905, Cr. = 29 P.L.R. 1905 = 2 Cr.L.J. 185.**

Act II of 1858 (Port Dues, Cuttack).

[REP., ACT XII OF 1875.]

S. 28—*See* ACCOMPLICE — ACCOMPLICE, EVIDENCE—NECESSITY FOR CORROBORATION, 5 W.R. Cr. 11.

*** Act X of 1859 (Rent).**

[SHORT TITLE GIVEN, ACT I OF 1903; S. 37 REP., ACT XXXVI OF 1860; SS. 26, 40, 74, 79, 86, 150, 162 REP., BEN. ACT VI OF 1862; S. 71, REP. IN PT., S. 149 REP, ACT XX OF 1865; SS 15, 19, 120, 146, 161 REP. IN PT., ACT VII OF 1870; SS. 1, 167 REP., ACT XIV OF 1870; FORMS E,F. IN SCH. REP., ACT XII OF 1891; SS. 3, 15, 28, 29, 32, 33, 163, 168 REP. IN PT., SS. 136, 151 AM., ACT I OF 1903; REP. (IN THE CHOTA NAGPUR DIVISION, EXCEPT THE MANBHUM DISTRICT), BOM. ACT I OF 1879; REP. (IN THE MANBHUM DISTRICT), BEN. ACT VI OF 1908 WHEN AND WHERE NOTIFIED; REP. IN EASTERN BENGAL AND LOCALLY IN (BENGAL), ACT VIII OF 1885; REP IN PT. (IN AGRA), ACT XIV OF 1863, S 5; REP. (IN AGRA, EXCEPT CERTAIN AREAS), ACT XVIII OF 1873; REP. (IN CENTRAL PROVINCES AND THE SAMBALPUR DISTRICT), ACT IX OF 1883.]

See BEN. ACT VIII OF 1869.

(1)—*Appeals against decrees and orders made by Deputy Collector.*—Appeals against decrees and orders made by a Deputy Collector, acting under the provisions of Act X of 1859, ordinarily lie to the Collector, and not to the District Judge. SHAMACHARAN DAS v. KASI NAIK, **23 C. 971.**

(2)—S. 145—*See* BEN. ACT VIII OF 1869, 10 W.R. Cr. 46 = 2 B.L.R. S.N. 4.

*** Act XXII of 1860 (Chittagong Hill Tracts).**

[REP., REG. I OF 1900.]

(1)—*S.* 1—*Appeals from conviction of offences within Chittagong Hill Tracts—Jurisdiction of the High Court.*—By Act XXII of 1860, s. 1, the tracts of country described in the schedule to the Act and known as Chittagong Hill Tracts are removed from the jurisdiction of the existing Civil and Criminal Courts. Consequently, the High Court has no jurisdiction to hear appeals in respect of sentences passed on conviction of offences committed in those districts. QUEEN-EMPRESS v. SONAI MUGH, **27 C. 654.**

* These local Acts were passed by the Imperial Legislature.

2.—Bengal Acts—continued.

Act IX of 1862 (Registration of Deeds).

[REP., BEN. ACT II OF 1865.]

(1) — Mohurrir — *Public servant.*—Money, in the shape of fees paid by parties bringing deeds for registry and received by a *mohurrir* appointed under Bengal Act IX of 1862 would be money entrusted to the *Mohurrir* as a public servant. QUEEN v. DWARKANATH GHOSE, **20 W R. Cr. 49.**

(2)—*See* PUBLIC SERVANT, 20 W.R. Cr. 49.

Act III of 1863 (Transport of Native Labourers).

[REP., BEN. ACT II OF 1870.]

(1)—*Special law—Punishment—Fine—Sub-Magistrate of the first class.*—A Sub-Magistrate of the first class has power to deal with the case of an offence provided for by a special law, as the above Act, when the punishment awardable is six months, fine and fine only. S. 67 and not s. 65, I.P.C., is applicable to such a case. *In the matter of* CHUNDER PERSHAD SINGH, **10 W.R.Cr. 30.**

Act VI of 1863 (Calcutta Municipality).

[REP., BEN. ACT IV OF 1876.]

(1)—*Construction of Act—Right of way.*—The words "lands, walks, gangways, or other thoroughfares" must, in case of obstruction, be restricted to mean those spaces over which the public by consent or dedication of the owner, enjoy the right of passing and re-passing for market purposes. JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA v. MAHARANE OF BURDWAN, **1 Ind. Jur. N.S. 102.**

(2)—*Conviction of owner of bazaar for permitting obstruction.*—In order that a conviction may be sustained against the owner of a bazaar under bye-law 7 of the above Act, it must be shown that he actually permitted an obstruction in the paths of the bazaar. JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA v. HERA LALL SEAL, **Bourke O.C. 412.**

(3)—*S.* 18—*Duties of Justices of the Peace for the Town of Calcutta—Supplying tanks for water.*—Where the Justices had closed a tank for the purpose of constructing in its place a different means of water supply, a *mandamus* was issued directing the Justices to maintain the tank and supply it with water, or to substitute another tank in its place and supply that with water. QUEEN v. JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA, **2 Ind. Jur. N.S. 182.**

(4)—*Ss.* 151, 226, 229 *and* 230—*Liability of Justices for compensation for damage in making sewers, etc.—Negligence—Amount of damages Writ of* mandamus. — JUSTICES OF THE PEACE FOR CALCUTTA v. ORIENTAL GAS COMPANY, **8 B.L.R. 433 = 17 W.R. 364.**

(5)—*S.* 200—*Warrant for search and seizure —Jurisdiction of Chairman of Justices—Procedure.*—The above Act does not empower the Chairman of the Justices, as such, to issue a warrant under s. 200; such a warrant must show, on the face of it, that the Justice issuing it had

2.—Bengal Acts—continued.

Act VI of 1863 (Calcutta Municipality)—*cld.*

jurisdiction; the application under the section must be reduced to writing; the evidence taken therefrom must be recorded; and notice must be given to the party proceeded against. DAY AND CO v. JUSTICES FOR THE TOWN OF CALCUTTA, **Bourke O.C. 232.**

(6)—*S. 226—Suit against Justices for damage in repairing drains—Contractors—Negligence—Cause of action—Notice of action.*—ULLMAN v. JUSTICE OF THE PEACE, **8 B.L R. 265.** [*R.*, 34 C. 257 = 5 C.L.J. 148, 17 B. 307.]

(7)—S. 226—*See* No. 4, *supra.*

(8)—S. 229—*See* No. 4, *supra.*

(9)—S. 230—*See* No. 4, *supra.*

Act III of 1864 (District Municipal Improvement).

[REP., BEN. ACT V OF 1876.]

(1)—*Power of Municipal Commissioner to close or divert public highways.*—Act III of 1864, which vests public highways in Municipal Councillors, does not empower them to stop up or divert such public highways. JODOO NATH v. BROJO NATH, **1 J.G. 13.**

(2)—*Land let to tenants by owner—His liability.*—When the owners has let the land to tenants, then for the filthy condition of that land the owner is not liable, but the occupiers. QUEEN v. PARBUTTY CHURN SIRCAR, **2 W. R. Cr. 57**; QUEEN v. BROJO LALL MITTER, **8 W.R. Cr. 45.**

(3)—*Public highways—Powers of Municipality.*—The fact that, under Act III of 1864 (B.C.), public highways are vested in the Municipality does not, *ipso facto*, empower it to stop up or divert them. EMPRESS v. BROJONATH DEY, **2 C. 425.**

(4)—*Ss. 6, 79—Power of Municipal Commissioners to administer oath—Order to close burning ground.*—As every Municipal Commissioner is vested by s. 6 with the powers of a Magistrate under s. 23 of the Crim. Pro. Code, 1872, such Commissioner is authorised to administer an oath, if the purposes of the Act require that he should do so. BRINDABAN CHUNDER ROY AND OTHERS v. CHAIRMAN AND VICE-CHAIRMAN OF THE MUNICIPAL COMMISSIONERS OF THE TOWN OF SERAMPORE, **19 W.R. 309.** [*D.*, 25 C. 425.]

(5)—*S. 19—Municipal Act* (III *of* 1864), *B. C.—Excavation of tank—Permission for Discretion of Chairman of Municipality.*—Where the Chairman of the Municipality of Howrah, acting in the *bona fide* exercise of the discretion vested in him under s. 19 of the Bye laws of the Howrah Municipality framed under the Bengal Municipal Act (III of 1864), refuses permission for the excavation of a tank, *held* that the Civil Courts had no power to interfere. BHYRUB CHUNDER BANERJEE v. MR. G. E. MAKGILL, **17 W.R. 215.**

(6)—*S. 27—Warrant of arrest—Chap.* XV, *Crim. Pro. Code* (1861).—A Magistrate or Municipal Commissioner has no power to issue a warrant for the arrest of a person who may

2.—Bengal Acts—continued.

Act III of 1864 (District Municipal Improvement)—*continued.*

have failed to appear on a summons to answer a charge under the above section, for using the premises as a straw or wood depot without a license. The provisions of Chap. XV of the Code of Criminal Procedure, 1861, are not applicable to offences under the Act *In re* BISSESSUR CHATTERJEE, **16 W.R. Cr. 1.**

(7)—*S. 57—Obstruction of drain by tree blown down.*—The obstruction of a drain by a tree blown down by a cyclone was held not to be an obstruction within the meaning of the above section. That section refers to some obstruction raised purposely by a party. ANONYMOUS, **3 W.R. Cr. 33.**

(8)—*S. 57—Blocking up private drain.*—The Municipal authorities have no power under the above Act, to impose a fine on a person for blocking up a drain which is not shown to be public property, or along the side of any highway. *In re* BANI MADHUB BANERJI, **14 W.R. Cr. 23.**

(9)—*S. 63—Right to pull down ruinous house—Notice of action.*—Under the above section, if Municipal Commissioners deem a house or a building to be in a ruinous state, they may, after the notice prescribed by that section, cause the same to be taken down. GOPEE KISHEN GOSSAIN v. MR. W. H. RYLAND, **9 W.R. 279.**

(10)—*S. 63—Bye-law of Municipality—Roofs with inflammable material.*—A bye-law made by the Howrah Municipality in the exercise of the authority vested in it by s. 63, forbidding the erection or renewal of the external roof and walls of buildings with inflammable materials, was held to forbid the renewal even of the portion of the roof with such material. CHAIRMAN OF THE HOWRAH MUNICIPALITY v. MONTANEE BEWAH, **24 W.R. Cr. 70.**

(11)—*Ss* 65 *and* 66—*Nuisance—Prospective fine.*—In a case in which the accused was convicted of a nuisance under s. 66, Act III (B.C.) of 1864, and sentenced to pay a fine of Rs. 10, and further fined Rs. 2 a day for every day the nuisance continued unabated, the High Court (following a precedent cited) set aside only so much of the order as inflicted the fine prospectively. CHAIRMAN OF THE MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA v. ANNESUDDEEN MEAH, **20 W. R. Cr. 64 = 12 B L.R App. 2.** (18 W.R. Cr. 44, *D.*) [*F.*, 25 W.R. Cr. 6.]

(12)—S. 66—*See* No. 11, *supra.*

(13)—*S. 67—Fine for suffering premises to be in filthy state—Owners and occupiers.*—Where a land was occupied by tenants and the owner lived in another district, and there was nothing to show that he suffered the land to be in a filthy state, the imposition of a fine on the owner would not be a proper exercise of the discretion given under the above section. QUEEN v. DWARKANATH HAZRA, **8 B.L.R. App. 9 = 16 W.R. Cr. 70.**

2.—Bengal Acts—continued.

Act III of 1864 (District Municipal Improvement)—*continued.*

(14)—S. 67—*Allowing ground to remain in filthy state.*—It is no valid excuse for a man, who is bound by law to keep his ground clean to say "I did not make it dirty, but somebody else did" The owner of the ground is liable under the above section whether his ground was made dirty by himself or by somebody else. ANONYMOUS, 3 **W.R Cr 33.**

(15)—Ss. 67, 73—*Omission to clear away jungle—Power of Magistrate as Municipal Commissioner*—In this case upon a notice being served on a party under s. 73, he did not choose to clear away the jungle referred to. *Held*, it was open to the Magistrate, as Commissioner of the Municipality, either to clear the jungle at the expense of the party in possession or to inflict a fine under s 67. *In the matter of* GOPEE KISHEN GOSSAIN **21 W.R Cr. 79.**

(16)—S. 68—*See* REVISION—QUESTION OF FACT, 17 W R Cr. 58.

(17)—S. 73—*Expense of clearing away jungle after notice to defendant.*—The Municipal Commissioners are entitled, under the above section, to recover from the defendant the expense of clearing away any jungle which they found on his land, upon his failure after the notice to clear it himself within the time specified in the notice. LORD ULICK BROWNE, H. v. WOMESH CHUNDER ROY, **7 W.R. 213.**

(17-*a*)—S. 73—*See* No. 15, *supra.*

(18)—S 77—*Notice of action—Suit against Municipal Commissioners.*—A notice of action against Municipal Commissioners is absolutely necessary under the above section. A notice of objection to, and demand for, a reconsideration of the order complained of is not sufficient. ABHOYANATH BOSE v. CHAIRMAN AND THE DEPUTY CHAIRMAN OF THE MUNICIPAL COMMITTEE OF KISHNAGAR, **7 W.R. 92.**

(19)—S. 77—*Omission to take out license.*—The accused was charged for not taking out a license for a wood yard. He pleaded that the yard had been in existence prior to 1864. *Held*, that the Magistrate was wrong in refusing to inquire into the allegation as to the existence of the yard prior to 1864. CHAIRMAN OF THE MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA v. UMBICA CHURN MOOKERJEE, **15 W.R. Cr. 84.**

(20)—S 77—"*Using premises*" *for offensive trades*—The words "uses any premises" in the section means using and employing the premises as a place for the carrying on of the offensive trades mentioned in that section. MUNICIPAL COMMISSIONER FOR THE SUBURBS OF CALCUTTA v. ZAMIR SHAIKH AND OTHERS, **16 W.R Cr. 4.**

(21)—S. 77—*Burning bricks for private use.*—This section refers to the burning of bricks for trading purposes. It does not refer to cases where bricks are made for the particular use of the person burning them; such person need not take out a license for that purpose. SRI RAM CHUNDER HALDAR v. CHAIRMAN OF THE HOWRAH MUNICIPALITY, **20 W R. Cr. 65.**

(22)—S 79—*Scope of section—Closing burning ground—Interference by Municipality—Proceedings under Act—Reports by medical men.*—This section does not authorise Municipal Commissioners to close a burning ground which has been used for very many years, merely because they think that the burning of dead bodies is offensive. It allows them to interfere only when it shall appear to them upon the evidence of competent persons that any burning *ghat* or ground is in such a state as to be dangerous to the health of persons living in the neighbourhood thereof. [*D.*, 25 C. 125.] Regular reports signed by Medical men would constitute evidence within the meaning of the above section. A proceeding taken under s. 79 is not a judicial proceeding, and the evidence referred to therein means evidence without oath. BRINDABUN CHUNDER ROY v. CHAIRMAN AND VICE-CHAIRMAN OF THE MUNICIPAL COMMISSIONERS OF THE TOWN OF SERAMPORE, **19 W.R 309.**

(23)—S. 79—*See* No. 4, *supra.*

(24)—S. 87—*See* JUDICIAL OFFICERS, LIABILITY OF, 13 W.R. 340.

Act V 1864 (Canals).

[S. 19 REP. ACT XII OF 1873. PREAMBLE, SS. 1, 2, 3 REP IN PT., S 17, SCHEDULE REP, ACT I OF 1903. REP. (IN ASSAM), ACT V OF 1897.]

(1)—*Conviction, when sustainable, under the Act.*—A conviction cannot be had under the Act unless it is charged and proved that the accused *wilfully* obstructed the navigation. QUEEN v. KALIL, **11 W.R. Cr. 13 = 2 B.L.R.A C 23.**

(2)—S. 16—*See* OBSTRUCTING NAVIGATION, 2 B.L.R.A.C. 23 = 11 W.R. Cr. 18.

Act VII of 1864 (Salt).

[AM. AS TO JURISDICTION OF MAGISTRATES BEN ACT I OF 1873. AM. (IN BENGAL) AS TO REFERENCES TO POLICE ACTS, BEN. ACT I OF 1873 SS. 2, 42, AND SCH. REP, ACT XII OF 1873. S. 9 REP, ACT XII OF 1882 SS 3, 40 REP. IN PT., SS. 35, 36 REP., ACT I OF 1903 REP. IN ASSAM, ACT V OF 1897. DECLARED IN FORCE IN THE SONTHAL PARGANAS, REG. III OF 1872, S 3, AS AMENDED BY REG. III OF 1899, S. 3.]

See ACT XII OF 1882.

See BOM. ACT XXVII OF 1837.

See BOM. ACT XXXI OF 1850.

See BOM. ACT VII OF 1873.

See BOM ACT II OF 1890.

See MAD. ACT XVII OF 1840.

See MAD. ACT VI OF 1871.

2.—Bengal Acts—continued.

Act VII of 1864 (Salt)—*continued.*

See MAD. ACT I OF 1882.

See MAD. ACT IV OF 1889.

See U.P. ACT XXXVI OF 1855.

(1)—*Ss.* 12 *and* 16—*Confiscation of salt found without pass—Intention to sell.*—When salt of a quantity exceeding five seers is found within the limits prescribed by s. 12, unprotected by a pass, the salt is contraband and such salt is liable to seizure, the parties transporting it being liable to be punished under s. 16. It matters not whether any attempt or intention to sell is proved or not. QUEEN v. OFATULLA, **6 B L R Cr. 381**; GOVERNMENT OF BENGAL v. AKATOOLLAH, **15 W.R. Cr. 21.**

(2)—*S.* 16—Rawana, *endorsement of, by police or customs officers.*—A *rawana* as defined by this Act is complete on the face of it without any certificate by way of endorsement, signed by the superintendent showing that the endorsement made by the preventive officers of customs have been examined by him. The section only gives power to fine when the salt is not specified in the *rawana* *In re* KISHORY MOHUN PRAMANICK, **23 W.R. Cr. 6.**

(3)—*S.* 16—*Salt carried partly by land and partly by water.*—Where a person, who had taken a quantity of salt under a *rawana* for transit from Calcutta to his *golah*, part of the journey to be performed by water and part by land, conveyed a portion of it to his *golah* where the *rawana* was, and was conveying the rest in two separate batches by land, it was held that he could not be convicted under s. 16 QUEEN v. CHUNDEE CHURN DAS, **22 W R. Cr. 71.**

(4)—S. 16—*See* No. 1, *supra.*

(5)—*Ss.* 16 *and* 18—*Possession of contraband salt.*—A conviction for possession of contraband salt would be set aside, if the salt had already reached its distinction and was not *en route.* QUEEN v. CHUNDRO MOHUN BHOOYA, **22 W.R. Cr. 82.**

(6)—*Ss.* 16 *and* 21—*Possession and sale of salt.*—Where a person was convicted under s. 16 and another under s. 21 of the same Act, the former with having had in his possession salt not covered by a *rawana* and the latter with having sold to the former the said salt, *held* that the conviction of the former under s. 16 was illegal, the salt in his possession having been a portion of salt for which the latter had taken out a *rawana*, but that the conviction of the latter under s. 21 was proper, as he had failed to certify the salt sold by him to the former on the back of the *rawana.* *In re* BHAG BUT DEY, **18 W R. Cr. 64.**

(7)—*S.* 17—*Infliction of penalty on owner and servant.*—In a case of conviction for having in possession contraband salt, the penalty cannot be inflicted on the owner of the salt and also on the servant or *gomastha* of the owner who has the salt in his possession. In the above case, the possession of the servant was held to be the possession of the master. *In re* GUNGADHUR SAHOO, **22 W.R. Cr. 9.**

2.—Bengal Acts—continued.

Act VII of 1864 (Salt)—*concluded.*

(8)—*S.* 18—*Confiscation of salt—Power of releasing from confiscation.*—Under the above section, salt not being conveyed by the route and to the place prescribed in the *rawana* becomes absolutely confiscated. The power of releasing any such salt is vested in the Board of Revenue under s. 39 and not in the Magistrate. QUEEN v. BOIDONATH, **7 W.R. Cr. 48.**

(9)—*S* 18—*Salt seized, power of Magistrate to release.*—A Magistrate has no authority to release salt seized under circumstances in which the seizure is found, on the trial of an offender, to have been warranted by s. 18, Act VII of 1864 (B.C.). CRIMINAL CIRCULAR NO. 4 OF 12TH JUNE 1867, **8 W.R. Cr. Cir. 1.**

(10)—*S.* 18—*Conviction of both principal and agent.*—A Magistrate can, under the above section, convict both the owner of contraband salt and his agent who transports it. The Magistrate need not pass sentence on the *manjees* of the boat in which the salt was being transported when seized, when their boat has been already confiscated by the Magistrate. QUEEN v. MODHUN MOHUN PAL CHOWDHRY, **23 W.R. Cr. 7.**

(11)—S. 18—*See* No. 5, *supra.*

(12)—S. 21—*See* No. 6, *supra.*

(13)—*S.* 29—*Power of Magistrate to confiscate salt.*—The power of a Magistrate under s. 29 to confiscate salt not protected by a *rawana* in a prohibited district is not affected, because there was no attempt or intention to sell the salt within the prohibited district. GOVERNMENT OF BENGAL v. AKATOOLLAH, **15 W R. Cr. 21.**

Act VI of 1865 (Transport of Native Labourers).

[REP., BEN. ACT II OF 1870.]

(1)—*S* 31—*Procedure under section—Crim. Pro. Code* (1861), s. 444,—The procedure under s. 31 must be conducted in accordance with s 444, Crim Pro. Code, 1861. *In the matter of the* NORTHERN ASSAM TEA COMPANY, **3 B L. R.A. Cr. 39 = 12 W R Cr. 29.**

(2)—*Ss.* 31 *and* 32—*Protector of labourers, power of—Wages of labourers—Mode of taking account.*—Until an enquiry is made under s. 31 the Protector of labourers is not competent to act under s. 32 *In the matter of the* NORTHERN ASSAM TEA COMPANY, **3 B.L R. A. Cr 39 = 12 W.R. Cr. 29.**

(3)—*S.* 32—*Essentials for a conviction under section.*—To support a conviction under s. 32, it must be shown that the wages or part of the wages due have remained unpaid for more than six months. But in an account current, the payments are not to be appropriated for the wages of the month in which the payment was

2.—Bengal Acts—continued.

Act VI of 1865 (Transport of Native Labourers)—*concluded.*

made. *In the matter of the* NORTHERN ASSAM TEA COMPANY, **3 B.L.R. Cr. 39=12 W.R. Cr. 29.**

(4)—S. 32—*See* No. 2, *supra.*

Act VII of 1865 (Bengal Municipal Slaughter-houses and Meat Markets).

[SHORT TITLE GIVEN, ACT I OF 1903. TITLE, PREAMBLE AND S. 8 REP. IN PT., S. 1 AM., ACT I OF 1903; REP. (IN ASSAM), ACT V OF 1897.]

(1)—*License for carrying on slaughter-house—Notice of revocation.*—The length of notice to be given to persons holding licenses for carrying on slaughter houses under the Act must be determined in each case according to its own particular circumstances. *In re* MR. E. VERE HALDANE, **6 W.R. Cr. 76.**

(2)—*S. 1—Using place as slaughter house.*—No person is liable to any penalty under the section except a person who, without a license, uses a place or building as a slaughter-house either by letting it out for such purpose, or by employing servants and others for the purpose of killing cattle therein; but a person who may be the mere servant of a butcher killing cattle in a particular slaughter-house or a butcher resorting accidentally or occasionally to a slaughter-house for the purpose of killing an ox or a sheep there, does not use the place as a slaughter-house within the meaning of the above section. MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA v. ZAMIR SHAIKH, **16 W.R. Cr. 4.**

(3)—*S. 7—Slaughtering cattle—Owner of a slaughter-house.*—The owner of a slaughter house, by giving it in lease to another, parts with his interest in it, and ceases to have any power to allow or disallow the slaughtering of cattle therein, and in such a case, he does not bring himself within the terms of the above section. MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA, v. PETITIONERS, **14 W.R. Cr. 67=6 B.L.R. Ap. 28.**

Act I of 1866 (Ferries, amending Bengal Regulation VI of 1819).

[REP. (IN BENGAL AND EASTERN BENGAL), BEN. ACT I OF 1885; (IN ASSAM), ACT XII OF 1891.]

S. 2—Suit to re-open a ferry against the provisions of the section not maintainable—*See* FERRY, 15 W.R. 132.

Act II of 1866 (Calcutta Suburban Police).

[SHORT TITLE GIVEN, ACT I OF 1903; SS. 25—30, 32 REP., BEN. ACT II OF 1867, S. 17; S. 40 (16) REP., BEN. ACT I OF 1869, S. 8; S. 49 REP., BEN. ACT I OF 1874; S. 41 AM., BEN. ACT II OF 1886, S. 2; S. 11 REP., BEN. ACT I OF 1890, S. 3; SS. 41A, 43A, INS., S. 43 AM., BEN. ACT II OF 1895; SS. 31, 52

2.—Bengal Acts—continued.

Act II of 1866 (Calcutta Suburban Police)—*concluded.*

REP., S. 51 REP. IN PT., ACT I OF 1903; S. 10 REP., BEN. ACT VI OF 1905; S. 17 REP., NEW SS. 17, 17A, 17B, 17C INS., SS. 39, 40 (13), 43 AM., BEN. ACT III OF 1907.]

Ss. 39-A (4), 49-A—*See* BEN. ACT IV OF 1866, s. 62-*a*, cls. 4, 6, s. 102, 17 C.W.N. 505 =18 Ind. Cas. 685=14 Cr. L.J. 125=40 C. 470.

Act IV of 1866 (Calcutta Police).

[S. 52 REP., BEN. ACT II OF 1867, S. 17; S. 67 REP., BEN. ACT I OF 1869, S. 8; S. 2 REP., ACT XII OF 1873; S. 103 REP., ACT XII OF 1875; S. 40 AM., BEN. ACT II OF 1876, S. 12; SS. 22—24, 26—28, 30, 31, 69, 73, 82—84, 96—98 REP., S. 79 REP. IN PT., ACT IV OF 1877; SS. 63—65 REP., BEN. ACT IV OF 1879; SS. 68, 72 AM., S. 68A INS., BEN. ACT II OF 1886; S. 17 REP., BEN. ACT I OF 1890, S. 3; S. 72 AM., SS. 68B, 72A INS., BEN ACT II OF 1895; S. 3 AM., BEN. ACT III OF 1897; SS. 3, 77 REP. IN PT., SS. 25, 33, 95 AM., FORM B IN SCH. REP., ACT I OF 1903; S. 16 REP., BEN. ACT VI OF 1905; S. 43 REP., NEW SS. 43, 43A, 43B, 43C, INS., SS. 46, 62, 66 (13), 72, 80 AM., S. 51 REP. IN. PT. AND AM., BEN. ACT III OF 1907.]

See ACT V OF 1861.
See ACT VIII OF 1895.
See BOM. ACT XIII OF 1856.
See BOM. ACT XLVIII OF 1860.
See BOM. ACT IV OF 1902.
See BUR. ACT IV OF 1899.
See MAD. ACT XXIV OF 1859.
See MAD. ACT I OF 1885.
See MAD. ACT III OF 1888.

(1)—*S. 5—Powers of Deputy Commissioner.*—A Deputy Commissioner of Police, under s. 5 of Bengal Act IV of 1866, has all the powers of a Commissioner, subject to the control of that officer, that is to say, the Commissioner may at any time set aside his orders, or he may give, either in printing or otherwise, any special direction with regard to any matter. Apart from such special direction, any act of the Deputy Commissioner, provided it be within the powers of the Commissioner, is made valid under that section. No instructions either in writing or otherwise, or either general or in regard to specific acts, are necessary. FORSYTH v. WILSON, **20 C. 670.**

(2)—*S. 9—Circular order authorizing the Calcutta police to inquire into matters.*—S. 9 of the Act authorizes the Commissioners to issue orders from time to time for various purposes, amongst which, one is "to render the police force efficient in the discharge of all duties." The circular order authorising the Calcutta police to inquire into matters comes within the scope of such a purpose. BIJOYENDRA LALL MITTER v. EMPEROR, **7 C.W.N. 883.**

2.—Bengal Acts—continued.

Act IV of 1866 (Calcutta Police)—*continued.*

(3)—*S. 13 B, cl. (c)—Police officer being in possession of money when on duty—Contravention of order of Commissioner of Police—Order contravened, necessity of proof of—Plea of guilty, qualified* —The petitioner was placed on his trial under s 13-B, cl. (c) of Act IV of 1866 (B.C.) for being, while on duty, in possession of annas four, contrary to an order of the Commissioner of Police. After the examination of one witness, the petitioner pleaded guilty to having the money in his possession. He, however, stated before the Magistrate that at the time in question he was not on duty, but engaged in the private business of a Police officer and also that he had been on duty the previous night The Magistrate convicted the accused on this plea of guilty. The order the contravention of which was the subject-matter of the prosecution was not proved. *Held*, that a copy of the Government order or an extract therefrom or a reference thereto should have been placed on the record. That the petitioner's plea of guilty was to be looked upon merely as an admission of the fact that he had at the time in question the sum found upon his person. The High Court set aside the conviction and sentence and directed a re-trial by a new Magistrate. GAYA RAY v. EMPEROR, **18 C W.N. 1273 = 15 Cr.L.J. 703 = 26 Ind. Cas. 151.**

(4)—*S 26—Power of Magistrate.*—A Police Magistrate had power to convict summarily, under the above section, for an offence punishable under s. 16, Penal Code. QUEEN v. MAHBUB KHAN, **1 B.L.R.O. Cr. 39.**

(5)—Ss. 36 and 37—*See* ACT I OF 1878, s. 39, 13 C.L.R 336.

(6)—S. 37—*See* No. 5, *supra.*

(7)—*S. 44—Betting on cotton figures, if an offence—Calcutta Police Act* (IV, *B.C., of* 1866, *as amended by Act* III, *B.C. of* 1897) *—Distinction between gaming and wagering—Cotton gambling not a game of contest.*—No form of batting or wagering without instruments other then rain-gambling is an offence as created by Act IV (B.C.) of 1866. Apart from legislation, rain-gambling is gaming only when a complete apparatus is used for the purpose, otherwise it is not. Gaming is playing at any game, sport, pastime or exercise, lawful or unlawful, for money or any other valuable thing which is staked on the result of the game, *i.e.*, which is to be lost or won according to the success or failure of the person who has staked. (1 Ellis and Blackburn, 286 (1852). (1903) 2 K.B. 423, *R.*). Wagering which includes betting is making a contract on an unascertained event, past or future (in which the parties have no pecuniary interest other than that created by the contract), by which the parties are to gain or lose according as the uncertainty is determined one way or another. ((1892) 2 Q.B. 484, *R.*) Cotton gambling is betting pure and simple. Books, papers, notice boards and list of prices furnish evidence of gambling but are not instruments of gaming. RAM PRATAP NEMANI v. KING-EMPEROR, **16 C.W.N. 838 = 16 C L J. 250 = 13 Cr. L J. 603 = 16 Ind Cas. 171 = 39 C. 958.**

(8)—*S. 46 — Search warrants — Power of Deputy Commissioners.*—A Deputy Commissioner is empowered to issue search warrants under s. 46 of the Act. FORSYTH v WILSON, **20 C. 670.**

(9)—*Ss. 46, 72—Common gaming house—Presumption under s. 46 of the Calcutta Police Act, under what circumstances it may arise—Existence of a warrant which has been executed against other persons who has since been convicted and tried, hardly a justification for arrest, when the arrest is not really made under it—Indian Penal Code, ss. 323, 332.*—When a person is arrested for an offence not really under warrant, the mere fact that a warrant had been issued for his arrest, which warrant had been executed against other persons, who have since been convicted, can hardly be put forward as a justification for the arrest. Where an arrest of a person, who was gambling in an open place in view of the police, is sought to be justified as having been made under s. 74 of the Calcutta Police Act, it must be found that the place where the gambling was taking place was a common gaming house. The presumption referred to under s. 46 of the Calcutta Police Act, cannot arise in a case where the arrest is not made on a warrant. ABDOOL KARIM v. EMPEROR, **4 C L J. 92 = 4 Cr. L J. 71.**

(10)—*S. 62-A, cls. 4, 6, s. 102— Calcutta Suburban Police Act* (II *B.C. of* 1866), *s. 39-A, cl. 4, s. 49 A—Calcutta and Suburban Police (Amendment) Act* (III, *B.C of* 1910), *s. 16—Power of the Commissioner of Police to prohibit procession or public assembly, scope of, and how to be exercised—Indian Legislatures, competency of, to make such regulations.*—A power such as that conferred by cl. 4 of s 62-A of the Calcutta Police Act and cl. 4 of s 39-A of the Suburban Police Act as amended by the Calcutta Suburban Police (Amendment) Act must be exercised strictly according to the terms of the Statute. It is one thing to say that a procession will not be allowed, and quite another thing to say that, if a procession is formed, particular individuals are not to join therein. The law does not give the Commissioner of Police power to discriminate between individuals in this way. *Held*, further—cl 4 of s. 62 A of the Calcutta Police Act and cl. 4 of s. 39-A of the Suburban Police Act require that an order made thereunder should be in writing, but do not require that public notice should be given of it. The Indian Legislatures are competent to make Police regulations of this kind in the interest of the public peace and safety. LEAKAT HOSSAIN v. KING-EMPEROR, **17 C W.N. 505 = 18 Ind. Cas. 685 = 14 Cr.L.J. 125 = 40 C. 470.**

(11)—S. 72—*See* No. 9, *supra.*

2.—Bengal Acts—continued.

Act IV of 1866 (Calcutta Police)—*concluded.*

(12)—*S.* 99 (1)—*Term "prosecutions" explained—Inspector detaining persons in custody for police enquiry.*—The word "prosecutions" in cl. (1) of s. 99 of the Calcutta Police Act means "criminal prosecutions;" and the clause, so far as the rule of limitation goes, articles to criminal prosecutions as well as to civil actions. Where a Police Inspector in Calcutta, purporting to act under a circular order issued by the Commissioner of Police, detained a person in custody for the purpose of police inquiry, *held* that the act of the Inspector was done or at least intended to be done under the provisions of the Calcutta Police Act, in the absence of any evidence to show that he did so in abuse of his authority and under colour of it for the purpose of harassing or injuring the accused. Therefore, a prosecution of the Police Inspector under s. 342, I P.C., after expiry of three months from the date of the commission of the act is barred by cl. (1) of s. 99. BIJOYENDRA LALL MITTER v. EMPEROR, **7 C.W.N. 883.** (23 C. 55, 22 Ch. D. 511, *R.*)

(13)—S. 102—*See* No. 10, *supra.*

Act VI of 1866 [Calcutta Municipality (amending Ben. Act VI of 1863).]

[REP., BEN. ACT IV OF 1876.]

See SENTENCE—FINE, 1 B.L.R.O. Cr. 41 = 18 W.R. Cr. 44, Note.

Act II of 1867 (Gambling).

[SHORT TITLE GIVEN, BEN. ACT I OF 1903, S. 1, AMENDED BEN. ACT III OF 1897, SS. 1, 14, 16, REP. IN PT., S. 17 REPEALED ACT I OF 1903, REP. (IN ASSAM), ACT XII OF 1891. DECLARED IN FORCE IN SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

See ACT III OF 1867.

See BOM. ACT III OF 1866.

See BOM. ACT IV OF 1887.

See BUR. ACT XVI OF 1884.

See BUR. ACT I OF 1899.

(1)—*Instruments of gaming—Public place—Horse raising machine called "little horses"—"Public place," defined.*—The acused kept a machine known as "little horses" which consisted of metal figures of horses which could be made to move in concentric circles by turning a handle. The horse which occupied a certain position when the machine halted after being thus set in motion, is the winning horse. The public staked their money on any of the horses before the machine was started. The accused took all the stakes returning four times their stakes to those who had staked on the winning horse. The place, in which the machine was kept, was an open piece of ground near a bazaar and was not separated from it by any wall or fence, although it was private property. *Held*, that the machine was an instrument of gaming and the place was a public place. A place may

2.—Bengal Acts—continued.

Act II of 1867 (Gambling)—*continued.*

be a public place, though it may be the private property of an individual. Where a place is in any way dedicated to the use of the public, it is of course a public place. But when it is owned privately, and such dedication has taken place, the question whether it is a public place seems to depend on the character of the place itself and the use actually made of it. If the place is an open piece of ground, the presumption that it is a public place is naturally more easily created than where it is a building, or is surrounded by a wall. HARI SINGH v. JADU NANDAN SINGH, **31 C. 542 = 8 C.W.N 458 = 1 Cr. L.J. 349.** [*R.*, 39 C. 968 = 16 C.L.J. 250 = 16 C.W.N. 858 = 13 Cr. L.J. 603 = 16 Ind. Cas. 171, 9 N.L.R. 164 = 21 Ind. Cas. 910 = 14 Cr. L.J. 670, 9 P.R. 1905, Cr. = 123 P.L.R. 1905 = 2 Cr. L.J. 46.]

(2)—*Act not extended to Jungipore—Conviction under Act illegal.*—Case where, in consequence of the Government Notification extending Bengal Act II of 1867 to Jungipore not having been published in three consecutive numbers of the Government Gazette, a sentence of rigorous imprisonment in default of payment of fine passed under such Act was cancelled. QUEEN v. ZOHUR SHEIKH, **18 W.R. Cr. 41.**

(3)—*See* PENAL CODE, s. 218, 27 C. 144.

(4)—*Ss.* 1 *and* 6—*Instruments of gaming—Coins and cowries.*—Although coins and cowries may not necessarily be implements of gaming, yet, when it is found that they are actually used in gaming, they do become within the meaning of the Act "instruments of gaming." AMRIT SINGH v. KING-EMPEROR, **5 C.W.N. 503.**

(5)—*S.* 2—*Government notification—Subsequent notification.*—The notification issued by Government under the above section should specify the limits of any town to which it is intended the Act should apply, and must be published in three consecutive Gazettes. Where a first notification, which extended the Act to a town with specification of limits to which it was intended to be applied, was published only once, and a subsequent notification, published three times, extended the Act to the town without specifying the limits to which the Act was to apply, it was held that the subsequent notifications were not sufficient, but that did not prevent the operation of the Act in places which are shown to be undoubtedly within the town according to its ordinary designation. *In re* BANEE MADHUB KUNDOO, **21 W.R. Cr. 23.**

(6)—*Ss.* 3, 10—*Game of chance, of skill—Ring game — Chief element, skill — Certain amount of chance—No offence.*—If a game is one of skill, it is not an offence under the Gaming Act; if it is a game of mere chance, it is; where the chief element of a game is one of skill, the game is not an offence, although

2.—Bengal Acts—continued.

Act II of 1867 (Gambling)—*continued.*

there is an element of chance in it. HARI SINGH v. KING-EMPEROR, **6 C.L.J. 708 = 6 Cr. L. J. 421.** [*Diss.*, 23 Ind. Cas. 484 = 15 Cr. L. J. 276; *R.*, 40 C. 702 = 17 C.W.N. 883 = 14 Cr. L. J. 452 = 20 Ind. Cas. 612; *D.*, 34 A. 96 = 8 A. L.J. 1262 = 12 Cr. L.J. 612 = 12 Ind. Cas, 988.]

(7)—*S.* 4—*Gambling — Common gambling house.*—Where the premises of Messrs. J. and Co., were used, during the night, when they were deserted for business purposes, for the purpose of gambling for months together, to the profit of the *durwans* left in charge thereof, *held* that the premises could not be regarded as a "common gambling house," even though the *durwans* might have made some profit out of the gambling which went on there. MOHESH NARAIN PANDAY v. EMPEROR, **11 C.W.N. 972 = 6 Cr. L J. 228.**

(8)—*S.* 4—*What constitutes offence under the section.*—To sustain a conviction under s. 4 of the Act, two things have to be established, first, that the accused were found gaming, and, second, that the place where they were found was a common gaming house within the meaning of the Act. The mere fact of gambling having taken place in the house on previous occasions is not sufficient to make it a common gaming house within the meaning of the Act. QUEEN-EMPRESS v. MAKUND RAM, **25 C. 432.**

(9)—*Ss.* 5 *and* 6—*Gambling—Unauthorised entry and arrest.*—A Magistrate can convict persons under s. 5 of Act II of 1867 (B.C.) even on an unauthorised and illegal arrest by a police officer, provided there is proof, independent of the presumption raised in s. 6 of the Act, that the house, where the arrest was made, is a gaming house. NAZIR KHAN v. PROLADH DUTTA, **4 C. 659.** [*F.*, 12 Cr. L.J. 28 = 8 Ind. Cas. 1127 = 6 N.L.R. 168; *R.*, U.B.R, 1892—1896, Vol. I, 123.]

(10)— *Ss.* 5, 6—*Sub-Inspector's power of arresting—Gambling.*—Where a Sub-Inspector of Police, not authorised to do so by the District Magistrate or Superintendent of Police, under s. 5 of the Act, enters an alleged gambling-house and arrests persons, a Magistrate cannot convict them, even the presumption of evidence created by s. 6 not arising in such a case. SRERAM CHANDRA LERKAN v. BIPINDASS, **4 C. 710.** [*F.*, 12 Cr. L.J. 28 = 8 Ind. Cas. 1127 = 6 N.L.R. 168.]

(11)—*S.* 6—*Common gaming house.*—A house cannot be considered, as exclusively private in its character, which is used for the purpose of gaming, by a large party of people of different social position and standing who would not ordinarily be friends or guests of the owner. S. 6 would raise a presumption that such a house in which coins and cowries were found was a common gaming-house. AMRIT SINGH v. KING-EMPEROR, **5 C.W.N. 503.**

(12)—*S.* 6—*Cowries—Instruments of gaming — Presumption.*— Although coins are not

2.—Bengal Acts—continued.

Act II of 1867 (Gambling)—*continued.*

instruments of gaming, yet, *cowries* being different from coins, may be treated as instruments of gaming, when they are used as counters, or as a means to carry on gaming. The finding of cowries, in a house upon search made under a warrant, will, under s. 6 of the Act, raise a rebuttable presumption that the house is used as a common gaming house. QUEEN-EMPRESS v. MAKUND RAM, **25 C. 432.**

(13)—S. 6—*See* Nos. 4, 9, 10, *supra.*

(14)—S. 10—*See* No. 6, *supra.*

(15)—*Ss.* 10, 11—*Gambling — Ring-game — Game of mere skill—Meaning of "mere" — Evidence Act, s.* 105—Onus *that game is game of "mere" skill.*—The words "mere skill" in s. 10 of the Bengal Gambling Act of 1867 import the meaning "pure skill." No form of the ring game can be a game of pure skill. (6 C.L. J. 708 = 6 Cr. L.J. 421, *Diss.*) The games of skill spoken of in s. 10 obviously refer to games where there are two parties sitting their skill against each other. Therefore, a ring-game kept for the profit of a man who does not play himself and does not pit his skill at all against anybody cannot fall within the exception to s. 10 of the Act. The *onus* to show that any offence falls within a general exception of the Gambling Act, is upon the accused and it is for him to show, in order to bring the case under s. 10 of the Gambling Act, that the game played is a game of mere skill. Where in a ring-game it was found that the particular position in which the table was slanted rendered it a matter of almost mere chance whether any ring alighted on the peg or encircled the coin: *Held*, that the game was not a game of mere skill and did not fall under s. 10 of the Gambling Act. RAM NEWAZ LAL v. EMPEROR, **15 Cr. L.J. 276 = 23 Ind. Cas. 484.**

(16)—*S.* 11—"*Place,*" *meaning of—Confiscation.*—The word "place" in s. 11 cannot but be a public place, and is evidently *ejusdem generis*, with the other words in the section, public market, fair, street, or thoroughfare. A place within a *thakurbari* surrounded by a high compound wall is not a public place. [*R.*, 8 C.W.N. 458 = 31 C. 542, 31 C. 910 = 8 C.W.N. 592, 8 Bom. L.R. 22 = 30 B. 348 = 3 Cr. L.J. 216.] If the conviction under s. 11 cannot be sustained, the order for confiscation must also fall. KHUDI SHEIKH v. KING-EMPEROR, **6 C.W.N. 33.** [*R.*, 10 Cr. L.J. 16, 14 Cr. L.J. 670 = 21 Ind. Cas. 910 = 9 N.L.R. 164.]

(17)—*S.* 11—*Public place*—Osara *enclosed on all sides with doors opening towards the road.*—The accused were convicted under s. 11 of the Bengal Gambling Act. The place in which the gambling was held, was an *osara*, enclosed on all sides, with doors opening towards the road, and with a platform between the *osara* and the road, and was a part of a building, the private property of certain individuals. It was

2.—Bengal Acts—continued.

Act II of 1867 (Gambling)—*concluded.*

used during the day as a shop, but not so in the night. The gambling in question took place after midnight on a certain day. *Held*, that the place was not a public place within the meaning of s. 11 of the Act. DURGA PRASAD KALWAR v. EMPEROR, **31 C. 910 = 8 C.W N. 592.** [*R.*, 10 Cr. L.J. 16.]

(18)—*S.* 11—*Public verandah of a private house.*— Gambling in an *osara* (verandah) belonging to a private owner would not be an offence under s. 11 of the Act, if the verandah is not used as a common gaming house, although the verandah may be accessible to the public in the sense that there is no physical obstruction to a person desirous of stepping on to it. EMPRESS v. RAGHOONANDAN SING, **31 C. 912, Note.**

(19)—S. 11—*See* No. 15, *supra.*

Act VI of 1868 (District Towns).

[REP. BEN. ACT V OF 1876.]

Sch. K, cl. (1).—*See* JUDICIAL OFFICERS, LIABILITY OF, 14 B L.R. 254 = 21 W.R. 391.

Act VIII of 1869 (Landlord and Tenant Procedure).

[SS. 14, 20, 76, REP. IN PART, ACT VII OF 1870. REP. (IN BENGAL AND EASTERN BENGAL), ACT VIII OF 1885].

(1)—*Suit against agent for rent received and misappropriated.*—A suit will lie against an agent under the Rent Act for rents received by him, whether or not he has committed in respect of such rents an offence under the Penal Code SKINNER & CO. v. RUJUB ALI KHAN, **2 W R. Act X, 105.**

(2)—*Fraudulent removal of property—Decree of Collector's Court—Penal Code, s.* 206—*Act* X *of* 1859, *s.* 145 (*B.C.*).—A person, who fraudulently removes property, intending thereby to prevent that property from being taken in execution of a decree made by a Collector, commits an offence, and is punishable under s. 206, I.P.C., and not under s. 145, Act X of 1859. GOUR CHUNDER CHUCKERBUTTY v. KISHEN MOHUN SINGH, **10 W.R. Cr. 46 = 2 B.L.R. S.N. 4.**

(3)—S. 6—*See* WRONGFUL DISTRAINT, 8 C.L.R. 204.

(4)—Ss. 72, 74, 76—*See* CRIMINAL TRESPASS, 7 C. 26.

(5)—S. 74—*See* No. 4, *supra.*

(6)—S 76—*See* No. 4, *supra.*

(7)—*S.* 101—*Procedure—Wrongful restraint.*—When proceedings are taken before a Munsiff under the above section, he is bound first to inquire whether an offence has been committed and if he is satisfied that it has, the only order he can make against the offenders (not being tenants) is that they shall pay the value of the crops distrained. PREMCHAND LAHA v. ADDOITO DOSS, **20 W.R. 445.**

2.—Bengal Acts—continued.

Act VIII of 1869 (Landlord and Tenant Procedure)—*concluded.*

(8)—*S.* 101—*Act* X *of* 1859, *ss.* 145 *and* 160—*Complaint—Suit.*—A complaint under s 145 is not a suit within the description of suits in which, under s. 160, an appeal was given to the Zillah Judge. *In the matter of* AMANATULLA, **6 B.L.R. 569 = 15 W R. 136**

Act VI of 1870 (Village Chaukdari).

[SS. 2, 21, 26 AM., OTHER SS. SUPPLEMENTED, BEN. ACT I OF 1871; APPLICATION OF PART II EXT.—(LOCALLY IN ASSAM), BEN. ACT V OF 1876, S. 375; (IN BENGAL AND EASTERN BENGAL AND LOCALLY IN ASSAM), BEN. ACT III OF 1884, S. 364; SS 6, 8, 9, 22, 41, 42, 43, 44, 45 AM., SS 9A, 9B, 46B. INS., BEN. ACT I OF 1886; "DISTRICT MAGISTRATE" SUBSTITUTED FOR "MAGISTRATE OF THE DISTRICT" AND "MAGISTRATE" SS 1, 5 REP IN PT., SS. 3, 4, 11—14, 35, 39, 42—44, 62, SCH. B., AM., SS. 3A, 46A, INS., SS. 36, 37, REP., S. 64 REP. IN PT. AND AM., BEN. ACT I OF 1892.]

(1)—*S.* 8—*Fine imposed by Sub-Divisional officer on a member of village* punchayet—*Nature of the order—Revision by High Court.*—An order under s. 8 of the Act imposing a fine on the collecting member of a *punchayet* is an order by the Magistrate in his judicial capacity. The order being made under the provisions of an Act of the Bengal Council, the person on whom the fine is imposed is guilty of an offence (s. 4 (*p*), Crim. Pro. Code), and the fine is realisable under the provisions of the Penal Code and Crim. Pro Code. Such a person could, therefore, be sentenced to imprisonment in default of payment of the fine. An order of this nature is, therefore, a judicial order, and consequently subject to revision by the High Court. QUEEN-EMPRESS v. ASHWINI KUMAR GHOSE, **23 C. 421.** [*R.*, 35 C. 1036, Note = 9 Cr. L.J. 187.]

(2)—S. 39 — *See* CRIM. PRO. CODE 1898, s. 56 (1), 10 C.W.N. 287 = 3 Cr. L J. 201.

(3)—*S.* 39, *cl.* (2)—*Daffadar's authority to arrest—Continuing offence—Theft—Offence, how long continues.*—Under s. 39, cl. (2), of Act VI B.C. of 1870, a *daffadar* is only entitled to arrest a person for theft committed in his presence. One R after having cut down some plantain trees belonging to J with the intention of dishonestly taking them, loaded them in a cart and was driving away the cart J pursued the cart and on his crying out that R had cut and was taking away his plantain trees, a *daffadar* came up and arrested R. *Held*, that the offence of theft did not continue when the *daffadar* came up and as the offence of theft was completed before the *daffadar* came up, and arrested R, the arrest was illegal and therefore the rescue of R from the *daffadar's* custody was not an offence. BALAI DEY v EMPEROR, **12 C. W.N. 367 = 7 Cr. L.J 188 = 35 C. 361.**

(4)—S. 45—*See* PENAL CODE, s. 186, **14 C.** W.N. 282 = **37 C. 122.**

2.—Bengal Acts—continued.

***Act VI of 1871 (Bengal Civil Courts Act).**

[REP., ACT XII OF 1887].

(1)—*S. 24—Evidence Act, s. 57 (1)—Judicial notice of Mahomedan Ecclesiastical law—Penal Code, ss. 79, 296—Disturbing a religious assembly.*—In *masjid* used by the members of the Hanifi sect, who use the word "*amen*" in their prayers in a low tone of voice, the accused, a Muhammadan of another sect called out "*amen*" in a loud tone of voice, according to the tenets of his sect, and was convicted of an offence under s. 296, I P.C., *held* by the Full Bench (*Mahmood, J., dissenting*). The Magistrate should re-try the case, having regard to the following questions. Was there an assembly lawfully engaged in the performance of a religious worship? (2) Was such assembly in fact disturbed by the accused? (3) Was such disturbance caused by acts and conduct on the part of the accused by which he intended to cause such disturbance, or which acts and conduct at the time of such acts and conduct, he knew or believed to be likely to cause such disturbance? *Per Mahmood, J.*—(*a*) To say that the utterance of the word "*amen*" aloud, after the Imam has recited the "*Surai, Fateha*" causes a disturbance in the prayer of a congregation, some or many of whom say the word in a low tone, is to contradict the express provisions of the Muhammadan Ecclesiastical Law as explained by the four orthodox Imams.—(*b*) A mosque once consecrated by public worship cannot in any case revert to the founder, and every Muhammadan has the legal right to enter it, and perform devotions according to his own tenets, so long as the form of worship is in accord with the recognized rules of Muhammadan Ecclesiastical Law. (*c*) The discussion said to have taken place after the act of the accused, could have only taken place during the interval when the prayers were not going on, and would not, therefore, fall under the purview of s. 296.—(*d*) The accused, being fully entitled by law to enter the mosque, to join the congregation, and to say the word "*amen*" aloud, was justified by law in exercising his right of worship within the meaning of s. 70, I.P.C., *Per Mahmood, J.*—The Courts are bound to take judicial notice of the Muhammadan Ecclesiastical Law, and the rules of the law need not be proved by specific evidence. QUEEN-EMPRESS v. RAMZAN, **7 A. 461, F.B.=A.W. N. 1885, 117.** [*R.*, 12 A. 494, F.B., 18 C. 448, P.C., 13 A. 419, F.B., 1 C.W.N. 76, 15 P.R. 1902, F.B. Cr.=104 P.L.R. 1902, 35 C. 294=12 C.W.N. 289=7 C.L.J. 433=3 M.L.J. 191.]

Act II of 1872 (Jute Warehouse and Fire Brigade).

[REP., BEN. ACT V OF 1879].

(1)—*Ss. 4 and 34—Procedure—Storing jute—License.*—Before a conviction for storing jute in a ware-house without a license can be had under s. 4, proceedings should be taken under the provisions of Ch. XV of the Code of Criminal Procedure, 1861, as required by s. 34 of the former Act, *In re* BHUGWAN CHUNDER KOONDOO, **19 W.R.Cr. 4.**

(2)—S. 34—*See* No. 1, *supra*.

Act V of 1875 (Bengal Survey).

[S. 57—(REP. BEN. ACT VII OF 1880. S. 1, REP. IN PART ACT I OF 1903. REP. (IN ASSAM), ACT XII OF 1891. DECLARED IN FORCE IN ANGUL DISTRICT, REG. I OF 1894, S. 3).]

(1)—S. 41—*See* SURVEY, 11 C.L.J. 417.

(2)—*S. 45—Obstruction to Canongoe appointed by Settlement Officer—Penal Code, s. 186*—Where a Canongoe appointed by a Settlement Officer in connection with the settlement of certain *khas mehal* belonging to Government was obstructed in his attempt to drive some pegs in the land by way of demarcating the boundary, *held*, that he was not acting in the discharge of any public function within the meaning of s. 186, as either of the two conditions required by the Act had not been proved. MOULA BUX v. KING-EMPEROR, **6 C.W.N. 120.**

Act I of 1876 (Registration of Mahomedan Marriages and Divorces).

[SHORT TITLE GIVEN, ACT I OF 1903].

See PENAL CODE, S. 419, 17 C. 606.

Act IV of 1876 (Calcutta Municipal Consolidation).

[REP., BEN. ACT II OF 1888].

(1)—*Prosecution by Corporation—Competency of its servant to try as Justice of the Peace.*—A servant of the Calcutta Corporation was held to have such an interest in the result of a prosecution by the Corporation (under s. 77 of Act IV of 1876) as to disqualify him from trying it as Justice of the Peace. WOOD v. CORPORATION OF THE TOWN OF CALCUTTA, **7 C. 322=9 C.L.R. 193.** [*R.*, 9 C. 397; *Compared*, 34 M. 130 =20 M.L.J. 773=7 Ind. Cas. 743=11 Cr. L.J. 521=8 M.L.T. 305.]

(2)—*Ss. 11 and 12—Person having no beneficial interest in the property for which he paid taxes, whether qualified under above sections.*—Where it is found that a certain person has himself no beneficial interest in the property for which he paid rates and taxes, he being simply the manager and trustee of such property, *held*, that he was not qualified under the above sections. If his name has been entered in the list of candidates eligible for election as Municipal Commissioners, the Chairman will be directed to expunge his name from the list. *In the matter of* RAJENDRA LAL MITTRA, **19 C. 195, Note.** [*R.*, 19 C. 192.]

(3)—S. 12—*See* No. 2, *supra*.

(4)—*Ss. 75 and 79—License—Assessment—Finality of.*—It is only where any person, by

* These Local Acts were passed by the Imperial Legislature.

2.—Bengal Acts—continued.

Act IV of 1876 (Calcutta Municipal Consolidation)—*continued.*

reason of his exercising a specified profession, is *admittedly* under a duty to take out a license under s. 75 of Bengal Act (IV of 1876), that an assessment should be made; and the finality of the Chairman's decision referred to in s. 79 has reference only to such cases. The language of s. 78 does not authorize the Chairman to determine (when the fact is denied), whether a particular person is bound to take out a license under s. 75. If that person denies his liability, the question can only be determined *judicially, i.e.*, after taking evidence by a competent Court in a prosecution under s. 77. WOOD v. CORPORATION OF THE TOWN OF CALCUTTA, **7 C. 322 = 9 C.L.R. 193.** [*R.*, 9 C. 397; *Considered*, 34 M. 130 = 20 M L.J. 773 = 7 Ind. Cas. 743 = 11 Cr.L J. 521 = 8 M L.T. 305.]

(5)—Ss. 75, 79—*See* TRANSFER OF CRIMINAL CASES—MISCELLANEOUS CASES, 2 C. 290.

(6)—*S.* 77—*Condition for conviction—Sentence of fine.*—For a conviction under s. 77 of Bengal Act IV of 1876 for keeping a boarding-house without a license, there must be proof of the accused having held himself out to the public as one whose business or profession it is to receive boarders for profit. A proper sentence of fine under s. 77 of Bengal Act IV of 1876 should be supported by evidence of the assessment on the accused's place of business and the amount payable for the license. *In the matter of the* HIGH COURT'S CRIMINAL PROCEDURE ACT X OF 1875, WOOD v. THE CORPORATION OF THE TOWN OF CALCUTTA, **8 C. 891 = 11 C. L.R. 357 = 4 Shome L.R 288.** [*Expl.*, 10 C. 194].

(7)—*S.* 77—*Prosecution under section—Refusal to hear evidence—Legality.*—Where, in such a prosecution, the accused denied his liability, a refusal to hear evidence on the point, on the ground of the finality of an (improper) assessment by the Chairman of the Corporation, is illegal. WOOD v. CORPORATION OF THE TOWN OF CALCUTTA, **7 C. 322 = 9 C.L R. 193.** [*R.*, 9 C. 397; *Compared*, 34 M. 130 = 20 M.L.J. 773 = 7 Ind. Cas. 743 = 11 Cr. L.J. 521 = 8 M. L.T. 305.]

(8)—S. 79—*See* Nos. 4 and 5, *supra.*

(9)—*S.* 88—*Annual value — Meaning.*—"Annual value," in the above section, means "annual letting value." *Per Wilson, J.* NUNDO LAL BOSE v. CORPORATION FOR THE TOWN OF CALCUTTA, **11 C. 275.**

(10)—*S.* 104—*Scope of section—Quære.*—Whether the above section ought to be regarded as an interpretation clause, or as only directory as containing instructions to the Commissioners how to proceed when exercising the jurisdiction under s. 88 of the Act. NUNDO LAL BOSE v. CORPORATION FOR THE TOWN OF CALCUTTA, **11 C. 275.**

(11)—*S.* 117—*Certiorari.*—The High Court will interfere and quash proceedings on *certiorari*, notwithstanding the provisions of the above section, if it appears that that the Commissioners have acted without or in excess of jurisdiction. NUNDO LAL BOSE v. CORPORATION FOR THE TOWN OF CALCUTTA, **11 C. 275.** [*R.*, 35 C. 859 = 12 C.W.N. 709 = 7 C.L. J. 631, 36 M. 72 = 13 M.L.T. 367 = 13 Cr. L.J. 723 = 16 Ind. Cas. 755 = 23 M.L.J. 393 = 1912 M.W.N. 1012.]

(12)—*S.* 248—*Conviction for keeping animals without licenses—Continuance of same offence before conviction.*—Under s. 248 of Beng. Act IV of 1876, a milkman, who has been convicted and fined under the section for keeping an animal without a license, cannot be again prosecuted for the continuance of the same offence before the date of the conviction. Nor can such a milkman be separately prosecuted for the offence, for each day the offence is continued as a separate and distinct offence under the above section before conviction. CORPORATION OF CALCUTTA v. MATOO BEWAH, **13 C. 108.**

Act V of 1876 (Bengal Municipality).

[S. 159; REP. IN PART BY ACT II OF 1901. REP. (IN BENGAL AND EASTERN BENGAL LOCALLY IN ASSAM), BEN. ACT III OF 1884.]

(1)—*S.* 216, *prosecution under—Bench of Magistrates, power of — Omission to remove obstruction.*—In a prosecution under s. 216 of Bengal Act V of 1876, a Bench of Magistrates has jurisdiction to determine whether the order that had not been carried out was a proper one or not. MUNICIPAL COMMITTEE OF DACCA v. SOMEER, **9 C. 38 = 5 Shome L R. 79 and 92.**

(2)—S. 256—*See* CRIM. PRO. CODE, 1898, s. 556, 10 C. 1030.

(3)—*S.* 313—*Bye-law* ultra vires *under Bengal Municipal Act* (*Bengal Act V of* 1876)—*Effect of s.* 2 *of Bengal Municipal Act* (*Bengal Act III of* 1884—*Bye-law* 83—*Validity.*—The word "prescribed" in s. 2 of Act III of 1884, must mean "duly" or lawfully prescribed, and the section cannot make *intra vires* a bye-law which is obviously *ultra vires* under Act V of 1876. The bye-law 83 purporting to be made under s. 313, Bengal Act V of 1876, and sanctioned by the local Government provides that persons failing, after service of notice, to trim trees overhanging tanks, which are likely to foul the water thereof shall be liable to a fine not exceeding Rs. 10 and to a daily fine not exceeding Rs. 2 until such requisition be complied with. *Held* that the bye-law was *ultra vires.* BENI MADHUB NAG v. MOTI LAL DAS, **21 C. 837.**

Act VII of 1876 (Land Registration).

[S. 55, AM., BEN. ACT V OF 1878; S. 82 REP. IN PT., BEN. ACT VII OF 1880; S. 1 REP. IN PT., S. 2, SCH. REP., ACT I OF 1903; SS. 3, 13, 15, 24, 28, 30, 31, 53, 64, 70, 77, 83, AM. SS. 5, 23 REP. IN PT., SS. 19 A, 19 B, 53 A. 74 A, INS., S. 25 REP. (IN BENGAL), BEN.

2.—Bengal Acts—continued.

Act VII of 1876 (Land Registration)—*concld.*

ACT II OF 1906; SS. 7 (*e*), 8 (*e*) REP. LOCALLY, AND SS. 8 (*b*), 18 (*a*). (*d*) REP. IN. PT. LOCALLY (IN BENGAL), E.B. & A. ACT I OF 1907; SS. 7 (*e*), 8 (*e*) REP. LOCALLY, AND SS. 8 (*b*), 18 (*a*), (*d*) REP. IN PT. LOCALLY (IN EASTERN BENGAL), WHEN ORDER ISSUED, E.B. & A. ACT I OF 1907; DECLARED IN FORCE IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

(1)—Ss. 52, 53, 84 — *See* PENAL CODE, ss. 191, 193 (2), 9 C.W.N. 127.

(2)—Ss. 52, 88—Rules framed by Board under—Validity—Force of Law—*See* PENAL CODE, ss. 191, 193, 38 C. 368 = 11 Ind. Cas. 595 = 12 Cr. L.J. 411.

(3)—S. 53—*See* No. 1, *supra*.

(4)—S. 56—*See* PENAL CODE, ss. 174, 175, 186 and 188, 29 C. 236 = 6 C.W.N. 141.

(4-*a*)—S. 84—*See* No. 1, *supra*.

(5)—*S.* 88—*Board of revenue, rule passed by—How far binding—Evidence—Admissibility—Deposition before Land Registration Deputy Collector not taken in accordance with the provisions of Civ. Pro. Code.*—Rules passed in the course of a proceeding of the Board of Revenue, and not drawn up by the Board under s. 88 of the Land Registration Act (VII B.C. of 1876), have not the force of law. Where the Deputy Collector, in a proceeding under the Act of 1876 recorded the deposition of a witness, which was not read over and interpreted to the witness, *held*, that the deposition was not inadmissible in evidence, as the rule of the Board of Revenue, which directed that "the depositions of witnesses are to be taken as directed in the Civ Pro. Code, by the presiding officer, and not by the *amla* of the Court," was passed in the course of the Board's proceeding, and not drawn up by the Board under s. 88 of the Land Registration Act, and, therefore, has not the force of law. DEBI SARAN MISSER v. EMPEROR, **11 C.W.N. 470 = 5 Cr L.J. 281.** [*R.*, 38 C. 368 = 11 Ind. Cas. 595 = 12 Cr.L.J. 411.]

(6)—S. 88—*See* No. 2, *supra*.

Act VIII of 1876 (Estate's Partition).

[REP. BEN. ACT V OF 1897.]

(1)—*Ss.* 112 *and* 116—*Functions of a* butwari *amin—Penal Code, s.* 186.—S. 112 of the Act is limited to those cases where the community of interest in the land in dispute between the proprietors of the estate under partition as a body and the proprietors of other estates is admitted. Where there is no such community of interest, it will not be within the legitimate functions of a *butwari* amin to proceed to measure the lands without a special order from the Collector, made after a preliminary enquiry. LILLA SINGH v. QUEEN-EMPRESS, **22 C. 286.**

(2)—S. 116—*See* No. 1, *supra*.

2.—Bengal Acts—continued.

Act VII of 1878 (Bengal Excise and Licensing).

[S. 36, REP. IN PT., BEN. ACT VII OF 1880; SS. 4, 9, 19, 61, 75, 82, AM., SS. 17A, 61A, INS. S. 58, REP. IN PT. AND AM., S. 64, REP., BEN. ACT IV OF 1881; SS. 4, 15, 17, 26, 29, 30. 53, 60, 61 AM., SS. 10A, 19A, INS., BEN. ACT I OF 1883; S. 18 AM., ACT IX OF 1885, S. 3; S. 81 (PROVISO) REP., ACT XIII OF 1889; SS. 18, 19 AM., ACT XIII OF 1890, SS. 6, 7; S. 2 REP. IN PT., ACT V OF 1897; SS. 3, 51 REP. IN PT. ACT I OF 1903. TITLE, PREAMBLE, SS. 1, 11, 27, 28, 67 AM., S. 27A, INS. (FOR BENGAL AND EASTERN BENGAL), BEN. ACT II OF 1903. DECLARED IN FORCE—IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ANGUL DISTRICT, REG. I OF 1894, S. 3.]

(1)—*Vendor of spirits—Breach of condition of license—Conviction of servant—Rank of excise officer.*—The conviction of the servants of a licensed vendor of spirits for a breach of the license is not necessarily illegal; and a Magistrate is competent to punish more than one such servant, if each of them was guilty of a breach. [*F.*, 9 C. 847; *R.*, 17 C. 566, 1 N.L.R. 81.] The excise officer, to whom a licensed vendor of spirits is bound to produce his license, must be of the higher grades and not any Police officer exercising the powers of an Excise officer. *In the matter of the petition of* BANEY MADHUB SHAW; EMPRESS v. BANEY MADHUB SHAW, **8 C. 207 = 10 C.L.R. 389 = 4 Shome L.R. 282.** [*Overruled*, 29 C. 606 = 6 C. W.N. 674, F.B.]

(2)—*Ss.* 4, 40 *and* 75—*Foreign excisable article*—Gujrat-Ganja—*Penal Code, ss.* 99, 147 *and* 353—*Resistance to a public officer acting without legal authority.*—Where the accused offered resistance to an Excise Sub-Inspector in his attempt to search the house of one of the accused persons for *Gurjat-Ganja*, *held*, that *Gurjat-Ganja* was a foreign excisable article, as defined in s. 4 of Act VII of 1878, as amended by Act IV of 1881, and consequently the excise officer had no legal authority to enter and search the house and that the accused were, therefore, not guilty of an offence either under s. 147 or 353, Penal Code. *Held*, also, that s. 99 of the Penal Code could not protect the officer as his conduct was altogether illegal. JAGARNATH MANDHATA v. QUEEN-EMPRESS, **24 C. 324 = 1 C. W.N. 233.**

(3)—*S.* 14—*Selling toddy to European soldiers—Power to cancel license—Act* III *of* 1880, *s.* 14.—The words "spirituous liquors," in s. 14 of the Bengal Excise Act, must be interpreted in their popular sense. So taken, fermented toddy comes within the words of s. 14 of the Act, which forbids the sale of any spirituous liquor, wine or intoxicating drug to European soldiers. In his judicial capacity, a Cantonment Magistrate has no authority to cancel the license of a person convicted of an offence under s. 14 of the Act, as the power to cancel licenses belongs to the revenue authorities. QUEEN-EMPRESS v. RAMDHANI PASSI, **15 C. 452.**

2.—Bengal Acts—continued.

Act VII of 1878 (Bengal Excise and Licensing) —*continued.*

(4)—*S.* 15—*Sale by wholesale, what is.*—Under s. 15 of the Bengal Excise Act, a sale of more than twelve quart bottles of spirituous or fermented liquors of the *same kind*, made at one transaction, is a sale by wholesale. EMPRESS v. NUDDIAR CHAND SHAW, **6 C. 832 = 8 C L.R. 152.**

(5)—S. 15—*See* No. 21, *infra.*

(6)—*Ss.* 15, 17 *and* 61—*Specified quantity of spirits—Maximum amount.*—Any lesser quantity of country spirits, which the Chief Commissioner of Assam, exercising the powers of the Board of Revenue, may have declared to be the maximum quantity, by any rule or order made by him under the provisions of s. 15 of the Act, cannot be deemed to be "the quantity specified in s. 15, within the meaning of s. 61." EMPRESS v. KOLA LALANG, **8 C. 214 = 10 C. L.R. 155.** [*F.*, 9 C. 847.]

(7)—S. 17—*See* No. 6, *supra.*

(8)—*Ss.* 17 *and* 61—*Possession of liquor.*—Certain liquor was consigned to a company of licensed vendors at Agra from Europe. The petitioner, at the request of the consignee, cleared this liquor at Calcutta by paying the duty and landing charges. The Abkari authorities seized it, while it was being conveyed to Howrah station for despatch to the consignee at Agra, and the petitioner was convicted of having the liquor in his possession in contravention of ss. 17 and 61 of the Excise Act, *held*, that the conviction was wrong. *In the matter of* HENRY KYTE, **11 C.L.R. 427.**

(9)—*Ss* 39 *and* 40—*Arrest under the Act, when a lawful one.*—Where an excise Sub-Inspector arrested some persons found illicitly distilling liquor and took them to a neighbouring village and asked for the assistance of a *Punchayet* who, instead of giving assistance, collected men and rescued them, *held*, that the arrest was a lawful one. HRIDOY MONDAL v. JAGANANDA DAS, **4 C.W.N. 245.** (16 C. 442, *F.*)

(10)—S. 40—*See* Nos. 2, 9, *supra.*

(11)—*S.* 53—*Sale in presence of master—Liability of servant.*—The accused, a servant in the employ of a licensed retail vendor, sold to a person a quantity of *Puchwai* in excess of the quantity allowed to be sold by the master's license, in the presence of his employer and at his request. He simply handed the liquor to the vendee. *Held* that the accused could not be convicted under s. 53 of the Bengal Excise Act, as the facts proved did not establish a sale by the accused, and the mere mechanical act of handing the liquor could not be regarded as a sale by the accused. QUEEN-EMPRESS v. HARRIDAS SAN, **17 C. 566.** [*D.*, 29 C. 496.]

(12)—*S.* 53—*Ganja sold by master in contravention of the terms in the presence of servant—Receipt of money by servant — Penal Code, ss.* 34 *and* 114.—Where a servant received the money for *ganja* sold by his master in contravention of the terms of his license, master and servant both being present at the sale, *held*, that the servant was guilty of the offence by the provision of s. 34, Penal Code, and not as an abettor of s. 114, Penal Code, not being applicable to the case. KESHWAR LAL SHAHA v. GIRISH CHUNDER DUTT, **29 C. 496.** (17 C. 566, *D.*)

(13)—*S.* 53—*Term,* "*spirituous liquor*" *explained.*—Although the term "spirituous liquor" is not defined in the Act, it does not include a medicinal preparation, merely because it is a liquid substance containing alcohol in its composition. The case would be different, if a person has been found manufacturing alcohol or spirits separately for the purpose of being used in the preparation of a medicine. GONESH CHUNDER SIKDAR v. QUEEN-EMPRESS, **24 C. 157 = 1 C.W.N. 1.** [*R.*, 13 Cr. L. J. 545 = 15 Ind. Cas. 961 = 16 C.W.N. 785 = 39 C. 1053.]

(14)—*Ss.* 53, 59—*Prosecution under s.* 59.—The person prosecuted under s. 59 for breach of license should be the licensed vendor, and not his servants. *In the matter of* NOMULLU AKUND, **11 C.L.R. 416.**

(15)—*Ss.* 53, 59, 60—*S.* 53, *when applicable.*—S. 53 does not apply to sales by a licensed vendor contrary to the terms of his license; but provides for a breach of the conditions of a license not covered by the second clause of s. 59. EMPRESS v. NOBOCOOMAR PAL, **6 C. 621.** [*R.*, 7 Cr. L.J. 344 = 12 C.W.N. 461 = 7 C.L.J. 377.]

(16)—*Ss.* 53, 59 *and* 61—*Offence under ss.* 53 *and* 61—*License for sale and possession at a certain place—Sale at a different place—S.* 59 *of the Excise Act, offence under—Servant's liability for the master's act.*—The servant, who delivers *ganja* to purchasers at the bidding of his master and who sells it and receives the price, cannot be convicted of offences under ss. 53 and 61 of the Excise Act (VII, B.C. of 1898). When a person having a license for the sale and possession of *ganja* at a certain place sells it at a different place, he commits an offence under s. 59, and not under ss. 53 and 61 of the Excise Act. GOSHTA BEHARI SAHA v. EMPEROR, **12 C.W.N. 461 = 7 C.L.J. 377 = 7 Cr. L.J. 344.**

(17)—*S.* 54—*Cultivation of Ganja—Area not covered by license.*—The license mentioned in s. 54 of the Excise Act is a license to a person, and not a license for a specific area. AROJ ALI MANDAL v. KING-EMPEROR, **13 C.L.J. 217 = 9 Ind. Cas. 707.**

(18)—*S.* 58, *Award of maximum sentence under — Additional alternative sentence of imprisonment — Competency of Magistrate — Conditions of offence under s.* 58.—When the accused were sentenced under s. 58 of the

2.—Bengal Acts—continued.

Act VII of 1878 (Bengal Excise and Licensing) —*continued.*

Bengal Excise Act to the maximum term of imprisonment awardable under the section and were, in addition, sentenced, under s. 74, to an alternative sentence of imprisonment, *held*, the Magistrate had not thereby exceeded his powers under s. 12 of the Presidency Magistrates' Act, as the additional sentence could not affect his powers in respect of the original sentence under s. 58. To constitute an offence under the latter part of s. 58 the offender must have introduced or attempted to introduce for sale spirituous liquors manufactured at another place into the *limits fixed* for the consumption of such liquors manufactured at a distillery established under s. 9 of the Act, without a special pass from the Collector; where, therefore, such limits have not been fixed under the section, a conviction is bad. RAM CHUNDER SHAW v. EMPRESS, **6 C. 575 = 8 C. L.R. 250.**

(19)—*S. 59—Licensed manufacturer or vendor —Breach of license by servant—Servant, whether liable.*—The servant of a manufacturer or vendor under Bengal Act VII of 1878 is not liable under s. 59 of the Act to the penalty provided by that section for the commission of an act in breach of any of the conditions of the license of such manufacturer or vendor not otherwise provided for in the Act. *In the matter of* KALU MAL KHETRI, **29 C. 606 = 6 C. W.N. 674, F B.** (6 C. 832, 11 C.L.R. 416, *appr.*; 19 W.R. Cr. 34, *D.*; 8 C. 207, *overruled.*)

(20)—S. 59—*See* Nos. 14, 15, 16, and *supra.*

(20-*a*) - S. 60—*See* No. 15, *supra.*

(21)—*Ss.* 60 *and* 15—*Sale by servant—Liability.*—The licensed retail vendor is the only person liable to conviction under s. 60, and not the servant of such vendor. *Quære*—Whether a sale of twelve quart bottles of one kind and three of another, at the same time, comes within the prohibition in the Explanation clause of s. 15? EMPRESS v. NUDDIAR CHAND SHAW, **6. C. 832 = 8 C.L R. 152.** [*Diss.*, 8 C. 207; *Appr.*, 29 C. 606, F.B.; *R.*, 17 C. 566.]

(22) *S.* 61—*Imported liquor — Possession without pass by Agent of consignee* —The possession of liquors by an agent, authorised to land and forward them to the consignees, would not constitute sufficient possession to justify a conviction under s. 61 of Bengal Act VII of 1878 for being in possession of them without a pass. *In the matter of petition of* HENRY KYTE; CROWN v. HENRY KYTE, **9 C. 223 = 11 C.L.R. 427 = 5 Shome L R. 78.**

(23)—*S.* 61—*Sale by servant of licensed vendor—Cooly employed by servant—Conviction under s.* 61.—The conviction of a cooly, who carried eight quart bottles of country spirit sold by the servant of a licensed vendor, under s. 61 of Bengal Act VII of 1878, is illegal and must be set aside. But the conviction of the servant would be proper; whether it *is* under s. 53 or s. 60 is immaterial. EMPRESS v. ISHAN CHUNDRA DE, **9 C. 847 = 12 C.L.R. 451.** (19 W. R. Cr. 34, 8 C. 207 = 10 C.L.R. 389, *F.*) [*R.*, 17 C. 566, 1 N.L.R. 81.]

2.—Bengal Acts—continued.

Act VII of 1878 (Bengal Excise and Licensing) —*concluded.*

(24)—S. 61—*See* ACT IV OF 1889, ss. 6 and 7, 23 C. 174.

(25) -S. 61—*See* Nos. 6, 8 and 16, *supra.*

(26)—*S.* 74—*Provision for additional punishment.*—S. 74 providing for additional punishment in the case of a "previous conviction for a like offence" merely contemplates the conviction for an offence punishable with a fine of Rs 200 or upwards, and another conviction for another offence punishable similarly, it not being necessary that the previous conviction should have been for the same offence. RAM CHUNDER SHAW v. EMPRESS **6 C. 575 = 8 C.L.R. 250.** [*F.*, 16 C. 799; *R.*, 4 C.L.J. 408 = 33 C. 1036.]

(27)—*S.* 74—*Selling wine by retail with a wholesale license.*—The offence of selling wine by retail, with a wholesale license is an offence like to the offence of selling wine without a license at all; it is equally the offence of selling wine without having a license so to sell it. SCHEIN v. QUEEN-EMPRESS, **16 C. 799.** (6 C. 575, *F.*)

(28)—*S.* 75, *interpretation of—Excise law—Confiscation in the owner's absence.*—The boat, in which excisable articles are carried in contravention of the excise law, should not be confiscated under the provisions of s. 75 of the Bengal Excise and Licensing Act (VII B.C. of 1878), unless it is found that the owner of the boat was in some way implicated in the offence under the excise law. GOLAP SAHA v. EMPEROR, **12 C.W.N. 139.**

(29)—S. 75—*See* No. 2, *supra.*

(30)—S. 16—Nature of license under—Perjury—Sanction for prosecution—*See* CRIM. PRO. CODE, 1898, s. 195, 9 Ind. Cas. 115 = 15 C.W.N. 169 = 12 Cr. L.J. 11.

Act IX of 1880 (Cess).

[SS 64A, 64B INS., ACT VII OF 1881; S. 9 AM. (IN BENGAL), SS. 10, 13, 42 (1), 43, 44, 45, 46 (3), 108, SCHS. A AND C AM., S. 40A INS. (IN BENGAL AND EASTERN BENGAL), BEN. ACT II OF 1881; SS 110—181 AND S. 182 (*a*), (*b*), (*c*), (*e*), (*g*) AND (*h*) REP., SS. 9, 40, 108 REP. IN PT., SS. 4, 38, 82, 83, 98, 109 AM. (IN EASTERN BENGAL AND IN PLACES IN EASTERN BENGAL IN WHICH BEN. ACT III OF 1885 IS DECLARED IN FORCE), BEN. ACT III OF 1885, S. 2; S. 1 REP. IN PT., S. 20, EXAMPLE B AM., ACT I OF 1903; S. 109 AM. (IN PLACES IN BENGAL IN WHICH BEN. ACT III OF 1885 IS IN FORCE), BEN. ACT V OF 1908, S. 64.]

(1)—Ss. 14, 94 and 95—*See* PENAL CODE, s. 177, 11 Cr. L.J. 10 = 13 C.W.N. 191 = 5 M. L.T. 93 = 4 Ind. Cas. 578.

2.—Bengal Acts—continued.

Act IX of 1880 (Cess)—*concluded.*

(2)—S. 94—*See* No. 1, *supra.*

(3)—S. 95—*See* No. 1, *supra.*

Act IV of 1881 (Excise Amendment).

[S. 1, REP. IN PART, S. 2 REP. BY ACT V OF 1897. DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

See BEN. ACT VII OF 1878, ss. 4, 40, 75, 24 C. 324=1 C.W.N. 233.

Act II of 1882 (Embankment).

[S. 16 REP., S. 17 REP. IN PART, ACT IX OF 1890; SS. 1, 2, 46, REP. IN PART BY ACT I OF 1903.]

(1)—*Ss.* 6, 76, 80—*Failure to comply with the provisions of ss.* 6 *and* 80, *effect of—Commission of acts prohibited by s.* 76 (6).—The direction in s. 6 as to the publication of the notification in the manner directed by s. 80 is merely directory and intended to inform people living in the locality. The further directions in s. 80, as to the publishing of the proclamations and the issuing of notices are intended to serve the same purpose. Failure to comply with either provisions cannot override the declaration in s. 6 that the provisions of the notification shall take effect one month from the publication of the notification. But compliance with such provisions would be most material on the question of punishment in a prosecution under s. 76. On the principle that ignorance of law is no excuse, a person who has committed any of the acts prohibited by s. 76 (6), one month after the publication of the notification in the Gazette, cannot escape prosecution by denying all knowledge of the publication. BRINDABUN GHOSH v. EMPEROR, **7 C.W.N. 286.**

(2)—*Ss.* 6, 80—*Notification—Manner of publication.*—The notification referred to in s. 6 of the Act must be published in the manner provided by s. 80; so that a publication of it in the *Calcutta Gazette* alone would not be sufficient. GOVERDHAN SINHA v. QUEEN-EMPRESS, **11 C. 570.**

(3)—*S.* 76—*Offence under—Adding to embankment.*—S. 76 of the Bengal Embankment Act prohibits, not only the construction of new *bundhs*, but also adding to old *bundhs* so as to obstruct the flow of water. DWARKA NATH MANJI v. EMPEROR, **12 C.W.N. 344=7 Cr.L.J. 185=7 C.L.J. 239.**

(4)—*S.* 76, *cls.* (*a*) *and* (*b*)—*Making addition to existing embankment—Sanction of Collector—Proviso.*—There is no such proviso attached to cl. (*b*) of s. 76 of the Act as is attached to cl. (*a*). The only offence constituted by cl. (*b*) is that of omitting to obtain sanction of the Collector to making any addition to an existing embankment within the prohibitory area. The ruling in 11 C. 570 has been distinctly and clearly overruled, as far as the interpretations of the words "existing embankments" in both the cls. (*b*) and (*a*) are concerned, by the Full Bench case in 30 C. 481. RAMA NATH v. EMPEROR, **12 Cr. L.J. 65=9 Ind. Cas. 360=13 C.L.J. 333=38 C. 413.**

2.—Bengal Acts—continued.

Act II of 1882 (Embankment)—*concluded.*

(5)—*S.* 76, *cl.* (*b*)—"*Shall add to existing embankments,*" *meaning of.*—The words "shall add to existing embankments" in s. 76 of the Act, are not intended to mean any repair to an existing embankment, even if the effect of such a repair be to make the embankment higher or broader; they only mean an extension in the length of an existing embankment. GOVERDHAN SINHA v. QUEEN EMPRESS, **11 C. 570.** [*Overruled*, 30 C. 481=7 C.W.N. 284, 38 C. 413=9 Ind. Cas. 360=12 Cr. L.J. 65=13 C.L.J. 333.]

(6)—S. 76—*See* No. 1, *supra.*

(7)—*Ss.* 76 (*a*), 79—*Addition to the height of an embankment.*—The words "shall add to any existing embankment" in s. 76 (*a*) of Act II (B.C.) of 1882, include an addition to the height of an embankment. AJODHYA NATH KOILA v. RAJ KRISHTO BHAR, **30 C. 481=7 C.W.N 284, F.B.** (11 C. 570, *overruled.*) [*Overruled*, 38 C. 413=12 Cr. L.J. 65=9 Ind. Cas. 360.]

(8)—*S.* 77—*Sand bank artificially formed—Public embankment.*—A bank of sand which has artificially formed between the two spurs erected by Government for the protection of an embankment is not an embankment, nor is it a public embankment. The cutting through of such a sand bank for the protection of one's own cultivation is not an offence under s. 77 of the Act. BISSUMBHUR SINGH v. QUEEN-EMPRESS, **5 C.W.N. 108.**

(9)—S. 79—*See* No. 7, *supra.*

(10)—S. 80—*See* Nos. 1 and 2, *supra.*

Act III of 1884 (Municipal).

[S. 251 AM., SS. 251A TO 251D INS., BEN. ACT. III OF 1886; SCH. 2 REP. IN PT., BEN. ACT II OF 1888; S. 261 REP. IN PT. (IN BEN.), BEN. ACT 1 OF 1893, S. 46; SS. 2, 9, 14, 15, 17, 20, 22, 23, 24, 26, 27, 28, 30, 38, 58, 59 (*a*), 68, 82, 86, 89, 97, 98, 99, 113, 114, 121, 125, 127, 186, 187, 199, 200, 208, 210, 212, 217 (4), 218—220, 236—242, 243, 261, 262, 270, 271, 273 (1), 279, 290, 307, 321, 322, 339, 350, 353, 365 AND SCH. V AM., S. 101 AM. (IN BEN.), S. 6, CL. (14A), INS., SS. 9A, 9B, 25A, 26A, 26B, 27A, 29A, 37A TO 37M, 66A, 97A, 111A, 141A, 147A, 199A, 210A, 223A, 242A, 256A, 256B, 260A, 262A, 318A, 334A, 349A, 349B, 350A, 351A INS., SS 11, 12, 18, 327, 328 REP., SS. 46, 57, 76, 85, 87, 320, 351 REP. IN PT, AND AM., SS. 116, 142 (*c*), 263, 294 REP. IN PT., BEN. ACT IV OF 1894; SS. 15, 37L, 39, 42, 69, 70, 131, 142, 238, (1), 279, 321, 322 (3), 350, 351A AM., SS. 69A, 69B, 140B, 147B, INS., S. 141A REP. IN PT., S. 147A REP. IN PT. AND AM., BEN. ACT II OF 1896; SS. 37J, 219 AM., ACT V OF 1897; IN HOWRAH, REP. IN PT., BEN.

2.—Bengal Acts—continued.

Act III of 1884 (Municipal)—*continued.*

ACT III OF 1899, S. 642; IN DARJEELING, S. 6, CLS. (20) TO (35) ADDED, SS. 6A, 182A, 182B, 201A TO 201G, 207A, 210B, 210C, 224A TO 224C, 229A, 244A TO 244Z, 248A TO 248E, 272A TO 272E, 350B, 351B TO 351H INS., SS. 175 TO 182 BARRED, SS. 191, 201, 207, 220 227, 228, 236 TO 244, 350A AM., SS. 208, 232, 267, 270 (4), (5) REP., SS. 218, 224, 229, 271, 272 (2), 273 (1) REP. IN PT., SCHS. A TO D ADDED, BEN. ACT I OF 1900, S. 168, REP. IN PT., ACT II OF 1901; SS. 1, 2 REP. IN PT., ACT I OF 1903. DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.

(1)—S. 2—" Prescribed," meaning of—*See* BEN. ACT V OF 1876, s. 313, 21 C. 837.]

(2)—*Ss.* 6 (13), 30 *and* 217 (5)—*Obstructing road not vested in the Municipality.*—The word "road" in cl. 5 of s. 217 is not limited to roads vested in the Municipality. A path through a paddy field, over which the public has a right of way, would amount to a "road" within the definition of the term in s. 217 (5). RAM CHANDRA GHOSE v. BALLY MUNICIPALITY, **17 C. 684.**

(3)—S. 30—*See* No. 2, *supra.*

(4)—*S.* 45—*Delegation of powers of Chairman to Vice-Chairman—Written order of delegation.*—The proviso to s. 45 of the Act must not be understood as altogether over-riding the body of the section. It, merely, relates to specific acts in which an express or implied consent may have been given, or held to have been given. A general authority given orally by the Chairman to the Vice-Chairman to institute prosecutions under the Act, without any written order, does not come under s. 45 of the Act and is not a valid delegation of the power. The law requires not express consent, but a written order, where such general powers are delegated by the Chairman. KHERODA PROSAD PAUL v. CHAIRMAN OF THE HOWRAH MUNICIPALITY, **20 C. 448.** [*R.*, 13 Cr. L. J. 524 = 15 Ind. Cas. 796 = 16 C.W.N. 934.]

(5)—*S.* 133—*Application for license—False statement—Magistrate's power to take cognizance of offence on his own motion—Crim. Pro. Code* (1882), s. 191 — *Penal Code, ss.* 182, 199, 417 *and* 511—*Applicability of Penal Code to offences under Act.*—Where a Deputy Magistrate instituted proceedings, of his own motion, against an accused for making a false statement, regarding the number of horses in his possession, in an application to a Municipality for a license, and charged the accused under ss. 182, 199 and 417 read with s. 511, *held*, on an application to the High Court during the hearing of the case, that the proceeding was not properly instituted, as there was no private complaint before the Magistrate and as he was not empowered to take cognizance of offences of his own motion in the manner prescribed by cl. (*c*) of s. 191 of the Code of Criminal Procedure. *Held* that s. 182, Penal Code, was not applicable to the case, as the applicant could not be said to have tried to dishonestly induce the Municipality to omit to inspect his premises under s. 140 of the Municipal Act, merely by presenting his application in that form. For, under the section, the Commissioners had no power to inspect them at all, unless there was some other reason which justified their doing so, and that, for the same reason, the accused was not guilty of the offence of attempting to commit cheating under s. 417 read with s. 511 of the Penal Code. *Held*, further, that the accused was not guilty of an offence under s. 199 of the Penal Code, as the statement made by the accused for the purpose of taking out the licenses was no evidence at all against any one but himself, and could only be evidence against himself as proving an admission by him. Whenever there is an intention to apply the provisions of the criminal law to acts authorized or required by particular statutes, that intention is always made clear by express words to that effect. As there is no such provision in the Bengal Municipal Act, the Act is intended to be complete in itself as regards offenees committed against the Municipality. No penalty is attached to the omission to make a return under s. 133, and there are no words in the Act constituting the making of a false return a penal offence. CHANDI PERSHAD v. ABDUR RAHMAN, **22 C. 131.** [*R.*, 38 C. 68 = 13 C.L.J. 43 = 7 Ind. Cas. 747 = 11 Cr. L J. 525, 5 C.L J. 47 = 11 C.W N. 100.]

(6)—*Ss.* 142 *and* 146—*Non registration of carts—Meaning of the words " habitually used."*—The word "habitually" in s. 142 imports some degree of frequency, and, in order that a cart may be said to be "habitually used" within the limits of any Municipality, it must be used within those limits oftener than it is not, regard being had to the total extent of the use within and without the Municipality to which, in due course of business it is, or might reasonably, be put. Therefore, a person, living and keeping a cart outside a Municipality, cannot be said to be habitually using the cart under s. 142 of the Act, merely because he brings it within the limits twice a week throughout the year. THE LEGAL REMEMBRANCER v. SHAMA CHARAN GHOSE, **23 C. 52.**

(7)—S. 146—*See* No. 6, *supra.*

(8)—*Ss.* 155 *and* 156—*Meaning of the term "ferry"—Plying ferry without license within prescribed limits Unlicensed boat—Rights of ferryman to demand tolls from passengers.*—A ferry, under the Act, means the exclusive right to carry passengers across a stream from one bank to the other, on payment of prescribed tolls, and the object of s. 155 is to prevent the crossing of passengers from one bank of the river to the opposite bank by a boat plying for hire without a license within the prescribed limits. The crossing of the bar of a stream so as to enter another stream would constitute no breach of ss. 155 and 156, and a Magistrate

2.—Bengal Acts—continued.

Act III of 1884 (Municipal)—*continued.*

will not be right in adopting, as a matter of law, the precedent of an erroneous judgment of the Sessions Judge holding that the crossing of the bar at the mouth of a *khal* so as to enter a river and to land passengers on the opposite bank constituted a breach of the Municipal Act. A ferryman has, under no circumstances, authority to demand tolls from persons who are merely passengers in an unlicensed boat; his remedy lies under s. 156 against the person who keeps the ferry boat without a license. GOVERNMENT OF BENGAL v. SENAYAT ALI, **27 C. 317 = 4 C.W.N. 348** [*R.*, 28 M. 517 = 15 M.L.J. 466.]

(8-*a*)—S. 156—*See* No. 8, *supra.*

(9)—*Ss.* 202, 218—*Removal of a wall and a privy—Owner or lessee—Requisition or notice to remove—Service on person who has built—Failure to comply with requisition—Liability.*—The notice contemplated by s. 202 of the Bengal Municipal Act (III of 1884) for the removal of any wall or other obstruction erected on any road or drain should be served upon the person, who may have erected the same, and on failure to comply with such requisition, he alone is liable to a prosecution under s. 218 of the Act. So, where a wall and a privy were erected by the lessee, and not the owner of a land or building, the lessee alone is liable to a prosecution for non-compliance with a requisition issued to remove such wall and privy. SHAMA BIBEE v. JADAB CHUNDER BANERJEE, **2 C.L.J. 226 = 2 Cr.L.J. 613.**

(10)—*S.* 201—*Construction of the Act.*—This section applies only to the case of a projection, which is caused by a building which is new, *i.e.*, erected after the passing of the Acts referred to in this section, and it does not apply to the case of a projection forming part of a building which is merely in substitution for an old building, which had existed upon the same site, before the passing of the Acts mentioned in the section. [*Appr.*, 23 B. 248.] The words "which may have been so erected or placed," in this section mean erected or placed for the first time. ESHAN CHUNDER MITTER v. BANKU BEHARI PAL, **25 C. 160 = 1 C.W.N. 660.** [*R.*, 6 Ind. Cas. 431 = 6 N.L.R. 53.]

(11)—S. 217, cl. 5—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 23 C. 44.

(11-*a*)—S. 217—*See* No. 2, *supra*, and No. 30, *infra.*

(12)—S. 218—*See* No. 9, *supra.*

(13)—*Ss.* 218, 353—*Obstruction to drains—Removal—Limitation.*—Although the offence of erecting culverts on *pucca* drains may be continuous in its nature, a prosecution for that offence cannot be instituted, under s. 353, more than six months after the commission of the obstruction was brought to the notice of the Chairman. S. 218 is not applicable to such a case. LUTTI SINGH v. BEHAR MUNICIPALITY, **1 C.W.N. 492.**

2.—Bengal Acts—continued.

Act III of 1884 (Municipal)—*continued.*

(14)—*Ss.* 224, 246—*Notice under s. 246.*—Regard being had to the fact that the Municipality is empowered to issue a notice under s. 224, the notice here under s. 246, *re* the demolition of a *pucca* privy, was *held* to be a substantial compliance with the provisions of the law. DUKE, CHAIRMAN, HOWRAH MUNICIPALITY v. RAMESHWAR MALIA, **26 C. 811 = 3 C.W.N. 508.**

(15)—*Ss.* 230, 231, 270—*Nature of the offence of constructing a latrine in contravention of the provisions of ss.* 230, 231.—The offence under sub-s. 3 of s. 270, namely, the construction of latrines in contravention of the provisions of ss. 230 and 231, is not a continuous offence. BIDHU BHUSAN MULLICK v. ASSENSOLE MUNICIPALITY, **6 C.W.N 167.**

(16)—S. 231—*See* No. 15, *supra.*

(17)—*Ss.* 236 *and* 273 (1)—*Commencement of building second storey without permission, whether an offence under s.* 273 (1)—*Crim. Pro. Code* (1898), *ss.* 438 *and* 439.—Where a Subdivisonal Magistrate, who was also the Chairman of the Municipality, had in one order convicted the accused under s. 273 (1) of the Bengal Municipal Act, 1884, and, in addition to sentence, had, as Chairman, in the same order directed the demolition of the second storey commenced to be built without permission, *held*, that the whole order should be set aside as the case did not come under s. 273 (1) and as there was no necessity for permission to build a second storey, the act not amounting to building or rebuilding a house, nor to obstruction or encroachment on roads. EMPEROR v. MATHURA PRASAD, **29 C. 491.**

(18)—*Ss.* 237 *and* 238—*Notice of intention to build—Commencement of building in anticipation of sanction—Refusal of sanction—Effect.*—Although a person commencing to build a house after giving the notice required by s. 237, without waiting for the six weeks mentioned in it, does not necessarily contravene the law, yet, when he so acts, the reasonable view must be that he does it at his risk, his act being liable to be treated as one in contravention of any legal order of the Commissioners issued within the statutory period of six weeks, if such order does not sanction the proposed building. CHUNDRA KUMAR DEY v. GONESH DAS AGRAWALLA, **25 C. 419.**

(19)—S. 238—*See* No. 18, *supra.*

(19-*a*)—*Ss.* 238, 240, 273, *sub-s.* (1)—*Building of new masonry wall, whether erection of house—Erection without sanction, whether offence—"Building," meaning of.*—The building of a new and additional masonry wall which materially enlarges a courtyard constitutes the erecting of a house within the meaning of ss. 238 and 240 of the Bengal Municipal Act, and its erection without the sanction of the Municipal Commissioners is an offence under s. 273, sub-s. (1) of the Act. The word "building," in

2.—Bengal Acts—continued.

Act III of 1884 (Municipal)—*continued.*

the absence of any specific definition in the Act, should be construed in its ordinary sense and as including erections, structures, or buildings such as masonry walls. MAHANT MOHABIR DAS v. GAYA MUNICIPALITY, **16 Cr. L.J. 59=26 Ind. Cas. 651.**

(20)—*Ss.* 238, 273—*Sanction to build not given in proper time—Right to build without sanction.*—A person building according to his own plans six weeks after his submission of plans and specifications for the sanction of the Municipal Commissioners cannot be convicted under s. 273, for building without a sanction. The fact that certain alterations were made after such period at the suggestion of the Municipality, would not make him forfeit his rights, under s. 238, to build on his own plan. SEWANANDAN RAI KAYAL v. VICE-CHAIRMAN OF THE DARJEELING MUNICIPALITY, **5 C. W.N. 42.**

(20-*a*)—S. 240—*See* No. 19-*a*, *supra.*

(21)—*Ss.* 243, 244, 267—*Hut, erection of, without notice to Commissioners, offence—Notice to remove hut, not condition precedent to conviction.*—S. 243 of the Bengal Municipal Act forbids the erection of a hut within a Municipality, without a month's notice to the Municipal Commissioners. When, therefore, a person was prosecuted under s. 267 of the Act for having erected a hut without such notice, and it was found that the hut was so erected: *held*, upon the facts found, the accused ought to have been convicted, *held*, also, s. 267 of the Act provides for two distinct classes of offences, namely, (1) erecting a hut without a month's notice to the Commissioners, and (2) failing to remove a hut, erected without such notice, when required to do so, the latter only being an offence of a continuous nature, liable to be punished with a daily fine. Notice to remove the hut is not a condition precedent to a conviction for the first class of offences mentioned above. CHAIRMAN, HOWRAH MUNICIPALITY v. GOLAPI BEWA, **10 C L J. 16=10 Cr. L.J. 191 =2 Ind. Cas. 939**

(22)—S. 244—*See* No. 21, *supra.*

(23)—*Ss.* 245, 246—*Suit against Municipality—Civil Court's jurisdiction for challenging acts of Municipality, when they are in conformity with statutory powers.*—A Civil Court can restrain a Municipality from doing anything *ultra vires.* but it has no jurisdiction to try the question whether the Municipality, when it was acting within the limits of its statutory power, was right in its judgment that a certain thing should be done. If a Municipality having proceeded in accordance with the provisions of ss. 245, 246, Bengal Municipal Act (III of 1884), decides that certain works are necessary, that conclusion, in the absence of *mala fides*, or fraud or considerations of that nature, cannot be successfully challenged and cannot be gone into, in a Civil Court. DUKE, CHAIRMAN, HOWRAH MUNICIPALITY v. RAMESHWAR MALIA, **26 C. 811=3 C.W.N. 508.** [*R.*, 6 Ind. Cas. 431=6 N.L.R. 53, 16 Ind. Cas. 449=8 N L.R 107. 58 P.R. 1907=196 P.L.R. 1908 =136 P.W.R 1907.]

(23-*a*) S. 246—*See* No. 23, *supra.*

(24)—*Ss.* 261, 273, *cl.* 2—*Carrying an offensive or dangerous trade—Scope of s. 261—Fixing of local limits a condition precedent to prosecution under s. 272—Proceedings of Municipal bodies how to be proved—Presumption as to the regular performance of official acts, if applies to supply deficiency in proof—Evidence Act, ss.*78 (5), 114, *Ill.* (*e*).—Where the petitioner was convicted under cl. 2 of s. 273 of the Bengal Municipal Act for having used without a license certain premises within the Cuttack Municipality for the purpose of storing hides in contravention of s. 261 of the Act, but no resolution passed by the Commissioners at a meeting fixing the local limits within which licenses should be required under s. 261 for offensive or dangerous trades was on the record, nor was there any secondary evidence of any such resolution: *Held*—that the conviction must be set aside, as the prosecution had failed to prove the existence of the resolution, and if, from other circumstances, it were assumed that such a resolution was passed, the prosecution had failed to prove its purport in the manner required by law. The presumption that official acts have been regularly performed (s. 114, Evidence Act, Ill. (*e*)) cannot supply the deficiency in the proof. As a rule the contents of documents cannot be proved inferentially. A legitimate way of proving the proceedings of a Municipal body in British India is by a copy of such proceedings certified by the legal keeper thereof or by a printed book purporting to be published by the authority of such body as laid down in cl. 5 of s. 78 of the Evidence Act. The language used in s. 261 of the Bengal Municipal Act is wide enough to enable the Commissioners of the Municipality to apply the section to all places within the Municipal limits or the entire area within the Municipal boundaries. *Quœre*—Whether the penultimate clause of s. 261 empowers the Commissioners to do more than withhold the license in individual cases, each case being considered on its own merits. SYED MOKRAM ALI v. CUTTACK MUNICIPALITY, **17 C.W.N. 531=14 Cr L.J. 91 =18 Ind. Cas 651.**

(25)—*Ss.* 263 *and* 273—*Keeper of hackney carriages—Milk man.*—Where a person had a number of ponies and also some cows and sheep and let out a carriage and pair on monthly hire, keeping the same in his stable, and also kept other ponies for sale, and supplied milk to others out of his cows, *held*, that the facts found did not render him liable within the terms of s. 273 FAIRWEATHER v. SURESH CHUNDER DUTT, **5 C.W.N. 331.**

(25-*a*)—S 270—*See* No. 15, *supra.*

(26)—*Ss.* 271, 272—*Conviction under the sections, when awardable.*—In the absence of

2.—Bengal Acts—continued.

Act III of 1884 (Municipal)—*continued.*

any finding or material in the judgment to show that the requisition was served upon the accused and what the requisition was about, a conviction either under s. 271 or s. 272, cannot be maintained. BIDHU BHUSAN MULLICK v. ASSENSOLE MUNICIPALITY, **6 C.W.N. 167.**

(26-*a*)—S. 272—*See* No. 26, *supra.*

(27)—*S.* 273—*Period of sanction, computation of.*—The period of six weeks during which the Municipal Commissioners should sanction an application to build, is to be computed from the date when complete plans and specifications are submitted in such a form as to make it possible of being considered by the Commissioners. SEWANANDAN RAI KAYAB v. VICE-CHAIRMAN OF THE DARJEELING MUNICIPALITY, **5 C.W.N. 42.**

(27-*a*)—S. 273—*See* Nos. 17, 19-*a*, 20, 24 and 25, *supra.*

(28)—Ss. 320, 321—Liability for keeping a factory in a filthy state—*See* ACT XV OF 1881, s. 15, 25 C. 454.

(28-*a*)—S. 321—*See* No. 28, *supra.*

(29)—*Ss.* 337, 338, 344 *and* 339—*Resolution extending provisions of s.* 337 *to a Municipality —Order as contemplated by s.* 337—*Power to grant license— Jurisdiction of Courts.*—The Municipal Commissioners of Madaripur at a meeting passed the following resolution:— "That the provisions of s. 337 of the Act be extended to this Municipality." But it also appeared that Part X of the Act, which includes the section, had been previously extended to the Municipality by an order of the Government of Bengal. *Held*, that the resolution of the Municipality was not such an order as was contemplated by s. 337, and its terms were not sufficiently precise, so as to convey a definite meaning, and it merely purported only to do what the Bengal Government had already done some time previously. Therefore, the conviction of a person, under s. 344 of the Act, for holding a market on his land, after the passing of the resolution, without any license, was set aside. It is entirely within the discretion of the Municipal Commissioners, under the provisions of s 339 of the Bengal Municipal Act, to grant or refuse a license, and the Courts have no longer any jurisdiction to control such power, however arbitrarily exercised. QUEEN-EMPRESS v. MUKUNDA CHUNDER CHATTERJEE **20 C. 654.** (17 C. 329, *appr.*)

(29-*a*)—S. 338—*See* No. 29, *supra.*

(29-*b*)—S. 339—*See* No. 29, *supra.*

(29-*c*)—S. 344—*See* No. 29, *supra.*

(29-*d*)—S. 353—*See* No. 13, *supra.*

(30)—*Ss.* 353, 217—*Municipal offence, prosecution for—Consent of the Commissioners to prosecution how to be evidenced—Sanction of prosecution, by public authority, if should be in writing signed and sealed by the authority.*—

2.—Bengal Acts—continued.

Act III of 1884 (Municipal)—*concluded.*

The only evidence of sanction of prosecution of a public authority is a writing under the seal and signature of that authority. Where the Vice-Chairman of a Municipality, in starting two prosecutions against the accused under s.217 of the Bengal Municipal Act and Municipal Bye-law No. 50 respectively, merely signed two "Forms" called "Forms of prosecution," in the remarks column of one of which was written "I have seen myself" and in that of other "prosecute." *Held*—that neither of these documents disclosed any authority written or otherwise showing the consent of the Commissioners or the Vice-Chairman on their behalf to a prosecution. RASUL BUKHSH v. MUNICIPAL BOARD OF CHAPRA, **16 C.W.N. 934=15 Ind. Cas. 796=13 Cr. L.J. 524.**

Act I of 1885 (Ferries).

[S. 18 REP. IN PT. BY ACT II OF 1901. DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

(1)—*Ss.* 6, 16, 28—*Declaration of ferry being public—Private ferry not to ply within specified distance of public ferry.*—Where a ferry has not been declared to be a public ferry under s. 6 of the Bengal Ferries Act, no conviction under ss. 16 and 28 of the Act can take place for plying a private ferry, within the specified distance of the ferry. MAHARAJ MANDAL v. POKAK SINGH. **6 Ind. Cas. 198=37 C. 543=11 Cr. L.J. 293=12 C.L.J. 21.**

Act III of 1885 (Local Self-Government).

[S. 45 AND SCH. II AM., ACT I OF 1903; SS. 1, 6, 25, 73, 103 REP. IN PT., SS. 5, 7, 10, 11, 13, 15, 17, 19, 22, 25—27, 29, 32, 33, 35, 36, 44, 48, 50, 52, 53, 56, 58—61, 63, 65, 67, 73, 82, 86, 91, 99 (AND HEADING THERETO), 100, 104—111, 114—119, 130—134, 138, 139, 142, 144, SCH. II, AM., SS. 16, 24, 34, 72 REP., S. 18 REP. IN PT. AND AM., S. 18-A, 19-A, 23-A, 26-A, 29 A, 35-A, 41-A, 53-A, 64-A, 65-A, 65-B, 78-A, 86-A TO 86-M, 88-A, 99-A, 118-A TO 118-D INS. (IN BENGAL), BEN. ACT V OF 1908.]

(1) *Bye-laws—District Board roadside land, encroachment on — Acquisition of right by District Board over land adjacent to road, how to be made.*—A District Board can only take action and acquire right over a *zemindar's* land adjacent to its road under Act III (B.C.) of 1885. Where some accused were convicted under ss. 15 and 19 of the District Board Bye-laws for having encroached upon and cultivated land claimed by the District Board to be their roadside land from which its officers had been taking earth, although there had never been any formal acquisition of these lands by the District Board: *Held*, that the conviction must be set aside. JADU GHOSH v. DISTRICT BOARD OF MURSHIDABAD, **15 Cr. L.J. 267=23 Ind. Cas. 475=19 C.L.J. 635.**

2.—Bengal Acts—continued.

Act III of 1885 (Local Self-Government)—*ctd.*

(2)—*S.* 76—*Channel—Property of private person—How can be brought under District Board.*—A District Board can only bring a private channel under its control and administration by making an agreement with the person in whom the property in any channel is vested, under s. 76 of the Bengal Local Self-Government Act. Where a District Board had a certain private channel entered on its books and had spent some money on its up-keep: *Held*, that this was not sufficient to bring the channel under the control and administration of the District Board, and that the persons erecting weirs and fishing in it, with the permission of the owners, committed no offence against the District Board's bye-laws. SHASHI BHUSHAN GUPTA v. EMPEROR, **13 Cr. L J. 580 = 15 Ind. Cas. 996.**

(2-*a*)—S. 78—*See* No. 4, *infra.*

(3)—*S.* 139—*Bye-law—Encroachment, what is—Highway—District Board road—Right of user by public—Hanging verandah, if invade right of user of public—Obiter.*—An encroachment is an unlawful gaining upon the right or possession of another man. (L.R. 7 Q.B. 69 (73) = 41 L.J. M.C. 25 = 25 L.T. 586 = 20 W.R. 203, *Rel.*) In the case of a District Board road, the right to the soil ordinarily rests with the owner of the land adjoining the road. But the public have an extended right of user in the road for the protection and control of which the District Boards were created. A hanging *verandah*, therefore, would be an encroachment if it amounted to an unlawful gaining upon the right of user by the public. That right extends to all forms of traffic which have been usual or customary, and also all that are reasonably similar or incidental thereto. (2 F. and F. 570 = 121 R R. 816, *Rel.*) The question whether a hanging *verandah* amounts to an encroachment would depend in each case upon the question whether in the particular circumstances it constitutes an invasion of the public right of user as described above. The public have a right of user not merely on the roadway, but also on the side lands attached to the road. HIRJI BALDEO v. MANBHOOM DISTRICT BOARD, **15 Cr. L.J. 187 = 22 Ind. Cas. 763 = 18 C.W.N. 1120.**

(4)—*Ss.* 139 *and* 78—*Bye-law made under—Authority of the District Board to make the bye-law not* ultra vires.—Where the bye-law of a District Board, made under s. 139 of the Bengal Local Self Government Act, was in these terms:—"Whoever encroaches on any road by cultivating crops or by ploughing it up for cultivation, or by the construction of any building or structure thereon, except by the permission of the Chairman of the District Board, shall be liable to a fine not exceeding Rs. 50 and to a further fine not exceeding Rs. 2 for every day on which the offence is continued." *held* that the bye-law was not *ultra vires* of the District Board, which had power, under s. 139 read with s. 78 of the Bengal Local Self-Government Act, to make such a bye-law. The building of the part of a house over part of a public road, without the permission of the Chairman of the District Board, is punishable under the bye-law. RAMANTAR SAHU v. ARRAH MUNICIPAL BOARD, **11 C.W.N. 1099 = 5 Cr. L.J. 319.**

(5)—*S.* 140—*Encroachment—Erection of a fence on the roadside land—Passage along the road not impeded—Offence—Proprietary right of the District Board over roadside land—Continuing offences likely to be committed after proceeding—Daily fine—Legality.*—Where a bye-law made under s. 140 of the Bengal Local Self-Government Act, 1885, enacted that "no person shall damage or encroach on any part of a road, its slopes or side ditches, by placing a fence thereon," and where a person erected a fencing that stood upon the roadside land and thereby encroached upon such land. *Held* that the encroachment, though it did not impede the passage along the highway, was an offence. The fact that it was admitted that the District Board has no proprietary right in the road or in the land on which its slopes or side ditches stand, and that its rights are confined to maintaining the road, does not affect the question. A sentence of a daily fine, imposed in respect of a continuing offence, which may be committed after the date of the proceeding, is illegal. NILMANI GHATAK v. EMPEROR, **37 C. 671 = 7 Ind. Cas. 931 = 11 Cr. L.J. 540.**

***Act VIII of 1885 (Bengal Tenancy).**

[SS. 12 (2), 13 (1), (2) AM., ACT VIII OF 1886. SUPPLEMENTED, BEN. ACT III OF 1895, SS. 20, 28—32, 36 (*c*). SS. 30 (*a*), 31, 39 (6), 52, CH. X, and S. 119 AM., SS. 31A, 31B, INS., BEN. ACT III OF 1898. CERTAIN TRANSFERS UNDER SS. 12, 13, 17 OR 18 VALIDATED, PROVISIONS OF THOSE SECTIONS AS TO FEES AM., S. 106 AM., BEN. ACT I OF 1903. SS. 1 (3), 3 (5), (10), 12 (2), (3), 13 (1), (2), 15, 16, 19, 22, 40, 52, 58, 67, 69 75, 88, 101 (2), 102, CH. X, PT. II (HEADING), SS. 104, 104H (*g*), 105 (2), 106, 107, 108, 109, 109A, 111, 112, CH. XI (HEADING), SS, 116, 120, 148, 153, 158 (1), 161, 168 (1), 169 (1), 170, 174 (2), 178, 189, 192, SCH. III AM., SS. 14, 45 REP., CH. IVA (SS. 18A TO 18C), SS. 40A, 102A, 103B, 105A, 108A, 109B, 109C, 109D, 111B, 115A, 147A, 147B, 148A, 153A, CH. XIIIA (S. 158A), SS. 158B, 186A, 188A INS., S. 114 REP. IN PT. AND AM., SS. 149, 150 REP. IN PT. (IN BENGAL), BEN. ACT I OF 1907; SS. 1 (3), 3 (5), (10), 12 (2), (3), 13 (1), (2), 15, 16, 19, 22, 40, 52, 58, 67, 69, 75, 101 (2), 102, 103B, CH. X, PT. II (HEADING), SS. 104, 104H (3), 105, 106, 107, 108, 109, 109A, 111, 112, CH. XI (HEADING), SS. 116, 120, 148, 154, 158 (1), 161, 168 (1), 169 (1), 170, 174 (2), 178, 189,

* This local Act was passed by the Imperial Legislature.

2.—Bengal Acts—continued.

Act VIII of 1885 (Bengal Tenancy)—*continued.*

192, SCH. III AM., SS. 14, 45 REP., CH. IVA (SS. 18A TO 18C), SS. 40A, 102A, 105A, 108A, 109B, 109C, 111B, 115A, 147A, 147B, 148A, 153A, CH. XIIIA (S. 158A), SS. 158B, 186A, 188A, INS., S. 114 REP. IN PT., AND AM., SS. 149, 150 REP. IN PT (IN EASTERN BENGAL), E.B. & A. ACT 1 OF 1908. S 84 DECLARED IN FORCE IN THE SANTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

(1)—Ss. 3 (16), 58 (3)—*See* CRIM. PRO. CODE, 1898, s. 476, 17 C.W.N. 571 = 14 Cr.L.J. 139 = 18 Ind. Cas. 891 = 40 C. 465.

(2)—*S.* 58(3)—*Crim. Pro Code* (1898), *ss.* 4 (*o*), 29 (2)—*Jurisdiction of Magistrates to try a landlord for the act specified in s.* 58 (3).—Reading the definition of "offence" in s. 4 (*o*) with s. 29 (2), and the last entry in Sch. II, Crim. Pro. Code, a Magistrate has jurisdiction to try a landlord for the act specified in s. 58 (3) of the Bengal Tenancy Act, namely, failure to prepare and retain counterfoils and rent receipts. But the trial of such offences must be conducted with the ordinary procedure. A conviction under s. 58 (3), Bengal Tenancy Act, based merely on an admission alleged to have been made by the accused, and recorded in a report written by a Police officer in another case, after the examination of the accused on oath, was held to be irregular. EMPEROR v. MOHUNT RAMDAS, **9 C.W.N. 816 = 2 Cr. L.J. 532.**

(3)—S. 58 (3)—*See* No. 1, *supra.*

(4)—*S.* 69—*Penal Code, s.* 186 — *Person nominated by Collector under s.* 69 *of the Act—Public servant.* — A person nominated by a Collector, under s. 69 of the Bengal Tenancy Act, for the purpose of making a division of crops between the landlord and tenant is not a public servant within the meaning of the Penal Code. CHATTER LAL v. THACOOR PERSHAD, **18 C. 518.** [*D.*, 26 C. 158.]

(5)—*Ss.* 69 *and* 70—*Crim. Pro Code* (1882), *s.* 195 — "*Court,*" *meaning of* — *Collector acting under ss.* 69 *and* 70 *of the Act.*—The word "Court" is not defined in the Crim. Pro. Code, but it certainly has a wider meaning than a Court of Justice as defined in the Penal Code. Having regard to the obvious purpose for which s. 195 was enacted, the widest possible meaning should be given to the word "Court," as therein mentioned and it will include a tribunal empowered to deal with a particular matter and authorised to receive evidence on that matter, in order to arrive at a determination. A Collector, acting under ss. 69 and 70 of the Bengal Tenancy Act is such a tribunal, and is, therefore, a 'Court' within the meaning of s. 195 of the Crim. Pro Code. RAGHOOBUNS SAHOY v. KOKIL SINGH, **17 C. 872.** [*F.*, 37 B. 365 = 15 Bom L.R. 45 = 2 Bom. Cr. C. 1 = 18 Ind. Cas. 408 = 14 Cr. L.J. 72; *Rel. on*, 10 Cr. L.J. 395 = 3 Ind. Cas. 886 = 3 S.L.R. 66; *R.*, 37 C. 52 = 5 Ind. Cas. 62 = 14 C.W.N. 132 = 11 Cr. L.J. 45, 24 M. 121 = 2 Weir 170.]

2.—Bengal Acts—continued.

Act VIII of 1885 (Bengal Tenancy)—*concluded.*

(6)—S. 70—*See* No. 5, *supra.*

(7)—Ss. 90, 188—*See* CRIM. PRO. CODE (1898), s. 107, 9 C.W.N. 618 = 2 Cr. L. J. 338.

(8)—*S.* 95—*Penal Code, ss.* 193 *and* 199—*Proceedings without jurisdiction—False statement given in such proceedings.*—There is no provision in the Bengal Tenancy Act authorising a District Judge to direct a person to deliver certain accounts and papers belonging to an estate to a common manager appointed under s. 95 of the Act, nor is there any power given to him to institute a proceeding on the person's failure to comply with the order and to examine him on oath in such proceeding. Therefore, a person making a false statement in that proceeding cannot be convicted under s. 193 or s. 199 of the Penal Code. ABDUL MAJID v. KRISHNA LAL NAG, **20 C. 724.** [*F.*, 35 A. 58 = 10 A.L.J. 462 = 13 Cr. L. J. 769 = 17 Ind. Cas. 401.]

(9)—*S.* 123—*Public servant, obstruction to—Warrant—Cutting crops distrained under s* 123 *of the Act—Penal Code, ss.* 143 *and* 186 —*Absence of complaint by public servant concerned—Crim. Pro. Code* (1898), *ss.* 4 *and* 195. —A person, acting under the orders of a Munsiff, was cutting crops which were distrained under s. 123, Bengal Tenancy Act. While doing so with the assistance of a number of labourers, the petitioners in a mob threatened the labourers and prevented the peon from having the crops cut. The peon lodged information of the occurrence, and the petitioners were convicted under ss. 186 and 143, Penal Code. *Held*, that the conviction under s. 186, Penal Code, should be set aside as there was no complaint of the public servant concerned with s. 195, Crim. Pro. Code, taking complaint as defined in s. 4, Crim. Pro. Code. KAILAS KURMI v. EMPEROR, **30 C. 285.** [*R.*, 8 C.W.N. 17 = 30 C. 910.]

(10)—S. 188—*See* No. 7, *supra.*

Act II of 1888 (Calcutta Municipal Consolidation).

[REP., BEN. ACT III OF 1899.]

(1)—*List of Voters—Chairman's duty.*—The Chairman's duty is to publish the general or original list of voters, 60 days before the day for each general election, and, if, required, to revise the list in the manner laid down in s. 22 of the above Act. *In the matter of* CORKHILL, **22 C. 717.**

(1-*a*)—*See* BEN. ACT III OF 1899, ss. 449, 452, 579, 7 C.W.N. 551.

(2)—*Ss.* 8 *and* 19 — *Exercise of power of voting.*—There is nothing specific in the Acts, which prevents or disentitles a person who is qualified to vote under s. 8, from exercising his right in the event of his name not appearing in the revised list of voters. The only prohibition of this nature which exists is that

2.—Bengal Acts—continued.

Act II of 1888 (Calcutta Municipal Consolidation)—*continued.*

found in the rules of the Local Government issued under s. 19 of the Act. *In the matter of* CORKHILL, **22 C. 717.**

(3)—*Ss.* 14 *and* 24—*Right of Hindu joint family to empower one to vote on its behalf.*—The portion of the Municipal Act, which deals with persons qualified to be elected, is to be found in s. 14 of the Act. The right of a Hindu joint family to empower a person to vote on its behalf is given by s. 24, which does not precede s. 14. *In the matter of* MUTTY LALL GHOSE, **19 C. 192.** [*Appl.*, 22 C. 717.]

(4)—S. 19—*See* No. 2, *supra.*

(5)—*Ss.* 19, 21, 22, 23—*Revised list of voters—Supplementary list.*—Neither the above Act, nor the Local Government's Rules issued under s. 19 of that Act, require that the names of either the candidate or his proposer, seconder, or approvers, should appear in the revised list of voters, prepared under ss. 21, 22 and 23 of the Act. There is no sanction for the issue of any supplementary list of voters to be found either in the Act or under the rules issued by the Local Government under s. 19 of the Act. The Chairman cannot even revise the original list of voters on his own motion at any time. He can only do so in the manner stated in s. 22, or, on an application made under s. 21, or in pursuance of orders made by the Presidency Magistrate under s. 23. *In the matter of* CORKHILL, **22 C. 717.**

(6)—S. 21—*See* No. 5, *supra.*

(7)—S. 22—*See* No. 5, *supra.*

(8)—S. 23—*See* No. 5, *supra.*

(9)—S. 24—*See* No. 3, *supra.*

(10)—*Ss.* 24 *and* 25—*Interpretation of the Act.*—The Legislature intended to provide that a family, firm, company, or association should be represented by one of their own members, on whom they could rely and who would do as they desired, and that, although the omission so to provide appeared to be a grave defect in the Act, which the Legislature might well take into consideration, still, it is not possible to introduce into the above section, words which were not to be found in such section, *namely*, "such person being a member of such joint Hindu family, etc." Therefore, in this case, the Court reluctantly came to the conclusion that it would not be justified in putting such an interpretation on the Act as would involve the addition in the Act of words which the Legislature had left out. *In the matter of the* ELECTION OF MUNICIPAL COMMISSIONERS FOR WARD No. 10, CALCUTTA, **19 C. 198, Note.**

(11)—S. 25—*See* No. 10, *supra.*

(12)—*S.* 31—*Compliance with the section—Chairman's power—Duty of candidate standing for election.*—Where there is a *prima facie* compliance with the above section, the Chairman has no power to go further and determine

2.—Bengal Acts—continued.

Act II of 1888 (Calcutta Municipal Consolidation)—*continued.*

questions affecting the *status* of persons claiming to be candidates duly qualified under the Act, and he has no judicial discretion to interfere with the list of candidates. (19 C. 192, *Appr.*) It seems, in such cases, the High Court has jurisdiction, by a proceeding in the nature of a *quo warranto*, to restrain a person duly elected from exercising the functions of a duly elected commissioner. According to the above section, a candidate for election must, within the time mentioned, send in his own name, together with the names of the proposer, seconder, and approvers. This rule cannot be waived by the Chairman. *In the matter of* CORKHILL, **22 C. 717.**

(13)—*S.* 31—*Interference with list of candidates for election as Municipal Commissioners.*—No order can be made, under s. 45, Act I of 1877, unless, amongst other things, it is shown that the doing, or the forbearing to do an act by any person holding a public office or by any corporation or inferior Court, is clearly incumbent on such person or Court in his or its public character, or on such corporation in its corporate character. The Chairman of a Municipality cannot be ordered to show cause why the name of a particular person should not be removed from the list of candidates for election as Commissioner, since the above section does not impose on the Chairman of the Municipality the duty of exercising any judicial discretion or taking any judicial action on the list of candidates prepared under that section. *In the matter of* MUTTY LALL GHOSE, **19 C. 192.** [*Appr.*, 22 C. 717.]

(13-a)—*S.* 87 *and the second Schedule—Insurance Companies registered in England—Business in India carried on through agency of general merchants.*—An insurance Company, which is registered in England, with a paid up capital of £100,000, which issues policies, and carries on the general business of insurance in Calcutta, through the agency of general merchants there, is not liable to the license tax imposed by s. 87 of the Act, as such company does not come either under the section or any of the classes mentioned in the second schedule of the Act. CORPORATION OF CALCUTTA *v.* STANDARD MARINE INSURANCE COMPANY, **22 C. 581.** [*Appl.*, 21 M. 5; *R.*, 24 M. 205; *D.*, 25 C. 483.]

(14)—*S.* 87 *and Sch. II, Rule* 7 (6)—*License-tax—Liability of Joint-Stock Company having no registered place of business.*—A joint-stock company, having no registered place of business in Calcutta, but carrying on, through an agent, a business prescribed in the second schedule of the Act, comes within the scope of s. 87 and is bound to take out a personal license, although it is not liable to take out a local license. CORPORATION OF CALCUTTA *v.* EASTERN MORTGAGE AGENCY COMPANY, LTD., **25 C. 483=2 C.W.N. 328.** (22 C. 581, *D.*)

(15)—*Ss.* 236, 241—*Material alterations of the structure of a house—Sanction.*—The words

2.—Bengal Acts—continued.

Act II of 1888 (Calcutta Municipal Consolidation)—*continued.*

"material alteration of the structure of any house" in s. 236, contemplate the erection of any thing on a site attached to, or detached from, any building standing on it, so as to alter the structure of the house, that is to say, of the house with all the building standing on that site. Sanction is necessary for such building, and failure to obtain the same entails the liability under s. 241. But an order of demolition under s. 449 of Act III of 1899 is not legal. KESHUB CHANDRA SEN v. CALCUTTA MUNICIPAL CORPORATION, **7 C.W.N. 374.**

(16)—S. 241—*See* No. 15, *supra.*

(17)—*Ss.* 307, 336, *r.* 6, *sch.* II—*Keeping animals without license—Premises in lessee's possession—Validity of prosecution of owner.*—The words of s. 336, though apparently general, must be read with this limitation, namely, that the penalty under the section attaches to the owner for permitting any animals to be kept thereon for profit without taking out a license when he has direct possession of the premises in question; but when the property is let out, it is the duty of the lessee to obtain the license. In the latter case, the owners of the premises cannot be prosecuted under s. 307. ABHOY CHARAN DASS v. MUNICIPAL WARD INSPECTOR, **25 C. 625 = 2 C.W.N. 289.**

(18)—*Ss.* 335 *and* 336—*License—Cow-shed.*—By paragraph 2 of s. 335, the owner of a cow-shed is allowed time up to the 1st June of every year to take out a license. Therefore, a person cannot be prosecuted under s. 336 of the Act before the 1st June for keeping an unlicensed shed. AUKHOY CHUNDRA HATI v. CALCUTTA MUNICIPAL CORPORATION, **24 C. 360.**

(19)—S. 336—*See* Nos. 17, 18, *supra.*

(20)—*S.* 364—*Sale of adulterated mustard oil.*—Where a person was charged with having sold mustard oil mixed with other kinds of oil on the evidence of a chemical analyst, and he proved that what was known as mustard oil in the market was ordinarily prepared in the same manner as the specimen, *held*, that the accused was protected under the first proviso to s. 364 of the Act. BAISHTAB CHARAN DAS v. UPENDRA NATH MITRA, **3 C.W.N. 66.**

(21)—*Ss.* 381 *and* 382—*Certificate prohibiting the use of a burial ground.*—S. 381 of the Act requires that, in stating the period on a certificate under the section (*e.g.*, prohibiting the use of a burial ground), the point of time from which the period is to run must be mentioned; in the absence of any express mention of the point of time from which the period is to run, it cannot be taken to run from the date of the certificate itself. LUTFUR RAHMAN NUSKUR v. MUNICIPAL WARD INSPECTOR, **25 C. 492 = 2 C.W.N. 145.**

(22)—S. 382—*See* No. 21, *supra.*

2.—Bengal Acts—continued.

Act II of 1888 (Calcutta Municipal Consolidation)—*concluded.*

(23)—*Ss.* 412 *and* 417—*Power of the corporation to make bye-laws for taking out permit—Bye-laws* (*C*), 4, 6—*Failure to take out permit.*—*Quære.*—Whether it was competent for the Municipal Commissioners to make bye-laws, under s. 412 of the Act, creating the duty or obligation of taking out a permit, and whether disobedience to such bye-law would constitute a punishable offence. Where a milkman having been convicted, for not taking out before the 1st December, a half-yearly permit in accordance with bye-laws (*C*), 4, 6, made under the provisions of s. 412 of Bengal Act II of 1888, by the Municipal Commissioners of Calcutta, was charged again with continuing the offence by failing, for the space of seven days subsequent to the said conviction, to take out the permit for the same half-year, whilst still carrying on the business as a milkman, *held*, that the offence of not taking out a permit, on or before the 1st December, was complete, when that day had passed, and that, as he had already been punished for it, he could not be again convicted for the same offence. CORPORATION OF CALCUTTA v. GADUB DOOLEY, **20 C. 605.**

(24)—S. 417—*See* No. 23, *supra.*

(25)—Sch. II, r. 6—*See* No. 17, *supra.*

(26)—Sch. II, r. 7 (6)—*See* No. 14, *supra.*

Act II of 1889 (Private Fisheries Protection).

[SUPPLEMENTED ACT IV OF 1897].

(1)—*S.* 3—*Fishing in private waters*—Bona fide *dispute as to boundaries—Jurisdiction of Criminal Courts.*—Where, in a charge under s. 3, of having fished in the waters of another person, the accused pleaded a *bona fide* claim to it and it was shown that there had been dispute and litigation between the parties, *held*, that the matter should not be tried by Criminal Court and still less in a summary way. SRI RAM CHANDRA ROY v. DINA NATH MUKHOPADHAYA, **4 C.W.N. 247.**

(2)—*S.* 3—*Fishing in private waters*—Bona fide *claim of right.*—Where a person has a *bona fide* claim of right of fishing in private waters upon the basis of a lease, he cannot be convicted of an offence under s. 3. The question, whether the lessee ought to have satisfied himself thoroughly that the lessor has a good title to the property, is not a matter that properly comes under the Fisheries Act. NAZIR MALITA v. HARI CHARAN PARUI, **6 C.W.N. 118.**

Act I of 1892 (Village-chaukidari Amendment).

[SHORT TITLE GIVEN, ACT I OF 1903, S. 3 REP. IN PT., ACT V OF 1897. SS. 2 (1), 6, 12, REP., ACT I OF 1903].

(1)—*See* EVIDENCE ACT, 1872, ss. 25 and 26, 2 C.W.N. 637.

(2)—S. 13—*See* CHOWKIDAR, 27 C. 366 = 4 C.W.N. 252.

2.—Bengal Acts—continued.

Act I of 1895 (Public Demands Recovery).

[SS. 2, 16, 23 (1), REP. IN PT, SS. 4 (3), 6 (2), 7—9, 14, 15, 17 (c), 18—22, 23 (3), 26, 27, 29, 30, 32 AM., S. 33 AND FORM 2 IN SCH. REP. IN PT. AND AM., BEN. ACT I of 1897; S. 1 (3) REP., ACT I OF 1903; S. 7 (1) (d) REP. IN PT., ACT IV OF 1907; APPLIED TO RECOVERY OF RENT DUE TO LANDLORDS—IN BENGAL, ACT VIII OF 1885, S. 158-A (INS. BEN. ACT I OF 1907, S. 49), IN EASTERN BENGAL, ACT VIII OF 1885, S. 158A (INS. E.B. & A. ACT I OF 1908, S. 49); DECLARED IN FORCE IN THE SONTHAL PARGANAS, III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3.]

(1)—*Certificate under the Act—Powers of Court.*—The Court issuing the certificate, under the Public Demands Recovery Act, is vested with all the powers conferred by the Law on a Civil Court to enforce a compliance with the certificate by the payment or by realization through distress of the amount so declared to be due. SUNDER DASADH v. SITAL MAHTO, **28 C. 217=5 C.W.N. 291.**

(2)—*See* PENAL CODE, s. 206, 28 C. 217=5 C.W.N. 291.

Act I of 1899 (Bengal General Clauses).

[S. 2, REP., SS. 3 (6), 25 AM., ACT I OF 1903; REP. (IN EASTERN BENGAL AND ASSAM), E.B. & A. ACT I OF 1909. DECLARED IN FORCE—IN THE SONTHAL PARGANAS, REG. III OF 1872, S. 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE CHITTAGONG HILL-TRACTS, REG. I OF 1900, S. 4.]

S. 8—*See* BEN. ACT III OF 1899, ss. 449, 452, 579, 7 C.W.N. 554.

Act III of 1899 (Calcutta Municipal).

[S. 467 REP. IN PT. BEN. ACT I OF 1893, S. 46—*See* BEN ACT I OF 1899, S. 10, SS. 1, 2 (1) REP. IN PT., S. 60 (1) REP., ACT I OF 1903.]

(1)—*S. 3, cls.* (3), (39) (*a*)—*Ss.* 351, 449 (ii)—*Re-erection—Building—Tin-shed with posts.*—Before the building line was laid down, a shed consisting of four posts and a tin roof stood on identically the same spot as they did subsequently. After the building line was laid down, the owner had occasion to take the roof off, and eventually he put up a roof either made of new tin or repaired:—*Held*, that this was not a re-erection within the meaning of s. 3 (39) (*a*) of the Calcutta Municipal Act, that the roof with four posts was not a building and that the re-placing of the roof upon the same posts did not infringe s. 351 of the Act, as no portion of any building or wall abutting on any street had been constructed within the building line. TRIPUNDESHUR MITTER v. CORPORATION OF CALCUTTA, **12 Cr.L.J. 461=16 C.W.N. 23=11 Ind. Cas. 997.**

(2)—*S.* 3 (25)—"*Building*" *defined—Masonry wall.*—The word "building" in the term "masonry building" is applied to that which can be used as a warehouse or dwelling-house or a public hall, or hospital, or for like purposes. A detached wall built of masonry is not a "masonry building." CORPORATION OF CALCUTTA v. JOGESWAR LAHA, **8 C.W.N. 487.**

2.—Bengal Acts—continued.

Act III of 1899 (Calcutta Municipal)—*contd.*

(3)—*S.* 3, *cl.* (29)—*Nuisance—Putting up posts to prevent wheel-traffic passing through busti, if nuisance.*—The owner of a busti put up certain posts which had the effect of preventing the wheel-traffic passing through the *busti* from east to west, and from north to south, leaving the opening on to the main road open and free at all times for any cart which had business in the *butsi* and could go all over it and all round it and out again by the same passage by which it came in; but the cart could not get in and out of this *busti* by the shortest route as it had to go back by the way it came in: *Held*, that, although it may be inconvenient to the municipal servants and although it may add to the expense of cleansing the *busti*, the act of the owner cannot in any way interfere with the effective cleansing of the *busti*, which it is necessary to establish before it can be held to be a nuisance. NARENDRA NATH v. CHAIRMAN, CORPORATION OF CALCUTTA, **8 Ind. Cas. 17=11 Cr.L.J. 556=15 C.W.N. 100.**

(3-*a*)—S. 3 (32)—*See* No. 15-*a*, *infra.*

(4)—*S.* 3, *cl.* 29 *and s.* 632 — *Nuisance—Building wall to prevent neighbour from acquiring easement, if nuisance—May be otherwise nuisance—Duty of Court in abating nuisance.*—The building of a wall, however high on a man's own property, for the purpose of preventing his neighbour from acquiring rights of easement over his land, is not in itself a nuisance under the Calcutta Municipal Act. But although the height of the wall may not be a nuisance, yet the accumulation of filth and want of space to clear the drainage between it and the neighbour's house may cause it to be a nuisance. The Court should not pull down the wall to a lesser height, but should consider whether the nuisance may not be abated by some means of clearing the space. KHAGENDRA NATH v. BHUPENDRA NARAYAN, **8 Ind. Cas. 530=11 Cr. L.J. 665=15 C.W.N. 316.**

(5)—*Ss.* 3, *sub-s.* (30), 408, 575, 622, *sub-s.* (3) 645—*Owner—Lessee—Occupier—Property leased in actual occupation of lessee's tenants—Proceeding by owner for facilities to effect improvement—Obstruction by lessee—Owner's liability, if discharged.* — The petitioner was sentenced under s. 575, read with s. 408 of the Calcutta Municipal Act, for repeated failure to comply with a notice served upon him requiring him to make improvements upon certain property which he owns in Calcutta. The petitioner had, before the service of the notice, leased the property which was, consequently, in the possession of the lessee and his tenants. The petitioner had instituted a proceeding against the lessee under s. 622 of the Act and had

2.—Bengal Acts—continued.

Act III of 1899 (Calcutta Municipal)—*contd.*

obtained an order from the Chief Judge of the Calcutta Small Cause Court requiring the lessee to give him reasonable facilities to carry out the improvements required of him, but his contractors had been obstructed by the tenants of the lessee. *Held*, that the word "occupier" in s. 622 of the Act did not mean only the person in actual occupation: that the lessee was an occupier within the definition of the word in sub-s. (30) of s. 3 of the Act; that the case under s. 622 was, consequently, rightly brought against the lessee and that, so long as the lessee refused to provide reasonable facilities, the petitioner was discharged from liability under s. 622, sub-s. (3). BENODE LAL GHOSH v. THE CORPORATION OF CALCUTTA, **14 Cr. L.J. 490 = 20 Ind Cas. 746 = 41 C. 164.**

(6)—*Ss.* 3 (32), 408, 574, 575—*Bustee land —Debutter property—Shebait not in possession, of an "owner."*—When the petitioner, being one of several shebaits who had his last turn of Worship in 1906 and had since then no hand in the management of the debutter properties, was convicted under s. 575/408 of the Calcutta Municipal Act for non-compliance with a notice under s. 408 calling upon him to carry out certain improvements in a bustee which was one of the debutter properties: *Held*, that the petitioner was not an owner within the meaning of s. 3, sub-s. 32 of the Act, inasmuch as, though he might be regarded as a manager for the deity, yet he was not receiving the rent. RATENDRO LAL MITTER v. CORPORATION OF CALCUTTA. **17 C W.N. 1084 = 21 Ind. Cas. 169 = 14 Cr. L.J. 569 = 41 C. 104.**

(7)—*Ss.* 3, *cl.* 35, 361, 416 (1), (5), 419—*Roadway in* bustee *land—Public exercising right of way—Applicability of s.* 361—*Definition of "street" if includes "passage"—Conditions necessary to create public right of way —Crim. Pro. Code, s.* 439—*Order of acquittal, revision of.*—A roadway less than 20 ft. wide was originally made as part of a *bustee* and in accordance with the standard plan approved by the General Committee. The owner of the *bustee* sold the land covered by the *bustee* to various persons who built residences on the land. At the instance of the Chairman of the Corporation, the opposite party, whose house abutted on the roadway was prosecuted for failure to comply with a direction under s. 361 of the Act to improve the roadway. The Magistrate found that the public exercised a right of way over the road and acquitted the accused. There was no agreement between the General Committee and the owner as to the road being made public. *Held*—That the roadway in question was a private street to which s. 361 of the Calcutta Municipal Act applied. That the definition of the word "street" in the Act includes a passage, and the fact that the roadway was not 20 ft. wide did not make s. 361 inapplicable. That the meaning of s. 416 read with s. 419 is that a street like the one in question remains a private street until

2.—Bengal Acts—continued.

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the owner of the *bustee* initiates a proceeding under s. 419 That, in order to create a public right of way over a road, there must be a dedication by the owner, and in the present case under s. 416 (1) the owner could not dedicate without the consent of the General Committee. That the Chairman of the Corporation was competent to initiate the prosecution. CORPORATION OF CALCUTTA v. SREMUTTY MOHAMAYA DEBI, **17 C W.N. 1250 = 14 Cr. L J. 511 = 20 Ind. Cas. 991.**

(8)—*S.* 3, *cls* (35) *and* (37) *and sch.* XVII, *r.* 2—*Private street—Pathway made by owner —Height of building*—Where there are four buildings owned by four different persons bearing four different assessment numbers, which abut on a passage which is not a public street; *held*, that it was a pathway made by the owner of a building on his own land to secure access to, or the convenient use of, such building, and that the provisions of r. 2 of sch. XVII of the Calcutta Municipal Act did not apply. HARI MATI DASI v. CORPORATION OF CALCUTTA, **8 Ind. Cas. 891 = 11 Cr.L.J. 728 = 13 C L.J. 219.**

(9)—*Ss.* 102 (1) (*c*), 391—*Sanction to alteration of buildings—Sanction to alteration of plan —Power of District Surveyor—Initiation of proceedings by Secretary, validity of—Irregularity.* —S. 391 of the Calcutta Municipal Act applies only to alterations of, and additions to, existing buildings, and a supplementary application proposing an addition to an already sanctioned plan of a contemplated building cannot be held to fall within its scope, and need not be sanctioned by the General Committee, and such an application may be lawfully sanctioned by the District Surveyor under powers delegated to him by the Chairman. *Obiter dictum:*—Even if the Secretary to the Corporation, who is also the Secretary to the General Committee, has no power to make any application complaining against any person, for having erected any building without a valid sanction, the defect or irregularity is covered by s. 102 (1) (*c*) of the Calcutta Municipal Act. KISHORI LAL JAINI v. CORPORATION OF CALCUTTA, **6 Ind. Cas. 172 = 11 Cr. L.J. 255 = 12 C.L.J. 24 = 37 C. 585.**

(10)—*Ss.* 198, 199, 466, 466 (1) *and* 574—*Sch.* II, *and Rule* 7 *of the Act—Trade license, and license for storing lime—Liability to take out both the licenses—Licenses under ss.* 198 *and* 466—*Connection between.*—The purposes, for which the licenses under ss. 198 and 466 of the Calcutta Municipal Act are necessary, are widely different, and there is no necessary connection between the two licenses. The taking out of the license under s. 198 of the Act is itself no excuse for not taking out another license under s. 466, The scheduled rules that apply to the one have no application to the other. Where a person carried on the business of lime-trader and used a certain premises for storing lime, *held* he was bound to

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take out a trade license under s. 198 of the Calcutta Municipal Act, as well as a license under s. 466 for storing lime, and his omission to take out a license under the latter section is punishable under ss. 466 (1) and 574 of the Act. BIPIN BEHARI GHOSE v. CORPORATION OF CALCUTTA, **34 C. 913=6 C L.J. 183=6 Cr. L.J. 148=11 C.W.N. 885.**

(10-*a*)—S. 199—*See* No. 10, *supra.*

(10-*b*)—S. 270—*See* No. 16, *infra.*

(11)—*Ss.* 299, 574—*Drainage—"Place lawfully set apart," meaning of.*—A place "lawfully set apart" for the use of the public by the Corporation within the meaning of s. 299 of the Act, must be a place over which the Corporation have acquired, by some procedure under the statute, a right to make use of private property as a public drain. Where every hut in a *busti* had a surface drain connected with the private common drain of the landlord and this latter drain discharged into the Municipal sewer at a distance outside the statutory limits *Held*, that this private common drain of the landlord cannot be presumed to be a place lawfully set apart for the discharge of drainage within the meaning of s. 299, that a tenant of one of the huts in the *busti* cannot be called upon to alter his connecting drain to suit the convenience of the Corporation, and that he cannot be fined for neglecting to do so. GOBINDA CHANDRA ADDY v. CORPORATION OF CALCUTTA, **8 Ind. Cas. 706=13 C.L.J. 327=15 C.W.N. 412.**

(12)—*Ss.* 320 *and* 574—*Receiver appointed by Court, whether "owner" of premises he is holding.*—A Receiver appointed by the High Court is not the "owner" of the premises he holds as a Receiver, within the definition of the term "owner" in the Municipal Act. If he receives rent for such premises, he does not do so on his own account, or as agent, or trustee for any person or society, or for any religious or charitable purpose, but as an officer of the Court and as manager of the property on its behalf. FINK v. CORPORATION OF CALCUTTA, **30 C. 721=7 C.W.N. 106.** (30 C. 593=7 C.W.N. 390, *R.*) [*R.*, 38 C. 714=15 C.W.N. 1002=12 Cr. L.J. 361=11 Ind. Cas. 129.]

(13)—Ss. 320, 574—*See* CRIM. PRO. CODE, 1898, ss. 197, 423, 30 C. 927=7 C.W.N. 750.

(14)—*Ss.* 325, 574—*Consolidation of cases based on different facts, irregular—Magistrate dictating judgment to clerk, not in accordance with law — Liability of plumber to prosecution for defect in work not absolved by subsequent sanction granted.*—Where two separate prosecutions were started by the corporation against a licensed plumber for defect in his works in connection with two different premises, and the Municipal Magistrate consolidated the two cases together: *held*, that such a procedure was irregular. Where the Magistrate did not write the judgment himself but dictated and signed it, *held*, that the dictation of the judgment contravened the provisions of s 367 of the Crim. Pro. Code. Where the work of a licensed plumber was found, on inspection after submission of the completion report, to be defective and in contravention of Rule 4 of Sch. XV of the Calcutta Municipal Act, *held*, that the plumber was liable to prosecution notwithstanding that the defects were subsequently remedied and the officers of the Corporation subsequently sanctioned the requisite connections. Laxity in the administration of the Rules and Bye-laws of the Municipality by the officers thereof condemned. MANIK LAL MULLICK v. CORPORATION OF CALCUTTA, **4 C L.J. 411=4 Cr. L J. 394.**

(15)—*Ss.* 341, 450, 574, 631—*Fixture—Demolition—Limitation period in s. 631, whether applies to demolition order.*—Where, a notice under s. 341 of the Calcutta Municipal Act having been served in January 1907, upon the petitioner to remove a certain fixture, proceedings were instituted against the petitioner in 1907 under s. 450, and on the 30th October, 1909, the Municipal Magistrate ordered under s. 450 (*b*) that the fixture should be demolished by the Chairman of the Corporation at the expense of the petitioner, *held*—that s. 631 has no application to the order of the Magistrate, and the order of the demolition was not illegal on the ground of having been made after the limitation period prescribed by the section. SARAT CHANDRA MUKERJEE v. CORPORATION OF CALCUTTA, **14 C.W.N. 591=37 C. 384=5 Ind. Cas 644=11 Cr. L.J. 183.**

(15-*a*)—*Ss.* 343, 442 *and* (32)—*Notice for removal of dilapidated hut belonging to tenant if can be served on the landlord.*—The definition of owner of land as given in s. 3, sub-s. (32), includes both the landlord and the tenant and a notice under s. 343 for the removal of a hut belonging to the tenant can be served upon the person who is the owner of the land, and such person having had a notice served upon him is liable to comply with the terms thereof. S. 442 of the Act which contemplates a different set of circumstances does not in any manner abridge the power conferred by s 343. CORPORATION OF CALCUTTA v. MONMOTHA NATH SHETT, **19 C.W.N. 391.**

(16)—*Ss.* 350 *and* 270—*Bye-law No.* 64 *made under s.* 350—Ultra vires—*Reasonable construction—Interference with private property by Municipality—Tethering bullock by a private drain—Allowing offensive matter to be thrown into a private drain.*—The road or drain referred to in cl. (2) of s. 270 of the Bengal Municipal Act is a road or drain belonging to the Municipality. If the bye-law No. 64, made under s. 350 of the Bengal Municipal Act, authorises the Municipality to interfere with private property, it is *ultra vires.* MAHESH CHANDRA PANDEY v. BASANTA KUMAR DAS, **10 C.W.N. 667=3 Cr.L.J. 450.**

(16-*a*)—S. 351—*See* No. 1, *supra.*

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(16-*b*)—S. 361—*See* No. 7, *supra.*

(17)—*Ss.* 372, 383 *and* 449 (1)—*Demolition of a building erected without sanction—Notice under s.* 383, *whether condition precedent to the passing of order for demolition.*—No notice under s. 383 of the Calcutta Municipal Act (III, B. C. of 1899) is necessary, before an order under s. 449 (1) of the Act, directing the demolition of a building erected without sanction in contravention of s. 372, can be passed. SRIMATTY SUSARMOYEE DEBI v. CORPORATION OF CALCUTTA, **12 C W.N. 271=7 Cr. L.J. 110=7 C.L.J. 243.** (7 C.W.N. 554, *F.*)

(18)—*Ss.* 374, 376, 631, 580—*Application for permission to execute a work neither refused nor granted by chairman—Remedy of applicant—Imprisonment in default of payment of fine, whether legal under the Act—Offence under the Municipal Act whether falls within s. 64 of the Penal Code (Act* XLV *of* 1860).—S. 374 of the Calcutta Municipal Act is governed by s. 376. When the Chairman does not refuse or grant permission to execute any work, the only remedy of the applicant for such permission is to apply to the General Committee by a written request for permission to execute the work. The applicant could not under the law prefer an appeal to the General Committee unless the Chairman has refused permission. There is no authority under the Calcutta Municipal Act to impose imprisonment in default of payment of fine, at any rate for such offences to which a daily penalty is assigned in addition to the substantive fine.—*Semble* :—All "offences" under the Calcutta Municipal Act may not be offences within the meaning of s. 64 of the Penal Code. BASANTA KUMARI DEBI v. CORPORATION OF CALCUTTA, **15 C.W.N. 906 =11 Ind. Cas. 143=12 Cr. L J. 375.**

(18-*a*)—S. 376—*See* No. 18, *supra.*

(18-*b*)—S. 383—*See* No. 17, *supra.*

(19)—*Ss.* 383, 449—*Notice before taking proceedings under sub-s.* 1 *of s.* 449.—There is nothing in the Act making a notice under s. 383 a condition precedent to a proceeding under the first sub-section of s. 449. CORPORATION OF CALCUTTA v. AMIRTA LAL MUKERJEE, **7 C. W.N. 554.** [*F.*, 12 C.W.N. 271=7 Cr. L.J. 110=7 C.L.J. 243].

(19-*a*)—S. 391—*See* No. 9, *supra.*

(20)—*Ss.* 391, 449—*Scope of the Act.*—The Calcutta Municipal Act relates only to acts done after the commencement of that Act, including acts done to complete a building commenced before the Act came into operation. KESHUB CHANDRA SEN v. CALCUTTA MUNICIPAL CORPORATION, **7 C.W.N. 374.**

(21)—*Ss.* 406, 407, 408 *and* 574—*Notice under s.* 408—*Standard plan—Necessity of attaching a copy of the plan to the notice*—Bustee *improvement—Power and duty of the Corporation in respect thereof.*—The duty of the corporation in improving *bustees* is a most important one and they have been invested with the most ample power, but when certain penal sections enforced by the Criminal law are put in motion on the report of the servants of the Municipality, it is incumbent on the Magistrate and the authorities of the Corporation to see that the legal procedure, which is a condition precedent to any conviction, is strictly and properly carried out. Where a letter was issued by the Deputy Chairman requiring the petitioners to do certain works, but no notice under s. 408 was issued directing them to specifically carry out the works. *Held*, the conviction of the petitioners under ss. 574, 408 of Act III (B.C.) of 1899 for neglecting to carry out the works, cannot stand. When the Municipality directs one of several owners of a *bustee* to carry out certain improvements and issues a general notice under s. 408 of Act (B C.) of 1899, it is the duty of the Municipality to serve him with a copy of the standard plan approved by the General Committee, under s. 407, and point out to him on that plan what work he is to do. KANAI LAL JALAN v. CORPORATION OF CALCUTTA, **11 C.W.N. 508=5 Cr. L J. 293.**

(22)—*Ss.* 406, 408, 409, 574—*The power of the General Committee to proceed either under s.* 406 *or s.* 408—*Sub-Committee's power to sanction amendment of the original plan—Officers who should inspect a* bustee *and submit report—Objections of the owners of a* bustee *to standard plan, how to be made.*—The standard plan prepared on a report made by two officers—the medical officer and the engineer—on an inspection of a *bustee* under the provisions of s. 406 of Act III (B.C.) of 1899 does not become bad in law, because one of the officers, the engineer, was not a permanent servant of the Municipality. Notices under s. 408 of Act III (B.C.) of 1899 having been served upon all the owners of land of a *bustee*, one of the owners objected to a certain proposed road in the standard plan going in a certain direction and on his objection, the Sub-Committee decided that the road be deflected. The standard plan thus modified was approved by the General Committee, who served a notice upon the petitioner to carry out the improvements according to the standard plan so modified, and for her non-compliance they prosecuted the petitioner. *Held*, that the petitioner was not entitled to a fresh notice with regard to the deflection of the road, in order to enable her to urge her objections to the deflection, before the General Committee. The law contemplates that all persons interested will be present before the Sub-Committee, and will present not merely their own objections to the scheme but also any objection which they have to any modification of the scheme on the objections raised by others. It is the duty of each of the persons, at the time when the matter is before the Sub-Committee, to ascertain what the various objections of the other persons are, and then to oppose those objections if necessary.

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Under the Calcutta Municipal Act, the Sub-Committee have power to sanction any amendment of the original plan, even though the amendment be necessary for the purpose of avoiding expense, and not for the purpose of improving the *bustee*. The Calcutta Municipal Act gives the General Committee full discretion to proceed either under s. 406 or under s. 409. SREEMATI ATARMANI DASI v. CORPORATION OF CALCUTTA, **12 C.W.N. 1116 = 8 C.L.J. 507.**

(23)—*Ss.* 406, 408, 574, 645—*Power of the General Committee of Calcutta Corporation to determine the owner for carring out improvements under the Act—High Court's power of revision.*—Under s. 645, the General Committee of the Calcutta Corporation has power, where there are gradations of owners or persons, to determine who may be regarded as owners, or where there is a doubt as to who is the owner bound to perform the duty, to determine which of such owners shall be deemed to be bound to carry out the improvements. That discretion having been by law vested in the General Committee, the High Court has no power, in the exercise of its Revisional Criminal Jurisdiction, to set aside or question the acts done in the exercise of that discretion, if these acts have otherwise been done in accordance with the provisions of laws. Where there is no stipulation in a lease, providing by which party (*i.e.*, lessor or lessee) any improvements ordered by the Corporation under the Act or to be carried out, the obligation cast upon the owner to carry out such improvements will remain *prima facie* unaffected by the terms of the lease. SHAMUL DHONE DUTT v CORPORATION OF CALCUTTA, **34 C. 30 = 5 Cr.L.J. 137 = 11 C.W.N. 671.**

(23-*a*)—S. 407—*See* No. 21, *supra.*

(24)—*Ss.* 407, 408, 574—"*Owner*" *in* s. 407, *meaning of—Owner of land—Owner of* busti—*Notice—Standard plan.*—The word "owner" in s. 407 of the Act does not include "owner of huts" also, so as to make it obligatory on the General Committee to hear the objections of "owners of huts" under s. 407 before the approval of the standard plan. The Municipality does not proceed against any body under s. 408. They issue notices in three different kinds of cases. If huts belonging to the occupiers have to be removed, a notice need be issued to them; if they disobey, they are liable to prosecution under s. 574. If improvements are to be done which can be exclusively done by the owners of the land, the same rule applies. If the standard plan includes work which has to be done partly by the owners of the huts and partly by the owner of the land, and a notice is issued under s. 408 on either or both of them, and it is disobeyed, the party in default is still liable to be prosecuted under s. 574. If the whole of the work has to be done by the owners of the huts, then the cancelling of the notice on the owner of the land does not oust the jurisdiction of the Municipality under s. 409. If, on the other hand, the Municipality have cancelled the notice on the owner of the *bustee* land but still require him to carry out any portion of the work, it is clear that they must serve fresh notice on the owner of the *bustee* before they become vested with any jurisdiction under s. 409. CORPORATION OF CALCUTTA v. MUZAFFAR HUSSAIN, **8 Ind. Cas. 53 = 11 Cr. L.J. 558.**

(25)—*S.* 408, *notice under, served upon the owner, when the property under the management of a Receiver—Owner's duty.*—Where a notice under s. 408 of Act III, B.C. of 1899, was served upon the owner, with respect to a property under the management of a Receiver appointed by the High Court:—*Held*—that it was incumbent on the owner to request the Receiver to comply with the notice and, on his failure to comply, to apply to the High Court making the Receiver a party to his application. The owner must satisfy the Magistrate that he used all due diligence to carry out the requisition of the notice under s. 408; but he would not escape liability by pleading his inability to carry out the requisition on account of the property being under the management of the Receiver. CORPORATION OF CALCUTTA v. HAJI KASSIM ARIFF BHAM, **15 C.W.N. 1002 = 12 Cr. L J. 361 = 38 C. 714 = 11 Ind. Cas. 129.**

(25-*a*)—S. 408—*See* Nos. 5, 6, 21, 22, 23, 24, *supra.*

(26)—*Ss.* 408, 419 *and* 575—Bustee *improvement—Failure to make road as in standard plan of* bustee—Bustee *ceasing to be so.*—After huts have been removed from a *bustee* land, the land ceases to be a *bustee* land and the provisions of s. 408 of the Calcutta Municipal Act can then no longer have any operation on the owner. ABINASH CHANDRA GANGULI v. CORPORATION OF CALCUTTA, **12 C.W.N. 72.**

(27)—*Ss.* 408, 419, 574 *and* 631—*Limitation for starting prosecution under ss.* 408 *and* 574—*S.* 419, *effect of, in enlarging time after the commission of the offence.*—Where a notice under s. 408 of the Calcutta Municipal Act was served upon the petitioner, on the 3rd March, 1906, requiring her to make certain improvements in a *bustee* within three months, and on her non-compliance with the notice within the time, a remainder was sent by the Corporation on the 21st June, 1906, and then on the 2nd July, 1906, a notice under s. 419 of the Act was sent by the petitioner to the Chairman, and on the expiry of six months from the date of this notice, prosecution was started against the petitioner on the 23rd January, 1907, with the result that she was convicted under ss. 408 and 574 of the Act and sentenced to a fine of Rs. 25, *held* that the conviction and sentence were bad in law and must be set aside, as the prosecution, having been started more than three months after the expiry of the notice under s. 408 of the Act, was barred by limitation; that the notice

2.—Bengal Acts—continued.

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under s. 419 of the Act, having been served after the offence of the petitioner under ss. 408 and 574 had been committed, could not have the effect of enlarging the time by six months. A notice under s. 419 of the Act, in order to be effectual, must be served before the offence is committed. KUMUD KUMARI DASSI v. CORPORATION OF CALCUTTA, **11 C W.N. 1097 =34 C. 909=6 Cr. L.J. 317.**

(28)—*Ss. 408 and 574—Notice to owners of property pending litigation, failure to comply with, whether amounts to an offence under the sections.*—At the time when the General Committee of the Corporation caused a written notice to be served upon the owners of the property in question, calling upon them to carry out improvements under s. 408 of the Act, the property was under litigation, *viz*, a suit for partition, during the pendency of which it was not open to the owners, either individually or collectively, to alter the property by carrying out the improvements, which they were called upon, by the Corporation, to make. *Held*, setting aside the conviction of the owners under ss. 408 and 574 of the Act, the former section must reasonably be construed and when the directions given to the owner were such as he was not in a position to carry out, the failure to comply with the notice containing such directions could not amount to an offence under the said sections. PURNA CHAND BURAL v. CORPORATION OF CALCUTTA, **33 C. 699 =4 Cr.L J. 47.**

(28-*a*)—S. 409—*See* No. 22, *supra.*

(28-*b*)—S. 416—*See* No. 7, *supra.*

(28 *c*)—S. 419—*See* Nos. 7, 26, 27, *supra.*

(28-*d*)—S. 442—*See* No. 15-*a*, *supra.*

(29)—*Ss.* 444 (2), 574—*Using a house found unfit for human habitation—Joint penalty imposed on several accused, if legal*—A joint conviction and a joint penalty were passed against the owner of a house and a person occupying it with him, under s. 444, cl. (2), read with s. 574 of the Calcutta Municipal Act, for disobeying an order prohibiting them from using a house found to be unfit for human habitation: *Held* that the act of disobedience in each of the accused was a separate offence, and there was no provision of law justifying the passing of a joint penalty. BHAIRAB CHANDRA KOLAY v. CORPORATION OF CALCUTTA, **14 C.W.N. 911=6 Ind. Cas. 874=11 Cr. L.J. 412=37 C. 895.**

(30)—*S. 449—Demolition of building, order for—Deviation from plan sanctioned—Assessment on the deviation—Acquiescence—Order made long after notice—Order, if proper—Order, propriety of—High Court, jurisdiction of, to revise such order—Crim Pro. Code, 1898, s. 435—Revision, power of—Discretion of Magistrate.*—The General Committee, if satisfied, of the existence of the circumstances mentioned in s. 449 of the Act, may or may not make an application to the Magistrate for the demolition of a building or a portion of it, erected in violation of, or contrary to the plan sanctioned by the Municipality, but when such an application is made to the Magistrate, he also has a discretion either to make or refuse the order under s. 449 of the Act. When a Magistrate has not properly exercised his discretion, the order is not a proper order and the High Court has power to set it aside. SHEIKH ABDOOL SAMAD v. CORPORATION OF CALCUTTA, **3 C L.J. 90 =33 C. 287=10 C.W.N. 182=3 Cr. L.J. 211.** [*R.*, 34 C. 341=4 Cr.L.J. 403=11 C.W.N. 30.]

(31)—*S. 449—Order of demolition--Acceptance of rates in respect of the premises pending negotiation, if acquiescence.*—The acceptance, by the Municipality, of rates in respect of premises which have been ordered to be demolished under s. 449 of the Act, does not amount to an acquiescence by the Municipality to disobedience of the order for demolition. LUCHMI NARAYAN MAHTO v. CORPORATION OF CALCUTTA, **14 C.W N. 912=6 Ind. Cas. 800=11 Cr.L.J. 406=37 C. 833.**

(32)—*S. 449—Demolition of building—Deviation from sanctioned plan—Building existing for long time and not coming under the sanction—Order directing the demolition of building, whether legal.*—Authority is not given by s. 449 of the Act to a Magistrate to direct the demolition of the whole or a part of the building, which has been in existence for years before the sanction was given. The magistrate is only empowered to direct the demolition of buildings erected in contravention of the plan submitted and sanctioned by the corporation. JOSEPH ISAAC HYAM v. CALCUTTA CORPORATION, **10 C.W.N. 1004=33 C. 646=3 C.L J. 571=3 Cr L.J. 465.** [*R.*, 33 A. 147=7 A.L.J. 1075= 11 Cr.L J. 681=8 Ind. Cas. 569.]

(33)—S. 449—*See* Nos. 1, 17 19, 20, *supra* and No. 45, *infra.*

(34)—*Ss.* 449, 450, 452, 579—*Demolition of building, order for—Discretion of Magistrate—Analogy to case of mandatory injunction—Difference—Waiver, acquiescence and delay, effect of—Danger to public—Cumulative penalty—Fine and demolition.*—It is discretionary with the Municipal Magistrate to make or not an order of demolition under s. 449 of the Calcutta Municipal Act. This discretion is to be exercised after receiving evidence and hearing the defence. The Municipal Magistrate should exercise the discretion vested in him under ss. 449, 450 and 452 of the Calcutta Municipal Act with due regard to those rules which guide Courts of Equity in granting injunctions—with this difference that he has also to consider whether or not a building ought to be demolished on the ground of is being a danger or obstruction to the public. It is the duty of the Municipal Corporation to procure the demolition of a building which is a danger or obstruction to the public. In other respects,

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Act III of 1899 (Calcutta Municipal)—*contd.*

the Corporation stands, unless the law expressly directs, in practically the same position as a private individual wronged by a tortious act. Although the Municipal Act does not prescribe any period of limitation for an action under s. 449 or 450 of the Act, the Court in directing demolition should consider how far the delay in the institution of the proceeding has affected the action. The fact that in respect of the same deviation from the sanctioned plan of a building, the Municipal Corporation instituted two different proceedings at different times, *viz.*, for fine under s. 579 and demolition under s. 449—cannot deprive the Magistrate of his discretion under s 452 of the Act. This section applies even when the two proceedings are not simultaneous. CHUNI LAL DUTT v. CORPORATION OF CALCUTTA, **34 C 341 = 11 C.W.N. 30 = 4 Cr. L J. 408.** (33 C. 287 = 10 C.W.N. 182, *R.*)

(35)—*Ss.* 449 (1), 451 *and* 574—*Rule No.* 2 *of Part II, sch.* 17 *of the Act, interpretation of —Height-limit of building facing street and an open platform—Angle of* 45 *degrees whence to be drawn.*—On one side of a street was a bathing platform open to the sky. On the opposite side, a building was erected facing the street and the platform ; *held*, in determining the height-limit of the building in accordance with Rule No. 2 of Part II, sch. 17 of the Calcutta Municipal Act (III, B.C of 1899), the angle of 45 degrees must be drawn from the street alignment on the side of the street and not from the side of the platform farthest from the street. SHEOMALL GOENKA v. CORPORATION OF CALCUTTA, **13 C.W.N. 74 = 9 Cr. L.J. 302.**

(36)—*Ss.* 449, 452, 579—*Sanction for building under the old Act,* II *of* 1888—*Deviation from the plan, effect of—Bengal Act* I *of* 1889 (*General Clauses*), *s.* 8—*Question of penalty.*—If the building as constructed was a deviation from the plan as sanctioned under the old Act so as to render the owner liable to a penalty under the old Act, then, he cannot show that he had acquired under the old Act, before the new Act came into force, a right entitling him to build in contravention of the provisions and rules laid down by the new Act, so as to bring himself within cl. (*c*) of s. 8 of the Bengal General Clauses Act ; he will then be liable to a prosecution under the new Act. The question of what penalty should be enforced under ss. 449, 452 and 579 of Act III of 1899 is in the discretion of the Magistrate, and is not a question of law which the High Court will answer. CORPORATION OF CALCUTTA v. AMRITA LAL MUKERJEE, **7 C.W N. 554.** [*F.*, 12 C.W.N. 271 = 7 Cr. L.J. 110 = 7 C.L J. 243.]

(37)—*Ss.* 449, 575—*Acquittal under s.* 575—*Refusal to return a plan to which sanction has been obtained by misrepresentation and fraud—Order precluding the petitioner from building according to such plan—Magistrate not competent to make such order.*—Where, in a prosecution under s. 449 of the Act, the Magistrate acquitted the accused under s. 579, but found that the sanction to the plan had been obtained by misrepresentation and fraud, and made an order prohibiting the petitioner from building the second storey on the basis of such plan and directing that the sanctioned plan filed by him be not returned to him ; *held*, that the Magistrate was not competent to make an order of that description. NOGENDRA NATH SADKHAN v. CORPORATION OF CALCUTTA, **3 C. L.J. 138 = 3 Cr. L. J. 215.**

2.—Bengal Acts—continued.

Act III of 1899 (Calcutta Municipal)—*contd.*

(38)—*Ss.* 449 *and* 580—*Sanction for erection of a building under misapprehension—Scope of sections.*—A sanction given by the Municipal Corporation for the erection of a building under a misapprehension due to the applicant's omission to draw the attention of the Corporation to all the necessary facts connected with the position and surroundings of the proposed building will not exonerate the applicant from liability under the Act, if the building be afterwards found to have been constructed in contravention of the provisions of the Act. S. 580 of the Calcutta Municipal Act does not merely provide for the punishment of offences committed under s. 449 of the Act. It itself creates the offences, both the primary offences, consisting of default in carrying out an order under s. 449 and the secondary or continuing offence committed on each day thereafter by reason of the continuance of the default. NANI LAL SETT v. CORPORATION OF CALCUTTA, **7 C.W.N. 853.**

(39)—*Ss.* 449, 628, 629 *and* 631—*Demolition of unsanctioned building—Punishment of the offender—Civil suit—"Magistrate," scope of the term.*—The Municipal Act provides a means both for punishing the offender and securing the demolition of an unsanctioned building. The Corporation will be ill-advised to abandon their remedy under the Act in favour of a civil suit which would possibly not lie before the remedy has been exhausted. The words, "a Magistrate" in s. 449 mean any Magistrate having jurisdiction in Calcutta, and includes a Municipal Magistrate. He has, therefore, power not only to try offences, under the Act, but also to make an order for the demolition of an unsanctioned building. SEW PROSAD PODDAR v. CORPORATION OF CALCUTTA, **9 C.W.N. 18.** (8 C.W.N. 142, *D.*)

(40)—*Ss.* 449 *and* 631—*Scope of the section—Nature of the proceedings—Crim. Pro. Code* (1898), *s.* 432.—The limitation for the prosecution of offences, prescribed in s. 631 (1) has no application to proceedings taken under s. 449. S. 631 only applies to complaints made before a Magistrate in order to the punishment of a person for an offence against the Act or any rule, or bye laws, or regulation under the Act. [*R.*, 9 C.W.N. 18.] S. 449 provides for applications to be made to a Magistrate by the General Committee in order to the issue of an order directing the demolition or alteration of work which has been unlawfully executed

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Act III of 1899 (Calcutta Municipal)—*contd.*

under certain circumstances. Proceedings under that section are not instituted on a "complaint," nor is the demolition of an unlawfully executed work a "punishment" within the meaning of s. 631, sub-s. 1. CORPORATION OF CALCUTTA v. KESHUB CHUNDER SEN, **8 C.W.N. 142.**

(40-*a*)—S. 450—*See* Nos. 15, 34, *supra.*

(40-*b*)—S. 451—*See* No. 35, *supra.*

(40-*c*)—S. 452—*See* Nos. 34, 36, *supra.*

(40-*d*)—S. 466—*See* No. 10, *supra.*

(40-*e*)—*Ss.* 466 *and* 574 *and sch.* XVIII, *cl.* 8—*Iron includes steel.*—The petitioner stored steel joists, etc., without a license. He was convicted under s. 574 of the Calcutta Municipal Act for not taking out a license under s. 466 (1). *Held* that as the term "iron" as used in sch. XVIII, cl. (8) of the Act includes "steel" the conviction is right. GANGA NARAIN PAL v. CORPORATION OF CALCUTTA, **10 C L J. 486 =4 Ind. Cas. 438=11 Cr. L J. 277.**

(41)—*S.* 495—*Sale of mustard oil adulterated with* til *oil.*—Where, on a prosecution by the Food Inspector, the accused was convicted under s. 495 of Bengal Act III of 1899, for having sold mustard oil adulterated with *til* oil, *held*, that the accused was rightly convicted, inasmuch as it was not necessary for the purpose of manufacturing mustard oil to use any hard seed (such as *til* oil) to assist in expressing the oil, as what was commercially known as mustard oil was the pure oil and not oil adulterated with *til* or other oil, and as such adulteration was to the prejudice of the purchaser. MOTILAL PAL v. THE CORPORATION OF CALCUTTA, **30 C. 643= 7 C.W.N. 637.** (3 C.W.N. 66, *D.*)

(42)—*Ss.* 495, 507, 574—*Sale of adulterated food by servant, liability of master—Sale by partner--Liability of co-partner, S.*507,*"seller," meaning of.*—S. 495 of the Calcutta Municipal Act, like the corresponding section of the English Statute, is positive in its prohibition of the sale of adulterated articles, and when a servant sells such articles, it is the master, firm or the beneficial owner who is liable to punishment, and this would be so even when the servant adulterates the articles himself and sells without the knowledge or connivance of the master, firm or owner. (17 Cox. C.C 509 (Q.B.D.); 61 L.J. (M.C.) 110 [(1892), *F.*)—Where the person who sells is one of two partners of the firm, the conviction of the other partner would be equally legal. SEW KARAN v. CORPORATION OF CALCUTTA, **16 C.W.N. 455 =14 Ind. Cas. 205=13 Cr. L.J. 205=39 C. 682.**

(43)—*Ss.* 502 *and* 505—*Order under s.* 505, *when can be made.*—In order to justify an order under s. 505, Calcutta Municipal Act, the Magistrate has to be satisfied that the article directed to be destroyed comes within the provision of s. 502 of the Act. He is to be satisfied that the article is either exposed, or hawked about, for sale, or brought to any place for the purpose of sale, or of preparation for sale and is intended for human food. Before a Magistrate could order the destruction of damaged rice, the judgment should contain an affirmative finding that the rice was brought for the purposes of sale, or that it was intended for human food. CHUNDRA COOMAR BISWAS v. CALCUTTA CORPORATION, **30 C. 421=7 C.W.N. 27.**

(43-*a*)—S. 505—*See* No. 43, *supra.*

(43-*b*)—S. 507—*See* No. 42, *supra.*

(44)—*Cl.* (18) *of ss.* 559, 561 (*b*), 631—*Bye-laws, s.* 1—*Encroachment on a public street by raising pillars—Obstruction, removal of, notice for—Notice, disobedience to the requisition of—Proceedings institution of three months after the expiration of the period of the requisition—Limitation—Offence, if continuous.*—A bye-law must conform with the provisions of the enactment under which it purports to be made. Bye-law, s. 1, so far as it relates to obstruction, comes within the provisions of clause (18) of s. 559 of the Calcutta Municipal Act (III of 1899). S. 561 (*b*) only authorises the penalty for the continuance of a breach, where notice follows breach. The penalty is attached to a breach, which only arises after the notice, and there is no provision for any subsequent notice, which could come within the provisions of s. 561, requiring that there should be notice after breach. The bye-law purports to create a continuous breach, which is outside of and fails to comply with the provision of s. 561, clause (*b*), under which alone it can claim vitality. There is, therefore, no provision for a continuing breach, that could take the case outside the provision of s. 631 of the Calcutta Municipal Act. NARAIN CHANDRA CHATTERJEE v. CORPORATION OF CALCUTTA, **37 C. 545=10 C.L.J. 623=14 C.W.N. 614=10 Cr. L. J. 522=4 Ind. Cas. 259.**

(44-*a*)—S. 561—*See* No. 44, *supra.*

(44-*b*)—S. 574—*See* Nos. 6, 10, 11, 12, 13, 14, 15, 21, 22, 23, 24, 27, 28, 29, 35, 40-*e*, 42, *supra.*

(44-*c*)—S. 575—*See* Nos. 5, 6, 26, 37, *supra.*

(44-*d*)—S. 579—*See* Nos. 34, 36, *supra.*

(44-*e*)—S. 580—*See* Nos. 18, 38, *supra.*

(44-*f*)—S. 622—*See* No. 5, *supra.*

(44-*g*)—S. 628—*See* No. 39, *supra.*

(44-*h*)—S. 629—*See* No. 39, *supra.*

(44-*i*)—S. 631—*See* Nos. 15, 18, 27, 39, 40, 44, *supra.*

(44-*j*)—S. 632—*See* No. 4, *supra.*

(45)—*Ss.* 632, 449—"*Nuisance,*" *building sanctioned by Municipality, if may be—Nuisance, if must be public—Building in contravention of regulations, if to be proceeded against only under s.* 449—*Partition decree, effect of.*—The term "nuisance" in s. 632 of the Calcutta Municipal Act does not refer only to

2.—Bengal Acts—continued.

Act III of 1899 (Calcutta Municipal)—*concld.*

nuisances affecting the public generally. It applies as well to nuisances affecting an individual. The mere fact that the Municipality could have proceeded against a building erected contrary to the building regulations under s. 449 of the Act does not preclude the Municipal Magistrate from interfering with it under s 632, at the instance of the person whose house has been deprived of light and air by the building. If a building is a nuisance, it is no answer in a proceeding under s. 632 to say that the Corporation had sanctioned it. Whether erected with or without sanction, or in contravention of the building regulations or not, any person residing in Calcutta affected by it can move the Magistrate, and it is within the jurisdiction of the Magistrate to pass an order under s. 632, if in his discretion he is so advised. A partition decree previously passed, which purported to specify the easements reserved to the portion which fell to the complainant, cannot be held to override the provisions of the Calcutta Municipal Act, which is directed to provide for public sanitation among other public considerations. BHAGWAN DAS v. RASH BEHARI MULICK, **14 C W.N 637=6 Ind. Cas. 595.** [*R.*, 15 C. W. N. 316 ; *Expl.*, 38 C. 296=11 Cr. L.J. 665=8 Ind. Cas. 530.]

(45-*a*)—S. 645—*See* Nos. 5, 23, *supra.*

(45-*b*)—Sch. II, r. 7—*See* No. 10, *supra.*

(45-*c*)—Sch. XVII, r. 2—*See* No. 8, *supra.*

(46) *Sch. XVII, r. 17—Demolition of buildings outside sanctioned plan and existing for a long time, illegal.*—What a Magistrate is empowered to direct to be demolished, under s. 449 of the Calcutta Municipal Act, is work which forms part of the plan sanctioned, and which contravenes some provision of the Act or of the bye-laws in force, with reference to the erection of buildings, and not buildings outside such sanctioned plan and existing for a long time. JOSEPH ISAAC JOSEPH HYAM v. CALCUTTA CORPORATION, **3 C. L. J. 571=3 Cr. L. J. 465=33 C. 646=10 C. W. N. 1004.**

(47) *Sch. 17, rr. 22 and 24—Construction of the rules.*—An open square or the like to come within r. 24 must at least be four feet wide. If the open space is not less than four feet wide on the other side, the owner of the house is to leave at least four feet of open space more as indicated by cl. (*b*) of paragraph 2 of the r. 24. NONI LAL SETT v. CORPORATION OF CALCUTTA, **7 C. W. N. 853.**

(48)—Sch. XVII, r. 24—*See* No. 47, *supra.*

(49)—Sch. XVIII, r. 8—*See* No. 40-*e*, *supra.*

Act VI of 1901 (Assam Labour Emigration).

[SS. 91, 218, AM., ACT II OF 1908.]

(1)—*Charge of recruiting coolies from Agency tracts prohibited by a Government Order—Application of accused to summon witnesses refused by Magistrate—Procedure illegal.*—

2.—Bengal Acts—continued.

Act VI of 1901 (Assam Labour Emigration)
—*concluded.*

Where an accused, charged with recruiting coolies from Agency tracts, applies to the Magistrate trying the case to summon certain witnesses cited by him to prove his defence, and the Magistrate refuses such an application, the procedure is illegal and the conviction is one liable to be set aside. LUNMO OF MAHALUNMA v. EMPEROR, **(1911) 2 M.W.N.472=12 Cr. L.J. 566.**

(2)—*Ss.* 2 (*n*), 161, 164—"*Magistrate," meaning of—Re-patriation, order for, at cost of owner of garden—Order made by Sub-Deputy Magistrate, if legal—Employer not called upon to show cause — Undue influence or coercion, absence of.*—A Sub-Deputy Magistrate, not appointed by the Local Government to perform the functions of a Magistrate under the Assam Labour and Emigration Act, 1901, acquitted certain persons of offence under s. 164 of that Act, but at the same time passed an order that the proprietor of the garden for which the coolies were recruited should deposit the expenses of repatriation of the coolies. There was nothing to show that there had been any undue influence or coercion and the employer was not called upon to show cause as required by s. 161 that the order was a bad one. *Held*, that the order of repatriation at the cost of the employer was bad. EMPEROR v. RITU CHAMAR, **15 Cr. L J. 195=22 Ind. Cas. 979=18 C.W.N. 1143.**

(3)—S. 161—*See* No. 2, *supra.*

(4)—*S.* 164—"*Emigrate", meaning of—Inducement to emigrate to Fiji—Subsequent inducement at another place to emigrate to Sylhet—Place of trial—Jurisdiction of Criminal Court—Emigration.*—Where the accused induced L to leave Cawnpore in order to go to Fiji for work, and, on the way at Arrah, told him that he would have to go to Sylhet, and placed him in a train bound therefor, *held* that the Magistrate at Arrah, and not the Magistrate of Cawnpore, had jurisdiction to try the case. L was not induced to leave Cawnpore in order to go to Sylhet, but in order to go to Fiji, and no offence was therefore committed at Cawnpore. The inducement to go to Sylhet was made at Arrah, and so the Arrah Court alone had jurisdiction. FAIZ ALI v. EMPEROR, **37 C. 27.**

(5)—S. 164—*See* No. 2, *supra.*

Act III of 1903 (Bengal Motor-car and Cycle).

(1)—Liability of principal for acts done by agent or servant—*See* ACT VIII OF 1899, ss. 11, 15 (*a*), 17 C.W.N. 207=17 C.L.J. 390=13 Cr. L.J. 792=17 Ind. Cas. 536=40 C. 356.

(2)—*See* MASTER AND SERVANT, 12 Cr. L. J. 89=15 C.W.N. 390=9 Ind. Cas 480=13 C. L.J. 335=38 C. 415.

Act VII of 1905 (Bengal and Assam Laws).

Effect of repeal of—*See* BEN. ACT VIII OF 1912, ss. 3, 8, 19 C.L.J. 92.

2.—Bengal Acts—continued.

Act III of 1906 (Bengal Disorderly House).

[REP. IN MUNICIPALITIES CONSTITUTED UNDER BENGAL ACT III OF 1884, IN WHICH BEN. ACT II OF 1866, IS IN FORCE, BEN. ACT III OF 1907, S. 3.]

S. 2 — *Dancing girls — Singing obscene-songs — Brothel — Habitual prostitution.*—In order to bring a case under s. 2 of Act III (B.C.) of 1906, it must be shown, first, that the house is in the vicinity of an educational institution or a boarding house, hostel or mess, and secondly, that it is used as a brothel for the purpose of habitual prostitution or is used by disorderly persons of any description. Where a house is occupied by a male and the members of his family, two of the members of which are dancing girls, who are kept mistresses of gentlemen and who sing songs sometimes of an obscene character, *held*, that the house is not used as a brothel or for the purpose of habitual prostitution. KOKIL RAM v. EMPEROR, **6 C. L. J. 710 = 6 Cr. L. J. 423.**

Act II of 1907 (Eastern Bengal and Assam Disorderly Houses).

(1)—*Ss.* 2, 3, 6—*Offence under—Procedure of the Magistrate in making inquiry under the Act—Criminal Court, whether a Magistrate acting under s.* 2, *is—Irregularity in the proceedings, effect of — Revision — Criminal Procedure Code (Act* V *of* 1898), ss. 435, 439, —A Court acting under s. 3 of the Eastern Bengal and Assam Disorderly Houses Act (II of 1907) is a Criminal Court within the meaning of s. 435, Crim. Pro. Code, and the High Court has jurisdiction to interfere under ss. 435 and 439, Crim. Pro. Code. Ss. 2 and 3 of the Act do not create any offence and the only offence created by the Act is that created by s. 6. The power conferred by ss. 2 and 3 is not a power to hold a Criminal trial or to take any preliminary proceedings under the Criminal Procedure. It is a power similar to those conferred on Criminal Courts by Chaps. VIII, X, XI and XII of the Code. The Eastern Bengal and Assam Disorderly Houses Act does not prescribe any particular procedure except such as is indicated by the last paragraph in s. 2 and ss. 4 and 5. The Magistrate may make his enquiry under ss. 2 and 3 in any way that does not violate ordinary rules of fairness and propriety, and in making the enquiry he performs an administrative duty and not a judicial duty. Where, in any inquiry under s. 2 of the Act, it was contended that the Magistrate had erroneously administered oaths to witnesses, *held* that, the proceedings of the Magistrate having been perfectly fair and reasonable in themselves, the error, if any, did not vitiate them. RAJANI KHEMTAWALI v. PRAMATHA NATH CHOWDHRY, **37 C. 287 = 14 C.W.N. 404 = 11 C.L.J. 297 = 11 Cr. L.J. 1.2.**

(2) *Ss.* 2, *cl.* (*b*), 7—*House, use of, as brothel or for habitual prostitution—S.* 7, *object of—Order under cl.* (*b*) *of s.* 2, *effect of—Proceedings under, how instituted—Crim. Pro. Code,* s. 190.—S 7 of Act II of 1907 (E. B. and Assam) is an enabling section and is not a necessary part of the procedure of the Act prior to the prosecution being instituted. It is not necessary to have recourse to that section if the Magistrate can be satisfied in other ways that the nuisance complained of is continuing. S. 6 of the Act creates an offence under a local law, and proceedings relating to such offence should be taken under s. 190 of the Crim. Pro. Code. Where a Magistrate authorised an Inspector of Police to enter and inspect the houses and the Inspector asked the Sub-Inspector to make the enquiry. *Held* that the Magistrate has no jurisdiction to take cognisance of the case on the Sub-Inspector's report The Magistrate could either treat the Sub-Inspector's report as a complaint under S. 190 (*a*), in which case he would have to call upon the Sub-Inspector to appear and substantiate the report on oath : or under s. 155 direct the Police to investigate the case and submit a charge-sheet if they thought proper. Where the Sub-Inspector stated in his report that he was satisfied that a woman "was going on with her profession of prostitution" but did not say that she was using her house to the annoyance of the inhabitants of the vicinity. *Held*, that, although the report might furnish a basis to the Magistrate to call upon the Sub-Inspector to depose on oath as complainant, the report itself did not disclose a complete case under s. 2 of the Act. FEROJA PESHAKAR v. AMIRUDDIN **16 C.W.N. 1049 = 13 Cr. L J. 691 = 16 Ind. Cas. 499.**

(3)—S. 3—*See* No. 1, *supra.*

(4)—S 6—*See* No. 1, *supra.*

(5)—S. 7—*See* No. 2, *supra.*

Act V of 1909 (Excise).

(1) Liability of principal for acts done by agent or servant.—*See* ACT VIII OF 1899, ss. 11, 15 (*a*), 17 C.W.N. 205 = 17 C.L.J. 390 = 13 Cr. L.J. 792 = 17 Ind. Cas. 536 = 40 C. 356.

(2)—*Ss.* 2, (14), 2 (20), 9 (2), 10, 46, 52, 55, 57—*Medicinal drugs if necessarily exciseable because spirit is an ingredient—Importing of excisable articles, offence of, when committed—Transport—Possession—Taking orders to supply, if abetment of transport—Delivery when takes place—Cocoanut, milk of, if excisable.*—The unreported decision of *O'Kinealy and Ameer Ali, JJ.*, that spirits of wine sold by a chemist for medicinal purposes are not liable under the Excise Act, has been overruled by the enactment of the new Excise Act (V. B. C. of 1909) but that the decision at 24 C. 157 is no longer good law is not so clear. *Semble* (without deciding the question) : The meaning of the Legislature in amending the Act was to prevent chemists and vendors of drugs selling intoxicating liquors or otherwise dealing with them as

2.—Bengal Acts—continued.

Act V of 1909 (Excise)—*continued.*

medicinal preparations, and not to declare that all drugs *bona fide* prepared in accordance with the British or other recognized Pharmacopœias are excisable merely because alcohol is used in their preparation, and the notifications of the Board of Revenue, if they declared that spirit found in the prepared drugs rendered the drugs themselves exciseable, would be *ultra vires.* (24 C. 157, *Cons.*) Liquor as defined in s. 2 (14) of the Bengal Excise Act must be intoxicating liquor and the enumeration of all the liquids that follows does not make them liquor unless they are intoxicating. *Held*, that, if articles, which are subject to both customs and excise duties escape the customs, they can be dealt with by the Excise authorities either in transport or when an attempt is made to export them, but the Excise duty on imports does not apply to articles that are liable to a similar duty in the customs. Where medicinal drugs containing spirits which had been manufactured in Chandranagore within French territories were consigned from Chandranagore station by rail to Howrah and from there taken to a Calcutta shop, in pursuance of orders given to the manufacturer by the manager of the Calcutta shop; *Held*, that, assuming that the articles were excisable after they had passed undetected by the custom authorities, no charge could be framed at the instance of the Excise authorities against persons concerned in the transaction of importing exciseable articles, but the Excise authorities could proceed for illegal transport or export or possession of the articles imported *Held*, on the evidence, that delivery of the articles to the Calcutta firm had taken place before the transport of the same commenced, and the mere fact of the persons who despatched them from French Territory having arranged that an agent of theirs should be present at the Calcutta shop to see that the goods were in order when opened, did not prevent possession passing to the Calcutta firm; and they were not liable to conviction for illegal transport or possession of excisable articles. Taking an order for foreign goods which are excisable may constitute abetment of their import but not of their transport. The expression "juice drawn from any cocoanut" in s. 2 (20) of the Excise Act does not mean the milk of the cocoanut but the juice of the tree. EMPEROR v. MOTI LAL CHANDER, **16 C.W.N. 785 = 15 Ind. Cas. 961 = 13 Cr. L J. 545 = 39 C. 1053.** [*R.*, 15 Cr. L.J. 73 = 19 C.L.J. 53 = 22 Ind. Cas. 425]

(3)—*Ss.* 2, *cls.* (6), (7) *and* (14), 46, 48—'*Denatured spirit*'—'*Manufacture*'—*Denatured spirit, dilution of, with water—Appeal—Crim. Pro. Code, applicability of—Crim. Pro. Code, ss.* 233, 410—*Charges, misjoinder of—Summons case—Applicability of Crim. Pro. Code, to trials under Act* V *of* 1909 (*B. C.*).—To support a conviction under s. 48 of the Bengal Excise Act, two elements must be established, namely, *first*, that the spirit is denatured spirit, and, *secondly*, that the accused has attempted to render such spirit fit for human consumption. The definition of 'denatured spirit' in cl. (6) of s. 2 of the Bengal Excise Act considered. The essence of 'manufacture' as defined in cl. (15) of s. 2 of the Bengal Excise Act is, that it is a *process.* A mere dilution of denatured spirit with water is not a *process* for the manufacture of an excisable article. The Code of Criminal Procedure, subject to specified restrictions, is applicable to trials under the Bengal Excise Act, before a Magistrate. The fact that the trial has taken place as a summons case, does not exclude the application of s. 233 of the Code of Criminal Procedure. Manufacturing excisable article seized and brought into Court, bottling it, possessing it, selling from time to time various other articles not before the Court, and attempting to render denatured spirit fit for human consumption, do not constitute one transaction. *Quære.*—Whether a spirit diluted with water is excisable article or intoxicating liquor within the meaning of cls. (7) and (14) of s. 2 of the Bengal Excise Act U.N. BISWAS v. KING-EMPEROR, **19 C. L. J. 53 = 18 C W. N 486 = 22 Ind. Cas. 425 = 15 Cr. L J. 73 = 41 C. 694.**

(4)—*Ss.* 2 (12), 46, 52, 61—"*Possession*"—*Constructive possession — Crim. Pro. Code, ss.* 236, 237.—The petitioner was in possession of an invoice and bill of lading which purported to cover old wearing apparel exported by Porter & Co., of London to Rasu Prosad at Dharjeeling. The bill of lading with endorsement by Porter & Co., and Rasu Prosad were made over by the accused to Cox & Co., in order that the goods might be cleared and passed through the Customs House. The goods were found to contain a large quantity of cocaine which was sought to be illicitly exported in contravention of the provisions of the Excise Act. The accused, when apprised of the discovery, professed to be acting on behalf of Rasu Prosad. *Held*, that the accused committed an offence falling under s. 61 read with s. 46, cl. (*a*) and s. 2, cl. (12) of the Bengal Excise Act, of attempting to bring cocaine into Bengal in contravention of the provisions of the said Act, and not under ss. 46 and 52, as he could not be said to be in "possession" of the cocaine. (32 C. 557, 36 C. 1016, *D.*) The doctrine of constructive possession is to be very cautiously applied, specially in the department of criminal jurisprudence. Ss. 236 and 237 of the Code of Criminal Procedure applied. KALI CHARAN MOOKERJEE v. EMPEROR, **18 C.L.J. 514 = 18 C.W.N. 309 = 41 C. 537 = 22 Ind. Cas. 148 = 15 Cr. L.J. 4.**

(5) Ss. 2 (12), 46, 61—Meaning of "import"—Articles intercepted by Customs House, if can be said to have been brought into Bengal. —*See* EVIDENCE—ADMISSIBILITY OF EVIDENCE, 18 C.L.J. 567.

(6)—S. 9—*See* No. 2, *supra.*

(7)—S. 10—*See* No. 2, *supra.*

2.—Bengal Acts—continued.

Act V of 1909 (Excise)—*continued.*

(8)—*S.* 46 -*Cocaine—Illicit possession—Possession of cocaine exceeding five grains—Burden of proof of authority under which cocaine was obtained.*—Under the Government Notification of November 20th, 1911, it is an offence for any person other than those specified to have any cocaine at all except with medical man's prescription, and then only five grains. In all cases, the burden of proof to show under what authority he obtained cocaine lies on the accused. MAKUND SAHU v. EMPEROR, **15 Cr. L.J. 262 = 23 Ind. Cas. 470 = 18 C.W.N. 1023.**

(9)—S. 46—*See* 2 to 5, *supra.*

(10)—*Ss.* 46, 56—*Servant leaving shop and trying to export ganja—Master if may be punished.*—A servant employed in the petitioner's ganja shop left the shop and was found travelling with $2\frac{1}{2}$ seers of ganja from the District of Arrah to Bindhyachal and was convicted under s. 46 of the Excise Act. *Held*, that the petitioner could not be punished for the servant's act under s. 56 of the Act, when it did not appear that the servant was acting for the petitioner's benefit and within the scope of his employment. UTTAM CHAND v. KING-EMPEROR, **16 C.W.N. 551 = 15 Ind. Cas. 1007 = 13 Cr. L J. 591 = 15 C.L.J. 401 = 39 C. 344.**

(11)—S. 48—*See* No. 3, *supra.*

(12)—S. 52—*See* Nos. 2, 4, *supra.*

(13)—*Ss.* 54, 56—*Misjoinder of charges—Crim. Pro. Code, Ss.* 234, 235 (2), 239—*Abettor — Accomplice—Obiter* : — A licensed vendor, who is punishable by implication under s. 56 of the Bengal Excise Act, can be tried together with his agent who commits the offence. The case is one of abetment by implication, and s. 239 of the Code of Criminal Procedure allows an abettor to be tried in the same trial as the principal. Where a person was convicted of a different offence before a trial and he had nothing to gain or lose by the evidence he gave in Court, he could not be said to be an accomplice in law. Other persons who were directly concerned in the crime as principals might be considered as accomplices, even though convicted. PRIYA NATH BISAI v. KING-EMPEROR, **15 C.L.J. 692 = 13 Cr. L.J. 255 = 14 Ind. Cas. 607.**

(14)—S. 55—*See* No. 2, *supra.*

(15)—S. 56—*See* Nos. 10, 13, *supra.*

(16)—S. 57—*See* No. 2, *supra.*

(17)—S. 61—*See* Nos. 4, 5, *supra.*

(18)—*S.* 67—*Excise officers assaulted before they entered any house or made any arrest or search—Rioting—Separate sentence—Penal Code, ss.* 147, 353.—A Deputy Inspector of Excise received information, that he would find certain persons in the act of illicitly distilling liquor, if he went to a certain village. He accordingly went with two Sub-Inspectors and a large number of peons, who actually saw the accused and their men removing the distilling apparatus. But before they had time to enter the house and arrest those persons or to make any search whatever, the accused sallied out and proceeded to beat the peons. The accused were convicted of rioting and using criminal force to deter a public servant from the discharge of his duty : *Held*, that the assault upon the officers was wholly unjustifiable and the riot was one of a very serious and lawless nature, that the Excise Officers were acting under s. 67 of the Excise Act (V of 1909 B.C.) ; that before they had time to do anything lawful or unlawful in respect of any search, they were wantonly assaulted by the accused, and that as there was no search, it could not be said that there was a search not in accordance with law. A separate sentence should not be passed upon people convicted of rioting for the offence which is specifically stated to have been the common object of the assembly, unless a specific charge is laid against the individual members of committing such an offence. Therefore, persons who are shown to have committed a separate offence under s. 353, Penal Code, should receive a separate punishment, even although the common object of the riot was to commit that offence. PRAKASH CHANDRA KUNDU v. EMPEROR, **15 Cr.L.J. 251 = 23 Ind. Cas. 203 = 41 C. 836 = 18 C.W.N. 918.**

Act I of 1910 (Eastern Bengal and Assam Excise).

(1)—*Ss.* 36, 53, 72 —*Medicated article containing* Bhang—Kameshwar *Modak—Manufacture and sale by medical practitioner for medicinal purposes if protected—S.* 72, *effect and scope of—Notification by Local Government—Rules by Board of Revenue.*—The petitioner, who was a *Kabiraj*, was charged under s. 53 of the Eastern Bengal and Assam Excise Act with the manufacture and sale of an excisable article, namely, a mixture called *Komeshwar* Modak, which contained *Bhang* and which admittedly was a medicated article prepared by the petitioner for medicinal purposes :—*Held*, in regard to the manufacture and sale of the article in question, the petitioner was protected by s. 72 of the Act, the language of which is wide enough to take any case, to which it applies without restriction, out of the Act. SATISH CHANDRA ROY v. KING-EMPEROR, **17 C.W.N. 939 = 14 Cr. L.J. 300 = 19 Ind. Cas. 956.**

(2)—S. 53—*See* No. 1, *supra.*

(3)—S. 72—*See* No. 1, *supra.*

Act III of 1910 (Calcutta and Suburban).

S. 16—*See* BEN. ACT IV OF 1866, s. 62-*a*, cls. 4, 6, s. 102, 17 C.W.N. 505 = 18 Ind. Cas. 685 = 14 Cr.L.J. 125 = 40 C. 470.

Act VIII of 1912 (Bengal, Bihar, Orissa and Assam Laws).

(1)—*Ss.* 3, 8, *effect of—Honorary Magistrates, differences of opinion between, settlement of—*

2.—Bengal Acts—concluded.

Act VIII of 1912 (Bengal, Bihar, Orisa and Assam Laws)—*concluded.*

New Rule under Government Notification, 1906, *if extends to Eastern Bengal—Bengal and Assam Laws Act* (VII *of* 1905) *repeal of, effect of —Crim. Pro. Code*, s. 16.—In Eastern Bengal, the old notification under which a difference of opinion between two Honorary Magistrates forming a Bench is to be settled by the casting vote of one of them, namely, the Chairman, is still in force. The provisions of s. 3 of Act VIII of 1912, are applicable to notifications which derived their force in the former Province of Eastern Bengal and Assam, from the Act of 1905. UTFAL SHAIKH v. KING-EMPEROR, **19 C.L.J. 92.**

(2) Ss. 3, 8—Difference of opinion between Chairman and colleague — Procedure—*See* BENCH OF MAGISTRATES, 14 Cr. L.J. 684= 21 Ind. Cas. 1004.

(3)—S. 8—*See* Nos. 1, 2, *supra.*

3.—Bombay Acts.

*** Act XXVII of 1837 (Salt).**

[REP. (EXCEPT IN SIND), BOM. ACT VII OF 1873.]

(1)—*Salt thrown overboard to avoid measurement—Presumption—Salt removed in excess of the permit—Confiscation.*—In a case where a vessel was seized on suspicion of having a greater quantity of salt than was allowed by its permit, and immediately afterwards, a number of men boarded the boat and threw some of the salt overboard, *held* that, from the above circumstances, a presumption arose that there was, at the time of the seizure, an excess of salt on board the vessel, beyond that allowed by the permit. Where a vessel, holding a permit to pass a certain quantity of salt on which duty had been paid, removed a larger quantity, the whole of such salt must be considered as removed contrary to the provisions of the above Acts; and the whole of such salt, and not merely the exception, is liable to confiscation. FRAMJI HORMASJI v. THE COMMISSIONER AND DEPUTY COMMISSIONER OF CUSTOMS, SALT AND OPIUM, **7 B.H C.A.C.J. 89.**

(2)—*S. 7—Act* XXXI *of* 1850—*Removal of one's own salt—Detention.*—Removal of one's own salt from the bed of a creek, not forming part of any salt-work, is not an offence under the Penal Code nor under either Act XXVII of 1837 or Act XXXI of 1850, though, under s. 7 of the former Act made applicable by s. 8 of the latter, the salt removed becomes liable to detention. REG. v. FAKIRA, **Rat. Un. Cr. C. 66=Cr. Rg. 12-9-1872.** [*R.*, 10 B.H. Cr. A.C. 74.]

(3)—*S.* 7—*Dishonest removal of salt naturally formed in a creek.*—A dishonest removal

* This Local Act was passed by the Imperial Legislature.

3.—Bombay Acts—continued.

Act XXVII of 1837 (Salt)—*concluded.*

of salt naturally formed in a creek, which was under the supervision of an officer belonging to the Customs Department, constitutes that, the salt have been legally appropriated by such officer. (*Per* Bayley and West, JJ.) REG. v. MANSANG BHAVSANG, **10 B. H. C. A C. J. 74.**

***Act XIX of 1838 (Coasting Vessels, Bombay).**

[S. 1 REP. IN PART, ACT XIV OF 1870. FORMAL WORDS IN SS 2 TO 14 REP., ACT XVI OF 1874; SS. 9, 15, REP., SS. 12, 13, REP. IN PART, ACT XII OF 1876. DECLARED IN FORCE THROUGHOUT THE PRESIDENCY OF BOMBAY, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 5.]

(1)—*Ss.* 4, 7, 13 — *Certificate of Registry—Certificate in father's name—On father's death, his son though joint and carrying on business in the same name must obtain new certificate.*—A certificate of registry of a craft was issued, under s. 7 of the Coasting Vessels Act, in the name of a person who traded jointly with his son. On his death, the son carried on the business as before in the father's name, and did not obtain a fresh certificate for the craft. He was accordingly prosecuted for plying the craft without a certificate under s. 13 of the Act, but was acquitted by the Magistrate. The Government having appealed :—*Held*, that the craft having been registered in the father's name as sole owner. The ownership passed in the event of his death to his son who was bound to obtain a certificate under s. 4 of the Coasting Vessels Act, and that the son had, therefore, committed an offence punishable under s. 13 of the Act. EMPEROR v. HARIDAS LAKSHMIDAS, **15 Bom. L R. 994=2 Bom. Cr. C. 161= 14 Cr. L.J. 653=21 Ind. Cas. 893=38 B. 111.**

(2)—*Ss.* 4, 13—*See* ST. 17 AND 18 VIC., C. 104 ss. 24 and 26, 14 B. 170.

(2-*a*)—S. 7—*See* No. 1, *supra.*

(3)—*S.* 13—*Using boat without number and certificate of registry—Jurisdiction.*—A full power Magistrate alone has jurisdiction to convict an accused person under s. 13 of Act XIX of 1838. REG. v. KASANJI *valad* HAMINJI MHASKAR, **5 B. H. C. Cr. 6.** [*R.*, Rat. Un. Cr. Cas. 134.]

(4)—S. 13—*See* Nos. 1, 2, *supra.*

***Act XI of 1843 (Hereditary Officers, Bombay).**

[REP., BOM. ACT III OF 1874.]

S. 8—*See* CONTEMPT OF COURT, 8 B.H. C. Cr. 19.

***Act XI of 1846 (Khandesh and Ahmednagar).**

[REP., AS TO KHANDESH, ACT XIV OF 1874; REP., AS TO AHMEDNAGAR, ACT XII OF 1876.]

* These Local Acts were passed by the Imperial Legislature.

3.--Bombay Acts—continued.

Act XI of 1846 (Khandesh and Ahmednagar) —*concluded.*

(1)—*Jurisdiction of High Court to deal with cases under the Act.*—The High Court of Judicature at Bombay has the same jurisdiction as was possessed by the Sudder Fouzdari Adawlat to deal with cases under Act XI of 1846, either by way of confirmation or of appeal. QUEEN EMPRESS v. RATNYA RAJA, **Rat Un. Cr. C. 939.**

(2)—*S.* 3—*Jurisdiction — Appeal to High Court.*—Rule 44 of the rules framed under s. 3 of Act XI of 1846 was held to be *ultra vires*, as no power was given by Act XI of 1846 to the Government to confer appellate powers on the Sadar Fouzdari Adawlat,as was practically done by the rule. Act XI of 1846 being repealed in the Mehwassi Village by Act XIV of 1874, rule 44 could not be continued either by the notification published in the Bombay Government Gazette for 1879, Pt. I. p 115, or by the notification published in the Bombay Government Gazette for 1887, Pt. I, p. 19. In this case the accused were convicted, under s. 201, I.P.C., of an offence committed in the village of Gulamba in the Mohwasi Estate of Nal, in the Khandesh District, and each of the accused was sentenced by the Agent to the Governor to suffer rigorous imprisonment for five years. The Agent tried the cases under the rules framed under Act XI of 1846. The accused appealed to the High Court under Rule 44 of the rules framed under s. 3 of Act XI of 1846. *Held*, no appeal lay to the High Court. QUEEN EMPRESS v. SARYA, **15 B. 505.** [*Diss.*, 25 B. 667 ; *R.*, Rat. Un. Cr. C. 939.]

(3)—*S.* 3, *Scheduled Districts Act* IV *of* 1874 —*Rule* 35 *of the rules framed under Act* XI *of* 1846—*Reference to High Court from conviction in Scheduled District.*—The Collector of Khandesh, acting in his capacity as Political Agent for the Mehwasi Estates, tried the accused on the charge of the murder of his wife at a village in a Scheduled District, and sentenced him to transportation for life, subject to the confirmation of His Excellency the Governor in Council. The accused also presented a petition of appeal to the same authority. The Government directed the Political Agent to submit the proceedings to the High Court, and the reference was accordingly made by the Political Agent under Rule 35 of the Rules promulgated in July 1855, under the powers conferred on Government by s. 3 of Act XI of 1846. The accused's appeal also was forwarded to the High Court. *Held* that the High Court had jurisdiction to hear and determine the reference. IMPERATRIX v. RATNYA, **25 B. 667.**

*** Act XXXI of 1850 (Salt Revenue, Bombay).**

[REP. BOM. ACT VII OF 1873]

(1)—*Crim. Pro. Code* (1861), *s.* 45—*Applicability of s.* 65, *I.P.C.*—*Imprisonment in default of payment of fine.*—S. 45, Crim. Pro. Code, 1861, makes applicable the provisions of s. 65, I.P.C., to every case in which a Magistrate has jurisdiction under s. 21, Crim. Pro. Code. Where an accused person convicted under s. 3, Act XXXI of 1850, was sentenced to pay a fine of ten rupees, or in default to suffer one month's simple imprisonment, the imprisonment in default was reduced to three weeks' simple imprisonment. REG v. VITHOBA *bin* SOMA, **5 B.H C. Cr. 61.**

3.—Bombay Acts—continued.

Act XXXI of 1850 (Salt Revenue, Bombay) —*concluded.*

(2)—*See* BOM. ACT XXVII OF 1837, 7 B.H. C.A C.J. 89.

(3)—S. 3—*See* PENAL CODE, ss. 69, 70, Rat. Un. Cr. C. 40=Cr. Rg. 15 9-1870.

(4)—S. 8—*See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 10 B.H.C. 74, (note).

*** Act XXXV of 1850 (Ferries, Bombay).**

[REP., BOM ACT II OF 1868.]

(1)—*S.* 9—*Jurisdiction— Zillah Magistrate— Reg.* XII *of* 1827.—A full power Magistrate has no jurisdiction to convict for an offence under s. 9 of the Bombay Ferries Act, since only a Zillah Magistrate as defined by Reg. XII of 1827 has jurisdiction in such cases. REG. v. PRABHAKAR N. SOMAN, **3 B.H.C. Cr. 11.**

(2)—*S.* 14—*Construction.*—Conveying for hire passengers from an island in the harbour to the mainland of Bombay is not an offence under s. 14 of the Bombay Ferries Act. REG. v. MALHARI *bin* SHIVJI, **3 B.H.C. Cr. 41.**

(3)—*S.* 16—*Appeal from Zillah Magistrate's decision—Reg.* XIX *of* 1827, *s.* 14—*Time for appeal.*—An appeal lies to the Sessions from the summary decision of the Zillah Magistrate under s. 16 of the Bombay Ferries Act. Such an appeal need not be preferred within eight days as required by s. 14 of Reg. XIX of 1827. REG. v. MALHARI LAUJI ET AL, **6 B.H.C. Cr. 45.**

*** Act III of 1852 (Spirituous Liquors, Bombay).**

[REP., BOM ACT V OF 1878.]

Penal Code, s. 205—*Prosecution under Act* III *of* 1852.—A prosecution under Act III of 1852 is a criminal prosecution within the meaning of s. 205 of the Penal Code. REG. v. GANGA, **Rat. Un. Cr. C. 59=Cr. Rg. 14 12-1871.**

*** Act XIII of 1856 (Police, Presidency Towns).**

[REP. IN CALCUTTA BEN. ACT IV OF 1866, REP. IN MADRAS, ACT VIII OF 1867, S. 81, REP. IN BOMBAY, BOM. ACT IV OF 1902.]

* This Local Act was passed by the Imperial Legislature.

* These Local Acts were passed by the Imperial Legislature.

3.—Bombay Acts—continued.

Act XIII of 1856 (Police, Presidency Towns) —*concluded.*

(1)—*S.* 35 (1)—*Fraudulent possession of property reasonably suspected to be stolen.*—The Police Act being a penal enactment which shifts the burden of proof of innocence at a certain point on the accused, it has to be construed strictly. Before the accused can be called on to account for the property under s. 35 (1), there must be evidence amounting to proof to the satisfaction, not of the police officer or witness, but of the Court, that the accused possessed or conveyed a thing of which, after judicial consideration by the Court, it may be said that it "may be reasonably suspected of being stolen or fraudulently obtained." QUEEN-EMPRESS v. DHANJIBHAI EDULJI, **20 B. 348.**

(2)—*Ss.* 57, 58—*Act* XLVIII *of* 1860, *s.* 15—*Recital in warrant—Evidence—Found gaming.*—S. 15 of Act XLVIII of 1860 does not render the recitals in a warrant to the effect that information of gaming has been given on oath to the Magistrate, *prima facie* evidence of the use of the room. The proper construction to be put on the section does not require that the accused should be actually arrested in the place where the gaming has been going on. It is enough that gaming was seen to take place there. REG. v. NANA MOROJI, **8 B.H.C.R. 1.**

(3)—*Ss.* 57, 58, 111—*Form of warrant—Irregularity—Effect.*—A warrant issued under s. 58 of the Police Act should be addressed, not to all constables and peace officers, but to some one or more superior officers of Police, or at least to superior officers of Police generally. But this defect in the warrant is not such an irregularity, having regard to s. 111 of the same Act, as to vitiate a conviction on the merits for an offence under s. 57. REG. v. NANA MOROJI, **8 B.H.C Cr. 1.**

(4)—S. 58—*See* Nos. 2, 3, *supra.*

(5)—*S.* 77 — *Power of Commissioner of Police to prohibit procession—Quære.*—Whether, under s. 77, Bombay Act XIII of 1856, the Commissioner of Police has power to issue orders prohibiting processions altogether. EMPRESS v. TUCKER, **7 B. 42=7 Ind. Jur. 202.**

(6)—S. 111—*See* CERTIORARI, WRIT OF, 10 B.H.C.R. 102.

(7)—S. 111—*See* No. 3, *supra.*

Act XLVIII of 1860 (Police, Presidency Towns, Amending Act XIII of 1856).

[REP. (IN CALCUTTA) BENGAL ACT IV OF 1866, REP. (IN MADRAS) MADRAS ACT VIII OF 1867, S. 81 (IN BOMBAY) BOMBAY ACT IV OF 1902.]

(1)—*S.* 2—*Police office—Clerk of Magistrate of Police.*—The words "Police office" in this section did not apply to a Police Magistrate. *In re* JUDO NATH MOOKERJEE, **Bourke O. C. 186.**

3 —Bombay Acts—continued.

Act XLVIII of 1860 (Police, Presidency Towns, Amending Act XIII of 1856).—*continued.*

(2)—*S.* 8—*Escape from custody—Arrest under Civil process—Offence.*—Down to 1856, escapes from custody under civil process in the mofussil, and down to the end of 1855, such escapes in Bombay, were not by any legislation rendered punishable. Nor could it be held that, under s. 8 of Act XLVIII of 1860, "legal custody" meant custody under civil process and escape therefrom is not an offence. It is doubtful whether in England it was punishable criminally, and even if it was, it would be only a misdemeanour. REG. v. JOHN CONNON, **6 B.H C. Cr. 15.**

(3)—*S.* 10, *Presidency Town Police Act—Order for maintenance—Muhammadan—Divorce—Effect.*— An order for maintenance validly made against a Muhammadan husband under s. 13 of the Presidency Town Police Act Amendment Act, can no further be executed after the divorce of the wife by the husband. *In re* KASAM PIRBHAI, **8 B.H C. Cr. 95.** [*F.*, 5 A. 226, 7 B. 180, 5 C. 558; *R.*, 19 A. 50, 12 B.H. C. 281, L.B.R. 1872—1892, 145; *D.*, 15 A. 143.]

(4)—*S.* 11—*Boarding-house — License.*—A boarding-house, where regular customers take their meals at specified hours, requires a license under s. 11 of Act XLVIII of 1860. KING-EMPEROR v. SACOOBAI, **3 Bom. L.R. 765, F.B.**

(5)—*S.* 11—*Refusal of license.*—The sole circumstance that the Police Commissioner refused to grant license to the accused under s. 12 of Act XLVIII of 1860 is no good defence to a prosecution under s. 11, when it is proved that the accused keeps such an eating house as is described in that section. QUEEN-EMPRESS v. ELLAHIBAX, **Rat. Un. Cr. C. 835=Cr. Rg. 1 of 1896.**

(6)—*S.* 11, *cl* (2)—"*Hotel, tavern, shop or place,*" *construction of words.*—The words "hotel, tavern, shop or place," in cl. 2, s. 11 of Act XLVIII of 1860 are wide enough to include every place mentioned in the first clause of the section. QUEEN-EMPRESS v. SHERIAR ARDESEER ERANI, **15 B. 530.**

(7)—*Ss.* 11, 12—*Discretion in granting licenses—Act* I *of* 1877, *s.* 45—"*Personal right,*" *meaning of.*—Where a person, who purchased the business and stock in trade of an eating house which was carried on under a license granted by the Commissioner of Police, Bombay, under Act XLVIII of 1860, subsequent to his purchase, applied to the Commissioner of Police for a transfer of the license to his name, which was refused, and thereupon applied to the High Court, under s. 45, Specific Relief Act, for an order directing the Commissioner to grant a license to him: *held*, that no order could be made under s. 45. Specific Relief Act, as the Commissioner of Police, had, under ss. 11 and 12, Act XLVIII of 1860, a discretion in the matter of granting licenses. The five conditions mentioned in s. 45, Specific Relief Act, are not

3.—Bombay Acts—continued.

Act XLVIII of 1860 (Police, Presidency Towns, Amending Act XIII of 1856)—*concluded.*

disjunctive, the effect of which is that, if any one of them is not complied with, the section cannot be put into operation. The words "personal right" in s. 45 (*a*), Specific Relief Act, are intended to cover rights *in rem* such as every human being in a civilised society possesses independently of any act of his own. *In re* RUSTAM JAMSHED IRANI, **3 Bom.L.R. 653.**

(8)—*Ss.* 11, 12—*Meaning of "shall" in* s. 12 —*Granting of license for eating-house in Bombay town, if in absolute discretion of Commissioner of Police.*—The conditions set forth in s. 45, Specific Relief Act are cumulative. The word "shall," used as it is in s. 12, Act XLVIII of 1860 (Town Police), is *prima facie* imperative. The first part of s. 11, in effect, means, first, that the Commissioner of Police shall grant licenses, and, secondly, that he shall grant them upon the conditions indicated. The Commissioner of Police in Bombay is not, therefore, vested with any absolute discretion to refuse to grant licenses, for eating houses within the town of Bombay, under Act XLVIII of 1860. If they be a legal nuisance, then, any resident prejudicially affected will have his proper remedy, but the mere apprehension of the residents is no justification for refusing a license under the Act. RUSTOAM JAMSHED IRANI v. HARTLEY KENNEDY. **4 Bom. L. R. 1=26 B. 396.** (5 Moo. P.C. 296=11 Jur. 857, *F.*)

(9)—S. 12—*See* Nos. 7, 8, *supra.*

(10)—S. 15—*See* BOM. ACT XIII OF 1856, ss. 57, 58, 111, 8 B.H.C. Cr. 1.

(11)—S. 21—*See* ACT XI OF 1890, s. 3 (*b*), 26 B. 609=4 Bom. L.R. 290.

Act V 1862 (Bhagdari and Narwadari Tenures).

[REP. IN PART, ACT XII OF 1873; ACT XII OF 1876; BOM. ACT III OF 1886, DECLARED NOT TO BE IN FORCE IN THE PANCH MAHALS, ACT VII OF 1885.]

Contempt — Bhagdaree and Narvadaree Tenures Act (Bom.) V of 1862—Mamlatdar—Summons.—Bombay Act V of 1862 does not provide for the attendance of persons before the Mamlatdar for the purposes of an enquiry held under that Act. So, a conviction for disobeying a summons issued by the Mamlatdar under that Act is illegal. REG. v. MAHOMED ISMAL, **Rat. Un. Cr. C. 70=Cr. Rg. 17-4-1873.**

Act V of 1863 (Gas Companies).

[REP. IN PART, BOM. ACT III OF 1886, AMENDED, ACT XVI OF 1895.]

—*See* BOM. ACT III OF 1888, ss. 429, 430, 7 Bom. L.R. 460=2 Cr. L.J. 439.

3.—Bombay Acts—continued.

Act VI of 1863 (Public Conveyances).

[REP. IN PART, ACT XII OF 1873; ACT XII OF 1876; BOM. ACT III OF 1886; BOM. ACT III OF 1888. AMENDED, ACT XVI OF 1895; BOM. ACT V OF 1887.]

(1)—*See* ACT XVI OF 1861, s. 7, Rat. Un. Cr. C. 327=Cr. Rg. 17 of 1887.

(2)—*S.* 1—*Tonga used for carrying Her Majesty's mails.*—A tonga, when used for carrying Her Majesty's mails, is not a public conveyance within the definition contained in s. 1 of the Bombay Public Conveyances Act. QUEEN-EMPRESS v. NARAYAN, **Rat. Un. Cr. C. 521=Cr. Rg. 46 of 1890.**

(3)—*S.* 1—*Public conveyance—Hand-drawn lorry.*—A hand-drawn lorry for the conveyance of goods is a public conveyance within the meaning of the Public Conveyances Act. EMPEROR v. BANUBHAI, **15 Bom. L R. 66=14 Cr. L. J. 78=18 Ind. Cas. 414=2 Bom. Cr. C. 22=37 B. 374.**

(4)—*S.* 2—*Essentials for conviction.* — To support a conviction under s. 2 of the Public Conveyance Act, it must be proved that the carriage was a public conveyance, and that the accused kept or let it for hire. QUEEN-EMPRESS v. ABDUL RAHIMAN, **Rat. Un. Cr. C. 900.**

(5)—*S.* 2—*Licensed conveyance—Unlicensed horse—Yoking of—Penalty.*—A person who yokes a pony, which is not licensed, to a licensed conveyance and plies it for hire, commits the offence punishable by s. 2 of the Public Conveyances Act. EMPEROR v. HARI TANAJI, **15 Bom. L.R. 700=2 Bom. Cr. C. 107=14 Cr. L.J. 458=20 Ind. Cas. 618.**

(6)—*S.* 4—*License — Maximum weight.*—S 4 of Bombay Act VI of 1863 does not require that licenses granted under the Act shall contain any particulars as to the maximum weight of goods to be carried in a public conveyance. QUEEN-EMPRESS v. JHINA, **Rat. Un. Cr. C. 415=Cr. Rg. 81 of 1888.**

(7)—*S.* 6—*Refusal of license to carriage not on sealed pattern.*—The Commissioner of Police cannot refuse a license to a public conveyance on the ground that the fashion on which it is built is obsolete or objectionable, unless the Commissioner can also say that, in the particular instances before him, he has satisfied himself that the defects appearing in the pattern have been reproduced in the conveyance in question, which renders it unfit for public use. HERBERT GEORGE GELL v. TAJA NOORA, **5 Bom. L. R. 133.** (*On appeal from* 4 Bom. L.R. 768). [*R.*, 2 Bom. Cr. C. 107=15 Bom. L. R. 700=20 Ind. Cas. 618.]

(8)—*S.* 6—*Public conveyances not conforming to Police Commissioner's sealed pattern.*—The Commissioner of Police at Bombay is not justified, by s. 6 of Bombay Act VI of 1863, in refusing licenses for hack-victorias, which were so constructed as not to comply with his

3.—Bombay Acts—continued.

Act VI of 1863 (Public Conveyances)—*contd.*

"sealed pattern," though they might otherwise be most perfect and up-to date carriages. *In re* TAJA NOORA, **4 Bom. L. R. 768.** (*On appeal* 5 Bom. L. R. 133.)

(9)—*S.* 18—*Licensed drivers—List of fares—Omission to carry the list—Demand for it by police officer.*—The driver of a public conveyance was unable to produce the list of fares when required to do so by a police officer. He was, thereupon, proceeded against under s. 18 of the Public Conveyances Act, 1863, but was acquitted by the Magistrate. *Held*, upholding the order of acquittal, that the penalty under s. 18 of the Public Conveyances Act, 1863, can be imposed only when the list is not produced on demand by the hirer or passenger. EMPEROR v. ALIBHAI MIABHAI, **14 Bom. L R. 875 =1 Bom. Cr. Cas 171=17 Ind. Cas. 531=13 Cr. L.J. 787**

(10)—*S.* 22—*Meaning of "stand to ply."*—The expression "stand to ply for hire" has not been defined in the Public Conveyances Act. The question, therefore, whether drivers of public conveyances are liable under s. 22 of the Act for driving slowly along the road to pick up a fare, is one of fact and not of law. QUEEN EMPRESS v TAJA, **Rat. Un. Cr. C. 539=Cr. Rg. 10 of 1891.**

(11)—S. 22—*See* BOM. ACT III OF 1888, ss. 429, 430, 7 Bom. L.R. 460=2 Cr. L.J. 135.

(12)—*Ss.* 22 *and* 25—*Application of the Act outside Municipal limits—Refusal to drive—Receiving pre-payment of fare—Order* ultra vires *—Power of High Court to interfere—Use of preamble.*—The journey, to which s. 22 refers, must be a journey within the limit to which the Act applies. It is no offence to demand pre-payment of fare for a journey outside the said limits. The accused's refusal to proceed to a place outside the Municipal limit is not an offence under s.22. Where the facts found by a Magistrate do not constitute an offence under the Act, the conviction is not under the Act, and will be *ultra vires*, and s. 25 of the Act is no bar to the interference of the High Court in revision. When the words of a section are ambiguous, the preamble of the Act may be consulted. IMPERATOR v. KHAMISO, **2 S.L. R. 20 Cr.=10 Cr. L J. 233.**

(13)—*Ss.* 22 *and* 35—*Omission to fufil engagement by driver.*—The driver of a public conveyance, who had been engaged beforehand to call in the evening at a gentleman's house and take him out to dinner, omitted to fulfil the agreement. *Held* that the omission was not punishable under s. 22, as the driver, when he entered into the agreement, was not 'plying for hire;' also, that s. 35 debars the High Court from reversing an improper conviction under the Act. *In the matter of* DASTGIR, **Cr. Rg. 24th March 1881.**

(14)—S. 25—*See* No. 12, *supra.*

(15)—*Jurisdiction of Magistrate of Hubli.*—Under a Notification issued by the Bombay Government under s. 34 of the Bombay Public Conveyances Act, the second class Magistrate of Hubli alone is empowered to try cases under that Act. QUEEN EMPRESS v. RAMA *bin* NAGAPPA, **Rat. Un. Cr. C. 921=Cr. Rg. 26 of 1897.**

(16)—S. 35—*See* No. 13, *supra.*

Act IX of 1863 (Cotton-Frauds).

[REP., BOM. ACT VII OF 1878.]

(1) *S.* 2—*Adulteration of cotton.*—Possession of adulterated cotton, even though accompanied by the knowledge that the cotton was adulterated, would not be sufficient to sustain a conviction, unless accompanied by the offering of it for sale or compression. REG. v. HANMANT GAVDA, **1 B. 228.**

(2)—*S.*2—*Jurisdiction—Crim. Pro. Code, Act* XXV *of* 1861, *s.* 411—*Appeal.*—Where there was no evidence of mixing of cotton or that such mixing, if any, was done within the jurisdiction of the trying Magistrate, *held* that the conviction under s. 2 of Bombay Act IX of 1863 was illegal. *Quære*:—Whether, under s. 411 of the Crim. Pro. Code, there is an appeal to the Sessions Court against such a conviction? REG. v. JIVAN USMAN, **3 B.H.C. Cr. 12.**

(3)—*S.* 2—*Mixing cotton.*—Ginning two varieties of cotton, which had already been mixed together by another person, is a continuation of the process of mixing, and is an offence under s. 2 of the Bombay Cotton Frauds Act. REG. v. CHOUTHMAL LACHIRAM, **11 B.H C. 144.**

(4)—*Ss.* 2, 8—*Proof of fraudulent intent or knowledge.*—In order to convict a person of the offence of offering adulterated cotton for compression, it is not necessary for the prosecution to prove that the accused had a fraudulent intention, or that he knew that the cotton was either adulterated or deteriorated. REG. v. PREMJI BHAGVAN, **10 B H C. 295.**

(5)—S. 8—*See* No. 4, *supra.*

Act II of 1864 (Civil and Criminal Justice, Aden.)

[REP., IN PART, ACT XVI OF 1891.]

(1)—*Island of Perim—Jurisdiction of Resident at Aden.*—1. By a Government Notification No. 2336, dated 6th May, 1884, the island of Perim was included within the Sessions Division and District of Aden; and the officer in command of the troops stationed at Perim was empowered to commit persons for trial to the Court of Sessions at Aden. *Held*, that, notwithstanding the notification, the resident had no jurisdiction over the island of Perim, and the resident had never been appointed a Judge of a Court of Session for that island. Where a person charged with murder was committed for trial before the Court of the Resident at Aden, and was convicted and sentenced to death, the High Court annulled the

3.—Bombay Acts—continued.

Act II of 1864 (Civil and Criminal Justice, Aden)—*continued.*

conviction and directed the prisoner to be tried before a Court of competent jurisdiction. Act II of 1864 (Aden Act) does not by its own force extend to Perim, as it cannot be regarded as part of Aden. The Court created by Act II of 1864 was the Court of the Resident; the powers of that Court and a Court of Session were not made commensurate, as appears clearly from s. 20 and other sections. In order to properly carry out the intention of the Legislature, a Court of Sessions for a Sessions Division, including Perim, remains to be created, and a Judge appointed thereto by the Local Government. QUEEN EMPRESS v. PRIVATE MONGOL TEKCHAND. **10 B. 263.** [*R.*, 96 P.L.R. 1901, Rat. Un. Cr. 825.]

(2)—*Reg.* II *of* 1891—*Village of Shiekh Othman—Aden.*—For the purposes of Act II of 1864, the village of Sheikh Othman is, by Reg. II of 1891, made a part of the Settlement of Aden and subject to the jurisdiction of the Resident at Aden. QUEEN-EMPRESS v. NURADIN, **Rat. Un. Cr. C. 325 = Cr. Rg. 67 of 1895.** (10 B. 258, *R.*)

(3)—*Crim. Pro. Code, ss.* 1, 3, 7, 9—*Aden Act,* II *of* 1864—*Island of Perim—Jurisdiction of Resident at Aden.*—The island of Perim, having been occupied with a view to its permanent retention, is a part of British India under 21 and 22 Vic., Chap. 106 and of the Presidency of Bombay. The Penal Code and Criminal Procedure Code are in force in that island. For certain purposes, the Court of the Resident at Aden, established under Act II of 1864, may be regarded as a Court of Sessions, and the local area, to which that Act applies is a Sessions Division. It is doubtful whether the Court of the Resident could be held to be a Court of Session within the intention of the Code, for the trial of cases arising in the island of Perim, and also whether the Resident could be held to be a Sessions Judge within the meaning of the Code for the trial of such cases. The High Court intimated a wish to have these points argued by counsel, and subject to further argument on the whole question of jurisdiction, admitted the appeal by a person convicted by the Resident at Aden for an offence committed in the island of Perim. QUEEN-EMPRESS v. MANGAL TEKCHAND, **10 B. 258.** [*R.*, Rat. Un. Cr. C. 825, 96 P.L.R. 1901.]

(4)—*See* ACT XIV OF 1874, ss. 3, 5, 6, 10 B. 274.

(5)—S. 20—*See* TRANSFER OF CRIMINAL CASES—GENERAL, 29 B. 575 = 7 Bom.L.R. 104.

(6)—*Ss.* 29, 30—*Court of Resident at Aden—Review of criminal case by Bombay High Court—Certificate of the Advocate-General—High Court can go only into questions of law—Penal Code, s.* 161—*Public servant taking illegal gratifications—Bribery—" In the exercise of his official functions "—" As a motive or reward."*—There is nothing in s. 29 or 30 of the Aden Courts Act, 1864, which can operate either by express words or by necessary implication, to limit the application of those sections to cases tried by the Resident as a Court of Session or to exclude appeals from their purview. S. 30 of the Act empowers and requires the High Court of Bombay to review the case, or such part of it as may be necessary, with reference only to the points of law specified in the certificate of the Advocate-General, and the section does not contemplate that any decision by the Resident on a point of fact should be questioned in review, save in so far as such decision may be dependent, for its validity, on the determination of a point of law mentioned in the certificate. S. 161 of the Indian Penal Code requires proof that an official has obtained as a motive or reward for official conduct an illegal gratification for himself or another. That other may or may not be an official and, therefore, may be wholly unconnected with official conduct. The conduct which is contemplated as the consideration for the bribe, must be that of the official obtaining it. To obtain a bribe, as a motive or reward for another's conduct, does not fall within the section, though it may be an abetment of that offence or cheating. The performance of the act which is the consideration for the bribe is not essential. But it is essential that the bribe should be obtained "as a motive or reward." That phrase evidently means 'on the understanding that the bribe is given in consideration of some official act or conduct.' Such an undertaking need not be proved by explicit evidence of any precise agreement. It may be inferred from circumstances. EMPEROR v. BHAGWANDAS KANJI, **9 Bom. L.R. 331 = 31 B. 335 = 5 Cr.L.J. 309.**

(7)—S. 30—*See* No. 6, *supra.*

Act V of 1864 (Mamlatdars' Courts).

[REP., BOM. ACT III OF 1876.]

(1)—*Disobedience of illegal order by Mamlatdar—Penal Code, s.* 188.—A Mamlatdar was not legally empowered under Act V of 1864 (Bombay) to promulgate an order directing one person not to obstruct another in going and coming by his gateway, and to keep it open. Disobedience to such an order was not, therefore, punishable under s. 188, I.P.C. REG. v. KHANDOJI *bin* TANAJI, **5 B.H.C. Cr. 21.**

(2)—*Order directing accused to keep open right of way to privy — Jurisdiction — Penal Code, s.* 188.—An order by a Mamlatdar directing the accused to keep open a right of way to a privy was held to be an injunction to refrain from disturbing the possession of the parties and, therefore, within the jurisdiction of the Mamlatdar. A disobedience of such order was, therefore, punishable under s. 188, I.P.C. REG v. KRISHNASHET *bin* NARAYANSHET, **5 B.H.C. Cr. 46.**

3.—Bombay Acts—continued.

Act V of 1864 (Mamlatdars' Courts)—*concld.*

(3)—*Penal Code, Act* XLV *of* 1860, *s.* 188—*Mamlatdar's jurisdiction.* — A Mamlatdar, under Bombay Act V of 1864, has no jurisdiction to make an order of the nature described in s. 188 of the Penal Code. REG. v. BHAN *bin* VITHU, **3 B.H.C. Cr. 53.**

(4)—*See* MISCHIEF, 8 B.H.C. Cr. 63.

(5)—*See* SANCTION TO PROSECUTE, CONDITIONS REQUISITE FOR GRANT OF SANCTION —NECESSITY, SUFFICIENCY AND VALIDITY OF SANCTION. Rat. Un. Cr. C. 118=Cr. Rg. 21-11-1876.

Act I of 1865 (Survey and Settlement).

[REP. IN PART, ACT XII OF 1873; ACT X OF 1876; BOM. ACT IV OF 1868, SS. 16, 20. SUPPLEMENTED, AND APPLICATION DECLARED (LOCALLY), BOM. ACT IV OF 1868. AMENDED, BOM. ACT I OF 1875. REP. LOCALLY (EXCEPT SS. 37 AND 38), BOM. ACT V OF 1879. SS. 37 AND 38 REP. (LOCALLY), BOM. ACT I OF 1880.]

(1)—*Ss.* 10, 14—*City Surveys Act* (*Bom.*) IV *of* 1868—*Sanad*—*Omission to attend*—*Offence.* —An omission to attend to receive a sanad, which, it is incumbent on the Collector to issue under s. 12 of Bom. Act IV of 1868, is not an offence, the purpose being not one of those specified in ss. 10 and 14 of Bom. Act I of 1865. REG. v. GAJANAN, **Rat. Un. Cr. C. 67=Cr. Rg. 13-11-1872.**

(2)—S. 11—*See* SURVEY, 5 B.H.C. Cr. 51.

(3)—S. 14— *See* INSPECTION OF DOCUMENTS, 11 B.H.C. 231.

(4)—S. 14—*See* No. 1, *supra.*

Act II of 1866 (Divesting Revenue—Courts of certain suits).

[REP., ACT X OF 1876.]

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION —NECESSITY, SUFFICIENCY, AND VALIDITY OF SANCTION. Rat. Un. Cr. Cas. 118=Cr. Rg. 21—11—1876.

Act III of 1866 (Gambling).

[REP., BOM. ACT IV OF 1887.]

(1)—*S.* 1, *cl.* 2—"*Three miles,' meaning of.*—The expression "three miles" in s. 1, cl. 2 of Bombay Act III of 1866 must be taken to mean three miles measured in a straight line along the horizontal plane. REG. v. BHIKOBA VINOBA, **4 B.H.C. Cr. 9.** [*F.*, Rat. Un. Cr. Cas. 138.]

(2)—*Ss.* 3, 4, 5 *and* 9—*Search warrant*—*Complaint on oath*—*Finding of instrument of gaming.*—Although under s. 5 of Act III of 1866, a complaint on oath was necessary in order to authorise the issuing of the warrant, yet, if there was sufficient evidence otherwise from which the Magistrate might find the

3.—Bombay Acts—continued.

Act III of 1866 (Gambling)—*concluded.*

accused guilty of the offence charged, a search warrant might be issued. It is not necessary to make use of the finding of instruments of gaming in a house as evidence that the house was used as a common gaming-house, and that the persons were present there for the purpose of gaming. REG. v. NARAYAN SUNDAR, **5 B.H.C. Cr. 1.** [*F.*, 12 Cr. L.J. 28=8 Ind. Cas. 1127 =6 N.L.R. 168.]

(3)—S. 4—*See* No. 2, *supra.*

(4)—S. 5—*See* No. 2, *supra.*

(5)—*S.* 6—*Common gaming-house.*—A house suspected to be used as a common gaming-house, in which any instruments of gaming are found, and which is entered in the warrant issued under the provisions of the Bombay Gambling Act, is presumed to be a common gaming-house until the contrary is proved. QUEEN-EMPRESS v. GANGARAM, **Rat. Un. Cr. C. 216=Cr. Rg. 8-10-85.**

(6 & 7)—S. 6—Statement that a person keeps a gaming house—Magistrate exercising powers under—*See* CRIM. PRO. CODE, 1898, ss. 4, 190 (1) (c), 8 S.L.R. 66=15 Cr. L.J. 657=25 Ind. Cas. 985.

(8)—S. 9—*See* No. 2, *supra.*

(9)—*S.* 11—*Coin*—*Instruments of gaming.*—An instrument of gaming means an implement devised or intended for that purpose. A coin is not an instrument of gaming within the meaning of s. 11 of Bombay Act III of 1866. IMPERATRIX v. VITHAL BHAICHAND, **6 B. 19.** [*F.*, Rat. Un. R. Cr. Cas. 314; *Appl.*, 16 B. 283; *R.*, 18 A. 23; *D.*, 25 C. 432.]

(10)—*S.* 11—*Coin, not an instrument of gaming.*—A coin is not an instrument of gaming, which means an implement devised or intended for that purpose. REG. v. RAMA ZILU, **Rat. Un. Cr. C. 75=Cr. Rg. 19-6-1873.** [*F.*, Rat. Un. Cr. C. 314.]

(11)—*S.* 11—*Pieces of title.*—Pieces of title are not instruments of gaming within the meaning of s. 11 of the Bombay Gambling Act, 1866. QUEEN EMPRESS v. MAHOMED, **Rat. Un. Cr. C. 314=Cr. Rg. 72 of 1886.**

(12)—*S.* 14 — *Gambling-house, what is*—*Penal Code*, s. 268.—A common gambling-house is one kept for the profit or gain of the person keeping such house, and such a house may be a public nuisance. But, in the absence of evidence that it was so kept, or in such a manner as to cause a public nuisance within the meaning of s. 268 of the Penal Code, it cannot be held that every person who admits gamblers into the house and every person who goes in is guilty of the offence of public nuisance. REG. v. HAU NAGJI ET AL, **7 B.H.C. Cr. 74.** [*R.*, L.B.R. 1872—1892, 59.]

3.—Bombay Acts—continued.

Act VIII of 1866 (Sale of Poisons).

[REP. IN PART, ACT XII OF 1873; ACT XVI OF 1895; BOM. ACT III OF 1886. REP. ACT I OF 1904, FROM DATE NOTIFIED UNDER S. 11, THEREOF.]

(1)—*S.* 11—*Scope.*—A conviction under s. 11 of Bombay Act VIII of 1896 can only be had before a Magistrate of the first class. EMPRESS v. IMAMBU, **4 B. 167.**

(2)—*S.* 13—*Omission to keep accounts for sales of poison—Jurisdiction.*—A first class Magistrate alone can try an offence of omitting to keep accounts of the sale of poisons under s. 13 of the Bombay Poisons Sales Act, and a second class Magistrate has no jurisdiction to try such a case. QUEEN EMPRESS. v. SHRIRAM, **Rat. Un. Cr. C. 292 = Cr. Rg. 35 of 1886.**

Act XII of 1866 (Courts, Sindh.)

[REP. IN PT., ACT XII OF 1873; REP. IN PT., ACT XVI OF 1895; REP. IN PT., BOM. ACT III OF 1886. AM., BOM. ACT III OF 1868. "LOCAL GOVERNMENT" SUBSTITUTED FOR "GOVERNOR IN COUNCIL," "GOVERNMENT OF INDIA" SUBSTITUTED FOR "GOVERNOR GENERAL OF INDIA IN COUNCIL," SS. 1, 2, 6, 9, 10, 16, 17, 21 (PROV.) AM., SS. 1A, 9A, 9B, 9C, 9D, 9E, 15 A, INS., S. 7 REP., BOM. ACT I OF 1906.]

S. 16—*Pleader signing and executing* vakalat *for accused—Deception on Court—Professional misconduct.*—G, a pleader, was approached for the defence, in a criminal case, by the relatives of the accused, who refrained from coming themselves, as warrants were out for their arrest. G drew up and handed over to the relatives an application for copies together with a *Vakalatnama* purporting to have been executed in his favour by the accused themselves, but as a matter of fact executed for them by himself, to enable them to obtain copies from the Court. *Held* that it was the duty of the pleader to inform the relatives that he could do nothing without a *Vakalatnama* executed by the accused themselves, and that his act amounted to a deception on Court. Such attempted deception cannot be too strongly condemned on the part of a pleader, whose bounden duty it is as an officer of the Court not deceitfully to circumvent but honestly and loyally to uphold the practice of the Courts. *Re* PROFESSIONAL MISCONDUCT OF MR. G.A., PLEADER **4 S.L.R. 242, F B. = 11 Ind. Cas. 234 = 12 Cr. L J. 390.**

Act III of 1867 (Bom. Cantonment).

[REP., ACT XIII OF 1889.]

See ACT XIII OF 1889.

(1)—*S.* 9—*Rules—Sanction of Committee and declaration of Magistrate.*—Any temporary construction within the limits of a Cantonment is an offence only if it shall be declared to be objectionable by the Cantonment Magistrate with the sanction of the Cantonment Committee, according to the rules framed under Act III of 1876. QUEEN-EMPRESS v. GOVIND BAPUJI, **Rat. Un. Cr. C. 875 = Cr. Rg. 54 of 1896.**

(2) *S.* 10—*Cantonment Rules, r.* 3—*Closing of public road — Interpretation.*—Though the Rules framed under the Cantonment Act should be construed so as to uphold their legality, yet, it cannot be held that s. 10, cl. 6 of the Act intended to authorize the Commanding Officer to altogether close a public road to traffic at all times. QUEEN-EMPRESS v. SUCKOO, **Rat. Un. Cr. C. 476 = Cr. Rg. 35 of 1889.**

(3)—*S.* 11—*Cantonment Rules—Public nuisance—Drum-beating.*—The beating of a drum at a certain specified time does not amount to a public nuisance and does not fall within s. 11 of Bombay Act III of 1867. A rule prohibiting such an act goes beyond the powers conferred by the Act. QUEEN-EMPRESS v. BHAYA RAMRATAN, **Rat. Un. Cr. C. 480 = Cr. Rg. 45 of 1889.**

(4)—*S.* 11, *r.* 39—*Admixture of water with milk—Penal Code*, s. 420.—The mere admixture of water with milk, not being ordinarily sufficient to render it noxious as drink, cannot be punished as an offence of adulterating milk by mixing water with it so as to render it noxious as drink as contemplated by r. 39 of the rules but such cases (that is, cases in which there is no proof that the adulteration is noxious) when penal, are generally so on account of their involving the offence of cheating, and should be dealt with under s. 420, I.P.C. QUEEN-EMPRESS v. HIRI, **Rat. Un. Cr. C. 367 = Cr. Rg. 14 of 1888.**

(5)—*S.* 11. *r.* 57—*Cantonment — Repair of house, neglect of.*—It is not an offence punishable under r. 57, ch. III of the Cantonment Rules, to neglect to repair a *house* within the Cantonment limits. QUEEN-EMPRESS v. NAVALMAL, **Rat. Un. Cr. C. 636 = Cr. Rg. 11 of 1893.**

(6)—*S.* 11, *r.* 75—*Act* XIII *of* 1889, *s.* 2 (2)—*Common gaming-house.*—In order to constitute a house a common gaming-house, it should be found that the instruments of gaming were kept for the benefit or gain of the person keeping the house, whether by way of charge for the use of the instruments of gaming or of the house, room or place, or otherwise howsoever. A house rented by some members of the Joanese community in the name of one of the persons who kept the house, restricted to the use of the members only, is not "a common gaming house" by the mere fact of the members playing for money with cards, in the absence of proof that the member keeping the house was making any profit by way of charge for the use of either the cards or the house. QUEEN-EMPRESS v. ANTONE FERNANDEZ, **Rat. Un. Cr. C. 706 = Cr. Rg. 39 of 1894.**

(7)—*Ss.* 11, 12, 14—*Conviction without complaint—Report of police and medical officers—*

3.—Bombay Acts—continued.

Act III of 1867 (Bom. Cantonment)—*contd.*

Simultaneous sentences of fine and imprisonment.—The report of a police officer and a medical officer that a prostitute, having been served with notice, did not appear for examination by the Civil Surgeon as required by s. 11 of Bombay Act III of 1867, is no proper substitute for a complaint on oath, and a conviction thereon is illegal. Simultaneous sentences of fine and of imprisonment in default of payment of fine, under s. 12, Bombay Act III of 1867, are illegal. Imprisonment can only be awarded under s. 14 of the Act in the event of no property sufficient for the payment of the fine being found. REG. v. LADU, **7 B.H C. Cr. 87.**

(8)—S. 12—*See* No. 7, *supra.*

(9)—*Ss.* 13 *and* 14—*Default of payment of fine—Imprisonment—Penal Code*, ss. 40, 64—Notwithstanding the amendment, by s. 1 of Act VIII of 1882, of s. 40, I.P.C., and the amendment by s. 2 of the Act of s. 64 of the Code, the provisions of ss. 13 and 14 of Bombay Act III of 1867, which is a special and local law, still remain unaffected under s. 5, I.P.C. The ruling in *Reg* v. *Lallu* (8th August, 1870) that, in cases coming under the Cantonment Act, 1867, simultaneous sentences of fine and imprisonment in default of payment of fine, are illegal, was held to be still in force. QUEEN EMPRESS v. BIRAIN, **Rat. Un. Cr. C. 221.**

(10)—Ss. 13, 14—*See* ACT XIII OF 1889, s. 27, Rat. Un. Cr Cas. 563=Cr Rg. 36 of 1891.

(11)—S. 14—*See* Nos. 7, 9, 10, *supra.*

(12)—*S.* 21—*Act* XIII *of* 1889 (*Cantonment*), *ss.* 2 *and* 13—*Punishment of whipping.*—Since the repeal of s. 21 of Bombay Act III of 1867 by XIII of 1889, which substitutes a new s. 13 containing no mention of whipping, that punishment is not kept alive by s. 2 of Act XIII of 1889. QUEEN EMPRESS v. LAKSHMAN, **Rat. Un. Cr. C. 682=Cr. Rg. 49 of 1893.**

(13)—*R.* 17—*Bombay Act* III *of* 1867—*Butcher taking diseased cattle to Inspector—Offence.*—Where the accused, butchers, took diseased cattle to a public slaughter-house for getting them passed by the Inspector as fit for food, *held* this act was not punishable under r. 34 of the Cantonment Rules as that Rule applies only to owners or occupants of places used as slaughter-houses who have killed a diseased animal therein or have failed to report that such an animal had been taken there for being killed. QUEEN EMPRESS v. RAMJAN, **Rat. Un. Cr. C. 471=Cr. Rg. 28 of 1889.**

(14)—R. 29—*See* No. 4, *supra.*

(15)—*R.*48—*Offensive trades—Declaration.*—In the case of offensive trades, the Cantonment Magistrate should, before instituting proceedings, make the declaration specified in r. 48 of the Rules framed by the Bombay Government under Act III of 1867. REG. v. SHAIKH CHEGAN, **Rat. Un. Cr. C. 54=Cr. Rg. 17-8-1871.**

3.—Bombay Acts—continued.

Act III of 1867 (Bom. Cantonment)—*concld.*

(16)—R. 57—*See* No. 5, *supra.*

(17)—*R.* 71—*Lock Hospital—Public place.*—A lock hospital is not a public place within the meaning of r. 71 of the Cantonment Rules. QUEEN EMPRESS v. CHANDRI, **Rat. Un. Cr. C. 361=Cr. Rg. 4 of 1888.**

(18)—S. 75—*See* No. 6, *supra.*

(19)—*R.* 76—*Omission to appoint resident agent—Offence.*—R. 76 of the Cantonment Rules, which requires every absent owner of property within the limits of a Cantonment to appoint a resident agent, is a rule of procedure and convenience only, and an omission to comply with it is not penal under s. 11 of the Cantonment Act. QUEEN EMPRESS v MOTI LAL, **Rat. Un. Cr. C. 497=Cr. Rg. 3 of 1890.**

Act VII of 1867 (Bombay District Police).

[S. 31, REP. IN PART AND AMENDED BY BOM. ACT III OF 1886, REP. (SAVE SS. 33, 34), BOM. ACT IV OF 1890, SS. 33, 34, REP. (LOCALLY AND TEMPORARILY) BOM. ACT I OF 1889.]

(1)—*British-born subject in Mofussil—Jurisdiction.*—The Bombay District Police Act passed by the Governor of Bombay in Council, is *ultra vires* in so far as it confers criminal jurisdiction upon Magistrates in the mofussil, being also Justices of the Peace, over British-born subjects. The Acts of Parliament, under which the High Court is constituted, confer exclusive jurisdiction on the High Court in this matter except as limited by 53 Geo. III, c. 155, s. 105, and certain subsequent Acts of the Government of India. Though the East India Company had power, under the Charter of 1661 and 1668 of Charles II, to legislate about British-born subjects, yet this power ceased at the time of *Queen Anne*, and from that time up to 1834, when the Governor-General's Council became the sole legislative power in India, no authority was given to the Indian Governments to legislate about such subjects except within the local limits of Presidency towns. REG v. EDWARD REAY, **7 B. H. C. Cr. 6.** [*R.*, 7 B.H.C. Cr. 77.]

(2)—*Crim. Pro. Code* (1882), *s.* 555—*Applicability—Personal interest.*—Though s. 555 of the Crim. Pro. Code does not apply to village police officers, the principle contained therein does, and a Police Patel cannot try a case in which he is personally interested. QUEEN EMPRESS v. BAI KUSA, **Rat. Un. Cr. C. 433.**

(3)—*See* PENAL CODE, s. 188, Rat. Un. Cr. Cas. 81=Cr. Rg. 11-6-1874.

(4)—*S.* 3—*Duties of Police—Duty of destroying stray dogs.*—The duties of the police are divisible into three heads:—(1) those imposed upon them by the rules framed by the Commissioner and approved by the Government, (2) those imposed by the rules or orders which the Commissioner may make preventing abuse or neglect of duty and (3) those imposed by law.

3.—Bombay Acts—continued.

Act VII of 1867 (Bombay District Police) *—continued.*

The duty of destroying stray dogs is one which can only be brought under the first of these heads, and, as the rule relating to it, though it has been in force for many years, is stated not to have received the approval of the Government, it is on this account invalid and a conviction for a breach of it is illegal. REG v. JETHYA ALLIAJI, **Rat. Un. Cr. C. 107.**

(5)—*S.* 7 – *Village Mahars — Patel's order to assist the Public Works Department.*—A Police Patel has no authority, under s. 7 of the Bombay District Police Act, to order the village Mahars to assist a subordinate officer of the Public Works Department in measuring the road. And the Mahars cannot be convicted under cl. 1 of s. 15 for refusing to obey such an order. QUEEN-EMPRESS v. DHAVLYA, **Rat. Un. Cr. C. 509 = Cr. Rg. 28 of 1890.**

(6)—*Ss.* 7, 26—*District Police.—Jurisdiction*—A Superintendent of Police, even if he is also a full power Magistrate, has no jurisdiction to try a Police officer for an offence under s. 26 of the Bombay District Police Act in having permitted prisoners to escape from his custody and not reporting the same to his superior. REG. v. SYAD UMAR, **Rat. Un. Cr. C. 29 = Cr. Rg. 10-2-1870.**

(7)—*S.* 8—*Sanction of Government.*—An Inspector of Police being an officer who may be removed from office, under s. 8 of the Bombay District Police Act, without the sanction of the Government, the sanction of the Government is not necessary in order to give a Magistrate jurisdiction to entertain a complaint against him of an offence committed in his capacity as a Police Officer. QUEEN-EMPRESS v. GANPAT, **Rat, Un. Cr. C. 142.**

(8)—*S.* 9—*Railways Act* XVIII *of* 1854, *s.* 27—*Railway Police.*—Members of the Railway Police, though they hold commissions from the Commissioner of Police under s. 9 of the District Police Act, are amenable to the provisions of the Railways Act for neglect of duty. REG. v. SAYAD KAZI, **Rat. Un. Cr. C. 51 = Cr. Rg. 15—6—1871.**

(9)—S. 9—*See* ACT XVIII OF 1854, s. 27, Rat. Un. Cr. C. 51 = Cr Rg. 15—6—1871.

(10)—*S.* 16—*Police Patels—Remission of fine by District Magistrate—High Court.*—A District Magistrate cannot remit any portion of a fine inflicted by a Police Patel under s. 16 of the Bombay Village Police Act, so as to make it conform to law, but must refer the matter to the High Court. Police Patels have always been treated as subject to the superintendence of the High Court QUEEN EMPRESS v. HARGOWIN, **Rat. Un. Cr. C. 478 = Cr. Rg. 41 of 1889.**

(11)—*S.* 23—*Right of police officer to examine witnesses.*—S. 23 of Bombay Act, XII of 1867, does not give any right to a police officer to examine or cross-examine witnesses in a Criminal Court. REG v. TEESLA TOOKA, **Rat. Un. Cr. C. 28.**

(12)—*S.* 23, *Crim. Pro. Code* (1882), *s.* 495—*Power of Police officer below the rank of Inspector to prosecute.*—The special local law, Bombay Act VII of 1867, has been preserved by the Code, whether intentionally or through oversight. Therefore, a prosecution instituted by a police officer, below the rank of an Inspector, that is to say, a chief constable, was held to be valid. QUEEN-EMPRESS v. HONKERAPA, **8 B. 534.**

(13)—*S.* 26—*Police officer overstaying leave.*—A police constable overstaying the casual leave granted him, without permission, withdraws from the duties of his office without permission and commits an offence within the meaning of s. 26 of the Act. QUEEN-EMPRESS v. SHEIK SULTAN, **Rat. Un. Cr. C. 279 = Cr. Rg. 17 of 1886.**

(14)—S. 26—*See* No. 6, *supra.*

(15)—*S.* 27—*Prohibition by police of music in private houses.*—S. 27 of Bombay Act VII of 1867 does not empower the police to prohibit the use of music in a private house. REG. v. LUKHMAVIEW CHANGO, **9 B.H.C. 153, A.C.J.**

(16)—*Ss.* 27, 29—*Powers of District Superintendent to prohibit the carrying of sticks.*—A Police Superintendent cannot, under s. 27 of the Bom. District Police Act, 1867, legally make an order forbidding sticks to be carried by persons attending a certain *jatra* (fair). Hence, a person who, in contravention of such an order, carries a stick at the *jatra*, is not guilty of an offence under s. 29 of the Act. QUEEN-EMPRESS v. SANGAPPA, **Rat. Un. Cr. C. 394 = Cr. Rg. 51 of 1888.**

(17)—*S.* 28—*Power to issue general order.*—The police have power, under s. 28 of Bombay Act VII of 1867, to issue a general notification ordering people to drive on the proper side of the road. REG. v. KHODA BHARTHE, **Rat. Un. Cr. C. 35 = Cr. Rg. 15-6-1870.**

(18)—S. 28—*See* CRIM. PRO. CODE, 1898, s. 190, Rat. Un. Cr.C. 355 = Cr. Rg. 44 of 1887.

(19)—*Ss.* 28, 29—*Written order if necessary.*—An order issued under s. 28 of the Bombay District Police Act need not be in writing. Disobedience of an oral order is punishable. REG. v. BAPUJI GANGARAM, **7 B.H.C. Cr.** 2.

(20)—*Ss.* 28, 29—*Warning against going along a road.*—The warning or advice given by the Police to certain persons not to go alone on a particular road, as the country was believed to be infested with dacoits, is not such an order as can be legally passed, under s. 28 of the Bombay District Police Act and non-compliance with it is not punishable under s. 29 of the Act. QUEEN-EMPRESS v. RAMA, **Rat. Un. Cr. C. 385.**

3.—Bombay Acts—continued.

Act VII of 1867 (Bombay District Police) *—continued.*

(21)—S. 21—*See* Nos. 16, 19, 20, *supra.*

(22)—*S.* 31—*Magistrate on tour—Resident.*—The words "Magistrate resident" in s. 31 of Bombay Act VII of 1867 do not include a Magistrate who happens on his tour to stay a few days at a place. QUEEN-EMPRESS v. MAHADU, **Rat. Un. Cr. C. 483=Cr. Rg. 49 of 1889.**

(23)—*S.* 31 (3)—*Committing nuisance, not an offence under cl.* 3 *of s.* 31, *but only under cl.* 4.—A person committing nuisance on or close to, and within sight of, any public road, street or thoroughfare, is liable to be punished under cl. 4 of s. 31, but cannot be legally convicted of depositing dirt under cl. 3 of the section. QUEEN-EMPRESS v. SHIVA KASHIRAM, **Rat. Un. Cr. C. 521=Cr. Rg. 45 of 1890.**

(24)—*S.* 31 (3)—*Imprisonment in default of payment of fine, nature of.*—The punishment of imprisonment in default of payment of fine inflicted upon a person convicted under s. 31, cl. 3 of Act VII of 1867 (Bombay) should be simple and not rigorous. REG. v. BECHAR KHUSHAL, **5 B.H.C. Cr. 43.**

(25)—*S.* 31—*Resident Magistrate—Need of Government Notification.*—S. 31 of Bombay Act VII of 1867 became at once operative at places, where there was a Magistrate resident, without being specially extended by Government by *Notification.* REG. v. KERU *bin* RAMSHET, **5 B.H.C. Cr. 100.**

(26)—*S.* 31—*Cruelty to animals.*—A man who, after firing at a dog, refrains from again firing at it to put it out of pain, does not commit an offence under s. 31 of Bom. Act VII of 1867. QUEEN-EMPRESS v. FRANCIS, **Rat. Un. Cr. C. 183.**

(27)—*S.* 31—"*Nuisance*" *defined — Penal Code,* s. 268.—The expression "commits nuisance," in s. 31 of the Bombay District Police Act, does not mean a nuisance within the definition of the term in s. 268 of the Indian Penal Code, but a nuisance within the meaning of the common notice to the public to "commit no nuisance." QUEEN-EMPRESS v. NILKANTH, QUEEN-EMPRESS v. GANESH, **Rat. Un. Cr. C. 134=Cr. Rg. 8-4-1878.**

(28)—*S.* 31 (2)—*Prohibitory notice—River, if a watering place.*—A conviction under s. 31, cl. 2 of Bombay Act VII of 1867 is illegal, if the prohibitory notice specified therein has not been issued. A river is not a watering place within the meaning of the above clause. REG. v. CHHOTIRAM BHASKER, **Rat. Un. Cr. C. 55=Cr. Rg. 31-8-1871.**

(29)—*S.* 31 (4)—*Making water in a public street.*—To perform the offices of nature, as, *e.g.*, to make water in a public street, is an offence punishable under s. 31 (4) of the Bombay District Police Act, provided there be evidence of annoyance to residents or passengers. QUEEN-EMPRESS v. MULLA, **Rat. Un. Cr. 305 =Cr. Rg. 56 of 1886.**

(30)—*S.* 33—*Structure contemplated by section, what amounts to*—"*Booth,*" *defined.*—The accused owned a house on each side of a street and put bamboos across the street from the top windows of one into the top windows of the other house, and laid a covering of cloth over the bamboos, thus making a canopy, roof or awning over the street. The structure was at such a height that no obstruction or inconvenience whatever was caused to persons or animals passing along the street. *Held* that the structure could not be considered to have been constructed on the road, as the use of the word "on" would seem to imply that the structure complained of must be on the road itself and cause some nuisance. *Held,* also, that it was not a booth. S. 33 of the Bombay District Police Act did not, therefore, apply. In Webster's dictionary, the word "booth" is said to mean "a house or shed built of boards, boughs of trees or other light materials for temporary occupation." In Latham's dictionary, it is said to mean "a temporary house constructed with boards or boughs or canvas." *In re* NAHAL CHAND MOTIRAM, **22 B. 742.**

(31)—*S.* 33—*Scope—Structures of temporary character—Crim. Pro. Code,* 1898, s. 133 — *Per Chandavarkar, J.*—In s. 33 of the District Police Act, the Legislature intended to deal with structures of a temporary character, *e.g.*, cases where a person, without intending to appropriate a public thoroughfare permanently to his own purposes, builds a temporary structure for a temporary purpose such as a booth, shed, stable or the like. Where, however, a person appropriates a public thoroughfare permanently to his own purposes and builds a *pucca* wall, he is liable to be proceeded with under s. 133, Crim Pro. Code, or punished of offences under s. 269, I.P.C., *Per Aston, J.*—Where a person builds a wall on ground forming part of a public street, he can be dealt with under s. 33, District Police Act. EMPEROR v. DEWRAO CHAPAJI, **6 Bom. L.R. 358.**

(32)—*S.* 33—*Nuisance committed by children outside school—Criminal liability of teacher.*—The masters of a school were convicted of wilfully permitting a common nuisance to continue, by allowing some two hundred pupils to obey the calls of nature daily in a plot of ground within the town and close enough to other houses to cause annoyance and danger to health. *Held* that children once outside the school are not so under the control of the master so as to make the latter criminally responsible, as their parents might be, for a nuisance committed by their children. If a school is so conducted as to be a nuisance, the complainant can get a remedy by injunction. QUEEN-EMPRESS v. RAVANSHIDAPA, **Rat. Un. Cr. C. 291=Cr. Rg. 32 of 1886.**

3.—Bombay Acts—continued.

Act VII of 1867 (Bombay District Police) —*concluded.*

(33)—*S.* 42—*Crim. Pro. Code* (1882), s. 54—*Penal Code, s.* 342—*Prosecution of Police officer for wrongful confinement without warrant.*—The provisions of s. 42 of Bom. Act VII of 1867 must be held to apply to criminal prosecutions as well as to civil actions, notwithstanding the use of the word "decree" in s. 43 in connection with prosecutions. The prosecution of a Police Officer for an alleged offence of wrongful confinement, punishable under s. 342, I. P. C., the Police officer having, without a warrant, arrested and detained in custody the person in whose possession he found property which he suspected to be stolen, is a prosecution for a thing done or intended to be done under Bom. Act VII of 1867, inasmuch as s. 21 of the Act authorizes every Police officer to apprehend all persons whom he is legally authorized to apprehend, and s. 54 of the Crim. Pro. Code, authorises the arrest by a Police officer without warrant of any person in whose possession any thing is found which may be reasonably suspected to be stolen property, if the person may be "reasonably suspected of having committed an offence with reference to such thing." Authority given to arrest in such cases implies authority to detain. QUEEN-EMPRESS v. RAMCHANDRA, **Rat. Un. Cr. C. 220=Cr. Rg. 26-11-85.**

(34)—*S.* 42—*Absence of notice—Official act done in good faith.*—Where two Police constables were prosecuted for having severally beaten the complainant in the course of a night patrol duty, but under circumstances apparently showing a complete absence of authority or jurisdiction, without the notice required under s. 42 of the Bombay District Police Act, *held* that such notice was not a condition precedent to the prosecution, and that the protection thereby extended to official acts done in good faith, though in excess of authority, does not exist where there is a total absence of authority. QUEEN-EMPRESS v. GANU, **Rat. Un. Cr. C. 486=Cr. Rg. 51 of 1889.**

Act VIII of 1867 (Village Police).

[REP. IN PART, ACT XII OF 1873; ACT XII OF 1876; BOM. ACT III OF 1886; REP. IN PART (LOCALLY AND TEMPORARILY), BOM. ACT I OF 1889. AMENDED, BOM. ACT I OF 1876; BOM. ACT. III OF 1886 (AS AMENDED BY BOM. ACT I OF 1891). SUPPLEMENTED, BOM. ACT IV OF 1890, S. 58, S. 9, AMENDED BOM. ACT IV OF 1905.]

(1)—*Powers of Police patel.*—A police patel has no authority, under the Village Police Act, to prevent persons from performing tamashas in their houses. QUEEN-EMPRESS v. TUKARAM, **Rat. Un. Cr. C. 287=Cr. Rg 24 of 1886.**

(2)—*Inquest—Police Patel.*—The omission of Police patel to hold the inquest, as required by Bombay Act VIII of 1867, should be pointed out by the Courts to the District Magistrate. *In re* GHARYA, **Cr. Rg. 44 of 1894.**

3.—Bombay Acts—continued.

Act VIII of 1867 (Village Police)—*continued.*

(3)—*See* CORONER, Rat. Un. Cr. Cas. 771=Cr. Rg. 35 of 1895.

(4)—*See* CRIM PRO. CODE, 1898, ss. 60, 61, Rat. Un. Cr. C. 22=Cr. Rg. 14-9-1869.

(5)—*See* INQUEST REPORT, 6 B H.C. Cr. 75.

(6)—*See* BOM. REG. XII OF 1827, s. 52, 6 B.H.C. Cr. 75.

(7)—*See* SUDDEN DEATH, Rat. Un. Cr. Cas. 792=Cr. Rg. 50 of 1895.

(8)—*Ss.* 6 *and* 14—*Police patel—Judicial proceedings before the Police patel—District Magistrate's power to transfer the case to another Court—Transfer of case—High Court—Superintendence—Letters Patent, cls.* 26 *and* 27.—The duties which are enumerated in s. 6 of the Village Police Act, 1867, are the executive duties of the Police Patel: they are duties imposed upon him quite independently of the authority which he has given to him under s. 14 to try and punish in cases of petty assault and abuse. The authority given to him by s. 14 is a judicial and not an executive authority. S. 6, therefore, does not justify the District Magistrate in stopping the judicial proceeding which is already in progress before the Police Patel. Apart from the power expressly conferred by the Act upon the Magistrate in that connection, the only right of superintendence over the judicial functions of the Police Patel created by the Village Police Act, is vested in the High Court by cls. 26 and 27 of the Letters Patent. *In re* DAYAL KANJI, **10 Bom. L.R. 630=8 Cr.L.J. 141.**

(9)—*Ss.* 6, 15—*Patel's authority to summon.*—A Police Patel has authority to summon a person to appear before him in reference to an offence of which he can take cognizance. If the summons is signed by the Patel, refusal to obey it is an offence under cl 1 of s. 15 of the Village Police Act. QUEEN-EMPRESS v. RATNIA, **Rat. Un. Cr. C. 550=Cr. Rg. 25 of 1891,** [*F*, 3 Cr. L.J. 239=8 Bom. L R. 118.]

(10)—*S.* 9—*Police Patel—Not reporting encroachment—Conviction of Police Patel—Legality.*—The duty of reporting encroachments by villagers on the public road is not a duty cast on a Police Patel under Act VIII of 1867, and a conviction under s. 9 for not reporting such a matter is illegal. REG v. UKHA SAV, **7 B. H. C. Cr. 88.**

(11)—S. 9—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 4 B. 357.

(12)—*Ss.* 10, 11, 12—*Duties of Police patel in cases of unnatural and sudden death.*—The ancient village system of Police, regulated formerly by Reg. IV of 1818 and Reg. XII of 1827 and now by Bombay Act, VIII of 1867, remains unaffected by the Code of Criminal Procedure, except where the Code contains a special provision. Under the local law, the Police patel has to do much more than merely

3.—Bombay Acts—continued.

Act VIII of 1867 (Village Police)—*continued.*

inform the District Police under s. 10 thereof, or under s. 45 of the Code. Under s. 10, he has himself to investigate the matter of a crime and obtain all procurable evidence. Under s. 11, if any unnatural or sudden death occur, or any corpse be found, the police patel shall forthwith assemble an inquest and investigate with the *panch* the causes of death and all the circumstances of the case, and make a written report of the same. If, from the inquest, it appears that the death was unlawfully caused, he must give immediate notice to the Police station, and, if the state of the corpse permits, he shall at once forward it to the Civil Surgeon or other appointed Medical Officer. Under s. 12, the Police patel can make arrests, and under s. 13, he can take evidence on solemn affirmation and hold searches. QUEEN-EMPRESS v. RAGHO MAHADU, **19 B. 612.** [*R.*, Rat. Un. Cr. C. 792, Rat Un. Cr. C. 854.]

(13)—*S. 11—Duty of Police Patel—Inquest—Object of—Coroner's inquest.*—The law, which imposes on the Police Patel the duty of holding an inquest and arresting murderers and empowers him to take evidence on oath, is obviously intended to make justice effectual by means of prompt enquiry in the face of all villagers, and by delivery of the verdict of men not open to the suspicions of undue zeal often cast on the District Police. Like the Coroner's inquest, it also records the evidence and circumstances justifying the accusation of the person denounced or appearing to be the murderer. Like the Coroner's inquest, it saves the innocent from false charges, as people are not likely to bring charges, against an innocent man when they have kept silence at the inquest. The inquest must be held forthwith, so that all the circumstances of the murder may be reported forthwith to the District Police. QUEEN-EMPRESS v. VASTA JEBHAN, **Rat. Un. Cr. C. 740=Cr. Rg. 8 of 1895.**

(14)—S. 11—*See* No. 12, *supra.*

(14-*a*)—*S.* 12 (1)—*Arrest—Bail.*—S. 12 (1) of the Village Police Act authorizes Police patels to arrest for "any serious offence." The power of the Police to take bail being regulated by the Crim. Pro. Code, the Court cannot empower a Police constable to take bail for persons sent to him by Police patels under Act VIII of 1867. KULLADGHEE MAGISTRATE'S LETTER NO. 444 OF 1869, **Rat. Un. Cr. C. 26=Cr. Rg. 12-10-1869.**

(15)—S. 12—*See* No. 12, *supra.*

(16)—S. 13—*See* FALSE EVIDENCE, 4 B. 479.

(17)—*S. 14—Term "assault" defined.*—The word "assault" used in s. 14, Bombay Village Police Act, is not confined to the definition given in s. 351, I.P.C., but means what is colloquially called an assault, namely, any unlawful attack upon the person of another, and includes, therefore, what under the Penal Code would amount to the use of criminal force. QUEEN-EMPRESS v. JAGANNATH BIJLAL MARWADI, **1 Bom. L.R. 687.**

(18)—*S.* 14—*Powers of Police Patel.*—Under s. 14 of the Bom. Village Police Act, 1867, the Police Patel, on convicting a person of abuse, has authority to punish him with confinement in the Village Chowri for a period not exceeding 24 hours; but has no authority to inflict a fine. QUEEN-EMPRESS v. RAGHO NANASING, **Rat. Un. Cr. C. 187=Cr. Rg. 11—1—83.**

(19)—S. 14—*See* No. 8, *supra.*

(20)—*S.* 15—*Power of Village Police Patel to order imprisonment in default of fine—Penal Code, s.* 64—*Bombay General Clauses Act* (III *of* 1886), *s.* 12.—A Village Police Patel has, under s. 15, jurisdiction either to impose a fine not exceeding Rs. 5 on a person convicted by him of theft under that section, or to confine him in the village *Chowri* for a period not exceeding forty-eight hours, but has no jurisdiction to sentence the accused to confinement in default of payment of fine, s. 64, Penal Code, not being made applicable by the Bombay General Clauses Act to proceedings under the Bombay Village Police Act. EMPEROR v. FUNA LAXMAN BHIL, **6 Bom. L.R. 357.**

(21)—*S.* 15—*Police Patel—Verbal order by a Police Patel sent through a messenger asking a person to be present before him personally.*—A verbal order sent through a messenger by a Police Patel, under s 15 of the Act, asking a person to present himself before him to answer an accusation, is not a lawful order issued by the Police Patel personally within the meaning of s. 15. EMPEROR v. SHIVOO GOWRI, **8 Bom. L R. 118=3 Cr. L J. 239.** (Rat. Un. Cr. C. 550, *R.*).

(22)—*S.* 15—*Non-cognizable offence—Patel's authority to summon.*—A Police Patel has no authority to order the accused to attend at his office in a case of an offence not cognizable by him. Refusal to obey such an order is not an offence under s. 15 of the Act QUEEN-EMPRESS v. VENKATESH, **Rat. Un. Cr. C. 551=Cr. Rg. 26 of 1891.**

(23)—*S.* 15—*Omission to obey Patel's order.*—A mere omission, which is not a refusal, to obey a Police Patel's order, is not punishable under s. 15 of the Bombay Village Police Act. QUEEN-EMPRESS v. NATHU, **Rat. Un. Cr. C. 624=Cr. Rg. 49 of 1892.**

(24)—*S.* 15—*Power of Police Patel to order removal of wood lying on public road.*—A Police Patel has, under the Bombay Village Police Act, no power to order the removal of a piece of wood lying on a public road; disobedience of such an order, therefore, is no offence under s. 15 of the Act. QUEEN-EMPRESS v. DAMA GHELA, **Rat. Un. Cr. C. 980.**

3.—Bombay Acts—continued.

Act VIII of 1867 (Village Police)—*continued.*

(25)—*S.* 15 (1)—*Refusal to answer questions —Police Patel.*—The refusal to answer questions put by a Police Patel in a Criminal proceeding is not "refusal to obey a lawful order issued by a Police Patel personally" within the meaning of s. 15 (1) of the Bombay Village Police Act. QUEEN-EMPRESS v. RAVAJI, **Rat. Un. Cr. C. 610=Cr. Rg. 30 of 1892.**

(26)—S. 15—*See* CRIM. PRO. CODE, 1898, ss. 6, 545, Rat. Un. Cr. C. 317=Cr. Rg. 2 of 1887.

(26-*a*)—S. 15—*See* PENAL CODE, s. 64, 6 Bom. L.R. 357.

(26-*b*)—S. 15—*See* No. 9, *supra.*

(27)—*Ss.* 15 *and* 16—*Police Patels—Jurisdiction to punish for nuisance or disorderly act.*—The jurisdiction to punish for nuisance or disorderly acts under s. 16 of the Village Police Act, is expressly confined to Police Patels duly empowered under s. 15, cl. 1, and does not extend to their official superiors (the Magistrates in charge of the talukas within which they are Patels). QUEEN-EMPRESS v. HANMANTA, **Rat. Un. Cr. C. 196=Cr. Rg. 6-3-1884.**

(28)—*Ss.* 15 *and* 16 (3)—*Refusal to serve at inquest—Unyoking and feeding bullocks on a road, if an offence.*—A refusal to serve on an inquest, when called on by a Police Patel specially empowered under s. 15 of the Bombay Village Police Act, is punishable by the Patel himself. The unyoking of bullocks and feeding them on a road is not punishable under s. 16 (3) of the Act. QUEEN-EMPRESS v. RAMASHETTI, **Rat. Un. Cr. C. 614=Cr. Rg. 35 of 1892.**

(29)—*S.* 16 (2)—*Offences re-rivers.*—S. 16 (2) of the Bombay Village Police Act does not apply to offences regarding rivers. QUEEN-EMPRESS v. PUNJA, **Rat. Un. Cr. C. 609=Cr. Rg. 27 of 1892.**

(30)—*S.* 16 (3)—*Nuisance outside a house—Liability of the head.*—It is a general principle that the head of the house is responsible for all nuisances which emanate from his house. QUEEN-EMPRESS v. NARAYAN, **Rat. Un. Cr. C. 338=Cr. Rg. 29 of 1887.**

(31)—*S.* 16 (5)—*Refuse or filth—Milk bush.* —Milk-bush put in a river for the purpose of catching fish is not refuse or filth within the meaning of s. 16, cl. 5 of the Village Police Act. QUEEN-EMPRESS v. DAGDU, **Rat. Un. Cr. C. 379=Cr. Rg. 30 of 1888.**

(32)—S. 16—*See* Nos. 27, 28, *supra.*

(33)—Ss. 28, 29—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, Rat. Un. Cr. C. 321=Cr. Rg. 7 of 1887.

(34)—S. 29—*See* No. 33, *supra.*

(35)—*S.* 31—*Easing oneself in a public road.* —To ease oneself close to a public road is not an offence under s. 31 of the Bombay Village Police Act, 1867, unless the act is committed within sight of a public road so as to cause obstruction, annoyance, risk, danger or damage to residents or passengers. QUEEN-EMPRESS v. BHIKA, **Rat. Un. Cr. C. 161.**

(36)—*S* 61—*Police—Arrest without warrant.* —The Police have no power to arrest without warrant for an offence under s. 61 of the Bombay Village Police Act. QUEEN-EMPRESS v. MEHMAN, **Rat. Un.Cr. C. 533=Cr. Rg. 1 of 1891.**

Act II of 1868 (Bombay Ferries).

[REP. IN PART, ACT XII OF 1873; ACT II OF 1901; BOM. ACT III OF 1886; REP. IN PART (EXCEPT IN ADEN AND THE CITY OF BOMBAY), BOM. ACT I OF 1884. AMENDED, BOM. ACT II OF 1878.]

(1)—*S.* 14—*Conviction—Order for sale of boat, under* s. 517, *Crim. Pro. Code—Compensation to complainant.*—When a person is convicted under s. 14 of Bom. Act II of 1868, it is not competent to a Magistrate to order sale of the boat under s. 517, Crim. Pro. Code, and to award out of the sale-proceeds compensation to the complainant under s. 545, Crim. Pro. Code. QUEEN-EMPRESS v. BEERA, **Rat. Un. Cr. C. 688=Cr. Rg. 10 of 1894.**

(2)—*S.* 14—*Construction.*—For an offence under s. 14 of the Public Ferries Act, it is not necessary that both the starting point and the arriving point should be within three miles of the ferry. It is only the latter which has got to be considered. QUEEN-EMPRESS v. HARI APPA, **Rat. Un. Cr. C. 901=Cr. Rg. 10 of 1897.**

Act IV of 1868 (City Surveys and Survey and Settlement Amendment Act).

[REP. IN PART, ACT XII OF 1873, RESIDUE REP. (LOCALLY), BOM. ACT V OF 1879].

(1)—S. 10—*See* BOM. ACT VI OF 1873, s. 33, 15 B. 516.

(2)—S 12—*See* BOM. ACT I OF 1865, ss. 10, 14, Rat. Un. Cr. C. 67=Cr. Rg. 13-11-72.

(3)—S 14—*See* INSPECTION OF DOCUMENTS, 11 B H.C. 231.

Act III of 1872 (Bombay Municipal Act).

[REP., BOM. ACT III OF 1888.]

(1)—*S.* 220, *as amended by Act* IV *of* 1878—*Scope—Power to order structural alteration—Contents of notice.*—The legislature, in enacting s. 220, could not have intended and did not intend, to invest the Municipal Commissioner with the power of directing structural alterations. A notice requiring the owner of a range of buildings to provide ridge ventilation is not legal, and disobedience of such notice is not an offence. When a notice is required by law, it cannot prescribe something which the law itself

3.—Bombay Acts—continued.

Act III of 1872 (Bombay Municipal Act)—*cld.*

does not contemplate or involve. EMPRESS v. SADANAND SHRIKRISHNAJI, **8 B. 151= Rat. Un. Cr. C. 192.**

(2)—*S. 225—Storage of wool, without license.*—The accused was charged with using a place within the city of Bombay for the storage of wool, without a license from the Bombay Municipal Commissioner, and fined Rs. 10 under s. 225 of Bombay Act III of 1872 as amended by Act IV of 1878. *Held*, that, notwithstanding that there is mention of "wool" for purposes of washing and drying in the first part of the section and none later on, the words "other articles" may include the case of the storage of wool. QUEEN-EMPRESS v. CURRIMBHOY, **Rat. Un. Cr. C. 297=Cr. Rg. 43 of 1886.**

(3)—S. 226—*See* ACT III OF 1880, s. 22, Rat. Un. Cr. C. 413=Cr. Rg. 80 of 1888.

Act VI of 1873 (Bom. District Municipalities).

[REP., BOM. ACT III OF 1901.]

(1)—*See* SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE ETC, Rat. Un. Cr. Cas. 91=Cr. Rg. 21-6-1875.

(2)—*S. 3—Building or enclosure—Wattle-fence.*—The "building" or "enclosure" referred to in s. 3 of the Bombay District Municipal Act, is of a substantial kind. A mere wattle-fence does not fall within the definition. *In re* SALOMIBAI, **Rat. Un. Cr. C. 428=Cr. Rg. 92 of 1888.**

(3)—*Ss. 3 and 66—Term "place" explained—Market—Selling vegetables.*—The word "place" as defined in s. 3 of the Act does not include a house or an *ota* of a house. Selling vegetables on the *ota* of one's house is not using it as a market, but only as a shop, and is not an offence under s. 66. *In re the petition of* RAJA PABA KHOJI, **9 B. 272.** [*Appl.*, Rat. Unrep. Cr. Cas. 399; *R.*, 10 M. 216=1 Weir 741, Rat. Unrep. Cr. Cas. 797; *Expl.*, 11 B. 106.]

(4)—*Ss. 11, 26—Police officer—Suspension—Other employment.*—Though a police officer, under ss. 11 and 26 of Act VI of 1873, should not engage himself in any other employment, yet, there is no objection to his doing so for his maintenance during his period of suspension, till he is restored to duty. REG. v. DOSA UMAR, **Rat. Un. Cr. C. 53=Cr. Rg. 3-8-1871.**

(5)—*Ss. 14, 82 — Rules—"Payable in advance"—Meaning.*—The words, "payable in advance," in r. 1 in s. 5 of Appendix B to the Rules framed under s. 14 of the Bombay District Municipal Act, do not mean that the taxes are payable on the first day of the year, but on demand at any time of the year. QUEEN EMPRESS v. RAJA *valad* HUSEN, **Rat. Un. Cr. C. 868.**

3.—Bombay Acts—continued.

Act VI of 1873 (Bom. District Municipalities) —*continued.*

(6)—*Ss. 21, 27, cl. (7) 32—Tax when becomes payable — Resolution at a Municipal special meeting—Permission of presiding authority.*—A tax can only be made payable from the date of its levy being sanctioned by Government under s. 21 of the Bombay District Municipal Act, and, under s. 32, it is payable duly at the expiration of the period for which it is declared payable. The liability to pay a tax arises only at the beginning of the official year next following the rule or law sanctioning it.—(*Per Jardine, J., Parsons, J. contra*). (7 M.H.C. R 249 and 1 M. 158, *R.*). Where some indication is given of the business of a Municipal special meeting, and a resolution is passed at such meeting where almost all the members of the Council are present, it must be assumed that the permission of the presiding authority was expressly or tacitly given. QUEEN EMPRESS v. RAMCHANDRA, **Rat. Un. Cr. C. 574 =Cr. Rg. 39 of 1891.**

(7)—Ss. 23, 35—*See* APPEAL—ACTS, Rat. Un. Cr. C. 672=Cr. Rg. 37 of 1893.

(8)—S. 26—*See* No. 4, *supra*.

(9)—S. 27—*See* No. 6, *supra*.

(10)—S. 32—*See* No. 6, *supra*.

(11)—*S. 33—Power of Municipality to call for sannad under City Survey Act (Bombay Act IV of 1868).*—Under cl. 1 of s. 33 of Bombay Act, VI of 1873, a Municipality is empowered before granting permission to build, to call on the applicant to furnish information as to the limits, design, and materials of the proposed building. But it is not empowered to call for any *sannad* issued under s. 10 of the City Survey Act (Bombay Act IV of 1868), although it may contain information as to the limits and tenure of applicants' holding. *In re* JAMNA DAS DULABDAS, **15 B. 516.** [*F.*, 19 B. 27.]

(12)—*S. 33—Act III of 1901, ss. 48, 96—Permission to erect a building—Condition.*—A Municipality in granting permission to a person to erect a building can legally impose a condition that he should leave a gully of certain dimensions. MUNICIPALITY OF THANA v. FAZAL KARIM, **3 Bom. L. R. 842.** [*F.*, 27 B. 221.]

(13)—*S. 33—Re-building on old foundations without notice to Municipality.*—A person who, without giving notice to the Municipality, merely re-erects on the same foundation the part of a wall which has fallen down, does not contravene the provisions of s. 33 of the Act, as he does not, by so re-erecting it, begin to erect any building or to alter externally or to add to any existing building within the meaning of that section. QUEEN-EMPRESS v. TIPPANA. **Rat. Un. Cr. C. 402=Cr. Rg. 63 of 1888.** [*R.*, 35 B. 236=12 Bom. L.R. 1060= 12 Cr. L. J. 1=8 Ind. Cas. 1050.]

3.—Bombay Acts—continued.

Act VI of 1873 (Bom. District Municipalities) —*continued.*

(14)—*S.* 33—*Re-erection of fallen wall on same foundation.*—The re-erection on the same foundation of a wall which has fallen down is not an offence under s. 33. QUEEN-EMPRESS v. UMAR JAMAL, **Rat. Un. Cr. C. 932.**

(15)—*S.* 33—*Extended door-step.*—A *katta*, which is permanent in character and which serves as a broad extended door-step or raised platform in communication with the road, is an addition to the existing building within the meaning of cl. 1, s. 33 of the Bombay District Municipal Act. *In re* DEVENDRAPPA, **Rat. Un. Cr. C. 483 = Cr. Rg. 47 of 1889.**

(16)—*S.* 33—*Wall—Bamboo fence.*—It is a question whether a bamboo fence can be properly described as a wall so as to come within the terms of s. 33, Bombay Act VI of 1873. QUEEN-EMPRESS v. UMAR JAMAL, **Rat. Un. Cr. C. 932.**

(17)—*S.* 33 (1)—"*Building*"—*Reed fencing.*—A *karvi* or reed fencing is not a building within the meaning of s. 33 (1) of the Bombay District Municipal Act, 1873. QUEEN-EMPRESS v. JANARDHAN, **Rat. Un. Cr. C. 145.**

(18)—*S.* 33 (2)—*Scope.*—The effect of cl. 2 of s. 33 which permits a person to erect the building, of which he has given notice, if, within the period prescribed, the Municipality has failed to issue written orders, is by implication to prohibit the erection of any building within such period, unless in the meantime written orders have been passed. QUEEN-EMPRESS v. GANPATRAM, **Rat. Un. Cr. C. 657 = Cr. Rg. 22 of 1893.**

(19)—*S.* 33 (3)—*Order under the section—Non-compliance—Duty of Magistrate.*—In dealing with a case of non-compliance with a legal order made by a Municipality, under s. 33 (3) of the Bombay District Municipal Act, a Magistrate has no right to review the order from the stand-point of its propriety, and to consider what kind of structure would be sufficient for the purpose in view. QUEEN-EMPRESS v. MORU, **Rat. Un. Cr. C. 310 = Cr. Rg. 63 of 1886.**

(20)—*Ss.* 33 (2), 39 (2)—*Plan of building—Objection to site of privy—Building privy on the site proposed by applicant after one month.*—The accused gave a notice to the Bandora Municipality, under s. 33 of the Bombay District Municipal Act, of his intention to build a house and submitted a plan of the proposed building. The Municipality replied that the site for the privy shown in the plan was objectionable, and that the plan was, therefore, returned with a view to an amended one being submitted. The accused built a privy on the proposed site after one month had expired. *Held* that the action of the accused in building the privy came within the words of the penal clause of s. 39 (2) of the Act, as there was the construction of a privy, which was, as regards its site, contrary to the directions of the Municipality, and that the action of the accused properly came within the mischief at which s. 39 (2) strikes. QUEEN-EMPRESS v. HARIKISONDAS NAROTAMDAS, **Rat. Un. Cr. C. 819 = Cr. Rg. 65 of 1895.**

(21)—*Ss.* 33, 74—*External alteration, what amounts to.*—Opening a new external door is an external alteration of the building in which the door is opened, and such an act done without notice to the Municipality, contemplated by s. 33 of Bombay Act VI of 1878, is an offence punishable under s. 74 of the Act. But where such an act does not cause any inconvenience to anybody, a nominal fine is an adequate punishment. QUEEN-EMPRESS v. GUJRIA, **9 B. 568.** [*R.*, 2 Bom. L.R. 572.]

(22)—*Ss.* 33, 74—*Permission to build—Exceeding time allowed.*—The accused obtained permission from the Surat Municipality to make some alterations in his house under a *razachitti*, dated 12th May, 1892, which allowed him a year in which to carry out his work. There was no bye-law under s. 33 of the District Municipal Act, providing a period within which works were to be carried on. *Held* that the accused could not be convicted of an offence under ss. 33 and 74 for having exceeded the period of one year. QUEEN-EMPRESS v. THAKORDAS, **Rat. Un. Cr. C. 684 = Cr. Rg. 52 of 1893.**

(23)—S. 35—*See* No. 7, *supra.*

(24)—*S.* 36—*Omission to have printed copies of rules in vernacular—Act* II *of* 1884.—The omission by a District Municipality to keep printed copies of the rules in the vernacular for sale, as required by s. 36 of the Municipal Act, does not affect the validity of the rules. QUEEN-EMPRESS v. BAHADAR SHAH, **Rat. Un. Cr. C. 615 = Cr. Rg. 37 of 1892.**

(25)—*Ss.* 36, 39, 74—*Notice issued under s.* 36 *or s.* 39 (1)—*Non-compliance, whether punishable.*—Clause 1 of s. 74 of Bombay Act VI of 1873 applies only to the second clause of s. 39. Non-compliance with a notice issued under s. 36, or s. 39 (1) is not, therefore, punishable under the Act, as s. 74 (1), does not apply to either of these provisions. *In re* TUKARAM VITHAL, **2 B. 527.**

(26)—S. 39—*See* Nos. 20, 25, *supra.*

(27)—*Ss.* 39 *and* 74—*Notice—Owner.*—Where a notice requiring the *owner* of a house to whitewash the privy was received and the receipt signed by his nephew, *held*, that the nephew could not be convicted for not having complied with the notice, as the Municipal Act concerned itself only with the owner of the house. QUEEN-EMPRESS v. NATHUBHAI NAHALCHAND, **Rat. Un. Cr. C. 973 = Cr. Rg. 28 of 1898.**

3.—Bombay Acts—continued.

Act VI of 1873 (Bom. District Municipalities) —*continued.*

(28)—*S.* 48—*Trial for an offence under the section in the absence of the accused—Crim. Pro. Code* (1882), ss. 4, 205.—A woman was charged with causing obstruction, under s. 48 of Bom. Act VI of 1873. In her absence, her mother-in-law appeared in Court on her behalf and the Magistrate proceeded with the case and convicted her. *Held*, that the conviction was wrong, as the accused was neither present, nor duly represented in the case by a pleader. QUEEN EMPRESS v. VITHI, **Rat. Un. Cr. C. 205 = Cr. Rg. 7-8-1884.**

(29)—*S.* 48—*Re-erection of old structure.*—The words used in s. 48 of Bombay Act, VI of 1873, should be so construed as referring to the erection of a thing for the first time, and not to the simple re-erection of an old structure which had been taken down for a temporary purpose only. KALA GOVIND v. MUNICIPALITY OF THANA, **13 B. 248.**

(30)—*Ss.* 48, 74—*Allowing carriage with horses to stand on public road—Object of Municipal Act and nature of sentences.*—As a carriage with horses is not one of the things contemplated in s. 48 of the Bombay District Municipal Act, a person cannot be convicted, under ss. 48 and 74, of causing obstruction to passers-by in having allowed his carriage to stand half an hour in a public street. QUEEN-EMPRESS v. LADBA, **Rat. Un. Cr. C. 324 = Cr. Rg. 11 of 1887.**

(31)—*Ss.* 48, 74—*Object of Municipal Act and sentences under the Act.*—The Municipal Act is intended to check many offences petty in their nature, but which may cause grievous injury to the neighbourhood as by facilitating fires or serious annoyance when a house-holder blocks a street. The sentence passed ought to be not only punitive but also deterrent, and the fine should also bear some proportion to the amount awardable at law. QUEEN-EMPRESS v. JAMNADAS, **Rat. Un. Cr. C. 719 = Cr. Rg. 45 of 1894.**

(32)—*Ss.* 51, 74—*Conviction under s. 51—Appeal.*—Where a second class Magistrate has dealt with a case as a Magistrate and convicted the accused under s. 51 of Bombay Act VI of 1873, and sentenced him to pay a penalty under s. 74, the District Magistrate should not refuse to hear an appeal from the conviction and sentence. If the conviction does not properly fall within s. 51, that is a ground for reversing it and not for refusing to entertain the appeal. *In re* KARUNARAM, **Rat. Un. Cr. C. 363 = Cr. Rg. 6 of 1888.**

(33)—*S.* 53—*Obeying calls of nature—Street.*—To obey the calls of nature elsewhere than in a street is not an offence under s. 53 of the Bombay District Municipal Act. QUEEN-EMPRESS v. DIGAMBUR, **Rat. Un. Cr. C. 507 = Cr. Rg. 24 of 1890.**

(34)—*S.* 53—*Dirt—Back of house.*—A person cannot be convicted under s. 53 of the Bombay District Municipal Act for depositing dirt at the back of his house, since it is not "a street, public quarry, jetty or landing place, or any part of the seashore or bank of a tidal river," as described in the section. QUEEN-EMPRESS v. SHAM, **Rat. Un. Cr. C. 477 = Cr. Rg. 37 of 1889.**

(35)—*S.* 53 (1)—*Cattle—Members of family.*—Cattle are not members of a family or household within the meaning of s. 53 (1) of the Bombay District Municipal Act, and a person cannot be convicted of an offence under cl. 2 of the section for tying his bullock near the street gutter so as to allow the dung, etc., to drop there. QUEEN-EMPRESS v. HARI KHUSAL, **Rat. Un. Cr. C. 412 = Cr. Rg. 78 of 1888.**

(36)—*S.* 54—*Offensive water, what amounts to.*—The word "offensive" in s. 54 does not include mere waste or dirty water. A person, therefore, who allows mere waste or dirty water to pass to the public street is not liable to the penalty under s. 54 of the Act. *In re* GULABDAS BHAIDAS, **20 B. 83.** [*D.*, 30 B. 558 = 8 Bom. L.R. 457 = 4 Cr.L.J. 23.]

(37)—*S.* 61—*Washing dirty clothes in a river.*—A person cannot be convicted under s. 61 of the Bombay District Municipal Act, on account of his wife having washed some dirty cloths in a river, without finding (1) that the river in question was a stream, etc., belonging to the Municipality, or (2) that the accused caused clothes to be washed by his wife in such stream, if it appeared that he had simply told his wife to wash the clothes, without saying where they were to be washed. QUEEN-EMPRESS v. FATEH MAHOMED, **Rat. Un. Cr. C. 399 = Cr. Rg. 59 of 1888.**

(38)—*S.* 66—*Sale of fruits in private shop—Market.*—What the Municipality have authority to direct under s. 66 of Bombay Act VI of 1873 is, that no place, other than the Municipal markets or other places licensed as markets, should be used by anybody as a *market.* They have no authority to issue a notification affecting other places which may be used for selling vegetables, etc., otherwise than *as a market.* The act of selling fruits without a license in a private shop within six hundred yards of the Municipal market, even if it could be held to be using the shop as a market, is not a violation of the provisions of s. 66, as the section contains nothing to warrant the inclusion of the case of fruit selling within it. The Municipality of Ahmedabad issued a notification to the effect that no one was to use, within six hundred yards of the Municipal market, any place as a market, and that, if any one acted in contravention of this notification, he would be dealt with according to law. *Held*, that if the prohibition of the Municipality was meant to affect the private rights of persons to use their own places for selling any commodity, that would amount

3.—Bombay Acts—continued.

Act VI of 1873 (Bom. District Municipalities) —*continued.*

to an excess of the authority conferred by the Bombay Municipal Act. [*Appl.*, 10 M. 216= 1 Weir 743 ; *R.*, Rat. Un. Cr. C. 797.] To constitute the use of a place as a market so as to interfere with any other market, it is not sufficient that it is used as a shop, but there must be something in addition to show that there has been a disturbance of the market rights. QUEEN-EMPRESS v. MAGAN HARJIVAN, **11 B. 106.** (9 B. 272, *Expl.* ; 49 L.J. Q B. 144; L.R. 22 Ch. Div. 287, *F.*). [*Appl.*, 10 M. 216=1 Weir 741; *R.*, Rat. Un. Rep. Cr. Cas. 797, U.B.R. 1903, Municipal, p. 1.]

(39)—*S.* 66—*Selling fish on roadside.*—A person who sold a small quantity of fish on the roadside on her way to the market cannot be convicted under s. 66 of the Bombay District Municipal Act, where it did not appear that the Municipality had issued an order that no place except the licensed one should be used as a market. QUEEN-EMPRESS v. SANTU, **Rat. Un. Cr. C. 606=Cr. Rg. 24 of 1892.**

(40)—*S.* 66—*Slaughter-house, what amounts to.*—A person who kills a goat in his own house for his own consumption cannot be said to use the place as a slaughter-house within the meaning of s. 66, Bombay District Municipal Act. QUEEN-EMPRESS v. BHIVA, **Rat. Un. Cr. C. 399.**

(41)—S. 66—*See* No. 3, *supra.*

(42)—*Ss.* 66 *and* 67 (2)—*Selling meat at one's own house and at another's platform—License.*—The selling of meat in one's own house would not, but the selling of meat on another person's platform abutting on a public road would be an offence under s. 67 of the Bombay District Municipal Act, 1873. QUEEN-EMPRESS v. RAJYA, **Rat. Un. Cr. C. 209.**

(43)—*S.* 67 (2)—*Selling meat in one's own house.*—A person selling meat not in a public market, but at his house without permission or license from the Municipality, cannot be punished under s. 67 (2). QUEEN-EMPRESS v. LAKSHMAN, **Rat. Un. Cr. C. 397=Cr. Rg. 57 of 1888.**

(44)—S. 67—*See* No. 42, *supra.*

(45)—*S.* 68—*Crim. Pro. Code* (1882), s. 29—*Jurisdiction of Third Class Magistrate.*—S. 68 of the Bombay District Municipal Act makes the offender liable to the penalty provided by s. 273, I. P. C. A Magistrate of the Third Class has under s. 29, Crim. Pro. Code, jurisdiction to try an offence under s. 68 of Bom. Act VI of 1873. QUEEN-EMPRESS v. NARAN NARSING, **Rat. Un. Cr. C. 763=Cr. Rg. 24 of 1895.**

(46)—*Ss.* 69, 74—*Order against future continuance of offence.*—An order cannot be made under s. 74 (2) in respect of a possible future continuance of the offence for which an accused person has been punished under cl. (c) of the section. In respect of any such offence, a fresh prosecution is necessary. QUEEN-EMPRESS v. BAWAJI, **Rat. Un. Cr. C. 396=Cr. Rg. 55 of 1888.**

(47)—*S.* 70—*Act* II *of* 1884, *s.* 33—*Bye-law prohibiting sale of fish or meat outside market.*—A bye-law prohibiting the sale of fish or meat outside the market, purporting to be made by a Municipality under repealed s. 70 of Act VI of 1873, is *ultra vires* of that section and also of s. 33 of Act II of 1884. The bye-law cannot be treated as a direction under s. 66 (1), directing that no place shall be used as a market, as it does not allude to any such use, there being no evidence that the road in question on which fish were sold was used as a market. QUEEN-EMPRESS v. GOOKI, **Rat. Un. Cr. C. 797=Cr. Rg. 55 of 1895.** [*R.*, 14 Cr.L.J. 432=20 Ind. Cas. 416=7 L.B.R. 26.]

(48)—*S.* 72—*Duty of giving information as to birth of child.*—The duty of giving information to the Municipality about the birth of a child is imposed on the parent or guardian of a child, or in the case of the death, illness or inability of the parent or guardian, on the occupant of the house in which the child is born, and not on the servant of such occupant. QUEEN-EMPRESS v. GOVINDA, **Rat. Un. Cr. C. 373=Cr. Rg. 20 of 1888.**

(49)—*S.* 73—*Scope—Power to interdict caste-feast on the outbreak of cholera.*—S. 73 of the Bombay Municipal Act (VI of 1873) empowers any Municipality "threatened or visited with an outbreak of any epidemic disease," "to take such measures as may be deemed necessary to prevent, meet, mitigate or suppress any such outbreak," with the previous sanction of the Governor in Council or any officer authorized by him. The words "take such measures, etc." imply in themselves something actively to be done by the Municipality, rather than any limitation to be imposed on the private rights of citizens in their relations of daily life. Special measures for the health of the town—such as sulphur fumigation, daily flushing of sewers, insistence on good house sanitation, isolation of infected districts and other similar steps to be taken by the authorities themselves come naturally within the meaning of the terms of the section. Under that section, a Municipality cannot prohibit the giving of caste-dinners within Municipal limits when more than thirty persons are to assemble. A person disobeying such an order cannot be convicted under s. 188, I.P.C. The Court ought not to strain an act in favour of an interference with private rights which is not justified by the primary sense of the language. QUEEN-EMPRESS v. HARI LAL, **14 B. 180.**

(50)—*S.* 74—*Crim. Pro. Code* (1898), s. 245—*Sentence must follow conviction.*—A Magistrate, proceeding under s. 74 of the Bombay

3.—Bombay Acts—continued.

Act VI of 1873 (Bom. District Municipalities) —*continued.*

District Municipal Act, is bound by the provisions of s. 245, Crim. Pro. Code. QUEEN-EMPRESS v. HANMANTDAS, **2 Bom. L.R. 611.**

(51)—S. 74—*See* Nos. 21, 22, 25, 27, 30, 31, 32, 46, *supra.*

(51-*a*)—*S.* 82—*Right of private person to complain.*—S. 82 of the Bombay District Municipal Act does not prevent a private person from making a complaint to a Magistrate where an offensive liquid was allowed to flow from the premises of the accused into the street without the permission required by s. 54. QUEEN-EMPRESS v. BAI REVA, **Rat. Un. Cr. C. 630.** (Rat. Un. Cr. Cas. 355, *F.*)

(52)—S. 82—*See* CRIM. PRO. CODE 1898, s. 190, Rat. Un. Cr. C. 355=Cr.Rg. 44 of 1887.

(53)—S. 82—*See* No. 5, *supra.*

(54)—*Ss.* 82, 84—*Bom. Act* II *of* 1884, *s.* 49 (*i*) —*Failure to pay arrears of tax—Offence—Time.*—The effect of the amendment of s. 84 of Bom. Act VI of 1873 by s. 49 (i) of Bom. Act, II of 1884, is to make a failure to pay arrears of taxes an offence under s. 82 of the former Act. An information of such failure laid before a Magistrate, though not asking for imposition of penalty, must be laid within three months after the date when the taxes were due and not paid. *In re* KARUNASHANKER, **Rat. Un. Cr. C. 420=Cr. Rg. 86 of 1888.** [*R.*, 30 B. 241=7 Bom. L.R. 951.]

(55)—*S.* 84—*Scope of.*—The sums that may be due under a contract to collect a tax due to a Municipality do not come within any of the matters provided for by s. 84 of the Bombay District Municipal Act. *In re* JAGU SANTRAM, **22 B. 709.** [*F.*, 26 M. 475=1 Weir 752; *R.*, 130 P.L.R. 1903=23 P.R. 1903, Cr.]

(56)—*S.*84—*Proceedings under section, nature of—Scope.*—Proceedings before a Magistrate under s. 84 of Bombay Act, VI of 1873, are criminal prosecutions. Such prosecutions must be conducted according to the rules applicable to summary trials prescribed in Ch. XXII of the Code The Magistrate is bound, therefore, before sentencing a defaulter to pay a rate, to satisfy himself as to the extent of his legal liability. MUNICIPALITY OF AHMEDABAD v. JUMNA PUNJA, **17 B. 731.** [*F.*, Rat. Un. Cr. C. 559, 30 B. 241=7 Bom. L.R. 951; *Appr., and D.*, 23 B. 446; *R.*, 109 P.L.R. 1909=23 P.W.R. 1909; *D.*, 22 A. 111.]

(57)—*S.* 84—*Power of Magistrate to impose penalty.*—Although under s. 84 of the Bombay District Municipal Act, a Magistrate has power to inflict, in addition to arrears of cess or other taxes, a penalty, not exceeding in any case one-fourth of such arrears, he has no power to levy any penalty computed as an addition to the expenses. QUEEN-EMPRESS v. SYED MAHOMED, **Rat. Un. Cr. C. 692=Cr. Rg. 19 of 1894.**

3.—Bombay Acts—continued.

Act VI of 1873 (Bom. District Municipalities) —*continued.*

(58)—*S.* 84—*Liability to penalty on non-payment of taxes—Penalty, meaning of the word—Imprisonment in default—Penal Code, ss.* 40, 64. —As non-payment of Municipal taxes entails liability to a penalty, it appears to be an offence under s. 40, I.P.C. There is no distinction between the word "penalty" in the Bombay District Municipal Act and the word "fine" in s. 64, I.P.C. The word penalty is used in many places in the Municipal Act as equivalent to a fine or pecuniary punishment for an offence. Imprisonment can, therefore, be awarded in default of payment of the penalty. *In re* LAKMIA, **18 B. 400.**

(59)—*S.* 84—*Penalty in addition to arrears of rent.*—S. 84 of the Bombay District Municipal Act allows penalties to be imposed in addition to arrears of cesses or other taxes, but it does not provide for the imposition of a penalty in addition to arrears of rent. *In re* RANGU, **22 B. 708.**

(60)—*S.* 84—*Fine—Payment of rent.*—S. 84 of the Bombay District Municipal Act does not permit a Magistrate to impose a fine in addition to the payment of arrears of rent. QUEEN EMPRESS v. PANDU MAHADU, **2 Bom. L.R. 674.**

(61)—*S.* 84—*Non-payment of house-tax—Fine — Penalty — Process fee—Arrears of rent — Want of rules on the subject.*—The accused was convicted under s. 84 for non-payment of house-tax, and ordered to pay Rs. 10 for house-tax, and a fine of Rs. 2-8-0 and one anna as process fee, but it appeared that there was no rule on the subject framed by the Municipality. *Held*, ordering the return of the penalty and the tax levied, that, as admittedly the Municipality had not framed a rule for the sanction of Government as required by the Acts, and as nothing has been submitted to Government, except some general proposals sent up by the Collector, the conviction was illegal. QUEEN-EMPRESS v. LAKSHMAN, **Rat. Un. Cr.C. 694=Cr. Rg. 21 of 1894.**

(62)—*S.* 84—*Octroi duties on certain articles within Municipal limits.*—A certain Municipality passed a rule or bye-law imposing an octroi duty on certain articles when imported within Municipal limits. Where goods merely passed through the Municipal limits in the course of transit to Bombay, *held*, that the goods were imported, within the meaning of the section, and were liable to the duty. The only remedy was to claim a refund of the duty paid. *In re* RAHIMU BHANJI, **22 B. 843.**

(63)—*S.* 84—*Annual letting-value of house made by Municipality—Jurisdiction of Magistrates.*—By the rules framed under the Bombay District Municipal Act, the Municipality is empowered to levy house-tax on a certain scale according to the annual letting-value of the house. The "letting value" is defined to mean the annual rent for which the house might be

3.—Bombay Acts—continued.

Act VI of 1873 (Bom. District Municipalities) *—continued.*

reasonably expected to let from year to year, if the tenants were liable for all repairs; and r. 3 provides that an estimate of the annual letting-value of each house shall be made by the Managing Committee and published not later than the 15th March in each year, and that applications for the reduction of the estimate by persons made liable may be presented to, and shall be disposed of by the Managing Committee. *Held*, that the Magistrate should accept as conclusive the amount found by the Managing Committee to be the letting-value of the house and to hold the legal liability of the accused to pay the tax based on this amount to be proved. He has no power to review the decision of the Managing Committee and reverse it on fresh evidence taken before himself. MUNICIPALITY OF WAI v. KRISHNAJI GANGADAR, **23 B. 446.** [*Appl.*, 24 B. 607; *R.*, 35 C. 859=12 C.W.N. 709=7 C.L.J. 631.]

(64)—*S.* 84—*Pendency of prosecution under the old Act, how affected by the passing of the new Act—General Clauses Act, Bombay Act* III *of* 1886, *s.* 8—*Bombay Act* III *of* 1901, *s.* 2 (1) (*a*), (*b*).— A Municipality instituted proceedings under Bombay Act VI of 1873. During the pendency of the proceedings, the Act was repealed and replaced by Act III of 1901. The Magistrate, thereupon, acquitted the accused on the ground that, under the new Act, he had no jurisdiction to dispose of the complaint. *Held*, reversing the order and directing the Magistrate to rehear the complaint, that, in the absence of any contrary intention in the new Act, the repeal of the old Act could not be deemed to affect any proceedings commenced before the new Act came into force; that the Magistrate was bound to conclude the proceedings which had already been instituted before him under the old Act, and that he could not disclaim jurisdiction, because the procedure laid down for proceedings instituted under the old Act was entirely different. MUKUND RAMCHANDRA KARKUN v. LADU GOVIND PEDNEKAR, **3 Bom.L.R. 584.**

(65)—*S.* 84—*Entries in shipping bills and manifests.*—A person who imports timber by sea into a Municipal District is not bound by the entries in shipping bills and manifests as to its weight and measurement, for the purpose of calculating the duty payable. He may dispute them and is entitled to demand a fresh weighment, but, if he does not do so and fails to prove their incorrectness, he is bound by the entries. QUEEN-EMPRESS v. RAMCHANDRA, **Rat. Un. Cr. C. 541=Cr. Rg. 15 of 1891.**

(66)—*S.* 84—*Jurisdiction of Magistrate to inquire into correctness of cess claimed.*—In a prosecution under s. 84 of the Bombay District Municipal Act for recovery of a tax, the Magistrate has jurisdiction to determine whether the amount claimed is correct and to inquire into all the conditions on which the rate of tax fixed is based. It is nowhere laid down that the statement of amount by the Municipality should be accepted as final. QUEEN-EMPRESS v. NATHEE, **Rat. Un. Cr. C. 559=Cr. Rg. 35 of 1891.**

(67)—*S.* 84—*Payment of arrears before hearing—Infliction of penalty.*—A Magistrate cannot inflict a penalty under s. 84 of the Bombay District Municipal Act, if the arrears are paid before the case comes on for hearing. QUEEN-EMPRESS v. GANESH, **Rat.Un.Cr.C. 618=Cr. Rg. 42 of 1892.**

(68)—*S.* 84—*Cess upon houses—Term "yielding a yearly rent" explained.*—Where a rule prescribes the levying of cess on "every house yielding a certain annul rent," the expression means "capable of yielding a yearly rent." QUEEN EMPRESS v. MAHADU, **Rat. Un. Cr. C. 658=Cr. Rg. 23 of 1893.**

(69)—S. 84—*See* No. 54, *supra.*

(70)—*S.* 99—*Approval by Revenue Commissioner.*—The approval by the Revenue Commissioner of the rules is tantamount to approval by the Governor-in-Council within the meaning of s. 99 of the Act. QUEEN-EMPRESS v. BAHADARSHAH, **Rat. Un. Cr. C. 615=Cr. Rg. 37 of 1892.**

Act VII of 1873 (Salt).

[REP., BOM. ACT II OF 1890.]

(1)—*Officer of Salt Department whether Police officer—Evidence Act, s.* 125.—Having regard to the distinction drawn throughout Act VII of 1873 (Bombay) between a Police officer and an officer of the Salt Department, the latter cannot be considered a Police officer within the meaning of s. 125, Evidence Act, and may, therefore, be compelled to say whence he obtained information as to the commission of an offence. REG v. GOWLIA, **Rat. Un. Cr. C. 183 =Cr. Rg. 20-7-1882.**

(2)—*Ss.* 3, 18, 19, 49—*Peon—Possession of naturally formed salt.*—S. 18 of the Bombay Salt Act does not apply to the case of a peon of the Salt Department being in possession of naturally formed salt for his private use. The act is, however, punishable as an offence under ss. 19 and 49. REG v. FAKIO PARSHOTTAM, **Rat. Un. Cr. C. 101=Cr. Rg. 10-1-1876.**

(3)—S. 18—*See* No. 2, *supra.*

(4)—S. 19—*See* No. 2, *supra.*

(5)—*Ss.* 35, 37,—*Distance of ten miles, how to be measured.*—The distance of ten miles mentioned in ss. 35, 37 of the Bombay Salt Act is to be measured in a straight line "as the crow flies," *i. e.*, along the horizontal plane and not by the nearest mode of practical access. QUEEN EMPRESS v. ADRASHAPPA, **Rat. Un. Cr. C. 138=Cr. Rg. 20-2-1879.**

(6)—S. 37—*See* No. 5, *supra.*

(7)—S. 49—*See* No. 2, *supra.*

3.—Bombay Acts—continued.

Act VII of 1873 (Salt)—*concluded.*

(8)—*S. 54—Charge under the section.*—S. 54 of the Bombay Salt Act, 1873, is not an enactment under which, by itself, a charge can be laid. There must, in addition, be reference to some other provision of the Act or some rule in pursuance thereof according to the actual character of the offence imputed. Nor can a mere loose description of salt as contraband satisfy the requirements of the law as to what is contraband salt for the purposes of the penal sections of the Salt Act. The definitions given in s. 3 must, in each case, be satisfied by evidence of facts giving to the salt the character there indicated. QUEEN EMPRESS v. DHARAMDAS, **Rat. Un. Cr. C. 295 = Cr. Rg. 40 of 1886.**

Act I of 1874 (Tramways).

[REP. IN PART, BOM. ACT III OF 1886, REP. IN PART AND AMENDED, BOM. ACT II OF 1895, S. 6. AMENDED, BY S. 9, REP. IN PART, AND AMENDED BOM. ACT I OF 1907.]

S. 24—*Regulation for regulating the conduct of the Company's servants.*—The words "regulating the travelling" in s. 24 of Bombay Act I of 1874, can only mean laying down rules as to how persons shall travel, that is to say, rules for the conduct and behaviour of the persons who travel, and cannot be held to include rules for the conduct of the Company's own servants, prescribing what they shall do or what they shall not do, in the matter, for instance, of the issue of tickets, which rules are only framed by the Company for their own protection against the possible fraud or dishonesty of their servants. MANOCKJI DODABHAI v. BOMBAY TRAMWAY COMPANY, **22 B. 739.**

Act II of 1874 (Jails).

[REP. IN PART, ACT IX OF 1894; BOM. ACT III OF 1886, AMENDED, BOM. ACT II OF 1882.]

S. 30—*Duties of jailor.*—The jailor is, under Bombay Act II of 1874, s. 30, responsible for the execution of a warrant for punishment, unless it be one not within the competence of the Court. If any thing prevents his executing a warrant, he should make a return or report to that effect to the Court whence the warrant issued. QUEEN-EMPRESS v. MAHADU, **Rat. Un. Cr. C. 136 = Cr. Rg. 5-8-1878.**

Act III of 1874 (Hereditary Offices).

[REP. IN PART, ACT XII OF 1876; REP. IN PART, BOM. ACT III OF 1886, REP. IN PART AND AMENDED, ACT XVI OF 1895; BOM. ACT V OF 1886, REP. IN PART, AMENDED AND SUPPLEMENTED (LOCALLY), BOM. ACT VI OF 1887.]

S. 85—*See* SANCTION TO PROSECUTE, CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., **Rat. Un. Cr.C. 147 = Cr. Rg. 17-6-1880.**

3.—Bombay Acts—continued.

Act III of 1876 (Mamlatdars' Courts).

[REP. BOM. ACT II OF 1906.]

(1)—*See* PENAL CODE, ss. 99, 186, 13 B. 168.

(2)—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 5 B. 137.

(3)—*S. 10—Jurisdiction of Mamlatdar to try possessory suits—Crim. Pro. Code* (1898), s. 145.—The jurisdiction of a Mamlatdar to entertain a possessory suit, under Bombay Act III of 1876, is not taken away by the fact that the Magistrate has previously passed an order, regarding the same property, under s. 145 of the Crim. Pro. Code. NAGAPPA v. SAYAD BADRUDIN, **26 B. 353 = 3 Bom. L.R. 919.** [*R.*, 7 C.L.J. 547 = 12 C.W.N. 696.]

(4)—S. 17—*See* PENAL CODE, s. 166, Rat. Un. Cr. C. 764 = Cr. Rg. 27 of 1895.

Act IV of 1878 (Bom. Municipal Act, Amendment and Continuance).

[REP., BOM. ACT III OF 1888.]

See BOM. ACT III OF 1872, s. 225, Rat. Un. Cr. Cas. 297 = Cr. Rg. 43 of 1886.

Act V of 1878 (Bom. Abkari).

[REP., IN PART, ACT XVI OF 1895, REP. IN PART AND AMENDED. BOM. ACT III OF 1886, AMENDED, BOM. ACT III OF 1892; BOM. ACT V OF 1901, S. 3, AMENDED BOM. ACT I OF 1903, S 18-A AMENDED BY BOM. ACT III OF 1905, S. 45, AMENDED BOM. ACT IV OF 1905.]

(1)—*Possession of liquor in greater quantity than prescribed.* — The Bombay Abkari Act renders a man punishable for the offence of possessing more than a particular quantity of liquor within a certain local area or place, except under the authority of some license, permit or special order, obtained under that Act. It is, therefore, immaterial to consider whether the possession in any case was illegal before the Act came into force. QUEEN-EMPRESS v. SORABJI, **Rat. Un. Cr. C. 144 = Cr. Rg. 7-8-1879.**

(2)—" Chandul "—*Preparation of opium — Opium Act.—Chandul* is a preparation of opium, and the provisions of the Bombay Abkari Act, V of 1878, cannot be applied to a person found in possession of it. He can, however, be dealt with under the Opium Act. IMPERATOR v. JAN MAHOMED, **9 Cr. L. J. 254 = 1 S. L. R. 8, Cr.**

(3)—*Trial for offence under Bombay Abkari Act and acquittal—Re-trial, when allowed--Jurisdiction of Magistrate.*—All offences against the Bombay Abkari Act being cognizable by a Magistrate of the second class, a person tried for any such offence by any such Magistrate and acquitted is not liable to be tried again for the same offence, unless the acquittal has been set aside by the High Court on appeal by the

3.—Bombay Acts—continued.

Act V of 1878 (Bom. Abkari) – *continued.*

Government. The jurisdiction conferred by the Code of Criminal Procedure (Act X of 1882) does not affect any special jurisdiction or power conferred by any law in force at the time when the Code came into force. QUEEN-EMPRESS v. GUSTADJI BARJORJI, **10 B. 181.** [*R.*, 1 Bom. L.R. 15.]

(4)—*Third Class Magistrate, Jurisdiction of, to try cases under.*—A third class Magistrate has no jurisdiction to try cases under the Abkari Act, 1878. QUEEN-EMPRESS v. BAPU PUNJA, **Rat. Un. Cr. C. 184=Cr. Rg. 5-10-1882.**

(5)—*Prosecution under—Distillery Inspector's report—Evidence.*—In a prosecution under the Bombay Abkari Act, the report of a Distillery Inspector to the effect that certain liquor was illicit is not admissible in evidence, and there must be independent evidence to show that it was illicit. QUEEN-EMPRESS v. MOHAN LALL, **Rat. Un. Cr. C. 298=Cr. Rg. 45 of 1886.**

(6)—*Breach of license—Keeping toddy where it was drawn.*—Where the license provided that toddy drawn should be taken to the shop or distillery by a direct route, no obligation is imposed on the licensee to take the toddy at once. Keeping it at the place where it was drawn is not a breach of the license. QUEEN-EMPRESS v. GANESH, **Rat. Un. Cr. C. 552.** (Rat. Un. Cr. Cas. 290, *R.*)

(7)—*Juice in toddy-producing tree, if spirit.*—Juice in toddy-producing tree is not spirit, which includes toddy in a fermented state only. NARAYAN VENKU KALGUTKAR v. SAKHARAM NAGU KOREGAUMKAR, **9 B. 462.** [*F.*, 20 B. 764 ; *R.*, 20 B. 803.]

(8)—*Ss.* 2 (8), 43 (*a*)—*Liquor manufactured in Native States.*—S. 43 (*a*) of Bombay Act V of 1878 makes punishable the importing or exporting of foreign liquor, and the term, as defined in the Act, does not include liquor manufactured in the Native States. QUEEN-EMPRESS v. MAWARSA *bin* KRISHNASA, **1 Bom. L.R. 158.**

(9)—Ss. 3 (5), 56—*See* AUTREFOIS ACQUIT, PLEA OF, 10 B. 181.

(10)—*Ss.* 3 (9), 62—*Cocaine—Intoxicating drug—Medicated article.*—(*a*) The term "medicated article" in s. 62 of Bombay Act V of 1878, applies to something which is manufactured and by such manufacture is imbued with certain medicinal properties. Cocaine does not fall within that term as it is a medicine *per se.* (*b*) The word "intoxicating" as used in s. 3 (9) cannot be confined to its derivative meaning, namely, "poisonous," but must be taken in its popular sense. Cocaine is an intoxicating drug in the popular sense. EMPEROR v. JAMSETJI CAWASJI CAMA, **27 B. 551=5 Bom. L.R. 498.**

3.—Bombay Acts—continued.

Act V of 1878 (Bom. Abkari)—*continued.*

(11)—*Ss.* 3 (10), 9 *and* 43—*'Import' meaning of—Sea Customs Act* (VIII *of* 1878), *s.* 19.—The intention and requirement of s. 9 of the Abkari Act in the case of articles liable to duty are that the duty shall be paid. That intention and requirement can only be contravened, when reasonable opportunity to pay the duty has been afforded and evaded. The mere entry into the Bombay harbour of a ship conveying the dutiable goods, or mere tying up of such ship against the dockwall, is not importing goods, under s. 43 of the Abkari Act, in contravention of the Act, that is, in contravention of the obligation to pay duty. The word 'import' in the Abkari Act includes the conveying into any part of the Presidency of Bombay by sea. EMPEROR v. DE SYLVA, **11 Bom. L.R. 221=1 Ind. Cas. 343=9 Cr. L J. 291=33 B. 380.**

(12)—*Ss.* 3 (11), 43 — *Drawing toddy, not manufacturing liquor.*—Drawing toddy is not manufacturing liquor as defined in cl. 11 of s. 3 of Bombay Act V of 1878. The mere possession of implements for the purpose of drawing toddy is not an offence punishable under cl. (*f*) of s. 43 of Bombay Act, V of 1878. QUEEN-EMPRESS v. PIRIO KALIO, **18 B. 428.**

(13)—*Ss.* 4, 7—*Imprisonment in default of payment of fine.*—In passing a sentence upon conviction of more than one person under s. 4, the proper course is to direct that the fine be paid by the prisoners generally, and that, in the event of non-payment by all co-partners, each should suffer the same term of imprisonment, whether it be the full period or any reduced period on part-payment of the penalty, and not to award payment in equal or unequal fixed portions. *In re* LAKHE, **Cr Rg. 23-11-1870.**

(14)—*Ss.* 6, 43 (*a*) *and* (*f*)—*Importation of* bhang *in Native State—No cession of territory—Offence.*—Where an applicant was charged with having imported *bhang* into the Bombay Presidency, owing to a parcel containing *bhang* and bearing his name and address being received at Kalol, a railway station in a Native State, it appeared that the criminal jurisdiction along the line of the Railway was ceded to the Government of India, but there had been no cession of territory. *Held*, that no offence was committed unless the importation was into the Bombay Presidency, that is, in territories which formed part of British India ; and, if the land upon which the offence was alleged to have been committed had not actually been ceded, it could not form part of British India. EMPEROR v. RAGHUNATH RAO VINAEKRAO, **5 Bom. L.R. 873.**

(14-*a*)—S. 7—*See* No. 13, *supra.*

(15)—*S.* 9—*Importation of liquor—When complete.*—Under s. 9 of the Abkari Act, the importation of liquor into a port is not complete till the person importing it has had an opportunity of paying the duty thereon at the Customs House. QUEEN EMPRESS v. ASCENSA, **Rat. Un. Cr. C. 503=Cr. Rg. 17 of 1890.**

3.—Bombay Acts—continued.

Act V of 1878 (Bom. Abkari)—*continued.*

(16)—S. 9—*See* Nos. 11, 12, *supra* and No. 80, *infra.*

(17)—*Ss.* 9, 13, 43—*Cocaine—Forwarding of cocaine from Lucknow to Bombay bp rail without transhipment — Crossing the frontier.*—Where the accused forwarded a large consignment of cocaine from Lucknow to Bombay through railway, and the consignment reached Bombay direct without transhipment and traversed British territory the whole way, it was *held* that neither the mere fact that cocaine was consigned from Lucknow to Bombay city and conveyed thereto without transhipment at the frontier of the Bombay Presidency, nor the mere fact that the journey from Lucknow to Bombay was, throughout, through British territory, prevented cocaine from coming within the provisions of the Act, as soon as it crossed the frontier. EMPEROR v. TYABALLY CARIMBHOY, **8 Bom. L R. 601.**

(18)—*Ss.* 9, 43—*Carrying liquor from one village to another in a Native State through British India.*—The bringing into British India from a Native State, of liquor without a pass or permit authorised by the Abkari Act is an offence punishable under it, notwithstanding that it was so brought only for the purposes of taking into another village of the same State; but where the importing of liquor is not from one portion of British India to another, there cannot be any offence of transporting liquor from one place to another within British India. QUEEN EMPRESS v. JERIA, **Rat. Un. Cr. C. 313 = Cr. Rg. 67 of 1886.**

(18-*a*)—S. 11—*See* No. 80, *infra.*

(19)—S. 13—*See* No. 17, *supra.*

(20)—*Ss.* 14, 20, 64; 65, 66, *and* 67—"*Tree*" —"*Toddy-producing tree*" *meaning of.*—The words "any tree" in s. 14 and "every toddy, producing tree" in s. 20 of the Bombay Abkari Act, V of 1878 mean all trees in the Bombay Presidency to which the Act applies, from which toddy is drawn or produced. These words do not mean merely those in regard to which no special rights of drawing toddy previously existed. ARDESIR JEHANGIR FRAMJI v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL, **6 B. 398.**

(21)—*S.* 16—*Selling toddy for liquidating a debt, if breach of license.*—Where toddy is not sold but is given in liquidation of a debt, there can be no breach of the license, which provides that the licensee "shall not receive wearing apparel, or ornaments; or any consideration, except coin for any *toddy* he may sell." QUEEN-EMPRESS v. KANJI, **Rat. Un. Cr. C. 586 = Cr. Rg. 47 of 1891.**

(22)—*Ss.* 17, 47—*Mere possession of liquor.*—Mere possession of liquor on which no duty has been paid, is not an offence under s. 47 of the Bombay Abkari Act, irrespective of the quantity fixed by s. 17. QUEEN-EMPRESS v. RANCHOD, **Rat. Un. Cr. C. 593 = Cr. Rg. 8 of 1892.**

(22-*a*)—S. 18-*a*—*See* No. 46-*b*, *infra.*

(23)—S. 20—*See* No. 20, *supra.*

(24)—*S.* 38—*Accused found with a bottle of liquor when travelling—Crim. Pro. Code* (1882), s. 103—*Evidence Act*, s. 91.—An Abkari officer searched the cart in which the accused was travelling and found a bottle of liquor. The trying Magistrate found that the search was not made in the presence of two or more persons or any list prepared of the things found, as required by s. 103, Crim. Pro. Code, extended to Abkari cases by s. 38, and, considering that under s. 91 of the Evidence Act, oral evidence was inadmissible, acquitted the accused. *Held* that a cart is not such a place as is contemplated in s. 103, and, therefore, its provisions cannot be applied to the search of a cart. *In the matter of* MAKAN KHOSHAL, **Cr. Rg. 18-6-1885.**

(25)—*S.* 43—*Growing* ganja *without permit.*—To grow *ganja* without a permit is not an offence within the meaning of s. 43 of the Act. QUEEN EMPRESS v. NARAYAN, **Rat. Un. Cr. C. 190 = Cr. Rg. 26-4-1883.**

(26)—*S.* 43 — "*Sell*," *meaning of.* — The Abkari Act being a penal statute, it should not be strained in its interpretation against the subject. The word "sell" in s. 43 does not include exchange. QUEEN-EMPRESS v. JANKI, **Rat. Un. Cr. C. 415.**

(27)—*S.* 43 (2)—*Possessing apparatus and material—Separate convictions.*—The possession of apparatus and materials for the purpose of manufacturing liquor without a permit is one transaction, and there can be no separate conviction for the possession of distinct materials. QUEEN EMPRESS v. LAKSHMAN BHIMA. **Rat. Un. Cr. C. 878.**

(28)—*S.* 43 (*a*)—*British India—Wadhwan Civil Station*—Bhang—*Carrying it from Wadhwan Civil Station to Viramgam—Importation into British India of intoxicating drug.*—The Civil Station at Wadhwan is not part of British India. A person who carries *bhang* from Wadhwan Civil Station to Viramgam is guilty, under s. 43 (*a*) of the Bombay Abkari Act, 1878, of importing the intoxicating drug inte the Presidency of Bombay. EMPEROR v. CHIMAN LAL, **14 Bom. L.R. 876 = 1 Bom. Cr. Cas. 172 = 13 Cr. L.J. 790 = 17 Ind. Cas. 534 = 37 B. 152.** (10 B. 244, *Diss.*; 10 B. 186, *F.*)

(29)—*S.* 43 (*b*)—*Transporting toddy—Temporary custody by a girl—Latter's liability—Removal of* ganja *from one field to another.*—The accused, a girl of about 16 years of age, was charged with transporting *toddy* without a pass under s. 43 (*b*) of the Bombay Abkari Act, and, on conviction, was fined eight annas. Her uncle, who held a pass for tapping *toddy* trees and carrying *toddy* to the shop, had told her to drive a buffalo laden with *toddy*, while he himself was busy searching for a runaway pony. For doing so, she was convicted. *Held* that the girl should not have been considered

3.—Bombay Acts—continued.

Act V of 1878 (Bom. Abkari)—*continued.*

as herself transporting *toddy*, seeing that her uncle who had but momentarily withdrawn, might be deemed as still controlling the buffalo laden with it. QUEEN EMPRESS v. NAGOWA, **Rat. Un. Cr. C. 306 = Cr. Rg. 57 of 1886.**

(30)—*S.* 43 (*b*)—*Removal of* ganja *from one field to another*—Where the accused removed *ganja* grown in one survey number to a threshing floor in the adjoining number for the purpose of preparing it, *held* that the act was not punishable under s. 43 (*b*) of the Bombay Abkari Act. QUEEN EMPRESS v. SATWA, **Rat. Un. Cr. C. 465 = Cr. Rg 23 of 1889.**

(31)—*S.* 43 (*c*)—Ganja *cultivation*—"*Manufacture*," *meaning of.*—Mere cultivation of *ganja* plants is not a process of manufacturing intoxicating drugs within the meaning of s. 43 (*c*) of the Bombay Abkari Act. QUEEN-EMPRESS v. DADU, **Rat. Un. Cr. C. 415 = Cr. Rg. 82 of 1888.**

(32)—*S.* 43 (*c*) —"*Manufacture*" *meaning of*—*Making of Eau-de-Cologne.*—The word "manufacture" in the Bombay Abkari Act includes the preparation of a spirituous liquor by admixture and is not limited to processes which result in the production of alcohol. The making of Eau-de-Cologne by adding some essential fragrant oils to rectified spirit water is manufacture of liquor within the meaning of s. 43 (*c*). QUEEN-EMPRESS v. YESHWANTA, **Rat. Un. Cr. C. 834 = Cr. Rg. 77 of 1895.**

(33)—*S.* 43 (*c*)—*Selling of* mhowra *flowers.*—It is no offence to sell *mhowra* flowers, except in the area in which Bombay Act III of 1892 is in force. The mere fact of a sale would not be in itself sufficient to justify a conviction for abetment of the offence of manufacturing liquor, mentioned in s. 43 (*c*) of the Bombay Abkari Act, 1878. QUEEN-EMPRESS v. SHEKH CHAND, **Rat. Un. Cr. C. 949 = Cr. Rg. 1 of 1898.**

(34)—*S.* 43 (*c*)—*Imprisonment in default of payment of fine*—*I P.C.*, *s.* 65.—The accused was convicted of an offence under s. 43 (*c*) of the Bombay Abkari Act and sentenced to pay a fine of Rs. 75, or, in default, to suffer rigorous imprisonment for three months. *Held*, altering the sentence of imprisonment in default of payment of fine to six weeks, that the sentence passed was illegal under s. 65, I.P.C., the maximum term of imprisonment fixed for the offence being six months. QUEEN EMPRESS v. BHIKARAO, **Rat. Un. Cr. C. 979 = Cr. Rg. 37 of 1898.**

(35)—*S.* 43, *cls.* (*c*) *and* (*f*)—*Separate convictions and sentences under both clauses*—*Crim. Pro. Code* (1898), *s.* 35.—A person was convicted under the Bombay Abkari Act, s. 43 (*c*) for the manufacture of liquor, and under s. 43 (*f*) for being in possession of utensils for the manufacture of liquor, and was sentenced separately for each of these offences. *Held*, reversing the sentence under s. 43 (*f*), *that the second* offence was included in the former, and, under the *explanation* to s. 35 of the Crim. Pro. Code, they were not distinct offences. QUEEN-EMPRESS v. BHAWA SARDAR, **1 Bom. L.R. 344.**

(36)—*S.* 43 (*e*) (*f*)—*Manufacturing country liquor*—*Possession of apparatus*—*Separate offences.*—The accused was charged with manufacturing country liquor from *mhowra* flowers, and keeping in his possession soaked *mhowra* flowers and apparatus for the purpose of manufacturing liquor from them. He was convicted and sentenced separately for each of the offences under cls. (*e*) and (*f*) of the Bombay Abkari Act. *Held*, that the accused could, under the circumstances, only be convicted and sentenced for the offence of manufacturing country liquor from *mhowra* flowers. EMPEROR v. RANIO BHIKHLO, **4 Bom. L.R. 720.**

(37)—*S.* 43 (*e*) (*f*)—*Possession of materials for manufacturing liquor*—*Manufacturing liquor*—*Distinct offences* — *Separate sentences.*—The possession of materials for manufacturing liquor and the act of manufacturing liquor are two distinct offences punishable under cl. (*f*) and cl. (*g*) of s. 43 of the Bombay Abkari Act, and separate sentences may, therefore, be passed on conviction for both offences. QUEEN-EMPRESS v. SHIVDIA, **Rat. Un. Cr. C. 523 = Cr. Rg. 52 of 1890.**

(38)—*S.* 43 (*d*)—*Drawing juice from cashewnut tree.*—The drawing of juice from a cashewnut tree does not constitute the offence of drawing *toddy*, punishable under s. 43 (*d*) of the Bombay Abkari Act, under the definition of *toddy* as given in the Act. QUEEN-EMPRESS v. MAHADOO, **Rat. Un. Cr. C. 308 = Cr. Rg. 60 of 1886.**

(39)—*S.* 43 (*d*)—*Payment of fees*—*Tapping toddy trees without license.*—There is no provision in the Bombay Abkari Act which authorises a Magistrate, who convicts an accused person under s. 43 (*d*) of the Act, to order the payment by him of any fee that may be leviable in respect of trees tapped by him without a license. QUEEN-EMPRESS v. RAGHO, **Rat. Un. Cr. C. 533 = Cr. Rg. 4 of 1891.**

(40)—*S.* 43 (*f*)—*Possession of apparatus* — *Intention*—*Responsibility of head of house.*—To support a conviction under s. 43 (*f*) of the Bombay Abkari Act, it is not enough to prove the possession by the accused of apparatus which can be used for manufacturing liquor, but it must also be proved that he had such apparatus for that purpose. QUEEN-EMPRESS v. MUKUND, **Rat. Un. Cr. C. 510 = Cr. Rg. 29 of 1890.** (9 B. 556, *R.*)

(41)— *S.* 43 (*f*) — *Possession of apparatus* — *Father and son.* — Where apparatus for the manufacture of liquor is found in a house, the question who is to be proceeded against for the offence is not one to be decided by the principle of civil responsibility, but one of fact. It is

3.—Bombay Acts—continued.

Act V of 1878 (Bom. Abkari)—*continued.*

possible that a son may contravene the provisions of the Abkari Act. while the father, the head of the house in which the apparatus was found may be innocent. GOVERNMENT OF BOMBAY v. DHAGO, **Rat. Un. Cr. C. 504=Cr. Rg. 18 of 1890.**

(42)—*S.* 43, *cl.* (*g*)—*Sale of liquor by servant of licensee without permit, and at rates not specified.*—The penalty prescribed by s. 43, cl. (*g*) of the Bombay Abkari Act, 1878, attaches to the servant of a licensee, who sells liquor without a permit from the Collector. EMPEROR v. BALLA SAKHARAM KOREGAONKAR, **11 Bom. L.R. 746=3 Ind. Cas. 778=10 Cr L J. 382.**

(43)—*S.* 43 (*g*)—*Sale of liquor by servant at rates other than those specified.*—The servant of a license-holder under the Bombay Abkari Act selling liquor at rates other than those specified in the license is guilty of an offence under s. 43 (*g*) of the Act. QUEEN-EMPRESS v. FRAMJI BAMANJI KELAWALA, **2 Bom. L.R. 663.** [*R.*, 8 Bom. L.R. 947.]

(44)—*S.* 43 (*g*)—*Transfer of ganja from one shop to another.*—A transfer of *ganja* from one shop to another, both shops belonging to the same licensee, does not constitute an offence under s. 43 (*g*) of the Bombay Abkari Act. QUEEN-EMPRESS v. MOHAN, **Rat. Un. Cr. C. 214=Cr. Rg. 1st Oct. 1885.**

(45)—*S.* 43 (*h*)—*Finding of ganja plants—Inference of accused being its cultivator.*—The mere fact that three *ganja* plants were found growing in the accused's compound, without any proof of its having been cultivated by him, is not an offence under s. 43 (*h*) of the Bombay Abkari Act, as it could not be inferred therefrom that he cultivated them. The inference which might be justifiable, if a large number of plants were found, did not arise from the existence of three plants alone. KING EMPEROR v. IMAM, **4 Bom. L.R. 98.**

(46)—*S.* 43 (*g*)—*Illicit possession of cocaine—Sentence — Enhancement of sentence — High Court—District Magistrate can move for enhancement—Crim. Pro. Code*, s. 439.—Cases where cocaine is found to have been secretly possessed and sold without a license must be dealt with so as to produce a deterrent effect. The Magistrate should pass a sentence of imprisonment in cocaine cases, where a mere sentence of fine fails to check the evil of its illicit sale and possession. It is not necessary that Government should instruct the Government Pleader to move the High Court to enhance sentences. It is competent to District Magistrates to bring to the notice of the High Court cases of inadequate sentences. The High Court has, under its revisional powers, jurisdiction to enhance sentence, howsoever the case comes to its notice. EMPEROR v. ROGER DE SILVA, **13 Bom. L.R. 1185=12 Ind. Cas. 980=12 Cr. L.J. 604.**

(46-*a*)—S. 43—*See* Nos. 8, 11, 14, 17, 18, *supra.*

3.—Bombay Acts—continued.

Act V of 1878 (Bom. Abkari)—*continued.*

(46-*b*)—*Ss.* 43 (*a*), (*b*) (2) *and* 18-*A*—*Mhowra flowers—Consignment from one place to another by railway—Goods transhipped by railway at a place in a prescribed area—Liability of consignor for possession of the Mhowra flowers.*—The accused consigned certain Mhowra flowers partly at the Nadiad and partly at the Umreth stations of a Railway Company for conveyance to Nandod in the Rajpipla State. The goods were taken possession of by the Railway Company and were conveyed to Ankleshvar, for being transhipped into the Rajpipla State Railway. Ankleshvar was a place in a prescribed area within which even the possession of Mhowra flowers without a permit was unlawful (s. 18-A of the Bombay Abkari Act). The Mhowra flowers were attached at the Ankleshvar Railway station and the accused was convicted and sentenced under S. 43 (2) of the Act. The accused having applied to the High Court:—*Held*, that the accused had not committed any offence, for he personally did not possess the Mhowra flowers within the prescribed area or transport them within or import them into or export them from that area. EMPEROR v. CHUNILAL MANILAL, **17 Bom. L.R. 72=3 Bom. Cr. C. 5.**

(47)—*Ss.* 43 *to* 46, 53—*Servant's offences—Licensee, if liable.*—The holder of a license under the Bombay Abkari Act can be held criminally liable for his servant's act, under s. 53, only when the act, if committed by the master, would have been a breach of the conditions of the license. (*Per Birdwood, J.*). The second para of s. 53 applies only to acts, which would be offences under ss. 43 to 46, if done by a person when actually in the employ or acting on behalf of a holder of a license, pass or permit. (*Per Parsons, J.*) QUEEN-EMPRESS v. VIRBAIJI, **Rat. Un. Cr. C. 542=Cr. Rg. 17 of 1891.**

(48)—*Ss.* 43 (*g*), 45 (*c*)—*Conviction of licensee and gomasta.*—Where a licensee and his *gomasta* were both convicted under s. 45 (*c*) of the Bombay Abkari Act of selling a larger quantity of toddy than permitted by the rules, the High Court declined to interfere since the *gomasta* was punishable at least under s. 43 (*g*). QUEEN-EMPRESS v. DORABJI, **Rat. Un. Cr. C. 616=Cr. Rg. 38 of 1892.**

(49)—*Ss.* 43 (*g*), 45 (*c*)—*Liability of servant holding a* Naukarnama *from his master.*—The servant of a country spirit farmer holding a *naukarnama* issued by his master and countersigned by the Collector, but not himself holding a license under the Act, is not liable to be convicted under s. 45 (c) of the Bombay Abkari Act, but can be convicted under s. 43 (*g*) of the Act. QUEEN-EMPRESS v. BALAPA. **Rat. Un. Cr. C. 671=Cr. Rg. 34 of 1893.**

(50)—*Ss.* 43, 47—*Illegal importation and possession of liquor, when distinct offences.*—A man who illegally imports liquor may keep it in his possession for some time after he imports

3.—Bombay Acts—continued.

Act V of 1878 (Bom. Abkari)—*continued.*

it. The importation and possession in such a case would be distinct offences. But where the importation involves possession of liquor, the accused, if convicted already for possession, cannot again be convicted for the importation. QUEEN-EMPRESS v. CHAND *valad* KITAB, **14 B. 583.**

(51)—*Ss.* 43 (*b*), 47—*Cocaine—Illegal possession—Removal—Transportation of cocaine.*—Accused No. 1, who was illegally in possession of cocaine, brought it from his room and gave it to accused No. 2, who stood opposite to his house. The latter carried it to some distance and delivered it to a Purdeshi. The two accused were, under these circumstances, charged with transporting cocaine, an offence punishable under s. 43 (*b*) of the Bombay Abkari Act, 1878. The Magistrate, however, acquitted them of the offence and convicted them of illegal possession of cocaine, under s. 47 of the Act. Against this order of acquittal, the Public Prosecutor appealed to the High Court. *Held*, that the Magistrate was right in declining to convict the accused under s. 43 (*b*) of the Bombay Abkari Act, 1878, inasmuch as the accused's offence consisted, not in moving the cocaine from one place to another, but in the unauthorised possession of it at any place in contravention of the Act. S. 43, cl. (*b*), seems to contemplate rather the case of a person who is in lawful possession of cocaine at one place, but is by law forbidden to remove it either partly or wholly to another place. EMPEROR v. BALVANTRAO ANANTRAO, **12 Bom. L.R. 124.**

(52)—*Ss.* 43, 47, 53—*Possession of liquor not accounted for.*—If the evidence had shown that the accused had manufactured toddy, or been in possession of a still, or had transported toddy from one place to another, then there would be ground to presume such manufacture or transport to be illegal, and the case would come under s. 43. The sole fact that the accused was in possession of liquor, in excess of that permitted by law, without being able to account for its possession, would only lead to a presumption that the possession was not legal, thereby constituting an offence under s. 47. QUEEN EMPRESS v. BYRAMJI KHURSEDJI, **14 B. 93.**

(53)—*Ss.* 43, 53—*Possession of distilling materials.*—Mere possession without a license of utensils for distilling liquor is not an offence punishable under s. 43. It is only in cases where such possession is not satisfactorily accounted for, that under s. 53, it is to be presumed, until the contrary is proved, that the accused person has committed an offence under s. 43. QUEEN EMPRESS v. PRESTANJI BARJORJI, **9 B. 456.** [*F.*, L.B.R. (1872-1892), 597.]

(54)—*Ss.* 43 (*f*), 53—*Possession of mhowra flowers.*—Where the accused, a dealer in *mhowra* flowers was proved to have sold the flowers to a person who made an illegal use of them, *held*, that he was not liable to be punished under s. 43, Bombay Act V of 1878, if there was no proof that he had used those flowers for the purpose of manufacturing liquor. *In the matter of the petition of* LIMDA KOYA, 9 **B. 566.** [*F.*, Rat. Un. Cr. C. 510.]

(55)—*Ss.* 43 (*a*), 54—*Importation of liquor —Conviction.*—The accused was convicted of importing liquor from Goa into British India without a permit. The bottle and the liquor were ordered to be confiscated but no other sentence was passed. *Held*, that the Magistrate was bound to have passed some sentence, however small, after convicting of the offence. QUEEN-EMPRESS v. JAKIN, **Rat. Un. Cr. C. 291 = Cr. Rg. 33 of 1886.**

(56)—S. 44—*See* No. 47, *supra.*

(57)—*Ss.* 44 (*a*) *and* 45 (*c*)—*Hydrometer, failure to keep it an offence, Quantity of liquor. —Accounts*—The failue to keep a hydrometer is an offence under s. 44 (*a*) of the Bombay Abkari Act. The omission to keep the prescribed quantity of liquor and to keep accounts is not punishable under s. 45 (*c*) of the Act, since these are not acts committed in breach of the terms of a license but mere omissions. *In re* GANGARAM. **Rat. Un. Cr. C. 617.** (Rat. Un. Cr. Cas. 284, *R.*)

(58)—*S.* 45—*Holder of license—Servant.*—To a servant not being the holder of a license, s. 45, Act V of 1878 (Bombay Abkari) has no application. Under that section, the servant of the holder of a license is not made liable for any breach of the conditions of the license. Though s. 53 of the Act provides that "the holder of a license under the Act shall be responsible, as well as the actual offender, for any offence committed by any person in his employ or acting on his behalf under s. 43, 44, 45 or 46, as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence," yet s. 45 does not make "the actual offender," if he be the servant of a licensee, punishable, unless he is himself the holder of a license granted under the Act. QUEEN-EMPRESS v. RAMACHANDRA MATADIN, **15 B. 45.** [*R.*, 2 Bom. L.R. 663, Rat. Un.Cr. C. 542.]

(59)—*S.* 45—*Delivery of juice by licensee to servant of farmer instead of farmer himself.*—A licensee was convicted of having broken the conditions of his license, which provided that the licensee should deliver the juice of the trees drawn to the farmer, inasmuch as he delivered the juice to a servant of the farmer who came for the juice on behalf of the farmer as his agent. *Held* that the conviction was bad, since, under the terms of the license, a delivery to the farmer in person was not essential, but that the latter could depute a servant, or agent to take delivery of the juice drawn. QUEEN-EMPRESS v. SHAPURJI RATANJI, **Rat. Un. Cr. C. 754 = Cr. Rg. 17 of 1895.**

3.—Bombay Acts—continued.

Act V of 1878 (Bom. Abkari)—*continued.*

(60)—*S.* 45—*Omission to open shops and to keep accounts—Penal Code*, s. 33. —The accused, a licensee under the Bombay Abkari Act, omitted to open shops at certain places and to keep accounts; he was, thereupon, convicted of a breach of license under s. 45 (*c*) of the Act. *Held* that neither omission was an "act" in breach of any condition of the accused's license, s. 33, I.P.C., having no application to the case. QUEEN-EMPRESS v. NANA MAHADEV, **Rat. Un. Cr. C. 284 = Cr. Rg. 19 of 1886.** [*R.*, Rat. Un. Cr. C. 617.]

(61)—*S.* 45 *(c)—Omission to have minimum quantity of liquor.*—The accused was convicted of not keeping, according to his license, the minimum quantity of certain kinds of liquor. The District Magistrate was of opinion that the negligence of the accused amounted to an omission, and not an act, and that, under s. 45 (*c*) of the Bombay Abkari Act, an act, but not an illegal omission, was punishable. *Held* that the conviction should be upheld, and that an act failing to comply with the terms legally imposed is illegal in the affirmative as well as in the negative sense. QUEEN-EMPRESS v. PEDRU, **Rat. Un. Cr. C. 323 = Cr. Rg. 9 of 1887.**

(62)—*S.* 45 *(c)—Omission to keep minimum quantity of liquor in shop.*—The omission of the accused to keep the minimum quantity of liquor in his shop is not "an act in breach of any of the conditions of his license" within the meaning of s. 45 (*c*) of the Abkari Act. QUEEN-EMPRESS v. GOVIND, **16 B. 669.** [*Appl.*, 1 Bom. L.R. 164, 1 Bom. L.R. 690.]

(63)—*S.* 45 (*c*), *to whom applies.*—S. 45 (*c*) of the Bombay Abkari Act applies only to the "holder of a license" and not to a mere servant of the licensee. QUEEN-EMPRESS v. GAFFUR, **Rat. Un. Cr. C. 214 = Cr. Rg. 6-8-1885.** [*R.*, Rat. Un. Cr. C. 396.]

(64)—*S.* 45 (*c*)—*Breaches of license by licensee's servants—Liability of licensee's agent and that of servant.*—An agent of a license-holder cannot be saddled, under s. 45 (*c*) of the Act, with responsibility for the acts of the licensee's servants. Only the license-holder is responsible for such breaches by his servants. QUEEN-EMPRESS v. JAMSHEDJI, **Rat. Un. Cr. C. 668 = Cr. Rg. 26 of 1893.**

(65)—*S.* 45 (*c*)—*Liability of servant.*—Under s. 45 (*c*) of the Bombay Abkari Act, the servant of the holder of a license granted under the Act cannot be made liable for breach of the conditions of the license. QUEEN-EMPRESS v. RAMJI, **Rat. Un. Cr. C. 416 = Cr. Rg. 83 of 1888.**

(66)—*S.* 45 (*c*)—*Liability of the servant.*—Under s. 45 (*c*), the servant of a license-holder cannot be made liable for breach of the conditions of the license. QUEEN-EMPRESS v. GOPAL, **Rat. Un. Cr. C. 406 = Cr. Rg. 69 of 1888.**

3.—Bombay Acts—continued.

Act V of 1878 (Bom. Abkari)—*continued.*

(67)—*S.* 45 (*c*)—*Liability of servant.*—Under s. 45 (*c*), the servants of the holder of a license granted under the Act cannot be made liable for breach of the conditions of the license. QUEEN-EMPRESS v. GOPAL, **Rat. Un. Cr. C. 396 = Cr. Rg. 54 of 1888.**

(68)—*S.* 45 (*c*)—*Failure to open toddy shop, etc.*—The accused was convicted of a breach of the license under s. 45 (*c*) of the Bombay Abkari Act, in that he did not establish toddy shops at certain places within a certain time. *Held*, reversing the conviction, that the license, by not specifying any time for opening of shops, left the matter to subsequent adjustment between the Collector and the contractor who finally came to terms. QUEEN-EMPRESS v. RAJA RAM, **Rat. Un. Cr. C. 290 = Cr. Rg. 30 of 1886.** [*R.*, Rat. Un. Cr. C. 552.]

(69)—*S.* 45 (*c*)—*Omission of liquor contractors to open shop, to affix board and to keep accounts.*—The omission by licensed liquor-contractors to open a shop, to affix a board and to keep accounts, does not come within the meaning of s. 45 (*c*) of the Bombay Abkari Act. QUEEN-EMPRESS v. PHEROJSHOB HORMUSJEE, **1 Bom. L.R. 164.** (16 B. 669, *F.*)

(70)—*S.* 45 (*c*)—*Omission to keep accounts.—Breach of conditions of license.*—The omission to keep true accounts is a breach of the conditions of the license. The receiving into the shops of liquor without keeping true accounts is an act in breach of such conditions. EMPEROR v. MASCERENAS, J. B., **6 Bom. L.R. 253.**

(71)—*S.* 45—*Act in breach of the conditions of the license.*—A licensee holding a license under Bombay Act V of 1878, who omits to pay the sum fixed by the Collector on account of the costs of the Government establishment on the first of the month as required by cl. 15, is not liable to punishment under s. 45 (*e*), as the omission does not amount to an "act in breach of the conditions of the license." QUEEN-EMPRESS v. VENKATESH BAL SHENVI, **1 Bom. L.R. 690.**

(72)—*S.* 45 (*c*)—*Breach of conditions of license—License Rule 20—Sale - Sub-letting of contract—Construction of rule.*—The accused agreed with the complainant to allow his name to be used as a contractor from Government, for two shops for the sale of country liquor. The funds for the contract proceeded from the complainant, and the accused was to be paid a certain sum by the complainant, for allowing his name to be used. The contract was knocked down to the accused; and the licenses were issued in his name. One of the conditions of the licenses was as follows: "The licensee shall not sell, transfer or sublet his right of sale of country spirits under this license, nor enter into any agreement in connection with the exercise of the said right, which, in the opinion of the Collector, is in the nature of sub-lease." The shops remained in

3.—Bombay Acts—continued.

Act V of 1878 (Bom. Abkari)—*continued.*

the complainant's possession and were managed by him. On these facts, the accused was proceeded against under s. 45 (*c*) of the Act, for the breach of a condition in the license. It was contended on behalf of the accused that the right of sale conferred by the license had been obtained through him as a benamidar (and not from him as a person who had acquired that right for himself), and that, therefore, the offence charged had not been committed. *Held* negativing the contention, that, though, by supplying the necessary funds, a person, other than the licensee named in the license, might acquire a beneficial interest in the proceeds or profits of sales, he could not, by so supplying funds, acquire the right of sale through the licensee named—such right being conferred by virtue of the Act only upon the person named, and that the person named in the license could not set up as a defence that another person had acquired the right of sale through him as an agent or benamidar—instead of from him as the person who had that right in himself. EMPEROR v. MAHADEVAPPA, **8 Bom. L.R. 990=5 Cr. L.J. 10.**

(72-*a*)—S. 45—*See* Nos. 47, 48, 49, 57, *supra.*

(73)—*Ss.* 45(*c*), 53—*Breach of license by servant—Liability of master.*—The holder of a license for the sale of country liquor cannot be convicted of a breach of license, merely because his servant, a liquor shop-keeper, has given short measure to a customer, where it is proved that the licensee has taken all reasonable precautions such as reasonable men would use to prevent the commission of such offences by his servants. QUEEN-EMPRESS v. DADABHOY, **Rat. Un. Cr. C. 691=Cr. Rg. 15 of 1894.**

(74)—*S.*46 (*a*)—*Mixing water.*—Mixing water with liquor is not an offence under s. 46 (*a*) of the Bombay Abkari Act. QUEEN-EMPRESS v. BHIMA, **Rat. Un. Cr. C. 597=Cr. Rg. 16 of 1892.**

(75)—S. 46—*See* No. 47, *supra.*

(76)—*S.* 47—*Possession of more than one gallon of liquor without permit.*—The accused was convicted of the offence of being in possession of more than a gallon of country liquor without a permit or pass from the Collector, under s. 47 of the Bombay Abkari Act. *Held* that the conviction was, on its face, unsustainable, as the section did not make the possession of more than one gallon of country liquor penal. QUEEN-EMPRESS v. KANA, **Rat. Un. Cr. C. 310=Cr. Rg. 62 of 1886.**

(77)—*S.* 47—*Casual presence in and charge of shop—Possession of more than prescribed quantity.*—Mere casual presence in and charge of a building containing liquor in illegal quantity does not constitute possession within the meaning of s. 47 of the Bombay Abkari Act. QUEEN-EMPRESS v. PANDURANG, **Rat. Un. Cr. C. 436.**

(78)—*S.* 47—*Possession of* Mhowra *liquor—Quantity—Liability of head of family—Number of the family members not material.*—Under s. 47 of the Bombay Abkari Act the possession of 2 gallons and 2½ seers of *mhowra* liquor is illegal, in the absence of any license, permit, pass or special order, and the law does not allow the head of a family to exceed that limit, merely because he has a family of ten or twelve members, of whom five are adults. QUEEN-EMPRESS v. FARSU, **Rat. Un. Cr. C. 292=Cr.Rg. 34 of 1886.**

(79)—S. 47—*See* Nos. 22, 50, 51, 52, *supra.*

(80)—*Ss.* 47, 9 *and* 11—*Kaju liquor—Country liquor—Possession of the liquor—Mere possession of the liquor under the maximum limits is no offence.*—The mere possession of Kaju liquor, on which no duty has been paid, but which is under the quantity fixed by s. 17 of the Abkari Act, is not punishable under s. 47 of the Act. EMPEROR v. DATTA KHETAR DESAI, **10 Bom. L.R. 284=7 Cr. L.J. 307.**

(81)—*S.* 53—*Principle to be applied to cases under the Act*—Mens rea—*Master's liability for servant's defaults.*—The principle with regard to the Abkari Act, 1878, is that licenses to keep shops are only granted to persons of good personal character, and it is obvious that the object of so restricting the grant of licenses would be defeated, if the licensed person could, by delegating the control and management of the house to another person who was altogether unfit to keep it, free himself from responsibility for the manner in which the shop was conducted. *Mens rea* is not required where the acts prohibited by a statute are not criminal in any sense, but are prohibited in the public interest, under a penalty. This principle is substantially adopted in s. 53 of the Abkari Act, with the exception, that it is open to the license-holder, according to the section, to prove facts to show that he is not liable for his servant's defaults or acts. EMPEROR v. WAMAN DHANRAJ, **10 Bom. L.R. 171=7 Cr. L.J. 191.**

(82)—S. 53—*See* Nos. 47, 52, 53, 54, 73, *supra.*

(83)—S. 54—*See* No. 55, *supra.*

(84)—*S.* 55—*Order of confiscation, when and by whom to be made.*—Under the provisions of the Bombay Abkari Act, s. 55, the Collector cannot make a valid order of confiscation before the expiration of one month from the date of seizure of the articles. FRAMJI MANEKJI PUNJAJI v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL, **17 B. 154.**

(85)—*S.* 55—*Magistrate, powers of—Order of confiscation.*—A Magistrate is not competent to order confiscation under the Bombay Abkari Act, the Collector alone being invested with such power by s. 55 of the Act. QUEEN-EMPRESS v. BASLINGAPA, **Rat. Un. Cr. C. 149=Cr. Rg. 22-7-1880.**

(86)—S. 56—*See* No. 9, *supra.*

3.—Bombay Acts—continued.

Act V of 1878 (Bom. Abkari)—*concluded.*

(87)—*Ss.* 56, 60—*Land Revenue Code, Bom. Act* V *of* 1879, *s.* 209—*Conviction under s.* 60 *of former Act—Appellate Court convicting under latter Act—Validity of convictions.*—The accused was convicted by a second class Magistrate of the offence of breach of a license under the Bombay Abkari Act, and fined Rs. 10. In appeal, the first class Magistrate, under s. 60 of the Act and s. 209 of the Bombay Land Revenue Code, enhanced the fine to Rs. 100. *Held* that s. 60 of the Bombay Abkari Act did not apply. The accused was convicted by a Magistrate under s. 56 of the Act, and, in appeal, the first class Magistrate could not make any order under s. 209. Land Revenue Code. QUEEN-EMPRESS v. MIYA SAHEB, **Rat. Un. Cr. C. 254 = Cr. Rg. 14 of 1886.**

(88)—*S.* 59—*Reward—Apportionment of.*—Under the rule under s. 59 of the Bombay Abkari Act, a Magistrate is bound to name each person to whom a portion of the fine is to be given by way of reward. QUEEN-EMPRESS v. BALYA, **Rat. Un. Cr. C. 482 = Cr. Rg. 46 of 1889.**

(89)—S. 60—*See* No. 87, *supra.*

(90)—S. 62—*See* No. 10, *supra.*

(91)—S. 64—*See* No. 20, *supra.*

(92)—S. 65—*See* No. 20, *supra.*

(93)—S. 66—*See* No. 20, *supra.*

(94)—S. 67—*See* No. 20, *supra.*

Act VII of 1878 (Bom. Cotton Frauds).

[REP., BOM. ACT I OF 1882.]

(1)—*Ss.* 6 *and* 14, *Act* VII *of* 1878 (*Cotton Frauds Bombay*), *effect of.*—The effect of the new Cotton Frauds Act (Bombay), ss. 6 and 14, is to make possession of adulterated cotton liable to confiscation, punishable with fine, and it is immaterial where the adulteration takes place. IMPERATRIX v. KHIM CHAND NARAYAN, **3 B. 384.**

Act V of 1879 (Bombay Land Revenue Code).

[REP. IN PT., BOM. ACT III OF 1886. REP. IN PT. AND AM.—ACT XVI OF 1895; BOM. ACT, VI OF 1901; (LOCALLY) BOM. ACT I OF 1880, S. 39; (LOCALLY) BOM. ACT VI OF 1888, SS. 3, 33, AS AM. BY BOM. ACT II OF 1905. AM. BOM. ACT VII OF 1879, S. 2; AM. BOM. ACT IV OF 1886, SS. 3 (1), 38, 43, 52, 80, 187, 214, HEADING ABOVE S. 40, SCH. B, AM. S. 144; REP. IN PT., BOM. ACT IV OF 1905. REP. (IN COORG), REG. I OF 1899. S. 85 AND PART OF S. 58 DECLARED NOT TO BE IN FORCE IN THE PANCH MAHALS ACT VII OF 1885.]

(1)—Ss. 12, 87 — Distraint by Karkoon—Resistance — Proceedings of Lower Court—Presumption by High Court on review—*See* PENAL CODE, s. 183, Rat. Un. Cr. C. 325 = Cr. Rg. 13 of 1887.

3.—Bombay Acts—continued.

Act V of 1879 (Bombay Land Revenue Code)—*continued.*

(2)—S. 37—*See* CRIMINAL TRESPASS, Rat. Un. Cr. C. 393 = Cr. Rg. 49 of 1888.

(3)—S. 87—*See* No. 1, *supra.*

(4)—*Ss.* 125, 214, 215—*Rules* 101 *and* 111 *made under s.* 214—*Digging earth close to a boundary—Boundaries and boundary marks—Jurisdiction.*—Rule 101 of the Rules made by the Government of Bombay under s. 214, Land Revenue Code, providing that "the digging of earth close around an earthen boundary-mark for the purpose of repairing is prohibited, and a space of two cubits in breadth all round each such mark is to be left untouched, so as to prevent injury to the mark from water lodging in the cavities from which earth is taken for the repairs,"—is not such a rule as can legally be made under s. 214 (*g*) of the Code. It is not a rule "for the administration of survey settlement." Such a settlement is a settlement of the land revenue, and relates only to such matters as are referred to in chap. VIII of the Code, and not to boundaries and boundary-marks. Boundaries and boundary-marks are dealt with in chap. IX, and penalties for injuring boundary-marks are specially provided by s. 125 of the Code, which gives no jurisdiction to Magistrate. QUEEN-EMPRESS v. IRAPPA, **13 B. 291.**

(5)—Ss. 141, 142—*See* PENAL CODE, ss. 379, 424, 1 Bom. L.R. 515.

(5-*a*)—S. 142—*See* No. 5, *supra.*

(6)—*S.* 189—*Inquiry for appointing Police Patel—Mamlatdar—Summons to attend—Penal Code, s.* 174.—S. 189 of the Bombay Land Revenue Code does not empower a Mamlatdar to summon any person to attend before a Deputy Collector who is making certain inquiries about the appointment of a Patel for an *inam* village. A failure to attend in obedience to such a summons is not an offence under s. 174 of the Penal Code. QUEEN-EMPRESS v. VIDIADHAR, **Rat. Un. Cr. C. 488 = Cr. Rg. 52 of 1889.** (5 B.H.C. Cr. 33, *R.*)

(7)—Ss. 189, 197—Mamlatdar holding enquiry relating to record of rights under—Whether a Revenue Court—Sanction to prosecute—*See* CRIM. PRO. CODE, 1898, s. 195 (1) (*c*), 16 Bom. L.R. 678 = 2 Bom. Cr. C. 243.

(7-*a*)—S. 197—*See* No. 7, *supra.*

(8)—S. 209—*See* BOM. ACT V OF 1878, ss. 56, 60, Rat. Un. Cr. C. 254 = Cr. Rg. 14 of 1886.

(9)—*S.* 214—*Removing stones with occupant's permission.*—A person who has dug and removed stones from land in the possession of a person having occupancy rights therein under the Land Revenue Code with such person's permission, cannot be convicted under cl. (*d*) of Rule III framed under s. 214 of the Code. QUEEN-EMPRESS v. BHOJILAL, **Rat. Un. Cr. C. 531 = Cr. Rg. 68 of 1890.**

3.—Bombay Acts—continued.

Act V of 1879 (Bombay Land Revenue Code) —*continued.*

(10)—*Rule* III, *cl.* 1 (*d*)—*Offences under the Rule—Jurisdiction — Bom. General Clauses Act* (1886) *s.* 3 (13).—An offence committed in contravention of Rule III, cl. 1, item (*d*) of the rules framed under s. 214, Land Revenue Code, 1879, is triable, having regard to the provisions of s. 3 (13) of the Bom. General Clauses Act, by any person exercising Magisterial powers under the Code of Criminal Procedure. QUEEN-EMPRESS v. BAI EMMA, **Rat. Un. Cr. C. 681 = Cr. Rg. 46 of 1893.** (8 B. 591, *Overruled*).

(11)—*S.* 214—*Offence under, by whom triable.*—An offence under Rule III, cl. 1, item (*d*) of the rules under s. 214 of the Land Revenue Code is only triable by a Magistrate of the first class. QUEEN-EMPRESS v. SHIVRAM, **8 B. 591.** [*Diss.*, Rat.Un.Cr.C. 68.]

(12)—*S.* 214, *r.* III (*b*)—*Cutting of trees from assessed occupied survey number.*—A person cutting a tree from an assessed occupied survey number cannot be punished under Rule III (*b*), framed under s. 214, of the Bombay Land Revenue Code. EMPEROR v. VENKAPPA, **4 Bom. L.R. 625.**

(13)—*S.* 214, *r.* III, *cl.* 1—*Trees—Question of right.*—There can be no conviction under cl. 1 of r. III made under s. 214 of the Land Revenue Code when there is no direct evidence to the ownership of the trees being in the Government. The fact that the Government has asserted ownership in other trees in other parts of the village is not such evidence. QUEEN-EMPRESS v. GANESH RAGHUNATH, **Rat. Un. Cr. C. 828 = Cr. Rg. 71 of 1895.** (18 B. 670, *R.*)

(14)—S. 214—*See* No. 4, *supra.*

(15)—S. 215—*See* No. 4, *supra.*

(16)—*Rules* 48 *and* 111, *cl.* (2) (*a*)—*Encroachment on public road.* — The accused encroached on part of a public road and enclosed it in its own field with an embankment and cultivated it; he was thereupon convicted of an offence under the Land Revenue Code s. 214, Rule 48, and sentenced to pay a fine of Rs. 10 under Rule 111, cl. 2 (*a*) framed under the same section. *Held* that, as the land encroached upon by the accused did not fall under the prohibition contained in Rule 48, the conviction was illegal QUEEN-EMPRESS v. YADU *bin* ARJUNA, **1 Bom. L R. 161.**

(17)—*Rules* 103 (1) *and* 40, *Breach of.*—Where a person removed stone from the earth for making lime, without the permission of the Revenue authorities, and was convicted under Rules 103 (1) and 40 of the Land Revenue Code. *Held*, reversing the conviction, that Rule 40 was permissive and merely conferred certain privileges on persons obtaining permission under it, and that failure to apply for such permission did not amount to a breach for the Rule. CROWN v. MANGHO *walad* VENSI, **9 Cr. L.J. 258 = 1 S.L.R. 16 Cr.**

3.—Bombay Acts—continued.

Act V of 1879 (Bombay Land Revenue Code) —*concluded.*

(18)—*Rule* III, *cl.* (2) (*d*)—*Excavating foundation and building wall in village site without permission.*—Excavating, without permission, a foundation on the site of a village and building a wall upon it is not an offence under Rule III, cl. (2) (*d*), of the Rules under the Land Revenue Code. The act of unauthorised occupation can be taken notice of by the Revenue authorities and not by a Magistrate's Court. QUEEN-EMPRESS v. SHESHIBHAT, **Rat. Un. Cr. C. 200 = Cr Rg. 8-5-1884.**

Act VII of 1879 (Bombay Irrigation).

[REP. IN PT. ACT XVI OF 1895; BOM. ACT III OF 1880; BOM. ACT III OF 1886.]

(1)—*S.* 61, *cl.* 10—*Conviction—Court's duty to specify the sub-section—Practice.*—Under cl. 10 of s. 61 of the Bombay Irrigation Act, a person cannot be convicted, unless it is found that (1) he was responsible for the maintenance of a water-course or used of water-course and (2) that there were certain proper precautions which should have been taken by him for preventing the waste of water, and that he neglected to take these precautions. *Held*, further, that, in all convictions under a section of an Act which contains several sub-sections, the sub-section under which the accused is convicted must be stated in it, and it must be shown clearly how the act or omission complained of is an offence. CROWN HAJI v. MIR MAHMAND *walad* HAJI SADNALLAH, **9 Cr. L J. 271 = 1 S L.R. 32 Cr.**

*** Act XVII of 1879 (Dekkhan Agriculturists' Relief).**

[REP. IN PT. ACT XII OF 1891; ACT XVI OF 1895, REP. IN PT. AND AMENDED —ACT XXIII OF 1881; ACT XXII OF 1882; ACT XXIII OF 1886; ACT VI OF 1895. PROVISO ADDED TO S. 59, BOM. ACT I OF 1902, SS. 10A, 22A, INSERTED BY BOM. ACT II OF 1907.]

(*a*)—S. 2 (2) (4)—*See* No. 2, *infra.*

(1)—*S.* 64—*Person to grant receipt.*—Under s. 64 of the Dekkhan Agriculturists' Relief Act, the person to whom the payment is made is the person who is to tender the receipt. A clerk of a firm, to whom payment is made, is authorised to grant such receipt. QUEEN-EMPRESS v. RAJMAL, **Rat. Un. Cr. C. 903 = Cr. Rg. 12 of 1897.**

(2)—*Ss.* 64, 67, 2 (2) (4)—*Bullocks, sale of—Passing of receipt—Money includes bullocks.*—A person purchasing bullocks from an agriculturist is bound to pass a receipt under s. 64 of the Dekkhan Agriculturists' Relief Act, for the word "money" as used in that section includes bullocks. EMPEROR v. GOVINDA BABAJI BABDE, **16 Bom. L.R. 683 = 2 Bom. Cr. Cas. 248.**

(3)—S. 67—*See* No. 2, *supra.*

* These Local Acts were passed by the Imperial Legislature.

3.—Bombay Acts—continued.

Act II of 1884 (District Municipalities Amendment).

[REP., BOM. ACT III OF 1901.]

(*a*)—*See* STREET, 20 B. 83.

(*b*)—S. 32 (*h*)—*See* BOM. ACT VI OF 1873, s. 84, Rat. Un. Cr. C. 694 = Cr. Rg. 21 of 1894.

(1)—*S.* 33 (*b*)—*Act* III *of* 1901, *s.* 48 (*b*) (*iii*) —*Scope of section.*—A bye-law framed by a District Municipality provided that "Every place used for drying fish or fins shall be surrounded by a wall not less than six feet in height or with a fence made of bamboo mats or double cadjan leaves." *Held*, that the bye-law was *ultra vires* of the powers conferred by s. 33 (*b*) of Bombay Act, II of 1884, and s. 48 (*b*) (iii) of Bombay Act, III of 1901, as both these sections extended only to the regulation of business within the place used and gave no authority to require external structures. EMPEROR v. RAGHUNATH JIWABA, **4 Bom. L.R. 585.**

(1-*a*)—S. 33—*See* BOM. ACT VI OF 1873, s. 70, Rat. Un. Cr. C. 797 = Cr. Rg. 55 of 1895.

(2)—S. 36—*See* BOM. ACT VI OF 1873, Rat. Un. Cr. C. 615 = Cr. Rg. 37 of 1892.

(3)—S. 49—See BOM. ACT VI OF 1873, ss. 82, 84, Rat. Un. Cr. C. 420 = Cr. Rg. 86 of 1888.

(4)—*S.* 61—*Appearance of accused by her ather-in-law—Crim. Pro. Code* (1882), ss. 4 *and* 205.—A woman was charged with the offence of fouling water under s. 61 of the Bombay District Municipal Act. She being unwell, her father-in-law appeared in Court on her behalf and the trying Magistrate proceeded with the case and convicted her. *Held*, that the father-in-law of the accused might probably have been received by the trying Magistrate as a person appointed by her to act in the proceedings before him consistently with s. 4 of the Crim. Pro. Code. QUEEN-EMPRESS v. CHANDRABHAGA, **Rat. Un. Cr. C. 206 = Cr. Rg. 26th Aug. 1884.**

Act III of 1886 (General Clauses).

[REP. IN PART, AS TO BOMBAY REG. XII OF 1817, BOM. ACT IV OF 1890. REP. (EXCEPT SO MUCH OF SCH. B AS RELATES TO UNREPEAL ENACTMENTS) BOM. ACT I OF 1904, AS AMENDED BY BOM. ACT IV OF 1905.]

(1)—*Ss.* 6, 43 (*a*), (*b*)—*Importing of bhang into British territory—Receipt in a Railway Station in Native State—No cession of territory to Government—Offence.*—The applicant was charged with having imported *bhang* into the Presidency of Bombay, inasmuch as a parcel containing *bhang* and bearing his name and address was received at a Railway Station in a Native State. It appeared that the criminal jurisdiction along the line of the Railway was ceded to the Government, but there had been no cessation of territory. *Held*, that no offence was committed unless the importation was

3.—Bombay Acts—continued.

Act III of 1886 (General Clauses)—*concluded.*

into the Presidency of Bombay, that is, into territories which formed part of British India, and, if the land upon which the offence was alleged to have been committed had not actually been ceded, it could not form part of British India. EMPEROR v. RAGHUNATH RAO VINÆKRAO, **5 Bom. L.R. 873.**

(2)—S. 8—*See* BOM. ACT VI OF 1873, s. 84, 3 Bom. L.R. 584.

(3)—S. 12—*See* BOM. ACT VIII OF 1867, s. 15, 6 Bom. L.R. 357.

(3-*a*)—S. 12 — *See* PENAL CODE, s. 64, 6 Bom. L.R. 357.

(4)—S. 43 (*a*) (*b*)—*See* No. 1, *supra.*

Act IV of 1887 (Prevention of Gambling).

[REP. IN PART, ACT XVI OF 1895. AMENDED, BOM. ACT I OF 1890.]

(1)—*Amending Act* I *of* 1890—*Gaming includes wagering.*—The word 'gaming' in the Act has now, under the provisions of Bombay Act I of 1890, to be read as including wagering. KING-EMPEROR v. AHMED HAJI, **4 Bom. L. R. 297.**

(2)—*See* BOM. ACT I OF 1890, s. 12, 16 B. 283, F.B.

(3)—*S.* 3—*Instrument of gaming—Paper for registering wager.*—A single page of paper used for registering wagers is an instrument of gambling within the meaning of s. 3 of Act IV of 1887. EMPEROR v. LAKHAMSI MALSI, **29 B. 264 = 6 Bom. L.R. 1091.**

(4)—*S.* 3—*Common gaming house—Evidence.* —In the absence of evidence that a house is used for profit or gain, it cannot be held to be a common gaming house as defined in Bombay Act IV of 1887, s. 3. QUEEN-EMPRESS v. MAGAN KALA, **Rat. Un. Cr. C. 840 = Cr. Rg. 9 of 1896.**

(5)—*Ss.* 3 *and* 4—*Rain betting.*—The accused kept a certain shed. The people frequented the shed to bet on the quantity of rain which may fall in a given time. The instruments kept there and used for such purpose were a rain guage and a gutter. The rainfall used to be registered by the accused, who, after deducting a commission on each bet, paid over the money to the winner. *Held* that, although the place was used as a common betting house and the instruments were those of betting, there was no gaming, as there was no contest, no players, and no participation by the players, save as onlookers; and the place was not a common gaming house. The accused was not, therefore, guilty of an offence under s. 4 (*b*) and (*c*) of Bombay Act IV of 1887. It would be an undue straining of the word "gaming" to hold that it covered "rain-betting." QUEEN-EMPRESS v. NAROTTAMDAS MOTIRAM, **13 B. 681.** [*R.*, 16 B. 283, 39 C. 968 = 13 Cr. L.J. 603 = 16 C.L.J. 250 = 16 C.W.N. 856 = 16 Ind. Cas. 171; *D.*, 31 C. 542 = 8 C.W.N. 458, 4 Bom. L R. 297.]

3.—Bombay Acts—continued.

Act IV of 1887 (Prevention of Gambling) *—continued.*

(6)—*Ss. 3, 4, 5—Betting on figures of auction at Calcutta—Books of accounts for registering bets—Telegrams announcing winning number—Instruments of gaming.*—Wagering was carried on the figures which denoted the prices in Calcutta of the auction sales of opium cheats. The wagers were recorded in books, the different pages of which had the various units at the top of each page, and the betters were invited to inscribe their names under the various units, stating the amounts of their wagers. The winning numbers were communicated by means of telegrams from Calcutta. *Held*, that the books and telegrams were "instruments of gaming" within the meaning of s. 3 and that the persons dealing with these were guilty under s. 4. *Held* also, that this particular wagering was not a 'game' within the meaning of s. 5, and that, therefore, the presumption allowed by s. 7 of the Act was not applicable and that the accused could not be convicted under s. 5 of the Act. EMPEROR v. TRIBHOVANDAS BRIJBHUKANDAS, 26 B. 533=4 **Bom. L.R. 271.** [*R.*, 29 B. 264=6 Bom. L.R. 1091, 5 Bom. L.R. 129, 6 Bom. L.R. 249.]

(7)—*S. 4—Instrument of gaming*—Ank satta *book—Inference.*—During the course of a search instituted under s. 6 of the Prevention of Gambling Act, an *ank satta* book was founded in the house of the accused. *Held*, that the book was an "instrument of gaming," and that the book having been found in the house of the accused, his house was a common gaming house. EMPEROR v. JAMNADAS HIRACHAND, **5 Bom. L.R. 129.** [*F.*, 5 Bom. L.R. 1047; *R.*, 29 B. 264=6 Bom. L.R. 1091, 6 Bom. L.R. 249.]

(8)—*Execution of warrant — Betting*—Ank Satta *book—Instrument of gaming— Evidence.*—In execution of a warrant issued under s. 6 of Act IV of 1887, an *ank satta* book was found in the house of the accused. It appeared that there was betting in the house and that the bets were recorded in the book in his handwriting. It was also shown that he got one per cent. on the bets; and he himself admitted that the book was used for betting. *Held*, (1) that these circumstances put together justified the conclusion that the book was an instrument of gaming kept and used in the house for the purpose of profit by the accused, within the meaning of s. 4 (*a*); (2) that direct evidence was not necessary to prove the use of the book in the house; but such use might be inferred from the facts and surrounding circumstances found to exist. EMPEROR v. NAROTAM MOTIRAM, **5 Bom. L.R. 1047.**

(9)—*S. 4—Place where* Jota *business is carried on—Common gaming house.*—A person keeping for his profit a place where brokers and others carry on *Jota* business, *i.e.*, wagering from day to day on the total sale of cotton bales in Liverpool, and where the wagering books are kept or used, is guilty of keeping a common gaming house and is liable to be punished under s. 4 of Act IV of 1887. EMPEROR v. CHAGANLAL JIWRAJ, **6 Bom. L.R. 249.** (26 B. 553=4 Bom. L.R. 287, 5 Bom. L.R. 129, *R.*) [*R.*, 29 B. 264=6 Bom. L.R. 1091.]

(10)—*S. 4 (a), (c)—Place—Chok—Interpretation.*—The term 'place' as used in s. 4 of the Bombay Prevention of Gambling Act, includes a small open space surrounded by houses on all sides, accessible by a narrow lane having a sign board pointing to the space, and appropriated by the lessee in occupation for the business of betting. EMPEROR v. FATTU MAHOMED SHER MAHOMED. **15 Bom. L. R. 689=2 Bom. Cr. C. 96=14 Cr. L.J. 449=20 Ind. Cas. 609=37 B. 651.**

(11)—S. 4—*See* Nos. 5, 6, *supra.*

(12)—*Ss. 4 and 5—Imprisonment in default of payment of fine.*—In awarding imprisonment in default of payment of fine under ss. 4 and 5 of Bom. Act IV of 1887, the Court should keep in view the provisions of s. 65, I.P.C. QUEEN-EMPRESS v. VENKATA *bin* TIMANNA, **2 Bom. L. R. 1081.**

(13)—*Ss. 4, 5—Common gaming house.*—The accused opened a shop wherein he kept a table with a cover on it. The cover had on it numbers 6 to 36. They were not consecutive numbers. On each number was placed an article such as a clock, a watch, etc., of the values ranging from Rs. 1-8 to Rs. 15. Any customer who paid Rs. 2 was given by the accused six dice. The dice had six sides, each of which bore marks ranging from one to six. The customer was allowed one throw of the dice, and the number of points thus obtained was to entitle him to obtain the article placed on the corresponding number on the cloth. *Held* that the shop was a common gaming house, and the persons keeping the house and playing therein were punishable under ss. 4 and 5 of Bom. Act IV of 1887. KING-EMPEROR v. AHMED HAJI, **4 Bom. L.R. 297.**

(14)—Ss. 4 and 5—*See* CRIM. PRO. CODE (1898), s. 4 (*l*), 4 Bom. L.R. 271=26 B. 533.

(15)—*Ss. 4, 5, 6, 7—Keeping a common gaming house—Gaming in a common gaming house—Power to order search and arrest—Presumption under s. 7 of the Act—Criminal Procedure Code* (*Act* V *of* 1898), *ss.* 65, 105.—The presumption under s. 7 of the Bombay Prevention of Gambling Act, 1887, only arises where there has been an arrest and search under s. 6 of the Act. Under s. 6 of the Act, as a first-class Magistrate has power to give authority under a special warrant, to a Police officer of the class designated in the section, to make the arrest and the search, the legislature must be presumed to have intended that the Magistrate, First Class, should have the authority to make the arrest and the search himself, if necessary. For, when the legislature empowers an officer to delegate an authority to do a certain act to

3.—Bombay Acts—continued.

Act IV of 1887 (Prevention of Gambling) *—continued.*

another person, it necessarily implies that the original authority to do such act is fully and completely in the officer himself, but that it is necessary for the exigencies of business that it should be done in the majority of cases by persons acting under authority derived from him. Where the Bombay Prevention of Gambling Act has provided for the manner or place of investigating or inquiring into any offence under it, its provisions must prevail, and the Criminal Procedure Code must give way. Accordingly, no provision of the Code as to the authority empowered to issue a warrant for arrest or search, or the persons to whom and the conditions under which such warrant may be issued, can apply for the purposes of s. 7 of the Gambling Act. The authority, the persons and the conditions must be respectively those specifically mentioned in s. 6 of the Act and no other. But the special provision in s. 6 of the Bombay Act would still be subject to the general provisions of ss. 65 and 105 of the Code. When a Magistrate, First Class, or other officer mentioned in s. 6 of the Act, himself acts under its provisions, instead of acting through an officer of the particular class prescribed therein under a special warrant, he must act strictly in compliance with those provisions. The first condition necessary to make an arrest and seizure under the section legal, so as to bring in the operation of s. 7, is that, where the Magistrate is acting on information, there must be a complaint made before him *on oath* to set him in motion. When a Magistrate, First Class, or other officer mentioned in s. 6 himself does the act specified in cl. 3 of the section, instead of issuing a special warrant, he must give evidence, because he supplies the place of the warrant and the warrant is necessary part of the evidence for the prosecution. Where a Magistrate, First Class, himself makes an arrest and seizure under s. 6 of the Act, he must himself "enter" the "house, room or place" with, of course, the assistance of such persons as may be found necessary. S. 6 of the Act must be construed strictly, because s. 7 gives to an arrest and seizure under it an operation different from that of the general presumption of innocence in criminal cases. EMPEROR v. KAITAN DUMING FERNAD, **9 Bom. L.R. 695 =6 Cr. L.J. 60=31 B. 438.** [*R.*, 12 Cr.L.J. 149=9 Ind. Cas. 895=5 S.L.R. 40, 37 B. 402 =2 Bom. Cr. Cas. 29=15 Bom.L.R. 106=14 Cr. L.J. 204=19 Ind. Cas. 204.]

(16)—*Ss.* 4, 5, 6, 7—*Presumption under s.* 7 —*Warrant under s.* 6—*Delay in execution of warrant—Previous conviction—Proof of—Crim. Pro. Code (Act* V *of* 1898*), s.* 342—*Evidence Act* (I *of* 1872*), ss.* 10, 54.—*Held* by *Chandavarkar and Aston, JJ.*, (*Jacob, J., dissenting*) that (1) the presumption created by s. 7 of the Prevention of Gambling Act (Bombay Act IV of 1887) can be applied to cases falling under s. 5 as well as to those falling under s. 4 of the Act. (2) Where a long interval elapses between the issue of a warrant under s. 6 of the Prevention of Gambling Act, 1887, and its execution, the applicability of s. 7 of the Act is not by that alone taken away. (3) In a trial for the offence of keeping a common gaming house under s. 4 of the Prevention of Gambling Act, 1887, evidence that the accused had been previously convicted of the same offence is admissible to show guilty knowledge or intention. *Held*, by *Jacob, J., dissenting*, (1) that the presumption created by s. 7 of the Prevention of Gambling Act, 1887, is sufficient for the purposes of s. 5. It is also sufficient for the purposes of s. 4 (*a*) so far as regards the fact that the house, etc., is so used, but it is not alone sufficient for the purpose of showing that the house was so kept or used by any specified person; (2) that in a trial for an offence under s. 4 (*a*) of the Prevention of Gambling Act, 1887, the evidence that he was previously convicted of a similar offence cannot be let in either under s. 54 or s. 11 of the Evidence Act, 1872. *Per Aston, J.*—"It is open to an accused to ask the Court to treat what the Legislature declares in s. 7 of the Prevention of Gambling Act, 1887, to be incriminating 'evidence' to be reduced in weight by any unreasonable delay which may take place between the issue of a warrant under s. 6 and its execution." "It is not competent to a Magistrate to ask an accused, under s. 342 of the Crim. Pro. Code, 1898, before his conviction, about the previous conviction, either with a view to take it into consideration for the purposes of conviction or with a view to dispense with formal evidence as to the alleged previous conviction and as to identity of the accused, in the event of conviction." EMPEROR v. ALLOOMIYA, **5 Bom. L.R. 805= 28 B. 129.**

(17)—*Ss.* 4, 5, 7—*Common gaming house.*—In order to establish an offence under s. 4 of keeping a "common gaming house," it is necessary to show, in the first place, that the person charged is the owner, or occupier or a person "having the use" of the place in question. It is not sufficient to show that the accused used the place for the purpose of gambling there. EMPEROR v. WALIA MUSAJI, **29 B. 226=7 Bom. L.R. 16=2 Cr. L.J. 26.** [*R.*, 167 P.L.R. 1905.]

(18)—*Ss.* 4, 6—*Common gaming house — When Police officer can arrest under the Act— Conviction under section, when sustainable.*— A conviction under s. 4 will be sustained, only if it be shown that the house in which the accused were found was a common gaming house. EMPEROR v. MULCHAND, **4 Bom. L. R. 946.**

(19)—*Ss.* 4, 12, *object of—Gambling in* Machwa *hired by accused in harbour for the purpose.*—Gambling in a *Machwa*, which was chartered by the accused and was used by them

3.—Bombay Acts—continued.

Act IV of 1887 (Prevention of Gambling) —*continued.*

for the purpose in the Bombay Harbour, could not be said to be gambling in a public place, street, or thoroughfare, within the meaning of s. 12, Bombay Gambling Act. In s. 4, Bombay Gambling Act, the mischief aimed at is the practice of individuals making a profit by providing a spot of their own selection, known as a place where gambling is to be carried on, and making a livelihood by attracting people to a place which they would not otherwise frequent. In s. 12 of the Act, however, the offence is, not that the individual members are making a profit at all, but simply that they are carrying on their gambling with such publicity that the ordinary passer-by cannot well avoid seeing it and being enticed—if his inclinations lie that way—to join in or follow the bad example openly placed in his way. In the one case, comparative privacy for profit, in the other, bad public example and accessibility to the public. would seem to constitute the gravemen of the offence. S. 12 aims at gambling in a public place or thoroughfare and ordinarily applies to persons sitting on or near a road or public place with no intervening obstruction to the public view where there is voluntary publicity. EMPEROR v. JUSUB ALLY, **29 B. 386 = 7 Bom. L.R. 333 = 2 Cr. L.J. 252.** (17 A. 166, *R.*) [*R.*, 30 B. 348 = 8 Bom. L.R. 22 = 2 Cr. L J. 216, 14 Cr. L.J. 670 = 21 Ind. Cas. 910 = 9 N.L.R. 164.]

(20) – *S. 5—Common gaming house.*—S. 5 of Bom. Act IV of 1887 refers to persons found in a common gaming house ; it does not refer to persons who are in the habit of assembling in various places for the sole purpose of gambling. QUEEN EMPRESS v. SHEKH AHMEDBHAI, **Rat. Un. Cr. C. 763 = Cr. Rg. 25 of 1895.**

(21)—S. 5—*See* Nos. 6, 12 to 17, *supra.*

(22)—*Ss. 5, 6, 7—Common gaming house—Search without warrant under s. 6—Presumption under s. 7 cannot arise on such search.*—A Police Officer qualified to act under s. 6 of the Bombay Prevention of Gambling Act, without a warrant issued under s. 6, raided a house in the City of Bombay, and arrested the accused who were found there with cards and small coin lying near them. They were tried by a Magistrate for gaming in a common gaming house, who, applying the presumption raised by s. 7 of the Act, found them guilty under s. 5 of the Act ;—*Held,* (1) that the Police Officer was entitled to make the search he did, even in the absence of a warrant under s. 6, for he had authority to make the arrest and the search himself which he could have empowered a Subordinate Officer to do under a warrant under his hand ; (2) that, in the absence of the warrant issued under s. 6, the presumption established by s. 7, that the mere finding of cards or dice was evidence that the house was used as a common gaming house, could not be applied ; (3) that, therefore, the convictions of the accused were unsustainable. EMPEROR v. JAFFUR MAHOMED, **15 Bom. L. R. 106 = 2 Bom. Cr. C. 29 = 14 Cr. L.J. 204 = 19 Ind. Cas. 204 = 37 B. 402.** (31 B. 438 = 9 Bom. L.R. 695, (1897) A.C. 22 (38), *R.*)

(23)—*Ss. 5, 12—Gambling in a public place —Presumption under s. 5—Presumption cannot be applied.*—The presumption mentioned in s. 5 of the Prevention of Gambling Act, cannot be applied to cases falling under s. 12 of the Act. EMPEROR v. HIRALAL MOTILAL, **15 Bom. L.R. 331 = 2 Bom. Cr. C. 74 = 20 Ind. Cas. 143 = 14 Cr.L.J. 383.**

(24)—*S. 6—Arrest by Police officers.*—A Police officer cannot arrest a person, under the Act, unless he holds a warrant under s. 6 of the Act. EMPEROR v. MULCHAND, **4 Bom. L. R. 946.**

(25)—*S. 6—Endorsement of warrant by an officer named therein to another, whether valid —Authority under warrant cannot be delegated.* —Where the officer, to whom a warrant was issued under s. 6 of the Act, endorsed it to another officer, *held,* that the warrant should specify the officer to whom the authority is given and that he alone can execute the warrant. A "special warrant" is a warrant, which specially authorizes an officer to do a particular act or acts. CROWN v. MITHU, **3 S.L.R. 56 Cr. = 2 Ind. Cas. 371.**

(26)—*S. 6—Inquiry by Magistrate—Issue of warrant—Whether informant should have knowledge—Money found on person of accused—Confiscation.*—S. 6 of the Bombay Gambling Act does not make it obligatory on a Magistrate, before issuing a warrant, to make inquiry after receiving information. This section only enjoins the Magistrate to make "such enquiry as he may think necessary," and the words do not mean that he is to make an inquiry, even though he may not think it necessary to do so. This section does not require that the informant should have knowledge ; it is sufficient if the informant testifies to a reasonable suspicion that any house, room or place is used as a common gaming house. On the conviction of the accused, the Magistrate cannot order the money on their person to be confiscated. IMPERATOR v. HIRO *wd.* BHOJRAJ, **1 S.L.R Cr. 64 = 8 Cr. L J. 182.** (26 B. 641, *F.*)

(27)—*S. 6—Search—Police officer.*—A police officer of a lower rank than a Chief Constable cannot, under s. 6 of Bombay Act IV of 1887, enter a house with a search warrant. QUEEN-EMPRESS v. SUBBABHATTA, **Rat. Un. Cr. C. 825 = Cr. Rg. 68 of 1895.**

(28)—*S. 6—Warrant—When valid.*—Where a warrant, issued by the Commissioner of Police under s. 6 of the Bombay Prevention of Gambling Act, contains a sufficiently accurate description of the house or room to be searched, it is not illegal, merely because it does not correctly specify the locality of the house or room to be searched. EMPEROR v. KRISHNA RUTNA DALVI, **6 Bom. L.R. 52.**

3.—Bombay Acts—continued.

Act IV of 1887 (Prevention of Gambling) *—continued.*

(29)—S. 6—*See* Nos. 15, 16 and 18, *supra.*

(29-*a*)—*Ss.* 6, 7.—*Presumption under s.* 7, *dependent upon proper warrant under s.* 6—*Defence, duty of.*—Where the conviction was based upon the fact that instruments of gambling were found on the premises, such fact being treated as evidence that the premises were used as a common gaming house under the special provisions of s. 7, but the sworn complaint had not been put in, except that the Police Inspector had stated that the warrant under s. 6 was issued on information given on oath to the Magistrate, *held*, that the mere assertion of the Police Inspector that information was given on oath to the Magistrate granting the warrant, was not sufficient material for the trying Magistrate to come to the conclusion that the warrant was properly issued under s. 6, and to apply the provisions of s. 7 to the case. The mere finding of instruments of gambling in the house entered under the warrant is not proof that it was used as a common gaming house. KING-EMPEROR v. KADIR, **3 S.L.R. 78 = 3 Ind. Cas. 893.** [*Diss.*, 82 Cr.L.J. 149 = 9 Ind. Cas. 895 = 5 S L.R. 40.]

(30)—*Ss.* 6 *and* 7—*Validity of warrant disputed—Proof.*—*Held*, that before any presumptions of guilt can be drawn against the accused under s. 7 of the Gambling Act, it is incumbent on the trying Magistrate to be satisfied that the warrant issued by the Police Officer under s. 6 of the Act was a valid one. *And* where the Magistrate had merely referred to an uncertified copy of the statement made by the informer, without calling for further proof, *held*, that he had no sufficient materials to hold that the warrant was a valid one. CROWN v. SEJU *walad* CHATU, **9 Cr. L. J. 267 = 1 S L.R. 27, Cr.**

(31)—*Ss.* 6, 7—*Warrant—Search—Complaint on oath—Evidence Act* (I *of* 1872), *s.* 114 (*e*)—*Evidence.*—Though it is desirable to formally produce in evidence a warrant issued under s. 6, yet where the complainant states that he searched the house under warrant, and such warrant and his complaint on oath appear in the proceedings of the Magistrate, and it is not alleged that the complainant searched the house under any other warrant, or that the warrant was not regularly issued under the said section, the High Court will not exercise its discretionary powers of revision. (28 B. 533, 6 Bom. L.R. 379, 1 Cr. L.J. 390, *R.*) The complaint on oath is not a necessary part of the evidence of the prosecution; ordinarily, it would be sufficient to rely on the maxim "*omnia rite esse acta*" after formal proof of the search-warrant. ABDULLAH v. EMPEROR, **9 Ind. Cas. 895 = 12 Cr. L.J. 149 = 5 S.L.R. 40.** (1 S.L.R. 27, 1 S.L.R. 67, 3 S.L.R. 78, 3 Ind. Cas. 893, 3 S.L.R. 84, 3 Ind. Cas. 895, *Dissented from.*)

3.—Bombay Acts—continued.

Act IV of 1887 (Prevention of Gambling) *—continued.*

(32)—*Ss.* 6, 7 *and* 11—*Warrant—Further inquiry by Magistrate before issuing one—Presumption under s.* 7, *when will arise—Duty of Magistrate—Motives of informant, relevancy of.*—S. 6 of the Bombay Gambling Act does not make it obligatory on a Magistrate to make, before issuing a warrant, further inquiry after a complaint was made to him if he thinks it not necessary to do so. The presumption under s. 7 will not arise, unless it is shown that the warrant was issued under the provisions of s. 6, and, therefore, in every case it is necessary that the Magistrate should exhibit and bring on the record the complaint on oath and the warrant. The motives of the informant of an offence under the Bombay Gambling Act are altogether irrelevant, and s. 11 of the Act shows that the Legislature recognized that the informant might be actuated only by the hope of reward. IMPERATOR v. PAMAN, **1 S.L.R. 67 Cr. = 8 Cr. L.J 185.** (1 S.L.R. 64, Cr., *R.*) [*Diss.*, 12 Cr. L.J. 149 = 9 Ind. Cas. 895 = 5 S.L.R. 40.]

(33)—*S.* 7—*Onus of proof—Construction of Act.*—Bombay Act IV of 1887 must be strictly construed, as s. 7 departs from the ordinary rules of evidence and places the burden of proof on the accused. QUEEN-EMPRESS v. SUBHABHATTA, **Rat. Un. Cr. C. 825 = Cr.Rg. 68 of 1895.**

(34)—*S.* 7—*Common gaming house—Presumption.*—Where 13 persons were found in a room in the upper story of a house, sitting in a circle gambling with dice, and having a quantity of *cowries* and money before them, *held*, that the above facts would be evidence under s. 7 of Bombay Act IV of 1887, until the contrary was proved, that the room was used as a common gaming house and that the persons found therein were then present for purpose of gaming. QUEEN-EMPRESS v. BAI VAJU, **22 B. 745.**

(35)—*S.* 7—*Documents not formally exhibited, though in possession of Court—Duty of Court.*—Where both the complaint made under s. 6 and the warrant issued thereon are actually on the file of the proceedings, if they are not formally exhibited and put on the record as evidence, the Magistrate should, in the exercise of a wise discretion, before the close of the prosecution case, draw the attention of the prosecution to the fact that the documents have not been exhibited, and ascertain whether or not they are to be regarded as having been produced as evidence for the prosecution under s., 244, Cr.P.C. CROWN v. GHOLAM HOOSEIN KARIMBUX, **3 S.L.R. 84 = 3 Ind.Cas. 895.** [*Diss.*, 12 Cr. L.J. 149 = 9 Ind. Cas. 895 = 5 S L.R. 40.]

(36)—*S.* 7—*Search warrant— Presumption, nature of and when it arises.*—Where a search warrant has been issued under the provisions of s. 7, it is for the accused to prove that the house was not a common gaming house and

***3.—Bombay Acts*—continued.**

Act IV of 1887 (Prevention of Gambling) *—continued.*

that the articles found therein were not there for the purpose of gaming. KING EMPEROR v. AHMED HAJI, **4 Bom. L.R. 297.**

(37)—*S.7—Instruments of gaming—Presumption—Rebuttable—Search warrant.*—Where the convicion was based upon the fact that instruments of gaming were found on the premises, *held*, that the presumption under s. 7 was rebuttable, and was rebutted in this case by the fact that the warrant for search was issued, on the sworn information of an avowed gambler, that the accused all belonged to the same caste, and were, at the time of search, preparing tea, that cricketting things were found, as well as a money box with a little cash, and that the accused alleged that the premises were used by them as a club. TYAB ALI MOHAMUD ALI v. CROWN, **3 S.L.R. 80.**

(38)—*S. 7—Warrant—Common gaming house—Presumption—Proof.*—A Magistrate issued a warrant under the Act to a *Mukhtiarkar* to arrest the appellant. *Held*, as the warrant was not issued to a Police officer, no presumption under s. 7 of the Gambling Act arises, and that the prosecution must prove that the house in question is a common gaming house. CROWN v. CHELLARAM, **2 S.L.R. 40, Cr. = 10 Cr. L.J. 205.**

(39) *S. 7—Bagatelle—Billiard balls—Game of skill—Game of chance—Presumption.*—A bagatelle board and billiard balls are capable of being used both for games of skill and games of chance, and no presumption can be drawn under s. 7 of the Prevention of Gambling Act, QUEEN-EMPRESS v. MASUKH RAICHAND, **Rat. Un. Cr. C 923 = Cr. Rg. 28 of 1897.**

(39-*a*)—S. 7—*See* Nos. 15, 16, 17, 22, 29, 30, 31 and 32, *supra.*

(40)—*S. 8—Seizure of money found on person in gambling house.*—The power of seizing money, under s. 8 of Bombay Act IV of 1887, does not extend to that found on the persons of those who may be at the time in the gambling house. EMPEROR v. WALLI MUSSAJI, **26 B. 641 = 4 Bom. L R. 427.** [*R.*, 7 A.L.J. 404 = 6 Ind. Cas. 586 = 11 Cr. L.J. 373, 8 Cr. L.J. 182 = 1 S.L.R. 64.]

(41)—S. 11—*See* No. 32, *supra.*

(42)—*S. 12—Conviction—Sentence.*—Where a person is convicted of an offence under s. 12, Prevention of Gambling Act, he can be sentenced to pay a fine or to undergo imprisonment, but not to both. QUEEN-EMPRESS v. TUKARAM, **Rat. Un. Cr. C. 686 = Cr. Rg. 5 of 1894.**

(43)—*S. 12—Public place, street or thoroughfare—Gambling in a second class compartment in a special Race Express running through—Accused found gambling at the reversing Station, where the train stopped for engine purposes—Public place — Interpretation.*—The word "place" in s. 12 of the Act is qualified by the word "public" and having regard to its context, and its position in that context, it must mean a place of the same general character as a "road or thoroughfare," else it was pointless to use the words "street or thoroughfare" as they are there used. A railway carriage forming part of a through special train is not a public place within the meaning of s. 12 of the Act. *Per Jenkins, C.J.*—"I would be slow to place on the section (s. 12) an interpretation that would curtail its legitimate scope, but I am unable to regard the railway carriage, in which the accused were, as possessing such characteristics of, or bearing such a resemblance to, a street or thoroughfare as to justify us in holding that it was a public place within the meaning of s. 12." *Per Russell, J.*—"I am of opinion that to call or describe either the Railway line at the spot in question (*i.e.*, at the Reversing Station, where the train stopped for engine purposes only and where the public would not have any right, without the permission of the Railway Company, to be on the line at all) or the carriage (in a special train, which took no passengers between the two termini of the journey) in which the accused were playing, as coming within any of the terms 'public street, place or thoroughfare' (in s. 12 of the Act) would be to place a wrong interpretation upon those words." EMPEROR v. HUSSEIN NOOR MAHOMED, **8 Bom. L R. 22 = 30 B. 348 = 3 Cr. L.J. 216.** [*R.*, 10 Cr. L.J. 16, 14 Cr. L.J. 670 = 21 Ind. Cas. 910 = 9 N.L.R. 164, 15 Cr. L.J. 468 = 24 Ind. Cas. 348 = 4 P.R. 1914, Cr. = 155 P.L.R. 1914, 19 Ind. Cas. 167 = 15 Bom. L.R. 101.]

(44)—S. 12—*Public place—Swami's Math.*—The accused were found playing for money with cards in a Math, which was enclosed in a compound wall and off the highway. It was managed by a Swami of the Lingayet community and was open to all Lingayets and to other castes, subject to certain restrictions. The Swami could, if he chose, keep the people out. Under these circumstances, the accused were convicted of an offence punishable under s. 12 of the Prevention of Gambling Act. *Held*, setting aside the convictions and sentences, that the 'Math' could not be regarded as a public place within the meaning of the Act. EMPEROR v. CHENAPPA, **15 Bom. L.R. 101 = 2 Bom. Cr. C. 24 = 19 Ind. Cas. 167 = 14 Cr. L.J. 167.**

(45)—S. 12—*See* Nos. 19, 23, *supra.*

Act III of 1888 (City of Bombay Municipal).

[REP. IN PT., ACT II OF 1901; REP. IN PT., BOM. ACT I OF 1897; REP. IN PT. AND AM., ACT XVI OF 1895; BOM. ACT IV OF 1888; AM., BOM. ACT I OF 1894; AM., BOM. ACT II OF 1899, SS. 5 (1), 5 (3), 6 (1); AM., BOM. ACT II OF 1900; AM., BOM. ACT II OF 1901. SUPPLEMENTED, ACT XII OF 1888;

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SUPPLEMENTED, ACT II OF 1889; SUPPLEMENTED, BOM. ACT V OF 1890; SUPPLEMENTED, BOM. ACT I OF 1898; SUPPLEMENTED, BOM. ACT II OF 1899. S. 74 (2) (*c*) AM., BOM. ACT V OF 1903. SS. 3 (*u*), 26 (*j*), 28 (*c*), (*m*), (*p*), 33 (1), (2), 68 (2), 77 (*d*), 118 (*c*), 120, 220, 221, 228, 229, 230 (1), (4), 231, 232, 233 (1), (2), 234 (2), 236, 238 (1), 239, 241, 242, 244, 246 (*c*), 247, 248, 253, 255, 256, 257, 258, 260, 272, 273, 281, 287 (2), 297, 302, 303 (1), 304 (1), (2), 338, 342, 344 (2), 347, 379, 470, 471, 472, 489 (2) AM., SS. 220-*A*, 232-*A*, 233-*A*, 246-*A*, 249-*A*, 251*A*, 251-*B*, 257-*A*, 259 *A*, 273-*A*, 287-*A*, 344-*A*, 349-*A*, 349-*B*, 349.*C*, 353-*A*, 354-*A*, 379-*A*, SCHS. S. & T. INS., SS. 226 259 (2) REP., SS. 337 (1), 343, 348 (1), 461 REP. IN PT. AND AM., BOM. ACT V OF 1905. SS. 39 (1), (5), (6), 10), 40 AND 121 AND HEADING THERETO REP. IN PT., SS. 39 (3), (7), (8), 80, 92, 118, 518 (1) AM., SS 39 (9), 461 (*u*) REP. IN PT. AND AM., SS. 62-*A*, 62-*B*, 62-*C*, 68-*A*, 76*A*, 76-*B*, 89-*A* TO 89-*F*, SCHS. U & V INS., BOM. ACT III OF 1907, WHEN NOTIFIED. SS. 61, 62, 111 AM, S. 62-*D* INS., S. 63 (*a*) AND S. 120 AND HEADING THERETO REP., BOM. ACT III OF 1907.]

(1)—*S. 3, cl. (w)—Street—Passage kept open having houses on both sides of it.*—The owner of a large piece of land divided it into several small building sites which were sold to different persons. These sites were ranged on either side of two proposed roads, which ran through the land and which touched a high road at the one end and a dead wall on the other. Each of the purchasers entered into a covenant with the owner, whereby he agreed to prepare and keep free, for passage, so much of the road as lay in front of his site. Under these circumstances, the question arose whether the proposed road fell within the meaning of the term "street" as used in the Act. *Held*, that the proposed road would constitute a "street" within the meaning of the Act. MUNICIPAL COMMISSIONER OF BOMBAY v. MATHURABAI, 8 **Bom. L.R. 457 = 30 B. 558 = 4 Cr. L.J. 23.**

(2)—S. 3 (10), 61 (*b*) — *Public street—Stopping of rat-holes and re-setting of stones.*—The stopping up of rat-holes and putting stones right by the Health Department of the Municipality is no proof of repair within the intent of the definition of "public street" in s. 3 (10) of the City of Bombay Municipal Act, but comes more appropriately under s. 61 (*d*) of the Act, the Corporation having to make many sanitary provisions and generally the abatement of all nuisances. MUNICIPAL COMMISSIONER OF BOMBAY v. VINAYEK RAMACHANDRA, **Rat. Un. Cr. C. 802 = Cr. Rg. 58 of 1895.**

(3)—*Ss. 3, 305—Public street—Private street—Sewer—Drain-pipe to carry off sullage water from adjoining houses.*—The applicant owned a house abutting on a street which contained a drain-pipe laid by the Municipality. The drain pipe carried only sullage from the houses on either side of the street, and did not carry any rain-water or other water or sullage or anything else from the street itself. The Municipal Corporation of Bombay issued a notice on the applicant under s. 305 of the City of Bombay Municipal Act, calling upon him to level, metal or pave, drain and light the street running by his premises. The applicant was, for disobedience of this notice, convicted under s. 471 of the Act. It was contended in defence that s. 305 did not apply, because the street in question was not private but public, owing to its having been sewered by the drain-pipe laid by the Municipality; *Held* that the srteet in question was not public, for it could not be said to be 'sewered' merely because there ran under it a pipe, which, though carrying off sullage water from certain houses, had no direct connection with the surface of the street. EMPEROR v. EDALJI K. PATEL, **14 Bom. L.R. 1169 = 1 Bom. Cr. C. 240 = 18 Ind. Cas. 267 = 14 Cr. L.J. 43.**

(4)—*S. 24—"City," meaning of.*—In this section, "city" is not equivalent to the City of Bombay or the whole area to which the Municipal Act applies. EMPEROR v. BUDHOOBAI, **30 B. 126 = 7 Bom. L.R. 726 = 2 Cr. L. J. 604.** [*R.*, 9 Bom. L.R. 1321.]

(5)—S. 61—*See* No. 2, *supra.*

(6)—*Ss. 63, 231, 471, 517—Municipal offence—Competency to complain.*—The Municipal Commissioner is the only person empowered under the City of Bombay Municipal Act, 1888, to take proceedings against any person who is charged with any offence against the Act. He has powers under s. 68 to delegate his functions under s. 517 (*a*) to any Municipal Officer by writing in this behalf and then such person can take proceedings, but no one else can. QUEEN-EMPRESS v. NADIRSHAW H. SUKHIA, **Rat. Un. Cr. C. 987 = Cr. Rg. 45 of 1898.**

(7)—S. 231—*See* No. 6, *supra.*

(8)—*Ss. 231, 471—Failure to comply with notice to construct drain—Limitation—Protest against notice and reply thereto—Scope of s. 231.*—The accused was convicted of an offence punishable under s. 471 of Act III of 1888, *i.e.*, of failing to comply with the requisition of the Municipal Commissioner under s. 231, asking the accused to construct an open drain from his premises and connect it with the Municipal drain. The notice directed the accused to construct the drain in a particular part of his house and close to a particular wall thereof. The accused protested against the notice and the Municipal Commissioner replied that he would make enquiries. Finally, the Commissioner, seeing no reason to cancel the notice issued another notice asking the accused to carry out the work mentioned in the first notice; the accused's failure to comply with this notice resulted in the conviction in question. *Held* (1) that the complaint was not

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barred, the combined effect to the protest on the part of the accused and the reply on the part of the commissioner, stating that he would make further enquiries, being to keep the first notice in abeyance pending further enquiries, and it being competent to the Commissioner, when the result of the enquiries was adverse to the accused, to start proceedings against him and issue a fresh notice ; time, therefore, began to run only from the second notice ; (2) that it was not competent to the Commissioner, under s. 231 (*a*), to direct the accused to construct a drain so as to adjoin any particular part or wall of his premises. Cl. (*a*) of s. 231 of the Act merely gives the Commissioner power to require that a drain should be made " of such material, size and description, and laid at such level and with such fall and outlet as may appear to the Commissioner necessary, emptying into such Municipal drain or place aforesaid." There is nothing in the language of the section authorising the Commissioner to direct that a drain should be made so as to adjoin any particular part or wall of the premises. The requisition was so far *ultra vires* of the Commissioner, and the notice was illegal. EMPEROR v. NADIRSHA H. E. SUKHIA, **29 B. 35 = 6 Bom. L.R. 667.**

(9)—*S.* 248 — *Liability of* fazendar.—*Per Jardine, J.*—The word " owner " in s. 3 of Bombay Act, III of 1888, does not primarily include the owner in fee entitled to ground-rent or quit-rent, where there is a lessee or other person in beneficial occupation actually getting the rent or capable of getting it, if he chooses to let the premises. Therefore a *fazendar*, who owns the lands on which a house is built, is not the person liable, as the owner of the premises, to provide the privy accommodation, the beneficial owner of the house built on the *fazendar's* land being the owner within the meaning of the statutable provision. *Per Ranade, J.*—The decision of the question depends not so much upon the proper construction of the word " owner " by itself, but on the words " owner of such premises " used in s. 248 of the Municipal Act. If the word " owner " stood by itself, it might, as defined in cl. (*m*) of s. 3, apply equally to the *fazendar* who owns the land as to the owners of the huts built on it, for, he receives the rent of his land just as much as the owners of the huts might receive the rent of the huts, if they let them to others and did not occupy them. Ss. 247, 249, 250, 251, seem to confine and narrow the more general meaning of the word " premises " used in s. 248 to buildings, *i.e.*, the huts on the land in dispute. The words " such premises " must, therefore, be construed to refer to the huts for whose residents privy accommodation is necessary. A *fazendar* is not, therefore, liable under s. 248. MUNICIPALITY OF BOMBAY v. SHA PURJI DINSHA, **20 B. 617 = Cr. Rg. 32 of 1895.**

(10)—*S.* 249—*Construction.*—The words " are employed " in s. 249 of the Bombay Municipal

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Act refer to employment of any kind or for any length of time. MUNICIPALITY OF BOMBAY v. AHMEDBHAI HABIBHOY, **23 B. 528 = 1 Bom. L.R. 12.**

(11)—*S.* 249—*Theatre—Place of public resort — Latrine accommodation.*—A theatre is a place of public resort within the meaning of s. 249 of the Act. EMPEROR v. DWARKADAS, **8 Bom. L.R. 115 = 3 Cr. L.J. 236 = 30 B. 392.**

(12)—*S.* 249—*Notice to construct an urinal—Legality of notice.*—Where a notice issued under s. 249, Bombay Act III of 1888, required a person to construct urinals in a particular place in his market, *held*, that the notice was *ultra vires* of s. 249, inasmuch as it required the accused to construct the urinals in a particular place in his premises, and that the accused could not be convicted for disobeying such notice. *In re* KHIMJI JAIRAM, **24 B. 75 = 1 Bom. L R. 431.** [*R.*, 29 B. 35 = 6 Bom. L. R. 667.]

(12-*a*)—S. 302—*See* No. 14, *infra.*

(12-*b*)—S. 303—*See* No. 14, *infra.*

(12 *c*)—S. 304 —*See* No. 14, *infra.*

(13)—S. 305—*See* No. 3, *supra.*

(14)—*Ss.* 305, 302 *to* 307—*Private streets — Levelling and draining of — Owner of several premises—Premises—Owner dividing a large plot of ground into several building sites—The building sites let out on long terms to lessees —Lessees building houses and receiving rents—Lessees are owners of the premises—Construction of statutes.*—The mere owner of land, who has let it out under a building scheme for building purposes, is not the owner of the property, within the meaning of s. 305 of the city of Bombay Municipal Act, 1888, because the property contemplated by the section necessarily embraces buildings, whether erected or to be erected ; and the legislature regards him as the owner of the premises who has the right to receive rent in respect of that property. It would, therefore, include a lessee from the original owner of vacant site, who leases the building site on a long term and erects a building upon the site. The word " premises " occurring in s. 305 of the City of Bombay Municipal Act must be presumed to have been used by the legislature in its legal sense, as referring to the particular kind of property which forms the subject-matter of the group of the immediately preceding sections of the Act (ss. 302—307). That group has reference to streets made for the use of buildings or building sites. The dominant idea running through the ss. 302 to 304 is that of buildings either erected or projected : that is the kind of property dealt within what has gone before s. 305 ; and, therefore, that is its " *præmissa.*" It is a primary rule of interpretation that a word having a popular meaning ought to be construed in that sense. There is

3.—Bombay Acts—continued.

Act III of 1888 (City of Bombay Municipal) *—continued.*

one exception to this rule, *viz.*, unless there is something to the contrary in the context, words of known legal import are to be considered as having been used in their technical sense, when the law has attached that sense to them. EMPEROR v. RAMACHANDRA BHASKAR MANTRI, **12 Bom. L.R. 669=34 B 593=7 Ind. Cas. 935=11 Cr. L.J. 544.**

(15)—S. 306—*See* No. 14, *supra*

(16)—S. 307—*See* No. 14, *supra.*

(17)—*Ss.* 308, 309, 342—*Crim. Pro. Code* (1898), *ss.* 236, 237,403 (1)—*Acquittal on charge under s.* 342.—The accused was prosecuted by the Bombay Municipality under s. 342 of the Bombay City Municipal Act, for adding two balconies to his house without the permission of the Municipality. He was acquitted. The Municipality then served a notice upon the accused under ss. 308 and 309, asking him to remove the two balconies and also two others which were not new; and on the accused's failing to comply with the notice, the Municipality prosecuted him again. The Magistrate referred to the High Court the question whether the previous acquittal of the accused precluded the Municipality from bringing the second charge against him. *Held*, that there was no bar to the second prosecution, as ss. 403 (1), 236, 237, Crim. Pro. Code, had no application. The second offence could not have been committed until the notice to remove was served on the accused, and this notice was not served on the accused till the year following that in which he was acquitted under the former charge. MUNICIPALITY OF BOMBAY v. JAVER JAGJIVAN, **4 Bom. L.R. 575.**

(18)—*Ss.* 308, 315—*Scope of sections.*—Ss. 308, 315 of the Act apply to private and public streets, so that the use by the Corporation of its powers to remove projections and obstructions is not evidence that the street is a public street. MUNICIPAL COMMISSIONER OF BOMBAY v. VINAYAK RAMCHANDRA, **Rat. Un. Cr. C. 802=Cr. Rg. 58 of 1895.**

(19)—S. 309—*See* No. 17, *supra.*

(20)—S. 315—*See* No. 18, *supra.*

(21)—*Ss.* 337 (2), 342, 349-*C*—*To erect a building*—"*To re-erect,*" "*To re-construct*"—*Frame buildings—Height of—Notice to Municipality.*—The term "re-erection" applies to all buildings which are not included in s. 337 (2) of the Bombay City Municipal Act, 1888. A building with a ground floor, to which, after it has been in existence for some years, the owner wants to add one or more storeys, would fall within "re-erection," provided it is not of the description mentioned in the definition of erection. EMPEROR v. NANABHOY BEZANJI CHOKSEY, **9 Bom. L.R. 932=6 Cr. L.J. 236.**

(21-*a*)—S. 342—*See* Nos. 17 and 21, *supra.*

(22)—*S.* 349-*B*—*Height of buildings with reference to width of streets—Construction of statute*—Casus omissus.—The accused erected a building, which touched, on either side of it, public streets which ran parallel to each other. The height of the house having exceeded the permissible limits, the Municipality required the accused to reduce the height, conformably to the provisions of s. 349-B of the City of Bombay Municipal Act. The accused disobeyed the requisition; and he was convicted and sentenced for the disobedience. *Held*, (1) that the building of the kind in question must, at all events, fulfil the conditions prescribed in cls. 1, 2 and 3 of s. 349—B with reference to both the streets on which it abuts, even if it did not fall within cl. 4 of the section, (2) that the provisions in question of the Act were intended in the interests of public health, and the Court ought to so construe them as to advance that object. It is not permissible to create a *casus omissus* by interpretation save in some case of strong necessity. EMPEROR v. RUSTOMJI J. GHORKHODU, **9 Bom. L.R. 633 =5 Cr. L.J. 338.**

(23)—*S.* 349-*B*—*Limit of height of buildings—Reconstructing a house burnt down—Abutting on street.*—Where the owner of a house destroyed by fire pulls down its remaining walls to six feet above the plinth, and the house abuts on a street, the height, to which he can raise his new building, is governed by the provisions of s. 349-B of the City of Bombay Municipal Act, 1888. Where, in reconstructing a house, the owner set it back by five inches from the street on which it originally abutted; *held*, that the house should be taken as abutting on the street notwithstanding the set-back. *In re* ALI MAHOMED, **9 Bom. L.R. 737=6 Cr. L.J. 80.**

(24)—S. 349-C—*See* No 21, *supra.*

(25)—*S.* 353—*Scope* "*Completion*"—*Meaning.*—The word "completion" in s. 353, Bombay Act III of 1888, must be taken in its ordinary meaning, and the Court must not read into the section "in accordance with sanitary regulations" or "Sanitary officers' opinions." *In re* RAGHUNATH MAKUND, **19 B. 372.**

(26)—*S.* 377 — *Municipal Commissioner—Neglected premises—Notice to remove nuisance—Magistrate's discretion.*—The accused was served with a notice of requisition under s. 377 of the City of Bombay Municipal Act, 1888, requiring him to remove filth, rubbish, heaps of cutchera and stable refuse from a large piece of vacant land belonging to him. He failed to comply with the requisition, and a prosecution was instituted against him. The Magistrate viewed the premises; and having so viewed them, but without hearing any evidence, acquitted the accused, as the premises did not appear to him to be in a filthy condition. *Held* that the premises having appeared to the Commissioner to be in a filthy condition, the notice was validly issued under s. 377 of the City of Bombay Municipal Act, 1888; and that, there

3.—Bombay Acts—continued.

Act III of 1888 (City of Bombay Municipal) —*continued.*

having been a non-compliance of the notice, the offence was complete. *Held*, further, that the Magistrate was wrong in acquitting the accused on the sole ground that the premises did not appear to him to be in such a condition as to justify the issue of a notice under s. 377. S. 377 of the City of Bombay Municipal Act, 1888, enacts, that the only condition precedent to the valid issue of a requisition is that it shall appear, not to the Magistrate, but to the Commissioner, that the premises are in the condition specified in the section. EMPEROR v. RAJA BAHADUR SHIVLAL MOTILAL, **12 Bom. L.R. 126.**

(27)—*S. 379-A—Over-crowding of a house—Notice to abate over-crowding—Owner to be served with the notice.*—Where the owner of a building lets his rooms separately to individual tenants, and these cause over-crowding, the notice to abate the same, under s. 379-A (1) of the City of Bombay Municipal Act, 1888, must be given to the owner and not to the tenants. MUNICIPAL COMMISSIONER v. MATHURADAS GOKALDAS PASTA, **13 Bom. L.R. 640 = 11 Ind. Cas. 995 = 12 Cr. L.J. 459.**

(28)—*S. 381—Commissioner's power to require the owner to fill up low ground.*—S 381 of Bombay Act III of 1888 empowers the Commissioner to require the owner of a low ground to cleanse and fill up the same; but it does not permit him to issue an order that an indefinite quantity of low-lying ground shall be filled up, much less that it shall be filled to some particular level or filled up with sweet earth, or that it shall be sloped in a particular direction. MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY v. HARI DWARKOGI, **24 B. 125 = 1 Bom. L.R. 518.**

(29)—*S. 390—Factory, establishing of—Municipal Commissioner, Permission of.*—The accused obtained the Municipal Commissioner's permission under s. 390 (1) of the City of Bombay Municipal Act, 1888, to establish a hand-loom factory worked by an oil-engine: but by means of this oil-engine he also established a flour mill without any permission. The accused was, therefore, charged with the offence under s. 390 (1) of the Act. *Held*, that the accused was guilty of a technical offence under s. 390 (1) of the City of Bombay Municipal Act, 1888; for, although the accused had leave to establish the hand-loom factory, he had no leave to establish the flour mill factory, which was, not the less, another and a separate factory, because it happened to be worked by the same power which it was proposed to employ in the permitted factory. EMPEROR v. MULJI DAMODARDAS, **12 Bom. L.R. 122.**

(30)—*S. 394—Scope—" Storing "—Intention—Exemptions.*—The wording of the section requires that the premises, in order to attract the operation of the section, should be used for the purpose of storing. The phrase " for the purpose " indicates that it must be the intention of those using the premises to store, that storing must be the object aimed at, the final cause for which the premises are used. The actual use is by itself insufficient, in the absence of proof as to the object aimed at. The purpose to store must be the dominant motive. There is nothing in the exemption, which sub-s. 3 declares in favour of the specified mills, to imply that sub-s. 1 was intended to include any use to which they might be put, which was merely incidental or subsidiary to the paramount purposes to which the premises are devoted. Where articles are kept on the premises, not because of the purpose of storing them, but merely because they have not been consumed as rapidly as anticipated or for other similar reasons, it cannot be reasonably said that the premises are used on purpose for storing. The purpose or intention is the test sub-s. 3 of s. 394 is clearly intended only to give an exemption to mills for spinning or weaving cotton, wool, silk or jute, in respect of those particular articles with which those mills are concerned, and is not intended to touch or in any way affect their liability in respect of any other articles mentioned in Sch. M EMPEROR v. WALLACE FLOUR MILL COMPNAY, **29 B. 193 = 6 Bom. L.R. 735 = 1 Cr. L.J. 835.** (20 C. 626, *R.*) [*R.*, 14 Cr. L J. 103 = 18 Ind. Cas. 663 = 13 M.L T. 144 = 1913 M.W.N. 74.]

(31)—*S 394—License—Stabling carts, etc.*—An owner of premises, who, without a license, allowed cartmen to stable their carts and bullocks thereon receiving a fee of one rupee for each cart and a pair of bullocks, should be considered to use his premises for that purpose, and so to contravene the provisions of the section. CRIMINAL REFERENCE NO. 105 OF 1897, **4 Bom. L R. 945, Note.** [*R*, 1 Bom. Cr.C, 178 = 14 Bom. L R. 882; *D.*, 4 Bom. L.R. 943, 14 Bom. L R. 885-N = 13 Cr.L.J. 785 = 17 Ind. Cas. 529.]

(32)—*S. 394—Term " premises " explained.*—The meaning of the word " premises " in s. 394 is not restricted to buildings; it must also include open ground. S. B. MASTER, v. DHARAMSI JETHA, **3 Bom. L R. 43.**

(33)—*S. 394—Storing wood for bake-houses.*—In s. 394 of Bom. Act III of 1888, the word " domestic " means " household " and connotes "dwelling" as opposed to manufacture or bake-house. The section aims at punishing people who, without a license or contrary to its terms, use premises in a way likely to endanger life, health, or property, or to create what the Act defines as a nuisance. When a baker having a bake-house in his dwelling stores so much fire-wood in excess of his domestic requirements as may lead to such danger or nuisance, he may be punished, as the intention of law about licenses is to bring trades-factories and bake-houses under the eyes of the Commissioner in

3.—Bombay Acts—continued.

Act III of 1888 (City of Bombay Municipal) —*continued.*

order that he may protect the public. MUNICIPAL COMMISSIONER OF BOMBAY v. PROPRIETOR OF PRINCE ALBERT VICTOR BAKERY, **Rat. Un. Cr. C. 793=Cr. Rg. 5 of 1895.**

(34)—*S.* 394—*License—Stabling of bullocks for hire—Liability of owner of land.*—The accused was the owner of certain premises, which he had let out: and the sub-tenants of his lessee used the place for the purpose of stabling bullocks used for hire. No license was obtained for the purpose from the Municipal Commissioner. The accused was therefore convicted of an offence under s. 394 of the City of Bombay Municipal Act, 1888. *Held*, that the accused was rightly convicted, for he must be held to have allowed the cattle to be stabled by his tenant in contravention of the provisions of the law. EMPEROR v. DADABHAI FRAMJI LAMA, **14 Bom. L.R. 882=1 Bom Cr. C. 178=13 Cr. L.J. 788=17 Ind. Cas. 532.**

(35)—*S.* 394—*Keeping bullocks for hire—Bullocks kept by tenants in huts and in open—Liability of owner.*—A was joint owner of a place, part of which was let out to several tenants. The tenants kept bullocks on the place, some in the huts and some in the open. The bullocks were plied for hire, but the place was not licensed by the Municipal Commissioner under s. 394 of the Bombay Municipal Act. A knew that the bullocks were kept on the land and allowed it. *Held*, that A was guilty of an offence under s. 394 of the Act, whether the bullocks were kept upon leased land or on waste land not leased out. IMPERATOR v. TYABALI CURIMJI, **13 Cr. L.J. 785 =17 Ind. Cas. 529=14 Bom. L.R. 885, Note.** (14 L.T.N.S. 600, *Rel* ; 4 Bom. L.R. 943, *D.*)

(36)—*S.* 394 (1) *(c)—Scope.*—S. 394 (1) *(c)* of the City of Bombay Municipal Act is not intended to reach the landlord, but it aims at the actual occupier or a tenant of the premises who converts them to the use mentioned in the section without a license. EMPEROR v. MIRZA MAHOMED SHIRAZI, **4 Bom. L R. 943.** [*R.*, 1 Bom. Cr. C. 178=14 Bom. L R. 882 ; *D.*, 13 Cr. L J. 785=14 Bom. L.R. 885, Note=17 Ind. Cas. 529.]

(37)—S. 394—*See* ACT IX OF 1890, s. 7, 11 Bom. L.R. 1181=34 B. 252=10 Cr. L.J. 543.

(38)—*Ss.* 394 (1), 471—*Unlicensed use of premises for purposes mentioned in sub-s.* 1 *of* s. 394.—A Presidency Magistrate may, under s. 471, convict and punish any person contravening any provision of s. 394, sub-s. 1, as, for instance, using any premises for any of the purposes mentioned in that sub-section without a license from the Commissioner. The questions whether the Municipal Commissioner refused the accused a license and whether the refusal was legally justified are irrelevant to the determination of a case under the section. QUEEN-EMPRESS v. OOMER, **Rat. Un. Cr. C. 729= Cr. Rg. 57 of 1894.**

3.—Bombay Acts—continued.

Act III of 1888 (City of Bombay Municipal) —*continued.*

(39)—*Ss.* 398, 410—*Selling or exposing for sale fish intended for human food—Sale from a basket placed on the foreshore of* Chowpatti—*Place between high and low water-mark—Private market—Burden of proof—City of Bombay—Bombay General Clauses Act* (I *of* 1904), s. 3 (10).—The accused was charged with selling or exposing for sale, without license from the Municipal Commissioner, fish intended for human food on the *Chowpatti* foreshore, contrary to the provisions of s. 410 (1) of the Bombay Municipal Act, 1888. The sale was from a basket which the accused had placed on the sand at some distance from the water, the place between the high and the low water mark. The fish sold was fresh fish and it had been recently brought from one of the boats then in the back bay. *Held*, that the accused was liable under s. 410 (1), since it was impossible to say that fresh fish was sold from a vessel, when, as a matter of fact, it had been sold from the basket on the shore, it having been brought from the vessel which was in the water. *Held*, in answer to the contention that the place where the fish was sold was a private market, that it was difficult to see how a place like the whole of the foreshore of *Chowpatti* could be held to be a private market; and, even if this were not so, since the Municipality started their case by showing that the place in question was the foreshore of *Chowpatti*, that was sufficient to throw the *onus* upon the accused to show that the foreshore of *Chowpatti* was a private market within the meaning of s. 398 of the Bombay Municipal Act, 1888. *Held*, also, that the Bombay Municipal Act, 1888, applied to the spot in question. EMPEROR v. BADHOOBAI, **7 Bom. L R. 726=30 B. 126=2 Cr. L.J. 604.** [*R.*, 9 Bom. L R. 1321.]

(40)—*Ss.* 402, *sub-ss.* 1 *and* 2, 471—*Punishment.*—The words of s. 471 of Bombay Act III of 1888 provide a punishment for contravening any provision of s. 402, cl. 1. A person, who does, what is so distinctly prohibited by cl. 2, does, by usurping the powers vested in the Corporation by cl. (1), contravene the last-mentioned clause. The two clauses must be read and interpreted together in order to give effect to the policy and object of the Legislature. MUNICIPAL COMMISSIONER OF BOMBAY v. CAWASJI BYRAMJI, **Rat. Un. Cr. C. 733=Cr. Rg. 64 of 1894.**

(41)—S. 410—*See* No. 39, *supra*

(42)—*Ss.* 429, 430—*Bombay Public Conveyance Act* VI *of* 1863—*Penal Code, s.* 269—*Carrying person suffering from dangerous disease in a public conveyance.*—The driver of a public conveyance in the City of Bombay who carries, in his conveyance, a person suffering from small-pox, offends against the provisions of s. 430 (3) of Bom. Act III of 1888. *Semble* :—There exists an apparent antimony between s. 22 of Bom. Act VI of 1863 and

3.—Bombay Acts—continued.

Act III of 1888 (City of Bombay Municipal) —*concluded.*

ss. 429 and 430 of Bom. Act III of 1888. EMPEROR v. MYAJI ALIJI, **7 Bom. L. R. 460 = 2 Cr.L.J. 435.**

(43)—S. 430—*See* No. 42, *supra.*

(44)—*S.* 461 (*d*)—*Bye-low relating to height of building on site previously built upon—Bye-law* 30.—The Municipality of Bombay has the power, under bye-law 30, to restrict the height of a new building on a site which has been previously built upon. MUNICIPALITY OF BOMBAY v. SUNDERJI, **22 B. 980.**

(45)—S. 471—*See* Nos. 6, 8, 38 and 40, *supra.*

(46)—*Ss.* 471, 472—*Prospective punishment for continuing offence—Legality.*—S. 174 of the City of Bombay Municipal Act requires a separate prosecution for a distinct offence, a prosecution in which a charge must be laid for a specific contravention for a specific number of days, and for which charge, if proved, the Magistrate is to impose a daily fine of an amount which is left to him in his discretion to determine. Where a Presidency Magistrate, having convicted certain accused persons and fined them under s. 471 of the City of Bombay Municipal Act, proceeded in the same order, purporting to act under the provisions of s. 472, to fine them so much a day in case they continued the offence, *held*, that the order was illegal. *In re* LIMBAJI TULSI RAM, **22 B. 766.** [*F.*, 22 B. 841 ; *D.*, 7 C.W.N. 853.]

(47)—S. 472—*See* No. 46, *supra.*

(48)—S. 517—*See* No. 6, *supra.*

(49)—S. 521—*See* PUBLIC SERVANT, 6 Bom. L.R. 54.

Act I of 1890 (Gambling, amending Bom. Act IV of 1887).

(*a*)—*See* BOM. ACT IV OF 1887, 4 Bom. L. R. 297.

(1)—*S.* 3—*Instruments of gaming—Common gaming house.*—A thing may be an "instrument or means" of gaming or wagering, although not "devised or intended for that purpose," or "primarily used for that purpose," or "destined for that purpose." Any article that is made use of as a subject or means of wagering, no matter of what nature that article may be, comes within the definition of instruments of gaming or wagering. [*R.*, 26 B. 533, 28 B. 129.] To bring a place under a "common gaming house," as defined in s. 3 of the Gambling Act, the instrument of wagering must be in the place itself, either kept there or brought there, and used there for profit or gain, and it is not sufficient that wagers are made in the place upon or by means of some article or other which is outside the place. QUEEN EMPRESS v. KANJI BHIMJI, **17 B. 184.**

(2)—*S.* 12—*Coins, whether instruments of gaming—Powers of police to arrest without warrant—Construction of Act.*—The provisions

3.—Bombay Acts—continued.

Act I of 1890 (Gambling amending Bom. Act IV of 1887)—*concluded.*

of s. 12 of Bombay Act I of 1890 apply only to instruments of gaming "used in playing any game not being a game of mere skill." The interpretation of the expression "instruments of gaming" as qualified by the words which follow it in the section is implements devised or intended for that purpose. A coin is not an instrument of gaming. [*R.*, 17 B. 184, 26 B. 533.] It is not lawful for a police officer to arrest without warrant the persons he finds playing, unless they are playing for money or other valuable thing. The Gambling Act must be construed strictly, because it interferes with the liberty of the subject, and because in some of its provisions, it shifts the burden of proof on the accused. Moreover, if the words are ambiguously and obscurely worded, the interpretation is ever in favour of the subject. QUEEN-EMPRESS v. GOVIND, **16 B. 283, F.B.** (6 B. 19, *R.*) [*R.*, 28 B. 129.]

Act II of 1890 (Salt).

[REP. IN PART, ACT XVI OF 1895. AMENDED, BOM. ACT II OF 1892 ; BOM. ACT I OF 1901. FIGURE "(1)" IN S. 58. REP., BOM. ACT IV OF 1905.]

(1)—*S.* 3 (*g*)—*Manufacture—Evaporation for purification.*—The accused bought some dirty salt in the bazaar, dissolved it in water, removed the dirt and obtained a pure dry salt by evaporating the brine *Held* that this was manufacturing salt within the meaning of s. 3 (*g*) of the Bombay Salt Act of 1890, but that the offence was of a very light character. QUEEN-EMPRESS v. DEOKI, QUEEN-EMPRESS v. MALAMMA, **Rat. Un. Cr. C. 528 = Cr. Rg. 60 of 1890.**

(1-*a*)—S. 3—*See* No. 6, *infra.*

(2)—*Ss.* 3, 47—*Liability of principal for acts of agent.*—Where it is not established that a principal has knowledge of or connivance in the illegal act done by the agent, on the principal's account, he cannot be held liable under s. 47 of the Bombay Salt Act. QUEEN-EMPRESS v. BALU MIYA, **Rat. Un. Cr. C. 576 = Cr. Rg. 40 of 1891.**

(3)—*S.* 47 (*a*)—*Possession of salt water.*—The mere possession of salt water with the intention of manufacturing salt therefrom is not made an offence under the Bombay Salt Act. QUEEN-EMPRESS v. DABHAI KABHAI, **23 B. 788 = 1 Bom L.R. 345.**

(4)—*S.* 47 (*a*)—*Gist of offence.*—The provisions of s 47 (*a*) of the Bombay Salt Act, 1890, do not, in express terms or by necessary implication, make intention or knowledge an essential ingredient of the offence ; hence, to support a conviction under the section, it is not necessary to prove dishonest intention on the part of the accused. EMPEROR v. MAGAN LAL DULABHAI, **28 B. 346 = 6 Bom. L.R. 93.**

(5)—S. 47—*See* No. 2, *supra.*

3.—Bombay Acts—continued.

Act II of 1890 (Salt)—*concluded.*

(6)—*Ss.* 47 (*c*), 3 (*m*)—*Bom. Act* I *of* 1901—*Possession of contraband salt.*—It is illegal to possess, as well as to transport contraband salt, however small in quantity. KING-EMPEROR v. SAWLO KUNDLIK, **4 Bom. L.R. 83.**

(7)—*S.* 52—*Order of confiscation—Power of District Magistrate to alter, in appeal.*—It is not competent to a District Magistrate to alter or vary an order of confiscation in confirming a conviction recorded by a Subordinate Magistrate under the Bombay Salt Act, 1890. EMPEROR v. LALA VAHALA, **4 Bom.L R. 459**

Act IV of 1890 (District Police).

[REP. IN PT. ACT XVI OF 1895, AMENDED, BOM. ACT III OF 1898.]

(1)—*Ss.* 3, (*e*), 6 (*i*)—*Street—Gambling in street.*—The definition of the word "street" in s. 3 (*e*) of the Bombay District Police Act, 1890, is inclusive in its terms. The expression "accessible to the public" means that any member of the public, as such member of the public, has access to the land; and "access" means unimpeded entrance upon the land. EMPEROR v. MANILAL MOHANLAL, **14 Bom. L.R. 499 = 15 Ind. Cas. 785 = 13 Cr. L J. 513 = 1 Bom. Cr. C. 144.**

(2)—*Ss* 34, 36—*Withdrawal from duty -Meaning.*—A Police officer who, having been transferred from one place to another, remains at the former place doing duty expecting a reply to a petition sent by him to his superiors, does not commit a "withdrawal from duty" within the meaning of s. 34 of the Bombay Police Act. QUEEN-EMPRESS v. TATIA, **Rat. Un. Cr. C. 555 = Cr. Rg. 31 of 1891.**

(3)—*S.* 36—*Absence without leave.*—A Police officer, who absents himself from his duties for a day without leave, commits an offence under s. 36 of the Bombay District Police Act. QUEEN-EMPRESS v. CHAND, **Rat. Un. Cr. C. 585 = Cr. Rg. 45 of 1891.**

(4)—*S.* 36—*Police officer leaving the hospital without permission.*—A police officer leaving the hospital, where he was placed being sick, is not guilty of an offence under s. 36 (*d*) of Bombay Act IV of 1890, because he cannot be considered to be on duty while in a hospital. QUEEN-EMPRESS v. NANU JABU, **1 Bom.L R. 685.**

(4-*a*)- S. 36—*See* No. 2, *supra.*

(5)—*S.* 41—*Brothel—Meaning—Ingredients of the offence under the section—Nuisance not an element.*—The facts that a woman plies the trade of a prostitute in her own (*i e.*, her husband's) house does not make the house 'a brothel.' In order to constitute a brothel, the prostitute or prostitute must be strangers to the occupancy. (L R, 1 Q.B.D. 607, *R*) S. 41, Bombay District Police Act, contains two ingredients, *viz.* :—(1) *The character of the house*, (*i.e.*,) the use of the house as a "common brothel or lodging house or place of resort for prostitutes or disorderly persons of any description;" and (2) the nuisance, *i.e.*, "the annoyance of the respectable inhabitants of the vicinity." Nuisance or no nuisance is not an element in the definition of a brothel. THE CROWN v. VERSIMAL, **6 S L.R. 224 = 14 Cr. L.J. 282 = 9 Ind. Cas. 514.**

3.—Bombay Acts—continued.

Act IV of 1890 (District Police)—*continued.*

(6)—S. 41—Frivolous complaint under—Jurisdiction to award compensation—*See* CRIM. PRO. CODE, 1898, ss. 4 (*o*), 250, 6 S.L.R. 254 = 19 Ind. Cas. 1008 = 14 Cr. L.J. 320.

(7)—*Ss.* 42, 68 (*a*) — *District Magistrate — Order for prevention of disorder - Promulgation of the order—Personal presence of the Magistrate—Area within which the order is to operate*—Ultra vires.—A District Magistrate, acting under the provisions of s. 42 of the Bombay District Police Act, prohibited the circulation of certain pictures throughout the whole district. At the time when he issued the notification, the District Magistrate was at a considerable distance from the village where the accused lived and where he was charged with having disobeyed the prohibition. The notification in question was promulgated in taluka head quarters, the nearest of which was nearly twelve miles distant from the village. The accused was punished under s. 68 (*a*) of the Act for his disobedience. *Held*, setting aside the conviction and sentence, that the notification in question could not be upheld under s 42 of the Act, inasmuch as the order was not confined on its operation to a "town or village" but operated over the whole district; and the District Magistrate was not, at the time of its promulgation, present in the vicinity of the place. For the exercise of jurisdiction conferred by s. 42, the preliminary conditions essential under its provisions are these; *first*, the jurisdiction is conferred on the Magistrate of the District, or,in his absence and subject to his order, the Magistrate of the First Class; *secondly*, they must have jurisdiction in the town or village where the jurisdiction is intended to operate; and *thirdly* they must be presented in such town or village or in the neighbourhood thereof at the time the jurisdiction under the section is set in motion. The intention of the Legislature appears to have been that such a proclamation as is contemplated by s. 42 should be issued in such a manner as to give full publicity to its terms on the responsibility of the District Magistrate or Magistrate of the First Class, who must be personaly in the place to satisfy himself that there is necessity for the proclamation. EMPEROR v. DATTATRAYA LAXMAN SARPOTDAR, **14 Bom. L.R. 158 = 14 Ind. Cas 974 = 1 Bom. Cr. C. 99 = 13 Cr. L J. 430 = 36 B. 504.**

(8)—*S.* 43—*Crim. Pro. Code* (1882). *s.* 435—*Jurisdiction of High Court.*—The High Court has no jurisdiction to interfere with an order duly made by a District Magistrate under s. 43

3.—Bombay Acts—continued.

Act IV of 1890 (District Police)—*continued.*

of the Bombay District Police Act. QUEEN-EMPRESS v. KAJI SULTAN, **Rat. Un. Cr. C. 540 = Cr. Rg. 13 of 1891.** [*R.*, 12 Bom. L. R. 1029 = 11 Cr. L.J. 705 = 8 Ind. Cas. 747.]

(9)—*S.* 44—*Religious procession—Exhibition of an emblem—Vyasantol emblem—Lingayats—District Magistrate — Order permitting the carrying of emblem—High Court—Revisionary powers—Crim. Pro. Code, s.* 435—*Jurisdiction.*—An order passed by a District Magistrate under s. 44 of the Bombay District Police Act, 1890, being a mere executive police order, cannot be interfered with by the High Court under its criminal revisional jurisdiction. It is competent to a District Magistrate, acting under s. 44, to order that persons forming a religious procession on a particular day and on specified roads may carry a particular emblem. *In re* PANDURANG SHIDRAO, **12 Bom. L.R. 1029 = 8 Ind. Cas. 747.** (12 Bom. L.R. 378, *R.*)

(10)—S. 44—*See* PUBLIC NUISANCE, 11 Bom. L.R. 372 = 2 Ind. Cas. 494.

(11)—*Ss.* 44, 68 *and* 71—*Order under s.* 44—*Valid order, what amounts to—Abetment.*—Where the order of a Magistrate under s. 44 of Act IV of 1890 (Bombay District Police) clearly indicates that it is dealing with an existing dispute, between Hindus and Muhammadans of a certain place, about music in religious processions, likely to cause a disturbance of the public peace, the order is made within the ordinary lawful duty of the Magistrate to prevent a particular disturbance of the peace, and there is no occasion to construe it as an edict usurping the functions of the Legislature. The order does not interfere with the general rights of the subject for an unlimited time. The accused cannot go behind the order or question its expediency. In order to punish a person for an offence under s. 68, Act IV of 1890, it is only necessary to prove the disobedience and not the existence of danger or other occasion for making the order. Although the complaint was only under s. 68 of the Bombay Police Act, *held* that it was not unlawful to convict under s. 71 of the Act. The mere presence of a person at a procession in which music was played in contravention of an order of the District Magistrate under s. 44, Bombay Police Act, does not by itself constitute the abetment of an offence under the Act. QUEEN-EMPRESS v. VISHWANATH, **Rat. Un. Cr. C. 708 = Cr. Rg. 41 of 1894.**

(12)—*S.* 46—*Order duly made under section—Power of Sessions Judge to call for proceedings under s.* 435, *Crim. Pro. Code* (1882).—Where an order has been duly made under the jurisdiction conferred by s. 46 of Bom. Act IV of 1890, the Court of Sessions has no power to call for such proceeding under s. 435, Crim. Pro. Code. As the person aggrieved by the order can petition the Governor-in-Council under whose control the prerogative of keeping the peace is worked by the Magistracy, it is unnecessary to determine the powers of the High Court. *In re* HAIBATI, **Rat. Un. Cr. C. 692 = Cr. Rg. 18 of 1894.**

(13)—*S.* 47—*Authority of police officer to be present at a race ground—Resistance—Penal Code, s.* 353.—At a race meeting held at Poona, under the auspices of the Western India Turf Club, on enclosed ground lent for the purpose by the Military authorities, the complainant, an Inspector of Police, who was present there on duty in that capacity, came into the first enclosure over the ropes which were used to fence the enclosure, passing through the pickets of soldiers who were stationed along the ropes to prevent people from entering and leaving the enclosure otherwise than by one of the regular entrances provided. This entrance being reported to the Honorary Secretary of the Club, he directed two soldiers to put the Inspector outside the enclosure. These men took hold of the Inspector, then let him go at his request, and escorted him outside the enclosure. *Held* that the Secretary was liable to be convicted under s. 353, I.P.C., as s. 47 of the Police Act empowered the Police Inspector to be present at the race ground, a place of public amusement and resort, for the purpose of preserving peace and order. QUEEN-EMPRESS v. ROSS, **22 B. 746.**

(14)—*S.* 48 (*a*) (1)—"*Conduct*"—*Order as to costume.*—The word "conduct," in s. 48 (*a*) means the act or method of leading, guiding or managing, the guidance or management (of a procession or assemblage), and does not mean the mode of action or behaviour of an assembly. The clause, therefore, does not confer a power to direct what costume shall be worn or not worn by the members of a procession. An order was issued by the District Superintendent of Police to the following effect:—"No member of any sect can be permitted to proceed naked to the *tirth* to bathe, nor while there to bathe naked, nor to pass the streets naked on any account; if any one does this, he will be dealt with according to law." *Held*, that this was not an order or command, but a piece of advice or warning to the people, telling them in what light the authorities would view certain acts. It did not prohibit the act, so as to make the commission of it punishable as a breach of the order; but it only declared that proceedings would be taken against the perpetrator, on the ground that he has committed an offence by reason of the commission of the act itself. *In re* HUKUMPURIBAVA GOSAVI, **22 B. 715.**

(15)—*S.* 48 (*b*)—*Power of Police to regulate the playing of music in private houses.*—The words about music "in the streets of towns on occasion of festivals and ceremonies" in s. 48, cl. (*b*), do not empower a District Superintendent or Assistant Superintendent of Police to regulate the playing of music in private houses. The word "near a street" should be construed as meaning open spaces by the sides or at the ends of streets. *In re* JAMNA DAS BHUKHANDAS, **19 B. 737.**

3.—Bombay Acts—continued.

Act IV of 1890 (District Police)—*continued.*

(16)—S. 51—Information laid by Police officer is a complaint—*See* CRIM. PRO. CODE, 1898, ss. 4 (*h*), 250, 173, 6 S.L R. 82=17 Ind. Cas. 64=13 Cr. L.J. 752.

(17)—*S.* 52—"Respondeat superior"—*Duty of police officer to shelter prisoner in custody.*—Nothing but fear of instant death is a defence for a policeman who tortures a man or woman by superior order. The maxim *respondeat superior* has no application to such a case; the law is the only superior. A person legally bound to act in a certain manner by illegally omitting so to act is liable to punishment. Under s. 52, Bombay Police Act IV of 1890, every police officer is bound to shelter every person in custody and to arrest persons committing assaults likely to cause grievous bodily injury and an omission to perform this duty will make him guilty of abetment. QUEEN-EMPRESS v. LATIFKHAN, 20 B. 394.

(18)—*Ss.* 52 (2) *and* 65—*Refusal to attend to make a panchnama.*—Refusal to attend to make a *panchnama* regarding the obstruction to a public road, caused by a person in keeping his grain bags on the road, is not an offence punishable under s. 53 (2) or s. 65 of the Police Act. *In re* BHOLASHANKAR, 22 B. 970.

(19)—*Ss.* 57, 58—*Finder of property—Police requiring the property to be produced—Right of Magistrate to declare the property to be at the disposal of Government.*—Where property is found by any person who, on reporting the matter to the Police, is required to produce it, it is not competent to the Magistrate, under s. 58, cl. 2, of the Bombay District Police Act, to declare such property to be at the disposal of Government. *In re* Alimia, **14 Bom. L R. 305=15 Ind. Cas. 647=13 Cr. L J. 503=1 Bom. Cr. C. 113.**

(20)—S. 58 -*See* No 19, *supra.*

(21)—*S.* 61 (*d*)—"*Contrary to Regulation*"—*meaning of.*—The words, "contrary to any Regulation," in cl. (*d*) of s. 61 of the Bombay District Police Act, refer to the words "or by driving," *etc.*, and not to the words "causes obstruction or injury," etc., in the first part of the clause. QUEEN-EMPRESS v. MANYA, **Rat. Un. Cr. C. 654=Cr. Rg. 7 of 1893.**

(22)—*S.* 61 (*m*)—*Fishing in tank—Offence.*—The mere act of fishing in a public tank, without proof that the bait is of a defiling character, is not an offence under s. 61 of the Bombay District Police Act. QUEEN-EMPRESS v. MULAN KALAMIA, **Rat. Un. Cr. C. 865=Cr. Rg. 30 of 1896.**

(23)—S. 61—*See* No. 1, *supra.*

(24)—*S.* 62—*Conviction under section—Evidence required.*—To support a conviction under s. 62 of the Bombay District Police Act, it should be found as a fact that pain or suffering has been inflicted. QUEEN-EMPRESS v. DHONDI MANKU, **Rat. Un. Cr. C. 738=Cr. Rg. 6 of 1895.**

3.—Bombay Acts—continued.

Act IV of 1890 (District Police)—*concluded.*

(25)—S. 65—*See* No. 18, *supra.*

(26)—S. 68—*See* Nos. 7, 11, *supra.*

(27)—S. 71—*See* No. 11, *supra.*

(28)—S. 90—*See* CRIM. PRO. CODE (1898), s. 250, 26 B. 150=3 Bom. L.R. 586, F.B.

Act II of 1891 (Bombay Boiler Inspection).

[REP. IN PT. ACT XVI OF 1895, AM., BOM. ACT II OF 1897, s. 1 (3); AM. BOM. ACT II OF 1903.]

(1)—*S.* 29 (1) (*b*)—"*In direct and immediate management and charge*"—*Construction.*—The words "in direct and immediate management and charge" in sub-s. (1) (*b*) of s. 29 of the Bombay Boiler Inspection Act, II of 1891 (as applied to Berar), were not intended to mean that the qualified person or the Engineer should always be in the immediate presence of the boiler and have his eyes fixed on it for the whole day. In every case, it is a question of fact, to be decided from the circumstances, whether the Engineer can be said to be in direct and immediate charge. One may not take into consideration in interpreting an Act the proceedings of the Legislative Council which enacted it. EMPEROR v. RAMU BEHARI LAL, **4 N.L. R. 95=8 Cr. L.J. 31**

Act I of 1901 [Salt (amending Bom. Act II of 1890)].

See BOM. ACT II OF 1890, s. 47 (*c*), 3 (*m*), 4 Bom. L.R. 83.

Act III of 1901 (District Municipality).

[SUPPLEMENTED, BOM. ACTS V OF 1890, AND II OF 1899, (SAVED BY S. II, (*c*), OF BOM. ACT III OF 1901), AMENDED BY BOM. ACT III OF 1902, S 52, REP. IN PART BY SS. 188 (1), 189, AMENDED BY BOM. ACT III OF 1903, SS. 25, (*A*), 48 (1), 83 (1), (*B*), 84 (3), 113 (1), 122, AMENDED SS. 46 (*e*), 59, PROVISO, (*c*), 96 (*c*), 174 (1), REP. IN PART BY BOM. ACT IV OF 1904].

(1)—S. 2 (1) (*a*) (*b*)—*See* BOM. ACT VI OF 1873, s. 84, 3 Bom. L.R. 584.

(1 *a*)—S. 3—*See* No. 9, *infra.*

(2)—*S.* 22—*Crim. Pro. Code, s.* 195—*Penal Code, ss.* 193, 511 — *Court* — *Sanction for prosecution—False evidence given before District Judge acting under s. 22 of the District Municipalities Act.*—A District Judge determining the validity of elections under s. 22 of the District Municipalities Act is a 'Court' within the meaning of cl. (*b*) of s. 195, Crim. Pro. Code, (17 C. 872, *F.*). A prosecution for attempting to fabricate false evidence (ss. 193, 511, Penal Code) before the District Judge when so acting cannot lie in the absence of sanction under s 195, Crim. Pro. Code. *In re* NANCHAND, **15 Bom. L.R. 45=2 Bom. Cr. C 1=18 Ind. Cas. 408=14 Cr. L.J. 72=37 B. 365.**

(3)—S. 48 (*b*) (*iii*)—*See* BOM. ACT II OF 1884, s. 33 (*b*), 4 Bom. L.R. 585.

3.—Bombay Acts—continued.

Act III of 1901 (District Municipality)—*ctd.*

(4)—Ss. 48 and 96—*See* BOM. ACT VI OF 1873, s 33, 3 Bom. L.R. 842.

(4-*a*)—S. 82—*See* PENAL CODE, ss. 21, 186, 10 Bom. L.R. 761 = 33 B. 213 = 8 Cr. L.J. 269 = 1 Ind. Cas. 869.

(5)—*S.* 86—*Recovery of Municipal claims—Notice of demand—Appeal—Magistrate—High Court—Revision—Crim. Pro. Code* (*Act V of* 1898), *s.* 435.—Under s. 86 of the Bombay District Municipal Act, 1901, a Magistrate hearing an appeal of the kind mentioned in the section, is merely an appellate authority having jurisdiction given by the Act to deal with the question of a civil liability. He is, therefore, not an inferior Criminal Court, to which alone the revisional jurisdiction of the High Court applies under s. 435 of the Criminal Procedure Code. *In re* DALSUKHRAM HURGOVINDAS, **9 Bom. L.R. 1347 = 6 Cr. L.J. 425.**

(6)—*S.* 96—*Notice of new building—Erecting a building—Re-building a wall that had been fallen down— Material re-construction.*—One of the walls of the house of the accused having fallen down, he applied on the 19th April, 1910 to the Municipality for leave to re-construct it. Without having received the leave or without waiting for it for one month from the date of its application, he re-built the wall on the 11th May, 1910. On the 13th idem, the Municipality issued an order to the accused prohibiting him from making the re construction. The accused was upon these facts prosecuted under s. 96 of the Bombay District Municipal Act, 1901, but was acquitted by the Magistrate. The Government having appealed:—*Held*, reversing the order of acquittal, that the accused had erected a building within the meaning of s. 96 of the Act, inasmuch as in re-building the whole wall which had fallen down, there was a material re-construction or an erection of a building as defined in the explanation to the section. EMPEROR v. KALEKHAN SARDAR KHAN, **12 Bom. L.R. 1060.** (Rat. Un. Cr. C. 402, *R*).

(7)—*S.* 96—*Jurisdiction of Municipality to call for information as to ownership—Time for commencing construction.*—The question whether, under s. 96, the Municipality has jurisdiction or right to call for information regarding ownership must be decided on the circumstances of each case. Where a person produces the title-deeds and furnishes the information asked for, he is bound to wait for one month from that date for the orders of that Municipality before he proceeds to begin the intended construction. EMPEROR v. PRANSHANKER GAVRISHANKER, **6 Bom. L R. 581.**

(8 —S. 96—*See* No. 4, *supra.*

(9)—*Ss.* 96, 3 (7)—*Notice of new buildings—Building, interpretation of—Constructing the side wall of a house on its old foundation.*—The accused was charged with the offence of erecting a building without the permission of the Municipality under s. 96 of the Bombay District Municipal Act, 1901, in that he built up one of the small walls of his house on its old foundation without having previously obtained the permission of the Municipality: *Held*, that the accused committed no offence under s. 96, for it could not be said as a matter of law that the material re-construction of a small wall must constitute "the erection of a building" (12 Bom. L.R. 1060, *D.*). Where a term is interpreted in a statute as 'including,' &c., the comprehensive sense is not to be taken as strictly defining what the meaning of the word must be under all circumstances, but merely as declaring what things may be comprehended within the term where the circumstance require that they should. EMPEROR v. BRAZ H. DE SOUZA, **13 Bom. L.R 494 = 11 Ind. Cas. 610 = 12 Cr. L.J. 426 = 35 B. 412.** (7 Ad. and E. 480, 491, 7 E. and Ir. 481, 493, 10 App. Cas. 364, 375, *F.*)

(10)—*Ss.* 107, (2), 155—*Cess-pool—Order to remove—Disobedience of the order.*—A District Municipality issued a written notice under s 107 (2) of the Bombay District Municipal Act, 1901, to the accused, stating that the cesspool of his house was a nuisance, and that, therefore, within seven days from the receipt of the notice, the pipe and the drain of the cesspool should be removed, and that, if no steps were taken as directed within the time fixed, steps would be taken according to law. The accused disobeyed this notice, for which he was prosecuted under s. 155 of the Act. *Held*, that, as there was no power given under s. 107 (2) of the Act to the Municipality to lawfully direct an owner or occupier to demolish or close a cesspool himself, there was no disobedience of any lawful direction on the part of the accused under s. 155 of the District Municipal Act. EMPEROR v. LADURAM MANORMAL, **11 Bom. L.R. 1349.**

(11)—*S.* 122—*Projection into public street—Building divided into two portions—Distinct offences.*—A shop keeper affixed to his shop a board which projected into the public street. The shop was divided into two portions; one of them was occupied by the shop-keeper himself and the other was let by him to a tenant. The shop-keeper was tried separately regarding the two projections and convicted and sentenced separately. *Held*, that the Magistrate was wrong in trying the two cases as two distinct offences; it was one offence, because it related to one board. EMPEROR v. ATMARAM MANOR, **4 Bom. L.R. 942.**

(12)—S. 122—Obstruction to or encroachment on public street—Existence of *bona fide* dispute as to ownership of encroached portion — Effect—*See* PENAL CODE, s. 186, 15 Bom. L. R. 315 = 2 Bom. Cr. C. 66 = 14 Cr. L J. 251 = 19 Ind. Cas. 507.

(13)—*Ss.* 122 *and* 161—*General authority to institute prosecution under Act given to Municipal Secretary—No special direction given to*

3.—Bombay Acts—continued.

Act III of 1901 (District Municipality)—*ctd.*

institute particular prosecution—Validity of prosecution—Offence falling under two sub-divisions of same section—Construction, principle of.—S. 161 of the Bombay District Municipalities Act is merely a section empowering the Municipality to expend Municipal funds on the prosecution of Municipal offences and nuisances generally. The prosecution of such offenders is one of the means by which the Municipality performs its duties in matters of conservancy and the protection of public health and convenience. There are no negative words directing that a prosecution may not be instituted in any other way. The general rule is that any person having knowledge of the commission of an offence may set the law in motion by complaint. In Bombay Act III of 1901 there are no words which either directly or by implication take away the right that any member of the public has to set the law in motion by a complaint. It may be that it is more desirable that the general power to prosecute should not be delegated by the Municipality, but that is merely a matter of Municipal administration. The accused could have appealed to the general Board against the Secretary's action and asked that he be ordered to withdraw the complaint. The Magistrate, therefore, had jurisdiction as soon as the complaint was filed by the Secretary. Though the offence of building a *landhi* on a public road without permission is covered by the more general words of cl. 3 of s. 122, yet as the more specific and particular words of the first-clause do so also, the clause containing the more specific and particular words should, as a principle of a construction be held to govern the case, and the accused should be convicted under s. 122 (1). IMPERATOR v. HASOMAL *walud* SHAMDAS, **1 S.L R. 88 Cr. = 8 Cr. L J. 213.**

(14)—*S.* 125—*Master's liability for acts of servant.*—Where a person had a permit for the deposit of building materials within a certain area, but the contractor employed by him stored things outside those limits, and he was convicted under s. 125, Bombay Municipal Act. *Held*, that the could not be held responsible for the criminal act of his contractor. CROWN v. TYEBJI MULLA MAHOMED BHY, **9 Cr. L.J. 257 = 1 S.L.R. 15, Cr.**

(15)—*Ss.* 131, 135, 155—*Notice by Municipality— Alloo plantation — Nuisance.*—S. 131 of the Bombay District Municipal Act renders the owner liable for non-compliance with a notice issued under it, not when the Municipality considers vegetation to be rank or noisome, but only when the vegetation is actually so. To support a conviction under the section for non-compliance with a notice, the prosecution must establish affirmatively the objectionable character of the vegetation. To support a conviction for non-compliance with a notice issued under s. 135 of the Act, it must be shown that there is some pool, ditch, tank, hole, water-channel, receptacle of foul water, etc., of the kind mentioned in the section, the filling, cleansing, drawing or removal of which the Municipality has directed by notice, or with regard to which, the Municipality has directed such measures to be taken, as it considers necessarily to abate or remove the nuisance. EMPEROR v. ANANDRAO KHANDERAO RASTE, **9 Bom. L. R. 247 = 5 Cr. L.J. 252.**

(16)—S. 135—*See* No. 15, *supra.*

(17)—*S.* 142—*Prosecution by the Secretary having no authority under* s. 142—*Crim. Pro. Code* (1898), s. 537, *Explanation — Whether merely irregular or affects jurisdiction — Validity.*—Where the Secretary of a Municipality, who was not authorised for that purpose under s. 142 (2) of the Bombay District Municipal Act (III of 1901), prosecuted certain persons for selling as *ghi* an article which was not *ghi*, and it was objected that the prosecution was illegal, on the ground that the Secretary had no authority to institute the prosecution, *held*, that the objection raised is not an averment of an irregularity to which the Explanation to s. 537, Crim. Pro. Code, applies, but one of jurisdiction, and that, as the Municipal Secretary was acting unauthorisedly, the Magistrate had no jurisdiction to convict the applicants. TIKAM WD. KUNDANMAL v. CROWN, **3 S.L.R. 13.**

(18)—S. 155—*See* Nos. 10, 15, *supra.*

(19)—*S.* 159—*Notice under the section containing certain directions—Validity.*—There is nothing in s. 159 of Bombay Act III of 1901 authorising a Municipality issuing a notice under that section to give any direction to the person to whom the notice is given to do anything that they may require. The notice has to be simply an intimation to the occupier of land that the Municipality will enter for the purposes mentioned in the section at a specified hour on a specified day. The power of the Municipality to enter no doubt carries with it, by necessary implication, an obligation on the part of the occupant of the land to whom the notice is given to give every reasonable facility to the Municipality to enter and not to obstruct. But, if the occupant does anything to prevent the entrance, it cannot be said that he disobeys the notice, for, the notice is a mere condition precedent to the right of the Municipality to enter. Once the notice is given, the right arises, and if the occupant does any act to prevent its exercise, his act may amount to wrongful restraint or wilful obstruction, but it has nothing to do with the question of obeying or disobeying the notice. EMPEROR v. PURUSHOTTAM GOPALSHET GANDHI, **6 Bom. L R. 538.**

(20)—S. 161—*See* No. 13, *supra.*

Act IV of 1902 (City of Bombay Police).

[S. 44, AM., BOM. ACT IV OF 1905.]

(1)—*Ss.* 12, 16—*Commissioner of Police—Orders issued by Police Commissioner in relation to discipline and general government of the police force — Construction of statute.*—The

3.– Bombay Acts—continued.

Act IV of 1902 (City of Bombay Police)—*ctd.*

order, which the Commissioner of Police is competent to issue under the head of discipline and general government, under s. 12 of the Bombay City Police Act, 1902, must be one having reference to the conduct of the Police Officers in their capacity as such officers. Over their conduct in other relations of life, his disciplinary power does not extend, so long as no element or question of their police duty enters into those relations. If it does enter, the controlling authority of the Commissioner comes into play and it becomes a matter of police discipline. The meaning of s. 16 of the Act is that, even when a Police officer is not actually at his post discharging the duty assigned to him, he is, for the purposes of the Act, to be regarded as being at that post, with all the rights and obligations of his office attaching to him. In construing an expression of doubtful import occurring in a statute, the Court may well have regard to considerations outside the language of the Act. EMPEROR v. ATMARAM GOVIND, **31 B. 480=9 Bom. L.R. 681=6 Cr. L.J. 47.** [*R.*, 10 Bom. L.R. 26=7 Cr. L.J. 32=3 M.L.J. 122].

(2)—S. 16—*See* No. 1, *supra.*

(3)—*Ss.* 28, 129 — *Conditions for issuing notice to prostitutes—Act* I *of* 1877 (*Specific Relief*), *s.* 45.—The Commissioner of Police at Bombay issued, under s. 28, Bombay City Municipal Act, 1902, a notice upon the applicants calling upon them to vacate the premises occupied by them, and notifying that "failure to comply with this notice will render you liable to punishment under s. 129," of the Act. The applicants moved the High Court, under s. 45, Specific Relief Act, 1877, for a rule against the Commissioner of Police to show cause why the notice should not be cancelled and why he should not be restrained from carrying the same into effect. *Held* that the cancellation of the notice or the non-enforcing of it was an act clearly incumbent by law upon the Commissioner of Police, so as to bring it within s. 45 (*b*), Specific Relief Act, 1877. Under s. 28, the Commissioner of Police can only serve the notice upon the person who comes within the scope of s. 28. He is not entitled to serve it upon any person whom he merely *suspects* to be guilty of the conduct therein referred to. The misconduct, or immoral conduct, must be a matter of *fact* and not a mere matter of suspicion. A Magistrate would not be justified in convicting any person under s. 129, unless and until he is satisfied that the notices were not only served and that they were properly and validly served, that is to say, until he is really satisfied that the women had really conducted themselves in the manner imputed to them under s. 28. *In re* TARABAI IBRAHIM PURKAR, **7 Bom. L.R. 161.**

(4)—*S* 63—*Crim. Pro. Code* (1898), *s.* 162—*Evidence Act, ss.* 24 *and* 167—*Admissibility in evidence of a statement made by witness to, and taken down in writing by, a Police Officer*—

3.—Bombay Acts—continued.

Act IV of 1902 (City of Bombay Police)—*ctd.*

Confession, admissibility of.—*Held*, that, having regard to s. 162 of the Code of Criminal Procedure (corresponding to s. 63 of the Bombay City Police Act, IV of 1902), a statement, taken down in writing, of a witness for the prosecution and recorded by a Police Officer, cannot be admitted or used in evidence against the accused. *Per Russel, Ag. C. J.*—Such a document might be used to contradict the witness, not by putting the statement in as evidence, but by putting in the hands of the Police officer who has taken down the statement, to refresh his memory therefrom and thereby to enable him to contradict the statement of the witness. *Per Chandavarkar, J.*—The use of the *writing* as evidence against the accused is opposed to the express terms of the section, but the statement contained in the writing could be used to impeach the credit of such witness in the manner provided by the Indian Evidence Act. *Per Batty, J*—The writing may be used for the purpose of refreshing the memory of the witness cross-examined, as to the fact of the statement either on behalf of the prosecution or on behalf of the defence, provided that it was treated by the prosecution only for the purpose of impeaching the credit, or in corroboration, of the witness who made it. *Per Beaman, J.*—The statement ought not to have been admitted at all, or its contents to have been allowed to be used by the prosecution, even for the nominal purpose of contradicting the witness. The distinction between the "writing" and the "statement" which is embodied in the writing is a distinction of form rather than of substance. If the "statement" might properly be admitted and used to contradict the prosecution witness who made it, then there is no reason in principle why that statement should not be provable in the usual way and by the best evidence of it, namely, the written record of it. S. 162 plainly constitutes an exception to the ordinary rule of evidence. The proviso engrafts an exception upon the exception. Before the present section was amended, statements made by witnesses to the police and recorded by the Police might not be used as evidence against the accused, but there was nothing to prevent them from being used in favour of the accused. He can only obtain access to written statements made by the prosecution witnesses to the Police, at the discretion of the Court. It is no longer a matter of right. The proviso is clearly limited to the purpose of this single concession, in derogation of the universal prohibition contained in the body of the section, to the accused. He can get a copy of the recorded statements of witnesses for the prosecution, for the only purpose of breaking down the evidence of the prosecution witnesses. The proviso does not cover the case of a witness for the defence, whose statement may have been recorded by a policeman, nor allows the prosecution to impeach the credit of such a witness by examining him upon any written statements he may have made to the police. *A fortiori*, the proviso could never have been intended to allow the

3.—Bombay Acts—continued.

Act IV of 1902 (City of Bombay Police)—*cld.*

prosecution to impeach the credit of its own witnesses for its own purposes, and against the wish of the accused, by reference to the police testimony. EMPEROR v. NARAYAN RAGHUNATH PATKI, **9 Bom L.R. 789, F.B =6 Cr. L. J. 164=2 M L.T. 414=32 B. 111.** [*F*, 11 Cr. L. J. 117=5 Ind. Cas. 357=13 O.C. 7; *Rel.*, 11 Cr. L J. 498=7 Ind. Cas. 601=4 S.L.R. 38; *R.*, 36 C. 281=9 C.L.J. 193=13 C.W.N. 197=5 M.L.T. 997=1 Ind. Cas. 970, 35 M. 397=13 Cr. L.J. 352=14 Ind. Cas 896=12 M.L.T. 1=(1912) M.W.N. 549, 7 A L.J. 468=11 Cr. L.J. 235=6 Ind. Cas. 101, 16 Bom. L.R. 603, 22 M.L.J. 490=(1912) M.W.N. 207.]

(5)—*S.* 120—" *Otherwise* "—*Interpretation—Soliciting for the purpose of prostitution.*—The words "or otherwise" in s. 120, cl. (*a*) of the Bombay City Police Act, 1902, must be construed as having a limited signification, following as they do words of a limited description. They mean "in a manner similar to that of words or gestures." Therefore, merely sitting at the window without any act done of the nature indicated in the section, is not an offence. EMPEROR v. NASHMIRBAI, **10 Bom. L.R. 92=7 Cr. L.J. 118.**

(6)—S. 129—*See* No. 3, *supra.*

(7)—S. 163—*See* CRIM. PRO. CODE, 1898, s. 162, 9 Bom. L.R. 789=6 Cr. L.J, 164=2 M.L.T. 414=32 B. 111, F.B.

Act I of 1904 (General Clauses).

[SCH. AM. (AS TO BOM. ACT III OF 1886), BOM. ACT IV OF 1905, AS FROM 30TH MAY, 1904.]

S. 3 (10)—*See* BOM. ACT III OF 1888, ss. 398, 410, 7 Bom. L.R. 726=2 Cr. L.J. 604=30 B. 126.

Act II of 1904 (Motor Vehicles).

[S. 4 (3) AM. BOM. ACT III OF 1907.]

(1)—*S.* 2—*Reckless or negligent driving—Rule of the road.*—The applicant, who was driving his own motor car late at night, found a horse carriage a little ahead of him crossing from the left to the right of the road. Seeing that it was safe to pass the carriage in front on the left, he tried to pass it on the left: but as he was doing so, the carriage in front suddenly swerved again to the left, with the result that the motor ran into it. The applicant was on these facts convicted and sentenced by the Chief Presidency Magistrate, under s. 2 of the Bombay Motor Vehicles Act, 1904, for driving his motor recklessly or negligently: *Held*, that the carriage driver having first directed his carriage towards the right was not justified in so suddenly changing his course back to the left as to place the overtaking motor in the position of difficulty which he did; and that, therefore, the applicant could not be said to be reckless or negligent in driving his car, within the meaning of the Act. *Per Batchelor, J.*—The mere passing of another vehicle on the left is no doubt primarily evidence of negligence, but the inference arising from this solitary circumstance may be rebutted by other circumstances appearing in the case. The rule of the road is not an invariable or inflexible rule, and a deviation from it may upon occasions be not only justified but actually necessary. *In re* **Jehangir D Davar, 13 Bom. L R. 126=9 Ind. Cas. 945=12 Cr. L.J. 167.**

(2)—S. 2—*See* PENAL CODE, ss. 81 and 279, 8 Bom. L.R. 414=3 Cr. L.J. 494.

(3)—Ss. 9 and 13—*See* ABETMENT, 9 Bom. L.R. 161=5 Cr. L J. 176.

(4)—S. 12—*See* ABETMENT, 9Bom. L.R. 159=5 Cr. L J. 173.

(5)—S. 13—*See* No. 3, *supra.*

Act II of 1906 (Mamlatdar's Courts).

(1)—Mamlatdar's Court constituted under—Whether a Civil Court within the meaning of s. 476, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 476, 15 Bom. L.R. 53=2 Bom. Cr. C. 9=18 Ind. Cas. 416=14 Cr. L.J. 80.

(2)—*S.* 23—*Crim. Pro. Code* (1898). *s.* 195, *cl.* 7 (3)—*Perjury in a possessory suit—Sanction to prosecute not given by Mamlatdar—Appeal to District Judge—Collector has no jurisdiction to hear the appeal.*—An appeal, from an order passed by a Mamlatdar refusing sanction to prosecute for perjury in a possessory suit under the above Act, lies to the District Court. The Collector has only the revisional power granted to him by s. 23 of the Act, for the limited purpose specified in the clause. He does not on that account become the principal Court of jurisdiction within the meaning of the expression as used in sub.-cl. (3) of cl. (7) of s. 195 of the Crim. Pro. Code. NARAYAN DHONDIBA v. TUKARAM GOVINDSHET, **9 Bom. L.R. 896=6 Cr L.J. 225.** (5 Bom. L.R. 206, *F.*) [*F.*, 2 Bom. Cr. Cas. 9=15 Bom. L.R. 53=14 Cr. L.J. 80=18 Ind. Cas. 416.]

4.—Burma Acts.

*** Act II of 1873 (Ferries).**

[REP., BUR. ACT II OF 1898.]

(1)—*S.* 14—*Crossing a ferry in a private boat not an offence.*—It is not an offence under the Ferries Act for a man to cross the river at the ferry, or take his cattle across, in his own boat or in that of a relative not plying for hire. QUEEN-EMPRESS v. KYA KAING, **L.B.R. 1872—1892, 600.**

***Act VII of 1875 (Burma Fisheries).**

[REP., BUR. ACT III OF 1905.]

(1)—*S.* 2—" *Fishery* "—*Burma Fisheries Act, ss.* 2 *and* 7 (*a*) *and* (*b*).—A temporary collection of water on one's own land, the result of rainfall and overflow, and not shown to be connected by any regular channel with waters of a permanent nature, cannot be said to be a fishery

* These local Acts were passed by the Imperial Legislature.

4.—Burma Acts—continued.

Act VII of 1875 (Burma Fisheries)—*concluded.*

within the meaning of s. 2 of the Fisheries Act. QUEEN-EMPRESS v. SHWE HLA, **L.B.R. 1893—1900, 202.**

*** Act XVII of 1875 (Burma Courts).**

[REP., ACT XI OF 1889.]

(1)—*Transfer of case—Local Government, powers of—Crim. Pro. Code* (1882), s. 178.—The local Government has no power under s. 178 of the Crim. Pro. Code to transfer for trial to the Court of the Commissioner a criminal case duly committed for trial by the Court of the Recorder of Rangoon, but the local Government has the power to transfer a case from the District of Rangoon to the Sessions division of Pegu. QUEEN-EMPRESS v. NGA THA MOUNG, **10 C. 643.** [*R.*, 10 B. 263]

(2)—S. 8 (1) (*a*) and (*b*)—*See* EUROPEAN BRITISH SUBJECT, 1 L.B.R. 158.

(3)—*S. 35—Special Court of British Burma, appeal to—Crim. Pro Code* (1872), s. 64.—An appeal lies to the Special Court of British Burma from a conviction and sentence by the Judicial Commissioner, in a case transferred by him to his own Court from that of the Sessions Judge, under s. 54 of the Crim. Pro. Code and s. 35 of the Burma Courts Act. EMPRESS v. TSIT OOE, **4 C. 667.** [*R.*, 10 B. 274.]

(4)—S. 80—*See* CHARGE TO JURY—MISDIRECTION, 11 C. 10.

*** Act II of 1876 (Land and Revenue Act).**

[REP. IN PART, ACT II OF 1880 ; ACT XII OF 1882 ; ACT XIII OF 1898, S. 18. AMENDED ACT XIII OF 1898, S. 16 ; BUR. ACT I OF 1901. APPLICATION OF CERTAIN PROVISISIONS EXT. BURMA ACT III OF 1905, S. 30, " LOCAL GOVERNMENT " SUBSTITUTED FOR "CHIEF COMMISSIONERS" S. 8, (B) AND HEADING OVER S. 39, AMENDED BY SS. 22-A. 38. A, 54 A. 54-B, INSERTED BY BUR. ACT I OF 1907, SS. 2-6.]

(*a*)—*See* BUR. ACT III OF 1889, s. 9 2) 4 L.B.R. 150=7 Cr. L.J. 450.

(1)—*Ss.* 18, 19, *rr.* 51, 52, 68, 69—*Failure to comply with notice of ejectment—Demarcated grazing land—Admission of receipt and disobedience of notice—Prosecution bound to prove illegal encroachment—Application of rules—Crim. Pro. Code*, ss. 190 (*c*), 191—*Magistrate acting on his own knowledge of fact—Failure to inform accused of his right to be tried by another Court.*—In a prosecution for failure to comply with a notice of ejectment from land said to form part of demarcated grazing ground, an admission by the accused of the receipt of notice and of his failure to comply with it does not amount to an admission that he has committed an offence, as it does not imply that the accused admits his liability to ejectment. The prosecution must prove not only that the accused was served with a notice and disobeyed it but that he was actually occupying the land in contravention of rules under the Land and Revenue Act. Rr. 51 and 52 only refer to land available for temporary occupation under s. 19 of the Act, and do not apply to demarcated grazing grounds. R. 69 deals with persons who encroach on grazing grounds. Where a Magistrate acts on his own knowledge of facts under s. 190 (*c*) of the Crim. Pro. Code, he is bound to proceed under s. 191 and inform the accused that he is entitled to be tried by another Court. Failure to comply with this imperative rule of law in s. 191 is a defect which invalidates the proceedings. MADAR SAHIB v. EMPEROR, **13 Cr. L J. 52=13 Ind. Cas. 388=4 Bur. L.T 259.** (2 L.B.R. 311, 1 Cr. L J. 1118, *R.*)

* These local Acts were passed by the Imperial Legislature.

4.—Burma Acts—continued.

Act II of 1876 (Land and Revenue Act)—*cld.*

(1-*a*)—S. 19—*See* No. 1, *supra.*

(2)—S. 39. cl. (*c*)—*See* ACT XII OF 1882, s. 9, L.B.R. 1893—1900, 252.

(3)—S. 57, cl. (*c*)—*See* FALSE EVIDENCE, 2 L.B R. 272.

(4)—Rule 51—*See* No. 1, *supra.*

(5)—Rule 52—*See* No. 1, *supra.*

(6)—Rule 68—*See* No. 1, *supra.*

(7)—Rule 69—*See* No. 1, *supra.*

*** Act XIII of 1877 (Embankment).**

[REP. IN PART, ACT XI OF 1889. AMENDED, ACT XIII OF 1898, S. 16.]

(1)—*S.* 3—*Penal Code*, s. 188.—The accused were convicted under. 188, I.P.C., of disobeying the order of a public servant and were sentenced to pay a fine of two rupees each. The order disobeyed was an order, requiring them to execute a work in connection with an embankment, purporting to have been issued under s. 3 of Act XIII of 1877. *Held* that s. 188, I.P.C. did not embrace cases of disobedience of orders issued under the above Act, and that the Embankment Act provideduo penalty for refusal of labour. QUEEN-EMPRESS v. NGA SHWE, U **L.B.R. 1872-1892, 92.**

*** Act II of 1880 (Bombay District Cesses and Rural Police).**

[REP IN PART, ACT III OF 1889, S. 1, (6). AMENDED ACT XIII OF 1898, S. 16. S. 9 (A) AMENDED SS. 12—21, REP. BURMA ACT VI OF 1907, SS. 27, (2)].

(1)—*Confession to a police officer—Evidence Act*, s. 25—*Act* II *of* 1880 (*Burma Rural Police*).—A confession to a village headman or *gaung* appointed under the Burma Rural Police Act is inadmissible under s. 25 of the Evidence Act. LU BEIN v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 479.**

(2)—*See* CONFESSION—CONFESSIONS MADE TO POLICE OFFICERS, L.B.R. 1872--1892, 479.

* These local Acts were passed by the Imperial Legislature.

4.—Burma Acts—continued.

*** Act V of 1880 (Boundaries).**

[REP. IN PART AND AMENDED, ACT II OF 1895. AMENDED, ACT VI OF 1900, S. 47. DECLARED IN FORCE IN UPPER BURMA (EXCEPT THE SHAN STATES), ACT XIII OF 1898, S. 4].

(1)—*Ss* 2, 17 *and* 18—*Burma Municipal Act,* 1898, *s.* 94 (2)—*Boundary Officer's decision—Adverse possession, plea of, to be taken in appeal against Boundary Officer's decision—Legality of want of notice under s.* 11 *of the Act.*—A Boundary Officer confirmed the Demarcation Officer's marks, which showed the proper limit of the petitioner's land, and declared the extension of the house beyond that limit to be an encroachment. The petitioner's house was in a Municipality. The petitioner did not appeal against the Boundary Officer's order. The petitioner, having encroached beyond the limit fixed by the Boundary Officer, was prosecuted by the Municipality. His answer was that the decision of the Boundary Officer was not binding on him, because the special notice, under s. 11 of the Boundaries Act, was not served on him and because he had obtained a title to the property encroached upon, by adverse possession before the Boundary Officer's decision. *Held,* the Boundaries Act makes the decision of a Boundary Officer conclusive, subject to the appeals provided for under the Act; that no appeal having been preferred against the Boundary Officer's decision, it was conclusive and the petitioner lost his right by adverse possession, even if he had any, by reason of the Boundary Officer's decision. *Held,* further, the objection as to want of special notice under s. 11 was one which ought to have been taken against the decision of the Boundary Officer and could not be taken now. KYA NEYUN v. RANGOON MUNICIPALITY, **4 L B R. 153=7 Cr. L.J. 462.**

(2)—S. 17—*See* No. 1, *supra.*

(3)—S. 18—*See* No. 1, *supra.*

*** Act XIX of 1881 (Forest).**

[REP., BUR. ACT IV OF 1902.]

(1)—*Chap.* VI—*Rule under the Act — Drift timber and timber in transit.*—Chap. VI of the Act applies to breaches of duties in respect of timber floated down the Salween River, which, although treated departmentally as drift timber, is not drift timber within the meaning of Chapter VII of the Act, but actually timber in transit. Whoever makes the report, under Rule No. 17 of the Forest departmental rules, is personally responsible for its correctness. QUEEN-EMPRESS v. V. M. T. T. VEERAPPA CHETTY, **L.B.R. 1893—1900, 57.**

(2)—*S.* 36—*Penal Code, ss.* 40 *and* 67—*Sentence.*—Imprisonment may be awarded in default of payment of a fine imposed under s. 36, but the imprisonment must be simple

* These local Acts were passed by the Imperial Legislature.

4.—Burma Acts—continued.

Act XIX of 1881 (Forest)—*concluded.*

and must be governed by the scale laid down in s. 67, I.P.C. QUEEN-EMPRESS v. NGA KYWE, **L.B.R. 1872—1892, 410.**

(3)—S. 54—*See* APPELLATE COURT, L.B. R. 1893—1900, 423.

(4)—S. 55 —*See* RESTORATION OF PROPERTY, L.B.R. 1893—1900, 20.

(5)—S. 62—Offer of money to forest subordinate — Compoundable offence — Effect—See PENAL CODE, s. 214, 6 L.B.R. 48=15 Ind. Cas. 990=13 Cr. L.J. 574.

*** Act XVI of 1884 (Gaming).**

[REP., BUR. ACT I OF 1899.]

(1)—S. 5—*See* ACT III OF 1867, ss. 3, 4, 5, 14, L.B.R. 1872—1892, 486.

(2)—S. 6—*See* ACT III OF 1867, s. 13, L.B. R. 1872—1892, 317.

*** Act XVII of 1884 (Municipality).**

[REP., ACT XIII OF 1898, s. 18.]

(1)—*Ss.* 27 *and* 145—*Prosecutions under the Act—Rule 24 of the Rangoon Municipal Rules.*—Having regard to the fact that the Rangoon Municipal Committee have, by rules duly issued under the Act and sanctioned by the Chief Commissioner, delegated to the President of their Committee their executive authority in respect of s. 145 of the Burma Municipal Act, their previous sanction at a meeting is not necessary to prosecutions for offences under that Act or the Rules made under it. MAHOMED MOOSAJEE GOONDAH v. RANGOON MUNICIPALITY, **L.B.R. 1872—1892, 463.**

(2)—*S.* 75—*Delegation of powers by President of Municipality — "Executive authority."* — When the President of a Municipality delegates his powers to the vice-president, the delegation remains in force only so long as such president and vice-president continue in office. The words "executive authority," with reference to s 75 of the Act, do not include all that a municipal committee may do under that section. The determination of the matters referred to in sub-s. (1), including the question of compensation, or deciding, under sub-s. (2), that a building should be altered or demolished, is not a matter of executive authority. MAUNG SHWE BAN v. U MAUNG, **L.B.R. 1893—1900, 371.**

(3)—*S.* 79—*Slaughtering of animals not intended for sale—Slaughtering at other places.*—The Municipal slaughter-house rules ought not to render a person liable to punishment for slaughtering an animal outside the slaughter-house premises. Slaughter-houses are established by a Municipality under the provisions of s. 79 and are for the slaughter of animals *for sale.* There is no penalty for slaughtering an animal not intended for sale at a place other than the slaughter-house, and the slaughter of an animal intended for sale at another place

* These local Acts were passed by the Imperial Legislature.

4.—Burma Acts—continued.

Act XVII of 1884 (Municipality)—*concluded.*

only renders the person liable to a fine. QUEEN-EMPRESS v. CHOKALINGAM, **L.B.R. 1893—1900, 383.**

(4)—*S. 84—Interpretation of, "or."*—For the sake of brevity, "*or*" has been used in s. 84 in the sense of "*or*" and also in the sense of "*and.*" QUEEN-EMPRESS v. MA AUNG, **L.B.R. 1893—1900, 348.**

(5)—*S. 104—Sentence—Imposition of daily fine.*—A Magistrate has no power to impose a daily fine by anticipation for an offence which has not been committed when the order is made. The proper course would be to fix a near day for report, and, if it be found that the order has not been carried out, it is open to prosecute the accused, and, on conviction, the daily fine up to the date of the report may be imposed and so on until the order is complied with. QUEEN-EMPRESS v. NGA PAW HI, **L.B.R. 1872--1892, 421.**

(6)—S. 145—*See* No. 1, *supra.*

*** Act XX of 1886 (Upper Burma Laws).**

[REP., ACT XIII OF 1898, S. 18.]

(1)—S. 7 *a*—*See* PWES, U.B.R. 1897—1901, Vol. I, 368.

(2)—Sch. III—*See* ACT VI OF 1864, s. 2, U.B.R. 1892—1896, Vol. I, 332.

*** Act III of 1889 (Lower Burma Village).**

[REP., BUR. ACT VI OF 1907.]

(*a*)—*See* EVIDENCE ACT, 1872, s. 25, 3 L.B.R. 283 = 5 Cr. L.J. 421, 1 L.B.R. 65.

(1)—*Offence not cognizable by* Ywathugyi—*Order directing attendance*—Ultra vires.—Insult not being an offence cognizable by a *Ywathugyi* or headman under the Lower Burma Village Act, the order issued by him compelling the attendance of the accused before him is *ultra vires*, and is, therefore, not legally binding on the accused QUEEN-EMPRESS v. NGA KAUNG KYWE, **L.B.R. 1872—1892, 535.**

(2)—*Accused previously convicted of theft—Subsequent commission of an offence punishable with 3 years' imprisonment—Liability to enhanced sentence under s. 75, Penal Code.*—A person duly convicted of theft under s. 7 of the Lower Burma Village Act in case of a subsequent offence punishable with imprisonment for a term of three years or upwards under Chap. XII or XVII of the Indian Penal Code is liable to be dealt with under s. 75, Penal Code. QUEEN-EMPRESS v. NGA MAUNG GYI, **L.B.R. 1872—1892, 549,** [*Overruled,* L.B.R. 1893—1900, 378].

(3)—S. 7—*See* SENTENCE—ENHANCEMENT OF SENTENCE, L.B.R. 1893—1900, 378.

* These local Acts were passed by the Imperial Legislature.

4.—Burma Acts—continued.

Act III of 1889 (Lower Burma Village)—*ctd.*

(4)—Ss. 7, 8, 10, 28—Powers of village headman—Abuse of powers—*See* PENAL CODE, ss. 161, 384, 14 Cr. L.J. 413 = 20 Ind. Cas. 237 = 6 Bur. L.T. 92.

(5)—*S. 8—Powers of Deputy Commissioner.*—Under s. 8 of the Lower Burma Village Act, a Deputy Commissioner can fine, suspend or dismiss a village headman for neglect of duty. Where, therefore, a Magistrate, citing s. 8 of the above Act as his authority, tried, convicted and passed a sentence of fine on a village headman for neglect of duty, though not authorized by any provisions of this Act, *held* that the Magistrate had no jurisdiction to do so. QUEEN-EMPRESS v. NGA SAN HLA, **L.B.R. 1893—1900, 186.**

(6)—S. 8—*See* No. 4, *supra.*

(7)—Ss. 8, 9, 23—*See* VILLAGE HEADMAN, L.B.R. 1893—1900, 397.

(8)—*S. 9—Order of the village headman to keep pigs in enclosure—Disobedience to such order.*—The issue of an order by a village headman that the villagers should keep their pigs in enclosures to prevent their trespassing on the fields and destroying the paddy crop does not appear to be one of the public duties of a village headman which every resident of a village must, under s. 9, assist him in executing. QUEEN-EMPRESS v. NGA AUNG NE, **L.B.R. 1893—1900, 490.**

(9)—*S. 9 (2)—Burma Land and Revenue Act, 1876—Failure to pay capitation tax at a certain place on the demand of a village headman.*—The accused were ordered by a village headman by repeated notices to come and pay their capitation tax at a certain place. They failed to do so. They were thereupon prosecuted by the circle *thugyi.* The accused were convicted under s. 9 (2) of the Lower Burma Village Act. *Held,* the conviction was bad. The non-payment of a revenue is a matter that can be dealt with under the Land and Revenue Act. The provisions of s. 9 (2) of the Lower Burma Village Act are inapplicable. KING-EMPEROR v. LU PE AND TEIN THI, **4 L.B.R. 150 = 7 Cr. L.J. 450.**

(10)—*S. 9 (2)—Application of section.*—The mere breach of one of the rules, issued under s. 6 (1) of the Act, cannot amount to an offence and does not justify a conviction under s. 9 (2) of the Act. The essence of an offence, under that section, is refusal or neglect to comply with the requisition of a headman. To support a conviction under that section, it must, therefore, be proved that the headman made a certain requisition to the accused and that the accused refused or neglected to comply with it. KING-EMPEROR v. PANZI, **3 L.B.R. 96 = 3 Cr. L.J. 22.**

(11)—S. 9 (2)—*See* CONTEMPT OF LAWFUL AUTHORITY, L.B.R. 1893—1900, 218.

(11-*a*)—S. 9—*See* No. 7, *supra.*

4.—*Burma Acts*—continued.

Act III of 1889 (Lower Burma Village)—*cld.*

(12)—*Ss.* 9 (2), 20 (2)—*Power of Deputy Commissioner to revise* ywathugyi's *order.*—S. 20, cl. 2, empowers the Deputy Commissioner to revise the order given by the village headman. The High Court will be in a position to deal with the conviction or sentence, under s. 9, cl. (2), only after the order of the village headman has been cancelled. QUEEN-EMPRESS v. NGA CHO, **L.B.R. 1893—1900, 147.**

(13)—S. 10—*See* No. 4, *supra.*

(14)—*S.* 13—*Imprisonment in default of payment of fine illegal—General Clauses Act* (I of 1868), s. 5—*Penal Code*, *ss.* 63 *to* 70.—A sentence of more than one-fourth of 15 days' imprisonment in default of payment of a fine imposed under s. 13, Lower Burma Village Act, is illegal. S. 5, General Clauses Act (1868), makes ss. 63 to 70 of the Penal Code applicable, where imprisonment is awardable as well as fine. QUEEN-EMPRESS v. NGA NYEIN, **L.B. R. 1893—1900, 141.**

(15)—*S.* 13-*A*—Pwe, *what constitutes.*—An assembly of villagers, at which there is music, and two of the village girls dance, is not a *pwe* under the Act as amended by Act II of 1904, unless the Local Government declare, by a specific notification under the Act, such an assembly to be a *pwe*. KING-EMPEROR v. NGA PYU, **4 L.B.R. 43=6 Cr. L.J. 280.**

(16)—*S.* 13-*A*—*Foot races not* pwes.—The accused, who were concerned in a foot-race, were prosecuted for holding an unlicensed *pwe*, under s. 13 A of the Act, as amended by Burma Act II of 1904, and convicted and sentenced to fine : *held*, on a reference to the Chief Court, that the general expression " other like race," in cl. 3 of s. 13-A, cannot cover foot-races, and, though it might be open to the executive, under the last portion of that clause, to declare them by notification to be *pwes* in certain local areas, in the absence of such a declaration, it cannot be held that foot-races are *pwes* as defined in the Village Act. KING-EMPEROR v. CHAN E, **3 L B.R. 93=3 Cr. L.J. 18.**

(17)—*S.* 13-*A*— Pwe, *meaning of—Lower Burma Towns Act*, s. 7-*A.*—The term "*pwe*" used in s. 13 A of the Lower Burma Village Act, 1889, and s. 7-A of the Lower Burma Towns Act, 1892, does not include such entertainments or gatherings as cart-races or pony-races. It merely refers to entertainments of a theatrical nature, namely, *zat-pwes* and *yok-the-pwes*. CROWN v. NGA THA DUN, **1 L B.R. 110, F.B.**

(18)—*S.* 19—*Scope of section.*—S. 19 of the Lower Burma Village Act refers to a complaint of an act which constitutes an offence under the Penal Code or any other law, if such act is also punishable departmentally under s. 8 of the Lower Burma Village Act. SHWE YI v. CROWN, **1 L.B.R. 336.** (L B R. 1893—1900, 397, *F.*). [*R.*, 14 Cr.L.J. 413=20 Ind. Cas. 237.]

(19)—S. 20—*See* No. 12, *supra.*

(20)—S. 28—*See* No. 4, *supra.*

4.—*Burma Acts*—continued.

***Act XI of 1889 (Lower Burma Courts).**

[REP., ACT VI OF 1900, S. 48.]

(*a*)—*See* SANCTION TO PROSECUTE—REVOCATION OF SANCTION, L.B.R. 1893—1900, 529.

(1)—*Ss.* 50 *and* 69—*Criminal case.*—A petition presented to the Special Court under s. 50, cl. (5), Lower Burma Courts Act, by a person considering himself aggrieved by an order of the Recorder, sitting as Insolvency Commissioner, made under s. 50 of the Insolvent Act, comes before the Special Court as a criminal case, and is, therefore, to be dealt with, in case of difference of opinion between the members of the Special Court, under s. 69, cl. (*c*) of the Lower Burma Courts Act. The punishment, which can be awarded under s. 50 of the Insolvent Act, is a punishment for something which the person to be punished has done, and is not inflicted in order to compel him to do something in the future, and the case in which it is inflicted is, therefore, a criminal case. YEO SWEE CHOON *alias* BAHU v. CHARTERED BANK OF INDIA, AUSTRALIA, AND CHINA, RANGOON, **19 C. 605.** (17 C. 209, *F.*)

(2)—S. 69—*See* No. 1, *supra.*

(3)—Ss. 86 and 87—*See* LEGAL PRACTITIONERS—ADVOCATE, L.B.R. 1872—1892, 260.

(4)—S. 87—*See* No. 3, *supra.*

*** Act IX of 1892 (Lower Burma Towns).**

[REP., BUR. ACT III OF 1907.]

(1)—*S.* 5, *cl.* (*k*)—*Assistance by headman of a ward—Limit of assistance.*—The general assistance which the headman of a ward is required by s. 5 (*k*) to give to all officers of the Government and Municipal officers in the execution of their public duties must be limited to assistance within the headman's ward. QUEEN-EMPRESS v. NGA PO KIN, **L.B.R. 1893—1900, 454.**

(2)—*Ss.* 6 (*as amended by s.* 4, *Act* XVIII *of* 1895) *and* 8—*Village headman refusing to assist—Offence triable by a Magistrate—Crim. Pro. Code* (1882), s. 4 (*p*).—A village headman, refusing, without good reason, to assist at a search for opium, when required to do so by an Excise Sergeant, and thereby rendering himself liable to fine for an offence punishable under s. 6 of the above Act, commits an offence within the meaning of s. 4 (*p*), Crim. Pro. Code. Such an offence must be enquired into and tried by a Magistrate. S. 8 of the Act has no application to orders passed in criminal proceedings for offences under the Act. QUEEN-EMPRESS v. NGA ZUN, **L.B.R. 1893—1900, 329.**

(3)—S. 7-A—*See* BUR. ACT III OF 1889, s. 13-A, 1 L.B.R. 110, F.B.

(4)—S. 8—*See* No. 2, *supra.*

* These local Acts were passed by the Imperial Legislature.

4.—Burma Acts—continued.

Act II of 1898 (Ferries).

[Rep. in part Act II of 1901. Amended, Bur. Act II of 1899.]

(1)—*Ss.* 12, 14, 15, 25 *and* 27.—Isolated acts of conveying goods or passengers in a boat for hire within the limits of a ferry is not punishable under the Ferries Act. Queen-Empress v. Nga Chan Tha, **U.B.R. 1897—1901, Vol. I, 194.**

(2)—S. 14—*See* No. 1, *supra.*

(3)—S. 15—*See* No. 1, *supra.*

(4)—S. 25—*See* No. 1, *supra.*

(5)—*Ss.* 25 *and* 26 (*b*)—*Some of the accused hiring other accused to carry betel leaves from one place to another—Sampans of those hired, whether ferry boats—Neither fraudulent crossing of public ferry nor user of landing place, without paying ferry toll, shown—Whether offence under Act committed.*—Where the evidence, at most, showed that the first three accused employed the other three for hire to carry their betel leaves from one place to another within the limits of a ferry. *Held*, that the *sampans* of the accused, who were hired, did not thereby become "ferry boats," *i.e.*, plying for hire between two fixed points for all comers indiscriminately, and that no offence was disclosed under s. 25 of the Burma Ferries Act. None of the accused having been shown to have fraudulently or forcibly crossed the public ferry or used the landing place without paying the ferry toll, *held*, there was no evidence of an offence under s. 26 (*b*). Po U v. King-Emperor, **14 Bur. L.R. 22=7 Cr. L. J. 311.**

(6)—S. 26—*See* No. 5, *supra.*

(7)—S. 27—*See* No. 1, *supra.*

Act III of 1898 (Municipality).

[Amended, Act VI of 1900, s. 47.]

(1)—*Ss.* 92 (1), (2), (3), 180—*Notice of intention to build—Direction of Municipal Committee to leave space, disobedience of—Prosecution for disobedience of successive directions—Previous acquittals whether a bar to subsequent prosecution—Crim. Pro. Code* (1898), *s.* 403—*Jurisdiction of Court to consider the reasonableness of lawful direction of Committee—Crim. Pro Code* (1898), *s.* 403—*Application of.*—A, just before he began to erect a building, gave notice of his intention to do so to the Municipal Committee under s. 92 (1). After he began to build, but within six months from the receipt of his notice, the Municipal Committee issued, under s. 121-A, notice requiring A to leave space about the building for scavenging purposes. A disobeyed the notice. He was prosecuted and acquitted. Again, notice was issued under s. 92 (2) requiring A to leave space within a month. He was prosecuted for disobedience and acquitted again. Then the Committee issued a notice under s. 92 (3) requiring A to alter the building so as to leave space for conservancy and prosecuted him for disobeying such notice. A pleaded, *inter alia*, that (1) the two previous acquittals were a bar to the prosecution and (2) that the order of the Committee was not lawful or reasonable, there being sufficient means of access for scavenging purposes from the back, but he was convicted. *Held*, that, as he has now been convicted of disobeying a notice issued under s. 92 (3), the offence is not the same offence as either of the previous offences, and that he has not been convicted on the same facts for another offence for which a different charge might have been made under s. 236, Crim. Pro. Code, at the previous trial, as some of the facts constituting the present offence were not in existence at the time of the former trials, and so, s. 403, Crim. Pro. Code, does not apply. *Held*, also, the notice given by the Committee was a lawful one, and, when it is lawful, the Court has no jurisdiction under s. 180 to consider whether such order is reasonable or not. *Obiter*:—S. 403, Crim. Pro. Code, does not direct that a person shall be acquitted, but that he shall not be tried. So, an order of acquittal cannot be passed under s. 403, on the ground that the accused had been previously acquitted. Oborno Charan Chowdhry v. King-Emperor, **5 L.B.R. 12=9 Cr. L. J. 578 =2 Ind. Cas. 357.**

4.—Burma Acts—continued.

Act III of 1898 (Municipality)—*continued.*

(2)—*Ss.* 92 (3), (4), 180—*Act of building without permission not punishable—Absence of any notice to the accused regarding his breach of law or bye-law — Appeal—Continuing breach.*—Maung Po Tok was prosecuted under s. 180 of the Burma Municipal Act under the following circumstances. He applied for permission to erect a zayat putting in plans, which were approved of by the Municipal Committee, Bassein. He then erected the zayat in contravention of the plans, for he proceeded to erect a portico. Complaint was made and he was ordered by written notice to stop going on with the erection of the portico. After that Po Tok asked that the portico be allowed to stand, but the President of the Committee rejected the request and ordered Po Tok's prosecution for building contrary to the plan. The Magistrate found that he did not stop when ordered to do so and that no notice appeared to have been issued requiring him to pull down or dismantle the extension. He found that Po Tok had departed from the sanctioned plan without permission and that he had erected, or began to erect, in contravention of the bye-laws, the portico. He found him guilty of a breach, in contravention of s. 92 (3) (4) of the Municipal Act and bye-laws framed under the Act, and directed that he pay a fine of Rs. 50, and in case of a continuing breach a further fine of Rs. 5 a day for every day in which the erection continued to exist after seven days from the 25th May. Maung Po Tok then applied for revision of this order to the Sessions Judge who referred the case to the Chief Court: *Held*, that, although at first sight the order of the Magistrate might seem to be more than an order of

4.—Burma Acts—continued.

Act III of 1898 (Municipality)—*continued.*

fine of Rs. 50 only and, therefore, appealable, but that, looking at the facts, there was no continuing breach of any notice issued by the Municipality, as no notice was proved to have been issued under s. 92 (3) or (4) requiring the portico to be altered or demolished: that, therefore, that portion of the order seemed to be meaningless and inoperative and appeared to be only for Rs. 50 and was thus not appealable. S. 180 makes punishable the disobedience of a bye-law or any lawful direction given by the Committee by public notice under the powers conferred upon it by Chap. VI, or any notice in writing lawfully issued by it under the powers so conferred, or failure to comply with the conditions subject to which any permission is given by the Committee under those powers. An erection in contravention of plans is not in itself or by itself alone punishable, as there is no bye-law rendering punishable the mere erection of a building in contravention of a plan. EMPEROR v. MAUNG PO TOK, 8 Ind. **Cas. 983 = 11 Cr. L J. 745.**

(3)—S. 94 (2)—*See* BUR. ACT V OF 1880, ss. 2, 17, 18, 4 L.B.R. 153 = 7 Cr.L.J. 462.

(4)—*Ss.* 99, 100 *and* 154—*Points to be proved by prosecution.*—In a prosecution under ss. 99, 100 and 154, Burma Municipal Act, for slaughtering an animal within the limits of a Municipality in a place not licensed for that purpose, the prosecution must prove not only that the animal was slaughtered in such a place, but it was slaughtered for the sale of its flesh. ALLY HOSSAIN v. KING-EMPEROR, **U.B.R. 1904, 2nd Quarter, Municipal 1.**

(5)—S. 100—*See* No. 4, *supra.*

(6)—*S.* 121—*Scope of section.*—This section empowers the Committee to require an owner to allow the servants of the Committee reasonable access to, or passage over, his land for scavenging purposes, whether these purposes concern the land in question or other land. MAPARA v. MUNICIPAL COMMITTEE OF MANDALAY, **U.B.R. 1897—1901, 230.**

(7)—*Ss.* 130, 147 *and* 180—*Premises unfit for human habitation—Notice by Municipal Committee prohibiting use of premises until further orders— Renting of premises — Prosecution—Legality of order of Municipal Committee—"Called in question"* — Ultra vires—*Magistrate not Municipal Committee to decide if premises fit for habitation.*"—An owner of a building was required by the Rangoon Municipal Committee under s. 130 of the Burma Municipal Act to refrain from using it as it was unfit for human habitation in consequence of its insanitary condition, until the Committee should be satisfied that the said premises had been rendered fit for such use. The owner carried out some repairs and reported that the house had been thoroughly cleaned and painted and was open to inspection. The Health Officer replied that something further was required to make the building sanitary but the owner let the house to a tenant. He was prosecuted under s. 180 of the Burma Municipal Act for disobedience of the notice and was convicted, the Magistrate holding that s. 147 enacts that no order made under s. 130 should be liable to be called in question otherwise than by an appeal to the Commissioner under s. 147. *Held*, that the words "no such order shall be liable to be called in question otherwise than by such appeal" in s. 147 of the Act should not be interpreted as preventing an accused person from challenging the order as *ultra vires* by way of defence to a criminal charge: *held*, also, reversing the conviction and sentence that the portion of the Committee's order prohibiting the use of the house "until such time as the said Committee is satisfied &c," was *ultra vires.* S. 130 did not make the Committee the judge of the question whether the house had been made fit for habitation. It was a question of fact to be decided by the Magistrate if the Committee saw fit to prosecute. BRETTO, J.F v. RANGOON MUNICIPAL COMMITTEE, **4 L.B.R. 144 = 14 Bur. L.R. 125 = 7 Cr. L J. 441.**

(8)—*Ss.* 133 (1) *and* 160—*Construction of term "wood."*—S. 133 (1) of the Act prohibits the storage for trade purposes of wood in an inflammable condition, and it is immaterial whether it is in a manufactured or unmanufactured shape. NAGORE MEERA v. RANGOON MUNICIPALITY, **2 L.B.R. 70.**

(9)—*Bye-law* (2) *under s.* 142 (*e*), *s* 180—*Unlicensed pawn-broker- Definition of pawn-broker — Indian Contract Act, Ch* IX.— The mere taking of goods as security for money lent would not make the lender a pawn-broker. To show that a person comes within the definition of pawn-broker, it must be proved that he carries on the business of lending money on the security of goods pledged to him, and that he holds himself out to lend money on such security and is in the habit of doing so. Where a person took goods in pawn for two loans of Rs. 20 and Rs. 10 and took also an "on demand note" for the loan of Rs. 20, but not for that of Rs. 10, which was explained by the fact that he was not in the habit of taking such a receipt for loans of less than Rs. 20 when property was kept with him as collateral security, *held*, that the fact that the accused belonged to the Chetty community, who carry on the business of money-lenders and hold themselves out as such, and also the admission of the accused, made the accused a pawn-broker, and, as such, he was guilty of an offence punishable under s. 180 of the Burma Municipal Act, in not having obtained a license from the Municipal authorities. In India, the English Law on the subject of pawning and pawn-brokers is not applicable. But Ch. IX of the Indian Contract Act is the law in force in India. According to Indian Law, there can be a taking in pawn even though no fixed time be agreed on for repayment of the loan, on account

4.—Burma Acts—continued.

Act III of 1898 (Municipality)—*continued.*

of which goods are deposited as security. KING-EMPEROR v. KANNAPPA CHETTY, **4 L.B.R. 8=6 Cr. L.J. 118.**

(10)—*Ss.* 142 (*f*), 180—"*Market,*" *test of.*—The test to find whether a market has been established without sanction in contravention of the bye-law is whether the use of the place constituted a disturbance of market rights. When a *zayat* is partitioned off into stalls, and the public are allowed to come there, and occupy stalls for daily fees for the purpose of sale of goods, that constitutes a disturbance of the market rights of the Municipality. It does not matter whether the number of sellers is three or thirty. If three can do so without question, there is no reason why thirty should not do the same. The only difference is that the disturbance of market rights is more apparent in one case than in the other. KING-EMPEROR v. NGA BA, **1 U B.R. 1902—1903, Municipal, 1.** (11 B. 106, *F*)

(11)—*Ss.* 142 (*d*), 180, 202, *Bye-laws,* 19, 20 *framed thereunder*—Ultra vires—*Punishment for breach of bye-law No.* 19—*Notice must require alterations that are reasonable and possible.*—Clause (c) of by-law 19 framed by the Rangoon Municipality requiring the owners of lodging houses "to make such alterations in the construction and in the sanitary appliances and water supply of the building as may seem necessary for keeping the building in a wholesome condition" is not *ultra vires,* as the framing of such a clause is authorized by sub-cl. (iii) of s. 142 (*d*), which mentions one of the objects of such bye-laws to be to promote cleanliness and ventilation in lodging houses, and rules for promoting ventilation must by their nature provide for the necessary structural alterations when the purposes of the bye-law cannot be attained without them. A notice to be valid must be reasonable and possible to comply with. It is not reasonable to require a house owner to remove the latrines to a site outside and quite separate from the main building when no such site is available, nor to require him to close the latrines without the provision of any others. PARTIAL MAISTRY v. EMPEROR, **14 Cr. L J. 484=20 Ind. Cas. 740=6 Bur. L.T. 138.**

(12)—S. 147—*See* No. 7, *supra.*

(13)—S. 154—*See* No. 4, *supra.*

(14)—S. 160—*See* No. 8, *supra.*

(15)—*S.* 162-*B* —"*Driving a vehicle*"—*Riding a bicycle*—"*Vehicle*"—"*Driving*"—A man riding a bicycle may properly be said to drive a vehicle within the meaning of s 162-B of the Municipal Act, and he is guilty of the offence of "driving a vehicle after dark without lamps" when he is found riding his bicycle without a light after dark. The word '*vehicle*' includes a bicycle driven by human energy; the word '*drives*' includes application of human energy to the pedals of a bicycle. EMPEROR v. NGA THA ZAN, **12 Cr. L J. 573=12 Ind. Cas. 837=4 Bur. L.T. 134.**

4.—Burma Acts—continued.

Act III of 1898 (Municipality)—*concluded.*

(16)—*S.* 163—*Mere letting off a fire-balloon, whether an offence.*—The letting off a fire-balloon within a municipal town is not of itself an offence, as s. 163 of the Municipal Act merely requires that the consent of certain officers shall be obtained previous to doing so, showing that the act in itself, under permission, is not a dangerous one. The mere letting off of a fire-balloon, therefore, in the absence of proof of rashness or negligence cannot be a ground of conviction. QUEEN-EMPRESS v. NGA BO GALE, **L.B.R. 1893—1900, 628.**

(17)—*S.* 180—*Disobedience to notice.*—In prosecutions under s. 180, for disobedience to a notice issued under s. 114, legal evidence of the terms of the notice and of the period allowed by the notice for complying with it ought to be given. A Magistrate ordering a person to obey a notice issued by the Municipality under s. 114 acts *ultra vires.* KING-EMPEROR v. ABDUL GANI NAIKWAYA, **1 U B.R. 1902—1903, Municipal, 3.**

(18)—S. 180—*See* Nos. 1, 2, 7, 9, 10, 11, *supra.*

(19)—*Ss.* 180 (1), 195—*Prosecution for not obeying order of Municipality—Conviction—Fine for a contingent offence—Legality.*—In convicting a person under s. 180 (1) of the Act for not obeying an order of the Municipal Committee to vacate his house in forty-eight hours, the Magistrate ordered the accused to vacate the house in five days, failing which to pay a fine of Rs. 5 for every day of non-compliance. *Held,* (1) the Magistrate had no authority to extend the time granted by the Municipality, and to give five days' time for the accused to vacate. (2) He had no authority to inflict a fine contingent on future events. If the disobedience continued, a fresh prosecution might be instituted, and, if convicted in such prosecution, the Magistrate could inflict a fine not exceeding Rs. 5 for every day of disobedience. KING EMPEROR v. PO NAN, **4 L.B.R. 44=6 Cr L J. 281.** [*R*, 8 Cr. L.J. 505=14 Bur. L. R. 250=4 L.B.R. 300.]

(20)—*S.* 195—*Prosecutions when legal.*—No Court can take cognizance of any offence punishable under the Act except on the complaint of a person authorised by the Committee. KING-EMPEROR v. ABDUL MAWZIT, **2 L.B.R 124.**

(21)—S. 195—*See* No. 19, *supra.*

(22)—S. 202—*See* No. 11, *supra.*

Act I of 1899 (Gambling).

[SS 6, 8, 9, 12, 14, AM., BUR. ACT I OF 1905]

(1)—*Abuse to which it may be put—Care required of Magistrates in administering it.*—There is great danger that the gambling law as it stands may be made a means by unscrupulous persons of harassing and oppressing persons on charges of gambling, and Magistrates should be careful to see that precautions are used to

4.—Burma Acts—continued.

Act I of 1899 (Gambling)—*continued.*

avoid unnecessary hardship, and to follow strictly the procedure laid down by law. QUEEN-EMPRESS v. NGA LU GYI, **1 L B.R. 49.**

(2)—*See* CRIM. PRO. CODE, 1898, ss. 4 (1) (*b*) and 190 (1) (*b*), 2 L.B.R. 146.

(3)—*S.* 3—Ti *Game — Raffle.*—Though a game of *Ti* is not specifically defined in the Act, a *raffle* game comes within the definition of "*Ti* or other game or pretended game" of a like nature in s. 3, sub-s. (3), cl. (*b*) of the Act and is, therefore, equally punishable with a game of *Ti*. MAUNG PO THA v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 112.**

(4)—*Ss.* 3 (*a*), 5, 10—*Arrest of gamblers by village-headman illegal—Coins not necessarily instruments of gaming.*—A village headman not being a police officer is not empowered to arrest people whom he finds gambling in a public place, and it is illegal for the police to take cognizance of the offence on the headman's report. Coins are not necessarily instruments of gaming, but may be so in certain conditions. Coins found in the possession of a person arrested under s. 5 of the Act are not liable to seizure and forfeiture unless there is evidence to show that they were used or intended for the purpose of gaming. The fact that the arrest is illegal does not invalidate a trial. KING-EMPEROR v NGA THU DAW, **2 L.B R. 60.** (L B.R. 1872--1892, 281, L.B.R. 1893--1900, 547, 1 L.B R. 65, 1 U B.R. 211, L.B.R. 1893—1900, 369, *R.*). [*R.*, 14 Cr. L. J. 413=20 Ind. Cas. 237.]

(5)—*Ss.* 3, 6, 7—*S.* 103 *of the Crim. Pro. Code — Common gaming house.*—Though the Inspector of Police should not have added any new items to the list of things seized at a search held under s. 103 of the Crim. Pro. Code, *held*, that his doing so was not a breach which could invalidate the search. Though the profits of gambling were devoted to Club Premises and not for the profit or gain of the Club, the place might still come under the definition of "common gaming house" under s. 3 of the Act. HTAUNG v. KING-EMPEROR, **7 Bur L. T. 163=15 Cr.L.J. 523=24 Ind. Cas. 835.**

(6)—*Ss.* 3, 7, 11, 12—*Common gaming-house—Presumption on finding gaming instruments.*—The definition of common gaming-house in s. 3 of the Burma Gambling Act applies to private as well as to public houses and places, and ss. 11 and 12 render players in, and the owners, occupiers and users of, common gaming-houses liable to punishment. Where a house is entered and searched under s. 6 of the Act, and gaming instruments found therein, the presumption mentioned in s. 7 arises, although there is no proof of any payment of commission by the players to the keeper. EMPEROR v. PO YIN, **12 Cr.L.J. 80=9 Ind. Cas. 450.**

(7)—*Ss.* 3, 7, 12—"*Common gaming-house*"—*Presumption under s.* 7—*Whether rebutted by circumstances — Revision —Power to interfere with sentences of persons who have not appealed.*—Where there is no independent evidence as to the actual taking of the commission by the accused and the conviction of the accused rests on the bare presumption coupled with the discovery of the instruments of gaming under s. 7 of the Burma Gambling Act, it is necessary to consider very carefully whether the legal presumption is rebutted by the circumstances of the case and by the evidence produced for the defence. In exercise of its revisional jurisdiction, the High Court can, on the appeal of one accused, deal with the sentences passed on the other co-accused who have not appealed. T. R. S. CHARI v. EMPEROR, **12 Cr. L J. 250 =10 Ind. Cas. 792.**

(8)—*S.* 4—*Game of skill.*—In the games of *thonbonpe* or dominoes, as played in Burma, the element of chance is so subordinated to the element of skill that the game must be looked upon as a game of the kind contemplated by s. 4 of the Burma Gambling Act. EMPEROR v. TUN ZUN, **8 Ind Cas. 451=3 Bur. L.T. 66.**

(9)—*Ss.* 4, 10, 11 *and* 12.—*Game of* gonnyin.—The game of *gonnyin* is one of pure skill and does not, therefore, come under the provisions of the law against public gaming. QUEEN-EMPRESS v NGA SHWE ZIN, **U.B.R. 1897—1901, Vol. I. 209.**

(10)—*S.* 5—*Gambling in a public place—Power of police to arrest without warrant.*—The procedure of a police officer in arresting an accused without warrant on the mere report of an *Ayalok* was held to be illegal. Under s 5 of the Gambling Act, a police officer, who finds people gambling in a public place, may arrest them He has no power to arrest without warrant people who are reported to him to have so played, when he himself has not come upon them in the act, CROWN v. THA DUN, **1 L.B.R. 267.**

(11)—S. 5—*See* No. 4, *supra.*

(12)—*Ss* 5 *and* 10—*Power of police officer to arrest.*—If a police officer sees a man gambling in a place to which the public have access, he himself may arrest him then and there, or, if he escapes for the time, subsequently. But it would not be legal for a police officer, who should come upon a number of persons gambling, subsequently to arrest persons reported to have been present but whom he himself did not see or recognise. QUEEN-EMPRESS v. NGA SU, **U.B.R. 1897—1901, Vol. I, 211.**

(13)—*Ss.* 5 *and* 10—*Gambling in licensed toddy-shop—Toddy shop not a public place.*—A licensed toddy-shop is not a place to which the public have access within the meaning of ss. 5 and 10 of the Burma Gambling Act, 1899. Ss. 5 and 10 of the Gambling Act are aimed at gambling in streets and thoroughfares and other similar places to which the public have access, and gambling in houses is dealt with in other

4.—Burma Acts—continued.

Act I of 1899 (Gambling)—*continued.*

parts of the Act and under different conditions. AH KON v. KING-EMPEROR, 2 **L.B.R. 195.** (4 B.L.R. 99, L.B R. 1872—1892, 317, *R.*) [*R*, 11 Cr. L.J. 737=8 Ind. Cas. 949=3 Bur. L. T. 121, 4 Bur. L.T. 71=10 Ind. Cas. 775.]

(14)—*S.* 6—*Issue of warrant—Further procedure.*—When a warrant is issued under s. 6 of this Act, it should be executed in accordance with the provisions of that section. All the persons found in the common gaming-house are not to be indiscriminately taken into custody and brought before a Magistrate for trial. MAUNG PO THA v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 112.**

(15)—S. 6—*See* No. 5, *supra.*

(16)—*Ss.* 6 *and* 7—*Issue of warrant under sections.*—Before the presumption under s. 7 can be drawn, it must be shown that the search was made in strict accordance with the provisions of s. 6. The warrant must be issued after the information has been recorded, and the provisions of s. 103, Crim. Pro. Code, must be observed in the search. *Held, also,* that, as a matter of practice, the information and grounds of belief recorded under s. 6 should always be filed with the record of the trial. NGA PYI v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 213.**

(17)—*Ss.* 6 *and* 7—*Lower Burma Towns Act,* s. 4—*Officer executing search warrant—Necessity for two respectable inhabitants of locality to witness search—Headmen of wards, whether proper witnesses — Crim. Pro. Code* (1898), s. 103.—A house cannot be deemed to be entered under the provisions of s. 6 of the Burma Gambling Act, unless the Police Officer authorised by the warrant be accompanied by two respectable inhabitants of the locality within the meaning of s. 103, Crim. Pro. Code. The intention of the Legislature in framing s. 103, Crim. Pro. Code, should be considered in deciding whether the word "inhabitants" should be taken in its widest and ordinary sense, or whether it should be restricted so as to exclude a certain class of "inhabitants." The intention of the enactment seems to have been beyond doubt to ensure that searches are conducted with decency and in order, and that no wrong-doing, such as the planting of articles by the Police in the house searched, should take place. The regularity and proper conduct of the search was to be secured by two or more witnesses, and, this being so, it seems to be obvious that the intention was that only those should be chosen as witnesses, who can be reasonably relied on to secure the desired result, and whose trustworthiness and ability towards the carrying out of the particular duty required of them, can be felt. The intention, therefore, was to exclude from the category of inhabitants, those in whom confidence could not be felt and those against whom a reasonable suspicion arises that they may not carry out the duty required of them. Headmen of wards in the City of Rangoon are appointed by the Commissioner of Police, and it has become the practice to constantly use them as witnesses of searches. They further have certain police duties to do. They may be good and respectable men, but, under the circumstances, it would be dangerous to hold that they are of the class of those whom the law intended to be called as witnesses of searches, While they have police duties, are constantly called on to attend searches, and are appointed by the police, there cannot be that confidence in their doing the duty required of them which there ought to be, and they belong to that class which the law never intended witnesses to be chosen from. The house, entered in the present case, therefore, was not entered under the provisions of s. 6 of the Burma Gambling Act and the presumption under s. 7 of the Act cannot be drawn, KING-EMPEROR v. KWE HAN, **14 Bur. L.R. 81=4 L.B.R. 213=7 Cr. L J. 479.**

(18)—*Ss.* 6 *and* 7—*Crim. Pro. Code* (1898), *ss.* 102 *and* 103—*Presumption from discovery of instruments for gaming — Common gaming-house—List of things seized in search.*—The accused were convicted under the Gambling Act, some under s. 11 for being present in a common gambling house for the purpose of gaming, and others under s. 12 for keeping a common gaming house. When a house, entered under the provisions of s. 6 of the Act, is found to contain any instruments of gaming, the presumption under s. 7 is that such house is a common gaming house and that the persons found therein were then present for the purpose of gaming. Under s. 6, the search must be made in accordance with the provisions of ss. 102 and 103 of the Crim. Pro. Code. Under s 103 of the Code, unless the list of the things seized is signed by the witnesses mentioned in the section, the search would not be legal. In the present case, a list was made upon three separate sheets of paper, the first of which was signed by the witnesses, while the rest were not signed. The first sheet did not contain any instruments of gaming. The search being thus illegal, the presumption under s. 7 does not arise and the convictions must be set aside. ANA DEWA SING v. KING-EMPEROR, **4 L.B.R. 134=7 Cr. L J. 411.**

(19)—*Ss.* 6 *and* 7—*Search—Presumption—Article-liable to seizure.*—In cases under ss. 11 and 12, Gambling Act, it is only when the provisions of s. 6 are strictly followed that the presumption under s. 7 arises. The record containing the information received and the grounds of belief prepared under s. 6, Gambling Act, must form part of the trial record. Only articles specified in s. 6 can be seized in execution of a warrant under that section. CROWN v. TUN WA, **1 L.B.R. 289.**

(20)—*Ss.* 6 *and* 7—*House irregularly entered.*—The provisions of sub-s. 1 of s. 6 of the Burma Gambling Act are all important, and, unless those provisions are strictly carried out,

4.—Burma Acts—continued.

Act I of 1899 (Gambling)—*continued.*

a house or place cannot be said to have been entered under the provisions of that section, and consequently the presumption specified in s. 7 cannot be made. A Magistrate or District Superintendent of Police, before he can issue a search-warrant, is required (1) to himself record in writing the substance of the information he has received, and (2) to record the grounds of his belief that the information is credible. CROWN v. MAJUN, **1 L.B.R. 120.**

(21)—Ss. 6, 7—*See* CRIM. PRO. CODE, 1898, ss. 102, 103, 3 L.B.R. 229=4 Cr. L.J. 390.

(22)—*Ss.* 6, 7, 11—*Crim. Pro. Code, ss.* 103, 342—*Search—Respectable persons in the locality—Stress on the words 'respectable' and not on 'locality'—Presumption under s. 7 of the Burma Gambling Act not optional—Duty of Magistrate to sift correctness of information on which they are asked to act under s. 6.*—The object of s. 103 of the Crim. Pro. Code, in requiring that respectable inhabitants of the "locality" should be called to witness the search, is to ensure that false evidence may not be fabricated. The important point is that the men called in should be persons of some standing, whose word can be believed, not that they should be persons living within a stone's throw of the house which is to be searched ; the stress is on the word " respectable " and not on the word " locality. " Therefore, for the purposes of s. 103, a person living in a quarter within hail of the place to be searched may reasonably be regarded as an inhabitant of the locality, even if a river flows between. The presumption under s. 7 of the Gambling Act is not optional for the Magistrate to make. He is bound to presume that the house was a common gaming house until the contrary is proved. The house of the first respondent, Sit Nyein, in an outlying part of the Wakema Municipality, was entered by two Magistrates, who found a gambling ring of about twenty persons. The ring broke up and the gamblers fled, but the Magistrates and their companions managed to arrest nine of them. Three packs of cards and Rs. 25 in cash were found in the gambling ring. *Held*, that the presumption described in s. 7 of the Gambling Act arose in the case, and unless the accused proved that the house was not a common gaming house the described Magistrate was bound to convict. The provisions of ss. 6 and 7 of the Burma Gambling Act may cause great hardship, if the Magistrate, who issues the warrant, himself makes a raid and does so without good reason for believing that house to be entered is a common gaming house. It behoves Magistrates to sift information most carefully before acting under s. 6, the effect of which is to throw on the accused the burden of proving that the house which is raided is not a common gaming house. Two respondents, denied the offence charged against them under s. 11 of the Gambling Act. *Held*, that it was the duty of the Magistrate at the close of the prosecution to examine those persons under

4.—Burma Acts—continued.

Act I of 1899 (Gambling)—*continued.*

s. 342 of the Crim. Pro. Code, and to call upon them for their defence ; that, as those requirements were disregarded, those accused could not be said to have had a fair trial : *Held*, therefore, that, so far as these respondents were concerned, the order of the Sessions Court, which set aside their convictions, would stand. EMPEROR v. SIT NYEIN, **8 Ind. Cas. 988=11 Cr. L.J. 746.**

(23)—*Ss.* 6 *and* 8—*Gambling—Evidence of accomplice—House not searched—Crim. Pro. Code* (1898), s. 337.—S. 8 of the Gambling Act does not enable a Magistrate to call on an accused person to give evidence in the case of a house not entered under the provisions of s. 6 of that Act, and s. 337, Crim. Pro. Code, does not apply to such cases. QUEEN-EMPRESS v. NGA PO SIN, **1 L.B.R. 62.**

(24)—*Ss.* 6, 8 *and* 9—*Evidence of arrested person when—admissible Certificate of indemnity to be given—Scope of such certificate.*—If the evidence of a person arrested under s. 6 of the Act is to be taken, he should be examined as a witness in accordance with the provisions of s. 8 of this Act, and not otherwise. The person so examined should, under s. 9 of the Act, be given a certificate absolutely freeing him from all prosecutions under the Act for anything done before that time in respect of the game under enquiry. NGA NGE v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 115.**

(25)—*Ss.* 6, 10 (*a*), 15 (2), 3 (*a*)—*Gambling in public streets—Warrant to whom to be directed and in what cases—Coins, whether instruments of gaming—Rewards.*—It is only with regard to common gaming houses that it is now necessary for a Magistrate to direct his warrant to a police officer not below a certain rank. In cases coming under s. 10, he is not so restricted, and the provisions of s. 77, Crim. Pro. Code, will apply. It is not generally advisable to issue warrants to an informer for execution. Coins are now instruments of gaming under s. 3 (*a*) and under s. 15 (2) ; they can be seized and forfeited, even in prosecutions under s. 10 (*a*). Rewards can now be paid to any person who contributes to a conviction. QUEEN-EMPRESS v. NGA PO NYUN, **L.B.R. 1893—1900, 547.**

(26)—*Ss.* 6, 11 *and* 12—*Warrant to be on record—Their provisions to be strictly followed.*—The warrant issued under s. 6 of this Act should be on the record as a documentary exhibit (*vide* Circular No. 6, Criminal, 7 (*b*) of 1893). The procedure laid down for the trial of offences under this Act should be strictly followed. The proceedings, as in the trial of summons-cases, should begin with the statements of the particulars of the complaint to the accused and the defence should come in after the evidence for the prosecution. QUEEN-EMPRESS v. NGA PO KIN, **U.B.R. 1892—1896, Vol. I, 114.**

4.– Burma Acts—continued.

Act I of 1899 (Gambling)—*continued.*

(27)—*Ss.* 6, 11, 12 *and* 15—*Seizure of moneys in common gaming house.*—There is no provision in the Burma Gambling Act, empowering any person to seize moneys found in a common gaming house which is not entered under the provisions of s. 6, nor authorising a Magistrate to order that moneys so seized be forfeited. In this case, both the seizure of moneys and the order directing it to be forfeited being illegal, the Chief Court set aside the order and directed the refund of the moneys. PO HLA v. KING-EMPEROR, **4 L.B.R.** 227 = **7 Cr.L.J.** 488. (3 L. B.R. 229, *R.*)

(28)—*Ss.* 6 *and* 14—"*Report*" *meaning of.*—The expression "report or information" in s. 14 of the Gambling Act has a very wide significance, and any report of a police officer is included in the term "report," as used in that section. PAUNG NGA v. KING-EMPEROR, 2 **L.B.R. 212.** (2 L B.R. 146, *R.*)

(29)—*Ss.* 6 (*sub-ss.* 3 *and* 4) *and* 14—*Search in common gaming house—Procedure.*—A District Superintendent of Police making a search on his own initiative, under s. 6 (1) of the Act, should comply with the provisions of s. 6 (4), in the same way as if he were making the search under a warrant. He has no authority to release the accused on bail. The presumption under s. 7 does not arise if the provisions of s 6 (3) are not complied with. KING-EMPEROR v. MAUNG CHO, 2 **L.B.R. 43.** [*R.*, 14 Bur. L.R. 81 = 7 Cr. L. J. 479 = 4 L. B. R. 213.]

(30)—*S.* 7—*Crim. Pro. Code, s.* 103—*Search —Ward headmen and Block-elders not qualified to be witnesses of search.—By the Full Bench* (*Ormond, J., dissenting*).—The words "respectable inhabitants" in s. 103 of the Crim. Pro. Code, should not be construed to include ward-headman and block-elders who are appointed by the Deputy Commissioner (4 L.B.R. 213, 14 Bur L.R. 81, 7 Cr. L.J. 479, *F.*)—*Per Twomey, J.*—"Respectability" in this context means much the same thing as the impartiality, presumption being that all respectable people are *prima facie* impartial. There is no sufficient reason for holding that ward-headmen as a class should not be regarded as impartial. The genesis of the presumption under s. 7 of the Gambling Act is traceable not to the respectability or impartiality off the persons who witnessed the search, but to the sufficiency of the grounds on which the warrant was issued under s. 6 coupled with the finding of cards or other instruments of gaming in the place searched (U.B.R. 1908, Gamb. 1 ; 8 Cr. L.J. 413, *F.*) *Per Hartnoll, J.*—As the duties of the ward headmen and block-elders appointed under the Lower Burma Towns Act, 1892, or the Burma Towns Act, 1907, include duties which relate to the prevention of certain offences and the discovery of crime, and as it is part of their duty to assist all Officers of the Government in the execution of their public duties, they are not such persons as the Legislature contemplated should be called as witnesses within the meaning of s. 103 (1) of the Code of Criminal Procedure. *Per Fox, C.J.*—The ward-headmen and the block-elders, although appointed by a Deputy Commissioner, having the same duties to perform as wardmen appointed by the commissioner of Police, Rangoon, are not qualified witnesses to the search under s. 103 of the Code, which applies whatever the offence may be and is not confined to searches under the Gambling Act. *Per Ormond, J.*—The witnesses to a search should not be policemen, but there is no necessity to further limit the words "respectable inhabitants." Ward-headmen and block-elders are not policemen. The appointment or selection of the witnesses rests with the officer or person conducting the search and if the selection is not *bona fide*, the Court will have no difficulty in coming to the conclusion that there was no entry for search within the meaning of the Burma Gambling Act or the Code. EMPEROR v. KHAN HAW, **12 Cr.L.J. 251, F.B. = 10 Ind. Cas. 796.**

(31)—S. 7— Presumption — Witnesses to search—'Respectable inhabitants,' meaning of—*See* CRIM. PRO. CODE, 1898, s. 103, 15 Cr. L J. 441 = 24 Ind. Cas. 321 = 7 Bur. L.T. 143, F.B.

(32)—S. 7—*See* Nos. 5, 6, 7, 16, 17, 18, 19, 20, 21, 22, *supra.*

(33)—*S.* 8—*Accused found in common gaming house—House not entered without warrant—Accused persons made witnesses — Procedure illegal.*—The procedure of a Magistrate, in a case where the evidence offered was insufficient, in making two of the accused persons witnesses in the trial of an offence under s. 10 of the Act, on the application of the police, was held to be illegal. S. 8 of the Gambling Act applies only to cases in which a house or place has been entered under the provisions of s. 6, that is, under a warrant issued by a duly empowered Magistrate or by the District Superintendent of Police. QUEEN-EMPRESS v. NGA SAW, **1 L.B.R. 59.** [*Overruled*, 2 L.B.R. 146.]

(34)—S. 8—*See* Nos. 23, 24, *supra.*

(35)—*S.* 9—*Evidence of accomplices absolved under s.* 9, *not invested with any special value.*—Though s. 9 of the Gambling Act (I of 1899) by inference renders it admissible to examine persons who are accomplices to the accused, it does not invest their testimony with any special value beyond that which ordinarily attaches to the evidence of accomplices. QUEEN-EMPRESS v. NGA YA PO, **U.B.R. 1897—1901, Vol. I, 224.**

(36)—S. 9—*See* No. 24, *supra.*

(37)—*S.* 10—*Scene of offence to be a "public place."*—Setting birds or animals to fight in a *cultivated field* is no offence under this section, as such a place is a *private* and not a *public* one. CRIM. REVISION CASE NO. 301 OF 1829, **U.B.R. 1892—1896, Vol. I, 117.**

4.—Burma Acts—continued.

Act I of 1899 (Gambling)—*continued.*

(38)—*S.* 10—*Gambling in a Zayat—Zayat is a "place to which the public have access."*—A *zayat* must be regarded as a "place to which the public have access," and persons found gaming in it are liable to a prosecution under the said section. QUEEN-EMPRESS v. NGA SAN YE, **U.B.R. 1897—1901, Vol. I, 215.** [*F.*, U.B.R. 1897—1901, Vol. I, 216.]

(39)—*S.* 10—*Encouraging by their presence—Whether it is "aiding and abetting"—First conviction—No maximum sentence.*—Sympathetic spectators at a cock-fight, encouraging the same by their presence, shouting and gesticulation, can rightly be convicted of being present, aiding and abetting." On a first conviction under this section, the appropriate punishment is a small fine and not the maximum punishment provided for the offence, unless there is sufficient reason to satisfy that extreme severity. QUEEN-EMPRESS v. NGA SHWE KYA, **U.B R. 1892—1896, Vol. I, 119.**

(40)—*S.* 10—*Abetment—" Aiding and abetting."*—Meaning of the words 'aiding and abetting' in the above section do not include those who are present against their will or accidentally or for a legitimate purpose. CRIMINAL REVISION CASE NO. 82 OF 1892, **U.B.R. 1892—1896, Vol. I, 117.**

(41)—*S.* 10—*Sentence of both imprisonment and fine, legality of.*—This Act does not allow a sentence of both fine and imprisonment to be imposed on an accused person. Either the one or the other should be awarded. QUEEN-EMPRESS v. NGA PO KIN, **U.B.R. 1892—1896, Vol. I, 114**; CRIMINAL REVISION CASE, NO. 1357 OF 1892, **U B.R. 1892—1896, Vol. I, 118.**

(42)—*S.* 10—*Setting cocks to fight in a street—Proceedings of Legislature not an aid to interpret a statute.*—The mere act of setting birds or animals to fight in a street, thoroughfare, or place to which the public have access, is an offence under s. 10 of the Burma Gambling Act. The section does not require that there should be any wagering on the result of the fight. The proceedings of the Legislature to wit, the statement of objects and reasons, which resulted in the passing of an Act cannot be referred to as an aid to the interpretation of the Act. CROWN v. NGA YEIK, **1 L B.R. 231.** (22 C. 788, *F*)

(43)—*S.* 10—*"Place," meaning of—First offence—Sentence.*—S. 10 of the Gambling Act is not applicable to a man who merely runs away from a gambling *waing*. It must be shown that he actually played. The alleged gambling took place on a privately owned piece of land on which fruit trees were growing and on which land revenue was paid, but which was unenclosed, and people could pass freely through *to* and *fro*. *Held*, that such a place was of the same genus as a street or a thoroughfare within the meaning of s. 10. A sentence of one month's imprisonment for a first offence was considered excessive and altered to one of Rs. 30. ON BAN v EMPEROR, **8 Ind. Cas. 949 = 11 Cr. L. J. 737.** (2 L.B.R. 195, 1 Cr. L.J. 461, *R.*)

(44)—*S.* 10—*Place to which public have access—Fenced garden not such a place.*—"The place to which the public have access" in s. 10 of the Act must be a place akin to or of the same nature as a street or a thoroughfare. A fenced garden, which is private property, cannot be held to be akin to or of the same nature as a street or thoroughfare. LU GALE v. EMPEROR, **12 Cr. L J. 245 = 10 Ind. Cas. 775.** (2 L.B.R. 195, 10 Bur. L.R. 137, 1 Cr. L.J. 461, *F.*)

(45)—S. 10—*See* CRIM. PRO. CODE, 1898, ss. 190 (1) (*b*) and 4 (1) (*h*), 1 L.B.R. 18.

(46)—S. 10—Powers of village headman—Abuse of powers—*See* PENAL CODE, ss. 161, 384, 14 Cr. L.J. 413 = 20 Ind. Cas. 237 = 7 Bur. L.T. 92.

(47)—S. 10—*See* Nos. 4, 9, 12, 13 and 25, *supra.*

(48)—*Ss.* 10, 11—*Gaming in Zayat in a compound in a monastery*—Gambling in a *zayat* in the compound of a monastery is an offence punishable under s. 10, as the *zayat* was a place to which the public had access. KING-EMPEROR v. NGA PO SO, **U.B.R. 1897—1901, Vol. I, 216.** (U.B.R. 1897—1901, Vol. I, 215, *F.*)

(49)—*Ss.* 10, 11, 12—*Gambling in a threshing-floor.*—Gambling in a threshing floor is punishable under s. 10, such place being a place to which the public have access. NGA PO TUN v. KING-EMPEROR, **U.B.R. 1897—1901, Vol. I, 217.**

(50)—*Ss.* 10, 11 *and* 12—*Card-gambling and cock-fighting under a tree near a village—Conductors thereof, nature of offence committed by.*—Card-gambling and cock-fighting were carried on by the accused under a tree near a village. Most of them were convicted of gambling and setting animals to fight in a public place, under s. 10 of the Act. The others were convicted, on the same facts, with the additional fact that they acted as *daings* under s. 12. *Held*, that even if the possession of cards could convert the space under the tree into a common gaming-house, the possession of cocks could not, because birds and animals are not mentioned in s. 3 (3). The Legislature could not have intended that the person, who organises offences, under cl. (*a*) of s. 10, for his own profit should be punishable under s. 12, while a person, who organises offences, under the other clauses of s. 10, is not so punishable. Ss. 11 and 12 relate to offences committed in a common gaming-house, and s. 10 to offences committed in a public place. It could not be said that the primary object of the Legislature was to make the conductor of gambling in a public place punishable under s. 12. Therefore, the conviction under s. 12 was altered to one

4.—Burma Acts—continued.

Act I of 1899 (Gambling)—*continued.*

under s. 10. KING-EMPEROR v. NGA NET, **U.B.R. 1905, Gambling 1=2 Cr.L J. 471.** (U. B.R. 1897—1901, 217, *R.*) [*F.*, 4 L.B.R. 47.]

(51)—*Ss.* 10, 11 *and* 12—*Gambling in a public place, person conducting—Daing—Conviction of.*—If the place of gaming was a common gaming-house, the persons who played cards for money in it ought to have been convicted under s. 11 of the Act, not under s. 10. If it was a place to which the public have access, the *daings* ought to have been convicted under s. 10. KING-EMPEROR v. PO WA, **4 L.B.R. 47=6 Cr. L.J. 285.**

(52)—*S.* 11—*Gambling—Evidence of informer—Necessity for corroboration.*—Convictions for illegal gambling cannot safely be had on the mere word of an informer, corroborated solely by the bald statements of his near relations and by no other evidence, direct or circumstantial. NGA PA SI v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 218.**

(53)—S. 11—*See* Nos. 6, 9, 22, 26, 27, 48, 49, 50, 51, *supra.*

(54)—*Ss.* 11, 12—*Common gaming-house, owner of, present for gaming—Double conviction, illegal.*—The owner of a common gaming-house, who was present for the purpose of gaming and who received a small commission, is not liable to a conviction under s. 11, as well as under s. 12 of the Act. Double conviction is illegal in such cases. CROWN v. SHWE PE, **1 L B.R. 178,** (1 L.B.R. 33, *F.*) [*R.*, 7 Cr. L.J. 76=4 L.B.R. 104.]

(55)—*Ss.* 11 *and* 12—*Indian Penal Code, s.* 71—*House-owner taking part in the gambling—Double conviction—Legality of the sentence.*—The taking part in the game by the house-owner or occupant may be and often is, a part of the method of conducting or of assisting in conducting the business of a common gaming house, and so it may be a part of the way in which the house is used as a common gaming-house for the profit or the gain of the owner or occupier. Where the Magistrate found that the accused had used her house as a common gaming-house, and, also, that she had herself played cards for money in the house, *held*, that s. 71 of the Penal Code applied to such a case, and that the accused was not liable to be sentenced for an offence under s. 11 of the Gambling Act in addition to being sentenced under s. 12. KING-EMPEROR v. MI THIN, **4 L.B R. 104=7 Cr. L.J. 76.**

(56)—*Ss.* 11 *and* 12—*Sentence under the sections*—A sentence of imprisonment in default of payment of a fine, under s. 11 or 12 of the Act, is limited to one-fourth of the maximum term of imprisonment for the offence. QUEEN-EMPRESS v. NGA PO SIN, **U.B.R. 1897—1901. Vol. I, 220,** (U.B.R. 1897—1901, Vol. I, 221, *F.*)

(57)—Ss. 11 and 12—*See* CRIM. PRO. CODE, 1898, ss. 4 and 190, 1 L.B.R. 58.

(58)—*S.* 12, *cls.* (*a*) *and* (*d*)—*Offences under—Punishment.*—Offences under the above two clauses of this section are distinct and may be separately punished. QUEEN-EMPRESS v. NGA YA PO, **U.B.R. 1897—1901, Vol. I, 224.**

(59)—*S.* 12—*Common gaming-house—Magistrate, duty of—Issue of process.*—A Magistrate ought, before issuing process under s. 12, Burma Gambling Act, 1899, to satisfy himself by evidence that a house is used as a common gaming-house. NGA HNAN v. CROWN, **1 L. B.R. 92.**

(60)—*S.* 12—*Limit of imprisonment in default of payment of fine—Penal Code*, s. 65.—S. 65, I P.C., is intended to apply to offences punishable with imprisonment or fine, and imprisonment in default of the payment of a fine under s. 12 of Act I of 1899 must be limited to one-fourth of the maximum term of imprisonment awarded for the offence. QUEEN-EMPRESS v. NGA TUN HLA, **U.B R. 1897—1901, Vol. I, 221.** *See, also*, QUEEN-EMPRESS v. NGA PO LIN, **U.B.R. 1897—1901, Vol I, 220.** (U.B.R. 1892—1896, Vol. I, 93, L B R. 1893—1900, 385, *R.*)

(61)—S. 12—*See* CRIM. PRO. CODE, 1898, s. 556, U.B.R. 1897—1901, Vol. I, 125.

(62)—S. 12—*See* SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC., 1 L.B.R. 150.

(63)—S. 12—*See* Nos. 6, 7, 9, 26, 27, 49, 50, 51, 54, 55, 56 and 57, *supra.*

(64)—*Ss.* 12 *and* 14—*Jurisdiction of Magistrate.*—According to s. 14 of the Gambling Act (I of 1899), a Magistrate is precluded from taking cognizance of any offence under s. 12 of the Act committed more than a month before the offence is reported to him. QUEEN-EMPRESS v. NGA YA PO, **U.B.R. 1897—1901, Vol. I, 224.**

(65)—*S.* 13—*Stakeholder in a* Ti *game—Liability.*—A stakeholder in a *Ti* game is liable to be punished under the provisions of s. 13 of this Act. QUEEN-EMPRESS v. NGA TALOK PYU, **U.B R. 1892—1896, Vol. I, 122.**

(66)—*S.* 13—*Arrest—Irregularity—Proceedings, whether vitiated thereby.*—As the law has prescribed no special mode of arrest as a necessary preliminary to a prosecution under this section, the manner of arrest is not an essential point of procedure, any substantial defect in which would vitiate the proceedings. QUEEN-EMPRESS v. NGA KAN, **U.B.R. 1892—1896, Vol. I, 123.** (4 C. 659, *R.*)

(67)—S. 14—*See* Nos. 28, 29 and 64, *supra.*

(68)—S. 15—*See* Nos. 25 and 27, *supra.*

(69)—*S.* 16—*Burma Judicial Department Notification, No.* 286, *dated* 20*th August* 1896, *Rule* 7.—The Rules contained in Judicial Department Notification, No. 286, dated 20th August, 1896, do not affect the payment of rewards under the express provision of any Act, Regulation or Rule having the force of law.

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Act I of 1899 (Gambling)—*continued.*

S. 16 of the Act expressly provides for the payment of such rewards, and the limitation imposed by Rule 7 of the Rules under the former Act does not apply. QUEEN-EMPRESS v. KYIN TON, **L.B.R. 1893—1900, 664.**

(70)—*S. 17—Order requiring security—Appeal, maintainability of—Crim. Pro. Code*, 1898, *ss.* 110, 117, 118 *and* 406.—S. 17 of the Gambling Act empowers a competent Magistrate, who receives information that any person in his jurisdiction earns his livelihood, wholly, or in part, by unlawful gambling, to deal with that person as merely as may be as if the information were of the description mentioned in s. 110 of the Crim. Pro. Code and to pass an order under s. 118, Crim. Pro. Code. *Held*, that, inasmuch as an order under s. 17 of the Act, requiring security from a person, who has been found to earn his livelihood by unlawful gaming, is an order passed under s. 118, Crim. Pro. Code, an appeal lies against that order under s 406, Crim. Pro. Code. TET PYA v. KING-EMPEROR, **3 L.B.R. 21=2 Cr. L.J. 378.**

(71)—*S. 17—Procedure in demanding security with reference to s. 17—Appeal.*—In demanding security with reference to s. 17, the Magistrate must be held to act under s. 118, Crim. Pro. Code, 1898, and, therefore, an appeal lies to the District Magistrate under s. 406, Crim. Pro. Code, 1898. QUEEN-EMPRESS v. NGA KYAUK MAW, **U.B.R. 1897—1901, Vol. I, 227.**

(72)—*S. 17—Evidence of general repute as foundation for proceedings under—Order requiring a bond Acceptance of separate sureties improper.*—The taking of evidence of general repute as a foundation for proceedings under s. 17 of the Act is warranted by the terms of the section. Where a Magistrate requires a bond for Rs. 3,000 under s. 17 of the Act, the acceptance by him of separate sureties for Rs. 3,000 and Rs. 2,000 is imporper. It will look as if the sureties were given for Rs. 5,000. All that can properly be demanded is security amounting jointly and severally to Rs. 3,000 or sureties severally bound for such sums as will make up Rs. 3,000. CASSIM v. CROWN, **1 L. B. R. 145.**

(73)—*S. 17—Points to be proved in prosecution under the section.*—In a prosecution under s. 17 of the above Act, what has to be proved is that the applicant partially earned his livelihood by unlawful gaming, or by promoting, or assisting in the promotion, of unlawful gaming, and, under s. 117 (3), Crim. Pro. Code, these facts may be proved "by evidence of general repute or otherwise." But the statements of the witnesses, who heard this or that, are not evidence of general repute. NGA HOK v. KING-EMPEROR, **U.B.R. 1897—1901, Vol. I, 228** (23 C. 621, *F.*)

(74)—S. 17—*See* CRIM. PRO. CODE, 1898, s. 55, **3 L.B.R. 94=3 Cr. L.J. 20.**

(75)—S. 17—Security for good behaviour—Single penalty—Forfeiture of bond—Liability of sureties—*See* CRIM. PRO. CODE, 1898, ss. 110, 514, 14 Cr. L.J. 430=20 Ind. Cas. 414=U.B.R. 1913, 1st Qr., 159.

4.—Burma Acts—continued.

Act I of 1899 (Gambling)—*concluded.*

(76)—S. 17—*See* CRIM. PRO. CODE, 1898, ss. 118 (3) and 562, 2 L.B.R. 168.

(77)—S. 17—*See* GAMBLING, **1 L.B.R. 71.**

Act IV of 1899 (Rangoon Police).

[SS. 43A. TO 43C. INS., BUR. ACT II OF 1902, S. 3. S. 31-A INS., BUR. ACT I OF 1904. S. 8, REP. IN. PT. AND AM., SS. 8A, 36A, 41A, 43 D INS., S. 41 (15) REP. IN. PT., S. 41 (16) REP., BUR. ACT IV OF 1907.]

(1)—S. 30—*See* ACT XI OF 1878, s. 19 (*e*), 3 L.B R. 218, F. B.

(2)—*S. 30, cl. (c)—Summary trial—Record must show ingredients of offence charged—Venue of trial material only where accused is prejudiced—Crim. Pro. Code (Act V of 1898), s. 531.*—Where an accused person was charged under s. 30 (*c*) of the Rangoon Police Act for "being found between sunset and sunrise with his face covered and being unable to give a satisfactory account of himself," and where the record was silent as to what account, if any, the accused at the time of his arrest gave of himself and as to any reason there may be for considering such account to be unsatisfactory: *Held*, that the record omitted a most essential ingredient of the offence of which the accused was convicted and that this omission was fatal. The record in summary trials, however brief, should show the necessary ingredients of the offence charged. (3 L.B.R. 3, 2 Cr. L.J. 375, *F.*) Where it was contended that the accused was found within Municipal limits and not within Cantonment limits, and that his trial by the Cantonment Magistrate was consequently illegal. *Held*, that there would be no ground to interfere, unless it could be shown that failure of justice had in fact been occasioned by the error of venue. KET FOON v. EMPEROR, **12 Cr. L.J. 280=10 Ind. Cas. 921.**

(3)—*Ss. 30, 31-A—Summary trial under s.30—Order for security for good behaviour under s. 31-A, in addition to sentence of imprisonment, whether it affects the right of appeal—Provisions of ss. 414 and 415, Crim. Pro. Code, whether applicable—Appealable sentence passed on one only of the persons jointly tried—Whether others on whom no such appealable sentence passed, have also the right of appeal.*—Where two persons were jointly tried at a summary trial under s. 30 of the Rangoon Police Act, and one of them was sentenced to three months' rigorous imprisonment and was further ordered under s. 31-A to give security for good behaviour, *held*, the addition of such order to give security for good behaviour did render the sentence appealable; and that the provision in s. 415, Crim. Pro. Code, will not apply to an order under the Rangoon Police Act, s. 31-A, since (1) s. 415 has no reference to security for good behaviour and (2) there is no corresponding provision in

4.—Burma Acts—concluded.

Act IV of 1899 (Rangoon Police)—*concluded.*

the Rangoon Police Act restricting the right of appeal. *Held*, also, when more persons than one are convicted at one trial and an appealable sentence is passed on any of them, all the persons convicted at such trial have a right of appeal. KATTAN v. KING-EMPEROR, **4 L.B.R. 359 = 9 Cr. L.J. 368.** (2 L.B.R. 72, 4 L.B.R. 354, *R.*).

(4)—S. 31-A—*See* No. 3, *supra.*

Act II of 1900 (Burma Vaccination Law Amendment).

[S. 2 (*a*) AM., BUR. ACT VI OF 1908, S. 5 (WHEN NOTIFIED); REP. BUR., ACT I OF 1909 (WHEN NOTIFIED).]

See ACT XIII OF 1880, s. 17, 2 L.B.R. 279.

Act I of 1901 (Lower Burma Land and Revenue Act Amendment).

(1)—Powers of Revenue officers under—Power to order removal of Zayats built on Karer Christian burial ground—Disobedience of order—Punishment—*See* PENAL CODE, s. 188, 7 L.B.R. 75.

Act IV of 1901 (Lower Burma Courts Act (1900) Amendment).

(1)—S. 12—*See* CRIM. PRO. CODE, 1898, ss. 299 (*a*), 302, 303, 439, 537 (*d*), 3 L.B.R. 75 = 3 Cr. L.J. 1.

Act II of 1904 (Towns and Village Laws Amendment).

[REP., BUR. ACT III OF 1907.]

(1)—*See* BUR. ACT III OF 1889, s. 13-*a*, 3 L.B.R. 93 = 3 Cr. L.J. 18.

Act VI of 1907 (Village).

(1)—*S.* 19 (1)—*Conviction under—Necessary elements of the offence.*—To support a conviction under s. 19 (1), Village Act, it is necessary to show that the accused had built their houses without the permission of the Deputy Commissioner and later than the year 1908 in which year the present Village Act came into force. KING-EMPEROR v. NGA NYA, **U.B.R. 1913, 3rd Qr., 180 = 15 Cr. L.J. 250 = 23 Ind. Cas. 202.**

Act I of 1909 (Vaccination Law Amendment).

(1)—*Ss.* 4, 7—*Vaccination of children under six months—Applicability of s. 7—Crim. Pro. Code, s. 537—Omission to examine complainant — Irregularity cured by s.* 537.—S. 4 of the Burma Act I of 1909 applies only if the child to be vaccinated is under six months, and has been exposed to certain possibilites of infection. If it is desired to make use of the section, the second paragraph must be complied with, and no summary procedure is possible. S. 7 of the Act refers to inmates of lodging houses and persons living under other special conditions. The omission to examine the complainant is cured by s. 537, Crim. Pro. Code. EMPEROR v. NGA PO KAN, **14 Cr. L.J. 420 = 20 Ind. Cas. 404 = U.B.R. 1913, 1st Qr., 162.** (4 L.B.R. 300, *R.*)

(2)—S. 7—*See* No. 1, *supra.*

5.—Central Provinces Acts.

***Act XI of 1873 (Central Provinces Municipal).**

[REP., ACT XVIII OF 1889.]

(1)—S. 21—*Dividing carcass of animal within Municipal limits for cooking purposes.*—To bring the carcass of an animal into the limits of a Municipality and divide it for the purpose of cooking, is not to dispose of it within Municipal limits, within the meaning of the Municipal bye-laws on that subject. POLICE v. BALDI, **Colm. Dig. Cr. 84 of 1877.**

(2)—S. 74—*Wells within Municipal limits.*—The Municipal Committee could not, under the above section, require the owner of a well to protect it, unless it was, for want of protection, dangerous to persons passing by or dwelling or working in the neighbourhood. EMPRESS v. ZORAWAR, **5 C.P.L.R. 57.**

***Act XVIII of 1881 (Land-Revenue Act).**

[REP., IN PT. AND AM., ACT XVI OF 1889; ACT XII OF 1891; ACT XII OF 1898. SS. 77 (*a*), 138 (*b*), 141 (*a*) REP. IN PT., S. 143-*A* (*c*) REP. IN PT. AND AM., S. 146-*A* REP. IN CENTRAL PROVINCES, ACT IV OF 1907. SS. 5 6, 17, 22 (*c*), 23 (*c*), 25 AM. IN CENTRAL PROVINCES ACT XIII OF 1908. AM. IN THE TALUQAS OF NAGUR, ALBAKA AND CHERLA, REG. I OF 1909, S. 3 (2), PROV.]

(1)—Ss. 137, 141—*Mukaddam* appointing gumastah—Effect upon responsibility of *Mukaddam—See* PENAL CODE, s. 176, 7 N.L.R. 101 = 11 Ind. Cas. 785 = 12 Cr. L.J. 441.

(2)—S. 141—*See* No. 1, *supra.*

***Act XVIII of 1889 (C.P. Municipality).**

[REP., ACT XVI OF 1903.]

(1)—*Playing music in a Municipal town, when an offence.*—Where a Municipal Committee has not issued any orders or made any rule against playing music at night, a conviction, in such a case under the above Act is untenable. EMPRESS v. PURAN, **5 C.P.L.R. 92.**

(2)—*S.* 84, *prosecution under—Burden of proof—Evidence Act, s.* 106.—Where an accused person is charged with omitting to report the occurrence of death within the prescribed time, a conviction should not be set aside merely on the ground that the prosecution omitted to prove that the occurrence was not reported. MUNICIPAL COMMITTEE OF WARDHA v. LAKSHMAN RAO NAIDU, E , **16 C P.L.R. 63.**

(3)—*S.* 97—*Nuisance.*—The accused in this case was charged, under s. 97 of the above Act, of keeping swine in insecure enclosures, in disregard of orders given by the Municipal Committee for preventing a nuisance. In addition to passing a sentence of fine, and alternative imprisonment on the accused, the Bench passed the following order:—"that he should take his swine outside the Municipal limits within 5 days and demolish his enclosures, and, in

* These Local Acts were passedby the Imperial Legislature.

5.—Central Provinces Acts—concluded.

Act XVIII of 1899 (C. P. Municipality)—*cld.*

case of failure to comply with the orders, pay a fine of Re. 1 *per diem.*" *Held* that the order for the removal of the swine, and the demolition of the enclosures were without jurisdiction and the order that, in case of failure to comply with that order, the accused should pay a daily fine was illegal. EMPRESS v. GANGARAM, **6 C.P.L.R. 32, Cr.**

(4)—*S. 120—Public nuisance.*—The C.P. Municipal Act, XVIII of 1889, does not empower a Municipal Committee to define public or common nuisances. Rules made under the previous Act of 1873 declaring what acts or omissions within the limits of the town should be declared to be public or common nuisances cannot be deemed to be any longer in force as law. EMPRESS v. HASSU MIYAN, **12 C.P.L.R. Cr. 16.**

(5)—*S. 122—Penalty for disobedience to orders of Committee not punishable under any other section of Act—The continuing breach contemplated by s. 122 is a past breach and not a possible future breach.*—A Magistrate cannot legally, when convicting a person of disobedience to a written notice issued by the Municipal Committee, direct that he shall obey the notice within a certain time and that, in case of non-compliance, he shall pay a certain daily fine. MUNICIPAL COMMITTEE v. DADU HALWAI, **7 C.P.L R. 4, Cr.**

Act II of 1904 (C.P. Courts).

[REP. IN SAMBALPUR DISTRICT, BEN. ACT IV OF 1906.]

(1)—*S. 8, sub-s. 1 (a) and sub s. 3—Rules framed under Act, when applicable—District Magistrate receiving applications for licenses under Indian Arms Act, 1878, whether a Criminal Court or executive officer.*—When receiving applications for licenses under the Arms Act, 1878, a District Magistrate is not acting as a Criminal Court, that is, judically, but as an executive officer. Under these circumstances, an order by him, fining a person who writes applications for hire, as though that person had violated a rule made under cl. (*a*), sub-s. 1 of s. 8, Central Provinces Courts Act, 1904, is *ultra vires*, as he is not empowered to fine under sub-s. 3 of s. 8 of the C.P. Courts Act, 1904. The rules framed by the Judicial Commissioner's Court under cl. (*a*), sub-s. 1 of s. 8, C.P. Courts Act, 1904, apply only where the act complained of is done in a Court subordinate to it or in the latter Court itself. SURAJ PRASAD v. EMPEROR, **4 N.L.R. 134.**

(2)—S. 15—*See* CRIM. PRO. CODE, 1898, s. 195, sub-ss. 7 (*a*), 6, 8 N.L.R. 57=13 Cr. L.J. 498=15 Ind. Cas. 642.

6.—Madras Acts.

*** Act XXIV of 1839 (Ganjam and Vizagapatam).**

[SHORT TITLE GIVEN, ACT XI OF 1901. REP. IN PART, ACT XIV OF 1870; ACT XVI OF 1874; ACT XII OF 1891; MAD. ACT I OF 1865.]

S. 3—*See* ACT XIV OF 1874, 14 M. 121=2 Weir 7.

*** Act XVII of 1840 (Salt Laws, Madras).**

[REP., MAD. ACT IV OF 1889.]

(1)—*Breach of—Imprisonment in default of payment of fine, whether legal.*—The award of imprisonment in default of payment of fine is not allowable under the provisions of Act XVII of 1840. QUEEN v. AMIRTAM, **4 M. 335.** (4 M. 335, Note, F.B., *R.*).

(2)—*Punishment of imprisonment as substantive sentence, whether allowed by the Act—Madras Reg. I of 1805.*—Act XVII of 1840 allows of either fine or imprisonment being imposed as a substantive punishment. FULL BENCH DECISION OF 15TH DECEMBER 1879, **4 M. 335, Note, F.B.** [*R.*, 4 M. 335.]

(3)—*Possession of salt-earth.*—Being in possession of salt-earth from which salt may be manufactured is an offence under Act XVII of 1840. HIGH COURT PROCEEDINGS, 1ST JULY 1869, **4 M.H.C. App. 53.**

(4)—*Discretion of Magistrate regarding sentence of fine and imprisonment—Order of Government restricting such discretion, effect of.*—An order of the Government prohibiting Magistrates from the exercise of discretion imposed on them by law as to whether they shall, in the case of certain offences, pass a sentence of fine or a sentence of imprisonment, is *ultra vires*, as, in the absence of any provision conferring or reserving to the Executive Government such power, the Government cannot, by an executive order, release the Magistracy from their obligation to obey the enactments of the Legislature. HIGH COURT JUDGMENT, 15TH DECEMBER 1879, **1 Weir 894, F.B.**

*** Act IV of 1842 (Boat Regulations, Madras Roads).**

[REP., MAD. ACT I OF 1893.]

See MAD. ACT IX OF 1846, 9 M. 431=1 Weir 852.

***Act IX of 1846 (Boats in Harbours, Madras).**

[REP., MAD. ACT I OF 1893.]

(1)—*Rule VII of Rules made under Act—Liability of owner of boat—Burden of proof—Power of Local Government to make provision for the hearing of cases cognisable under rules passed under the Act.* — Under r. 7 of the Rules for the better management of boats and canoes,

* These Local Acts were passed by the Imperial Legislature.

6.—Madras Acts—continued.

Act IX of 186 (Boats in Harbours, Madras) *—concluded.*

plying for hire at the out-ports of the Madras Presidency, dated 30th September, 1867, the owner of a boat is liable to a fine, on proof of his "allowing" his boat to ply without the requisite complement of men. The word "allow" in the rule creates a liability more extensive than would be implied in such words, as "if the owner neglects to ensure that the boat is fully manned, and thereby contravenes the provisions of the rules, he shall be guilty of an offence under the rules, unless he proves that he has taken all reasonable means to prevent such contravention." The absence of proof by the prosecution that the owner was aware that the boat was plying without its proper crew is no bar to his conviction. Act IX of 1846 is an Act authorising the Government of Fort St. George to make, from time to time, in respect of each port or other place of anchorage in the Presidency, such regulations for the management of boats and *catamarans*, etc., and such other matters as are provided for by Act IV of 1842 in respect of the Madras Roads as shall seem to them expedient, "being similar in principal to the provisions contained in the said Act, but varying in detail as local circumstances required such variation." Under the provisions of this Act, it is competent for the Local Government to provide that cases involving questions as to breaches of the regulations or rules shall be cognisable by Magistrates not being Justices of the Peace. *In re* ROWTHAKONNI, **9 M.431 = 1 Weir 852.**

***Act I of 1858 (Compulsory Labour, Madras).**

[SHORT TITLE GIVEN, ACT XI OF 1901. REP. IN PART, ACT XVI OF 1874. DECLARED IN FORCE THROUGHOUT THE PRESIDENCY OF MADRAS, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 4.]

(1)—*Labouring classes.* — By the term "labouring classes" in Act I of 1858, not only persons who let their labour for hire are included, but also persons who habitually engage in manual labour, although they may, at the same time, be employers of labour. QUEEN v. MUTTU REDDI, **6 M. 199 = 1 Weir 784.**

(2)—*S. 1—Village "in the vicinity."*— Villages seven miles away from the place where a breach has occurred are not within such distance as answers to the words "vicinity" or "neighbouring" in s. 1 of the Act. HIGH COURT PROCEEDINGS. 19TH MAY, 1882, No. 984, **1 Weir. 783.**

(3)—*Ss. 1 and 2—Right to call labourers to help in stopping or preventing a breach.*—To entitle the authorities to call upon labourers of neighbouring villages to help in stopping or preventing a breach of a channel, it is only

* This Local Act was passed by the Imperial Legislature.

6.—Madras Acts—continued.

Act I of 1858 (Compulsory Labour, Madras) *—concluded.*

necessary to see that there has been or will be a breach. It is not necessary to see that a loss of property has occurred or will occur. HIGH COURT PROCEEDINGS, 19TH MAY 1882, NO. 984, **1 Weir 783.**

(4)—*Ss. 1, 2 and 6—Jurisdiction of Magistrates under the Act.*—The only acts or omissions, over which a Magistrate has jurisdiction under Act I of 1858, are those specified in the first section, namely, where a tank or other irrigation work has been breached or is in imminent danger of being breached. Cases under s. 6 are not cognisable by a Magistrate at all, but the section points out distinctly the only mode in which the value of the labour withheld can be assessed or recovered. HIGH COURT PROCEEDINGS, 23RD NOVEMBER, 1868, NO. 1534, **1 Weir 783 = 4 M.H C. App. 20.**

(5)—*S. 2—Offence under the section, what constitutes.*—When persons belonging to labouring classes are duly called upon by the head of the village to labour, as provided in s. 1 of the Act, a refusal or neglect to comply with such call, without any lawful excuse, constitutes an offence under s. 2. HIGH COURT PROCEEDINGS, 14TH MARCH 1878, No. 559, **1 Weir 783.**

(6)—S. 2—*See* Nos. 3 and 4, *supra.*

(7)—S. 6—*See* No. 4, *supra.*

*** Act XXIV of 1859 (Police, Madras).**

[SHORT TITLE GIVEN, ACT XI OF 1901. REP. IN PART, ACT XVII OF 1864; ACT XIV OF 1870; ACT XVI OF 1874; MAD. ACT I OF 1885; MAD. ACT V OF 1896. REP. IN PART AND AMENDED, MAD ACT III OF 1889 (EXCEPT IN SCHEDULED DISTRICTS), MAD. ACT III OF 1895. AMENDED, MAD. ACT V OF 1865. SUPPLEMENTED, ACT III OF 1883. SS. 1, 10, AMENDED, MAD. ACT III OF 1909. SS. 2, 3. DECLARED IN FORCE THROUGHOUT THE PRESIDENCY OF MADRAS, EXCEPT AS REGARDS THE SCHEDULED DISTRICTS, ACT XV OF 1874, S. 4.]

(*a*)—*See* PENAL CODE, s. 223, 1 Weir 197.

(1)—S. 1—*See* MAD. ACT III OF 1864, s. 26, 9 M. 97 = 1 Weir 630.

(2)—S. 1—*See* MAD. ACT I OF 1886, s. 55, 1 Weir 632 = 1 Weir 836.

(3)—*Ss. 1, 8 and 11—Penal Code, ss. 21 and 353—Village talayari, whether a police officer.*— Under the Madras Police Act, a person, though assuming the functions of a police officer, is not a police officer in the execution of his duty so as to affect third parties, unless he has been enrolled and has received the certificate of enrolment. A village *talayari* is not a police officer, unless so enrolled, and, if not a police officer, he is not a public servant acting in the

* This Local Act was passed by the Imperial Legislature.

6.—Madras Acts—continued.

Act XXIV of 1859 (Police, Madras)—*contd.*

execution of his office, while making an arrest of persons suspected of crime. *In re* VENKATIGADU, **1 Weir 342 = 1 Weir 837.**

(4)—S. 8—*See* No. 3, *supra.*

(5)—*Ss.* 8, 10, 11 *and* 44—*Village* kavalgars.—S. 44 of Act XXIV of 1859 applies only to police officers enrolled and appointed in the manner prescribed in ss. 8, 10 and 11 of the Act. Village *kavalgars*, not being so appointed, are not punishable under s. 44. HIGH COURT PROCEEDINGS, 11TH MARCH 1872, **1 Weir 836 = 7 M.H.C. App. 4.**

(6)—S. 10—*See* No. 5, *supra.*

(7)—*Ss.* 10 *and* 44—*Departmental punishment, whether a bar to a prosecution under the Act.*—Where the Government has not framed any rules under s. 10 of Act XXIV of 1859, the mere fact of departmental punishment having been awarded is not sufficient to exonerate from liability under s. 44, though the circumstance may be taken into consideration in passing sentence. QUEEN EMPRESS v. FAKRUDEEN, **17 M. 278 = 1 Weir 839.**

(8)—*Ss.* 10 *and* 44—*Police constable leaving his post, when on duty at the central jail, if liable to punishment.*—Where a police constable, who was on duty at the outer gate of a central jail, quitted his post inside the gateway and, leaving the gate open, slept outside, *held*, that he was properly punished under s. 44. and that s. 10 did not apply to the case. HIGH COURT PROCEEDINGS, 13TH JUNE 1872, No. 1074, **1 Weir 837 = 7 M.H.C. App. 7.** [*F.*, 1 Weir 838.]

(9)—*Ss.* 10, 44 — *Constable posted as sentry going to sleep.*—Where a constable posted as a sentry over the jail went to sleep, while on guard, *held* that he was guilty under s. 10 and not under s. 44. HIGH COURT PROCEEDINGS OF 9TH AUGUST, 1871, **1 Weir 837**, note = **6 M.H.C App. 31** [*Overruled*, 7 M.H.C. App. 7 = 1 Weir. 837.]

(10)—*Ss.* 10, 44—*Constable while on guard going to sleep* —A police constable falling asleep, while on guard, is guilty of a grave violation of duty and should, therefore, be dealt with under s. 44 HIGH COURT PROCEEDINGS, 3RD OCTOBER 1878 No. 1601, **1 Weir. 838.** [*F.*, 17 M. 278 = 1 Weir 839.]

(11)—*Ss.* 10, 44—*Temporary absence from duty.*—The temporary absence of a constable from duty is not such a cessation of duty as to be covered by the provisions of s. 44. The offence is clearly one punishable under s. 10 of the Act *In re* ELLIAH NAIDU, **1 Weir 840.** [*D.*, 1 Weir 841.]

(12)—*Ss.* 10, 44—*Wilful disobedience of an express lawful order.*—Where a Police constable, who was directed by the Station House Officer, to guard a certain place with instructions not to leave his post until a week expired or until relieved meanwhile, left his post and was found at the police station, *held*, that the accused was guilty under s. 44, inasmuch as he wilfully disobeyed an express lawful order given to him and that s. 10 did not apply. *In re* (SHAIKH) MEERAH, **1 Weir 841.**

(13)—S. 11—*See* Nos. 3, 5, *supra.*

(14)—*Ss.* 11 *and* 44—*Police officer—Appointment.*—No person, who has not been duly appointed under s. 11 of Act XXIV of 1859, can be held to be a "Police officer" within the meaning of s. 44 of the Act. The distinction between the general Police and the village Police has been fully recognized in the Act. HIGH COURT PROCEEDINGS, 28TH JUNE 1867, **1 Weir 836.**

(15)—*Ss.* 21 *and* 49—*Procession likely to cause breach of the peace—Powers of police—Removal of banners from persons in the procession.*—Where a procession of Hindus carrying certain banners made the Superintendent of Police apprehend that a breach of the peace would be occasioned, if these banners continued to be displayed, and, for the purpose of preventing such breach of the peace, he *bona fide* took away the banners from certain persons in the procession, *held*, that the action of the Superintendent of Police was not justified by the Madras Police Act, ss. 21 and 49, and that he was accordingly liable for trespass. RANGANAYAKULU v. PRENDERGAST, **17 M. 37 = 3 M.L J. 276.**

(16)—*Ss.* 23 *and* 44—*Omission to bring a person in custody without a warrant before a Magistrate.*—The defendant, a deputy constable, was convicted under s. 44, Act XXIV of 1859, for neglect to bring a person in custody without a warrant before a Magistrate. On appeal, the conviction was set aside on the ground that the clause in s. 44 had been virtually repealed by the repeal of s. 23 in which the duty in question was provided. *Held*, that the words "as hereinbefore provided" in s. 44, referring to s. 23, should be treated as mere surplusage and that s. 44 should be read as providing for the punishment of a police officer, "guilty of any wilful neglect of duty in not bringing any person who shall be in his custody without a warrant before a Magistrate." *Held*, therefore, that the accused was guilty under s. 44. HIGH COURT PROCEEDINGS, 31ST OCT. 1865, **1 Weir 837.**

(17)—S 44—*Scope of the section.*—The provisions of s. 44 of Act XXIV of 1859, are intended rather for the punishment of departmental offences than of offences which can be properly brought under the Penal Code. *In re* ESOFF KHAN, **1 Weir 842.**

(18)—S 44—*Offence under the section—Jurisdiction.*—A Sessions Judge has no jurisdiction to try a person accused of an offence under s. 44 of the Police Act The trial should be before a Magistrate. HIGH COURT PROCEEDINGS, 29TH MARCH 1878, No. 655, **1 Weir 841.**

6.—Madras Acts—continued.

Act XXIV of 1859 (Police, Madras)—*contd.*

(19)—*S.* 44—*Police constable staying away after expiry of casual leave, guilty of the offence under—Object of section.*—If a police constable is granted casual leave for a limited period and does not, at the end of that period, resume his duties, but stays away without obtaining fresh leave, he withdraws himself from his duties and "ceases to perform the duties of his office without leave" within the meaning of the above s. 44. The intention of the section is to render Police constables liable to punishment for such neglect or breaches of duty as are not punishable under s. 10 of the Act, such as desertion. *Prima facie*, a constable, absent without leave is guilty, under the said s. 44, of 'ceasing to perform his duty,' and the fact that he has been permitted to be absent on casual leave for a time immediately anterior to his absenting himself from duty, can make no difference in his offence. EMPEROR v. RAMASWAMY RAJU, **29 M. 192=3 Cr. L.J. 463.**

(20)—*S.* 44—*Omission to go on beat.*—Where the petitioner neglected to go on beat, when ordered to do so, and produced a false beat ticket alleged to have been attested by a Village Munsif to the effect that he had visited a certain village, whereas, in fact, he had not done so, *held*, that the petitioner's conduct was something more than remissness or negligence in the discharge of duty, punishable departmentally under s. 10 of the Act, and was properly punishable under s. 44 of the Act. *In re* PONNUSAMI, **1 Weir 840.**

(21)—*S.* 44—*Refusal by constable on sufficient grounds to search a house, if a violation of duty—Duty imposed without any authority—Violation—Liability.*—Where a constable is asked to search a house, he has also some discretion in the matter. If there are sufficient grounds for thinking that a search is not justified, he can refuse to search a house, and the refusal will not amount to a violation of duty. Where a constable, apparently without any authority, asked another constable to watch a house, *held*, that the latter who left the place, after some time, without having been relieved, was not guilty under s. 44 of the Act. HIGH COURT PROCEEDINGS, 19TH FEBRUARY, 1880, No. 332, **1 Weir 841.**

(22)—S. 44—*See* Nos. 5, 7, 8, 9, 10, 11, 12, 14, 16, *supra*.

(23)—*S.* 46—*Section construed—Gist of offence.*—Under s. 46, it is an offence for any police constable to extort, exact, seek or obtain a bribe, etc., by means of any illegal threat or pretence. Further, it is also an offence for any Police officer to extort, exact, seek or obtain a bribe, etc., for doing or omitting to do any act which it may be his duty to do. The gist of the offence is the obtaining a bribe, not the neglect of duty, which last is punishable under s. 44. Under s. 46, it must be shown that the bribe was taken for omitting to do an act which it may be the duty of the officer to do. HIGH COURT PROCEEDINGS, 21ST JULY, 1879, No. 967, **1 Weir 842.**

(24)—*S.* 46—*Conviction under the section, when allowable.*—In order that a conviction under s. 46 of Act XXIV of 1859 can be supported, it must be shown that the accused obtained a bribe on the pretence that he would omit to do a thing. *In re* GOPALASAMI NAIDU, **1 Weir 844.**

(25)—*Ss.* 46, 50—*Charge of dacoity under s.* 389, *Penal Code—Acquittal—Conviction under s.* 46 *of the Act—Validity.*—A police officer was charged under s. 389, Penal Code. He was acquitted of that offence, but was convicted of an offence under s. 46 of the Police Act. The actual charge framed against him under s. 46 of the Police Act was the same as the charge framed against him under s. 389, Penal Code, *i.e.*, extortion, of which he was acquitted. *Held*, that, having regard to s. 50 of the Act, the conviction was bad. *In re* GOPALASAMI NAIDU, **1 Weir 844.**

(26)—*S.* 47—*Sanction whether necessary for lodging a complaint.*—No sanction is necessary for the entertainment of a complaint under s. 47 of the Police Act. *In re* RAMANUJA CHARI, **1 Weir 845.**

(27)—*S.* 48—"*Town,*" *definition of.*—There is no Act of the Legislature which empowers either the Magistrate of the District or the Local Government to define a "town" for the purposes of s. 48, Act XXIV of 1859. In the absence of any provision of law defining a "town," it rests with Magistrates to determine, on a reasonable consideration of the circumstances, whether or not a place is a town. HIGH COURT PROCEEDINGS, 25TH AUG. 1871, **6 M. H.C. App. 34.**

(28)—*S.* 48, *offences under—Crim. Pro. Code* (1882), *s.* 261—*Jurisdiction of Benches of Magistrates.*—S. 48 of the Police Act, which relates to obstruction and nuisances in roads (within the limits of towns) is a general conservancy clause, and the offences committed thereunder are within the cognisance of a Bench of Magistrates. QUEEN EMPRESS v. OOLAGANADA, **13 M. 142=1 Weir 910=2 Weir 327.**

(29)—*S.* 48—*Powers of special Magistrate conferred upon Sub-Registrar—Whether the power continues on transfer of Sub-Registrar to another place.*—A Sub-Registrar, who was invested with third-class powers for the trial of offences under s. 48 of Act XXIV of 1859 in a certain place was transferred from that place to another. In the latter place, he took up cases in his file and tried a certain number of them. *Held*, that the Sub-Registrar was competent to exercise, on his transfer to another place, the powers conferred upon him as Sub-Registrar of the place from which he was transferred, unless the Local Government directed him not to

6.—Madras Acts—continued.

Act XXIV of 1859 (Police, Madras)—*contd.*

exercise them. QUEEN-EMPRESS v. VIRANNA, **15 M. 132 = 2 Weir 36.**

(30)—*S.* 48—*Punishment under the Act—Imprisonment in default of payment of fine—Penal Code, ss.* 48 *and* 64—*Act V of* 1865.—Persons punished under s. 48 of the Police Act cannot be sentenced to pay a fine with a period of imprisonment in default of payment. The procedure to be followed in enforcing the fine, or in awarding imprisonment in default, is that laid down in Madras Act V of 1865, by which a Magistrate can only order imprisonment on being satisfied that the accused has not sufficient property whereon the fine can be levied. HIGH COURT PROCEEDINGS, 7TH DEC. 1866, **3 M.H C App.** 9. [*F.*, 7 M.H.C. App. 22; *D.*, 18 **M.** 490 = 1 Weir 909.]

(31)—*S.* 48—*Offence by a European British subject—Trial.*—The Contonment Magistrate has no jurisdiction to try a European British subject for an offence under s. 48 of Act XXIV of 1859. HIGH COURT PROCEEDINGS, 13TH JUNE 1870, **5 M.H.C. App. 25.**

(32)—*S.* 48—*Rigorous imprisonment under, if legal.*—Under s. 48 of the Police Act, the award of rigorous imprisonment is not legal. HIGH COURT PROCEEDINGS, 31ST AUG. 1870, **5 M. H.C. App. 34.**

(33)—*S.* 48—*Imprisonment in default of payment of fine.*—Imprisonment in default of payment of fine for an offence under s. 48 of Act XXIV of 1859 is irregular. HIGH COURT PROCEEDINGS, 24TH APRIL 1873, **7 M.H.C. App. 22.**

(34)—*S.* 48—*Whipping, sentence of, if legal under the Act.*—The Whipping Act only authorises the punishment of whipping for offences of which the accused is convicted under the Penal Code, and s. 5 of the Whipping Act provides for juveniles convicted under the same. Therefore, a sentence of whipping cannot be passed for an offence under the Police Act. HIGH COURT PROCEEDINGS, 10TH MAR. 1880, No. 485, **1 Weir 845.**

(35)—*S.* 48 (*s.* 3 *of the Towns Nuisances Act*) *spreading raggi stalks in a public street.*—The mere spreading of raggi stalks to dry in the streets of a village is not an offence under s. 48 of Act XXIV of 1859 (s 3 of the Towns Nuisances Act). *In re* SINNAPPUDAYAN, **1 Weir 912.**

(36)—*S.* 48 (1)—*Town Nuisances* (*Madras Act* III *of* 1889), *s.* 3 (1)—*Riding on untrained bullock in public streets.*—Riding an untrained bullock on a public road, which the rider could not control, is an offence under s. 48 (1) of Act XXIV of 1859, and under s. 3 (1) of Act III of 1889. HIGH COURT PROCEEDINGS, 14TH AUGUST 1872, **1 Weir 845 = 7 M.H.C. App. 10 = 1 Weir 911.**

(37)—*S.* 48, *cl.* 3—*Applicability of the section to the causing of obstruction by spreading fishing nets—Penal Code, s.* 283—Cl. 3, s. 48 of the Police Act refers to obstruction of roads or streets caused by cattle or by conveyances, in certain circumstances therein detailed. The act of spreading fishing nets by the side of the road is clearly not punishable under that clause, nor is it punishable under s. 283, Penal Code, without proof that obstruction is caused to a particular person or persons by such act. QUEEN v. KHADER MOIDIN, **4 M 235 = 1 Weir 911 = 1 Weir 232.** [*F.*, 25 C. 275 ; *R.*, 1 Weir 232.]

(38)—*S.* 48, *cl.* 5—*Heap of dirt kept in town, when amounts to an offence—Act* I *of* 1885.—It is not the intention of the legislature to make it penal to lay down a heap of dirt or materials for building, in convenient places within the limits of a town. The last sentence in cl. 5, which makes it penal to cause any offensive matter to run from a dung heap into the street, contemplates the deposit of a dung heap near a street, or within the limits of a town as otherwise than penal. QUEEN-EMPREES v. APPATHORAI, **9 M. 167.**

(39)—S. 48—*See* MAD. ACT III OF 1889, S. 3, 1 Weir 912.

(40)—S. 48—*See* MAD. ACT III OF 1889, S. 3, cl. 9, 1 Weir 913, 914.

(41)—S. 48—*See* JURISDICTION OF CRIMINAL COURTS—JURISDICTION OVER EUROPEAN, 5 M.H.C. App. 25.

(42) — *S.* 49—*Processions — Powers of the Police.*—*Per* Collins, C.J.—S. 49 of the Madras Police Act defines the powers of the police. They may direct the conduct of all assemblies and processions in the public streets, prescribe the routes by which and the time at which such processions may pass, keep order in the public streets and prevent obstructions; they may also regulate the use of music in the streets on the occasion of native festivals and may direct crowds of twelve of more persons to disperse, when they have reason to apprehend any breach of the peace. The powers thus given to the police are large and set out with particularity, but the Superintendent of Police has no power to remove from the processionists any banner belonging to them and order those banners to be taken to the Police Station. The Superintendent in taking possession of the banners commits a tortious act. *Per* Shephard, J.—Under the Madras Police Act, although the Superintendent may, as occasion requires, do certain things with regard to processions, yet, the Act does not say that he may take flags or obnoxious devices carried by members of the procession, nor does the Crim. Pro. Code confer any such power. PANCHAKARLA RANGANAYAKULU v. SUPERINTENDENT OF POLICE, **3 M.L.J. 276.**

(43)—S. 49—*See* No. 15, *supra.*

(44)—*S.* 50—*Proviso to the section, whether made inoperative by the provisions of Madras Act* III *of* 1865.—S. 1 of Madras Act III of 1865, renders inoperative the proviso in s. 50

6.—Madras Acts—continued.

Act XXIV of 1859 (Police, Madras)—*concld.*

of Act XXIV of 1859. Therefore, a native Magistrate has jurisdiction to try Police officers above the rank of a private charged with offences under Act XXIV of 1859. HIGH COURT PROCEEDINGS. 7TH JULY 1869, No. 1211, **1 Weir 846 = 4 M.H.C. App. 54.** [*F.*, 1 Weir 846.]

(45)—S. 50—*See* No. 25, *supra.*

(46, 47)—*S.* 53—*Power of native Magsitrate to try police officer—Act* III *of* 1865—*Scope of the section* —After the passing of the Act III of 1865, native Magistrates have power to try a Police officer above the rank of a private for an offence under Act XXIV of 1859. S. 53 has reference only to acts done or intended to be done under colour of the Act, but does not apply to any acts not professedly done in the exercise of any power conferred by the Act. *In re* CHENDRIAL, **1 Weir 846.**

(48)—*S.* 53—*Inspector withholding pay of Head-constable—Suit for recovery of the same.* —The plaintiff, a Police Head-constable, sued the defendant, a Police Inspector, for his pay, which he alleged that the latter kept back. It appeared that, before resorting to the Court, the plaintiff complained of this to the Head Assistant Magistrate, who dismissed the complaint because the plaintiff's allegations did not amount to an offence under the Penal Code. After being discharged from the Police, the plaintiff give notice to the Superintendent of Police, under s. 53 of the Police Act, asking him to direct the defendant to pay the money, but he declined to interfere. Hence,the present suit was instituted. The defendant pleaded limitation under s. 53, Act XXIV of 1859, and that the plaintiff was estopped from denying that the section applied by reason of his admission in his notice to the Superintendent. *Held*, that the suit was maintainable as the act alleged to have been done had nothing whatever to do with police duties and that the plaintiff was not estopped from standing on his legal rights, because he gave a notice under the Act, when it was not necessary GUNDAN VENKATASAMI v. CHINNAM PURUSHOTTAMA, **1 Weir 847 = 5 M.H.C. 466.**

(49)—*S.* 53 — *Conviction under the Act—Limitation.*—A conviction under the Act is illegal if the prosecution is time-barred under s. 53 of the Act. *In re* SESHAGIRI ROW, **1 Weir 848.**

Act I of 1863 (Subordinate Magistrates, Second Class).

[REP. (IN MADRAS), MAD. ACT IV OF 1867; (IN COORG), REG. I OF 1831.]

(1)—Ss. 1 and 2—*See* CONTEMPT OF COURT, 4 M.H.C. App. 51.

(2)—S. 2—*See* No. 1, *supra.*

6.—Madras Acts—continued.

Act II of 1864 (Recovery of Arrears of Revenue).

[SHORT TITLE GIVEN, ACT XI OF 1901, REP. IN PART, ACT XII OF 1873. AMENDED, MAD. ACT III OF 1884; MAD. ACT I OF 1897. S 37, PROVISO 38 (3) AMENDED, S. 37 A. INS. MAD. ACT I OF 1909.]

(1)—*See* THEFT--THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 1 Weir 421.

(2)—*S.* 8—*Removal of crops under attachment by the owner—Demand being made upon another person holding the* patta — *Charge of theft, whether maintainable.*—Certain standing crop was distrained for arrears of revenue. The accused, the real owner of the land, carried away the crop and was charged with theft. The Deputy Magistrate acquitted the accused on the ground that no demand was served upon them and that no list of distrained property was furnished to them but were given to another person in whose name the *pattas* stood. *Held*, that the Deputy Magistrate was wrong in acquitting the accused on the ground mentioned. The case was directed to be retried on the point whether the accused was in fact aware of the distraint, and with such knowledge dishonestly removed the crop. QUEEN-EMPRESS v. RAMASAMI, **16 M. 364 = 1 Weir 422 = 3 M.L.J. 178.**

Act III of 1864 (Abkari).

[REP. IN PART, ACT XII OF 1873; MAD. ACT V OF 1879. REP. (LOCALLY), MAD. ACT I OF 1886.]

(1)—*See* MAD. ACT I OF 1886, SS. 29 AND 55 (*c*), 11 M. 250 = 1 Weir 638.

(2)—*See* MAD. ACT I OF 1886, S. 34, 26 M. 124 = 1 Weir 630.

(3)—Repealed by Act I of 1886—Conviction under—Illegal—Retrial—*See* RE-TRIAL, (1911) 2 M.W.N. 588 = 12 Ind. Cas. 616 = 12 Cr. L.J. 992.

(4)—*S.* 2—*Payment of wages by liquor, whether amounts to sale.*—A payment of wages by liquor is not included in the general term "selling," and, is, therefore, not an offence under the Abkari Act. QUEEN-EMPRESS v. APPAVU, 9 M. **141 = 1 Weir 645.** [*R.*, 25 B. 696 = 3 Bom. L.R. 384, 2 P.R. 1903 = 53 P.L. R. 1903.]

(5)—*Ss.* 2, 21, *and* 22—*Exposure of sweet palm juice—Manufacture.*—Sweet palm juice, which, by exposure to the operation of natural causes, ferments and becomes toddy, is as much manufactured by the person who exposes it, as if the same result was produced by the process of distillation HIGH COURT PROCEEDINGS, 17TH JUNE 1870, **5 M H C. App. 26.**

(6)—*S.* 8—*Selling liquor without license, what amounts to.*—Where a person, whose license was cancelled for some breach of the regulations, put forward anothers person as a

6.—*Madras Acts*—continued.

Act III of 1864 (Abkari)—*continued.*

proper person to be licensed for the shop in which he himself had been vending, and such person being duly approved and licensed by the Collector, the former licensee under the cover of that license continued his old business, paying a monthly sum to that person, *held*, that the former licensee could not be convicted of selling liquor without license, as the Collector was estopped by his own license and could not enquire into the private arrangements between the licensee and the person conducting the business. QUEEN EMPRESS v. NANJAPPA PILLAI, **7 M. 432=1 Weir 644.**

(7)—*Ss.* 14, 16, 22—*Valid permit.*—There is nothing in Madras Act III of 1864 to restrict the validity of a permit to the actual person to whom it is issued, or to prevent it from protecting liquor conveyed by third persons on the licensee's behalf. HIGH COURT PROCEEDINGS, 20TH JULY 1870, **5 M.H.C. App. 29.**

(8)—*Ss.* 15 *and* 22—*Sub-renter's servant conveying toddy without a permit.*—The conveying of toddy by servants of a sub-renter, without a permit, from the sub-renter's trees to his shop would not amount to an offence under s. 22, if the quantity conveyed did not exceed that which a sub-renter's permit would cover. QUEEN v. POTTACHI, **7 M. 161=1 Weir 633.** [*R.*, 11 M. 472.]

(8-*a*)—S. 16—*See* No. 7, *supra.*

(9)—*S.* 17—*Order for confiscation.*—Under s. 17, the Collector alone can confiscate, and not a Magistrate. QUEEN v. KOKKILIGADDA THATHAYYA, **4 M. 240.**

(10)—*Ss.* 17, 21—*Conviction under s.* 21—*Confiscation.*—A Magistrate is not competent to order the confiscation of arrack found in possession of a person convicted by him under s. 21, when such person is a licensed vendor. HIGH COURT PROCEEDINGS, 4TH NOV. 1870, **5 M.H.C. App. 41.**

(11)—*Ss.* 17, 23-*A and* 26-*B*—*Power of Magistrate to confiscate animals*—*Proceeds of property confiscated by Collector, whether available for distribution.*—Although a Magistrate cannot confiscate animals under s. 23-A of the Act, yet, in all magisterial cases falling for disposal under s. 26-B, the proceeds of whatever has been confiscated by the Collector, including animals, would be available for distribution in the manner therein prescribed. QUEEN v. SYKEYA, **5 M. 137=6 Ind. Jur. 243.**

(12)—*S.* 20 (*ss.* 55, 56 *of Act* I *of* 1886)—*Selling of liquor by measures of less value than prescribed by the Board of Revenue*—*Object of s.* 20.—S. 20 of Act III of 1864 provides for the punishment of persons wilfully contravening any rule, regarding the manufacture and sale of liquor, prescribed by the Board of Revenue, under the authority conferred in the Act, or any person duly licensed who shall commit a breach of the provisions of his license. The rules framed by the Board, under the authority mentioned, requires sellers to use a drachm measure, 48 of which make an imperial gallon. The meaning of the rule is that sellers are to sell by the measure prescribed, not that they are to use only a one drachm measure. The seller may use measures containing many drachms or parts of drachm, but he is to sell by the drachm. Therefore, selling by measures of less capacity is not a breach of the rules or of the provisions of the license. HIGH COURT PROCEEDINGS, 23RD DEC. 1879, No. 2332, **1 Weir 643.**

(13)—*S.* 21—*Selling toddy without license*—*Toddy, what is.*—A person selling toddy without license is liable to be convicted under s. 21 of the Abkari Act without any evidence as to fermentation, as toddy *prima facie* is fermented palm juice. HIGH COURT PROCEEDINGS, 21ST OCT. 1870, **5 M.H.C. App. 36.**

(14)—*S.* 21—"*Toddy*"—*Definition.*— The High Court in 5 M.H.C.R, App. XXXVI, did not intend to definite toddy as a matter of law. HIGH COURT PROCEEDINGS, 4TH JAN. 1871, **6 M.H.C. App. 11.**

(15)—*S.* 21 (*s.* 55, *cl.* (*h*) *of Act* I *of* 1886)—*Licensee's death*—*Expiry of license.*—A license expires on the death of the license-holder and cannot protect a subsequent sale by a member of the deceased's family. *In re* MARI, **1 Weir 642.**

(16)—*S.* 21—*Brother of license-holder, whether protected by the license.*—The license given to a person will protect the brother of the licensee, as also his agent. HIGH COURT PROCEEDINGS, 11TH DECEMBER, 1871, No. 1982, **1 Weir 642.**

(17)—*S.* 21 (*s.* 55 *of Act* I *of* 1886)—*License-holder's wife, whether protected by the license.*—The license of the husband protects a wife who is selling liquor on his behalf. HIGH COURT PROCEEDINGS, 11TH NOVEMBER, 1872, No. 1897, **1 Weir 642.** [*D.*, 1 Weir 642.]

(18)—S. 21—*See* Nos. 5, 10, *supra.*

(19)—*Ss.* 21 *and* 22—*Expiry of license*—*Possession of liquor after period of license, whether an offence.*—S. 21 must be read as an exception to the general provision in s. 22. If so read, the liability of the licensed vendors whose license has expired is limited to the case in which they are found in possession of liquor for the purpose of sale. QUEEN v. RAMAYA, **5 M. 131.**

(20)—*Ss.* 21, 22—*Offences under the Act*—*Fine in default of imprisonment*—*Penal Code, s.* 64.—Fines under ss. 21 and 22 of Act III of 1864 can be levied only by adopting the procedure prescribed in ss. 30, 31 and 32. S. 64 of the Penal Code has, therefore, no application. HIGH COURT PROCEEDINGS, 20TH NOV. 1871, **6 M.H.C.R. App. 40.**

(21)—*Ss.* 21, 23-*A and* 55 (*g*)—*Implement for the purpose of manufacturing liquor.*—Where

6.—Madras Acts—continued.

Act III of 1864 (Abkari)—*concluded.*

the accused was found in possession of a mixture of boiled rice, dry ginger and nuts of the marking-nut plant, and admitted that he had prepared the mixture in order to manufacture liquor, *held*, that the accused was not guilty, under Madras Abkari Act, III of 1864, inasmuch as the mixture in question was certainly not an "implement" for the manufacture of liquor. *In re* SONDI DONNAI SAHU, **1 Weir 640.** [*D.*, 1 Weir 641=24 M. 417.]

(22)—*Ss.* 21, 32—*Non-realisation of penalty—Sentence of imprisonment.*—Where the penalty, imposed on a person under s. 21 of Madras Act III of 1864, is not fully realized by the distress and sale of his moveable property, s. 32 authorizes a sentence of imprisonment on him. QUEEN v. CHAKRASAHU, **7 M. 185.**

(23)—*S.* 22—*Abkari Amendment Act* V *of* 1879, *s.* 23 (*a*)—*Boat used for carrying liquor without valid permit—Order for confiscation of the boat— Validity.*— Where a second class Magistrate convicted certain persons under s. 22 of Act III of 1864, of conveying liquor without a permit, and ordered the confiscation and sale of the boat in which the liquor was found, *held*, that the Magistrate was not justified in passing such an order either under s. 23 (*a*) of Act V of 1879, or under s. 17 of Act III of 1864. QUEEN v. KOKKILIGADDA THATHAYYA, **4 M. 240.**

(24)—S. 22—*See* Nos. 5, 7, 8, 19, 20, *supra.*

(25)—S. 23-A—*See* Nos. 11, 21, *supra.*

(26)—*S.* 25—*Failure to produce a liquor license being called upon to do so—Order for confiscation of property—Act* V *of* 1879, *s.* 26(*b*).—The offence, under Madras Act III of 1864, of not having a liquor license ready to be shown to a Police constable, when called upon to produce it, is not an offence for which a Magistrate could proceed under s. 26 (*b*) of Madras Act V of 1879 to confiscate the property, and to award half of the fine and of the sale proceeds to the Police. QUEEN v. VASANTAPPA, **4 M. 231.**

(27)—*S.* 26—"*Police Officer*"—*Village policeman—Police Act* (*Madras Act* XXIV *of* 1859), *s.* 1.—The Abkari Act does not narrow the definition of the word "police" given in the Police Act. The term "Police Officer," as used in s. 26 of the Abkari Act, includes an officer of the village police, *e.g.*,*mohatad.* QUEEN-EMPRESS v. SESHAYA, **9 M. 97=1 Weir 630.**

(28)—S. 26-B.—*See* No. 11, *supra.*

(29)—S. 32—*See* No. 22, *supra.*

(30)—S. 55—*See* No. 21, *supra.*

(31)—*S.* 65—*Order for confiscation of property* —Where a person is convicted under s. 21, Act III of 1864 (s. 55 of Act I of 1886), a Magistrate is not competent to order the confiscation of the property in the possession of the accused, in respect of which no offence has been committed. HIGH COURT PROCEEDINGS, 27TH SEPTEMBER 1881, No. 2008, **1 Weir 651.**

6.—Madras Acts—continued.

Act IV of 1864 (Cess in lieu of Village Fees).

[REP., MAD. ACT IV OF 1893].

S. 7 — *See* CONFESSION — CONFESSIONS MADE TO POLICE OFFICER, 7 M. 287=2 Weir 735.

Act III of 1865 (Offences against special and local laws).

[REP., ACT XVI OF 1874.]

(1)—*Jurisdiction of Magistrates.*—The jurisdiction which Madras Act III of 1865 confers on Magistrates is not repealed by the schedule to the Crim. Pro. Code, as amended by Act VIII of 1869. HIGH COURT PROCEEDINGS, 4TH JUNE 1872, **7 M.H.C. App. 6.**

(2)—*Mad. Act* III *of* 1865, *not repealed—Act* VIII *of* 1869.—Madras Act III of 1865 is not repealed by the schedule to Act VIII of 1869. HIGH COURT PROCEEDINGS, 29TH JUNE 1872, **7 M.H.C. App. 8.**

(3)—*Repealing Act* XVI *of* 1874, *s.* 1—*Effect of the Act on jurisdiction of Courts under special or local laws.*—The repeal of Madras Act III of 1865 by Act XVI of 1874 has not deprived Magistrates in the Madras Presidency of their jurisdiction over offences created by special and local laws. HIGH COURT PROCEEDINGS, 29TH SEPTEMBER 1876, No. 2230. **1 Weir, 886, F.B.**

(4)—*See* ACT XIII OF 1859, 4 M.H.C. App. 64.

(5)—Effect of repeal of this Act by Act XVI of 1874—*See* ACT XVI OF 1874, 1 M. 223.

(6)—*See* ACT XVI OF 1874, 2 M. 161=1 Weir 887.

(7)—*See* MAD. ACT XXIV OF 1859, 1 Weir 846.

(8)—S. 1—*See* ACT XVIII OF 1854, S. 26, 4 M.H.C. App. 9.

(9)—S. 1—*See* MAD. ACT, XXIV OF 1859, S. 50, 1 Weir 846=4 M.H.C. App. 54.

Act V of 1865 (District Police Amendment).

[SHORT TITLE GIVEN, ACT XI OF 1901.]

See MAD. ACT XXIV OF 1859, S. 48, 3 M.H. C. App. 9.

Act X of 1865 (Towns Improvement).

[REP. MAD. ACT III OF 1871.]

(1)—*S.* 108-*A*—*Keeping a slaughter-house.*—Slaughtering a beast in one's own premises for the owner's private purpose does not amount to using the same as a slaughter-house. HIGH COURT PROCEEDINGS, 1ST FEB. 1871, **6 M.H. C. App. 18.**

(2) *S.* 144—*Scope of the section.*—S. 144 of Madras Act X of 1865 applies only to the fresh dedication of premises to certain offensive trades. The continuing of an offensive trade in premises already used is not within the section. HIGH COURT PROCEEDINGS, 4TH FEB. 1870, **5 M.H. C. App. 16.**

6.—Madras Acts—continued.

Act I of 1866 (Cantonment).

[REP., ACT XIII OF 1889.]

(1)—*S. 19—Cantonment Act Rules, ch IV, s. 16—Failure to report to Cantonment Magistrate the appearance of contagious disease.*—No penalty attaches to a failure on the part of a private individual to report to the Cantonment Magistrate the appearance of an epidemic or contagious disease, as directed by ch. IV of the Cantonment Rules, framed under s. 19, Military Cantonment Act. QUEEN EMPRESS v. LALLA, **8 M. 428 = 1 Weir 708.**

(2)—*S. 22—Power of Cantonment Magistrate to award rigorous imprisonment in default of payment of fine—General Clauses Act*, 1868, s. 5.—As the Cantonment Act was passed two years prior to the General Clauses Act, the provisions of s. 5 of the latter Act do not apply to the former, and the fact that rules and regulations framed under cls. 4 to 11 of the Cantonment Act did not receive the force of law until after 1868, can make no difference. Therefore, a Cantonment Magistrate cannot award rigorous imprisonment in default of realisation of fine imposed for breach of any rule or regulation made under the provisions of s. 17 of Act 1 of 1866. EMPRESS v. GOUNDADU, **8 M. 350.**

(3)—*S. 26—Adulteration of milk with water.*—The mere addition of water to milk cannot be said to be adulteration, so as to make the milk noxious as drink, within the meaning of r. XXXI, Ch. III of the Cantonment Rules made under Act I of 1866. *In re* BALAKRISHNA PILLAI, **1 Weir 709.**

(4)—*S. 30—Supplying liquor without license—Jurisdiction.*—The offence under s. 30 of the Madras Act I of 1866 of supplying liquor without a license is only punishable by a Magistrate. The words of the section exclude the jurisdiction of the Sessions court in the Mofussil as well as a prosecution for the offences by indictment before the High Court. REG. v. DONOGHUE, 5 M.H.C. 277. [*R.*, 19 A. 465.]

Act VII of 1867 (Madras Port Dues).

[REP., ACT XII OF 1875.]

Mad. Boat Rules, s. 14—*Refusal by licensed owner of boat to hire it.*—It is provided by s. 14 of the Boat rules that any owner of a licensed boat or person deputed by him refusing to let on hire his boat without assigning reasonable and satisfactory cause for such refusal should be liable to a penalty not exceeding Rs. 10. Ss. 7 and 8 of the Rules pre-suppose that the person in charge of a licensed boat is able to count the number of passengers taken into the boat and to compare it with the number mentioned in the license and to ascertain the quantity of cargo shipped and compare it with the quantity specified in the license. The refusal by the owner of a boat to take in certain goods on board unless a tally-man were provided, on the ground of his inability to count, was held to be not a refusal for a reasonable and

6.—Madras Acts—continued.

Act VII of 1867 (Madras Port Dues)—*concld.*

satisfactory cause within the meaning of s. 14 of the Rule. QUEEN-EMPRESS v. KAMANDU, **10 M. 121.** [*R.*, 9 Cr. L.J. 56 (57) = 4 N.L.R. 163.]

Act III of 1869 (Revenue Summonses).

[SHORT TITLE GIVEN, ACT XI OF 1901.]

(1)—*Power of Tahsildar to issue summons to* Karnam—*Disobedience to such summons—Penal Code*, s. 174.—Summonses issued by Tahsildar to *Karnams* to attend the Taluq Katchari for the purpose of preparing the census, *jamabundi, dowle*, and other accounts are not within the purview of Madras Act III of 1869, as they are not summonses to give evidence or produce documents in connection with the investigation of any matter in which the Tahsildar is authorised to hold an enquiry. Disobedience to such summons is not an offence under s. 174, Penal Code. QUEEN v. VANAM SUBRAMANYAN, **5 M. 377 = 1 Weir 91.** [*Overruled*, 1 Weir 91 = 7 M. 197, F.B.]

(2)—*Power of Revenue Officers to issue summonses to subordinate officers—Disobedience to summons—Penal Code, s.* 174.—Act III of 1869 should be given a liberal construction. A summons may be issued under it by a Revenue Officer for the purpose of any enquiry, however general, which the officer is empowered to make for the purposes of administration. The explanation by a *karnam* of his *dowl* or other accounts or statements might be such a purpose. QUEEN-EMPRESS v SUBBANNA, **7 M. 197, F.B. = 1 Weir 90 = 1 Weir 891.** [*R.*, 6 Cr. L.J. 107 = 4 P.R. Cr. 1907 = 37 P.L.R. 1907 = 25 P.W.R. 1907 Cr., 11 Cr. L.J. 566 (567) = 8 Ind. Cas. 133 (134) = 8 M.L.T. 373.]

(3)—*Scope and intention of the Act.*—The intention of Act III of 1869 was to create a facility towards the settlement of matters connected with Revenue administration, and the facility created consisted in empowering Revenue officers to summon persons to give evidence, which may appear to be necessary for the investigation of any matter in which they are authorised to hold an inquiry. Having regard to the rule of construction that, when an Act gives a special power, the power must be limited to the purpose for which it is conferred, the power conferred on Revenue officers must be confined to purposes connected with the Revenue or general administration. QUEEN-EMPRESS v. VARATHAPPA CHETTI, **12 M. 297 = 1 Weir 98.** [*R.*, 7 Cr.L.J. 319 = 4 N.L.R. 18.]

(4)—*Departmental enquiry into conduct of Tahsildar—Power to issue summons to witnesses.*—Where, on a complaint having been made to the Government against a Tahsildar of extortion from ryots, while engaged in collecting public revenue, the Government called upon the Collector to submit a report, and the Collector deputed a Sub-Collector to hold an enquiry, *held*, that the conduct of the Tahsildar

6.—Madras Acts—continued.

Act III of 1869 (Revenue Summonses)—*contd.*

was a matter on which a Collector was authorised to hold an enquiry in virtue of the power conferred on him by Reg. IX of 1822 and the inquiry would come under the terms of Act III of 1869. *Held*, also, that the Collector was authorised to depute the enquiry to the Sub-Collector and the Sub-Collector was competent to issue summonses for the attendance of persons whose evidence may appear to him necessary for investigation SRINIVASA IYENGAR v. QUEEN, **4 M. 393 = 1 Weir 76 = 1 Weir 891.**

(5)—*See* CONTEMPT OF COURT, 1 Weir 90 = 5 M.H.C. App. 27 ; 7 M.H.C. App. 11.

(6)—*See* PENAL CODE, SS. 173, 174, 1 Weir 96.

(7)—*See* PENAL CODE, S. 174, 1 Weir 93, 1 Weir 94, 1 Weir 95, 1 Weir 96, 1 Weir 97, 12 M. 297 = 1 Weir 98.

(8)—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC , 24 M. 121 = 2 Weir 170.

(9)—*S.* 1—*Power of Tahsildar to issue summons.*—Madras Act III of 1869 does not authorise a Tahsildar to issue a summons to any person to appear before any other person than himself. HIGH COURT PROCEEDINGS, 21ST AUGUST, 1872, No. 1559, **1 Weir 890 = 7 M.H. C. App. 10.**

(10)—*S.* 1—*Power of Tahsildar to issue summons.*—There is no other provision of law, except Madras Act III of 1869, which authorises a Tahsildar to issue a legal summons, disobedience to which would constitute an offence. HIGH COURT PROCEEDINGS, 4TH NOVEMBER 1872, No. 1853, **1 Weir 890 = 7 M.H.C. App. 11.**

(11)—*S.* 1—*Tahsildar's power to issue summons.*—Where a Tahsildar issued a notice calling upon a *karnam* to appear before him on a certain day for preparing Permanent Registers, *held*, that the disobedience to the notice was not punishable under the Penal Code, as the Tahsildar was not conducting an enquiry under Act III of 1869. *In re* RAMKRISHNIAH, **1 Weir 891.**

(12)—*S.* 1—*Power of Tahsildar to issue summons* —Where a Tahsildar, under Act III of 1869, summoned the *shrotriemdars* of a village to appear before him on a certain date to consider whom they proposed to appoint *karnam* of the village, *held* that the Tahsildar had no power to issue summonses for that purpose under Act III of 1869 and that, therefore, a disobedience of the summons was not an offence. *In re* VENKATASESHIAH. **1 Weir 892.**

(13)—S. 1—*See* PENAL CODE, S. 174, 1 Weir 95, 1 Weir 96, 8 M.L.T. 373.

(14)—*S.* 2—*Penal Code, s.* 174—*Defective summons, disobedience of.*—Where a summons has not been drawn up in conformity with s. 2, Act III of 1869, and the place where a person is required to attend is not stated therein, a conviction for the disobedience of such summons is bad. *In re* NARAYANA REDDI, **1 Weir 100.**

(15)—S. 2—*See* PENAL CODE, S. 174, 1 Weir 97, 1 Weir 100.

(16)—*Ss.* 2 *and* 3—*Proper service of summons —Penal Code, s.* 174.—The summons under Madras Act III of 1869 should be left with the person summoned. It is not sufficient to merely show it to him and to take it back. Therefore, a person disobeying such summons is not liable to be punished under s. 174, Penal Code. *In re* KUPPAN, **11 M. 137 = 1 Weir 100 = 1 Weir 891** [*R.*, 13 Cr. L.J. 245 = 14 Ind. Cas. 597 = 11 M.L.T. 405 = 1912, M.W.N. 528]

(17)—*S.* 3—*Summons—Refusal to accept service—Copy not thrown in presence of accused —No personal service—No offence.*—Where the accused refused to accept service of summons and where a copy of the summons which was in duplicate was not even thrown down in his presence. *Held*, that the service did not amount to personal service and that the accused cannot be convicted of the offence of disobedience of summons. Act III of 1869, s. 3, requires personal service, but does not say what amounts to personal service. *In re* GURUSAMI ALAMBIRAM, **11 M.L.T. 405 = 14 Ind. Cas. 597 = 13 Cr. L.J. 245 = 1912, M.W.N. 528.** (11 M. 137, *R.*)

(18)—S. 3—*See* No. 16, *supra.*

Act VIII of 1869 (Madras Inams).

SHORT TITLE GIVEN, ACT XI OF 1901.

See MAD. ACT III OF 1865, 7 M.H C. App. 8.

Act III of 1871 (Towns Improvement).

REP., MAD. ACT IV OF 1884, S 6.

(1)—*Ss.* 27, 61 *and* 62—*Power of Vice-President to revise profession tax—Imposition of profession-tax—Insufficiency of notice, whether amounts to an answer to a charge under s.* 62.—Under s. 27 of the Act, the Vice-President, in the absence of the President, can revise the list of tax-payers and act for the Commissioners in an emergency. Where the Vice-President revised the assessment list and included the name of the accused in that list without any emergency, *held*, that the maxim, *quod fieri non debut factum valet* applied to such a case, and the person charged cannot rely on the insufficiency of the notice of assessment as an answer to a charge under s. 62. MUNICIPAL COMMISSIONERS OF MANGALORE v. DAVIES, J.A. **7 M. 65.**

(2)—*Ss.* 58 *and* 62—*Liability to profession tax—Nature of.*—A person, who commences the practice of a profession or the exercise of a calling in a Municipality, after the commencement of the official year, may be liable to pay the tax for that year. The payment of such

6.—Madras Acts—continued.

Act III of 1871 (Towns Improvement)—*ctd.*

tax cannot be enforced, unless the person charged therewith has, for the space of two months in any one official year, exercised his calling in the town, nor is a half-yearly instalment to be recovered in one Municipality from any person who, in another Municipality, has paid the instalment for the same half-year, unless he has exercised the calling in respect of which he is taxed within the same half-year in both Municipalities; nor can the obligation be enforced against a person who has not received a notice of assessment. The duty of paying profession-tax is independent of the obligations of registration and of taking out a certificate of such registration. VICE-PRESIDENT OF MUNICIPAL COMMISSION, CUDDALORE v. J. H. NELSON, **3 M. 129.**

(3)—*S.* 61—*Interpretation of section.*—The section must be given a wider construction and the Municipal Councillors have power to add new names of persons not in the town at the beginning of the year, and assess profession tax on them. VICE-PRESIDENT OF MUNICIPAL COMMISSION, CUDDALORE v. J. H. NELSON, **3 M. 129.**

(4)—S. 61—*See* No. 1, *supra.*

(5)—*S.* 62—*Scope of the section—Trading companies, how taxed.*—The word "person" in s. 62 must be construed to include any company or association or body of persons, whether incorporated or not, where such construction is not repugnant to the context. The schedule contemplates that the incidence of the tax on shop-keepers will be governed by the gross rental of the shop in which the business is carried on; and it was not intended that each person should pay a license-tax on the full gross rental of the shop. Trading companies are liable to pay the tax on trades; but it is not every member of the company, but the partnership, that is taxed. MUNICIPAL COMMISSIONER OF NEGAPATAM v. SADAYA PILLAI, **7 M. 74.**

(6)—*S.* 62—*Washerman, whether an artizan.*—A washerman is not an artizan within the meaning of Madras Act III of 1871, and so the conviction of the accused (a washerman by calling) under s. 62 was annulled. HIGH COURT PROCEEDINGS, 11TH DECEMBER 1876, *Ex parte* POONEN, **1 M. 174 = 1 Weir 726.**

(7)—S. 62—*See* Nos. 1, 2, *supra.*

(8)—*Ss.* 62, 109—*Non-payment of profession-tax—Prosecution when to be instituted.*—Where a person was charged under s. 62 of Madras Act III of 1871 for having exercised his profession for more than two months in a certain official year without paying the tax, but the Magistrate dismissed the charge on the ground that the prosecution was not instituted till more than 5 months after the last payment on account of the tax which became payable, and was, therefore, barred under s. 169, *held*, that the offence was a continuing offence, and that it was immaterial at what part of the year it was first completed, and that a complaint was within time, if laid within three months after the close of the official year; or, when the accused had before the end of the official year ceased to exercise his profession, within three months from the time at which he so ceased to exercise it. OOTACAMUND MUNICIPALITY v. O'SHAUGHNESSY, **9 M. 38.**

(9)—*Ss.* 63 to 72—*License for horses—Transfer of.*—*Held* by Turner, C.J. and Hutchins, J., (Brandt, J., *dissenting*):—The Act requires every particular vehicle or animal, used or kept for more than 30 days in the half-year, to be paid for; a person becoming possessed of an unlicensed horse within the half-year, is not at liberty to transfer to it a license taken out for another which has died or been sold. MUNICIPAL COMMISSIONER OF MANNARGUDI v. NALLAPA, **8 M. 327.**

(10)—Ss. 64 to 72—*See* No. 9, *supra.*

(11)—S. 109—*See* No. 8, *supra.*

(12)—*Ss.* 127, 129—*Publication of bye law with a penal clause by Municipal Commissioners—Bye-laws requiring license.*—A mere publication of a bye-law with a penal clause at the end, which has not been passed by the Municipal Commissioners or approved by the Government as applicable to the bye-law in question, though it was so passed and approved in reference to other bye-laws, cannot avail to legalize the infliction of the penalty. The bye-laws requiring licenses in cases in which the Act, by specifying the cases in which they should be required has implicitly declared that they shall not be required, are in violation of the Act. HIGH COURT PROCEEDINGS, 17TH FEB. 1875, **8 M.H.C. App. 3.**

(13)—S. 129—*See* No. 12, *supra.*

(14)—*S.* 148 (*s.* 179, *Madras Act* IV *of* 1884)—*Re-thatching a shop—Renewal.*—A re-thatching of a shop is a renewal of the shop within the meaning of s. 148, Act III of 1871. CRIMINAL REVISION CASE, NO. 470 OF 1882, **1 Weir 732.**

(15)—*S.* 154—*Scope of the section—Crim. Pro. Code* (1861), *ss.* 43, 66 *and* 68.— S. 154 of Madras Act III of 1871 does not apply to omissions to take out licenses. It applies to the breaches of the Act which in a policeman's view are offences, and regarding which, if committed within his view, one of two courses is open to him, *viz.*, to arrest without warrant, or to lay an information before a Magistrate and apply for a summons or warrant. HIGH COURT PROCEEDINGS, 29TH DECEMBER 1871, **6 M.H.C. App. 49.**

(16)—*Cl.* (4), *sch.* (*b*)—"*Pleader and practising Vakil,*" *whether includes private practitioner in Magistrate's Court.*—The term "pleader and practising Vakil" used in cl. (4), sch. (*b*) of the Towns Improvement Act includes also the case of a person who, not having a sannad from a District or High Court, nor

6.—Madras Acts—continued.

Act III of 1871 (Towns Improvement)—*cld.*

coming under the definition of "pleader" as used in s. 186, Crim. Pro. Code, defends prisoners in the Courts of the Magistrate within the Municipal limits. MUNICIPALITY OF PALAMCOTTAH v. ANNASAMI MUDALI, **6 M. 100=7 Ind. Jur. 78.**

(17)—*Sch.* (c)—*Term "horse," whether includes ponies.*—The sch. (*c*) of Act III of 1871 is a part of the Act. The word "horse" includes pony, except when the articles of schedule (*c*), by reference to the number of hands, exclude the application of "horse" to pony. A four-wheeled carriage on springs drawn by one pony under 13 hands is not liable to be taxed under the Act. PRESIDENT OF THE MUNICIPAL COMMISSION, VIZAGAPATAM v. WALKER, G.L., **5 M. 269.**

Act IV of 1871 (Local Funds).

[REP., MAD. ACT V OF 1884, S. 4].

(1)—*Ss.* 62, 63, 64 *and* 68 —*Tolls where leviable—Carts entering circle by public road, where no tolls are erected—Liability to pay toll.*—A high way toll can only be levied at a toll-gate or toll station. Where a cart uses a road, whether old or new, available to the public and on which there is no toll-station, and gets to the road within the circle, then, in the absence of a toll station at or near the point where it enters the road, there is no power to levy the toll and the cart is not liable to be seized. *Quære.*—Whether tolls are not leviable on a cart approaching a toll-station, and making a *detour* to evade the payment of the toll otherwise than by a road available to the public, and entering the road within the circle at a point beyond the station within the sight of the toll-contractor. GOVINDARAJULU v. LAKSHUMAN, **6 M. 37=1 Weir 797=7 Ind. Jur. 15.**

(2)—S. 63—*See* No. 1, *supra.*

(3)—S. 64—*See* No. 1, *supra.*

(4)—S. 68—*See* No. 1, *supra.*

Act VI of 1871 (Salt Excise Act, Madras).

[REP., MAD. ACT IV OF 1889].

See also, MAD. ACT I OF 1882.

" " MAD. ACT IV OF 1889.

(1)—*See* MAD. REG. I OF 1805, S. 18, 1 M. 278, 3 M. 17, **F.B.**

(2)—*S.* 15 (*s.* 74 *of Act* IV *of* 1889)—*Manufacture of inferior substitute for salt.*—The manufacture of an inferior substitute for salt, such as brine, is not an offence within the provisions of s. 15, Act VI of 1871. HIGH COURT PROCEEDINGS, 19TH JULY 1879, No. 943, **1 Weir 895.**

6.—Madras Acts—continued.

Act III of 1878 (License).

[REP., ACT II OF 1886].

(1)—*Ss.* 14 *and* 15 (*Income-Tax Act,* II *of* 1886. *ss.* 25 *and* 28)—*Objections to assessment of income-tax—False statements—Penal Code, s.* 193.—In determining objections taken, under s. 14 of Act III of 1878, to the assessment of income-tax, the Collector has the same power as a Civil Court to enforce the attendance of, and to examine, witnesses on oath or affirmation, in order to ascertain the correctness of the fact alleged by the petitioner. If a false statement is made during such enquiry, the maker of it is liable to be prosecuted for an offence under s. 193. *In re* AIYAVAIYAN *alias* CHIDAMBARA AYAN, **1 Weir 782.**

(2)—S. 15—*See* No. 1, *supra.*

Act V of 1878 (City of Madras Municipality).

[REP., MAD. ACT I OF 1884.]

See MAD. ACT I OF 1884.

(1)—*S.* 71, *cls.* XI *and* XV—*Performance of music in a private place with the object of collecting crowd—Obstruction of street.*—On construction of cl. XI of s. 71, it cannot have been the intention of the Legislature that the person causing the obstruction should actually be on or in the street at the time of the alleged obstruction. The words of the clause are very wide, *viz.*, "whoever in any way wilfully obstructs or causes obstruction. etc," and it is clear that it was the intention of the Legislature to confer very extensive powers on the City Police for the control and regulation of street traffic. A person or body of persons, although not actually in the street, or on a piece of ground or in a house immediately abutting on or adjoining a street, has as much power of obstructing the traffic by collecting a crowd as if they were actually on the street. Where members of a Salvation Army played music and sang on a spot immediately adjoining a street and thereby collected a large crowd, which obstructed the free passage of the public road, *held*, that the persons were guilty under cl. XI of s. 71. but not under cl. XV of that section. QUEEN-EMPRESS v. SUKHA SINGH, **14 M. 223=1 Weir 848.**

(2)—*S.* 103—*Act* I *of* 1884, *s.* 105—*Profession-tax, nature of.*—Although the profession-tax, under s. 103 of Act V of 1878, and under s. 105 of Act I of 1884, is described as yearly tax, the tax-payer incurs only a half-yearly liability. If he does not carry on his profession during the first half-year, he is liable to pay the tax only for the second half-year. If, having carried on his profession during the first half-year, he ceases to do so, he cannot be charged with the tax for the second half year. WILSON v. THE PRESIDENT, MUNICIPAL COMMISSION, MADRAS, **8 M. 429.**

(3)—*S* 119—*Place of public worship.*—A *mattom*, used in part or whole for purposes other than those of public worship, is liable to be

6.—Madras Acts—continued.

Act V of 1878 (City of Madras Municipality) —*concluded.*

taxed under s. 119 of Madras Act V of 1878, and the feeding of Brahmans, although it may be meritorious, is not what the Act contemplates as public worship. THAMBU CHETTI SUBBARAYA CHETTI v. A. T. ARUNDEL, **6 M. 287.**

(4)—*Ss.* 120 *and* 123—*Annual value for purposes of assessment—Power to impose a fixed annual tax.*— S. 123, defining annual value for the purposes of assessment under the Act, has no reference to the alternative given to the Municipal Commissioners by s. 120, by which the President is allowed a discretion, in lieu of the tax, to levy on lands unappropriated to buildings or occupied by native huts a fixed annual tax not exceeding Rs. 4 per ground, irrespectively of the annual value calculated under s. 123. NAWAB AHMED UN-NISSA BEGAM SAHIBA v. A. T. ARUNDEL, PRESIDENT OF THE MUNICIPAL COMMISSION, MADRAS, **7 M. 63.**

(5)—S. 123—*See* No. 4, *supra.*

(6)—*Sch. A, cl.* 1—*Act* 1 *of* 1884, *Sch. A, cl.* 1—*Profession-tax levied under Act* V *of* 1878 —*Increase of tax under Act* I *of* 1884 *for the second half-year—Validity.*—Where a person assessed at the beginning of the year, under Act V of 1878, under cl. 1, sch A, with the sum of Rs. 150 for the whole year, had paid a moiety thereof, *viz.*, Rs. 75, for the first half of the year, and he was assessed at Rs. 125 for the second half-year under Act I of 1884, which had come into force by that time and by which the tax had been raised from Rs. 150 to Rs. 250 under cl. 1, sch. A, *held* that, the assessment was authorized by law. WILSON v. THE PRESIDENT OF THE MUNICIPAL COMMISSION, MADRAS, **8 M. 429.**

Act VIII of 1878 (Coffee-stealing Prevention).

[AMENDED (IN MADRAS PRESIDENCY), MAD. ACT II OF 1900.]

—S. 10—*Scope of the section.*—S. 10, Act VIII of 1878, does not refer to the owner of coffee removed by him from his own estate, nor his authorized agent. *In re* THUTTAN, **1 Weir 719.**

Act V of 1879 (Abkari Laws Amendment).

[REP. (LOCALLY), MAD. ACT I OF 1886.]

(1)—S. 23 (*a*)—*See* MAD. ACT III OF 1864, S. 22, 4 M. 240.

(2)—S 26 (*b*)—*See* MAD. ACT III OF 1864, S. 25, 4 M. 231.

Act I of 1882 (Salt Laws Amendment).

[REP., MAD. ACT IV OF 1889.]

See MAD. ACT XVII OF 1840.

„ MAD. ACT VI OF 1871.

„ MAD. ACT IV OF 1889.

6.—Madras Acts—continued.

Act I of 1882 (Salt Laws Amendment)—*concld.*

(1)—*Ss.* 2 *and* 26—*Possession of salt earth.*— The Act distinguishes between natural saline deposits and efflorescence and earth impregnated with salt, and it confines the term "earth salt," which it includes under the term "salt," to the former. Therefore, the possession of earth impregnated with salt, which is not a saline efflorescence, is no offence under s. 26. QUEEN v. THUNJI, **7 M. 163.**

(2) *Ss.* 13 *and* 22 (*ss.* 59 *and* 58 *of Act* IV *of* 1889)—*Scope of s.* 13.—The proviso to s. 13 provides that no Inspector or Assistant Inspector shall summon any person to appear at a greater distance than 20 miles, and no Sub-Inspector at a greater distance than 5 miles, from the usual place of residence of such persons. Having regard to the context of the section, and to the succeeding sections, and also to the terms of s. 22, there can be no doubt that the proviso to s. 13 cannot be imported into s. 22. Therefore, s. 13 applies only to persons required to attend as witnesses, and not to persons accused or suspected of having committed offences under s. 22. *In re* ACTING GOVERNMENT PLEADER, **1 Weir 893.**

(3)—S. 22—*See* No. 2, *supra.*

(4)—S. 26 – *See* No. 1, *supra.*

(5)—*Ss.* 26 *and* 27—*Importation of salt from foreign state in contravention of Salt Laws.*— The Act does not in express terms prohibit the importation of salt from Native States by any other than prescribed route, but it declares it to be an offence, under s. 26, cl. 3 to import salt by any route not legally sanctioned for that purpose and so implies a prohibition against such importation generally. The Act, moreover, empowers the Government, *inter alia* to frame rules "for regulating the export and import of salt by sea and land," and so impliedly gives to the Government power to prescribe rules for the import of salt by land from foreign territories. But, in the absence of such rules, the implied prohibition contained in s. 27, cl. (*e*) nevertheless takes effect. QUEEN-EMPRESS v. PODIATHAL, **8 M. 342.**

(6)—S. 27—*See* No. 5, *supra.*

(7)—*S.* 74 (*d*)—*Possession of salt water.*— The mere possession of salt water is not an offence under s. 74 (*d*) of the Salt Act. *In re* KATHAPERUMAL PADAYACHI, **1 Weir 896.**

Act V of 1882 (Forest).

[CONFIRMED, ACT XXI OF 1882.]

(1)—*Ss.* 2, 3, 4, 6, 8 *and* 9—*Powers of Forest Settlement Officer to enter upon and demarcate land.*—The power conferred upon a Forest Settlement Officer to enter upon any land to survey, demarcate and make a map of the same, is limited to the purpose of the inquiry directed by s. 8, *i e.*, as to "claims made under s. 6," claims namely, to "any right referred to in

6.—*Madras Acts*—continued.

Act V of 1882 (Forest)—*continued.*

s. 4 ;" and the rights " referred, to in s. 4 " are rights claimed or alleged to exist on, or over, any land comprised within the limits specified in the notification published under that section. QUEEN-EMPRESS v. JANGAM REDDI, **14 M. 247 = 1 Weir 776.**

(2)—*Ss.* 2, 21 (*f*)—*Stems of trees, if forest produce.*—The stems of trees are forest produce within the meaning of s. 2, Madras Act V of 1882, and, therefore, the act of removing them falls under cl. (*f*), s. 21. *In re* SUBBADU, **1 Weir 757.**

(3)—*Ss.* 2 *and* 43—*Logs of wood permanently fastened to building, whether " timber."*—Logs of wood, when they have become part of a house and permanently fastened to a building attached to the earth, cease to be timber, within the meaning of s. 2 of the Forest Act, and are, therefore, not liable to attachment under s. 43 of that Act. QUEEN-EMPRESS v. KETTIGADU, **9 M. 373 = 1 Weir 757.**

(4)—*Ss.* 2 *and* 50 (*d*)—*Applicability to shrotriem lands.*—The acts made punishable under cl. (*d*) of s. 50 are expressly limited to boundary marks of any forest lands, " to which any of the provisions of the Forest Act apply." In the definition of " land at the disposal of Government" in s. 2, Shrotriemdars are expressly mentioned as landlords, whose land is excluded from the definition. QUEEN-EMPRESS v. JANGAM REDDI, **14 M. 247 = 1 Weir 776.**

(5)—S. 3—*See* No. 1, *supra.*

(6)—S. 4—*See* No. 1, *supra.*

(7)—*Ss.* 4, 7, 16 *and* 21—*Clearing of reserved forest by claimant during pendency of appeal.*—A person put forward a claim to a portion of a forest notified for reservation, but the claim was rejected by the Forest Settlement Officer. On appeal, the District Judge reversed the Forest Settlement Officer's decision. The High Court set aside the order, and directed a re-hearing of the appeal. Pending the re-hearing of the appeal, the accused, the lessee of the claimant, trespassed on the forest and felled trees. The Sub-Magistrate acquitted the accused, on the ground that no order in writing was served on the accused by the Forest Department, prohibiting him from felling trees during the pendency of the second hearing of the appeal. *Held*, that the acquittal was wrong, inasmuch as s. 7 renders illegal any fresh clearing between the date of notification under s. 4 and the date of notification under s. 16. QUEEN-EMPRESS v. NARASIMMAYYA, **12 M. 338 = 1 Weir 760.**

(8)—*Ss.* 4 *and* 21—*Absence of notification as required by s. 4, effect of.*—Where no notification has been duly issued, as required by s. 4 of the Act, notifying that it is intended to constitute certain tracts as reserved forests, a person cutting wood, in such a tract, is not guilty under s. 21 of the Act ; but, it is open to prosecute him under the Penal Code, if it is thought desirable. *In re* KUNNIYA GOUNDEN, **1 Weir 759 = 2 Weir 456.**

(9)—*S.* 6—*Holder of a tree* patta, *if an occupier of land.*—The holder of a tree *patta* is a known occupier of land within the meaning of s. 6 of the Forest Act. REFERENCE UNDER S. 39 OF ACT V OF 1882, **12 M. 203 = 1 Weir 758 (F.B.).** [*F.*, 12 M. 226; *R.*, 21 M. 433, 36 M. 148 = 22 M.L.J. 201 = 10 M.L.T. 488 = 1911, 2 M.W.N. 532.]

(9-*a*)—S. 6—*See* No. 1, *supra.*

(10)—*Ss.* 6, 10, 16 *and* 21—*Owner of tree* patta—*Charge of trespass into reserved forest when could be made.*—S. 16, Act V of 1882, lays down that the Governor-in-Council may publish a notification declaring a forest to be reserved when certain events have occurred, and that such forest shall become reserved from the date specified in that notification. One of the events, which must have occurred before the Governor-in-Council can declare that a forest is reserved, is the disposal of all claims made by owners or occupiers of land. Where the holder of a *patta* of certain trees on such lands was convicted of the offence of trespass under s. 21 of that Act, *held*, that the conviction was wrong inasmuch as it was not shown that the claim of the accused, who was an owner or occupier of land, was disposed of prior to the Government notification making the forest reserved, nor was there any proof to show that he had not preferred his claim within the period required by law. QUEEN-EMPRESS v. RAMI REDDI, **12 M. 226 = 1 Weir 761.**

(11)—S. 7—*See* No. 7, *supra.*

(12)—S. 8—*See* No. 1, *supra.*

(13)—S. 9—*See* No. 1, *supra.*

(14)—S. 10—*See* No. 10, *supra.*

(15)—*S.* 16—*Private land wrongly included in the notification regarding proposed reserve but omitted in demarcation—Private party in possession with patta and paying assessment—Conviction for trespass, if legal.*—Where, under a notification published under s. 16 of the Madras Forest Act, certain land alleged to belong to the accused had been included in the tract proposed to be constituted a reserve forest, but the same had been excluded from the reserve at the time the latter was demarcated, and where the party alleging title continued in possession and enjoyment, a patta being issued to him and assesment received from him therefor, *held* that a conviction for trespass could not be sustained under the Forest Act. ALI MAHOMED MUKRI v. KING-EMPEROR, **2 L. W. 67 = 16 Cr. L.J. 53 = 26 Ind. Cas. 645.**

(15-*a*)—S. 16—*See* Nos. 7, 10, *supra.*

6.—Madras Acts—continued.

Act V of 1882 (Forest)—*continued.*

(16)—S. 21—Offence under—Applicability of s. 79, I P.C.—Belief of accused that he was justified in his act—Effect—*See* PENAL CODE, SS. 79, 40, 16 M.L.T. 124=15 Cr.L.J. 171=22 Ind. Cas. 747.

(17)—*S. 21 (a)—Reserved forest-land—Cultivating such land without removal of trees or shrubs, whether an offence—"Clearing," meaning of.*—The word "clearing" in s. 21 (a) of the Madras Forest Act means something in the nature of the removal of trees or shrubs. The provision is a penal one and must be construed strictly. Where the accused admitted that they had cultivated a reserved forest-land, but maintained that it had been cultivated previously, and there was no evidence on the part of the prosecution that the accused had removed any trees or shrubs from the land, *held*, that the accused had not committed any act prohibited within the meaning of s. 21. EMPEROR v. VENKANNA PRABHU, 26 M. 470=**1 Weir 760.**

(18)—*S. 21 (d)—Offence under the clause, what constitutes.*—The act punishable under s. 21 (d) is that of a person trespassing, pasturing cattle or permitting cattle to trespass in a reserved forest. A person cannot be said to permit cattle to trespass into a reserved forest, unless he knows that such trespass is likely to be committed, and neglects, with such knowledge, to take measures to prevent it. The essence of the offence consists either in a misfeasance, as in the case of one wilfully pasturing cattle, or in a non-feasance, as in his neglecting to take proper measures to prevent the cattle trespassing in circumstances from which it may by reasonably inferred that such trespass might have been foreseen or known as the probable consequence of his negligence. *In re* UTHAU-LEVARA VATHIAR, **1 Weir 762.** [*F.*, 1 Weir. 762.]

(19)—*S. 21 (d)—Conviction under, when can be sustained.*—To sustain a conviction under s. 21 (d) of the Forest Act, there must be some evidence either that the defendant pastured the cattle or permitted them to trespass on the reserved forest. Where the prosecution merely proves that the defendant's cattle were found in the reserve, such cattle may be impounded, but the owner cannot be held liable unless some overt act of his be proved. QUEEN-EMPRESS v. KRISTNAYYAN, 15 M. 156=**1 Weir 763.**

(20)—*S. 21 (d)—Conviction under the clause, when could be made.*—Unless the circumstances were such that a trespass complained of might have been foreseen, or it might have been known that the trespass complained of would probably be committed, a conviction under s. 21 (d) could not take place. Where a trespass could not be committed unless the cattle swam a river, nearly one-fourth of a mile wide, *held*. that the owners of the cattle could not be convicted under s. 21 (d for trespass by the cattle. *In re* PANDU SHAMBOGUE, **1 Weir 762.**

(21)—*S. 21 (b)—Permitting cattle trespass.*—The mere fact that, during the absence of the person in charge of cattle from the locality where the cattle were grazing, the cattle strayed into a reserved forest is not sufficient to support a conviction under s. 21 of the Forest Act. *In re* UGRADU, **1 Weir 764.**

(22)—*S. 21 (f)—Quarrying without permit—Absence of dishonest motive—Nominal fine—Proper sentence.*—Where the accused committed an offence under s. 21 (*f*), Madras Forest Act, by quarrying in a reserved forest without a permit, under the impression that what he did was quite legal and proper, and without any dishonest or bad motive, *held*, that nothing more than a nominal fine was called for. *In re* PENCHUI REDDI KOTTUR, **9 M.L.T. 216=8 Ind. Cas. 567=12 Cr.L J. 99.** [*F.*, 15 Cr.L.J. 171=15 M.L.T. 124=22 Ind. Cas. 747.]

(23)—S. 21—*See* NOS. 2, 7, 8, 10, *supra.*

(24)—*S. 21 (h)—Preparation for killing game.*—Where the accused entered a reserved forest, and were prepared for killing game therein without holding a license, *held*, that they were punishable, under s. 21 (*h*) for the offence of hunting, inasmuch as they had gone into the forest in pursuit of game. PUBLIC PROSECUTOR v. GURUNADA GOUNDAN, **1 Weir 764.**

(25)—*Ss. 21 (d) and 54—Levy of fines under s. 12, Cattle Trespass Act whether a bar to prosecution under s. 21 (d).*—The levy of fines, under s. 12 of the Cattle Trespass Act, is not a bar to a prosecution under s. 21 (*d*) of the Madras Act V of 1882, inasmuch as the fines under the former Act are not imposed by way of punishment for an offence, of which the owner of the cattle that were impounded was convicted. PUBLIC PROSECUTOR v. MALAGA KONAN, **1 Weir 763.**

(26)—*S. 26—Rules framed under s. 26—Object of the rules.*—The rules framed under s. 26 of the Act prohibit the sale of the produce to strangers. The term "produce" can hardly mean and include an article manufactured out of timber. A man who cut down a jungle tree within *kumaki* land, and fashioned it into a boat and attempted to sell the same, could not be convicted under the rules framed under s. 26 of the Act. *In re* KOTI, **1 Weir 766.**

(27)—*S. 26—Cutting wood in Government forests—Liability.*—S. 26 is an enabling section and does not in itself make any act mentioned by it penal. It is competent to Government to make a rule prohibiting the cutting of trees on land at the disposal of the Government and to affix a penalty to the breach of such rule. If such a rule is made, it must be shown that the land was at the disposal of the Government, in order to make a person liable under that rule. *In re* RUKMAPPA, **1 Weir 768.**

(28)—*S. 26—Bat's dung, if natural—Produce of land and trees.*—Bat's dung is not the

6.—*Madras Acts*—continued.

Act V of 1882 (Forest)—*continued.*

natural produce of land or trees. *In re* JAMAL SAHEB, **1 Weir 769.**

(29)—*S. 26—Kindling fire in reserved forests —Penal Code*, s. 289.—Rule 8, framed under s. 26, Act V of 1882, refers to kindling fires within the areas placed under fire protection. Where the kindling of fires occurs at a place beyond that area, the accused cannot be convicted under the Forest Rules, nor under s. 285, Penal Code, as that section refers to fires likely to cause injury to person, not to such as are only dangerous to property. *In re* CHINNA RANGAPATHY, **1 Weir 769.**

(30)—*S. 26—Rule* XII *of the Forest Rules—Purchase of forest produce from another—Penal Code, s.* 411.—Where the accused received a few seers of wild mace from a Pariah female in payment of a debt, and disposed of the same at the forest depot, *held*, that he was not guilty of collecting or selling or using forest produce in breach of Rule XII of the Rules framed under s. 26 of the Forest Act. *Per Shephard, J.*—The presumption that forest produce is the property of the Government does not import the presumption of knowledge on the part of the person found to be selling or buying it. It must be proved that the person buying knew that he was dealing with the produce of Government forest. *In re* ISMALI BEHARY, **1 Weir 769.**

(31)—*S. 26—Felling trees without permit.*—Where a person was charged with offences against the rules made under s. 26 of the Madras Forest Act, for having felled trees in Government land without permit, *held*, that the prosecution was bound to prove that the land in question was land at the disposal of the Government. CRIMINAL REVISION CASE NO. 59 OF 1901, **1 Weir 771.**

(32)—*S. 26—Rr.* 3 *and* 9 *framed under the section—Land included in patta granted by Government.*—In order to constitute an offence under r. 9, the alleged unlawful act must have been committed either on "reserved or unreserved" land. Unreserved land is defined, in r. 3, as land at the disposal of the Government which is not set apart as "reserved land" or otherwise specially assigned by Government. Therefore, land included in the *kumaki* pattah granted to the Moopars (a jungle tribe in Wynad) was held to be neither land at the disposal of the Government, nor land not "specially assigned by Government" within the meaning of r. 3 of the Rules framed under s. 26 of Madras Act V of 1882. Therefore, a person who cut trees on such land without a permit would not be guilty of having acted in contravention of r. 9. *In re* ARUMUGHA KONAR, **1 Weir 772.**

(33)—*S 26—Canara Forest rr.* 7 & 12—*Ryot cutting classified trees to be used for purposes of trade.*—It would be illegal for a ryot, without having a permit, to sell wood cut in his *kumaki* land to another person as fuel. But, so long as he converts the wood to his own use, he is protected by r. 7 (2) of the Canara Forest Rules. Therefore, a ryot, who cuts classified trees in *kumaki* land to be used as firewood for his still is protected by r. 7. QUEEN-EMPRESS v. SHEREGAR, **13 M. 21 = 1 Weir 767.**

(34)—*S.* 26. *rr.* 7 *and* 12—*Removal of leaves from classified trees.*—The mere removal of leaves from classified trees on unreserved land is not alone sufficient to constitute a breach of rr. 7 and 12, when read together. QUEEN-EMPRESS v. SIVANNA, **11 M. 139 = 1 Weir 765.**

(35)—Ss. 26 and 35—*See* PENAL CODE. S. 188, 1 Weir 140.

(36)—*Ss.* 26, 53, 55—*Offence compounded—Whether further proceedings can be taken against accused.*—The accused in this case was charged with an offence under s. 26 of the Forest Act. This offence being compoundable, he paid a certain sum as compensation for the Forest authorities. On such payment, s. 53 of the Act provided that no further proceedings shall be taken against such person. *Held*, therefore, that on such payment the proceedings in progress must lapse and the Magistrate had no jurisdiction to convict the accused. *Re* NARAYANA PADAYACHI, **37 M. 280 = 15 Cr. L.J. 680 = 25 Ind. Cas. 1008.**

(37)—*Ss.* 26 *and* 56—*Importing forest produce —Burden of proof.*—Where a person is charged with having imported, without permit, forest produce from a certain locality, the prosecution should prove that the produce was imported from that locality. S. 56 of the Act does not provide for any such presumption. *In re* JALDU SREEMANNARAYANA, **1 Weir 773.**

(38)—*S.* 26, *rr.* 8 *and* 9—*Charge under r.* 8 —*Omission to state that the place from where accused cut tree was "reserved forest"*—*Material defect.*—A charge framed under r. 8, s. 26 of the Madras Forest Act must clearly state that the place from where the accused cut a tree was a "reserved forest." The omission to state this is a material defect and vitiates the trial. GOVINDA REDDI v. EMPEROR. **13 Cr. L.J. 504 = 15 Ind. Cas. 648 = (1912) M.W.N. 1129.**

(38-*a*)—S. 35—*See* No. 35, *supra.*

(39)—*Ss.* 35, 36—*Rr.* 2, 3, 6 *and* 7—*Illicit possession of sandalwood.*—Where the accused was charged by the Forest Department with illicit possession and removal of some billets of sandalwood, punishable under rr. 2, 3, 6 and 7 of Rules framed under ss. 35 and 36 of the Act, and the Magistrate acquitted the accused on the ground that he had not obtained possession of the sandalwood by illicit or clandestine means, *held*, that the Magistrate should have considered whether the accused had committed a breach of r. 3, or 7 of the Rules under the Madras Forest Act. *In re* THANATHI CHETTY, **1 Weir 774.**

(40)—*Ss.* 35, 36—*Rr.* 2, 7 *and* 10 *of Rules by Local Government—Form* 2—*Cutting of*

6.—Madras Acts—continued.

Act V of 1882 (Forest)—*continued.*

tree—'Moving' meaning of—Whether moving in the act of cutting constitutes an offence under the Forest Act.—S. 35 of the Forest Act, in empowering Government to make rules as regards transit, and Form No. 2, speaking of a transport, do not contemplate the moving which is involved in the cutting of a tree, as comprised within the meaning of the word 'transit' or 'transport.' Under r. 2 of the Rules framed by the Government under the Forest Act, the word 'moving' has not the sense attached to it in the definition of 'theft' in the Penal Code. *In re* RANGASAMY AIYAR, **4 Ind. Cas. 405.**

(40-*a*)—S. 36—*See* Nos. 39, 40, *supra.*

(41)—S. 43—*See* No. 3, *supra.*

(42)—*Ss.* 43 *and* 44—*Confiscation of property by Government and disposal of property in favour of Government, when legal.*—A Magistrate has no power to order the confiscation of certain property, under s. 43, if the person charged is not convicted. But an order disposing of the property in favour of the Government, while the person charged is acquitted, would be valid under the last sentence of s. 44. *In re* RAMALINGAM MUDALI, **1 Weir 775.**

(43)—*Ss.* 43, 47—*Appeal from orders under s.* 43—*Crim. Pro. Code* (1882), *s.* 520.—An Appeal from an order under s. 43 of the Forest Act does not lie under s. 520, Crim. Pro. Code (1882), but lies only under s. 47 of the Forest Act. THE PUBLIC PROSECUTOR v. CHEYYAVARAM RAMI REDDI, **1 Weir 776.**

(44)—S. 44—*See* No. 42, *supra.*

(45)—*S.* 47—*Appeal under the section—Duty of Magistrate—Crim. Pro. Code* (1898), *s.* 520.—Where an appeal is preferred under s. 47 against an order of confiscation under s. 43, the appellate Magistrate should not refer the appellant to a Civil Court for redress. He should deal with the appellant's claim himself, and, following the direction in s. 520, Crim. Pro. Code, pass an order which would meet the justice of the case. *In re* MURUKURTY VENKAYYA, **1 Weir 776.**

(46)—S. 47—*See* No. 43, *supra.*

(47)—*S.* 50 — *Acts done in good faith in exercise of a valid right.*—S. 50 is inapplicable to a case in which any of the acts therein specified is done in good faith in the exercise of a valid right. QUEEN EMPRESS v. JANGAM REDDI, **14 M. 241 = 1 Weir 776.**

(48)—S. 50—*See* No. 4, *supra.*

(49)—S. 53—*See* No. 36, *supra.*

(50)—S. 54—*See* No. 25, *supra.*

(51)—S. 55—*See* No. 36, *supra.*

(52)—*S.* 56—*Scope of the section.*—S. 56 does not require a Magistrate to presume that forest land is the property of the Government. *In re* RUKMAPPA, **1 Weir 768.**

(53)—S. 56—*See* No. 37, *supra.*

6.—Madras Acts—continued.

Act V of 1882 (Forest)—*concluded.*

(54)—R. 8—*See* No. 38, *supra.*

(55)—R. 9—*See* No. 38, *supra.*

Act I of 1884 (City Municipality).

[REP. MAD. ACT III OF 1904].

(1)—*Ss.* 103 *and* 109—*Liability of members of firm to pay Municipal tax, nature of.*—A firm or a partnership is a person within the meaning of s. 103 The tax prescribed by s. 103 is a tax upon a profession or trade or calling and there can be but one tax, when several persons jointly carry on one trade or business. The partner of a firm is liable only to pay the tax payable by the whole firm. Each member of the firm carrying on one business should not be taxed as several distinct persons. Therefore, the assessment of one of the partners of a firm as agent of an absentee partner in his individual capacity as a member of the firm was held to be illegal. DAVIES v. PRESIDENT OF THE MADRAS MUNICIPAL COMMISSION, **14 M. 140.** [*Not F.*, 34 M. 130 = 11 Cr. L.J. 521 = 7 Ind. Cas. 743 = 20 M.L.J. 773 = 8 M.L.T. 305; *F.*, 23 M. 529.]

(2)—*Ss.* 103 *and* 192—*Power of Magistrates to hear appeal from assessment of taxes.*—Presidency Magistrates have jurisdiction under s. 192 to determine as well the question of the liability to be taxed as the question whether the person taxed is placed in the proper class on appeal against the decision of the President of the Municipality. DAVIES v. PRESIDENT OF THE MADRAS MUNICIPAL COMMISSION, **14 M. 140.** [*Not F.*, 34 M. 130 = 11 Cr. L.J. 521 = 7 Ind. Cas. 743 = 20 M.L.J. 773 = 8 M.L.T. 305; *F.*, 23 M. 529.]

(3)—*S.* 103, *Sch. A* (I) (*a and b*)—*Benefit Societies whether liable to be taxed.*—The term "benefit society" distinguishes it from a society of which the object is purely benevolent and charitable or the promotion of social intercourse and convivial enjoyment. Such society has the business of investment for interest resulting in gain and such business is a calling within the meaning of s. 103, and the fact that the gain is not personal, but that it redounds to the benefit of those, in whom the subscribers are interested, does not render it the less a calling or a business. A society established to provide by voluntary subscriptions of the members thereof, with or without the aid of donations, relief or maintenance, for the widows and legitimate children of subscribers is a "benefit society" and is taxable under sch. A, cl. I (*a*) of the Act. JENNINGS v. PRESIDENT, MUNICIPAL COMMISSION, MADRAS, **11 M. 253 = 11 Ind. Jur. 369.** [*R.*, 31 M. 403 = 18 M.L.J. 349 = 3 M.L.T. 400 = 9 Cr. L.J. 68.]

(4)—S. 109—*See* No. 1, *supra.*

(5)—*Ss.* 170, 174, 338 *and* 341—*Liability of Government to pay tax for importing timber.*—Where the Superintendent of the Government Gun Carriage Factory in the City of Madras

***6.—Madras Acts*—continued.**

Act I of 1884 (CityMunicipality)—*continued.*

caused certain timber to be brought into the city without obtaining a license and paying the fees prescribed by s 341 of Madras Act I of 1884, *held*, that the Government was liable to pay duty on the timber imported and that the exemption in favour of the Government under s. 338 from taking out license for storing wood would not apply also to s 341. Nor would s. 174 exempting Government property from payment of tolls, apply to s 341, as the fee leviable under the latter section would not amount to "tolls" within the meaning of s. 174, as the tolls referred to in that section were those tolls which were leviable under s 170 of the Act, such as specified in Sch. D. BELL v MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS, **25 M. 457=12 M.L.J. 208=1 Weir 800.**

(6)—S. 174—*See* No. 5, *supra.*

(7)—S. 192—*See* No. 2, *supra.*

(8)—*S. 307—Deposit of stable refuse in a dust-bin, whether an offence under the section.* —*Held*, by *Moore and O'Farrell, JJ.* (*Subrahmania Ayyar, C. J., dissenting*) :—A person, who deposits stable refuse in a Municipal dust-bin erected in a street cannot be convicted of an offence under the latter clause of s. 307 of Madras Act, I of 1884, inasmuch as the person who throws the refuse into a dust-bin cannot be considered to have deposited the refuse in the street within the meaning of s. 307, cl. 2. PERUMAL v. MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS, **23 M. 164=1 Weir 800.**

(8-*a*)—S. 338—*See* No. 5, *supra.*

(9)—*Ss. 338 and 341—Scope of s. 341—Government whether exempted from paying the tax.*—S. 341 is in no sense ancillary or dependent upon s. 338. It really imposes Octroi duties or Town duties on the importation of timber or firewood, the duty being regulated with reference to its weight. The primary object of s. 341 is the levy of import duty and that is entirely independent of s. 338. It is impossible, therefore, to connect s. 341 and s. 338 in such a way as to justify the engrafting on the former of the exemption in favour of the Government contained in the latter. BELL v. MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS, **25 M. 457=12 M.L.J. 208=1 Weir 800.**

(10)—*S. 341—Crim. Pro. Code* (1898), *s. 197 —Sanction to prosecute a public servant bringing timber without license into the City of Madras.*—The offence of bringing wood into the City of Madras without a license, as required by s. 341 of the City of Madras Municipal Act, is not an offence which could be committed by a public servant only, nor does it involve as one of its elements that it has been committed by a public servant. Therefore, no sanction is necessary for the prosecution of a public servant under s. 341 of the Municipal

***6.—Madras Acts*—continued.**

Act I of 1884 (City Municipality)—*concluded.*

Act. Where the Superintendent of the Gun Carriage Factory in Madras caused timber to be brought within the City of Madras without a license, as provided by s. 341 of Madras Act I of 1884, *held*, that no sanction, under s. 197, was necessary to prosecute him under s. 341, Act I of 1884. MUNICIPAL COMMISSIONERS, CITY OF MADRAS v. MAJOR BELL, **25 M. 15 =2 Weir 223.** [*R.*, 7 C.W.N 750=30 C. 927. 32 M. 255=3 Ind. Cas. 387=4 M.L.T. 373=9 Cr. L.J. 89.]

(11)—S. 341—*See* Nos. 5, 9, *supra.*

(12)—*Sch. A—Mutual Assurance Company —Liability to pay tax.*—In order to render a company liable to taxation under the Madras Municipality Act, it is not necessary that it must be a company of the character defined in the Madras Joint Stock Companies Act. A Company carrying on business, as a benefit society, if it carries on business for gain, is liable to taxation under the Act. In the case of such societies, the aggregate of the sum contributed by those associated for the common purpose, *e.g.*, in the case of industrial and provident societies, for the relief and maintenance during sickness and infirmity of members and their families, or in the case of assurance societies, *premia* paid by the insurers and the profits from the investment of such sums, would constitute the "capital" of the company under the Act. MADRAS EQUITABLE ASSURANCE COMPANY v. THE PRESIDENT. MUNICIPAL COMMISSION, MADRAS, **11 M. 238= 11 Ind. Jur. 373.** [*R.*, 31 M 408=18 M.L.J. 349=3 M.L.T. 400 =9 Cr. L. J. 68.]

(13)—Sch. A—*See* No. 3, *supra.*

(13-*a*)—*Sch. (b)—Bicycle, whether liable to be taxed.*—A bicycle is a vehicle with springs within the meaning of Madras Act I of 1884 and is, as such, liable to be taxed. WILSON v. MADRAS MUNICIPALITY, **19 M. 83=5 M.L.J. 293.**

Act IV of 1884 (District Municipalities).

[REP. IN PART, ACT IX OF 1888; ACT II OF 1901. REP. IN PART AND AMENDED, MAD ACT III OF 1897. AMENDED, MAD. ACT I OF 1899. SUPPLEMENTED AND REPEALED IN PART AND AMENDED IN HILL MUNICIPALITIES, MAD. ACT II OF 1907]

(1)—*Rules under—Crim. Pro. Code* (1898), *s. 195 — Proceedings of Collector according sanction for prosecution — Appeal.*— The Collector of a District, acting under the rules framed under the Madras District Municipalities Act, 1884, is not a "Court" within the meaning of s. 195, Crim. Pro. Code, and no appeal lies to the District Judge against an order passed by him under that section. SINGARAVELU MUDALIAR v. VARADARAJA MUDALIAR, **2 Ind. Cas. 426.**

(2)—*Order to vacate a stall in public market, effect of.*—An order to vacate a stall let for

6.—*Madras Acts*—continued.

Act IV of 1884 (District Municipalities)—*ctd.*

purposes of sale in a public market, clearly amounts to a direction not to sell from the date on which the stall is required to be vacated. MUNICIPAL CORPORATION OF MADURA v. SANDLAI KON, **2 M.L.J. 206.**

(3)—Bona fide *dispute as to ownership of land.*—Where there is a *bona fide* dispute as to the ownership of the land, the person claiming the land *bona fide* is entitled to put a sun-shade without the sanction of the Municipal Commissioners. *In re* SOWDRI BASALINGAPA, **1 Weir 732.**

(4)—*S.* 3—" *Building* "—*Addition of wing and tower to a building.*—A wing and a tower added to an existing building come within the definition of the term building in s. 3 of the Act. SVAYAMBU AIYAR v. MUNICIPAL COUNCIL OF NEGAPATAM, **1 M.L.J. 37.**

(5)—*Ss.* 3 *and* 60—*What are Municipalities—Exemption from payment of profession-tax.*—A certain person claimed exemption under s. 60 from payment of profession-tax to the Bellary Municipality on the ground that, during the half-year, he paid " profession-tax " to the Bellary Cantonment. *Held*, that the Bellary Cantonment, not having been declared a Municipality under cl. (14) of s. 3, was not a Municility constituted under the Act; and, therefore, the payment made by the defendant to the Bellary Cantonment, not having been made to any other Municipality does not, under s. 60, exempt the defendant from his liability to pay to the Bellary Municipality. BELLARY MUNICIPAL COUNCIL. BELLARY v. LIEUT.-COL. S. C. SARKISS, I.M.S., **4 M.L.T. 477=9 Cr. L. J. 91.**

(6)—*Ss.* 3 (27), 169 *and* 263—*Extent of " public street "—Verandahs, etc., erected within the limits of adjacent property—License.*—Under the definition in s. 3 (27) of the Act, a public street extends only up to the boundaries of the adjacent property. Verandahs and other coverings erected within the limits of the adjacent property do not require the special license under s. 169 of the Act, which is required in the case of projection " over *pyals* and pavements in front of any building or land in a public street." NARASIMMA CHARI v. CHAIRMAN, MUNICIPAL COUNCIL, CONJEEVARAM, **31 M. 181=8 Cr. L.J. 72.**

(7)—*Ss.* 10-*A*, 39-*A*, 268 *and* 280—*Complaint by Secretary, withdrawal of—Municipal Council—Crim. Pro. Code, s.* 248.—It is not open to a Municipal Council to withdraw a complaint duly instituted by the Secretary of the Municipality under s. 268 of the District Municipalities Act (Madras). PARAMANANDA NADAR v. KARUNAKARA DOSS, **15 Cr. L.J. 299=23 Ind. Cas. 507=27 M.L.J. 617.**

(8)—*S.* 10-*B*—*Feeding voters.*—The feeding of voters which results in the procuring of votes may amount to an offence under s. 10-B. Therefore, a Magistrate, who dismissed a complaint which charged a candidate for a municipal election with having fed the voters, on the ground that the allegation in the complaint, even if true, did not amount to an offence under s. 10-B, was held to be wrong. KANNAYIRAM PILLAI v. KARUPPANNA PILLAI, **1 Weir 726.**

(8-*a*)—S. 23—*See* No. 17, *infra.*

(9)—S. 39-A—*See* No. 7, *supra.*

(10)—*S.* 41—*Penal Code, s.* 353—*Municipal Inspector, whether a public servant.*—A Municipal Inspector is a public servant within the meaning of s. 41, Madras Act IV of 1884. If he is assaulted in the execution of a distress, the person assaulting is liable to be punished under s. 353, Penal Code. QUEEN-EMPRESS v. RAMASAMI, **13 M. 131=1 Weir 345=1 Weir 726.**

(11)—*Ss.* 53 *and* 262—*Tax on " income "—Meaning of term " income."*—The word " income " which occurs throughout sch. A of the Act must be taken to mean the " net income " or profits derived from the business and not the gross income or receipts. Where a person is assessed under s. 53 and sch. A, on his estimated gross income, the provisions of the Act have not been complied with and the jurisdiction of the Civil Court to question the legality of the assessment is not barred by s. 262, sub-s. 2. MUNICIPAL COUNCIL OF MANGALORE v. CODIAL BAIL PRESS, **27 M. 547=14 M.L.J. 410.**

(12)—*S.* 53. *sch. A, proviso* 4—*Tax on money-lenders.*—The effect of the proviso to the Schedule of the Act is not to make taxable, persons who, apart from the proviso, would be in no class at all. A person, who carries on the business of a money-lender and whose income is below Rs 30 a month, is not chargeable with a tax under s. 53 of the District Municipalities Act. MUNICIPAL COUNCIL, CHIDAMBARAM v. VENKATANARAYANA PILLAI, **11 M.L.J. 312=24 M. 644.**

(13)—*Ss.* 59, 60 *and* 103—*Liability to be separately taxed for business carried on in different capacities.*—The appellant carried on business as a trader in cotton, and also carried on business as a purchaser of cotton on commission, in other words, as a commission agent for an absent principal. In respect of this cotton occupation, he had already been assessed and paid the tax which could be levied under the Act. *Held* that, as the appellant had already been personally charged under one designation, he could not be again charged under any other designation. *Held*, also, a merchant carrying on a business in one town cannot, by reason that he purchases cotton through a commission agent in another town, be held to be carrying on business within the town in which the purchase is made. HIGH COURT PROCEEDINGS, 10TH MARCH 1880, No. 459, **1 Weir 726-A.**

(14)—S. 60—*See* Nos. 5 and 13, *supra.*

6.—Madras Acts—continued.

Act IV of 1884 (District Municipalities)—*ctd.*

(15)—*S.* 63 (2 *and* 3)—*Tax on land.*—Subject to the conditions mentioned in s. 63, a tax levied under sub-s 3 of s. 63 on all lands within a Municipality indiscriminately is a legal tax. QUEEN EMPRESS v. ALLAN, **24 M. 195 = 1 Weir 726-B.**

(16)—*S.* 63, *cl.* 3—*Madras District Municipalities Amendment Act,* III *of* 1887, *s.* 49—*Lands used solely for agricultural purposes—Liability to the tax—Meaning of the expression, "Lands used for agricultural purposes."*—S. 63 of the Madras District Municipalities Act, as amended by the Madras Act, III of 1897, exempts from the enhanced rate of taxation, that may be imposed in certain cases under sub-s. 3, lands used solely for agricultural purposes. Lands, on which potato, grain, vegetables, are grown, are lands used solely for agricultural purposes and are, therefore, exempt from the enhanced rate of taxation. In construing the words "lands used solely for agricultural purposes," the definition of the term "agricultural purposes" given in English Agricultural Rates Act and in Murray'sDictionary may be referred to and followed." KING-EMPEROR v. ALEXANDER ALLAN, **25 M. 627 = 1 Weir 727 = 12 M.L.J. 393.**

(17)—*Ss.* 75, 23—*Arrack shop whether a place of public resort.*—Where the accused, charged under s. 75 of Madras Act, III of 1888, with being drunk, and disorderly in an arrack shop, were acquitted on the ground that an arrack shop is not a place of "public resort" within the meaning of s. 75. *Held,* that s. 75, read in connection with s. 23 of this Act, and with due advertance to the mischief which the section is intended to prevent, makes it clear that an arrack shop is a "place of public resort" within the meaning of the section. *Held,* also, that the doctrine of *ejusdem generis* should not be applied in considering the scope of s. 75. EMPEROR v. MOONOOSAWMY, **6 M L T. 16 = 9 Cr. L J. 496 = 2 Ind. Cas. 84 = 33 M. 83.**

(18)—*S.* 89—*Penal Code,* s. 166—*Attachment of cart while in motion for want of license—Goods placed in cart—Cart ready to receive passengers — Whether employed in conveying passengers or goods—Knowingly disobeying law —Offence.*—The attachment of a cart for being kept or used without a license after the goods of passengers or hirers have been placed in it and just at the time when the passengers are about to get into it, is illegal as an attachment, while the cart is being used for the conveyance of goods or passengers, under s. 89 of the Madras District Municipalities Act. A seizure under such circumstances is an offence under s. 166, Penal Code. SUBRAYA IYER v. EMPEROR, **13 Cr. L. J 199 = 14 Ind. Cas. 199.**

(19)—*S.* 103—*Attachment of doors of houses, validity of.*—The doors of a house are not moveable property and cannot be distrained under the first portion of cl. 1 of s. 103 of the Madras Act (IV of 1884). QUEEN-EMPRESS v. SHAIK IBRAHIM, **13 M. 518 = 1 Weir 730.** [*F.*, 14 M. 467 ; *R.*, 16 Ind. Cas. 877.]

(20)—*S.* 103—*Prosecution under the section, whether barred by civil suit.*—The fact that a civil suit has been brought does not bar a prosecution under s. 103. AZEEZUD DOWLA BAHADUR v. CHAIRMAN, WALLAJAH MUNICIPALITY, **1 Weir 731.**

(21)—S. 103—*See* No. 13, *supra.*

(22)—*Ss.* 103 *and* 111—*Failure to pay tax—Procedure to be adopted before launching prosecution.*—A person cannot be prosecuted under s. 103 for default of payment of tax, unless it appears that the tax cannot be recovered by distress and sale of the moveable property of the defaulter. QUEEN-EMPRESS v O'SHAUGHNESSY, **9 M. 429.**

(23, 24)—S. 111—*See* No. 22, *supra.*

(25, 26, 27)—*S.* 167 (2)—*Scope of the section.*—The mere fact of a door opening into a public street is not sufficient to bring it within the s. 167 (2). If the door, though it opens in the street, does not open outwards but inwards into the house, the section does not apply. *In re* BHIMA ROW, **1 Weir 731.**

(28)—S. 169—*See* No. 6, *supra.*

(29)—*S.* 173—*Obstruction to high road.*—The depositing, by any one, of any article on the high road except with the license of the Municipality under s. 173, is an obstruction, inasmuch as the public are entitled to the whole width of the road unimpeded by any article deposited thereon. QUEEN EMPRESS v. BOLAPPA, **11 M. 343 = 1 Weir 732.**

(30)—*S.* 179—"*Renewed*" *includes also repair.*—The word "renewed" in s. 179 of Madras Act IV of 1884 includes also repairing. QUEEN-EMPRESS v. SUBBANNA, **19 M 241 = 1 Weir 732.** [*D.*, U.B.R 1904, 3rd Qr., Upper Burma Municipal Regulation, 1.]

(31)—*S.* 179—*External roofs—Construction.*—Where the facts of a case, beyond dispute, established, on the part of the accused, acts contravening the provisions of s. 179, District Municipalities Act, *held,* that the construction that s. 179 operates only when the roofs, etc., are constructed outside the house, *i e.*, externally, was erroneous. PUBLIC PROSECUTOR v. NARAYANASAMY NAIDU, **2 M.L.T. 499 = 7 Cr. L J. 219.**

(32)—*S.* 179—*Inflammable material—Mats made of bamboos*—Bamboo mats used in the erection of a *pandal* are inflammable material within the meaning of s. 179. HUSSAIN SAHIB v. CHAIRMAN OF BELLARY MUNICIPALITY, **1 Weir 733.**

(33)—S. 179—*See* MAD. ACT III OF 1871, s. 148, 1 Weir 732 (*a*).

(34)—*S.* 180—*Powers under the section.*—It is clear, on a perusal of s. 180, that no power is

6.—Madras Acts—continued.

Act IV of 1884 (District Municipalities)—*ctd.*

thereby conferred on the Municipal Council of depriving owners of the legitimate use of their land. The object of the section is no other than to ensure the safety and sanitation of buildings to be newly erected. What the Council has to consider under the section is the plan of the proposed building; and the grounds on which the same can be disapproved are such as are stated in cl. 4. A person intending to build on his land made the necessary application for a license, which the Municipality granted as regards a portion only of the applicant's land, as they required the rest for widening a lane. The building was erected on the whole land, and the builder was convicted of building contrary to the terms of license. *Held* that, as the order of the Municipality was not legal, no penalty could be enforced on the builder and no notice could be given to him requiring him to pull down the building. QUEEN-EMPRESS v. VIRAMMAL, **16 M. 230 = 1 Weir 733** [*R.*, 27 B. 221, 2 Bom. L.R. 572; *D.*, 21 B. 187.]

(35)—*S.* 180—*Erection of building—License, necessity for.*—Either a license or permission in writing from the Municipal Council is necessary under s. 180 before commencing to erect a building, except in the case of default on the part of the Municipal Council mentioned in cl. 5 of s. 180. SVAYAMBU AYAR v. MUNICIPAL COUNCIL OF NEGAPATAM, **1 M.L J. 37.**

(36)—*S.* 180—*Construction of pyal—License.*—Constructing a *pyal* without having obtained a license from the Municipal Council and before the expiration of six weeks from the date of sending the application is an offence under s. 180, cl. 5 of the Act. RAMASAMI AYAR v. AMBALAVANA PILLAI, **9 M L.J. 335.**

(37)—*Ss.* 180 (1) *and* (5) *and* 263—*Construction of walls for erecting house—Construction commenced before receipt of license—Offence.*—The word 'building' in cl. 5 of s 180 of the Act includes 'mere walls' built for the purpose of erecting a house, and the construction of such walls without the license of the Municipality renders the person constructing them liable to the penalty prescribed in s 263, even though the house, to support which the walls were designed, had not been built. THE PUBLIC PROSECUTOR v. KALIA PERUMAL, **8 M L.T. 431 = 8 Ind. Cas 148 = 1910 M.W N. 740.**

(38)—*Ss.* 180, 263 *and* 264—*Application for license to build thatched roof—Illegal refusal of sanction—Erection of roof with tiles after six weeks—Object of s.* 180.—A person applied, under s. 180, to erect a building with a thatched roof and the application was refused by the Municipality on the erroneous ground that the land was public land. At the end of six weeks, he erected the building with a roof of tiles and not of thatch. *Held*, that the sanction was illegally refused and the erecting of a roof of tiles, when the application was for erecting a roof of thatch, would not make him liable to be convicted of an offence under s. 180 of Madras Act IV of 1884. SUBRAHMANYA AYAR v. ASIRVADAM PILLAI, **9 M.L J. 337 = 1 Weir 736.**

(39)—*Ss.* 187 and 264-*A*—*Failure to comply with notice issued under s.* 187 (1) *of the Act—Penalties prescribed by s.* 187 (2) *and s.* 264 *of the Act*—A party failing to comply with a notice issued by a Municipality, under s. 187(1) of the District Municipalities Act, requiring the removal of a building, renders himself liable to the penalty prescribed in s. 187 (2). The penalty prescribed under the general provisions of s. 264 A is not applicable to such a case. *In re* ESOOF SAIT SAHIB, **17 M.L.J. 560 = 2 M.L T. 520 = 7 Cr. L J. 8.**

(40)—*S.* 188 (*j*)—*License under the Explosives Act,* IV *of* 1884, *whether sufficient.*—There is nothing in either the District Municipalities Act or in the Explosives Act to show that a license under the latter Act exempts the licensee from the obligation, imposed by s. 188(*j*) of the former Act, to take out a license from the Municipal authorities, if the explosives are kept within the limits of the Municipality. PUBLIC PROSECUTOR v. GOVINDA PILLAI, **1 Weir 740.**

(41)—*S.* 188 (*n*)—*Construction of words "offensive and dangerous trades"*—*Keeping more than ten head of cattle without license.*—The words "offensive and dangerous trades" in s. 188 (*n*) of the Act are merely words of general description to facilitate reference, and cannot limit or control the plain words of the section, which are, "no place shall be used for any one or more of the purposes specified in the section unless licensed." A person keeps more than ten head of cattle in a private place without license is guilty of an offence under s. 188 (*n*), although the cattle are not kept for purposes of trade. But the High Court did not interfere with the acquittal of a person who kept temporarily more than ten head of cattle without a license. EMPEROR v. MAYANDI KONAN, **30 M. 220 = 2 M L.T 54 = 5 Cr. L.J. 189 = 17 M L.J. 371 = 6 Cr. L.J. 128.**

(42)—*Ss.* 188 *and* 189—*Keeping an unlicensed private cart-stand.*—Where, in the prosecution of a person under s. 189 of Madras Act IV of 1884 for keeping an unlicensed private cart-stand, it was proved that some ten or fifteen carts from outside villages daily resorted to the premises of the accused, laden with produce and goods of various kinds intended for sale to the general public, but not specially to the accused, the accused acting as broker between the owners of the produce and the public, and the carts were to stand on the premises until the completion of the sale and removal of the goods, *held*, that the premises were used as a cart-stand under s. 188, Act IV of 1884, and the accused was guilty under s. 189 of the Act. QUEEN-EMPRESS v. AYYAKKANNU MUDALI, **22 M. 455 = 1 Weir 739.**

6.—Madras Acts—continued.

Act IV of 1884 (District Municipalities)—*ctd.*

(43)—*Ss.* 188 *and* 189—*Separate licenses for each of the modes of user.*—The District Municipalities Act requires a license for each of the modes of the user of the premises specified in cls. (*a*) to (*q*) of s. 138. The mere fact that a person has taken out a license for a tannery would not entitle him to use a lime-kiln without taking a separate license, although the latter may be merely a subordinate part of the business of tannery. PUBLIC PROSECUTOR v. PACHAMIAN SAHEB, **1 Weir 737.**

(44)—*Ss.* 188 *and* 189—*License for kilns.*—Each separate kiln is a separate "place" and. therefore, requires a separate license. CHAIRMAN, MUNICIPAL COUNCIL, NELLORE v. SUBBAYYA, **1 Weir 737.**

(45)—*Ss.* 188 *and* 189—*Livery stable.*—A hack-stable is a livery stable within the meaning of s. 108. PUBLIC PROSECUTOR v. MADUVALATH GOPALAN, **1 Weir 737.**

(46)—*S.* 189—*Unlicensed private cart-stand—When a place becomes a "cart-stand."*—To constitute the offence of keeping a private cart-stand, without a license, within the limits of a Municipality, under s. 189 of Madras Act IV of 1884, it is not necessary for the prosecution to prove that it is "offensive" or "dangerous" or that fees are levied in it. Nor is a place a cart-stand within the meaning of the section, merely because one or more carts stand there. The term must be construed reasonably with due regard to all the circumstances of the case, *e.g.*, how many carts use the place from time to time, whether they belong to one or more persons, whether fees are levied, how long the carts remain there, and the purpose for which they go there, whether for the sale of goods to the owner of the premises or to others, or for the purpose of being engaged for hire. QUEEN-EMPRESS v. AYYAKKANNU MUDALI, **21 M. 293 = 1 Weir 738.**

(47)—S. 189—*See* Nos. 42 to 45, *supra.*

(48)—*Ss.* 190 *and* 277—*Farmer of fees leviable under s.* 190.—A farmer of the fees leviable under s. 190 is not a person employed by the Municipal Council to collect the fees on account of the Municipality. Where a farmer of the fees leviable under s. 190, in respect of carts laden with manganese, demanded fees under s. 277 in respect of carts laden with chillies, *held*, that the cart-drivers, in refusing the payment, were not guilty under s. 277 of the Act. *In re* BALABHADRAM KAMARAJU, **1 Weir 753.**

(49)—*Ss.* 191 *and* 192—*Slaughter of animals in private premises for private consumption.*—The slaughtering of a sheep by a person in his own premises for the purpose of private consumption is punishable under s. 192. GOVERNMENT PLEADER v. SHEIKH SAHIB, **1 Weir 742** (A).

(50)—*Ss.* 191, 192, 193 *and* 194—*License to keep a butcher's shop—Public market—Scope and nature of s.* 194.—Persons keeping butcher's shops, not used as slaughter-houses, when those shops are not licensed markets at the passing of the Act, and when they have not since been declared by the Municipal Council to be markets, are not bound to take out licenses under s. 191, cl. 2 of the Act. The Municipal Council will not also be justified in refusing to give them license, except on the condition that they should remove to a fixed market. QUEEN-EMPRESS v. BAODUR BHAI, **10 M. 216 = 1 Weir 741.**

(51)—*Ss.* 191 (2), 194—*Public slaughter-house—License.*—S. 191 (2) refers to a place other than a public slaughter-house used without a special license for the purpose mentioned therein. The very act of providing a public slaughter-house is a license to the public to use it as such, and there is no obligation to take out a special license under s. 191 (2). If, in providing a place as a public slaughter-house, a portion is set apart also for the sale of flesh, it is a public market within the meaning of s. 194. It is important to bear in mind, in construing s. 194, the fact that the property in the public market, the right of possession as owner, and its regulation and control are, for the purposes of the Act, vested in the Municipal Council. Reading s. 194 in the light of that fact, the clause which enables the Municipal Council to levy rents, fees and tolls appears to be an enabling provision and it does not operate to take away any right which they have as owners of the public market. The view is confirmed by cl. 3 which pre-supposes a valid lease or tenure granted by them and empowers them to determine the lease at once in the event of there being a conviction for a breach of a bye-law. MUNICIPAL CORPORATION OF MADURA v. SANDLAI KON, **2 M.L.J. 206 = 1 Weir 743.**

(52)—*Ss.* 191 *and* 197—*Using unlicensed private place as market—Sale of flesh without license.*—Where a person sold mutton at a place, not licensed for use as a market, *held*, that he was punishable under s. 197 of the Act, if his use of the place, which was private property, was as a market, *i.e.*, as a public place for buying and selling. Even if it were otherwise, he was guilty of an offence under s. 191, cl. 2 of the Act, for having sold without license "flesh intended for food." ABU BAKER v. MUNICIPALITY OF NEGAPATAM, **29 M. 185 = 3 Cr. L J. 458.**

(53)—S. 192—*See* Nos. 49, and 50, *supra.*

(54)—S. 193—*See* No. 50, *supra.*

(55)—S. 194—*See* Nos. 50, and 51, *supra.*

(56)—*S.* 195—*Notice by Municipality on a tenant of a stall prohibiting sale—Jurisdiction of Magistrate.*—Where a tenant of the Municipal Council, holding a stall or shop, was prohibited from selling in the stall, *held*, that the tenant could not be prosecuted under s. 195, as the matter of the dispute between him and the Municipal Council was of a civil nature. *Quære*:—Whether a Municipality which has

6.—*Madras Acts*—continued.

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leased out a stall or shop to a person can, by giving a notice under s 195 of Act IV of 1884, prevent the defendant from selling goods in the shop or stall so let to him by the Council and render him liable to the penalty prescribed by that section. MUNICIPAL COUNCIL, MADURA v. PICHAYEE, **1 Weir 746.**

(57)—S. 197—*See* No. 52, *supra.*

(58)—*S.* 203—*Prohibition of a sale in streets.*—A conviction under s. 203 is bad, if the notification prohibiting the sale is not published in the District Gazette, and if such notification does not specify the street or part of the street in which the sale is prohibited. *In re* BHARGAVA RAMAN, **1 Weir 746.**

(59)—*S.* 207—*Notice to erect a wall to secure privacy of neighbour's backyard.*—A Municipal Council is not empowered by s. 207 or by any other section to require the owner or occupier of land to erect upon his land a wall to secure the privacy of his neighbour's backyard. *In re* MUKKAN ASARI, **1 Weir 747.**

(60)—*S.* 221—*Prospective sentence.*—A conviction and sentence under s. 221 can only relate to the offence actually charged and proved against the offender. He cannot be sentenced prospectively for any repetition of the offence. The latter words of the section merely denote the scale of punishment which may be inflicted on offenders who repeat the offence. There is nothing in them to obviate the necessity for a fresh prosecution. *In re* DEVAT SWAMY, **1 Weir 747.**

(61)—*S.* 222, *Scope of—Its applicability to streets and lanes having no drains.*—The providing of drains by the Municipality is not a condition precedent to the obligation, imposed by s. 222 of the Act, upon the owner or occupant of a house, of not letting dirty waters into the street. But the practical hardship in enforcing the obligation in particular cases, where no drains are provided, may be taken into account by the Magistrate in graduating the penalty. The words "except a drain" after "street" are inserted in s 222 by Act III of 1897, because a street, as defined in the Act, includes a drain where there is such in or on the side of a street, but they do not imply that any street, to be within the purview of the section, must have a drain, in or by the side of it. EMPEROR v. NAGAN CHETTY, **30 M 221 = 17 M L.J. 372 = 6 Cr. L J. 235.**

(62)—*S.* 222—*Allowing sewage water to run into street, if an offence.*—An owner or occupier of a house, who lets sewage water in the street, commits an offence under s 222, Act IV of 1884 although the Municipality has not provided drains. The section contemplates two classes of cases, in one of which the street is not provided with drains, and in the other such provisions are made. In the latter case, it was intended to secure that the offensive water should actually pass into the drain, and not be allowed to be soaked into the walls or ground at the side of the drain. QUEEN EMPRESS v. SEVUDAPPA IYER, **15 M. 91 = 1 Weir 747.** [*F.*, 30 M. 221 = 17 M.L J. 372.]

(63)—*S.* 228—*Order by Municipality to drain off stagnant water and to fill up a pit.*—Where a Municipality gave a notice to the accused, under s. 228, Act IV of 1884, calling upon him to fill up certain pits completely, so that water may not stagnate therein and also to drain off the stagnate water, *held* that the first part of the notice went beyond the powers conferred by sub-s. 1 or sub-s, 2 of s. 228, but that the second part of the order was clearly within the powers of the Municipality. But the notice should be treated as bad in its entirety, for, to hold otherwise would impose upon the accused the obligation of picking out from the notice the requirements which it was within the power of the Municipality to call upon him to carry out. *In re* THE MADRAS RAILWAY COMPANY, **1 Weir 749.**

(64)—S. 262—*See* No. 11, *supra.*

(65)—S. 263—*See* Nos. 6, 37, 38, *supra.*

(66)—*Ss.* 263 *and* 264—*Encroachment on public street.*—Where a person erects a fence in a lane and, thereby, encroaches on the lane, without obtaining a license from the Municipality, he is liable to be punished under s. 263, District Municipalities Act, although, it may be, he cannot be convicted under s. 264 in the absence of a resolution passed by the Municipal Council. KARUPPANNA NADAN v. CHAIRMAN, MADURA MUNICIPALITY, **21 M. 246 = 2 Weir 17 = 1 Weir 751.**

(67)—*S.* 264—*Power to impose prospective fine.*—Though s. 264 prescribes a further fine, a Magistrate is not empowered, under that section, to impose a fine prospectively on a person, who is convicted under the section, in respect of the period during which he fails to comply with the order of a Magistrate directing the removal of a building constructed against the order of the Municipality. The proper course in such cases is to institute further prosecution, if there is occasion for it, and allow the accused an opportunity of defending himself before the further fine is imposed. QUEEN-EMPRESS v. VEERAMMAL, **16 M. 230 = 1 Weir 733.** [*R.*, 171 P.L.R. 1903 = 13 P.R. 1903].

(68)—*S.* 264—*Non-compliance with notice issued by a Municipality.*—Where a prosecution is instituted, under s. 264, cl. (1) (II) of the Act, form not complying with a notice issued by a Municipal Council, requiring the accused to prevent the flow into the street of waste and sewage water from certain houses belonging to him, the accused incurs a penalty for non-compliance with the notice, only if the issue of the notice is authorised by some provision of the Act. PUBLIC PROSECUTOR v. SHUNMUGAM PILLAI, **1 Weir 751.**

(69)—S. 264—*See* Nos. 38 and 66, *supra.*

***6.—Madras Acts*—continued.**

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(70)—S. 264-A—*See* No. 39, *supra.*

(71)—S. 268—*See* No. 7, *supra.*

(72)—*S.* 269—*Money due on a toll contract.*—Money due from a contractor under a contract with the Municipality by which he has assigned to him the right to collect tolls, in consideration of a money payment to the Municipality, does not come within any of the provisions of s. 269 and is neither a "rent" nor a "toll" A contractor failing to pay money due under such contract cannot be convicted under that section. ABDUL AZEEZ SAHIB v CUDDAPAH MUNICIPALITY, **26 M. 475 = 1 Weir 752.**

(73)—*Ss.* 274 *and* 277—*Resistance offered to distraining officer—Penal Code, s.* 99 (1).—The officer entrusted with the work of distraint is, under s. 109, Act IV of 1884, empowered to distrain the defaulter's property wherever the same may be found within the Municipal limits. No previous notice of the officer's intention to enter the house for the purpose of making the distraint is required under s. 274. Even if the section were applicable, the defaulter, in offering resistance to the officer, is not justified under s. 99 (1), Penal Code. *In re* SANKARALINGAM PILLAI, **1 Weir 752.**

(74)—S. 277—*See* PENAL CODE, s. 183, 1 Weir 126.

(75)—S. 277—*See* Nos. 48 AND 73, *supra.*

(76)—S. 280—*See* No. 7, *supra.*

(77)—*S.* 284—*Offence under section, what constitutes.*—The object of the section, generally, is to prevent unauthorised persons collecting monies under colour of the Act. But where a person collects, in his own right, monies due to the Municipality who claim them as owners of the land, and not under any provision of the Act, he is not guilty of an offence under s. 284 of the Act. *In re* SEETARAM DOSS BAVAJEE, **1 Weir 754.**

(78)—*S.* 284—*Penal Code,* ss. 44 *and* 384—*Illegal levying of toll.*—Where certain cartmen who had paid toll legally leviable on empty carts on entering the town were prevented by the *gumastha* of a toll-contractor illegally from passing through the toll-gate, unless they paid an extra toll on leaving the town, *held* that such detention amounted to an injury under s. 44, Penal Code, and that the accused was properly convicted under s. 384, Penal Code. *Held,* also, that the conviction might also have been sustained under s. 284 of Madras Act IV of 1884. *In re* B. APPALASAMI, **1 Weir 29 = 1 Weir 441.** [*R.*, 1 Weir 754].

(79)—*S.* 284—*Imprisonment in default of payment of fine.*—There is no provision in the Act for imprisonment being awarded in default of payment of fine, and the procedure for levying fines is laid down in s. 286. HIGH COURT PROCEEDINGS, 21ST DECEMBER 1888, No. 1200, **1 Weir 753.**

(80)—*Bye-law No.* 48—*Covering drains without permission of Municipality.*—Bye-law No. 48 framed under Madras Act IV of 1884 as amended by Madras Act III of 1897 is as follows:—"No public drain shall be covered without the permission of the Municipal Council." The bye law applies to all drains which existed in a covered state at the time the bye-law came into operation. The word "shall" is used throughout the bye-law in the imperative, and not with reference to time. This is the sense in which it is used in bye-law No. 48. Where a person had, prior to the coming into operation of bye-law No. 48, erected a covered drain without the permission of the Municipality, and there was an earlier bye-law in the same terms as the existing bye-law during the time of erection, *held,* that his conviction under the new bye-law was legal. PARIMANAM PILLAI v. CHAIRMAN, MUNICIPAL COUNCIL, OOTACAMUND, **23 M. 213 = 1 Weir 750.**

(81)—Sch. A, proviso 4—*See* No. 12, *supra.*

Act V of 1884 (Local Boards).

[REP. IN PART, ACT II OF 1901; ACT XI OF 1901, SCH. 3. REP. IN PART AND AMENDED, MAD. ACT VI OF 1900. AMENDED, MAD. ACT III OF 1890, SS 1 TO 6; ACT XI OF 1901, SCH. 2.]

(1)—*S.* 43—*Sanitary Inspector appointed by Local Board, whether a public servant.*—S. 43 of the Local Boards Act runs as follows:—"Every member or servant of a Local Board, or of a *Panchayat,* every contractor or agent, to whom the collection of any tax, etc., is entrusted, etc., shall be deemed to be a public servant." The words "to whom the collection, etc., is entrusted" govern only the words "contractor or agent" immediately preceding them. A Sanitary Inspector appointed by the Local Board, is, therefore, a public servant within the meaning of s. 43 of the Local Boards Act. QUEEN-EMPRESS v. THIRUVENGADA MUDALI, **21 M. 428 = 1 Weir 792.**

(1-*a*)—S. 60—*See* No. 20, *infra.*

(2)—*Ss.* 77, 78, 81, 94 *and* 163—*Penal Code,* ss. 99, 186 *and* 353—*Resistance to distraining officer—Notice of demand of house-tax without filling up completely the house-register—Illegal distraint of tools of artisan.*—The accused, a potter, failed to pay the tax due on his house after service of notice of demand, which was affixed to his house. There was an omission in the notice of demand in that, one column of the house-register was not filled up. The accused not having paid the tax, a warrant of distress was issued and a bucket and a spade belonging to him were attached. The distraint was resisted by the accused who recovered and retained his articles. *Held,* that the omission to fill up one column of the house-register was cured by s. 155, cl. 1 of the Act and that the service of the notice was regular and that the accused, in resisting the distraint, had committed an offence under ss. 186 and 353 of the

6.—*Madras Acts*—continued.

Act V of 1884 (Local Boards)—*continued.*

Penal Code, inasmuch as the accused has no right of self-defence, the act of the officer being an act done in good faith and under colour of his office. QUEEN-EMPRESS v. POOMALAI UDAYAN, **21 M. 296 = 1 Weir 135 = 1 Weir 792.** [*R.*, 27 A. 499 = 2 A.L.J. 219 = A.W.N. 1905, 74, 10 Ind. Cas. 667 = 2 M.W.N. 231 = 9 M.L. T. 414.]

(3)—S. 78—*See* No. 2, *supra.*

(4)—*S.* 81 (2)—*Doors whether can be distrained under — Doors not 'moveable property' — General Clauses Act—Assault on the bill-collector—Conviction under s.* 353, *I.P.C.—Legality.* — Doors ought not to be distrained under s. 81, cl. (2) (i) of the Local Boards Act, as they are not moveables. The bill collector, when he proceeded to distrain the doors, cannot be said to have been acting in the lawful discharge of any duty imposed on him as a public servant, and the conviction under s. 353, I.P.C., for assaulting the bill-collector, is not therefore sustainable. E. C. CHINASWAMY PILLAY v. CHAIRMAN OF THE ARKONAM UNION, **16 M.L. T. 429 = 15 Cr. L J. 637 = 25 Ind. Cas. 837.** (11 M. 467, *R.*).

(5)—S. 81—*See* No. 2, *supra.*

(6) *S.* 87—*Government Stores and Equipages —Stores and carts belonging to Government Jail —Liability to tolls.*—Stores and carts belonging to the Government Jails come within the words "Government Stores and Equipages" in s. 87 of Act V of 1884, and are free from tolls under the Act. QUEEN-EMPRESS v. KUTTI ALI, **20 M. 16 = 1 Weir 793.**

(7) *Ss.* 89, 92—*Absence of toll-gates.*—Where a toll-gate has not been constructed under the provisions of s. 89 of Madras Act V of 1884, s. 92 does not apply. SUBRAMANIAN CHETTY v. KISTNAN CHETTY, **1 Weir 794.**

(8) *Ss.* 89 *and* 92—*Conviction under s.* 92—*Necessary proof.*—A conviction under s. 92, Madras Act V of 1884, pre-supposes a liability to pay toll and an intention to avoid its payment. It lies on the prosecution to prove everything necessary to support the conviction. Where the prosecution did not prove that a table of the tolls, as provided by s. 89 (2), had been put up at the toll-gate or station, *held* that a conviction under s. 92 was not sustainable. *In re* SUBBAN, **1 Weir 793.**

(9)—S. 92—*See* Nos. 7, 8, *supra.*

(10)—*S.* 94—*Tools of artisan, attachment of.* —Spades and buckets belonging to a potter are tools of artisan or implements of husbandry, and are, therefore, exempt under s. 94 of Act V of 1884, from attachment. QUEEN-EMPRESS v. POOMALAI UDAYAN, **21 M. 296 = 1 Weir 135 = 1 Weir 792.**

(11)—S. 94—*See* No. 2, *supra.*

(12)—S. 98—*Building erected on* poramboke *land.*—Where a building is erected on a *poramboke* land, it is not competent to the Magistrate to issue a notice under s. 98 as such land is not a public street. A failure to obey the notice is not punishable. *In re* PALANI THACHAN, **1 Weir 794.**

(13)—*S.* 98—*Notice to remove obstruction on public road.*—The Chairman of a Union issued a notice, under s. 98 (2) of Madras Act V of 1884, to the accused to remove an encroachment alleged to have been made upon a public street. The power to issue notice was delegated to him by the President, Taluq Board. The encroachment itself existed prior to the passing of the Act. The accused disobeyed the order, but there was no evidence of obstruction. *Held*, that the accused was not guilty under s. 188, Penal Code. *In re* NARAYANASWAMY NAICK, **1 Weir 795.**

(14)—*S.* 98—*Notice by Chairman of Union to remove a wall—Disobedience Penal Code,* s. 188.—The accused, who had an open verandah in front of his house, enclosed it by building a wall. Thereupon, a notice was issued by the Chairman of the Union, who was not so authorised, calling on him to remove the new erection. The accused, having failed to comply with the order, was convicted under s. 188, Penal Code. *Held*, that the conviction was illegal as there was nothing to show that the accused erected any obstruction on any public street, his enclosing his own verandah being no such obstruction, and as the Chairman was not competent to issue the notice. *In re* MURUGAPPASARI, **1 Weir 796.**

(15)—*Ss.* 98 (2) *and* 98-*A* (2)—*Penal Code,* s. 188—*Notice issued under the said sections, as amended by Act* VI *of* 1900.—Neither a notice under s. 98-A, sub-s. 2 of the Madras Local Boards Act, as amended by Act VI of 1900, nor a notice under s. 98 (2) of the amended Act, is an order within the meaning of s. 188, Penal Code. *In re* SHUNMUGAM PILLAI, **1 Weir 140 = 1 Weir 797.**

(16)—*Ss.* 98 *and* 100—*Penal Code, s.* 188—*Disobedience to a notice ordering the removal of obstruction on public street.*—Ss. 98 and 100 of the Local Boards Act must be read together. It is clear that the notice prescribed by s. 98 is a mere preliminary to the action to be taken by the President himself under s. 100. Where the President of a Taluq Board issued a notice to remove encroachments on a public road within a specified time, *held*, that the notice was merely a notice and not an order of the kind contemplated in s. 188, Penal Code, and a person disobeying such notice could not be convicted under that section. QUEEN-EMPRESS v. SUBRAMANIAN, **20 M. 1 = 1 Weir 140 = 1 Weir 797.** [*F.*, 1 Bom. L R. 166; *R.*, 12 Cr. L.J. 63 = 9 Ind. Cas. 329 = 1911, 1 M.W. N. 78.]

(17)—*Ss.* 98, 162 *(b)* (2)—*Enquiry under s.* 162 *(b)* (2)—*Public road—Applicability of* s. 98.—In a prosecution under s. 162 (*b*) (2), the question whether the erection is on a public road or not is material. S. 98 applies only to

6.—Madras Acts—continued.

Act V of 1884 (Local Boards)—*concluded.*

obstructions and encroachments on any public road, and a public road extends only up to the boundaries of the adjacent property K. CHANDRA MAULIA v. EMPEROR, **9 M.L.T. 219=9 Ind. Cas. 329=12 Cr. L.J. 63=1911 M.W.N. 78.**

(18)—S. 93-A—*See* No. 15, *supra.*

(19)—S. 100—*See* No. 16, *supra.*

(20)—*Ss.* 155 *and* 60—*Notice of demand of house-tax—Omission to fill up a column in House Register.*—A notice of demand of house-tax is not irregular merely because there has been an omission to fill up one column of the house-register. Such omission may be cured by s. 155, cl. 1 of Act V of 1884. QUEEN-EMPRESS v. POOMALAI UDAYAN, **21 M. 296 =1 Weir 135=1 Weir 792.**

(21)—S. 162—*See* No. 17, *supra.*

(22)—*S.* 162-*B*—*Joint trial of several accused for separate offences under S.* 162-*B*—*Legality.*—The trial of several accused persons jointly for separate and distinct offences under s. 162-B of the Madras Local Boards Act is illegal. PUBLIC PROSECUTOR v. IRUSAN, **13 Cr. L.J. 240=14 Ind. Cas. 432.**

(23)—*S.* 163—*Service of notice of demand of house-tax.*—The affixing of a notice of a demand of a house tax under Act V of 1884 to the house, when the owner is in the village, is not a real departure from the procedure prescribed in s. 163 of Act V of 1884. QUEEN-EMPRESS v. POOMALAI UDAYAN, **21 M. 296=1 Weir 135 =1 Weir 792.**

(24)—S. 163—*See* No. 2, *supra.*

Act I of 1885 (Police, amending Act XXIV of 1859).

[REP., MAD. ACT III OF 1889.]

See MAD. ACT XXIV OF 1859, s. 45 (5), 9 M. 167.

Act III of 1885 (Out-ports Landing and Shipping Fees).

—*S.* 6—*Terms "owner" and "property" explained.*—As the word "owner" in s. 6 of Act III of 1885 includes an agent or consignee, the word "property" in bye-law 2 of bye-laws framed under s. 6 includes goods of which any person is in possession as agent or consignee. *In re* F. S. CLARKE, **1 Weir 851.**

Act I of 1886 (Abkari).

[S. 5-A INS., SS. 34, 40, AM., MAD. ACT I OF 1905.]

(1)—*See* RE TRIAL, 1911, 2 M.W.N. 588= 12 Ind. Cas. 616=12 Cr. L.J. 992.

(2)—*Ss.* 9, 11 *and* 55—*License to carry toddy.*—Where persons convey toddy from the licensee's trees to his shop within the limits of his farm, or where the licensee has a general permit and the persons conveying toddy act as his servants or persons employed by him, they are not liable to be convicted under s. 55 of Act I of 1886. QUEEN-EMPRESS v. SAMBOJI, **11 M. 472=1 Weir 633.**

(3)—S. 11—*See* No. 2, *supra.*

(4)—*Ss.* 11, 55 (*a*)—*Expired permit, if a permit.*—An expired permit is no permit at all within the meaning of s. 11 of the Act. PUBLIC PROSECUTOR v. ANGATA PARADESI, **1 Weir 633.**

(5)—*Ss.* 12 *and* 55, *cl.* (*c*)—*Delegation of the work of drawing toddy.*—The intention of the Legislature was to prohibit the drawing of toddy, but clearly not to prevent the delegation of the actual work to the servant or agent of the licensee. *In re* N. KAMAN, **1 Weir 637.**

(6)—*Ss.* 13 *and* 55—*Possession of arrack outside the local limits defined in the license.*—Under s. 13 of the Madras Abkari Act, only persons not being licensed manufacturers or vendors of liquors are prohibited from having more than a certain quantity of liquor. Where a limitation in the license had reference to the place of sale and not to the place of keeping, a person may bring the liquor from outside his authorised place of sale. CRIMINAL REVISION CASE, PETITION NO. 207 OF 1887, **1 Weir 637** (note). [*D.*, 1 Weir 636.]

(7)—*S.* 29 (*n*)—*Rule under, effect of—Magistrate's power over confiscated article.*—By virtue of the rule made under the powers conferred by s. 29 (*n*) of the Abkari Act (I of 1886), the Magistrate who adjudges the confiscation has power to direct that the confiscated article may be sold or destroyed. The rule may reasonably be construed, as not only authorizing the Magistrate to direct the sale of the article, but as also authorizing him to give directions as to the mode of sale. *In re* PONNUSAMI PILLAI, **5 M.L.T. 256=9 Cr. L.J. 149=1 Ind. Cas. 79= 19 M.L.J. 254.**

(8)—*Ss.* 29 *and* 55 (*e*)—*Power of Government to frame rules prohibiting delegation by licensee.*—Under s. 29 of the Act, the Governor-in-Council published a rule for the drawing of toddy in the District of South Canara, which prohibited the license-holder from authorising any other person to draw toddy, except in the case of his prolonged illness. *Held*, that the rule was *ultra vires* inasmuch as the intention of the Legislature was to prohibit the drawing of the toddy without a license, and not to prevent the delegation of the actual work to a servant or agent and the power given to the Governor in-Council to frame rules "to carry out the provisions of the Act" should be exercised within the limit which the Act would recognise. QUEEN-EMPRESS v. BELLARA, **11 M. 250=1 Weir 638.**

(9) *S.* 30—*Spirituous liquor—Beer.*—Country beer is not included in the general term beer. HIGH COURT PROCEEDINGS, 14TH MARCH 1873, **7 M.H.C. App. 15.**

6.—Madras Acts—continued.

Act I of 1886 (Abkari)—*continued.*

(10)—*Ss. 31 and 36—Obstruction to a salt officer entering the house in search of property in execution of his duty.*—Although a Sub-Inspector of the Salt and Abkari department may be acting irregularly in making a search for the purpose of finding out the illicit possession of toddy, without a search warrant, persons obstructing such search cannot claim the right of private defence inasmuch as s. 99 of the Penal Code does not allow the exercise of that right when an act is done by a public servant or under the direction of a public servant. QUEEN EMPRESS v. PUKOT KOTU, **19 M. 349=1 Weir 45=1 Weir 631.** [*F.*, 21 M. 296=1 Weir 135; *R.*, 18 Ind. Cas. 894=14 Cr. L.J. 142=155 P.L.R. 1913=20 P.W.R. 1913, Cr.; *D.*, 6 Cr. L.J. 105=17 M.L.J. 323.]

(11)—*S. 34—Power of Salt officer of one circle to make an arrest in another.*—Where the Salt officer of one circle entered another circle for the purpose of arresting an offender against the Salt Laws and arrested him, the Magistrate, although believing the accused was guilty of an offence under s. 55 of the Abkari Act, acquitted the accused on the ground that the Salt and Abkari officer of one circle had no power to enter a village in another circle and to detect a case there. *Held*, that the question whether the officer who effected the arrest was acting within or beyond his power in making the arrest did not affect the question whether the accused was or was not guilty of the offence with which he was charged, and that, therefore, the order of acquittal was wrong and should be set aside. EMPEROR v. RAVALU KESIGADU, **26 M. 124=1 Weir 630.** [*F.*, 31 C. 557=7 C. W.N. 661.]

(12)—S. 36—*See* No. 10, *supra.*

(13)—*S. 43—Magistrate enforcing a penalty on the application of an Abkari Inspector—Crim. Pro. Code (1882), ss. 514, 515 and 516—Procedure to be adopted.*—A Magistrate enforcing a penalty on the application of an Abkari Inspector, who forwards, under s. 43 of Act I of 1886, a bail bond by reason of default of appearance of the person bailed to appear before him, must follow the procedure laid down in s. 514, Crim. Pro. Code. The Magistrate should proceed in the same manner as if the default had been made by a person bailed to appear before his own Court. He should call upon the defaulter to show cause why the penalty should not be enforced. QUEEN-EMPRESS v. PALAYATHAN, **18 M. 48=1 Weir 631=2 Weir 664 =4 M L.J. 242.**

(14)—*S. 55—Abkari peon, whether a Police Officer—Madras Police Act, XXIV of 1859, s. 1.*—An Abkari peon does not fall within the definition of "Police" in s. 1 of Act XXIV of 1859. *In re* VENKASAMI RAO, **1 Weir 632=1 Weir 836.**

(15)—*S. 55 (a)—License for a certain local area—Possession of liquor outside that area—Licensee depositing liquor in out-house.*—Where the accused held a license for a certain taluq, but was found in possession of a quantity of arrack in a place, which was not included in the limits covered by that license, *held*, that the accused was guilty of an offence under s. 55, cl. (a). PUBLIC PROSECUTOR v. SUBRAMANIA MUDALIAR, **1 Weir 636.**

(16)—*S. 55 (a)—Keeping spirit in unlicensed place for safe custody during night, if contrary to the terms of license.*—Where a license prohibited the keeping or sale of spirits at any place other than that specified in the license, and where the licensee deposited a few drams of spirit in an unlicensed place for safe custody during night, *held* (*per* Wilkinson, J.), that the act, although a violation of the terms of the license, would not amount to such a violation as was contemplated by s. 55. *Per Shephard, J.*—The act of the accused amounted to a violation of law. *In re* MUNISAMI, **1 Weir 636.**

(17)—*S. 55 (a)—Depositing liquor in the out-house while it is in transit.*—Where there is nothing in a toddy-drawer's license prohibiting the licensee and the permit holder from depositing the liquor in the out-house of his dwelling place while it is in transit, he cannot be punished under s. 55 (a) for doing the same. *In re* SESHU, **1 Weir 635.**

(18)—*S. 55 (a) — Shop-keepers' licenses—Duration.*—Shop-keepers' licenses are granted by the Collector on the motion of the renter and would inure until cancelled by the Collector or by the lapse of time. It does not cease on the cessation of the renter's lease. *In re* ALAGA SANATHY, **1 Weir 634.**

(19)—*S. 55, cls. (a) and (g)—Possession of skin smelling arrack.*—Where the accused was found in possession of a skin, which smelt of arrack and which was used for the conveyance of the liquor, *held*, that the accused was not guilty of an offence under s. 55 of the Act. *In re* BALAGANA SUNYASI *alias* GOLAGANA SUNYASI, **1 Weir 640.**

(20)—*S. 55 (h)—License, nature of.*—There is nothing in the Act which authorises a person licensed to sell spirits to transfer his license to a person who purchases a spirit business, so as to continue the business under the license granted to the vendor. The license is personal. *In re* MADALLAPALLI CHINNIA KONDAIYA, **1 Weir 644.**

(21)—*S. 55 (h)—Transfer of liquor by way of gift.*—Where toddy is given at an unlicensed place as remuneration for watching the trees, the transfer is punishable under s. 55 (h). *In re* SUNDARAM, **1 Weir 645.** [*D.*, 1 Weir 645.]

(22)—*S. 55 (h)—Present of toddy for casual service rendered.*—Where it was found that a boy rendered some service to the accused, who thereupon made a present of some toddy, but there was no evidence to warrant the inference that there was a contract that toddy was to be

***6.—Madras Acts*—continued.**

Act I of 1886 (Abkari)—*continued.*

supplied as remuneration for work to be done for several days, as in the case reported in 1 Weir 645, *held*, that the accused was not guilty under s. 55 (*h*) of the Abkari Act. *In re* PETHARANDA NAIKEN, **1 Weir 645.**

(23)—*S.* 55 (*h*) —*Sale of ganja without license.*—The notification of the 12th November, 1888, brought into force in the Madras Presidency so much of Madras Act I of 1886 as relates to intoxicating drugs manufactured from the hemp plant. Ganja being a preparation of the hemp plant, persons selling it without license are liable to be punished under s. 55, unless entitled to the exemption allowed in s. 71 *In re* MOHIUDDIN KUTTI, **1 Weir 646.**

(24)—*S.* 55 (9)—*Material for manufacturing liquor—"Wash"*—A liquid mixture named "wash," consisting of jaggery and babool bark, is "material" for the purpose of manufacturing liquor, as it is fit to be used for distillation. QUEEN-EMPRESS v. GANGAYYA, **24 M. 417 = 1 Weir 641.**

(25)—S. 55—*See* Nos. 2, 4, 5, 6, 8, *supra.*

(26)—*Ss.* 55 *and* 68 —*Imprisonment in default of payment of fine—Penal Code, ss.* 65 *and* 67.—An offence under s. 55, Act I of 1886, is punishable with fine or imprisonment or both. S 67, Penal Code, does not, therefore, apply to it. There is no express provision, in Act I of 1886, to the effect that s. 65, Penal Code, does not apply, and under that section the imprisonment to be awarded in default of payment of fine cannot exceed 1½ months. *In re* GIRIDBORO SAN, **1 Weir 652.**

(27)—*Ss.* 55 (*a*) 69—*Rules by Government framed under the Act—Rule directing immediate removal of toddy to shops.*—The rules framed by the Governor-in-Council, under the Abkari Act, have the force of law, and in accordance with them, the holder of a tree-tapping license is bound to convey the pots containing toddy immediately after removal from the trees, that is, within a reasonable time. A person omitting to do so is liable to be punished under s. 55 of the Abkari Acts. QUEEN-EMPRESS v. JAMMU, **12 M. 450 = 1 Weir 635.**

(28)—*S.* 56 (*b*) *License to keep toddy shop—Omission to keep shop open and to pay kist.*—The holder of a license to keep a shop for the sale of toddy was convicted by a Magistrate, for having failed to keep his shop open, in breach of one of the conditions of the license. *Held*, that there was nothing to show that the licensee was bound to keep a shop. *Held*, further, that even if he was so bound, an omission to do so did not amount to an act in breach of the conditions of the license. Omission on the part of a licensee to pay kist on the due date is not an act done "on breach of the conditions of his license," and is not therefore, punishable under s 56 (*b*). QUEEN EMPRESS v. KARUPPAN, **23 M. 220 Foot note = 1 Weir 649.**
R., 23 M. 220 = 1 Weir 649 ; *D.*, 1 Weir 650.]

(29)—*S.* 56 (*b*)—*License whether necessary to be carried on the person of the licensee.*—It is not required by the Act that the person having a license should have it on his person when carrying toddy under his license. *In re* THAYYIL KUTTAN, **1 Weir 646.**

(30)—*S.* 56 (*b*)—"*Holder of license*"—*Scope of the term.*—The words "being the holder of a license" in s. 56 must be taken to include any person in his employ and acting on his behalf for the time being. *In re* SUDALAIMUTHU PILLAI, **1 Weir 647.** [*F.*, 21 M. 63 = 1 Weir 648.]

(31)—*S.* 56 (*b*)—*Terms of license, construction of.*—Where the words of the license required only that the toddy should be taken straight from the tree to the shop, it would not contravene the terms of the license to pour the contents of several pots into one pot in order to take the whole amount drawn to the shop in the evening. *In re* CHAIKUTTI, **1 Weir 648.**

(32)—*S.* 56 (*b*)—*Contravention of the terms of a license.*—Where a license expressly provides that the licensee is bound to see that bottles containing spirits manufactured in India are labelled "spirit manufactured in India," a contravention of the provision is punishable under s. 56 (*b*) of the Act. THE PUBLIC PROSECUTOR v. KANCHETI PICHAYYA, **1 Weir 650.**

(33)—*Ss.* 56 *and* 64—*Applicability of s.* 56 *to a servant of the holder of a license.*—Ss. 56 and 64 of the Abkari Act must be read together, and the words "being the holder of a license" in s. 56 must be taken to include any person in the employ, or for the time being acting on behalf of the holder of the license, as otherwise the words in s. 64, "for any offence committed by any person in his employ and acting on his behalf under s. 56" would have no meaning or application. QUEEN-EMPRESS v. MAHALINGAM SERVAI, **21 M. 63 = 1 Weir 648.**

(34)—*Ss.* 56 *and* 64—*Liability of license holder for offences committed by employee in his absence—Liability of manager of licensee.*—A license-holder, though not present, is liable, under s. 64, for any offence under s. 56, committed by a person in his employ, unless he can show that he has taken all due and reasonable precautions to prevent the commission of any offence under s. 56. A person managing a shop on behalf of the license-holder is not *prima facie* punishable under s. 56 for an offence under s. 56 committed in the shop. Incidentally, however, such a person seems to be made punishable by s. 64(2), for, he appears to be what is there called the actual offender. The section intends that the person who answers this description as well as the license-holder may be punished. *In re* YADUBANDI BHATTALASWAMI, **1 Weir 647.**

(35)—*S.* 62 —*Peon, whether an Abkari Officer.*—An Abkari peon is not an Abkari officer within the meaning of s. 62 of the Abkari Act (I of 1886). *In re* PACHAPPA CHETTY, **4 M.L.T. 107 = 18 M.L.J. 455.**

6.—Madras Acts—continued.

Act I of 1886 (Abkari)—*concluded.*

(36)—*S.* 62—*Peon, whether an Abkari officer.*—A peon is not an Abkari officer within the meaning of s. 62 of the Act. *In re* CROWN PROSECUTOR, **1 Weir 651.**

(37)—*S.* 62—*Omission to apply for extension of leave.*—The omission to apply for extension of leave by an Abkari peon at the proper time does not constitute an offence. *In re* KOTHANDARAMAN, **1 Weir 650.**

(38)—*S.* 64—*Penal Code, s.* 79—*Transporting liquor without license—Plea of ignorance.*—The act of carrying liquor over a gallon, without a permit, is rendered penal by statute, and under s. 64 of the Abkari Act, the *onus* of proving that the act was not an offence is thrown upon the accused. To do this, they must show that they acted in good faith, that is, with due care and attention, since s. 40 of the Penal Code renders applicable the provisions of s. 79 to offences punishable under special and local laws. *Held,* that the *onus* was discharged by proving that the accused, who was alleged to have conveyed liquor without a permit, did so by reason of believing, in good faith, that he was not transporting liquor, but was transporting mere casks containing water. *In re* KANDAN, **1 Weir 40.**

(39)—*S.* 64—*Gambling in arrack shop.*—Gambling in an arrack shop is not made an offence under the Act. *In re* YEDUBANDI BHATTALASWAMI, **1 Weir 647.**

(40)—S. 64—*See* Nos. 33, 34, *supra.*

(41)—*S.* 65—*Confiscation of liquor and measures.*—Where, on the conviction of a person under s. 55 for possessing liquor without license, the Magistrate ordered the confiscation of the liquor, and certain measures, *held,* that the order directing the confiscation of measures must be set aside, because the provisions of s. 65 do not apply. *In re* LUTCHMIAH, **1 Weir 652.**

(42)—*S.* 65—"*Knife,*" *whether an utensil.*—A knife cannot be said to be an "utensil" within the meaning of s. 65 of the Act, and should not therefore be confiscated. *In re* SOORA, **1 Weir 652.**

(43)—*S.* 65—*Confiscation of money.*—Money is not liable to be confiscated under s. 65 of the Act. *In re* GOVINDA NAICKEN, **1 Weir 652.**

(44)—S. 68—*See* No. 26, *supra.*

(45)—S. 69—*See* No. 27, *supra.*

Act III of 1888 (City Police).

[AMENDED, MAD. ACT III OF 1898, REP., IN PART, ACT XI OF 1901, SCH. 3, S. 71 (4), REP., IN PART, MAD. ACT IV OF 1905, AS TO CONTROL OF COMMISSIONER OF POLICE BY INSPECTOR-GENERAL OF POLICE — SEE MAD. ACT III OF 1907.]

(1)—S. 23—*See* No. 8, *infra.*

(2)—*Ss.* 42, 45 *and* 47—*Gaming—Seizure of money and securities for money—Forfeiture—Magistrate, whether bound to inquire whether things seized were intended to be used for purpose of gaming.*—The phrase "all or any of the articles seized" in s. 47 is large enough to cover money or securities for money when seized by the Police. S. 47, under which the Magistrate is empowered to order a forfeiture, does not require that he should make an inquiry whether the money and other things seized were used or intended to be used for the purpose of gaming. It is sufficient that the articles have, in fact, been seized by the Commissioner of Police under circumstances of reasonable suspicion entertained by him. The Magistrate has a discretion in the matter, and, while he is entitled to presume that the action of the Police authorities have been regular, he will, no doubt, not order a forfeiture in a case where he has reason to believe that the seizure has been irregularly made. QUEEN-EMPRESS v. BASHYAM CHETTI, **19 M. 209=1 Weir 850.**

(3)—*Ss.* 43, 46, 47—*Gambling — Gaming materials found on premises—Presumption.*—The presence of cards, counters and so-called *lunai* boxes on the premises, is a strong presumption that it is used as a common gaming house, and the owner of it when he makes a profit out of it is presumed to keep a common gaming house, and the persons present on the spot are guilty of gaming, in the absence of rebutting evidence. DESIKACHARI v. EMPEROR, **15 Cr. L.J. 408=23 Ind. Cas. 1008.**

(4)—S. 45—*See* No. 2, *supra.*

(5)—S. 46—*See* No. 3, *supra.*

(6)—S. 47—*See* Nos. 2, 3, *supra.*

(7)—*S.* 71, *cl.* XV—*Music played in a private place.*—The playing of music, where there is no wilful obstruction of a thoroughfare caused thereby, is not in itself punishable under cl. XV, s. 71 of the Act when such playing takes place on private property. QUEEN EMPRESS v. SUKHA SINGH, **14 M. 223=1 Weir 848.**

(8)—*Ss.* 75, 23—*Arrack shop whether a place of public resort.*—Where the accused, charged under s. 75 of Madras Act, III of 1888, with being drunk and disorderly in an arrack-shop, were acquitted on the ground that an arrack-shop is not a place of "public resort" within the meaning of s. 75, *held,* that s. 75, read in connection with s. 23 of this Act, and with due advertence to the mischief which the section is intended to prevent, makes it clear that an arrack-shop is a "place of public resort" within the meaning of the section, *held,* also, that the doctrine of *ejusdem generis* should not be applied in considering the scope of s. 75. EMPEROR v. MOONOOSAWMY, **6 M L.T. 16=9 Cr L J. 496=2 Ind. Cas. 84=33 M. 83.**

Act III of 1889 (Towns Nuisances).

[REP. IN PT., ACT XI OF 1901, SCH. III, S. 9, AMD., MAD. ACT III OF 1909, S. 4.]

(1)—*See* BENCH MAGISTRATES, 18 M. 394 =2 Weir 17.

6.—Madras Acts—continued.

Act III of 1889 (Towns Nuisances)—*continued.*

(2)—*S* 3—*Spreading raggi stalks in a public street—Act* XXIV *of* 1859 (*Police, Madras*).—The mere spreading of a raggi stalk to dry in the streets of a village is not an offence under s. 48 of Act XXIV of 1859 (=s. 3, Towns Nuisance). *In re* SINNAPPUDAYAN, **1 Weir 912.**

(3)—*S*. 3 (5) (6)—*Obstruction to thoroughfare—What constitutes offence under the section.*—The overhanging boughs of a hedge cannot be said to cause obstruction to the free passage of a thoroughfare. They may cause inconvenience to passers-by, but inconvenience is not obstruction. Nor can it be said that the obstruction is caused "wilfully," *i.e.*, by design, or set purpose. *In re* SANKARA ROW, **1 Weir 912.**

(4)—*Madras Towns Nuisances Act*, III *of* 1889, *s.* 3 (5 *and* 6)—*Offence under the clauses, what constitutes.*—To constitute an offence under s. 3, cl. 5 or 6, Act III of 1889, there must be evidence of obstruction. It is not enough to prove that the act complained of must in all probability cause obstruction, but it must be proved that obstruction to the free passage of the thoroughfare was caused. *In re* PEROOMAL SERVAI, **1 Weir 912.**

(5)—*S*. 3, *cls.* 5 *and* 9—*Spreading cloths to dry in a public street.*—The spreading of cloths to dry in a public street can neither come under cl. 5 nor under cl. 9 of s. 3 of Madras Act III of 1889. *In re* NARAYANA PILLAI, **1 Weir 913.**

(6)—*S*. 3, *cls.* 5 *and* 9—*Allowing the growth of rank vegetation.*—The allowing of the growth of rank vegetation in front of one's house is not an offence. *In re* NARAYANA PATTER, **1 Weir 913.**

(7)—*S*. 3 (6)—*Selling fish on the roadside—Obstruction—Offence.* — Where the evidence proved conclusively that, owing to the accused's selling fish on the roadside near the market, numbers of people collected there and caused an obstruction, *held*, this was an offence within the section. PUBLIC PROSECUTOR v. KANNA, **3 M.L.T. 400 = 18 M.L.J. 329 = 8 Cr. L J. 149.**

(8)—*S*. 3, *cl.* 9—*Act* XXIV *of* 1859, s. 48 (5)—*Drying grain in a street—Nuisance caused by bullock.*—The exposing of grain to dry in a street is not an offence under s. 3, cl. 9 of Act III of 1889, or under s. 48, cl. 5 of Act XXIV of 1859. *In re* SEPPAYEE, **1 Weir 913.**

(9)—*S*. 3 (9)—*Nuisance caused by bullock in street.*—Where the accused's bullocks were alleged to have dirtied a place of public resort, but the accused did not admit that they threw or laid down the dirt or filth, *held* that the accused could not be convicted under s. 3 (9). *In re* ABDULLA, **1 Weir 914.**

(10)—*S*. 3, *cl.* 9 (*s.* 48, *cl.* 5. *Act* XXIV *of* 1859)—*Rubbish in front of a house.*—The presence of rubbish in front of a man's house cannot be held generally as *prima facie* proof that the owner of the house threw it there.

6.—Madras Acts—continued.

Act III of 1889 (Towns Nuisances)—*continued.*

(*Per* Hutchins, J.) It may be presumed that any rubbish thrown in front of a man's door was thrown there by himself or with his consent. This, however, is not a presumption of law, but purely one of fact, which the Magistrates are at liberty to raise, and which they may well consider inconclusive. *Per* Kindersley, J. *In re* SOMAIYAN CHETTI, **1 Weir 914.**

(11)—*S*. 3 (9)—*Allowing pigs to stray and commit nuisance.*—A person cannot be convicted, under s. 3 (9) of Act III of 1889, of leaving pigs at large and causing them to commit nuisance on the public road. *In re* CHALLA GURUVADU, **1 Weir 914.**

(12)—*S*. 3, *cl.* (10)—*Gambling on* pyal *of private house whether offence.*—Where the act of gambling was committed, not in any public street, road, thoroughfare or place of public resort, but on the *pyal* of a private house it was held that no offence under cl. (10) of s. 3 of Act III of 1899, was committed. *In re* CHINNAYA MUDALI, **3 M.L.T. 137 = 7 Cr.L.J. 130.**

(13)—*S*. 3 (10)—*Public street—Verandah of a house.*—A verandah of a house is not a public street for the purposes of Act III of 1889. *In re* ANNAMALA MOOTHAN, **1 Weir 915.**

(14)—S. 3 (10)—*See* PENAL CODE, SS. 65 AND 67, 22 M. 238 = 1 Weir 32.

(15)—*S*. 3 (12)—*Throwing stones at a religious procession.*—A man, who throws a stone at a religious procession, is guilty of a disorderly act under s. 3 (12) of Act III of 1889. *In re* NARAYANASAMI, **1 Weir 915.**

(16)—*Ss.* 3, 6 *and* 7—*Gaming in a vacant unenclosed site.*—Where "gaming" took place in a vacant site belonging to one of the accused persons, and the owner of the site was convicted under ss. 6 and 7 of the Act and the other accused persons were convicted under s. 7 of the Act, *held*, that the conviction was wrong, inasmuch as the locality, in which gambling took place, could not be called as a "common gaming house" which would mean an "enclosed place." QUEEN-EMPRESS v. JAGANNAYAKULU, **18 M. 46 = 1 Weir 919.** [*R.*, 37 B. 651 = 15 Bom. L.R. 689 = 2 Bom. Cr. Cas. 96 = 14 Cr. L.J. 449 = 20 Ind. Cas. 609.]

(17)—*Ss.* 3 *and* 11—*Penal Code, ss.* 40 *and* 64—*Imprisonment in default of payment of fine.*—The effect of the amendment of the Penal Code by Act VIII of 1882 is to make ss. 40 and 64, Penal Code, applicable to offences under the Police Act, XXIV of 1859. The incorporation of ss. 3 and 4 of Madras Act III of 1889 in Act XXIV of 1859 does not, therefore, render the provisions of ss. 40 and 64, Penal Code, inapplicable. A Magistrate, convicting a person under s. 3 of Madras Act III of 1889, has the power to impose a fine and to award a sentence of imprisonment in default of the payment of fine. QUEEN-EMPRESS v. RAPPEL, **18 M. 490 = 1 Weir 909 = 1 Weir 31.**

6.—Madras Acts—continued.

Act III of 1889 (Towns Nuisances)—*continued.*

(18)—*S. 4—Letting offensive matter into a 'street'—Definition of 'street'—Discharge into 'drain' or 'ditch' by the side of street.*—The accused was convicted of letting offensive matter from his house into a street, under s. 4 of Madras Act III of 1889 (Towns Nuisances). It was found that the accused allowed the water to flow into a 'drain' or 'ditch' constructed alongside the road-way. *Held*, that the word 'street' not being defined in the Act, it must be taken in its ordinary or popular sense:—'A street is, properly, a paved way or road but, in usage, any way or road in a city having houses on one or both sides,' that such definition excludes what is called a 'drain' or 'ditch' on either side of the road-way and that, therefore, the drain in question didnot form part of the street. The conviction was, accordingly, quashed. VENKATARAMA CHETTI v. EMPEROR, **28 M. 17 = 1 Weir 916.** [*R.*, 9 Cr. L.J. 68 = 31 M. 408 = 18 M.L.J. 349 = 3 M.L.T. 400.]

(19)—*S. 5—Scope of the section.*—There is nothing in s. 5 of Act III of 1889 to restrict it to a place of public resort, nor is there any reference to nuisance, much less public nuisance. Where the accused used a bullock with sore neck to his oil mill in his private land at a distance from the public street, *held*, that the accused would be guilty of an offence under s. 5, Act III of 1889. *In re* MARUDAMUTHU CHETTI, **1 Weir 917.**

(20)—*S. 6—Common gaming-house.*—The mere fact of cards being played in a house is no ground for presuming it to be a common-gaming house. *In re* PALANIAPPA CHETTY, **1 Weir 918.**

(21)—S. 6—*See* No. 16, *supra.*

(22)—*Ss. 6 and 7—Common gaming-house.*—Where there is evidence that gaming took place in a house, that instruments for gaming were found there, and that money was paid to the owner of the house for allowing gaming therein, these facts were held to be sufficient to find that the house is a common gaming-house. *In re* SAKKARAIVAVA ROUTHEN, **1 Weir 918**

(23)—*Ss. 6, 7—"Common gaming house".*—In the absence of any definition of the term "common gaming-house," the term must at least imply that the house was one used as a place of public resort. Where there is no evidence that a house was either open to the public or kept for the profit of any person as a place of public resort, a conviction under s. 6 or 7 of the Act is not maintainable. *In re* SRINIVASA CHARY, **1 Weir 917.**

(24)—*Ss. 6 and 7—Conviction under the sections, when maintainable.*—Where there is no evidence that gaming in a house was carried on for the profit and lucre of the proprietor or that he supplied or charged for the cards, *held*, that the proprietor could not be convicted under s. 6 or s. 7 of Act III of 1889. *In re* NANJAPPA GOUNDAN, **1 Weir 918.** [*F.*, 1 Weir 918.]

6.—Madras Acts—continued.

Act III of 1889 (Towns Nuisances)—*concluded.*

(25)—S. 7—*See* Nos. 16, 22, 23, 24, *supra.*

(26)—S. 11—*See* No. 17, *supra.*

Act IV of 1889 (Salt).

[REP. IN PT., ACT XI OF 1901, SCH. III.]

See MAD. ACT VI OF 1871.

See MAD. ACT I OF 1882.

(1)—*Ss. 3 and 74 (b)—Possession of sea-water.*—Sea-water is not "contraband salt" within the meaning of ss. 3 and 74 of the Madras Salt Act. *In re* MUNISAMI, **1 Weir 896.**

(2)—*Ss. 46 and 47—Penal Code, s. 264—Escape from lawful custody—Arrest by a salt officer without a search warrant.*—S. 47 of the Madras Salt Act empowers an officer of the Salt Department, whenever he "has reason to believe that contraband salt is being kept in any place and that the delay in obtaining a search will prevent the discovery thereof," after certain formalities, to search such place to seize any contraband salt therein, and to arrest any person in the keeping of such salt. The officer has power only within the limits allowed by law, and must exercise his powers strictly in accordance with law. Where there could not have been any delay in obtaining a warrant from a Magistrate so as to prevent the discovery of contraband salt, the salt officer would be bound to take such warrant. In such a case an arrest, without the warrant, would be illegal, and a person escaping from it would not be liable under s. 224, Penal Code. QUEEN EMPRESS v. KALIAN AND OTHERS, **19 M. 310 = 1 Weir 206 = 6 M.L.J. 173 = 1 Weir 892.** [*R.*, 10 Ind. Cas. 667 = 9 M.L.T. 414 = 1911, 1 M. W.N. 231; *D.*, 21 M. 296 = 1 Weir 135.]

(3)—S. 47—*See* No. 2, *supra.*

(4)—*S. 74 (b)—Possession of illicit salt—Proof of intention.*—In order to convict a person under s. 74 (b), Act IV of 1889, it must be proved that the accused knew or had reason to believe that the salt in his possession was illicit. *In re* CHENGA REDDI, **1 Weir 897.**

(5)—S. 74—*See* No. 1, *supra.*

Act III of 1890 (Local Boards and Rent Recovery Amendment).

[SHORT TITLE GIVEN, ACT XI OF 1901, S. 7, REP., MAD. ACT I OF 1908.]

S. 162 (c)—Tree in a public road—Cutting a branch with permission—Subsequent wrongful conversion of the branch—Not punishable.—Where the accused cut down a branch of a tree in a public road by permission of the Chairman of the Union, and afterwards wrongfully converted it to his own use, *held* that his conviction under s. 162 (c) of the Local Boards Act, 1890, was improper, because the Act does not contain any provision as to trees wrongfully converted. EMPEROR v. ADAM KHAN, **9 M.L.T. 458 = 10 Ind. Cas. 577 = 12 Cr. L.J. 281.**

6.—Madras Acts—continued.

Act III of 1897 (District Municipalities Amendment.)

S. 49—*See* MAD. ACT IV OF 1884, S. 63 (3), 25 M. 627 = 1 Weir 727 = 12 M.L.J. 393.

Act I of 1900 (Malabar Compensation for Tenants' Improvements).

[S. 2, REP., ACT XI OF 1901, SCH. III.]

S. 3—*'Licensee' whether comes within the definition of 'tenant.'*—A licensee does not come within the definition of tenant in s. 3 of the Act, and he is not therefore entitled to the benefit of Act I of 1900. *In re* OLIVEIRA, **7 M.L.T. 121 = 5 Ind. Cas. 834 = 11 Cr. L.J. 258.**

Act VI of 1900 (Local Boards Amendment).

[S. 5, VIRT. AM. ACT XI OF 1901, SCH. II, S. 73, VIRT. REP., IN PART, ACT XI OF 1901, SCH. III.]

See MAD. ACT V OF 1884, SS. 98 (2), 98-A (2), 1 Weir 140 = 1 Weir 797.

Act I of 1903 (Planters' Labour).

S. 35—*Meaning of the provision of the end of first para—Power to punish Maistry or labourer indefinitely on obtaining periodical refusals—Absence of—Nature of refusal referred to in s. 35.*—A Magistrate cannot go on imprisoning a Maistry indefinitely obtaining periodical refusals from him. The meaning of the provision in s. 35 of the Madras Planters' Labour Act, to the effect that 'no conviction under this Act or imprisonment under such conviction shall have the effect of releasing any Maistry or labourer from the terms of his contract of labour as the case may be' is merely that the civil contractual obligation does not cease by the criminal Court's punishment for breach of contract, and not that a Maistry or labourer could be punished indefinitely till he dies. The refusal referred to in that section is a final refusal on the part of the Maistry or labourer, and he can be punished for it only once more. His refusal cannot be treated as a temporary refusal lasting only for the period of his punishment for that refusal, and he cannot be made to repeat his refusal every three months and again and again be punished. PONGA MAISTRY v. KING-EMPEROR, **24 M.L.J. 186 = 18 Ind. Cas 413 = 14 Cr. L.J. 79 = 36 M.** 497.

Act III of 1904 (City Municipality).

[SS. 3 (12), 12, AM., MAD. ACT IV OF 1907.]

(1) *See* MAD. ACT I OF 1884, S. 103, SCH. A. (1) (A and B), 11 M. 253 = 11 Ind. Jur. 369.

(2)—*See* MAD. ACT I OF 1884, S 307, 23 M. 164.

(3)—*See* MAD. ACT I OF 1884, SCH. A, 11 M. 238.

(4)—*Ss. 3 (8) and (22), 322 and 323 and Schedule—Conviction under s. 323—Storing iron without license.*—As no license under s. 322 is required to be taken out for storing iron, a conviction under s. 323 is unsustainable. Storing

6.—Madras Acts—continued.

Act III of 1904 (City Municipality)—*continued.*

iron is not specified in the Schedule to the Act as a dangerous or offensive trade, and so does not come within the definition of dangerous and offensive trade in ss. 3 (8) and (22). AROOMUGAM CHETTY v. PRESIDENT, CORPORATION OF MADRAS, **4 M.L.T. 321.**

(5)—*Ss. 103, 118, 120, 124, 125, 126, 172, 177—Failure to pay professional tax—Conviction—Legality.*—The President of the Madras Municipality served a notice on the accused to pay profession tax, but the accused failed to comply with the notice, alleging that, for sixty days during the half-year in question, he was not in the city exercising any trade, etc., and therefore pleaded that he was not liable. He was convicted under s 125 (1) of the Act. *Held* that the conviction was right. *Held* also that the President of the Municipality can order prosecution, if the accused fails to pay after fifteen days from the date of service of notice, and that failure to complain of the classification within the time limited is conclusive under s. 172 of the Act. *In re* VEERARAGHAVALU, **8 M.L.T. 305 = 20 M.L.J. 773 = 7 Ind. Cas. 743 = 11 Cr. L.J. 521 = 1910, M.W.N. 583.** (24 M. 205, *D.*; 14 M. 140, *Not F.*; 7 C. 322, *Appr.*)

(5-*a*)—S. 118—*See* No. 5, *supra.*

(6)—*S. 120—Trader buying goods through servant at Madras — Shop in Tinnevelly—Whether the trader can be said to carry on business at Madras—Profession tax—Liability to be taxed under s. 120.*—*Held* that a person, who is a trader in piece goods and has a shop in Tinnevelly where he sells the goods and earns his profits, cannot be said to carry on business at Madras, merely because he buys his goods at Madras (where he has no office), through a servant, who, acting under his orders, buys and forwards them to Tinnevelly and that he is not liable to be taxed under s. 120 of the Act. P. S.K. HAJEE SHEIK MEERA ROWTHER v. PRESIDENT OF THE CORPORATION OF MADRAS, **7 M.L.T. 80 = 33 M. 82 = 5 Ind. Cas. 44.**

(6-*a*)—S. 120—*See* No. 5, *supra.*

(6-*b*)—S. 124—*See* No. 5, *supra.*

(6-*c*)—S. 125—*See* No. 5, *supra.*

(6-*d*)—S. 126—*See* No. 5, *supra.*

(7)—*Ss. 150, 188—Failure to pay tax within time prescribed after service of bill—Omission to appeal to Standing Committee—Prosecution—Right of accused to plead non-liability for tax.*—An accused person, who is prosecuted under s. 188 of the City of Madras Municipal Act for failure to pay Municipal tax within the time prescribed, after service of the bill, cannot plead non-liability to pay the tax, where he has failed to appeal to the Standing Committee against the imposition as required by the Act. CROWN PROSECUTOR v. SUBRAYA NAICKER, **13 Cr. L.J. 207 = 14 Ind. Cas. 207.** (34 M. 130 = 1 M.W.N. 553 = 8 M.L.T. 305 = 20 M.L.J. 773 = 7 Ind. Cas. 743 = 11 Cr. L.J. 521, *F.*)

6.—Madras Acts—continued.

Act III of 1904 (City Municipality)—*continued.*

(8)—*S. 172—'Shall be ordinarily resident in'—Board of Commissioners—One member whether required to be resident of the division—Meaning of the section.*—S. 172, Act III of 1904, does not require that one of the Commissioners hearing an application for revision of assessment should always be one who is resident in or representative of the division in which the applicant resides or carries on business or in which the property assessed is situate. Meaning of the section explained. NARAYANA RAO v. THE PRESIDENT OF THE CORPORATION OF MADRAS, **23 M.L.J. 591 = 17 Ind. Cas. 945.**

(9)—S. 172—*See* No. 5, *supra.*

(10)—*S. 176—Dealers of every description, in cl. iii, sch. V—Whether money-lender comes within the term—Question of law—Reference to High Court—Duty of Magistrates.*—The question whether a money-lender comes within the expression 'dealers of every description' in cl. III. sch. V of the City Municipal Act, 1904, is a question of law which the Magistrates were, under s. 176 of the Act, bound to have referred to the High Court on the application of the petitioner. SAWMI CHETTY v. THE CORPORATION OF MADRAS, **23 M.L.J. 591 = 18 Ind. Cas. 271 = 14 Cr. L.J. 47** [*R.*, 27 M.L.J. 227 = 16 M.L.T. 128.]

(11)—S. 177—*See* No. 5, *supra.*

(12)—S. 188—*See* No. 7, *supra.*

(13)—*Ss. 262 and 420 "Made," meaning of—License—When necessary.*—The words "shall be made" in s. 262 of the City Municipal Act means "shall be constructed" and not "shall be composed of" and one who keeps a pandal already erected, without a license, is not liable to be prosecuted for not taking a license. CROWN PROSECUTOR v. AUDIKESAVALOO NAIDOO, **1912, M.W.N. 84 = 13 Ind. Cas. 832 = 13 Cr. L.J. 144.**

(14)—*S. 322—Fee for license—Place used for more purposes than one—Powers of President of the Municipality.*—If the license is required for more purposes than one, there is apparently nothing to prevent its issue, but there is also nothing to restrict the amount of the fee which may be charged for its issue, provided that it is levied with the approval of the Corporation and the sanction of Government. If the President, with such approval and sanction, prescribed in such a case a fee equal to the total of the fees which would be leviable if a separate license were taken for the use of a separate place for each of the purposes for which the license is required, the action of the President is not *ultra vires.* NYNA MAHOMED SAHIB v. LYOD, **8 M.L.T. 373.**

(15)—S. 322—*See* No. 4, *supra.*

(16)—S. 323—*See* No. 4, *supra.*

(17)—*S. 409, cl. (19)—By-law framed thereunder — "Food," meaning of ærated waters, whether food.*—The term "food" does not include "drinks" and, therefore, in the absence of a special inclusion, a person exposing for sale ærated waters unwholesome and unfit for human consumption does not commit any offence under by-law 177 framed under s. 409 (19) of the Madras City Municipal Act. EMPEROR v. P. R. GANAPATHY IYER, **16 M.L.T. 585 = 26 Ind. Cas. 311 = 27 M.L.J. 732.**

(18)—*S. 413—Rule 5 of the rules framed by Government under—Application to Presidency Magistrate by counter petitioner to declare that the inclusion of the petitioner as a candidate for the Municipal election by the President of the Madras Corporation was illegal—Order of Presidency Magistrate allowing the application—Whether revision lies to High Court under s. 439, Crim. Pro. Code or s. 15 of the Charter Act.*—An application was made to the Presidency Magistrate by the counter-petitioner to declare that the inclusion of the petitioner as a candidate for the Municipal election by the President of the Madras Corporation was illegal under r. 5 of the rules framed by Government in pursuance of the powers given to them by s. 413 of Act III of 1904. The Magistrate allowed the application. *Held,* no revision lies against the Magistrate's order, either under s. 439, Crim. Pro. Code, or under s. 15 of the Charter Act. The Presidency Magistrate in the particular instance is not a Court subject to the appellate jurisdiction of the High Court. He is in the position of a referee between the President and the candidate. The rule declares his decision to be final. When *quasi*-judicial functions are delegated to an officer whose decisions are ordinarily subject to the revisional powers of the High Court, he is not with reference to the delegated power necessarily subject to the High Court's appellate or revisional authority. *In re* VIJIYARAGHAVULU PILLAY, **16 M.L.T. 128 = 27 M.L.J. 227 = 15 Cr. L.J. 593 = 25 Ind. Cas. 345.** (11 M. 26, 30 M. 326, 23 M.L.J. 591, 25 M.L.J. 536, 21 B. 279, 38 C. 547, 1892, 1 Q B. 431 (447, 448), *R.*)

(18-*a*)—S. 420—*See* No. 13, *supra.*

(19)—*Sch. V— "Capital," meaning of—Indian Companies Act.*—The Indian Companies Act cannot be properly resorted to for determining the meaning of words on the Municipal Act, as the two Acts are not in *pari materia.* When sch. V of the Municipal Act is read as a whole, the underlying principle seems to be that taxation should be roughly proportionate to the professional incomes of individuals and the profits of companies. The word "Capital" in sch. V means paid-up-capital. MYLAPORE HINDU PERMANENT FUND v. CORPORATION OF MADRAS, **3 M.L.T. 400 = 18 M.L.J. 349 = 31 M. 408 = 9 Cr.L.J. 68.**

(20)—*Sch. VI, cl. 1—' Trailor Cars '—Vehicles with springs—' Propelled. '*—Trailor cars are vehicles with springs and are 'propelled by electricity', within the meaning of the words as used in sch. VI, cl. 1 of the Madras City Municipal Act, 1904, and, as such, are liable to pay a tax of Rs. 15 each to the Municipality. MADRAS ELECTRIC TRAMWAYS COMPANY v. MADRAS CORPORATION, **18 M.L.J. 149.**

6.—Madras Acts—concluded.

Act I of 1907 (Motor Vehicles).

—*Motor Vehicles Act—Rules* 9 *and* 12 *thereunder—Car on wrong side of the road—No blowing of horns—Liable for conviction.*—Rule 9 of the rules prescribed under the Motor Vehicles Act requires a car not to be driven on the wrong side of the road, and r. 12 lays down the sounding of a horn whenever expedient. If, while turning, the car has to be on the wrong side and the driver fails to blow the horn, a conviction will rightly lie under r. 9. RATNAM v. EMPEROR, **1912, M.W.N. 539=15 Ind. Cas. 487=13 Cr.L.J. 487.**

Act II of 1907 (Hill Municipalities).

Order under s. 23 (3)—*Finality—Appeal under s.* 23 (4)—*Party entitled to show cause—Crim. Pro. Code* (*Act* V *of* 1898), *ss.* 435, 439. —*Held*, that the finding of the Chairman under s. 23 (3), Act II of 1907, that a certain work was not in accordance with the approved plan is final, subject to a right of appeal to the Council under s. 23 (4) of the same Act. The owner is entitled to show cause against an order under s. 23 (3) of the Act. *In re* NABI KHAN SAHIB, H, **7 M.L.T. 183=5 Ind. Cas. 929=11 Cr.L.J. 332**

Act I of 1908 (Estates Land).

[SS. 3, 214 (3), REP. IN PT., SS. 6 (1), (4) 46 (1) 138, 142, 153, AND SCH. AM. MAD. ACT IV OF 1909.]

(1)—S. 12—Tenant cutting trees on *Jirayati* land after execution of *Kadappa*—No theft—*See* PENAL CODE, SS. 24, 379, 15 Cr.L.J. 586 =25 Ind. Cas. 338.

(2)—*Ss.* 73, 212—*Penal provisions not exclusive—Penal Code s.* 424.—The penal provisions of the Estates Land Act I of 1908 are in addition to, and not in substitution for, those contained in the Indian Penal Code. Where, therefore, an act is an offence under the Penal Code, but not punishable under the Estates Land Act, the accused can be tried for it. *In re* SIVANUPANDIA THEVAN, **15 Cr.L.J. 295=23 Ind. Cas. 503.**

(2-*a*)—S. 163—*See* No. 4, *infra*.

(3)—S. 212—*See* No. 2, *supra*.

(4) *Ss.* 212, 163—*Landlord and tenant—Decree for ejectment.*—Where a landlord has obtained a decree for ejectment against the ryot prior to the coming into force of the Madras Estates Land Act, the tenant cannot be prosecuted and convicted under s. 212 of the Madras Estates Land Act for being in possession of the land without the landlord's consent. That section would apply only if the decree could be treated as one passed under s. 163 of the Act PRATI APPALA RAJU v. MUTHARAJU SURPA RAJU, **1914, M W N. 396 =27 M.L.J. 676=15 Cr.L.J. 620=25 Ind. Cas. 628.**

7.—Punjab Acts.

Act XXI of 1856 (Excise).

(1)—*Ss.* 48 *and* 51—*District in which acreage on poppy cultivation had been introduced —Unlicensed vendors.*—The prohibition of the possession of opium by other than licensed vendors contained in s. 51, was held not to be in force in districts in which an acreage on poppy cultivation had been introduced, held also. that s. 48 applied to such cases; but that the provision of the latter section which made it an offence for a person authorized to supply licensed vendors, to sell opium to any person other than a licensed vendor was applicable to such area. MAYA v. THE CROWN, **14 P.R. 1869, Cr.**

(2)—S. 51—*See* No. 1, *supra*.

***Act XV of 1867 (Municipal Committees, Punjab, Oudh, Central Provinces).**

[REP. (IN PUNJAB) ACT IV OF 1873; (IN CENTRAL PROVINCES AND THE DISTRICT OF SAMBALPUR, ACT XI OF 1873; (IN OUDH), XV OF 1873.]

(1)—*Choongi tax on timber in transit—Act* XV *of* 1867.—The Choongi tax upon timber in transit through a town is not legal. NANUCK CHAND v. CHAPMAN, **19 P.R. 1869, Cr.**

(2)—*Ss.* 2, 3—*Extension of the provisions of the Act to a Cantonment.*—A notification purporting to have been made under s. 3 of Act XV of 1867, extending so much of the Act, as was not inconsistent with the provisions of Act XXII of 1864, to a cantonment was held not to be *ultra vires*, although no Municipal Committee had previously existed in that cantonment, inasmuch as the objection was not taken before the Original Court, and as even supposing that the notification under s 3 of Act XV of 1867 was *ultra vires*, the Local Government had authority to extend the Act to the cantonment, under s. 2. RAMPERSHAD v. EMPRESS, **43 P R. 1888, Cr.**

(3)—S. 3—*See* No. 2, *supra*.

***Act IV of 1872 (Punjab Laws).**

[REP. IN PART, ACT I OF 1878; ACT VI OF 1878; ACT X OF 1879; ACT IV OF 1882 (WHEN EXTENDED TO THE PUNJAB); ACT X OF 1882; ACT XVII OF 1887; ACT VIII OF 1890; REP. IN PART AND AMENDED, ACT XII OF 1878; ACT XII OF 1891; ACT VII OF 1895, SS. 3 AND 4; AMENDED ACT XV OF 1875; ACT XXIV OF 1881; PUN. ACT IV OF 1900, SS. 34 TO 38, REP., PUN. ACT II OF 1903. SS 9 TO 20; REP., PUN. ACT II OF 1905, SS. 22 TO 32, REP. (EXCEP. IN SCHEDULED DISTRICTS), ACT III OF 1907. REP., N.W.P. FRONTIER PROVINCE, REG. VII OF 1901, S. 5.]

(1)—*S* 25—*Discharge not opposed by creditors —Imprisonment of insolvent.*—When no objection is taken by the creditors for the discharge of the insolvent, as prescribed by r. 25,

* These Local Acts were passed by the Imperial Legislature.

7.—Punjab Acts—continued.

Act IV of 1872 (Punjab Laws)—*continued.*

Chief Court Book Circular, No. IV, 1753, the Court has no jurisdiction to award imprisonment under s. 25 of Act IV of 1872. BULDEO DASS v. DIAL SINGH, **24 P.R. 1873, Cr.**

(2)—*S.* 25 — *Imprisonment of insolvent — Power of Court to delegate to another the duty of examining the accounts.*—Where a Court awards imprisonment to an insolvent, under s. 25, Act IV of 1872, the Court itself is bound to make the enquiry and is not competent to delegate its powers to a Commissioner to investigate the insolvent's accounts. BULDEO DAS v. DIAL SINGH, **24 P R. 1873, Cr.**

(3)—S. 39—*See* CRIM. PRO. CODE, 1882, s. 512, 26 P.R. 1885, Cr.

(4)—*S.* 39-*A*—*Rule* 18—*Village officers — Duty of reporting movement of bad character.*—Where a person, whose name was on the Police Department Register No. X, was absent from the village in company with the *lambardar* himself, *held* that it was not the movement of a bad character which it was necessary to report under Rule 18. BAHAB v. EMPRESS, **11 P.R. 1893, Cr.**

(5)—*S.* 39-*A*—*Rule* 18 — *Duty of village officers to report the absence of a bad character from the village.*— The rule imposes as an obligation upon the village officers the duty of reporting, from time to time, the absence of a bad character from the village. The rule does not require immediate or prompt report. A decision by a lower Court upon the question whether there has been a breach of the obligation to report from time to time is not revisable without strong ground, especially in the case of an acquittal. EMPRESS v. MUHAMMAD, **37 P.R. 1887, Cr.**

(6)—*S.* 39-*A*—*Rule* 19—*Omission by* lambardar *to report absence of bad character—Information already given by village watchman.*—When the prescribed information of the absence of a bad character has been given by the village watchman, the *lambardars* could not be punished for breach of the rule. CROWN v. MULA, **20 P R. 1903, Cr. = 23 P.L.R. 1904.**

(7)—*S.* 39-*A*—*Rule* 23—*Village officers—Duty of reporting occurrence of an epidemic disease.*—It is not a conclusive poof of a breach of the rule that an epidemic disease had occurred and had not been reported. It must also appear that the accused were aware of it. The word any "epidemic" in r. 23 means any epidemic disease and not any disease in epidemic form. AMIN CHAND v. EMPRESS, **8 P.R. 1893, Cr.**

(8)—*S.* 39-*A*—*Rule* 24—*Scope of the Rule.*—Where the *lambardar* had no information that the offence of murder was about to be committed or no opportunity or means of preventing it, *held* that he could not be convicted under r. 24. The rule prescribes merely a certain mental attitude and a certain line of action as regards cognizable offences and does not make him responsible that none are committed. PAKHAR SINGH v. QUEEN-EMPRESS, **4 P.R. 1895, Cr.**

7.—Punjab Acts—continued.

Act IV of 1872 (Punjab Laws)—*continued.*

(9)—*S.* 39-*A*—*Rules* 25, 32, 44—*Commission of cognizable offence—Omission by Village Headmen to give information.*—In order to convict a *Chaukidar* for omitting to give information of a cognizable offence, it is necessary to prove that he received information of the commission of the offence, and that certain circumstances existed which rendered it incumbent on him to report to the Police personally. ABAS KHAN v. EMPRESS, **30 P.R. 1883, Cr.**

(10)—*S.* 39-*A*—*Rule* 28—*Scope.*—Rule 28 does not apply to a case where there has been no refusal to arrest, but, at most, negligence in the pursuit of the offender which may be due as much to error of judgment or cowardice as to corrupt motives. PAKHAR SINGH v. QUEEN-EMPRESS, **4 P.R. 1895, Cr.**

(11)—*S.* 39-*A*—*Rule* 43—*Absence of* Chaukidar *from village without leave.*—The mere temporary absence of a *Chaukidar* from the village without leave is not, when taken alone and without proof of further circumstances, an offence punishable under r. 43, either as being wilful misconduct or as being neglect of duty, or as being a withdrawal from the duties of his office without permission. GANDA SHAH v. EMPRESS, **23 P.R. 1894, Cr.**

(12)—*S.* 39-*A*—*Rules* 43, 44—*Village Headmen—Illegal omission.*— When the Village Headmen were charged and convicted under rr. 43 and 44 made under s. 39-A, for allowing the body of a person, who had committed suicide by throwing himself into a well, to remain in the well till the arrival of the police, without taking any steps to extricate it, *held* that they were not guilty of any offence. EMPRESS v. IZZAT, **23 P.R. 1882, Cr.**

(13)—*Ss.* 41, 42—*Track Law—Responsibility of village.*—The Act is intended to make a village responsible to an outsider and not to afford those of the same village a means of redress against one another. The Act applies only to a village to which the tracks lead from without. WASSANDA RAM v. KAIM SHAH, **11 P.R. 1876, Cr.**

(14)—*S.* 42—*Fine.*—Under the Act, the Magistrate of the village is empowered to inflict a fine with the previous sanction of the Commissioner. HAYAT ALA KHAN v. JAHANA, **16 P.R. 1872, Cr.**

(15)—*S.* 42—*Track law—Appeal.*—A Commissioner's order refusing to impose a fine under s. 42, Act IV of 1872, is not appealable. HAYAT ALA KHAN v. JAHANA, **16 P.R, 1872, Cr.**

(16)—*S.* 42—*Track Law—Nature of proceedings.*—Proceedings under the track law are judicial proceedings governed by s. 539, Crim. Pro. Code, 1872. The Deputy Commissioner should not fine a village under the track law, upon evidence taken by the Tahsildar to whom the matter has been sent for enquiry. DUL SINGH v. CROWN, **28 P.R. 1873, Cr.**

(17)—*S.* 42—*Jurisdiction to impose a fine.*—A fine under s. 42 can be imposed only by the

7.—Punjab Acts—continued.

Act IV of 1872 (Punjab Laws)—*continued.*

Magistrate of the District, in which the offending village is situate, with the previous sanction of the Commissioner. CROWN v. VILLAGE OF BADHANA, **7 P.R. 1876, Cr.**

(18)—*S.* 42—*Sanction of the Commissioner, when to be obtained.*—The previous sanction of the Commissioner, mentioned in s. 42 of Act IV of 1872, means sanction given after the proceedings under that section have been completed, when the Commissioner will have sufficient material for deciding whether sanction should be given or refused. AKBAR KHAN v. EMPRESS, **5 P R. 1884, Cr.**

(19)—S. 42—*See* No. 13, *supra.*

(20)—*Ss.* 43, 50, 50-*A*, 50-*B*—*Slaughter of kine.*—A conviction, under s. 43 of Act IV of 1872, by the District Magistrate, Pohtak, was set aside on the ground that no rules had been prescribed as applicable by the Local Government to Pohtak since Act IV of 1872 was passed and before Act XII of 1878 came into force, or have been made and published since the Act of 1872 was amended by Act XII of 1878. No penalty was attached to the slaughter of kine and sale of beef prohibited by s. 43. NIAM v. EMPRESS, **20 P.R. 1888, Cr.**

(21)—*S.* 45—*Order under—Executive order not judicial—Power of revision by the Chief Court.*—An order by the District Magistrate under s. 45 of the Act, which required certain foreign vagrants to leave his district, is made in an executive, not in a judicial, capacity. The Chief Court has no power to interfere with such an order by way of revision, even if such order be illegal. The proper remedy is by way of appeal to the Local Government. SUNDAR v. EMPEROR, **9 P R. 1907, Cr.=36 P.W.R. 1907, Cr.=42 P.L.R 1908=6 Cr. L.J. 379.**

(22)—*Ss.* 47 *and* 50—*Possession of* Sarani.—The possession of a *sarani* or skin for crossing a river without a license was a punishable offence. CROWN v. ARUB, **20 P.R. 1874, Cr.**

(23)—*Ss.* 47, 50-*B*—*Possession or user of rafts or buoys to cross rivers—No rules framed under s.* 47 *or s.* 50-*B—No offence.*—Where there were no rules framed by the Local Government either under s. 47 or under s. 50-B of the Punjab Laws Act, 1872, constituting it an offence to manufacture rafts or buoys or to use them for crossing rivers: *Held*, that a breach of the provisions of s. 47 would not amount to an offence. CROWN v. SOHAN SINGH, **18 P.R. 1911, Cr.**

(24)—*Ss.* 48 *and* 50—*Tirni or Rakh Rules for Jhang District.*—The Tirni Rules for the Rakhs in Jhang District were held not to have the force of law, as they were not published in the Gazette. Breach of those rules would not, therefore, be punished under s. 50. CROWN v. VIRU, **3 P.R. 1878, Cr.**

(25)—S. 49—*See* ACT X OF 1871, ss. 78 and 79, 6 P.R. 1877, Cr., 23 P.R. 1879, Cr.

(26)—*Ss.* 49 *and* 50—*Cultivator consuming his own opium.*—The consumption by a cultivator of his own opium is punishable under the rules framed under s. 49, Act IV of 1872. AMIR BUKSH v. EMPRESS, **7 P.R. 1875, Cr.** [*Overruled*, 12 P.R. 1884.]

7.—Punjab Acts—continued.

Act IV of 1872 (Punjab Laws)—*concluded.*

(27)—*S.* 50, *cls.* 1 *and* 2—*Penalty for breach of opium rules.*—As Act XV of 1875 had repealed cl. 2 of s. 50, Act IV of 1872, a breach of the rules framed under the first clause of the section could not be punished with the penalty provided by the second clause. PIR BAKSH v. CROWN, **4 P R. 1878, Cr.**

(28)—S. 50—*See* Nos. 20, 22, 24, 26, *supra.*

(29)—S. 50-*A.*—*See* No. 20, *supra.*

(30)—S. 50-*B.*—*See* Nos. 20, 23, *supra.*

(31)—*Rules under rr.* 19 *and* 44—*Lambardar* — Chowkidar— *Duty to give intimation of absence of bad characters from village.*—The headman of a village were convicted under r. 44 of the Rules framed under the Punjab Laws Act for not giving intimation, as required by r. 19, of the absence at night of a notorious bad character from his village. It appeared that the *Chowkidar* of the village had given timely intimation. *Held*, that the conviction was illegal, for, when information was duly given, the duty imposed by law, which was a collective duty and not an individual duty imposed on each headman and watchman, was discharged. CROWN v. MULA, **23 P.L.R. 1904=20 P.R. 1903, Cr.**

(32)—*Sch.* I—*Rules for conservancy of forests and jungles.*—No. 9 of the Rules for the conservancy of forests and jungles in the Hill Districts of the Punjab Territories is not a penal Rule. LACHMAN v. EMPRESS, **7 P.R. 1893, Cr.**

*** Act IV of 1873 (Municipal).**

[REP., ACT XII OF 1891.]

(*a*) *See* PUN. ACT XIII OF 1884, ss. 117, 118 and 119, 4 P.R. 1887, Cr.

(1)—*Ss.* 8, 14, 21—*Bye-law providing against evasion of* Octroi duty.—S. 8, Act IV of 1873, does not affect the competency of a Municipal Committee to frame a bye-law providing against evasion of payment of *Octroi.* The section merely authorizes the Local Government to make rules for collection and application of rates. Further, when a tax has been lawfully imposed, s. 14 authorizes the Committee to frame a bye-law with a view of checking the evasion of such tax and such a bye-law is not *ultra vires.* RAMPERSHAD v. EMPRESS, **43 P.R. 1888, Cr.**

(2)—*S.* 14—*Public or common nuisance—R.* 20, *Penal Code, s.* 268—*Police Act* V *of* 1861.—Where a person was charged for breach of the 20th bye-law, in having proceeded to build a balcony after receiving a notice from the Municipal Committee not to proceed with the building, *held*, that he was rightly convicted of a breach of that bye-law and that the act of the accused was not punishable, under s. 268, I.P.C.,

* This Local Act was passed by the Imperial Legislature.

7.—Punjab Acts—continued.

Act IV of 1873 (Municipal)—*concluded.*

or under s. 34 of Act V of 1861. JAI KISHEN v. MUNICIPAL COMMITTEE, AMRITSAR, **6 P. R. 1874, Cr.**

(3)—S. 14—*See* No. 1, *supra.*

(4)—*S.* 21—Octroi *duty, evasion of.*—Evasion of *Octroi* duty is only an offence under Municipal rules. Where there is no rule or bye-law providing for the tax, evasion of such tax is not punishable under the ordinary criminal law. CROWN v. KUNDAL, **18 P.R. 1874 Cr.**

(5)—S. 21—*See* PUN. ACT XIII OF 1884, s. 12, 10 P.R. 1887 Cr.

(6)—S. 21—*See* No. 1, *supra.*

(7)—*Ss.* 21, 22—*Object of sections.*—The sole object of s. 22 was to enable a Committee to institute a prosecution, and was not intended to give an exclusive right to them and the persons authorized by them. On receipt of a petition from an informer that the accused had been persistently evading payment of *Octroi* on grain, the Deputy Commissioner, who was also the President of the Municipality, directed the petition to be sent to the Tahsildar Magistrate for enquiry. Eventually the latter convicted the accused. *Held*, that, in the absence of proof that the President had authority from the Committee to institute a prosecution for the breach of the bye-law, it could not be taken that the prosecution was instituted by the Municipal Committee or by a person authorized by the Committee to institute it. BANSIDHAR v. EMPRESS, **10 P R. 1884, Cr.**

(8)—S. 22—*See* No. 7, *supra.*

(9)—*Bye-law No.* 23—*Notice issued by the President on his own individual authority—Validity.*—A person cannot be made liable to be convicted for a breach of the municipal bye-law, on a notice issued by the President of the Municipal Committee on his own individual authority, and not by the Committee as required by law. There is no provision in the Municipal Act, or in the bye-laws framed under the Act, which would justify the Committee in delegating its powers, conferred upon them as Committee, to any person. LALA GOBIND RAM v. EMPRESS, **32 P.R. 1881, Cr.** [*R.*, 26 P.R. 1905, Cr.]

*** Act XIII of 1884 (Municipal Act).**

[REP., ACT XX OF 1891.]

(1)—*Removal of projections and obstructions—Penalty for disobedience to orders of Committee.* — The accused, with the permission of the Municipal Committee accorded since the passing of Act XIII of 1884, built certain steps in front of his house. After the permission had been given, the Deputy Commissioner discovered that the Committee was not competent, without the sanction of the Commissioner, to grant permission to build anything encroaching upon public land ; consequently, the permission

* This Local Act was passed by the Imperial Legislature.

7.—Punjab Acts—continued.

Act XIII of 1884 (Municipal Act)—*continued.*

given was considered unlawful by the Committee and they desired in supersession of their previous order to revoke that permission, and accordingly issued notice to the accused to remove the steps, with a tender of compensation. The accused paid no regard to the notice, and this prosecution was instituted. *Held*, that a prosecution would not lie on these facts. Assuming that the structure was of the kind described in s. 89 of the Act, it was built with the permission in writing of the Committee, and was, therefore, expressly excluded from the provisions of s. 89, cl. 1 and was a lawful structure. Clause 2 of the section cannot properly be construed as relating to structures lawfully erected under cl. 1, so as to entitle the Committee by a summary notice to require their removal or alteration ; and the proviso to cl. 2 is clearly inapplicable to a structure erected since the passing of the Act. MATSADI MAL v. MUNICIPAL COMMITTEE, BHIWANI, **6 P.R. 1891, Cr.**

(2) — *Offences under the Act — Summary procedure.*—Offences under Punjab Act XIII of 1884 should be tried under the procedure prescribed for summons cases, under Ss. 242, 243, 244, Crim. Pro. Code, 1882. SHIB RAM v. SIMLA MUNICIPAL COMMITTEE, **2 P.R. 1890, Cr.**

(3)—*S.* 8—*Defamation by member of Municipal Committee—Sanction to prosecute—Crim. Pro. Code* (1882), *s.* 197.—Where a member of the Municipal Committee which passed a resolution considered by the accused to be defamatory of himself, was charged for defamation without obtaining the sanction of the Government, *held*, that, as the accused was a public servant not removable from his office without the sanction of the Government, and as the act imputed to the accused was committed by him in the character of a member of the Committee, he was not liable to be prosecuted without the previous sanction of the Government. BAKHSHI RAM LABHAYA v. DIWAN GANPAT RAI, **14 P.R. 1890, Cr.** (8 P.R. 1879, Cr., 3 C. 758, *D.*; 9 M. 439, *R.*) [*F.*, 29 P.R. 1904 ; *R.*, 17 P.R. 1902, Cr.]

(4)—*S.* 12— *Bye-law framed under Punjab Act* IV *of* 1873, *s.* 21.—A bye-law framed under Punjab Act IV of 1873, prohibiting conveyance of goods liable to any authorised Municipal tax within the Municipal limits, without first paying or tendering such duty, was held to be consistent with the powers conferred by Punjab Act XIII of 1884. Under Act IV of 1873, no penalty was attached in the Rule itself nor was it necessary to attach any such penalty, as, by s. 21 of Act IV of 1873, a penalty was attached to each of the bye-laws as soon as it was promulgated. But Act XIII of 1884 requires that every bye-law should have a penalty attached to it, with the confirmation of Government. A breach of the bye-law mentioned above had no such penalty attached to it under Act XIII of 1884. EMPRESS v. SHEODATT, **10 P.R. 1887, Cr.**

7.—Punjab Acts—continued.

Act XIII of 1884 (Municipal Act)—*continued.*

(5)—S. 39—*See* CHEATING — GENERAL, P.L.R. 1900, p. 38, Cr.

(6)—Ss. 49, 172—*Prosecution for recovery of taxes—Duty of Magistrates.*—Where a prosecution is launched for recovering taxes, the Magistrate is bound to act, his power being limited to finding whether the amount is claimable or not. The Magistrate should satisfy himself that the Committee applying to him is legally constituted and that the amount claimed is claimed under a tax or assessment legally imposed. But it is not competent to the Magistrate to go into the merits and investigate the details of the sum claimed ; the remedy in such case is by appeal under s. 49 of the Act. LAGI v. MUNICIPAL COMMITTEE, LAHORE, **1 P.R. 1891, Cr.** [*F.*, 11 Cr.L.J. 87 = 4 Ind. Cas. 951 = 109 P.L.R. 1909 = 23 P.W.R. 1909 = 2 P.R. 1910 Cr.; *R.*, 23 P.R. 1903, Cr.]

(7)—*Ss.* 88, 144—*Order prohibiting a proposed erection.*—It is not a condition precedent, for an order under s. 88, prohibiting a proposed erection, that compensation should be paid. The Committee is not bound to set forth its reasons for refusal. The Courts cannot interfere with the discretion of the Committee, if exercised *bona fide.* CHIPPAL v. MUNICIPAL COMMITTEE, SIMLA, **24 P.R. 1890, Cr.** [*R.*, 11 P.R. 1904 Cr., 1 P.R. 1906, Cr.]

(8)—*S.* 89—*Steps constructed with Committee's sanction—Commissioner's sanction found necessary—Subsequent order for removal—Disobedience—Prosecution.*—Since the passing of Punjab Act XIII of 1884, the accused applied for and obtained permission to build a certain step in front of his house. Subsequent to the granting of the sanction, it was found that the Municipal Committee had no authority to allow an encroachment, without the sanction of the Commissioner. The Committee thereupon revoked the sanction and issued a notice to the owner of the house to remove the steps with a tender of compensation. *Held*, that the accused could not be prosecuted for disobedience to the notice. MATSADI MAL v. MUNICIPAL COMMITTEE, BHIWANI, **6 P.R 1891, Cr.** [*R.*, 11 P.R. 1904, Cr.]

(9)—*Ss.* 89 *and* 162—*Notice not signed by the President or Secretary.*—A notice issued under s. 89 is materially defective, if it is not signed by the President or Secretary. The defect is not cured by the provisions of the last clause of s. 162. EMPRESS v. SHAMBUNATH, **8 P.R. 1886, Cr.**

(10)—*S.* 92 (3)—*Notice to remove slaughter-house.*—Disobedience to a notice issued by the Municipal Committee calling upon the accused to close his slaughter-house at its present position and remove it to another specified place, without fixing the latter place as the only place for slaughter of animals was held not to be punishable under s. 92. BOLAKI v. MUNICIPAL COMMITTEE, KUNJAH, **22 P.R. 1889, Cr.** [*R.*, 1 P.R. 1906, Cr.]

(11)—*Ss.* 117, 118, 119—*Bye-law—Validity.*

7.—Punjab Acts—continued.

Act XIII of 1884 (Municipal Act)—*concluded.*

—A bye-law made under Act IV of 1873, prohibiting the use of certain localities or permitting any special locality for any of the purposes mentioned in the bye-law, was held to be inconsistent with, and beyond the powers conferred by ss. 117, 118 and 119 of Act XIII of 1884. MUSSAMMAT JAFARAN v. EMPRESS, **4 P.R. 1887, Cr.** [*R.*, 11 Cr. L.J. 87 = 4 Ind. Cas. 951 = 109 P.L.R. 1909 = 23 P.W.R. 1909 = 2 P.R. 1910, Cr.]

(12)—S. 118—*See* No. 11, *supra.*

(13)—S. 119—*See* No. 11, *supra.*

(14)—S. 144—*See* No. 7, *supra.*

(15)—S. 162—*See* No. 9, *supra.*

(16)—S. 172—*See* No. 6, *supra.*

(17)—*Bye-law No.* 22—*Evasion of Octroi duty.*—A bye-law to the effect that "any evasion or attempt at evasion of payment of *Octroi* dues shall render the offender liable to a fine of not exceeding Rs. 50" was held to be invalid, on the ground that it made no distinction between lawful and unlawful, honest and dishonest, evasion. *Quære*:—Whether any bye-law heretofore framed regarding evasion of *Octroi* dues has any validity in places where the Municipal Act of 1884 is in force. EMPRESS v. KHUBI RAM, **27 P. R. 1889, Cr.** [*R.*, 11 Cr. L J. 87 = 4 Ind. Cas. 951 = 109 P.L.R. 1909 = 23 P.W.R. 1909, Cr. = 2 P.R. 1910, Cr.]

*** Act XVIII of 1884 (Punjab Courts).**

[REP. IN PART, ACT VII OF 1887, S 10; ACT XVI OF 1887 ; ACT XVII OF 1887 ; ACT VII OF 1889 ; ACT VIII OF 1890 ; ACT XII OF 1891; ACT I OF 1894, REP. IN PART AND AMENDED, ACT XIII OF 1898 ; ACT XXV OF 1899. AMENDED, ACT XIX OF 1895 ; ACT IX OF 1900 ; REP. IN N.W.F.P. REG. VII OF 1901, S. 5.]

(1)—*S.* 10 (2) (*A*)—*Equal division in opinion among Judges—Competency of senior Judge to re-consider his opinion.*—When the Judges constituting a Full Bench are equally divided in their opinion, it is competent for the senior Judge, without affirming the judgment already recorded by him, to reconsider his opinion and write a fresh judgment if he finds reason for so doing. SHIRCORE v. EMPRESS, **15 P.R. 1897 Cr., F.B.**

(2)—S. 11—Reference to Full Bench—Practice—See CRIM. PRO. CODE, 1898, s. 304, 13 Cr.L.J. 815 = 17 Ind. Cas. 559 = 9 P.W.R. 1913, Cr. = 6 P.R. 1913, Cr. = 175 P.L.R. 1913 F.B.

(3)—S. 13—Chief Court's power of superintendence over orders of Criminal Courts—*See* ACT XVIII OF 1879, s. 3, 18 P.R. 1914, Cr. = 266 P.L.R. 1914 = 15 Cr. L.J. 601 = 25 Ind. Cas. 513 = 51 P.W.R. 1914, Cr.

(4)—S. 13—*See* ACT XVIII OF 1879, ss. 13, 14, 41 P.R. 1888, Cr.

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* This Local Act was passed by the Imperial Legislature.

7.—Punjab Acts—continued.

Act XVIII of 1884 (Punjab Courts)—*concld.*

(5)—S. 13—*See* ACT XVIII OF 1879, s. 36, 3 P.R. 1900, Cr.

(6)—S. 13—*See* REVISION—MISCELLANEOUS CASES, P.L.R. 1900, p. 17, Cr.

(7)—S. 13—*See* TOUT, 27 P.W.R. 1909, Cr. =4 Ind. Cas. 1022=11 Cr. L.J. 148.

(8)—Ss. 13 and 70—*See* ACT XVIII OF 1879, s. 36, 115 P.L.R. 1909=11 P.R. 1909, Cr. =28 P.W.R. 1909=3 Ind. Cas. 977.

(9)—*S.* 14—*Petition-writers—Rules* 20, 21, 22, 29.—Under the Rules regarding petition-writers, the District Judge alone has jurisdiction. As a petition-writer, who dictates a petition to a third person, does not write the petition, he is not guilty of any offence under the rules. EMPRESS v. SAMMAN LAL, **28 P. R. 1889, Cr.**

(10)—S. 23—*See* ACT XVIII OF 1879, s. 36, 108 P.L.R. 1904.

(11)—S. 23—*See* TOUT, 108 P.L.R. 1904= 22 P.R. 1904, Cr.

(12)—S.33—Power of superintendence—Whether enlarges power of transfer under s. 526, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 526, 110, 5 P.R. 1914, Cr.

(13)—*Ss.* 33, 34, 36—*Powers of Chief Court —Exercise by Division Bench of powers under s.* 36.—The Chief Court cannot, under the general powers of superintendence conferred upon it by s. 13, Punjab Courts Act, revise orders passed by the Divisional Court in exercise of the powers conferred upon it under s. 36. RATTAN LAL v. EMPRESS, **31 P.R. 1888, Cr.**

(14)—S. 34—*See* No. 13, *supra.*

(15)—S. 36—*See* No. 13, *supra.*

(16)—S. 70—*See* No. 8, *supra.*

*** Act XVII of 1887 (Punjab Land Revenue).**

[REP. IN PART, ACT XII OF 1891; REP. IN PART AND AMENDED, ACT XVII OF 1896; AMENDED, PUN. ACT I OF 1899, SS. 2 AND 3 REP. IN PART AND AM. IN N. W. F. P. REG. 7 OF 1901, SS. 3, 6 (2), SS. 79 (2) 87 REP.—(IN PUNJAB), PUN. ACT II OF 1905 (IN N.W.F.P.) REG. II OF 1906, S. 3, S. 29 (1) AM., ACT IV OF 1907.]

(1)—*S.* 28—Zaildar, *whether bound to give information of commission of a heinous offence.*—Though a *Zaildar* is required by virtue of Rule 25 of the Rules framed under s. 28 of the Punjab Land Revenue Act, to report heinous crimes to the Police and Magistrate, such Rule does not cast upon him a legal duty to report, such as is imposed by a direct and express enactment of the Legislature, so that he can be held merely as a *Zaildar* to be "legally bound to give information" of the commission of a heinous offence. HARI SINGH v. QUEEN-EMPRESS, **25 P.R. 1894, Cr.** (19 P.R. 1886, Cr., *R.*)

* This Local Act was passed by the Imperial Legislature.

7.—Punjab Acts—continued.

*** Act XX of 1891 (Punjab Municipalities).**

[REP. IN PART AND AMENDED, ACT XVIII OF 1896; PUN. ACT III OF 1900, SS. 34, 184 (1), AMENDED PUN. ACT I OF 1905, SS 3, 4.]

(1)—*Ss.* 15, 28, 169—*Order of Committee—Validity.*—A meeting presided over by a President, neither elected nor appointed as a member of the Committee, nor its President as required by s. 15, Punjab Act XX of 1891, is not a valid meeting. Disobedience to an order passed at that meeting is not, therefore, punishable under s. 169. CHANDA v. EMPEROR, **46 P.R. 1905, Cr=134 P.L R. 1905.**

(2)—*Ss.* 26, 122 *and* 169—*Issuing notice by President of the Municipality without any emergency, validity of—Order* ultra vires—*Conviction for disobedience of order cannot stand.* —Purporting to act under s. 26 of the Act, the President of the Simla Municipal Committee issued a notice, without any urgency, to the petitioner, under s. 122 of the Act, to make certain drainage improvements in a house belonging to the petitioner. The petitioner was fined for disobedience of the order. But the record did not show that the notice was issued in pursuance of any resolution of the Committee or was even reported to the Committee as required by proviso (*b*) to s. 26, or that the Committee had, in any way, delegated its powers to the President, even if it had power to do so. *Held*, that, in the absence of any proof that the matter was urgent, the notice was invalid and the petitioner could not be convicted for disobedience thereto. PURAN MAL v. KING-EMPEROR OF INDIA, **92 P.L.R. 1905=26 P.R. 1905, Cr=2 Cr. L.J. 371.**

(3)—S. 28—*See* No. 1, *supra.*

(4)—*Ss.* 42 (1), (*f*), 201 — *Municipality—Boundaries, extension of*—Octroi *on goods stored at a place outside original, but within extended boundaries at the date of extension—Attachment by order of Magistrate to recover* octroi—*Revision — Criminal cases — Crim. Pro. Code* (V *of* 1898), *s.* 439.—When a Municipality moves a Magistrate to take action under s. 201 of the Punjab Municipal Act, it is his duty to see that, on the facts as stated by the Municipality, the amount would be "claimable," *i.e.*, whether the claim is *intra vires* or *ultra vires*. If the Municipality is properly constituted and competent to levy the tax in the area in which it is sought to levy it, the Magistrate is not competent to enquire whether the amount claimed under a tax duly and legally imposed and set to be in arrears is due or not; the remedy as to that lies under s. 52. But if he finds that the sum claimed could not be legally claimed from any one and is beyond the power, *ultra vires* of the Committee, then he is bound to refuse to act. THE CROWN v. KANHAYA LAL, **109 P.L.R. 1909=23 P.W.R. 1909=2 P.R. 1910, Cr.** (1 P.R. Cr., 1891, *F.*; 22 A. 210, 17 B. 173, 33 B. 446, 21 C. 319, 13 M. 1878, 1 M. 158, *R.*)

* This Local Act was passed by the Imperial Legislature.

7.—Punjab Acts—continued.

Act XX of 1891 (Punjab Municipalities)—*ctd.*

(5)—S. 70—*See* REVISION, SENTENCES, P.L.R. 1900, p. 32, Cr.

(6)—*Ss.* 87, 95, 164, 165—*Encroachment on public street—Order for its removal—Disobedience.*—When a plot of land alleged to be a part of a public street was not in the possession of the Municipal Committee for a long time, but was in the occupation of the petitioner for more than 20 years, *held*, that no criminal proceedings regarding that plot could be instituted, without first establishing the Committee's right of ownership. S. 87 does not apply to a structure built on a public street with the permission of the Municipality, although it may be on a site on a part of the public thoroughfare. The Committee cannot, therefore, proceed for its removal after a summary notice under s. 95. KARIM BAKSH v. MUNICIPAL COMMITTEE, UMBALLA, **11 P.R. 1904, Cr. = 66 P L R. 1904.** (6 P.R. 1891, Cr., *R.*)

(7)—*S.* 92—*Building house without sanction after six weeks of petition*—Building a house, six weeks after the receipt of a petition by, but before receiving an order from, the Municipal Committee, is not an offence under the Municipal Act. AYA RAM v. EMPEROR, **9 P.R. 1901, Cr.** (27 P.R. 1904, 62 P.R. 1907, Cr., *D. & N.F.*)

(8)—*S.* 92, *cl.* 6—*Sanction for building—Obligation to begin work within the period fixed by the clause—Completion within such period not necessary.*—Where a person obtains, from a Municipal Committee, the necessary sanction for a building, under s. 92 of the Act, the section does not make it obligatory on him to complete the building within a year of his obtaining the sanction nor even to have commenced each separate part of the building within that time. He is bound only to commence some portion of the building within the period of one year from the date of sanction as is provided for by cl. 6, s. 92, and there cannot be any rule or provision of law requiring that the building must be completed within any particular, or a reasonable, time. BANWARI LAL v. EMPEROR, **61 P.R. 1905, Cr. = 3 Cr. L. J. 344 = 41 P.L.R. 1906.**

(9)—*S.* 92—*Rule* V *of Rules of the Municipal Committee of Murree—Scope.*—Rule V of the Rules of the Municipal Committee of Murree has no application to subsequent additions to a house built on a site subject to the Rules. MUHAMMAD HUSSAIN v. EMPRESS, **12 P.R. 1893, Cr.**

(10)—*Ss.* 92 *and* 94—*Erecting a partition wall over a* tharra—"*Erection of a building*"—*Sanction of the Municipal Committee necessary.*—The erection of a new partition wall over a *tharra*, if it affects the interests of the public and the Municipality, is, in so far as it affects such interests, an act which causes a material alteration in the house, and so amounts to "the erection of a building" within the meaning of s. 94 of the Act; and requires the sanction of the Municipal Committee under s. 92 of the Act. BASANT RAM v. KING-EMPEROR, **13 P.R. 1907, Cr. = 39 P.W.R. 1907 = 36 P.L.R. 1908 = 6 Cr. L.J. 342.**

(11)—*Ss.* 92 *and* 95—*Encroachment on public street.*—It is not lawful for the owner of a building to add to or place against or in front of his building any projection or encroachment without the written permission of the committee. KING-EMPEROR v. BILLU MAL, **27 P.R. 1904, Cr.** (9 P.R. 1901, Cr., *D.*) [*Cons.*, 62 P.R. 1907, Cr.]

(12)—*S.* 92, *sub-s.* 4 *and s.* 145—*Infringement of bye-law framed under—Whether such infringement entails criminal liability—Bye-law by Kasur Municipality—Whether affects s.* 92.—*Held*, that non-compliance with the provisions of the first part of sub-s. (4), s. 92 of Act XX of 1891, does not make the defaulter *criminally* liable. It only enables the Committee to issue a notice to him, calling upon him to alter or demolish the wall. *Held*, also, that the bye-law framed by the Kasur Municipal Committee does not at all make it obligatory on the person, giving to the Committee a notice of his intention to erect or re erect a building, to refrain from so erecting or re-erecting it within six weeks from the date of the notice, and that, therefore, a breach of the bye-law will not entail upon the notice giver any penalty. The provisions of s. 92, sub-s. 4, cannot be read into the bye-law as framed by the Municipal Committee of Kasur. CROWN v. DINA NATH, **13 P.R. 1909, Cr. = 4 Ind. Cas. 861.**

(13)—*Ss.* 92, 150, 164 *and* 169—*Notice to remove platform—Prosecution—Whether fresh notice necessary after accused's reply to municipal committee.*—The Municipal Committee of Peshawar, holding that the accused had constructed a new platform in front of his building, contrary to the order sanctioning the erection of the building subject to the condition that no new *sufa* or *thalla*, that is platform, should be constructed in front of the building, served him with a notice to remove it, and warned him that, if he did not comply, he would be prosecuted. The accused neither complied with the notice, nor appealed against it under s. 150 of the Municipal Act. The Municipal Committee prosecuted him under ss. 164 and 169 of the Act, but the Magistrate acquitted him on the ground, that the accused had, on receipt of the notice, written to the Municipal Committee that the land on which the platform was constructed was his own property, that the platform had existed for years, and that the Committee had failed to serve the accused with a fresh notice in reply to his objections.—*Held*, setting aside the order of acquittal, that the Committee were not legally bound to serve the accused with a fresh notice. QUEEN-EMPRESS v. SALEH MUHAMMAD, **3 P.L.R. 1900, Cr. = 12 P.R. 1899, Cr.**

(14)—*Ss.* 92 *and* 169—*Opening of a window in the wall of a private house.*—The accused

7.—*Punjab Acts*—continued.

Act XX of 1891 (Punjab Municipalities)—*ctd.*

opened a window 5ft ×3ft., fitted with iron bars, 4½ feet above the level of the ground in the northern wall of his private house, without giving notice to or obtaining the sanction of the Municipal Committee of Peshawar. On a prosecution by the said Committee, the accused was sentenced by the order of a First Class Magistrate, under ss. 92, 169 of Act XX of 1891 to Rs. 10 fine for opening the said window without giving notice to the said Municipal Committee as required by its Bye-Laws published in Notification No 101 of 18th March, 1895, and was further ordered to close up the window. *Held*, that there was nothing in the wording of s. 92 read with s. 94 of the Municipal Act, or in the Bye-Laws framed by the Peshawar Municipal Committee and published in the Notification quoted above, which required a person to give notice to the Committee of his intention to open out a new window in a wall of his private house, and that, therefore, the accused was not legally bound to give notice of his intention to open out the new window. The Magistrate's order was accordingly set aside. GHULAM HAIDAR v. THE CROWN, **4 P.W.R. 1913 (N.W.F.P.) Cr.=160 P.L R. 1913.**

(15)—S. 94—*See* No. 10, *supra.*

(16)—*S.* 95— *Encroachment upon Municipal land—Evidence—Blyth's map of Amritsar Municipality.—Held* that, in the absence of any direct evidence of encroachment upon the land of a Municipal Committee, a conviction under s. 95 of Act XX of 1891, is illegal. The evidence of an official, who has got no personal knowledge, based upon a comparison of some old Municipal maps is, after all, a mere opinion. MUHAMMAD YUSAF v. CROWN, **31 P.W.R. 1908, Cr.**

(17)—S. 95—*See* Nos. 6 and 11, *supra.*

(18)—*Ss.* 95 *and* 169—*Notice to remove building erected without permission of municipality —Conviction—Fine—Prospective fine, validity of —Procedure.*—For failure to comply with a notice issued under s. 95 of the Punjab Municipalities Act, requiring the accused to remove a building erected without the permission of the municipality, he was convicted, under s. 169 of the Act, and fined Rs. 5, and in the event of failure to remove the building within a week, he was further ordered to pay an additional fine of two annas a day till the building was removed. *Held*, that fine could not be imposed prospectively and that, in such a case, the proper course was to institute further prosecution if there be occasion for it, and allow the accused an opportunity of defending himself before the further fine should be imposed. CROWN v. GURDITTA, **171 P L.R. 1903=13 P.R. 1903, Cr.**

(19)—S. 122—*See* No. 2, *supra.*

(20)—*S.* 128—*Power of Municipality to issue notice directing owner to demolish and rebuild a new wall, in place of the old.*—The renewal of a wall built against a hill side, as a support to it, which was bulging out and had become dangerous was held to be nothing but repairs, within the meaning of s. 128, Punjab Municipal Act, 1891, to the bank or hill side, though it might necessitate the removal of the wall previously built. Therefore, a Municipal Committee can, under that section, issue notice to a person directing the re-building of such a wall of specified dimensions and character, after pulling it down, as the object of the Committee is to protect the bank or hill side from slipping down. DEVI SARAN v. KING-EMPEROR, **13 P.R. 1908, Cr.=28 P.W R. 1908, Cr. =8 Cr. L.J. 258.**

(21)—*Ss.* 128, 169 *and* 92—*Notice requiring removal of ruinous shed without option of repair —Legality — Non-compliance with notice—No offence.*—A notice issued under s. 128 of the Act, requiring the owner to remove a ruinous shed, without the option to repair the shed, is defective and illegal, and non-compliance with it is no offence under s. 169 of the Act. HAZURI MAL v. KING-EMPEROR, **18 P.R. 1908, Cr.** (23 P.R. 1905, Cr., *R.*) [*R.*, 147 P.L. R. 1908, Cr.=7 P.R.1908, Cr.=13 P.W.R. 1908, Cr.=7 Cr. L.J. 349.]

(22)—*Ss.* 135, 136, 169—*Scope of the sections.* —S. 135, Punjab Act XX of 1891, deals with unregistered and unlicensed places. S. 136 deals with places registered or licensed. Therefore, there can be no conviction with reference to one and the same place under both sections. S. 169 punishes disobedience to written notices lawfully issued by a Municipal Committee only when such disobedience is not an offence punishable under any other section of the Act. A person convicted under s. 135 or s. 136 should be punished under those sections and not under s. 169. ABDUL RAZAQ v. QUEEN-EMPRESS, **4 P.R. 1894, Cr.**

(22-*a*)—S. 136—*See* No. 22, *supra.*

(23)—*S.* 143 (*h*) (*ii*)—*Bye-law* XVIII, *sub-ss.* (2) *and* (4) *framed under—Appointment of agent for all Municipal purposes by non-resident owner of house property in Simla—Failure to notify appointment—Offence—Punishment under sub-s.* (4).—Where a non-resident owner of house property in Simla appointed another as his agent for all purposes of the Municipal Act and omitted to notify such appointment to the Engineer-Secretary of the Municipal Committee, as required by sub-s. (2), of Bye law XVIII, framed under s. 143 (*h*) (*ii*) of the Punjab Municipal Act: *Held* that the omission would amount to an offence punishable under sub-s. (4) of that bye-law. CROWN v. BEJA RAM, **21 P.R. 1911, Cr.**

(24)—S. 145—*See* No. 12, *supra.*

(25)—S. 150—*See* No. 13, *supra.*

(26)—*S.* 164—Moras *put up in front of a shop in a street—Right of the public to use of the entire breadth of the street—Obstruction to the public.*—The accused, a shop-keeper, placed *moras* in front of his shop so as to prevent

7.—Punjab Acts—continued.

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officials from getting at a sewer or drain. He was convicted of an offence under s. 164 of the Punjab Municipal Act and the conviction was confirmed on appeal. *Held*, on revision, agreeing with the lower Courts, that, since the public was entitled to the whole breadth of the street to the last inch, the act of the accused in having placed the *moras* did amount to an obstruction under s. 164 of the Act. GHASI RAM v. EMPEROR, **45 P.R. 1905, Cr. = 189 P.L. R. 1905 = 3 Cr.L J. 130.**

(27)—*S.* 164—*Street, obstruction of—Crim. Pro. Code* (1898), *s.* 403—*Acquittal—Bar to future prosecution.*—The petitioners were summarily convicted of an offence under s. 164 of the Punjab Municipal Act for obstructing or encroaching upon a street. They were some years previously tried for and acquitted of the same offence. There was no evidence in the present case to show that the encroachment on the street for which the accused were convicted was in excess of the encroachment then effected. *Held* that, in the absence of evidence distinguishing the facts before the Court in this case from those dealt with in the previous case, the conviction was illegal. CROWN v. DINA NATH, **63 P.L.R. 1904.**

(28)—S. 164—*See* Nos. 6 and 13, *supra*.

(29)—S. 165—*See* No. 6, *supra*.

(30)—*S.* 169—*Continuing breach—Prospective fine.*—Where a Magistrate passed an order for payment of fine for not complying with a notice to remove a building, and, in the event of failure to remove the building within a week, to pay an additional fine of two annas a day for every day after the week's time, *held* that the order sentencing the accused to a daily fine prospectively was not valid. CROWN v. GURDITTA, **13 P.R. 1903 Cr. = 171 P.L.R. 1903.** (16 M. 230, *R.*) [*F.*, 11 Ind. Cas. 139 = 206 P.L.R. 1911 = 12 Cr. L.J. 371, 19 P.R. 1904, Cr.]

(31)—S. 169—*See* COMPLAINT—WHAT IS, AND WHO SHOULD INSTITUTE, 20 P.R. 1894, Cr.

(32)—S. 169—*See* Nos. 1, 2, 13, 14, 18, 21, 22, *supra*.

(33)—*S.* 186—*Authority for prosecution—Crim. Pro. Code* (1882), *ss.* 4 *and* 191.—Where a prosecution was started under the Municipal Act against the accused on an informal letter addressed by the Secretary of the Municipal Committee, and the verbal authorization of the Deputy Commissioner, the President of the Committee, was afterwards relied on, the Secretary not being examined on oath with reference to the contents of the letter, *held*, that there was no complaint as required by s. 186, Municipal Act, 1891, and by ss. 4 (*a*) and 191, Crim. Pro. Code. ABDUL GHANI v. MUNICIPAL COMMITTEE, PESHAWAR, **2 P. R. 1892, Cr.** [*R.*, 44 P.R. 1905, 149 P.L.R. 1908 = 8 P.R. 1908, Cr. = 15 P.W.R. 1908, Cr. = 7Cr. L.J. 353.]

7.—Punjab Acts—continued.

Act XX of 1891 (Punjab Municipalities)—*ctd.*

(34)—*S.* 186—*Authority for prosecution — Crim. Pro. Code* (1882), ss. 4 *and* 191.—The complainant in a Municipal case was the Inspector of Sanitation. The petition contained at the foot, written in Urudu, the following "Petition of Mr. Webb, Inspector of Sanitation, Civil Station, Lahore." Below this was an English signature "D. Johnston," which appeared to be the signature of the Secretary of the Committee. *Held*, that this was not a complaint as required by s. 186, Municipal Act XX of 1891 and ss. 4 (*a*), 198, Crim. Pro. Code. NURDIN v. MUNICIPAL COMMITTEE, LAHORE, **3 P.R. 1892, Cr.** [*R.*, 11 P.R. 1904, 149 P.L.R. 1908, Cr. = 8 P.R. 1908, Cr. = 15 P. W.R. 1908, Cr. = 7 Cr.L.J. 353, 11 Cr. L.J. 577 = 8 Ind. Cas. 190 = 35 P.W.R. 1910, Cr.]

(35)—S. 186—*See* COMPLAINT—WHAT IS, AND WHO SHOULD INSTITUTE, 1 P.R. 1892, Cr.

(36)—*S.* 188—*Magistrate—Jurisdiction to try a case—Crim. Pro. Code* (1882), *s.* 555.—A member of the Municipal Committee, who has taken an active part in issuing an order under Punjab Act XX of 1891, is disqualified within the meaning of s. 555, Crim. Pro. Code, from trying a case of disobedience to that order. PURAN MAL v. EMPRESS, **3 P.R. 1895, Cr.**

(37)—*S.* 188—*Municipal offence—Magistrate, Vice-President of Committee—Jurisdiction—Crim. Pro. Code* (1882), s. 555.—A Magistrate, who, as the Vice-President of a Municipal Committee, has made a preliminary inquiry into a Municipal offence, and has recommended the prosecution, is not competent to try the case himself. FAZAL ILLAHI v. MUNICIPAL COMMITTEE, MUREE, **5 P.R. 1896, Cr.** (3 P.R. 1895, Cr., *F.*)

(38)—*S.* 201—*Recovery of money due on a simple contract.*—Arrears claimable under a simple contract, *e. g.*, arrears of a contract of Municipal sewage, do not come within the provisions of s. 201, Punjab Act XX of 1891, and are not recoverable by the procedure prescribed by the section. The Chief Court has power under s. 439, Crim. Pro. Code, 1898, to revise an order passed granting or refusing an application of the Committee under s. 201, Punjab Act XX of 1891. DIN MUHAMMAD v. MUNICIPAL COMMITTEE, AMRITSAR, **23 P.R. 1903, Cr. = 130 P.L.R. 1903.** [*F.*, 10 Cr.L.J. 353 = 3 Ind. Cas. 638 = 9 P.W.R. 1909, Cr., *R.*; 4 Ind. Cas. 951 = 105 P.L.R. 1909 = 23 P.W.R. 1909, Cr = 2 P.R. 1910, Cr.] (1 P.R. 1891, Cr., 2 P.R. 1899, Cr., 18 P.R. 1902, Cr. 22 A. 111; 22 B. 709, *R.*; 26 C. 852, *D.*)

(39)—*S.* 201—*Arrears of rent not recoverable through a Magistrate—Termination of* Sapurddar's *liability.*—Claims for arrears of rent, which are not for any arrears of tax, fee or money claimable under the Punjab Municipal Act (XX of 1891), cannot be realized through the agency of a Magistrate under s. 201 of the Act. *Held*, also that the liability of the custodian (*Sapurddar*) of attached property

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necessarily terminates, if the attachment falls through. HIRALAL v. EMPEROR, **3 Ind. Cas. 638=9 P.W R. 1909, Cr.**

(39-*a*)—S. 201—*See* No. 4, *supra.*

(40)—*S.* 204—*Brothel house, removal of—Discretion of Magistrate—Exercise of discretion by his predecessor—Complaint not addressed to Magistrate.*—The discretion of the Magistrate for the time being in charge of a district, which he is entitled to exercise under s. 204 of the Municipal Act, is not necessarily fettered by the manner in which his predecessors have in the past exercised that discretion. A petition presented to the District Magistrate, and acted upon by him is a complaint within the meaning of s. 204 of the Punjab Municipal Act, though it may not be addressed to him. MUSSAMMAT MALO v. CROWN, **28 P.L.R. 1910=8 Ind. Cas. 223=11 Cr. L.J. 596.**

Act I of 1903 (Punjab Military Transport Animals).

(1)—*Ss.* 29 *and* 30—*Failure to produce animals of a particular description—Conditions essential for criminal liability for failure.*—Before owners of animals can be made criminally liable, under s. 29 (*b*) of the Punjab Military Transports Animals Act, 1903, for failure to produce animals of a certain description, the prosecution must show clearly that the sanction required to be previously obtained by s. 30 of the Act has been obtained, that the inspection held by the Transport Registration Officer was one at which owners were legally bound to produce their animals, and that a legal notice was issued for the production of the animals and legally served upon the accused. MANGAL SINGH v. KING-EMPEROR, **12 P.R. 1908, Cr.=25 P.W.R. 1908=8 Cr. L.J. 243.**

(2)—S. 30—*See* No. 1, *supra.*

Act IV of 1904 (North-West Border Military Police).

(1)—*S.* 9 (*c*)—*Penal Code, s.* 223.—The accused, a sepoy of the Border Military Police, was charged with having negligently suffered a prisoner to escape from his custody while on sentry duty, and was convicted and sentenced by the Commandant of the Border Military Police, exercising the powers of a Magistrate of the First Class, to six months' rigorous imprisonment and a fine of a Rs. 24, under S. 9 (c) of Act IV of 1904. *Held* that the proceedings taken against the accused were bad in law, and that s. 9 (c) of Act IV of 1904, which applied to a Military Police Officer *in command of a guard, picquet, or patrol,* was not applicable to the accused sepoy. The conviction and sentence were consequently set aside and the accused was ordered to be re-tried before a Magistrate of competent jurisdiction on a charge under s. 223, Penal Code. CROWN v. HAVILDAR ARSALLA KHAN, **2 P.W.R. 1913 (N.W.F.P.), Cr.=158 P.L.R. 1913.**

7.—Punjab Acts—concluded.

Act III of 1911 (Punjab Municipal).

(1)—*Ss.* 219 *and* 221 — *Disobeying orders which are not in themselves precise—No offence.* —*Held,* that unless a Municipal Committee itself passes a precise order the extent of which cannot be doubted, no offence committed by disobeying such an order or doing anything against it. PIRTHI SINGH v. CROWN, **2 P.W. R. 1914, Cr.=5 P.L.R. 1914=15 Cr. L.J. 191=22 Ind. Cas. 767.**

(2)—S. 221—*See* No. 1, *supra.*

Act V of 1912 (Colonization of Government Lands).

(1)—*S.* 33—*Omission to do a thing whether an offence—Construction of Penal Acts—Retrospective effect.*—S. 33 of the Act was intended to punish persons for doing certain positive acts enumerated therein, and a mere omission to do a thing does not amount to an offence under this section. This section is not retrospective *propriovigore,* and the ordinary presumption is that an Act is not meant to operate retrospectively. And this presumption is strengthened when the Act imposes a penalty. Unless the intention of the Legislature is clearly expressed to that effect, criminal offences are not to be created by giving a retrospective operation to statutes. Therefore s. 33, not being retrospective, cannot be invoked for punishing the accused for an alleged act or omission which took place before the date on which the Act came into force. MIRAN BAKHSH v. CROWN, **26 P. R. 1913, Cr.=91 P.L.R. 1914=15 Cr.L.J. 146=33 P.W.R. 1914=22 Ind. Cas. 722.**

8.—United Provinces Acts.

*** Act VI of 1868 (Municipal Improvements).**

[REP., ACT XV OF 1873.]

(1)—S. 12 — *See* U.P. ACT XV OF 1883, ss. 69 and 71, 8 A. 677=A.W.N. 1886, 267.

(2)—*S.* 33—*Act* XV *of* 1873, *s.* 45—*Evasion of* octroi *duties.*—The accused, the consignee of goods sent by Railway, submitted the Railway receipt to a Municipal *octroi* office and paid duty on the weight specified therein. It was subsequently found by the Railway authorities that the weighment was wrong and less than the real weight and the accused offered to pay the excess duty. *Held,* in a prosecution by the Municipality for an offence under s. 45 of Act XV of 1873 (evasion of *octroi* duty), that the under-payment was an evasion that the accused would be liable for, only if he knew the weighment in the Railway receipt to be wrong, but that, in the absence of proof of such knowledge, no evasion or abetment of evasion was committed. EMPRESS v. KIRPA RAM, **A.W N. 1882, 231.**

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* This local Act was passed by the Imperial Legislature.

8.—United Provinces Acts—continued.

*** Act XV of 1873 (N.W.P. and Oudh Municipalities).**

[REP. IN PART, ACT XVI OF 1874. REP. (IN AJMERE), REG. V OF 1886, S. 17; (IN U.P.) U.P. ACT I OF 1900); (IN COORG), REG. II OF 1907.]

See U.P. ACT XV OF 1883.

See U.P. ACT I OF 1900.

(1)—*S.* 22—*Act* XV *of* 1883, *s.* 55 (2)—*Notification of Local Government approving bye-law—Construction of bye-law.*— Sanction was given by the Local Government to a rule to be passed by the several Municipalities in the N.W. Provinces to the following effect:— "Every act or omission declared to be a public nuisance, or otherwise made punishable, under Act XV of 1873, by, or by virtue of, any rule in force in the Municipality under s. 22 of that Act immediately before the Act ceased to apply to the Municipality, is hereby made punishable with fine to the full extent that may be directed by a Municipal Board, under s. 55 (2), Act XV of 1883." *Held*, on a construction of this rule, that it was intended thereby to make all the offences therein alluded to punishable with fine which may extend to Rs. 50, the maximum fine, under s. 55 (2), Act XV of 1883, imposable for a Municipal offence, and that it was not necessary for the Municipal Board in question to go on and direct with what particular amount of fine each offence specified in their rules was punishable. QUEEN-EMPRESS v. BHULLAN, **A.W.N. 1901, 1.**

(2)—*S.* 45—*Municipal rule framed about public markets.*—To support a conviction under s. 45 of Act XV of 1873 for the breach of a rule prohibiting the establishment of a public market without the sanction of the Municipal Committee, it is not enough to show that some shops were leased by the accused to people who sold grain therein, but also that a public market was established and that its establishment operated as a public nuisance. EMPRESS v. SHANKAR LAL, **A.W.N. 1882, 241.**

(3)—*S.* 45—*Evasion of* octroi—*Intention.*—Certain traders of Ludhiana consigned 333 bags of grain to the accused, traders residing in Meerut. The bags were weighed by the Railway authorities and entered in the Railway receipt as weighing 527 maunds. The consignees submitted this receipt to the *Octroi* office at Meerut and paid duty on 527 maunds as mentioned in the receipt. Almost immediately after this despatch, it was discovered that the bags had been underweighed at Ludhiana. The accused were upon this discovery required to make good the balance of freight which they did. The next day the accused petitioned the Municipality offering to pay up the balance of the *Octroi* duty. But the Municipality had already on the same date brought a charge against the accused for evasion of payment of

* This local Act was passed by the Imperial Legislature.

8.—United Provinces Acts—continued.

Act XV of 1873 (N.W P. and Oudh Municipalities)—*concluded.*

Octroi duty under s. 45 of Act XV of 1873. Subsequently, the Railway authorities preferred a criminal charge against a clerk at Ludhiana in respect of the underweighment. *Held*, on a reference by the District Magistrate, that the Joint Magistrate was perfectly justified in discharging the accused on the finding that the prosecution had failed to prove that the conduct of the consignees (accused) was the result of a conspiracy with the Ludhiana consignees or that they had any fraudulent intention. EMPRESS v. KIRPA RAM, **A.W.N. 1882, 231.**

(4)—S. 71—*See* U.P. ACT XV OF 1883, ss. 69, 71, 8 A. 677 = A.W.N. 1886, 267.

(5)—*S.* 72—*Municipal rules—Public nuisance.*—The letting of 5 shops in an enclosure or *sarai* to persons who opened there the business of buying and selling grain was not establishing a public market, &c., within the meaning of the section, and, further, as it was not shown how the public order or convenience was affected, it was held that the conviction must be quashed as bad. EMPRESS v. SHANKAR LAL, **A.W.N. 1882, 241.**

*** Act XVI of 1873 (Village and Road Police).**

[REP. IN PART, ACT XVI OF 1874; ACT XII OF 1876; ACT XII OF 1891.]

(*a*)—*See* ACT VIII OF 1870, 6 A. 380.

(1)—S. 8—*See* PENAL CODE, s. 221, 3 A. 60.

(2)—Ss. 8 and 11—*See* CRIM PRO. CODE, 1898, s. 45, A.W.N. 1886, 65.

(3)—*S.* 11—*Village* Chaukidar—*Not bound to give immediate information of an offence.—No neglect of duty.*—The village *chaukidars* did not give information of the occurrence of a dacoity committed in the village till the next day. They were charged and convicted of an offence under s. 11 of the Act. *Held* that under the Act the village *chaukidars* were not bound to give immediate information of an offence not committed within their village. EMPRESS v. KHUDA BAKSH, **A.W.N. 1886, 65.**

(4)—*S.* 11—*Wilful neglect of duty.*—Where the *chaukidar* of a village was convicted under s. 11 of Act XVI of 1873 for having been present outside the house of the *chaukidar* of another village, while illicit distilling was going on therein, *held* that the village being one beyond the scope of his duties, the accused had not committed any misconduct in respect of his duties, and that mere presence outside cannot be regarded as an abetment of an offence committed inside. EMPRESS v. SANAWA, **A.W.N. 1882, 160.**

(5)—S. 11—*See* No. 2, *supra.*

*** Act XVIII of 1873 (Agra Ren.).**

[REP., ACT XII OF 1891.]

See ARREST, 4 A. 27.

* These local Acts were passed by the Imperial Legislature.

8.—United Provinces Acts—continued.

*** Act XIX of 1873 (Agra Land Revenue).**

[REP., U.P. ACT III OF 1901.]

(1)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 195—*Jurisdiction of Sessions Judge and High Court.*—The Collector and Assistant Collector exercising jurisdiction under the North West Provinces Land Revenue Act XIX of 1873 are not subordinate to the High Court or the Sessions Court for the purposes of s. 195 of the Crim. Pro. Code. *In the matter of the petition of* KADAM SINGH, **A.W.N. 1891, 82.**

(2)—Chapter IV—Proceedings under, not judicial proceedings—Statements made therein not being declarations, not false evidence—*See* PENAL CODE, ss. 193 and 199, A.W.N. 1885, 29.

(3)—S. 153—*See* PENAL CODE, ss. 206, 406, A.W.N. 1888, 227.

*** Act XV of 1883 (United Provinces Municipalities).**

[REP., U.P. ACT I OF 1900.]

See U.P. ACT I OF 1900.

(1)—*S.* 46—*Recovery of arrears of tax by distress and sale of moveable property belonging to defaulter—Duty of Magistrate.*—S.46 provides for the distress and sale of moveable property of the defaulter for the purpose of realising arrears of tax by an application to a Magistrate having jurisdiction within the Municipality. The duty imposed by that section is purely ministerial and provides the means whereby the recovery of taxes could be enforced by a legal authority. He has no power to judicially hear and determine the question whether any such arrears are due at all. W. J. ELLIS v. MUNICIPAL BOARD OF MUSSOORIE, **22 A. 111 = A.W.N. 1899, 202.** [*R.*, 11 Cr. L.J. 87 = 4 Ind. Cas. 951 = 109 P.L.R. 1909 = 2 P. R. 1910, Cr. = 23 P.W.R. 1909; *D.*, 130 P.L.R. 1903.]

(2)—*S.* 55—*Rules—Order for demolition of wall—Crim. Pro. Code, Act* V *of* 1898, *s.* 517.—An order for demolition of a wall on a conviction for building in contravention of Municipal rules, is *ultra vires*, and s. 517 of the Crim. Pro. Code has no application to a case of the kind. QUEEN-EMPRESS v. NANHU, **A.W.N. 1900, 81.**

(3)—*S.* 55—*Bye-laws of Municipality, validity of—Presumption.*—The presumption is that the bye-laws of a Municipality have been passed according to the regular and lawful procedure, and that the common course of business has been followed in that procedure. It is for the person raising the objection to give some evidence to show that it would not be safe to make such a presumption. It is no part of the duty of a Court exercising appellate or revisional jurisdiction, to take, of its own motion, the question whether the bye-laws have been properly and legally framed. QUEEN-EMPRESS v. RAM CHANDAR, **19 A. 493 = A.W. N. 1897, 133.** (20 B. 732, *R.*) [*R.*, 7 O.C. 51.]

* These local Acts were passed by the Imperial Legislature.

(4)—*S.* 55—*Rules—Power to interfere with internal alterations of house.*—A Municipality having given permission to raise the roof of a kitchen, has no power to prevent the owner of the house from converting part of the building covered by the roof into living rooms. POWELL v. MUNICIPAL BOARD OF MUSSOORIE, **22 A. 123, F. B. = A.W.N. 1900, 41.**

(5)—*S* 55—*Rules—Order for demolition of building.*—On a conviction for building in contravention of the rules framed under Act XV of 1883, the Court has no power to order the demolition of the building so erected or to impose a recurring fine in default of compliance with such order. C. H. A. TWIDALE v. MUNICIPAL BOARD OF MUSSOORIE, **A.W.N. 1900, 8.** [*R.*, A.W.N. 1900, 81.]

(6)—*S.* 55—*Rules—Continuing breach.*—The maintenance of a *chabutra*, which has been directed to be removed under s. 42 of the Rules framed under s. 55 of Act XV of 1883, is not a "continuing breach" within the meaning of para. 2 of s. 55 of the Act which could be punished as such. QUEEN-EMPRESS v. SALIG PRASAD, **A.W.N. 1895, 226.**

(7)—S. 55 (2)—*See* U.P. ACT XV OF 1873, s. 22, A.W.N. 1901, 1.

(8)—S. 55 (c)—*See* MUNICIPALITY, A.W.N. 1897, 65.

(9)—*S.* 69—*Power of Municipal Board to delegate generally the authority to institute prosecutions.*—S. 69 of Act XV of 1883 authorises the conferring of a general authority upon a person by a Municipal Board to make complaints in respect of Municipal offences; such an authority need not be specifically given for each and every particular offence for which a complaint is to be made. Such general authority will include not merely the formal or mechanical act of putting a complaint before the Magistrate, but, also, the power to determine whether there should be a complaint at all. [*R.*, 26 A. 482.] S. 69 of the Act confers upon Municipal Boards in N.W P. and Oudh the power to delegate generally their authority to make complaints in respect of Municipal offences. This delegation includes the authority to do the formal acts of presenting a complaint to the Court, and also the exercise of discretion as to whether in any given case a complaint shall or shall not be made. QUEEN-EMPRESS v. M. J. POWELL, **A.W.N. 1900, 18 = 22 A. 123.**

(10)—*Ss.* 69, 71—*Position of a District Magistrate—Rules framed under s* 12 *of Act* VI *of* 1868—*Act* XV *of* 1873.—The position of the Magistrate of the District, in connection with the terms of the s. 69, is neither better nor worse than that of any other member of the Board

8.—United Provinces Acts—continued.

Act XV of 1883 (United Provinces Municipalities)—*concluded.*

and unless he has been duly authorised by the Board as a Board, he has no more "*locus standi*" to cause a prosecution to be instituted personally than any other individual member. Rule 6 of the Rules framed under s. 12 of Act VI of 1868 runs as follows:—"Any person evading or abetting the evasion of the *Octroi* duties imposed in the schedule, shall be deemed to have committed an infringement of a byelaw." Assuming that the rule to have been legally made under that section, which is far from clear, and that it was saved by Act XV of 1873, it would, as declared in s. 71 of Act XV of 1883, continue in force until repealed by new rules made under such last mentioned Act, and be deemed to have been made under that Act. Its operation is, therefore, subject to the provisions of Act XV of 1883, and among them, to that contained in s. 69, which makes it a condition precedent to the institution of a prosecution, that there should be a complaint of the Municipal Board or by some person authorised by the Board in that behalf. QUEEN-EMPRESS v. YUSUF KHAN, **8 A. 677 = A.W.N. 1886, 267.**

(11, 12)—S. 71—*See* No. 10, *supra.*

(13)—S. 167—*See* PENAL CODE, ss. 425, 426, 29 A. 565 = A.W.N. 1907, 170 = 6 Cr. L.J. 13.

Act I of 1891 (United Provinces Water-Works).

[AMENDED, U. P. ACT II OF 1895. REP. IN PT. AND AMENDED, U. P. ACT I OF 1901. SS. 2-A, 11, 21, 35-B. (1) AM., U. P. ACT I OF 1908.]

(1)—Punishment under—Whether bars conviction under I.P.C.—*See* PENAL CODE, ss. 406, 408, 11 A.L.J. 369 = 14 Cr. L.J. 415 = 35 A. 361 = 20 Ind. Cas. 239.

(2)—*Ss. 34, 40, 41—Unoccupied house—Payment of water-rate, no evasion of.*—When a person omits to give notice of re-occupation of a house previously reported to be vacant, but pays water-rate for the period during which the house remained unoccupied, he is not guilty of an offence under s. 41 of the Water-Works Act (I of 1891). S. 41 refers to a house, which has been exempt from liability to the payment of water-rate, and the penalty imposed by it is not incurred, where the rate has been paid and there has been no evasion of payment. The object of the section is to ensure payment of water-rate, by reason of non-occupation for three months. EMPEROR v. SUMAR CHAND, **4 A.L.J. 235 = A.W.N. 1907, 92 = 29 A. 375 = 5 Cr. L.J. 283.**

(3)—S. 40—*See* No. 2, *supra.*

(4)—S. 41—*See* No. 2, *supra.*

(5)—*S. 46 (a)—Supply of water for domestic purposes—Repairing a house not a domestic purpose—Construction of statutes.*—The Municipal water used for repairs of a house is not used for "domestic purposes." A provision in an enactment imposing penalty must be construed strictly. S. 46 (*a*) of Water Works Act does not impose any penalty on the person on whose behalf, but without whose knowledge and sanction, the Municipal water is used for the repair of a house. SAT NARAIN PRASAD v. KING-EMPEROR, **12 A.L.J. 288 = 15 Cr. L.J. 291 = 23 Ind. Cas. 499.**

Act I of 1892 (U. P. Lodging House).

(1)—*S. 5 (2)—Houses used by* pragwal *for accommodating pilgrims—License.*—Where it was found that the accused, a *pragwal*, kept certain houses where he lodged pilgrims and received presents from them, though no part of the presents was expressly given as consideration for the accommodation afforded to them by the accused, *held*, that he was bound to take out a license under N.W.P. Act I of 1892, as a portion of the value of those presents should be ascribed to the accommodation which was given and received. QUEEN-EMPRESS v. BEHARI LAL, **20 A. 534 = A.W.N. 1898, 142.**

Act III of 1892 (Village Courts).

[AMENDED, U. P. ACT II OF 1894.]

S. 73—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 6 A.L.J. 796 = 6 M.L.T. 98.

Act I of 1895 (Municipalities, amending Acts XV of 1873 and XV of 1883).

[REP., U. P. ACT I OF 1900.]

(1)—*Offence under special Act.*—Where the offence charged is one under a special Act, the guilt of the accused should be strictly proved. ABDUL GHANI v. KING EMPEROR, **2 A.L.J. 411 = 2 Cr. L.J. 352.**

Act I of 1900 (U. P. Municipalities Act, 1900).

[REP. IN PT. AND AM., U.P. ACT V OF 1901, S. 128 (*c*) REP., ACT I OF 1904, FROM DATE NOTIFIED UNDER S. 11, THEREOF, SS. 36, 42, 70, 104, 123 (i), 130 162, 163, 193 (3) AM., S. 157-A IN., U. P. ACT I OF 1907.]

(1)—*Punitive enactment, construction of.*—A punitive enactment must always be strictly construed. PATANDIN v. KING-EMPEROR, **2 A.L.J. 26 = A.W.N. 1905, 19 = 2 Cr.L.J. 19.**

(2)—*Right of accused to challenge validity of order under s. 88—Notice—Retrial.*—An accused person is not prohibited from challenging the validity of a notice issued under s. 88 of the Act, where the Board's order is wholly *ultra vires.* CHHOTE v. MUNICIPAL BOARD OF LUCKNOW, **9 O.C. 29 = 3 Cr.L.J. 205.** [*F.*, 15 Cr. L.J. 377 = 23 Ind. Cas. 745 = 12 A.L.J. 254 = 36 A. 185.]

(3)—*S. 3 (4)—Street—Definition.*—A lane which though at one time private property, had been for upwards of thirty years used by the public generally and had been lighted, drained

8.—United Provinces Acts—continued.

Act I of 1900 (U. P. Municipalities Act, 1900) —*continued.*

and swept by the Municipality, is a *street* within the meaning of s. 3 of Act I of 1900 and is not the less a street, because it happened to be a *cul-de sac.* MUNICIPAL BOARD OF BULANDSHAR v. DAKHAN LAL, **A.W.N. 1908, 15 = 5 A.L.J. 45.**

(4)—*S.* 3 (9) *"erect" or "re-erect," meaning of —Covered balcony.*—Cl. 9 of s. 3 of the Municipalities Act is not exhaustive, but it may fairly be taken as a guide to the nature of acts which fall within the words "erect" or "re-erect" a building. The construction of covered balcony on the spot where some kind of balcony at first existed does not amount to a material alteration or enlargement of any building. SHIAM LAL v. KING-EMPEROR, **9 A.L.J. 694 = 14 Ind. Cas. 602 = 13 Cr. L.J. 250.**

(5)—*Ss.* 3, 87—*Rules forbidding 'erection or re-erection of any building' without sanction, scope of — Bye-laws, interpretation of.*—An occupier of a house in the Civil Station of Allahabad, who got inclosed, by means of *kanauts*, or canvas screens, a small piece of ground adjoining his house, without obtaining permission to do so from the Municipal Board, was charged and convicted of an offence under a rule made by the Municipal Board, with reference to s. 87 of the Act, which required that its previous sanction must be obtained to the erection or re-erection of any building in the Civil Station. *Held*, on revision, reversing the above conviction, the mere inclosing of a space by canvas screens cannot be considered as 'erecting or re-erecting any building' which words necessarily convey with them an idea of permanence with utility. If such a mere inclosing as the above is an offence, the person inclosing would have, every time he puts up a shelter (*e.g.*, for his pankha cooly or gardener), to go through the difficulty of applying to the Municipal Board and awaiting their sanction or refusal for a long time before he could venture to make the enclosure in time. If the legislature intended to restrict the rights of Municipal citizens to such an extent, its intention should have been plainly manifested and put beyond reasonable doubt. It cannot, therefore, be that the said s 87 has been intended to bring temporary enclosure of the above description within its purview and that of the rules framed under it. The recognised rule of interpretation in the case of such bye-laws is that any words contained in it should, as far as possible, be so interpreted as not to militate against and curtail the general rights of the subject as regards property. KAMTA NATH v. MUNICIPAL BOARD OF ALLAHABAD, **28 A. 199 = 2 A.L.J. 676 = A.W.N. 1905, 252 = 2 Cr. L.J. 793.**

(6)—*Ss.* 55 (c), 168—*Acts on private drain not punishable, construction of Act.*—The Municipalities Act is a local Act of a highly technical nature and one which touches the private rights of individuals. It has, therefore, to be most carefully construed, and if the intention of the framers of the Act was to include an act done upon private property, which might result in some obstruction of public property at some distance from the place where the physical obstruction took place, it should have been provided for in a more particular language than has been done in s. 168. Where, therefore, certain persons were convicted of having, without permission from the Municipality, obstructed a drain found to be their private property, *held*, that the conviction was bad. DASSU v. KING-EMPEROR, **6 A.L.J. 544 = 2 Ind. Cas. 408.**

(7)—*S.* 69 (2)—*Offence under Special Act—Evidence for the prosecution meagre.*—Where a person is accused of an offence under a Special Act, the guilt of the accused ought to be distinctly proved. The Court should base its conviction not on the weakness of the defence, but on the strength of the prosecution. ABDUL GHANI v. KING-EMPEROR, **2 A.L.J. 411 = 2 Cr.L J. 352.**

(8)—*Ss.* 28 *and* 87 (3)—*Application for permission to build—Implied permission—Power to erect necessary scaffolding.*—Where application for permission to build has been made to a Municipal Board, and the period mentioned in s. 87 (3) of the Municipalities Act, 1900, has expired, the applicant is in the same position as if the erection of the building specified in his application had been formally sanctioned by the Board. A sanction, express or implied, to the erection of a specified building, necessarily carries with it a right to put up such ordinary scaffolding as would be necessary under ordinary circumstances for the execution of the work. EMPEROR v. GOKUL, **A.W.N. 1907, 251 = 7 Cr.L.J. 233 = 29 A. 737.**

(9)—*S.* 87 (1)—"*Public place*" *defined.*—The term "public place" as used in s. 87 (1) of Act I of 1900, means a public place to which the public have a right of access by permission, usage or otherwise, not merely a place which any member of the public is physically able to walk upon, or any place which lies open to public view. BHAIRON NATH v. MUNICIPAL BOARD OF BENARES, **A.W.N. 1901, 56.**

(10)—S. 87—*See* Nos. 5 and 8, *supra.*

(11)—*Ss.* 87, 88 *and* 147—*Disobedience of notice, under one section—Prosecution under another—Legality of notice to make construction—Construction after* 15 *days—Effect of.*—Where a notice is issued by the Board under s. 88 but not under s. 87, there can be no prosecution under s 87. Where a person applies to the Board for permission to build, and on notice not being taken of that application, he sends a written reminder to the Board and after 15 days of the receipt by the Board of that reminder makes the construction complained of, *held* that the Board should be taken to have sanctioned the construction and there can be no

8.—United Provinces Acts—continued.

Act I of 1900 (U. P. Municipalities Act, 1900) *—continued.*

prosecution of the applicant under s. 87 (5). RAM NATH v. MUNICIPAL BOARD OF MUTTRA, **12 A L.J. 740.**

(12)—*Ss.* 87, 132—*Order under s.* 82—*Appeal.* —No prohibition, notice, or order under s. 87 of Act I of 1900, is liable to be called in question otherwise than by an appeal under s. 152. EMPEROR v. SHADI, 26 **A**. 386 = **A.W.N. 1904, 57.**

(13)—*Ss.* 87 *and* 132 –*Blocking up archways of verandah abutting on public street.*—A person converted an open verandah abutting on a public street into rooms by filling up the arches with bricks; *held* that this was clearly re-erecting his building and that, as he did not obtain the sanction of the Municipal Board to such re-erection, he committed a breach of s. 87, and was liable to punishment under s. 132, but not to the extreme penalty provided by the section. EMPEROR v. JAGARNATH PRASAD, **A.W.N. 1904,** 233.

(14)—*Ss*. 87 (1) (*a*) *and* 132—"*Abutting on a public street,*" *meaning of.*—The words *abutting on or adjoining a public street* " as used in s. 87 (1) (*a*), N.W.P. and Oudh Municipalities Act, 1900, could not be construed as applicable to an erection which was distant at its nearest point some 20 or 25 feet away from a public street. KING-EMPEROR v. MAKUND LAL, **A.W.N. 1901, 203.**

(15)—*Ss.* 87 *and* 137—*Addition of masonry edging to a* kutcha chabootra — *Material alteration.*—The addition of a masonry edging to an already existing *kutcha chabootra* which causes no change in its shape or situation is not material alienation of the *chabootra*, and no previous sanction of the Municipal Board necessary for such alteration. *Held* also that no one can be convicted of a possible offence which he might perhaps commit in future in regard to the Municipal Bye-Laws. RADHA BALLABH v. KING-EMPEROR, **12 A.L.J 227 = 15 Cr. L.J. 240 = 23 Ind. Cas. 192.**

(16)—*Ss.* 87 (1) (*a*) *and* 147—*Digging a grain-pit*—*No permission*— *Erection or re-erection.*—Digging of a grain-pit does not amount to erection or re-erection of a building within the meaning of s. 87 (1) (*a*) of the Municipalities Act, and a person digging such a pit without the previous permission of the Municipal Board cannot be convicted of an offence under s. 147 of that Act. HAR SARAN DAS v. KING-EMPEROR, **11 A.L.J. 688 = 20 Ind. Cas. 611 = 14 Cr. L.J. 451.**

(17)—*Ss.* 87 (5), 149, 152—*Legality of notice and validity of conviction under s.* 149—*S.* 152, *application of.*—S. 87 of the Municipalities Act, 1900, was not intended to empower a Board to require a man to pull down his house, though it had been standing there before the passing of the Act. If the Board have no power to issue a notice under s. 87 (5), it cannot be considered to be a notice under that section and the provisions of s. 152 do not apply. When the Board issued such a notice and it was not complied with a prosecution could not be entertained. RAM DYAL v. KING-EMPEROR, **7 A. L J. 1075 = 8 Ind. Cas. 569.**

(18)—*S.* 88—*Street*— *Definition* —*Authority to order removal of building.*—The fact that the place on which the walls in question were erected, was a public way in 1881, does not establish that the place is a street in 1906, as defined in Act I of 1900. Where the walls were erected with the express permission of the Municipal Board in 1881 and were used by the owner exclusive for 25 years, on a finding that the walls did not overhang or project into a street, *held* that the Municipal Board were not justified in ordering a removal of the walls under s. 88 of the Act. ALOPI DIN v. THE MUNICIPAL BOARD, **A.W.N. 1907, 2 = 4 A.L. J. 8.** [*R.*, 33 A. 147 = 7 A.L.J. 1075 = 8 Ind. Cas. 569.]

(19)—S. 88 – *See* No. 11, *supra.*

(20)—*Ss.* 88, 91 *and* 147—*Re-building without sanction of the Board of a screening wall of a privy which had fallen down*—*Notice under s.* 91 *bad*—*Re-building without sanction of a balcony overhanging road* — *Powers of the Board to get it demolished under s.* 88 *unlimited* —*Proviso to s.* 88—*Right to compensation*—*Suit to be filed in case of refusal to pay.*—A Municipal Board is not competent to issue notice, under s. 91 of the Municipalities Act, to demolish the upper portion of a screening wall of a privy which had fallen down and had been re-built without the sanction of the Board, and where such a notice was given and disregarded, the accused could not be convicted under s. 147 of the Municipalities Act. Where a balcony overhanging a public road fell into disrepair and was re-constructed without the sanction of the Board and a notice was given by the Board under s. 88 to remove that balcony, *held* that the powers of the Board in giving notice under that section were not limited to cases in which the structure was dangerous to the public or was insanitary or to cases of a similar nature, that it was not necessary for the Board to mention in the notice the amount of compensation or its willingness to pay the same, and a settlement of the question of compensation was not a condition precedent to the giving of notice under s. 88, and if the notice was disregarded the conviction under s. 147 was a good one. The proviso to s. 88 only gave a right to the owner of the house to get compensation which, if the Board refused to pay, could be sued for. NANNA MAL v. MUNICIPAL BOARD, HATHRAS, **11 A L J. 486 = 35 A. 375 = 20 Ind. Cas. 405 = 13 Cr. L. J. 421.**

(21)—*Ss.* 88 *and* 147—" *Public place,*" *constructionof*—*Condition to be legally enforceable for a conviction for an omission under s.* 147.—The term " Public place " means a place to

8.—United Provinces Acts—continued.

Act I of 1900 (U. P. Municipalities Act, 1900) *—continued.*

which the public have a right of access by permission, mortgage or otherwise, not merely a place which any member of the public is physically able to walk upon, or any place which has been open to public view. In order to convict and sentence a person under s. 147 for an omission to comply with a condition subject to which permission was given to him by the Board, it must be shown that the permission was required by law or the condition was one which could be legally enforced. BHAIRON NATH v. MUNICIPAL BOARD OF BENARES, **A.W.N. 1901, 56.** (17 A. 616, *R.*)

(22)—*Ss.* 88, 147 *and* 152—*Removal of building—Right of accused to challenge validity of order under s.* 88—*Notice—Re-trial—Held*, that, by s. 152 of the Act an accused person is not prohibited from challenging the validity of a notice issued under s. 88 of the Act, where the Board's order is wholly *ultra vires*. CHHOTE v. MUNICIPAL BOARD OF LUCKNOW, **9 O.C. 29 = 3 Cr. L.J. 205.** [*F.*, 15 Cr. L J. 377 = 23 Ind. Cas. 745 = 12 A.L J. 254 = 36 A. 185.]

(23)—Ss. 90, 91—*See* MUNICIPALITY, A.W. N. 1905, 79.

(23-*a*)—S. 91—*See* Nos. 20 and 23, *supra*.

(24)—*S.* 128 (*b*) (1)—*Place of public entertainment and resort, meaning of—Street and* patri *adjoining the street, not a place of public entertainment and resort—Right to sell food articles without permission of the Municipality—Right to frame rules—Powers of Municipality—Interpretation of statutes—Enactment encroaching upon subject's right.*—A Municipality has no power to make rules under s. 128 (*b*) (1) of the Municipalities Act, charging fees for licenses to hawk for sale articles of food on a public street and the *patri* adjoining thereto. The words ' place of public entertainment and resort' in s. 128 (*b*) cannot be read distributively, and they do not include a street or a *patri* adjoining a street. In construing an Act encroaching on the rights of subjects, the Courts have a right to expect that the Legislature will manifest its intention plainly, if not in express words, at least by clear implication and beyond reasonable doubt. IMAMI v. EMPEROR, **13 Cr.L.J. 683 = 16 Ind Cas. 333 = 10 A.L J. 426 = 35 A. 24.**

(25)—*S.* 128, *cls.* (*h*), (*i*)—*Municipal Rules—" Dandidar," meaning of seller.*—A *dandidar*, who only weighs things brought to a market to be sold, is not a seller of these things. JABBAR SINGH v. EMPEROR, **13 Cr. L.J. 797 = 17 Ind. Cas. 541.**

(26)—*Ss.* 128 (*c*), 132—*Bye-laws framed under the Act—Their reasonableness.*—All bye-laws and rules of the same nature have to be very carefully construed, and the invariable rule of law is that they are to be construed in favour of the subject. The rule of law prevailing in England, that a bye-law may be examined in order to discover whether it is reasonable in itself, is a very sound rule, and is also applicable to bye-laws framed in the exercise of their statutory powers by Municipal Boards in India. *Held*, that a bye-law framed under s. 128 (*c*) of N.W.P. and Oudh Municipalities Act (I of 1900), prohibiting servants, except those in attendance upon their master, from using a particular road, is not a reasonable bye-law and should not be given effect to. EMPEROR v. BALKISHAN, **24 A. 439 = A W.N. 1902, 117.**

(27)—*Ss* 128 (*c*), 132—*Bye-law held to be unreasonable and its enforcement refused.*—The English law as to the necessity of bye-laws being reasonable is applicable to bye-laws framed in the exercise of their statutory powers by Municipal Boards in India. The Municipal Board of Naini Tal passed a bye-law under the powers conferred upon it by s. 128 (*c*) of U.P. Act I of 1900 to the following effect :—" No coolie, whether bearing loads or not, no servant, except in attendance on his master, and no prostitute shall use the upper North Mail (one of two parallel roads running along the north side of the Naini Tal lake) at any time." *Held* that, as regards the word " no servant, except in attendance on his master,"—this was under the circumstances an unreasonable bye-law, and the Court declined to give effect to it. EMPEROR v. BAL KISHEN, **A.W.N. 1902, 117 = 24 A. 439.**

(28)—S. 132—*See* Nos. 12, 13, 14, 26 and 27, *supra*.

(29)—*Ss.* 132 *and* 147—*Conviction for failure to remove certain building—Sentence of daily fine on second conviction for failure to remove the structure—Prospective fine—Rule* (2) *of ss.* 128 *and* 132.—*Held*, that the imposition of a prospective fine is illegal. *Held, further*, that the words " first conviction " in ss. 132 and 147 of the N.W.P. and Oudh Municipalities Act make it clear that the Legislature contemplated a conviction for an original offence or disobedience of a lawful order and subsequent convictions for a continuation of, or persistence in, an original offence or disobedience. MAHADEO PRASHAD v. MUNICIPAL BOARD, LUCKNOW, **11 O.C. 122 = 7 Cr.L.J. 454.**

(30)—*Ss.* 133, 168—*Resolution of Municipality neither published nor sanctioned as required by s.* 133—*Breach of such resolution, whether punishable.*—The accused dug a certain grain pit on his own land in contravention of resolution passed by the Municipal Board of Ghaziabad. The resolution had neither been published nor sanctioned as required by s. 133 of the Act: *Held*, that the accused could not be convicted for the breach of such a resolution. HAR SARAN DAS v. EMPEROR, **14 Cr.L J. 576 = 21 Ind. Cas. 176.**

(31)—*S.* 147—*Fine in advance for a continuing breach, validity of.*—The order for payment

8.—United Provinces Acts—continued.

Act I of 1900 (U. P. Municipalities Act, 1900) —*continued.*

of so much fine per day as long as a building, not built in accordance with the plan submitted to the Municipality, continues to stand, passed in advance, whilst sentencing the offender in respect of the original breach, is not a valid order There must be proof of a continuing nuisance before the jurisdiction of the Magistrate to make such an order arises. EMPEROR v. WAZIR AHMAD, **24 A. 309=A. W.N. 1902, 70.** (27 C. 565, *F.*) [*R.*, 7 Cr. L. J. 454=11 O.C. 122.]

(32)—*S.* 147—*Building erected without sanction—Second prosecution.*—One B.D. built a wall without the permission of the Municipality where the house was situate. B.D. was, therefore, prosecuted under s. 87 of the Act and convicted. He was sentenced to pay a fine of Rs. 20, but the Magistrate trying the case did not impose a recurring fine. During the pendency of these proceedings, the house was transferred by B.D., to a minor, of whom S.D., the applicant, was the guardian. After a termination of the above proceedings, the Municipal Board again lodged a fresh notice and ordered the applicant to pull down the wall. On a disobedience to the notice, the guardian was prosecuted and convicted. *Held* that, in face of the previous conviction, no subsequent conviction of the applicant was permissible. The maxim of "*nemo debet bis vexart*" was applied. SRIDHAR v. KING-EMPEROR, **8 O.C. 249=2 Cr.L.J. 511.** [*R.*, 7 Cr. L.J. 454=11 O.C. 122.]

(33)—*S.* 147—*Prosecution under—Decision of Civil Court in favour of the accused.*—In accordance with a decree of the Civil Court passed in favour of B against the Municipal Board of Etawah, B erected certain buildings. The Board objected and the Civil Court ordered demolition of some of the buildings and allowed others to remain. During the pendency of the proceedings in the Civil Court, the Board instituted proceedings against B in the Criminal Court. *Held* that it was not open to the Board to prosecute B in respect of the buildings pending the decision of the Civil Court, and to continue the prosecution after its decision. The provisions of the Municipalities Act were not intended to enable Municipal authorities to override the decision of a Civil Court where that Court had jurisdiction. BALDEO PRASAD v. KING-EMPEROR, **7 A L.J. 735=7 Ind. Cas. 288=11 Cr.L J. 445=32 A. 620.**

(34)—*S.* 147—*Municipalities Act—Powers of Municipal Board to require a person to vacate a shop.*—The Municipal Board has no power to require a person to give up his shop situate on land, not belonging to the Municipality, of which such person is lawfully in possession. JIWA v. KING-EMPEROR, **10 A.L.J. 286=17 Ind. Cas. 713=13 Cr. L.J. 841.**

(35)—*S.* 147—*Disobedience of notice— Prosecution for continued disobedience.*—After a conviction under s. 147 of the Municipalities Act, the person convicted cannot challenge the

8.—United Provinces Acts—continued.

Act I of 1900 (U. P. Municipalities Act, 1900) —*continued.*

correctness of the conviction and show the illegality of the Board's notice as often as he is prosecuted for continued disobedience of the order of the Court. SITAL PARSHAD v. MUNICIPAL BOARD OF CAWNPORE, **12 A.L. J. 595=36 A. 430=15 Cr. L.J. 571=25 Ind. Cas. 323.**

(36)—*Ch.* VII, *s.* 147—*Prosecution for disobedience of notice—Validity of the notice to be considered.*—No one can be convicted of disobedience of a written notice of a Municipal Board for demolition of certain constructions, unless the Court is satisfied that what he had disobeyed is a notice lawfully issued by the Board under the powers conferred upon it by the Municipalities Act. KING-EMPEROR v. PIARE ALI, **12 A.L.J. 254=36 A. 185=15 Cr. L.J. 377=23 Ind. Cas. 745.** (9 O.C. 29, 20 A. 501, *R.*)

(37)—S. 147—*See* Nos. 11, 15, 16, 20, 21, 22 and 29, *supra.*

(38)—S. 149—*See* No. 17, *supra.*

(39)—*S.* 152—*Disobeying a written notice—Validity of notice contested on the ground that it is not a lawfully issued notice—Magistrate—Duty of.*—S. 152 of the Municipalities Act is no bar to the accused setting up the defence that the notice was not lawfully issued by the Board, and the Magistrate enquiring into it was bound to call upon the prosecution to produce evidence to show that it was a notice lawfully issued by the Board or by the authority of any person to whom the powers exercisable by the Board as a whole had been lawfully delegated. **Hazari Lal v. King-Emperor, 12 A.L.J. 312 =36 A. 227=15 Cr. L.J. 574=25 Ind. Cas. 326.**

(40)—S. 152—*See* Nos. 17 and 22, *supra.*

(41)—*S.* 167—*Cattle-trespass—Legality of conviction—Construction of Acts.*—The accused got a buffalo released from the pound, at the instance of his master. Sometime after, the buffalo was found to have trespassed upon the land of a private person. The accused was, on these facts, convicted of an offence under s. 167 of this Act. *Held* that, trespass upon land not being within the contemplation of the section in question, the scope of which is to prevent danger, alarm or annoyance to any person, the conviction was illegal. Punitive enactments must be strictly construed. KING-EMPEROR v. PATAN DIN, **A.W.N. 1905, 19=2 A.L J. 26=2 Cr.L.J. 19.** [*F.*, 29 A. 565=A.W.N. 1907, 170=6 Cr. L.J. 313.]

(42)—*S.* 167—*Penal Code, ss.* 425 *and* 426—*Definition—Mischief.*—Certain cattle belonging to one M. H., upon various occasions when in charge of a servant of M. H., strayed, or were driven, into the Government gardens at Saharanpur and there caused damage. *Held* that M. H., could not, on these facts, be convicted of the offence of mischief. *Held*, also, that s. 167 of the Municipalities Act, 1900, did not apply, that section being one dealing with

8.—United Provinces Acts—continued.

Act I of 1900 (U. P. Municipalities Act, 1900) —*concluded.*

offences against the person. EMPEROR v. MEHDI HASAN, **29 A. 565=A.W.N. 1907, 170 =6 Cr L.J. 13.** (14 W.R. 31, 7 B. 126, A.W. N. 1905, 19, *F.*)

(43)—*S.168—Order to vacate land, conviction on failure to comply with—Daily fine, legality of.—Held,* that s. 168 of the North-West Provinces and Oudh Municipalities Act (I of 1900) does not authorize the imposition of a daily fine. RAMJAS v. MUNICIPAL BOARD, LUCKNOW, **11 O.C. 121, B=8 Cr. L.J. 226.**

(44)—S. 168—*See* Nos. 6, 30, *supra.*

(45)—*Ss.* 168 *and* 170—*Leaving the carriage in a thoroughfare pending harnessing—Halting place—Whether an offence — Power of Nazal Darogha to make complaints.*—The accused unharnessed his horse from his carriage on the roadside, placed the former in its stable and the carriage in the coach-house. The vehicle did not stand for any considerable length of time upon the public road. *Held*: that the act was not an offence under s. 168 of the Municipalities Act. It was also not an offence under s. 170 of the Act, as the accused cannot be said to have used the public road as a halting place for the carriage. *Held :* also that the Municipal Board cannot, by any resolution of its own, extend the scope of s. 170 of the Municipalities Act. *Held :* further that a Nazul Daroga has no power to make complaints of offences under s. 170 of the Act and prosecution instituted on his complaint cannot be entertained. NALIN KUMAR MUKERJI v. KING-EMPEROR, **11 A. L.J. 721=14 Cr. L.J. 523=20 Ind. Cas. 1003.**

(46)—S. 170—*See* No. 45, *supra.*

(47)—*S.* 183—*Jurisdiction of Civil Courts.*—A Municipal Board granted permission to B for building a temple. The District Magistrate, acting under s. 183 of the Municipalities Act, made an order cancelling the permission given by the Municipal Board, and the Local Government confirmed this order of the District Magistrate. B brought a suit for a declaration that he had a right to build the temple. *Held,* that the suit was not maintainable ; *held,* further, that the Civil Court had no power to disturb the order of the District Magistrate, who acted within his jurisdiction, and whose order had been duly confirmed by the Local Government. BULAKI DAS v. THE SECRETARY OF STATE FOR INDIA, **6 A L.J. 458=31 A. 371=1 Ind. Cas. 896.** (2 A.L.J. 222, *Appl.*)

(48)—*S.* 187—*Power of Magistrate dismissing objection petition against certain election to award costs.*—A Magistrate has no power to award costs to be paid by a defeated petitioner who petitioned to set aside a Municipal election. It is even doubtful as to whether or not there is any necessity for seeking to set aside the order of the Magistrate, and whether the petitioner is not entitled to treat the order, so far as it awards costs against him, as waste paper. CHANDRA BHAN v. GIRWAR LAL, **28 A. 475=A.W.N. 1906, 97=3 A.L.J. 420.**

8.—United Provinces Acts—continued.

Act II of 1901 (Agra Tenancy).

(1)—*S.* 134—*Power of amin to adjourn sale—Obstruction at adjourned sale—Penal Code, s.* 184, *offence under.*—An amin, deputed to hold a sale under chap. IX of the Act, adjourned it to another date for paucity of bidders ; the conditions laid down in s. 134 of the Act for an adjournment of sale did not exist in the case. On the adjourned date of sale, the Amin was obstructed. The obstructors were convicted of an offence under s. 184 of the Penal Code. *Held,* the Amin not having the power to adjourn the sale, under the circumstances, the obstruction did not constitute an offence under s. 184 of the Penal Code. EMPEROR v. TARA SINGH, **A.W N. 1905, 65=27 A. 480.**

Act III of 1901 (U.P. Land Revenue).

(1)—Ss. 32, 46, 234—*See* PENAL CODE, s. 176, 10 O.C. 238=6 Cr. L.J. 301.

(2)—*S.* 46—*Penal Code, s.* 176—*Facts to be proved for justifying conviction.*—The accused, certain Zamindars, were convicted of an offence under s. 176, Penal Code, read with s. 46 of the above Act, for not having given information to *Putwaris,* preparing the *Jamabandis,* regarding enhancement of rent of certain tenants. It was found that enhancement had been made. There was nothing, however, to show that the *Putwaris* or *Kanangoes* made any requisition of the accused for any particulars. *Held,* the convictions were wrong. To sustain a conviction, there must be evidence to show that a particular *Putwari* or *Kanango* called for a particular information from a particular Zamindar and that the latter either refused to give the information or gave information which was false. In the absence of such a requisition or compliance therewith or a compliance therewith truly, the Zamindar ought not to be convicted. Mere abstinence, on the part of a Zamindar, to go to a *Putwari* or *Kanango* and give him information as to the rent of a certain tenant or tenants having been enhanced is no offence. KING-EMPEROR v. JANKI SINGH, **8 O.C. 128=2 Cr. L.J. 307.**

(3)—S. 46—*See* No. 1, *supra.*

(4)—Ss. 142, 143 and 149—*See* ESCAPE FROM LAWFUL CUSTODY, 7 A.L.J. 21.

(5)—S. 143—*See* No. 4, *supra.*

(6)—Ss. 147, 195, 196—*See* PENAL CODE, s. 173, 6 A.L.J. 777.

(7)—Ss. 147, 227, 228—*See* PENAL CODE, ss. 352, 353, 4 A.L.J. 132=29 A. 272=A.W.N. 1907, 42=5 Cr. L.J. 110.

(8)—S. 149—*See* No. 4, *supra.*

(9)—S. 195—*See* No. 6, *supra.*

(10)—S. 196—*See* No. 6, *supra.*

(11)—S. 227—*See* No. 7, *supra.*

(12)—S. 228—*See* No. 7, *supra.*

(13)—S. 234—*See* No. 1, *supra.*

8.—United Provinces Acts—concluded.

Act IV of 1910 (Excise).

(1)—*S. 63—Code of Criminal Procedure, s. 537—Search without warrant—Mixture of cocaine and another drug found—Search illegal.*—The police on information received, searched without a warrant the house of the accused and found there a mixture of cocaine and another drug. *Held* that the case did not come under the provisions of s. 50 of the Excise Act and the search without warrant was illegal. *Held*, further that the illegality of the search was no bar to the conviction of the accused, when there was evidence of the finding in his house of an excisable article for the possession of which he had no license. KING EMPEROR v. ALLAHDAD KHAN, **11 A.L.J. 442=19 Ind. Cas. 332=14 Cr. L J. 236=35 A. 358.** [*R.*, 35 A. 575=11 A.L.J. 933=15 Cr. L.J. 19=22 Ind. Cas. 163.]

Act II of 1911 (Motor Vehicles).

(1)--*S. 13 (b)—' Employs,' meaning of--License to drive a motor.*—*Held*, that the 'employs' as used in s. 13 (*b*) of the Motor Vehicle Act (II of 1911) means 'has' or 'retains' in his employ and not 'takes into his employ.' *Held further*, that the section provides *imprimis* for the case of a man who at the time in question is driving a Motor Vehicle without a license, and therefore clearly refers to the case of a license in force at the time of such driving. MAHAMMAD ALI MAHAMMAD KHAN v. KING EMPEROR, **17 O. C. 311=15 Cr. L J. 677=25 Ind Cas. 1005.**

Acting Judge of the High Court.

Power of Governor-General in Council or Governor in Council or Lieutenant-Governor to appoint an—*See* ST. 24 & 25, Vict. C. 104, ss. 7, 16, 16-*a*, 136, F.B.

Actionable Claim.

Purchase of, by pleader—Professional misconduct — *See* LEGAL PRACTITIONERS — PLEADER AND CLIENT, 23 M.L.J. 447=1912 M W.N. 1029=12 M.L.T. 615=37 M. 238=13 Cr. L.J. 800=17 Ind. Cas. 544.

Actionable Wrong.

What is an—*See* PENAL CODE, ss. 2, 499, 500, 17 C.W.N. 297=14 Cr. L.J. 100=18 Ind. Cas. 660=40 C. 433.

Act, Construction of.

See STATUTES, CONSTRUCTION OF.

Act of State.

(1)—*Arrest and detention of a Mahomedan subject of the Crown under Reg. III of 1818, if act of State*—Where a Mahomedan subject of the Crown was arrested in Calcutta, taken into the Mofussil, and there detained in jail, under a warrant of the Governor-General in Council in the form prescribed by Reg. III of 1818, it was *held* that such arrest and detainer were not acts of State, but matters cognizable by a Municipal Court. *In the matter of* AMEER KHAN, **6 B.L R. 392.** [*R.*, 36 M. 72=23 M. L.J. 393=1912 M.W.N. 1012=16 Ind. Cas. 755=13 Cr. L.J. 723=13 M.L.T. 367, 39 C. 164=15 C.W.N. 1053=14 C.L.J. 375=12 Cr. L.J. 505.]

Actor.

Contract to serve as, in theatrical Company—*See* ACT XIII OF 1859, s. 2, 28 P.R. 1904, Cr.

Additional District Magistrate.

(1)—*Crim. Pro. Code* (1898), ss. 10 (2) *and* 435 (1)—*Relation between Additional District Magistrate and District Magistrate—Additional District Magistrate inferior to District Magistrate—Revision.*—The Court of a Magistrate of the First Class, appointed under s. 10 (2), Crim. Pro. Code, to be an Additional District Magistrate, is an inferior Criminal Court, situate within the local limits of the jurisdiction of the District Magistrate, for the purposes of s. 435 (1) of the Code. The Code of 1898 did not except Additional District Magistrates from supervision by the District Magistrate and Additional District Magistrates are obviously not inferior to Sub-Divisional Magistrates. CROWN v. ABDUL, **25 P R. 1908, Cr.=9 Cr. L J. 104.** (38 P.R. 1885, Cr., *Appr.*; 9 B. 100, 13 C. 473, F.B.; 8 M. 18 F.B., *R.*)

See CRIM. PRO. CODE (1898), ss. 10 (2), 12, 528, 34 C. 918=6 Cr. L.J. 360.

Additional Evidence.

Remand by appellate Court for—and finding illegal—*See* CRIM. PRO. CODE, 1898, s. 428, 1914 M.W.N. 778.

Duty of appellate Court—Admission of additional evidence—Reliance upon matters not in evidence before appellate Court—Effect—*See* CRIM. PRO. CODE, 1898, ss. 428, 423, 8 M.L.T. 428.

Power of appellate Court to take additional evidence—Penal Code, s. 411— Dishonestly receiving or retaining stolen property—Article of small value—Recent possession—Burden of proof—Evidence Act, 1872, s. 114 (*a*)—*See* CRIM. PRO. CODE, 1898, ss. 428, 540, 8 M. L.T. 418=8 Ind. Cas. 145=1910 M.W.N. 419.

See CRIM. PRO. CODE, 1898, s. 437, 10 B. 131.

In appellate Court—*See* LIBEL, 1911 2 M. W.N. 576=10 M.L.T. 506=12 Ind. Cas. 961=12 Cr. L.J. 585=36 M. 457.

Power of Sessions Judge to direct calling additional witnesses after commitment—*See* SESSIONS TRIAL, 29 P.R. 1888, Cr.

Additional Fine.

See SENTENCE—FINE.

For continuing offence, validity of—*See* ACT XIII OF 1889, s. 26, r. 2, 22 B. 841.

Additional Judge.

Whether subordinate to District Court—Appeal from decision of Additional Judge where lies—*See* ACT III OF 1907, s. 46 (1), 12 A.L J. 1105, F.B.=36 A. 576=15 Cr. L.J. 658=25 Ind. Cas. 986, F.B.

Additional Sessions Judge.

(1)—*Crim. Pro. Code*, 1882 *and* 1898—*Joint Judge—Additional Judge.—Held* that a Joint Sessions Judge was invested with the powers of an Additional Sessions Judge under the Code of 1898, in virtue of the Government Notification dated 28th May, 1898. QUEEN-EMPRESS v. BAGAS ASMAL ADAM, **Rat. Un. Cr. C. 972.**

Power of Local Government to appoint—to try a case of bribery against a Public officer—*See* CRIM. PRO. CODE, 1898, ss. 9, 193, 197, 1 M.L.J. 397, F.B.

Power of, to hear appeals from sentence of Magistrate—Power of, to grant sanction refused by a Magistrate—*See* CRIM. PRO. CODE, 1898, ss. 195, sub-ss. (6) & (7), 408, 409, 367, 424=14 Cr. L.J. 195=19 Ind. Cas. 195.

See CRIM. PRO. CODE (1898), ss. 435, 438 (1), 1 L.B.R. 119.

Addition of Charge.

See CHARGE—ADDITION OF CHARGE.

Aden.

See BOM. ACT II OF 1864.

(1)—*Appeal from sentence of Political Resident at Aden to the High Court of Bombay in criminal case arising at Perim.*—The prisoner was charged with having committed murder in the island of Perim. He was committed by the Magistrate at Perim to be tried before the Political Resident at Aden. He was found guilty and sentenced to death. He then appealed to the High Court of Bombay. By the Aden Act II of 1864, s. 29, it is provided that "no appeal shall lie from an order or sentence passed by the Resident in any criminal case." The High Court, however, admitted the appeal, being doubtful as to whether the above provision applied to cases arising in the island of Perim. QUEEN-EMPRESS v. MANGAL TEKCHAND, **10 B. 258.** [*R.*, Rat. Un. Cr. C. 825, 96 P.L.R. 1901.]

(2)—*Perim, if part of Aden.*—The island of Perim, although under the control of the Political Resident at Aden cannot be regarded as a part of Aden, and the provisions of the Aden Act II of 1864 are not in force at Perim. QUEEN-EMPRESS v. PRIVATE MANGAL TEKCHAND, **10 B. 263.**

(3)—*Village of Shaikh Othman.*—The village of Shaikh Othman is made, for the purposes of Act II of 1864, part of the Settlement of Aden by Reg. II of 1891 and is placed under the jurisidiction of the Court of the Resident at Aden. *In re* NURADIN, **Cr. Rg. 67 of 1895.**

(4)—*Resident at Aden—Transfer of case—Resident's power of sentencing European British subject—Bom. Act* (II *of* 1864).—The Resident at Aden, who has a case committed to his Court under s. 447, Crim. Pro. Code, 1898, is not competent to transfer the case to the High Court of Bombay under s. 449 of the Code, when he feels that the accused being a European British subject cannot be adequately punished

Aden—*concluded.*

by him. The powers of the Court of Sessions conferred upon the Resident by the Aden Courts Act, 1864, are not merely such as are defined in the Crim. Pro. Code, but such as are provided expressly in the Act itself, and s. 449, Crim. Pro. Code, cannot affect those provisions. EMPEROR v. ROBERT COMLEY, **7 Bom. L.R. 104=29 B. 575.**

(5)—Political Resident at Aden—*See* ACT XIV OF 1874, ss. 3, 5, 6, 10 B. 274.

Aden Courts Act.

See BOM. ACT II OF 1864.

Aden Laws.

See BOM. REG. II OF 1891.

Adjournment.

See CRIM. PRO. CODE, 1898, s. 344.

(1)—*Crim. Pro. Code* (1898), *s.* 344—*Costs of.*—S. 344, Crim. Pro. Code, entitles the Court to award costs to a party who has been put to unnecessary expenses by an adjournment granted on the application of the other party. MATHURA PRASAD v. BASANT LAL, **28 A 207=2 A.L.J. 831=A.W.N. 1905, 256=2 Cr. L.J. 803.** (9 C.W.N. 18, *F.*; A.W.N. 1902, 59, *Disc. & Doubt*).

(2)—*Costs of adjournment — Discretion of Magistrate.*—A Magistrate has a discretion to require from the accused the cost of an adjournment, when he is not entitled to the adjournment asked for. SEW PROSAD PODDAR v. CORPORATION OF CALCUTTA, **9 C.W.N. 18.** [*F.*, 28 A. 207=2 A.L.J. 831=A.W.N. 1905, 256, 28 A. 209, note=A.W.N. 1905, 257, note].

(3)—*Crim. Pro. Code* (1898), *s.* 526 (8)—*Application for adjournment for moving the High Court for transfer*—Bona fides *of application, whether to be considered—Refusal, when does not vitiate the trial.*—Where an application for adjournment under s. 526 (8), Crim. Pro. Code, was refused and the trial was proceeded with, *held*, that the trial was a good and valid trial inasmuch as it was found that the accused still got reasonable time for applying to the High Court for transfer before they were required to enter upon their defence. Unreasonable delay or total abstention from moving the High Court might well be taken into account in considering the *bona fides* of the accused in notifying the intention to the trying Court. JOHARUDDIN SARKAR v. EMPEROR, **31 C 715=8 C.W.N. 910.** [*F.*, 33 C. 1183=10 C.W.N. 793=3 C.L.J. 477; *R.*, 1 P.R. 1913 Cr.=254 P.L.R. 1912=42 P.W.R. 1912 Cr.=17 Ind. Cas. 58=13 Cr. L.J. 746.]

(4)—*Crim. Pro. Code* (1898), *s.* 526 (8)—*Application for adjournment to apply for a transfer*—S. 526 (8) does not make it obligatory to grant a special adjournment irrespective of whether the party has reasonable time to make his application to the High Court without such adjournment; but makes it obligatory only, if

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it is necessary to enable the petitioner under s. 526 to make his application, before the accused is called on for his defence. It is, therefore, competent to the Magistrate, before granting an adjournment, to proceed with the case up to the point at which the accused would be called on for their defence. DHONE KRISTO SAMANTA v. KING EMPEROR, **6 C.W.N. 717.** [*Appr.*, 31 C. 715=8 C.W.N. 910; *R.*, 1 P.R. 1913 Cr.=254 P.L.R. 1912=42 P.W.R. 1912, Cr.=17 Ind. Cas. 58=13 Cr. L.J. 746.]

(5)—*Omission to file list of witnesses for the defence—Witnesses actually present in attendance—Application for adjournment*—Where there were many witnesses present on behalf of the accused, and at midday, when the Court, which apparently was holding a morning sitting, should have closed, the counsel for the accused wished to have an adjournment, so as to examine those witnesses, who were in attendance; and the Deputy Magistrate did not grant the adjournment, and did not allow the examination of the witnesses, on the ground that the list of witnesses for the defence had not been given in; *held* that the refusal to grant an adjournment was wrong and that the conviction of the accused should be set aside. EMPEROR v. KESO SINGH, **7 C.W.N. 714.** [*R.*, 4 Bur. L. T. 213=12 Cr. L.J. 474=12 Ind. Cas. 82.]

(6)—*Application for postponement of case for obtaining its transfer—Refusal of application—Effect.*—The duty of a Magistrate under s. 526, Crim. Pro. Code, where a case falls within it, being to grant a postponement, and he having no power to proceed with the hearing of the case until a reasonable postponement had been granted, the effect of his refusal to grant an adjournment is that the subsequent proceedings are unwarranted by law and must be set aside. KISHORI GIR v. RAM NARAYAN GIR, **8 C.W. N. 77.** (29 C. 211, *F.*) [*F.*, 4 Bur. L.T. 213=12 Cr L.J. 474=12 Ind. Cas. 82; *R.*, 31 C. 715=8 C.W.N. 910.]

(7)—*Refusal to grant time for filing written statement.*—A Magistrate has a discretion to refuse an application for a time to file a written statement. GOBIND CHANDRA CHAKRABUTTY v. NIBARAN CHANDRA BHUTTACHARJI, **8 C. W.N. 642.**

(8)—*Adjournment of trial by public proclamation.*—The adjournment of a trial by public proclamation is irregular and objectionable. Magistrate should give special notice to the parties of the date to which a case is adjourned. HIGH COURT PROCEEDINGS, 21ST JUNE, 1871, **6 M H.C. App. 29=1 Weir. 83.**

(9)—*Of trial—Reasonable cause—Crim. Pro. Code* (1898), *s.* 344.—There is no authority, for adjourning a case till all the absconders are found. An accused is entitled to have the evidence against him recorded as early as possible. The absence of some of the men suspected of gambling is not a "reasonable cause" for adjourning the enquiry into the guilt of the accused who are present. QUEEN-EMPRESS v. NGA TUN HLA, **1 L.B.R. 60.**

Adjournment—*continued.*

(10)—*Power of Magistrate to postpone to commencement of a trial—Crim. Pro. Cod,* (1898), *s.* 344.—Under s. 344, Crim. Pro. Code, a Magistrate has power to postpone the commencement of a trial "from the absence of a witness or other reasonable cause," but giving time to prepare the defence is not specifically mentioned as a reasonable cause. It may sometimes be right, in complicated and difficult cases, to postpone a trial in order to enable the accused to engage an advocate, if he applies for such postponement, but, in ordinary cases and as a general rule, this should not be done. The object of the trial is to ascertain the truth; examining the witnesses as early as possible is a far more likely way of attaining that end than postponing the trial to engage an advocate. TAUNG BO v. CROWN, **1 L.B.R. 270.**

See U. P. ACT II OF 1901, s. 134, A.W.N. 1905, 65.

See COSTS, A.W.N. 1902, 59.

Of criminal trial—Costs—*See* COSTS, 20 P.R. 1904 Cr.

Pending application for transfer—Proceeding under s. 107, if a criminal case—*See* CRIM. PRO. CODE, 1898, ss. 107, 526 (8), 18 C.W.N. 274=15 Cr. L.J. 171=22 Ind. Cas. 747=41 C. 719.

Proceedings under s. 145, Crim. Pro. Code—Propriety of—*See* CRIM. PRO. CODE, 1898, s. 145, 17 C.W.N. 144=18 Ind. Cas. 264=14 Cr. L.J. 40=17 C.L.J. 610.

See CRIM. PRO. CODE, 1898, ss. 145, 435, 526, cl. (8), 18 C.W.N. 393=15 Cr. L.J. 359=23 Ind. Cas. 727.

See CRIM. PRO. CODE, 1898, ss. 256, 526, 1912 M.W.N. 1121=13 Cr. L.J. 828=17 Ind. Cas. 572.

See CRIM. PRO. CODE, 1898, s. 257, 28 C. 594.

See CRIM. PRO. CODE, 1898, s. 526 (8), 29 C. 211=6 C.W.N. 251, 10 Ind. Cas. 380=12 Cr. L.J. 271=1911 2 M.W N. 311, 13 Cr. L.J. 584=15 Ind. Cas. 1000=5 Bur. L.T. 137, 15 C. 455.

See CRIM. PRO. CODE, 1898, ss. 526 (8), 344, 19 M. 375=2 Weir 683=6 M.L.J. 195.

Deposition of an absent witness—Ground for non-production of witness—Trial to be adjourned—*See* EVIDENCE ACT, 1872, s. 33, 21 W. R. Cr. 56.

See MAGISTRATE, DUTY OF, Rat. Un. Cr. C. 594=Cr. Rg. 14 of 1892.

Right to adjournment to produce witnesses—*See* SECURITY TO KEEP THE PEACE—SUMMONING WITNESSES, 23 W.R. Cr. 9.

See SUMMARY TRIAL, 5 L.B.R. 20=9 Cr.L. J. 583=2 Ind. Cas. 365.

See TRANSFER OF CRIMINAL CASES—GROUNDS FOR TRANSFER—NOTICE, 2 Weir 685, 2 Weir 686, 9 Cr. L.J. 274=1 S.L.R. 35, Cr.

Adjournment—*concluded.*

See TRANSFER OF CRIMINAL CASES—MISCELLANEOUS CASES, 19 M. 375=2 Weir 680 =6 M.L.J. 195.

Refusal to grant, to enable accused to move High Court for transfer—No good grounds for such refusal — Conviction — Illegality — *See* VILLAGE MAGISTRATE, 21 M.L.J. 755=11 Ind. Cas. 591=12 Cr. L J. 407.

Administrator-General.

See CRIM. PRO.CODE, 1898, ss. 197 and 423, 30 C. 927=7 C.W.N. 750.

Admission.

See ACCUSED PERSON.

See CONFESSION.

See EVIDENCE ACT, 1872, SS. 17 TO 30.

(1)—*Admissions of prisoners before Magistrate.*—The admissions of prisoners in their own statements before the Magistrate ought to be given in evidence at the trial. QUEEN v. BHUGWAN DOSADH, **4 W.R. Cr. 18.**

(2)—*Admissions made by a prisoner's vakil.*—admissions made by a prisoner's vakil cannot be used against him. QUEEN v. KAZIM MUNDLE, **17 W.R. Cr. 49.**

(3)—*By pleader appointed by Court.*—The Admissions made by a pleader who is appointed by the Court to help the accused in his defence are not binding on the accused. QUEEN-EMPRESS v. SANGAYA, **2 Bom. L R. 731.**

(4)—*Evidence Act, s. 58—Admission by accused—Crim. Pro. Code* (1882), s. 342.—An accused person is bound by an unqualified admission made at the trial by his solicitor. In England, a formal admission by the counsel at a trial has been allowed in order to dispense with mere formal proofs. In India there is nothing to prevent a prisoner, on being questioned under s. 342, to make an admission ; and it is obvious that some admissions on formal matters of law can be better trusted to his legal adviser, and there seems to be no reason in principle why, when the admission has been so made in his presence at the trial so as to dispense with the attendance of witnesses for the prosecution, it should not be held to bind him QUEEN-EMPRESS v. LEANDRO MASCARENHAS, **Rat. Un. Cr.C. 769=Cr. Rg. 34 of 1895.**

(5)—*Admission to police officer before arrest—Admissibility.*—An admission to a Police Officer made by an accused person before arrest is admissible in evidence. EMPRESS v. DABEE PERSHAD, **6 C. 530=7 C L R. 541.** [*R.*, L. B.R. 1893—1900, 42, 3 N.L.R. 51, 11 Cr. L.J. 453=7 Ind. Cas. 359=37 C. 467=14 C.W.N. 1114, 12 Cr. L.J. 60=8 Ind. Cas. 1181=6 N.L. R. 180.]

(6)—*Applicability of the term to civil and criminal proceedings—All admissions by accused whether confessions—Test whether statement is*

Admission—*continued.*

admission or confession—What are admissions and what are confessions.—It is impossible to hold that admissions only mean statements made by parties to civil proceedings, and that they do not include statements of accused persons in criminal proceedings. All admissions of an accused person are not, in the eye of the law, confessions. To ascertain whether a certain statement, made by an accused person is an admission only, or, amounts to a confession, a reference must always be made to the terms of that statement. Every statement, oral or documentary, which suggests any inference as to any fact in issue or relevant fact, made by an accused person, is an admission under ss. 17 and 18, Evidence Act, which is provable against the person making it, unless some provision of the Evidence Act, or other law renders it inadmissible. Under s. 24 to s 26, statements of accused persons are irrelevant subject to the provisions of ss. 27 to 29, when such statements are confessions. ILAHI BAKHSH v. EMPRESS, **16 P.R. 1886, Cr.**

(7)—*Admission—Confession, definition and scope of.*—A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime. HAKIMAN v. KING-EMPEROR OF INDIA, **51 P L.R. 1905=20 P R 1905, Cr =2 Cr. L.J. 230.** *See, also,* QUEEN-EMPRESS v. BABU LAL, **6 A. 509, F.B.**

(8)—*Confession and admission.*—A confession is also an admission of fact as well as an admission of guilt. ABBAS ALI v. EMPEROR, **4 Cr. L.J. 471=3 L.B.R. 208, F B.**

(9)—*Confessions must be considered as a whole.*—A confession must be looked at as a whole, and it would not be right to take isolated portions of it, and to consider whether any of them, regarded separately, amounts to an admission of guilt or not, though it is clear that taken together they do not. QUEEN-EMPRESS v. JAGRUP, **7 A. 646=A.W.N. 1885, 131.**

(10)—*Confession to be taken in its entirety.*—A prisoner's confession must be taken in its entirety. QUEEN v. SHEIK BOODHOO, **8 W. R. Cr. 38.**

(11)—*Confession to be taken in its entirety.*—Where there was no reliable evidence of the prisoner's guilt beyond his confessions, *held* his confessions must be taken in their entirety. QUEEN v. GOUR CHUNDER POLIE, **1 W.R. Cr. 17.** QUEEN v. CHULLUNDEE PORAMANICK, **3 W.R. Cr. 55.** QUEEN v. CHOKOO KHAN, **5 W.R. Cr. 70.** GOLOKEE CHUNDER CHOWDHRY v. MAGISTRATE OF CHITTAGONG, **25 W.R. Cr. 15.**

(12)—*Statements of accused, construed as not being admissions of guilt.*—Where a prisoner pleaded guilty, but went on to say that he did not commit the offence with which he stood

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charged, the plea was held to be really one of not guilty. QUEEN v. MITTUN CHOWDHRY, **11 W.R. Cr. 53.**

(13)—*Plea of "guilty" or "not guilty".*—In cases where an accused person, called on to plead to a charge before a Court of Session, instead of pleading guilty, makes a long rambling statement, more or less, admitting guilt, it would be much safer if the judge recorded a formal plea of "not guilty" and proceeded to try the case in the ordinary way recording the evidence. EMPEROR v. DEOKI, **A.W.N. 1908, 64=5 A. L.J. 157=7 Cr.L.J. 295.** (19 A. 119, *R.*)

(14)—*Trial—Magistrate—Admission by accused of some fact alleged by prosecution—Plea of not guilty.*—An accused person may admit some or even all of the facts alleged by the prosecution, but if he pleads not guilty, the Court trying him is bound to proceed according to law by examining the witnesses and giving an opportunity to the accused to cross-examine the witnesses for the prosecution and adduce his own evidence. EMPEROR v. SOMABHAI NATHABAI, **9 Bom. L R. 1346=6 Cr. L.J. 424.**

(15)—*Confession of culpable homicide not amounting to murder.*—Where a prisoner confessed that he did not suspect his wife's fidelity, that he left home on business, that on his return he saw what convinced him of his wife's infidelity, and that, maddened at the sight, he killed both her and her paramour, *held* that he was guilty of culpable homicide not amounting to murder, and that the case was one is which he ought to be treated with lenity. QUEEN v. SHEIK BOODHOO, **8 W.R. Cr. 38.**

(16)—*Admission by person required to furnish security.*—An admission by a person required to furnish security expressing willingness to give security should be duly recorded under s. 243 of the Code of Criminal Procedure, 1898. *In re* SUBBA NAICKEN, **17 M.L.J. 438.**

By Vakil—*See* CRIM. PRO. CODE, 1898, s. 145, 7 C.W.N. 351.

Admission in evidence of certain statements recorded by police officer regarding the commission of a cognizable offence—*See* CRIM. PRO. CODE, 1898, s. 154, U.B.R. 1892—1896, Vol. I, 24.

See CRIM. PRO. CODE, 1898, ss. 221 (7), 342, 412 and 511, 4 N.L.R. 163=9 Cr. L.J. 56.

See EVIDENCE—GENERAL, 8 W.R. Cr. 29.

See EVIDENCE—NON-ADMISSIBILITY OF EVIDENCE, L.B.R. 1872—1892, 350.

Admission—Sole evidence against accused—Admission to be taken in its entirety—See PENAL CODE, ss. 302, 318, 9 M.L.T. 316=9 Ind. Cas. 790=12 Cr. L.J. 142=1911 1 M.W.N. 199.

See PENAL CODE, s. 318, 1 C.P.L.R. 163, Cr.

Adoption.

Temple dasi—Of minor girl by—Offence under s. 373—Guilty knowledge—Presumption—*See* PENAL CODE, ss. 372, 373, 13 M L.T. 131=24 M.L.J. 211=14 Cr. L.J. 33=18 Ind. Cas. 257.

Adulterated Mustard Oil.

Sale of—*See* BEN. ACT II OF 1888, s. 364, 3 C.W.N. 66.

Adulteration.

Sale of mustard oil adulterated with til oil—*See* BEN. ACT III OF 1899, s. 495, 30 C. 643 =7 C.W.N. 637.

Of milk with water—*See* MAD. ACT I OF 1866, s. 26, 1 Weir 709.

Adulteration of Food.

See BEN. ACT II of 1888, s. 364, 3 C.W.N. 66.

Adultery.

See PENAL CODE, ss. 497, 498.

(1)—*Crim. Pro. Code (1872), s. 478—Charge of adultery—Complaint by husband.*—If a criminal charge of adultery is to be preferred, a formal complaint of that offence must be instituted in the manner provided by law, and, if it is not, s. 478 will not have been satisfied. When the husband preferred against the accused a complaint of rape on his wife, but not of adultery, *held* that the mere circumstance of the husband appearing as a witness in the prosecution for that offence could not be regarded as amounting to the institution of a complaint for adultery in the sense of s. 478. EMPRESS OF INDIA v. KALLU, **5 A. 233=A.W.N. 1883, 1.** [*F.*, 29 C. 415, 27 M. 61=2 Weir 236; *R.*, 10 A. 39=7 A.W.N. 264, 36 A. 1=11 A.L.J. 994=15 Cr. L J. 78=22 Ind. Cas. 430, 14 Cr. L.J. 284=19 Ind. Cas. 716=U.B.R. 1912, 155, 30 C. 910=8 C.W.N. 17.]

(2)—*Complaint by husband—Quære.*—Is the formal assent of a husband to a charge of adultery, added at the end of his deposition, a proper compliance with s. 478, Act X of 1872. QUEEN v. LUCKHY NARAIN NAGORY, **24 W. R. 18 Cr.**

(3 & 4)—*Condonation of adultery—Complaint by husband—Penal Code, s. 497—Proof of marriage.*—The appellate Court will not uphold a conviction for adultery when the husband has shown that he has condoned the offence. Before a person charged with adultery can be convicted, strict proof of the marriage is necessary. The charge should be instituted by the husband of the woman. The offence of adultery may be compounded. QUEEN v. SMITH, **1 Ind. Jur. N S. 8=4 W.R. Cr. 31.**

(5)—*Penal Code, s. 497—Proof of marriage—Evidence Act, s. 50.*—Where the accused was convicted of adultery with the complainant's wife, the evidence as to the marriage between the complainant and his wife consisted of statements by them that they were married to each

Adultery—*continued.*

other, and a statement by the accused, when examined by the committing Magistrate, that the woman was the wife of the complainant, *held,* that the evidence, having regard to s. 50 of the Evidence Act, and also to the principle that strict proof should be required in all criminal cases, was altogether insufficient to prove the marriage, and the admission of the prisoner would not strengthen the position, because if, as a matter of fact, there had been no marriage, no conviction would stand against him under s. 497. EMPRESS OF INDIA v. KALLU, **5 A. 233=A.W N. 1883, 1.** [*F.*, Rat. Un. Cr. C. 190; *Appr.*, 18 A.W.N. 7; *R.*, 18 A.W.N. 186, 3 O.C. 342, 31 B. 218=9 Bom. L.R. 148=5 Cr. L.J. 164; *Discussed*, 9 M. 9=1 Weir 572; *Not F.*, 5 P.R. 1894 Cr.].

(6)—*Penal Code, s. 497—Adultery—Proof of marriage.*—In a prosecution for adultery, the marriage of the complainant with his alleged wife must be strictly proved. QUEEN-EMPRESS v. ABDUL, **Rat. Un. Cr. C. 539=Cr. Rg. 12 of 1891.**

(7)—*Proof of marriage—Evidence Act, s.* 50.—Where marriage is an ingredient in any offence, *e g.*, adultery, bigamy and the like, there must be, according to s. 50 of the Evidence Act, strict proof, in the regular way, of the fact of the marriage. EMPRESS v. PITAMBUR SINGH. **5 C. 566=5 C L.R. 597, F.B.=3 Shome L.R Cr. 13.** (6 B.L.R. App. 63, *Overruled.*) [*Not F.*, 5 P.R. 1894 Cr.; *F.*, 5 A. 233, 3 O.C. 342, Rat. Un. Cr. C. 190; *R.*, 36 A. 1=11 A.L.J. 994=15 Cr. L.J. 78=22 Ind. Cas. 430, 31 B. 218=9 Bom. L.R. 148=5 Cr. L.J. 164, A.W.N. 1898, 186, 10 Cr. L.J. 235=2 S.L.R. 22; *Discussed*, 9 M. 9=1 Weir 572].

(8)—*Penal Code, s. 498—Conviction under the section—Proof of valid marriage—Evidence Act, s.* 60.—In order to convict a person under s. 498, I.P.C. mere statements of witnesses that the complainant and his wife lived as husband and wife are not sufficient; it is necessary that the facts constituting a valid marriage should be proved in accordance with s. 60 of the Evidence Act. EMPRESS v ARSHED ALI, **13 C L. R. 125.** (5 C.L.R. 597, F.B.=5 C. 566, *R.*)

(9)—*Proof of adultery—Sexual intercourse—Presumption of knowledge that woman is married.*—In a case of adultery, sexual intercourse must be proved; the sexual intercourse required for adultery being the same identical thing as the sexual intercourse required for rape. The difference lies in the mode of proof: in rape, no presumption of sexual intercourse can be made; in adultery, it can be from evidence pointing strongly to an inference of guilt. It is not necessary, therefore, that there should be direct evidence of an act of adultery, nor that the adulterer should know whose wife the woman is, provided he knew she was a married woman. QUEEN v. MADHUB GIRI MOHUNT, **21 W.R. Cr. 13.**

(10)—*Co-habitation if necessary for complete marriage—Penal Code, s.* 497.—It is not necessary to make a marriage complete, that there should be co-habitation. BIRBUL v. SAWAN, **4 P.R. 1874 Cr.** (48 P.R. 1867, Cr., *Overruled*).

(11)—Sagai *wives, whether legal wives.*—*Sagai* marriages, that is, the custom of re-marriage of widows, prevails among certain low castes of Behar, and is legal and valid. Persons committing adultery with a *sagai* wife are punishable BISSURAM KOIREE v. EMPRESS, **3 C.L.R. 410.** [*Appl.*, 10 C. 138; *R.*, 5 C. 692.]

(12)—*Marriage illegal by Hindu Law—Custom of caste—Penal Code, s. 497—Dissolution of marriage at will and marriage (natra) with another man—Custom.*—A custom of the *Talapada Hali* caste that a woman should be permitted to leave the husband to whom she has been first married and to contract a second marriage (*natra*) with another man during the lifetime of her first husband and without his consent is invalid, as being entirely opposed to the spirit of Hindu law; and the man with whom the woman so married, having had sexual intercourse with her, and it being found that he did not honestly believe that she had become his wife was held to be guilty of adultery under s. 497, Penal Code. REG v. KARSAN CROJA, **2 B.H.C. 117.**

(13)—*Marriage contrary to Hindu Law—Custom of caste—Penal Code, s.* 497.—Where a prisoner accused of adultery sets up in defence a *natra* marriage contracted with the woman with whom he is alleged to have committed adultery, in accordance with the custom of his caste, the question the Court has to determine is whether or not the accused honestly believed at the time of contracting the *natra* marriage that the woman was the wife of another man. REG v. MANOHAR RAIJI, **5 B.H C. Cr. 17.**

(14)—*Adultery with Mahomedan's sixth wife, if offence—Penal Code, s.* 497.—Where, in a case of adultery with the complainant's wife, the complainant, a Mahomedan, alleged that, in order to legalise his marriage with his 5th and 6th wives and to keep within the law, which only permitted him to have four wives, he kept two of the first four of his six wives partially divorced by uttering the words of divorce only once or twice, *held* that the woman in question was not the complainant's wife. RAB NAWAZ KHAN v. CROWN, **1 P.R. 1875 Cr.**

(15)—*Penal Code, s. 498—Offence, when complete.*—The offence contemplated by s. 488, I.P.C., is complete if it appears that the accused went away with the woman in such a manner as to deprive her husband of his control over her; the fact that the woman accompanied the accused of her own free will does not diminish the criminality of the act. EMPEROR v. JAN MAHOMED, **4 Bom. L.R. 435.**

(16)—*Adultery and re-marriage—Joinder of charge.*—The offences of adultery and marrying again during the life-time of the husband should not be tried together. REG v. VITHAEE, **Rat. Un. Cr. C. 4.**

(17)—*Penal Code, ss. 497, 498—Previous conviction for adultery—Subsequent adultery—*

Adultery—*continued.*

Second punishment.—If a man, who has been convicted of adultery with another man's wife, continues his adulterous intercourse, he will be liable to a second conviction and punishment for the fresh act, notwithstanding that the woman had not returned to her husband's protection after the conviction of her paramour. QUEEN-EMPRESS v. EMAJI, **Rat. Un. Cr. C. 150 = Cr. Rg. 28—10—1880.**

(18)—*Suit for dissolution of marriage—Delay —Divorce Act* (IV of 1869), *s.* 14.—Though there is no absolute limitation in the case of a petition for dissolution of marriage, yet the Courts will always look whether there has been such delay in preferring the charge of adultery as to lead to the conclusion that the petitioner had either connived at the adultery or was wholly indifferent to it. But, any presumption, arising from apparent delay, may be rebutted by an explanation of the circumstances. WILLIAMS v. WILLIAMS, **3 C. 688.** [*R.*, 17 B. 624, F.B.]

(19)—*Enticing away woman—Penal Code, ss.* 497, 498—*Form of conviction.*—A prisoner need not be convicted both of adultery and enticing away the woman; the former would include the latter, if there be an enticing away. QUEEN v. POCHUN CHUNG, **2 W.R. Cr. 35.**

(20)—*Charges of adultery, enticing away and theft—Acquittal on the first two—Trial of theft.* —Where a person was charged with adultery and enticing away a married woman and of theft of the husband's property with the connivance of the latter, *held*, that the acquittal of the accused on the first two charges would not entitle him to a discharge without trial on the charge of theft. It would still be open to the Jury to find that the accused was present and dishonestly removed or took part in the removal of the property of the husband. HIGH COURT PROCEEDINGS, 16TH MAY 1870, **5 M.H.C. App. 22.**

(21)—*Partnership, dissolution of.*—Adultery of one partner with the wife of his co-partner is a sufficient ground for dissolution of the partnership. ABBOTT v. CRUMP, **5 B.L.R. 109.**

(22)—*Penal Code, s.* 497—*Attempt to commit adultery.*—Adultery being an act which requires the consent of both the parties, it is not sufficient, in order to convict a man of an attempt to commit adultery, that he was found in a place in which adultery might have been committed and he was minded to commit it. Because he was so minded and had entered the woman's room, it does not necessarily follow that, but for some interruption, the offence would have been consummated. *In re* BASAVA CHARY, **1 Weir 569.**

(23)—*S.* 199, *Crim. Pro. Code* (1861), *Prosecution for adultery—Death of husband, effect of.*—The law only requires that the prosecution on a charge of adultery should be instituted by the husband. Although it is desirable that such charges should be withdrawn by the prosecution on the death of the aggrieved party, it cannot be said that the death necessarily puts an end to the prosecution. HIGH COURT PROCEEDINGS, 13TH JULY 1869, NO. 1261, **2 Weir 235 = 4 M.H C. App. 55.**

(24)—*Crim. Pro. Code* (1861), *s.* 199—*Prosecution for adultery—Minor husband.*—A minor husband cannot be represented by another in a prosecution for adultery. HIGH COURT PROCEEDINGS, 7TH FEB. 1871, NO. 250, **2 Weir 235.**

(25)—*Proof of adultery—Penal Code, s.* 497. —In a criminal case, adultery must be proved in the same degree as in a divorce suit. If the woman and the alleged adulterer are not caught in the act, criminal intention and opportunity must be proved, and all absence of consent or connivance must be shown on the husband's part. SHER KHAN v. CROWN, **1 P. R. 1874 Cr.** [*R.*, 1911 U.B.R. 4th qr. p. 100.]

See ABATEMENT OF PROSECUTION, 4 M.H.C. App. 55 = 2 Weir 235.

See ATTEMPT, 13 P.R. 1879 Cr., 25 P.R. 1902 Cr.

See COMMITMENT TO SESSIONS COURT, 4 A. 150.

Charge of adultery—Withdrawal of charge by husband—Revisional powers of High Court —*See* COMPOUNDING OFFENCE, 5 B H.C. Cr. 27.

See COMPOUNDING OFFENCE, 2 N.W.P. 234.

See CRIM. PRO. CODE, 1898, ss. 4 and 488, 17 M. 260 = 2 Weir 641 = 4 M.L.J. 83.

Mother of a minor husband, if aggrieved party—*See* CRIM. PRO. CODE, 1898, s. 198, 2 Weir 231.

Prosecution for—Minor husband—*See* CRIM. PRO. CODE, 1898, s. 199, 2 Weir 235.

See CRIM. PRO. CODE, 1882, s. 488, 20 M. 470 = 2 Weir 643 = 7 M.L.J. 303, F.B.

House trespass with intent to commit—*See* CRIMINAL TRESPASS, 1 Weir 532 = 8 M.H.C. App. 6.

Grave provocation—Husband finding wife in —*See* CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 1 W.R. Cr. 17, 8 W.R. Cr. 38.

Grave provocation — Husband seeing wife seduced to—*See* CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 3 B.L.R.A. Cr. 33.

Imputation of—to woman—Medical examination of woman—*See* DEFAMATION, Rat. Un. Cr. 474 = Cr. Rg. 33 of 1889.

See EVIDENCE GENERAL, 40 P.R. 1882 Cr.

House trespass with intent to commit adultery—*See* HOUSE BREAKING, 1 Weir 532 = 8 M.H.C. App. 6.

Adultery—*concluded.*

House trespass in order to commit— *See* HOUSE-TRESPASS, 1 Weir 531=2 Weir 235.

House trespass for the purpose of committing —*See* HOUSE-TRESPASS, 1 Weir 537.

See MAHOMEDAN LAW— MAINTENANCE, L.B.R. 1872-1892, 596.

Order for maintenance—Subsequent proof of —*See* MAINTENANCE, 8 B.H.C. Cr. 124.

See MAINTENANCE, 30 M. 332=2 M.L.T. 166=17 M.L.J. 279=5 Cr. L.J. 359, A.W.N. 1883, 180, A.W N. 1893, 56, 31 P.R. 1887, Cr. L.B.R. 1872—1892, 596, Rat. Un. Cr. C. 353 =Cr. Rg. 42 of 1887, 5 N.L.R. 19=9 Cr. L.J. 390=1 Ind. Cas. 801.

See PENAL CODE, s. 451, 19 A. 74=A.W.N. 1896, 178.

See RAPE, 29 C. 415=6 C.W.N. 677.

See TRIAL, 5 M.H.C. App. 16.

Evidence of woman charged with — *See* WITNESS — GENERAL — WHO ARE COMPETENT TO BE WITNESSES, 6 W.R. Cr. 92.

Advance.

To brokers for supply of paddy—Absence of pro-notes—Undertaking to apply advances to purchasing paddy for advancing firm—Transaction whether a loan or trust—*See* PENAL CODE, s. 405, 14 Cr. L.J. 145=19 Ind. Cas. 145=7 L.B.R. 16=6 Bur. L.T. 13, F.B.

Adverse Possession.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 8 W.R. 373.

Advertisement.

Obscene through post cards—*See* ACT VI OF 1898, ss. 20 and 61, 32 C. 247=2 Cr. L.J. 201.

See DEFAMATION, 3 A. 342.

Advocacy.

See WITNESS—MISCELLANEOUS CASES, 5 M.L.T. 58, P.C.=9 C.L.J. 172=13 C.W.N. 370=11 Bom. L.R. 196=31 A. 116=19 M.L.J. 186=1 Ind. Cas. 128.

Advocate.

See LEGAL PRACTITIONERS—ADVOCATE.

Advocate-General.

(1)—*Advocate General—Right to pre-audience.*—The Advocate-General and Officiating Advocate-General for the time being are entitled to similar pre-audience as the Attorney-General in England. *In the matter of the claim of* ADVOCATE-GENERAL, **Bourke O.C. 224.**

Points not raised in Advocate-General's certificate not allowed to be argued at the hearing—*See* EVIDENCE ACT, 1872, ss. 25, 26, 114. ill (*b*), 133, 157, (1912) M.W.N. 549=12 M.L.T. 1=13 Cr. L.J. 352=14 Ind. Cas. 896=35 M. 397.

Advocate-General—*concluded.*

Certificate by Advocate-General, when grantable—*See* LETTERS PATENT — LETTERS PATENT, 1865—BENGAL, s. 26, 4 C.W.N. 433, F.B.

See LETTERS PATENT—LETTERS PATENT, 1865—BOMBAY, ss 25, 26, 9 Bom. L.R. 789=6 Cr. L.J. 164=32 B. 111=2 M.L.T. 414.

Advocate-Generals' Powers Act.

See ACT X OF 1875.

Aerated-Waters.

Aerated waters whether 'food'—Exposing unwholesome aerated waters for sale—Whether punishable—*See* MAD. ACT III OF 1904, s. 409, cl. (19), 16 M.L.T. 585=26 Ind. Cas. 311.

Affidavit.

(1)—*Affidavits, use to be made of.*—Though affidavits may be used to show a want of jurisdiction, even though such affidavits contradict for this purpose the finding of the Court, it is quite clear that they cannot be used as affording materials for reviewing the Magistrate's decision. Where the charge is such that, if true, it would give the Magistrate jurisdiction, his decision is final. REG. v. NATHALAL PITAMBER, **10 B H C. 102.**

(2)—*Crim. Pro. Code* (1882), *s.* 342—*False statement in an affidavit attached to an application for revision.*—Where, in an affidavit attached to an application for revision from an order convicting him, the convict makes a false allegation, he could not be prosecuted for perjury, as it was not competent to put him upon oath at all. *In the matter of* BARKAT, **19 A. 200=A.W.N. 1897, 23.** (12 M. 451, *R.*) [*F.*, 28A. 331=3 A.L.J. 98=A.W.N. 1906, 42=3 Cr. L.J. 225; *R.*, 10 Cr. L.J. 509=4 Ind. Cas. 160=12 O.C. 308.]

(3)—*Penal Code, ss.* 196 *and* 199—*Affidavit before a Deputy Magistrate—Power to administer oath—Perjury.*—A Deputy Magistrate has no power to administer an oath to a person making a declaration in the shape of an affidavit. Such person cannot, therefore, be prosecuted for perjury under s. 199. *In the matter of the petition of* ISWAR CHUNDER GUHO, **14 C. 653.** [*R.*, 35 A. 58=10 A.L.J. 462=13 Cr. L.J. 769=17 Ind. Cas. 401; 5 S.L.R. 102=12 Ind. Cas. 651=12 Cr. L.J. 563.]

Attorney if can make affidavit in answer to rule against him under Court's disciplinary powers—Liability for false statement in affidavit—*See* CRIM. PRO. CODE, 1898, s. 195, 15 Cr. L.J. 49 S. B.=22 Ind. Cas. 321=41 C. 446, S.B.

Sanction to prosecute—Evidence—Affidavit. —*See* CRIM. PRO. CODE 1898, ss. 195, 476=14 Bom L R. 587=13 Cr. L.J. 689=16 Ind. Cas. 497=1 Bom. Cr. C. 154.

False allegation in—*See* CRIM. PRO. CODE, 1898, ss. 476, 526, 3 C.L.J. 357=3 Cr. L.J. 329.

Affidavit—*concluded.*

What affidavits should contain and how they should be verified—*See* CRIM. PRO. CODE, 1898, s. 540, 11 A.L.J. 986.

See DEFAMATION, 8 C.W.N. 292.

False statement in affidavit supporting the application for transfer—*See* PENAL CODE, ss. 193 and 199, 1 Weir 176=1 Weir 822=2 Weir 686.

Of accused, if admissible in High Court to show that he had not pleaded guilty—*See* PRACTICE AND PROCEDURE, 19 M. 209=1 Weir 850.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 11 Bom. L.R. 1164=4 Ind. Cas. 273=10 Cr. L.J. 539.

See TRANSFER OF CRIMINAL CASES—GENERAL, A.W.N. 1886, 257.

See TRANSFER OF CRIMINAL CASES—MISCELLANEOUS CASES, 8 C. 63.

Affirmation.

See SOLEMN AFFIRMATION.

Affray.

See PENAL CODE, ss. 159, 160.

(1)—*Penal Code, s.* 159—*Affray defined.*—If two or more persons, by fighting in a public street, disturb the public peace, they may be guilty of an affray, though it is not clear which particular person struck which particular person. It is sufficient to prove that they fought together in a public place and thereby disturbed the public peace. VADDE RAMUGADU, **1 Weir, 71.**

(2)—*Penal Code, ss.* 159 *and* 160—*Affray, what constitutes.*—To constitute an affray under s. 160, Penal Code, there must be a "fighting in a public place" and consequent disturbance of the public peace. Mere exchange of words without fighting, in consequence of an obstruction in the public way, caused to some of the accused, would not amount to an affray. *In re* ANGAPPANASARI, **1 Weir 71.**

(3)—*Evidence as to nature of.*—In an affray, specific evidence as to the acts of each fighter cannot be expected, but only general evidence as to the accused taking part in it, and persons who, as in this case, punted the boats on which the fight took place, were held to be just as blameworthy as men who struck blows. MOHER SHEIKH v. QUEEN-EMPRESS, **21 C. 392.**

(4)—*Penal Code, ss.* 159, 160—*Affray in a public place.*—Where it appeared from the evidence that a *chabutra* was not accessible to the public, by right or by possession, or by usage or otherwise, *held*, that it was not a public place under s. 159, I.P.C., although any member of the public walking along the street could walk on to it as it adjoined the public street. QUEEN-EMPRESS v. SRI LAL, **17 A. 166=A.W.N. 1895, 42.** [*R.*, 29 B. 386=7 Bom. L.R. 333=2 Cr L.J. 252, 31 C. 542=8 C.W.N. 458; A. W.N. 1904, 92; 10 Cr.L.J. 16.]

Affray – *concluded.*

See CRIM. PRO. CODE, 1898, ss. 244, 250, Rat. Un. Cr. C. 403=Cr. Rg. 64 of 1888.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 13 W.R. Cr. 19.

See HURT, 4 L.B.R. 237=7 Cr. L.J. 498.

See RIOTING, 1 N.W.P. 293.

See SENTENCE—GENERAL, 12 W.R. Cr. 72.

Affrays, Bengal.

See BEN. ACT IV OF 1840.

Afghans.

Afghan soldier enlisted in the Indian Army—Murder committed by him at Canton—Jurisdiction of Court at Honkong to try him—Consent of Amir of Afghanistan to exercise of jurisdiction if can be implied. *See* ST. 53 AND 54, VICT., C. 37, 18 C.W.N. 705=15 Cr. L.J. 326=23 Ind Cas. 678, P.C.

Africa Order in Council, 1889, 1892, 1893.

(1)—*Spheres of influence — Significance — African orders in Council.*—The Consular Court, by various Articles of the orders in Council of 1889 and subsequent years, is given some jurisdiction over spheres of influence under its command. But this is not the same as the jurisdiction which the Consul has as Commander and does not extend over foreigners. Occupation for purposes of war is not annexation, and has no significance nor does it affect the law of the State so occupied. Thus, the Consular Court of Uganda had no jurisdiction over offences by foreigners committed within its sphere of influence but beyond the Protectorate. QUEEN-EMPRESS v. JUMA, **Rat. Un. Cr. C. 880=Cr. Rg. 3 of 1897.**

See JURISDICTION OF CRIMINAL COURTS,—GENERAL, 22 B. 54.

Age.

Determination of—*See* ACT V OF 1876, s. 8, RAT. UN. CR. C. 494.

Murder—Evidence purely circumstantial—Sentence of death or transportation for life—Legality—Age of accused also to be taken into account in imposing sentence—*See* CIRCUMSTANTIAL EVIDENCE, 16 M.L.T. 535.

False certificate of—*See* FORGERY, 13 B. 515, Note.

Agency Tracts (Ganjam).

(1)—*Transfer of case from Agency Tract to Sub-Divisional Magistrate having jurisdiction over agency and non-Agency tracts—Conviction by latter Magistrate—Appeal to Sessions Judge of Ganjam—Does not lie—Proper* forum *of appeal —Agent as Sessions Judge of Agency tracts.*—S committed an offence at B, which is within the Ganjam Agency tracts. The case was transferred by the Agent to the First-class Magistrate of G, who had local criminal jurisdiction over certain Agency as well as certain non-Agency tracts. S preferred an appeal to the Sessions

Agency Tracts (Ganjam) —*concluded.*

Judge of the Ganjam Sessions Division. *Held* that the Sessions Judge of the Ganjam Sessions had no jurisdiction to hear the appeal, which should have been not to him, but to the Agent. The Magistrates of the Agency Tracts are not, as such, in any way, subordinate to the Sessions Court of the non-Agency Sessions Division of Ganjam; nor does the fact that the same person is a First-Class Sub-Divisional Magistrate in both districts, make him subordinate to the Sessions Court of the Ganjam Sessions division, in regard to the Magistrate's jurisdiction in the Agency District. THE PUBLIC PROSECUTOR v. SADANANDA PATNAIK, **23 M.L.J. 670=12 M.L.T. 601=13 Cr. L.J. 850=17 Ind. Cas. 786.** (30 M. 136, *D.*)

Agent.

See PRINCIPAL AND AGENT.

(1)—*Dewan—Khazanchi.*—A *dewan* may be an agent during the absence of his master; but not a *dewan* who acts only under the orders of his resident master. A *khazanchi* of the zamindar of a village is not an agent under s. 90, Crim. Pro. Code, 1872. *Per Markby, J.* EMPRESS v. ACHIRAJ LALL, **4 C. 603=3 C. L R. 87=1 Shome L.R. Cr. 89.**

Contractor or commission agent—*See* ACT XIII OF 1859, s. 2, 2 Bom. L.R. 801.

Unauthorized use of name as, giving Vakalatnamah in name of decree-holders without their authority—*See* FORGERY, 6 W.R. Cr. 78.

Money entrusted to broker—Broker to bear all loss — Ownership—Trustee — *See* PENAL CODE, s. 405, 15 Cr L. J. 452=24 Ind. Cas. 332=7 Bur. L. T. 209, F. B.

Aggrieved Person.

See CRIM. PRO. CODE, 1898, s. 198.

See BIGAMY, 26 C. 336.

See DEFAMATION, 25 B. 151=2 Bom. L. R. 665, F. B.

Agra.

Magistrates in the Province of Agra should follow precedents of Allahabad High Court. *See* CRIM. PRO. CODE, 1898, CHS. XVIII, XXI, ss. 208, 256, 439, 10 A.L.J. 144 =13 Cr.L.J. 443=15 Ind. Cas. 75.

Agreement.

Not to prosecute for giving false evidence—*See* FALSE EVIDENCE, 3 N.W.P. 166.

Between parties as to maintenance—Power of Criminal Court to enforce agreement—*See* MAINTENANCE, 42 P.R. 1888, Cr.

Agricultural Purposes.

Contract of service for, and other purposes—*See* ACT XIII OF 1859, s. 2, 7 B. 379.

Agricultural Purposes—*concluded.*

Closing water course—Diminution of supply of water for—Mischief—Wrongful loss—*See* PENAL CODE, ss. 23, 430, 4 L.B.R. 149=7 Cr. L.J. 448.

Illegal taking of water for — *See* PENAL CODE, s. 430, 1 Weir 507.

Agriculturist's Relief, Dekhan.

See BOM. ACT XVII OF 1879.

Ahmednagar and Khandesh.

See BOM. ACT XI OF 1846.

Air-gun.

See ACT XI OF 1878, 4 Cr. L.J. 239.

Akbar's Coin.

See COUNTERFEITING COIN, 11 B.H.C. 172.

Alibi.

(1)—*Failure to prove, whether evidence supporting prosecution.*—Failure to prove an *alibi*, or even proof that an *alibi* is false, can rarely be regarded as evidence supporting the case for the prosecution. ALI HUSSAN v. QUEEN-EMPRESS, **L.B.R. 1893-1900, 349.**

(2)—*Nature of defence.*—An alibi is generally an unsatisfactory way of disproving a claim or charge. REG. v. PARBHU DAS, **11 B.H.C. 90.**

(3)—*Case where defence of* alibi *failed.*—In this case the appeal was rejected as the approver declared that the (prisoner) appellant was present at the dacoity and as the *alibi* which the prisoner attempted to prove failed altogether. BOOTA SING v. CROWN, **68 P.R. 1866, Cr.**

Proof of—*See* CHARGE TO JURY, MISDIRECTION, 3 B.L.R.A. Cr. 43.

See CHARGE TO JURY—MISDIRECTION, 4 M.L.T. 194.

Defence of—Whether accused prejudiced by change of section of Penal Code—*See* CRIM. PRO. CODE, 1898, ss. 236, 237, 238, (1911) U.B.R. 3rd. Qr. 98=14 Ind. Cas. 973=13 Cr. L.J. 429.

See FALSE EVIDENCE, 57 P.R. 1866, Cr.

Pleader—Setting up a false plea of—Professional misconduct— *See* LEGAL PRACTITIONERS—PLEADER, 20 M.L.J. 498.

Alluvial Land.

Cases which Magistrate can decide as to possession—Dispute as to—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 17 W.R. Cr. 53.

Alteration.

(1)—*Entry, alteration of.*—With reference to entry No. 1 of the list of crimes in Circular Order No. 5, dated 6th July, 1865, ss. 325 and 326 may be substituted for ss. 323 to 326, as it was never intended to include ss. 323 and 324, Penal Code, in the list in question. CRIMINAL CIRCULAR MEMO. NO. 1, **11 W.R. Cr. Cir. 3.**

Alteration—*concluded.*

(2)—*Alteration of columns 14 to 16 of statements No. 1, Part I and No. 2, Part I—Withdrawals, discharges and acquittals* —Nos. 9 and 25 of the Rules for the preparation of Magistrates' Statements and Nos. 93 and 134 relative to the preparation of Memo A. CRIMINAL CIRCULAR NO. 18 OF 15TH SEPTEMBER, 1864, **1 W.R. Cir. Cir. 3.**

Alteration of Charge.

See CHARGE.

See PENAL CODE, ss. 497, 498, A.W.N. 1881, 112.

Alteration of Conviction.

See CONVICTION.

See SENTENCE.

See PENAL CODE, ss. 497, 498, A.W.N. 1881, 112.

Alteration of Judgment.

See JUDGMENT, 21 A 177 = A.W.N. 1899, 15.

Alteration of Register.

Under the Land Registration Act—*See* COLLECTOR, 2 C.L.J. 555 = 10 C.W.N. 82 = 3 Cr.L.J. 169.

Alteration of Sentence.

See SENTENCE.

(1) *When Magistrate may alter sentence.*—A Magistrate is at liberty to alter his sentence at any time before the despatch of the Calendar to the appellate authority. HIGH COURT PROCEEDINGS, 29TH MARCH 1870 **5 M.H.C. App. 19.**

Alternative Charges.

See CHARGE.

See CRIM. PRO. CODE, 1898, ss. 225, 232, 233, 537, 10 B, 124.

Charges in the alternative, difference between—Alternative charges for offences under the Penal Code and special laws not permissible—Nature of offences for which alternative charges are permissible—*See* CRIM. PRO. CODE, 1898, s. 236 10 Ind. Cas. 168 = 12 Cr. L.J. 224 = 5 S.L.R. 16.

See CRIM. PRO. CODE, 1898, s. 477, S.C. Oudh, 206.

Incriminating questions — Contradictory statements—*See* FALSE EVIDENCE, Rat. Un. Cr. C. 518 = Cr. Rg. 40 of 1890.

To support, proof to be given of the truth of each branch of charge— When justified—*See* FALSE EVIDENCE, 22 W.R.Cr. 2.

See FALSE EVIDENCE, 5 B.H.C. Cr. 49 Rat. Un.Cr.C. 336 = Cr.Rg. 26 of 1887, 27 P. R. 1890, Cr.

See PENAL CODE, ss. 182, 193, 5 A. 17.

Alternative Charges—*concluded.*

See PENAL CODE, s. 193, 17 A. 436 = A.W. N. 1895, 102.

See PENAL CODE, ss. 201, 302, and 314 S.C. 138, Oudh.

Contradictory statements—*See* SANCTION TO PROSECUTE — CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC.—2 Weir 169.

Alternative Conviction.

When not legal—*See* PENAL CODE, ss. 72, 302, 201, 11 P.R. 1913, Cr.

Aternative Finding.

See FALSE EVIDENCE.

(1)—*Alternative findings, when not to be made* —When there is no reason to doubt which of two offences specified in an alternative charge the accused has committed, there should not be an alternative finding. QUEEN-EMPRESS v. NGA ON GAING, **L.B.R. 1872—1892, 436.**

(2)—*Crim. Pro. Code* (1861), s. 382—*Alternative findings under same offence—Legality* —The Code of Criminal Procedure only contemplates an alternative finding when the facts are ascertained and it would follow beyond a doubt that the facts proved constitute one of two offences under one section of the Indian Penal Code; or when the evidence proves the commission of an offence falling within one of two sections of the Code and it is doubtful which of such sections is applicable. So, an alternative finding that the accused committed dacoity in A's house or B's house is illegal, where it cannot be determined which house was entered, since the not committing dacoity in one house would not be conclusive of the commission of the offence in the other. REG v. DEWJI, **Rat. Un. Cr. C. 20 = Cr. Rg. 6-9-1869.**

See CHARGE—GENERAL, L.B.R. 1872—1892, 436.

Contradictory statements on oath or solemn affirmation—*See* FALSE EVIDENCE, 1 Weir 156 = 4 M.H.C. 51.

See FALSE EVIDENCE, Rat. Un. Cr. C. 26 = Cr. Rg. 20-10-1869.

As to intent — Conviction — *See* PENAL CODE, S. 441, 5 P.R. 1886, Cr.

Sentence on—*See* SENTENCE— GENERAL, 7 W.R. Cr. 13.

Alternative Plea.

Session trial—*See* CRIM. PRO. CODES, 1898, s. 271 (2), Rat. Un. Cr. Cas. 327 = Cr. Rg. 15 of 1887.

Alternative Sentence.

See SENTENCE.

See SENTENCE —IMPRISONMENT—IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE.

See PENAL CODE, s. 294, L.B.R. 1872—1892, 309.

Alyasantana Law.

Marriage according to—Proof of co-habitation, whether sufficient—*See* PENAL CODE, s. 498, 6 M. 374=1 Weir 560=8 Ind. Jur. 35.

Ameen.

(1)—*Misconduct of Ameen.*—The Court is bound to enquire into charges against the Civil Court Ameen (such as can be readily enquired into and their truth either disapproved or proved). ABDOOL KUREEM BISWAS v. MR. J. D. CAMPBELL, **8 W.R. 172.**

See BEN. ACT VIII OF 1876, ss. 112 and 116, 22 C. 286.

See U. P. ACT II OF 1901, s. 134, A.W.N. 1905, 65.

Sufficiency of Amin's report for passing order—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 20 W.R. Cr. 57.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 C. 378.

See PENAL CODE, s. 167, 1 Weir 74.

See PENAL CODE, s. 193, 17 A. 436=A.W.N. 1895, 102.

Order for payment of part of fine to—*See* SENTENCE—FINE, 6 W.R. Cr. 93.

Amending Act XXI of 1867.

See ACT XXIX OF 1867.

Amending Act II of 1890, Bombay.

See BOM. ACT I OF 1901.

Amending the Code of Criminal Procedure.

See ACT XV OF 1862.

Amendment.

See CRIM. PRO. CODE, 1898, s. 145, 2 Weir 107.

Amendment of Charge.

See CHARGE—AMENDMEET OF CHARGE.

Amendment, Railway Act.

See ACT XXV OF 1871.

American Law.

Running water—English and American law—Not subject of larceny—*See* PENAL CODE, s. 378, (1912) M.W.N. 119=13 Ind. Cas. 819=13 Cr. L.J. 131.

Americans.

(1)—*Penal Code, s. 56—Penal servitude.*—The punishment of penal servitude is only applicable to Europeans and Americans. QUEEN-EMPRESS v. DIMA BAIDYA, **19 M. 483 =1 Weir 298=1 Weir 29.**

Amin.

See AMEEN.

Amins, Munsifs, Sadar Amins and Principal Sadr.

See BEN. REG. V OF 1831.

Ammunition.

See ACT XI OF 1878, ss. 4, 19, 23 P.W.R. 1910, Cr.=16 P.R. 1910=6 Ind. Cas. 952=11 Cr. L.J. 421=191 P.L.R. 1910.

Angling.

In a tank, whether an offence—*See* PENAL CODE, s. 277, 1 Weir 231.

Animals.

See ACT XI OF 1890.

See CRUELTY TO ANIMALS.

(1)—*What are animals.*—The word "animal" ordinarily means an organised or living being having sensation and power of voluntary motion, an inferior or irrational being as distinguished from man, and crabs are "animals" within the definition of s. 2 of Act XI of 1890 (Prevention of Cruelty to Animals). TULSI BEWAH v. SWEENEY, **24 C. 881.**

Cruelty to—*See* ACT V OF 1861, s. 34, cl. (2), A.W.N. 1887, 67.

See ACT XI OF 1890, ss. 2 and 3, 24 C. 881.

See BOM. ACT VII OF 1867, s. 31, Rat. Un. Cr. Cas. 183.

Attachment of a forest—Whether an elephant in that forest can also be attached—Who is entitled to the possession of the elephant—*See* CRIM. PRO. CODE, 1898, s. 145, (1912) M.W.N. 540=14 Ind. Cas. 318=13 Cr. L.J. 222.

Escape of an animal *feræ naturæ* from the possession of the owner—*See* MISCHIEF, 1 Weir 498.

Possession of animals which had strayed away—Offence—*See* PENAL CODE, ss. 75, 403, 411, 12 Cr. L.J. 439=11 Ind. Cas. 623=36 P.W.R. 1911=235 P.L.R. 1911.

—When can be the property of the pursuer—*See* PENAL CODE, ss. 148, 149, 304, 15 O.C. 183=15 Ind. Cas. 972=13 Cr. L.J. 556.

See PENAL CODE, s. 273, 3 P.R. 1908, Cr.=5 P.W.R. 1908, Cr.=7 Cr. L.J. 278=139 P.L.R. 1908.

Known to be dangerous—Injury caused by such animal—Conviction of herdsman in charge of animal—*See* PENAL CODE, s. 289, 3 N.L.R. 90=6 Cr. L.J. 100.

See PENAL CODE, s. 289, 1 A.L.J. 605.

Wounding—*See* PENAL CODE, ss. 426 and 429, 3 Bom. L.R. 503.

—"Bull" and "Cow" and "any other animal," meaning of—*See* PENAL CODE, s. 429, 22 C. 457.

Removal of animals from open land for grazing—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 4 Bom. L.R. 626.

Animals, Punjab Military Transport of.

See PUN. ACT I OF 1903.

Anonymous Communication.

See COMPLAINT, PROCEDURE ON RECEIPT OF COMPLAINTS, 3 C.W.N. 65.

Anonymous Petition.

Writing false anonymous petition to Collector—*See* FALSE CHARGE, 1 Weir 121.

Ante-dating Sentence.

See SENTENCE—IMPRISONMENT — GENERAL, 4 L.B.R. 152=7 Cr. L.J. 453.

Apostacy.

See CONVERSION.

See HINDU LAW—MARRIAGE, 18 C. 264.

Appeal.

1.—GENERAL.

2.—CASES WHERE APPEAL LIES.

3.—CASES WHERE APPEAL DOES NOT LIE.

4.—ACTS.

5.—APPEAL FROM ACQUITTAL.

6.—APPEAL—PRACTICE AND PROCEDURE.

7.—APPEAL TO PRIVY COUNCIL.

See ABATEMENT OF APPEAL.

See APPELLATE COURT.

See CRIM. PRO. CODE, 1898, SS. 404 TO 431.

See MEMORANDUM OF APPEAL.

See REFERENCE TO HIGH COURT.

See REVISION.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION—REFUSAL TO GRANT SANCTION—APPEAL, REVISION AND JURISDICTION OF COURTS.

See SPECIAL OR SECOND APPEAL.

——1.—General.

(1)—*Crim. Pro. Code* (1898), ss. 421, 423—*Appeal from conviction—Duty of appellant.*—An appellant is not precisely in the same position before an appellate Court as he is before the Court trying him, but must satisfy the Court that there is sufficient ground for interfering with the order of conviction. If no sufficient ground is shown, it is the duty of the appellate Court not to interfere. EMPRESS v. SAJIWAN LAL, 5 **A. 386=A.W.N. 1883, 72.**

(2)—*Appeal in criminal cases—Duty of Appellate Court.*—Where it appeared from the judgment of the Sessions Judge in appeal that he practically called upon the appellants before him to establish to his satisfaction that the first Court had come to a wrong finding:—*Held*, that this was not the standpoint from which an appeal in a criminal case was to be approached. In an appeal from a conviction and sentence, it is for the appellate Court, as for the first Court, to be satisfied affirmatively that the prosecution case is substantially true and that the guilt of the appellants has been established beyond all reasonable doubt. KANCHAN MULLIK v. KING EMPEROR, **18 C.W.N. 1215=15 Cr. L.J. 686=26 Ind. Cas. 134.**

Appeal—continued.

——1.—General—*continued.*

(3)—*Crim. Pro. Code* (1898), s. 421—*Summary rejection of appeal, without opportunity given to pleader.*—On the presentation by a pleader of a criminal appeal, the Magistrate, who received the appeal, called upon him to argue it at once and, on the latter praying for an adjournment to enable him to acquaint himself with the evidence in the case and then argue, rejected the appeal summarily. *Held*, that the order rejecting the appeal without affording an opportunity to the pleader of being heard in support of the appeal, was illegal. EMPEROR v. GURSHIDA BALAPA JATI, **7 Bom. L.R. 89=2 Cr. L.J. 58.**

(4)—*Disposal of appeal without hearing pleader—Practice.*—Where a Sessions Judge, not knowing the fact that the appellant was represented by a pleader, disposed of the appeal in chambers, the High Court directed the rehearing of the appeal. QUEEN-EMPRESS v. CHUNIA, **Rat. Un. Cr. C. 914.**

(5)—*Crim. Pro. Code* (1882), s. 421—*Dismissal of appeal without hearing appellant.*—The dismissal of an appeal without giving the appellant an opportunity of being heard is a material irregularity. The Magistrate in such cases should re-hear the appeal and follow the procedure prescribed by s. 421, Crim. Pro. Code. QUEEN-EMPRESS v. FAKIRA, **Rat. Un. Cr. C. 703=Cr. Rg. 34 of 1894.**

(6)—*Criminal appeal—Dismissal for default, opportunity to the appellant—Consideration on the merits.*—A criminal appeal cannot be dismissed in default without being considered on its merits, though it may be dismissed summarily if there is no sufficient ground for interfering. SHEOJI v. EMPEROR, **12 Cr. L.J. 481 =12 Ind. Cas. 89.**

(7)—*Crim. Pro. Code* (1898), s. 421 (*proviso*)—"*Reasonable opportunity of being heard in support of the same,*" *what amounts to.*—Where the pleader presenting a criminal appeal informed the Magistrate that he was not prepared to argue it, but that some other pleader would do so, and the Magistrate did not question the pleader's good faith, it cannot be said that the Magistrate, when he required the pleader to argue the appeal, at once gave him a reasonable opportunity of being heard in support of it and his order rejecting the appeal after calling upon that pleader to argue is illegal. *In re* MACHI REDDI, **6 M.L.T. 309.**

(8)—*Crim. Pro. Code* (1898), s. 421—*Dismissal of appeal without perusing record, for non-appearance of appellant.*—It is not competent to a Sessions Judge to reject an appeal under s. 421 without perusing the record, on the ground that there is no appearance for the appellant either by counsel or in person, because if the appellant is content to leave the question of admission or rejection to be determined by the Sessions Judge on the papers, the Sessions Judge is bound to peruse them, and the appellant

Appeal—continued.

——**1.—General**—*continued.*

is not bound to appear a second time, either by counsel or in person. QUEEN-EMPRESS v. VALI MAHOMED, **Rat. Un.Cr. C. 739 = Cr. Rg. 7 of 1895.**

(9)—*Appeal, criminal — Appellate Court bound to peruse record--Perusing judgment, only if sufficient—Crim. Pro. Code, s. 423.*—When, in a criminal appeal, no one appears on behalf of the appellant, the Court must peruse the record. A decision upon a perusal only of the judgment appealed against is not legal. ABBASH ALI v. EMPEROR, **14 Cr. L.J. 182 = 19 Ind. Cas. 182.**

(10)—*Crim. Pro. Code* (1882), *ss.* 367, 424—*Failure of Court of appeal to deal fully with evidence.*—In a case where the appellant was placed in jeopardy by the failure of the Court of appeal to deal fully with the evidence by the light of the established rules applying to criminal cases in a proper judgment, in the form which ss. 367 and 424, Crim. Pro. Code, require, the High Court set aside the order confirming the conviction and sentence and directed the Sessions Judge to re-hear the appeal. QUEEN-EMPRESS v. GANESH BHIKAJI, **Rat. Un. Cr. C. 772 = Cr. Rg. 36 of 1895.**

(11)—*Appellant, right of, to be heard by* mukhtear—*Crim. Pro. Code* (1872), *s.* 278.--The appellant in a criminal case has a right to be heard by a *mukhtear*. IMPERATRIX v. SHIVRAM GUNDO, **6 B. 14** [*R.*, 12 Cr. L.J. 118 = 9 Ind. Cas. 711 = 4 S.L.R. 195.]

(12)—*Crim. Pro. Code* (1898), ss. 421, 423—*Right of applicant's pleader to be heard a second time after records are sent for.*—Where a District Magistrate heard the applicant's pleader in support of the appeal, and then sent for the records of the case, but disposed of the case without hearing the applicant's pleader a second time: *held*, that, as the case was never fixed for hearing under s. 423, the Magistrate was not under any obligation to give the pleader a second hearing. CROWN v. JIVAYO *wd.* ABDULLA, **2 S.L.R. Cr. 39 = 10 Cr. L.J. 204.**

(13)—*Right of complainant or of person interested in prosecution to be heard by counsel.*—The Appellate Court, in an appeal from conviction, is only bound to hear the appellant or his pleader, and the Public Prosecutor if he appears. The complainant or a person interested in the prosecution, or a pleader or other person appointed on his behalf, is not entitled to be heard as of right, as there is no provision in the Code which confers this privilege. AKBAR v. EMPRESS, **29 P.R. 1886, Cr.**

(14)—*Appeal — Crim. Pro. Code* (1898), s. 123 (1)—*Right of accused to be heard through counsel—Amount of security.*—When a reference has been made to the Sessions Judge under s. 123 (1), Crim. Pro. Code, and disposed of, no appeal lies to the District Magistrate. (9 C. 878, *F*). When such a reference is made to a Sessions Judge, he is bound to hear the accused's Counsel (16 B. 661, 23 C. 493, *F.*). *Held*, also, that the object of requiring security for good behaviour is to place habitual criminals under the *surveillance* of persons who may, more or less, be able to control them, and who become their guarantors. If possible, imprisonment should be avoided and the security demanded should be as low as possible provided that the object of the law can be attained. CROWN v. IDA, **P.L.R. 1900, Cr. p. 59.** (9 C. 878, 16 B. 661, 23 C. 493, *F.*)

Appeal—continued.

——**1.—General**—*continued.*

(15)—*Crim Pro. Code, Act* X *of* 1882, ss. 412, 418, 424 — *Admission of appeal for limited purpose.*—Except when there are express words as in ss. 412, 418, the Crim. Pro. Code does not provide for an appeal for the limited purpose of reviewing only a part of the sentence. The appellant has a right to be heard fully on the merits and the Judge is bound by s. 424 to record a complete judgment. An omission to do so is a material irregularity. QUEEN-EMPRESS v. DAGDU GANGARAM, **Rat. Un. Cr. C. 826 = Cr. Rg. 69 of 1895.**

(16)—*Summary rejection of appeal — Practice.*—Where important questions of fact and law are involved, the Sessions Judge should not summarily reject the appeal but it should be heard fully and decided. QUEEN-EMPRESS v. ADAM ISAQ, **Rat. Un. Cr. C. 916.**

(17)—*Crim. Pro. Code* (1898), *s.* 421—*Summary dismissal of the appeal of one of the accused—Admission of the appeal of the other accused, validity of.*—The law gives to the appellate Court the power of summarily dismissing an appeal upon going through the judgment, if the Court is satisfied that there is no sufficient reason shown for its interference. The fact that the Court admitted an appellant's appeal does not affect his order dismissing summarily a co-appellant's appeal. JAGAT CHANDRA SARMA v. LAL CHAND DAS, **5 C.W.N. 332.**

(18)—*Accused sentenced to four years' rigorous imprisonment — Co-accused sentenced to imprisonment for a term exceeding four years*—Forum *of appeal—Crim. Pro. Code* (1898), s. 408 (*b*).—Where an accused is sentenced, by a Magistrate specially empowered under s. 30, Crim. Pro. Code, to rigorous imprisonment for a term of four years and in the same proceeding another accused is also sentenced to imprisonment for a term exceeding four years, the appeal lies to the High Court and not to the Court of Session under s. 408, proviso (*b*), Crim. Pro. Code, 1898. NGA PO SAING v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 516.**

(19) — *Crim. Pro. Code* (1892), s. 412 — *Appeal — Rejection of appeal on ground of accused pleading guilty.*—The fact that an accused person has pleaded guilty before the Magistrate may be a ground for rejecting an appeal where the conviction has been by a Court of Session or a Presidency Magistrate, though even then the extent and the legality

Appeal—continued.

——1.—General—*continued.*

of the sentence would have to be considered. But where the conviction is by any other Magistrate, an appeal lies on fact as well as on law, and, when made, should be disposed of in a legal manner. QUEEN EMPRESS v. GOVIND RAGHU, **Rat. Un. Cr. C. 954=Cr. Rg. 5 of 1898.**

(20)—*Appeal—Rejection—Duty of appellate Court.*—An appellate Court, on receiving an appeal, is bound, although the appellant's agent does not appear, to peruse the petition of appeal and the judgment of the lower Court, in order to see whether there is any ground for interfering with the conviction and sentence. KOURA v. EMPRESS, **21 P.R. 1895, Cr.**

(21)—*Crim. Pro. Code* (1898), s. 480—*Appeal—Duty of Sessions Judge.*—A Sessions Judge cannot decline to interfere on appeal merely because in his opinion "the matter is a mere trifle." He is bound to hear the appeal and come to a finding whether the conviction is legal or illegal. EMPRESS v. JIVACHRAM KESHAVRAM, **Rat. Un. Cr. C 978=Cr. Rg. 35 of 1898.**

(22)—*Rejection of appeal—Stating of points for determination and finding thereupon, not necessary.*—Where an appeal is rejected under s. 278, Crim. Pro. Code, it is not necessary to state the points for determination or the finding thereupon, or the reasons for such finding, as s. 464, Crim. Pro. Code, 1882, does not apply to judgments in appeal. BUDRULDIN v. EMPRESS, **31 P.R 1881, Cr.** [*R.*, 35 P.R. 1882, Cr.]

(23)—*Summary dismissal of appeal—Writing judgment unnecessary.*—A Sessions Judge or Magistrate, dismissing an appeal summarily, need not write a judgment or give any reasons. TAUNG VO v. CROWN, **1 L.B.R 270.**

(24)—*Crim. Pro. Code* (1882), s. 421—*Rejection of appeal — Judgment.*—In rejecting an appeal under s. 421, Crim Pro. Code, the appellate Court is not bound to write a judgment. QUEEN-EMPRESS v. WARUBAI, **20 B. 540** [*F.*, 2 Weir 473=25 M. 534 ; *R.*, U.B.R. (1906), 2nd Qr., Crim. Pro. Code, p. 49=4 Cr.L.J. 284.]

(25)—*Appeal—Duty of appellate Court—Crim. Pro. Code*, s. 537.—Where the law allows an appeal, the appellant is entitled to have an explicit opinion of the Court of appeal on the questions of fact involved in the case. An omission to do so cannot be cured by s. 537 of the Code. FARKHAN v. SOMSHER MAHOMED, **22 C. 241.**

(26)—*Appeal—Power of appellate Court to remand a case.*—On an appeal from a conviction under ss. 147 and 349, Penal Code, the Sessions Judge, without disposing of the appeal on the merits of the case, merely remarked that the Magistrate was wrong in having convicted the accused under the above sections without arriving at any finding as regards the common object of the unlawful assembly and remanded the case to the Magistrate with instructions to write out a proper judgment. *Held*, on revision, that the Sessions Judge had no authority under any section of the Crim. Pro. Code, to pass the order, which he did. If the Deputy Magistrate's decision was not as satisfactory as he thought it should have been, it was his duty as Sessions Judge to go into the whole facts fully and dispose of the case; he could not devolve his duty on the Deputy Magistrate who tried the case in the first instance. TARA CHAND SINGH v. EMPEROR, **32 C. 1069=3 Cr. L.J. 119.**

(27)—*Presentation to Superintendent of Jail sufficient—Limitation—Time for obtaining copies to be excluded.*—A petition of appeal presented to the Superintendent of the Jail is equivalent, for purposes of limitation, to presentation in Court. In computing the period of limitation, the time required to procure a copy of the sentence or order appealed against should be deducted. BAGAWATHI v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 130.**

(28)—*Presentation of appeal to officer in charge of Jail.*—The presentation of a petition of appeal by a prisoner in jail to the officer in charge of the jail is, for the purposes of limitation, equivalent to presentation in Court, whatever delay there may be in forwarding it. MUHAMMAD v. EMPRESS, **29 P.R. 1890, Cr.**

(29)—*Presentation of appeal to officer in charge of jail—Limitation.*—The time requisite for obtaining a copy of the sentence appealed against must be excluded under s. 12 of the Limitation Act in computing the prescribed period of limitation. The presentation of a petition of appeal to the officer in charge of the jail, in which a convict appellant is confined, is, for the purposes of limitation, equivalent to a presentation in Court. (*Vide* Burma Circular, No. 13, Crl of 1890). NGA PO THAUNG v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 129.**

(30)—*Prisoner in jail—Appeal—Delay in furnishing copy of judgment—Limitation—Magistrate's duty—Superintendent of jail may send an appeal without copy of judgment.*—When a prisoner in jail applies through the Superintendent for a copy of the judgment in order to prefer an appeal, it is the Magistrate's business to procure and forward the copy applied for or to arrange that this should be done. It is not proper for a Magistrate to return any such application for keeping it for nearly two months and a half, with an endorsement that a copy had been already supplied to the accused's daughters. Any delay, thereby caused, will be excluded in the computation of the period of limitation for the appeal. MAUNG ZA KYE v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 5.**

(31)—*Transmission of, by prisoners against sentences or orders of Sessions Judge.*—The petitions of appeal against the sentences or orders of Sessions Judges, presented to officers in charge of jails, should be forwarded by such

Appeal—continued.

——**1.—General**—*continued.*

officers direct to the High Court, intimation of the fact being at once given, in each instance, and in the form prescribed, to the Judge whose sentence or order is appealed against. CRIMINAL CIRCULAR, NO. 9 OF 1867, **8 W.R.Cr. Cir. 5.**

(32)—*Transmission of, by prisoners.*—The petitions of appeals against the sentences or orders of Sessions Judges presented to officers in charge of jails should be forwarded by such officers direct to the Registrar of the High Court, intimation of the fact being at once given, in each instance and in the form prescribed, to the Judge whose sentence or order is appealed against. Petitions of appeals must be presented within the period allowed for appeal, as provided by s. 413, Crim. Pro. Code, 1861, and must be accompanied by a copy of the sentence or order appealed against as provided by s. 416. Petitions not presented in time or not accompanied as above are to be returned to the petitioner with an endorsement by the officer in charge of the jail showing the date of presentation. CRIMINAL CIRCULAR, NO. 9, **8 W.R. Cr. Cir. 7.**

(33)—*Of prisoners—Order of appellate Courts thereon.*—Communications from the officer in charge of the jail to the Sessions Judge, relative to the appeals of prisoners to him, should be made to the Judge direct, and not through the Magistrate of the District, who has no concern with the decision of the Court of Session made on appeal, unless when the appeal happens to be from his own Court. The appellate Court should certify its decision to the Court or Magistrate from whose decision the appeal has been preferred, and the Court or Magistrate should inform the appellant in *writing*, through the officer in charge of the jail, of the result of his appeal. CRIMINAL CIRCULAR, NO. 6 OF 1869, **12 W.R. Cr. Cir. 1.**

(34)—*Forwarding of petitions of, from prisoners in unappealable cases.*—Officers in charge of jails should not forward petitions of appeal from prisoners to the High Court in cases in which sentences or orders have already been passed by an appellate Court on appeal, such sentences or orders being final under s. 428, Crim. Pro. Code, 1861. In such cases parties should apply to the High Court by motion made by a pleader in open Court. CRIMINAL CIRCULAR MEMO. NO. 8 OF 1869, **12 W.R. Cr. Cir. 5.**

(35)—*Delay in furnishing copies — Duty of Magistrate to prevent—Special arrangements.*—In order to prevent delays in furnishing a copy of a judgment due to remoteness of the Court from the jail in which the appellant may be imprisoned, the Magistrates of Courts so situated should ascertain from convicted prisoners whether they desire to appeal or not, and, if they do, should transmit a copy of the judgment along with them to the jail. NGA PO THAUNG v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 129.**

(36)—*Limitation—Deduction of time occupied in obtaining copies.*—Where an accused, convicted on the 6th June, applied for a copy of the judgment through the Superintendent of the Jail on the 27th June and the copy was sent to the jail on the 4th July and was delivered to the accused's *Mukhtear* on the 11th July, the accused giving his *Mukhtarnama* on the 7th, *held*, that the accused was fairly entitled to deduct the period from the 27th June, the date of his application, to 11th July, the date of the delivery of the copy to his *Mukhtear*, in computing the period of limitation. GHAMMAN v. EMPRESS, **5 P.R. 1888, Cr.**

(37)—*Limitation—Sufficient cause for presenting an appeal out of time.*—The fact that one of several persons convicted together was acquitted on appeal was held to be a sufficient cause for admitting the appeal of the others presented out of time. CROWN v. MOHAMED BUX, **7 P.R. 1871, Cr.**

(38)—*Crim. Pro. Code*, 1882, *ss.* 419, 420, 421 —*Appellant in jail—Notice—Right to be heard.*—S. 419 is a general section embracing the case of all appellants whether in or out of jail, and there is nothing in s. 420 to indicate that s. 419 was intended to deprive the appellants who are in jail of the opportunity of being heard on their appeal. Therefore, even when an appellant is in jail, reasonable notice should be given either to him or to his pleader, so that he may have a reasonable opportunity of being heard in support of the appeal. In cases where an appellant is in jail, if the jail is at the same station as the appellate Court, there is nothing to prevent the prisoner applying to be heard in person, and, in all cases, a person so situated may require that he shall be heard by a pleader. *In re* KOTINA BUTCHIYA, **2 Weir 472.**

(39)—*Crim. Pro. Code, s.* 419—*Appeal by accused in jail and by those not in jail—Stamp.*—Where certain persons, who were undergoing imprisonment, presented an appeal with an unstamped copy of the judgment of the lower Court, *held*, that those appellants, who were not in custody were not entitled to take advantage of that unstamped copy. They should be required to put in a stamp of 8 annas (*vide* Notification in G.O. of the 6th June, 1873). *In re* VENKATA KONDA REDDI, **2 Weir 467.**

(40)—*Crim.Pro.Code* (1882), *s.* 419—*Appeals sent by post.*—The transmission of an appeal by post is not a sufficient compliance with s. 419. The practice of accepting appeals transmitted by post, otherwise than under s. 420, is irregular. But there is nothing in the Code which renders it illegal for a Magistrate to take cognizance of complaints of offences reported by post. *In re* LURISETTI PITCHAIYA, **2 Weir 467.** [*F.*, 2 Weir 468 = 15 M. 137.]

(41)—*Appeal sent by post.*—An appeal transmitted by post by a convict in jail cannot be considered as an appeal properly presented under the Crim. Pro. Code. But, where the

Appeal—continued.

——**1.—General**—*continued.*

Court has proceeded to deal with it as duly presented, it cannot dismiss it without hearing the complainant. QUEEN-EMPRESS v. BHAGWAN, **Rat. Un. Cr. C. 464.**

(42)—*Crim. Pro. Code* (1861), *s.* 412—*Magistrate—Proclamation.*—There is no reason why the Government should in every case specially empower a Magistrate to hear appeals under s. 412 of the Code. The Government can by a proclamation declare that an Assistant Collector shall be the officer charged with the executive administration of the District in criminal matters. REG. v. BHAI SHANKAR HARIRAM, **3 B.H.C. Cr. 18.**

(43)—*Trial by jury—Illegal evidence admitted —Procedure—Crim. Pro. Code, Act* XXV *of* 1861, *s.* 426.—In a trial by jury, where the appellate Court finds that evidence not properly admissible has been admitted, the Court should consider the appeal on the same principles as apply to cases of misdirection to the jury. If it finds that the accused has been prejudiced by the error committed in admitting improper evidence, and that the evidence on record is of such a character that its value can be appreciated only by the Court which heard the evidence, the proper course is to direct a re-trial by a different jury. If there is clear evidence on record to sustain a verdict, the case is to be treated as one tried with the aid of assessors and the conviction may be confirmed (*Warden, J.* was for confirming the conviction in this case, but a re-trial was ordered). REG. v. RAMASWAMI MUDALIAR, **6 B.H.C. Cr. 47.** [*R.*, 27 B. 626, 19 B. 749, 9 B.H.C. 358, 10 B. H.C. 497, Rat. Un. Cr. C. 245.]

(44)—*Crim. Pro. Code* (1898), *s.* 419—*Appeal by several accused persons—Separate copies of judgment not tendered—Rejection of appeal, validity of*—Two accused persons made together with another co accused a joint appeal to the District Magistrate with which a copy of the judgment appealed against was filed. The two accused subsequently tendered the stamps requisite for the separate copies of the judgment appealed against, conditionally necessary under Criminal Circular No. 74; but the District Magistrate refused to dispense with the separate copies of the judgment appealed against. *Held*, that the District Magistrate would have exercised a sounder discretion if he had, in virtue of the power given by s. 419, and cited in Criminal Circular No. 74, dispensed with separate copies of the judgment appealed against. EMPEROR v. SITARAM RAGHO, **5 Bom. L.R. 704.**

(45)—*Crim. Pro. Code* (1882), *s.* 422—*Absence of appellant—Service of notice.*—Where the appellant in a criminal appeal cannot be found at the address given by him, the notice of hearing of the appeal should be left at such address. QUEEN-EMPRESS v. HARI NARAYAN, **Rat. Un. Cr. C. 869=C Rg. 40 of 1896.**

(46)—*Crim. Pro. Code* (1872), *s.* 278—*Limitation Act*, IX *of* 1871, *s.* 5, *art.* 152—*Appeal presented out of time—Hearing.*—An appeal presented out of time, without sufficient reason for the delay, may be rejected as time-barred without hearing the appellant. S. 278 of the the Crim. Pro. Code does not apply to such appeals. REG v. GULAB KARIM, **Rat. Un. Cr. C. 90=Cr. Rg. 28-1-1875.**

(47)—*Crim. Pro. Code* (1882), *ss.* 514, 515—*Appeal from Second Class Magistrate.*—A First Class Magistrate, not being a District Magistrate, has no jurisdiction under s. 515, Crim. Pro. Code, to hear an appeal against an order of a Second Class Magistrate under s. 514 of the Code QUEEN-EMPRESS v. SAMBHAJI, **Rat. Un. Cr. C. 384=Cr. Rg. 35 of 1888.**

(48)—*Crim. Pro. Code* (1872), *s.* 278—*Criminal appeals—Duty of Court to fix a date for admission of appeals.*—A general notice posted in a Sessions Court that appeals will be heard for admission only on the first Court day next after presentation is not in compliance with the provisions of s. 278, Crim. Pro. Code. The Sessions Judge should fix a time as directed by that section in each case so as to enable the appellant or his agent to appear and to be heard. MALAN v. QUEEN, **5 M. 11=2 Weir 472.**

(49)—*Crim Pro. Code, s.* 278—*Duty of Court to fix date for appearance of appellant or counsel.*—Where the appellate Court failed to fix a reasonable time for the appearance of the appellant or his counsel as required by s. 278, Act X of 1872, it was held that the error was one that would invalidate the proceedings. *In re* HURI PERSHAD, **24 W.R. Cr. 60.**

(50)—*Crim. Pro. Code, s.* 279—*Notice of date fixed for hearing of appeal.*—Under s. 279 of the Code of 1872, notice of the date fixed for the hearing of an appeal should be given to the appellant himself, notwithstanding that the pleader engaged by the appellant has been verbally informed of the date. MIRAN BAKHSH v. EMPRESS, **7 P.R. 1883, Cr.**

(51)—*Change of place of hearing of appeal—Notice to accused or his pleader.*—An appeal posted for hearing at one place cannot be heard and dismissed in another, without giving notice either to the accused or his pleader of such change of place. BAHAWAL v. QUEEN-EMPRESS, **7 P.R. 1891, Cr.**

(52)—*Dismissal of appeal for appellant's default—Criminal appeal not to be dismissed for default of appellant.*—When notice is issued to an appellant, in a criminal case, to appear at head-quarters on a date fixed and when, on that date, the Magistrate moves out into camp, it is not competent for him to dismiss the case for default, even though there may be a general order to him to the effect that parties ought to go to him in camp. NIHAL SINGH v. EMPEROR, **11 P.R. 1905, Cr.=117 P.L.R. 1905=2 Cr. L.J. 66.** (21 P.R. 1895, Cr. *F.*)

(53)—*Transmission of appeal records.*—In cases of appeal to the High Court from the sentence or order of a Sessions Judge, the record

Appeal—continued.

——1.—**General**—*continued.*

should be forwarded to the High Court by the Sessions Judge immediately on receipt of the notice of appeal. If public inconvenience would arise from the transmission of the original record, the Judge should forward a certified copy of his reasons for making or passing such sentence or order, stating at the same time why the original record has not been immediately sent. CRIMINAL CIRCULAR NO. 5, **9 W.R. Cr. Cir. 13.**

(54)—*Transmission of appeal.*—Cases under s. 434, Crim. Pro. Code, 1861, referred by Magistrates should be sent up through the Sessions Judge and should not appear in his Statements 1 and 2. CRIMINAL CIRCULAR NO. 4 OF 1869, **11 W.R. Cr. Cir. 5.**

(55)—*Opinion of senior Judge to prevail.*—When two Judges, sitting as a Division Court, hear a criminal appeal, and they differ in opinion, the opinion of the senior Judge must prevail. QUEEN v. KAZIM THAKOOR, **2 B.L. R. F. B., 25=10 W.R. Cr. 45.**

(56)—*Evidence before Magistrate—Appeal.*—Evidence taken before a Magistrate, but used at the trial, cannot be referred to on appeal. QUEEN v. WAZIRA, **8B .L.R. Ap. 63=17 W.R. 5 Cr.**

(57)—*Additional evidence — Admissibility* — Fresh evidence will not be allowed to be adduced in appeal, which was not tendered in the lower Court on the ground that it was discovered after the filing of the appeal. GURUMURTHI CHETTY v. ARCHIBALD READ, **9 Ind Cas. 251 =12 Cr. L. J. 40=9 M.L.T. 323=(1911) 1 M. W.N. 136.** (31 M. 114, 3 M.L.T. 308, *R.*).

(58)—*Crim. Pro. Code, s.* 419—*Appeal petition, presentation of, by Vakil's gumasta.*—Where a vakil had signed an appeal petition, having been duly authorized by a *vakalatnamah, held*, that the presentation of the petition by the vakil's *gumasta* was sufficient. *In re* GUDIYATI SAMUEL, **2 Weir 469.** [*F.*, 2 Weir 470 (Cr. Rev. Case No. 50 of 1896); 2 Weir 470 (Cr. Rev. Cas. No. 652 of 1895), 2 Weir 470=20 M.87.]

(59)—*Crim. Pro. Code, s.* 419—*Presentation of appeal memorandum by vakil for one of the accused.*—Where an appeal memorandum was prepared on behalf of three accused and signed under a *vakalut* by their pleader, *held*, that its presentation by another pleader, who held a vakalut only from one of the accused, was a proper presentation. *In re* MUTHU MIRA LEVAI, **2 Weir 470.**

(60)—*Appeal under s.* 421, *Crim. Pro. Code, right of counsel to refer to certified copies of evidence at the hearing of—Evidence, certified copies of.*—At the hearing of an appeal under s. 421 of the Code, counsel for the appellants proposed to refer to certified copies of the evidence in order to show that the conviction was erroneous. The Judge declined to allow this to be done and dismissed the appeal. The

Appeal—continued.

——1.—**General**—*continued.*

appellants applied for revision of the order of the Sessions Judge. *Held* that, at the hearing of an appeal under s. 421, counsel for the appellant was entitled to refer to certified copies of the evidence. MANGA v. KING-EMPEROR, **11 O.C. 360=9 Cr.L.J. 55.**

(61)—*Appeal heard by a Judge in a case tried by him as a Magistrate—Validity.*—The Crim. Pro. Code of 1872 did not prevent a Judge, sitting as an appellate Court, from hearing an appeal from an order passed by him when presiding over an inferior Court. CROWN v. SAHAB SINGH, **22 P.R. 1873, Cr.**

(62)—*Crim. Pro. Code* (1898), s. 407—*Trial begun by Magistrate holding Second Class powers —Magistrate getting First Class powers before conclusion of trial—Appeal.*—Where a trial was held by a Magistrate holding Second Class powers, the fact that he was appointed a Magistrate of the First Class, before the conclusion of the trial, was held to make no difference, with reference to the question of appeal, which, therefore, was held to lie to the District Magistrate. KING-EMPEROR v. NGA PAW, **4 L.B.R. 239=8 Cr.L.J. 48.**

(63)—*Magistrate of full power—Jurisdiction to hear appeals—Jurisdiction of District Magistrate not excluded.*—The power conferred upon a Magistrate of full power at Broach to hear appeals does not exclude the jurisdiction which the Magistrate of the District has by law. The proceedings in any case in which the appeal is made to the Magistrate of the District from the decision of a Magistrate subordinate to him must be forwarded to him. REG v. UMTHA RUGNATH, **5 B.H.C.Cr. 8.**

(64)—*Disqualification of Judge to hear appeal in cases where prosecution has been ordered by him.*—A Sessions Judge is not disqualified from hearing an appeal from the conviction of an accused, merely because he has himself directed the prosecution of the accused for the offence, though it is not desirable that the Judge should, under such circumstances, hear the appeal. BOSTAN KHAN v. EMPRESS, **39 P.R. 1884, Cr.**

(65)—*Hearing of an appeal by a Judge personally interested—Crim. Pro. Code* (1898), s. 556.—A Judge, who has directed a prosecution, should not take upon himself to determine the appeal of the accused when convicted, even though the appeal is only against the severity of the sentence. His duty is to report the case to the High Court for orders. KING-EMPEROR v. HTUKTALWE, **2 L.B.R. 302.**

(66)—*Power of High Court to interfere.*—Where the High Court on appeal found the evidence against the prisoner insufficient to support the conviction, and would, if the case had been before them on the facts, have reversed the conviction if the case had been tried without a jury, they ordered the verdict to be set aside, and the prisoner to be discharged, though, where a verdict is set aside on appeal,

Appeal—continued.

——1.—General—*continued.*

they can order a new trial. QUEEN v. MAHIMA CHANDRA DAS, **6 L B.R. Ap. 108=15 W.R. Cr. 37, Cr.**

(67)—*Power of High Court Judge.*—A High Court Judge sitting alone on the appellate side has power to hear and dispose of appeals in criminal cases. QUEEN v. CHANDRA JUGI, **9 B.L.R. 6=17 W.R.Cr. 47.**

(68)—*Power of High Court.*—When a Civil Court directs that criminal proceedings be taken against a party to a suit before it for perjury or forgery, it is open to the High Court, on an appeal being preferred against the decision of that Court, to direct that such proceedings be stayed until the appeal shall have been heard and determined. *In the matter of the petition of* RAM PRASAD AAZRA, **B.L.R. Sup. Vol. 426.** [*D.*, 31 M. 510=4 M.L.T. 186 =18 M.L.J. 466=8 Cr. L.J. 390.]

(69)—*Crim. Pro. Code* (1861), *ss.* 404 *and* 405 —*Error as to probative force and effect of evidence — High Court's power of interference.*— When there is evidence to be considered and weighed by the Court, which is called upon to determine whether a person charged with an offence is guilty or not guilty, an error as to the probative force and effect of the evidence is one of fact and not open to correction except upon appeal in the case of a conviction. HIGH COURT PROCEEDINGS, 29TH NOVEMBER 1869, **5 M H. C. App. 10.** [*Appl.*, 2 M. 38, 31 M. 133=7 Cr. L.J. 267=18 M.L.J. 57=3 M.L.T. 230.]

(70)—*Acquittal by Sessions Judge where he might have convicted under a different section of Penal Code—Crim. Pro. Code* (1872), *s.* 272.— The High Court refused to interfere with a case where the Sessions Judge might, upon appeal, have convicted the defendants under a section of the Penal Code different from that under which they were convicted by the Magistrate, but where instead of doing so he acquitted them. *In re* GOVERNMENT PLEADER, **7 M.H. C. 339=2 Weir 476.** [*F.*, 7 N.W.P. 196; *R.*, 3 C.W.N. 663, 17 C.P.L.R. 75.]

(71)—*Sentence, when can be enhanced by appellate Court.*—An appellate Court is not empowered to enhance, under s. 280, Crim. Pro. Code, 1872, any punishment awarded to the accused whose appeal is rejected under s. 278, Crim. Pro. Code. Such enhancement can only be awarded when the appellate Court, having decided to hear the appeal, issues notice to the appellant under s. 279, Crim. Pro. Code, 1872. GANDA SINGH v. DHANA, **14 P.R. 1887, Cr.**

(72)—*Enhancement of sentence by appellate Court.*—When the appellate Court rejects an appeal under Act X of 1872, s. 278, it cannot, under Act XI of 1874, s. 26, enhance the sentence. AKOOL SIRCAR v. PARTAMA, **24 W.R. Cr. 29.**

(73)—*Crim. Pro. Code* (1882), *s.* 423 (*b*), *sub-s.* 3—*Enhancement of sentence — Power of appellate Court—Penal Code, ss.* 147 *and* 379.— A person was convicted by a Deputy Magistrate of rioting and theft and was sentenced for the first offence to four months' and for the latter offence to two months' rigorous imprisonment. The District Magistrate, on appeal, acquitted the accused of rioting, but upheld the conviction for theft and sentence of six months' rigorous imprisonment. *Held,* that the effect of the order was to enhance the sentence under s. 379, Penal Code (theft), which he had no authority to do under s. 423, cl. (*b*), sub-s. 3 of the Code of Criminal Procedure. RAMZAN KUNJRA v. RAMKHELAWAN CHOWBE, **24 C. 316.** [*F.*, 1 M.L.T. 403; *R.*, 3 N.L.R. 67.]

(74)—*Enhancement of sentence—Power to add imprisonment to fine.*—The power of an appellate Court to "enhance any punishment awarded" under s. 280 of the Crim. Pro. Code of 1872, enables the appellate Court to add a sentence of imprisonment to one of fine. SHAMRU LALL v. CROWN, **8 P.R. 1875, Cr.**

(75)—*Enhancement of sentence—Appeal.*— No appeal was held to lie, under the Code of 1872, from an order of the appellate Court enhancing the sentence of the Court of the first instance. *In re* A REFERENCE FROM THE COMMISSIONER AND SUPERINTENDENT OF RAWALPINDI, **6 P.R. 1873, Cr.**

(76)—*Conviction by Honorary Magistrate— Enhancement of sentence by Chief Court on the case being reported by the District Magistrate— Appeal.*—Where a sentence of fine by the Board of Honorary Magistrates at Amritsar was enhanced by six months' imprisonment by the Chief Court, to which, in the absence of any appeal by the accused, the case was reported by the Magistrate of the District; *held,* that the appeal from the enhanced conviction lay, under s. 266 of the Code, to the Magistrate of the District. CROWN v. ABDULLA, **24 P.R. 1878, Cr.**

(77)—*Practice—Magistrate—Passing of non-appealable sentence—Adding to sentence to make it appealable— Appeal—Sessions Judge—Jurisdiction.*—A Magistrate passed at first a non-appealable sentence on the accused; but at the request of the accused he shortly after enhanced the sentence passed so as to make it appealable. The accused then appealed to the Sessions Judge, but he dismissed the appeal on the ground that the sentence first passed was non-appealable and the Magistrate had no jurisdiction to enhance the sentence once passed by him. In revision:—*Held,* that the Sessions Judge committed an error in holding that he had no jurisdiction to hear the appeal; for, though the Magistrate had no jurisdiction to alter the sentence in the way he had done, yet, for the purposes of the Sessions Judge's jurisdiction so far as the appeal was concerned, that was the very mistake which he was called upon to correct by way of appeal. EMPEROR v. KESHAVLAL VIRCHAND, **13 Bom.L R. 503=11 Ind. Cas. 586=12 Cr.L J. 402.** [*R.*, 15 Cr.L. J. 383=23 Ind. Cas. 751=7 S.L.R. 100.]

Appeal—continued.

——**1.—General**—*continued.*

(78)—*Crim. Pro. Code* (1898), *s.* 423—*Alteration of finding on appeal—Notice to appellant.*—The Magistrate charged the accused with offences under s. 406, I P.C. He found all of them not guilty of an offence under that section, but without framing any charge against them of having committed any other offences, he convicted some of them of offences under s. 417. On appeal, the Sessions Judge held that the Magistrate was irregular in convicting the accused of offences under s. 417, but he found that the evidence recorded disclosed that the appellants had committed offences under s. 406, and he accordingly altered the findings, without giving, however, any opportunity to the accused of showing cause against being convicted by him of offences, of which they had been acquitted by the Magistrate. *Held*, that the Sessions Judge's order must be set aside and the appeal re-heard. MI MO DAH v. KING-EMPEROR, **3 L.B R. 283 = 5 Cr. L. J. 420.**

(79)—*Trial of person under s.* 59, *Frontier Crimes Regulation, without the assistance of Council of Elders—Course of appeal.*—Where a Magistrate, empowered by s. 59 of the Regulation, tries, without the assistance of a Council of Elders, a person charged with having done an act punishable under the Regulation, the ordinary course of appeal prescribed by the Code of Criminal Procedure applies. KING-EMPEROR v. MUSSAMAT ALAM KHATUN, **19 P.R. 1910 Cr. = 103 P.L.R. 1910 = 6 Ind. Cas 959 = 11 Cr. L.J. 426 = 34 P.W.R. 1910, Cr.**

(80)—*S.* 411, *Crim. Pro. Code,* 1861—*Fine —Imprisonment—Appeal.*—*Held* that an appeal lay, under s. 411. Crim.Pro. Code, 1861, against a sentence of a fine of Rs. 50 with more than one month's imprisonment in default. FATTAH v. MAHOMED DIN, **3 P.R. 1872, Cr.**

(81)—*S.* 438, *Crim. Pro. Code—Revision—Interference with acquittal on reference by the District Magistrate.*—As the Criminal Procedure Code provides for an appeal against acquittal by Government, the High Court will not interfere under s 438. The High Court has no power in revision to convert an acquittal into a conviction. SANGILI NAICKEN v. EMPEROR, **8 M.L.T. 380 = 8 Ind. Cas. 293 = 11 Cr L.J. 622.**

(82)—*Magistrate of district exercising powers under s.* 36 *of Crim. Pro. Code* (*Act* X *of* 1872) —*Joint trial of several persons—Award to some of accused of upwards of* 2 *years' imprisonment —Course of appeal.*—A District Magistrate tried and convicted several accused together, sentencing some of them with upwards of 2 years' imprisonment, *held*, that the entire proceedings of the Magistrate was, under s. 36 of the above Code, and that therefore, the appeal of all the accused lay to the Chief Court. MOHAMED NEWAZ v. EMPRESS, **33 P.R. 1879, Cr.** [*R.*, 43 P.R. 1882, Cr.]

(83)—*Crim. Pro. Code* (1872), *s.* 36—*Accused convicted at one trial of several charges—Course of appeal.*—An accused person, convicted at one trial by the Magistrate of the district of several charges, for one or more of which he is sentenced to less, and for the rest to more, punishment then the Magistrate is competent to inflict under his ordinary powers, can appeal not to the Court of Sessions, but to the Chief Court against each conviction. JEYTUMAL v. EMPRESS, **36 P.R. 1880, Cr.**

(84)—*Case of confirmation of sentence of sessions judge on appeal.*—In this case, the Session Judge, who conducted the trial in a a very careful and searching manner, expressed himself entirely satisfied with the evidence and with all the preliminary proceedings. Under such circumstances the Sudder Court did not see any ground, in the simple asseveration of the appellants that they were innocent, to doubt the correctness of the conclusion of the Sessions Judge, and rejected appeal. CROWN v. SUNDAR SINGH, **10 P.R. 1866, Cr.**

(85)—*Capital sentences —Appeal.*—Where a case has been referred by the Sessions Judge for confirmation of sentence of death, and the Chief Court has pronounced its decision thereon, the accused has no right of appeal left; though he may bring an appeal on his own account, at the time of the revision. CROWN v. SOOJUN SINGH, **33 P.R. 1867, Cr.**

See ACCUSED PERSON, A.W.N. 1900, 47.

Acquittal of one of a number of accused the rest of whom have not appealed—*See* ACQUITTAL, 71 P.R. 1866, Cr.

Acquital on appeal to Sessions Court reversed—Proper tribunal for retrying appeal—*See* ACQUITTAL, 9 A. 134, F.B. = A.W.N. 1886, 322.

See ACT V OF 1861, 5 W.R. Cr. Cir. 1, 5 W.R. Cr. 22.

See ACT VI OF 1864, s. 9, Rat. Un. Cr. C, 68.

See ACT XIV OF 1868, s. 11, 17 W.R.Cr. 11.

See ACT IX OF 1869, ss. 24 and 25, 2 N.W. P. 113.

See ACT I OF 1871, s. 22, 3 N.W.P. 200, 19 M. 238 = 2 Weir 461, 11 M. 359 = 1 Weir 712, 4 L.B.R. 10 = 6 Cr. L.J. 121, 15 C. 712.

See ACT IX OF 1872, 3 C. 379 = 1 C.L.R. 339.

See ACT III OF 1877, s. 82, 12 C.W.N. 47.

See ACT IV OF 1877, s. 167, 2 M. 30 = 1 Weir 525, 5 B. 85.

See ACT IV OF 1877, s. 41, 2 C. 466.

Limitation for — from Resident's Court, Bangalore—*See* ACT XV OF 1877, art. 155, 15 M. 414 = 1 Weir 588 = 2 M.L.J. 142.

See ACT XV OF 1887, s. 5, sch. II, art. 155, A.W.N. 1891, 10, 9 Bom. L.R. 893 = 6 Cr L.J. 221.

Appeal—continued.

——1.—**General**—*continued.*

Exclusion of time in obtaining copy of judgment—*See* ACT XV OF 1877, s. 12, 10 C. 642.

Appeal by persons in jail—Time taken in obtaining copies of judgment—*See* ACT XV OF 1877, s. 12, sch. II, art. 154, 9 M. 258=1 Weir 789.

See ACT I OF 1878, s. 11, 1 Weir 835.

See ACT III OF 1880, 40 P.R. 1884 Cr.

Conviction for escape from lawful custody —Appeal—*See* ACT XIV OF 1882, ss. 588 (29) and 651, 5 A. 318.

Jurisdiction to interfere with orders under s. 16—Reformatory Schools Act, 1897—*See* ACT VIII OF 1897, s. 16, 21 A. 391, F.B.= A.W.N. 1899, 138.

See ACT VIII OF 1897, s. 16, 18 P.R. 1907, Cr.=43 P.W.R. 1907=55 P.L R. 1908.

Appeal from decision of Additional Judge whether lies to District Court or High Court— *See* ACT III OF 1907, s. 46 (1), 12 A.L J. 1105 =36 A. 576=15 Cr. L.J. 658=25 Ind. Cas. 686.

See BOM. ACT XI OF 1846, s. 3, 15 B. 505.

See BOM. ACT XXXV OF 1850, s. 16, 6 B. H.C. Cr. 45.

See BOM. ACT IX OF 1863, s. 2, 3 B.H.C. Cr. 12.

See BOM. ACT II OF 1864, 10 B. 258.

See BOM. ACT VI OF 1873, ss. 51, 74, Rat. Un. Cr. C. 363=Cr. Rg. 6 of 1888.

See BOM. ACT III OF 1901, s. 89, 9 Bom. L.R. 1347=6 Cr. L.J. 425.

See BOM. ACT II OF 1906, s. 23, 9 Bom. L.R. 896=6 Cr. L.J. 225.

See BUR. ACT XVII OF 1875, s. 35, 4 C. 667.

Appeal by one accused —Power to interfere with sentences of persons who have not appealed—*See* BUR. ACT I OF 1899, ss. 3, 7, 12, 12 Cr. L J. 250=10 Ind. Cas. 792.

See BUR. ACT I OF 1899, s. 17, U.B.R. 1897—1901, Vol. I, 227.

See MAD. ACT II OF 1907, s. 23 (3), 7 M.L. T. 183=5 Ind. Cas. 929=11 Cr. L.J. 332.

See PUN. ACT IV OF 1872, s. 45, 9 P.R. 1907 Cr.=36 P.W.R. 1907=6 Cr. L.J. 379= 42 P.L.R. 1908.

See U.P. ACT I OF 1900, ss. 87 and 132, 26 A. 386=A.W.N. 1904, 57.

In criminal cases—Agency tracts—Jurisdiction—*See* AGENCY TRACTS (GANJAM), 23 M. L.J. 670=12 M.L.T. 601=13 Cr. L.J. 850=17 Ind. Cas. 786.

Case triable with assessors tried by jury— Appeal on facts—*See* ASSESSORS, 3 C. 765.

Appeal—continued.

——1.—**General**—*continued.*

Granting of bail in—Practice—*See* BAIL, Rat. Un. Cr. Cas. 480.

See BENCH OF MAGISTRATES, 9 C. 96=11 C.L.R. 423.

See CANTONMENT CODE, 1899, ss. 94, 10, 23 P.R. 1905 Cr.=168 P.L.R. 1905=3 Cr. L. J. 301.

See COMPENSATION—GENERAL, 5 M.L.T. 262=19 M.L.J. 130=9 Cr. L.J. 150=1 Ind. Cas. 79=33 M. 89.

See COMPENSATION TO ACCUSED, 29 M. 187=3 Cr. L.J. 452.

Confession—Plea of torture urged in appeal —Record — Procedure — *See* CONFESSION— GENERAL, 8 B. H.C.Cr. 126.

See CRIM. PRO. CODE, 1898, ss. 7 (3), 408, 435, 16 M.L J. 444=4 Cr. L.J. 443=30 M. 136 =1 M.L T. 402.

See CRIM. PRO. CODE, 1898, ss. 30, 34, 408, 410, 423, 2 A. 53.

See CRIM. PRO. CODE, 1898, ss. 30, 349, 408, 4 L.B.R. 53=6 Cr. L.J. 289.

See CRIM. PRO. CODE, 1908, s. 35, U.B.R. 1897—1901, Vol. I, 13.

Whether lies when aggregate sentence is one month—*See* CRIM. PRO. CODE, 1898, ss. 35, 413, 15 C.W.N. 734=11 Ind. Cas. 255=12 Cr. L.J. 391.

Admission of—Subject dealing with question whether appeal lay—Legality—Several concurrent sentences—Each by itself non-appealable —If appealable taken collectively—*See* CRIM. PRO CODE, 1898, s. 35 (2), 14 Cr. L.J. 254= 17 C.W.N. 825.

Concurrent sentences aggregating to more than one month, by a Magistrate of the 1st class—Whether appeal lies—*See* CRIM. PRO. CODE, 1898, ss. 35 (3), 413, 17 C.W.N. 72=13 Cr. L.J. 877=17 Ind. Cas. 813.

Against order under s. 106, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 106 and 423, 30 C. 101=6 C.W.N. 422.

From orders to keep the peace—*See* CRIM. PRO. CODE (1898), ss. 107, 406 and 438, 32 C. 948=9 C.W.N. 860=2 Cr. L.J. 550.

See CRIM. PRO. CODE, 1898, ss. 118, 406, 27 A. 623=A.W.N. 1905, 135=2 A.L.J. 716.

From orders requiring security for good behaviour — *See* CRIM. PRO. CODE, 1898, ss. 118, 123, 406, 439, 2 O.C. 307.

Appellate Court incompetent to refer to the Chief Court a case in which appeal lies to it —*See* CRIM. PRO. CODE, 1898, ss. 121, 438, 514, 515, 7 P.W.R. 1914, Cr.=62 P.L.R. 1914 =15 Cr. L.J. 485=24 Ind. Cas. 573.

See CRIM. PRO. CODE, 1898, s. 123, 9 C. 878.

Appeal—continued.

——1.—**General**—*continued.*

Order under s. 125, Crim. Pro. Code—Appeal if lies—*See* CRIM. PRO. CODE, 1898, s. 125, 11 A L.J. 16=18 Ind. Cas. 351=14 Cr. L.J. 63=35 A. 108.

Letters Patent appeal—Order of single Judge of High Court refusing to interfere under ss. 435, 439, Crim. Pro. Code, in revision—Appeal—Grounds for interference in—Discretion—*See* CRIM. PRO. CODE, 1898, ss. 147, 144, 133, 435, 439, 15 M.L.T. 230=26 M.L.J. 223=1914 M.W.N. 394=15 Cr. L.J. 362=23 Ind. Cas. 730.

See CRIM. PRO. CODE, 1898, ss. 190 (1) (c) and 191, 12 C.W.N. 438=7 Cr. L.J. 224.

Sanction for prosecution granted by Presidency Small Cause Court—Appeal whether lies to the original or the appellate side of the High Court—*See* CRIM. PRO. CODE, 1898, s. 195, 36 M. 138=10 M.L.T. 278=(1911) 2 M.W.N. 259=12 Ind. Cas. 521.

See CRIM. PRO. CODE, 1898, ss. 195, 404, 439, 15 A. 61=A.W.N. 1892, 242.

Sanction to prosecute — Appeal—Order of single Judge of Chief Court—Power of Division Bench to hear appeal—*See* CRIM. PRO. CODE, 1898, s. 195 (6), 12 Cr. L.J. 469=11 Ind. Cas. 1005=6 L.B.R. 25.

Application under s. 195 (6), Crim. Pro. Code, not an appeal—*See* CRIM. PRO. CODE, 1898, ss. 195, cl. (6), 429, 439, (1912) M.W.N. 499, F B.=14 Ind. Cas. 305=11 M.L.T. 367=22 M.L.J. 419=13 Cr. L.J. 209.

See CRIM. PRO. CODE, 1898, ss. 198, 195, 6 N.W.P. 124.

From acquittal — Appellate Court cannot convict accused of offence not charged in grounds of appeal—*See* CRIM. PRO. CODE, 1898, ss. 222, 292, 417, 63 P.L.R. 1911=9 Ind. Cas. 436=12 Cr. L.J. 73.

See CRIM. PRO. CODE, 1898, ss. 227 and 537, 20 P.W.R. 1909, Cr.

See CRIM. PRO. CODE, 1898, ss. 238, 418, 536, 26 M. 243=2 Weir 463.

Admission of additional evidence in appeals—Powers of Court—*See* CRIM. PRO. CODE, 1898, ss. 247, 403, 417, 435, 439, 26 M.L.J. 160.

See CRIM. PRO. CODE, 1908, ss. 247, 404, 2 Weir 308.

See CRIM. PRO. CODE, 1898, ss. 253, 437, 2 Ind. Cas. 825.

See CRIM. PRO. CODE, 1898, ss. 264, 407, 9 M. 36=2 Weir 460.

Demeanour of witnesses noted by Court—Duty of Appellate Court—*See* CRIM. PRO. CODE, 1898, ss. 363, 417, 125 P.L.R. 1914=15 Cr. L.J. 203=27 P.W.R. 1914, Cr.=22 Ind. Cas. 987.

Appeal—continued.

——1.—**General**—*continued.*

See CRIM. PRO. CODE, 1898, ss. 367, 369, 421, 422, 423, 5 N.L.R. 76=9 Cr. L.J. 553=2 Ind. Cas. 247.

See CRIM. PRO. CODE, 1898, ss. 435, 107 (1), 2 M. 169.

From acquittal not preferred by Government—Revision — *See* CRIM. PRO. CODE, 1898, ss. 435, 438, 439, 24 A. 346=A.W.N. 1902, 89.

See CRIM. PRO. CODE, 1898, ss. 435, 439, 7 M.L.T. 182=5 Ind. Cas. 928=11 Cr. L J. 331.

See CRIM. PRO. CODE, 1898, s. 438, 121 P. L.R. 1903.

See CRIM. PRO. CODE, 1898, ss. 452, 408, 404, 14 B. 160.

Application asking a Munsif to take criminal action himself against a person—Sanction to prosecute—Appeal to District Judge—*See* CRIM. PRO. CODE, 1898, s. 476, 12 A.L J. 684=15 Cr. L J. 575=25 Ind. Cas. 327.

Pendency of civil appeal—No bar to proceedings under s. 476, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 476, 14 Bom. L.R. 968=1 Bom. Cr. 212=13 Cr. L.J. 848=17 Ind. Cas. 720.

See CRIM. PRO. CODE, 1898, ss. 517, 520, 1 C.L.R. 339=3 C. 379.

Order of transfer by Sub-Divisional Magistrate— Appeal to District Magistrate not maintainable—*See* CRIM. PRO. CODE, 1898, s. 528, 13 Cr. L.J. 782=17 Ind. Cas. 414.

Hearing an appeal presented within jurisdiction of a Sessions Court at a place outside the jurisdiction — *See* CRIM. PRO. CODE, 1898, s. 531, 17 A. 36=A.W.N. 1894, 195.

See CRIM. PRO. CODE, 1898, s. 550, 14 P.W. R. 1909, Cr.

See CRIM. PRO. CODE, 1898, s. 556, 36 C. 869, A.W.N. 1899, 74.

District Magistrate directing prosecution of accused— Competency to hear appeal—*See* CRIM. PRO. CODE, 1898, ss. 556, 435, 439, 9 N. L.R. 81=14 Cr. L.J. 385=20 Ind. Cas. 209.

See CRIM. PRO. CODE, 1898, s. 560, 8 C.P. L.R. 13 Cr.

See CRIMINAL PROCEEDINGS, 16 B. 729, 4 C. 18=3 C.L.R. 44.

See EVIDENCE—NON-ADMISSIBILITY OF EVIDENCE, 21 W.R. Cr. 13.

See HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 1 L. B.R. 68.

See JUDGMENT, 17 A. 241, F.B.=A.W.N. 1895, 68, 13, C. 110.

Accused discharged for want of jurisdiction—Appeal — Revision—*See* JURISDICTION — GENERAL, 9 A.L.J. 51=13 Ind. Cas. 921=34 A. 118=13 Cr. L.J. 169.

Appeal—continued.

——**1.—General**—*continued.*

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 10 B. 258, 32 C. 1069=3 Cr. L.J. 119.

See LETTERS PATENT—LETTERS PATENT, 1865—BOMBAY, cl. 15, 14 B. 555.

See LETTERS PATENT—LETTERS PATENT, 1865—BOMBAY, s. 29, Rat. Un. Cr. C. 110=Cr., Rg. 5-10-1876.

See LETTERS PATENT—LETTERS PATENT, 1865—MADRAS, s. 15, 30 M. 311=2 M.L.T. 84=17 M.L.J. 123=5 Cr. L.J. 288.

Order refusing bail—Judgment—Whether lies from order of single Judge of the High Court to a Division Bench—*See* LETTERS PATENT—LETTERS PATENT, 1865—MADRAS, cl. 15, 4 Ind. Cas. 871=19 M.L.J. 478.

Distinction between right of appeal against acquittal and right of appeal against conviction—*See* LETTERS PATENT—LETTERS PATENT, 1865—N.W.P., s. 16, 12 A.L.J. 231=36 A. 168=15 Cr.L.J. 200=22 Ind. Cas. 984.

See MAGISTRATE. JURISDICTION OF—GENERAL JURISDICTION, 6 C. 476; 29 C. 724=6 C.W.N. 713.

Appeal presented to Sessions Court where it lies to Chief Court—Procedure—*See* PENAL CODE, ss. 71, 147, 149, 323, 332, 161 P.L.R. 1911=12 Cr.L.J. 236=10 Ind. Cas. 278.

Findings of appellate Court inconsistent with conclusions arrived at by that Court—Ground for re-hearing of—*See* PENAL CODE, ss. 148, 326, 149, 17 C.L.J. 394=14 Cr.L.J. 295=19 Ind. Cas. 951.

Sanction for prosecution given by District Juge—Conviction of accused for false evidence—Appeal heard by the same Judge as Sessions Judge — Competency to hear appeal — *See* PENAL CODE, s. 193, 15 Bom. L.R. 104=2 Bom. Cr. C. 27=19 Ind. Cas. 190=14 Cr.L J. 190.

Murder—Further evidence in appeal—Inspection of spot—*See* PENAL CODE, s. 302, 16 P. W.R. 1911, Cr.=12 Cr. L.J. 412=11 Ind. Cas. 596.

See PLEA OF GUILTY, L.B.R. 1893—1900, 328.

Procedure where judges in appeal differ in opinion—*See* PRACTICE AND PROCEDURE, 12 C.L.J. 294.

See PRACTICE AND PROCEDURE, 13 C.W. N. 684=36 C. 385=9 Cr.L.J. 401=1 Ind. Cas. 868, 15 B. 488.

Rejection of appeal by Sessions Judge—Reference by District Magistrate to High Court—Proper procedure—*See* REFERENCE TO HIGH COURT, 18 C. 186.

See RESTORATION OF PROPERTY, 10 B. 197, Rat. Un. Cr. C. 957=Cr. Rg. 10 of 1898.

See REVISION—GENERAL PRINCIPLES, 2 A.L.J. 173=2 Cr.L.J. 105.

Appeal—continued.

——**1.—General**—*concluded.*

Summary rejection of criminal appeal—*See* REVISION—DELAY, 8 A. 514=A.W.N. 1886, 177.

See REVISION—DELAY, Rat. Un. Cr. C. 977=Cr. Rg. 32 of 1898.

See REVISION—MATTERS PERTAINING TO EVIDENCE, 4 B. 101.

See REVISION—MISCELLANEOUS CASES, 4 A.L.J. 805=6 Cr.L.J. 454=A.W.N. 1908, 28=3 M.L.T. 115=30 A. 109, 1 P.R. 1909, Cr=6 P.W.R. 1909, Cr.=1 Ind. Cas. 506, 9 C. 513=12 C.L.R. 500.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION ETC. OF COURTS, 10 Bom.L.R. 95=32 B. 203=3 M.L.T. 170=7 Cr L.J. 120, 30 P.R. 1901, Cr., 3 N.L R. 50=5 Cr.L.J. 432, A.W.N. 1908, 290=31 A. 48=6 A.L.J. 1=5 M.L.T. 55=9 Cr.L. J. 63=1 Ind. Cas. 5, 26 A. 244, F.B.=A.W.N. 1904, 10, 34 P.R 1886, Cr. 2 M.L.T. 84=17 M.L.J. 123=5 Cr.L.J. 288=30 M. 311, 10 Bom. L.R. 28=32 B. 184=3 M.L.T. 116=7 Cr.L J. 35, 13 M. 144, 19 A. 121=A W.N. 1897, 2 A.W.N. 1893, 147.

See SANCTION TO PROSECUTE—EXPIRY OF SANCTION AND LIMITATION, 32 C. 379=9 C. W.N. 321, 2 Weir 201.

See SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 12 M.L.J. 408.

See SANCTION TO PROSECUTE—REVOCATION OF SANCTION, Rat. Un. Cas. 805=Cr. Rg. 63 of 1895, 24 P.W.R. 1908, Cr., 30 M. 382=17 M.L.J. 266=2 M.L.T. 239=6 Cr. L.J. 102, F.B., 12 C.W.N.248=9 Cr.L.J. 189.

See SECURITY FOR GOOD BEHAVIOUR, L. B.R. 1893—1900, 381, 15 P R. 1905, Cr., 1 S.L. R. Cr. 98=8 Cr.L.J. 356, A.W.N. 1898, 127.

See SECURITY TO KEEP THE PEACE—APPELLATE COURT, 1 M.L.T. 343=4 Cr.L.J. 498=30 M 182, 21 P.R. 1908, Cr=9 Cr.L.J. 84, 16 C. 779.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 1 B. 223.

Imposition of non-appealable sentence—*See* SENTENCE—IMPRISONMENT—GENERAL, 20 C. 483.

See SENTENCE—WHIPPING, L.B.R. 1893—1900, 310.

See SESSIONS JUDGE, JURISDICTION OF, 22 B. 759, 1 M.H.C. 4.

Record in appeal—*See* SUMMARY TRIAL, 4 L.B.R. 338=9 Cr. L.J. 23.

See SUMMARY TRIAL, 6 M. 396=2 Weir 328=8 Ind. Jur. 35.

See TRANSFER OF CRIMINAL CASES—TRANSFER BY HIGH COURT, Rat. Un. Cr. C. 973=Cr. Rg. 27 of 1898.

See TRIAL BY JURY, 3 S.L.R. 102.

Appeal—continued.

——2.—**Cases where appeal lies.**

(1)—*Order under s.* 562, *Crim. Pro. Code.*—An appeal lies from an order under s. 562, Crim. Pro. Code. KING-EMPEROR v. MANOHAR DAS. **24 P.R. 1904, Cr. = 1 Cr. L.J. 1098.** [*F.*, 11 Cr. L.J. 152 = 4 Ind. Cas. 1027 = 5 L.B.R 129; *R.*, 16 P.R. 1911, Cr. = 155 P.L.R. 1911 = 12 Cr. L.J. 213 = 10 Ind. Cas. 114.]

(2)—*Crim. Pro. Code* (1898), *s.* 517—*Appeal to Sessions Judge.*—An appeal lies to the Sessions Judge from an order under s. 517 of the Code. SAON GOND v. SHEONANDAN LAL, **14 C.P.L.R. 60.** (9 M. 448, 3 C. 379, 2 A. 276, *R.*)

(2-*a*)—*Joint trial by a First Class Magistrate Appealable sentence against one of the accused —Right of appeal of other accused —Crim. Pro. Code,* s. 413.—If, at a joint trial of two or more persons by a First Class Magistrate, an appealable sentence is passed against any one of them, all the persons convicted have the same right of appeal even though their sentences may be of the kind against which appeal would have been barred by s. 413 of the Crim. Pro. Code, if they had been tried singly. SHEOPAL v. KING-EMPEROR, **15 O C. 386 = 19 Ind. Cas. 170 = 14 Cr. L J. 170.** (9 Cr. L.J. 356, *R.*; 7 B.H.C. 35, *Not F.*)

(3)—*Crim. Pro. Code* (1898), *ss.* 307, 383, 491 *and* 456—*Refusal to issue writ of* Habeas Corpus—*Order by single Judge of High Court in exercise of ordinary original criminal jurisdiction—Appeal—Letters Patent, s.* 15—"*Judgment.*"—An application by a person for release from alleged illegal custody under a sentence of imprisonment passed by a Division Bench, under s. 307, Crim. Pro. Code, may, in accordance with the practice of the High Court, be made to a single Judge exercising the ordinary original criminal jurisdiction of the High Court. An order refusing such an application, not being a sentence or order made in any criminal trial, is a "judgment" within the meaning of cl. 15, Letters Patent, and is, as such, appealable. Appeals provided for under cl. 15 of the Letters Patent, are not limited to civil matters, but cover criminal matters as well. *In the matter of* HORACE LYALL, **29 C 286 = 6 C.W. N. 254, F.B.** [*D.*, 1 Weir 788-A.]

(4)—*Crim. Pro. Code* (1861), s. 48—*Accused sentenced while another sentence in force—Appeal—Practice.*—It appears to be contrary to the provisions of s. 48 of the Crim. Pro. Code, 1861, to make a sentence passed on a person already undergoing another sentence concurrent with the latter, But, in such cases, though one of the sentences may be inoperative the accused has a right to appeal from either conviction. KHANDESH SESSION JUDGE'S LETTER, NO. 815 OF 1869, **Rat. Un. Cr. C. 18 = Cr. Rg. 3-8-1869.**

(5)—*Order of Mamlatdar—Appeal.*—An appeal from an order passed by a Mamlatdar refusing sanction to prosecute for perjury, committed in a possessory suit under the Mamlatdars' Courts Act, lies to the District Court. NARAYAN DHONDIBA v. TUKARAM GOVINDSHET, **9 Bom. L.R. 896 = 6 Cr. L.J. 225.** (5 Bom. L.R. 206, *F.*) [*F.*, 15 Bom. L.R. 53 = 2 Bom. Cr.C. 9 = 14 Cr.L.J. 80 = 18 Ind. Cas. 416.]

Appeal—continued.

——2.—**Cases where appeal lies**—*continued.*

(6)—*Conviction by Munsiff in contempt cases —Appeal.*—For the purposes of s. 486, Crim. Pro. Code, the Court to which decrees or orders made in a Munsiff's Court are ordinarily appealable is, in the Punjab, the Divisional Court. FATEH CHAND v. EMPRESS, **16 P.R. 1887, Cr.**

(7)—*Sentence by officer in Non-regulation District—Crim. Pro. Code* (1861), *ss.* 445-*A*, 445-*C.*—Under s. 445-C of Act VIII of 1869, an appeal lay only to the High Court from a sentence passed by an officer in a Non regulation district invested with the powers mentioned in s. 445-A. *In re* LUNTRO SING, **14 W.R. Cr. 18.**

(8)—*Two concurrent sentences for four years' imprisonment by Magistrate empowered under* s. 30, *Crim Pro. Code* (1882)—*Court of appeal.* —In cases of two sentences of four years each ordered to run concurrently by a Magistrate specially empowered under s. 30, Crim. Pro. Code, the appeal lies to the Sessions Court and not to the Chief Court, as, in such cases, there can be no aggregation of sentences. SHER MUHAMMAD v. EMPEROR, **25 P.R. 1901, Cr.** [*F.*, 10 Cr. L.J. 250 = 3 Ind. Cas. 171 = 11 Bom. L.R. 544, 14 Cr. L.J. 119 = 18 Ind. Cas. 679 = 11 A.L.J. 111.]

(9)—*Sentences aggregating for more than four years by a Magistrate empowered under* s. 30, *Crim. Pro. Code—Sentences not confirmed by Sessions Judge—Appeal to whom lies.*—Where persons charged with three separate offences of dacoity and tried at one trial were each convicted and sentenced on the aggregate for more than four years' rigorous imprisonment, by a District Magistrate with enhanced powers under s. 30, Crim. Pro. Code, *held*, that such sentences were, under s. 35, Crim. Pro. Code, single sentences requiring confirmation by the Sessions Judge. *Held*, also, that the omission of the District Magistrate to submit them for confirmation would not give appellate jurisdiction to the Sessions Judge. *Held*, further, that the Sessions Judge, when the matter came before him as an appeal, should have exercised his confirmatory jurisdiction under s. 380 of the Crim Pro. Code, 1882. The appeals then would lie to the Chief Court. QUEEN-EMPRESS v. BATERA, **3 P.R. 1898, Cr.**

(10)—*Conviction by District Magistrate with enhanced powers—Appeal.*—In cases where the imprisonment awarded does not exceed two years or where the offence is not exclusively triable by a Court of Session, an appeal lies from the District Magistrate to the Sessions Court and not to the Chief Court, even when the Magistrate acts under s. 36, Crim. Pro. Code, 1872. NATHU v. CROWN, **10 P.R. 1875, Cr.**

Appeal—continued.

——2.—**Cases where appeal lies**—*continued.*

(11)—*Conviction by District Magistrate with enhanced powers—Appeal.*—An appeal under s. 270, Crim. Pro. Code, 1872, lies to the Chief Court only when it appears, from the sentence awarded, that the Magistrate of the District has, in trying the particular case, exercised his enhanced powers under s. 36, Crim. Pro. Code, 1872. In all other cases the appeal lies to the Court of Session under s. 269. BAHADAR v. CROWN, **8 P.R. 1877, Cr., F.B.**

(12)—*Conviction by Magistrate with enhanced powers—Appeal.*—Where it did not appear from the sentences passed for two offences jointly tried (one year's rigorous imprisonment on the first charge, and two years' rigorous imprisonment on the second) that the Magistrate was not acting within his ordinary powers, but within his special powers under s. 36, Crim. Pro. Code, 1872, *held*, that the appeal would lie to the Court of Session. TULSI RAM v. EMPRESS, **23 P.R. 1881, Cr.** [*R.*, 25 P.R. 1882, Cr.]

(13)—*Conviction by Magistrate with enhanced powers—Appeal.*—Where a Magistrate invested with powers under s. 30, Crim. Pro. Code, convicted two accused tried jointly on their admission of the commission of the offence to persons who assisted the police in the investigation, and submitted the case to the Sessions Judge for confirmation of the sentence against one of them only, the other also filing an appeal before the latter Court and where the Sessions Judge confirmed the sentence of the one and acquitted the other, *held*, that the appeal of both the accused lay to the High Court and not to the Sessions Judge. QUEEN EMPRESS v. JAI SINGH, **12 P R. 1900, Cr.=P.L R. 1900, p. 56 Cr.** [*F.*, 10 Ind. Cas. 278=161 P.L.R. 1911=12 Cr. L. J. 236.]

(14)—*Crim. Pro. Code* (1898), s. 408—*Sentence by Assistant Judge—Concurrent sentences under four years—Appeal to Sessions Court.*—When an Assistant Sessions Judge passes sentences upon an accused each of which is four years or under, and they are ordered to run concurrently, the appeal from the conviction and sentence lies to the Sessions Court and not to the High Court. EMPEROR v. TULSHIDAS LAKSHMAN, **11 Bom. L. R. 544=10 Cr.L J. 250=3 Ind. Cas 171.** [*Diss.*, 35 A. 154=11 A. L. J. 111=14 Cr. L.J. 119=18 Ind. Cas. 679.]

(15)—*Crim. Pro. Code* (1898), s. 408, *cl.* (*b*) —*Appeal against sentence of Assistant Sessions Judge.*—Under s. 408 (*b*), when any sentence of over four years' imprisonment is passed by an Assistant Sessions Judge, in any case, the appeal lies to the High Court. The words of the section seem to require that an appeal by any person convicted in a case, in which an Assistant Sessions Judge has passed a sentence of imprisonment of four years or upwards on any one of the accused, whether he be the appellant or any other person tried with him in the same case, shall lie only to the High Court; and the Sessions Judge has no jurisdiction to hear an appeal from the persons sentenced to less than four years' imprisonment in the same case. PALANI KORAVAN v. EMPEROR, **17 M. L. J. 248=5 Cr. L J. 496.** [*R.*, 15 Cr. L.J. 371=22 Ind. Cas. 739=16 M.L.J. 33.]

Appeal—continued.

——2.—**Cases where appeal lies**—*concluded.*

——3.—**Cases where appeal does not lie.**

(1)—*Crim. Pro. Code* (1882), *s.* 560—*Appeal against order of.*—An order awarding compensation to the accused, passed by a Magistrate of the 1st class is not appealable. EMPRESS v. BIRBAL, **9 C.P.L.R. Cr. 27.**

(2)—*Crim. Pro. Code, Act* X *of* 1882, s. 250 —*Appeal.*—There is no provision in the Crim. Pro. Code for an appeal from an order under s. 250. QUEEN EMPRESS v. NAGYA, **Rat. Un. Cr. C. 409=Cr. Rg. 75 of 1888.**

(3)—*Order of Magistrate dismissing ministerial officer.*—The order of the Commissioner passed in an appeal from the order of a Magistrate dismissing a ministerial officer from his post is final and no appeal lies to the High Court. *In the matter of* PARBHU NARAYAN SINGH, **3 B.L R. A.C. 370=12 W.R. 323.**

(4)—*Order to furnish security under s.* 118, *Crim. Pro. Code—Confirmation by Sessions Judge under s.* 128.—Where an order to furnish security under s. 118, Crim. Pro. Code, has been affirmed by the Sessions Judge no appeal lies to the Magistrate of the District. KANHAYA v. EMPRESS, **23 P.R. 1886, Cr.**

(5)—*Crim Pro. Code*, 1872, *ss.* 267, 286, *ill.* (*d*)—*Security for good behaviour— Appeal.*—There was no appeal to the High Court under ss. 267, 286, illus. (*d*) of Act X of 1872 from an order passed by a Magistrate of the district requiring a person to give security for good behaviour. QUEEN v. NUJNAH, **22 W. R. 68, Cr.**

(6)—*Order of District Magistrate under s.* 123 *of Crim. Pro. Code, as to security for good behaviour confirmed by Sessions Judge on reference—Appeal.*—No appeal lies to the High Court from an order by a District Magistrate under s. 123 of the Crim. Pro. Code, confirmed by the Sessions Judge on reference, detaining a person in prison till he should provide security for good behaviour. CHAND KHAN v. EMPRESS, **9 C. 878.** [*F.*, 15 P.R. 1900, Cr. =P.L.R. 1900, p. 59; *Compared.* L.B.R. 1893 =1990, 381; *R.*, 15 Cr. L. J. 372=23 Ind. Cas. 740=7 S.L.R. 80.]

(7)—*Letters Patent, s.* 15—*Appeal from order to furnish security—" Judgment."* — Petitioner was ordered by the Head Assistant Magistrate to furnish security for keeping the peace under s. 107, Crim. Pro. Code. The District Magistrate confirmed the order. An application to the High Court for revision of the order was also rejected by a single Judge. Thereupon, the petitioner appealed to two Judges of the High Court. *Held*, that no appeal lay under

Appeal—continued.

——3.—Cases where appeal does not lie—*ctd.*

s. 15, Letters Patent. *Per Boddam, J.*—There is no "judgment" in this case, and, therefore, there is no appeal, under s. 15, Letters Patent. *In the matter of* RAMASAMI CHETTY, **27 M. 510 = 1 Weir 787 = 14 M.L.J. 394**

(8)—*Crim. Pro. Code, Act* XXV *of* 1861, ss. 280, 409, 434—*Order for penal recognisance —Appeal to Sessions Court.*—There is no appeal under s. 409 of the Crim. Pro. Code to the Sessions Court from an order of a Magistrate, under s. 280, requiring a person to furnish a penal recognisance to keep the peace for a certain period. The Court of Session may call for the records under s. 434 and refer the matter to the High Court. Where in an appeal from a conviction by a first-class Magistrate for trespass, the District Magistrate reversed the conviction and sentence but passed an order requiring the accused person to enter into a recognisance bond undertaking not to enter a certain house for a year, *held* that the order was illegal under s. 280 of the Crim. Pro. Code, since the conviction was not for an offence mentioned in the section. *Held*, also, that such an order should not be passed in the absence of the party affected by it, and by way of a postscript after the order reversing the conviction was passed. REG. v. BHASKAR K. KHARKAR, **3 B.H.C. Cr. 1.**

(9)—*Order refusing to recall witness for cross-examination.*—There is no appeal to the Sessions Judge from the order of the Deputy Magistrate refusing to recall the witnesses for the prosecution for the purpose of cross-examination. BELILIOS v. QUEEN, **19 W.R. Cr. 53.**

(10)—*Decision of Jury as to nuisance.*—No appeal lay from the decision of a jury appointed to try whether the order of a Magistrate for the removal of a nuisance under s. 308 of the Crim. Pro. Code, 1861, was reasonable and proper. SHITARAM v. RAMANUND, **16 W. R. Cr. 56** (66).

(11)—*Order of Sessions Judge fining assessor under Crim. Pro. Code* (1861), *s.* 354.—An order under s. 354, Crim. Pro. Code, by which the Sessions Judge is authorised to fine an assessor for non-attendance is not appealable. *In re* GOUR SURUN DASS, **8 W.R. Cr. 83.**

(12)—*Illegal conviction — Appeal on the merits.*—There cannot be entertained an appeal upon the merits from a conviction which was based on no legal evidence, and which was absolutely bad in law. QUEEN v. POORNOO CHUNDER DOSS, **8 W.R Cr. 59**. (2 W.R. Cr. 13, *D.*)

(13)—*Order directing prosecution for forgery.* —There is no appeal from an order of a Civil Court directing a prosecution for forgery committed before it. GUNGA NARAIN SIRCAR v. AZEEZOONNISSA BEEBEE, **5 W.R. Mis 18.** (1 Marsh 270 = 2 Hay 236, *F.*)

(14)—*Crim. Pro. Code* (1898), *ss.* 517 *and* 520 —*Restoration of property in respect of which no offence has been committed—Appeal.*—An order directing the restoration of property, in respect of which no offence has been committed, to the person in whose possession the property was found, is not an order under s. 517, and is, therefore, not appealable. SURENDRA NATH SARMA v. RAI MOHAN DAS, **30 C. 690 = 7 C. W.N. 634.** (14 C. 834, 1 B. 630, 22 B. 844, *R.*) [*Diss.*, 5 C.L.J. 44 = 5 Cr. L.J. 48 = 34 C. 347.]

(15)—*Order for maintenance.*—There is no right of appeal from the order of a Magistrate under s. 316 of Act XXV of 1861, directing a man to pay a monthly allowance for the support of his illegitimate child. QUEEN v. GULAM HOSSEIN CHOWDHRY, **2 Ind. Jur. N. S. 88 = 7 W.R. Cr. 10.**

(16)—*Crim. Pro. Code* (1882), *s.* 307—*Judgment of High Court—Appeal.*—No appeal lies to the High Court from its own judgment passed under s 307. QUEEN-EMPRESS v. ADVEPPA, **Rat. Un. Cr. C. 691 = Cr. Rg. 14 of 1894.**

(17)—*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 422 (*amended by Act* VIII *of* 1869)—*Appeal.* —Where an Appellate Court, under s. 422 of the Crim. Pro. Code, directs the first Court to take additional evidence, and passes a judgment on such evidence, no appeal lies to the High Court on the merits from such judgment after the amendment of the section by Act VIII of 1869. REG v. NANTAMRAM UTTAMRAM, **6 B.H. C. Cr. 64.**

(18)—*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 411—*Appeal from sentence of imprisonment and fine.*—In an appeal from a sentence, for rioting of fifteen days' imprisonment and an additional term of fifteen days in default of payment of fine, *held*, there was no appeal under s. 411 of the Crim. Pro. Code, since the aggregate term did not exceed a month. REG. v. SHANKAR VENKAJI, **3 B.H.C.Cr. 15.**

(19)—*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 411—*Sentence against some accused appealable and not against others—Appeal.*—In a case where, among several persons jointly tried and convicted of rioting, some were sentenced to a fine of Rs. 50 or in default to one month's rigorous imprisonment, and others to a severer punishment; *held* that the whole case was not appealable under s. 411 by reason of an appealable sentence having been imposed on some of the accused. REG v. KALUBHAI MEGHABHAI, *et al*, **7 B.H.C. Cr. 35.** [*Diss.*, 4 L.B.R. 354.]

(20)—*Dismissal of complaint—Procedure.*—In a case where the complaint was dismissed by the Deputy Magistrate, *held* that the prosecutor had no right to appeal, but that the proper course for him would be to have moved the Magistrate to procure, under s. 434 of the Code of Criminal Procedure, a reversal by the High Court of the order of dismissal. LYALL AND CO. v. SAM MUNDLE, **W.R. 1864, Cr., 23**

Appeal—continued.

——3.—**Cases where appeal does not lie**—*ctd.*

(21)—*Crim. Pro. Code, s.* 411—*Conviction by Presidency Magistrate.*—No appeal is allowed from a conviction by a Presidency Magistrate, where the sentence is six months' rigorous imprisonment and a fine of Rs. 125, or, in default, a further period of three months' rigorous imprisonment. QUEEN-EMPRESS v. HARI SAVBA, **20 B. 145.** [*R.*, 3 Ind. Cas. 285.]

(22)—*Crim. Pro. Code* (1898), *s.* 411—*Appeal not entertainable—Point of law involved — Appeal heard as a revision—Penal Code, ss.* 405 *and* 408—*Breach of trust by servant—Failure to give correct account—Dishonest intention not shown.*—No appeal lies against a conviction by a Presidency Magistrate, where the sentence awarded is only one day's simple imprisonment and a fine of Rs. 150. A nonappealable case may be entertained as a revision, if a point of law arises upon the findings. Where the master was in debt to the servant for a sum exceeding Rs. 300, *held*, that the mere failure of the servant to give a correct and true account of the manner in which the servant had spent a sum of Rs. 32 in numerous Court proceedings did not necessarily imply a dishonest intention. Unless dishonest intention is shown, an offence under s. 405, Penal Code, cannot be made out. DATTA RAM KASHINATH WAGLE v. EMPEROR, **3 Ind. Cas. 285.** (20 B. 145, *R.*)

(23)—*Dismissal of, without giving an opportunity to the appellant to be heard—Review.*—An order dismissing an appeal under s. 421, Crim. Pro. Code, 1882, without giving the appellant an opportunity to be heard, owing to a mistake as to the date of the hearing, is a final order in accordance with the provisions of s. 430, and is not liable to be reviewed by the same Court. NIHALA v. EMPRESS, **24 P. R. 1887, Cr.**

(24)— *Consolidation of separate sentences—Penal Code, ss.* 143, 447, 211—*Crim. Pro. Code* (1861), *s.* 411.—Where a person was convicted of offences under ss. 143, 447 and 211, Penal Code, and sentenced to one month's imprisonment for each offence, it was held that the separate sentences could not be taken together and combined into one sentence so as to give a right of appeal. QUEEN v. NAGARDI PARAMANIK, **1 B.L R.A.C. Cr. 3 = 10 W.R. Cr. 3** (6 W.R. Cr. 51, *R.*)

(25)—*Consolidation of sentences—Appeal.*—There is no right of appeal because the united sentences in three separate cases amount to more than a month's imprisonment. QUEEN v. MORLY SHEIKH, **6 W.R. Cr. 51.**

(26) — *Crim. Pro. Code*, 1872, *s.* 272 — *Amendment by Act* XI *of* 1874, *s.* 23—*Six months expiring on date of operation—Effect.*—Where the six months provided for an appeal against acquittal by the Government expired on the day when the Amending Act X Iof 1874 came into operation, *held* that a law of limitation being one of procedure, an appeal presented after that day was barred. GOVERNMENT OF BOMBAY v. DORABJI BALABHAI, **11 B H C.A.C. 117.** [*R.*, 6 B. 26, 2 C. 436.]

Order under s. 2, Act XIII of 1859 -No appeal.—*See* ACT XIII OF 1859, s. 2, 18 C.W. N. 1271 = 15 Cr. L.J. 697 = 26 Ind Cas. 145.

——4. —**Acts.**

(1)—*Award of compensation under the cattle Trespass Act* (I *of* 1871), s. 22.—There is no appeal from an order of compensation passed under s. 22, Act I of 1871. *In re* GUNESH PERSHAD, **3 N W.P. 200.**

(2)—*Act* I *of* 1871, *s.* 22—*Appeal.*—There is no appeal from an order passed under s. 22, Act I of 1871, awarding compensation for illegal seizure of cattle. QUEEN-EMPRESS v. RAYA LAKHMA, **10 B. 230.** [*F.*, 15 C. 712, 19 M. 238, Rat. Un. Cr. C. 520.]

(3)—*Convictions under Police Act.*—Convictions under the Police Act (V of 1861) are appealable like other convictions. *In re* THAKOOR DOSS AND GODAI SHEK, **5 W R. Cr. 22.**

(4)—*Act* XI *of* 1846, *Rules framed under the Act—Act* XIV *of* 1874 *(Scheduled Districts), Conviction by Agent to Governor of Bombay in Khandesh—Appeal to High Court.*—(1) The accused were convicted by the Agent to the Governor of Bombay in Khandesh, under s. 201 I P.C, and sentenced to five years' rigorous imprisonment. The offence was alleged to have been committed in the village of Gulamba, in the Mehwas Estate of Nal in the District of Khandesh. The agent tried the case under the Rules framed under Act XI of 1846, by which the estate of Nal was excluded from the ordinary criminal jurisdiction. The accused appealed to the High Court under r. 44 of the Rules framed under s. 3 of Act XI of 1846. *Held* that no appeal would lie to the High Court, as the sentence passed by the Political Agent was within the limits of the absolute jurisdiction of that officer. *Per Birdwood, J.*—There is no provision of the Act (XI of 1846) which constitutes the *Sadder Faujdari* a Court of appeal from the decisions of the Agent in criminal trials. That Court is only contemplated by s 4, as a Court of reference in criminal trials. No power is given to the Government to confer appellate powers on it, as is practically done by Rule 44 of the Rules of the 31st July, 1895. That rule is, therefore, *ultra vires* of the Government, and cannot be regarded as a valid rule under the Act. *Jardine*, *J*, agreed with *Birdwood, J.*, in his view that Rule 44 was *ultra vires*, and expressed an opinion to the effect that after the enactment of Act XIV of 1874, which repealed Act XI of 1846, these rules under the old Act ceased to be in force, so far as they had reference to the powers of the High Court. S. 7 of Act XIV of 1874 did not continue these rules except so far as they related to the Political Agent and his officers, as they could not be

Appeal—continued.

——4.—**Acts**—*continued.*

regarded as being in force at the time when Act XIV of 1874 was passed, and they were in conflict with the Letters Patent of the High Court. QUEEN-EMPRESS v. SARYA, **15 B. 505.** [*Diss.*, 25 B. 667 ; *R.*, Rat. Un. Cr. C. 939.]

(5)—*Transfer of North Canara District to the Presidency of Bombay—Crim. Pro. Code*, ss. 19, 408—*Reg.* II *of* 1827, s. 16 (2)—16 *and* 17 *Vic.*, *C.* 95—21 *and* 22 *Vic.*, *C.* 106—24 *and* 25 *Vic.*, *C.* 67, 104.—A proclamation was issued by the Governor-General in Council, on the 15th April, 1862, in pursuance of an order made by the Secretary of State for India in Council under 16 and 17 Vic., C. 95, s. 18 and 21 and 22 Vic., C. 106, declaring that the District of North Canara with the exception of the taluq of Candapur should be detached from the Presidency of Madras from the 16th day of April, 1862. Subsequent to this, the Legislative Council of Bombay passed an Act, No. III of 1863, which received the assent of the Governor of Bombay on the 4th January, 1863 and of the Governor-General on the 25th March, 1863. By s. 6 of that Act : "The district of North Canara, with the exception of the taluqa of Candapur, as transferred from the Presidency of Fort St. George, shall, from and after the 16th day of April, 1862, be subject to the Regulations and Acts which are, or shall at any time hereafter be, in force within the territories subject to the Presidency of Bombay." S. 7 provided that nothing in the Act is to affect any acts done, or proceedings held, or order made, in the District previously to the passing of the Act. The accused who was convicted by the Sessions Judge of North Canara on the 18th day of September, 1862, appealed to the High Court of Bombay, and the question whether that Court or the High Court of Madras had jurisdiction being raised. *Held*, per *Forbes, J.*:—S. 7 of Act III of 1863 must be so read as to be not incompatible with s. 6 of the same Act. *Held* that apart from that Act, the High Court of Madras could have no jurisdiction within the Presidency of Bombay, of which North Canara had become a part on the 16th day of April, 1862. *Held*, further, that the order of the Secretary of State, detaching North Canara from the Presidency of Fort St. George and annexing it to the Presidency of Bombay, was complete in every respect except as to the time from which the annexation was to take effect. All that was left to the Governor-General in Council was the authority to declare that time by proclamation. The annexation was the act of Her Majesty's Government, not that of the Government of India ; and regarded in that light, should be considered as having itself changed the law of the annexed district from the date of annexation, and introduced therein the law of the Bombay Presidency. Per *Couch, J.*:—The proviso to s. 47 of the Indian Councils Act, 24 and 25 Vic., Chap. 67, applies to laws and regulations made by the Governor, or Lieutenant-Governor in Council of the Presidency, Division or Province.

Appeal—continued.

——4.—**Acts**—*concluded.*

The case in question being governed by the Crim. Pro Code, an Act of the Legislative Council of India in force in both the Presidencies, the right of appeal in this case was transferred to the High Court of Bombay, with the transfer of the district to the Bombay Presidency. In this view of the matter, Act III of 1863, could be immaterial. Per *Newton, J.*—The District of North Canara having been severed from the Presidency of Madras, before the trial of the case under consideration, and having passed from one Presidency to the other with the Code of Criminal Procedure in uninterrupted operation within its limits, the provision of s. 408 of the Code should be interpreted as making the decision in such cases appealable to the High Court of Bombay. REG v. VYANKATSVAMI, **2 B.H.C. 106.** [*R.*, 10 B. 274, 12 B.H.C. App. 1.]

(6)—*Public Conveyance Act* (*Bom. Act* VI *of* 1873), *ss.* 23, 35—*Conviction of owner of public conveyance—Appeal.*—Where an accused person, the owner of a public conveyance, was convicted by a first class Magistrate, under s. 22 of the Public Conveyances Act, on the ground that he was responsible for the act of his servant who had refused to let the conveyance for hire, the High Court *held*, that it was not precluded by s. 35 of the Act from interfering in revision, for the person punishable under s. 22 was the driver or other attendant, and the accused was, therefore, not a person punishable under s. 35 ; and that the conviction must be reversed. The words of s. 35, "no conviction under this Act ...shall be open to appeal or reversal by any other Court" must be taken to mean "no conviction of any person punishable under the Act." QUEEN-EMPRESS v. LOUIS FRANCES, **Rat. Un. Cr. C. 672 = Cr. Rg. 37 of 1893.**

—Appeal to High Court on conviction by Agent to Governor of Bombay in Khandesh—*See* ACT XI OF 1846, s. 3, 15 B. 505.

See ACT XIII OF 1859, s. 2, 7 S.L.R. 80 = 15 Cr. L.J. 372 = 23 Ind. Cas. 740.

See ACT IX OF 1869, s. 25, 14 W.R. Cr. 71.

See ACT VII OF 1870, s. 31, 20 C. 687, 26 M. 421 = 2 Weir 488.

See ACT I OF 1871, s. 23, 22 P R. 1886, Cr.

See ACT IV OF 1877, s. 41, 2 C. 466.

See ACT IV OF 1877, s. 167, 5 B. 85.

See ACT III OF 1880, 40 P.R. 1884, Cr.

See ACT XIII OF 1889, ss. 2, 5 and 7, 1 P.R. 1897, Cr.

See PUN. ACT IV OF 1872, s. 42, 16 P.R. 1872, Cr.

See CRIM. PRO. CODE, 1898, ss. 403, 423 (*b*), 22 C. 377.

—Magistrate's order declaring road public—*See* JURISDICTION OF CIVIL COURTS, 7 W.R. 95.

Appeal—continued.

——**5.—Appeal from acquittal**.

See ACQUITTAL.

See CRIM. PRO. CODE, 1898, s. 417.

See REVISION—ACQUITTAL.

(1)—*Right oj appeal from acquittal—Object of limiting it to the Local Government.*—The law, by limiting the right of appeal against judgments of acquittal to the Local Government prevents personal vindictiveness from seeking to call in question judgments of acquittal by way of appeal, and evidently intends that such interference shall take place only in cases where there has been a miscarriage of justice so grave as would induce the Local Government to move in the matter. DEPUTY LEGAL REMEMBRANCER v. KARUNA BAISTOBI, **22 C. 164.** [*R* , 12 P.R. 1904, Cr.=110 P.L.R. 1904, 17 C.P.L.R. 75.]

(2)—*Power of Local Government to appeal not to be questioned by High Court.*—The exercise of the discretion to prefer an appeal under s. 417 of the Crim. Pro. Code, against any order of acquittal made by a Court other than a High Court, rests with the Local Government concerned, and cannot be questioned by the High Court in dealing with such appeal. EMPEROR v. MUSST. GUBBI, **17 C.P.L.R. 75.**

(3)—*Crim. Pro. Code* (1898), s. 417—*Difference between appeal from acquittal and from conviction* --There is no difference between an appeal from an acquittal and from a conviction. KING EMPEROR v. CHATTER SINGH, **7 P.R. 1904, Cr.=97 P.L.R. 1904=1 Cr. L.J. 781.** (11 P.R. 1903, Cr., 10 P.R. 1897, Cr., 4 A. 148, 9 A. 528, 16 A. 212, *Diss.*; 29 P.R. 1885, Cr., 17 C. 485, 19 B. 52, 20 A. 459, 11 C.L.R 25, 23 C. 347, *F.*) [*F.*, 15 Cr.L.J. 236=26 M.L J. 160=23 Ind. Cas. 188=15 Cr. L.J. 203=125 P.L.R. 1914=22 Ind. Cas. 987=27 P.W.R. 1914, 323 P.L R. 1913=26 P.W R. 1913=20 Ind. Cas. 1005=14 Cr. L.J. 525.]

(4)—*Right of appeal against acquittal and against conviction.*—There is no distinction in the Crim. Pro. Code between the right of appeal against an acquittal and a right of appeal against a conviction. QUEEN-EMPRESS v. PRAG DAT, **20 A. 459=A.W.N. 1898, 117.** (4 A. 148, 9 A. 528, *R.*) [*F.*, 15 Cr. L.J. 236=23 Ind Cas. 188=26 M L.J. 160=1914, M.W.N. 273; *R.*, 36 A. 168=12 A.L.J. 231=15 Cr. L. J. 200=22 Ind. Cas. 984, 1 Cr. L.J. 1022=2 L. B.R. 303=7 P.R. 1904, Cr.=97 P.L.R. 1904.]

(5)—*Appeal against acquittal and conviction —Procedure.*—There is nothing in s. 417, Crim. Pro. Code, which indicates that an appeal from an acquittal, allowed in the interest of public safety, peace and order, by the statute-law of the country, should receive any different treatment from any other appeal or class of appeals. But when an accused person has been acquitted by a Magistrate after hearing all the evidence against him, the presumption is that there was at least reasonable doubt, and the Appellate Court must be positively convinced

Appeal—continued.

——**5.—Appeal from acquittal**—*continued.*

that there was no such reasonable doubt, the benefit of all doubt shown to exist being against the appellant, whereas, in an appeal from a conviction, the benefit of all reasonable doubt has to be given in favour of the appellant. This appears to constitute the only distinction between an appeal from an acquittal, and one from a conviction. CROWN v. HARNAMAN, **15 P.R. 1909, Cr.=37 P.W.R. 1909=4 Ind. Cas. 864.**

(6)—*Appeal against acquittal and conviction —Procedure.*—The Government has the same right of appeal against an acquittal as a convicted person has against his conviction. The Code makes no distinction as to the procedure to be adopted or as to the principles upon which such appeals are to be decided. GOVERNMENT PLEADER v. LAKSHMI NARASIMHAM CHETTY, **2 Weir 462.**

(7)—*Appeal against acquittal and conviction —Procedure.*—In an appeal from an acquittal, the Government is placed in a position neither better nor worse than a private person appealing from his conviction; and to require the Government to show that the lower Court "obstinately blundered" or has so "gone wrong as to produce a result mischievous at once to the administration of justice and the interests of the public" is to legislate and not to interpret the law, as contained in s. 417, Crim. Pro. Code. EMPRESS v. UTTAM, **29 P.R. 1885, Cr.** (4 A. 148, *Diss.*) [*F.*, 7 P.R. 1904, Cr.=97 P. L.R. 1904.]

(8)—*Appeal—Appeal against order of acquittal—Appellate Court, duty of.*—The Code of Criminal Procedure makes no distinction between an appeal from an acquittal and one from a conviction. Any rule of Court which differentiates their position would be tantamount to an usurpation of legislative functions by the Court. If there is any difference in the respective positions of Government as appellant under s. 417 of the Code of Criminal Procedure and a convict appealing from the judgment convicting and sentencing him, it takes its rise from the principles of judicial construction and adjudication in criminal cases, with which the Statute Law has no concern. The Indian Penal Code provides the substantive criminal law administered by the Indian Courts while the Code of Criminal Procedure regulates their procedure in the trial of criminal cases. But apart from these, there are certain rules of adjudication and conduct which Criminal Judges in India invariably follow and which are mainly derived from the Criminal Law of England. They are founded on natural justice and sound sense and are not inconsistent with, but expressly or tacitly recognised by, the Indian Law. One of these is, that every man is to be presumed innocent until his guilt is established; another, that if there is a reasonable doubt, the accused must have the benefit of that doubt. These are principles of the English Criminal Law of evidence which are clearly in accord

Appeal—continued.

——5.—**Appeal from acquittal**—*continued.*

with the provisions of the Indian Evidence Act under the heads of Proof and Burden of Proof, and their value lies in their being clear statements of the law of evidence applicable in criminal judicature which are very convenient for the practical guidance of the Courts. An appellant from a judgment of conviction can always invoke the support of these principles, if he can show that the facts of his case come within their purview. If he makes out that the essential evidence against him is not sufficiently reliable, as the lower Court thought, or that all reasonable doubt as to his guilt is not removed thereby, he is bound to succeed on the strength of these principles. An appellant from a judgment of acquittal has, on the contrary, to work in the face of these principles and to satisfy the Court that the accused can derive no benefit from them on the facts of the case under appeal. His task thus is naturally more difficult than that of the convict appellant. In all questions of fact, the Court of first instance, which has the witnesses before itself, has a great advantage over the Court of appeal, which deals with the evidence second-hand; great regard is, therefore, as a rule, paid to the opinion of the first Court on the oral evidence, and a Court of appeal is ordinarily reluctant to differ from its opinion, unless for cogent grounds. In an appeal from a conviction, this regard is tempered somewhat by considerations of fairness to the accused in deciding the question of his guilt which the highest principles of Criminal Law enjoin on the Courts. But such considerations have no application in an appeal from an acquittal where, naturally, the Court is chary of disturbing a finding of the first Court rejecting the evidence against the accused as unreliable and declaring his innocence. The cumulative effects of these considerations create a considerable difference between an appeal from a conviction and one from an order of acquittal as regards the decision of their subject-matter, though both appeals are placed on the same footing in the statute law of procedure. In order to justify interference with a judgment of acquittal on a question of fact, it is sufficient, if the finding is clearly wrong on the evidence and unreasonable in the opinion of the appellate Court, whether or not the unreasonableness amounts to perversity, stupidity or incompetence, or the Court below can be said to have obstinately blundered in coming to it; but upon sound principles of Criminal Jurisprudence the indications of error in the judgment of acquittal ought to be clearer and more palpable and the evidence more cogent and convincing in order to justify its being set aside than would be necessary in the case of a judgment of conviction. An appeal from an acquittal is not substantially different from an appeal from a conviction. Full weight must be given to the advantages possessed by the first Court in hearing the evidence and having the trial slowly developed before itself, but if due weight is given to this, and the appellate

Appeal—continued.

——5.—**Appeal from acquittal**—*continued.*

Court is still satisfied that the first Court was wrong, and that the accused is guilty, the appellate Court is bound by law to convict the accused. KING-EMPEROR v. CHATTER SINGH, **97 P.L.R 1904 = 7 P.R. 1904, Cr. = 1 Cr.L.J. 781.** (11 P.R. 1903, Cr., 10 P.R. 1897, Cr., 4 A. 148, 9 A. 528, 16 A. 212, *Diss.*; 29 P. R. 1885, Cr., 17 C. 485, 19 B. 52, 20 A. 459, 11 C L.R. 25, 23 C. 347, *F*) [*F.*, 15 Cr.L.J. 236 = 26 M.L.J. 160 = 23 Ind. Cas. 188, 15 Cr. L.J. 203 = 125 P.L.R. 1914 = 22 Ind. Cas. 987 = 27 P.W.R. 1914, Cr.; *R.*, 328 P.L. R. 1913 = 26 P.W.R. 1913, Cr. = 20 Ind. Cas. 1005 = 14 Cr.L.J. 525, 22 Ind. Cas. 986 = 19 C. L.J. 356.]

(9 *and* 10)—*Crim. Pro. Code* (1882), s. 417—*Right of appeal in criminal cases by Government from judgment of acquittal—Acquittal by assessors.*—Under the Code, the Government have the same right of appeal against an acquittal, as a person convicted has to appeal against his conviction and sentence. No distinction is made in the Code as to the mode of procedure which governs the two kinds of appeals or as to the principles on which they are to be decided. Both appeals are governed by the same rules and are subject to the same limitations. [*F.*, 15 Cr. L.J. 236 = 26 M.L.J. 160 = 23 Ind. Cas. 188, 2 Weir 462, Rat. Un. Cr. C. 756; *R.*, 17 C.P.L.R. 75, 97 P.L.R. 1904.] In all cases of appeals, the Judges of a Court of appeal are naturally very cautious in interfering with the judgment of a Judge and assessors before whom the witnesses were examined both on the ground that a Court before whom witnesses are examined has superior advantages in estimating the value of their testimony, and also, in case of an acquittal, on the additional ground, that, in all criminal cases, the accused is entitled to have the advantage of any doubt which may arise in the case; but, after giving the accused every benefit which he can derive from such a decision in his favour, if the High Court is still of opinion, that he is guilty of the offence with which he has been charged, there is no discretion left to the Court as to whether to find him guilty or not. *In the matter of the petition of the* DEPUTY LEGAL REMEMBRANCER *on behalf of the* GOVERNMENT OF BENGAL; QUEEN EMPRESS v. BIBHUTI BHUSAN BIT, **17 C. 485.** [*R.*, 19 B. 51, L.B.R. 1893-1900, 42.]

(11)—*High Court — Acquittal — Appeal — Crim. Pro. Code* (1872), s. 272.—In a case tried by assessors, in which the accused was charged with culpable homicide not amounting to murder, he was acquitted by the Sessions Judge and one of the assessors, while the other assessor was for a conviction. The Government of Bengal having appealed under s. 272, Crim. Pro. Code, 1872, the High Court on a consideration of the evidence, set aside the order of acquittal, and convicted the accused of the offence charged. GOVERNMENT OF BENGAL v. JANEEF FAKEER, **23 W.R. Cr. 50.**

Appeal—continued.

——5.—**Appeal from acquittal**—*continued.*

(12)—*Crim. Pro.Code, Act X of* 1872, *s.* 272—*Appeal from acquittal—Procedure.*—The procedure to be adopted by the High Court in appeals by the Local Government from acquitting judgments is that laid down in 1 A.W.N. (1881), 159 EMPRESS v. WALI MUHAMMAD, **A. W N. 1882, 64.**

(13)—*Appeal in what cases to be made—Crim. Pro. Code* (1882), *s.* 417.—*Held* that the Government should prefer an appeal from an acquittal only in cases of some importance. QUEEN-EMPRESS v. KHUSHAL SINGH, **15 P. R. 1898, Cr.** [*F.*, 12 Cr. L.J. 364 = 11 Ind. Cas. 132 = 10 P.R. 1911.]

(14)—*Condition for acceptance of appeal from acquittal.*—In an appeal against an order of acquittal, the Chief Court must be satisfied not merely that the correctness of the judgment appealed against is open to doubt, but that it is so clearly wrong as to amount to a miscarriage of justice. QUEEN-EMPRESS v. GHULAM MUHAMMAD, **10 P.R. 1897, Cr.** [*Diss.*, 7 P.R. 1904, Cr., *F.*, 12 Cr.L J. 364 = 11 Ind. Cas. 132 = 10 P.R. 1911 ; *R.*, 12 Cr.L.J. 597 = 12 Ind. Cas. 973 = 14 P.R. 1911, Cr. = 42 P.W.R. 1911, Cr.]

(15)—*Condition of interference with acquittals —Crim. Pro. Code* (1898), *s.* 417.—An order of acquittal, made after a careful consideration of the facts without any manifest incompetence or perversion, will not be disturbed by the Chief Court, though it might consider that a different conclusion would have been drawn by it if it sat as a Court of original jurisdiction. EMPEROR v. MANGAT, **11 P.R. 1903, Cr. = 142 P.L R. 1903.** (4 A. 148, *F.*) [*Diss.*, 7 P.R. 1904, Cr.]

(16)—*Condition of interference with acquittal.* —An acquittal on a question of fact will be disturbed if the finding is clearly wrong on the evidence and unreasonable in the opinion of the appellate Court, whether or not the unreasonableness amounts to perversity, stupidity or incompetence, or the Court below has obstinately blundered in arriving at it. The indications of error in the judgment of acquittal ought to be clearer and more palpable and the evidence more cogent and convincing before the acquittal can be set aside than would be necessary in the case of a conviction. KING-EMPEROR v. CHATTER SINGH, **7 P.R. 1904, Cr. = 97 P.L R. 1904 = 1 Cr. L J. 781.** (11 P.R. 1903, Cr., 10 P.R. 1897, Cr., 4 A. 148, 9 A. 528, 16 A. 212, *Diss.*; 29 P.R. 1885, Cr., 17 C. 485, 19 B. 52, 20 A. 459, 11 C L.R. 25, 23 C. 347, *F.*) [*F.*, 15 Cr. L.J. 236 = 26 M.L.J. 160 = 23 Ind. Cas 188, 15 Cr. L.J. 203 = 125 P.L.R. 1914 = 22 Ind. Cas 987 = 27 P.W.R. 1914, Cr.; *R.*, 328 P.L.R. 1913 = 26 P.W.R. 1913, Cr. = 20 Ind. Cas. 1005 = 14 Cr. L.J. 525, 22 Ind. Cas. 986 = 19 C.L.J. 356.]

(17)—*Crim. Pro. Code* (1882), *ss.* 417, 427—*Appeal from acquittal in capital case—Arrest of the accused.—Per Edge, C.J.*—In capital cases, in which the Government is appealing under s. 417, it is generally speaking, and without laying down any inflexible rule, undesirable that the prisoner's fate should be discussed, while he remains at large. In such cases, the Government should apply for the arrest of the accused, under s. 427 of the Code. QUEEN-EMPRESS v. GOBARDHAN, **9 A. 528 = A.W.N. 1887, 156.**

(18)—*Crim. Pro. Code* (1882), *ss.* 417, 421—*Appeal by Government from acquittal, conditions of.*—In considering an appeal by the Government against an order of acquittal, it is not for the High Court to say whether, if it had been trying the case, it might not have taken a view opposed to that of the lower Court. In respect of pure questions of fact, the power of Government to appeal from an acquittal should be limited to those cases where, through the incompetence, stupidity or perversity of a subordinate tribunal, such unreasonable and distorted conclusions have been drawn from evidence as to produce a positive miscarriage of justice. Where the decision of the Subordinate Court is an honest and not an unreasonable one, of which the facts were susceptible, the High Court will not interfere. QUEEN EMPRESS v. ROBINSON, **16 A. 212 = A.W.N. 1894, 49.** (4 A. 148, *R.*) [*Diss.*, 17 C.P.L.R. 75 ; *R.*, 21 A. 122, 36 A. 168 = 12 A.L.J. 231 = 15 Cr.L. J. 200 = 22 Ind. Cas. 984, 7 P.R. 1904, Cr. = 97 P.L.R. 1904, 2 L.B.R. 303 = 1 Cr.L.J. 1022.]

(19)—*Appeal against acquittal—Practice and procedure.*—The High Court, exercising its jurisdiction in the matter of appeals against acquittals, should confine its exercise to the particular acquittal complained of by the Government. At the same time it would not be proper for the High Court to consider the appeal on grounds not contained in the objection urged on behalf of the Government. QUEEN-EMPRESS v. KARIGOWDA, **19 B. 51.** [*F.*, 17 C.P.L.R. 75 ; *R.*, 7 P.R. 1904, Cr. = 97 P.L.R. 1904.]

(20)—*Sessions Judge overlooking main circumstances of corroboration of accomplice evidence —Appeal against acquittal.—Per Straight, J.*—Where the Sessions Judge has overlooked the main and crucial circumstances which go to corroborate the evidence of an accomplice and has acquitted the accused, the High Court will not be departing from, or doing violence to, the principle laid down in 4 A. 148, by entertaining the appeal by the Government, and determining one way or the other the guilt of the accused. QUEEN-EMPRESS v. GOBARDHAN, **9 A. 528 = A.W.N. 1887, 156.** [*R.*, 20 A. 459 = 18 A.W.N. 117, 97 P.L.R. 1904 = 7 P. R. 1904, Cr.]

(21)—*Appeal against acquittal, when to be preferred.*—It is not because a Judge or Magistrate has taken a view of a case in which the

Appeal—contiuued.

——5.—**Appeal from acquittal**—*continued.*

Government does not coincide, and has acquitted the accused persons, that an appeal from his decision must necessarily prevail, or that the High Court should be called upon to disturb the ordinary course of justice, by putting in force the arbitrary powers conferred on it by s. 272. The doing so should be limited to those instances, in which the lower Court has so obstinately blundered and gone wrong as to produce a result mischievous at once to the administration of justice and the interests of the public. EMPRESS OF INDIA v. GAYADIN, **4 A. 148=A.W.N. 1881, 159.** [*F.*, 16 A. 212=14 A.W.N. 49, 142 P.L.R. 1903=11 P.R. 1903, Cr., 13 Cr. L.J. 259=14 Ind. Cas. 643=5 Bur. L T. 20. ; *R.*, 9 A. 52, 19 B. 51, 20 A. 459, 7 P.R. 1904, Cr.=97 P.L. R. 1904 ; *D.*, 9 A. 528, F.B., 21 A. 122 ; *Diss.*, 29 P.R. 1885, Cr., 17 C. 485, 2 Weir 462, 2 L. B.R. 303=1 Cr. L.J. 1022, 17 C.P.L.R. 75, 9 Cr. L.J. 437.]

(22)—*Crim. Pro. Code* (1872), s. 272—*Appeals from acquittals by Government.*—Where a person was convicted of criminal breach of trust by a public servant under s. 409, I.P C., but the Sessions Court acquitted him on the ground that the breach of trust was not committed by him in his capacity as public servant, the High Court, on appeal by the Government, directed a new trial under s. 406, I.P.C., under the provisions of s. 272, Crim. Pro. Code. QUEEN v. DUKARAN, **7 N.W.P. 196.** (7 M.H.C. 339, *R.*) [*R.*, 17 C.P.L.R. 75.]

(23)—*Crim. Pro. Code* (1882), *ss.* 247, 404, 417 *and* 423—*Appeals from acquittals—Powers of District Magistrate.*—S. 417, providing for appeals against orders of acquittal, requires that such appeals shall be (1) directed by Government and (2) presented to the High Court. Therefore, cl. (*a*) of s. 423 can only apply to the High Court. A Second Class Magistrate trying a case of mischief, having held that there was a *prima facie* case against the accused, adjourned the trial, to enable the accused to adduce evidence. On that day the Magistrate acquitted the accused under s. 247, as the complainant was not present. The District Magistrate on appeal reversed the order of the Subordinate Magistrate and directed a re-hearing. *Held*, that the District Magistrate had no power to make such an order. RANGASWAMI AYYANGAR v. NARASIMHULU NAYAK, **7 M. 213=2 Weir 477=8 Ind. Jur. 247.** [*F.*, 15 Cr. L.J. 236=23 Ind. Cas. 188=26 M.L.J. 160=1914, M.W.N. 273.]

(24)—*Powers of Government—How to be exercised.*—The right of appeal vested in the Local Government is a right which should be advanced with care and caution. Where a Sessions Judge, sitting as a Court of Appeal, erred upon a question of law, and his error of law led him to set aside the conclusion of the Magistrate convicting the accused upon facts that he himself would probably have accepted, but for the error of law into which he had fallen, *held*, that the High Court could exercise the powers vested in it. QUEEN-EMPRESS v. TIMMAL, **21 A. 122=A.W.N. 1898, 208.**

(25)— "*Appellate judgment of acquittal,*" *meaning—Crim. Pro. Code* (1872), *s.* 272.—The words ' appellate judgment of acquittal ' in Act X of 1872, s. 272, were meant to include all judgments of an Appellate Court by which a conviction is set aside. GOVERNMENT OF BENGAL v. GOKOOL CHUNDER CHOWDHRY, **24 W.R.Cr. 41.**

(26)—*Crim. Pro. Code* (1861), *s.* 277—*Acquittal by appellate Court without any appeal before it against Subordinate Magistrate's order.*—Where, on two persons being convicted, the case of one was submitted to the District Magistrate for enhanced punishment, and the latter enhanced the sentence, and at the same time acquitted the other, *held* that the District Magistrate had no jurisdiction to acquit in the absence of any appeal before him. CROWN v. MONINDA, **5 P.R. 1869, Cr.**

(27)—*Crim. Pro. Code* (1872), *ss.* 272, 297—*Arrest pending appeal.*—After the admission of an appeal from an acquittal by the High Court, the Court can order the arrest of the accused pending the appeal. EMPRESS OF INDIA v. MANGU, **2 A. 340, F.B.**

(28) — *Criminal appeal by Government—Arrest of accused.*—In a criminal appeal by Government to the High Court, the arrest of the accused may be ordered pending the appeal. QUEEN v. GOBIN TEWARI, **1 C. 281.** [*F.*, 2 A. 340, F.B.; *Appr.*, 2 A. 386.]

(29)—*Crim. Pro. Code* (1872), *ss.* 149, 272—*Person under arrest pending appeal—Admissibility of evidence against persons concerned in the same offence.*—Where a person accused of an offence was discharged by the Sessions Judge and he was re-arrested by the Magistrate pending an appeal from the acquittal to the High Court, and before the appeal was admitted, *held* that the re-arrest was lawful and absolutely necessary in the interests of justice, and his statement, after his re-arrest and pending his appeal, was admissible in the trial of another person who was arrested subsequently to the arrest of the former as being concerned in the same offence. (*Per Stuart, C.J.*) Assuming that the re-apprehension after an acquittal and on the same charge was unlawful, his statement and evidence although admissible, was not such evidence, as the Court would place much reliance upon. If his re-arrest was lawful, he was in the position of an accused person and Magistrate should not have examined him as a witness in the trial of the other accused. *Per Spankie, J.* EMPRESS OF INDIA v. KARIM BAKSH, **2 A. 386.**

(30)—*Acquittal—Appeal— Crim. Pro. Code* (1872), *s.* 297—*Re-trial.*—The High Court has no power to disturb an acquittal save on appeal by the Government. The provisions of s. 297

Appeal—continued.

——5.—**Appeal from acquittal**—*continued.*

only permit the High Court to interfere and order a new trial where an accused person has been discharged without being put on his trial. QUEEN v. BISHESHAR PANDEY, **6 N.W.P. 357.** [*D.*, 1 A. 139, F.B.]

(31)—*Crim. Pro. Code* (1882), *s.* 404—*Acquittal, appeal from.*—A Third Class Magistrate in trying a case under ss. 426 and 352, Penal Code, took the evidence of the complainant and adjourned the case for the examination of witnesses. On the day fixed, the witnesses on both sides appeared, but the complainant did not. The Magistrate, thereupon, acquitted the accused under ss. 247 and 250, Crim. Pro. Code, and ordered the complainant to pay a compensation of Rs. 5. On appeal the District Magistrate cancelled the order of acquittal and directed that the case should be tried *de novo*. *Held* that the order of the District Magistrate was *ultra vires*; also *held* that the Third Class Magistrate was not justified in acquitting the accused. EMPRESS v. HARDEO SINGH, **A.W. N. 1891, 120.** [*F.*, 15 Cr. L.J. 236 = 23 Ind. Cas. 188 = 26 M.L.J. 160.]

(32)—*Crim. Pro. Code, Act* X *of* 1872, *ss* 297, 460 — *Improper acquittal — Retrial —Proper course.*—When the accused person has been improperly acquitted by a Magistrate having jurisdiction, the High Court will not interfere in revision and order a re-trial on a fresh charge. The proper remedy in such a case appears to be for the Local Government to direct an appeal under s. 272 of the Crim. Pro. Code. REG. v. PIRKHAN, **Rat. Un. Cr. C. 73.**

(33)—*Crim. Pro. Code* (1872), *s.* 272 (=*s.* 417 *of the present Code*)—*Limitation Act,* IX *of* 1871, *art.* 153 (=*Art.* 155, *act* XV *of* 1877)—*Appeal by Government—Acquittal.*—An appeal by a Local Government, against an acquittal, will be in time if presented within six months from the date of the acquittal, though more than 60 days from that date. EMPRESS v. JYADULLA, **2 C. 436, F.B.**

(34)—*Trial by Jury—Accused charged with murder acquitted of that charge out convicted of culpable homicide not amounting to murder —Appeal by Government.*—Where, in a case tried by a Jury, an accused charged with murder, is acquitted of that charge but is convicted of culpable homicide not amounting to murder and an appeal is preferred by the Government Pleader at the instance of the Legal Remembrancer, *held*, an appeal did lie by Government so far as the charge of murder was concerned. EMPRESS OF INDIA v. JUDOONATH GANGOOLY, **2 C. 273.** [*F.*, 15 Cr. L.J. 236 = 26 M. L.J. 160 = 23 Ind. Cas. 188; *D.*, 13 Cr.L.J. 457 = 15 Ind. Cas. 89 = U.B.R. 1911, 1, 100.]

(35)—*Crim. Pro. Code, ss.* 417, 418 *and* 423 —*Order of acquittal passed in a trial by jury—Appeal on questions of fact.*—The provisions of s. 423 clearly show that an appeal against an order of acquittal in a case tried by jury must be supported upon a ground, which is covered by s. 418 of the Code, which provides, in cases of trial by jury, for an appeal on a matter of law only. Where the Local Government applied to the High Court, under s. 417 of the Code, against an order of acquittal, the grounds upon which the appeal was sought to be preferred being all questions of fact, the High Court rejected the application. GOVERNMENT OF BENGAL v. PARMESHUR MULLICK, **10 C. 1029.** [*R.*, 17 C.P.L.R. 75]

(36)—*Appeal from acquittal—Conviction—Commencement of sentence.*—Where on the appeal of the Government, an order of acquittal is set aside and sentence passed, the sentence will commence to run from the date of the committal of the accused to the jail, and not from the date of their arrest or of the sentence on the appeal. EMPRESS v. MAHUDDI, **6 C.L. R. 349.**

(37)—*Crim. Pro. Code* (1898), *ss.* 423, *cl.* 3, *and* 537—*Appeal by Government from an acquittal by a verdict of jury—Power of High Court to go into the evidence of the case.*—In an appeal by Government from an acquittal by a verdict of jury, the High Court cannot alter the verdict of the jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge or to a misunderstanding on the part of the jury as to the law laid down by him. If, on that ground, the High Court is to alter or reverse the verdict of the acquittal by the jury, its powers, under s. 423, cl. (*a*), are to reverse such order and direct that further inquiry be made or the accused be re-tried or committed for trial as the case may be, or, finding guilty, to pass sentence on him according to law. In order to determine if the verdict is erroneous, and, if so, which of these powers the High Court should exercise, it is absolutely necessary for it to go into the facts and to consider the evidence in the case before passing orders in it. (*Per Davies, J.*) As soon as the verdict of the jury is reversed, the Court has the same power to deal with the case that it has to deal with a case triable by assessors as soon as the order of acquittal by the Judge is set aside; that is, the Court may order a retrial or may find the accused guilty and pass sentence on him according to law. The High Court ought not to order a retrial on the ground of misdirection unless it is satisfied that the misdirection has, in fact, occasioned a failure of justice. (*Per Benson, J.*) EMPEROR v. EDWARD WILLIAM SMITHER, **26 M 1 = 2 Weir 521.**

See ACT XV OF 1877, s. 5, art. 157, 1 Weir 791 = 2 Weir 462.

Order of acquittal passed after cross-examination of prosecution witnesses subsequent to framing of charge—Appeal by Government against acquittal—Powers and duties of the High Court—*See* CRIM. PRO. CODE, 1898, ss. 256, 258, 417, **18 C.W.N. 666** = **15 Cr. L.J. 160** = **22 Ind. Cas. 736.**

Appeal—continued.

——5 —**Appeal from acquittal**—*concluded.*

See CRIM. PRO. CODE, 1898, ss. 404 to 417, 22 C. 377.

From acquittal — *See* CRIM. PRO. CODE, 1898, s. 438, 25 A. 128=A.W.N. 1902, 200.

Order of acquittal—Reference by District Magistrate—Right of appeal against acquittal —Revision—Practice—*See* CRIM PRO. CODE, 1898, ss. 438, 439 (5), 12 A.L.J. 255=15 Cr. L. J. 304=23 Ind. Cas. 512.

See CRIM. PRO. CODE, 1898, s. 439, 1 P.L.R. 1904.

See PENAL CODE, s. 193, 9 C.L J. 378.

See PENAL CODE, ss. 425, 430, 14 P.R. 1909, Cr.=25 P.L.R. 1910.

See REVISION—ACQUITTALS, 14 M. 363=2 Weir 571, 157 P.L.R. 1908=22 P.W.R. 1908, 13 P.W.R. 1907, Cr.=5 Cr. L.J. 438=72 P.L. R. 1908.

——6.—**Appeal—Practice and Procedure.**

(1)—*Criminal appeal—Procedure.*—The sound rule to apply in trying a criminal appeal, where questions of disputed fact are in issue, is to consider whether the conviction is right, and in this respect, a criminal appeal differs from a civil one. There the Court must be convinced, before reversing a finding of fact by a lower Court that the finding is wrong. PROTAP CHUNDER MUKERJI v. EMPRESS, **11 C. L.R. 25.** [*F.*, 23 C. 347 ; *R.*, 20 C. 353, 7 P.R. 1904, Cr.=97 P.L.R. 1904, Cr.]

(2)—*Crim. Pro. Code* (1872), *ss.* 279 *and* 280 (=*ss.* 422 *and* 423 *of the Code of* 1898)—*Right of complainant to be heard on appeal.*—Under ss. 279 and 280 of the Code of 1872, a complainant cannot claim as of right to be heard in the appeal. The matter was one which was left in each case to the discretion of the Court, HIGH COURT PROCEEDINGS, 6TH NOVEMBER 1874 NO. 1719, **2 Weir 476=7 M.H.C. App. 42.**

(2-a)—*Public prosecutor—Legal Remembrancer of Bengal, appeal by—Government of Behar and Orissa—Acquittal, order of—Crim. Pro. Code.* s. 417.—The mere fact that a person has been directed to present an appeal to the High Court from an order of acquittal does not involve his appointment as Public Prosecutor for the purposes of the case. In a case of this description where the liberty of the subject is involved, and an appeal is sought to be preferred against an order of acquittal, the statute must be strictly construed, and full compliance with its provisions is required. EMPEROR v. GAYA PROSAD, **18 C.L J. 519=18 C.W.N. 279 =22 Ind. Cas. 190=15 Cr. L.J. 46=41 C. 425.**

(3)—*Crim. Pro. Code* (1898), *s.* 419—*Presentation of petition of appeal.*—The word "presented" in s. 419 of the Code, evidently means that such petition shall be delivered to the proper officer of the Court either by the appellant or by his pleader. In order to secure this, it is necessary that the presentation be made in person. *Held*, that a petition of appeal found in a petition box was rightly returned for legal presentation, inasmuch as the petition might have been deposited there by a third person who could not legally present it. QUEEN-EMPRESS v. VASUDEVAYYA, **19 M. 354=2 Weir 468.**

(4)—*Crim. Pro. Code* (1898), *s.* 419—*Presentation of appeal by post, validity of.*—A petition of appeal sent by post is not presented to the Court within the meaning of s. 419, Crim. Pro. Code. The word "presented" in that section means that such petition shall be delivered to the proper officer of the Court either by the appellant or by his pleader. QUEEN-EMPRESS v. ARLAPPA, **15 M. 137=2 Weir 468.** [*F.*, 19 M. 354=2 Weir 469 ; *Appl.*, 8 C.P.L.R 93.]

(5)—*Crim. Pro. Code* (1898), *s.* 419—*Presentation of appeal by pleader's clerk.*—Presentation of an appeal petition by the appellant's pleader's clerk is equivalent to a presentation by the pleader himself, when the petition of appeal is signed by the pleader and he is duly authorized. QUEEN-EMPRESS v. KARUPPA UDAYAN, **20 M. 87=2 Weir 470.**

(6)—*Presentation of appeal by pleader's clerk.*—An authorized pleader may present a petition of appeal by the hand of his clerk, and such presentation is equivalent to a presentation by a pleader himself. But a pleader is not competent to present an appeal by a person who is not his clerk and over whose conduct and action he has no control. QUEEN EMPRESS v. RAMASAMI, **21 M. 114=2 Weir 470.** [*F.*, 5 Ind. Cas. 330.]

(7)—*Rule to show cause—Discretion of Court hearing the rule—Duty of appellate Court.*—Although rules to "show cause, why the conviction of a person should not be set aside" are frequently granted on particular grounds, it is very unusual to tie the hands of the Court which is to hear the rule as to the action it should take if the conviction is set aside. This is a matter which should be left to the discretion of the Court which hears the rule. Rule was granted by a Division Bench of the High Court calling upon a Magistrate " to show cause by the conviction of the petitioner should not be set aside and the case sent back for retrial." *Held*, that the Judges who granted the rule did not intend to say that the Court hearing the rule should have no power to discharge the accused person. An appellate Court is to come to a conclusion for itself upon the evidence on the record, assisted so far as it might be by such reasons or arguments as it might elicit from the conclusions and reasons contained in the judgment of the original Court. If the Judge of the appellate Court entertain any doubt about the correctness of the conviction or the commission of the offence, he should discharge the accused. It is not necessary in criminal cases that the appellant should clearly establish that the order of the Lower Court was wrong,

Appeal—continued.

——6.—**Appeal—Practice and Procedure** —*continued.*

and in this respect a criminal appeal differs from a civil appeal. MILAN KHAN v. SAGAI BEPARI, **23 C. 347**. (11 C.L.R. 25, *F.*) [*R.*, 97 P.L.R. 1904=7 P.R. 1904, Cr., 21, 17 C. P. L.R. 75, 17 C.P.L.R. 97.]

(8)—*Crim. Pro. Code* (1872), *s.* 476—*Convictionf or graver offence on appeal—Withdrawal of petition of appeal.*—The appellate Court should not alter a conviction so as to find the appellants guilty of a graver offence than that with which they had been charged on their trial, unless they are allowed an opportunity of defending themselves against the charge so altered. [*R.*, 26 C. 863=8 C.W.N. 653, 3 L.B.R. 232.] Although a petition of appeal can be withdrawn, at the option of the appellant, before the appellate Court has decided to hear it, a petition for withdrawal, presented at the last moment does not debar the appellate Court, which has perused or had heard the evidence read, from dealing with the appeal on the merits. *In the matter of* DWARKANATH MANJHEE, **6 C.L.R. 427**. (5 C. L.R. 372, *Dist.*)

(9)—*Crim. Pro. Code*, s. 423—*High Court's power on appeal to alter the finding of the Lower Court.*—It is doubtful, whether the High Court has power, under s. 423, Crim Pro. Code, on holding that the conviction of a person for an offence charged in the sessions trial was not sustainable, to alter the finding to a conviction for some other offence, *e.g.*, under s. 161, for which the accused had not been charged or tried. QUEEN-EMPRESS v. IMDAD KHAN, **8 A. 120=A.W.N. 1886, 7.** [*R.*, 3 L.B.R. 232; *D.*, U.B.R. 1903, Third Quarter, Penal Code, 9, 13 Cr. L J. 305=14 Ind. Cas. 849=1912 M. W.N. 207=22 M.L.J. 490=11 M.L.T. Sup. 1 =35 M. 247.]

(10)—*Appellate Court's power to alter a sentence of fine into one of imprisonment.*—A Sessions Judge has no power to enhance a sentence in appeal, by altering a sentence of fine into one of imprisonment. QUEEN-EMPRESS v. DANSANG DADA, **18 B. 751.**

(11)—*Crim. Pro. Code* (1882), s. 423 (*b*) (3)—*Enhancement of sentence.*—The alteration by an appellate Court of a sentence of fine of Rs. 50, or in default two months' simple imprisonment, to one of six months' rigorous imprisonment is an enhancement of the sentence. QUEEN-EMPRESS v. LACHMI KANT, **18 A. 301=A.W. N. 1896, 58.** (18 B. 751, *R.*)

(12)—*Petition of appeal, withdrawal of—Enhancement of sentence.*—A petition of appeal presented for admission may be withdrawn. A Judge who disallowed such withdrawal and enhanced the sentence was held to have acted wrongly, and the enhancement order was set aside. *In the matter of* CHUNDER NATH DEB, **5 C.L.R. 372.** [*D.*, 6 C.L.R. 427.]

(13)—*Crim. Pro. Code* (1882), s. 423 (*b*), *subs.* 3—*Enhancement of sentence by appellate Court—Power of High Court—Penal Code, ss.* 323 *and* 392.—The accused was convicted of robbery (s. 392, Penal Code) and hurt and sentenced for the former offence to ten months' rigorous imprisonment, and for the latter to one day's rigorous imprisonment. On appeal, the Sessions Judge set aside the conviction on the charge of robbery, but, confirming the conviction for hurt, sentenced the accused to six months' rigorous imprisonment. *Held*, that the Sessions Judge had no power to pass such sentence, but the High Court could confirm such sentence if it would meet the ends of justice. ARPIN SHEIK v. AROBDI DATIA, **24 C. 317, Note.** [*F.*, 3 N L.R. 67; *R.*, 24 C. 316.]

(14)—*Acquittal — Competency of appellate Court to convict accused of offences not charged.*—Where, on an appeal from a conviction under s. 302, I.P.C, the appellate Court came to the conclusion that the offence under s. 302 was not proved against the appellants, but it was brought to the notice of the Court that there was evidence on the record which might support, as against some of the appellants, a conviction under s. 404 or s. 414, I.P.C., the appellate Court acquitted the accused, but declined to enter into the question whether they were liable to be convicted under s. 404 or s. 414, I.P.C. QUEEN-EMPRESS v. YUSUF, **20 A. 107 =A.W.N. 1897, 210.** (A.W.N. 1887, 130, *R.*)

(15)—*Crim. Pro. Code*, ss. 280, 297—*Death of appellant—Abatement of appeal.*—The Code has not made any provision for the continuance of the appeal either by the heir, devisee, or executor of the deceased convict or by any other person. The appeal abates upon the appellant's death. But the High Court has the right to call for the record, and make such order thereon as it may deem just. IMPERATRIX v. DONGAJI ANDAJI, **2 B. 564.**

(16)—*Crim. Pro. Code* (1898), s. 423—*Power of appellate Court to order re-trial.*—There is nothing in the terms of s. 423 (1) (*b*) to limit the powers of an appellate Court to order a retrial, the only restriction imposed being that it cannot enhance the sentence on an appeal from a conviction. Therefore, the power of an appellate Court to order a new trial is not confined to a case where the conviction and sentence are set aside for want of jurisdiction in the Court that tried the case. SATIS CHANDRA DAS BOSE v. QUEEN-EMPRESS, **27 C. 172=4 C.W.N. 166.** (15 A. 205, 23 C. 975, *F.*; 8 A. 14, *Disappr.*) [*R.*, 35 M. 243=12 Cr. L J. 269=10 Ind. Cas. 372=21 M.L.J. 805=10 M.L.T. 66= (1911) 2 M.W.N. 106, 11 Cr. L.J. 295=6 Ind. Cas. 251, 7 C.W.N. 301, 17 C.P.L.R. 97; *L.*, 41 C. 350=18 C. W. N. 498=15 Cr. L.J. 385= 23 Ind. Cas. 985.]

(17)—*Crim. Pro. Code* (1872), s. 278 (=*s.* 421 *of the Code of* 1898) — *Re-admission of appeal rejected for default of appearance.*—When an appeal has been rejected without hearing the appellant's pleader, because of his default, and it is afterwards proved to the satisfaction of

Appeal—continued.

——6 —**Appeal—Practice and Procedure** —*concluded.*

the appellate Court that an adequate excuse has been made out for the pleader's non-appearance, it is open to that Court to re-hear the appeal on its merits. HIGH COURT PROCEEDINGS, 7TH NOVEMBER 1873, NO. 1875, **2 Weir 471 = 7 M.H.C. App. 29.**

(18)—*Crim. Pro. Code* (1872), *ss.* 278, 279—*Notice to appellant of day of hearing of appeal.*—The fact that the appellant's pleader is present in Court, when an order admitting an appeal is passed, will not save the necessity of giving separate notice to the appellant. Since s. 279 lays down that the notice is to be given to the appellant, a substituted notice to the appellant's pleader or mukhtear is not sufficient. *In the matter of* GOPAL CHANDRA MUNDLE, **10 C.L.R. 57.**

(19)—*Crim. Pro. Code, ss.* 517 *and* 520—*Order for disposal of property regarding which offence is committed—Appeal.*—An appeal lies against an order passed under s. 517 of the Code, though there be no appeal against the finding in the case in which the order was passed, inasmuch as the words "Court of Appeal" in s. 520 are not to be read as restricted to "a Court of Appeal before which an appeal is pending." The wording of s. 520 is sufficient to show that the Sessions Court, as the court to which appeals ordinarily lie from the decisions of the First-class Magistrate, has power to modify, alter or annul an order under s. 517, made by the Magistrate. QUEEN EMPRESS v. AHMED, **9 M. 448 = 2 Weir 672.** [*R.*, 14 C.P.L.R. 60 (61), 17 C.P.L.R. 107 (110), 14 Cr. L.J. 27 = 18 Ind. Cas. 171 (174) = 24 M.L.J. 1 = 14 M.L.T. 431 = 1913 M.W.N. 851.]

(20)—*Criminal appeal—Presentation by person authorised by appellant—Limitation Act* (IX *of* 1871), *art.* 152.—A petition of criminal appeal may be presented by any person authorised by the appellant to present it. Such presentation is sufficient for the purposes of sch. II, art. 152, Limitation Act (IX of 1871). *In the matter of* SUBBA AITALA, **1 M. 304 = 2 Weir 469.** [*R.*, 6 B. 14.]

(21)—*Presentation of appeal—Limitation—Delay in obtaining copies.*—In order to compute the period of limitation for the presentation of an appeal, every day of delay in obtaining copies not attributable to the party should be deducted. *In re* TOTI CHENGAN, **6 M.H.C. 349.**

(22)—*Appeal presented out of time—Rejection.*—Under s. 415 of the Crim. Pro. Code, 1861, an appeal preferred out of time and without any explanation of the delay may be rejected at once. *In re* ELAHEE BUKSH, **5 W.R. Cr. 80.**

See CRIM. PRO. CODE, 1898, ss. 418, 423, 21 C. 955.

——7.—**Appeal to Privy Council.**

(1)—*Leave to appeal to Privy Council in criminal cases.*—In criminal cases, the High Court will not, in general, grant leave to appeal to the Privy Council, unless some important question

Appeal—continued.

——7.—**Appeal to Privy Council**—*continued.*

of law or practice, or jurisdiction, is involved. Considerations that guide the Court in granting leave to appeal in such cases stated, and instances in which such leave has been granted, mentioned. REG v. PESTANJI DINSHA, **10 B.H.C. 75.**

(2)—*Practice—Special leave to appeal—Criminal proceedings.*—It would be against the constitutional duty of the Privy Council to assume the position of a Court of Criminal Appeal. The Privy Council can only interfere where they find that what has been done has been grossly contrary to the forms of justice or violates fundamental principles. GEORGE STAUNTON CLIFFORD v. THE KING-EMPEROR, **1914 M.W.N. 11 = 16 Bom. L.R. 1 = 19 C.L.J. 107 = 18 C.W.N. 374 = 12 A.L.J. 75 = 15 M.L.T. 84 = 7 Bur. L.T. 37 = 22 Ind. Cas. 496 = 15 Cr. L.J. 144 = 2 Bom. Cr. Cas. 173 = 41 C. 568, P.C.**

(3)—*Leave to appeal — Application to the executive authorities for relief—Practice.*—On an application for leave to appeal from the sentence of the Sudder Nizamut Adawlut (the chief native Criminal Court of Appeal in Bengal), the Judicial Committee, though of opinion that justice had not been done in the Court below, declined to determine the question of the prerogative of the Crown to admit an appeal in criminal matters and to advise such admission, on the ground that such course might be detrimental to the general administration of criminal justice in Her Majesty's colonial and foreign possessions; but suggested an application by the petitioner to the executive authorities for relief, with an intimation of their Lordships' opinion of the hardship and injustice of the particular case. JOYKISSEN MOOKERJEE, *Petitioner*, **1 W.R.P.C. 13 = 9 M.I.A. 168 = 1 Ind. Jur. O.S. 61.**

(4)—*S.* 124-*A*, *Penal Code—Leave to appeal—Practice.*—Where leave to appeal to the Privy Council from a conviction under s. 124-A, was applied for before the Privy Council, their Lordships refused to accord permission, holding that no case had been made out consistently with the rules by which their advice to Her Majesty had been hitherto guided in giving leave to appeal in criminal cases. BAL GANGADHAR TILAK v. QUEEN-EMPRESS, **22 B. 528, P.C. = 25 I.A. 1 = 7 Sar. 270.** [*R.*, 34 C. 991.]

(5)—*Practice—Criminal proceedings—Special leave to appeal—What the applicants must show by their petition.*—His Majesty will not review criminal proceedings, unless it be shown that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done ((1887) 12 App. Cas. 459, *R*). The applicants ought to show the materials upon which one of those propositions can be established and ought fully to inform the Board of the facts. J. S. B. BIRCH v. EMPEROR, **13 Bom.L.R. 9, P.C. = 8 A.L.J. 147 = 9 M.L.T. 200 = 21 M.L.J. 374 = 9 Ind. Cas. 581 = 13 C.L.J. 129 = 12 Cr.L.J. 100 = 1911 2 M.W.N. 159.**

Appeal—continued.

——7.—Appeal to Privy Council—*continued.*

(6)—*Leave to appeal to the Privy Council in criminal cases—Grave and substantial injustice to be shown—Crim Pro. Code* (*Act* V *of* 1898), *ss.* 233, 234, 235, 236, 237 *and* 239—*Joinder of charges.*—Before granting leave to appeal, in criminal cases, to the Judicial Committee of the Privy Council the High Court must be satisfied that, by a disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, substantial and grave injustice has been done. Ss. 234 235, 236 and 239 of the Crim. Pro. Code, referred to as exceptions in s. 233, are not mutually exclusive; otherwise, the provisions of s. 236 or s. 237 can never be invoked to prevent a miscarriage of justice arising from a failure to make good all the details of a charge joined with two other charges under s. 234. The Legislature hardly intended that a joint trial of three offences under s. 234 should prevent the prosecution from establishing at the same trial the minor or alternative degrees of criminality involved in the acts complained of. Ss. 235 and 236 may be resorted to in framing additional charges where the trial is, under s. 234, of three offences of the same kind committed within a year. *In re* BAL GANGADHAR TILAK, **10 Bom. L.R. 973=33 B. 221=4 M.L. T. 450=9 Cr.L J. 226.**

(7)—*Leave to appeal to the Privy Council in criminal cases, when may be given—Invasion of liberty and just rights of a citizen—Embezzlement—Criminal and civil liability, distinction between — Costs against Crown in criminal appeal.*—The appellant, who was a member of a firm, was authorized by the guardian of two minors by a power-of-attorney to act for the guardian in collecting and investing the minors' property. Acting under this authority funds were received and remittances made from time to time by the appellant's firm with whom an account was opened in the name of the minors. A certain amount due to the minors from a debtor was paid by him in the shape of crediting it to the appellant's firm in their account with their bankers which account was overdrawn. The minors' account with the appellant's firm, was duly credited with that amount. The appellant being thereafter asked to give a guarantee for the funds of the minor in his hand, gave security to the satisfaction of the authorities. Thereafter criminal proceedings were instituted against the appellant who was tried by the Chief Justice without a jury and convicted of having embezzled the minors' money: *Held*, that the facts did not, on any just or legal view of them, warrant a conviction, and the grounds of distinctions between the categories of liability in a civil as distinguished from a criminal suit appeared in the present case to have been left out of judicial view. That the Judicial Committee of the Privy Council does not lightly interfere in criminal cases, but in the present case although the proceedings taken were unobjectionable in form, justice had been gravely and injuriously miscarried, and the sentence pronounced against the appellant formed such an invasion of liberty and such denial of his just rights as a citizen that their Lordships felt called upon to interfere. Having regard to the exceptional nature of the case, their Lordships directed the Crown to pay to the appellant the costs of the appeal. LOUIS EDOUARD LANIER v. THE KING, **18 C.W.N. 98, P.C.=26 M L J. 1=15 Cr. L J. 305=23 Ind. Cas. 657.** [*R.*, 18 C.W.N. 785.]

(8)—*Appeal—Privy Council—Matter of original jurisdiction.*—No appeal lies to the Privy Council from any order of the High Court in any matter of original jurisdiction. *In re* GOOROO DOSS ROY, **18 W.R. 407.**

(9) *Privy Council—Leave to appeal—Order of High Court on appeal from conviction by Sessions Judge.*—Leave to appeal to the Privy Council cannot be granted from an order of the High Court in an appeal from the finding and sentence of a Sessions Judge. *In re* AMEER KHAN, **18 W.R. 407, Note.**

(10)—*Dismissal of Munsiff for corruption—Appeal to Privy Council if lies.*—An order of the High Court at Calcutta, under s. 26, cl. 2 of Bengal Regulation V of 1831, dismissing a Munsiff for corruption in the exercise of his functions as Judge, is final, and there is no jurisdiction in the Judicial Committee to admit a special appeal therefrom. *In the matter of* SREE MOHUN GHUTUCK, **13 M.I.A. 343=2 Sar. 549.**

(11)—*Conviction for felony — Appeal in criminal cases, if lies.*—Upon a petition, praying for leave to appeal from a conviction for felony, held by the Judicial Committee of the Privy Council, that there was no power reserved to the Crown by the Charter of the Supreme Court, Bombay, to allow appeals in criminal cases, such appeal being confined to civil cases only. QUEEN v. EDULJEE BYRAMJEE, **3 M.I.A. 468=5 Moo. P.C. 276=1 Sar. 305.**

(12)—*Leave to appeal to Privy Council on the ground of misdirection of jury.*—Although there are very special and exceptional circumstances in which the Privy Council grants leave to appeal in criminal cases, yet it would be contrary to its practice and very mischievous, if any countenance were given to the view that an appeal will be allowed in every case in which it is shown that the Judge has misdirected the jury. *In the matter of* MACCREA, **15 A. 310, P.C.=20 I.A. 90=6 Sar 344=17 Ind. Jur. 430.** [*R.*, 2 A.L.J. 718.]

(13)—*Conviction for murder—Application for special leave to appeal — Misdirection.*—An application was made to the Privy Council for special leave to appeal from a judgment of the Supreme Court of Ceylon, in its criminal jurisdiction, upholding the conviction and sentence, in a trial for murder at the Colombo

Appeal—continued.

——**7.—Appeal to Privy Council**—*continued.*

Criminal Sessions, on the ground, *inter alia*, that the Judge, instead of directing the jury as to the absence of corroboration, made the general remark that if juries were to throw up a case on account of contradiction and falsehoods, there would be an end to the criminal law of the island; an application was also made for the mitigation of punishment pending the appeal, and for the admission of the accused to bail. Special leave to appeal was granted, directing the petitioners to address the Ceylon Government or the Supreme Court as to the mitigation of punishment or bail. LOKU NONA v. KING, **14 Bur. L.R. 148, P.C.**

(14)—*Leave to appeal to Privy Council—Crim. Pro. Code, s.* 404—*Letters Patent*, 1865, *cl.* 41.—The High Court has no power, under cl. 41 of the Letters Patent, to grant leave to appeal to Her Majesty in Council from an order made or decision given by it in a case decided by a full power Magistrate and referred to it by the District Magistrate, under s. 404 of the Crim. Pro. Code (*N.B.*—This was an application by the Government for leave to appeal from 7 B.H.C. Cr. 6). REG v. REAY, **7 B H. C. Cr. 77.**

(15)—*Leave to appeal to Privy Council—Decision of third Judge on reference—Calcutta Letters Patent*, 1865, *cl.* 41.—Leave to appeal to Privy Council from a decision of a third Judge in a criminal case on a reference arising from difference of opinion of two Judges of the High Court, being one not coming under cl. 41 of the Calcutta Letters Patent, refused. ATAUR v. KING EMPEROR, **18 C.L.J. 121=14 Cr. L. J. 672=21 Ind. Cas. 912.**

See BAIL, 24 M. 161=2 Weir 657, 19 P W. R. 1908, Cr.=15 P.L R. 1908=8 Cr. L.J. 89.

Order passed by High Court in revision—Whether appeal to Privy Council lies—*See* CRIM. PRO. CODE, 1898, s. 118, 18 C.L.J. 119 =21 Ind. Cas. 470=14 Cr. L.J 598.

See LEGAL PRACTITIONERS—ADVOCATE, 4 Cr. L.J. 236, P.C.

High Court's power to grant leave to appeal to Privy Council against order under cl. 10 of Letters Patent—Order granting leave whether may be reviewed at instance of Public Prosecutor—*See* LETTERS PATENT — LETTERS PATENT, 1865—CALCUTTA, cls. 10. 39, 15 Cr. L.J. 52=22 Ind. Cas. 324=41 C. 734.

Order of High Court refusing to issue writ of *certiorari* and to cancel proceedings of Deputy Collector acting as Income-tax officer—No appeal to Privy Council—*See* LETTERS PATENT—LETTERS PATENT, 1865—MADRAS, cls. 39, 11, 12, 13, 14 M.L.T. 421=25 M.L.J. 565.

See PENAL CODE, ss. 188, 290, 7 M.L.J. 33, P.C.

Practice of Privy Council in interfering with criminal trials—Misdirection to jury when sufficient for interference by Privy Council—*See* PENAL CODE, s. 499, excep. 9 and s. 52, 18 C W.N. 785=26 M.L J. 621=15 Cr.L.J. 309 =23 Ind. Cas 661=16 M.L T. 79=1914 M.W. N. 506=12 Ind. Cas. 1042=20 C.L.J. 161= 16 Bom. L.R. 544=2 Bom. Cr. Cas. 207=7 Bur. L.T. 167=41 C. 1023, P.C.

Privy Council when will interfere with order in criminal case—*See* ST. 53 AND 54, VIC., C. 37, 18 C.W.N. 705=15 Cr. L.J. 326=23 Ind. Cas. 678, P.C.

Appearance.

See PERSONAL APPEARANCE.

Appellant.

See APPEAL.

See CRIM. PRO. CODE, 1898, ss. 420, 421, 422, 423, 13 A. 171=A.W.N. 1891, 48.

Summary dismissal of appeal—Reasonable opportunity of being heard to be given to, or his pleader—*See* CRIM. PRO. CODE, 1898, s. 421, 29 M. 236=4 Cr. L.J. 57.

Appellate Court.

See APPEAL.

See CRIM. PRO. CODE, 1898, ss. 404 to 431.

See SECURITY TO KEEP THE PEACE—APPELLATE COURT.

See SENTENCE—POWERS OF APPELLATE COURT.

(1)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 106 —*Appellate Court—Power to order security to be given.*—An appellate Court cannot, in an appeal from a conviction, order security to be furnished under s. 106 of the Crim. Pro. Code. EMPRESS v. PEMAN, **A.W.N. 1890, 170.**

(2) *Appeal, criminal—Duty of Court of appeal —Conviction against each accused to be considered.*—The first duty of a Court of criminal appeal is to find whether the conviction had by the lower Court against each of the accused persons is sustainable. A general agreement with the lower Court cannot be sufficient to uphold the conviction of each particular individual, each of whom is entitled to a finding on the facts that he did or did not take part in the alleged offence; and where there is no such finding, there must be a re-hearing of the appeal. JATRA MOHAN BYSACK v. AKHIL CHANDRA BYSACK, **9 Ind. Cas. 261=12 Cr. L.J. 43.**

(3)—*Court of Appeal—Competency to alter the finding of the lower Court.—Per Brodhurst, J.*—A Court of appeal is not competent to alter the finding of a Magistrate, so as to convict an accused person of an offence which the lower Court is not competent to try. QUEEN EMPRESS v. PERSHAD, **7 A. 414=A. W.N. 1885, 105.** [*Commented upon*, 8 A. 576, F.B.]

Appellate Court—*continued.*

(4)—*Crim. Pro.Code*, 1882, s. 423—*Powers of appellate Court—Whether competent to alter conviction by adding conviction for another offence.*—The accused were convicted by a second class Magistrate under s. 323, I.P.C. On appeal, the appellate Court confirmed the conviction under s. 323, I.P.C., and also convicted the accused under s. 147, for which they were not tried by the second class Magistrate: *held* that, as the accused were not tried for an offence under s. 147, the appellate Court could not legally convict them of it. QUEEN-EMPRESS v. BASAPPA, QUEEN EMPRESS v. MALLKAPPA, QUEEN-EMPRESS v MURGAPPA, QUEEN-EMPRESS v. YELLAPPA, QUEEN-EMPRESS v SHIVAPPA, **Rat. Un. Cr. C 353 = Cr. Rg. 41 of 1887.**

(5)—*Power of, to alter finding limited by provisions of s. 233, Crim Pro. Code.*—The power of altering the finding, while maintaining the sentence, conferred on appellate Courts by s. 423 (1) (*b*), Crim. Pro. Code, does not *empower those* Courts to act in contravention of the provisions of s. 233, Crim. Pro. Code. SAHIB SINGH v. EMPEROR, **38 P.R. 1905 = 115 P.L R. 1905.**

(6)—*Crim. Pro. Code* (1882), ss. 238, 423 (*b*) (2)—*Charge of offence under s. 457, I.P.C.—Conviction by appellate Court under s. 414, I.P.C:*—The accused was convicted, by a second class Magistrate of house-breaking by night, under s. 457, I.P C. In appeal, the first class Magistrate altered the conviction to one under s. 414 of the Code. *Held*, (1) that s. 457, I.P. C., applied to a composite offence, and, under s. 238, Crim. Pro. Code, an accused may be convicted of any element of the composite offence; (2) that under s. 423 (*b*) (2) of the Crim. Pro. Code, it was competent to a Court of appeal to record a new finding and sentence. QUEEN EMPRESS v. BALU, **Rat. Un. Cr. C. 293 = Cr. Rg. 37 of 1886.**

(7)—*Crim. Pro. Code* (1882), s. 425—*Enhancement of sentence by Appellate Court—Appellate Court quashing conviction on one charge but acquitting on the other—Sentence.*—An appellate Court has no power to maintain the entire sentence passed by the original Court, when it reverses the conviction on one of the charges, such a maintenance being an enhancement of the sentence. QUEEN EMPRESS v. HAMMA, **22 B. 760.** [*F.*, 1 M.L.T. 403 = 5 Cr. L. J. 88 = 30 M. 48; *R.*, 3 N.L.R. 67 = 6 Cr. L.J. 43.]

(8)—*Solitary confinement—Enhancement.*—When an appellate Court reduces the term of the imprisonment but orders a term of solitary confinement, this is an enhancement of the sentence and is illegal. QUEEN-EMPRESS v. PEMAN, **A.W N. 1890, 170.**

(9)—*Remission of sentence.*—A Sessions Judge as a Court of appeal, is not competent to remit the remainder of the appellant's sentence, on the ground of the youth of the appellant, and of his father's services. It is an usurpation of the powers of Government. CROWN v. LOODUN, **11 P.R. 1869, Cr.**

Appellate Court—*continued.*

(10)—*Alteration of sentence—Powers of.* It is a rule underlying the whole fabric of appellate jurisdiction, that the power of an appellate Court is measured by the power of the Court from whose judgment or order the appeal before it has been made. This is equally so in the Civil and Criminal branches of the law of procedure. It is a fundamental principle that every Court of appeal exists for the purpose, where necessary, of doing, or causing to be done, that which each Court subordinate to its appellate jurisdiction should have, but has not, done, or caused to be done, and nothing further. Therefore, the jurisdiction in appeal is necessarily limited in each case to the same extent as the jurisdiction from which that particular case comes. Where a criminal appellate Court alters a sentence of imprisonment into a sentence of fine, it cannot inflict a fine beyond the maximum which could have been imposed by the first Court. SITARAM v. EMPEROR, **7 N.L.R. 109 = 11 Ind. Cas. 788 = 12 Cr. L.J. 444.** (21 C. 622, 29 M. 190, 30 M. 48, *R.*)

(11)—*Crim. Pro. Code, s. 421—Rejection of appeal—Judgment.*—In rejecting an appeal under s. 421, Crim. Pro. Code, the appellate Court is not bound to write a judgment. QUEEN-EMPRESS v. WARUBAI, **20 B. 540.** [*F.*, 2 Weir 473 = 25 M. 534; *R.*, U. B. R. 1906, Second Quarter, Crim. Pro. Code, 49 = 4 Cr. L.J. 284.]

(12)—*Judgment of*—Courts subordinate to the revisional jurisdiction of the High Court should incorporate in their judgments materials to enable the High Court to grasp the nature of the case without reference to the record. SANWANT v. EMPRESS, **18 P.R. 1897, Cr.** (19 A. 506, *R.*)

(13)—*Summary dismissal by — Writing of judgment by, if necessary—Alteration or reduction of sentence—Crim. Pro. Code* (1882), *ss.* 421, 423, 424 *and* 367.—It is not necessary for an appellate Court to write a judgment while summarily dismissing an appeal under s. 421, Crim. Pro. Code. That section does not provide for any material alteration or reduction of any sentence. A sentence can only be reduced after an appeal is admitted and orders are passed under s. 423. In that case a judgment should be written as required by s. 367 read with s 424. NGA PO KIN v. QUEEN-EMPRESS, **L.B.R. 1893 1900, 606.** (22 C. 214, *F.*)

(14)—*Power of—Rejection of appeal.*—*Held*, that an appellate Court would not be exercising its discretion properly, if it was to reject an appeal by the accused, merely after perusing the Lower Court's judgment and the grounds of appeal and hearing the appellant's agent, without any reference to the lower Court's record, which the appellate Court had not before it. Such a procedure would be a ground for revision by the High Court. *Per Rattigan, J.*—What is contemplated by s. 278 is that the appellate Court exercising the discretionary powers of rejecting an appeal conferred by the section should do so, not arbitrarily, but on some sound judicial principles. An appellate Court

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which omits to send for and peruse the proceedings of the first Court, when the grounds of appeal impeach the findings of that Court, and raise objections which cannot fairly be disposed of without a reference to the record, commits an error of a material kind; the error consists in omitting to exercise a power which the Legislature has conferred in the interests of the accused person where a proper case for its exercise is shown to exist, and it is material because it affects the merits of the case and possibly occasions a failure of justice. *Per Beverley, J*—As it did not appear that the appellate Court could have satisfied itself on all material grounds of appeal without examining the records of the case, it would not be acting properly in rejecting the appeal without so doing. *Per Elsmie, J. (Contra)*—As the judgment of the Lower Court was sufficiently full and detailed to satisfy the appellate Court that the material points in the case, including those raised in the appeal, have been rightly disposed of, and as there was no *prima facie* ground for questioning the correctness of the Magistrate's conclusion or the legality of his proceedings, the appeal was properly disposed of, without sending for the record. LAL KHAN v. EMPRESS, **35 P.R. 1882, Cr.** (35 P.R. 1882, Cr., Note, 31 P.R. 1881, Cr., 5 P.R. 1876, Cr., *R.*).

(15)—*Appellate Court—Order for re-trial—Crim. Pro. Code* (1882), s. 423.—S. 423, Crim. Pro. Code, 1882, gives a discretion to the appellate Court to order a re-trial when the circumstances of the case require it. QUEEN-EMPRESS v. RUPYA, **Rat. Un. Cr. C. 245 = Cr. Rg. 12 of 1886.**

(16)—*Order for re-trial.*—The power of an appellate Court in an appeal from a conviction, is not restricted to making an order for the committal of the accused person, when the case is triable exclusively by the Court of Sessions. The section authorises the appellate Court to order a re-trial where necessary. QUEEN-EMPRESS v. SADASHIV BALKRISHNA VARTAK, **Rat. Un. Cr. C. 938 = Cr. Rg. 49 of 1897.**

(17)—*Order for re-trial*—Under the provisions of s. 423 (1) (*b*), the re-trial, if ordered, must be by a Court of competent jurisdiction subordinate to the appellate Court; the appellate Court cannot order the re-trial to proceed before itself. QUEEN-EMPRESS v. FAKIRA, **Rat. Un. Cr. C. 982 = Cr. Rg. 42 of 1898.**

(18)—*Order for re-trial.*—In an appeal from a conviction, the appellate Court is competent, after reversing the conviction, to order the re-trial of the appellant by a Court of competent jurisdiction, on the ground that the original Court, although possessing jurisdiction to try the case, had not the competency to adequately punish for the offence. DANI v. EMPRESS, **16 P.R. 1895, Cr.** (15 A. 205, 16 B. 580, *F.*; 18 A. 14, *N.F.*)

(19)—*Order for re-trial.*—Under s. 423 (5) of the Crim. Pro. Code, an appellate Court, being competent to order a re-trial of the accused by a subordinate Court of competent jurisdiction or to order him to be committed to the Sessions, should, instead of rejecting an appeal, referring the case to the High Court, reverse the finding and deal with the case under the powers conferred upon an appellate Court by the section above quoted. QUEEN-EMPRESS v. NGA SAN, HLA BAW, **L.B.R. 1893—1900, 128.**

(20)—*Duty of, to give the benefit of doubt to the appellant.*—The law of appeal constitutes the appellate Court a Judge of the facts as completely as the Court of first instance, and the former Court should give the benefit of the doubt to the accused, if it feels any doubt about the guilt of the accused. TURIN v. CROWN, **5 P.R. 1876, Cr.** [*R.*, 35 P.R. 1882.]

(21)—*Benefit of doubt to accused.*—Though in criminal cases, an appellate Court should be guided in its estimate of the evidence of a witness by remarks recorded by the first Court under s. 363, Crim. Pro. Code, as to the demeanour of that witness, such appellate Court is bound to independently consider the facts of the case, and the prisoner is entitled to the benefit of a reasonable doubt in the appellate no less than in the first Court. MOULA BAKHSH v. EMPRESS, **6 P.R. 1898, Cr.**

(22)—*Appellate Court to consider evidence independently—Weight to be attached to opinion of lower Court.*—In every appeal, and *a fortiori* in every reference under s. 34 of the Code of Criminal Procedure, it is obviously the duty of the Sessions Judge to carefully weigh the evidence himself and not to rely solely upon the weight attached to it by the Court whose order is appealed against or is referred to for confirmation. No doubt an appellate Court is right in attaching in all cases a certain weight, and in some cases very considerable weight, to the fact that the lower Court believed the witnesses for the prosecution; but even in such cases the appellate Court is not justified in placing complete reliance upon the lower Court's view as to the credibility of the witnesses. It is bound to look into all the circumstances of the case and to see whether they in any way impugn the statements made by them. KYAN ZAN v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 516.**

(23)—*Appellate Court not fully going into the evidence—Power of revision.* Where the appellate Court dismisses the appeal, and its order betrays little or no indication that it has examined the evidence or brought an independent judgment to bear on the main points, it becomes necessary to examine the case in greater detail than would ordinarily be justified on revision. MOHAMMAD SHAH v. CROWN, **16 P.W.R 1907, Cr. = 6 Cr. L.J. 137** (2 P.R. 1895, Cr., 14 A. 254, 25 M. 61, *R.*)

(24)—*Misquoting of section by Court—Duty of appellate Court.*—If a Judge or Magistrate misquotes the proper section which is applicable to the conviction, it is the duty of the superior Court, before which the matter may come afterwards, to look to the proper section of the law rather than, by attributing the conviction to

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the wrong section, cause a failure of justice. QUEEN-EMPRESS v. NARAYAN, **Rat. Un. Cr. C. 338=Cr. Rg. 29 of 1887.**

(25)—*Proceedings involving further inquiry or the taking of additional evidence.*—Any proceedings involving further enquiry or the taking of additional evidence under s. 422, Crim. Pro. Code, should be promptly completed by the lower Courts of criminal appeal. CRIMINAL CIRCULAR NO. 11 OF 1865, **4 W.R.Cr. Cir. 1.**

(26)—*Crim. Pro. Code* (1898), s. 428—*Appellate Court—Examination of further witnesses—Proceedings to be adopted* —If a Sessions Judge, hearing an appeal, thinks that the evidence of some more witnesses. who were not examined in the lower Court is necessary, he should proceed under cl. (1) of s. 428, Crim. Pro. Code. EMPEROR v. LUCHMUN SINGH, **31 C. 710.** [*D.*, 13 Cr.L.J. 457=15 Ind. Cas. 89=U.B. **R.** 1911, 100.]

(27)—*Powers of—Setting aside order for payment of Court-fees under s. 31 of Court Fees Act—Sentence.*—The order, directing the accused convicted of a non-cognisable offence, to repay to the complainant the fee paid by him on his complaint, does not form part of the sentence passed upon the accused for the offence. An appellate Court is not, therefore, competent to set aside the order of the trying Magistrate under s. 31 of the Court Fees Act. EMPEROR v. MADDIPATLA SUBBARAYADU, **31 M. 547=5 M.L T. 223=9 Cr.L.J. 83.**

(28)—*Order of confiscation by, where no such order is made by convicting Court—Alteration of sentence of fine to one of imprisonment—Enhancement of sentence—Crim. Pro. Code* (1882), s. 423—*Forest Act*, s. 54.—S 54 of the Forest Act empowers the convicting Magistrate to order confiscation of timber in respect of which a Forest offence has been committed, and his order is subject to appeal. The Act does not empower the appellate Court to confiscate timber when no confiscating order has been made by the convicting Magistrate. Assuming that the Sessions Judge had the power of confiscating the timber, his power would be limited by the provisions of s. 423, Crim. Pro. Code, which prevents an appellate Court enhancing a sentence on appeal. To alter a sentence of fine to one of imprisonment is an enhancement which an appellate Court is not competent to order. KYAWKAING *alias* CHET PA v. QUEEN-EMPRESS, **L B.R. 1893—1900, 423.** (18 B 751, *F.*)

(29)—*Function of - Crim. Pro. Code* (1898), s. 537—*Evidence Act*, s. 167.—It is not a mere Court of error, but the Court, as a Court of reference, appeal or revision is enjoined by s. 537, Crim. Pro. Code, and s. 167, Evidence Act, not to reverse or alter the finding or sentence passed by a Court of competent jurisdiction on account of any error, omission, irregularity, improper admission or rejection of evidence, unless, in its judgment, such error, omission or irregularity has, in fact, occasioned a failure of justice or unless independently of the evidence objected to and admitted there was not sufficient evidence to justify the decision, or if the rejected evidence had been received, it ought to have varied the decision. KING-EMPEROR v. THIRUMALAI REDDI, **24 M. 523=2 Weir 340=1 Weir 340=2 Weir 712.** (15 B. 66, *R.*)

(30)—*Crim. Pro. Code*, s. 423 (*b*) (2)—*Powers of appellate Court.*—In this case the charge against the accused was under ss. 148 and 325, I.P.C. The Magistrate acquitted the accused under s. 148 but convicted them under s. 325. The accused then appealed to the Sessions Judge who was of opinion that the accused should have been convicted under s. 147, I.P.C., but thought he could not interfere with the acquittal. *Held* that the appellate Court may alter the finding maintaining the sentence and there is nothing to restrict the finding which may be altered to a finding of conviction. APPANNA v. PETHANI MAHALAKSHMI, **8 M L. T. 313=7 Ind. Cas. 861=11 Cr. L.J 534.**

(31)—*Crim. Pro. Code*, ss. 428, 423—*Duty of appellate Court— Admission of additional evidence—Reliance upon matters not in evidence before appellate Court—Effect.*—The Sessions Judge in appeal, acting under s. 428, might take additional evidence or order it to be taken by the Magistrate, but he must record his reasons for admitting additional evidence and comply with the provisions of Ch. XXV as if the taking of such evidence was an enquiry. An appellate Court should not rely upon matters which are not in evidence before it. *In re* CHINTHALAPUDI KOTIAH, **8 M L.T. 428.**

(32)—*Crim. Pro. Code*, ss. 428. 540—*Power of appellate Court to take additional evidence——Penal Code*, s. 411—*Dishonestly receiving or retaining stolen property—Article of small value—Recent possession—Burden of proof — Evidence Act*, s. 114 (*a*).—The powers of a criminal appellate Court, under s. 428 of the Crim. Pro. Code, are not analogous to those conferred on a civil appellate Court under s. 568 of the Crim. Pro. Code (1882). A Court of criminal appeal can take additional evidence at any time; only it must record its reasons for so doing. Where the accused was convicted under s. 411, I P.C., of having been in dishonest possession of stolen property, *viz.*, a copper vessel, which was discovered seven months after its loss. *Held*, that the conviction was bad, as the *onus* was on the prosecution to prove guilty knowledge, and the failure of accused to account for his possession did not relieve the prosecution of the burden of proving that his possession was dishonest. *In re* BHAMI LUXUMAN SHANBAGA, **8 M.L T, 418=8 Ind Cas. 145.**

(33)—*Charge of murder and theft—Evidence found not sufficient to support charge.*—Prisoner found not guilty and discharged on appeal. CROWN v. SHAH MAHOMED, **37 P.R. 1867, Cr.**

Procedure in deciding appeals against acquittal—*See* ACQUITTAL, L.B.R. 1893—1900, 42.

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Power of, to order payment of fees—*See* ACT VII OF 1870, s. 31, 1 Weir 723.

Power of appellate Court rejecting appeal to enhance sentence—*See* ACT XI OF 1874, s. 26, 24 W.R. Cr. 29.

Power to appellate Court to pass order for detention in a Reformatory School—*See* ACT VIII OF 1897, ss. 8, 9 and 11, 4 C.W.N. 225.

Substitution of imprisonment for an order of detention in Reformatory Schools by—*See* ACT VIII OF 1897, s. 16, 3 C.W.N. 576.

See ACT VIII OF 1897, s. 16, 6 Bom. L R. 550, 55 P.L R. 1908 = 18 P.R. 1907, Cr. = 43 P. W.R. 1907.

Power of appellate Court to add charge—*See* CHARGE—GENERAL, 7 N.W.P. 137.

See CHARGE—ALTERATION OF CHARGE, 26 C. 863 = 3 C.W.N. 653, 27 C. 990 = 5 C.W.N. 31.

Power of — to acquit the accused of theft and convict for distinct offence—*See* CHARGE —ALTERATION OF CHARGE, 27 C. 660.

Power to interfere with verdict of Jury—*See* CHARGE TO JURY—MISDIRECTION, 23 C. 252.

See CHARGE TO JURY—MISDIRECTION, 25 C. 711 = 2 C.W.N. 369.

Power of appellate Court to direct committal—*See* COMMITMENT TO SESSIONS COURT, 23 C. 350, 8 A. 14 = A.W.N. 1885, 298.

See COMPENSATION—GENERAL, 3 A.L.J. 382 = A.W.N. 1906, 145 = 3 Cr. L.J. 441 = 28 A. 625.

Powers of—*See* CRIM. PRO. CODE, 1898, ss. 106 and 423, 29 C. 393 = 6 C.W.N. 678.

Power of, to set aside order under s. 106, Crim. Pro. Code—*See* CRIM PRO CODE, 1898, ss. 106 and 423, 30 C. 101 = 6 C.W.N. 422.

Conviction for offences under ss. 147, 323, Penal Code—Appellate Court confirming sentence and ordering security to keep peace—Legality—*See* CRIM. PRO. CODE, 1898, s. 106 (3), 8 M L T. 291.

Jurisdiction of appellate Court to try case itself, instead of ordering re-trial by Subordinate Court—*See* CRIM. PRO. CODE, 1898, ss. 190, 191, 423 (i) (6) and 528, 30 M. 228 = 16 M.L.J. 546 = 2 M.L T. 46 = 5 Cr. L.J. 104 = 6 Cr. L.J. 133.

Power of, to alter finding—*See* CRIM. PRO. CODE, 1898, ss. 195, 198, 423, 25 A. 534 = A. W.N. 1903, 100.

Sanction to prosecute—Power of, to order a re-trial by the first Court—*See* CRIM. PRO. CODE, 1898, s. 195 (6), 8 Ind. Cas. 679 = 9 M. L.T. 79.

See CRIM. PRO. CODE, 1898, ss. 221 (7), 342, 412 and 511, 4 N.L.R. 163 = 9 Cr. L.J. 56.

Conviction in absence of charge—New trial, power of appellate Court to order—*See* CRIM. PRO. CODE, 1898, ss. 232 and 423, 28 C. 63 = 5 C.W.N. 819.

Appellate Court—*continued.*

Two accused tried jointly for one offence—Power of, to convict one of them of different offence—*See* CRIM. PRO. CODE, 1898, s. 233, 15 Cr. L.J. 680 = 25 Ind. Cas. 1008.

Power of, to order compensation—*See* CRIM. PRO. CODE, 1898, ss. 250, 423 (1) (*d*), 14 C.L.J. 437 = 16 C.W.N. 10.

See CRIM. PRO. CODE, 1898, ss. 253, 437, 2 Ind. Cas. 825.

See CRIM. PRO. CODE, 1898, ss. 363, 417, 125 P.L.R. 1914 = 15 Cr. L.J. 203 = 27 P.W.R. 1914, Cr. = 22 Ind. Cas. 987.

See CRIM. PRO. CODE, 1898, ss. 367, 369, 421, 422, 423, 5 N.L.R. 76 = 9 Cr. L.J. 553 = 2 Ind. Cas. 247.

See CRIM. PRO. CODE, 1898, s. 402, 116 P.L R. 1904.

Powers of — *See* CRIM PRO. CODE, 1898, ss. 403 and 423 (*b*), 22 C. 377.

Powers of, to order parties to establish their claims to property in dispute in a Civil Court—*See* CRIM. PRO CODE, 1898, ss. 517, 518, 520, 11 A.L.J. 452 = 35 A. 374 = 14 Cr. L.J. 526 = 20 Ind. Cas. 1006.

See CRIM. PRO. CODE, 1898, s. 520, 2 Weir 674.

See CRIM. PRO. CODE, 1898, ss. 522, 423, 5 C.W.N. 432.

See CRIM. PRO. CODE, 1898, s. 537, 2 Weir 709 = 7 M.H.C. App. 25.

European British subject not claiming trial by jury—*See* EUROPEAN BRITISH SUBJECT, 27 A. 397 = 2 A L.J. 20 = A.W.N. 1905, 5 = 2 Cr. L.J. 17.

Bad livelihood case—Duty of, to consider defence evidence—*See* EVIDENCE—GENERAL, 40 C. 376 = 14 Cr. L.J. 419 = 20 Ind. Cas. 403.

See IRREGULARITY, 19 M. 3 = 2 Weir 40.

See JOINDER OF CHARGES—MISJOINDER OF CHARGES, 25 M. 61 = 11 M L.J. 233 = 3 Bom. L.R. 540 = 28 I.A. 257 = 5 C.W.N. 866 = 2 Weir 271 = 10 M.L.J. 147, P.C.

Judgment of appellate Court, form and contents of—*See* JUDGMENT, 19 A. 506, F.B. = A.W.N. 1897, 142.

See JUDGMENT, 21 C. 92, A.W.N. 1896, 73.

Conviction for theft—Modification of conviction by appellate Court into one of abetment—Legality—*See* PENAL CODE, ss. 109, 379, 13 Cr. L.J. 203 = 14 Ind. Cas. 203.

See PENAL CODE, s. 289, 3 N.L.R. 90 = 6 Cr. L.J. 100.

Duty of appellate Court to write judgment —*See* PRACTICE AND PROCEDURE, 2 Weir 473.

Re-trial, power of appellate Court, to order —*See* RE-TRIAL, 7 C W.N. 301.

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Appellate judgment dismissing appeal as time-barred—*See* REVISION—GENERAL PRINCIPLES, 6 Bom. L.R. 360.

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Power of—To sanction for prosecution of abetment—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 15 W.R. 352.

Power of appellate Court to grant sanction —*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 31 C. 811.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 56 P.R. 1905, Cr.=180 P.L.R. 1905=3 Cr. L.J. 121, 2 Weir 160.

Application for sanction to an appellate Court —*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 16 A. 80=A.W.N. 1894, 9.

Revocation of sanction by appellate Court —*See* SANCTION TO PROSECUTE—REVOCATION OF SANCTION, 2 Weir 195.

Acquitting accused, but holding that security should be furnished—Procedure—*See* SECURITY PROCEEDINGS, 1 B.H.C. Cr. 91.

See SESSIONS JUDGE, JURISDICTION OF, 20 A. 181=A.W.N. 1898, 11, 18 B. 751, 22 B. 759.

See UNLAWFUL ASSEMBLY, 35 C. 718=8 Cr. L.J. 203.

Application to High Court.

(1)—*Application to Court—Scandalous or defamatory matter—Return.*—Where an application made to the High Court contains defamatory or scandalous matter about the trying Magistrate and other officers of the Government, it cannot be placed on the record and may be returned to the party. *In re* CLIVE DURANT, **Rat. Un. Cr. C. 480.**

Apprentice.

Unpaid apprentice—Not a public servant—*See* PENAL CODE, ss. 161, 21, 15 C.W.N. 319 =9 Ind. Cas. 698.

See PENAL CODE, s. 381, 157 P.L.R. 1905 =50 P.R. 1905, Cr.=3 Cr. L.J. 70.

Approver.

See ACCOMPLICE.

See ACCUSED PERSON.

See CHARGE TO JURY.

See COMMITMENT TO SESSIONS COURT.

See CONFESSION.

See CRIM. PRO. CODE, 1898, ss. 337-339.

See EVIDENCE ACT, 1872, ss. 114, 133.

See PARDON.

(1)—"*Accomplice*"—*Circumstances constituting a person an accomplice.*—Persons, who alleged that they had no other object than that of getting the deceased a beating, but who was eventually murdered, were treated as accomplices in the offence of murder, having regard to the part they took in disposing of the body, to their silence for three days and to their finally going to assist in removing the body from the place of concealment to the railway line, the body having been mutilated on the way on being deposited on the rails. EMPEROR v. BAJI KRISHNA, **6 Bom. L.R. 481.**

Approver—*continued.*

(2)—*Crim. Pro. Code* (1882), *ss.* 337, 339—*Conditional pardon, effect of.*—(1) The accused being charged with offences under ss. 471, 472 and 474, I.P.C., made a statement to the Magistrate of Benares, implicating others in Calcutta. He was in the meanwhile sent to Calcutta and was charged along with four others upon charges under ss. 467, 473 and 475, Penal Code. He was offered a conditional pardon and. upon his acceptance, was taken as approver. The Magistrate at Calcutta, holding that there was no sufficient corroboration of the accused's evidence, discharged the persons charged in that case, and there was nothing in the record to show that the Magistrate was dissatisfied with the statements made by the approver, or considered that he had not complied with the conditions on which the tender was made. Thereafter the accused was brought back to Benares to have his trial for offences under ss. 471, 472 and 474, Penal Code, completed. In that trial he pleaded not guilty, but did not specially plead the conditional pardon as a bar to the trial and was convicted and sentenced. *Held* that, as both sets of charges were closely connected and mixed up, and as it was not shown that the conditional pardon granted by the Calcutta Magistrate had ever been withdrawn, the accused was protected from trial at Benares in respect of the offences under ss. 474, 471, 472, I.P.C., and was not liable to be proceeded against in respect of them. (2) Although it is clear that s. 337, Crim. Pro. Code, does not in terms cover a case in which a Magistrate holding a preliminary enquiry for committal against several persons, tenders a conditional pardon to one of them, examines him as a witness, and subsequently discharges all the accused for want of a *prima facie* case to justify a committal; yet, the words "every person accepting a tender under this section shall be examined as a witness in the case" mean that, for all purposes, subject of course to his failure to satisfy the conditions of his pardon as provided by s. 339, he ceases to be triable for the offence or offences under enquiry, or, looking again to s. 339, for "any other offence of which he appears to have been guilty in connection with the same matter while making a full and true disclosure of the whole of the circumstances, within his knowledge relative to the offences" directly under inquiry. (3) When a pardon is tendered, the approver should be encouraged to give the fullest details, so that points, capable of corroboration, may be found in his evidence. QUEEN-EMPRESS v. GANGA CHARAN, **11 A. 79=A.W.N. 1888, 289=13 Ind. Jur. 193.** [*R.*, 32 M. 173=9 Cr. L.J. 571=2 Ind. Cas. 313.]

(3)—*Crim. Pro. Code* (1882), *s.* 337—*Withdrawal of conditional pardon and trial of the person with the other accused, validity of.*—A person, to whom a pardon has been granted in connection with an offence, should not be tried for an alleged breach of the conditions upon

Approver—*continued.*

which the pardon was tendered, or for any other offence of which he appears to have been guilty in connection with the offence for which he had received the pardon, until the original case has been fully heard and determined. QUEEN-EMPRESS v. SUDRA, **14 A.** 336 = **A. W.N. 1892, 21.** [*Diss.*, 20 A. 529 = A.W.N. 1898, 152, 29 A. 24 = 3 A.L.J. 615 = A.W.N. 1906, 258; *F.*, 23 B. 493, 27 C. 137, 32 M. 173 = 9 Cr. L.J. 571 = 2 Ind. Cas. 343, 13 C. P.L R. 123; *R.*, 22 C. 50, 14 Bur. L R. 306 = 7 Cr L.J. 245 = U.B.R. 1907, 4th Qr., Cr. P.C. **p. 7.**]

(4)—*Tender of pardon to—Withdrawal of pardon—Joint trial of, with co-accused.*—An accused person to whom a pardon was tendered and who was examined as a witness under that pardon against the co-accused, should, if such pardon is subsequently withdrawn, be tried separately after the trial of the co-accused. A joint trial of the approver with the co-accused is bad. QUEEN-EMPRESS v. PIARI, **A.W.N. 1891, 182.**

(5)—*Approver — Withdrawal of conditional pardon—Validity of trial along with other prisoners.*—It is unfair to put an approver, whose conditional pardon has been cancelled, on trial along with the other prisoners, in the course of whose trial such approver has given evidence. The proper course is to defer taking action against the approver until the conclusion of the trial then proceeding. QUEEN-EMPRESS v. RAMA TEVAN, **15 M. 352 = 2 Weir 394 = 2 Weir 376 = 2 Weir 153.** [*F.*, 23 B. 493, 22 C. 50; *R.*, L.B.R. 1893—1900, 536, 6 O.C. 236.]

(6)—*Crim. Pro. Code* (1882), *ss.* 338, 339—*Withdrawal of pardon tendered to an approver and subsequent trial.*—Where a man has given evidence upon a tender of pardon, and such evidence is considered by the Sessions Judge to be false evidence in which he has wilfully concealed something essential, he ought not to be put back into the dock at once and tried, but the trial against him on the original charge ought to be a subsequent proceeding. QUEEN-EMPRESS v. MULUA, **14 A. 502 = A.W.N. 1892, 95.** [*F.*, 20 A. 529 = A.W.N. 1898, 152, 23 B. 493, 22 C. 50, 27 C. 839, 32 M. 173 = 2 Ind. Cas. 343 = 9 Cr. L.J. 571, 14 Bur. L.R. 306 = U B.R. 1907, 4th Qr., Crim. Pro. Code, p. 7, 7 Cr. L.J. 245, 6 O.C. 236.]

(7)—*Tender of pardon—Withdrawal of pardon—Trial of accused.*—An accused person was committed to the Court of Session for trial on a charge of murder; and an approver was sent along with him. At the trial of the accused, after one witness for the prosecution was examined, the approver was put into the witness-box, and at the end of his examination, the Sessions Judge, being of opinion that he had given false evidence, withdrew the pardon, drew up a charge against him and convicted him on his plea of guilty. The sentence, however, was postponed. The trial of the accused then went on with the result that he was found not guilty and discharged. The Judge, thereafter, sentenced the approver to death. *Held*, that the approver had not legal trial, as he had no opportunity to defend himself, and there was nothing to show that the charge was explained to him. KING-EMPEROR v. TRIMBAKA DEWJI, **3 Bom. L.R. 489.**

(8)—*Withdrawal of pardon granted to approver and order of commitment after judgment—Illegality—Crim. Pro. Code* (*Act* X *of* 1872), s. 349.—Where the Judge, at a Sessions trial, after acquitting the prisoner, withdrew the pardon granted to an approver, ordered his commitment and put him on his trial, *held*, he acted contrary to the provisions of s. 349 of the Code and that the trial was illegal; the words " before judgment has been passed " in the section limiting the time before which the power to direct commitments may be exercised—*Per Mitter, J.* It is not necessary that the commitment order should be made before judgment is passed, it being enough if it appears to the Judge, before passing judgment, that the conditions of the pardon have not been complied with—*Per Maclean, J.* EMPRESS v. NOBIN CHUNDRA BANIKYA; *In the matter of the petition of* NOBIN CHUNDRA BANIKYA, **8 C. 560 = 10 C.L.R. 369 = 4 Shome L.R.** 232. [*R.*, 32 M. 173 = 9 Cr. L. J. 571 = 2 Ind. Cas. 343.]

(9, 10)—*Conditional pardon withdrawn—If evidence of approver in Court of committing Magistrate be used against accused in Sessions Court—Procedure.*—It is doubtful whether the deposition of an approver taken before the committing Magistrate, may be used as evidence against his accomplices on their trial before the Sessions Court, the conditional pardon of the approver having been withdrawn. [*R.*, 13 C.L. R. 326.] On the withdrawal of the conditional pardon of an approver, the Judge would be exercising a sound discretion, if he waited till the conclusion of the trial of the other prisoners before him, and then, before passing judgment on them, proceeded, under s. 349, Crim. Pro. Code, against the approver. *In the matter of* JOYUDEE PARMANICK, **7 C.L.R. 66.** [*F.*, 22 B. 493; *R.*, 22 C. 50.]

(11)—*Conditional pardon, withdrawal of.*—A party charged along with others with murder, having had a conditional pardon granted to him by the Deputy Magistrate, retracted before the Sessions Judge the statements he had made before the Deputy Magistrate. On being sent back to the Deputy Magistrate, that officer committed him for trial on a charge of giving false evidence. The Sessions Judge considered that the Deputy Magistrate was bound, under s. 349, Crim. Pro. Code, to commit on the original charge of murder, and not on that of giving false evidence, and he recommended that the order of commitment should be quashed and the Deputy Magistrate directed to commit on the charge of murder. The High Court declined to interfere as there was evidence on the record tending to support the charge for giving false evidence, and as s. 349 did not have

Approver—*continued.*

the effect of taking away from the Magistrate the power to entertain a charge of this kind. QUEEN v. MULLIK JEECHOO, **23 W.R. Cr. 12.**

(12)—*Withdrawal of conditional pardon and prosecution—Proof of wilful concealment and of giving false evidence—Right of approver.*—When a person who has accepted a tender of pardon is subsequently prosecuted for the offence, in respect of which the pardon was tendered, it must appear that he either wilfully concealed something essential, or that he gave false evidence and thus failed to comply with the condition on which the pardon was tendered, and if the prosecution does not aver such failure, it is at least open to the accused to plead that he did not either wilfully conceal anything essential or give false evidence; and this plea, if produced, would be a bar to the trial. The mere order by the Court, before which the person gave evidence that he was prosecuted for not complying with the condition of his pardon, does not preclude the Court before which the prosecution is instituted from enquiring into the question of fact involved in the plea, the opinion of the Court directing the prosecution, even if relevant, not being conclusive, especially when the order is made, as in practice may occur, without the accused person having any opportunity of showing cause against the order. EMPRESS v. MUSSAMMAT MURIAMA, **6 P R. 1889, Cr.** [*F.*, 31 P.R. 1904, 59 P.R. 1905; *R.*, 14 P.R. 1894, 15 P.R. 1895; *see, also*, 41 P. R. 1905, F.B.]

(13)—*Crim. Pro. Code* (1872), *s.* 349—*Withdrawal of pardon, grounds for.*—Where a Sessions Judge withdrew a pardon, on the ground that the person to whom the pardon was tendered had not conformed to the conditions, but had given an utterly incredible account of the circumstances, and he came to that conclusion, not after a patient hearing of the whole of the evidence, or upon proof that it was inconsistent in any but the most immaterial and trifling degree with his previous statements or that it was contradicted by other evidence, but on the Judge's own responsibility, and before any evidence affecting his veracity had been given, *held*, that the withdrawal of the pardon was not properly made. SRINOP v. EMPRESS, **12 C.L.R. 226.**

(14)—*Power to revoke pardon—Question whether pardon was forfeited to be decided by the Court trying the approver.*—The law contains no provision whatever for any one withdrawing, revoking, or cancelling a pardon. The question whether a pardon has in fact been forfeited by the approver's having either wilfully concealed anything essential or by giving false evidence not complied with the condition on which the tender was made, is one to be decided by the Court that is asked to try him for the offence in respect of which a pardon was tendered to him. EMPEROR v. MT. KACHRI, **7 N.L.R. 65=10 Ind. Cas. 622=12 Cr. L. J. 326.** (30 B. 611, *Appr.*).

Approver—*continued.*

(15)—*Pardon—Tender by committing Court—Withdrawal of pardon—Retracting confession before Special Bench—Proper Court to enquire question of forfeiture—Powers of Special Bench—Accused's right to challenge falsity of statements before Special Bench after commitment—Crim. Pro. Code,* 1898, *ss.* 317, 339.—Where an approver, to whom a pardon was tendered under s. 337, Crim. Pro. Code, 1898, by the committing Magistrate, retracted his confession and previous deposition before a Special Bench of the High Court. *Held*, that it was only the committing Court, and not the Special Bench, that ought to hold the enquiry as to whether the approver has or has not complied with the conditions upon which the pardon was tendered, whether he has made a full and true statement and disclosed the true facts, and whether he has thereby forfeited the pardon. The Special Bench cannot take any action in respect of the offence as regards which the pardon was tendered. *Per Chatterjee, J.*—After commitment it is perfectly open to the accused to show before the Special Bench that the statements which are alleged to be false are true in fact, or were induced by proper influences. EMPEROR v. ABANI BHUSHAN CHUCKERBUTTY, **37 C. 845, S. B.=8 Ind. Cas. 721.** (24 C. 492, *Appr.*; 30 B. 611, 32 M. 173, *R.*; 25 B. 675, *D.*)

(16)—*Grant of pardon to an accomplice revocation of, after trial.*—An accomplice was granted a conditional pardon and was sent as a witness to the Sessions Court, which considered his evidence to be false. After the trial, the District Magistrate revoked the pardon and committed him to the Sessions for trial. *Held*, that the commitment was contrary to law, inasmuch as the District Magistrate had no power to revoke the pardon after the conclusion of the trial. QUEEN-EMPRESS v. BHOLA, **A.W.N. 1895, 163.**

(17)—*Tender of pardon to accomplice—Retraction of statement.*—The statement made before the committing Magistrate by an accused, who was examined as a witness after the offer and acceptance of a pardon and retracted before the Court of the Session as having been made on the intimidation of the police, should not be used and acted upon by the Court of Session, but should be discarded as being involuntary. The proper course would be to call his attention to the various passages of his deposition seriatim before using it to contradict him. EMPRESS v. NAZZARA, **A.W.N. 1881, 74.**

(18)—*Crim. Pro. Code* (1882), *s.* 338—*Tender of pardon to accomplice, when not permissible.*—The word "supposed" in s. 338, must be taken merely as intended to exclude the case of a man who has actually been convicted of the crime, and not the case of the man, who, although admitted to be a party to the crime, is unconvicted. Where pardon was tendered to, and accepted by, a person, who, being charged with others with the same offence, pleaded guilty, and such person was examined as a witness against the other accused, *held*, that the pardon

Approver—*continued.*

was properly tendered and that his evidence was admissible. QUEEN-EMPRESS v. KALLU, **7 A. 160 = A.W.N. 1884, 314.** [*F.*, Rat. Un. Cr. C. 750; *R.*, 10 M.L.J. 147, F.B., 2 Weir 276 = 25 M. 61, P.C.]

(19)—*Withdrawal of pardon — Commitment of approver—Crim. Pro. Code* (1898), *s.* 339 — A Sessions Judge is competent to order the commitment of an accused person to whom a conditional pardon has been tendered, if he finds that the conditions of the pardon have not been fulfilled. But, in such a case, one of the questions of fact to be tried and decided at the trial will be whether the accused has or has not forfeited his pardon. KING-EMPEROR v. KADU, **31 P.R. 1904, Cr. = 176 P.L.R. 1905.** (6 P.R. 1889, F.B., Cr., 1 P.R. 1889, Cr., *F.*; 24 C. 492, 19 P.R. 1901, Cr., *D.*; 5 P.R. 1889, Cr., 24 P.R. 1902, Cr., *Doubted*).

(20)—*Commitment of person to whom pardon had been tendered along with others—Crim. Pro. Code* (1898), *s.* 337.—Where a person, who had been tendered a pardon by the District Magistrate, was subsequently committed for trial jointly with the other accused, his version of the affair not being believed either by the District Magistrate or by the committing Magistrate, *held*, that, as the approver was throughout the proceedings treated as an accused person, and not as a witness, his commitment and trial along with other accused was legal, he being at the date of his commitment not a person accepting a tender of pardon. QUEEN-EMPRESS v. MIHAN SINGH, **5 P.R. 1899, Cr.**

(21)—*Tender of pardon—Commitment of an approver in a case of murder.*—Where a person who has accepted a tender of pardon in a case of murder, was, on the acquittal of the accused, directed by the Sessions Judge to be committed for trial on a charge of murder, *held*, that the order of the Sessions Judge should be regarded as one under s. 436. TABAN v. EMPRESS, **1 P.R. 1898, Cr.**

(22)—*Withdrawal of pardon—Power of Sessions Court to try approver forthwith on its own charge.*—S. 477, Crim. Pro. Code, 1882, does not empower a Sessions Court to try forthwith on its own charge, under s. 193, I.P.C., a person from whom it has withdrawn a pardon under s. 439, Crim. Pro Code, unless and until the Chief Court has sanctioned the prosecution. MUSSAMMAT SHARINA v. EMPRESS, **42 P.R. 1884, Cr.**

(23)—*Withdrawal of conditional pardon—Approver examined as witness and tried as accused in the same trial—Procedure irregular —Crim. Pro. Code* (1898), *s.* 193.—A Sessions Judge is incompetent to examine an approver as a witness, then withdraw the pardon granted to him, and try him as an accused person is the same trial. He should complete the trial against the other accused persons and then direct the Magistrate to commit the approver in regular course. A Court of Session can only take cognizance of an offence as a Court of original jurisdiction only on a commitment made by a Magistrate duly empowered in that behalf. NGA AUNG BWIN v. QUEEN-EMPRESS, **L.B.R. 1893 –1900, 536** (22 C. 50, *F.*; 15 M. 352, *R.*)

(24)—*Accomplice—Witness erroneously treated as accomplice.*—Where a Magistrate treated a mere witness as an accomplice and granted him a conditional pardon, *held* that his evidence did not require corroboration. REG v. FATTEH CHAND VASTACHAND, **5 B H C. Cr. 85.** [*R.*, 35 M. 397 = 13 Cr L.J. 352 = 14 Ind. Cas. 896 = 12 M.L.T. 1 = M.W.N. 1912, 549, 22 M.L.J. 490 = 1912 M.W.N. 207 = 35 M. 247 = 11 M.L.T. Sup. 1 = 14 Ind.Cas. 849 = 13 Cr. L.J. 305.]

(25)—*Evidence of accomplice — Practice — Corroboration required.*— The evidence of an accomplice must be very strictly watched, especially, when the offence spoken to relates public officials. The evidence must be corroborated by independent testimony. QUEEN-EMPRESS v. SHIDLINGAPPA, **Rat. Un. Cr. C. 844 = Cr. Rg. 13 of 1896.**

(26)—*Evidence of—Corroboration.*—The uncorroborated testimony of an approver is not sufficient to convict a person charged with an offence. QUEEN v. TULSI DOSAD, **3 B L.R. A. Cr. 66** ; *see, also*, QUEEN v. ISSEN MUNDLE, **3. W R. Cr. 8**; QUEEN v. NAWAB JAN, **8 W.R. Cr. 19** ; QUEEN v. RAM SAGOR, **8 W.R Cr. 57**; QUEEN v. CHIRAG ALI, **12 W.R. Cr. 5.**

(27)—*Evidence of—Nature of—Corroboration —Judges charge to jury.*—A Sessions Judge should warn the jury of the infirmity which attaches to the evidence of an approver and he should also tell them (if the fact be so) that the approver is speaking under the influence of an officer of conditional pardon. QUEEN v. NAWAB JAN, **8 W.R. Cr. 19.**

(28)—*Evidence of — Corroboration — Judge's charge to jury.*—If the jury find a prisoner guilty on the uncorroborated evidence of an approver, after the Judge in his summing up had pointed out to them the desirability, under the circumstances, of such corroboration, the High Court on appeal would refuse to set aside the conviction. QUEEN v. MAHIMA CHANDRA DAS, **6 B.L.R. Ap. 108 = 15 W.R. Cr. 37.** (5 W.R. Cr. 80, B.L.R. Sup. Vol. 459, *R.*)

(29)—*Evidence of accomplice—Corroboration.* —In order to support the testimony of an accomplice, not only as to the persons spoken of by him must there be corroborative evidence, but also as to the *corpus deliciti* there must be some *prima facie* evidence pointing the same way to make his evidence satisfactory. REG v. CHATUR PURSHOTAM, **1 B. 476, Note** [*F.*, 1 B. 475.]

(30)—*Approver's evidence — Corroboration — Confession by co-prisoner.*—Approver's evidence should be corroborated as to the identity of the accused person. The confession of a co-prisoner implicating the accused cannot be accepted as evidence to corroborate the testimony of the

Approver—*continued.*

approver. REG. v. BUDHU NANKU, **1 B. 475.** [*Diss.*, 1 M 394=2 Weir 799=2 Ind Jur. 600; *F.*, 10 B. 319; *R.*, 10 C. 970, 14 B. 115, Rat. Un. Cr. C. 840, 6 Bom. L. R. 481, 9 Cr. L.J. 360, 22 M L.J. 490=1912 M.W.N. 207=14 Ind. Cas. 849=11 M.L T. Sup. 1, 35 M. 247=13 Cr. L.J. 305.]

(31)—*Confessions of some prisoners—Evidence of approvers—Corroborative value.*—Confessions of prisoners, made in the absence of their fellow-prisoners, as well as the statements of approvers, are always regarded as tainted and not entitled to the same weight as the evidence of ordinary witnesses. [*R.*, 6 Bom. L.R 481, 3 P.R. 1904, Cr.] Such confessions would not be corroborative evidence of the statement of the approver such as to justify the conviction of the other prisoners, nor would they be of any weight against them. QUEEN-EMPRESS v. BEPIN BISWAS. **10 C. 970.** [*R.*, 35 M. 247=1912 M.W.N. 207=22 M.L.J. 490=11 M.L.T. 1, Sup.=13 Cr. L J. 305=14 Ind. Cas. 849, 35 M. 397=1912 M.W.N. 549=12 M L.T. 1=13 Cr. L.J. 352=14 Ind. Cas. 896, 9 Cr.L.J. 360.]

(32)—*Accomplice, evidence of — Nature of corroboration required.*—As regards the nature of the corroboration required to convict a person on the testimony of an accomplice, it must be confirmatory of some of the leading circumstances of the story of the approver as against the particular prisoner. Facts, which do not show the connection of the prisoner with the commission of the offence with which he is charged, are no corroboration in the sense in which the word is used in such cases, although they may tend to show that certain portions of what the accomplice says is true. Courts ought not to convict upon an accomplice's testimony, unless it is confirmed not only as to the offence, but as to the identity of the individual prisoner as the person or one of the persons, who participated in the offence, and juries ought to be so advised and directed. It will be an error in summing up, if a Judge, after pointing out the danger of acting upon the uncorroborated evidence of an accomplice were to tell the jury that the evidence of the accomplice was corroborated by a fact, which did not amount to any corroboration at all. JAMIRUDDI MASALLI v. EMPEROR, **29 C. 782=6 C.W.N. 553.** (5 W. R. Cr. 80, 8 W.R. Cr. 19, 11 W.R. Cr. 21, *R.*) [*R.*, 35 M. 247=11 M.L.T. 1, Sup.=22 M.L.J. 490=1912 M.W.N. 207=14 Ind. Cas. 849=13 Cr. L.J. 305, 35 M. 397=1912 M.W N. 549=12 M.L.T. 1=13 Cr. L.J. 352=14 Ind. Cas. 896, 9 Cr. L.J. 360.]

(33)—*Evidence of—Nature of corroboration required.*—Where the evidence of an approver is entirely uncorroborated by any evidence to show that it was the accused who committed the offence with which he is charged, the accused cannot be convicted. The approver's evidence must be corroborated by material facts tending to point to the accused as the guilty person. Where the evidence against an

Approver—*continued.*

accused person charged with murder consisted of only the testimony of the accomplice or approver, and the Sessions Judge convicted the accused on the ground that the medical certificate was consistent with the approver's statements and that marks of blood were found at the spot which the approver pointed out as the place where the deceased fell, *held*, that the conviction was bad and should be set aside. Observations on the duty of Sessions Judges to sift facts in Sessions trials, when this is not sufficiently done by pleaders for the prosecution and defence. *In re* MUTHAN PAPAYYA, **4 Ind. Cas. 391.**

(34)—*Accomplice — Degree of corroboration necessary.*—The evidence of an accomplice, here as under English practice requires corroboration not only as to facts but also as to the identity of each and every one of the accused whom he implicates. The evidence should not weigh at all as against those whose identity is not corroborated. REG. v. IMAM *valad* BABAN, **3 B.H C. Cr. 57.** [*R.*, 14 B. 331, 6 B. H. C. Cr. 57 (58), Rat. Un. Cr. C. 840, 848, 13 Cr. L.J. 305=14 Ind. Cas. 849=M.W.N. 1912, 207=22 M.L.J. 490=11 M.L.T. Sup. 1=35 M. 247.]

(35)—*Evidence of approver—Correspondence of details, value of—Corroboration.*—The exact correspondence in detail of several statements made by an approver in the course of a trial, is not corroborative evidence such as Courts ordinarily require to make it safe to convict any particular prisoner upon. QUEEN-EMPRESS v. BEPIN BISWAS, **10 C. 970.**

(36)—*Evidence of accomplice—Penal Code, s. 460—Possession of stolen property, whether sufficient corroboration.*—Criminal Courts dealing with an approver's evidence, in a case where several persons are charged, should require corroboration of his statements in respect of the identity of each of the individuals charged. Where five persons were charged under s. 460, I.P.C., and the only direct evidence against the accused was that of an approver, but as to the first three accused, there was the further proof that they produced, or caused to be produced, certain portions of the property stolen on the night of the crime, from the house where the crime was committed; as to the fourth, it was proved that he was present when the second accused pointed out the place where some of the property was dug up; but he did not appear to have said anything or given any direction about it; and as to the fifth, no property was found with him or produced through his instrumentality; *held*, that the recent possession by the first three accused of part of the stolen property, soon after it had been stolen, was not such corroboration of the approver's evidence of their participation in the dacoity and that, as to the fourth and the fifth accused, there was not sufficient material to warrant the inference of guilty knowledge on their part. QUEEN-EMPRESS v. BALDEO, **8 A. 509=A.W.N. 1886, 176.** (8 A. 306, A.W.N.

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1886, 65, 3 Cox. C.C. 526, *R.*) [*R.*, 9 Cr. L.J. 360, 13 Cr. L.J. 305 = 14 Ind. Cas. 849 = 1912 M.W.N. 207 = 22 M.L.J. 490 = 11 M.L.T. Sup. 1 = 35 M. 247, Rat. Un Cr C. 750.]

(37)—*Conviction based on uncorroborated evidence of approver alone.*—A conviction should not be based on the evidence of an approver alone, unless it is corroborated by reliable, independent evidence. NANZIGADU v. EMPEROR, **12 Cr. L.J. 240 = 10 Ind. Cas. 284.**

(38)—*Uncorroborated evidence of approver—Previous conduct and character.*—It is unsafe to convict on the uncorroborated testimony of the approver, and the Judge in his charge to the jury should take care to state this and also that the evidence of approver was given on conditional pardon. Evidence of previous conduct and character of the accused is irrelevant and ought not to be placed before the jury. QUEEN v. BYKUNT NATH BANERJEE, **10 W.R. Cr. 17.**

(39)—*Jury, verdict of—Charge—Misdirection—Approver, statement of, conviction cannot be based entirely on—Corroboration of the approver's statement—Jurors, choosing of—Practice—Witness for identification of handwriting—Marking of particular entries.*—It is unsafe to act upon the uncorroborated evidence of an approver; the sort of corroboration required is not corroboration of the narrative of the offence committed, but corroboration of the approver's statement that the accused took part in the offence. Where a Sessions Judge has failed to warn a jury that it is unsafe to convict merely upon the testimony of the approver, and where the Judge has not properly explained to the jury the law and practice regarding such cases, there is a misdirection of a very serious kind, and the verdict of the jury cannot be sustained. The verdict and the sentence should, therefore, be set aside and the case sent back for re-trial. Rules regarding the choosing of jurors should be complied with strictly. Where a witness appears to identify the entries in a book, which are written in the handwriting of a particular person, he should not be allowed to so conspicuously mark the identified entries as may be calculated to assist the witnesses who appear subsequently for the same purpose. MAKBUL AHMAD v. EMPEROR, **12 Cr. L.J. 537 = 12 Ind. Cas. 513.** (12 O.C. 418, 4 Ind. Cas. 884, 11 Cr. L.J. 71, *R.*)

(40)—*Approver's evidence — Corroboration, necessary for— Retracted confession how far evidence against co-accused— Accomplice, evidence of.*—*Held*, that, before a conviction can be based on the evidence of an approver, it must be corroborated as to the identity of the person or persons accused. *Held*, further, that the retracted confession of an accused has very little weight as evidence against the other accused persons and does not constitute the independent evidence of corroboration of the statement of an approver which is necessary to base a conviction thereon. HUBBA v. KING-EMPEROR, **12 O. C. 418 = 4 Ind. Cas. 884 = 11 Cr. L.J. 71.** (2 Q.B. D. 1894, 415, 8 A. 306, 2 K.

Approver—*continued.*

B. D. 1908, 680, 7 Bom. L.R. 969, 9 A. 528, 29 A. 434, 4 C. 483, 11 O.C. 328, *R.*) [*R.*, 12 Cr. L.J. 537 = 12 Ind. Cas. 513.]

(41)—*Evidence not sufficient to corroborate his statement—Retracted confession good evidence against the person making it, but not against others.*—*Held* that evidence to prove that certain accused persons were seen on certain occasions with the gang of the dacoits before and after a dacoity, and particularly where that evidence is unsatisfactory, is not sufficient to corroborate the approver's statement so as to make it admissible against the said accused. *Held*, also, that it is a recognized rule of the Law of Evidence that a retracted confession may be used against the person making it, but not against others jointly accused with him. CHET SINGH v. CROWN, **28 P.W.R. 1907, Cr. = 7 Cr. L J. 227.** [*R.*, 12 Cr. L.J. 276 = 10 Ind. Cas. 857 = 5 P. R. 1911, Cr. = 91 P.L.R. 1911 = 27 P.W.R. 1911, Cr.]

(42) *Penal Code, s.* 400—*Dacoity—Corroboration of approver's evidence*—Corroboration of the evidence of an approver is required in a case of dacoity under s. 400, I.P.C. It is sufficient if the approver's evidence is corroborated in some of the leading circumstances of the story, so that the Court may be able to presume that he has told the truth as to the rest. QUEEN v. KALLA CHAND DOSS, **11 W.R.Cr. 21.**

(43)—*Accomplice of accused person—Corroboration when not necessary.*—The evidence of an accomplice may be admitted without corroboration, if the witness is not open to the same charge as the accused. *In the matter of* ROJONI KANT BHOOMICK, **13 W.R Cr. 24.**

(44)—*Approver, evidence of—Corroboration—Failure of lower Courts to carefully scrutinize corroborative evidence—Crim. Pro. Code* (*Act* V *of* 1898, *ss.* 296, 439—*Effect of not producing a witness for cross examination after charge—Revision—Concurrent finding of fact—Evidence Act* (I *of* 1872), *s.* 27—*Fact already discovered.*—The evidence of an approver should not be believed without material corroboration; and in order to see whether there is such a corroboration, it is the duty of the Court to scrutinize and marshal out very carefully the proof relating thereto. Where this duty has not been properly performed by the lower Court, the High Court will interfere on the revision side and set aside even the concurrent findings of the Courts below. Where a material fact, for instance, the manner in which a theft was committed, has already been discovered by some other means, an accused's subsequent statement relating to the same fact, while in the police custody, is not admissible against him under s. 27 of Act I of 1872. The evidence of a witness not re-called by the prosecution, when required by the accused, after the charge, for further cross-examination, cannot be used to support the charge. MANNA v. EMPEROR, **9 Ind. Cas. 232 = 12 Cr. L.J. 35 = 3 P.W.R. 1911.**

(45)—*Evidence—Approver—Weight of approver's evidence.*—The evidence of an approver

Approver—*continued.*

has to be most carefully analyzed and considered. It must be so far above suspicion that a Court has no alternative but to accept and act upon it. Where the Court believes in the approver's evidence in part, and disbelieves in part, it has no alternative but to reject the evidence altogether. BALKARAN v. EMPEROR, **7 Ind. Cas. 185=11 Cr. L.J. 441.**

(46)—*Evidence of—Weight to be attached to.*—The evidence of persons who are themselves liable to punishment should be carefully sifted and tested before they can be relied on in any Court of law. QUEEN v. REAZ ALI *alias* DULLOO KHAN, **6 W.R. Cr. 77.**

(47)—*Evidence of—Points to be considered.*—When evidence is given by an approver, it is not important to consider whether a story told by the accused to him tallies with that made to another person. QUEEN v. NYTA RAM MYTEE, **1 Ind. Jur. N.S. 171.**

(48)—*Crim. Pro. Code* (1882), *s.* 288—*Evidence of approver.*—Where an approver, under conditional pardon, gave a deposition before the committing Magistrate, and the Sessions Judge, after the denial of it by the approver, retracted the pardon, it was held doubtful whether the deposition before the committing Magistrate could be used in evidence against his accomplices. NANHA MALLA v. EMPRESS, **13 C.L.R. 326.** (7 C.L.R. 66, *R.*) [*R.*, 22 C. 50.]

(49)—*Evidence of an accused person in police custody who has confessed and been admitted as an approver.*—Where an accused person in police custody has confessed and has been admitted or is likely to be admitted as an approver, any evidence that he might afterwards give is open to the greatest suspicion that the police have arranged his statements so as to fit in with the evidence that they may have obtained elsewhere. AMIR KHAN v. KING EMPEROR, **7 C.W.N. 457.** [*R.*, 13 Cr. L.J. 609=16 C.W.N. 1105=15 C.L.J. 517=16 Ind. Cas. 257.]

(50)—*Approver, evidence of—Admissibility in Sessions Court of such evidence taken by Sub-Magistrate.*—A Sessions Judge should not allow an approver's evidence before a Sub-Magistrate to be laid before the jury. HIGH COURT PROCEEDINGS, 31ST OCT. 1868, **4 M.H.C.App. 21.**

(51)—*False evidence—Application for sanction to prosecute—Proper procedure.*—An application for sanction to prosecute an approver for giving false evidence should be made by motion on behalf of the Crown in open Court, and not by a letter of reference. QUEEN-EMPRESS v. MANICK CHANDRA SARKAR, **24 C. 492.** [*F.*, 32 M. 47=5 M.L.T. 164=1 Ind.Cas. 207=9 Cr. L.J. 283; *R.*, 30 B. 611=8 Bom L.R. 740; 32 M. 173=9 Cr. L.J. 571=2 Ind.Cas. 343; 10 P. R. 1904, Cr.]

(52)—*Prosecution—Application for sanction.*—An application to the Chief Court for sanction to prosecute an approver for giving false evidence should be by motion on behalf of the Crown in

Approver—*concluded.*

open Court, and not by a letter of reference. CROWN v. BULAKA SINGH, **10 P.R. 1904, Cr. =1 Cr. L.J. 793.** (24 C. 492, *cited.*) [*F.*, 230 P.L.R 1912, Cr.=30 P.W.R. 1912, Cr.=175 P. L.R. 1912=15 Ind. Cas. 83=13 Cr. L.J. 451.]

Evidence of, when pardon is withdrawn if inadmissible in evidence—Approver to be detained in custody when not on bail—*See* CRIM. PRO. CODE, 1898, ss. 167, 337, 136 P.L.R. 1902.

See CRIM. PRO. CODE, 1898, ss. 193, 287, 288, 339 and 349, 15 M. 352=2 Weir 394, 153 and 376.

See REVISION—ACQUITTALS, 157 P.L R. 1908=22 P.W.R. 1908.

See SECURITY FOR GOOD BEHAVIOUR, 5 L. B.R. 72.

Arbitration.

(1)—*Award in criminal matter—Civ. Pro. Code* (1859), *s.* 327.—In this case, a complaint was preferred to a Criminal Court and the Magistrate directed the subject-matter of the complaint to be referred to arbitration. If the parties consent and proceed to such reference, *held* that the award might be enforced under the provisions of s. 327, Civ. Pro. Code, 1859. SHEVO NUND ROY v. MAHA NAND RAM, **1 Agra 45.**

See ACT II OF 1899, s. 62, 7 A.L.J. 180=32 A. 198=11 Cr. L.J. 52=5 Ind. Cas 180.

Reference to arbitration of disputes about land—*See* CRIM. PRO CODE 1898, s. 145, 7 C.W.N. 461.

Power of Presidency Magistrate to refer a dispute to arbitration—*See* CRIM. PRO. CODE, 1898, ss. 403 (1 to 4 and Expl.), 436, 437, 439 (1 to 4), 1 C.W.N. 49.

Compromise—Order made without evidence not validated by consent—*See* NUISANCE UNDER CRIM. PRO. CODE, 10 C.L.J. 482=11 Cr. L.J. 1=4 Ind. Cas. 436.

See PENAL CODE, ss. 21 and 434, 30 C. 1084.

Suit in Court of Small Causes referred to arbitrator—Fabrication of evidence, forgery and using forged document before such arbitrator—Sanction of the Court of Small Causes—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 17 M.L.J. 420=6 Cr. L.J. 331=2 M.L.T. 496.

Arbitrator.

Offences under ss. 193, 471, I.P.C., committed in proceedings before arbitrator—Sanction to prosecute whether necessary—*See* CRIM. PRO. CODE, 1898, s. 195, 3 P.R. 1914, Cr.= 136 P.L.R. 1914=15 Cr. L.J. 358=23 Ind. Cas. 726.

Arms.

See ACT XXXI OF 1860.

See ACT XI OF 1878.

(1)—*Arms— Definition.*—" *Arma armes,* in the common law, signified anything that a man striketh or hurteth withal." QUEEN-EMPRESS v. NGA MYAT AUNG, **U.B.R. 1897-1901, Vol. I, 1.**

Arms—*concluded.*

See CHHAVI, 16 P.R. 1900, Cr.

Find of arms after arrest and pending prosecution of conspirators—Evidentiary value—*See* CONSPIRACY, 16 C.W.N. 1105=16 Ind Cas. 257.

Use of, in endeavouring to effect escape by persons attempting to commit dacoity—*See* PENAL CODE, ss. 397, 398, 399, 402, 511, 23 A. 78=A.W.N. 1900, 202.

Army.

Deserter from—Detention of, in police custody—Obstruction—Rescue from such custody—*See* PENAL CODE, ss. 225, 225-B, 20 P.R. 1911.

Arrack Shop.

Whether a place of public resort—*See* MAD. ACT IV OF 1884, ss. 75, 23, 6 M L.T. 16=9 Cr. L.J. 496=2 Ind. Cas. 84=33 M. 83.

Arrest.

See PENAL CODE, ss. 224 to 225 B.

See WARRANT.

See WARRANT OF ARREST.

See WITNESS, ARREST OF.

(1)—*Crim. Pro. Code* (1882), s. 54—*Powers of arrest.*—S. 54 authorizes the arrest not only of persons against whom a reasonable complaint has been made or a reasonable suspicion exists of their having been concerned in a cognizable offence, but also of persons against whom "credible information" to that effect has been received. QUEEN-EMPRESS v. AMARSANG JETHA HOSAIN GULAM, **10 B. 506.** [*R.*, U. B.R. 1892—1896, Vol. I, 172.]

(2)—*Crim Pro. Code* (1898), s. 79—*Warrant of arrest, without endorsement of any name.*—Under the terms of s. 79, the endorsement should be regularly made by name to a certain person in order to authorise him to make the arrest. If not, the person resisting the arrest is not liable to be punished under s. 224, I.P.C. DURGA TEWARI v RAHMAN BUKSH, **4 C.W. N. 85.**

(3)—*Crim. Pro. Code* (1898), *ss.* 56 *and* 80—*Arrest in accordance with an order in writing under s.* 56—*Police officer making the arrest, whether bound to notify the authority to arrest.*—S. 80 should not be extended to an arrest made by the Police on an order in writing under s. 56 so as to require any information to be given to the person arrested in order to make it an arrest warranted by law. The order in writing is an authority to the Subordinate Police officer to make an arrest which the superior Police officer, if present, could himself make on his own responsibility. It may be desirable or even obligatory that, if called upon, the Police officer making such an arrest should show the person arrested the authority under which he is acting; but to hold that he is bound to do so before he can properly arrest and detain in custody such a person, so as to make the arrest and the detention lawful would be to extend the law beyond what the Legislature has

Arrest—*continued.*

thought proper to declare it. QUEEN-EMPRESS v. BASANT LALL, **27 C. 320=4 C.W N. 311.** [*F.*, 5 N.L.R. 4=9 Cr. L.J. 211=1 Ind. Cas. 238, 6 S.L.R. 120=13 Cr. L.J. 771=17 Ind. Cas. 403.]

(4)—*Crim. Pro. Code* (1898), ss. 68 *and* 79—*Warrant of arrest addressed to a police officer—Endorsement by another police officer to process serving peons, legality of—Obstruction to execution of warrant—Persons competent to execute warrant.*—Where a warrant of arrest addressed to a Court Sub Inspector was by an order in writing, signed by the Court Head Constable, endorsed to two process serving peons for execution, *held*, that the execution of the warrant by these persons did not constitute a lawful arrest, inasmuch as the officer to whom the warrant was directed did not lawfully endorse it to these persons, and *held*, further, that, even if it had been lawfully endorsed, the persons to whom the warrant was endorsed, not being Police officers, were not competent to make the arrest, under the provisions of s. 79 of the Code. Therefore, persons rescuing the persons arrested under such warrant and obstructing the execution of the warrant cannot be punished under the Penal Code. The terms of s. 79, Crim. Pro. Code, expressly provide that no other person, except a Police Officer, is competent to execute a warrant of arrest under an endorsement from another Police officer. DURGA CHARAN JEMADAR v. QUEEN-EMPRESS, **27 C. 457=4 C.W N. 822.**

(5)—*Crim. Pro. Code* (1898), s. 59—*Arrest by a private person for theft—Handing over the person to a village Chowkidar—Penal Code, s.* 225—*Rescuing from lawful custody.*—Arrest by a private person for alleged theft, not committed in his view, is not lawful. The person so arrested and delivered to the custody of the village Choukidar cannot be regarded as being in lawful detention and, therefore, a person rescuing him from such custody is not guilty of an offence under s. 225, Penal Code. KALAI v. KALU CHOWKIDAR, **27 C. 366=4 C.W.N. 252.** [*R.*, 29 A. 377=A.W.N. 1907, 94=5 Cr. L.J. 277, 41 C. 17=14 Cr. L.J. 494=17 C.W. N. 978=20 Ind. Cas. 750.]

(6)—*Crim Pro. Code* (1898), s. 80—*Warrant of arrest—Notification of substance—Penal Code, s.* 225-B.—Where a Police officer arrests a person for an offence, for which he is not competent to make the arrest without warrant, and does not notify the substance of the warrant to the person, *held*, that an arrest so made is not a lawful arrest, and a resistance to such an arrest does not, therefore, amount to an offence under s. 225-B, Penal Code. SATISH CHANDRA RAI v. JODU NANDAN SINGH, **26 C. 748=3 C.W.N. 741.** [*R.*, 16 P.R. 1904, Cr.; *D.*, 15 Cr.L.J. 439=24 Ind. Cas. 175=25 Ind. Cas. 328=1914 M. W.N. 498.]

(7)—*Discharge*—*Re-arrest.*—The re-arrest on the same charge of a prisoner who has been discharged is illegal. The officer making it may

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be guilty of wrongful confinement. RAMDAS SADHOO v. ANUND CHANDER ROY, **19 W.R. Cr. 27.**

(8)—*Rescue from illegal arrest.*—Where the arrest is illegal, rescue from that arrest is not an offence punishable under the Penal Code. LAJJE RAM v. EMPRESS, **12 P.R. 1898, Cr.**

(9)—*Law regarding— Handcuffs, use of— Bailable offence—Resistance to unlawful force, no offence under s. 224, Penal Code—Crim. Pro. Code* (1898), *ss.* 46 *and* 50—*Abuse to be checked by Magistrates.*—All that is necessary to constitute an arrest is that the arresting officer shall touch the body of the person to be arrested ; even the touching of the body is not necessary when the person to be arrested submits to the arresting officer's custody by word or action. The arresting officer should intimate to the person he intends to arrest that he is about to do so, and, if he touches him, he does so in pursuance of his intention. In the case of persons charged with minor offences and even in some cases of persons charged with grave offences, an opportunity should be given to the person to be arrested, of "submitting to the custody by word or action." It is by no means necessary that a Police officer should, in arresting the accused immediately proceed to put handcuffs on him, or to tie him with cord or chain. After an arrest has been effected in either of the above ways, the accused is thereafter in the arresting officer's custody, even if that officer does not actually hold or confine him, and if the accused intentionally escapes or attempts to escape from that officer's custody, or from any other officer's custody before he is duly released, he commits an offence punishable under s. 224 of the I.P.C. TAN SEIN *alias* MAUNG SAING v. CROWN, **1 L.B.R. 173.**

(10)—*Irregularity in the arrest.*—When accused persons are brought before a criminal Court, it is the duty of the Court to try them for the offences with which they are charged, and any irregularity in the arrest is not in itself a ground for acquitting them. QUEEN-EMPRESS v. NGA SU, **U B R. 1897—1901, Vol.I, 211.** (U.B.R. 1892—1896, Vol. I, p. 2, 123, 153 and 317, and U.B R. 1897—1901, Vol. I, 182, *F.*)

(11)—*Warrant not addressed to the Bailiff—Resistance, whether punishable under s.* 225-*B, I.P.C.*—Where a warrant of arrest is not addressed to a bailiff as required by Form No. 154, Sch. IV of the Crim. Pro. Code, a person resisting the execution of such warrant cannot be convicted of an offence under s. 225-B of the Penal Code. MAHOMMAD BAKSH v. EMPEROR, **16 P.R. 1904, Cr.** (23 C. 896, 26 C. 748, 28 C. 399, *R.*) [*R.*, 16 P.R. 1913, Cr. = 155 P.L.R. 1913 = 14 Cr. L.J. 142 = 18 Ind. Cas. 894 = 20 P.W.R.1913, 19 P.W.R. 1913, Cr. = 14 Cr. L.J. 141 = 18 Ind. Cas. 893 = 183 P.L. R. 1913.]

(12)—*Arrest under s.* 100, *Crim. Pro. Code* (1882)—*Penal Code, s.* 99—*Right of self-defence.*—*Held*, that a Police officer was justified in arresting a person who in midnight worked around in a village inhabited by professional dacoits. *Held*, further, that, even if the arrest were not strictly justifiable, the accused had not, under the circumstances of the case, the right of private defence. CROWN v. GATEEA MEENA, **7 P.R. 1869, Cr.**

(13)—*Right of arrest and private defence of property—Limit.*—The accused was watching his field, the grain of which had, on previous occasions, been stolen ; he saw a thief cutting corn in it, and gave chase. The thief ran his head against a tree and fell. The accused hit him recklessly with a stick while on the ground, and fractured his skull into pieces, causing his death. The thief when he fled did not carry any corn with him. *Held*, that the right of private defence of property and the right of arrest provided by s. 59, read with s. 46, Crim. Pro. Code, were exceeded by the accused, who must have known that he was likely to cause death, and that he was guilty of an offence under s. 304, Penal Code. BAGALIAS BAGI v. EMPEROR, **29 P.R. 1902, Cr. = 2 P.L.R. 1903.** (29 C. 483, 12 W.R. 15, Cr., *D.*)

(14)—*Gambling in public places—Offender escaping immediate arrest—Arrest by police without warrant—Prosecution—Process of Criminal Court—Public Gambling Act, s.* 13.—S. 13, Public Gambling Act, gives no authority to the police to apprehend, without warrant, any person committing any of the acts made punishable by that section, except at the time and place where such act is committed. But this section does not protect any such offender, who may escape arrest at such time and place, from being prosecuted in a competent Criminal Court, nor does it place such offender beyond the reach of the ordinary process of a Criminal Court, which, in such a case as the present, would be a summons and not a warrant. QUEEN-EMPRESS v. NGA PAN BU, **L B.R. 1893-1900, 256.**

(15)—*Crim. Pro. Code* (1882), *s.* 54—*Complaint of cognizable case to police—Power to refrain from arresting person charged.*—A police officer to whom a complaint of a cognizable offence is made, ought, if there be circumstances in the case which led him to suspect the information, to refrain from arresting persons of respectable position, and leave the complainant to go to a Magistrate and convince him that the information justifies the serious step of the issue of warrant of arrest. QUEEN-EMPRESS v. IRAPPA, **Rat. Un. Cr. C. 795 = Cr. Rg. 53 of 1895.**

(16)—*Finding person with stolen property.*—A formal complaint need not be made, in order to authorize a police officer to arrest any person found with stolen property. QUEEN v. GOUREE SINGH, **8 W. R. Cr. 28.**

(17)—*Arrest of Government brig.*—In a case, where a Government brig employed in supplying pilots to vessels at the sand heads, was arrested under a proceeding *in rem*, it was

Arrest—*continued.*

held that the brig, by 21 & 22 Vic., Ch. 126, had become the property of the Crown, and as such was entitled to the same exemption from arrest as all other Queen's ships, and that the proceeding *in rem* was therefore illegal. BROWN v. THE PILOT BRIG, **1 Hyde 253**.

(18)—*Reg.* XXI *of* 1827—*Jurisdiction to try offence under the Regulation—Limit of power to fine—Power to arrest without warrant—Crim. Pro. Code* (1861), *s.* 108.—A District Magistrate's Court is the proper tribunal to try an offence under Reg. XXI of 1827, relating to the smuggling of opium. He has, under s. 21, Crim. Pro. Code, 1861, power to inflict any fine which he may be competent to impose under the Regulation. His pecuniary jurisdiction is not in such cases limited to one thousand rupees. An arrest without a warrant for an offence under Reg. XXI of 1827 is generally illegal, though, under the provisions of s. 108, Crim. Pro. Code, it is competent to him, under the circumstances therein named, to arrest without a warrant. REG. v. NARAYAN GANGARAM, **9 B.H.C. 343.**

(19)—*Arrest of judgment-debtor going to Court.*—Where an arrest under civil process of a judgment-debtor, going to a Court in obedience to a citation to give evidence, was made within the precincts of that Court and with some show of violence and contempt of Court, *held* such circumstances did not entitle the officers making the arrest to protection under s. 78, I.P.C. THAKOORDOSS NUNDEE v. SHUNKUR ROY, **3 W.R.Cr. 53.**

(20)—*Civ. Pro. Code, s* 642 — *Exemption from arrest—Arrest under the Rent Act,* XVIII *of* 1873.—The privilege conferred by s. 642, Civ. Pro. Code, is the privilege from arrest under such process only as may have been issued under the Code of Civil Procedure. Therefore, the protection from arrest afforded by s. 642 does not apply to an arrest under a Revenue Court process under Chap VII of Act XVIII of 1873. EMPRESS OF INDIA v. HARAKH NATH SINGH, **4 A. 27.**

(21)—*Privilege of witness.*—In this case it was held that, on the facts shown in the affidavit, the prisoner was privileged as a witness at the time of his arrest. *In the matter of* OMRITOLALL DEY, **1 C. 78.**

(22)—*Attachment for contempt of Court.*—The right of privilege from arrest while proceeding to the Court or leaving the Court on the hearing of the suit does not apply against whom a writ of attachment for contempt has been issued. JOHN v. CARTER, **4 B.L.R.O.C. 90.**

(23)—*Arrest on Sunday.*—Arrest under civil process of a mofussil Court on Sunday is legal in this country. HIGH COURT PROCEEDINGS, 30TH JULY 1869, **4 M.H.C. App. 62**; D. ABRAHAM v. QUEEN, **1 B.L.R. A.C. Cr. 17**; GRASEMANN AND CO. v. GARDNER, BROOKE AND CO., **3 W.R. Rec. Ref. 2**; PARAM SHOOK DOSS v. RASHEED-OOD-DOWLAH BAHADOOR, **7 M.H.C. 285.**

Arrest—*continued.*

(24)—*Government of India Notification, No.* 11431, *dated 22nd March,* 1888—*Effect—Jurisdiction to arrest persons along the line of the Railway in the Hyderabad State for offence committed in British India.*—The jurisdiction which H.H. the Nizam of Hyderabad conferred upon British India is the Civil and Criminal jurisdiction along the line of the Railway as is the case on other lines running through Independent States. *Held*, therefore, that the arrest of a person charged with the abetment of an offence under ss. 116 and 161, committed in the British territory, at a place within H.H. the Nizam's territories, but also within the Railway limits defined in the Notification, was not legal, merely because the accused at the time of arrest happened to be physically present on a portion of that line of Railway over which jurisdiction was given for the purpose of Criminal and Civil jurisdiction. MUHAMMAD YUSUFUDDIN v. EMPRESS, **6 P.R. 1897. Cr., P. C.,** *on appeal from* **1 P.R. 1896, Cr.** [*R.*, 12 Cr L J. 113=9 Ind. Cas 677=1 P.R. 1911, Cr. =4 P.W.R. 1911=84 P.L.R. 1911.]

(25)—*Warrant of arrest to be executed in Hyderabad—Valid warrant—Government of India Notification, 22nd March, No.* 11431—*Crim. Pro. Code* (1882), *ss.* 77, 82, 83, 191 (*c*), 205 *and* 537.—Where a warrant is issued under s. 191 (*c*) and not under s. 200, Crim. Pro Code, the Magistrate may issue the warrant, without examining the complainant. Under that section the District Magistrate can act on information received from any person other than a Police officer or on his own knowledge or suspicion that the offence for which he issues the warrant has been committed. *Held*, that the omission in a warrant to sufficiently specify the person against whom it was directed was remedied by a Police officer being sent out to point out and identify the accused and s. 357, Crim. Pro. Code, cured any such defect. Where the warrant of arrest of an accused person, a subject of His Highness the Nizam of Hyderabad for the abetment of an offence punishable under ss. 116 and 161, I.P.C., committed in British territory was issued to the resident at Hyderabad, *held*, that the warrant should have been addressed, according to the Government of India Notification, No. 11431, dated 22nd March 1888, to the Railway Magistrate or the Superintendent of the Railway Police, but as it was delivered and executed by the proper Magistrate, the irregularity was cured by s. 537, Crim. Pro. Code. *Held*, further, as in the place where the accused was arrested full jurisdiction had been ceded over British subjects as well as H. H. the Nizam's subjects, the fact that the accused was a subject of H. H. the Nizam did not affect the arrest. MUHAMMAD YUSUFUDDIN v. EMPRESS, **1 P.R. 1896, Cr.,** *on appeal,* **6 P.R. 1897, Cr.**

Power of—*See* ACT XIII OF 1857, s. 24, 24 C. 691.

Warrant of arrest to be in possession at time of arrest—*See* ACT XIV OF 1882, s. 651, 5 A. 318.

Arrest—*continued.*

See BEN. ACT III OF 1864, s. 27, 16 W.R. Cr. 1.

See BEN. ACT IV OF 1866, ss. 46, 72, 4 C. L.J. 92=4 Cr. L J. 71.

See BEN. ACT VI OF 1870. s. 39, cl. (2), 12 C W.N. 367=7 Cr.L.J. 188=35 C. 361.

See BEN. ACT VII OF 1878, ss. 39, 40, 4 C. W N. 245.

See BOM. ACT VIII OF 1867, s. 12 (1), Rat. Un. Cr. C. 26=Cr. Rg. 12-10-1869.

See BOM. ACT IV OF 1887, s. 6, 4 Bom. L. R. 946.

Of person pending appeal—*See* APPEAL—APPEAL FROM ACQUITTAL, 2 A. 386.

See APPEAL—APPEAL FROM ACQUITTAL, 2 A. 340, F.B., 1 C. 281.

See BAIL, 14 A. 45=A.W.N. 1891, 179, 6 M. 69=2 Weir 413.

See COGNIZABLE OFFENCE, L.B R. 1893—1900, 390.

Of witness during the course of trial for giving false evidence—Legality—*See* CONFESSION—CONFESSION BY CO-ACCUSED, 12 Cr. L.J. 465=11 Ind. Cas. 1001.

Validity of, by reason of illegal arrest—*See* CONVICTION, 17 P.R. 1906, Cr.=5 Cr. L.J. 89 =60 P.L.R. 1907.

See CRIM. PRO. CODE, 1898, s. 55, A.W.N. 1883, 223, 3 L B.R. 94=3 Cr. L.J. 20.

Without a warrant — Proceedings under s. 110, Crim. Pro. Code, 1898—*See* CRIM. PRO. CODE, 1898, ss. 55, 110, Ch. VIII, 11 A.L.J. 596=35 A. 407.

See CRIM. PRO. CODE, 1898, s. 56, 11 W R. Cr. 20.

See CRIM. PRO. CODE, 1898, s. 56 (1), 10 C. W.N. 287=3 Cr. L.J. 201.

See CRIM. PRO. CODE, 1898, ss. 87, 88, 90, 3 L B.R. 116.

See CRIM. PRO. CODE, 1882, ss. 177 and 252, 6 P.R. 1899.

Effect of illegal arrest on trial of accused—Extradition—*See* CRIM. PRO. CODE, 1898, s. 188, 13 Bom. L.R 296=35 B. 225=12 Cr. L.J.356=10 Ind. Cas. 956.

See CRIM. PRO. CODE, 1898, s. 437, U.B.R. 1892—1896, Vol. I, 48.

Under illegal warrant, if vitiates trial otherwise regular —*See* HABEAS CORPUS, 15 C.W.N. 1053=14 C.L.J. 375=12 Cr. L.J. 505.

Illegal—When acting *bona fide*—Liability of public officer—*See* JUDICIAL OFFICERS, LIABILITY OF, 3 Agra 409.

See JURISDICTION OF CRIMINAL COURTS —GENERAL, 25 C. 20=24 I.A. 137=2 C.W.N. P.C.

See NATIVE STATE, 7 B.H.C.O.C.J. 172.

Absconding in order to avoid being served with a summons, notice or order—Running away to avoid an arrest under a warrant—*See* PENAL CODE, s. 172, 2 C.L.J. 625=3 Cr. L.J. 117.

Arrest—*concluded.*

Stabbing in evasion of legal, whether exercise of right of self-defence — Crim. Pro. Code, 1882, ss. 59 and 46—*See* PRIVATE DEFENCE, RIGHT OF, L.B.R. 1893—1900, 136.

Without a warrant — Right of private defence—*See* PRIVATE DEFENCE, RIGHT OF, 7 P.R. 1869, Cr.

See SECURITY TO KEEP THE PEACE—ON CREDIBLE INFORMATION, 6 A. 132.

Of a witness, during course of trial, improper—Effect of such arrest—*See* WITNESS, MISCELLANEOUS CASES, L.B.R. 1893—1900, 355.

Arrest of Judgment.

See ACT XVIII OF 1862, s. 41, 1 B.L.R.O. Cr. 1=15 W.R. Cr. 71, note.

Articles of war, Native.

See ACT XXIX OF 1861.

Artificer.

See ACT XIII OF 1859, Rat. Un. Cr. 204= Cr. Rg. 24-7-1884.

Cooly Sirdar or recruiter, whether an, workman or labourer—*See* ACT XIII OF 1859, s. 2, 6 C.L.J. 180=6 Cr. L J. 191.

See ACT XIII OF 1859, s. 2, 10 B. 96, 2 B.L. R.A. Cr. 32=12 W.R. Cr. 71, note, 8 C.L.R. 254.

Artisan.

(1)—*Person driving engine.*—A person driving an engine on board a steamer is an artisan within the meaning of the Indian Emigration Act. EMPEROR v. HAJI SHAIK MAHOMED SHUSTARI, 9 **Bom. L.R. 1059=32 B. 10=7 Cr. L.J. 238.**

Washerman, whether—*See* MAD. ACT III OF 1871, s. 62, 1 M. 174=1 Weir 726.

Assam.

Powers of Laskars—*See* GARO HILLS, 9 Ind. Cas. 114=12 Cr. L.J. 10=13 C.L.J. 444.

Assam Forest.

See REG. VII OF 1891.

Assam Frontier Tracts.

See REG. II OF 1880.

Assam Labour and Emigration Act.

See BEN. ACT VI OF 1901.

Assault.

See PENAL CODE, ss. 349-358.

(1)—*Assault—Term defined.*—Any gestures calculated to excite in the party threatened a reasonable apprehension that the party threatening intends immediately to offer violence, or is about to use criminal force to the person threatened, constitute, if coupled with a present ability to carry such intention into execution, an assault in law. Mere words do not amoun

Assault—*continued.*

to assault. But the words which the party threatening uses at the time may either give to his gestures such a meaning as may make them amount to an assault, or on the other hand, may prevent them from doing so. A. C. CAMA v. H. F. MORGAN, **1 B.H.C. 205.**

(2)—*Penal Code,* s. 351—*Assault, what constitutes.*—To substantiate a charge of assault upon a particular person, it is necessary that a gesture or preparation should be made by a person which would cause another person to apprehend that the person was about to use criminal force to him then and there. It would not be enough to prove that the words used and the preparations made were calculated to cause that person to apprehend that criminal force would be used to him, if he persisted in a certain course of conduct BIRBAL KHALIFA v. EMPEROR, **30 C. 97 = 6 C.W.N. 342.**

(3)—*Penal Code,* ss. 351 *and* 336—*Throwing missiles at human beings—Assault.*—For throwing a bottle into a house, the accused was convicted of a rash and negligent act under s. 336. *Held*, that such an act, done with the intention of hurting or frightening the inmates, constitutes the offence of assault, under s. 351, and not an offence under s. 336. EMPEROR v. PO TAW, **4 Cr. L.J. 201 = 3 L.B.R. 194.**

(4)—*Joint assault— Cause of action.*—An assault made by parties proceeding together and acting in conjunction as to time, place, and assault is one single act, and not a divisible and distinct act. In such a case it cannot be said that the cause of action is not one common to all the parties. RAMESSUR BHUTTACHARJEE v. SHIB NARAIN CHUCKERBUTTY, **14 W.R. 419**

(5)—*Penal Code.* ss. 114, 34, 326 *and* 352—*Abetment of assault—Grievous hurt with dangerous weapon—Knowledge of abettor—Offence committed in presence of abettor.*—A person urged another to attack the complainant; and such other person cut the complainant in the fore-arm with a clasp knife, while the former threw sticks at him. It appeared from the evidence that there was no proof that the latter had the knife in his hand at the time of the former's urging him on; nor was there evidence that the former knew in any other way that the latter would be likely to use the clasp knife. *Held* that the former could not be convicted of abetting the offence of causing grievous hurt with a dangerous weapon under s. 326, Penal Code, but that he could only be convicted of abetting an assault. S. 114 of the Penal Code only applies where, the abetment having been made beforehand, the abettor is also present when the offence abetted is subsequently committed. THA MYA v. KING-EMPEROR, **4 L.B. R. 271.**

(6)—*Assault on a woman—Act causing slight harm, no offence.*—The complainant, a young woman, went after sunrise with an earthen jar through a public thoroughfare to fetch water from a well, when the accused standing at his door caught hold of her hand, which prevented her from proceeding in the direction in which she was going. The Magistrate convicted the accused of an offence under s. 352, Penal Code. The Sessions Judge who was of opinion that the complainant was a woman of loose morals and did not offer any resistance to the accused and, therefore, no offence had been committed, referred the case to the High Court. *Held* that, though there was evidence to sustain a conviction for an offence under s. 352, Penal Code, the harm complained of was so slight that it would be absurd to treat it very seriously. EMPRESS v. BHAIRON MISR, **A.W.N. 1887, 73.**

(7)—*Assault on a public servant—Collectorate peadah—Penal Code,* s. 353.—Persons assaulting a Collectorate peadah, who had been deputed to keep the peace during a distraint are guilty under s. 353 of assaulting a public servant while in the execution of his duty. QUEEN v. METHI MULLAH, **13 W.R. Cr. 49.**

(8)—*Assault on vaccinator—Assaulting vaccinator taking lymph from arm of person objecting to it.*—An attempt by a vaccinator to take the lymph from the arm of a person who objects to it, notwithstanding the objection, is unlawful, and resistance to such an attempt will not be an offence under s. 353, Penal Code. MANGOBIND MUCHI v. EMPRESS, **3 C.W.N. 627.**

(9)—*Penal Code,* s. 353—*Assault on a process-server while executing a warrant—Necessity of producing the warrant in evidence—Evidence Act,* s. 91—*Duty of Magistrates towards getting at the facts of a case.*—The accused were convicted of assaulting a process-server in order to deter him from discharging his duty of arresting a person under a warrant issued by a Civil Court. The warrant was not produced, nor was there any legal evidence of the contents of the warrant. On behalf of the accused, this defect was pointed out and it was contended that, without production of the warrant, there could be no conviction, but the Magistrate convicted them ruling that the production of the warrant was not necessary at all. *Held,* on appeal, the evidence on the record did not support the conviction. The fact, that the process-server was attempting to discharge his duty as a public servant, is an essential part of the offence and of that fact there was no legal evidence of any kind on the record. As required by ss. 250 and 251 of the Civil Procedure, the warrant must have been in writing, and, therefore, under s. 91 of the Evidence Act, the fact, that the warrant gave authority to the process-server for making the arrest, could not be proved except by the production of the warrant or by secondary evidence of its contents and no circumstances appeared on the record which could render secondary evidence admissible. SHWE KO v. KING-EMPEROR, **3 L.B.R. 128.**

(10)—*Criminal complaint for assault no bar to a civil suit.*—The fact that a person, who was assaulted, brought a criminal complaint does not prevent him from subsequently bringing a

Assault—*concluded.*

suit for damages in respect of such assault. JODHI RAM v. ABDUL MIAN, **A.W.N. 1893, 62.** CHANDAN v SUMERA, **A.W N 1887, 104.**

See ABETMENT, 12 W.R. Cr. 51.

Contract compounding—*See* ACT IX OF 1872, s. 23, 5 W.R.S.C.C. Ref. 16.

See ATTEMPT, 45 P.R. 1882, Cr.

See COMPOUNDING OFFENCE, 6 N.W.P. 302.

Right of police constable to enter houses of suspected persons—Assault on the constable—*See* CRIMINAL TRESPASS, 27 M. 52=1 Weir 529 and 346=13 M.L J. 285.

See CRIM. PRO. CODE, 1898, ss. 244, 250, Rat. Un. Cr. C. 403=Cr. Rg. 64 of 1888.

See JOINDER OF CHARGES—MISJOINDER OF CHARGES, 26 M. 454=2 Weir 296.

Assault on a girl of six with intent to outrage her modesty—*See* PENAL CODE, ss. 10, 352, 354, 14 Bom.L.R. 961=1 Bom. Cr. C. 205=13 Cr. L.J. 858=17 Ind. Cas. 794,

See PENAL CODE, ss. 21, 353, 9 Ind. Cas. 669.

Fatal—*See* PENAL CODE, ss. 34, 99, 100, 148, 304, 16 C.L.J. 440.

On pubic servant—*See* PENAL CODE. ss. 99, 353, 38 P.W.R. 1913, Cr.=14 Cr. L.J. 512= 20 Ind. Cas. 992=325 P.L.R. 1913.

Upon a public servant conveying person arrested with sufficient authority—Penal Code ss. 80, 99, 101—*See* PRIVATE DEFENCE, RIGHT OF, 5 P.R. 1901, Cr.

See MAD. REG. XI OF 1816, s. 10, 1 Weir 923.

See SANCTION TO PROSECUTE —CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 17 M.L.J. 559=31 M, 43=7 Cr, L.J. 6= 3 M.L T. 113.

See SECURITY TO KEEP THE PEACE—DEFAULT IN GIVING SECURITY, 7 O C. 338.

See SECURITY TO KEEP THE PEACE—FORFEITURE OF SECURITY, 6 B.L.R. 66=15 W.R. Cr. 14.

See SECURITY TO KEEP THE PEACE—SUMMONS TO SHOW CAUSE, FORM AND NATURE OF, ETC., 3 N.W.P. 96,

See SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC., 16 W.R. Cr. 42.

Assessment.

Illegal assessment—Jurisdiction of Criminal Courts—*See* ACT XXIX OF 1867, s. 3, 29 P.R. 1868, Cr.

Assessors.

See CRIM. PRO. CODE, 1898, ss. 284, 285, 309.

See CHARGE TO JURY.

See JUDGE AND JURY.

See JURY.

See VERDICT OF JURY.

Assessors—*continued.*

(1)—*To be elected "from persons summoned"—Number of—Person not summoned to act as assessor acting as such—Crim. Pro. Code* (1882), s. 248.—Out of six assessors summoned to appear at a criminal sessions, three absented themselves, two were discarded by the Sessions Judge as not appearing to be intelligent and only one was appointed to act as assessor. Two new persons were sent for to fill up the places of the discarded persons. They were neither summoned to act as assessors nor competent to act as such. *Held* that, under the above circumstances, there having been only one properly appointed assessor, all the proceedings conducted with his aid were void and a new trial should be ordered. QUEEN-EMPRESS v. BADRI, **A.W.N. 1894, 207.**

(2)—*Person not summoned to act as assessor acting as such—Trial with the aid of person not summoned to act as assessor, legality of—Constitution of Court, defect in, where mere irregularity—Accused, want of objection by—Crim.Pro. Code* (1898), ss. 326 *and* 537.—In this case the Sessions Judge under s. 326, Crim. Pro. Code, had requested the District Magistrate to summon five persons to attend as assessors. When the case was taken up only one of those persons was present. Thereupon the Sessions Judge directed that a search should be made as to whether there was any one present in the precincts of the Court who was acquainted with English and who could be required to act as an assessor. The result of the search was that the Nazir of the Court was produced and was directed by the Judge to act as an assessor. The Judge noted that no objection was raised to the course taken by him. *Held*, that, as the Nazir was not a person summoned to act as an assessor, and there was nothing to show that he was on the list of assessors and could have been summoned, the trial was illegal. *Held* further, that, in the circumstances, the Court was not properly constituted, and a defect of this kind was not a mere irregularity which could be cured by s. 537, Crim. Pro. Code. *Held* also, that the fact that the appellant did not object to the Nazir's sitting as an assessor was immaterial. KHUB SINGH v. KING-EMPEROR, **13 O.C. 337=8 Ind. Cas. 874=11 Cr. L J. 724.** (15 B. 514, 25 B. 695, *R.*)

(3)—*Liability to serve as—Penalty for non-attendance—Crim. Pro. Code* (1882), ss. 320 *and* 332.—Placing gentlemen of high position such as hereditary Rajas on the list of assessors and fining them for non-attendance when summoned to serve as such are contrary to the usages of the country and consequently highly undesirable. *In the matter of the petition of* RAJA BHUP INDAR BAHADUR SINGH, **A.W.N. 1897, 167.**

(4)—*Crim. Pro. Code* (1882), *ss.* 268, 272, 284 285—*Trial with aid of one assessor only.*—After the accused claimed to be tried, pleading not guilty, the Sessions Judge chose two assessors; but, as one of them was suffering from fever, the Judge at once dispensed with his attendance and

Assessors—*continued.*

proceeded with the trial with the aid of one only, *held*, that the procedure was clearly opposed to ss. 284 and 285 of the code. In a Court of Sessions, the trial "with the aid of assessors" does not commence with the reading of the charge, as the assessors are chosen under s. 272, only if the accused has refused to, or does not plead guilty to the charge, or claims to be tried. QUEEN-EMPRESS v. BASTIANO *bin* ALEXANDER SILVA, **15 B. 514.** [*F.*, 25 B. 694 = 3 Bom. L.R. 274 ; *R.*, 11 Cr. L.J. 724 = 8 Ind. Cas. 874 = 13 O. C. 337.]

(5)—*Crim. Pro. Code* (1898), *ss.* 284, 285, 537 —*Trial with the aid of assessors—Trial with the aid of one assessor only.*—Where a trial before the Court of Sessions begins and ends with one assessor only, it is not a legal trial and the whole proceedings are vitiated by the error. KING-EMPEROR v. JAYRAM, **25 B. 694 = 3 Bom. L.R. 274.** [*R.*, 11 Cr. L.J. 724 = 8 Ind. Cas. 874 = 13 O.C. 337.]

(6)—*Case triable with assessors tried by jury —Appeal on facts.*—The trial by jury of a case properly triable with assessors is not invalid on that ground ; but, in such a case, the prisoner does not lose his right of an appeal on the facts, which he would have had, if the case had been tried with assessors. EMPRESS v. MOHIM CHUNDER RAI, **3 C. 765.** [*Cons.*, 6 M.L.J. 14 ; *R.*, 4 C.L.R. 405, 3 Bom. L.R. 278, F.B., 26 M. 243.]

(7)—*Crim. Pro. Code* (1882), *s.* 285—*Assessors —Trial with the aid of two assessors, one of them being deaf—Validity*—Before a Sessions trial began, it was found that one of the three assessors who attended was deaf, and the trial proceeded with the aid of two assessors. It was found, after the public prosecutor had closed his case, that another assessor was so deaf as to be incapable of understanding the proceedings. *Held*, that the proceedings were null and void, as the trial was held with the aid of only one assessor who was capable of acting as such, and that s. 285 did not apply, as the section applied only to a case of a trial which had commenced with the aid of two or more assessors, who at the commencement of the trial were capable of acting as assessors. QUEEN-EMPRESS v. BABU LAL, **21 A. 106 = A.W.N. 1898, 185.** [*F.*, 25 B. 694 = 3 Bom. L. R. 274 ; *R.*, 24 M. 523.]

(8)—*Crim. Pro. Code* (1882), *ss.* 268, 285—*Trial with the aid of assessors—Absence of assessor, effect of.*—The first part of s. 285 explicitly provides that the assessors shall attend throughout the proceedings, that is to say, that there shall be no break in their attendance, which shall be exactly commensurate with the entire continuance of the trial down to the time when the finding is made. At the early stage of a Sessions trial, one out of three assessors died, and later on, another became too ill to take any further part in the trial. The third assessor was obliged to be absent on account of illness during the address of the accused's pleader ; *held*, that the trial should be set aside, because it was before a Court without jurisdiction, a portion of the trial having been conducted without the aid of any assessor. QUEEN-EMPRESS v. MUHAMMAD MAHMUD KHAN, **13 A. 337 = A.W.N. 1891, 93.** [*R.*, 24 M. 523 = 2 Weir 345.]

(9)—*Crim. Pro. Code* (1898), *ss.* 268 *and* 285 —*Trial with the aid of assessors—Absence of an assessor—Trial without aid of assessor.*—When a trial is resumed by a Sessions Judge in the absence of one of the assessors, but still with the aid of the other assessor or assessors present, the absent assessor ceases to occupy the position of an assessor aiding at the trial. It is clear that what the law requires is that a Sessions trial should be held, under exceptional circumstances, by the Sessions Judge with the aid of at least one assessor sitting throughout during all the proceedings. KING-EMPEROR v. MESSERUDDIN SHIKDAR, **6 C.W.N. 715.**

(10)—*Crim. Pro. Code* (1882), *ss.* 268, 428, 537—*Recording evidence in the absence of assessors*—Where in a trial for murder, the Sessions Judge, relying on a statement made by the deceased, convicted the accused, but there was evidence to show that the statement was not recorded by the Judge until after the assessors had been discharged, *held*, that the error vitiated the trial, and it was not covered by the provisions of s. 537. In only one instance is a Court of Sessions authorized to record evidence in the absence of the jury or the assessors, and that is, when additional evidence is called for by the appellate Court. QUEEN-EMPRESS v. RAM LALL **15 A. 136 = A.W.N. 1893, 50** [*R.*, 24 M. 523 = 2 Weir 346.]

(11) — *Procedure—Assessors—Plea of guilty.* —Where a prisoner pleads guilty, a conviction upon that plea is valid, although there are no assessors. QUEEN v. SREE KANT CHARAL, **10 W.R. Cr. 43 = 2 B.L R. F.B. 23.**

(12)—*Plea of guilty—Plea that accused was not of sound mind.*—Where, after pleading guilty, the accused makes an addition to the plea of guilty, to the effect that he was really not guilty of the offence charged, as he was out of mind when he committed it, and it becomes necessary to have a formal trial, and to take evidence before a conclusion on the issue raised can be arrived at, then, the trial cannot proceed without the aid of assessors. QUEEN v. CHEIT RAM, **5 N.W.P. 110.** [*F.*, Rat. Un. Cr. C. 698.]

(13)—*Crim. Pro. Code* (1898), *s.* 309—*Sessions trial—Assessors, opinion of—Grounds.*—Assessors should be invited and encouraged by the Judge to state briefly the grounds of their opinion as well as the result. QUEEN-EMPRESS v. MAHADU TUKARAM, **2 Bom. L.R. 322.**

(14)—*Assessors—Opinion to be given on the whole evidence.*—Unless the opinion of the assessors is taken on the whole of the evidence in the case, there can be no legal conviction. QUEEN v. BHUGWAN LALL, **15 W.R. Cr. 3.**

Assessors—*continued.*

(15)—*Crim. Pro. Code* (1898), s. 309—*Sessions trial—Opinion of assessors, recording of.*—The Sessions Judge should record fully the opinion of the assessors. The reasons for the opinion should be briefly stated and not merely the result of the opinion. Where one of the assessors merely found the accused not guilty of the offence charged and the other concurred with him, *held*, that such opinion could not be of any assistance to the Sessions Judge at the trial or to the High Court on appeal. QUEEN-EMPRESS v. FAKIRA *bin* LINGAPPA, **2 Bom. L.R. 323.**

(16)—*Opinion of each assessor and grounds therefor, to be recorded.*—The grounds given by each assessor for his opinion should be distinctly recorded by the Judge. QUEEN v. MST. MINA NUGGERBHATAIN, **3 W.R. Cr. 6.**

(17)—*Grounds of opinion—One assessor concurring with the other.*—In a case where one of the two assessors said that he thought it proved that a war was waged against the Queen, that there was a conspiracy to carry on that war, and that the prisoner was guilty of all the acts charged, and the other assessor concurs with him, *held* that it could not be said that the assessors have no reason for their opinion. QUEEN v. AMIRUDDIN, **7 B.L R. 63 = 15 W.R. Cr. 25.**

(18)—*Assessors differing from Judge—Grounds of opinion.*—Assessors are appointed to aid the Judge in the trial. They must give the grounds of their opinions when they differ in opinion from the Judge. QUEEN v. BUSHMO ANENT, **3 W R. Cr. 21.**

(19)—*Opinions of assessors, how to be delivered—Summing up of evidence, record of.*—The Sessions Judge should require *each* assessor to state his opinion orally. If the Sessions Judge is not able to record the substance of his summing up of the evidence in a case, he should employ an independent person to record it and not ask the Public Prosecutor to do it. SHADULLA HOWLADAR v. EMPRESS, **9 C. 875 = 12 C.L.R. 506.**

(20)—*Summing up of evidence by Judge.*—Although the old Criminal Procedure Code did not expressly provide for the summing up of the evidence in a trial with the aid of assessors yet there was nothing in the Code to prevent a Judge from summing up the evidence to the assessors. QUEEN v. AMIRUDDIN, **7 B L R. 63 = 15 W.R. Cr. 25**; *But see* QUEEN v. JOGE POLY, **7 B.L.R. 67, note = 11 W.R Cr. 39.**

(21)—*Crim. Pro. Code* (1861), *s.* 324—*Case tried with assessors—Absence of evidence against the accused—Procedure*—In a case tried with assessors, if the prisoner pleads not guilty and if the Public Prosecutor is not able to offer evidence in support of the charge, the Judge should instruct the assessors that they are bound to find the prisoner not guilty. HIGH COURT PROCEEDINGS, 9TH MARCH 1869, **4 M.H.C. App. 39.**

Assessors—*continued.*

(22)—*Crim. Pro. Code* (1882), *ss.* 309, 537—*Case tried with the aid of assessors—Omission to record judgment.*—The omission of a Judge to record a judgment, in a case tried with the aid of assessors, is an irregularity that is covered by s. 537 of the Code. *In re* SAVU PASUMBADI, **2 Weir 392.**

(23)—*Trial with assessors—Omission to state reasons for judgment—Crim. Pro. Code, Act* XXV *of* 1861, *s.* 379.—In a trial with the aid of assessors, the Judge's omission to state the reasons for his judgment is an irregularity which does not vitiate the finding. REG. v. KALA KARSAN, **6 B H.C. Cr. 55.**

(24)—*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 372—*Acquittal—Opinion of assessors—Practice.*—When a judgment of acquittal is recorded under s. 372 of the Crim. Pro. Code, 1861, it is not necessary to take and record the opinions of the assessors. REG v. PARVATI, **7 B.H.C. Cr. 82**; REG v. PARVATI, **Rat. Un. Cr. Cas. 35.**

(25)—*Evidence thought unworthy of credit by Judge—Opinion of arrears to be taken.*—Where there is any evidence to support the charge, the opinions of the assessors should be taken, even though the Sessions Judge may consider such evidence to be unworthy of belief. EMPRESS v. TULARAM BRAHMIN, **9 C.P.L.R. 24, Cr.** (10 A. 414, 16 B. 414, *R.*)

(26)—*Opinion of assessors—Crim. Pro. Code* (1872), *ss.* 255, 265, *scope of.*—The intention of the Legislature in ss. 255 and 265 of the Criminal Procedure Code, in a case in which the accused was tried on two charges, was that the assessors should give a definite opinion whether the prisoner is guilty of either of the offences charged, and, if so, of which of the charges preferred against him, and that the Judge, on delivering judgment, should give it with advertence to the opinion of the assessors. QUEEN v. MATAM MAL, **22 W.R. Cr. 34.**

(27)—*View by assessors of scene of offence.*—As to a view by the assessors of the scene of an alleged offence, the Judge could not delegate his own function of examining witnesses on the spot to the assessors, who cannot under s. 348, Crim. Pro. Code, 1861, speak to or communicate with any person other than the officer appointed to conduct them to the place. QUEEN v. CHUTTERDHAREE SINGH, **5 W.R. Cr. 59.**

(28)—*Crim. Pro. Code* (1882), *ss.* 321, 325—*Holding Sessions in another District.*—The Sessions Judge of Canara asked the High Court for special permission to hold his Court at Sirsi, instead of at Karwar, for the Sessions of September 1886. *Held* that, as the assessors can only be chosen from the list prepared under s. 321, Crim. Pro. Code, which can only be revised once a year, (s. 325. Crim. Pro. Code), the Court should, therefore, decline to grant the permission asked for, there being no assessors available for the Sessions at Sirsi. KARWAR SESSIONS JUDGE'S LETTER, **Rat. Un. Cr. C. 304 = Cr. Rg. 52 of 1886.**

Assessors—*concluded.*

(29)—*Appointment of assessors by appellate Court.*—The appointment of assessors by an appellate Court in a criminal case is not authorized by law. CROWN v. SYUD AHMUD, **17 P.R. 1868, Cr.**

Order of Sessions Judge fining—*See* APPEAL—CASES WHERE APPEAL DOES NOT LIE, 8 W.R Cr. 83.

See CRIM. PRO. CODE, 1898, ss. 269, 409, 536, 24 M. 641=2 Weir 458.

Offence triable both by jury and assessors—Proper procedure — *See* CRIM. PRO. CODE, 1898, ss. 269 (3) and 309, 2 Weir 334.

See CRIM. PRO. CODE, 1898, s 289, 10 A. 414=A.W.N. 1888, 129.

See CRIM. PRO. CODE, 1898, s. 307, 8 Bom. L.R. 599=4 Cr. L J. 192.

See CRIM. PRO. CODE, 1898, ss. 326, 327, A.W.N. 1894, 207.

Trial by jury instead of with the aid of assessors—*See* CRIM. PRO. CODE, 1898, ss. 418, 439, 536, 25 B. 680=3 Bom. L.R 279, F.B.

See CRIM. PRO. CODE, 1898, ss. 536 and 537, 26 M. 243, note.

See CRIM. PRO. CODE, 1898, s. 536, cl. 2, 23 M. 632=2 Weir 331.

See CRIM. PRO. CODE, 1898, s. 537, 1 A. 610.

Power of Judge to delegate to—Examination of witnesses—*See* JUDGE, 5 W.R. Cr. 59.

Mode of recording opinions of—*See* JURISDICTION—GENERAL, 39 C. 119=15 Ind. Cas. 65=13 Cr. L J. 433.

Verdict of assessors in answer to questions by Judge—Propriety—*See* PENAL CODE, ss. 399, 402, 18 C.W.N. 498=41 C. 350=15 Cr. L.J. 385 =23 Ind. Cas 985.

See SESSIONS JUDGE, JURISDICTION OF, 22 C. 805.

Joint opinion of, mere irregularity—*See* SESSIONS TRIAL, 41 P. R. 1887, Cr.

Trial with—One of them found disqualified to act after trial began—Procedure—*See* TRIAL, (1912) M.W.N. 378=15 Ind. Cas. 313=13 Cr. L J. 473.

Opinion of assessors—*See* WITHDRAWAL OF PROSECUTION, Rat. Un. Cr. C. 307=Cr. Rg. 58 of 1886.

Assistant Sessions Judge.

Crim. Pro. Code (1882), *s* 193—*Assistant Sessions Judge—Taking charge—Jurisdiction.*—An Assistant Sessions Judge, who has been directed by the Government to take over charge of the duties of Judge and Sessions Judge during the temporary vacancy of the office, is not an officer appointed to act as a Sessions Judge and has no jurisdiction to try any case even as Assistant Sessions Judge, unless it was made over to him under a general or special order under the last para of s. 193 of the Crim. Pro. Code. QUEEN-EMPRESS v. MAHADHU, **Rat. Un. Cr. C. 500=Cr. Rg. 12 of 1890.** (14 C. 887, *R.*)

Asylums.

See LUNATIC ASYLUM'S ACT.

Attachment.

See CRIM. PRO. CODE, 1898, ss. 87, 89, 146.

See MALICIOUS ATTACHMENT.

See WARRANT OF ATTACHMENT.

(1)—*Profits obtained during the attachment to be delivered—Crim. Pro. Code* (1882), *s.* 146.—A Magistrate attaching immoveable property under s. 146, Crim. Pro. Code, pending the decision of a Civil Court in respect thereof, should not, after the decision of the Civil Court, retain in his hands the profits derived from such property during the attachment. *In the matter of the petition of,* AVADH NARAIN LAL, **A.W. N. 1893, 100.**

(2)—*Claim*—Bona fide *interest*—A Magistrate must inquire judicially into and decide a claim to property attached under his orders in attempting to recover a fine. A claimant must be given an opportunity of showing a *bona fide* interest in such property before it was attached. QUEEN-EMPRESS v. MI MYAING, **L. B. R. 1872—1892, 332.**

(3)—*Attachment of property of absconding accused—Attachment and sale in execution of money-decree—Sale by Magistrate.*—Where the property belonging to an absconding accused was attached, under s. 172, Crim. Pro. Code, and subsequently sold, and the same property was in the meantime also attached and sold in execution of a money decree, *held*, the title conferred on the purchaser at the Magistrate's sale was the superior one. So long as the attachment by the Magistrate continued, no title could be conferred by any attachment subsequently made. GOLAM ABED v. TOOLSEERAM BERA, **9 C. 861=12 C.L.R. 411.**

(4)—*Crim. Pro. Code* (1898), *s.* 88—*Attachment of property—Claim by third person—Duty of Magistrate—Rights of claimant—Civil suit.*—Where the District Magistrate attached the property of an absconder under s. 88 of the Crim. Pro. Code, a claim made to such property cannot be investigated by the Magistrate. But the Magistrate should stay the sale to give the claimant time to establish his right; and, if the Magistrate errs, the remedy of the aggrieved party is by civil suit and not by criminal revision petition. SU WE v. KING-EMPEROR, **4 L.B.R. 109.**

(5)—*Power of Magistrate to enquire into claims to property attached as belonging to the accused—Order as to disposal of property respecting which accused appears to have committed an offence—Crim. Pro. Code* (1882), *ss.* 88, 89, 523, 512 *and* 517.—Ss. 88 and 89, Crim. Pro. Code, do not provide for any enquiry into the claims of other persons to the property attached as belonging to an accused, and a Magistrate should be very careful only to attach property belonging to the absconding accused person. S. 523 does not apply to property produced under search warrant issued by a Criminal Court, or produced by the police in carrying out the order

Attachment—*concluded.*

of a Magistrate. When an accused person has absconded, the only enquiry which a Magistrate can make into the truth of the complaint made against him is an enquiry under s. 512, Crim. Pro. Code, and, if any offence appears to have been committed regarding any property produced before the Magistrate at such enquiry, it seems permissible and proper to make an order as to the disposal of such property under s. 517. GOLOB SINGH v. ABDUL RASHID, **L. B R. 1893—1900, 324.** (17 B. 748, *F.*).

Decree ordering wife to return to husband—Enforcing decree under a suit for restitution of conjugal rights against wife—*See* ACT XIV OF 1882, 8 W.R. P.C. 3 = 11 M.I.A. 551.

Of doors of houses, validity of—*See* MAD. ACT IV OF 1884, s. 103, 13 M. 518 = 1 Weir 730.

Tools of artisan, attachment of—*See* MAD. ACT V OF 1884, s. 94, 21 M. 296 = 1 Weir 135 = 1 Weir 792.

Of a forest—Whether an elephant in the forest can also be attached—Who is entitled to the possession of the elephant—*See* CRIM. PRO. CODE, 1898, s. 145, (1912) M.W.N. 540 = 14 Ind. Cas. 318 = 13 Cr. L.J. 222.

Possession delivered by Civil Court—Dispute concerning lands so delivered—Attachment of land by Magistrate, legality of—*See* CRIM. PRO. CODE, 1898, ss. 145 and 146, 32 C. 796 = 2 Cr. L.J. 761.

Order of, of crops, belonging to tenants of the land in dispute under s. 145, Cr. P.C.—*See* CRIM. PRO. CODE, 1898, ss. 145 and 146, 5 C. W.N. 105.

Conditions essential for passing order for attachment of property— *See* CRIM. PRO. CODE (1898), s. 146, 2 A.L.J. 149 = 6 Bom. L. R. 723, 9 C.W.N. 887 = 1 C.L.J. 331 = 2 Cr. L. J. 408, 26 M. 410.

Under s. 146, if valid where Magistrate unable to satisfy himself who was in possession—*See* CRIM. PRO. CODE. 1898, ss. 146 and 435, 7 Bom. L R. 18 = 2 Cr. L.J. 28.

See PENAL CODE, ss. 183, 186, 27 A. 258 = 1 A.L.J. 595 = A.W.N. 1904, 229.

Land under—Trespass upon that land—*See* PENAL CODE. ss. 188, 447, 8 M.L.J. 253.

Of property—Removal from custody—Theft or criminal breach of trust—*See* PENAL CODE, ss. 379, 406, 8 A.L.J. 656 = 11 Ind. Cas. 142 = 12 Cr. L.J. 374.

Order for payment of Municipal taxes out of fine—Power of Deputy Magistrate to question legality of, by Civil Court—*See* SENTENCE—FINE, 8 W.R. Cr. 17.

Attempt.

See PENAL CODE, s. 511.

(1)—*Attempt defined.*—An attempt is an intentional preparatory action which fails in object—which so fails through circumstances independent of the person who seeks its accomplishment. QUEEN-EMPRESS v. LUXMAN NARAYAN JOSHI, **2 Bom L.R. 286.** [*F.*, 10 Bom. L.R. 973 = 9 Cr. L.J. 226 = 4 M.L.T. 450.]

(2)—*Attempt, what constitutes.*—When a man does an intentional act with a view to attain a certain end and fails in his object through some circumstances independant of his own will, he has attempted to effect the object at which he aimed. QUEEN-EMPRESS v. VINAYAK NARAYAN BHATYE, **2 Bom. L.R. 304.**

(3)—*Penal Code, s.* 511—*Attempt, what constitutes.*—S. 511 does not cover only the penultimate act towards the completion of an offence. It also covers acts precedent, if those acts are done in the course of the attempt to commit the offence, with the intent to commit it and towards its commission. The question whether an act is an act of preperation, or an act in the attempt and towards commission, is a fact to be determined upon the evidence. It is in most cases a question for the jury to distinguish between an act before attempt has begun, an act after attempt begun, and towards the commission of the offence attempted, and an act independent of the attempt altogether. *In the matter of*, MACCREA **15 A. 173 = A.W.N. 1893, 71.** [*R.*, 25 B. 90 : 39 M. 501 = 2 Bom Cr. Cas. 123 = 18 C.L.J. 365 = 14 Cr. L.J. 577 = 20 Ind. Cas. 369, 2 A L.J. 718, 15 Cr. L.J. 265 = 66 P.L R. 1914 = 13 P.W.R. 1914, Cr. = 14 P.R. 1914, Cr. = 23 Ind. Cas. 473]

(4)—*Attempt, what constitutes—Penal Code s.* 511, *scope of—Per Ranade, J.*—S. 511, I.P.C., does not relate only to the penultimate act, but to all preceding acts if they were done with intent to commit or facilitate the commission of the act. QUEEN-EMPRESS v. ANANT PURANIK, **25 B. 90 = 2 Bom. L.R. 653.**

(5)—*Attempt to commit offence, what constitutes.*—A person cannot be convicted of attempting to commit an offence, unless the offence would have been committed, had the attempt proved successful. CHANDI PERSHAD v. ABDHUR RAHMAN, **22 C. 131.** [*R.*, 38 C. 68 = 7 Ind. Cas. 747 = 13 C.L.J. 43 = 11 Cr. L.J. 525.]

(6)—*Attempt, what constitutes.*—To constitute an attempt to commit an offence, there must be something "commenced which would have ended in the crime if not interrupted." *In the matter of the petition of* RIASAT ALI *alias* BABU MIYA *alias* BODIUZZUMA EMPRESS v. RIASAT ALI, **7 C. 352 = 8 C L.R. 572 = 4 Shome L.R. 155** [*Diss.*, 15 A. 173 ; *F.*, 1 L.B.R. 264 ; *R.*, 22 C. 131, Rat. Un. Cr. C. 470, 13 Cr. L.J. 6 = 13 Ind. Cas. 99.]

(7)—*Preparation—Attempt— Difference*—Locus penitentiæ.—Between the preparation for the attempt and the attempt itself, there is a wide difference. The preparation consists in devising or arranging means or measures necessary for the commission of the offence; the attempt is the direct movement towards the commission after preparations are made. The law allows a *locus penitentiæ* and will not hold

Attempt—*continued.*

that a person has attempted a crime, until he has passed beyond the stage of preparation. REG. v. PADALA VENKATASAMY, **3 M. 4 = 1 Weir 543.**

(8)—*Penal Code, ss.* 75, 511—*Applicability of s.* 75 *to attempt under s.* 511.—S. 75 does not apply to cases which are confined to s. 511. The offences which come under s. 511 must be punished entirely irrespective of s. 75. QUEEN-EMPRESS v. BHAROSA, **17 A 123 = A W.N. 1895, 23.** (17 A 120 = A.W.N. 1895, 22, *Appr*) [*F*, 14 P R. 1906, Cr. = 12 P.L R. 1907 = 15 P. W.R 1907, Cr. = 5 Cr. L.J. 85 : *R.*, 10 Bom.L. R. 26 = 7 Cr. L J. 32 = 3 M.L.T. 122]

(9)—*Attempt—Penal Code, s.* 75.—S. 75, I.P.C. is restricted to offences under Chaps. XII and XVII of the Penal Code, when the term of imprisonment awardable is three years' imprisonment and upwards, and does not refer to an attempt to commit any of those offences, nor can any case be brought within it, merely because the punishment that may be given for it extends to three years and upwards. QUEEN v. DAMU HAREE, **21 W.R.35 Cr.**

(10)—*Penal Code, s.* 511—*Attempt distinguished from preparation*—To constitute the offence of attempt under s. 511, there must be an act done with the intention of committing an offence and for the purpose of committing that offence, and it must be done in *attempting* the commission of the offence. Although the provisions of the section extend to a much wider range of cases than would be deemed punishable under the English Law, they would not extend to make punishable as attempts acts done in the mere stage of preparation. Although such acts are done towards the commission of the offence, they are not done in the attempt to commit the offence. The term " attempt " indicates the actual taking of those steps which lead immediately to the commission of the offence, although nothing be done, or omitted, which of itself is a necessary constituent of the offence attempted. QUEEN v. RAMSARUN CHOWBEY, **4 N.W.P. 46.** [*R.*, 16 A. 409 ; *Expl.*, 15 A. 173; *D.*, 2 A. 105.]

(11)—*Offence—Attempt—Preparation*—There is a distinction between the commission of an offence, the attempt to commit it and a preparation to commit it. Preparation, or providing an opportunity to commit an offence, is a stage of the proceeding short of attempt, and is not punishable by law. PAIRA RAM v. EMPEROR, **7 P.L R. 1903 = 25 P.R. 1902, Cr.**

(12)—*Attempt—Preparation.*—Preparation to commit an offence is punishable only when the preparation is to commit dacoity. Preparation to commit an offence and an attempt are distinct; if the actual transaction has commenced and would have aided in a crime, if not interrupted, there is an attempt. CROWN v. SHERA, **18 P.R. 1868, Cr.** [*R.*, 15 Cr. L.J. 385 = 23 Ind. Cas. 985 = 18 C.W N. 498.]

(13)—*Attempt—Preparation.*—The act of a milk-man in going in the direction of the place where the cows are about to be milked with about three gallons of stale milk in his possession, the milk being in a can similar to the cans in which the cows are milked, amounts only to a preparation to adulterate the milk intended for sale as food or drink, but not to an attempt. SUKHA v. EMPRESS, **40 P.R. 1885, Cr.** [*R.*, 14 P.R. 1914, Cr. = 13 P.W.R. 1914 = 66 P.L.R. 1914 = 15 Cr. L. J. 765 = 23 Ind. Cas. 473.]

(14)—*Attempt to abet an offence.*—An offence can be abetted, within the meaning of s. 109, I.P.C., though the means which are intended to be employed are such that it is physically impossible that the effect requisite to constitute the offence should be caused by them. SAHIB DITTA v EMPRESS, **20 P.R. 1885, Cr.** [*Contra* 7 C. 352.]

(15)—*Attempt to abet*—It is not legally impossible to attempt the abetment of an offence, which is provided for in s. 511. There is, therefore, no legal obstacle to punishing such an offence. R. SPIER v. EMPRESS, **49 P.R. 1887, Cr.**

(16)—*Penal Code, ss.* 467, 511—*Attempt to commit forgery.*—Where the first appellant personating another person, accompanied by the second appellant, purchased from the stamp vendor a stamp paper in the name of the person personated, and thereupon requested a petition writer to engross on the stamp paper a bond by which the person personated acknowledged that he had borrowed a certain amount from the second appellant and the petition-writer took them to the *thana*, his suspicions being aroused, *held*, that the second appellant was guilty of an attempt to commit an offence under s. 467, and that the first appellant was guilty of an abetment of the same. QUEEN-EMPRESS v. KALYAN SINGH, **16 A 409 = A. W.N. 1894, 150.** (N.W.P H.C. 1872 46, *R.*) [*R.*, 25 B 90, 15 Cr. L.J. 765 = 23 Ind. Cas. 473 = 66 P L.R. 1914 = 14 P.R. 1914, Cr. = 13 P.W.R. 1914, Cr.]

(17)—*Penal Code, s.* 307—*Attempt to commit murder.*—Where a woman of 20 years administered *datura* to her parents and brother, *held*, that it should be presumed that she was aware that death might be caused by the administration of *datura*, although she might not have intended to kill them. QUEEN-EMPRESS v. TULSHA, **20 A. 143 = A W.N. 1897, 225.** [*N. F.*, 30 A. 568 = A.W.N. 1908, 243 = 8 Cr. L.J. 383 = 4 M.L.T. 402.]

(18)—*Penal Code, s.* 307—*Attempt to commit murder*—S. 307 of the Penal Code was not intended to exhaust all attempts to commit murder which could be punishable under the Code, but applies only to acts done which are capable of causing death in the natural and ordinary course of things, if the act took effect, in considering, however, an attempt under s. 511, it is unnecessary to see whether the causing of death was possible or not, if the act was completed. In this case, the prisoner was about to pull the trigger of a loaded gun which, however, was not capped, though the prisoner believed it to be so, when the gun was pulled

Attempt—*continued.*

from his hands. *Held*, there was an attempt to murder, not under s. 307, but under s. 511 coupled with ss. 299 and 300 of the Code. REG. v. FRANCIS CASSIDY, **4 B.H.C. Cr. 17.** [*Diss.*, 14 A. 38 ; *R.*, 30 P. R. 1904, 15 Cr. Bom. L.R. 991=2 Bom. Cr Cas. 159=14 Cr. L.J. 641=21 Ind. Cas, 881.]

(19)—*Attempt to commit murder—Grievous hurt—Preparation.*—The mere act of bringing a sword is not an act of such an approximate nature as would amount to an attempt to commit murder or grievous hurt, although it may be a preparation towards the commission of some such offence. But, under the circumstances of the case, it was held that the prisoner's act might amount to an assault, as it was likely to cause the complainant to apprehend that the prisoner was about to use criminal force to him. DATA RAM v. EMPRESS, **45 P.R. 1882, Cr.** [*Dist.*. 30 P.R. 1904, Cr.]

(20)—*Attempt to murder.*—The fact that the illegitimate child of a Brahman widow was found wrapped up in a cloth and with a pot turned over its head, when the police rushed into the room just opened, and the suggestion that the mother was interested in killing the child, are not sufficient evidence to support a conviction for an attempt to murder. REG. v. CHIMA, **8 B.H.C. Cr. 164.**

(21)—*Attempt to murder.*—*Held* (*Ormond, J., dissenting*) that the offence, which is called shortly, in the marginal index to s. 307, Penal Code, "attempt to murder," does not depend at all on the nature of the hurt actually inflicted; it is an offence which may be committed without inflicting any hurt at all, as will be clear from the first illustration to the section. Though, in most cases, the nature of the injuries inflicted is of considerable assistance in coming to a finding as to the intention with which the accused acted, yet, such intention must also be deduced from a consideration of the whole facts of the case and may even be ascertained, in some cases, without reference to the wounds at all. KYAW WE v. KING-EMPEROR, **4 L B R. 311, F B.=9 Cr. L J. 5.**

(22)—*Attempt to murder—Attempt to cause grievous hurt.*—Where the accused ran after the complainant with an axe in his hand and raising it to the shoulder when about four *kadams* from the complainant, but the axe was snatched away before he could do anything in pursuance of that object, *held*, that the accused was not guilty of an attempt to commit murder, but was guilty of an attempt to cause grievous hurt under s. 511 read with s. 326. JIWAN DAS v. EMPEROR. **30 P.R. 1904, Cr.** (4 B.H.C. R. 17, 14 A. 38, *cited* ; 45 P.R. 1882 **Cr.**, *D.*) [*R.*, 10 Bom. L.R. 848=8 Cr. L.J. 281.]

(23)—*Attempt to murder—Grievous hurt with dangerous weapons*—An attempt to murder must not be confounded with causing grievous hurt with dangerous weapons. GHOLAM RUSSOOL v. CROWN, **32 P.R. 1866, Cr.**

Attempt—*continued.*

(24)—*Raising a knife in a threatening manner, but without trying to stab, if attempt—Penal Code, s.* 511.—In order to constitute an attempt punishable under s. 511, Penal Code, there must be an intention to commit a particular crime, a commencement of the commission and an act done towards the commission. The act of raising a knife in a threatening manner, manifesting an intention to stab, but without actually trying to stab, the complainant, falls short of an attempt to stab. CROWN v. THA DO HLA, **1 L.B.R. 264.** (7 C. 352, *F.*)

(25)—*Attempt to commit murder—Preparation.*—A request to a native doctor by the accused for medicine for the purpose of poisoning her son-in-law was not an attempt to commit murder, but was merely a preparation. But the act could be held to be an instigation of the doctor to abet the accused in the commission of murder, punishable under s. 302 read with s. 116, I.P.C. EMPRESS v. BHAKHTAWAR, **24 P.R. 1882, Cr.**

(26)—*Attempt to commit suicide — Causing grievous hurt to himself.*—A person cannot be convicted under s. 309, for emasculating himself. CROWN v. MADHO SINGH, **22 P.R. 1878, Cr.**

(27)—*Attempt to commit dacoity.*—S. 511, Penal Code, does not apply to a case of dacoity. QUEEN v. KOONEE, **7 W.R. Cr. 48.**

(28)—*Attempt to commit house-breaking.*—Removing some projecting tiles from the roof of a house is not a step towards committing house-breaking and consequently is not an attempt to commit house-breaking. EMPRESS v. TEJMAN, **A.W.N. 1886, 290.** [*R.*, 15 Cr. L.J. 765=23 Ind. Cas 473=66 P.L.R. 1914=13 P.W.R 1914=14 P.R. 1914.]

(29)—*Attempt to commit house trespass, after previous conviction under Chap.* XVII, *Penal Code—Enhanced punishment.*—A person previously convicted of an offence under Chap. XVII, I.P.C., cannot be convicted under s. 75, I.P.C., and sentenced to an enhanced punishment for an attempt to commit an offence punishable under s. 456, I P.C. DEVA SINGH v. CROWN, **27 P.R. 1872, Cr.** [*F.*, 37 P.R. 1882, Cr.]

(30)—*Attempt to commit an offence under s.* 215, *Penal Code, when complete—Proposal and contract distinguished*—In order to constitute an attempt to commit an offence under s. 215, Penal Code, it is not necessary that the person who is willing to take and the person who is willing to give, the illegal gratification should agree both as to the object for which the gratification is to be given and also as to the shape or form the gratification is to take. When once a proposal has been made for the payment of an illegal gratification, whether it is completed by an agreement or not, the offence of an attempt to commit an offence under s. 215 is complete. Proposals as defined in s 2 of the Contract Act are attempts to complete an agreement, or in other words, to arrive at the

Attempt—*continued.*

mutually expressed view of two wills whereby the legal bond, called a contract, is constituted. KING-EMPEROR v. NGA NYA, **2 L.B.R. 310.** (20 A. 389, *Diss.*)

(31)—*Penal Code, ss.* 379, 511—*Attempt to commit theft.*—Trying to open a gate for the purpose of stealing some paddy is an act done towards the commission of the offence of theft, which was admittedly their object. They can be convicted, therefore, under s. 511 and s. 379 of I P.C. QUEEN-EMPRESS v. NGA PA DAUK, **U.B.R. 1892—1896, Vol. I, 293.**

(32)—*Fabricating false evidence—Attempt.*—Where the facts showed that the accused had dug a hole, intending to place salt therein, so that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, he would be guilty of an attempt to fabricate false evidence. QUEEN v. NUNDA, **4 N.W.P. 133.**

(33)—*Public servant preparing an incorrect document—Attempt to cheat.*—If after framing an incorrect document coming under the provisions of s 218, I.P.C., the public servant submits the document, with intent thereby to procure credit for payment of more than, to his own knowledge, is due to him, all the elements of an attempt to cheat, in its simple or aggravated form, would be present; but it does not follow that, because there was no complete offence to cheat, there was no complete offence. MEGRAJ v. EMPRESS, **13 P R. 1881, Cr.** [*R*, 14 P.R. 1914, Cr. = 13 P W.R. 1914 = 66 P.L.R. 1914 = 15 Cr. L J. 765 = 23 Ind. Cas. 473.]

(34)—*Penal Code, s.* 511—*Attempt to cheat—Where a person forewarned—False claim for payment of lost currency notes.*—An accused person sent to the Currency Office at Calcutta a letter enclosing two half currency notes, stating that the other halves were lost, and asking what steps should be taken for the recovery of the money. The Currency Office caused a search to be made and came to know that the amount of the notes had been paid to the holder of the other halves. However, the usual form of claim was sent to the accused person to be filled up and sent to the office, although the office never contemplated payment. The accused, after filling up the form, sent it to the office. *Held*, that the accused was guilty of an attempt to cheat by sending up the claim form filled up, although the first letter was a mere letter of enquiry and did not amount to an attempt. [*R*., 8 C.W.N. 784, 14 P.R. 1914, Cr. = 13 P.W.R. 1914, Cr. = 66 P. L.R. 1914 = 15 Cr.L J. 765 = 23 Ind. Cas. 473.] A man may attempt to cheat, although the person he attempts to cheat is forewarned and is, therefore, not cheated. GOVERNMENT OF BENGAL v UMESH CHUNDER MITTER, **16 C. 310.** (11 Cox. C. C. 570, *R.*)

(35)—*Penal Code, ss.* 417, 511—*Attempt to cheat—Attempt distinguished from preparation.*—The accused, at the Central *Octroi* Office in Mathura, falsely represented that three *kuppas*

Attempt—*continued.*

(skin vessels), which were then and there produced, contained *ghi*, whereas only two contained *ghi* and the third contained oil; the object of this false representation was to obtain a certificate entitling him to a refund of *octroi* duty on the three *kuvpas* of *ghi*, which would have amounted to 30 annas, instead of the proper refund, which would have been 25 annas only. It was alleged by the prosecution that, prior to granting the refund certificate, the *octroi* officers found out, after examining the contents of the three *kuppas*, that the accused's statement was false. The procedure in case of a refund of *octroi* at Mathura was, that the Central Office, on satisfying itself that the articles produced were, what they were said to be, granted a certificate which used to be endorsed by the outpost clerk, when he passed the goods out of the town. The owner would take back the certificate so endorsed to the Central Office, where these certificates used to be encashed once a week. *Held*, that even assuming that the accused had falsely represented the contents of the *kuppas* as alleged, he had not completed an attempt to cheat, but only had made a preparation for cheating, for, before the time of presentation on a Saturday, he might have altered his mind even from prudence, if not from penitence, and torn up the certificate, and no cheating could then have happened. QUEEN-EMPRESS v. DHUNDI, **8 A. 303 = A.W. N. 1886, 125.** [*R.*, 15 A. 173, U.B.R 1892—1896, 191, 25 B. 90, 2 A.L.J. 718].

(36)—*Attempt to commit adultery—Attempt distinguished from preparation*—Preparation or providing an opportunity being a stage of the providing, short of an attempt, is not punishable by law. An opportunity made for sexual intercourse by a married woman going to the accused's shop, the object being frustrated by people following her and besieging the shop, was held to be a mere preparation. PAIRA RAM v. EMPEROR, **25 P.R. 1902, Cr. = 7 P L.R. 1903.** (13 P.R. 1879, Cr., *F.*) [*R.*, 14 P.R. 1914, Cr = 13 P.W.R. 1914 = 66 P.L.R. 1914 = 15 Cr. L.J. 765 = 23 Ind. Cas. 473].

(37)—*Attempt to commit adultery—Preparation.*—From the moment when an intention is formed to commit an offence, every act done to facilitate the commission of the offence with that object is in one sense "an act done towards the commission of the offence," but the doing of every such act does not constitute an attempt to commit the offence. It is in every case a question depending upon the circumstances whether a particular act done (with the requisite intention) towards the commission of an offence, is sufficiently proximate towards its commission to constitute an attempt, or is so remote as to merely constitute a preparation for its commission. Where a woman brought to a house for the purpose of having sexual intercourse with the accused, was taken out of the house by her husband, before the accused had sexual intercourse with her, *held*, that the accused had not passed beyond the stage of preparation, and that the conviction, therefore,

Attempt—*continued.*

for attempt to commit adultery was not legal. GHULAM MAHOMED v. CROWN, **13 P.R. 1879, Cr.** [*F.*, 25 P.R. 1902 ; R., 14 P.R. 1914 Cr = 13 P.W.R. 1914 = 66 P.L.R. 1914 = 15 Cr. L.J. 765 = 23 Ind. Cas. 473].

(38)—*Penal Code, ss.* 376, 511—*Attempt to commit rape—Proof of potency.*—In India, the potency of a person who is charged with committing rape or attempting to commit rape has to be proved by evidence in each case. A person proved to have the power of erection must be presumed to be physically capable of committing rape. QUEEN-EMPRESS v. GOPALA *bin* RAMA, **Rat. Un. Cr. C. 865 = Cr. Rg. 31 of 1896.**

(39)—*Penal Code, s.* 494—*Attempt to commit bigamy—Publishing the banns.*—The causing of the publication of the banns of marriage is not an attempt to marry, but only a preparation for such an attempt. QUEEN v. PETERSON, **1 A. 316.**

(40)—*Attempt to commit mischief.*—The possession of an instrument to commit mischief by fire and the going about of the person with it are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt. QUEEN v. DOYAL BAWRI, **3 B.L.R.A.C. 55.**

(41)—*Penal Code, ss.* 328 *and* 511.—*Administering a harmless substance believing it to be poison.*—An attempt to commit an offence, as defined in s. 511, I.P.C., means not merely an act with the intention to commit an offence which is unsuccessful because it could not possibly result in the completion of the offence, *but an act done towards the commission of the offence*, that is to say, the offence remains incomplete, only because something yet remains to be done, which the person intending to commit the offence is unable to do by reason of circumstances independent of his own volition. An action complete in itself and not constituting an offence did not constitute an "*attempt*" to commit an offence, *e. g.*, as the administration of a harmless substance which the accused wrongly believed to be poison. EMPRESS v. MUSSAMMAT RUPSIR PANKU, **9 C.P.L.R. 14, Cr.** (4 B.H.C. 17, Cr., *Diss.*; 11 B. 376, 14 A. 38, *R.*)

(42)—*Attempt to evade payment of Railway fare—Attempt to cheat—Railway Act* XVIII *of* 1854.—A mere attempt to evade the payment of fare is punishable under the provisions of the Railway Act (XVIII of 1854). But to evade payment by the production of an old pass, altered as to the date and the number of persons, amounts to the offence of attempting to cheat. CROWN v. GUNPAT, **6 P.R. 1868, Cr.**

(43)—*Attempt to commit an offence—Whipping Act, s.* 2.—S. 2 of the Whipping Act refers to the commission of offences and not to attempts to commit offences, *e. g.*, an attempt to commit theft. EMPRESS v. JAGROO CHAMAR, **12 C.P.L.R.Cr. 1.**

(44)—*Penal Code, ss.* 108-*A*, 109, 372, 511—*Intention—Preparation—Disposal of minor girl for immoral purposes effected outside British India—Jurisdiction of British Courts—Crim. Pro. Code,* 1898, *s.* 188—*Political Agent's certificate.*—Mere intention not followed by an act cannot constitute an offence. An indirect preparation, which does not amount to an act which can be held to be a commencement of the offence, does not constitute either a principal offence or an attempt or abetment of the same. (19 B. 105, *R.*) The charge against the first accused was that she took a minor girl of 16 years from Sholapur to Tuljapur (in the Nizam's territory) to dedicate her to the Goddess Amba, with the intent of employing or using the girl, or knowing it to be likely that the girl would be employed or used, for the purposes of prostitution, and the second accused was charged with having directed the first accused to do so. *Held* that the intention of either accused, while they were staying at Sholapur did not constitute any offence, and their removal with the girl to Tuljapur did not, by itself, constitute an abetment. The second accused was, therefore, not guilty of abetment under s. 108-A, I.P.C. *Held*, also, that the British Courts had no jurisdiction over the offence of the disposal of the girl in Tuljapur in the absence of a certificate of the Political Agent or the sanction of the Local Government as required by s. 188 Cr. P. C. QUEEN-EMPRESS v. BAKU, **24 B. 287 = 1 Bom. L. R. 678** (5 M. 23, 13 M. 423, 13 B. 147, 14 B. 227, 6 B. 122, 2 A. 218, 19 A. 109. Rat. Un. Cr. C. 773, *R.*)

See ABETMENT, 24 P.R 1882.

See ACT XVIII OF 1854, s. 3, Rat. Un. Cr. C. 123.

See ACT VI OF 1864, s. 2, L.B.R. 1872—1892, 399.

See ACT VI OF 1864, s. 3, 3 B.H.C. Cr. 37.

To commit adultery — *See* ADULTERY, 1 Weir. 569.

See CHEATING—GENERAL, 2 A.L.J. 718 = 2 Cr. L.J. 788.

At cheating—False representation to pleader—Damage or harm in mind, reputation—Complainant, position of—*See* CHEATING—GENERAL, 7 C. L. J. 375 = 12 C.W.N. 750 = 7 Cr. L.J. 342.

To cheat—*See* CHEATING — GENERAL, Rat. Un. Cr 470.

Attempt to cheat—*See* CHEATING—FALSE PERSONATION, 9 C.W.N. 764 = 2 Cr. L.J. 422.

See CRIMINAL INTIMIDATION, 11 B. 376.

See CRIM. PRO. CODE, 1898, ss. 236, 237, 1 L.B.R. 221.

See CRIM. PRO. CODE, 1898, s. 435, 12 Bom. L.R. 21.

See CRIM. PRO. CODE, 1898, s. 562, 3 L.B. R. 30.

Attempt—*continued.*

See CRIMINAL TRESPASS, 15 P. R. 1907, Cr. =44 P.W.R. 1907=6 Cr. L.J. 444=56 P.L.R. 1908.

See CULPABLE HOMICIDE, 18 C. 484.

See FALSE EVIDENCE, U.B.R. 1892—1896, Vol. I, 191.

See HOUSE-BREAKING, 8 Bom. L. R. 855=4 Cr. L.J. 450.

See PENAL CODE, ss. 75, 511, 14 P.R. 1906, Cr.=12 P.L.R. 1907=15 P.W.R. 1907, Cr.=5 Cr. L.J. 85.

See PENAL CODE, ss. 85, 86, 387,398, 6 L.B. R. 100=5 Bur. L.T. 193=17 Ind. Cas. 800=13 Cr. L.J. 864, F.B.

See PENAL CODE, ss. 107, 109, 379, 382 and 393, 18 P.R. 1879, Cr.

Proof of publication of seditious matter—What amounts to, to commit sedition—*See* PENAL CODE, s. 124-A, 39 C. 522=16 Ind. Cas. 327=13 Cr. L.J. 679.

See PENAL CODE, ss. 124-A, 153, 153-A and 505, 14 P.W.R. 1907, Cr.=5 Cr.L.J. 439=2 M. L.T. 272=10 P.R. Cr. 1907.

See PENAL CODE, s. 161, 2 A. 253.

See PENAL CODE, ss. 302, 307, 15 B. 194.

See PENAL CODE, s. 307, 14 A. 38=A.W.N. 1891, 176, 4 L.B.R. 311, F.B.=9 Cr.L.J. 11.

See PENAL CODE, ss. 307, 308, L.B.R. 1872—1892, 466.

See PENAL CODE, ss. 307, 511, 14 A. 38=A. W.N. 1891, 176.

To commit murder—*See* PENAL CODE, s. 309, Rat. Un. Cr. C. 188.

Suicide—Leaping into well to avoid Police torture—*See* PENAL CODE, s. 309, 14 Bom. L.R. 146=1 Bom. Cr. C. 87=14 Ind. Cas. 598=13 Cr.L.J. 246.

See PENAL CODE, s. 309, 8 M. 5=1 Weir 330.

At rape—*See* PENAL CODE, s. 354, U.B. R. 1897—1901, Vol. I, 325.

See PENAL CODE, ss. 354, 375 and 511, 5 B. 403.

Rape—Difference between — to rape and assault to outrage modesty—First report to the Police—*See* PENAL CODE, ss. 354, 376, 511, 42 P.W.R. 1910, Cr.

To cheat—Dishonest intention—Facts proved not sufficient to support conviction—Evidence gone into in revision—*See* PENAL CODE, ss. 415, 417, 511, 17 C.W.N. 294=18 Ind. Cas. 680=14 Cr.L.J. 120.

See PENAL CODE, ss. 417, 468, 511, 25 M. 726=1 Weir 481=12 M.L.J. 68.

What amounts to—or preparation to cheat—*See* PENAL CODE, ss. 420, 415, 417, 511, 10 P.R. 1913, Cr.=14 Cr.L.J. 436=20 Ind. Cas. 596=30 P.W.R. 1913, Cr.=299 P.L.R. 1913.

See PENAL CODE, ss. 420, 511, 15 Bom. L. R. 568=2 Bom. Cr. C. 80=14 Cr.L.J. 433=20 Ind. Cas. 593.

Definition of 'attempt'—*See* PENAL CODE, ss. 457, 442, 379, 511, 24 P.R. 1914, Cr.

Attempt—*concluded.*

House-breaking—Preparation—Burglars digging a hole in a wall but not digging it through owing to interruption by third parties—*See* PENAL CODE, ss. 457, 511, 15 Bom. L.R. 564=2 Bom. Cr. C. 76=14 Cr.L.J. 451=20 Ind. Cas. 611=37 B. 553.

See PENAL CODE, ss. 464, 465, 468, 415, 417 and 511, 8 C.W N. 278.

See QUARANTINE, Rat. Un. Cr. C. 966.

At murder—Liability for act done—Consequences intended not happening—Accident—*See* REFERENCE TO HIGH COURT, 9 C.L.J. 432=2 Ind. Cas. 593.

To commit theft — *See* SECURITY PROCEEDINGS, Rat. Un. Cr. C. 622=Cr. Rg. 45 of 1892.

See SEDITION, 2 Bom. L.R. 304.

See SENTENCE—ENHANCEMENT OF SENTENCE, 14 P.R. 1906, Cr.=5 Cr. L.J. 85=12 P.L.R. 1907=15 P.W.R. 1907, Cr.

To commit extortion — *See* SENTENCE—ENHANCEMENT OF SENTENCE, L.B.R. 1893—1900, 496.

See SENTENCE—IMPRISONMENT—GENERAL, 3 W.R. Cr. 59.

See SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION, 17 A. 120=A.W.N. 1895, 22, 14 C. 357.

Previous conviction for theft—Subsequent charge of attempt to commit theft—Enhanced punishment—*See* SENTENCE — SENTENCE AFTER PREVIOUS CONVICTION, 5 B. 140.

See WAGING WAR AGAINST THE QUEEN, L.B.R. 1872—1892, 158.

Attendance of Witnesses.

See WITNESS.

(1)—*Crim. Pro. Code*, 1898, *s.* 145—*Witness.*—In a proceeding under s. 145 of the Crim. Pro. Code, it is not obligatory on the Magistrate to enforce the attendance of any witness at the instance of the parties. HARENDRA KUMAR BOSE *v.* GIRISH CHANDRA MITRA, **7 Ind. Cas. 798=38 C. 24=11 Cr. L.J. 530.**

Attestation.

Of Magistrate—*See* EVIDENCE—GENERAL, 11 W.R. Cr. 39=7 B.L.R. 67, note, 12 W.R. Cr. 51.

Attorney.

See LEGAL PRACTITIONERS—ATTORNEY.

Auction Sale.

Betting on figures of auction — *See* BOM. ACT IV OF 1887, ss. 3, 4 and 5, 26 B. 533=4 Bom. L.R. 271.

Bidding at auction without intending to purchase — *See* CONTEMPT OF LAWFUL AUTHORITY, 3 W.R. Cr. 33.

Autrefois Acquit, Plea of.

See CRIM. PRO. CODE, 1898, s. 403.

(1)—*Act* XXV *of* 1861, *s* 55—*Principle of.*—Where the accused was once acquitted of an offence, *held* that he was not liable to be tried again for the same offence and that his second

Autrefois Acquit, Plea of—*continued.*

conviction was, therefore, under s. 55, Act XXV of 1861, illegal. GOVERNMENT v. DOULAT, **2 Agra 3, Cr.**

(2)—*Principle of.*—Where a former trial is set aside on the ground of want of jurisdiction and illegality, such a setting aside is not a bar to a second trial. QUEEN v. MUSSAMUT MUTHOORAPERSHAD PANDAY, **2 W.R.Cr. 9.**

(3)—*Crim. Pro. Code,* 1861, *s.* 55—*Previous acquittal.* — Discharge of a prisoner by the Sessions Court for illegality and irregularity of procedure is no bar, under s. 55 of the Code of Criminal Procedure, to his being subsequently tried and convicted of the same offence. QUEEN v. WAHED ALI, **13 W.R. Cr. 42.**

(4)—*Acquittal—Discharge—Second trial.*—An order for the release of the accused, as being not guilty, amounts to an acquittal and not a discharge; such an order would exempt the prisoner from a second trial for the same offence. RAMJOY SURMAH v. MIRZA ALI, **18 W.R. Cr. 10.**

(5)—*Stealing and receiving stolen property—Fresh trial.*—The mere fact of a person's having once been acquitted of the charge of stealing any property does not of itself prevent his trial at any future time on the charge of receiving the same property knowing it to be stolen. QUEEN v. NYAZ ALI, **25 W.R. Cr. 47.**

(6)—*Rioting and criminal trespass.*—The dismissal by one Court of a charge of rioting instituted by the police is no bar to the trial by another Court of a charge of criminal trespass instituted by a third person, although the two charges may substantially refer to the same occurrence. QUEEN v. MORLY SHEIKH, **6 W.R. Cr. 51.**

(7)—*Forgery.*—P was tried on a charge of forging, etc., document A. and acquitted. In order to prove the charge, evidence was given in respect of another document B, which was also alleged to have been forged, and the prosecutor mainly based his case on the alleged exact resemblance between the signatures to A and B, both of which, it was said, exactly resembled a third signature admitted to be genuine. *Held* that the acquittal in respect of A did not operate as an acquittal in respect of the document B, so as to enable the accused to plead *autrefois acquit.* REG v. DWARKA NAUTH DUTT, **2 Ind. Jur. N.S. 67 = 7 W.R. Cr. 15.**

(8)—*Crim. Pro. Code* (1872), *ss.* 455, 456, 460 —*Previous acquittal of some of the accused and committal of others—High Court's order for retrial on appeal from convicted persons, effect of.*—Where a Magistrate acquitted some of the accused and convicted the remaining two of grievous hurt, and the Sessions Judge, on appeal by the latter, holding that they had been guilty of an attempt to murder, referred the case to the High Court, which ordered a new trial, *held* that the proceedings taken against all the five accused, though the order referred only to the two who appealed from their conviction was valid, and the plea of *autrefois convict* and *autrefois acquit* could not be urged by any of them as an answer to the charge of an attempt to murder. QUEEN v. PANNA, **7 N.W.P. 371.**

(9)—*Crim. Pro. Code* (1898), *ss.* 1 *and* 403—*Bombay Act* V *of* 1878, *ss.* 3 (5), 56—*Acquittal by competent Magistrate—Re-trial.*—Where a Magistrate of the Second Class, who has, under ss. 3 (5), 56, Bombay Act V of 1878, jurisdiction to try an offence against Act V of 1878, has acquitted the person so charged, no re-trial can be held on the same charge, unless the acquittal has been set aside on an appeal by the Government. QUEEN-EMPRESS v. GUSTADJI BARJORJI, **10 B. 181.** [*R.*, 1 Bom. L.R. 15.]

(10)—*Crim. Pro. Code, ss.* 247, 403—*Effect of dismissal under s.* 247—*Accused served with process in summons case—Absence of accused—Effect—" Tried," meaning of, in s.* 403.—The word "tried" in s. 403 is not confined to decision of the case on the merits, so far at least as proceedings under s. 247 are concerned. There is therefore no reason for saying that an accused, who has been served with process in a summons case and does not appear, is not entitled to the full benefit of an acquittal, when the case against him has been dismissed under s. 247. *In re* GUGGILAPU PADDAYA OF PALAKOL, **9 M.L.T. 93 = 9 Ind. Cas. 253 12 Cr. L.J. 41 = 34 M. 233.**

(11)—*Crim. Pro. Code, s.* 403—*Acquittal—Some accused charged with others—Acquitted in previous trial—Whether bars trial of others subsequently captured—Same transaction—High Court—Powers of interference.*—Where some out of several persons charged with offences under ss. 148, 326 and 302, I.P.C., were placed on trial and acquitted, and where subsequently five others implicated in the same transaction were captured and put upon their trial. *Held,* that the acquittal under s 403, Crim. Pro. Code of the accused who were tried previously, is no bar for the trial on the same charges of the persons subsequently arrested. Where, in the first trial, the Sessions Judge, having disbelieved the evidence, acquitted the accused and expressed an opinion that the facts and circumstances suggested to him a very strong doubt as to the truth of the prosecution story, but nevertheless came to the conclusion that a riot did take place in which one person was killed, the High Court refused to interfere with the pending prosecution of the persons who were subsequently captured and put upon trial. KOKAI SARDAR v. MEHER KHAN, **37 C. 680 = 7 Ind. Cas. 932 = 11 Cr. L J. 541.** (7 C.W.N. 493, *D.*)

See ACQUITTAL, 1 W.R. Cr. Letters, 10.

See BUR. ACT III OF 1898, ss. 92 (1, 2, 3), 180, 5 L.B.R. 12 = 9 Cr. L J. 578 = 2 Ind. Cas. 357.

See CRIM. PRO. CODE, 1898, ss. 247, 403 (1), 2 C.L.J. 622 = 3 Cr. L.J. 115.

See CRIM. PRO. CODE, 1898, ss. 253, 366, 367, 437, 31 M. 543 = 5 M.L.T. 184 = 9 Cr. L.J. 80.

Plea of—Validity—*See* CRIM. PRO. CODE, 1898, ss. 403, 305, 308, 271, 272, 18 C.W.N.

Autrefois Acquit, Plea of—*concluded.*

723=15 Cr. L.J. 460=24 Ind. Cas. 340=41 C. 1072.

See CRIM. PRO. CODE, 1898, s. 423, 22 C. 377.

See CRIM. PRO. CODE, 1898, ss. 437, 203, 12 A.L.J. 1=15 Cr. L.J. 1=22 Ind. Cas. 145=36 A. 53.

See DISCHARGE OF ACCUSED, 31 M. 543=5 M.L.T. 184=9 Cr. L.J. 80, 12 M. 35=2 Weir 457=2 Weir 654.

Application of, doctrine of—Burden of proof—*See* PENAL CODE, ss. 182, 211, 15 Cr. L.J. 672=25 Ind. Cas. 1000.

See PENAL CODE, s. 352, 7 B.L.R. App. 25=16 W.R. Cr. 3.

Autrefois Convict, Plea of.

See CRIM. PRO. CODE, 1898, s. 403.

(1)—*Departmental punishment — Subsequent punishment by Magistrate—Competency.*—A fine judicially inflicted cannot be remitted, if it is not in itself an improper one. Departmental punishment cannot withdraw a wrong-doer from the cognizance of the ordinary Courts, or relieve him from the penalties provided by the law. The fine imposed departmentally can probably be remitted departmentally. QUEEN-EMPRESS v. RAMNAIK, **Rat. Un. Cr. C. 318=Cr. Rg. 6 of 1887.**

See ACT XIII OF 1859, s. 2, 21 C. 262.

See AUTREFOIS ACQUIT, PLEA OF, 7 N.W.P. 371.

See CRIM. PRO. CODE, 1898, ss. 235 and 403, A.W.N. 1906, 32=3 A.L.J. 2=3 Cr. L.J. 93.

Award.

See ARBITRATION, 1 Agra 45.

See CRIM. PRO. CODE, 1898, s. 476, 8 A.L.J. 240.

Bad Character.

See EVIDENCE.

See EVIDENCE ACT, 1872, ss. 53, 55.

(1)—*Relevancy of evidence of accused's previous character.*—Where evidence of the good character of an accused person has not been given, evidence of his previous bad character is irrelevant at any stage of a criminal proceeding as covered by the explanation to s. 54, Evidence Act. IDA v. EMPRESS, **15 P.R. 1888, F.B.**

(2)—*Relevancy of previous conviction—Evidence Act, ss. 14, 43, 54.*—Except for the purpose of awarding enhanced punishment in cases falling within the provisions of s. 75, Penal Code, evidence of previous convictions now stands upon the same footing, as regards admissibility, as other evidence of bad character. Such evidence is only relevant where the accused has shown that he has a good character or where the bad character of any person is itself a fact in issue (s. 54, Evidence Act), or where the existence of the judgment of conviction is itself a fact in issue, or relevant under some other provision of the Evidence Act (*vide* s. 43), such as s. 14 or s. 8, and possibly certain other sections referring to the relevancy of facts. WASIR v. EMPRESS, **7 P R. 1895, Cr.**

Bail.

See BAIL BOND.

See CRIM. PRO. CODE, 1898, ss. 496-498.

(1)—*Granting of bail in appeal—Practice.*—A convicted person should not be admitted to bail where the chance of his acquittal depends on a mere technical ground. *In re* OLIVE DURANT, **Rat. Un. Cr. C. 480.**

(2)—*Release on bail of accused—Grounds upon which release may be ordered.*—The question, whether an appeal should be admitted is not the same as the question whether an appellant should be released on bail, and Criminal Courts, to which applications for release on bail are made before the appeal is heard, must always be on guard, lest they should fall into the error of prejudging the case before the appeal is heard, or lest, to avoid this danger, they should fall into the habit of passing indiscriminate orders for release on bail without any real consideration of the grounds upon which such release may be properly ordered. The main questions for consideration when an application for release on bail is made by an appellant who stands convicted and sentenced by a Court of competent jurisdiction are, where, upon perusal of the judgment or the record and the petition of appeal, *prima facie* ground is disclosed for substantial doubt whether the conviction or sentence can be maintained, or, secondly, whether circumstances beyond the control of the appellant are likely to delay the decision of the appeal for an unreasonable time. MAHOMED RAHAMAT ALLY v. ABDUL GUNNY, **L.B.R. 1893—1900, 235.**

(3)—*Crim. Pro. Code—Application for bail—When bail may be granted.*—In this case the accused, who was a Deputy Tahsildar, was charged before the Head Assistant Magistrate of Chittore with the offence of criminal misappropriation. He was at first on bail; but after the examination in-chief of a few witnesses for the prosecution, the Magistrate cancelled the bail and remanded the accused to jail. When the accused again applied for bail, the Magistrate refused it without recording any reasons. The accused now applied to the High Court for bail. Considering (1) that the offence was said to have been committed more than a year and a half before the date of the complaint, (2) that it was doubtful whether, assuming the facts stated by the prosecution to be true, any offence was committed at all by the accused, and (3) that no reasons whatever were given by the Magistrate for cancelling the original bail, the High Court directed the release of the accused on sufficient bail being furnished. CHENGALRAYA PILLAI v. EMPEROR, **1911, 2 M.W.N. 138=12 Cr. L.J. 503=12 Ind. Cas. 223.**

(4)—*Crim. Pro. Code* (1898), *s.* 497—*Bail—Grant of bail in non-bailable offences—Practice.*—The rule in respect of non-bailable offences is that bail is not to be taken except in special circumstances. EMPEROR v. NENSI HANSRAJ, **8 Bom. L.R. 420=3 Cr. L.J. 499.**

Bail—*continued.*

(5)—*Crim. Pro. Code,* (1898), s. 498—*Bail—Non-bailable offences.*—An accused person ought to be released on bail until reasonable grounds are made out on the evidence for believing. him to be guilty. *In re* JOHUR MULL. **10 C.W.N 1093 = 4 Cr. L.J. 221.** [*F.*, 36 C. 174 = 13 C.W.N. 51 = 9 Cr. L J. 409 = 4 M.L.T. 432, 1 Ind. Cas. 910 ; *R.*, 13 C.W.N. 43.]

(6)—*Discretion of High Court or Court of Session as to granting of bail—Crim. Pro. Code* (1898), s. 498.—S. 498, Crim. Pro. Code, gives the High Court or Court of Session an unlimited judicial discretion with an application for admission to bail. CROWN v. EBRAHIM AHMED DAWOODJEE, **1 L.B.R. 62.**

(7)—*Crim. Pro. Code, s. 498—Provision as to bail—Discretion of High Court or Court of Sessions.*—S. 498 of the Code of Criminal Procedure gives the Court of Sessions and High Court very wide powers to admit an accused to bail even when he is charged with a non-bailable offence. The admission to bail is a matter within the discretion of the Sessions Judge. In this case the Judge having exercised his discretion with proper care, the High Court refused to interfere. KING-EMPEROR v. BADRI PRASAD, **5 A.L.J. 419, Cr. = A.W.N. 1908, 193 = 8 Cr.L J. 49.**

(8)—*Crim. Pro. Code* (1872), s. 125—*Non-bailable case—Admission to bail by Police officer.*—A Police officer reports for the orders of a Magistrate a non-bailable case under s. 125, Crim. Pro. Code, admitting the accused to bail, there being in the Police officer's opinion, no sufficient evidence to justify the immediate transmission of the accused to the Magistrate. The Magistrate, however, considers that the evidence does establish a *prima facie* case, and he, accordingly, orders its committal to him : *Resolved*, that the admission to bail by the Police under s. 125 of the Code being a purely provisional arrangement, when the Magistrate determines that there is a *prima facie* case of a non-bailable offence, the accused should be re-arrested and forwarded to the Magistrate in custody. RATNAGIRI MAGISTRATE'S LETTER, NO. 675, **Rat. Un. Cr. C. 121.**

(9)—*Sufficiency of bail—Duty of the Court—Duty of testing sufficiency of bail not to be entrusted to police.*—If the Court admits a man to bail, it is of course at liberty to call for a report from the Police as to the sufficiency of the bail, but the duty of deciding as to the sufficiency or otherwise is with the Court itself, and not with the Police. If such duties are irregularly entrusted to the Police, two dangers are likely to arise: first, a Police officer may sometimes be unscrupulous enough to take advantage of the power entrusted to him for the purpose of extortion; secondly, the bringing of false charges against the Police. QUEEN-EMPRESS v. GAYITRI PROSUNNO GHOSAL, **15 C. 455.**

Bail—*continued.*

(10)—*Bail, effect of.*—A person who is released on bail cannot be regarded as under imprisonment so long as he is on bail, though it might not have the effect of restoring complete freedom. MAHAMMAD YUSUFUDDIN v. SECRETARY OF STATE FOR INDIA, **30 C. 872 P.C. = 30 I.A. 154 = 7 C.W.N. 729 = 5 Bom. L R. 490 = 8 Sar. 503.**

(11)—*Arrest of accused person—Application for bail—Evidence necessary to remand the accused person to custody.*—Where an accused person, after his arrest, applies for bail, evidence should be given on which the Magistrate could, in the exercise of his discretion, determine whether for the ends of justice it is necessary to detain the accused in custody. It will not be necessary on the first occasion accused persons are produced before the Court to go fully into the charge ; it is ordinarily sufficient to show by the evidence of a Police officer that the Police are in possession of information which they believe to be reliable, that an offence has been committed and that the accused are concerned in its commission. When the accused are brought up after a remand, some direct evidence of the connection of the accused with the crime should be required to justify the Magistrate in refusing bail, and with each remand the necessity for the production of implicating proof becomes more strong. PONNUSAMI CHETTI v. QUEEN, **6 M. 69 = 2 Weir 413 = 6 Ind.Jur. 632.** [*R.*, Rat. Un. Cr. C. 892].

(12)—*Crim. Pro. Code* (1872), ss. 160, 352, 355 *and* 185 (= *ss.* 76, 90, 93 *of the Code of* 1898)—*Arrest of witnesses—Bail.*—A Magistrate is competent to admit to bail recalcitrant witnesses arrested under ss. 352 and 355 (s. 90) of the Crim. Pro. Code. HIGH COURT PROCEEDINGS, 11TH MAY 1881, NO. 957, **2 Weir 39.**

(13)—*Act* XVIII *of* 1850 (*The Judicial Officer's Protection*)—*Refusal of bail.*—The duty of a Magistrate in accepting or refusing bail is not merely a ministerial but a judicial duty. A mistake in the exercise of that duty, without malice, will not sustain an action. PARANKUSAM NARASAYA PANTULU v. CAPTAIN R. A.C. STUART, **2 M.H.C. 396.** [*R.*, 6 M.H.C. 423.]

(14)—*Crim. Pro. Code* (1882), s. 55—*Option of the person arrested to furnish bail.*—When the Police act under s. 55, they are bound to give the person arrested the option of bail, and the bail should not be excessive, but in accordance with the position in life occupied by the person arrested. *In the matter of the petition of* DAULAT SINGH, **14 A. 45 = A.W.N. 1891, 179.** [*R.*, 36 A. 262 = 12 A.L.J. 365 = 15 Cr. L J. 288 = 23 Ind. Cas. 496.]

(15)—*Crim. Pro. Code, s.* 107—*Proceedings under bail.*—No bail should be called for from a person, against whom proceedings under s. 107 of the Crim. Pro. Code, are contemplated, but not actually initiated. The most that can be required of him is to furnish recognizance, and

Bail—*continued.*

that only where there is any likelihood of his absenting himself from Court. MEWA LAL THAKUR v. EMPEROR, **11 C.W.N. 415**=**5 Cr. L.J. 194**. [*D.*, 36 M. 474=22 M.L.J. 357=11 M.L.T. 253=1912 M.W.N. 169=13 Cr. L.J. 447 =15 Ind. Cas. 79.]

(16) — *Contempt of Court - Crim. Pro. Code* (1861), *s.* 163.—If sufficient bail is tendered in a case of contempt, the Court before which the offence is committed is bound, under s. 163, Crim Pro. Code, 1861, to accept it. QUEEN v. CHUNDER SEEKAR ROY, **12 W.R. Cr. 18.**

(17)—*Crim. Pro. Code* (1872). s. 390 —*Power of Sessions Court to admit convicted person to bail.*—The Court of Sessions is not competent to make an order, under s. 390, Crim. Pro. Code 1872, directing the admission of a convicted person to bail, as a convicted person is not an accused person. QUEEN v. THAKUR PARSHAD, **1 A. 151, F.B.** [*Appl.*, 17 B. 334]

(18)—*Sessions Court—Bail after conviction.*—A Court of Sessions acting under s. 296, Crim. Pro. Code, 1872, has no power to admit a convicted person to bail. MOHESH MONDUL v. BOLANATH MUNDUL **3 C L.R. 404.** (23 W. R. Cr. 40, *Cited & F.*)

(19)—*Sessions Court—Bail after conviction.*—A Sessions Judge has no jurisdiction to release an accused on bail after convicting him pending his appeal to the High Court. Crim. Pro. Code (1898), s. 498, indicates generally the powers of a Sessions Judge to release on bail all prisoners who he thinks may be found to have been wrongly convicted, and whose case he can either deal with himself or has power to refer to the High Court. It does not give him power in any way to alter or vary his own order. KING-EMPEROR v. BASAPPA, **4 Bom. L.R. 55.** [*R.*, 8 Cr. L J. 89=15 P.R. 1908, Cr.=19 P. W.R. 1908, Cr.]

(20)—*Sessions Court, power of—Bail after conviction.*—S. 390, Crim. Pro. Code, 1872, refers only to the period during which a case is under enquiry and when the party concerned is still in the position of an accused person, and, therefore, the Sessions Judge cannot admit him to bail after he is sentenced and convicted. QUEEN v. RAM RUTTON MOOKERJEE, **24 W. R. Cr. 8** ; MOHESH MUNDUL v. BHOLANATH MUNDUL, **3 C.L.R. 404** ; MOHESH MUNDUL v. BHOLANATH BISWAS, **3 C.L.R. 405, note**; QUEEN v. KANHAI SHAHU, **23 W R. Cr. 40.** [*R.*, 17 B. 334.]

(21)—*Power of Sessions Judge to give bail after conviction pending reference to High Court.*—Pending a reference to the High Court under Act X of 1872, s. 296, a Sessions Judge cannot release on bail persons convicted by the Magistrate. ARADHUN MUNDUL v. MYAN KHAN TAKADGEER, **24 W.R. Cr. 7.** [*Cons.*, 22 C. 669 ; *R.*, 17 B. 334.]

(22)—*Sessions Judge—Bail after conviction and pending reference to High Court.*—A person sentenced to one month's imprisonment by a Magistrate, from which sentence no appeal is allowed under s. 411 of Act XXV of 1861, is not an accused person within the meaning of s. 436 of the same Act, so as to be admitted to bail by the Court of Session, when his case is referred to the High Court under s. 434 of the same Act. THE QUEEN v. MAHANDRANARAYAN BANGABHUSHAN, **1 B.L.R.A.C. Cr. 7**=**10 W.R. Cr. 16.** [*R.*, 17 B. 334.]

(23)—*Power of single Judge of High Court pending appeal—Release on bail.*—Pending the hearing of an appeal, a single Judge of the High Court may order the release of a prisoner on bail. QUEEN v. JHALOO SIRDAR, **W.R. 1864, Cr. 18.**

(24)—*Crim. Pro. Code* (1882). s. 497—*Order granting bail—Power of District Magistrate to revise the order.*—The discretionary powers vested in a Magistrate of granting bail are not revisable by the District Magistrate. If he considers the order to be wrong, the proper course is to refer it to the High Court. IMPERATRIX v. SADASHIV NARAYAN JOSHI, **22 B. 549.**

(25)—*Crim. Pro. Code, Act* X *of* 1882, s. 497 —*Discretion of Magistrate — Interference of High Court.*—The High Court will be very cautious in interfering with the discretion of a Magistrate in case of bail under s. 497 of the Crim. Pro. Code, especially where the prosecution has not tendered evidence to connect the accused with the offence. QUEEN-EMPRESS v. LAKSHMAN SANGOR, **Rat. Un. Cr. C. 892.** (6 M. 63, 6 M. 69, *R*)

(26)—*Crim. Pro. Code* (1872), s. 297—*Proceedings on an application for bail, whether judicial proceedings—High Court's powers of interference.*—The proceedings in which it is or has to be determined whether bail from an accused person should be taken falls within the definition of "judicial proceeding" and the High Court has power to interfere with orders made in such proceedings when they prove to be illegal. MANIKAM MUDALI v. QUEEN, **6 M. 63**=**2 Weir 409**=**2 Weir 577**=**2 Weir 656.** [*F.*, Rat. Un. Cr. Cas. 892.]

(27)—*Conviction of person by High Court Sessions—Appeal to Privy Council—Jurisdiction of High Court to release the accused on bail.*—A person was convicted and sentenced by the Criminal Sessions of the Madras High Court. Upon a certificate being granted by the Advocate-General under s. 26 of the Letters Patent, the High Court had reviewed the case and determined that the conviction on certain counts ought not to be upheld and therefore reduced the sentence. The accused obtained special leave to appeal to Her Majesty in Council and was asked by the Judicial Committee to apply for bail to the High Court. On his applying to the High Court to be released on bail, *held*, that the High Court had jurisdiction to make an order, in the circumstances of the case, releasing the accused on bail, pending the decision of the Privy Council. Having also regard to the rule laid down by the Privy

Bail—*continued.*

Council as to the circumstances in which an appeal in a criminal matter will be admitted by the Privy Council (*ex parte* Carew, 1897, A.C. 790), the accused ought to be released on bail in the present case. QUEEN-EMPRESS v. SUBRAHMANIA AYYAR, **24 M. 161 = 2 Weir 657.** [*R.*, 15 P.R. 1908, 19 P.W.R. 1908.]

(28)—*Crim. Pro. Code* (1898), s. 498—*Chief Court has no power to release a prisoner on his expressing intention of appealing to the Privy Council.*—*Held*, that, after deciding a criminal case, whether on the Original, Appellate or Revision side and upholding the conviction of a prisoner, the Chief Court, Punjab, has no power under s. 498, Crim. Pro. Code (Act V of 1898), to suspend the operation of his sentence and to release him on bail, on his asserting his intention to appeal to His Majesty in Council, because:—(*a*) the section does not refer to a case where the Court is *functus officio* but refers to cases where the Court has still some power left as regards the sentence of the accused; (*b*) the Crim. Pro. Code does not provide for an appeal to the Privy Council and does not provide for the release of the accused appealing to the Privy Council. DIWAN CHAND v. KING-EMPEROR, **19 P.W.R. 1908, Cr. = 15 P.R. 1908, Cr. = 8 Cr. L.J. 89.** (4 Bom. L.R, 55, *R.*; 24 M. 161, *D.*)

(29)—*Crim. Pro. Code* (1898), ss. 497, 498, 167 *and* 344—*Explosives Act* (VI *of* 1908)—*Bail when to be granted*—*Likelihood of absconding*—*Evidence of complicity*—*What evidence sufficient*—*Police-officer swearing to existence of evidence*—*Delay in production of evidence*—*Remand*—*Bail, cancellation of.*—On a question whether bail should be granted by the High Court to certain persons undergoing trial under the Explosives Act (VI of 1908), *held* that the decisions of English Courts are not necessarily a safe guide in interpreting sections of the Crim. Pro. Code. It is not correct to say that, in exercising its discretion under s. 498 of the Code in granting bail to under-trial prisoners, the High Court should confine its attention only to the question whether the prisoner is or is not likely to abscond. There may be other circumstances also which may affect the question of granting bail to accused persons who are alleged to have committed crimes of a grave and serious nature. It is the right of an accused person to demand that the charge against him should be tried without any unreasonable delay, and such delay will dispose the Court to grant bail. Under s. 167 of the Code, a Magistrate, on the mere perusal of the entries in the police diaries relating to the case to which the accused have no access, may, from time to time, authorize the detention of the accused in custody for a term not exceeding 15 days on the whole. Thereafter, he can, under s. 344, by a warrant, remand an accused for any term not exceeding 15 days at a time, if sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence and it appears likely that further evidence may be obtained by such remand. Where, on the accused being placed for trial, a police-officer of superior rank swore to the existence of evidence implicating the accused, and it did not appear that the production of the evidence was being unreasonably delayed, bail was refused. Bail was allowed, however, to those in regard to whom the production of evidence was being unreasonably delayed. A Magistrate may commit an accused person who has been released on bail, if a *prima facie* case is made out against him by the sworn testimony given before him. NARENDRA LAL KHAN v. EMPEROR, **36 C. 166 = 13 C.W.N. 43 = 9 Cr. L. J. 375 = 1 Ind. Cas. 739.**

(30)—*Crim. Pro. Code* (1898), ss. 497 *and* 498—*Explosives Act* (VI *of* 1908)—*Bail, when to be granted*—*Object of bail*—*Non-bailable offence*—*Likelihood of absconding*—*Seriousness of offence charged*—*Evidence of complicity*—*What kind of evidence sufficient*—*Prosecution, opportunity to, to produce evidence*—*Remand*—*Conspiracy, case of*—*Cancellation of bail.*—The petitioners who were charged with offences under the Explosives Act (VI of 1908), which are non-bailable and of a very serious nature, were refused bail by the enquiring Magistrate. *Held*, (*per Mitra, J.*; *Coxe, J.*, dissentiente) on an application to the High Court, under s. 498 of the Crim. Pro. Code, for bail, that the main question for consideration was whether there were reasonable grounds for believing that the petitioners were guilty of offences of which they were accused. Other considerations must also arise, and one of these, which has always guided Courts of Justice both in England and India, is, whether there are any grounds for supposing that the accused, if released on bail, would abscond and attempt to escape justice by avoiding or delaying an enquiry or trial. An accused may ordinarily be released on substantial bail, until reasonable grounds are made out for presuming his guilt. If, after remand, evidence of an incriminating character is not adduced and if the prosecution had already sufficient time to adduce such evidence, the Court would reasonably come to the conclusion that such evidence was not forthcoming at the time. It should then, under s. 497, cl. (2) of the Code, release the accused on bail, whatever be the nature of the offence, though the preliminary enquiry should proceed. Whether there are reasonable grounds or not for believing that the accused are guilty of the offences charged must be decided judicially, that is to say, there should be tangible evidence, on which, if unrebutted, the Court might come to the conclusion that the accused might be convicted. The statement by a witness in the witness-box that he has seen a certain act done—an act of an incriminating character—may be sufficient. As to whether the witness can be fully relied on or not is a question for subsequent consideration. But if there be no evidence whatsoever or evidence of a very flimsy character on the face of it, the inference would naturally be, after

Bail—*continued.*

reasonable time has elapsed since the beginning of the enquiry, that there are no reasonable grounds for supposing that an accused is guilty. The prosecution must, however, have a fair opportunity, according to the nature of the case, of adducing evidence of a really incriminating character. The detention of an accused under trial is not intended to be penal, but its object is to secure attendance. The seriousness of an alleged offence and some evidence of its perpetration by the accused would, however, justify detention. Bail allowed to an accused person may be cancelled by the Magistrate, if, upon further evidence produced, a case is made out against him. JAMINI MULLICK v. EMPEROR, **36 C.174=13 C.W.N. 51=9 Cr. L J. 409=1 Ind. Cas. 910=4 M.L.T. 432.** (10 C.W.N. 1093, 6 M. 63, *F.*)

(31)—*Ss.* 496 *and* 114, *Crim. Pro. Code* (1882)—*Who can apply for bail.*—Where a person arrested under s. 114, Crim. Pro. Code, was refused bail on the ground that he could claim it under no provision of the Code, *held* that, under s. 496, Crim. Pro. Code, "any person other than a person accused of a non-bailable offence" who "is arrested or detained without warrant by an officer in charge of a police station, or appears, or is brought before a Court" may claim it. It is extremely unsafe to trust to a marginal note as giving the full purport of the section to which it relates. EMPRESS v. SHEOLASING, **6 C.P.L.R. 31, Cr.**

(32)—*Liability of sureties—Crim. Pro. Code, ss.* 498 *and* 499.—Before any person is released on bail, a bond for such sum of money as is thought sufficient shall be executed by the accused, and in the case of a release on bail, by one or more sureties. The penalty of the bond should be a specific sum which the principal and the sureties bind themselves jointly and severally to pay in case of default. More than the penalty of the bond cannot be recovered from one or all of them. KING-EMPEROR v. KAUNG NGA, **2 L.B.R. 235.** (1 L.B.R. 79, U.B.R. 1897—1901, 26, *R.*)

(33)—*Bail bond—Bail, prisoner on, committing suicide—Discharge of sureties.*—When a person who has been let out on bail commits suicide, the sureties are discharged from their obligation to produce him. KRISINGA DEB CHATTERJEE v. KING-EMPEROR, **16 C.W.N. 550=15 Ind. Cas. 1008=13 Cr.L.J. 592.** [*F.*, 37 M. 156=26 M.L.J. 63=1913 M.W.N. 77=13 Cr. L.J. 684=16 Ind. Cas. 332.]

(34)—*Bail—Suicide by accused—Liability of sureties—Whether bail bond liable to forfeiture.*—Where an accused person commits suicide, the sureties who have given bail for his appearance are not liable for the default of his appearance. The fact that the sureties did not take steps to prevent the accused from committing suicide, even though the possibility of his doing so may have passed through their minds, does not amount to such neglect or default as to make

Bail—*continued.*

them liable on the bond. VIJIARAGAVULU NAIDU v. EMPEROR, **13 Cr. L.J. 684=16 Ind. Cas. 332=1913 M.W.N. 77.** (16 C.W.N. 550, 13 Cr. L.J. 592, 15 Ind. Cas. 1008, *F.*; 6 Term Rep. 50, 10, E.R. 429, 13 East 457, 104 E.R. 448 and 7 East 405, 103 E.R. 457, *R.*)

(35)—*Discharge for want of evidence—Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 212—*Act* X *of* 1872, *s.* 389.—Where the accused in a case of dacoity and assault were discharged by the Magistrate for want of evidence, but were ordered to give certain security to appear before him any time within six months if called upon, *held* that the order for security was illegal and should be quashed. RAM LAL TEWARI v. SUPHARAM, **1 B.L.R.S.N. 26=10 W.R.Cr. 34.**

Order for for repayment of money advanced —*See* ACT XIII OF 1859, s. 3, 1 Weir 699.

High Court, if may order bail—*See* ACT XV OF 1903, s. 3, 15 C.W.N. 736=12 Cr. L.J. 358 =10 Ind. Cas. 958.

See ACT XV OF 1903, ss. 7 and 8, 33 C. 1032 =4 Cr. L.J. 366.

Warrant issued by Political Agent, endorsement in—Jurisdiction of Magistrate to release arrested person on bail, where no such endorsement—*See* ACT XV OF 1903, s. 8, 7 C.L.J. 171=7 Cr. L.J. 198=12 C.W.N. 602.

See ACT XIV OF 1908, ss. 12, 14 (1), 14 C.W.N. 512=37 C. 412=11 Cr.L.J. 217.

See BOM. ACT VIII OF 1867, s. 12, Rat. Un. Cr. C. 26=Cr. Rg. 12-10-69.

Bail for personal appearance at a future date of accused permitted to appear by agent —*See* CRIM. PRO. CODE, 1898, s. 53, Col. Dig. Cr. 9 of 1873.

See CRIM. PRO. CODE, 1898, ss. 75, 76, 13 C.W.N. 1091.

See CRIM. PRO. CODE, 1898, ss. 106, 226, 354, 7 M.L.T. 104.

Person brought before Magistrate illegally —Power to call for bail—*See* CRIM. PRO. CODE, 1898, ss. 110, 113, 496, 12 Cr. L.J. 533 =12 Ind. Cas. 301.

See CRIM. PRO. CODE, 1898, ss. 125 and 476, 14 C.W.N. 306=37 C. 72.

See CRIM. PRO. CODE, 1898, ss. 439 and 497, 10 M.L.J. 411.

Increasing of bail during trial—*See* CRIM. PRO. CODE, 1898, s. 526, 4 P.W.R. 1912, Cr. =15 Ind. Cas. 314=13 Cr.L.J. 474=66 P.L.R. 1912.

Order refusing bail — Judgment—Appeal, whether lies from order of a single Judge of the High Court to a Division Bench—*See* LETTERS PATENT, 1865—MADRAS, cl. 15, 4 Ind. Cas. 871=19 M.L.J. 478.

Arrest on a warrant allowing bail without intimating that bail has been allowed—Legality

Bail—*concluded.*

—Lawful custody—Rescue from custody—*See* PENAL CODE, ss. 225, 353, 147, 16 C.W.N. 549 = 15 Ind. Cas. 1006 = 13 Cr.L.J. 590.

Order for—Effect—Stay of proceedings—*See* PENAL CODE, ss. 323, 147, 13 C.L.J. 329 = 38 C. 293 = 9 Ind. Cas. 965 = 12 Cr.L.J. 169.

Discretions as to granting bail—*See* PENAL CODE, s. 499, Excep. 9 and s. 52, 18 C.W.N. 785 = 26 M.L.J. 621 = 15 Cr.L.J. 309 = 23 Ind. Cas. 661 = 16 M.L.T. 79 = 1914 M.W.N. 506 = 12 A.L.J. 1042 = 20 C.L.J. 161 = 16 Bom.L.R. 544 = 2 Bom. Cr. Cas. 207 = 7 Bur.L.T. 167 = 41 C. 1023, P.C.

See PRACTICE AND PROCEDURE, 15 B. 488.

See SECURITY TO KEEP THE PEACE—FINAL ORDER—ORDER LIMITED BY REQUISITION, 4 Cr.L.J. 456 = 11 C.W.N. 121.

See SENTENCE—GENERAL, 7 C.L.R. 393.

Issuing warrants and exacting heavy, from accused, whether a good ground for transfer of the case—*See* TRANSFER OF CRIMINAL CASES—GROUNDS FOR TRANSFER—NOTICE, 8 C.W.N. 589.

When bailable warrant should be issued—*See* WARRANT, (1911) 2 M.W.N. 452 = 11 Ind. Cas. 614 = 12 Cr.L.J. 430.

Preventing person from going home until he gave—*See* WRONGFUL RESTRAINT, 10 W.R. Cr. 20.

Bail Bond.

See BAIL.

See CRIM. PRO. CODE, 1898, s. 514.

See SECURITY TO KEEP THE PEACE.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

(1)—*Crim. Pro. Code* (1898), *s.* 514—*Bail bond—Guarantee by surety for appearance of accused—Non-appearance of accused before a different Magistrate — Forfeiture of bond.*—Where a person stood as a surety for an accused and executed a bond guaranteeing the appearance of the accused before the Deputy Magistrate before whom the case was pending, and the accused did not appear before the District Magistrate to whom the case was subsequently transferred, *held*, that there was no breach of the condition of the surety bond so as to make the surety liable to pay the penalty. SHAMSUDDIN SIRKAR v. EMPEROR, **30 C. 107 = 6 C.W.N. 885.**

(2)—*Crim. Pro. Code*, 1898, *s.* 514—*Bail bonds for production of accused before Sessions Court on a certain date—Requisition to appear before District Magistrate—Non-appearance—Liability of sureties.*—A bail bond recited, "we hereby stand surety for the production of the above named persons in the Sessions Court, on the 1st December next in the sum of Rs. 200 each, and in case of default, we shall forfeit the amount of the surety to the King-Emperor." The accused appeared in the Court of Sessions on the 1st December 1908, and on the other

Bail Bond—*concluded.*

dates of the hearing. After the appeals were dismissed by the Sessions Court, the District Magistrate ordered the sureties to produce the persons named within 14 days. They did not do so. Then the District Magistrate ordered forfeiture of ten *per cent.* of the amounts of the bond. *Held*, that the condition of the bonds was satisfied when the accused appeared before the Sessions Court on the 1st December 1908, and that the subsequent proceedings of the District Magistrate were not valid. Such a bond should contain a clear proviso for the production of the accused persons before the Court or officer who is to take measures to secure the surrender of the accused and to re-commit them to jail in terms of the warrant: (see General Rules and Circular Orders, Criminal of the High Court, Chap. I, r. 119). BEHARI LAL CHATTERJEE v. EMPEROR, RASH BEHARI SEN v. EMPEROR, **36 C. 749 = 10 Cr.L.J. 251 = 3 Ind. Cas. 188.**

(3)—*Bail bond—Forfeiture of bond—Terms of bond—Evidence to explain terms.*—Where the petitioner was released on bail pending the decision of his petition for revision against his conviction under s. 409, I.P.C., and the bail bond executed by his surety provided that the petitioner shall attend before the Chief Court on the day or days that he may be ordered therefor in order to prosecute his case in obedience to the order of the Court, and, in case of his making default therein, the surety bound himself to forfeit the sum of Rs. 2,500, and the petitioner failed to surrender to his bail after the decision of his petition, *held*, that the surety vouched for the appearance of the petitioner only on the dates he might be ordered to attend in order to prosecute his case, which means the date fixed for his hearing; in the absence of notice to the petitioner that he should remain in attendance until his appearance was dispensed with, the surety committed no breach of his bond when the petitioner disappeared without the leave of the Court; a bail bond must be interpreted with reference to its own language, if it is plain, and no external evidence will be admitted to explain its conditions. EMPEROR v. NATHU RAM, **55 P.L.R. 1902.**

See ACT IX OF 1872, ss. 23, 24, 10 Bom. L.R. 553.

See CRIM. PRO. CODE, 1898, s. 514, 30 C. 107 = 6 C.W.N 885.

See NOTICE, 4 M.H.C. App. 45.

See SURETY BOND, Rat. Un. Cr. C. 126.

Bailiff.

Breaking open doors in execution of decree—Assisting the bailiff—Intention—*See* MISCHIEF, Rat. Un. Cr. C. 949.

See PENAL CODE, s. 147, 17 C.W.N. 941 = 14 Cr.L.J. 274 = 19 Ind. Cas. 706.

Illegal resistance to attachment of property by bailiff—*See* PENAL CODE, s. 183, 15 B. 564.

Balance Sheet.

—Balance sheet under the Indian Companies Act, nature of—*See* ACT VI OF 1882, s. 215, 16 A. 88 = A.W.N. 1894, 23.

—Cheating by finishing false balance sheet—*See* PENAL CODE, ss. 109, 415, 418, 16 A. 88 = A.W N. 1894, 23.

False—*See* PENAL CODE, s. 191, 16 A. 88 = A.W.N. 1894, 23.

See PENAL CODE, s. 409, 8 Ind. Cas. 325.

Ballads.

See SECURITY TO KEEP THE PEACE—LIKELIHOOD OF BREACH OF THE PEACE, 13 P.R. 1889, Cr.

Bamboos.

Theft of—*See* THEFT—GENERAL—WHAT CONSTITUTES THEFT, 28 M. 304 = 2 Cr. L J. 754.

Bank.

See BANKER.

See ACT VI OF 1882, 16 A. 88 = A.W.N. 1894, 23.

See PENAL CODE, s. 409, 16 A. 88 = A.W.N. 1894, 23.

Banker.

(1)—*Loss of* hundi —*Negligence—Criminal act of Bank servant.*—A person sent a *hundi* by post to a bank, and the bank presented it for payment by one of its servants, who brought it back reporting that payment had been refused. The manager of the bank with the intention of returning it to the owner placed it in an envelope, sealed and stamped, which was laid upon the table ready for the post, in accordance with the custom of the bank. The *hundi* did not reach the owner and it afterwards appeared that the bank servant presented it for payment the following day, and obtained cash for it. *Held*, that the bank was guilty of such neglect as to render it liable for the amount of the *hundi*. PEOPLE'S BANK v. OBBARD, **2 Hyde 57.**

Use by banker of customer's money—*See* CRIMINAL BREACH OF TRUST, 32 P R. 1901, Cr.

Banker and Customer.

See CRIMINAL BREACH OF TRUST, 135 P. L.R. 191.

Bankers' Books Evidence Act.

See ACT XVIII OF 1891.

Barrister.

See LEGAL PRACTITIONERS—BARRISTER.

Bar to prosecution.

—*Suit in Civil Court.*—Civil proceedings do not constitute a bar to a prosecution in a Criminal Court. MADHUB KYBURTO v. KESHUB SINGH, **9 W.R. Cr. 22.**

Bar to trial.

See MAD. ACT XXIV OF 1859, ss. 10 and 44, 17 M. 278 = 1 Weir 839.

Bar to trial—*concluded.*

Previous acquittal — *See* JOINDER OF CHARGES—GENERAL, 12 Bom. L.R. 226.

See PENAL CODE, ss. 395, 411, 412, A.W.N. 1898, 203.

Basini.

Dedication of minor as—*See* PENAL CODE, s. 372, 15 M. 75 = 1 Weir 372.

Bastardy Proceedings.

See MAINTENANCE.

(1)—*Crim. Pro. Code* (1882), s. 488—*Bastardy proceedings—Their nature—Evidence Act,* s. 120—Bastardy proceedings, under s. 488, Crim. Pro. Code, are civil proceedings within the meaning of s. 120 of the Evidence Act, and the defendant thereto may give evidence on his own behalf. NUR MAHOMED v. BISMALLA JAN, **16 C. 781.** [*F.*, 154 P.L.R. 1914; *R.*, 18 B. 468, L.B.R. 1893—1900, 662, 168 P.L.R. 1903 = 19 P.R. 1903, Cr., 17 C.P.L.R. 127; *Appr.*, 5 P.R. 1914, Cr.]

Bathing.

In a tank not set apart for bathing purposes—*See* PENAL CODE, s. 277, 1 Weir 228.

Battle-axe.

See ACT XI OF 1878, s. 4 (3), 1 Weir 654.

Bazaar.

See ACT V OF 1861, U.B R. 1892—1896, Vol. I, 296.

Beating.

Branding and, for the purpose of freeing from bewitchment—*See* CULPABLE HOMICIDE, 4 Bom. L.R. 879.

To exercise evil spirits—Death—*See* PENAL CODE, ss. 84, 304, Rat. Un. Cr. C. 603.

Beggar.

—Liability of a beggar to pay maintenance—*See* MAINTENANCE, 2 Weir 616.

Begin, Right to.

See CRIM. PRO. CODE, 1898, s. 434, 8 B. 200.

Benamee Transactions.

Alleged false statements involving questions of benamee—Impropriety of criminal trial for perjury—Charge, Vagueness of—*See* PERJURY, 10 C.W.N. 1099 = 4 Cr. L.J. 227 = 4 C.L.J. 558.

Bench of Honorary Presidency Magistrates.

Crim. Pro. Code (1898), ss. 18, 21, 106—*Bench of Honorary Presidency Magistrates.*—S. 18 of the Code confers the full powers of a Presidency Magistrate on a Bench of Honorary Presidency Magistrates under the Code; and the Bench can, therefore, take action under s. 106. HASSAN v. YAS KUBAR, **7 Bom. L.R. 833 = 2 Cr. L.J. 770.**

Bench of Magistrates.

See CRIM. PRO. CODE, 1898, ss. 15, 16.

(1)—*Bench of Magistrates, powers of—Crim. Pro. Code* (X of 1872), *ss.* 50, 530.—A Bench

Bench of Magistrates—*continued.*

of Magistrates, being empowered only to try offences, is not competent to deal with the miscellaneous matters mentioned in s. 530 of the Crim. Pro. Code of 1872. SUFFERUDDIN v. IBRAHIM, **3 C. 754.** [*R.*, 20 C. 870.]

(2)—*Bench of Magistrates, powers of.*—It is not competent to a Bench of Magistrates to deal with a case under s. 530. SUFFERUDDIN v. IBRAHIM, **2 C.L.R. 263.**

(3)—*Bench of Magistrates, decision of—Appeal—Summary procedure.*—No appeal lies to a District Magistrate, in a case tried under Chap. XVIII of the Crim. Pro. Code, from the decision of a Bench of Magistrates consisting of an Assistant Magistrate with Second Class powers and two or more Honorary Magistrates. HAVALDAR ROY v. JAGU MEAN, **9 C. 96 = 11 C.L.R. 423 = 5 Shome L.R. 85.**

(4)—*Irregular order by Bench of Magistrates—Case partly heard by one Bench and decided by another.*—Where, in a summary case, no member of the Bench of Magistrates, that heard the evidence for the prosecution, was on the Bench that recorded, on another day, the evidence for the accused and acquitted them, *held*, by the High Court, that the order of acquittal was irregularly made and should be set aside and the case should be tried *de novo*. RAMSUNDER DE v. RAJAB ALI, **12 C. 558.**

(5)—*Trial before Bench of Magistrates—Decision not by same Bench by which case was heard — Irregularity.*—Where a prosecution was commenced before a Bench of Magistrates, and on a subsequent day the trial was proceeded with before a Bench which contained only one of the Magistrates, who heard the case on the previous occasion and the accused was convicted, the High Court set aside the conviction and ordered a new trial. QUEEN-EMPRESS v. BASAPPA, **18 M. 394 = 2 Weir 17.** [*Diss.*, 15 Cr. L J. 516 = 24 Ind. Cas. 604 = 17 O.C. 142.]

(6)—*Trial before Bench of Magistrates — Decision to be by same Magistrates that heard the evidence — Irregularity — Retrial.*—Where evidence for the prosecution was taken before two Honorary Magistrates and, on a subsequent day, the evidence for the defence was taken before one of them and another Magistrate who delivered the judgment and convicted the accused, the High Court set aside the conviction and ordered a new trial. HARDWAR SINGH OR LALL v. KHEGA OJHA, **20 C. 870.** [*Diss.*, 15 Cr. L.J. 516 = 17 O.C. 142 = 24 Ind. Cas. 604; *F.*, 23 C. 194, 18 M. 394 = 2 Weir 17; *D.*, 21 M. 246 = 2 Weir 17.]

(7)—*Decision to be by same Magistrates that heard the evidence.*—In the absence of any provision of law providing for a change in the constitution of Benches of Magistrates, only those Magistrates, who have heard the whole evidence can decide a case. S. 350 of the Code does not apply to cases of this description. A decision given by a Bench consisting of three Magistrates, only two of whom heard the entire evidence, was set aside. DAMRI THAKUR v.

Bench of Magistrates—*continued.*

BHOWANI SAHOO, **23 C. 194.** (13 C.L.R. 212, 20 C. 870, *F.*) [*Diss.*, 15 Cr. L.J. 516 = 17 O.C. 142 = 24 Ind. Cas. 604; *R.*, 35 C. 457 = 12 C. W.N. 416 = 7 Cr. L.J. 220 = 7 C.L.J. 488, 1 N. L.R. 187; *D.*, 21 M. 246 = 2 Weir 17, 3 N.L.R. 67.]

(7-*a*)—*Bench of Magistrates—Conviction in absence of two members of the Bench.*—Where a case was tried by a bench consisting of seven Magistrates and when the judgment was pronounced and the accused was convicted, only five out of those seven Magistrates were present, *held*, that the mere circumstance that two out of the seven Magistrates were absent on the day when the accused was convicted did not affect the legality of the conviction. KARUPANNA NADAN v. CHAIRMAN, MADURA MUNICIPALITY, **21 M. 246 = 2 Weir 17 = 1 Weir 751.** [*Diss.*, 15 Cr. L.J. 516 = 24 Ind. Cas. 604 = 17 O.C. 142; *R.*, 3 N.L.R. 67.]

(8)—*Bench of Honorary Magistrates—Presence at every hearing of each Honorary Magistrate deciding a case, necessity of.*—*Held*, that it is not necessary to validate a judgment of a Bench of Honorary Magistrates that each Honorary Magistrate who decides the case must be present at every hearing when the evidence is heard. INDAR DUT v. KING-EMPEROR, **17 O.C. 142 = 15 Cr.L J. 516 = 24 Ind. Cas. 604.** (20 C. 870, 23 C. 194, 18 M. 394, 21 M. 246, *R.*)

(9)—*Trial by Bench of Magistrates—Absence of some of the members at the adjourned trial, effect of.*—Where a case triable by a First-Class Magistrate was at first tried by a Bench exercising First Class powers, but the individual Magistrates having no such power, the case was, at the adjourned trial, tried before only one of them, *held* that he was not competent to try the case alone. *In the matter of* BARODA PROSUNNO CHUCKERBUTTY, **2 C.L.R. 343.**

(10)—*Bench of Magistrates—Absence of one of them during a portion of the trial.*—Where a person was tried by a Bench consisting of a stipendiary and two Honorary Magistrates, and, in the course of the trial, one of the Honorary Magistrates, was absent, and important evidence was recorded in his absence, but on the following day he resumed his seat and joined with the other Magistrates, in signing the order for the conviction of the accused, *held*, that the conviction was bad. SHUMBHU NATH SARKAR v. RAM KAMAL GUHA, **13 C.L.R. 212.** [*F.*, 23 C. 194; *R.*, 20 C. 870, 25 C. 233.]

(11)—*Bench of Magistrates—Absence of some during part of the trial.*—Where three out of the six Magistrates constituting a Bench, who had heard only the defence part of the trial, expressed their judgments in the case, as well as the three who had tried the case throughout, and came to the same conclusion as the latter three Magistrates on a question of law, *held*, that, as the conclusion they had arrived at was a correct one, the irregularity was not of such a nature or degree as to vitiate the proceedings, or to require the interference of the High Court. *In re* RAMASAMI AIYAR, **2 Weir 18.**

Bench of Magistrates—*continued.*

(12)—*Crim. Pro. Code* 1882, *s.* 16—*Bench of Magistrates—Right of an absent member to vote.*—A Magistrate who has been absent from the Bench during a material part of the trial of a case is entitled to vote with his brother Magistrates, when a difference of opinion arises. *In re* RENGANATHEN, **2 Weir 13.**

(13)—*Crim. Pro. Code,* 1882, *s.* 261—*Offence under s.* 48, *Police Act* (XXIV *of* 1859)—*Jurisdiction of Bench of Magistrates.*—S. 48 of the Police Act, which relates to obstruction and nuisances in roads (within the limits of towns), is a general conservancy clause, and the offences committed thereunder are within the cognizance of a Bench of Magistrates. QUEEN-EMPRESS v. OOLAGANADAM, **13 M. 142=1 Weir 910=2 Weir 327.**

(14)—*Crim. Pro. Code,* 1882, *ss.* 15 *and* 16—*Conviction by a Bench of Magistrates consisting of an appointed Chairman and another Special Magistrate — Power of Chairman to convict, availing himself of his right to a casting vote.*—Paragraph 1 of the Rules made by the Government, dated 5th April, 1889, under ss. 15 and 16, Crim. Pro. Code, as amended by the Government Order, dated 18th July, 1889, lays down that, in the absence of a salaried Magistrate, the Bench could not consist of less than three members. Government order, dated 30th July, 1890 merely empowered the Benches of Magistrates at Madura and Dindigal to try, even in the absence of a salaried Magistrate, the offences under the Penal Code specified in clause 1 of paragraph 1 of the Rules, dated 5th April, 1889, a class of offences, which was theretofore triable by them only in conjunction with a salaried Magistrate, and it appointed specially designated Presidents for the trial for such cases. but the power was given and the Chairman appointed subject to the Rule contained in the proviso to paragraph 1. Where a person was tried by a Bench of Magistrates at Dindigal consisting of a pensioned District Munsiff, who had been appointed the Chairman of the Bench and one Special Magistrate, for an offence punishable under s. 352 of the Penal Code and the Magistrates differing as to the guilt of the accused, he was convicted by the Chairman availing himself of his right to a casting vote, *held*, that the Court was not legally constituted and that the conviction was wrong. QUEEN-EMPRESS v. MUTHIA, **16 M. 410=2 Weir 14.**

(15)—*Bench of Magistrates— Difference of opinion between Chairman and colleague—Casting vote of Chairman—District of Faridpur—Notification in force in* 1905—*Whether still in force in Faridpur—Bengal, Bihar, Orissa and Assam Laws Act* (VII *of* 1912), ss. 3, 8.—In 1913, the petitioners were tried in the District of Faridpur by a bench consisting of two Honorary Magistrates. The Chairman recorded a judgment of conviction, and his colleague a judgment of acquittal. The Magistrates took the view that a Chairman had a casting vote. The trial thus resulted in a conviction. An appeal to the District Magistrate was dismissed. In 1906, the Government of Bengal had ssued a notification directing that, in the event of a disagreement between two members of a Bench of Magistrates, the case shall be referred back to the District Magistrate or Sub-Divisional Officer as the case may be :—*Held*, that, as Faridpur was not within the limits of the Government of Bengal in 1906, and as the application of the notification was not extended when the territorial limits of the Government of Bengal were extended in 1912, so as to include Faridpur, the notification did not apply to the present case. In 1905, when Faridpur was in Bengal, a notification was in force under which a difference of opinion between two members of a Bench was to be settled by the casting vote of the Chairman : *Held*, that, under s. 3 of Act VII of 1912, this notification was still in force in Faridpur and that the conviction in the present case was legal. No general rule can be laid down that, when there is a difference of opinion between two Magistrates composing a Bench, the accused should be acquitted in appeal, although the fact that one of the two trying Magistrates is in favour of acquittal is a very important factor calling for careful consideration. ULTAF SHEIKH v. EMPEROR, **14 Cr. L.J. 684=21 Ind. Cas. 1004=18 C.W.N. 384.**

(16)—*Municipal offence—Salaried officer of Municipality — Disqualification—Crim. Pro. Code* (1882), *s.* 555.—A conviction for a Municipal offence, by a Bench of Magistrates including a salaried Officer of the Municipality, is bad in spite of the provisions of s. 555 of the Crim. Pro. Code. NOBIN KRISHNA MOOKERJEE v. CHAIRMAN OF THE SUBURBAN MUNICIPALITY, **10 C. 194** [*R.*, 18 B. 442 ; *D.*, 15 A. 192.]

(17&18)—*Trial by—Alteration in constitution of, during trial*—'Quorum.'—Where a Bench of Magistrates consisted of four members, but only two of them, who constituted a *quorum* of the Bench, sat throughout the trial, heard all the evidence and decided the case, the removal from the Bench, during the trial, of two other Magistrates, who were supernumerary to the *quorum* necessary to constitute a valid Bench, does not invalidate that Bench or vitiate the trial. BABBADRI BANI v. TRIBHUBAN NATH, **3 N.L.R. 67=6 Cr. L.J. 43.**

(19)—*Bench of Magistrates—Powers of member to act independently of the Bench.*—An Honorary Magistrate, who is a member of an independent Bench, which exercises third class powers, cannot act independently, that is to say, when not sitting on the Bench, unless he is authorised to act independently. EMPEROR v. NURI SHEIKH, **29 C. 483=6 C W.N. 596.**

See BEN. ACT V OF 1876, s. 216, 9 C. 38.

See MAD. ACT XXIV OF 1859, s. 48, 13 M. 142=1 Weir 910=2 Weir 327.

Power of Bench of Honorary Presidency Magistrates to take action under s. 106, Crim. Pro. Code—*See* BENCH OF HONORARY PRESIDENCY MAGISTRATES, 7 Bom. L. R. 833=2 Cr. L.J. 770.

Bench of Magistrates—*concluded.*

See CRIM. PRO. CODE, 1898, s. 21, 8 C.W.N. 862.

See CRIM. PRO. CODE, 1898, ss. 264, 407, 9 M. 36=2 Weir 460.

Municipal Councillor reporting a case for prosecution — His competency to be one of Bench of Magistrates to try the case — *See* CRIM. PRO. CODE, 1898, s. 558, 2 Weir 728.

Trial by—Some not present throughout the trial—Irregularity, whether curable—*See* MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION, 9 M.L.J. 335.

See SUMMARY TRIAL, 4 L.B.R. 277.

Benefit of doubt.

(1)—*Principle explained.*—Where the probabilities in favour of the prosecution outweigh those in favour of the defence, but, looking to all the circumstances, there remains a reasonable doubt in favour of the accused, the accused must get the benefit of that doubt. QUEEN-EMPRESS v. SHIVGOD, **Rat. Un. Cr. C. 127.**

(2)—*To favour the accused must be a reasonable or substantial one.*—The accused must be given the benefit of the doubt, but that doubt must be a reasonable or substantial one, such as a jury would give effect to, in their ordinary every day's action as men of business and not the mere creature of speculative ingenuity or mental timidity. EMPRESS v. KALI PRASANNA KABYABISHARAD, **1 C.W.N. 465.**

(3)—The doubt of which it is usual to give an accused person the benefit is a reasonble doubt. Slight doubt of his guilt is not a proper ground for reversing his conviction. QUEEN-EMPRESS v. NGA SHWE THE, **L.B R. 1893-1900, 149.**

(4)—The doubt which entitles an accused person to an acquittal is a reasonable doubt and no other. QUEEN-EMPRESS v. DAYA, **S.C. 221, Oudh.**

(5)—A Court should carefully consider the evidence for the prosecution and the probability or improbability of the statements made by the witnesses being true, and if that evidence left *reasonable doubt* in its mind as to the guilt of the accused, it should give them the benefit of that doubt. ALI HUSSAN v. QUEEN-EMPRESS, **L.B.R. 1893-1900, 349.**

(6)—*Burden of proof— Guilt of accused—Benefit of doubt.*—When L was convicted of the offence of murder and K of abetment, the Chief Court set aside the conviction of K, holding that evidence against L was overwhelming, but the police report and the surrounding circumstances showed that probably K was implicated owing to his being extremely unpopular in the village. LACHHMAN SINGH v. KING EMPEROR, **90 P.L.R. 1909=4 Ind. Cas. 992.**

(7)—*First report—Description of the culprits not applying to the persons subsequently accused —Benefit of doubt—False implication of enemies.*—*Held*, that, where the first report of the commission of a crime made by a person closely

Benefit of doubt—*concluded.*

connected with the complainant does not mention the names of the persons subsequently implicated, and says the culprits were of a certain village, which description does not apply to them at all, their conviction is illegal; or in any case such a circumstance so weakens the prosecution that they must be allowed to get benefit of doubt. MUHAMMADA *alias* SANTU v. THE CROWN, **33 P.W.R. 1911, Cr.=12 Cr. L J. 561=12 Ind. Cas. 649.**

Case of doubt - Suspicious circumstances—Unappealable sentence—Legality—Concurrent findings of lower Courts—Revision—*See* ACT XII OF 1896, s. 51, 43 P.W.R. 1913, Cr.

See APPELLATE COURT, 5 P.R. 1876, Cr., 6 P.R. 1898, Cr.

See CONVICTION, 7 P.L.R 1911=9 Ind. Cas. 400=12 Cr. L.J. 69=11 P.W.R. 1911, Cr.

See CRIM. PRO. CODE, 1898, ss. 253, 254, 2 P.R. 1906, Cr.=37 P.L.R. 1906=3 Cr.L.J. 345.

See CRIM. PRO. CODE, 1898, s. 297, 1 M.L.T. 350=4 Cr. L J. 502.

When should be given to accused—*See* CRIM. PRO. CODE, 1898, s. 439, 5 P.W.R. 1913, Cr. =14 Cr. L.J. 320=19 Ind. Cas. 1008=152 P. L.R. 1913.

Accused entitled to—*See* INTENTION, U.B. R. 1897—1901, Vol. I, 316.

When to be given—*See* PENAL CODE, ss. 72 302, 201, 11 P.R. 1913, Cr.

Accused's name not mentioned at the earliest stage—Benefit of doubt—*See* PENAL CODE, ss. 147, 148, 332, 395, 223 P.L.R. 1912=41 P. W.R. 1912, Cr.

Blood stains on clothes—Accusing one person at the thana and different person on the spot.—*See* PENAL CODE, s. 307, 14 P.W.R. 1913, Cr.=67 P.L R. 1913=19 Ind. Cas. 196 =14 Cr. L.J. 196.

Identification of accused—Tracker—Evidence of—*See* PENAL CODE, s. 395, 71 P.L.R. 1910.

See PENAL CODE, s. 467, 34 P.L.R. 1907=1 P.W.R. 1907, Cr.

Benefit Society.

Whether it is liable to be taxed—*See* MAD. ACT I OF 1884, s. 103, sch. A. (1) (A & B), 11 M. 253=11 Ind. Jur. 369.

Bengal Acts.

See ACTS—BENGAL ACTS.

Bengal Regulations.

See REGULATIONS-BENGAL REGULATIONS.

Berar Criminal Code.

See CRIM. PRO. CODE, BERAR.

Berar Municipal Law, 1886.

(1) S. 146 (1)—Member of Municipal Committee—Advancing money to Municipal contractor for municipal works—Offence—*See* PENAL CODE, s. 168, 7 N.L.R. 53=10 Ind. Cas. 577=12 Cr. L.J. 281

(2)—*Ss.* 146 (1), 151—*Municipal member becoming interested in contracts in contravention*

Berar Municipal Law, 1886—*concluded.*

of the terms of s. 146 (1)—*Applicability of s.* 151 —*Offence under s.* 168, *I.P.C* —*Complaint, as required by s.* 151, *whether necessary—Objection overruled summarily—Propriety.*—Where a member of a Municipal Committee in Berar becomes directly or indirectly interested in contracts made with the said Committee, in violation of the prohibition contained in s. 146 (1) of the Berar Municipal Law, 1886, he commits an offence punishable under s. 168, I.P.C., and s. 151 of the Berar Municipal Law, 1886, has no application. S. 151, Barar Municipal Law, 1886, applies only to what are generally known as municipal offences, *i.e.*, offences against the powers, rules and bye-laws of a Municipal Committee, in respect of which the Committee is given a discretion to complain or not to complain, and in such cases, the Criminal Courts are restrained from taking cognizance unless and until the Committee has complained. NARAYAN v. EMPEROR. **6 N.L. R. 114=8 Ind. Cas. 274=11 Cr. L.J. 613.**

(3)—S. 151—*See* No. 2, *supra.*

Berar Penal Code.

See PENAL CODE (BERAR).

Betel.

See CHEWING BETEL.

Betting.

See GAMBLING.

See GAMING.

(1)—*Gaming.*—A bet cannot, for the purposes of criminal law, be treated as a game. Under the Indian Law, mere betting is not punishable. QUEEN-EMPRESS v. NAROTTAM DASS MOTIRAM. **13 B. 681.** [*Doubted*, 31 C. 542=8 C.W.N. 458.]

On rainfall—*See* BOM. ACT IV OF 1887, ss. 3 and 4, 13 B. 681.

On figures of auction—*See* BOM. ACT IV OF 1887, ss. 3, 4, 5, 26 B. 533=4 Bom. L.R. 271.

Distinction between gaming and betting—*See* GAMING, 31 C. 542=8 C.W.N. 458.

Bhagdari and Narwadari Tenures.

See BOM ACT V OF 1862.

Bicycle

(1)—*Bicycle, if a vehicle.*—A bicycle is a vehicle with springs under the Municipal Acts. WILSON v. MADRAS MUNICIPALITY, **19 M. 83=5 M.L.J. 293.**

(2)—Whether liable to be taxed—*See* MAD. ACT I OF 1884, sch. (*c*), 19 M. 83=5 M.L.J. 293.

Bidding at auction.

Without intending to purchase—*See* CONTEMPT OF LAWFUL AUTHORITY, 3 W.R. Cr. 33.

Bigamy.

See CRIM PRO. CODE, 1898, s. 198.

See PENAL CODE, ss. 494, 495.

Bigamy—*continued.*

(1)—*Penal Code, s.* 494—*Bigamy—Essentials of the offence.*—S. 494 requires proof of a second contract of marriage in the lifetime of the husband or wife of the party as the case may be, and of the invalidity of such contract by reason of the husband or wife being alive. Polygamy is not permitted to women by the general Hindu Law. HIGH COURT PROCEEDINGS, 28TH JUNE 1870, NO. 1204, **1 Weir 565, F.B.** [*R.*, 1 Weir 563.]

(2)—*Penal Code, s.* 494—*Right of Hindu woman to marry second time.*—The Hindu Law, which recognises the right of a Hindu husband to contract a valid second marriage, notwithstanding the continuance of a former marriage, does not recognise a correlative right on the part of a Hindu wife. In cases under s. 494, the point for determination is whether there was a valid subsisting marriage at the date of the second marriage. *In re* MICHAEL *alias* VELLAYA KUDUMBAN, **1 Weir 563.**

(3)—*Penal Code, ss.* 52, 79, 494, 497—*Custom of caste authorising dissolution of marriage without husband's consent and second marriage.*—A woman of the Talapad Koli caste was convicted under s. 494 of contracting a marriage with another, during the lifetime of her first husband. The bigamous husband was convicted of committing adultery with that woman. The defence was that a *natra* marriage had been solemnized between them, and that it was the custom of the caste that a woman may, without the consent of her husband, leave him and contract a valid marriage with another man. *Held* that such a custom as that set up, even if it be proved to exist, was invalid as being entirely opposed to the spirit of the Hindu Law, and that a marriage entered into in accordance with such a custom was void. REG. v. KARSAN GOJA; REG v. BAI RUPA, **2 B H.C. 117.** [*R.*, 1 B. 97 (117), 2 B. 140 (141), 4 B. 330 (332), 545 (567), 10 B H.C. 381 (382), 12 C.P.L.R. 19, Cr.; *D.*, 5 B.H.C. 17, Cr., 17 B. 400.]

(4)—Sagai or nikka *marriage—Relinquishment of wife—Penal Code, s.* 494.—A conviction under s. 494, Penal Code, cannot be supported where there is evidence to show that, by the custom of the caste, *sagai* or *nikka* marriage was admissible and that the husband had relinquished his wife. JUKNI *alias* PARBATI v. QUEEN-EMPRESS, **19 C. 627.** (7 C.L.R. 354, *F.*)

(5)—Nikka *marriage—Penal Code, ss.* 494, 495.—A *nikka* marriage falls within ss. 494 and 495, I.P.C. QUEEN v. JUDOO MUSSULMANEE, **6 W.R.Cr. 60.**

(6)—Jhingara *marriage.*—The *jhingara* ceremony of marriage does not by custom constitute a valid marriage within the meaning of s. 494, I.P.C. GIGAL v. PHIO, **25 P.R. 1888, Cr.**

(7)—*Mahomedan Law—Absence of husband for four years.*—The fact that a certain school of Mahomedan lawyers have declared that a woman is competent to marry again, if her

Bigamy—*continued.*

husband has been absent for 4 years, will not bring a case under the exception to s. 494, I.P.C. ALAM SHAH v. JEWAN, **27 P.R. 1878, Cr.**

(8)—*Continuous absence of husband for seven years—Second marriage.*—In order to entitle the accused to the benefit of the exception to s. 494, I.P.C., it is only necessary to prove that the other party to the marriage has been continuously absent from, and not been heard of as alive by, the accused for the space of seven years, it being immaterial under such circumstances, whether or not the accused made any inquiries or had reasonable grounds for believing the other party to be dead. MUHAMMAD NISSA v. EMPRESS, **1 P.R. 1900, Cr. = P.L.R. 1900, p. 1b.**

(9)—*Mahomedan Law — Second marriage during* iddat.—Under the Mahomedan Law, a second marriage contracted with a woman who is in the state of observing her *iddat*, subsequent to the death of her husband, *viz.*, a period of 4 months and 10 days from such death, is not valid, unless a special custom to the contrary has been recognized as valid and binding upon the parties. MUSST. BIBI v. EMPRESS, **43 P.R. 1882, Cr.**

(10)—*Penal Code, s. 494—Conversion of Hindu wife to Mahomedanism and re-marriage with a Mahomedan—Bigamy.*—The conversion of a Hindu wife to Mahomedanism does not operate to dissolve her marriage with the Hindu husband, with whom she has lived up to the time of her conversion. She cannot, therefore, during the lifetime of her Hindu husband, marry a Mahomedan husband. GOVERNMENT OF BOMBAY v. GANGA, **4 B. 330.** [*F.*, 18 C. 264, 30 M. 550 = 17 M.L.J. 476 = 2 M.L.T. 345 = 6 Cr. L.J. 338, 1914 M.W.N. 278; *R.*, 25 B. 644, 9 M. 466, 49 P.R. 1907 = 83 P.L R. 1908 = 110 P.W.R. 1907, U.B.R. 1897—1901, 488.]

(11)—*Apostacy of Hindu wife—Effect.*—The apostacy of a Hindu wife does not dissolve the marriage union. CROWN v. GHOLAM FATIMA, **32 P.R. 1870, Cr.**

(12)—*Muhammadan Law — Conversion of Hindu wife to Mahomedanism — Effect.*—According to Mahomedan Law, when a Hindu wife becomes a convert to the Mussalman faith and the husband is an unbeliever, the Magistrate, on her application, is to call upon him to embrace Islam, and if he does so, the woman continues as his wife, but if he refuses, the Magistrate must separate them; and if the wife embraces Islam in a foreign country and the husband is an unbeliever, separation takes place on the expiration of three terms of the wife's courses. British India not being a foreign country within the meaning of the intention of the above rules, a Hindu wife, on conversion to Mahomedanism, must, before she marries a Mahomedan, either give the notice through a Magistrate, or seek the intervention of the Court by instituting a suit, after notice to the husband, for a declaratory decree that, under

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Mahomedan Law, her former marriage is dissolved, and that she is competent to marry again. If she does not do so, her marrying a Mahomedan husband during the lifetime of her former Hindu husband would make her liable under s. 494 of the Code. *In the matter of* RAM KUMARI, **18 C. 264.** [*R.*, 34 A. 589 = 10 A.L.J. 82 = 16 Ind. Cas. 513 = 13 Cr. L.J. 705 = 30 M. 550 = 6 Cr. L.J. 338 = 17 M.L.J. 476 = 2 M.L.T. 345; *D.*, 17 M. 235.]

(13)—*Penal Code, s. 494—Marriage of minor Mahomedan girl—Second marriage after attaining puberty while the former husband was in jail —Repudiation of marriage—Proof of marriage under Mahomedan law—Option of puberty.*—The first prisoner, a Mahomedan girl, when only 5 years old, was given in marriage by her mother, to the complainant. Before the girl had attained puberty, the complainant was sentenced to a term of imprisonment for the offence of theft; and whilst he was in jail, the girl attained puberty and married the second prisoner. It was found that the second prisoner was aware of the first marriage with the complainant. The only proof of marriage between the complainant and the first prisoner offered in the case was evidence of the complainant and the girl's mother and of two witnesses who were said to have been present on the occasion. *Held*, on appeal from the conviction for an offence under s. 494 of the Code, that, on the facts of the case, there was not any valid marriage between the first prisoner, inasmuch as there was no proof of the presence of a Mollah with necessary witnesses and vakils at the ceremony or that the *sigha* was recited, or the *akd* performed. *Held*, also, that her second marriage was a sufficient indication that she never ratified the unauthorized marriage which was never consummated, and that, even supposing that the girl was governed by the *sunni* law, it was not necessary to signify her assent or dissent, inasmuch as the complainant was in jail when she attained puberty. The conviction was accordingly set aside. In a legal marriage, according to the Mahomedan Law, a Mollah would be present, with the necessary witnesses and vakils to read the *sigha*. The *sigha* would be recited and the *akd* performed. If there is no proof of these, it cannot be said that there has been a valid marriage. In a prosecution for bigamy, if proof of either marriage is unsatisfactory, there ought to be no conviction. [*R*, L.B.R. 1893—1900, 607, 8 C W.N. 705 = 31 C. 849; *D.*, 10 C.W.N. 982]. Under the Mahomedan Law, when a child is given in marriage by any person other than the father or grandfather, he or she has the option of either ratifying or repudiating it, on attaining puberty. This is called the option of puberty. The only difference between the *Sunni* and the Shiah Law, on the question of option of puberty, is that whereas, according to the latter school, a marriage contracted for a minor by a person other than the father or grandfather is wholly ineffective, until it is ratified by the minor on attaining puberty, it continues, according to the *sunni* school, effective until it

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is cancelled by the minor. Both schools give to the minor an absolute power, either to ratify, or to cancel the unauthorized marriage. In criminal proceedings under s. 494 of the Code, where a conviction can take place only if it is found conclusively that the former marriage is still binding and effective, the accused may plead the exercise of the right of option. BADAL AURAT v. QUEEN-EMPRESS, **19 C. 79.** [*F.*, 11 Cr. L.J. 664=8 Ind. Cas. 494=33 P. W.R. 1910, Cr.]

(14)—*Penal Code*, ss. 109 *and* 494—*Abetment of bigamy of a young girl.*—A Hindu father giving his married daughter, who, on account of her youth has not the knowledge and intelligence to commit an offence under s. 494, again in marriage to another in the lifetime of her husband, is guilty of the abetment of bigamy, although the girl herself cannot be convicted under s. 494. NAND LAL SINGH v. CROWN, **6 C.W.N. 343.** (4 C. 10, *D.*)

(15)—*Penal Code*, ss. 83, 495—*Bigamy—Child of ten years.*—A girl of ten years of age should be deemed not to have attained sufficient maturity of understanding to judge of the nature and consequences of her act in going through a second marriage, which marriage and the previous one were negotiated by her mother. QUEEN-EMPRESS v. GODI, **Rat. Un. Cr.C. 876 =Cr. Rg.85 of 1896.**

(16)—*Minor—Validity of second marriage.*—Where a widow, charged with bigamy, contended that her second marriage was invalid, as she was married when she was a minor without the consent of her relations, *held*, that the marriage was legal. MADHA v. JEEWEE, **2 P.R. 1869, Cr.**

(17)—*Penal Code*, s. 494—*Bigamy—Proof of first marriage.*—To substantiate a charge of bigamy, the first marriage of the complainant and his alleged wife must be strictly proved. QUEEN-EMPRESS v. SHIVANA, **Rat. Un.Cr. C. 190.**

(18)—*Consummation of marriage.*—Consummation is not required to complete a marriage. BIRBUL v. SAWAN. **4 P.R. 1874, Cr.** (48 P.R. 1867, Cr., *Overruled.*)

(19)—*Bigamy—Invalidity of second marriage.*—Where during the subsistence of a first marriage, a person goes through a form of marriage recognised by law, he is guilty of bigamy, although the second marriage may be void for other reasons than that of its being bigamous. GURBAKSH SINGH v. SHAMA SINGH, **19 P.R. 1876, Cr.**

(20)—*Question of marriage—Duty of Criminal Court.*—A Criminal Court is bound to decide the question of marriage when it is essential to the decision of the question whether an offence has been committed or not. ALAM SHAH v. JEWAN, **27 P.R. 1878 Cr.** (2 P.R. 1879, **Cr.**, *R.*)

Bigamy—*continued.*

(21)—*Validity of marriage—Decision of a Civil Court.*—In arriving at a decision as to whether there has been a valid subsisting first marriage, the Criminal Court is not bound by the fact of the decision of a Civil Court for custody of the wife, or by proceeding in execution of that decree. NIZAM DIN v. GOHRAN, **18 P.R. 1881, Cr.**

(22)—*Penal Code*, s. 494—*Second marriage with a Hindu woman by a person relapsing from Christianity to Hinduism—Bigamy.*—*Held*, by *Holloway and Innes, JJ.*—A Hindu Christian convert relapsing into Hinduism and marrying a Hindu woman cannot be convicted of bigamy on the ground that he has another wife living whom he married while a professing Christian. *Per Holloway, J.*—A second marriage of a Hindu is not void in consequence of a previous valid Hindu marriage. It is manifest, therefore, that the second marriage cannot be rendered void in consequence of a previous marriage which the Hindu Law could not have recognised it not having been performed with any reference to its provisions. If again, the accused is to be treated as still a Christian, the union entered into with a Hindu woman, cannot, in the view of any law governing Christian unions, be considered a marriage at all. *Per Innes, J.*—Although doubtless the tendency of Christianity is adverse to polygamy, polygamy as an offence exists only by statute, and there is no statute applicable to India except the Statute 9, Geo. IV., c. 74, s. 70, which makes polygamy an offence. But that Statute applies to a second marriage, not by an apostate from Christianity to Hinduism, but by one still professing the Christian religion at the time of the second marriage. Therefore, there is, by Statute, no obligation imposed on an apostate to Hinduism to observe monogamy, and, therefore, nothing in the Statute Law which renders void the second marriage by reason of the first wife being alive. HIGH COURT PROCEEDINGS, 8TH NOVR. 1866, **1 Weir 561=3 M.H.C. App. 7.** [*D.*, 4 M.H.C. App. 3, 1 Weir 563; *Diss.*, 30 M. 550=6 Cr. L.J. 338=17 M.L.J. 476=2 M. L.T. 345.]

(23)—*Penal Code*, s. 494—*Bigamy—Marriage according to Hindu rites of relapsed convert—Subsequent conversion and marriage to Christian*—Onus *of proving dissolution of first marriage.*—A, in her childhood, was with her parents baptized into the Roman Catholic Church, but after her father's death, the family relapsed into Hinduism. A was then married to a Hindu. The husband, after sometime, discarded her on the ground of her former baptism, which was not known to him at the time of the marriage. She was then re-admitted to the Roman Catholic Church by the second accused and was married by him to a Roman Catholic Christian. *Held*, that the woman was guilty of bigamy under s. 494, Penal Code, and the second accused of abetting the same. [*R.*, 18 C. 264, 17 M. 235, F.B., U.B.R. 1897—1901 Civil, p. 488, 49 P.R. 1907, 17 M.L J. 476=2 M.L.T. 345=6 Cr. L.J. 338=30 M,

Bigamy—*continued.*

550.] When once a marriage in fact has been proved, there arises a presumption, in the absence of any evidence to the contrary, that there has also been marriage in law. There can be no such presumption as to a form of marriage gone through, when a former valid subsisting marriage has been proved. In such case, the *onus* is entirely upon the defence to show that the earlier subsisting marriage has been validly dissolved. *In re* MILLARD, **10 M. 218 = 1 Weir 566.**

(24 & 25)—*Penal Code*, s. 494—*Attempt to commit bigamy—Publishing the banns.*—The causing of the publication of the banns of marriage is not an attempt to marry, but only a preparation for such an attempt. QUEEN v. PETERSON, **1 A. 316.**

(26)—*Crim. Pro. Code* (1898), s. 198—*Meaning of the term "aggrieved person"—Penal Code, s.* 494—*Complaint by the husband.*—It cannot be said that the only "person aggrieved" under s. 494 is the person with whom the second ceremony was gone through. The husband is also a "person aggrieved" under s. 198, Crim. Pro. Code, and the Court should, therefore, take cognizance of an offence under s. 494, Penal Code, on a complaint by the husband. DEPUTY LEGAL REMEMBRANCER v. SARNA KAHMI, **26 C. 336.** (10 B. 340, 1 C.L. R. 523, *R.*) [*R.*, 3 C.L.J. 38.]

(27)—*Bigamy — Person aggrieved to present complaint— Husband not father.*—In a case of bigamy, the person aggrieved is either the first husband or the second husband, and not the father. Hence, where, in such a case, a complaint was preferred by the father of the husband, but not by either of the husbands, *held*, there was no valid complaint before the Court and that the commitment was bad. KING EMPEROR v. LALA, **7 A.L J. 10 = 32 A. 78.**

(28)—*Bigamy—Brother of lunatic wife is not "person aggrieved."*—The brother of a lunatic, whose wife is charged with having committed bigamy, is not a "person aggrieved by such offence," within the meaning of s. 198, Crim. Pro. Code. QUEEN-EMPRESS v. BAI RUKHSHMONI, **10 B. 340.** [*R.*, 25 A. 132 = A.W. N. 1902, 198, 26 C. 336, 3 C.L.J. 48 = 3 Cr. L. J. 197, 7 Cr. L J. 457 = 11 O.C. 148, L.B.R. 1872—1892, 617.]

(29)—*Penal Code*, s. 494—*Evidence necessary for conviction under the section.*—In order to sustain the conviction of a woman under s. 494 it must be proved (1) that the accused had a husband living; (2) that she married during the lifetime of the first husband; and (3) that such second marriage is void by reason of its taking place during the life of such husband. Where there is proof that such second marriages are not uncommon among persons of the caste to which the accused belonged, and instances are given of such marriages having occurred, a conviction under the section cannot be had. *In the matter of* MUSSAMMAT CHOMIA, **7 C.L. R 354.** [*F.*, 19 C. 627.]

Bigamy—*concluded.*

(30)—*Penal Code, ss.* 496, 494—*Marriage fraudulently going through form of—Essence of offence—Show of marriage—Ulterior fraudulent purpose — Practice — Trial by jury — Charge under one section, if can be converted into another by High Court.*—Under the Hanifi Law, where the father of a minor girl is present at her marriage and is a consenting party, no special recitations are necessary to make a valid marriage. *Semble.*—The marriage is irrevocable and cannot be repudiated by the girl on the attainment of puberty. The essence of an offence under s. 496 of the Code, is that the marriage ceremony should be fraudulently gone through and that there should be no lawful marriage. The accused must have the knowledge that there is no marriage. A case of bigamy is not contemplated by s. 496 of the Code. Where it is intended that there should be a valid marriage and not that there should be only a show of marriage for some ulterior and fraudulent purpose, the case does not come under s. 496 of the Code. Where the trial was by jury, the High Court refused to convert the charge from one under ss. 496/109 to one under ss. 494/109 of the Code. SHEIKH ALIMUDDIN v. EMPEROR, **10 C.W.N. 982 = 4 Cr. L J. 152.** (19 C. 79, *D.*)

Abetment of—*See* ABETMENT, 7 P.R. 1894, Cr.

Charge of—Persons competent to complain—*See* CRIM. PRO. CODE, 1898, s. 198, 25 A. 132 = A.W.N. 1902, 198.

See CRIM. PRO. CODE, 1898, s. 198, 25 A. 209 = A.W.N. 1903, 7, 3 C.L J. 38 = 3 Cr. L.J. 187, 11 O.C. 148 = 7 Cr. L.J. 457.

Women charged with abetment of—Vague complaint, no allegation of specific acts—Exemption from personal attendance—Right to be allowed—*See* CRIM PRO. CODE, 1898, s. 205, 7 S.L R. 161 = 15 Cr. L.J. 539 = 24 Ind. Cas. 947.

See PENAL CODE, s. 496, W.R. 1864, Cr. 13.

Billiard Saloons.

See BOM. REG. XII OF 1827, s. 19, Rat. Un. Cr. C. 490 = Cr. Rg. 59 of 1889.

Bill in Legislative Council.

Reference to—Bill in Legislative Council, if guide in construction of statutes—*See* STATUTES, CONSTRUCTION OF, 3 A. 283.

Birds.

Whether birds can be subject of theft—*See* PENAL CODE, s. 378, 1914 M.W.N. 368 = 22 Ind. Cas. 429 = 15 Cr. L.J. 77.

Blackart.

Abetment of murder by impossible means—Sorcery—*See* ABETMENT, 10 B.H.C. 75.

Blood Stains.

On a Zamindar's clothes—Whether incriminating—*See* EVIDENCE ACT, 1872, s. 27, 15 P.W.R. 1913, Cr. = 19 Ind. Cas. 190 = 14 Cr. L.J. 190 = 171 P.L.R. 1913.

Blow.

Causing hurt—, with umbrella—*See* HURT, 24 W.R. Cr. 67.

Board of Revenue.

See MAD. REG. I OF 1803.

Powers of, over Divisional Officers—*See* CERTIORARI—WRIT OF, 23 M.L.J. 393=16 Ind. Cas. 755=13 Cr. L.J. 723=1912 M.W. N. 1012.

Boat.

Unlawful user by hirer—Confiscation without hearing owner—*See* ACT I OF 1878, s. 11, 15 C.W.N. 296=9 Ind. Cas. 587=12 Cr. L.J. 103.

Entry and search of, between sunset and sunrise without warrant—*See* ACT I OF 1878, ss. 15, 19, 5 L.B.R. 56, F.B.=2 Ind. Cas. 546.

Order of confiscation of—*See* CRIM. PRO. CODE, 1898, s. 517, 8 C.W.N. 887.

Theft of — *See* THEFT—GENERAL—WHAT CONSTITUTES THEFT, 16 W.R. Cr. 63.

Theft of rice from a—*See* THEFT IN A B UILDING, 1 Weir 436.

Boatman.

Theft by hired—*See* THEFT—GENERAL —WHAT CONSTITUTES THEFT, 8 W.R. Cr. 32.

Boat Rules.

S. 14—*See* MAD. ACT VII OF 1876, 10 M. 121.

Boats in Harbours, Madras.

See MAD. ACT IX OF 1846.

Boat Theft.

(1)—*Summary trial—Boat and cattle thefts.* —Boat thefts and cattle thefts call ordinarily for a severe sentence of two years' rigorous imprisonment ; a summary trial is not suitable for them. QUEEN-EMPRESS v. NGA SAN, **L.B. R. 1893—1900, 198.**

Boiler Inspection Act (Bombay) as applied to Berar.

See BOM. ACT II of 1891.

Bomb.

(1)—*Bomb found in house—Possession.*— When a bomb was found in a *baitakkhana ghar* in a house to which all the members of the family had access, it could not be held that any particular member was in possession of the bomb. JOGJIBAN GHOSE v. EMPEROR, **9 C.L. J. 663=13 C.W.N. 861=2 Ind. Cas. 681=10 Cr. L. J. 123.** (15 A. 129, *appl.*)

Bombay Acts.

See ACTS—BOMBAY ACTS.

Bombay and Madras Land Customs Act.

See ACT XI OF 1869.

Bombay Regulations.

See REGULATIONS — BOMBAY REGULATIONS.

Bombay Supreme Court.

See SUPREME COURT, BOMBAY.

Bona fide claim of right.

See BONA FIDES.

Mischief as to land—Intent—*See* MISCHIEF, Rat. Un. Cr. C. 432.

See WRONGFUL RESTRAINT, Rat. Un. Cr. C. 451=Cr. Rg. 10 of 1889.

Bona fides.

See CRIM. PRO. CODE, 1898, s. 133.

See DEFAMATION.

(1)—*Good faith.*—The question of good faith is one of fact. It must be considered with reference to the position of the accused and the circumstances under which he acted. BHAWOO JIVAJI v. MULJI DAYAL, **12 B. 377.** [*R.*, 31 B. 293=9 Bom. L.R. 230.]

See ACT XVIII OF 1850, S.C. 19, Oudh.

'*Bona fide*' transfer of case under s. 145 by Magistrate not so empowered—*See* CRIM. PRO. CODE, 1898, ss. 145, 192, 529 (*f*), 5 C.W.N. 686.

See NUISANCE UNDER CRIM. PRO. CODE, 23 C. 499.

See UNLAWFUL ASSEMBLY, 21 M. 249=1 Weir 310=1 Weir 42.

Bond.

See BAIL BOND.

See FORFEITURE OF BOND.

See RECOGNIZANCE TO APPEAR.

See SECURITY BOND.

See SECURITY TO KEEP THE PEACE—EFFECT OF SIGNING WRONG BOND AND POSTPONING PROCEEDINGS FOR CIVIL SUIT.

See SURETY BOND.

See ACT XVIII OF 1869, s. 3, 2 N.W.P. 453.

Acknowledgment of debt attested by witness, whether a—*See* ACT I OF 1879, s. 3 (4) (*b*), 22 C. 757.

See RECOGNIZANCE TO APPEAR, 4 M.H.C. App. 44.

Book of Science.

See EVIDENCE ACT, 1872, ss. 57, 60, 12 C. L.R. 86.

Books.

Tendency and teachings of, if may be judged from isolated extracts—Possession of objectionable books if proof of guilty intention—*See* CONSPIRACY, 16 C.W.N. 1105=16 Ind. Cas. 257.

See PENAL CODE, s. 486, 26 C. 232=3 C.W. N. 97.

Books, Bankers Books, evidence.

See ACT XVIII OF 1891.

Books, Press and Registration of.

See ACT XXV OF 1867.

Booth.

See BOM. ACT VII OF 1867, s. 33, 22 B. 742.

Boundaries Act.

See BUR. ACT V OF 1880.

Boundary Officer.

See BUR. ACT V OF 1880, ss. 2, 17 and 18, 4 L.B.R. 153=7 Cr. L.J. 462.

Boy.

Statement by a, value of—*See* JUDICIAL ENQUIRY. 4 Cr. L.J. 181=8 Bom. L.R 705=1 M L.T. 301=4 Cr. L.J. 334, P.C =30 B. 523 =33 I.A. 198, P.C.

Boycott.

See COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 5 M.L.T. 1=32 M. 3=9 Cr. L.J. 108=1 Ind. Cas. 22.

Brake Van.

Theft from a—*See* THEFT IN A BUILDING, 1 Weir 436.

Branding.

And beating for the purpose of freeing from bewitchment—*See* CULPABLE HOMICIDE, 4 Bom. L.R. 879.

Breach of Bond.

See CRIM. PRO. CODE, 1898, ch. VIII, U.B. R. 1892–1896, Vol. I, 21.

Breach of Contract.

See CRIMINAL BREACH OF CONTRACT.

Breach of Contract of Service.

See ACT XIII OF 1859.

By workman—*See* PENAL CODE, s. 490, U.B.R. 1892—1896, Vol. I, 288.

Breach of Contracts, Workman's.

See ACT XIII OF 1859.

Breach of Etiquette.

See MURDER, 4 L.B.R. 132=7 Cr. L.J. 410.

Breach of the Peace.

See CRIM. PRO. CODE, 1898, ss. 106—123, 145, 146.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

See RECOGNIZANCE TO KEEP THE PEACE.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

(1)—*Likelihood of breach of the peace—Crim. Pro. Code, ch. VIII.*—Where a Magistrate apprehends a breach of the peace, he is to adopt the procedure prescribed by ch. VIII, Crim. Pro. Code, and to take security. *In re* ATMA RAM NARAYAN PARAB, **14 B. 25.**

(2)—*Crim. Pro. Code, 1898, s. 144—Breach of the peace apprehended—Power of a Criminal Court to take property in dispute into custody—High Court's power to interfere—Restoration of matters to the original condition.*—Where disputes and differences having arisen between head members of a Church and its Secretary, the Magistrate drew up a proceeding under s. 144, Crim. Pro. Code, and passed an order forbidding anything that might tend to disturb public tranquillity, and at the same time directed, with the consent of both parties, that certain articles concerning which the parties

Breach of the Peace—*concluded.*

were in dispute be removed into the custody of the Court and should remain there for two months or until the decision of a civil suit regarding the same, which was then pending before the High Court; *held*, that the Court's custody of the articles was wholly without jurisdiction and the High Court has power to order that matters should be restored to exactly the same condition as the Magistrate found them in, before he passed the order removing them into Court's custody. LEANG MOW v. TCHUN CHUN, **12 C.W.N. 1044=8 Cr.L.J. 230.**

(3)—*Crim. Pro. Code*, 1898, ss. 144 *and* 145—*Order under s.* 145—*Omission to state the grounds of dispute—Non-service of notice to a party admitted to be in possession—Legality of the order.*—Where an order by a Magistrate, under s. 144, did not state the grounds on which he came to the conclusion that there was a dispute likely to cause a breach of the peace, *held*, that the omission was not a ground for holding that the proceedings were void, that it would, at the most, be an irregularity, and that the High Court would not interfere in revision, unless either of parties had been prejudiced by such omission. An order passed under s. 145 would not be improper even though some person admitted to be in possession was not served with notice, if such person did not question the order. *In re* CHINNAPPUDAYAN, **3 M.L.T. 18=30 M. 548 =7 Cr. L.J. 28.**

Procession likely to cause breach of the peace—Power of police—Removal of banners from persons in the procession—*See* MAD. ACT XXIV OF 1859, ss. 21 and 49, 17 M. 37.

See CRIM. PRO. CODE, 1898, s. 147, S.C. 64, Oudh.

See CRIM. PRO. CODE, 1898, ss. 451, 127, 7 B. 42.

See EVIDENCE—GENERAL, 6 B.L.R. 148=15 W.R. Cr. 42.

See INSULT, 10 M. 352=1 Weir 620.

See PENAL CODE, s. 504, U.B.R. 1892—1896, Vol. I, 290.

Breach of Trust.

See CRIMINAL BREACH OF TRUST.

See CRIMINAL MISAPPROPRIATION.

See PARTNERSHIP PROPERTY, 6 B.L.R, 133=13 B.L.R. 310, Note=15 W.R. Cr. 51.

See SENTENCE—GENERAL, 29 A. 25=A. W.N. 1906, 259=3 A.L.J. 772=4 Cr. L.J. 371.

Bribe.

See BRIBERY.

See PENAL CODE, ss. 161—165.

(1)—*Alleged offer of bribe to Police officer conducting search—Confiscation without further enquiry—Validity.*—Where money found in the petitioner's house by the police during the search of a house was alleged by the police officer conducting the search to have been offered to him as a bribe by the petitioner's brother

Bribe—*concluded.*

and was, therefore, confiscated to the Government by the District Magistrate, without any further enquiry at all, *held*, that the money should be refunded to the petitioner. ISHAR DAS v. EMPRESS, **16 P R. 1896, Cr.**

See CRIM. PRO. CODE, 1898, ss. 234, 235 (1), 2 Weir 299.

See EVIDENCE ACT, 1872, ss. 114 and 133, 14 B. 331.

Proof of—*See* PENAL CODE, ss. 161, 304, 330-A, 26 P.W.R. 1911, Cr.=12 Cr. L.J. 485=12 Ind. Cas. 93.

Bribery.

See BRIBE.

See ILLEGAL GRATIFICATION.

See PENAL CODE, ss. 161—165.

(1)—*Penal Code*, ss. 161, 165—*Bribery.*—A police officer employed in a Criminal Court to read the diaries of cases investigated by the police, and to bring up in order each case for trial with the accused and witnesses, brought up, in the usual manner, a case in which two persons were charged with the offence of theft. After the conviction and sentence of the accused in that case, a sum of money, the proceeds of the theft, was made over to the complainant. The police officer asked for and received from the prosecution a portion of that money. There was no evidence that the money was given with any of the objects mentioned in s. 161, Penal Code. *Held*, that the police officer could not be convicted under s 161, I.P.C., as the money was not promised and given as a reward for his performance of his duty in Court, but was liable to be punished under s. 165. EMPRESS OF INDIA v. KAMPTA PRASAD, **1 A. 530.**

(2)—*Person giving bribes—Accomplice.*—A person who gives bribes is an accomplice of the person who receives them ; and, while it is usually unsafe to convict public servants on the uncorroborated evidence of persons who say that they have given bribes, the question as to the amount of corroboration depends on the circumstances of each case. KING-EMPEROR v. MALHAR, **26 B. 193=3 Bom. L R. 694.** [*R.*, 33 C. 649=10 C.W.N. 669=3 Cr. L.J. 452, 35 M. 247=13 Cr. L.J. 305=14 Ind. Cas. 849=22 M.L.J. 390=11 M.L.T. 1=1912 M. W.N. 207, 35 M. 397=13 Cr. L.J. 352=14 Ind. Cas. 896=12 M L.T. 1=1912 M.W.N. 549, 6 Bom. L.R. 443.]

(3)—*Penal Code*, s. 193—*Crim. Pro. Code*, 1882, s. 161—*Answer to an incriminating question.*—A Police Patel in an investigation by a Police officer. stated that he had paid Rs. 5 to a Revenue officer as a bribe for not increasing the assessment on his land, and subsequently stated before the Magistrate that he had paid the sum for provisions. On a prosecution under s. 193 for false evidence under alternative charges, *held*, that the offer of a bribe being a punishable offence and also exposing the patel to dismissal from office, he could not

Bribery—*continued.*

be required to answer truly a question respecting that, put to him by the Police officer, under s. 161, Crim. Pro. Code. He could not, therefore, be convicted under s. 193 of the Penal Code, unless the statement before the Magistrate was clearly proved to be false. QUEEN-EMPRESS v. KALIDAS, **Rat. Un. Cr. C. 488= Cr. Rg. 57 of 1889.**

(4)—*Charge of bribery against an officer—Complaint by the officer against witnesses for conspiracy to bribe him—Power of High Court to interfere on the ground that the complaint was vindictive in its nature—Evidence Act*, ss. 80, 132.—An officer, in the Revenue Settlement Department, who was convicted of an attempt to receive a bribe from certain raiyats, who gave evidence against him in the trial, subsequently charged the raiyats who deposed against him with having conspired to bribe him. The District Magistrate transferred the complainant for disposal to the Deputy Magistrate, who, after examining the complainant, issued process. *Held*, that there was nothing illegal on the part of the Deputy Magistrate in entertaining the complaint and issuing process and that it was premature for the High Court to interfere on the ground that the complaint was vindictive in its nature. *Held*, also, that, in the case mentioned above the depositions of the raiyats given in the case of bribery, against the officer, incriminating themselves, were admissible under s. 80 of the Evidence Act. QUEEN-EMPRESS v. SAMIAPPA, **15 M. 63=2 Weir 794.**

(5) *Admissibility of evidence of bribing person.*—The evidence of the person who bribes is admissible against the person bribed. QUEEN v. OBHOY CHURN CHUCKERBUTTY, **3 W.R. Cr. 19.**

Persons accompanying another to witness payment of bribe—*See* ACCOMPLICE—GENERAL, 2 C.W.N. 672.

See ACCOMPLICE—GENERAL, 14 B. 115, 14 B. 331, 26 M. 1=2 Weir 521.

See ACCOMPLICE—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, 7 Bom. L.R. 969=3 Cr.L J. 33.

See Bom. ACT II OF 1864, ss. 29, 30, 9 Bom. L.R. 331=5 Cr. L.J. 309=31 B. 335.

Contempts generally—Officer of Court accepting bribes—Person offering bribes to officers—Powers of High Court—*See* CONTEMPT OF COURT, 8 W.R. Cr. 32.

See CRIM. PRO. CODE, 1898, ss. 3, 193, 197, 1 M.L J. 397, F.B.

See CRIM. PRO. CODE, 1898, s. 478, 15 M. 36=2 Weir 218.

Charged against a Magistrate—Defamation—Sanction to prosecute—Evidence Act, s. 55—General reputation—Penal Code, s. 211—*See* DEFAMATION, 2 C.P.L.R. 198.

Evidence of persons from whom money was extorted — Credibility—*See* EVIDENCE ACT, 1872, ss. 3, 34, 114 (*b*), 133, 6 S.L.R. 195=14 Cr. L.J. 262=19 Ind. Cas. 534.

Bribery—*concluded.*

Nature and effect—*See* EVIDENCE ACT, 1872, s. 114, 9 M.L T. 503=9 Ind. Cas. 978=12 Cr. L.J. 170.

See JOINDER OF CHARGES—GENERAL, A. W.N. 1904, 223.

See PENAL CODE, s. 94, 14 B. 115.

Taking bribes—Motive essential to constitute offence—*See* PENAL CODE. s. 162, 8 Ind. Cas. 668=9 M L.T. 137=1910 M.W.N. 776.

See PENAL CODE, s. 214, 1 Weir 194.

See PENAL CODE, ss. 420 and 161, 1 C.P. L.R. 24, Cr.

Bricks.

Dishonest taking of, from will, part of which was situated in accused's premises—*See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 21 P.R. 1890, Cr.

Bridges.

See MAD. REG. VII OF 1817.

Brief.

See ACT XVIII OF 1879, ss. 13 and 14, 12 C.W.N. 381.

British Baluchistan.

See JURISDICTION OF CRIMINAL COURTS—JURISDICTION OVER EUROPEANS, 5 P.R. 1907, Cr.=6 Cr. L.J. 108=41 P. L. R. 1907=26 P.W.R. 1907.

British Baluchistan Criminal Justice.

See REG. VIII OF 1896.

British Born Subject.

See EUROPEAN BRITISH SUBJECT.

See CRIM. PRO. CODE, 1898, s. 4 (*i*), 2 Weir 11=6 M.H.C. 7.

British Courts.

See JURISDICTION OF BRITISH COURTS.

British India.

See ACT I OF 1868, S. 2 (8), 6 P.R. 1878, Cr.

Jurisdiction to dispose of case outside British India—*See* DISTRICT MAGISTRATE, Rat. Un. Cr. C. 376=Cr. Rg. 25 of 1888.

Native Indian subject of Her Majesty—Offence committed outside—Want of Political Agent's certificate—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 11 P.R. 1899, Cr.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 8 C. 985=10 C.L.R. 241, F.B.

British Indian Subject.

Validity of warrant issued by Political Agent of Native State against—*See* ACT XXI OF 1879, ss. 1, 11, 12, 18, 5 O.C. 55.

British Seaman.

See HIGH SEAS, OFFENCES COMMITTED IN, 21 C. 782.

British Subject.

See EUROPEAN BRITISH SUBJECT.

See JURISDICTION OF CRIMINAL COURTS—JURISDICTION OVER EUROPEANS, 2 Weir 11=6 M.H.C. 7.

Associating with foreign subjects in foreign state for the purpose of habitually committing theft—*See* PENAL CODE, s. 401, 33 P.R. 1886, Cr.

See WRONGFUL CONFINEMENT, 19 B. 72.

Broker.

Or middleman is not employer—*See* ACT XIII OF 1859. 14 Bom. L.R. 956=1 Bom. Cr. C. 200=13 Cr. L.J. 853=17 Ind. Cas. 789.

Advance to brokers on pro-notes—Loan or trust—*See* PENAL CODE, s. 405, 6 L.B.R. 62=17 Ind. Cas. 824=5 Bur. L.T. 143=13 Cr. L.J. 888, F.B.

Money entrusted to broker—Broker to bear all loss—Whether broker liable for criminal breach of trust—*See* PENAL CODE, s. 405, 15 Cr. L.J. 452=24 Ind. Cas. 332=7 Bur. L.T. 209, F.B.

Brothel.

See BEN. ACT III OF 1906, s. 2, 6 C.L.J. 710=6 Cr. L.J. 423.

What is a—*See* BOM. ACT IV OF 1890, s. 41, 6 S.L.R. 224=14 Cr. L.J. 282=19 Ind. Cas. 714.

Removal of—Discretion of Magistrate—Exercise of discretion by his predecessor—Complaint not addressed to magistrate—*See* PUN. ACT XX OF 1891, s. 204, 28 P.L.R. 1910=8 Ind. Cas. 223=11 Cr. L.J. 596.

Buddhist Law.

1.—GENERAL.
2.—DIVORCE.
3.—MAINTENANCE.
4.—MARRIAGE.

——1.—General.

See PENAL CODE, ss. 363 and 366, 1 U.B.R. 1902—1903, Penal Code, 15.

——2.—Divorce.

See DIVORCE.

See CRIM. PRO. CODE, 1898, s. 488, L.B.R. 1872—1892, 362.

——3.—Maintenance.

Validity of marriage of a Chinese Buddhist with a Burman Buddhist—Right of wife to maintenance—*See* CRIM. PRO. CODE, 1898, s. 488, 7 Bur. L.T. 71=15 Cr. L.J. 484=24 Ind. Cas. 572.

Right of lesser wife to maintenance—*Sse* CRIM. PRO. CODE, 1898, s. 488, 8 Ind. Cas. 997=11 Cr. L.J. 750.

——4.—Marriage.

(1)—*Right of husband to chastise wife.*—Husbands have no right whatever to chastise their wives, even with small canes or bamboos. QUEEN-EMPRESS v. NGA NANDA, **L.B.R. 1872—1892, 421.**

Buddhist Law—concluded.

——4.—Marriage—*concluded.*

(2)—*Custom* — Karens — *Marriage* — *Match-making—Cock and hen eating—Buddhist Law—s.* 488, *Crim. Pro. Code.*—The Nat-worshipping *Karens* have peculiar marriage ceremonies of their own. A match-maker brings the parties together; the man goes to the woman's house if the parties were not married before ; but the woman may go to the man's house if he is a widower. A cock and hen eating would apparently complete the ceremony, but if the parties profess Buddhism, though *Karens*, they may marry according to Buddhist Law. MG. SAW TU v. MA SA MA, **15 Cr. L J. 590=25 Ind. Cas. 342.**

Validity of marriage of a Chinese Buddhist with a Burman Buddhist—Right of wife to maintenance—*See* CRIM. PRO. CODE, 1898, s. 488, 7 Bur. L.T. 71=15 Cr. L.J. 484=24 Ind. Cas. 572.

See MAINTENANCE, 4 L.B.R. 146=7 Cr. L. J. 444, 4 L.B.R. 340, F.B.=9 Cr. L.J. 25.

See PENAL CODE, ss. 363, 366, U.B.R. 1897—1901, Vol. I, 328.

See PENAL CODE, s. 366, L.B.R. 1872—1892, 202.

Buddhist Woman.

Marriage with, when lawful—*See* MAHOMEDAN LAW — MARRIAGE, L.B.R. 1893—1900, 607.

Building.

See MUNICIPAL ACTS.

See THEFT IN A BUILDING.

(1)—*Power to erect building.*—Sanction by a Municipality to erect a building carries with it power to put up such ordinary scaffolding as would be necessary under ordinary circumstances for the execution of the work. EMPEROR v. GOKUL, **A.W.N. 1907, 251=29 A. 737=7 Cr. L.J. 233.**

Notice of intention to build—Commencement of—In anticipation of sanction—Refusal of sanction—Effect—*See* BEN. ACT III OF 1884, ss. 237, 238, 25 C. 419.

See BEN. ACT III OF 1884, ss. 238, 273, 5 C.W.N. 42.

See BEN. ACT III OF 1899, s. 3, cls. (3), (39) (*a*), 12 Cr. L.J. 461=16 C.W.N. 23=11 Ind. Cas. 997.

Sanction to alteration of—Sanction to alteration of plan—Power of District Surveyor—Initiation of proceedings by Secretary, validity of—Irregularity—*See* BEN. ACT III OF 1899, ss. 102 (1) (c), 391, 6 Ind. Cas. 172=11 Cr. L. J. 255=12 C.L.J. 24=37 C. 585.

See BEN. ACT III OF 1899, ss. 372, 383 and 449 (1), 12 C.W.N. 271=7 Cr. L.J. 110=7 C.L J. 243.

See BEN. ACT III OF 1899, ss. 391, 449, 7 C.W.N. 374.

Demolition of—Order for—*See* BEN. ACT III OF 1899, ss. 449, 450, 452, 579, 3 C. L.J. 90=

Building—*concluded.*

10 C.W.N. 182=3 Cr. L.J. 211=33 C. 287 ; 10 C.W.N. 1004=33 C. 646=3 C.L.J. 571=3 Cr. L.J. 465 ; 11 C.W.N. 30=4 Cr. L.J. 408=34 C. 341.

See BEN. ACT III OF 1899, ss. 449, 628, 629, 631, 9 C.W.N. 18.

See BEN. ACT III OF 1899, ss. 449 (1), 451, 574, 13 C.W.N. 74=9 Cr. L.J. 302.

See BOM. ACT VI OF 1873, s. 33 (1), Rat. Un. Cr. C. 145.

See BOM. ACT III OF 1888, s. 353, 19 B. 372.

Re-building a wall that had fallen down —*See* BOM. ACT III OF 1901, s. 96, 12 Bom. L.R. 1160.

Meaning of the terms—*See* BOM. ACT III OF 1901, ss. 96, 3 (7), 13 Bom. L.R. 494=11 Ind. Cas. 610=12 Cr. L.J. 426=35 B. 412.

Addition of wing and tower to a building—*See* MAD. ACT IV OF 1884, s. 3, 1 M.L.J. 37.

See MAD. ACT IV OF 1884, s. 180, 1 M.L.J. 37.

See PUN. ACT XX OF 1891, s. 92 (6), 61 P. R. 1905, Cr.=41 P.L R. 1906=3 Cr. L.J. 344.

See U. P. ACT XV OF 1883, s. 55, A.W.N. 1900, 8.

See CRIM. PRO. CODE, 1898, ss. 133, 138, 139, 6 C.W.N. 886.

Dangerous—*See* NUISANCE UNDER CRIM. PRO. CODE, 5 P.R. 1890, Cr.

See NUISANCE UNDER CRIM. PRO. CODE, 4 M.H.C. App. 34.

See PENAL CODE, s. 436, 68 P.L.R. 1903.

See PENAL CODE, s. 442, 6 N.W.P. 307.

What is a—Open space surrounded by a fence whether a—See PENAL CODE, ss. 457, 442, 379, 511, 24 P.R. 1914 Cr.

See THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, Rat. Un. Cr. C. 293=Cr. Rg. 36 of 1886.

Building Sites.

Owner dividing a large plot of ground into several—The building sites let out on long terms to lessees—Lessees building houses and receiving rents—Lessees are owners of the premises—Construction of Statutes—*See* BOM. ACT III OF 1888, ss. 305, 302 to 307, 12 Bom. L.R. 669=34 B. 593=7 Ind. Cas. 935=11 Cr. L.J. 544.

Bull.

Dedicated to idol — *See* CRIMINAL MISAPPROPRIATION, 11 M. 145=1 Weir 498=1 Weir 456.

See MISCHIEF, 34 P.R. 1888, Cr.

Killing of a bull set at large at Sraddha—*See* PENAL CODE, ss. 295, 378, 403, 425, 17 C. 852.

Set at large in accordance with Hindu religious usage—Appropriation whether amounts to an offence—*See* PENAL CODE, ss. 403, 410, 411, 8 A. 51.

Bull—*concluded.*

"Bull" and "Cow" and "any other animal," meaning of—*See* PENAL CODE, s. 429, 22 C. 457.

Set at large upon relative's death—*See* STOLEN PROPERTY, 9 A. 348=A.W.N. 1887, 73.

Bullock.

Race not an offence under Act III of 1867—*See* ACT III OF 1867, s. 13, L B.R. 1872—1892, 541.

Keeping—For hire—Bullocks kept by tenants in huts and in open—Liability of owner—*See* BOM. ACT III OF 1888, s. 394, 13 Cr. L.J. 785 =17 Ind. Cas. 529= 14 Bom. L.R. 885, Note.

Bund.

Damming the streams by erection of a—*See* CRIM. PRO. CODE, 1898, s. 133, 32 C. 930= 2 Cr. L.J. 762.

Burden of Proof.

See BENEFIT OF DOUBT.

See EVIDENCE ACT, 1872, ss. 101—114.

See PRESUMPTION.

(1)—*Offence—Rule as to.*—It is the first principle of criminal law, that where a statute creates a criminal offence, the ingredients of that offence must be strictly proved, and that where the doing of an act without authority or without consent is made a criminal offence, and the statute does not expressly put upon the accused the proof of such consent or authority, it is a necessary part of the case for the prosecution to negative by evidence such consent or authority. BRIJ BASI v. QUEEN-EMPRESS, **19 A. 74=A.W.N. 1896, 178.**

(2)—*Evidence Act*, s. 101—*Criminal cases—Conviction—Burden of proof.*—In a criminal case, the burden of proof is on the prosecution under s. 101, Evidence Act, and a conviction must be based on evidence which excludes the theory of innocence; not on circumstances of suspicion, or on mere probabilities. QUEEN-EMPRESS v. NARAYAN NATHU, **Rat. Un. Cr. C. 779=Cr. Rg. 43 of 1895.**

(3)—*Person accused of offence—Exceptions under the Penal Code—Burden of proof.*—When a person is accused of an offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Penal Code is upon the accused, and it is directed by the statute that the Courts should presume the absence of such circumstances. QUEEN-EMPRESS v. PRAG DAT, **20 A. 459= A.W.N. 1898, 117.** (4 A. 148, 9 A. 528, *R.*)

(4) *Exceptions under Penal Code—Good faith—Burden of proof.*—The burden of proving the exception of good faith is on the accused. A mistake of law does not make an exception under s. 79, I.P.C., even when due care and attention under s. 52 is proved. As a rule, when the act done comes within the words of the Penal Code, proof of a general or special exception is required to take it out of the same.

Burden of Proof—*continued.*

QUEEN-EMPRESS v. BAI MAHAKAR, **Rat. Un. Cr. C. 820=Cr. Rg. 66 of 1895.**

(5)—*Special or General exception.*—Burden of proof—Since the Evidence Act, the burden of proving the existence of circumstances, bringing the case within any general or special exceptions in criminal trials in the Mofussil, lies on the accused. *In the matter of the petition of* SHIBO PROSAD PANDAH, **4 C. 124=3 C L. R. 122.** [*R.*, 10 Cr. L.J. 372=3 Ind. Cas. 744 =11 Bom. L.R. 638.]

(6)—*Suit for damages for malicious prosecution—Burden of proof.*—In a suit for damages for malicious prosecution, the plaintiff must, in the first instance, make out a *prima facie* case that the defendant had no reasonable or probable cause for the prosecution and acted maliciously. The acquittal of the plaintiff by the Criminal Court is not alone sufficient proof of this. EBRAHIM SULIMAN v. ESUFF SULIMAN, **L.B.R. 1893—1900, 387.**

(7)—*In case of theft—Facts which may be presumed—Strong presumption—Absence of evidence as to owner, whether rebuts the presumption and shifts* onus—*Evidence Act,* ss. 4 *and* 114.—When persons are discovered dealing with property of a sort which can be easily pilfered where it passes in large quantities from one possessor to another for transport and export, the strong presumption which arises that the property was stolen by the accused and his companions, or dishonestly received by them cannot be treated as in any degree rebutted by the absence of evidence as to whose property it was that was stolen. S. 114, Evidence Act, read together with s. 4 of the Evidence Act, shifts the burden of proof at a certain stage in the evidence on to the accused, and a Court may, therefore, in the absence of any credible explanation or satisfactory rebuttal, well regard the existence of a recent theft as proved, when property (for the possession of which no satisfactory explanation is forthcoming) is surreptitiously conveyed by persons whose conduct renders it so highly probable as to leave no room for reasonable doubt that they are either thieves or receivers of stolen property. KARPINI v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 276.**

(8)—Onus *of proof—Suit for land attached under s.* 3 *of Ben. Act* IV *of* 1840.—In a suit for the possession of land attached by the Magistrate under s. 3 of Act IV of 1840, the *onus probandi* is on the plaintiff. MOHESHUR SINGH v. RAMAPUT SINGH, **W.R.F.B. 7=1 Ind. Jur. O.S. 35.**

As to good faith—*See* ACT XVIII OF 1862, s. 27, 4 W.R. Cr. 22.

See ACT IX OF 1872, s. 23, 11 W. R. 313.

See ACT I OF 1878, s. 9, 2 O C. 99.

See ACT I OF 1878, s. 10, 8 Ind. Cas. 461=3 Bur. L.T. 82.

Criminal cases—Shifting of *onus* from prosecution to the accused—*See* ACT I OF 1878, Rule 1 (XX), U.B.R., 1892—1896, Vol. I, 144.

Burden of Proof—*continued.*

See ACT XII OF 1896, ss. 3 (1) (*n*), 30, 51, 5 L.B.R. 52, F.B. = 2 Ind. Cas. 543.

See ACT XII OF 1896, s. 51, U.B.R. 1906, Excise, 7.

See BOM. ACT XIII OF 1856, s. 35 (1), 20 B. 348.

See BOM. ACT III OF 1888, ss. 398, 410, 7 Bom. L.R. 726 = 2 Cr. L.J. 604 = 30 B. 126.

Of omission to report death to municipal authorities—*See* C.P. ACT XVIII OF 1889, S. 84, 16 C.P.L.R. 63.

See COMPOUNDING OFFENCE, 21 C. 103.

Rape on a child—Complaint of robbery—Report of Chemical Examiner—Confession—*See* CONFESSION—GENERAL, 93 P.L.R. 1910 = 8 Ind. Cas. 494 = 11 Cr. L.J. 665.

See CONVICTION, 7 P.L.R. 1911 = 9 Ind. Cas. 400 = 12 Cr. L.J. 69 = 11 P.W.R. 1911, Cr.

See CRIMINAL BREACH OF TRUST, Rat. Un. Cr. C. 860 = Cr. Rg. 27 of 1896, Rat. Un. Cr. C. 872 = Cr. Rg. 47 OF 1896.

Power of appellate Court to take additional evidence—Penal Code, s. 411 — Dishonestly receiving or retaining stolen property—Article of small value—Recent possession—Burden of proof—Evidence Act, 1872, s. 114 (*a*)—*See* CRIM. PRO. CODE, 1898, ss. 428, 540, 8 M. L. T. 418 = 8 Ind. Cas. 145 = 1910 M.W.N. 419.

See CULPABLE HOMICIDE, 1 Weir 288.

See DEFAMATION, 6 A. 220.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 9 C.L.R. 305.

See EASEMENT, 11 C. 52.

See EVIDENCE—GENERAL, 27 P.R. 1887, Cr.

Where provocation alleged for murder—*See* MURDER, 14 C.P.L.R. 188.

See MURDER, L.B.R. 1893—1900, 452.

See PENAL CODE, ss. 34, 99, 100, 148, 304, 16 C.L.J. 440.

See PENAL CODE, s. 84, Rat. Un. Cr. C. 818 = Cr. Rg. 64 of 1895.

See PENAL CODE, ss. 85, 86, 387, 398, 6 L. B.R. 100 = 5 Bur. L T. 193 = 17 Ind. Cas. 800 = 13 Cr. L. J. 864, F.B.

See PENAL CODE, S. 151, 22 P.R. 1887, Cr.

See PENAL CODE, ss. 241, 243, 12 Cr. L.J. 79 = 9 Ind. Cas. 449.

Prima facie proof of negligence of accused—Proof of having taken proper precautions—*Onus*—*See* PENAL CODE, s. 268, 12 M.L.T. 664 = 14 Cr. L.J. 45 = 18 Ind. Cas. 269.

See PENAL CODE, s. 302, 11 C.W.N. 1085 = 6 Cr. L.J. 204.

See PENAL CODE, ss. 302, 304, A.W.N. 1897, 121.

Temple dasi—Adoption of minor girl by offence under s. 373—Guilty knowledge—Presumption—*See* PENAL CODE, ss. 372, 373, 13 M.L.T. 131 = 24 M.L.J. 211 = 14 Cr. L.J. 33 = 18 Ind. Cas. 257.

Burden of Proof—*concluded.*

Misappropriation Mode of misappropriation of money, prosecution not bound to prove—*See* PENAL CODE, s. 409, 8 Ind. Cas. 687 = 8 A.L.J 88.

See PENAL CODE, s. 467, 34 P.L.R. 1907 = 1 P.W.R. 1907, Cr.

See PENAL CODE, s. 486, 8 C.W.N. 421.

See REGULATION VII OF 1881, s. 40, 33 C. 895 = 4 Cr. L.J. 206.

See REVISION—QUESTION OF FACT, Rat. Un. Cr. C. 794 = Cr. Rg. 52 of 1895.

See SECURITY TO KEEP THE PEACE—EVIDENCE AND PROCEDURE, 9 A. 452 = A.W. N. 1887, 111, 2 N.W.P. 431.

Burglary.

Murder while committing—*See* PENAL CODE, S. 460, 8 A.L.J. 574 = 11 Ind. Cas. 570 = 12 Cr. L.J. 395.

Burial.

See CRIM. PRO. CODE, 1898, ss. 144, 143, 133, 2 Weir 64.

Burial Ground.

(1)—*Crim. Pro. Code* (1898), *s.* 133—*Burial ground, order closing.*—An order prohibiting the use of a graveyard is not such an order as can be made under s. 133, Crim. Pro. Code. SHEO SARAN LAL v. LAL MOHAMAD LAL, **12 C.W.N. 70.**

See BEN. ACT II OF 1888, ss. 381, 382, 25 C. 492 = 2 C.W.N. 145.

Cultivation of burial ground—*See* CRIMINAL TRESPASS, 1 Weir 513 = 6 M.H.C. App. 25.

See CRIMINAL TRESPASS, 3 M. 178 = 1 Weir 286.

Trespass on burial place—*See* PENAL CODE, S. 297, 18 A. 395 = A.W.N. 1896, 119.

Trespass on—Ploughing up burial ground—joint owner—*See* PENAL CODE, s. 297, 8 A.L. J. 927 = 12 Ind. Cas. 300 = 12 Cr. L.J. 532.

If should be in use—Depository for the remains of the dead, trespass on—Knowledge or intention requisite to constitute offence—*See* PENAL CODE, ss. 297, 441, 17 C.W N. 534 = 18 Ind. Cas. 677 = 14 Cr. L.J. 117 = 40 C. 548.

See PENAL CODE, s. 297, 26 P.R. 1887, Cr., 1 Weir 287.

Burma Acts.

See ACTS—BURMA ACTS.

Burma Courts.

See BUR. ACT XVII OF 1875.

Upper Burma Courts bound to follow Upper Burma Rulings—*See* PENAL CODE, s. 302, 12 Cr. L.J. 448 = U.B.R. 1911, 87 = 11 Ind. Cas. 792.

Burma Forest Act, 1902.

(1)—*S. 63—Burning firewood without paying first royalty.*—S. 63 (=s. 67 of Burma Forest Regulation V of 1898) cannot apply, and was never intended to apply to a case of burning firewood without first paying the royalty. KING-EMPEROR v. SADU SINGH, **1 U.B.R. 1902—1903, Forest 1.**

Burman.

See ACT I OF 1878, Rule I, cl. XX, U.B.R. 1892—1896, Vol. I, 144.

Burma Regulations.

See REGULATIONS — BURMA REGULATIONS.

Burning Ghat.

See CRIM. PRO. CODE, 1898, ss. 133, 140, 25 C. 425=2 C.W.N. 113.

Burning Ground.

Power of municipal commissioners to administer oath—Order to close burning ground—*See* BEN. ACT III OF 1864, ss. 679, 19 W. R. 309.

Cremation of corpse in a used immemorially for the purpose, against an order by the Collector prohibiting such cremation—*See* PENAL CODE, ss. 188, 290, 19 M. 464=1 Weir 247=6 M.L. J. 181=1 Weir 247=2 Weir 65.

Bustee Land.

Debutter property—Shebait not in possession, if an "owner"—*See* BEN. ACT III OF 1899, ss. 3 (32), 408, 574, 575, 17 C.W.N. 1084=21 Ind. Cas. 169=14 Cr. L.J. 569.

Butchers.

See ACT XIII OF 1859, s. 2, 1 Weir 690=7 M.H.C. App. 12.

License to keep butcher's shop—*See* MAD. ACT IV OF 1884, ss. 191, 192, 193, 194, 10 M. 216=1 Weir 741.

Bye-law.

(1)—*Powers of Corporations to make Bye-laws—Act* XXVI *of* 1850—*Municipality—Bye-law partly good—Effect.*—A corporation or company or other public body, whether created by Act of Parliament or by Charter, has no power of making bye-laws beyond what is clearly given to it by the Act or Charter. And such rules or bye-laws, if inconsistent with the express or implied provisions of the Charter or Act, would be void as *ultra vires*, though sanctioned by the Executive Government. [*R.*, 5 B. 188.] The power to make rules given to Municipal Commissioners under Act XXVI of 1850 and to provide penalties for breaches thereof does not carry with the power to adjudicate or even to determine who shall adjudicate whether a person has broken the rules. Rules, therefore, giving power to a committee of the Municipal Council to try and punish such breaches, are *ultra vires* and void. (5 B.H.C. Cr. 10, *F.*) [*R.*, 8 B.H.C. (A.C.J.), 213] *Obiter.*—The effect of English decisions appears to be that a bye-law, though *ultra vires* as to a part, is good as to the remainder, if the good part is divisible from the bad and unconnected with it. REG v. YENKU BAPUJI, **8 B.H.C. Cr. 39, F.B.**

Bye-law—*concluded.*

(2)—*Administration of Bye-laws.*—Laxity in the administration of the Rules and Bye-laws of the Municipality by the officers condemned. MANIK LAL MULLICK v. THE CORPORATION OF CALCUTTA, **4 C.L.J. 411=4 Cr. L J. 394.**

See BEN. ACT VI OF 1863, Bourke O.C. 412.

See BEN. ACT III OF 1864, 24 W.R. Cr. 70.

See BEN. ACT V OF 1876, s. 313, 21 C. 837.

See BEN. ACT III OF 1885, s. 139, 15 Cr.L. J. 187=22 Ind. Cas. 763=18 C.W.N. 1120.

See BEN. ACT III OF 1885, ss. 139, 78, 11 C.W.N. 1099=6 Cr. L.J. 319.

Continuing offences likely to be committed after proceeding—Daily fine—*See* BEN. ACT III of 1885, s. 140, 37 C. 671=7 Ind. Cas. 931 =11 Cr.L.J. 540.

See BEN. ACT II OF 1888, ss. 412, 417, 20 C. 605.

No. 64 made under s. 350 of Ben. Act III of 1899—*Ultra vires*—Reasonable construction—*See* BEN. ACT III OF 1893, ss. 350 and 270, 10 C.W.N. 667=3 Cr. L.J. 450.

S. 1—*See* BEN. ACT III OF 1899, cl. 18, ss. 559, 561 (*b*), 631, 10 C.L.J. 623=14 C.W.N. 614=4 Ind. Cas. 259=10 Cr.L.J. 522=37 C. 545.

See BOM. ACT VI OF 1875, s. 70, Rat. Un. Cr. C. 797=Cr. Rg. 55 of 1895.

See BOM. ACT II OF 1884, s. 33 (*b*), 4 Bom. L.R. 585.

See BOM. ACT III OF 1888, s. 461 (*d*), 22 B. 980.

See BUR. ACT III OF 1898, ss. 142 (*d*), 180, 202, 14 Cr. L.J. 484=20 Ind. Cas. 740=6 Bur. L.T. 138.

See MAD. ACT III OF 1871, ss. 127 and 129, 8 M.H.C. App. 3.

See PUN. ACT IV OF 1873, ss. 8, 14, 21, 43 P.R. 1888, Cr.

See PUN. ACT XIII OF 1884, 10 P.R. 1887, Cr., 27 P.R. 1889, Cr.

See PUN. ACT XIII OF 1884, ss. 117, 118, 119, 4 P.R. 1887, Cr.

See PUN. ACT XX OF 1891, ss. 92 (4) and 145, 13 P.R. 1909, Cr.

See PUN. ACT XX OF 1891, s. 143 (*h*) (2), 21 P.R. 1911, Cr.

Construction of—*See* U. P. ACT XV OF 1873, s. 22, A.W.N. 1901, 1.

Of Municipality, validity of—Presumption—*See* U.P. ACT XV OF 1883, s. 55, 19 A. 493 =A.W.N. 1897, 133.

To be reasonable—Unreasonable by-law will not be enforced by Court—*See* U. P. ACT I OF 1900, ss. 128 (*c*), 132 A.W.N. 1902, 117= 24 A. 439.

See MASTER AND SERVANT, 12 Cr. L.J. 89 =15 C.W.N. 390=9 Ind. Cas. 480=13 C.L. J. 335=38 C. 415.

Calcutta Acts.

See ACTS—BENGAL ACTS.

Calcutta Supreme Court.

See SUPREME COURT—CALCUTTA.

Calendar.

(1)—*Destruction of duplicates of calendars.*—The calendars and proceedings of the magistracy sent to the Court of Sessions are not, properly speaking, records. The originals which are retained in the Magistrate's Courts are the only official records. But anyhow the duplicates should be retained for a period of three years and can then be destroyed or returned to the Magistrate's office, if required. HIGH COURT PROCEEDINGS, 1ST DEC. 1870, **6 M.H C. App. 6.**

Canal and Drainage, Northern India, Act.

See ACT VIII OF 1873.

Canals.

See CHANNEL.

See ACT VIII OF 1873, ss. 70 and 74, A.W. N. 1907, 18=4 A.L.J. 204=5 Cr. L.J. 196.

See PENAL CODE, s. 188, 12 P.L.R. 1901.

Canals Act.

See BEN. ACT V OF 1864.

Canara Forest Rules.

Rule 7 (2)—*See* MAD. ACT V OF 1882, s. 26, 13 M. 21=1 Weir 767.

Cancellation.

Cancellation of an order for maintenance on the ground of a disputed compromise—*See* MAINTENANCE, 2 Weir 649.

Cancelling Order.

See SECURITY TO KEEP THE PEACE — CANCELLING ORDER AND DISCHARGING SECURITY.

Canongoe.

See BEN. ACT V OF 1875, s. 45, 6 C.W.N. 120.

Cantonment Code, 1899.

(1)—*Ss.* 5, 89, 283—*Building without permission of Cantonment Magistrate.*—The officer commanding a regiment in the Cantonment is not the authority whose permission, to build within Cantonment limits, is sufficient under the Cantonment Code. Building a hut with the permission of the Commanding Officer, but without the permission of the Cantonment Magistrate, is an offence, under ss. 89, 283, Act XIII of 1889. NATHU v. KING-EMPEROR, **1 A.L J. 608.**

(2 & 3)—*Ss.* 22, 282—*Failure to pay hackney carriage fee.*—Failure to pay hackney carriage fee to the Cantonment authority is not punishable either under s. 22 or s. 282 of the Cantonment Code. JAMALA v. CROWN, **22 P. L.R. 1907=P.W.R. 1906, p. 42, Cr.**

(4)—*S.* 66 (*a*), (*xi*)—*Shaking down leaves from road side tree—'Defacing.'*—The shaking down of leaves from a road-side tree does not amount to defacing the same within the

Cantonment Code, 1899—*continued.*

meaning of s. 66 (*a*), (*xi*) of the Cantonment Code. QUEEN-EMPRESS v. RAJA RAM, **2 Bom. L.R. 540.**

(5)—*S.* 66 (1)—*Carrying meat exposed to public view—Servant's offence—Master's liability.*—The offences aimed at by s. 66 (1) of the Cantonment Code are personal offences, and not offences which can be committed by delegation. Hence, a master cannot be punished under the section for an act of his servant in carrying meat in a bullock cart exposed to public view, which is not proved to be committed with his knowledge or authority. EMPEROR v. JAFFAR HAJI ISMAIL, **10 Bom. L.R. 1052=9 Cr. L.J. 182.**

(6)—*S.* 66 (1), (*g*)—*Gambling—Common gaming house, use of.*—*Held,* that persons found gambling in a common gaming house cannot be said to be using the house as a common gaming house within the terms of s. 66 (1), (*g*) of the Code. MADHO v. KING-EMPEROR OF INDIA, **167 P L.R. 1905=3 Cr. L.J. 78.**

(7)—*Ss.* 79 *and* 96—*Notice—Power delegated to two members—Notice by one.*—Where the Cantonment Committee delegated the power to issue notices to a sub-committee of two members, any single member has no power to issue a notice to a house owner to repair his house. RAM SARAN DASS v. KING-EMPEROR, **4 A.L. J. 694=A.W.N. 1907, 275=9 Cr. L.J. 348.**

(8)—*Ss.* 83, 85, 283—*Notice, nature of.*—Where a Cantonment Magistrate issued a notice under s. 83, Cantonment Code, to the accused to the effect that a house belonging to the latter being declared both ruinous and insanitary by expert opinion, he was thereby directed to carry out the repairs indicated in an attached report which recommended general repairs, and the accused having failed to comply with the notice was prosecuted and convicted, *held,* that for the purposes of a prosecution under s. 85 read with s. 83, Cantonment Code, 1899, it is not necessary for the prosecution to begin by proving that the authority which issued the notice was duly constituted, that the Court ought to presume, until some evidence is given to destroy the presumption, that the Cantonment authority used the regular and lawful procedure, that the common course of business was followed in its procedure, and that it was for the person raising the objection to give some evidence to show that it would not be safe to make such a presumption ; *held,* also, that the phrase, "insanitary state" in s. 83 did not mean an insanitary state generally, but an insanitary state as qualified by the preceding words, that is, an insanitary state resulting from the ill-construction or dilapidation of the building. The word "defects" in that section means "sanitary defect" and the repairs which the notice may require the owner to execute must, therefore, be such repairs as are necessary to remove the sanitary defects resulting from the ill-construction or dilapidation of the building. *Held,* therefore, that the repairs which the accused was required to carry out were repairs of such a nature as to

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put the house into habitable order generally, and not merely repairs to remove the sanitary defects of the nature contemplated in s. 83; that the Cantonment authority was not authorised by the provisions of s. 83 to issue a notice for general repairs; that it did not exercise a legal discretion in directing under that section such repairs to be carried out, and that the notice was bad and invalid in law. JACKSON v. KING-EMPEROR, **7 O.C. 51.** (19 A. 493, 20 B. 732, *R.*). [*F.*, 7 O.C. 68].

(9)—*Ss.* 83, 85, 283—*Penalty for failure to comply with notice for repairs.*—Where a Cantonment Magistrate, by a notice purporting to have been issued in accordance with s. 83, Chap. VI, Cantonment Code, directed the accused to carry out certain general repairs in a house as recommended by a Committee of Arbitration, but the accused having failed to comply with the notice, was convicted under s. 283, Cantonment Code, *held* that, s. 83, Cantonment Code, did not authorise the procedure adopted by the Cantonment Magistrate, that the repairs ordered to be carried out were not the kind of repairs contemplated by s. 83, and that the notice purporting to have been issued under that section was bad and invalid in law. *Held*, further, that as a penalty for failure to comply with a notice under s. 83, was expressly provided for in s. 85, the conviction under s. 283 was bad. RAI NARAIN DAS v. KING-EMPEROR, **7 O C. 68.** (7 O.C. 57, *F.*)

(10)—S. 85—*See* Nos. 8, 9, *supra.*

(11)—S. 89—*See* No. 1, *supra.*

(12)—*Ss.* 89, 104—*Interpretation of Statutes—Strict construction—Practice—Conviction under particular section—Section not justifying conviction—Conviction maintainable on other grounds—Benefit to accused—Ignorance of amendment—Future daily fine.*—The penal sections of the Cantonment Code are of so rigorous a nature that they must be construed strictly in favour of an accused as well as against him. It is no part of the duty of the superior Courts to search through a voluminous enactment like the Cantonment Code, in order to ascertain whether convictions are maintainable otherwise than under the precise sections quoted by the Magistrate as his authority. Where, therefore, a Magistrate convicts under a wrong section of the Code, whether by inadvertence or otherwise, the accused is entitled to benefit of the mistake, and the Magistrate's order are liable to be set aside as illegal. Under the amended s. 104 of the Cantonment Code, a person, who fails to give notice as required by s. 89 (1) or fails to comply with any notice, is punishable with fine extending to Rs. 50. A conviction under this section cannot be set aside merely on the ground that the accused did not know of the amendment of the section, especially where the accused deliberately disobeyed the orders given to him. An order directing a person, who has erected a structure without sanction, to remove the structure within a certain time, or in default to pay thereafter a daily fine, is improper. If the Magistrate's directions are not carried out, then the proper course is to institute a further prosecution and allow the accused an opportunity of defending himself before the further fine is imposed. EMPEROR v. SITA RAM, **12 Cr. L.J. 371 = 11 Ind. Cas. 139 = 206 P.L.R. 1911.** (13 P.R. 1903, Cr., 171 P.L.R. 1903, 19 P.R. 1904, Cr., *F.*)

(13)—*S.* 94— *Jurisdiction of Court to interfere with the discretion given by the section.*—Civil or Criminal Courts have no jurisdiction to interfere with the discretion given to the Cantonment authorities under s. 94, unless it is exercised corruptly or maliciously. KING-EMPEROR v. MIRAN BAKSH, **19 P.R. 1904, Cr.** (13 P.R. 1903, Cr., *Cited.*) [*F.*, 11 Ind. Cas. 139 = 206 P.L.R. 1911 = 12 Cr. L.J. 371; *R.*, 23 P R, 1905, Cr. = 168 P.L.R. 1905; *D.*, 1 P.R. 1906, Cr.]

(14)—*S.* 94—*Notice not specifying the nature and extent of repairs whether legal.*—S. 94 of the Cantonment Code contemplates that the owner should know the precise nature and extent of the repairs which, in the opinion of the Cantonment authority, he should execute in the interest of the safety of the occupier or of the public. Therefore, a notice under the section, which does not state at all what kind of repairs the Cantonment authority requires the owner to make on the houses specified in the notice, is illegal. EMPEROR v. QUADIR BAKSH, **56 P.L.R. 1912 = 13 Ind. Cas. 209 = 13 Cr. L.J. 17 = 3 P.R. 1912, Cr.**

(15)—*Ss.* 94 *and* 104—*Notice by Cantonment authority—The remains of a building to be removed—No option given of repair.*—The petitioner, the liquidator of the club of Northern India, was required by the Cantonment Committee, by notice under s. 94, to demolish certain roofless walls of the club, which remained standing, after being destroyed by fire, since they were, in the opinion of the committee, dangerous to the public safety. On the petitioner denying apprehension of danger by way of reply, he was directed to appeal to the General Commanding Officer under s. 104. The appeal was rejected summarily without a hearing. The Magistrate convicted the petitioner. *Held*, on revision, that the conviction must be set aside, as it was illegal for the General to decide the appeal summarily, and as no option was given to the petitioner to repair or to remove, whereas s. 94 gives the option. PETMAN v. EMPEROR, **23 P.R. 1905, Cr. = 168 P.L R. 1905 = 3 Cr. L.J. 301.** (19 P R. 1904, Cr., *D.*) [*Cited*, 3 P.R. 1912 Cr. = 56 P.L.R. 1912 = 13 Ind. Cas. 209 = 13 Cr.L.J. 17 = 9 P.W R. 1912; *R.*, 35 P.W R. 1908, Cr. = 18 P.R. 1908, Cr. = 8 Cr. L.J. 490.]

(16)—*Ss.* 94, 104, 240—*Repair of buildings dangerous to "public safety," order issued by Cantonment authorities as to, conviction for disobedience of—Power of Chief Court to interfere on revision.*—It is for the Cantonment authority to issue the notice under r. 94, and

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an appeal lies from that decision under r. 240; and with these orders the Court cannot interfere; but, when there is a criminal proceeding under r. 104 for not complying with the notice, and a conviction, it is open to the Chief Court to review the proceedings and decide the legality or otherwise of the conviction. Also, the provisions of s. 94 apply only to such repairs as may be necessary for the "public safety," *i.e.*, the safety of the general public and not of a particular person, as a tenant of a bungalow or his guest. So, where the Cantonment authority, before issuing a notice, had not decided that the step was necessary in view of the public safety, it was *held* that the Chief Court might hold the notice to have been illegal and might, on revision, set aside the conviction and sentence for not having complied with such notice. WAZIR ULLAH v. EMPEROR, **1 P R. 1906, Cr. =3 Cr. L J. 346=48 P L.R. 1906.** (19 P.R. 1904, Cr. *Diss.*; 22 P.R. 1889, Cr. *R.*; 24 P.R. 1890, *D.*) [*R.*, 13 Cr. L.J. 17=13 Ind. Cas. 209=56 P.L.R. 1912.]

(17)—*Ss.* 94, 104, 291—*Notice issued by Cantonment Magistrate, on his own authority, under r.* 94, *validity of.*—Where the authority to issue notice under r. 94 is vested by the Code in a constituted Committee or Sub-Committee, a notice issued by the Cantonment Magistrate, on his own single authority, without any reference to or direction or consideration by the Sub Committee, of which he was only one of the members, is *ultra vires.* And a conviction under r. 104 for disobedience of such notice is illegal. The defect in authority to issue the notice is not a defect or irregularity not affecting the merits of the case, and so, cannot be condoned by r. 291. GOPAL SINGH v. KING-EMPEROR OF INDIA, **3 P.R. 1907, Cr. =5 Cr. L.J. 493=47 P.L.R. 1907.** (26 M. 61, P.C.=26 P.R. 1905, Cr., *R.*)

(18)—S. 96—*See* No. 7, *supra.*

(19)—*S.* 96 (2) (*a*) *and* (*b*)—"*Cantonment authority,*" *Cantonment Magistrate, whether—Order issued by him—Validity.*—*Held*, that, under sub-ss. (2) (*a*) and (*b*) of s. 96 of the Cantonment Code, the "Cantonment authority," *i.e.*, the Cantonment Committee, is the only authority that can require the owner of land to remove a boundary wall, and that, before an order can be legally issued even by a Cantonment Committee, the members of that body must form the opinion that the wall is unsustainable, unsightly or otherwise objectionable. *Held*, also, that, under s. 17 of the Code, the Cantonment Magistrate is declared to be the executive officer of the Cantonment authority, and all orders must be issued through him but *he has no authority, of his own initiative, to issue an order under s.* 96, and that an order, not being based on an opinion formed by the Cantonment Committee, or one issued by them, had no legal validity as an order under s. 96 (2) (*a*) and (*b*). CROWN v. DETARAM WATONMAL, **3 S.L.R. 11=9 Cr. L.J. 447=1 Ind. Cas. 940.**

Cantonment Code, 1899—*continued.*

(20)—*S.* 104—*Prospective daily fine.*—S. 104, Cantonment Code, 1899, does not allow a prospective daily fine for failure to comply with an order under the Cantonment Code irrespective of the period between the date of the conviction and the date on which the order may be complied with. KING EMPEROR v. MIRAN BAKHSH, **19 P.R. 1904, Cr.** (13 P.R. 1903, Cr., *Cited.*) [*F.*, 11 Ind. Cas. 139=206 P.L.R. 1911=12 Cr.L.J. 371; *R.*, 23 P.R. 1905, Cr.= 168 P.L.R. 1905; *D.*, 1 P.R. 1906, Cr.]

(21)—S. 104—*See* Nos. 12, 15, 16, 17, *supra.*

(22)—*Ss.* 131, 283—*Contract of renting a stall from Cantonment authorities—Failure to pay rent, whether an offence under s.* 283.—S. 283 provides a penalty, in cases not otherwise provided for, for failure to comply with any notice under, or for breach of, any of the provisions of the Cantonment Code. But, in a contract of renting a stall, notice to pay stallage or rent is not a notice under the Code, and failure to pay such stallage or rent is not a breach of any provision of the Code, within the terms of s. 283. KING-EMPEROR v. MAGHI RAM, **15 P.R. 1906, Cr.=45 P L.R. 1907=5 Cr. L.J. 87.**

(23)—*S.* 141—*Obstructing public road*—*S.* 141, *Cantonment Code*, 1889.—In this case the accused were convicted of the offence of obstructing the public road, under s. 141, Cantonment Code, 1899, and sentenced to rigorous imprisonment for eight days. The Sessions Judge submitted the proceedings for revision to the Chief Court with the remark that the extreme sentence of 8 days' rigorous imprisonment, for the very petty offence to which the accused pleaded guilty, was excessive. The Chief Court remitted the unexpired part of the sentence. CROWN v. KALA SINGH, **P.L.R. 1900, Cr., p. 52.**

(24)—*S.* 141 (*a*)—*Carriage standing on a public road.*—The accused went in his own bullock-carriage to see his son who was ill, and during his visit left the carriage standing at the door in the street. The evidence showed that the carriage stood there for about 20 minutes. *Held, per Batty and Whitworth, JJ.*, (*Fulton, J., dissentiente*) that the accused was liable to be punished under r. 141 (*a*), as it would be straining language to say that it was necessary to wait nearly 20 minutes to take up or set down any passenger, and, therefore, the rule laid down in s. 141 (*a*) seemed technically to have been infringed. *Per Fulton, J.*—In every case in which a person is charged under r. 141 (*a*) with causing a carriage to remain in the street longer than may be necessary for taking up passengers, the Magistrate must decide whether the detention was really for the purpose aforesaid. If he finds that the carriage was sent to stand in the street long before the time when it could be required, he will probably hold that there has been an infringement of the rule. But when he finds that it was kept standing merely whilst the owner was paying a visit or transacting business for a reasonable time, he will come to the conclusion that

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it has not been caused to remain longer than was necessary for the purpose of taking him up. *Per Baty, J.*—The phrases "taking up" and "setting down" are correlative, and as "setting down" could extend to nothing further than the mere alighting of the passengers, so "taking up" would include nothing beyond his getting in and taking his seat, and would not include waiting for passengers while they are engaged on business or pleasure. *Per Whitworth, J.*—The words "taking up or setting down passengers" in r. 141 (*a*) of the Cantonment Code cannot properly be extended to any purpose distinct from the two named. The making of a visit, which was the occasion in the present instance of the carriage standing in the street, was not a purpose incidental to the taking up or setting down of passengers, but was a purpose distinct from and beyond those two acts. QUEEN-EMPRESS v. MAHOMED AYOOB, **2 Bom. L. R. 918.**

(25)—*S.* 167, *cl.* (*j*)—*Article of "perishables nature"—Brown sugar—Crim. Pro. Code* (V *of* 1898), *ss.* 190, 191.—Where a Cantonment Magistrate institutes a prosecution, under the Cantonment Code, against the accused, he ought to inform him that the latter is entitled to have his case tried by another Magistrate, and his not doing so is an irregularity which will vitiate the proceedings. Brown sugar is not an "article of food which is of a perishable nature," within the meaning of s. 167, cl. (*j*), of the Cantonment Code and the person selling it within the Cantonment is not guilty of any offence. MOHIB ALI v. KING-EMPEROR, **3 A. L.J. 694 = A.W.N. 1906, 303 = 4 Cr. L.J. 374.**

(25-*a*)—S. 167—*See* No. 35, *infra.*

(26)—*Ss.* 167, 168, 173—*License for sale of ærated waters—An invalid condition in the license, breach of, no offence.*—The accused held a license under s. 167 of the Act for the sale of ærated waters in a Cantonment and for having sold ærated waters manufactured by a firm not approved of by the Cantonment Committee; he was charged with and convicted of the breach of a condition in the license, which restricted him to vend ærated waters manufactured by certain manufacturers approved of by the Cantonment Committee. *Held*, on revision, that, as s. 168 of the Code only authorised the Committee to lay down the sources from which the water used in the manufacture is procured, and as there was no provision in the Code empowering the Committee to select manufacturers for the license, the condition in the license in question was *ultra vires* and the conviction was wrong. PRABH DIAL v. KING-EMPEROR, **47 P.R. 1905, Cr. = 191 P.L.R. 1905 = 3 Cr. L.J. 131.**

(27)—S. 168—*See* No. 26, *supra.*

(28)—S. 173—*See* No. 26, *supra.*

(29)—*S.* 203—*Meaning of section—Information by Medical officer of one cantonment to another, whether amounts to* "prima facie *grounds for believing.*"—Information forwarded by the Medical officer of one cantonment to the authorities of another, to the effect that a woman is believed to have a venereal disease, amounts to "*prima facie* grounds for believing," within the meaning of s. 203 of the Cantonment Code. The section does not mean that the authorities issuing the notice must have something in the nature of the legal evidence before them: on the contrary, the vague and general wording employed in the section seems intended to cover all such matters as would reasonably justify an executive officer in taking action. IMPERATOR v. PHUSKI, **3 S.L.R. 184 = 4 Ind. Cas. 1157.**

(30)—*S.* 212 — *Returning to Cantonment without permission.*—S. 212, Cantonment Code, 1899, deals with harbouring and concealing a person who has been required to remove from the Cantonment, and not with returning to the Cantonment without permission. QUEEN-EMPRESS v. RAMA, **2 Bom. L.R. 338.**

(31)—S. 240—*See* No. 16, *supra.*

(32)—S. 282—*See* No. 3, *supra.*

(33)—*S.* 283, *fine under, for breach of the conditions of a license—No notice to the accused—Legality of fine—Proceedings, if judicial proceedings—Revision—Accused entitled to copy of proceedings in the summary register.*—Where the accused was fined under s. 283 of the Cantonment Code for breach of the conditions of his license, and there was no proof that any notice was issued to the accused and that he failed to comply with any such notice or otherwise committed a breach of the provisions thereof, *held* that s. 283 of the Code was not applicable, there being no notice to the accused; that the proceedings were judicial proceedings and, as such, revisable by the Chief Court; that the only lawful penalty was the cancellation or suspension of the license; and that the accused was entitled to a copy of the proceedings in the summary register. MANGI RAM v. KING-EMPEROR, **9 P.R. 1909, Cr. 37 P.L.R. 1910 = 11 Cr. L.J. 17 = 4 Ind. Cas. 611 = 30 P. W.R. 1909, Cr.**

(34)—S. 283—*See* Nos. 1, 8, 9, 22, *supra.*

(35)—*Ss.* 283 *and* 167. — Reading together s. 167 of the Code and the proviso to it, a person wishing to start a dairy cannot be held to have infringed the Rule, until and unless it is shown either that he has not applied for a license, or that, having so applied, he has failed to obtain it by reason of his unwillingness to comply with the conditions imposed under s. 168. Hence, where the accused applied for a license and his failure to obtain it resulted, not from any fault of his own, but from the illegal action taken by the Cantonment authority in prohibiting him from starting the dairy, *held* that the prohibition was *ultra vires* and could be disregarded. CANTONMENT AUTHORITY, KAMPTEE v. KISAN CONTRACTOR, **14 C.P.L. R. 135, Cr.**

(36)—S. 291—*See* No. 17, *supra.*

Cantonment Code, 1899—*concluded.*

(37)—*Rule* 141 (*d*) — *Obstruction to public street.*—The accused had kept for years past a wooden box in front of his shop for use as a step to facilitate access to his *ota* which was three feet above ground. The wooden box was placed upon a stone slab covering the gutter at the side of the road adjoining the accused's shop. *Held* that the accused was not guilty of causing wilful obstruction to the free passage of a street under Rule 141 (*d*) of the Cantonment Code. EMPEROR v. ABDUL HUSSEIN, **5 Bom. L.R. 741.**

Cantonment Magistrate.

See ACT III OF 1880.

See ACT XIII OF 1889.

See BOM. ACT III OF 1867.

See MAD. ACT I OF 1866.

See CANTONMENT CODE, 1899.

(1)—*Cantonment Rules, Rule* 9—*Magistrate's order to build privy.*—Rule 7 of the Cantonment Rules does not empower a Cantonment Magistrate to order any person to construct a privy, and a failure to comply with such an order is not an offence. QUEEN-EMPRESS v. SANTAN, **Rat. Un. Cr. C. 541 = Cr. Rg. 16 of 1891.**

Jurisdiction of—*See* ACT V OF 1861, s. 29, 1 Agra 24, Cr.

Power to cancel license — *See* BEN. ACT VII OF 1878, s. 14, 15 C. 452.

See MAD. ACT XXIV OF 1859, s. 48, 5 M.H.C. App. 25.

Order to appoint a resident agent — *See* PENAL CODE, s. 188, A.W.N. 1882, 52.

Cantonment Officer.

See ACT XVIII OF 1850, S. C. 19, Oudh.

Cantonment Rules.

See ACT XXII OF 1864.

See ACT III OF 1880.

See ACT XIII OF 1889.

See CANTONMENT CODE, 1899.

See CANTONMENT MAGISTRATE.

(1)—*Rule* 7—*Conviction.*—The mere finding that the compound of a house, of which the accused is the landlord, was kept in a dirty state, is not sufficient to support a conviction under Rule 7. To justify a conviction under the Rule, it must be found that the accused, being the owner or occupier of the house, had allowed dirt, filth, refuse, rubbish, or noxious or offensive matter, to be kept for more than 24 hours on the ground attached to and occupied with the house. QUEEN-EMPRESS v. GAMBHIRMAL, **Rat. Un. Cr. C. 398 = Cr. Rg. 58 of 1888.**

(2)—*Rule* 57.—A person, who neglects to repair his house which is within the Cantonment limits, does not commit an offence punishable under Rule 57, Chapter III of the Cantonment Rules. *In re* NAVALMAL, **Cr. Rg. 38 of 1891.**

Cantonment Rules—*concluded.*

(3) Rule 59 (3)—*See* ENCROACHMENT, Rat. Un. Cr. C. 505 = Cr. Rg. 19 of 1890.

(4)—*Rule* 67, *Chap.* III, *Notification* 759, *dated 25th March,* 1876—*Public place.*—A place in the open air, between a barrack wash-house and kitchen by the side of a path leading from the public road, and visible from the public road, is not a "public place," within the meaning of Rule 67. CROWN v. CHATTAR, **1 P.R. 1873, Cr.**

(5)—*Rule* 74—*Keeper of house—Meaning.*—The owner of a house who lets it to prostitutes who use it for prostitution, but who does not live in it himself or exercise control over its inmates, is not "the keeper of a house, etc." within the meaning of R. 74 of the Cantonment Rules. QUEEN-EMPRESS v. DOLLATTA, **Rat. Un. Cr. C. 572 = Cr. Rg. 38 of 1891.**

Cantonments Act.

See ACT III OF 1880.

See ACT XIII OF 1889.

See BOM. ACT III OF 1867.

See MAD. ACT I OF 1866.

See CANTONMENT CODE, 1899.

Cantonments, Military.

See ACT XXII OF 1864.

Capital Cases.

Plea of guilty in—*See* PLEA OF GUILTY, 19 A. 119.

Capital Sentence.

See SENTENCE—CAPITAL SENTENCE.

Capitation Tax.

See BUR. ACT III OF 1889, s. 9 (2), 4 L.B.R. 150 = 7 Cr. L.J. 450.

Carcase.

Theft of the carcase of a buried bullock—*See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 1 Weir 384 = 4 M.H.C. App. 30.

Cards.

See GAMBLING.

See GAMING.

Gambling with cards in a public road—*See* PENAL CODE, s. 290, 1 Weir 239.

Carelessness.

See NEGLIGENCE.

How it differs from dishonest misappropriation—*See* CRIMINAL BREACH OF TRUST, 1 Weir 464.

Carriage, Hackney.

See ACT XIV OF 1879.

Carriages, Stage.

See ACT XVI OF 1861.

Carrier.

See PENAL CODE, s. 407, 9 Bom.L.R. 229 = 5 Cr. L.J. 235.

Cart.

Refusal to allow—On hire to Government officer—*See* PENAL CODE, s. 186, 9 B.H.C. 165.

Impressment of, for Government officer's use—Obstruction—*See* PENAL CODE, ss. 352, 353, 9 B. 558.

Cart-men.

See ACT XIII OF 1859, s. 2, 1 Weir 690.

Cartridge.

Empty—Case — Ammunition—*See* ACT XI OF 1878, s. 4, 7 A.L.J. 102 = 4 Ind. Cas. 405 = 10 Cr. L.J. 573 = 32 A. 152.

Cart Stand.

See MAD. ACT IV OF 1884, s. 189, 21 M. 293 = 1 Weir 738.

Case-diary.

Admissibility of statements in—*See* CRIM. PRO. CODE, 1898, ss. 162, 172, 7 C.P.L.R. 22, Cr.

Cash.

See EVIDENCE ACT, 1872, s. 27, 2 S.L.R. 27, Cr. = 10 Cr. L.J. 239.

Caste.

See CONVERSION.

See DEFAMATION.

See EXCOMMUNICATION.

(1)—*Caste matters—Jurisdiction of Courts.*—If caste matters fall within the exclusive cognizance of a caste assembly, it is clear that the Courts will not interfere, on the ground that the procedure of such assemblies is not strictly or even approximately "judicial" as to the manner of recording either evidence or resolutions, when there is no evidence that, according to custom or otherwise, it is necessary to keep such a record. For the same reason, it is not open for the Courts to determine whether or not the evidence on which the caste assembly acted is such as a Court of Juctice would act upon. SALER MANNAJI ROW v. HEROJEE ROW, 1 **Weir 614.**

(2)—*Passing off girl for marriage as of another caste.*—To describe a Brahman woman as a Kirari is not cheating by personation, but may be an offence under s. 420, I P.C DURGA DAS v. KING-EMPEROR, **13 P.R. 1904, Cr.** [*R.*, 12 Cr. L.J. 94 = 9 Ind. Cas. 511 = 56 P.L.R. 1911.]

See ACT XXI OF 1850, 2 N.W.P. 446.

See BOM. ACT VI OF 1873, s. 73, 14 B. 180.

See BIGAMY, 2 B.H.C. 117.

Misrepresenting—of the girl—*See* CHEATING—FALSE PERSONATION, 16 W.R. Cr. 42.

Passing off girl for marriage as of high caste—*See* CHEATING—FALSE PERSONATION, 7 W R. Cr. 55.

See CHEATING—FALSE PERSONATION, A. W.N. 1882, 237.

Threat to put a person out of caste—*See* CRIMINAL INTIMIDATION, Rat. Un. Cr. C. 37.

Caste—*concluded.*

False representation of a girl belonging to a lower, as of a higher, and inducing one to contract marriage with her—*See* PENAL CODE, ss. 372, 373, 2 A. 694, F.B.

Pollution by accused of food served at a feast—*See* PENAL CODE, ss. 426, 298, 504, 24 A. 155 = A.W.N. 1901, 212.

See PENAL CODE, s. 494, 1 B. 347.

Statements made to caste—Whether defamatory—*See* PENAL CODE, 1898, s. 499, 14 Bom. L.R. 585 = 13 Cr. L.J. 687 = 16 Ind. Cas. 335 = 1 Bom. Cr. Cas. 152.

See PENAL CODE, s. 499, Rat. Un. Cr. C. 387 = Cr. Rg. 39 of 1888.

Caste Disabilities Removal.

See ACT XXI OF 1850.

Casting Vote.

Bench of Honorary Magistrates—Chairman's casting vote—Rule 6 of the Government rules, whether *ultra vires*—*See* CRIM. PRO. CODE, 1898, s. 16. cl. (*d*), 3 C.L.J. 492, F.B. = 10 C. W.N. 642, F.B.

Cattle.

See ACT III OF 1857.

See ACT I OF 1871.

See CATTLE TRESPASS.

Left in charge of keeper—Permitting them to stray on a Railway—Liability of owner—*See* ACT IX OF 1890, s. 125, 8 A.L.J. 1249 = 12 Ind. Cas. 990 = 34 A. 91 = 12 Cr.L.J. 614.

Not members of family—*See* BOM. ACT VI OF 1873, s. 53 (1), Rat. Un. Cr. Cas. 412 = Cr. Rg. 78 of 1888.

Trespass of cattle on accused's land—Accused receiving money payment on threat of impounding the cattle—*See* EXTORTION, 1 Weir 440.

See EXTORTION, 1 Weir 438.

Theft of—from a cattle-fold or pen—*See* HOUSE TRESPASS, 57 P.R. 1887, Cr.

In a forest under re-settlement—*See* MISCHIEF, 8 Bom. L.R. 549 = 4 Cr. L.J. 93.

Allowed to stray—*See* MISCHIEF, 1 Weir 487 = 6 M.H.C. App. 36.

Trespass by—*See* NUISANCE UNDER CRIM. PRO. CODE, 3 B.L.R.A. Cr. 45 = 12 W.R. 36.

Cattle Lifting.

Cattle-lifting—Trial—Not to be summary—*See* CRIM. PRO. CODE, 1898, s. 260, 6 S.L.R. 101 = 17 Ind. Cas. 412 = 13 Cr. L.J. 780.

Cattle Pen.

Criminal trespass—Intention—Entry into a—House trespass—*See* PENAL CODE ss. 441 and 448, 28 P.R. 1905 = 2 Cr. L J. 420 = 118 P.L.R. 1905.

Cattle Theft.

(1)—*Boat and cattle thefts—Summary trial of such thefts.*—Boat thefts and cattle thefts call ordinarily for a severe sentence, *e.g.*, of two

Cattle Theft—*concluded.*

years' rigorous imprisonment and a summary trial is not suitable for them. QUEEN-EMPRESS v. NGA SAN, **L.B.R. 1893—1900, 198.**

(2)—*Cattle theft, how to be treated.*—Cases of cattle theft must be treated with some severity. NGA PAN THIN v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 291.**

Whether an offence in Upper Burma—*See* CRIM. PRO. CODE, 1898, s. 45, U.B.R. 1892—1896, Vol. I, 19.

Cattle Trespass.

See ACT III OF 1857.

See ACT I OF 1871.

(1)—*Owner's neglect to keep cattle from straying.*—Mere neglect on the part of an owner of cattle to keep them from straying into fields is not causing them to enter a compound within the meaning of s. 425, I.P.C. The section requires that, before the owner is convicted of the offence, it must be proved that he actually caused the cattle to enter, knowing that, by so doing, he was likely to cause damage. MAJOR FORBES v GIRISH CHANDRA BHUTTACHARJEE, **6 B.L.R. Ap. 3=14 W.R. Cr. 31.**

(2)—*Trespass by cattle when amounts to mischief*—In order to constitute the offence of mischief, it is not sufficient to show that the accused was guilty of carelessness, in allowing her goat to stray. The prosecution was bound to show that there was an intention to cause wrongful loss or damage. EMPRESS v. BAIBAYA, **7 B. 126.**

(3)—*Cattle causing damage to crop—Liability of owner.*—The owner of an animal which strays on to another's land and causes damage to the crop thereon, does not, unless he has wilfully driven it upon the land, commit the offence of mischief under s. 426, Penal Code. QUEEN-EMPRESS v. SHAIK RAJU, **B. 173=9 Ind Jur. 363.** [*F.*, 13 Cr. L.J. 536=15 Ind. Cas. 808 =5 S.L.R. 263, Rat Un. Cr. C. 357.]

(4)—*Order by a Magistrate prohibiting the straying of cattle.*—An order by a Magistrate, prohibiting the straying of cattle within certain local limits, is not an order within the meaning of s. 62 of the Criminal Procedure Code (Act XXV of 1861). QUEEN v MOOZAFAR KHALIFA, **9 B L R. Ap. 36=18 W.R C R. 21.**

Permitting cattle to stray upon Railway—*See* ACT IX OF 1890, s. 125 (1), 18 M. 228=1 Weir 874.

See MISCHIEF, 23 P.R. 1904, Cr.

Census Register.

See EVIDENCE ACT, 1872, s. 74, 6 Bom. L. R. 535.

Central Provinces Acts.

See ACTS—CENTRAL PROVINCES ACT.

Central Provinces Courts.

See C.P. ACT II OF 1904.

Central Provinces, Municipal Committees, Punjab, Oudh.

See PUNJAB ACT XV OF 1867.

Central Provinces Municipality.

See C.P. ACT XVIII OF 1889.

Certificate.

(1)—*Certificate of administration—Possession.*—The grant of a certificate of administration under Act XXVII of 1860 does not decide any question of title to the possession of the land. MAHANT DHANRAJ GIRI GOSWAMI v. SRIPATHI GIRI GOSWAMI, 2 **B.L R A. Cr 27**; QUEEN v. KALIL, **11 W R. Cr. 18=2 B L R. A C. 23.** *In re* OBILASHERY DEBIA, **9 W.R.Cr. 18.**

Certificate by Political Agent—*See* CRIM. PRO. CODE, 1898, s. 188, 24 A. 256=A.W.N. 1902, 45.

See CRIM. PRO. CODE, 1898, s. 188, Rat. Un. Cr. C. 253=Cr. Rg. 13 of 1886.

See EVIDENCE—EXPERT EVIDENCE, 4 L. B.R. 125=7 Cr. L.J. 406.

See FORGERY, 28 M. 90, F.B.=1 Weir 538-A.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, A.W.N. 1884, 85.

Certificate of Administration.

See CERTIFICATE.

Certificate by Political Agent.

See CERTIFICATE.

See CRIM. PRO. CODE, 1898, s. 188.

See POLITICAL AGENT.

Native Indian subject of Her Majesty—Offence committed outside British India—Want of Political Agent's Certificate—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 11 P.R. 1899, Cr.

Certified Copies.

See ACT XVIII OF 1891, ss. 2 and 4, 4 C. W.N. 433, F.B.

Fabricated document—filed with plaint as proof—Charge of fabricating false evidence, sanction if necessary—*See* CRIM. PRO. CODE, 1898, s. 195 (1), cl. (*b*), 17 C.W.N. 937=14 Cr. L.J. 289=19 Ind. Cas. 945.

See CRIM. PRO. CODE, 1898, s. 511, 11 C.P. L.R.Cr. 5.

Value of first report—Admission of its certified copy in revision—Punishment—*See* PENAL CODE, s. 498, 24 P.W R. 1911, Cr.=224 P.L.R. 1911=12 Cr. L.J. 500=12 Ind. Cas. 220.

Certiorari, Writ of.

(1)—*Writ of* certiorari—*Discretion of Court*—The right of a defendant to a writ of *certiorari* to remove proceedings before a Magistrate is not *ex debito justitiæ*, the issue of it being discretionary with the Court. REG v. NANA MOROJI, **8 B.H C. Cr. 1.**

(2)—Certiorari—*Writ of—Power to issue writ—Charter Act—Letters Patent—Crim. Pro. Code, ss.* 476, 435.—A Divisional Officer when hearing appeals under the Income-tax Act is a Court; mere authority to receive evidence would not make the officer recording it a Court. A Divisional Officer acting under the Income-tax Act as an appellate Court is not a criminal Court:

Certiorari, Writ of—*continued.*

and the High Court has no power to revise his proceedings under s. 435, Crim. Pro. Code. The Revenue Board has no power to set aside the Divisional Officer's order under s. 476, Crim. Pro. Code. *Quære.*—Whether a Court has no power to pass an order under s. 476, Crim. Pro. Code, except as a part of the proceedings in which the offence referred to in the section was committed or brought to its notice; and whether proceedings passed after a lapse of time can be said to be passed without jurisdiction. *Sundara Iyer, J.*—Under s. 435, Crim. Pro. Code, the High Court has power to call for and examine only the record of a proceeding before an inferior Criminal Court. The powers of a superior Court can only be limited or taken away by some express provision to that effect. The right of superintendence of the High Court under the Charter Act is only confined to Court subject to its appellate jurisdiction. The Supreme Court had no jurisdiction to issue the writ of *certiorari* of an officer of the East India Company acting judicially beyond the limits of Madras. *Sadasiva Iyer, J.*—The test to find whether a particular officer is a Court is whether he has been given jurisdiction by the constituted authorities to deal out justice in any particular defined class of cases. The Chief Justice and the Judges of the High Court have clearly jurisdiction to issue writs of *certiorari* over the whole of the Madras Presidency. NATARAJA IYER v. EMPEROR, **1912 M.W.N. 1012=23 M.L.J. 393=16 Ind Cas. 755=13 Cr. L.J. 723 =13 M.L.T. 367=36 M. 72.**

(3)—*Bom. Act* XIII *of* 1856 *(Police), s.* 111—*Jurisdiction of High Court to interfere and issue writ of* certiorari.—The High Court has jurisdiction to remove and quash convictions and sentences of the Police Magistrates and Petty Sessions of the town and island of Bombay in cases where the Court of Queen's Bench in England would do so in respect of inferior Criminal Courts of that country. But s. 111, Act XIII of 1856, does not say that a conviction may be quashed where a Magistrate may be considered to have come to a wrong conclusion on the evidence before him. That has never been a ground for a writ of *certiorari*. In order to justify such a procedure, the objection to the conviction must have a substantial meritorious ground, and not merely an error of form or procedure. In cases where the Magistrate has convicted an accused person of a charge which the Magistrate had no jurisdiction to hear and determine, or had awarded a sentence which he had no power to award, or had proceeded in such a manner as to afford ground for saying that the accused person had not had reasonable opportunity of defending himself, the conviction can be quashed. The section, in short, says that to quash a conviction there must be merits, not that whenever there are merits in the general sense of the word, the conviction will be quashed. REG v. NATHA LAL PITAMBAR, **10 B.H.C. 102.** [*R.*, 36 M. 72=23 M.L.J. 393 =M.W.N. 1912, 1012=16 Ind. Cas. 755=13 Cr. L.J. 723=13 M.L.T. 367].

Certiorari Writ of—*concluded.*

(4)—*Jurisdiction of High Court.*—Upon a writ of *certiorari*, the High Court has no jurisdiction to enter into the merits of the case or to consider whether or not upon the evidence the Magistrate had come to a correct conclusion. REG. v. SAKHARAM ANATOBA, **10 B.H.C. 109, Note.** (*Queen* v. *Justice of Cheshire*, 11 Add. and Ell. 139, *Queen* v. *Bolton*, 1 Q.B. 66, *Thompson* v. *Ingham*, 14 Q.B.D. 710, 718, *Barber* v. *Nottingham and Grantham Railway Co.*, 33 L.J.C.P. 194; *Queen* v *Dayman*, 7 Ell. and B. 672, 6 B.H.C. Cr. 27 and *Queen* v. *Jan Muhammad*, Unreported Cr. Case, *R.*).

(5)—*Rule* nisi *to quash conviction—Practice.*—In this case where a writ of *certiorari* was granted to bring up a conviction of Justices, in order to quash it, and a rule *nisi* to quash the conviction was moved for, it was *held* that the *certiorari* should be returned into Court before the motion for the rule *nisi* is made. REG. v. JUSTICES OF THE PEACE, **1 Ind. Jur. N.S. 293.** [*Appr.*, 9 W.R. 325.]

See ACT X OF 1875, ss. 115 and 147, 12 B. H.C. 217.

See BEN. ACT IV OF 1876, s. 117, 11 C. 275.

Writ of *certiorari*—Order of High Court refusing to set aside Income-tax officer's proceedings granting sanction to prosecute—No appeal to Privy Council — *See* LETTERS PATENT—LETTERS PATENT, 1865—MADRAS, cls. 39, 11, 12, 13, 14 M.L.T. 421=25 M.L.J. 565.

Cess.

See BEN. ACT IX OF 1880.

Jurisdiction of Magistrate to inquire into correctness of—claimed—*See* BEN. ACT VI OF 1873, Rat. Un. Cr. C. 559=Cr. Rg. 35 of 1891.

See NUISANCE UNDER CRIM. PRO. CODE, 14 W.R. Cr. 3.

See SECURITY TO KEEP THE PEACE—GENERAL—POSITION OF PARTIES REQUIRED TO FURNISH SECURITY, 14 W.R. Cr. 3.

Cesses and Rural Police, District.

See BUR. ACT II OF 1880.

Cess in lieu of Village Fees.

See MAD. ACT IV OF 1864.

Cesspool.

See BOM. ACT III OF 1901, ss. 107 (2), 155, 11 Bom. L.R. 1349.

Chairman.

List of voters, duty—*See* BEN. ACT II OF 1888, s. 22, 22 C. 717.

Criminal breach of trust—Municipal—Statement as to cash in hand—*See* CRIMINAL BREACH OF TRUST, Rat. Un. Cr. C. 484=Cr. Rg. 50 of 1889.

Bench of Honorary Magistrates—Chairman's casting vote—Rule 6 of the Government rules, whether *ultra vires*—*See* CRIM. PRO. CODE, 1898, s. 16 (*d*), 3 C.L.J. 492, F. B.=10 C.W.N. 642.

Chairman—*concluded.*

See NUISANCE UNDER CRIM. PRO. CODE, 10 C.L.J. 484 = 4 Ind. Cas. 437 = 11 Cr. L.J. 2.

Chairman Deligate of Municipality.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 2 Weir 226.

Chairman of Local Board.

Magistrate issuing notice as—Case should not be tried by him—*See* CRIM. PRO. CODE, 1898, ss. 133, 556, 11 Cr. L J. 2 = 4 Ind. Cas. 437 = 10 C.L.J. 484.

Chairman of Municipality.

See MUNICIPALITY.

Order directing appearance before him by Chairman of Municipal Commissioners appointed under Act XXVI of 1850—*See* CONTEMPT OF COURT, 5 B.H.C. Cr. 33.

See CRIM. PRO. CODE, 1898, s. 556, 15 M. 83 = 2 Weir 326.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 18 B. 442.

Liability of Chairman of Municipality —*See* PENAL CODE, s. 290, 1 Weir 243.

Whether a public servant—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 1 Weir 243, 2 Weir 221, 2 Weir 226.

"Chandul."

Preparation of opium—*See* BOM. ACT V OF 1878, 9 Cr. L.J. 254 = 1 S.L.R. 8, Cr.

Chanks.

In Palk's Bay and Gulf of Mannar, whether capable of being subject of theft—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 27 M. 551 = 14 M.L.J. 248 = 1 Weir 386.

Channel.

See CANALS.

Closing of, in *bona fide* assertion of right—*See* MISCHIEF, 1 Weir 505.

See MISCHIEF, 1 Weir 507.

Mischief—Blocking up a—Civil rights—Tort —*See* PENAL CODE, s. 425, 8 M.L.T. 385 = 8 Ind. Cas. 128.

Mischief—Intention — Motive — Cutting a, through railway to let out water from fields—*See* PENAL CODE, s. 427, 16 C.W.N. 263 = 13 Ind. Cas. 826 = 13 Cr.L.J. 138.

Character.

See BAD CHARACTER.

See EVIDENCE—CHARACTER EVIDENCE.

See EVIDENCE—GENERAL, 10 W.R.Cr. 39.

Previous conduct and—*See* EVIDENCE—GENERAL, 10 W.R.Cr. 17.

Charge.

1.—GENERAL.
2.—ADDITION OF CHARGE.
3.—ALTERATION OF CHARGE.
4.—ALTERNATIVE CHARGE.

Charge—continued.

5.—AMENDMENT OF CHARGE.
6.—EXPLANATION OF CHARGE.
7.—FORM OF CHARGE.
8.—FRAMING OF CHARGE.
9.—WITHDRAWAL OF CHARGE.

See ALTERNATIVE CHARGES.

See CHARGE TO JURY.

See CRIM. PRO. CODE, 1898, ss. 221—240.

See FALSE CHARGE.

See JOINDER OF CHARGES.

See MISJOINDER OF CHARGES.

See POLICE CHARGE SHEET.

See WITHDRAWAL OF CHARGE.

——1.—General.

(1)—*Meaning of the term "charge."*—A charge is a precise formulation of the specific accusation made against a person, who is entitled to know its nature at the earliest state. REILY v. KING-EMPEROR, **28 C. 434 = 5 C.W. N. 609.**

(2)—"*Charge*"—*Meaning of the term.—Per Sargent, C.J., and Bayley, J.*—The word "charge" in the Crim. Pro. Code, is generally used as the statement of a specific offence and not as the aggregate of all the separate offences for which the prisoner is being tried. There is nothing in the Code of 1882 to justify the term "charge" having a different meaning given to it in ss. 226, 227, from what it has throughout the other sections of the Code. *Per Scott, J.*:—The word "charge" is used in the Code both as indicating the whole series of counts or heads of charges, and also, as indicating a charge of specific offence. In s 227, it is used in the former sense. QUEEN-EMPRESS v. APPA SUBHANA MENDRE, **8 B. 200.**

(3)—*Framing of charge.*—A charge of an offence under the Penal Code should be drawn up in the words of the section defining the offence. EMPRESS v. JHENGRIA, **5 C P.L.R. Cr. 18.**

(4)—*Framing of charge.*—All verbiage should be avoided in the drawing up of charges and a strict adherence to the language of the Penal Code should be maintained while adopting the forms given in Chapter XIII, Crim. Pro. Code. **1 W R. Cr. Letters 1.**

(5)—*Framing of charge.*—In framing a charge, a Magistrate is not restricted to the offences stated in the complaint or police report. If, on the evidence, he finds that an offence different from that which had been made the special subject of a complaint has been committed, he is competent to enquire into and proceed against the accused with regard to such other offence. LOCAL GOVERNMENT v. SUKHA MUSALMAN, **11 C.P.L.R. 9 Cr.** (5 B.H.C. Cr. 100, 8 W.R. Cr. 82, *R.*)

(6)—*Drawing up of charge.*—Charges should be drawn up only with reference to the offence disclosed. It is not proper for a Magistrate to

***Charge*—continued.**

——1.—General—*continued.*

consider whether the framing of a certain charge will or will not render committal to the Sessions Court necessary. MUKERJI v. EMPEROR, **5 P.R. 1901, Cr.=51 P.L R. 1901.**

(7)—*Drawing up charge.*—Where the committing cfficer resolved the crime into its elementary facts in the charge, all that combined to constitute the compound offence should be specified. **1 W.R. Cr. Letters 10.**

(8)—*Charge—Unnecessary averments.*—Unnecessary averments included in charge may be rejected as surplusage and the substantial portion of the charge alone considered. REG v. FRANCIS CASSIDY, **4 B H.C. Cr. 17.**

(9)—*Charge, when to be framed.*—It is irregular to frame a charge against the accused after his defence has been recorded. QUEEN v. CHOTEY LAL, **3 N W.P. 271.**

(10)—*S.* 300, *Penal Code—Frame of charge.*—The charge against a prisoner with "causing B's death by inflicting on him a wound with a '*chennai*' with the intention of causing bodily injury, such as was sufficient, in the course of nature to cause death, or which he knew to be likely to cause death," if it was intended probably to refer to the 2nd and 3rd clauses in s. 300 of the Penal Code, is defective and inexact as regards both clauses. With reference to the second clause, it should be "likely to cause the death of B, the person to whom the harm was caused," and with reference to the third, it should have said "ordinary course of nature." *In the matter of the petition of* SAMIRUDDIN. EMPRESS v. SAMIRUDDIN, **8 C. 211 =10 C L.R. 11.** [*F.*, 36 C. 659=13 C.W.N. 681=10 Cr. L.J. 186=2 Ind. Cas. 841 ; *Not Appl.*, 9 Cr.L.J. 156=1 Ind. Cas. 100=4 P.W. R. 1909, Cr.]

(11)—*Crim. Pro. Code*, 1898, *ss.* 222, 235 — *Framing of charge.* —S. 222, Crim. Pro. Code, provides for a charge being framed in respect of gross sums appropriated within 12 months from the first to the last and enacts that a charge so framed shall be deemed to be a charge within the meaning of s. 234, Crim. Pro. Code, but it does not follow that the acts so charged should be deemed to be one transaction within the meaning of s. 235, Crim Pro. Code KASI VISWANADHAN v. EMPEROR, **30 M. 328 =17 M.L.J. 141=2 M.L T. 177=5 Cr L J 341.**

(12)—*Crim. Pro. Code*, 1861, *s.* 250—*Omission to prepare charge.*—The omission to prepare a charge in writing, although a very great irregularity, does not form a proper ground for setting aside a conviction, as it cannot be said to have occasioned a failure of justice. REG v. KABHAI RAVABHAI *et al.* **5 B.H.C. Cr. 40.**

(13)—*Error in charge.*—Where there was an irregularity in the charge, in so far as it stated that the defamation was of the complainant, the husband, and not of the wife, *held*, that it was an error or irregularity in the charge which had not prejudiced the accused or occasioned a failure of justice. ANANTHA GOUNDAN v. KING-EMPEROR, **15 M.L.J. 224=2 Cr. L.J. 381=2 Weir 231.**

(14)—*Crim. Pro. Code*, 1872, *ss.* 272, 283, 443—*Charge—Omission to specify in charge of theft the word "dishonestly."*—The mere omission of the word "dishonestly" in a charge of theft and in the record of conviction is no ground for the reversal of the conviction and sentence, when the accused persons fully understood the nature of the offence with which they were charged, and were not prejudiced by the omission. QUEEN v. RAKHMA, **10 B.H C. 373.**

(15)—*Form of, in case of rape— Amendment of.*—A full denial of the exception contained in s 375 of the Penal Code should be made in the body of the charge and not at the end of it, and it should be drawn up formally. Where a charge is incorrectly drawn up, the Sessions Judge is competent under the provisions of s. 244, Crim. Pro. Code, to alter or amend it. **1 W.R. Cr. Letters, 2.**

(16)—*Form of—Forgery of valuable security and abetment—Giving and fabricating false evidence.*—The first head of the charge should state that the forged document is a document purporting to be a valuable security. The second head should follow the wording of the first head. The abetment charged on this head is not punishable under s. 109, I.P.C., but under that section coupled with s. 467 of the Penal Code ; and in order properly to make those sections apply, it should be declared that "the act abetted was committed in consequence of the abetment." Giving and fabricating false evidence being distinct offences, they should be charged separately. **1 W.R Cr. Letters 9.**

(17)—*Murder—Form of charge—Denial of exceptions in the charge—Penal Code*, *s.* 300.—In a count of wilful murder, the words "culpable homicide amounting to murder" must be used. The special exceptions contained in s. 300, I.P.C., must be fully denied in the charge. **1 W.R. Cr. Letters 9.**

(18)—*Murder—Grave and sudden provocation.*—In the case of murder, the offence should be entered as a "culpable homicide amounting to murder," and not merely as "culpable homicide," which is an indefinite term. In the denial of the 1st exception under s. 300, Penal Code, it should be stated that the provocation was given by the deceased. Mention also should be made of the provisos to that exception. **1 W.R. Cr. Letters 13.**

(19)—*Form of—The word "et cetera," use of.*—The abbreviation of charges against the accused by introducing the word 'et cetera' cannot be made. Explicit and full statements, such as can easily be intelligible to an accused, are always requisite in charges. **1 W.R.Cr. Letters 13.**

(20)—*How to be framed—Exceptions in cases of murder—Cuplable homicide not amounting to*

Charge—continued.

——1.—**General**—*continued.*

murder and grievous hurt—Crim. Pro. Code, 1861, *ss.* 237, 239 *and* 243.—In drawing up charges for offences falling under any of the sections of the Penal Code which contain special exceptions, the provisions of s. 237, Crim. Pro. Code, must be strictly attended to; except when the charge is for murder, culpable homicide not amounting to murder and grievous hurt, in which cases the forms given in ss. 243 and 239 are to be followed. CRIMINAL CIRCULAR NO. 6 of 1867, **8 W.R. Cr. Circular 3.**

(21)—*Charge, defect in—Charge, omission to frame—Conviction, validity of—Embezzlement—Penal Code, ss.* 406 *and* 116.—Where the charge against the accused was to the effect, that he, on or before the 21st day of June 1907, committed breach of trust in respect of some deeds which he took from the complainant and was thereby guilty of an offence punishable under s. 406, I.P.C., but at the trial he was convicted of embezzling, not the deeds, but amounts obtained by dealing with those deeds; *held*, that the conviction was bad and ought to be set aside. Where an accused, who was tried with the other accused against whom the above mentioned charge was framed, was convicted under s. 406 read with s. 116, I.P.C., without any specific charge having been framed against him, but it appeared that he knew of the charge, as he put in a written statement denying it; *held* that his conviction was also bad and ought to be set aside. BIPRA DAS GIRI v. NIRADAMONI BEWA, **12 C.W.N. 577 = 7 Cr.L.J. 372.**

(22)—*Attempt to cheat—Defect in the charge.*—In the case of an attempt to cheat, the omission in the charge to specify the person upon whom the alleged attempt to cheat was made, and also the manner in which it was intended by the accused to influence the conduct of that person, is a serious defect. HURJEE MULL v. IMAM ALI SIRCAR, **8 C.W.N. 278.**

(23)—*Charge—Defective — Burglary—Object to commit adultery—Crim. Pro. Code (Act* V *of* 1898), *ss.* 222, 223.—A charge, which sets out an intention on the part of an accused person to commit an offence, but of which intention there is no evidence on the record, is defective and a conviction based thereon is illegal. LALA v. EMPEROR, **12 Cr. L J 483 = 12 Ind. Cas. 91 = 23 P.W.R. 1911 = 32 P.L.R. 1911.**

(24)—*Assumption of absence of general or special exceptions in a charge for offence.*—Though the Crim Pro. Code of 1872 contained no provisions analogous to those in ss. 235 and 237 of the Code of 1861, it might be inferred, from s. 439, illustration (*a*) of the Code of 1872, that the absence of all general exceptions and of some other exceptions mentioned in the Penal Code was to be assumed as before without allegations in the statement of an offence in the charge.—*Per Markby, J. In the matter of the petition of* SHIBO PROSAD PANDAH, **4 C. 124 = 3 C.L R. 122.** [*R.*, 10 Cr. L.J. 372 = 3 Ind. Cas. 744 = 11 Bom. L.R. 638.]

Charge—continued.

——1.—**General**—*continued.*

(25)—*Penal Code, s.* 217—*Charge expressed in vague terms.*—The least that can fairly be allowed in favour of one criminally convicted is that when a charge has been expressed in vague terms, the prosecution on appeal should be limited to the particular sense in which the charge has been understood in the actual trial. IMPERATRIX v. BABAN KHAN *valad* MHASKOJI, **2 B. 142.** [*R.*, Rat. Un. Cr. C. 764; *D.*, 22 C. 392.]

(26)—*Charge—Omission to charge a previous conviction, effect of.*—Where a Magistrate passes a sentence which he is competent to pass for the offence charged, the mere fact that the Magistrate has, in passing the sentence, been influenced by a previous conviction of which the accused has not been formally charged, will not render the sentence illegal. *In re* RAMANJULU NAIK, **2 Weir 264.** [*F.*, 2 Weir 265.]

(27)—*Penal Code, s.* 75—*Previous conviction—Form of charge.*—A charge alleging a previous conviction, which makes the accused liable for enhanced punishment under s. 75, Penal Code, need not specify the extent of the former punishment. HIGH COURT PROCEEDINGS, 17TH APRIL 1868, **4 M.H.C. App. 11.**

(28)—*Warrant cases—Separate charges for each offence—Penal Code, s.* 75—*Enhanced punishment.*—The object and direction of the Crim. Pro. Code are that, for each offence, there must, in warrant cases, be a separate charge. In order to award the enhanced punishment, provided by s. 75, the Magistrate should frame a charge under that section and try the prisoner on that charge. QUEEN-EMPRESS v. DORASAMI, **9 M. 284 = 2 Weir 266.**

(29)—*Crim. Pro. Code,* 1861, *Ch.* XIV—*Procedure before preparing a charge.*—The course to be taken by a Magistrate before preparing a charge must depend upon the circumstances of each case. HIGH COURT PROCEEDINGS, 16TH DEC. 1864, **3 M.H.C. App. 2.**

(30)—*Joinder of charges—Joint trial of several witnesses alleged to have given false evidence.*—A joint trial of several witnesses alleged to have given false evidence was held to have prejudiced the accused, as it might have deprived each of the accused of the advantage of calling the other persons, who were by reason of the joint trial in the position of co-accused, to give evidence for him. BAGGA SINGH v. EMPRESS, **39 P.R. 1888, Cr.**

(31)—*Joinder of charges—Trial of separate offences of giving false evidence.*—Three separate offences of giving false evidence should have a separate charge for each, with reference to which there should be a distinct finding and a distinct sentence. QUEEN v. SHEO CHURUN, **3 N.W.P. 314.**

(32)—*Joinder of charges—Crim. Pro. Code,* 1898, *s.* 233—*Charge—Cheating.*—Where one charge was framed against two persons, charging them with cheating the complainant and

Charge—continued.

——1.—General—*continued.*

two others on three different occasions, *held*, that the charge was bad in law. SRISH CHANDRA MUKERJEE v. EMPEROR, **13 C.W.N. 1067 = 4 Ind. Cas. 16 = 10 Cr.L.J. 469.** (10 C. W. N. 53 and 520, *R.*) [*R.*, 11 Cr. L.J. 597 = 8 Ind. Cas. 229 = 36 P.L.R. 1910 = 64 P.W. R. 1910, Cr.]

(33)—*Joinder of charges—Two distinct charges on distinct individuals—Order, nature of.*—A Magistrate is not entitled to pass one order applying to two distinct charges between two distinct individuals. BELLEW v. PARKER, **7 C.W.N. 521.** [*R.*, 36 C. 994 = 11 C.L.J. 50 = 13 C.W.N. 1221 = 10 Cr.L.J. 385 = 3 Ind. Cas. 861.]

(34)—*Joinder of charges—Security for good behaviour.*—Where there is no association between the persons against whom proceedings for security for good behaviour are taken, nor are they residents of the same village, evidence against each of them should be taken separately. AHMAD ALI v. QUEEN-EMPRESS, **6 P.R. 1896, Cr.**

(35)—*Joinder of charges—Distinct offences—Dacoity.*—Where four accused were charged at one and the same trial for three dacoities committed during the course of a single day, and one of them was charged further with rescuing a person from a lawful custody, with murder of a constable and with taking part in the dacoity in which the constable was murdered, *held*, that the irregularity of jointly trying the fourth along with the others was cured by s. 537, Crim. Pro. Code, inasmuch as the charge against him was kept separate, and the opinions of the assessors were separately recorded on the charges affecting him. MANNEN v. EMPRESS, **7 P.R. 1901, Cr. = 83 P L.R. 1901.** (11 M. 441, 14 A. 502, 20 C. 537, *R.*; 14 C. 128, 14 C. 395, 15 B 491, 5 P.R. 1900, Cr., *D.*)

(36)—*Joinder of charges—Misjoinder not curable.*—The provisions of ss. 233, 239, Crim. Pro. Code, as to the framing of charges must be strictly observed. Any violation of them is an illegality which cannot be remedied by s. 537. A person accused of kidnapping a girl or having kept a kidnapped girl in confinement cannot be tried jointly with a person who is found disposing of her on a subsequent date and is charged with an offence under s. 419, I.P.C. Similarly a person accused of theft cannot be tried jointly with a person who is alleged to have dishonestly received from the alleged theft properties stolen by him. SINGHARA v. EMPEROR, **17 P.R 1903, Cr. = 149 P.L R. 1093.** (25 M. 61, P.C., *R.*) [*R.*, 18 P.R. 1904, Cr., 113 P.L.R. 1906, 3 P.R. 1905, *Note.*]

(37)—*Alternative charge.*—Where an accused is charged on the same facts in the alternative on a graver and on a less serious count, the Court should record a definite finding on each count. MAUNG PO THIN v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 324.**

Charge—continued.

——1.—General—*continued.*

(38)—*Alternative charges—Alternative findings.*—Alternative charges should be framed as in the form given in sch. V, No. XXVIII, sub-head (ii). When there is no reason to doubt which of two offences specified in an alternative charge the accused has committed, there should not be an alternative finding. QUEEN-EMPRESS v. NYAN ON GAING, **L B.R. 1872—1892, 436.**

(39)—*Crim. Pro. Code, s. 242—Nature of offences to form alternative charges.*—In order to make an alternative charge under s. 242 of the Crim. Pro. Code, both the offences must be offences under the Penal Code. Thus, criminal breach of trust cannot form an alternative charge to one of undue exaction of money under Reg. XVII of 1827, s. 16. REG v. AJAM DULLA, **8 B.H.C. Cr. 115.**

(40)—*Duty of Magistrate to decide on charges disclosed by the complaint.*—It is for the Magistrate to decide on the exact charge disclosed on the complaint. The accused can be convicted on a charge different from that preferred by the complainant, if the charge is involved in the complaint. NUTHOOA v. DEWANNA, **50 P.R. 1867, Cr.**

(41)—*Power of appellate Court to add charge.*—Where the accused persons were committed for trial under an erroneous and untenable alternative charge under s. 193, I.P.C., and the Court of Sessions amended the charge under s. 193 and added charges under ss. 201 and 203, *held*, that it was doubtful whether the amendment and addition did not prejudice the accused. QUEEN v. JAMURHA, **7 N.W.P. 137.** [*R.*, 14 Cr. L J. 664 = 11 P.R 1913 = 21 Ind. Cas. 904.]

(42)—*Crim. Pro. Code* 1898, *ss.* 227, 228, 229—*Adding a charge.*—While the law empowers a Magistrate to add a charge at any stage of the proceedings before judgment, he must, when doing so, exercise a sound and wise discretion. *Held* that a Sessions Judge did not exercise a wise and sound discretion in adding a new and grave charge of dacoity at a late stage of the trial, after the conclusion of the case for the defence, and in continuing the trial without any adjournment. KING-EMPEROR v. MATHURA THAKUR, **6 C.W.N. 72.**

(43)—*Crim. Pro. Code*, 1872, *s.* 446—*Power of Sessions Judge to expunge a charge before calling upon accused to plead.*—Where a Magistrate commits an accused person to the Sessions to be tried on specific charges, the Sessions Judge has no power, before calling upon the accused to plead, to expunge one of the charges. EMPRESS v. PORESHOLLA SHEIKH, **7 C.L.R. 143.** [*R.*, 15 C.L.J. 517 = 13 Cr. L.J. 609 = 16 C.W.N. 1105 = 16 Ind. Cas. 257.]

(44)—*Notice of the charge to the accused.*—An accused is entitled to know with certainty the matter with which he is charged and unless he has this knowledge he cannot but be seriously

Charge—continued.

——1.—General—*continued.*

prejudiced in his defence. When two or more persons are jointly tried, one of such persons cannot be called as a witness either for or against another of such persons. EMPEROR v. VINAYAK JAGESHWAR, **15 C.P.L.R. 112.**

(45)—*Crim. Pro. Code* (1882), *ss.* 237, 238 —*Extradition on charge of dacoity—Conviction for theft, validity of.*—Where the extradition from a Native State of an accused person has been obtained on a representation charging him with an offence, under s. 395, Penal Code, of dacoity committed within British India, and he is committed to the Sessions, the Judge, if he has jurisdiction over the accused independently of the extradition, is competent to convict him of theft, if the offence of dacoity is not proved against him. Extradition is only a means of bringing the accused before the tribunal having jurisdiction. "All crime is local; the jurisdiction over the crime belongs to the country where the crime is committed." If the jurisdiction of the Court cannot be disputed, there is nothing to justify the Court in applying at the trial rules and principles other than those which, in ordinary cases, it is bound to apply under the Code of Criminal Procedure. Even assuming that the extradition proceedings could in some way limit the jurisdiction of the Sessions Court, if there is nothing on the face of those proceedings to warrant the conclusion that any such limitation has been in fact imposed, the mere circumstance that the offence of dacoity alone was mentioned, when extradition was demanded, does not necessarily lead to the conclusion that the extradition was allowed for the purpose of a trial only on that charge, and on no other charge whatever. QUEEN EMPRESS v. KHODA UMA, **17 B. 369.** [*R.*, Rat. Un. Cr. C. 773.]

(45-*a*)—*Crim. Pro. Code—Charge—No details of offence—Conviction set aside — Maximum number of offences—Evidence of three other dacoities—Inadmissible — Evidence Act s.* 14 *or* 15.—Where the accused are not identified as being present at the scene of dacoity, the charge of dacoity cannot stand. If the charge for dacoity does not set out or indicate which particular dacoity an accused is tried for, the conviction must be set aside. An accused cannot be charged in all with more than three dacoities. Evidence of other dacoities by accused is inadmissible either under s. 14 or 15 of the Evidence Act. MANDI GHASI v. EMPEROR, **(1912) M.W.N. 49 = 13 Ind. Cas. 781 = 13 Cr. L.J. 125.**

(46)—*Charge — Sessions Court — Practice—Facts proved not supporting charge.*—When a Sessions Judge trying a case considers that the facts do not support the charge on which the prisoner is tried but finds that he committed the offence at some later time, he may alter the charge, but cannot order a re-commitment in respect of such charge. REG v. BAPU PARBAT, **7 B H C. Cr. 81.**

Charge—continued.

——1.—General—*continued.*

(47)—*Crim. Pro. Code, s.* 232—*Accused charged with offence triable as warrant case—Conviction for a summons case not charged, validity of—Penal Code, ss.* 143 *and* 379.—When a case is being tried as a warrant case and a charge is drawn up of an offence which is triable as a warrant case, if it is intended to proceed against him also for an offence which is triable only as a summons case, the offence should form part of the charge. Where an accused person was summoned for offences under ss. 143 and 379, Penal Code, but only a charge for an offence under s. 379 was drawn up, *held*, that a conviction under s. 143 should be set aside, as no charge had been drawn of the offence of which he had been convicted and, as by the absence of the charge, the accused had been misled. HOSSEIN SARDAR v. KALU SARDAR, **29 C. 481 = 6 C W N. 599.**

(48)—*Penal Code, s.* 147—*Common object—Rioting.*—A conviction for rioting, in the absence of a finding as to the common object of the assembly charged with rioting, is improper. CHUNDER COOMAR SEN v QUEEN-EMPRESS, **3 C W.N. 605.** TAFAZZUL AHMED CHOWDHURY v. QUEEN-EMPRESS, **26 C. 630.**

(49)—*Penal Code, s.* 193—*False evidence—Charge.*—The alleged false evidence, and not its assumed substance and purport, should be set forth in a charge under s. 193, I.P.C. QUEEN v. JAMURHA, **7 N.W.P 137** [*R.*, 14 Cr. L.J. 661 = 11 P R. 1913 = 21 Ind. Cas. 904.]

(50)—*Charge of having given false evidence—Frame of charge—Particulars of false evidence.*—A man who is called upon to answer to a charge of giving false evidence should know exactly what is the false evidence imputed to him. QUEEN v. SHEO CHURN, **3 N.W P. 314.**

(51)—*Facts not constituting an offence under s* 211, *I.P.C., but one under s.* 182 (*a*)—*False charge—Magistrate bound to frame a charge under s.* 182 (*a*), *I.P.C.—S.* 45 (*c*), *Crim. Pro. Code* (1898).—Where the facts alleged do not amount to an offence under s. 211, I.P.C., but the Magistrate was of opinion that an offence under s. 182 (*a*) has been made out, *held*, he ought to have framed a charge of an offence punishable under s. 182 (*a*), I.P.C. PUBLIC PROSECUTOR v. THAWASALANDI THEVAN, **6 M.L.T. 175.**

(52)—*Penal Code, s.* 408—*Charge under the section in respect of general deficiency in accounts.*—In a case of criminal breach of trust under s. 408, account based upon a general deficiency was struck out of the indictment by the presiding Judge after consultation with the Chief Justice. QUEEN-EMPRESS v. PURSHOTAM DASS MORARJEE, **24 C. 193.** [*Appr.*, 2 C.W.N. 341; *R.*, 33 A. 36 = 7 Ind. Cas. 186 = 7 A.L.J. 897 = 11 Cr. L.J. 442.]

(53)—*Crim. Pro. Code*(1898), *s.* 240—*Scope.*—S. 240, Crim. Pro. Code, applies only to charges

Charge—continued.

——1.—**General**—*continued.*

in the same case and has no application to separate cases. QUEEN-EMPRESS v. GOVINDA, **Rat. Un. Cr. C. 977 = Cr. Rg. 34 of 1898.**

(54)—*Crim. Pro. Code* (1882), *s.* 237—*Dacoity —Receiving stolen property.*—A person charged with dacoity cannot be convicted of dishonestly receiving stolen property which has not been shown to be a part of the property taken in the dacoity. *In re* DOWALATA, **Cr. Rg. 19-9-1890.**

(55)—*Forgery—Using false document—Abetment of forgery.*—When a Civil Court sends a prisoner before a Magistrate on a charge of forgery, it is competent to the Magistrate to commit him for trial on a charge either of forgery, or of abetting forgery, or of using as genuine a false document. QUEEN v. MOKESH CHUNDER ACHARJEE, **6 W R. Cr. 20.** [*R.*, 15 W.R. 352 5 M. 397, F.B.; *F*, 3 A. 538; *D.*, 13 W.R 147.]

See ACT XVIII OF 1862, s. 41, 1 B.L.R.O. Cr. 1, 1 B.L.R. O. Cr. 15 = 15 W.R. Cr. 71, note.

See ACT X OF 1875, s. 147, 1 C. 356.

Committal after drawing up—*See* COMMITMENT TO SESSIONS COURT, 3 C. 495 = 2 C.L.R. 2.

See COMMITMENT TO SESSIONS COURT, 9 Bom. L.R. 225 = 5 Cr. L.J. 213, 27 M. 54 = 2 Weir 227 = 2 Weir 578 = 2 Weir 263.

Defamation not alleged in complaint — Subsequent adding of it on examination of complainant—*See* COMPLAINT—INSTITUTION OF COMPLAINT—PRELIMINARIES, 10 A. 39. = A.W.N. 1887, 264.

See COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 5 M.L.T. 1 = 32 M. 3 = 9 Cr. L.J. 108 = 1 Ind. Cas. 22, 5 C.W.N. 296.

See CONVICTION, Rat. Un. Cr. C. 854 = Cr. Rg. 20 of 1896.

See CRIMINAL CASE, 4 Bom. L.R. 936.

See CRIM. PRO CODE, 1898, Ch. XXI, U.B. R. 1892—1896, Vol. I, 37.

See CRIM. PRO. CODE, 1898, ss. 188 and 537, 8 Bom. L.R. 507 = 4 Cr. L J. 49.

Whether should be framed in proceedings under s. 477, Crim. Pro. Code—*See* CRIM. PRO. CODE, ss. 195 and 477, 28 C. 434 = 5 C.W. N. 609.

See CRIM. PRO. CODE, 1898, ss. 198, 487, 3 A. 322.

Expunging one and substituting another —*See* CRIM. PRO. CODE, 1898, ss. 215 and 227, 10 C.P.L.R. 13, Cr.

See CRIM. PRO. CODE, 1898, s. 256, 14 C. P.L.R. 137.

Charge of house-breaking with intent to commit theft—Different object proved—Necessary that charge should be altered—Notice to accused—*See* CRIM. PRO. CODE, 1898, ss. 263, 342, 15 Cr. L.J. 190 = 22 Ind. Cas. 766 = 18 C. W.N. 1247 = 41 C .743.

Charge—continued.

——1.—**General**—*continued.*

See CRIM PRO. CODE, 1898, s. 271 (2), Rat. Un. Cr. C. 327 = Cr. Rg. 15 of 1887.

Withdrawal of — Proper procedure—*See* CRIM PRO. CODE, 1898, s. 494 (*b*), 2 A.L.J. 30 = 2 Cr. L.J. 21.

Omission to set out guilty intention in—*See* CRIM. PRO. CODE, 1898, s. 537, 22 C. 391.

—Counter charge—*See* CRIMINAL PROCEEDINGS, 14 C. 358.

See DEFAMATION, 30 C. 402 = 7 C.W N. 74.

See DISCHARGE OF ACCUSED, 6 W.R. Cr. 13.

See FALSE CHARGE, 5 M.L.T. 269, F.B. = 32 M. 258 = 9 Cr. L.J. 170.

Form of—*See* FALSE EVIDENCE, 7 A. 44 = A.W.N. 1884, 258.

Splitting up of charges for purposes of jurisdiction—*See* MAGISTRATE, JURISDICTION OF —TRANSFER OF CASES—REFERENCE TO OTHER MAGISTRATES, ETC., 11 C. 236.

Defective charge—*See* PENAL CODE, ss. 17, 124-A, 153-A, 5 M.L.T. 24 = 19 M.L.J. 81 = 9 Cr. L.J. 140 = 1 Ind. Cas 42.

Previous convictions not set out distinctly in the charge sheet—Effect—Material omission —Enhanced punishment—*See* PENAL CODE, s. 75, 19 P L.R. 1911 = 130 Ind. Cas. 241 = 12 Cr. L.J. 233 = 40 P.W.R. 1911.

Withdrawal of charges, if permissible—*See* PENAL CODE, ss. 121-A, 123, 15 C.L.J. 517 = 16 Ind. Cas. 257 = 13 Cr. L.J. 609.

See PENAL CODE, ss. 147, 323, 448, 30 C. 288.

Acquittal of one charge— Conviction for minor charge—Legality where Sessions Judge omits to give any finding on minor charge—*See* PENAL CODE, s. 201, 8 P.R. 1913 Cr. = 19 Ind. Cas. 710 = 223 P.L.R. 1913 = 14 Cr. L.J. 278 = 22 P.W.R. 1913, Cr.

See PENAL CODE, ss. 201, 302, 1 P.R. 1904 = 30 P.L.R. 1904.

Amendment of, by Sessions Judge before hearing evidence—*See* PENAL CODE, ss. 392, 411, 395, 16 C.W.N. 238 = 13 Ind. Cas. 783 = 13 Cr. L.J. 127.

Charge amounting to illegality—Whether defect can be cured—Re-trial if may be ordered where charge fails for want of evidence—*See* PENAL CODE, s. 406, 17 C.W.N. 479 = 14 Cr. L J. 219 = 19 Ind. Cas. 315.

Criminal misappropriation — General deficiency in accounts—*See* PENAL CODE, s. 409, 18 A. 116 = A.W.N. 1896, 11.

See PENAL CODE, s. 409, 17 A. 153 = A.W. N. 1895, 37.

Onus—Defect in charge—Omission to set out intention in charge — Cross-examination of accused—*See* PENAL CODE, ss. 464, 465, 467, 17 C.W.N. 354 = 18 Ind. Cas. 881 = 14 Cr. L.J. 129.

See PENAL CODE, s. 475, 15 B. 189.

Charge—continued.

——1.—**General**—*concluded.*

Defective charge when immaterial — *See* PENAL CODE, s. 498, 20 P.W.R. 1914, Cr. = 123 P.L.R. 1914 = 15 Cr. L.J. 524 = 24 Ind. Cas. 836.

Commitment to jail before charge is framed —Validity—*See* PRELIMINARY INQUIRY, 28 C. 434 = 5 C.W.N. 609

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 1 L.B.R. 286.

See SANCTION TO PROSECUTE—NOTICE OF SANCTION, 9 C L.J. 690 = 13 C.W.N. 942 = 10 Cr. L J. 150 = 36 C. 808 = 2 Ind. Cas. 697.

See SANCTION TO PROSECUTE — WHO MAY APPLY FOR SANCTION, 4 C. 712.

See TRANSFER OF CRIMINAL CASES — GROUNDS FOR TRANSFER—NOTICE, 30 M. 233 = 2 M.L.T. 89 = 5 Cr. L.J. 290.

Failure to frame a—. *See* TRIAL, 3 C.L.R. 131.

——2.— **Addition of Charge.**

(1)—*Crim. Pro. Code* (1882), *s.* 227—*Addition of charge at a Sessions trial.*—The Court has power under s. 227, to add a fresh charge upon which the accused has not been committed for trial. QUEEN-EMPRESS v. GORDON, **9 A. 525 = A.W.N. 1887, 155.** [*R.*, 10 C.P.L.R. 13.]

(2)—*Powers of Sessions Judge— Alteration, amendment or addition of charge.*—Although a Sessions Judge has power to alter or amend a charge, he cannot add an entirely new charge which is not even cognate to the charge on which an accused person has been committed for trial. QUEEN v. WARIS ALI, **3 N.W.P. 337.** [*R.*, 9 A. 525.]

(3)—*Charges added at sessions—Depositions before Magistrate, admissibility of—Dead and absconding witnesses.*—The evidence of witnesses, one of them being dead and the other absconding, given before a Magistrate, was held admissible at the sessions trial, even though fresh charges had been added. *In the matter of the petition of* ROCHIA MOHATO, EMPRESS v. ROCHIA MOHATO, **7 C. 42 = 8 C.L.R. 273.**

(4)—*Additional charges against accused without previous notice to him.*—An accused should not, on the day of trial, be required to meet additional charges, without previous intimation, other than those entered against him in the Police register on arrest. *In the matter of the petition of* RADOINATH SHAHA, EMPRESS v. RADOINATH SHAHA, **8 C. 195.**

(5)—*Crim. Pro. Code* (1882), *ss.* 229 *and* 537 —*Addition of new charge.*—Where a new charge was read aloud to the jury, but was not specially explained to the prisoner and he was not called upon to plead to that charge, but his counsel, on being asked, did not require a new trial, *held* that the accused was not prejudiced by the addition of the new charge, and the omission would not affect the trial. QUEEN EMPRESS v. APPA SUBHANA MENDRE, **8 B. 200.**

Charge—continued.

——2.—**Addition of Charge**—*concluded.*

(6)—*Crim. Pro. Code* (1898), *ss.* 227, 228, 199 *and* 238—*Charge—Addition of a charge—Irregularity—Penal Code* (*Act* XLV *of* 1860), *ss.* 363, 366 *and* 498.—The accused was committed to the Sessions on charges under ss. 363 and 366 of the Indian Penal Code. At the conclusion of the evidence, to establish these charges in the Sessions Court, the Court added a charge under s. 498 of the Penal Code, after the evidence for the defence had been recorded. The Court then convicted the accused on all the three charges. *Held*, that the procedure followed by the Sessions Judge was not regular; the additional charge, framed at the stage it was framed, was prejudicial to the accused, and that, therefore, the conviction under s. 498 should be set aside and the case be further investigated into on the other charges. EMPEROR v. ISAP MAHOMED, **9 Bom. L R. 148 = 31 B. 218 = 5 Cr. L.J. 164.** [*F.*, 12 Cr. L.J. 50 = 8 Ind. Cas. 1160 = 32 P.R 1910, Cr. = 39 P.L.R. 1911, 51 P.W.R. 1910.]

See SESSIONS JUDGE, JURISDICTION OF, 3 M. 351 = 2 Weir 269 = 6 Ind. Jur. 28.

Power of Sessions Judge to add charge and try it—*See* SESSIONS JUDGE, JURISDICTION OF, 8 A. 665 = A.W.N. 1886, 254.

——3.—**Alteration of Charge.**

(1)—*Several offences under same section—Amendment of charge — Imperfect charge—Example—Crim. Pro. Code*, 1861, *s.* 244.—If a charge consists of several offences under the same section, the committing Magistrate should frame the charge so as to contain a separate head for each offence. If the committing Magistrate does not frame a charge with separate heads for each distinct offence, the defect may be remedied by the Sessions Judge. *In re* KALARAM SING, **7 W R. Cr. 8.**

(2)—*Omission of count in charge—Defect in charge—Power of appellate Court.*—The appellate Court may confirm a conviction under a section of the Penal Code different from that upon which the prisoner was tried and convicted, provided the prisoner has not been prejudiced or injured by the substitution of one section for another. ANONYMOUS, **1 Ind Jur. N.S. 46.**

(3)—*Alteration of charge from culpable homicide to s.* 154, *Penal Code.*—The Sessions Judge is compent to alter a charge and to try the prisoner for any offence coming under any one of the sections of the Code. GOVERNMENT v. THACOOR DOSS, **1 Agra Cr. 13.**

(4)—*Amendment of charge by Sessions Judge after commitment by Magistrate—Reasons of Magistrate for committing case in certain way.* —Where a Magistrate gives reasons for committing a case for trial in a certain way, the Sessions Judge must either accept the charges as framed or frame others himself: he cannot

Charge—continued.

——**3.—Alteration of Charge**—*continued.*

insist on a redrawing of the charge by the Magistrate. unless he specifies the charge which he wishes to be sent up. RAMDHONE ACHARJEE, *Petitioners*, **25 W.R. Cr. 17.**

(5)—*Form of charge—Altering charge after plea of guilty.*—When an accused pleads guilty to a charge already framed, the Sessions Judge has no power to alter the charge upon the evidence on the record. QUEEN v. GOBARDHAN BHUYAN, **4 B.L R. Ap. 101 = 13 W.R. Cr. 55.**

(6)—*Crim. Pro. Code* (1861), s 244—*Trial by jury—Alteration of charge after verdict.*—On a trial by jury, the Sessions Judge has no power to alter the charge after the delivery of the verdict by the jury. REG v. SHEK ALI *valad* FAKIR MUHAMMAD, **5 B H C. Cr. 9.**

(7)—*Crim. Pro. Code, ss.* 236, 237, 238 423—*Appellate Court—Power to alter finding—Necessity for re-trial.*—It would obviously be improper and unfair to an accused that, on his appeal, he should be convicted of a more serious offence, to which he had never pleaded on the trial, and there are many instances in which the adopting of such a course would work injustice upon the accused. This would be particularly so, if the offence which the appellate Court might consider to be established was not cognate to the offence of which he had been tried and convicted, and it would also be so, if there were circumstances of aggravation of an offence to which the accused had not pleaded. But there are exceptions to this rule. Some of these are referred to in ss. 236, 237 and 238. Another exception is the case in which the prosecution has established certain acts constituting an offence, and the Court has misapplied the law to those acts by charging and convicting him for an offence other than that for which he should have been properly charged on proof of commission of those acts. Here, if notwithstanding this error, the accused has by his defence endeavoured to meet the accusation of the commission of those acts, understanding the charge to mean an offence arising out and made up of those acts, his conviction for the offence which those acts properly constitute may be maintained, if the accused has not been prejudiced by the alteration of the finding. Such an error is one of form rather than of substance, and the alteration by an appellate Court of the charge or finding to the more serious offence would not necessitate a re-trial expressly on a charge of that offence. Where a person is convicted of an attempt to commit an offence, the appellate Court, if it thinks that the acts of the accused constitute the substantive offence itself, may convict him of the substantive offence without ordering a re-trial. LALA OJHA v. QUEEN-EMPRESS, **26 C 863 = 3 C.W N. 653.** [*F.*, 13 C.P.L R. 125, U.B.R. (1903). 3rd Qr., Penal Code, p. 9, 3 N L.R. 67, 3 L.B. R. 232].

(8)—*Conviction for theft—Power of appellate Court to acquit the accused of theft and convict for a distinct offence—Penal Code, ss.* 143 *and* 379—*Crim. Pro. Code* (1898), s. 423.—It is on the proceedings taken before the Magistrate that the facts constituting an offence for which a trial is held are made known to the accused, and the law is applied by the Magistrate to the facts established, so as to constitute the charge which the accused is called upon to answer. Where a person was convicted of theft, the only charge which he was called upon to answer, a conviction by the appellate Court under s. 143, Penal Code, upon finding that no theft has been committed, could not be legal, inasmuch as he was never called upon to answer to any charge other than theft, and he could not, therefore, be fairly convicted of an offence of an entirely different character. JATU SING v. MAHABIR SINGH, **27 C. 660.** [*F.*, 3 L.B.R. 232; *R.*, 11 Cr. L J. 340 = 5 Ind. Cas. 974 = 7 M.L.T. 202.]

(9)—*Penal Code, ss.* 147 *and* 379—*Conviction for rioting, common object of unlawful assembly being theft—Finding by appellate Court of different common object—Alteration of charge—Validity.*—The accused were convicted by a Magistrate of theft of mangoes and also of rioting, the common object of the unlawful asembly being the forcible taking away of the mangoes belonging to the complainant. The Sessions Judge, on appeal, finding that the common object was not the taking away of the mangoes, but was regarding certain land, dismissed the appeal and confirmed the conviction and sentence. *Held*, that the accused were entitled to an acquittal, inasmuch as the accused were convicted by the appellate Court of an offence for which they had never been tried. RAHIMUDDI v ASGAR ALI, **27 C. 990 = 5 C.W. N. 31.** [*R.*, 33 C. 295 = 2 C L.J. 516.]

(10)—*Crim. Pro. Code* (1898), s. 423, *cl.* (*b*)—*Alteration of finding under ss.* 109 *and* 211 *to one under s.* 193, *I.P.C.*—In proceedings taken on a charge of the abetment of an offence punishable under s 211, it would be improper to convict the accused of intentionally giving false evidence. The two offences are entirely of a different character, and in making a defence on a charge of the first named offence, the accused could not be regarded as pleading to a charge of intentionally giving false evidence, in regard to some particular statement. MONORANJAN CHOWDHURY v. QUEEN-EMPRESS, **3 C.W N. 367.** [R., 3. L.B.R. 232.]

(11)—*Crim. Pro. Code, Act* X *of* 1872, *s.* 478—*Alteration of charge — Rape —Adultery.*—Where a Magistrate altered a charge of rape into one of adultery on the representation of the accused, without any request on the part of the husband of the woman, and committed the case to the Sessions, *held* that the procedure was irregular and that he should have committed for the offence of rape, but that, though the Sessions Judge could not quash the commitment under s. 197 of the Crim. Pro. Code, it was competent for him under s. 446 to draw up a

Charge—continued.

——**3.—Alteration of Charge**—*concluded.*

proper charge and proceed with the case. EMPRESS v. RAM BAKHSH, **A.W.N. 1882, 165**

See COMPENSATION— GENERAL, 10 W.R. Cr. 49.

See CRIM. PRO. CODE, 1898, ss. 236, 237, 238, 8 Bom. L.R. 120=3 Cr. L.J. 240.

See CRIM. PRO. CODE, 1898, s. 417, 16 B. 414.

——**4.—Alternative Charge.**

(1)—*Penal Code, s.* 193—*Alternative charge —Evidence before Constable or Magistrate.*—An alternative charge of giving false evidence either before the Chief Constable or the Magistrate is wrong as the former falls under the earlier part of s. 193 and the latter, being given in a judicial proceeding, is a distinct offence. QUEEN-EMPRESS v. WARDHAN, **Rat Un Cr. C. 503.** (Rat. Un. Cr. C. 333, 10 B. 124, *R.*)

See CONFESSION —RETRACTED CONFESSIONS, 11 B. 702, F.B.

See FALSE EVIDENCE, 18 B. 377, F.B., 10 C. 405, 937, 23 M. 544, Foot-note=1 Weir 166, 1 L.B.R. 101.

Charge of theft or, in the alternative, of receiving stolen property—*See* JOINDER OF CHARGES—WHEN LEGAL, 17 M.L.J. 219=5 Cr. L.J. 479.

——**5.—Amendment of Charge.**

(1)—*Penal Code, ss.* 415 *and* 420, *what an indictment under, should state—When defective indictment, should be objected to Amendment of formal defect—Act* XVIII *of* 1862, *s.* 41.—An indictment for cheating, under ss. 415 and 420 of the Penal Code, should state that the property obtained was the property of the person defrauded. But an indictment defective in this respect is defective for uncertainty and must be objected to, if at all, before the jury is sworn. *Semble*, the latter part of s. 41 of Act XVIII of 1862, only gives power to amend where the defect is formal. QUEEN v. WILLANS, **1 M.H.C. 31=1 Weir 471.** [*R.*, 1 M H C. 38.]

(2)—*Amendments to appear on the face of record.*—Amendments in a charge ought to be made formally, and should appear on the face of the record. QUEEN v. FEOJDAR ROY, **9 W.R. Cr. 14.** [*D.*, 8 B.H.C. Cr., 28.]

(3)—*Several offences under same section—Amendment of charge.*—If a charge consists of several offences under the same section, the committing Magistrate should frame the charge so as to contain a separate head for each offence. *In re* KALARAM SING, **7 W.R. Cr. 8.**

(4)—*Conviction on charge different from that of which notice was given to accused.*—An accused person called on to answer to a specific charge cannot be convicted on an entirely different charge without previous notice of the offence imputed to him and opportunity being

Charge—continued.

——**5.—Amendment of Charge**—*concluded.*

afforded him of meeting the accusation. *In the matter of the petition of*, GIRISH CHUNDER NUNDEE, **26 W.R. Cr. 8.**

(5)—*Crim. Pro. Code* (1882), *ss.* 236, 237—*Amendment of charges.*—Although it is open to a Magistrate to amend his charges, and if he is satisfied that the graver charge includes the smaller complained of, to proceed upon the graver charge, such power can only be exercised when both the charges are *ejusdem generis* and when they fall under the same or similar class of offences, one being only an aggravation of the other. When a complaint is made of an offence under ss. 499, 500, I.P.C., a Magistrate, for the reasons above-mentioned, is not competent to change the charge to one under s. 211, I.P C., and also for the additional reason that the changed charge would shift the burden of proof sensibly from one side to the other. QUEEN-EMPRESS v. KARIGOWDA, **19 B. 51.**

(6)—*Criminal Law Amendment Act*, XVIII *of* 1862, *s.* 1—*Amendment of charge—Prejudice to accused.*—Under s. 1 of Act XVIII of 1862, the Court has power to order an amendment of a charge provided that the person indicated will not be prejudiced by the amendment in his defence on the merits. Where it is doubtful whether he was so prejudiced or not, the leaning of the Court should be in his favour. REG v. GOVINDAS HARIDAS, **6 B.H C. Cr. 76.** [*R.*, 22 C. 391.]

(7)—*Crim. Pro. Code, s.* 244—*Offence committed in foreign territory—Act* I *of* 1849, *s.* 3—*Sessions Judge—Procedure.*—Where a Sessions Judge, in the course of a trial, finds that the offence was committed in foreign territory, the proper procedure is to direct the committing Magistrate to obtain the permission of the Government under Act I of 1849, s. 3, and on receipt of such order, to amend the charge and then continue the trial, giving the accused the option to re-examine witnesses already examined. REG v. POONJA KALA, **Rat. Un. Cr. C. 33.**

See ACT XVIII OF 1862, s. 1, 6 B.H.C. Cr. 76.

——**6.—Explanation of Charge.**

(1)—*Criminal proceedings—Thorough explanation of charge to accused, necessity for.*—The charge should be read and so *explained* to the accused that the Court is sure that he has understood the nature of the charge thoroughly; and it is only then that his plea should be received. EMPRESS v. VAIMBILEE, **5 C. 826.** [*R.*, L.B.R. 1893—1900, 328.]

(2)—*Crim. Pro.Code* (*Act* X *of* 1882), *s.* 221—*Right of accused person to know the exact value of the charge brought against him.*—An accused person is entitled to know with certainty and accuracy, the exact value of the charge brought against him. Unless he has this knowledge, he must be seriously prejudiced in his defence. This is true in all cases, but it is more especially

Charge —continued.

——6.—Explanation of Charge—*concluded.*

true in cases, where it is sought to implicate an accused person for acts not committed by himself but by others with whom he was in company. BEHARI MAHTON v. QUEEN-EMPRESS. **11 C. 106.** [*R.*, 22 C. 391, 7 C.W.N. 301, 15 C.W.N. 98= 8 Ind. Cas. 1059=12 Cr. L.J. 2.]

(3)—*Explanation of charge to accused — Omission to explain charge when amended—Crim. Pro. Code*, 1872, s. 445.—A prisoner charged with dacoity and riot and acquitted cannot be convicted of house trespass, unless the charge was amended by the addition of the new charge and was read out or explained to him, and he was called on to plead to it. QUEEN v. SALAMUT ALI, **23 W.R. Cr. 59.** [*F.*, 26 B. 50 ; *R.*, 3 Bom. L R. 558.]

(4)—*Plea of guilty and charge of murder—Admission by an accused person that he killed the deceased, effect of* —A bare admission by an accused person that he had killed the deceased would not amount to an admission of murder. Where certain persons accused of murder admitted that they killed the deceased and added that they made the admissions of their own accord without being persuaded by others, *held*, that they could not be convicted under s. 302, Penal Code, inasmuch as they were not asked in their examination whether they intended to kill, or in what circumstances they killed, and their statements did not disclose on their part a knowledge of the elements constituting the offence of murder. AIYAVU v. QUEEN-EMPRESS, **9 M. 61=2 Weir 337.** [*R.*, L B.R. 1893—1900, 328.]

——7.—Form of Charge.

(1)—*Form as to time and place of offence—Crim. Pro. Code*, 1872, *s.* 440.—Under s. 440 of the Crim. Pro. Code, the charge ought to contain such particulars as to the time and place of the alleged offence and the person against whom it was committed as are reasonably sufficient to give notice to the accused person of the matter with which he is charged. And sch. III attached to the Code, gives the form of the charge under s. 193. Where a charge does not show such particulars, the accused must be acquitted. QUEEN v. UDIT SINGH, **25 W.R. Cr. 46.**

(2)—*Reference to section of Code under which charge is made—Crim. Pro. Code*, 1861, *ss.* 234, 237.—The framing of a charge should be such as to refer to the section of the Penal Code under which the offence charged is punishable. This is required by ss. 234 and 237 of the Code of Criminal Procedure. QUEEN v. DURZOOLLA, **9 W.R. Cr. 33.**

(3)—*Sufficiency of charge.*—In order to constitute a proper charge, one count charging each specific offence and describing it with a reasonable degree of certainty, is sufficient. QUEEN v. BABOOLUN HIJRAH, **5 W.R. Cr. 7.**

Charge—continued.

——7.—Form of Charge—*continued.*

(4)—*Charge in case of omission to give information of offence.*—A charge in a case of omission to give information of offence should distinctly set forth the particular offence in respect of which the accused either omitted to give information, or gave information which he knew to be false ; and it should appear precisely what his duty was in the matter. QUEEN v. MOOSUBRO, **8 W.R. Cr 37.** [*R.*, 14 W.R. Cr. 46.]

(5)—*Defect in charge, effect of.*—An indictment will not be invalidated in consequence of the charge not notifying the specific section. QUEEN v. NOTABUR NUNDY, **1 Ind. Jur. N.S. 43.**

(6)—*Form of charge—Penal Code, s.* 193—*False evidence.*—Whenever a person is committed for trial under s. 193 of the Penal Code, the evidence alleged to be false should be set out in the charge. QUEEN-EMPRESS v. BHIKAJIRAO, **Rat. Un. Cr. C. 511=Cr. Rg. 35 of 1890.**

(7)—*False evidence—Penal Code, s.* 193.—In charges of false evidence, the charge should specifically state what words or expressions the accused is charged with having uttered, and in what respect they are supposed to be false. *In re* DOWLUT MOONSHEE, **8 W.R. Cr. 95.**

(8) —*False evidence on three occasions — Charge.*—Where the accused is charged with giving false evidence on three different occasions, each occasion should form the subject of a distinct head in the charge. QUEEN v. FEOJDAR ROY, **9 W.R. Cr. 14** ; QUEEN v. SOONDER MOHOOREE, **9 W.R. Cr. 25** ; QUEEN v. BOODHUN AHIR, **17 W.R. Cr. 32** ; QUEEN v. ADHYA THAKOOR, **17 W.R. 33, Cr.**

(9)—*False evidence — Perjury — Charge.*—Charges of perjury ought to be based strictly upon the exact words which are used by the person who is charged, and no evidence, which does not profess to give the exact words, can alone be a safe foundation for a conviction. QUEEN v. MUNGAL DASS, **23 W.R. Cr. 28.**

(10)—*Charge of perjury—False evidence.*—Charges of perjury should contain a distinct assertion, with regard to each statement intended to be characterised as perjury of the following particulars : (1) that it was made ; (2) that it was untrue in fact ; (3) that the accused knew it to be so when he made it ; and the Court should investigate each of these points singly. QUEEN v. KALI CHURN LAHORE, **9 W.R. Cr. 54.** [*D.*, 8 B.H.C. Cr. 28.]

(11)—*Perjury—Several charges.* It is the duty of the Court of Sessions to find judicially whether all, or, if not all, which, of the particular charges of perjury, where there is more than one charge, are or is made out against each prisoner. QUEEN v. KHOAB LALL, **9 W. R. Cr. 66.**

(12)—*Penal Code, s.* 193—*Giving false evidence—Perjury.*—In this case six persons were charged in the same charge as follows :—" That

***Charge*—continued.**

——7.—Form of Charge—*continued.*

you, on or about the....committed the offence of voluntarily giving false evidence in the stage of a judicial proceeding, etc." *Held*, that the charge was bad and defective for the following reasons: *first*, as it charged a number of persons jointly with giving false evidence; *second*, as it did not show what statement the accused persons made; *third*, as it did not mention the day and the year when the offence was committed; *fourth*, as it did not indicate the Court or officer before whom the false evidence was given. QUEEN v. MAHARAJ MISSER, **7 B.L.R. Ap. 66=16 W.R. Cr. 47.**

(13)—*Penal Code, s. 193—Perjury.*—It is necessary that a charge under s. 193, I.P.C., should specify not only the judicial proceeding in the course of which the prisoner is accused of having made the false statement, but the particular stage of the proceeding in which the statement is made. QUEEN v. FATIK BISWAS, **1 B.L.R.A.Cr. 13=13 W.R Cr. 37.** [*F.*, 8 B. H.C. Cr. 37, 13 W.R. Cr. 56; *R.*, 16 W.R. Cr. 47.]

(14)—*Crim. Pro. Code* (1861), *s. 242—False evidence — Contradictory statements.* — S. 242 pointed out how the charge is to be drawn up in a case in which it is doubtful which of the two statements made by the accused is false. QUEEN v. KALA KHAN, **12 W.R.Cr. 23.** [*F.*, 23 M. 544.]

(15 & 16)—*Charge of giving false evidence—Several accused—Joint trial.*—Where several persons are charged with having given false evidence, each of them is entitled to have the specific charge made against him tried independently of a like charge against another person. REG. v. BHAWANI SANKAR HARIBHAI, **5 B.H.C. Cr. 55.** (9 W.R. Cr. 66, *R.*) [*Appr.*, 2 N.W.P. 21.]

(17)—*Crim. Pro. Code* (1882), *s. 233—Form of charge—Conviction for another charge — Accused to have opportunity of meeting charge.*—The accused, having been summoned to answer a charge of storing wool under the City of Bombay Municipal Act of 1888, was convicted of storing cotton. *Held*, that the conviction was illegal, the accused having had no opportunity of meeting the latter charge. QUEEN-EMPRESS v. NATHOO LALJI, **Rat. Un. Cr. C. 529=Cr. Rg. 61 of 1890.**

(18)—*Penal Code, s. 397—Crim. Pro. Code, Act XXV of 1861, s. 234—Form of charge—Accused to know what facts are alleged against him, and which he is called upon to rebut.*—In offences such as the one falling under s. 397 of the Penal Code, which provides a minimum punishment for the offence on account of the existence of aggravating circumstances, such circumstances should be set forth in the charge so that the accused person may know what kind of offence it is he pleads guilty to or what fact he is called upon to rebut. REG v. MUKTA MANKA, **Rat. Un. Cr. C. 55=Cr. Rg. 31-8-1871.**

***Charge*—continued.**

——7.—Form of Charge—*continued.*

(19)—*Penal Code, s. 411—Charge, form of—Receiving stolen property.*—A charge under s. 411, I.P.C., should state that the articles found in the accused's possession were property stolen from A.B., the owner thereof. REG. v. SIDDU *bin* BALNATH, **1 B.H.C. 95.**

(20)—*Crim. Pro. Code* (1882), *s. 439—Judgment not stating the common object of an unlawful assembly—Revisional powers of High Court—Penal Code, s. 147.*—The High Court, on an application for revision from the conviction and sentence of certain persons for rioting, should not grant a rule to show cause why the conviction and sentence should not be set aside, under the powers created by s. 439 of the Code, on the ground that the charge does not specify any common object and the judgments of the lower Courts do not find that any common object existed, or what it was, if it did exist, unless that Court is prepared, on the materials, on which the rule is granted, to make it absolute, or, in other words to acquit the accused, if no cause were shown against it. The above mentioned defects in the charge and the judgments are not by themselves sufficient to warrant the acquittal of the accused if there is ample material, in the evidence on the record, to justify the conviction. BASIREDDI v. QUEEN-EMPRESS, **21 C 827.** [*F.*, 22 C. 391; *R.*, 39 C. 781=13 Cr.L.J. 218=14 Ind. Cas. 314, 2 Bom. L.R. 1129.]

(21)—*Crim Pro. Code* (1872), *s. 439—Previous conviction.*—Under s. 439 of the Code to prove a previous conviction against an accused person for enhancing the punishment, the fact of that previous punishment must be stated in the charge. In case of its omission, it may be added to the charge at any time previous to the sentence being passed, but not after. QUEEN v. RAJCOOMAR BOSE, **19 W.R Cr. 41.**

(22)—*Previous conviction—Crim. Pro. Code,* 1872, *s. 439.*—The fact of a previous conviction should under s. 439 of the Crim. Pro. Code, be stated in the charge when it is intended to prove it in order to enhance the punishment. QUEEN v. ESAN CHUNDER DEY, **21 W.R. Cr. 40.**

(23)—*Previous conviction Charge.*—Under s. 439 of the Code, a charge of having committed the offence after a previous conviction therefor should be stated specifically. A statement in a Court that, at the time when the prisoner committed the offence (no offence being specifically mentioned in the Court), he had been previously convicted of offences punishable under ch. XVII of the Penal Code is not sufficient under s. 439. QUEEN v. SHEIKH JAKIR, **22 W.R. Cr. 39.**

(24)—*Penal Code, s. 499—Charge, form of.*—In framing a charge under s. 499, I.P.C., it is not necessary that the charge should negative the exceptions contained in s. 499, I.P.C. REG v. KIKABHAI PARBHUDAS, **9 B.H.C. 451.**

(25)—*Charge under Penal Code, s. 471—Conviction under s. 467—Legality.*—Where a

Charge—continued.

——7.—Form of Charge—*continued.*

person was charged with simply using as genuine a forged document, under s. 471 of the Penal Code, and convicted of an offence under s. 467, the document falling within the description given therein, *held* that the conviction was illegal and that the charge should have specified that the document was one described in s. 467. REG v. GANGARAM MALJI, **6 B.H.C. Cr. 43.**

(26)—*Penal Code, s. 101—Charge—Right of private defence.*—It is a Magistrate's duty to draw up a charge in accordance with the offence disclosed, and not to consider such questions as to whether he himself has or has not jurisdiction to try the offence, or whether a particular charge will or will not require a committal to the Sessions. It appeared that the accused had every reason to believe that he was about to be subjected to personal violence, that his carriage had been stopped by Beluchis who refused to abate the restraint, in itself a criminal offence, that in the scuffle a person properly under arrest was directly released or enabled to escape, and that the accused either let off his gun by accident, or that he fired it off, without any careful aim at the assailants, to secure his own safety. *Held* that, if the gun went off by accident, there was no offence and if the accused fired it, he came under s. 101, Penal Code, and was entitled to be acquitted. MUKERJI v. EMPRESS OF INDIA, **51 P.L.R. 1901 = 5 P.R. 1901, Cr.**

(27)—*Penal Code ss. 282, 336—Plying unsafe vessel.*—Where certain sailors were charged under s. 336 I.P.C., with doing an act which endangered the lives or the personal safety of others, in having plied on a certain river a boat which was out of order and had also crack, *held* that s. 336, I.P.C., was not applicable to the offence committed by the accused, but that s. 282, I.P.C., applied. REG. v. KHODA JAGTA, **1 B.H.C. 137.**

(28)—*Form of charge—Murder—Penal Code, s. 302—Objections to charge.*—Technical objections to criminal charges, particularly on the ground of the want of a sufficient specification of details, should be taken before the conclusion of the trial, when the Judge may, if necessary, amend the charge, and not afterwards, unless it appears that some failure of justice has been caused by the irregularity complained of. A charge under s. 302 of the Penal Code need not set out at length all the facts necessary to constitute the offence of murder, and negative all the exceptions contained in s. 300, which defines the crime of murder. GOVERNMENT v. RAMASAMY, **5 W R. Rec. Ref. 1.**

(29)—*Rioting—Separate charges against members of rival parties.*—Where there is riot and fight between two factions, the members of each party should be committed for trial separately, and not all together. QUEEN v. DURZOOLAH, **9 W.R. Cr. 33**; QUEEN v. SHEIKH BAZU, **B L.R. Sup. Vol. Cr. 750 = 8 W.R Cr. 47.** [*Doubted*, 11 C 349; *R.*, 6 C. 718, 8 C. L.R. 390.]

Charge—continued.

——7.—Form of Charge—*continued.*

(30)—*Unlawful assembly and theft—Cutting and carrying away crops in disputed land—Penal Code, ss. 143, 379.*—Observation of the Court as to the proper framing of the charge in cases of unlawful assembly, with the object of committing theft by cutting crops. JAGAT CHUNDRA ROY v. RAKHAL CHUNDRA ROY, **4 C.W.N. 190.** (3 C.W.N. 332, *D.*)

(31)—*Mischief—Mischief by setting fire to house.*—The charge in a case of mischief by fire, with intent to cause the destruction of a dwelling-house, should lay the intent as an intent to cause the destruction, not of a house simply, but of a house used as a human dwelling. QUEEN v. DURBARRO POLIE, **8 W R. Cr. 30.**

(32)—*Illegal gratification—Vagueness of charge.*—A charge of attempting to obtain a gratification for influencing a public servant in the exercise of his public functions is illegal, as disclosing no legal offence, when it omits to state the person or persons for whom the gratification was obtained, or the public servant to be influenced in the exercise of his public functions. QUEEN v. SETUL CHUNDER BAGCHEE, **3 W. R. Cr. 69.**

(33)—*House-trespass—Penal Code, s. 451.*—A charge under s. 451, Penal Code, must charge the accused with committing house-trespass with intent to commit some specific offence punishable with imprisonment. QUEEN v. MEHAR DOWALIA, **16 W.R. Cr. 63.**

(34)—*Hurt—Causing hurt—Penal Code, s. 324.*—In a case of causing hurt, the charge and finding need not contain a negation that the hurt was caused on grave and sudden provocation. HIGH COURT PROCEEDINGS, 16TH MARCH, 1868, **4 M.H.C. App. 5.**

(35)—*Charge—Conviction without charge—Conviction for offences under ss. 447, 352, I.P. C.—Conviction by Appellate Magistrate for offences under s. 379—Legality.*—Where the accused were charged under ss 447 and 352, I P C., and convicted by the Magistrate and the Appellate Magistrate, without expressing any opinion as to whether those convictions were right, convicted the accused under s. 379, I.P.C., *held* that the charge of theft is a distinct and separate charge, and should have been separately made, and the accused given the opportunity of answering the same. *In re* BOMMAREDDI SOMIREDDI, **7 M L.T. 202 = 5 Ind. Cas. 974 = 11 Cr. L.J. 340.**

See ACT I OF 1878, s. 9 (*f*), 10 P.R. 1888, Cr.

See CRIM. PRO. CODE (1898), ss. 233, 235, 26 A. 195 = A.W.N. 1903, 231.

Specification of intention in the charge—Proof of intention—*See* CRIMINAL TRESPASS, 22 C. 391

See DACOITY, 2 W. R Cr. Letters, 1, 1 Weir 447.

See FALSE EVIDENCE, 9 W.R. Cr. 25.

Charge—continued.

——7.—Form of Charge—*concluded.*

See PENAL CODE, s. 124 A, 5 M.L.T. 393=32 M. 384=9 Cr. L. J. 456=2 Ind. Cas. 33.

See PENAL CODE, s. 193, Rat. Un. Cr C. 488=Cr. Rg. 57 of 1889.

See PENAL CODE, s. 323, Rat. Un. Cr. C. 20=Cr. Rg. 17-8-1869.

See PLEA OF GUILTY, L.B.R. 1893—1900, 328.

See UNLAWFUL ASSEMBLY, 13 C.W.N. 801=36 C. 865.

——8.—Framing of Charge.

(1)—*Crim. Pro. Code*, 1882, *s.* 560—*Framing of charge—Charge held as frivolous and vexatious.*—The fact that a Magistrate has framed a charge, under s. 254, Crim. Pro. Code, against an accused, does not of itself prevent him from holding after full enquiry that the charge is frivolous and vexatious under s. 560. QUEEN-EMPRESS v. ABDULLA RAHIMAN, **Rat. Un. Cr. C. 734=Cr. Rg. 2 of 1895**

See CRIM. PRO. CODE, s. 233, 36 P.L.R. 1910=8 Ind. Cas. 229=11 Cr. L.J. 597.

Framing of, in respect of two different documents—Separate charge for every act of forgery, if necessary—*See* PENAL CODE, ss. 467, 471, 14 C.L J, 652.

See SENTENCE—TRANSPORTATION, Rat. Un. Cr. Cas. 735=Cr. Rg. 4 of 1895.

——9.—Withdrawal of Charge.

(1)—*Charge—Withdrawal of charge—Crim. Pro. Code*, 1882, *ss.* 226, 227—*Power of Sessions Judge to withdraw a charge.*—The Sessions Court is not precluded from withdrawing a charge framed by itself at the commencement of the trial and which it considers to have been an improper charge. The word "alter" in s. 227, Crim. Pro. Code, must be taken to include "withdraw." DWARKA LAL v. MAHADEO RAI, **12 A. 551=A.W.N. 1890, 178.** [*R.*, 10 C.P.L.R. 13, Cr.]

(2)—*Crim. Pro. Code*, 1898, *s.* 240—*Withdrawal of further proceedings—Several charges of embezzlement—Penal Code* (*Act* XLV *of* 1860), s. 408.—Case in which the High Court in appeal directed withdrawal of remaining charges (of embezzlement) against the accused, under s. 240 of the Crim. Pro. Code. BASIRUDDIN AHMED SHEIKH v. KING-EMPEROR, **9 C.L.J. 257.**

(3)—*Crim. Pro. Code*, 1861, *ss.* 57, 61, 459 (*ss.* 492, 494, 240 *of the Code of* 1898)—*Powers of a Government pleader to withdraw a charge—Power of District Magistrate to withdraw charge.*—Unless a Government pleader has been appointed a Public Prosecutor, under the provisions of s. 57 (s. 492), and so has power under s. 61 (s. 494) to withdraw a charge, the Code does not authorise him to withdraw it, except in the case mentioned in s. 459 (s. 240), that is to say, where several charges have been preferred against the same person and he has been convicted of one of them. Where it is within the powers of a Government pleader to withdraw

Charge—concluded.

——9.—Withdrawal of Charge—*concluded.*

a charge, the law confers on him a discretion to do so, which is not subject to the control of the Magistrate of the District. HIGH COURT PROCEEDINGS, 10TH SEPTEMBER 1881, No. 1870, 2 Weir 258=**2 Weir 652.**

See CRIM. PRO. CODE, 1898, ss. 271 (2), 342 (1), 439, 494, 5 M.L.T. 216.

Charge Sheet.

Right of accused to copy of—*See* ACCUSED PERSON, 19 M. 14=2 Weir 143.

Right of accused to copies of police reports and—during trial—*See* ACCUSED PERSON, 20 M. 189=2 Weir 763, F.B.=2 Weir 120=142=144=7 M.L.J. 167.

Public documents—Evidence Act. s. 74, Right of accused to a copy before trial—*See* ACCUSED PERSON, 20 M. 189=2 Weir 763, F.B.=7 M.L.J. 167=2 Weir 120=142=144.

See COMPLAINT—DISMISSAL OF COMPLAINT, 2 Weir 246.

Charge to Jury.

1.—GENERAL.

2.—MISDIRECTION.

See ACCOMPLICE—ACCOMLICE, EVIDENCE—JUDGE'S CHARGE TO JURY.

See ASSESSORS.

See CRIM. PRO. CODE, 1898, ss. 297—307.

See JURY.

See TRIAL BY JURY.

See VERDICT OF JURY.

——1.—General.

(1)—*Charge to the jury, how to be recorded.*—Although, under the law, only the heads of the charge to the jury need be recorded, still, as the law allows an appeal on grounds of misdirection, it is not only desirable, but necessary, that the charge should be recorded in an intelligible form and with sufficient fulness, to enable the appellate Court to satisfy itself that all points of law were clearly and carefully explained to the jury, in reference to the facts and the evidence in the case. PANCHU DAS v. EMPEROR, **34 C. 698=11 C.W.N. 666=5 Cr. L.J. 427.**

(2)—*Sessions trial—Summing up—Duty of Judge.*—A Judge in summing up is entitled to have regard to the elaboration and skill with which the rival contentions have been placed before the jury by the advocates on both sides, but he should not, in doing so, omit pointedly to call the attention of the jury to matters of prime importance, especially, if they favour the accused, merely because they have been discussed by the advocate. EMPEROR v. MALGOWDA BASGOWDA, **27 B. 644=4 Bom. L R. 683** [*F.*, 27 B. 626=5 Bom L R. 599; *R.*, 11 Cr. L.J. 13=4 Ind. Cas. 597=3 S.L R. 102.]

(3)—*Duty of Judge in charging Jury.*—It is the duty of a Judge in charging the jury to give a narrative and history of the case, and to place

Charge to Jury—continued.

——1.—General—*continued.*

the facts and evidence in a clear manner before the jury so as to enable them to grasp the details and come to a right decision. All the facts of prime importance in favour of the accused must be placed before the jury. It is not the duty of the Judge to say that the jury may neglect any portion of the evidence; that is clearly against the provisions of the law which says that the jury are to give their verdict upon the whole of the evidence on the record. EMPEROR v. MIRA GAJBAR, **6 Bom. L.R 31.**

(4)—*Duty of judge in his charge to jury.*—In trials by jury, the Judge in his charge, should not state his own view of important matters of fact so positively as to leave the jury no loophole for taking any other view. S. 297 requires the Judge to sum up the evidence for the prosecution and the defence, but s. 299 leaves it to the jury to decide which view of the facts, is true. The duty of the Judge is to lay down the law authoritatively to the jury and to decide on the admissibility of evidence. QUEEN-EMPRESS v. MENGA BUDHIA, **Rat. Un. Cr. C. 748 = Cr. Rg. 15 of 1895.**

(5)—*Duty of judge in charge to jury—Judge to state to jury that they should form their own opinion on the evidence.*—Though a Judge can, in his charge to the jury, express his opinion of the effect of any portion of the evidence, he should always be careful to add that it is for the jury to form their own opinion. QUEEN-EMPRESS v. BEPIN BISWAS, **10 C. 970.** [*F*., 25 C. 230.]

(6)—*Judge to explain law to jury.*—It is the duty of the Judge to explain the law to the jury, and to tell them what offence the facts would prove against the prisoner if they believed them, and it is then for the jury to see whether, within the definition given by the Judge, the facts as proved constitute the offence. Where the jury found the accused not guilty of the charge framed against them, stating at the same time, that they thought an offence had been committed by one of the prisoners, although they were uncertain as to the section of the Penal Code under which the offence came, the Judge was held not to have acted properly, in handing over the Code to the jury to decide under what section the offence came. JASPATH SINGH v. QUEEN-EMPRESS, **14 C. 164.** [*R*., Rat. Un. Cr C. 736 = 6 Bom.L R. 258.]

(7)—*Duty of Judge in charging a jury.*—The duty of the Judge in charging a jury in a criminal case is to make up his mind as to what the law is, and to tell the jury what it is, as succinctly and clearly as he can. If he turns out to be wrong, a higher tribunal can set him right. But to cite to the jury a large number of cases, which the jury cannot possibly understand, is calculated to confuse them and lead to a miscarriage of justice. SHYAMA CHARAN CHAKRAVARTI v. EMPEROR, **1 C.L.J. 159 = 2 Cr. L.J. 157.**

(8)—*Duty of Judge in charging a jury—Identity of thumb impression is a question for the jury.*—A Judge in charging a jury, should call the attention of the jury to the nature and history of the case as laid before the Court by the prosecution. The question as to the identity of thumb-impressions on two or more documents, for the purpose of ascertaining whether the thumb-impressions are of one and the same person, is eminently a matter for the jury, and not for the Judge. PANCHU MONDAL v. EMPEROR, **1 C.L.J. 385 = 2 Cr. L J, 311.** [*F*., 13 Cr.L.J. 563 = 15 Ind. Cas. 975 = 147 P. L.R 1912 = 18 P.W.R. 1912, Cr.; *R*., 9 P.R. 1914, Cr.]

(9)—*Charge to jury in supplementary trial—Whether result of previous trial can be placed before the jury.*—The Sessions Judge, in his charge to the Jury in a supplementary trial should not put before them the result of the original trial, without qualifying the reference with an admonition. **1 W.R. Cr. Letters, 10.**

(10)—*Charge to jury—Respective functions of Judge and Advocate in the matter of laying evidence before jury.*—A Judge does his duty when he lays all the evidence fully and fairly before a jury, and he is not bound to go into a long and laboured argument to show how this witness is to be believed, or that witness is to be discredited, why this set of circumstances appear to be true, and that to be false. It is the Advocate's business to lay all this before the Jury, not the Judge's. QUEEN v. CHUNDER KUMAR MUZOOMDAR, **25 W.R. Cr. 54.**

(11)—*Duty of Judge in charging jury.*—Principles for the guidance of a Judge in charging a jury laid down. QUEEN v. RAJCOOMAR BOSE, **10 B.L.R. Ap 36 = 19 W R. Cr. 71.** [*F*., 25 C. 230; *R*., Rat. Un. Cr. C. 748].

(12)—*Crim. Pro Code*, 1882, *ss.* 297, 367—*Judge's charge to jury—Explanation of law—Duty of Judge—Record of judgment—Indication in charge to jury of compliance with law.*—It is incumbent on the Judge to explain the law relating to the particular offence with which the accused is charged, in order to enable the jury to apply the law to the special facts of the case. Mere references to sections of the Penal Code will not be sufficient. Although the Judge is not bound to record a judgment, yet, he should give a sufficient indication in his record of the heads of the charge that he has complied with the law so as to enable the appellate Court to determine whether or not he has acted in accordance with s. 297. ABBAS PEADA v. QUEEN-EMPRESS, **25 C. 736 = 2 C. W.N. 484.** [*R*., 19 Ind. Cas. 1004 = 14 Cr. L.J. 316 = 44 P.W.R. 1913, Cr. = 244 P.L.R. 1913.]

(13) — *Explanation of the law bearing on case — Presumption of innocence.*—A Judge's charge to the jury should consist only of a summing up of all the evidence and of showing how the law applies to it. Where facts are as consistent with a prisoner's innocence as with his guilt, innocence must be presumed; and criminal intent or knowledge is not necessarily

***Charge to Jury*—continued.**

——1.—General—*continued.*

imputable to every man who acts contrary to the provisions of the law. QUEEN v. NOBOKISTO GHOSE, **8 W.R. Cr. 87.**

(14)—*Crim. Pro. Code* (1861), *s.* 379—*Summing up when defective.*—The summing up contemplated by s. 379 cannot mean any statement of the evidence which a Judge may, in his caprice, think proper to make to the jury, but a proper summing up containing a full and distinct statement of the evidence on both sides, with such advice as to the legal bearing of the evidence, and the weight which properly attaches to the several parts of it, as a sound judicial discretion would suggest. If the Judge does not sum up in that manner, an error in a matter of law has been committed within the meaning of the Crim. Pro. Code, and the conviction based on such summing up shall be reversed if the accused person shall have been prejudiced by the defect. The ends of justice will, in most cases, be satisfied by considering whether, if the case had been tried by a Judge and assessors, the Court will set aside the finding. In cases of very serious offences and where the evidence is merely circumstantial, the evidence should be read over *in extenso* to the jury. REG v. FATTEH CHAND VASTACHAND, **5 B.H.C. Cr. 85.** [*F.*, 5 Bom. L.R. 207; *R.*, 6 B.H.C. 47, Rat. Un. Cr. C. 644, 16 A. 84, F. B., Rat. Un. Cr. C. 719, 720, 19 B. 741, Rat. Un. Cr. C. 748, 806, 19 B. 749, Rat. Un. Cr. C. 850, 917, 23 B. 316, 3 S. L. R. 102 = 11 Cr. L. J. 13 = 4 Ind. Cas. 597.]

(15)—*Omission to state the facts of the case, whether amounts to a defect in charge.*—Where a charge to the jury did not show what the facts of the case were, what the evidence adduced was, or what the case for the accused was, *held*, that the case was not put to the jury as required by law, or in such a way as to enable them to exercise their functions as jurymen. BIRENDRA LAL BHADURI v. EMPEROR, **30 C. 822 = 7 C.W.N. 639.**

(16)—*Defective summing up—Weight to be given to evidence in a case—New trial, when could be ordered.*—It would lead to defeat and not to promote justice, if a verdict were set aside and a new trial granted for a defective summing up with reference to the weight of evidence given in a case, in which a High Court would, upon evidence given in a trial, have affirmed a conviction if, instead of a trial by jury, the trial had been before a Judge and assessors. In matters like these, the question to be considered is not whether upon a proper summing up of the whole evidence, a jury might possibly have given a different verdict, but whether the legitimate effect of the evidence would require a different verdict. If the Court is of opinion that the evidence would not, on any proper view of the case, support a conviction, it would be worse than useless to send back a case for a new trial in order that a jury may have the opportunity of convicting on such

***Charge to Jury*—continued.**

——1.—General—*continued.*

evidence upon a proper summing up. JAMIRUDDI MASALLI v. EMPEROR, **29 C. 782 = 6 C.W.N. 553.** (5 W.R. Cr. 80, 8 W.R. Cr. 19, 11 W.R. Cr. 21, *R.*) [*R.*, 35 M. 247 = 11 M.L.T. 1 Sup. = 22 M.L.J. 490 = 1912 M.W N. 207 = 14 Ind. Cas. 849 = 13 Cr.L.J. 305, 35 M. 397 = 1912 M.W.N. 549 = 12 M.L.T. 1 = 13 Cr. L.J. 352 = 14 Ind. Cas. 896, 9 Cr. L.J. 560.]

(17)—*Defective summing up — New trial, practice as to.*—The power of setting aside convictions and ordering new trials for any error or defect in the summing up, will be exercised by the High Court only when the Court is satisfied that the accused person has been prejudiced by the error or defect, or that a failure of justice has been occasioned thereby. *In re* ELAHEE BUKSH, **5 W.R. Cr. 80 = B.L R. Sup. Vol. 459.** [*F.*, 3 B.L R. 66; *R.*, Rat. Un. Cr. C. 245, 19 W.R. Cr. 68, 3 Bom. L.R. 694, 29 C. 792, 26 B. 193, 26 M. 1, 25 M. 147.]

(18)—*Trial by jury—Omission to read to the jury the material portion of evidence.*—An objection to a trial by jury, on the ground that, in delivering his charge to the jury, the Judge did not read material portions of the evidence, is not in itself sufficient for the reversal of a verdict of the jury. In each case it must be a question whether the omission to read the material portions of the evidence was such as to misdirect a jury A Court of appeal will not interfere with the verdict of the jury if such omission has not prejudiced the accused. EMPEROR v. APPUNNA DEVAPPA, **5 Bom. L. R. 207.**

(19) — *Misdirection — Evidence discussed generally—Retracted confession—Corroboration.*—Where the Sessions Judge did not sum up the evidence to the jury calling their attention to the material facts of it and leaving them to form their own opinion on it, but only treated it generally and called it "very poor evidence" which, "standing alone, amounted to nothing," *held*, that the charge was defective. *Held*, also, that it was a misdirection to tell the jury that the law, in the case of retracted confessions, was to look for corroboration in independent evidence, as there is no rule of law that a retracted confession must be supported by independent reliable evidence corroborating it in material particulars. QUEEN-EMPRESS v. GANGIA, **23 B. 316.**

(20)—*Misdirection to jury—Failure to point out to jury as to the irrelevancy of confession under s.* 24.—Where a Sessions Judge, in his charge to the jury made no reference to the relevancy or otherwise of a confession made to a village Magistrate on inducement, but merely told the jury that, if the confession was true, it was enough to warrant the conviction of the accused, *held*, that there had been a material and important misdirection likely to lead to an erroneous verdict. THANDRAYA MUDALY v. EMPEROR, **26 M. 38 = 2 Weir 733.**

Charge to Jury—continued.

——1.—**General**—*continued.*

(21)—*Misdirection to jury — Question of whether possession of stolen property was recent enough to warrant conviction for substantive offence.*—Where a Judge, in his charge to the jury directed them that the finding of the stolen property with the accused two months after the dacoity was "so short" a time as to justify them in convicting the accused of the dacoity itself, instead of convicting them of receiving stolen property, *held*, that the Judge had misdirected the jury. Whether the possession of the stolen property was recent enough to warrant a conviction for the substantive offence was a matter entirely for the jury, and should not have been put to them in the positive way which the Judge adopted. GUZZALA HANUMAN v. EMPEROR, **26 M. 467**=**2 Weir 517.**

(22)—*Common object of unlawful assembly, not mentioned in the charge—Misdirection—Crim. Pro. Code* (1882), *s.* 225.—Where a Judge in his charge to the jury propounded two different common objects of an unlawful assembly, the accused being charged with one of them only, *held*, that the conviction of the accused should be set aside and a retrial should be ordered, inasmuch as it was impossible to say which of the two common objects the jury accepted and, if they had accepted the one on which he had not been charged, he had no opportunity of meeting it. SABIR v. QUEEN-EMPRESS, **22 C. 276** [*F.*, 33 C. 295=2 C.L.J. 516=3 Cr. L. J. 153; *R.*, 2 Bom. L.R. 1129, 38 P.W.R. 1907, Cr.; *D.*, 4 C.W.N. 196.]

(23)—*Charge to jury—Misdirection—Burden of proof—Evidence Act, s.* 103—*Crim. Pro. Code* (1898), *ss.* 298, 299 *and* 537—*Retrial owing to misdirection—Powers of High Court.*—It is for the jury, and not for the Judge, to say what fact has or has not been proved. The Judge should call the attention of the jury to the evidence, and having done so, should leave it to them to form their own conclusion. *Held*, that the Judge, in stating to the jury, that, under s. 103 of the Evidence Act, the *onus* may be said to be on the accused to show that the deed in respect of which he was charged with forgery was genuine, took an erroneous view of the law and misdirected the jury, and that s. 537 would not apply to such a misdirection. It is doubtful whether the High Court has the power to try a case in which it has set aside a conviction on the ground of misdirection. The accused is entitled in such a case to have the case re-tried before a jury and, as a matter of procedure and in justice to the accused, this course should be adopted. SADU SHEIKH v. EMPRESS, **4 C.W.N. 576.**

(24)—*Reading—Charge during trial—Misdirection.*—A jury should not be told that the prisoners had previously been bad characters. It is a fact to be taken into consideration by a Sessions Judge after conviction and when awarding sentence. QUEEN v. KULUM SHEIKH, **10 W.R. Cr. 39.**

Charge to Jury—continued.

——1.—**General**—*concluded.*

See CRIM. PRO. CODE, 1898, ss. 288, 423 (2), 2 Weir 509.

See CRIM. PRO. CODE, 1898, s. 423, cl. 2, 2 Weir 517.

——2.—**Misdirection.**

(1)—*Charge to jury—Duty of Judge.*—The duty of a Judge charging a jury is to present the facts in their natural aspect; and if that aspect is greatly favourable to the one side or the other, any attempt by the Judge to redress the balance, by out-of-the-way suggestions and far-fetched explanations, not put forward by the parties, is not impartial, but the reverse. Such suggestions and explanations may, properly, be urged by the pleaders, and the jury will give them their true weight; whereas, if they are put forward by the Judge, a value will be attached to them to which they are not intrinsically entitled. KIZHAKEDATH UNNIRAM v. QUEEN, **9 M.L.J. 380**=**2 Weir 386.**

(2)—*Summing up of evidence—Duty of Judge—Misdirection.*—It is a sufficient compliance with the requisition of the Code, if the Judge, in summing up to the jury, points out the principal features of the evidence, both as regards the case for the Crown and that for the defence. QUEEN v. SHEPPARD, **13 W.R. Cr. 23.**

(3)—*Charge—Misdirection to jury.*—In giving warning to the jury not to disbelieve a mass of otherwise consistent evidence because in one or two minor and immaterial points the witness made different statements, a Judge exercises a wise discretion, and affords no ground for the objection of misdirection to the jury. QUEEN v. BUSTEE KHAN, **1 W.R. Cr. 17.**

(4)—*Duty of Judge—Misdirection.*—Where the Judge omitted to aid the Jury in arriving at a proper conclusion on questions of fact, but himself arrived at a conclusion on the facts which he should have left to the jury, *held* that the verdict founded thereon was bad and that the prisoner ought to be released. QUEEN v. RAMGOPAL DHUR, **10 W.R. Cr. 7.**

(5)—*Omission to point out weakness of evidence for prosecution.*—The omission of a Judge to point out to the jury the weakness of the evidence against the accused and the possibility of other persons being guilty parties does not amount to a positive misdirection. QUEEN v. CHOONEE, **5 W.R. Cr. 13.**

(6)—*Misreception of evidence—Reasons given by Magistrate for discharge in the first instance—Reasons given by Sessions Judge in directing commitment—Setting out nature of defence—Judge's address to jury—What should nature of address be—Crim. Pro.Code, s.* 423, *cl.* (2).—The reasons given by a Magistrate in discharging the accused at first and the contents of the Sessions Judge's order in directing further enquiry and the commitment of the accused, that is to say, the opinions of these two officers should not be admitted in evidence. Failure to set out clearly

Charge to Jury—continued.

——2.—**Misdirection**—*continued.*

the nature of the defence of the several accused, and failure to warn the jury, in dealing with the retracted confession of one of the accused, that, if the jury found they could not act upon it as against that accused, they must wholly disregard it as against the others, will vitiate the trial. A Sessions Judge in addressing a jury should endeavour to speak in a simple and direct manner. The charge to the jury should not be involved, and the language used should not be extravagant, so that the jury may not experience any difficulty in appreciating his true intention and meaning. HARENDRA PAL v. EMPEROR, **7 Ind. Cas. 915 = 11 Cr.L.J. 538.**

(7)—*Statement of prisoners—Depositions before Magistrate.*—The bare statements of prisoners are inadmissible in evidence ; so are depositions before the Magistrate except to contradict the evidence of the same witnesses as given before the Sessions Court. Consequently it is improper for a judge to allude them in his charge to the jury. QUEEN v. BHEKOO SINGH, **7 W. R. Cr. 72.**

(8)—*What amounts to.* — It would be a material misdirection to the jury to tell them to leave out of consideration the evidence of a witness and the retracted confession of the accused. The Sessions Judge, after commenting upon the evidence of the witness, should leave it to the jury to act upon that evidence or not as they thought right. As to the retracted confession, *held* that he should have told them that they should consider, in view of all the circumstances in the case, whether the confession or the statement retracting it was true and to act accordingly. PUBLIC PROSECUTOR v. PAPAKKA, **8 M.L.T. 372 = 8 Ind. Cas. 573.**

(9)—*Hearsay statement—Anonymous letter.*—The receiving of a hearsay statement as evidence against the accused, and also of an anonymous letter which was put in without showing how or by whom it was sent, are facts that unjustifiably prejudice the accused ; and an omission to draw the attention of the jury to these facts would amount to a misdirection. QUEEN v. CHUNDER KOOMAR MOZOOMDAR, **24 W.R. Cr. 77.**

(10)—*Accomplice evidence—Corroboration necessary.*—The Judge merely telling the jury, in a case of murder, that it was for them to consider whether the evidence of the accomplice was strictly corroborated as to the prisoners or not, would not amount to a proper direction. The Judge should go through the history of the crime as detailed by the accomplices, and must point out any independent evidence proving facts, showing that the prisoners were or must have been present at or cognizant of the murder. QUEEN v. KHOTUB SHEIKH, **6 W.R. Cr. 17.** QUEEN v. KAROO, **6 W.R. Cr. 44.**

(11)—*Omission to warn jury not to convict on uncorroborated evidence of accomplice.* — A Sessions Judge should warn the jury of the infirmity which attaches to the evidence of an approver and he should also tell them (if the fact be so) that the approver is speaking under the influence of an officer of conditional pardon. It is a misdirection to the jury to say that the uncorroborated evidence of the accomplice is as reliable as other evidence, and to tell them that the evidence of the accomplice is uncorroborated by a fact which is no evidence at all. QUEEN v. NAWAB JAN, **8 W.R. Cr. 19.**

(12)—*Evidence of persons not having personal knowledge from their own observation.*—The evidence of persons not having personal knowledge from their own observation ought not to be allowed to go to the jury, especially when such persons do not orally depose before the jury, but their evidence is presented to the jury in the form of a written deposition. QUEEN v. RAMGOPAL DHUR, **10 W.R. Cr. 57.**

(13)—*Different trials of different persons in respect of same crime—Fresh charge to jury necessary.*—When different trials, of different persons, are held at different times, though in respect of the same crime, a fresh charge to each jury should be delivered in each case. QUEEN v. MAHADEO, **W.R. 1864, Cr. 15.**

(14)—*Crim. Pro. Code*, 1861, *s.* 379—*Omission to sum up evidence—New trial.*—A new trial would be ordered if the Judge fails to sum up the evidence, and neglects the provisions laid down in s. 379, Crim. Pro. Code, 1861. QUEEN v. SHUMSHERE BEG, **9 W.R Cr. 51.** (B.L.R. Sup. Vol. 359, 5 W.R.Cr. 80, *R.*)

(15)—*Summing up of evidence.*—Although the necessary conditions regarding the Judges summing of evidence to the jury are not satisfied, there may be circumstances in which it would be unnecessary to set aside the conviction. QUEEN v. SITWA *alias* SITARAM PUTWAH, **14 W.R.Cr. 66.**

(16)—*Summing up evidence—Judge stating impression made by evidence on his own mind.*—The Sessions Judge in advising the jury on questions of fact may inform them of the impression, which the evidence in the case might have made on his own mind. *In re* DWARKANATH SEN, **13 W.R.Cr. 34.**

(17)—But he must add in the clearest terms that the ultimate decision rests with the jury. QUEEN v. ABDOOL JULEEL, **1864, W.R.Cr. 5.**

(18)—*Judge in his charge to jury not to give a positive opinion as to the guilt or innocence of accused.*—The Sessions Judge, in his charge to the jury, must not give a positive opinion as to the guilt or innocence of the accused. *In re* BHARUT CHUNDER CHRISTIAN, **1 W.R. Cr. 2.**

(19)—*Judge's charge to the jury—Danger of Judge giving out his own opinion of the case.*—Native juries are in all cases too apt to follow what they imagine to be the opinion of the presiding officer, and any expression of the Judge's own sentiments should be avoided. The

Charge to Jury—continued.

——2.—**Misdirection**—*continued.*

most that a charge should contain is a statement of the evidence *pro* and *con*, with a running commentary as to its agreement or disagreement with the other facts of the case. QUEEN v. GUNGA BISHUN, **1 W R.Cr. 25.**

(20)—*Judge considering prisoner guilty—Reasons to be stated.*—The Sessions Judge should sum up the evidence as recorded before him ; and, if he considers the prisoner guilty, he should state his reasons for so considering. QUEEN v. NAWAB KHAN, **7 W R. Cr. 25.**

(21)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 297 —*Charge to jury—Record.*—A Sessions Judge, in summing up to the jury, should set out the evidence fully and should also record in his charge what evidence he has read out to them. QUEEN EMPRESS v. BASWANTAPPA LINGAPPA, **Rat. Un. Cr. C. 917 = Cr. Rg. 23 of 1897.** (5 B.H.C. 85, *R.*).

(22)—*Penal Code*, s. 304—*Form of charge to jury.*—A Sessions Judge in summing up to the jury in the case of an offence under s. 304 of the Penal Code, should draw their attention to both parts of the section and ask them to say explicitly under which part they find the accused guilty. QUEEN-EMPRESS v LADKYA, **Rat. Un. Cr. C. 530 = Cr. Rg. 62 of 1890.**

(23)—*Verdict of not guilty of culpable homicide—Procedure—Inquiry if accused is guilty of minor offence.*—Where a jury returns a verdict of not guilty of culpable homicide, it is the duty of the Sessions Judge to require them to find expressly whether or not the accused is guilty of any minor offence. QUEEN-EMPRESS v. PANDU KAL PATIL, **2 Bom. L.R. 334.**

(24)—*Summing up to jury—Omission to notice evidence, effect of.*—Where the defence evidence, which appeared to the High Court to be untrustworthy, was not noticed by the Sessions Judge at the original trial in his charge to the jury, the summing up was held not defective on that account. *In the matter of the petition of* ROCHIA MOHATO, EMPRESS v. ROCHIA MOHATO, **7 C. 42 = 8 C.L.R. 273.**

(25)—*Crim. Pro. Code*, 1882, *s.* 271—*Explanation of the charge to jury.*—A Sessions Judge should explain to the jury the charges against the prisoner. *In re* SINGA, **2 Weir 339.**

(26)—*Crim. Pro. Code, Act* X *of* 1882, ss. 298, 537—*What amounts to misdirection.*—Mere non-direction does not amount to misdirection to the jury, and the High Court will not interfere with a verdict of the jury, unless the non-direction appears to be so material as to amount to a misdirection. QUEEN-EMPRESS v. YESU, **Rat. Un. Cr. 644 = Cr. Rg. 17 of 1893.** (5 B.H.C. 85, 10 B.H.C. 88, 7 C. 42, *R.*).

(27)—*Crim. Pro. Code*, 1898, ss. 418, 423 (2) —*Misdirection to jury—Interference by High Court.*—Where, in charging a jury, the Sessions Judge deals with all the points of importance urged on behalf of the accused, the mere fact that some of the points were not amplified, as they might have been, does not amount to a misdirection. Before interfering with the verdict of a jury on the ground that a piece of evidence was wrongly admitted and allowed to go before the jury, the High Court must be satisfied first, that the verdict is erroneous, secondly, that the error was caused either by the Judge's misdirection to the jury as to the evidence, or by a misunderstanding, on their part, of the law as to it as laid down by the Judge. Where material evidence which ought not to be admitted is admitted and the jury are placed in possession of it, there is an error of law in the trial under s. 418, and there is a misdirection of law when the Judge tells the jury that it is evidence which they can consider and on which they can, if they think proper, convict the accused. The fact that, after putting the jury in possession of the inadmissible evidence, the Judge in his charge goes on also to point out circumstances which would justify the jury in disbelieving the wrongly admitted evidence, does not make the misdirection any the less a misdirection. Where inadmissible evidence is let in with other evidence legally admissible, and the former is of a material character, it would be mere speculative refinement to hold that the jury must, in convicting the accused, have relied upon the latter and rejected the former. EMPEROR v. VAMAN SHIVRAM DAMLE, **27 B. 626 = 5 Bom. L R. 599.**

(28)—*Sessions trial—Omission to put certain important matters before jury—Misdirection.*—It was contended that, in a trial before a Court of Sessions, though the Judge took a fair and lenient view of the case, yet in his charge to the jury, he failed to put before them certain important matters, by which omission the accused had been prejudiced, and a failure of justice had thereby been occasioned. *Held*, on the facts of the case, that, though the heads of the charge to the jury might have shown greater detail, the Court saw no reason to doubt that the main points on both sides were fairly put before them. QUEEN-EMPRESS v. SHETTYA, **2 Bom. L.R. 1129.**

(29)—*Penal Code*, ss. 361, 366—*Misdirection to jury on the question of intention.*—Where a Sessions Judge, in a trial for kidnapping, charged the jury thus :—"It remains only to consider the question of intent. The charge was that the girl was kidnapped in order that she might be forced or seduced to illicit intercourse. As to this, it is sufficient to say that no other inference is possible under the circumstances. When a man carries off a young girl at night from her father's house, the presumption is that he did so with the intent indicated above. It would be open to him, if he had admitted the kidnapping, to prove that he had some other object, but no other object is apparent on the face of the facts." *Held*, that this amounted to a misdirection, and had prejudiced the accused, as the question of intent was a

***Charge to Jury*—continued.**

——2.—Misdirection—*continued.*

pure question of fact, and as it did not appear that the Judge left the jury any alternative, and practically what he told them was that, upon the evidence, there was only one conclusion they could arrive at, namely, the intent charged was proved. QUEEN-EMPRESS v. HUGHES, **14 A. 25 = A.W.N. 1891, 170.**

(30)—*Charge to jury—Misdirection—Offences under ss.* 474 *and* 475, *I.P.C.*—The accused was charged, first, "with having in his possession 37 papers, on which seals or signatures or other marks and devices, which are used for the purpose of authenticating documents of the nature of valuable securities, had been counterfeited, intending that such seals or signatures, or other marks and devices shall be used for the purpose of giving authenticity to documents thereafter to be forged on such papers, an offence punishable under s. 475, I.P.C. The second charge against the accused was "being in possession of the above 37 documents, knowing the same to be forged and intending that the same shall be fraudulently or dishonestly used as genuine, an offence punishable under s. 474, I.P.C." The Sessions Judge convicted the accused of both the offences. On appeal to the High Court, *held* that the conviction under s. 475 was not sustainable, as the Sessions Judge had not explained the nature of the offence to the jury, as the evidence necessary to support which was never placed before them, and as to which the Judge was wholly silent. *Held*, also, that the Sessions Judge had misdirected the jury on the second charge, inasmuch as he told them that the only issue they had to decide was whether the forged documents were in the possession of the accused, ignoring altogether the question of knowledge combined with intention which is so absolutely requisite to justify a conviction under s. 474, and as he had omitted to direct the jury as to the description of the documents necessary for the constitution of an offence under s. 474. QUEEN-EMPRESS v. ABAJI RAMACHANDRA, **16 B. 165.**

(31)—*Misdirection of jury—Misunderstanding of the charge.*—In a case of alleged misdirection, the High Court is bound to give all due weight to the statement of the Judge himself, as to what he really said to the jury. An application on behalf of an accused person made to the High Court to set aside a conviction, on the ground of misdirection, was refused, on the ground, that the counsel for the accused had merely misunderstood the expressions used by the Judge in charging the jury, and that the Judge's charge could not have the meaning suggested by the counsel for the accused. QUEEN-EMPRESS v. SHIB CHUNDER MITTER, **10 C. 1079.** [*R.*, 3 Cr.L.J. 1 = 3 L.B.R. 75, F.B.]

(32)—*Misdirection of the jury—Delay—Reference to the Calcutta High Court, under s* 80 *of the Burma Courts Act.*—Where the additional Recorder of Rangoon omitted to point out to the jury the fact, that the complainant did not charge four of the seven accused until eighteen days after the assault against the complainant was made, whereas the first three accused were charged on the day of the occurrence, *held* that such omission amounted to a misdirection of the jury, and that it so prejudiced the accused as to justify the setting aside of the verdict of the jury. LEIU TU v. QUEEN-EMPRESS, **11 C. 10.** [*R.*, 4 C.W.N. 196.]

(33)—*Crim. Pro. Code* (1882), *ss.* 337, 364 *and* 434—*Misdirection to jury—Evidence of accomplice—Improper reception of evidence—Letters Patent*, 1865 (*Calcutta*), *s.* 26—*High Court's powers of review.*—O was charged with the murder of the deceased. The two principal witnesses for the prosecution were M and G, to whom pardons were tendered by the committing Magistrate, under s. 337 of the Crim. Pro. Code, and were accepted by them. The case for the prosecution was that the three persons, O, M and G went out armed at night, broke into a house, from which they took some property; they used at other houses violence to persons found there; they carried off the deceased at dead of night from his house and took him to the tank. While there, he was shoved into the tank by O, G being close by and, though not aiding, and only so far as his presence might tend to intimidate the deceased from making resistance, not interfering to prevent the deceased from being so treated. O murdered him within three yards of G by a gun. After it was fired, M returned and found the deceased in the water. M and G deposed before the Magistrate, that O was at the tank with the deceased, and G deposed further that O fired the shot that killed the deceased. *Held*, the G was an accomplice and it was the duty of the Judge to follow the ordinary rules and to advise the jury not to act on his evidence without corroboration in a material part of it. Where the Judge, in the above case, in his direction to the jury, expressed that G was not an accomplice, *held*, that it amounted to a misdirection in fact, though not in form, as the effect of such direction would be that his evidence ought to be given as much weight as that of a perfectly independent and unprejudiced witness. *Held*, further, that the depositions of G and M before the committing Magistrate were improperly read to the jury as they had not been admitted in evidence and that the admission prejudiced the prisoners. The Court did not determine the question whether M was an accomplice. [*R.*, 15 Cr. L.J. 410 = 24 Ind. Cas. 146; *D.*, 27 C. 144.] In case of such a misdirection to the jury and the improper reception of evidence, the High Court ought to exercise its powers of review under cl. 26 of the Letters Patent. QUEEN-EMPRESS v. O'HARA, **17 C. 642.** [*F.*, 25 C. 711; *R.*, 25 M. 61, P.C. = 3 Bom. L.R. 540 = 5 C.W.N. 866 = 28 I.A. 257 = 11 M.L.J. 233 = 8 Sar. 160, 35 M. 397 = 1912 M.W.N. 549 = 12 M.L.T. 1 = 13 Cr. L.J. 352 = 14 Ind. Cas. 896, 10 M.L.J. 147, 2 M.L.T. 414 = 32 B. 111 = 9 Bom. L.R. 789 = 6 Cr. L.J. 164.]

Charge to Jury—continued.

——2.—**Misdirection**—*continued.*

(34)—*Crim. Pro. Code* (1882), ss. 423 (*d*), 537—*Misdirection to jury—Erroneous verdict.*—Before a verdict can be interfered with, the High Court must be satisfied that such verdict is erroneous owing to a misdirection by the Judge or to a misunderstanding on the part of the jury as to the cases laid down by him. Both ss. 423 (*d*) and 537 require that before the verdict can be set aside on the ground of misdirection, the Court must be satisfied that the misdirection was of such a nature that it may be reasonably supposed that the verdict was erroneous by reason of such misdirection; or, in other words, there has been a failure of justice by reason of such misdirection. It is not necessary that the High Court should go through the facts, and find for itself whether the verdict is actually erroneous upon the facts. Where a Judge in his charge to the jury in a case of rape said "you will observe that the sexual intercourse was against the girl's will" instead of saying "you will have to determine upon the evidence in the case whether sexual intercourse was against the girl's will," and concluded the charge by saying "you have seen the witnesses and I have no doubt that you will return a just verdict." *Held* that the charge amounted to a clear misdirection as it omitted to tell the jury that it was for them to consider, whether upon the evidence adduced the offence was established and that the case should be retried as the verdict was vitiated by such misdirection. ALI FAKIR v. QUEEN-EMPRESS, **25 C. 230.** [*R.*, 26 M. 1=2 Weir 521.]

(35)—*Crim. Pro. Code*, 1882, *ss.* 480 *and* 423 (*d*)—*Misdirection to jury—Charge of theft.*—In a case where a servant, charged by his master with having committed theft of a box, pleaded that he had done so with the object of giving a lesson to his master, the Judge in charging the jury said :—If the jury find that the accused removed the box to put the owner to trouble, that is causing wrongful loss to the owner, and the act is theft. The jury will consider the accused's statement in this connection." *Held* that the charge amounted to a misdirection, as to remove a thing to put the owner to trouble would not necessarily involve the causing of wrongful loss. NABI BAKSH *alias* ALI BAKSH v. QUEEN-EMPRESS, **25 C. 416=2 C.W.N. 347.**

(36)—*Misdirection to jury—Omission to explain the law.*—It is the duty of a Judge, to give a direction upon the law to the jury, so far as to make them understand the law as bearing upon the facts; and if he does not give them an explanation of the law sufficiently comprehensive to enable them to decide the particular issue, it is a misdirection. JHUBBOO MAHTON v. EMPRESS, **12 C.L.R. 233.**

(37)—*Misdirection to jury—Explanation of the law—Mere reading of sections of the I.P.C.—Judge giving his opinion on facts or inference deducible from them.*—(*a*) It is the duty of the Sessions Judge, when charging the jury, to explain the law to them; merely reading the sections of the I.P.C. bearing upon the charge, and there leaving the matter, is no explanation of the law (*b*). The Judge should not give his opinion to the jury upon a question of fact or an inference deducible from the facts. He must simply call their attention to the facts, and then leave it to them to consider whether from those facts they conclude that a particular criminal act was done, and if they so concluded, he must then direct them that the case comes within a particular section of the Code. Failure in these respects amounts to a misdirection vitiating the trial. SRI PROSAD MISSER v. EMPRESS, **4 C. W.N. 193.**

(38)—*Crim. Pro. Code* (1882), *ss* 423 (*d*), 537—*Omission to explain the law to jury—Misdirection—Defect whether curable.*—An omission to explain the law to the jury amounts to a misdirection within the meaning of s. 423 (*d*) of the Code. There must be some statement on the record to show that the law has been explained to the jury. The effect of ss. 423 (*d*) and 537 is to require the High Court, before interfering with the verdict of the jury, to see whether the misdirection complained of is one of a material character, that is, one which has made the verdict erroneous and led to a failure of justice. Where the accused was charged with having committed a number of offences of a complex character, *held*, that the omission of the Judge to explain the elements that go to constitute each offence was a misdirection that had vitiated the verdict and had occasioned a failure of justice, having regard to the fact that the jury were not able to say what their verdict was upon each charge. BIRU MANDAL v. QUEEN-EMPRESS, **25 C. 561.** (21 C. 955, *Rel. on*).

(39)—*Crim. Pro.Code* (1898), *ss.* 297 *and* 537—*Charge to jury—Omission of Judge to lay down the law—Incomplete definition of offence—Material irregularity.*—If the direction of the Judge leaves room for doubt as to whether the jury had present to their minds an essential element of the offence, with which the accused are charged, it is a misdirection to the jury. So where, in a charge of dacoity, the Judge said to the jury "the accused are charged with dacoity; dacoity is committed when any number of persons not less than five conjointly committed robbery," but did not explain to the jury what is necessary to constitute the offence of robbery, is an omission to lay down the law, by which the jury are to be guided, as required by s. 297. It is not merely a misdirection. It is a failure to comply with an express provision of the law and s. 537 is not applicable to such a case. MARI VALAYAN v. EMPEROR, **30 M. 44=1 M.L.T. 399=5 Cr. L.J. 78.** (29 C. 379, *R. & F.*) [*F.*, 11 Cr. L.J. 222=6 Ind.Cas. 14=8 M.L.T. 82, 11 Cr. L.J. 482=7 Ind. Cas. 401; *R.*, 7 Bur. L.T. 20=15 Cr. L.J. 257=23 Ind. Cas. 465.]

Charge to Jury—continued.

——2.—**Misdirection**—*continued.*

(40)—*Misdirection of jury—Omission to point out elements of offence—Crim. Pro. Code* (1882), *s.* 423—*Reversal of verdict—Powers of appellate Court.*—It is the duty of the Judge to call the attention of the jury to the different elements constituting the offence with which an accused person is charged, and to deal with the evidence by which it is proposed to make the accused liable. Failure to do so amounts to a misdirection. Where a Judge failed to explain to the jury that, in order to convict an accused person under s. 412, Penal Code, it was necessary to find that he retained or had possession of the goods with guilty knowledge, and to bring to the notice of the jury that the accused was in police custody, at the time of the search, *held*, that the omission amounted to a misdirection. [*Appl.*, 30 M. 44=1 M.L.T. 399]. Once the verdict of the jury is set aside under s. 423 (*d*), there is no restriction on the power of the appellate Court, to deal with the case of which it has complete *seizin* in any of the manners provided in that section. Its power is not restricted to directing a retrial, and it may also reverse the finding and sentence and acquit or discharge the accused, or order him to be retried, or alter the finding and maintain the sentence, or without altering the finding, reduce the sentence. TAJU PRAMANIK v. QUEEN-EMPRESS, **25 C. 711=2 C.W.N. 369.** (21 C. 955. *Diss.*; 17 C. 642, 9 B.H.C. 358, 1 C. 207, *F.*) [*Appl.*, 7 Bur. L.T. 20=23 Ind. Cas. 465=15 Cr. L.J. 257.]

(41)—*Misdirection to jury — Omission of Judge to direct jury to give accused the benefit of reasonable doubt.*—Where the Judge expresses a certain opinion on the facts without telling the jury that they are at liberty to form their own opinions in regard to such facts, and without telling them that if they had any reasonable doubt on any point, the accused are entitled to the benefit of that reasonable doubt, the Judge must be held to have misdirected the jury. PANCHU DAS v. EMPEROR, **34 C. 698=11 C.W.N. 666=5 Cr. L.J. 427.**

(42)—*Omission of Judge to direct Jury to give the accused the benefit of doubt, when amounts to a misdirection.*—A direction by the Judge to the jury that, if they entertain reasonable doubt as to the guilt of any one of the accused, the jury should give him the benefit of the doubt and acquit him, is certainly a usual and most proper direction and it ought, as a matter of practice, to be given in every case; but, it cannot be held that the omission to give it must, in every case, constitute a misdirection of such a character, as to render a conviction invalid. Where, however, the Judge thinks that the evidence is so weak that there are the very greatest doubts as to the guilt of the accused, the omission to direct the jury to give the benefit of the doubt is a misdirection, which prejudices the accused and entitles him to an acquittal. PARA THANDAN v. PARA SENNA MOONJI, **1 M.L.T. 350=4 Cr. L.J. 502.**

Charge to Jury—continued.

——2.—**Misdirection**—*continued.*

(43)—*Duty of Judge as to directing Jury to give accused benefit of doubt.*—Where a Judge did not lay down the law by which the jury should be guided, nor properly summed up the evidence, and, at the conclusion of the charge, directed them to consider the evidence against each prisoner without, at the same time, requiring them to consider the evidence in favour of each, and omitted also, to give jury the very necessary direction that, if they entertained any reasonable doubt as to the guilt of the accused, they (the accused) were entitled to the benefit of that doubt and should be acquitted, *held*, that there was a grave misdirection by the Judge to the prejudice of the prisoners. *In re* SUGALIGADU, **2 Weir 500.**

(44)—*Misdirection to jury—Penal Code, s.* 471 —*Forgery, elements of.*—In a sessions trial for an offence under s. 471, I.P.C., it is not sufficient for the jury merely to decide, on the evidence, whether the document in question was a forgery, and whether the accused knew it was a forgery, when it was used. It is also necessary for them to decide whether the document has been used fraudulently or dishonestly. KHORSHED KAZI v. EMPRESS, **8 C.L.R. 542.**

(45)—*False evidence—Misdirection.*—Where a Judge, in a case of false evidence, pointed out to the jury the contrast between the evidence for the prosecution and the course followed by the prisoner, *viz.*, a simple denial of the charge followed by a refusal to examine the witnesses in attendance, *held*, it was not a misdirection, so long as the Judge leaves it to the jury to decide between the opposing statements and to believe whichever they thought worthy of belief. QUEEN v. SEETANATH GHOSAL, **2 W.R. Cr. 60.**

(46)—*Misdirection—Perjury.*—Case in which the majority of the Court held that there had been neither misdirection to the jury nor error of law within the reading of s. 408, Crim. Pro. Code, to justify the High Court's interference with the finding of the Court below. QUEEN v. RAMMONI SEIN, **7 W.R.Cr. 69.**

(47)—*Misdirection to jury—Omission to lay before jury evidence affecting each of the accused severally.*—Where there are several accused, it is a misdirection not to lay before the jury clearly, though concisely, the evidence affecting each of the accused severally, not only what told against them, but also any that might be in their favour. JUGUT MOHINI DASSEE v. MODHU SUDHAN DUTT, **10 C.L.R. 4.**

(48)—*Crim.Pro.Code* (1882), *ss.* 418, 323, 537 —*Misdirection to jury in a charge under s.* 211, *I.P.C.*—Where, in a charge under s. 211, I.P.C. the Sessions Judge merely directed the jury that, if they believed the charge of dacoity, which had been instituted by the accused, to be false, they should find the prisoner guilty under the section, otherwise they should acquit him, *held*, that as the Judge did not place before the jury one of the most essential elements of the

***Charge to Jury*—continued.**

——2.—Misdirection—*continued.*

charge, *viz.*, that in instituting the false charge of dacoity, there was no just ground for the charge, the conviction should be set aside and a fresh trial should be ordered. TOMJI *alias* ZOMIJUDDIN PRAMANICK v. EMPRESS, **1 C. W.N. 301.**

(49)—*Crim. Pro. Code* (1898), *ss.* 225, 298 (2)—*Omission to state common object of unlawful assembly—Misdirection—Expression of opinion on question of fact.*—The omission to correctly state the common object of an unlawful assembly in the charge to the jury does not vitiate the trial, if the accused is not prejudiced thereby. S. 298 allows the Judge to express to the jury his opinion upon any question of fact. But the decision upon the questions of facts must be left entirely for the jury. When a charge to the jury places prominently before them all the circumstances that go against the accused, and does not call their attention to any of those that are in their favour, *held*, that there has been a misdirection sufficient to vitiate the trial. RAHAMAT ALI v. EMPRESS, **4 C.W.N. 196.** (22 C. 276, 11 C. 106, *D.*; 12 W.R. Cr. 80, 11 C. 10, *R.*)

(50)—*Plea of* alibi *not referred to in charge to jury.*—Where the accused pleaded an *alibi* and called witnesses to prove it, but the Sessions Judge in his charge to the jury has not referred to such evidence or to their plea, this would be a misdirection prejudicing the accused. *In re* GANGI REDDI BUCHANNA, **4 M.L.T. 194.**

(51)—*Crim. Pro. Code* (1898), *s.* 537—*Trial by jury—Judge's summing up—Misdirection.*—M, accused, was seen at the scene of offence, a week prior to its commission, with G, and other thieves. M was seen running from R's house (where M lodged) on which occasion he dropped a bundle which was found to contain a coat in the pocket of which was a spoon that was identified as one of the stolen articles. *Held* that, where the summing up of a Judge was calculated to leave upon the minds of the jury the impression that M was identified by four persons, whereas in fact he was identified by two only, the summing up was misleading. Where some of the stolen property was found in R's house, which is not the house of the accused, but where he was only lodging, the Judge ought to have told the jury that there was no evidence on which they could find that it was property found in his possession, and, as regards the spoon, the Judge ought not to have told the jury that, if they believed the evidence, the discovery of the property without doubt connected the accused with the offence. He should have left it to them to say whether, in the circumstances in which the property was found, including the period which had elapsed after the theft, they could find that it was found in the possession of the accused, and that, so soon after the theft as to enable them to presume that he was guilty of the theft. *In re* MANJUNATHA, **5 M.L.T. 134.**

***Charge to Jury*—continued.**

——2.—Misdirection—*continued.*

(52)—*Crim. Pro. Code* (1898), *s.* 297—*Direction to the jury—Misdirection, what is—Effect.*—Where a Sessions Judge did not explain to the jury as to what was meant by theft, but asked them to decide whether the accused was found at the place of theft and whether he was then with an honest or dishonest intention, and then convicted the accused on a verdict given by the jury, *held*, that the jury ought to have been directed to decide on the question of the dishonest removal of the property, and that the verdict of the jury ought to be set aside. *In re* KAMMAJ ASWATHEN, **6 M.L.T. 324.**

(53)—*Jury, trial by—Sessions Judge telling jury that there was no force in a certain argument of accused—Misdirection—Conviction under ss.* 395, 109, *I.P.C.—Maintainability.*—Where the Sessions Judge told the jury that there was no force in the argument that the accused may not have foreseen and may not have intended that a dacoity should take place, and where the accused was convicted of having committed offences under ss. 395, 109, I.P.C., *held*, that the Sessions Judge should not have taken the matter out of the hands of the jury in this way, and that the conviction of the accused should be set aside. *In re* SHIVAPPA HIGADE, **7 M.L.T. 191=5 Ind. Cas. 935=11 Cr. L.J. 334.**

(54)—*Crim. Pro. Code* (1882), *s.* 423 (2)—*Misdirection to jury—Theft.*—Where, in a case of theft, the only evidence against the accused was the possession of stolen property five years after the occurrence, *held*, that the Judge had misdirected the jury by saying that "on this evidence, notwithstanding that it is nearly five years since the crime occurred, you will decide whether you are satisfied with the prisoner's explanation for his possession of stolen property." The proper course would be to tell them to consider whether, after five years, it was reasonable to require the prisoner to prove how he came by the goods, or whether his story, not being in itself improbable, ought not to be accepted. *In re.* PUTHENVITTIL *alias* KARUMAN KUZHI KRISHNA NAYAR, **2 Weir 489=2 Weir 777.**

(55)—*Crim. Pro. Code* (1882), *s.* 423 (2)—*Misdirection to jury—Showing the stolen property, effect of.*—A direction to the jury that they should convict the prisoner, if they believed that he had shown the stolen property to the Police, is open to exception. If a person is found in possession or control of stolen property, there is, of course, a presumption that he was the thief. But the mere fact of knowing where such property is, is not equivalent to possession. *In re* MUPPIDI KRISHNAMOORTHY, **2 Weir 493.**

(56)—*Crim. Pro. Code* (1898), *s.* 432 (2)—*Misdirection to jury—Identification.*—Where a Judge directed the jury to acquit one of the prisoners on the ground that the witnesses who identified him had deposed falsely, *held*, that the Sessions Judge ought to have made it clear

Charge to Jury—continued.

——2.—**Misdirection**—*continued.*

to the jury that, if they disbelieved the witnesses on whose testimony the case hinged, in regard to any one of the prisoners, that was a circumstance to be carefully weighed by them in estimating the credibility of the testimony as it affected the other accused. His omission to do so amounted to a misdirection. *In re* BOGA VASANTHUGADU ADIKARI BUYANNA, **2 Weir 501.**

(57)—*Crim. Pro. Code* (1898), *ss.* 297, 298—*Charge to jury—Misdirection—Judge defining dacoity as robbery committed by more than five persons.*—Where a Sessions Judge, in a trial for dacoity, in the course of his summing up to the jury, told them that dacoity is robbery committed by *more than five* persons, instead of saying that it was robbery committed by five or more persons, *held*, that it was a misdirection, but as it did not prejudice the accused but was favourable to them, their conviction was not liable to be quashed on that ground. SINNA TEVAN *alias* SINNA KARUPPAN TEVAN v. EMPEROR, 9 **Cr. L J. 311=1 Ind. Cas. 546.**

(58)—*Crim. Pro. Code* (1898), *ss.* 292, 298—*Charge to jury—Confession of accused implicating himself and co-accused—Absence of direction that confession should be corroborated—Misdirection.*—Where a Sessions Judge charged the jury as follows:—"It is a rule of law that, where a person confesses a crime and implicates himself, if he implicates the persons who have been tried along with him to the same extent as he implicates himself, then, if you accept his statement as being true and voluntarily given as against himself, *you can safely accept it as true as against the other persons.*" *Held*, that, as the Judge did not caution the jury that such confession should be corroborated before it could be accepted, it amounted to a misdirection. *In re* GIDDIGADU, 9 **Cr. L.J. 404=1 Ind. Cas. 867=33 M. 46=8 M.L T. 116.** (7 M.H.C. App. 15, 1 M. 163, 4 C. 483, F.B., *R.*)

(59)—*Misdirection—Omission to tell the jury that the statement of one prisoner is not evidence against his fellow-prisoner—Omission to tell the jury that they are entitled to draw their own independent conclusions upon the facts—Conduct of a brother of the accused where no privity is shown—Admissibility.*—The omission of the Sessions Judge to warn the jury that the statement of one prisoner is not evidence against his fellow-prisoner is a material error and a misdirection fatal to the trial, notwithstanding that the Sessions Judge dealt with the evidence against each of the prisoners separately. When a Judge states his own opinion to the jury, omission to tell them that they are entitled to draw their own conclusions of fact is a misdirection. Where the conduct of the brother of the accused was placed before the jury as evidence against the accused, *held*, that the evidence of the brother and of the others proving the brother's conduct should be excluded as there was nothing to show, with any

Charge to Jury—continued.

——2.—**Misdirection**—*continued.*

degree of certainty, that his knowledge was necessarily derived from the accused and that he did not act on his own initiative and without any suggestion from the accused. SOURENDRANATH MITTRA v. EMPEROR, **10 C.W.N. 153=3 Cr. L.J. 144.** (6 B.H.C. Cr. 10, *Rel.*)

(60)—*Trial by jury—Defect in summing up—Statement of one accused against another—Retrial.*—The failure of a Sessions Judge in summing up to the jury, to tell them explicitly that the statement of one prisoner against another should not be considered in weighing the evidence against that other, is such a grave irregularity as to vitiate the verdict of the jury even though the Judge, in summing up, considered separately the evidence against each of the accused without referring at all to the statement referred to. (*Warden, J., Diss.*) REG v. SHEKH MIYA *valad* DAUD, **6 B.H.C.Cr. 10.** [*R.*, 10 C.W N. 153.]

(61)—*Evidence of approver—Misdirection to jury.*—A Sessions Judge should caution the jury not to accept an approver's evidence unless it is corroborated. It is a misdirection not to do so. QUEEN-EMPRESS v. ARMUGA, **12 M. 196=2 Weir 519.** [*R.*, 35 M. 397=13 Cr. L.J. 352=12 M.L.T. 1=(1912), M.W.N. 549=14 Ind. Cas. 896, 22 M.L.J. 490=(1912) M.W.N. 207.]

(62)—*Trial by jury—Evidence of accomplice—Direction—Practice.*—In a trial by jury, it is not sufficient for the Judge to tell the jury, that it is unusual to convict on the evidence of an accomplice without corroboration in material points. He should impress on them that it is opposed to prudence and practice to convict on such evidence. Yet, his omission to do so would not amount to an error in law. REG v. GANU DHAROJI, **6 B.H.C. Cr. 57.** [*R.*, 14 B. 331].

(63)—*Trial by jury—Misdirection—Charge of culpable homicide against three accused—Omission to deal with intention, common and individual—Omission to deal separately with the case of accused setting up distinct defence—Failure of justice.*—Where, in a charge of culpable homicide not amounting to murder, the Judicial Commissioner directed the jury, in his charge to them, in these terms, *viz.*, "If you hold it proved that the three accused all set upon with the intention of beating him, and that one of them struck the fatal blow, you will be justified in finding them all guilty of culpable homicide not amounting to murder, even if there is no evidence to show which of the three struck the blow" and also read and explained s. 34, I.P.C., *held*, (1) that the Judge misdirected the jury in stating that any one of the accused might be found guilty of culpable homicide, even though his individual intention and the common intention were merely to beat, and that the misdirection had in fact occasioned a failure of justice, and (2) that, as one of the accused denied his presence at the scene of the assault, and as there was positive evidence to

Charge to Jury—continued.

——2.—**Misdirection**—*continued*.

support his statement, the Judge's omission to deal with his case separately in his summing up constituted a misdirection which, in fact, had occasioned a failure of justice. CROWN v. MURID, **3 S.L.R. 125=11 Cr. L.J. 15=4 Ind. Cas. 608**.

(64)—*Charge to jury—Misdirection—Proof of previous conviction against accused—Judge charging jury that they were proved—Effect of misdirection on sentence and verdict.*—Where, in a sessions case, the Judge told the jury that certain alleged prior convictions against the accused were proved, instead of leaving to them to decide whether they were proved or not: *held*, (1) that it amounted to a misdirection, (2) and the misdirection did not affect the conviction of the accused, as the question of prior convictions can be gone into only after the jury return their verdict, and (3) that, though it affected the question of sentence, the Court was not prepared to interfere, seeing that the sentence passed were not too severe. THOOLIPATTI RAMA GOUNDAN v. EMPEROR, **2 Ind. Cas. 434**.

(65)—*Kidnapping—Charge to jury.*—It is no misdirection for the Judge, in a case of kidnapping, to leave the jury to decide upon the age of the girl kidnapped, merely aiding them with his own opinion in which they expressed their concurrence. QUEEN v. SHAMA KHANKEE, **7 W.R. Cr. 22**.

(66)—*Penal Code, ss. 361, Expl., and 363—Kidnapping minor married girl from father's keeping—"Lawful guardianship"—Misdirection to jury—Failure to place evidence fairly before jury — Retrial, order for — Sentence suffered under conviction set aside.*—Where an accused was charged with having kidnapped a married Hindu girl under 16 years of age by taking her out of the keeping of her father, the father being alleged in the circumstances of the case to be the lawful guardian, what the Judge should have left to the jury was whether or not the father had been lawfully entrusted with the care or custody of the girl. The Judge had charged the jury as follows:—"Now the lawful guardian of a married woman is no doubt her husband. But there is the evidence before you that she came with the consent of the husband into the house of her father, if you believe such evidence. Therefore, the father of the girl was her *de facto* lawful guardian for the time the girl was residing in her father's house." *Held*, that, in matters of this kind, a Judge should adhere to the words of the particular section of the Penal Code, with which he has to deal and not substitute phraseology of his own. As it further appeared that, upon the point of the husband's consent, the Judge had failed to place before the jury a fair and proper statement of the evidence on the record, the conviction was set aside and a further trial ordered. *Per Jenkins, C.J.*—"I have no doubt, should the accused be again convicted, the Court, in estimating what would be the proper sentence, will have regard to the detention already suffered by him." EMPEROR v. NAKUL KABIRAJ, **13 C.W.N. 754=11 Cr. L.J. 9=4 Ind. Cas. 543**.

(67)—*Misdirection—Statements of witnesses—Crim. Pro. Code (Act V of 1898), s. 164—Propriety—Judge's opinion on evidence.*—In a trial by jury, the Judge ought to tell the jury that the evidence of witnesses taken under s. 164 of the Crim. Pro. Code, must be accepted with a great deal of caution. He ought to point out that it is not always proper for the police officer to get such statements recorded for the purpose of pinning the witnesses down to some statement, especially at a time when they are not entirely free from police influence. It is a misdirection for the Judge to say that he sees no reason to disbelieve a particular witness. He ought to leave the question of believing or disbelieving to the jury. In placing a suggestion made by the Crown Prosecutor without any evidence to support it before the jury, the Judge ought to point out that there is no evidence to support the suggestion. KALI SINGH v. KING-EMPEROR, **7 C.L.J. 246=7 Cr. L.J. 315**.

(68)—*Misdirection — Material ingredient of offence not stated—Judge's opinion on facts—Jury sole Judges of fact—First information report.*—A Sessions Judge, in charging the jury in a case of culpable homicide not amounting to murder, omitted to tell them that they must come to a conclusion as to whether, in causing the death of the deceased, the accused had the intention to cause death, or such injury as was likely to cause death, or the knowledge that he was likely to cause death. *Held*, such omission was a clear misdirection. The Judge, in giving his opinion on the facts must tell the jury that his opinion is not binding on them and that they are the sole Judges of fact. If the first information Report is properly made evidence, it must be read out to the jury as a whole and if not, the Judge should abstain from all reference to it. He must not comment on it without placing it before the jury. NATABAR GHOSE v. EMPEROR, **35 C. 531=7 C.L.J. 599 =12 C.W.N. 774=8 Cr. L.J. 6**.

(69)—*Crim. Pro. Code (Act V of 1898), s. 303—Jury—Unanimous verdict of jury—Questioning jury—First information, use to be made of, whether evidence — Misdirection — Omission—Absconding of accused, value of.*—A Judge is not justified in questioning the jury after they have given an unanimous verdict. The first information is not evidence in the case. It is tendered by the Crown for such use as the defence may be able to make of it and to test the consistency of the prosecution evidence. The most use which a Judge can make of it is to say that, although it gave a different account of the occurrence from that in the evidence, yet it can be reconciled with the evidence. It is misdirection on the part of the Judge to ask the jury to accept the statement in the first information in preference to the evidence in the case. Where the Judge

Charge to Jury—continued.

——2.—**Misdirection**—*continued.*

thought it necessary to put the fact that no evidence was adduced for the defence prominently before the jury, he was bound to qualify it by pointing out to the jury that the defence was not bound to call any evidence, that they could rely on the prosecution evidence, as far as it could help them, and that they were entitled to the benefit of any doubt. Where it was proved that, after the alleged occurrence the accused and the villagers absconded, the Judge should point out to the jury that absconding is a matter which is equally consistent with innocence as with guilt, and that it could only be considered in connection with the rest of the evidence and that it is in itself a circumstance of no weight. ASFAR SHEIK v. EMPEROR, **8 Ind. Cas. 52=15 C.W.N. 198=11 Cr. L.J. 557.**

(70)—*Charge to jury—Previous proceedings, reference to—Misdirection.*—A Judge should not, in charging the jury, refer to a previous case against some other persons tried for the same offence, except to warn the jury that they were not to be influenced in any way by the result of such previous trial. It is a misdirection for him to tell the jury that the High Court had come to a certain finding in the previous case, and they were to consider if they had any reason for coming to a different conclusion. KESHAB PAL v. EMPEROR, **9 C. L.J. 380.**

(71)—*Duty of a Judge who thinks that the prosecution should have called a certain witness for examination—Sessions Judge charging police officer making search with breach of police rules.* — Where a Sessions Judge had, after the examination of a Head Constable, considered that the evidence of the Inspector of Police was necessary, *held*, that he should have intimated his opinion to the Public Prosecutor, and given an opportunity of calling him. But he should not remark upon his absence as a witness in charging the jury. Where a Sessions Judge in his charge to the jury charged a Head Constable, one of the prosecution witnesses, with a breach of the Police regulations in that, in conducting a search, he had a loose shirt on, without examining the Head Constable about it, *held*, that the Sessions Judge had misdirected the jury. QUEEN-EMPRESS v. RAMAN, **21 M. 83=2 Weir 503=2 Weir 374=2 Weir 46.**

(72)—*Crim. Pro. Code*, ss. 379, 408—*Accused aged above seven and below twelve—Question of fact—Trial by jury.*—The question whether an accused above the age of seven years and below twelve has sufficient maturity of understanding to judge of the nature and consequences of his act, is one of fact and to be determined by the jury. The omission by the Sessions Judge to refer this question to the jury is a ground for setting aside the conviction and ordering a new trial. REG v. IMAM, **Rat. Un. Cr. C. 27=Cr. Rg. 25-11-1869.**

Charge to Jury—continued.

——2.—**Misdirection**—*continued.*

(73)—*Complaint by accused in previous trial —Admissibility without proof of presentation of it by him.*—Where, in a sessions trial for an offence under s. 193, Penal Code, for presenting a false petition of complaint, the petition alleged to be false was admitted on the strength of an order on its back in the handwriting of the Deputy Magistrate who tried the accused's complaint, without any further proof of the presentation of the complaint by the accused, *held*, that the document was not properly admitted, and that the Judge misdirected the jury in asking them to consider the document. BASANTA KUMAR GHATTACK v. QUEEN-EMPRESS, **26 C. 49.** [*D.*, P.L.R. 1900, 63, 3 L.B.R. 208.]

(74)—*Crim. Pro. Code* (1898), s. 297—*Sessions Judge—Charge to jury—Misdirection—Penal Code*, *ss.* 148, 149, 300 *and* 302—*Unlawful assembly— Riot — Murder — Common object of the assembly.*—The accused, ten in number, were tried for offences punishable under ss. 148 and 302 of the Indian Penal Code. In his charge to the jury, the Sessions Judge did not place before the jury the special circumstances, which, in his view, would have brought the offence within the definition of murder contained in s. 300 of the Indian Penal Code. It was not put to the jury in the charge, whether any of the intentions mentioned in the section were established as against any of the accused, and the exceptions 1, 2 and 4, were not explicitly explained to the jury. The Sessions Judge directed the jury to find that, if the offence of rioting were established, all the accused were guilty of murder. *Held*, that this was a misdirection in the charge to the jury. Before any one of the accused could, as a member of an unlawful assembly, be held guilty of a murder, alleged to have been committed by any other member or members of that assembly, it is essential, in the first place, that the act or acts alleged to have constituted the murder should be proved to have been done with an intention, such as is specified in s. 300, and that none of the exceptions contained in that section should be applicable to the case. If any member of unlawful assembly causes death with the intention specified in s. 300, it does not necessarily follow that every member of that assembly will, under s. 149, be guilty of murder. The one essential point, which must be established before s. 149 applies, is that the act must be an act committed in the prosecution of the common object of the unlawful assembly, or must be such as the members knew to be likely to be committed in prosecution of that object. EMPEROR v. MAHMADKHAN SULTANKHAN, **9 Bom. L.R. 153=5 Cr. L.J. 168.**

(75)—*Penal Code, s.* 401—*Offence of belonging to a gang of thieves.*—In order to constitute an offence under s. 401, I.P.C., it is necessary, first, to prove association, secondly, that the association was for the purpose of habitually

Charge to Jury—continued.

——2.—**Misdirection**—*continued.*

committing theft, and thirdly, to prove the habit by an aggregate of similar acts. This must be stated by the Judge clearly to the jury. *In re* SRI RAM VENKATASAMI, **1 Weir 452=6 M.H.C. 120.** (27 C. 139=4 C.W.N. 97, *R.*). [*F.*, 1 Weir 452; *R.*, Rat. Un. Cr. C. 509, 27 C. 139.]

(76)—*Crim. Pro. Code* (1898), *ss.* 298, 299 *and* 537—*Retrial of a case owing to misdirection—Powers of High Court.*—It is for the jury, and not for the Judge, to say what fact has or has not been proved. The Judge should call the attention of the jury to the evidence, and having done so, should leave to them to form their own conclusion. *Held*, that the Judge, in stating to the jury that, under s. 103 of the Evidence Act, the *onus* may be said to be on the accused to show that the deed, in respect of which he was charged with forgery, was genuine, took an erroneous view of the law and misdirected the jury and that s. 537, Crim. Pro. Code, would not apply to such a misdirection. It is doubtful whether the High Court has the power to try a case the conviction in which it has set aside on the ground of misdirection. The accused is entitled, in such a case, to have the case re-tried before a jury, and, as a matter of procedure and in justice to the accused, this course should be adopted. SADHU SHEIKH v. EMPRESS, **4 C W.N. 576.** [*R.*, 11 C.L.J. 301=14 C.W.N. 493=11 Cr. L.J. 96=5 Ind. Cas. 315.]

(77)—*Crim. Pro. Code* (1882), *ss.* 289, 297 *and* 423 (*d*)—*Omission to call upon the accused to enter upon his defence—Omission to charge the jury—Appellate Court's power to interfere with verdict of jury.*—Where, in a sessions case, the accused was not called upon to enter upon his defence after the Public Prosecutor's address as provided by the last paragraph of s. 289 and the Judge did not charge the jury as provided by s. 297, *held*, that it was, in effect, a misdirection and that s. 423 (*d*) would not preclude the appellate Court from interfering with the verdict of the jury. QUEEN-EMPRESS v. IMAM ALI KHAN, **23 C. 252.**

(78)—*Charge to jury — Defective charge—Misdirection — Murder case.*—In a murder case, the Sessions Judge charged the jury thus:—"S. 302--The murder of Mahar Mullya—Murder defined—Punishment.—The only question here in view of the statements made by the prisoners is, did the prisoners, any or all of them, inflict these injuries on the deceased? If they did, they are guilty of murder." *Held* that this was a very defective charge. The Judge should have left it to the jury to find whether the offence was one of murder or of culpable homicide not amounting to murder or any lesser offence after pointing out to them the legal definition of each offence. Moreover, the infliction of injuries would not necessarily make the offence of all the accused the same. The jury should have been asked to find as to the intention of the accused persons and their attention should have been drawn to the provisions of ss. 34, 35, 37 and 38, Penal Code, and they should have been told to return a verdict as to the exact guilt of each of the accused persons. QUEEN-EMPRESS v. BABYA *bin* BHIMAPPA, **1 Bom. L.R. 784.**

(79)—*Penal Code*, s. 304.—In his charge to the jury, the Judge should draw a distinction between the two classes of culpable homicide mentioned in s. 304 of the Penal Code, and direct them to find specially under which, if either, the prisoner was guilty. QUEEN v. KALI CHARAN DAS, **6 B.L.R. Ap. 86=15 W. R. Cr. 17.** *See also* QUEEN v. AMIR KHAN, **6 B.L.R. Ap. 87, Note=12 W.R. Cr. 35.**

(80) — *Murder and culpable homicide not amounting to murder—Distinction between.*—In a trial for murder, the Judge should point out to the jury accurately the difference between murder and culpable homicide not amounting to murder and to direct the attention of the jury to the evidence and to leave them to find the facts and say upon those facts (under the guidance of the Judge as regards the law), of what offence if any, the prisoner is guilty. QUEEN v. SHUMSHERE BEG, **9 W.R. Cr. 51.**

(81)—*Crim. Pro. Code* (1882), ss. 238, 303, 307—*Charge of murder—Power of jury to find verdict of guilty of culpable homicide not amounting to murder.*—In a charge of murder, the jury in the first instance returned a verdict of murder under grave and sudden provocation. But the Judge, instead of questioning them under s. 303, Crim. Pro. Code, as to the degree of intensity of the provocation, informed the jury that he could not accept a qualified verdict, and required them to find the prisoner either guilty or not guilty of murder, telling them that if the grave and sudden provocation was of the kind which the law allowed, to acquit the prisoner. The jury returned the second time a verdict of not guilty on the charge of murder. The Sessions Judge referred the case to the High Court under s. 307, Crim. Pro. Code. *Held*, that the Judge had in the second instance misdirected the jury, as under s. 238, Crim. Pro. Code, it was open to the jury on a charge of murder to bring in a verdict stating the circumstances which might reduce the murder to culpable homicide not amounting to murder. QUEEN-EMPRESS v. DEVJI GOVINDJI, **20 B. 215.**

(82)—*Culpable homicide—Provocation—Form of charge to jury.* QUEEN v. GUNESH LUSKUR, **9 W.R. Cr. 72.**

(83)—*Penal Code*, s. 411—*Retaining stolen property—Charge to jury.*—In a case of retaining stolen property, it amounts to a misdirection to direct the jury that it is only necessary for them to decide whether the property was stolen and whether it was retained by the accused. The Judge should put up all the evidence in the case and direct the jury that, before they can find the accused guilty of an offence under

***Charge to Jury*—continued.**

——2.—Misdirection—*continued.*

s. 411, I.P.C., it is necessary for them to find in the affirmative (1) that, the property was stolen, (2) that it was dishonestly retained, and (3) that the accused knew or had reason to believe the same to be stolen property. QUEEN-EMPRESS v. BALYA SOMYA, **15 B. 369.** [*F.*, 25 C. 711; *R.*, 10 Bom. L R. 565 = 8 Cr. L.J. 36.]

(84)—Alibi, *proof of—Erroneous direction as to admissibility of document.*—Upon a plea of *alibi* by the prisoners that they had left Patna on the 12th April, 1869, and reached Port Canning on the 20th of the same month and were now at Patna on the 13th May, the prosecutor adduced in evidence a written statement engrossed on two pieces of stamp paper, one bearing the endorsement of a stamp-vendor as sold on the 13th, and the other on the 18th April, filed on the 20th April, and alleged to bear the verification of the prisoners. No evidence was adduced to prôve that the prisoners had signed it. The Judge drew the attention of the jurors to this document, and adverted to it in these terms: "If the written statement was drawn up on an earlier date than the date it bears, it could not have been prepared earlier than the day on which the principal stamp was brought,—*i.e.*, 18th." *Held* that the document should not have been received in evidence, and that there was a misdirection which contributed materially towards the jury finding the prisoner guilty. QUEEN v. GAJRAJ, **3 B.L.R.A. Cr. 43.**

(85)—*Private defence, Right of.*—It is no misdirection for the Judge not to call the attention of the jury to cls. (1) and (2) of s. 100, Penal Code, when he called their particular attention to cl. (6) of the same section. QUEEN v. MOOKHTARAM MUNDLE, **17 W.R. Cr. 45.**

(86)—*Unsoundness, a preliminary issue, to be tried first—Jury—Crim. Pro.Code*, 1872, s. 425. —The issue as to the unsoundness of mind of the accused is a preliminary issue, and should be submitted to the jury first before proceeding with the trial. QUEEN v. DOORJODHUN SHAMONTO, **19 W.R Cr. 26.**

(87)—*Question of fact—Proof of previous conviction.*—The question of the proof of a previous conviction is one of fact which ought to go to the jury. QUEEN v. ESAM CHUNDER DEY, **21 W.R. Cr. 40.**

(88)—*Special cases—Questions of law and fact—Competency of child to give evidence—Evidence Act*, II *of* 1855, *s.* 14.—The question whether or not a child was competent to give evidence within the meaning of s. 14, Act II of 1855, is one for the Judge to decide, and not for the jury. The amount of credit to be given to the statement is all that falls within the province of the jury. The error, however, in leaving the first question to the jury was held to be no misdirection. QUEEN v. HOSSEINEE, **8 W.R. Cr. 60.**

(89)—*Special cases — Recommendation to mercy.*—It is not proper for a Judge to introduce into his direction to the jury any question as to recommending a prisoner to mercy. He should leave that solely to the jury. QUEEN v. DASSEE MUSULMANY, **14 W.R. Cr. 46.**

(90)—*Crim. Pro. Code, ss.* 297, 537 (*d*)—"*Laying down the law*" *what is—Effect of failure—Whether defect cured by s.* 537 (*d*).—Where the Sessions Judge, both before and after summing up the evidence, placed certain questions of fact before the jury and directed them that, if they found certain facts proved, they were to convict, and that, if, on the contrary, they found certain other facts proved, they were to acquit, *held*, (*Ormond, J.*, *dissenting*) there was no laying down of the law as required by s. 297, that the essential elements of the offence with which the accused was charged ought to have been explained, and that there was therefore a grave misdirection which would not be cured by s. 537 (*d*). BRISCOE BIRCH v. KING-EMPEROR, **5 L.B.R. 149 = 5 Ind. Cas. 981 = 11 Cr. L.J. 340.** (25 M. 61, *F.*; 3 L.B.R. 75, *Ref.*) [*R.*, 7 Bur. L.T. 20, 4 Bur. L.T. 198 = 12 Cr. L.J. 468 = 11 Ind. Cas. 1004.]

(91)—*Misreception of evidence—Reasons given by Magistrate for discharge in the first instance —Reasons given by Sessions Judge in directing commitment—Setting out nature of defence—Judge's address to jury—What should nature of address be—Crim. Pro. Code*, s. 423, *cl.* 2. —The reasons given by a Magistrate in discharging the accused at first and the contents of the Sessions Judge's order in directing further enquiry and the commitment of the accused, that is to say, the opinions of these two officers should not be admitted in evidence. Failure to set out clearly the nature of the defence of the several accused, and failure to warn the jury, in dealing with the retracted confession of one of the accused, that, if the jury found they could not act upon it as against that accused, they must wholly disregard it as against the others, will vitiate the trial. A Sessions Judge in addressing a jury should endeavour to speak in a simple and direct manner. The charge to the jury should not be involved, and the language used should not be extravagant, so that the jury may not experience any difficulty in appreciating his true intention and meaning. HARENDRA PAL v. EMPEROR, **7 Ind. Cas. 915 = 11 Cr. L.J. 538.**

(92)—*Crim. Pro. Code*, s. 297—*Direction to jury—Failure to explain the law to the jury—Omission to explain the definition of robbery.*—When, in a Sessions trial, the accused are charged with *robbery*, the omission on the part of the Judge to explain to the jury the meaning of the term *robbery* vitiates the trial, and a re-trial should be ordered in the case. Under s. 297, Crim. Pro. Code, the Judge must explain to the jury the law by which they are to be guided. *In re* SURATTI, **6 Ind. Cas. 14.**

See ABANDONMENT OF CHILDREN, 1 W.R. Cr. Letters, 10.

***Charge to Jury*—concluded.**

——2.—**Misdirection**—*concluded.*

See APPEAL—APPEAL TO PRIVY COUNCIL, 15 A. 310, 22 B. 528, P.C., 14 Bur. L.R. 148, P.C.

Evidence Act, s. 30—Confession of co-accused, effect of—Misdirection to jury—Judge not instructing jury that confession of co-accused was not enough, if amounts to misdirection—*See* CONFESSION — CONFESSIONS BY CO-ACCUSED—ADMISSIBILITY, 5 M.L.T. 355=9 Cr. L.J. 308=1 Ind. Cas. 547.

See CONVICTION, 34 C. 325=5 Cr. L.J. 424.

See CRIM. PRO.CODE, 1898, ss. 288, 423 (2), 2 Weir 509.

See CRIM. PRO. CODE, 1898, ss. 309, 367, Rat. Un. Cr. C. 426=Cr. Rg. 90 of 1888.

See CRIM. PRO. CODE, 1898, s. 423, 2 Weir 488.

See CRIM. PRO. CODE, 1898, s. 423 (2), 2 Weir 47=2 Weir 515.

See DACOITY, 1 Weir 446, 15 C.W.N. 434=10 Ind. Cas. 684=12 Cr. L.J. 193.

See EVIDENCE ACT, 1872, ss. 25, 167, 11 C.L.J. 301.

Jury—Charge to—Death caused by blow with a weapon—Omission to put alternative case under s. 320 (8), I.P.C.—Misdirection—*See* PENAL CODE, ss. 304, 320 (8), 6 S.L.R. 116=17 Ind. Cas. 62=13 Cr. L.J. 750.

See PENAL CODE, s. 361, 11 Cr. L.J. 9=4 Ind. Cas. 543=13 C.W.N. 754.

As to causing grievous hurt—*See* PENAL CODE, s. 397, 1912 M.W.N. 35=11 M.L.T. 20=22 M.L.J. 186=13 Ind. Cas. 282=13 Cr. L.J. 42.

See PENAL CODE, s. 475, 15 B. 189.

See REVISION—MISDIRECTION AND VERDICT OF JURY, 7 W. R. Cr. 2.

Misdirection on matter of small importance if a ground for reversal of judgment—*See* ST. 53 AND 54 VIC., C. 37, 18 C.W.N. 705=15 Cr. L.J. 326=23 Ind. Cas. 678, P.C.

Trial by jury—Judge's summing up—Neither law nor facts lucidly stated—Trial irregular—*See* TRIAL, 9 M.L.T. 345=9 Ind. Cas. 788=12 Cr. L. J. 140=1911 M.W.N. 190.

Charitable Endowments.

See MAD. REG. VII OF 1817.

Charm.

Administering poison believing it to be a charm rash and negligent act—Liability for—*See* PENAL CODE, s. 304 (A), 6 A.L.J. 203=31 A. 290=9 Cr.L.J. 522=2 Ind. Cas. 214.

Charter-party.

See ACT I OF 1879, ss. 39, 69, L.B.R. 1872—1892, 623.

Chaukidar.

See CHAUKIDAR.

Cheating.

——1.—GENERAL.

——2.—FALSE PERSONATION.

See PENAL CODE, SS. 415—420.

——1.—**General.**

(1)—*Penal Code, s. 415—Cheating, what constitutes.*—To constitute the offence of cheating, it is, from the wording of the section, enough to allege that the property obtained was in the possession of the person defrauded, and that it is not necessary to allege that such property belonged to him. QUEEN v. WILLIAMS, **1 Weir 471=1 M.H.C. 31=1 Ind. Jur. O. S. 94.** [*R.*, 1 M.H.C. 38.]

(2)—*Cheating, what constitutes.*—The offence of cheating, as defined in s. 415, I.P.C., requires that the person made to deliver property, etc., or to do or omit to do anything, which causes or is likely to cause him danger in body, mind, reputation or property, and which he would not have otherwise done, should be the person who has been deceived. The offence is not committed if a third party, on whom no deception has been practised, sustains pecuniary loss in consequence of the accused's act. SUNDER SINGH v. EMPEROR, **25 P.R. 1904, Cr.=10 P.L.R. 1905.** (14 P.R. 1880, Cr., A.W.N. 1903, 234, 17 C. 606, *R.*)

(3)—*Cheating, what is—"Intentionally," meaning of.*—The word "intentionally" in the second branch of the definition of cheating in s. 415, Penal Code, only applies to the act or omission which the person deceived is induced to do or omit to do, and it is not necessary, in order to sustain a charge under that branch of the definition, that the accused person should also have intended to cause harm or damage as the result of such act or omission. NAND LALL v. EMPRESS, **36 P.R. 1888, Cr.** [*F.*, 9 P.R. 1914, Cr.]

(4)—*Penal Code, s. 415—Scope of the section — What amounts to cheating.*— The words "fraudulently" and "dishonestly" do not govern the whole of the definition of cheating in s. 415. In the second part of the section, the words "fraudulently" and "dishonestly" do not apply. CROWN v. MOHABAT, **20 P.R. 1889, Cr.** (16 P.R. 1876, Cr., *R.*) [*F.*, 18 P.W.R. 1908, Cr., 9 P.R. 1914, Cr.]

(5)—*Penal Code, s. 415—Cheating—Elements of the offence.*—In a case where a person is charged with cheating, in having represented to the complainant that he would pay the amount of a decree, and thereby induced the complainant to make the payment, *held*, that, in order to constitute the offence of cheating, it should be proved that the accused made the representation falsely, fraudulently and dishonestly, that is to say, having at the time no intention to apply the money to the satisfaction of the decree, but to misappropriate it. The

Cheating—continued.

——**1.—General**—*continued.*

proof that there was a subsequent default was some evidence of the existence of a dishonest intention at the time the money was obtained, which may be rebutted by the accused. *In re* VENKATACHALA PILLAI, **1 Weir 476.**

(6)—*Penal Code, s.* 415, *illus.* (*f*) *and* (*g*)—*Scope and effect of—What amounts to cheating.*—Illustrations (*f*) and (*g*) of s. 415 leave no doubt that an intention as to the future, expressed falsely or dishonestly, for the purpose of deceiving a person, would amount to deception as a constituent element of the offence of cheating. But it would be most dangerous to the liberties of the people to lay down the rule that a mere non-fulfilment of a promise constitutes, even *prima facie* evidence of a fraudulent intention at the time when the promise was made; for, if it were so, every breach of contract might become the subject of a criminal prosecution. In order to justify a conviction for the offence of cheating, there must be some evidence of an intention to cheat at the time when the promise, the omission to perform which completes the offence of cheating, is made. EMPRESS v. ASHUTOSH, **A.W.N. 1886, 262.**

(7)—*Penal Code, ss.* 417, 420—*Cheating, what constitutes.*—The complainant purchased a lottery ticket which, at the final result, carried a price of Rs. 598. The accused took away the ticket from the complainant representing that it carried a price of Rs. 10 or Rs. 20 which he offered to pay. The complainant declined to receive the money and demanded back the ticket. The accused failed to do so. The complainant, thereupon, brought against the accused a charge of cheating. The Magistrate discharged the accused saying that, as the ticket was not a valuable security, the maxim *de minimus non curat lex* applied. *Held* that the reason given by the Magistrate for not issuing process was bad in law since, if the allegations of the complainant were established, the accused, by deceiving the complainant, fraudulently or dishonestly induced him to do something which he would not have otherwise done and which was likely to cause him the loss of the money to be drawn as the prize won by the ticket in the lottery. BHAGWAN KESSEW v. SIBA VALJI, **4 Bom. L.R. 75.**

(8)—*Cheating, what constitutes.*—A person can cheat in various ways other than by inducing the person deceived to deliver any property, or to do any of the acts specified in s. 420, Penal Code. When a person is convicted of cheating by inducing the persons deceived to do any of the acts described in s. 415, but not specified in s. 420, the offence is punishable under s. 417. When the person deceived is induced to do any of the acts specified in s. 420, then, that section must be applied, and the Court is not entitled to charge under s. 417, which relates to a less serious offence. CROWN v. PO HLAING, **1 L.B.R. 266.**

(9)—*Penal Code, ss.* 417, 420—*Distinction—Jurisdiction.*—Cheating, unaccompanied by delivery of property, is an offence under s. 417 and can be tried by a Second-class Magistrate. When accompanied by delivery of property, the offence is punishable under s. 420, and is triable only by a Sessions Judge or a First-Class Magistrate. REG v. BAVAJI, **Rat. Un. Cr. C. 96 = Cr. Rg. 25-9-1875.**

(10)—*Penal Code. ss.* 415, 416 *and* 419—*Cheating.*—Where the accused was found to have knowingly represented one J to be B, the mother of a sepoy named K who had been killed, and thereby induced the military authorities to grant a pension to J to which she was not entitled, it was *held* that the accused had committed the offence of cheating, punishable under s. 419 of the Indian Penal Code. EMPEROR v. KIRAT SINGH, **A.W.N. 1907, 291 = 3 M.L.T. 61 = 6 Cr. L.J. 426.**

(11)—*Depriving one of property is necessarily not.*—Depriving one of property is not necessarily cheating, but it may be either theft, or extortion, or robbery according to the attendant circumstances. **1 W. R. Cr. Letters, 12.**

(12)—*Hiring certain property—Part-payment of hire—Promise to pay balance—Intention to attach the property—Cheating.*—Where the accused hired certain property from the complainant for use at a wedding, and advanced a portion of the hire, promising in writing to pay the balance and to restore the goods when the wedding was over, being fully aware that there was to be no wedding, and intending, when he got the property, to apply for its attachment before judgment as belonging to another person against whom he had brought a suit, *held* that the accused was guilty of cheating. QUEEN v. KADIR BUX, **3 N.W.P. 16.**

(13)—*Receipt of Government promissory note—Promise to redeem certain jewels—Retaining for another debt—Cheating.*—Where the accused received a Government promissory note promising that he would redeem certain jewellery, but not intending to do so, and subsequently claimed to retain it for another debt alleged to be due to him by the sender, *held* that the accused was guilty of cheating under s. 415, I.P.C. QUEEN v. SHEODURSHUN DAS, **3 N.W. P. 17.** [*R.*, 2 C.L.J. 524 = 3 Cr. L.J. 160, 32 C. 941 = 9 C.W.N. 1006.]

(14)—*Penal Code, ss.* 269, 417, 420—*Communicating syphilis by sexual intercourse.*—The accused, a prostitute, was charged under s. 269, I.P.C., with communicating syphilis to a person who had sexual intercourse with her. *Held*, that she was not punishable under the section, as, even assuming that there was a dangerous disease and culpable negligence, still the accused's act of sexual intercourse would not spread infection without the intervention of the complaining party, himself a responsible person and himself generally an accomplice. *Held*, also, that, if there was an offence in the case, it was one of cheating punishable under s. 417, or s. 420, if there was evidence that the

***Cheating*—continued.**

——1.—General—*continued.*

intercourse was induced by misrepresentation on the part of the diseased person. QUEEN-EMPRESS v. RAKMA KOM SADHU, **11 B. 59.**

(15)—*Penal Code, s.* 417—*Selling opium at rates higher than those fixed by Government.*—A licensed opium vendor commits the offence of cheating, if he sells opium at rates higher than those fixed by the Government. EMPEROR v. PANDURANG RAMCHANDRA, **4 Bom. L.R. 823.**

(16)—*Penal Code, ss.* 265, 415, 417—*Selling liquor by fraudulent measure.*—The accused who sold liquor, measuring it with a glass which was not a prescribed measure, and of which they fraudulently misrepresented the capacity, were convicted of the offence of fraudulent use of a false measure under s. 265, I.P.C. *Held*, that they would more appropriately have been tried for the offence of cheating. QUEEN EMPRESS v. NURODIN, **Rat. Un. Cr. C. 386 = Cr. Rg. 36 of 1888.**

(17)—*Penal Code*, s. 415—*Inducing a* Karkun *to deliver a warrant of attachment.*—Where a person induces a *Karkun* under a false representation to deliver a warrant of attachment to him, and makes on it an endorsement to his own advantage, and it appears that, but for such false representation, the *Karkun* would not have parted with the warrant, the person commits the offence of cheating punishable under s. 415. EMPEROR v. HARISHUNKAR GANGARAM, **6 Bom. L.R. 375.**

(18)—*Cheating—Inducing son to pay father's debts—Want of dishonest intention.*—To induce a son to pay his father's debts, by acting merely on his fear of consequences to his father, does not seem to come within the definition of the crime of cheating. To describe the consequences to be more serious than, in fact, they were likely to be, may be to deceive ; but if a fraudulent or dishonest design, which is an essential element of the crime of cheating, is not apparent in the person deceiving, he does not cheat. QUEEN v. RAJ COOMAR BANERJEE, **W.R. 1864, Cr. 25.**

(19)—*Taking money one day, and dishonestly running away without paying.*—The mere taking of money one day, and dishonestly running away without paying the next day, is not necessarily cheating. There must be an intention to deceive and defraud at the time of taking the money. QUEEN v. HEERAMUN HULWYE, **5 W.R. Cr. 5 = 1 Ind. Jur. N.S. 97.**

(20)—*Proof necessary for offence of cheating—Contractor receiving money for work not finished.*—A contractor in the Public Works Department, who was charged with cheating in respect of a sum of money which he received on account for work which he had not then finished, was acquitted on the ground that there was no proof (1) that there was a false pretence made use of by the accused, (2) that he knew he was making use of a false pretence or that he intended to defraud, (3) that the Public Works Department were deceived by the pretence as they believed in its truth, and (4) that the accused received the money with the intention of causing wrongful loss to the Government. QUEEN v. KALIPUDDO PORAMANICK, **23 W.R. Cr. 43.**

(21)—*Wrongful gain or loss — Penal Code, s.* 415 *and ss.* 23 *and* 24—*Selling rice at higher rate than that agreed upon.*—A person, who purchased rice from a famine relief officer at a certain rate (16 seers to the rupee) on condition that he should sell it at a seer less for the rupee, would not be guilty of cheating if he did not sell it at the rate agreed on, but at 12 seers as, in such a case, there would be no wrongful gain or wrongful loss to any one. QUEEN v. LALL MAHOMED, **22 W.R. Cr. 82.**

(22)—*Penal Code, s.* 415—*Cheating—Purchase of waste paper by Government servant under assumed name.*—In the office of the Accountant-General it was the practice from time to time to put up quantities of waste paper to public auction. One Kutab Ali, who was a *diftari* in the office, purchased at one of these auctions a quantity of waste paper, bidding for it under an assumed name. *Held* that, in the absence of any rules forbidding employees in the office from bidding at such sales, it was doubtful whether the accused had been guilty of the offence of cheating. KING-EMPEROR v. KATUB ALI. **A.W.N. 1902, 151** [*F.*, A.W.N. 1903, 231]. *See also* EMPEROR v. KUTUB ALI, **A.W.N. 1903, 231.**

(23)—*Penal Code, s.* 415—*Selling adulterated milk as pure milk.*—The selling of milk and water in about equal proportions as pure milk will support a finding of cheating under s. 415 of the I.P.C. QUEEN-EMPRESS v. NANA, **Rat. Un. Cr. C. 145.**

(24)—*Penal Code, s.* 417—*Cheating—Including an article not supplied in a bill.*—The mere fact that there had been a wrong entry in a bill would not of itself constitute the offence of cheating. To constitute that offence, it must be shown that the accused, by deceiving the complainant, fraudulently or dishonestly induced him to deliver property or intentionally induced him to do or omit to do something which he would not have done or omitted, if he had not been so deceived, such an act or omission causing or being likely to cause damages to him in his property. BAIJ NATH RAM MARWARI v. BURGESS, **5 C.W.N. 255.**

(25)—*Penal Code, s.* 420—*Cheating—Purchase of goods—Non-payment of price—Evidence of similar previous non-payment to other firms.*—The accused purchased some wool with delivery of possession from a firm, agreeing to pay the price on the next day. Default was made in the payment of the purchase money at the stipulated time, and the accused pledged the wool to another and raised money thereon. In these circumstances, the accused was convicted of cheating and thereby dishonestly

Cheating—continued.

——**1.—General**—*continued.*

inducing delivery of property, under s. 420, Indian Penal Code. The Magistrate admitted in evidence the statements of two persons from whom the accused had purchased wool in similar circumstances, and who had not been paid yet, their wool also having been pledged by the accused to another:—*Held* (1) that the evidence of these persons must be excluded from consideration on the principles of *Reg* v. *Parbhudas*, (11 B.H.C. 90), because their evidence related to transactions, the character of which was itself in question, and to accept their statements as proving cases of cheating against the accused would be to find him guilty in those instances without a trial; (2) that a fraudulent purpose could not, under the circumstances, be safely inferred from the accused not paying, or from his inability to pay for the wool on the next day as agreed; (3) that to sustain a conviction of cheating under s. 420, I P.C., there must be evidence to prove that, when the accused bought the wool, he did not intend to pay for the same. QUEEN-EMPRESS v. FAZUL, **Rat. Un. Cr. C. 312 = Cr. Rg. 66 of 1886.**

(26)—*Penal Code, ss. 465, 417, 511—An entry by debtor in creditor's book.*—Where a debtor, who owed some money to the complainant, was asked by the latter to see the account book, and the accused finding that he owed a certain sum to the complainant, and being asked by him to make an entry to that effect in the account book, made an entry in a language unknown to the complainant to the effect that he had paid the complainant that amount on a certain date, *held*, that the accused was not guilty of forgery, as the entry was not a document made by the prisoner with the intention denoted by the first clause of s. 464, or caused by him to be signed or executed within the meaning of the third clause of that section; but that the accused was guilty of an attempt to cheat. QUEEN-EMPRESS v. KUNJU NAIR, **12 M. 114 = 1 Weir. 539.** [*F.*, Rat. Un. Cr. Cas. 595.]

(27)—*Penal Code, ss. 415, 419 and 463 — Admission to University examinations on false personation and signing answer papers in another's name.*—Where a person, by falsely representing himself to be a different person at a University Examination, got a hall ticket under that name and wrote answer papers to questions and signed them with the name of that person, *held*, that the accused was guilty under s. 419 of cheating by personation and of forgery under s. 416, Penal Code. QUEEN-EMPRESS v. APPASAMI, **12 M. 151 = 1 Weir. 480 = 1 Weir 541 = 13 Ind. Jur. 53.** [*F.*, 15 A. 210 = 13 A.W.N. 96; *App.*, 28 M. 90 = 1 Weir 538-A; *R*, 1 P.R. 1907 = 32 P.L.R. 1907, Rat. Un. Cr. C. 627.]

(28)—*Penal Code, ss. 415 and 463—Forwarding false certificate of character and past employment along with application for employment—Offence committed, cheating or forgery.*—Where a person, a fireman, sent an application for employment to the Locomotive Superintendent of the Burma Railways, and forwarded along with his application a false certificate, as if given by the North-Western Railway authorities, to the effect that he was employed as a driver on the North-Western Railway and was of good character, *held*, he was guilty of an attempt to cheat, and not of forgery KING-EMPEROR v. FAZAL DIN, **1 P.R. 1907 Cr. = 32 P.L.R. 1907.** (21 A 113, 2 East 92, 5 C. W.N. 897, 9 C. 53, 17 C. 606, 15 A. 210, 12 M. 151, 28 M. 90, 6 A. 97, 2 P.R. 1895 Cr. *R.*, W.R. F.B.—R. 71, *Dis.*)

(29)—*Penal Code, s. 417—Cheating—Inducing a person to part with valuable security by false representation.*—Where a person obtains delivery of a deed, or other valuable security, after making a promise, which he, at the time, does not intend to keep, he is guilty of cheating, inasmuch as his intention in inducing the other person to part with the deed is fraudulent. HIGH COURT PROCEEDINGS. **1 Weir 478.**

(30)—*Penal Code, s. 417—Application to a Tahsildar for land free of tax—Misrepresentation.*—Where a person applied to a Tahsildar for certain acres of land on *cowle* tenures free of tax for five years, having falsely represented that the lands applied for were waste lands, *held*, that the accused was guilty of cheating as the Tahsildar was deceived by the accused's misrepresentation and forwarded his application to his superior. HIGH COURT PROCEEDINGS, 6TH JANUARY, 1871. **1 Weir 477 = 6 M.H.C. App. 12.**

(31)—*Person sending luggage through a passenger to evade payment of luggage fare.*—Every passenger is entitled to the conveyance of a certain quantity of luggage, whether it belongs to him or to another who has made over his luggage to him in order to evade payment of charge for over-weight. In the absence of a rule providing for the conveyance of the passengers' personal property only, the servant of a Railway Company is not competent to enquire into the over-weight of luggage which passengers take with them when travelling. To such a case, s. 417, Penal Code, does not apply. CROWN v. PARAS RAM, **25 P.R 1903, Cr. = 128 P.L R. 1903.**

(32)—*Penal Code, s. 417—Cheating—Fraud or dishonesty.*—Where a person was convicted of cheating, under s. 417 of the Penal Code, in that he induced his master's brother to go to another village, by falsely representing to him that his master was ill at that village, *held*, that the conviction was wrong, since the accused had not acted fraudulently or dishonestly within the meaning of s. 415 of the Code. QUEEN-EMPRESS v. PUNJIA, **Rat. Un. Cr. C. 423.**

(33)—*Penal Code, s. 417—Cheating—Dishonest intention.*—In order to convict a person under s. 417, there must be evidence to show

***Cheating*—continued.**

——1.—General—*continued.*

that, at the time at which he induces the complainant to part with his money or to do or omit to do anything, he has an intention of acting fraudulently or dishonestly. *In re* VIRASWAMI, **1 Weir 478.**

(34)—*Penal Code, ss.* 415, 420—*Cheating—Deception and dishonesty.*—The accused was a person authorised to collect subscriptions towards the funds of a charitable society. He produced the society's subscription book before one P, the health officer of a big Municipality, and, falsely representing himself to P to be a servant of the Municipality, obtained a subscription of Rs. 10 from him for the society and duly paid the sum over to the institution. He was, however, subsequently tried and convicted under s. 420 of the I. P. Code for having made this false statement. *Held*, reversing the conviction, the accused was not guilty of cheating, since he practised no dishonest deception causing wrongful loss or wrongful gain, having regard to the fact that considerations other than the false statement might have influenced P to subscribe towards the fund. ASHUTOSH MALLICK v. EMPEROR, **33 C. 50 = 3 Cr. L.J. 244.**

(35)—*Penal Code, Act* XLV *of* 1860, *ss.* 415, 420— *Cheating — Serious nature— Sessions Court.*—Cheating unaccompanied by delivery of property may be punished under s. 415 or s. 420 of the Penal Code, but, if of a serious nature, the case should be sent to the Sessions Court. The trial of such a case by a Magistrate is not, however, an excess of jurisdiction. REG v. BAPU, **Rat. Un. Cr. C. 2.**

(36)—*Penal Code, ss.* 415, 417—*Cheating, what amounts to—Concealment of prior incumbrance by vendor—Transfer of Property Act, s.* 55.—Where there is a concealment of fact, there is neither fraud nor dishonesty, unless there is a duty imposed by law, as between the accused and the person with whom he is dealing, to make the fact known. Where the vendor of a land omitted to inform the vendee of the existence of a prior mortgage, *held*, that there was no obligation cast on him by s. 55, Tr. P. Act, to disclose to the vendee the existence of the mortgage, inasmuch as the mortgage was effected by a registered instrument, and the vendee could, with ordinary care, have ascertained its existence, that the accused was not proved to have said that it was unincumbered on being questioned by the vendee, and that, therefore, the accused was not guilty of cheating. EMPEROR v. BISHAN DAS, **27 A. 561 = A.W.N. 1905, 98 = 2 A.L.J. 268 = 2 Cr. L.J. 218.** (12 B.H.C. 322, *R.*) [*N.F.*, 101 P.L.R. 1908, Cr. = 3 P.W.R. 1908, Cr.; *R.* 11 Cr. L.J. 610 = 8 Ind. Cas. 256 = 40 P.W.R. 1910, Cr.]

(37)—*Penal Code, ss.* 177, 182, 415—*False statement as to place of residence for facilitating recruitment to the police.*—A person making a false statement in respect of his place of residence, in order to facilitate his recruitment in a certain district, has not committed the offence comtemplated by s. 177 or s. 182, I.P.C., nor has he committed the offence of cheating under s. 415. EMPRESS v. DWARKA PRASAD, **6 A. 97 = A.W.N. 1883, 224.** [*R.*, 13 B. 506, 15 A. 210, 32 P.L.R. 1907 = 1 P.R. 1907, Cr.]

(38)—*Penal Code, s.* 415—*Cheating—Vendor dishonestly concealing fact of incumbrance on property—Crim. Pro. Code* (1898), *ss.* 252, 253 *and* 439—*Discharge of accused without taking evidence for the prosecution* —*Held* that, where the accused is summoned and the evidence of the complainant is ready, it is desirable that the Court should not dismiss the complaint without taking all such evidence as may be produced in support of the prosecution. *Held* also that, if a vendor at the time of selling his immoveable property, either makes a positive statement that the property is encumbered or dishonestly conceals the facts within his knowledge thinking that if he stated those facts the vendee would not buy, he can be convicted of cheating as defined in s. 415, I.P.C. MUSST. BEGAM BIBI v. GHULAM MUHAMMAD, **3 P.W.R. 1908, Cr. = 101 P.L.R. 1908 = 7 Cr. L.J. 272.** (27 A. 561, *N.F.* and *Appr.*)

(39)—*Penal Code, ss.* 415, 417—*Cheating—Debt really due—Payment made in the expectation of bond securing the debt being returned—Return of another and a false bond—Money paid available for other existing debt—False pretence—False inducement—Fraud and deceit—Damage or loss, remote if contemplated—Conduct of parties.*—*Per* RAMPINI, J.—When a person makes a false document, a bond, with the object of inducing another person by means of the counterfeit bond to pay him his debt and then by means of a genuine registered bond previously executed by him to sue him for the money, and so recover it from him twice, he is guilty of cheating. In the absence of an express finding that the complainant was induced by the show of the counterfeit bond to part with his money, or any express statement in the complainant's evidence, it is sufficient to constitute the offence, if the conduct of the parties or the other evidence, in the case makes it clear that the complainant parted with his money on the understanding that the genuine bond would be returned. *Per* WOODROFFE, J.—To constitute the offence of cheating, there must be a deception, which must precede and induce, under the first part of the s. 415 of the Penal Code, the delivery or retention of the property or the act or the omission referred to in the second part. But such deception may be by words or by conduct. As to what is sufficient to constitute a deception must be decided in each case on its own facts. When a person owes money to another, he is not bound to pay in respect of any debt other than that he admits and is, in fact, due and only then upon the return of the bond securing that debt, if at the time of tender he asks for it. When a person receives money due to him from another, which that other person pays, with the intention not to credit the money to the real debt due but to

Cheating—continued.

——**1.—General**—*continued.*

deceive him into paying money, due on a real debt, and keeps the money under the pretence of crediting it to a debt, which the other person did not owe upon a bond, which he did not execute, the debt for which the payment is made remains unpaid and the person is guilty of cheating. The payment of the money cannot be severed from the other incidents of its having been paid without getting back the bond, and the fact that it has been credited to another and a false debt, and the possibility of a fraudulent claim on the retained bond cannot be considered to be a damage too remote. *Held*, further, on the evidence, the case for the prosecution was untrustworthy and the conviction should be set aside. *Per Mookerjee, J.* —In order to bring a case within the first part of s. 415 of the Penal Code, it is essential, in the first place, that the person who delivers the property should have been deceived before he makes the delivery, and, in the second place, that he should have been induced to do so fraudulently or dishonestly. When a person makes a payment in the hope or expectation that, after he has made the payment, the bond would be returned, it is not by itself sufficient to show that he has been deceived by the accused into making the payment. When a debtor pays his just dues, he cannot be said to be, fraudulently or dishonestly, induced to pay within the meaning of ss. 24, 25 of the Penal Code. The payment itself of such just dues cannot be said to cause any wrongful loss to the debtor or wrongful gain to the creditor, and, assuming that the creditor might have sued the debtor upon the bond and sued successfully in spite of the fact that the debt has been discharged, the wrongful loss of the complainant would be the result of enforcing such decree and the fraud of the creditor would consist in obtaining such a decree. The damage or harm referred to in s. 415 of the Penal Code must be the necessary consequence of the act done by reason of the deceit practised or must be necessarily likely to follow therefrom ; the possibility of a successful fraudulent litigation is too remote to be in contemplation of the statute. However immoral a deception may be, it does not constitute the offence of cheating, if its object is only to cause a distribution of property, which the law recognizes as rightful ; there must be an intention to acquire, or retain, wrongful possession of that to which some other person has a better claim, and which that other person is entitled to recover by law ; in all such cases, the object is wrongful gain attended with wrongful loss. RAMA NATH KALAPAHAR v. KING-EMPEROR, **2 C.L.J. 524=3 Cr.L.J. 160.** (32 C. 94, 32 C. 775, 17 C. 606, *R.*) [*R.*, 16 C.L.J. 453=17 C.W.N. 379=13 Cr.L.J. 897=17 Ind. Cas. 993.]

(40)—*Inducing person to enter into contract by false statements of intention.*—Where a person instigates another to enter into a contract by a false statement of his own intention to fulfil its terms, he commits the offence of cheating ; but the mere non-fulfilment of the contract is no *prima facie* evidence even of an original intent to defraud. The complainant has the burden of clearly establishing the initial deceit, which is the gist of the offence. SHADULA v. LAL SINGH, **13 C.P.L.R. 97.** (9 B.H.C. 448, *R.*)

(41)—*Penal Code*, ss. 415, 420—*Cheating—Contract—Breach—Intention to perform when contract entered into, absence of—Dishonest intention — Misrepresentation—Appropriation of money to other than purpose for which advanced.* —The complainant's firm had advanced money to the accused on the understanding that the accused would purchase rice from the outlying *hats* and ship and deliver the same at the firm's place of business, where it would be sold, the profits on the sale going to the accused, and the accused being liable to pay to the complainant's firm the capital advanced with interest, and a commission of one anna per maund of rice sold. The accused failed to deliver the rice within the stipulated time and was charged with cheating. The representations, made by the accused to the complainant's firm when getting the advance, were not entirely false, and it appeared that the accused had, to some extent, endeavoured to carry out the terms of the agreement, though he was also found to have converted a small portion of the money to his own use in paying off his own debts. *Held*, that the case was really one of a breach of contract. The mere fact that the accused converted a small portion of money to his own use was not in itself sufficient to prove that the intention of the accused, when he received the money from the complainant's firm, was dishonest or that he obtained it by fraudulent misrepresentation of facts. The important question to be considered was whether the accused, when he took over the money from the complainant's firm, had any intention of performing the contract. DEPUTY LEGAL REMEMBRANCER v. IJJATULLA KAZI, **10 C.W.N. 1005=4 Cr.L.J. 154.**

(42)—*Attempt to cheat.*—The essence of the offence of cheating is a fraudulent or dishonest intention ; and the act done towards the commission of the offence, which is requisite to establish the attempt to cheat, must be done with a fraudulent or dishonest intent. QUEEN-EMPRESS v. HARADHAN, **19 C. 380.**

(43)—*Penal Code*, ss. 417, 511—*Attempt at cheating.*—Where the evidence established the fact that the accused informed an *Octroi* Superintendent that there were 16 maunds of an article in a cart, whereas there were only 6, and by this act he induced the Superintendent to grant him a refund of the duty on 16 maunds of the article instead of 6 maunds, and where this was discovered before any money was paid to the accused ; *held*, that the accused was guilty of an attempt at cheating under s. 417 read with s. 511, I.P.C. BHAGWAN DAS v. KING-EMPEROR, **2 A.L.J. 718=2 Cr. L.J. 788.**

Cheating—continued.

——1.—**General**—*continued.*

(44)—*Penal Code, s.* 420—*Attempt to cheat—Preparation.*—Where the accused, an Assistant Station-Master, prepared fictitious consignment notes for articles not in existence and forwarded the same, *held*, that the act was merely one preparatory to the offence of cheating, not done in the attempt to cheat. QUEEN-EMPRESS v. RAGHUNATH, **Rat. Un. Cr. C. 470.**

(45)—*Penal Code, ss.* 417 *and* 511—*Attempt at cheating—False representation to pleader—Damage or harm in mind, reputation—Complainant. position of* —Where A, falsely representing himself to be a member of the firm of B, which firm were clients of a pleader C, went to the pleader and instructed him to write a letter on behalf of B, cancelling a certain contract, and where A wrote the letter, but instead of despatching it to the addressee, sent it to B's shop where the fraud was discovered : *held*, the despatch of the letter would have caused injury to the pleader in mind and reputation, he would certainly have been likely to lose reputation, and perhaps business, if it appeared that he had been negligent and had been readily deceived. *Held*, therefore, that A was rightly convicted of an attempt at cheating. The prosecutor in all criminal cases is really the Crown ; the complainant merely sets the machinery of the Court in motion. In cases of cheating, it is not necessary that the complainant should have been the person deceived. MAHADEO LAL v. KING-EMPEROR. **7 C.L.J. 375=12 C.W.N. 750=7 Cr. L.J. 342.** [*R.*, 9 P.R. 1914, Cr.]

(46)—*Penal Code, ss.* 417 *and* 511—*Cheating and attempt to cheat—Power to impose Municipal taxes—S.* 39, *Act* XIII *of* 1884.—In this case it was proved that the accused attempted to pass at the Lahore *Octroi* goods described by him as linseed and iron bolts which were really turpentine and tobacco respectively. When charged with attempt to cheat, it was contended on his behalf that the *octroi* on turpentine and tobacco exacted by the Municipality was illegal and that no offence could be committed in evading it. The Magistrate acquitted the accused holding that, without the sanction of the Imperial Government, the *octroi* was illegal. On appeal by the Local Government, the Chief Court set aside the acquittal and convicted the accused of attempt to cheat under ss. 417 and 511, Indian Penal Code, holding that the authority which had the power to sanction the taxes in question was the Local Government of the Punjab, which had sanctioned it. Executive or administrative orders passed by the Governer-General in Council, which may be held to require that the consent of the Supreme Government should be obtained before taxes are imposed under s. 39, Act XIII of 1884, are clearly not orders and rules under the Act. EMPRESS v. GHULAM ALI, **P.L.R. 1900, 38, Cr.**

Cheating—continued.

——1.—**General**—*continued.*

(47)—*Penal Code* (*Act* XLV *of* 1860), *s.* 417—*Cheating—Attempt to defraud Railway Company.*—The accused entrusted some of his luggage at a Railway Station to a Railway passenger who paid his full fare and also for the luggage in excess of what was allowed by the rules. For this he was convicted of attempting to defraud the Railway Company under Bye-law 8 of the Railway Company. *Held*, that the conviction was illegal. EMPEROR v. PARAS RAM, **128 P.L.R. 1903=25 P.R. 1903, Cr.**

(48)—*Penal Code, ss.* 116, 232, 241, 420—*Counterfeiting Queen's coin—Abetment of cheating.*—Where a person was charged with having parted with a double pice coin, whitened with quick-silver, for the purpose of changing it for copper-coins as a rupee, *held*, that he was not liable to be convicted under s. 241, nor under s. 232, unless, at the time of whitening the coin, he intended thereby to practise deception, or knew it to be likely that deception would thereby be caused. Otherwise, the accused could be convicted of abetting the person to whom the coin was given to cheat the person to whom he was sent with the counterfeit rupee. EMPRESS v. MIHARBAN, **9 P.R.1884, Cr.**

(49)—*Passing off girl for marriage as of another caste.*—To describe a Brahman woman as a Kirari is not cheating by personation, but may be an offence under s. 420, I.P.C. DURGA DAS v. KING EMPEROR, **13 P.R. 1904, Cr.=114 P.L.R. 1904.** [*R.*, 12 Cr. L.J. 94=9 Ind. Cas. 511=56 P.L.R. 1911.]

See ABETMENT, 4 P.R. 1905, Cr.

See ACT XVIII OF 1879, s. 12, 7 A. 290, F.B.

See ATTEMPT, 8 A. 303=A.W.N. 1886, 125, 16 C. 310, 6 P.R. 1868, Cr.

See CRIMINAL BREACH OF TRUST, A.W.N. 1881, 32, 1 Weir. 466.

See CRIMINAL MISAPPROPRIATION, A.W.N. 1905, 9.

See CRIM. PRO. CODE, 1898, ss. 179, 222, 235 to 239, 531 and 537, 18 P.W.R. 1908, Cr.=8 Cr.L.J. 75.

See CRIM. PRO.CODE, 1898, s. 562, 23 P.W.R. 1908, Cr., 3 L.B.R. 95=3 Cr. L.J. 21, F.B.

See EVIDENCE ACT, 1872, ss. 14, 15, 9 C.L.J. 610=36 C. 573=13 C.W.N. 973=2 Ind. Cas. 601.

See FORGERY, 15 A. 210=A.W.N. 1893, 96, 19 C. 380.

Joint trial of several persons charged with distinct offences of. *See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 16 P.R. 1902, Cr.

Charge of criminal breach of trust—Conviction for—Whether sustainable—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 9 Cr. L.J. 406=1 Ind. Cas. 867.

Cheating—continued.

——1.—**General**—*concluded.*

See JOINDER OF CHARGES—MISJOINDER OF CHARGES, 2 C.L J. 618=10 C.W.N. 520=3 Cr.L.J. 111.

Joinder of charges of dacoity, forgery, using a forged document as genuine, and—*See* JOINDER OF CHARGES—WHEN LEGAL, 11 C.W.N. 715=5 Cr.L.J. 484.

See PENAL CODE, ss. 75 and 417, 19 P.R. 1889, Cr.

By furnishing false balance-sheet—*See* PENAL CODE, ss. 109, 415, 418, 16 A. 88=A. W.N. 1894, 23.

See PENAL CODE, ss. 109, 417, 457, 468, 471 and 511, 30 C. 822=7 C.W.N. 639.

See PENAL CODE, ss. 230 and 420, A.W.N. 1906, 308=4 Cr.L.J. 453=29 A. 141=4 A.L.J. 43.

See PENAL CODE, ss. 366, 372, 419 and 420, 114 P.L.R. 1904=13 P.R. 1904, Cr.

Offence of—Whether a Sessions Case—*See* SESSIONS CASE, 21 W.R. Cr. 41.

——2.—**False Personation.**

(1)—*Penal Code,* s. 415—*Cheating by false representation.*—The complainant a salt-merchant, went to buy 34 maunds of salt at Kharagoda and paid Rs. 45 to the accused, a shroff in the Kharagoda Salt Department. The accused asked him for some small change and demanded four annas, on which the complainant tendered a rupee and received only four pies change. *Held* that, on these facts, the conviction for cheating cannot be supported, as there was no evidence to show that the accused wilfully made a false representation, or that he acted fraudulently or dishonesty. EMPEROR v. NATHURAM NARANJI, **4 Bom.L.R. 442.**

(2)—*Dishonest inducement to deliver property.*—The accused induced the complainant to deliver to him a bicycle under false representations that he was a commission agent and that the machine was required for an up-country purchaser, but after taking delivery, he negotiated its sale to a customer in Bombay. *Held* that the offence of cheating and dishonestly inducing delivery of property was complete as soon as the bicycle was handed over. QUEEN-EMPRESS v. BANAJI FRANJI MUNSHI, **2 Bom. L.R. 621.**

(3)—*Purchasing stamp in the name of another representing himself to be that other.*—Where a person purchased a stamp from a licensed vendor, representing himself to be another, the vendor entering the latter's name in the Register, *held*, that he was not liable to be convicted of cheating. GIRDHAREE v. CROWN, **16 P.R. 1876, Cr.** [*F.*, 20 P.R. 1889, Cr.]

(3-*a*)—*Penal Code,* ss. 415, 419—*Cheating by personation—Purchasing stamp in false name.*—No offence of cheating by personation is committed by purchasing a stamp from a stamp vendor in a false name. EMPRESS v. NEKA, **A.W.N. 1884, 87.**

Cheating—continued.

——2.—**False Personation**—*continued.*

(4)—*Servant purchasing stamp for his master and giving out his master's name as if it were his own.*—Where a servant purchased a stamped paper for his master and gave his master's name as if it had been his own, *held*, that he could not be convicted of cheating by personation, as he had no fraudulent or dishonest intention. *In re* KARUPPANNA PILLAI, **1 Weir. 480.**

(5)—*Penal Code,* ss. 417 *and* 419—*Cheating by personation.*—The accused wished to pass a stolen note and, in order to escape detection, gave his name falsely, when he was asked by the shop-keeper, after he has cashed the note, to give his name. The shop-keeper did not know either of the men, and admitted that the name made no difference. *Held,* that the accused was neither guilty of cheating by personation, nor of cheating. *In re* SHAIK BASIT, **1 Weir 479.** [*R.*, 2 C.L.J. 524.]

(6)—*Penal Code,* s. 420—*Obtaining money by false representation—Promise to procure a post and to repay if post not procured—Cheating—Tests of criminality.*—The accused falsely represented to the complainant that he would be able to appoint him (the complainant) to a lucrative post on a cash security of Rs. 1,000, of which a third was to be paid in advance when submitting the application for the post. The complainant on the faith of this representation paid some money and made the application. Afterwards the accused told the complainant that, if he (the complainant) did not get the post, he would get a refund of the money. On the accused's failing to keep his promise, the complainant demanded the refund, which the accused promised to make by instalments and actually paid one of the instalments. *Held,* that the accused committed an offence under s. 420, I.P.C., as he obtained the complainant's money by a promise which he knew he could not fulfil, and the fact that, long afterwards, under pressure, the accused paid back a portion of what he had received could in no way affect his criminality. The test of the accused's criminality is not what he did months afterwards, but what was in his mind at the time when, and under what circumstances, he received the money from the complainant, and whether the accused then intended to repay the same. EMPEROR v. DEBENDRA PROSAD, **13 C.W.N. 728=9 C.L.J. 605.** (L.R. 1906 A.C. 93, 1908 A.C. 16, *R.*)

(7)—*Cheating by personation — Representing oneself to be member of another caste—Penal Code,* ss. 182 *and* 419.—Where a person belonging to a certain caste, whose enlistment in the police force was prohibited, representing himself to be a member of another caste, got a Government appointment in the Police Department, *held,* that the accused was not guilty of the offence of cheating by personation, but might be guilty of an offence under s. 182, I.P.C. EMPRESS v. BUDDHA, **14 P.R. 1880, Cr.** [*R.*, 25 P.R. 1904, Cr.]

***Cheating*—continued.**

——2.—False Personation—*continued.*

(8)—*Penal Code, ss.* 415, 417, 511 — *Coolie recruiting on false pretences.*—A coolie recruiter induced the complainant to come to the depot promising him domestic service, and entered his name in the books of the depot. He wrote a letter to a coolie contractor in Calcutta offering the complainant as a coolie. Subsequently, the accused, while the complainant was in the Railway station to fetch a parcel on his master's orders, bought a Railway ticket for Calcutta and tried to force him into the train, with a view to send him to Calcutta *en-route* to Assam as a tea garden coolie. *Held*, that the acts of the accused amounted to an attempt to cheat. KISHORI LAL CHATTERJI v. EMPEROR, **9 C.W.N. 764=2 Cr. L.J. 422.**

(9)—*Penal Code, s.* 417—*Cheating—Giving false name and address to avoid prosecution.*—Where a person gives a false name and address to a Sanitary Inspector in order to shield himself from prosecution for an offence, he cannot be convicted of cheating. QUEEN-EMPRESS v. LADKA, **Rat. Un. Cr. C. 635=Cr. Rg. 10 of 1893.**

(10)—*Penal Code, s.* 415—*Inducing another person to withdraw a charge by deceased.*—Where the accused promised to file a *rajinama* and to withdraw his charge against the complainant's brother-in-law and others, without any intention of keeping up the promise when he made it, and the complainant was thereupon induced to withdraw his complaint against the accused, *held*, that the act of the complainant, so induced by the accused's deceit, should not be said to be one likely to cause damage or wrong to the complainant in body, mind, or reputation or property, within the meaning of the concluding words of s. 415, Penal Code. P. DURGIAH v. ROTEE GUNDAPPAH, **1 Weir 477.**

(11)—*Penal Code*, ss. 415 *and* 417—*Cheating—Purchase of more than a particular allotted quantity of opium by giving false name and address—"Fraudulently," meaning of — Misjoinder of eleven charges — Accused pleading guilty and not applying for revision—Revision, whether necessary—Crim. Pro. Code* (1898), ss. 233, 234, 439 *and* 537.—An accused person, by giving a false name and falsely representing himself to be the resident of a particular place, induced the Resident Excise Officer, at the Government opium shop in that place, to sell him more opium than he would otherwise have done. *Held* (*Irwin, C.J., dissenting*) that, on the facts proved against the accused, his conduct was fraudulent, within the meaning of s. 415, and that he was guilty of cheating, under s. 417, Penal Code. On the question whether the trial of the accused was invalidated by misjoinder, in that eleven different transactions were lumped together in one charge, it was *held*, that there was illegal misjoinder, not curable by s. 537, Crim. Pro. Code, but that the conviction should not be set aside, as the accused had not personally applied for revision, as the accused pleaded guilty, and as no injustice seemed to have resulted. Sir James Stephen's analysis of the term "fraudulently," approved. KING-EMPEROR v. THA BYAW, **4 L.B.R. 315, F.B.=9 Cr.L.J. 15.** (25 C. 512, P.J.L.B. 437, 5 C.W.N. 897, 21 A. 113, 15 A. 210, 1 L.B.R. 357, 1 Weir 538 (A), 13 B. 515, N. 25 M. 61, 4 L.B.R. 49, 5 P.R. 1906, *R.*) [*R.*, 3 Bur. L.T. 11=11 Cr. L.J. 686=8 Ind. Cas. 596.]

(12)—*Penal Code*, ss. 415 *and* 419—*Cheating by false personation—*Kurta *inducing Collector to pay money due to family on false personation of minor members of joint family.*—The *kurta* of a joint Hindu family having applied to the Collector as representing the family, for payment of certain sum standing to their credit in the Treasury, the Collector made an order directing him to produce a power of attorney or to cause the other members to appear and admit his authority to sign on their behalf. The *kurta* and the other adult members of the family appeared before the Collector with two persons who were falsely represented to be the minor members of the family and a receipt for money was signed by the adult members and the personators signed in the name of the minors The money was paid over. *Held*, that no offence of cheating by personation had been committed as there was no intent to defraud the Collector. BABURAM RAI v. EMPEROR, **32 C. 775=9 C.W.N. 807=2 Cr. L.J. 368=1 C L.J. 469.** (11 W.R. Cr. 24, *R.*) [*R.*, 2 C.L.J. 524].

(13)—*Passing off girl for marriage as of high caste—Penal Code*, ss. 373, 415, 416, 419.—Two girls were bought by the prisoners on speculation, taken to a foreign and distant district, palmed off as woman of much higher caste than they really were, and married to two Rajaputs after receiving the usual bonus; *held* that the prisoners were guilty of cheating and false personation. QUEEN v. DABEE SINGH, **7 W.R. Cr. 55.**

(14)—*Penal Code*, s. 416—*Misrepresenting caste of the girl.*—The accused represented to the prosecutor that a girl was a Brahmin, and thereby induced him to part with his money in consideration of the marriage of the girl to his brother when the girl really was of the Sudra caste; *held* that he was guilty of cheating by false personation. QUEEN v. MOHIN CHUNDER SIL, **16 W.R.Cr. 42.**

(15)—*False representation of daughter of one person as daughter of another—Penal Code*, s. 416.—A person represented a girl to be the daughter of one woman, when she was, within his knowledge, the daughter of another woman, *held* that he was guilty of cheating by personation. QUEEN v. DHUNPUT OJHAB, **7 W.R. Cr. 51.**

(16)—*Penal Code, s.* 416—*Misrepresenting a woman's caste—Cheating by personation.*—To palm off a young woman as belonging to a caste

***Cheating*—concluded.**

——2.—False Personation—*concluded.*

different from the one to which she really belongs, with the object of obtaining money, amounts to cheating by personation. EMPRESS v. SHEORAM, **A.W.N. 1882, 237.** (7 W.R. Cr. 55, *F.*).

(17)—*Cheating by false personation—Student entitled to concession tickets obtaining a pass on a certificate given to another student—Whether offence committed.*—Four students, who were entitled to travel at a reduced rate, were mentioned in a certificate which was properly signed by the proper authority and endorsed by the Railway Company. The accused, who was not one of the four, was also entitled to travel at the reduced rate, as a student, and there is no rule prohibiting the transfer of a student's ticket. On the presentation, by the accused, of the endorsed certificate containing the names of 4 persons eligible for concession tickets, the Railway Company issued a pass for 4 passenger tickets, and arrested the accused who was convicted. *Held* that the conviction was bad, as it cannot be assumed that the accused intended to use the pass for persons who were not entitled to travel at the reduced rate. *In re* JAMES FLETCHER, **7 M L.T. 201=5 Ind. Cas. 793=11 Cr.L.J. 339=1910 M.W.N. 510.**

See ABETMENT, 4 P.R. 1905, Cr.

Chemical Examiner.

Burden of proof—Rape on a child—Complaint of robbery—Report of—Confession.—*See* CONFESSION—GENERAL, 93 P.L.R. 1910=8 Ind. Cas. 494=11 Cr.L.J. 665.

Chemical Examiner's Report.

(1)—*Inquest report.*—Reg. XII of 1827, s. 52, having been repealed by (Bombay) Act VIII of 1867, an inquest report is not admissible in evidence. REG. v. BHAI SHANKAR NARBHERAIN, **6 B.H.C.Cr. 75.**

(2)—*Admissibility in evidence of.*—A document purporting to be a report under the hand of an "Additional Chemical Examiner" upon a matter or thing submitted to him for analysis and report cannot be received in evidence under s. 510 of Act X of 1882. QUEEN-EMPRESS v. AUTAL MUCHI, **10 C. 1026.**

(3)—*Whether Report is evidence—Production of original.*—The report of a Chemical Examiner is evidence in a criminal trial, if it bear the signature of the Examiner. The original should be produced. QUEEN v. BISWAMBHAR DAS, **6 B.L.R. App. 122=15 W.R.Cr. 49.**

(4)—*Crim. Pro. Code* (1861), s. 370.—The Chemical Examiner's report can be read and acted upon as evidence by Magistrates as well as Sessions Judges. HIGH COURT PROCEEDINGS, 23RD DECEMBER 1870, **6 M.H.C. App. 11.**

Report of Chemical Examiner, when admissible in evidence—*See* CRIM. PRO. CODE, 1898, s. 510, 2 Weir 661.

Chewing Betel.

While being examined as a witness—*See* PENAL CODE, s. 228, 1 Weir 217.

Chhavi.

(1)—Chhavi, *whether arms.*—The Arms Act has no exhaustive definition of the expression "arms," which, besides, including the articles specified in the Act, may apply to other instruments of offence also. Any weapon or instrument possessed or carried for the purpose of offence or defence, but not as an article of domestic or agricultural utility, may be held to fall within the category of arms. A *chhavi*, if used for purposes of offence or defence, may fall within the category of arms. CROWN v. SAMTA SINGH, **16 P.R. 1900, Cr.**

If arms—*See* ACT XI OF 1878, s. 4, 33 P.L.R. 1901.

What is "Chhavi"—*See* ACT XI OF 1878, s. 19 (*a*), 20, 1 P.W.R. 1914 (Cr.)=33 P.L.R. 1914=15 Cr. L.J. 506=24 Ind. Cas. 594.

Chief Constable.

See CONSTABLE.

See POLICE.

See POLICE OFFICER.

See BOM. ACT IV OF 1887, s. 6, Rat. Un. Cr. C. 825=Cr. Rg. 68 of 1895.

Chief Court.

See ACT XV OF 1903, s. 7, 36 P.W.R. 1908 Cr.=3 P.R. 1909, Cr.=9 Cr.L.J. 3.

See BAIL, 19 P.W.R. 1908, Cr.=15 P.R. 1908, Cr.=8 Cr.L.J. 89.

Chief Court (Burma).

Bench of Chief Court whether a superior Court as regards a single Judge of that Court—*See* CRIM. PRO. CODE, 1898, s. 195 (6), 12 Cr. L.J. 469=11 Ind. Cas. 1005=6 L.B.R. 25.

Chief Court Circular No. 849 G, Dated 15th February, 1900.

See DEFAMATION, 4 P.W.R. 1910, Cr.

Chief Justice, Powers of.

(1)—*Application to the Chief Justice to appoint another Bench to hear and determine case—Charter Act* (24 *and* 25 *Vic.*, c. 104), *s.* 14.—Having appointed a Bench, under s. 14 of the Charter Act, to hear any particular case, the Chief Justice has no power to interfere after the disposal of the case by the Bench. *In the matter of* ABDOOL SOBHAN, **8 C. 63=4 Shome L.R. 57.** [*R.*, 14 C. 42, F.B., 1 P.R. 1909, Cr=6 P.W.R 1909, Cr=1 Ind. Cas. 506=9 Cr.L.J. 306.]

See TRANSFER OF CRIMINAL CASES—MISCELLANEOUS CASES, 8 C. 63.

Child.

See ABANDONMENT OF CHILDREN.

See CUSTODY OF CHILDREN.

Child—*concluded.*

See MINORS.

See PENAL CODE, s. 317.

(1)—*When* fœtus *is a child*—*S.* 312, *I.P.C.*—A *fœtus* not bigger than a man's finger, but having the shape of a child, is a child within the meaning of s. 318, I.P.C. EMPRESS v. RUKHMA, **5 C.P.L.R. Cr. 21.**

Competency to be a witness, of old men and young—*See* ACT X OF 1873, ss. 5, 6 and 13, 11 A. 183=A.W.N. 1889, 65.

Child witness—Failure to administer oath—Evidence whether inadmissible—*See* ACT X OF 1873, ss. 5, 13, 15 Cr. L.J. 161=22 Ind. Cas. 737.

Duty of giving information as to birth of child—*See* BOM. ACT VI OF 1873, s. 72, Rat. Un. Cr. C. 373= Cr. Rg. 22 of 1888.

Competency of, to give evidence—*See* CHARGE TO JURY—MISDIRECTION, 8 W.R. Cr. 60.

Burden of proof—Rape on a child—Complaint of robbery--Report of Chemical Examiner—Confession—*See* CONFESSION—GENERAL, 93 P.L.R. 1910=8 Ind. Cas. 494=11 Cr. L.J. 665.

Whether children are property—*See* CRIM. PRO. CODE, 1898, s. 517, 1 Weir 348.

Detention of children for purposes of conversion—*See* CRIM. PRO. CODE, 1898, s. 552, 16 C. 487.

Maintenance of unborn child—*See* MAINTENANCE, 3 N.W.P. 70.

Maintenance of—*See* MAINTENANCE, U.B. R. 1910, 2nd Qr. 34=8 Ind. Cas. 479.

See MAINTENANCE, 28 P.W.R. 1910, Cr.

Allowing, to languish and die—*See* MURDER, 5 N.W.P. 44.

Starvation of infant child—Death caused thereby—*See* MURDER, A.W.N. 1883, 36.

Murder of newly born—*See* MURDER, Rat. Un. Cr. C. 401.

Capacity of a, to do wrong, how to be measured—*See* PENAL CODE, s. 83, 1 W.R Cr. 43.

See PENAL CODE, s. 304, A.W.N. 1893, 100.

See PENAL CODE, s. 318, 2 C.P.L.R. 153.

Blow intended to fall upon an adult falling on a, and causing its death—*See* RASH AND NEGLIGENT ACT—CAUSING DEATH BY, 28 P.R. 1888, Cr.

Receiving stolen property from child thief—*See* STOLEN PROPERTY, 6 M. 373=1 Weir 469=7 Ind. Jur. 304.

Child Wife.

See PENAL CODE, ss. 304, 325, 328, 18 C. 49.

Child Witness.

See ACT X OF 1873, s. 13, 5 Bom. L.R. 551.

See WITNESS—GENERAL—WHO ARE COMPETENT TO BE WITNESSES, 11 C.W.N. 51=4 Cr. L.J. 412.

China and Corea Order in Council, 1904.

Arts. III, V, XXXV—Jurisdiction over foreigners and British protected persons (Afghan sepoys)—English rules of evidence how far binding on Supreme Court at Hongkong—*See* ST. 53 AND 54, VIC. C. 37, 18 C.W.N. 705=15 Cr. L.J. 326=23 Ind. Cas. 678, P.C.

China Hills.

See REG. V OF 1896.

Chittagong Hill Tracts.

See BEN. ACT XXII OF 1860.

Chittas.

Evidentiary value of kabuliyats—Accounts, receipts, and survey maps—*See* EVIDENCE—GENERAL, 29 C. 187=29 I.A. 24=6 C.W.N. 386, P.C.

Cholera.

Omission to report a case of—*See* ACT III OF 1880, 9 P.R. 1895, Cr.

Power to interdict caste feast on the outbreak of cholera—*See* BOM. ACT VI OF 1873, s. 73, 14 B. 180.

See PENAL CODE, s. 188, Rat. Un. Cr. C. 433.

Travelling in a train by a person suffering from—*See* PENAL CODE, s. 269, 7 M. 276=1 Weir 226.

Chowkidar.

See POLICE.

(1)—*Crim. Pro. Code*, 1898, *s.* 59—*Village Chowkidar, whether a police officer*—*Village Chowkidar Act* (*Act* I *of* 1892 *B.C.*), s. 13.—A village chowkidar cannot be properly regarded as a police officer within the terms of s. 59, Crim. Pro. Code KALAI v. KALU CHOWKIDAR, **27 C. 366=4 C.W.N. 252.**

See ABETMENT, 8 C. 728=11 C.L.R. 223.

See PUN. ACT IV OF 1872, s. 39-A, Rule 43, 23 P.R. 1894, Cr.

See U.P. ACT XVI OF 1873, s. 11, A.W.N. 1882, 160.

See ARREST, 27 C. 366=4 C.W.N. 252.

See CONFESSION—CONFESSIONS MADE TO POLICE OFFICERS, 2 C.W.N. 71.

Power of police officer to demand aid of, in arresting an accused person—*See* CRIM. PRO. CODE, 1898, s. 42, 6 C.W.N. 337.

See CRIM. PRO. CODE, 1898, s. 56 (1), 10 C.W.N. 287=5 Cr. L.J. 201.

Chowkidar—*concluded.*

If a police officer—*See* CRIM. PRO. CODE, 1898, s. 59, 17 C.W.N. 978 = 14 Cr.L.J. 494 = 20 Ind. Cas. 750.

Confession made to—Confession to a Magistrate subsequently retracted—Bengal Act I of 1892 (Village Chowkidars)— Village chowkidar, whether a police officer—*See* EVIDENCE ACT, 1872, ss. 25 and 26, 2 C.W.N. 637.

Whether he is a police officer—*See* EVIDENCE ACT, 1872, s. 26, 9 C.W.N. 474 = 2 Cr. L.J. 255.

See MAGISTRATE, JURISDICTION OF — MISCELLANEOUS, 1 W.R. Cr. 12.

See PENAL CODE, s. 223, A.W.N. 1907, 94 = 5 Cr.L.J. 277 = 29 A. 377.

See PENAL CODE, s. 225, 10 C.W.N. 287 = 3 Cr. L.J. 201.

Chowkidar, Village.

See BEN. ACT VII OF 1870.

Chowkidari Village amending Bengal Act VI of 1870.

See BEN. ACT I OF 1892.

Christian.

Words describing atrocities committed by Christians upon the Mahomedans—Tendency to make Mahomedans hate—*See* ACT I OF 1910 ss. 4, 12, 17, 19, 22, 14 Cr. L.J. 497 = 20 Ind. Cas. 977 = 18 C.W.N. 1 = 41 C. 466.

Application for maintenance by wife of a Christian reverted to Hinduism—*See* MAINTENANCE, 4 M.H.C. App. 3.

Re-marriage of Hindu when, wife alive—Whether bigamy—*See* PENAL CODE, s. 494, 33 M. 371 = 8 Ind. Cas. 572.

Christian Marriage.

See ACT XV OF 1872.

Circular Order.

(1) *Scope of.*—Circular orders should not unduly limit the operation of any of the sections of the Crim. Pro. Code and any order so limiting their operation should be cancelled. Circular No. 3 OF 30TH APRIL 1869, **11 W.R. Cr. Cir. 3.**

Circumstantial Evidence.

See EVIDENCE.

(1)—*Cases depending on —Incriminating facts, nature of.*—It is a fundamental principle and one of universal application in cases depending on circumstantial evidence, that, in order to justify the inference of guilt, the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. HURJEE MULL v. IMAM ALI SIRCAR, **8 C.W.N. 278.** [*F.*, 11 Cr. L.J. 82 = 4 Ind. Cas. 941 = 136 P.L.R. 1909 = 36 P.W.R. 1909, Cr. *R.*, 14 Cr. L.J. 316 = 19 Ind. Cas. 1004 = 244 P.L.R. 1913]

Circumstantial Evidence—*continued.*

(2)—*Circumstantial evidence, nature of—Theft of currency notes—Opportunity of entering room not accused's exclusively—Encashment of stolen notes in presence of accused's relation—Money in accused's possession after theft, not accounted for satisfactorily—Sufficiency of evidence.*—Circumstantial evidence must be exhaustive and exclude the possibility of guilt of any other person, or must point conclusively to the complicity of the accused. Therefore, where, in a case of theft of currency notes and cash from an office, the evidence against the accused was that he was one of those who entered the office in the absence of the complainant, that a relation of his was present when two of the notes were cashed by that relation's relative and that the accused was after the theft in possession of money for which he could not satisfactorily account, it was held that this evidence did not fulfil the conditions of circumstantial evidence. CHIRAGUDDIN v. EMPEROR, **15 Cr. L.J. 293 = 23 Ind. Cas. 501 = 18 C.W.N. 1144.**

(3)—*Circumstantial evidence—Presumption of innocence—Establishment of* prima facie *case—Applicability of the presumption—Duty of accused to explain circumstances.*—When no *prima facie* case had been made against the accused, it is open to the accused to rely safely on the presumption of innocence or on the infirmity of the evidence for the prosecution. But when a *prima facie* case is made out and the presumption of innocence is displaced, then the force of circumstantial evidence is augmented whenever the party attempts no explanation of facts which he may reasonably be presumed to be able and interested to explain. ISARSING SAWANSING v. THE CROWN, **7 S.L.R. 109 = 15 Cr. L.J. 497 = 24 Ind. Cas. 585.**

(4)—*Murder—Evidence purely circumstantial—Sentence of death or transportation for life—Legality—Age of accused also to be taken into account in imposing sentence.—Per Ayling, J.*—Where the Court is satisfied beyond reasonable doubt, of the guilt of the accused, the fact that the evidence is circumstantial and not direct is not a factor which should *per se* affect the sentence (2 Weir 736, *R.*). There is no unwritten rule or principle standing in the way of the imposition of a death sentence in cases where the evidence is purely circumstantial. Age of the accused is undoubtedly a point which no Court should leave out of consideration in determining the sentence to be imposed. The substitution of a death sentence for one of transportation is a measure which must always be undertaken with reluctance. *Per Kumaraswamy Sastri, J.*—A consideration of the species of evidence on which the guilt of an accused is found should not of itself determine the nature of the sentence (13 M. 426, *R.*). And the Court is not bound in every case to pass the lesser sentence when the evidence is circumstantial. Circumstantial evidence, like any other, must in every case be tested and weighed, and prevail or not by its own inherent proving force. The age of the accused is a fact that might well be taken into consideration in

Circumstantial Evidence—*concluded.*

determining what sentence is to be passed in cases of murder. MUNIANDI v. EMPEROR, **16 M.L.T. 535.** (11 C.W.N. 904, *R.*)

(5)—*Murder of a child for its ornaments.*—In this case the sentence of death was confirmed though the evidence was mainly circumstantial. CROWN v. MAMRAJ, **70 P.R. 1866, Cr.**

(6)— *Murder by poison.*—Sentence of death was confirmed in this case, though the evidence was only circumstantial. CROWN v. LAIKA, **75 P.R. 1866, Cr.**

See CONFESSION — RETRACTED CONFESSION, 38 P.W.R. Cr. 1910=24 P.R. 1910=193 P.L.R. 1910=8 Ind. Cas. 250=11 Cr. L. J. 604.

Summary dismissal of appeal —Discretion, exercise of—Circumstantial evidence, conviction based on—Revision by High Court—*See* CRIM. PRO. CODE, 1898, s. 421, 13 O.C. 309=8 Ind. Cas. 379=11 Cr. L.J. 631.

Conviction for murder whether can be based on circumstantial evidence—*See* MURDER, 1914 M.W.N. 718.

Murder—Value of—Unsatisfactory evidence of the identification of the body—Effect—*See* MURDER, 40 P.W.R. 1914, Cr.

See PENAL CODE, s. 395, 15 Cr. L.J. 404=23 Ind. Cas. 1004.

City Municipality.

See MAD. ACT I OF 1884.

See MAD. ACT III OF 1904.

City of Bombay Municipality.

See BOM. ACT III OF 1888.

City of Madras Municipality.

See MAD. ACT V OF 1878.

City Police.

See BOM. ACT IV OF 1902.

See MAD. ACT III OF 1888.

City Survey and Settlement Amendment Act.

See BOM. ACT IV OF 1868.

Civil and Criminal Justice, Aden.

See BOM. ACT II OF 1864.

Civil and Criminal Proceedings.

Started together—Stay of criminal proceedings—*See* CRIM. PRO. CODE, 1898, ss. 295, 435, 439, 44 P.W.R. 1911, Cr.=12 Cr. L. J. 615=12 Ind. Cas. 991.

Civil Appeal.

Proceedings against a person who is neither a party nor a witness—Pendency of—No bar to prosecution—*See* CRIM. PRO. CODE, 1898, s. 476, 14 Bom. L.R. 968=1 Bom. Cr. 212=13 Cr. L.J. 848=17 Ind. Cas. 720.

Civil Courts.

See JURISDICTION OF CIVIL COURTS.

Decision of, in favour of the accused—Effect —*See* U. P. ACT I OF 1900, s. 147, 7 A.L.J. 735=7 Ind. Cas. 288=11 Cr. L.J. 445=32 A. 620.

Finding as to possession essential—View, whether conclusive—*See* CRIM. PRO. CODE, 1898, s. 145, 15 Cr. L.J. 663=25 Ind. Cas. 991.

See CRIM. PRO. CODE, 1898, s. 439, 33 P.R. 1910, Cr.

Duty of Criminal Court to give effect to final judgment of Civil Court—*See* CRIM. PRO. CODE (1898), s. 476, 12 C.W.N. 1=6 C.L.J. 703.

Breach of the peace, likely, imminent — Possession—Decree of—Not necessarily conclusive—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 2 C.L.J. 271=2 Cr. L.J. 670=10 C.W.N. 257=33 C. 33, F.B.

Nature and effect of Civil Court's decision—Decree of, for possession—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 6 W.R. Cr. 10.

Effect of decree of Civil Court on order for maintenance—Decree in suit for restitution of conjugal rights—*See* MAINTENANCE, 13 W. R. Cr. 52.

Civil Courts Act, Bengal.

See BEN. ACT VI OF 1871.

Civil Dispute.

Dispute between Civil suitors — Improper prosecution—Illegal conviction—*See* CONVICTION, 17 W.R. Cr. 46.

See CRIMINAL CASE, 4 Bom. L.R. 936.

Pendency of—Habit of rushing into Criminal Courts to be discouraged—*See* CRIM. PRO. CODE, 1898, s. 439, 10 P.W.R. 1913, Cr.=33 P.L.R. 1913=18 Ind. Cas. 688=14 Cr. L.J. 128.

Further enquiry in case of discharge of accused person on the ground of matter in dispute being of a civil nature—*See* FURTHER ENQUIRY, 1 Bom. L R. 852.

See MISCHIEF, 2 Bom. L.R. 340.

Dispute of civil nature, if should be brought in the Criminal Court—*See* PENAL CODE, ss. 482, 485, 486, 17 C.W.N. 227=18 Ind. Cas. 404=14 Cr. L.J. 68=40 C. 281.

Civil Law.

Cheating—Evidence of the previous and subsequent conduct of accused when and in what cases relevant—Principle of, when applies to criminal case—Indian Evidence Act (I of 1872), ss. 14, 15 and 54—*See* PENAL CODE, s. 420, 26 P.W.R. 1910, Cr.

Principles of, when applicable to criminal cases—*See* PENAL CODE, s. 420, 269 P.L. R. 1914.

Civil Procedure, Arrears of Rent.

See BEN. REG. XX OF 1817.

Civil Procedure Code.

See ACT XXIII OF 1861.

See ACT X OF 1877.

See ACT XIV OF 1882.

See ACT V OF 1908.

Civil Rights.

Mischief—Blocking up a channel—Tort—*See* PENAL CODE, s. 425, 8 M.L.T. 385=8 Ind. Cas. 128.

Civil Suit.

See SECURITY TO KEEP THE PEACE—EFFECT OF SIGNING WRONG BOND AND POSTPONING PROCEEDINGS FOR CIVIL SUIT.

See STAY OF CRIMINAL PROCEEDINGS.

(1)—*Suit in Civil Court.*—Civil proceedings do not constitute a bar to prosecution in a Criminal Court. MADHUB KYBURTO v. KESHUB SINGH, 9 **W.R. Cr.** 22.

Claims to attached property—Remedy by—*See* ABSCONDING OFFENDER, 17 W.R. Cr. 10.

See CRIM. PRO CODE, 1898, ss. 133, 135, 138, 7 Bur. L.T. 23=23 Ind. Cas. 467=15 Cr.L.J. 259.

Without criminal prosecution—*See* CRIMINAL PROCEEDINGS, 17 M.L.J. 537=2 M.L.T. 461.

Pending civil suit—Criminal prosecution during such pendency—Stay of criminal proceedings—*See* HIGH COURT, JURISDICTION OF—GENERAL, 30 M. 226=6 Cr. L.J. 131.

Civil Surgeon.

See PENAL CODE, s. 326, L.B.R. 1872—1892, 292.

Civil Trespass.

Criminal trespass, distinguished from—*See* PENAL CODE, s. 441, 16 C.W.N. 1007=13 Cr. L.J. 783=17 Ind. Cas. 415.

Claim.

Enquiry of—To property attached as belonging to the accused—*See* ATTACHMENT, L.B.R. 1893—1900, 324.

Clasp Knife.

Not an arm—*See* ACT XI OF 1878, ss. 4 and 19, 1 L.B.R. 271.

"Clearing."

See MAD. ACT V OF 1882, s. 21 (*a*), 26 M. 470=1 Weir 760.

Clerk.

See MUNICIPAL CLERK.

See ACT XIII OF 1859, s. 2, 1 Weir 689.

Magistrate dictating judgment to Clerk, not in accordance with law—*See* BEN. ACT III OF 1899, ss. 325, 574, 4 C.L.J. 411=4 Cr. L.J. 394.

Appointed by a Sub-Registrar, whether a public servant—*See* PENAL CODE, ss. 21 and 161, 32 C. 664=2 Cr. L.J. 512.

Cloths.

Order for maintenance — Order for payment of cloths—*See* MAINTENANCE, 2 Weir 627.

Co-accused.

See ACCOMPLICE

See ACCUSED PERSON.

See APPROVER.

See CONFESSION.

See EVIDENCE ACT, 1872, ss. 30, 114, 133.

(1)—*Evidence of co-accused pleading guilty, admissibility of.*—On behalf of the prosecution, an application was made that a conditional pardon might be tendered to the second accused. The Judge declined to consider the application, until the second accused had pleaded to the charges preferred against him. The second accused, then, pleaded guilty on some counts of the indictment, and his plea was recorded. The Judge then tendered a pardon to him, which was declared to be illegal, and he was then removed from the dock. *Held*, by the Full Bench, that, independently of the legality of the pardon, his evidence was admissible on the broad ground that, when he gave evidence, he was not in charge of the jury and no issue remained to be tried as between him and the Crown. N. A SUBRAHMANI AIYAR v. QUEEN-EMPRESS, **10 M.L.J. 147, F.B.**

Security demanded—Evidence of—*See* CRIM. PRO. CODE, 1898, s. 117, 12 A.L J. 1262.

See CRIM. PRO. CODE, 1898, s. 342, 3 Bom. L.R. 437.

Evidence of—*See* EVIDENCE — ADMISSIBILITY OF EVIDENCE, 10 C.L.R. 553.

See EVIDENCE ACT, 1872, ss. 21, 157, 12 Bom. L.R. 663=7 Ind. Cas. 933=11 Cr.L.J. 542=34 B. 599.

Coasting Vessles, Bombay.

See BOM ACT XIX OF 1838.

Cobra.

Exhibition of a cobra with unextracted fangs in public—*See* CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 5 C. 351=4 C. L.R. 580.

Cocaine.

See ACCOMPLICE — ACCOMPLICE EVIDENCE—CORROBORATION, 8 Ind. Cas. 119.

See ACT XII OF 1896, s. 48 (*c*). 14 Cr. L.J. 440=20 Ind. Cas. 600=6 Bur. L.T. 129.

Illicit possession of—Burden of proof—*See* BEN. ACT V OF 1909, s. 46, 15 Cr.L J. 262=23 Ind. Cas. 470=18 C.W.N. 1023.

See BOM. ACT V OF 1878, ss. 9, 13, 43, 45 (*b*), 8 Bom. L.R. 601, 12 Bom. L.R. 124.

Illicit possession of — Punishment — *See* BOM. ACT V OF 1878, s. 43 (*g*), 13 Bom. L.R. 1185=12 Ind. Cas. 980=12 Cr.L.J. 604.

Cock-fighting.

See GAMBLING.

See GAMING.

(1)—*Spectators—Gambling Act* (III *of* 1867), *s.* 13.—Mere spectators at a cock-fighting on a public road are not liable to be punished as aiding and abetting an offence under Act III of 1867 (Gambling), s. 13. QUEEN-EMPRESS, v. NGA KYEW, **L.B.R. 1872—1892, 163.**

See ABETMENT, U.B.R. 1892—1896, Vol. I, 119.

See BUR. ACT I OF 1899, s. 10, 1 L.B.R. 231.

Co-defendants.

Examination of, as Witnesses—*See* WITNESS—GENERAL—WHO ARE COMPETENT TO BE WITNESSES, 6 W. R. Cr. 91.

Code of Civil Procedure.

See ACT XXIII OF 1861.

See ACT X OF 1877.

See ACT XIV OF 1882.

See ACT V OF 1908.

Code of Criminal Procedure Amendment.

See ACT XV OF 1862.

See ACT VIII OF 1869.

Codification.

Of existing law and introduction of foreign Law—*See* PENAL CODE, ss. 2, 499, 500, 17 C.W.N. 297 = 14 Cr.L.J. 100 = 18 Ind. Cas. 660 = 40 C. 433.

Coercion.

See BEN. ACT VI OF 1901, ss. 2 (*n*), 161, 164, 15 Cr.L.J. 195 = 22 Ind. Cas. 979 = 18 C.W.N. 1143.

To witness—*See* MAGISTRATE, DUTY OF, 8 A. 672.

See PENAL CODE, s. 94, 14 B. 115.

Coffee stealing Prevention.

See MAD. ACT VII OF 1878.

Cognisable Offence.

(1)—*Cognisable offence—Complaint—Court Fees Act, VII of* 1870, *s.* 18 (16).—No stamp is necessary to petitions of complaint made to Magistrates of cognisable offences. NASICK MAGISTRATE'S REFERENCE, No. 939, **Rat. Un. Cr. C 70.**

(2)—*Information of a cognizable and a non-cognizable offence—Police reporting the case as non-cognizable—Magistrate's acceptance of the report—Magistrate's subsequent order calling for charge-sheet from the Police for the cognizable offence—Illegality.*—Where, on an information having been lodged before the Police, charging the accused with a cognizable and a non-cognizable offence, the Police reports that the charge of the cognizable offence is false, and the Magistrate accepts the Police-report and passes orders accordingly, the Magistrate cannot subsequently order the Police to send up the charge-sheet for the cognizable offence, if there appears nothing in the Police-report or on the materials before the Magistrate to support a charge of such an offence. Where, in such a case, on the order of the Magistrate, the Police sends up a charge-sheet for the cognizable offence, and proceedings are commenced against the accused; *held* that the proceedings so taken are bad and ought to be quashed. MOKAMIJI DAS v. EMPEROR, **11 C.W.N. 832 = 6 Cr. L J. 34.**

(3)—*Power of the police to arrest for a, discretionary.*—The power of the police to arrest for a cognizable offence is discretionary. QUEEN-EMPRESS v. PU ME, **L.B.R. 1893—1900, 390.**

See CRIM. PRO. CODE, 1898, s. 154, U.B.R. 1892—1896, Vol. I. 24.

Cognisance of Offence.

See CRIM. PRO. CODE, 1898, s. 190.

(1)—*Crim. Pro. Code* (1882), ss. 170, 191(*c*)—*Cognizance of offence by Magistrate on perusing Police Diary—Jurisdiction to try the offence.*—Where a Magistrate, enquiring into a charge against A, read certain statements in the Police Diary and, after examining some witnesses, issued warrants against B, C, D, and E, he must be deemed to have taken cognizance of the offence against B, C, D, and E, under cl. (*c*) of s. 191. The provisions of the last paragraph of that section applied to the case and they were entitled to ask that the case should be committed to the Court of Sessions. QUEEN-EMPRESS v. HIRASHANKER UDAYSHANKER, **Rat. Un. Cr. C. 951 = Cr. Rg. 2 of 1898.** [*R.*, 11 Cr. L.J. 489 = 7 Ind. Cas. 461 = U.B.R. 1910, Crim. Pro. Code. 2.]

(2)—*Crim Pro. Code*, 1898, *ss.* 190 (1) (*c*) *and* 191—*Application for transfer from file of Magistrate who had taken cognizance of case.*—After the institution of a complaint, the names of some more accused persons, which were not in the original complaint, were added by the Public Prosecutor under instructions from the District Magistrate. The accused did not at all appear before the Magistrate. *Held*, that the Magistrate could not act under s. 191, Crim. Pro. Code, for transferring it to some other Magistrate under him and that the application for transfer was premature. *Held*, also, that the case against the newly added accused was taken cognisance of by the District Magistrate under s. 190 (1) (c), Crim. Pro. Code, and that s. 191 applied to the case. Neither for the above reason, nor because the District Magistrate entertains a complaint in the face of a standing order in force that all complaints should be presented to the senior Magistrate of the district, nor again because the District Magistrate appoints a Public Prosecutor to conduct the case, can it be held that he has prejudged it, so as to entitle a party to claim its transfer to a Court outside the district. MAUNG SHWE HLA v. CROWN, **14 Bur. L.R. 327 = 9 Cr. L J. 64.**

Cognisance of Offence—*concluded.*

(3)—*Crim. Pro. Code* (1898), s. 190, *cl.* (c)—*Cognisance of case against persons not originally complained against.*—Where a complaint is made against some persons, and the Magistrate takes cognisance of the offence, it is the duty of the Magistrate to deal with the evidence brought before him and to see that justice is done in regard to any person who might be proved by the evidence to be concerned in the offence. CHARU CHANDRA DAS v. NORENDRA KRISHNA CHAKRAVARTI, **4 C.W.N. xlv.**

See ACT XII OF 1896, s. 57, U.B.R. 1892-1896, Vol. I, 111.

See COMMITMENT TO SESSIONS COURT, A.W.N. 1907, 178=6 Cr. L.J. 7, 2 S.L R. 9,Cr.=10 Cr. L.J. 224.

See COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINT, 13 C. 334.

See CRIM. PRO. CODE, 1898, ss. 94, 96, 190 (c), 537, 12 C.W.N. 1075=8 Cr. L J. 235=35 C. 1076.

See CRIM. PRO. CODE, 1898, s. 198, 11 O.C. 148=7 Cr.L.J. 457.

See MAGISTRATE, JURISDICTION OF—TRANSFER OF CASES—REFERENCE TO OTHER MAGISTRATES, ETC, A.W.N. 1907, 93=5 Cr. L.J. 275.

See SANCTION TO PROSECUTE—MISCELLANEOUS CASES, 10 Bom. L.R. 1053=9 Cr. L.J. 183.

Co-habitation.

Marriage according to Alyasantana Law—Proof of co-habitation, whether sufficient.—*See* PENAL CODE, s. 498, 6 M. 374=1 Weir 560=8 Ind. Jur. 35.

Coin.

See AKBAR'S COIN.

See COUNTERFEITING COIN.

See GAMBLING.

See KING'S COIN (COUNTERFEITING OF).

See PENAL CODE, SS. 230—254.

(1)—*Shah Jehan's coin.*—A coin of the reign of Shah Jehan is not a coin under s. 230, Penal Code. EMPEROR v. KHUSHALI, **A.W.N. 1906, 308=4 A.L.J. 43=4 Cr. L.J. 453=29 A. 141.** (11 B.H.C. 172, *F.*;5 N.W.P.H.C. 187, *D.*) [*R.*, 11 Cr. L.J. 571=8 Ind. Cas. 145.]

(2)—*Coin, not an instrument of gaming.*—A coin is not an instrument of gaming within the meaning of s. 11 of the Bombay Gambling Act (III of 1866). IMPERATRIX v. VITHAL BHAICHAND, **6 B. 19.** [*Appl.*, 16 B. 283.]

(3)—Coins are not instruments of gambling. KING-EMPEROR v. NGA THU DAW, **2 L B.R. 60.** [*R.*, 14 Cr. L.J. 413=20 Ind. Cas. 237.]

Coin, if instrument of gaming—*See* BEN. ACT II OF 1867, ss. 1 and 6, 5 C.W.N. 503.

See BOM ACT III OF 1866, s. 11, Rat. Un. Cr. C. 75=Cr. Rg. 19—6—73.

Coin—*concluded.*

Whether instruments of gaming—*See* BOM. ACT I OF 1890, s. 12, 16 B. 283, F.B.

Whether instruments of gaming—Seizure and forfeiture of—*See* BUR. ACT I OF 1899, ss. 6, 10 (*a*), 15 (2), 3 (*a*), L.B.R. 1890—1900, 547.

Taking coins from land bought—*See* CRIMINAL MISAPPROPRIATION, Rat. Un. Cr. C. 8.

See PENAL CODE, ss. 230 and 420, A.W.N. 1906, 308=4 Cr. L.J. 453=29 A. 141=4 A.L.J. 43.

Possession of coining instruments —*See* PENAL CODE, s. 235, 1 Weir 219.

Delivery to another of coin with the knowledge of its counterfeitness—*See* PENAL CODE, s. 139, 1 Weir 221.

Collection of Debts on Successions.

See ACT XXVII OF 1860.

Collector.

See DISTRICT MAGISTRATE AND COLLECTOR.

(1)—*Collector, if a Court.*—A Collector acting under ss. 69 and 70 of the Bengal Tenancy Act is a "Court" within the meaning of s. 195 of the Code of Criminal Procedure. RAGHOOBUNS SAHOY v. KOKIL SINGH, **17 C. 872.** [*R.*, 24 M. 121=2 Weir 170.]

(2)—*Alteration of Register under the Land Registration Act.*—The action of a Collector in altering the register kept under the Land Registration Act for the mutation of names, by striking out the name of the registered owner and substituting that of another, without a proper proceeding or enquiry and without notice to the party whose name is struck out, condemned. GOPINATH PARYAH v. EMPRESS, **2 C.L.J. 555=10 C.W.N. 82=3 Cr.L.J. 169.**

(3)—*Power of Collector—Officer acting in two capacities—Crim. Pro. Code* (1861),s. 168.—A Collector, who entertains a charge, under s. 168 of the Code of Criminal Procedure, of an offence against any Court or public servant, should not try the case himself as a Magistrate nor, unless under very exceptionally circumstances, give evidence as a witness before himself as a Magistrate. *In re* NIHAL MAHTEE, **9 W.R.Cr. 13.**

See ACT XVIII of 1869, 2 A. 806.

See ACT II OF 1886, 25, s. 44 P.R. 1905 Cr.=187 P.L.R. 1905=3 Cr. L.J. 128.

Acting under the Land Acquisition Act, whether a "Court"—Power of Collector to administer oath—*See* ACT I OF 1894, s. 53, 27 C. 820.

If Court—*See* BEN. ACT VIII OF 1885,ss.69, 70, 17 C. 872.

Superior to Tahsildar — *See* CRIM. PRO. CODE, 1898, s. 195 (6), 12 Cr. L.J. 109=9 Ind. Cas. 635.

Collector—*concluded.*

Whether a Civil Court—*See* CRIM. PRO. CODE, 1898, ss. 198, 195, 2 A. 533, F.B.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., A.W.N. 1895, 121, 7 B.H.C. Cr. 64.

See SANCTION TO PROSECUTE—REVOCATION OF SANCTION, 10 A. 582=A.W.N. 1888, 234.

Collectorate Pedah.

See ASSAULT, 13 W.R. Cr. 49.

Commission.

See WITNESS.

(1)—*Commission for examination of witnesses outside jurisdiction.*—The High Court has no power to issue a commission for the examination of witnesses outside its jurisdiction. EMPRESS v. S. MOORGA CHETTY, **5 B. 338, F.B.**

(2)—*Examination of witness on commission.*—An application to examine a witness for the prosecution by commission was refused by the High Court in the interests of the prisoner. EMPRESS v. COUNSELL, R. P., **8 C. 896.** [*Compared*, 15 C.P.L.R. 66.]

(3)—*Examination of witnesses in a foreign territory—Crim. Pro. Code* (1872), *s.* 30.—A commission should not be issued for the examination of a witness in a foreign territory. MUSSUMMAT KISHEN KOUR v. CROWN, **20 P. R. 1878, Cr.** [*F.*, 16 P.R. 1880; *R.*, 35 P.R. 1880, 36 B. 524=14 Bom. L.R. 147=14 Ind. Cas. 970=13 Cr L.J. 426.]

(4)—*High Court—Crim. Pro. Act*, X *of* 1875, *s.* 76—*Commission for taking evidence of public servant transferred to distant place*.—Where a Government servant, who had executed a recognizance to appear at an ensuing criminal Sessions, when called upon to give evidence, was transferred to a very distant place, before the date of the hearing of the case, and the Government, on his behalf, applied for a commission to take his evidence, on the ground that he could not, with due regard to the public interest, be present for the trial, *held*, that the application should be granted and the commission should be allowed. EMPRESS v. BAL GANGADHAR TILAK, **6 B. 285=6 Ind. Jur. 482.** [*R.*, 19 B. 749; *D.*, 24 C. 551.]

(5)—*Crim. Pro. Code* (1882), *ss.* 503 *and* 507—*Scope of the sections—Meaning of the term "in the case"—Application for commission, when to be made—S.* 33, *Evidence Act.*—Ss. 503 and 507 should be construed distributively, and the word "case" in s. 507 means the case before the Court issuing the commission, and not any subsequent stage of it before another Court. Therefore, evidence taken under commission issued by the Chief Presidency Magistrate during the course of an enquiry before him cannot be admitted on the trial of the same case at the High Court Sessions under s. 507 of the Code. Nor would it be admissible under s. 33 of the Evidence Act, in a case where the only

Commission—*continued.*

objection to obtaining witnesses' presence was on the ground of expense of attendance. [*F.*, 19 B. 749.] Although s. 503 may include any party to a proceeding, it is principally intended for the purposes of some witness other than the parties principally concerned, persons "whose presence could not be obtained without an amount of delay and expense, which, under the circumstances of the case, the Court considers unreasonable." An application for commission applied for by the prosecution, during the trial and after the jury had been sworn, was refused on the ground that the trial and commission could not go on together. QUEEN-EMPRESS, v. A. M. JACOB, **19 C. 113.** (6 A. 224, 6 C. 532, *R.*)

(6)—*Crim Pro. Code* (1882), *ss.* 503 *to* 507—*Power of Presidency Magistrate—Power to issue commission for examination of witnesses residing within jurisdiction.*—Although it is doubtful whether a Presidency Magistrate has power to issue commissions for the examination of witnesses within his own jurisdiction, yet, there is nothing to prevent a Presidency Magistrate from examining a witness within his jurisdiction at some place other than the Court-house. HEM COOMAREE DASSEE v. QUEEN-EMPRESS, **24 C. 551=1 C.W.N. 333.**

(7)—*In criminal cases—Justification for its issue.*—Every witness must be produced at a trial, unless and until it is proved either to be actually impossible to produce him or to be so difficult to do so, that it is under the circumstances unreasonable to insist on his production. But petty inconveniences such as those to which a witness may be subjected by being summoned as a witness in a criminal case would not justify the issue of a commission, especially when a previous conviction depended for its proof solely and entirely upon expert evidence. EMPEROR v. KASIM, **15 C.P.L.R. 66, Cr.**

(8)—*Commission for the examination of complainant on presenting the complaint, not regular—Crim. Pro. Code* (1882), ss. 198, 200, 503, 537.—In the preliminary stage of a criminal proceeding, a complainant is only a complainant, not a witness. A commission for his examination cannot, therefore, be issued under s. 503, which relates to the examination of witnesses only. When, on a complaint being presented on behalf of H.H. the Maharaja of Kashmir to the District Magistrate of Lahore, the latter issued, to the Resident at Kashmir, a commission for the examination of the complainant, *held* that the examination so taken was contrary to the provisions of ss. 198 and 200, Crim. Pro. Code, but that, as there was no doubt of the wish of His Highness to prosecute and the irregularity being a formal one, it was cured by the provisions of s. 537, Crim Pro. Code. SARBDYAL v. EMPRESS, **10 P.R. 1896 Cr.** [*R.*, 32 P.W.R. 1911, Cr.=146 P.L.R. 1911=10 Ind. Cas. 156=12 Cr. L. J. 217=11 P.R 1911.]

To examine witnesses—*See* ACT XIV OF 1882, s. 640, 3 C.W.N. 753.

Commission—*concluded.*

To examine complainant who is a *pardanashin* lady whether may be issued—*See* CRIM. PRO. CODE, ss. 192, 200, 503, 15 Cr. L.J. 348 = 23 Ind. Cas. 700 = 18 C.W.N. 1020.

Examination of witnesses by—*See* CRIM. PRO. CODE, 1898, ss. 503 (1 to 3), 505, 5 A. 92

Evidence taken on commission in Nepal—Admissibility — *See* EVIDENCE—GENERAL, 7 C.W.N. 635.

Examination of witnesses on commission—*See* EVIDENCE ACT, 1872, s. 33, 6 A. 224 = A.W.N. 1884, 55, 19 B. 749.

District Magistrate's power to issue, for examination of witnesses—*See* PARDANASHIN WOMAN, 4 S.L.R. 257 = 11 Ind. Cas. 582 = 12 Cr. L.J. 398.

See PARDANASHIN WOMAN, 4 C. 20 = 3 C. L.R. 93.

See PENAL CODE, s. 174, 6 C.W.N. 927.

See REVISION—MATTERS PERTAINING TO EVIDENCE, 24 C. 551 = 1 C.W.N. 333.

Commission Agent.

Contractor or Commission agent—*See* ACT XIII OF 1859, s. 2, 2 Bom. L.R. 801.

Commissioner.

See JUDICIAL COMMISSIONER.

See JUDICIAL COMMISSIONER OF MYSORE.

See MUNICIPAL COMMISSIONER.

—Commissioner to examine witnesses—His power to grant sanction—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 11 C.W.N. 909 = 6 Cr. L. J. 160.

Commitment.

See COMMITMENT TO SESSIONS COURT.

See CRIM. PRO. CODE, 1898, ss. 206—220.

See MAGISTRATE, JURISDICTION OF.

See REVISION—COMMITMENTS.

Connection with another case no ground for committal—*See* CRIM. PRO. CODE, 1898, s. 206, 15 Bom. L.R. 998 = 2 Bom. Cr. C. 165.

To the Court of Session—Discretion of the Magistrate—Interference of High Court—Commitment when may be quashed—*See* CRIM. PRO. CODE, 1898, ss. 207, 215, 11 A.L J. 439 = 19 Ind. Cas. 960 = 14 Cr. L. J. 304.

When illegal and when can be quashed—*See* CRIM. PRO. CODE, 1898, ss. 215, 346, 347, 349, 6 L.B.R. 129 = 5 Bur. L. T. 239 = 17 Ind. Cas. 813 = 13 Cr. L. J. 877, F.B.

Commitment—*concluded.*

Commitment without notice to accused—Legality—Revision—*See* CRIM. PRO. CODE, 1898, ss. 215, 436, Proviso (*a*), 28 P.W.R. 1913, Cr. = 312 P.L.R. 1913 = 14 Cr. L. J. 605 = 21 Ind. Cas. 477.

In pursuance of order of Sessions Judge—Legality—*See* CRIM. PRO. CODE, 1898, ss. 403 (4), 213 = 7 P.R. 1912 Cr. = 39 P.W.R 1912, Cr. = 243 P.L R. 1912 = 17 Ind. Cas. 54 = 13 Cr. L. J. 742.

Order directing—Notice to parties—*See* CRIM. PRO. CODE, 1898, ss. 436, 438, 1 C.L.R. 93.

Commitment to Sessions Court.

See CRIM. PRO. CODE, 1898, ss. 206—220.

See MAGISTRATE, JURISDICTION OF.

See REVISION.

(1)—*Discretion as to commitment—Proper exercise of discretion.*—The power of commitment must be exercised judicially upon the evidence before the Court. QUEEN v. SHAMA SUNKAR BISWAS, **10 W.R. Cr. 25 = 1 B.L.R.S.N. 16.**

(2)—*Commitment—Crim. Pro. Code* (1882), *ss.* 207, 213 215.—A Magistrate should not send up, for trial by the Court of Sessions, cases which he himself has jurisdiction to dispose of, unless there be some good cause for sending them to the Court of Sessions, as for instance, if the Magistrate considers the punishment which he can award would be inadequate. However, the discretion which the Magistrate may exercise under s. 207, Crim. Pro. Code, 1882, when exercised by him, ought not to be lightly interfered with. EMPRESS v. BEHARI, **A.W N. 1886, 255.**

(3)—*Crim. Pro. Code* (1898), *s.* 347—*Scope—Power of commitment.*—S. 347, Crim. Pro. Code, 1898, empowers a Magistrate to commit at any stage of the proceedings, if it appears to him that the case is one which ought to be tried by the Court of Session or by the High Court. *In re* CLIVE DURANT, **Rat. Un. Cr. C. 975 = Cr. Rg. 29 of 1898.** [*F.*, 36 C 48 = 12 C. W.N. 1014 = 8 Cr. L.J. 221 = 1 Ind. Cas. 469.]

(4)—*Crim. Pro. Code* (1898), *ss.* 436, 526 *and* 226—*Commitment without charge.*—A commitment may be made without a charge against the accused (*vide* s. 226, Crim. Pro. Code). *In the matter of* KALAGAVA BAPIAH, **27 M. 54 = 2 Weir 227 = 2 Weir 578 = 2 Weir 263.**

(5)—*Commitment to Sessions—Magistrate, power of—Magistrate's belief that case is not fit for commitment—Discharge of accused.*—The accused were sent up for trial for having committed offences under ss. 366 and 376, Penal Code. The Sub-Divisional Magistrate inquired into the offences and recorded evidence of the prosecution witnesses at great length. He, however, discharged the accused on the ground that there were insufficient grounds for committing them to the Sessions. *Held*, that the Magistrate was right in so discharging the accused. The mere fact that there is evidence

Commitment to Sessions Court—*continued.*

which, if believed, would justify a conviction, does not compel the Magistrate to commit the case to the Sessions. SHAHZAD v. EMPEROR, **14 Cr. L.J. 491 = 20 Ind. Cas. 747 = 12 A.L J. 157.** (26 A. 564 = 1 A.L.J. 292 = 1 Cr. L.J. 519 = A.W.N. 1904, 125, *R.*)

(6)—*Crim. Pro. Code* (1898), s. 215—*Commitment to the Sessions, when can be made.*—The test which should be applied to decide whether a committal ought or ought not to be made on the facts is this—assuming that the whole of the evidence telling against the accused is true, is there a case which a Judge at the trial could leave to a jury? If the evidence is such that a Judge would have been bound to rule that there was no evidence on which a jury could convict, then, a committal ought not to be made. If there is any evidence which calls for an answer, however great the preponderance in favour of the prisoner may be, then the committal is proper. Per *Harrington, J.* Where the only grounds on which an accused person was committed to the Sessions for trial upon charges of abetment of offences under ss. 193, 196, 471, I.P.C., were (1) that servant in the employ of the accused gave false evidence and produced forged documents at the trial of certain suits, (2) that the accused was present actively prosecuting those suits, (3) that the evidence, if believed, would have supported the accused's case, (4) that the accused had sometimes made collections and tested *jamabandies*, *held*, that it was not a fit case for commitment. SHEOBUX RAM v. EMPEROR, **9 C.W.N. 829 = 2 Cr. L.J. 534.** [*R.*, 14 Cr. L. J. 529 = 21 Ind. Cas. 129 = 14 M.L.T. 200 = 1913 M.W.N. 728.]

(7)—*Commitment to Sessions, when can be made.*—It is not necessary that the committing Magistrate should satisfy himself fully of the guilt of the accused before making a commitment. It is his duty to commit when the evidence for the prosecution is sufficient to make out a *prima facie* case against the accused, and he exercises a wrong discretion if he takes upon himself to discharge an accused in the face of evidence which might justify a conviction. EMPEROR v. VAJIVANDAS *alias* KALIDAS BHAIDAS, **27 B. 84 = 4 Bom. L.R. 779.** [*F.*, 148 P.L.R. 1903; *R.*, 9 Bom. L.R. 225 = 5 Cr. L.J. 213, 8 Cr. L.J. 263 = 14 P.R. 1908 = 30 P.W.R. 1908, 11 Cr. L.J. 18 = 4 Ind. Cas. 612 = 10 P.R. 1909, Cr. = 155 P.L.R. 1909 = 32 P.W.R. 1909, Cr., 11 Cr. L.J. 751 = 8 Ind. Cas. 1044 = 215 P.L.R. 1910, 58 P.W.R. 1910.]

(8)—*Commitment to Sessions, when to be made.*—The Magistrate ought to commit, when the evidence is enough to put the party on his trial, and such a case obviously arises, when credible witnesses make statements which, if believed, would sustain a conviction. The weighing of their testimony with regard to improbabilities and apparent discrepancies is more properly the function of the Court having jurisdiction to try the case. QUEEN-EMPRESS v. NAMDEO, **Rat. Un. Cr. C. 319.**

Commitment to Sessions Court—*continued.*

(9)—*Commitment to Sessions when to be made.*—In a case committed for trial under s. 392, I.P.C., to the Court of the Judicial Commissioner of Sind, the examination of the witnesses disclosed many contradictions and inherent improbabilities and the jury returned a unanimous verdict of not guilty. The Court, holding that the case ought never to have been committed to the Sessions, remarked that "the charge was not of so serious a nature as to justify the Magistrate in avoiding its trial and committing the accused to the Sessions It appears that the Magistrate deliberately shirked the responsibilities of his office, with the result that the two accused have been unnecessarily detained in custody for nearly three months, that valuable time has been wasted both of the gentlemen of the Jury and of the Court of Sessions, and that considerable avoidable expense has been caused to Government." CROWN v. AHMED SHAH WD. MAHOMED HUSSAN SHAH, **1 S.L.R. 103, Cr.**

(10)—*Crim. Pro. Code*, s. 347—*Cases which ought to be committed to Court of Sessions.*—Where the facts of the case showed that the accused threw his wife down and deliberately kicked her several times, on her body, thus inflicting injuries which caused her death, *held*, that such a case ought not to have been finally dealt with by the Magistrate of the first class, the accused being convicted of the offence of voluntarily causing hurt, but should have been committed to the Court of Sessions for trial on charges of culpable homicide and voluntarily causing grievous hurt. QUEEN-EMPRESS v. RUPAYA, **Rat. Un. Cr. C. 382 = Cr. Rg. 33 of 1888.**

(11)—*Committal to Sessions, when justified.*—Where there is evidence not obviously false, and on which, if it be accepted as reliable, a Court of Sessions might convict an accused person, the Magistrate is justified in sending up the case for trial, and, if the case is triable by a Court of Sessions only, he is bound to do so. HIGH COURT PROCEEDINGS, 10TH SEP. 1881, NO. 1870, **2 Weir 258 = 2 Weir 652.**

(12)—*Crim. Pro. Code* (1898), ss. 213 (2) and 208—*Committal proceedings—Sufficient ground for committal—Duty of a committing Magistrate.*—S. 213 (2), Crim. Pro. Code, is intended to provide for the cases in which the evidence recorded after a charge so changes the aspect of the cases as to leave no reasonable doubt that a conviction is not sustainable. But that clause does not apply when the evidence for the defence merely casts some doubt on the case. "Sufficient ground" for committal is a *prima facie* case, and it still remains a sufficient ground, even if to some extent weakened—but not proved beyond reasonable doubt to be false—by the evidence for the defence. Under s. 208, the duty of a committing Magistrate in the first place is to take all the evidence tendered on both sides before forming a charge. CROWN v. PO NYAN, **1 L.B.R. 348.**

Commitment to Sessions Court—*continued.*

(13)—*Crim. Pro. Code* (1898), *ss.* 209, 210, 436—*Committal to the Sessions, grounds for—Duty of Sessions Judge.*—Before committing an accused person to the Sessions Court, the Magistrate has to consider whether there are sufficient grounds for committing the accused and, among those grounds, may, properly, be placed the consideration whether, on the evidence before him, it is probable that a conviction will be arrived at. [*R.*, 12 C.W.N. 117=6 C.L.J. 760=6 Cr. L J. 406, 14 P.R. 1908, Cr. =30 P.W.R. 1908.] It is the duty of a Sessions Judge, in considering whether an accused person has been improperly discharged, within the terms of s. 436, Crim. Pro. Code, to consider all the grounds upon which such order of discharge has been passed, including a consideration of the evidence which has not been believed or held to be sufficient to establish a *prima facie* case. Then only can he pass an order for the commitment of the accused person or for a further inquiry. HARBANS SINGH v. FAKIR DAS, **7 C.W.N 77.** [*R.*, 8 Cr. L.J. 263, 14 Cr. L.J. 529=21 Ind. Cas. 129=14 M.L.T. 200=1913, M.W.N. 728.]

(14)—*Committing Magistrate, duty of.*—The duty of a committing officer is to ascertain whether, by the evidence of the prosecution, a *prima facie* case is made out against the accused. QUEEN v. MAHA SINGH, **3 N.W.P. 27.**

(15)—*Committing Magistrate, duty of.*—It is the duty of the committing Magistrate to place before the Sessions Judge all the evidence procurable. NGA PO SE v. QUEEN EMPRESS, **L.B.R. 1872-1892. 538.**

(16)—*Duty of Magistrates in making commitments—Prolonged periods of detention to be avoided.*—The Magistrates should be careful to arrange their commitments with a view to the trials taking place at the earliest or next ensuing Session, in order to avoid the needless detention of accused persons for prolonged periods. Whenever a commitment is made, information should immediately be given to the Court of Session, through the Magistrate of the District by a letter. Prosecutors and witnesses should be bound over to appear at the next Criminal Sessions. CRIMINAL CIRCULAR NO. 4 OF 1868. **9 W.R.Cr. Cir. 5.**

(17)—*Magistrates to be careful to send evidence to prove identity of body sent for* post-mortem *examination—Sessions Judge to insist on being furnished with satisfactory relevant evidence—Necessity for great care in bringing forward requisite evidence.*—When committing cases, Magistrates must take care to send up evidence to prove that a body sent to the hospital for *post-mortem* examination is really the body of the person referred to in the case under trial, or that an article analysed by the Chemical Examiner was actually the article sent to him for analysis in the case under trial. Sessions Judges must insist on being furnished with such evidence, and must not record either the Chemical Examiner's report, or the evidence of the Medical Officer until the connecting links requisite to render them admissible have been established. The police should use great care in bringing forward all evidence requisite to render relevant the evidence of the Medical Officer and the report of the Chemical Examiner. NGA PYA v. QUEEN EMPRESS, **L.B.R. 1872—1892, 634.**

(18)—*Doubtful cases, commitment of.*—Where the ground of commitment in a case where the evidence was insufficient, was that the charge was a serious one and there was a certain amount of doubt regarding the innocence of the accused, *held*, that the Magistrate erred in law in committing the accused. CROWN v. FAKIR ALI, **35 P.R. 1878, Cr.**

(19)—*Crim. Pro. Code* (1898), *ss.* 190 *and* 191—*Judicial discretion to be exercised by Magistrate before committing to Court of Sessions—Reasons must be good for commitment—Irregularity in Magistrate trying a case taken cognisance of by him* suo motu—*Commitment without reasons—Without framing a charge—Without a note of the offences.*—A Magistrate, in deciding whether he should, under s. 191, Crim. Pro. Code, commit the case to the Court of Sessions or transfer it to another Magistrate for trial, should exercise a judicial discretion. His decision will depend chiefly upon the question whether the punishment, which a Magistrate is competent to inflict in case of a conviction will be adequate or not. Where a Magistrate gives no such reasons for the commitment, but merely states that the pleader for the complainant wished the case to be committed, the Magistrate fails to exercise any judicial discretion at all when ordering the commitment, and the commitment is, therefore, liable to be quashed. A case having been begun by a Magistrate on a complaint filed against one of the accused, the Magistrate took cognisance against the other accused (during the course of the trial), under cl. (*c*) of s. 190, Crim. Pro. Code. Evidence was recorded against both the accused, without the second accused being informed that he was entitled to have the case tried in another Court. In spite of the objection for the trial before the same Magistrate who had taken cognisance *suo motu*, the Magistrate committed the case to the Court of Sessions, without even framing a charge against the accused or requiring them to give in a list of witnesses. Further, the reasons for commitment were contained in a short note in the diary of the case which contained no statement as to the offence for which the accused were committed. *Held*, that the Magistrate failed to exercise a judicial discretion in dealing with the case. CROWN v. TARUMAL, **2 S.L.R. 9, Cr. =10 Cr.L.J. 224.**

(20)—*Crim. Pro. Code* (1898), *s.* 210—*Magistrate—Charge to be framed—Commitment when permissible—Sufficient grounds for commitment—District Magistrate ordering commitment to be made.*—S. 210 of the Code, 1898, requires that a charge should be framed and commitment made, only when "the Magistrate is satisfied that there are sufficient grounds for committing." The requirement, that the grounds for

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committing the case should be sufficient, must be taken as excluding all cases, in which the alleged grounds for commitment appear insufficient, whatever the reason of this insufficiency may be, and is not limited to a requirement for merely formal allegations, whether credible or not, as to the essentials of the alleged offence. A District Magistrate is not justified in calling on a subordinate Magistrate to commit a case, unless it can be shown that, if that Magistrate was not satisfied, as required by s. 210, he ought to have been satisfied, that is to say, it ought to appear that the Magistrate had no ground for discrediting the evidence adduced for the Crown, as well as that the evidence relates to facts sufficient to form the basis for a conviction. EMPEROR v. RAWJI HARI YELGAUMKAR, **9 Bom. L.R. 225=5 Cr. L.J. 213.** [*R.*, 35 B. 163=12 Bom. L.R. 923 =11 Cr. L.J. 692=8 Ind. Cas. 631, 14 Cr. L. J. 529=21 Ind.Cas. 129=14 M.L.T. 200=1913 M.W.N. 728.]

(21)—*Crim. Pro. Code, Act X of* 1872, ss. 193, 248, 342, 357—*Commitment without evidence—Defence evidence.*—A commitment made, without taking any evidence on a preliminary inquiry, is illegal. S. 248 contemplates the examination of the accused, though ss. 193 and 242 do not render such examination imperatively necessary and, according to s. 357, the accused should be given an opportunity to adduce evidence on his behalf. REG v. SITA, **Rat. Un. Cr C 100=Cr. Rg. 10-1-1876.**

(22)—*Penal Code, s.* 411—*Proof of guilty knowledge.*—Where there is no clear proof that the accused knew the property to be stolen, a commitment for an offence under s. 411 of the Penal Code, is illegal. EMPRESS v. SUMER, **A.W.N. 1884, 14.**

(23)—*Crim. Pro. Code* (1872), s. 196—*Committal—Drawing up of charge by Magistrate—Function of Magistrate.*—The drawing up of a charge must always follow the determination of a Magistrate to commit a case to the Court of Session, which determination duly expressed, the Magistrate becomes *functus officio* as to that matter. Where, therefore, a Magistrate first drew up a charge, directing the commitment of the accused, and afterwards taking further evidence, discharged them, the High Court *held* that the order of discharge was illegal and that the case should be committed for trial by the Court of Session. *In re* MARI, **Rat. Un. Cr. C. 161=Cr. Rg. 6-4 1881.**

(24)—*Crim. Pro. Code* (1882), ss. 215 *and* 436 —*Power of District Magistrate to order committal.*—The power to order a committal is conferred on the District Magistrate by s. 436, Crim. Pro. Code, subject to the provision that the accused should have an opportunity of showing cause why the commitment should not be made. Where a Sub-Magistrate discharged an accused person, charged with offences cognisable exclusively by the Sessions Court, and the District Magistrate directed his committal to the Court of Sessions without calling upon him to show

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cause why he should not be committed, *held*, that the commitment by the District Magistrate was illegal and should be set aside. QUEEN v. KANJAMALAI PADAYACHI, **6 M. 372=2 Weir 541.** [*R.*, Rat. Un. Cr. Cas. 588.]

(25)—*Crim. Pro. Code* (1882), s. 191, *cl.* (c) —*Crim. Pro. Code* (1898), ss. 190 *and* 191—*Objection to the trial of a case by a Magistrate—Competency of the Magistrate to commit the case to Sessions.*—Where a valid objection is raised to the trial of a case by a particular Magistrate, he is not bound to transfer it to another Magistrate, but may elect to commit the case to the Court of Sessions. Such a course is perfectly legal both under s. 191 of the Code of 1882 and under ss. 190 and 191 of the Code of 1898. QUEEN-EMPRESS v. FELIX, **22 M. 148=2 Weir 150.**

(26)—*Crim. Pro. Code* (1898), ss. 215, 478—*Commitment to Sessions by Civil or Revenue Courts—Powers of revision of High Court.*—When a Civil or Revenue Court acts with the powers of a Criminal Court under s. 478 and makes a commitment to a Court of Sessions, s. 215 authorises the High Court to quash such commitment on a point of law. *In re* CHENNANAGOUD, **26 M. 139=2 Weir 197=2 Weir 577.**

(27)—*Crim. Pro. Code* (1882), ss. 403, 436—*Conviction by Magistrate for minor offence—Jurisdiction of Sessions Judge to order commitment for murder.*—Where an accused person appears to have committed culpable homicide, his conviction by a Magistrate for a minor offence does not prevent his trial for murder, etc. The Sessions Judge, if he thinks there is a *prima facie* case, may call on the accused to show cause why a commitment should not be ordered, and may, thereafter, order his commitment under s. 436 of the Crim. Pro. Code, if satisfied that there is sufficient cause for it. QUEEN-EMPRESS v. LADKIA, **Rat. Un. Cr. C. 337=Cr. Rg. 27 of 1887.**

(28)—*Crim. Pro. Code* (1861), *ss* 225, 359 *and* 425—*Discharge by subordinate Magistrate—Power of superior Magistrate to direct a committal.*—After a subordinate Magistrate has discharged an accused person, after the preliminary enquiry, a superior Magistrate ought not to direct the latter to commit the accused to the Sessions on the same evidence. But he is not prevented from suggesting further enquiry in a case where he considers that the enquiry has been defective and not merely that the subordinate Magistrate has arrived at an erroneous conclusion. The Sessions Judge is the only authority empowered by law to direct a committal. HIGH COURT PROCEEDINGS, 9TH FEB. 1869, **4 M.H.C. App. 30.**

(29)—*Crim. Pro. Code* (1882), s. 423—*Offences not exclusively triable by Court of Sessions—Power of appellate Court to direct committal.*—Under s. 423, the power of an appellate Court to direct a committal to the Sessions Court is not confined only to cases exclusively triable by the Court of Sessions. Even in cases not

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exclusively triable by the Court of Sessions, the appellate Court has such power. MISRI LAL v. LACHMI NARAIN BAJPIE, **23 C. 350.** (8 A. 14, *Diss.*; 16 B. 580, *F.*) [*R.*, 27 C. 172, 17 C. P.L.R. 97.]

(30)—*Offences triable respectively by Magistrate and by Sessions Court—Commitment on latter and trial on former.*—Where an accused is charged before a Magistrate of the first class with two offences, one of which he is competent to try and the other not, the proper course for him is to commit the accused for trial of both the offences, though there is nothing in the law to make it illegal for him to try the one he is competent to try. EMPRESS v. RAMANAND, **A.W.N. 1883 199.** [*R.*, 8 A. 291=A.W.N. 1886, 94.]

(31)—*Crim. Pro. Code* (1882), *ss.* 531, 532—*Commitment when could be quashed.*—A commitment is an order within s. 531, Crim. Pro. Code. The section must be read as complete in itself and not as in any way cut down or limited by the proviso contained in the latter part of s. 532. S. 531 applies solely to cases in which there is no jurisdiction by reason of the enquiry, trial or other proceeding being held in the wrong local area. S. 532 seems to refer to cases in which the Magistrate is competent to deal with the offence as having taken place within the local limits of his jurisdiction, but has no power to commit to the High Court or Court of Sessions either, because he is only a second-class Magistrate or for some reason other than that of local jurisdiction. Under s. 531, the commitment could not be quashed, unless a failure of justice would be caused by proceeding with the trial. QUEEN-EMPRESS v JAMES INGLE, **16 B. 200.** [*F.*, 17 M. 402=4 M.L. J. 196=2 Weir, 704; *Appl.*, 17 A. 36; *Appr.*, 18 A. 350= A.W.N. 1896, 96; *R.*, 26 M. 640=1Weir 190, 30 M. 94=4 Cr. L. J. 800=1 M.L.T. 345, 36 M. 387=13 Cr. L. J. 35=22 M.L.J. 141=10 M.L. T. 563=1912 M.W.N. 3=13 Ind. Cas. 275.]

(32)—*Grounds for quashing commitment.*—A commitment should not be quashed on the ground that the Sessions Judge, on perusing the record, found that the offence committed was one triable by a Magistrate of the first class. EMPRESS v. MALLU SHAH, **22 P.R. 1882, Cr.**

(33)—*Crim. Pro. Code* (1882), s. 215—*Refusal to quash commitment.*—Where a Magistrate after enquiry had found reasons for committing for trial on the merits, the High Court declined to quash the acquittal. QUEEN-EMPRESS v. KILA, **Rat. Un. Cr. C. 718=Cr. Rg. 43 of 1894.**

(34)—*Subsequent inquiry of Magistrate—Quashing commitment—Crim. Pro. Code, Act X of* 1882, *s.* 215.—Where some days after committing a case for trial at the Sessions Court, the Magistrate recorded that he had made further inquiry and found that he should not have made the commitment, *held* that this was no reason for quashing the commitment under s. 215 of the Crim. Pro. Code. EMPRESS v. MADARI, **A.W.N. 1885, 53.**

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(35)—*Crim. Pro. Code* (1882), *Ch.* XXXV—*Quashing commitment—Civil suit.*—The fact that a regular suit has been filed to establish the genuineness of a transaction is not sufficient to enable the High Court to quash a commitment regularly made by a Subordinate Judge to the Sessions Court, or to direct the trial to be adjourned pending the hearing of the Civil suit or appeal, therefrom. *In re* DEWJI, **Cr. Rg. 39 of 1893.**

(36)—*False evidence--Quashing commitment.*—Where a person was committed on a charge of using certain evidence known to be false, *held* that the fact that there was not any evidence to connect such person with the use of such false evidence was a defect in law, sufficient to justify the quashing of the commitment. EMPRESS v. NAROTAM DAS, **6 A. 98 =A.W.N. 1883, 225.**

(37)—*Quashing of commitment, after the accused had pleaded to the charge.*—Where the accused has been put upon his trial and has pleaded to the charge, he is entitled to have the trial proceeded with. The commitment cannot be quashed. EMPRESS v. SAGAMBUR, **12 C.L.R. 120.** [*R.*, 9 Cr. L.J. 250=1 S.L.R. Cr. 6.]

(38)—*Commitment on charge of grievous hurt—Quashing commitment—Death of complainant—Case where commitment quashed.*—The accused was committed to the Sessions Judge for having caused grievous hurt to a *Chowkidar*, an offence punishable under s. 326, I.P.C. When the Court called the complainant to give evidence, it appeared that he was dead. The Sessions Judge being of opinion that, as there was reason to think that his death might have resulted from the hurt, reported the circumstances to the High Court in order that the commitment might be quashed, and a fresh enquiry ordered under ss. 302, 304, 324 and 326, I.P.C. *Held* that the Judge was right and that the commitment should be quashed. EMPRESS v. ZAHARIA, **A.W.N. 1883, 257.**

(39)—*Quashing commitment—Powers of High Court—Crim. Pro. Code* (1898), ss. 215, 438. —The High Court will not enter into and discuss the nature of the evidence, before the trial has taken place, when the question before them for decision is whether a commitment should be set aside. EMPRESS v. ANANDA KISHORE CHOUDHURI, **4 C.W.N. cxvi.** [*R.*, 1 S.L.R. 6.]

(40)—*Quashing commitment—Power of Chief Court.*—Under the Crim. Pro. Code, 1861, the Chief Court alone has the power to cancel a commitment to the Court of Sessions. CROWN v. GOONGA, **24 P.R. 1867, Cr.**

(41)—*Quashing commitment—Power of High Court—Penal Code, ss.* 411 *and* 413.—Under s. 215, Crim. Pro. Code, a commitment once made by a competent Magistrate can only be quashed by the High Court and that on a point of law. The offences under ss. 413 and 411, Penal Code, being of the same nature, the fact

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that the evidence recorded does not justify a conviction under s. 413, Penal Code, is not a sufficient ground for quashing a commitment, under s. 215, Crim. Pro. Code, even though there is ample evidence to show that an offence under s. 411, I.P.C., has been committed. CROWN v. NGA SAWE YAUK, **1 L.B.R. 88.** (19 C. 190, *R.*)

(42)—*Quashing commitment—Power of High Court.*—A Magistrate is disqualified from dealing with any case, in the police investigation of which he has taken more than a formal part, and, unless he obtains the permission of the appellate Court, he is disqualified from committing a case for trial. If an accused objects on the ground that the Magistrate has taken an active part in the investigation, the proper course is to apply for leave to make a committal or transfer to some other Court. The High Court may quash a commitment by a Magistrate whether he was competent or not to make it. KING-EMPEROR v. MAUNG LAT, **2 L.B.R. 209.**

(43)—*Commitment quashed only on point of law.*—With reference to s. 215 of the Code, a commitment once made under s. 213 can only be quashed on a point of law. EMPRESS v. BEHARI, **A.W.N. 1886, 256.**

(44)—*Power of Chief Court to direct commitment.*—The Chief Court alone could annul a conviction by a Magistrate and direct a commitment to the Sessions Court. WUZEER SINGH v. CROWN, **34 P.R. 1866, Cr.**

(45)—*Commitment to Deputy Commissioner—Quashing commitment.*—Where A was committed to the Court of the Deputy Commissioner under s. 304, Penal Code, and the latter was not competent to send the case back to the committing Magistrate for a trial under s. 304-A, I. P. C., the Deputy Commissioner was directed by the Chief Court to try the case on the original commitment. CROWN v. ALYA, **28 P.R. 1872, Cr.**

(46)—*Crim. Pro. Code* (1898), *s.* 215—*Absence of evidence to warrant a commitment.*—The absence of evidence to warrant a commitment is a point of law and may furnish a good ground for quashing the commitment. JOGESHWAR GHOSE v. KING-EMPEROR, **5 C.W.N. 411.**

(47)—*Sessions case — Commitment to Deputy Commissioner.*—Under s. 445-B of the Act VIII of 1869, the Deputy Commissioner could try a Sessions case committed to him by a Magistrate competent to commit to the Court of Sessions. ALLAYA v. PUNJAB SINGH, **30 P. R. 1869.**

(48)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 423 —*Session Judge whether can order a commitment to his own Court.*—A Sessions Judge, to whom an appeal has been preferred by persons convicted by a Magistrate, cannot direct the commitment of them to his own Court for trial. EMPRESS v. IMAMI, **A.W.N. 1885, 297.**

(49)—*Crim. Pro. Code, Act* X *of* 1872, *s.* 296 —*Sessions case—Powers of revision.*—A commitment made, under an order passed by a Sessions Judge in revision, directing such commitment in a judgment in another case in which the present accused had been discharged by the Magistrate, is illegal, since the Sessions Judge had no power to direct such a commitment. EMPRESS v. MUHAMMAD BAKHSH, **A.W.N. 1882, 105.**

(50)—*Crim. Pro. Code* (1898), *ss.* 209, 213, 215 *and* 436—*Order of commitment, after order of discharge—Revisional power of High Court.* —Where a Sessions Judge, under s. 436, ordered the commitment of an accused person, who had previously been discharged, under s. 209, by a Magistrate on the ground that the evidence was unreliable and insufficient, *held* that the High Court had authority to set aside the order of commitment on the merits of the case and that the order was bad and should be set aside. PIRTHI CHAND LAL v. SAMPATIA, **7 C.W.N. 327.** [*F.*, 12 C.W.N. 177 = 6 Cr. L.J. 406 = 6 C.L.J. 760; *R.*, 30 M. 224 = 5 Cr. L.J. 100 = 16 M.L.J. 529.]

(51)—*Commitment to the Court of Sessions ordered under s.* 436 *of Crim. Pro. Code—High Court's power to revise under s.* 439—*Preliminary inquiry into Sessions cases—Magistrate's power and duties in regard thereto—Crim. Pro. Code* (1898), *ss.* 436, 439.—It is not incompetent to a Magistrate holding a preliminary inquiry into Sessions cases to examine the credibility of the evidence adduced in the course of the enquiry. Such Magistrate should not commit the accused for trial in the Sessions Court, if he be of opinion that, notwithstanding direct evidence adduced against the accused, the prosecution case is improbable and the evidence is unreliable. The High Court has full jurisdiction under s. 439, Crim. Pro. Code, to revise a commitment order made under s. 436 on points of law as well as of facts. RASH BEHARI LAL MANDAL v. EMPEROR, **12 C.W.N. 117 = 6 Cr. L.J. 760 = 6 Cr.L.J. 406.** [*R.*, 3 M.L.T. 230 = 18 M.L.J. 57 = 7 Cr. L J. 267 = 31 M. 133.]

(52)—*Order for further enquiry and commitment passed simultaneously.*—Where the order of the Sessions Judge amounted to simultaneously directing further enquiry into the alleged offence and to ordering a commitment of the accused, *held* that the commitment was premature and illegal and must be set aside. ADYAN SINGH v. QUEEN-EMPRESS, **13 C. 121.**

(53)—*Discretion of Sessions Judge to commit discharged person.*—A Sessions Judge has a discretion to order or not to order the commitment to the Sessions Court of any accused person discharged by the Magistrate with which the High Court will not interfere. QUEEN v. SHEETARAM CHOWDRY, **2 W.R. Cr. 44.**

(54)—*Crim. Pro. Code, Act* V *of* 1898, *ss.* 215, 233— *Wrong joint commitment— Procedure.*— The fact that a Magistrate has wrongly committed persons for a joint trial, while separate

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commitments should have been made, is not a sufficient reason to quash the commitment under s. 215 of the Crim. Pro. Code. The Sessions Judge can try the accused separately on amended charges. QUEEN EMPRESS v. SALAMAT-ULLAH-KHAN, **A.W.N. 1900, 206.**

(55)—*Mode of commitment of European British subjects and Native subjects together charged with an offence.*—When a European British subject and a Native subject are together charged with an offence requiring the commitment of the former to the High Court for trial, the latter should not be committed to the High Court, also, but should, in the ordinary manner, be committed in the Sessions Court competent to try the offence. CRIMINAL CIR. NO. 1, 16TH JANUARY 1866, **5 W.R. Cr. Cir. 1.**

(56)—*Crim. Pro. Code* (1898), *ss.* 208, 215—*Commitment in the absence of accused.*—It is illegal to make a commitment in the absence of the accused. *In the matter of* SURJYA NARAIN SINGH, **5 C.W.N. 110.** [*Rel. on*, 39 C. 885=16 C.W.N. 1155=13 Cr. L.J. 774=17 Ind. Cas. 406.]

(57)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 537—*Commitment by District Magistrate—Notice to accused by Subordinate Magistrate.*—Where a District Magistrate, being of opinion that a person has been improperly discharged by a Subordinate Magistrate, makes an order of commitment to the Sessions for trial, without notice to the accused person, the irregularity is cured under the provisions of s. 537 of the Crim. Pro. Code, if the Subordinate Magistrate gives him an opportunity to show cause before committing him. QUEEN-EMPRESS v. RABHA, **Rat. Un. Cr. C. 899.**

(58)—*Crim. Pro. Code, ss.* 177, 531—*Commitment to wrong Sessions Court.*—A commitment is an order of a criminal Court which cannot be set aside unless a failure of justice has been occasioned thereby. Where a case is committed to a Sessions Court having no territorial jurisdiction, the High Court, without setting aside the order of commitment, transferred it to the proper Sessions Court. QUEEN-EMPRESS v. THAKU, 8 **B. 312=8 Ind. Jur. 627.** [*F.*, 18 A. 350, 16 B. 200, 2 Bom. L.R. 394 ; *R.*, 36 M. 387=13 Cr.L.J. 35=13 Ind. Cas. 275=22 M.L. J. 141=10 M.L.T. 563=1912 M.W.N. 3 ; *D.*, 10 B. 274.]

(59)—*Crim. Pro. Code* (1872), *s.* 147—*Commitment without jurisdiction.*—A commitment made by a Magistrate having no jurisdiction is no proper commitment, and no reference to the High Court is necessary to have it set aside. EMPRESS v. ALIM MANDLE, **11 C.L.R. 55.** [*Diss.*, 4 L.B.R. 49=6 Cr.L.J. 287 ; *R.*, 15 C. L.J. 517=13 Cr.L.J. 609=16 C.W.N. 1105=16 Ind. Cas. 257.]

(60)—*Commitment without jurisdiction—Quashing of.*—In the crucial case of a commitment by a Magistrate without jurisdiction, the commitment is not to be quashed unless the accused has been prejudiced. HIGH COURT PROCEEDINGS, 23RD NOVEMBER, 1874, **2 Weir 258=7 M.H.C. App. 40.**

(61)—*Discharge without trial of accused duly committed.*—A Sessions Court cannot discharge without trial an accused duly committed, however probable it may be that an acquittal will result. CROWN v. JAMAL KHAN, **3 P.R. 1874.**

(62)—*Commitment without framing a charge after enquiry—Penal Code, s.* 318.—Where the District Magistrate, in directing a commitment, did not specify the charge and the committing Magistrate, without any enquiry, committed the accused on a charge under s. 318, Penal Code, *held*, that the commitment was not properly made, and that a fresh enquiry should be made by another Magistrate. EMPRESS v. GYANO, **6 P.R. 1881, Cr.**

(63)—*Crim. Pro. Code* (1898), *ss.* 337, 339—*Revocation of pardon tendered to an approver and commitment to Sessions.*—An accused, who had an opportunity of cross-examining the prosecution witnesses, was tendered a pardon on condition of his making a true disclosure. After accepting that pardon, he refused to make any statement, saying that he knew nothing. The Magistrate revoked the pardon and committed him to the Court of Sessions. *Held*, that the commitment was perfectly legal. EMPEROR v. BUDHAN, **29 A. 24=3 A.L.J. 615=A.W.N. 1906, 258=5 Cr.L.J. 144.** (20 A. 529, *F.*) [*N.F.*, 3 Ind. Cas. 922=5 N.L.R. 134.]

(64)—*Crim. Pro. Code,* 337—*Withdrawal of pardon, commitment.*—Where a pardon was tendered to A, who was accused of murder along with B before a Magistrate, and after the examination of A as a witness against B, the pardon was withdrawn by the Magistrate and both were committed for trial in the Sessions Court, *held* that the procedure was illegal under s. 337 of the Crim Pro. Code, and that A should have been separately tried. QUEEN EMPRESS v. PIARI, **A W.N. 1891, 132.**

(65)—*Crim. Pro. Code* (1898), *ss.* 193 *and* 423 (1)—*Sessions Court—Jurisdiction—Sessions Court has, as a rule, no authority to commit to itself.*—Except in cases, in which a Court of Session is expressly empowered to take cognizance of an offence as a Court of original jurisdiction, it has no power to do so, unless a commitment has been made by a Magistrate duly empowered in that behalf. EMPEROR v. MAULA KHAN, **A.W.N. 1907, 178=6 Cr. L.J. 7.** (22 C. 50, *Ref.*)

(66)—*Commitment, order for—Sessions Judge jurisdiction of.*—The Sessions Court can only order commitment in cases exclusively triable by it. QUEEN v. SEETUL PERSHAD, **5 N.W. P. 168.** [*Appr.*, 1 A. 413, F.B., 8 A. 14 ; *R.*, 7 N.W.P. 233 ; *D.*, 2 A. 570, 15 A. 205.]

(67)—*Crim. Pro. Code* (1882), *ss.* 423, 436, 439—*Powers of Sessions Court, as appellate Court—Powers of commitment.*—The meaning of the sentence "or order him to be re-tried by a Court of competent jurisdiction subordinate to

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such appellate Court or committed for trial" in cl. (*b*) of s. 423 of Crim. Pro. Code, is as follows:—If, in an appeal from a conviction, the appellate Court find the accused person, who was triable only by a Magistrate of the first class, or by a Court of Sessions, has, by an oversight or under a misapprehension, been tried and convicted and sentenced by a Magistrate of the second class, the appellate Court may, in that case, reverse the finding and sentence and order the accused to be re-tried by a Magistrate of the first class, or by the Court of Sessions; and, in like manner, when the appellant, who was triable solely by the Court of Sessions has been tried, convicted and sentenced by a Magistrate of the first class, the Sessions Judge, in disposing of the appeal, is empowered to reverse the finding and sentence, and order the accused to be committed for trial. The appellate Court referred to in s. 423, can, in an appeal from conviction, only order an accused person to be committed for trial, when it considers that the accused is triable exclusively by the Court of Sessions. QUEEN-EMPRESS v. SUKHAI, **8 A. 14 = A.W.N. 1885, 298.** [*Overruled*, 15 A. 205 = 13 A.W.N. 105; *D.*, 2 Weir 481; *Diss.*, 16 B. 580 = Rat. Un.Cr. C. 577, 16 P.R. 1895, Cr., 23 C. 350, L.B.R. 1893—1900, 238, 27 C. 172.]

(68)—*S.* 423—*Crim. Pro. Code—Sessions Judge — Power of commitment.*—A Sessions Judge sitting as a Court of appeal under s. 423 can, having reversed the sentence and finding of the lower Court, order the appellant to be committed for trial to the Court of Sessions. QUEEN EMPRESS v. MAULU BAKHSH, **15 A. 205 = A.W.N. 1893, 105.** (8 A. 14, *Overruled.*) [*F.*, 16 P.R. 1895, Cr.; *R.*, 27 C. 172, 7 C.W.N. 301, 17 C.P.L.R. 97.]

(69)—*Crim. Pro. Code*, ss. 436, 537—*Power of Sessions Judge to commit to Sessions Court person discharged by Magistrate.*—In cases triable exclusively by a Court of Session, s. 436 empowers the Court of Session or District Magistrate to order a discharged person to be committed for trial by such Court. There is nothing in the section to show that, when such an order is made, the commitment thereupon must necessarily be made by the Magistrate who has discharged him, while the first proviso to it shows that it may be made by such Court or by the District Magistrate, according as the power under that section happens to be exercised by one or the other. The words "order him to be committed for trial" in s. 436 means "commit him for trial." It is competent, therefore, to the Court of Sessions in such a case to make the commitment itself. Assuming however, that it is necessary for that Court to send its order to the Magistrate who has discharged the accused, for the latter to frame charge and direct the accused to be tried on it by such Court, the omission by the Court to observe the formality is an irregularity on its part before the trial, and s. 537 applies. QUEEN-EMPRESS v. KRISHNABHAT, **10 B. 319.** [*Appr.*, 28 C. 397; *R.*, 31 M. 40 = 3 M.L.T. 25 = 7 Cr. L.J. 29.]

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(70)—*Crim. Pro. Code* (1898), ss. 215, 436 *and* 439—*Powers of Sessions Judge to order commitment—Powers of High Court to interfere.*—S. 215 refers only to a commitment actually made. It is open to the High Court to consider whether the Sessions Judge has or has not exercised a proper judicial discretion under s. 436 in setting aside a Magistrate's order of discharge, and, for this purpose, the High Court may consider the facts as well as the questions of law involved. Though the High Court has this power, it will only exercise it, where it is manifest that the Sessions Judge's order is improper; *e.g.*, where there is no evidence to prove the offence charged, or where it is clear that the Court would not act on the evidence. MUTHIA CHETTY v. EMPEROR, **30 M. 224 = 16 M.L.J. 529 = 5 Cr.L J. 100.** (7 C.W.N. 327, *R.*) [*F.*, 23 Ind. Cas. 741 = 15 Cr. L J. 373; *R.*, 9 Cr. L.J. 192 = 5 M.L T. 233, 1 Ind. Cas. 228.]

(71)—*Crim. Pro.Code*, ss. 44, 296—*Discharge of accused person—Sessions Judge suggesting a revival of proceedings—Commitment.*—Where, on the acquittal of an accused person charged under s. 417, I. P. C., the Sessions Judge forwarded the record to the District Magistrate and suggested that he should direct the Subordinate Court to inquire into any offence, which the evidence on the record showed to have been committed, other than that in respect of which he was discharged, and the Magistrate committed the accused to the Sessions Court upon charges under ss. 363, 420, I.P.C., *held* that, as there was no "direction to commit" that is to say, to send the discharged person at once to the Sessions Court without further enquiry, the Sessions Judge's suggestions were not contrary to s. 296, Crim. Pro. Code, and the commitment could not be impeached. EMPRESS OF INDIA v. BHUP SINGH, **2 A. 570.** [*R.*, A.W.N. 1882, 105.]

(72)—*Crim. Pro. Code* (1872), ss. 196, 197—*Commitment on a charge of adultery—Compounding and withdrawal of the offence.*—A commitment once made by a competent Magistrate can be quashed by the High Court only, and only on a point of law. Where after the committal of a case of adultery to the Court of Sessions, the Magistrate discharged the accused, on the representation of the prosecutor that he wished to withdraw from the prosecution, the order of discharge was held to be bad. EMPRESS OF INDIA v. JANGHIR, **4 A. 150 = A.W.N. 1881, 167.**

(73)—*Crim. Pro. Code* (1861), ss. 171 *and* 273—*Reference under s.* 171—*Trial by a Magistrate other than the Magistrate to whom the reference was made—Validity.*—In a case referred to a Head Assistant Magistrate for investigation by a Small Cause Court Judge under s. 171, Crim. Pro. Code, an order of commitment by a Sub-Magistrate after investigation is not valid. HIGH COURT PROCEEDINGS, 20TH NOV. 1871, **6 M.H.C. App. 41.**

(74)—*Crim. Pro. Code* (1872), ss. 4, 296—*Power of Sessions Judge to direct a committal.*—S. 296 read with the definition of "Sessions

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case" in s. 4 narrows the power of a Sessions Judge to direct a committal to cases which have been investigated previously to committal. HIGH COURT PROCEEDINGS, 5TH NOV. 1873, **7 M.H.C. App. 27.**

(75)—*Crim. Pro. Code* (1898), *s.* 436—*District Magistrate acting under the section—Notice to accused—Power of District Magistrate to direct Sub-Divisional Magistrate to commit to Sessions.*—A District Magistrate, acting under s. 436, should give the accused an opportunity of showing cause before himself why a commitment should not be made. An opportunity given to show cause, before the Assistant Magistrate, cannot be regarded as a compliance with the law, though the Assistant Magistrate forwards a statement of the accused to the District Magistrate. Where the offence, with which an accused person is charged, is not one triable exclusively by the Court of Sessions, the District Magistrate has no power, under s. 436, to direct a Sub-Divisional Magistrate to commit the accused for trial to the Court of Sessions. THAMMANNA *alias* LINGAI GOUNDAN v. KING-EMPEROR, **15 M.L.J. 373 = 2 Cr. L.J. 774.** [*R.*, 14 Cr.L.J. 605 = 21 Ind. Cas. 477 = 312 P.L.R. 1913 = 28 P.W.R. 1913, Cr.]

(76)—*Crim.Pro.Code* (1898), s. 215—*Commitment to Sessions on a charge not triable exclusively by a Court of Sessions—Power of Sessions Judge to set it aside and refer it back to the Magistrate for trial—Powers of the High Court.* —Though the offence of theft in a building is not triable exclusively by a Court of Session there is nothing to prevent such a Court from trying a person accused of such an offence and duly committed to it for trial. Such a committal can be set aside only by the High Court under s. 215 of the Code. The Sessions Judge has no power to set it aside and direct the Magistrate to try the case himself. *In re* BHEEMA, **16 M.L.J. 525 = 5 Cr. L.J. 99.**

(77)—*Joint indictment of two or more persons —Jurisdiction of Magistrate.*—When two or more persons are jointly indicted and the jurisdiction of the Magistrate is ousted in the case of one of them, the proper course is to commit both or all for trial before the Court of Sessions. H. C. PROCEEDINGS, 18TH MARCH 1868, NO. 481, **1 Weir 448 = 2 Weir 20 = 2 Weir 258.** [*R.*, 12 M. 54 = 2 Weir 22, 2 Weir 699 = 24 M. 675.]

(78)—*Crim. Pro. Code*, 1872, *s.* 75—*European British subject charged with several offences one of which punishable with transportation for life — Commitment.*—Where a complaint of several offences was made against a European British subject, one of which was punishable with transportation for life, *held*, that under s. 75, Crim. Pro. Code, 1872, the Magistrate should not have committed him to the Court of Session, but to the High Court. EMPRESS v. THOMSON, **A.W.N. 1881, 150.**

(79)—*European British subject committing murder at Nari George—Commitment by Political Agent of Thal Chotiali to High Court—*

Commitment to Sessoins Court—*continued.*

Doubt as to competency of the committing officer to commit—Crim. Pro. Code, 1882, *s.* 185.—The Government of India Notification made the Political Agent at Thal Chotiali, an European British subject, a Justice of the Peace within the territories of His Highness the Khan of Khelat, and directed that the Court of the Agent of the Governor-General in Baluchistan, as the Court of Sessions, and the Chief Court of the Punjab as the High Court, should be the Courts to which the said Justice of the Peace should commit European British subjects for trial; an European British subject committing murder at Nari George was committed by the Political Agent of Thal Chotiali to the High Court. Nari George was situated within the Afghan District of Sibi assigned by the Amir to Her Majesty by the treaty of Gundamuk. *Held*, that as the place was not within the territories of H. H. the Khan of Kelat, the commitment was not in accordance with the provisions of the notification. The question whether Nari George was within, or beyond the limits of British India, need not be determined. Where a doubt arises as to the competency of the committing officer to commit a case, s. 185 does not apply. The section applies only to cases where the doubt is regarding the Court by which the offence is to be enquired into or tried. EMPRESS v. CLEGG, **13 P.R. 1887, Cr.**

(80)—*Offence under s.* 121, *I.P.C.—Commitment without complaint — Crim. Pro. Code*, (1882), ss. 196, 532, 537.—A Magistrate or Sessions Court proceeding to try a person accused of an offence under s. 121, I.P.C., exceeds his jurisdiction, if he takes cognizance of such offence without a complaint authorized in the manner prescribed by s. 196, Crim. Pro. Code, and the defect is not cured by the provisions of s. 537, Crim. Pro. Code. A letter by the Government, after commitment, but before trial, sanctioning prosecution may be an authority to institute the compliant, but the letter itself is not a complaint. SHAMAL KHAN v. EMPRESS, **16 P.R. 1890, Cr.** (9 B. 288, *Not F.*) [*R.*, 149 P.L.R. 1908 = 8 P.R. 1908, Cr. = 15 P.W.R. 1908, Cr. = 7 Cr. L.J. 353, 11 Cr. L.J. 453 = 7 Ind. Cas. 359 = 37 C. 467, 16 C.W.N. 1105, 13 Cr. L.J. 609 = 16 Ind. Cas. 257, 15 C.L.J. 517.]

(81)—*Rape case committed to the Court of Deputy Commissioner—Direction by Chief Court for commitment to the Court of Commissioner.*—The Chief Court cancelled the commitment to the Deputy Commissioner of a case of rape, which was tried by the latter, under his powers under s. 36, Crim. Pro. Code, 1872, and directed the case to be committed to the Court of the Commissioner. CROWN v. PIRANDITTA, **17 P.R. 1873, Cr.**

(82)—*Crim. Pro. Code* (1898), *s.* 435 (4)—*Refusal by Sessions Judge to order the committal of a person to Sessions—Power of District Magistrate to act* sue motu *and to order committal to Sessions.*—A Second Class Magistrate, after holding a preliminary inquiry into a charge

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of murder, acquitted the accused. The Sessions Judge, to whom a revision petition requesting him to direct the committal of the accused to the Sessions Court was presented, dismissed the revision petition holding that the Magistrate's reasons for discharging the accused were good. The District Magistrate subsequently took up the case *suo motu* and directed the committal of the accused to the Sessions. *Held* that, under s. 435 (4), Crim. Pro. Code, it was not competent to the District Magistrate to entertain an application for the commitment being ordered when the Sessions Judge had refused such order. *Held*, also, that the District Magistrate could not act *suo motu* as the reason for the prohibition, *viz.*, the avoidance of a conflict between the orders of two District authorities having co-ordinate powers in the matter, would be equally applicable to cases where they act *suo motu*. KALIMUTHU v. EMPEROR, **26 M 477 = 2 Weir 542.** [*R.*, 14 Cr. L.J. 134 = 18 Ind. Cas.886 = 10 P.R. 1912, Cr. = 117 P.L.R. 1913.]

(83)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 215 —*Commitment—Joinder of charges—Practice.* —The commitment for trial, in one and the same case, of some accused persons for robbery and some for receiving stolen property, is not illegal so as to be quashed by the High Court under s. 215 of the Crim. Pro. Code. The Sessions Judge can, if it seems advisable, separate the charges and try the accused separately. QUEEN-EMPRESS v. RAGHU VALAD HARI, **Rat.Un. Cr. C. 915 = Cr. Rg. 20 of 1897.**

(84)—*Charge of sedition — Commitment on evidence recorded before applying for sanction of the Government for the prosecution.*—Where, on a charge of sedition, the Magistrate recorded evidence for the purpose of ascertaining whether there were sufficient grounds for applying to the Government for sanction, he could not be justified in committing the accused to the Sessions, after obtaining sanction upon the evidence already recorded, without commencing the enquiry *de novo.* EMPRESS v. MULLA ABDUL RAHIM, **28 P.R. 1882, Cr.**

(85)—*Trial of approver, who had not deposed truly, on a charge under s.* 201, *I.P.C., without commitment—Validity—Crim. Pro. Code* (1882), *ss.* 193, 337, 339, 477 and 537.—The trial of an approver, who in the opinion of the Sessions Judge, had not deposed truly, on a charge of an offence under s. 201, I.P.C., without a commitment by a Magistrate, is not authorised by s. 477 and is in direct contravention of the provisions of s. 193, Crim. Pro. Code. The absence of commitment being a default in substance, and not merely in form, is not cured by the provisions of s. 537. MUSSAMMAT SHARINA v. EMPRESS, **42 P.R. 1884, Cr.**

(86)—*Discharge by Magistrate — Order of commitment by Sessions Judge — Omission to call on accused to show cause against such commitment.*—A Sessions Judge has no power to order the commitment of a person discharged by a Magistrate, without giving him an opportunity of showing cause against such commitment. *In the matter of the petition of* KHAMIR, EMPRESS v. KHAMIR, **7 C. 662 = 10 C.L.R. 8.** [*R.*, Rat. Un. Cr. C. 588, 899.]

(87)—*Committal after drawing up charge—Crim. Pro. Code* (X *of* 1872), *ss.* 220, 221.—S. 221 of the Crim. Pro. Code authorises a Magistrate, although a charge may have been drawn up, to stop further proceedings and commit for trial. Though the explanation to s. 220, Crim. Pro. Code, provides that, if a charge is drawn up, the prisoner must either be convicted or acquitted, the acquittal or conviction need not be by the same Magistrate that drew the charge. EMPRESS v. KUDRUTOOLLAH, **3 C. 495 = 2 C.L.R. 2.**

(88)—*Joint commitment of several accused—Cross cases of rioting—Joint commitment—Fresh commitment for trial—Order for commitment of persons not accused before Magistrates—Separate Sessions trial.*—The mere fact that persons are jointly committed to the Court of Sessions does not preclude the Sessions Judge from trying them separately. It is an incorrect principle to commit jointly persons concerned in a riot on opposite sides; the two opposing parties do not form a single unlawful assembly because they have no common object. [*F.*, 15 P. R. 1882]. A Sessions Judge is not competent, after commitment for trial, to direct a case of several accused persons, committed jointly, to be committed in two batches, including in the commitment two persons not previously committed. Neither the Sessions Judge, nor the Chief Court, has authority to direct proceedings to be commenced against persons not committed by, nor accused before, the Magistrate. EMPRESS v. HAIBAT, **22 P.R. 1881, Cr.** *See also* NAWAB v. EMPRESS, **26 P.R. 1881, Cr.**

(89)—*Commitment by Court of Session—Release without trial.*—A person committed to stand his trial in a Court of Session was released by the Sessions Judge "without putting him on his trial and without taking his defence" on the ground that his complicity in the murder was entirely unproved and quite unlikely. *Held* that there was no provision of law justifying such a course, and that the only way in which the commitment could be disposed of was to proceed with the trial, and if the Government Prosecutor requested leave to withdraw the charge, or the evidence failed to sustain it, then, the Sessions Judge should have recorded a judgment of acquittal. The accused himself was entitled to claim such procedure as a protection against any future proceedings, and his release, without this precaution being taken, was wholly erroneous. EMPRESS v. SUNDER, **A.W.N. 1881, 60.**

(90)—*Magistrate's duty to commit a case of homicide to Sessions.*—Although, where death appears to have resulted from an injury voluntarily inflicted, and on the evidence it would be open to a Sessions Court to convict an accused person of culpable homicide, a Magistrate should

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not take it upon himself to determine that an offence has been committed of a less serious character and to deal with it himself, yet, where it is clear there is not sufficient evidence to warrant a commitment, the Magistrate is not justified in making a commitment. HIGH COURT PROCEEDINGS, 19TH MAY 1881, No. 1002, 1 Weir 288.

See ACT XX OF 1866, ss. 91, 95, 5 B.H.C. Cr. 7.

See ACT IV OF 1871, s. 25, 16 B. 159.

High Court's power to issue *Mandamus* to commit case to it—*See* ACT X OF 1875, s. 147, 2 C. 278, 9 C. 397.

Charge under Registration Act—Whether Magistrate bound to commit it to Sessions—*See* ACT III OF 1877, s. 83, 10 W.R. Cr. 21=6 B.L.R. 693, note.

Commitment for an offence under s. 9 of the Act to the Sessions—*See* ACT I OF 1878, s. 9, 19 A. 465=A.W.N. 1897, 115.

See ACT IV OF 1879, ss 45 and 46, Rat. Un.Cr.C. 458=Cr. Rg. 14 of 1889.

See BAIL, 13 C.W.N. 43=36 C. 166=9 Cr. L.J. 375=1 Ind. Cas. 738.

See CHARGE—ALTERATION OF CHARGE, A.W.N. 1882, 165.

See CONVICTION, Rat. Un. Cr. C. 413=Cr. Rg. 79 of 1888

See CRIM. PRO. CODE, 1898, ss. 30, 34, 5 N.W.P. 219.

Accused acquitted under s. 323, I.P.C.—Subsequent death of the injured—Commitment to Sessions—Commitment when may be set aside—Interference by High Court—*See* CRIM. PRO. CODE. 1898, ss. 34, 114, 423, 439, 11 A.L. J. 959.

See CRIM. PRO. CODE, 1898, ss. 164 and 350, L.B.R, 1893—1900, 52.

Person accused of being one of a gang of dacoits—Resident of Native State, arrested in such State—Committal to take his trial at Sessions Court, Gurgaon, in British territory by a British Magistrate—Validity—S. 400, Penal Code—Jurisdiction—*See* CRIM. PRO. CODE, 1898. s. 181 (1), 1 P.R. 1911, Cr.=4 P.W.R. 1911, Cr.=84 P.L.R. 1911.

See CRIM. PRO. CODE, 1898, ss. 190 (1) (c), 191, 21 A. 109=A.W.N. 1896, 186.

Accused not present before the committing Magistrate—Validity of—Trial by the Sessions Court on such commitment—Legality and effect—*See* CRIM. PRO. CODE, 1898, ss. 193, 353, 6 P. W.R. 1913 (N.W.F. Crim.)=260 P.L.R. 1913.

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See CRIM. PRO. CODE, 1898, s. 347, 1 N. W.P. 307.

Trial under s. 354, I.P.C.—Prosecution and defence witnesses examined and cross-examined—Accused committed to Sessions on charges under ss. 376 and 511, I.P.C.—Legality—*See* CRIM. PRO. CODE, 1898, s. 347, Ch. XVIII, 15 Cr. L.J. 366=23 Ind. Cas. 734.

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See CRIM PRO. CODE, 1898, s. 423 (b) (1), 2 Weir 479.

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See CRIM. PRO. CODE, 1898, ss. 426, 439, 440, 477, 2 A. 398.

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See EVIDENCE—NON-ADMISSIBILITY OF EVIDENCE, 13 C. 121.

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See HIGH COURT. JURISDICTION OF—GENERAL, 9 B. 288, F.B., 6 C. 584=8 C.L.R, 265.

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Liability of limited company to be convicted and punished—*See* PENAL CODE, ss. 482, 486, 15 Cr.L.J. 337=23 Ind. Cas. 689=7 Bur. L.T. 116.

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See ACT VI OF 1882.

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Comparison of Native Seals.

See EVIDENCE—GENERAL, 6 W.R. Cr. 5.

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Testimony of single witness—One kind of corroboration—*See* FALSE EVIDENCE, 5 W.R. Cr. 98.

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Compensation.

1.—GENERAL.
2.—TO ACCUSED.
3.—TO COMPLAINANT AND HIS RELATIVES.

See CRIM. PRO. CODE, 1898, ss. 250, 545.

See DAMAGES.

——1.—General.

(1)—*To accused, when awardable—Case triable only by Sessions Court.*—Where a case ordinarily triable only by a Court of Session is tried by a Magistrate empowered under s. 30, Crim. Pro. Code, the Magistrate is not competent to award compensation. CROWN v. QADU, **26 P.R„ 1902, Cr.=139 P.L.R. 1902.** (14 P. R. 1902, *R.*)

(2)—*Crim. Pro. Code* (1882), *s.* 250—*Compensation when awardable.*—S. 250 of the Code authorizes the payment of compensation in cases where the accused has been acquitted under s. 245, after the whole of the evidence in the case has been recorded. QUEEN-EMPRESS v. PANDU *valad* GOPALA, **10 B. 199.**

(3)—*S.* 250, *Crim. Pro. Code—Compensation when awardable.*—S. 250, Crim.Pro. Code, can only be applied when the discharge or acquittal is legal. QUEEN-EMPRESS v. MAUNG TUN HALA, **1 L.B.R. 44.**

(4)—*Compensation when awardable.*—It is sufficient to support an award of compensation under s. 209, Crim. Pro Code, 1872, if the complaint is frivolous or vexatious. The latter is a question of fact for the decision of the Magistrate by whom the complaint is investigated. *In re* MUNISAMI MUDALI, **2 Weir 319.**

(5)—*Compensation when awardable.*— It is only upon an acquittal under s. 245, Crim.Pro. Code, 1882, after taking evidence for the prosecution or under s. 247, upon the default of the complainant to appear, that an order of compensation, under s. 250, can be made. An order awarding compensation by a Magistrate on refusal to allow the complainant to withdraw the prosecution is not a valid order. ALI AHMED v. NATHU, **14 P.R. 1884, Cr.** ; GULAB v. SANT RAM, **14 P.R. 1884, Cr. Note.** (24 P. R. 1883, Cr. *R.*) [*R.*, 12 P.R. 1885, Cr., 19 P. R. 1888, Cr.]

(6)—*Compensation when awardable—Practice and procedure.*—What the Code contemplates and directs is that, before making an order for the payment of compensation, the Magistrate shall record and consider any objection which the complainant may urge and shall state in writing, *in his order of discharge or acquittal*, his reasons for awarding the compensation. The order directing payment of compensation is to be embodied in the order of discharge or acquittal. The Code does not contemplate that a Magistrate shall acquit the accused and shall thereafter hold an informal inquiry for the purpose of satisfying himself whether the

***Compensation*—continued.**

——1.—**General**—*continued.*

complaint was or was not frivolous or vexatious. KASHI NATH GOPAL v. ZINCKE, **14 C.P.L.R. 37, Cr.** [*R.*, 15 Cr. L.J. 290=23 Ind. Cas. 498 =10 N.L.R. 8.]

(7)—*Compensation, when awardable—Penal Code, s.* 323.—An award of compensation to an accused person under s. 250 may be legal, where, on a complaint under s. 323, I.P.C., the Magistrate has proceeded under s. 352, and Ch. XX of Crim. Pro. Code. EMPRESS v. SAMWAN SINGH, **31 P.R. 1886, Cr.**

(8)—*Compensation when awardable—Penal Code, ss.* 323 *and* 352.—Where a Magistrate ordered summons to issue to the accused on a charge for an offence under s. 323, I.P.C., but, after examining two witnesses for the prosecution, altered the charge to one for an offence under s. 352, and eventually acquitted the accused and awarded compensation, *held*, that the Magistrate was not competent to award compensation, as he could not apply the procedure prescribed in Ch. XX, Crim. Pro. Code, as the summons in the case was issued for an offence punishable with more than six months' imprisonment. EMPRESS v. GHULAM HOSAIN, **17 P.R. 1887, Cr.**

(9)—*Compensation, when awardable—Crim. Pro Code,* 1872, *s.* 209—*Order under the section.*—The complainant charged four persons with damaging his crops by pasturing sheep on them and with having forcibly rescued the sheep when he was taking them to the pound. The subordinate Magistrate trying the case dismissed the charge as untrue and vexatious, and, under s. 209, Crim Pro. Code, 1872, awarded compensation to the accused persons. The District Magistrate, being of opinion that there was evidence to show that damage was caused to the complainant, and that he had valid reasons for charging the accused, reported the case to the High Court. The High Court agreed with the Magistrate in much of his estimate regarding the merits of the case, and *held* that, under the circumstances of the case, there was no sufficient justification for an order under s. 209. *In re complaint of* SARNAM, **A.W.N. 1881, 167.**

(10)—*Order of compensation, when to be made.*—An order of compensation under s. 209 of the Crim. Pro. Code, 1872, cannot be made until all the evidence in support of the complaint is heard. Where a complaint is preferred by a person as the *karinda* of another and the offence falling within the scope of s. 209, Crim. Pro. Code, 1872, relates to the *karinda* himself and not the latter, no order for compensation can be made against the latter. JUGMOHAN v. SHEOBALAK, **A.W.N. 1882, 116.**

(11)—*When can order as to compensation be made.*—An order for compensation can only be made upon an acquittal. EMPRESS v. DURGA, **A W.N. 1883, 257.**

(12)—*Compensation to accused—When awardable.*—It is not competent for a Magistrate to award compensation to the accused in a trial held under Ch. XVII, Crim. Pro. Code, 1872. EMPRESS v. JOKHAN, **A.W.N. 1881, 161.**

(13)—*Crim. Pro. Code* (1872), *s.* 209 (=*s.* 250 *of the Code of* 1898)—*Scope of the section—Award of compensation--Power of appellate Court.*—The special provisions of s. 209 are applicable only in the case of original trials under Ch. XVI of the Code. The award of compensation by the appellate Court is illegal. HIGH COURT PROCEEDINGS, 27TH FEB., 1875, No. 488. **2 Weir 314=8 M.H.C. App. 7.**

(14)—*Crim. Pro. Code, s.* 250, *when applicable—Compensation when awardable.*—S. 250 applies only when a person is charged with an offence triable by a Magistrate. But where the accused is charged with an offence exclusively triable by a Court of Sessions, a Magistrate is not competent to award compensation. *In re* POLIGADU, **2 Weir 315.**

(15)—*Crim. Pro. Code, s.* 250—*Application of the section.*—S. 250 of the Crim. Pro. Code does not apply where the offence is not one to be dealt with under Ch. XX of the Code. *In the matter of the complaint of* HARBANS, **A.W.N. 1885, 45.**

(16)—*Crim. Pro. Code* (1872), *s.* 209—*Compensation in warrant case.*—In a warrant case, no compensation can be awarded under s. 209, Crim. Pro. Code, 1872. EMPRESS v. ANGNU, **A.W.N. 1881, 154** [*R.*, A.W.N. 1881, 161.]

(17)—*Crim. Pro Code, s.* 250—*Summons case—Compensation.*—S. 250, Crim. Pro. Code, 1882, relates to summons cases and not to warrant cases. NIAZULLAH v. NAJJU, **A.W.N. 1883, 130.**

(18)—*Crim. Pro. Code* (1898), *s* 250—*Scope of the section—Public Officers.*—The Legislature does not intend that public officers or departments should be exempted from the liability to make compensation for vexatious and frivolous complaints. NARASAYYA v. RAMADAS NAIDU, **2 Weir 317.**

(19)—*Crim. Pro. Code* (1898), *s.* 250—*Complaint by public servant — Compensation.*—Where proceedings are instituted on the information of a public servant, and an officer subordinate to him gives evidence in the case, an order directing the latter to pay compensation to the accused is not proper. KHASIM SAHIB v. DASARI RAMUDU, **2 Weir 318**

(20)—*Crim. Pro. Code* (1882), *s.* 250—*Report of police constable—Acquittal of accused—Compensation.*—Where a case has been reported by a police constable, and the accused is acquitted, *held* that the Court is not competent to order the police constable to pay compensation to the accused. EMPRESS v. DURGA, **A.W.N. 1883, 257.**

(21)—*Withdrawal of complaint in a compoundable case — Compensation.*—The withdrawal of the complaint under s. 248, Crim. Pro. Code, 1882, on the composition of the

Compensation—continued.

——1.—**General**—*continued.*

offence under s. 345, does not preclude the Magistrate from directing the complainant to pay compensation to the accused under s. 250, Crim. Pro. Code. HIMMAT SINGH v. BUKHTAWAR, **24 P.R. 1883, Cr.** [*R.*, 19 P.R. 1898, Cr.]

(22)—*Crim. Pro. Code* (1872), *ss.* 209, 210—*Case allowed to be withdrawn—Compensation to accused.—Held* that the order of a Magistrate, awarding compensation to the accused, under s. 209, Crim. Pro. Code, 1872, in a case which he had permitted to be withdrawn under s. 210, was illegal. DEBI SAHAI v. DALSINGAR RAI, **A.W.N. 1881, 155.**

(23)—*Acceptance of* razinama *withdrawing a complaint — Compensation.*—Where a Magistrate accepts a *razinama* so far as to stop the case against the accused, he should not treat the case as one dismissed on the merits and award compensation without giving the complainant an opportunity to prove his case. SITAL DAS v. ANOKHA, **56 P.R. 1887, Cr.**

(24)—*Cross complaints—Compensation to the accused in the one case and fining the complainant in the first case as the accused in the second—Validity.*—When two persons prefer cross-complaints of assault, the Magistrate may dismiss the complaint of one of them awarding compensation to the other, and may also fine him in the cross-case. It does not amount to fining twice for the same offence. PRUBOO DYALL v. MOOKHA, **26 P.R 1869, Cr.**

(25)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 250—*Absence of complainant.*—Where, on the absence of the complainant at the hearing, a Magistrate dismissed a complaint, acquitted the accused and, holding the complaint to be of a frivolous nature, awarded compensation to the accused, *held* that the order was legal. *In the matter of the complaint of* MUSAHIB KHAN, **A.W.N. 1884, 115.**

(26)—*Crim. Pro. Code* (1898), *s.* 250—*Frivolous complaint—Jurisdiction—Complaint dismissed without issue of process.*—S. 250 is not applicable to a case in which a complaint is dismissed without any process being issued for the attendance of the person against whom such complaint is made. BHAGWAN SINGH, v. HARMUKH, **A.W.N. 1906, 306=4 Cr. L.J. 451=29 A. 137.**

(27)—*Frivolous and vexatious complaint—Compensation.*—Where a Court awards compensation under the provisions of s. 250, Crim. Pro. Code, 1898, the person against whom such compensation is awarded may show cause, with reference to the evidence already recorded, why the complaint should not be held to be frivolous or vexatious, and why compensation should not be awarded ; but the section does not require that separate proceedings should be held and fresh evidence taken. QUEEN-EMPRESS v. CHIRAGH ALI, **A.W.N. 1898, 198.**

(28)—*Judicial officer — Mistake — Vexatious conduct—Crim. Pro. Code, s.* 270.—Where a judicial officer from over-anxiety for the due administration of justice in his Court makes a mistake in taking steps against parties, whose conduct appears to obstruct the course of justice, somewhat too hastily and without due circumspection, it is not to be presumed that he had acted vexatiously, in the sense of s. 270 of the Crim. Pro. Code, 1861, or otherwise than in perfect good faith, so as to justify an award of compensation to the person who was prosecuted by his directions. ANONYMOUS, **15 W. R. 506.**

(29)—*S.* 270. *Crim. Pro. Code, application of—Complaint being frivolous and vexatious—Compensation.*—S. 270, Crim. Pro. Code, applies only to cases punishable only with fine or with imprisonment not exceeding six months. Compensation to the accused for a frivolous and vexatious complaint of hurt is not, therefore, awardable. HIGH COURT PROCEEDINGS, 4TH NOV. 1870, **5 M.H.C. App. 40.**

(30)—*Crim. Pro. Code, s.* 270—*Nature of offence—Complaint being vexatious.*—Where a complainant prefers three charges of three distinct offences, two of which are offences triable under Ch. XV of the Code of Criminal Procedure, a Magistrate may award amends to the accused under s. 270 of the Code, if he considers the charge with reference to the cases under Ch. XV to have been vexatious. MODHOOSOODHUN GHOSE v. JOYRAM HAZRAH, **13 W.R. Cr. 39.**

(31)—*To accused for frivolous or vexatious complaint—Death of accused.*—Where a Magistrate awarded compensation to an accused, under s. 560, Crim. Pro. Code, 1882, the complainant applied to the High Court, under ss. 435 and 439, Crim. Pro. Code, for revision of that order. *Held* that, as the accused had died, no order could be made, as none could be passed to the prejudice of a person who could not be served with a notice. GOVINDA v. KESHAVRAO, **Cr. Rg. 6 of 1893=Rat. Un. Cr. C. 634.**

(32)—*Failure to substantiate charge—Committal of prosecutor for false evidence—Act* XXV *of* 1861, *s.* 270—*Act* X *of* 1872, *s.* 209 —When a prosecutor fails to substantiate his charge by making contradictory statements, the Magistrate, who tries the case under Ch. XV of the Criminal Procedure Code, can award compensation to the accused, although he commits the prosecutor to take his trial on a charge of giving false evidence. QUEEN v. RUPAN RAI, **6 B.L.R. 296=15 W.R. Cr. 9.** [*Appl.*, 22 C. 586; *R.*, 30 C. 123, F.B., 26 C. 181, 21 M. 237.]

(33)—*Crim Pro. Code* (1882), *s.* 250—*Case instituted on complaint—Compensation to accused.*—Where, upon a complaint to the police, the latter make an enquiry and send the case for trial, the case is not instituted "upon complaint" within the meaning of s. 250 of the Code. In such a case, therefore, the Magistrate is not competent to award compensation to the accused. ISHRI v. BAKHSHI, **6 A. 96=A.W.N. 1883, 224.** [*F.*, 7 M. 563.]

Compensation—continued.

——1.—**General**—*continued.*

(34)—*Crim. Pro. Code* (1861), s. 270 (s. 250 *of the Code of* 1898)—*Complaint against a person as being of a bad character—Compensation.*—A complaint made against any person that he is a person of bad character or repute is not a complaint of such a nature, that, if the Magistrate dismisses the complaint as frivolous or vexatious, he would be competent, under s. 270, Crim. Pro. Code, 1861, to award compensation from the complainant to the accused. QUEEN v. BAL KISHAN, **2 N.W.P. 447.**

(35)—*Crim. Pro. Code* (1898), s. 250—*Compensation order by an appellate Court—Illegal.*—The legislature intended that only the Magistrate, by whom a case is in the first instance heard, can pass an order under s. 250 of the Code. It would be inconvenient if, when the tribunal before which the case is heard finds a charge to be proved, an appellate tribunal, when reversing that finding, could pass an order for compensation on the ground that the accusation which was established in the Court below was either frivolous or vexatious. KING-EMPEROR v. CHITTAN, **3 A.L.J. 382=28 A. 623=A.W.N. 1906, 145=3 Cr.L.J. 441.** [*Diss.*, 14 C.W.N. 212 =11 Cr.L.J. 46=5 Ind. Cas. 72; *R.*, 14 C.L.J. 437=16 C.W.N. 10.]

(36)—*S.* 250—*Powers of appellate Court.*—An order for compensation under s. 250 cannot be passed by an appellate Court. HARI CHAND v. FAKIR SADRUDIN, **3 Bom.L.R. 841.** [*R.*, 39 C. 157=14 C.L.J. 437=16 C.W.N. 10=12 Cr.L.J. 529=12 Ind. Cas. 297.]

(37)—*Crim. Pro. Code* (1898), ss. 250, 423 (1) (*d*)—*Compensation for making a frivolous or vexatious complaint—Appellate Court's power to award—S.* 423, *sub-s.* 1, *cl.* (*d*)—*Power of the appellate Court under.*—An appellate Court can pass an order against the complainant, awarding compensation to the accused under s. 250, Crim. Pro. Code. Such an order may very reasonably be regarded as a consequential order within the meaning of s. 423, sub-s. 1, cl. (*d*). KARI SINGH v. TUFANI DHANUK, **14 C.W.N. 212=5 Ind. Cas. 72=11 Cr.L.J. 46.** (28 A. 625 *Diss.*) [*R.*, 14 C.L.J. 437=16 C.W.N. 10.]

(38)—*Crim. Pro. Code* (1861), s. 270—*Compensation on frivolous and vexations complaints—Fine.*—Fines on complainants, as compensation to the accused on frivolous and vexatious complaints, are awardable only in cases triable by Magistrates, in which a summons on complaint shall ordinarily issue REG v. YELLAPPA *bin* MUDAKAPPA, **1 B.H.C. 181.**

(39)—*In what cases can Magistrate award compensation.*—An order awarding compensation to the accused under s. 270, Crim. Pro. Code, 1861, can only be made in cases triable by Magistrates in which a summons on complaint shall ordinarily issue. REG. v. RAMJI *valad* DAJI, **5 B.H.C. Cr 12.**

(40)—*Crim. Pro. Code* (1898), s. 250—*Notice accused imperative.*—An order, awarding compensation to be paid by the complainant to the accused under s. 250, Crim. Pro. Code, should not be passed without notice to the complainant and without considering any of the objections the complainant may have to urge. IMPERATOR v. ACHAR, **2 S.L.R. Cr. 4=10 Cr.L.J. 220.**

(41 & 42)—*Crim. Pro. Code* (1898), s. 250—*Omission to comply with procedure—Illegality—Not an irregularity.*—Before making an order under s. 250, Crim. Pro. Code, the Magistrate is required to give the complainant an opportunity of objecting, and to record and consider such objections. It has been held repeatedly that the above procedure enjoined by s. 250 is imperative, and omission to comply with it is not merely an irregularity, but an illegality. CROWN v. JETHO, **2 S.L.R. 14, Cr.=10 Cr.L.J. 229.** [*R.*, 15 Cr.L.J. 504=7 S.L.R. 123=24 Ind. Cas. 592.]

(43)—*Crim. Pro. Code* (1898), s. 250—*Frivolous or vexatious*—Ejusdem generis—*False complaint not frivolous or vexatious.*—*Held*, that the word "vexatious" in s. 250 of the Code must be read as *ejusdem generis* with "frivolous." Both the words apply to that class of cases in which the aid of the law has been heedlessly invoked. And, therefore, where a Magistrate holds the complaint to be false or needless, he cannot award compensation under this section. KING-EMPEROR v. JETHOMAL, **9 Cr.L.J. 255=1 S.L.R. 12, Cr.**

(44)—*Crim. Pro. Code* (1898), s. 250—*False charge—Vexatious—Compensation — Discretion of trying Magistrate.*—*Held*, that the words "frivolous" or "vaxatious" used in s. 250 are not used *ejusdem generis*, and where a Magistrate holds that a complaint is not only false but vexatious, he has a discretion to award compensation, if he is of opinion that public policy does not necessitate the sanctioning of a prosecution against the complainant. CROWN v. NOTO *WD.* MOLEDINO, **9 Cr.L J. 268, F.B.=1 S.L.R. 28, Cr.**

(45)—*Crim Pro. Code* (1898), ss. 250, 438—*Penal Code, s.* 497—*Adultery—Discharge of accused by Magistrate not competent to try—Compensation — Illegality — Reference under s.* 438. *Crim. Pro. Code—Grounds of reference to be stated*—A Magistrate, by whom a charge under s. 497, Penal Code, is not triable, but who enquires into a charge of adultery and discharges the accused on the ground that no case is made out against him, cannot award compensation to the accusedunder s. 250, Crim. Pro. Code. A reference to the High Court under s. 438, Crim. Pro. Code, should contain a brief abstract of the case and the grounds of the reference. *In re* KESAVA PANDA, **9 Cr.L.J. 502=2 Ind. Cas. 159.**

(46)—*Crim. Pro. Code* (1898), s. 250—*Award of compensation by Divisional First Class Magistrate—Powers of revision by District Magistrate—Jurisdiction—Revision by District Magistrate of an order of discharge—Procedure.*—The District Magistrate has no power to revise

Compensation—continued.

——1.—**General**—*continued.*

the order of a subordinate First-Class Magistrate awarding compensation under s. 250, Crim. Pro. Code. Where a District Magistrate is asked to revise an order of a Divisional Magistrate discharging an accused person, and at the same time directing the complainant to pay compensation to the accused under s. 250, Crim. Pro. Code, the proper course for the District Magistrate to adopt is either to decline to interfere, or, if he thinks interference necessary, to refer the matter to the High Court, which can deal both with the order of discharge and with the order for the payment of compensation. DANDAYUTHAPANI SHOLINGAN v. THERUMALAI SHOLINGAN, **4 Ind. Cas. 399.**

(47)—*Crim. Pro. Code* (1898), s. 250—*Order for compensation for false charge—Power of revision by Sessions Judge.*—The Sessions Judge has no power to interfere in revision with an order of compensation passed by a First Class Magistrate, under the provisions of s. 250. *In re* PITAMBAR DWARKADAS, **7 Bom. L.R. 998=3 Cr. L.J.** 88.

(48)—*Crim. Pro. Code* (1898), s. 250—*False and vexatious complaint—Order of compensation—The order passed at the same time as the order of discharge.*—A Magistrate, in discharging an accused, recorded, at the same time that he ordered the discharge, his conclusion that the case was one in which, subject to any objection that the complainant might urge against the direction, the complainant ought to be ordered to pay compensation for making a frivolous and vexatious complaint. He, then, as required by s. 250 (*a*) of the Code, recorded the complainant's objection, and added, under cl. (*b*) of the section, to his order of discharge, a direction that the complainant should pay compensation. *Held*, the procedure adopted by the Magistrate was a sufficient compliance with the law as enacted in s. 250. EMPEROR v. PUNAMCHAND HIRACHAND, **8 Bom. L.R. 847=4 Cr.L.J. 423.** [*F.*, 36 A. 132=12 A.L.J. 143=15 Cr.L.J. 198=22 Ind. Cas. 977, 15 Cr.L.J. 504=24 Ind. Cas. 592=7 S.L.R. 123; *R.*, 10 Cr.L.J. 220=2 S.L.R. 4, 14 Cr.L.J. 48=18 Ind. Cas. 272=16 P.W.R. 1913, Cr., 99 P.L.R. 1913.]

(49)—*Crim. Pro. Code* (1898), ss. 250 *and* 345—*False or vexatious charge—Compounding of offences—Procedure.*—An enquiry as to whether a charge is not frivolous or vexatious, under s. 250 of the Crim. Pro. Code, can only be instituted for the purpose of deciding whether compensation should be paid to the accused person. Proceedings under s. 250 are inapplicable where the accused person has himself by agreement with the prosecutor, arrived at a settlement, and been a party to the compounding of the offence. *In re* HARKISANDAS HARIDAS, **10 Bom. L.R. 1056=9 Cr.L.J.** 186.

(50)—*Crim. Pro. Code* (1882), ss. 248, 350—*Withdrawal of complaint—Acquittal—Compensation.*—Since s. 250 of the Crim. Pro. Code, applies only to acquittals under s. 245 or s. 247 of the Code, compensation cannot be awarded in a case of acquittal under s. 248 on the withdrawal of a complaint. MORO KRISHANA v. YESHWANTRAO, **Rat. Un. Cr. C. 462=Cr. Rg. 21 of 1889.**

(51)—*Crim. Pro. Code* (1898), s. 250—*Dismissal of complaint as false and vexatious—Order for compensation, whether valid—Penal Code*, s. 211.—Where a Magistrate dismissed a complaint as false and vexatious, on finding that the complainant, with intent to cause injury to the accused, instituted the proceedings against him, knowing that there was no just and lawful ground for such proceeding or charge, and passed on order for compensation to be given to the accused, *held*, that the Magistrate did not exercise a proper discretion in awarding the compensation and that the Magistrate would be at liberty, if he was so advised, to institute proceedings under s. 211, Penal Code. KINA KARMAKAR v. PREO NATH DUTT, **29 C. 479.** [*Diss.*, 15 C.P.L.R. 194; *R.*, 27 M. 59.]

(52)—*Awardable by order of discharge or acquittal.*—It is the plain direction of the law that the award of compensation shall be made by the order of discharge or acquittal. After the completion of the order of discharge or acquittal, the Magistrate is *functus officio*, and he cannot re-open the case to pass an order under s. 250, Crim. Pro. Code. QUEEN-EMPRESS v. ABDUL KARIM, **L.B.R. 1893—1900, 528.**

(53)—*Order of compensation to accused—Absence of complainant when Magistrate passes order acquitting accused — Procedure— Crim. Pro. Code* (1898), s. 250.—Where a Magistrate intends to award compensation under s. 250, Crim. Pro. Code, 1898, his proper procedure is to stay delivery of judgment till the complainant has stated his objections under s. 250 and the Magistrate has recorded his reasons. If the accused are in custody and the Magistrate intends to acquit them, but is unable to pass an order of acquittal because of the absence of the complainant, they should be released on their own recognizance till the requirements of s. 250 are complied with. QUEEN-EMPRESS v. NGA TUN HLA, **L.B.R. 1893—1900, 565.** (L.B.R. 1893—1900, 528, *R.*)

(54)—*Crim. Pro. Code* (1898), s. 250—*Scope of the section — Compensation—Order against a police officer.*—S. 250 is limited to cases instituted by complaints as defined in the Code or on information given to a police officer or to a Magistrate. A Magistrate has no power to order a police officer, prosecuting a person in his capacity, as such, to pay compensation. SYED BAHADUR ALI v. NUR MAHOMED, **7 C. W.N. 206.**

(55)—*Crim. Pro. Code*, s. 250—*Scope, and applicability of—Order of compensation against police officer.*—S. 250 is inapplicable to the case of a complaint lodged by a police officer acting

***Compensation*—continued.**

——1.—General—*continued.*

as such. SHEOBARAN OJHA v. NUNMONIA DOSHAD, **5 C.W.N. 370.**

(56)—*Crim. Pro. Code*, ss. 4, 250—*Power of Magistrate to award compensation—Police officer.*—An accusation, made to a police officer, who takes action upon it and lays the matter before the Magistrate with a charge sheet, cannot be said to be a case instituted upon complaint. In such a case, the Magistrate has no power to award compensation under s. 250, Crim. Pro. Code. QUEEN-EMPRESS v. POLAVARAPA, **7 M. 563.**

(57)—*Crim. Pro. Code* (1898), s. 250—*Vexatious complaint—Compensation to the accused, order for—Reasons, sufficiency of.*—A Magistrate, in ordering the complainant to pay compensation to the accused under s. 250, on the ground that the complainant's case is vexatious, should state his reasons why he thinks the complaint to be vexatious and should also state in his judgment the facts of the case with a criticism of the incidents involved in it. The statement that, in his opinion, the prosecution evidence is highly unsatisfactory and that, upon the evidence and the written statement and documents, he has no hesitation in saying that the case is vexatious is not sufficient. AMJAD ALI v. ASHRAF ALI, **10 C W.N. 544=3 Cr.L.J. 390.**

(58)—*Crim. Pro. Code* (1882), s. 250—*Frivolous complaint of illegal seizure of cattle—Cattle Trespass Act* (I *of* 1871).—The illegal seizure of cattle under colour of Act I of 1871 is not constituted an offence under that Act or otherwise, and, therefore, a Magistrate is not competent to award compensation under s. 250, Crim. Pro. Code, to the accused on a frivolous and vexatious complaint in respect of such alleged illegal seizure. PITCHI v. ANKAPPA, **9 M. 102 =2 Weir 315.** [*R.*, 18 A. 353=16 A.W.N. 98; *F.*, 13 C. 304, 23 C. 248.]

(59)—*Crim. Pro. Code* (1882), ss. 250 *and* 262—*Applicability of* s. 250 *to summons cases.*—S. 262 renders applicable, in the case of summons cases, tried summarily, all the provisions of s. 250, and in all cases, whether tried summarily or not, in which a Magistrate acquits and is also of opinion that the complaint was frivolous or vexatious, it is open to him to award compensation. QUEEN-EMPRESS v. BASAVA, **11 M. 142=2 Weir 314.** [*R.*, U.B.R. 1906, 3rd Qr., Crim. Pro. Code, 51.]

(60)—*Crim. Pro. Code* (1898), s. 250—*Order for compensation to an accused person against whom a frivolous or vexatious accusation was instituted—Case instituted on information to a Village Magistrate — Discharge of accused—Validity of order for compensation.*—Where a complaint was made to a Village Magistrate, who sent a report to the police and the police investigated the case and submitted a charge sheet to the Taluq Magistrate, *held*, that an order for compensation to be paid to the accused on his being discharged was not validly made, inasmuch an information was not given to the Magistrate, as the word is used in s. 250, the Village Magistrate not being a Magistrate within the meaning of that section. KING-EMPEROR v. THAMMANA REDDI, **25 M. 667=2 Weir 318.** [*F.*, 13 Cr.L.J. 29=13 Ind. Cas. 221 =22 M.L.J. 138=1911, 2 M.W.N. 558=10 M.L.T. 550; *R.*, 15 Cr.L.J. 431=24 Ind. Cas. 167 =27 M.L.J. 37.]

(61)—*Crim. Pro. Code* (1898), s. 250—*Order for compensation—Discretion of Magistrate.*—The question whether the discretion given by s. 250 has been rightly exercised must always depend upon the facts of the particular case. If the false charge is of such a nature that a prosecution is necessary on the grounds of public policy, it may well be that a Magistrate would exercise his discretion wrongly, if instead of sanctioning a prosecution, he awarded compensation. If the false charge is one which does not render it necessary on the grounds of public policy that a prosecution should be sanctioned, a Magistrate, who makes an order for compensation, cannot be said to exercise his discretion wrongly. *In the matter of* TAMNI REDDI, **27 M. 59=2 Weir 313.** [*R.*, 9 Cr.L.J. 268=1 S. L.R. 28, Cr.]

(62)—*Crim. Pro. Code* (1898), ss. 250 (3), 422 —*Compensation, appeal against order granting —Notice to accused, necessity of.*—In cases of appeals under s. 250 (3), Crim. Pro. Code, which provides that there shall be an appeal from an order under that section, it is necessary to give notice of the appeal to the accused, as he is the party prejudiced, if the appeal be allowed and the order for compensation rescinded. AMBAKKAGARI NAGI REDDI v. BAPAPPA OF MEDIMAKKULAPALLI, **5 M.L.T. 262=9 Cr L.J. 150 =19 M.L.J. 130=1 Ind. Cas. 79=33 M. 89.**

(63)—*Crim. Pro. Code* (1898), s. 250—*Non-compliance with the provisions of* s. 250—*Order for compensation.*—Where a Magistrate does not comply with the provisions of proviso (*a*) to cl. (1) of s. 250, the order under s. 250, awarding compensation, cannot be validly made. NARAYANASAMI MUDALY v. BUKEE REDDY, **2 Weir 310.**

(64)—*Crim.Pro.Code* (1872), ss. 203 *and* 209 (=s. 250 *of the Code of* 1898)—*Complaint of offence triable as warrant case—Validity of trying the case as summons case—Dicsharge of the accused—Award of compensation.*—S. 203 of the Code enables a Magistrate, if, after further examination of the complainant, he ascertains that the offence is not properly described either in the complaint or in the summons, to convict the accused on any other charge proved by the facts, provided it was triable as a summons case. Where the complaint and examination of the complainant and the evidence offered for the prosecution showed that the offences committed by the accused were, if any, criminal trespass, voluntarily causing hurt, and abetment of causing hurt, *held*, that the Magistrate had no power to try the case as a summons case, and to award compensation under s. 209 after discharging the accused. SOMU v. QUEEN, **6 M. 316.** [*R.*, 5 A.W.N. 45.]

Compensation—continued.

——1.—General—*continued.*

(65)—*Crim. Pro. Code* (*Act* V *of* 1898). s. 250—*Compensation to accused—Restitution on cancellation of order.*—When compensation awarded to an accused under s. 250 of the Crim. Pro. Code has been paid by the complainant and the order awarding it has been subsequently set aside, the compensation may be recovered under s. 547 of the Code. CROWN v. HIRA NAND, **2 P.L.R. 1904=29 P.R. 1903, Cr.** (12 P.R. 1885, Cr., 19 A. 112, *F.*; 2 P.R. 1889, Cr., 14 P.R. 1902, Cr., *R.*)

(66)—*Crim. Pro. Code* (*Act* V *of* 1898), s. 250 — *Compensation for frivolous complaint—Offence — Proceedings under s.* 107, *Code of Criminal Procedure.*—A Magistrate is not competent, under s. 250, Crim. Pro. Code, to award compensation to a person against whom proceedings under s. 107, Crim. Pro. Code, are dropped, the proceedings not being a case in which a person is accused of an offence. CROWN v. KAURA, **9 P.L.R. 1903= 33 P.R. 1902, Cr** (15 A. 365, *F.*) [*R.*, 12 P.R. 1909, Cr.=105 P.L.R. 1909.]

(67)—*Compensation under* s. 270, *Crim. Pro. Code* (1861) *and under a special law.*—Compensation is awarded both under s. 270, Crim. Pro. Code, and under a special law (*e.g*, Cattle Trespass Act). ALLA DITTA v. SHERE MAHOMED, **1 P.R. 1872, Cr.**

(68)—*Complaints under special law—Crim. Pro. Code* (1861), *s.* 270.—S. 270 of the Code of Criminal Procedure does not apply to complaints under a special law, but only to complaints punishable under the Penal Code with imprisonment for a period not exceeding six months. QUEEN v. ABDUL AZEEZ KHAN, **14 W.R. Cr. 36.**

(69)—*Crim. Pro. Code* (1898), *s.* 250—*Award of compensation and its reasons must be contained in order of discharge.*—In this case a Magistrate, after discharging the accused while the complainants were absent, procured their attendance subsequently and made an order awarding compensation to the accused. *Held*, that the order was unlawful as the Magistrate had no power to pass such an order after the discharge of the accused, s. 250 of the Code requiring that the order awarding compensation with the reasons for the same must be contained in the order of discharge. The Magistrate ought to have simply adjourned the case, without discharging the accused, with a view to procure the complainant's attendance and to ask them to show cause against paying compensation and passed final orders in the case subsequent to those steps. NARPAT RAI v. EMPEROR, **57 P.R. 1905, Cr.=181 P.L.R. 1905=3 Cr. L.J. 123.** [*R.*, 99 P.L.R. 1913= 14 Cr. L.J. 48=16 P.W.R. 1913=18 Ind. Cas. 272, 18 P.R. 1913, Cr.]

(70)—*Crim. Pro. Code* (1898), *ss.* 250 *and* 431—*Compensation—Death of person applying in revision against order to pay compensation—Abatement of application—Whether his legal representatives con conduct application.*—Where compensation has been awarded under s. 250, Crim. Pro. Code, and an application for revision against this order has been made, pending which the petitioner dies, the application does not abate also, but can be prosecuted by his legal representatives. PREM SINGH v. BHOLA, **24 P.R. 1908, Cr.=9 Cr.L J. 103=42 P.W.R. 1908, Cr.** (6 P.R 1893, Cr., 16 P.R. 1878, Cr., *D.*)

(71)—*Improper order for compensation.*—A *Karkun*, attached to the establishment of a Subordinate Court, reported to the Sub-Judge of an obstruction to the execution of a writ of attachment of property, and the latter sent the case to a First Class Magistrate. The persons alleged to have obstructed the *Karkun* were acquitted, and the *Karkun* was ordered to pay compensation to the accused. *Held* that the order for compensation was not proper, as the Sub-Judge and not the *Karkun* should be regarded as the complainant. *In re* KESHAV LAKSHMAN, **1 B. 175.** [*Rel.*, 12 Cr.L.J. 482 =12 Ind. Cas. 90=21 M.L.J. 844=10 M. L.T. 191; *R.*, 1 Bom. Cr. C. 237=14 Bom. L. R. 1166=14 Cr.L.J. 1=18 Ind. Cas. 145; *D.*, Rat. Un. Cr. Cas. 309.]

(72)—*Crim. Pro. Code, Act* X *of* 1872. s. 209 —*Acquittal—Compensation.*—The provisions of s. 209 of the Crim. Pro. Code, as to the award of compensation on the dismissal of a complaint, do not apply to an adjudication of acquittal. REG v. JEKISON, **Rat. Un. Cr. C. 83.**

(73)—*Crim. Pro. Code, Act* X *of* 1882. ss. 250, 242—*Acquittal—Condition for compensation.*—The word "acquitted" in s. 250 of the Crim. Pro. Code, implies that there has been at least an inquiry to the extent required by s. 242 of the Code. Where the Magistrate dismisses a complaint and acquits the accused for the non-appearance of the complainant, no order for compensation can be made. ABDUL GHAFUR v. LALTU, **A.W.N. 1891, 63.**

(74)—*Crim. Pro. Code* (1861), *s.* 44—*Order for compensation—Form.*—Where two persons were charged with theft and purchasing stolen property respectively, and the former was convicted and the latter was discharged on the ground that he had no guilty knowledge, *held*, that the Magistrate was not competent to seize from the thief the money he had with him and to pay it to the second accused as part of the purchase-money paid by him. HIGH COURT PROCEEDINGS, 16TH JAN. 1869, **4 M.H.C. App. 28.**

(75)—*Crim. Pro. Code* (1861), *s.* 44—*Order of compensation—Form of.*—The award of compensation, referred to in s. 44 of the Code of Criminal Procedure, should be a part of the sentence and order made upon a conviction for an offence of the nature specified therein, and it should be found upon a statement of loss, damage or expenses, as the case may be, ascertained at the trial. QUEEN v. GOUR CHURN DOSS, **11 W.R. Cr. 53.**

***Compensation*—continued.**

——1.—**General**—*continued.*

(76)—*Act* I *of* 1871 (*Cattle Trespass*), s. 20—*Complaint of illegal seizure of cattle—Compensation to accused, whether can be ordered—Crim. Pro. Code* (1882), ss. 4 (*a*) *and* 250.—The illegal seizure of cattle is not an offence within the meaning of the Crim. Pro. Code, and the order for compensation to the accused, under s. 250 of the Code, cannot be made. KOTTALANADA v. MUTHAYA, 9 **M. 374**=2 **Weir 315.** [*F.*, 23 C. 248; *R.*, 18 A. 353=16 A.W.N. 98, 23 C. 442.]

(77)—*Security proceedings.* — Proceedings under s. 107, Crim. Pro. Code, are not in conformity with the requirements of s. 250, Crim. Pro. Code. CROWN v. KAURA, **33 P.R. 1902, Cr.=9 P.L.R. 1903.** (15 A. 365, *F.*) [*R.*, 12 P.R. 1909, Cr.=105 P.L.R. 1909.]

(78)—*Security proceedings—Crim. Pro. Code, ss.* 107 *and* 560—*Compensation.*—Under s. 560, Crim. Pro. Code, 1882, the Court is not competent to award compensation on the dismissal of a complaint under s. 107, Crim. Pro. Code. NATHA SINGH v. PALA SINGH, **4 P.R. 1896, Cr.** [*F.*, 154 P.L.R. 1914=5 P.R. 1914, Cr.]

(79)—*Security proceedings—Crim. Pro. Code, ss.* 107 *and* 560—*Compensation.*—The provisions of s. 560, Crim. Pro. Code, are not applicable to an application under s. 107, such proceedings not being a case in which a person is "accused of an offence." HAZARI MAL v. MEMAN MAL, **16 P.R. 1893, Cr.** [*R.*, 4 P.R. 1896, Cr.]

(80)—*Crim. Pro. Code, ss.* 119 *and* 250, *scope and application of.*—To a final order passed under s. 119, Crim. Pro. Code, s. 250, Crim. Pro. Code, does not apply. JEY SINGH v. KANHYA, **37 P.R. 1884, Cr.**

(81)—*Frivolous complaints—Compensation to accused—Crim. Pro. Code* (1861), *Chapter* XV. —Compensation for frivolous complaint could only be awarded in trials under Chapter XV of Act XXV of 1861. BOOTA v. BUGGOO, **14 P.R. 1866, Cr**; *See* KALOO v. EMAM BUX, **27 P. R. 1866, Cr**; GHOLAM YASEEN v. KHANAN KHAN, **6 P.R. 1869, Cr.**; AHMED v. KHODA BUX, **28 P.R. 1870, Cr.**

(82)—*Complaint by master on behalf of his servant.*—Where, on behalf of the servants, the master makes a complaint, *held*, that the Magistrate should not, on dismissing the complaint, order compensation to be paid to the accused. CHORBYN v. AMEER KHAN, **24 P. R. 1869, Cr.**

(83)—*To the police officer for his efforts in a case.*—It is illegal to order payment of part of the fine, imposed under Act III of 1867, to be made to a police officer for his efforts in the case. CROWN v. RAM SURN, **2 P.R. 1870, Cr.**

(84)—*Illegal order awarding compensation—Revisional powers of Chief Court.*—The power of the Chief Court, as a Court of revision, to set aside illegal orders awarding compensation includes the power to direct repayment of the money paid as compensation. HOWANNA RAM v. JASSU RAM, **12 P.R. 1885, Cr.** (14 P.R. 1884, Cr., *R.*) [*R.*, 29 P.R. 1903, Cr.]

***Compensation*—continued.**

——1.—**General**—*continued.*

(85)—*Sanction to prosecute and awarding compensation.*—Although there is nothing in the Code, which makes it illegal for a Magistrate both to award compensation to the accused and also to direct or sanction the prosecution of the complainant for bringing a false charge, yet, a Magistrate, who adopts such course, would be exercising his discretion improperly. BACHU LAL v. JAGDAM SAHAI, **26 C. 181.** (22 C. 586, 6 B.L.R. 296=15 W.R. Cr. 9, *R.*) [*Not F.*, 37 B. 376=2 Bom. Cr. C. 5=15 Bom. L.R. 49=14 Cr. L.J 75=18 Ind. Cas. 411; *R.*, 30 C. 123, 15 C.P.L.R. 194, 6 P.R. 1904, Cr., 18 P.R. 1901, Cr.=100 P.L.R. 1901, 18 P.R. 1903, Cr.=156 P.L R. 1903.]

(86)—*Sanction to prosecute as well as awarding conpensation—Penal Code*, s. 211.—A Magistrate is competent to order the prosecution of the complainant under s. 211, I.P.C., as well as award compensation to the accused under s. 250, Cr. P.C. MULKA v. FATTEH MUHAMMAD, **6 P. R. 1904, Cr., F.B.** (26 C. 181, *R.*)

(87)—*Sanction to prosecute and awarding compensation.*—There is nothing in the terms of s. 250 of the Code of Criminal Procedure to justify the conclusion that a Magistrate, who grants sanction to prosecute for offences punishable under ss. 211 and 193 of the Penal Code, is *ipso facto* debarred from also granting compensation to the person falsely accused. MATHRA DAS v. RAJA, **100 P.L R. 1901=18 P.R. 1901, Cr.** (21 M. 237, *F.*; 22 C. 586, 26 C. 181, *N.F.*)

(88)—*Sanction to prosecute and awarding compensation—Penal Code*, s. 211.—*Held* that a Magistrate, by granting, or by expressing an intention to grant, sanction to prosecute the complainant under s. 211, Indian Penal Code, is not precluded from awarding, under s. 250, Crim. Pro. Code, reasonable compensation to the accused. NANHE KHAN v. GHANHAYA, **30 P.W.R. 1907, Cr.=7 Cr. L.J. 231.** (30 C. 123, F.B., *Overruled*; 22 C. 586, *F.*)

(89)—*Proceedings under s.* 211 *for false charge and order for compensation.*—An award, under s. 270, Crim. Pro. Code, 1861, will not bar proceedings against the complainant under s. 211, Penal Code. HIGH COURT PROCEEDINGS, 29TH APRIL, 1867, **2 Weir 311.**

(90)—*Acquittal of accused—Order for compensation—Validity—Crim. Pro. Code, s.* 211.—Compensation under s. 209 of the Code of 1872 may be awarded, though the accused has been tried and is acquitted under s. 211, Crim. Pro. Code. The first accused was charged under s. 24, Cattle Trespass Act, with having rescued a cow from the possession of the complainant who was conveying it to a village pound to be impounded, and he was further charged, along with the second and third accused, with using criminal force to the complainant on the same occasion. The first accused was convicted on both the charges, but the second and third accused were acquitted under s. 211, and the

Compensation—continued.

——1.—**General**—*continued.*

complainant was ordered to pay compensation. *Held*, that the Magistrate was competent to pass the order for compensation, as a complaint may be well founded as regards some of the accused, and yet vexatious and frivolous as regards others. NUMBER v. AMBU, **5 M. 381 =2 Weir 316.** [*F.*, 10 B. 199.]

(91)—*Order as to compensation on acquittal—Crim. Pro. Code*, s. 211.—An order to pay compensation may be added to an acquittal order made under s. 211 of the Crim. Pro. Code. MONA SHEIKH v. ISHAN BARDHAN, **6 C. 581.**

(92)—*Imprisonment in default of payment of.*—A complainant, who has been ordered to pay compensation, cannot be ordered to undergo a sentence of imprisonment, in default of payment. QUEEN-EMPRESS v. ASA NAND, **13 P.R. 1896, Cr.** (22 C. 586, 18 A. 96, *F.*) [*R.*, 14 P.R. 1902, Cr.]

(93)—*Crim. Pro Code, Act* X *of* 1882, *ss.* 560, 386, 387— *Compensation — Imprisonment.*—S. 560 of the Crim. Pro. Code, 1882, does not empower a Magistrate to award imprisonment in the order for payment of the compensation. It provides a procedure for the levy of the payment, *viz.*, that for levy of a fine under ss. 386, 387. It is only when the compensation cannot be recovered that the Magistrate is empowered to award imprisonment. QUEEN-EMPRESS v. HARI, **Rat. Un. Cr. C. 611=Cr. Rg. 32 of 1892.**

(94)—*Crim. Pro. Code* (1882), *s.* 560—*Imprisonment in default of payment of compensation.*—An order for imprisonment in default of payment of compensation is illegal. SHIB NATH CHONG v. SARAT CHUNDER SARKAR, **22 C. 586.** (21 C. 979, *F.*) [*F.*, 13 P.R. 1896, Cr.]

(95)—*Crim. Pro. Code*, s. 560, *compensation under—Recoverable as a fine—Imprisonment in default.*—Compensation awarded under s. 560, Crim. Pro. Code, 1882, is recoverable as if it were a fine. But a Magistrate is not authorised, immediately on ordering a complainant to pay compensation, to direct that he should in default be sentenced to imprisonment. Before imprisonment is awarded, an attempt must have been made to recover the money in the manner prescribed by s. 386, Crim. Pro. Code. QUEEN-EMPRESS v. PUNNA, **18 A. 96=A.W. N. 1895, 241.** [*F.*, 19 A. 73.]

(96)—*Imprisonment in default—Validity of sentence.*—An order of imprisonment in default of payment of compensation is not authorised by s. 250, Crim. Pro. Code, 1898. CROWN v. HAMIR CHAND, **14 P.R. 1902, Cr.** (13 P.R. 1896, *F.*) [*F.*, 11 Cr. L.J. 396=6 Ind. Cas. 735=21 P.W.R. 1910, Cr.; *R.*, 26 P.R. 1902, Cr., 29 P.R. 1903, Cr.]

(97)—*Imprisonment in default of payment of part of—Proportion to maximum term—Crim. Pro. Code* (1882), s. 560.—When compensation awarded under s. 560, Crim. Pro. Code, 1882, can only be partly recovered, the person ordered to pay compensation is not liable, on account of the unrecovered part of the compensation, to the maximum term of imprisonment prescribed by that section, *viz.*, one month, but is only liable to a part of a month, regulated by the proportion which the unrecovered part of the compensation bears to the whole compensation awarded. QUEEN-EMPRESS v. MA KA YA, **L.B.R. 1893-1900, 320.**

(98)—*Crim. Pro. Code* (1882), s. 560—*Order for compensation—Case instituted on information given by a Police Officer—Imprisonment in default of payment of compensation.*—The operation of s. 560 is restricted to cases instituted by "complaint" as defined by this Code or upon information given to a Police Officer or to a Magistrate. It is clear that it will not apply to a case instituted on a Police report or on information given by a Police Officer. *Held*, that an order passed by a Deputy Magistrate under the provisions of s. 560 of the Code, directing a Police constable, who had arrested and charged a carter with an offence under cl. 3, s. 34 of Act V of 1861, and who had failed to prove such charge, to pay the carter Rs. 20 as compensation or undergo simple imprisonment for a fortnight, was illegal. [*F.*, 22 B, 934, 5 C W.N. 370; *R.*, U.B.R. 1897-1901, 68, Cr.] It is extremely doubtful whether a Magistrate has, under the section, any jurisdiction to make an order for imprisonment in default of payment of the compensation. Anyhow, the order for imprisonment could only be made, if the compensation could not be realised by distress, and it is illegal to make such an order, until some attempt has been made to levy the amount of the compensation. RAMJEEVAN KOORMI v. DURGA CHARAN SADHU KHAN, **21 C. 979.** [*F.*, 22 C. 586 ; *R.*, 26 M. 127=2 Weir 321.]

(99)—*Crim. Pro. Code*, 1898, *s.* 250—*Scope and applicability of—Compensation, non-payment of — Imprisonment.*—S. 250 does not permit a Magistrate, who has passed an order directing the complainant to give compensation to the accused, forthwith to add to his order that, in default of payment of compensation, imprisonment for a certain term shall be undergone. The law requires that an attempt should be made to realise the amount, and if it be not recovered, an order of imprisonment may be passed in default. PRIYA NATH BOSE v. ROY BASANTA KUMAR SINGH, **5 C.W.N. 213.**

(100)—*Crim. Pro. Code*, s. 250—*Compensation, nature of — Recovery of compensation amount—Fine.*—The compensation which the Court is empowered to give under s. 250 is not a fine, but is in the nature of damages for malicious prosecution, although it is made recoverable in a summary manner as if it were a fine. An imprisonment cannot be ordered on intimation by the person directed to pay compensation that he is unable to pay it. *In the matter of* BYRAVALU NAIDU, **26 M. 127=2 Weir 321=2 Weir 446.**

***Compensation*—continued.**

——1.—General—*continued.*

(101)—*Recovery of compensation—Imprisonment — Fine.*—Imprisonment can only be awarded on failure to recovera fine. An order awarding imprisonment in default of payment of compensation is, therefore, not valid. *In re* VENKATARAYAPPA, **2 Weir 320.**

(102)—*Non-payment of compensation—Imprisonment—Fine.*—A sentence of imprisonment awarded in default of payment of compensation is not warranted by law. The law prescribes that the compensation may be levied as a fine, but it does not say that imprisonment may be awarded in default of payment. The ordinary mode of levying fines is laid down in s. 386, Crim Pro Code. PARYAG RAI v. ARJU MIAN, **22 C. 139.** [*R.*, 3 L.B.R. 32, 2 Weir 320.]

(103)—*Recovery of compensation amount—Imprisonment—Fine.*—It is only if the compensation awarded under s. 250 of the Code of Criminal Procedure cannot be recovered that imprisonment can be awarded, but the Magistrate may, if he thinks fit to do so, take action under s. 388 (2) of the Code. BHIWA KUNBI v. RAMJI, **17 C P.L.R. 104.**

(104)— *Non-payment of compensation — Imprisonment—Fine.*—A Magistrate should not direct a complainant to pay compensation, under s. 250 of the Code, and at the same time make an order of imprisonment in default. The proper procedure is to recover the fine, in the first instance, under ss. 386 and 387 of the Code, and, if it is not found to be recoverable, the Magistrate can order imprisonment under the proviso to s. 250. KING EMPEROR v. PAN AUNG, **3 L.B R. 32.**

(105)—*Crim. Pro. Code* (1898), *s.* 250—*Compensation for frivolous and vexatious accusation—Objection against awarding it—Imprisonment in default.*—A Magistrate should record and consider any objection which the complainant might urge against the making of an order for compensation, and a failure to do so makes the order bad in law. [*R.*, U.B.R. 1906, 3rd Qr., Crim. Pro. Code, 51=5 Cr. L.J. 298]. Imprisonment in default of payment of compensation cannot be awarded, unless it is found that the payment of the compensation cannot be enforced by legal process. SUCHANDI KOLITANI v. DOM KOLITA, **5 C.W N. 214.**

(106)—*Crim. Pro. Code* (1861), *s.* 294—*Imprisonment of sureties* —S. 294 makes no provision for the sureties being imprisoned. HIGH COURT PROCEEDINGS, 20TH AUG. 1869, **4 M.H.C. App. 68.**

(107)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 250—*Compensation—Fine.*—Where a complaint is thrown out as false, the Magistrate can order compensation to be paid by the complainant to the accused, but cannot impose a fine on the complainant and order a portion thereof to be paid to the accused. *In the matter of the complaint of* BEHARI, **A.W.N. 1885, 44.**

***Compensation*—continued.**

——1.—General—*continued.*

(108)—*Award of—Crim. Pro. Code* (1898), *s.* 560.—Compensation cannot be awarded, under s. 570, in case in which there has been a dismissal of the complaint without issue of process for compelling the attendance of the accused. BASTA SINGH v. KAPURI LAL. **8 P R. 1897, Cr.** AZAM v. MIR ABDULLA, **14 P.R. 1897, Cr.**

(109)—*Crim. Pro. Code*(1898), *s.* 560—*Award of compensation.*— A Magistrate has no jurisdiction to award compensation under s. 560 in cases triable exclusively by a Court of Session. QUEEN-EMPRESS v. BHAVABHAI KESARISING, **Rat. Un. Cr. C. 961=Cr. Rg. 14 of 1898.**

(110)—*Crim.Pro.Code*(1898), *s.* 560—*Compensation—Practice.*—Before directing a complainant to pay compensation, the Magistrate should comply with provisos (*a*) and (*b*) of s. 560, which are imperative, and the complainant ought to be given an opportunity to show cause against it. QUEEN-EMPRESS v. MANIK, **Rat. Un. Cr. C. 725=Cr. Rg. 53 of 1894.**

(111)—*When awardable and from whom to be levied—Crim. Pro. Code* (1882), *s.* 560—*Penal Code, s.* 366.—Compensation can only be given under s. 560 of the Crim. Pro. Code, 1882, when the complaint is of an offence *triable by a Magistrate.* An offence under s. 366, Penal Code, is not triable by a Magistrate. Compensation can only be recovered from the person upon whose complaint or information the accusation was made, and not from a person who did not institute proceedings, but was examined as a witness. MA PWA YON v. MAUNG PO MYA, **L.B.R. 1893-1900, 443.**

(112)—*Crim. Pro. Code* (1882), *s.* 560—*Charge on several counts—Acquittal on one and conviction on another—Compensation to accused.*—Where a person charged under ss. 352 and 379, Penal Code, was convicted under s. 352, being discharged under s. 379, and the Magistrate ordered the complainant under s. 560, Crim. Pro. Code, to pay compensation for the accused, *held*, that the order directing the complainant to pay compensation should be set aside, as s. 560 could only operate when there was a complete discharge or acquittal. MUKTI BEWA v. JHOTU SANTRA, **24 C. 53=1 C.W.N. 17.**

(113)—*Crim. Pro. Code* (1882), *s.* 560—*Complaint by police—Compensation to the accused.*—An order for the payment of compensation to the accused, under s. 560, Crim. Pro. Code, is not legal when the complainant is a police officer. QUEEN-EMPRESS v. SAKAR JAN MAHOMED, **22 B. 934.**

(114)—*Crim.Pro.Code* (1882), *s.* 560—*Wrongful seizure of cattle—Compensation—Cattle Trespass Act*, I *of* 1871, *s.* 20.—A wrongful seizure of cattle is not made punishable under any law. Therefore, a complaint of the illegal seizure of cattle is not a complaint of an offence within the meaning of the Code, and s. 560 is not applicable. Compensation to the persons against whom the complaint is made cannot,

Compensation—continued.

——1.—General—*continued.*

therefore, be awarded. MEGHAI v. SHEOBHIK, **18 A. 353=A.W.N. 1896, 98.** (9 M. 102, 9 M. 374, 13 C. 304, 23 C. 248, *R.*)

(115)—*Crim. Pro. Code* (1882), *s.* 560—*Compensation on a complaint under s.* 110, *Crim. Pro. Code.*—S. 560 contemplates information and accusation of an offence, and provides compensation for a person who has been discharged or acquitted of such offence, the accusation against him being held frivolous or vexatious. Compensation cannot be granted to a person respecting whom a rule issued under s. 110 has been discharged, as he is not charged with any offence. QUEEN-EMPRESS v. LAKHPAT, **15 A. 365=A.W.N. 1893, 114.** [*F.*, 25 B. 48, 33 P.R. 1902, Cr. ; *Appr.*, 5 P.R. 1914, Cr.; *R.*, 7 A.L J. 743=11 Cr. L.J. 446=7 Ind. Cas. 290, 131 P.L.R. 1905=42 P.R. 1905, Cr.]

(116)—*Crim. Pro. Code* (1882), *s.* 560—*Order for compensation to the accused—Subsequent order to prosecute the complainant under s.* 211, *Penal Code, and his witnesses under s.* 193, *Penal Code, validity of.*—There is nothing in the terms of s. 560, Crim. Pro. Code, to justify the conclusion that a Magistrate, who grants sanction to prosecute for offences punishable under ss. 221 and 193, Indian Penal Code, is *ipso facto* debarred from also granting compensation under s.560 to the person falsely charged. Where a Magistrate acquitting the accused of the charge of theft directed the complainant to pay compensation to the accused and subsequently granted sanction to prosecute the complainant under s. 211 and his witnesses under s. 193, Penal Code, *held*, that the order granting sanction was not illegal on the ground of the previous order for compensation. ADIKKAN v. ALAGAN, **21 M. 237=2 Weir 312.** [*F.*, 37B. 376=2 Bom. Cr. Cas. 5=15 Bom. L.R. 49=14 Cr. L.J. 75=18 Ind. Cas. 411, 15 C.P.L.R. 194 ; *R.*, 26 A. 512=1 A.L.J. 234=A.W.N. 1904, 116, 27 M. 59, 18 P.R. 1901, Cr.=100 P.L.R. 1901, 14 Cr. L.J. 437=20 Ind. Cas. 597=7 S.L.R. 10.]

(117)—*Crim. Pro. Code* (1861), *s.* 44 (*s.* 545 *of the Code of* 1898)—*Compensation to innocent purchaser of stolen property out of fine.*—Compensation cannot be awarded to an innocent purchaser of stolen property out of the fine imposed upon the accused, the thief. HIGH COURT PROCEEDINGS, 3RD DEC. 1872, NO. 2091, **2 Weir 715=7 M.H.C. App. 13.** [*F.*, 2 Weir 716.]

(118)—*Compensation to innocent purchaser of stolen property, not legal.*—It is not lawful to direct payment of part of the fine imposed on a person convicted of theft as compensation to an innocent purchaser of stolen property. The sale to the purchaser is not the offence complained of within the meaning of s. 308. QUEEN v. ALEXANDER REDDON, **6 M. 286=2 Weir 716.** [*F.*, 2 Weir 716.]

(119 & 120)—*Setting aside of order for payment of compensation—Refund, how enforced.*—Where an order for payment of compensation has been set aside by an appellate Court or the Court of Revision, the refund of compensation can be enforced under s. 547, Crim. Pro. Code, as if it were a fine. CROWN v. HIRA NAND, **29 P.R. 1903, Cr.=2 P.L.R. 1904.** (12 P.R. 1885. Cr., 19 A. 112, *F.* ; 2 P.R, 1889, Cr., *Not F.*)

(121)—*Compensation in false cases of theft.*—Compensation is not awardable in false cases of theft. JUHOORUN v. GIRDHAREE RAM, **3 W.R. Cr.70.** JALIL MUNSHI v. FARNAM HOSSEIN, **6 W.R. Cr. 55.** CHIDI CHOWBEE v. BHOWANY, **1 W.R. Cr. 1.** QUEEN v. GOGUN SEIN, **2 W.R. Cr. 57.** DHURAI NOSHYO v. HUBEE NOSHYO, **7 W.R. Cr. 12.** CHOOTOO DHOON BHARBHONIA v. ABDOOL MEAH, **7 W.R Cr.40.** GUNAMANEE v. HAREE DATTA, **18 W.R. Cr. 6.** *But see* KALI CHURN LAHIREE v. SHOSHEE BHOOSHUN SANYAL, **23 W.R. Cr. 17.**

(122)—*Crim. Pro. Code*, 1882, *s.* 250—*Theft—Compensation.*—Where the offence complained of is theft, the offence being one not referred to in Ch. XX of the Crim. Pro.Code, s. 250 does not apply, and no order for compensation can be made. KALKA v. BABU, **A.W.N. 1885, 258.**

(123)—*In cases of defamation.*—Compensation is not awardable in cases of defamation. ASSURUDDEE KHAN v. BABOO KHAN, **1 W.R.Cr. 6.**

(124)—*House-breaking.*—Compensation cannot be awarded in a case of house-breaking by night. DHURAI NOSHYO v. HUBEE NOSHYO, **7 W.R.Cr. 12.**

(125)—*Wrongful confinement.*—Compensation cannot be awarded in a case of wrongful confinement. JHARU v. BAHAR ALI, **7 W.R.Cr. 11.**

(126)—*Mischief—House-trespass.*—The section did not apply to cases of mischief committed on land and house-breaking by night, though both contain an element of criminal trespass to which s. 270, Crim. Pro. Code, does apply. QUEEN v. LALLOO SING, **8 W.R.Cr. 54.**

(127) — *Fine — Crim. Pro. Code* (1861), *Ch.* XIV.—A fine cannot be awarded as compensation in a case falling under Ch. XIV of the Code of Criminal Procedure, 1861. QUEEN v. NIJANUND, **3 W.R. Cr. 60.**

(128)—*Penal Code*, *s.* 374.—Compensation is awardable only in cases under Ch. XV of the Crim. Pro. Code, and, therefore, not in a case under s. 374 of the Penal Code. RATEEAH v. PHOKONDEE, **5 W.R.Cr. 1.**

(129)—*Recovery of amount when not paid—Distress warrant—Crim. Pro. Code* (1872), *s.* 209.—A Magistrate in making an order for compensation is bound, if the amount be not paid, to proceed to the recovery of it by distress and sale of the moveables of the person ordered to pay ; but, if such person admits he has no goods, and thereby waives the right to have the amount levied by distress, the Magistrate

***Compensation*—continued.**

——1.—General—*continued.*

may proceed to imprison him in the civil jail. The warrant of distress cannot have currency simultaneously with the imprisonment. BISHESHWAR SHAHA v. BISHWAMBHUR SIRCAR, **23 W.R. Cr. 64.**

(130)—*Alteration of charge to bring offence under Ch.* XV *of Crim. Pro. Code* (1861).—Where a Magistrate is dealing with a charge which he has the power to dispose of finally under Ch. XV of the Code of Criminal Procedure, although the charge, as originally laid, fell under Ch. XIV, he has a discretion to inflict a fine under s. 270 of that Code. HOTHOOR LALOOG v. HINDOO SINGH MOUZ, **10 W.R.Cr. 49.**

(131)—*Failure to prove case—Crim. Pro. Code* (1861), *s.* 270.—The High Court refused to interfere with the order of a Magistrate fining complainants under s. 270 of the Code of Criminal Procedure, when it appeared, after due enquiry by the Magistrate, that the complainants laid claim to large *jummas* in a *chur*, without possessing any documents to prove their rights. *In the case of* MOTHOOR GHOSE, **11 W.R. Cr. 10.**

(132)—*Amount of compensation—Crim. Pro. Code* (1861), *s.* 270.—Since the passing of Act VIII of 1869, it is competent to a Magistrate, under s. 270, in a case in which more than one person has been accused, to award compensation not exceeding Rs. 50 to each person. *In re* BHYROO LALL, **14 W.R. Cr. 75.**

(133)—*Amount of compensation.*—Rs. 50 is the measure of compensation awardable from any complainant, irrespective of the number of accused persons. QUEEN v. LALLOO SINGH, **8 W.R. Cr. 54.**

(134)—*Crim. Pro. Code, Act* V *of* 1898, *s.* 250 —*Compensation — Procedure.*—A Magistrate, having come to the conclusion that a complaint was frivolous or vexatious, after acquitting the accused, ordered the complainant at the end of the judgment to show cause why an order for compensation should not be made. The complainant appeared on a subsequent day to show cause, but an order under s. 250 of the Crim. Pro. Code was eventually made. *Held* that this was not quite a regular procedure, but that the irregularity was waived and that the High Court could not interfere with the order in revision. JAGAL KISHORE v. ABDUL KARIM, **A.W.N. 1905, 214=2 Cr. L.J. 523,** (A.W.N. 1903, 57, *D*) [*Rel.*, 36 A. 132=12 A.L.J. 143 =15 Cr. L.J. 198=22 Ind. Cas. 977.]

(135) — *Crim. Pro. Code, Act* X *of* 1882, *s.* 560, *cl.* 1—*Successor in office—Jurisdiction—Compensation.*—Where an order for compensation under s. 560 of the Crim. Pro. Code was made by a Magistrate who succeeded in office the Magistrate who had tried the case and had directed the complainant to show cause why such order should not be made, *held* that he acted without jurisdiction. *In the matter of the petition of* MAHADEO TIWARI, **A.W.N. 1892, 58.**

***Compensation*—continued.**

——1.—General—*continued.*

(136)—"*Taken into account*"—*Crim. Pro. Code* (1872), *s.* 308.—The expression "taken into account" in the Code of Criminal Procedure, s. 308, means that the compensation awarded by the Magistrate is to be taken into consideration by the Court in a subsequent civil suit, not that it is to be afterwards deducted from the damages awarded. WILLIAM NICHOLAS LOVE v. WILLIAM JOHN HUME AINSWORTH, **22 W.R. 336.**

(137)—*Crim. Pro. Code, s.* 250—*Complaint —Accused of an offence.*—By s. 250, Crim. Pro. Code, an order for compensation can only be made in a case instituted by a complainant to Magistrate or information given to a police officer that certain person has committed an offence, with a view to his taking action. When a complainant filed a petition asking the Court to take security from the accused to keep the peace, but the allegations were found to be untrue, *held* that the complainant could not be required to pay compensation to the accused, inasmuch as he did not charge him with any offence. RAM SUKH RAI v. MAHADEO RAI, **7 A.L.J. 743=7 Ind. Cas. 290=11 Cr.L.J. 446.**

(138)—*Crim. Pro. Code, s.* 250—*Report of process server—Prosecution instituted by District Judge on such report—Acquittal of accused —Process server—Liability to pay compensation.* —The process server, on whose report that the accused had obstructed him while executing a warrant in execution of a decree for custody of a wife and had removed that woman from his custody, the Court instituted criminal proceedings against the accused, is not a person upon whose complaint or information the accusation was made and is not liable to pay compensation under s. 250, Crim. Pro. Code. THE CROWN v. ABDUL GHANI, **25 P.R. 1910=195 P.L.R. 1910=8 Ind. Cas. 382=11 Cr. L.J. 634.** (26 A 1883, 20 C. 481, *Doubted and F.*)

(139)—*Crim. Pro. Code, s.* 250—*Case compounded—Award of compensation —Illegal.*—When a criminal case is compounded, a Magistrate cannot allow compensation to the accused under s. 250, Crim. Pro. Code. THE CROWN v. SUNDER SINGH, **30 P R. 1910=197 P.L.R. 1910=44 P.W.R. 1910=8 Ind. Cas. 387=11 Cr. L.J. 638.** (19 P.R. 1888, Cr., *F.*)

(140)—*Crim. Pro Code, ss.* 250, 30—*Incompetency of Magistrate exercising powers under s.* 30, *Crim. Pro. Code, to award compensation.* —*Held*, that a Magistrate, when exercising his powers under s. 30, Crim. Pro. Code, 1898, in a case triable by the Court of Session, is incompetent to award compensation under s. 250 of the said Code. RAMZAN v. MUSSAMAT RAJAN, **21 P.W R. 1910, Cr.=6 Ind. Cas. 735 =11 Cr. L.J. 336.** (14 P.R. Cr. 1902, *F.*)

(141)—*Crim. Pro. Code*, 1882, *s.* 560—*Order for imprisonment.*—It is not competent to a Court in awarding compensation against a complainant for making a frivolous and vexatious complaint to order at the same time that

Compensation—continued.

——1.—**General**—*concluded.*

in default of payment of the compensation the person against whom the order is made, suffer imprisonment. MANJHLI v. MANIK CHAND, **19 A. 73=16 A.W.N. 180.** (18 A. 96, *Appr.*)

(142)—*Dismissal in default of appearance—Crim. Pro. Code*, 1861, *ss.* 259, 270.—In a case where a Magistrate dismissed a complaint in default, and fined the complainant under s. 270, the fine was remitted and ordered to be refunded. RAM CHURN DEY v. SHEIKH JANNUE, **17 W.R. Cr. 6.**

See ACT I OF 1871, s. 22, 19 M. 238=2 Weir 461.

Report of process-server—Prosecution instituted by District Judge on such report—Acquittal of accused — Process-server — Liability to pay—*See* CRIM. PRO. CODE, 1898, s. 250, 25 P.R. 1910, Cr.=8 Ind. Cas. 382=11 Cr. L.J. 634=195 P.L.R. 1910.

Murder case—Death sentence—Imposition of fine in addition—Award of, to deceased's heirs—Practice of Punjab Chief Court—*See* MURDER, 18 P.R. 1913,Cr.=14 Cr. L.J. 522=20 Ind. Cas. 1002=41 P.W.R. 1913, Cr.

High Court setting aside a sentence of fine —Recovery when a portion of it has been given to the complainant as—*See* SENTENCE—FINE, 19 A. 112=A.W.N. 1896, 182.

Fine not to be awarded as—*See* SENTENCE —FINE, 3 W.R. Cr. 60.

——2.—**To Accused.**

See COMPENSATION—GENERAL.

See CRIM. PRO. CODE, 1898, s. 250.

(1)—*Compensation to accused, nature of.*—The award of compensation is by way of amends to the accused and should not be credited to the Government. JUMNA DASS v. RAMLA, **102 P.R. 1866, Cr.**; GHOOLA v. AMEER SINGH, **1 P.R. 1869, Cr.**

(2)—*Compensation to accused, when can be granted.*—Compensation may be awarded to an accused person on the dismissal of the complaint, on the ground of its being frivolous and vexatious, although the complaint is not one of an offence under the Penal Code. QUEEN v. TURNER, **4 N.W.P. 94.**

(3)—*Crim. Pro. Code* (1861), *s.* 270—*Compensation to accused, when can be awarded.*—Compensation can be awarded under s. 270, Crim. Pro. Code, 1861, only when a complaint of an offence triable by a Magistrate under Ch. XV is dismissed. HIGH COURT PROCEEDINGS, 21ST DEC. 1871, **6 M.H.C. App. 49.**

(4)—*Crim. Pro. Code* (1898), *s.* 250—*Compounding offence—Acquittal—Compensation.*—To justify the award of compensation under s. 250, the Magistrate himself must acquit the accused under s. 245 or s. 247; but where a case is compounded under s. 345, the composition in itself has the effect of an acquittal;

Compensation—continued.

——2.—**To Accused**—*continued.*

neither in that case nor in the case of an acquittal recorded by the Magistrate under s. 248, can compensation be legally awarded. EMPRESS v. KHUSHALI RAM, **19 P.R. 1888, Cr.** (24 P.R. 1883, Cr. 14 P.R. 1884, Cr., *R.*) [*R.*, 8 Ind. Cas. 387=30 P.R. 1910,Cr.=197 P. L.R. 1910=11 Cr.L J. 638.] *See also* CROWN v. SUNDER SINGH, **30 P.R. 1910, Cr.**

(5)—*Withdrawal of complaint—Compensation.*—Only in cases where the complaint is dismissed, and not in cases where the complaint is allowed to be withdrawn, can the accused be compensated. CROWN v. GUJJUR, **26 P.R. 1870, Cr.**; *See also* CROWN v. MAIYA, **16 P.R. 1871, Cr.**=197 P L.R. 1910=44 P.W.R. 1910 =8 Ind. Cas. 387.

(6)—*Complaint against several accused—Dismissal of complaint as against one—Compensation.*—A Magistrate is competent, in a complaint against several persons, to award compensation to one of them, when he dismisses the complaint against him as vexatious. GOHRA SHAH v. AMIRA, **15 P.R. 1877, Cr.**

(7)—*To accused—His right to be heard in proceeding relating to compensation.*—An accused person to wh m payment of compensation has been ordered has no right to be heard in a proceeding relating merely to the order of compensation, as he is not "an accused person" within the meaning of s. 439. EMPRESS v. LAL, **14 P.R. 1888, Cr.** [*R.*, 3 Ind. Cas. 977 =11 P.R. 1909=10 Cr.L.J. 443=115 P.L.R. 1909, Cr].

(8)—*Compensation to accused—Power to award compensation without hearing evidence.*—*Held* that it was not competent to the Magistrate to order compensation to the accused under s. 270, Act XXV of 1861, without hearing evidence. BILASH v. MAKROO, **2 B.L.R. S. N. 15=10 W.R. Cr. 61.**

(9)—*Order for, appeal by complainant from —Necessity of notice to the accused and the public prosecutor.*—In this case, an order of a Magistrate awarding compensation to the accused was reversed, on the appeal preferred by the complainant, without notice either to the accused or to the Public Prosecutor. *Held*, on revision, setting aside the said order of the appellate Court, though there is no express provision directing that notice should be given to the accused in such a case, yet, on the principle *audi alteram partem*, the accused should be given notice of the appeal so as to afford him an opportunity of supporting the order passed in his favour. Also, according to the letter of the law, notice should also be given to the officer, if any, appointed by the Local Government referred to in s. 422 of the Crim. Pro. Code. The safer course in such an appeal, therefore, unless it be summarily rejected, is to give notice to both the accused and the officer referred to. EMPEROR v. PALANIAPPAVELAN, **29 M. 187=3 Cr. L.J. 459.** [*R.*, 33 M. 89=9 Cr. L.J. 150=1 Ind. Cas. 79=19 M.L.J. 130= 5 M.L.T. 262.]

Compensation—continued.

——2.—**To Accused**—*continued.*

(10)—*Crim. Pro. Code* (1861), *s.* 270 (*s.* 250 *of the Code of* 1898)—*Compensation, award of —Right of civil suit.*—The compensation which a Magistrate, who dismisses a complaint as frivolous or vexatious, is empowered in his discretion to award to an accused person, does not deprive the latter of any right of suit in the Civil Court which he may possess. ADRAM v. HURBULLUB, **2 N.W P. 58.**

(11)—*Crim. Pro. Code* (1861), *s.* 270 (*s.* 250 *of the Code of* 1898)—*Compensation, nature of, and how to be realised.*—A Magistrate dismissing a complaint can award to the accused a sum not exceeding Rs. 50, as compensation. He cannot exceed that amount and he cannot impose it as a fine otherwise than in compensation. He cannot directly sentence the complainant to imprisonment in default of payment. The amount awarded is recoverable by distress and sale of the complainant's property, and in default of such distress, by imprisonment of the complainant in the civil jail for any time not exceeding 30 days, unless it shall be sooner paid. QUEEN v. GOPAL, **2 N.W P. 430.** [*R.*, 21 C. 979.]

(12)—*Crim. Pro. Code* (1872), *s.* 209 (*s.* 250 *of the Code of* 1898)—*Order for compensation—Award of, after hearing defence witnesses.*—If the Magistrate finds that the complaint is frivolous or vexatious, he may dismiss the complaint, and, in his discretion, may, by his order of dismissal, award compensation. Where, owing to the exaggerated statement of the complainant or some such cause, the Magistrate is not able to detect the frivolous or vexatious character of the complaint, he may award compensation after hearing the evidence for the defence. HIGH COURT PROCEEDINGS, 14TH DEC. 1880, **2 Weir 316.**

(13)—*Award of—To accused—Recovery of amount paid as compensation.*—Where, under the orders of an Inspector of the Railway Police, on the report of the Railway constable, the accused was charged, tried and discharged by the Magistrate, and awarded compensation to be paid by the constable, *held*, that the order for compensation was not a valid order, as he was not the complainant. The Code of 1872 had no provisions for recovering the amount paid away to the accused as compensation, when the order of payment is set aside. KARUN ILAHI v. MORRISON, **16 P.R. 1879, Cr.**

(14)—*False case—Compensation to accused* —A Magistrate is competent to order the complainant to pay compensation to the accused in a case which is wilfully false, as such a case is necessarily vexatious. CROWN v. ISMAIL, **18 P.R. 1903, Cr.=156 P.L.R. 1903.** (26 C. 181, *R.*; 28 C. 251, 4 B.L.R. 645, *D*.)

(15)—*False complaint—Compensation to accused.*—A Magistrate is not precluded from awarding compensation to the accused, merely because he finds that the complaint is false. PANNALAL v. AMRIT RAO, **15 C.P.L.R. 194.** (26 C. 181, 29 C. 479, *Disapproved*; 21 M. 237, *Approved*).

(16)—*False complaint—Compensation to accused.*—Compensation to the accused may be awarded under s. 250 of the Crim. Pro. Code in a case found to be false by the trying Magistrate. CROWN v. ISMAIL, **156 P.L.R. 1903=18 P.R. 1903, Cr.** (28 C. 251, 4 Bom. L.R. 645, *Diss.*; 26 C. 181, *R.*)

(17)—*S.* 250, *Crim. Pro. Code—Scope and application of charge frivolous or vexatious—False charge.*—The provisions of s. 250, Crim. Pro. Code, apply only to cases where the charge is frivolous or vexatious; they do not apply where the charge is false. EMPEROR v. ASHA, **4 Bom. L.R. 645.** (7 M. 274, *F.*) [*Diss.*, 156 P. L.R. 1903, *D.*, 5 Bom. L R. 128.]

(18)—*S.* 250—*Scope of—Charge frivolous or vextatious.*—S. 250. Crim. Pro. Code, contemplates a case where the accusation is false; a charge that is false must also be vexatious, though it may not be frivolous as well. EMPEROR v. BAI ASHA, **5 Bom. L.R. 128.** [*F.*, 37 B. 376=2 Bom. Cr. Cas. 5=15 Bom. L.R. 49 =14 Cr. L.J. 75=18 Ind. Cas. 411.]

(19)—*Crim. Pro Code, s.* 250—*Compensation—Charge frivolous or vexatious—False charge.*—*Held* by the Full Bench (Prinsep, C.J., *dissenting*) :—Where an accusation is frivolous or vexatious, the fact of its being false as well cannot disentitle the accused to compensation under s. 250. An order for the payment of compensation, therefore, can be made in a case, which is false as well as frivolous or vexatious. BENI MADHUB KURMI v. KUMUD KUMAR BISWAS, **30 C. 123=6 C.W.N. 799, F.B** (28 C. 251, *Over*). [*F.*, 26 A. 512=A.W.N. 1904, 116, 37 B. 376=2 Bom. Cr. C. 5=15, Bom. L.R. 49 =14 Cr.L.J. 75=18 Ind.Cas. 411; 5 Bom.L.R. 128, 7 Cr. L.J. 231=30 P.W.R. 1907,Cr.; *R.*, 14 Cr. L.J. 437=20 Ind. Cas. 597=7 S L.R. 10.]

(19-*a*)—*Crim. Pro. Code*, 1898, *s.* 250—*Frivolous complaint—Compensation —Conduct of accused.*—Where the case against the accused was found to be false, and vexatious, and compensation was awarded to the accused, the order awarding compensation was set aside on the ground that the conduct of the accused was not straight forward throughout. THE CROWN v. ISHAR SINGH, **22 P L.R. 1901.**

(20)—*Crim. Pro. Code* (1872), *s.* 209 (*s.* 250 *of the Code of* 1898)—*False complaint, whether vexatious.*—A false complaint is also a vexatious complaint. *In re* PONNAMMAL, **2 Weir 313.**

(21)—*False complaint—Award of compensation—Crim. Pro. Code* (1882), *s.* 250—*Cattle Trespass Act*, 1871, *s.* 20.—A Magistrate cannot award compensation under s. 250 of the Crim. Pro. Code, to be paid to the accused in a frivolous and vexatious complaint, under s. 20 of the Cattle Trespass Act of illegal seizure of cattle. KALACHAND v. GUDADHUR BISWAS, **13 C. 304.** [*R.*, 18 A. 353=16 A.W.N. 98.]

***Compensation*—continued.**

——2.—To Accused—*concluded.*

(22)—*Crim. Pro. Code, s.* 250—*Frivolous accusation—Award of compensation to accused, when to be made.*—When a Magistrate, on finding a complaint to be frivolous, thinks it right to award compensation to the accused, he must do so by his order of discharge or acquittal. An order for compensation made in a separate proceeding, after the accused has been discharged, is without jurisdiction. A Magistrate shall hear the complainant, before making an order for compensation against him, on that aspect of the case, and unless he does this, the whole proceeding as to compensation is bad. HARU TANTI v. SATISH ROY, **9 Ind. Cas. 45 = 12 Cr. L.J. 6 = 13 C.L.J. 425 = 38 C. 302.**

(23)—*Crim. Pro. Code* (1882), *s.* 250—*False complaint by Municipal servant, who had the sanction of the Municipality to prosecute—Compensation.*—The accused was charged under the sanction of a District Municipality, and on a complaint made by a Municipal peon, with the offence of easing herself within the Municipal limits in a prohibited place. The Magistrate, who tried the case, acquitted the accused and ordered the complainant, under s. 250 of the Crim. Pro. Code, to pay the accused Re. 1 only as compensation. The District Magistrate, on the authority of *Keshav* v. *Lakshman* (1 B. 175, 177) referred the case to the High Court for reversal of the order of compensation. *Held*, that the case differed from the one cited, as there the complaint was preferred by a Judge acting judicially. An executive body cannot authorize a servant to prefer a wrongful complaint and so screen the complainant from a legal penalty. QUEEN-EMPRESS v. BHIMA, **Rat. Un. Cr. C. 309 = Cr. Rg. 61 of 1886.**

To accused on dismissal of complaint—*See* ACT XIII OF 1859, 4 M.H.C. App. 67 = 1 Weir 698, Rat. Un. Cr. Cas. 625 = Cr. Rg. 52 of 1892.

——3.—To Complainant and his Relatives.

See COMPENSATION—GENERAL.

See CRIM. PRO. CODE, 1898, s. 545.

(1)—*Crim. Pro. Code* (1882), *s.* 545—*Compensation to complainant out of fine imposed upon the accused—When awardable.*—A Magistrate, acting under s. 545 of the Crim. Pro. Code, cannot, in awarding compensation out of the fine imposed upon the accused, order the payment of the sum to the complainant which he might have given to the accused for bribing others. QUEEN-EMPRESS v. NANESAHEB, **Rat. Un. Cr. C. 373 = Cr. Rg. 21 of 1888.**

(2)—*Crim. Pro. Code, s.* 545—*Compensation to complainant—When awardable.*—S. 545, Crim. Pro. Code, does not empower a Court to award compensation for alleged offences other than those which form the subject of enquiry in the case in which the order is made, still less for offences of which the accused is acquitted. QUEEN-EMPRESS v. GOVIND NARAYAN, **Rat. Un. Cr. C. 407 = Cr. Rg. 72 of 1888.**

***Compensation*—continued.**

——3.—To Complainant and his Relatives —*continued.*

(3)—*Crim. Pro. Code, s.* 545—*Compensation to complainant when and out of what fund to be awarded.*—Under s. 545, Crim. Pro. Code, 1882, an award of compensation cannot be made in addition to the fine imposed, but must be made payable out of the fine itself. QUEEN-EMPRESS v. DHANJI, **Rat. Un. Cr. C. 196.**

(4)—*S.* 545—*Compensation to be awarded out of fine.*—Under s. 545, payment of compensation can only be ordered out of the fine recovered; and it is not competent to a Magistrate to award compensation in addition to the fine imposed upon the accused. EMPEROR v. BHUJANGA LUXMAN SHINDE, **5 Bom. L. R. 976.**

(5)—*Matters in respect of compensation to complainant cannot be awarded.*—S. 545 deals with expenses incurred in the prosecution and with compensation for injury only. Compensation cannot, therefore, be granted for loss occasioned to the complainant on account of his inability to go on with his field work on account of the prosecution of the accused. IMPERATRIX v. NARAYAN VAMANAJI PATIL, **22 B. 438.**

(6)—*In respect of what matters can complainant be awarded compensation.*—If compensation is to be awarded to the complainant, the Magistrate should state explicitly under what section of the Code the award was made and for what purpose. *Held* also, that an order that the accused is to pay besides the fine "all the expenses which the complainant has been put to" is illegal. KING-EMPEROR v. NGA THA ZAN, **U.B.R. 1897-1901, Vol. I, 347.**

(7)—*Court should state specific ground on which compensation is claimed and awarded.*—In cases where the complainant can recover damages in a civil action, he can be compensated under s. 308, Crim. Pro. Code, 1872. In order that an accused person may have an opportunity to contest both the liability to, and the amount of, compensation, the Court should state the specific ground on which the compensation is claimed and awarded. KESAR SINGH v. CROWN, **10 P.R. 1878, Cr.**

(8)—*Compensation awarded only in case of pecuniary loss or damage.*—Compensation to the complainant is only awardable in cases where he has suffered pecuniary loss, or some special pecuniary damage, or incurred expenses in prosecuting. CROWN v. HEMRAJ, **77 P.R. 1866, Cr.**

(9)—*Order for restoration of stolen property to complainant as well as award of compensation to him.*—Where loss has been occasioned to the complainant by the accused stealing his property, it is competent to the Magistrate to award compensation to the complainant out of the fine levied on the accused, besides ordering the stolen property to be restored to the complainant. REG. v. YESSAPPA *bin* NINGAPPA, **5 B.H.C. Cr. 41.**

***Compensation*—continued.**

——3.—To Complainant and his Relatives *—continued.*

(10)—*Power of appellate Court as to awarding compensation to complainant out of fine imposed by lower court.*—An appellate Court cannot award as compensation any portion of a fine imposed on a convict by the trying Court, when the latter had refused to award it. *In re* MAGISTRATE F P. IN CHARGE, SURAT, **No. 1193, Rat. Un. Cr. C. 39.**

(11)—*Nature of compensation—Loss to person injured—Damages.*—The compensation awarded, under s. 44 of the Code of Criminal Procedure, 1861, corresponds to damages awarded in civil proceedings. QUEEN v. BARJOO KOORMEE, **5 W.R. Cr 76.**

(12)—*Crim. Pro. Code, s. 545—Compensation, when no fine is imposed.*—Where the accused is discharged without the imposition of any fine, an order for payment of compensation cannot be legally passed under s. 545, Crim. Pro. Code. *In re* BASTOO DUMAJI, **22 B. 717.**

(13)—*To complainant—Power to order refund, when afterwards remitted—Powers of High Court—Revision.*—There is no provision in the Crim. Pro. Code, under which an accused person can obtain a summary order from the Criminal Courts directing the refund of a fine paid as compensation to the complainant, but which has been subsequently remitted by a superior Court. CHOGATTA v. EMPRESS, **2 P.R. 1889, Cr.** [*R.*, 29 P.R. 1903, Cr.]

(14)—*Crim. Pro. Code* (1882). *s. 545—Order for removal of fishing stakes—Obstructions to Fair Ways Act, XVI of 1881—Penal Code, s. 283—Compensation to the complainant.*—The accused was ordered by the Superintendent of the Coast Guard Service to remove certain fishing stakes, and was convicted under s. 283, I.P.C., for failing to comply with that order, and sentenced to pay a fine of Rs. 20, of which Rs. 15 were awarded as compensation to the complainant, the Coast Guard, to cover the expenses of removing the stakes: *Held* that the case, not having been dealt with under the Obstruction to Fair Ways Act, the order of compensation was illegal, the same not coming within the terms of s. 545, Crim. Pro Code. QUEEN-EMPRESS v. BHIKARI, **Rat. Un. Cr. C. 241 = Cr. Rg 8 of 1886.**

(15)—*To whom awardable—Relations.*—It is awardable only to the person who suffered from the offence, and not to his relations. ABDOOL RAHEEM v. MEHRAB SHAH, **89 P R. 1866, Cr.**

(16)—*Compensation to whom awarded—Relatives.*—Compensation can only be awarded to the person who has suffered from the accused's act and not to his relatives CROWN v. SADOOLAH. **97 P R 1866 Cr.**; CROWN v. DEBEE BUKSH, **25 P.R. 1868, Cr.**

(17)—*Heirs of person suffering by offence—Crim. Pro. Code* (1861), *s. 34.*—Compensation, under s. 44 of the Code of Criminal Procedure, 1861, cannot be awarded to the heirs of a person who has been killed. *In re* ROOP LALL SINGH, **10 W.R. Cr. 39.**

(18)—*Compensation for mother of deceased on conviction for hurt—Crim. Pro. Code* (1882), *s.* 545.—The mother of a deceased person, who had not incurred any expense in conducting the prosecution, could not recover, out of the fine imposed upon the accused convicted for hurt, any compensation. HYAT v. MAMUN, **6 P.R. 1890, Cr.** [*D.*, 17 P.R. 1898, F.B.]

(19)—*Crim. Pro. Code* (1882), *s. 545—Compensation to the widow of a man whose death is caused by negligent act.*—Compensation cannot be given by a Magistrate to the widow of the person, whose death was caused by the accused's negligent act out of the fine imposed on him, on being convicted under s. 304-A of the Penal Code. YALLA SANGULI v. MAMIDI ALI, **21 M. 74, F.B. = 2 Weir 719. (F.B.)** [*Not F.*, 36 C. 302 = 9 C.L.J. 204 = 9 Cr.L J. 393 = 13 C.W.N 362 = 1 Ind. Cas 814; *F*; 16 C.P.L.R. 180, 17 P.R. 1898, Cr., F.B.]

(20)—*Penal Code, s. 304-A—Fine-Compensation to the widow of the deceased.*—Where a person convicted, under s. 304 A of the Penal Code, was sentenced to pay a fine and was ordered that the whole amount of fine, if recovered, be paid to the widow of the deceased as compensation, *held*, that the award of compensation to the widow was not legal under s. 545, Crim. Pro. Code. *In re.* LUTCHMAKA, **12 M. 352 = 2 Weir 719.** [*Diss.*, 9 Cr.L.J. 342, 17 P.R. 1898, Cr. F.B.; *F*, 21 M. 74 = 2 Weir, 719, F.B., 16 C.P.L.R 180, Rat. Un. Cr Cas 763.]

(21)—*Compensation to widow of the deceased.*—It is not competent to a Judge to award, in case of the death of complainant, compensation to the widow of the deceased out of the fine imposed upon the accused. QUEEN-EMPRESS v. ABDUL RAHIMAN, **Rat. Un. Cr. C. 763 = Cr. Rg. 26 of 1895.**

(22)—*Compensation to widow of the deceased.*—An award of compensation to the widow of a person, whose death was caused by falling into a pit dug by the accused, out of the fine imposed on the accused, is illegal under s. 44 of the Crim. Pro. Code, 1861. REG v. SHIVBASAPA, **7 B.H.C. Cr 73.** [*R.*, 5 C.P.L R. Cr. 45, 16 C.P.L.R. 180.]

(23)—*Compensation to the widow of the deceased—Penal Code, s.* 304.—It is competent to the Court, under s. 545, Crim. Pro. Code, to award part of the fine imposed under s. 304, I.P.C., for the offence of culpable homicide not amounting to murder, to the widow of the person killed. QUEEN-EMPRESS v. SAIF ALI. **17 P.R. 1898. Cr., F B.** (12 M. 352, 21 M. 74, F.B., *Not F.*) [*R.*, 326 P.L.R. 1913 = 18 P.R. 1913 = 14 Cr. L.J. 522 = 20 Ind. Cas. 1002 = 41 P.W.R. 1913. 15 Cr. L.J 260 = 37 P.L R. 1914 = 23 Ind. Cas. 468 = 19 P.R. 1914, Cr., 9 Cr. L J. 342.]

Compensation—continued.

——3.—**To Complainant and his Relatives** —*continued.*

(24) *Conviction under s. 304-A., I.P.C.—Compensation to the relatives of the deceased—Act* XIII *of* 1855.—The award of compensation to the relatives of the deceased, under Act XIII of 1855, on the conviction of the accused who caused the death under s. 304-A.I P.C., is illegal. CROWN v. GOPAL DAS, **7 P.R. 1877, Cr.**

(25)—*Compensation to husband whose wife is enticed away.*—Compensation may be awarded to a husband whose wife has been enticed away with criminal intent. KESAR SINGH v. CROWN, **10 P R. 1878, Cr.** *See, also*, CROWN v. ALHOO, **14 P R. 1878, Cr.**

(26)—*Award of, under s.* 545—*What the order should state.*—In an award of compensation to a complainant under s. 545 of Crim. Pro. Code, 1882, the two cls. (*a*) and (*b*) of that section should be borne in mind, and it should be clearly stated in the order whether the payment out of the fine is intended to defray the expenses properly incurred in the prosecution, or to make compensation for the injury caused by the offence committed, such as would be recoverable by a Civil suit. QUEEN-EMPRESS v. MI TE, **U.B.R. 1892—1896, Vol. I, 290.** (10 M. 353=1 Weir 620, *R.*)

(27)—*Acquittal after trial of charges—Crim. Pro.Code* (1872), *ss.* 209, 211.—Where a formal charge has been drawn up and the accused tried and acquitted, no compensation can be awarded to the accused under s. 209 in such a case. RADHANATH PANJA v. WOOMA CHURN CHOWDHRY, **22 W.R.Cr. 12.**

(28 & 29)—*Crim. Pro. Code, Act* X *of* 1882, *ss.* 247, 250—*Absence of complainant—Appeal from order for compensation—Act* IV *of* 1891.—Where a Third Class Magistrate, after examining the complainant in a case under ss 352, 426 of the Penal Code, acquitted the accused under s. 247 of the Crim. Pro. Code, and made an order for compensation under s. 250 on account of the non-appearance of the complainant on the adjourned date, *held*, that both the orders were illegal. No appeal lay, before Act IV of 1891 came into force, from an order of compensation, under s. 250, to the District Magistrate. QUEEN-EMPRESS v. HARDEO SINGH, **A.W.N. 1891,** 170. [*F.*, 15 Cr. L.J. 236=23 Ind. Cas. 188=26 M.L.J 160.]

(30)—*Crim. Pro. Code* (1898), *s.* 545 (1) (*b*)—*Compensation paid out of fine—Amount to be awarded—Expense incurred in prosecution—Compensation for injury caused by the offence.*—Where the accused was convicted of illegally demanding and receiving money, under s. 21 (*e*) of the Fisheries Act, and was fined three times the amount of the illegal receipts, and the Magistrate directed the whole of the fine to be paid to the persons from whom the accused had taken money: *Held*, as the prosecution was instituted, without complaint, on the report of an official, and as the persons aggrieved had not incurred any expense in the prosecution, except the expense of attending Court as witnesses and had not suffered any injury beyond the loss of the sums paid to the accused, the amounts awarded, as compensation, were considerably in excess of the amounts to be awarded under cl (*b*) of s 545 (1) KING-EMPEROR v. MAUNG THIN, **5 L.B.R. 50=2 Ind. Cas. 542.**

(31)—*Award of compensation out of fines in petty cases—Crim. Pro Code* (1882), *s.* 545.—It is improper to award, out of the fine imposed, compensation to complainants in petty cases, where no damage of any kind to occasion pecuniary loss has been sustained. S 545, Crim. Pro. Code, provides that such payment is to be made where substantial compensation is recoverable by civil suit. QUEEN-EMPRESS v. MI YIN, **L.B.R. 1872—1892,538.**

(32)—*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 44—*Loss or damage—Compensation.*—Where there is no proof that any loss or special damage has been caused to the complainant by the hurt inflicted by the accused, *held* that an order for compensation is illegal. REG v. SAMSEN BABAJI, **3 B H.C. Cr. 43.**

(33)—*Cattle Trespass Act,* I *of* 1871, *s.* 22—*Fine in addition to compensation.*—S. 22 does not provide for a fine in addition to compensation. H.C. PROCEEDINGS, 1ST AUGUST 1873, NO. 1379, **1 Weir 710=7 M.H.C. App. 24.**

(34)—*Bodily pain suffered by complainant—Compensation.*—Bodily pain suffered from the administration of poison is not an injury that can be compensated by money. The question of compensating a complainant out of fine depends upon whether the loss, injury or damage has been occasioned by the offence, which can be appraised in money. CROWN v. DINDA, **12 P. R. 1876, Cr.**

See ACT XIII OF 1859, ss. 2, 3, Rat. Un. Cr. C. 617=Cr. Rg. 40 of 1892.

For loss or injury caused by offence—*See* ACT VII OF 1870, s. 31, 24 M. 305=2 Weir 722, =1 Weir 723.

See ACT VII OF 1870, s. 31, U.B.R. 1892—1896, Vol. I, 7.

See ACT I OF 1871, ss. 8, 20, 22, 23 C. 442.

In cases of illegal seizure of cattle—*See* ACT I OF 1871, ss. 21 and 23, L.B.R. 1872—1892, 515.

See ACT I OF 1871, s. 22, 14 C. 175, 27 C. 992=5 C.W.N 32, 11 M. 359=1 Weir 712, 3 N.W.P. 200, 25 P.R. 1878, Cr., 36 P.R. 1878, Cr., 37 P.R. 1878, Cr., 5 P.R. 1880, Cr.

See ACT I OF 1871, s. 23, 22 P.R. 1886, Cr.

See ACT I OF 1871, s. 24, 1 P.R. 1872, Cr.

In addition to imprisonment—*See* ACT VII OF 1878, s. 41 (Rules 21 and 26), 5 Bom. L.R. 126.

Order of, where person not really the complainant—*See* ACT IV OF 1891, 20 C. 481.

See BOM. ACT II OF 1868, s. 14, Rat. Un. Cr. C. 688=Cr. Rg. 10 of 1894.

Compensation—concluded.

——3.—**To Complainant and his Relatives** —*concluded.*

See APPEAL—ACTS, 3 N.W.P. 200.

See APPEAL—CASES WHERE APPEAL DOES NOT LIE, 9 C.P.L.R. 27, Cr.

See COMPOUNDING OFFENCE, Rat. Un. Cr. C. 700=Cr. Rg. 29 of 1894, Rat. Un. Cr. Cas. 957=Cr. Rg. 8 of 1898.

Power of Magistrate to award compensation for damages to party's crops in disputes about land—*See* CRIM. PRO. CODE, 1898, ss. 145 and 148, 32 C. 602=9 C.W.N. 862=2 Cr. L.J. 552.

Compensation to innocent alienee of stolen property — *See* CRIM. PRO. CODE, 1898, ss. 519, 545, 2 Weir 671, 672.

See CRIM. PRO. CODE, 1898, s. 547, Rat. Un. Cr. C. 213=Cr. Rg. 10-3-1885.

See MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION, 3 P.R. 1906, Cr.= 84 P.L.R. 1906=4 Cr. L.J. 36.

See NEGLIGENCE, 5 C.P.L.R. 45, Cr.

Complainant unable to recover substantial compensation in Civil Court—Right to compensation under s. 545 (*b*), Crim. Pro. Code, and for prosecution expenses — *See* PENAL CODE, ss. 24, 420, 15 Cr. L.J. 555=24 Ind. Cas. 963.

See SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 22 C. 586.

See STOLEN PROPERTY, 3 Bom. L.R. 449, 764.

See SUMMARY TRIAL, U.B.R. 1906, Crim. Pro. Code, 51=5 Cr. L.J. 298.

Complainant.

See COMPENSATION TO COMPLAINANT AND HIS RELATIVES.

See COMPLAINT.

See CRIM. PRO. CODE, 1898, s. 198.

(1)—*Complaint by whom to be made.*—Any person having knowledge of the commission of an offence may set the law in motion by complaint, even though he is not personally injured or affected by the offence, unless that power is expressly restricted. When the offence is against the public interest, the truth of the complaint *and the amount of the evidence* of crime it discloses are alone considered. Such a complaint ought not to be dismissed on the ground that the complainant has suffered no personal injury and that he is a mere instrument. *In re* GANESH NARAYAN SATHE, **13 B. 600**. [*F.*, 18 A. 465, 19 A. 34=A.W.N. 1896, 149; *R.*, 19 B. 51, 21 B. 536, 3 Bur. L.T. 124 =11 Cr. L.J. 738=8 Ind. Cas. 952=5 L.B.R. 241, 15 Cr. L.J. 369=23 Ind. Cas. 737=7 S. L.R. 77.]

(2)—*Crim. Pro. Code* (1861), s. 360—*Who is a complainant.*—The complainant, intended by s. 360, Crim. Pro. Code, 1861, must be a person who makes a complaint before a Magistrate in order to the issuing of a summons or warrant

Complainant—*continued.*

against any person. A person who, merely as an informer, telegraphed to a Magistrate that a murder had been committed, and, when the case had been dismissed for want of proof, petitioned the Sessions Judge to call for the proceedings and order further enquiry, could not be considered as a complainant and need not be examined. REG v. FATTE CHAND VASTACHAND, **5 B.H.C. Cr. 85.**

(3)—*Complaint filed—Summons not taken for appearance of accused—Duty of Magistrate.* —A complainant, by omitting to take out a summons, cannot keep a case hanging over a man for an indefinite time. The summons is merely a means of procuring attendance, but if the accused appears of his own accord without a summons, he is entitled to require that the complaint shall either be proceeded with or dismissed. *In re* LAKSHMAN GOVIND NIRGUDE, **26 B. 552=4 Bom. L.R. 276.**

(4)—*Crim. Pro. Code* (1861), s. 269—*Dismissal of complaint for default before commencement of trial.*—An order dismissing the complaint, on the non-appearance of the complainant, passed before the commencement of the trial, amounts to a discharge without trial, and does not bar a fresh complaint. HIGH COURT PROCEEDINGS, 1ST APRIL, 1868, **4 M.H.C. App. 8.**

(5)—*Recognisance by witnesses and complainant.*—A subordinate Magistrate has no power to take recognisances from the witnesses and the complainant to appear on a certain day before a Magistrate with co-ordinate jurisdiction. HIGH COURT PROCEEDINGS, 31ST OCT. 1868, **4 M.H.C. App. 17.**

(6)—*Crim. Pro. Code* (1861), s. 259—*Complaint of criminal misappropriation—Dismissal for default.*—S. 259 of the Code of 1861 applies only to cases which fall within Chap. XV of the Crim. Pro. Code. The offence of criminal misappropriation being triable according to the provisions of Chap. XIV, the Magistrate has no power to dismiss a complaint of such offence for the non-appearance of the complainant. HIGH COURT PROCEEDINGS, 24TH MARCH, 1869, **4 M.H.C. App. 41.**

See ACT X OF 1873, ss. 8 to 11, 13 B. 389.

See BIGAMY, 10 B. 340.

See CHEATING—GENERAL, 7 C.L.J. 375= 12 C.W.N. 750=7 Cr. L.J. 342.

See COMPENSATION—GENERAL, 1 B. 175.

Transfer of complaint by District Magistrate to Deputy Magistrate for disposal—Issue of search warrant by Deputy Magistrate—Omission to examine complainant on oath—*See* CRIM. PRO. CODE, 1898, s. 96, 7 Ind. Cas. 895 =8 M.L.T. 416=1910 M.W.N. 818=11 Cr.L. J. 535.

Examination of complainant, nature and necessity of—Inquiry and report without specific examination—*See* CRIM. PRO. CODE, 1898, ss. 195, 200, 202, 203, 476, 12 Cr. L.J. 539=12 Ind. Cas. 515=2 P.R. 1912, Cr.=11 P.L.R. 1912.

Complainant—*concluded.*

See CRIM PRO. CODE, 1898, s. 199, 3 S.L.R. 15, Cr. = 9 Cr. L.J. 450 = 1 Ind. Cas. 941, 1 S.L.R. 72, Cr. = 8 Cr. L.J. 190.

Institution of criminal proceedings before Police—Proceedings turning out unfounded—Prosecution of complainant—*See* CRIM. PRO. CODE, 1898, s 203, 33 C. 1 = 10 C.W.N. 158 = 2 C.L.J. 228.

See FALSE EVIDENCE, 4 N.W.P. 6.

Right of complainant to conduct case by counsel — *See* LEGAL PRACTITIONERS — COUNSEL, 11 B.H.C. 102.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 10 C. 67 = 13 C.L.R. 408.

See PENAL CODE, s 174, 13 B. 600.

Statements of — Court not limited to the statements — Court to find out truth — *See* PRACTICE AND PROCEDURE, 14 Bom. L.R. 135 = 1 Bom. Cr. C. 76 = 14 Ind. Cas. 764 = 13 Cr. L.J. 300

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 2 B. 653.

See SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 7 C L.J. 49 = 7 Cr. L.J. 10 = 35 C. 141 = 2 M.L.T 500.

Complaint.

1.—GENERAL.
2.—WHAT IS, AND WHO SHOULD INSTITUTE.
3.—INSTITUTION OF COMPLAINT—PRELIMINARIES.
4.—PROCEDURE ON RECEIPT OF COMPLAINTS.
5 —DISMISSAL OF COMPLAINT.
6.—WITHDRAWAL AND REVIVAL OF COMPLAINTS.

See COMPLAINANT.

See CRIM. PRO. CODE, 1898, ss. 200 to 203.

See CROSS-COMPLAINTS, TRIAL OF.

See DISMISSAL OF COMPLAINT.

See FALSE CHARGE

See FALSE COMPLAINT.

See FRESH COMPLAINT.

See REVIVAL OF COMPLAINT.

See WITHDRAWAL OF COMPLAINT.

——1.—General.

(1)—Prima facie *case made out—Police report.*—Where there is a *prima facie* case made out a Magistrate should send for the witnesses, and not, merely on the strength of the police report, reject the complainant's petition and refer him to the Civil Court. BORODAKANT MOOKERJEE v. KALI BHUTTACHARJEE, **9 W.R. Cr. 21.**

See ABETMENT, 4 P.R. 1888, Cr

See ACT III OF 1857, s. 14, 8 B H C Cr. 22.

Competency to complain—Municipal offence—*See* BOM ACT III OF 1888, ss. 68, 231, 471, 517, Rat. Un. Cr. C. 987 = Cr. Rg. 45 of 1898.

Complaint—continued.

——1.—General—*continued.*

Brothel house, removal of—Discretion of Magistrate — Exercise of discretion by his predecessor—Not addressed to Magistrate—*See* PUN. ACT XX OF 1891, s. 204, 28 P.L.R. 1910 = 8 Ind. Cas. 223 = 11 Cr. L.J. 596.

See CRIM. PRO. CODE, 1898, ss. 4 and 190, 1 L.B.R. 58.

Jurisdiction of Magistrate to summon persons not named in the—Meaning of "complaint" and "complainant"—*See* CRIM. PRO. CODE, 1898, ss. 4 (1), (*h*), 190, cls. (*a*), (*c*), 18 C.W.N. 921 = 15 Cr. L J. 546 = 24 Ind. Cas. 954 = 41 C. 1013.

Whether all the accused persons should be named in the—*See* CRIM. PRO. CODE, 1898, ss. 4 (8), 337 (4), 13 Cr. L.J. 588 = 15 Ind. Cas, 1004.

Presentation of—Duty of Magistrate—Direction to strike off case from police file—Legality—*See* CRIM. PRO. CODE, 1898, s. 156 (3), Ch. XVI, ss. 200, 201, 202, 203, 10 M.L.T. 120 = 1911 2 M.W.N. 74 = 11 Ind. Cas. 999 = 12 Cr. L.J. 463.

Information to Magistrate - Initiation of criminal proceedings — Prosecution in conformity with an *ultra vires* order — *See* CRIM. PRO. CODE, 1898, s. 190, 87 P.L.R. 1910 = 8 Ind. Cas. 247 = 11 Cr. L.J. 602.

See CRIM. PRO. CODE, 1898, ss. 190, 202, 4 O.C. 127.

Complaint — Facts constituting offence—Personal knowledge of complainant — Not necessary—*See* CRIM. PRO. CODE, 1898, s. 190 (1) (*a*) (*b*) (*c*) and s. 4 (*h*), 7 S.L.R. 77 = 15 Cr. L.J. 369 = 23 Ind. Cas. 737.

Complaint in the form of police report—*See* CRIM. PRO CODE, 1898, ss. 190 (1) (*b*) and 203, 2 Weir 246.

Dismissal of, without recording reasons is bad—*See* CRIM. PRO. CODE, 1898, ss. 195, 203, 13 Cr. L.J. 482 = 15 Ind. Cas. 482 = 40 C 41.

By husband—Statements made by husband in his deposition are not complaints—*See* CRIM. PRO. CODE, 1898, ss. 199, 4 (*h*), 14 Bom. L.R. 141 = 1 Bom. Cr. C. 82 = 14 Ind. Cas. 671 = 13 Cr. L J. 287.

Defamatory statements in—Absolutely privileged—*See* DEFAMATION, 11 M.L.T. 431 = 14 Ind. Cas. 757 = 13 Cr. L.J. 293.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 27 C. 798, 7 B.H.C. Cr. 58.

See MAINTENANCE, L.B.R. 1893—1900, 662.

By *de facto* guardian—*See* PENAL CODE, s. 363, 12 Cr. L.J. 239 = 10 Ind. Cas 281.

Of offences of criminal breach of trust and misappropriation—Dismissal of—Legality—*See* PENAL CODE, s. 409, 9 M.L.T. 332 = 12 Cr. L. J. 123 = 9 Ind. Cas. 726 = 1911 M.W.N 125.

***Complaint*—continued.**

——1.—General—*concluded*

Enticing away married woman—Report of Police officer—*See* PENAL CODE, s. 498, 39 P.L.R. 1911 = 32 P.R. 1910 = 12 Cr. L.J. 50 = 8 Ind. Cas. 1160.

See SANCTION TO PROSECUTE — CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 1 L.B.R. 286.

——2.—What is, and who should institute.

(1)—*Crim. Pro Code* (1898), *ss.* 4 *and* 199—*Meaning of "complaint" as used in s.* 199.—The word "complaint" referred to in s. 199, Crim. Pro. Code, means a "complaint" as defined by s. 4 (*h*) of the same Code. TARA PROSAD LAHA v. EMPEROR, **30 C. 910, F B. = 8 C.W.N 17.** (20 C. 483, *D*) [*F*, 12 Cr. L.J. 50 = 8 Ind. Cas. 1160 = 32 P.R. 1910, Cr. = 32 P. L.R. 1911 = 51 P.W.R. 1910, Cr.]

(2)—*Crim. Pro. Code, Act* X *of* 1882, *ss.* 199, 200—*Complaint, meaning.*—The word "complaint" in s. 199 of the Crim. Pro. Code must be taken as including not only a written complaint, but also the examination of the complainant under s. 200. Thus, where the written complaint only suggested an offence under s. 498 but the complainant's examination made out such an offence, *held* that the Magistrate had jurisdiction to try for that offence. GOVERNMENT OF BOMBAY v. SHEIKH MAHOMED, **Rat. Un. Cr. C. 584 = Cr. Rg. 44 of 1891.**

(3)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 4 (*a*) —*Report made by Village Officer in executive capacity, whether a complaint.*—The report by a village police officer in his executive capacity is not a complaint within the meaning of s. 4 (*h*) of the Crim. Pro. Code. QUEEN-EMPRESS v. SHIVRAM, **Rat. Un. Cr. C. 554 = Cr. Rg. 29 of 1891.**

(3-*a*)—*Crim. Pro. Code, ss.* 4, 195, 476—*Reference to District Magistrate by Revenue Court concerning case involving forgery of documents —"Complaint," what constitutes.*—*Held,* (i) that a Revenue Court, in referring a case, in which certain forged documents had been tendered, to the District Magistrate (who was also a Collector) for inquiry and such orders as might seem fit to him had not acted under s 476, Crim. Pro. Code. But (ii) that the communication by the Revenue Court to the District Magistrate was a "*complaint*" upon which the Magistrate was competent to take action under s. 195, Crim. Pro. Code. INDER BHAN v. KING-EMPEROR, **30 P R. 1905, Cr = 105 P.L R. 1905.** (23 P.R. 1901, Cr., *F.*; 13 B. 109, *Appr.*)

(3-*b*)—*Maintenance of wife, application for, not a "complaint"—Cr. P.C., ss.*4, 488.—*Held,* (i) that a petition under s. 488 Crim Pro. Code, is not a "complaint" of an offence within the meaning of s. 4 (*b*), Crim. Pro. Code; (ii) that an application under s. 488, Crim. Pro. Code, therefore, cannot be referred for inquiry under s. 202, Crim. Pro. Code, nor dismissed

***Complaint*—continued.**

——2.—What is, and who should institute —*continued.*

under s. 203, Crim. Pro. Code, and consequently, the Magistrate should inquire into it himself. SARDARAN v. AMIR KHAN, **29 P.R. 1905, Cr. = 90 P.L R. 1905.** (11 M. 99, *F.*)

(4)—*Report to the police—Cognizable offence —Code of Criminal Procedure, s.* 199—*Jurisdiction.*—A report to the police of a cognizable offence is not a 'complaint' under s. 199, Crim. Pro. Code, 1898. EMPEROR v. KHUSHAL SINGH, **17 C.P L.R. 105.**

(5)—*Crim. Pro. Code* (1882), *s.* 191—*False charge—Application for enquiry to Magistrate —"Complaint."*—Where the Police, making enquiries upon an information laid before them, reported a case as false, an application by the informant to the Magistrate for the investigation of the case and for summoning his witnesses would be a complaint within the meaning of s. 191 of the Crim. Pro. Code, which should be enquired into by the Magistrate. The Magistrate could not avoid the responsibility of making the enquiry by accepting the conclusion of the police on the subject. QUEEN-EMPRESS v. SHAM LALL, **14 C. 707, F.B.** [*Affirmed*, 35 C. 141 = 7 Cr. L.J. 10 = 7 C.L.J. 49; *F.*, 37 C. 250 = 14 C.W.N. 330 = 10 C.L.J 564 = 4 Ind. Cas. 710 = 11 Cr. L.J. 37, 5 C.W.N. 254; *R.*, 2 M.W.N. 1911, 9 = 21 M.L J. 795 = 12 Cr. L J. 323 = 10 M.L.T. 47 = 10 Ind. Cas. 619, 2 P.R. 1912, Cr. = 12 Cr. L.J. 539 = 12 Ind. Cas. 515. 16 Ind. Cas. 257 = 16 C.W.N. 1105 = 15 C.L.J. 517, 15 Cr. L.J. 369 = 23 Ind. Cas. 737 = 7 S.L.R.77.]

(6)—*Crim. Pro. Code* (1882), *ss.* 4, 191, 200 *and* 537—Yadast *from a Revenue officer to a Third Class Magistrate, containing allegations against a person.*—Where a Tahsildar sent a *yadast* to a third class Magistrate containing allegations against a person that he had failed to obey the summons issued to him and requesting the Magistrate to take action, *held,* that the *yadast* was a complaint of facts constituting an offence, punishable under s. 174, Penal Code, and the omission to examine the Tahsildar under s. 200 was only an error of procedure, which was cured by s. 537, Crim. Pro. Code. QUEEN-EMPRESS v. MONU, **11 M.443 = 2 Weir 238.** [*R.*, 12 Cr. L. J. 217 = 10 Ind. Cas. 156 = 11 P.R. 1911, Cr. = 146 P.L. R. 1911 = 32 P.W.R. 1911, P.L R. 1900, 63]

(7) — *Complaint under Punjab Municipal Act, s.* 109.—A document addressed by the Municipal Committee of the Punjab to a Deputy Commissioner to institute a prosecution under the Punjab Municipal Act, s. 186, and endorsed by the Deputy Commissioner is not a complaint. ABDUL AZIZ v. MUNICIPAL COMMITTEE, BAHADARGARH, **1 P.R. 1892, Cr.** [*R.*, 44 P R. 1905, 149 P.L.R. 1908, Cr. = 8 P.R. 1908, Cr. = 15 P.W.R. 1908, Cr. = 7 Cr.L. J. 353.]

(8)—*House-trespass with intent to commit adultery—Complaint by husband.*—A charge of

***Complaint*—continued.**

——2.—What is, and who should institute —*continued.*

house-trespass with intent to commit adultery can be entertained without a complaint by the husband or by the person under whose care the woman is. CROWN v. SULZ ALI, **2 P.R. 1877, Cr.** [*F.*, 41 P.R. 1882, 5 P.R 1886; *R.*, 42 P.R. 1881; *Discussed*, 12 P.R. 1906, F.B., Cr.]

(9)—*Complaint to Police of rape—Charge of adultery.*—Where the complainant informed the Police that the accused had committed rape upon his wife, but the Police reported that the case was one of adultery and the complainant, therefore, stated that he wished to proceed against the accused for adultery, *held*, that there was no complaint, as required by s. 478, Crim. Pro. Code, 1872. RAHMATULLA v. EMPRESS, **10 P.R. 1883, Cr.** (3 P.R. 1882, Cr., *R.*)

(10)—*Complaint preferred through counsel.*—Where the complainant only complained of an offence under s. 498, I.P.C., but the counsel for the complainant, on the day of the appearance of the accused, preferred a complaint, signed by him only, under s. 497, I.P.C., and the Magistrate discharged the accused as to the first offence, but committed him to the Session on the second offence, *held*, that, as there was no formal complaint by the complainant himself, the commitment was not proper. KIRPA SINGH v. BHUP SINGH, **11 P.R. 1872, Cr.**

(11)—*Application for maintenance.*—An application for an order of maintenance is not a complaint of an offence. REV. FATHER HILDEPHONSUS v. MALONE, **13 P.R. 1885, Cr.** (9 P.R. 1883, Cr., *Cited*). [*F*, 154 P.L.R. 1914; *Appr.*, 5 P.R. 1914, Cr.; *R.*, 3 P.R. 1893, 19 P.R. 1903, Cr.]

(12)—*Defamation—Complaint by party defamed.*—Where the accused, a petition-writer, wrote in a memorandum of appeal defamatory statements about the lower Court, and the Appellate Court directed a subordinate Magistrate to enquire into the matter, and the latter convicted the accused of an offence under s. 500, I.P.C., *held*, that the conviction was illegal, as there was no complaint within the meaning of s. 142, Crim. Pro. Code. NABI SHAH v. CROWN, **15 P.R. 1878, Cr.**

(13)—*Investigation on information received without any complaint—Right to examine witnesses on oath—False evidence.*—Where, on information received demi-officially from the Secretariat regarding the publication of a certain pamphlet, the District Magistrate commenced an enquiry under s. 202, and placed the witnesses on oath, *held*, that, as there was no complaint as required by s. 202, Crim. Pro. Code, the Magistrate was not competent to administer oath to the accused, and they, if they had given false evidence, were not liable to be convicted under s. 193, I.P.C. FATTEH ALI v. EMPRESS, **15 P.R. 1894, Cr.**

(14)—*Prosecution for an offence under s. 121, I.P.C.—Sanction to prosecute—Complaint—Crim. Pro. Code, ss. 196 and 537.*—A letter by the Local Government awarding sanction for prosecution is not a complaint, although it may be an authority to make a complaint. A Court taking cognizance of an offence without the authority required by s. 196, Crim. Pro. Code, acts without jurisdiction, and the defect is not cured by s. 537, Crim. Pro. Code. SHAMAL KHAN v EMPRESS, **16 P.R. 1890, Cr.** [*R.*, 149 P.L.R. 1908, Cr. = 8 P.R. 1908, Cr. = 15 P.W.R. 1908 = 7 Cr L J. 353, 11 Cr. L.J. 453 = 7 Ind. Cas. 359 = 37 C. 467, 16 C.W.N 1105, 13 Cr. L.J. 609 = 16 Ind. Cas. 257 = 15 C.L.J. 517.]

(15)—*Complaint to Police of adultery—Conviction without a formal charge before the Magistrate by the husband.*—The Police, on a complaint made by the husband, arrested the accused who was committing adultery with his wife. The accused was charged and convicted of an offence under s. 497, I.P.C., the husband being entered as the complainant in the Police *chalan* and giving evidence against the accused. *Held*, that the absence of a formal complaint by the husband was merely an irregularity to which the provisions of s. 283, Crim. Pro. Code, 1872, applied. GULZARA v. EMPRESS, **17 P.R. 1881, Cr.**

(16)—*Defamation of wife—Complaint by husband.*—A complaint made by the husband of a woman alleged to have been defamed, and not by the woman herself, is a sufficient compliance with the provisions of s. 142, Crim. Pro. Code. EMPRESS v. LACHMAN, **20 P.R. 1882, Cr.**

(17)—*Resolution of Municipal Committee under s. 186, Punjab Municipal Act* (1891).—A mere resolution of the Municipal Committee, on which some person authorized by the Committee could have framed a complaint, but on which no complaint was framed, and where no complainant appeared before the Magistrate, was held not to be a complaint, and a conviction upon such basis was set aside by the High Court. NAHINYA v. EMPRESS, **20 P.R. 1894, Cr.**

(18)—*What is a sufficient complaint.*—A complainant need only state the facts upon which he relies, and it is the Magistrate that has to decide whether any and what offence has been committed. If the facts, as stated, disclose an offence punishable under s. 498, I.P.C., the Magistrate cannot act except upon the complaint of the husband, or of some one having charge of the wife on behalf of the husband. PIRAN DITTA v. QUEEN-EMPRESS, **23 P.R. 1895, Cr.**

(19)—*Competency of master to complain of an assault on his servant.*—A master is not competent to lodge a complaint for an assault upon his servant. CHORBYN v. AMEER KHAN, **24 P.R. 1869, Cr.**

(20)—*Crim. Pro. Code* (1882), s. 202—*Scope.*—S. 202 applies only to a case where there is a

Complaint—continued.

——2.—**What is, and who should institute** —*continued.*

"complaint" as distinguished from a mere "information," and further applies only to those cases where the Magistrate is not satisfied as to the truth of the complaint. NARAIN SINGH v. EMPRESS, **24 P.R. 1888, Cr.**

(21)—*Offence under s.* 211, *I.P.C., complained—Framing of charge under s.* 500, *I.P.C.*—Where a complaint alleged that the accused, with a view to injure the complainant's reputation, had brought a false charge that he had poisoned his daughter-in-law, and charged the accused under s. 211, I.P.C., *held* that, having regard to the substance of the complaint, the Magistrate could frame a charge under s. 500, I.P.C., notwithstanding the provisions of s. 198, Crim. Pro. Code. NUR ASLAM v. EMPRESS, **24 P.R. 1884, Cr.**

(22)—*Taking cognizance on suggestion of Police officer.*—Where a Police officer informed a Magistrate that the accused injured the crops of the people of a certain village, and the Magistrate acting on his suggestion issued summons to the accused, whereupon the Police held an investigation and the accused, who had been previously arrested and released on bail, were subsequently finally *challaned, held*, that none of the conditions required by s. 191, Crim. Pro. Code, had been fulfilled, and that the accused had been prejudiced by the irregular procedure of the Magistrate. SAMUN v. EMPRESS, **24 P.R. 1894, Cr.**

(23)—*Sanction granted to one—Complaint by another.*—Where a person to whom a sanction has been granted to prosecute another for an offence under s. 193, I.P.C., has not availed himself of it, the Court can take cognizance of the case on the complaint of any other person. LAKHI v. EMPEROR, **27 P. R. 1902, Cr.=5 P. L.R. 1903.** (12 M. 47, *F.*; 4 C 712, 8 C. 435, *R.*) [*Dist.*, 30 P. R. 1903, Cr.]

(24)—*Trial without complaint.*—Where, on a complaint of assault to a Magistrate of the First Class, the Magistrate finding that the facts disclosed an affray, in which the complainant also was implicated, put him on his trial, *held* that his trial, without a formal complaint, was not legal. CROWN v. RAMJEE, **34 P.R. 1870, Cr.**

(25)—*Private prosecution, distinguished from—Crim. Pro. Code* (1882), *ss.* 195 *and* 476—*Preliminary enquiry.*—Where the District Magistrate acting on his own motion proceeds, under s. 476, Crim. Pro. Code, his written order to a Magistrate to try the case will amount to a complaint. Sanction to prosecute for making a false charge is granted under s. 195, Crim. Pro. Code, to some person who applies for it and the prosecution is then a private prosecution. The preliminary enquiry held under s. 476 is not judicial. KRISHNASAMI NAIDU v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 383.**

(26)—*Crim. Pro. Code* (1898), *ss.* 4, *cl.* (*h*), 190, 191—*Cognizance of offence by Magistrate—Complaint.*—Where a petition of complaint was filed by certain persons that the accused were interfering with persons who came to sell cattle and had assaulted them as well as the complainants; *held*, that the complaint was a complaint within the definition of the term as contained in s. 4, cl. (*h*). The Magistrate acting upon this complaint acted under cl. (*a*) and not under cl. (*c*) of s. 190. S. 191 of the Code had no application to this case. JHAN LAL v. PIR BAKHSH, **2 Ind. Cas. 453.**

(27, 28)—*Non-compliance with provisions of Code—Crim. Pro. Code* (*Act* XXV *of* 1861), *ss.* 66, 67—*Act* VIII *of* 1869, *s.* 66(*b*)—*Act* X *of* 1872, *ss.* 144, 147 *and* 49.—The Magistrate of a District, before whom a complaint had been made, without complying with the provisions of s. 66 of Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate, not authorized to receive complaints without reference from the District Magistrate, and the Deputy Magistrate tried and convicted the offender. *Held, per Kemp, J.*, that non-compliance with the provisions of s. 66 of Act XXV of 1861, made the subsequent proceedings void; *per Ainslie, J.*, that the order sending the petition to the Deputy Magistrate for disposal gave the latter officer power to receive the complaint under s. 66 (*b*) of Act VIII of 1869, and that the subsequent proceedings were, therefore, valid. ISWAR CHANDRA KOER v. UMESH CHANDRA PAL, **8 B.L.R. 19.**

(29)—*Non-compliance with provisions of Code,*—A Magistrate of a District, before whom a complaint had been made, without complying with the provisions of s. 66, Act XXV of 1861, sent the petition to be disposed of by a Deputy Magistrate; and when the Deputy Magistrate had proceeded to some extent with the case, the Magistrate took it up and tried it himself. *Held* that non-compliance with the provisions of s. 66 made the subsequent proceedings void. QUEEN v. GIRISH CHANDRA GHOSE, **7 B.L.R 513=16 W.R. Cr. 40.** [*F.*, 8 B.L.R. 19, 4 N.W.P. 88; *Expl.*, 18 W.R. Cr. 18.]

(30)—*Jurisdiction of Magistrate*—A Magistrate may re-call an order which he finds to be wrong, and substitute any other which he may think right under the law. KALIDASS BHUTTACHARJEE v. MOHENDRO NATH CHATTERJEE, **12 W.R. Cr. 40.**

(31)—*Postponement for further evidence.*—Where the charge was one under s. 347 of the Penal Code, and the evidence of the prosecutor and other evidence had been taken, and the case postponed for the evidence of further witnesses which was considered necessary by the Magistrate, and they failed to appear, an order by the Magistrate dismissing the case for want of sufficient evidence was held to be legal. QUEEN v. BIRDUR GHOSE, **7 B.L.R. 9, Note =12 W.R. Cr. 27.** [*D.*, 15 W.R. Cr. 53.]

(32)—*Omission to examine complainant—Act* XXV *of* 1861, *ss.* 66 *and* 273—*Act* X *of* 1872,

Complaint—continued.

——2.—What is, and who should institute —*concluded.*

ss. 144 *and* 44—*Reference by District Magistrate to subordinate Magistrate.*—A District Magistrate is not bound, on receipt of a complaint, to examine the complainant under s. 66 of Act XXV of 1861 before referring the complaint to a subordinate Magistrate for disposal. The examination of the complainant by the Magistrate to whom the case has been referred is sufficient. QUEEN v. HARU, **9 B. L.R.F.B. 146 = 18 W.R. Cr. 18.** (14 W.R. Cr. 1, *F.*; 16 W.R. Cr. 40, *D.*)

Statement that a person keeps a gaming house—Issue of search warrant and arrest of certain persons in consequence of the statement—Whether statement amounts to complaint—*See* CRIM. PRO. CODE, 1898, ss. 4, 190 (1) (*c*), 8 S.L.R. 66 = 15 Cr. L.J. 657 = 25 Ind. Cas. 985.

——3.—Institution of Complaint—Preliminaries.

(1)—*Crim. Pro. Code* (1882), *ss.* 203, 537 — *Written complaint—Attestation by oath.*—Where the deposition in the shape of a complaint is made orally or in writing, and when it is sworn to by the complainant, though he is not examined on oath, the provisions of s. 203 are sufficiently satisfied. Even if this is doubted, s. 537 will be applicable to such cases. QUEEN-EMPRESS v. MURPHY, **9 A. 666 = A.W.N. 1887, 141.** [*Diss.*, 18 A. 221 = A.W.N. 1896, 35; *F.*, 4 Bom. L.R. 609; *R.*, 35 M. 606 = 12 Ind. Cas. 526 = 2 M.W.N. 1911, 356 = 10 M.L.T. 573 = 12 Cr. L.J. 550 = 22 M.L.J. 155, 11 P.R. 1911, Cr. = 146 P.L R 1911 = 10 Ind.Cas.156 = 12 Cr. L.J. 217 = 32 P.W.R. 1911, Cr.]

(2)—*Crim. Pro. Code* (1882), *s.* 198—*Charge of defamation not made in complaint—Subsequent adding of it on examination of complainant.*—Where a complaint contained only charges under ss. 352, 504, I.P.C., but not a charge under s. 500, I.P.C., *held*, that a charge of defamation, having regard to the provisions of s. 198, Crim. Pro. Code, could not, subsequent to the presentation of the complaint, be added by the Magistrate on statements made by the complainant in his evidence whether of his own accord, or with reference to suggestions made by the Magistrate. QUEEN-EMPRESS v. DEOKINANDAN, **10 A. 39 = A.W.N, 1887, 264.** [*R.*, Rat. Un. Cr. C. 584.]

(3)—*Crim. Pro. Code* (1882), *s.* 191 (*c*)—*Complaint of an offence, by whom to be made.*—A Magistrate can take cognizance of an offence, under s. 191 (*c*), upon the complaint of any member of the public acquainted with the facts of the case. The complaint need not necessarily be by the aggrieved person, except in those cases where it is so restricted by the Code. FARZAND ALI v. HANUMAN PRASAD, **18 A. 465 = A.W.N. 1896, 149.** (1 B. 600, *F.*) [*R.*, 14 Cr. L.J. 409 = 20 Ind. Cas. 233.]

(4)—*Complaint, making of—Effect.*—When a complaint is made, the proceedings have been instituted and the prosecution has commenced, the reception of the complaint being a stage of the judicial proceeding towards conviction. IMPERATRIX v. LAKSHMAN SAKHARAM, **2 B. 481** [*R.*, 28 B. 226 = 5 Bom. L.R. 940.]

(5)—*Crim. Pro. Code* (1861), *s.* 23 (*d*)—*Competency to issue warrants.*—Where a Magistrate, other than a District Magistrate or a Magistrate in charge of a Division, entertained a case against the accused without any complaint having been preferred to him or any report made to him by the police, *held* that the Magistrate was not competent to entertain the complaint or to issue warrants. QUEEN v. OOMRAO SINGH, **3 N.W.P. 317.**

(6)—*Conviction without complaint—Railway Act*, XVIII *of* 1854.—Where a Magistrate convicted a person of an offence under the Railway Act without any sworn complaint before him and acting only on a private note from a Railway officer, *held* that the conviction was illegal. REG. v. LARKINS, **4 B H C. Cr. 4.**

(7)—*Crim. Pro. Code* (1861), *ss.* 66, 179, 248, 257—*Voluntary appearance by accused to answer a charge—Complaints when not necessary.*—When the accused appears voluntarily to answer a charge, the want of a summons or of a complaint in order to the issuing of a summons becomes immaterial. Taking a complaint and issuing a summons thereon are not ministerial acts, but are judicial acts. When a case is sent under ss. 168, 169 or 170, Crim. Pro. Code, 1861, and a Magistrate, to whom the case is sent by the Court, himself investigates it, no complaint is necessary, nor is it necessary when the Court itself holds an investigation, nor where the accused is lawfully apprehended by the Police without a warrant and duly brought before the Magistrate. REG. v SADASHIVAPPA PANDURANGAPPA, **5 B.H.C. Cr. 29.**

(8)—*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 434—*Complaint if necessary—What records to call for.*—In order to the exercise of the powers given by s. 434 to the Sessions Judge, it is not necessary that any complaint should be preferred to him. In calling for records under the above section, the Sessions Judge can call for the proceedings of the subordinate Magistrate which have been called for and examined by the District Magistrate. REG. v. VRIJVALLABH, **Rat. Un. Cr. C. 55 = Cr Rg. 28-8-1871.**

(9)—*Crim. Pro. Code* (1882), *s.* 198—*Complaint of defamation of a female—Complaint to be made by herself.*—In case of the defamation of a female, it is she herself, and not a mere male relative, who should make a complaint under s. 198 of the Crim. Pro. Code. QUEEN-EMPRESS v. KUSSANTIN, **Rat. Un. Cr. C. 327 = Cr. Rg. 14 of 1887.**

(10)—*Crim. Pro. Code* (1872), *s.* 142—*Offence under s.* 494, *I.P.C., cognizance of.*—Where a complaint was made against a party, apparently, of taking or keeping the complainant's wife away from him, and the accused, against whom no

Complaint—continued.

——3.—**Institution of Complaint—Preliminaries**—*continued.*

complaint in the proper sense of the term had been made by the prosecutor, was charged under s. 494 of the Indian Penal Code, *held*, that the Magistrate had not acted without jurisdiction, inasmuch as he had not acted *suo motu*, but upon the motion of the prosecutor. *In the matter of* UJJALA BEWA, **1 C.L.R. 523.** [*Appr.*, 25 A. 209 = 23 A.W.N. 7 ; *R.*, 26 C. 336.]

(11)—*Crim. Pro. Code* (1898), *s.* 190 (1) (*c*) —*Jurisdiction to implead a person not charged as accused.*—Where a Magistrate has taken cognizance of an offence, on the case having been duly referred to him by a superior Magistrate, he has the power, although he is not specially empowered under s. 190 (1) (*c*), to implead a person not before the Court and issue process against him and try him. CHARU CHANDRA DAS v. NARENDRA KRISHNA CHAKRAVARTI, **4 C.W.N 367.** [*F.*, 11 Cr.L.J. 489 = 7 Ind.Cas. 461 = U.B.R. 1910, Cr.P.C., 2, 32 P.R. 1904, Cr. = 68 P L R 1904 ; *R.*, 18 C.W.N. 921, 14 Cr.L.J. 290 = 19 Ind. Cas. 946 = 9 N.L.R. 65; *D.*, 39 C. 119 = 13 Cr.L.J. 433 = 15 Ind. Cas. 65.]

(12)—*Crim. Pro. Code* (1898), *ss.* 200, 202—*Complaint by Government Pleader without personal knowledge* —Where proceedings were commenced on the complaint of the Government Pleader who had no personal knowledge of the matters contained in the proceedings, *held*, that there was no complaint properly so called on which a judicial inquiry can be based. CHAMRO SAHU v. EMPEROR, **11 C. W N 170 = 5 Cr.L. J. 13.** [*R.*, 15 C.L J. 517 = 16 C.W.N. 1105 = 13 Cr.L.J. 609 = 16 Ind. Cas. 257.]

(13)—*Crim. Pro. Code* (1871), *ss.* 67, 468 (*ss.* 203, 195 *of the Code of* 1898)—*Delay in presenting the accused after receipt of sanction—Refusal to entertain the complaint.*— Where the complainant could give no satisfactory explanation of his delay in coming forward to prosecute for more than three months after sanction had been given, *held*, that the Magistrate was justified in refusing to entertain the complaint. HIGH COURT PROCEEDINGS, 9TH JAN. 1871, **2 Weir 154 = 6 M.H.C. App. 15.**

(14)—*Complaint of forgery of document—Pending civil suit.*—It is desirable that criminal proceedings on a charge of forgery should be postponed, until the decision of a suit, in which the genuineness of the document is in dispute, if such suit is pending. SANKARAYYA v. KERALA SUBBA AIYA, **2 Weir 260 = 2 Weir 531.**

(15)—*Enticing away a married woman, complaint of—Trial for bigamy, validity of.*—Preferring a complaint is an essential condition of the Magistrate's jurisdiction to enquire into and try an offence falling under Chapter XX, I.P.C., and the extent of the jurisdiction so founded is limited to offences covered by the facts complained of. Where the complaint is one for an offence under s. 498, Penal Code, the Magistrate cannot convict the accused of an offence under s. 494, I.P.C. FAIZ AHMED v. EMPRESS, **5 P.R. 1879, Cr.** [*R.*, 19 P.R. 1882, Cr.]

(16)—*Power to entertain complaints on Police report.*—A Third Class Magistrate, authorised to receive complaints under s. 23 (*a*) (2), Crim. Pro. Code, 1872, is competent to entertain complaints on the report of a Police officer. CROWN v. RAMA, **27 P R. 1873, Cr.**

(17) —*Report of Police officer—Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 68—*Act* X *of* 1872, *s.* 142 —*Knowledge—Report of Police—Interference of High Court.*—S. 68 of the Criminal Procedure Code applies only to cases in which the private individual injured or aggrieved does not come forward to make a formal complaint. That section is intended for the purpose of enabling a Magistrate to take care that justice may be vindicated, notwithstanding that the persons individually aggrieved are unwilling or unable to prosecute ; and, even in such cases, the jurisdiction to arrest requires, for its foundation, knowledge of the fact of an offence having been committed and that knowledge must be either personal or derived from testimony legally given. The report of the Police, or any statement which falls short of an actual formal complaint, or of a statement made on oath, is not sufficient in law to give a Magistrate jurisdiction to issue his warrant. In this case, although the Magistrate had acted illegally before evidence was recorded, and had shown a want of discretion in some of the stages, the HighCourt refused to quash the Magistrate's order directing the prisoners to be put upon their defence, on the ground that the order had been made by a competent officer after hearing evidence, which was judicially received and recorded. QUEEN v. SURENDRA NATH ROY, **5 B.L.R. 274 = 13 W.R. Cr. 27.** [*Appl.*, 13 B. 600, 14 W.R. Cr. 41; *R.*, 19 W.R. Cr. 4 ; *F.*, 10 C.W.N. 775.]

(18)—*Act* XXV *of* 1861, *s.* 68—*Private information.*—A belief, founded on private and anonymous information, is not knowledge within the meaning of s. 68 of the Criminal Procedure Code. *In the matter of* MAHESH CHANDRA BANERJEE, **4 B.L.R. Ap. 1 = 13 W. R. Cr. 1.** [*R.*, 6 M. 63, 18 A. 380 ; *F.*, 10 C.W. N. 775, 20 W.R. Cr. 23.]

(19)—*Petition of third person—Crim. Pro. Code* (1872), *s.* 205—*Magistrate entertaining petition by third party.*—Certain parties having complained in the Magistrate's Court of assault or ill-usage by the order of one whom they called their zamindar, with a view to making them pay enhanced rent, both the complainants and the accused were absent when the case was called on for hearing. As the Magistrate was about to dismiss the complaint, a third party appeared and alleged that the complaint had been made with the connivance of the accused for the purpose of fabricating evidence of his right or title to the *mouzah*, where the complainants lived. Thereupon, the Magistrate compelled the complainants to appear, took down the evidence of

Complaint—continued.

—3.—Institution of Complaint—Preliminaries—*continued.*

some of them, received a counter-complaint from the third party above mentioned, and convicted the complainants under the Penal Code, s. 193, and sentenced them to imprisonment. *Held* that the Magistrate ought not to have entertained the third party's petition, or compelled the complainants to go on with their case; and that, under the circumstances, the evidence given was not judicial evidence. *In re* DUKHUN PAHAN, **24 W.R. Cr. 32.**

(20)—*Power of Magistrate—Information of third person.*—It is open to a Magistrate to take cognizance of a case on the information of a third person without any complaint by the party injured. *In the matter of* RAMRUTTUN NEOGEE, **6 W.R. Cr. 3.**

(21)—*Extra-judicial knowledge of Magistrate —Crim.Pro.Code* (1861). *s.* 68—*Summons without complaint.*—The Magistrate of a District, or the Magistrate in charge of a division of a district, is competent, under s. 68 of the Code of Criminal Procedure, without any complaint, to take cognizance of any offence which may come to his knowledge and may issue a summons against the person known or suspected to have committed such offence, in the same manner as if a complaint had been made against such person. This power is not affected by the circumstance that the offence with which the accused was charged came to the knowledge of the Magistrate otherwise than through a petition which was presented against the accused. BISSESHUR ROY v. BABOO HURPERSHAD SINGH, **11 W.R. Cr. 1.**

(22)—*Previous enquiry — Crim. Pro. Code,* 1872, *ss.* 146, 147—*Procedure.*—When a complaint first comes before a Magistrate, it is open to him to proceed under ss. 146 and 147. After issuing his warrant, and bringing the accused before the Court, he is bound to go on with the trial and hear the case for the prosecution; it will be too late for the previous inquiry provided for by s. 146, at that stage. RAMKANT SIRCAR v. JADUB CHUNDER DASS BYRAGEE, **21 W. R. Cr. 44.**

(23)—*Case irregularly sent by Civil Court—Investigation without complaint—Crim. Pro. Code* (1861), *s.* 68.—Although a Civil Court would be acting irregularly in sending to the Magistrate for investigation a case of using or attempting to use false evidence when no suit was pending in that Court, yet as the Court had given its sanction to the prosecution of the offence, *held* that it was in the competency of the Magistrate, under s. 68 of the Code of Criminal Procedure, even without a charge or complaint, to proceed to investigate, and, if necessary, to commit for trial to the Sessions Court. QUEEN v. DOORGA NATH ROY, **8 W.R. Cr. 9.**

(24)—*Case referred by Civil Court—Crim. Pro. Code, s.* 273—*Power to refer.*—The various modes in which Civil proceedings can be instituted under the Code of Criminal Procedure pointed out. BHUGOBAN CHUNDER PODDAR v. MOHUN CHUNDER CHUCKERBUTTY, **12 W. R. Cr. 49.**

(25)—*Irregularity in recording complaint—Complaint not reduced to writing—Act X of* 1872, *ss.* 144, 44 *and* 283—*Crim. Pro. Code* (*Act* XXV *of* 1861), *ss.* 66, 273, 426 *and* 439—*Irregularity in commencing proceedings.*—Under s. 66 of the Code of Criminal Procedure, the examination of the prosecutor should be reduced to writing and signed by him. When a complaint is made before a Magistrate, but not reduced to writing, he cannot, under s. 273 of the Code of Criminal Procedure, refer the case to a Deputy Magistrate for trial. Ss. 426 and 439, Crim. Pro. Code, 1861, do not apply to a case where the prosecution is not commenced by a complaint, as directed in the Code. A conviction with such irregularity cannot stand good, merely because the amount of punishment would have been the same if proper proceedings had been instituted. QUEEN v. MAHIM CHANDRA CHUCKERBUTTY, **3 B.L.R. A. Cr. 67.**

(26)—*Authorization to proceed with case—Form of complaint, irregularity or defect in.*—A Court of Session is competent to proceed to the trial of a prisoner brought before it upon a charge by a Magistrate authorized to make a commitment, though the complaint or authorization be contained only in a letter, from the Judge of that Court to the Magistrate of the District, sent with the record of the case notwithstanding an irregularity or defect of form in recording the complaint. The complaint or authorization of the Court before which, or against the authority of which, an offence mentioned in Ch. XI of the Code of Criminal Procedure is alleged to have been committed is a sufficient warrant for the commencement of criminal proceedings. QUEEN v. NARAYAN NAIK, **5 B.L.R., F.B., 660, 14 W.R. Cr. 34.**

(27)—*Complainant — Omission to examine complainant—Summons.*—The Deputy Magistrate was held, to have been wrong in summoning the parties charged before the complainant had been examined on oath or solemn affirmation. RUJEEB MUNDLE v. LOCHUN MUNDLE, **W.R. 1864, Cr. 37.**

(28)—*Offence charged under particular section of Penal Code—Power of Magistrate to apply any other section applicable.*—A Magistrate is not bound to adhere to any particular section of the law which may be mentioned by a complainant in his complaint, but may apply any section which he thinks applicable to the case, so long as the parties are not misled and the proper procedure is observed. KALIDAS BHUTTACHARJEE v. MOHENDRONATH CHATTERJEE, **12 W.R. Cr. 40.**

(29)—*Complaint not reduced to writing or signed.*—On receipt of a petition from the complainant, the Magistrate, without examining him and reducing his examination to

Complaint—continued.

——3.—**Institution of Complaint—Preliminaries**—*concluded.*

writing and obtaining a signature thereto, or appending his own signature as Magistrate, referred the petition to a Deputy Magistrate for trial. The Deputy Magistrate tried and convicted the accused. On a reference from the Sesssons Judge, on the ground that the proceedings were irregular under s. 66, Act XXV of 1861, and that, therefore, the order of the Deputy Magistrate was without jurisdiction, *held* that the petition was sufficient, and that the Magistrate was justified in making over the petition to a Deputy Magistrate, who had the full powers of a Magistrate for enquiry and trial. QUEEN v. UMESH CHANDRA CHOWDHRY, **5 B.L.R. 160 = 14 W.R. Cr. 1.**

——4.—**Procedure on receipt of complaints.**

(1)—*Crim. Pro. Code* (1882), *s.* 200—*Examination of the complainant—Duty of Magistrate.*—On receiving a complaint in a summons case, the Magistrate should examine the complainant on oath and should reduce the substance of the examination (or have it reduced) to writing. It is not a sufficient compliance with the requirements of the section to merely call upon the complainant to swear to the complaint as it was filed and to sign it. The substance of the examination, which is by law required to be reduced to writing, must be distinct from the complaint. KESRI v. MUHAMMAD BAKHSH, **18 A. 221 = A.W.N. 1896, 35.** (9 A. 666, *D.*). [*R.*, 6 Bom. L.R. 662 = 15 C.L.J. 517 = 16 C. W.N. 1105 = 13 Cr.L.J. 609 = 16 Ind. Cas. 257.]

(2)—*Examination of complainant—Duty of Magistrate.*—A Magistrate is bound to hear a complaint on its being duly presented to him. It is not competent to him either to refuse to take cognizance or to postpone its investigation *sine die* on the ground of a non-existent Civil proceeding. *In re* CHHATRASANGJI, **Rat. Un. Cr. C. 206.**

(3)—*Examination of complainant—Duty of Magistrate.*—Where a complaint is made before a Magistrate, he is bound to examine the complainant on oath and then to proceed according to law. Where a complaint was filed regarding the conduct of a Government Officer, the Magistrate called for a report from the officer concerned, and feeling satisfied with it, rejected the complaint. *Held* that the action of the Magistrate in calling for a report was not proper, and that, in any case, he ought to have heard the complainant and his witnesses before acting upon any statement made by the person complained against. *In re* SUBRAO RAMCHANDRA, **Rat. Un. Cr. C. 954 = Cr. Rg. 6 of 1898.**

(4)—*Examination of complainant—Duty of Magistrate—Crim. Pro. Code* (1882), *ss.* 200, 202, 203.—Upon the receipt of a complaint, it is the duty of a Magistrate to examine the complainant on oath. Although it is competent for him to dismiss the complaint under s. 203, he can only do so after examining the complainant as required by s. 200. If an investigation into the subject-matter of the complaint is necessary, it should be conducted by the Magistrate himself, or by some properly qualified officer. It is not a proper procedure to call on the person complained against to submit a report as to the truth or otherwise of the allegations made against him. SATYA CHARAN GHOSE v. CHAIRMAN OF THE UTTERPARAH MUNICIPALITY, **3 C.W.N. 17.**

(5)—*Crim. Pro. Code*, s. 203—*Examination of witnesses.*—Where a Magistrate has not disposed of a case under s. 203, Crim. Pro. Code, 1882, but has issued a summons to the complainant's witnesses, he is not at liberty to stop the case whenever he likes, but is bound to examine the witnesses tendered by the complainant before acquitting the accused. An acquittal of the accused on a consideration of the complainant's statement alone is not legal. QUEEN-EMPRESS v. SINNAI GOVINDAN, **20 M. 388 = 2 Weir 251.**

(6)—*Examination of complainant and witnesses—Dismissal of complaint.*—Until a Magistrate has at least examined the complainant, he is not in a position to exercise the discretionary power given by s. 67, Crim. Pro. Code, to issue process or dismiss the complaint. RANGASWAMI GOUNDAN v. SABAPATHY GOUNDEN, **4 M.H.C. 162.**

(7)—*Powers of District Magistrate to send case for trial by subordinate Magistrate.*—The omission of a District Magistrate to reduce to writing the examination of the complainant on a complaint directly preferred to him, before he refers it to a subordinate Magistrate for disposal, is an illegality which vitiates all the proceedings taken subsequently. QUEEN v. BHIKAREE NAWAB ABDOOLLA, **4 N.W.P. 88.**

(8)—*Crim. Pro. Code* (1882), *ss.* 155, 202, 203—*Duty of Magistrate on receiving complaint—Reference to Police.*—It is not a proper course for a Magistrate, when a complaint is made before him of an offence of which he has cognizance, to refer the complainant to a Police officer. He is bound, when the circumstances giving jurisdiction exist, to receive the complaint, and to deal with it according to law. A different course would foster abuses and defeat the purpose of the law, which is to give to the persons, who have been injured, an access to justice independent of the Police. *In re* JANKIDAS GURU SITARAM, **12 B. 161.**

(9)—*Crim. Pro. Code* (1882), *ss.* 202 *and* 350—*Power of Magistrate to refer a case that had been partially heard by his predecessor to Police.*—Where a Magistrate, accepting a complaint, issued process upon it and examined certain witnesses for the prosecution, his successor in office would not be entitled to ignore what the former had done and to refer the case to the Police for enquiry and report. He could, under

Complaint—continued.

——4.—**Procedure on receipt of complaints** —*continued.*

s. 350, Crim. Pro. Code, 1882, re-commence the inquiry, but the inquiry referred by that section would, under s. 4, not include a reference to the Police such as the original Magistrate might direct. SADAGOPACHARIAR v. RAGAVACHARYAR, **9 M. 282=2 Weir 243=2 Weir 430.** [*R.*, 14 P.R. 1903, Cr.=175 P.L.R. 1903, 1914 M.W.N. 646.]

(10)—*Crim. Pro. Code* (1882), *s.* 202—*Power of Magistrate to send cases to Police for inquiry.*—A Magistrate is empowered, under s. 202, to send a case for inquiry by the Police only when he distrusts the truth of the complaint. The section also requires the Magistrate to give his reasons. Great caution should be shown in sending, for investigation by the Police, charges against members of that force. In such cases, it would generally be better that inquiry should be prosecuted by a Magistrate. QUEEN-EMPRESS v. KANAPPA PILLAI, **20 M. 387=2 Weir 240.** [*F.*, A.W.N. (1902), 195, 11 Cr. L. J. 205=5 Ind. Cas. 714=4 P.W.R. 1910, Cr.]

(11)—*Crim. Pro. Code* (1898), *ss.* 4, 196, 287 *and* 537—*Police officer making a complaint—Validity of such complaint—Informality in complaints— Report of Police officer—Prosecuting Inspector—Charge defective in stating offence committed under s.* 124-*A, Penal Code—Effect—"Swaraj" and "Boycott."*—What s. 196. Crim. Pro. Code, requires is, that the complaint should be made upon authority from the Local Government. There is nothing in s. 196, Crim. Pro. Code, to warrant the construction that the actual complaint must be expressly authorised by the Local Government. The only question which the Court has to consider with reference to that section is, " Is the complaint, which I am asked to entertain, a complaint made by the order or under the authority of the Government? " A complaint is none the less a complaint, because it is put in by a Police officer. The report of a Police officer must be some statement made in connection with, or, at least, under colour of the duty of the maker as a Police officer. It is not the duty of a Prosecuting Inspector to make reports of offences to Magistrates under s. 124-A, Penal Code. Where a complaint did not set out the speeches or the alleged seditious words, which were the subject-matter of the subsequent charge, there is no informality in it. The complaint is not intended to give information to the accused. Even if it were defective, in that it might not have set out the dates of the speeches and the nature of the alleged seditious matter, it would, at most, be an irregularity within s. 537 (*a*) of the Crim. Pro. Code. Notwithstanding the omission of the particulars which a charge ought to contain, should the accused in fact be not misled by the omission, and the omission did not occasion a failure of justice, the High Court, as a Court of appeal, will not reverse a conviction on the bare ground of the irregularity. The notes of Police officers used for the purpose of refreshing their memory in accordance with which they gave their evidence, may be allowed to become part of the record of the case. Where there is a series of speeches or lectures on one topic, all delivered within a short period of time, one may be considered for the purpose of throwing light on the real meaning and intent of another, and on the state of mind of the speaker with reference to the object-matter of the other speeches—a principle recognised in Illus. (*e*) to s. 14, Evidence Act, and acted on in cases of prosecutions for sedition in all the other High Courts in India. A statement made by an accused person to the Superintendent of a District Jail, with the request that it might be placed on the record, and so placed, was held to be admissible in evidence under s. 287, Crim. Pro Code, as evidence of an intention relevant to a charge under s. 124-A, Penal Code. The word "*Swaraj*" must, in trying to ascertain whether the language used by an accused person is seditious, be construed with reference to his speech as a whole and not with reference to isolated passages taken apart from their context. The speech in the particular case, judging it on the evidence, actually adduced, was held to mean not only the exclusion of the present Government, but also to urge, if necessary, the use of force in order that that end might be attained. With reference to the term "*Boycott,*" their Lordships observed that it was scarcely necessary to say that language, advising a strike of workmen, or the *boycott* of foreign goods, was not in itself seditious, however misguided or mischievous such advice might be. *In re* SUBRAMANIA SIVA, **5 M.L.T. 1=32 M. 3=9 Cr. L.J. 108=1 Ind. Cas. 22.**

(12)—*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 169—*Jurisdiction of District Mgistrate to trasfer case sent to him.*—The Magistrate of a District, to whom a case has been sent by a Munsiff for prosecution, has no power to refer the case to a Full Power Magistrate, and the latter has no jurisdiction to try the case without a complaint. **N.B.**—In connection with the same case, a letter was sent by the High Court to the Magistrate to inform him that a Magistrate can try a case in which the accused has been legally arrested by the Police without a warrant. REG. v. DIPCHAND KHUSHAL, **4 B.H.C. Cr. 30.** [*Expl.*, Rat. Un. Cr. C. 8 ; *R.*, 5 B.H.C.Cr. 29, 5 B.H.C. 69.]

(13)—*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 276—*Sub-Magistrate's power to refer.*—A subordinate Magistrate, who has no jurisdiction to try a case, has no power to refer it to a Full Power Magistrate, and the latter cannot try the case without a complaint being made to him. REG v. BAGU *valad* OWSARI et al, **4 B.H.C. Cr. 34.** [*Expl.*, Rat. Un. Cr. Cas. 8 ; *R.*, 5 B.H.C. Cr. 29.]

(14)—*Stamp Act* X *of* 1862, *s.* 3—*Absence of complaint — Memorandum by Collector— Crim. Pro. Code* (1861), *s.* 69.—In the absence

Complaint—continued.

—4.—Procedure on receipt of complaints —*continued.*

of a complaint, as required by s. 66, Crim. Pro. Code, either by the Collector or any person duly authorised on his behalf, a conviction and sentence under s. 3 of Act X of 1862, is not sustainable. A memorandum under the signature of the Collector cannot be accepted in the place of a complaint so as to authorise the issuing of a complaint. REG. v. BAI DIVALI, **5 B.H.C. Cr. 48.**

(15)—*Crim. Pro. Code* (1861), *s.* 250—*Trial for offence different from the one complained of.*—If a Magistrate, to whom a proper complaint has been made, finds on the evidence, that an offence different from the one expressly charged has been committed, he has power to enquire and proceed against the accused with regard to such other offence. REG v. DHONDU RAMCHANDRA, **5 B.H.C. Cr. 100.** [*R.*, 11 C.P.L. R. 9, Cr.]

(16)—*Conviction for an offence different from that complained of, validity of.*—Where a Magistrate disbelieved a complaint as originally framed, and drew fresh charges of wrongful confinement and assault, and convicted the accused without giving them an opportunity of properly defending themselves, and the Sessions Judge, on appeal, went even further and disbelieved the case both as originally made, as also the one made out by the Magistrate, and yet convicted the accused on a charge of assault, *held*, that that was not the proper way of dealing with the case and the accused ought not to have been convicted of an offence which did not form the subject-matter of the complaint, specially when all other matters relating to the event were found to be false or not proved. RAMESWAR SINGH v. JOGI SAHOO, **5 C.W.N. 296.**

(17)—*Crim. Pro. Code* (1861), *ss.* 66-*A and* 155—*Report of Police officer—Complaint on oath —Warrant case.*—In cases in which the Police might not arrest without a warrant, a warrant cannot be legally issued except on a complaint on oath. Where the Magistrate is empowered to act on such complaint or on the report of a Police officer (s. 66-A of the Crim. Pro. Code), the report thus referred to does not mean any communication from the Police officer, but a formal report drawn up under s. 155 of the Crim. Pro. Code, in cases in which the Police may arrest without warrant. REG. v. JAFAR ALI, **8 B H C. Cr. 113.** [*Appr.*, U.B.R. (1892 to 1896), 28, 3 Bom. L.R. 568 ; *R.*, 10 B.H.C. Cr. 70, 26 B. 150, F.B., 2 L.B.R. 146, F.B.]

(18)—*Crim. Pro. Code* (1898), *s.* 254—*Complaint of defamation—Further charge of criminal force made in course of deposition by complainant—Conviction for criminal force.*—The accused was tried at one trial for defamation and for using criminal force. He was in the first place charged with defamation, but the complainant, in the course of her deposition, further charged him with using criminal force. The Magistrate tried him jointly for both the offences, acquitted him of the former offence but convicted him of using criminal force. *Held*, that the Magistrate's procedure was legal, inasmuch as the allegation made by the complainant constituted a fresh complaint of another offence and the accused had had an opportunity of meeting the fresh accusation. KING-EMPEROR v. LUIS MINGEL FONCECA, **3 Bom. L.R. 675.**

(19)—*Court Fees Act* VII *of* 1870, *s.* 31—*Non-cognisable offence—Complaint—Conviction —Refund.*—Where a complaint of a non-cognizable offence results in a conviction, the stamp duty on the complaint can be refunded. REG. v. BHIMYA, **Rat. Un. Cr. C. 79 = Cr. Rg. 27-11-1873.**

(20)—*Crim. Pro. Code* (1882), *s.* 191, *receipt of complaint under—Proceedings by Magistrate —" May take cognizance of " meaning of.*—The use of the term "may take cognisance of an offence" in s. 191 of the Crim. Pro. Code, does not make it optional with a Magistrate to hear a complaint, but refers to the action of the Magistrate in taking cognisance of an offence in either of the specified courses in which the facts constituting the offence may be brought to his notice. He is bound to examine the complainant and can then either issue summons to the accused, or order an enquiry under s. 202, or dismiss the complaint under s. 203. UMER ALI v. SAFER ALI, **13 C. 334.** [*F.*, 4 O.C. 127 ; *R.*, 13 Cr. L.J. 609 = 16 Ind. Cas. 257 = 15 C.L.J. 517 = 16 C.W.N. 1105.]

(21)—*Crim. Pro. Code* (1898), *ss.* 190, 191—*Cognizance of a case taken upon an anonymous communication—Transfer.*—Where cognizance of a case is taken upon an anonymous communication, and not upon a complaint or Police report, the accused are, under the provisions of s. 191, entitled to claim that the case should be tried by a Magistrate other than the one who has taken cognizance of the case under cl. (*c*) of s. 190. *In the matter of* HARI NARAYAN BISWAS, **3 C.W.N. 65.**

(22)—*Crim. Pro. Code* (1898), *ss.* 202, 203 *and* 476—*Referring of a case triable by Court of Session to a subordinate Magistrate of Second Class—Order for the prosecution of the complainant on report from the Magistrate.*—On the complaint of a case triable by a Court of Session, the District Magistrate made over the enquiry to a subordinate Magistrate with Second Class powers, and the District Magistrate, on receiving a report that the complaint was false, ordered the prosecution of the complainant for an offence under s. 211, I.P.C. *Held*, that the subordinate Magistrate had no jurisdiction in the case, that the District Magistrate could not make over the case to any other Magistrate without having previously examined the complainant and that the enquiry ordered would not come either under s. 202 or under s. 203, and that the order for the prosecution of the

Complaint—continued.

——4.—**Procedure on receipt of complaints** —*continued.*

complainant, was, therefore, illegal. BUDH NATH MAHATO v. EMPRESS, **4 C.W.N. 305.** [*F.*, 12 Cr. L.J. 539 = 12 Ind. Cas. 515 = 2 P. R. 1912, Cr. = 11 P.L.R. 1912 ; *R.*, 33 C. 1 = 2 C.L.J. 228 = 10 C.W.N. 158.]

(23)—*Crim. Pro. Code* (1898), *s.* 190, *cl.* (*c*) —*Deputy Commissioner, as Magistrate and Revenue Officer—Trial of a Revenue case by him —Revisional powers of High Court.*—Where a Deputy Commissioner, who, as a Revenue Officer, is entitled to complain regarding an offence against the public revenue, himself instituted proceedings, that is to say, proceeded, as a Magistrate, to take cognisance of a Revenue offence, and directed that the trial should be held by one of the Magistrates subordinate to him, *held*, that the action of the Deputy Commissioner cannot be regarded as other than that of a Magistrate acting judicially, and, as such, his order was subject to revision by the High Court. SHAHIRAM v. QUEEN-EMPRESS, **4 C.W.N. 825.**

(24)—*Penal Code, s.* 451—*House-trespass for purpose of carrying on an intrigue with prosecutor's wife—Refusal by husband to so charge him, effect of.*—A person was charged with house-trespass by night and admitted that he was there for the purpose of carrying on an intrigue with the prosecutor's wife. The complainant, the husband, refused to charge the accused with having entered the house to commit the offence of adultery, but founded his complaint solely on the entry having been with intent to commit theft, which was found to be false. The Deputy Magistrate dismissed the charge on the ground that the husband refused to lay a complaint of house-trespass with intent to commit adultery. *Held*, that the Magistrate was right, under the circumstances, in refusing to convict the accused of a charge which the husband refused to make, although he had the power to so convict him. HIGH COURT PROCEEDINGS, 15TH NOV. 1869, NO. 2221, **1 Weir 532 = 5 M.H.C. App. 5.** [*F.*, 16 C.P.L.R. 182.]

(25)—*Crim. Pro. Code* (1861), *Chap.* III, *s.* 144 (*s.* 200 *of the Code of* 1898)—*Complaint of petty theft to Magistrate—Jurisdiction to refer the complainant to the heads of the village.* —Where a complaint is made to a subordinate Magistrate, he is bound to proceed under s. 144 (s. 200 of the Code of 1898) and dispose of the complaint according to law. The mere fact that the complaint is also cognizable by the head of the village does not affect the competency of the Magistrate, nor can he decline to exercise his jurisdiction. HIGH COURT PROCEEDINGS, 18TH DEC. 1873, No. 2236, **2 Weir 22 = 2 Weir 237 = 1 Weir 926 = 7 M.H.C. App. 31.**

(26)—*Complaint of offence under s.* 354, *I.P.C.* — *Conviction for rape—Setting aside of conviction.*—Where on the complaint of an offence under s. 354, I.P.C., but subsequently

Complaint—continued.

——4.—**Procedure on receipt of complaints** —*concluded.*

altered to one of attempt to commit rape, the Magistrate convicted the accused of an attempt to commit adultery, the conviction was set aside in revision by the Chief Court, as there was no complaint by a person competent to complain under the provisions of s. 498. DULA v. EMPRESS, **3 P.R. 1882, Cr.** [*R.*, 10 P.R. 1883, Cr.]

(27)—*Trial without complaint.*—A Magistrate, who is neither a Magistrate of the District, nor a Divisional Magistrate, is not competent to take cognizance of an offence in the absence of a formal complaint. CROWN v. HURBHUGWAN, **10 P.R. 1870, Cr.**

(28)—*Written record only legal proof of terms of complaint — Policeman's report of complaint not sufficient proof—Production of the document, if procurable to be insisted on— Crim. Pro. Code* (1882), *s.* 154—*Evidence Act, s.* 91.—Having regard to the provisions of s. 154, Code of Criminal Procedure, and s. 91, Evidence Act, the only legal proof of the terms of a complaint of a cognizable offence to the Police is the written record of the same, excepting where secondary evidence of its contents is admissible. It would be most unsafe if, in cases under s. 211, Penal Code, a Policeman's report of what a complaint contained could be accepted as sufficient proof of its contents, without insisting on the production of the document itself if it were in any way procurable. QUEEN EMPRESS v. NGA, SI, **L.B.R. 1872-1892, 572.**

Allegation made in writing to a Magistrate with a view to his taking action—Complainant not examined before issue of process—Quashing of proceedings—*See* CRIM. PRO. CODE, ss. 4 (*h*), 190 (*c*) 200, 17 C.W.N. 448 = 18 Ind. Cas. 412 = 14 Cr. L.J. 76.

Petition against a Tahsildar addressed to the Collector—District Magistrate treating it as a— Enquiry instituted—Petitioner taking part in enquiry—Effect—*See* CRIM. PRO. CODE, 1898, ss. 4 (*h*), 476, 11 A.L.J. 529 = 14 Cr. L.J. 425 = 20 Ind. Cas. 409.

Complaint before District Magistrate— Transfer for inquiry without examining complainant—Irregularity—*See* CRIM. PRO. CODE, 1898, ss. 195, 476, 202, 439, 8 S.L.R. 21 = 15 Cr L.J. 662 = 25 Ind. Cas. 990.

Order of Deputy Magistrate amounting to a dismissal of—Fresh complaint disposed of by District Magistrate—Further enquiry ordered by Sessions Judge—Legality—*See* CRIM. PRO. CODE, 1898, ss. 203, 435, 437, 528, 17 C.W.N. 451 = 18 Ind. Cas. 683 = 14 Cr. L.J. 123 = 17 C. L.J. 608.

Examination of complainant in presence of accused—Practice — *See* CRIM. PRO. CODE, 1898, ss. 439, 503, 11 P.W.R. 1913, Cr. = 18 Ind. Cas. 147 = 14 Cr. L.J. 3.

Complaint—continued.

—— **5.—Dismissal of Complaint.**

(1)—*Dismissal of complaint—Crim. Pro. Code* (1882), ss. 200 *to* 203—A Magistrate can dismiss a complaint only in three cases, (1) if he, upon the statement of the complainant (*i.e.*, the complaint) finds no offence has been committed; (2) if he distrusts the truth of the statement; and (3) if, after further enquiry, he holds there is not sufficient ground for proceding. A complaint ought not to be dismissed on the ground (1) that the Magistrate believed the complainant had no personal grounds to complain; and (2) because he believed him to be used as a tool by others in bringing forward the complaint. *In re* GANESH NARAYAN SATHE, **13 B. 600.** (14 C. 141, *F.*)

(2)—*Crim. Pro. Code, s.* 203—*Scope of.*—S. 203 gives very large powers to the Magistrate to dismiss a complaint without issuing a process at all against the accused persons, but certain conditions are laid down in the Chapter in which the section occurs, and those conditions must be strictly fulfilled in making an order under the section. A Magistrate may dismiss a complaint under the section on any one of the three grounds, *viz.*:—(1) if he, upon the statement of the complainant, reduced to writing under s. 200, finds that no offence has been committed, (2) if he distrusts the statement made by the complainant, and (3) if he distrusts that statement, but his distrust is not sufficiently strong to warrant him to act upon it, he may direct further inquiry as provided in s. 200. In any case, he is bound to record his reasons for dismissing the complaint, for, if that is not done, it would be impossible for the High Court to consider whether the discretion vested in the Magistrate, under s. 203, has been properly exercised. BAIDYA NATH SINGH v. MUSPRATT, **14 C.141.** [*F.*, 13 B. 600; *R* , 14 Cr.L.J. 493=20 Ind. Cas. 749=11 A.L.J. 754.]

(3)—*Crim. Pro. Code, s.* 203—*Power of Magistrate under the section.*—A Magistrate cannot dismiss a complaint under s. 203 until he has examined the complainant. In exercising his discretionary power of summary dismissal of the complaint, the Magistrate should not allow himself to be influenced by considerations altogether apart from the facts adduced by the complainant in support of the charge, nor by a consideration of the motive by which the complainant is actuated. What he has to consider is whether there is *prima facie* evidence of a criminal offence which, in his judgment, calls upon the alleged offender to answer. The expression "sufficient ground" in s. 203 points exclusively to the facts which the complainant brings to the knowledge of the Magistrate, and to their establishing a *prima faice* trustworthy case against the accused. *In the matter of the petition of* GANESH NARAYAN SATHE, **13 B. 590, (F.B).** [*F.*, Rat. Un.Cr. C. 549, Rat. Un. Cr. C. 562; *Rel.*, 11 Cr. L.J. 205=5 Ind. Cas. 714=4 P.W.R. 1910 (Cr.); *R.*, 9 Bom.L.R. 742, 14 Cr. L.J. 633=21 Ind. Cas. 681=25 M.L.J. 510, Rat. Un. Cr. C. 669, Rat. Un. Cr. C. 786.]

Complaint—continued.

——**5.—Dismissal of Complaint**—*continued.*

(4)—*Crim. Pro. Code, s.* 147 — *Scope and effect of.*—S. 147, Crim. Pro. Code, 1872, is explicit that the Magistrate must examine the complainant before dismissing his complaint. Where a Magistrate has the complaint with him he can only legitimately dispose of it, either by himself pursuing the procedure pointed out by s. 147, or by transferring the complaint to some subordinate Magistrate to dispose of it according to law. A reference to a subordinate Magistrate for his opinion, and the opinion of the officer that the charge is not true, will not discharge the Magistrate from examining the complainant. SHEIKH ERAD ALI v. NUSIBUNISSA BIBEE, **4 C.L.R. 534.**

(5)—*Crim. Pro. Code* (1861), s. 193—*Dismissal of complaint — Practice.*—Before dismissing a complaint under s. 193 of the Crim. Pro. Code, a Magistrate should examine all the witnesses called for by the complainant. REG. v. DAYA KESUR, **Rat. Un. Cr. C. 21=Cr. Rg. 8-9-1869.**

(6) —*Dismissal of complaint—Procedure.*—Where a subordinate Magistrate, First Class, dismissed a complaint against a person who, though previously convicted twice, persisted in committing house-trespass, the District Magistrate cannot interfere with the order as the offence is not one of the nature specified in s. 435, Crim. Pro Code. If a complaint is preferred before the latter in such a case, he may either try the case himself or send it to a subordinate Magistrate. *Inre* REG. v. RAGHO. **Rat. Un. Cr. C. 28.**

(7)—*Dismissal of complaint—Procedure.*—A complaint should not be dismissed without giving the complainant the necessary opportunity of being heard. *In re* HARI PURUSHOTAM, **Rat. Uu. Cr.C. 365=Cr. Rg. 12 of 1888.**

(8)—*Crim. Pro. Code* (1898), *ss.* 202 *and* 203 —*Dismissal of complaint under s.* 203, *effect of.* —The dismissal of a complaint, after hearing the complainant and after considering the results of an investigation ordered under s. 202, amounts to a legal determination of the complaint. SURJYA HARIANI v. KING-EMPEROR, **6 C.W.N. 295.**

(9)—*Crim. Pro. Code* (1898), *ss.* 160, 202 *and* 203—*Dismissal of complaint without following the procedure prescribed by ss.* 202 *and* 203.—Where, on the complaint of an offence, the Deputy Magistrate, having examined the complainant, put the case before the Deputy Commissioner, who dismissed the complaint without examining the complainant, *held*, that the order of dismissal was wrong. HALADHAR BHUMIJ v. SUB-INSPECTOR OF POLICE, HURA OUT POST, **9 C.W.N. 199=2 Cr.L.J 51.** [*F.*, 12 Cr.L.J. 539=12 Ind. Cas. 515=2 P.R. 1912 Cr.=11 P.L R. 1912 ; *Rel.*, 11 Cr.L.J. 205=5 Ind. Cas. 714=4 P.W.R. 1910, Cr. ; *R.*, 13 Cr. L.J. 609=16 C.W.N. 1105=15 C.L.J. 517=16 Ind. Cas. 257.].

(10)—*Crim. Pro. Code* (1898), *s.* 202—*Dismissal of complaint—Reasons.*—The reason

Complaint—continued.

——5.—**Dismissal of Complaint**—*continued.*

for dismissing a complaint should be based on inferences or facts arising from or disclosed by (1) the complaint; (2) the examination of the complainant; (3) the investigation, if any, made under the powers conferred by s. 202 of the Crim. Pro. Code. This provides a wide field. Anything outside it is extra-judicial and must be discarded. MUSTAFA v. MOTILAL, 9 **Bom. L.R. 742=6 Cr.L.J. 85.** (13 B. 590, *R.*)

(11)—*Crim. Pro. Code* (1898), s. 203—*Complaint—Order of dismissal—Grounds not recorded—Police report containing reasons—Sufficiency.*—Where a Magistrate dismisses a complaint under s. 203, Crim. Pro. Code, merely stating that he agrees with the Police report, without recording his reasons for dismissal and without even making the Police report part of his order. *Held*, that the order was improper and ought to be set aside. AHMED BEE v. AMEENA BEE, **7 M.L.T. 175=5 Ind. Cas. 926=11 Cr. L.J. 331.**

(12)—*Dismissal of complaint after enquiry—Powers of Sessions Judge to interfere—Crim. Pro. Code* (1861), ss. 67, 180, 435.—The words "dismissed without enquiry," in s. 435 of the Code of 1861, refer to a complaint which the Magistrate has, under s. 67, dismissed without making the enquiry he is empowered to make under s. 180. If a complaint has not been dismissed without enquiry, the Sessions Judge has no power to interfere. *In re*, MOOLCHUND, **3 N.W.P. 261.**

(13)—*Crim. Pro. Code* (1872), s. 147—*Order for re-enquiry—Powers of Sessions Judge.*—A Sessions Judge has power to direct a Magistrate to enquire into a complaint dismissed by him under s. 147 of the Code. HIGH COURT PROCEEDINGS, 19TH MARCH 1873, **7 M.H.C. App. 16.**

(14)—*False complaint—Discretion of Magistrate.*—If a Magistrate considers a complaint false and groundless, he is not bound to issue a summons or warrant. The law invests him with a discretion, which it is incumbent on him to exercise, so as to prevent the evil of allowing legal process to be made subservient to the gratification of malice or revenge. At the same time, the Magistrate should always take the examination of the complainant. *In re*, RAMCHURN, **3 N W.P. 272.**

(15)—*Crim. Pro. Code*, 1882, s. 247—*Dismissal of complaint for default.*—Where a Magistrate, to whom a case had been transferred, called the case on the day fixed by his predecessor for the trial, without any communication to the parties, and dismissed it under s. 247, for default of the complainant. but it was found that the complainant and his witnesses, though they did not attend that Court, were present in another Court in the same Court-house, not having been informed of the particular Court to which the case had been transferred, *held* that, under the circumstances of the case, the provisions of s. 247 had not been properly applied. ROMA NATH BAL v. BEHARI BAG BAGDI, **13 C.L.R. 303.**

Complaint—continued.

——5.—**Dismissal of Complaint**—*continued.*

(16)—*Want of prosecution of complainant—Striking off case from file, practice as to.*—Cases instituted and tried under Ch. XIV cannot be struck off the file at the request of the complainant or for want of prosecution on his part. QUEEN v. JUGROOP UGRABEE, **3 N.W P. 341.**

(17)—*Non-appearance of complainant—Dismissal of complaint*—The dismisal of a complaint for the non-appearance of the complainant on the date to which the hearing has been adjourned is illegal, if the order of adjournment has not been made in the hearing and presence of the parties. HIGH COURT PROCEEDINGS, 24TH FEBRUARY, 1875, **8 M.H C. App. 5.**

(18)—*Crim. Pro. Code*, s. 200—*Presentation of complaint by* Mukhtyar—*Dismissal.*—Where a complaint is presented by a woman's *mukhtyar*, the Magistrate can dismiss it, since he has no opportunity of examining the complainant as required by s. 200 of the Crim. Pro. Code. QUEEN-EMPRESS v. JANAKI, **Rat. Un. Cr. C. 625=Cr. Rg. 51 of 1892.**

(19)—*Crim. Pro. Code* (1898), ss. 247, 437—*Dismissal of complaint on default of complainant — Effect of, on an absent accused.*— A dismissal of the complaint under s. 247 for the complainant's default and the acquittal of one of the accused, terminates also the case against the other accused, whose attendance could not be obtained and against whom the trial did not proceed, nor can the order under s. 247 be set aside under s. 437. PANCHU SINGH *alias* PUNCHANAN SINGH v. UMOR MAHOMED SHEIKH, **4 C.W.N. 346.** [*F.*, 7 C.W.N. 711; *R.*, 34 M. 253=9 M.L.T. 93=9 Ind. Cas. 263 =12 Cr.L.J. 41; *D.*, 7 C.L.J. 249=7 Cr. L.J. 318, 10 C.W.N. 1031=4 Cr. L.J. 173.]

(20)—*Crim. Pro. Code* (1872), s. 220—*Order dismissing complaint—Acquittal.*—The dismissal of a complaint under s. 220 amounts to an acquittal. *In the matter of* JADUBAR MOOKERJEE, **5 C.L R. 359.**

(21)—*Discharge whether amounts to acquittal—Re opening of complaint—Crim. Pro. Code* (1861), s. 250—A discharge under s. 250 of the Code of 1861 does not amount to an acquittal where there has been no enquiry at all, the case is still stronger, and it cannot, therefore, be said that a complaint could not be re-opened. QUEEN v. HUR PERSHAD, **4 N.W.P. 23.**

(22)—*Crim. Pro. Code*, ss. 203, 204 *and* 476—*Duty of Magistrate on receiving a complaint—Necessity for examination—Dismissal of complaint.*—A complainant must be examined by the Magistrate who receives the complaint, or by some Magistrate to whom he has transferred the case. When a complainant has been examined, he is entitled to have the person accused brought before the Magistrate, and it is only when the Magistrate has reason not to believe the truth of the complaint from his examination that this can be properly refused and an investigation held. [*F.*, 4 O.C. 127; *R.*, 10 C.W.N. 158=33 C. 1=2 C.L.J. 228.]

Complaint—continued.

——5.—**Dismissal of Complaint**—*continued.*

A District Magistrate on a report by the Police to the effect that a complaint was false, was asked by the complainant to try the complaint, but, instead of examining the complainant, referred the complaint to the Deputy Magistrate for judicial enquiry or report. The latter, after examining the complainant and his witnesses, reported that the complaint was false. *Held*, that an order under s. 476, ordering the complainant to be prosecuted under s. 211, Penal Code, was not validly made, inasmuch as the order was not properly passed on judicial proceedings before him, and as the case before the District Magistrate had never been tried out and never been dismissed on evidence recorded by him or obtained by him in the manner directed by s. 202. *Held*, further, that the mere examination of the complainant by the District Magistrate, without hearing his witnesses and without dismissing the complaint and without the judicial trial which the complainant asked for and was entitled to, would not justify an order under s. 476 directing the prosecution of the complainant under s. 211, Penal Code. MAHADEO SINGH v. QUEEN-EMPRESS, **27 C. 921.** [*F.*, 4 O.C. 127; *R.*,33 C.12 C.L.J. 228=10 C.W.N. 158, 12 Cr. L.J. 539=12 Ind. Cas. 515=2 P. R. 1912, Cr.=11 P.L.R. 1912 ; *D.*, 6 C.W.N. 295.]

(23)—*Crim. Pro. Code, ss.* 247, 369 *and* 432 — *Dismissal for default of a case under s.* 420, *I.P.C.*—A dismissal for default of a case under s. 420, I.P.C., for the non-appearance of the complainant, is bad, inasmuch as it amounts to an application, to a warrant case, of the procedure prescribed by s. 247, Crim. Pro. Code, in respect of summons cases only. RAM COOMAR v. RAMJEE, **4 C.W.N. 26.**

(24)—*Crim. Pro. Code* (1898), *s.* 437—*Issue of warrants—Further proceedings not taken—Discharge—Further enquiry on Police report.*—Where after the issue of warrants against certain persons, the Magistrate does not think it necessary to proceed further, the termination of the proceedings against them is in effect an order of discharge. Where no proceedings were taken against certain persons mentioned in a police report by a Sub-Divisional Magistrate, although other persons were tried and convicted of the same offence, *held* that the Sub-Divisional Magistrate was competent to take proceedings against them on the Police report, and, although he was subordinate to the District Magistrate, it would not be proper to the latter to pass an order directing proceedings to be taken against them,unless he had withdrawn the whole matter to his own Court. MOUL SINGH v. MAHABIR SINGH, **4 C.W.N. 242.** [*R.*, 30 C. 449, 32 C. 783=9 C.W.N. 810=2 Cr. L.J. 524 ; *Construed*, 3 C.L.J. 87=3 Cr.L.J. 209 ; *D.*, 39 C. 119=13 Cr.L.J. 433 =15 Ind. Cas. 65.]

(25)—*Crim. Pro. Code, s.* 259—*Complaint of grievous hurt—Dismissal for want of prosecution.*—A Sub-Magistrate has no power to dismiss a complaint of grevious hurt on the ground that the complainant refused to proceed with the prosecution. REG. v. JAGJIVAN, **Rat. Un. Cr. C. 23=Cr. Rg. 20-9-1869.**

(26)—*Dismissal of complaint—Offence committed six years ago—Malice of complainant.*—That the complainant was actuated by malicious feeling against the accused or that the offence was committed six years ago, is no sufficient reason for dismissing a complaint. There is no limiting the time for prosecutions for offences QUEEN-EMPRESS v. MANJI, **Rat. Un. Cr. C. 549=Cr. Rg. 24 of 1891.** (13 B. 593, *R.*)

(27)—*Dimissal of complaint—Prospect of raising other religious disputes—Legality.*—It is not competent to a Magistrate to refuse to take up a complaint or to dismiss it summarily on the ground that, if the complaint was entertained, it would tend to bring numerous other complaints and stir up old religious ill-feelings. QUEEN-EMPRESS v. RAMCHANDRA, **Rat. Un. Cr. C. 562.**

(28)—*Crim. Pro. Code* (1872), *ss.* 205 *and* 361 —*Failure of complainant to pay fees for summoning of witnesses—Dismissal of complaint, validity of.*—When a complainant is required to pay fees for summoning witnesses under s. 361 and fails to do so, the Magistrate must deal with the case on such evidence as he may have before him, but not dismiss the complaint. KORAPULU v. MONAPPA, **5 M. 160=2 Weir, 305.**

(29)—*Crim. Pro. Code* (1882), *s.* 247—*Dismissal of complaint—Acquittal of accused for default of prosecutor.*—A Magistrate, before acquitting an accused person under s. 247 for the complainant's default of appearance, is not bound to wait till his Court is about to close for the day. SYED AMMADATH KUTTIYALI v. PARI MUKRI, **7 M. 356=2 Weir 309.**

(30)—*Crim. Pro. Code, s.* 205—*Dismissal of complaint for non-apperance of complainant—Discretion, exercise of.*—S. 205, Crim.Pro. Code, contemplates the use of discretion on the part of Magistrates in dismissing complaints. The Magistrate entitled to dismiss a complaint under this section, ought to exercise some discretion with reference to the particular circumstances of the case. Where a complainant was prevented from attending Court on the day of the hearing on account of a heavy flood which cut off all communications, and the Magistrate dismissed the complaint under s. 205, Crim. Pro. Code, it was *held* that the Magistrate did not use his discretion properly. SREEMUTTEE TAZOONNISSA v. WASSIL, **24 W.R. Cr. 64.**

(31)—*Crim. Pro. Code* (1882), *s.* 246—*Dismissal of complaint made by a Police charge sheet.*—Where a complaint is made by a police charge-sheet, it is not necessary to examine the complainant before dismissing the complaint. *In re* L. M. SOARES, **2 Weir 246.**

***Complaint*—continued.**

——5.—Dismissal of Complaint—*continued.*

(32)—*Circular order No. 5-A of 7th September 1868—Dismissal of complaint—Complainant's preliminary examination—Police report.*—After complainant's preliminary examination had been recorded the case was referred to the police for report. The complainant had notice to appear on 6th November to hear the report. On 31st October the Assistant Magistrate dismissed the case upon the report of the police-officer without giving complainant an opportunity to show cause against the dismissal. His order was set aside by the High Court, and he was directed to proceed as required by Circular 5-A, dated 7th September 1868. BULLEE SINGH v. KANAL CHOWDHREE, **17 W.R. Cr. 2.**

(33)—*Grounds for dismissal of—Order for further inquiry — Notice to the accused, not essential—Crim. Pro. Code,* 1898, *ss.* 203 *and* 437.—Where a complaint had been dismissed under s. 203 of the Code of Criminal Procedure, *held*, that the Sessions Judge was not bound to issue notice to the accused before ordering further inquiry under s. 437, Code of Criminal Procedure. *Held*, further, that a person bringing a complaint in a criminal Court is entitled to produce evidence in support of it subject only to two conditions, *viz.* (*a*) that the facts alleged constitute an offence and (*b*) that there are no circumstances apparent on the examination of the complainant, such as to justify the Court in coming to the conclusion that the complaint is false. MUHAMMAD SALAMATULLAH v. LALA SITAL PRASAD, **11 O.C. 261.** (29 C. 457, 5 A.L.J. 74, *F.*; 2 O.C. 363, *D.*)

(34)—*Penal Code, ss.* 497 *and* 498—*Complaint dismissed as evidence did not disclose offence of abduction.*—Where a complaint of abduction under s. 498, Penal Code, was dismissed on the ground that the evidence disclosed the offence of adultery, leaving the complainant to bring a fresh complaint under s. 497, Penal Code, *held* that the Magistrate erred in law and that, until the evidence of the witnesses named for the prosecution was taken an order of discharge should not generally be made. NIHAL SINGH v. MOHAMDA, **17 P.R. 1874, Cr.**

(35)—*Crim. Pro. Code,* 1872, *s.* 215—*Discharge, without examining all the prosecution witnesses.*—An accused person shall not be discharged unless the Magistrate has examined all the witnesses named for the prosecution. EMPRESS OF INDIA v. KASHI, **2 A. 447.** [*F.*, A. W.N. 1882, 179.] QUEEN v. PARASURAMA NAIKAR, **4 M. 329**; HIGH COURT PROCEEDINGS, 24TH FEBRUARY, 1875, **8 M H.C. App. 5**; JELDHARI SINGH v. SHUNKUR DOYAL, **23 W.R. Cr. 9.**

(36)—*Examination of complainant's witnesses—Crim. Pro. Code,* 1861, *s.* 67.—Where the Crim. Pro. Code, makes it necessary for a Magistrate, before dismissing a charge, to examine both the complainant and his witnesses, it supposes that there has been already a *prima facie* case made out; and where the complainant makes out such a *prima facie* case, the Magistrate is bound first to examine all the complainant's witnesses before dismissing the charge; but where there is clearly no *prima facie* case established, the Magistrate is justified in acting under s. 67 of the Crim. Pro. Code, 1861, and in dismissing the case at once. ISSER CHUNDER GHOSE v. PEARI MOHUN PALIT, **16 W.R. Cr. 39.**

(37)—*Crim. Pro. Code,* 1861, *s.* 193, *Ch.* XV—*Prosecution, witnesses for examination of.*—S. 193, Crim. Pro. Code, 1861, is applicable also to cases under Ch. XV of that Code. A Magistrate cannot dispose of a case under that chapter without examining the witnesses for prosecution. KISHARI SAHAI v. MUNGERI SAHAI, **16 W.R. Cr. 48**

(38)—*Examination of complainant's witnesses—Recording reasons—Charge under s.* 211, *Penal Code—Crim. Pro. Code,* 1861, *s.* 429.—If a Deputy Magistrate, without recording reasons, and without examining all the witnesses tendered, or allowing a reasonable time for the attendance of such of the witnesses as were not present, dismisses a complaint and directs a trial of the complainants under s. 211, Penal Code, he acts with material irregularity. QUEEN v. HEERA LALL GHOSE, **13 W.R. Cr. 37**; SYED NISSAR HOSSEIN v. RAMGOLAM SING, **25 W.R. Cr. 10**; *In the matter of* GANGOO SINGH, **2 C.L.R. 389.**

(39)—*Power to dismiss case—Irregularity in dismissal—Transfer of case by Magistrate to Deputy Magistrate.*—S. T. brought a charge of theft against B. before a Magistrate. The case was made over to the Deputy Magistrate, on whose suggestion the Magistrate ordered that there should be a police enquiry. The Police Superintendent reported that, in his opinion, the charge was false, and that the plaintiff should be summoned for bringing a false charge; and the Magistrate, while declaring that he would not encourage charges of "false complaint," said that the injured party might swear an information if she chose. S. T. then petitioned to be allowed to call witnesses in support of her charge of theft, and objected to the police proceedings. The Magistrate recorded the following order:—"The case has been dismissed, and the accused, Mrs. B, has received permission to prosecute the woman S. T. for making a false charge; the present petition may be put in defence in that case." *Held* that the order of the Magistrate must be quashed—(1) because he had no jurisdiction, the case having been made over to the Deputy Magistrate; (2) because the order above was not a judicial dismissal of the case. Case remanded for trial of the original charge as brought by S.T. SHANTO TEORNI v. MRS. BELILIAS, **3 B.L R. App. 151.**

(40)—*Failure to show in Magistrate's opinion any criminal offence—Act* XXV *of* 1861, *s.* 180—*Act* X *of* 1872, *s.* 146—*Powers of a Magistrate.*

Complaint—continued.

——5.—**Dismissal of Complaint**—*continued.*

—The accused was charged before a Deputy Magistrate with an offence under s. 431, Penal Code. The Deputy Magistrate examined the complainant, took bail from the accused, but refused to examine the complainant's witnesses, although present, and delayed the investigation unnecessarily for a long time. The Magistrate of the district then called for the proceedings, and, having looked at them, considered that there was no case for the interference of the Criminal Courts, and discharged the prisoner, although he was present and under bail. *Held* that the Magistrate was not only competent, but bound to discharge the prisoner, if his conclusion that no offence was made out was correct; but *held*, also, that the Magistrate's conclusion was wrong, and that the act complained of, if true, did amount to an offence under s. 431 of the Penal Code; therefore, the Magistrate's order was set aside, and further enquiry ordered. NIAMUTULLA v. GOPAL SAHA, **6 B.L.R. Ap. 6=14 W.R. Cr. 63.**

(41)—*Examination of complainant—Interference by High Court—Act* X *of* 1872, *ss.* 144, 147, 295 *and* 296—*Act* XXV *of* 1861, *s.* 434.—Where a Magistrate had examined the complainant under s. 56 of Act XXV of 1861, and dismissed the complaint under s. 67, *held* that the High Court would not interfere under s. 434. REVISION OF PROCEEDINGS IN THE CASE OF FOKTU SHAH, **2 B.L.R.S.N. 6=10 W.R. Cr. 49.**

(42)—*Examination of complainant— Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 67—*Act* X *of* 1872, *s.* 147 — *Dismissal without enquiry.*—Where a District Magistrate removed a case from the file of the Joint Magistrate to his own, after complaint had been made and warrants issued by the Joint Magistrate upon the footing of the complaint, and thereupon suspended the warrant and dismissed the complaint without hearing it in due course of procedure, *held* that it was an improper proceeding; he ought to have proceeded with the case from the stage at which it was when he removed it. *In the matter of the petition of* RAGHOO PARIRAH, **10 B.L.R. App. 26=19 W.R. Cr. 28.**

(43)—*Preliminaries to dismissal—Recording evidence of complainant—Act* XXV *of* 1861, *ss.* 66 *and* 180—*Dismissal of complaint without recording evidence—Act* X *of* 1872, *ss.* 144 *and* 140.—A charged B before a Magistrate for wrongful confinement of her brother. Previous to the petition to the Magistrate, the charge had been investigated by the police, and reported to be false. The Magistrate without recording the complaint under s. 66 of the Code of Criminal Procedure, sent for the police papers, and under s. 180 of the same Code dismissed the case. *Held* that the proceedings were illegal; that the Magistrate was bound, under s. 66 of the Code of Criminal Procedure to record the examination of the complainant before he could, under s. 180, dismiss the complaint. DULALI BEWA v. BHUBAN SHAHA, **3 B.L.R. A. Cr. 53.** *See, also,* QUEEN v. HARRAK CHAND NOWLAKA, **8 W.R. Cr. 12=7 W.R. Cr. 47**; QUEEN v. SREENATH MOOKOPADHIA, **7 W.R. Cr. 45**; SATYA CHARAN GHOSE v. CHAIRMAN OF THE UTTERPARAH MUNICIPALITY, **3 C.W.N. 17.** (16 W.R. Cr. 68, *contra.*)

(44)—But s. 180, Crim. Pro. Code, 1861, applied to cases under Chap. XIV of the Code by force of s. 249 of Act VIII of 1869, and a Magistrate might dismiss a complaint under that chapter without calling evidence if he thought there was no sufficient ground for proceeding under it. QUEEN v. GOUR MOHUN SINGH, **16 W.R. Cr. 44=8 B.L.R. App. 11.**

(45)—*Hearing evidence—Dismissal without hearing evidence—Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 270—*Act* X *of* 1872, *s.* 209.—On the day fixed for hearing a complaint of trespass and assault made against three persons named, the complainant appeared with his witnesses, and the defendants also appeared; and on one of them being found to be a child of eight years of age, the Magistrate dismissed the case without taking any evidence. *Held*, the Magistrate was in error, and should not have dismissed the case, merely because one defendant was a child. He should have followed the procedure laid down in ss. 265 and 266. BILASH v. MAKROO, **2 B.L.R. S.N. 15=10 W.R. Cr. 61.**

(46)—*Hearing evidence—Dismissal without hearing evidence.*—A Magistrate ought to hear evidence in support of a charge before dismissing the complaint. A bare assertion by an accused, charged with committing theft of a proprietary right in the alleged stolen property, is no reason for a Magistrate to refuse to entertain the charge of theft. QUEEN v. KALI CHARAN MISSER, **7 B.L.R. App 55=16 W.R. Cr. 18.** [*Expl.*, 16 W.R. Cr. 68; *R.*, 33 C. 410=10 C.W.N 276=4 C.L.J. 102.]

(47)—*Dismissal after hearing evidence — Further proceedings—Acquittal— Crim. Pro. Code*, 1872, *s.* 147.—The further proceedings allowed by the Code of Criminal Procedure, s. 147, can only be taken in cases where the complainant has been alone heard, and not where he has had the advantage of having his witnesses heard. In the latter case, a dismissal would amount to a verdict of acquittal against the accused parties, and render a second trial on the facts impossible. NITYANUNDO BUR v. KALA CHAND BUR, **24 W.R. Cr. 75.**

(48)—*Non-appearance of complainant—Examination of complainant and his witnesses—Dismissal of complaint.*—The non-appearance of the complainant, on the day to which the hearing had been duly adjourned, may be a good ground for dismissing the complaint under s. 208, Crim. Pro. Code, 1872. The fact that the complainant and his witnesses have been examined and that their further attendance was not necessary, makes no difference. MUDHOO SOODUN SHA v. HARI DASS DASS, **22 W.R. Cr. 40.**

Complaint—continued.

——5.—Dismissal of Complaint—*continued.*

(49)—*Non-appearance of complainant—Dismissal of complaint.*—The charge of obstructing a road by repairing it without leave may be dismissed for the non-appearance of the complainant. QUEEN v. BHOLANATH BANERJEE, **7 W.R. Cr. 31.**

(50)—*Non-appearance of complainant—Prosecution witnesses being present—Dismissal of complaint.*—The accused may be discharged although the prosecution witnesses be present, if the complainant be absent and the Magistrate thinks it unnecessary to carry on the enquiry in the absence of the complainant. QUEEN v. DASSOO MANJEE, **11 W.R. Cr. 39.**

(51)—*Illegal adjournment—Non-appearance of complainant—Dismissal for default.*—A Magistrate cannot dismiss a case for default on the ground of the non-appearance of the complainant on a day to which no legal adjournment was made. MAHOMED ALUM v. SHEIKH AKIL, **16 W.R. Cr. 68.**

(52)—*Crim. Pro. Code, Act* X *of* 1882, s. 247 —*Dismissal of complaint for non-appearance —Effect.*—Where a complaint of mischief and trespass is dismissed for the non-appearance of the complainant, it amounts to an acquittal, and the Magistrate cannot proceed on another complaint for substantially the same offence. EMPRESS v. BHAWANI PRASAD, **A.W.N. 1885, 43.**

(53)—*Crim. Pro. Code* (1882), ss. 244, 245—*Acquittal without examination of complainant and his witnesses.*—A Magistrate cannot acquit an accused person without examining the complainant and his witnesses. QUEEN-EMPRESS v. TOULMAN, **Rat. Un. Cr. C. 539 = Cr. Rg. 11 of 1891.**

(54)—*Crim. Pro. Code, Act* X *of* 1882, ss. 200, 202—*Investigation by Police and report—Dismissal of complaint.*—The complainant preferred charges under ss. 161, 342 and 417 of the Penal Code against some Police officers. The Magistrate sent the case for investigation by the Police and dismissed it as false, on the receipt of the Police report, without examining the complainant. *Held* that the Magistrate had no authority to dismiss the complaint without following strictly the procedure laid down in Chap. XVI of the Crim. Pro. Code. JALALUDIN v. MUHAMMAD KHALIL, **A.W.N. 1884, 47.**

(55)—*Crim. Pro. Code* (1872), ss. 147, 298—*Dismissal of complaint—Fresh complaint.*—There is nothing in the law to prevent a Magistrate from entertaining a second complaint, when the first complaint has been dismissed under s. 147, Crim. Pro. Code. EMPRESS v. INDAR DAWAN, **A.W.N. 1881, 68.**

(56)—*Crim. Pro. Code* (1872), ss. 144, 146, 147—*Dismissal of complaint on report by subordinate officer, without examining the complainant.*—On a complaint of extortion, the Magistrate directed the Tahsildar to make an

Complaint—continued.

——5.—Dismissal of Complaint—*continued.*

enquiry. On receiving a report from the Tahsildar that the evidence was weak, the Magistrate dismissed the complaint without recording the statement of the complainant on oath or, apparently examining him. The High Court set aside the order, and directed him to examine the complainant and dispose of the charge according to law, observing that it was not apparent why the case was referred to the Tahsildar for enquiry, and that the provisions of s. 146, Crim. Pro. Code, 1872, should not be put in force without discrimination. EMPRESS v. LALLU, **A.W.N. 1881, 23.**

(57)—*Discharge of accused.*—In answer to a reference from a Sessions Judge, the High Court held that, in a case where the accused has been duly summoned or arrested under a warrant, and is present to meet any charge, and the complainant and his witnesses negligently fail to appear against him, if it be not shown to the Magistrate that the case is one in which he ought to adjourn the enquiry under s. 224, Code of Criminal Procedure, the accused person ought to be discharged; but also, *held* that the question did not arise under the circumstances of the case, and the case must go back to the Magistrate for investigation. TAKI MAHOMMED MANDAL v. KRISHNA NATH RAI, **7 B.L.R. 7 = 15 W.R. Cr. 53.**

(58)—*Crim. Pro. Code* (1861), s. 67—*Dismissal of complaint—Discretion of Magistrate.*—A Magistrate can, in his discretion, dismiss a complaint under s. 67, Crim. Pro. Code, 1861; and he is under no obligation to go further. BATOOL NUSHYO v BHUGLOO CHOWKEEDAR, **10 W.R. Cr. 50**; SHIBU MANJEE v. NOSHEE MOOKERJEE, **17 W.R. Cr. 3.**

(59)—*Dismissal of complaint, effect of—Interference by High Court—Crim. Pro. Code,* 1872, s. 212.—If the Magistrate dismisses a case rightly or wrongly as the result of judicial discretion, the dismissal has the effect of an acquittal, and the High Court has no jurisdiction to interfere with the dismissal except on an application made by the Government or on behalf of the Government. *In re* J.G. BAGRAM, **19 W R. Cr. 52.**

(59-*a*)—*Dismissal of complaint, effect of—Crim. Pro. Code,* 1872, ss 205, 212—*Omission to comply with formalities.*—The omission to comply with the prescribed formalities before issuing thesummons will not vitiate the proceedings after summons, so as to enable a complainant to re-open the case. The dismissal of a complaint under s. 205 operates as an acquittal by reason of s. 212, Crim. Pro. Code. THE EASTERN BENGAL RAILWAY COMPANY v. KALI DASS DUTT, **23 W.R. Cr. 63.**

(60)—*Dismissal of complaint after charge framed, effect of—Crim. Pro. Code,* 1872, s. 212. —When in a summons case a Magistrate after framing a charge dismisses the complaint under s. 212, Crim. Pro. Code, it amounts to an acquittal. IRFAN BISWAS v. JINNUT BIBEE, **25 W.R. Cr. 63.**

Complaint—continued.

——5.—**Dismissal of Complaint**—*continued.*

(61)—*Acquittal without regular trial—Power of Deputy Magistrate—Crim. Pro. Code* (1861), s. 250—*Practice and procedure.*—Under s. 250, Crim. Pro. Code (1861), the Magistrate should, in a case tried under Chap. XIV, take the evidence of the complainant and his witnesses and, if necessary, examine the accused, and then apply the law to the criminal acts, of the commission of which he may find there is *prima facie* evidence, frame charges, and call the accused to plead thereto, and to enter into a defence. GOONATH MUDLE v. TROYLOCKO CHUCKERBUTTY, **9 W R. Cr. 15.**

(62)—*Magistrate recording evidence for prosecution—Some more offences disclosed—Procedure.*—When a Magistrate, after having recorded the evidence of the prosecution and examined the accused, is of opinion that the facts disclose some more offences in addition to those with which the accused is charged, he must not dismiss the complaint but should adjudicate on the charge disclosed on enquiry. DEGUMBER PAUL v. KALLY DOSS DUTT, **8 W.R. Cr. 82.**

(63)—*Complaint not having been laid by the most responsible person.*—A complaint cannot be dismissed on the ground that the complaint ought to have been laid by a more responsible person. BOODHOO ROY v. RAMDYAL SINGH, **18 W.R. Cr. 55.**

(64)—*Delay in making charge—Want of material evidence—Effect—Dismissal of complaint.*—(1) Want of explanation of the cause of complainant's *presence* on the spot where the alleged assault was committed, (2) want of explanation of *delay* in making complaint, and (3) want of material evidence are not sufficient in law to justify a summary dismissal. MAHOMED JAN v. KHADI SHEIK, HURNATH DE KHASHKHIL v. JOYGOPAL DE SARKAR, HURIS CHANDRA DAS v. BOLA AUDHICAREE, SHEIK AHMUDDY v. ANUND MOHUN MOZOOMDAR, **16 W.R. 65, Cr.**

(65)—*Adultery—Dismissal of complaint without examining wife or without issuing process for other witnesses—Fresh enquiry.*—The dismissal of a complaint of adultery without examining the wife in the presence of her husband, the complainant, and without issuing process to compel the attendance of certain witnesses named by him is a material error necessitating a fresh enquiry. DOOKHA GOORE v. JAMES, **1 J.G. 24.**

(66)—*Charge of theft.*—A charge of theft should be enquired into before deciding it to be false or taking steps under s. 211, Penal Code. *In the case of* BISHOO BARIK, **16 W.R. Cr. 77.**

(67)—*Want of sanction to prosecute.*—When a Magistrate dismisses a complaint of offences under ss. 182 and 500, I.P.C., for want of sanction to prosecute, his order does not amount to an acquittal and he is bound to entertain a fresh complaint of the same offences, if made after obtaining sanction. *In re* SAMSUDIN, **Cr. Rg. 38 of 1896.**

Complaint—continued.

——5.—**Dismissal of Complaint**—*concluded.*

(68)—*Summons, right to—Duty of Magistrate.*—It is not competent to a Magistrate to refuse to issue a summons to a complainant, even in a case in which the charge might have been laid with the Police in the first instance. He must examine the complainant on oath and pass orders in the case. AMEER MAHOMED v. G. BRASS, **14 W.R. Cr. 36.**

See COMPOUNDING OFFENCE, 1 B. 64.

See CRIM. PRO. CODE. 1898, ss. 202, 435, 1, 2, 3, Rat. Un Cr. C. 669 = Cr. Rg. 27 of 1893.

Complainant absent—Order saying that case was 'struck off'—Legality and effect of order—Sanction to prosecute for false complaint—Necessity for sanction of Courts in case of fresh complaint—*See* CRIM. PRO. CODE, 1898, s. 259, 17 O.C. 18 = 23 Ind. Cas. 182 = 15 Cr. L.J. 230.

Complaint dismissed once—Subsequent complaint by another complainant on the same facts—Same tribunal—Different incumbent—Enquiry ordered by the High Court—*See* CRIM. PRO. CODE, 1898, ss. 437, 203, 12 A.L.J. 106 = 36 A. 129 = 15 Cr. L.J. 158 = 22 Ind. Cas. 734.

Not disclosing criminal offence—Dismissal of, by the Chief Court on revision—*See* CRIM. PRO. CODE, 1898, s. 439, 10 P.W.R. 1913, Cr. = 33 P.L.R. 1913 = 18 Ind. Cas. 688 = 14 Cr. L.J. 128.

Discharge without judicial investigation into the merits of the complaint—Inquiry into the same charge on a second complaint—*See* DISCHARGE OF ACCUSED, 17 O.C. 273 = 15 Cr. L.J. 638 = 25 Ind. Cas. 838.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 2 P. R. 1907, Cr. = 5 Cr. L.J. 491 = 49 P.L.R. 1907 = 18 P.W.R. 1907, Cr. = 6 Cr. L.J. 258, 8 C.L.R. 267.

——6.—**Withdrawal and Revival of Complaint.**

See COMPOUNDING OFFENCE.

(1)—*Withdrawal of complaint—Act* XXV *of* 1861, *s.* 270—*Act* X *of* 1872, *s.* 210.—Offences punishable under the Penal Code with more than six months' imprisonment are not triable under Ch. XV of the Code of Criminal Procedure, and consequently do not fall within the provisions of s. 271 of that Code. ANONYMOUS, **4 B.L.R. F.B. 41 = 12 W.R. Cr. 59.**

(2)—*Withdrawal of complaint and obligation of Magistrate to hear it—Effect of withdrawal—Acquittal.*—The withdrawal of a complaint by a complainant operates as an acquittal, and the High Court cannot entertain the matter at all, except upon an application duly made with sanction of the Government. LACHI BEHARA v. NITYANUND DOSS, **19 W.R. Cr. 55.**

(3)—*Complaint once instituted — Duty of Magistrate.*—Where once a complaint of a non-compoundable offence is before a Magistrate, he is bound to make a complete enquiry, and to see that the accused, if guilty, is brought to punishment. QUEEN v. DUDRAJ DOSADH, **22 W.R. Cr. 83.**

Complaint—continued.

——6.—**Withdrawal and Revival of Complaint**—*continued.*

(4)—*Duty of Magistrate—Remedy by civil suit.*—If, on a complaint duly made before a Magistrate, it should appear that the act imputed amounts to an offence under the Penal Code and that there is *prima facie* reason to suppose the accusation true, it is the duty of the Magistrate to proceed, although he may consider that a civil suit would afford the more convenient or appropriate remedy. QUEEN v. NUDAS MUHTON, **8 W.R. Cr. 65.**

(5)—*Criminal charge — Civil action.*—The complaint, if the allegations disclose a criminal offence, should not be dismissed because the case is one in which civil remedy is obtainable. KOSAL SING v. TOOLSHEE CHOWDHRY, **10 W.R. Cr. 40 (a).**

(6)—*Mischief — Criminal trespass — Civil action.*—On a joint Magistrate dismissing a case wherein the complainant charged the accused with illegal assembly, criminal trespass, and mischief, on the ground that the case was completely a civil case, the High Court set aside the order, and directed the joint Magistrate to try it. SHEIKH KOREEM BUX v. SHEIKH MOORMUT, **20 W.R Cr. 60.**

(7)—*Case where civil suit is the proper remedy —Procedure.*—The High Court would not interfere with an order of a Magistrate, in a complaint of theft because it appeared to him, after making enquiries from the police, before whom the complaint was in the first instance brought, that the complaint was one in respect of which only a suit in the Civil Court should be brought. QUEEN v. RUSSICK MONEE, **11 W.R. Cr. 54.**

(8)—*Penal Code, s. 498—Withdrawal of complaint—Crim. Pro. Code,* 1861, *s.* 271.—A complaint under s. 499, I.P.C., could not be withdrawn under s. 271, Crim. Pro. Code, 1861. But the husband, the complainant, could stay proceedings against the accused by declining to offer any evidence. MOHUN v. GUNSHAM, **8 P.R. 1871.**

(9)—*Withdrawal of a complaint of adultery.* —The power to permit the withdrawal of complaints is confined to cases falling for disposal under Ch. XV of the Crim. Pro. Code, 1861. Therefore a Magistrate is not competent to allow the withdrawal of a complaint of adultery. QUEEN v. GUMBHEER, **2 N.W.P. 234.**

(10)—*Crim. Pro. Code, s.* 147—*Revival of complaint.*—On a complaint of enticing away a married woman, a non-cognizable offence, and of theft, cognizable offence, being made to a Police officer, he enquired into the offence of theft only, scarcely noticing the allegation as to the enticing away of the woman, and reported to a Magistrate that no such offence was even *prima facie* made out. The Magistrate, thereupon, directed him to strike off the offence complained of from the list of reported offences. *Held* that this was no bar to the taking up of and proceeding with a fresh complaint of enticing away a married woman, inasmuch as there was no dismissal of the complaint in respect of that offence GOVERNMENT OF BOMBAY v. SHIDAPA, **5 B. 405.**

(11)—*Second complaint—First, dismissed summarily—Whether second, barred.*—A Magistrate is not precluded from taking up a complaint on the facts on which a similar complaint had been summarily dismissed on a former occasion, and, if it is shown that the complainant has some grounds for his complaint, the Magistrate should admit it. BHAGWAN DIN v DIBBA, **5 A L.J. 137 = A.W.N. 1908, 67 = 7 Cr. L.J. 297.** (22 A. 108, *D.*)

(12)—*Crim. Pro. Code,* 1861, *Ch.* XIV—*Dismissal of complaint for default—Fresh complaint.* — In cases triable under Ch. XIV, where a Magistrate, on account of the non-appearance of the complainant or for any other sufficient cause, is satisfied that the charge cannot be sustained he may dismiss the complaint. The dismissal will not bar the complaint being again entertained. HIGH COURT PROCEEDINGS, 8TH DECEMBER 1870, **6 M.H. C. App. 8.**

(13)—*Crim. Pro. Code,* 1882, *ss.* 203 *and* 537 —*Dismissal of complaint — Fresh complaint without setting aside the order of discharge.*— Where a complaint is dismissed under s 203, no fresh proceedings upon a new complaint on the same facts can be taken unless the order of dismissal is set aside in the manner provided by s. 203 by a competent authority. If such proceedings are instituted without setting aside the order of dismissal, the defect cannot be cured by s. 537 of the Code. NILRATAN SEN v. JOGESH CHUNDRA BHUTTACHARJEE, **23 C. 983 = 1 C.W.N. 57.** [*Diss.*, 29 M. 126, F.B. = 16 M.L.J. 79 = 1 M.L.T. 31, 2 L.B.R. 27, 1 N. L.R. 18; *F.*, 22 A. 106, 24 C. 286 = 1 C.W.N. 185; 28 M. 255 = 2 Weir 247-A; *Appr.*, 24 C. 528 = 1 C.W.N. 370; *R.*, 28 C. 652, F.B., 25 M. 61 = 2 Weir 271, P.C., 2 C.W.N. 290, 12 Cr.L. J. 320 = 10 Ind. Cas. 616, 9 P.R. 1902, Cr. = 50 P.L.R. 1902; *D.*, 28 C. 211 = 5 C.W.N. 169, 24 M. 337 = 10 M.L.J. 147 = 2 Weir 251, 28 M. 310 = 2 Weir 325-A.]

(14)—*Dismissal of complaint—Fresh complaint.*—When a complaint is dismissed under s. 203, the Magistrate has no jurisdiction to revive the proceedings upon a fresh complaint on the same facts, so long as the order of dismissal is not set aside by a competent authority under s. 437 of the Code. KOMAL CHANDRA PAL v. GOUR CHAND AUDHIKARI, **24 C. 286 = 1 C.W.N. 185.** (23 C. 983, *F.*) [*Diss.*, 29 M. 226 = 16 M.L.J. 79 = 1 M.L.T. 31, 2 L.B.R, 27, 1 N.L.R. 18, *F.*, 22 A 106 = A.W.N. 1899, 211, 28 M. 255 = 2 Weir 247-A, 2 C.W.N. 260; *R.*, 28 C. 652, 9 P.R. 1902, Cr. = 50 P.L.R. 1902; *D.*, 24 M. 337 = 2 Weir 351, 28 M. 310 = 2 Weir 325-A.]

(15)—*Complaint dismissed under s.* 203—*Fresh complaint—Procedure.*—Where a complaint is dismissed under s. 203 for the default of

Complaint—continued.

——6.— **Withdrawal and Revival of Complaint**—*continued.*

the complainant, the Magistrate cannot, on a subsequent appearance of the complainant, restore the case to the file and proceed to try the case. Before any fresh proceedings can be taken, the order of dismissal should be set aside by a competent authority. SIMBHOO RAM LALL v. KARI HAZARI, **3 C.W.N. 760.** [*R.*, 2 L.B.R. 27.]

(16)—*Crim. Pro. Code* (1882), ss. 202, 203, 437—*Dismissal of complaint—Power to revive proceedings.*—On a complaint being presented, the Magistrate took the statement of the complainant, recorded it briefly and called for a report from the Police on the matter, without asking him if he had any witnesses to call. On receipt of the report, the Magistrate dismissed the complaint. He did not record any reasons for distrusting the truth of the complaint, nor did he direct a local investigation to be made by a Police officer for the purpose of ascertaining the truth or falsehood of the complaint. *Held*, that the Magistrate did not comply with the provisions of s. 202, and that he ought not, merely on the report of the Police, to have dismissed the complaint under s. 203. *Held*, also, that, when the Magistrate, who had dismissed the complaint, ordered a further enquiry, on receiving the complainant's second petition, he did not act contrary to any provision of the law; and that, considering the circumstances under which the complaint had been dismissed, a further enquiry was necessary. QUEEN-EMPRESS v. PURAN, **9 A. 85 = A.W N. 1886, 307.** [*Diss.*, 28 C. 652; *F.*, 1 N.L.R. 18, 29 M. 126, F.B. = 1 M.L.T. 31 = 16 M.L.J. 79, 10 P.R. 1911, Cr. = 24 P.W.R. 1911, Cr. = 11 Ind. Cas. 132 = 12 Cr.L.J. 364 = 205 P.L.R. 1911; *R*, 28 C. 211 = 5 C.W.N. 169, 35 A. 78 = 10 A.L.J. 531 = 18 Ind. Cas. 146 = 14 Cr.L J. 2, 2 L.B.R. 27, 9 P.R. 1902 = 50 P.L.R. 1902; *D.*, 23 C. 983 22 A. 106.]

(17)—*Crim. Pro. Code*, s. 203—*Dismissal of complaint—Power to re-open the matter.*—It is utterly contrary to sound principles that one Magistrate of co-ordinate jurisdiction should, in effect and substance, deal with, as if it were an appeal or matter for revision, a complaint which has already been dismissed by a competent tribunal of co-ordinate authority. QUEEN-EMPRESS v. ADAM KHAN, **22 A. 106 = A.W.N. 1899, 211.** (23 C. 983, 24 C. 286, *F.*; 9 A. 85, A.W.N. 1895, 86, *R.*) [*Diss.*, 2 L.B.R. 27; *F.*, 28 M. 255 = 2 Cr.L.J. 752 = 2 Weir 247-A; *R.*, 28 C. 652, 8 Cr.L.J. 249 = 26 P.W.R. 1908, 1 N.L.R. 18; *D.*, 29 A. 7 = 3 A.L.J. 562 = A.W.N. 1907, 245, 36 A. 129 = 12 A.L.J. 106 = 15 Cr. L.J. 158 = 22 Ind. Cas. 734, 24 M. 337 = 2 Weir 251, 29 M. 126 = 3 Cr.L.J. 274 = 16 M.L.J. 79 = 1 M.L.T. 31, 5 A.L.J. 137 = A.W.N. 1908, 67 = 7 Cr.L.J. 297.]

(18)—*Crim. Pro. Code*, 1882, ss. 4, 203 *and* 437—*Revival of proceeding by a successor in office.*—Where an order of a Magistrate is a judicial and not an executive order and is one dismissing a complaint, it is not competent to the successor in office to set aside such order of his predecessor. INDERJIT SINGH v. THAKUR SINGH, **2 C.W.N. 290.** (23 C. 983 = 1 C.W.N. 57, 24 C. 286 = 1 C.W.N. 185, *F.*) [*R.*, 2 L.B. R. 27.]

(19)—*Charter Act—High Court's power to revise an order, reviving a complaint after discharge.*—The High Court has ample power, under the Charter, if not under the Code, to revise an order reviving a complaint after discharge. OPOORBA KUMAR SETT DASSI v. SREEMATTY PROBOD KUMARY DASSI, **1 C.W. N. 49.** [*F.*, 6 C.L.J. 705 = 6 Cr. L.J. 490; *Appl.*, 28 C. 709; *R.*, 27 C. 126 = 3 C.W.N. 601.]

(20)—*Crim. Pro. Code*, 1882, ss. 253, 403, 423, 439—*Warrant case—Discharge —Revival of complaint—Power of Presidency Magistrate—Power of High Court to direct further enquiry or order re-trial.*—An order of discharge under s. 253 does not, in a warrant case, operate as an acquittal, and is no bar under s. 403 to the retrial of any person so discharged. But a stipendiary Presidency Magistrate or any other Magistrate of co-ordinate authority has no power to sit as it were on appeal from the order of an Honorary Presidency Magistrate or other Magistrate of co-ordinate jurisdiction and to direct the issue of fresh process, notwithstanding that, upon a consideration of the same materials, the latter has dismissed the summons and discharged the accused. [*Diss.*, 28 C. 211; *R.*, 28 C. 652, 9 P.R. 1902, Cr. = 50 P.L.R. 1902; *D.*, 2 L.B.R. 27.]—Under s. 439, read with s. 423, and, possibly also under the Charters, it is open to the High Court to set aside such order of discharge, as is mentioned above and direct a retrial or further enquiry. GRISH CHUNDER ROY v. DWARKA DASS AGARWALLAH, **24 C. 528 = 1 C.W.N. 370.** (23 C. 983, *Appr.*; 7 M. 557, 1 C.W.N. 49, *Discussed*).

(21)—*Crim. Pro. Code*, 1898, ss. 195, 528—*Case pending before a Court—Power of superior Court to withdraw it or to grant sanction.* —When no final order has been made by a Magistrate in a case pending before him, a superior Magistrate who has transferred the case to the former's file, has no authority to pass an order of dismissal, nor to grant sanction for the prosecution of the complainant. SHEIKH KUTAB ALI v. EMPRESS, **3 C.W.N. 490.**

(22)—*Crim. Pro. Code*, 1882, *ss.* 259, 369 *and* 439—*Discharge of accused in a warrant case—Power of Presidency Magistrate to revive the case.*—Where a Presidency Magistrate has discharged the accused under s. 259, he has no jurisdiction to revive the case, much less to transfer it. DAMIND DASSI v. HURRY MOHAN MUKERJEE, **4 C.W.N. 46.** [*Diss.*, 28 C. 652 = 5 C.W.N. 457.]

(23)—*Crim. Pro. Code*, 1872, s. 210—*Withdrawal of complaint—Penal Code, ss.* 352 *and* 323.—Where a person complained that he had

Complaint—continued.

——6.—**Withdrawal and Revival of Complaint**—*continued.*

been seized by the hands and legs and thrown on the ground, stopped, thumbed, and stiffened on the chest by three persons, one of whom gave a knife to another with directions to stab the complainant, *held*, that the complaint was one of voluntary hurt, and that the Magistrate was wrong in treating the complaint as of criminal force, and in allowing it to be withdrawn. SAMBASIVANNA v. BHOGAPPA, **5 M. 378.**

(24)—*Withdrawal of complaint—Compounding of offences—Revival of complaint.*—When a compoundable offence has been compromised and the complaint withdrawn, the complaint may be revived, if it appeared that the compromise was the result of a promise on the part of the accused which he failed to fulfil. SYAD GHULAM HAIDAR SHAH v. SYAD RUKHAN ABDULLA SHA, **94 P.L.R. 1904.**

(25)—*Crim. Pro Code* (1898), *s.* 248—*Magistrate taking cognizance of case on police report made on complaint—Right of complainant to withdraw the case.*—Where a Magistrate had taken cognizance of a case against certain persons under ss. 143 and 504 Penal Code, upon the report of the police, made in consequence of a complaint made to them, *held*, that the Magistrate was not competent to allow the complainant to withdraw the case, inasmuch as there was no complaint in the case, the Magistrate taking cognizance of the case upon the police report. QUEEN-EMPRESS v. CHENCHAYYA, **23 M. 625 = 1 Weir 310.**

See ACT XIII OF 1859, ss. 1 and 2 (1), U.B. R. 1909, 2nd Qr. Workmen's Breach of Contracts Act, 1.

See ACT I OF 1871, s. 24, 5 Bom. L.R. 205.

Dismissal of, for default after partial hearing by Presidency Magisitrate—Institution of fresh proceedings—*See* ACT IV OF 1877, s. 124, 6 C. 523 = 8 C.L.R. 106.

See ACT I OF 1894, ss. 9 and 10, 27 C. 985 = 5 C.W.N. 131.

See ACT XII OF 1896, ss. 37, 44 (1), (2), 46, 57, 22 P.R. 1900, Cr.

See ACT VI OF 1898, ss. 61, 72, 10 C.W.N. 1029 = 4 Cr. L.J. 170.

See PUN. ACT XX OF 1891, s. 186, 2 P.R. 1892, Cr.

To police—*See* COMPENSATION—GENERAL, 7 M. 563.

See COMPENSATION—GENERAL, 2 N.W.P. 447.

See COMPENSATION—TO ACCUSED, 15 C.P. L.R. Cr. 194.

Complaint by Civil Court—*See* COURT FEES, 5 B.H.C. Cr. 104.

See CRIM. PRO. CODE, 1898, ss. 4 and 195, 30 C. 415.

See CRIM. PRO. CODE, 1898, ss. 4, 195, 537, A.W.N. 1904, 266.

Complaint—continued.

——6.—**Withdrawal and Revival of Complaint**—*continued.*

See CRIM. PRO. CODE, 1898, ss. 4 (*h*), 190 (*c*), 6 C.W.N. 926.

See CRIM. PRO. CODE, 1898, s. 190, 14 Bur. L.R. 250 = 4 L.B.R. 300, 3 C.L.J. 87 = 3 Cr. L.J. 209.

See CRIM. PRO. CODE, 1898, ss. 190, 192 and 254, 1 S.L.R. 119, Cr.

Power of Magistrate to refuse to initiate proceedings in cases initiated by Police report —*See* CRIM. PRO. CODE, 1898, ss. 190, 253, 1 A.L.J. 669.

See CRIM. PRO. CODE, 1898, ss. 195, 476, 5 C.W.N. 106.

See CRIM. PRO. CODE, 1898, s. 195 (*b*), 30 A. 52 = A.W.N. 1907, 288 = 4 A.L.J. 790 = 6 Cr. L.J. 396.

Ser CRIM. PRO. CODE, 1898, ss. 197, 527 and 177, 4 L B.R. 265 = 8 Cr. L.J. 70.

Bigamy, charge of—Persons competent to complain—*Sec* CRIM. PRO.CODE, 1898, s. 198, 25 A. 132 = A.W.N. 1902, 198.

See CRIM. PRO. CODE, 1898, s. 198, 25 A. 209 = A.W.N. 1903, 7.

By husband in charge of adultery—*See* CRIM. PRO. CODE, 1898, s. 190, 5 A. 233.

See CRIM. PRO. CODE, 1898, ss. 199, 238, 27 M. 61 = 2 Weir 236.

See CRIM.PRO. CODE, 1898, s. 353, Rat Un. Cr. C. 24 = Cr. Rg. 23-9-1869.

See CRIM. PRO. CODE, 1898, s. 403 (1), 6 A.L.J. 262 = 9 Cr. L.J. 526 = 31 A. 317 = 2 Ind. Cas. 219.

See CRIM. PRO. CODE, 1898, ss. 435 (1 to 3) 426, 439 (1 to 4) and 440, 4 C. 647.

First complaint—Second complaint by a different person — Same Acts — *See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 3 A.L.J. 562 = 4 Cr. L.J. 59 = A.W. N. 1906, 243 = 29 A. 7.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 17 C. P.L.R. 105.

See MAINTENANCE, 168 P.L.R. 1903.

See PENAL CODE, s. 182, 6 A.L.J. 236 = 9 Cr. L.J. 518 = 2 Ind. Cas. 199.

See PENAL CODE, s. 211, 29 A. 587 = A.W.N. 1907, 195 = 4 A.L.J. 471 = 6 Cr. L.J. 42.

See RAPE, 29 C. 415 = 6 C.W.N. 677.

See REVISION—GENERAL PRINCIPLES, 3 L B.R. 234, F.B.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION ETC., 13 M. 144.

See SANCTION TO PROSECUTE—CONDITION REQUISITE FOR GRANT OF SANCTION ETC., 8 P.R. 1908, Cr. = 15 P.W.R. 1908, Cr. = 149 P. L.R. 1908 = 7 Cr. L.J. 353, 2 C.L.J. 619 = 10 C.W.N. 222 = 3 Cr. L.J. 112, 2 P.W.R. 1909, Cr. = 9 Cr. L.J. 152 = 37 P.L.R. 1909 = 1 Ind. Cas. 93, 6 O.C. 1.

***Complaint*—concluded.**

—— **6.—Withdrawal and Revival of Complaint**—*concluded.*

Distinction between complaint by private individuals and complainant by Courts—*See* SANCTION TO PROSECUTE—REVOCATION OF SANCTION, 13 B. 109.

See SANCTION TO PROSECUTE—WHO MAY APPLY FOR SANCTION, 9 C.P.L.R. Cr. 27.

See WARRANT CASE, 13 B. 600.

Compoundable Offence.

See COMPOUNDING OFFENCE.

Compounding Offence.

See COMPLAINT—WITHDRAWAL AND REVIVAL OF COMPLAINT.

See CRIM. PRO. CODE, 1898, s. 345.

See WITHDRAWAL OF PROSECUTION.

(1)—*Conviction set aside on appeal—Liberty to compound when retrial ordered—No sanction of Court necessary.*—Where the accused is charged with an offence which is compoundable, and is convicted by the Magistrate, but, on appeal, the conviction is set aside and a retrial ordered. *Held*, that it is open to the complainant and the accused to compound the case, in the same manner in which a case may be compounded before conviction by the Magistrate. *Held*, further that it was not necessary in this case, to apply to the Court for permission to compound. UMRAI v. MAKBULAN, **3 A.L.J. 523=A.W.N. 1906, 200=4 Cr. L.J. 35.**

(2)—*Penal Code, s. 214—Crim. Pro. Code* (1872), *s.* 210.—Whenever the words "voluntarily," "intentionally," "fraudulently," "dishonestly," or others, whose definition involves a particular intention, enter along with a specified act into the description of an offence, the offence, not being one "irrespective of the intention," is not one which the exception to s. 214 by itself allows to be compounded without the parties incurring the penalties prescribed by that and the next preceding section. The offence to admit of compromise, must be one in this sense irrespective of the intention; and it must be one for which a civil action may be brought at the option of the person injured, instead of criminal proceedings. The offence of voluntarily causing grievous hurt cannot legally be compounded. REG v. RAHIMAT, **1 B. 147** [*R.*, 13 Cr. L.J. 721=16 Ind. Cas. 753=6 S.L.R. 76.]

(3)—*What offences are not compoundable.*—Offences punishable under any law other than the Penal Code are not compoundable. (*Vide* last tabular statement in sch. ii, Crim. Pro. Code). QUEEN-EMPRESS v. GAUBAR, **S.C. 78 Oudh.**

(4)—*Compounding of offences—Test.*—The compoundability of an offence charged is the sole or decisive test for determining the class of offences which concern individuals only, as distinguished from those which have reference to the interests of the State. DALSUKHRAM HURGOVINDAS v. CHARLES DE BRETTON, **6 Bom. L.R. 73.**

Compounding Offence—*continued.*

(5)—*Crim. Pro. Code* (1882), *s.* 345—*Compoundable offences.*—The general principle of the law of England that felonies and serious misdemeanours shall not be compounded is embodied in s. 345, Crim. Pro. Code, which says that no offence not mentioned in the section shall be compounded; and neither that of culpable homicide, nor that defined in s. 304-A is mentioned there. The Magistrate should find upon the evidence whether the accused should be discharged or charged with an offence, and should decide that only a compoundable offence had been proved before he allows compounding. QUEEN-EMPRESS v. NARAN, **Rat. Un. Cr. C. 699=Cr. Rg. 28 of 1894.** [*R.*, 1 L.B.R. 349.]

(6)—*Crim. Pro. Code* (1872), *s.* 188—*Charge of adultery—Compounding of the offence—Penal Code, s.* 497.—Where, after the conviction by a Sessions Judge of a person charged with adultery, and during the pendency of the appeal in the High Court, the complainant, who had taken his wife back to live with him, had asked the High Court to be allowed to compound the offence, *held*, that the sanction for compounding could not be given at that stage of the proceeding. EMPRESS OF INDIA v. THOMPSON, **2 A. 339.** [*R.*, 14 Cr. L.J. 46=18 Ind. Cas. 270=11 A.L.J. 13.]

(7)—*Withdrawal of a complaint of adultery.*—The power to permit the withdrawal of complaints is confined to cases falling for disposal under Ch. XV of the Crim. Pro. Code, 1861. Therefore, a Magistrate is not competent to allow the withdrawal of a complaint of adultery. QUEEN v. GUMBHEER **2 N.W.P. 234.**

(8)—*Compounding offence—Kidnapping.*—The offence of kidnapping can be lawfully compounded. The withdrawal of such a charge by the complainant has the effect of an acquittal. QUEEN v. GOPEE MOHUN MITTER, **22 W.R. Cr. 26.**

(9)—*Wrongful restraint.*—The offence of wrongfully restraining another may be lawfully compounded. MOTHOORANATH BHOOMICK v. NO. 1, KENARAM KURMAKAR, **7 W.R. 33.**

(10)—*Compromise—Assault resulting in intentional grievous hurt.*—Although an assault may be compromised, an assault which results in the intentional infliction of grievous hurt cannot be compromised. REG. v. MUDAN MOHAN, **6 N.W.P. 302.** [*F.*, 1 B. 147.]

(11)—*Crim. Pro. Code, Act X of* 1872, *s.* 345—*Compounding of offence of hurt—Grievous hurt—Subsequent complaint.*—Where an offence which, at the time of the complaint, was believed to have caused only simple hurt, was compounded, and subsequently the complainant applied to have the case taken on file again on the ground that the offence had turned out to be one of grievous hurt and therefore non-compoundable, *held* thet the first compounding was legal. EMPRESS v. UNKAR, **A.W.N. 1884, 13.**

Compounding Offence—*continued.*

(12)—*Crim. Pro. Code,* s. 213, *et seq* –*Compounding of warrant case—Dismissal—Revival of proceeding.*—The dismissal of a warrant case —falling under the provision of s. 213, *et seq,* of the Code of Criminal Procedure, 1872, which is not therefore compoundable—on the parties coming to an amicable settlement regarding the matter in dispute, amounts to a discharge. There could, therefore, be no bar to the renewal of the proceedings, if that should otherwise be thought necessary. Housebreaking in order to commit theft is not an offence which, according to s. 214, I.P.C., can be legally compounded, and a withdrawal from the prosecution in such a case has not, according to s. 188, Crim. Pro. Code, 1872, the effect of an acquittal. Such a withdrawal cannot, therefore, affect the revival of the prosecution. REG. v. DEVAMA, **1 B. 64.** [*F*, Rat. Un. Cr. 330, Rat. Un. Cr. 391 ; *Appr.*, 29 M. 126=16 M.L.J. 79=1 M.L.T. 31 ; *R.*, 10 B. 131, 28 C. 652=5 C.W.N. 457 ; *D.*, 37 B. 369=2 Bom. Cr. C. 17=15 Bom. L.R. 61=14 Cr. L.J. 77=18 Ind. Cas. 413]

(13)—*Guarantee on condition of not taking criminal proceedings—Compounding felony.*—A man, to whom a civil debt is due, may take securities for that debt from his debtor, even though the debt arises out of a criminal offence and he threatens to prosecute for that offence, provided he does not, in consideration of such securities, agree not to prosecute. He must not, however, by stifling a prosecution obtain a guarantee from third parties. KESSOWJI TULSIDAS v. HURJIVAN MULJI, **11 B. 566.** [*R.*, 28 A. 718=3 A.L.J. 506=A.W.N. 1906, 212 ; 11 C.L.J. 131=5 Ind. Cas. 98; 11 Ind. Cas. 321=31 P R. 1911=192 P L.R. 1911; 16 Ind. Cas. 555=8 N.L.R. 97; 17 O.C. 213 ; *D.*, 9 P.R. 1906=19 P.L.R. 1906.]

(14)—*Crim. Pro. Code* (1898), s. 345—*Compounding offence of mischief done to private property of village Mahar.*—The accused was charged under s. 427, I.P.C., with having caused damage to the complainant's property. The Magistrate refused to allow the offence to be compounded, because the damage was done to a village Mahar, and, therefore, could not be treated as damage affecting only a private person, as Mahars had duties to perform in connection with the village. *Held* that the offence was compoundable, as the damage was caused to harvested crops, which were the private property of the complainant. The fact that the complainant was a village Mahar would not make his personal property, the property of the public or even of the Mahar community generally. *In re* MOTIRAM, **22 B. 889.**

(15)—*Charge of adultery — Withdrawal of charge by husband —Revisional powers of High Court.*—Where in the case against the accused who was charged with adultery which was withdrawn by the husband of the woman, the Assistant Sessions Judge ordered the accused to be discharged, *held,* that the High Court would not be exercising its discretion properly in interfering in the matter .REG. v. RAMLO JERIO, **5 B.H.C. Cr. 27.**

Compounding Offence—*continued.*

(16)—*Crim. Pro. Code* (1872), s. 188—*Withdrawal of offence under* s. 323, *Penal Code.*—The offence of voluntarily causing hurt is one which may be lawfully compounded and, therefore, withdrawal from the prosecution in such a case is permissible under s. 188, Crim. Pro. Code. REG. v. JETHA BHALA, **10 B.H.C. 68.** [*Disappr.*, 1 B. 147.]

(17)—*Crim. Pro. Code* (1882), s. 345—*Compoundable offences—Penal Code,* s. 323.—The offence punishable under s. 323, I.P.C., is, by s. 345, Crim. Pro. Code (1882), compoundable irrespective of the permission of the Court. EMPRESS v. RAM GOPAL, **A.W N. 1886, 167.**

(18)—*Penal Code,* ss 323, 353—*Crim. Pro. Code, Act* X *of* 1882, s. 345—*Compounding.*—Where a person is prosecuted for offences under ss. 323 and 353 of the Penal Code and the complainant applies to have the case under s. 323 struck off, the Magistrate should allow the composition and proceed only in respect of the other offence. EMPRESS v. CORRIE, **A.W.N. 1884, 256.**

(19)—*Crim. Pro. Code* (1882), s. 345—*Compoundable offences—Penal Code,* ss. 323, 342.—The offences punishable under ss. 323 and 342, I.P.C., are compoundable under s. 345, Crim. Pro. Code. EMPRESS v. KHUDA BAKSH, **A.W.N. 1883, 245.**

(20)—*Counter-cases under ss.* 342, 353—*Penal Code—Evidence in both cases taken together—Evidence of accused—Compounding.*—In a case where there were counter-charges between the parties of offences under ss. 342 and 353 of the I.P.C., the Magistrate took evidence in both cases, without having come to a decision in either case, and eventually allowed the charges to be compounded : *Held* that the Magistrate's procedure in hearing the two counter-charges before coming to a decision in either was not illegal, but that he should not have taken the evidence of an accused person on oath against the persons accused by him until the case against himself had been disposed of ; and that the order of compounding should be reversed. QUEEN-EMPRESS v. SORABJI ; QUEEN-EMPRESS v. BUDAN, **Rat. Un. Cr. C. 331=Cr. Rg. 22 of 1887.**

(21)—*Crim. Pro. Code,* s. 345—*Compounding offences—Offence under* s. 148, *Penal Code.*—In a case before a Magistrate, the evidence disclosed an offence under s. 148, I.P.C. The complainant subsequently applied to withdraw the case on the ground that some of his witnesses had turned around. The Magistrate allowed the offence to be compounded under s. 345, Crim. Pro. Code. *Held,* that the Magistrate acted without jurisdiction in allowing the compounding of a non-compoundable offence. EMPEROR v. ASMAL HASAN, **4 Bom. L.R. 718.**

(22)—*Crim. Pro. Code* (1882), ss. 345, 560—*Compounding of offences —Compensation.*—Where an offence is compounded undes s. 345, it is incompetent to a Magistrate to award compensation under s. 560, Crim. Pro. Code. In a

Compounding Offence—*continued.*

case where there is neither a discharge nor an acquittal, but only a composition, s. 560 does not apply so as to enable the Magistrate to award compensation to the accused. QUEEN-EMPRESS v. RAOJI, **Rat. Un. Cr. C. 700 = Cr. Rg. 29 of 1894.**

(23)—*Compounding of offence—Compensation.*—Although the composition of an offence under s. 345 has the effect of an acquittal yet, it is not an acquittal so as to bring the case within the provisions of s. 560, Crim. Pro. Code. The Magistrate is not, therefore, competent to award compensation to the accused. QUEEN-EMPRESS v. SANGAPPA, **Rat. Un. Cr. C. 957 = Cr. Rg. 8 of 1898.**

(24)—*Penal Code, s.* 214, *excep.—Compromise of a prosecution.*—It is not every compromise of a criminal prosecution out of Court which is a breach of the positive law. RAJ KRISTO MOITRO v. KOYLASH CHUNDER BHUTTACHARJEE, **8 C. 24.**

(25)—*Jurisdiction of Magistrate to record compromise order—Ss.* 248, 259 *and* 437, *Crim. Pro. Code.*—The mere fact of the accused having been sent by the Police would not prevent an offence (under s. 448 of the Penal Code), which is legally compoundable, from being compromised; and a District Magistrate, relying upon ss. 248 and 259, Crim. Pro. Code, and professing to act under s. 437, would not be warranted in setting aside an order of compromise recorded by a Deputy Magistrate of the first class under such circumstances. Ss. 248 and 259 have no bearing at all upon the case. QUEEN-EMPRESS v. NOWAB JAN, **10 C. 551.**

(26)—*Penal Code, s.* 211—*Compounding of the original charge—Charge against the complainant under s.* 211 *of the Code.*—The compounding of the original charge is not a conclusive answer to the charge made against the complainant under s. 211, Penal Code. QUEEN-EMPRESS v. ATAR ALI, **11 C. 79.** [*R.*, 18 Ind. Cas. 149 = 17 C.W.N. 238 = 16 C.L.J. 467 = 14 Cr.L.J. 5]

(27)—*Crim. Pro. Code* (1882), *s.* 345—*Compounding offences—Burden of proof—Effect of compounding.*—Where an accused person charged with an offence, under s. 341, Penal Code, pleaded the compounding of the charge as a bar to the jurisdiction of the Magistrate, *held*, that, having regard to the fact that the accused person was a European and the complainants were ignorant coolies, and that the Police had a hand in the compounding of the offence, the burden of proving the validity of the composition lay with the accused and that he had not sufficiently discharged that burden. *Per Prinsep, J.*:—The compounding of an offence signifies that the person, against whom the offence has been committed, has received some gratification, not necessarily of a pecuniary character, to act as an inducement for his desiring to abstain from a prosecution, and the law provides that a composition would have the effect of an acquittal. In the case mentioned above, it was for the accused, who raised an objection to the jurisdiction of the Magistrate, to show that there was a composition valid in law. *Per Trevelyan, J*:—Compounding an offence is more than a mere promise to withdraw a prosecution. It supposes an arrangement by which the parties have settled their differences, and, in the more usual acceptance of the term, implies that the prosecution has received some consideration or gratification for dropping the prosecution. Although the provisions of the Contract Act may not apply, the proof of the arrangement must be similar to that which the Court requires for the proof of any agreement which is in issue. Unless it appears that the parties were free from influence of every kind and were aware fully of their respective rights, it would be impossible to give effect to a so-called arrangement or composition. MURRAY v. QUEEN-EMPRESS, **21 C. 103.** [*R.*, 14 Cr. L J. 292 = 19 Ind. Cas. 948 = 6 S.L.R. 284.]

(28)—*Effect of compounding.*—If, in the case of a compoundable offence, the complainant intimates to the Court that he has compounded it and desires to withdraw the complaint, the order passed by the Magistrate allowing the withdrawal is in respect to the *offence* and not solely in regard to the *person* actually under trial at the time. In so providing, the law contemplates that all the accused persons should be under trial at the same time before a judicial officer, unless in some exceptional circumstances such as their absconding, or sickness, or some such reason, the attendance of some of them cannot be obtained. CHANDRA KUMAR DAS v. EMPEROR, **7 C.W.N. 176.**

(29)—*Penal Code, ss.* 213, 214, 406—*Compounding offences.*—The offence of criminal breach of trust, being one into which the element of dishonesty enters, cannot, under the terms of ss. 213 and 214, I.P.C., be lawfully compounded. *In the matter of* REFERENCE FROM THE CHIEF PRESIDENCY MAGISTRATE, **6 C.L.R. 392.**

(30)—*Crim. Pro. Code* (1898), *s.* 345—*Filing of petition of compromise—Duty of Magistrate—Withdrawal of compromise.*—Where, on the filing of a petition of compromise, in respect of a compoundable offence, the Magistrate examines the complainant and satisfies himself as to her understanding the same, it is his duty to accept the compromise and to dismiss the case or acquit the accused. He is wrong in ordering the petition to be put up with the record. Where a *bona fide* petition of compromise withdrawing a case has been filed, the complainant cannot subsequently withdraw the compromise and insist upon the case being tried. KUSAM BEWA v. BECHU BEWA, **3 C W.N. 322.**

(31)—*Crim. Pro. Code* (1898), *s* 345—*Petition of withdrawal or compromise—Duty of Magistrate.*—A Magistrate should make an order either granting or refusing application for withdrawal or compromise. He is not competent to order the petition to be filed for consideration with the evidence in the case.

Compounding Offence—*continued.*

Where a petition is put in to compound a compoundable offence, it is the duty of the Magistrate to allow the parties to compound the offence and to acquit the accused MAHOMED ISMAIL v. FAIZUDDI, **3 C.W.N. 548.**

(32)—*Crim. Pro. Code* (1872), *s.* 188—*Compoundable offences—Enticing away a married woman and criminal breach of trust.* — The offences of enticing away a married woman with a criminal intent and of criminal breach of trust are not offences which may lawfully be compounded. REG. v. MUTHAVAN, **1 M. 191.**

(33)—*Compounding of offences, nature of—Civil action for damages, effect of.*—Compounding imports a corrupt agreement to stifle a prosecution or to forbear prosecuting, and it is, on this account, against the policy of the law, to allow offences to be compounded. The bringing of a civil action does not import that any corrupt agreement has been entered into or that forbearance from criminal proceedings has been corruptly purchased. The institution of a suit is not inconsistent with the intention eventually to have recourse to criminal proceedings. VIRANNA v. NAGAYYAH, **3 M. 6=5 Ind. Jur. 467.** (6 W.R. Cr. 9, *R.*) [*R.*, 4 M. 410, 14 C.P.L.R. 121.]

(34)—*Penal Code, s.* 404—*Compounding of the offence.*—An offence under s. 404, Penal Code, is not one of the class of offences that may be compounded. HIGH COURT PROCEEDINGS, 30TH JUNE 1874, **7 M.H.C. App. 34.**

(35)—*Compounding of offences for a consideration.*—A consideration that proceeds upon the withdrawal of criminal proceedings that have been instituted is illegal as being opposed to public policy and as amounting to the stifling of the prosecution. SRIRANGACHARIAR v. RAMASAMI AIYANGAR, **4 M.L.J. 106.**

(36)—*Crim. Pro. Code* (1882), *s.* 345—*Compounding of offences—Persons competent.*—By s. 345, the only person who can compound the offence of hurt is the person to whom the hurt is caused. The widow of the person to whom the hurt was caused cannot compound the offence. *In re* GANGAMMA DORAYYA, **2 Weir 418.**

(37)—*Crim. Pro. Code* (1898), *s.* 345—*Compromise of compoundable offences—Conviction, validity of.*—Where the parties have compromised an offence compoundable under s. 345, and have filed the petition of compromise, the Magistrate is not competent to convict the accused. KORA RAMAN v. KANDAN, **2 Weir, 418.**

(38)—*Alteration of conviction from non-compoundable offence to compoundable offence* —A person convicted by a Magistrate of a non-compoundable offence was on appeal acquitted of that offence, but convicted of a compoundable offence, for which he had not been tried by the Magistrate. *Held*, that the accused should not have been convicted of the offence without any opportunity having been given him to effect, if possible, a composition of the offence. GIRWAR SINGH v. QUEEN-EMPRESS, **3 O.C. 314.** [*R.*, 11 Cr. L.J. 496 =7 Ind. Cas. 539=13 O.C. 161.]

(39)—*Lawful composition* —Although a lawful composition may be effected within the scope s. 345, Crim Pro. Code, 1882, without the passing of any consideration or gratification, there must be some arrangement between the parties settling their differences. When the accused denied the charge and did not even allege that there had been any composition between him and the complainant, nor had the complainant uttered a word which would be construed into an admission that he had compounded the offence, *held*, that there had been no composition of the offence. HAIDAYAT ALI v. EMPRESS, **9 P.R. 1896, Cr.**

(40)—*Crim. Pro. Code* (1898), *s.* 345—*Penal Code, s.* 147—*Rioting—Magistrate allowing the offence to be compounded—Reasons for so allowing—Order* ultra vires.—A Magistrate has no jurisdiction to allow a non-compoundable offence to be compounded, on the ground that it would probably be better for the complainant to do so, that the accused also wished for the compromise, and that it was probable that the case might in the end turn out to be a compoundable offence. Such an order is *ultra vires.* The offence of rioting under s. 147, Indian Penal Code, being an offence against the public tranquility, primarily concerns the State more than the individual; and that is probably one reason why it was not made a compoundable offence. KING-EMPEROR v. HIRA SINGH, **11 P.R. 1907, Cr.=34 P.W.R. 1907=47 P.L.R. 1908.**

(41)—*Competency of minor to compound offence.*—The effect of s. 345, Crim. Pro. Code, read with s. 3 of the Indian Majority Act, 1875, is that a person under the age of 18 years cannot lawfully compound the offences declared to be compoundable by the first portion of the former section. SHIB SINGH v. EMPRESS, **17 P.R. 1891, Cr.**

(42)—*Crim. Pro. Code* (1898), *s.* 345—*Compounding an offence—Accused pleading not guilty—Compromise valid—Intervention of respectable persons.*—In a case, wherein the accused does not plead guilty, and the matter is settled by respectable persons and a compromise entered into, the Court is not concerned to inquire into the nature or value of the consideration; and if the complainant considers that his grievance is redressed, by the fact of respectable persons intervening, even though he may not have received any money payment or even a direct apology from the accused, the complainant is at full liberty to compound the prosecution. CROWN v. LILARAM, **2 S.L.R. 16, Cr.=10 Cr. L.J. 228.**

(43)—*Duty of Magistrate before allowing composition—Penal Code, ss.* 324, 325—*Crim. Pro. Code* (1898), *s.* 345.—Before allowing composition of an offence alleged to fall under s. 325,

Compounding Offence—*continued.*

Penal Code, a Magistrate should take sufficient evidence to satisfy himself that the offence really falls under that section and that the case is one in which composition may fitly be allowed. When allowing composition under s. 345 (2) of the Crim. Pro. Code, the Magistrate should briefly state his reasons for granting sanction in order that, if any appeal is preferred, the High Court may be in a position to judge whether discretion has been properly exercised In a case falling under s. 324 or 325, Penal Code, the Magistrate should take into consideration all the circumstances of the case and should bear in mind that such an offence is punishable not only for the satisfaction of the injured person, but also to protect society by deterring others from committing similar offences. The degree of prevalence of such offences at any particular place or time may fitly be considered in determining whether composition should or should not be allowed. CROWN v. KONOO MEAH, **1 L.B.R. 349**, (Rat. Un. Cr. C. 699, *R.*)

(44)—*Crim. Pro. Code* (1882), *ss.* 345 *and* 403—*Composition of offence under Magisterial sanction—Whether improper discharge.*—S. 345 of the Crim. Pro. Code gives no authority for the composition of an offence under s. 325 of the Penal Code. The composition of such an offence is not a composition of an offence under s. 345 of the Crim. Pro. Code, and there is nothing in s. 345, or in any other part of the Crim. Pro. Code, to give such a composition the effect of an acquittal. There is thus nothing in s. 403 of the Crim. Pro. Code to prevent a District Magistrate from treating any such composition under magisterial sanction as an improper discharge. QUEEN-EMPRESS v. PO BA, **L.B.R. 1893-1900, 240.**

(45)—*Option of Magistrate to allow composition—Penal Code*, ss. 324, 334—*Crim. Pro. Code*, s. 345.—Where a Magistrate finds that a case is not one under s. 324, Penal Code, as sent by the Police, and decides to charge the accused under s. 334, the offence becomes compoundable by the person to whom the hurt is caused, and the Court has no option but to allow it to be compounded. S. 334 is inapplicable to a case where an accused person throws a stone at a Police constable and hits another person causing hurt. QUEEN-EMPRESS v. NGA SAN HLA, **L.B.R. 1893-1900, 484.**

(46)—*Non-compoundable offence—Duty of Magistrate—Compromise.*—If a Magistrate considers that on the facts alleged a non-compoundable offence has been committed, it is his duty to decline to recognise any compromise and to proceed with the case. *In re* ABDUL ALLY SAHIB, **2 Weir 151.**

(47)—*Compounding after committal—Effect of, on committal.*—A committal once made of an accused person by a Magistrate to the Sessions, cannot be annulled by his allowing the prosecutor to file a compromise. QUEEN v. SALIM SHEIK, **2 W.R.Cr. 57.**

(48)—*Code of Criminal Procedure, s.* 345—*Compounding of an offence—Compromise.*—In

Compounding Offence—*concluded.*

applying the provisions of s. 345 of the Code of Criminal Procedure a Magistrate is not restricted to the specific offence entered in the complaint or Police report but is bound to satisfy himself that the facts alleged do not disclose the commission of any offence other than a compoundable offence. SITARAM v. HIRA LAL, **16 C.P.L.R. 178.**

Contract compounding assault—*See* ACT IX OF 1872, s. 23, 5 W.R.S.C.C. Ref. 16.

See ACT IX OF 1872, s. 23, 4 M.H C. 14, 7 W.R. 33, 6 Bom.L.R. 73.

See COMMITMENT TO SESSIONS COURT, 4 A. 150.

See COMPENSATION—GENERAL, 10 Bom. L.R. 1056=9 Cr. L.J. 186.

See CRIMINAL BREACH OF TRUST, 30 P.R. 1879, Cr.

Case compounded—Award of compensation—Illegal—*See* CRIM. PRO. CODE, 1898, s. 250, 30 P.R. 1910, Cr.=197 P.L.R. 1910=44 P.W. R. 1910, Cr.=8 Ind. Cas. 387=11 Cr. L.J. 638.

See ENTICING AWAY MARRIED WOMAN, 22 P.L.R. 1910, Cr.

See GRIEVOUS HURT, 19 P.R. 1902, Cr.

See PENAL CODE, s. 214, 14 M. 400= 1 Weir, 195=1 M.L.J. 163, 3 A. 283.

When grievous hurt is compoundable—*See* PENAL CODE, ss. 335 and 338, S.C. 74, Oudh.

See REVISION—MISCELLANEOUS CASES, 7 A.L.J. 103.

Compromise.

See COMPOUNDING OFFENCE.

See CRIM. PRO. CODE, 1898, s. 345.

(1)—*Compromise by lawful guardian.*— A compromise by the lawful guardian of a minor acting *bona fide* for his benefit, cannot be set aside even at his instance, except on proof of fraud, and the subsequent extravagance or misconduct of the guardian could not revive an obligation which was once lawfully satisfied. PARVATHI v. RAMASWAMI ROWTH, **2 Weir, 630.**

Termination of proceedings—Petition of—Subsequent proceeding, if legal—*See* CRIM. PRO. CODE, 1898, s. 145, cls. 5 and 6, 9 Ind. Cas. 167=12 Cr L J. 32=15 C.W.N. 568.

Appellate Court—Power to sanction compromise—*See* CRIM. PRO CODE, 1898, ss. 323, 345 (5), 439, 463, 11 A.L J. 13=18 Ind. Cas. 270=14 Cr.L.J. 46.

See EVIDENCE — NON-ADMISSIBILITY OF EVIDENCE, 25 C. 736=2 C.W.N. 484.

Compromise of maintenance claim—Duty of Magistrate—*See* MAINTENANCE, 2 Weir 629, 631.

Arbitration—Order made without evidence not validated by consent—*See* NUISANCE UNDER CRIM. PRO. CODE, 10 C.L.J. 482=11 Cr.L.J. 1=4 Ind. Cas. 436.

See PENAL CODE, s. 422, 22 W.R. Cr. 46.

Compulsory Labour.

Unlawful—Slavery — *See* PENAL CODE, ss. 370, 374, U.B.R. 1897—1901, Vol. I, 337.

Compulsory Labour, Madras.

See MAD. ACT I OF 1858.

Concealment of Birth.

See PENAL CODE, s. 318, 1 Weir 334=4 M. H.C. App. 63.

Conception.

Advocating checks to—*See* PENAL CODE, s 292, Rat. Un. Cr. C. 620.

Concubinage.

See PROSTITUTION.

See MAINTENANCE, 2 Weir 641.

Concubine.

Guardian transferring a minor to another as —*See* PENAL CODE, s. 372, 1 Weir 373.

Concurrent Finding of Fact.

Doubt—Revision—First report—Setting aside of—*See* CRIM. PRO. CODE, 1898, s. 439, 5 P. W.R. 1913, Cr=14 Cr.L.J. 320=19 Ind. Cas. 1008=152 P.L R. 1913.

Revision—Of two Courts — Insufficient evidence—*See* CRIM. PRO. CODE, 1898, s. 439, 12 P.W.R. 1913, Cr.=66 P.L.R. 1913=19 Ind. Cas. 148=14 Cr.L.J. 148.

Revision—Of two Courts—Strong element of doubt—*See* CRIM. PRO. CODE, 1898, s. 439, 28 P.W.R. 1912, Cr.=16 Ind. Cas. 520=13 Cr. L.J. 712.

See PENAL CODE, s. 411, 18 P.W.R. 1914, Cr.=113 P.L.R. 1914=15 Cr.L.J. 521=24 Ind. Cas. 833.

Concurrent Sentences.

See SENTENCE—CONCURRENT SENTENCES.

Conditional Order.

Vague and indefinite—Final order, scope of—*See* CRIM. PRO. CODE, 1898, ss. 133, 137, 140, 11 C.L.J. 114.

Conduct.

Of a brother of the accused where no privity is shown—Admissibility — *See* CHARGE TO JURY — MISDIRECTION, 10 C.W.N. 153=3 Cr.L.J. 141.

Previous—and character—Evidentiary value of—*See* EVIDENCE—GENERAL, 10 W.R. Cr. 17.

Confession.

1.—GENERAL.
2.—CONFESSIONS MADE TO POLICE OFFICERS.
3.—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY — RECORD OF CONFESSIONS.
4.—CONFESSIONS OBTAINED BY INDUCEMENT, THREAT, ETC.

Confession—continued.

5.—RETRACTED CONFESSIONS.
6.—CONFESSIONS BY CO-ACCUSED—ADMISSIBILITY.
7.—MISCELLANEOUS.

See ACCOMPLICE.

See ACCUSED PERSON.

See ADMISSION.

See APPROVER.

See CRIM. PRO. CODE, 1898, ss. 164, 364.

See EVIDENCE ACT, 1872, ss. 17—31.

See PARDON.

See PLEA OF GUILTY.

——1.—General.

(1)—*Evidence Act, s. 26—Confession, definition of—Admissibility in evidence.*—A 'confession' is 'an admission made at any time by a person charged with a crime stating or suggesting the inference that he committed the crime.' So, an incriminating statement, which falls short of an absolute confession, but from which the inference of guilt follows, is a 'confession.' Such a statement, if made by the accused while in police custody, ought to be excluded from consideration as inadmissible in evidence. HAKIMAN v. KING-EMPEROR OF INDIA, **51 P.L.R. 1905=2 Cr. L.J. 239=20 P R. 1905. Cr.**

(2)—*Evidence Act, ss. 24, 25, 26, 30—"Confession," meaning of the term.*—The word "confession," as used in the sections of the Evidence Act relating to confessions, should not be construed as including a mere inculpatory admission which falls short of being an admission of guilt. A statement by a person who admits that he witnessed the perpetration of a crime, but denies having participated in it, and alleges that he protested against it, does not, therefore, amount to a confession. QUEEN-EMPRESS v. JAGRUP, **7 A. 646=A W.N. 1885, 131.** [*F.*, 4 Ind. Cas. 1028=5 L. B.R. 131; *R.*, 10 Cr. L.J. 369=3 Ind Cas. 742=11 Bom. L.R. 633, 14 Ind. Cas. 896=12 M.L.T. 1=1912 M. W.N. 549; *Doubted*, 13 Cr. L.J. 305=14 Ind. Cas. 849=1912 M.W.N. 207=22 M.L.J. 490=11 M.L.T. Sup. 1=35 M. 247.]

(3)—*General cases—Voluntary confession—Effect.*—If there is no reasonable doubt that a confession is voluntary and genuine it is legal and sufficient proof of guilt. QUEEN v. JHURREE, **7 W.R Cr. 41.**

(4)—*Confession distinguished from admission.*—All the admissions of an accused person are not, in the eye of the law, confessions. It is also impossible to hold that admissions only mean statements made by parties to civil proceedings, and that they do not include statements of accused persons in criminal proceedings. A confession may be defined as "an admission made at any time by a person charged with an offence, stating or suggesting the inference that he committed the offence." When the statement, taken by itself, does not suggest the inference of guilt, in relation to the particular charge, it is not a confession. To ascertain, whether a certain statement, made by an

***Confession*—continued.**

——1.—General—*continued.*

accused person, is an admission only, or amounts to a confession, a reference must always be made to the terms of that statement. ILAHI BAKSH v. EMPRESS, **16 P.R 1886, Cr**

(5)—*Confession by persons charged with theft, used against accused charged with concealment of stolen property.*—Where a Magistrate used against an accused person, charged with assisting in the concealment or disposal of stolen property, confessions made by others tried for theft, *held*, that the confessions were not admissible under s. 30, Evidence Act, against the first, who was not charged with the same offence. MUSA v. EMPRESS, **31 P.R. 1885, Cr.**

(6)—*Information by accused to the Police—Discovery of property—Admissibility of such information—Evidence Act, s. 27.*—Where the accused gave certain information to the Police and in consequence of which certain property was discovered, *held*, that such information could be proved, although it was given while the accused was in police custody and though they were present when the search caused by their information was made. GANGU v. EMPRESS, **30 P.R. 1885, Cr.** [*R.*, 28 P.R. 1894, Cr.]

(7)—*To be regarded with caution.*—A plea of guilty, no less than a confession, must be regarded with caution. CROWN v. ZOOLFOO, **47 P.R. 1866, Cr.**

(8)—*Confession, to be received and acted upon with caution.*—Where the proof in a case is limited to a confession made by an accused person, it is essential that too much stress should not be laid upon it. CROWN v. OOMRA, **31 P. R. 1867, Cr.**

(9)—*Confession to be regarded and acted upon with caution.*—A Judge, who is to decide whether a confession is admissible in evidence or should be rejected, should exercise all necessary caution and vigilance, before admitting as voluntary, any confession tendered in evidence. But, in coming to a decision on this point, a Court should govern itself by the law and principles which regulate the procedure and adjudication in a Court of Justice and should not be influenced by conjecture or preconceived prejudice in recording what should be a decision based upon reasoned conclusions from the evidence adduced. A subsequent, interested, irresponsible and unsupported allegation of misconduct on the part of the police should not be taken as sufficient to remove from consideration altogether a confession duly recorded by a Magistrate under the safeguards enjoined by the Legislature. NGA SHWE KIN v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 145.**

(10)—*To be taken as a whole.*—Unless the prosecution can show that any part of the confession of an accused person, so far as it exculpates him, is untrue or violently improbable, it is not fair to act on it so much as to incriminate him, omitting all that which goes to explain his own conduct and diminish the gravity of his offence. The only fair method is to take the confesssion as a whole. MAUNG PO THIN v. QUEEN-EMPRESS, **L.B.R 1872—1892, 324.** QUEEN-EMPRESS v. EINGTI, **L. B.R. 1872—1892, 327.**

(11)—*Confession to be taken as a whole—Per Jardine, J.*—Where an accused person makes a confession, the confession is evidence in his favour as well as against him, and must be taken as a whole. *Per Candy, J.*—A confession must be taken as a whole and considered along with the admitted facts of the case, and the accused must be judged by his whole conduct. The Court is at liberty to disregard any self-exculpatory statements contained in the confession, which it disbelieves. QUEEN-EMPRESS v. DADA ANA, **15 B. 452.**

(12)—*Confession to be taken as a whole.*—Where a confession contains extenuating as well as incriminating matter, the extenuating portion must be taken into consideration no less than the incriminating portion, except when there is evidence to contradict it. CROWN v. SUMUNDUR, **4 P.R. 1872, Cr.**

(13)—*Part of confession not to be tendered in evidence—Confession to be taken as a whole.*—A prosecutor is not to be allowed to give in evidence part of a confession made by a prisoner, but it must be put in proof as a whole, so that the jury in the one case, and the Judge and the assessors in the other, may have the fullest means of testing its accuracy and forming their opinion as to whether the whole or part, and what portion of it, can be believed. For example, if one passage in a statement made by a prisoner standing by itself amounts to an admission of guilt, it is not alone to be regarded, if there are passages qualifying or contradicting it. A confession ought not to be rejected merely because there has been in the confession a false statement on a material point. EMPRESS v. MOHARMAN SINGH, **A.W.N. 1883, 148.**

(14)—*Confession to be taken as a whole.*—A prisoner's confession must be taken in its entirety. QUEEN v SHAIK BOODHOO, **8 W.R. Cr. 38**; QUEEN v. SONAOOLLAH, **25 W.R. Cr. 23**; GOLOKE CHUNDER CHOWDHRY v. MAGISTRATE OF CHITTAGONG, **25 W R. Cr. 15.**

(15)—*Statement of accused inconsistent with each other.*—The ordinary rule of taking confessions as a whole and giving the accused (in the absence of other evidence against him) the benefit of any circumstance that may appear in his favour therefrom, cannot apply to confessions which are diametrically opposed to each other; but only where the more favourable view is absolutely inconsistent with the general tenor of the confession. QUEEN v. NITYO GOPAL DASS BYRAKEE, **24 W.R. Cr. 80.**

(16)—*Confessions of prisoner in one case evidence in another.*—The confessions of the prisoner in one case in which he was convicted cannot be used against him in another case, unless

Confession—continued.

——1.—**General**—*continued.*

they are deposed to on oath either by the person who took them down, or by some one else who heard them. *In the case of* MUNGER BHOOYAN, **10 W.R. Cr. 56.**

(17)—*Confessions to Magistrate—Sufficiency of confession—Corroborative denial of statement in Sessions Court.*—The properly attested confession of a prisoner before a Magistrate is sufficient for his conviction without corroborative evidence although there is a subsequent denial before the Sessions Court. QUEEN v. BHUTTUM RUJWUN, **12 W.R. Cr. 49.**

(18)—*Inconsistent statements, credibility of.*—The words actually used by an accused, who is said to have confessed, ought to be ascertained. The Court should not accept merely the conclusions at which the witnesses, deposing to a confession, themselves arrived from the answers which the accused gave to the questions put by them Where an accused person makes two distinct statements,—the one amounting to a confession of guilt, the other repudiating guilt,—if the one statement is taken against the accused, the other also must be taken, for what it is worth in his favour. The Court ought to weigh well the relative credibility of the two statements before it accepts the one in preference to the other. QUEEN v. SOOBJAN, **10 B.L.R. 332.**

(19)—*Husband and wife only living together—Death of wife—Cause of death not ascertained—Presumption against husband.*—*Held*, that, where the accused's own confession is the only evidence against him, accounting for the commission of the crime with which he is charged, it must be accepted, in so far as it is not inconsistent with reason and other surrounding circumstances. *Held*, also, upon the above principle, that, where A and his wife only were living together, and the death of his wife occurs at his house, and the circumstances relating to her death are absolutely unknown, and A does not admit that he has killed her, the dissatisfaction of A with her and his ill-treatment of her, as well as his attempt to dispose of her body, are not sufficient to bring home the offence of murder to him, but, in the absence of exculpating circumstances, which he has to prove, he can be found guilty of culpable homicide, not amounting to murder. GOPAL SINGH v. CROWN, **19 P.W.R. 1907, Cr. =6 Cr. L.J. 260.**

(20)—*S. 27, Evidence Act—Discovery arising out of confession.*—An accused person, while in the custody of the Police, made a full confession, that he had murdered a boy, to the Police and the *lambardars* and offered to point out the spot where he had concealed the body. He subsequently took the Police and the *lambardars* to the place, and examined the body himself, which was identified as that of the missing boy. *Held* that the fact discovered being the boy's body lying buried in the place shown, and the information received from the accused (which related distinctly to that fact) being that the accused offered to show where the body lay buried, the information that the accused had killed the boy did not distinctly relate "to the discovery of the body" within the meaning of s. 27, Evidence Act, and was not, therefore, admissible. GANU v. EMPRESS, **28 P.R. 1894, Cr.** (14 B. 260, *F.*; 15 P.R. 1885. Cr., 30 P.R. 1885, Cr, *R.*)

(21)—*Confession—Admissibility and value as evidence—Practice.*—Under ordinary circumstances, a confession cannot be accepted as sufficient for a conviction, unless it is supported by material facts established independently of the confession itself. Experience shows that unfounded confessions are not infrequently made from one motive or another natural to humanity and that consequently the Courts have to be on their guard against being led astray by such deceptions. It is, therefore, the practice in general to require some support for a confession and reasonable consistency with the surrounding circumstances about which there is no doubt. NGA SHUE TAT v QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 152.**

(22)—*Practice—Confessions of some of the accused—Trial with others—Procedure to be adopted.*—Some of the accused pleaded guilty to a charge of dacoity brought against them and other persons jointly tried with them. The Judge did not record their conviction but went on with the trial till the end. *Held*, that the Judge had committed an irregularity, inasmuch as he should have recorded the conviction of the confessing accused and then gone on with the trial of the others. SURJAN SINGH v. KING-EMPEROR, **12 A.L.J. 1239.**

(23)—*Confession, how construed.*—Where people are so ignorant, as Burmans are, of the most elementary legal principles, it is extremely dangerous to accept an admission as a plea of guilty without the closest scrutiny of the meaning of the acknowledgment. MI NYEIN v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 72.** (U.B.R. 1897—1901, Vol. I, 78, *R.*)

(24)—*Essentials of, to be admissible against the accused—Retracted confessions.*—To use a confession as evidence against the accused, the Court must be satisfied (i) that it is voluntary, and (ii) that it is substantially true. Moreover, it is a general rule of practice not to act upon retracted confessions, unless they are corroborated on material points by credible independent evidence. CROWN v. MOTAN, **2 S.L.R.Cr. 34= 10 Cr.L.J. 200.**

(25)—*Conviction not to be based upon bare confession.*—Notwithstanding that the law sanctions the conviction of an accused person upon a bare confession, it is not yet an approved practice to solely rely upon it ordinarily. CROWN v. CHOUGATTA, **3 P.R. 1868, Cr.**

(26)—*Accomplice—Confession—Corroboration.*—The accused was convicted of offences under

Confession—continued.

——1.—General—*continued.*

ss. 392, 109 and 411 of the Indian Penal Code. The case against the accused rested (1) on the confession of a co-accused ; (2) on his confession before a *lambardar;* and (3) on his production of stolen property. It was proved that there was enmity between the accused and the *lambardar*, who took an active part in the investigation, and the confession before him was made in the presence of the Deputy Inspector of Police. The property found was such as could not be identified. *Held*, that the confession made by the accused was inadmissible in evidence and the other evidence against him was insufficient and that he must be acquitted, DASU v. EMPEROR, **11 P.L.R. 1904.**

(27)—*Confession—Corroboration necessary—Weight and admissibility of confession as against co-accused.*—X. Y and Z were convicted of murder. X made a confession before the committing Magistrate incriminating himself, Y and Z. In the Sessions Court X retracted the confession. In corroboration of the confession it was proved that he gave information which led to the discovery of an axe and a *chadar* from the house of his brother. Both these articles were the property of the accused and blood colouring matter was found on them. He had been seen going together with Y and Z on the road from their village to the village where the murder took place. On appeal the Chief Court upheld the conviction of X and set aside the conviction of Y and Z.—*Held*, that the confession of X was admissible against him and was sufficiently corroborated but it was not sufficient to convict Y and Z of the offence of murder. MUHAMMAD v. CROWN, **5 P.L.R. 1915=3 P. W.R. 1915, Cr.=16 Cr.L.J. 157=17 Ind. Cas. 221.**

(28)—*Case depending on circumstantial evidence—Confession.*—Where a case depends upon circumstantial evidence, it is usual to find a confession to bolster up such evidence. Courts should attach little importance to such a confession. NAZIR JHAMDAR v. EMPEROR, **9 C.W. N. 474=2 Cr.L.J. 255.**

(29)—*Accused's statement, admissibility of.*—The mere absence of the questions in a prisoner's statement does not render it inadmissible. EMPRESS v. SAGAMBUR, **12 C.L.R. 120.** [*R.*, 9 Cr.L.J. 250=1 S.L.R. Cr. 6.]

(30)—*Crim. Pro. Code* (1882), *s.* 344—*Remand after confession—Validity.*—Where the accused had already made a confession and produced an article stolen from the boy, who was alleged to have been murdered, he could not be remanded "in order to get from him a confessional statement." REFERRED TRIAL NO. 54 OF 1885, **2 Weir 414.**

(31)—*Confession, made at the close of a trial, nature of.*—A confessional statement made at the close of the trial is not a plea of guilty, upon which the Sessions Judge can record a finding without taking the verdict of the Jury. After the prisoner has claimed to be tried, all the evidence, whether the statements of the witnesses or the admission of the prisoner, should be laid before the Jury. HIGH COURT PROCEEDINGS, 12TH NOV. 1866, **2 Weir 334.**

(32)—*Nature of confession made voluntarily—Admissibility and value of.*—Where a confession appears to be made voluntarily and to be a true and probable one from the circumstantial evidence in the case, it may be accepted as true, QUEEN-EMPRESS v. JANU *bin* DHONDI, **Rat. Un. Cr. C. 867.**

(33)—*Voluntary confession, evidentiary value of.*—Where a confession is deliberately and voluntarily made in a manner inconsistent with any suspicion of oppression or improper inducement, and it is amply sufficient to prove the guilt of the accused, it may be accepted as conclusive in itself without further corroboration. QUEEN-EMPRESS v. SANGAPPA. **Rat. Un. Cr. C. 463=Cr. Rg. 22 of 1889.**

(34)—*Admissibility of—Judge to decide its voluntariness—Jury to decide whether it is true or false—Crim. Pro. Code* (*Act* V *of* 1898), *s.* 298.—The question whether a confession was voluntarily made or not has to be decided by the Judge himself for the purpose of admitting it in, or excluding it from, the evidence in the case. If the Judge finds it was voluntarily made and was not caused by any threat or inducement, he must admit it in evidence; once it is so admitted, it is for the jury to say whether it is true or not. EMPEROR v. KESARI DAYAL KANJI, **11 Bom. L.R 332=2 Ind. Cas. 517.**

(35)—*Act* I *of* 1872 (*Evidence*), *s.* 91—*Applicability of, when writing is not evidence of matter recorded—Search list—Whether excludes oral evidence as to matters recorded therein—Confession—Non-compliance with Government order—Weight to be attached to Government Order—Question whether confession was voluntary—Oral evidence to prove—Admissibility—Crim. Pro. Code, s.* 167.—S. 91, Evidence Act, presupposes that, where a certain matter is required by law to be reduced to writing, the writing is itself evidence of the matter so reduced, and the section does not apply if the writing is not evidence of the matter. A search list is not evidence of the matter stated therein and it does not therefore exclude oral evidence of such matter. As regards a confession, the only question to be determined is whether the confession was voluntary or not. A Government Order prescribing rules as to the mode of recording any confession or statement under s. 167, Crim. Pro. Code, has not the force of law, and failure to comply with its provisions, though it might be a circumstance to be considered in deciding the question whether a confession was made voluntarily or not, does not preclude admission of evidence to prove the character of the confession. PUBLIC PROSECUTOR v. SARABU CHINNAYYA, **33 M. 413.**

***Confession*—continued.**

——1.—General—*continued.*

(36)—*Confession—Evidentiary value.*—The test for appreciating the evidence of witnesses cannot appropriately be applied in estimating the value to be attached to a confession. The statements of an accused person are not subject to an examination on oath compelling his attention to accuracy in details. The credence given to such statements when they are voluntary, rests upon the improbability of an accused person deliberately adhering to a self-criminatory statement which is substantially false. And thus variations in detail are of less importance in considering the effect of a confession, than they would be in considering a deposition incriminating a person other than the deponent. EMPEROR v. YELLARADDI *bin* RUDRARADDI, **6 Bom. L.R. 773.**

(37)—*Proof of confession—Language foreign to Magistrate*:—Where the confession of a prisoner is made in a language foreign to the recording Magistrate, and is interpreted to him by some person who is not an official interpreter, such confession cannot be regarded as properly proved by the testimony of the Magistrate which is only hearsay evidence. The signature of the accused in the translated record of confession is no evidence of its correctness, when there is no proof of the record having been accurately translated to the prisoner. QUEEN-EMPRESS v. LAKSHMYA *bin* BHIMA, **Rat. Un. Cr. C. 855 = Cr. Rg. 22 of 1896.**

(38)—*Confession of mere presence at a murder.*—A confession by an accused of his mere presence at a murder as a neutral onlooker is not, in the absence of any other evidence, sufficient to convict him of murder. QUEEN-EMPRESS v. SAHADU LAKSHMAN, **Rat. Un. Cr. C. 771 = Cr. Rg. 35 of 1895.**

(38-*a*)—*Burden of proof—Rape on a child—Complaint of robbery—Report of Chemical Examiner—Confession.*—The accused, who belonged to the menial staff of a railway station, were convicted of ravishing a girl 11—13 years of age, who was travelling in a train and was left at the station while getting a drink. Their confessions were recorded by a Magistrate of the first class a day after the occurrence, and the Chemical Examiner's report supported the girl's story. On appeal it was contended that the confessions were not admissible in evidence and that the girl having in the first instance complained only of the robbery of her ornaments was not a credible witness. *Held* that the contentions were not valid, for the confessions were validly recorded and appeared to be voluntary, and the fact that the girl in the first instance complained only of robbery of the ornaments to the strangers was natural. SOSNI v. CROWN, **93 P.L.R. 1910 = 8 Ind. Cas. 494 = 11 Cr.L.J. 665.**

(39)—*Confession—Question as to admissibility.*—Where a confession was objected to on the ground that it was improperly received in evidence by the lower Court, the High Court declined to disturb the discretion exercised by the lower Court, on the grounds that the objections now advanced could well have been advanced before the lower Court, and that there was nothing improper, on the facts of the case, in the lower Court's admitting the confessions. QUEEN-EMPRESS v. VIJIALAKSHMI, **Rat. Un. Cr. C. 163.** [*Appl.*, 32 B. 111 = 9 Bom.L.R. 789 = 6 Cr. L.J. 164 = 2 M.L.T. 414.]

(40)—*Evidence Act—Confession by an accused of abetment only—Admissibility against co-accused.*—The confession of an accused is not admissible against another accused where it amounts only to a confession of abetting the principal offence charged against him and the other. QUEEN-EMPRESS v. BALA; QUEEN-EMPRESS v. KEDARI, **Rat. Un. Cr. C. 153.**

(41)—*Confession—Plea of torture urged in appeal—Record—Procedure—Inquiry directed by High Court as to how the confession was obtained.*—Where the accused, who had been convicted chiefly on confessions made by them before the Magistrate, asked in appeal that an enquiry be made whether the confessions were voluntary or caused by undue influence on the part of the police, *held* that the record by the Magistrate that he had warned the accused that it was optional with them to answer the questions or not, though conclusive as to the fact of such warning, did not preclude the necessity for the enquiry prayed for. It is a grave error in law and procedure to refuse to make such enquiry. [*R.*, Rat. Un. Cr. C. 254, 242, 245, 25 B. 168.] Where the Crown did not object to the order made by the High Court, in directing the inquiry above referred to, to take a statement on solemn affirmation from the accused, *held*, that the objection as to the illegality of such an order could not be taken after it was made. REG v. KASHINATH DINKAR, **8 B. H. C. Cr. 126.**

(42)—*Crim. Pro. Code, Acts* XXV *of* 1861 *and* VIII *of* 1869, *ss.* 203, 209, 211—*Statements on conditional pardon—Admissibility in evidence—Act* II *of* 1855, *s.* 32.—A voluntary statement given by an accused person on conditional pardon is admissible in evidence against him under s. 32 of Act II of 1855. S. 203 of the Crim. Pro. Code does not prohibit the admission of such evidence, having regard to ss. 209 and 211, Crim. Pro. Code, 1861. REG v. ALIBHAI MITHA, **8 B.H.C. Cr. 103.**

(43)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 298—*Evidence Act,* I *of* 1872, *s.* 24—*Confession—Duty of Sessions Judge*—It is the duty of the Sessions Judge to decide whether a retracted confession is admissible under s. 24 of the Evidence Act. Where none of the disabling circumstances referred to in that section exists, the jury should be directed that the confession may be presumed to be admissible. The statement that "the mere fact of the withdrawal suggests that the confession was obtained in an improper manner" is too broad to be correct law. QUEEN-EMPRESS v. GANU *bin* MATHAJI **Rat. Un. Cr. C. 842 = Cr. Rg. 12 of 1896.**

***Confession*—continued.**

——1.—General—*continued.*

(44)—*Evidence Act*, I *of* 1872, *s.* 24—*Confession—Acquittal by jury.*—Where it was not shown that a confession was induced by illegal pressure, and the confession was also borne out by other evidence, the High Court agreed with the Sessions Judge in convicting the accused, differing from the jury, who held him not to be guilty. RAG v. BULVANT PENDHARKAR, **11 B.H C. 137.** [*F.*, 19 B. 728, 25 B. 168; *R.*, Rat. Un. Cr. Cas. 245, 719, 842.]

(45)—*Confession, when not voluntarily made, admissibility of.*—The admitted ill-usage,—*viz.*, the unjustifiable violence used to the accused for his arrest, illegal detention of the accused in police custody for more than twenty-four hours after his arrest, and the marks on his person,—was *held* to have vitiated the voluntary character of his confession, which was, therefore, not admitted in evidence. QUEEN-EMPRESS v. APPA, **1 Bom. L.R. 357.**

(46)—*Confession alleging that it was not voluntary.*—Where the accused makes a statement in writing containing an allegation, from which it is to be inferred that the statement of which it forms a part was not voluntarily made, *held* that such a statement is not admissible under the provisions of the Crim. Pro. Code. EMPEROR v. TARANATH ROY CHOWDHRY, **37 C. 735=8 Ind. Cas. 653.**

(47)—*Accused making confession—Magistrate enquiring as to its voluntary character at the end of the statement—Effect—Value of confession which is partly false.*—The fact that the Magistrate, instead of asking the accused about the voluntary nature of the confession at the commencement of the confessional statement, asked him at the end, is merely a defect of form that does not alter the character of the confession. The entire confession should not be rejected merely because parts of it have been found to be false. After the entire statement of a prisoner has been given in evidence, any part of it may be contradicted by the prosecution if they choose to do so, and then the whole testimony is left open for consideration precisely as in other cases where one part of the evidence contradicts another. Even without such contradiction it is not to be supposed that all the parts of a confession are entitled to equal credit. If sufficient grounds exist, the part that charges the prisoner may be believed, while that which is in his favour may be rejected. PULIN TANTI v EMPEROR, **40 C. 873=22 Ind. Cas. 169=15 Cr. L.J. 25.** ((1829) 3 C. and P. 603, (1830) 4 C. and P. 221 and 397, *R.*)

(48)—*Magistrate recording confession.*— A Magistrate recording a confession, under s. 164, Crim. Pro. Code, is other than the Magistrate who has jurisdiction in the case. *In re* BEHARI HADGEE, **3 J.G. 2.**

(49)—*Confession made before prosecution witnesses out of Court and not recorded by Magistrate, weight of—Penal Code, s.* 218—*Pay-sheets drawn up in Railway offices, whether a "record"—Accused sentenced by Magistrate under two offences, one of which was exclusively triable by Court of Sessions—Sentence under each offence not specified—Objection as to irregularity and want of jurisdiction verbally taken for first time before High Court—Apportionment of aggregate sentence—Conviction and sentence, setting aside of.*—There is nothing in law to prevent a Court acting upon extra-judicial confessions made by the prisoner to prosecution witnesses out of Court and not recorded by a Magistrate. Such confessions may be, though cautiously, considered by the Court. A pay-sheet drawn up in a Railway Office and setting out certain sums as due by the Railway to certain coolies described as working in a special gang, is a record within the meaning of s. 218, Penal Code. Where a person was charged before a Magistrate of two offences, one of which was exclusively triable by a Court of Sessions, and the Magistrate awarded an aggregate sentence without specifying any particular sentence awarded in respect of each of the offences, the High Court, on objection as to the irregularity and want of jurisdiction being verbally taken for the first time before it, apportioned the sentence between the two offences and set aside the conviction and sentence in respect of the offence exclusively triable by a Court of Sessions. KESRI MAL v. EMPEROR, **15 Cr. L.J. 502=24 Ind. Cas. 590.**

(50)—*Crim. Pro Code* (1898), *ss.* 164, 342, 364—*Evidence Act*, *ss.* 21, 29.—A confession, to come within the scope of s. 164, Crim. Pro. Code, must be made either (1) in the course of an investigation under Ch. XIV, or (2) at any time afterwards and before the commencement of the enquiry or trial. The condition requiring the confession to be prior to the commencement of the enquiry or trial is only imposed when the investigation has ceased, and not when it is made in the course of the investigation. *Held*, also, that it cannot be contended that a confession recorded by a Magistrate, who afterwards conducts the enquiry, is outside the provisions of s. 164, Crim. Pro. Code. *Obiter.* The argument that the confessions, if recorded after the commencement of the trial, would be inadmissible in evidence, cannot be sustained, because the argument seeks to derive from the provisions of the Code, a limitation on the law of confession as defined by the Evidence Act. for which there is no sufficient warrant. Ss. 364, 342, 364, Crim. Pro. Code, are not exhaustive and do not limit the generality of s. 21, Evidence Act, as to the relevancy of admissions. The mere fact that a statement was elicited by a question does not make it irrelevant as a confession under s. 164, Crim. Pro. Code, or s. 29, Evidence Act, though such fact may be material on the question of its voluntariness. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467=14 C.W.N. 1114=7 Ind Cas. 359=11 Cr.L.J. 453.** [*F.*, 13 Cr. L.J. 433=15 Ind. Cas. 65=39 C. 119.]

Confession—continued.

——1.—**General**—*concluded.*

(51)—*Recording of, before the commencement of judicial proceedings.*—A Magistrate may make, what the police may not, a record of any statement, whether a confession or not, made to him before judicial proceedings commence. S. 80, Evidence Act, expressly provides for proof of the document, distinguishing it from a record of evidence, as well as s. 533, Crim. Pro. Code. LALU v. EMPRESS, **2 P.R. 1893, Cr.**

See CRIM. PRO. CODE, 1898, s. 162, 9 Bom. L.R. 789 = 6 Cr. L.J. 164 = 2 M.L.T. 414 = 32 B. 111, F.B.

By an accomplice—Admissibility of evidence—Illegal inducement or threat—Withdrawal of case against co-accused—Discharge — *See* CRIM. PRO. CODE, 1898, s. 337, 5 C.L.J. 224 = 5 Cr. L.J. 142.

Value of confession not well proved.—*See* CRIM. PRO. CODE, 1898, s. 439, 28 P.W.R. 1912, Cr. = 16 Ind. Cas. 520 = 13 Cr. L J. 712.

Admission of guilt while departmental enquiry was going on—Whether could be proved in judicial proceeding—*See* EVIDENCE ACT, 1872, s. 91, 12 A.L.J. 306 = 36 A. 222 = 15 Cr. L.J. 569 = 25 Ind. Cas. 321.

Secondary evidence, if admissible—*See* EVIDENCE ACT, 1872, s. 91, 9 M. 224 = 2 Weir 125.

Hurt caused in extorting—Of offence—*See* HURT, 13 W.R. Cr. 23.

Case where sentence based on—Was set aside—*See* SENTENCE—GENERAL, U.B.R. 1892—1896, Vol. I, 249.

——2.—**Confessions made to Police Officers.**

(1)—*Confession to police officer, admissibility of.*—Where a police officer read over to the accused the statements which he (the police officer) had taken from others and then told him "I know the whole thing now," and the accused, thereupon, made a statement, in consequence of which he was arrested and his confession was duly recorded, *held* that the confession recorded under these circumstances was free and voluntary and was perfectly admissible in evidence. KING-EMPEROR v. RANGO HANMANT, **3 Bom. L.R. 404.**

(2)—*Confession irrelevant under* s. 24, *Evidence Act, whether rendered relevant by* s. 27.—S. 27 does not qualify the prohibition contained in s. 24, Evidence Act, where the confession is illegally induced by a police officer; a confession, irrelevant under s. 24, does not become provable by reason of a fact being discovered in consequence of information received from the accused, while in police custody. RAM DYAL v EMPRESS, **15 P.R. 1885, Cr.** [*R.*, 28 P.R. 1894, Cr.]

(3)—*Corroboration of, extorted by the police—Effect of defective enquiry and trial upon, of co-accused—Inadmissibility of confession made before the police—Evidence Act,* ss. 24, 25, 26 *and* 30.—When there is no judicial proof of the guilt of an accused person, it is illegal to rely

Confession—continued.

——2.—**Confessions made to Police Officers**—*continued.*

upon an unreliable or suspicious confession, or a confession which is open to grave suspicion of having been produced by ill-treatment of the police. *Held*, further, that when an accused person makes two criminating statements, one before a Magistrate and another before a police officer, it is very essential to compare them and to try and ascertain why there occurred a change and which of them was the true one, with a view to testing the value of the confession before the Magistrate, the other being, of course, inadmissible for any other purpose whatever as made to the police. KHAIR DIN v. CROWN, **21 P.W.R 1907, Cr. = 6 Cr.L.J. 266.**

(4)—*To a police officer—Evidence Act,* s. 25—*Act* II *of* 1880 (*Burma Rural Police*).—A confession to a village headman or *gaung*, appointed under the Burma Rural Police Act, is inadmissible under s. 25 of the Evidence Act. LU BEIN v. QUEEN-EMPRESS, **L B.R. 1872—1892, 479.**

(5)—*Confession to* ywathugyi *whether relevant—Evidence Act,* s. 25—"*Police officer,*" *construction of the term.*—A confession made to a *ywathugyi* should not be admitted in evidence. He is the head of the rural police and has police duties to perform. He is, to all intents and purposes, a police officer though he may not be so designated. The material point is, not whether he is called a police officer, but whether he discharges the duties of a police officer. The spirit of the law and not merely the letter of the law is to be considered. The term "police officer" in s. 25 of the Evidence Act is not to be read in a technical sense, but in its more comprehensive and popular meaning." MAUNG WUN v. QUEEN-EMPRESS, **L. B.R. 1893—1900, 22.** (1 C. 207, *F.*)

(6)—*Evidence Act,* s. 25—"*Confession,*" *definition of—Confession made to a police.*—A confession is an admission made at any time by a person charged with a crime, stating, or suggesting the inference, that he committed that crime. Not only statements which amount to a direct acknowledgment of guilt are confessions, but also inculpatory statements which, although they fall short of being actual admissions of guilt, yet suggest an inference of guilt and from which an inference of guilt follows. The factor determining whether a statement amounts to a confession or not is, not the motive of the party making it, but the fact that it leads to an inference of guilt. Statements made to the police by accused persons as to the ownership of property, which is the subject-matter of the proceedings against them, are inadmissible as evidence against them at the trial for the offence with which they are charged. MI EIN THA v. KING-EMPEROR, **5 L.B.R. 131 = 4 Ind. Cas. 1028 = 11 Cr. L.J. 153.** (6 A. 509, 7 A. 646, 6 B. 34, 14 B. 260, 9 B. 131, 10 C. 1022, 15 C. 589, 19 B. 363, *F.*)

(7)—*Accused in police custody—Incriminating statement.*—Where an accused person promised,

***Confession*—continued.**

——2.—Confessions made to Police Officers —*continued*.

while in police custody, to restore the stolen property, *held*, that the promise was an incriminating statement suggesting the inference that the accused participated in the commission of the offence, and, therefore, a confession irrelevant under ss. 25 and 26, Evidence Act. HAKIMAN v. KING-EMPEROR, **20 P.R. 1905 = 51 P.L.R. 1905 = 2 Cr. L.J. 230.** (2 C.W.N. 702, 14 B. 260. F.B., 10, C. 1022, *F.*) [*F.*, 14 Cr. L.J. 602 = 32 P.W.R. 1913 = 21 Ind.Cas. 474 = 315 P.L.R. 1913, 21 P.W.R. 1908, Cr. = 155 P.L.R. 1908, Cr.].

(8)—*Evidence Act*, I *of* 1872, *s.* 27—*Statements made by prisoners in police custody leading to discovery of facts—Admissibility in evidence.*—The reasonable construction of s. 27, which provides for the admissibility of information, whether it amounts to a confession or not, made by prisoners whilst in custody of a police officer, whereby certain facts are discovered, is that in addition to the fact discovered, so much of the information as was the immediate cause of its discovery is legal evidence. The test is "was the fact discovered by reason of the information, and how much of the information, was the immediate cause of the fact discovered, and as such a relevant fact." QUEEN-EMPRESS v. COMMER SAHIB, **12 M. 153 = 2 Weir 738.** [*F.*, 14 B. 260, F.B.; *R.*, U.B.R. 1906, 3rd Qr., Evidence, 3, 31 M. 127 = 3 M.L.T. 270 = 18 M.L.J. 66.]

(9)—*Evidence Act*, *s.* 25—*Evidence—Confession—Incriminating statements made before police.*—An incriminating statement, made by an accused person to the police, when nothing is discovered in consequence of it, cannot be admitted in evidence against him. FARID v. EMPEROR, **111 P.L.R. 1906 = 16 P.R. 1906, Cr. = 4 Cr. L J. 177.** (10 C. 1022, 6 B. 34, 16 B. 260. 19 B. 363, *F.*)

(10)—*Scope of ss.* 164 *and* 162—*Crim. Pro. Code* (1882).—The object of police proceedings is to collect information as a preliminary step to the production of evidence in a judicial proceeding against an accused person. For this purpose, any person may be examined, and any statement may be reduced to writing by the police, (with the exception specified in the proviso to s. 162) and can be evidence against the accused. To these provisions, s. 164 seems to be supplementary. LALU v. EMPRESS, **2 P. R. 1893, Cr.**

(11)—*Confession inadmissible if owing to police interference.*—Where the confession of an accused person conflicted with the medical evidence in the case and was probably induced by the police, the Chief Court declined to confirm a capital sentence based upon it. CROWN v. MEER KHAN, **3 P.R. 1867, Cr.**

(12)—*Confession to police.*—A confession made to a police officer is not relevant against an accused person. CROWN v. CHOUGATTA, **3 P. R. 1868, Cr.**

***Confession*—continued.**

——2.—Confessions made to Police Officers —*continued*.

(13)—*Admission made by accused after inducement by police—Admissibility.*—*Per Smyth, J.*—Notwithstanding the fact that s. 24, Evidence Act, is in terms applicable only to "confessions," which are distinguished in the Act from a mere admission, yet, reading it with s. 27 of the Act, and s. 120, Crim. Pro. Code, 1872, the intention of the Legislature was to reject as inadmissible an admission, made by an accused person on the strength of a promise made by a police officer making the enquiry, that such person would get off, if he made a disclosure, unless, when the admission resulted in the discovery of some fact, and then only in so far as it related to the fact discovered thereby. *Per Elsmie, J.*, (*contra*) :—Nothing in the Crim. Pro. Code or the Evidence Act was held to exist necessarily rendering inadmissible such an admission, when it does not amount to a confession, however illegal or improper the conduct of the police might have been in inducing the admission. MUSSAMMAT NURAI v. EMPRESS, **8 P.R. 1882 Cr.**

(14)—*Evidence Act*, *s.* 25—*Confession made before Village Munsiff—Village Cess Act* (*Madras Act* IV *of* 1864), s. 7.—A Village Munsiff is not a police officer and confession made to him is, therefore, admissible in evidence under s. 25 of Evidence Act. QUEEN-EMPRESS v. SAMA PAPI, **7 M. 287 = 2 Weir 735.** [*R.*, 17 B. 485, 1 L.B.R. 65.]

(15)—*Statement by prisoner to police constable —Admissibility in evidence—Evidence Act* (*I of* 1872), *s.* 30—*Confession of co-prisoner* —The statement given by a prisoner to a police constable is not admissible in evidence. A conviction based solely upon the evidence of a co-prisoner is bad in law. REG v AMBIGARA HULAGU, **1 M. 163 = 2 Weir 740.** [*R.* 8 M.L.T. 116 = 33 M 46 = 9 Cr. L.J. 404 = 1 Ind.Cas. 867, 2 Bom. Cr. C. 143 = 15 Bom. L.R. 975, 9 Cr.L. J. 308 = 5 M.L.T. 355, 1 Ind. Cas. 547, L B R. 1893—1900, 368.]

(16)—*Evidence Act*, *ss.* 25 *and* 26—*Reasons for exclusion of confession made to a police officer —Confession to* Chowkidar.—The reason why the law in ss. 25 and 26 jealously excludes a confession made by an accused, whilst in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, is that there is room for apprehension that a police officer, who is armed with large powers over accused persons, may unwillingly excite terror in their minds and extort false and involuntary confessions ; and his duty to investigate criminal cases and to detect offenders and bring them to justice may make him feel tempted to obtain confessions from accused persons by threat, promise, or other improper influence. QUEEN-EMPRESS v. BEPIN BEHARI DEY, **2 C.W.N. 71.**

(17)—*Confession to Police officers—S.* 25 *of the Evidence Act—Scope and construction of the section.*—S. 25 of the Evidence Act is not to be read as if it ran, "no confession made to a police

Confession—continued.

——2.—**Confessions made to Police Officers** —*continued.*

officer investigating the case." The section excludes confessions to a Police officer under any circumstances. It is immaterial whether such Police officer be the officer investigating the case or not. *In the matter of* HIRAN MIYA *alias* ABDOOL WAHID, **1 C L R. 21.** [*Appl*, 26 C. 569=3 C.W.N. 393; *D.*, 6 C. 530=7 C.L.R. 541.]

(18)—*Confession to Police officer—Evidence Act, s.* 25, *scope of.*—S. 25 of the Evidence Act, which declares that no confession made to a Police officer shall be proved as against a person accused of any offence, applies to every Police officer and should not be restricted to officers of the regular Police Force. Therefore, the section is applicable to a confession made to a village *chowkidar.* QUEEN-EMPRESS v. SALEMUDDIN SHEIK, **26 C. 569=3 C.W.N. 393.**

(19)—*Evidence Act, ss* 25 *to* 27, *scope of.*—The prohibition laid down in ss. 25 and 27, must be strictly applied, and any relaxation of it in accordance with the proviso to s. 27 should be sparingly admitted, and only to the extent of so much of the accused's statement as directly and distinctly relates to the fact alleged to have been discovered in consequence of it. Where a person accused of murder produced a knife and gave it to a Police officer, saying that he had committed the murder with it, and also informed the Police, that he threw the deceased's anklets at the scene of murder and pointed them out to the Police, at the place of the murder, *held*, that the statement with respect to the knife was merely a confession to a Police officer, and the other statement was also inadmissible, as the anklets were nót discovered in consequence of what he had said. for, on the contrary, the accused himself went with the Police and pointed out the spot where they were lying. EMPRESS OF INDIA v. PANCHAM, **4 A. 198= A.W.N. 1882, 21.** [*F.*, 10 B. 595=Rat Un. Cr. C. 285; *R.*, 6 A. 509, F. B., 11 C. 635, 12 M. 153=2 Weir 739, 2 L.B R. 168; *Diss.*, 14 B. 260, F.B., 25 C. 413.]

(20)—*Evidence Act, s.* 27—*Statements made by accused to the Police while in Police custody —Information leading to discovery of fact.*—*Per Wilkins, J.*—As a general rule, a confession made to a Police officer is not admissible in evidence. But s. 27 of the Evidence Act makes admissible so much of the accused's statements to the Police as led to the discovery of the stolen property. When more of an accused's statements to a Police officer than the law will strictly justify is recorded, and there is ample evidence on the record, apart from that, against him, the accused cannot be said to be prejudiced by the recording of a little more of the statements than the law strictly justifies. *Per Bannerjee, J.*—Where the statement of an accused person is a necessary preliminary to the fact discovered, it is admissible under s. 27 of the Evidence Act, the question whether the statement is sufficient to enable the police to make the discovery by themselves or is only of such a nature as to require the further assistance of the accused to enable them to discover the fact being immaterial. LEGAL REMEMBRANCER v. CHEMA NASHYA, **25 C. 413=2 C.W.N. 257.** (4 A. 198, *Diss.*; 14 B. 268, *F.*; 11 C. 635, *R.*) [*R.*, 10 Cr. L.J. 239=2 S.L. R. 27, Cr., U.B.R. 1906, 3rd Qr., Evidence, p. 3.]

(21)—*Evidence Act, ss.* 25 *to* 27, *scope and application of.*—*Held by the Full Bench* (*Mahmood, J., dissenting*). (1) S. 27 of the Evidence Act is a proviso not only to s. 26, but also to s. 25. Therefore, so much of a confession made to a Police officer, relating distinctly to facts thereby discovered, is admissible under s. 27. *Per Mahmood, J., contra*:—S. 27 cannot be regarded as governing the general rule laid down in s. 25, but only that contained in s. 26. The confession contemplated by s. 27 must, therefore, have been made to some person other than a Police officer. (2) *Per Straight, C. J.*:—Where a statement is being detailed by a constable as having been made by an accused, in consequence of which he discovered a certain fact or facts, the strictest precision should be enjoined on the witness, so that there may be no room for mistake or misunderstanding. S. 27 is not intended to let in a confession generally, but only such particular part of it as set the person to whom it was made in motion, and led to his ascertaining the fact or facts of which he gives evidence. (3) *Confessions in India, their nature.* The reason for the frequent retraction of confessions in India is that the average Indian Policeman, with the desire to satisfy his superiors before, and the terms of the Police Acts and Rules behind him, is not likely to be over-nice in the methods he adopts to make a short cut to the elucidation of a difficult case by getting a suspected person to confess. QUEEN-EMPRESS v. BABUL LAL, **6 A. 509, F.B.=A.W.N. 1884, 229.** [*F.*, 11 C. 635, 4 L.B.R. 116=7 Cr. L.J. 82; *R.*, 10 B. 595=Rat. Un. Cr. Cas. 285, 14 B. 260, F.B., 2 L.B.R. 168, Rat. Un. Cr. Cas. 245, 254, 11 Cr. L.J. 153=4 Ind. Cas. 1028=5 L.B.R. 131, 22 M.L J. 490=M.W.N. 1912, 207, 35 M. 397=1912 M.W.N. 549=13 Cr. L.J. 352=14 Ind. Cas. 896, 5 L.B.R. 129]

(22)—*Confession to Police officer—Evidence Act,* 1872, *s.* 27—*Scope—Facts leading to discovery already known to another Police officer.*—No judicial officer, dealing with the provisions of s. 27 of the Evidence Act, should allow one word more to be deposed to by a Police officer detailing a statement, made to him by an accused, in consequence of which he discovered a fact, than is absolutely necessary to show how the fact that was discovered is connected with the accused, so as in itself to be a relevant fact against him. S. 27, Evidence Act, was not intended to let in a confession generally, but only such particular parts of it as set the person, to

Confession—continued.

——2.—**Confessions made to Police Officers** —*continued.*

whom it was made, in motion, and led to his ascertaining the fact or facts of which he gives evidence. (6 A. 509, *F.*; 4 A. 198, *Diss.*) [*F.*, 12 M. 153=2 Weir 738, 14 B. 260, F.B., P.L. R. 1900, 56, U.B.R. 1906, 3rd Qr., Evidence, 3.] It would be most dangerous to extend the provisions of s. 27 of the Evidence Act and allow a Police officer, who is investigating a case, to prove an information, received from a person accused of an offence in the custody of a Police officer, on the ground that a material fact was thereby discovered by him, when the fact was already known to another Police officer. ADU SHIKDAR v. QUEEN-EMPRESS, **11 C. 635.** [*R.*, 25 C. 413.]

(23)—*Incriminating statements made to a Police officer— Admissibility in evidence.*—A Police officer examined for the prosecution stated in the course of cross-examination, that, when he arrested the prisoner, he said to the former that some Chinamen, at the time of the occurrence, came out with hatchets. In re-examination, the Policeman substituted the words "at the time," for the words "at the time of the occurrence." On being asked if the prisoner had explained "what time," the Policeman answered that the prisoner said "at the time I struck the deceased." *Held* that the statement of the prisoner that Chinamen came out with hatchets at the time when he struck the deceased would not be admissible in evidence, as it was an incriminating statement made to a Police officer by an accused person in custody. QUEEN-EMPRESS v. MATHEWS, **10 C. 1022.** [*F.*, 16 P.R. 1906, Cr.=111 P.L.R. 1906=4 Cr. L.J. 177, 11 Cr. L J. 153=4 Ind. Cas. 1028 =5 L.B.R. 131 ; *R.*, 37 C. 467=14 C.W.N. 1114 =7 Ind. Cas. 359=11 Cr. L J. 453, 22 M.L.J. 490=1912 M.W.N. 207, L.B.R. 1893—1900, 42, 20 P.R. 1905, Cr.=51 P.L.R. 1905.]

(24)—*Admission to Police officer before arrest —Admissibility.*—An admission to a Police officer made by an accused before arrest is admissible in evidence. EMPRESS v. DABEE PERSHAD, **6 C. 530=7 C.L R. 541.** [*R.*, L.B. R. 1893—1900, 42, 3 N.L.R. 51. 11 Cr.L.J. 453 =7 Ind. Cas. 359=14 C.W.N. 1114=37 C. 467, 12 Cr.L.J. 60=8 Ind. Cas. 1181=6 N.L.R. 180.]

(25)—*Evidence Act*, s. 27—*Discovery of property through confession of one accused—Competency to ask another accused to produce same property after replacing it in the place* —Where the Police succeed in discovering property in consequence of information received from an accused, it is not competent to the Police to re-place the property in the place where it was discovered, and to ask the other accused to produce the property, because there is no further "discovery" under s. 27, Evidence Act, as against the other accused. QUEEN-EMPRESS v. BASHYA *bin* NARASAPPA, **2 Bom. L.R. 1089.**

Confession—continued.

——2.—**Confessions made to Police Officers** —*continued.*

(26)—*Evidence Act*, s. 26—*Custody of Police officer—Confession.*—The custody of the keeper of a jail in a Native State was held not to be the custody of a Police officer, merely because his subordinates, the warders of the jail, were members of the Police Force of the State. In the absence of any suggestion of a close custody of the prisoner inside the jail, such as may possibly occur when a prisoner is watched and guarded there by the Police officer investigating the offence, it is wrong to hold that s. 26, Evidence Act, precluded such a jailor from giving evidence of what the prisoners told him. QUEEN-EMPRESS v. TATYA *bin* APPAJI, **20 B. 795.** [*R.*, 2 C.W.N. 71.]

(27)—*Evidence Act*, ss. 25, 26—*Confession made to Police officer.*—A statement made by an accused person, while in the custody of the Police, if it is an admission of a criminating circumstances, is not admissible in evidence. QUEEN-EMPRESS v. JAVECHARAM, **19 B. 363.** [*F.*, 4 Cr. L. J. 177=16 P.R. 1906. Cr.=111 P. L.R. 1906.]

(28)—*Confession to Police officer—Evidence.* —A confession made to a Police officer cannot be used in evidence against the accused. EMPRESS v. THAKUR DAS, **A.W.N. 1883, 188.**

(29)—*I.P.C.*, s. 412—*Evidence Act*, s. 25—*Confession to Police.*—The accused was convicted of an offence under s. 412, I.P.C. The evidence for the prosecution consisted of certain confessions made to the Police and the circumstance that the accused found some stolen cloth for the Police while in Police custody. *Held* that the confession was inadmissible under s. 25, Evidence Act, and the circumstance mentioned did not justify his conviction under the section. EMPRESS v. NANHE BEG, **A.W.N. 1883, 126.**

(30)—*Evidence Act*, ss. 24 *to* 27—*Confession to Police officer.*—S. 27 of the Evidence Act cannot be regarded as governing the general rule laid down in s. 25 or s. 24, but only that contained in s. 26. All statements made by a prisoner which can be regarded as confessions made to a Police officer are absolutely inadmissible, though they may have led to discovery such as is contemplated by s. 27. EMPRESS v. KUARPALA, **A.W.N 1882, 225.** [*Diss.*, 6 A. 509=A.W.N. 1884, 229]

(31)—*Confession to Police officers—Information as to offence charged—Evidence Act*, ss. 26, 27—*Confessions of persons charged—Information as to offence.*—When a fact is discovered in consequence of information received from one of several persons charged with an offence, and when others give like information, the fact should not be treated as discovered from the information of them all. It should be deposed that a particular fact has been discovered from the information of A.B., and this will let in so much of the information as relates distinctly to the information therein discovered. QUEEN v. RAM CHURN CHUNG, **24 W.R. 36, Cr.**

Confession—continued.

——2.—Confessions made to Police Officers —*continued.*

(32)—*Evidence Act, ss.* 25 *and* 26—*Confession, while in the custody of a* chowkidar.—A village *chowkidar*, not being a police officer, a confession made by an accused person, while in his custody, is admissible in evidence. QUEEN-EMPRESS v. BEPIN BEHARI DEY, **2 C.W.N. 71.** (1 C. 207, 17 B. 485, *D.*) [*Diss.*, 2 C. W.N. 637.]

(33)—*Evidence Act.* 1 *of* 1872, *ss.* 25, 26—*Admissibility of statements made to the Police.*—Statements made by accused persons to Police officers, embodying what may be understood as confessions are not wholly inadmissible in evidence, but may be received and applied as far as they prove merely corroborative circumstances and not an absolute confession of guilt. *Per Stuart, C.J.* The intention of the Legislature was, by ss. 25, 26 of the Evidence Act, to render confessions absolutely inadmissible as proof, unless made in the immediate presence of the Magistrate. The exception in s. 27 should be sparingly applied. EMPRESS v. PANCHAM, **A.W.N. 1882, 21=4 A. 198.**

(34)—*Evidence Act, ss.* 25, 26—*Confession made to police patel, admissibility of.*—The term "Police Officer" in ss. 25 and 26, Evidence Act, should be read not in any strict technical sense, but according to its more comprehensive and popular meaning. A police patel is a police officer within the meaning of those sections. A confession made to a police patel is, therefore, inadmissible in evidence. QUEEN-EMPRESS v. BHIMA, **17 B. 485.** [*D.*, 2 C.W.N. 71, 1 L.B.R. 65.]

(35)—*Evidence Act. ss.* 8, 25, 26, 27—*Scope of s.* 8—*The section how affected by ss.* 25 *and* 26—*Confession of guilt to Police officer*—*Confession leading to discovery of fact.*—S. 8, so far as it admits a statement as included in the word "conduct" must be read in connection with ss. 25 and 26, and cannot admit a statement, as part of the evidence, which would be shut by those sections. Statements made by a prisoner while in the custody of the Police, are not admissible under s 8, Expl. 1, as evidence of conduct [*F.*, Rat. Un. Cr. C. 833; *Appl*, 20 B. 215; *R.*, Rat. Un. Cr. C. 829.] A confession of guilt, or an admission of a criminating circumstance, or a statement suggesting an inference of guilt, made to a Police officer, while in his custody, should be rejected. [*R.*, 2 L.B.R. 168, 20 P.R. 1905. Cr.=51 P.L.R. 1905=2 Cr.L.J. 230, P.W.R. 1906, Cr., 2=4 Cr. L.J. 177=16 P.R. 1906, Cr.=111 P.L.R. 1906; *D.*, 5 Bom. L.R. 312.] Where it was clear that it was upon the information, which an accused person gave to the Police, that they accompanied him to the spot where the stolen property was disinterred by him, and it was equally clear that, but for that information, the property would not have been discovered, it was *held* to be in accordance with the ordinary use of such terms to say that the discovery of the property was the consequence of the information; it set the police in motion, the immediate consequence being that the police asked the accused to show them the spot, and accompanied him there; but such a proceeding on the part of the police was with the view to the discovery of the property, and was the natural consequence of the information they had received from him and so connected it with the final result, *viz.*, the discovery of the property as a *causa causans.* Whether the statement made by the accused is of such a detailed description as to enable the police themselves to discover the property, or only of such a nature as to require his assistance in discovering the exact spot where the property is, it cannot prevent the statement from being admissible under s. 27. In both cases, there is the guarantee afforded by the discovery of the property for the correctness of the accused's statement, which is presumably the ground of the admission of the exception to the general rule. The distinction, therefore, appears to be without substance. In regard to the extent of the words "thereby discovered," some assistance may be derived from the tests applied by the Courts in dealing with proximate and remote causes of damage, that is, whether what followed was the natural and reasonable result of the defendant's action. Only so much of the information as distinctly leads to the discovery is admissible under the section. Where an accused person, charged with dishonestly receiving stolen property, on being asked by the police, in the course of their investigation, where the property was, stated that he had kept it and buried it in the fields, and stated the fact and the circumstances of the burial showing that he had received the property and had come by it dishonestly, and suggesting the inference that he was guilty, his statement was *held* to be a confession within the meaning of ss. 24 to 30. The statement that he had buried the property, which led to the discovery of the property was admissible under s. 27, but the statement that he had kept the property, not being necessarily connected with the fact discovered, was inadmissible under s. 27. QUEEN-EMPRESS v. NANA, **14 B. 260, F.B** [*F.*, 25 C. 413=2 C. W.N. 257, 11 Cr. L.J. 153=4 Ind. Cas. 1028=5 L.B.R. 131, Rat. Un. Cr. C. 833; *Appl.*, 20 B. 215, 2 Cr. L.J. 230=20 P.R. 1905, Cr.=51 P.L.R. 1905, 4 Cr. L J. 177=16 P.R. 1906, Cr.=P.W.R. 1906, Cr., p.2, 5 Cr.L.J. 300=U.B. R 1906, 3rd Qr., Evidence, p 3, 9 Cr. L.J. 267=2 S.L.R. 27, 12 Cr. L.J. 119=9 Ind. Cas. 718=4 S.L.R. 209, 14 Cr. L J. 252=19 Ind. Cas. 508=6 S.L.R. 143, 28 P.R. 1894, Cr., 2 L.B.R. 168, Rat. Un. Cr., C. 829, 15 Cr. L.J. 533=24 Ind. Cas. 845; *D.*, 5 Bom. L.R. 312.]

(36)—*Evidence Act, s.* 27—*How much of confession can be proved.*—S. 27 does not apply to a case in which the discovery is not made by the police on the information given to them by the accused, but the accused themselves produce

Confession—continued.

——2.—**Confessions made to Police Officers** —*continued.*

property alleged to have been stolen. In such a case, only the fact of production of the property may be proved, but not the accompanying confession made to the police. QUEEN-EMPRESS v KAMAILIA, **10 B 595 = Rat. Un Cr. C. 285 = Cr. Rg. 21 of 1886.** [*F.*, 14 Cr.L.J. 190 = 19 Ind. Cas. 190 = 171 P.L.R. 1913 = 15 P.W.R. 1913, Cr.; *D.*, 14 B. 260, F.B.]

(37)—*Confession made to police officer, admissibility of—Crim. Pro. Code* (1882), *ss.* 517, 523.—" Confession " in s. 25, Evidence Act, as in s. 24, means a confession made by an accused person, which it is proposed to prove against him to establish an offence. For such a purpose, a confession might be inadmissible which, yet, for other purposes, would be admissible under s. 18 against the person who made it (s. 21), in his character of one setting up an interest in property, the object of litigation, or judicial enquiry and disposal. Where an order has to be made under s. 523, the Magistrate may, in the enquiry, proceed on such evidence as is available, and make an order for handing property to the person he thinks entitled. This does not conclude the right of any man. As the real owner may proceed against the holder of the articles or for damages as for conversion, the High Court would not interfere. QUEEN-EMPRESS v. TRIBHOVAN MANEKCHAND, **9 B. 131.** [*F.*, 11 Cr. L.J. 153 = 4 Ind. Cas. 1028 = 5 L. B.R. 131, 12 Cr. L.J. 400 = 11 Ind. Cas. 584 = 96 P.L.R. 1911 ; *R.*, 19 B. 668, 35 M. 247 = 13 Cr. L.J. 305 = 14 Ind. Cas. 849 = 22 M.L J. 490 = 11 M.L.T. Sup. 1 = 1912 M.W.N. 207, 35 M. 397 = 13 Cr. L.J 352 = 14 Ind. Cas. 896 = 12 M.L. T. 1 = 1912 M.W.N. 459, Rat. Un. Cr. C. 365.]

(38)—*Evidence Act, ss. 25, 26—Statements made to Police officers by accused in self-exculpation— Admissibility as evidence against the accused.*—Where an accused person makes a statement to a Police officer, while in his custody, not as a confession of guilt but as a self-exculpatory statement, it comes properly within the rule of exclusion, if it amounts to an admission of a criminating circumstance. IMPERATRIX v. PANDARINATH, **6 B. 34.** [*F.*, 19 B. 363, 4 Cr. L.J. 177 = 16 P R. 1906 = 11 P. L.R. 1906 = P.W.R. 1906, p. 3, 11 Cr. L.J. 153 = 4 Ind. Cas. 1028 = 5 L.B.R. 131, Rat. Un. Cr. C. 488 ; *R.*, 14 B. 260, 19 B. 749, 37 C. 467 = 14 C.W.N. 1114 = 11 Cr. L.J. 453 = 7 Ind. Cas. 359 = 20 M.L.J. 498, 2 C.W.N. 702, 12 Cr. L.J. 60 = 8 Ind. Cas. 1181 = 6 N.L.R. 180, 14 Cr. L.J. 252 = 19 Ind. Cas. 508 = 6 S.L.R. 143 ; *D.*, 5 Bom. L.R. 312.]

(39)—*Evidence Act, s. 25—Confessions to Police not to be proved against maker, but may be proved on behalf of co-accused —Separate trial.*—S. 25 only provides that no confession made to a Police officer shall be proved as against a person accused of any offence. It does not preclude the Counsel for one accused person, on his client's behalf, asking questions to prove

Confession—continued.

——2.—**Confessions made to Police Officers** —*concluded.*

a confession made to the police by another accused person, tried jointly with him ; such a confession is not to be treated or received as evidence against the person making it, but simply as evidence on behalf of the other. The Judge should instruct the jury accordingly. Unless the law were so, the accused person on trial with the confessing party might be considerably prejudiced by the exclusion of that evidence. Although it may be difficult for a jury to give the co-accused the benefit of such evidence and not to permit it to prejudice their minds against the confessing party, the Court is not to presume that the jury will disobey the directions of the Judge (whose duty is to instruct them as to the law), when he tells them, as he should do, that the confession made to a Police officer is not to be treated as evidence against the accused who made it. That accused would have the protection of the direction, whereas, if the confession were wholly excluded, the co-accused might suffer serious injury and would be absolutely helpless. The value of the confession as a circumstance in his favour may be great or small. That is a matter to be weighed by the jury. [*R.*, 25 B. 168.] Where a Judge, on perusing the depositions before trial, perceives that a confession, made to a Police officer by one of the accused persons jointly tried, is likely to be offered in evidence on behalf of another accused, it would be an important matter for his consideration, whether it would not be desirable to direct the jury that the accused persons should be separately tried. IMPERATRIX v. PITAMBER JINA, **2 B. 61.** [*R.*, 25 B. 168, 12 Bom. L.R. 899 = 11 Cr. L.J. 690 = 8 Ind. Cas. 622.]

(40)—*Crim Pro. Code* (1872), *ss.* 122, 193, 346 —*Crim. Pro. Code* (1882), *ss.* 342, 364—*Confessions to an investigating officer.*—Where the accused, being brought up by the police before the Magistrate, made a statement before him, and on the next day the same Magistrate examined the witnesses for the prosecution and committed the accused to the Sessions, *held*, that the statement by the accused, having been made before a Magistrate competent to hold, and who was actually then holding, the preliminary enquiry, with a view to committing the accused for trial before the Sessions, should be regarded as falling within s. 193 of the Code of 1872, or s. 342 of the Code of 1882, and as such, governed by the reservations contained in s. 346 of the Code of 1872, or s. 364 of the Code of 1882. EMPRESS OF INDIA v. YAKHUB KHAN, **5 A. 253 = A.W.N. 1883, 25.** [*R.* 37 C. 467 = 11 Cr. L.J. 453 = 7 Ind. Cas. 359.]

Wife charged with murder of step-son Admission of confession by wife to husband —Confession by the woman in police custody —Confession retracted—Effect— Meaning of ' offence'—*See* EVIDENCE ACT, 1872, s. 122, 10 P.R. 1914, Cr. = 261 P.L.R. 1914 = 15 Cr. L.J. 613 = 25 Ind. Cas. 525.

Confession—continued.

——3.—Confessions to Magistrates—Admissibility—Record of Confessions.

(1)—*Evidence of confession, how to be recorded.*—When witnesses depose to some statement having been made to them by the accused, the Judge should require each and all of those witnesses, as nearly as possible, to give the precise words alleged to have been used in the first person, and should record them in as accurate English equivalent as he is able. EMPRESS v. BALWANT SINGH, **A.W.N. 1883, 12.**

(2)—*Confession — Magistrate — Practice.*—Magistrates recording confessions and thereon ordering remand of the persons making them, should, on all occasions, be most careful to ascertain how long such persons have been under the influence of the police and, in recording their reasons for the remand, should set forth all the information they are able to obtain on the subject. EMPRESS v. MADAR, **A.W.N. 1885, 59, F.B.**

(3)—*Evidence Act, ss.* 24, 25, 26, 29—*Confession to Magistrate before action taken—Crim. Pro. Code* (1882), *ss.* 164, 364, 533.—A confession was made to the Court, three weeks before the commencement of any enquiry and any evidence had been taken. The confessor stated to the Magistrate that he confessed voluntarily. The memorandum required by s. 164, Crim. Pro. Code, 1882, was attached to the confession. *Held* that the confession was not excluded by s. 25, Evidence Act, and that s. 26, and the latter part of s. 29, appear to point to a confession such as this being taken cognizance of. *Held by Stuart, C J.*, that the confession was admissible though not taken in the manner directed by ss. 164 and 364, Crim. Pro. Code. *Held by Straight, J.*, that it was very doubtful, whether the statement, having been taken at a wrong stage of the case, was not altogether inadmissible, but that if that, defect was cured by s. 533, the Court would hesitate to hold that the accused was not prejudiced by the Magistrate's action. EMPRESS v. BALJIT, **A.W.N. 1883, 238.** [*R.*, A.W.N. 1883, 243.]

(4)—*Crim. Pro. Code, Act* X *of* 1882, *ss.* 164, 342, 364.—*Statement of accused*—S. 164 of the Crim. Pro. Code does not apply to any statement of the accused taken by the Magistrate holding the inquiry. S. 342 does not seem to apply to statements offered by the accused, but only to answers to questions put by the Magistrate. A Magistrate may record a statement of the former kind made at the commencement of the inquiry, but he should be very careful in doing so since it is usually one of confession, and since the accused comes fresh from the hands of the police. EMPRESS v. CHATTAR SINGH, **A.W.N. 1884, 84.**

(5)—*Crim. Pro. Code* (1882), ss. 164, 342, 364, 533—*Confession taken by committing Magistrate not signed by accused.*—Where statements made by the accused persons to the committing Magistrate were not signed by them: *Held per Stuart, C.J.*, that the confessions were not absolutely inadmissible, and it could not be said that they cannot be looked to at all and made evidence to any effect whatever. *Per Straight, J.*—The committing Magistrate did not follow the directions of s. 364, by requiring the accused to sign the statements made by them in his Court. This he ought to have done, and his failure in that respect rendered them inadmissible in the Sessions Court until the defect had been cured in manner provided by s. 533. The rules laid down in s. 364 should be strictly observed, and they are applicable alike to confessions taken before enquiry or trial under s. 164, and examinations of accused under s. 342. EMPRESS v. GAJADHAR, **A.W.N. 1883, 243.**

Confession—continued.

——3.—Confessions to Magistrates—Admissibility—Record of Confessions—*continued.*

(6)—*Crim. Pro. Code, Act* X *of* 1882, *ss* 364, 533—*Confession— No signature of accused — Admissibility.*—Where a Magistrate, who took down the confession of the accused ostensibly under s. 364 of the Crim. Pro. Code, did not take the signature of the accused, but gave evidence in the Sessions Court as to the genuineness of the confession, *held* that s. 533 of the Crim. Pro. Code, applied and that the confession was admissible in evidence. QUEEN-EMPRESS v. CHEDDA, **A.W.N. 1896, 161.**

(7)—*Admissibility of confession reduced to writing by a Magistrate—Proof of.*—Where a document containing a confession is signed by the accused or owned by him to be correct, it cannot be rejected simply by reason of its not being attested by the accused or by the Magistrate, or of there being no certificate or memorandum, or of questions and answers not being recorded, when the examination had been taken in the form of questions and answers. But, if the document is not signed by the accused or owned by him to be correct after it was shown or read over to him, the document may not be relevant against him, but might be used under s. 159, Evidence Act, to refresh the Magistrate's memory regarding the statement of the accused. *Absence of formalities, effect of.*—Where the confession of an accused was reduced to writing by a Magistrate in accordance with the provisions of ss. 122 and 364, Crim. Pro. Code, the absence of the formalities prescribed by the sections was held to be matters which affected the weight and the value of the document as evidence, and not valid objections to its relevancy as an admission by the accused. SHERE SINGH v. EMPRESS, **21 P.R. 1881, Cr.** [*R.*, 52 P.R. 1887, Cr., 54 P.R., 1887, Cr.]

(8)—*Crim. Pro. Code, Act* V *of* 1898, *s.* 364—*Statement of accused—Certificate of statement—Court's handwriting.*—It is sufficient if the certificate attesting the statement of an accused person, under s. 364 of the Crim. Pro. Code, is signed by the presiding officer of the Court. The whole of it need not be in the Court's handwriting. EMPRESS v. RIAZ ALI, **A.W.N. 1900, 203,** (8 W.R. Cr. 55, *F.*)

Confession—continued.

——3.—**Confessions to Magistrates—Admissibility—Record of Confessions**—*continued.*

(9)—*Confessions to Magistrate— Confession taken by Magistrate other than the one investigating the case— Certificate of Magistrate— Crim. Pro. Code* (1872), *s.* 122.—S. 122 of the Code of Criminal Procedure, which requires a Magistrate to certify on a confession his belief that it was voluntarily made, does not apply to the case of a confession taken by a Magistrate who is actually investigating the case and examining the witnesses preparatory to commitment, but to a case where some other Magistrate takes a confession and forwards it to the Magistrate by whom the case is enquired into or tried. QUEEN v. JETOO, **23 W.R. Cr. 16.**

(10)—*Confessions to Magistrate— Statement made to Magistrate—Crim. Pro. Code* (1861), *s.* 109.—It is only when properly made to the Magistrate that the confession can be used as evidence against the prisoner. The mere standing by of the Magistrate when the confession is being made to the police is not sufficient. QUEEN v. DOMUN KAHAR, **12 W. R. Cr. 82.**

(11)—*Irregular recording of confession—Admissibility—Crim. Pro. Code* (1882), *s.* 533.—The point upon which evidence is to be taken under s. 533, Crim. Pro. Code. 1882, is that the accused duly made the statement recorded under s. 164 or 364, as the case may be, (*i.e.*), that the accused did actually make the statement recorded as his statement. It seems sufficient to show that the statement or examination recorded, though not in exact conformity with the provisions of s. 164, or 364, Crim. Pro. Code, does accurately represent in substance the statement of the accused person. If no error injurious to the accused in his defence in the merits is disclosed the document becomes admissible, subject to all just exceptions as to its admissibility under the Evidence Act, except one under s. 91. BUTA v. EMPRESS, **52 P.R. 1887, Cr.** [*R.*, 7 P.R. 1899, Cr.]

(12)—*Irregular recording of confession — Admissibility.*—Confession in the recording of which all the formalities required by law were neglected are inadmissible in evidence. *In re* MANNU TAMULI, **2 J.G. 19.**

(13)—*Irregular recording of confession — Admissibility in evidence.*—A confession not recorded acording to the provisions of Act X of 1872, s. 346, is inadmissible in evidence. QUEEN v. KALA CHAND PAL, **24 W. R. Cr. 29**; QUEEN v. CHUNDER BHUTTACHARJEE, **24 W. R. Cr. 42.** [*R.*, 23 B. 221, 228.]

(14)—*Crim. Pro. Code, Act* X *of* 1882, *ss.* 164 364, 533—*Record of confession—Regularity.*—Where a Magistrate recorded the confession of an accused person in English in the narrative form, though the confession was made in the form of question and answer, and afterwards translated it into the vernacular to the accused who admitted it to be correct, *held* that there was no irregularity in the manner of the record so as to render the confession inadmissible. QUEEN-EMPRESS v. ANTA, **A.W.N. 1892, 60.** [*R.*, 21 B. 495.]

(15)—*Crim. Pro. Code, Act* X *of* 1882, *ss.* 164, 364—*Confession—Record—Legality.*—A Magistrate recorded the confession of the accused in his private house on a close holiday. Since he could not get the service of any one to write Hindustani, he recorded the confession in English, translated it in Urdu to the accused who admitted it to be correct. Each of the accused was also examined as to the voluntary and uninfluenced character of the confession. *Held* that the confession was properly recorded in accordance with the provisions of ss. 164 and 364 of the Crim. Pro. Code, and that it was admissible in evidence. QUEEN-EMPRESS v. BA CHANNA, **A.W.N. 1891, 55.** [*R.*, 21 B. 495.]

(16)—*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 149—*Magistrate—Making of confession to one not having jurisdiction—Practice.*—The word "Magistrate" in s. 149 of the Crim. Pro. Code, means "any Magistrate" and not merely "the Magistrate having jurisdiction." It is not generally desirable, however, that a prisoner should be taken for confession before a Magistrate not having jurisdiction to try him, but such a confession is legally admissible when duly proved. REG. v. VAHALA JETHA, **7 B.H. C. Cr. 56.** [*R.*, 10 B.H.C. 166, Rat. Un. Cr. C. 254, 468.]

(17)—*To Magistrates—Crim. Pro. Code, s.* 163 —*Evidence Act, s.* 24.—Where a Magistrate told the accused, that, if he made a full confession in regard to certain property he was charged with having stolen, the Court would take this into consideration in awarding punishment, and the accused then confessed, relying on the above mentioned promise, *held* that, having regard to s. 163, Crim. Pro. Code, 1882, and to s. 24 of the Evidence Act, the confession could not be admitted as evidence against the accused. QUEEN-EMPRESS v. NGA PAW LON, **L.B.R. 1872—1892, 289.** (10 C. 775, *F.*)

(18)—*Evidence Act, s.* 24—*Warning by Magistrate.*—Certain accused persons were sent before a Magistrate to have their statements or confessions recorded. They were warned by the Magistrate, before they made their statements, "not to expect any advantage or disadvantage, therefrom." *Held*, that the confessions made by the accused after this warning had been given to them were entirely inadmissible in evidence. EMPEROR v. BASORA, **A.W.N. 1906, 75=3 Cr. L.J. 324.**

(19)—*S.* 150 *of Act* XXV *of* 1861 (s. 27, *Evidence Act*)—*Confession not made in the presence of Magistrate, when admissible.*—In order to render a confession not made in the presence of a Magistrate admissible in evidence, the fact discovered by it must be one which, of its own force, independently of the confession, would be admissible in evidence. *In re* CHODA ACHANNA, **2 Weir 735=3 M.H.C. 318.**

Confession—continued.

——3.—**Confessions to Magistrates—Admissibility—Record of Confessions**—*continued.*

(20)— *Confession— Magistrate— Custody of police—Practice* —The omission of the Magistrate before whom a confession is made, to record the circumstance that the accused was not then in the custody of the police cannot invalidate the confession. The Sessions Judge, to whom the case is committed, may, if he thought it necessary, call for evidence to satisfy himself, that the confession was voluntarily made. *In re* BORKU, **Rat. Un. Cr. C. 534 = Cr. Rg. 3 of 1891.**

(21)—*Before Magistrate of a Native State—Admissibility of, as evidence in trial in British India—Evidence Act, s.* 26.—A confession made by a prisoner voluntarily before a Magistrate in a Native territory and recorded by him, under s. 164 of the Code of Criminal Procedure, is admissible in evidence in a trial in British India, although such confession was subsequently retracted in the Courts of the committing Magistrate and of Session. BHOLA v. KING-EMPEROR, **8 P.R. 1907, Cr. = 33 P.W.R. 1907 = 46 P.L.R. 1908 = 6 Cr. L.J. 377.** (12 A. 595, 22 B. 235, *R.*) [*F.*, 7 P.W.R. 1909, Cr.]

(22)—*Made to the Magistrate of a Native State and written down by his Munshi—Admissibility of, in British Courts—Irregularity, if can be cured—Crim. Pro. Code* (1898), *ss.* 164, 364 *and* 533—*Evidence Act* (1872), *s.* 26.—A confession made to a Magistrate in a Native State is admissible in evidence in a trial in British India, if it is duly recorded in proceedings under, and in the manner required by the Code of Criminal Procedure. Such a confession is none the less admissible merely because the provisions of the Code have not been in every respect strictly observed, provided that the accused had not thereby been prejudiced on the merits of the case, and that the fact that the accused made the statement is proved by evidence. The mere fact that the statement was actually written, not by the Magistrate himself, but by the Munshi, does not in any way injure the accused as to his defence on the merits. But it must be admitted that a confession so recorded is not entitled to the same weight as a confession recorded by a British Magistrate in strict compliance with the terms of the Code, and Courts should certainly hesitate to convict the accused upon such a confession standing alone. Although the terms of ss. 164 and 364, Crim. Pro. Code, are to be strictly observed, *i.e.*, by the Magistrate actually taking down the confession himself, such a defect can be cured by examining the Magistrate as provided for in s. 533. BADAN SINGH v. KING-EMPEROR, **2 P.R. 1909, Cr. = 1 Ind. Cas. 444 = 7 P.W.R. 1909, Cr.** (8 P.R. 1907, Cr., *F.*)

(23)—*Evidence Act, s.* 26—*Confession made to Magistrate in Native State.*—The words "police officer" and "Magistrate" in s. 26 include the police officers and Magistrates of a Native State as well as those of British India. A limitation which would exclude the use, in British Indian Courts, of a confession made by a person, while in police custody, to a Magistrate in England or in a foreign country, does not appear to have been intended by the section. A confession made by a prisoner, while in police custody, to a first-class Magistrate in the Native State of Muli in Kathiawar, and duly recorded by him in the manner provided by the Crim. Pro. Code, 1882, was *held* admissible in evidence under s. 26. QUEEN-EMPRESS v. NAGLA KALA, **22 B 235.** [*F.*, Rat. Un. Cr. C. 855, 8 P.R. 1907, Cr. = 33 P W.R. 1907, Cr. = 46 P.L.R. 1908 = 6 Cr. L.J. 377.]

(24)—*Evidence Act, ss.* 74, 80—*Confessions made before a Judicial Officer in a Native State — Admissibility in British Courts.*—Person charged with dacoity in a place partly in the Gwalior State and partly in British territory made statements to a Magistsate of the Gwalior State. Each statement had at the foot of it the following certificate in the hand of that Magistrate :—I believe that the confession was made without coercion or threat and it was made in my presence and to my hearing. The person making it having heard it read out to him stated it as correct, and that it contained a full and true account of the statement made by him. Each statement bore also a mark by way of signature of the person making it. *Held*, that the records made by the Magistrate of the confessions were admissible under s. 80 of the Evidence Act, probably under s. 74 of that Act, and that there was nothing in law to prevent a confession being proved, no matter when or where made, against the man who made it, provided it was not under circumstances which, under the Courts, would render it inadmissible. QUEEN-EMPRESS v. SUNDAR SINGH, **12 A. 595 = A.W.N. 1890, 199.** [*F.*, 22 B. 235, 6 Cr. L.J. 377 = 8 P.R. 1907 = 46 P.L.R. 1908 = 33 P.W.R. 1907, Rat. Un. Cr. C. 855.]

(25)—*Crim. Pro. Code* (1882), *ss.* 164, 209, 342, 355 *to* 364—*Mode of recording the confessional statement.*—Where statements are recorded by a Magistrate, in the course of an investigation under Chap. XIV of the Code, the provisions of s. 164 must be observed. They should be recorded in the manner prescribed for recording evidence, and confessions must be recorded in the manner provided by s. 363. Ss. 355 to 363 relate only to the mode of recording the statement of witnesses, while s. 364 deals with all statements made by accused persons, whether amounting to confessions or not. The reason that s. 164 provides only for the recording of that class of statements of an accused which are or purport to be confessions, is, that the section relates to a stage of the case, *viz.*, the Police investigation stage at which statements of the accused, which do not amount to confessions, and which are elicited by examination, are not intended to be obtained. Ss. 209 and 342, which are the only provisions of the Code authorizing the examination of the accused,

Confession—continued.

——3.—**Confessions to Magistrates—Admissibility—Record of Confessions**—*continued.*

clearly shows that the object of such examination is not to obtain criminating statements from the accused, but is only to enable him to explain circumstances appearing against him. It is, therefore, improper to attempt to make an accused person, before any evidence is required, confess his guilt and admit facts that may go to incriminate him. [*R.*, 20 P.R. 1905=51 P.L.R. 1905=2 Cr. L.J 230, 4 N.L.R. 163.] Confessions are inadmissible, when the appended certificate does not show that they were voluntarily made or that the Magistrate inquired whether they were so made. Statements made by accused persons before the case reached the stage at which the examination of the accused is authorized, if they do not amount to confessions, are inadmissible. [*F.*, 8 C.W.N. 22; *D.*, 13 C.W.N. 197=36 C. 281=9 C.L.J. 198=5 M.L.T. 97=9 Cr. L.J. 452.] The rule laid down in s. 21 of the Evidence Act must be taken subject to the special provision, relating to confessions and statements of accused persons, enacted in ss. 24, 25 and 26, Evidence Act, and ss. 164 and 364, Crim. Pro. Code. Under s. 533, Crim. Pro. Code, 1882, when a confession or other statement of an accused person is duly made in accordance with the provision of the law, but in the recording of which those provisions have not been fully complied with, oral evidence is admissible to prove that the confession or other statement was duly made. The defect which the section is intended to cure is not one of substance but of form only. QUEEN-EMPRESS v. BHIRAB CHUNDER CHUCKERBUTTY, **2 C.W.N. 702.** (9 M. 224, 17 C. 870, 2 B. 643, 1 C.L.R 436, 1 M.H. C. 199, *F.*) [*R.*, 35 M. 397=1912 M.W. N. 549=12 M.L.T. 1=14 Ind. Cas. 896=13 Cr. L.J. 352, 35 M. 247=13 Cr. L.J. 305=14 Ind. Cas. 849=1912 M W.N. 207=22 M.L.J. 490=11 M.L.T. Sup. 1, 1903 U.B.R. Cr. P.C. 16, 9 C.L.J. 55=10 Cr. L.J. 325=3 Ind. Cas. 625, 11 Cr. L.J. 235=6 Ind. Cas. 101=7 A.L. J. 468, 1 Ind. Cas. 970.]

(26)—*Confessions—Proof—Record of—Practice*—The Courts, being well aware of the safeguards with which the law expressly surrounds the action of the police, are bound to approach confessions in the same spirit as the Legislature, and to remember that the intended safeguards would become little better than pitfalls. The practice of taking prisoners before Magistrates not having jurisdiction in the case, for the purpose of getting confessions, is not generally desirable. It is still more objectionable to send prisoners before different Magistrates, each of whom would have imperfect knowledge of the mater from only taking one or two examinations. QUEEN-EMPRESS v. REVUBAI, **Rat. Un. Cr. C. 254.**

(27)—*Confession—Proof — Practice.*—Where an accused makes a confession before one Magistrate and again confesses before the committing Magistrate, it is not open to the latter to read to the accused his statement before the former Magistrate and to ask him if it was true; in such cases, it is very desirable to test the value of statements made on different occasions by taking them fully and in detail, and seeing in what respects they agree and in what particulars they differ. QUEEN-EMPRESS v. CHINTAMAN, **Rat. Un. Cr. C. 153.**

(28)—*Crim. Pro. Code, s. 164—Record of confession by magistrate — Irregularity.*— A Magistrate who recorded, under s. 164, Crim. Pro. Code, the confession of the accused instead of first satisfying himself that the accused, was about to make confession voluntarily, recorded the confession and then, at the end of it, put one comprehensive question as to the nature of the confession: *Held* that the Magistrate had not complied with the provision of s. 164, Crim. Pro. Code, which clearly denotes that the Magistrate should not proceed to record any confession unless he first had reason to believe that the person was about to make it voluntarily, and that he should, therefore have, begun by enquiring into that point. QUEEN-EMPRESS v. APPA *bin* BAPU, **1 Bom. L.R. 357.**

(29)—*Crim. Pro. Code* (1898), *s.* 164 (3)—*Confession—Record of confession.*—The word, 'record,' in s. 164, cl. (3) of the Code, must necessarily mean "making a part of judicial record," and not merely writing out. EMPEROR v. KADAR GHULAM MAHMAD, **8 Bom. L. R. 950=5 Cr.L.J. 4.**

(30)—*Crim. Pro. Code, ss.* 164, 533—*Confession made in* Marathi *recorded in English.*—A Magistrate, in recording a confession, put question to the accused in *Marathi*, and the accused gave his answers in *Marathi*; but the Magistrate recorded the statement in English. It appeared that the answers were correctly recorded, that, after the examination was concluded, the Magistrate read it out sentence by sentence and the Sheristadar translated it into *Marathi* and the accused then admitted it was correct. *Held*, that, having regard to the provisions of s. 533, Crim. Pro. Code, the statement was admissible in evidence, and the error did not prejudice the accused as to his defence on the merits. EMPEROR v. PHILIP JUZE FERNAND, **4 Bom. L.R. 785.**

(31)—*Evidence Act, s.* 24—*Confession—Omission to observe the formalities prescribed by ss.* 122 *and* 346, *Crim. Pro. Code* (1872).—A confession does not become unworthy of consideration, merely because the memoranda required by law to be attached thereto, have not been written in the exact form prescribed. EMPRESS OF INDIA v. BHALRON SINGH, **3 A. 338.** [*R.*, 23 B. 221.]

(32)—*Magistrate himself to record.*—The recording of confessions should be made by Magistrates with their own hands. CRIMINAL CIRCULAR MEMO, NO. 7 OF 1873, **20 W.R. Cr. Cir. 7.**

Confession—continued.

——3.—**Confessions to Magistrates—Admissibility—Record of Confessions**—*continued.*

(33)—*Crim. Pro. Code* (1872), *ss.* 122 *and* 346—*Recording of confession—Omission to take it in writing with required formalities.*—An omission by a Magistrate to take a confession in writing with the formalities prescribed by s. 346, although irregular, does not make the confessions absolutely inadmissible in evidence. If necessary, evidence might be taken to show that such a confession had been duly recorded. EMPRESS v. RAMANJIYYA, **2 M. 5=2 Weir 123.** [*R.*, 4 B. 15, 23 B. 221.]

(34)—*Record of confessions freely made—Defective recording of confessions.*—A confession freely made to a Magistrate and recorded under s. 164 is admissible in evidence. It would not become inadmissible, if the Magistrate thought proper, or if it so happened that he was the only Magistrate, to take the case and commit it to the Sessions Court. A confession, although it is not properly recorded, because the Magistrate has not signed the record as well as the verification as required by law, is admissible in evidence, on the evidence of the Magistrate. The Code of 1898 has placed both the statement of an accused recorded in an investigation and during a judicial inquiry on the same footing, in regard to the means of providing a remedy for a defect in recording such a statement. EMPRESS v. LALL SHEIKH, **3 C.W.N. 387.**

(35)—*Recording of confession—Admissibility of unrecorded confession—Crim. Pro. Code* (1898), *s.* 164.—S. 164 of the Crim. Pro. Code requires that a confession made to a Magistrate in the course of an investigation shall be recorded in a particular manner, and that, if not so recorded, no evidence of it can be received. NGA TA PEV v. KING-EMPEROR, **2 L.B.R. 19.** (17 C. 862, *F.*).

(36)—*Recording of confession—Irregularity—Admissibility of unrecorded confession*—The essential requirements of s. 164, Crim. Pro. Code, are that the Magistrate should, before recording the confession, question the accused, and, upon so questioning him, form the belief that the confession to be recorded is made voluntarily, and that the record made by the Magistrate should contain a full and true account of the statement made by the accused. If, in the case of a confession purporting to be recorded under s. 164, it is found that any of the provisions of that section are not complied with, the point on which s. 533 requires the Court to take evidence is, whether the confession was made in accordance with the imperative requirements of s. 164. Under s. 533, even oral evidence of the terms of the confession would be admissible, but the section does not apply to a confession made to a Magistrate and not recorded by him in any way. NGA WE v. KING-EMPEROR, **2 L.B.R. 317.**

(37)—*Recording of—By Magistrates.*—A confession to a Magistrate before the Magisterial enquiry commenced consisted of two portions, in one of which there was a note which certified that the statement above recorded was read over to, and admitted by, the accused to be correct, but was not signed by him. The other portion contained a different account wherein the accused denied his guilt. The entire statement contained a certificate and was in accordance with s. 364, Crim. Pro. Code, 1882. *Held*, that the first portion was admissible in evidence, subject to all just exceptions under s. 24, Evidence Act, or otherwise, as an accurate record of a statement made by an accused person before the Magistrate, if the Magistrate should depose that the record was a statement recorded by him and admitted by the accused to be correct and that the absence of the signature of the accused from the record was no bar to its reception. NADIR v. EMPRESS, **36 P.R. 1887, Cr., F.B.**

(38)—*Mode of taking evidence of a confession.*—A Judge, in taking down the evidence of a witness to a confession, alleged to have been made by an accused person, should insist upon the witness stating the actual words used by the accused; the witness's idea of the import of those words not being sufficient. NAWAB BIBI v. EMPRESS, **22 P.R. 1885, Cr.**

(39)—*Duly recorded confession, when could be rejected.*—A confession duly recorded under s. 164, Crim. Pro. Code, may be liable to be rejected under s. 24, Evidence Act, if any ground of exclusion specified in the section is made to appear, although, at the time of record, it appeared to be a voluntary confession. The fact of its being voluntarily made is a circumstance to be taken into account, of which the accused may be reasonably expected to give a satisfactory explanation. UMAR v. EMPRESS, **51 P.R. 1887, Cr.**

(40)—*Prisoner sent to Magistrate for recording his confession—Corroboration.*—A confession made by a prisoner, who is sent before a Magistrate by the police only for the purpose of having it recorded, differs little from a confession made to the police. Where such a confession was retracted at the preliminary enquiry and was uncorroborated, a conviction could not be sustained. CROWN v. PAIREE, **21 P.R. 1869, Cr.** [*R.*, 16 P.R. 1903, *Not Appl.*; 10 Cr. L.J. 584=4 Ind. Cas. 429=24 P.W.R. 1909, Cr.=153 P.L.R. 1909.]

(41)—*Record of—In form of question and answer—Evidence Act, s.* 80.—So far as s. 80, Evidence Act, is concerned, the Court is bound to make the presumptions specified in that section in respect of the document purporting to be a confession of the accused. The fact that questions are put to an accused person making a confession does not render that confession inadmissible on the ground that it was not duly taken. The Court has full power to consider whether the questions are such as may properly be put to the accused in the circumstances,

Confession—continued.

——3.—Confessions to Magistrates—Admissibility—Record of Confessions—*continued.*

and to exclude it from consideration, if it is of opinion that the questions are improper. SAN BAW v. CROWN, **1 L B.R. 340, F.B.**

(42)—*Necessity for accurate report of—Information leading to discovery.*—Where two persons are being tried, it is not a proper course to allow a witness to say "they said this," or "they said that." It is not at all likely that both the persons should speak at once, and it is the right of each of them to have the witness required to depose as nearly as possible to the exact words he individually used. Where a statement is being detailed by a constable as having been made by an accused in consequence of which he discovered a certain fact or certain facts, the strictest precision should be enjoined on the witness, so that there may be no room for mistake or misunderstanding. KHA HLAW v. KING-EMPEROR, **4 L.B.R. 116=7 Cr.L.J 82.**

(43)—*Police improperly inducing accused to confess—Examination of accused by Magistrate with respect to such confession—Object of examination—Crim. Pro. Code* (1898), *ss.* 287, 342—*Accused pointing out places where offence was committed—No discovery—Evidence as to it inadmissible—Evidence Act* (I *of* 1872), *ss.* 24, 25 *and* 27.—Where an accused person was induced by the police to make a confession of having taken part in the commission of an offence, and the committing Magistrate admitted it in evidence and examined the accused with respect to it and the accused admitted it. *Held*, that the accused being examined about a confession which was not admissible in evidence, the questions and the answers to them could not be said to be duly recorded, as the questions were such as were not allowed by the law to be put, and that the answers to those questions were not admissible in evidence against the accused. *Held*, also, the confession being admitted in evidence through the medium of those answers, the confession was inadmissible in evidence. The examination of an accused person under s. 342, Crim. Pro. Code, *duly recorded* by or before the committing Magistrate, can be tendered by the prosecutor, and read as evidence, under s. 287, Crim. Pro. Code. The examination of an accused person is for the purpose of enabling him to explain any circumstances appearing in evidence against him, and not for the purpose of filling up a gap for the prosecution. Remarks made on the effect of an accused's pointing out to the police the places where certain acts were committed. Where a confession was held, by the Court below, to be corroborated by the accused having pointed out to the police the places where certain acts were committed: *Held*, that evidence regarding it was not admissible, under s. 27 of the Evidence Act, because no fact was discovered in consequence of the information given by the accused. The fact that a discovery was made in consequence of information received by the police from an accused person is admissible, and so much of the information given by the accused, as led to such discovery, would be admissible. But a statement by the accused to the police that certain property had been stolen would not be admissible, as such statement is not connected directly with the discovery, where there is nothing else to connect the property discovered with the offence. GAUNG GYI v. KING-EMPEROR, **4 L.B.R. 244=8 Cr. L.J. 62 =14 Bur. L.R. 233.**

(44)—*Irregularity in recording confession—Admissibility.*—A confession, which had the certificate required by s. 122, Crim. Pro. Code, duly attached, and which was signed by the accused, but which was not recorded in the manner prescribed by s. 346, Crim. Pro. Code, nor certified that it contained in full the statement made by the accused, though it contained a statement by the accused that it had been correctly recorded, was held to be admissible in evidence and to be proved by its production. AHMED DIN v. EMPRESS, **20 P.R. 1881, Cr.**

(45)—*By accused persons—Duty of Magistrate—Crim. Pro. Code* (1898), *ss.* 164, 364.—When a prisoner is brought before a Magistrate to make a confession, it is the duty of the Magistrate to question him with a view to discover whether he confesses voluntarily and this questioning must be in pursuance of a real endeavour to find out the object of it. Unless the Magistrate has made a real and substantial enquiry as to the voluntary nature of a confession, a confession even before him is inadmissible in evidence. ANANDA CHANDRA SEN v. PARBATI NATH SEN, **4 Cr. L.J. 198=3 L.B. R. 173.**

(46)—*Confession by prisoner—Attestation—Magistrate's powers—Crim. Pro. Code* (1872), *ss.* 324, 346.—The record of confession, upon which a prisoner is convicted, need not be attested by the Magistrate, trying the accused, as required by s. 346 of the Crim. Pro. Code (of 1872). It is not even necessary for the Magistrate to record any "confession," since he is competent, on the admission of the prisoner, to sentence him without any further record (s. 324). *In the matter of* CHUMMAN SHAH, **3 C. 756=2 C.L.R. 317.**

(47)—*Crim. Pro. Code* (1872), *ss.* 122, 346—*Defective confession—Admissibility of secondary evidence.*—The defect of a prisoner's confession not having been recorded according to s. 346 of the Crim. Pro. Code (of 1872) could not be cured by the evidence of the recording officer that the confession was actually made. The express provision made to meet the case of an imperfect record of examination of a prisoner, in the course of a preliminary enquiry, cannot be made applicable to the case of an imperfect record of a confession. EMPRESS v. MANOO TAMOOLEE, **4 C. 696=4 C.L.R. 137=2 Shome L.R. Cr. 19.** (10 B.H.C. 166, F.B., *F.*) [*R.*, 5 C.L.R. 238, U.B.R 1892—1896, Vol. I, 16; *Cons.*, 6 C.L.R. 289; *D.*, 5 C. 954.]

Confession—continued.

——3.—Confessions to Magistrates—Admissibility—Record of Confessions—*continued.*

(48)—*Record of confession—Crim. Pro. Code (X of* 1872), *ss.* 122, 193, 346.—S. 122 of the Crim. Pro. Code (of 1872) contemplates and provides for cases in which confessions are recorded by a Magistrate other than the one by whom the case is enquired into or tried. [*D.*, 5 C. 958.] A confession recorded by a Magistrate, having jurisdiction, is to be treated as an examination under s. 193 of the Crim. Pro. Code (of 1872), notwithstanding that the prisoner may have been brought before the Magistrate before the conclusion of the Police investigation. The provisions of the last paragraph of s. 346 of the Crim. Pro. Code apply to such a confession. EMPRESS v. ANUNTRAM SINGH, **5 C. 954=6 C.L.R. 297=3 Shome L.R. Cr. 29.** (4 C. 696, *D.*) [*Declared Obsolete*, 11 Cr. L.J. 453=7 Ind. Cas. 359=37 C. 467; *F.*, 5 A. 253=2 A.W.N. 1882. 25; *R.*, 3 C.W.N. 387, U.B.R. 1892—1896, Vol. I, 16 Rat. Un. Cr. C. 254.]

(49)—*Defective confession—Cure of defect—Record of evidence by Sessions Judge—Crim. Pro. Code* (X *of* 1872). *ss.* 122 *and* 346—*Deposition by recording Magistrate before committing Magistrate—Evidence in Sessions Court.*—The defect of a confession recorded by a Magistrate under s. 122 of the Crim. Pro. Code, who omitted to record the certificate required by s. 346, can be cured, if at all, only on the Sessions Judge taking evidence that the accused made the statement. A deposition by the Magistrate, who recorded a defective confession, made before the committing Magistrate to the effect that the accused did make the statement will not be evidence of the fact in the Sessions Court; except where the recording Magistrate's presence at the Sessions Court cannot be obtained without unreasonable delay or expense, the Sessions Judge himself must examine the recording Magistrate. NOSHAI MISTRI v. EMPRESS, **5 C. 958=6 C.L.R. 353.**

(50)—*Record of confession of accused in narrative form—Effect of the error on admissibility in evidence—Crim. Pro. Code (Act* X *of* 1872), *s.* 346—*English memorandum.*—The fact of the confession of an accused person having been recorded in a narrative form, and not in the form of questions and answers as required by s. 346 of the Code, would not affect its admissibility in evidence, if the accused had not been prejudiced by the error. *In the matter of the petition of* MUNSHI SHEIKH; EMPRESS v. MUNSHI SHEIKH, **8 C. 616=4 Shome L.R. 281.** (8 C. 618, Note=1 C.L.R. 1, *R.*) [*R.*, 23 B. 221, 4 Bom. L.R. 785.]

(51)—*Confession recorded by clerk in presence of Magistrate, in narrative form.*—A confession recorded by a clerk, under s. 164 of the Code, in the presence of a Magistrate, in the form of a narrative and without the questions being recorded, would not be illegal, if the accused was not prejudiced by it. The same would be the case as regards a confession taken, under s. 364, while the case was being heard before the Magistrate, and recorded in a narrative form. [*R.*, 21 B. 495, U.B.R. 1897-1901, Vol. I, 47, 4 Bom. L.R. 785] It is not necessary that an English memorandum as required by s 364, para. 3, should be made in respect of a confession under s. 164. FEKOO MAHTO v. EMPRESS, **14 C. 539.** [*F.*, 10 Cr. L J. 325=3 Ind. Cas. 625=9 C.L.J. 55.]

(52)—*Statement recorded by Magistrate—Admissibility in evidence—Inducement to confess—Evidence Act, s.* 24.—A statement by an accused recorded by a Magistrate, after a verbal warning from the Magistrate to the accused to the effect that what he (the accused) was going to say would be evidence against him and that he must speak the truth, was held inadmissible in evidence, such warning being calculated to hold out an inducement to the accused to confess. QUEEN-EMPRESS v. UZEE, **10 C. 775.** [*R.*, L.B.R. 1872-1892, 289.].

(53)—*Crim. Pro. Code, ss.* 164, 364, 533—*Applicability to Police in town of Calcutta—Statements made by accused in custody of Police recorded by a Magistrate—Irregular recording—Admissibility.*—Chapter XIV of the Crim Pro. Code, except s. 155, does not apply to the Police in the town of Calcutta. Therefore, neither s. 164, nor, as a necessary consequence, s. 364 or s. 533 applies to a statement made by a person in custody, to a Magistrate in Calcutta, in the course of an investigation, made by the Police in the town of Calcutta, into the circumstances of a crime committed in Calcutta. Where a statement of the kind mentioned above was recorded by a Magistrate, while the accused was in the custody of the police, in English, the accused, who spoke and understood English, sometimes answering in English and sometimes in Bengali, *held*, that the statement was admissible, on the evidence of the Magistrate, under ss. 21 and 26 of the Evidence Act. [*F.*, 21 B. 495]. *Obiter*;—The provisions of s. 164, read with s. 364 of the Code, would not be complied with, when answers are made by an accused person in one language and written down in another, unless it is shown that it was impracticable to write them in the language in which they were spoken. The Court had very grave doubts whether the defect could be cured under s. 533 of the Code. QUEEN-EMPRESS v. NILMADHUB MITTER, **15 C. 595, F. B.** [*Diss.*, 8 C.P.L.R. 21 Cr., 16 C.P.L.R. 122; *R.*, 17 C. 862, L.B.R. 1893—1900, 70, 10 Cr.L.J. 325=3 Ind. Cas. 625=9 C.L.J. 55.].

(54)—*Crim. Pro. Code, ss.* 164, 364 *and* 533—*Scope of s.* 533—*Confession not recorded in the language in which it is given—Admissibility in evidence.*—The section would only come into operation when a confession or other statement of an accused person, recorded under s. 164 or s. 364, was tendered, but a confession recorded in

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direct violation of those sections would not be one recorded under them. S. 533 is intended to provide a remedy against omissions to sign the confession and the certificates and to certify all the facts required to be certified. The provisions of s. 164 read with s. 364 are imperative as to the language in which a confession is to be recorded, and s. 533 does not contemplate or provide for any non-compliance with the law in this respect. It is clear from ss. 164 and 364 that the confession is to be recorded in the language in which it was made, or, if that is not practicable, in the language of the Court or English. It would be for the prosecution to establish the impracticability, if any existed. JAI NARAYAN RAI v. QUEEN-EMPRESS. **17 C. 862.** [*Diss.*, 21 B. 495, 23 B. 221, 18 C. 549; *F.*, 2 C.W.N. 702, 2 L.B.R. 19; *R.*, L.B.R. 1893-1900, 70, 8 C.P.L.R. 21 Cr., U.B.R. 1903, 1st Qr. Cr. P.C. 13, 16 C.P.L.R. 122, 10 Cr L.J. 325=3 Ind. Cas. 625=9 C.L.J. 55.]

(55)—*Crim. Pro. Code* (1882), *ss.* 164, 364 *and* 533—*Confession not rendered in language in which it was given, but rendered in Court language—Knowledge of the Magistrate of language in which confessioon was given—Presumption.*—A confession made in Hindustani, in the presence of a Sub-Divisional Magistrate who was a Mahomedan gentleman, was recorded by the Court officer in Bengalee, which was the language of the Court and a memorandum, as required by law, was made by the Magistrate himself in English. It was contended that, because the Magistrate was a Mahomedan, he must be presumed to have sufficient acquaintance with Urdu to enable him to record a statement in that language. *Held*, that, in the absence of any evidence to the contrary, it should be presumed that the proceedings of the Magistrate were conducted in accordance with law and that, in the absence of anything to show that it was practicable for the officers of the Court to record the statement in Urdu, it should be taken that the Magistrate found it impracticable to do so, and adopted the alternative course allowed by law, namely, to have it recorded in the Court language, Bengalee. LALCHAND v. QUEEN-EMPRESS, **18 C. 549.** (17 C. 862, *Doubted.*) [*R.*, 21 B. 495, 23 B. 221, 10 O.C. 112, 10 Cr. L.J. 325=3 Ind. Cas. 625=9 C.L.J. 55.]

(56)—*Crim. Pro. Code* (1882), *s.* 364—*Recording statement of accused by a Magistrate—Proper procedure.*—Where a statement made by an accused person in Manipuri and communicated in Bengali to the Magistrate was recorded in English by the Magistrate, and there was also a record in Manipuri, and both records differed, *held*, that the Manipuri document should be regarded as the proper record and the only evidence in the case. If the Manipuri statement had not been made, the Magistrate would not have strictly complied with the provisions of s. 364 of the Code in recording the statement in English. QUEEN-EMPRESS v. SAGAL SAMBA SAJAO, **21 C. 642.** [*R.*, 4 N.L.R. 163=9 Cr.L.J. 56.]

(57)—*Crim. Pro. Code* (1882), *s.* 364—*Confession recorded in a language different from that in which it was given—Admissibility.*—Where a confession of an accused given in Bengali was recorded by the committing Magistrate in English and the Magistrate, in his evidence before the Sessions Court, deposed that he could not write Bengali well and that he had no *mohurrir* at the time when the confession was recorded, *held* that the confession so recorded was admissible in evidence. QUEEN-EMPRESS v. RAZAI MIA, **22 C. 817.** (17 C. 862, *D.*) [*R.*, 21 B. 495, 10 Cr. L.J. 325=3 Ind.Cas. 625=9 C. L.J. 55.]

(57-*a*)—*Confession not recorded in language in which it was made—Admissibility.*—Where a confession made in Urdu was recorded by the Magistrate, who knew both English and Urdu well, in English and the Magistrate deposed that the confession was taken down sentence by sentence, and was interpreted by himself to the accused who admitted its correctness, *held*, that the accused had not been prejudiced by the defect which was, therefore, cured by s. 533. *Held*, further, that such a defect could be cured by the statement on oath of the Magistrate who had recorded the confession. RATTI RAM v. EMPRESS, **7 P.R. 1899, Cr.**

(58)—*Record of, to be accompanied by English translation.*—When confessions of accused persons, made before a Magistrate, form part of the evidence against the persons committed for trial to the Court of Sessions, they should be accompanied by translations into English fairly written out. CRIMINAL CIRCULAR No. 4 of 1872, **18 W.R. Cr. Cir. 9.**

(58-*a*)—*Record of—Crim. Pro. Code* (1898), *ss.* 364 *and* 533—*English translation.*—A Magistrate recorded an English translation of the confession made in his presence by an accused in the *Chhatisgarhi* language; on examination as a witness during a Sessions trial, he deposed that he had recorded every single question he asked and every answer thereto, that he had read out the record so taken to the accused translating each English sentence into its *Chhatisgarhi* equivalent, and that the accused acknowledged the record to be correct. *Held*, that the Sessions Judge ought not to reject the record of such a confession as irrelevant, on the ground that s. 533, Crim. Pro. Code, covered only cases where a statement had been "recorded," and that a translation of the said statement cannot be deemed to be any "record" at all. *Held*, further, s 533 was to be liberally interpreted and that its amendment showed that neither s. 164 nor s. 364, Crim. Pro. Code, prevented oral evidence being taken to show the statement to have been duly made. On general principles, there is no reason why a-

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translation should be regarded as no record. EMPEROR v. CHAITU GAHERA, 16 C.P.L.R. 122. (9 C. 455, *Appr.*; 23 B. 221, 15 C. 595, 17 C. 862, 13 C.P.L.R. 107, *R.*)

(59)—*Crim. Pro. Code*, 1872, *ss.* 122, 346—*Defect in confession.*—A defect in a confession taken under s. 122 of the Code cannot be remedied by evidence taken at the Sessions, as can be done in the case of the examination of a prisoner under s. 346 EMPRESS v. HARI KISTO BISWAS, 5 C.L.R. 209.

(60)—*Certificate of recording Magistrate, value of—Confession, admissibility of—Evidence Act* (I *of* 1872), *s.* 84—*Conspiracy, conviction for.*—A Court of appeal is not precluded from inquiring into the nature of a confession, to see whether it was voluntary or not, because the recording Magistrate attached at its foot the memorandum prescribed in s. 164 of the Code. It is a duty clearly incumbent on the Court of appeal, where the spontaneity and voluntary nature of the confession is impugned. A Magistrate before recording a confession had the following conversation with the accused:—"Do you know who I am?—Yes. Any statement you make will be of your own free will. You are under no compulsion—I understand." *Held*, there was no compliance either with the letter or the spirit of the law as laid down in s. 164 of the Crim. Pro. Code. When it appeared that an accused person was illegally confined in solitary confinement for about a fortnight, that the police had access to him, that pressure was brought to bear upon him through his father, mother and brother, that the desirability of a confession was pressed upon him by the District Magistrate as a means of saving himself and his relatives from threatened pains and penalties, that his father was illegally arrested and detained in *hajut* for a long time without any charge, that he then made a confession which was recorded without legal precautions and in the immediate presence of an officer who was the head of the police and was officially and personally interested in the case and who put incriminating questions to the accused and helped in amplifying the confession, and finally that the confession was retracted as soon as the accused was produced in Court: *Held*, such confession was not voluntary and not admissible in evidence. Where it appeared that an accused person was in police custody from the 7th to the 15th August, that from the 31st July he had been in jail, part of the time in solitary confinement, that he was confronted with another accused, who, he was told, had made a confession, that, during the recording of the confession, questions were put to him from a police report by another Magistrate who was present, that the confession contained evidently false statements and that it was retracted as soon as the accused was produced in Court: *Held*, the confession was not voluntary and was not admissible in evidence. There is no warrant or justification for the intervention of a third party as the questioner, directly or indirectly, of a confessing prisoner. It is highly irregular for a Magistrate recording a confession to obtain from the police a report of what the accused is alleged to have stated to them, before he begins to record the confession. A conviction for conspiracy cannot stand, when the charge against the other alleged conspirators has failed. It is highly irregular for a Court Inspector, a police officer appointed to conduct prosecutions, to take away and retain with him petitions filed in the case. When a bomb was found in a *baitakkhanaghar* in a house to which all the members of the family had access, it could not be held that any particular member was in possession of the bomb. JOGJIBAN GHOSE v. EMPEROR, 9 C.L.J. 663=13 C.W.N. 861=10 Cr. L.J. 125=2 Ind Cas. 681. (7 C.W.N. 220, *Appr.*; 15 A. 129, *Appl.*) [*R.*, 15 C.L.J. 517=16 C.W.N. 105=13 Cr. L.J. 609=16 Ind. Cas. 257, 13 Cr.L.J. 65=13 Ind. Cas. 721=16 C.W.N. 145.]

(61)—*Crim. Pro. Code*, 1898, *s.* 164—*Confessions, recording of—Admissibility—Evidence Act*, *s.* 80—*Confessions made to police officer.*—A confession recorded by a Magistrate during the course of a police investigation without a certificate, as required by s. 164, cannot be admitted under s. 80, without proof of its having been made. A confession made to a police officer cannot be proved against an accused person, and the officer should not be allowed to say that the accused person confessed to him, even though the terms of the confession are not allowed to be proved. EMPEROR v. RADHE HALWAI, 7 C.W.N. 220. [*F.*, 10 Cr. L.J. 125=9 C.L.J. 663=13 C.W.N. 861=2 Ind. Cas. 681.]

(62)—*Crim. Pro. Code*, 1882, *ss.* 164, 364 *and* 533—*Confession not recorded properly—Examination by Magistrate of accused person regarding such confessions—Admissibility—Evidence Act* (I *of* 1872), *ss.* 80 *and* 91—*Confession not conforming with provisions of s.* 164—Certain *Mapillas*, suspected of being concerned in a murder, made statements to a Magistrate, who was acting under the provisions of the *Mapilla* Act, and they were recorded in English, although given in Malayalam, and were neither signed by the prisoner, nor certified by the Magistrate; subsequently, when there was no evidence on the record against the accused, the Magistrate examined them as to those statements, and the prisoners admitted that they had made such statements. In the Sessions Court, the statements which were subsequently retracted were sought to be admitted by the evidence of the Deputy Magistrate. *Held*, that the statements were not admissible. [*F.*, 8 C.W.N. 22; *R.*, 2 C.W.N 702.] The provisions of s. 164 are imperative, and s. 533 will not render a confession admissible, where no attempt at all has been made to conform to its provision.

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Per Parker, J. QUEEN-EMPRESS v. VIRAN, **9 M. 224=2 Weir 125.** [*F.*, 23 B. 221; *R.*, 2 C.W.N. 702, 17 C. 862, L.B.R. 1893—1900, 70, 4 Bom. L.R. 785; *D.*, 21 B. 495.]

(63) — *Confessions — Uncertified statements made by accused—Admissibility in evidence—Confession caused by inducement.*—The accused was convicted of the murder of a boy committed on the 22nd June, 1901. The question in this case was, whether the incriminating statements made by the accused were admissible in evidence as confessions. On the 28th June, his house was searched without any result and he was formally arrested on the 29th. On the 1st July, he was taken to a Magistrate at Jhelum with a view to obtaining a remand and on the 4th July to the Tahsildar of Jhelum, a Magistrate of the second class, who recorded a statement made by him which amounted to a confession of actively abetting the murder by holding the legs of the deceased while he was strangled by another person, who afterwards cut the deceased's throat. This confession was supplemented by two uncertified statements. On the 5th July, the accused produced bangles worn by the deceased from a hole near a tomb after trying two other holes without finding the bangles in them. On the 10th July, the accused stated that the bangles shown to him were not the bangles worn by the boy and that the *Lambardar* had asked him to take them out from the hole for pardon having been tendered to him and told him that it would be better for him to do so. The confession was retracted on the 24th July before the committing Magistrate. *Held* that the uncertified statements were rightly excluded by the Lower Court from evidence and that the certified confession was also not admissible in evidence as the Court was not satisfied that inducements were not offered to the accused to make it. ALLAH DAD v. EMPEROR, **7 P.L.R. 1902.**

(64)—*Refusal to record confession on suspicion of insanity.*—A Magistrate is not justified in refusing to record the statement of an accused person under s. 164, Crim. Pro. Code, 1882, on a mere suspicion of insanity. Although such a statement may contain an admission of guilt, it may, subsequently, be useful to the accused as evidence that he was not in his right mind. SOHAN v. EMPRESS, **3 P.R. 1894, Cr.**

(65 *to* 67)—*Record of—Practice.*—If confessions and other incriminating statements made by the accused in preliminary enquiries are to be recorded, the Magistrate should record whether the accused have been brought from police custody or from jail and whether the police officers, who made the enquiry, were present in Court while the accused were making their statements. The Magistrate should also be careful of the interests of the accused as he would be of those of the prosecution. His chief object must be to ascertain the truth of the case, to endeavour that the innocent may not suffer punishment as well as that the guilty may not escape. EMPRESS v. JIJOBA, **1 C.P. L.R. 115, Cr.**

(68)—*Confession made to a person not a police officer and when accused not in police custody—Confession made under inducement held out by one who is not a person in authority—Proof of so much of confession as relates to fact thereby discovered—Admission—Evidence Act, ss. 21, 24, 25, 26 and 27—Evidence of—Crim. Pro. Code, ss. 533 and 164—Murder.*—The appellant, who was accused of murder, made a statement during the course of police investigation to certain men of influence in the neighbouring villages when no police official was present. In consequence of the accused's statement, some money and other things belonging to the deceased were found at the place mentioned by him. The accused, also, made a statement before the Magistrate of the District. The District Magistrate refused to make the memorandum referred to in s. 164, Crim. Pro. Code, because it appeared to him that the statement was not the accused's free and spontaneous statement, but was made by him in consequence of certain hopes which a constable had held out to the accused, which he thought might possibly be realised. In the Court of the committing Magistrate, when the statement made by the accused before the District Magistrate was read out to him, he stated that some constables had given him *bhang* and liquor to drink and he did not remember what he stated. The Sessions Judge held both statements to be inadmissible, the former on the ground that, the accused not having been in the custody of the police at the time when the statement was made, it was inadmissible in evidence under s. 27 of the Evidence Act, the latter on the ground that it did not contain the memorandum required under s. 164, Crim. Pro. Code. On appeal, the Court of the Judicial Commissioner directed the Sessions Judge to examine the District Magistrate as to the statement made by the accused before him and to give an opportunity to the accused of explaining how he came to make it. The District Magistrate was examined and he proved that the accused appeared to be in perfect possession of his senses when he made the statement and that there was absolutely nothing to suggest that he was under the influence of any intoxicant. *Held (per Ryves, O.A.J.C.)*: That the confession of the accused made to the residents of the neighbouring villages was admissible in evidence against him. A confession made not to a police officer, and not improperly obtained as laid down in s. 24 of the Evidence Act is always admissible against an accused. In the same way, any fact discovered in consequence of an admissible confession can also be admitted against him. *Held (Per Scott, J. C.)* that having regard to the provisions of s. 21 of the Evidence Act, the confessions made by the accused to the residents of the neighbouring villages and to the District Magistrate were

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admissible in evidence. The former confession although having been made when the accused was not in police custody, proof of it was not prohibited by ss. 25 and 26 of the Evidence Act and it was relevant under s. 24, if the inducement held out to him did not proceed from a person in authority and the latter was admissible under s. 533, Crim. Pro. Code, as the evidence of the District Magistrate who recorded it was taken to prove that the said statement was made voluntarily. HARBANS v. KING-EMPEROR, **8 O.C. 395, B.**

(69)—*Recorded by Police Officer and Magistrate.*—A confession recorded by a Police Officer, who is also a Magistrate, is inadmissible in evidence. QUEEN v. HURRIBOLE CHUNDER GHOSE, **1 C. 207=25 W. R. Cr. 36.** [*R.*, 37 C. 467=14 C.W.N. 1114=7 Ind.Cas. 359=11 Cr. L.J. 453.]

(70)—*Crim. Pro. Code*, 1882, *ss.* 164, 342—*Confession to Magistrate other than committing Magistrate—Accused having been long in police custody—Examination of accused.*—A confession made under s. 164, Crim. Pro. Code, made to a Magistrate, other than the committing Magistrate, if tendered on the part of the Crown, cannot be rejected on the sole ground that the accused had been a long time in the hands of the Police. It is necessary for the Court to examine the accused at the close of the case for the prosecution, s. 342 being imperative, as it is a means of enabling the accused to explain what appears against him. QUEEN-EMPRESS v. MAHADHU, **Rat. Un. Cr. C. 720=Cr. Rg. 46 of 1894.**

(71)—*Crim. Pro. Code*, *s.* 164—*Question and answer by accused.*—Where the Sessions Judge regarded as an admission by the accused a statement as to her profession as recorded by the Magistrate, *held* that, if the Court wanted to use it as evidence, the Magistrate and the clerk who recorded it should be examined to prove it. The failure to do so is not a mere irregularity which can be waived.—*Per Candy, J.* The fact that the statement does not purport to be given in answer to a question does not render it inadmissible. It is at best a mere irregularity which is waived when no objection is taken to it at the trial.—*Per Fulton, J.* QUEEN-EMPRESS v. YESU, **Rat. Un. Cr. C. 644=Cr. Rg. 17 of 1893.**

(72)—*Crim. Pro. Code* (*Act* X *of* 1872), *s.* 346—*Signature of accused in confession.*—S. 346 of the Crim. Pro. Code, imperatively demands that the accused person shall sign or attest by his mark the record of his confession. Where, in place of such signature, the record says "signature of A. B. (accused), the handwriting of C. D," *held*, that this was not enough when there was nothing to show that A. B. authorised C. D. to sign for him. REG. v. DAYA ANAND, **11 B.H.C. 44.** [*R.*, 23 B. 221, 9 M. 224.]

(73)—*Crim. Pro. Code*, 1872, *ss.* 45, 122, 256, 346—*Confession not recorded properly—Admissibility—Confession of co-accused tried jointly—Penal Code*, *s.* 114.—Where a confession is not recorded in the form of question and answer, and is not completed by an indorsement under the hand of the Magistrate to the following effect:—"I believe that this confession was voluntarily made," the confession is inadmissible in evidence. The evidence of the Magistrate cannot cure the defects which appear in what is provided for by the law as a species of pre-appointed evidence, and which the law declares to be complete and admissible only when certain forms are complied with in the recording of it. The waiver of the accused cannot affect the inadmissibility of the document. [*R.*, 9 M. 224=2 Weir 128]. If an abettor of a crime is, on account of his presence at its commission, to be charged as a principal, the abetment must continue down to the time of the commission of the offence. At any time before the event he may change his mind, and withdraw from the abetment. The law allows a *locus penitentiæ* in such cases, and if he distinctly withdraws at any moment before the final act is done, the offence is no longer committed with his abetment. The confession of a person who, after admitting that he abetted the murder, says that he dissuaded the other accused from committing the murder, as the deceased was a friend of his, has not the inherent quality of a confession, and cannot, therefore, be used against the other accused, and should not be laid before the jury. REG. v. AMIRTA GOVINDA, **10 B. H. C 497.** [*R.*, 5 B. 63, 2 Bom. Cr. C. 143=15 Bom. L. R 975; Rat. Un. Cr. C. 153, 436, U.B.R. 1892—1896, 191; *Appr.*, 27 P.R. 1913, Cr.=244 P.L.R. 1913=19 Ind. Cas. 1004=14 Cr. L.J. 316=44 P.W.R. 1913.]

(74)—*Crim. Pro. Code*, 1872, *ss.* 122, 346—*Scope of s.* 346—*Imperfect record of confession.*—S. 346, Crim. Pro. Code, 1872, would appear to apply only to the examination of the accused taken on enquiries as distinguished from investigations or trials, and dealt only with statements and confessions made in the course of the preliminary enquiry and was not applicable to confessions recorded under s. 122, Crim. Pro. Code. [*R.*, 5 C.L.R. 238.] The confession of an accused person, taken by a Magistrate having no jurisdiction to commit the accused, was *held* to be defective for want of the signature or mark of the accused, rendering the imperfect record of the confession inadmissible in evidence against the accused. Oral evidence to prove that such an inadmissible confession was made, or what the terms of the confession were, is inadmissible also. REG. v. BAI RATAN, **10 B.H.C. 166.** [*F.*, 10 B.H.C. 497, 4 C. 696; *Appr.*, 4 B. 15; *R.*, 11 B.H.C. 44, 1 B. 219, 6 C.L.R. 289, Rat. Un. Cr. C. 173, 6 B. 288, 9 M. 224=2 Weir 128, 23 B. 221, U.B.R. (1903), Crim. Pro. Code, 13; *Declared obsolete*, 37 C. 467=11 Cr. L.J. 453=7 Ind. Cas. 359.]

Confession—continued.

——4.—**Confessions obtained by inducement, threat, etc.**

(1)—*Obtained by inducement—Corroboration of approver and accomplice.*—A confession induced by promising immunity from prosecution of another case is not admissible against the confessor. Evidence obviously unreliable is not sufficient to corroborate the statement of either an accomplice or an approver. KALLOO v. CROWN, **12 P.W.R. 1907, Cr.=5 Cr. L.J. 437.**

(2)—*Exhortation to confess.*—The mere exhortation to the accused to speak the truth could not be construed into an inducement, threat or promise, and, least of all, into an inducement to make a false confession, and is not enough to exclude evidence of a confession, not otherwise improperly induced. GULABA v. EMPRESS, **9 P.R. 1894, Cr.**

(3)—*Confession induced by promise of pardon—Retracted confession.*—A statement by an accused person, under a promise of pardon, is not evidence against him. Where a confession made by an accused, who had been in police custody for four days in the Magistrate's Court, was retracted by him, *held*, that the confession was properly received as sufficient for conviction, as it was corroborated by other evidence. CROWN v. RADHA KISHEN, **9 P.R. 1869, Cr.**

(4)—*Confession induced by deceit.*—A confession otherwise voluntarily made is not inadmissible merely because it was induced by deceit. QUEEN-EMPRESS v. MATHUR KUBER, **Rat. Un. Cr. C. 756.**

(5)—*Inducement to confess—Legality of conviction based on such confession.*—A conviction based upon the evidence of an approver, who confessed on being told by the police that they were in possession of information that implicated him and that all has been discovered, is illegal. *In re* JADOO KHATOOA, **1 J. G. 18.**

(6)—*Confession under pressure—Statement admitting crime, but pleading compulsion by others.*—When the statements made by the accused amount to saying that the other accused were really guilty, and any share they had in the offence was owing to compulsion, they are not confessions which can be used as against the other accused. QUEEN V. KISTO MUNDUL, **7 W.R. 8.**

(7)—*Confession, evidentiary value of—Persons confessing must be free agents.*—To give weight to the confessions of prisoners recorded under the Code of Criminal Procedure, there should be a judicial record of the special circumstances under which such confessions were received by the Magistrate, showing in whose custody the prisoners were, and how far they were free agents. QUEEN V. KODAI KAHAR, **5 W.R. Cr. 6.**

(8)—*Confession made under threat for purpose other than to extort confession—Evidence Act*, 1879, s. 24.—A prisoner was tried for wounding with intent to murder, and wounding with intent to do grievous bodily harm. The offence was committed on the high seas on board a ship on which the prisoner was a seaman. At the trial it was proved for the prosecution that the master of the ship had sailed from Calcutta and could not be found, and the Standing Counsel thereupon tendered in evidence his deposition before the committing Magistrate, which contained an admission alleged to have been made to the deponent by the prisoner, when in custody. The Court refused to allow the portion of the deposition containing the admission to be read, as it was stated to have been made immediately after the prisoner, with others, had been threatened by the witness with a loaded rifle; it was immaterial that the threat was not made to extort a confession, but to suppress an attempt at mutiny. QUEEN v. HICKS, **10 B.L.R. Ap. 1.**

(9)—*Crim. Pro. Code*, 1882, s. 298—*Confession given after inducement—Conviction.*—The accused, who was charged with the offence of murder, had made two confessions, the first before the first class Magistrate of Junnar, and the second before the committing Magistrate. On his trial before the Court of Sessions, he retracted the confessions and alleged that he was beaten by the police and that the confessions were caused by inducement offered by the police. *Held*: (1) that for the proper disposal of the case, it should have determined whether the confession was first induced by the illegal promise, and whether that inducement still existed, or had been effectually dispelled when the Magistrate recorded the confessions. If such inducement had been given, and had not been effectually dispelled until after the respective confessions had been recorded, it should be held that they were inadmissible; (2) that under s. 298, Crim. Pro. Code, it is the duty of the Judge "at his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;" and also "to decide upon all matters of fact, which it may be necessary to prove in order to enable evidence of particular matters to be given." The Judge ought, therefore, to have made some enquiry into the allegation of the prisoner about the tutoring, which he said had resulted in his confession. QUEEN-EMPRESS v. RUPYA, **Rat. Un. Cr. C. 245=Cr. Rg. 12 of 1880.**

(10)—*Confession induced by false allegation.*—A confession induced by false allegations is irrelevant even if it is true. QUEEN-EMPRESS v. CHINTAMAN, **Rat. Un. Cr. C. 153.**

(11)—*Improperly induced and inadmissible confession—Evidence of things done in consequence of such confession.*—In consequence of certain incriminating statements which an accused person was improperly induced to make by a promise of pardon and while in police custody, a witness proceeded to a certain place and made enquiries of some persons. *Held*,

Confession—continued.

——4.—Confessions obtained by inducement, threat, etc.—*continued.*

that the facts that the accused made a statement, in consequence whereof a witness visited a certain place and made enquiries, were relevant facts provable against the accused, owing to the circumstances that a relevant fact was discovered in consequence of information given by the accused, if the discovery be itself a relevant fact, being capable of proof, without adducing evidence of any portion of an inadmissible confession. KHANA v. EMPRESS, **34 P.R. 1894, Cr.**

(12)—*Confession made on tender of pardon held out to accused—What amounts to removal of inducement.*—An accused person made a detailed confession to a Magistrate implicating himself and others which was duly recorded. Subsequently before the committing Magistrate, he admitted the statement to be correct, but stated that he made it, as the Police Superintendent and the Magistrate had told him that the District Magistrate had promised him a pardon, and the Magistrate to whom the confession was made also admitted that. *Held*, that the confession was inadmissible owing to the inducement which the Magistrate held out, it being immaterial that the Magistrate to whom the confession was made had no authority for what he said, and though what he said did not amount to a promise of pardon. Though, when the committing Magistrate told an accused person that he could not get the pardon which the Magistrate, before whom the accused made the confession on his making a promise of pardon, had promised, the accused adhered to his original confession without however repeating it, *held*, that he was under the influence of the inducement. MAHAMMAD SHAFFI v. EMPRESS, **1 P.R. 1899, Cr.**

(13)—*Evidence Act*, I *of* 1872, *s.* 24—*Confessions induced by person in authority*—Monigar *Magistrate, such a person—Confession vitiated.*—A *Monigar* Magistrate who was inquiring into a dacoity case said to the accused, who requested the *monigar* not to report against him, "it should have been written yesterday ; there is a hue and cry against you ; if you speak the truth we would consult the Head Constable and arrange," and the accused thereupon made a confession, *held*, that the Village Magistrate was a person in authority within the meaning of s. 24 of the Evidence Act and that the arrangement was an inducement intended to make the accused believe that he would be saved from prosecution by being taken as a witness instead of as an accused person, if he would confess, and that the confession was irrelevant under s. 24. THANDRAYA MUDALY v. EMPEROR, **26 M. 38=2 Weir 733.**

(14)—*Evidence Act*, *s.* 24—*Confession made to son of Village Magistrate.*—*Held*, that a confession to the son of a Village Magistrate, who was himself acting as such, was receivable in evidence, as it was not caused by any inducement sufficient to give the accused person reasonable

Confession—continued.

——4.—Confessions obtained by inducement, threat, etc.—*continued.*

ground for supposing that, by making it, he would gain any advantage or avoid evil of a temporal nature in reference to the proceedings against him. *In re* KUPPA THACHAN, **2 Weir 733.**

(15)—*Evidence Act*, s. 24—*Confession induced by person in authority—Opinion of Court—Removal of impression caused by inducement.*—S. 24, whilst requiring the inducement to be offered by a person in authority, leaves it entirely to the Court to form its own opinion as to whether the inducement, threat or promise was sufficient to lead the prisoner to suppose that he would derive some benefit or avoid some evil of a temporal nature. The words "you had better pay the money, than go to jail, and it is better for you to tell the truth" addressed by the Travelling Auditor of a Railway Company to a booking clerk charged with defalcation, were held to operate as an inducement, by the suggestion which they carried with them that the prisoner would be certainly sent to jail if he did not confess and pay, and that if he did so, he would not be sent. *Held*, also that the Auditor was a person in authority. The term "person in authority" is not to be construed in any restricted sense. It is not confined to a person having control over the prosecutor or the accused. [*R.*, Rat. Un. Cr. C. 245.] Where the Travelling Auditor took the accused, after inducing him to confess as mentioned above, to the Traffic Manager, before whome he signed a receipt for the amount with the misappropriation of which he was charged, *held*, that it would be impossible to hold that the impression had been effected in the short interval which elapsed between the conversation in the prisoner's house and the signing of the receipt. REG v. NAVROJI DADABHAI, **9 B.H.C. 358 (383).** [*R.*, 10 Cr. L.J. 344.]

(16)—*Evidence Act*, *s.* 24—*Confession made after hopes of pardon held out—Accomplice evidence—Corroboration.*—The confession of an accused made before a Magistrate cannot be used in evidence against him at his trial, when the police had told him that he would get a pardon if he would make a confession, and he made that confession under the hope of obtaining the pardon. The evidence of an accomplice cannot be acted upon, without corroboration in material particulars, unless it is such that the Court can unhesitatingly receive it. Such corroboration must be independent of the accomplice, or of a co-confessing prisoner. The accomplice must be corroborated as to all the persons affected by his evidence. If he is corroborated in his evidence as to one person, there will still be need for corroboration of his testimony with respect to the other prisoners. ABDUL KARIM v. KING-EMPEROR, **1 A.L.J. 110=1 Cr.L.J. 211.** [*R.*, 35 M. 397=13 Cr. L.J. 352=14 Ind. Cas. 896=1912 M.W.N. 549=12 M.L.T. 1, 22 M.L.J. 490=1912 M.W.N. 207=13 Cr. L.J. 305=14 Ind. Cas. 849=11 M.L.T. Sup. 1=35 M. 247.]

***Confession*—continued.**

—— 4.—Confessions obtained by inducement, threat, etc.—*continued.*

(17)—*Crim. Pro. Code*, 1872, ss. 344, 345, 347—*Pardon to an accused person—Evidence—Evidence Act*, s. 24.—Tender of pardon to a person concerned along with others in an offence, not exclusively triable by a Court of Sessions, and his examination as a witness, are both illegal. And his statement would be irrelevant and inadmissible with reference to s. 344, Crim. Pro. Code, and s. 24, Evidence Act. EMPRESS OF INDIA v. ASGHAR ALI, **2 A. 260.** [*Appl.*, Rat. Un. Cr. C. 461; *R.*, 23 B. 213, 10 M.L.J. 147, 25 M. 61, P.C., 52 P.L.R. 1902, 12 P.R. 1902, 16 C.P.L.R. 112. 100 P.L.R. 1902, 33 C. 1353 = 10 C.W.N. 962 = 4 Cr. L.J. 165, 5 A.L.J. 691 = A.W.N. 1908, 259; *D.*, L.B.R. 1872—1892, 246, 248, 252, 16 B. 661, 13 Cr. L.J. 33 = 5 S.L.R. 174 = 13 Ind. Cas. 273.]

(18)—*Evidence Act*, s. 24—*Confession to a* Punchayat—*Admissibility.*—Where the matter before a *Punchayat* was, whether or not the accused had by their acts disqualified themselves from further social intercourse with the rest of the brotherhood, and the accused made statements admitting that they were guilty of murder, *held*, that the provisions of s. 24, Evidence Act, could not be pleaded against their admissibility, for the members of the *Punchayat* were not in authority over them within the meaning of that section, nor was there any threat, inducement or promise, made with reference to any charge against the accused. [*R.*, 3 A.W.N. 129.] Where the statements ascribed to the accused are in general terms, and represent only the impression, conveyed by what might have been said, to the minds of the witnesses, they should not be accepted as sufficient to corroborate the evidence of the approver or to support the conviction of the accused. It is always essential that the Court should know as nearly as possible what were the words used by the supposed confessors, and what were the questions or matters in regard to which they were used. EMPRESS OF INDIA v. MOHAN LAL, **4 A. 46 = A.W.N. 1881, 84.**

(19)—*Person in authority* -- Punchayat.—Where a *Punchayat* was assuming an authority and was leading the accused to believe that he had that authority, *held*, that a Court would be justified in holding that he was "a person in authority" within the meaning of s. 24. NAZIR JHARUDAR v. EMPEROR, **9 C.W.N. 474 = 2 Cr. L.J. 255.**

(20)—*Evidence Act*, s. 24—*Accused in police custody—Confession, voluntary nature of, how to be ascertained in Sessions trial—Confession when irrelevant under s.* 24.—Where it appears that a confessing accused has been in the custody of the police for a long period of time, the first question obviously which a Magistrate ought to put in order to satisfy himself that the confession would be a voluntary one, is, how long has the accused been in custody. If there is no record of the fact, it is the duty of the Sessions Judge, before holding the confession relevant under s. 24 of the Evidence Act, to send for the Magistrate and to satisfy himself on the point. [*R.*, U.B.R. 1903, 1st Quarter, Crim. Pro. Code, 13.] It is a mistake to suppose that a confession cannot be irrelevant under s. 24, unless it can be alleged that there was torture leaving marks of personal violence. Under the section, the confession becomes irrelevant if the making of it appears to have been caused by any inducement, threat, or promise, etc. QUEEN-EMPRESS v. NARAYAN, **25 B. 543 = 3 Bom.L.R. 122.**

(21)—*Evidence Act*, s. 28—*Confession given after promise—Removal of impression, what amounts to.*—Where a promise of safety was made by a police officer, to whom the accused confessed, which confession was also repeated before the committing Magistrate and the accused also made a confession, although different in some respects, before a Sessions Judge, *held*, that the confession before the Magistrate was irrelevant, and that the Court was not prepared to hold that the confession before the Court of Sessions was made after the impression caused by the promise by the police officer had been fully removed. QUEEN v. MUSSAMUT LUCHOO, **5 N.W.P. 86.**

(22)—*Evidence Act*, ss. 24 *and* 29—*Confession to Medical Officer.*—The accused made a confession of his guilt to the Medical Officer of his Regiment, who told the accused, when he was under his treatment in the Hospital, that it would be better for him to tell the truth as to how he had certain wounds. *Held*, that the Medical Officer was not a person in authority in respect of any proceedings, which might be contemplated or taken against the accused, who made the confession to him; and that all that he represented to the accused was that, on medical grounds, it would be for the accused's benefit, if he told the truth as to how he came by the wounds. The accused made his confession of guilt to the Commissioned Officer of their Regiment, who stated to the accused that he had already obtained information from another person and promised secrecy if he told the truth: *Held*, that the Commanding Officer was not shown to be a person in authority in relation to the proceedings that were to be taken against the accused; and that the alleged deception and inducement were covered by the provisions of s. 29 of the Act. EMPEROR v. MAHAMAD BUKSH KARIM BUKSH, **8 Bom. L. R. 507 = 4 Cr.L.J. 49.**

——5.—Retracted Confessions.

(1)—*Retracted confession of approver.*—Where the statement of a person in the capacity of an approver had been made under a condition not fulfilled, *viz.*, that he should be examined at the trial, if the prosecution was not prepared to treat him as a witness, preferring to deal with him as a co-accused, his retracted confession

***Confession*—continued.**

——5.—Retracted Confessions—*continued.*

would be irrelevant under s. 24, Evidence Act, notwithstanding the special provisions of cl. 2 of s. 339, Crim. Pro. Code, 1898. MAHAMMAD SHAFFI v. EMPRESS, **1 P.R 1899, Cr.** *See, also,* CROWN v. RADHAKISHEN, **9 P.R. 1869, Cr.**

(2)—*Retracted confession—Considerations for the Court.*—In cases of retracted confessions, the Court should consider whether the story told in the confession is itself probably true, and it must see whether the story is or is not consistent with such evidence in the case as it believes. If the confession bears the appearance of truth and is not inconsistent with the true evidence on the record, the Judge or Magistrate should convict on the confession, whether it is withdrawn or not. QUEEN-EMPRESS v. NANNA, **A. W.N. 1898, 69.** (20 A. 133 = A.W.N. 1897, 224, *R.*)

(3)—*Confession — Retraction in Sessions Court—Circumstances—Presumption.* —Where a confession was made before a Magistrate under circumstances not liable to suspicion, and, to all appearances, fulfils the requirements of the law, the fact that it is retracted in the Sessions Court does not negative the presumption of the genuineness of the confession. QUEEN-EMPRESS v. BINDA, **A.W.N. 1890, 173.**

(4)—*Sessions Judge—Duty—Retracted confession.*—In cases where serious importance is attached to a confession, and the confession is retracted in the Sessions Court, it is the duty of the Judge to inquire and ascertain that the confession was not the result of undue influence. EMPRESS v. MADAR, **A.W.N. 1885, 59, F.B.**

(5)—*Confession — Retractation — Duty of Magistrate and Judge.*—Where a confession made before a Magistrate is retracted before him or before the Sessions Judge, and a charge of coercion or torture is made against the police in whose custody the accused was before the confession, it is the duty of the Court to inquire into the circumstances under which the confession was made and the manner in which the case was investigated prior to the confession. EMPRESS v. RAMANAND, **A.W.N. 1885, 221.**

(6 & 7)—*Confession subsequently retracted—Confession retracted before Sessions Judge—Evidentiary value.*—A confession before the Magistrate, though afterwards retracted by the Sessions Court, is evidence against the party making it, under s. 366 of the Code of Criminal Procedure, 1861. QUEEN v. MUSSAMAT JEMA, **8 W.R. Cr. 40.**

(8)—*Confession—Conviction based on confession subsequently retracted not illegal.*—It cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt, without independent corroborative evidence. The weight to be given to a retracted confession must depend upon the circumstances under which the confession was originally given, and the circumstances under which it was retracted, including the reasons given by the prisoner for his retractation. SAJJAD HUSSAIN v. EMPEROR, **16 P.R. 1903, Cr. = 153 P.L.R. 1903.** (21 M. 83, *F.*; 20 A. 133, *R.*; 21 P R. 1869, Cr., 7 P.R. 1899, Cr., *D*) [*R.*, 24 P.W.R. 1909, Cr. = 4 Ind. Cas. 429 = 153 P.L.R. 1909, Cr. = 10 Cr. L.J. 584.]

(9)—*Retracted confession, value of.*—It is not proper to convict an accused solely on his confession to a *Myook* which was retracted at a Sessions trial. NGA THA MAUNG v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 497.**

(10)—*Retracted confession, value of.*—A confession though made voluntarily by an accused person before a Magistrate, if subsequently retracted, is not sufficient by itself to justify a Sessions Court in acting upon it. QUEEN-EMPRESS v. BALYA DAGDU, **Rat. Un. Cr. C. 952 = Cr. Rg. 3 of 1898.**

(11)—*Retracted confession, value of.*—Even in cases where there is a confession, the Magistrate must take all the evidence of the offence available, since, in many cases, confessions are retracted in the Sessions Court. QUEEN-EMPRESS v. MAHADU VITHOBA, **Rat. Un. Cr. C. 842 = Cr. Rg. 11 of 1896.**

(12)—*Retracted confession good evidence against the person making it, but not against others.*—It is a recognised rule of the law of evidence, that a retracted confession may be used against the person making it. but not against other accused jointly with him. CHET SING v. CROWN, **28 P.W R. 1907 = 7 Cr. L.J. 227.** [*R.*, 12 Cr. L.J. 276 = 10 Ind. Cas. 857 = 5 P.R. 1911, Cr. = 91 P.L.R. 1911 = 27 P.W.R. 1911, Cr.]

(13)—*Retracted confession—Points to be considered—Crim. Pro. Code,* 1882, *ss.* 164, 364.—Where a confession made by a prisoner is withdrawn at a later stage and allegations are made of improper conduct in obtaining the confession, an enquiry must be made as to the circumstances under which the prisoner confessed. PADAN BYU v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 423.**

(14)—*Retracted—of accused—Its admisibility against co-accused.*—A confession made by one accused person before the Township Magistrate and admitted before a Sub-Divisional Magistrate but repudiated by such accused when the District Magistrate, empowered under S. 30, Crim. Pro. Code, began his trial, is not admissible in evidence against the co-accused, who were tried jointly with him. PAT THAN v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 642.**

(15) — *Confession — Retracted confession—Value of confession against co-accused.*—The net result of authorities on the value of confessions seems to be this: (i) That it is not *illegal* to base a conviction upon the uncorroborated confession of an accused person, provided the Court is satisfied that the confession was voluntary

Confession—continued.

——5.—**Retracted Confessions**—*continued.*

and is true in fact ; (ii), that, *from the point of view of legality, pure and simple*, the fact that a confession has been retracted is immaterial ; (iii) that the use to be made by the Court of a confession, whether retracted or not, is a matter rather of prudence than of law, the business of the Court being to make up its mind, in accordance with the dictates of common sense, whether it is safe to believe the confession or not ; (iv) that experience and common sense show that, in the absence of corroboration in material particulars, it is not safe to convict on a confession, unless from the peculiar circumstances in which it was made and judging from the reasons, alleged or apparent of the retraction, there remain a high degree of certainty that the confession, notwithstanding its having been resiled from, is genuine ; (v) that, when it is a question of using a confession against a co-accused of the person confessing and the Court would not be prepared to accept the confession *per se* as sufficient, the corroboration ought to be of the kind that not only confirms the general story of the crime, but also, unmistakably, connects the said co-accused with the crime. JAWAN v. EMPEROR, 264 **P.L.R. 1914** =**15 Cr.L.J. 626**=**30 P.R. 1914, Cr.**=**25 Ind. Cas. 634**=**50 P.W.R. 1914, Cr.**

(16)—*Evidence Act, s. 30—Retracted confession—Evidence against co-accused.*—There is nothing in s. 30 of the Evidence Act which would exclude, as against persons being jointly tried for the same offence, a confession made by one of the accused duly proved, simply because, at the trial, the confession is withdrawn or denied. The word "confession" must be strictly interpreted for the purpose of s. 30, Evidence Act. A confession must be a confession of guilt or a confession of facts which constitute in law the offence charged. Mere admissions of incriminating facts will not amount to a confession, unless those facts and the necessary inferences from them amount to an offence. AUNG THEIN v. CROWN, **1 L.B.R. 133.** (L.B.R. 1893—1900, 642, *Diss.*)

(17)—*Motive for retracted confession, if a ground for mitigating sentence—Admissibility of retracted confession—Independent corroborative evidence not absolutely necessary—Accused to prove that what he admitted is really untrue.*—Spontaneous confessions are often induced by hope or belief of mitigation of punishment. Self-interest is the source from which the act comes. Such being the case, an offender should not receive a less punishment than he ordinarily would receive, merely because, in pursuance of what he considered best in his own interests, he confessed his crime. An accused person's prompt confession may no doubt be of use to the authorities, and in putting the police upon the track of, and in helping them to find, the other offenders, but the executive authorities have much better means of knowing what aid an accused has in fact given than the Courts have, and any question whether a sentence should be mitigated on such ground is one for such authorities to deal with upon an appeal for the clemency of the Crown. The mere fact that a confession has been subsequently retracted will not make it inadmissible against the accused ; but, before a Court can act upon such a confession, it must be satisfied as to its truth. There is no rule of law that a retracted confession must be supported by independent reliable evidence corroborating it in material particulars. The use to be made of such a confession is a matter of prudence rather than of law. If a Judge believes that a confession made by a prisoner, although subsequently withdrawn, contains a true account of that prisoner's connection with the crime, the Judge is bound to act, as far as that prisoner is concerned, on that confession, which he believes to be true. The possible malpractices of the police should be borne in mind in estimating retracted confessions. Neither the accused's confession, nor the record of the Magistrate's belief that the confession had been voluntarily made is conclusive proof that it was so made, but, having made the admission that it was so made, it lay upon the accused to adduce, if not actual evidence, at least some well-founded and probable reason for the Court's coming to the conclusion that what he admitted was not in reality the fact. CHIT SUN v. CROWN, **1 L.B.R. 238.** (10 M. 295, 12 M. 123, L.B.R. 1872—1892, 497, 18 A. 78, 27 C. 295, *R.* ; 21 M. 83, 20 A. 133, 19 B. 728, *F.*) [*R.*, 6 Bur. L.T. 47=14 Cr. L.J. 179=19 Ind. Cas. 179.]

(18)—*Retracted confessions— Corroboration.*—Where a prisoner, accused of murder, made a confessional statement, which was recorded by the Village Munsiff, and repeated the same before the committing Magistrate and before the Sessions Judge, but on appeal to the High Court, after having been sentenced to death, he retracted those statements ; *held*, that as the prisoner had withdrawn all the confessional statements, it was necessary to examine the evidence and see if there was reliable evidence to corroborate, to a material extent and in material particulars, the statements contained in the withdrawn confessional statements. If no such corroborative evidence existed, then the contradictory statements remained, and doubt would exist as to which statement was true, and the confessional statements could not be relied on against the prisoner. The fact that, after the first confessional statements, the prisoner made several others, subsequently, to the same effect, including the confessional statement made at the trial, could not be accepted as a corroboration of the prior statement as such subsequent statements themselves would require corroboration as they were withdrawn. QUEEN-EMPRESS v. RANGI, **10 M. 295**=**2 Weir 361.** [*Diss.*, 19 B. 728 (729), 1 L.B.R. 238, Rat. Un. Cr. C. 719 ; *Appl.*, 27 C. 295=4 C.W.N. 129 ; *R.*, 18 A. 78=15 A.W.N. 227 ; 20 A. 133 ; 12 M., 123=2 Weir 376, 2 Weir 510.]

Confession—continued.

——5.—**Retracted Confessions**—*continued.*

(19)— *Retracted confession* — *Necessity for corroboration.*—Some corroborative evidence is necessary to warrant a Court in acting upon a retracted confession. EMPRESS v. TIKA RAM, **A.W.N. 1886, 22.**

(20)—*Retracted confession* — *Necessity for corroboration.*—A retracted confession must be supported by independent reliable evidence corroborating it in material particulars. Depositions read under s. 288 and retracted at the trial are not by themselves material corroboration. QUEEN-EMPRESS v. BHARMAPPA, **12 M. 123 =2 Weir 376.** [*Diss.*, 19 B. 728; *F.*, L.B.R. 1872—1892, 497, 2 Weir 509; *Appl.*, Rat. Un. Cr. C. 894; *Appr.*, 27 C. 295; *R.*, 21 A. 111=18 A.W.N. 196=13 C.P L.R. 107=1 L.B R. 238, Rat. Un. Cr. C. 719=2 Weir 510.]

(21)—*Corroboration in material particulars.*—Where the only evidence against two persons, accused of murder, where their confessions which, taken together, conclusively proved the guilt of both, but which were subsequently retracted, and where there was no proof that the confessions had been extorted or obtained by inducement by the police, *held* that the accused were rightly convicted of murder inasmuch as the confessions were sufficiently corroborated in material particulars by other witnesses. QUEEN-EMPRESS v RARU NAYAR, **19 M. 482=2 Weir 745.** [*R.*, 13 C.P.L.R. 107.]

(22)—*Necessity for corroboration—Rule as to.*—It cannot be laid down as an absolute rule of law that a confession made and subsequently retracted by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. The weight to be given to such a confession must depend upon the circumstances under which the confession was originally given and under which it was retracted, including the reasons given by the prisoner for his retraction. A confession, in itself reasonable, and probable, must, if repeated more than once and retracted only at a late stage in the proceedings, has greater weight attached to it than a confession made only once and retracted after a short interval. The question which should be put to the Jury regarding such confessions is not whether they are corroborated by independent evidence, but whether, having regard to the circumstances under which they were made and retracted, and all the circumstances connected with them, it was more probable that the original confessions or the statements retracting them were true. An omission on the part of the Judge to put this question to the Jury amounts to a misdirection. QUEEN-EMPRESS v. RAMAN, **21 M. 83=2 Weir 503.** [*F.*, 22 B. 316, 16 P.R 1903, Cr.=153 P. L.R. 1903; *R.*, 13 Cr.L.J. 763=17 Ind. Cas. 75 =23 M.L.J. 445=1912 M.W.N. 1111, 1 L.B. R. 238.]

(23)—*Retracted confession—Necessity for corroboration.*—A retracted confession should carry practically no weight as against a person other than the maker; and the very fullest corroboration would be necessary in such a case, far more than would be demanded for the sworn testimony of an accomplice on oath. YASIN v. KING-EMPEROR, **28 C. 689=5 C.W.N 670.** [*R.*, 38 C. 559=15 C.W.N. 98=8 Ind. Cas. 1059=12 Cr. L.J. 2, 12 Cr. L.J. 286=15 C.W. N. 593=10 Ind. Cas. 582]

(24)—*Retracted confession—Necessity for corroboration.*—It is obviously important that, in cases where a retracted confession is the evidence chiefly relied on by the prosecution, not only should the Court be satisfied as to the falsity of any allegations as to improper pressure by the police, but should use every reasonable effort to ascertain to what extent, if any, the details of the confession are corroborated. QUEEN-EMPRESS v. BHAGI, **Rat. Un. Cr. C. 242.**

(25)—*Value of retracted confession—Necessity for corroboration.*—The High Court of Bombay, while fully conscious of the need of caution in dealing with retracted confessions, has refrained from laying down any binding rule, such as that a retracted confession must be supported by independent reliable evidence corroborating it in material particulars. It has treated the value of a retracted confession as a matter of prudence than of law. A retracted confession, if proved to have been voluntarily made, can be considered along with the other evidence, in the case. QUEEN-EMPRESS v. GHARYA, **19 B. 728.** [*R.*, Rat. Un. Cr. C. 842, Rat. Un. Cr. C. 952, 23 B. 316, 1 L.B R. 238.]

(26)—*Value of retracted confession—Necessity for corroboration.*—If a Judge believes that a confession made by a prisoner, although subsequently withdrawn, contains a true account of that prisoner's crime, the Judge is bound to act, so far as the prisoner is concerned, on that confession, which he believes to be true. When a confession is not supported by the evidence of witnesses, a Judge must examine carefully to see whether it gives details which indicate that it is a natural narrative of what took place in the presence of the man making it, and is not at variance with any evidence in the case which is believed, and is not merely a parrot-like repetition of a story put into the man's mouth. QUEEN-EMPRESS v. MAIKU LAL, **20 A. 133= A.W.N. 1897, 224.** (18 A. 78, 10 M. 295, *R.*) [*F.*, 29 A. 434=A.W.N. 1907, 140=4 A.L.J. 310=5 Cr. L.J. 360; *R.*, 23 B. 316, 1 L.B.R. 238, 153 P.L.R. 1903=16 P.R. 1903, Cr.]

(27)—*Retracted confession, value of—Corroboration.*—It is unsafe to rely and act upon retracted confessions unless, upon a consideration of the whole of the evidence in the case, the Court is in a position to come to the unhesitating conclusion that the confessions were true. It is very difficult, if not impossible, to come to such a conclusion unless those retracted confessions are corroborated by credible

***Confession*—continued.**

——5.—Retracted Confessions—*continued.*

independent evidence. QUEEN-EMPRESS v. MAHABIR, **18 A. 78 = A.W.N. 1895, 227.** (10 M. 295, *R*) [*Diss.*, I L.B.R. 238; *R.*, 20 A. 133, 10 P.R. 1914, Cr., 3 P.W.R. 1907, Cr.]

(28)—*Retracted confession—Corroboration.*—In the absence of any corroboration by credible and independent evidence, it is unsafe in the majority of cases to found a conviction on a retracted confession. A retracted deposition does not in itself afford a sufficient corroboration of a retracted confession. EMPRESS v. CHUTIA, **13 C.P.L.R. 107.**

(29)—*Evidence—Retracted confession—Some accused not present when confession made—Corroboration of approver's evidence.*—Certain accused persons made confessions which led to the arrest of certain other persons. The confessions were subsequently retracted, but were corroborated by the evidence of the approver. *Held* that the retracted confessions, taken behind the back of the accused who had no opportunity of cross-examining the persons who made them, were not sufficient corroboration of the approver's evidence and no conviction should be based on them. DEBI DAYAL v. KING-EMPEROR, **11 A.L.J. 73 = 18 Ind. Cas. 672 = 14 Cr. L.J. 112**

(30)—*Confession retracted at trial—Its value when uncorroborated by any other direct evidence—Production of thing unconnected with commission of crime.*—C was convicted of causing the death of J, by fracturing her skull. C made a confession before a Magistrate, which she retracted in the Court of the trying Magistrate. Except the evidence of one witness, who said he saw the two women quarrelling, there was no proof whatever to show that C, committed the crime. *Held*, that it is not safe to convict an accused person on his retracted confession standing by itself uncorroborated. *Held*, also, that production by an accused person, while in the hands of the Police, of a thing unconnected with the commission of the crime is not admissible in evidence against him. MT. CHANDAN v. CROWN, **3 P.W.R. 1907, Cr.** (21 P.R. 1869, Cr., 5 C.W.N. 670, 18 A. 78, 27 C. 295, *F*)

(31)—*Crim. Pro. Code* (1898), *s.* 288—*Confession made to a Magistrate and retracted at Sessions trial—Evidence brought under s.* 288—*Corroboration.*—Where there are two sets of evidence, neither of which can alone be accepted without corroboration, they cannot be taken to corroborate one another, and joined together so as to justify any Court in taking action on such evidence. Evidence brought in under s. 288 cannot be accepted as proper corroboration of a confession made to a Magistrate and retracted at the Sessions trial, especially when that confession was not fairly obtained and was not voluntary. QUEEN-EMPRESS v. JADUB DAS, **27 C. 295 = 4 C.W.N. 129.** (12 B.L.R. Ap. 15 = 21 W.R. Cr. 49, 10 M. 295, 12 M. 123, *R. & Appr.*). [*F.*, 7 C.W.N. 345; *R.*, 13 C.P.L.R. 107, 13 Cr. L.J. 352 = 14 Ind. Cas. 896 = 12 M.L.T. 1 = 1912 M.W.N. 549, 1 L.B.R. 238, 3 P.W.R. 1907, Cr., 264 P.L.R. 1914 = 30 P.R. 1914, Cr. = 15 Cr. L.J. 626 = 25 Ind. Cas. 634.]

(32)—*Retracted confession—Evidence of accomplice corroborated in material particulars—Evidence Act*, I *of* 1872, *ss.* 133 *and* 114.—A person, who was charged with murder, made a confessional statement which was recorded under s. 164, Crim. Pro. Code, but subsequently in the Sessions Court, he repudiated those statements. One of the accused, who was taken as approver, deposed against him, and he was corroborated in certain most important particulars by some witnesses. *Held*, that the accused was properly convicted as there were no grounds for supposing that the confessional statement was not given voluntarily and as the evidence of the approver was sufficiently corroborated by other witnesses. KING-EMPEROR v. MOHIUDDIN SAHIB, **25 M 143 = 2 Weir 800.** [*R.*, 13 Cr. L.J. 305 = 14 Ind. Cas. 849 = 1912 M.W.N. 207 = 22 M.L.J. 490 = 11 M.L.T. Supl. 1 = 35 M. 247, 35 M. 397 = 1912 M.W.N. 549 = 12 M.L.T. 1 = 13 Cr. L.J. 352 = 14 Ind. Cas. 896.]

(33)—*Confession—Statement by a person not implicating himself—Inadmissibility of such a statement—Circumstantial evidence—Evidence Act*, *ss.* 11 *and* 30—*Murder.*—*Held* that:—(1) A statement of an accused to the effect that, under threats of death, he was forced to sit outside the door of the house where a murder was being committed, to warn the murderers of the approach of anybody, and not to divulge the secret and to remain an impassive agent in the crime, and that he took no part in, on the other hand he vainly tried to dissuade the co-accused from committing the crime, does not amount to a confession of either murder or its abetment, and consequently is also inadmissible in evidence under s. 30 of Act I of 1872, against the co-accused. (2) A retracted confession, though admissible in evidence, is not of much value. (3) The circumstantial evidence, not satisfactorily explained, to the following effect, is sufficient to convict G and S of murder, even in the absence of a clear and strong motive for committing it. "The deceased was the wife of one G who was living with her in the quarters adjoining those occupied by S his brother at M; on 25th May she was seen alive in the company of G and S, and said she was going off early next day with G to K; and after 25th she disappeared and was never heard of until her body was found in a well at M on 26th July. The medical opinion was that the body was that of a woman and was thrown down the well after being fully murdered and it must have been in water from two to four weeks. G arrived at K without her on 27th July; neither G nor S gave report to the Police of her disappearance and on the 6th August ornaments worn by her were found with S," (4) Satisfactory proof that

Confession—continued.

——5.—**Retracted Confessions**—*continued.*

clothes found on the body of a murdered person belong to him and were worn by him immediately before disappearance is sufficient to find that the corpse is of that person, although it is too decomposed to be identified otherwise. GUL HASSAN AND RASUL KHAN v. CROWN, **38 P. W.R.Cr. 1910=24 P.R. 1910=193 P.L.R. 1910 =8 Ind. Cas. 250=11 Cr. L.J. 604.**

(34)—*Confession given under coercion—Subsequent withdrawal — Confession at variance with the evidence.*—Where a prisoner, a young girl of 15 years of age, who was suddenly charged with a serious offence and was kept in police custody for some time, made a confession to a Magistrate, after being beaten by the police with a view to forcing her to make it, which she subsequently retracted, *held* that it could not be relied upon, especially, when it was inconsistent with the evidence given in the case by the prosecution witnesses. MOTIJAN BIBEE v. CROWN, **6 C.W.N. 380.**

(35)—*Examination of accused, record of—Proof of identity of person who made confession.*—If the accused was examined in a language which the Magistrate understood and was able to write, then the record of the examination, if made in another language, is inadmissible, and no evidence can be admitted to prove what statement was made by the accused. It is not the practice to base a conviction upon a retracted confession, unless it is corroborated. That a person, who is being tried, is the same person as the person who made the confession must be proved. QUEEN-EMPRESS v. RAMZAN ALI, **L.B.R. 1893—1900, 70.** (11 C. 580, 14 C. 539, 15 C. 595, 17 C. 862, 9 M. 224, *F.*; 14 B. 331, *R.*)

(36)—*Confession retracted—Corroboration—Penal Code, ss. 114, 302, conviction under—Charge under s. 302, Penal Code.*—Where a confession was taken by a Magistrate in jail with a police officer in the next room and was subsequently retracted. *Held*, such a confession could not be acted upon unless supported by very good corroboration. *Quære.*—Whether a person charged under s. 302, as a principal, can be convicted under ss. 302 and 114 as an abettor. SHEIKH SOHALI v. KING-EMPEROR, **11 C.L.J. 273.**

(37)—*Confessions—Subsequent withdrawal—Value.*—Where the only evidence in a criminal case was the confession of the accused made before the Magistrate but subsequently retracted, and where it was found that the police misconducted themselves in the search of the houses of the prisoners who confessed, the High Court set aside the conviction. *In re* SOFIRUDEEN, **2 C.L.R. 132.**

(38)—*Confession retracted subsequently—Pardon—Statement by the accused, after accepting pardon, retracted subsequently.*—A confession made before the Magistrate, though afterwards retracted, is evidence against the party making it; and the statement of an accused made after accepting a pardon, is not inadmissible in evidence by reason of the person making it having retracted it before the committing Magistrate. SAHIB DIN v. EMPRESS OF INDIA, **P.L R. 1900, 19, Cr.**

(39)—*Retracted, uncorroborated, contradicted inconsistent confession, value of.*—A conviction cannot be prudently based upon a retracted confession when not only uncorroborated, but actually contradicted by the other evidence on record, and when containing a story intrinsically improbable. BIPAT v. QUEEN-EMPRESS, **Supp. 1 O C. 13.** (19 B 728, *D.*; A.W.N. 1895, 227, *R.*)

(40)—*Confession retracted as having been induced by torture—Duty of Judge when it is sought to be used against co-accused—Evidence Act, s. 30*—Where a confession is retracted by the accused on the ground that it was induced by torture, and especially when the confession, after admission, is to be taken into consideration against his co-accused under s. 30, Evidence Act, and the accused has marks of violence on his body, it may be the proper course for the Judge to take evidence about the circumstances before admitting the confession in evidence. QUEEN-EMPRESS v. BALAPPA, **Rat. Un. Cr. C. 730=Cr. Rg. 58 of 1894.**

(41)—*Retracted confessions—Practice.*—The practice of the High Court of Bombay has been to deal with confessions in connection with all the facts of the particular case, and while not ignoring the difficulties that surround retracted confessions, it has not avoided these difficulties by applying any stringent rule. There is no rule of law that requires a duly proved confession to be corroborated. QUEEN-EMPRESS v. DANJI, **Rat. Un. Cr. C. 719.**

(42)—*Capital cases—Conviction on retracted confession.*—In capital cases, the jury should often refrain from convicting on retracted confessions. QUEEN-EMPRESS v. RUPYA, **Rat. Un. Cr. C. 245=Cr. Rg. 12 of 1886.**

(43)—*Confession, definition of — Retracted confession — Corroboration — Confession of co-accused—Discovery of important fact—Evidence Act* (I *of* 1872), *s.* 27.—An admission of all the ingredients required to constitute an offence is a confession. A statement of the following kind cannot be regarded as a confession of complicity in an offence. "I told the other accused that, if they wanted to kill my husband, they were at liberty to do so, and I would bring no case against them. But when they arrived at my husband's house on the fateful night, I endeavoured to restrain them and was only prevented from doing so by their threats to kill me and my son if I interfered. I did neither take any part in the murder, nor did I in any way assist the murderers after my husband was put to death." A confession taken in conformity with the strict provisions of the law by a Magistrate cannot be ruled out of Court, simply because the accused was produced before the Magistrate with the sole object of having his confession recorded by him. A confession of a co-accused is corroborative evidence of another

Confession—continued.

——5.—**Retracted Confessions**—*continued.*

co-accused's confession, if the former supports the latter in all its material parts. A confession retracted at an early opportunity must be very carefully scrutinised before it is accepted by the Courts. But if the confession is made under circumstances which preclude the idea that it was not genuine, and if the confession is such that, had there been no retraction, the Court would not have hesitated to accept it as a voluntary admission of guilt, its value is not diminished simply because its author has subsequently thought fit to disclaim it. The fact of pointing out the place where the murdered body is found strongly corroborates the confession in a very material particular. But when the place has already been pointed out by another co-accused, the value of this evidence remains very small. In the absence of any evidence connecting the accused with the commission of the crime, it is not lawful to convict an accused person simply on the strength of the co-accused's confession. BHAG SINGH v. EMPEROR, **4 Ind. Cas. 429= 24 P.W.R. 1909, Cr.=153 P.L.R. 1909.**

(44) — *Admissibility — Voluntary and true confessions — Retraction of confessions.—Per Aston, J.*—A Judge ought to be satisfied that a confession was voluntarily made, before it can be even admissible in evidence. *Per Beaman, J.*—A Judge should, in the first instance, see whether a retracted confession is voluntary or has been improperly induced. The mere fact that a prisoner puts in a plea of not guilty and denies having made the confession or explains having made it by allegation of police torture, is enough in itself to put a Judge upon enquiry. And he, then, has to decide, before admitting the confession at all, or allowing it to be looked at, whether it has been improperly induced. That is a question for the Court, *i.e.*, the Judge to answer *in limine*. If, upon weighing all the circumstances, the prisoner's denial and the probabilities, it appears to the Judge that the confession has been improperly induced, no matter how true it may be, he is bound to exclude it. If he comes to the conclusion that the confession was not improperly induced and admits it, it then becomes evidence and liable to be appreciated and weighed with the rest of the evidence in the usual way. EMPEROR v. BHAGI VEDU, **8 Bom. L.R. 697=4 Cr. L.J. 332.**

(45)—*Retracted confession—Duty of Court.*—Where a confession is retracted, it is the duty of the Court that has to act upon it, especially in a case of murder, to inquire into all the material points and surrounding circumstances and satisfy itself fully that the confession cannot but be true. KING-EMPEROR v. DURGAYA, **3 Bom. L.R. 441.**

(46)—*Crim. Pro. Code* (1861), s 205—*Retracting of confession when read over by committing Magistrate.*—Where the accused, who made a detailed confession before the committing Magistrate, retracted it, on his examination being read over to him in conformity with s. 205, Crim. Pro. Code, *held* that that did not amount to a confession. REG. v. GARBAD BECHAR, **9 B.H.C. 344.**

(47)—*Evidence Act, s. 24—Confession, admissibility of—Retracted confession—English and Indian Law.*—A confession duly recorded and certified under s. 164, Crim. Pro. Code, is admissible in evidence against the person making it, unless shut out by the provisions of s. 24, Evidence Act. In India the law relating to the admissibility of a confession is contained in s. 24, Evidence Act. It is not identical with the law in England. The question which a Court has to decide when determining on the admissibility of a confession is whether it appears to the Court to have been induced by the means mentioned in that section. The mere subsequent retraction of a confession, which has been duly recorded and certified by a Magistrate, is not enough in all cases to make it appear to have been unduly induced. QUEEN-EMPRESS v. BASVANTA, **25 B. 168= 2 Bom. L.R. 761.** (11 B.H.C. 137, *F.*)

(48)—*Crim. Pro. Code, ss.* 164, 364, 533—*Confession made to Presidency Magistrate—Confession not recorded in the language in which it was made—Admissibility.*—Ch. XIV, Crim. Pro. Code (except s. 155) does not apply to the police in the Presidency towns, and, consequently, a confession or statement to a Presidency Magistrate does not come within the words of s. 164. Therefore, the procedure prescribed, in regard to the recording of statements or confessions, by s. 164 and (by reference) s. 364, does not apply to statements and confessions recorded by a Presidency Magistrate before the commencement of the trial. Such statements or confessions, though not taken under s. 164, would be admissible in evidence under s. 26, Evidence Act, if it is proved that the whole statements contained in the document were either the actual words spoken by the prisoner or were accepted by him as representing the true meaning of what he had said and when the whole document was signed by him with his own hand. The scope of s. 533, Crim. Pro. Code, cannot be limited to any particular kind of non-compliance with s. 364. No distinction can be drawn between a neglect to sign the confession or the certificate, or to certify the facts requiring to be certified, and a neglect to record the examination in the prisoner's own language. In both cases, the statement would be admissible in evidence, if the accused would not be injured by such irregularities. QUEEN-EMPRESS v. VISRAM BABAJI, **21 B. 495.** [*F.*, 23 B. 221 ; *R.*, 4 Bom. L.R. 785, U.B.R. (1903), 1st Quarter, Cr. P.C. 13, 10 O.C. 112=6 Cr. L.J. 94.]

(49)—*Crim. Pro. Code, s. 164—Statement recorded by Magistrate not empowered to carry on preliminary enquiry—Contradiction before Magistrate having jurisdiction—False evidence—Alternative charge—Penal Code,* ss. 191, 193.

***Confession*—continued.**

——5.—Retracted Confessions—*continued.*

—A statement taken by a third class Magistrate under s. 164, Crim. Pro. Code, such Magistrate not having authority to carry on the preliminary enquiry in the case, is not evidence in a stage of judicial proceeding within the meaning of ss. 191 and 193, I.P.C., such that, when the statement is contradicted afterwards before the Magistrate having jurisdiction and exercising it in the preliminary enquiry into an accusation of murder, it will form a sufficient basis for an alternative charge of giving false evidence in a judicial proceeding. QUEEN-EMPRESS v. BHARMA *bin* NINGAPPA, **11 B. 702.** [*F.*, 1 Bom. Cr. 167 = 14 Bom. L.R. 753 = 13 Cr. L.J. 709 = 16 Ind. Cas. 517; *R.*, 11 B. 659, Rat. Un. Cr. 468, 2 Weir 605; *D.*, 22 A. 115 = A.W.N. 1899, 207, 16 M. 421 = 1 Weir 175, 13 Ind. Cas. 273 = 5 S.L.R. 174.]

(50)—*Approver — Retracted confession.* — Where an approver who had accepted a conditional pardon, made a confession implicating the accused, but afterwards retracted it, *held*, that the accused was not liable to be convicted on that confession alone. QUEEN v. HARDEWA, **5 N.W.P. 217.**

(51)—*Crim. Pro. Code, ss.* 164, 193 (1), 537 —*Confession subsequently retracted.*—The accused was examined as a witness under s. 337, Crim. Pro. Code, by the committing Magistrate, and was not himself committed for trial before the Sessions Court, but was sent as a witness for the prosecution. On the same day, he made a confession recorded by a Magistrate under s. 164, Crim. Pro. Code. A pardon was offered by the District Magistrate which influenced him to confess. In the Sessions Court, however, the accused was made to plead to the charge and, on his retracting his confession, was put on trial with other persons who had been duly committed. The accused was convicted mainly on his retracted confession. *Held*, that the conviction and the sentence must be reversed on the ground that the accused was not committed for trial, under s. 193 (1), Crim. Pro. Code, as this is not a mere irregularity such as is contemplated by s. 537, Crim. Pro. Code, but is very prejudicial to the accused. *Held*, also, that the confession recorded under s. 164, Crim. Pro. Code, and retracted, was inadmissible under s. 24 of the Evidence Act. *Held*, further, that the evidence given by the accused as a witness was not admissible in the absence of anything on the record to show that the conditions of pardon were explained to the accused who was fettered by the confession which had been obtained from him. NGA THIN NU v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 8.**

(52)—*Mere statement of co-accused not amounting to confession*—*S.* 30, *Evidence Act.*— The mere statement of a co-accused, as distinguished from a confession, cannot be used for or against another co-accused person. S. 30, Evidence Act, does not permit the confession of the co-accused to be used in favour of some other of the co-accused persons. BAGGA SINGH v. EMPRESS, **39 P.R. 1888, Cr.**

***Confession*—continued.**

——5.—Retracted Confessions—*concluded.*

Retracted confession made after long police custody—Admissions in, not retracted, if admissible—*See* CONSPIRACY, 16 C.W.N. 1105 = 16 Ind. Cas. 257.

See JUDGE AND JURY, Rat. Un. Cr. C. 730 = Cr. Rg. 58 of 1894.

Murder—Retracted confession, corroboration —Sulphate of copper poisoning—*See* PENAL CODE, s. 302, 43 P.W.R. 1910, Cr.

——6.—Confessions by co-accused—Admissibility.

(1)—*Evidence Act, s.* 30—*Confession—Admission—Distinction between.*—S. 30 must be strictly construed. It makes a clear distinction between an admission and a confession. It is only under that section that the confession of one of two or more accused, jointly tried for the same offence, can be taken into consideration as against the rest. It must be a confession to be so admissible, that is, it must affect both the person confessing and the other accused. The word "confession," as used in the Act, must not be construed as including a mere inculpatory admission, which falls short of being an admission of guilt. The terms of the section do not countenance the construction of a statement into a confession by a process of inferential reasoning. It is one thing to make statements giving rise to an inference of guilt and another thing to confess a crime. EMPEROR v. SANTYA BANDU, **11 Bom. L.R. 633 = 3 Ind. Cas. 742.**

(2)—*Evidence Act, s.* 30 — *Confession.*—A confession within the meaning of s. 30 is a full and unqualified admission of the guilt of the person making it and of a character to justify his conviction upon it. The statements, therefore, of a person being jointly tried with another person for the same offence, cannot be taken into consideration against such other person, under that section, unless such statements are of the nature indicated above. *In re petition of* KAPUR SINGH, **A.W.N. 1881, 20.**

(3)—*Evidence Act, s.* 30—*Confession by co-accused pleading guilty.*—Where one of the co-accused pleads guilty and his trial is suspended immediately after his plea is taken, his confession cannot be used against the other accused, for, he is not jointly tried with the co-accused. His plea of guilty has not the effect of making his admission relevant against them. A statement by an accused person consisting of the vague accusations of a co-accused, but containing no admission of an offence or a share in an offence, beyond the admission, that he only knew that a dacoity was to take place and that he was a passive spectator of it, was held not to be a confession. EMPRESS v. BAIJU, **A.W.N. 1881, 99.**

(4)—*Joint trial—Evidence—Confession of co-accused—Evidentiary value.*—Two persons were

Confession—continued.

——6.—**Confessions by co-accused—Admissibility**—*continued.*

jointly tried, the former for criminal breach of trust and the latter for the abetment of that offence. The only evidence against the latter was the confession by the former. *Held* that he was improperly convicted on such unsupported statement. EMPRESS v. BALDEO, **A.W.N. 1881, 164.**

(4-*a*)—*Confession—Joint trial—Admissibility of.*—Several persons were put upon their trial for an offence under s. 193, Penal Code. One of them made a statement confessing his guilt and implicating some of the other accused. The Magistrate did not convict him upon the confession but recorded evidence against all the accused and convicted them after considering the whole evidence, including the confession. The Sessions Judge reversed the judgment in this respect. *Held* that the confessing accused was tried jointly with the other accused and the confession was admissible in evidence against them all. KING-EMPEROR v. DIP NARAIN, **13 A.L.J. 337 = 37 A. 247 = 16 Cr. L.J. 327 = 28 Ind. Cas. 663.**

(5)—Thug—*Trial for murder—Confession implicating another, admissibility of.—Held* that a confession made by one person while he was on his trial for murder, for being a *thug*, and implicating another, was not admissible in evidence against the latter tried alone, subsequent to the confession and conviction of the former. EMPRESS v. JITA SINGH, **A.W.N. 1881, 164.**

(6)—*Confession of co-accused—How far can be acted on.*—The confession of a co-accused cannot be taken into consideration, where he does not substantially implicate himself to the same extent as the other accused, but on the contrary tries as far as he can to minimise the part he took. Where a conviction is based for the most part on such evidence, it is bad in law. SIVASAMI PILLAI v. EMPEROR, **8 Ind. Cas. 719 = 9 M.L.T. 318 = 1910 M.W.N. 754.**

(7)—*Evidence Act (I of 1872), s. 30—Confessions by co-accused—No conviction can be made on such confessions unless they are corroborated—Arrest of witness during the course of trial—Practice.*—A conviction should not be sustained where it rests entirely on statements contained in confessions of co-accused persons. The arrest of a witness for the defence for giving false evidence, while the evidence for the defence is being taken, is very improper. NGA PO KYA v. EMPEROR, **12 Cr. L.J. 465 = 11 Ind. Cas. 1001.**

(8)—*By co-accused—Co-accused tried for abetment of the offence.*—An accused person and another co-accused were tried together for an offence. The accused, though only liable for abetment of the offence, was found to have been present at the time of the commission of the offence. *Held*, that, under s. 114, I.P.C., the accused stood in the same position as if he himself had committed the offence; that his trial with the co-accused for the offence was proper, and that the confession made by the co-accused in such trial could be taken into consideration under s. 30, Evidence Act, against the accused. THAKUR SINGH v. EMPRESS, **32 P.R. 1882, Cr.** (3 P.R. 1870, Cr., *F.*)

(9)—*Confession of a prisoner when admissible against co-prisoner.*—To render the confession of one prisoner, jointly tried with another, admissible in evidence against the latter, it must appear that that confession implicates the confessing person substantially to the same extent as it implicates the person, against whom it is to be used, in the commission of the offence for which the prisoners are being jointly tried. QUEEN v. BELAT ALI, **10 B.L.R. 453 = 19 W.R. Cr. 67**; *see also*, QUEEN v. MOHESH BISWAS, **10 B.L.R. 455, Note = 19 W.R. Cr. 16.** [*F.*, 21 W.R. Cr. 69, 2 A. 444, 2 A. 646; *R.*, Rat. Un. Cr. C. 436, 10 B.H.C. 497.]

(10)—*Confession of accused, when admissible against co-accused.*—Before the confession of a person, jointly tried with a co-accused, can be taken into consideration against such co-accused, it must appear that the confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used in the commission of the offence for which they are being jointly tried. AUNG HLA v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 7.** (19 W.R. Cr. 67, 2 A. 446, Cr. Rg. 12th April, 1898, *R.*)

(11)—*Confession when admissible against co-accused.—Per Rattigan, J.*—A confession to be admissible against co-prisoners must affect the person making it substantially to the same extent as the others, but so long as it fulfils this condition, and provided the evidence adduced in corroboration relates not simply to the general drift of the confessing prisoner's story, but to those particular points that affect the co-accused, the actual weight to be attached to the confession must depend upon the circumstances of each case. The extent of corroboration which is sufficient, coupled with the confession of a co-accused, to convict a prisoner must depend on the circumstances of each particular case. The same general tests must be applied to the confession by a co-accused as to other kinds of evidence, except that it must not be forgotten that the confessing prisoner is not giving his statement on oath, and that his fellow prisoners have not the liberty of cross examining him and of exposing his falsehood. *Per Rattigan, J.* The confession of a co-accused may be considered with the other evidence, and if, in taking all together and considering the matter before it, the Court believes that the events detailed existed, or that their existence is so probable that a prudent man ought, under the circumstances of the particular case, to act on the supposition that they existed, the Court should then hold the fact stated to be proved. *Per Brandreth, J.* BANNA v. EMPRESS, **29 P.R. 1880, Cr.**

Confession—continued.

——6.—**Confessions by co-accused—Admissibility**—*continued.*

(12)—*Confession, how far affects co-accused.*—The corroboration of the confession of a co-accused as to the details of the crime, without corroboration as to the person of the accused, is worthless. QUEEN v. DURBAROO DASS SIRDAR, **13 W.R. Cr. 14.**

(13)—*Confession of one accused, how far affects co-accused.*—Statements made by one set of prisoners, criminating another set of prisoners, when each individual prisoner made a case for himself in which he was free from any criminal offence, ought not to be taken into consideration under s. 30 of the Evidence Act against the prisoners of the second set, when the two sets, although tried together, were tried upon totally different charges. QUEEN v. BUNWAREE LALL, **21 W R. Cr. 53**, QUEEN v. KHUKREE COORAM, **21 W.R. Cr. 48.**

(14)—*Confession, how far affects co-accused.*—Confessions of prisoners tried simultaneously with the accused tor the same offence, which are in a very qualified manner made operative as evidence by Act I of 1872, s. 30, are only to be rated as evidence of a defective character, and require especially careful scrutiny before they can be safety relied on. QUEEN v. SADHU MUNDUL, **21 W.R. Cr. 69.**

(15)—*Evidence Act, s. 30—Statement by prisoners.*—Statements made by a prisoner before the committing officer, which implicate his fellows and exculpates himself, cannot be regarded as evidence under the Evidence Act, s. 30. QUEEN v. KESHUB BHOONIA, **23 W. R. Cr. 8.**

(16)—*Confession of guilt implicating another.*—The rule that the statement of one prisoner can be considered against another is applicable, only when the statement amounts to a confession of guilt and implicates the prisoner making it. EMPRESS v. KADIR BAKSH. **A.W. N.1885, 303.** (10 B.L.R. 453, 6 C. 279, 2 A. 444, 2 A. 646, *R.*).

(17)—*Evidence Act, s. 30—Confession of co-accused.*—In order that the confession referred to in s. 30 of the Evidence Act may be admissible, it must be proved, and the person or persons against whom it is sought to use it must be on their joint trial along with the person proved to have made it ; but the law nowhere requires that the confession should have been made in the presence of the person against whom it is sought to use it. QUEEN-EMPRESS v. KALLUA, **A.W.N. 1894, 11.** (6 B. 124, *R.*).

(18)—*By co accused—Joint trial, what amounts to.*—A prisoner escaping from custody during the trial, but before charge, who has been tried separately after re-arrest, cannot be said to have been jointly tried with the person whose trial, from a stage prior to the charge, was separate owing to the escape from custody and the confession of the co-accused, first tried, was held to be inadmissible against the prisoner as the trial was not joint. HASSAN KHAN v. EMPEROR, **29 P.R. 1901, Cr.**=P.L.R. **1900, p. 32.**

(19)—*Confession of co-accused—Joint trial what amounts to.*—Two persons jointly tried, one for theft, the other for abetment of it before hand and being present during its commission, were held to be jointly tried for the same offence within the meaning of s. 30. BAG SHAH v. CROWN, **3 P.R. 1879, Cr**

(20)—*Confession of co-accused—Joint trial.*—In 1873, two persons were concerned in the murder of a third person, the first absconded, but the second, having been arrested, was tried in that year. The second person, during his defence at the Sessions trial, made a statement that the first person admitted to him having committed the murder. In 1877, the first person having been arrested and placed upon his trial—the second person had meanwhile died—the Court of Sessions used the statement of the deceased made at his trial in 1873 as evidence against the first. *Held* that the deceased person's statement was not admissible against the first, either under s. 327, Crim. Pro. Code, 1872, or ss. 30 and 133, Evidence Act. CROWN v. JHABA, **13 P.R. 1878, Cr.**

(21)—*Evidence Act, ss 24, 25, 26, 30—Joint trial for same offence—Confession by one, admissibility of.*—Where a number of persons are jointly tried for the same offence, the confession of one of them, if admissible at all, is admissible for the purpose of the Court's taking it into consideration against his co-accused, as well as against himself. After it has been once entirely rejected as unduly obtained, it cannot be admitted against the co-accused. If circumstances made it wholly or partly admissible, it ought not to be set aside at all, but weighed for all purposes with care and discretion. EMPRESS v. RAMA BIRAPA, **3 B. 12.** [*R.*, 4 A. 198=A.W N. 1882, 21, 6 C. 530, 26 C. 569, 2 L.B.R. 168.]

(22)—*Uncorroborated confession of co-accused.—Corroboration.*—A conviction based on the confession of a co-accused not corroborated in material particulars by independent evidence is illegal AMIR SHAH v. EMPRESS, **20 P.R. 1880, Cr.**

(23)—*Accomplice evidence — Necessity for corroboration—Confession of another accomplice, no corroboration.*—Although the conviction of an accused person upon the uncorroborated testimony of an accomplice is not illegal, yet, the invariable and undeviating practice of all English Courts and Judges has, time out of mind, been to require that the evidence of an approver shall be corroborated in some material particulars, from an independent and an untainted source. It would be absurd to hold that any such corroboration is to be found in the confession of another accomplice who is

***Confession*—continued.**

——6.—Confessions by co-accused—Admissibility—*continued.*

being tried along with the person against whom the evidence of the approver is tendered. EMPRESS v. BUDHU. **A.W.N. 1881, 18.**

(24)—*Confession of co-accused—Necessity for corroboration.*—The statement of one prisoner, when considered against another, is entitled to little or no weight if it is not corroborated by other testimony in material particulars, and, among them, such particulars as connect the accused with the offence. EMPRESS v. PIRIA, **A.W.N 1885, 320.**

(24-*a*)—*Confession of co-accused—Evidence Act, s.* 114, *ill.* (*b*)—*Corroboration.*—The confession of a co-accused, is, although evidence against the accused, one of the weakest kind, and if uncorroborated, is not sufficient to warrant a conviction. MANKI TEWARI v. AMIR HOSSEIN, **2 C.W.N. 749.** (4 C. 483, *F.*)

(25)—*Evidence Act,* I *of* 1872, *s.* 30—*Confession of co-accused—Evidentiary value.*—The confession of a co-accused is *evidence*, though not conclusive or of great weight, against the other accused. "May be considered," in s. 30 of the Evidence Act, means "may be considered as in the nature of evidence and the confession must be treated as evidence." (24 W.R.Cr. 42, *R.*). *Per Stuart, C.J.* The confession of one accused is not, strictly speaking, *evidence* against the other on a joint trial for the same offence. *Per Straight, J.* EMPRESS v. SUNDRA, **A.W.N. 1884, 38.** [*R.*, 11 O.C. 328=8 Cr. L.J. 393.]

(26)—*Evidence Act,* I *of* 1872, *s.* 30—*Use of confession—Same offence—Meaning.*—Where two persons were accused of an offence under s. 411 of the Penal Code, another of an offence under s. 457, the offences arising out of the same transaction, *held* that the confession of the third accused could not be used under s. 30 of the Evidence Act against the other two accused, though it appeared to the Magistrate that the latter should properly have been charged with abetment of the offence with which the third was charged. QUEEN-EMPRESS v. HIRA LAL, **A.W.N. 1899, 63.**

(27)—*By co-accused tried jointly for distinct offences — Admissibility of confession by one against the other.*—An accused person was tried, under s. 411, I.P.C., for receiving stolen property knowing it to be stolen, simultaneously with the thief. Another person was also charged under the same section with receiving stolen property, the proceeds of the same theft, from the same thief, but the property was different. *Held*, that the two persons were being jointly tried, not for the same offence, but were tried together for different offences punishable under the same section, and that a confession made by the latter could not be legally considered against the former. MAYA SINGH v. EMPRESS, **9 P.R. 1886, Cr.**

(28)—*Co accused tried jointly for principal offence and for abetment—Confession by one.*—

***Confession*—continued.**

—— 6.—Confessions by co-accused—Admissibility—*continued.*

Two persons were jointly tried, one for committing an offence and the other for abetting it. *Held*, that they were not tried for the same offence within the meaning of s. 30, so as to authorise a Court to take into consideration a confession made by one of the co-accused against the other. NUR AHMED v. CROWN, **8 P.R. 1874, Cr.** [*F.*, 39 P.R. 1885 ; *R.*, 3 P.R. 1879.]

(29)—*Confessions of prisoners tried jointly—Confession of co-prisoner—Trial for substantive offence and for abetment.*—S. 30, Act I of 1872, ought to be construed with great strictness, and the confession of one person is not admissible in evidence against another, although the two are jointly tried, if one is tried for the abetment of the offence for which the other is on his trial. QUEEN v. JAFFIR ALI, **19 W.R. Cr. 57.**

(30)—*Confession of person jointly tried—Extent of implication.*—Before the confession of a person jointly tried with the prisoner can be taken into consideration against such prisoner, it must appear that that confession implicates the confessing person substantially to the same extent as it implicates the person against whom it is to be used in the commission of the offence for which the prisoners are being jointly tried. *In re* KHETTER MOHUN v. DUTT, **2 J.G. 37.**

(31)—*Self-exculpatory statement of co-accused.*—Self-exculpatory statements made by co-accused are not admissible in evidence against the other co-accused. EMPRESS v. KALWA, **A.W.N. 1881, 135.**

(32)—*Confession of prisoners tried jointly—Confession of co-prisoner incriminating himself.*—The statement of one prisoner cannot be taken as evidence against another prisoner under s. 30 of the Evidence Act, unless the confessing prisoner implicates himself to the full as much as his co-prisoner whom he incriminates. QUEEN v. BAIJOO CHOWDHRY, **25 W.R. Cr. 43.**

(33)—*Confessions of prisoners tried jointly—Confession by co-prisoner implicating himself.*—The intention of the legislature as enacted in s. 30, Evidence Act, is that when, as against any person implicated by a co-prisoner's confession, there is evidence tending to his conviction, the circumstance of such person being implicated by the confession of one of those, who are being jointly tried with him, shall be taken into consideration as bearing upon the truth or sufficiency of such evidence. QUEEN v. CHUNDER BHUTTACHARJEE, **24 W.R. Cr. 42.**

(34)—*Confession under s.* 30, *Evidence Act, not substantial evidence—Judge to decide himself the question of admissibility or otherwise of evidence—Jury not a Court.*—A confession under s. 30, Evidence Act, may only be taken into consideration but cannot be treated as substantial evidence. A Judge should not leave the question of determining the admissibility or otherwise of a piece of evidence to the Jury, but should decide it himself. The word "Court" in

Confession—continued.

——6.—**Confessions by co accused—Admissibility**—*continued.*

s. 3, Evidence Act, does not include a Jury and, therefore, a confession under that section cannot be taken into consideration by a Jury. *In the matter of*, RAM MULLA, **1 J.G. 77.**

(35)—*Confessions of prisoners tried jointly—Defects of confessions by co-prisoners.*—The confessions of co-prisoners cannot, under the Evidence Act, I of 1872, s 30, be treated as evidence of an ordinary character, not distinguished by any special infirmity or qualifications against the other prisoners, as, in addition to the infirmity inherent in an accomplice's testimony, they are not sanctioned by an oath, and not tested by cross-examination. QUEEN v. NAGA, **23 W.R Cr. 24.**

(36)—*Evidence Act, I of 1872, ss. 30, 114—Joint trial—Plea of guilty by a co-accused—Admissibility of such confession against other accused.*—Where, in a joint trial of more than one person, one of the accused pleads guilty, his statements affecting himself and the other accused are not entitled to be considered under s. 30, for the statements, following the plea of guilty, cease to be the statements of a person jointly tried, because the trial ends, so far as he is concerned, with his plea. [*Diss.*, 23 M. 151; *R.*, 23 A. 53.] Confessions made by accused persons at a joint trial cannot be treated as evidence of accomplices against one another. QUEEN-EMPRESS v. LAKSHMAYYA PANDARAM, **22 M. 491 = 2 Weir 746.** [*R.*, 22 Ind. Cas. 157 = 14 M.L.T. 453.]

(37)—*Trial of accused. when it ends—Plea of guilty—Evidence Act, s. 30.*—The trial of a person does not necessarily end as soon as he pleads guilty. The proper course to be adopted, when an accused person pleads guilty, is either to convict him on his plea and remove him from the dock, in which case his trial would be manifestly at an end so as to warrant his being called as a witness for or against any person, who had been accused along with him, or else to allow the trial to go on as if the plea had been one of not guilty in which case his trial does not end with the plea of guilty and, therefore, any confession made by the person so pleading could be taken into consideration under s. 30 of the Evidence Act, as against any other person, who was being jointly tried with him for the same offence. The only case in which there may be a doubt is where neither of these courses has been explicitly adopted, but the accused who has pleaded guilty is left in the dock merely to see what the evidence will show as against him, though the Court intends ultimately to convict him on the plea of guilty. In such a case, it would not be fair to allow his confession to be considered as against his co-accused for that would be, in effect, to comply with the forms of justice while violating it in substance. QUEEN-EMPRESS v. CHINNA PAVUCHI, **23 M. 151 = 2 Weir 747 = 2 Weir 335.** [*F.*, 12 Cr. L.J. 605 = 12 Ind. Cas. 981 = 15 P.R. 1911; *Appl.*, 23 A. 53 = A.W.N. 1900, 192; *R.*, 25 M. 61 = 3 Bom. L.R. 540 = 5 C.W.N. 866 = 28 I.A. 257 = 11 M. L.J. 233 = 8 Sar. 160, 10 M.L.J. 147, F.B., 10 C. L.J. 19, 14 Cr. L.J. 566 = 21 Ind. Cas. 166 = U.B.R. 1913, 2nd Qr. p. 170.]

Confession—continued.

——6.—**Confessions by co-accused—Admissibility**—*continued.*

(38)—*Evidence Act, I of 1872, s. 30—Confessions of co prisoners—Murder—Abetment.*—Murder and abetment of murder are not the same specific offence so as to warrant the confessions of persons charged with murder being taken into consideration under s. 30 of the Evidence Act against those who are charged with the abetment of murder only. BADI v. QUEEN-EMPRESS, **7 M. 579 = 2 Weir 742.** [*F.*, 2 Weir 742; *R.*, Rat. Un. Cr. C 450.]

(39 & 40)—*Evidence Act, s. 30—Persons charged jointly with another for separate offences under ss. 372 and 373 of the Penal Code respectively—Admissibility of confession made by one of them as against the other—Retracted confessions—Their value.*—Where two persons are tried together, one charged with an offence under s. 372 and the other under s. 373, Penal Code, a confession made by one of them cannot be admitted against the other under s. 30 of the Evidence Act, as the offences are substantive offences. Confessions, which are supposed to be the offspring of penitence and remorse, and which, nevertheless, are repudiated by the prisoner at the trial, must always be open to suspicion. DEPUTY LEGAL REMEMBRANCER v. KARUNA BAISTOBI, **22 C. 164** [*R.*, 1913 M.W N. 207 = 14 Cr.L.J. 33 = 13 M.L.T. 131 = 24 M.L J. 211 = 18 Ind. Cas. 257.]

(41)—*Statement by one of several prisoners jointly charged, implicating others alone—Evidence Act, s. 30.*—A statement, by a prisoner with others, made before the committing Magistrate, which, being neither a confession nor amounting to any admission of guilt in any degree with respect to the offence charged, is simply an endeavour on his part to explain his own presence on the occasion in such a manner as to exculpate himself, is quite irrelevant as regards any mention therein implicating others and is not evidence against them. NOOR BUX KAZI v. EMPRESS, **6 C. 279 = 7 C.L.R. 385.** [*R.*, 27 M. 271 = 2 Weir 808.]

(42)—*Accused, confession of, affecting co-accused—Conviction—Confession is evidence.*—The confession of a prisoner affecting himself and another, being jointly tried with him for the same offence, is, under s. 30 of the Evidence Act, evidence against both when duly proved. [*F.*, L.B.R. (1893—1900), 368, 29 A. 434 = 4 A.L.J. 310 = 5 Cr. L.J. 360 = A.W.N. 1907, 140.] A prisoner cannot be legally convicted upon the uncorroborated confession of another, jointly tried for the same offence. [*F*, 2 C.W.N. 749; *R.*, 10 B. 319, Rat. Un. Cr. 436, Rat. Un. Cr. C. 456.] *Per* GARTH, C.J. Unsupported by other evidence, its evidentiary value is of the weakest kind; but. if supported by other evidence, it is immaterial, for purposes of a

Confession—continued.

——6.—**Confessions by co-accused—Admissibility**—*continued.*

conviction upon it, whether the confession succeeds or precedes the evidence that supports it. [*Criticized*, 29 A. 434=4 A.L.J. 310=5 Cr. L.J. 360=A.W.N. 1907, 140.] *Per* JACKSON, J., and MCDONNEL, J. Such confession is not sufficient to support a conviction, even if corroborated, unless the corroborating circumstantial evidence is such as itself to support a conviction independently. [*Diss.*, 29 A. 434=4 A.L.J. 310=5 Cr. L.J. 360=A.W.N. 1907, 140.] If a relevant fact is proved, and the Law expressly authorises its being taken into consideration, *i.e.*, considered for a certain purpose or against persons in a certain situation, the fact in question is "evidence" for that purpose or against such persons, although the result has not been expressed in those words by the Legislature; and being "evidence" it must be used in the same way as everything else that is "evidence." The confession being thus what is called "evidence," it is clearly matter for the jury to consider. What the Legislature intended to denote whenever the word "evidence" is used in the Act, is explained in the interpretation clause. EMPRESS v. ASHOOTOSH CHUCKERBUTTY, **4 C. 483=3 C.L.R. 270 F.B.=1 Shom. L.R. Cr. 79.** [*Diss.*, 14 Cr. L.J. 179=19 Ind. Cas. 179=6 Bur. L.T. 47; *R.*, 33 M. 46=9 Cr. L.J. 404=1 Ind. Cas. 867, 2 Bom. Cr. C. 143=15 Bom. L.R. 975=38 B. 156, 11 O.C. 328=8 Cr. L.J. 393, 9 Cr. L.J. 308=5 M L.T. 355, 11 Cr. L.J. 71=4 Ind. Cas. 884=12 O.C. 418, 14 Cr. L. J. 566=U.B.R. 1913, 2nd Qr. p. 170=21 Ind. Cas. 166, 1 Ind. Cas. 547.]

(43)—*Conviction based solely on confession of co-accused--Circumstantial evidence.*—An accused person ought not to be convicted where the only evidence against him is the confession of a co-accused and circumstantial evidence, which, although true, would not itself support a conviction. SRI KISHEN v. KING-EMPEROR, **6 O.C. 204** (4 O.C. 70, *R.*) [*Diss.*, 11 O.C. 328=8 Cr. L J. 393.]

(44)—*Conviction based solely on uncorroborated confession of co-accused.*—The wording of s. 30 shows that a confession of a co-accused is merely an element in the consideration of the evidence. Unless there is something more, a conviction upon it will still be a case of no evidence. HIGH COURT PROCEEDINGS 24TH JANUARY 1873, No. 175, **2 Weir 740=7 M.H.C. App. 15.** [*F.*, 1 M. 163=2 Weir 740.]

(45)—*Conviction based on confession of co-accused--Necessity for corroboration.*—A conviction cannot be based upon the uncorrborated confession of one of the co-accused. The mere fact that the accused, who was charged with house-breaking by night with intent to commit theft, pointed out, some months afterwards, the stolen property, is not a sufficient corroboration of the confession of a co-accused, as the act of pointing out the stolen property is in itself ambiguous, and not inconsistent with his innocence.

Confession—continued.

——6.—**Confessions by co-accused—Admissibility**—*continued.*

QUEEN-EMPRESS v. DOSA JIVA, **10 B. 231=10 Ind. Jur. 383.** [*F.*, Rat. Un. Cr. C. 468, Rat. Un. Cr. C. 748; *R.*, 2 Bom. Cr. C. 143=15 Bom.L.R.975=38 B 156, Rat. Un. Cr. C. 436, Rat. Un. Cr. C. 456].

(46)—*Confession of co-accused, evidentiary value of.*—Statements of co-accused persons are not entitled to even as much consideration as the testimony of an accomplice. QUEEN-EMPRESS v. NANA RAJU, **Rat Un. Cr. C. 468=Cr. Rg. 26 of 1889.** (10 B. 231, *R.*)

(47)—*Confession of co-accused, evidentiary value of.*—Confessions made by accused persons at a joint trial cannot be treated as the evidence of accomplices against one another. Such a confession would be evidence only against the person making it. A confession must be taken as a whole and considered along with the admitted facts of the case, and the accused must be judged by his whole conduct. Where the accused admitted that he heard the other accused say that she was going to kill the child as it was a hindrance to the journey she was about to make with him, that he saw her killing it, that he did nothing to prevent her, and that, after the murder, he, with her, concealed the body and harboured her several days, *held* that such a confession was a positive proof of the guilt of the accused on the charge of murder. The confession of one co-accused, where he does not substantially implicate himself to the same extent as he implicates the other co accused, is not admissible in evidence against the latter. QUEEN EMPRESS v. UMA; QUEEN-EMPRESS v. BALAJI, **Rat. Un. Cr. C. 370=Cr. Rg. 19 of 1888.**

(48)—*Confession of co-accused, evidentiary value of.*—When two persons are accused of an offence of the same definition arising out of a single transaction, the confession of the one may be used against the other, though it inculpates himself through acts separable from those ascribed to his accomplice, and capable, therefore, of constituting a separate offence from that of the accomplice. QUEEN-EMPRESS v. NUR MAHOMED, **8 B. 223.** [*R.*, Rat Un. Cr. C. 450.]

(49)—*Use of confession of co-accused against the other—Evidentiary value.*—In a case where two persons were jointly tried on a charge of murder, the Judge examined each of the accused in the absence of the other, in order that neither of them might hear what the other said, and the statements so taken were not read over to, or in any way proved as against, the other, *held*, that the statement made by each prisoner could not be taken into consideration against the other prisoner. EMPRESS v. LAKSHMAN BALA, **6 B. 124=6 Ind. Jur. 317.** [*R.*, A.W.N. (1894) 11.]

(50)—*Evidence Act, s. 30—Confession of co-accused—Evidentiary value.*—Where some of the accused make statements in Court denying their participation in the commission of any crime, but incriminating a co-accused, such

Confession—continued.

——6.—**Confessions by co accused—Admissibility**—*continued.*

statements are not confessions, and cannot be taken into consideration as against the co accused under s. 30, Evidence Act. BISHAN DAT v. KING-EMPEROR, **2 A.L.J. 53=2 Cr. L J. 22.**

(51)—*Confession of co-accused, evidentiary value of—Evidence Act,* s. 30—"*Taken into consideration," meaning of.*—The words "taken into consideration" in s. 30 mean that the confessions of a co-accused are not to have the force of sworn evidence. A conviction resting on such a confession alone cannot be maintained. QUEEN-EEPRESS v. NIRMAL DAS, 22 A. 445= **A.W.N. 1900, 169.** (15 B. 66, *R.*) [*R.*, 2 Bom. Cr. C. 143=15 Bom. L.R. 975=38 B. 156, 11 O.C. 328=8 Cr. L.J. 393.]

(52)—*Statement of co-accused—Evidentiary value of.*—The statement by an accused, being jointly tried with others, should not be taken into consideration against such other persons, if the person making the statement entirely deprecates any guilty knowledge and seeks to clear himself at the expense of his co-prisoners. EMPRESS OF INDIA v. MULU, **2 A. 646.** [*R.*, L.B.R. (1893—1900), 70.]

(53)—*Confession of co-accused, evidentiary value of—Necessity for corroboration—Practice.*—Although the law allows a Court to consider statements made by accused persons when dealing with the case against other accused persons, who are tried with them. a conviction based on such evidence only, without corroboration on a material point, is not proper. EMPRESS OF INDIA v. BHAWANI, **1 A. 664** [*R.*, 2 Bom. Cr. C. 143=38 B. 156=15 Bom. L R. 975.] EMPRESS OF INDIA v. RAM CHAND, **1 A. 675.**

(54)—*Evidence Act,* s. 30—*Confession of co-accused, effect of—Misdirection to jury— Judge not instructing jury that confession of co-accused was not enough, if amounts to.*—As a general rule of practice, it is not safe to convict an accused upon the uncorroborated evidence of an accomplice; the confession of a co accused is on even a lower footing. The statement of a co-accused is of less probative force than the evidence of an accomplice, for, it is affected by all the inherent weakness of such evidence, and it could not be tested, as such evidence can, by cross-examination, nor is it given under the sanction of an oath. A conviction on such a confession alone has long been held to be a case of "no evidence and bad in law." The omission of the Sessions Judge to give instructions to the jury in the sense above stated is clearly a misdirection, leading to a failure of justice. *In re* KUPPAN, **5 M.L.T. 355=9 Cr. L. J. 308 =1 Ind. Cas. 547.**

(55)—*Evidence Act,* s. 30 — *Confession of a co-prisoner making plea of guilty—Admissibility against other prisoners.*— Where, in a trial for the offence of house-breaking, some of the prisoners pleaded guilty and were convicted on their own plea, *held*, that the confessions made by such prisoner could not be used in evidence against the other prisoners inasmuch as they were not tried at all, and therefore were not "being tried jointly for the same offence" with the other prisoners. The only course to make their statements admissible against the other prisoners would be to remove them from the dock and call them as witnesses. VENKATASAMI v. QUEEN, **7 M. 102=2 Weir 740.** [*R.*, 19 B. 195 (198); 25 M. 61 (69), P.C =3 Bom. L. R. 540=5 C.W.N. 866=28 I. A. 257=11 M. L.J. 233=8 Sar. P.C.J. 160=2 Weir 271.]

Confession—continued.

——6 —**Confessions by co-accused—Admissibility**—*continued.*

(56)—*Of co-accused and accomplice testimony*—A confession of the co-accused stands on a perfectly different footing from the testimony of an accomplice. The latter being substantive evidence in the strict sense of the term, a conviction may legally proceed upon it without corroboration. It is entirely otherwise with the confession of a co-accused. It can only be used in a subsidiary manner in connection with the substantive evidence adduced in the case. EMPRESS v. KARIM BAX MUSALMAN, **9 C.P. L.R. Cr. 37.**

(57)—*Co-accused's confession, if accomplice testimony—Evidence Act,* ss. 30 *and* 133,—The confession of a co-accused is not "the testimony of an accomplice" within the meaning of s. 133, Evidence Act. EMPRESS v. GOVINDE, **9 C.P. L.R. Cr.** 35.

(58)—*Evidence Act,* s. 30— *Accused pleading guilty — Admissibility of confession against co-accused on trial.*—Four persons being charged with murder, one of them was made an approver and two of them pleaded guilty, and the trial proceeded against the fourth alone. *Held* that the statement of persons pleading guilty could not be used against the accused to corroborate the evidence of the approver, as he could not be considered to be undergoing trial jointly with persons pleading guilty. QUEEN-EMPRESS v. CHAND. **Rat. Un. Cr. C. 400=Cr. Rg. 60 of 1888.**

(59)—*Evidence Act,* s. 30—*Confession by accused—Corroboration.*—The appellants, accused Nos. 3 and 7, were convicted of the abetment of murder and of murder respectively, on the strength of a confession made by accused No. 3, which implicated himself as well as accused No. 7. *Held,* (1) that the confession of accused No. 3 was not evidence against accused No. 7, and ought not to have been considered against him, because, in the confession, the share of the accused in the murder was minimized to the last degree and the blame was all placed on the other accused, (2) that motive for the murder could not take the place of evidence of identification, nor could it afford corroboration of the confession, (3) that the confession was insufficient to convict upon, for it did not amount to a confession of murder. The accused described himself as a spectator of the murder, taking no part in it and compelled by force to witness it

Confession—continued.

——6.—**Confessions by co-accused—Admissibility**—*continued.*

as he was not allowed to go away. His being there at all was not criminal as he had no foreknowledge that a murder was about to be committed. He went when called and there he was compelled to remain. QUEEN-EMPRESS v. DNYANU *bin* TATYA, **1 Bom. L.R. 428.**

(60)—*Evidence Act,* I *of* 1872, *s.* 30—*Joint trial—Different charges — Amended into one charge—Confession—Effect—Crim. Pro. Code, Act* X *of* 1872, *ss.* 447 *to* 449.—A and B were tried at the same trial, A for murder and B for abetment. A confessed to having committed the murder at the instigation of B. The Sessions Judge subsequently amended the charge against A into one of abetment. B, who was represented by a vakil, did not object to the amendment or ask for a new trial. *Held* that the objection that the Judge should not, under s. 30 of the Evidence Act, have taken the confession of A into consideration as against B, could not be allowed in appeal, since the two charges were so nearly related, and there was no such material prejudice as would, under ss. 447 to 449 of the Crim. Pro. Code, have necessitated a new trial, and since the amendment of charge was not objected to. REG. v. GOVIND BABLI RAUL, **11 B.H.C.** 278. [*R.*, 8 B. 209, F.B.]

(61)—*Evidence Act,* I *of* 1872, *ss.* 30, 114, 113, 157—*Corroboration of evidence of accomplice—Corroboration of approver.*—The previous statement of an accomplice is no corroboration of his evidence. It must be corroborated as regards every material particular and the identity of the accused must be proved by reliable independent testimony. [*F.*, 10 B. 319, Rat. Un. Cr. C. 840, 6 Bom. L.R. 481.] The confession of one of several accused persons, though it may be taken into consideration against the others, under s. 30 of the Evidence Act, cannot be taken as evidence to corroborate the testimony of an approver. REG. v. MALAPA *bin* KAPANA, **11 B.H.C.A.C. 196.** [*F.*, 1 B. 475, 10 C. 970, Rat. Un. Cr. Cas. 400 (750) = 35 M. 247 = 22 M L.J. 490 = 11 M.L.T. sup. 1 = M.W.N. 1912, 207 = 13 Cr.L.J. 305 = 14 Ind. Cas. 849, 36 M. 501 = 2 Bom. Cr. Cas. 123 = 15 Bom. L. R 910 = 18 C. L.J. 365 = 14 Cr. L.J. 577 = 17 C.W.N. 110 = 20 Ind. Cas. 369 = 25 M.L.J. 518 = 14 M.L.T. 263 = M.W.N. 1913, 806 = 35 M. 397 = 13 Cr. L.J. 352 = 14 Ind. Cas. 896 = 12 M.L.T. 1 = M.W.N. 1912, 549, 12 Cr. L.J. 150 = 9 Ind. Cas. 897 = 21 M.L.J. 283 = 10 M.L.T. 84 = 1911, 2 M.W. N. 327.]

(62)—*Evidence Act, I of* 1872, *s.* 30—*Jointly tried—Prisoner who has pleaded guilty.*—Where one of the prisoners, who were jointly tried, pleaded guilty, the proper course for the Court to adopt is, not to keep him on along with the rest so as to use his statement against the others, but to convict and sentence him and then to examine him on solemn affirmation. REG. v. KALU PATIL, **11 B H.C. 146.** [*R.*, A. W.N. 1881, 99, 10 M.L.J. 147, F.B.]

Confession—continued.

——6.—**Confessions by co-accused—Admissibility**—*continued.*

(63)—*Evidence Act, s.* 30—*Confession by co-accused pleading guilty, but not convicted.*—Where one of two accused persons tried jointly pleads guilty, but is not convicted till the conclusion of the trial of the other accused, *held* that his confession is not admissible in evidence as against the co-accused, as the accused, pleading guilty, could not be treated as being jointly tried with the other accused. QUEEN-EMPRESS v. PAHUJI, **19 B. 195.** [*R.*, 22 M. 491 = 2 Weir 746 ; *R.*, Rat. Un. Cr. C. 776, 17 A. 524, 23 M. 151 = 2 Weir 747, 10 M.L.J. 147, F.B., 25 M. 51, P.C = 2 Weir 749, 23 A. 53, 9 C.L J. 291 = 13 C.W.N. 552.]

(64)—*S.* 30, *Evidence Act—Joint trial—Confession of fellow prisoners—Effect.*—Where an accused person was convicted solely on the confessions of his fellow prisoners who were tried jointly with him for the same offence, *held,* that the conviction was bad. Under s. 30, Evidence Act, these confessions could be "taken into consideration" as against the accused ; but they are not technically evidence within the definition given in s. 3 of the Act. They could not, therefore, form the basis of a conviction. QUEEN-EMPRESS v. KHANDIA *bin* PANDU, **15 B. 66.** [*R.*, 22 A. 445 = A.W. N. 1900, 169, 38 B. 156 = 2 Bom. Cr. Cas. 143 = 15 Bom. L.R. 975, 24 M. 523 = 1 Weir. 351, L.B.R. (1893-1900) 368 ; 10 O.C. 328 = 8 Cr. L. J. 393.]

(65)—*Evidence Act, s.* 30—*Confession by accused charged with dacoity.—Its admissibility against person charged with receiving stolen property.*—Where the sole evidence of the identity of the goods stolen at a dacoity with those found in the possession of the accused, who was charged with having received the stolen property, was the confession to the committing Magistrate by the person charged with the dacoity, who had pleaded guilty to that charge, *held,* that the confession was inadmissible against the person charged with receiving the stolen property, as he and the other person were not being tried jointly for the same offences. EMPRESS v. BALA PATEL, **5 B. 63 = 5 Ind. Jur. 425.** [*R.*, 6 Bom. L.R. 517.]

(66)—*Evidence Act, s.* 30—*Statement of person jointly tried—Court not holding him guilty—Effect.*—The statement of a person jointly tried with others for the same offence is not the less an admission regarding all that the person knew about the offence affecting himself and the other persons, merely by the fact of the Court not holding him guilty of the offence with which he is charged. QUEEN v. BAKUR KHAN, **5 N.W.P. 213.**

(67)—*Statements made by an accomplice not conclusive evidence.*—Though the confession of an accused person is relevant evidence against the co-accused jointly tried with him, still it is not conclusive evidence against the co-accused,

***Confession*—continued.**

——6.—Confessions by co-accused—Admissibility—*continued.*

and must be received with the greatest caution and discrimination. EMPRESS v. SUNDRA, **A.W.N. 1884, 38.**

(68)—*Evidence Act*, s. 30—*Plea of guilty by some of the co-accused—Continuance of the trial without convicting them.*—Although it is open to the Court, under certain circumstances, to continue the trial without convicting those of the accused who plead guilty, yet, it is unfair to defer convicting them merely in order that their confessions may be considered against the other accused who are being tried with them. QUEEN-EMPRESS v. PALTUA. **23 A. 53 = A.W.N. 1900, 192.** (19 B. 195, 22 M. 491, 17 A 525, 23 M. 151, *R.*) [*F.*, 30 A. 540 = 5 A.L.J. 505 = A.W.N. 1908, 241 = 4 M.L.T. 540 = 8 Cr.L J. 380; *R.*, 9 C.L J. 291 = 13 C.W.N. 552 = 10 Cr. L.J. 484 = 4 Ind. Cas. 57.]

(69)—*Evidence Act*, s. 30—*Co-accused pleading guilty—Joint trial.*—Where the statements of two of several co-accused persons followed their plea of guilty, *held*, they were not entitled to be considered as evidence against the other accused persons, and that, in those circumstances, they ceased to be statements of persons jointly tried, for the trial ended, as regards them, with their plea of guilty QUEEN-EMPRESS v. PIRBHU, **17 A. 524 = A W.N. 1895, 111.** [*F.*, 22 M. 491; *R.*, 23 A. 53 = A.W.N. 1900 192, 3 Bom.L.R. 437, 15 Cr.L.J. 13 = 22 Ind. Cas. 157 = 14 M.L.T. 453].

(70)—*Evidence Act*, s. 30—*Scope and application of.*—The test, for s. 30 of the Evidence Act intended, to be applied to a statement of one prisoner proposed to be used in evidence as against another, is to see whether it is sufficient by itself to justify the conviction of the person making it for the offence for which he is being jointly tried with another person or persons against whom it is tendered. To use a popular phrase, the confessing prisoner must tar himself and the person or persons he implicates with one and the same brush. EMPRESS OF INDIA v. GANRAJ, **2 A. 444.** [*F.*, 2 A. 646, A.W.N. 1881, 30, 135, Rat.Un.Cr. C. 436, L.B R. 1893-1900, 7; *Doubted* 13 Cr.L.J. 305 = 14 Ind. Cas. 849 = 1912 M.W.N. 207 = 22 M.L.J. 490 = 11 M. L.T. Sup. 1 = 35 M. 407; *R.*, L.B.R. 1893—1900, 70.]

(71)—*Evidence of co-accused —Pardon — Practice—Crim. Pro. Code, Act* X *of* 1882, s. 288.—Where a pardon tendered to one of two accused persons by a Magistrate was withdrawn before the close of his examination, *held* that the evidence thus given was inadmissible in the Sessions Court. In this case, the person to whom the pardon was tendered repudiated the statements in the Magistrate's Court when examined as a witness in the Sessions Court. QUEEN-EMPRESS v. NAGU, **A W.N. 1891, 184.**

Scope of the term "Confession"—*See* CRIM. PRO. CODE, 1898, s. 162, 6 N.L.R. 180 = 8 Ind. Cas. 1181 = 12 Cr. L.J. 60.

***Confession*—continued.**

——6.—Confessions by co-accused—Admissibility—*concluded.*

Duty of Magistrate taking part in police investigations—*See* CRIM. PRO. CODE, ss 164, 103, 5 S.L.R. 31 = 12 Ind. Cas. 209 = 12 Cr. L.J. 489.

Certificate of voluntariness omitted—Defect cured by evidence of Magistrate—*See* CRIM. PRO. CODE, ss. 164, 167, 533, 9 Ind. Cas. 148. = 12 Cr. L.J. 15.

—not relevant against the maker whether relevant against a co-accused—*See* EVIDENCE ACT, 1872, ss. 24, 30. 133, 166 P.L.R. 1911 = 10 Ind Cas. 340 = 9 P.R. 1911, Cr. = 22 P.W. R. 1911, Cr. = 12 Cr. L.J. 267.

—of co-accused exculpating himself—Value —*See* MURDER, (1911) 2 M.W.N. 375 = 12 Cr. L.J. 562.

Confession—Made to zaildar or nominally to third party in presence of police--Inadmissibility —*See* MURDER, 14 P.R. 1911, Cr. = 12 Ind.Cas. 973 = 12 Cr. L.J. 597.

Retracted confession — Value — Statement recorded by police officer prior to making confession not produced—Effect—Accused offering to confess—Propriety of police officer recording statement before taking to Magistrate to record confession—"Verification" of confession, value and utility of—*See* PENAL CODE, s. 121-A, 15 C.W.N. 593 = 10 Ind. Cas. 582 = 12 Cr. L.J. 286.

One accused can prove on his own behalf a co-accused's confession to a police officer—*See* PENAL CODE, ss. 241, 243, 12 Cr. L.J. 79 = 9 Ind. Cas. 449.

Evidence of Magistrate—Best evidence of verification—*See* PENAL CODE, s. 400, 16 C. W.N. 69.

——7.—Miscellaneous.

(1)—*Crim. Pro. Code* (1872), *ss.* 122, 546—*Scope of s.* 122.—S. 122 applies to a confession made to a Magistrate other than the Magistrate by whom the case has to be enquired into or tried, but who may not even have jurisdiction to enquire into or try it; and to a confession made while the case is still under investigation by the police, or before such investigation is commenced. It does not apply to a confession recorded by a Magistrate acting under Ch. XV or Ch. XVII of the Code. *In the matter of*, BEHARI HAJDI, **5 C.L.R. 238.** [*Cons.*, 6 C.L. R. 289; *R.*, 37 C. 467 = 11 Cr. L.J. 453 = 7 Ind. Cas. 359.]

(2)—*Crim. Pro. Code* (1872), ss. 122, 346—*Object of the section—Making confession the commencement of enquiry, validity of.*—The object of s. 122 is to enable any Magistrate, other than the Magistrate by whom the case is enquired into or tried, and who is conveniently near at hand, to record a confession promptly. S. 122 enables any Magistrate to record a confession but if that confession be made before a Magistrate who had jurisdiction to

***Confession*—continued.**

——7.—Miscellaneous—*continued.*

deal with the matter to which it relates, in the form, either of a trial or of an enquiry under Ch. XV, he can record the confession before the commencement of such trial or enquiry, and so proceed under s. 346, whether or not the case be still under the investigation of the police. KRISNA MONEE v. EMPRESS, **6 C.L.R. 289.** (5 C.L.R. 238, 1 Bom. 219, *Discussed.*)

(3)—*Penal Code*, ss. 109, 302—*Abetment of murder.*—Where the only evidence against the accused charged with having abetted the commission of murder by the administration of arsenic was a retracted confession, *held*, that it would be manifestly unsafe to found a conviction of abetment of murder on so suspicious a piece of evidence, and more particularly when the police had failed to trace any vestige of arsenic into the accused's possession. EMPEROR v. NAGANDA KOM BHIMAPPA, **4 Bom. L.R. 425.** [*D.*, 31 A. 290=6 A.L.J. 203=9 Cr. L.J. 522=2 Ind. Cas. 214.]

(4)—*Crim. Pro. Code, Act* X *of* 1872, *ss.* 283, 346—*Prisoner represented by counsel—Prejudice.*—Where the counsel representing the prisoner in the Sessions Court did not object to the admission of a statement of the accused not signed or marked by him as required by s. 346 of the Crim. Pro. Code, *held*, that the error in the formality could not have prejudiced the prisoner in his defence and that no objection to the conviction on that ground could be considered by the appellate Court. REG. v. DEVA DAYAL, **11 B H.C. 237.** [*R.*, 23 B. 221, U.B.R. 1892—1896, 187.]

(5)—*Plea of guilty of charge of murder.*—The accused, who was in the habit of smoking *ganja*, being charged with the murder of his wife and an infant son, made a confession, two days after the occurrence, stating that he had killed his wife and child because of a quarrel which arose on account of her refusal to accede to his proposal to go to another place, on account of his poverty. *Held*, that the statements made by the accused did not amount to an admission of the offence of murder. He alleged a sudden provocation and he should, therefore, have been put on his trial, in order that the Court might ascertain whether the provocation was grave and sudden enough to prevent the offence from amounting to murder. QUEEN-EMPRESS v. SAKHARAM *valad* RAMJI, **14 B. 564.** [*F.*, Rat. Un. Cr. C. 532.]

(6)—*Crim. Pro. Code*, s. 122—*Confession—Admissibility—Evidence Act*, s. 30.—Both the memorandum and the certificate required by ss. 122 and 346 of the Code of 1872, should be attached to confessions. The effect of these is to afford proof of the accuracy of the record, of the presence of a Magistrate, and of the voluntary nature of the confession. When a confession taken under s 122 is inadmissible in evidence, oral evidence to prove that such a confession was made, or what were the terms of the confession, is inadmissible also. REG. v. SHIVYA, **1 B. 219.** [*Not F.*, 2 M. 5=2 Weir 123; *Appr.*, 4 B. 15; *R.*, 21 B. 495, 23 B. 221, 9 M. 224=2 Weir 128; *Const.*, 6 C.L.R. 289.]

(7)—*Crim. Pro. Code* (1872) s. 122—*Confession, without necessary certificate—Admissibility—Evidence Act*, s. 24—*Confession to a police officer.*—A confession upon which the necessary certificate that it is voluntarily made is not recorded at the time, or, at any rate, on the day the confession was reduced to writing, is bad, and cannot be admitted in evidence. [*R.* 23 B. 221.] A confession made by an accused person, while he is in police custody, is not admissible in evidence. EMPRESS v. DAJI NARSU, **6 B. 288.**

(8)—*Penal Code*, s. 180—*Refusal by accused to sign statement made by him.*—S. 180, I.P.C., is not applicable to the signatures or marks made to such confessions and statements as those treated of in ss. 122, 346, Crim. Pro. Code. Therefore, an accused person refusing to sign his examination does not render himself liable to be punished for contempt under s. 180, I.P.C. IMPERATRIX v. SIRSAPA, **4 B. 15.** [*F.*, 4 Cr. L. J. 205=3 L.B.R. 199; *R.*, 13 Cr. L.J. 713=16 Ind. Cas. 521=245 P.L.R. 1914 =8 P.R. 1912 (Cr.)=37 P.W.R. 1912 (Cr.).

(9)—*Sessions trial—Accused's examination before committing Magistrate — Admissibility before Sessions Judge—Crim. Pro. Code* (1868), s. 205.—Where the accused makes a confessional statement when examined by the Magistrate, the mere signing of the statement by the Magistrate would not be sufficient to make the examination legal evidence in the Sessions Court. The certificate under the Magistrate's hand required by s. 205 of the Code of Criminal Procedure should be attached. A confession should be recorded in the language in which it was made. The question must be put to him in a language which the accused understands, and his answers are to be recorded in full. They are to be shown and to be read to him. It is obvious that a Magistrate who shows or reads a confession; taken in English, to a Native who does not understand English, cannot be said to comply with the provisions of the law in s. 205, Crim. Pro. Code. Or if the Magistrate translates both the questions and answers, this cannot be said to be a showing or reading of the questions actually put or the answers actually given. QUEEN v. BHEEBEEKEE, **4 N.W.P. 16.**

(10)—*Murder.*—The admission of the accused as to his presence at the murder, corroborated by his possession of part of the property of deceased, held to justify his conviction for the principal offence CROWN v. KALOO, **73 P.R. 1866, Cr.**

(11)—*Confession, proof of.*—If the confession was written down and then signed by the prisoner, on proof of his signature it may be read in evidence as an ordinary document. If written and not signed it may be used by the person

***Confession*—concluded.**

——7.—Miscellaneous—*concluded.*

who wrote it to refresh his memory if he is examined; but the writing is not itself evidence and the confession must be proved by the Magistrate sworn as a witness, or by another person who heard it. CROWN v. GUNGA RAM, **61 P. R. 1866, Cr.**

Acquittal of confessing prisoner—*See* ACQUITTAL, 1 W.R. Cr. Letters, 2.

See ACT III OF 1867, ss. 3 and 5, L.B.R. 1872—1892. 281.

See BOM. ACT IV OF 1902, s. 63, 9 Bom. L.R. 789, F.B.=6 Cr. L.J. 164=2 M.L.T. 414 =32 B. 111.

See CHARGE TO JURY—GENERAL, 26 M. 38=2 Weir 733.

See CRIM. PRO. CODE, 1898, ss. 193, 288, 337, 22 C. 50.

See CRIM. PRO. CODE, 1898, ss. 200, 533, 6 C.W.N. 840.

Admissibility in evidence of retracted confession—Evidence of accomplice—*See* CRIM. PRO. CODE, 1898, s. 288, 2 L.B.R. 214.

Oral evidence of—Admissibility—Voluntary confessions without pressure—Admissibility—*See* CRIM. PRO. CODE, 1898, ss. 288, 364, 533, 11 A.L J. 286=14 Cr. L J. 211=19 Ind. Cas. 307=35 A. 260.

See CRIM. PRO. CODE, 1898, ss. 288, 423 (2), 2 Weir 509.

See CRIM. PRO. CODE, 1898, s. 423, 2 Weir 507.

See CRIM. PRO. CODE, 1898, s. 423 (2), 2 Weir 510.

See CRIM. PRO. CODE, 1898, s. 533, 23 B. 221, 8 C.P.L R. Cr. 21.

See CRIM. PRO. CODE, 1898, s. 537, 3 M.L.T. 263=7 Cr. L.J. 358=18 M.L J 250.

See EVIDENCE—ADMISSIBILITY OF EVIDENCE, 13 C.W.N. 501.

See EVIDENCE ACT, 1872, ss. 159 and 160, 16 C.P.L.R. 122.

See FALSE EVIDENCE, 22 A. 115=A.W.N 1889, 207.

See JUDGE AND JURY, 18 M.L.J. 66=31 M. 127=3 M.L T. 270=7 Cr. L.J. 325.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 4 M.H.C. App. 2

See PENAL CODE, s. 400, 18 P.L.R. 1910, Cr.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, 19 C. 345.

To a police officer inadmissible—*See* WITNESS—MISCELLANEOUS CASES, L.B.R. 1893—1900, 42.

Confinement.

See MAD. REG. XI OF 1816, s. 10, 24 M. 271=1 Weir 928=11 M.L.J. 23.

Confirmation of sentence.

See SENTENCE—CONFIRMATION OF SENTENCE.

Confiscation.

See FORFEITURE OF PROPERTY.

(1)—*Penal Code, ss.* 121, 122 *and* 124-*A*—*Confiscation of press in which seditious matters have been published—Crim. Pro. Code* (1898), *s.* 517.—Confiscation of property may be ordered either under s. 121 or s. 122, Penal Code, but there is nothing in s. 124-A which authorises a Magistrate to confiscate the property of an accused person. The offence under s. 124-A consists in publication. The Printing Press, in which seditious matters, punishable under s. 124-A, have been printed, cannot be said to be property, which has been used for the commission of an offence within the meaning of s. 517, Crim. Pro. Code, the Press being a remote instrument. The Printing Press could not be said to have been used for the commission of the offence in the same way as a gun, sword, or a dagger. ABINASH CHANDRA BHATTACHARJEE v. EMPEROR, **34 C. 986=11 C.W.N. 1046=6 C.L.J. 754=6 Cr. L.J. 293** [*F.*, 9 Cr. L J. 539=2 Ind. Cas. 233=5 N.L.R. 59; 14 Cr. L.J. 27=18 Ind. Cas. 171=24 M L.J. 1 =14 M.L.T. 431=1913 M.W.N. 851.]

(2)—*Crim. Pro. Code* (1898), s. 517—*False charge of theft—Stolen object found in complainant's house—Confiscation—Penal Code*, s. 182.—Where the accused was convicted under s. 182, Penal Code, of giving false information regarding a case of theft, the jewels alleged to have been stolen having been found in the house of the accused and the Magistrate passed an order under s. 517 confiscating them *held* that such an order could not be made under s. 517. LAKSHMI NARAYAN DUTT v. INSPECTOR UREAGAN, **9 C.W N. 597=2 Cr. L.J. 273.** [*R.*, *& Expl.*, 14 Cr. L.J. 27=18 Ind. Cas. 171=24 M. L.J. 1=14 M.L.T. 431=1913 M.W.N. 851.]

(3)—*Of property found with the accused.*—A Magistrate ordered the confisaction of money in the possession of the accused, who was convicted of inoculating under s. 269, I.P.C., merely because he admitted that he had received the money by way of fees for inoculating. *Held*, that the Magistrate acted illegally and that the confiscated money should be refunded to the accused. POLICE v. DULKHURA, **Colm. Dig. Cr. 54 of 1876.**

(4)—*In cases of murder—Sanction of Revenue authorities.*—Confiscation, in cases of murder, does not require the sanction of the Revenue authorities. CROWN v. TALUB, **7 P.R. 1868, Cr.**

(5)—*Money offered as bribe.*—Money given as bribe and paid into Court, by the person to whom it was offered, who at once turned informer, could, on the conviction of the person offering the bribe, be ordered to be paid partly to the informer, and could be confiscated as to the rest. CROWN v. BUTA SINGH, **9 P.R. 1873, Cr.**

(6)—*On conviction under* s. 188, *I. P. C.*—Where a person disobeying a duly promulgated order was convicted under s. 188, I.P.C., for exposing beef for sale, and his knife and scales were ordered to be confiscated, *held*, that the

Confiscation—*continued.*

confiscation was not authorised by law. CROWN v. IMAMI, **13 P.R. 1872, Cr.**

(7)—*Cantonment Act*, XXII *of* 1864, s. 29—*Previous conviction.*—Where the manager of a liquor-merchant was convicted under s. 29 of Act XXII of 1864, after a previous conviction of his master for selling liquor without license under the same s. 29, *held* that, an order for confiscation of wine and liquor was illegal, as the manager had not been previously convicted. PESTONJEE v. CROWN, **20 P.R. 1872, Cr.**

(8)—*Discharge of thief, effect of.*—The fact that the person charged with theft is discharged does not preclude the confiscation of property suspected of being stolen. PHULLA SINGH v. RAM SINGH, **20 P.R. 1873, Cr.**

(9)—*Property stolen in British India, but seized in foreign territory.*—Property stolen in British India, but seized in foreign territory and brought into British territory by the police may be confiscated. MUSSUMMAT KISHEN KOUR v. CROWN, **20 P.R. 1878, Cr.** [*F.*, 16 P. R. 1880; *R.*, 35 P.R. 1880, 7 P.R. 1894, Cr., 36 B. 524=14 Bom. L.R. 147=14 Ind. Cas. 970=13 Cr. L.J. 426.]

(10)—*Stolen property in possession of innocent purchaser.*—The proper order, where stolen property is in the possession of an innocent purchaser, is to leave the property in his possession, until the owner takes the necessary step to establish his ownership and recover possession from the purchaser. CROWN v. SAWAN SINGH, **21 P.R. 1878, Cr.**

(11)—*Penal Code*, s. 62—*Forfeiture of property.*—A sentence of forfeiture of property should not be inflicted where the accused does not possess any property worth mentioning. JIVAN v. EMPEROR, **21 P.R. 1903, Cr.=132 P.L.R. 1903.**

(12)—*Order for forfeiture of property.*—Where the act of the accused in causing the death of another arose out of jealousy he felt at the deceased having an unnatural intimacy with a boy, with whom he had a similar intimacy, *held*, that an order for forfeiture of property, besides sentencing him to death, was not a proper order. TURAB v. CROWN, **23 P.R. 1900 Cr.=P.L.R. 1900, p. 35.**

(13)—*Conviction for murder—Accused having mother and young children — Confiscation.*—Where the accused, convicted of murder, had a mother and young children, a sentence of confiscation of property was annulled. CROWN v. SUNT SINGH, **35 P.R. 1866, Cr.**

(14)—*S.* 517, *Crim. Pro. Code, property with reference to which no offence has been committed.*—S. 517, Crim. Pro. Code, does not warrant an order for the disposal of property regarding which no offence appears to have been committed. ABDUL KHALIK v. EMPRESS, **46 P.R. 1888, Cr.**

(15)—*Jagirs, Mafis, Inams.*—The Penal Code does not authorise the confiscation of *jagirs, mafis* and *inams.* The case should be reported

Confiscation—*concluded.*

for the orders of the Government as to resumption. CROWN v. ANWAR KHAN, **64 P.R. 1866, Cr.**

(16)—*Order of, added to a sentence not otherwise appealbale, whether makes the order appealable—Confiscation, whether part of the sentence—Excise Act, S.* 51—*Crim. Pro Code* (1898), s. 414.—The addition of an order of confiscation to a sentence passed under s. 51, Excise Act, does not render appealable, a sentence otherwise not appealable. The order of confiscation is not a part of the sentence. (Case where an order of confiscation of valuable property in addition to a fine was held excessive and set aside). QUEEN-EMPRESS v. TAGARAJAN, **I.B.L.R. 3.**

Boat, unlawful user by hirer—Without hearing owner—*See* ACT I OF 1878, s. 11, 15 C. W.N. 296=9 Ind. Cas. 587=12 Cr. L.J. 103.

See ACT I OF 1878, s. 11, 1 Weir 835.

See ACT VII OF 1878, ss. 25 and 54, 27 C. 450.

Sentence—Payments of rewards out of fines and—*See* ACT VII OF 1878, ss. 25, 75, Rat. Un. Cr. C. 960=Cr. Rg. 13 of 1898.

Theft of timber or forest produce, conviction for—Order of—*See* ACT VII OF 1878, ss. 32, 54, 55, 1 P.R. 1912 (Cr.)=37 P.L.R. 1912=13 Cr. L.J. 172=13 Ind. Cas. 924.

See ACT VII OF 1878, ss. 54 and 55, 4 A. 417.

See ACT VII OF 1878, s. 75, 12 C.W.N. 139.

See BOM. ACT V OF 1878, s. 55, 17 B. 154; Rat. Un. Cr. C. 149=Cr. Rg. 22-7-1880.

See BOM. ACT IV OF 1887, s. 6, 1 S.L.R. 64 Cr.=8 Cr.L J. 182.

See BOM. ACT II OF 1890, s. 52, 4 Bom. L. R. 459.

See MAD. ACT III OF 1864, s. 17, 4 M. 240.

See MAD. ACT III OF 1864, ss. 17, 21, 5 M. H.C. App. 41.

See MAD. ACT III OF 1864, ss. 17, 23-A, 26-B, 5 M. 137=6 Ind. Jur. 243.

Order for, of property—*See* MAD. ACT III OF 1864, s. 65, 1 Weir 651.

See MAD. ACT I OF 1886, s. 29 (N), 5 M.L. T. 256=9 Cr. L.J. 149=1 Ind. Cas. 79=19 M. L.J. 254.

Of money—*See* MAD. ACT I OF 1886, s. 65, 1 Weir 652.

Of liquor and measures—*See* MAD. ACT I OF 1886, s. 65, 1 Weir 652.

See U.P. ACT III OF 1867, s. 13, 26 A. 270 =A.W.N. 1904, 11.

See BRIBE, 16 P.R. 1896, Cr.

See CRIM. PRO. CODE (1898), s. 517, 8 C. W.N. 887.

Confiscation, etc. for Rebellion.

See ACT X OF 1858.

Confiscation of salt.

Power of releasing from confiscation—*See* s. 18, BEN. ACT VII OF 1864, 7 W.R. Cr. 48.

Conflicting Claims.

Enquiry as to possession, based on different titles—Refusal of Magistrate to decide as to possession — Jurisdiction—*See* CRIM. PRO. CODE, 1898, s. 146, 8 Ind. Cas. 63.

Conjecture.

(1)—*Reasoned conclusion based on evidence and legal presumptions, to be distinguished from.*—Courts adjudicating cases upon judicial evidence should always be careful to distinguish between bare conjecture and reasoned conclusions as to facts or probabilities based upon evidence and legal presumptions. QUEEN-EMPRESS v. NAGA AUNG KYU, **L.B.R. 1893—1900, 257.**

Conjugal Rights, Restitution of.

See RESTITUTION OF CONJUGAL RIGHTS.

Consecutive Sentences.

See SENTENCE — CONSECUTIVE SENTENCES.

Consent.

See ACQUIESCENCE.

See WAIVER.

(1) — *Consent cannot cure irregularity.*—If criminal proceedings are substantially bad, they will not be cured by any waiver or consent of the prisoner. EMPEROR v. KASIM, **15 C.P. L.R. 66.** (2 C. 23, *R.*)

(2)—*Consent of accused cannot cure—Irregularity.*—The object of a trial being the administration of justice, as far as human administration of it can be—not the interest of either party—a prisoner can consent to nothing. REG. v. NAVROJI DADABHAI, **9 B.H.C. 358.**

(3)—*Legal consent.*—A consent is not a legal consent unless the person consenting is above the age of 18 years. **1 W.R. Cr. Letters, 10.**

Curing of illegalities by—*See* CRIM. PRO. CODE, 1898, ss. 346, 349, 350, 537, 91 P.L.R. 1905=2 Cr. L.J. 369.

Compromise—Order made without evidence, not validated by consent—*See* NUISANCE UNDER CRIM. PRO. CODE, 10 C.L.J. 482=11 Cr. L.J. 1=4 Ind. Cas. 436.

Consent obtained by fraud, coercion or misrepresentation—Effect—*See* PENAL CODE, ss. 90, 366, 36 M. 453.

Through fear of injury—*See* RAPE, 1 W.R. Cr. 21.

See SECURITY TO KEEP THE PEACE—EVIDENCE AND PROCEDURE, 8 C.L.J. 68=35 C. 674=8 Cr. L.J. 128.

Conservancy Mohurrir.

See PUBLIC SERVANT, A.W.N. 1885, 175.

Conservancy Rules (Forests and Jungles).

See PUN. ACT IV OF 1872, Schedule 1, 7 P.R. 1893, Cr.

Consideration.

Sale-deed with false statement of—*See* PENAL CODE, s. 423, 10 P.R. 1902, Cr.=75 P.L.R. 1902.

See WITHDRAWAL OF CASE, Old S.C. 43, Oudh.

Conspiracy.

See ABETMENT.

See PENAL CODE, ss. 109—114, 121-A.

(1)—*Crim. Pro Code* (1882), *s.* 239—*Charges involving conspiracy between accused—Joint trial.*—Where there are charges involving conspiracy between the accused, they should be tried jointly. QUEEN-EMPRESS v. MOSS, **16 A. 88=A.W.N. 1894, 23.**

(2)—*Abetment of kidnapping by conspiracy.*—A forcibly took a girl outside the fort against her will into the fort and there had forcible connection with her. Immediately after, B, C, and D, who were previously acquainted with A and with each other, took the girl off to a *sarai* in the city and, after having had forcible connection with her, brought the girl back in the next morning and returned her to the custody of A. *Held*, that there was a sufficient evidence upon which a jury could find a conspiracy to kidnap against all the four men. KING-EMPEROR v. RAHAMATULLAH, **A.W.N. 1902, 143.**

(3)—*Proof of conspiracy—Evidence.*—A conspiracy may be proved by other than oral evidence: it may be proved by the evidence of surrounding circumstances and the conduct of the accused, both before and after the alleged commission of the crime. EMPEROR v. ANNAPPA BHARAMGANDA, **9 Bom.L.R. 347=5 Cr. L.J. 329.**

(4)—*Evidence Act, s.* 10—*Things said or done by conspirator in reference to common intention — Penal Code, ss.* 107 *and* 108—*Conspiracy, what amounts to.*—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done or written by any one of such persons in reference to their common intention may be proved both for the purpose of proving the existence of the conspiracy as also for showing that any such person was a party to it. The elements which constitute an abetment by conspiracy are, first, the combining together of two or more persons in the conspiracy, and, secondly, an act or illegal omission must take place in pursuance of that conspiracy, and in order to the doing of that thing. It is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused, nor is it necessary that the abettor should concert the offence with the person who commits it. It is sufficient, if he engages in the conspiracy in pursuance of which the offence is committed. Conspiracy is stated to be a crime, which consists either in a combination and agreement by persons to do some illegal acts or to effect a legal purpose by illegal

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means. The crime of conspiracy is complete, if two, or more than two, persons, should agree to do an illegal thing, *i.e.*, to effect something in itself unlawful, or to effect by unlawful means something which in itself may be indifferent or even lawful. Conspiracy is not a substantive offence in India. However, s. 107, laying down the law on the abetment of a crime, incorporates in it the crime of conspiracy. KALIL MUNDA v. KING-EMPEROR, **28 C. 797.**

(5)—*Evidence Act, s. 10—Conspiracy, what amounts to—Abetment of kidnapping—Penal Code, ss. 109, 363.*—A conspiracy, within the terms of s. 10, contemplates something more than the joint act of two or more persons to commit an offence. Where a child was kidnapped after a visit to the accused's house, by the servants of the person whose paramour the accused was, and she was charged with the abetment of kidnapping and it was proved that she was very fond of the child, *held*, that the evidence was insufficient to establish the charge of abetment, or that, if there was conspiracy, she was a party to it. NOGENDRABALA DEBEE v. EMPRESS, **4 C.W.N 528.**

(6)—*Conviction for conspiracy, when not sustainable.*—A conviction for conspiracy cannot stand when the charge against the other alleged conspirators has failed. JOGJIBAN GHOSE v. EMPEROR, **9 C.L.J. 663=13 C.W.N. 861=2 Ind. Cas. 681=10 Cr.L.J. 128.**

(7)—*Conspiracy—Evidence of—Evidence Act, ss. 10, 25—Confession.*—S. 10, Evidence Act, says that reasonable ground for belief in the existence of a conspiracy should be shown before evidence is given of the acts of persons, who, but for such conspiracy, would be strangers to one another. The existence or fact of conspiracy must be proved before evidence can be given of the acts of any person not done in the presence of the prisoner. Again, a statement which is inadmissible under s. 25 of the Evidence Act, cannot be used again as evidence against the accused under s. 10 of the same Act. The criterion in s. 25 for excluding a confession is not, to whom was the confession made and was it made by a person accused of an offence, but to whom was the confession made? If it was made to a police-officer, it is excluded. Further it is the duty of the Sessions Judge to prove the evidence in the interest of the prisoner as well as of the prosecution, particularly, where the prisoner is not defended. MANDAI v. KING-EMPEROR, **5 O.C. 321.**

(8)—*Penal Code, ss. 121-A, 123—Conspiracy to wage war against the King—Concealing existence of conspiracy in furtherance thereof—Joint trial for both offences, if legal—Crim. Pro. Code, ss. 235 to 239—S 196, sanction to prosecute under, legality of—Local Government even illegally constituted, authority of, to grant sanction, objection if may be taken by accused—Government* de facto, *Judge* de facto, *exercise of power by, if may be collaterally attacked—Complaint not disclosing facts, validity of, proper stage for taking objection—Crim. Pro. Code, ss. 4 (h), 190, 537 (a)—Spies and informers, testimony of, if should be corroborated and when—Accomplice's evidence—Evidence Act, ss. 114, 133—Conspiracy, crime of, essence of—Overt acts, bearing of—Proof of conspiracy, indirect—Acts of co-conspirators, before and after entry into conspiracy if admissible and for what purpose—Evidence Act, s. 10—Documents in possession of one conspirator if admissible to prove complicity of another, independent proof of complicity, if necessary—Documents when admissible—Handwriting, proof of the standard of comparison—Evidence Act, s. 73—Dacoity, charge of, abandonment, if bar to trial for conspiracy—Acquittal, effect of—Association in* (lathi) *play, if evidence of intention to wage war—Books, tendency and teachings of, if may be judged from isolated extracts—Books, objectionable, possession of, if proof of guilty intention—Seditious compositions by accused as proof of intent—Association, if a branch of a revolutionary organisation, proof of—Members of revolutionary society not acquainted with its real object, if guilty of conspiracy— Arms, find of, after arrest and pending prosecution of conspirators, if evidence —Retracted confession made after long police custody, admissions in, not retracted, if admissible.—Per Curiam :*—When persons engaged in a conspiracy within the meaning of S. 121-A of the Penal Code, in furtherance of their object, conceal the existence of the conspiracy from the authorities, a charge under s. 123 of the Penal Code may be legally joined with one under s. 121-A. (14 C.W.N. 1114=37 C. 467, *F.*) *Per Mookerjee, J.*—Criminal Courts have, equally with Civil Courts, inherent power to mould their procedure, subject to statutory provisions, to enable them to discharge their functions as Courts of Justice. A Criminal Court has power to permit the prosecution to withdraw charges, the joinder of which is objected to as illegal. Where a conviction under s. 121-A of the Penal Code at a trial which was sanctioned under s. 196, Crim. Pro. Code, by the Local Government, was challenged on appeal to the High Court, on the ground that the Local Government was not legally constituted and had no authority to sanction the prosecution. *Held (per Harington, J.)*—That it was not open to persons, who had been convicted, to question the right of the *de facto* Government of the Province to exercise any of those powers which a Government may lawfully exercise, no such point having been taken, at an early stage of the trial, by motion to the High Court, and the fairness of the trial and the merits of the case being in no way affected. *Per Mookerjee, J.*—Sanction having been given by the *de facto* Local Government and cognisance having been taken by the *de facto* Sessions Judge, it was not open to the persons convicted at the trial to question collaterally the legality of the conviction, upon the allegation that the Local Government was irregularly constituted and the Sessions Judge irregularly appointed. The acts of one, who, although not the *de jure* holder of a legal office, was actually in possession of it under some colour of title or under such conditions as indicated the acquiescence of the

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public in his actions, cannot be collaterally impeached in any proceeding in which such person is not a party. (1 Lord Raymond 658, 12 Mad. 467 and 6 East 359 (1805), *F.*) *Mookerjee, J.*— When the persons sought to be prosecuted were all named in the sanction and the sections of the Code under which they were alleged to have committed offences, as also the period of their activity, were specified, the mere fact that those persons were not described as members of a revolutionary society (the existence of which was sought to be established at the trial) did not affect the validity of the sanction. The sanction was neither vague nor did it amount to a delegation of authority vested in the Local Government (14 C.W.N. 1114 =37 C. 467, *D.*) The complaint in this case did not set out the facts which constituted the alleged offence, but stated that the persons named had committed offences punishable under certain sections of the Penal Code:—*Held* (*per Mookerjee, J.*)—That a complaint of the description constituted a merely colourable compliance with the provisions of s. 190, Crim. Pro. Code.—*Per Harington, J.*—There was a complaint which the Magistrate had jurisdiction to entertain.—*Per Harington, J.*—Where a trial has been concluded, the proceedings cannot be attacked on the ground that the materials the Magistrate had before him at the time he issued process were meagre or even insufficient, if the Magistrate had jurisdiction to issue process. To make the whole proceeding void, it is necessary to show that there was no complaint before the Magistrate and the Magistrate had no other course but to refuse to issue process on the ground that he had no jurisdiction under the law to issue process.—Where the accused took no steps at the initial stage to set aside the Magistrate's order issuing process, on the ground. that, on the face of it, the materials on which it was made were insufficient, and proceeded to trial. *Held* (*per Harington, J.*)—That no objection could be allowed to be taken to the issue of the process upon an appeal from the conviction had at the trial, the point not being one affecting the fairness of the trial in any way. *Per Mookerjee, J.*—The case was covered by cl (*a*) of s. 537 of the Crim. Pro. Code. *Per Harington, J.*—The testimony of persons who have been members of a criminal conspiracy or else have joined it for the purpose of betraying its secrets must be very carefully scrutinised, and much weight cannot be attached to it unless it is corroborated by other circumstances. *Per Mookerjee, J.*—Where a witness has made himself an agent for the prosecution before associating with the wrong-doers or before the actual perpetration of the offence, he is not an accomplice, but he may be, if he extends no aid to the prosecution until after the offence is committed. A mere detective or decoy is not therefore an accomplice nor an original confederate who betrays before the crime was committed. Yet an accessory after the fact would be an accomplice, if he had, before betrayal, rendered himself liable as such. As the crime of conspiracy is complete, the moment there is concerted intention, members of the conspiracy, who, after such agreement, have, out of fear or repentance, transformed themselves into spies and informers, do not thereby cease to be accomplices and their evidence requires corroboration to the same extent and character as in the case of accomplices. Overt acts may properly be looked at as evidence of the existence of a concerted intention, and in many cases it is only by means of overt acts that the existence of the conspiracy can be made out. But the criminality of the conspiracy is independent of the criminality of the overt act. (L.R. 8 Q.B. 102, 12 Cox. C.C. 383 (1873), 11 Cl. and F. 155. 1 Cox. C. C. 413 (1844), 5 Cox C. C. 404, 434 (1851), *R.*) The prosecution is not obliged to prove a conspiracy by direct evidence of the agreement to do an unlawful act. If the facts proved are such that the jury, as reasonable men, can say that there was a common design and the prisoners were acting in concert to do what is wrong, that is evidence from which the jury may suppose that a conspiracy was actually formed. (7 Cox. C. C. 442 (1858), *F.*) Where it appeared that certain members of a society found to be revolutionary were not acquainted with the real object of the society, not having been admitted to its secrets, it was held that it would not be proper to convict such members under s. 121-A, Penal Code. The criminality of a conspiracy lying in the concerted intention, once reasonable grounds are made out for belief in the existence of the conspiracy amongst the accused, the acts of each conspirator in furtherance of the objects are evidence against each of the others and this whether such acts were done before or after his entry into the combination, in his presence or in his absence. Conspirators are not thereby necessarily subjected to punishment for everything done by their fellows; but acts done prior to the entry of a particular person into the combination are evidence to show the nature of the concert to which he becomes a party, whilst subsequent acts of the other members would indicate further the character of the common design in which all are presumed to be equally concerned. (8 C.L.P. 297 at p. 310 (1837), 6 COX C.C. 134 (1852), 12 Cox. C.C. 111 (1871), 2 I.R. 681 (1903), *R.*) If arms were collected and secreted in furtherance of a conspiracy before the activities of the associates had been brought to an end by their arrest, the fact that they were discovered after the arrest and after prosecution had been started against them would not make the evidence of the find inadmissible at the trial. A letter written by a stranger to a conspirator, which is not shown to have been received or replied to or otherwise acted upon by the latter is not sufficient to establish the former's connection with the conspiracy so as to make his acts, acts done in pursuance of the conspiracy (12 Cox. C.C. 87 (92) (1871), *Rel. on.*) What has to be established under s. 10 of the Evidence Act to make documents found in the possession of one of several persons accused of conspiracy admissible against the other accused, is, that there is

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reasonable ground to believe in the existence of a conspiracy amongst such persons. It is not necessary for this purpose to establish by independent evidence that they were conspirators. (2 B. & B. 203 (1820); 1 Cox. C. C. 173 (1845), 5 Cox. C.C. 404, 434 (1851), *R.*) A document to be admissible against an accused person should be proved (1) to be either a document in the handwriting of an accused person by comparison with an admitted or proved specimen of his handwriting. in the light of the testimony of expert witnesses or (2) to be in the possession of an accused person, or (3) to be admissible as falling within the scope of s. 10, Evidence Act. (14 C.W.N. 1114 =37 C. 467, *F.*) The fact that proceedings for participation in a dacoity against certain individuals were dropped owing to insufficiency of evidence does not preclude a charge for conspiracy in respect of that dacoity from being brought against the same persons and others, for the criminality of a conspiracy is distinct from and independent of the criminality of overt acts. (15 C.W.N. 593, *D.*) A judgment of not guilty against an accused person fully establishes his innocence, and the incident in respect of which the charge was brought cannot be used against the acquitted person in a subsequent trial for conspiracy. (15 C.W.N. 594, *F.*) *Lathi* play by itself is perfectly harmless, and standing alone cannot be treated as evidence of a conspiracy to wage war. To attach sinister significance to the mere association in play or pastime of those that live in the same village or attended the same school would be dangerous, specially when those exercises were undertaken with complete absence of secrecy and rather with a courting of publicity. (15 C.W.N.594, *F.*) A Court cannot be invited to form an opinion as to the true tendency of books from translations of isolated passages; books must be judged as a whole. The mere circumstance that a book of an objectionable character is present in the library of an individual or an association does not justify the inference that the teachings of the books are approved and adopted by persons who have access to it. The mere fact that books of a distinctly revolutionary character were found in the library of an association and were now and then read by some of its members would not conclusively show that the object of the society was revolutionary. (2 Starkie 116, 147, 32 Howell St. Tr. 354, East on Pleas of the Crown, 119 (1817) and 15 C. W.N. 594, *R.*) The presence of seditious literature of this description written by members of the society would however be an important element in furnishing a clue to their tendencies and designs. *Per Harington, J.*—The utmost that can be said of persons in whose library are found books which are calculated to excite hatred against the English is, that they approved of literature of that nature, and even that assumption would not in all cases be a just one. But the presence in the library of a *Samity* of violently revolutionary literature (some of them written in the hands of a member of the *Samity*) urging the destruction of the English and exalting persons who had murdered English people justified the inference that the members of the *Samity* were imbued with the sentiments those documents expressed. *Per Mookerjee, J.*—In the absence "of a joint design, a joint combination" one association could not be held to be a branch of another association proved to have had revolutionary designs. N who was charged with an offence under the Arms Act made a confession in the course of which he stated he was a member of the *Samity*, but subsequently retracted the confession by a statement in which he repeated that he was a member of the *Samity*. *Held*—that the statement that he was a member of the *Samity* was good evidence against himself, even though the original confession might have been made after long police custody. PULIM BEHARI DAS v. KING-EMPEROR, **16 C.W.N. 1105=16 Ind. Cas. 257.** (7 C.W.N. 457, 14 C. W.N. 1114=37 C. 467, 3 Bom. L.R. 438, 15 C. W.N. 25, *R.*) [*R.*, 17 C.W.N. 238=16 C.L.J. 467.]

(9)—*Conspiracy—Murder—Sedition—Defective charge—Precise date of inauguration of conspiracy not necessary — Meaning and effect of s.* 10 *of Act* I *of* 1872—*Inconsistency between it and its Illustration—Accomplice—Confession—Corroboration—S.* 114, *Illustration* (*b*) *and* 133 *of Act* I *of* 1872, *Penal Code, ss.* 109, 115, 120-*B*, 302—*Ss.* 4, 5 *and* 6, *Explosives Act* (VI *of* 1908)—*Pardon — Acquittal converted into conviction—Appeal by Local Government — Crim. Pro. Code, ss.* 221 (1) (3), 225, 337, 417, 439, 533 *and* 537—*Revision by Local Government—Illustration to an Act.—Per Johnstone, J*—(1) It is not necessary for the prosecution to fix a precise date for the inauguration of conspiracy, it is sufficient to state and prove that between certain dates a conspiracy was in existence. (2) An omission or a defect in a charge which does not mislead or prejudice an accused person and has not occasioned a failure of justice cannot be regarded at any stage of the case as material. (3) The principles laid down in s. 10 of Act I of 1872 are wider than those of the English Law on the subject and they cannot be restricted in their application with reference to that Law. (4) There is a difference between "reasonable ground to believe a thing" and "proof of that thing." (5) In case of conspiracy to commit murder or any other crime, anything said or done or written by any one of the conspirators, whether accused or not, in reference to the said common intention, after that intention was first entertained by any of them, is a relevant fact against each and all of the accused, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that "any such person" was a party to it. (6) There is a considerable inconsistency between the provisions of the said s. 10 and the Illustration attached thereto. The way that the words "and to prove A's *complicity* in it" come into the Illustration are not quite in accordance with common sense or with the gist of the section. How what B did in Europe

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and C in Calcutta and so forth can *per se* possibly touch the question of A's *complicity* ? A's complicity can, from the nature of things, only be shown by A's acts, or, A being otherwise shown to be a member of the conspiracy, by acts of B, C and so forth implicating him. *Other acts* of B. C and the rest seem capable, as regards A, only of adding proof of the existence and nature of the conspiracy. This view can be better explained by the following illustration : In the case given in the illustration, if B, in ordering arms in Europe, tells the manufacturers to send the Bill to A or to consign the arms to him, this, if A is otherwise *prima facie* shown to be a member of the conspiracy, would be relevant both as to the nature of the conspiracy and as to A's complicity ; but if B does not mention A, and A's name in no way comes into the business of ordering arms in Europe, it cannot be said that B's ordering of arms there can produce in the mind of the Judge any added conviction that A was a member of the conspiracy. (14 C.W.N. 1115, *R.*) (7) It is not necessary to establish by direct evidence that the accused persons did enter into agreement to commit an offence ; and hence as soon as it is shown with regard to an individual accused that he was in privy with the combination and its object and adopted the acts already performed, he, as a conspirator, becomes bound by the antecedent and the consequent acts of his conspirators. (16 Ind. Cas. 315 , 30 C. 983 *R.* (8) (*a*) As laid down in s. 133 of the Evidence Act, an accomplice is a competent witness and a conviction based even on his uncorroborated evidence is not illegal. (*b*) Notwithstanding s. 114 and illus. (*b*), the Courts are not tied down in any technical way, but it is their duty, when deciding (1) whether any corroboration of a particular accomplice is required, and (2) what amount or kind of corroboration is required, to look at the question as a prudent man, desiring to avoid error and to arrive at the truth, would look at it. (*c*) As a general rule corroboration is necessary, but as to the extent and nature of such corroboration no hard and fast rule can be stated. (14 P R. 1894 (Cr.), 5 P.R. 1902 (Cr.), 28 P.W. R. 1907 (Cr.), 36 P.W.R. 1910 (Cr.), 19 P.W.R. 1912, 1 P.W.R. 1911=19 P.L.R. 1911, 29 C. 782 (787), 10 C. 970 (973, 975), *R.*) (9) Where a Magistrate is enquiring into an offence exclusively triable by a Court of Sessions along with one not so triable, pardon can be granted under s. 337 of the Crim. Pro. Code. (10) The finding of papers relating to conspiracy in possession of one of the conspirators though in closed covers is relevant against the others under s. 10 of the Evidence Act. (41 C. 380, *Diss.*) (11) An accused can be convicted on his own bare confession if there is no reason whatever to doubt it, but when there is other circumstantial evidence in its corroboration it is the best proof of his guilt. *Per Rattigan, J.*—(*a*) In a case of a conspiracy to murder certain human beings indiscriminately, it is not necessary for the prosecution to particularize in the charge, the person or class of persons murdered or

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intended to be murdered. (72 B.D. 244=50 L.J. Mag. Cas. 113, *R.*; 33 C. 295, *D.*) (*b*) In case of a conspiracy to commit murder, if also murder is actually committed in pursuance thereof, it is not illegal to try all the conspirators upon the charge of conspiring to commit murder, though it is satisfactory and expedient to charge the persons actually committing the murder with the murder of the victim or victims, and the rest with the offence of entering into a conspiracy to commit murder. (5 Cox. C.C. 495, 12 Cox. C.C. 93, *R.*; 38 C. 578, *D.*) (*c*) Illustrations appended to sections of an Act of the Legislature are not to be taken as express provision of Law or as binding on the Court. (*d*) It is not necessary that the evidence of an accomplice should be corroborated in every detail, if, taken in its entirety, it is found to be confirmed by the testimony of independent witnesses or circumstantial evidence which strongly supports it. (7 A. 113, 9 A. 528, *R.*) (*e*) A defect in recording a confession can be cured by taking the evidence of the Magistrate recording it as is provided under s. 533 of the Crim. Pro. Code. (*f*) The prosecution is not obliged to prove that the persons accused of conspiracy actually met and laid their heads together and after a formal consultation came to an express agreement to do evil. Such an inference is very often drawn from their overt acts. Conspiracy in fact is a matter of inference deduced from certain criminal acts, of the parties accused, done in pursuance of an apparent criminal purpose in common between them, and which hardly ever are confined to one place. If a conspiracy be formed and a person joins it afterwards he is equally guilty(*h*). BALMOKAND v. THE CROWN, **11 P.W.R. 1915, Cr.** (8 C. & C. 370, 37 C. 507, 7 Rev. Repts. 551, 28 C. 797, *R.*)

See CONFESSION—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY—RECORD OF CONFESSIONS, 9 C.L.J. 663=13 C.W.N. 861=2 Ind. Cas. 681.

By accused to procure conviction of innocent person—Several acts done by each all converging to the point agreed upon—Liability of all conspirators—Trial can be joint—*See* CRIM. PRO. CODE, 1898, s. 239, 14 Bom. L.R. 972=1 Bom. Cr. C. 216=13 Cr. L.J. 833=17 Ind. Cas. 705.

See CRIM. PRO.CODE, 1898, s. 239, 16 A. 88 =A.W.N. 1894, 23.

See CRIM. PRO.CODE, 1898, s. 252, 11 Bom. L.R. 1153=4 Ind. Cas. 268=10 Cr. L.J. 530.

See EVIDENCE ACT, 1872, ss. 10, 30, 8 Ind. Cas. 770=15 C.W.N. 25=11 Cr. L.J. 710=38 C. 169.

See JOINT TRIAL, A.W.N. 1882, 64.

At Cambay—Abetment of forgery—Forgery committed accordingly in British India—Trial for abetment in British Indian Court—Jurisdiction—Place of trial—Offence continued and completed in British India through initiated in

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foreign territory--Abetment—*See* PENAL CODE, ss. 4, 34, 107, 14 Bom. L.R. 147=14 Ind. Cas. 970=13 Cr. L.J. 426=1 Bom. Cr. C. 88=36 B. 524.

To wage war— Essentials— Evidence of — Musical associations—*Lathe*-play, etc.—Effect —*See* PENAL CODE, s. 121-A, 15 C.W.N. 593 =10 Ind. Cas. 582=12 Cr. L.J. 286.

To wage war—*See* WAGING WAR AGAINST THE QUEEN, 7 B.L.R. 63=15 W.R. Cr. 25.

Constables.

See SPECIAL CONSTABLES.

Keeping out of way knowing that offence is likely to be committed—*See* ABETMENT, 21 W.R. Cr. 11.

Police—Staying away after expiry of casual leave, guilty of the offence—*See* MAD. ACT XXIV OF 1859, s. 44, 29 M. 192=3 Cr. L.J. 463.

Misappropriation of pay of thanna police—*See* CRIMINAL BREACH OF TRUST, 3 W.R. Cr. 44.

See CRIM. PRO. CODE, 1898, s. 165, sub-s. 3, 6 C.L.J. 753=6 Cr. L.J. 439.

Prosecution under s. 211, I.P.C., sanctioned by Assistant Superintendent of Police—Station House officer presenting charge-sheet through a—Order directing — to pay compensation — Illegality—*See* CRIM. PRO. CODE, 1898, s. 250, 10 M.L.T. 191=21 M.L.J. 844=12 Cr. L.J. 482.

Right of police constable to enter houses of suspected persons—Assault on the constable—*See* CRIMINAL TRESPASS, 27 M. 52=1 Weir 529 and 346=13 M.L.J. 285.

Obeying an illegal order of Magistrate—Right of self-defence—*See* PRIVATE DEFENCE, RIGHT OF, 1 Weir 344.

Stealing one's own property in possession of —*See* THEFT—GENERAL — WHAT CONSTITUTES THEFT, Rat. Un. Cr. C. 343=Cr. Rg. 36 of 1887.

Theft by—*See* THEFT IN A BUILDING, 3 W. R. Cr. 29.

Constable firing under orders of superior officers, liability of—*See* UNLAWFUL ASSEMBLY, 21 M. 249=1 Weir 310.

Construction of Act.

See STATUTES, CONSTRUCTION OF.

Construction of Documents.

Newspaper article ambiguous—Both defamatory and innocent—Interpretation in favour of accused—*See* DEFAMATION, 15 Cr. L.J. 566=24 Ind. Cas. 974.

Construction of Statutes.

See STATUTES, CONSTRUCTION OF.

Constructive Murder.

Dacoity accompanied with murder—Constructive murder—*See* MURDER, 2 Bom. L.R. 325.

Abetment—*See* PENAL CODE, ss. 114, 149, 302, 2 C.W.N. 49.

Constructive Possession.

See BEN. ACT V OF 1909, ss. 2 (12), 46, 52, 61, 18 C.L.J. 514=18 C.W.N. 309.

Consular Court.

(1)—*Revisional jurisdiction of High Court at Bombay.*—The High Court at Bombay has no criminal revisional jurisdiction over the proceedings of Her Majesty's Consul within the dominions of Sultan of Muscat. *In re* RATSANSEE PURSHOTTEM, **24 B. 471=1 Bom. L.R. 840.**

(2)—*Consular Court in Uganda—Jurisdiction over offences committed beyond British territory — Military jurisdiction.*— Her Majesty's Commissioner and Consul-General in Uganda can, as Commander-in-Chief, try foreign subjects (German in this case) under the martial law for offences committed in territories under the military occupation of the British, provided he does so at the place of military operations. QUEEN-EMPRESS *v.* JUMA, **Rat. Un. Cr. C. 880=Cr. Rg. 3 of 1897.**

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 19 B. 741.

Contagious Disease.

See ACT XIV OF 1868.

Failure to report to cantonment Magistrate the appearance of—*See* MAD. ACT I OF 1866, s. 19, 8 M. 428=1 Weir 708.

Contempt of Court.

See CONTEMPT OF LAWFUL AUTHORITY—CRIM. PRO. CODE, 1898, s. 480.

See PENAL CODE, ss. 172-190.

See SENTENCE—CONTEMPT OF COURT, SENTENCE FOR.

(1)—*Contempt of inferior Court —Inherent jurisdiction of High Court—S. 15, High Courts Act.*— The High Court has the Common Law jurisdiction to deal with contempt of an inferior Court, but it has no such jurisdiction under s. 15 of the India High Courts Act. *In re* VENKAT RAO, **10 M.L.T. 209=21 M.L.J. 832 =12 Ind. Cas. 293=12 Cr.L.J. 525.** (10 C. 109, 7 B. 1, *R.*) [*Disc.*, 14 Cr. L.J. 321=20 Ind. Cas. 81.]

(2)—*Contempt of Court—Comment on pending proceedings—Newspaper.*—It is a contempt of Court to make comment on a pending case, especially where the comment can in the least be taken to have the effect of prejudicing the fair trial of an accused person. *In re* G. W. CLARIDGE, **14 Bom. L. R. 231=15 Ind. Cas. 93=13 Cr. L. J. 461=1 Bom. Cr. C. 106.**

(3)—*Contempt—Comments on pending cases—Intention of offender to be considered—Prepossess or prejudice minds of person—Prejudice trial—Intention to preserve honour being discussed in papers before judgment.*—Comments on cases pending or allegations against parties to suits that are pending, if published, amount to contempt on the part of the offender. But it would not be right to lose sight of the intention

Contempt of Court—*continued.*

by which a person giving publicity to a matter which is the subject of the charge of contempt is actuated. The plaintiff in this case is the daughter of the defendant. She instituted a suit against him for the recovery of certain property left by her mother. On the day after the suit was instituted, there appeared in two newspapers a paragraph in each with a sensational heading "suit against an Attorney" which made reference to some of the allegations setout in the plaint. The defendant, who is an old Attorney, replied by two letters addressed to the Editor of the two newspapers, being only anxious to preserve his honour being discussed in the papers before a judicial declaration had been made by a competent Court. On the statements contained in those two letters, an application has been founded for proceedings for contempt against him: *Held*, that, as the intention of the defendant was not to pre-possess or prejudice the mind of any person in reference to the matter in dispute, and as the publications in question did not tend to prejudice a trial, the date of which is not yet fixed and which is very distant, the defendant was not guilty of contempt. KETRA MONI DASI v. SHAMAL DHONE DUTT, **14 Cr. L.J. 267 = 19 Ind. Cas. 539.**

(4)—*Criminal offence—Comment on pending case—Offence to be proved by legal evidence—Statement resting on information and belief, no legal evidence—Materials on which application for summary process for contempt, not to be amplified by other materials—High Court—Jurisdiction—Power of High Court to commit for contempt of Mofussil Magistrate—Comment on case pending before Mofussil Magistrate—Comment in newspaper published in Calcutta—Remonstrating against universal house-search—Protesting against harsh treatment of accused—Deprecating Police methods—Request that case should not be tried by Magistrate—Appeal to Government's recognized fairness—Whether contempt of High Court—Interference with due administration of justice—Deterring witnesses from giving evidence—Comments on pending cases deprecated—Summary process of contempt — Technical contempt of Court not enough—Substantial interference with administration of justice necessary.*—A contempt of Court for making comments in a newspaper on a pending case is a criminal offence, and no person can be punished for it unless that offence be proved by legal evidence. (L.R. 2 P.C. 106 = 5 Moo. P.C. 111 = 16 Eng. Rep. 457, *Rel.*) The connection of the accused with the impugned articles in the newspaper must be shown by legal evidence. A statement resting on information and belief is not legal evidence in such a case. (6 Q.B. 352 = 40 L.J.Q. B. 96 = 24 L T. 266 = 19 W.R. 640, *F.*) Therefore, where an application for a Rule to show cause why M should not be committed for contempt of Court as the Editor and Manager of a certain newspaper for making comments in that paper on a pending case, was made on affidavits which alleged that M is the Editor and Manager of that paper to the information of the deponent and that, when the serving officer went to the office of the newspaper to inquire for M, the Editor and Manager, the sub-editor said that the Editor and Manager was in Darjeeling. *Held*, that the application against M. should be dismissed on the ground that there was no legal evidence that he was the Editor and Manager of the paper. It was also alleged that, in a certain other proceeding in the High Court, M, being charged as the Editor and Manager of the newspaper, he did not deny being Manager, and it was suggested that in the present case there was no denial by M.: *Held*, that, if the materials on which the application was made, did not justify that which was the essential fact in the case, it could not be amplified by other materials, and that a man in a criminal proceeding need not deny that which is not legally proved against him. The High Court has no jurisdiction to punish, as an offence in a summary proceeding, conduct in relation to a proceeding in the Mofussil Criminal Court, such as commenting on a case pending before that Court, as such jurisdiction is not inherited from any of the three abolished Courts—the Supreme Court, the Sudder Dewany and the Sudder Nizamat Adalats—and is not vested in the High Court by the Charter Act of 1861 or the Letters Patent under that Act, and as such conduct is not contempt of the High Court, and the High Court's power of superintendence over the Mofussil Courts does not imply any power of protecting those Courts from improper interference. (1906, 1 K.B. 32 = 75 L.J.K.B. 104 = 93 L T. 772 = 22 T.L.R. 97 = 54 W.R. 107; 12 Ind. Cas. 293 = 10 M.L.T. 209 = 12 Cr. L.J. 525 = 21 M.L.J. 832; *Diss.*) Some of the articles relating to the pending case (1) remonstrated against universal house-searches, (2) protested against the harsh treatment of those arrested, (3) deprecated certain methods attributed to the Police, (4) requested that the case should not be tried before a Special Magistrate as a conviction by him would not command public confidence, and (5) appealed to the recognized fairness of the Government accompanied with advice: *Held* that, no suspicion of contempt of the High Court was to be found in the first, second and fifth of the topics, even if there be involved in them what the prosecution alleged to be the inexcusable effrontery of presuming to offer advice to the higher authorities; that the fourth topic showed that the writer knew very little about what he was discussing, for the case could not be tried and the accused convicted by a Special Magistrate as their trial in the normal course could only come before a Sessions Judge sitting with assessors and against such a tribunal not a word had been said, and that there was nothing in the discussion of this topic that was in any degree a contempt of the High Court; that as to the third topic, although indiscriminate attacks on the Police are to be deprecated, there was nothing in the articles showing a contempt of the High Court; and that the only ground on which it could be suggested that there had been a contempt of the High Court, an interference with the due administration by it of justice, would be if it

Contempt of Court—*continued.*

could be shown that witnesses might have been deterred from giving evidence by reason of this attack on Police methods or of anything contained in the articles. The propriety of abstaining from comments on pending cases in whatever Court they may be or whatever stage they may have reached, pointed out. In order to justify recourse to the summary process of contempt, it is not enough that there should be a technical contempt of Court; it must be shown that it was probable that the publication would substantially interfere with the due administration of justice. GOVERNOR OF BENGAL v. MOTI LAL GHOSH, **14 Cr. L.J. 321 = 20 Ind. Cas. 81 = 17 C.W.N. 1253 = 18 C.L. J. 452 S.B., = 41 C. 173.** (59 L.J.P. 47 = 15 P. D. 59 at p. 64 = 62 L.T. 713 = 38 W.R. 374 = 17 Cox. C.C. 107, (1899) A.C. 549 = 68 L.J.P. 137 = 48 W.R. 173 = 81 L.T. 158 = 15 T.L.R. 487, 17 Ch. D. 49 = 50 L.J. Ch. 406 = 44 L.T. 389 = 29 W.R. 510, (1900) 2 Q.B. 36 = 69 L.J. Q.B. 502 = 64 J.P. 484 = 48 W.R. 474 = 82 L.T. 534 = 16 T.L.R. 305, (1907) 2 I.R. 260. *Rel.*)

(5)—*Contempt of Court, its* quasi-*criminal character—Comments reflecting on witness and party under cross-examination, if contempt — Contempt proceedings, strict observance of rules of practice in—Application by private party—If applicant to name the person charged with contempt—Court taking notice of its own initiative, practice different—Rule issued against editor, printer, publisher without naming them on application of private party, if to be discharged —Person charged, waiving objection subject to question of costs—When apology accepted by Court, if would allow costs when rule omitted name.*—An article in a newspaper reflecting on the party to a suit, more especially when he is a witness under cross-examination, is a contempt of Court. Proceedings in contempt are of a *quasi*-criminal character and all the rules of Courts must be observed strictly in respect thereof. Where a private party applied for a rule against the editor, printer and publisher of a newspaper, alleging contempt of Court, and omitted to name them respectively: *Held*— the rule was liable to be discharged. If the persons concerned waive the objection and offer apology which is accepted by Court, the Court would not order any costs against them when the rule omitted to name them. WESTON v. EDITOR, PRINTER AND PUBLISHER OF THE BENGALEE, **15 C.W.N. 771.**

(6)—*Penal Code, s. 174—Non-attendance in obedience to summons—Contents of summons.*— A summons should be clear and specific in its terms as to the title of the Court, the place at which, the day, and the time of the day when, the attendance of the party summoned is required, and it should go to say, that such party is not to leave the Court without leave, and if the case, wherein he has been summoned, is adjourned, without ascertaining the date of the adjournment. A conviction under s. 174, I.P.C., for non-attendance in obedience to a summons, was set aside on the ground, that the summons contained no mention of the place at which the parties summoned were to attend, nor the time of the day when their attendance would be required. EMPRESS OF INDIA v. RAM SARAN, **5 A. 7 = A.W.N. 1882, 145.**

(7)—*Summons to appear before public officer— Penal Code, s.* 174.—Where a person summoned to appear before a public servant on a certain day was not informed of it till three days subsequent to that day, *held*, that he was not bound to appear before the Court as soon as he became aware of the summons to appear on a previous day, and that he was not, therefore, liable to be punished under s. 174, I.P.C. QUEEN v. UNGAM LAL, **1 N.W.P. 303.**

(8)—*Penal Code, s.* 174—*Contempt of Court.*— Where a person, who was required by summons to appear before a Magistrate and to answer a criminal charge, waited for two or three minutes beyond the time mentioned in the summons, and departed, as the Magistrate was not present then, *held* that, as he had not waited for a sufficient time, he was guilty of an offence under s. 174, I.P.C. QUEEN-EMPRESS v. KISAN BAPU, **10 B. 93.**

(9)—*Penal Code, s.* 174, *construction of.*—The proper construction of s. 174, Penal Code, is that the place where a witness is summoned to appear must be in British India. Where a Magistrate summoned a person to appear before him at a place outside British territory, *held*, that disobedience to such summons would not constitute an offence under s. 174, Penal Code. QUEEN-EMPRESS v. PARANGA, **16 M. 463 = 1 Weir 86.**

(10)—*Penal Code, s.* 174—*Scope of.*—The offence contemplated by s. 174, Penal Code, is not an omission on the part of the person summoned to be at a particular place and at a particular time, but an omission to appear at such time or place before a specific public functionary. Where a public servant, who had summoned the accused to appear before him on a particular date at a certain place, was absent from that place on that date, the accused could not be convicted under s. 174 for his failure to attend, even though the failure was due to an intention to disobey the summons. QUEEN-EMPRESS v. KRISTAPPA, **20 M. 31 = 2 Weir 83.** [*R.*, 3 S.L.R. 155.]

(11)—*Penal Code, s.* 174—*Scope of.*—Where the accused, summoned to appear before a Settlement Officer, explained to the process-server his inability to be present, but the latter omitted to mention it to the officer issuing the summons, *held*, that the accused could not be convicted under s. 174, Penal Code, for failure to attend in obedience to the summons, as the accused could not be said to have intentionally disobeyed the summons. EMPRESS v. RAMDHIR, **22 P.R. 1880, Cr.**

(12)—*Penal Code, s.* 174—*Scope of.*—S. 174, I.P.C., does not apply to an escape from custody under a warrant in execution of the decree of a Civil Court. REG. v. SARDAR PATHU, **1 B.H.C. 38, Cr.** [*F.*, 4 N.W.P. 97, U.B.R. 1897-1901, 61.]

Contempt of Court—*continued.*

(13)—*Summons issued before Tahsildar—Penal Code, s.* 174—*Madras Act* III *of* 1869.—Under Madras Act III of 1869, Tahsildars are empowered to issue summonses. Therefore, disobedience to such summonses is punishable under the first part of s. 174, Penal Code. HIGH COURT PROCEEDINGS, 30TH NOV. 1871, **6 M.H.C. App. 44.** [*D.*, 3 M.L.J. 241.]

(14)—*Summons by Tahsildar—Penal Code, s.* 174—*Act* III *of* 1869.—The only Act which authorizes a Tahsildar to issue a legal summons is Madras Act III of 1869. Disobedience to such summons would constitute an offence under s. 174, Penal Code. HIGH COURT PROCEEDINGS, 4TH NOV. 1872, **7 M.H.C. App. 11.** HIGH COURT PROCEEDINGS, 21ST AUG. 1872, **7 M.H.C. App. 10.**

(15)—*Tahsildar's order to peon—Penal Code, s.* 174.—Where a Tahsildar issued an order to a peon to produce the accused before him to maintain his objection to a claim for pre-emption in a *dakhil kharij* case, and the accused refused to attend, *held* that the refusal to attend was not punishable under s. 174, I.P.C., as the order had been directed to the peon, and that the Tahsildar was competent to issue such an order. CROWN v. FIRKHA, **6 P.R. 1870, Cr.**

(16)—*Summons by Revenue officer—Penal Code, s.* 174.—Where the accused intentionally omitted to attend the Mahalkari's Kacheri to give evidence in a revenue case, in obedience to a summons duly served on him, *held* that he was properly convicted under s. 174, I.P.C. REG. v. NARAINAPPA COMTE, **5 B.H.C. Cr. 39.**

(17)—*Order by chairman of Municipality—Penal Code, s.* 174—*Act* XXVI *of* 1850.—The Chairman of the Commissioners appointed under Act XXVI of 1850 is a public servant. But he is not legally competent, as such, to issue an order directing a person to appear before him. Disobedience to such an order is not, therefore, punishable under s. 174, I.P.C. REG. v. PURSHOTAM VALJI, **5 B.H.C. Cr. 33.** [*R.*, Rat. Un. Cr. C. 488.]

(18)—*Verbal order of Village Magistrate—Penal Code, s.* 174.—A disobedience to the verbal order of a Village Magistrate, directing the attendance of an accused person before him, is an offence under Penal Code, s. 174. HIGH COURT PROCEEDINGS, 20TH FEBRUARY 1872, **1 Weir 88=7 M.H.C. App. 3.**

(19)—*Verbal order to appear when required—Penal Code, s.* 174.—Where a person, being summoned as a defendant in a case of trespass, was verbally ordered, by the Magistrate, to appear when required, the Magistrate not adjourning the trial to any particular day, *held*, that the person could not be convicted of disobedience of summons under s. 174, Penal Code. HIGH COURT PROCEEDINGS, 22ND DECEMBER 1870, **1 Weir 82=6 M.H.C. App. 10.** HIGH COURT PROCEEDINGS, 18TH JANUARY 1870, **5 M.H.C. App. 15.**

(20)—*Penal Code, s.* 174—*Non-attendance in obedience to order of public servant.*—A conviction for non-attendance in obedience to an order from a public servant, under s. 174, Penal Code, cannot be had, unless the person summoned was legally bound to attend, and refused, or intentionally omitted, to attend. *In the case of* SREENATH GHOSE, **10 W.R. Cr. 33.**

(21)—*Penal Code, s.* 174—*Disobedience to summons served.*—In order to make a person, summoned as a witness, liable under s. 174 of the Penal Code, the fact must be that he intentionally omitted to attend at the place or time mentioned in the summons, or that he wilfully departed from the place where he had attended before the time at which it was lawful for him to depart. QUEEN v. SUTHERLAND, **14 W.R. Cr. 20.**

(22)—*Summons not specifying place of attendance—Penal Code, s.* 174.—Where a summons does not specify the place at which the attendance is required, a person disobeying the summons cannot be convicted under s. 174. HIGH COURT PROCEEDINGS, 20TH DECEMBER 1872, NO. 2231, **1 Weir 81=7 M.H.C. App. 14.** HIGH COURT PROCEEDINGS, 30TH NOVEMBER 1874, **7 M.H.C. App. 43.**

(23)—*Disobedience to warrant—Penal Code, ss.* 174, 224.—Disobedience to a warrant issued for the appearance of the accused before a Settlement Officer was held not to be punishable under s. 174, I.P.C., when the warrant was not addressed to them; nor could the accused be committed under s. 224, I.P.C., in the absence of evidence of an arrest and subsequent escape. EMPRESS v. GOKAL, **8 P.R. 1881, Cr.**

(24)—*Contempt of Magistrate's own authority—Commitment to be to another Magistrate.*—A Magistrate cannot convict a person for contempt of Court committed in respect of his own authority. A commitment to another Magistrate is necessary in all such cases. REG. v. ATMARAM GOVIND, **Rat. Un. Cr.C. 64=Cr. Rg. 25 4-1872.** (Rat. Un. Cr. C. 45, *R.*)

(25)—*Turning out the Sheriff's officers—Officers in possession by order of Court.*—Land belonging to N.B., had been seized by the Sheriff under a writ of *fieri facias*, which expressly directed him to take that particular land; while in possession, his officers were turned out by A, who knew that they were in possession by order of the High Court. A had purchased the right, title, and interest of N.B., in the land at a sale held in the Court of the Zilla Judge of the 24-Parganas, in execution of a decree of that Court against N.B. A was put in possession, by an offier of that Court. *Held* that the turning out of the Sheriff's officers was a contempt of the High Court. BHUGGOBUTTY DASSEE v. NOBIN CHUNDER BOSE, **2 Ind. Jur. N.S. 99.**

(26)—*Resistance of process of Civil Court—Jurisdiction of Criminal Court—Penal Code, s,* 186.—The resistance of the process of a Civil Court is punishable, under the Code of Criminal Procedure, by a Court of criminal jurisdiction. QUEEN v. BHAGAI DAFADAR, **2 B. L.R. F.B. 21=10 W.R. Cr. 43.** [*R.*, 22 C. 759.]

Contempt of Court—*continued.*

(27)—*Crim. Pro. Code*, 1882, *ss.* 480, 537—*Contempt of Court—Procedure.*—The provisions of s. 480, Crim. Pro. Code, should be applied *then and there*, or at any rate before it rises, by the Court in whose view or presence a contempt has been committed, if it considers than it can be properly and adequately dealt with under that section. Where a Magistrate, in whose presence a contempt was committed, after taking cognizance of the matter, postponed passing final orders, in order to afford the accused an opportunity of showing cause why such order should not be passed, and eventually fined him, *held*, that the procedure adopted by the Magistrate was an irregularity which was cured by s. 537, and that the proper procedure would have been to detain the accused and to deal with the matter at once or before rising. QUEEN-EMPRESS v. PETAMBER BAKHSH, **11 A. 361 = A.W.N. 1889, 128 = 13 Ind. Jur. 477.** [*F.*, 10 C.W.N. 1062 = 4 C.L.J. 415.]

(28)—*Accused, presence of, not necessary in preliminary inquiry—Crim. Pro. Code*, 1861, *s.* 171.—It is not necessary that the preliminary enquiry, contemplated by s. 171, Crim. Pro. Code, 1861, should be conducted in the presence of the accused. All the Court making the inquiry has to do is, to satisfy isself that there are *prima facie* grounds for sending the case for investigation to a Magistrate. CHOTA SADOO PEADAH v. BHOOBUN CHUCKERBUTTY, **9 W.R. Cr. 3.**

(29)—*Contempt of Court—Ss.* 244 *and* 2 *of Civ. Pro. Code*, 1882.—Proceedings by a Court in the exercise of its inherent power to punish for contempt do not come under s. 244, nor under the term "decree" in s. 2 of the Civ. Pro. Code. GODU RAM v. SURAJ MAL, **27 A. 380 = 2 A.L.J. 18 = A.W.N. 1905, 10.**

(30)—*Order of attachment for contempt—S.* 591, *Civ. Pro. Code*, 1882.—An order of attachment for contempt is not an order in the exercise of the High Court's civil jurisdiction, and, therefore, does not come within the provisions of s. 591 of the Civ. Pro. Code. Contempts are of the nature of offences, and, therefore, under s. 15 of the Letters Patent, 1865, an appeal lies from an order of committal for contempt. In dealing with an appeal from such an order, the appellate Court will go behind the order the disobedience to which constitutes the contempt. NAVIVAHOO v. NAROTAMDAS CANDAS, **7 B. 5.**

(31)—*Witnesses not producing the document—Civ. Pro. Code*, 1882, *s.* 174—*Crim. Pro. Code*, 1882, *s.* 480—*Penal Code*, *s.* 175.—The jurisdiction to punish under s. 174, Civ. Pro. Code. exists only in the case of a witness, who, not having attended on summons, has been arrested and brought before the Court. The case of a witness who, having a document, will not produce it, is provided for by s. 480, Crim. Pro. Code. Where a witness denies, on oath, that he has the possession of, or means of producing, a particular document, he can, if he is guilty of falsehood, be prosecuted for giving false evidence in a judicial proceeding. *In re* PREMCHAND DOWLATRAM, **12 B. 63.**

(32)—*Penal Code, Act* XLV *of* 1860, *s.* 228—*Prevarication in giving evidence.*—Prevarication in giving evidence is not an offence under s. 228 of the Penal Code. REG. v. AUBA *bin* BHIVRAV, **4 B.H.C. Cr. 6.** [*R.*, Rat. Un. Cr. C. 69, 473.]

(33)—*Prevarication by witness in giving evidence.*—Prevarication by a witness may amount to a contempt of Court within the meaning of s. 228, I.P.C., and s. 435, Crim. Pro. Code, 1872. REG. v. JAIMAL SHRAVAN, **10 B.H.C. 69.** [*R.*, Rat. Un. Cr. C. 473.]

(34)—*Prevarication or persistent refusal by witness to answer questions.*—Though prevarication or persistent refusal to answer questions does not necessarily constitute the offence of cantempt of Court, it may, according to circumstances, amount to interruption in a judicial proceeding punishable under s. 228 of the Penal Code. QUEEN-EMPRESS v. DEVJI ASA, **Rat. Un. Cr. C. 473 = Cr. Rg. 31 of 1889.**

(35)—*Refusal or neglect to give direct answers to questions.*—Refusal or neglect to return direct answers to questions does not amount to an offence under s. 228 of the Penal Code. REG. v. PANDU *bin* VITHOJI, **4 B.H.C. Cr. 7.** [*R.*, Rat. Un. Cr. C. 69.]

(36)—*Contempt of Court — Rule* nisi *and order for attachment granted late.*—Where a rule *nisi* for attachment against certain defendants in a suit, who were guilty of contempt of Court in not obeying an order with reference to the appointment of a receiver, was granted late on account of their having been evading service fraudulently, *held* that the objection that the rule and order were made late could not be raised by them. HARIVALLABHADAS KALLIANDAS v. UTAMCHAND MANICK CHAND, **7 B. H.C. O.C J. 172.** [*R.*, 8 B.H.C. O.C. 236.]

(37)—*Act* XI *of* 1843, *s.* 8—*Mahalkari, with powers of Second class Magistrate—Penal Code*, *s* 174.—A *Mahalkari* with the powers of a Second class Magistrate cannot issue a summons under s. 8 of Act XI of 1843. A person disobeying such a summons cannot be convicted under s. 174 of the Penal Code. REG. v. VENKAJI BHASKAR, **8 B.H.C. Cr. 19.**

(38)—*Language which strikes at the root of all respect for the Court and its authority amounts to contempt—Criticism of Judge or Court how far justifiable.*—Any act done or writing published, calculated to bring a Court or a Judge of the Court into contempt, or to lower his authority, or to obstruct or interfere with the due course of justice or the lawful process of the Court, is a contempt of Court. Judges and Courts are alike open to criticism; and if reasonable argument or expostulation is offered against any judicial act as contrary to law or the public good, it is not a contempt of Court. *In re* NARSINHA CHINTAMAN KELKAR, **10 Bom. L.R. 1040 = 4 M.L.T. 359 = 33 B. 240 = 8 Cr. L.J. 426 = 2 Ind. Cas. 288.**

Contempt of Court—*continued.*

(39)—*Walking with shoes in presence of Magistrate— Magistrate acting under s.* 480, *Crim. Pro. Code—Offence under s.* 228, *I.P.C.—Suit —Maintainability.*—Where the respondent, a Magistrate, acting under s. 480, Crim. Pro. Code, charged the appellant with an offence under s. 228, I.P.C., committed by the appellant, a Reddy, by walking in view of the respondent with shoes on while discharging his duties as a Magistrate, and where it was found that the respondent acted *bona fide* :—*Held* that the respondent was justified in his action and that no suit could be maintained against him. VAMA REDDY RANGA REDDY v. TOKE J. ABBOY NAIDU, **9 M.L.T. 444.**

(40)—*Crim. Pro. Code, Act* X *of* 1872, *ss.* 49, 471—*District Magistrate—Allocation of business —Contempt of Court.*—Any general allocation of business in various parts of the District made by the District Magistrate does not control the special power conferred on a Court to send cases of contempt of its authority to some other Magistrate. The latter may try it himself or transfer it to some other Court, if he is competent to do so. LETTER FROM THE SESSIONS JUDGE OF TANNA, NO. 4414, **Rat. Un. Cr. C. 88.**

(41)— *Magistrate—Powers of—Pleader not behaving properly.*—A Criminal Court has no right to ask a pleader to sit down in the middle of an examination of a witness because he is asking irrelevant questions, or to refuse to allow the pleader to examine other witnesses because he has not apologised for the contempt he showed in examining the previous witnesses, or to ask the accused to engage another pleader because his pleader did not behave properly. The Magistrate can only rule questions as irrelevant, and if the pleader is persistent and disrespectful and wastes the time of the Court and tries its patience, the Magistrate can commit for contempt. *In re* JAMES FITZGERALD, **Rat. Un. Cr. C. 861=Cr. Rg. 25 of 1896.**

(42)—*Imprisonment for contempt of Court— Ss.* 341 *and* 342 *of the Civ. Pro. Code (of* 1877), *applicability of—High Court's jurisdiction.*— Ss. 341 and 342 of the Civ. Pro. Code (of 1877) apply only to cases of imprisonment under process of execution of decrees, and not to cases of imprisonment for contempt of Court. So, where a party had been imprisoned for disobedience of an order of the Court in an administration suit, he could not apply to be discharged under s. 341, on the ground of his having been in prison for six months. [*F.*, Rat. Un. Cr. C. 614.] The High Court's jurisdiction to imprison for contempt has been inherited from the old Supreme Court, upon which it was conferred by the Charters of the Crown, investing it with all the process and authority of the then Court of King's Bench and of the High Court of Chancery in Great Britain ; and this jurisdiction has not been removed or affected by the Civ. Pro. Code of 1877. (*Per White, J.*) MARTIN v. LAWRENCE, **4 C. 655.**

Contempt of Court—*continued.*

[*F.*, Rat. Un. Cr. C. 614 ; *R.*, 7 B. 1, 7 B. 5, 14 B. 353, 33 B. 630, 11 Bom. L.R. 360, 14 Cr. L J. 321=20 Ind. Cas. 81.]

(43)—*Libel upon Judge in his Judicial capacity—Punishment—Offence not included in Penal Code—Crim. Pro. Code,* 1882, *s.* 5—*Courts of record—Power under common law—Contempt of Court—Powers of High Courts—Origin of jurisdiction.*—The High Courts in the Presidencies are superior Courts of Record, and the offence of contempt, and the powers of the High Court for punishing it, are the same in India as in England, not by virtue of the Penal Code for British India and the Crim. Pro. Code, but by virtue of the common law of England which was introduced at the time of the establishment of the Supreme Courts. Such jurisdiction has not been affected by the Crim. Pro. Code. [*R.*, 8 B. 380, Rat. Un. Cr. C. 614, 2 Bom. L. R. 130, 33 C. 927=3 C.L.J. 67.] Chap. 21, "of defamation," in the Penal Code, does not define "contempt of Court" or make any provision for the punishment of a contempt of Court, by the publication of a libel reflecting upon a Judge in his judicial capacity, in reference to his conduct in the discharge of his public duties. Though the offence may doubtless be punished under the chapter, it does not preclude the publisher from being summarily punished by the High Court for a contempt of Court with fine, or imprisonment, or both. Such a contempt of the High Court by a libel published out of Court, when the Court is not sitting, is not included in the words "offences under the Indian Penal Code" or "all offences under any other law," in s. 5 of the Crim. Pro. Code, though the contempt may include defamation. It is something more than mere defamation, and is of a different character. [*R.*, 2 Bom. L.R. 130.] By the Common Law, every Court of Record is the sole and exclusive Judge of what amounts to a contempt of Court. SURENDRA NATH BANERJEE v. THE CHIEF JUSTICE AND JUDGES OF THE HIGH COURT AT FORT WILLIAM IN BENGAL, **10 C. 109, P.C.=10 I.A. 171=4 Sar. 474.** [*R.*, 39 C. 164=15 C.W.N. 1053=14 C.L.J. 375=12 Cr.L.J. 505=12 Ind. Cas. 273, 12 Cr.L.J. 525=12 Ind. Cas. 293=10 M.L.T. 209; *Expl.*, 18 C.L.J. 452=17 C.W.N. 1253=14 Cr.L.J. 321=20 Ind. Cas. 81.]

(44)—*Reg.* IV *of* 1816 (*Village Munsiffs*), *ss.* 15 *and* 16—*Summons by Village Munsiff— Disobedience to summons—Penal Code, s.* 174. —The provisions of s. 174, Penal Code, are not in conflict with those of Reg. IV of 1816, and effect may, therefore, be given to both. By s. 16, cl. 3 of the Regulation, a summary power to impose a fine on a person, who disobeys his summons, is conferred on a Village Munsiff analogous to that conferred on the Civil Courts by s. 170, Crim. Pro. Code. In ordinary cases, where there are no aggravating circumstances, the Village Munsiff or Civil Court would act discreetly in employing the special power conferred on it, but if a charge is instituted in a Criminal Court under the Indian Penal Code,

Contempt of Court—*continued.*

it must be dealt with by that Court. QUEEN v. RAMCHANDRAPPA, **6 M. 249 = 1 Weir 89.**

(45)—*Crim. Pro. Code*, 1882, ss. 476. 477, 480, 485 *and* 487—*Jurisdiction of Magistrates to try person for offences committed before him—Penal Code, s.* 175.—Only in cases provided for in ss. 477, 480 and 485, Crim. Pro. Code, a Court, other than the High Court, can try any person for offences committed before itself. An offence under s. 175, Penal Code, does not come under any of these sections, and. therefore, a Magistrate, before whom the offence is committed, is precluded by the provisions of s. 487 from trying the case himself. QUEEN-EMPRESS v. SESHAYYA, **13 M. 24 = 2 Weir 610.**

(46)—*Crim. Pro. Code*, 1882, ss. 194, 480, 482 *and* 537—*Insulting a Village Munsiff while sitting in a stage of judicial proceeding—Penal Code, s.* 228—*Power of Second Class Magistrate to try the charge without any complaint by Village Munsiff.*—The accused was charged under s. 228, Penal Code, with having intentionally offered an insult to a Village Munsiff, while sitting in a stage of a judicial proceeding, and was convicted by a Second Class Magistrate, in the absence of any complaint by the Village Munsiff. *Held*, that the provisions of ss. 480 and 482, Crim. Pro. Code, do not apply to Village Magistrates, that the defect of the absence of complaint by the Village Munsiff was covered by s. 537, and that the Second Class Magistrate was of a grade competent to try the complaint. QUEEN-EMPRESS v. VENKATASAWMI, **15 M. 131 = 2 Weir 605 = 1 Weir 218.** [*R.*, A.W.N. 1904, 266.]

(47)—*Fine for contempt of Court—Recording reasons.*—A Criminal Court inflicting a fine for contempt of Court should specifically record its reasons, and the facts constituting the contempt, with any statement the offender may make as well as the finding and sentence. *In re* PANCHANADA THAMBIRAN, **4 M.H.C. 229** [*F.*, 4 C.L.J. 415 = 10 C.W.N. 1062.]

(48)—*Crim. Pro. Code*, 1861, s. 273—*Madras Act* I *of* 1863, *ss.* 1 *and* 2—*Jurisdiction of Magistrate to punish for disobedience to his own summons.*—Under s. 273, Crim. Pro. Code, read with ss. 1 and 2 of the Madras Act I of 1863, a Subordinate Magistrate is competent to convict persons under s. 174, I.P.C., for disobedience to summons issued by himself. HIGH COURT PROCEEDINGS. 18TH MAY, 1869, **4 M.H.C. App. 51.** [*Diss.*, 4 M.H.C. App. 52.]

(49)—*Crim. Pro. Code*, 1861, ss. 172 to 175—*Disobedience to summons — Jurisdiction.*— A Magistrate may, under the general provisions of the Crim. Pro. Code, try the offence of disobedience to his own summons. HIGH COURT PROCEEDINGS, 26TH JULY 1869. **4 M. H.C. App. 52.** (4 M.H.C. App. 51, *R.*) [*D.*, 2 Weir 61 = 3 M.L.J. 241.]

(50)—*Crim. Pro. Code*, 1898, s. 480—*Contempt of Court—Walking with creaking shoes—Accused committing some act not enumerated in* s. 480—*Power of Court to punish—Abuse of power.*—*Held*, that, merely because the accused walked with creaking shoes on his feet near the Court-room, a Court is not justified in arriving at the conclusion that the accused intended to insult it or interrupt it in its work, and that a conviction by the lower Court in such a case is an abuse of the power conferred by the Legislature on Courts to punish wilful acts of contempt or interference with the due discharge of judicial duties. Under s. 480, Crim. Pro. Code, a Court has power only to deal with the accused if he committed one of the offences enumerated therein. *In re* DAVULURI VEERAYYA, **5 M.L.T. 286 = 1 Ind. Cas. 560.**

(51)—*Penal Code, s.* 180—*Refusal to sign deposition given in Revenue inquiry.*—A witness is not legally bound to sign a deposition given by him in a Revenue inquiry. HIGH COURT PROCEEDINGS, 9TH JAN. 1871, NO. 40, **1 Weir 112 = 6 M H.C. App. 14.**

(52)—*Penal Code, s.* 174—*Revenue Officers summoning village official to attend for carrying out a sale of land for revenue arrears—Legality of the summons—Madras Act* III *of* 1869.—Madras Act III of 1869 confers no authority upon Revenue officers to summon a subordinate to attend for the purpose of carrying out a sale of land for arrears of revenue. Disobedience to such summons is not punishable under s. 174, Penal Code. HIGH COURT PROCEEDINGS, 15TH JULY 1870, NO. 1312, **1 Weir 90 = 5 M.H.C. App. 27.** [*R.*, 7 M. 197; F. B. = 1 Weir 90.]

(53)—*Crim. Pro. Code*, 1898, s. 480—*Contempt of Court.*—The power of Magistrates to punish any person for an offence committed in contempt of their own authority is restricted by the provisions of s. 480, Crim. Pro. Code. EMPRESS v. LACHMAN, **12 C.P.L.R. Cr. 15.**

(54)—*Jurisdiction—Preferring of false charge—Prosecution for contempt of Court.*—A person who prefers a false charge commits a contempt of Court, and is, therefore, not triable by the Magistrate to whom the complaint is presented. As there has been in such a trial, a fatal defect of jurisdiction, there should be a retrial by a competent Court. *Per Bouinois and Melville, JJ.* (*Lindsay, J., dissenting*). The Chief Court exercising its discretion under s. 297, Crim. Pro. Code, 1872, should order a new trial, if the accused is not prejudiced by such a trial. *Per Lindsay.* NATHU v. CROWN, **3 P.R. 1875, Cr.**

(55)—*Penal Code, s.* 211—*Jurisdiction.*—A Magistrate, to whom a complaint is presented and who has tried the case, cannot convict the complainant for an offence under s. 211, I.P.C. CROWN v. HASSAN ALI, **3 P.R. 1877, Cr.** [*R.*, 1 P.R. 1898, Cr.]

(56)—*Complaint to police—Conviction by Magistrate for making false charge—Jurisdiction.*—Where a complaint to the police was reported to the Magistrate who convicted the complainant for making a false charge, *held*, that he had no jurisdiction to try the case. DHONI v. CROWN, **4 P.R. 1876, Cr.** [*R.*, 30 P. R. 1882, Cr.]

Contempt of Court—*continued.*

(57)—*Conduct of a pleader in a suitor's capacity.*—The conduct which is in itself indefensible and amounts to gross misconduct in an advocate, is not taken out of s. 41, Legal Practitioners Act, by a mere colourable pretence that it was the conduct of a suitor or accused in that capacity. *In the matter of an* ADVOCATE, **5 P R. 1902, Cr., F.B.**

(58)—*Offence under Penal Code, s.* 181—*Jurisdiction to try the offence.*—The offence specified in s. 181, I.P.C., when committed in a Court of Justice, is a contempt of Court. The Court in which the offence was committed cannot try it. KISNEN v. CROWN, **7 P.R. 1874, Cr.** [*F.*, 18 P.R. 1875.]

(59)—*Judicial proceedings, what amounts to.*—Where the accused was committed under s. 228, I.P.C., and s. 480, Crim. Pro. Code, 1882, for contempt of Court, in having insulted the Court after the recording and reading out of an order calling upon him to give security, *held*, that he was properly convicted. The announcement of the order under s. 107, Crim. Pro. Code, was undoubtedly a stage in a judicial proceeding, and such proceedings must be held to have continued until the accused was allowed to leave the Court after executing the bond, or was removed in custody on failing to execute it. The whole sitting for the disposal of judicial work from the opening to the rising of the Court is a judicial proceeding and the necessary interval between the conclusions of one case and the opening of another is a stage in a judicial proceeding. A Magistrate cannot be considered to have concluded a case the very moment he has announced the order, while the judgment is still in his hands and before he could possibly have turned to any other occupation. *Per Frizelle, J.* QUEEN-EMPRESS v. SALIG RAM, **16 P.R. 1897, Cr.**

(60)—*Refusal to assist in apprehension of a criminal.*—Persons refusing to aid in the apprehension of a criminal cannot be fined summarily without a trial according to law. SOOKHA v. CROWN, **18 P.R. 1869, Cr.**

(61)—*Failure of arbitrators to attend Court.*—The failure of arbitrators in a civil suit to attend Court in obedience to a summons was held not to be punishable under s. 174, I.P.C. CROWN v. KURIA, **18 P.R. 1875, Cr.** [*R.*, 4 P.R. 1907.]

(62)—*Refusal for attachment in execution of a decree.*—A Judge, whose order for the attachment of the judgment-debtor's property in execution of a decree has been disobeyed, has no jurisdiction, as a Magistrate, to try and convict the accused of an offence under s. 186, I.P.C. EMPRESS v. KHUSHALA, **22 P.R. 1879, Cr.**

(63)—*Giving false evidence—Penal Code, s.* 191—*Jurisdiction to try.*—A judicial officer, before whom the offence of giving false evidence had been committed, might himself try and punish the offender. CROWN v. SAIN DASS, **25 P.R. 1873, Cr.**

Contempt of Court—*continued.*

(64)—*Disobedience to summons—Tahsildar's power to try the accused.*—Neither the Tahsildar nor the Naib-Tahsildar is competent to commence proceedings on the criminal side of his Court for an offence under s. 174, I.P.C., for the non-attendance of *lambardars* and *Patwaris* in obedience to summonses issued by him. RODA v. CROWN, **28 P.R. 1869, Cr.**

(65)—*Crim. Pro. Code, Act* XXV *of* 1861, *ss.* 163 *and* 168—*Jurisdiction of Small Cause Court.*—A Judge of a Small Cause Court in the mofussil found a judgment-debtor guilty of resisting an officer of the Court in attaching property in satisfaction of a decree, and fined him. *Held* that the Judge acted without jurisdiction. He ought to have sent the judgment-debtor before the Magistrate. *In the matter of* MANI CHANDRA DAS, **2 B.L.R.A.C. 188 = 11 W. R. 62.**

(66)—*Crim. Pro. Code,* 1861, *s.* 219—*Forfeiture of recognizance.*—In consequence of the default in appearance by the person bailed, the surety was compelled to pay the penalty mentioned in the recognizance. *Held* that, notwithstanding s. 219 of Act XXV of 1861, the accused might have been proceeded against for contempt of Court under s. 174 of the Penal Code. QUEEN v. TAJUMADDI LAHORY, **1 B. L.R.A. Cr. 1 = 10 W.R. Cr. 4.**

(67)—*Sending officer to Judge to ask for explanation of language used on the Bench.*—A barrister, offended by the use of a strong expression on the part of a Judge while sitting in Court, sent an officer to the Judge's private residence upon a pacific errand to ask for an explanation. *Held*, by nine Judges out of eleven, that the party sending the message and the party conveying it were guilty of a contempt of Court. *In the matter of* PIFFARD, **1 Hyde 79.**

(68)—*Carrying of crops pending suit for rent—Ground for dismissal of suit.*—During the pendency of a suit for rent, the plaintiff procured an attachment of the growing crops; and afterwards, without authority and before the suit was determined, carried off some of the crops. *Held* that, although this was an act properly punished by the Court below as a contempt with a fine, it was no ground for dismissing the suit. CHUTTOONATH SINGH v. SOOBOON SINGH, **Marsh 21 = 1 Hay 56.**

(69)—*Application for discharge — Practice.*—When a person is in custody for contempt of Court, any application for release should be made to the committing Judge. It is advisable, but not necessary, to limit the period of commitment to a fixed time. *In the matter of* SITA RAM ATMARAM, **1 Ind. Jur. N.S. 23.**

(70)—*Sending case for investigation—Penal Code, s.* 174—*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 171—*Power of Subordinate Magistrate.*—A Subordinate Magistrate has no power to try an offence punishable under s. 174 of the Pena Code, committed against his own Court, but is bound, under s. 171 of the Code of Criminal Procedure, to send the case, if, in his opinion,

Contempt of Court—*continued.*

there is sufficient ground for investigation, to a Magistrate having power to try or to commit for trial. QUEEN v. CHANDRA SEKHAR ROY, **5 B.L.R. 100**=**13 W.R. Cr. 66.** [*F.*, 14 W.R. Cr. 74, 15 W.R. Cr. 2, 88; *D.*, 8 B.L.R. 422, F.B., Rat. Un. Cr. C. 64; *R.*, 17 W.R. Cr. 39.]

(71)—*Person under contempt—Privilege from arrest—Party to suit proceeding to Court.*—When a writ of attachment for contempt was issued by the Court against a party to a suit in that Court, *held*, he could not claim privilege from arrest while proceeding to the Court for the purpose of attending the hearing of his suit. JOHN v. CARTER, **4 B.L R.O.C. 90.**

(72)—*Prevarication—Crim. Pro. Code*, 1872, *s.* 435.—Prevarication and refusal to answer on the part of a witness may amount to a contempt of Court within the meaning of s. 228, I.P.C., and s. 435, Crim. Pro. Code. *In the matter of*, ABDOOL RAHIMAN, **Cr. Rg. 16-3 1871.**

(73)—*Contempts generally—Communication with Judge.*—It is contrary to the practice of all Courts of Justice, unfair to an adversary, and a contempt of Court, for a suitor, under any pretext whatever, to communicate with a Judge, except by public proceedings in open Court, respecting the merits of any case in which he is interested, and which is either pending in the Court of such Judge or likely to come before him WILLIAM TAYLER v. RANEE ASMEDH KOONWAR, **4 W.R. 86.**

(74)—*Contempts generally—Officer of Court accepting bribes—Persons offering bribes to officers—Power of High Court.*—Any officer of the High Court, who asks for or accepts a present from any person in whose favour judgment is pronounced by the Court, is guilty of a gross breach of duty and a contempt of Court. So, also, any person who offers or gives such present is guilty of a contempt of Court. *In re* ABDOOL, **8 W.R. Cr. 32.**

(75)—*Penal Code, s.* 174—*Evidence of notice to attend.*—Before convicting a person under s. 174 of the Penal Code, it is necessary to prove that he had notice to appear at a certain time and place, and that he did not do so. *In re* SHIB PERSHAD CHUCKERBUTTY, **17 W.R. Cr. 38.**

(76)—*Penal Code, s.* 228—*Same officer in different capacity cannot try offences.*—Where an offence, under s. 228 of the Penal Code, is committed before an officer while he was acting in a certain capacity he cannot in another capacity take up and try the offence. QUEEN v. CHUNDUR SEEKUR ROY, **12 W.R. Cr. 18.**

(77)—*Giving evidence reluctantly and inconsistently—Penal Code, s.* 228.—No conviction be had under s. 228 of the Penal Code, simply can because witnesses have spoken issues of inconsistencies, have shown throughout a reluctance to speak the truth and have caused much interruption to the Court by taking up its valuable time for nothing. QUEEN v. CHOTA HURRY PRAMMANICK TAUTEE, **15 W.R. Cr. 5.**

Contempt of Court—*continued.*

(78)—*Penal Code, s.* 228 —*Obstruction of public servant.*—A party, who bids for an estate at a sale in execution, knowing that he is not able to deposit the earnest money, obstructs the business of the Court, and is guilty of a contempt of Court, punishable under s. 228 of the Penal Code. *In re* MOHESH CHUNDER MOOKERJEE, **W.R. 1864, Mis. 3.**

(79)—*Penal Code, s.* 228—*Judicial proceeding.*—In a conviction under s. 228, Penal Code, it ought to be stated that the Judge was sitting in a stage of judicial proceeding, the nature of which should also be stated. *In re* PROKASH CHUNDER DASS, **12 W.R.Cr. 64.**

(80)—*Penal Code, s.* 228—*Intention to insult, proof of.*—Before a conviction can be had, under s. 228 of the Penal Code, of offering an insult to a public servant, it must be proved that there was an intention to insult. QUEEN v. HURRI KISHEN DOSS, **15 W.R.Cr. 62.**

(81)—*Contempt — Receiver — Obstruction of Receiver in discharge of duty—Stranger in possession not to obstruct Receiver but to apply to Court for redress of grievance—Costs against person obstructing Receiver.*—The right of a stranger in possession of property to continue in possession is not affected by an order of a Court appointing a Receiver; but the fact of his possession does not give him the privilege to interfere with the Receiver directed to take possession of the property. His proper course is to apply to the Court to redress his grievance. If he interferes with the Receiver, he does so at his peril. The Court will not permit the Receiver appointed by its authority to be interfered with or dispossessed of the property which he is directed to receive, by any one, even though the order appointing him may be perfectly erronenus. (20 Beav. 332(354), 24 L.J. Ch. 540, 1 Jur. (N.S.) 529, 3 W.R. 381=52 Eng. Rep. 630, 109 R.R. 442, *F.*) A person, who is guilty of a contempt of the Court's authority, by obstructing a Receiver in the discharge of his duty, may be made to pay the costs as those of a hearing and not of a motion. MR P. ROY CHOWHURY v. NOLINI PROKASH SEN, **15 Cr. L.J. 65**=**22 Ind. Cas. 417.**

(82)—*Procedure—When sentence of imprisonment necessary—Crim. Pro. Code*, 1861, *s.* 163 —*Penal Code, s.* 179.—Under s. 163 of the Code of Criminal Procedure, if a Court, before which the offence of contempt, under s. 179 of the Penal Code, is committed, considers that a sentence of imprisonment is called for, it should record a statement of the facts constituting the contempt and the statement of the accused, and forward the case to a Magistrate. QUEEN v. RUTTON SAHOO, **11 W. R. Cr. 49.**

(83)—*Procedure—Sending case for investigation—Crim. Pro. Code*, 1861, *s.* 171.—A Civil Court may, under s. 171 of the Code of Criminal Procedure, transfer a case to the Criminal Court for investigation, without specifying the particular officer by whom it is to be investigated. QUEEN v. MADHUBCHUNDER MISSER, **13 W.R. Cr. 45.**

Contempt of Court—*continued.*

(84)—*Jurisdiction—Complaint to police submitted to Magistrate—Competency of the latter to try complainant for an offence under s. 182 or s. 211, I.P.C.*—Where a complaint is made to the police and the police submitted a report to a Magistrate, the latter is not incompetent to try the complainant for an offence under s. 182 or s. 211, I.P.C. EMPRESS v. DUDI, **30 P.R. 1882**, Cr. (4 P.R. 1876, Cr., *Not F.*)

(85)—*Application for transfer on the ground of probable failure of justice.*—A person, who applies to an Appellate Court for a transfer of a suit on the ground of a likelihood of miscarriage of justice, if the case were retained in the particular Court, cannot be convicted, on the transfer being refused, for contempt of Court under s. 163, Crim. Pro. Code, 1861. CROWN v. SIRDAR BUKSH, **34 P.R. 1869, Cr.**

(86)—*Duty of Court taking summary action under s. 481, Crim. Pro. Code.*—Under the provisions of s. 481, Crim. Pro. Code, 1882, the record of a Court taking summary action must show the nature and stage of the judicial proceedings in which the Court interrupted or insulted was sitting and the nature of the interruption or insult. KHUSHAL SINGH v. EMPRESS, **36 P.R. 1886, Cr** [*F.*, 16 P. R. 1897, Cr.]

(87)—*Practice—Contempt case—Assurance of pleader not accepted by Munsif—Interference in revision.*—A pleader was tried and punished for contempt by a Munsif for having used certain words which the latter thought to be derogatory to his position. The pleader gave an assurance that the words in question had no reference to the Court, but the Munsif declined to accept the assurance. The District Judge refused to interfere on appeal by the pleader. The High Court on revision directed the Munsif to consider whether it was not a case in which he himself should take action under s. 484 of the Code of Criminal Procedure. Upon the Munsif declining to do so because the pleader had not withdrawn the words, *held* that the assurance given that the words in question had not been used with reference to the Court should be taken to be sufficient. RAM BALI RAI v. KING EMPEROR, **11 A.L.J. 955=14 Cr. L.J. 687=21 Ind. Cas. 1007.**

(88)—*Putting irrelevant and vexatious questions after being warned*—Persisting in putting irrelevant and vexatious questions to a witness after warning might amount to a contempt. AZEEMOOLA v. CROWN, **44 P.R. 1867, Cr.**

(89)—*Failure to appear before a Civil Court as entered into in a recognizance.*—A defendant, who was ordered to attend Court until the decision of a Civil appeal filed against him, and who entered into a recognizance, which was taken by the Original Court, could not be sentenced to pay a fine for having failed to duly attend Court. ABDUL RUHMAN v. CROWN, **75-A, P.R. 1866, Cr.**

(90)—*Minor under Court of Wards—Liability for disobedience by his servants.*—A minor under

Contempt of Court—*concluded.*

the Court of Wards cannot be convicted, under s. 174, I.P.C., for disobedience by his servants of a lawful order duly promulgated with reference to such property. CROWN v. SIRDAR DYAL SING, **84 P.R. 1866, Cr.**

(91)—*Crim. Pro. Code,* 1872, *s.* 473—*Scope.*—S. 473, which says that no Court shall try any person for an offence committed in contempt of its own authority, is not limited to offences falling under Chap. X of the Penal Code. It extends to all contempts of Courts. REG. v. PARSAPPA MAHADEVAPA, **1 B. 339**. (1 A. 129, *Diss.*; 7 M.H.C. App. 17, *Appr.*; 10 B.H.C. 73, *F.*)

See ABSCONDING OFFENDER, 7 W.R Cr. 40.

See ACT XXVI OF 1850, 5 B.H.C. Cr. 33.

See BOM. ACT V OF 1862, Rat. Un. Cr. C. 70=Cr. Rg. 17-4-1873.

See MAD. ACT III OF 1869, 5 M. 377=1 Weir 91, 7 M.H.C. App. 10.

See APPEAL — CASES WHERE APPEAL LIES, 16 P.R. 1887, Cr.

See ARREST, 4 B.L.R. O.C. 90.

See BAIL, 12 W.R. Cr. 18.

See CRIM. PRO. CODE, 1898, ss. 369, 480, 481, 10 C.W.N. 1062=4 Cr. L J. 210=4 C.L.J. 415.

See CRIM. PRO. CODE, 1898, ss. 481, 482, 195, 476, 1 A. 625, F.B.

See CRIM. PRO. CODE, 1898, s. 482, 2 Weir 604.

See CRIM. PRO. CODE, 1898, s. 487, Colm. Dig. Cr. 37 of 1875, Colm. Dig. Cr. 41 of 1876, Colm. Dig. Cr. 44 of 1876.

See HIGH COURT — JURISDICTION OF, GENERAL, 7 B. 5, Rat. Un. Cr. C. 614.

See INJUNCTION, 6 C. 445=7 C.L.R. 350.

See JOINT TRIAL, A.W.N. 1883, 25.

See LEGAL PRACTITIONERS—PLEADER, 7 B.H.C. A.C.J. 102.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 2 Weir 38=7 M.H. C. App. 43.

See MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, 8 W.R. Cr. 61.

See PENAL CODE, s. 228, 29 P.L.R. 1903, 137 P.L.R. 1903, 23 P.W.R. 1912, Cr.=15 Ind. Cas. 983=13 Cr. L J. 567.

See PERJURY, 13 C.W.N. 685, P.C.=6 M. L T. 9=19 M.L.J. 324.

Contempt of Lawful Authority.

See CONTEMPT OF COURT.

See PENAL CODE, ss. 172—190.

(1)—*Penal Code, s. 185—Bidding at auction without intending to purchase.*—A person is guilty of contempt under s. 185, Penal Code, who bids for the lease of a ferry sold at a public auction by a Magistrate, without intending to perform the obligation under which he lays himself by such bidding. QUEEN v. REAZOODDEEN, **3 W.R. Cr. 33.**

Contempt of Lawful Authority—*concluded.*

(2)—*Crim. Pro. Code, Act X of* 1872, s. 473—*Penal Code*, s. 174—*Contempt.* —A trial for contempt in not obeying a summons issued by a Magistrate cannot be held by the same Magistrate. REG. v. MAHOMED ISMAL, **Rat. Un. Cr. C. 70=Cr. Rg. 17-4-1873.**

(3) — *Disobedience to* ywathugyi's *order* — *Lower Burma Village Act*, s. 9 (2).—A villager, who, ordered by the *ywathugyi* to remove himself to a village X, removes himself to village Y, is not guilty of a neglect or refusal to obey the *ywathugyi's* order. QUEEN-EMPRESS v. NGA SAN HLA, **L.B.R. 1893-1900, 218.**

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, 2 B. 653.

Continuing Offence.

See CONVICTION.

(1)—*Penal Code*, s. 363—*Kidnapping.*—The offence of kidnapping under s. 363, Penal Code, is not a continuing offence. QUEEN-EMPRESS v. RAM SUNDAR, **19 A. 109=A.W.N. 1896, 191.** [*F.*, 26 A. 197=A.W.N. 1903, 233, 27 C. 1041=4 C.W.N. 645.]

See ABETMENT, 8 P.R. 1894, Cr.

Likely to be committed after proceeding—Daily fine—*See* BEN. ACT III OF 1885, s. 140, 37 C. 671=7 Ind. Cas. 931=11 Cr.L.J. 540.

See BEN. ACT III OF 1899, cl. 18 of ss. 559, 561 (*b*), 631, 10 C.L.J. 623=14 C.W.N. 614=4 Ind. Cas. 259=10 Cr. L.J. 522=37 C. 545.

See BOM. ACT III OF 1888, ss. 471, 472, 22 B. 766.

See U.P. ACT I OF 1900, s. 147, 24 A. 309=A.W.N. 1902, 70.

Additional fine for, validity of—*See* CANTONMENT CODE, 1899, s. 26, r. 2, 22 B. 841.

Kidnapping not a—*See* KIDNAPPING, 26 A. 197.

Kidnapping—Abetment — Mother can be guilty of kidnapping her own child—*See* PENAL CODE, ss. 363, 498, 9 Ind. Cas. 511=56 P.L.R. 1911=12 Cr. L.J. 94.

Contraband Salt.

See ACT XXXVI OF 1855.

Contract.

See CRIMINAL BREACH OF CONTRACT.

See PENAL CODE, ss. 490—492.

(1)—*Contract—Subsequent conduct of parties.*—If the parties who have entered into definite and distinct terms involving certain legal results—certain penalties or legal forfeiture—afterwards by their own act or with their own consent enter upon a course of negotiations which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced or will be kept in suspense or held in abeyance, the person who might have otherwise enforced these rights will not be allowed to enforce them where it would be inequitable, having regard to the dealings which have thus taken place between the parties. EMPEROR v. NADIRSHA, **29 B. 35=6 Bom. L.R. 667.**

Contract—*concluded.*

See DURESS, 1 C. 330=3 I.A. 61=5 Sar. 597.

Advance to brokers on pro-notes—Loan or trust—Debtor and creditor—Breach of—Breach of trust—*See* PENAL CODE, s. 405, 6 L.B.R. 62=17 Ind. Cas. 824=5 Bur.L.T. 143=13 Cr. L.J. 888, F.B.

Immoral contract—Cheating in respect of the—Whether punishable—*See* PENAL CODE, 1898, s. 420, 14 Bom. L.R. 503, 15 Ind. Cas. 793=13 Cr. L.J. 521=1 Bom. Cr. Cas. 148.

Contract Act.

See ACT IX OF 1872.

Contract, Breach of.

See ACT XIII OF 1859.

See PENAL CODE, ss. 490 to 492.

Contractor.

See ACT XIII OF 1859, 7 M. 100=1 Weir 690.

See ACT XIII OF 1859, s. 2, 10 B. 96, 4 B.L.R. App. 1=13 W.R. Cr. 1, Rat. Un. Cr. C. 537=Cr. Rg. 9 of 1861.

Or commission agent—*See* ACT XIII OF 1859, s. 2, 2 Bom. L.R. 801.

Member of Municipal Committee—Advancing money to, for carrying out municipal contracts—Offence under s. 168, Penal Code—*See* PENAL CODE, s. 168, 7 N.L.R. 53=10 Ind. Cas. 577=12 Cr. L.J. 281.

Contract, Workman's Breach of.

See ACT XIII OF 1859.

Contradictory Depositions.

See FALSE EVIDENCE, Rat. Un. Cr. C. 26=Cr. Rg. 20-10-1869.

Contradictory Statements.

See FALSE EVIDENCE.

(1)—*Contradictory statements, reconciliation of.*—In charges founded upon supposed contradictory statements, every presumption in favour of the possible reconciliation of the statements must be made. QUEEN-EMPRESS v. RAMJI SAJABA RAO, **10 B. 124.** [*R.*, 28 B. 533=6 Bom. L.R. 379, 15 Cr. L.J. 379=23 Ind. Cas. 747=7 S.L.R. 96].

(2)—*Contradictory statements, mode of proving.*—A witness before a Court of Sessions made a statement different from the one made by him before the Magistrate or the Police. *Held* that the proper procedure to prove the contradiction in the statement is for the Sessions Court to bring on record the deposition of the witness before the Magistrate or obtain from the Police proof of the statements made to them. The Sessions Judge's note that the witness did

Contradictory Statements—*concluded.*

make a particular statement to the Magistrate or the Police is no evidence and is not proof that such a statement was made. CROWN v. BALOCHKHAN WD. KANDER, **4 S.L.R. 38=7 Ind. Cas. 601=11 Cr. L.J. 498.** 32 B. 111, *R.*). [*Expl.*; 12 Cr. L.J. 489=12 Ind. Cas. 209=5 S.L.R. 31.]

See CHARGE—FORM OF CHARGE, 12 W.R. Cr. 23.

Made before a qualified Magistrate in the preliminary enquiry—False evidence—Alternative charge—Penal Code, ss. 191, 193—*See* CRIM PRO. CODE, 1898, s. 164, 14 Bom. L.R. 753=16 Ind. Cas. 517=13 Cr. L.J. 709=1 Bom. Cr. C. 167.

See CRIM. PRO. CODE, 1898, ss. 164, 191 (*c*), 202, 7 S.L.R. 75=21 Ind. Cas. 472=14 Cr. L.J. 600.

See CRIM. PRO. CODE, 1898, ss. 225, 232, 233, 537, 10 B. 124.

See CRIM. PRO. CODE, 1898, s. 487, 3 M. 254 =2 Weir 607.

See PENAL CODE, ss. 182, 193, 5 A. 17.

See PENAL CODE, s. 193, Rat. Un. Cr. C. 502=Cr. Rg. 16 of 1890.

Perjury, basis of the charge—Reconciliation—Presumption in favour of—*See* PERJURY, 7 S.L. R. 96=15 Cr. L. J. 379=23 Ind. Cas. 747.

Perjury—Sanction to prosecute two—Reconciliation of — Presumption in favour of Penal Code, s. 193—*See* PERJURY, 7 S.L.R. 108=15 Cr. L.J. 488=24 Ind. Cas. 576.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, 30 P.R. 1901, Cr.

Alternative charge—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION ETC., 2 Weir 169.

Made before the Police and Magistrate—False evidence—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION ETC., L.B.R. 1893—1900, 187.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 2 Weir 168.

Contributory Negligence.

See PENAL CODE, s. 304-A, 1 Weir 322=6 M.H.C. App. 31, 1 Weir 327.

Convenience.

Of parties and witnesses—Grounds of transfer—*See* TRANSFER OF CRIMINAL CASES—GROUNDS FOR TRANSFER—NOTICE, 4 S.L.R. 42.

Conversion.

(1) *Relapse of Christian husband and wife to Hinduism—Necessity for second marriage ceremony according to Hindu rights.*—The Hindu Law might possibly not recognise as valid

Conversion—*concluded.*

a marriage obligation under the Christian status and would not regard such a contract as a Hindu marriage. But if husband and wife reverted to Hinduism at the same time, the caste would recognise the marriage union, though contracted in another status as a valid one, and would neither insist upon a second marriage being performed according to the Hindu ceremonial. nor permit the relapsing wife to contract a Hindu marriage with another man. *In re* MICHAEL *alias* VELLAYA KUDUMBAN, **1 Weir 563.**

Conversion of Hindu wife to Mahomedanism and re-marriage with Mahomedan — *See* BIGAMY, 4 B. 330, 18 C. 264.

Marriage according to Hindu rights of relapsed convert—Subsequent conversion and marriage to Christian—*See* BIGAMY, 10 M. 218=1 Weir 566.

Second marriage with a Hindu woman by a person relapsing from Christianity to Hinduism—Bigamy—*See* BIGAMY, 1 Weir 561=3 M. H.C. App. 7.

See CRIM. PRO. CODE, 1898, s. 517, 12 Cr. L.J. 473.

See FALSE EVIDENCE, 1 Weir 159=4 M.H. C. 185.

See MAINTENANCE, 4 M.H.C. App. 3.

Conveyances, Public.

See BOM. ACT VI OF 1863.

Convict.

Bringing convicts to Court in chains, propriety of.— As a general rule, a convict should be relieved of his chains, when brought before a Court for trial or as a witness. HIGH COURT PROCEEDINGS, 24TH AUG. 1869, **4 M.H.C. App. 69.**

Conviction.

See DOUBLE CONVICTION.

See PREVIOUS CONVICTION.

See SECURITY TO KEEP THE PEACE—ON CONVICTION.

See SEPARATE CONVICTION.

See SENTENCE.

(1)—*Not to be based on the weakness of the defence.*—A conviction ought not to be based on the weakness of the defence, but on the strength of the prosecution. ABDUL GHANI v. KING EMPEROR, 2 **A.L.J. 411=2 Cr. L.J. 352.**

(2)—*Conviction without evidence — Illegal conviction.*—A conviction on no evidence is wrong in point of law. QUEEN v. CHAND BAGDEE, **7 W.R. Cr. 6.** QUEEN v. POORNOO CHUNDER DOSS, **8 W.R. Cr. 59.**

(3)—*Conviction on statement of complainant.*—A conviction on the statement of a complainant is lawful. KULAM MUNDAL v. BHOWONIPROSAD, **22 W.R. Cr. 32.**

Conviction—*continued.*

(4)—*Conviction on plea of guilty without assessors—Crim. Pro. Code* (*Act* XXV *of* 1861), *s.* 362.—A conviction of a prisoner on a plea of guilty before a Court of Session is valid, although there were no assessors. QUEEN v. SRIKANT CHARAL, 2 **B.L.R. F.B. 23=10 W. R. Cr. 43.**

(5)—*Double conviction—High Court's revisional jurisdiction.*—F brought a charge of assault against M before a Bench of Magistrates, who, finding no evidence to show by whom complainant's arm had been broken, treated the case as one of simple hurt, and sentenced the accused accordingly. Complainant then applied for compensation to the District Magistrate, who instituted fresh proceedings, and convicted the accused of grievous hurt. *Held* that, as the whole matter was one transaction, and went as a whole before the bench of Magistrates, and as the facts were deposed to by the same witnesses before the Magistrate, the two convictions could not stand side by side. The proceedings before the Bench of Magistrates were accordingly quashed. *In re* FAKEER MAHOMED, **24 W.R. Cr. 46.**

(6)—*Conviction on evidence taken before another Magistrate—Illegal conviction.*—When a prisoner in convicted by one Magistrate upon evidence previously recorded before another, the defect cannot be cured by the evidence being again recorded, and the conviction confirmed. QUEEN v. POORNOO CHUNDER DOSS, **8 W.R. Cr. 59**; QUEEN v. POPI NOSHYO, **21 W.R.Cr. 47.**

(7)—*Power of Court to quash its own conviction.*—A lower Court has no power to quash its own conviction, though illegal. GUNOWREE BHOVEA v. JHANDOO, **6 W.R. Cr. 70.**

(8) *Ground for setting aside conviction—Police Act* V *of* 1861, *s.* 29—*Offence under Penal Code.*—That the facts proved would also constitute an offence under a section of the Penal Code seems to be no reason for quashing a conviction under the special law, Act V of 1861. QUEEN v. KASSIMUDDIN, CONSTABLE, **8 W. R. Cr. 55.**

(9)—*Subsequent evidence—Effect on a valid conviction.*—A valid conviction arrived at by a Magistrate, who had jurisdiction in the matter, cannot be set aside, simply because, subsequent to the trial and conviction, fresh evidence has been discovered which may tend to convict the accused of an offence other than that for which he was convicted. QUEEN v. ROMDAYAL MAHARA, **21 W.R. Cr. 47.**

(10)—*In criminal trial—Evidence.*—A conviction can only be based on the evidence actually before the Court, and cannot be supported by a consideration of what it is believed witnesses would have stated or ought to have testified. MUKERJI v. EMPEROR, **5 P.R. 1901, Cr.=51 P.L.R. 1901.**

(11)—*Conviction on evidence taken without jurisdiction.*—A conviction having been set aside as arrived at without jurisdiction, no

Conviction—*continued.*

sanction to the prosecution having been obtained from the Court against which the offence was committed, formal sanction was obtained, the accused re-arrested, and, without being called upon to plead, ordered to undergo the sentence previously passed. *Held* that the whole of these proceedings were illegal. *In re* EDOO KHANSAMAH, **24 W.R. 64, Cr.**

(12) *Dispute between Civil suitors—Improper prosecution—Illegal conviction.*—As a general rule, one of the two parties to an impending suit ought not to put the Criminal Law in motion as against the other in matters connected with the suit; or if he does so, the hearing of the criminal case ought to be postponed until the suit is concluded. But, although that is a good ground for questioning the propriety of a prosecution, it is not a ground for questioning the legality of a conviction. QUEEN v. ACHEET LALL, **17 W.R. Cr. 46.**

(13)—*Opinion of assessors on whole evidence necessary for legal conviction.*—No legal conviction can take place unless the opinion of the assessors is taken on the whole of the evidence in a case. *In re* PURUSHOTTAM LALL KHETTRI, **2 J.G. 38.**

(14)— *Conviction on plea of guilty without assessors—Crim. Pro. Code* (*Act* XXV *of* 1861), s. 262.—The conviction of a prisoner on a plea of guilty before a Court of Session was held to be valid, although there were no assessors. QUEEN v. BHAGAI DAFADAR, **2 B.L.R. F.B. 21=10 W.R. Cr. 43.** [*F.*, 11 W.R. 62; *R.*, 22 C. 759.]

(15)—*Conviction based on Magistrate's own evidence bad.*—A conviction based on the Magistrate's own evidence is illegal, in the absence of other evidence to support it. *In re* DONNELLY, **1 J.G. 22=2 C. 405.**

(16)—*Conviction based on uncorroborated testimony of accomplice made when a victim and believed by the Court.*—A conviction based upon the uncorroborated testimony of accomplices, found by the Court to have been once believed when the charge was different and the witnesses were not accomplices, but victims, is not illegal. *In re* BHOLANATH PATTRO, **2 J.G. 13.**

(17)—*Separate convictions under I.P.C., and under special law for same offence.*—A Magistrate cannot convict and punish an accused person both under the Penal Code and under a special law for the same offence. QUEEN v. HUSSUN ALI, **5 N.W.P. 49.**

(18)—*Penal Code, ss.* 147 *and* 324, *separate convictions under.—Quære.*—Whether separate convictions under ss. 147 and 324 of the Penal Code are legal. EMPRESS v. JUBDUR KAZI, **6 C. 718=8 C.L.R. 390.** (2 A. 139, 7 W.R. Cr. 60, 9 W.R. Cr. 33, *R.*)

(19)—*Crim. Pro. Code, Act* X *of* 1872, *s.* 228 —*Record.*—Where, in a summary trial in which there was an appeal, the Magistrate did not embody in his judgment the substance of the

Conviction—*continued.*

evidence, and convicted one of the prisoners on the mere statement of another, *held* that the conviction was bad and that there should be a re-trial. EMPRESS v. LALJI, **A.W.N. 1882, 178.**

(20)—*Stamp Act*, XXXVI *of* 1860, *ss.* 26, 37 —*Crim. Pro. Code, Act* XXV *of* 1861, *ss.* 65, 67—*Procedure.*—A conviction under s. 26 of the Stamp Act is illegal where the proceedings were commenced without any complaint on the record, but only an endorsement by the Collector of Stamp Revenue to a Deputy Magistrate to inquire into a matter and report, and where summons was issued to the accused without any sworn complaint on the record. REG. v. DEVASANVAT *bin* SHIVARAMSANVAT, **3 B.H.C. Cr. 34.**

(21)—*Penal Code, Act* XLV *of* 1860, *s.* 409—*Accounts not produced—Crim. Pro. Code, Act* XXV *of* 1861, *s.* 373—*Irregularity.*—In a prosecution for criminal breach of trust, where one of the accounts whose existence was not disproved and which was material for the defence, was not produced by the prosecution, and the Court did not put questions to the accused as required by s. 373 of the Crim. Pro. Code, *held* that the conviction was not justifiable. REG. v. DIAZ, J.M., **3 B.H.C. Cr. 51.**

(22)—*Absconding—Effect of—Production of a stolen article—Other evidence doubtful.*—*Held*, that the fact that the accused person has absconded does not raise any presumption of his guilt. *Held*, also, that the mere fact that the accused has made a certain incriminating statement before several witnesses for the prosecution and has produced in their presence one of the stolen articles from a field, does not establish that he is one of the dacoits, when other evidence against him is doubtful. FATTA v. CROWN, **31 P.W.R. 1913, Cr.=314 P.L.R. 1913=21 Ind. Cas. 473=14 Cr. L.J. 601.**

(23)—*Imprisonment in default of payment of fine—Portion paid—Refund.*—A person was sentenced to a term of imprisonment and to a further term in default of payment of fine. He paid a portion of the fine, but the fact not being communicated to the jailor, he had to serve the whole term. *Held* that, under such circumstances, a Magistrate had no jurisdiction to order re-payment of the fine, but that the party should be advised to apply to the Government. REG. v. NATHA MULA, **4 B.H.C. Cr. 37.**

(24)—*Sentence of Assistant Sessions Judge—Power of Sessions Judge to quash sentence—More than one offence proved—Conviction for one only illegal.*—A Sessions Judge has no power to quash a sentence passed by an Assistant Sessions Judge and direct the passing of a new sentence in a case submitted to him for confirmation of sentence, even supposing such sentence to have been illegal; much less has he such a power, where the sentence is one which the Assistant Sessions Judge was competent to pass. Where more than one offence is proved, it is not proper to convict of one only, and to

Conviction—*continued.*

acquit of the rest, although the offences may be cognate. REG. v. MURAR TRIKAM, **5 B. H.C. Cr. 3.** [*R.*, 10 A. 58, Rat. Un. Cr. 597.]

(25)—*Previous conviction no reason for subsequent conviction.*—To convict a man because he has been punished before is illegal. REG. v. MOROBA BHASKAJI, **8 B.H.C. Cr. 101.**

(26)—*Crim. Pro. Code, Act* X *of* 1872, *s.* 457 —*Charge of murder—Conviction for abetment—Legality.*—A person, who has been charged with murder, cannot be convicted on the same charge of abetment of the offence, for a charge of murder, simply as such gives no intimation of a trial on the abetment: s. 457 of the Crim. Pro. Code does not apply to a collateral offence. REG. v. CHAND NUR, **11 B.H C. 240.** [*F.*, 33 M. 264=11 Cr. L.J. 49=5 Ind. Cas. 145=20 M.L.J. 84=7 M.L.T. 79; *R.*, 13 C.P.L R. 167, 13 Cr. L.J. 453=15 Ind. Cas. 85=23 M.L.J. 722=12 M.L.T. 203=M.W.N. 1912, 725, Rat. Un. Cr. C. 775.] REG. v. RAMAJIRAO JIVBAJI RAO, **12 B H.C. 1.**

(27)—*Criminal case—Reason for conviction.* —A prisoner must be convicted on the strength of the case made against him and not in consequence of his inability to bring evidence to prove his innocence. REG. v. JENKOO, **Rat. Un. Cr. C. 5.**

(28)—*Transfer of case—Order not reaching Magistrate—Conviction—Legality.*— Where a case pending before a Magistrate was ordered by the High Court to be committed to the Sessions, if there was sufficient evidence for a conviction, but, owing to the order not reaching him in time, the Magistrate tried the case and convicted the accused, *held*, that the conviction was not illegal though the Magistrate's action was indiscreet. REG. v. VINAYEK, **Rat. Un. Cr. C. 46.**

(29)—*Commitment for culpable homicide—Plea of guilty—Conviction for grievous hurt—Legality.*—Where the accused, committed for trial of the offence of culpable homicide, pleaded guilty, but the Sessions Judge, without convicting him on such plea, convicted him of grievous hurt on the evidence recorded by the Committing Magistrate, *held* that the conviction was illegal. QUEEN-EMPRESS v. RAGHU, **Rat. Un. Cr C. 413=Cr. Rg 79 of 1888.** [*R.*, 10 Cr.L.J. 5=2 Ind. Cas. 372=3 S.L.R. 58.]

(30)—*Retracted statements by witnesses.*—A conviction based on previous statements of witnesses, who retracted them at the trial, cannot be sustained in law. QUEEN-EMPRESS v. RAMDIN, **Rat. Un. Cr. C. 762=Cr. Rg. 23 of 1895.**

(31)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 258 —*Charge framed—No rebutting evidence—Conviction, if necessary.*—Where a Magistrate has framed a charge in a warrant case, he is not bound to convict the accused merely because he does not produce any rebutting evidence. QUEEN-EMPRESS v. CHANBASAPA MADIAPA, **Rat. Un. Cr. C. 854=Cr. Rg. 20 of 1896.**

Conviction—*continued.*

(32)—*Conviction of accused by Magistrate—Brief record of reasons.*—In non-appealable cases, a Magistrate must briefly record the reasons for convicting an accused. *In the matter of the petition of* RADOINATH SHAHA; EMPRESS v. RADOINATH SHAHA, **8 C. 195.**

(33)—*Of offence without specific charge—Misdirection to jury.*—If the accused had been charged with an offence under ss. 304 or 325, they might be convicted of an offence under s. 323, though no charge under that section was drawn up against them. But, when they are charged with these offences, alleged to have been committed by another person in the course of a riot, and the jury found that there was no riot they should not be convicted of the offence of hurt in respect of their individual acts, with which they were not charged and of which there is no trace in the Judge's charge to the jury of ever having been imputed to them. The omission of the Judge to call the attention of the jury to the fact of the original witnesses having been abandoned by the prosecution, of two of them having given evidence for the defence and of the witnesses examined in Court for the prosecution being entirely new witnesses, is a sufficient misdirection in the charge to the jury to justify the High Court in setting aside the conviction. DASARATH MANDAL v. EMPEROR, **34 C. 325 = 5 Cr. L.J. 424.**

(34)—*Crim. Pro. Code* (1898), *s.* 263 (*h*)—*Omission to record reasons for conviction in a summary trial.*—The omission to record the reasons for conviction in a summary trial is fatal, when the evidence recorded is not such as would enable the High Court to deal with the case on the merits. DINA NATH TALUKDAR v. JOGENDRA NARAIN MAJUMDAR, **6 C.W.N. 40.**

(35) *Defence to a charge—Committal to Sessions on that charge and on further charges of fabricating false evidence and preferring false charge on disbelieving the defence—Conviction, validity of.*—Where persons, charged with the offence of wrongful confinement, raised the defence, that they had a lawful excuse for confining the persons, inasmuch as they were caught in the house of one of the prisoners under circumstances, which led to the belief, that they had committed house-breaking by night with intent to commit theft, and the Magistrate disbelieving the story and the evidence of the defence, committed the accused to the Sessions, not only for the wrongful confinement, but also, for fabricating false evidence and for bringing a false charge, and, at the Sessions trial, they were found guilty on all the three charges, *held*, that the conviction on the last two charges was illegal, inasmuch as, in putting the accused upon their trial in respect of the two additional charges, the Magistrate was really prejudging the defence which they had raised to the first charge. *In the matter of* TURIBULLAH, **4 C.L.R. 338.**

(36)—*Registers of, to be kept in a prescribed form.*—For the purpose of enabling the Magistrates to ascertain whether the parties, charged before them with heinous offences have been previously convicted of any of the offences for which enhancement of punishment is provided on a subsequent conviction, registers should be opened in the prescribed form in Magistrates' offices, containing the names of parties convicted of any of the previous offences written in the vernacular of the District. CRIMINAL CIRCULAR NO. 5, 5TH JULY, 1865, **3 W.R. Cr. Cir. 1.**

(37)—*Of a prisoner pleading guilty before a Court of Sessions—Validity—Crim. Pro. Code* (1861), *s* 362—*Conviction for one charge out of several.*—The conviction of a prisoner, pleading guilty before a Court of Session under s. 362, Crim. Pro. Code, is valid, although there are no assessors. When persons are charged with several offences and convicted of one only, the head of the charge on which they have been convicted may be indicated in Col. 5 of the Sessions statement No. 3. CRIMINAL CIRCULAR, NO. 8 OF 1868, **10 W.R. Cr. Cir. 5.**

(38)—*Copy of, forwarding of, to the Military Department of the Government of India.*—Judicial Commissioners, District Judges and Magistrates should forward to the Military Department of the Government of India, a copy of the conviction and sentence in all cases, in which persons serving under the Government of India in that Department are convicted in a criminal Court. CRIMINAL CIRCULAR NO. 6 OF 17TH JULY, 1871, **16 W.R. Cr. Cir. 1.**

(39)—*Evidence taken in the absence of the accused.*—A conviction passed upon an accused person on evidence taken in his absence is not legal. HIGH COURT PROCEEDINGS, 8TH APRIL 1867, **3 M.H.C. App. 34.**

(40)—*Crim. Pro. Code* (1861), *s.* 55—*Amending of the sentence.*— Where an appellate Magistrate at first reversed a sentence, but on re-consideration confirmed the lower Court's decision, *held*, that the second order of the Magistrate should be set aside and the original order restored. HIGH COURT PROCEEDINGS, 8TH DEC. 1870, **6 M.H.C. App. 7.**

(41)—*Based on deposition of accused—Solemn affirmation—Sustainability.*—Where a conviction is based on the deposition of the accused taken on solemn affirmation, such a conviction is bad in law and cannot be upheld. ANTHONY v. EMPEROR, **3 M.L.T. 138 = 7 Cr.L.J. 131.**

(42)—*Finding of guilty—Passing of sentence.*—Where the finding of the Magistrate is one of guilty, he is bound to pass some sentence, if only a nominal one. HIGH COURT PROCEEDINGS, 12TH AUGUST 1869, NO. 1513, **2 Weir 305 = 4 M.H.C. App. 66.**

(43)—*Act* XVII *of* 1854, *s.* 50 (*s.* 52 *of the Post Office Act* VI *of* 1898)—*Separate sentences for offences arising out of the same transaction.*—Where a person had been previously committed and sentenced on the charge of fraudulently secreting a letter under s. 50 of Act XVII of 1854, his subsequent conviction upon the charge

Conviction—*continued.*

of having fraudulently made away with the same letter upon the same occasion was held to be invalid. QUEEN v. DALAPATI RAU, 2 **Weir 454=1 M H.C. 83.** [*R.*, 1 Bom. L.R. 15.]

(44)—*Burden of proof—Guilt of accused—Benefit of doubt.*—Before an accused person can be convicted of an offence, every conceivable hypothesis of innocence must be at least reasonably excluded. LACHMAN SINGH v. KING-EMPEROR OF INDIA, **7 P.L.R. 1911=9 Ind. Cas. 400=12 Cr. L.J. 69=11 P.W.R. 1911, Cr.** (5 P.R. 1872, Cr., *R.*)

(45)—*Burden of proof—Guilt of accused—Benefit of doubt—Circumstantial evidence—Facts alleged must be incompatible with the innocence of the accused*—Tracker, *evidence of.*—Before the accused can be convicted of an offence, the Criminal Court must be satisfied that the incriminating facts, brought out in the evidence for the prosecution, are incompatible with the innocence of the accused and are incapable of explanation upon any other hypothesis than that of his guilt. To convict on circumstantial evidence alone, not only must the Court be satisfied that each of the facts on which the presumption of guilt is founded is proved beyond reasonable doubt, but there must be a chain of evidence so far complete as to leave no reasonable ground for a conclusion therefrom consistent with the innocence of the accused. When the whole question of the appellant's guilt in regard to a serious crime, such as murder, depends practically upon the bare word of the *tracker*, the Court will not be justified in placing reliance upon his testimony as that of an expert, unless and until it is shown to be clear, credible, and consistent beyond all doubt, and to be wholly incompatible, upon any reasonable hypothesis, with the innocence of the accused. GUARDIT SINGH v. CROWN, **136 P. L.R. 1909=36 P.W.R. 1909, Cr.=4 Ind. Cas. 941.**

(46)—*Crim. Pro. Code* (1898), *s.* 256—*Recalling witness for cross examination after charge—Accused not depositing the necessary expenses.*—It is the duty of the Magistrate to re-call the prosecution-witnesses for cross-examination, if the accused demands it after the charge is framed; this must be done presumably at the public expense. The accused is not bound to deposit the expenses. A conviction, based on the ground that the accused had not deposited the necessary expenses for re-calling the prosecution-witnesses for cross-examination, after the framing of the charge, is illegal. AMIN CHAND v. KING-EMPEROR, **12 P.R. 1907, Cr. =32 P.W R. 1907=6 Cr. L.J. 339=48 P L.R. 1908.** [*F.*, 13 Cr. L.J. 554=15 Ind. Cas. 970=8 N.L.R. 65.]

(47)—*Validity of, by reason of illegal arrest.*—The legality or illegality of the arrest of a person does not affect the jurisdiction of a competent Court in convicting him. If the arrest was bad, the accused has other remedy as against the party, who illegally arrested him. JUMO v. KING-EMPEROR, **17 P.R. 1906, Cr.=5 Cr. L.J. 89=60 P.L.R. 1907.** (L.R. 4 Q.B. D. 622, 6 P.R. 1899, Cr., *R.*; 6 P.R. 1897, Cr. P.C., *D.*) [*R.*, 12 Cr. L.J. 113=9 Ind. Cas. 677 =1 P.R. 1911, Cr.=4 P.W.R. 1911, Cr.=84 P.L R. 1911.]

(48)—*Magistrate convicting accused not according to his own conscience—Conviction bad—Practice.*—Where a Magistrate convicted the accused not according to his own conscience, the conviction was set aside as illegal. MUNSHI v. EMPEROR, **4 Ind. Cas. 428.**

(49)—*Conviction for a more serious offence—Lesser offences in the same transaction—Presumption.*—Where the accused were convicted of the more serious offence of rioting and they could also be convicted of the lesser offence of criminal trespass, committed in the course of the same transaction, it would not be proper to order a further charge and a re-trial in regard to the minor offence, if it appears that the Sessions Judge had taken it into account in fixing the appropriate sentence. MAPPILLAI MUTHAPPA NADAR v. MAPPILLAI KULA SANKARA NADAR, **12 Cr. L.J. 19.**

Criminality—Probability compatible with innocence—No justification for conviction—*See* ABETMENT, 15 Cr. L.J. 617=25 Ind. Cas. 625.

Conviction upon what should be based—Conviction based upon insufficient evidence—Revision—*See* CRIM. PRO. CODE, 1898, s. 439, 12 P.W.R. 1913, Cr.=66 P.L.R. 1913=19 Ind. Cas. 148=14 Cr. L.J. 148.

When may be based on circumstantial evidence—*See* EVIDENCE—GENERAL, 14 Cr. L. J. 660=21 Ind. Cas. 900.

Previous — Admissibility of evidence—*See* EVIDENCE—GENERAL, 7 W.R. Cr. 7.

Enhancing punishment—Relevancy of previous conviction—*See* EVIDENCE ACT, 1872, ss. 54, 165, 16 Bom. L.R. 934=2 Bom. Cr. C. 252.

Identification made after dark—Evidence of a single witness as to identification—Conviction rarely safe—*See* IDENTIFICATION, 2 L.B.R. 206.

Prosecution evidence mostly disbelieved—Hypothetical case made by the Court—Propriety of conviction—*See* PENAL CODE, s. 147, 17 C. W.N. 538=19 Ind. Cas. 1002=14 Cr.L J. 314.

Upon a hypothetical state of facts not suggested by the prosecution, how far sustainable—Hypothetical case—*See* PENAL CODE, ss. 147, 307 read with s. 149, 11 C.L.J. 270=5 Ind. Cas. 771.

Receiving illegal gratification partly on one day and partly on another day—Separate—Validity of—*See* PENAL CODE, ss. 161, 165, 5 C. W.N. 332.

When to be set aside on appeal—*See* PENAL CODE, ss. 302, 109, 17 C.W N. 1110=14 M.L. T. 263=1913 M.W.N. 806=15 Bom. L.R. 910 =25 M.L.J. 518=2 Bom. Cr. C. 123=18 C.L.J. 365=14 Cr. L.J. 577=21 Ind. Cas. 369=11 A. L.J. 881=36 M. 501.

Conviction—*concluded.*

On mere probability—*See* PENAL CODE, s. 304, Rat. Un. Cr. C. 686=Cr. Rg. 4 of 1894.

Separate—*See* PENAL CODE, ss. 380, 461, A. W.N. 1896, 194.

Repugnancy in judgment—Conviction if can be set aside on such ground—High Court's power to alter acquittal on one of two alternative charges into conviction—*See* PENAL CODE, ss. 399, 402, 18 C.W.N. 498=41 C. 350 =15 Cr. L.J. 385=23 Ind. Cas. 985.

Alteration of—*See* PENAL CODE, ss. 497, 498, A.W.N. 1881, 112.

Convict Warder.

See PENAL CODE, s. 21, 22 P.R. 1908, Cr.= 9 Cr. L.J. 90.

See PUBLIC SERVANT, Rat. Un. Cr. C. 389, 7 W.R. Cr. 63.

Cook.

See ACT XIII OF 1859, s. 2, 1 Weir 689.

Leaving service suddenly — *See* PENAL CODE, s. 491, Rat. Un. Cr. C. 354=Cr. Rg. 43 of 1887.

Cook's Knife.

—Cook's knife whether "arms"—*See* ACT XI OF 1878, s. 4, 5 L.B.R. 130.

Cooly.

See ACT XIII OF 1859, 8 W.R. Cr. 6.

Contract to supply—*See* ACT XIII OF 1859, s. 2, 1 Weir 676.

Employed by servant—*See* BEN. ACT VII OF 1878, s. 61, 9 C. 847=12 C.L.R. 451.

Cooly Sirdar.

Or recruiter whether an artificer, workman or labourer—*See* ACT XIII OF 1869, s. 2, 6 C. L.J. 180=6 Cr.L.J. 191.

Co-owners.

See CRIMINAL TRESPASS, 3 M. 178=1 Weir 286.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 2 C.L.R. 62.

See PENAL CODE, ss. 99, 141, 425, 2 C.L. R. 62.

Trespass by, what amounts to—*See* PENAL CODE, s. 297, 8 A.L.J. 927=12 Ind. Cas. 300= 12 Cr.L J. 532.

Co-prisoner.

See CO-ACCUSED.

See CONFESSION—CONFESSIONS BY CO-ACCUSED.

See EVIDENCE ACT, 1872, s. 30.

Copy.

(1)—*Statements of witnesses to the police—Grant of copies to accused.*—The granting of copies, to the accused, of statements made by witnesses before the police, is a matter in the

Copy—*continued.*

discretion of the Magistrate. QUEEN-EMPRESS v. SHIDLINGAPPA, **Rat. Un. Cr. C. 874=Cr. Rg. 51 of 1896.**

Occurrence reports—"Public documents"—Evidence Act, s. 74—Right of accused to—Before trial—*See* ACCUSED PERSON, 20 M. 189=2 Weir 763, F.B.=7 M.L.J. 167=2 Weir 120=2 Weir 142=2 Weir 144.

Copies of records of criminal trial—Stamp —*See* ACT X OF 1862, s. 14, 4 M.H.C. App. 57.

Copies of order passed by, and depositions made before, Presidency Magistrates, right to —*See* ACT IV OF 1877, s. 170, 8 C. 166=10 C. L.R. 190.

Exclusion of time in obtaining, of judgment —*See* ACT XV OF 1877, s. 12, 10 C. 642.

Appeal by persons in jail—Time taken in obtaining copies of judgment—*See* ACT XV OF 1877, s. 12, sch. II, art. 154, 9 M. 258=1 Weir 789.

See ACT XVIII OF 1891, ss. 2 and 4, 4 C.W. N. 433, F.B.

See APPEAL—GENERAL, U.B.R. 1892—1896, Vol. I, 5 Bom. L.R. 704.

Delay in furnishing—Duty of Magistrate to prevent—Special arrangements—*See* APPEAL —GENERAL, U.B.R. 1892—1896, Vol. I, 129.

Right of counsel to refer to certified copies of evidence at hearing of appeal—*See* APPEAL —GENERAL, 11 O.C. 360=9 Cr. L.J. 55.

See CRIM. PRO. CODE, 1898, ss. 161 and 162, 36 C. 560=2 Ind. Cas. 591.

Right of accused to get—of statements made to the Police—*See* CRIM. PRO. CODE, 1898, s. 162, 26 M.L.J. 182=15 Cr. L.J. 289=23 Ind. Cas. 497=1914 M.W.N. 484.

See CRIM. PRO. CODE, 1898, ss. 162 and 164, 30 M. 466=17 M.L.J. 471=6 Cr. L.J. 346=3 M.L.T. 14.

See CRIM. PRO. CODE, 1898, ss. 526 and 548, S.C. 141, Oudh.

See DISCHARGE OF ACCUSED, Rat. Un. Cr. C. 305=Cr. Rg. 54 of 1886.

Forgery—True—of false entry in public register—*See* FORGERY, Rat. Un. Cr. C. 583= Cr. Rg. 42 of 1891.

Forgery of — of document—*See* FORGERY, W.R F.B. 71=Marsh 270=2 Hay 236.

Of document proved in foreign Court if admissible—*See* HABEAS CORPUS, 15 C.W.N. 1053=14 C.L.J. 375=12 Cr. L.J. 505=39 C. 164=12 Ind. Cas. 273.

See INSPECTION OF DOCUMENTS, S C. 189, Oudh.

Secreting a document—Panchnama—Rough copy destroyed owing to obliterations—New copy made and duly signed—Destruction of rough copy is no offence—*See* PENAL CODE, s. 204, 14 Bom. L.R. 1163=1 Bom. Cr. C. 234=13 Cr. L.J. 912=17 Ind. Cas. 1008.

Copy—*concluded.*

Criminal cases — Judgments, copies of — Judgments for prisoners—*See* PRACTICE AND PROCEDURE, 9 W.R. Cr. 19.

Right of—Of documents—*See* PRISONER, 6 B.L.R. 59=14 W.R. Cr. 77.

Right of convicted person—Of proceedings—*See* REVISION—SENTENCE, 11 Cr. L.J. 17=4 Ind. Cas. 611=9 P.R. 1909, Cr.=30 P.W.R. 1909, Cr.

Copy of Judgment.

See CRIM. PRO. CODE, 1898, ss. 548, 367, 531, Rat. Un. Cr. C. 73.

See JUDGMENT, Rat. Un. Cr. C. 82.

Copyright.

See ACT XX OF 1847.

See ACT XXV OF 1867.

Coroner.

See ACT IV OF 1871.

(1) *Power of Coroner of Calcutta—Power to commit to prison.*—The Coroner of Calcutta has no power to commit any person to prison pending an inquest. In cases where he has authority to commit, a commitment to the officers deputed to receive prisoners by the statute in force is valid, and it is not necessary that the commitment should be directed to the Sheriff. *In re* TAYLOR, **2 Ind. Jur. N.S. 101.**

(2)—*Crim. Pro. Code* (1882), s. 174—*Bom. District Police Act,* 1867—*Police Constable—Coroner.*—There is no law to authorize a police constable to take upon himself any part of the duties of the Village Patel as a Coroner under the Bombay District Police Act, 1867. QUEEN-EMPRESS v. SAHADU LAKSHMAN, **Rat. Un. Cr. C. 771=Cr. R. 35 of 1895.**

Coroner's Act.

See ACT IV OF 1871.

Coroner's Inquest.

See INQUEST.

See BOM. ACT VIII OF 1867, s. 11, Rat. Un. Cr. C. 740=Cr. Rg. 8 of 1895.

Corporation.

See MUNICIPAL CORPORATION.

Corpse.

Carrying of corpse on a highway—*See* CRIM. PRO. CODE, 1898, s. 147, 7 M. 49=2 Weir 115.

See CRIM. PRO. CODE, 1898, s. 147, 6 M.L. J. 193.

Cremation of—in a burning ground used immemorially for the purpose,, against an order by the Collector prohibiting such cremation—*See* PENAL CODE, ss. 188 and 290, 19 M. 464=6 M.L.J. 181=1 Weir 247=2 Weir 65.

Corpus Delicti.

(1)—*Term* corpus delicti *explained.*—The term *corpus delicti* is an invention of the jurists of the middle ages and was used by them to denote the whole of the facts, which constituted the crime of killing, when the body of the killed had been found. A mixture of German and Roman views led to the proposition, which has found its way into the English Penal Law, that the proof of the aggregate of facts constituting the offence failed, when the body was not found. The expression was then extended to other offences and was used to denote that the qualities necessary to bring a fact within the operation of a rule of Criminal law had been shown to attach to that fact. The jurists of the middle ages, however, never conceived the dead body, in murder, or the object stolen, in theft, to be that "*corpus.*" The expression itself has many vices, but in the sense in which its authors used it is at least intelligible. HIGH COURT PROCEEDINGS, 18th FEB. 1873, **1 Weir 427=7 M.H.C. App. 19.**

(2)—*Murder cases--Proof.*—Before an accused person can be properly convicted of murder, it must be proved beyond reasonable doubt that murder has been perpetrated and that veritable *corpus delicti* exists. GHULAM HUSSAIN v. EMPRESS, **6 P.R. 1900, Cr. = P.L.R. 1900, 54, Cr.**

(3)—*Indirect proof.*—It is not a correct exposition of the English or Indian law of evidence, as it now exists, that the *corpus delicti* may not be established by indirect or presumptive proof and that such proof is admissible only to fix the criminal. NATHA SINGH v. EMPRESS, **44 P.R. 1888, Cr.**

(4)—*Murder—To obtain property.*—In this case it was held that the *corpus delicti* was established, and that the confession of the accused was corroborated. Hence the sentence of death was confirmed. THE CROWN v. KOORBAN KHAN, **25 P.R. 1866, Cr.**

See ACCOMPLICE — ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, Rat. Un. Cr. C. 102=Cr. Rg. 17-1-1876.

See MURDER, 3 A. 383, 11 C. 635, A.W.N. 1881, 112, 15 P.R. 1890, Cr.

See PENAL CODE, s. 201, 1 L.B.R. 316.

Correction.

Of false entries to conceal attempted misappropriation—*See* PENAL CODE, s. 465, Rat. Un. Cr. Cas. 595=Cr. Rg. 15 of 1892.

Corroboration.

See ACCOMPLICE—ACCOMPLICE EVIDENCE —NECESSITY FOR CORROBORATION.

(1)—*Evidence of probability—Corroboration.*—Internal evidence of probability may be good corroborative evidence of a confession. CROWN v. BAHADOOR, **36 P.R. 1867, Cr.**

Gambling—Evidence of informer—Necessity for—*See* BUR. ACT I OF 1899, s. 11, **U.B.R. 1897—1901, Vol. I, 218.**

Corroboration—*concluded.*

Accomplice evidence — Necessary — *See* CHARGE TO JURY—MISDIRECTION, 6 W.R. Cr. 17.

Material corroboration, meaning of—Motive whether sufficient corroboration—*See* CRIM. PRO. CODE, 1898, s. 364=15 C.L.J. 323=14 Ind. Cas. 667=13 Cr. L.J. 283.

See EVIDENCE ACT, 1872, s. 133, L.B.R. 1872—1892, 322.

Testimony of single witness—Comparison of signatures, one kind of—*See* FALSE EVIDENCE, 5 W.R. Cr. 98.

See MURDER, 6 M.L.T. 123.

Corroborative Evidence.

See EVIDENCE—GENERAL, 13 W.R. Cr. 22.

When to be let in—*See* EVIDENCE ACT, 1872, s. 157, 5 C.W.N. 16.

Co-sharers.

See CRIM. PRO. CODE, 1898, s. 145, 15 C.L. J. 184.

Possession of—Applicability of s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 145, 14 Cr. L J. 269=19 Ind. Cas. 541=17 C.W.N. 944=40 C. 982.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 C.W.N. 426.

See PENAL CODE, s. 155, 8 C.W.N. 908.

Co-sharer building on the common land without permission of the other co-sharer—Permission asked for and refused—Whether criminal trespass—*See* PENAL CODE, s. 447, 12 A.L.J. 790=36 A. 474=15 Cr. L.J. 584=25 Ind. Cas. 336.

Costs.

See ADJOURNMENT.

See CRIM. PRO. CODE (1898), s. 344.

(1)—*Suit to recover expenses incurred in prosecuting the defendant.*—A suit to recover as damages the expenses incurred in prosecuting the defendant will not lie in a Civil Court. This has no analogy to the case of a defendant in a malicious prosecution bringing a suit against the prosecutor and obtaining as damages the expenses he was put to in defending himself on the criminal trial. FAZAL IMAM v. FAZUL RASUL, **12 A. 166=A.W.N. 1890, 19.** [*F.*, 32 C. 429, 15 C. P.L R. 129.]

(2)—*Adjournment of criminal trial—Costs.*—The provisions of s. 344, Crim. Pro. Code, 1898, justify criminal Courts in allowing the costs of an adjournment to the party in damage by such adjournment. CROWN v. SHULDHAM **20 P.R. 1904, Cr.** [*Dist.*, 6 P.R. 1906, Cr.]

(3)—*Application for adjournment — Day's costs.*—A Court of criminal appeal cannot, on granting a motion for an adjournment made by the Public Prosecutor, order that the applicant should pay the costs of the day incurred by the appellant. KING-EMPEROR v. CHHABRAJ SINGH, **A.W.N. 1902, 59.** [*D.*, 28 A. 207=2 A.L.J. 831=A.W.N. 1905, 256, A.W.N. 1905, 257, *Note.*]

Costs—*continued.*

(4)—*General order to pay costs in addition to fine bad—Process fees and Court fees to be paid in addition to fine—Any other compensation to be paid out of fine imposed.*—A general order to pay costs in addition to fine is bad. The Court, on convicting an accused, can order him to pay in addition to the fine, the Court fee paid on the complaint and the process fees paid by the complainant. Any other compensation to the complainant can be ordered to be paid only out of the fine imposed. QUEEN EMPRESS v. PO THAW, **L.B.R. 1872-1892, 616.**

Order of appellate Court awarding further—if fine—*See* ACT VII OF 1870, s. 31, 22 M. 153 =1 Weir 724.

See ACT VII OF 1870, s. 31, U.B.R. 1892—1896, Vol. I, 7.

Magistrate bound to award complainant the cost of the fee paid on the complaint—*See* ACT VII OF 1870, s. 31, L.B.R. 1872—1892, 595.

Incurred for prosecution—*See* ACT I OF 1871, ss. 21 and 23, L.B.R. 1872—1892, 515.

In case transferred to High Court—*See* ACT X OF 1875, s. 147, 15 B.L.R. App. 14.

See ACT XIII OF 1880, s. 18, 4 L.B.R. 12= 6 Cr. L.J. 124.

Appeal— Costs against Crown in criminal appeal—*See* APPEAL TO PRIVY COUNCIL, 18 C.W.N. 98.

Expense incurred in prosecution—*See* COMPENSATION— TO COMPLAINANT AND HIS RELATIVES, 5 L.B.R. 50=2 Ind. Cas. 542.

Costs against person obstructing Receiver—*See* CONTEMPT OF COURT, 15 Cr. L.J. 65=22 Ind. Cas. 417.

See CONTEMPT OF COURT, 15 C.W.N. 771.

See CRIM. PRO. CODE, 1898, ss. 96, 105, 165, 13 C.W.N. 458=9 C.L.J. 298=36 C. 433=5 M. L.T. 367.

See CRIM. PRO. CODE, 1898, s. 145, 8 C.W. N. 178.

Order under s. 145, Crim. Pro. Code—Costs—Failure to assess—Right of legal representative of successful party to obtain costs—Successor in office of the Magistrate—Competency to pass order—*See* CRIM. PRO. CODE, 1898, s. 145, 16 M.L.T. 248=1914 M.W.N. 790=27 M.L.J. 613=15 Cr. L.J. 676=25 Ind. Cas. 1004.

Jurisdiction of Magistrate to award damages and costs in dispute about land—*See* CRIM. PRO. CODE, 1898, ss. 145, 148, 32 C. 602=9 C.W.N. 862=2 Cr. L.J. 552.

Order directing payment of the costs of the other side without specifying the amount—Amount assessed in a separate order—Legality —*See* CRIM. PRO. CODE, 1898, ss. 145, 148, 14 M.L.T. 195=1913 M.W.N. 771=21 Ind. Cas. 170=14 Cr. L.J. 570.

Proceedings under s. 145, Crim. Pro. Code—Order allowing withdrawal—Award of costs—*See* CRIM. PRO. CODE, 1898, ss. 145, 148, 9 M.L.T. 324=9 Ind. Cas. 289=12 Cr. L.J. 491.

Costs—*concluded.*

Under s. 148, Crim. Pro. Code, when to be assessed—High Court's power of revision as to the amount of costs—*See* CRIM. PRO. CODE, 1898, s. 148, 15 C.W.N. 811=11 Ind. Cas. 144 =12 Cr. L.J. 376.

Order for, and assessment thereof without notice to party affected by it—*See* CRIM. PRO. CODE, 1898, s. 148, 28 C. 302=5 C.W.N. 291.

Jurisdiction of Magistrate to award costs not provided for in s. 148 (3), Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 148 (3), 13 Cr. L. J. 297=14 Ind. Cas. 761.

Penalty for document not properly stamped—Inclusion of penalty in costs—*See* CRIM. PRO. CODE, 1898. s. 148, cl. (3), 13 M.L T. 224= 19 Ind. Cas. 306=14 Cr. L.J. 210.

See CRIM. PRO. CODE, 1898, s. 148 (3), 29 M. 373=4 Cr. L.J. 232, 9 C.W.N. 887=1 C.L.J. 331=2 Cr. L.J. 408.

See CRIM. PRO. CODE, 1898, s. 423, 29 M. 188=3 Cr. L.J. 460.

And process-fees awardable under Crim. Pro. Code, s. 545—*See* CRIM. PRO. CODE, 1898, s. 545, L.B.R. 1872—1892, 409.

See CRIM. PRO. CODE, 1898, s. 545 (2), 4 Bom. L R. 877.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 22 C. 384, 21 C. 609, 22 C. 387, 23 C. 37, 10 C.W.N. 1030=4 Cr. L.J. 171, 13 O.C. 66.

See LIBEL, 14 C.W.N. 713=37 C. 760=6 Ind. Cas. 81.

Of application for maintenance—*See* MAINTENANCE, 11 C.P.L.R. Cr. 14.

See MALICIOUS PROSECUTION, 1 Agra 38, Cr.

Proceeding under s. 195, Crim. Pro. Code—Costs—*See* PENAL CODE, ss. 471, 511, 13 Ind. Cas. 99.

S. 14, Merchandise Marks Act—Costs of successful party—Costs of appeal—*See* PENAL CODE, s. 486, 16 Bom. L.R. 78=2 Bom. Cr. C. 177=15 Cr. L.J. 522=24 Ind. Cas. 834.

See SANCTION TO PROSECUTE—MISCELLANEOUS CASES, 2 Weir 196.

Cotton Frauds.

See BOM. ACT IX OF 1863.

See BOM. ACT VII OF 1878.

See BOM. REG. III OF 1829.

Councillor.

See MUNICIPAL COUNCILLOR.

Council of Elders.

Trial of person under s. 59, Frontier Crimes Regulation, without the assistance of—Course of appeal—*See* APPEAL—GENERAL, 19 P.R. 1910, Cr.=6 Ind. Cas. 959=11 Cr.L.J. 426= 103 P.L.R. 1910=34 P.W.R. 1910, Cr.

Counsel.

See LEGAL PRACTITIONERS—COUNSEL.

Counter Case.

(1)—*Deposition of accused as witness in a counter case—Admissibility.*—The deposition of witnesses in a case of rioting may be used as evidence against them in their trial on a counter charge of rioting. MOHER SHEIKH v. QUEEN-EMPRESS, **21 C. 392.** (3 M. 271, 12 B. 440, *F.*) [*F.*, 31 C. 715=8 C.W.N. 910.]

See COMPOUNDING OFFENCE, Rat. Un. Cr. C. 331=Cr. Rg. 22 of 1887.

See CRIM. PRO. CODE, 1898, ss. 239, 537, 20 C. 537.

See RIOTING, 1 C.W.N. 426.

Counter Charge.

See TRANSFER OF CRIMINAL CASES—GROUNDS FOR TRANSFER-NOTICE, 30 M. 233 =2 M.L.T. 89=5 Cr. L.J. 290.

Counterfeiting.

Counterfeit — Meaning of — Essentials of offence of—*See* PENAL CODE, s. 489 D, 10 M.L.T. 108=11 Ind. Cas. 241=21 M.L.J. 766 =12 Cr. L.J. 377.

Counterfeiting Coin.

See COIN.

See KING'S COIN (COUNTERFEITING OF).

See PENAL CODE, ss. 230—251.

(1)—*Penal Code, s. 232—Counterfeiting King's coin, what amounts to.*—Where the accused had been in the habit of receiving what are called "*kundedar*" rupees, and there was nothing to show that any material part of the rupee had been removed, and all that the accused could have done was to remove the "*kunda*" and work up the face of the coin where the "*kunda*" had been, *held*, that the accused was not guilty of an offence under s. 232, Penal Code. KING-EMPEROR v. MUHAMMAD HUSAIN, **23 A. 420 =A W.N. 1901, 116**.

(2)—*Counterfeit coins, what are.*— Copper coins issued from the mints of the Nawab of Loharn with a certain stamp impressed upon them, the stamp not resembling any legal coin, were held not to be counterfeit coins, as it was generally believed that the Nawab had authority to establish the mints and issue the copper sent to him by merchants as coins. PREMSOOKH DASS v. CROWN, **38 P.R. 1870, Cr.**

(3)—*Penal Code, s. 232—Offence under.*—To constitute the offence described in s. 232, I.P.C., there must be an intention that the coins made will be used as Queen's coins, or a knowledge that they are likely to be used as such. A deception practised for show merely, and not for wrongful loss or gain, is not an offence under the Penal Code. SHUMSOODEEN v. CROWN, **26 P.R. 1868, Cr.**

(4)—*Penal Code, ss. 232, 235, offence under.*—In order to constitute offences under ss. 232 and 235, I.P.C., it is not necessary to prove that the accused intended that the specious coins should go into circulation and be used as

Counterfeiting Coin—*continued.*

money. It is sufficient that there should be the intention to practise deception by means of the imitation. PIRBHU v. EMPRESS, **4 P.R. 1899, Cr.**

(5)—*Penal Code*, s. 239—*Scope.*—The offence for which punishment is provided by s. 239 is not the offence committed by the coiner. The words "which at the time when he became possessed of it he knew to be counterfeit" point to a person other than the coiner, that is to say, the person who procures or obtains or receives counterfeit coin. It is against such a person that the section is directed. QUEEN v. SHEO BUX, **3 N.W.P. 150.** [*F.*, P.L.R. 1900. 14, Cr.]

(6)—*Penal Code*, s. 241—*Gist of the offence.*—The gist of an offence under s. 241 is that a person should deliver to another person as genuine, or attempt to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession. QUEEN v. SOORAT, **4 N.W.P. 62.**

(7)—*Penal Code*, ss. 230, 235—*Counterfeiting "coin"—Imitations of coins.*—Charges of counterfeiting and possession and manufacture of counterfeit coins are not sustainable in respect of imitations of coins out of currency. EMPRESS v. BISHESHAR, **A.W.N. 1882, 100.**

(8)—*Penal Code*, s. 239—*Delivery of counterfeit coins—Evidence.*—Where a person is charged with having fraudulently delivered to another counterfeit coins, evidence of previous attempts to dispose of such coins is relevant. QUEEN-EMPRESS v. NUR MAHOMED, **8 B. 223.** [*R.*, 16 B. 414.]

(9)—*Penal Code*, ss. 230, 231—*Money—Akbar's coin.*—To counterfeit a coin of Emperor *Akbar's* time is not an offence under ss. 230, 231 of the Penal Code, since the test of "money" is the possibility of its being used as a current medium of exchange in the market. REG. v. BAPU YADAV, **11 B.H.C. 172.** [*F.*, 29 A. 141=4 A.L.J. 43=A.W.N. 1906, 308=4 Cr. L.J. 453.]

(10)—*Penal Code*, ss. 230, 243—*Counterfeit coins—Murshidabad rupees—Queen's coins*—Murshidabad rupees, which have been declared to be current coins by Reg. XXXV of 1793, are "Queen's coins" within the meaning of s. 230, I.P.C., and consequently the possession of counterfeit Murshidabad rupees with the knowledge that they are counterfeit is an offence under s. 243, I.P.C. EMPEROR v. GOPAL, **A.W.N. 1903, 115** [*F.*, 28 A. 62=2 A.L.J. 498=A.W.N. 1905, 84=2 Cr. L.J. 395.]

(11)—*Penal Code*, ss. 240, 243—*Previous conviction for possession of counterfeit coins—Subsequent trial for delivery of the same, validity of.*—A previous conviction for being in possession of counterfeit Queen's coins does not bar a subsequent trial for delivering them to another with a view to their being changed for good money. PROSONNO KUMAR DAS v. EMPEROR, **8 C.W.N. 717**

Counterfeiting Coin—*continued.*

(12)—*Penal Code*, s. 256—*Possession of counterfeit coins and implements for making them—Evidence.*—An accused person was convicted of being in possession of implements for counterfeiting the Queen's coins and of the counterfeit coins themselves, on the evidence of three persons. The first of them had made contradictory statements, the second was on terms of enmity with the accused, and the third, a police officer, was uncorroborated in his testimony. *Held*, reversing his conviction that the case was not free from reasonable doubt and that the accused was entitled to the benefit of that doubt. *In re* KUMMARA GURUVAYYA, **3 M.L.T. 140=7 Cr. L.J. 132.**

(13)—*Penal Code*, s. 231—*Counterfeit coin—Essentials.*—The thing charged to be counterfeit coin must have some such resemblance to a piece of the genuine coin as to show that it was intended to resemble and pass for it, though the imitation may be imperfect or the process incomplete. HIGH COURT PROCEEDINGS, 17TH NOV. 1863, **1 Weir 219.**

(14)—*Queen's coin—Proof of fabrication—Guilty knowledge—Evidence.*—Where the charge is one of counterfeiting Queen's coin, direct proof of fabrication is not necessary to render the person punishable under the sections of the Penal Code with reference to the uttering of false coin. All that is required is a guilty knowledge of the spuriousness of the coin at the time of receiving possession of such coin, or the absence of such guilty knowledge at first. Such guilty knowledge may be proved either directly (which seldom is the case) or indirectly from surrounding circumstances. PARUSHULLAH MUNDUL v. KHEROO MUNDUL, **23 W.R. Cr. 4.**

(15)—*Penal Code*, ss. 240 *and* 241—*Evidence of uttering counterfeit coin.*—To constitute an offence under ss. 240 and 241, Penal Code, there must be evidence that the accused knew the coins to be counterfeit. EMPRESS v. HASAN-SHAH, **5 C.P.L.R. Cr. 5.**

(16)—*Coining Rupees, etc.—Counterfeiting.*—Coining *Akbaree*, *Shah Jehanee*, *Kasi Sikka* and *Kora Poonjee* Rupees and *Mohurs*, found to have been used in the Jubbalpore District as ornaments and sometimes proffered and received in barter, but, in the latter case, not used as a known and accepted standard of value, each individual piece having its own particular value and being exchangeable for money as an article of trade rather than in itself of the nature of money, was held not to be an offence. POLICE v. DURGAHI, **Colm. Dig. Cr. 24 of 1875.**

(17)—*Possession of counterfeit coins, Penal Code*, s. 239.—An accused found in possession of coins, counterfeit of Indore and Bhopal coins, was held to be rightly convicted under s. 239, Penal Code, the coins being used as money in the Hoshangabad District. POLICE v. MUNSOOKH, **Colm. Dig. Cr. 25 of 1875.**

(18)—*Imitation of obsolete coins.*—An accused, who, in imitation of obsolete coins "not now used as money," supplied the public with ornaments found to suit the prevailing fashion

Counterfeiting Coin—*concluded.*

using good silver and gold for the purpose, and who carried on an apparently honest business cannot be convicted under s. 239, Penal Code. POLICE v. SHAHAMAN, **Colm. Dig. Cr. 34 of 1876.**

(19)—*Penal Code* (*Act* XLV *of* 1860), *s.* 243—*Possession of counterfeit coin.*—When there is nothing to show that a person charged under s. 243 of Indian Penal Code was in possession of counterfeit coins fraudulently or with intent that fraud may be committed, or that he knew, when he became possessed of them, that they were counterfeit, the requisites of s. 243 are not fulfilled. ALLADAD v. THE EMPEROR OF INDIA, **69 P.L R. 1902 = 7 P.R. 1902, Cr.**

(20)—*Counterfeiting Queen's coin—Passing of counterfeit coin and possession of instruments for counterfeiting—Penal Code, ss.* 235 *and* 240.—Where a person, who was passing counterfeit Queen's coins was, on being chased, found in possession of instruments or metals used for counterfeiting coin, *held*, that he should be convicted under s. 235, and not under s. 240, I.P.C., as the latter section did not apply to the actual coins. AHMAD SHAH v. QUEEN-EMPRESS, **10 P.R. 1892, Cr.**

See ACT XIX OF 1872, 5 N.W.P. 187.

See PENAL CODE, ss. 28, 231, 239, 4 A.L.J. 776 = A.W.N. 1907, 289 = 3 M.L.T. 56 = 30 A. 93.

Separate convictions for possession of and uttering—*See* PENAL CODE, ss. 71, 240, 243, Rat. Un. Cr. C. 202.

See PENAL CODE, ss. 230, 235, 1 P.R. 1903, Cr.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 111 P.L.R. 1904.

Counterfeiting Government Stamp.

Counterfeiting Government Stamp — Penal Code, s 260.—The passing off of a one-anna stamp as a one-rupee stamp is not counterfeiting a one-rupee stamp. QUEEN v. SHUROOP CHUNDER DASS, **2 W.R. Cr. 65.**

Counterfeiting Trade-mark.

See PENAL CODE, ss. 478—486.

See TRADE MARK.

(1)—*Penal Code, s.* 486—*Possession of goods with counterfeit trade-mark—Jurisdiction of Courts—Crim. Pro.Code* (1882), *s.* 182.—Before the possessions of goods with a counterfeit trade-mark can be held to constitute an offence under s. 486, Penal Code, it must be shown that such possession was for sale or any purpose of trade or manufacture. But there is nothing in the law to show that the sale, for the purpose of which the accused has the goods in his possession, must be intended to take place within the jurisdiction of the Court in which the complaint is lodged. Possession within such jurisdiction of an article bearing a counterfeit trade mark with the intention of sale, irrespective of the locality of the intended sale, is sufficient. The provisions of s. 182, Crim. Pro. Code, go to show that the policy of

Counterfeiting Trade-mark—*continued.*

the law is to authorise more courts than one to try an offence of this kind. YUSAF MAHOMED ABARUTH v. BANSIDHUR SIRAOGI, **25 C. 639 = 2 C.W.N. 450.**

(2)—*Penal Code, ss.* 482, 486—*Counterfeit trade-mark, sale of goods marked with.*—The accused, a dealer in piece goods, purchased goods in the market bearing the trade mark labels of the complainant (a firm) attached thereto. He sold the same in the condition in which he bought them, without removing those labels and was convicted under s. 486 of the Penal Code for selling the goods marked with a counterfeit trade mark. *Held*, by the High Court on revision, that no offence was committed either under s. 486 or under s. 482 of the Penal Code. MATI LAL PREMSUK v. KANHAI LAL DASS, **32 C. 969 = 3 Cr. L.J. 106.**

See ACT IV OF 1889, s. 15, 22 M. 488 = 1 Weir 821 = 1 Weir 558.

See PENAL CODE, s. 486, 9 Bom. L.R. 732, = 6 Cr. L.J. 75.

Court.

See CONSULAR COURT.

See CRIMINAL COURT.

(1)—"*Court*" *as defined in Evidence Act—Scope—Judicial enquiry, what amounts to.*—The definition of "Court" in the Evidence Act is framed only for the purposes of the Act itself, and should not be extended beyond its legitimate scope. Special laws must be confined in their operation to their special subjects. An exception to the rule must not be permitted to absorb the rule. An enquiry is judicial if the object of it is to determine a jural relation between one person and another, or a group of persons, or between him and the community generally; even a Judge, acting without such an object in view, is not acting judicially. QUEEN-EMPRESS v. TULJA, **12 B. 36.**

(2)—"*Court*" *in s.* 30 *of the Evidence Act, meaning of.*—The word "Court" in the above section means and includes, in a trial by jury, both Judge and jury. EMPRESS v. ASHOOTOSH CHUCKERBUTTY, **4 C. 483 = 3 C.L.R. 270, F.B. = 1 Shome L.R. Cr. 79.** [*F.*, Rat. Un. Cr. C. 452.]

(3)—*Civ. Pro. Code* (1877), *s.* 651—*Revenue Court, whether "a Court of Civil Judicature."*—The term "any Court of Civil Judicature" in s. 651, is used for the purpose of including all Courts of Civil, in contradistinction to Courts of Criminal Procedure. A Revenue Court being, therefore, a Court of Civil Judicature, the provisions of s. 651 are applicable to a person, who escapes from custody under the warrant of a Revenue Court. EMPRESS OF INDIA v. HARAKH NATH SINGH, **4 A. 27 = A.W.N. 1881, 121.**

(4)—"*Court*"—*Meaning of—Place of trial of criminal case—Open Court—Pronouncing judgment in private house—Crim. Pro. Code* (1861), *s.* 279.—Where a Magistrate conducted and closed a trial in the established court-house, but

Court—*continued.*

could not, by reason of illness, pronounce judgment, which he did at his private house, *held* that the procedure, being exceptional and in no way prejudicial to the prisoner, could not be quashed as illegal under s. 279 of the Crim. Pro. Code, 1861. GOVERNMENT v. HOLASEE SINGH, **1 Agra, 17.**

Importing its own knowledge into case—*See* ACCUSED PERSON, 6 O.C. 204.

Sub-Registrar, whether a "Court"—*See* ACT III OF 1877, s. 34, 11 M. 3.

Sub-Registrar acting under s. 41, Registration Act, whether a "Court"—*See* ACT III OF 1877, s. 41, 10 M. 154=2 Weir 170=11 Ind. Jur. 140.

Registrar whether a "Court" within the meaning of s. 195, Crim. Pro. Code, 1882—*See* ACT III OF 1877, ss. 72, 73, 74 and 75, 2 M.L. J. 64, F.B.=15 M. 138.

Sub-Registrar, if a Court—*See* ACT III OF 1877, s. 84, 22 W.R. Cr. 10=13 B.L.R. Ap. 40.

Collector acting under the Land Acquisition Act, whether a "Court"—Power of Collector to administer oath—*See* ACT I OF 1894, s. 53, 27 C. 820.

Meaning of—*See* BEN. ACT VIII of 1885, ss. 69 and 70, 17 C. 872.

Judge *de facto*, exercise of power by, if may be collaterally attacked—*See* CONSPIRACY, 16 C.W.N. 1105=16 Ind. Cas. 257.

See CRIM. PRO. CODE, 1898, ss. 96, 105, 165, 13 C.W.N. 458=9 C.L.J. 298=36 C. 433=5 M. L.T. 367.

Power of Court to invent rules of procedure—*See* CRIM. PRO. CODE, 1898, s. 145, 16 M.L.T. 248=1914 M.W.N. 790=27 M.L.J. 613=15 Cr. L.J. 676=25 Ind. Cas. 1004.

Assignee not a—*See* CRIM. PRO. CODE, 1898, s. 195, 11 M.L.T. 391=14 Ind. Cas. 593=13 Cr. L.J. 241=1912 M.W.N. 536.

Registrar acting under s. 73, Act III of 1877, whether a "Court"—*See* CRIM. PRO. CODE, 1898, s. 195, 15 A. 141=A.W.N. 1883, 59.

See CRIM. PRO. CODE, 1898, s. 195, 9 C.W. N. 127, 2 M.L.J. 286.

See CRIM. PRO. CODE, 1898, ss. 195, 476, 34 C. 551=5 C.L.J. 508=11 C.W.N. 568=5 Cr.L. J. 398=2 M.L.T. 298.

Collector superior to Tahsildar—Sanction to prosecute—Mutation proceedings—*See* CRIM. PRO. CODE, 1898, s. 195 (6), 12 Cr. L.J. 109 =9 Ind.Cas. 635.

Income-tax Collector whether a "Court" —Sanction to prosecute—*See* CRIM. PRO. CODE, 1898, s. 195, cls. (*b*) and (*c*), 16 Bom. L. R. 446=2 Bom. Cr. C. 199=38 B. 642=15 Cr. L.J. 581=25 Ind. Cas. 333, F.B.

Revenue Courts whether Civil Courts—*See* CRIM. PRO. CODE, 1898, ss. 198, 195, 2 A. 533, F.B.

Effect of using the term—*See* CRIM. PRO. CODE, 1898, ss. 250, 476, 12 Cr. L.J. 521=12 Ind. Cas. 289=4 Bur. L.T. 246.

Court—*concluded.*

Inherent power of Court to replace lost records—*See* CRIM. PRO. CODE, 1898, ss. 366, 537, 14 M.L.T. 317=25 M.L.J. 445=1913 M.W.N. 862=21 Ind. Cas. 467=14 Cr. L.J. 595.

District Registrar whether a 'Court'—*See* CRIM. PRO. CODE, 1898, s. 476, 16 Bom. L.R. 946=2 Bom. Cr. C. 264.

See CRIM. PRO. CODE, 1898, s. 476, 6 P.R. 1909 Cr.=104 P.L.R. 1909=10 Cr. L.J. 158= 2 Ind. Cas. 812, 9 A.L.J. 156=13 Cr. L.J. 190 =13 Ind. Cas. 1006.

See CRIM. PRO. CODE, 1898, s. 487, Colm. Dig. Cr. 27 of 1875.

Criminal Court reviewing its own decisions—Practice—*See* CRIM. PRO. CODE, 1898, s. 517, 12 Cr. L.J. 473=12 Ind. Cas. 81.

Discrepancies between the statements of witnesses before the police and—*See* EVIDENCE ACT, 1872. ss. 114, 133, 36 P.W.R. 1910. Cr.= 8 Ind. Cas. 193=11 Cr. L.J. 580.

Power of Magistrate to try case after making over charge to successor—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 14 Cr. L. J. 239=19 Ind. Cas. 335.

Excise Collector, whether a Court—*See* PERJURY, 10 C.W.N. 220=3 Cr. L.J. 196.

See REVISION—GENERAL PRINCIPLES, 3 S.L.R. 66, Cr.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC. 5 C. L J. 176=5 Cr. L.J. 186, 11 C.W.N. 909 =6 Cr. L.J. 160, 11 M. 375=2 Weir 163.

See SANCTION TO PROSECUTE — CONDITIONS REQUISITE FOR GRANT OF SANCTION ETC., 22 B. 936, 11 O.C. 358=9 Cr. L J. 54, 4 M.L.J. 189.

Court, duty of.

Duty of Court—Exposition of law.—The duty of a Court is not to make the law reasonable, but to expound it as it stands, according to the real sense of the words. RUSTAM v. KING-EMPEROR, **7 A.L.J. 468=6 Ind Cas. 101.**

Court Fees.

See ACT VII OF 1870.

(1)—*Crim. Pro. Code* (1861), ss. 168, 171—*Complaint by Civil Court.*—Under s. 168, Crim. Pro. Code, the sanction of the Civil Court is all that is necessary, and under s. 171, Crim. Pro. Code, on the Munsif sending a case to the Magistrate, he is required to proceed thereupon according to law. The Munsif is not required to prefer a complaint on stamped paper. REG. v. SAJJAN *valad* VITHU, **5 B H.C. Cr. 104.**

(2)—*Court-fee on copy of judgment appealed against—Warrant case—Crim. Pro. Code* (1882), s. 371 —By cl. (3) of Government Notification, No. 532 of 26th January, 1886, the Court fee is remitted on the copy of a judgment, in an appeal from a conviction in a warrant case, when given under s. 371, Crim. Pro. Code. QUEEN-EMPRESS v. RAGBA, **Rat. Un. Cr. C. 364= Cr. Rg. 9 of 1888.**

Court Fees—*concluded.*

(3)—*Copies of summary of evidence—Stamp duty.*—Copies of summary of evidence and grounds of conviction can only be furnished on stamp paper. The exemption by the order of the Government of India, dated 11th September, 1870, refers only to final sentences and orders which alone it is necessary for a party to present with his petition of appeal. HIGH COURT PROCEEDINGS, 5th Jan. 1871, **6 M.H. C. App. 12.**

See ACT XIII OF 1880, s. 18, 4 L.B.R. 12=6 Cr. L.J. 124.

See COGNISABLE OFFENCE, Rat. Un. Cr. C. 70.

Warrant case—Court-fees for summoning witnesses—*See* CRIM. PRO. CODE, 1898, ss. 245 and 252, 2 Weir 323.

Court Fees Act.

See ACT VII OF 1870.

Court Fees, Presidency Magistrates Act.

See ACT IV OF 1877.

Court Inspector.

Functions of—and investigating police officer.—*See* POLICE, A.W.N. 1882, 24.

Court of competent Jursidiction.

See CRIM. PRO. CODE, 1898, s. 537, 10 B. 319.

Court of Record.

See CONTEMPT OF COURT, 10 C. 109, P.C. =10 I.A. 171.

Court of Wards.

See CONTEMPT OF COURT, 84 P.R. 1866, Cr.

See CRIMINAL BREACH OF TRUST, 5 C.W. N. 248.

See PUBLIC SERVANT, 21 A. 127=A.W.N. 1898, 205.

Manager under Court of Wards—*See* PUBLIC SERVANT, A.W.N. 1885, 297.

Peon of Court of Wards, whether public servant—*See* PUBLIC SERVANT, 7 M. 17=1 Weir 27.

Courts, Bengal Civil Courts Act.

See BEN. ACT, VI OF 1871.

Courts, Burma.

See BUR. ACT XVII OF 1875.

Courts, Central Provinces.

See C.P. ACT II OF 1904.

Courts, Mamlatdars'.

See BOM. ACT V OF 1864.

See BOM. ACT III OF 1876.

See BOM. ACT II OF 1906.

Courts of Requests, Military.

See ACT XI OF 1841.

Courts, Presidency Small Causes.

See ACT XV OF 1882.

Courts, Punjab.

See PUN. ACT XVIII OF 1884.

Courts, Village.

See U.P. ACT III OF 1892.

Cow.

Slaughter of—*See* PUN. ACT IV OF 1872, ss. 43, 50, 50-A, 50-B, 20 P.R. 1888, Cr.

Hindus taking forcible possession of, from Muhammadans—*See* DACOITY, 15 A. 299=A. W.N. 1893, 142.

Throwing stone at a—*See* MISCHIEF, 1 Weir 497.

Killing of, by Mahomedans—*See* NUISANCE UNDER CRIM. PRO. CODE, 30 A. 181=A.W. N. 1908, 64=5 A.L.J. 147=7 Cr. L.J. 381.

"Bull," "Cow" and "any other animal," meaning of—*See* PENAL CODE, s. 429, 22 C. 457.

Exhibition of cow flesh by Muhammadan—*See* RELIGION, OFFENCES RELATING TO, A.W.N. 1893, 144.

Cowdung.

Drying—in public street—*See* PUBLIC NUISANCE, Rat. Un. Cr. C. 297=Cr. Rg. 42 of 1886.

Cowries.

(1)—*Cowries, if instruments of gaming.*—Cowries cannot be taken to be instruments of gaming for the purposes of Act III of 1867. EMPRESS v. MUSST. KASHI, **6 C P L.R. Cr. 17.** [*Rel on.*, **12 Cr. L.J. 28=8 Ind. Cas 1127=6 N.L R 168.**] *See also* QUEEN-EMPRESS v. BHAWANI, **18 A. 23=A. W N. 1895, 139**; QUEEN-EMPRESS v. BALA MISRA, **19 A. 311 =A.W.N. 1897, 117.**

See ACT III OF 1867, ss. 5 and 6 A.W.N. 1882, 132.

Whether instruments of gaming—*See* ACT III OF 1867, s. 6, 18 A. 23.

See BEN. ACT II OF 1867, ss. 1 and 6, 5 C.W.N. 503, 25 C. 432.

See GAMBLING, A.W.N. 1897, 117=19 A. 311.

Crabs.

(1)—*Crabs, if animals.*—Crabs are animals within the meaning of s. 2 of the Prevention of Cruelty to Animals Act, XI of 1890. TULSI BEWAH v. SWEENEY, **24 C. 881.**

Cruelty to—*See* ACT XI OF 1890, ss. 2 and 3, 1 C.W.N. 642.

Credible Information.

See SECURITY TO KEEP THE PEACE ON CREDIBLE INFORMATION.

Creditor.

See DEBTOR AND CREDITOR.

Removal of property without consent to satisfy his own claim—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 18 A. 88=A.W.N. 1895, 233.

Creditor—*concluded.*

See THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 22 C. 1017 ; 1 WEIR 405.

Cremation.

Of corpse in a burning ground used immemorially for the purpose, against an order by the Collector prohibiting such cremation—*See* PENAL CODE, ss. 188, 290, 19 M. 464=1 Weir 247=6 M.L.J. 181=2 Weir 65.

Cremation Ground.

See CRIM. PRO. CODE (1898), s. 133 (3), 25 C. 425=2 C.W.N. 113.

See NUISANCE, UNDER PENAL CODE, 19 M. 464=1 Weir 247=6 M.L.J. 181=2 Weir 65, 1 Weir 144.

Crimes and Offences.

See BOM. REG. XIV OF 1827.

Crimes Regulation, Punjab Frontier.

See PUN. REG. IV OF 1887.

See PUN, REG. III OF 1901.

Criminal and Civil Justice, Aden.

See BOM. ACT II OF 1864.

Criminal Breach of Contract.

See ACT XIII OF 1859.

See PENAL CODE, ss. 490 to 492.

(1)—*Penal Code, s 490—Contract of service to convey indigo to the vats.*—An agreement for personal service in conveying indigo from the field to the vats is not a contract, the breach of which is punishable under s. 490 of the Penal Code. NOWA TEWAREE v. MALLEN JHA, **6 W.R. Cr. 80.**

(2)—*Offences against travellers.—Quære* :—Whether the words "during a voyage or journey" in s. 490 of the Penal Code do not limit the offences made under that section to offences against travellers. That section, however, does not apply to a contract to place the defendant's carts at the complainant's disposal for a specified time to convey a thing from where he pleases to where he pleases. SAGE v. NIRUNJUN CHATTERJEE, **9 W.R. Cr. 12.**

Criminal Breach of Trust.

See CHEATING.

See CRIMINAL MISAPPROPRIATION.

See PENAL CODE, ss. 405—409.

(1)—*Requisites for offence.*—To constitute the offence of criminal breach of trust, there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management of the property in respect of which the breach of trust is charged. ISSUR CHUNDER GHOSE v. PEARI MOHUN PALIT, **16 W. R. Cr. 39.**

(2)—*Penal Code, s. 405—Criminal breach of trust.*—Where the complaint amounted only to saying that, because, as between the father of the complainant, and the accused, certain arrangements were made in consequence of which certain moneys were received by the

Criminal Breach of Trust—*continued.*

accused and that the accused declined to render accounts, *held*, that the accused would not be guilty of the offence of criminal breach of trust, unless it was alleged that the money had, as a matter of fact, been realised by the accused, and was wrongfully appropriated to his own use. QUEEN-EMPRESS v. MURPHY, **9 A. 666 =A.W N. 1887, 141.** [*Doubted* 11 Cr. L.J. 44=4 Ind. Cas. 762=U.B.R. 1909, Penal Code, p. 21.]

(3)—*Penal Code, s. 406—Criminal misappropriation.—Per Batty, J.*—The loan of a chattel does not constitute the borrower a person entrusted with the chattel or with dominion over it within the meaning of s. 406, Penal Code, for, the borrower is not a trustee but has a beneficiary interest given him in the thing lent. *Per Aston, J.*—Where the property dishonestly misappropriated had come into the accused's possession through his being entrusted with, or with any dominion over, it, which includes a loan of a chattel, the offence committed is criminal breach of trust. EMPEROR v. GIRJI KOM HARI, **6 Bom.L.R. 1093.**

(4)—*Trust — Criminal misappropriation—Evidence.*—Evidences of trust and dishonest misappropriation are sufficient to constitute the offence of criminal breach of trust. The words "in violation of law" in s. 405 relate and are limited to, the words "dishonestly uses or disposes of that property," and are not to be extended to the words "dishonestly misappropriates or converts to his own use that property." HIGH COURT PROCEEDINGS, 30TH JUNE 1868, No. 879, **1 Weir 460.**

(5)—*Penal Code, ss. 405, 415 — Criminal breach of trust—Cheating.*—A *chaprasi* was directed by the Tahsildar to have census labels made and to affix them to certain houses. The cost of 1½ annas to make the label, he was directed to collect from each house-owner. But he collected more than 1½ annas, and appropriated the sum. *Held* that the offence committed was not criminal breach of trust, but cheating. EMPRESS v. MULCHAND, **A.W. N. 1881, 32.**

(6)—*Penal Code, ss. 95, 405—Value of property.*—In the case of a conviction for criminal breach of trust, except in so far as s. 95 is concerned, the question of the value of the property, in respect of which the offence was committed, is quite immaterial. EMPEROR v. MAULA BAKHSH, **27 A. 28=A.W.N. 1904, 153.**

(7)—*Penal Code, s. 409—Naib Nazir, whether a public servant.*—The Naib Nazir is a public servant within the meaning of s. 409, and not merely the private servant of the Nazir. QUEEN v. MAHMOOD HOSSIM, **2 N.W.P. 298.**

(8)—*Penal Code, ss. 62, 406—Criminal breach of trust — Sentence.—Held*, that the special sentence provided for by s. 62 of the Code is a sentence, which should only be inflicted in rare cases—those cases in which crimes of an atrocious nature are exposed or in which offences

Criminal Breach of Trust—*continued.*

have been committed under aggravated circumstances. EMPEROR v. AMRIT LAL, **A.W.N. 1906, 259 = 3 A.L.J. 772 = 4 Cr.L.J. 371 = 29 A. 25.** (12 W.R. Cr. 17, *F.*)

(9)—*Penal Code*, s. 409—*Criminal breach of trust.*—The accused, a clerk in a record room entrusted with Government records, gave a document in his custody stealthily to a person entitled to it. By his action, the Government was deprived of money, which it would have received, had the return of the document been applied for in the usual manner. *Held*, that the clerk was rightly convicted, under s. 409, of the offence of criminal breach of trust by a servant, as the giving of a document in his custody stealthily amounted to a violation of an implied contract touching the discharge of his trust. EMPEROR v. GANGA PRASAD, **27 A. 260 = A.W.N. 1904, 228.**

(10)—*Penal Code*, s. 409—*Breach of trust by public servant.*—Where the accused, a revenue *patel*, who received from Government small sums of money to be paid over as temple allowances, took formal receipts from the person to whom these payments were to be made, and forwarded those receipts to the authorities in due course, but the money was not paid over to the persons entitled to receive it, as they were willing to trust him; *held*, that the accused had fulfilled the trust reposed in him by the Government, and that he was not guilty of an offence under s. 409, I.P.C. QUEEN-EMPRESS v. GANPAT TAPIDAS, **10 B. 256.** [*R.*, U.B.R. 1905, 1st Qr. Penal Code, 19.]

(11)—*Intention to cause wrongful gain or loss—Penal Code*, ss. 405, 406—*Cattle Trespass Act* (I *of* 1871), s. 19.—The accused was Sub-Inspector of Police at the *thana* of Dunyar. A pony was brought to the pound at the police station and confined there under Act I of 1871. The books kept at the station showed that the pony had been sold by auction under the Act and purchased by one Gopinath. After some time, the pony had eventually been purchased by the accused from a vendor from Gopinath. The Magistrate found on the evidence that there had been no sale under Act I of 1871, and convicted the accused of criminal breach of trust, and sentenced him under s. 406 of the Penal Code. *Held*, the conviction was illegal. There must be an entrusting of the accused with the property, and evidence that he dishonestly misappropriated it; there must be an intention on the part of the accused to cause wrongful gain or wrongful loss. QUEEN v. RAJKRISHNA BISWAS, **8 B.L.R. App. 1 = 16 W.R. Cr. 52.**

(12)—*Penal Code*, s. 405—*Criminal breach of trust.*—An *ekka-driver* was the owner of a pony, when the pony fell into such condition of disease that it was condemned by the Municipal authorities. It then came into the custody of a Magistrate who, in the ordinary course, would have ordered it to be destroyed, but, being actuated by humane motives, handed the pony over to the accused, who professed to be the Secretary of a Society for the maintenance of incurable animals. Having kept the animal for some time, the accused sold it to the *ekka-driver. Held* that the accused was guilty of criminal breach of trust. QUEEN-EMPRESS v. GAURI SHANKAR, **A.W.N. 1894, 197.**

(13)—*Partner—Master and servant.*—The accused was convicted of criminal breach of trust in respect of the value of goods he was asked to sell. The contention was that the conviction could not be sustained, as the accused was a partner with the prosecutor. *Held* by Jackson, J., that the finding of the Magistrate and Sessions Judge on the evidence was to the effect that the prisoner was a servant not a partner; but that such finding could not be interfered with by the High Court as a Court of Revision, unless there was a mistake in law; that the finding was legally correct; that the defence of the prisoner could not be taken to mean that he was a partner, but merely that he claimed a small share in the profits, and that such claim did not make him a partner, as an agent's remuneration, a share in the profits, does not constitute the agent a partner. *Held* by Kemp and Mitter, JJ., (releasing the prisoner) that, though the allowance of a portion of the profits or goods does not destroy the relation of master and servant, the accused in this case distinctly pleaded that he was a partner, not merely that he was entitled to a share of the profits; that the lower Courts did not specifically decide that the accused was a servant; and that the prosecutor should sue for an account. *In the case of* LALL CHAND ROY, **9 W R. Cr. 37.**

(14)—*Penal Code*, s. 409—Kanungo *receiving salary through Government—Threat of criminal prosecution.*—A *kanungo* appointed to collect rents for the Maharajah of Benares and receiving his salary through the Government is punishable under s. 409 of the Penal Code for criminal breach of trust. Where a threat of criminal prosecution is used for constraining the accused to pay up moneys misappropriated by him and, after a portion is recovered, a criminal complaint is preferred, *held* that the conduct of the complainant is improper in that it is in diregard of the real objects of the criminal law and that a criminal prosecution should not be used as a means of recovering a civil debt. EMPRESS v. BRIJ KUMAR LAL, **A.W.N. 1884, 105.**

(15)—*Penal Code*, s. 405—*Breach of trust—Refusal to give up mortgaged land.*—A refusal by the accused to give up land alleged to have been mortgaged to them, the mortgage being denied, could not be treated as a misappropriation of the documents of title amounting to criminal breach of trust under s. 405, I.P.C. The matter in dispute would be but of the ordinary description which would form the subject of a civil suit. REG v. JAFFIR NAIK, **2 B.H.C. 127.**

(16 & 17)—*Failure to account—Penal Code*, ss. 406, 407 *and* 408.—The prisoner, a *gomastah*,

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took from his employers, between the 15th April and 30th June, sums amounting to Rs. 600, for the purchase of wood. During that period he supplied wood to the value of Rs. 234, but the prosecutor alleged that most of that was to be set off against the balance to the debit of the prisoner for the year before, and that the value of the firewood was, as a fact only Rs. 34. The prisoner was charged with criminal breach of trust as a servant. The defence was that he had purchased wood and made advances on that account ; but this defence was proved to be false. The Magistrate convicted him, but the Judge held it was merely a failure to account, and acquitted the prisoner. *Held*, the prisoner was guilty of criminal breach of trust. WATSON v. GOLAB KHAN, **1 B.L.R. S.N. 21 = 10 W.R. Cr. 28.**

(18)—*Act* XIII *of* 1850—*Furnishing false accounts.*—Where there is no provision in the Penal Code, and any other law (such as the Breach of Trust Law, Act XIII of 1850) provides for the punishment of persons furnishing false accounts such persons may be tried under that law. WATSON & Co. v. BYKANTNATH DASS, **14 W.R. Cr. 80.**

(19)—*Misappropriation of pay of* thanna *police—Penal Code, ss.* 405, 409.—A constable, who dishonestly misappropriates to his own use the pay of his *thanna* police entrusted to him, commits the offence of criminal breach of trust. QUEEN v. SUBDAR MEEAH, CONSTABLE, **3 W.R. Cr. 44.**

(20)—*Penal Code, Act* XLV *of* 1860, *ss.* 405, 417.—Where the accused, to whom silver had been entrusted for making a jewel, introduced copper, *held* that the offence committed was criminal breach of trust and not cheating. REG. v. BABAJI *bin* BHAU, **4 B.H.C. Cr. 16.**

(21)—*Penal Code, s.* 408—*Breach of trust—Temporary loss.*—An offence, under s. 408 of the Penal Code, is committed, even where the act of the accused was to cause wrongful loss to the complainant for a time only. EMPEROR TULSHIDAS v. CHHAGAN LAL, **8 Bom, L.R. 951 = 5 Cr. L.J. 5.**

(22)—*Penal Code, s.* 405—*Criminal breach of trust—Municipal Chairman—Statement as to cash in hand.*—A Municipal Chairman was charged with criminal breach of trust for stating to the *Mamlatdar* who examined the accounts on a certain day that he had a definite sum of money in hand, while the accounts, showing a correct cash-balance, showed also that a sum in addition to the admitted amount must have been in the hands of the Chairman as due to petty servants. This was, however, paid to the servants two days later, and the failure to state that sum appeared to have been due merely to a desire to hide the delay in the payment to servants. *Held* that no offence was made out, since no dishonest intention or dishonest use of money was proved, mere delay in payment not being a criminal act, and that there was no duty cast on the accused to pay the servants on any particular day. Not merely a civil breach of trust, but also a fraudulent intent or a wilful violation of trust with fraudulent design, should be proved. QUEEN-EMPRESS v. ARDESHIR MERWANJEE, **Rat. Un. Cr. C. 484 = Cr. Rg. 50 of 1889.** (12 M. 51, *D.*)

(23)—*Penal Code, s.* 409—*Burden of proof.*—In a case of criminal breach of trust where the accused pleads that he has accounted to the complainant and paid the balance of the money, the burden of proving non-accounting and non-payment is on the prosecution and not on the accused. QUEEN-EMPRESS v. RAMCHANDRA GANESH, **Rat. Un. Cr. C. 860 = Cr. Rg. 27 of 1896.**

(24)—*Burden of proof.*—Where, in a charge of criminal breach of trust, the accused pleads payment to the proper person, the burden of proving non-payment is on the prosecution and not on the accused. QUEEN-EMPRESS v. HARI DAGDU, **Rat. Un. Cr. C. 872 = Cr. Rg. 47 of 1896.**

(25)—*Penal Code, ss.* 403 *and* 405—*Immoveable property.*—The property referred to in s. 405 must, as in s. 403, be moveable property, and criminal breach of trust cannot be committed in respect of immoveable property. JUGDOWN SINHA v. QUEEN-EMPRESS, **23 C. 372** (6 B.H.C. Cr. 33, *F.*) [*R.*, 15 Cr. L.J. 175 = 18 C.W.N. 1146 = 22 Ind. Cas. 751 ; *D.*, 36 C. 758 = 3 Ind. Cas. 189 = 10 Cr. L J. 253.]

(26)—*Penal Code, s.* 408—*Charge under section in respect of general deficiency in accounts.*—In a case of criminal breach of trust under s. 408, a count based upon a general deficiency was struck out of the indictment by the presiding Judge after consultation with the Chief Justice. QUEEN-EMPRESS v. PURSHOTAM DASS MORARJEE, **24 C. 193.** [*Appr.*, 2 C.W N. 341; *R.*, 33 A. 36 = 7 A.L.J. 897 = 7 Ind. Cas. 186 = 11 Cr. L.J. 442.]

(27)—*Penal Code, s.* 406—*Criminal breach of trust—Refusal to pay money on ground of claim made to it by another.*—Where a person was employed by the complainant and another person to take their paddy for sale, but refused to give the complainant the amount of money realized by the sale of his paddy on the ground that a portion of the paddy was also claimed by the other person, *held*, that the accused could not be convicted of criminal breach of trust. The fact that the other person had brought a suit to recover the sum of money claimed by him would be a complete answer to the charge and meet the findings of the Magistrate that the claim made by the other person was false. RAJ KISHORE PATTER v. JOY KRISHNA SEN, **28 C. 362.**

(28)—*Penal Code, s.* 408—*Criminal breach of trust by servant—Waste paper ordered to be destroyed—Appropriation by servant.*—A servant received from his employers, a firm in Calcutta, some bags of waste paper with an order to take them to their yard and there to burn and destroy the papers. The servant instead of

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destroying them brought some of them to Bow Bazaar in Calcutta; *held*, that the act committed by the accused did not amount to an offence under s. 408. EMPEROR v. PREO NATH CHOWDHRY, **29 C. 489.** (2 C.W.N. 216, *F.*)

(29)—*Penal Code, s.* 406—*Criminal breach of trust—Dishonest conversion by partner—Liability of partner to account for partnership money.*—In a partnership, it is open to a partner to spend the money he receives and account for it in dealing with the partnership; and such a partner is plainly entitled to be called upon for an account of the expenditure of the money which he has received. In a case where it was not satisfactorily made out that this was not done, and if would not be made out in the absence of a proper demand for an account, it was held that no dishonest conversion could be found. which would justify the conviction of the partner under s. 406, Penal Code. DEBI PRASAD BHAGAT v. NAGAR MULL, **35 C. 1108 =9 Cr. L J. 74.**

(30)—*Penal Code, ss.* 406, 409—*Gist of the offence—Jurisdiction of Magistrates.*—S. 409 does not require the property, in respect of which criminal breach of trust is committed, to be the property of the Government, but only requires that it shall be entrusted to a public servant in his capacity as such. Where a Magistrate tried a case which properly came under s. 409, and which was, therefore, triable by the Court of Session, under s. 406, the High Court annulled the trial, and ordered a new trial for an offence under s. 409, Penal Code, before a Court of Sessions. *In the matter of* RAMSOONDER PODDAR, **2 C.L.R. 515.** [*F.*, 8 Cr. L.J. 160=1 S.L.R. 38.]

(31)—*Penal Code, ss.* 213, 214, 406—*Compounding offences.*—The offence of criminal breach of trust, being one into which the element of dishonesty enters, cannot, under the terms of ss. 213 and 214, I.P.C., be lawfully compounded *In the matter of Reference from the* CHIEF PRESIDENCY MAGISTRATE. **6 C. L.R. 392.**

(32)—*Penal Code, s.* 409—*Appropriation of property ordered to be destroyed.*—Where unclaimed rice lying at the Kidderpore Docks was advertised for sale, but before sale, it was condemned as being in a rotten condition and was handed over to the Superintendent of the Health Department of the Calcutta Corporation, *held*, that the latter had not committed the offence of criminal breach of trust by selling the property and retaining the sale proceeds, instead of destroying it EMPRESS v. WILKINSON, **2 C.W.N. 216.** [*F.*, 29 C. 489.]

(33)—*Penal Code, ss.* 408 *and* 414—*Abetment of criminal breach of trust by servant.*—In order to sustain a conviction for the abetment of criminal breach of trust by a servant, it must be proved that the accused knew that, in respect of such transaction, the servant was acting dishonestly and was committing a breach of trust, and that the accused abetted the servant in doing it. BAL GOBIND SHAHA v. EMPRESS, **4 C.W.N. 309.**

(34)—*Criminal breach of trust by servant—Prosecution by owner on taking the management from the Court of Wards.*—The owner of an estate, on assuming management thereof, is competent to prosecute a servant of the Court of Wards for criminal breach of trust committed during the management of the estate by the Court. TARAKNATH NUNDY v. GOBINDA CHANDRA MITRA, **5 C.W.N. 248.**

(35)—*Abetment—Conviction of abettor on the uncorroborated confession of the principal offender.*—Where a person was charged with abetment of criminal breach of trust and the only evidence against him was a confession by the principal offender, who had pleaded guilty, *held*, that, in the absence of any corroboration of the confession, it was not proper to convict the accused. NIKUNJA BEHARI ROY v. QUEEN-EMPRESS, **5 C.W.N. 294.**

(36)—*Penal Code, ss.* 23, 24, 109 *and* 408—*Criminal breach of trust by a servant.*—Where a person, entrusted with some blocks of wood engraving for the purpose of having a catalogue printed for the complainant, allowed his brother to use the block to print his catalogue, *held*, that such act constituted criminal breach of trust. KESHAB CHANDRA BORAL v. NITYANUND BISWAS, **6 C.W.N. 203** (3 M.H.C. App. 6, *D.*)

(37)—*Penal Code, s.* 405—*Criminal breach of trust—Leaving box in accused's house—Claim of debt—Refusal to allow removal of box till payment of debt.*—*Held*, that the refusal of the accused to allow the complainant to remove a box left in his (accused's) house by the latter, unless a debt claimed by the accused to be due to him from the complainant was paid, did not amount to a criminal breach of trust, inasmuch as there was no evidence that the accused dishonestly misappropriated or used or disposed of the box. *In re* ADINARAYANA IYER, **17 M.L.J. 413=6 Cr. L.J. 330.**

(38)—*Penal Code, ss.* 403, 405, 415 *and* 108—*Criminal breach of trust—Manager of Provident Institution permitting proprietor to receive monies which should have been in deposit in Bank—Contract so to permit—Manager not guilty of breach of trust or abetment.*—The accused B, the manager of a Provident Institution, undertook by his security bond to make himself civilly and criminally liable to the proprietor for the management of the entire concern, the safe custody and proper application of funds, but the proprietor and his agent were at liberty to take charge of money, papers, etc., relating to the Institution. B allowed the proprietor to receive a sum of money from a diploma-holder, which should, according to the Prospectus and Rules, be deposited in the Bank for meeting death claims, and the proprietor misappropriated the same. *Held*, on a charge of criminal breach of trust or abetment thereof, the accused was not guilty, as he could

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not, under his contract, prevent the proprietor and his agent from taking the money. There was no contract between B., and the diploma-holders, and he cannot be said to have held the subscription in trust for their nominees. PUBLIC PROSECUTOR v. KAMAL KRISHNA BOSE, **5 M.L.T. 141.**

(39)—*Penal Code, s.* 405—*Criminal breach of trust— "Dishonestly" explained.*—The word "dishonestly" means the doing an act with the intention of causing wrongful loss or wrongful gain; and wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled. For either wrongful loss or gain, the property must be lost to the owner or the owner must be wrongfully kept out of it. The deterioration of an article pledged with another by use is not such a loss of property to the owner and the wrongful use of the property by the pledgee is not such a gain to him. HIGH COURT PROCEEDINGS, 18TH SEP. 1866, **1 Weir 460 = 3 M.H.C. App. 6.** [*R.*, 6 C.W.N. 203.]

(40)—*Penal Code, s.* 406—*Criminal breach of trust by a pledgee.*—A person, who pledges what is pledged to him, may be guilty of criminal breach of trust. There are two elements to constitute the offence, (1) the disposal in violation of any direction of law or contract, express or implied, describing the mode in which the trust ought to be discharged, (2) and such disposal must be made dishonestly. Great caution ought to be used in drawing the inference of dishonesty from a breach of duty imposed by civil law. Whether it should be drawn or not is a question in each particular case. HIGH COURT PROCEEDINGS. 23RD MAY 1871, NO. 985, **1 Weir 461 = 6 M.H.C. App. 28.**

(41)—*Penal Code, s.* 406—*Criminal breach of trust—Misappropriation of money that ought to be sent to the treasury.*—Where the accused, whose duty it was to send immediately to the treasury sums received by him, retained small sums without immediately entering them in his accounts, and also mixed the employer's money with his own, *held*, that the accused was guilty under s. 406. *In re* PONNAMBALAM PILLAI, **1 Weir 462.**

(42)—*Penal Code, s.* 406—*Agreement with person guilty of embezzlement for refund of money embezzled, effect of.*—An agreement allowing a person, who had committed criminal breach of trust, to refund the property misappropriated cannot operate to bar a subsequent prosecution for the offence of criminal breach of trust. *In re* MAYANDI PILLAI, **1 Weir 462.**

(43)—*Penal Code, s.* 406—*Entrusting property in order to prevent it from being taken in execution of decree—Misappropriation.*—The fact that the complainant entrusted the accused with his flock in order to evade the payment on the execution of a decree, which might be issued, is not a legal defence which will justify the accused in selling the animals and appropriating the sale proceeds to his own use. *In re* CHINNA KARUPPA MUPPAN, **1 Weir 463.**

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(44)—*Penal Code, s.* 405—*Entrusting of property for raising a loan—Raising a larger sum and applying the additional money to his own use, effect of.*—The prisoner was entrusted with dominion over a pair of ear-rings for the purpose of raising Rs. 7 upon them, and creating a lien upon them to that amount only. The accused obtained a larger sum and created a greater lien, and then applied the additional money to his own use. *Held*, that the accused was guilty of criminal breach of trust. *In re* GURUMAHANTY APPALASAMY, **1 Weir 464.**

(45)—*Penal Code, s.* 408—*Delay in remitting money to treasury.*—Where a village officer delayed, for four or five months, in remitting the kist amount to the treasury, *held*, that the officer was guilty of an offence under s. 408. *Held*, also, that it may be difficult to separate carelessness from dishonest misappropriation and to say where the one ends and the other begins. HIGH COURT PROCEEDINGS, 19TH NOVEMBER 1880, NO. 2340, **1 Weir 464.**

(46)—*Penal Code. s.* 408—*Criminal breach of trust by servant—Effect of servant executing a bond for the amount misappropriated.*—Where a servant committed criminal breach of trust, *held*, that the circumstance that the employer had taken a bond for the amounts misappropriated or for amounts similarly misappropriated, would not prevent the prosecution or conviction of the accused for the offence. But the accused would be entitled to prove that the terms of his employment were such that the omission to make payment of the sums collected amounted only to a debt. ZAMINDAR OF YETTIYAPURAM v. RAMASAMI NADAN, **1 Weir 465.**

(47)—*Penal Code, s.* 409—*Village shroff receiving grain in payment of public revenue—Misappropriation of the grain.*—Where a village shroff, whose duty it was, among other things, to assist in collecting the revenue, received grain from certain ryots and, in return, granted receipts for the public revenue, as if for money received, *held*, that the shroff could not be convicted of criminal breach of trust of the grain so received, inasmuch as the accused were not authorised to receive the public revenue in kind, and as the party who so delivered the grain did not thereby discharge himself from liability for the revenue. HIGH COURT PROCEEDINGS, 12TH FEBRUARY 1869, **1 Weir 465 = 4 M.H.C. App. 32.**

(48)—*Penal Code, ss.* 409 *and* 417—*Kurnam receiving illegal payment.*—The accused was charged with criminal breach of trust and also of cheating in respect of the following:—(1) payment from ryot, as part of the assessment for a *fasli* or three *poramboke* fields for which the accused, subsequently, on the same day, issued two forged pattahs to the ryot; (2) payment from a ryot as costs of demarcation stones for two waste fields, one of which the ryot was cultivating without leave; (3) payment from another ryot as for assessment on a piece of waste land which the accused promised to get for him without a darkhast and as for

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cost of demarcation stones to be fixed for the said lands. *Held*, that the payments made to the accused were not made under such circumstances that it could be said that the accused received them as Government money or in trust for Government. *Held*, further, that the accused was not guilty of cheating, as the persons who gave the money must clearly have known that the money was not to be paid to the Government. *In re* RENGASAWMI AYYANGAR, **1 Weir 466**.

(49)—*Penal Code. s. 409—Criminal breach of trust by public servant, what amounts to.*—The accused, a petty officer in the Salt Department, was empowered to sell salt at reduced prices to fish-curers (ticket-holders). The charge against him was that he really bought salt for himself at reduced rates, entering the sales in the Government books as if made to ticket-holders, thus defrauding Government of the difference in the price of the salt. *Held*, that the officer was guilty of the offence of criminal breach of trust by a public servant GOVERNMENT PLEADER v. BALAYYA, **1 Weir 467**.

(50)—*Criminal breach of trust by public servant—Nazir.*—The petitioner, a Nazir of the Court of the Cantonment Magistrate, was convicted of the offence under s. 409, I.P.C., for having criminally misappropriated the sum of Rs. 52-6-3 out of the Government money in his charge. It appeared that the accused intended to restore this money to the Government. It was also found that the accounts in the books were kept all right and there appeared to have been a long standing practice in the office, among the officials employed, to receive advances of moneys out of the cash with the accused according to their requirements, generally out of mutual regard, and then to re-pay them when the salaries were drawn from the Treasury and that the accused had made advances when the cash was found to be deficient. The accused made good the deficiency when he was ordered by the Cantonment Magistrate to refund it. *Held*, that there was no dishonest misappropriation or conversion or use within the meaning of s. 405 of the Indian Penal Code and that the accused was entitled to be acquitted. IMAM DIN v. EMPEROR, **39 P.L.R. 1902**.

(51)—*Mere retention of money—Penal Code, s. 405.*—Mere retention of the money received by an accused person as diet-money in his capacity as Naib Nazir, would not amount to misappropriation and if he produces the money when asked for it, clear proof must be given of its use or conversion in the meantime. Further where the accused has given security for the money placed in his hands, there would be a reasonable presumption that, if he kept the money in his possession until he was told to re-pay it, he did not convert it to his own use. EMPRESS v. RAMAJI, **2 C.P.L.R. 161**.

(52)—*Penal Code, s. 403—Embezzlement of public money.*—If an accused person receives public money and does not pay it into the treasury and it is not shown to have left his possession, the proper inference would be that he embezzled it. POLICE v. MOHAMMED ALI, **Colm. Dig. Cr. 35 of 1876**.

(53)—*Penal Code, s. 406—Criminal breach of trust—Loan—Deposit.*—Upon a charge of criminal breach of trust, the accused pleaded that the amount claimed by the complainants was due by them as a debt but having sustained losses in business they were unable to pay it. *Held*, that in such cases the crucial test is, was the sum due to the complainants owed by the accused as a debt, or was it held by them as trust money for the complainants over which they had no right of disposition of any kind. *Held*, upon the evidence, that the accused must be considered to have acted as the complainant's bankers, and the relation between banker and customer is in law that of debtor and of creditor RANSHAN RAI v. EMPEROR, **135 P.L.R. 1901 = 32 P.R. 1901, Cr.** (95 P.R. 1885, *R.*)

(54)—*Servant of agent of a firm—S. 409, Penal Code—Agent entirely responsible—Misappropriation by agent—Liability of servant.*—Where a branch firm employed purchasing agents who, in their turn, employed the accused as their servant, and where the purchasing agents were charged with criminal breach of trust as agents under s. 409, and the servant for criminal breach of trust as a servant, *held*, that the servant could not be convicted of the offence, as he was not the servant of the firm, the purchasing agents having taken the sole responsibility, as no specific amount had been proved to have been embezzled by him and as he was not proved to have abetted the purchasing agents. UTTAM CHAND v. EMPEROR, **2 P. R. 1902, Cr. = 9 P.L.R 1902.** (58 P.R. 1900, *D. Cr. Misc.*) [*R.*, 18 P.W.R. 1908, Cr.]

(55)—*Penal Code, s. 406—Position of shroff of a Battery—Deficiency of Government monies in his hands—Criminal breach of trust—Essence of misappropriation.*—The shroff of a Battery holds the position of a cashier with reference to the custody of Government monies entrusted to him, and his failure to produce cash for the entire balance due out of the amount so entrusted amounts to a criminal breach of trust A contract of a special nature to keep a certain fund intact, and not to mix it with the other cash he holds in his hands for his business, must be established, before a person can be held to be a trustee of that fund. It is doubtful whether a mere contract that he should always be ready to show that he has in hand a sum equal to the balance of Government monies in his hands would suffice. For, the essence of misappropriation of property is that the property itself should not be at the disposal of the accused person according to his wish. HIRA LAL v. KING-EMPEROR, **19 P.R. 1908, Cr.**

(56)—*Police officer entrusted with property by a traveller for protection.*—A thana officer entrusted with property for its protection by a

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traveller, who believed himself to be dying, would be guilty of an offence under s. 409, I.P.C., if he misappropriated it as the accused entrusted with the property in his capacity as a public servant, who was empowered under s. 95, Crim. Pro. Code, 1872, to receive the property to prevent the commission of an offence, *i. e.*, theft by other persons taking advantage of the illness or death of the traveller. BHAG SINGH v. CROWN, **24 P.R. 1876, Cr.**

(57)—*Criminal breach of trust, if a compoundable offence.*—A charge of criminal breach of trust is not compoundable; the dishonest intent being an essential ingredient. EMPRESS v. RAHIM BAKSH, **30 P.R. 1879, Cr.**

(58)—*Banker and customer—Moneys of customer used by Banker for his own purpose.*—Moneys due to a customer from a banker are simply due as debts and are fully at the disposal of the banker. The latter is not, therefore, guilty of criminal breach of trust in using them for his own purpose. RAUSHAN RAI v. EMPEROR, **32 P.R 1901, Cr. = 135 P.L.R. 1901.** (95 P.R. 1885, *R.*)

(59)—*Servant taking money entrusted to him to be taken to another place—Necessity for proof of actual concession.*—Where a servant is charged with criminal breach of trust of his master's money, it is not necessary for the prosecution to show that the accused has actually expended any portion of the money. The first possession being lawful, the offence consists in a mental act or intent to deprive his master of his property without any outward or visible trespass. Where a servant entrusted with money for the purpose of taking it to one place walks away with the amount to another place, he is guilty of criminal breach of trust, although he has not spent any portion of the money. KESHO RAM v. EMPRESS, **36 P R. 1889, Cr.**

(60)—*Penal Code, ss.* 406, 408—*Criminal breach of trust—Defective charge—Crim. Pro. Code* (1898), *ss.* 222, 234, 439.—*Held*, that, in the case of criminal breach of trust, a general charge of embezzlement, mentioning the gross sum misappropriated, as laid down in sub-section (2) of s. 222 of the Code of Criminal Procedure, is sufficient, but it is defective and must fall through, where the accused appears to have been prejudiced by not having any definite charge to answer. MOHAMMAD SHAH v. CROWN, **16 P.W.R 1907, Cr. = 6 Cr. L.J. 137.** (2 P.R. Cr. 1895, 24 A. 254, 25 M. 61 *R.*)

(61)—*Stake-holder misappropriating stakes —Penal Code, s.* 406.—The holder of the stakes of a wager, who appropriates them or converts them to his own use without the consent of the depositor or of the winner of the wager, is liable to conviction under s. 406, Penal Code. The words "by unlawful means" in the definition of "wrongful gain" and "wrongful loss" are intended to refer to an act which would render the doer liable either to a civil action or to a criminal prosecution. NGA TE v. KING-EMPEROR, **2 L.B.R. 216.** (L.B.R. 1872—1892, 130, *overruled.*)

Criminal Breach of Trust—*continued.*

(62)—*Penal Code, s.* 405—*Money advanced for a specific purpose, misappropriation of, constitutes the offence of criminal breach of trust.*—The accused was convicted and sentenced on a charge of criminal breach of trust for having misappropriated the money lent to him to buy paddy with, in pursuance of an agreement, under which he was to sell the paddy, so bought, to the complainant. *Held*, the money was advanced for a specific purpose, and, apart from that purpose, it would not have been advanced at all and, the relation of debtor and creditor not being incompatible with the existence of a trust in respect of the money advanced, such money must be regarded as having been entrusted to the accused within the meaning of s. 405 of the Code. THA PO v. KING-EMPEROR, **3 L.B.R. 200 = 4 Cr. L.J. 466.** (2 Bur. L.R. 9, *F.*; 2 Bur. L.R. 11, *Diss.*) [*R.*, 13 Cr. L.J. 269 = 14 Ind. Cas. 653 = 5 Bur. L.T. 11 = 6 L.B.R. 46, 13 Cr. L.J. 888 = 17 Ind. Cas. 824 = 5 Bur. L.T. 143 = 6 L.B.R. 62.]

(63)—*Penal Code, s.* 406—*Criminal breach of trust—Hypothecation by accused of all his claims as a contractor against Government—Undertaking to convey all cheques drawn in his favour—Cashing cheques and appropriating proceeds in violation of the undertaking—Whether constitutes criminal breach of trust.*—An accused person hypothecated by a written contract to the applicant all his claims as a contractor against the Government in respect of work done and materials supplied to the Executive Engineer, and undertook "regularly and without fail" to "convey and make over" to the applicant all cheques drawn by the said Executive Engineer in his favour, to "hold the same unto the use of the applicant, and not under any circumstances to cash any bill or cheque or otherwise appropriate the proceeds thereof without the knowledge and consent of the applicant." The accused cashed two cheques and misappropriated the proceeds in violation of the contract. *Held*, such misappropriation amounted to a criminal breach of trust. SHUDUTHROY BISSESHURDAS v. AGAMA MISTRY, **U.B.R. 1908, 1st Quarter, Penal Code, 13 = 8 Cr. L.J. 24.** (5 W.R. Cr. 230, U.B.R. 1902-1903, Penal Code, 9, *R.*)

(64)—*Penal Code, s.* 405—*Failure to account for money entrusted—Criminal breach of trust whether constituted.*—Failure to account for money by the person to whom it has been entrusted may constitute the offence of criminal breach of trust under s. 405, Penal Code. GIRSHAM v. MUTUSAMY, **U.B.R. 1909, 1st Quarter, Penal Code, 21 = 11 Cr.L.J. 44 = 4 Ind. Cas. 762.** (9 A. 666, *Diss.*; U.B.R. 1904-1906, 1st quarter Penal Code, 19, *R.*)

(65, 66)—*Penal Code, s.* 409—*Subject-matter of breach of trust not belonging to Government—Crim. Pro. Code, s.* 222 (2)—*Inclusion of various items in one charge.*—*Held*, s. 409, I.P.C., does not require the property, in respect of which criminal breach of trust is committed, to be the property of the Government, but only requires that it shall be entrusted to a public

Criminal Breach of Trust—*concluded.*

servant in his capacity as such public servant. The inclusion of various items, in respect of which the criminal breach of trust was alleged to have been committed, in one charge, does not vitiate the trial, as such a procedure is in accordance with the provisions of s. 222 (2), Crim. Pro. Code. EMPEROR v. ALI BUX, 8 **Cr. L.J 160=1 S.L.R. 38, Cr.**

(67)—*Criminal breach of trust—Penal Code,* s. 408.—On a Court Inspector having no authority to delegate to a constable the custody, etc., of Government money, delegating to him the said functions, taking no doubt private security for his safeguard, and on the constable dishonestly converting the money to his own use, *held* that the case fell under s. 408, Penal Code, notwithstanding subsequent restorations by the constable. QUEEN v. BANEE MADHUB GHOSE, **8 W.R. Cr. 1.**

See COMPOUNDING OFFENCE, 1 M. 191.

See CRIM. PRO. CODE, 1898, ss. 179, 181 (2) and 190 (c), 4 M.L.T. 481=9 Cr. L.J. 92.

See CRIM. PRO. CODE, 1898, ss. 181 (2) and 531, 9 P.L.R. 1902.

See CRIM. PRO. CODE, 1898, ss. 222, 234, 24 A. 254=A.W.N. 1902, 44, 31 C. 928=8 C.W. N. 807.

See CRIM. PRO. CODE, 1898, s. 562, U.B.R. 1897—1901, Vol. I, 138.

Charge of—Conviction for cheating, whether sustainable—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 9 Cr. L.J. 406=1 Ind. Cas. 867.

See JOINDER OF CHARGES—WHEN LEGAL, 29 M. 558=5 Cr. L.J. 133, 7 A. 174, F.B.

Property must be received or retained within jurisdiction of the trying Court—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 8 Ind. Cas. 595=3 Bur. L.T. 10.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 19 A. 111=A.W.N. 1896, 191, A. W.N. 1883, 88.

See PENAL CODE, s. 411, 2 N.W.P. 312.

See RELEASE ON PROBATION OF GOOD CONDUCT, 1 L.B.R. 142.

See REVISION—MATTERS PERTAINING TO EVIDENCE, 19 B. 714=Rat. Un. Cr. C. 707=Cr. Rg. 40 of 1894.

See THEFT — THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 1 W.R. Cr. 2.

See THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 2 W.R. Cr. 55.

See THEFT—MISCELLANEOUS, Rat. Un. Cr. C. 928=Cr. Rg. 36 of 1897.

Criminal Case.

See TRANSFER of CRIMINAL CASES.

(1)—*Not to be thrown out as civil, but to be investigated.*—It is no answer to a criminal charge to say that a civil action should be brought; for "a charge, properly laid under the Penal Code, should be investigated even if the case be one in which a civil action will lie." EMPEROR v. SABALSANG, **4 Bom. L.R. 936.** (10 W.R. 40, Cr., *R.*)

(2)—*St.* 11 *and* 12 *Vic.*, c. 42, s. 50—*Insolvency ending in imprisonment, effect of—Punishment for contempt of Court, conditions for.*—An insolvent, seeking the benefit of the Insolvent Act, was found to defeat the object of the Act by wilfully preventing and purposely withholding the production of letters written to him. No charge was framed against him regarding this: and no pointed question was asked him during the proceedings: yet, at the termination of the proceedings, he was sentenced to a term or imprisonment, under the provisions of s. 50 of the Act. *Held*, reversing the sentence, that the proceedings, so far as they resulted in imprisonment amounted to a criminal charge; and in all criminal cases, it was necessary that there should be a charge, a finding, and a conviction, as a foundation for the sentence: everything should be strictly and accurately pursued: and if, in any one of these three points, a substantial defect should appear, it would be a ground for reversing the proceeding: and that no person should be punished for contempt of Court, which is a criminal offence, unless the specific offence alleged against him be distinctly stated, and an opportunity of answering it given to him. VALABHDAS JAIRAM v. NARRONJEE PERMANAND, **5 Bom. L.R. 343=27 B. 394.**

(3)—*Evidence Act*, s. 101—*Criminal cases—Adjudication on mere probabilities.*—The Court ought not to judge a criminal case on mere probabilities as if it were a civil action, or contravene the well-known principle of law that the burden of proof lies on the Crown, not at all on the accused; and, unless the evidence is such as to enable the Court to judge rather than to conjecture, the accused should not be called upon to make his defence. QUEEN-EMPRESS v. GANESH BHIKAJI, **Rat. Un Cr. C 772=Cr. Rg. 36 of 1895.**

(4)—*Re-opening a criminal case disposed of in default of appearance—Inherent power of Court to re-hear—Judgment signed and sealed—Crim. Pro. Code* (*Act* V *of* 1898), s. 440.—A Court has power to re-open and dispose of a criminal case, which has been previously disposed of in default of appearance. The Court may, under s. 440, Crim. Pro Code, determine the questions raised, without hearing counsel or pleader on either side, but, where it has not done so, but merely disposed of the case in default of appearance, the Court has power to restore the case and hear and determine it. BIBHUTY MOHUN ROY v. DASIMONI DASSI, **10 C L.J. 80=3 Ind. Cas. 393.** (14 C. 42, 10 B. 176, *D.*) [*D.*, 38 C. 933 =15 C.L.J. 325=12 Cr.L.J. 407=11 Ind. Cas. 591.]

See BUR. ACT XI OF 1889, ss. 50, 69, 19 C. 605.

See CHEATING—GENERAL, 7 C.L.J. 375=12 C.W.N. 750=7 Cr. L.J. 342.

Proceedings to prevent breach of the peace, if a—*See* CRIM. PRO. CODE, 1898, ss. 145 and 526, 25 B. 179=2 Bom. L.R. 755.

Criminal Case—*concluded.*

See CRIM. PRO. CODE, 1898 ss. 145, 526, 435, and 439, 28 C. 709=5 C.W.N. 749.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 11 O.C. 61=7 Cr. L.J. 423, 12 M.L.J. 391=2 Weir 678=26 M. 188.

Cheating—Evidence of the previous and subsequent conduct of accused when and in what cases relevant—Principle of civil law when applies to—Evidence Act (I of 1872) ss. 14, 15, and 54—*See* PENAL CODE, s. 420, 26 P.W.R. 1910, Cr.

Criminal Courts.

See JURISDICTION OF CIVIL AND CRIMINAL COURTS.

See JURISDICTION OF CRIMINAL COURTS.

(1)—*Police patel, if Court.*—A police patel is not a Criminal Court. IMPERATRIX v. IRBASAPA, **4 B. 479.**

Duty of, in cases of disputes as to land—*See* CRIM. PRO. CODE, 1898, s. 145, 5 C.W.N. 563.

Duty of Criminal Court to give effect to final judgment of Civil Court—*See* CRIM. PRO. CODE, 1898, s. 476, 12 C.W.N. 1=6 C.L.J. 703.

See LOCAL GOVERNMENT, Rat. Un. Cr. C. 827=Cr. Rg. 70 of 1895.

Criminal Force.

See ASSAULT.

See PENAL CODE, ss. 349—358.

(1)—*Death caused by striking a person with enlarged spleen Culpable homicide—Criminal force.*—Where the accused struck the deceased who had an enlarged spleen, in the course of a quarrel and caused his death thereby, but the accused had no knowledge of the diseased state of the deceased's spleen, *held*, that the accused was guilty only of using criminal force, under s. 352, Penal Code, but not of culpable homicide. CROWN v. JAI DYAL, **21 P.R. 1876, Cr.**

See COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 3 Bom. L.R. 675.

—Meaning of—*See* CRIM. PRO. CODE (1898), s. 522, 5 C.W.N. 250.

See WRONGFUL RESTRAINT, 1 Weir 340.

Criminal Intimidation.

See PENAL CODE, s. 506.

(1)—*Penal Code, ss. 503, 506—Criminal intimidation, what amounts to.*—The communication by a person that he is going to take revenge by false complaints cannot amount to threat or criminal intimidation. A threat will not amount to an offence, unless made with intent to cause alarm to the complainant. QUEEN-EMPRESS v. GOVIND RAOJI THOSUR, **2 Bom. L R. 55.**

(2)—*What amounts to.*—Where the accused threatened the complainant that he would get him imprisoned for six months if he continued to detain his adult sister in his house *held*, that this did not amount to the offence of criminal intimidation. REG v. MOROBA BHASKARJI, **8 B.H.C. Cr. 101.** [*F.*, 20 B. 794.]

Criminal Intimidation—*continued.*

(3)—*What amounts to.*—To constitute the offence described in s. 506, Penal Code, it must be shown that the person charged actually threatened another with injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm. Where, upon a quarrel between two brothers, one of them ran off and fetched a sword, but the sword was snatched from his hands before he had occasion to use the sword, and till then there was nothing to show that the prisoner used any threat towards the complainant, although, when he was seized and disarmed, he threatened to kill the complainant if he was free, *held*, that the accused was not guilty under s 506, as the words used by the accused were uttered under circumstances which negatived any intention to intimidate. DATA RAM v. EMPRESS, **45 P.R. 1882, Cr.**

(4)—*Penal Code, s. 503—What amounts to.*—The words 'threatens another' in s. 503, I.P C., show that the threat must be made to the complainant personally, or, if made to a third person, must be made with the intent that he should communicate it to the complainant. When a man conveys threats to the pleaders of a person, who is executing a decree against him, he may reasonably be presumed, in the absence of evidence to the contrary, to intend those threats to be communicated by the pleaders to their employer. SYED MAHOMED v. SARWARKHAN, **5 C.P.L.R. Cr. 50.**

(5)—*Penal Code, s. 506, offence under—Criminal intimidation, what amounts to.*—Where the accused held out threats to both Hindus and Muhammadans to get them implicated and imprisoned if they kept to the terms of an *ikrarnama* (entered into by the parties to keep the peace during the *Moharram* festival), *held* that he had committed an offence under s. 506, I.P.C. EMPRESS v. ATA HUSAIN, **A.W.N. 1886, 41.**

(6)—*Penal Code, s. 503—Criminal intimidation—Gist of the offence.*—The gist of the offence of criminal intimidation, as defined in s. 503, is the effect which the threat is intended to have upon the mind of the person threatened, and it is equally clear that, before it can have any effect upon the mind, it must be either made to him by the person threatening or communicated to him in some way. In other words, it must be a threat communicated or uttered with the intention of its being communicated to the person threatened for the purpose of influencing the man's mind. GUNGA CHUNDER SEN v. GOUR CHUNDER BANIKYA, **15 C 671.**

(7)—*Penal Code, ss. 44, 503 and 506—Criminal intimidation—Threat to ruin another with cases, whether amounts to injury.*—According to the definition of criminal intimidation in s. 503, Penal Code, there must be a threat to another person of injury to his person, reputation or property, or to the person or reputation of any one in whom that person is

Criminal Intimidation—*continued.*

interested. Where a person had been convicted under s. 506, for threatening to "ruin another with cases," *held*, that the conviction should be set aside, since the threat to ruin by cases did not necessarily imply that the cases were false cases. If the cases were not false, the mere fact that they were instituted for the purpose of persecuting the complainant would not bring them within the definition of the term "injury," because the harm, although caused from an improper motive, would not be caused illegally. If the threat had been to ruin the complainant with false cases, the offence of criminal intimidation would have been committed. JOWAHIR PATTAK v. PARBHOO AHIR, **30 C. 418=7 C.W.N. 116.**

(8)—*Penal Code, s.* 503—*Threat of excommunication.*—Where a person complains to a Magistrate that he is threatened with an illegal sentence of excommunication, which will at least injure his reputation unless he abstains from acts which he is legally entitled to do, the allegation, if established, might constitute the offence of criminal intimidation. But to hold that the offence has been committed, it would be necessary for the Courts to inquire (1) whether the acts inhibited by the threat are such as the complainant was legally entitled to do, (2) whether the ecclesiastical authority has or has not jurisdiction to pronounce on their legality, (3) whether or not the same authority has, under the circumstances, jurisdiction to pronounce a sentence of excommunication, and (4) whether, if it does not possess that jurisdiction, but has exercised it in good faith and under a misapprehension of law, such an exercise of jurisdiction would amount to an offence. All these enquiries except the last raise nice questions of civil right involving the consideration of the ordinances and practice of a particular ecclesiastical authority and the proper course for a Magistrate is to postpone the trial till the complainant has proved in a Civil Court the incompetency of the ecclesiastical authority to exercise the powers it has assumed, either generally or in the particular case and the legality of the rights they severally assert. *In the matter of the petition of* PAUL DE CRUZ, **8 M. 140=2 Weir 249=2 Weir 22=1 Weir 624;** *In re* JOHN RAYMOND BIBER, **8 M. 140=2 Weir 249=2 Weir 22=1 Weir 624.**

(9)—*Penal Code, s.* 506—*Threat of injury, what amounts to.*—Intimidating a police constable, by holding out a threat of getting him dismissed from service, is not such a threat of injury as is punishable under s. 506. QUEEN-EMPRESS v. DADA HANMANT DANI, **20 B. 794.**

(10)—*Threat of expulsion from caste.*—A mere threatening to bring a matter before the caste in order to get one expelled does not amount to criminal intimidation. QUEEN-EMPRESS v. FAKIRAPPA, **Rat. Un. Cr. C. 186.**

(10-*a*)—*Penal Code (Act* XLV *of* 1860), *ss.* 503, 44—*Criminal intimidation—Injury—Threat to put out of caste.*—The accused told the complainant, a member of their caste, that he should give up his field or else they would put him out of caste:—*Held*, that this did not amount to criminal intimidation within the meaning of the Indian Penal Code, the injury threatened not falling within the definition contained in s. 44 of the Indian Penal Code. REG. v. ALYA DHURMA, **Rat. Un. Cr. C. 37.**

(11)—*Penal Code, s.* 506—*Threat addressed to a third person.*—The threat, under s. 506, need not be addressed to the prosecutor direct. It is sufficient if the threat, though addressed to the neighbours, was intended to reach the party threatened. HIGH COURT PROCEEDINGS, 21ST JAN., 1865, **1 Weir 622.**

(12)—*Threat to whom to be addressed.*—To constitute an offence under s. 506, Penal Code, it is not necessary that the threat should be uttered directly to the persons intended to be intimidated. It is sufficient if it is intended to be, and is, communicated to such person. *In re* PALANI GOUNDAN, **1 Weir 623.**

(13)—*Threat to commit suicide.*—A threat to commit suicide, if another person refuses to do a particular act, is not criminal intimidation, unless the person be interested in the person making the threat. NUBI BUKSH v. OOMRA, **109 P.R. 1866, Cr.**

(14)—*Penal Code, s.* 506—*Threat to bring false charge.*—A threat to bring a false charge against a person and to support it by fabricating false evidence is criminal intimidation. CHITHRAPUTTRA PILLAI v. PARVATHI, **1 Weir 623.**

(15)—*Crim. Pro. Code,* 1872, *s.* 489—*Security to keep the peace on conviction for criminal intimidation—Penal Code, ss.* 503, 506.—Upon a mere conviction under ss. 503, 506, I.P.C., the accused person cannot be called upon under s. 489, Crim. Pro. Code, to find recognizance to keep the peace. EMPRESS OF INDIA v. RAGHUBAR, **2 A. 351.**

(16)—*Penal Code, ss.* 503, 507, 511—*Attempt.*—*Per West, J.*—The offence of criminal intimidation, as defined, seems to require both a person to be threatened and another in whom he is specially interested. Then, there must be the intent to cause alarm to the former by a threat to him of injury to the latter. The intent itself might be complete, though it could not be effected, but the existence of the interest seems essential to the offence, as also and equally to the attempt at the offence, since, otherwise, the attempt would be at something not constituting the offence. *Per Birdwood, J.*—No criminal liability can be incurred under the Code by an attempt to do an act, which, if done, would not be an offence against the Code. Where, therefore, the accused was not guilty of committing criminal intimidation, because the person threatened had no interest in the person regarding whom the threat is made, he could not also be guilty of an attempt. QUEEN-EMPRESS v. MANGESH JIVAJI, **11 B. 376.** [*R.*, **9 C.P.L.R. 14.**]

Criminal Intimidation—*concluded.*

(17)—*Penal Code, ss.* 186, 189, 506—*Intimidation of people going with Police—Crim. Pro. Code, Act* X *of* 1882, *s.* 106—*Rioting.*—Where a Police Inspector sent a constable to bring two persons for inquiring of them about an offence, the order was one under s. 160 of the Crim. Pro. Code, and, if the order was not in writing, the persons need not accompany the constable. A person, therefore, who threatened and induced such persons not to accompany the constable and give evidence, cannot be convicted under ss. 186 and 189 of the Penal Code, but commits an offence under s. 506 QUEEN-EMPRESS v. PURSHOTAM VANAMALAI, **Rat. Un. Cr. C. 850=Cr. Rg. 18 of 1896.**

(18)—*Penal Code, s.* 503—*Criminal intimidation, what constitutes— Conventional punishment by spiritual superior, whether amounts to injury.*—There can be no criminal intimidation where the injury of which complaint is made is the hardship arising from conventional punishment which a spiritual superior, acting in the exercise of his authority as regulated by the custom of the caste, is competent to inflict. The custom implies a common submission to his authority, and, assuming that there was an error of judgment on his part, the error cannot be accepted as sufficient for turning a case of conventional discipline into a criminal offence. QUEEN v. SIR VIDYA SANKARA NARASIMHA BHARATTI GURUSWAMULU, **6 M. 381=1 Weir 595=1 Weir 624.**

Criminal Justice Regulation.

See BUR. REG. V OF 1895.

Sch. XV—*See* SUMMARY TRIAL, U.B.R 1906, Crim. Pro. Code, 51=5 Cr. L.J. 298.

Criminal Justice, Upper Burma (Amending Reg. VII of 1886).

See BUR. REG. VI OF 1890.

Criminal Justice, Upper Burma, Amending Reg. V of 1892.

See BUR. REG. V OF 1895.

Criminal Law.

See PENAL CODE, s. 1, 25 A. 31=A.W.N. 1902, 173.

Criminal Law Amendment Act.

See ACT XIV OF 1908.

Criminal Law, Repealing enactments relating to.

See ACT XVII OF 1862.

Criminal Misappropriation.

See CHEATING.

See CRIMINAL BREACH OF TRUST.

See PENAL CODE, ss. 403, 404.

(1)—*Conversion—Penal Code, s.* 403.—Where the accused found a thing, and merely retained it in his possession, he was acquitted of criminal misappropriation under the section referred to. QUEEN v. ABDOOL, **10 W.R. Cr. 23.**

(2)—*Retaining by servant of money due as wages.*—The retaining by a servant of money

Criminal Misappropriation—*continued.*

due as wages would constitute criminal misappropriation. QUEEN v. BISSESSUR ROY, **11 W.R. Cr. 51.**

(3)—*Misappropriation of property of deceased person—Penal Code, s.* 404.—It is not necessary for a conviction for dishonest misappropriation of property possessed by a deceased person at the time of his death, under s. 404 of the Penal Code, that the accused should misappropriate it to his own use. QUEEN v. NOBIN CHUNDER SIRCAR, **12 W.R. Cr. 39.** *In re* ENAYET HOSSEIN, **11 W.R. Cr. 1.**

(4)—*Penal Code, s.* 404—*Offence under.*—Under s. 404, all the elements are required to constitute the offence which would be required to constitute the offence of criminal misappropriation in respect of a person who is alive. QUEEN v. NOBIN CHUNDER SIRCAR, **12 W. R. Cr. 39.**

(5)—*Refusal to pay for goods purchased—Penal Code, s.* 403.—The person, who takes certain hides from the prosecutrix, but refuses to pay for them, is not on that account guilty of dishonest misappropriation. QUEEN v. BOYSTUM MOOCHEE, **17 W.R. Cr. 11.**

(6)—*Penal Code, ss.* 403, 415—*Criminal misappropriation—Cheating.*—A and B met at Benares station. A got a ticket for Ajudhia and B for Benares Cantonment. A showed her ticket to B to see if it was all right. B, instead of returning the same ticket, substituted his own *Held* that the offence was one of misappropriation under s. 403 of the Penal Code rather than cheating under s. 415. EMPEROR v. RAZA HUSAIN, **A.W.N. 1905, 9.**

(7)—*Penal Code, s.* 403—*Criminal misappropriation—Dishonest intent.*—A mortgagor, who appropriated to himself certain money which was stated in the mortgage bond to be payable to the mortgagee, was charged with criminal misappropriation. He pleaded that he did so, as the mortgagee had not paid part of the consideration money provided for in the bond. *Held* that, assuming that there had been misappropriation by the mortgagor, it did not become criminal misappropriation, as defined in s. 403, I.P.C., until it had been established that there was dishonest misappropriation. EMPRESS v. PARSOTAM DAS, **A.W.N. 1881, 80.**

(8)—*Dishonest intent.*—The mahars of a village appropriated to their own use the skin of a buffalo, the owner of which could not be found. *Held*, that they were not guilty of criminal misappropriation, as there was no dishonest intention. *In the matter of* JETHA SATHU, **Cr. Rg 1st May 1872.**

(9)—*Penal Code, s.* 403—*Iron safe containing property belonging exclusively to other members of the family—Iron safe common property of all — Removal of iron safe with property, nature of the offence.*—A, the managing member of a joint Hindu family, removed an iron safe, the property of the joint estate, but containing properties which exclusively

Criminal Misappropriation—*continued.*

belonged to the other members of the family, from the possession of the latter without their consent. *Held* that A, by removing it, did not commit theft or any other offence but was guilty of misappropriation, if, on discovering the contents of the safe, he retained them and attempted to appropriate them. *In re,* KOOMAR JOGENDRANATH, **1 J.G. 31.**

(10)—*Penal Code, s.* 403 — *Criminal misappropriation—Joint property — Question of ownership—Jurisdiction of Criminal Courts.*—Joint property may be the subject of criminal misappropriation. The question of the actual ownership of property is not one for the decision of a Criminal Court, but of a Civil Court, and all appearances of prejudging the question should be avoided. EMPRESS v. PANIA, **A.W. N. 1881, 89**.

(11)—*Appropriation of money paid by mistake.*—Where money is paid by mistake, and the person receiving it, either at the time he received the money or at any time subsequently before its refund, discovers the mistake made by the complainant, but determines to appropriate the money, he is guilty of misappropriation. QUEEN v. SHAMSOONDAR, **2 N.W.P. 475.**

(12)—*Innocent possession when amounts to.*—Criminal misappropriation takes place when the possession has been innocently come by, but where, by a subsequent change of intention, or from the knowledge of some new fact with which the party was not previously acquainted, the retaining becomes wrongful and fraudulent. BHAGIRAM DOME v. ABAR DOME, **15 C. 388**.

(13)—*Gist of the offence.*—To constitute the offence under s. 403, I.P.C., there must be a misappropriation of moveable property and the misappropriation must be dishonest. In order to be dishonest, the property must be misappropriated or converted "with the intention of causing wrongful gain to one person and a wrongful loss to another," *i.e.*, with the intention of causing gain by unlawful means of property to which the person gaining it is not legally entitled, or the loss by unlawful means of property to which the person losing it is entitled. Where there is no intention to cause wrongful gain or wrongful loss of property, and merely an intention to deprive the owner temporarily of the use of property, dishonesty is not made out. Expl. 1 to s. 430, I.P.C., does not extend the section so as to include not only cases of wrongful gain or loss of property, but also cases of wrongful gain or loss of the possession of property, as distinct from gain or loss of possession of the property itself. JHANDU v. EMPRESS, **27 P.R. 1886, Cr.**

(14)—*Penal Code, ss.* 403 *and* 411—*Distinction between criminal misappropriation and "dishonestly retaining."*—A person, who is proved to be the thief, cannot be convicted of receiving, and by like reasoning, a person, who is proved to have dishonestly misappropriated property, cannot be convicted of retaining it under s. 411. If a man came honestly into possession of stolen property and then retained it, after he had discovered that it was stolen, he would commit the offence of dishonestly retaining under s. 411. S. 75, Penal Code, does not apply to s. 403, though it applies to s. 411. SHWE THI v. KING-EMPEROR, **3 L.B.R. 254 = 5 Cr.L.J. 413.**

(15)—*Property not taken from the possession of the owner—No theft but criminal misappropriation—Penal Code, ss.* 379, 403.—Where property, lost by the owner, is found in the possession of the accused, the offence committed by the accused is not theft but criminal misappropriation as the property was not taken from the possession of the owner. SHWE LE v. CROWN, **1 L.B.R. 123.**

(16)—*Penal Code, ss.* 403 *and* 429—*Bull dedicated to idol.*—A bull dedicated to an idol and allowed to roam at large is not *fere bestia* and therefore *res nullius.* Such an animal would, *prima facie,* be the property of the temple, and be the subject of criminal misappropriation. QUEEN-EMPRESS v. NALLA, **11 M. 145 = 1 Weir 498 = 1 Weir 456.** [*R.*, 17 C. 852, U.B.R. 1892—1896, Vol. I, 238.]

(17)—*Promise to pay—Acquittal—Order of—Revision.*—When an acquittal proceeds on a mistaken view of the law, the High Court can interfere in revision. The complainant agreed to receive money which the accused, charged with criminal misappropriation, promised to pay in three days. The Magistrate thereupon acquitted the accused. *Held*, that the acquittal was illegal. MUSAMMAT NANHI BAHU v. DHUNDE, **6 A.L.J. 758**

(18)—*Duty of agent to landholder.*—It is the duty of the agent of a landholder to keep the collections he makes for his master separate from his own moneys, expending thereout moneys on his master's behalf and handing over the balance to his master, and if he, in breach of this trust, converts the money to his own use, he is amenable to a criminal prosecution. Where a land owner permits the agent to mix the collections with his ownmoneys, if the agent applies the moneys so collected to his own use, fraudulently and dishonestly, and falsifies the accounts so as to conceal his fraud, there is evidence of criminal misappropriation. QUEEN v. KAREEM BUX, **3 N W.P. 30.**

(19)—*Property in lost goods.* — The offence consists in the dishonest misappropriation or conversion of moveable property, and before a conviction can be recorded, it must be proved that the article forming the object of the charge was moveable property. [*D.*, 11 P.R. 1908 = 27 P.W.R. 1908 Cr.] Where property has been cast away or abandoned, any one finding it and taking it acquires a right to it which would be good even as against the former owner, if the latter should be minded to resume it; but when a thing has been accidentally lost, the property is not divested, but remains in the owne who has lost it. Where the accused found a gold

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mohour on an open plain, and sold it the next day to a shroff, *Held*, that, in the absence of all information as to the circumstances under which it was lost, it would be impossible to say, with any approach to certainty, that it had not been finally abandoned before it was picked up, and that the accused could not be convicted under s. 403, I.P.C. QUEEN-EMPRESS v. SITA, **18 B. 212.** [*D.*, 11 P. R. 1908=27 P. W. R. 1908; Cr.].

(20)—*Penal Code, Act* XLV *of* 1860, s. 404—*Immoveable property.*—S. 404 of the Penal Code does not apply to immoveable property. REG. v. GIRDHAR DHARAMDAS, **6 B.H.C. Cr. 33.** [*F.* 23 C. 372; *R.*, Rat. Un. Cr. C. 928; *D.*, 36 C. 758=10 Cr. L.J. 253=3 Ind. Cas. 189.]

(21)—*Penal Code, ss.* 409, 463—*Misappropriation and falsification of accounts for the purpose of screening the misappropriation.* — Where a person misappropriates a sum of money, and to screen the misappropriation, falsifies the account, the offence of falsification becomes part and parcel of the offence of misappropriation, and the whole transaction must be considered as an offence consisting of criminal misappropriation. EMPEROR v. ANANT NARAIN, **6 Bom. L. R. 94.**

(22)—*Penal Code, s.* 405— *Misappropriation by partner.*—A partner who dishonestly misappropriates or converts to his own use any of the partnership property with which, he is entrusted or which he has dominion over, is guilty of an offence under s. 405. EMPEROR v. LALOO GHELLA, **6 Bom. L. R. 553.**

(23)—*Taking coins from land bought.*—A person finding and taking coins from land bought by him cannot be convicted of criminal misappropriation though the money did not belong to him, so long as they were not in the possession of any other person. REG. v. CHODAPA, **Rat. Un. Cr. C. 8.**

(24)—*What should be considered in a case of —Criminal misappropriation.* — In a case of criminal misappropriation, the Court should consider the question, whether the money was kept with a dishonest intention, or only on a wrong opinion that the prisoner was justified in keeping it. In the latter case, the act of the accused would not constitute the offence of criminal misappropriation. QUEEN-EMPRESS v. KHANDERAO, **Rat. Un. Cr. C. 700=Cr. Rg. 30 of 1894.**

(25)—*Penal Code, s.* 403—*Crim. Pro. Code, Act* X *of* 1882, *s.* 203 —*Misappropriation of temple property.*—Where the complaint of a *poojari* of a temple against the trustees, of having misappropriated some of the God's ornaments, was dismissed under s. 203 of the Crim. Pro. Code, on the ground that the nature of the trust had not been determined, *held* that the dismissal without enquiry was illegal and that any use of temple property otherwise than for the idol or temple amounts to misappropriation. GADGAYYA v. GURU SIDDHESHVAR, **Rat. Un. Cr. C. 919.**

Criminal Misappropriation—*continued.*

(26)—*Penal Code, s.* 403—*Criminal misappropriation—Inference of dishonest intention—Gist of the offence.*—Where an Income-tax clerk in a Collectorate, whose duty it was to receive moneys paid by persons assessed to income-tax, to enter such receipts in the remittance book and to remit the moneys immediately to the treasury, retained two sums for several months without entering them in his accounts, and paid them up, when he knew that detection was inevitable, making false entries in the remittance book as to the date of receipt, *held*, that the intention of the accused, as was deducible from the circumstances of the case, was a dishonest one, and that the accused was, therefore, guilty of criminal misappropriation under s. 403, Penal Code. [*D.*, Rat. Un. Cr. C. 484.] The offence under s. 403 consists in the dishonest misappropriation or conversion, either permanently or for a time, of property which is already without wrong in the possession of the offender. QUEEN EMPRESS v. RAMAKRISHNA, **12 M. 49=1 Weir 457.**

(27)—*Penal Code, ss.* 379, 403 *and* 424—*Standing crops under attachment under s.* 274 *of the Civ. Pro. Code—Their removal, whether amounts to theft or criminal misappropration.*—Standing crops are, for the purposes of the Penal Code, immoveable property, and when such crops are attached under s. 274 of the Civ. Pro. Code, possession of them is not transferred to the Court, but remains with the owner with the condition that he is forbidden to alienate or charge the crops. When the crops are cut by the owner, they become moveable property, but it cannot be said that the possession of them is transferred to the Court or its officer by the act of cutting. The cutting, however, cannot put an end to the attachment once properly effected. The crops must be regarded as moveable property under attachment, but in the possession, as before, of the judgment-debtor. A judgment-debtor removing such attached crops would, therefore, not be guilty of an offence under s. 379, but will be liable to be convicted of criminal misappropriation under s. 403 and of an offence punishable under s. 424, Penal Code. QUEEN EMPRESS v. MAKAN ABAYYA, **22 M. 151=8 M.L.J. 259=1 Weir 424 and 486.**

(28)—*Penal Code, ss.* 403 *and* 409—*Conviction for minor offence—Evidence disclosing graver offence to appellate Court—Conviction, whether invalid.*—The conviction of a public servant by a second class Magistrate for the minor offence of criminal misappropriation was held not to be invalid, although the facts, established by the evidence, seemed to constitute the offence of criminal breach of trust by a public servant, not triable by the second class Magistrate; the interests of justice did not suffer by the conviction of the prisoner in respect of the minor charge NARAYAN NAIKAN v. TAHSILDAR OF CONJEEVARAM, **2 M L.T. 495=7 Cr. L.J. 215.**

(29)—*Managing member of joint Hindu family, when liable to be charged with criminal*

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misappropriation.—The managing member of a joint Hindu family is entitled, under the Hindu law, to collect, keep and sell the produce of the family lands, notwithstanding the wish of any of the co-parceners to the contrary, such co-parcener being only entitled to an account of the family income at the time of partition and not to the payment of a share of the produce whenever it is collected. Such managing member may be liable to a charge of misappropriation, if, after a division of the property has taken place, and the share of each member of the family has been ascertained, it is found that the manager has wrongfully applied to his own use the share that belongs to one of the other co-parceners; but, so long as no account of the produce or money has been taken or the shares ascertained, no member of an undivided Hindu family has the right to claim any particular share or property as his separate property, and no prosecution against the manager for misappropriation would lie. The mere fact that there has been a general agreement to divide does not entitle one of the co-parceners to claim any defined portion of the estate, nor does it even enable him to say that he is entitled to any particular *quantum* in an isolated item of the property; until division, the law entrusts the property to the manager. HIGH COURT PROCEEDINGS, 14TH DEC. 1880, No. 2568, **1 Weir 453.**

(30)—*Accused finding logs of wood in a river and leaving them in front of his house.*—The accused found two logs of wood drifting in a river during high freshes and took possession of them. They were left in front of his house for about nine months. *Held*, that the accused had not committed an offence under s. 403, because the fact that the wood lay unused and exposed in front of the accused's house for a long time would negative any dishonest intention. *In re* MURUGAN, **1 Weir 455.**

(31)—*Criminal misappropriation by Kurnam.*—Where the accused, a village Kurnam, received money from the head of the village for the purpose of remitting it to the treasury, but omitted to do so, until after an inquiry by the Tahsildar into the arrears due by the villagers, *held*, that the Kurnam was guilty of the offence of misappropriation. *In re*, MADDURI KRISHNAMMA, **1 Weir 455.**

(32)—*Penal Code, s. 411—Buying stolen article from a child for a value much below its original value.*—Where the accused purchased for one anna from a child, six years old, two pieces of chintz valued at 15 annas, *held* that, although it was doubtful whether the accused could be convicted under s. 411, yet, the accused was clearly guilty of criminal misappropriation, if he knew that the property belonged to the child's guardian and dishonestly appropriated it to his own use. *In re* MAKHULSHAH, **1 Weir 470.**

(33)—*Picking up of money.*—The mere picking up of money, and retaining it, or making it over to another, would not necessarily constitute the

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offence of criminal misappropriation under s. 403, I.P.C. EMPRESS v. JAYA MAHAR, **5 C.P.L.R. 47, Cr.**

(34)—*Penal Code, s. 403—Misappropriation—Burden of proof—Dishonesty—Use of strayed animal—False statement by accused.*—The accused was found riding on a mare which had strayed away from the possession of its owner. The day after he was found riding, he confessed that he had found the mare hobbled, had unfastened the rope and used it as a bridle, had mounted the mare intending to ride her to his house, being tired, and to loosen her when he reached his house. Subsequently he stated before the Magistrate that his intention was to take the strayed mare to a Police Station. He was convicted under s. 403 of the Indian Penal Code. *Held*, that the conviction was illegal, for it could not be assumed that the intention of the accused was dishonest. The subsequent statement, being attributable to fear, did not affect the question of the accused's guilt. CROWN v. MUHAMMADA, **28 P.L.R. 1906 = 3 Cr. L.J. 299.**

(35)—*Partner misappropriating partnership property.*—There is nothing in the law to exempt a partner from a prosecution for criminal breach of trust provided the ingredients of the offence, as defined in s. 405, I.P.C., can be made out. Where a partner received money on behalf of the firm, and omitted to enter it in the accounts so that the fact of the receipt could not be known to his co-partner, *held*, that such omission, unless accounted for, was some proof of a *prima facie* dishonest intention, and that his admission, when detected, and profession to credit the money to his share of the profits did not exculpate him. KARIM BAKHSH v. HABIBULLAH, **10 P.R. 1903, Cr.** (13 B.L.R. 307, L. R. 1 Q.B. 1894, 548 *Cited*; 2 P.R. 1901, Cr. *D.*)

(36)—*Penal Code, s. 403—Property found in a public place—Finder picking it up and putting it in his pocket—No overt act of misappropriation—Whether criminal misappropriation committed—Revisional powers of Chief Court—Discretion—Crim. Pro. Code, s. 439.*—The accused picked up from the floor of a temple a bag containing articles of appreciable value, placed the bag in his waist cloth, and had not taken any action to discover the owner of the bag when arrested. *Held, per Reid and Chatterjee, JJ.*, (Clerk, C.J., dissenting as to this) that a person who merely picks up an article and puts it in his pocket, cannot be held, *ipso facto*, to have appropriated or converted it to his own use and that there must be some disposal of the article indicating an intention to exercise rights of ownership. Further, technical flaws and minor errors in the procedure of the lower Courts, and even mistakes in the appreciation of portions of the evidence would not ordinarily be good grounds for the Chief Court's revisional interference where they have not resulted in substantial prejudice or injustice to the accused. The discretion is a sound judicial discretion which is to be exercised with

Criminal Misappropriation—*continued.*

reference to the facts and circumstances of each case, and which should be subservient to the ends of justice. But, where such flaws and errors result in substantial prejudice or injustice to the accused, the Chief Court ought, under s. 439, Crim. Pro. Code, to interfere in revision. PHUMAN v. KING-EMPEROR, **11 P.R. 1908, Cr.** =**27 P.W. R. 1908**=**8 Cr. L.J. 250.**

(37)—*Appropriation to one's own use of jewel picked by another and got from the latter on false representation.*—Where the brother of a girl, who picked up a gold necklace, got possession of the necklace from the latter on representing that it belonged to an acquaintance of his, but later on delivered it to the police, although repeating to the police, representations made to his sister, which were found to be untrue to the knowledge of the accused, *held*, that he was guilty of criminal misappropriation. RAM DYAL v. EMPRESS, **24 P.R. 1886, Cr.**

(38)—*Charge, form of—Penal Code*, s. 403. —In a case in which the accused is charged with having dishonestly appropriated property, the charge should specify the person to whom the property belonged. Where the accused is interested in the property jointly with others, he is not necessarily guilty of a criminal act, if he takes possession of it and disposes of it. QUEEN v. PARBUTTY CHURN CHUCKERBUTTY, **14 W. R. Cr. 13.**

(39)—*Separate items of money - Charge, form of.*—The misappropriation of each separate item of money with which a person is entrusted is a separate offence, and the facts connected with it should form the subject of a separate enquiry. The duty of a committing officer in such a case is to select certain distinct items, to frame his charges upon them and to adduce evidence specially upon those items. CHETTER, C.A., (*Appellant*), **15 W.R. Cr. 5.**

(40)—*Trust arising from duty of public servant —Penal Code*, s. 409.—Where it was proved that the Head Clerk of an office entrusted the management of stamps, with the knowledge and sanction of his superiors, to one of his assistants, the latter was held to be guilty of criminal misappropriation by a public servant, within the meaning of s. 409, when he made away with the stamps. QUEEN v. RAM DHUN DEY, **13 W.R. Cr. 77.**

(41)—*Cheating or extortion by Chowkeedar.* —When a chowkeedar obtains money from another either under fraudulent inducement or dishonesty, or by putting that person in fear of injury, he is punishable under s. 417 or ss. 383 and 384, I.P.C. He can never be said to have appropriated public money entrusted to him as a public servant. QUEEN v. RAM NARAIN CHOWKEEDAR, **3 W.R. Cr. 32.**

(42)—*Mortgage—Wilful default by mortgagor in possession—Sale for arrears of Revenue—Benamee purchase by mortgagor —Criminal misappropriation.*—If a mortgagor in possession who is entrusted with the dominion over the mortgaged property by the mortgagee in whom

Criminal Misappropriation—*concluded.*

the property is in a mortgage in the English form, wilfully defaults, and causes the property to be sold for arrears of Government revenue for the purpose of defrauding the mortgagee, and purchases it *benamee*, he is liable to be punished for criminal misappropriation under s. 405 of the Penal Code. RAM MANICK SHAH v. BRINDABUN CHUNDER POTDAR, **5 W.R. 230.**

See ACT XIV OF 1866, s. 48, 14 M. 229=1 Weir 860.

See CRIM. PRO. CODE, 1898, ss. 222 (2), 234, 31 C. 928=8 C.W.N. 807.

See CRIM. PRO. CODE, 1898, s. 234, 2 C.W. N. 341.

See CRIM. PRO. CODE, 1898, s. 517, 12 Cr. L.J. 467=11 Ind. Cas. 1003.

See CRIM. PRO. CODE, 1898, ss. 536, 537, 26 M. 243, Note.

See FALSE EVIDENCE, 10 C.L.R. 187.

Joinder of the offences of forgery and, committed in one transaction with like offences committed in another—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 2 L. B.R. 10.

See PARTNERSHIP PROPERTY, 13 B.L.R. F.B. 307=21 W.R. 59, Cr., 6 B.L.R. 133=13 B.L.R. 310, note=15 W.R. 51, Cr.

See PENAL CODE, ss. 95, 403, A.W.N. 1881, 100.

See PENAL CODE, ss. 379 and 403, 7 C.P. L.R. Cr. 34.

See PENAL CODE, s. 409, 18 A. 116=A.W. N. 1896, 11.

See THEFT—GENERAL—WHAT CONSTITUTES THEFT, Rat. Un. Cr. C. 143.

See THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 15 C. 392, 15 C. 390, note.

See THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 4 Bom. L.R. 626, 1 Weir 408, Rat. Un. Cr. C. 136, 314=Cr. Rg. 70 of 1886, U.B.R. 1892—1896, Vol. I, 236.

Criminal Procedure Amendment Act.

See ACT XV OF 1862.

See ACT XI OF 1874.

See ACT III OF 1884.

See ACT IV OF 1891.

Crim. Pro. Code (Act XXV of 1861).

[REP., ACT X OF 1872.]

(1)—*General—Adoption of Western Court's Circular No 12—Publishing a table of changes.* —For the information and guidance of all Sessions Judges and Magistrates, the High Court was pleased to circulate Circular Order No. 12, dated the 27th April, 1866, issued by the Western Court, publishing a table indicating the changes made in the schedule annexed to the Crim Pro. Code by the provisions of Act VIII of 1866. CRIMINAL CIRCULAR, No. 7, DATED 14TH JUNE, 1866, **6 W.R. Cr. Cir. 1.**

Crim. Pro. Code (Act XXV of 1861)—*contd.*

(2)—*See* ACT V OF 1861, 5 W.R. Cr. Cir. 1.

(3)—*See* ACT XX OF 1866, ss. 94, 95, Rat. Un. Cr. C. 51.

(4)—S. 15—*See* MAGISTRATE, JURISDICTION OF—GENERAL—JURISDICTION, 4 M.H.C. App. 2.

(5)—Ss. 22, 46—*See* SENTENCE—GENERAL, Rat. Un. Cr. C. 49 = Cr. Rg. 2-3-1871.

(6)—Ss. 43, 66 and 68—*See* MAD. ACT III OF 1871, s. 154, 6 M.H.C. App. 49.

(7)—Ss. 44, 62, 308—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, Rat. Un. Cr. C. 50 = Cr. Rg. 13-4-1871.

(8)—S. 46—*See* No. 5, *supra.*

(9)—S. 62—*See* No. 7, *supra.*

(10)—S. 66—*See* No. 6, *supra.*

(11)—*Ss.* 66, 205—*Attestation and signature of statement.*—Where the statement of an accused person was not attested and signed by the Magistrate as required by s. 205 of the Crim. Pro. Code, before an appeal from the conviction was disposed of, *held*, the omission was a material irregularity. Where the examination of the complainant was not signed as required by s. 66 of the Code, *held* that the warrant of arrest issued on such examination was informal. REG. v. VYANKATRAV SHRINIVAS, **7 B.H.C. Cr. 50.** [*R.*, 12 B. 377.]

(12)—S. 68—*See* No. 6, *supra.*

(13)—S. 100—*See* ARREST, 7 P.R. 1869, Cr.

(14)—S. 149—*See* CONFESSION—CONFESSIONS TO MAGISTRATES ETC. 7 B.H.C. Cr. 56.

(15)—S. 163—*See* BAIL, 12 W.R. Cr. 18.

(16)—S. 205—*See* No. 11, *supra.*

(17)—Ss. 205, 366, 380, 426, 439—*See* REMAND, 2 B.H.C. 395.

(18)—S. 212—*See* BAIL, 1 B.L.R.S.N. 26 = 10 W.R. Cr. 34.

(19)—Ss. 225, 359, 425—*See* COMMITMENT TO SESSIONS COURT, 4 M.H.C. App. 30.

(20)—Ss. 234 and 237—*See* CHARGE—FORM OF CHARGE, 9 W.R. Cr. 33.

(21)—*S.* 237, *scope of.*—In s. 237, Crim. Pro. Code, 1861, requires that in framing a charge under any section of the Penal Code, the existence of the special exception contained within that section should be distinctly denied. **1 W. R. Cr. Letters, 10.**

(22)—*S.* 237, *Crim. Pro. Code* (1861), *as amended by Act* VIII *of* 1869, *Amendement Act.*—S. 237, Act VIII of 1869, forbids a police officer in charge of a station from proceeding with the investigation of any case in which there is no sufficient ground for entering on an enquiry or in which the immediate apprehension of the accused is not necessary for the ends of justice. In such a case, he must report the substance of the complaint or information for the orders of the Magistrate having jurisdiction and no other police officer is competent to make such enquiry unless he is authorised and required to do so by any order of the Magistrate. CRIMINAL CIRCULAR, No. 7 OF 20TH JULY, 1871, **16 W.R. Cr. Cir. 1.**

(23)—S. 237—*See* No. 20, *supra.*

(24)—Ss. 237, 239—*See* PENAL CODE, s. 323, Rat. Un. Cr. C. 20 = Cr. Rg. 17—8—1869.

(25)—Ss. 237, 239 and 243—*See* CHARGE—GENERAL, 8 W.R. Cr. Cir. 3.

(26)—*Crim. Pro. Code* (1861), *s.* 239 (6)—*Form of indictment.*—Where the Legislature has provided, as in s. 239 of the Crim. Pro Code of 1861, an example of an indictment to be used, it is sufficient to follow that form. HIGH COURT PROCEEDINGS, 16th MARCH 1868, **4 M.H.C. App. 5.**

(27)—S. 239—*See* Nos. 24, 25, *supra.*

(28)—S. 242—*See* CHARGE—FORM OF CHARGE, 12 W.R. Cr. 23.

(29)—S. 243—*See* No. 25, *supra.*

(30)—S. 271—*See* COMPLAINT—WITHDRAWAL AND REVIVAL OF COMPLAINT, 8 P.R. 1871, Cr.

(31)—*Crim. Pro. Code* (1861), *ss.* 280, 287 *and* 288—*Report of Sub-Magistrate not evidence of likelihood of breach of peace—Scope of ss.* 287 *and* 288.—The report of a Sub-Magistrate is not evidence on which a Magistrate can properly arrive at a conclusion that the accused is likely to cause a breach of the peace. Ss. 287 and 288, Crim. Pro. Code, require that evidence in such a case shall be recorded, and, if none is forthcoming, security to keep the peace should not be demanded. **3 J.G. 37.**

(32)—S. 287—*See* No. 31, *supra.*

(33)—S. 288—*See* No. 31, *supra.*

(34)—S. 306—*See* ABSCONDING OFFENDER, 3 N.W.P. 2.

(35)—S. 308—*See* JURISDICTION OF CIVIL COURTS, 4 B.L.R. F.B. 24 = 12 W.R. F.B. 18.

(36)—S. 308—*See* No. 7, *supra.*

(37)—S. 318—*See* ACT XXVII OF 1860, 11 W.R. Cr. 23.

(38)—S. 318—*See* ACT XV OF 1877, art. 47, 7 N.W.P. 35.

(39)—S. 318—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 6 B.H.C. Cr. 30.

(40)—Ss. 318, 319—*See* DAMAGES, 4 M.H.C. 410.

(41)—S. 319—*See* No. 40, *supra.*

(41-*a*) S. 359—*See* No. 19, *supra.*

(42)—S. 366—*See* No. 17, *supra.*

(43)—Ss. 368 and 369—*See* EXAMINATION OF WITNESSES, 8 W.R. Cr. Cir. 6.

(44)—S. 369—*See* DEPOSITION, Cr. Rg. 26-8-1869.

(45)—S. 369—*See* No. 43, *supra.*

(46)—S. 373—*See* CONVICTION, 3 B.H.C. Cr. 51.

(47)—S. 380—*See* No. 17, *supra.*

Crim. Pro. Code (Act XXV of 1861)—*concld.*

(48)—S. 382—*See* ALTERNATIVE FINDING, Rat. Un. Cr. C. 20=Cr. Rg. 6-9-1869.

(49)—Ss. 411, 436—*See* BAIL, 1 B.L.R. A. Cr. 7=10 W.R. Cr. 16.

(50)—S. 415—*See* APPEAL — APPEAL — PRACTICE AND PROCEDURE, 5 W.R. Cr. 80.

(50-*a*)—S. 425—*See* No. 19, *supra*.

(51)—S. 426—*See* APPEAL— GENERAL, 6 B.H.C. Cr. 47.

(52)—S. 426—*See* REVISION — GENERAL PRINCIPLES, 3 B.H.C. Cr. 42.

(53)—S. 426—*See* No. 17, *supra*.

(54)—Ss. 426, 439—*See* ACCUSED PERSON, 6 M.H.C. App. 45.

(55)—S. 427—*See* REVISION—RE TRIAL, 4 B.H.C. Cr. 2.

(56)—S. 436—*See* No. 49, *supra*.

(57)—S. 439—*See* Nos. 17, 54, *supra*.

(58)—*S.* 440—*Scope of the section.*—S. 440 of the Code has no bearing on the question of stamp duty, but refers solely to the expense of copying. Copies applied for under that section should in all cases be written by a salaried Officer of the Court. HIGH COURT PROCEEDINGS, 26TH JULY, 1869, **4 M.H.C. App. 57.**

(59)—S. 443—*See* WITNESS—MISCELLANEOUS CASES, 1 W.R. Cr. Cir. 4.

(60)—Ss. 445-A —445-C — *See* APPEAL — CASES WHERE APPEAL LIES, 14 W.R. Cr. 18.

(61)—Ch. III—*See* MAGISTRATE, JURISDICTION OF— GENERAL JURISDICTION, 2 Weir 20.

(62)—Ch. XIV— *See* COMPLAINT — DISMISSAL OF COMPLAINT, 3 N.W P. 341.

(63)—Ch. XIV—*See* COMPLAINT—WITHDRAWAL AND REVIVAL OF COMPLAINTS, 6 M.H.C. App. 8.

(64)—Ch. XV—*See* BEN. ACT II OF 1872, ss. 4, 34, 19 W.R. Cr. 4.

(65)—Ch. XX—Declaratory suit to set aside award—*See* ACT I OF 1877, s. 42, 15 W.R. 294 =6 B L.R. 643.

(66)—Chs. XX and XXII—Order for removing of encroachments not dealt with as local nuisance — *See* JURISDICTION OF CIVIL COURTS, 2 W.R. 287.

(67)—Ch. XXII—*See* No. 66, *supra*.

(68)—*Crim. Pro. Code, Act* XXV *of* 1861, *Schedule—Seventh Explanatory note—Purpose.* —The seventh explanatory note at the head of the schedule to the Crim. Pro. Code of 1861, as amended by Act VIII of 1869, refers to procedure and not the class of officers by whom an offence is punishable. REG. v. LAKHA JIBHAI, **Rat. Un. Cr. C. 24=Rat. Un. Cr. C. 26=Cr. Rg. 20-9-1869.**

Criminal Procedure Code (Act X of 1872).

[REP. ACT X OF 1882].

(1)—*See* ACT I OF 1877, s. 42, 6 M. 176.

(2)—*See* FALSE EVIDENCE, 18 B. 377, F.B.

Crim. Pro. Code (Act X of 1872)—*continued.*

(3)—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 7 B. 303.

(4)—*See* REVIVAL OF CRIMINAL PROCEEDINGS, 1 C. 282=25 W R. Cr. 30.

(5)—*See* STOLEN PROPERTY, 1 B. 630.

(6)—*Crim. Pro. Code* (1872), *ss.* 4, 296—"*Sessions case,*" *meaning of*—*S.* 457, *Penal Code*—*Held by the Full Bench* (*Spankie and Oldfield, JJ., dissenting*) :—A "Sessions case" in s. 296, means a case exclusively triable by a Sessions Court. Where a Magistrate discharged an accused person under s. 457, I.P.C., and the Sessions Judge ordered the commitment of the accused to the Sessions Court on a charge under ss. 457 and 380, I.P.C., *held*, that the Judge's order to commit the case to the Sessions Court was illegal, as the case was a Magistrate's case, and not one triable by the Court of Sessions only. EMPRESS OF INDIA v. KANCHAN SINGH, **1 A. 413 F.B.** [*F.*, 7 C.L.R. 168, 2 A.W.N. 105 ; *R.*, 2 A. 570.]

(7)—Ss. 4 and 296—*See* COMMITMENT TO SESSIONS COURT, 7 M.H.C. App. 27.

(8)—*Ss.* 34 *and* 283—*Evidence for the defence, not recorded by the Magistrate who tried the case.*—S. 283 does not cure the defect of a Magistrate, who had not jurisdiction, recording the evidence of witnesses for the defence, while the case was tried by another Magistrate having jurisdiction over the offence. BASAWA SINGH v. EMPRESS, **19 P.R. 1881. Cr.**

(9)—*Ss.* 36 *and* 109—*Alternative sentence of imprisonment.*—An alternative sentence of imprisonment exceeding 9 months could not be legally passed by a Magistrate of the District with enhanced powers, without confirmation by the Sessions Judge. EMPRESS v. PIR BAKSH, **16 P.R. 1881, Cr.**

(10)—*Crim. Pro. Code, Act* X *of* 1872, *ss.* 45, 315—*Penal Code, s.* 75—*Previous convictions*—*Light sentence.*—Though the High Court found that, in consideration of the various previous convictions proved against the accused, the sentence passed by the Magistrate was inadequate and that the Magistrate should have proceeded under ss. 45 and 315 of the Crim. Pro Code, *held* that the Magistrate had full discretion under s. 315 and that no new trial could be ordered. REG v. ANNAJI KRISHNA, **Rat. Un. Cr. C. 70=Cr. Rg. 24-4-1873.**

(11)—Ss. 50, 530—*See* BENCH OF MAGISTRATES, 2 C.L.R. 263.

(12)—Ss. 63, 530 — *See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 9 P.R. 1883, Cr.

(13)—*Ss.* 76, 90, 93—A Magistrate is competent to admit to bail recalcitrant witnesses arrested under s. 90 of the Code. HIGH COURT PROCEEDINGS 11TH MAY, 1881, No. 957, **2 Weir. 39.**

(14)—*S.* 90—*Information to police by agents.* — *Per Markby, J.* — A *khazanchi* of the zemindar of a village is not an 'agent' under the above section. A *dewan* may be an 'agent' during the absence of his master; but not a

Crim. Pro. Code (Act X of 1872)—*continued.*

dewan, who acts only under the orders of his resident master. *Quære—Per Prinsep, J.* — Whether, under the above section, an agent is responsible only for giving information of the occurrence of any sudden or unnatural death? EMPRESS v. ACHIRAJ LALL, **4 C. 603 = 3 C.L.R. 87 = 1 Shome L.R. Cr. 89.**

(15)—S. 90—*See* ILLEGAL OMISSION, 34 P.R. 1882, Cr.

(16)—S. 90(c)—*See* PENAL CODE, s. 202, A. W.N. 1883, 9.

(17)—S. 90—*See* No. 13, *supra.*

(17-*a*)—S. 93—*See* No. 13, *supra.*

(18)—S. 109—*See* No. 9, *supra.*

(19)—S. 147—*See* FALSE CHARGE, 8 C L.R. 289.

(20)—*Ss.* 227, 274—*Sentence of imprisonment and fine by first class Magistrate — Appeal—Form of record.*—Where a Magistrate of the first class passed a sentence of fine and imprisonment, *held* that his order was appealable; therefore, he should record the evidence of the witnesses and his reason for passing the sentence. *In the matter of* SHER MAHOMED, 2 **C.L.R. 511.**

(21 & 22)—*Crim. Pro. Code* (1872), *s.* 263—*Acquittal by jury—Duty of Sessions Judge in making a reference.*—When a Sessions Judge disagrees with a verdict of acquittal, it is his duty in sending up a case to the High Court, under ss. 263 and 464, to state the offence which, in his opinion, has been committed. Where a Sessions Judge referred a case to the High Court under s. 263, Crim. Pro. Code, 1872, *held* that the Court was competent to find the prisoner guilty, though the majority of the jury might have returned a verdict of acquittal *In the matter of* SAHAE RAE **1 J. G. 58.**

(23)—*Crim. Pro. Code* (1872), *s.* 263 — *Verdict of jury—Interference of High Court.*—Where there are reasons for suspicion sufficient to warrant the jury in disbelieving the witnesses and in giving the prisoner the benefit of the doubts raised by inconsistencies in their evidence, the High Court will not interfere, merely on the ground that another jury would have come to a different conclusion on the evidence. It must be shown that the verdict was unreasonable and perverse. *In re* HURREE NARAIN, **1 J.G. 76.**

(24)—Ss. 272, 283, 443 — *See* CHARGE—GENERAL, 10 B.H.C. 373

(25)—S. 274—*See* No. 20, *supra.*

(25-*a*)—S. 283—*See* Nos. 8, 24, *supra.*

(26)—S. 296—*See* Nos. 6, 7, *supra.*

(27)—Ss. 308, 310, 311—*See* JURISDICTION OF CIVIL COURTS, 19 W.R. 345.

(28)—S. 309 (3)—*See* SENTENCE—IMPRISONMENT—IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC., Rat. Un. Cr. C. 68 = Cr. Rg. 27-2-1873.

Crim. Pro. Code (Act X of 1872)—*continued.*

(29)—S. 310—*See* No. 27, *supra.*

(30)—S. 311—*See* No. 27, *supra.*

(31)—*S.* 315—*Power of Subordinate Magistrate to send a case for trial to the District Magistrate.*—A Magistrate may, at any stage of the proceedings, without framing a charge or completing an enquiry, send the accused to the Magistrate of the District to be placed upon his trial. *In re. a reference from* COMMISSIONER, LAHORE, **12 P.R. 1873, Cr.**

(32)—S. 315—*See* HABITUAL OFFENDER, A.W.N. 1881, 153, A W.N. 1882, 215.

(33)—S. 315—*See* No. 10, *supra.*

(34)—S. 390—*See* BAIL, 24 W.R. Cr. 8.

(35)—S. 435—*See* CONTEMPT OF COURT, Cr. Rg. 16—3—1871.

(36)—S. 439—*See* CHARGE, FORM OF CHARGE 22 W.R.C.R. 39.

(37)—S. 443—*See* No. 24, *supra.*

(38)—*S.* 446—*Power of Sessions Judge to expunge a charge before calling upon accused to plead.*—Where a Magistrate commits an accused person to the Sessions Court to be tried on specific charges, the Sessions Judge has no power, before calling upon the accused to plead, to expunge one of the charges. EMPRESS v. PORESHOLLAH SHEIKH, **7 C.L.R. 143.** [*R.*, 13 Cr. L.J. 609 = 16 Ind. Cas. 257 = 15 C.L. J. 517 = 16 C.W.N. 1105.]

(39)—Ss. 489, 490, 500, 504—*See* SURETY BOND, Rat. Un. Cr. C. 126.

(40)—S. 490—*See* No. 39, *supra.*

(41)—Ss. 491, 492—*See* SECURITY TO KEEP THE PEACE— SUMMONS TO SHOW CAUSE, FORM AND NATURE OF, NOTICE, ETC., 27 P. R. 1882, Cr.

(42)—Ss. 492—*See* No. 41, *supra.*

(43)—S. 497—*See* SECURITY TO KEEP THE PEACE—EVIDENCE AND PROCEDURE, 11 P. R. 1882, Cr.

(44)—S. 500—*See* No. 39, *supra.*

(45)—S. 504—*See* No. 39, *supra.*

(46)—*Ss.* 505 *and* 506, *Crim. Pro. Code* (1872), —*Discretion.*—The powers under these very stringent sections should be exercised only with extreme discretion. EMPRESS v KALA CHAND DASS, **6 C. 14 = 6 C.L.R. 128 = 3 Shome L.R. Cr. 14** [*R.*, 16 B. 372.]

(47)—Ss. 505, 506—*See* SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1882, 92.

(48)—S. 506—*See* Nos. 46, 47, *supra.*

(49)—S. 521 — *See* PENAL CODE, s. 188, A.W.N. 1882, 232.

(50)—Ss. 536 and 537—*See* MAINTENANCE, 28 P.R. 1880, Cr.

(51)—S. 539—*See* PUNJ. ACT IV OF 1872, s. 42, 28 P.R. 1873, Cr.

(52)—Ch. XVII—*See* WITNESS— EXAMINATION OF WITNESSES, 4 M. 130 = 2 Weir 324 = 6 **Ind. Jur. 30.**

Crim. Pro. Code (Act X of 1872)—*concluded.*

(53)—Ch. XVIII—*See* SUMMARY TRIAL, 6 M. 396=2 Weir 328=8 Ind. Jur. 35.

(54)—Ch. XLI—*See* MAINTENANCE, 4 C. 374.

Crim Pro. Code (Act X of 1882).

[REP., ACT V OF 1898].

(1)—*Crim. Pro. Code, object of.*—The object of a Code of Criminal Procedure is to provide a machinery for the punishment of offenders against the substantive criminal law. *In the matter of the petition of* GANESH NARAYAN SATHE, **13 B. 590, F.B.** [*F.*, 16 B. 580; *R.*, 16 B. 661, Rat. Un. Cr. Cr. 776.]

(2)—*Police officer's authority to take security bond for production of a person before the Police —Magistrate's power to alter such bond.*—There is no provision in the Code, authorizing a police officer to take a security bond for the production of any person before the Police. The Magistrate has, therefore, no power to alter it and to impose a fresh obligation. *In the matter of* CHENDRA SEKHAR RAI, **11 C. 77.** [*Diss.*, 21 Ind.Cas. 679=22 P.R. 1913, Cr.=6 P.L.R. 1914 =6 P.W.R. 1913, Cr.]

(3) Applicability of—*See* ACT XXI OF 1879, 12 M. 39=1 Weir 10.

(4)—*See* FALSE EVIDENCE, 7 A. 44=A.W. N. 1884, 258.

(5)—*See* REPLY, RIGHT OF, Rat. Un. Cr. C. 938=Cr. Rg. 48 of 1897.

(6)—Repeal of Crim. Pro. Code of 1872 by that of 1882—*See* REVISION—MISCELLANEOUS CASES. 9 C. 513=12 C.L.R. 500.

(7)—*Crim. Pro. Code* (1882), s. 100—*Custody of minor.*—It is not in all cases of alleged kidnapping that an order under s. 100 of the Crim. Pro. Code should be passed. It is only when the Magistrate believes that the minor was wrongly confined that such an order should be made. QUEEN-EMPRESS v. MUKTABAL, **Rat.Un. Cr. C. 839=Cr. Rg. 8 of 1896.**

(8)—*Ss.* 109, 112, 118 *and* 123—*Security—Minor.*—There is nothing in these sections, which precludes a Magistrate from ordering a minor to give security, but the nature of the security which may be required, when the person in respect of whom the inquiry is made is a minor, is provided for. QUEEN-EMPRESS v. NGA SHAN, **L.B.R. 1893—1900, 129.**

(9)—S. 112—*See* No. 8, *supra.*

(10)—S. 118—*See* No. 8, *supra.*

(11)—S. 123—*See* No. 8, *supra.*

(12)—S. 380—*See* SENTENCE—CONFIRMATION OF SENTENCE, 35 P.R. 1886, Cr, F.B., 25 P.R. 1887, Cr., 3 P.R. 1898, Cr.

(13)—S. 380—*See* SENTENCE—TRANSPORTATION, 43 P.R. 1884, Cr. 4 P.R. 1886, Cr.

(14)—*Crim. Pro. Code,* 1882, *s.* 439—*High Court—Revision—Fresh evidence—Enhancement.*—Evidence of previous conviction discovered after the trial does not justify the High Court in enhancing the sentence in the exercise of its revisional powers. QUEEN-EMPRESS v. KARIM **Rat. Un. Cr. C. 461.**

Crim. Pro. Code (Act X of 1882)—*concluded.*

(15)—S. 566-A—*See* TRANSFER OF CRIMINAL CASE, GROUNDS FOR TRANSFER—NOTICE, 2 C.W.N. 498.

(16)—Ch. XXII—*See* PENAL CODE, s. 75, L.B.R. 1872—1892, 386.

(17)—*Crim. Pro. Code* (1882), *Ch.* XXXII—*Sessions Judge—Reference to District Magistrate.*—Where an application is made to a Court of Sessions under Ch. XXXII of the Crim. Pro. Code, the Court has no power to refer the applicant to a District Magistrate whose Court is one not subordinate to, but of concurrent jurisdiction with, the Sessions Court for the purposes of that chapter QUEEN-EMPRESS v. TAJBHAI, **Rat. Un.Cr. C. 525=Cr. Rg 57 of 1890.**

Crim. Pro. Code (Act V of 1898).

[REP. IN PT., (IN SINDH FRONTIER), REG. V OF 1872, S. 11 (SAVED BY S. 3 OF THE CODE). AM. (LOCALLY IN MADRAS), ACT V OF 1889, S. 4, AS AMENDED BY ACT I OF 1903. AM., ACT XII OF 1899, S. 3. S. 185 (2) (AS TO LOWER BURMA), AND PART OF S. 487 RELATING TO LOWER BURMA, REP., ACT VI OF 1900, S. 48. SS. 54 (2), 55 (2), 56 (2), 84 (4), 127 (2) AND CH. IX (SS. 127 TO 132) REP. AS TO THE TOWN OF BOMBAY, AND SS. 83 (2), 85, 86 AND 155 REP. AS TO THE POLICE IN THE TOWN OF BOMBAY, BOM. ACT IV OF 1902. SS. 260 (1), 555 AND SCHS. II, V: AM., ACT I OF 1903. APPLICATION OF S. 45 BARRED, BUR. ACT VI OF 1907, S. 7 (2). APPLICATION RESTRICTED, ACT XIV OF 1908, SS. 12, 14. S. 392 (2) AM., S. 32 (1), (3), SCH. IV REP. IN PT., ACT IV OF 1909, SS. 7, 8. AM. (IN LOWER BURMA), ACT VI OF 1900, S. 47; AM., (IN ANDAMAN AND NICOBAR ISLANDS), REG. III OF 1876, S. 13, AS AMENDED BY REG. I OF 1884, S. 3 (SAVED BY S. 3 OF THE CODE); AM., (IN BRITISH BALUCHISTAN), REG. VIII OF 1896 (SAVED BY S. 3 OF THE CODE); AM. (IN PART OF THE PUNJAB AND IN THE N. W. FRONTIER PROVINCE.) REG. III OF 1901, SS. 4 TO 7, ETC.; AM., (IN N.W. FRONTIER PROVINCE), REG. VII OF 1901, PT. II; AM., (IN SINDH FRONTIER), REG. III OF 1892, S. 27 (SAVED BY S. 3 OF THE CODE). DECLARED IN FORCE—IN THE SONTHAL PARGANAS (WITH MODIFICATIONS) REG. V OF 1893, S. 4, AS AMENDED BY REG. III OF 1899, S. 2; IN THE CHITTAGONG HILL TRACTS (WITH A RESTRICTION), REG. 1 OF 1900, S. 4; IN UPPER BURMA (EXCEPT THE SHAN STATES)—(WITH MODIFICATIONS), REG. V OF 1892, S. 2, AS AMENDED BY ACT XIII OF 1898, SS 16, 18; (SUBJECT TO THE PROVISIONS OF THE UPPER BURMA CRIMINAL JUSTICE REGULATION, 1892), ACT XIII OF 1898, S. 4.]

(1)—*Withdrawal of Crim. Pro. Code from a District—Its effect on the powers of the High Court.*—It is quite conceivable that, notwithstanding the withdrawal of the operation of the Code of Criminal Procedure from a certain district, the High Court might continue to exercise

Crim. Pro. Code (Act V of 1898)—*continued.*

appellate and revisional powers over that district. SOONDERJEE NANJEE v. MAYLON, **26 C. 874=3 C.W.N. 564.** (4 C. 172=5 I.A. 178, *R.*)

(2)—*Delivery of property, order directing, merely upon complaint, illegal.*—An order passed by a Magistrate, directing the delivery of property to the complainant merely upon a complaint that some accused person was detaining it unlawfully, is illegal. The High Court, as a Court of Revision, set aside such an order, but declined to make a further order for restoration, on the ground that it would be illegal to do so. NUR MAHOMED JAKARIAH v. JAFAR MEHAR ALI, **5 C.L.J. 229=5 Cr. L.J. 147.**

(3)—*Examination of the accused at a Sessions trial.*—At a Sessions trial, if, at the close of a case for the prosecution, the accused person makes any statement in his defence, it should be recorded; if he does not voluntarily make any statement and declines to answer any question put by the Court, the fact should also be noted. QUEEN-EMPRESS v. MUSSAMUT HARDAI, **S.C. 95, Oudh.**

(4)—*See* DISTRICT MAGISTRATE, A.W.N. 1882, 135.

(5)—*See* EXAMINATION OF ACCUSED, ss. 289, 342 and 537, 2 L.B.R. 115.

(6)—*See* JURISDICTION OF CIVIL COURTS, 6 C. 291=7 C.L.R. 433, 6 C. 835=8 C.L.R. 217.

(7-8)—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 6 M.L.T. 128.

(9)—*See* SENTENCE—CAPITAL SENTENCE, 8 M.L.T. 81=7 Ind. Cas. 397=11 Cr. L.J. 481.

——S. 1 (=1882, s. 1; 1872, ss. 1, 2, 111, 535, 540).

(10)—*S.* 1 (=*Crim. Pro. Code*, 1882, *s.* 1 (2) (*b*)—*Applicability of the Code to village headmen.*—No part of the Crim. Pro. Code applies to village headmen and, therefore, they are not bound to follow the procedure prescribed by s. 476. VIZIRAMUTHA PLLLAI, *Accused*, **2 Weir 1.**

(11)—Ss. 1, 2 (1 to 3)—*See* ACT XVIII OF 1854, ss. 30, 35, Rat. Un. Cr. C. 83=Cr. Rg. 28-7-74.

(12)—Ss. 1, 2 (1 to 3)—*See* ACT XXXI OF 1860, s. 35, Rat. Un. Cr. C. 80=Cr. Rg. 15-1-74.

(13)—Ss. 1 and 2 (1 to 3) and 44—*See* EUROPEAN BRITISH SUBJECT, 2 Weir 578=7 M.H.C. App. 32.

(14)—Ss. 1 and 192—*See* ACT I OF 1871, ss. 20 to 23, 23 C. 300.

(15)—Ss. 1 and 403—*See* AUTREFOIS ACQUIT, PLEA OF, 10 B. 181.

(16)—*Ss.* 1 (2) (*a*), 4 (*p*) *and* (*s*), 55 (*b*)—*Arrest by Police in Calcutta.*—From s. 1 (2) (*a*) of the Code of Criminal Procedure, it is clear that the Code does not apply to the Police of Calcutta, unless expressly made applicable to them. Paragraphs (*p*) and (*s*) of s. 4 have

Crim. Pro. Code (Act V of 1898)—*continued.*

not been expressly made applicable, and hence they do not apply to the Calcutta Police. S. 55 of the Code is, however, expressly applicable. Therefore, an officer in charge of the police station in Calcutta may therefore arrest a person, although there is no declaration by Government declaring a *thana* or police station in Calcutta to be a police station within the meaning of the Code. EMPEROR v. MADHO DHOBI, **31 C. 557=7 C.W.N. 661.**

(17)—*Ss.* 1 (2) (*a*), 4 (*p*) *and* (*s*), 55 (*b*), 109 (*b*)—*Arrest by Police in the town of Calcutta—Security for good behaviour—Duty of Magistrate to proceed with the case—Legality of the arrest.*—Honorary Magistrates are empowered to put in force the provisions of s. 109 of the Code, whenever they have credible information that the accused has no ostensible means of livelihood or is unable to give a satisfactory account of himself and is within the limits of their jurisdiction. Whether the person is before them under a lawful arrest or not is immaterial. EMPEROR v. MADHO DHOBI, **31 C. 557=7 C.W.N. 661.** (26 M. 124, *F.*).

——S. 2 (=1882, ss. 2 (1) (2), 558; 1872, ss. 2, 82, 86).

(18)—S. 2—*See* Nos. 11, 12, 13, *supra.*

(19)—Ss. 2, 32—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 7 B. 303.

——S. 3 (=1882, s. 3 (1) (2); 1872, s. 2 (3) and (4).)

(20)—S. 3—*See* ACT XVI OF 1874, 2 M. 161=1 Weir 887.

——S. 4 (=1882, s. 4).

(21)—*S.* 4—"*Complaint*"—*Definition of the term.*—Although a petition to the Magistrate impugning the correctness of the Police report, and praying that the person accused by the petitioner might be brought to trial, is not such a petition as, according to the practice in the mofussil, would be regarded as a complaint, still as the definition of complaint in s. 4 is very wide, such a petition falls within that definition. JOGENDRA NATH MOOKERJEE v. EMPEROR, **33 C. 1=2 C.L.J. 228=10 C.W.N. 158=2 Cr. L.J. 615.**

(22)—*S.* 4—*Sanction to prosecute—I.P.C.,* (XLV *of* 1860), *s.* 211—*Petition before Magistrate making charges against accused and asking for an order on Police to warn accused, if complaint.*—A petition in which the petitioner made certain allegations against a person and asked for an order on the Police to warn him is not a complaint in a criminal case, and no sanction to prosecute the petitioner under s. 211, Penal Code, for those allegations, can be granted. PURNO CHANDRA GHOSH v. HURISH CHANDRA GHOSH, **15 C.W.N. 1051=12 Ind. Cas. 303=12 Cr. L.J. 535.**

(23)—S. 4—*See* ACT XXII OF 1881, ss. 35, 47 and 49, 8 P.R. 1894, Cr.

(23-*a*)—S. 4—*See* Nos. 16, 17, *supra.*

(24)—*Ss.* 4, 88, 89 (=*Crim. Pro. Code*, 1882, *ss.* 4 (*m*), 88, 89)—*Proceedings of Magistrate*

Crim. Pro. Code (Act V of 1898)—*continued.*

under s. 88, *Crim. Pro. Code, whether "judicial proceedings."*—The law makes no provision for the investigation by a Magistrate of the claims of third persons to property which has been attached under s. 88 of the Code. Therefore, the proceedings of Magistrates under s. 88 are not "judicial proceedings" in the sense of s. 4 (*m*) of that Code. QUEEN-EMPRESS v. SHEODIBAL RAI, **6 A. 487.** [*F.*, 4 L.B.R. 109=7 Cr. L.J. 81; *R.*, 8 Cr. L.J. 260=29 P.W.R. 1908=9 P.R. 1908, Cr., 3 P.L.R. Cr., 81.]

(25)—*Ss.* 4, 145, 437 (=*Crim. Pro. Code,* 1882, *ss.* 4 (*h*), 145 *and* 437)—*Case under s.* 145—*Power of Magistrate to order a further enquiry.*—S. 437 of the Code does not authorise a Magistrate to order a further enquiry in a case under s. 145 of the Code, as the section is not directed to any offence at all. S. 437 only allows a further enquiry into a complaint which means, under s. 4 (*h*) a complaint of an offence, *i.e.*, any act or omission made punishable by any law for the time being in force. CHATHU RAI v. NIRANJAN RAI, **20 C. 729.** [*R.*, 17 C.P.L.R. 127, 42 P.R. 1905, Cr.=131 P.L.R. 1905; *D.*, 29 C. 242=6 C.W.N. 290, 33 P.R. 1905, Cr.=149 P.L.R. 1905.]

(26)—Ss. 4, 155, 156, 165—*See* ACT XIII OF 1857, s. 24, 24 C. 691.

(27)—Ss. 4, 177, 488—*See* MAINTENANCE, 3 P.R. 1893, Cr.

(28)—*Ss.* 4, 190—*Police report—Complaint—Procedure.*—An information laid by a police officer of gambling contrary to ss. 11 and 12 of the Act is not a police report in the sense in which this term is used in s. 4 or s. 190, Crim. Pro. Code. Police report means a report made by a police officer under ch. XIV in a case he is authorised to investigate. The information must be treated as a complaint and the complainant should be examined, and, if necessary, action should be taken under s. 202, Crim. Pro. Code, before issue of process. QUEEN-EMPRESS v. NGA SHWE E, **1 L.B.R. 58.** [*Overruled*, 2 L.B.R. 146.]

(29)—Ss. 4 and 190—*See* PUN. ACT XX OF 1891, s. 186, 2 P.R. 1892, Cr., 3 P.R. 1892, Cr.

(30)—*Ss.* 4, 190 *and* 200 *to* 203—*Complaint, what constitutes.*—A petition sent by post to a District Magistrate informing him of an offence and praying for an enquiry by the Tahsildar, is not a complaint within the meaning of s. 4, but only an information under cl. (*c*) of sub-s. 1 of s. 190 of the Crim. Pro. Code. The rejection of such a petition does not bar the entertainment by a Subordinate Magistrate of another complaint in respect of the same offence. KARIMBAKSH v. ADIL KHAN, **A.W.N. 1899, 201.**

(31)—*Ss.* 4, 190 (1) (*c*)—*Statement that a person keeps a gaming house—Issue of search-warrant and arrest of certain persons in consequence of the statement— Whether statement amounts to complaint—Magistrate not authorised under s.* 190 (1) (*c*)—*Exercise of powers under Bombay Gambling Act, s.* 6—*Effect.*

Crim. Pro. Code (Act V of 1898)—*continued.*

Where one M made a statement to the Magistrate that H kept a common gaming house in which many persons used to gamble, and in consequence of such statement, the Magistrate issued a warrant under s. 6 of the Gambling Act, directing the search of H's house and the arrest of all persons found therein. *Held*, that the Magistrate received no 'complaint' within the meaning of the term as defined in s. 4 of the Code, because it is clear that M's statement did not refer to any offence that was committed before the complaint was made and because it was not made in order to induce the Magistrate to take any action under the Code of Criminal Procedure, but in order to induce him to proceed under s. 6 of the Gambling Act. *Held*, also, that the Magistrate who was not specially authorised to take action under s. 190 (1) (*c*), Crim. Pro. Code, took cognisance of the case only after the accused were arrested and brought before him for trial as the result of the warrant issued by him under s. 6 of the Gambling Act in consequence of the statement made to him. HOTU, SON OF PESSUMAL v. CROWN, **8 S.L.R. 66=15 Cr. L.J. 657=25 Ind. Cas. 985.**

(32)—Ss. 4, 191, 200 and 537—*See* COMPLAINT, WHAT IS, AND WHO SHOULD INSTITUTE, 11 M. 443=2 Weir 238.

(33)—Ss. 4 and 195—*See* BEN. ACT VIII OF 1885, s. 123, 30 C. 285.

(34) —*Ss.* 4, 195, 487 (=*Crim.Pro.Code*, 1882, *ss.* 4 (*m*), 195 *and* 487)—*Power of Magistrate declining to revoke a sanction, to try the case.*—An order, whether original or appellate, granting or refusing or revoking sanction under s. 195, Crim. Pro. Code, is a "judicial proceeding" as defined in s. 4 of the Act. Therefore, a Magistrate, who has declined to revoke a sanction to prosecute a person on a charge of forgery, is precluded, under s. 487, from himself trying the case. QUEEN-EMPRESS v. SESHADRI AYYANGAR, **20 M. 383=2 Weir. 613.** [*F.*, 13 Cr. L.J. 1=13 Ind. Cas. 111.]

(35)—*Ss.* 4, 195, 537—*Absence of complaint or sanction—Penal Code, s.* 186—*Defect of jurisdiction.*—Where a Magistrate convicted a person of an offence under s. 186 of the Penal Code, on a letter sent by a Civil Court Amin to a police officer, and without sanction by the Civil Court, *held* that the Magistrate had no jurisdiction, since there was no complaint within the meaning of s. 4 of the Crim. Pro. Code, and since there was no sanction. The defect was not cured by s. 537. EMPEROR v. MATHURA SINGH, **A.W.N. 1904, 266.**

(36)—Ss. 4, 196, 287 and 537—*See* COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINT, 5 M.L.T. 1=32 M. 3=9 Cr. L.J. 108 =1 Ind. Cas. 22.

(37)—Ss. 4 and 199—*See* COMPLAINT—WHAT IS, AND WHO SHOULD INSTITUTE, 30 C. 910, F.B.=8 C.W.N. 17.

(38)—Ss. 4, 203, 437—*See* COMPLAINT, WITHDRAWAL AND REVIVAL OF COMLAINTS, 2 C.W.N. 290.

Crim. Pro. Code (Act V of 1898)—*continued.*

(39)—Ss. 4, 205—*See* BOM. ACT VI OF 1873, s. 48, Rat. Un. Cr. C. 205 = Cr. Rg. 7—8—1884.

(40)—Ss. 4, 250—*See* ACT XIII OF 1859, s. 2, 4 C.W.N. 253.

(41)—Ss 4 and 250—*See* COMPENSATION—GENERAL, 7 M. 563.

(42)—Ss. 4, 435—*See* ACT V OF 1876, s. 8, 14 B. 381, Rat. Un. Cr. C. 494.

(43)—*Ss.* 4, 488 (= *Crim. Pro. Code,* 1882, *ss.* 4 *and* 488)—*Meaning of the term "adultery,"—Wife's refusal to live with husband on the ground of husband's adultery.*—The term "adultery" in s. 488 must be construed with reference to the definition of the term given in s. 487, Penal Code. The husband's immorality, which does not amount to adultery or involve the degradation of a married woman being brought into the society of a concubine, is not a sufficient ground for the wife's refusal to live with her husband. In face of s. 4 of the Crim. Pro. Code, no other interpretation of the term "adultery" is possible than the limited interpretation contained in the Penal Code. QUEEN-EMPRESS v. MANNATH ACHARI, **17 M. 260 = 2 Weir 641 = 4 M.L.J. 83.** [*Overruled,* 20 M. 470, F.B. = 7 M.L.J. 303 = 2 Weir 615.]

(44)—*Ss.* 4, 495 (4), 537—*Prosecution conducted by police officer making investigation—Irregularity.*—An Inspector of Police, on information received by him in a case of gambling, applied for the warrant, arrested the accused, seized the books, etc., and named the witnesses to be summoned by the Magistrate. But he did not examine any of the witnesses, and his investigation was confined to an inspection of the books and the papers which had been seized, and from which he gained all the necessary information. *Held* that, though the case technically fell within the provisions of s. 495 (4), Crim. Pro. Code, the irregularity in the Magistrate's proceedings in no way prejudiced the accused persons. KING-EMPEROR v. TRIBHOVANDAS BRIJBHUKUNDAS, **4 Bom. L.R. 271 = 26 B. 533.**

(45)—Ss. 4 and 537—*See* ACT XXII OF 1881, ss. 41 and 47, 28 P.R. 1883, Cr.

(46)—S. 4 (*a*)—*See* COMPLAINT—WHAT IS AND WHO SHOULD INSTITUTE, Rat. Un. Cr. C. 554 = Cr. Rg. 29 of 1891.

(47)—*Ss.* 4 (*b*), 195, 476—*Complaint—No sanction—Revision.*—A Judge passed an order to the following effect: "I complain that R filed two false and forged bonds in the Court of Small Causes, &c." He sent the papers to the District Magistrate for taking action. *Held,* that the order of the Judge was a complaint within the meaning of s. 4 (*b*) of the Crim. Pro. Code and was not a sanction given by him under s. 195 or 476. RAJA RAM v. KING-EMPEROR, **12 A.L.J. 881 = 15 Cr. L.J. 700 = 26 Ind. Cas. 148.**

(48)—Ss. 4 (*b*), 199—Enticing away married woman—Complaint—Report of Police officer—

Crim. Pro. Code (Act V of 1898)—*continued.*

See PENAL CODE, s. 498, 39 P.L.R. 1911 = 32 P.R. 1910 = 12 Cr. L.J. 50 = 8 Ind. Cas. 1160.

(49)—*S.* 4 (*h*)—*Complaint, what constitutes.*—The presentation of a petition by the complainant that his complaint should be enquired into is in effect a complaint, and the Magistrate is bound to hold a full judicial inquiry into the matter before proceeding further. LALJI GOPE v. GIRIDHARI CHAUDHURY, **5 C.W. N. 106.**

(50)—*S.* 4 (*h*), *Penal Code, s.* 186—*Obstruction of public servant—Complaint—Sanction, want of—Quashing of proceedings.*—The petitioner was summoned under s. 186. I.P.C., for obstructing a peon in the execution of a warrant under the Cess Act. The report of the peon on which the proceedings were started was merely a report of what took place and contained no express or implied request to the Magistrate to take any action. *Held,* that the report did not come within the meaning of a complaint under s. 4, cl. (*h*), Crim. Pro. Code. *Held,* further, the report not being a complaint and there being no sanction by the public officer concerned, the prosecution under s. 186, I.P.C., was bad. AHMED HUSAIN v. EMPEROR, **17 C.W. N. 930 = 20 Ind. Cas. 622 = 14 Cr. L.J. 462.**

(51)—S. 4, cl. (*h*)—*See* ACT VI OF 1898, ss. 61 and 72, 10 C.W.N. 1029 = 4 Cr.L.J. 170.

(52)—*Ss.* 4 (*h*), 154, 159, 173, 202, 476—*Penal Code, s.* 211—*Information before Police reported false—Informant called upon by Magistrate to prove his case—Order for prosecution under s.* 211, *I.P.C.—Jurisdiction to make such order.*—The petitioner lodged an information with the Police, who reported it to be false. The petitioner made no complaint in Court, but the Sub-Divisional Magistrate, on receipt of the police report, passed the order "complainant to prove his case," and made over the case for disposal to another Magistrate who ultimately made an order under s. 476, Crim. Pro. Code, against the petitioner: *Held,* that the order of the Sub-Divisional Magistrate and the proceedings held thereunder do not come within any of the provisions of the Code of Criminal Procedure, and the order for prosecution was without jurisdiction. SARBA MAHTON v. EMPEROR, **17 C.W.N. 824 = 14 Cr. L.J. 287 = 20 Ind. Cas. 211.**

(53)—Ss. 4, cl. (*h*), 190, 191—*See* COMPLAINT—WHAT IS, AND WHO SHOULD INSTITUTE, 2 Ind. Cas. 453.

(54)—Ss. 4 (*h*), 190, 196, 235 to 239, 537 (*a*)—*See* CONSPIRACY, 16 C.W.N. 1105 = 16 Ind. Cas. 257.

(55)—*Ss.* 4 (*h*), 190, *cls.* (*a*), (*c*)—*Cognizance—Jurisdiction of Magistrate to summon persons not named in complaint, on the evidence for prosecution—Cl.* (*c*), *s.* 190, *scope of—Complaint and complainant, meaning of.*—A complaint was filed against several persons before the Magistrate under ss. 342, 363, I.P.C., by the husband of a girl against whom the offences were said to have been committed. The Magistrate ordered

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the complainant to prove his case, but before the date fixed, the complainant filed a petition withdrawing the complaint. The Magistrate, however, examined witnesses on the date fixed and found that there was no satisfactory evidence against the persons complained against, but he summoned two other persons under ss. 342, 363, 353, I.P.C., holding that there was evidence against them: *Held*, that the Magistrate took cognizance under cl. (1) (*a*) of s. 190, Crim. Pro. Code, and had jurisdiction to try the persons summoned by him. A Magistrate having taken cognizance of a complaint can also proceed against another person, who, although not mentioned in the complaint, appears on the evidence for the prosecution to have been concerned in the commission of the offence. Clause (*c*) of s. 190 deals with cases where there has been neither a formal complaint nor a police report, and independently of these the Magistrate takes the initiative upon information received from any person other than a Police Officer or upon his own knowledge or suspicion. It is clear from the definition of "complaint" in cl. (*h*), sub-s. (1) of s. 4, Crim. Pro. Code, that it is not necessary that the complainant should always be the party directly aggrieved by the commission of the offence, and the husband of the girl was a competent person to apply to the Magistrate with a view to his taking action under the Code. That, in the circumstances of the case, the Magistrate was right in ordering examination of witnesses in order to ascertain if there was any substance in the petition of withdrawal and in the complaint. DEDAR BUX v. SYAMAPADA MALAKAR, **18 C.W.N. 921 = 15 Cr. L.J. 546 = 24 Ind. Cas. 954 = 41 C. 1013.**

(56)—*Ss.* 4 (*h*) *and* 190 (1) (*b*)—"*Report of a police officer*" *and* "*Police report,*" *meaning of —Burma Gambling Act, ss.* 11 *and* 12.—The words "Report of a Police Officer" and "Police Report" respectively, in ss. 4 (1) (*h*) and 190 (1) (*b*) of the Crim. Pro. Code, do not refer exclusively to reports under Chapter XIV of the Code. They refer to, and include, any report by a Police Officer, whether in a cognizable or non-cognizable case; and it is not necessary for a Magistrate receiving such a report to treat the reporting officer as a complainant under s. 200 of the Code. The term "Police Report" in s. 190 (1) (*b*) includes even a verbal report by a police officer. The term "Police Report" in ss. 4 and 190 includes any written information given by a Police Officer in the performance of his duty as a public servant, and not in his capacity as a private individual. KING-EMPEROR v. NGA PO THIN, **2 B.L.R. 146.** (1 U.B.R. 1892—1896, 28, *Diss*; 1 L.B.R. 18, 58, 59, *Overruled*; 8 B.H.C. Cr. 113, 13 W.R. Cr. 27, 10 B. H.C. Cr. 70, *R.*) [*R.*, 7 Cr.L.J. 414 = 4 L.B.R. 137.]

(57)—*Ss.* 4 (*h*) *and* 190 (*c*)—*Complaint, what amounts to.*—Where a petition was presented to a Magistrate alleging that the petitioner was taken to a certain place and there was made to sign a paper, but he expressly stated that he did not wish to prosecute, *held*, that the petition was not a complaint and that proceedings taken upon such a petition could not be justified as having been instituted by the Magistrate on his own responsibility under s. 190 (*c*). BHAMAN SINGH v. HALUMAN MANDAL, **6 C.W.N. 926.**

(58)—*Ss.* 4 (*h*), 190 (*c*), 200—*Complaint—Allegation made in writing to a Magistrate with a view to his taking action—Examination of complainant before issue of process—Quashing of proceedings.*—Where one N. M. wrote a letter to the Sub-Divisional Magistrate in which he stated that the petitioner had used insulting language towards him and asked the Magistrate to take action, and the Magistrate, on receipt of that letter, issued process against the petitioner without examining the said N. M. *Held*, that the letter in question certainly comes within the definition of "complaint" given in s. 4, Crim. Pro. Code, and the Magistrate should have examined the complainant and then proceeded in accordance with law. KHETRO MOHAN MITRA v. EMPEROR, **17 C.W.N. 448 = 18 Ind. Cas. 412 = 14 Cr. L.J. 76.**

(59)—*Ss.* 4 (*h*), 195—*Petition to Collector against a subordinate officer, whether a criminal complaint—Dismissal of complaint, without giving opportunity to call witnesses—Order for prosecution under* s. 211, *Penal Code, validity of.*—A petition to the Collector directed against one of his official inferiors, and asking the Collector, as the head of the Department, to redress the grievances of the petitioner, is not a complaint within s. 4 (*h*). Where, on such a petition being presented, the Collector saw the petitioner and got him to repeat his statement on oath and, purporting to act judicially, dismissed the complaint and ordered the prosecution of the petitioner for an offence under s. 211, *held*, the order should be set aside, inasmuch as the Collector was not justified in arbitrarily turning a departmental complaint into a criminal complaint and that, even if the Magistrate was justified in taking the course he did, he should have given the petitioner an opportunity of calling his witnesses, and proving his allegation. JAGOBUNDHOO KARMAKAR v. EMPEROR, **30 C. 415.** [*F.*, 30 C. 910, F.B. = 8 C.W.N. 17, 109 P.L.R. 1904; *R.*, 8 A.L.J. 1106 = 12 Cr. L.J. 433 = 11 Ind. Cas. 617.]

(60)—*Ss.* 4 (*h*) *and* 195—*Public servant, obstruction to—Cutting crops distrained under* s. 123, *Bengal Tenancy Act (VIII of* 1885)—*Penal Code, ss.* 143 *and* 186—*Absence of complaint by public servant concerned.*—A person, acting under the orders of a Munsiff, was cutting crops which were distrained under s. 123, Bengal Tenancy Act. While doing so, with the assistance of a number of labourers the petitioners with a mob threatened the labourers and prevented the peon from having the crops out. The peon lodged information of the occurrence, and the petitioners were convicted under ss. 186

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and 143, Penal Code. *Held*, that the conviction under s. 186, Penal Code, should be set aside as there was no complaint of the public servant concerned within s. 195, Crim. Pro. Code, taking complaint as defined in s. 4, Crim. Pro. Code. KAILAS KURMI v. EMPEROR, **30 C. 285.** [*R.*, 8 C.W.N. 17=30 C. 910, F.B.]

(61)—*Ss.* 4 (*h*), 195, 202, 203, 258, 476—*Penal Code, s.* 211—*Complaint—Order for preliminary enquiry without recording reasons for distrusting truth of complaint— Preliminary enquiry in the presence of the accused condemned —Acquittal of the accused by one Magistrate, order for prosecution of the complainant by another, without jurisdiction — Belated order under s.* 476, *Crim. Pro. Code, no independent judicial opinion.*—Where a man files a complaint and supports it by his oath rendering himself liable to prosecution and imprisonment if it is false, he is entitled to be believed unless there is some apparent reason for disbelieving him, and he is entitled to have the persons against whom he complains brought before the Court and tried. Where the Magistrate, on receiving a complaint, did not order a local investigation, and without recording any reasons for distrusting the complainant passed the following order—"Complainant to prove his case. Accused may cross-examine." *Held*, that the order was absolutely illegal. The practice of conducting preliminary enquiries in the presence of the accused condemned. Futility of such preliminary enquiries pointed out. (14 C. 141, *R.*) Where the persons complained against by the petitioner were tried and acquitted by a Deputy Magistrate on the 1st August, and a week later another Deputy Magistrate called on the petitioner to show cause why he should not be prosecuted under s. 211, I.P.C., and finally on the 23rd August directed his prosecution under s. 476, Crim. Pro. Code, but subsequently on the District Magistrate observing that the order for prosecution ought to be made by the Magistrate who tried the accused persons, the trying Magistrate on the 16th September passed the following order—"Petition purporting to show cause against prosecution under s. 211 filed. The cause shown is not good; draw up proceedings under s. 211, I.P.C." —this order purporting to be made under s. 476, Crim. Pro. Code, although the accused persons had applied for the prosecution of the petitioner. *Held*, that there was no judicial proceeding of any sort or kind before the Magistrate who made the order of the 23rd August, and his order for the prosecution of the petitioner was altogether beyond his jurisdiction. That the belated order of the 16th September did not represent the independent judicial opinion of the Magistrate who made it. If he had thought that action ought to be taken under s. 476, Crim. Pro. Code, he ought to have passed the order one and a half months before, and the fact that he did not do so indicated very clearly that he did not at the time think it necessary. There may be cases in which a Court may not think it necessary in the public interest to take action under s. 476, Crim. Pro. Code, but may be willing to allow the person injured to seek redress. In such a case, it is not necessary that the order should be passed at or near the time of the disposal of the original case. *Held*, however, in the present case — that, even treating the order of the 16th September as one made under s. 195, Crim. Pro. Code, the further prosecution of the petitioner should not be sanctioned, considering how illegally and unnecessarily he has been harassed in these proceedings. BHIM LAL SHAH v. BISU SINGH, **17 C.W.N. 290=14 Cr. L.J. 57=18 Ind. Cas. 345=40 C. 444.**

(61-*a*)—*Ss.* 4 (*h*), 195, 476—*Sanction without application, legality of—Order directing prosecution, when to be made—Complainant, whether can delegate his right.*—An application is a necessary condition precedent to the grant to a private person of sanction to prosecute. (23 P.R. 1901, Cr., 30 P.R. 1905, Cr.=105 P.L.R. 1905=2 Cr. L.J. 687, 5 Ind Cas. 721=11 C.L.J. 111=11 Cr. L.J. 212, *R.*)—Where the facts constituting an offence are not brought to the notice of a Magistrate in the course of a judicial proceeding, he has no authority to act under s. 476. A person cannot delegate to another the right to file a complaint. A District Magistrate cannot, therefore, authorise the Public Prosecutor to file a complaint on his behalf. LADHA SINGH v. EMPEROR, **16 Cr. L.J. 251=28 Ind. Cas. 107=13 P.R. 1915, Cr. =20 P.W.R. 1915, Cr.** (25 Ind. Cas. 333=38 B. 642=16 Bom. L.R. 446=15 Cr. L.J. 581, *F.*)

(62)—Ss. 4 (*h*), 196—Accused not named in petition of complaint made with sanction of Local Government, but named in sanction itself—Jurisdiction to try—*See* PENAL CODE, s. 121-A, 15 C.W.N. 98=8 Ind. Cas. 1059=12 Cr. L.J. 2=38 C. 559.

(63)—*Ss.* 4 (*h*), 200 *to* 203—*Charge before Police reported false—Petition to Magistrate impugning the Police report—Magistrate's order to complainant to show cause against his prosecution under s.* 211, *I.P.C.—Legality of the order and the procedure.*—The petitioner instituted proceedings at the thana, against two persons, for an offence under s. 436, I.P.C. The Police investigated the case and reported it to be false. He then presented a petition to the Sub-Divisional Magistrate, impugning the Police report and praying for the trial of the persons charged. This petition the Magistrate ordered to be "put up with the Police report" and, without any disposal of it, directed the petitioner to show cause why he should not be prosecuted under s. 211, I.P.C. The case was then referred for enquiry and report to a Sub-Divisional Magistrate and agreeing with his report that the charge was maliciously false, the Sub-Divisional Magistrate passed an order directing the prosecution of the petitioner. *Held*, that the petition presented to the Magistrate was a complaint under s. 4 (*h*) of the Crim. Pro. Code and must have been dealt with as such under s. 203 of the Code before any order for

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the prosecution of the petitioner was passed. JOGENDRA NATH MOOKERJEE v. EMPEROR, **33 C. 1 = 2 C L.J. 228 = 10 C.W.N. 158 = 2 Cr. L.J. 615.** (8 C.L.R. 289, 27 C. 921, 3 C.W.N. 758, 4 C.W.N. 305, 5 C.W.N. 254, *F.*) [*F.*, 37 C. 250 = 10 C.L.J. 564 = 14 C.W.N. 330 = 11 Cr. L.J. 37 = 4 Ind. Cas. 710; *R.*, 8 Cr. L.J. 349 = 4 N.L.R. 136, 13 Cr. L.J. 578 = 15 Ind. Cas. 994 = 5 Bur. L.T. 129.]

(64)—*Ss.* 4 (*h*), 250, 173—*Information under s.* 51, *Bombay Act*, IV *of* 1890 (*District Police*) *by police officer—Whether a complaint—Power of Magistrate to award compensation under s.* 250 *Crim. Pro. Code—'Police Report' in s.* 4 (*h*)—*Meaning of.*—Where a Police officer empowered to lay an information under s. 51, Bombay District Police Act, lays such an information before a Magistrate: *Held* that the information was a complaint under s. 4 (*h*), Crim. Pro. Code, and the Magistrate has jurisdiction to fine the police officer who lodged the information, under s. 250, Crim. Pro. Code, if he decided that the case was frivolous or vexatious. (26 B. 150, *Appr.*; 22 B. 934, *Diss.*) The Police report referred to in s. 4 (*h*), Crim. Pro. Code, is a report made under s. 173, Crim. Pro. Code, after the conclusion of Police investigation. IMPERATOR v. KHUSHALDAS, **6 S.L.R. 82 = 17 Ind. Cas. 64 = 13 Cr.L.J. 752.** (5 S.L.R. 1, *R.*)

(65)—*Ss.* 4 (*h*), 337 (4)—*Complaint—Tender of pardon—Recording of reasons, for the pardon—Penal Code, ss.* 7, 20, 466—*Plaint—Proceeding of a Court of Justice—Alteration of plaint after it has been filed.*—In filing a complaint in a Criminal Court, it is not necessary that the complainant should name all the accused persons. The recording of reasons by the inquiring Magistrate is not a condition precedent to the tender of pardon and its acceptance by the approver. A plaint is a record or a proceeding of the Court of Justice in which it is filed. It is a document which, once filed, cannot be altered or amended without the special sanction of the Court. EMPEROR v. SHAMA CHARAN, **13 Cr.L.J. 588 = 15 Ind. Cas. 1004.**

(66)—*Ss.* 4 (*h*), 476—*Complaint—Petition against a Tahsildar addressed to the Collector—District Magistrate treated it as complaint—Enquiry instituted—Petitioners took part in enquiry—Intention of the petitioners—Their subsequent action.*—The petitioners addressed a petition to the Collector of Muttra alleging that a Tahsildar had been guilty of certain acts, some of which it appeared amounted to offences under the Penal Code. They further asked for issue of orders to the Tahsildar to refrain from doing those acts. The District Magistrate of Muttra who received the petition treated it as a complaint and ordered an enquiry. The petitioners did not at all protest against the course taken by him and produced evidence in support of their petition. It was, however, dismissed and they applied in revision to the Sessions Judge, referring to their petition as *complainant's complaint* and prayed for a further

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magisterial enquiry into the *matter of their complaint.* The revision was also rejected. The District Magistrate took action under s. 476, Crim. Pro. Code, and proceeded to make a complaint against the petitioners for offences under ss. 182 and 211, Penal Code. In defence it was pleaded that the petition on which enquiry proceeded was not a complaint under s. 4 (*h*), Crim. Pro. Code. *Held* that, although the petition was addressed to the Collector and the petitioners did not appear to make a complaint or to invoke the exercise by the Magistrate of his powers as such, the subsequent action of the petitioners showed that, whatever may have been the heading and the language of the petition, they all along intended it to be a complaint and desired the Magistrate to take action under the Code of Criminal Procedure. BHULLAN v. KING-EMPEROR, **11 A.L.J. 529 = 14 Cr. L.J. 425 = 20 Ind. Cas. 409.**

(67)—*S.* 4 (*i*)—*British-born subject—Proof.*—Where a prisoner pleaded that he was a British-born subject and that he ought, therefore, to be tried before the High Court, and where the evidence showed that the prisoner was the legitimate grandson of a person said to have been a serjeant in the service of the King or of the East India Company, and there was no sufficient evidence to establish a valid marriage between that grandfather and a native Christian woman, through whom the prisoner traced his descent, and there were also doubts about the nationality of the said grandfather, *held*, that there was no evidence to show that the prisoner was a British-born subject. *In re* THOMAS NASH TURNBULL, **2 Weir 11 = 6 M. H. C. 7.**

(68)—*Ss.* 4 (*i*), 454 (*i*), 460—*European British Subject—Son of Indian subject born at Constantinople—Failure to claim privilege—Relinquishment—Penal Code, s.* 307—*Attempt to murder—Intention—Wounding in neck with knife—Punishment—Sentence—Morphia habit—Absence of mental aberration.*—The mere fact that the accused, the son of an Indian subject of His Majesty, was born at Constantinople, does not make him an "European British Subject," when it is not proved that the accused or his father or his grandfather was domiciled in the United Kigdom or in any of the European, American or Australian Colonies or Possessions of His Majesty. If an accused wishes to avail himself of the provisions of s. 460 or s. 454 of the Crim. Pro. Code, he is bound to make a claim under the section. Failure to make a claim amounts to a relinquishment of the alleged right to be dealt with as an European or an European British subject. The wounding of a person with a knife in the neck only ¼th of an inch from the carotid artery, is an act so imminently dangerous that it must in all probability cause death. In awarding punishment under s. 307 of the Penal Code, the fact that the accused had contracted the morphia habit and was a very fickle minded person, may be taken into consideration, although there is no

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indication of a plainly marked mental aberration. ALEXANDER RUFFE v. EMPEROR, **13 Cr. L J. 197 = 14 Ind. Cas. 197 = 24 P.W.R. 1912, Cr. = 6 P.R. 1912, Cr.**

(69)—Ss. 4 (*j*), 346, Ch. XXXIII—Claim to be tried as European British subject—Waiver—Jurisdiction of Judicial Commissioner's Court, Nagpore — *See* EUROPEAN BRITISH SUBJECTS, 7 N.L.R. 93 = 11 Ind. Cas. 620 = 12 Cr.L.J. 436.

(70)—*Ss.* 4 (*k*), 145 *and* 350—"*Enquiry*"—*Proceeding under s.* 145, *whether—Part heard proceeding under s.* 145— *Transfer of trying Magistrate*—"*Successor.*" —Proceedings, under s. 145, Crim. Pro. Code, are inquiries within the meaning of the Code of Criminal Procedure. Under that Code, enquiry means not only an enquiry into an offence, but extends to enquiry into matters which are not offences. When, in the course of a proceeding under s. 145, Crim. Pro. Code, one Magistrate is transferred and another comes in his place, the latter, if of competent jurisdiction, can deal with the proceeding under s. 350, Crim. Pro. Code. S. 350, Crim. Pro. Code, ought to be construed with all reasonable liberality. ALIMOHAMED KHAN v. TARAK CHANDRA BANERJI, **13 C.W.N. 420 = 9 Cr. L J. 278 = 1 Ind. Cas. 336.** [*F.*, 39 C. 781 = 13 Cr. L.J. 218 = 14 Ind. Cas. 314.]

(71)—*Ss.* 4, *cl.* (*k*), 145 *and* 526—*Investigation in a case under s.* 145, *whether an enquiry in a Criminal Court.—Per Ghose, J.*—An investigation in a case under s. 145 is an enquiry within the meaning of s. 4, cl. (*k*). The Court or Magistrate taking cognisance of it is a Criminal Court within the meaning of the Code. Therefore, a proceeding under s. 145 is an enquiry in a Criminal Court as indicated in the 1st para of s. 526. LOLIT MOHAN MOITRA v. SURJA KANTA ACHARJEE, **28 C. 709 = 5 C.W.N. 749.** [*R.*, 34 A. 533 = 10 A.L J. 27 = 13 Cr. L J. 452 = 15 Ind. Cas. 84, 14 Cr. L. J. 529 = 14 M.L.T. 200 = 21 Ind. Cas. 129 = 1913 M.W N. 728; *Cons.*, 15 Cr. L.J. 359 = 23 Ind. Cas. 727 = 18 C.W N. 393.]

(72)—*S.* 4 (*l*)—*Investigation—Bombay Act* IV *of* 1887 (*Gambling*), *ss.* 4 *and* 5.—The definition of the term "investigation" in s. 4, Crim. Pro. Code, 1898, is not exhaustive. A Police Inspector, who had got information that persons were carrying on wagering business, and, having satisfied himself, had obtained a warrant under s. 6 of the Bombay Gambling Act and effected the arrest of the accused and seizure of their books, does make an "investigation" into the offence in respect of which the accused was being prosecuted. KING-EMPEROR v. TRIBHOVANDAS BRIJBHUKUNDAS, **4 Bom. L.R. 271 = 26 B. 533.**

(73)—*Ss.* 4 (*m*), 195, 476—*Proceedings in execution whether 'judicial proceedings' — Action under s.* 195 *or s.* 476 *when may be taken.*—Proceedings in execution are judicial proceedings within the meaning of Crim. Pro. Code till they are finally disposed of by the Court. (10 C.W.N. 55, 37 C. 642, *F.*; 32 C. 367, 35 C. 133, *Diss*; 12 B. 36, *R.*). If a Court acted on merely fanciful grounds, on grounds so empty, so obviously wrong that it could not be said to have formed a serious judicial opinion at all, then the High Court would probably interfere in revision and hold that there had been no such action as s. 476, Crim. Pro. Code, contemplates. The opinion spoken of by s. 476 is a judicial opinion founded on evidence. If such an opinion has been formed, then the High Court ought not in revision to interfere merely on the ground that it disagrees with it. (23 A. 249, *F.*) The principle which should guide the Courts in taking action under s. 195 or s. 476 is that no sanction should be granted unless there is a reasonable probability of conviction. EMPEROR v. SHIOSHANKARPURI, **10 N.L.R. 177.** (37 C. 250, *F.*)

(74)—*Ss.* 4 (*m*), 476—"*Judicial proceedings,*" *what amounts to.*—An enquiry conducted by a Magistrate into the truth of allegations against a subordinate official, contained in a petition presented to a Deputy Commissioner, is a judicial proceeding within the meaning of s. 4 (*m*) of the Code. EMPEROR v. KUNA SAH, **28 A. 89 = A.W.N. 1905, 195 = 2 A.L.J. 717 = 2 Cr. L.J. 454.** (32 C. 367, *D.*)

(75)—*Ss.* 4 (*m*), 476—*Execution proceedings, if judicial proceedings—Jurisdiction of executing Court to determine genuineness of decree*—Onus *of proof as to jurisdiction.*—The petitioners presented an application for the execution of a decree alleged to have been passed, whereas, as a matter of fact, no such decree had been passed, and all the statements contained in the application were false. The Court took action under s. 476, Crim. Pro. Code, the petitioners were prosecuted, and convicted under s. 193. *Held*, that execution proceedings are 'judicial proceedings,' within the meaning of s. 476, Crim. Pro. Code. The test which has to be applied to a particular proceeding before a Court, to determine whether it is or is not a 'judicial proceeding' for the purposes of s. 476, is, whether, in the course of that proceeding, the Judge has power legally to take evidence on oath, not whether he has actually taken such evidence. *Held*, also, that the Munsiff had jurisdiction in the matter, as the *onus* lay upon the petitioners of showing that the amount of the decree sought to be executed exceeded the pecuniary limits of the Munsiff's jurisdiction, and they were unable to discharge the same. *Held*, further, that the Munsiff had jurisdiction to enquire into and decide the question of the genuineness of the decree, and the mere fact that the decree was fictitious and so not executable cannot make the proceedings, so far as regards the determination of the genuineness or otherwise of the decree, void for all purposes. CHANAN v. CROWN, **1 P.R. 1910, Cr. = 161 P.L.R. 1910 = 3 P.W.R. 1910, Cr. = 5 Ind. Cas. 257 = 11 Cr. L.J. 90.** (32 C. 367, 35 C. 133, *Diss.*; 10 C.W.N. 55, *F.*)

(76)—S. 4 (*n*) and (*f*)—*See* PENAL CODE, s. 218, 27 C. 144.

Crim. Pro. Code (Act V of 1898)—*continued.*

(77)—Ss. 4 (*o*), 29 (2)—*See* BEN. ACT VIII OF 1885, s. 58 (3), 9 C.W.N. 816=2 Cr. L.J. 532.

(78)—Ss. 4 (o), 192 (1)—*See* ACT I OF 1871, ss. 20 to 23, 34 C. 926=6 Cr.L.J. 363.

(79)—Ss. 4 (o), 241, 243, 245, 246, 407, 439—*See* ACT I OF 1871, s. 22, 4 L B.R. 10=6 Cr. L.J. 121.

(80)—*Ss.* 4 (o), 250—*Appeal against order made under s. 22, Cattle Trespass Act* (I *of* 1871), *ss.* 20 *and* 22.—By s. 4 (*o*) of the Crim. Pro. Code of 1898, the word "offence" includes an act, in respect of which a complaint may be made under s. 20 of the Cattle Trespass Act. It follows that a person, against whom an order under S. 22 of the Cattle Trespass Act is made, is a "person convicted on a trial," and an appeal against such conviction, therefore, lies under s. 407 of the Code. S. 250 of the Code applies to a case, in which compensation is awarded to an accused person, because a frivolous complaint has been made against him. But, where compensation is awarded, not to the accused, but to the complainant, and it is awarded under s. 22 of the Cattle Trespass Act, s. 250 of the Crim. Pro. Code, does not apply. *In the matter of* PONNUSAMI, **29 M. 517=5 Cr. L.J. 86.**

(81)—*Ss.* 4 (*o*), 250—*Complaint as to use of house as a brothel—S.* 41, *Bombay District Police Act—Offence — Frivolous complaint — Compensation.*—S. 41, Bombay District Police Act, does not make the use of a house as a brothel an offence. So a complaint under that section is not the complaint of an offence as defined in s. 4 (o), Crim. Pro. Code, and a Magistrate has no jurisdiction to award compensation under s. 250, Crim. Pro. Code, if the complaint is found to be frivolous or vexatious. IMPERATOR v. MUSSAMAT KHAIRI, **6 S.L.R. 254=19 Ind. Cas. 1008=14 Cr. L.J. 320.**

(82)—*S.* 4 (*p*)—*Officer in charge of Police Station—Absence of—Senior Constable in Madras—Whether such officer.*—S. 4, sub-sec. (*p*) says that the term,' officer in charge of a Police station' shall include, when the officer in such charge is absent from the Station-House, the Police officer present at the Station-House who is next in rank to the above Police officer and is above the rank of Constable, or when the Local Government so directs, any other Police officer so present. In Madras, under Judicial Notification, No. 3, dated 31st January, 1883 (*Vide* Local Rules and Orders, Madras, Vol. I. part 11, p. 165), the Madras Government has directed that the Senior Constable present at any such station shall be deemed to be the officer in charge of the Police station for the time being, during the absence of the officer in charge as defined in the said section. THE PUBLIC PROSECUTOR v. KUPPA KAVUNDAN, **9 M L.T. 414=9 Ind. Cas. 1067=12 Cr. L.J. 190=10 Ind. Cas. 667=1911 M.W.N. 231.**

(83)—S. 4 (*p*)—*See* BUR. ACT IX OF 1892, ss. 6, 8, L.B.R. 1893—1900, 329.

Crim. Pro. Code (Act V of 1898)—*continued.*

(84)—S. 4 (*p*) and Ch. XII—*See* ACT I OF 1871, ss. 20 to 23, 23 C. 248.

(85)—S. 4 (*r*)—*Mukhtear—Power of Magistrate to withhold permission to appear.*—An order by a Magistrate refusing permission to a mukhtear to appear in two cases and also a general order refusing permission to appear in any case before him, owing to the latter's alleged misconduct in Court on a particular day, were held to be without jurisdiction. Even in punishing the mukhtear for the particular misconduct, the Magistrate should deal with the matter on its own merits giving the mukhtear an opportunity of defending himself. *In the matter of* TARENDRA NATH CHATTERJEE, **7 C.W.N. 524.**

(86)—*S.* 4 (*r*)—*Mukhtears, meaning of—Right to practice—Legal Practitioners Act* (XVIII *of* 1879), *s.* 9—*Powers of mukhtears.*—*Per Curiam.*—A mukhtear cannot, as a matter of right, practise in Criminal Courts. He can do so only if he obtains the permission of the Court in each case. The word "Mukhtear" in cl. (*r*), s. 4 of the Crim. Pro. Code also refers to such mukhtears as have obtained a certificate of qualification from the High Court. Where the District Magistrate issued a notice that "mukhtears can appear under s. 4 (*r*) only with the Court's permission," *held* that he did not act without jurisdiction. *Per Banerji, J.*—If permission, to act in a criminal case, is asked for by a mukhtear, who holds a certificate empowering him to practise, such permission should not be refused except for valid reasons. *Per Richards, J.*—In considering whether or not permission should be granted to a mukhtear, who has qualified himself with a certificate provided by the Legal Practitioners Act, the Court ought to consider every application on its merits. *In the matter of* ANANT RAM, **5 A.L.J. 40=A.W.N. 1908, 11=30 A. 66=7 Cr. L.J. 21.**

(87)—S. 4 (*r*)—Pleader—*Sanad* not extended to a District—Magistrate's permission to practise before him—Necessity—*See* LEGAL PRACTITIONERS—PLEADER AND CLIENT, 7 S.L. R. 98=15 Cr. L.J. 382=23 Ind. Cas. 750.

(88)—S. 4 (*r*)—*See* LEGAL PRACTITIONERS—PLEADER, 4 S.L.R. 207=9 Ind. Cas. 717=12 Cr. L.J. 118.

(89)—Ss. 4 (*r*), 340—Right of accused to be represented by mukhtear before a Magistrate or Sessions Judge—*See* LEGAL PRACTITIONERS—MUKHTEAR, 15 C.W.N. 409=9 Ind. Cas. 664=12 Cr. L.J. 111=13 C.L.J. 635=38 C. 488.

(90)—Ss. 4 (*r*), 340, 421, 422, 423—*See* LEGAL PRACTITIONERS—MUKHTEAR, 4 S.L. R. 195=9 Ind. Cas. 711=12 Cr. L.J. 118.

——S. 5 (=1882, s. 5; 1872, ss. 6, 7, 8, 11, 63, expl; 1861, s. 21).

(91)—S. 5—*See* ACT I OF 1871, s. 18, 5 B.H. C. Cr. 13.

(92)—S. 5—Applicability of Penal and Crim. Pro. Codes to the Laccadive Islands—*See* ACT XIV OF 1874, ss. 1 to 7 and 11, 13 M. 353=2 Weir 1.

Crim. Pro. Code (Act V of 1898)—*continued.*

(93)—S. 5—*See* ACT XI OF 1878, s. 19 (i), 1 Weir 660.

(94)—S. 5—*See* CONTEMPT OF COURT, 10 C. 109 = 10 I.A. 171, P.C.

(95)—*Ss.* 5, 7 (= *Crim Pro, Code*, 1872, *ss.* 8 (2) *and* 12 (2)—*Jurisdiction of Magistrate.*—A Magistrate in the division in which an offence is committed and a Magistrate whose powers have not been formally limited to any particular portion of the division have jurisdiction over an offence committed in the division. HIGH COURT PROCEEDINGS, 1ST APRIL, 1880, NO. 570, **2 Weir 13.** [*R.*, U.B.R. 1892—1896, Vol. 1, 16.]

(96)—*Ss.* 5 *and* 83—*Warrants issued under Act* XIII *of* 1859.—A Magistrate has no discretion to decline to execute warrants issued by the Magistrate of another district under Act XIII of 1859 and forwarded to him for execution under s. 83 against persons residing in his district, as s. 5 read with s. 83, Crim. Pro. Code, does not exclude from the operation of the latter section warrants issued under Act XIII of 1859. QUEEN-EMPRESS v. CHETU, **11 P.R. 1898, Cr.**

(97)—Ss. 5, 386—*See* ACT I OF 1868, s. 5, Rat. Un. Cr. C. 57 = Cr. Rg. 5 10-71.

——S. 6 (= 1882, s. 6 ; 1872, ss. 5, 19 ; 1861, s. 23).

(98)—S. 6—*See* PRESIDENCY MAGISTRATE, Rat. Un. Cr. C. 193.

(99)—*Ss.* 6 *and* 32—*District Magistrate—Jurisdiction—Trial commenced but not concluded by first class Magistrate while officiating as Magistrate of the District.*—A trial commenced before an officiating District Magistrate was concluded by that officer after he had ceased to act as Magistrate of the District. He continued to serve in the District as a first class Magistrate. No objection to his jurisdiction was raised during the trial by the accused. On appeal, the learned Sessions Judge set aside the conviction and ordered a re-trial on the ground that the Magistrate in question had no jurisdiction to continue the trial after ceasing to act as District Magistrate. *Held*, that the Magistrate had jurisdiction to continue the trial to its conclusion. EMPEROR v. SYED SAJJAD HUSAIN, **A.W.N. 1906, 201 = 3 A.L.J. 825 = 4 Cr. L.J. 140,** (22 M. 47, 1 A.L.J. 315, *R.*)

(100)—*Ss.* 6, 545 (= *Crim. Pro. Code*, 1882, *ss.* 6, 545)—*Power of Police Patel to make order for compensation under s.* 545—*Village Police Act*, VIII *of* 1867, *s.* 15.—As the Police Patel's Court is not a Criminal Court within the enumeration contained in s. 6, Crim. Pro. Code, 1882, he has no power to make an order under s. 545. Crim. Pro. Code. QUEEN-EMPRESS v. RAMIA, **Rat. Un. Cr. C. 317 = Cr. Rg. 2 of 1887.**

——S. 7 (= 1882. s. 7 (1) (2) (3) ; 1872, ss. 12, 43 38, 14; 1861, s. 2.)

(101)—S. 7—*See* No. 95, *supra.*

Crim. Pro. Code (Act V of 1898)—*continued.*

(102)—*Ss.* 7 (3), 408, 435—*Two Sessions divisons in one district—Magistrate having jurisdiction over the whole district—Jurisdiction of the Sessions Courts in appeals against the Magistrate's decisions.*—Under s. 435, the Sessions Judge may call for and examine the records of any inferior Criminal Court "situate" within the local limits of his jurisdiction. The word "situate" means fixed or located, and when applied to a Court, it must be taken to refer to the place where the Court ordinarily sits. In the absence of any indication to the contrary in the Code, the principle thus laid down in regard to the analogous powers of revision under s. 435, should be followed in the case of appeals also. So, where a Magistrate, against whose decisions appeals are preferred, has his head-quarters in a place, which is within the local limits of one of the two Sessions Divisions in a district (*e.g.*, Malabar), though he is authorised to try offences throughout the whole district, including cases arising within the other Sessions Division, the appeals lie to the Sessions Division, within whose jurisdiction the head-quarters of the Magistrate are situate, irrespective of the place where the offence was committed. MUNDIATH VALIA AMBU PODAVAL v. KING-EMPEROR, **16 M.L.J. 444 = 1 M.L.T. 402 = 4 Cr. L.J. 443 = 30 M. 136.**

——S. 8 (= 1882, s. 8 (1) (2) ; 1872, s. 39).

(103)—S. 8 (1)—*See* COMPLAINT—INSTITUTION OF COMPLAINT—PRELIMINARIES, 3 N. W.P. 317.

——S. 9 (= 1872, ss. 15 to 18. paras. 1, 3 and 5) (= 1882, s. 9, paras 1, 2, 3).

(104)—*Ss.* 9, 31, 193, 423, 426, 439 *and* 440 (= *Crim. Pro. Code*, 1872, *ss.* 18, 280, 297).—The word "modify" in s. 18 does not include the power of enhancing a sentence. An appellate Court can, when hearing an appeal, enhance the sentence under s. 280. The High Court, as a Court of Revision, can enhance a sentence under cl. 7, s. 297 ; but no such power of enhancement of sentence is anywhere given to a Sessions Judge taking up a case referred by an Assistant Sessions Judge under the first clause of s. 18. IMPERATRIX v. RAMA PREMA, **4 B. 239.** [*R.*, 9 C.P.L.R. 29.]

(105)—*Ss.* 9, 193, 197 (= *Crim. Pro. Code*, 1882, *ss.* 9, 193, 197)—*Power of Local Government to appoint Additional Sessions Judge to try a case of bribery against a public officer.*—The Local Government, under the provisions of s. 197, Crim. Pro. Code, specified the Sessions Court of Tellicherry, as the Court which should try a Subordinate Judge, charged with an offence under s. 161, Penal Code, and the abetment of an offence under s. 164, and the second accused, a relative of the first accused, charged with an offence under s. 164, Penal Code. Mr. Irvine was appointed to officiate as District and Sessions Judge of Tellicherry. Subsequently Mr. Irvine was appointed Additional Sessions Judge of Tellicherry and was directed to try the case. *Held* by the Full Bench: Having under s. 197, Crim. Pro. Code, specified the

Crim. Pro. Code (Act V of 1898)—*continued.*

Sessions Court of Tellicherry as the Court before which the trial of the Subordinate Judge was to be held, the Local Government under s. 9 of the Code appointed Mr. Irvine as Additional Sessions Judge, to exercise jurisdiction in the Tellicherry Sessions Court and under s. 193 of the Code directed him to try the cases then pending. His appointment did not constitute an Additional Sessions Court. There can be only one Sessions Court for each Sessions Division, but there may be more than one Judge of such Sessions Court. If an Additional Sessions Judge is appointed, he can only try such cases as the Local Government directs, or as the Sessions Judge makes over to him. Mr. Irvine, having been directed by the Local Government to try the case, was competent to try the case. QUEEN-EMPRESS v. KUNJAN MENON, **1 M.L.J. 397.** [*R.*, 35 M. 397=13 Cr.L.J. 352=14 Ind. Cas. 896=12 M.L.T. 1=1912 M.W.N. 549, 22 M.L.J. 490=1912 M.W.N. 207.]

(106)—Ss. 9 and 215—*See* JURISDICTION OF CRIMINAL COURTS — JURISDICTION OVER EUROPEANS, 5 P.R. 1907; Cr.=6 Cr.L.J. 108 =41 P.L.R. 1907=26 P.W.R. 1907.

(107)—Ss. 9 (1 to 5), 31, 193 and 35—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 1 B. 223.

——**S. 10, para (1) (=1882, s 10; 1872, s. 35) and para. (2), new.**

(108)—*Ss.* 10, 12—*District Magistrates and Magistrate of the first class—Area of appointment.*—Ss. 10 and 12 of the Code show that District Magistrates and Magistrate of the first class are appointed only in districts outside the Presidency-towns. EMPEROR v. CHOTA SINGH, **32 M. 303.**

(109)—Ss 10 (1), 12 (1, 2), 17 (1 to 5)—*See* MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATES DURING TRIAL, 3 A. 563.

(110)—*Ss.* 10 (2), 12, 528—*Subordination of Additional District Magistrate to District Magistrate—Relations between a District Magistrate and an Additional District Magistrate—Transfer of cases—Omission to state reasons for —Irregularity.*—S. 12 of the Crim. Pro. Code does not make an Additional District Magistrate, appointed under sub-s. (2) of s. 10 of the Code, subordinate to a District Magistrate, who, therefore, has no power under s. 528 of the Code to transfer cases to the former; the Code does not define the relations between a District Magistrate and an Additional District Magistrate; although, under sub-s. (3) of s. 528, an officer transferring cases from one Court to another ought to record his reasons for it, his omission to do so, being only an irregularity, is not a material ground for setting aside his order of transfer. PRAKAS CHUNDER DUTT v. EMPEROR, **34 C. 918=6 Cr.L.J. 360.** [*F.*, 9 Cr.L.J. 310=1 Ind. Cas. 553, 12 Cr.L.J. 437=11 Ind. Cas. 621=7 N.L.R. 97.]

(111)—*Ss* 10 (2) *and* 435 (1) — *Relation between Additional District Magistrate and District Magistrate—Additional District Magistrate inferior to District Magistrate—Revision.*—The Court of a Magistrate of the first class, appointed under s. 10 (2), Crim. Pro. Code, to be an Additional District Magistrate, is an inferior Criminal Court, situate within the local limits of the jurisdiction of the District Magistrate, for the purposes of s. 435 (1) of the Code. The Code of 1898 did not except Additional District Magistrates from supervision by the District Magistrate and Additional District Magistrates are obviously not inferior to Sub-Divisional Magistrates. CROWN v. ABDUL KARIM, **25 P.R. 1908, Cr.=9 Cr.L.J. 104.** (38 P.R. 1885, Cr.. *Appr*; 9 B. 100, 13 C. 473, F.B. 8 M. 18, F.B., *R.*)

——**S. 11 (=1882, s. 11; 1872, s. 55; 1861, s. 23-B).**

(112)—S. 11—*See* SENTENCE - GENERAL, 20 M. 444=2 Weir 452.

——**S. 12, para. (1) (=1882, s. 12; 1872, ss. 37, 49; 1861, s. 23-G) and para. (2), new.**

(113)—*S.* 12—*Transfer of Magistrate.*—A judgment written by a Magistrate subsequent to his transfer to another district, after he had handed over charge of his duties as such Magistrate and thus ceased to exercise his powers, is invalid. EMPEROR v. DHONDU SINGH, **15 C.P.L.R. 15.** (3 A. 536, 19 A. 114 and 7 C.P.L.R. 18, *R.*)

(114)—*S.*12—*Magistrate, local jurisdiction of.* —*Held* that a Sub-Divisional Magistrate has power to record the confessions of the accused at the head-quarters of the district, though beyond the limits of his sub-division. QUEEN-EMPRESS v. LABAN HLA, **U.B.R. 1892—1896, Vol. I, 16.** (4 C. 696, 5 C. 954, *R.*)

(115)—S. 12—*See* Nos. 108, 109 and 110, *supra.*

(116)—*Ss.* 12, 17, 90, 342 (=*Crim. Pro. Code,* 1861, *ss.* 23-*G and* 273)—*Power of District Magistrate to refer cases to Divisional Magistrates.*—S. 23-G empowers District Magistrates to refer cases under s. 273 to Divisional Magistrates. HIGH COURT PROCEEDINGS, 23RD APRIL 1872, **7 M.H.C. App. 5.**

(117)—*Ss.* 12 *and* 107—*Magistrate in a District—Extent of jurisdiction.*—Under s. 12, Crim. Pro. Code, unless the powers of a Magistrate have been restricted to a certain local area, he has jurisdiction over the entire District. Where a sub-divisional Magistrate instituted proceedings under s. 107, and the District Magistrate transferred the case to a Magistrate not in the sub-division, but holding his Court at the head-quarters of the District, *held*, that the Deputy Magistrate, in as much as his powers were not restricted to a certain local area, had jurisdiction over the entire district, and had jurisdiction to institute the fresh proceedings. SARAT CHUNDER ROY v. BEPIN CHANDRA ROY, **29 C. 389=6 C.W.N. 552.** [*F.*, 37 C. 91=5 Ind. Cas. 29=14 C.W.N. 49=11 Cr.L.J. 23; *R.*, 2 L.B.R. 80, 10 C.W.N. 1095.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(118)—*Ss.* 12, 531—*Magistrate retaining case on file after transfer to another local area.*—Cases on the file of one Magistrate in a district do not pass automatically to his successor in the local area, merely because the former has been transferred to another local area in the same district, and there is nothing in s. 12 of Crim. Pro. Code, which supports such a procedure. The High Court refused to interfere with an order of acquittal passed by a Magistrate who retained the case on his file after being transferred to another local area in the district, when that order did not occasion any failure of justice. MITHANI v. KING-EMPEROR, **9 A. L.J. 448=34 A. 203=14 Ind. Cas. 203=13 Cr. L.J. 203.**

(119)—S. 12 (1 and 2)—*See* MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATES DURING TRIAL, 19 A. 114=A.W.N. 1896, 195.

(120)—Ss. 12 (1, 2), 17 (1 to 5), 90, 342—*See* MAGISTRATE, JURISDICTION OF—TRANSFER OF CASES—REFERENCE TO OTHER MAGISTRATES, ETC., Rat. Un. Cr. C. 18=Cr. Rg. 27-7-1869.

(121)—Ss. 12 (1, 2), 17 (1 to 5), 198—*See* SANCTION TO PROSECUTE— AUTHORITIES COMPETENT TO GRANT SANCTION—REFUSAL TO GRANT SANCTION, ETC., 2 A. 205, F.B.

(122)—Ss. 12 (1, 2), 476—*See* CONTEMPT OF COURT, Rat. Un. Cr. C. 88.

(122-*a*)—S. 13—*See* No. 135, *infra.*

—S. 14 (=1882, s. 14; 1872, s. 42; 1861, S. 23).

(123)—Ss. 14, 412—*See* APPEAL—GENERAL, 3 B.H.C. Cr. 18.

—S. 15, paras. (1) and (2) (=1882, s. 15; 1872, ss. 50, 51, 234).

(124)—*S.* 15—*Bench of Magistrates—Disposal of case by single member of Bench.*—Where a Bench of Magistrates established by the Local Government under s. 15, Crim. Pro. Code, is, under the notification establishing it, to consist of not less than two members, one member of the Bench cannot alone adjudicate upon a case. KING-EMPEROR v. LADO, **A.W.N. 1902, 148.**

(125)—S. 15—*See* BENCH OF MAGISTRATES, 29 C. 483=6 C.W.N. 596.

(126)—*Ss.* 15, 16—*Bench of Magistrates — Absence of some of Bench Magistrates from later stages of a trial, effect of.*—The absence of some of the Bench Magistrates, who were present at the earlier stage of a trial, from the further stages of the trial and at the time of judgment, does not vitiate the trial or invalidate the conviction. VENKATRAMA IYER v. SWAMINATHA IYER, **15 Cr.L.J. 549=24 Ind. Cas. 957=1914 M.W.N. 867.** (21 M. 246=2 Weir 217, *F.*; 12 M. 113, 20 C. 870, 23 C. 194, *R.*)

(127)—Ss. 15 and 16—*See* BENCH OF MAGISTRATES, 16 M. 410=2 Weir 14.

(128)—*Ss.* 15, 16, 261, 403, 529 (*f*), 530—*Offence under s.* 456, *I.P.C.—Power of second class Bench to try.*—A second class Bench tried regularly a case under S. 456, Penal Code, which was transferred to them by the District Magistrate, and acquitted the accused. *Held* that the proceedings of the Bench were not void, under rule 4 of the Local Government Rules made under ss. 15 and 16, Crim. Pro. Code, and that the District Magistrate's order for a re-trial was bad. NGA SAN HMI v. KING-EMPEROR, **U.B.R. 1910, 4th Qr., p. 70=11 Ind. Cas. 247 =12 Cr.L.J. 383.** (U.B.R. 1897—1901, I, pp. 91 and 100, U.B.R. 1892—1896, I, p. 11, *R.*)

(129)—Ss. 15 and 145— *See* BENCH OF MAGISTRATES, 3 C. 754.

—S. 16 (=1882, s. 16; 1872, ss. 52, 53).

(129-*a*)—*S.* 16—*Trial by Bench of Honorary Magistrates—Difference of opinion—Benefit of doubt—Reference to District Magistrate, whether legal—Practice.*—Where there is an irreconcilable difference of opinion between the members of a Bench of two Honorary Magistrates as to the guilt of an accused, they should follow the principle laid down by the Local Government for their guidance, though not formally issued by the District Magistrate of their district under s. 16 of the Crim. Pro. Code, and, giving the benefit of the doubt, should acquit the accused. A reference by a Bench of Honorary Magistrates on difference of opinion between them to a District Magistrate is irregular and not justified by any provisions of the Crim. Pro. Code. KASHINATH v. SHANKER RAM, **16 Cr.L.J. 113=27 Ind. Cas. 177.**

(130)—S. 16—*See* BENCH OF MAGISTRATES, 2 Weir 13.

(130-*a*)—S. 16—*See* Nos. 126, 127 and 128, *supra.*

(131)—*Ss.* 16 *and* 350 (=*Crim. Pro. Code,* 1882, *ss.* 16 *and* 350)—*Rules framed by Bengal Government under s.* 16, *r.* 8—*Validity of the rule.*—Under s. 16 of the Crim. Pro. Code, the Bengal Government has framed rules for the guidance of the Magistrates. R. 8 of those Rules is as follows: "any part-heard case postponed to a further sitting of the Bench may be proceeded with, if any member of the Bench has been present at the previous hearing in the case, but subject to the provisions of s. 350 of the Crim. Pro. Code." *Held,* that the rule is *ultra vires,* and does not come under the provisions of s. 16 of the Code. HARDWAR SINGH OR LALL v. KHEGA OJHA, **20 C. 870.**

(132)—Ss. 16, 350—*See* BENCH OF MAGISTRATES, 18 M. 394=2 Weir 17.

(133)—*S.* 16, *cl.* (*d*)—*Bench of Honorary Magistrates—Chairman's casting vote—Rule* 6 *of the Government rules, whether* ultra vires.—*Held,* by a majority of the Full Bench (*Ghose* and *Pratt, JJ., diss.*)—Rule 6 of the Rules framed by the Government of Bengal for the guidance of Benches of Honorary Magistrates, under the provisions of s. 16 of the Code, cl. (*d*), providing that, when the members of a Bench of Magistrates are even, the view of the Chairman shall prevail, is not inconsistent with the Code, and, therefore, not *ultra vires* though

Crim. Pro. Code (Act V of 1898)—*continued.*

highly undesirable. EMPEROR v. KALI PRASANNA ROY, **3 C.L.J. 492, F.B. = 10 C.W.N. 642, F.B. = 3 Cr. L.J. 409.** [*R.*, 19 C.L.J. 92, 14 Cr. L.J. 684 = 21 Ind. Cas. 1004.]

——**S. 17 (= 1882, s. 17, paras 1, 2, 3, 4; 1872, ss. 37, 41; 1861, s. 23 G.)**

(134)—*S.* 17—*Powers of a District Magistrate to distribute work—District Magistrate cannot delegate his powers.*—S. 17, Crim.Pro.Code, empowers a District Magistrate to make rules or give special orders connected with the Code as to the distribution of work among Subordinate Magistrates and Benches of Magistrates. It does not empower a District Magistrate to pass on his powers of calling up cases from Subordinate Courts and re-distributing them. The power of distribution of business cannot be exercised by a Magistrate in charge of a subdivision or by a senior Honorary Magistrate. BAL KISHUN v. SIPAHI LAL, **12 A.L.J. 803 = 36 A. 468 = 15 Cr.L.J. 584 = 25 Ind. Cas. 336.**

(134-*a*)—S. 17—*See* Nos. 109, 116, 120, 121, *supra.*

(135)—Ss. 17, 13, 435—*See* SESSIONS JUDGE, JURISDICTION OF, 2 Weir 537 = 7 M.H.C. App. 27.

(136)—*Ss.* 17, 195 *and* 435—*Sanction by Sub-Magistrate—Revocation of the sanction by the Sub-Divisional Magistrate—Power of Sessions Judge.*—The subordination of an authority, which is a Court, to another authority is regulated by sub-s. 7 of s. 195, but when the authority granting or refusing sanction does not act as a Court, the appeal lies under sub-s. 6 to the authority to which the former is subordinate under s. 17, Crim. Pro. Code. Where a Sub-Magistrate sanctions the prosecution of a person under s. 182, Penal Code, the appeal lies to the Sub-Divisional Magistrate. The latter, in a case of this kind, does not act as a Court, but as an executive officer. Therefore, where the Sub-Divisional Magistrate revokes the sanction given by the Sub-Magistrate a Sessions Judge has no jurisdiction to interfere under sub-ss. 6 or 7 of s. 195, nor has he any authority under s. 435, Crim. Pro. Code. SANKARAM AIYAR v. SAKKARAPPA MUDALIAR, 2 **Weir 19 = 2 Weir 155 = 2 Weir 199.**

(137)—Ss. 17, 435, 436—*See* MAGISTRATE, JURISDICTION OF, TRANSFER OF CASES—REFERENCE TO OTHER MAGISTRATES, 9 B. 100.

(138)—*Ss.* 17. 435 *and* 437 (= *Crim. Pro. Code,* 1882. *ss.* 17, 435, 437)—*First class Magistrate, whether subordinate to District Magistrate.*—A Magistrate of the first class is, within the meaning of s. 437, subordinate to the Magistrate of the District. The latter is, therefore, competent to call for the records of the former. QUEEN-EMPRESS v. LASKARI, **7 A. 853. F.B = A.W.N. 1885. 257.** [*F.*, 12 C. 473, F.B.]

(139)—S. 17 (1-3 and 5) and Ch. 32—*See* SESSIONS JUDGE, JURISDICTION OF, 9 B. 164.

(140)—*S.* **17 (1)** *and* **(5)**—*District Magistrate, if subordinate to Sessions Judge.*—Under s. 17 (1) and (5), Crim. Pro. Code, neither the District Magistrate nor the other Magistrates are subordinate to the Sessions Judge, except so far as is expressly provided by the Crim. Pro. Code. MUHAMMAD BAVU SAHIB v. DISTRICT JUDGE OF MADURA, **13 M.L.J. 272 = 26 M. 596.**

——**S. 18, para. (1) (= 1882, s. 18 (1), and para. (2), new.**

(141)—*Ss.* 18, 21 *and* 106—*Power of Bench of Honorary Presidency Magistrates to take action under s.* 106.—S. 18, Crim. Pro. Code, confers the full powers of a Presidency Magistrate on a Bench of Honorary Presidency Magistrates under the Criminal Procedure Code, and the Bench can, therefore, take action under s. 106 of the Code. HASSAN v. YAS KUBAR, **7 Bom. L.R. 833 = 2 Cr. L.J. 770.**

——**S. 21, para. (1) (*a, b, c, d*) (= 1882, s. 21, *a, b, c, d*) and paras. 1 (e) and 2, new.**

(142)—*S.* 21—*Rules framed by Chief Presidency Magistrate under that section regarding decisions by Bench of Magistrates—Rule* 8.—Rule 8 of the Rules framed by the Chief Presidency Magistrate under s. 21, is held to be not consistent with the provisions of the Code in so far as it directed that, in a Bench composed of two members, the decision of the Chairman should prevail. It was also arbitrary and not consonant with justice. HENRY WAKEFIELD v. HARAN SARDAR, **8 C.W.N. 862.** [*F.*, 10 C.W.N. 642.]

(143)—S. 21—*See* BOM. ACT XXXI OF 1850, s. 3, 5 B.H.C. Cr. 61.

(144)—S. 21—Rule 9 framed under—*See* PRESIDENCY MAGISTRATE, Rat. Un. Cr. C. 968 = Cr. Rg. 24 of 1898.

(145)—S. 21—*See* No. 141, *supra.*

——**S. 28 (= 1882, s. 28).**

(146)—*S.* 28—*Offences under Treasure Trove Act—Jurisdiction of third class Magistrate.*—Third class Magistrates have no jurisdiction to try offences punishable under s. 20 of Act VI of 1878. CRIMINAL REVISIONAL CASE, NO. 328 OF 1882, **2 Weir 23.**

(147)—*S.* 28 (= *Crim. Pro. Code,* 1882, *s.* 28) —*Scope of the section.*—S. 28. subject to the other provisions of the Code, empowers the High Court and the Court of Sessions to try any offence under the Penal Code. The provisions as to the other Courts do not cut down or limit the jurisdiction of the High Court or Court of Sessions. QUEEN-EMPRESS v. KHARGA, **8 A. 665 = A.W.N. 1886, 254.**

(148)—*Ss,* 28, 30 *and* 250—*Compensation for making a false and frivolous complaint—"Triable by a Magistrate"—Offence ordinarily triable by Court of Sessions tried by District Magistrate exercising powers under s.* 30, *Crim. Pro. Code.*—The object of the Legislature is to exclude offences of great gravity from the provisions of s. 250 of the Crim. Pro. Code. The words "triable by a Magistrate" in that section

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mean triable under s. 28 of the Code by a Magistrate. The cases provided for by s. 250 are those specified in the eighth column of the Schedule as triable by a Magistrate. A Magistrate exercising powers under s. 30 of the Crim. Pro. Code, is not competent to award compensation under s. 250 to the complainant in a case ordinarily triable by a Court of Sessions or the High Court. EMPEROR v. QADU, **139 P. L.R. 1902 = 26 P.R. 1902, Cr.**

(149)—Ss. 28, 207, 245, 254—*See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT, 24 C. 429 = 1 C.W.N. 414.

——S. 29 (=1882, s. 29; 1872, s. 8, para. 1).

(150)—*S.* 29(=*Crim. Pro. Code*, 1882, *s.* 29) —*Offences under the Treasure Trove Act—Jurisdiction of third class Magistrate.*—Third class Magistrates have no jurisdiction to try offences punishable under s. 20 of Act VI of 1878. CRIMINAL REVISIONAL CASE NO. 328 OF 1882, **2 Weir 23.**

(151)—*S.* 29 (=*Crim. Pro. Code*, 1882, *s.* 29) —*Offences punishable under Act* III *of* 1877 (*Registration Act*)—*Jurisdiction.*—Under s. 29, cl. (*b*), sub-s. 1, a second class Magistrate cannot try an offence under s. 82 of the Registration Act, since the offences referred to therein are punishable with imprisonment which may extend to three years. *In re* ENUMULLA NARAYANA, **2 Weir 25.**

(152)—S. 29—Jurisdiction of second class Magistrate over offences under Registration Act—*See* ACT III OF 1877, ss. 82, 83, 7 M. 347 = 2 Weir 24.

(153)—S. 29—*See* ACT I OF 1878, s. 9, 19 A. 465 = A.W.N. 1897, 115.

(154)—S. 29—*See* ACT XVI OF 1861, ss. 7, 9, 21, Rat. Un. Cr. C. 364 = Cr. Rg. 7 of 1888.

(155)—S. 29—*See* BOM. ACT VI OF 1873, s. 68, Rat. Un. Cr. C. 763 = Cr. Rg. 24 of 1895.

(156)—S. 29—*See* No. 77 *supra.*

——S. 30 (=1882, s. 30; 1872, s. 36).

(157)—*S.* 30, *cases triable by District Magistrate empowered under.*—A District Magistrate empowered under s. 30, may try all offences not punishable with death. QUEEN-EMPRESS v. GURDIT SINGH, **3 P.R. 1891, Cr.**

(158)—*S.* 30—*Inquiry of dacoity case—Transfer by Magistrate to a Deputy Commissioner empowered under s.* 30, *validity of.*—A Magistrate of the first class, who is holding an inquiry in a case of dacoity has jurisdiction either to commit the accused to the Court of Sessions or to discharge him. He has no authority to make over the case to a District Magistrate, who is a Deputy Commissioner specially empowered under s. 30, to try such cases. But the High Court maintained a conviction by the District Magistrate in a case where it was found that the accused had not been prejudiced by such trial. AMIR KHAN v. KING-EMPEROR, **7 C.W.N. 457.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(159)—*S.* 30—*District Magistrate empowered under this section—Jurisdiction to try the offence of culpable homicide not amounting to murder.* —A District Magistrate, empowered under s. 30 to try all offences not punishable with death, cannot legally try the offence of culpable homicide not amounting to murder, punishable under the first part of s. 304, I.P.C., an offence not punishable with death. Where there is credible evidence both of murder and of qualified murder, the accused should be committed for trial before a Court which is competent to do what a District Magistrate is not, *viz.*, try both offences once for all, and pronounce a judgment which shall effectively bar a second trial on the same facts. MANGAL SINGH v. EMPRESS, **1 P.R. 1893, Cr. F.B.** [*R.*, 8 Cr. L.J. 263 = 84 P.W.R. 1913 = 14 P.R. 1908.]

(160)—*S.* 30—*Magistrate described in the heading of his judgment as invested with powers under s.* 30, *but not purporting to act under those powers.*—*Held*, that, a first class Magistrate simply described in the heading of his judgment as invested with powers under s. 30, but not purporting to act under such powers, connot exercise those powers in passing the sentence. MAHI v. CROWN, **17 P.W.R. 1908, Cr.**

(161)—S. 30—*See* PENAL CODE, ss. 147, 148, 332, 395, 223 P.L.R. 1912 = 41 P.W.R. 1912.

(162)—S. 30—*See* No. 148, *supra.*

(163)—*Ss.* 30, 33 *and* 34, *Crim. Pro. Code*, (1882)—*Imprisonment in default of payment of fine.*—A District Magistrate, who is empowered under s. 30 and convicts an accused for an offence under s. 47, I.P.C., can pass a sentence of 1 year and 9 months, *i. e.*, ¼ of 7 years, in default of payment of fine. His power is not limited to awarding one-fourth of the punishment which, under s. 34, he is competent to inflict without confirmation. KARM CHAND v. EMPRESS, **35 P.R. 1885, Cr.**

(164)—*Ss.* 30 *and* 34 (=*Crim. Pro. Code*, 1872, *s.* 36)—*Commitment to Sessions—Powers of Deputy Commissioner empowered under s.* 36. —On the committal of a prisoner to the Court of Sessions, the records were sent to the Deputy Commissioner, who, on the passing of the Code of 1872, was no longer a Sessions Court, but had received power under s. 36, to try as a Magistrate, classes of cases which formerly he would have tried as a Court of Sessions. *Held*, that the Deputy Commissioner was not competent to intercept the case and try it himself, but should send the case to the Court of Sessions. QUEEN v. POORUN, **5 N.W.P. 219.**

(165)—*Ss.* 30 *and* 34 (=*Crim. Pro. Code*, 1872, *s.* 36).—The powers conferred on a Deputy Commissioner under s. 36, cannot be exercised by him in a summary trial. POLICE v. MAHBIR, **Colm. Dig. Cr. 42 of 1876.**

(166)—*Ss.* 30 *and* 34 (=*Crim. Pro. Code*, 1872, *s.* 36)—*Case referred for confirmation by Sessions Judge—His powers.*—Where a case is

Crim. Pro. Code (Act V of 1898)—*continued.*

referred for confirmation of sentence, a Sessions Judge has no power to enhance the same. POLICE v. RAMBAKSH, **Colm. Dig. Cr. 16 of 1874.**

(167)—*Ss.* 30 *and* 34 (=*Crim. Pro. Code,* 1872, *s.* 36)—*Confirmation by Sessions Judge, when necessary.*—The confirmation of the Sessions Judge is necessary only when a sentence exceeds three years' imprisonment, and this must be construed to mean the substantive sentence, exclusive of the imprisonment, which the offender may have to undergo in default of payment of fine. A longer period of imprisonment, in default of payment of fine, than one-fourth of three years, the substantive imprisonment being three years' imprisonment, need not be confirmed by the Sessions Judge. BHAGAT SINGH v. EMPRESS, **18 P.R. 1882, Cr.**

(168)—*Ss.* 30, 34 (=*Crim. Pro. Code,* 1872, *s.* 36)—*Order of Sessions Judge—Sentence under s.* 325, *I.P.C.—Confirmation—Legality.*—A Sessions Judge's order, annulling the proceedings of a Magistrate, who sent the case, under s. 36, for confirmation of sentences passed under s. 325, I.P.C., and directing him to retry the case for culpable homicide not amounting to murder, was held to be *ultra vires*, and, all subsequent proceedings being thereby rendered illegal, the Sessions Judge was ordered to again proceed under s. 36, the annulment of the Magistrate's order by him being annulled. POLICE v. MUNALAL, **Colm. Dig. Cr. 56 of 1876.**

(169)—*Ss.* 30, 34 (=*Crim. Pro. Code,* 1872, *s.* 36)—"*Modify,*" *meaning of.*—The word "modify" in the above section of the Code does not empower a Sessions Judge to alter a sentence of imprisonment into one of transportation. Under ss. 75 and 379, Penal Code, the awarding of more than six years' imprisonment is illegal. POLICE v. PARMU, **Colm. Dig. Cr. 62 of 1876.**

(170)—*Ss.* 30, 34 (=*Crim. Pro. Code,* 1872, *s.* 36)—*Reference by Sessions Judge to Chief Court for enhancement of sentence.*—A Sessions Judge, to whom a case has been referred under s. 36, Crim. Pro. Code, 1872, can refer the case to the Chief Court for enhancement of sentence, only after confirming the sentence. EMPRESS v. PURAN SINGH, **5 P.R. 1882, Cr.**

(171)—*Ss* 30, 34 (=*Crim. Pro. Code,* 1872, *s.* 36)—*Sessions Judge, duty of, before confirming the sentence.*—A Sessions Judge, to whom a case has been referred under s. 36, Crim Pro. Code, 1872, should consider, before confirming the sentence on his holding the conviction to be right, whether that sentence is appropriate, notwithstanding the fact that the accused can appeal to the Chief Court. DEODIT v. EMPRESS, **8 P.R. 1883, Cr.**

(172)—*Ss.* 30 *and* 34, *Crim. Pro. Code* (1882)—*Sentence of transportation for* 7 *years—Confirmation by Sessions Judge.*—Though a Magistrate can lawfully pass a sentence of 7 years' transportation in exercise of his powers under ss. 30 and 34, Crim. Pro, Code, aided by s. 59, I.P.C., yet, as he can lawfully pass a sentence of 7 years' imprisonment subject to the confirmation of the Sessions Judge, the existence of a power to lower the sentence of imprisonment to one of transportation is no reason for dispensing with the confirmation, which is required by law for the sentence of imprisonment, for which the sentence of transportation is substituted and upon which it is founded. BAHADUR v. EMPRESS, **14 P.R. 1886, Cr.** (17 P.R. 1880, Cr., *R.*)

(173)—*Ss.* 30, 34 (=*Crim. Pro. Code,* 1872, *s.* 36)—*Summary trial.*—The Magistrate of the District in the exercise of his special powers under s. 36, Crim. Pro. Code, 1872, has no power to try an accused person summarily. FAZLU v. EMPRESS, **25 P.R. 1879, Cr.**

(174)—Ss. 30, 34—*See* DISTRICT MAGISTRATE, L.B.R. 1893—1900, 219.

(175)—Ss. 30, 34—*See* PENAL CODE, s. 353, 12 P.R. 1879, Cr.

(176)—Ss. 30, 34—*See* SENTENCE—SENTENCE AFTER PREVIOUS CONVICTION, 27 P.L.R. 1904.

(177)—Ss. 30, 34—*See* SENTENCE—TRANSPORTATION, 17 P.R. 1880, Cr.

(178)—*Ss.* 30, 34, 35 (=*ss.* 36, 34 *of the Code of* 1872)—*Confirmation of sentence—Two separate sentences of three years.*—Confirmation by the Sessions Judge is not necessary for two consecutive sentences of three years' imprisonment passed for two distinct offences. REHMAN v. EMPRESS, **25 P.R. 1882, Cr.** (23 P.R. 1881, *R.*)

(179)—*Ss.* 30, 34, 36—*Competency of Sessions Judge to annul sentence.*—A Sessions Judge to whom a sentence has been referred for confirmation under s. 36, is competent to annul such sentence on the ground that evidence does not in his opinion, prove the offence. EMPRESS v. PIR BAKSH, **16 P.R. 1881, Cr.**

(180)—*Ss.* 30, 34, 244 (=*ss.* 36, 207 *of the Code of* 1872)—*Order of Deputy Commissioner—Omission to get sanction of Sessions Judge—Appeal.*—Where a Deputy Commissioner's order required, under s. 36 of the Code of 1872, the sanction of the Sessions Judge, the High Court could have no jurisdiction to entertain an appeal from it until so sanctioned. QUEEN v. SHAM SOONDER DASS, **25 W.R. Cr. 18.**

(181)—*Ss.* 30, 34, 347, 349, 463, 528 (=*Crim. Pro. Code,* 1872, *ss.* 36, 46, 47 *and* 460)—*Submission of case to District Magistrate—New trial by the latter—Validity—Enhancement of sentence by Sessions Judge.*—A case, after conviction, was submitted by a Subordinate Magistrate to the District Magistrate under s. 46, Crim. Pro. Code. The District Magistrate purported to withdraw that case from the Subordinate Magistrate under s. 47 of the Code, and then proceeded, ostensibly by way of a new trial, and finally passed a sentence of rigorous imprisonment for 5 years being,

Crim. Pro. Code (Act V of 1898)—*continued.*

invested with powers under s. 36 of the Code; *held*, that the new trial was barred by s. 460, so long as the original conviction was in existence; that, hence, the Magistrate's proceedings were not valid on a new trial, and that they were merely proceedings under s. 46 of the Code, and the sentence was reduced to 2 years' rigorous imprisonment; *held* further that a Sessions Judge could not be said to 'modify' a sentence of imprisonment by ordering solitary confinement which had been ordered by the Magistrate, for, such an order, if made, was only calculated to enhance the punishment which a Sessions Judge had no power to do under s. 36 of the Code of 1872. POLICE v. MAHBUB KHAN, **Colm. Dig. Cr. 68 of 1877.**

(182)—*Ss.* 30, 34, 349 (=*ss.* 36, 46 *of the Code of* 1872)—*Maximum term of imprisonment, awardable under s.* 46.—The maximum term of imprisonment that can be legally imposed by a Magistrate under s. 46 of the Code, even though entrusted with powers under s. 36, is only 2 years. POLICE v. BHAGWANDIN, **Colm. Dig. Cr. 64 of 1876.**

(183)—*Ss.* 30, 34, 349 (=*ss.* 36 46 *of* 1872) —*Case referred to District Magistrate under s.* 46—*Power to direct fresh trial under s.* 36.—Though the Magistrate of the District cannot, if he passes a judgment and sentence under s. 46, Crim. Pro. Code, 1872, exercise his powers under s. 36, he can, under that section, pass an order directing a fresh trial before himself under s. 36, and, if on such trial, he finds the prisoner guilty, he can then exercise his powers under that section. EMPRESS v. BEGU, **10 P.R. 1881, Cr.** [*R.*, 44 P. R. 1882, 12 P.R. 1903, Cr.]

(184)—Ss. 30, 34, 394 and 395—*See* WHIPPING, **10 P.R. 1889, Cr.**

(185)—Ss. 30, 34, 408, 410, 422—*See* APPEAL —CASES WHERE APPEAL LIES, 10 P.R. 1875, Cr., 8 P.R. 1877, F. B., Cr.

(186)—*Ss.* 30, 34, 408, 410, 423 (=*Crim. Pro. Code of* 1872, *ss.* 36, 270, 271)—*Confirmation by Sessions Judge of a conviction by a Deputy Commissioner—Appeal.*—Where a conviction passed by a Deputy Commissioner, acting under s. 36, Crim. Pro. Code, is confirmed by a Commissioner, having the powers of a Sessions Judge, to whom the former is subordinate, it is doubtful whether an appeal lies to the High Court. In accordance with the practice of the Allahabad High Court, such an appeal was admitted. EMPRESS OF INDIA v. NADUA, **2 A. 53.**

(187)—*Ss.* 30, 337 *and* 338 *of* 1898—*Conditional pardon—Tender by Local Government—Validity—Evidence of co-accused so pardoned—Admissibility—Trial by Deputy Commissioner of case after tender of pardon by him.*—The Local Government has no power to offer a conditional pardon to an accused, within the meaning of ss. 337, 338, of the Code. The evidence of an accused taken under a conditional pardon so offered is wholly inadmissible. When a Deputy Commissioner tries a case exclusively triable by the Court of Sessions, under powers conferred upon him by s. 30 of the Code, he does so as a Magistrate, and if he tenders a conditional pardon to one of the accused, he is precluded from trying the case himself. PABAN SINGH v. EMPEROR, **10 C.W.N. 847=4 Cr.L.J. 44.**

(188)—*Ss.* 30, 349, 408—*Illegal sentence on reference to a District Magistrate—Appeal.*—In a case transferred to a District Magistrate under s. 349, Crim. Pro. Code, the District Magistrate must be regarded as a Magistrate not empowered with the powers conferred under s. 30. But where, in such a case, he exercises his powers under s. 30, and sentences the accused to five years' imprisonment, the sentence is *ultra vires* under the last clause of s. 349. In spite of such a sentence, an appeal lies, not to the Chief Court, but to the Court of Session. NGA PYA v. KING-EMPEROR, **4 L.B.R. 53=6 Cr. L.J. 289.**

(189)—*Ss.* 30 *and* 436—*Discharge—Power of District Magistrate invested with powers under s.* 30, *to take action under s.* 436.—The words "triable exclusively by a Court of Session" in s. 436 of the Crim. Pro. Code mean an offence shown as so triable in the eighth column of the second schedule to the Code, and a District Magistrate in non-regulation provinces, invested with powers under s. 30 of the Code, is competent to take action under s. 436, when he finds an accused person has been improperly discharged by any inferior Court. ARJAN SINGH v. EMPEROR, **60 P.L.R. 1904.**

(190)—*Ss.* 30 *and* 437—*Discharge by District Magistrate exercising powers under s.* 30, *Crim. Pro. Code—Jurisdiction of Sessions Judge to order further inquiry.*—The police sent up the accused for trial under s. 366, Penal Code, to the District Magistrate who ordered a Magistrate of the first class to hold a local enquiry and to submit a report. The Magistrate made an enquiry and submitted a report adverse to the accused. The District Magistrate, however, without examining the complainant or taking any evidence for the prosecution, held the charge false upon the police papers and the record of the local enquiry, and discharged the accused under s. 253 of the Crim. Pro. Code. The Sessions Judge, on application under s. 437 of the Crim. Pro. Code, set aside the order of discharge and directed the District Magistrate to make a further inquiry into the case. On revision in the Chief Court, it was contended on behalf of the accused that, the District Magistrate having acted under s. 30 of the Crim. Pro. Code as a Court of co-ordinate jurisdiction with the Sessions Judge, the latter Court had no jurisdiction to revise the order of discharge, and that the order of discharge was a proper one. *Held*, overruling the contentions, that the Sessions Judge was competent to revise the order of the District Magistrate under s. 437 of Crim. Pro. Code, and that the order passed by the Session,

Crim. Pro. Code (Act V of 1898)—*continued.*

Judge was right. JALLOO v. EMPEROR, **131 P.L.R. 1904 = 15 P.R. 1904, Cr.**

(191)—S. 31—*See* Nos. 104 and 107. *supra.*

——S. 32 (=1882, s. 32 ; 1872, s. 20).

See SENTENCE.

(192)—*S.* 32 — *Enhanced sentence — Penal Code, s.* 75—A Magistrate, whose powers are limited by s. 32 of the Crim. Pro. Code, has no power to pass an enhanced sentence under s. 75 of the Penal Code. QUEEN-EMPRESS v. NGA JUN THA, **L.B.R. 1893-1900, 78.**

(193 & 194)—S. 32—*See* ACT VI OF 1882, s. 35, 20 C. 676.

(195)—S. 32—*See* Nos. 19 and 99, *supra.*

(196)—Ss. 32, 33, 262 — *See* SENTENCE — IMPRISONMENT — IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC., 6 A. 61.

(197)—Ss. 32, 33, 262—*See* SENTENCE—SOLITARY CONFINEMENT, 6 A. 83.

(198)—*Ss.* 32 *and* 395—*Sentence of imprisonment in lieu of whipping.*—Although s. 395 enables a Magistrate in certain cases to impose a sentence of imprisonment in lieu of a sentence of whipping, yet, it is expressly provided that nothing in s. 395 shall be deemed to authorise a Court to inflict imprisonment for a term exceeding that which the Court is competent to inflict under s. 32. *Petitioner,* KARAT AHMAD, **2 Weir 449.**

——S. 33 (=1882, s. 33 ; 1872, ss. 20, Expl. 309, para. 2).

See SENTENCE.

(199)—*S.* 33 (=*s.* 309 *of the Code of* 1872)—*Effect of the section on s.* 65, *I.P.C.—Act* VIII *of* 1873, *Canal Act.*—The provisos to s. 302, Crim. Pro. Code, do not extend the period of imprisonment that may be awarded under the provisions of s. 65, I.P.C. They only regulate the proceedings of Magistrate whose powers are limited. S. 309, Crim. Pro. Code, makes ss. 64 and 65 of the Indian Penal Code applicable, not only to offences punishable under that Code, but to offences punishable under any law in force for the time being, and, therefore, applicable to offences punishable under the Canal Act, VIII of 1873. EMPRESS OF INDIA v. DARBA, **1 A. 461, F.B.** [*F.*, 10 M. 166 = 2 Weir 26, 10 M. 165 = 2 Weir 30 ; *R.*, L. B.R. 1893—1900, 494.]

(200)—*S.* 33 (=*Crim. Pro. Code,* 1872, *s.* 309)—*Imprisonment in default of payment of fine.*—When a fine alone is inflicted, imprisonment in default of payment of fine may, under s. 309, Crim. Pro. Code, 1872, be awarded by a Court of Sessions or by a Deputy Commissioner, under s. 36 of the Code for a term not exceeding one-fourth of the maximum term provided for the offence ; by a Magistrate for any term allowed by law, provided such term does not exceed the term awardable by the Magistrate under the Crim. Pro. Code. CROWN v. SHEOAMBAR SINGH, **S.C. 28, Oudh.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(201)—*S.* 33—*Penal Code, s.* 65—*District Magistrate with higher powers—Maximum term of imprisonment which he may inflict.*—The effect of s. 33, Crim. Pro. Code, read with s. 65, Penal Code, is to limit the maximum imprisonment which a District Magistrate with higher powers may inflict to one-fourth of seven years. NGA PAW v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 281.**

(202)—*S.* 33—*Applicability of.* — S. 33, paragraph 2 of the Crim. Pro. Code, does not apply to cases where the substantive sentence is one of fine only. QUEEN-EMPRESS v. NGA SON GAUNG, **L.B.R. 1872—1892, 486.**

(203)—S. 33—*See* PENAL CODE, s. 64, 30 P. R. 1878, Cr.

(204)—S. 33—*See* Nos. 163, 196 and 197, *supra.*

(205)—*Ss.* 33, 369, 386, 387—*Imprisonment in default of payment of fine.*—Imprisonment in default of fine should, as a rule, be awarded in the judgment in cases where the Court is competent to award it, unless the Magistrate for special reason sees fit not to award such imprisonment in default ; and this is because the Magistrate has no power to alter his judgment after he has signed it (s. 369, Crim. Pro. Code) ; so that, if the fine is not paid up at once, he has no power to detain the accused and can only proceed in the ordinary way under ss. 386, 387, Crim. Pro. Code. QUEEN-EMPRESS v. M. E. GYWE, **U.B.R. 1892—1896, Vol. I, 18.**

——S. 34 (=1882, s. 34 ; 1872, s. 36).

See SENTENCE.

(206)—*S.* 34.—In every appeal, and *a fortiori* in every reference under s. 34 of the Code of Criminal Procedure, it is obviously the duty of the Sessions Judge to carefully weigh the evidence himself and not to rely solely upon the weight attached to it by the Court whose order is appealed against or is referred for confirmation. No doubt an appellate Court is right in attaching, in all cases, a certain weight, and in some cases very considerable weight, to the fact that the lower Court believed the witnesses for the prosecution ; but, even in such cases, the appellate Court is not justified in placing complete reliance upon the lower Court's view as to the credibility of the witnesses. It is bound to look into all the circumstances of the case and to see whether they, in any way, impugn the statements made by them. KYAW ZAN v. QUEEN-EMPRESS, **L. B.R. 1872-1892, 516.**

(207)—S. 34—*See* Nos. 163 to 178 and 180 to 186, *supra.*

(208)—*Ss.* 34, 35, 380—*Convictions by a District Magistrate at one trial of several offences — Aggregate sentence—Sentence submitted for confirmation of Sessions Judge—Single sentence—Crim. Pro. Code,* 1882, *ss.* 34, 35 *and* 380.—When a sentence passed by a District Magistrate, acting under s. 34, Crim. Pro. Code,

Crim. Pro. Code (Act V of 1898)—*continued.*

is submitted to a Sessions Judge for confirmation in a case in which more than one sentence has been passed upon conviction at one trial of several distinct offences, the sentence submitted for confirmation under s. 380 of the Crim. Pro. Code is the aggregate sentence. For the purpose of confirmation or appeal, aggregate sentences passed under s. 35 of the Crim. Pro. Code in case of convictions for several offences at one trial shall be deemed to be a single sentence. NGA U. v. QUEEN-EMPRESS, **L.B. R. 1893-1900, 268.**

(209)—*Ss.* 34, 114, 423 *and* 439—*Accused acquitted under s.* 323, *Penal Code—Subsequent death of the injured—Commitment to Sessions.*—S and R were charged for causing simple hurt to K. The case was compounded and both the accused were acquitted. K, later on, died of the injury caused by S and R. The Magistrate, thereupon, sent up R for trial before the Sessions under s. 304 and discharged S, as he found that the injury caused by him did not in any way contribute to K's death. The Sessions Judge directed the Magistrate to commit S also and he was committed accordingly. *Held* that there was no legal bar to the trial of S under s. 304, Penal Code, and to his conviction under that section if the evidence enabled the Court to apply either s. 34 or 114 of the Crim. Pro. Code to the case. A commitment can only be set aside on a point of law, and as no such point arose in this case, High Court did not interfere. SAILANI v. KING EMPEROR, **11 A.L.J. 959 = 22 Ind. Cas. 336 = 15 Cr. L. J. 64 = 36 A. 4.**

(210)—Ss. 34, 209—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 10 C. 85 = 13 C.L.R. 375.

(211)—Ss. 34 and 380 — *See* SESSIONS JUDGE—JURISDICTION OF, L.B.R. 1893—1900, 258.

——S. 35 (=1882, s. 35; 1872, s. 314; 1861, s. 46) and explanation new.

See ACT VI OF 1864.

See SENTENCE.

See WHIPPING.

(212)—*S.* 35 (=*Crim. Pro. Code*, 1882, *s.* 3) —*Power of Magistrate to pass aggregate sentence, where separate sentences ought to be passed—Maximum term of imprisonment passed under this section, no bar to further punishment on the same accused for a distinct offence tried separately.*—S. 35, Crim. Pro. Code, does not empower a District Magistrate or any other Magistrate to pass an aggregate sentence, instead of separate sentences, upon an accused person convicted at one trial of two or more distinct offences. Where a person was charged on two charges of dacoity and one charge of kidnapping, and was tried separately for the dacoity and for the kidnapping, *held*, that the fact that the Magistrate had passed, under s. 35, Crim. Pro. Code, double the amount of sentence he was competent to award on the charges of dacoity, would not disqualify him from passing sentence for the offence of kidnapping, although the trial for that offence was contemporaneous with the trial on the dacoity charges and terminated on the same day. BAHADAR v. EMPRESS, **14 P.R. 1886, Cr.**

(213)—*S.* 35 (=*Crim. Pro. Code*, 1882, *s.* 35) —*Concurrent sentences of transportation.*—A direction that several sentences of transportation passed on an accused person on a conviction of two or more distinct offences at the same trial, should be concurrent, is illegal, being contrary to the provisions of s. 35 of the Crim. Pro. Code. QUEEN-EMPRESS v. RAMA, **Rat. Un. Cr. C. 383 = Cr. Rg. 34 of 1888.**

(214)—*S.* 35 (=*Crim. Pro. Code*, 1882, *s.* 35) —*Offence under s.* 411, *I.P.C., read with s.* 75, *I.P.C., whether distinct offences — Enhanced punishment.*—The fact that an accused person is convicted under s. 411, I.P.C., after having been previously convicted of the same (*sic*) offence, is not sufficient to give the Magistrate the increased powers referred to in s. 35, Crim. Pro. Code. If the Magistrate thinks that the accused deserves an enhanced punishment, the best course for him would be to commit the accused for trial to the Court of Sessions under ss. 411, 75, I. P. C. QUEEN-EMPRESS v. KHALAK, **11 A. 393 = A.W.N. 1889, 152.** (10 A. 146 = A.W.N. 1888, 5, *Expl.*)

(215)—*S.* 35 (=*Crim. Pro. Code*, 1872, *s.* 314)—*Section does not apply to separate trials.*—An accused was tried on four separate charges by a Magistrate of the second class and sentenced to an aggregate punishment of twenty months' rigorous imprisonment. *Held* that the section did not apply, as the trials were separate. EMPRESS v. THAKUR, **A.W.N. 1881, 23.**

(216)—*S.* 35—*Penal Code, ss.* 357, 380—*Distinct offences—Conviction—Sentence—Powers of the Magistrate to pass consecutive sentences.*—The offences under ss. 457 and 380 of the Penal Code not being distinct offences, the trying Magistrate's ordinary jurisdiction is not enhanced by the provisions of para. 2 and proviso (*b*) of s. 35 of the Crim. Pro. Code. EMPEROR v. DHONDI BAPU BHAPKER, **8 Bom. L.R. 850 = 4 Cr.L.J. 445.**

(217)—*S.* 35—*Concurrent sentences when not awardable.*—It is illegal to award concurrent sentences under this section; when a person is convicted at one trial of two or more distinct offences and sentenced to several punishments, such sentences must not be directed to run simultaneously. EMPRESS v. SHRAWAN, 6 **C.P.L.R. 9, Cr.**

(218)—*S.* 35 (=*Crim. Pro. Code*, 1882, *s.* 35)—*Penal Code, s.* 59—*Maximum term of imprisonment.*—According to cl. (*a*) of s. 35 of the Code, the maximum term of imprisonment awardable as an aggregate sentence is 14 years. A sentence of transportation in lieu of imprisonment awarded under s. 59, Penal Code, is, therefore, subject to the limitation, which has been provided by s. 35, Crim. Pro. Code, in the

Crim. Pro. Code (Act V of 1898)—*continued.*

case of sentences of imprisonment. It is not sufficient to find that an accused person is guilty of the offence charged "after previous convictions," or even "after having been previously many times convicted of similar offences." The finding should clearly show that the previous convictions are such as bring the case within the purview of s. 75, Penal Code. EMPRESS GUMANI v. GOND, **7 C.P.L R.Cr. 29.**

(219)—*S.* 35 (=*Crim. Pro. Code*, 1882, *s.* 35) —*Concurrent sentences—Penal Code, ss.* 471 *and* 109.—An accused person was separately convicted at the same trial of two distinct offences, one being abetment of forgery under s. 109 read with s. 465, Penal Code, and the other dishonestly using a forged document as genuine under s. 471. He was sentenced for each offence to two years' rigorous imprisonment, the sentences to run concurrently. *Held*, that it was not correct to charge or convict under s. 471 only, any more than it would be to charge or convict under s. 109 only. S. 471 must be coupled with one or other of the sections which provide a punishment for the commission of forgery. Concurrent sentences cannot be legally passed at a trial under s. 35, Crim. Pro. Code. EMPRESS v. TIKARAM LOHAR, **8 C.P.L.R. Cr. 1.** (7 W.R. 59, Cr., 10 B. 254, 6 C.P.L.R. 9, Cr., *R.*)

(220)—*S.* 35—*Penal Code, ss.* 147 *and* 447—*Conviction for rioting and trespass, when common object is the same.*—Where the common object of a riot and a criminal trespass was the same, *held*, that separate convictions for both the offences were not valid. BHUP SING v. EMPEROR, **8 C W.N. 305.** [*D.*, 17 O.C. 184.]

(221)—*S.* 35 (=*Crim. Pro. Code*, 1882, *s.* 35) —*Separate sentences, if can be passed under.*—The above section being permissive with respect to the passing of separate sentences for each offence of which an accused may be found guilty, a Criminal Court is not bound to pass separate sentences in such cases. QUEEN-EMPRESS v. NGA KYIN U, **L.B.R. 1872—1892, 271.**

(222)—*S.* 35 (=*Crim. Pro. Code*, 1882, *s.* 35) — *Concurrent sentences of imprisonment.* — Under s. 35 of the Code, if separate sentences are passed for each offence of which an accused has been found guilty, the sentences must commence the one after the expiry of the other. Concurrent sentences of imprisonment are not recognised by the Crim. Pro. Code. The above section does not require a separate sentence to be passed on the accused in respect of every distinct offence of which he has been found guilty at one trial. QUEEN-EMPRESS v. MAUNG KALA, **L.B.R. 1872—1892, 526.**

(223)—*S.* 35—*House-trespass and insult—Separate convictions bad.*—A man, who commits house-trespass with intent to commit an offence and commits that offence, can be punished either for the house-trespass or for the offence, but not separately for both. He may be tried for and convicted of the offence of house-trespass and the offence which he intended to commit. But, he cannot be punished separately for the two offences. CROWN v. ON BU, **1 L.B.R. 279.** (1 L.B.R. 33, 23 B. 706, *F.*)

(224)—*S.* 35—*Concurrent sentences passed at one trial not to be considered aggregate sentences for purposes of appeal.*—Where the accused was convicted on three charges and sentenced to imprisonment for 4 years on each charge, the sentences to run concurrently, *held*, that, as the punishment, to which the appellant was sentenced, was four and not 12 years' rigorous imprisonment, the appeal lay to the Court of Session and not to the High Court. SAW HLAING v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 13.**

(225)—*S.* 35 (=*Crim. Pro. Code*, 1872, *s.* 314) —*Scope of the section.*—S. 314, Crim. Pro. Code, 1872, has reference only to the conviction of an accused person of two or more offences at one trial. It does not include the case of separate trials held on the same day for separate offences committed by the same person. HIGH COURT PROCEEDINGS, 5TH JUNE 1879, EXTRA NO. 13, **2 Weir 30.** [*F.*, 2 Weir 31.]

(226)—*S.* 35—*Scope of.*—The restriction in s. 314 is limited to cases in which the Magistrate is at liberty to hold one trial for distinct offences under ss. 452 and 453 (s. 234 of the Code of 1898). HIGH COURT PROCEEDINGS, 7TH DECEMBER 1880, NO. 2506, **2 Weir 31.**

(227)—*S.* 35—*Separate convictions for house-breaking and theft.*—Separate sentences in a case of house-breaking with intent to commit theft, and theft are illegal under s 35 of Crim. Pro. Code, 1898. *In re* SUBBADU, **2 Weir 34.**

(228)—*S.* 35—*Distinct trial—Concurrent sentences.*—A Sessions Judge has no power to order sentences to run concurrently, unless the accused is convicted at one trial for two or more distinct offences. If the Court wished to take the sentence in the first trial into consideration, it might have done so imposing a lesser sentence in the subsequent case. Where, therefore, a Sessions Judge, having convicted an accused, passed a sentence of imprisonment and ordered that it would be concurrent with the sentence he was undergoing for quite a distinct offence, for which he had been tried at a separate trial, *held* that the order was bad, s. 35 of the Code of Criminal Procedure not applying to the case. MAKBUL HUSSAIN v. KING-EMPEROR, **11 A. L.J. 263=19 Ind. Cas. 336=14 Cr. L.J. 240.**

(229)—*S.*35—*Sentence of imprisonment to run concurrently with sentence of transportation for life—Legality.*—In view of the provisions of s. 35, Crim. Pro. Code, it is not illegal to direct a sentence of imprisonment to run concurrently with a sentence of transportation for life. BOGI v. CROWN, **21 P.R. 1913, Cr.=50 P.L. R. 1914=15 Cr. L.J. 68=22 Ind. Cas. 420.**

(230)—*S.* 35—*Concurrent sentences, validity of.*—*Held*, that the power of passing concurrent sentences is confined to cases where a person

Crim. Pro. Code (Act V of 1898)—*continued.*

is convicted at *one* trial of two or more distinct offences. DEBI DAYAL v. KING-EMPEROR, **16 O.C. 370=15 Cr. L.J. 300=23 Ind. Cas. 508.**

(231)—S. 35—*See* BOM. ACT V OF 1878, s. 43, cls. (*c*) & (*f*). 1 Bom. L.R. 344.

(232)—S. 35—*See* HOUSE-BREAKING. 8 B. L.R. 855=4 Cr. L.J. 450, 1 Bom. L.R. 69.

(233)—S. 35—*See* JOINDER OF CHARGES—MIS-JOINDER OF CHARGES, 3 A. 305, F.B.

(234)—S. 35—*See* PENAL CODE, s. 71, U.B. R. 1904. 1st Qr., Penal Code, 1.

(235)—S. 35—*See* PENAL CODE, ss. 75, 379, Rat. Un. Cr. C. 688=Cr. Rg. 9 of 1894.

(236)—S. 35—Several offences—Sentence of fine for each of—Terms of imprisonment in default of payment—Order to run concurrently—Legality—*See* PENAL CODE, ss. 279, 427, 5 S.L.R. 263=15 Ind. Cas. 808=13 Cr. L.J. 536.

(237 to 241)—S. 35—*See* STOLEN PROPERTY. 1 Weir 469=4 M.H.C. App. 13=2 Weir 35.

(242)—S. 35—*See* Nos. 107, 178, 208, *supra.*

(243)—*Crim. Pro. Code, ss.* 35, 123—*Previous sentence under* s. 123, *Crim. Pro. Code—Subsequent sentence for an offence under Arms Act,* s. 19 (*e*)—*Concurrent sentences.*—The accused was sentenced to a term of imprisonment for an offence under the Arms Act; the sentence was ordered to run concurrently with another sentence previously passed upon him under s. 123, Crim. Pro. Code. *Held*, that the sentence for the substantive offence must commence at once and cannot be postponed to take effect after the expiry of the period of imprisonment in default of giving security for good behaviour which the accused was undergoing at the date of the conviction, that s. 35 of the Crim. Pro. Code, applies to sentences on conviction for offences at one trial and has no application to imprisonments under s. 123, Crim. Pro. Code. EMPEROR v. KANJI JAYSINGH, **5 Bom. L.R. 26.** [*F.*, 37 B. 178=1 Bom. Cr. Cas. 209=14 Bom. L.R. 965=13 Cr. L.J. 849=17 Ind. Cas. 785.]

(244)—*Ss.* 35, 190, 196, 197, 200, 233, 239, 527(*a*)—*Distinct offences--Concurrent sentences—Separate trial—Complaint against public official duly signed by Public Prosecutor—Erroneous impression of Magistrate, effect of—Cognizance—Failure to examine complainant, effect of—Irregularity--Sanction under* s. 197--*Sanction to prosecute under* s. 161, *or any other section of Penal Code—Valid—Charge framed under* s. 165—*Penal Code—Subsequent addition of charge under* s. 161—*Prejudice—Misjoinder of charges or offences—Illegal gratification—Receipt of lump sum collected from different persons—Penal Code,* ss. 161, 165—*Punishment—Revision—Finding of fact.*—A direction that punishments inflicted in respect of distinct offences shall run concurrently can be made only when the accused is convicted at one trial of two or more distinct offences. Where a complaint under s. 161, Penal Code, against a Government official,

Crim. Pro. Code (Act V of 1898)—*continued.*

is duly signed by the Public Prosecutor and proceedings thereon are taken, the mere fact that the Magistrate subsequently, by oversight, thought that he was taking cognizance of the offence on a police report would not render him incompetent to take cognizance of the offence. A failure to comply with the provisions of s. 200, Crim. Pro. Code, does not necessarily and in every case invalidate all subsequent proceedings. Where a complaint, preferred against a Government servant by a responsible public official, was reduced to writing and signed by him and was accompanied with the formal sanction by the Local Government authorizing the prosecution, and the accused was actually convicted of the offence charged: *Held*, that the Magistrate's failure to observe the strict requirements of s. 200, Crim. Pro. Code, had in no way prejudiced the accused or caused a failure or miscarriage of justice, and that the irregularity was sufficiently covered by the provisions of s. 527 (*a*) of the Code. (9 A. 66, 11 M. 443, 63 P.R. 1901=101 P.L.R. 1901, *F.*) The Local Government granted sanction for the prosecution of one of its servants of an offence under s. 161, Penal Code, "or any other section of the Code that may be found to be applicable to the offence in respect of the offence briefly described in the schedule annexed." In the schedule the alleged facts of the offence were briefly set forth. *Held*, that the sanction was not vague or indefinite. The Local Government had not delegated its function under s. 197, Crim. Pro. Code, to any other person or body. It sanctioned the prosecution of one of its servants upon a given set of facts; and while the Government was itself of opinion that the said facts constituted an offence under s. 161, Penal Code, it left it to the Court (which alone could decide the matter) to determine whether upon these facts the offence fell under s. 161 or any other section of the Penal Code. (16 M. 468, 37 C. 467=14 C.W.N. 1114=7 Ind. Cas. 359=11 Cr. L.J. 453, 22 B. 112, *D.*) The considerations which arise in a case to which s. 197 is applicable are essentially different from those considerations of policy which underlie the grant of sanction under s. 196, Crim. Pro. Code. In the trial of a charge of bribery, the Magistrate at first framed a charge under s. 165, Penal Code, but at a subsequent and much later stage added a charge under s. 161. On the addition of the charge, the accused was given an opportunity of re-calling the witnesses and he actually did re-call some of them: *Held*, that the accused was in no way prejudiced by the addition of the charge, and that the proceedings of the Magistrate were in no sense void or without jurisdiction. Certain sums of money were collected from land-holders of various villages and were paid in a lump sum by the persons who had collected them to the accused, a *zilladar* in the irrigation department, with the object of inducing him to show favour in his official capacity to their village as a whole. The accused was charged at the trial with having received a lump sum: *Held*, that the charge as framed was legal and correct. It was not

necessary to charge the accused with an offence under s. 161, Penal Code, in respect of every item contributed by the various landholders, and consequently there was no misjoinder of offences or charges. (13 C.W.N. 1062=4 Ind. Cas. 13=10 Cr. L.J. 463, *F.*; A.W.N. 1904, 223, *D.*) The orders of Criminal Courts should not be interfered with in revision upon facts, save in rare cases and for very exceptional reasons. GIRDHARI LAL v. EMPEROR, **146 P.L.R. 1911=10 Ind. Cas. 156=12 Cr. L.J. 217=11 P.R. 1911, Cr.=32 P.W.R. 1911.**

(245)—Ss. 35, 233, 235, 236—*See* SENTENCE—GENERAL, 2 A. 644.

(246)—Ss. 35, 235—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 7 A. 29, 10 A. 146=8 A.W.N. 5, 10 B. 493.

(247)—Ss. 35 and 253—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 12 M. 36=2 Weir 32.

(248)—*Ss.* 35, 256—*Concurrent sentences—Recalling prosecution witnesses.*—The accused was tried at four separate trials upon four distinct charges and sentences to various terms of imprisonment ranging from six months to six years, and it was ordered that all the sentences should be served conterminously: *Held*, that such an order was illegal and that, even if it was meant that the sentences were to run concurrently, the order was illegal as the sentences were passed at separate trials and not at one trial. (4 L.B.R. 147, 7 Cr. L.J. 445, *F.*) The Magistrate refused to grant the accused's application for re-calling all the prosecution witnesses under s. 256, Crim. Pro. Code, for cross-examination, on the ground that the accused had the fullest opportunity of cross-examination and apparently did not want to elicit anything new: *Held*, setting aside the conviction and ordering a new trial, that the section gave the Magistrate no discretion in the matter, and the fact that there had been some cross-examination before the charge was drawn up did not affect the privilege of the accused. NGA PYA v. EMPEROR, **14 Cr. L.J. 388=20 Ind. Cas. 212=6 Bur. L.T. 67.** (22 C. 469, *F.*)

(249)—Ss. 35, 367—*See* SENTENCE—CONCURRENT SENTENCES, A.W.N. 1897, 207=20 A. 1, F.B.

(250)—Ss. 35, 367, 397, 398—*Sse* SENTENCE—CONCURRENT SENTENCES, 12 P.R. 1894, Cr.

(251)—Ss. 35 and 391—*See* SENTENCE—WHIPPING, L.B.R. 1893—1900, 582.

(252)—*Ss.* 35, 391, 397 (=*Crim. Pro. Code,* 1882, *ss.* 35, 391, 397)—*Sentence of imprisonment and whipping—Execution of latter sentence.*—The accused was convicted of house-breaking by night in order to commit theft, and of theft in a building, and sentenced to suffer rigorous imprisonment for 18 months and to receive twenty stripes with a light rattan, the sentence to commence after the expiration of the sentence in the other case (*viz.*, eighteen months' rigorous imprisonment and twenty stripes): *Held* that a sentence of whipping must be executed fifteen days after the sentence is pronounced or on confirmation of the sentence in appeal. It is only a sentence of imprisonment that can be pronounced to take effect in succession (ss. 35 and 397, Crim. Pro. Code). The sentence of whipping should not have deferred the infliction of the punishment so as to contravene the provisions of s. 391 of the Crim. Pro. Code. QUEEN-EMPRESS v. SAGRAM, **Rat. Un. Cr. C. 300=Cr. Rg. 47 of 1886.**

(253)—*Ss.* 35, 397—*Concurrent sentences.*—The passing of concurrent sentences is opposed to the provisions of s. 397; this, however, must be read subject to the provisions of s. 35 of the Code. EMPEROR v. TUKARAM HARI, **4 Bom. L.R. 876.** [*R.*, 5 Bom. L.R. 26.]

(254)—*Ss.* 35, 397—*Concurrent sentences.*—S. 35 does not authorize any Court to direct that two or more sentences shall run concurrently except sentences passed at one and the same trial. S. 397 is explicit and gives the Court no option; a sentence of imprisonment must commence at the expiry of the previous sentence. KING-EMPEROR v. SAN E, **4 L.B.R. 147=7 Cr. L.J. 445.** [*R.*, 14 Cr. L.J. 388=20 Ind. Cas. 212, 4 Bur. L.T. 174=12 Cr. L.J. 465=11 Ind. Cas. 1001=6 L.B.R. 22.]

(255)—*Ss.* 35, 397—*Concurrent sentences.*—It is only in the case of a conviction for several offences at one trial that a Court, under the provisions of s. 35, Crim. Pro. Code, can direct that the punishments shall run concurrently. S. 397, Crim. Pro. Code, provides that a sentence of imprisonment for another offence shall commence at the expiration of the imprisonment to which he has been previously sentenced. NGA TOK GYI v. KING EMPEROR, **U.B.R. 1902—1903, Crim. Pro. 19.**

(256)—*Ss.* 35, 397—*Concurrent sentences—Consecutive sentences—Separate trials—Practice.*—At a trial held by a Magistrate, the accused was convicted of cheating and sentenced to undergo rigorous imprisonment for one year. He was immediately tried by the same Magistrate for another cheating and was convicted. The Magistrate sentenced him to suffer one year's rigorous imprisonment and ordered the two sentences to run concurrently. *Held*, that the order of the Magistrate was not illegal, inasmuch as the trials took place on one and the same day and one after the other, it was, for all practical purposes, one trial. EMPEROR v. MAHOMED ISAF HABIB, **13 Bom. L.R. 200=10 Ind. Cas. 769=12 Cr. L.J. 241.**

(257)—Ss. 35 and 397—*See* SENTENCE—CONCURRENT SENTENCES, 2 S.L.R. Cr. 23=10 Cr. L.J. 236.

(258)—*Ss.* 35, 397, 438, 439—*Accused convicted in two separate cases—Second sentence ordered to run from date of order—Direction illegal—Concurrent sentences, when can be passed—Revision—Effect to be given to real intention of Magistrate—Reduction of sentence.*—The question whether sentences should be concurrent or

consecutive arises only in cases of separate convictions *at one trial.* In all other cases, s. 397 is imperative and should not be disregarded. On 30th March, 1910, A was sentenced to four years' rigorous imprisonment. On 19th April, 1910, he was convicted in a separate case by the same Magistrate and sentenced to three years' imprisonment which the Magistrate ordered should run from the date of his order. The first sentence was reduced on appeal to two years. On a reference to the Chief Court that the Magistrate's direction as to the commencement of the sentence in the second case was illegal: *Held*, (1) that the direction was illegal and ought to be expunged from the order; (2) that, as the intention of the Magistrate was that A should undergo a total period of 4 years' imprisonment, effect should be given to this intention and, consequently, the second sentence should be reduced to a term of two years, to commence from the date of expiry of the first sentence. EMPEROR v. GANDA SINGH, **20 P. L.R. 1912 = 13 P W.R. 1912, Cr. = 13 Ind. Cas. 109 = 13 Cr. L.J. 3.**

(259)—Ss. 35 and 408—*See* APPEAL—CASES WHERE APPEAL LIES, 25 P.R. 1901, Cr.

(260)—*Ss.* 35, 411—*Sentences to run concurrently—Sentence of six months' imprisonment on each of two counts by Presidency Magistrate —Right of appeal—Aggregate sentence.*—Two sentences, each of six months' imprisonment passed simultaneously under s. 35 of the Crim. Pro. Code, and directed to run concurrently, cannot be held to be a single sentence of one year's imprisonment, but would be considered as a single sentence of six months' imprisonment. If such a sentence is passed by a Presidency Magistrate, it will not be appealable under s. 411 of the Crim. Pro. Code. SUKNANDAN SINGH v. EMPEROR, **13 Cr L J. 787 = 17 Ind. Cas. 531 = 17 C.L J. 392.** [*Appr.* 40 C. 631 = 14 Cr. L.J. 254 = 19 Ind. Cas. 510 = 17 C.W.N. 825.]

(261)—*Ss.* 35, 413—*Appeal, whether lies, when aggregate sentence is one month.*—Where the accused were convicted on two separate charges and sentenced to one month's rigorous imprisonment on each of the charges by a first class Magistrate, the sentences to run concurrently: *Held*—that an appeal lay to the Sessions Court. BEPIN BEHARY DEY v. EMPEROR, **16 C.W.N. 734 = 11 Ind. Cas. 255 = 12 Cr. L. J. 391.**

(262)—Ss. 35 and 423—*See* SENTENCE—POWERS OF APPELLATE COURT—ENHANCEMENT, 45 P.R. 1887, Cr.

(263)—*S.* 35 (2)—*Appeal—Criminal Appeal —Admission—Subsequent dealing with question, whether appeal lay—Sentence of one month's imprisonment under each of three sections to run concurrently—Whether appealable.*—The mere fact of the admission of a criminal appeal does not preclude the Court from dealing subsequently with the question whether an appeal lay. An accused, who has been sentenced to concurrent terms of imprisonment, no one of which is individually appealable, has no right of appeal against them collectively. AZIZ SHEIKH v. EMPEROR, **14 Cr. L.J. 254 = 17 C. W.N. 825.** (*Reported as Shahijan Shaikh* v. *Emperor*, in 17 C.W.N. 825 = 19 Ind. Cas. 510 = 40 C. 631.) (17 Ind.Cas. 813 = 17 C.W.N. 72 = 13 Cr. L.J. 877, *Diss.*; 17 Ind. Cas. 531 = 13 C.W.N. cclxxxiv = 13 Cr. L.J. 787 = 17 C.L.J. 392, *Appr.*)

(264)—S. 35, cl. 2 (*a*)—*See* SENTENCE—TRANSPORTATION, L.B.R. 1893—1900, 478.

(265)—*S.* 35 (3), *Applicability of.*—Sub-s. (3) of s. 35, Crim. Pro. Code, applies to consecutive sentences only and not to sentences which run concurrently. SAW HLAING v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 13.**

(266)—Ss. 35 (3), 408 (*c*)—Conviction and separate sentences under ss. 125-A and 153-A, I.P.C., passed on same trial—Appeal to High Court.—*See* PENAL CODE, ss. 124-A, 153-A, 38 C. 214 = 12 Cr. L.J. 348 = 10 Ind. Cas. 948.

(267)—*Ss.* 35 (3), 413—*Appeal—Concurrent sentences aggregating to more than one month, by a Magistrate of the first class—Whether appeal lies.*—For the purpose of appeal, concurrent sentences passed by the trying Magistrate on an accused must be taken in the aggregate. The petitioner and others were found guilty by a Magistrate of the first class, under ss. 143 and 365, read with s. 114, I.P.C. and each of them was sentenced to one months' rigorous imprisonment under each of the sections, the sentences to run concurrently. *Held*—that an appeal lay to the Court of Sessions. ABDUL KHALEK v. KING EMPEROR, **17 C.W.N. 72 = 13 Cr. L.J. 877 = 17 Ind. Cas. 813.** [*Diss.*, 35 A. 154 = 11 A.L.J. 111 = 18 Ind. Cas. 679 = 14 Cr L J. 119; *Not F*, 40 C. 631 = 17 C.W.N. 825 = 14 Cr. L J. 254 = 19 Ind. Cas. 510.]

(268)—S. 35, Expl.—Offences falling under ss. 365 and 387, I.P.C.—Separate sentences—Not to be passed—*See* PENAL CODE, ss. 71, 364, 365, 383, 111 (*b*), and 387, 6 L.B.R. 160 = 19 Ind. Cas. 167 = 14 Cr.L.J. 167 = 6 Bur. L.T. 77.

(269)—S. 35, ill.—House breaking with intent to commit theft and theft not distinct offences — Separate sentences illegal — *See* SENTENCE, CUMULATIVE AND SEPARATE SENTENCES, Cr. Rg. 36 of 1898.

——S. 36 (= 1882, s. 36; 1872, ss. 22, 24, 26, 28, 30).

(270)—*Ss.* 36, 107 (3) (4), 104, 114 *and* 334 —*District Magistrate's order detaining accused not sent before him under s.* 107, *cl* (3)—*Jurisdiction.*—Where an accused person is not sent before a District Magistrate by any other Magistrate under sub-s. 3 so as to bring the case within sub-s. 4, such District Magistrate's order detaining him in custody is one made without jurisdiction. Even if s. 36 can be construed as giving powers which are not specially referred to in sch. III, having regard to the term of sub-s. 3 of s. 107 the power is not one which can vest in the Magistrate to whom the accused person is

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sent. Assuming that the proviso to s. 114 applies in the case of a person who is before the Court, an order of the Magistrate cannot be supported under s. 114, where he has not followed the procedure therein prescribed. CHIDAMBARA PILLAI, V. O v. EMPEROR, **3 M L.T. 311 = 31 M. 315 = 7 Cr.L.J. 360, F.B.**

(271)—S. 36—*See* No. 179, *supra.*

——S. 37 (= 1882, s. 37 ; 1872, ss. 23, 25. 27, 29).

(272)—Ss. 37, 190—*See* COMPLAINT—INSTITUTION OF COMPLAINT—PRELIMINARIES. 27 P.R. 1873. Cr.

(273)—*Ss.* 37, 190, 64, 242, 243 (= ss. 25, *cl.* (3), 108 *to* 206, *Crim. Pro. Code,* 1872),—A Magistrate, having no power to try a case under s. 25, cl. (3), can try such cases under ss. 108—206, as these sections otherwise invest him with jurisdiction. S. 108 of Crim. Pro. Code enacts that bail may be allowed to an accused for his appearance for trial before a Magistrate having jurisdiction ; so that, if the Magistrate, acting under s. 108, chance to have jurisdiction to try the case, he can legally do so though not invested with the power of s. 25, cl. (3), Crim.Pro. Code. POLICE v. JIBBA KUNBI, **Colm. Dig. Cr. 22 of 1875.**

(274)—Ss. 37, 190, 423, except. 1 *(d)*—*See* EVIDENCE— GENERAL, 10 B.H.C 497.

——S. 39 (= 1882, s. 39 ; 1872, s. 43).

(275)—*Ss.* 39, 235 (= *Crim. Pro. Code,* 1882, *ss.* 39, 235)—*Powers of Magistrate of first class conferred on a Magistrate of second class during trial — Sentence.—Held by the Full Bench (Petheram C.J. and Brodhurst, J., dissenting)* :—A Magistrate of the second class, who begins a trial in that capacity and continues it in the same capacity up to the passing of the sentence, and who, previously to the passing of the sentence, has been empowered as a Magistrate of the first class, can inflict a severer sentence than he could have inflicted as a Magistrate of the second class. *Per Petheram, C.J.* (*Contra*)—A case is supposed to be tried on the day the trial commences, and after that day the case proceeds by adjournment. The only date to be looked at is the date of the first day of trial. Hence, the Magistrate is not competent to pass sentences in his capacity as a Magistrate of the first class conferred upon him just before the passing of the sentence. QUEEN EMPRESS v. PERSHAD, **7 A. 414, F.B. = A.W. N. 1885, 105.**

——S. 40 (= 1882, s. 40 ; 1872, s. 56 ; 1861, s. 23-E).

(276)—*S.* 40—*Transfer of Magistrate—Conferring of appellate powers—Continuance of powers.*—An Assistant Collector was appointed a first class Magistrate in Shikarpur District and was subsequently invested with appellate powers. He was then transferred to Sholapur and was next appointed to act as Collector and District Magistrate of Ahmedabad, and as Assistant Collector of Ahmedabad on the return to the duty of the permanent incumbent. During the course of this service, there were various intervals of leave. *Held* that, under the provisions of s. 40, he continued to exercise the same powers in successive local areas to which he was transferred ; and it made no difference that he proceeded on various terms of leave. BAI HARKU v. SITARAM KALIAN, **2 Bom. L.R. 536.**

(277)—*S.* 40 (= *Crim. Pro. Code,* 1882, *s.* 40) —*Scope of section—Jurisdiction of* Mamlatdar *invested with second class powers.*—S. 40, Crim. Pro. Code, relates only to transfer from one district or area to another. A *Mamlatdar* invested by name with second class Magisterial powers in a district, retains them though he ceases to be a *Mamlatdar*. His revenue title is a matter of mere description. QUEEN EMPRESS v. RAMA, **Rat. Un. Cr. C. 322 = Cr. Rg. 8 of 1887.**

(278)—*Ss* 40, 41 (= *Crim. Pro. Code,* 1882, *ss.* 40, 41)—*Magistrates—Investiture of powers —Continuance.*—When a Tahsildar is invested with the powers of a Magistrate of the first class, while acting as a Deputy Collector, his powers continue so long as he is a Magistrate, until they are withdrawn by a fresh notification, though he is posted in a less responsible post. *In re* HANUMANTHA, **2 Weir 36.**

(279)—*Ss.* 40, 86—*Civ. Pro. Code* (1882), *ss.* 588 (29), 651—*Conviction for escape from lawful custody—Appeal.*—As to whether a person who has been convicted under s. 651, for escaping from lawful custody and has been sentenced for one month, has the right of appeal under s. 588 (29), Civ. Pro. Code. EMPRESS OF INDIA v. AMAR NATH, **5 A. 318.**

(280)—S. 41—*See* No. 278, *supra.*

——S. 42 (= 1882, s. 42 ; 1861, s. 91).

(281)—*S.* 42—*Power of police officer to demand aid of chowkidar in arresting an accused person.* —A police officer is authorized to employ a *chowkidar* to assist him in arresting a person or in preventing his escape. MANIK PAN v. KENARAM SIRDAR CHOWKIDAR, **6 C.W.N. 337.**

(282)—*S.* 42 (= *Crim. Pro. Code,* 1882, *s.* 42) —*Scope of the section.*—The assistance that can be demanded under s. 42, Crim. Pro. Code, is personal assistance of the individuals of whom it is demanded, and not a supply of a contingent of men to assist. *In re* RAMIAH, **2 Weir 37.**

——S. 43 (= 1882, s. 43 ; 1872, s. 163 ; 1861, s. 78).

(283)—*S.* 43 (= *Crim. Pro. Code,* 1872, *s.* 90) —*Village Accountant and village peons—Applicability of the section—Penal Code, s.* 217.—A Village Accountant, being neither the head of the village nor a person engaged in the collection of the public revenue, does not come within s. 90, Crim. Pro. Code, 1872, nor does the section impose any obligation on village peons as such. Therefore, neither of them can be convicted under s. 217, Penal Code, for

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having disobeyed the direction of the law contained in s. 90, Crim. Pro. Code. *In the matter of* RAMINIHI NAYAR, **1 M. 266=1 Weir 196.**

(284)—*S.* 43 (=s. 90 (*c*), *Crim. Pro. Code*, 1872).—The word 'near' in the above section of the Code might include, in certain cases, a distance of two miles. POLICE v. BHORIK, **Colm. Dig. Cr. 14 of 1874.**

(285)—S. 43—*See* INFORMATION OF COMMISSION OF OFFENCE, 4 C. 623.

(285-*a*)—S. 43—*See* No. 289, *infra.*

——S. 44, para 1 (=1882, s. 44; 1872, s. 89; 1861, s. 138).

(286)—S. 44—Failure to report plot—Abetment of waging war—Intention—*See* PENAL CODE, ss. 107 (3), 121, 121-A, 6 Bur. L.T. 153=21 Ind. Cas. 658.

(287)—S. 44 (1)—*See* PENAL CODE, s. 193, Rat. Un. Cr. C. 674=Cr. Rg. 40 of 1893.

(288)—S. 44—*See* No. 13, *supra.*

(289)—Ss. 44 (1), 43—*See* PENAL CODE, s. 217, 1 M. 266=1 Weir 196.

——S. 45, para (1) (*a, b, c, d*) [=1882, s. 45, para (1) (*a, b, c, d*); 1861, s. 90; para (2) (i) (=1882, s. 45, Expl.) and paras (1) (*e, f*). (2) (ii) and 3, new.

See INFORMATION OF COMMISSION OF OFFENCE.

(290) — *S.* 45 (=*Crim. Pro. Code*, 1872, s. 90)—*Omission to give information of offence—Residence—Liability of resident agent.*—The duty imposed by Act X of 1872, s. 90, upon a village headman, etc., of giving information as to the occurrence of any sudden or unnatural death is intended to be done only when such occurrence takes place at or near the village of which he is headman, or in which he owns or occupies land, etc. Residence in a dwelling-house owned by another is not such an occupation of land as is within the meaning of the section. *In the matter of* MUDHOOSOODUN CHUCKERBUTTY, **23 W.R. Cr. 60.**

(291)—*S.* 45 (=*Crim. Pro. Code*, 1882, s.45) —*Village* chaukidar—*Omission to give information of dacoity committed in another village—N.W.P., Village and Rural Police Act*, X of 1873, ss. 8 *and* 11—*Penal Code*, s. 176.—A dacoity was committed in the lands of a certain village. The village *chaukidars* did not give information of the occurrence till the next day. They were charged with and convicted of an offence under s. 11 of Act XVI of 1873. *Held* that, under the Act, the village *chaukidars* were not bound to give immediate information of an offence not committed within their village. EMPRESS v. KHUDA BAKSH, **A.W.N. 1886, 65.**

(292)—*S.* 45 (=*Crim. Pro. Code*, 1882, s. 45)—*Omission to give information of offence to the police—Penal Code*, s. 176—*Proof of knowledge of offence.*—When information, as to the commission of a murder, is conveyed to the nearest Magistrate or police officer by one of the parties bound to give such information under s. 45 of the Crim. Pro. Code, it is not reasonable that every other person, who may, possibly, be bound to give information, should be prosecuted for not having done so, and convicted of an offence under s. 176 of the Penal Code. [*F.*, Rat. Un. Cr. C. 778; *R.*, Rat. Un. Cr. C. 674.] Certain proprietors residing at a certain village were charged, under s. 176 of the Penal Code, for not giving information to the Police of a murder which was committed in another village four miles off their village. There was no evidence on the side of the Crown, that those persons were aware of the murder on the date of the occurrence. But there was evidence on the side of the defence that they did not obtain information of the murder until the next day, and that one of their agents, thereupon, went to the spot and reported the matter to the Sub-Inspector on their behalf. *Held*, that it lay on the crown to show that they had obtained information on the day of the occurrence and had failed to inform on that day; otherwise, it could not be held that they were under a legal obligation to report the murder as required by s. 45 of the Crim. Pro. Code; *held*, also, that, under the circumstances of the case, they had sufficiently discharged the obligation imposed upon them by s.45, Crim. Pro. Code, and would, therefore, be entitled to an acquittal. QUEEN-EMPRESS v. GOPAL SINGH, **20 C 316.** (4 C. 623, *Rel. on.*) [*D.*, Rat. Un. Cr. C. 784.]

(293)—*S.* 45 (=*Crim. Pro. Code*, 1882, s. 45 —*Penal Code*, s. 176—*Omission to report sudden death in a house.*—The owner or occupier of a house within a village is not an owner or occupier of land within the meaning of s. 45, Crim. Pro. Code. Where the *karnavan* of a Nayar tarwad was convicted under s. 176, Penal Code, for omitting to give information touching the sudden death of a member of his family, *held*, that the conviction was wrong as he was not bound to do so under s. 45, Crim. Pro. Code. QUEEN-EMPRESS v. ACHUTA, **12 M. 92=1 Weir 102=2 Weir 38.**

(294)—*S.* 45 (=*Crim. Pro. Code*, 1882, s. 45) —*Omission to give information regarding suspicious death—Necessity for proof of death on land—Penal Code*, s. 176.—To sustain the conviction under s. 176, I.P.C., of a person falling under s.45 of the Crim. Pro.Code, 1882, for omission to give information of an occurrence referred to in cl. (*d*) of the latter section, it is not necessary to show that the death actually occurred on his land, if the dead body is found on the land under circumstances distinctly showing that the death was sudden, unnatural or suspicious, as, in such circumstances, the inference will reasonably be made that the death itself took place on the land.—*Per* Prinsep and Macpherson, JJ. *Mitter, J.*, however, held that proof of death on the land was necessary, as the finding of a dead body thereon would not afford the proof. MATUKI MISSER v. QUEEN-EMPRESS, **11 C. 619.** [*Appr.*, Rat. Un. Cr. C. 784; *R.*, 12 Cr. L.J. 441=11 Ind. Cas. 785=7 N.L.R. 101.]

(295)—*S.* 45—*Cattle-theft, whether an offence in Upper Burma—Liability of headman for not*

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reporting case of cattle-theft.—In Upper Burma, s. 45, Crim. Pro. Code, is as amended by s. 4 of the Village Regulation. Cattle theft is not one of the offences mentioned in s. 45, Crim. Pro. Code, as it exists in Upper Burma, where it was not, as far as appeared from the proceedings, been made, by order under cl. 6 of the section, an offence respecting which a headman is directed to communicate information, and it was *held* that the accused committed no breach of obligation by omitting to report a case of cattle-theft, and that, even if the obligation existed, the accused would not be liable, because he was not a headman appointed under the Village Regulation QUEEN-EMPRESS v. NGA PO MAUNG, **U.B R. 1892—1896, Vol. I, 19**

(296)—*S.* 45 (=*Crim. Pro. Code*, 1882, *s.* 45) —*Section interpreted.*—On the interpretation of s. 45 (*d*), the Court concurred with the majority of the Judges in *Matuki* v. *Queen Empress* (11 C. 622). The word "*forthwith*" in the first clause, must be construed with reference to the object of the enactment. QUEEN-EMPRESS v. WAMAN DHOND DEV, **Rat. Un. Cr. C. 784= Cr. Rg. 43 of 1893.**

(297)—*S.* 45—*Omission to give information—Nature of proof—Crim. Pro. Code*, 1872, *s.* 90. —To support a conviction for omitting to give information under s. 90, Crim. Pro. Code, 1872, it should be proved (*a*), that a specified offence has been committed by some one, (*b*) that the accused knew of its having been committed and (*c*) that he wilfully omitted to give the information. THE QUEEN v. AHMED ALI, **22 W.R. Cr. 42.**

(298)—S. 45 — *See* ILLEGAL OMISSION, 20 P.R. 1887, Cr., 30 P.R. 1887, Cr.

(299, 300)—S. 45—*See* PENAL CODE, s. 176, A.W.N. 1900, 207, 1 Weir 101.

(301)—S. 45—Concealment of dead body—*See* PENAL CODE, ss. 179, 201, 302, 309, 17 P.W. R. 1911, (Cr)=11 Ind. Cas. 609=12 Cr.L J. 425.

(302)—*Ss.* 45, 87, 88 (=*Crim. Pro, Code*, 1882, *ss.* 45, 87 *and* 88)—*Omission by zemindar to give information of presence of proclaimed offender to police—Proof of proclamation — Penal Code, s.* 176—*Object of ss.* 45 *and* 176, *I.P.C.*—Where a zemindar was convictedof having intentionally omitted to inform a public servant of the resort to the village of a proclaimed offender, and the fact of his being a proclaimed offender was presumed from the fact that the property belonging to him was attached and sold under the provisions of s. 88, Crim. Pro. Code, *held*, that the conviction was bad, as it was on the prosecution to prove that the proclamation was made in the manner prescribed by s. 87 of the Code. The provisions of s. 45, Crim. Pro. Code, and s. 176, Penal Code, are not to be worked solely or principally for the purpose of vexation, but for the purpose of insuring that information be not intentionally withheld by those whose position renders them liable to give it. It is not reasonable that every person, other than him or those from whom such information has been actually obtained and who may possibly be bound to give such information, should be prosecuted for not having done so. *In the matter of* PANDYA NAYAK, **7 M. 436=1 Weir 102.** [*F.*, Rat. Un. Cr. C. 778.]

(303)—Ss. 45, 87, 88 — *See* ABSCONDING OFFENDER, 7 M. 436=1 Weir 102.

(304)—*S.* 45 (*c*)—*Information of commission of offence, what is.*—Where the evidence showed that, the only information the village munsiff had, was that a jewel was missing, whether it had been stolen or it was lost, *held*, that he had no information of the commission of the offence of theft, which he was bound to communicate to the Magistrate or Police under s. 45 (*c*), Crim. Pro. Code, 1898. *In re* VEMI REDDI LACHA REDDI, **5 M.L.T. 257=9 Cr.L. J. 224=1 Ind. Cas. 248.**

(305)—S. 45 (*c*)—*See* CHARGE—GENERAL, 6 M.L.T. 175.

(305-*a*)—*Ss.* 45 (1) (*c*), 250—*Complaint of theft before Village Magistrate — Report to Police officer—Charge—Compensation, right to.* —Where a complaint of theft was made to the Village Magistrate who communicated the information to the nearest Police station and the Police in due course charged the case: *Held*, that the case must be regarded as instituted upon information given to a Police Officer within the meaning of s. 250 of the Crim Pro. Code, and the Magistrate was competent to pass an order for compensation. MARUDAI VEERAN v. PICHAN AMBALAGARAN, **16 Cr. L.J. 248=28 Ind. Cas. 104.**

(306)—*Ss.* 45 (*c*), 250, 435, 439—*Compensation for false and vexatious complaint*—"*Information given to Police Officer,*" *meaning of—Complaint of theft to village headman—Report sent to Station House Officer—Charge by Police —Falsity of charge—Magistrate's order directing payment of compensation whether legal.*—The words "information given to a Police Officer" in s. 250 of the Code of Criminal Procedure include also *a report which a village-headman is bound to send, under s.* 45 (*c*) of the Code, on a complaint made to him of the commission of a non-bailable offence. (25 M. 667, 13 Ind. Cas 221=22 M.L.J. 138=1911, 2 M.W.N. 558=10 M.L.T. 550=13 Cr.L.J. 29. *D.*; 1 Ind. Cas. 187=32 M. 258=5 M.L.T. 269, F.B.=9 Cr.L.J. 170, *F.*) Where a complaint of theft was made to a village-headman and he sent a report of the same to the Station House Officer upon which the Police charged the accused, and that charge the Magistrate found to be false and vexatious: *Held*, that an order by the Magistrate directing payment of compensation to the accused by the complainant was not illegal. NACHIMUTHU CHETTY v. MUTHUSAMI CHETTY, **15 Cr. L.J. 431=24 Ind. Cas. 167=27 M.L.J. 37=1914 M W.N. 804.**

(307)— Ss. 45 (*f*), 54 (1)—*See* PRIVATE DEFENCE, RIGHT OF, 21 P.R. 1900, Cr.

(308)—*S.* 45 (2) (ii)—"*Proclaimed offender*", *scope of.*—The persons included in the expression "proclaimed offenders" in s. 45, sub-s. (2),

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cl. (ii), are persons over and above those to whom the words in their ordinary signification apply, and who might, but for this explanation, have escaped out of the category of "proclaimed offenders." *Per Blair, J.*—The explanation clause in the section dealing with "proclaimed offenders" does not in any way apply to persons proclaimed as offenders for any act committed in British India. It applies exclusively to acts which, if committed in British India, would be punishable under certain sections. QUEEN-EMPRESS v. NARPAT SINGH, **A.W.N. 1901, 10.**

(309)—*Ss.* 45 (3), 435—*Revision—Executive order—Order of District Magistrate dismissing headman.*—*Held* that an order passed by a District Magistrate under the rules framed by Government under s. 45 (3) of the Code of Criminal Procedure is an executive order, and not subject to the revisional powers of the High Court. *In the matter of the petition of* DAMMA, **A.W.N. 1907, 168=5 Cr.L.J. 476=29 A. 563.**

——S. 46 (=1882, s. 46; 1872; ss. 177, 178; 1861, ss. 91 and 92).

See ARREST.

(310)—*S.* 46—*Arrest, power of—Punjab Frontier Reg.* IV *of* 1887, *s* 37—*Effect.*—The Punjab Frontier Crimes Regulation makes no alteration in the general principle of the law, that, in making an arrest, no more force is to be used than is necessary, and that death should not be caused, unless the arrest cannot be effected without causing it. But the limits presented by this section, as to the classes of persons to whom death may be caused in effecting an arrest, do not prevail where Reg. IV of 1887, s. 37 is in force. MUHAMMAD AZIM v. SAWAN, 32 **P.R. 1894, Cr.**

(311)—Ss. 46 and 50—*See* ARREST, 1 L.B.R. 173.

(312)—Ss. 46, 50—Abuse of—*See* PENAL CODE, s. 224, 1 L B.R. 173.

(313)—Ss. 46 and 59—*See* ARREST, 29 P.R. 1902, Cr.=2 P.L.R. 1903.

(314)—Ss. 46, 59—*See* PENAL CODE, ss. 97, 304, 2 P.L.R. 1903.

(315)—Ss. 46 and 59—*See* PRIVATE DEFENCE, RIGHT OF, L B.R. 1893—1900, 136.

(316)—Ss. 46 and 80—Warrant of arrest in possession at time of arrest—*See* ACT XIV OF 1882, s. 651, 5 A. 318.

(317)—Ss. 47, 103 (2)—Meaning and scope of s. 47—Search—Right of 'occupant' to be present at search—Denial of this right, effect of—'Occupant of the place,' meaning of—Omission of one Magistrate to take cognizance on suspicion, effect of, on subsequent proceedings—Finding of incriminating articles in a house—Presumption—*See* PENAL CODE, ss. 399, 402, 18 C.W.N. 498=41 C. 350=15 Cr. L.J. 385=23 Ind. Cas. 985.

——S. 50 (=1882, s. 50; 1872, s. 182; 1861, s. 96).

(318)—*S.* 50 (=s. 182, *Crim.Pro.Code*, 1872). —A Magistrate is incompetent to require bail for the personal appearance of an absentee accused person at a future date, where he has been permitted to appear by agent under s. 182. CROWN v. SETH GOKULDAS, **Col. Dig. Cr. 9 of 1873.**

(319)—S. 50—*See* Nos. 311, 312, *supra.*

——S. 54 (=1882, s. 54; 1872, s. 92; 1861, s. 100).

(320)—S. 54—*See* BOM. ACT VII OF 1867, s. 42, Rat. Un. Cr. C. 220=Cr. Rg. 26—11—1885.

(321)—S. 54—*See* ARREST, Rat. Un. Cr. C. 795=Cr. Rg. 53 of 1895.

(322)—S 54—*See* PENAL CODE, s. 221, 3 A. 60.

(323)—S. 54—*See* PENAL CODE, s. 223, A. W.N. 1907, 94=5 Cr. L.J. 277=29 A. 377.

(324)—S. 54—*See* WRONGFUL CONFINEMENT, 19 B. 72.

(325)—S. 54—*See* WRONGFUL RESTRAINT, 12 B. 377.

(326)—S. 54—*See* No. 307, *supra.*

(327)—Ss. 54, 165, 166, 550—Police search outside jurisdiction—Legality—*See* PENAL CODE, ss. 332, 147, 99, 8 S.L.R. 1.

(328)—*S.* 54 (1)—*Penal Code, s.* 353—*Cognizable offence—Warrant issued—Arrest without warrant—Credible information of the commission—Obstruction in the discharge of his duty.*—A warrant of arrest was issued against R, on a charge of cheating, to the Sub-Inspector of the thana within whose jurisdiction R. resided. That officer ordered his subordinate constables to be on the look out for R and arrest him wherever found. One of the constables came across R and proceeded to arrest him, informing him of the issue of warrant against him. The warrant itself was however not produced. The accused interfered with the constable in arresting R and managed to prevent his arrest. *Held,* that, under s. 54 (1), Crim. Pro. Code, the constable was empowered to make the arrest without warrant, as he had credible information that the person wanted had committed a cognizable offence and in making the arrest he was occupied in the discharge of his duty as a police officer, and any interference with that arrest amounted to obstructing a police officer in the discharge of his duty and was an offence under s. 353, Penal Code. GOPAL SINGH v. KING-EMPEROR, **11 A.L.J. 957=15 Cr.L.J 179=22 Ind. Cas. 755=36 A. 6.** (18 A. 246, *D.*)

(329)—S. 54 (1)—*See* PENAL CODE, s. 225, 5 L.B.R. 21=2 Ind. Cas. 619.

(330)—S. 54 (1) sixthly—*See* PENAL CODE, ss. 225, 225-B, 20 P.R. 1911, Cr.

——S. 55 (=1882, s. 55; 1872, s. 94; 1861, s. 101).

See ARREST.

(331)—*S.* 55—*Object.*—S. 55 was intended for the suppression of habitual bad characters,

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whom an officer in charge of a police station suddenly finds within his jurisdiction, or about whom he has good cause to fear that they will commit serious harm before there is time to apply to the nearest Magistrate empowered to deal with the case under s. 112, Crim. Pro. Code. *In the matter of the petition of* DAULAT SINGH, **14 A. 45 = A.W.N. 1891, 179.** [*R.*, 36 A. 262 = 12 A.L.J. 365 = 15 Cr.L.J. 288 = 23 Ind. Cas. 496.]

(332)—*S.* 55—*Burma Gambling Act*, 1899, s. 17—*Arrest by Police under s.* 55, *Crim. Pro. Code, on suspicion of gambling, illegal—Evidence of repute.*—The accused was suspected of earning his livelihood by unlawful gaming. The Police, under the sanction of the Magistrate, for institution of proceedings, arrested the accused under s. 55 of the Crim. Pro. Code. *Held*, that s. 55 does not empower the Police to arrest a person on suspicion of unlawful gaming and that the Magistrate should have made an order in writing under s. 112 and summoned the accused to appear under s. 114, attaching to the summons a copy of the said order under s. 112 as required by s. 115 of the Crim. Pro. Code. Observations on how evidence of repute ought to be accepted. KING-EMPEROR v. KYAW DUN, **3 L.B.R. 94 = 3 Cr. L.J. 20.** (2 L.B.R. 166, *R.*)

(333)—*S.* 55—*Arrest immediately after release.*—The arrest of the accused at Delhi under the orders of the Magistrate of Meerut, and all the proceedings subsequently taken by the Magistrate against him under Chap. VIII, Crim. Pro. Code, were held by the High Court to be illegal. But the Magistrate of Meerut, however, while ostensibly giving his release, caused him immediately to be arrested within the Court precincts under the provisions of s. 55, Crim. Pro. Code, and renewed proceedings against him under Chap. VIII of the Code. *Held* that the proceedings so taken did not give effect to the order of the High Court, and had rendered it abortive. It was an attempt in another way to do what had been declared to be illegal. The Magistrate could not, by unlawful exercise of authority, obtain jurisdiction over a person with a view to take proceedings against him when his former proceedings were set aside. EMPRESS v. AMIRKHAN, **A.W.N. 1883, 223.**

(334)—*S.* 55 (= *Crim. Pro. Code*, 1882, s. 55) —*Magistrate—Disqualification to try a case.*—Where a Magistrate is not shown to be personally interested in the case, the mere circumstance that he happens to hold the office of Secretary to the Cantonment Committee, would not, of itself, debar him from trying an accused person on a charge, the substance of which was an alleged infringement of one of the Committee's bye-law. RAMPARSHAD v. EMPRESS, **43 P.R. 1888.** [*R.*, 3 P.R. 1895, Cr.]

(335)—S. 55—*See* BAIL, 14 A. 45 = A.W.N. 1891, 179.

(336)—S. 55—*See* Nos. 16, 17 *supra.*

Crim. Pro. Code (Act V of 1898)—*continued.*

(337)—Ss. 55, 61, 109 and 110—*See* SECURITY FOR GOOD BEHAVIOUR, L.B.R. 1893—1900, 270.

(338)—Ss. 55, 110, 117 (1, 2 and 3), 118—*See* ESCAPE FROM LAWFUL CUSTODY, 7 A. 67.

(339)—*Ss.* 55, 110, *ch.* VIII—*Arrest without a warrant—Proceedings under s.* 110, *Crim. Pro. Code.*—S. 55, Crim. Pro. Code, is independent of chap VIII of the Code, although proceedings under that chapter might follow an arrest under s. 55, Crim. Pro. Code, as a natural sequence. A Police officer can, therefore, arrest or cause to be arrested, without a warrant or an order of a Magistrate, any person who is by repute a robber, house-breaker or thief, or otherwise comes under s. 110. NEPAL v. KING-EMPEROR, **11 A.L.J. 596 = 35 A. 407 = 14 Cr. L.J. 618 = 21 Ind. Cas. 666.**

(340)—*Ss.* 55, 112 (= *Crim. Pro. Code*, 1882, *ss,* 55, 112)—*Security for good behaviour.*—The powers with which officers in charge of police stations and the District Magistrate have been armed under the Code, for the purpose of restraining bad characters, are exceptional powers. They provide very strong remedies, and should never be put in force without the greatest deliberation, and except upon evidence which convinces the Magistrate that, in the interests of the public welfare, it is absolutely necessary to demand from the person before him, security for good behaviour. *In the matter of the petition of* DAULAT SINGH, **14 A. 45 = A.W.N. 1891, 179.** [*R.*, 36 A. 262 = 12 A.L.J. 365 = 15 Cr.L. J. 288 = 23 Ind. Cas. 496.]

(341)—Ss. 55, 156, 161—*See* FALSE EVIDENCE, A.W.N. 1893, 124.

(342)—Ss. 55 and 165—*See* ACT XI OF 1878, ss. 19 (*f*), 20, 25 and 29, 27 C. 692 = 4 C.W.N. 750.

——S. 56 (= 1882, s. 56; 1872, s. 102, para (1); 1861, s. 140.)

See ARREST.

(343)—*S.* 56 (= *Crim. Pro. Code*, 1861, s. 140).—The above section was held inapplicable where an arrest for dacoity was made without warrant by a subordinate police officer, in the presence of a head constable who authorised him to make the arrest. QUEEN v. SHAIKH EMOO, **11 W.R. Cr. 20**; QUEEN v. SAGUR BEEVAH, **11 W.R. Cr. 20.**

(344)—Ss. 56 and 80—*See* ARREST, 27 C. 320 = 4 C.W.N. 311.

(345)—Ss. 56 and 80—*See* ESCAPE FROM LAWFUL CUSTODY, 27 C. 320 = 4 C.W.N. 311.

(346)—*S.* 56 (1)—*Arrest by a* Chowkidar, *an officer subordinate to officer-in-charge of Police Station, legality of.*— A *chowkidar*, having regard to his duties as set out in s. 39 of the Village Chowkidari Act (VI of 1870, B.C.), is an officer subordinate to an officer-in-charge of a Police Station, within the meaning of s. 56 of the Crim. Pro. Code. An arrest of a person by a *chowkidar*, who may be lawfully arrested,

Crim. Pro. Code (Act V of 1898)—*continued.*

without a warrant, on the authority of an order in writing delivered to him in conformity with the provisions of s. 56 (1) of the Crim Pro. Code, would be legal. BAHUBAL SIRCAR v. EMPEROR, **10 C.W.N. 287=3 Cr. L J. 201.**

——S. 59 (=1882, s. 59 ; 1872, ss. 105, 107).

(347)—*S.* 59—*Penal Code, ss.* 224, 224 (1), 109—*Village Chowkidar if a Police Officer—Escape from custody—Abetment.*—A Chowkidar cannot be properly regarded as a Police Officer within the terms of s. 59, Crim. Pro. Code, and escape from his custody is not an offence under s. 224, I.P.C. PURNA CHANDRA KUNDU v. HACHANALI CHOWKIDAR, **17 C.W.N. 978=14 Cr. L.J. 494=20 Ind. Cas. 750=41 C. 17.**

(348)—S. 59—*See* ARREST, 27 C. 366=4 C.W.N. 252.

(349)—S. 59—*See* CHOWKIDAR, 27 C. 366=4 C.W.N. 252.

(350)—S. 59—*See* ESCAPE FROM LAWFUL CUSTODY, 5 M. 22=1 Weir 200.

(351)—S. 59—*See* PENAL CODE, ss. 224, 225, 29 A. 575=A.W.N. 1907, 179=4 A.L.J. 483=6 Cr. L.J. 10.

(352)—S 59—*See* PENAL CODE, s. 225, 1 Weir 209.

(353)—S. 59—*See* Nos. 313, 314, 315, *supra.*

(354)—Ss. 59, 239, 535 and 537—*See* ESCAPE FROM LAWUL CUSTODY, 11 M. 441=1 Weir 210=2 Weir 304.

——S. 60 (=1882, s 60 : 1872, s. 101 ; 1861, s. 109).

(355)—*Ss.* 60, 61 (=*Crim. Pro. Code, Act* XXV *of* 1861, *ss.* 109, 152)—*Accused—Arrest—Police officer—Village Police Act (Bombay Act* VIII *of* 1867)—24 *hours—Detention by Police—Computation of time—Time required for carrying accused to Magistrate.*—When an arrest is made under s. 109, Crim. Pro. Code, by an officer of the District Police not authorized to make an enquiry under ch. IX, Crim. Pro. Code, such police officer must forward the accused "without unnecessary delay" to a Magistrate having jurisdiction or to the officer in charge of the Police Station. He has no authority to detain the accused person for 24 hours under s. 152, Crim. Pro. Code. When a Police officer has authority to make enquiry under ch. IX, Crim. Pro. Code, the 24 hours of detention under s. 152 are to be counted up to the time when the accused person leaves the Police Station on the way to the Magistrate. The time occupied on the journey to the Magistrate is not to be counted in the 24 hours, but it is the duty of the Magistrate to see that the time so occupied is reasonable with reference to the distance to be traversed and other local considerations. The 24 hours during which the Village Police may detain an accused person under (Bombay) Act VIII of 1867 are not to be counted in the 24 hours allowed to the District Police Officer under s. 152, Crim Pro. Code. CRIMINAL CIRCULAR, No. 1260 OF 1869, **Rat. Un. Cr. C. 22=Cr. Rg. 14—9—1869.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(356)—Ss. 60, 61—*See* POLICE, A.W.N. 1885, 59, F.B.

——S. 61 (=1882, s. 61; 1872, s. 124, para (1); 1861, s. 152).

(357)—S. 61—*See* ACT V OF 1861, s. 42, 36 P.R. 1870, Cr.

(358)—S. 61—*See* Nos. 337, 355, 356, *supra and* 1436, *infra.*

——S. 62 (=1882, s. 62 ; 1872, s. 132, para (1); 1861, s. 160).

(359)—*Ss.* 62, 143, 190, 191 *and* 528 (3)—*Police Report—Transfer of case—Notice —Held* that, under s. 190 (*b*), the term (*Police Report*) does not necessarily mean only a Chalan, but includes also a report by the Police under s. 62 of the Code of Criminal Procedure, 1898. cl. (*c*), of the former section cannot possibly cover a case of information derived from the Police, and does not oblige a Magistrate to proceed under s. 191 of the Code and ask the accused whether he consented to be tried by him. *Held*, also, that the rule that notice should be given before a criminal case is transferred at the instance of a party does not apply where the District Magistrate *suo moto* withdraws it to his own file or transfers or re-transfers it from one Court to another under his control. *Held*, further, that under s. 528 (3) "reasons" for transfer should be recorded ; but the defect does not necessarily vitiate the order of transfer, and the superior Court can call for the reasons. The provisions of the Indian law in regard to the transfer of criminal cases are calculated to be used, and are in practice used, not to further justice, but to harass and annoy opponents. ABDULLA v. CROWN, **35 P.W R. 1909, Cr.=3 P.R. 1910, Cr.=4 Ind. Cas. 1025=11 Cr. L.J. 150=164 P.L.R 1910.** (28 P.R. 1902, Cr., 24 M. 317, *F.*, 22 B. 549, *Disap. and D.*).

(360)—S. 64—*See* No. 273, *supra.*

—— S. 65 (=1882, s. 65 ; 1872, s. 166, para 2).

(361)—Ss. 65, 105—*See* BOM. ACT IV 1887, ss. 4, 5, 6 and 7, 9 Bom. L.R. 695= Cr. L.J. 60=31 B. 438

——S. 67 (=1882, s. 67 ; 1861, s. 112).

(362)—S. 67—*See* FOREIGN TERRITORY—OFFENCES COMMITTED IN, Colm. Dig. Cr. 94 of 1877.

——S. 68 (=1882. s. 68 ; 1872. ss. 152, 153 ; 1861, ss. 69, 70).

(363)—S. 68—*See* COMPLAINT--PROCEDURE ON RECEIPT OF COMPLAINTS, 5 B.H.C.Cr. 48.

(364)—S. 68—*See* PENAL CODE, s. 174, A.L.J. 263=A.W.N. 1904, 122.

(365)—Ss. 68, 79—*See* ARREST, 27 C. 457.

(366)—Ss. 68, 437—*See* NOTICE, 6 A. 367= A.W.N. 1884, 130.

——S. 69, paras (1) (2) (=1882, s. 69 ; 1872, s. 154 ; 1861, s. 71) and para (3) new.

(367)—Ss. 69 and 70—*See* NOTICE, A.W.N. 1882, 170.

Crim. Pro. Code (Act V of 1898)—*continued.*

——**S. 70 (=1882, s. 70 ; 1872, s. 154 ; 1861, s. 71).**

(368)—S. 70—*See* No. 367, *supra.*

(369)—*Ss.* 70, 342 (=*Crim. Pro. Code*, 1868), s. 273—*Reference to subordinate Magistrate.*—Under s. 273, a full power Magistrate may refer for enquiry to a subordinate Magistrate any criminal case. The reference may be (1) for enquiry, or (2) for trial by the Sub-Magistrate, (3) with a view to commitment either to a Court of Session or to the High Court. HIGH COURT PROCEEDINGS, 23RD MARCH 1869, **4 M.H C. App. 40.**

——**S. 75 (=1882, s. 75 ; 1872, s. 159 ; 1861, s. 76).**

(370)—*S.* 75—*Penal Code, s.* 225—*Warrant, seal of Court on, if essential—Effect of absence of seal—Arrest made in execution of warrant without seal, if legal.*—The seal of the Court is essential to the validity of a warrant, and its absence makes the warrant void and an arrest made in execution of such warrant is not legal. MOHAJAN SHEIKH v. EMPEROR, **19 C.W.N. 224=16 Cr L.J. 336=28 Ind. Cas. 672.**

(371)—*Ss.* 75, 76—*Warrant of arrest—Resistance — Endorsements to bail fixing date of appearance—Warrant if remains in force after expiry of date—Lapse of bail—Order—Ss.* 75 *and* 76, *Crim. Pro. Code, construction of—S.* 76 (1), *Crim. Pro. Code, is permissive.*—A warrant, on which there is an endorsement for bail to be taken for the appearance of the accused on a certain date, does not lapse on the expiry of that date ; after that date, only the direction to take bail lapses, but the warrant continues in force until it is cancelled by the Court which issued it or until it is executed. The arrest of an accused on the 29th October, on a warrant issued against him, with an endorsement for bail to be taken for his appearance, on the 26th October, is not illegal, and the rescuing and escape of the accused from custody are punishable under ss. 225 and 224 of the Penal Code. RANSHAN SINGH v. KING-EMPEROR, **13 C W. N. 1091.**

(372)—Ss. 75, 80—*See* PENAL CODE, s. 186, 23 C. 896.

(373)—*Ss.* 75 *and* 204—*Issue of warrants—Cancellation—Issue of summons instead—Discretion—Sufficient cause.*—A Magistrate has a discretion, under s. 204, Crim. Pro. Code, on sufficient cause shown, to cancel the warrants issued at first against an accused person and issue summons instead. Cancellation of warrants under s. 75, Crim. Pro. Code, adverted to. IMPERATOR v. MUSSAMMAT JANAT, **1 S.L.R. Cr. 69=8 Cr. L.J. 187.**

(374)—*Ss.* 75, 437, 438 (=*Crim. Pro. Code*, 1882, *ss.* 75, 437, 438)— *Power of superior Magistrates to direct subordinate Magistrates to issue warrants.*—A District Magistrate has not the power to direct a subordinate Magistrate to re-issue the warrant for the apprehension of certain accused persons, when the latter has issued the warrants but afterwards cancelled the same. *In the matter of the petition of* GURU CHARAN AICH, **1 C.W.N. 650.**

(375)—Ss. 75, 537—*See* ACT III OF 1867, s. 5, 23 P.R. 1910, Cr.=8 Ind. Cas. 137=85 P.L. R. 1910.

(376)—Ss. 75 (2), 205 and 353—*See* PARDANASHIN WOMAN, 20 P.W.R. 1908, Cr.

——**S. 76 (=1882, s. 76 ; 1872, s. 160 ; 1861, s. 181).**

(377)—S. 76—*See* No. 371, *supra.*

(378)—Ss. 76, 81, 90, 91, 160—*See* WITNESS—MISCELLANEOUS CASES, 24 C. 320=1 C.W.N. 154.

(379)—*Ss.* 76, 90, 93 (=*Crim. Pro. Code*, 1872, *ss.* 160, 352, 355 *and* 185)—*Arrest of witnesses—Bail.*—A Magistrate is competent to admit to bail recalcitrant witnesses arrested under ss. 352 and 355 (s. 90) of the Crim. Pro. Code HIGH COURT PROCEEDINGS, 11TH MAY, 1881, No. 957, **2 Weir. 39.**

(380)—Ss. 76, 90, 93—*See* BAIL, 2 Weir 39.

——**S. 77 (=1882, s. 77 ; 1872, ss. 161, 164 ; 1861, ss. 77, 79).**

(381)—S. 77—*See* BUR. ACT I OF 1899, ss. 6, 10 (*a*), 15 (2), 3 (*a*), L.B.R. 1893—1900, 547.

(382)—Ss. 77, 82, 83, 190 (*c*), 200 and 537—*See* ARREST, 1 P.R. 1896, Cr.

(383)—*Ss.* 77, 83—*Scope.*—Ss. 77 and 83 of the Crim. Pro. Code. are directory and not mandatory, and a substantial compliance with their provisions is sufficient. MUHAMMAD YUSUFUDDIN v. EMPRESS, **1 P.R. 1896, Cr.**

——**S. 79 (=1882, s. 79 ; 1872, s. 165 ; 1861, s. 80).**

(384)—S. 79—*See* ARREST, 4 C.W.N. 85.

(385)—S. 79—*See* WARRANT, 5 C.W.N. 447.

(386)—S. 79—*See* No. 365, *supra.*

——**S. 80 (=1882, s. 80 ; 1872, s. 176 ; 1861, s. 90).**

(387)—S. 80—*See* ARREST, 26 C. 748=3 C. W.N. 741.

(388)—S. 80—*See* Nos, 316, 344, 345, 372, *supra.*

——**S. 81 (=1882, s. 81 ; 1872, s. 183 ; 1861, s. 97).**

(389)—S. 81—*See* No. 378, *supra.*

——**S. 82 (=1882, s. 82 ; 1872, s. 167 ; 1861, s. 83).**

(390)—*S.* 82—*Scope.*—S. 82 is essentially an enabling section, and from the fact that it only provides that warrants may be executed in British India, the inference does not necessarily follow that it positively forbids the execution of warrants outside British India, or that warrants which are meant to be so enforced are *ab initio* illegal and void. MUHAMMAD YUSUFUDDIN v. EMPRESS, **1 P.R. 1896, Cr.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(391)—S. 82—*See* SANCTION TO PROSECUTE — AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 7 M.H.C. 182.

(392)—S. 82—*See* No. 382, *supra.*

——**S. 83 (=1882, s. 83; 1872, ss. 168, 170; 1861, ss. 86, 87).**

(393)—*S. 83—Act* XIII *of* 1859—*Warrants under Act—Crim. Pro. Code* (1882), *s.* 83.—S. 83, Crim. Pro. Code, 1882, is applicable to warrants issued under the provisions of Act XIII of 1859. GAURI SHANKAR v. MATA PRASAD, **A.W.N. 1897, 220.** (20 M. 235, *Foll.*)

(394)—S. 83—*See* ACT XIII OF 1859, 20 M. 235=2 Weir, 40=1 Weir 697.

(395)—S. 83—*See* Nos. 96, 382, 383, *supra.*

——**S. 86 (=1882, s. 86; 1872, s. 170; 1861, s. 84).**

(396)—S. 86—*See* No. 279, *supra.*

——**S. 87 (=1882, s. 87; 1872, ss. 171, 353, 1861, ss. 183, 189).**

See ABSCONDING OFFENDER.

See ATTACHMENT.

See PROCLAMATION.

(397)—*S. 87—Proclamation for person absconding, requisites of.*—A proclamation issued under s. 87 of the Code, against an absconding person, should give thirty days' time for his appearance from the date of the proclamation. Where this is not done, the proceedings are liable to be set aside. *In re* SUBBA NAICKEN, **17 M.L.J. 438=6 Cr. L.J. 332.**

(398, 399) S. 87—*See* Nos. 302, 303, *supra and* 697, *infra.*

(400)—*Ss.* 87 *and* 88—*Sale on a proclamation not published in accordance with s.* 87—*Suit to set aside sale.*—A complaint was filed against the plaintiff in a Criminal Court. On his not appearing, that Court, acting under the provisions of ss. 87, 88, Crim. Pro. Code, attached and sold the property, but the proclamation of sale was not published as required by s. 87. *Held*, that the sale was a nullity and passed no estate to the purchaser who was bound to enquire whether the Court had issued a statement in writing to the effect that the proclamation was duly published. MIAN JAN v. ABDUL, **27 A. 572=A.W.N. 1905, 102=2 A.L.J. 348=2 Cr. L J. 247** [*R.*, 8 Cr. L J. 260=9 P.R. 1908, Cr.=22 P.W.R. 1908, Cr.]

(401)—*Ss.* 87, 88 (=*Crim Pro. Code*, 1872, *ss.* 171, 172)—*Absconding by person against whom warrant of arrest has been issued—Penal Code, s.* 172.—A person, against whom a warrant of arrest has been issued and who absconds, should be dealt with under the Crim. Pro. Code, and not under s. 172, I.P.C. QUEEN v. AMIRJAN, **7 N.W.P. 302.** [*F.*, 2 C.L.J. 625.]

(402)—*Ss.* 87 *and* 88—*Forfeiture of ancestral property of a criminal, subject to Punjab Customary Law for absconding or committing a crime—Extent of his interest—Necessity—Sale—Right of his reversioner—Full owner defined.*—

Crim. Pro. Code (Act V of 1898)—*continued.*

Held, by the majority (*Clark, C.J.* and *Chatterji, J.*), that, when the ancestral property of a person subject to the Punjab Customary Law is attached and sold by the order of a Criminal Court under the Indian Criminal Law, for his committing a crime or absconding, the sale disposes of the life-interest of that person only, but not the right of inheritance, after his death, of his male lineal descendants, or of collaterals descended from the original holder of the property. *Johnstone, J., contra.* Upon such a sale, the fee-simple of the property is sold and nothing remains for the heir to inherit. Per *Clark, C.J.*—The reversioner has such indefinite interest in the ancestral property that the owner in possession cannot, by his crime or absconding, cause that interest to be forfeited. Per *Chatterji, J.*—A full owner, in jurisprudence, is a person, who has a right over a determinate thing, indefinite in point of user, unrestricted in point of disposition, and unlimited in point of duration, or, in other words, having the fullest and freest right of possession, enjoyment and disposition. Principles underlying the existing law must be extended by analogy and other approved methods to new phases of affairs. DIWAN CHAND v. KING-EMPEROR, **19 P.W.R. 1908, Cr.=15 P.R 1908, Cr.=8 Cr. L J. 89.** (4 Bom. L.R. 55, *R.*; 24 M. 161, *D.*)

(403)—*Ss.* 87 *and* 88—*Attachment of the undivided interest in a joint family of an absconding party.*—S 88 is not intended to apply to an undivided member of a Hindu joint family, for, his interest cannot be seized, being unascertained. A receiver cannot be appointed, nor can an order be made prohibiting the payment of rent or delivery of the property to the managing member of the family. Nor can the undivided interest of the absconding person be sold under sub-s. 7 of s. 88. *In re* CHINNIYAN, **2 Weir 43.**

(404)—*Ss.* 87, 88 (=*Crim. Pro. Code*, 1882, *ss.* 87 *and* 88)—*Refusal to release attachment.*—As the attachment of property under s. 88, Crim. Pro. Code, is intended to enforce the attendance required by a proclamation issued under s. 87, it is illegal to wait till the period specified in the proclamation has expired and to order attachment, because that proclamation has not been obeyed. Where a Magistrate went even further and refused to release an attachment which was not made till after the appearances of the persons concerned, the order of attachment passed by the Magistrate was set aside. EMPRESS v. MULCHAND PEMRAJ, **6 C.P.L.R. 38, Cr.**

(405)—*Ss.* 87, 88—*Absconding to avoid warrant—Proclamation—Attachment of property—Procedure in issuing proclamation to be strictly followed.*—A warrant issued against the applicant for an offence not having been served upon him, a proclamation was issued under s. 87 of the Crim. Pro. Code, and the immoveable property belonging to the applicant was attached owing to his non-appearance. Later on, the applicant sur-

Crim. Pro. Code (Act V of 1898)—*continued.*

rendered to his warrant. He was tried and acquitted. He then applied to have the order of attachment set aside. Neither the proclamation nor its copy was forthcoming. *Held*, that the order should be set aside, for the evidence was not sufficient to show that the formalities, prescribed by ss. 87 and 88 of the Crim. Pro. Code, were observed by the Court. In proceeding under the provisions of ss. 87 and 88 of the Crim. Pro. Code, the Magistrate ought to take particular care to preserve the proclamation, and the record must be so clear as to satisfy the Court that all the legal formalities were duly observed. EMPEROR v. JINA BADHAR, **14 Bom. L.R. 163 = 14 Ind. Cas. 757 = 13 Cr.L.J. 293 = 1 Bom. Cr.C. 104.**

(406)—Ss. 87, 88—*See* ATTACHMENT, 9 C. 861 = 12 C.L.R. 411.

(407)—*Ss.* 87, 88, 89—*Absconding offender—Irregular proclamation — Sale of property—Title of purchaser.*—Where the property of an absconder had been attached and sold, and had vested in a third person (the purchaser), *held*, that the sale could not be set aside on the ground of irregularity in the proclamation, as the property had vested in a person who was not a party to the proceedings in which the proclamation was made. ABDULLAH v. JITU, **22 A. 216 = A.W.N. 1900, 28.** [*R.*, 12 Cr. L. J. 142 = 9 Ind. Cas. 826 = 8 P. R. 1911 = 104 P. L.R. 1911 = 13 P.W.R. 1911, Cr. = 8 Cr. L.J. 260 = 9 P.R. 1908 = 29 P.W.R. 1908, Cr.]

(408)—Ss. 87, 88 and 89—*See* ABSCONDING OFFENDER, 22 A. 216 = A.W.N. 1900, 28, 19 M. 3 = 2 Weir 40 = 1 Weir 86.

(409)—*Ss.* 87, 88, 90—*Issue of warrant and attachment after issue of summons—Conditions necessary—Failure to comply with provisions before issue of warrant or attachment—Effect—Procedure in cases of warrant.*—*Held* that, according to the fourth schedule of the Code of Criminal Procedure, 1898, the Magistrate ought, in the absence of any special grounds mentioned in s. 90, to issue a summons. He ought not, after the issue of a summons, to order the issue of a warrant, unless he first placed on record his reasons for considering that the accused had been duly served and that, in spite of such service, he had failed to appear without reasonable excuse. To lay a foundation for the issue of a proclamation under s. 87 with an accompanying order of attachment under s. 88 of the Code, it is necessary to comply strictly with the provisions of the law relating to the issue of a warrant in a case, where a summons is the ordinary mode of enforcing attendance. Those provisions have been embodied in the Code to safeguard the rights of the subject and anything done in defiance of them can have no force. *Obiter* :—Just as in the case of the summons, so in the case of the warrant, before the Magistrate could proceed under the above sections, he is bound to satisfy himself that the accused was absconding or concealing himself for the purpose of avoiding the execution of the warrant. YASIN KHAN v. EMPEROR, **5 N.L.R. 125.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(410)—*Ss.* 87, 88, 90—*Absconding of accused—Issue of warrant of arrest in lieu of summons—Proclamation and attachment.*— When a Magistrate is asked to proclaim an accused person, he should first take evidence that the person, has absconded, and, when the absconding is proved, he should record evidence of the offence under s. 512. Then, if he considers there is sufficient *prima facie* proof of the offence, he can proceed under ss. 87 and 88, and, in the absence of such proof, he should refuse to issue either proclamation or attachment. Magistrates must also use their discretion, towards refusing to proclaim an accused when the offence is a petty one. A warrant of arrest cannot be issued in cases in which a summons should ordinarily issue, unless the summons should be proved to have been duly served in good time, and a Police Officer's report that he served the summons is not evidence of service of the summons under cl. (*b*) of s. 90 of the Code. KING-EMPEROR v. PO NI, **3 L.B.R. 116.**

(411)—Ss. 87, 88, 90, 436 and 437—*See* ABSCONDING OFFENDER, 15 P.R. 1893, Cr.

(412)—Ss. 87, 88, 190—*See* ABSCONDING OFFENDER, 29 C. 417 = 6 C.W.N. 680.

(413)—*Ss.* 87, 88, 435, 439, 512—*Absconder—Seizure of property of—No proceedings taken under s. 87 or 88—Decree by Civil Court—Attachment before judgment at the instance of decree-holder—Order under O. XXI, r 52, Civ. Pro. Code,* 1908—*Service upon District Magistrate—Subsequent application for proclamation and sale—Obstruction by District Magistrate—Application to District Magistrate not to obstruct—Dismissal—Revision by Chief Court—Claim of Government not established till attachment by creditor—Creditor's claim—Preference of Police Act* V *of* 1861, *ss.* 25, 26.—On 29-8-1911, the house of one T was searched and a large quantity of opium was found. After the search T and H absconded and certain property said to belong to them were seized by the Police. On 2-9-1911, one S instituted a suit against T and H and obtained on 27-9-1911 a decree against them. On 2 9-1911 an order for attachment before judgment of the property seized by the Police was made and on 9-9-1911, an order of attachment was issued on the District Magistrate and on the District Superintendent of Police under O. XXI, r. 52, Civ. Pro. Code. On the back of the order the District Magistrate wrote as follows :—' None of this property is to be touched until the Government claim is first satisfied." On 4-10-1911, S applied for proclamation and sale of the attached property. The Sub-Divisional Judge refused to take action till the matter was settled by the District Magistrate or between the District Magistrate and S. S laid an appeal before the Divisional Court. This appeal was pending. On 23-11-1911, S applied to the Sessions Judge praying that the District Magistrate be asked not to obstruct the process of Sub-Divisional Court. On 25-9-1911, proceedings were taken before the Additional Magistrate of B, to record evidence

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under s. 512, Crim. Pro. Code, and to take action under ss. 87 and 88 of the same Code. No action was taken under s. 87 or s. 88 till 4-12-1911. But the property was on 19-2-1912 declared to be at the disposal of the Government. S had also made an application to the District Magistrate on 5-10-1911 praying that he might either withdraw his objection or allow the sale to proceed pending the determination by a proper tribunal of the rights of Government and of himself. The application was refused. *Held*, on a report by the Sessions Judge for the orders of the Chief Court, that the application of 5th October and the District Magistrate's order constituted a proceeding within the meaning of ss. 435 and 439, Crim. Pro. Code, and that the Chief Court had power to interfere in revision. *Held*, also (i) that, because at the time of the attachment and application for sale, no action had been taken by Government under ss. 87 and 88, Crim. Pro. Code, no rights had accrued to the Government under s. 88 (7); (ii) that S had, when he applied for the sale of the goods, established a right to have the right, title and interest of T and H in them sold by the Civil Court, and that this right was such a claim as is contemplated by s. 26 of the Police Act; and (iii) that, as Government had established no right on the 5th October, 1911, though they established such a right subsequently, the order passed by the District Magistrate on the application of 5th October 1911, made by S, was improper, and ought to be set aside. SUBRAMANYAM CHETTY v. KING-EMPEROR, **6 L.B.R. 57 = 13 Cr. L.J. 563 = 15 Ind. Cas. 984 = 5 Bur. L.T. 113.**

(414)—*Ss.* 87, 88, 537 (=*Crim. Pro. Code*, 1882, *ss.* 87, 88 *and* 537)—*Proclamation for the appearance of an absconding person—Failure to comply with provisions of the section.*—S. 87 prescribes a certain rule with regard to time and place. In respect of these matters, the section is imperative and the neglect of the rule with regard to time is no more excusable than would be the neglect of the rule requiring publication in two places. Such an irregularity cannot be cured by s. 537 of the Code. The penal consequences of a disobedience to such a proclamation cannot be visited on the person disobeying such an order. *In re* KOATHOOR SUBBAYYAR'S ESTATE, **5 M.L.J. 215.**

(415)—Ss. 87, 112, 243—*See* SECURITY PROCEEDINGS, 17 M.L.J. 438 = 6 Cr.L.J. 332.

(416)—Ss. 87 and 537—*See* IRREGULARITY, 19 M. 3 = 2 Weir 40 = 1 Weir 86.

——S. 88 = (1882, s. 88; 1872, ss. 172, 353; 1861, s. 184).

See ABSCONDING OFFENDER.

See ATTACHMENT.

See PROCLAMATION.

(417)—*S.* 88 (=*Crim. Pro. Code*, 1882, *s.* 88) —*Scope of the section.*—There is nothing in the language of s. 88 to restrict the meaning of the word "property," and it includes the rights and interests of persons who, as members of an

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undivided family, are jointly entitled to the property of the family. CRIMINAL REVISIONAL CASE, NO. 560 OF 1883, **2 Weir 43, Foot-note.** (9 C. 861, *D.*)

(418)—*S.* 88—*Attachment of property—Claim by third person—Duty of Magistrate—Rights of claimant—Civil suit.*—Where the District Magistrate attached the property of an absconder under s. 88 of the Crim. Pro. Code, a claim made to such property cannot be investigated by the Magistrate. But the Magistrate should stay the sale to give the claimant time to establish his right; and, if the Magistrate errs, the remedy of the aggrieved party is by civil suit and not by criminal revision petition. SU WE v. KING-EMPEROR, **4 L.B.R 109.**

(419)—*S.* 88—*Suit by real owner for possession and mesne profits and damages.*—Where immoveable property, believed to belong to an absconding accused, was attached and placed at the disposal of the Government, under s. 88, Crim. Pro. Code, and where, notwithstanding a notice, under s. 424, Crim. Pro. Code, by the real owner of the property, the Collector of the district did not repudiate his connection with the property after due enquiry of title, a suit against the Government and the person at whose instance the criminal proceedings were instituted for the recovery of possession of the property, with mesne profits and damages done to the property, while it was at the disposal of the Government, can be maintained by the real owner. SECRETARY OF STATE FOR INDIA IN COUNCIL v. JAGAT MOHINI DASSI, **28 C. 540 = 6 C.W.N. 175.** (12 W.R. 329, *R.*) [*R.*, 6 Bom. L.R. 131, 9 C.W.N. 736, 12 Cr. L.J. 392 = 11 Ind. Cas. 256 = U.B.R. 1910, I, 66.]

(420)—*S.* 88—*Claim to attached property by a third party—Procedure—Remedy of unsuccessful claimant.*—Where property is attached under s. 88, Crim. Pro. Code, as the property of the accused, and another person claims it as his and not the accused's, it is proper to give the claimant an opportunity of establishing his right, although no provision is expressly made for such cases in the Crim. Pro. Code. If, however, a claim is put forward which the Magistrate has not enquired into or has rejected, the claimant's remedy is by civil suit against the Secretary of State and the person at whose instance the attachment was effected. NGA PO AUNG v. KING-EMPEROR, **U.B.R. (1910), 4th Qr., p. 66 = 11 Ind. Cas. 256 = 12 Cr L.J. 392.** (20 M. 88, 28 C. 549, *R.*)

(421)—S. 88—*See* Nos. 24, 302, 303, 400 to 414, *supra* and 697 *infra.*

(422)—*Ss.* 88, 89—*Irregularities in proclamation* and *sale—Right of civil suit*—The provisions of the Crim. Pro. Code do not bar the right of civil suit for the recovery of property sold under the provisions of ss. 88, 89, on the ground that the proclamation and sale were absolute nullities on account of material irregularities. ABDUL v. KAZIM BEGAM, **A. W.N. 1904, 159.** [*F.*, 27 A. 572 = A.W.N. 1905, 102 = 2 A.L.J. 348 = 2 Cr.L.J. 247.]

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(423)—*Ss.* 88, 89—*Accused, absconding of—Proclamation by Magistrate—Attachment of property — Proceedings to release attachment—Period.*—Under s. 89 of the Crim. Pro. Code, it is necessary that the proof that the accused person has not absconded should be offered or given within two years of the date of the attachment. It is not enough to show that within that period the accused person appeared voluntarily or was apprehended or brought before the Court. The adverbial phrase " within two years from the date of the attachment" qualified not only the word " appears" but also the word " proves" which is connected with the word " appears" by the conjunction " and." For the purposes of the section, it is not necessary that the absconding accused should himself personally apply for the restoration of his property ; the application can be made by any one on his behalf. The section contemplates and requires proof that the offender did not abscond or conceal himself for the purposes of avoiding arrest, and that he had not such notice of the proclamation as to enable him to attend within the time specified. *In re* NILKANTH RAMCHANDRA KULKARNI, **15 Bom. L.R. 175 = 2 Bom. Cr. Cas. 36 = 19 Ind. Cas. 333 = 14 Cr.L.J. 237.**

(424)—Ss. 88, 89—*See* ABSCONDING OFFENDER, 6 A. 487 = A.W.N. 1884, 214, 7 W.R. Cr. 35, 9 C. 861 = 12 C L.R. 411, 4 M.H.C. App. 48.

(425)—*Ss.* 88, 89, 439—*Absconder's property attached and sold—Sale once effected cannot be set aside*—Locus standi *of third party.*—One G, accused, absconded, and his property was attached under s. 88 of the Crim. Pro. Code. Subsequently, certain occupancy-rights held by him were sold by order of the District Magistrate to one H.S., a *Khatri*. K.B., a collateral of G., made an application praying that the order sanctioning the sale be set aside and that the occupancy-rights in question be sold to him. The District Magistrate forwarded these proceedings for the order of the Chief Court, recommending that the sale to H S., who was a non-agriculturist, be set aside and a fresh sale made in favour of K.B. *Held*, that there was no provision of law under which the Chief Court acting in the exercise of its powers under s. 439 of the Crim. Pro. Code, could set aside the sale. S. 89 of the Code provides for applications by the absconding offender only for restoration of the property attached, and no provision is made for claims by third parties to such property. Once the sale of the property has been duly effected, it cannot be set aside even at the instance of the absconder. EMPEROR v. GAMAN, **104 P.L R. 1911 = 9 Ind Cas 826 = 12 Cr L.J. 142 = 13 P.W.R. 1911 = 8 P.R. 1911.**

(426)—Ss. 88, 89, 523, 512 and 517—*See* ATTACHMENT, L.B.R. 1893—1900, 324.

(427)—Ss. 88 and 386—*See* ABSCONDING OFFENDER, 20 M. 88 = 2 Weir 42.

(428)—*Ss.* 88, 435 *and* 439—*Magistrate investigating claims of third parties to property attached belonging to absconding accused—Jurisdiction of Chief Court to interfere in revision.*—The Chief Court has, under s. 439, Crim. Pro. Code, jurisdiction to interfere in revision with the order of a Magistrate, under s. 88, Crim. Pro. Code, attaching and selling the property of an absconder and adjudicating on the rights of lessees of the land so attached and sold, such an order being a proceeding within the meaning of s. 435 of the Code. *Held*, that the order of the Magistrate should be amended by ordering that the sale be subject to the right of the lessees to remain in possession until the expiry of the term of the lease. ILAM DIN v. KING-EMPEROR, **9 P.R. 1908, Cr. = 29 P.W.R 1908, Cr. = 8 Cr.L.J. 260.** (7 W.R 35, Cr., 17 W.R. 10 Cr., 6 A. 487, 22 A. 216, 27 A. 572, 20 M. 88, *Cited* and *Dist.*)

—S. 89 (= 1882, s. 89; 1872, ss. 173, 354 ; 1861, ss. 185, 190).

(429)—S. 89—*See* Nos. 24, 407, 408, 422 to 426, *supra.*

—S. 90 (= 1882, s. 90 ; 1872, ss. 148, 150, 156, 352, 355 ; 1861, ss. 260, 273, 188, 191, 265).

(430)—S. 90—Issue of warrant for arrest of witness when illegal—Omission to record reasons for issue of warrant—*See* PENAL CODE, s. 225-B, 15 C.W.N. 1001 = 11 Ind. Cas. 593 = 12 Cr.L.J. 409 = 38 C. 789.

(431)—S. 90—*See* Nos. 116, 120, 378, 379, 380, 409, 410, 411, *supra* and 612 *infra.*

(432)—Ss. 90, 107, 112, 114—*See* SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1896, 73.

(433)—Ss. 90 and 342—*See* CONTEMPT OF COURT, 4 M.H.C. App. 51.

(434)—Ss. 90, 342—*See* FALSE EVIDENCE, 24 P.R. 1870, Cr.

(435)—*Ss.* 90 *and* 487—*Issue of warrant in lieu of summons—Penal Code, s.* 174—*Magistrate not to try certain offences committed in contempt of his authority.*—A Magistrate taking cognizance of an offence in which a summons should ordinarily issue may not issue a warrant for the arrest of the accused, without previously recording in writing the reasons therefor. QUEEN-EMPRESS v. ANANT PARSHAD, **S. C. 99 Oudh.**

——S. 91 (= 1882, s. 91).

(436)—*S.* 91—*Process for compelling attendance of witness.*—A Magistrate, being of opinion that there was reason to believe that an important witness in a case pending before him might be kept out of the way by interested persons, took a bond from a *mukhtar* by which he undertook to produce the said witness whenever called upon during the pendency of the case. *Held* that such a bond was not open to objection upon the ground that no security for her appearance has been taken from the witness herself. QUEEN-EMPRESS v. KAZIM HUSSAIN, **A.W.N. 1901, 35.**

(437)—S. 91—*See* No. 378, *supra.*

——S. 93 (—1882, s. 93 ; 1872, ss. 158, 185 ; 1861, ss. 75, 79.)

(438)—S. 93—*See* Nos. 379, 380, *supra.*

Crim. Pro. Code (Act V of 1898)—*continued.*

——**S. 94 (=1882, s. 94; 1872, s. 365; 1861, s. 142).**

(439)—*S.* 94—*Inspection of accused's books by prosecution at office of accused's lawyers.*—It is not open to a Magistrate to issue an order allowing the prosecution to inspect the entries in the books of the accused, relating to the subject matter of the charge, at the offices of the accused's lawyers. *In re* LAKHMIDAS NARANJI, **5 Bom. L.R. 978.** (8 W.R. Cr. 174, 15 C. 109, *R.*) [*R.*, 5 Bom. L.R. 1032.]

(440)—*S.* 94—*Scope of section.*—S. 94 deals with documents forming the subject of a criminal offence as also with documents which are or can be used only as evidence in support of a prosecution. The question whether the production of a particular document or book is necessary or desirable for the purposes of any trial, is one which must be decided by the Magistrate before he orders its production, and in determining the question he has to exercise his discretion judicially, in the sense that he must satisfy himself that the document or book has a bearing upon and is relevant to the case. When he has so satisfied himself, his jurisdiction to order its production comes into play, and that carries with it the jurisdiction to allow the prosecution the right of inspection. *In re* LAKHMI DAS NARANJI, **5 Bom. L.R. 980.**

(441)—*S.* 94—*Production of document or other thing incriminating accused—Issue of summons to accused for—Whether permissible.*—It is competent to a Magistrate to issue summons to an accused person under s. 94, Crim. Pro. Code, to produce a document or other thing, the production of which might tend to incriminate him. SUBEY KONDAREDDI v. EMPEROR, **13 Cr. L.J. 493=15 Ind. Cas. 493 =37 M. 112.** (15 C. 109, *F.*; 19 C. 52, *R.*; 12 C. W.N. 1016, 8 C.L.J. 320, 8 Cr. L.J. 224, *Not followed.*)

(442)—S. 94—*See* PRODUCTION OF DOCUMENT, 12 C.W.N. 1016=8 C.L.J. 320=8 Cr. L.J. 224.

(443)—*Ss.* 94, 96—*Search-warrants—Desirability of issuing—Duty of Court.*—It is necessary that power to issue search-warrants should be given, but it should not be exercised without full appreciation of the gravity of the step and after the Court has come to the conclusion that the step is really necessary in the ends of justice, and it is highly desirable that the person against whom it is about to issue should have the protection of the complainant being compelled to state on oath the grounds for such an order. MUL CHAND v. KING-EMPEROR, **8 A.L.J. 517=12 Cr. L.J. 175=9 Ind. Cas. 991.**

(444)—Ss. 94, 96—*See* SEARCH WARRANT, 22 B. 949.

(445)—*Ss.* 94, 96, 190 (c), 537—*Search-warrant, under s.* 96—*Magistrate's jurisdiction to issue—Cognizance of an offence under s.* 190 (c) —*Information, nature of, upon which cognizance could be taken—Record of the information—How much should be recorded.* — The District Magistrate, on receiving information of the commission of an offence, cannot issue a search warrant under s. 96, para (1), Crim. Pro. Code, before he has acted judicially upon the information so received (*a*). To justify a Magistrate in taking cognizance of an offence under s. 190 (*c*), Crim. Pro. Code, upon information received from any person other than a police officer, the information need not contain all the allegations necessary to be proved to establish the offence; it is sufficient if enough is alleged to justify the Magistrate in dealing judicially with the matter. What allegations or how much of the information should be recorded by the Magistrate in such a case, it is difficult to lay down in general terms; but when it is found that the recorded information is sufficient to justify the Magistrate in considering that a *prima facie* case has been made out, the High Court will not interfere with the Magistrate's action in taking cognizance under s. 190 (c). S. 537, Crim. Pro. Code, cannot give legal effect to a defective warrant. RASH BEHARY LAL MANDAL v. EMPEROR, **35 C. 1076=12 C W.N. 1075=8 Cr. L J. 235.** [*R.*, 13 Cr. L.J. 693=16 Ind. Cas. 501=23 M. L.J. 32=16 C.W.N. 865=12 M.L.T. 171=10 A.L.J. 193=1912 M.W.N. 760=14 Bom. L.R. 717=10 C.L.J. 231, 14 Cr. L.J. 5=16 C.L.J. 467=17 C.W.N. 238=18 Ind. Cas. 149.]

(446)—*Ss.* 94, 96, 192—*Account books, production of—Procedure to be followed—Valuable security—Title page of account book signed by partners—Penal Code, ss.* 30, 177.—The complainant complained before a Magistrate that the accused had fraudulently tampered with the account books of a partnership business. The Magistrate directed the police "to enquire and report and to take possession of the khata books." The Magistrate not being satisfied with the police report submitted to him, referred the case to an Honorary Magistrate for further enquiry and report. The Honorary Magistrate reported that the charge was not "utterly devoid of foundation." The Magistrate then directed the issue of process for the attendance of the accused to answer a charge under s. 477, Penal Code. *Held*, that the order upon the police to take possession of the account books of the firm was illegal, and that, if their production was necessary, the Magistrate should have issued either a summons to produce under s. 94 or a search-warrant under s. 96 of the Crim. Pro. Code. *Held*, also, that the order directing the Honorary Magistrate to enquire and report was one not authorized by law, and that, if the Magistrate thought proper to refer the case to some other Magistrate for an enquiry other than a local investigation, he should have transferred the case under s. 192 of the Crim. Pro. Code, to such Magistrate, not for report, but for disposal. A title page of an account book of a firm, containing the names of the several partners and showing the amount of capital contributed by each, if signed by the partners, may be a valuable security within the meaning of s. 30, Penal Code. HARI CHARAN

Crim. Pro. Code (Act V of 1898)—*continued.*

GORAI v. SRISH CHANDRA SADHUKHAN, **7 Ind. Cas. 747 = 11 Cr. L.J. 525.**

(447)—*Ss.* 94, 96, 342—' *A person* ' *in s.* 96, *whether includes an accused person—Summons for production of documents, etc.—Search-warrant whether enforceable against accused persons—Court's power to invoke aid of others in reading and understanding contents of documents.*—In taking action under s. 96, Crim. Pro. Code, the Court is authorised to go as far as is physically possible in that search. The accused can perhaps defeat the Court by concealing or destroying the document, etc., or by having it concealed or destroyed, taking, of course, the consequences of such action just as the accused in the dock can, when questioned, under s. 342, thwart the Court in its search for the truth by answering falsely or refusing to answer. But the mere fact that the accused can so defeat or thwart the Court is no reason for holding that the Court is debarred from *going as far as the sections specifically allow.* The words ' a person ' in s. 96 include a person accused in the case. When the premises to be searched are those of the accused person, the warrant need not be only for the finding of the document, etc., in respect of which the alleged offence has been committed. The words ' document or thing ' in the section are general and seem to cover *any* document the production and inspection of which are necessary or desirable, or will serve the ends of justice. (15 C. 109, 38 C. 304, 41 C. 261, 12 C.W.N. 1016, 9 Ind. Cas. 564, 37 M. 112, 5 Bom. L. R. 980, *R.*) The Court has the power to invoke the aid of persons capable of helping it to read and understand the contents of the books, etc., found. MUNICIPAL COMMITTEE, JHANG v. MUHAMMAD HAYAT, **36 P.R. 1914, Cr.**

(448)—*Ss.* 94, 96, 517, 523—*Security required for production of ornaments, validity of.*—Where a Magistrate thinks that a criminal offence has been committed in respect of certain articles, he has power to proceed under s. 94 of the Code and to direct their production in his Court for the purpose of any investigation or trial into that offence, and, on failure of the party in whose possession the articles then are to produce them, to proceed under s. 96 or any other section in the Code in order to secure their production. There is no section of the law enabling him to demand security from the person in possession of the articles for their production, when required. An order of that kind passed in his judicial capacity, after taking cognisance of the offence and after having postponed the trial, pending the reference by the complainant to the Civil Court, cannot be considered as an executive order. PURNA CHANDRA BANDOPADHYA v. SASI BHUSAN MULLICK, **7 C.W.N. 522.**

(449)—*Ss.* 94, 98, 165—*Search by police officer—Search for stolen property without warrant, if legal—Right of private defence.*—S. 165 of the Crim. Pro. Code does not authorise a general search for stolen property. It speaks of a specific document or thing which may be the subject of summons or order under s. 94. S. 94 does not refer to stolen articles or to any incriminating document or thing in the possession of an accused person. S. 165, therefore, does not authorise a search for stolen property in the house of an absconding offender. And if there is no search-warrant under s. 98, the search is not a legal search, and the occupiers of the house had a right of private defence in resisting it. BAJRANGI GOPE v. EMPEROR, **9 Ind. Cas. 64 = 15 C.W.N. 343 = 12 Cr. L.J. 8 = 13 C.L.J. 639 = 38 C. 304.** (12 C.W.N. 1016, 8 C.L.J. 320, 8 Cr. L.J. 224, *Rel. on.*) [*Expl.*, 14 Cr. L.J. 405 = 17 C.W.N. 1209 = 20 Ind. Cas. 229.]

(450)—Ss. 94, 99—*See* INSPECTION OF DOCUMENTS, 15 C. 109, 19 C. 52.

(451)—Ss. 94, 105 and 165—*See* ACT XI OF 1878, s. 25, 8 C.L.J. 75.

(452)—*Ss.* 94, 165, *scope of—Search for specified article only—Article in possession of accused if can be searched for—General search for stolen property if authorised.*—Where a Sub-Inspector of Police searched the house of one S who had been charged with criminal breach of trust in respect of a sum of money and the object of the search was to discover, the money and a bag in which it was contained, and in the course of the search one of the petitioners cut the Sub-Inspector with a sickle on the hand and the other knocked him down, and they were convicted under ss. 332, 353, I.P.C.: *Held*—that the search was covered by s. 165, Crim. Pro. Code, and the convictions under ss. 332, 353, were right. That, under ss. 94, 165, Crim. Pro. Code, a search can be made for a stolen article or incriminating document or thing in the possession of an accused person, but one of the safeguards which the Legislature provides against abuse is that the search must be for a specified article or thing and not a search for stolen property generally. BISSAR MISSER v. EMPEROR, **17 C.W.N. 1209 = 14 Cr. L.J. 405 = 20 Ind. Cas. 229 = 41 C. 261.**

———**S. 96 (= 1882, s. 96; 1872, ss. 336, 368, 369, 1861, ss. 268, 114).**

See SEARCH WARRANT.

See WARRANT.

(453)—*S.* 96—*Issuing of search warrant—Discretion.*—The first para of s. 96, Crim. Pro. Code, requires, as a condition precedent to the issue of a search warrant, that the Court must have reason to believe that the person, against whom the warrant is issued, is not likely to produce the document or thing in his possession, as required by the summons or order under s. 94 or requisition under s. 95 (1) served upon him, or that he is not likely to produce it, should such summons or order or requisition be served. *In re* MANEKJI SORABJI CAPTAIN, **5 Bom. L. R. 1032.**

(454)—*S.* 96—*Transfer of complaint by District Magistrate to Deputy Magistrate for disposal—Issue of search warrant by Deputy Magistrate—Omission to examine complainant on oath.*—Where a District Magistrate transferred a complaint to the Deputy for enquiry

and disposal, and the latter, without examining the complainant on oath, issued a search warrant under s. 96, Crim. Pro. Code. *Held*, that the issue of the search warrant was illegal, and that the warrant should be discharged. *In re* SINAGURUNATHA PILLAI, **7 Ind. Cas. 895 = 8 M.L T. 416 = 1910 M.W.N. 818 = 11 Cr. L. J.** 535. (13 M. 18, *F.*).

(455)—*S.* 96 (=*Crim. Pro. Code*, 1882, *s.* 96) —*Search warrant.*—S. 96, Crim. Pro. Code, authorizes and compels the production in Court of the property in respect of which a search warrant is issued, but when property not alleged to be stolen is in the hands of third parties, such production can only be sought for the purpose of evidence, and ought not to be granted for the sole purpose of attaching property the title to which is in dispute. *In re* BHANJI, **Rat. Un. Cr. C. 677 = Cr. Rg. 43 of 1893.**

(456)—*S.* 96 (=*Crim. Pro. Code*, 1882, *s.* 96) —*Issuing search warrant.*—Under the provisions of s. 96, it is lawful for a Magistrate to issue a warrant for the search and production of anything before him, when he considers that such production is necessary for the purposes of investigation or inquiry under the Code. Nor is it obligatory upon him to wait until a preliminary inquiry is held and all the witnesses for the prosecution are examined and cross-examined. Such a restriction would often tend to defeat the object with which search warrants are authorised to be issued. The Magistrate is entitled to act upon information which he considers credible, provided that there is a complaint before him, and the complainant is examined by him on solemn affirmation in the manner prescribed by the Code. QUEEN EMPRESS v. MAHANT OF TIRUPATI, **13 M. 18 = 2 Weir 44.** [*F.*, 11 Cr. L.J. 535 = 7 Ind. Cas. 895 = 8 M.L.T. 416 ; *R.*, 22 B. 949.]

(457)—*S.* 96—*Search warrant, if can be addressed to accused for production of document—Penal Code*, s. 175.—A search warrant under s. 96 of the Crim. Pro. Code cannot be addressed to an accused person on his trial, and he cannot be prosecuted under s. 175, Penal Code, because of his failure to produce the document mentioned in the warrant. RAJ CHANDRA v. HARA KISHORE, **12 Cr. L.J. 98 = 9 Ind. Cas. 564.**

(458 and 459)—S. 96—*See* Nos. 443 to 447, *supra*, and 489, *infra*.

(460)—*Ss.* 96, 99, 104 (=*Crim. Pro. Code, Act* X *of* 1882, *ss.* 96, 99, 104)—*Production of account books—Procedure.*—Where a Presidency Magistrate, on a telegram from a District Magistrate requiring him to take possession of the account books of a certain person and to send them to him, summoned the person to produce the same and sent them, on production, to the District Magistrate, *held* that the procedure was illegal. Ss. 96 and 99 of the Crim. Pro. Code did not apply, since there was no search warrant, and s. 104 did not apply, since the Magistrate had no authority to summon the production of the books and send them out of his jurisdiction. *In re* PERMANAND KESHOWJI, **Rat. Un. Cr. C. 880 = Cr. Rg. 2 of 1897.**

(461)—Ss. 96, 100—*See* PRIVATE DEFENCE, RIGHT OF, 11 C.W.N. 836 = 6 C.L.J. 127 = 6 Cr. L.J. 38.

(462)—*Ss.* 96, 105, 165—*Tort—Trespass—House search by Magistrate—Statutory justification—Indian Arms Act* (XI *of* 1878), *s.* 25—*Arms, general search for—Grounds of belief, recording of—" Court, " when a Magistrate is—Judicial Officers' Protection Act* (XVIII *of* 1850), *s.* 1—*Acts, executive or judicial—Malice*—Bona fides—*Damages—Costs of appeal—Cross objections.* — *Held* (*Brett, J., dissentiente*).—When a statute creates a special right, but certain formalities have to be complied with, antecedent to the exercise of that right, a strict observance of the formalities is essential to the acquisition of that right. In a general search for arms under s. 25 of the Indian Arms Act, 1878, the Magistrate holding such search must first record the grounds of his belief as directed therein, in order to avail himself of the protection of that section from the consequences of his action. A Magistrate can only conduct a search under s. 105, Crim. Pro. Code, when he is competent to issue a search warrant under s. 96 of that Code which applies to the issue of a search warrant by the Court. *Per Maclean, C.J.*—Where there are special provisions in an act of the Legislature dealing with the case of a search for arms and laying down what are the conditions precedent to the making of such a search, and there are general provisions in another Act of the Legislature dealing with searches generally, and, in point of fact, the search was one made for arms, it ought—in the absence of evidence to show that the search was made under the general as opposed to the specific legislation—to be taken that the search was not made under the general provisions authorising searches, and especially so, when the search was made by one who, in the circumstances, had no power of search under the general provision as to searches. The scheme as regards searches under the Code of Criminal Procedure is as follows:—(1) the Court can issue a search warrant under s. 96; or (2) in lieu of that, the Magistrate may himself search under s. 105; and (3) s. 165 deals with searches by a police-officer and not by a Magistrate. The duties of a Magistrate in this country are at once executive and judicial. If a search is conducted by a Magistrate in his executive capacity, he cannot rely on Act XVIII of 1850 as a protection from the consequences of holding a search. *Per Harrington, J.*—Where a statute authorises the doing of an act which is *prima facie* a wrong to an individual, the doer must comply strictly with the conditions imposed by the statute, if he desires to rely on the statute as a justification for his act. A Magistrate cannot be said to be acting judicially in directing a search to be made

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without any proceeding having been instituted before him which he would be called on to determine judicially. The respondent, though successful, was not allowed his costs for pressing charges of malice against the appellant which were held to be unfounded. L.O. CLARKE v. BROJENDRA KISHORE ROY CHOWDHRY, **36 C. 433=13 C.W.N. 458=9 C.L.J. 293=5 M.L.T. 367=2 Ind. Cas. 436.** (17 Q.B.D. 338; 15 C. 109, 5 Bom. L.R. 980, *R.*) [*R.*, 11 Cr. L.J. 205=5 Ind. Cas. 714=4 P.W.R. 1910, Cr.]

(462-*a*)—S. 98—*See* Nos. 449, *supra*, and 468, *infra.*

(463)—Ss. 98, 100—Warrant under s. 100, legality of, when drawn up on a printed form under s. 98—Resistance to warrant—Offence—*See* PENAL CODE, ss. 147, 332, 16 C.W.N. 336=13 Ind. Cas. 1002=13 Cr. L.J. 186.

——S. 99 (=1882, s. 99; 1872, ss. 373, 374; 1861, s. 119).

(464)—S. 99—*See* Nos. 450, 460, *supra.*

——S. 100 (=New).

(465)—*S.* 100—*Complaint by guardian of wrongful confinement—Warrant for production of ward—Grown-up ward voluntarily appearing and denying allegations of wrongful confinement—Proceedings directed to be stayed—Guardian's civil remedy.*—A search warrant was issued for the production of a ward, alleged, by the complainant as his guardian, to have been wrongfully confined. The boy, who was quite grown up and able to look after himself, voluntarily appeared and denied the complainant's allegations of wrongful confinement. *Held* that, under the circumstances, the Magistrate should have declined to take any further action in the criminal proceeding, leaving the complainant to take such civil action as he may be advised for the recovery of the person of the ward under s. 25 of the Guardian and Wards Act (VIII of 1890). IMPERATOR v. PIRU, **2 S.L.R. 2, Cr.=10 Cr. L.J. 219.**

(466)—S. 100—*See* SEARCH WARRANT, 2 S.L.R. 2, Cr.=10 Cr. L.J. 219.

(467)—S. 100—*See* Nos. 4, 461, 463, *supra.*

(468)—*Ss.* 100, 98, 552—*Application under s.* 552—*Jurisdiction of Magistrate to issue search warrant under s.* 100—*Warrant under s.* 100 *drawn up on printed form used under s.* 98 *with the necessary alterations—Destruction of original warrant by the accused—Presumption—Resistance to execution of such warrant—Offence—Ss.* 147, 332, *Penal Code.*—A filed an application purporting to be made under s. 552, Crim. Pro. Code, alleging wrongful detention of his wife. The Magistrate examined the applicant on oath and recorded the facts alleging such wrongful detention and directed the issue of a search-warrant under s. 100, Crim. Pro. Code. It appeared that there was no printed form of a warrant under s. 100, and the warrant was drawn up on a printed form used under s. 98 with the necessary alterations to make it conform to the provisions of the former section. *Held*, that the Magistrate had jurisdiction to issue a search-warrant under s. 100, and that the form under s. 98 used with the necessary alterations was not illegal and that any resistance thereto was therefore an offence.

Where such a warrant was snatched away and destroyed by the accused persons, *held*, it must be presumed that it contained the substance of what is set out in s. 100, although admittedly it was drawn up on a form used, under s. 98, and that it contained the necessary alterations. GORA MIAN v. ABDUL MAJID, **39 C. 403.** (6 C.L.J. 127, *D.*).

——S. 102 (=1882, s. 102; 1872, ss. 382—384; 1861, ss. 122—124).

(468-*a*)—S. 102—*See* No. 1492, *infra.*

(469)—*Ss.* 102, 103—*Search by the Police who should be called as witnesses to—Burma Gambling Act, applicability of the sections to searches under.*—The provision of ss. 102 (2) and 103 of the Code, which regulate searches made under s. 6 of the Burma Gambling Act, obviously contemplate that two respectable inhabitants of the locality, unconnected in any way with the Government and its officers, should be called in to witness every search made. So, the calling in, and employment of, headmen of wards as witnesses for a search is against the above provisions; and the premises so searched could not, therefore, be deemed to have been duly entered and searched under s. 6 of the Burma Gambling Act, so as to afford room for the presumption under s. 7 that the place was a common gaming house. AH SHEE v. KING-EMPEROR, **3 L.B.R. 229=4 Cr L.J. 390.** [*R.*, 7 Cr.L.J. 87=4 L.B.R. 121, 7 Cr.L.J. 479=14 Bur.L.R. 81=4 L.B.R. 213, 7 Cr.L.J. 488=4 L.B.R. 227, 15 Cr.L.J. 441=24 Ind. Cas. 321.]

(470)—Ss. 102 and 103—*See* ACT I OF 1878, ss. 14, 15 and 16, 4 L.B.R. 121=14 Bur. L.R. 202=7 Cr. L.J. 87.

(471)—Ss. 102, 103—*See* BUR. ACT I OF 1899, ss. 6, 7, 4 L.B.R. 134=7 Cr. L.J. 411.

——S. 103 (=1882, s. 103; 1872, s. 385; 1861, s. 125).

See SEARCH.

(472)—*S.* 103—*Search list — Evidence — Whether search list the only evidence of its contents.*—The contents of a search list need not be proved by the search list alone. 'External evidence of its contents is admissible.' ELAMATHAN v. EMPEROR, **11 Cr.L.J. 136=5 Ind. Cas. 438=7 M.L.T. 362.**

(473)—*S.* 103—*Search of stolen property—Selection of witnesses to the search.*—S. 103, Crim. Pro. Code, requires the officer about to make the search to call upon two or more respectable inhabitants of the locality in which the place of the search is situate to attend and witness the search. There is nothing in that or in any other section of the Code to justify the view that the required witnesses are to be selected by any person other than the officer conducting the search. QUEEN-EMPRESS v. RAMAN, **21 M. 83=2 Weir 503.**

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(474)—*S.* 103—*Search list—Admissibility in evidence—Evidence Act*, s. 91.—The search list prepared under s. 103, Crim. Pro. Code, is proper evidence of the matters which it should contain, *viz.*, the properties found and the place where they were found. *In re* MAMMADI, **2 Weir 47 = 2 Weir 515.**

(475)—*S.* 103—*Ward and village headmen, whether competent witnesses to search under* s. 103, *Crim. Pro. Code—Gambling Act; searches under—Competency of witnesses.*—The mere fact that ward and village headmen are appointed by Government does not disqualify them as witnesses to a search under s. 103, Crim. Pro. Code. In theory, at any rate, the ward headman, like the village headman, is chosen for his "respectability," the very quality which is contemplated by s. 103. It is true that the actual appointment of ward headmen and village headmen is made by the Deputy Commissioner, but they are not officials in the same sense as salaried servants of Government, and their usefulness lies chiefly in the fact that they are spokesmen and representatives of the people in their charge and intermediaries between them and the various Government Departments. Hence, it cannot be said that the mere fact of their appointment by Government should be regarded as a bar. *Held* also, the existence of obligations, similar to, though somewhat wider than, those imposed by ch. IV of the Crim. Pro. Code on landholders and private individuals, in the case of ward and village headmen, does not disqualify them in the matter of searches under the Gambling Act. PAW YA v. KING-EMPEROR, **U.B.R. 1908, 2nd Qr., Gambling 1.** [*F.*, 12 Cr. L.J. 251 = 10 Ind.Cas. 796 = 4 Bur. L.T. 91, 15 Cr. L.J. 441 = 24 Ind. Cas. 321.]

(476)—*S.* 103—"*Locality*" *meaning of—Searches—Evidence Act* (I *of* 1872), *s.* 8, *Expl.* 2—*Admissibility—Informer's statement—Inference.*—The word "locality" in s. 103 of the Crim. Pro. Code does not mean the same quarter of the town as the place which is searched. An informer's statement to the Police that he had purchased opium from the accused is inadmissible, unless it was made in the presence of the accused. The finding, in this case, of marked coins on the accused and of opium on the informer are circumstances from which, it may fairly be inferred that the accused sold the opium. AH SEIN v. EMPEROR, **12 Cr. L.J. 479 = 12 Ind. Cas. 87.**

(477)—*S.* 103—*Burma Gambling Act* (I *of* 1899), *s.* 7—*Presumption—S.* 103—*Witnesses to search—*"*Respectable inhabitants,*" *meaning of.*—*Per Parlett, Young and Ormond, JJ.* (*Hartnoll, Offg. C.J.*, and *Robinson, J.*, dissenting). —Ward-headmen in towns other than Rangoon are competent witnesses of searches under s. 103, Crim. Pro. Code. *Per Young, J.*—It is beyond the province of the judiciary to construe the word "Respectable" in s. 103, Crim. Pro. Code, as meaning "respectable and independent or unconnected with the Police." TI YA v. EMPEROR, **15 Cr. L.J. 441 = 24 Ind. Cas. 321 = 7 Bur. L.T. 143, F.B.** (4 L.B.R. 213, F.B. = 14 Bur. L.R. 81 = 7 Cr. L.J. 479, U.B.R. 1908, 2nd Qr., Gambling, p. 1 = 8 Cr. L.J. 413, 10 Ind. Cas. 796 = 4 Bur. L.T. 91 = 12 Cr. L.J. 251, 79 L.J.K.B. 905 = (1910) A.C. 409 = 103 L.T. 81 = 54 S J. 599 = 26 T.L.R. 526, 22 Q.B.D. 513 = 58 L.J.Q.B. 174 = 60 L.T. 772 = 37 W.R. 315, 3 Q.B.D. 346 = 47 L.J.M.C. 541 = 37 L.T. 784 = 29 W.R. 314, 3 C.P.D. 439 = 47 L.J. C.P. 761 = 39 L.T. 349 = 27 W.R. 136, 1 B. & C. 123 = 25 R.R. 321 = 107 E.R. 47 = 2 Doul. &c. Ry. 241 = 1 L.J.K.B. (O.S.) 26 ; 53 L.J.Q.B. 185 = 12 Q.B.D. 176 = 49 L.T. 764 = 32 W.R. 546, *R.*)

(478)—S. 103—Search under s. 16 of Opium Act to be made in accordance with—*See* ACT I OF 1878, s. 16, U.B.R. 1892—1896, Vol. I, 135.

(479)—S. 103—Police officer adding new items to the list of things seized at a search—Effect—Validity of search—*See* BUR. ACT I OF 1899, ss. 3, 6, 7, 7 Bur. L.T. 163 = 15 Cr. L.J. 523 = 24 Ind. Cas. 835.

(480)—S. 103—*See* BUR. ACT I OF 1899, s. 6, U.B.R. 1897—1901, Vol. I, 213.

(481)—S. 103—*See* BUR. ACT I OF 1899, ss. 6 and 7, 14 Bur. L.R. 81 = 4 L.B.R. 213 = 7 Cr. L.J. 479.

(482)—S. 103—Meaning of "respectable inhabitants"—Who are competent to witness search—*See* BUR. ACT I OF 1899, s. 7, 10 Ind. Cas. 796 = 12 Cr. L.J. 251.

(483)—S. 103—*See* Nos. 317, 469, 470, 471, *supra*, and 1462, *infra.*

(484)—*Ss.* 103 *and* 166—*Evidence Act* (I *of* 1872), *s.* 91—*Search-list—Parol evidence of the contents of, whether admissible.*—The provisions of s. 91 of the Evidence Act do not apply to the case of a search-list prepared under s. 103 of the Crim. Pro. Code. When a search has been conducted under s. 103, Crim. Pro. Code, other evidence can be given regarding the things seized in the course of the search and regarding the places in which they were respectively found, than the list which the law in the section directs to be drawn up containing these particulars. If the narrative of an extrinsic fact has been committed to writing, it may be proved by parol evidence, even though such writing is required by law. *In re* SOLAI NAICK, **8 Ind. Cas. 178 = 8 M.L.T. 451 = 11 Cr. L.J. 576 = 21 M. L.J. 281.** (7 B.H.C. 45 at p. 63, *R.*).

(485)—Ss. 103, 342—Search—'Respectable' persons in the locality, who are—*See* BUR. ACT I OF 1899, ss. 6, 7, 11, 8 Ind. Cas. 988 = 11 Cr. L.J. 746.

(486)—S. 103 (1)—*See* ACT I OF 1878, s. 9, 2 O.C. 99.

——S. 104 (=1882, s. 104 ; 1872, s. 367).

(487)—*S.* 104—*Impounding a document.*—A District Magistrate could not, under s. 104, impound any document which had been produced in a pending case before a Subordinate

Crim. Pro. Code (Act V of 1898)—*continued.*

Magistrate. BYAS HARDEO DAS v. KING-EMPEROR, **1 A.L.J. 607.**

(488)—S. 104—*See* No. 460, *supra.*

(489)—Ss. 104, 96—*See* PRACTICE AND PROCEDURE, L.B.R. 1872—1892, 354.

——S. 105 (=1882, s. 105; 1872, s. 378).

(490)—S. 105—*See* CHEMICAL EXAMINER'S REPORT, 10 C. 1026.

(491)—S. 105—*See* Nos. 361, 451, 462, *supra.*

——S. 106 (=1882, s. 106; 1872, ss. 489, 490; 1861, ss. 280, 281).

See SECURITY BOND.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

(492)—*S. 106—Security to keep the peace on conviction—Offence not coming within the terms of s. 106—Duty of Magistrate to record finding of facts which make the section applicable.*—When a person is convicted of offences which do not, in themselves and apart from any other incidents, come within the terms of s. 106, it is incumbent upon the Magistrate to record a clear finding with respect to the facts, which, in his opinion, make that section applicable in the case. BAIDYANATH MAJUMDAR v. NIBARAN CHANDRA GOPE, **30 C. 93=6 C.W.N. 471.** (26 C. 93, *F.*) [*Diss.*, 33 A. 771=12 Cr. L.J. 405=8 A.L.J. 925=11 Ind. Cas. 589; *F.*, 7 C. L.J. 172=7 Cr. L.J. 200; *R.*, 29 M. 190, 8 C.W. N. 517, 9 O.C. 381.]

(493)—*S. 106—Order under the section on conviction for house-trespass.*—An order, under s. 106, Crim. Pro. Code, can be passed against a person who has been convicted of house-trespass, if he committed it with the object of causing hurt. TARINI CHARN MUNDLE v. GOURIKANT BISWAS, **7 C.W.N. 25.** [*Diss.*, 9 Cr. L.J. 88= 4 Ind. Cas. 616=19 M.L.J. 66=4 M.L.T. 468.]

(494)—*S. 106—Order under the section on conviction under s. 153, I.P.C.*—A conviction for an offence under s. 153, I.P.C., does not warrant an order under s. 106, Crim. Pro. Code. EMPEROR v. HUSAIN BAKHSH, **29 A. 569=A.W.N. 1907, 171=6 Cr. L.J. 14.**

(495)—*S. 106—Order under, on conviction under* ss. 143, 379, *I.P.C.*—A conviction under s. 143, or s. 379, Penal Code, is not of itself sufficient to sustain an order under s. 106 Crim. Pro. Code, although such conviction, coupled with findings bringing the case within the scope of s. 106, may sustain an order under that section; but, in such cases, those findings must be clear and explicit; and, moreover, if the finding be that the accused was guilty of the offence of criminal intimidation, the conviction must also be of criminal intimidation in order to sustain an order under s. 106. KISHORE SIRKAR v. KING-EMPEROR, **8 C.W. N. 517.** [*F.*, 7 C.L.J. 172=7 Cr. L.J. 200.]

(496)—*S. 106—Security to keep peace on conviction for offences not involving a breach of*

Crim. Pro. Code (Act V of 1898)—*continued.*

the peace—Absence of finding that breach of peace had been committed—Order under, when could be passed.—Where certain persons convicted of theft, of mischief and of being members of an unlawful assembly, were ordered to furnish security to keep the peace without an express finding that a breach of the peace had been committed by them, *held* that the offences for which they were convicted did not necessarily involve a breach of the peace, and, in the absence of an express finding that a breach of the peace had been committed by them, the order under s. 106, Crim. Pro. Code, should be set aside. [*R.*, 9 O.C. 381, 29 M. 190=3 Cr. L.J. 461, 8 C.W.N 517.] *Quære*:—Whether, in a case in which a person is not accused of an offence involving a breach of the peace, or of taking unlawful measures with the evident intention of committing the same, but in which there is nevertheless an express finding that a breach of the peace has been committed or unlawful measures have been taken with the evident intention of committing the same, the accused could be called upon to give security to keep the peace under s. 106 of the Code of Criminal Procedure? KAMOOKARAN KUNHAMMED v. EMPEROR, **26 M. 469=2 Weir 48.** [*R.*, 8 C.W.N. 517.].

(497)—*S. 106 (=Crim. Pro. Code,* 1882, s. 106)—*Conviction for offences under* ss. 296, 298, *Penal Code—Order for security to keep the peace—Validity.*—Where certain Mahomedans were convicted, under ss. 296 and 298, Penal Code, for having caused disturbance to a Hindu congregation engaged in religious worship by beating tom-toms in front of the temple and also for having uttered abusive words with the intention of wounding the religious feelings of the Hindus, and were also required to furnish security to keep the peace for six months under s. 106, Crim. Pro. Code, *held*, that, as there was no finding of the actual commission of the breach of the peace or of criminal intimidation, the Magistrate was not right in requiring security from the accused, as the mere fact of the accused instigating others to beat the tom-tom would not amount to "taking unlawful measures with the evident intention of committing a breach of the peace." KUNHI PURAPARAMBIL GULAM HUSSAIN, *Petitioner*, **2 Weir 47.**

(498)—*S. 106 (=Crim. Pro. Code,* 1882, s. 106)—*Order for security to keep the peace—Penal Code, s. 336.*—Under s. 106, Crim. Pro. Code, it is the offence for which the person is convicted, and not the facts as put in evidence at the trial, which determines whether or not security can be demanded. The offence under s. 336, Penal Code, of doing an act so rashly as to endanger the personal safety of others is not either a riot, assault or other breach of peace, and the circumstance that the evidence might have justified a conviction under some other section is immaterial. PAEZENSKY v. MRS. SMITH, **2 Weir 48.**

(499)—*S. 106—Order under—Offence under s 294, I.P.C.*—An offence under s. 294 does not

Crim. Pro. Code (Act V of 1898)—*continued.*

necessarily involve a breach of the peace for the purposes of s. 106 of the Crim. Pro. Code. KING-EMPEROR v. MA HLA BON, **2 L.B.R. 125.** (1 L.B.R. 262, *R.*).

(500)—*S.* 106 (=*Crim. Pro. Code*, 1882, s. 106)—*Powers of appellate Court—Security for keeping the peace.*—An appellate Court, affirming a conviction and sentence, has no power to make an order under s. 106 of the Code, requiring the appellant to execute a bond for keeping the peace. ASHU v. QUEEN-EMPRESS, **16 C. 779.** [*F.*, 17 A. 67, A.W.N. 1890, 201, Rat. Un. Cr. C. 906.].

(501)—*S.* 106—*Powers of appellate Court.*—An appellate Court cannot make an order under s. 106, unless the conviction, on which the order is based, was by a Court of the description specified in the first paragraph of the section. PARAMASIVA PILLAY v. EMPEROR, **1 M.L.T. 403=5 Cr. L.J. 83=30 M. 48.**

(502)—*S.* 106—*Power of District Magistrate in appeal or revision to require an accused person to furnish security to keep the peace.*—A District Magistrate is competent, in revision of the proceedings of a Magistrate of the second or third class, to require an accused person to furnish security to keep the peace under s. 106, Crim. Pro. Code. But, as the effect of such an order would be to prejudice the accused, he should be given an opportunity of showing cause against it. QUEEN-EMPRESS v. NGA PO MAUNG, **U.B R. 1897—1901, Vol. I, 9.**

(503)—*S.* 106 (=*Crim. Pro. Code*, 1872, s. 489)—*Remission of penalty under recognizance bond.*—Neither the Magistrate nor the High Court has the power to reduce the amount of a penalty entered in a recognizance bond. *In the matter of* NAKHI HAZI, **8 C.L.R. 72.** [*D.*, 2 Cr. L.J. 131=99 P.L.R. 1905=15 P.R. 1905, Cr.].

(504)—*S.* 106 (=*Crim. Pro. Code*, 1861, s. 280—*Order for recognizance to keep the peace—Default—Imprisonment.*—S. 280 does not authorise or contemplate the imposition of a term of imprisonment in default of compliance with an order to enter into a recognizance to keep the peace, nor is there any provision, in the chapter to which the section belongs, for the awarding of imprisonment to enforce compliance with an order under s. 280 to enter into such recognizance. *In re* SELLAM, **6 M.H.C. 25.**

(505)—*S.* 106—*Accused convicted by second class Magistrate—Direction by Sub-Divisional Magistrate to execute bonds on appeal—Legality.*—The order of the Deputy Magistrate, in appeal, directing the execution of a bond under s. 106, Crim. Pro. Code, is illegal, where the convicting Court was a second class Magistrate and, therefore, not a Magistrate who could make an order under that section. *In re* LATCHUMANA THALAVAN, **7 M L.T. 104=5 Ind. Cas. 807.**

(506)—*S.* 106—*Necessity for proceeding under, where an youthful offender is sentenced to whipping for causing hurt with dangerous weapon.*—Where a boy is sentenced to whipping for causing hurt with a dangerous weapon, a Magistrate could not pass an order under s 31, Reformatory Schools Act, 1897, directing delivery of the youthful offender to his parents on their giving a bond, but should proceed under s. 106 of the Crim. Pro. Code. KING-EMPEROR v. HA TAU, **3 L.B.R. 30.**

(507)—*S.* 106—*Surety, liability of.*—A surety, under s. 106, Crim. Pro. Code, cannot be made liable for an amount larger than the one for which the principal has executed the bond. EMPEROR v. C. E. ELLIS, **13 Cr. L. J. 482=15 Ind. Cas. 482=5 Bur. L.T. 101.**

(508)—*S.* 106—*Security for good behaviour—Offences involving a breach of the peace, meaning of removing land-mark — Penal Code, s.* 434.—The object of s. 106 of the Code of Criminal Procedure is to prevent breaches of peace taking place, and not merely to follow up breaches of the peace, which have taken place. The word "involve" connotes the inclusion not only of a necessary but also of a probable feature, circumstance, antecedent condition or consequence. Where the offence is such an offence that it is, as a matter of experience, often followed by breaches of the peace, and if the evidence that the accused are prepared to accompany the removal of the land-mark by a breach of the peace and are prevented from doing so by the other party running away, the offence is one which comes within the terms used in s. 106 of the Code of Criminal Procedure. MANIK RAI v. KING-EMPEROR, **8 A.L.J. 925=12 Cr. L.J. 405=11 Ind. Cas. 589.** (30 C. 93, 30 C. 366, 35 C. 315, 29 M. 190, *Diss.*).

(509)—*S.* 106—*Security to keep peace—In what cases may be demanded.*—S. 106 of the Crim. Pro. Code is not applicable to a person not convicted of riot, assault, or other offence involving a breach of the peace, or of abetting the same, or of assembling armed men, or taking other unlawful measures with evident intention of committing the same, or committing criminal intimidation. The latter offence is defined by s. 503 of the Penal Code and it is made punishable by s. 506 with rigorous imprisonment for two years or fine or both. Although intimidation is one of the elements of an unlawful assembly, the criminal intimidation specified in s. 106 is the offence specifically defined by s. 503, the sentence provided by s. 506 being more severe than that provided by s. 143, and s. 106 cannot be applied to a person convicted under s. 143, merely because intimidation by show of criminal force is in the fourth and fifth parts of the definition in s. 141 an element of the offence punishable under s. 143. ABDULLA KHAN v. CROWN, **126 P.L.R. 1910=8 Ind. Cas. 551.** (3 P.R. 1890, Cr., *R.*).

(510)—*S.* 106—*Conviction by second class Magistrate—Appellate Court's power to demand security for keeping the peace.*—An appellate Court, on hearing an appeal from a conviction by a second class Magistrate can also direct the accused to execute a bond giving security to

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keep the peace. *In re* GUNDA GANJI REDDI, **15 Cr. L J. 192 = 22 Ind. Cas. 768.** (30 M. 48 = 1 M.L.T. 403 = 5 Cr. L.J. 88, *Diss.*; 1 Criminal Law Reporter, 172, *F.*)

(511)—*S.* 106—*Powers of Sub-Divisional Magistrate—Accused bound over for six months.*—A Magistrate of the second class, who is also a Sub Divisional Magistrate, can pass an order under s. 106 of the Code binding over a person to keep the peace for a period exceeding six months. RAJA SINGH v. EMPEROR, **13 A.L. J. 268 = 37 A. 230 = 16 Cr. L.J. 350.**

(512)—S. 106—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 11 C.W. N. 176 = 5 Cr.L.J. 19.

(513)—S. 106—*See* PENAL CODE, s. 294, L.B.R. 1893—1900, 50.

(514 to 516)—S. 106—*See* No. 141, *supra.*

(517)—*S.* 106, *Ch.* VIII—*Scope and object of Chapter—Hearsay evidence.*—Hearsay evidence amounting to evidence of general repute is admissible for the purposes of proceedings under Ch. VIII, Crim. Pro. Code, 1898. The object of Ch. VIII, Crim. Pro Code, is the prevention, not the punishment, of offences. The Chapter gives a certain amount of discretion to Magistrates; and the High Court must be always slow to interfere with that discretion, unless there is an error of law. EMPEROR v. RAOJI FULCHAND, **6 Bom. L.R. 34.** (27 C. 781, *R.*; 3 M. 28, *F.*) [*R.*, 10 Cr. L.J. 355 = 3 Ind. Cas. 681 = 5 L.B R. 72.]

(517-*a*)—*Ch.* VIII, *s.* 106—*Surety bond—Breach and forfeiture of—Fresh proceedings necessary for fresh bond.*—A person cannot be required, without fresh proceedings taken against him, to find sureties a second time, when, in consequence of a breach, his original security is forfeited. The Code does not provide for a renewal of the bond without fresh proceedings. *In re* MUTHU DEVAN, **7 M.L.T. 90.**

(517-*b*)—*Ch.* VIII, *s.* 106—*Security for good behaviour.*—The District Magistrate, on appeal from a person sentenced to imprisonment for default in furnishing security, could only pass such an order as may be passed under Ch. VIII of Crim. Pro. Code, 1898, *i.e.*, under s. 123. There is no power to order security for six months and to imprison in default for a less period than the period for which security is demanded. If the sentence fixed in default is to be reduced in appeal, the period for which security is demanded should also be reduced to the same time. The procedure to be adopted on a breach of the bond is set out in s. 514, Crim. Pro. Code. Any person bound can be ordered to pay the penalty thereof. On failure of payment and of realization by attachment and sale of the property, the person bound may be imprisoned in a civil jail. There is no power given to order the accused person to give fresh security or to be imprisoned for the period of the bond. All that can be done is, to forfeit the bond and proceed as above mentioned. QUEEN-EMPRESS v. NGA PO CHEIN, **U.B.R. 1892—1896, Vol. I, 21.**

(517-*c*)—*Ch.* VIII, *s.* 106—*Letters Patent appeal—Proceedings under Ch.* VIII, *Crim. Pro. Code—Criminal trials.*—The proceedings taken for binding over persons to keep the peace under Ch. VIII of the Crim. Pro. Code are criminal trials within the meaning of s. 15 of the Letters Patent and no appeal lies therefrom under the Letters Patent. (41 C. 719, *F.*) The portion of the Letters Patent commencing with s. 22 and dealing with criminal jurisdiction gives no right of appeal against the order of a single Judge acting as a Court of Revision. ADUR DESIKACHARI v. EMPEROR, **28 M.L.J. 307 = 1915 M.W.N. 224 = 16 Cr.L.J. 303 = 28 Ind. Cas. 527.** (17 M. 105, *F.*).

(518)—*Ss.* 106 *and* 110—*Security for good behaviour—Meaning of the term "offences involving a breach of the peace"—Immoral and indecent act, whether amounts to such offences.*—The expression "the offences involving a breach of the peace" should not be interpreted as offences provoking, or likely to lead to a breach of the peace. The expression should be taken as meaning offences in which a breach of the peace is an ingredient. Where a person, who was found to be addicted to acts of immorality in attempting to seduce married woman and behaving indecently and immodestly towards them, was bound over to give security for good behaviour under s. 110 (*c*), *held*, that the order for security should be set aside, as the offences, though offences under the law, were not offences involving a breach of the peace. ARUN SAMANTA v. EMPEROR, **30 C. 366.** [*Diss.*, 33 A. 771 = 12 Cr. L.J. 405 = 8 A.L.J. 925 = 11 Ind. Cas. 589; *R.*, 38 C. 156 = 15 C.W.N. 366 = 12 Cr. L. J. 164 = 9 Ind. Cas. 916, 9 O.C. 381.]

(519)—*Ss.* 106, 120, 123—*Security proceedings—Preventive sections—Order for security on expiration of substantive sentence of imprisonment—Order for imprisonment in default of furnishing security.*—A person convicted of criminal intimidation was sentenced to three months' rigorous imprisonment, and was further ordered to give security to keep the peace for six months under s. 106, Crim. Pro. Code. At the time of the sentence, the Magistrate added an order to the effect that, if the accused failed to give the security demanded, he was to undergo six months' simple imprisonment. The case was referred to the Chief Court by the Sessions Judge, as it had been held in a previous case that an order made in similar circumstances for imprisonment in default of furnishing security was premature. *Held*, that it was unnecessary to interfere with the order in revision. (*Per Irwin, J. dissenting*). The order for imprisonment in default of furnishing security should be set aside, as such an order cannot properly be passed until the accused has failed to give the security demanded, and therefore not until the time from which the security is to be given has arrived. (*Per Irwin, J.*) The law requires

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that a person ordered to give security shall be imprisoned until the security is given or the period for which it is demanded expires. The Magistrate's order for imprisonment in default of security was, therefore, strictly speaking, superfluous, but did not call for interference. It is convenient that the warrant to the jail should mention the demand of security and should contain a warning of what the law requires, if the security is not furnished. (*Per Fox, C J.*) When security to keep the peace is demanded under s. 106, Crim. Pro. Code, an order should be passed at the time of sentence for the accused's detention in simple imprisonment, unless he shall have given the security on or before the expiration of his substantive sentence of imprisonment. *Per Hartnoll, J.* KING-EMPEROR v. THA HLAING, **4 L B.R. 205, F.B.=7 Cr. L.J. 472.** (Rat. Un. Cr. C. 432, 774, *R.*; P.J.L B. 245, *Diss.*). [*Relied on*, 10 Cr. L.J. 69=5 L.B.R. 34=2 Ind. Cas. 531.]

(520)—Ss. 106 and 123 (5)—*See* SECURITY TO KEEP THE PEACE—DEFAULT IN GIVING SECURITY, L.B.R. 1893—1900, 630.

(521)—*Ss.* 106, 226, 354—*Persons required to execute bond for keeping the peace—Whether, 'persons accused of an offence' are 'accused persons'—Order refusing bail to such persons—Legality.*—An order refusing bail to persons required to execute bonds for keeping the peace under s. 106, Crim. Pro. Code, is wrong. Persons ordered to give security for keeping the peace are not persons "accused of an offence." *Quære.*—Whether such persons are accused persons within the meaning of the Code? *In re* KORA AYYAPPA, **7 M.L T. 104=5 Ind. Cas. 809=11 Cr. L.J. 251.**

(522)—Ss. 106, 257, 349—*See* SECURITY TO KEEP THE PEACE - SUMMONING WITNESSES, 35 C. 1093=9 Cr. L.J. 72.

(523)—*Ss.* 106, 349—*Conviction by third class Magistrate—Appeal—Recommendation to first class Magistrate as to binding down—Conviction and appeal good—Recommendation bad.*—The accused were convicted by a third class Magistrate, who submitted the record to the Sub-Divisional Magistrate under s. 349, Crim. Pro. Code, in order that they might be bound down under s. 106. The Sub-Divisional Magistrate ordered the accused to be bound down. An appeal was then instituted from the original conviction, and the appellate Court set it aside. *Held*, that the recommendation as to binding down the accused was without jurisdiction, and the action of the Sub-Divisional Magistrate under s. 106 was also without jurisdiction ; but the original conviction and the appeal against it were good and within jurisdiction. LUKHAN DOSADH v. BACHI SINGH, **11 Cr. L.J. 170=5 Ind. Cas. 576.**

(524)—Ss 106, 349—*See* SECURITY TO KEEP THE PEACE—ON CONVICTION, 21 C. 622.

(525)—*Ss.* 106, 404, 406 (=*Crim. Pro. Code,* 1882, ss. 106, 404, 406)—*Order to furnish security under* s. 106—*Appeal.*—An order to furnish security under s. 106 is a separate order and not a part of the sentence. It is not, therefore, appealable. ROWTHA GOUNDAN v. MUTTUSAMI GOUNDAN, **2 Weir 460.**

(526)—*Ss.* 106, 423.—An order under s 106 may be set aside on appeal, and the order of the appellate Court setting aside such order is an incidental order within the meaning of s. 423, cl. (3), Crim. Pro. Code. ABDUL WAHED v. AMIRAN BIBI, **30 C. 101=6 C.W.N. 422.**

(527)—*Ss.* 106 *and* 423—*Powers of appellate Court—Order for security to keep the peace, when could be made, in appeal.*—Where, in affirming a conviction under s. 379, I.P.C., the District Magistrate, on appeal, added to his judgment an order under s. 106 binding over the accused to keep the peace, without expressly finding that the accused had committed an offence within the terms of s. 106, *held*, that the order under s. 106 was without jurisdiction ; and the fact that there was evidence on record, which, if accepted, would have shown that such an offence had been committed, was not enough to justify the order. KINOO SHEIKH v. DARASTULLAH MOLLAH, **29 C. 393=6 C.W.N. 678.**

(528)—Ss. 106, 423—*See* SECURITY TO KEEP THE PEACE—APPELLATE COURT, 21 P.R. 1884, Cr.=23 P.R. 1888, Cr.

(529)—*Ss.* 106 *and* 522—*Applicability of* s. 106 *where no breach of peace occurs.*—S. 106 may apply to a case in which armed men are assembled with the intention of committing a breach of the peace, but no breach of the peace occurs because the assembly does not go so far. SRI HARI SHOME v. LAL KHAN, **5 C.W.N. 250.**

(530)—*S.* 106 (1) (3)—*Scope and effect—Conviction by a 2nd or 3rd class Magistrate—Jurisdiction of appellate Court to order accused to execute a bond to keep the peace.*—The jurisdiction of an appellate Court to order a person, who has been convicted of one of the offences mentioned in sub-s. (1) of s. 106, Crim. Pro. Code, is not restricted to cases where the conviction was by one of the Courts specified in the subsection. The words "an appellate Court" are quite general and the word "also" indicates that the powers given by the section may be exercised by the Courts mentioned in sub-s. (1) and by any appellate Court. The words "under this section" in sub-section (3) have reference to the powers given by the section and not to the Courts by which these powers are, in the first instance, exercisable. *In re* SOLAI GOUNDAN, **14 M.L.T. 235=1913 M.W.N. 769=25 M.L.J. 403=14 Cr. L.J. 574=21 Ind. Cas. 174, F.B.=37 M. 153.** (29 M. 190, 30 M. 48, *Overruled* (35 C. 434, 21 C. 622, *Diss.*; 30 M. 182, 33 B. 33, 33 A. 48, *R.*)

(531)—*S.* 106(3)—*Appellate Court, power of, to order execution of bond for keeping the peace—Original Court, power of, does not control that of appellate Court.*—Under s. 106, sub-s. (3), an appellate Court may pass an order directing security to be taken for keeping the peace in

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cases coming to it on appeal from a Court incompetent to pass such an order as an original Court. There is nothing in sub-s. (3) which either suggests or implies that the powers of the original Court should in any way control those of the appellate or revisional authority. The appellate Court has power to make an order for security quite independently. BHARAT SINGH v. EMPEROR, **14 Cr. L.J. 592 = 21 Ind. Cas. 384 = 16 O.C. 281.** (10 O.C. 287 = 6 Cr. L.J. 302, *Overruled*; 1 Ind. Cas. 454 = 33 B. 33 = 10 Bom. L.R. 759 = 8 Cr. L.J. 267, 7 Ind. Cas. 412 = 33 A. 48 = 7 A.L.J. 910 = 11 Cr. L.J. 480, *F.*)

(532)—*S.* 106 (3)—*Conviction for offences under ss.* 147, 323, *Penal Code—Appellate Court confirming sentence and ordering security to keep peace—Legality.*—Where a Sub-Divisional Magistrate, while confirming the sentence of the lower Court for offences under ss. 147 and 323, Penal Code, ordered some of the accused to furnish security under s. 106 (3), Crim. Pro. Code, *held* that the order of the Sub-Divisional Magistrate is opposed to the decisions of the Madras High Court, and the order, so far as it directs security to be taken, should be set aside. EMPEROR v. RHODDAMATHA, **8 M.L.T. 291.** (30 M. 48, 30 M. 182, *F.*; 29 M. 190, *R.*; 33 B. 33, *Not F.*)

—S. 107. para 1 (= 1882, s. 107, 1872; ss. 491, 502; 1861, s. 282), para 3 (= 1882, s. 108); and para (2), new.

See SECURITY BOND.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

(533)—*S.* 107 (= *Crim. Pro. Code*, 1872, s. 502)—*Scope of the section—Breach of security bond, what amounts to.*—The penultimate clause of s. 502 says: "The commission or attempt to commit or the abetment of any offence whatever and wherever it may be committed is a breach of the bond." Whatever may be the extent of the application of this very wide language, it is intended merely as an illustration of some modes in which the peace may be broken, and is not to be read as a definition of the acts which will give rise to the penalty of the bond so as to confine the liability to occasions on which some actually punishable offence has been committed, or to render it incumbent on the prosecution, in calling upon the defendant to show cause why the penalty should not be levied, to establish the actual commission of an offence. All that it is necessary to show is that some act was done which was likely in its consequence to provoke a breach of the peace, and it is not material to consider whether the person bound did the act himself with his own hand or made use of other persons to do it. ANANTHA CHARRI v. ANANTHA CHARRI, **2 M. 169.** [*R*, 5 P.R. 1910. Cr. = 169 P.L.R. 1910 = 6 P.W R. 1910, Cr. = 5 Ind. Cas. 827 = 11 Cr L. J. 252.]

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(534)—*S.* 107—*Acts for which security may be required.*—The acts in respect of which security is required must not be acts, the repetition of which may be merely apprehended from past commission of similar acts, but acts from which a reasonable inference can be drawn that the accused *are* likely (not *were* likely) to commit a breach of the peace. The mere fact that certain persons had made preparations for disturbing the public tranquillity on the occasion of the last Muharram festival, would afford no ground, after the festival had passed without the public tranquillity having been disturbed, for inferring that they would be likely to commit a breach of the peace or disturb the public tranquillity at the next Muharram, and would not be a sufficient ground for binding them over. *In the matter of the petition of* BASDEO, **26 A. 190 = A.W.N. 1903, 229.** (7 C.L.R. 352. *R.*) [*F.*, 6 Bom. L R. 663; *D.*, 8 A.L.J. 1080 = 12 Cr. L.J. 493 = 12 Ind. Cas. 213].

(535)—*S.* 107—*Security to keep the peace—Principle on which a person may be bound over.*—Before a person is bound over to keep the peace, it must be shown that he is himself likely to commit a breach of peace or do a wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. He cannot be bound down merely because he is a wealthy or influential member of a party. JAGAT NARAIN v. KING EMPEROR, **7 A.L.J. 1161.**

(536)—*S.* 107—*Conditions for bringing case under section.*—To bring a case within the provisions of s. 107, Crim. Pro. Code, it is not enough to show that there is a great probability of a breach of the peace ensuing; it must further be shown that the party is likely to do illegal acts of violence. EMPEROR v. CHANBASAWA *Kom* RUDRAPPA, **6 Bom.L R 862.** (3 C.W.N. 297, *F.*)

(537)—*S.* 107—*Vague apprehension—Order—Duties of the Magistrate.*—When there is no evidence of a breach of the peace or disturbance of the public tranquillity, an order under s. 107, Crim. Pro. Code, cannot be passed merely on a vague apprehension. The Magistrate should use his power to protect persons seeking to exercise their rights allowed by law and to restrain persons threatening to disturb the exercise of such rights. GURUSAWMI NADAN v. EMPEROR, **1912 M.W.N. 47 = 13 Ind. Cas. 831 = 11 M.L.T. 32 = 22 M.L J. 251 = 13 Cr L.J. 143.**

(538)—*S.* 107—*Apprehension of breach of the peace.*—A Magistrate is only entitled to bind over a person who, he is informed, is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act which may probably occasion a breach of the peace or disturb the public tranquillity. NARINDRA BAHADUR PAL v. EMPEROR, **1 A. L.J. 418.**

(539)—*S.* 107—*Instigating the throwing of stones at theatre—Proceedings under section.*—In order to place an accused person on security

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to keep the peace, there must be evidence to show that some specific act likely to amount to, or to occasion, a breach of the peace is contemplated. The accused, who was the leader of the young men of a village, was supposed to have instigated the throwing of stones at a theatre. He was called upon to furnish security to keep the peace for one year. *Held* that, if there was sufficient evidence to show that the accused had instigated the throwing of stones at the theatre, he should have been prosecuted for any offence which he might thereby have committed. A presumption as to future probable conduct may often, though it cannot always necessarily, be drawn from past actions. NGA PO KIN v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 16.** (U.B.R. 1897—1901, Vol I, 15, 20 W.R. Cr. 57, 9 A. 452, *R.*)

(540)—*S.* 107—*Facts justifying an order for security to keep the peace.*—The facts proved to warrant an inference that the persons in question would be likely to disturb the public peace must be facts of a definite character, and must show that the persons sought to be bound down are individually and not collectively connected with them. No hard and fast rule can be laid down applicable to all cases. Each case must be determined upon its own circumstances. PRAN KRISHNA SAHA v. EMPEROR, **8 C.W.N. 180.** (9 A. 452, *F.*)

(541)—*S.* 107—*Presumption under section—Past actions.*—S. 107, Crim. Pro. Code, presupposes that the person sought to be put upon a rule of bail is likely (not *was* likely) to commit a breach of the peace; and it cannot be presumed from the fact that a person has done a wrongful act in the past that he is likely to do the same again. *In re* SHIVRAM PARASHRAM, **6 Bom. L.R. 663.** (26 A. 190, *R.*)

(542)—*S.* 107—*District Magistrate visiting the place after dispute concerning it has arisen—Competency to hear proceeding under s. 107 arising out of such dispute—Transfer of proceedings—Nature of proceedings under section—Threats of violence, if amount to breach of the peace.*—Where the District Magistrate visited a place, where a rival market was being started, after a dispute concerning it has arisen, to enquire into the facts and to take other steps to prevent a breach of the peace, these circumstances might afford a good reason for his transferring the proceedings under s. 107 to another Magistrate, but it would not be a sufficient ground for transferring the case to another District. Threats of violence are sufficient to indicate an intention to commit a breach of the peace. The fact that a breach of the peace was averted by the precautionary measures taken by the authorities is no ground for the discharge of a person from liability to be bound over to keep the peace. The object of s. 107 is to restrict the initiation only of proceedings against persons residing out of the jurisdiction of the District Magistrate, and not to restrict his power to transfer such proceedings, after initiation, to a Subordinate Magistrate. (23 C. 300, 23 C. 442, *Dist.*; 8 C. 851, 22 C. 898, *R.*; 24 A. 151, *F.*) [*R.*, 2 C.L.J. 614, 10 C.W.N. 1095.] The proceedings under s. 107 being intended to be precautionary and not punitive, excessive security should not be required. SURJYA KANTA ROY CHOWDHRY v. EMPEROR, **31 C. 350.** [*F.*, 37 C. 91=5 Ind. Cas. 29=14 C.W.N. 49=11 Cr. L.J. 23, 9 Cr. L.J. 246=1 S.L.R. Cr. 2.]

(543)—*S.* 107—*Proceedings under the section—Jurisdiction of Magistrate to remand person into custody till the completion of enquiry.*—Only in the special circumstances referred to in cls. (3) and (4) of s. 107, does the law empower a Magistrate to detain a person against whom proceedings have been instituted under s. 107, in custody until the completion of the enquiry. RAGHUNADAN PERSHAD v. EMPEROR, **32 C. 80=8 C.W.N. 779=1 Cr. L.J. 775.** [*R.*, 36 M. 474=22 M.L.J. 357=11 M.L.T. 253=1912 M. W.N. 169=15 Ind. Cas. 79=13 Cr. L.J. 447.]

(544)—*S.* 107—*Security to keep the peace—Measurement of land by co-owner — Bengal Tenancy Act,* VIII *of* 1885, *ss.* 90, 188.—Where one of several co-sharer landlords sought to make a measurement of lands contrary to the provisions of ss. 90 and 188, Bengal Tenancy Act, the other co-sharer landlords would be justified in objecting; where no force has been used by them, they ought not to be bound to keep the peace under s. 107, Crim. Pro. Code, inasmuch as any likelihood of a breach of the peace was really due to the action of the co-sharer. BHABATARAN GHOSE v. BANKUTESH LAL MITRA, **9 C.W.N. 618=2 Cr. L.J. 338.**

(545)—*S.* 107— *Resistance offered by a* dur-putnidar *to the purchaser from the* putnidar—*Regulation* VII *of* 1819, *ss.* 11 *and* 15.—Where everything has been done by the Revenue authorities and the Zemindar to give possession to a purchaser of a *putni* taluq under Reg. VIII of 1819, *held*, that the act of a *dur-putnidar* in continuing to collect the rents from the raiyats was wrongful and he was rightly bound down to keep the peace under s. 107, as his act was likely to cause a breach of the peace. As the effect of the *putni* regulation was to render any such acts unlawful, until such time as the setting aside of the sale, the mere fact that the *dur-putnidar* had brought a suit to set aside the sale would not make any difference. BISARAT ALI v. UMAPADA BANERJEE, **9 C.W.N. 792=2 Cr. L.J. 415.**

(546)—*S.* 107—*Grantee of zemindar in possession of property—Zemindar's interference with his possession—Resistance to such interference—Order for security to keep the peace.*—A zemindari village was in the possession of the accused as grantee thereof from the zemindar and the ryots in the village had previously attorned to him and had been paying rents to him, having executed *muchilikas* in his favour. The agent of the zemindar, attended by a body of men, came to the village for the express purpose of ousting him by inducing the tenants to break their engagements with him and to make them go over to the zemindar and execute

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muchilikas and pay rents to the latter. The agent was asked by the accused to leave the village and resist from inciting the tenants to break their contracts with him in a threatening manner. *Held*, that the agent was acting illegally and that the conduct of the accused could afford no ground for binding him to keep the peace. CHENDRASEKHARA DALAI v. EMPEROR, **14 M.L.J. 491.**

(547)—*S.* 107—*Security to keep peace—Boycotting servants of zemindar—No sufficient ground.*—Where the tenants were boycotting the servants of the zemindar, but beyond that they were doing nothing from which it might be apprehended that they were likely to commit a breach of the peace or disturb the public tranquillity. *Held*, that the tenants were not liable to be bound down under s. 107, Crim. Pro. Code, to keep peace. BEHARI v. EMPEROR, **14 Cr. L.J. 238 = 19 Ind. Cas. 334.**

(548)—*S.* 107 (=*Crim. Pro. Code*, 1872, s. 491)—*Taking of evidence.*—The evidence as to the likelihood of a breach of the peace, referred to in the section, should be taken before the Magistrate and in the presence of the parties concerned. MUSSAMMAT SATHANI v. DALCHAND, **Col. Dig. Cr. 15 of 1874.**

(549)—*S.* 107—*Security for keeping the peace—Evidence as to probability of breach of the peace.*—Security for keeping the peace should be taken in a case where, after the occasion on which ill-feeling between parties first came to a head had passed without any actual disturbances, there still remained the probability of a recurrence of it in the near future, in fact at any moment. AYODHYA PRASAD v. KING-EMPEROR, **8 A.L.J. 1080 = 12 Cr. L.J. 493 = 12 Ind. Cas. 213.**

(550)—*S.* 107—*Security to keep peace—Want of proof.*—*Held*, that, where no evidence to show that the petitioner is likely to commit breach of the peace exists on the record, the order under s. 107, Crim. Pro. Code, is liable to be set aside on revision. SHER SINGH v. HARI SINGH, **34 P.W.R.1912, Cr. = 195 P.L.R. 1912 = 16 Ind. Cas. 528 = 13 Cr. L.J. 720.**

(551)—*S.* 107—*Practice—Evidence—District Magistrate dealing with proceedings under s.* 107, *having outside knowledge—Order on the ground that applicants had instituted a committee to bring certain matters to the notice of authorities—Justification of order.*—If a District Magistrate, dealing with proceedings under s. 107 of the Code, possesses knowledge of certain facts which he obtains from sources outside the record, he should not base his judgment upon those facts, but should base it upon evidence relevant to the case. An order requiring certain persons to furnish security to keep the peace can only be justified upon the finding that each of those persons is likely to commit a breach of the peace or disturb public tranquillity, or is likely to do some wrongful act which may occasion such a disturbance. (9 A. 452, 7 A.L.J. 161, *R.*) Certain persons instituted a committee to collect funds in order to persuade the authorities to allow them to carry the Dasehra procession along a certain route, and to enforce, as against any other person who might desire to contest the same, the petitioners' alleged right to do so. *Held* that, in the absence of a finding that those persons were likely to take the procession forcibly down a particular route unless they were bound down to keep the peace, that order could not be properly passed against them. BIRJNANDAN PRASAD v. KING-EMPEROR, **12 A.L.J. 1246.**

(552)—*S.* 107—*Security for keeping peace—Person not likely to commit breach himself but inducing others to do so.*—Security for keeping the peace under s. 107, Crim. Pro. Code, cannot be taken from a person, who is not likely to commit any breach of peace himself, but is likely to induce another person to do so. DEWAT SINGH v. CROWN, **11 P.W.R. 1912, Cr. = 125 P.L.R. 1912 = 13 Ind. Cas. 782 = 4 P.R. 1912, Cr. = 13 Cr. L.J. 126.** (54 P.R. 1887, Cr., 17 W.R. 54, Cr., *F.*)

(553)—*S.* 107—*Security to keep the peace—Breach apprehended from opposite party if one party exercises his right, whether ground for demanding security.*—No security to keep the peace can be demanded from a party simply because the opposite party would commit such breach if the former party would exercise his right. *In re* DESIKACHARI, **15 Cr. L.J. 661 = 25 Ind. Cas. 989.** (12 C.W.N. 703 = 7 Cr. L.J. 504, *F.*)

(554)—*S.* 107—*Performance of religious ceremonies—When may amount to a wrongful act likely to cause breach of peace.*—The blowing of a conch in a public place for one's personal amusement, or with any other lawful and innocent motive, and without any intention of thereby annoying or hurting the religious feelings of any other persons, is not a wrongful act. The blowing of a conch in connection with ceremonial acts of worship, in accordance with established usage, in a place fixed for the occasional or periodical performance of such ceremonies or worship, will not, as a rule, be a wrongful act, even though there may be persons, within hearing of the sound, who find their religious feelings hurt in consequence. Where certain Hindus commenced to perform ceremonies involving the blowing of a conch, in a place in no way set apart for the purpose, and where no such ceremonies had hitherto been performed, and it is found that they did it with the deliberate intention of triumphing over, insulting and wounding the religious feelings of their Mahomedan neighbours, *held*, this is a wrongful act and is an act likely to provoke a breach of the peace and disturb the public tranquillity within the meaning of s. 107, Crim. Pro. Code. EMPEROR v. MURLI SINGH, **33 A. 775.**

(555)—*S.* 107 — *Security for breach of the peace—Bad feeling existing between two sections of community.*—Under s. 107 of the Crim. Pro. Code, the condition precedent to taking security

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is that the Magistrate should be informed that some person is likely to commit a breach of the peace or disturb the public tranquillity or to do some wrongful act that may probably occasion a breach of the peace or disturb the public tranquility. Where there is nothing definite to go upon with reference to each accused person individually, and no proof of use of violence, security cannot be taken merely because a bad feeling exists between two sections of a population. SHER KHAN v. EMPEROR, **126 P.L.R. 1911=9 Ind. Cas. 1026=12 Cr. L.J. 186=43 P.W.R. 1911.**

(556)—*S.* 107—*Security to keep peace—Procedure to be followed.*—Persons who are bound over to keep the peace should be given an opportunity of showing cause, and all the procedure laid down by ch. VIII of the Crim. Pro. Code should be followed. JAGADAMBA PRASAD v. KING-EMPEROR, **10 A.L.J. 353=17 Ind. Cas. 716=13 Cr. L. J. 844.**

(556-*a*)—*S.* 107—*Jurisdiction of Magistrate to take action—Dispute as to immoveable property —Breach of the peace.*—The jurisdiction of a Magistrate to take action under s. 107 of the Code is not ousted merely because the breach of the peace relates to immoveable property. SUPPA THEVAN v. RAMASAWMI AIYAR, **16 Cr. L.J. 211=27 Ind. Cas. 835.** (12 Ind. Cas. 833=14 C.L.J. 429=39 C. 150=12 C.L.J. 569 =16 C.W.N. 83, *F.*)

(557)—S. 107—*See* BAIL, 11 C.W.N. 415=5 Cr. L. J. 194.

(558)—S. 107— *See* EUROPEAN BRITISH SUBJECT, 1 L.B.R. 275.

(559)—S. 107—*See* OFFENCE, 16 P.R. 1893, Cr.

(560 to 564)—S. 107—*See* SUMMONS, DISOBEDIENCE OF, 10 C.L.R. 430.

(565)—S. 107—*See* Nos. 117, 432, *supra*, and Nos. 859, 1015, 1174-*a*, *infra*.

(566)—Ss. 107, 108, 110, 117 (4)—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 4 L.B.R. 46=6 Cr. L.J. 284.

(567)—*Ss.* 107, 110—*Security proceedings—Use of threats — Likelihood of a breach of the peace—Use of bombastic and exaggerated language—Security—Case of each person to be separately considered.*—In proceedings under ss. 107 and 110 of the Crim. Pro. Code, the Court is entitled to take into consideration the utterance of threats by a party on different occasions as well as the previous relations of the parties and the antecedent and existing circumstances. But the use of language of mere bombast does not render the persons using it liable to be dealt with under the provisions of these sections. Where the accused were alleged to have said "if the suit went on we would plant a flag on the Nairkotta and build a mosque:" *Held*, that this was mere bombast and did not justify the Court in calling on them to furnish security. Where a number of persons are charged, under these sections, the case of each person should be separately considered. *In re* CHINNATHAMBI ROWTHEN, **9 M.L.T. 271=12 Cr. L.J. 104= 9 Ind. Cas. 594= 1911 1 M.W.N. 235.**

(568)—*Ss.* 107 *and* 110—*Apprehension of using violence to a person.*—When all that the evidence discloses is that a certain person might commit a breach of the peace, by using violence towards a particular person or persons, action should be taken under s. 107 and not under s. 110. EMPEROR v. KALLU, **27 A. 92=1 A.L. J. 495=A.W.N. 1904, 195.**

(569)—*Ss.* 107, 110 (=*Crim. Pro. Code, Act X of* 1882, *ss.* 107, 110)— *Procedure.*— Where the Police sent a report to the Magistrate accusing some persons of habitually committing extortion, and praying that they may be called on to give security for good behaviour under s. 110 of the Crim. Pro. Code, but the Magistrate, considering the information to be insufficient for such purpose, called on the persons to show cause under s. 107 ; *held* that the procedure was illegal and that all the persons should not have been dealt with in one proceeding. EMPRESS v. BATUK, **A.W.N. 1884, 54.** [*R.*, 9 A. 452=A.W.N. 1887, 111.]

(570)—Ss. 107, 110, 112—*See* NOTICE, 30 M. 282=2 M.L.T. 183=5 Cr. L.J. 397.

(571)—*Ss.* 107, 110. 537— *Summons issued under s.* 107—*Proceedings taken under s.* 110—*Prejudice to accused — Irregularity.* —Where after issuing summons to parties under s. 107, Crim. Pro. Code, the Magistrate took proceedings under s. 110, but the evidence was recorded at length, and the parties had opportunity to cross-examine all the prosecution witnesses and were not prejudiced : *Held*, that the irregularity in procedure was cured by s. 537, Crim. Pro. Code. SANGAMMA NAICK v. EMPEROR, **14 Cr. L. J. 65=18 Ind. Cas. 401.**

(572)—*Ss.* 107, 112 (=*Crim. Pro. Code*, 1882, *ss.* 107, 112)—*Power to take action under s.* 107, *nature of.*—The power of taking action under s. 107, Crim. Pro. Code, is a discretionary power, and there is nothing irregular in the Magistrate calling for a report from a Subordinate Magistrate before issuing notice under s. 112, especially, if he doubts whether the information before him is reliable. EGAMBARA MUDALI v. MURUGAPPA CHETTY, **2 Weir 51.**

(573)—Ss. 107, 112—*See* JOINT TRIAL, 9 A. 452=A.W.N. 1887, 111.

(574)—*Ss.* 107, 112, 117, 118, 119, 145, 253, 403, 495—*Preliminary charge-sheet under s.* 107 —*Withdrawal by the Police—Whether bar to subsequent proceedings—S.* 495 *inapplicable to security proceedings—Order under s.* 145, *whether bar to order under s.* 107 *on the same facts—Legality of order of discharge or acquittal where accused not directed to appear at all.*—A preliminary charge sheet was laid by the Police under s. 107, Crim. Pro. Code, against the present petitioners and others. But the Police wished to withdraw it in order that they might present a fresh charge-sheet against some only

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of those included in it. The Magistrate permitted the withdrawal and endorsed on the charge-sheet that the accused were acquitted. A second charge sheet was laid by the Police against the present petitioners and some others only. The Magistrate directed the petitioners to give security. *Held* that the withdrawal of the first charge-sheet was no bar to proceedings under the second charge sheet. Ss. 403 and 495, Crim. Pro. Code, were no bar to the present proceedings, as nothing had been done with reference to the previous charge-sheet beyond the lodging of the information before the Magistrate, and no process was issued against those who were mentioned therein, and no proceedings could, therefore, be said to have been pending against the present petitioners or any other persons. S. 495 applies only where the proceedings could end in an acquittal or discharge of the accused, and does not apply to security proceedings under s. 107 which do not terminate in either of these ways. *Held* also that neither an order of discharge nor of acquittal could properly be made in a case where the accused have not been directed to appear at all; and the Magistrate's endorsement on the first charge-sheet that they were acquitted was irregular and unwarranted by any section of the Crim. Pro. Code. *Held*, also that a Magistrate's order under s. 145, Crim. Pro. Code, was no bar to his passing an order under s. 107 of the Code, on the same facts, where the Magistrate is satisfied that, notwithstanding the order under s. 145, one of the parties is likely to take the law into his own hands. *In re* MUTHIA MOOPAN, **36 M. 315 = 14 Cr. L.J. 559 = 21 Ind. Cas. 159.** (2 Weir 50, 32 C. 966, 3 C.W.N. 297, 27 C. 662, 24 A. 148, 21 A. 107, 33 M. 85, *R.*)

(575)—*Ss.* 107, 117—*Security to keep the peace—Evidence of general repute—Admissibility.*—An enquiry in a proceeding for security to keep the peace must be made in the same way as in a trial in a summons case. The finding must be based on legal evidence. It is only in the case of a person who is an habitual offender, and is called upon to furnish security for good behaviour that the fact of his being a habitual offender may be proved by evidence of general repute. This cannot be done in a case where a person is called upon to furnish security to keep the peace. EMPEROR v. BIDHYA PATI, **25 A. 273 = A.W.N. 1903, 36.** [*R.*, 34 M. 255 = 11 Cr. L.J. 663 = 8 Ind. Cas. 493 = 21 M.L.J. 488 = 8 M.L.T. 347 = 1911 1 M.W.N. 34.]

(576)—Ss. 107, 117, 118—*See* EVIDENCE—GENERAL, 9 A. 452 = A.W.N. 1887, 111.

(577)—Ss. 107, 117, 119, 250—*See* SECURITY TO KEEP THE PEACE—EVIDENCE AND PROCEDURE, 37 P.R. 1884, Cr.

(578)—Ss. 107, 117, 119, 250, 560—*See* COMPENSATION—GENERAL, 37 P.R. 1884, Cr., 33 P.R. 1902, Cr.

(579)—*Ss.* 107 *and* 117 (4)—*Security to keep the peace—Joint inquiry—Association—Persons acting as servants, whether liable to be bound down.*—Where all the acts alleged against certain persons, against whom a joint inquiry under s. 107 of the Code was instituted, were found to have been done by them for the benefit of their common master, *viz.*, with a view to extort *kabuliyats* at enhanced rates from his tenants. *Held* (*Henderson, J., dissentiente*), that, although each of the acts alleged was not done by all of them together, yet they were associated together within the meaning of s. 117, sub-s. (4), so as to justify a joint inquiry. *Held*, further, that they could be proceeded against under s. 107 of the Code, notwithstanding that the acts imputed to them were committed by them, not as individual members, but as servants of another person. SRIKANTA NATH SAHA v. EMPEROR, **9 C.W.N. 898 = 1 C.L.J. 616 = 2 Cr. L.J. 554.** [*R.*, 5 C.L.J. 231 = 11 C.W.N. 472 = 5 Cr. L.J. 197, 3 Ind. Cas. 774 = 11 Bom. L.R. 740.]

(580)—*Ss.* 107, 118 (= *Crim. Pro. Code*, 1872, *ss.* 491 *and* 497)—*Order for security to keep the peace, when can be made.*—The act, of which information is given and in respect of which security is required, must be an act which is shown to be in contemplation at the time of the information given and not merely one, a repetition of which may be apprehended from the past misconduct of the kind without anything further. HIGH COURT PROCEEDINGS, 29TH AUG. 1876, NO. 1952, **2 Weir 49.**

(581)—Ss. 107, 118, 514—*See* SECURITY TO KEEP THE PEACE—FORFEITURE OF SECURITY, 9 C.L.J. 296 = 36 C. 562 = 13 C.W.N. 555.

(582)—*Ss.* 107, 119, 437—"*Accused person*"—*Whether a person from whom security has been demanded under s.* 107 *is an accused person—Further inquiry, whether can be ordered of a person released under s.* 119.—A person from whom security has been demanded under s. 107, Crim. Pro. Code, is not an accused person, so as to permit a District Magistrate or Sessions Judge, as the case may be, to take action under s. 437 of the Code and order further inquiry, should that person have been released or discharged under s. 119. NARAIN DAS v. DURGA DEVI, **153 P.L R. 1911, F.B. = 6 P.R. Cr. 1911 = 10 Ind. Cas. 178 = 12 Cr. L. J. 232 = 30 P.W.R. 1911.** (42 P.R. 1905 Cr. = 131 P.L R. 1905 = 2 Cr. L.J. 637, *Appr.*; 24 P.R. 1903, Cr. = 20 P.L.R. 1904 = 1 Cr. L.J. 96, 33 P.R. 1905, Cr. = 149 P.L.R. 1905 = 2 Cr. L.J. 716, *Overruled*; 33 M. 85 = 4 Ind. Cas. 1057 = 20 M.L.J. 137 = 6 M.L.T. 133 = 11 Cr. L.J. 162, *R.*) [*F.*, 154 P.L.R. 1914; *Appr.*, 5 P. R. 1914, Cr.]

(583)—*Ss.* 107, 125 — *Security for keeping peace—Bond for keeping peace, cancellation of—District Magistrate, jurisdiction of—Admission of case, wrong, effect of—Revision, High Court's power in—Questions of fact, when to be considered in revision.*—S. 125, Crim. Pro. Code, does not confer upon a District Magistrate either an appellate or revisional jurisdiction, but it confers an original jurisdiction in respect of orders

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binding down persons to keep the peace. A person so bound down has no remedy by way of appeal to the District Magistrate. The proper course for him is to bring his case in revision before the Sessions Judge. (32 C. 948=9 C.W. N. 860=2 Cr. L.J. 550, *F.*) A High Court, having once admitted a case in revision and having fixed a date for the hearing thereof, ought to dispose of it on the merits after hearing the applicant for revision. In criminal revisions, the High Court does not ordinarily consider questions of fact, except where the matter has been before only one Court below. THAKUR SHEO SINGH v EMPEROR, **15 Cr. L.J. 721=26 Ind. Cas. 169.**

(584)—Ss. 107, 125, 439—*See* SECURITY PROCEEDINGS, A.W.N. 1905, 143=2 Cr. L.J. 335.

(585)—*Ss.* 107 *and* 144 (=*Crim. Pro. Code,* 1882, *ss.* 107, 144).—*Held,* no one is entitled to molest others in the orderly and decent exercise by them of their religion, in the edifices of religion, in private houses, or in such public places as the Magistrate permits. QUEEN-EMPRESS v. SAIYID MUHAMMED ASKARI, **S. C. 77, Oudh.**

(586)—Ss. 107, 144—*See* SECURITY TO KEEP THE PEACE—LIKELIHOOD OF BREACH OF THE PEACE, 10 P.R. 1876, Cr.

(587)—*Ss.* 107, 144 *and* 145—*Dispute relating to land likely to cause a breach of the peace—Discretion of Magistrate to proceed either under s.* 107 *or ss.* 144 *and* 145.—The mere fact of a dispute likely to cause a breach of the peace, being one relating to the possession of land, is not sufficient to preclude the Magistrate from taking proceedings under s. 107. In such cases, the Magistrate is not bound to act only under ss. 144 and 145, but has a discretion to proceed either under those sections or under s. 107. SHEORAJ ROY v. CHATTER ROY, **32 C. 966=10 C.W.N. 288=2 Cr.L.J. 769.** (7 C.W.N. 142, *N.F.*; 7 C.W.N. 746, 26 M. 471, *F.*) [*F.*, 34 A. 449=9 A.L.J. 582=13 Cr.L.J. 526=15 Ind. Cas. 798; *R.*, 36 M. 315=14 Cr. L.J. 559 =21 Ind.Cas. 159, 8 Cr. L J. 170=1 S.L.R. 50, Cr., 10 Cr. L.J. 231=2 S.L.R. 18, Cr.]

(588)—Ss. 107, 144, 145, 147—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 23 C. 557, 25 C. 559, 3 C.W.N. 463, 7 C.W.N. 142, 11 C.W.N. 176.

(589)—*Ss.* 107, 145—*Dispute relating to possession—Order under s.* 107, *validity of.*—Where a dispute likely to cause a breach of the peace concerning the possession of a land exists, a Magistrate should proceed under s. 145, and not under s. 107. MAHADUR KUNWAR v. BISU, **25 A. 537=A.W.N. 1903, 102.** (26 C. 188, 24 B. 527, 18 M. 41, 27 C. 981, 7 C.W.N. 174, *R.*) [*N.F.*, 10 Cr. L.J. 221=3 Ind. Cas. 64=5 N.L.R. 94; *R.*, 34 A. 449=9 A.L.J. 582=13 Cr. L.J. 526=15 Ind. Cas. 798.]

(590)—*Ss.* 107, 145, *applicability of.*—In a dispute, likely to cause a breach of the peace, relating to the possession of a land, the Magistrate should proceed under s. 145, and not under s. 107. An order under s. 107 binding down one of the parties in such a case is bad. BIDHU BHUSAN CHATTERJI v. ANNODA CHURN KANANGUI, **6 C.W.N. 883.** (25 C. 559, *F.*) [*Not F.*, 10 Cr. L.J. 221=3 Ind. Cas. 64=5 N.L.R. 94; *R.*, 35 C. 117=6 C.L.J. 697=6 Cr. L.J. 398.]

(591)—*Ss.* 107, 145—*Dispute as to possession of land likely to lead to breach of peace.*—The mere fact of a dispute likely to lead to a breach of the peace being a dispute as to the possession of land, may not be sufficient to preclude the Magistrate from taking proceedings under s. 107. But where the only facts found by the Magistrate were that one of the parties was the aggressor, and that he was trying to disturb the peaceful possession of the other party, *held*, that it was not such as would justify an order under s. 107. *Per Harington and Bannerji, JJ., Brett, J. dissenting.* KING-EMPEROR v. BASIRUDDIN MOLLAH, **7 C.W.N. 746.** [*F.*, 32 C. 966=10 C.W.N. 288=2 Cr. L.J. 769, 10 Cr. L.J. 221=3 Ind. Cas. 64=5 N L.R. 94; *R.*, 35 C. 117=6 C.L.J. 697=6 Cr.L.J. 398, 1 S.L.R. 50, Cr.]

(592)—*Ss.* 107, 145—*Procedure.*—Ordinarily where two or more persons are disputing with regard to the possession of certain land, and there is a likelihood of a breach of the peace, the more appropriate procedure is that provided by ch. XII, Crim. Pro. Code, which deals with disputes as to immoveable property. But where the complainant alleges that the accused has threatened to use violence to him, if he should go upon the land of which he is in possession, the Magistrate is justified in instituting proceedings under s. 107. JAFAR MANDAL v. JARIBULLAH SAHA, **9 C.W.N. 551=2 Cr. L.J. 272.**

(593)—*Ss.* 107, 145—*Question as to possession was joint or exclusive.*—Where the persons bound over consisted of two parties, who were quarrelling over a mango orchard, and one of the parties claimed to be in exclusive possession of the orchard, whereas the other party claimed to be in joint possession of the same, *held*, that s. 145 was applicable, and that the Magistrate ought not to have taken proceedings under s. 107, as there was a dispute concerning land, which was likely to cause a breach of the peace. EMPEROR v. DEBENDRA NATH BOSE, **1 C.L. J. 632=2 Cr. L.J. 658.**

(594)—*Ss.* 107 *and* 145—*Initiation of proceedings under s.* 145—*Necessity for making the formal order—Order under s.* 145 (1) *in a proceeding under s.* 107.—The making of a formal order under sub-s. 1 of s. 145 is absolutely necessary to give the Magistrate jurisdiction to initiate proceedings under the section. Where notice was issued on the parties to show cause why they should not execute a bond to keep the peace, and the Magistrate, when he tried the case, recorded an order in the course of which he stated that, on the facts, the case

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was one for the application of s. 145, and not of s. 107, and proceeded at once to "bind down" the first party under cl. 6 of s. 145, *held*, that the order was bad and the use of the expression "bind down" was not correct. SUKRU DOSADH v. RAM PERGASH SINGH, **30 C. 443 = 7 C.W.N. 174.** [*F.*, 27 A. 296 = A.W.N. 1904, 234; *R.*, 25 A. 537, 11 Cr. L.J. 69 = 4 Ind. Cas. 876 = 12 O.C. 400.]

(595)—*Ss* 107 *and* 145—*Condition necessary for orders under—Revision.*—There should be reliable information as to the probability of a breach of the peace being apprehended, before proceedings either under s. 145 or s. 107 of the Crim. Pro. Code should be taken. The Chief Court may, on revision, set aside an order passed by a Magistrate under s. 145 of the Code of Criminal Procedure, when the Magistrate has not observed the proper procedure in the trial of the case. MALIK SULTAN MUBARAZ v. MUSSAMMAT BANO, **115 P.L.R. 1903.** (2 P.R. 1889, Cr., 23 P.R. 1902, Cr. = 135 P.L.R. 1902, *F.*)

(596)—*Ss.* 107 *and* 145—*Dispute concerning land likely to cause a breach of peace—Magistrate's jurisdiction under s.* 107—*Magistrate, when can act under s.* 145, *after proceedings taken under s.* 107—*Magistrate, competency of, to act under s.* 107.—The fact that there is a dispute concerning land likely to cause a breach of the peace does not deprive a Magistrate of jurisdiction under s 107, Crim. Pro. Code, when he is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity. Whether, after proceeding under s. 107, Crim. Pro. Code, it will be proper for a Magistrate to act under s. 145 of the said Code, depends on the circumstances of each case. The competence of the Magistrate to proceed under s. 107 of the Code against persons not in possession, depends upon whether, as against those persons, the conditions specified in the section have been established. EMPEROR v. ABBAS, **14 C.L.J. 429, F.B. = 16 C.W.N. 83 = 12 Cr. L.J. 569.**

(597)—*Ss.* 107, 145—*Jurisdiction of Magistrate.*—There is nothing either in s. 107 or in s. 145 of the Code of Criminal Procedure leading to the conclusion that proceedings taken under the former section preclude a Magistrate taking action under the latter. SAYID FAIYAZ ALI v. SAYID EWAZ ALI, **9 A. L.J. 693 = 16 Ind. Cas. 982 = 13 Cr. L.J. 566.**

(598)—*Ss.* 107, 145—*Security to keep the peace—Dispute relating to possession of immoveable property—Discretion of Magistrate.*—Where, in a dispute relating to immoveable property, one party tries to set aside a possession of long standing on their own authority, and there is great probability of a breach of the peace in consequence, the Magistrate has a discretion to proceed either under s. 107 or s. 145 of the Code of Criminal Procedure. THAKUR PENDEY v. KING-EMPEROR, **9 A.L.J. 582 = 34 A. 449 = 13 Cr. L.J. 526 = 15 Ind. Cas. 798.** (32 C. 966, 28 A. 406, *F.*; 25 A. 537, *D.*; 35 C. 117, *Not F.*)

(599)—*Ss.* 107, 145—*Payment to a chaudhri by the dealers in a market for certain duties discharged by him—Dispute between the servants—Ownership of the market and rents and profits thereof not disputed—"Parties concerned in the dispute."*—R had been appointed by certain dealers in a certain market to act as *chaudhri*, in order to regulate the business of that market and so forth, and those dealers agreed voluntarily to pay him at the rate of two pie per head of cattle brought to the market laden with articles for sale. The servants of the lady who admittedly was the owner of the market wanted to enjoy the dues themselves. On a police report of an impending breach of the peace, proceedings were in the first instance instituted under s. 107, Crim. Pro. Code, but the Magistrate finding that the servants of the lady claimed to collect rent as part of the zamindari of their mistress cancelled his first order and instituted proceedings under s. 145, Crim. Pro. Code. *Held*, that there was no bar to the Magistrate cancelling his first order and instituting proceedings under s. 145, Crim. Pro. Code, provided that the latter proceedings were otherwise justified under that section. *Held* also, that the dues claimed by either party being in no way connected with the ordinary rents and profits of the market and not being a perquisite of the zamindari, but being only in the nature of a voluntary payment by the dealers in the market to the *chaudhri* appointed by them for the discharge of certain duties the dispute between the parties did not concern any tangible immoveable property or relate to the rents and profits of the market, and s. 145, Crim. Pro. Code, was not applicable. *Held* further, that the servants of the owner of the market having stated that they were acting in the interest and for the benefit of their mistress, she must be deemed "a party concerned in the dispute," and for the purposes of s. 145, Crim. Pro. Code, was a necessary party to the proceedings. *Held* further, that s. 107, Crim. Pro. Code, was applicable to the case. RAM LOCHAN v. KING-EMPEROR, **12 A.L.J. 162 = 22 Ind. Cas. 171 = 15 Cr. L.J. 27 = 36 A. 143.**

(600)—Ss. 107, 145—*See* SECURITY TO KEEP THE PEACE—APPELLATE COURT, 3 C.W.N. 297.

(600-*a*)—*Ss.* 107, 145, *ch.* XII—*Revision—Orders under ch.* XII, *Crim. Pro. Code—Not open to revision—Crim. Pro. Code, s.* 145 (3)—*Order of attachment under—Duration pending Magistrate's decision—Whether can be made pending decree by Civil Courts—Crim. Pro. Code, s.* 107—*Order under—Revisability—Proceedings under s.* 107 *against a person—Pre-requisites before initiating such proceedings.*—It is not competent for the High Court to revise or even to enter into the question of the legality of a Magistrate's proceedings where such proceedings are, in intention, in form and in fact,

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proceedings under ch. XII of the Code of Criminal Procedure by a Magistrate duly empowered under that Chapter. (26 A. 144, 31 A. 150, *F.*; 1 S.L R. 50, 24 B. 527, 25 A. 537, 23 M.L.J. 499, *R.*). An order for attachment of land passed under s. 145 (3) by a Magistrate should only have authorised attachment pending his decision under s. 145, instead of until a decree or order of a Civil Court is obtained. An order under s. 107, Crim. Pro Code, calling upon the two contending parties to show cause why they should not be bound over to keep the peace for six months, is subject to the revisional powers of the High Court. It is obviously undesirable to combine proceedings under s. 145 with proceedings under s. 107 or to act against both the opposing parties in the same proceedings under s. 107. (6 A. 214, 9 A. 452, 25 A. 537, 8 C.W.N. 180, 11 C.W.N. 472, *R.*) If the Magistrate thinks it desirable to proceed against either of the parties concerned under s. 107, this should be by separate proceedings against each in accordance with the provisions of ss. 112 to 118 of the Code. Before proceedings under s. 107 are taken against any person, the Magistrate must have information of a clear and definite kind directly affecting the person against whom process is issued, and it should disclose tangible facts and details, so that it may afford notice to such person of what he is to come prepared to meet. FARID v. PIRU, **8 S.L R. 207 = 16 Cr. L.J. 235 = 27 Ind. Cas. 907.** (6 A. 26, *R.*)

(601)—*Ss.* 107, 145 *and* 146—*Possession of immoveable property, dispute as to—Order requiring security to keep the peace.*—Where a Magistrate apprehends a breach of the peace, if an attempt is made by either of the parties in dispute to exercise acts of possession upon the disputed piece of land, the Magistrate should proceed under ss. 145, 146 and not under s. 107. BALAI MAHTO v. NOBIN MANJHI, **7 C.W.N. 29.** [*Not F.*, 10 Cr. L J. 221 = 3 Ind. Cas. 64 = 5 N. L.R. 94.]

(602)—*Ss.* 107, 145, 204 (3) *and* 439—*Dismissal of complaint where complainant's witnesses are not in attendance—Duty of Court.*—*Held*, that a litigant should not be required to repeatedly summon his witnesses on payment of fresh process fee, simply because the Magistrate may have been unable to record the evidence on the date originally fixed for examining them. In such a case his duty is to direct the witnesses in attendance to appear on the adjourned hearing. BALMOKAND v. MANAK CHAND, **3 P.W. R. 1912, Cr. = 60 P.L.R. 1912 = 13 Cr. L.J. 176 = 13 Ind. Cas. 928.**

(603)—*Ss.* 107, 146—*Attachment of disputed property if may be made after one party is bound down.*—It cannot be laid down as a general rule that simply because members of one party to a dispute relating to possession of land have been bound down under s. 107, no order of attachment under s. 146 of the Code can be made in respect of the disputed property. BAISNAB CHARAN MANJHI v. GATINATH MUNSHI, **16 C.W.N. 384 = 13 Ind. Cas. 830 = 13 Cr. L.J. 142.**

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(604)—*Ss.* 107, 147 (= *Crim. Pro. Code*, 1882, *ss.* 107 *and* 147)—*Jurisdiction of Magistrates.*—The jurisdiction vesting in Magistrates under ch. XII (s. 147) does not necessarily oust the jurisdiction vesting in them under ch. VIII (s. 107). Crim. Pro. Code. SINDAMA NAIK v. ZEMINDAR OF KADAVUR, **2 Weir 50.** [*R.*, 36 M. 315 = 14 Cr. L.J. 559 = 21 Ind. Cas. 159.]

(605)—*Ss.* 107 *and* 250—*Person liable—Offence—Frivolous accusation—Order for payment of compensation, whether can be passed in cases for security.*—A person in respect of whom information has been laid before a Magistrate to the effect that he is likely to commit a breach of the peace or is otherwise liable to the provisions of s. 107, Crim. Pro. Code, is not a person accused of any "offence" and an order for payment of compensation, by a person who brought frivolous accusation against him cannot be passed under s. 250, Crim. Pro Code. BINDHACHAL PRASAD RAI v. LAL BEHARI RAI, **12 A.L.J. 506 = 36 A. 382 = 15 Cr. L J. 578 = 25 Ind. Cas. 330.**

(606)—*Ss.* 107, 406 *and* 438—*Appeal from orders to keep the peace.*—An appeal is given from orders requiring security for good behaviour under s. 406. There is no such appeal in case of orders to keep the peace. The District Magistrate might, if he considered the case a proper one, make a reference to the High Court under the provisions of s. 438 of the Code. BARKA CHANDRA DEY v. JANMEJOY DUTT, **32 C. 948 = 9 C.W.N. 860 = 2 Cr.L.J. 550.**

(607)—*Ss.* 107 *and* 514—*Effect of omission to order forfeiture of security bonds at the time of conviction*—The spirit of s. 514, Crim. Pro. Code, is that if a Magistrate, who convicts a person of an offence which involves the forfeiture of his bond under s. 107, Crim. Pro. Code, does not make any order for forfeiture, he must be taken to have decided not to take action on the bond in respect of that particular breach of the peace, and cannot thereafter re-consider and add to his order by directing forfeiture of the recognizance. CROWN v. MAWAZ, **7 P.W. R. 1913, Cr. = 39 P.L R. 1913 = 14 Cr. L J. 67 = 18 Ind. Cas. 403 = 13 P.R. 1913, Cr., F.B.** (26 P R. 1904, Cr., 1 C.L R. 134, 3 C.L.R. 406, *F.*; 26 A. 202, *Diss.*) [*R.*, 62 P.L.R. 1914 = 7 P.W.R. 1914, Cr. = 15 Cr. L.J. 485 = 24 Ind. Cas. 573.]

(608)—Ss. 107, 514, 515—*See* SECURITY TO KEEP THE PEACE—AMOUNT OF SECURITY—SURETY, 13 C.W.N. 555 = 36 C. 562 = 9 C.L. J. 296.

(609)—*Ss.* 107, 526—*Transfer—Rule from High Court staying further proceedings—Telegram by the party, effect of—Issue of warrant pending rule.*—Where, upon the High Court having issued a Rule staying further proceedings, the petitioner sent a telegram which was laid before the trying Magistrate, but the petitioner having failed to appear on the date previously fixed, the Magistrate issued a warrant upon the petitioner. *Held*, that the sending of

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the telegram did not in any way absolve the obligation of the petitioner to appear before the Court on the date fixed, and the issue of the warrant upon the petitioner was no ground for transfer of the case. The inconvenience of transferring a preventive proceeding for trial from one district to another adverted to. CHANDI PROSHAD SINGH v. KING-EMPEROR, **17 C.W.N. 536 = 14 Cr.L.J. 382 = 20 Ind. Cas. 142.**

(610)—*Ss.* 107, 526 (8)—*S.* 526, *cl.* 8, *if applies to proceedings under s.* 107—*Adjournment pending application for transfer—Proceeding under s.* 107, *if a criminal case.*—A proceeding under s. 107, Crim. Pro. Code, is a criminal case, and the provision in cl. 8 of s. 526 of the Code is applicable thereto, and an applicant is entitled to an adjournment of the proceeding to enable him to move for a transfer as is contemplated in that clause. WAZED ALI KHAN PANEE v. KING-EMPEROR, **18 C.W.N. 274 = 15 Cr. L.J. 171 = 22 Ind. Cas. 747 = 41 C. 719.**

(611)—*Ss.* 107, 537—*Misjoinder of parties and charges.*—The main principles applicable to a criminal trial regarding joinder of charges and the joint trial of accused persons are also applicable to inquiries under s. 107. Where both the parties to a proceeding under s. 107 were tried together, some of them having been examined as witnesses also, *held*, that there was a misjoinder of parties, and s. 537 did not cure the defect. PRANKRISHNA SAHA v. EMPEROR, **8 C.W.N. 180.** (14 C. 358, 5 C.W.N. 866 = 25 M. 61, *R.*) [*R.*, 9 C.W.N. 898 = 1 C.L.J. 616 = 2 Cr. L.J. 554, 5 C.L.J. 231 = 11 C.W.N. 472 = 5 Cr. L.J. 197.]

(612)—Ss. 107 (1), 90, 145 (1, 4, 5, 6)—*See* SECURITY TO KEEP THE PEACE—FINAL ORDER—ORDER LIMITED BY REQUISITION, 1 C.L.R. 48.

(613)—Ss. 107 (1), 124, 125—*See* SECURITY TO KEEP THE PEACE — EVIDENCE AND PROCEDURE, 10 C.L.R. 335.

(614)—Ss. 107 (1), 554—*See* SECURITY TO KEEP THE PEACE—FORFEITURE OF SECURITY, 11 B.H.C. 170.

(615)—*Ss.* 107 (2), 192—*Transfer by a District Magistrate after taking cognizance of a proceeding for security to keep the peace against a person not within his district.*—Where proceedings for security to keep the peace have once been instituted before a District Magistrate against a person not resident within the District, the District Magistrate is not precluded from transferring the case to a Magistrate subordinate to him, who is otherwise qualified to complete the proceedings. KING-EMPEROR v. MUNNA, **24 A. 151 = A.W.N. 1901, 203.** [*F.*, 31 C. 350, 1 S.L.R. 2, Cr. = 9 Cr. L.J. 246; *R.*, 10 C.W.N. 1095.]

——**S. 108, New.**

(616)—S. 108—*See* No. 566, *supra.*

(617)—Ss. 108 and 118 — *See* SECURITY FOR GOOD BEHAVIOUR, 34 C. 991 = 6 C.L.J. 9 = 11 C.W.N. 1050 = 6 Cr. L.J. 297.

(618)—*Ss.* 108 (*b*), 451—*Security for good behaviour — Penal Code, s.* 153-*A—Intention to provoke feelings of enmity between Christians and Buddhists—Rights and duties of religious preachers.*—S. 451 of the Crim. Pro. Code. applies only to trials, and an inquiry under s. 108(*b*) is not a trial. A Magistrate, who is a European British subject and a Justice of the Peace, is competent to hold an inquiry under s. 108 against a European British subject. In order to sustain an order under s. 108 (*b*) of the Crim. Pro. Code, it is not sufficient to prove that the language used was highly offensive to a community, but it must be shown that the applicant intended to provoke feelings of enmity or hatred between two communities. It is not necessary, however, that he should have succeeded in exciting such feelings, if deliberate intention to do so can be inferred. Preachers are at liberty to descant on the errors of other religions and to extol their own faith to the skies. But they may not consciously inflame the minds of their hearers by holding up the ministers and followers of other religions to public execration. What may be harmless when merely printed in an English book may be highly inflammatory when translated into an Oriental language and served out with spicy comments to an audience of Orientals in a public address. In estimating the intention and probable effect of a man's public utterances, it is proper to consider not only the personality of the speaker but the tone and spirit of the speeches and also the circumstances in which he spoke. U. DHAMALOKA *alias* COLVIN v. EMPEROR, **12 Cr.L.J. 248 = 10 Ind. Cas. 789.**

——**S. 109 (= 1882, s. 109; 1872, ss. 504, 515; 1861, s. 295).**

See SECURITY BOND.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

(619)—*S.* 109—*Jurisdiction of the Magistrate under the section—Residence of the accused.*—It is not necessary that a person, against whom proceedings under s. 109 have been taken, should have a residence within the jurisdiction of the Magistrate who is asked to exercise the powers conferred under s. 109, Crim. Pro. Code. *In re* NARSIMHAPPA, **2 Weir 53.**

(620)—*S.* 109 (= *Crim. Pro. Code,* 1861, s. 296).—Separate proceedings should be instituted against each person charged under s. 296, unless there is association between them which would justify a contrary course. The power given by s. 296 is one that should be exercised discreetly, and, in fixing the amount of security, the Magistrate should consider the station in life of the person concerned, and should not go beyond a sum for which there is a fair probability of his being able to find security. The imprisonment is provided as a protection to society against the perpetration of crime by the individual, and not as a punishment for a crime committed, and, being made

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conditional on default of finding security, it is only reasonable and just that the individual should be afforded a fair chance at least of complying with the required condition of security. HIGH COURT PROCEEDINGS, 26TH APRIL 1869, No. 767, 2 **Weir 52=4 M.H.C. App. 46.**

(621)—*S.* 109 (=*Crim. Pro. Code,* 1861, *ss.* 295 *and* 296)—*Security for good behaviour—Separate proceedings—Amount of security—Discretion of Magistrate.*—Separate proceedings should be instituted against each person charged under s. 295, Crim. Pro. Code, 1861, unless there is such a connection between the parties as may indicate the necessity of the contrary course. HIGH COURT PROCEEDINGS, 17TH MARCH 1863, **2 Weir 51.** [*F*, 4 M.H.C. App. 46=1 Weir 52.]

(622)—*S.* 109.—A security order should be in an amount which the accused may be reasonably expected to be able to furnish. QUEEN-EMPRESS v. NGA TUN E, **L.B.R. 1872—1892, 422.**

(623)—*S.* 109 (=*s.* 109 *of the Code of* 1882)—*Accused being a gambler, if sufficient for proceeding under.*—The mere fact that an accused gambles and smokes opium is not, in the absence of previous bad conduct, sufficient ground for requiring him to give security for good behaviour. QUEEN-EMPRESS v. NGA WIN, **L.B.R. 1872—1892, 246.**

(624)—*S.* 109—*Security for good behaviour—"Give a satisfactory account of himself," meaning of.*—The words "give a satisfactory account of himself" in s. 109, Crim. Pro. Code, do not mean that a person spends his time or at least his leisure moments in a satisfactory manner. Hence, a person who is a peon in the employ of the Municipality and whose occupation and place of residence are well-known but who, according to the Magistrate, "prowls about at night, associates with scoundrels, bolts from the place and is armed with and uses a *lathi,*" cannot be proceeded against under s. 109 of the Code. SHARIF AHMAD v. KING-EMPEROR, **8 A.L.J. 1097=12 Ind. Cas. 304=12 Cr. L.J. 536.**

(625)—S. 109—*See* Nos. 17, 337, *supra.*

(626)—*Ss.* 109, 110 — *Order under s.* 110, *during continuance of an order under s.* 109, *validity of.*—As ss. 109 and 110 have the same object, an order under s. 110 is not valid during the continuance of an order under s. 109. GHOLAM ALI v. EMPEROR, **8 C.W.N. 543.**

(627)—*Ss.* 109 *and* 110 (=*Crim. Pro. Code,* 1882, *ss.* 109, 110)—*Powers of Magistrates under.*—S. 109, Crim. Pro. Code, confers powers for the summary disposal of cases of vagabondism, where sturdy rogues are found lurking about, and s. 110 gives a preventive, not a punitive, power, and should be used only by the Deputy Commissioner himself or by a specially qualified and careful officer vested by Government with power under the said section. QUEEN-EMPRESS v. AJUDHIA BANIA, **S.C. 73, Oudh.**

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(628)—*Ss.* 109, 110.—After the expiration of a term of security, some new proof of bad livelihood or of the fact that the person is not capable of following any honest calling, is necessary before fresh security may be demanded. QUEEN-EMPRESS v. NGA LU KE, **L.B.R. 1872—1892, 420.**

(629)—*Ss.* 109, 110—*Mode of security to be taken from the accused.*—If any security is taken, the accused must be ordered to execute his own bond as well as furnish securities. QUEEN-EMPRESS v. NGA LA KYI, **L.B.R. 1872—1892, 421.**

(630)—*Ss.* 109, 110.—There must be separate proceedings in security cases against each accused person. QUEEN-EMPRESS v. NGA LA KYI, **L.B.R. 1872—1892, 421.**

(631)—*Ss.* 109, 110.—If a security order is made under the above sections, the accused must be ordered to execute his own bond as well as furnish securities. QUEEN-EMPRESS v. NGA TUN E, **L.B.R. 1872—1892, 422.**

(632)—*Ss.* 109 *and* 110—*Liability of sureties under.*—Sureties cannot be required each to pay the full amount of the bond. QUEEN-EMPRESS v. NGA E, **U.B.R. 1897—1901, Vol. I, 20**; QUEEN-EMPRESS v. NGA HLA, **U.B.R. 1897—1901, Vol. I, 26.**

(633)—*Ss.* 109, 110—*Proceedings under—Ordinarily not to be instituted immediately after release of person from jail.*—It is not possible to lay down any definite limit of time within which proceedings under s. 109 or s. 110 should not be instituted against a person released from imprisonment, either under one of those sections or under sentence for a substantive offence; but sufficient time should be given to allow the accused a chance of reformation. QUEEN EMPRESS v. NGA NGWE GAING, **U.B R 1897—1901, Vol. I, 22.** (S.J.L. B. 420, 533, *R.*)

(634)—*Ss.* 109, 110.—There is only one penalty of a bond. The principal is bound in this amount, and, if he has to furnish sureties, they are bound for the same amount. They may be jointly and severally liable for it or may be each liable for a part. KING-EMPEROR v. NGA YE E, **U.B R, 1897—1901, Vol. I, 24**; QUEEN-EMPRESS v. NGA HLA, **U. B. R. 1897—1901, Vol. I, 26.** [*R.* 14 Cr. L.J. 430=20 Ind. Cas. 414, U.B R. 1913, I Qr., 159.]

(635)—*Ss.* 109 *and* 110—*Security for good behaviour—Concealing—Ostensible means of subsistence—Satisfactory account.*—The whole of cl (*a*) of s. 109, Crim. Pro. Code, must be read together, and the object of the concealment must be with a view to committing some offence; mere concealment with a view to avoid observation is no offence at all. A person cannot be called upon to furnish security for an alleged temporary concealment in his father's house unconnected with any intention to commit an offence, nor for any previous concealment outside the jurisdiction of the Magistrate

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who takes the proceedings. The fact that a person had been previously connected with any criminal conspiracy or might still be in correspondence with any criminals outside the jurisdiction of the Magistrate would not be relevant in a case under s. 109. Where a young man out of employment is staying in his father's house and the father is a man of substance, able, if necessary, to support him, he cannot be said to be without ostensible means of subsistence under the first part of cl. (*b*) of s. 109. The whole object of the second part of cl. (*b*) of s. 109 is to enable Magistrates to take action against suspicious strangers lurking within their jurisdiction. A person cannot be called upon to give any account of his presence outside the jurisdiction of the Magistrate taking proceedings under s. 109. SATISH CHANDRA SARGOR v. THE KING-EMPEROR, **16 C.W.N. 499 = 13 Ind.Cas. 913 = 13 Cr. L J. 161 = 15 C.L. J. 396.** [*R.*, 14 Ind. Cas. 431 = 13 Cr. L.J. 239.]

(636)—*Ss.* 109 *and* 110—*Fresh security, when can be demanded— New proof.*—Fresh security could not be demanded without fresh proceedings. QUEEN-EMPRESS v. NGA HLA, **U.B.R. 1897-1901, Vol. I, 26.** QUEEN-EMPRESS v. NGA E, **U.B.R. 1897-1901, Vol. I, 20.** [*R.*, 14 Cr.L. J. 430 = 20 Ind. Cas. 414, U.B.R. 1913, I Qr., 159.]

(637)—*Ss.* 109, 110 (= *Crim. Pro. Code*), 1882, *ss.* 109, 110).—Where a member of a gang of Yerukalas was asked to furnish security for good behaviour, on the ground that he had no ostensible means of livelihood and that his looks pointed to his having no settled abode or livelihood, *held*, that the order was not proper. *In re* YERUKULA MANIPATI POLUGADU, **2 Weir 53.**

(638)—*Ss.* 109, 110, 112—*Difference between ss.* 109 *and* 110 *pointed out—Errors in procedure.*—Where the accused was sent up being charged under s. 110, and the Magistrate sanctioned his prosecution under s. 109, and under s. 112 summarized the information as follows:—"No ostensible means of subsistence, association with bad characters, and habitual stealing," *held*, that the Magistrate ought to have kept to s. 110, Crim. Pro. Code, in his order under s. 112, in view of the information about the habitual stealing. *Held*, also, that, if the evidence failed to establish this, a final order could have been passed under s. 109. If the order under s. 112 is made under s. 109, a final order cannot be made under s. 110. KING-EMPEROR v. NGA YE E, **U.B.R. 1897—1901, Vol. I, 24.** (U B.R. 1897—1901, I, 26, *R.*)

(639)—*Ss.* 109, 110, 112 (= *Crim. Pro. Code*, 1882, *ss.* 109, 110 *and* 112)—*Proceedings under —Duty of Magistrate.*—A Magistrate proceeding under ss. 107, 109, 110, Crim. Pro. Code, 1882, is bound to follow strictly the procedure laid down in s. 112 of the Code and the following sections. QUEEN-EMPRESS v. NGA THAN YON, **L.B.R. 1872—1892, 398.**

(640)—*Ss.* 109, 110 *and* 117—*Proceedings under ss.* 109 *and* 110—*Separate trial.*—Under s. 117, a person called upon to give security under s. 109 and another under s. 110, cannot be dealt with in one and the same enquiry, each section dealing with a different matter. Hence, proceedings under ss. 109 and 112 should not be joined with those under ss. 110 and 112. KING-EMPEROR v. MEHAN *alias* BHAGWAN DAS, **8 O.C. 91 = 2 Cr.L.J. 224.**

(641)—*Ss.* 109, 118—*Playing ring game if ostensible means of livelihood.*—A person who lives by conducting the ring game cannot be said to have no ostensible means of livelihood. BANGOLI SHAH v. EMPEROR, **17 C.W.N. 883 = 40 C. 702 = 14 Cr.L.J. 452 = 20 Ind. Cas. 612.** [*R.*, 15 Cr.L J. 276 = 23 Ind. Cas. 484.]

(642)—*Ss.* 109, 118—*Order under—Subsequent conviction—Order for fresh security—Legality—Security for good behaviour.*—In this case, the accused was ordered to enter into a bond in the sum of Rs. 50, with three sureties, to be of good behaviour for one year. Soon after the furnishing of the security, the accused was convicted under s. 34, Police Act, and was fined Rs. 2. The Magistrate, thereupon, ordered the accused to be rigorously imprisoned for the remainder of the term of security, or till he furnished fresh security, and realized Rs. 50 from each of the sureties. *Held*, that the order committing the accused to prison was illegal. *Held*, also, that, under the above circumstances, the full amount of the bond should not have been recovered. QUEEN-EMPRESS v. NGA HLA, **U.B.R. 1897—1901, Vol. I, 26.** [*R.*, 14 Cr.L.J. 430 = 20 Ind. Cas. 414, U.B R. 1913, 1st Qr., 159].

(643)—Ss. 109, 118, 513—*See* SECURITY FOR GOOD BEHAVIOUR, Rat. Un. Cr. C 671 = Cr. Rg. 33 of 1893.

(644)—*Ss.* 109, 122—*Magistrate's power to reject surety—Sufficient ground—Defence witness, whether can stand surety—Revision.*—Sureties for good behaviour should not be rejected merely on the strength of the report of a Tahsildar and a Sub-Inspector of Police, without some further proceedings or at any rate without giving the sureties an opportunity of meeting any allegations that may be made against them. The fact that a person offering himself as surety for the good behaviour of another has given evidence in favour of that person in a proceeding under s. 109 or 110, Crim. Pro. Code, which resulted in the passing of an order requiring security, would not be at all a good reason for refusing to accept the surety. The discretion conferred on a Magistrate by s. 122 of the Code is a wide one and the High Court should not lightly interfere with any reasonable exercise of the same. BAIRAGI v EMPEROR, **15 Cr. L.J. 727 = 26 Ind. Cas. 175.**

(645)—Ss. 109, 122, 125—*See* SECURITY FOR GOOD BEHAVIOUR, 1 C.W.N. 394.

(646)—*Ss.* 109, 123 *and* 397—*I.P.C.*, *s.* 379—*Concurrent sentence—Consecutive sentences.*—The accused was proceeded against under s. 109,

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Crim. Pro. Code, and sentenced under s. 123 of the Code to rigorous imprisonment for nine months in default of furnishing security for good behaviour, on the 6th July, 1909. He was then tried for the offence of theft committed by him in November, 1908, and was, on the 17th August, 1909, sentenced to suffer rigorous imprisonment for three months: the second sentence was directed to take effect on the expiry of the first sentence. *Held*, that the two sentences could not run consecutively, but must run concurrently. EMPEROR v. ARJUN AMBO KATHODI, **12 Bom. L.R. 129 = 5 Ind. Cas. 861 = 11 Cr. L.J. 271.**

(647)—Ss. 109 and 239—*See* JOINT TRIAL, Rat. Un. Cr. C. 556.

(648)—Ss. 109, 435 (1 to 3)—*See* PRACTICE AND PROCEDURE, 7 M.H.C. App. 23.

(649)—*Ss.* 109 (*a*) *and* (*b*), 110—*Taking precaution to conceal presence to commit crime—Failure to give satisfactory account of himself—Giving false name and secretly delivering letters containing incitement to commit crime.*—A person who gives a false name and delivers letters secretly, containing incitement to commit crime or demanding money for the means of committing crime, falls within s. 109, cl. (*a*) of the Crim. Pro. Code. A person who secretly delivers letters arranging for the commission of dacoities is a person, who, in the interests of public peace, should be called upon to give security for good behaviour. The accused, when charged by A with endeavouring to secretly deliver letters to A's brother, asking him to assist in some nocturnal enterprise in which revolvers and guns were to be used, was unable to give A any satisfactory account of himself: *Held*, that this was sufficient to bring him within the meaning of s. 110. PREO NATH DATTA v. EMPEROR, **15 Cr. L.J. 255 = 23 Ind. Cas. 207.**

(650)—*S.* 109 (*b*)—*Security for good behaviour from one who has "no ostensible means of subsistence."*—The fact that a man does no work does not necessarily mean, what the law requires, that he has no ostensible means of subsistence. QUEEN-EMPRESS v. POORAN AGRAWALLA, **5 C.W.N. 28.**

(651)—*Ss.* 109, *cl.* (*b*), 110, *cl.* (*f*)—*Inability to give satisfactory account of himself—Living in different district at house of dangerous political conspirator—Desperate and dangerous character.*—Where a person was found in a district other than that in which he resided and in the house of a man who was suspected of being a dangerous political conspirator and to have collected a large amount of seditious literature: *Held*, that an order by a Magistrate requiring such person, under s. 109, cl. (*b*) of the Crim. Pro. Code, to give an account of himself was justified. *Held*, also, that cl. (*b*) of s. 109 applies not only to vagrants, but it covers suspected persons and persons of any class who cannot give a satisfactory account of themselves. NARENDRA MOHAN GHOSE CHOWDHRY v. EMPEROR, **13 Cr. L.J. 239 = 14 Ind. Cas. 431.** (13 Ind. Cas. 913 = 16 C.W.N. 499 = 15 C.L.J. 396 = 13 Cr.L.J. 161, *R.*)

——**S. 110 (= 1882, s. 110).**

See SECURITY BOND.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

(652)—*S.* 110—*Applicability of, and enquiries under.*—The above section can be applied only to the class of persons described therein. An enquiry in a security case under this section must be tried as a warrant case. QUEEN-EMPRESS v. NGA LA KYI, **L.B.R. 1872—1892, 421.**

(653)—*S.* 110—*Applicability of, to persons combining for cheating and bullying.*—S. 110 might be used against persons combining together for purposes of cheating and bullying. KING-EMPEROR v. PURSHOTTAM, **4 Bom. L. R. 38 (41) = 26 B. 418.**

(654)—*S.* 110—*Scope of.*—The fact that the accused has been arrested on suspicion of the commission of a dacoity and was released does not justify an order for security under s. 110, Crim. Pro. Code. QUEEN-EMPRESS v. NGA TUN E, **L.B.R. 1872—1892, 422.**

(655)—*S.* 110—*Security for good behaviour—Condition.*—Where the Magistrate, in a case under s. 110 of the Crim. Pro. Code, orders that "the security must be furnished of a respectable gentleman resident of the same village or of a neighbouring village in which the accused is living." *Held*, that it is quite unnecessary to demand that the surety shall be a resident of a particular place, if the Magistrate is satisfied that the surety can exercise proper control over the person who has been bound over. SHEIKH ZIKRI v. KING-EMPEROR, **8 A.L.J. 785 = 11 Ind. Cas. 1008 = 12 Cr. L.J. 472.**

(656)—*S.* 110—*Security for good behaviour—Residence of sureties.*—It is in the power of the Court, in ordering securities to be given, to assign some geographical limit within which such sureties must reside. EMPEROR v. NABBU KHAN, **24 A. 471 = A.W.N. 1902, 122.** (20 A. 206, *R.*) [*R.*, 8 Cr.L.J. 166 = 1 S.L.R. 46, 8 Cr. L.J. 344 = 11 O.C. 267.]

(657)—*S.* 110—*Taking of security without personal bonds—Legality.*—There is no provision of law empowering a Court to call upon a person to provide sureties for good behaviour without his giving his own bond at the same time. EMPEROR v. UDMI, **27 A. 262 = 1 A.L. J. 593 = A.W.N. 1904, 230.**

(658)—*S.* 110—*Security—Sufficient cause to refuse to accept surety.*—A Magistrate refused to accept sureties on the ground that they lived at a distance of nine miles from the residence of the accused and, consequently, had no influence over him and could not be expected to

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exercise proper vigilance over his actions. *Held*, that the reason for refusing was insufficient. MASHUK ALI v. EMPEROR, **14 Cr.L.J. 214 = 19 Ind. Cas. 310.**

(659)—*S.* 110—*Evidence necessary to support an order for security.*—In the absence of evidence of any complaint having been made to the police or to a Magistrate against a person called upon to find security to be of good behaviour, or that he had been arrested on a charge of having committed any offence, the facts that certain witnesses stated that he bore a bad character and that he was said by the police to have been suspected in several cases are not sufficient to warrant an order under ss. 110 and 118 being passed against him. EMPEROR v. HUSAIN AHMAD KHAN, **A.W.N. 1905, 34.** [*R.*, 16 C.L.J. 467 = 14 Cr.L.J. 5 = 17 C.W.N. 238 = 18 Ind Cas. 149].

(660)—*S.* 110—*Evidence of general repute, admissibility of.*—Vague and general statements that a man is a habitual offender is not sufficient evidence on which an accused person is liable to be bound down under s. 110. The evidence of the repute of an accused person must be the evidence of persons who are speaking to matters within their personal knowledge, and not from mere hearsay. RUP SINGH v. KING-EMPEROR, **1 A.L.J. 616.**

(661)—*S.* 110—*Evidence of general repute.*—Under the terms of s. 110, the reputation which the person is found to have must necessarily mean the reputation of the person in the neighbourhood in which he resides and the persons residing in that locality could best speak to his character. KEHABOI v. QUEEN-EMPRESS, **27 C. 993 = 5 C.W.N. 29.**

(662)—*S.* 110—*Charge to be proved by definite evidence—Security for good behaviour from habitual offenders—Evidence required—Evidence of general repute.*—The charge under *cl.* (*f*) of s. 110 cannot be proved by general reputation, but must be proved only by definite evidence. In order to sustain a charge under s. 110 that certain persons are thieves and dacoits by habit and that they are so dangerous to the community as to render them being at large without security hazardous to the community, there must be proof of specific acts to show that these men, to the knowledge of any particular individual, are dangerous and desperate characters. It is not sufficient that respectable pleaders and Honorary Magistrates have deposed that they have heard it stated that they were thieves and dacoits by habit, when they have no personal knowledge in the matter, and when they cannot mention from whom they have derived their information. KALAI HALDAR v. EMPEROR, **29 C. 779.** [*F.*, 3 Cr. L.J. 290 = 9 O.C. 69; *R.*, 34 M. 255 = 21 M.L.J. 488 = 8 M.L.T. 347 = 8 Ind. Cas. 493 = 11 Cr. L.J. 663 = (1911) 1 M.W. N. 34.]

(663)—*S.* 110—*Detention of accused in jail pending inquiry—Illegality—Evidence of general repute.*—Detention of a person in jail against whom an inquiry under ch. VIII of the Crim. Pro. Code, is in progress, is an illegality which vitiates the trial. The accused, who was Chairman of the Managing Committee of a Municipality, was called upon to give security for good behaviour, upon evidence of general repute which consisted of instances anterior to the date of such appointment. *Held*, that the evidence of general reputation must, in cases like the present, be evidence of a reputation which had been acquired since the last appointment to the office of the Chairman. EMPEROR v. BHAU SAVALARAM KOTASTHANE, **16 Bom. L.R. 943 = 2 Bom. Cr. C. 261.**

(664)—*S.* 110—*Evidence that a man was merely of bad character—Effect.*—Where all the evidence proved was that a person was of bad character, such a finding does not bring the case within s. 110. *In re* E. V. KARUPPANAN SERVAI, **8 M.L.T. 246.**

(665)—*S.* 110—*Bad livelihood—General repute—Evidence to the contrary.*—*Held* that, where security under s. 110, Crim. Pro. Code, is taken from a person on the evidence of general repute only, that repute should be universal and there should be no doubt about it. So where security was demanded from a person (who along with his brother was an income-tax payer) on the ground of general repute only and on one occasion his house was searched in connection with the theft of the properties of a man who himself said he had no suspicion, and on the other hand he and several other well-to-do people testified to the petitioner's good character, the Chief Court, on revision side, set aside the order to furnish security for good behaviour. JHANDU RAM v. CROWN, **48 P.W.R. 1914, Cr.** (2 P.R. 1897, Cr., *F.*)

(666)—*S.* 110—*Nature of evidence necessary under the section.*—In order to sustain an order under s. 110 against a person who is alleged to have been by habit a thief, the evidence must be of such a nature as would lead to a reasonable and definite ground for coming to the conclusion that he is an habitual thief. GHOLAM ALI v. EMPEROR, **8 C.W.N. 543.**

(667)—*S.* 110—*Habitual offender—No conviction for an offence against property recently committed—Evidence—Security for good behaviour.*—Where the only evidence against a person was that he was found hiding himself in a bush, and when his person was searched certain articles not claimed by him to be his own were found upon him, there is no presumption that he was there with a view to commit an offence, so that he may be deemed to be a "habitual offender" within the meaning of s. 110 of the Code of Criminal Procedure. MADIRA NAGADU v. EMPEROR, **(1911) 1 M.W.N. 355 = 10 Ind. Cas. 959 = 12 Cr.L.J. 359.**

(668)—*S.* 110 — *Admission of accused not sufficient to prove him to be habitual thief.*—A Magistrate called upon an accused to show cause why he should not furnish security for his conduct. The accused said he could furnish

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security, but stated that he was a bad character and had been in jail. On this evidence, the Magistrate ordered the accused to furnish security. *Held* that the Magistrate's order should be set aside, because, as the record stood, there was merely the accused's admission that he was a bad character and that he had been in jail, but he was nowhere shown that he was an habitual thief. KING-EMPEROR v. KAKA, **3 Bom. L.R. 269.**

(669)—*S.* 110—*Joint trial of more persons than one, definite evidence required in, against each person—Person said to be of bad character not necessarily a dacoit—Sureties not to be rejected merely on Police report.*—Where a number of persons are tried jointly for a charge under s. 110, Crim. Pro. Code, it is incumbent upon the Magistrate to exercise great care and caution in dealing with the evidence and to insist that definite evidence be given against each person who is charged. Where the evidence amounted to nothing more than that some persons said to to be of bad character had been seen on occasions at the *Kothar* where the accused did his work, *held* that it did not justify the Magistrate in holding that the accused was a dangerous dacoit and extortioner and habitually protected and harboured thieves. *Held* further, that Magistrates have no authority to reject sureties merely upon an unfavourable report of the Police. JAI GOVIND v. KING-EMPEROR, **15 O.C. 263=17 Ind. Cas. 72=13 Cr.L.J. 760.** (7 O.C. 113, 11 O.C. 267, *Appr.*)

(670)—*S.* 110—*Security for good behaviour from habitual offenders—Object—High Court, when can stay proceedings—Police report, effect of—Gazetteer, extract from—Evidence, admissibility of.*—The object of s. 110 of the Code of Criminal Procedure is preventive and not punitive. The purpose which the Legislature had in view was to afford protection to the public against the repetition of crimes in which the safety of property is menaced and not the security of the person alone is jeopardised (2 A. 835, *R.*). The preventive jurisdiction with which the Magistrate is thus vested is a powerful means to secure the interests of the community from injury at the hands of hardened offenders of the most dangerous classes. This very fact, however, renders it necessary that the powers should be exercised with caution and discretion. The statutory provisions of s. 110 were enacted by the Legislature with the purpose of protecting society from habitual offenders; they were never intended to be applied to coerce landlords, however recalcitrant they may be, to adopt methods of management of their estates, the efficacy of which they might not appreciate, though pressed upon them with the best of intentions. If it is established to the satisfaction of the High Court that the proceedings under s. 110 are not *bona fide*, and that, in substance, their continuance would mean an abuse of the statutory provisions on the subject, it is not only competent to the High Court but it is its obvious duty to interfere. The production of the Police report is not in every case a complete answer to the allegation that the proceedings under s. 110 are not *bona fide*. An allegation of that character has to be established conclusively, either by direct evidence or by evidence of surrounding circumstances which leave no room for reasonable doubt as to the true nature of the proceedings. An extract from a volume of a Gazetteer is admissible in evidence, if the extract itself is relevant for the purpose of the enquiry before the Court. RAJENDRA NARAYAN v. KING-EMPEROR, **16 C.L.J. 467=18 Ind. Cas. 149 =14 Cr. L J. 5=17 C.W.N. 238.**

(671)—*Previous conviction—Habitual offender—S.* 110 (=*Crim. Pro. Code*, 1882, *s.* 110). —The fact that a person was convicted on a former occasion or occasions will not justify his being treated as a habitual offender under ch. VIII, Act X of 1882, unless it be shown that, since his release, he has indicated an intention of returning to a dishonest course. Ch. VIII, Crim. Pro. Code, 1882, is not intended to enable a Magistrate to punish a person who has been tried on a specific charge and acquitted, but whom the Magistrate nevertheless believes to be guilty. QUEEN-EMPRESS v. RAM PATTAN, **S.C. 70, Oudh.**

(672)—*S.* 110—*Non-liability of manager of a shrine freely open to public where thieves resort—Previous convictions of gambling and of offences not relating to property.*—*Held* that the manager of a public shrine, which does not belong to him and is not under his exclusive control, and which is freely open to the public, cannot be called upon to furnish security for good behaviour under s. 110 (*c*), although some thieves have been arrested there on several occasions and it is generally used as a gambling resort, and among the people, who come up there, are a number of thieves and bad characters; and although the manager himself has nine convictions against him, none of which has anything to do with property and six of which are for gambling, inasmuch as the shrine is not his house and he cannot be said to harbour thieves and such like, convictions cannot fairly be raked against a person involved in the proceedings under the said s. 110 (*c*). *Held*, also, that an order under this section is not justifiable, where, apart from the police officials, only two persons are produced to support the prosecution, against a large body of apparently respectable witnesses of an immediate neighbourhood who testify in favour of the accused. SOMAN, SON OF MOHAMMAD BAKSH v. CROWN, **37 P.W. R. 1910 Cr=8 Ind. Cas. 249=11 Cr. L.J. 603.**

(673)—*S.* 110—*Security for good behaviour—Fresh proceedings after expiration of an order under section if can be based on materials antecedent to the expiration of the previous order.*—When, after the expiration of the period of a bond for good behaviour taken under s. 110, Crim. Pro. Code, fresh proceedings are taken against the accused, such proceedings must be confined to facts and circumstances alleged against him after release from his last

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security. RAM DEO PANDE v. EMPEROR, **19 C.W.N. 223 = 16 Cr. L.J. 312 = 28 Ind. Cas. 648.**

(674)—*S* 110—*Security for good behaviour—Weight of evidence on both sides—Instances of suspicion—Previous discharge on the same materials.—Held*, that a conviction under 110, Crim. Pro. Code, of A and B (the Brothers) is illegal where evidence for the prosecution consists of four Lambardars, one Zaildar, two sub-Inspectors coupled with a few instances of suspicions against 23 witnesses for A, and 40 witnesses for B including a lambardar, particularly, when a year before, they had been discharged nearly on the same materials and by the same Magistrate, and no fresh facts implicating them have since happened. LALA v. CROWN, **33 P.W.R. 1913. Cr = 316 P.L.R. 1913 = 21 Ind. Cas. 475 = 14 Cr. L.J. 603.**

(675)—*S.* 110—*Security for good behaviour—Persons not residing within Magistrate's jurisdiction.*—It is only when a person within the limits of a Magistrate's jurisdiction, that is, who is residing within the limits of such jurisdiction is found to be a person of the description mentioned in s. 110, that the Magistrate can take action; and it is not contemplated that the Magistrate, in such a case, should issue a warrant so as to pursue the person concerned into another jurisdiction KETABOI v. QUEEN-EMPRESS, **27 C. 993 = 5 C.W.N. 29.** [*Not F.*, 36 M. 96 = 17 Ind. Cas. 413 = 23 M.L.J. 535 = 13 Cr. L.J. 781; *F.*, 12 P.R. 1901, Cr. = 91 P.L.R. 1901.]

(676)—*S.* 110—*Jurisdiction of Magistrate—Person owning a residence and occasionally visiting the place—Institution of proceedings under the section at that place—Validity.*—A Magistrate has jurisdiction to take proceedings against a person under s. 110, when such person has a residential house and occasionally resides for the purpose of business within the local limits of the Magistrate's jurisdiction, and when the acts attributed to him are acts done by him while residing at that place. KASI SUNDAR ROY v. EMPEROR, **31 C. 419. = 1 Cr.L J. 438.** [*F.*, 38 C. 156 = 15 C.W.N. 366 = 12 Cr.L.J. 164 = 9 Ind. Cas. 916.]

(677)—*S.* 110—'*Any person within the local limits'—Meaning.*—The words 'any person within the local limits' occurring in s. 110, Crim. Pro. Code, mean any person who is within the local limits at the time when the Magistrate takes action under the section. It is not necessary that the person who is proceeded against under s. 110 should be a person resident within the local limits of the jurisdiction of the Magistrate. *In re* KORA RANGAN, **23 M.L.J. 535 = 17 Ind. Cas. 413 = 13 Cr. L. J. 781 = 36 M. 96.** (27 C. 993, *Not F.*)

(678)—*S.* 110—*Abetment of commission of offence involving a breach of the peace by a Zemindar.*—Where a Zemindar abets other people to commit offences involving a breach of the peace, in order to compel the raiyats to

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pay him enhanced rents, *held*, that the conduct of the Zemindar would come under s. 110 (*a*) of the Code, although the Zemindar is a person of considerable means. KASI SUNDAR ROY v. EMPEROR, **31 C. 419. = 1 Cr.L J. 438.** [*F.*, 38 C 156 = 15 C.W.N. 366 = 12 Cr. L J. 164 = 9 Ind. Cas. 916.]

(679)—*S.* 110 (= *Crim. Pro. Code*, 1882, s. 110)—*Jurisdiction of first class Magistrate.*—It is not open to a Magistrate of the first class, who is not a District or Sub-Divisional Magistrate, unless he is specially empowered in that behalf, to take up cases under s. 110, Crim. Pro. Code. QUEEN-EMPRESS v. NGA KALA, **L.B. R. 1872—1892, 239.**

(680)—*S.* 110—*Imprisonment in default of furnishing security.*—An order for imprisonment, in default of furnishing security, is not a sentence of imprisonment. QUEEN-EMPRESS v. NGA PO SU. **U.B.R. 1897—1901, Vol. I, 375.**

(681)—*S.* 110—*Imprisonment in default of giving security—Allowing time to accused to reform himself on release—Whether two months after release from jail sufficient to give accused opportunity to show his willingness to adopt honest livelihood.*—In the case of a person imprisoned for three years, in default of finding security to be of good behaviour, a period of under two months from his release from jail is not a sufficient time to give an opportunity of showing his willingness to adopt an honest livelihood. EMPEROR v. HUSAN AHMAD KHAN, **A.W.N. 1905, 34.** [*F.*, 28 A. 306 = A. W.N. 1906, 30 = 3 A.L.J. 29 = 3 Cr. L.J. 96 = 1 M.L.T. 58; *R.*, 18 Ind. Cas. 149 = 14 Cr L.J. 5 = 16 C.L.J. 467 = 17 C.W.N. 238.]

(682)—*S.* 110—*Bond for good behaviour—Conviction for receiving stolen property in Native State—Forfeiture— Nature of offence under section—Proof of commission, necessary.*—A person who was under security for good behaviour under s. 110, Crim. Pro. Code, does not merely on proof of conviction for dishonest receipt of stolen property by a Court in a Native State, forfeit his security. *Obiter.*—But proof of commission of an offence punishable by the Code entails such forfeiture. CROWN v. DEWA SINGH, **28 P.R. 1910, Cr. = 45 P.W.R. 1910 = 8 Ind. Cas. 383 = 11 Cr. L. J. 635 = 199 P.L.R. 1910.** (2 P.R. 1884, Cr.; 17 P.R. 1904, Cr., *R.*)

(683)—*S.* 110—*Security for bad livelihood—Offence committed different from that for which security given—Security whether liable to be forfeited.*—I. S. was on 17-12-1910 required to give security of Rs. 1,000 for one year as being suspected as a thief and notorious receiver of stolen property. U. S. who belonged to another village was accepted as the surety for I. S. On 13-10-1911, I.S. was sentenced to imprisonment on a serious charge of violence under s. 326, I.P.C. Proceedings were taken against the surety U.S. and he was directed to pay Rs. 500. *Held* that this order against the

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surety was not justifiable. When men stand surety in respect of s. 110, they undertake liability for such good conduct only on the part of the person for whom they stand surety as is indicated by the circumstances under which the security was demanded. The subsequent conviction should be for an offence similar to that for which security was given. The man who stands surety for another should always be treated in a considerate manner, and it is contrary to all principles of justice that he should be held liable for a sudden act of violence, especially when he himself belongs to another village and has no possible opportunity of controlling the every day life of the offender. UDHAM SINGH v. KING-EMPEROR OF INDIA, 15 P.R. 1913, Cr. = 334 **P.L.R. 1913 = 14 Cr. L.J. 575 = 39 P.W.R. 1913 = 21 Ind. Cas. 175.** [*R.*, 62 P.L.R. 1914 = 7 P.W.R. 1914, Cr. = 15 Cr. L.J. 485 = 24 Ind. Cas. 573.]

(684)—*S.* 110—*Separate trial—Conduct before previous bond.*—In cases under s. 110, Crim. Pro. Code, each accused is entitled to an entirely independent examination of his own case. To take up facts, against an accused, of dates older than the previous security bond, is against law and justice, and cannot be made the ground for fresh proceedings. BAHADUR SHAH v. EMPEROR, **4 Ind. Cas. 432 = 25 P.W. R. 1909, Cr. = 4 P.R. 1909 = 149 P.L.R. 1909.**

(685)—*S.* 110—*Security proceedings — Demanding security from a person trying to reform himself.*—Where it is found that an accused person is trying to reform himself and as for a fortnight led an honest life, security should not be demanded from him under s. 110, on the ground that there was no guarantee that he had mended his ways. S. 110 is preventive, and not punitive. Its object is to protect society against persons who are so likely to commit offences that it is not advisable to leave them at large unchecked. It is very undesirable to proceed under that section against a person who is trying to reform himself and to live an honest life. *In re* BILLA APPAYYA, 10 **Ind. Cas. 624 = 12 Cr.L.J. 328 = 10 M.L.T. 333.**

(686)— *S.* 110 — *Proceedings in security cases — Trying Magistrate, must decide the cases—Cases cannot be transferred to District Magistrate—Regulation* XII *of* 1827, *s.* 27.—Where proceedings under s. 110 of the Crim. Pro. Code, are once initiated before a Magistrate, the Magistrate must dispose of them himself. It is not competent to him to send up the case which he is trying to the District Magistrate for action under Regulation XII of 1827. EMPEROR v. KISAN KEVJI, **14 Bom. L.R. 713 = 17 Ind Cas. 60 = 13 Cr. L.J. 748 = 1 Bom. Cr. Cas. 162.**

(686-*a*)—*S.* 110 — *Sanction — Proceedings under s.* 110 — *Practice—Evidence of Police officers — Diaries — Admission in evidence — S.* 193, *Penal Code.*—In proceeding under s. 110 a Police officer was examined at great length but no security was demanded from the accused. The accused applied for and obtained sanction to prosecute the Police officer. *Held* that sanction should not be granted inasmuch as the Police officer had made the statements about the accused from what he had heard from others. " It is strange that Magistrates attach so much weight and examine at such inordinate length the Police officers who appear before them in proceedings under s. 110. Those officers usually know nothing more than this that there is current in their circle a rumour to the effect that certain person is an associate of bad characters, &c." Police diaries are useful evidence when one has to decide about the guilt of an accused person and they contain matter which points in the opposite direction, but even if evidence at all they are dangerous evidence against an accused person. ABDUL KHALIQ v. EMPEROR, **13 A.L.J. 412 = 16 Cr. L.J. 281 = 28 Ind. Cas. 329.**

(686-*b*)—*S.* 110—*Jurisdiction of Magistrate—" Within the local limits " meaning of.*—The words " within the local limits of his jurisdiction " are not equivalent to " residing within the local limits." It is sufficient to give the Magistrate jurisdiction, if the evil habits of the accused were practised and evil reputation acquired within the local limits of his jurisdiction. KING-EMPEROR v. DURGA HALWAI, **19 C.W.N. 1022.**

(687)—S. 110—*See* ACCUSED PERSON, 24 P.R. 1903, Cr.

(688)—S. 110—*See* HABITUAL OFFENDER, 5 O.C. 203.

(689)—S. 110—*See* PENAL CODE, s. 182, 11 Cr. L.J. 3 = 4 Ind. Cas. 477 = 3 S.L.R. 132, Cr.

(690)—S. 110—*See* PENAL CODE, s. 401, 36 P.W.R. 1912, Cr. = 13 Cr. L.J. 799 = 17 Ind. Cas. 543.

(691)—S. 110 - *See* Nos. 337, 338, 339, 518, 566 to 571, 626 to 640 and 649, 651, *supra* and 817-*a*, *infra.*

(692)—*Ss.* 110 *to* 118 *and* 439—*Defective notice—Chief Court's power of revision in a pending case and to quash defective proceedings.* *Held*, that the Chief Court is competent at any stage of a criminal case to interfere, in order to exercise its powers of revision, particularly where the case is of an exceptional nature. So where the proceedings of a Magistrate under s. 110, Crim. Pro. Code, are defective on one or more of the following grounds, the Chief Court has power to quash them at once, as where the accused has already been twice acquitted on similar facts and evidence, and nothing new is urged against him, and the original order is only initialled and not signed by the Magistrate, and neither the amount of security and the period for which it is required, nor the full particulars of the bad livelihood, are mentioned therein. A Magistrate is not justified in issuing unreasonably a warrant for the arrest of an accused person on excessive security, while the accused had reasonable

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excuse for not attending in obedience to the notice. NATHA SINGH v. CROWN, **17 P.W.R. 1910, Cr.=6 Ind. Cas. 624=11 Cr. L.J. 387.** (22 C. 131, 22 W.R. Cr. 23, 20 B. 543, 25 C. 233, *F.*; 45 P.R 1885, Cr. *D.*) [*F.*, 11 Cr. L.J. 388 =6 Ind. Cas. 626=18 P.W.R. 1910, Cr.]

(693)—Ss. 110 to 123, 438, 439—*See* SECURITY FOR GOOD BEHAVIOUR, 6 P.W.R. 1907, Cr.=56 P.L.R. 1907.

(694)—*Ss.* 110, 112—*Suspected persons.*—S. 110 is not intended to afford the police a means of keeping the suspected person under detention until they are able to work out a case against him. A Magistrate should not detain a person under that section, unless he has the necessary information upon which he can make the order in writing required by s. 112. KING-EMPEROR v. PAIMAL NAI, **10 A.L.J. 351=17 Ind. Cas. 571=13 Cr. L.J. 827.** [*R.*, 36 A. 262=12 A. L.J. 365=23 Ind. Cas. 496=15 Cr. L.J. 288.]

(695)—*Ss.* 110, 112— *Proceedings under—Detention in custody on the mere request of the police—Reason to be considered and recorded by Magistrate.*—A person, who, after investigation made, has been found not to have been concerned in any cognizable offence and against whom there is no reasonable complaint or suspicion of his having been so concerned, should at once be released and any further detention of him is a detention not warranted by law. A Magistrate has no jurisdiction to act under s. 110, Crim. Pro. Code, until he has such information before him as will suffice for his making an order in writing setting forth its substance and the further particulars required by s. 112 of the Code. KING-EMPEROR v. GANESH, **12 A.L. J. 336=15 Cr. L.J. 696=26 Ind. Cas. 144.**

(696)—*Ss.* 110, 112, 113, 117—*Good behaviour —Security — Warrant case — Opportunity to bring witnesses.*—In a proceeding under s. 110 of the Crim. Pro. Code, the accused person must have time to bring his witnesses and have their evidence recorded. Where the accused had not had this opportunity, the order against him must be set aside. KERAMUDDIN SARKAR v. EMPEROR, **15 Cr. L.J. 353=23 Ind. Cas. 721= 41 C. 806.**

(697)—*Ss.* 110, 112, 114, 87, 88—*Security proceedings — Accused residing outside the Court's jurisdiction — Warrant for arrest of accused — Proclamation and attachment of accused's property.*—In a proceeding under s. 110 of the Crim. Pro. Code, the Magistrate issued (S. 114) a warrant to arrest the accused who had already left his jurisdiction. As the warrant was not executed, the Magistrate took proceedings under s. 87 and attached the moveable and immoveable properties of the accused under s. 88 of the Code. An application having been made to cancel the warrant and attachment proceedings: *Held*, that, as the accused was no longer living within the limits of the Court's jurisdiction, the warrant, proclamation and attachment issued against him were illegal. *In re* RAMJIBAI WAGHJIBAI, **14 Bom. L.R. 889=1 Bom. Cr. Cas. 185=13 Cr. L.J. 796=17 Ind. Cas. 540.**

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(698)—*Ss.* 110, 112, 114, 118 (=*Crim. Pro. Code*, 1882, *ss.* 110, 112, 114, 118—*Detention pending enquiry.*—The accused was tried at Meerut for murder and acquitted. He was then sent to Delhi, and there committed for trial for murder and acquitted. Then, at the request of the Magistrate at Meerut, in order that proceedings under s. 110, Crim. Pro. Code, might be taken against him, he was sent in custody to that Magistrate, and, pending an enquiry by the police as to his character, he was confined in in the lock-up. Sometime after, a Sub-Inspector was examined to supply the information required by s. 110, Crim. Pro. Code. That being done, it was ordered that pending further enquiries, the accused should not be released until he gave security in two sureties for Rs. 200 each. *Held* that the detention of the accused under the circumstances was illegal. EMPRESS v. AMIR KHAN, **A.W.N. 1883, 204.** [*D.*, A.W. N. 1896, 73.]

(699)—*Ss.* 110, 112, 117 *and* 537—*Trial of habitual offenders in same enquiry.*—A Magistrate cannot, under s. 117, cl. 4, deal with two or more persons, where they have not associated with themselves as habitual offenders, in the same enquiry, and he must deal with them, in separate enquiries. But if, in the absence of any information of their having been associated together, he does try them in the same enquiry, this illegality is not cured by s. 537 of the Code. PADAN v. KING-EMPEROR, **5 O.C. 243.**

(700)—*Ss.* 110. 112, 190, 191—*Transfer on the ground of Magistrate acting on private information.*—The language of ss. 110, 112 does not place any limit as to the sources from which a Magistrate may derive his information regarding the accused, and these sections are not controlled by ss. 190, 191, Crim. Pro. Code. That the Magistrate is acting on private information cannot, therefore, be a ground for applying for the transfer of such proceedings. *In the matter of the petition of*, MITHU KHAN, **27 A. 172=1 A.L.J. 685=A.W.N. 1904, 206.**

(701)—*Ss.* 110, 113, 496—*Security for good behaviour—Person brought before a Magistrate illegally—Bail—Power to call for bail.*—A was summoned by the Police and then placed before a Magistrate, who called upon A. to furnish security under s. 110, Crim. Pro. Code. The Magistrate postponed the hearing of the case and bound over A in the sum of Rs. 250 for appearance on the next date. A was not arrested by the Police on a warrant. A applied to the High Court for the setting aside of the proceedings, on the ground that the procedure laid down in the Crim. Pro. Code for action under s. 110 was not followed. *Held*, (1) that, whether A was brought before the Magistrate legally, or illegally and whether he was under arrest or not, the Magistrate was justified in treating A as a person present in Court, and the Magistrate must be taken to have acted under s. 113 of the Code. (2) That, under the circumstances of the case, the Magistrate had the

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power to require bail from A. EMPEROR v. GULAM HUSAIN, **12 Cr. L.J. 533 = 12 Ind. Cas. 301.** (6 N.W.P. 366, *F.*)

(702)—*Ss.* 110, 117—*Security for good behaviour—Nature of evidence.*—The legislature intended to leave Magistrates a very wide discretion in relation to the admission of evidence as to general repute or "otherwise" as described in s. 117 of the Crim. Pro. Code. The word "otherwise" should be read as meaning something *ejusdem generis* with the particular or particulars alleged above it. EMPEROR v. KALLU MAL, **A.W.N. 1904, 140.**

(703)—*Ss.* 110, 117,—*Rumour—Not evidence of general repute.*—Rumours that a man is of a bad character is not evidence of general repute. Where the evidence for the defence to the effect that the accused is a man of good character is as weightly as, or weightier than, the evidence for the prosecution, it could not be held as proved that the accused is by general repute a bad character. RAJENDRA PRASAD SAHI v. KING-EMPEROR, **1 A.L.J. 611.** [*R.*, 10 A.L.J. 383 = 13 Cr.L.J. 772 = 17 Ind. Cas. 404.]

(704)—*Ss.* 110, 117—*Security for good behaviour—Evidence of cases in which accused suspected—Not evidence of general repute.*—Evidence of cases in which the applicant is suspected is not evidence of general repute within the meaning of s. 117, Crim. Pro. Code. Where the evidence is equally balanced in a case under s. 110, no order requiring security should be made. RAHAM ALI v. KING-EMPEROR, **11 A. L.J. 461 = 14 Cr. L J. 407 = 20 Ind. Cas. 231.**

(704-*a*)—Ss. 110 and 117—*See* MAGISTRATE, DUTY OF, 2 L.B.R. 166.

(705)—Ss. 110, 117, 118, 406—*See* BUR. ACT I OF 1899, s. 17, 3 L.B.R. 21 = 2 Cr.L.J. 378.

(706)—Ss. 110, 117, 191—*See* SECURITY FOR GOOD BEHAVIOUR, 29 C. 392 = 6 C.W.N. 595.

(707)—Ss. 110, 117 (1, 2 and (3), 526 (8)—*See* SECURITY FOR GOOD BEHAVIOUR, 19 A. 291 = A.W.N. 1897, 52.

(708)—*Ss.* 110, 117, *para.* 2, 251 *to* 256 *and* s. 540.—In a case under s. 110, where the evidence for the defence is equally good with that for the prosecution, the accused are entitled to an acquittal. Under para. 2 of s. 117 a case under s. 110 is to be conducted as if it were a warrant case, and the procedure to be observed in the trial of warrant cases is laid down in ss. 251 to 256. According to the said sections, an accused cannot be called upon to enter on his defence until the prosecution closes its case. No further evidence can be admitted against the accused except under s. 540, for which there must be valid reasons which must be recorded. GANGA SINGH v. KING-EMPEROR, **10 A.L.J. 383 = 17 Ind. Cas. 404 = 13 Cr. L.J. 772.**

(709)—*Ss.* 110, 117 (2), 256—*Applicability of* s. 256 *to proceedings under* s. 110.—Under s. 117 (2), of the Crim. Pro. Code, the Magistrate's inquiry in cases of security for good behaviour must conform to the procedure prescribed in warrant cases and, therefore, s. 256 is applicable to such proceedings. The record should show whether the accused wished to cross-examine any of the witneses for the prosecution already examined, and should, if he wishes, be allowed to cross-examine them. EMPEROR v. LANSHA, **12 Cr. L.J. 89 = 9 Ind. Cas. 468.**

(710)—*Ss.* 110, 117 (4)— *Security for good behaviour—Bad repute—Nature of evidence—Duty of Court—Evidence, value of—Statements of accused's caste-fellows and neighbours—Discretion of District Magistrate—Revision—Power of High Court to interfere.*—Where a case under s. 110 of the Crim. Pro. Code, is sought to be established upon evidence of bad repute, the Court may reasonably be required to take into consideration, the value and weight of the evidence as to repute tendered on behalf of the prosecution as compared with the evidence of the defence. Where the witnesses for the prosecution were examined in three batches on three different dates and the evidence of the witnesses examined on the first two dates was of little help to the prosecution, the evidence of the witnesses examined on the last date is open to suspicion and should be received with great caution as against the accused. The evidence of accused's caste-fellows, relatives and neighbours is, from one point of view, the best sort of evidence available in connection with an inquiry into general repute. Such evidence should not always be swept aside on the ground that a man's cast fellows and relatives are bound in such perceeding to perjure themselves on his behalf. Subject to the enforcement of certain general principles as to what should or should not be regarded as satisfactory evidence of ill-repute, each case under s. 110 must necessarily be treated on its own merits. Although the High Court is generally reluctant to interfere with the wide discretion, conferred by the provisions of ch. VIII of the Crim. Pro. Code, on the District Magistrate, who is responsible for the peace and order of his district, yet the High Court always maintains a general power of revision in such cases, in order to ensure that these provisions are not made engines of oppression or instruments for the gratification of private grudges. (5 O.C. 203, 9 O.C. 69, 3 Cr. L.J. 200, 10 O.C. 132, 6 Cr.L J. 97, 10 O.C. 168, 6 Cr. L.J. 256, *R.*) Where all that was proved against the accused was that they had contracted a disreputable sort of friendship with certain Pasis for the reason that some of the accused had immoral relations with some of the women belonging to the gang of Pasis, but there was nothing to show that any of the accused had ever been convicted for any criminal offence and most of the accused were persons of advanced stage: *Held*, that there was no sufficient ground to bind the accused under s. 110, Crim. Pro. Code. GUR BAKHSH SINGH v. EMPEROR, **12 Cr. L.J. 542 = 12 Ind. Cas. 518.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(711)—*Ss.* 110, 118—*Enquiry as to sufficiency of surety, by whom to be made.*—Where a person called upon to furnish security under s. 118 offers the security demanded, the Magistrate who has passed the order is not competent to delegate to another officer the decision of the sufficiency of the security, and to act upon his report. EMPEROR v. TOTA, **25 A. 272=A.W. N. 1903, 36.** (A.W.N. 1898, 154, *F.*) [*F.*, 27 A. 293=1 A.L.J. 601=A.W.N. 1904, 231, 5 Cr. L.J. 148=14 P.L.R. 1907=18 P.R. 1906, Cr.=5 P.W.R. 1907, 10 Cr. L.J. 225=2 S. L.R. 11.]

(712)—*Ss.* 110, 118—*Delegation of functions, to subordinate officer to enquire into sufficiency of security.*—A Magistrate, who has passed an order under s. 118, requiring from a person security for good behaviour, cannot delegate his functions to a subordinate to enquire into the sufficiency or otherwise of the security tendered and decide the question in the report of the subordinate. The Magistrate, who passed the order, should himself make the enquiry and pass a decision as to the sufficiency or otherwise of the security offered. EMPEROR v. BALWANT, **27 A. 293=1 A.L.J. 601=A.W. N. 1904, 231.** (A.W.N. 1898, 154, 25 A. 272, *F.*) [*F.*, 37 C. 91=14 C.W.N. 49=11 Cr. L. J. 23=5 Ind. Cas. 29, 12 A.L.J. 1004, 5 Cr.L. J. 148=14 P.L.R. 1907=18 P.R. 1906 Cr.= 5 P.W.R. 1907, Cr.=14 P.L.R. 1907; *R.*, 10 Cr.L.J. 225=2 S.L.R. 11, Cr.]

(713)—*Ss.* 110, 118—*Evidence necessary.*—The law requires that there should be evidence forthcoming, before any man can be called upon to furnish security for good behaviour, and that evidence must establish one or more points set out in s. 110. When the evidence against certain persons consisted mainly of the fact that they were Mewatis of a particular place and that the Mewatis of that place were looked upon generally and collectively by the other inhabitants of the neighbourhood as bad characters and dangerous persons, *held*, that such evidence was not enough to support an order under s. 118, in the absence of specific evidence against each of the accused individually. HURMAT KHAN v. KING EMPEROR, **2 A.L.J. 174=A.W.N. 1905, 41.**

(714)—*Ss.* 110 *and* 118—*Security for good behaviour—Successive orders, without giving sufficient* locus penitentiæ— *Legality.*— The petitioner who had undergone one year's imprisonment on failure to furnish security was, about 15 months after his release, again ordered to furnish security to be of good behaviour for one year. *Held*, that the order should be set aside as the petitioner had not had a sufficient *locus penitentiæ* and the evil reputation, which he had before, permeated the evidence of many of the witnesses. JUNAB ALI v. EMPEROR, **31 C. 783=8 C.W.N. 909.** [*R.*, 16 C.L.J. 467=17 C.W.N. 238=14 Cr.L.J. 5=18 Ind. Cas. 149.]

(715)—*Ss.* 110, 118—*See* HABITUAL OFFENDER, 11 C.W.N. 789=6 Cr.L.J. 1.

Crim. Pro. Code (Act V of 1898)—*continued.*

(716)—*Ss.* 110, 118 *and* 437—*Discharge—Further inquiry—"Accused person."*—A person against whom proceedings under ch. VIII of the Crim Pro. Code. are being taken is an "accused person" within the meaning of the s. 437 of the Code. A person against whom proceedings are taken under s. 110 of the Crim. Pro. Code, may be considered to be in the position of an accused from the time that he appears before the Court till the conclusion of the proceedings, and, if not called upon to furnish security, he may be regarded as discharged. If his evidence has been called for and taken as sufficient to justify the Magistrate in declining to take security, he must still be regarded as discharged, and not as "acquitted." It is not desirable that the District Magistrate should exercise the power of revision arbitrarily or harshly in such cases, except under the safeguards provided by s. 437. If further evidence is forthcoming, it may just as well be taken and considered in the same proceedings, instead of waiting until further information is had. This constitutes the "further inquiry" contemplated by that section, and a necessary ingredient is that fresh evidence is forthcoming on the part of the prosecution. That another Magistrate should hear and decide the matter on the same evidence is not what is contemplated. MANNA v. EMPEROR, **20 P.L.R. 1904=24 P.R. 1903, Cr.** (27 C. 662, *Diss.*: 21 A. 107, 16 B. 661, *F.*)

(717)—*Ss.* 110, 120, 123—*Security—Detention of accused in jail subsequent to expiry of period of security—Date of expiry to be mentioned in bond—Making each surety liable for whole penalty.*—A Magistrate has no power to keep a man in jail beyond the period for which security was ordered. It is a serious mistake in the bond to make each of the sureties liable for the full penalty of the bond. When the bond is not executed till after the date on which the period for which security is required commences, it should state plainly the date on which the period expires. EMPEROR v. NGA PO SIN, **13 Cr. L. J. 62=13 Ind Cas. 398=4 Bur. L.T. 270.** (U. B.R. 1897—1901, Vol. I, 119, *R.*)

(718)—*Ss.* 110, 121, 514—*Forfeiture of security bond in a separate proceeding when not allowed.*—*Held*, that, if a Criminal Court, knowing that the person charged before it is under security to be of good behaviour, in sentencing that person in the case before it, makes no reference to any confiscation of that security and takes no steps towards its confiscation, it is not competent for that Court or any other Court in a subsequent and separate proceeding to take such steps. BEGA SINGH v. CROWN, **6 P. W.R. 1915=Cr.=95 P.L.R. 1915=16 Cr. L. J. 194=27 Ind. Cas. 754.** (13 P.R. 1913, Cr.= 7 P.W.R. 1913, F.B., *F.*)

(719)—Ss 110, 121, 514—*See* SECURITY FOR GOOD BEHAVIOUR, 21 A. 86=A.W.N. 1898, 162.

(720)—*Ss.* 110, 122—*Refusal to accept surety, grounds for.*—A Magistrate cannot refuse to

Crim. Pro. Code (Act V of 1898)—*continued.*

accept a surety on the ground that he is unfit to control the party ordered to furnish security, or on the ground that he is not resident in the same village. The question in such cases is not whether or not a surety can supervise a person for whom he stands surety, but whether he is a person of sufficient means to warrant his being accepted. RAM PERSHAD v. KING-EMPEROR, **6 C.W.N. 593**. (4 C.W.N. 797, *Appr.*) [*F.*, 37 C. 446=14 C.W.N. 666=11 Cr. L.J. 392=6 Ind. Cas 668; *R.*, 35 C. 400=8 C.L.J. 243=13 C.W.N. 80=8 Cr. L.J. 388=4 Ind. Cas. 560, 7 Cr. L J. 323=12 C.W.N. 463, 6 O.C. 199, 1 S.L.R. 46, Cr.=8 Cr. L.J. 166; *Commented*, 41 C. 764=15 Cr.L.J. 169=22 Ind. Cas. 745.]

(721)—*Ss.* 110, 122—*Sureties, necessity of judicial enquiry before rejecting.*—Sureties offered should not be refused except after judicial enquiry under s. 122 by the Magistrate who has made the order under s. 110. AKBAR ALI MAHOMED v. KING-EMPEROR, **19 C.W.N. 220=16 Cr. L.J. 327=28 Ind. Cas. 663.**

(722)—*Ss.* 110, 122, 123—*Bond for security for good behaviour—Particulars to be stated in the order requiring the bond—Grounds for rejecting sureties—Relationship—No such ground—Order specifying a term more than a year—Detention of accused—Reference to Sessions Court—Necessity of—Object of proceedings under s. 110—Summary rejection of petition—When not to be made.*—M was ordered by a Magistrate of the 1st Class to give a bond under s. 110, Crim. Pro. Code, to be of good behaviour for 3 years for Rs. 1,000 with four sureties. M offered four persons as his sureties of whom two were rejected as being his relatives; one as being a mere boy and the remaining one as being a bad character. *Held* that particulars as to whether each and all are liable for Rs. 1,000 on occasion arising, or Rs. 1,000 between them, should have been stated in the order so as to prevent misunderstanding later. Mere relationship is no reason for refusing a surety. On the other hand, a relation is more likely than any other person to have influence over a man and to be able to keep an eye on him, in short, relationship is a recommendation (25 A. 131, *Appr.*) A Magistrate should, before rejecting a surety, himself enquire into the matters alleged against him, and not delegate such an enquiry to any one. (18 P.R. 1906, Cr., *R.*) The object of the law as to security for good behaviour is not to fill the jails with bad characters, but to bring reasonable pressure to bear on such persons to respect the law (28 P.R. 1901, Cr., *R.*). Where the order for security specifies a term exceeding one year during which accused is to be of good behaviour, the Magistrate in ordering the detention of the accused should, under s. 123, refer the case to the Sessions Court. The District Magistrate should not summarily reject a petition which was explicit enough merely because it did not contain just the particulars he wanted. MAHALA v. CROWN, **6 P.R. 1914, Cr.=142 P.L.R. 1914.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(723)—Ss. 110, 122, 123, sub-s. 3, 367 and 424—*See* SECURITY FOR GOOD BEHAVIOUR, 14 C.W.N. 49=37 C. 91=5 Ind. Cas. 29.

(724)—*Ss.* 110, 123—*Imprisonment in default of security—Period of imprisonment.*—It is not proper for a Court to order the detention of a person bound over under s. 123 for a period less than that for which he is called upon to give security. KING-EMPEROR v. KARIM-UD-DIN BEG, **23 A. 422=A.W.N. 1901, 114.**

(725)—Ss. 110, 123—*See* SESSIONS JUDGE, JURISDICTION OF, 27 C. 656.

(726)—*Ss.* 110, 123, 340—*Reference to Sessions Judge under s.* 123—*Notice.*—A person against whom proceedings are taken under s. 110, or s. 123 is an accused person and has the right to be heard by a pleader. Such a right cannot be exercised by him unless a date is fixed for the hearing and notice of such date is given. EMPEROR v. GIRAND, **25 A. 375=A.W.N. 1903, 79.** (23 C. 493, 27 C. 656, *F.*; A.W.N. 1898, 60, 21 A. 107, *R.*)

(727)—Ss. 110, 123, 340—*See* SECURITY FOR GOOD BEHAVIOUR, 27 C. 656.

(728)—*Ss.* 110 *and* 123, *cls.* 2 & 3—*District Magistrate calling for security under s.* 110—*Failure to furnish same—Sentence of imprisonment by District Magistrate subject to confirmation by Sessions Judge—Confirmation by latter—Legality—Proper procedure under s.* 123, *cls.* 2 & 3—*Gist of s.* 123, *cls.* 2 & 3—*Reference under s.* 123—*Duty of Sessions Judge to weigh evidence.*—Where, on failure to furnish security by a person called upon by the District Magistrate to execute a bond under s. 110 for three years, the Magistrate sentenced him to three years' rigorous imprisonment subject to confirmation by the Sessions Judge, and where the latter simply confirmed the District Magistrate's sentence, *held*, that the Magistrate's procedure was not according to s. 123, sub-s. (2) & (3), Cr. P. C., and that he had no authority to pass the order which he did. The gist of s. 123, sub-ss. 2 & 3, is that the Magistrate commits the person, from whom security has been demanded, to prison and sends the proceedings to the Sessions Judge for disposal as he thinks fit. There is nothing in the section about the Magistrate's order being confirmed. It is the duty of a Sessions Judge, in a reference under s. 123, Crim. Pro. Code, to consider the evidence and pass an order after doing so. He should not, as a matter of course and without regard to the evidence, send the person to prison. NANKU *alias* MUHAMMAD DIN v. THE CROWN, **29 P.R. 1910, Cr.=196 P.L.R. 1910=8 Ind. Cas. 385=11 Cr. L.J 637.**

(729)—*Ss.* 110 *and* 125—*Security for good behaviour—Acceptance of security bond by subordinate Magistrate—Subsequent cancellation of the same by the District Magistrate—Jurisdiction.*—Where, on receiving a police-report that the surety-bond (which had been furnished by a person bound over to be of good behaviour and accepted by the Magistrate) was unsatisfactory

Crim. Pro. Code (Act V of 1898)—*continued.*

the District Magistrate cancelled such security under s. 125 and made an order requiring fresh security, and directing imprisonment, in default, for the remainder of the term, *held*, that the Magistrate had no jurisdiction to make such an order. PANCHOO GAZI v. EMPEROR, 29 C. 455 = 6 **C.W.N. 291.**

(730)—Ss. 110, 192, 530—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, Rat. Un. Cr. C. 838 = Cr. Rg. 6 of 1896.

(731)—*Ss.* 110, 406—*Judgment of lower appellate Court very sketchy—Evidence not examined or weighed carefully—High Court's power to interfere on merits—Revision—Practice—Reputation— Evidence— Admissibility.*—The High Court will not ordinarily interfere on merits with proceedings under s. 110, Crim. Pro. Code, provided that the Court hearing the appeal under s. 406 shows in its judgment that it has really, and not merely nominally, considered the evidence on the record. Where the judgment of a District Magistrate, deciding in appeal a case under s. 110 of the Code, is very short and does not show that the evidence was all examined and carefully weighed, the High Court will interfere on merits in revision. In a proceeding under s. 110 of the Crim. Pro. Code, a list of crimes in which the accused was suspected by a Police officer is inadmissible in evidence to establish the reputation of the accused. BABU PERSHAD v. EMPEROR, **13 Cr. L.J. 9 = 13 Ind. Cas. 102.** (6 A.L.J. 487, 2 Ind. Cas. 225, 9 Cr. L.J. 598, *R.*)

(732)—*Ss.* 110, 437—*Discharge by a First Class Magistrate of a person asked to furnish security—Power of District Magistrate to institute fresh proceedings.*—Where a Magistrate of the First Class discharges a person called upon to furnish security for good behaviour, it is competent to the District Magistrate, after looking through the record, to institute fresh proceedings upon the same facts. KING-EMPEROR v. FAYAZ-UD-DIN, **24 A. 148 = A.W.N. 1901, 206.** [*F.*, 35 B. 401 = 1 Bom. Cr. Cas. 49 = 13 Bom. L.R. 505 = 12 Cr. L.J. 430 = 11 Ind. Cas. 614 ; *R.*, 36 A. 147 = 12 A.L.J. 167 = 15 Cr.L.J. 39 = 22 Ind. Cas. 183, 36 M. 315 = 14 Cr. L.J. 559 = 21 Ind. Cas. 159.]

(733)—*Ss.* 110, 437—*Further inquiry in a case under s.* 110—*Nature of proceedings under s.* 110.—The further inquiry which can be ordered under s. 437 is into a complaint which has been dismissed, or into the case of an accused person who has been discharged. Proceedings under s. 110 cannot be regarded as a case in which any accused person has been discharged, for the terms "accused person" and "discharged" in s. 437 refer to a person accused of an offence, who has been discharged of that offence within the terms of Ch. XIX of the Code. IMAM MANDAL v. EMPRESS, **6 C.W.N. 163.**

(734)—Ss. 110, 437—*See* SECURITY FOR GOOD BEHAVIOUR, 27 C. 662.

Crim. Pro. Code (Act V of 1898)—*continued.*

(735)—*Ss.* 110, 439—*Bad livelihood—Security for—Proof.*—*Held*, that the following circumstances are not sufficient for placing a person on security under s. 110 of Act V of 1898, specially where these circumstances are shown to have occurred about a year after dismissal of his complaint of bribe taking against two Police Sub-Inspectors of the *Illaqa* in which he lives : —(1) Two unsuccessful searches of his house. (2) His having been seen in the company of some suspected persons, none of whom has even been convicted of theft. (3) Allegations of some *Sufedphoses* and *Lambardars* to the effect that people of their villages know him to be a *budmash*, while no complainant has ever suspected him in a theft case. SAMANDA v. CROWN, **20 P.W.R. 1912, Cr. = 15 Ind. Cas. 966 = 13 Cr.L.J. 550.**

(736)—Ss. 110 and 439—*See* SECURITY FOR GOOD BEHAVIOUR, 23 P.L.R. 1907.

(737)—Ss. 110 and 498—*See* SECURITY FOR GOOD BEHAVIOUR, 4 N.W.P. 117.

(738)—*Ss.* 110, 514—*Conviction under s.* 323, *I.P.C.—Forfeiture of bond under s.* 110, *Crim. Pro. Code—Proper amount of forfeiture—Liability of sureties.*—On 14-10-1912, one F was put on Rs. 1,000 security for a year under s. 110, Crim. Pro. Code, as a reputed thief and burglar. S and B were his sureties. On 25-6-1913, F was convicted under s. 323, I.P.C., for having taken a minor part in an affair in which the real offenders were two men who escaped ; and this was treated by the Magistrate as an offence justifying the confiscation of Rs. 250 security money from F and his sureties jointly. On revision, *held*, that under the circumstances, there was no real ground for dealing with the sureties and the forfeiture must be set aside in respect of the sureties. *Held* also, that the sum to be paid by F out of his security money should be reduced from Rs. 250 to Rs. 50, in view of the fact that he had been already punished for his actual offence. FATTA v. CROWN, **6 P.R. 1915, Cr. = 16 Cr. L.J. 287 = 28 Ind. Cas. 335.**

(739)—*Ss.* 110, 514—*Burma Gambling Act (I of 1899)—Security for good behaviour—Single penalty—Forfeiture of bond—Liability of sureties—When surety to be called upon to pay—Effect of forfeiture of bond—Re-committal to jail after forfeiture is illegal.*—A bond executed under the provisions of s. 17, Gambling Act, read with s. 110, Code of Criminal Procedure, is a bond with a single penalty. A Magistrate directing the payment of money due thereon may remit any portion of the full amount under s. 514 (5) Code of Criminal Procedure. But such a remission is clearly an extinction of the liability of the parties to it for the amount remitted. Once the bond is forfeited, there is an end of it. Ordinarily, the sureties should be called upon to make good the amount which the Magistrate orders to be forfeited if it is not paid by the principal, and the usual practice should be to require the principal and

Crim. Pro. Code (Act V of 1898)—*continued.*

sureties together to pay the amount to be forfeited. A bond, after it is forfeited or the penalty under it has been exacted, ceases to remain in force. A person against whom an order had been made under s. 110, Crim. Pro. Code, cannot be recommitted to jail upon the forfeiture of his bond, except by fresh proceedings being taken against him. EMPEROR v. IGNATIO REIS, **14 Cr.L.J. 430 = 20 Ind. Cas. 414 = U.B.R. 1913, 1st Qr., 159.**

(740)—Ss. 110, 514—*See* SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1906, 13 = 3 Cr.L.J. 91.

(741)—*Ss.* 110, 526—*Transfer—Magistrate's duty to call witnesses—Practice—Expenses of witness to be realized before issuing summons.*—The Magistrate trying a case is bound by law to hear those witnesses only whose list is sent up by the police along with the case, and, as soon as the witnesses produced in support of the case have been heard, the Magistrate is then to ascertain the names of the persons likely to be acquainted with the facts of the case and shall summon to give evidence before himself only such of them as he thinks necessary. He is not bound by law to, and should not, save in very exceptional cases, call the other witnesses that the police or any one else may from time to time choose to produce. *Held* further that, when a Magistrate is of opinion that expenses for calling witnesses should be charged from parties, he should realize the expenses before issuing the summons. GOVIND SAHAI v. KING-EMPEROR, **12 A.L.J. 262 = 15 Cr.L.J. 363 = 23 Ind. Cas. 731.**

(742)—*Ss.* 110, 526—*Transfer of case—Jurisdiction of High Court.*—*Held*, that a High Court is not competent under s. 526, Code of Criminal Procedure, to pass order of transfer of proceedings under s. 110 of the Code. AHMED BAKHSH v. KING-EMPEROR OF INDIA, **154 P L.R. 1914 = 15 Cr.L.J. 563 = 24 Ind. Cas. 971.** (15 A. 365, 4 P.R. 1896, Cr., 42 P.R. 1905, Cr. = 131 P.L.R. 1905, 6 P.R. 1911, Cr. = 153 P.L.R. 1911, 25 B. 179, 28 C. 709, 13 P.R. 1885, Cr., 16 C. 781 (787), *F.*; 26 M. 188, 2 C.L.J. 614, 34 A 533; *Diss.*; 1 P.R. 1913, Cr. = 139 P.L.R. 1913, *D.*)

(743)—Ss. 110 and 526—*See* SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1907, 268 = 30 A. 47 = 7 Cr. L J. 214, 16 A. 9 = A.W.N. 1893, 183.

(744)—*Ss.* 110, 526 (8)—*Security for good behaviour—Transfer of case—Adjournment of criminal case.*—*Held*, that, under s. 526 (8), Crim. Pro. Code, a Magistrate is perfectly competent to hear and record all the evidence for the prosecution, if he considered that the grounds which were set forth as reasons for transfer were insufficient and unlikely to be acceded to by a Superior Court. But when the evidence for the prosecution has been completed, it is the bounden duty of the Magistrate under the law to allow a fair and reasonable opportunity to the accused to apply for a transfer, before calling upon him for his defence. It is for the superior Court, and not for the Magistrate himself, to decide whether the grounds set forth for a transfer were good or not. Where no such opportunity was afforded and the person proceeded against under s. 110, Crim. Pro. Code, was required to furnish security for good behaviour, the Chief Court on revision quashed the proceedings as void. (24 P.L.R. 1904, *F.*; 31 C. 715, 33 C. 1183, 19 M. 375, 6 C.W.N. 719, *R.*) The Chief Court drew the attention of the officers trying cases for security under s. 110 of the Code to the cases reported in. BAGGU MAL v. KING-EMPEROR OF INDIA, **254 P.L.R. 1912 = 17 Ind. Cas. 58 = 13 Cr. L.J. 746 = 42 P. W.R. 1912, Cr. = 1 P.R. 1913, Cr.** (10 P.R. 1899, 27 P.R. 1903, Cr. *R.*) [*D.*, 5 P.R. 1914, Cr. = 154 P.L.R. 1914.]

(744-*a*)—*S.* 110, *cls.* (*a*) (*and*) (*f*)—*What is meant by evidence of general reputation—Value of evidence of Police officials and Ward headmen—Sureties need not be landholders.*—*Held*, that no order for security can stand when it is based on a charge not communicated to the applicant. *Held* that evidence of general repute must be evidence given by respectable persons who are acquainted with the person on trial, who live in the same neighbourhood and are aware of his reputation; mere evidence of suspicion that the applicant committed certain acts is not generally of any value, and especially so when given by persons responsible for the maintenance of order. *Held* that, though s. 110 provides for proceedings being taken against a person whom the police looks upon as a clever scoundrel and yet are unable to convict him of any particular offence and therefore desire to have him locked up, the section does not provide for an order being made without reasonable grounds. *Held* that the order requiring sureties to be respectable holders of landed property was an improper order framed with the express intention of preventing the applicant from furnishing security. Magistrates should see that sureties are such persons as are in a position to influence the applicant and are likely to be able to restrain him. NGA HEIN v. KING-EMPEROR, **8 Bur. L.T. 53.**

(745)—*S.* 110 (*d*)—*Forged documents—Obtaining decrees by means of—Neither cheating nor extortion—Applicability of s.* 110 (*d*) *to such cases—Joint trial—Association of two persons in the same offence—Proof of.*—The obtaining of decrees by means of forged documents is neither cheating nor extortion as defined in the Penal Code. S. 110, Crim. Pro. Code, does not apply to the case of a habitual forger having the reputation of bringing false claims upon forged entries in account books. (25 P.R. 1884, Cr., 28 P.R. 1900, Cr, *R.*) Two persons cannot be tried together unless their association in the same offences was made out. CROWN v. CHUNI, **21 P.R. 1914, Cr.**

(746)—S. 110, cl. (*d*)—*See* JOINDER OF CHARGES—GENERAL, 11 C.W.N. 789 = 6 Cr. L.J. 1.

(747)—*S.* 110 (*e*)—*Zemindar, when may be bound down for the oppressive acts of the naib*—

Crim. Pro. Code (Act V of 1898)—*continued.*

Private spite wreaked through public prosecution.—Offences involving a breach of the peace mean offences of which breach of the peace is an ingredient, and persons cannot be bound down under s. 110, cl. (*e*) of the Crim. Pro. Code, unless they are found to have habitually committed, attempted to commit or abetted the commitment of such offences. Where it was found that the naib of two co-sharer zemindars, who were brothers, had led several riots in their interest and had been convicted in several cases and that certain lathials were always employed to help their cause: *Held*—That one of them who was a *Mukhtear* practising and residing elsewhere and who was not shown to have been implicated in the acts should not have been bound down, but the other who resided at the place, and whose complicity was established by the evidence was rightly bound down. (31 C. 419, 30 C. 366, *R.*) The prosecution in this case being found to have been supported by persons more or less interested in the downfall and humiliation of accused: *Held, per Chatterjee, J.*—It is notorious that accusations under this section are constantly made with the object of blackening an enemy's character and of satisfying feelings of spite and hatred, and a Magistrate cannot be too cautious in making sure that proving intended for securing the peace of the community are not utilised for wreaking private vengeance under the *aegis* of a Crown prosecution. KALI PRASANNA BASU ROY CHOUDRY v. EMPEROR, **15 C.W.N. 366=38 C. 156=9 Ind. Cas. 916=12 Cr. L J. 164.**

(748)—*Ss.* 110 (*f*), 117—*Security for good behaviour—When to be ordered—Evidence of general repute—Admissibility.*—Where a person is solely charged under s. 110, cl. (*f*), evidence of general repute is not admissible, as a provision of law which is an exception to the general rules of evidence must be only applied to the cases to which it is confined by the Legislature. Such evidence is only admissible under s. 117 to prove that a person is a habitual offender. under s. 110, but not to prove a charge under s. 110, cl. (*f*) of being a desperate and dangerous character. *In re* MUTHU PILLAI, **8 M.L.T. 347=8 Ind. Cas. 493=11 Cr L J. 663.** (25 A. 273, 29 C. 779, 11 C.W.N. 789, *R.*; 13 C.W.N. 247, *D.*)

(749)—*Ss.* 110, *cl.* (*f*), 117—*Certain conduct held insufficient to justify demanding of security—Evidence of repute*—Evidence of repute is not admissible in cases coming under cl. (*f*), s. 110, Crim. Pro. Code. Where the imputations were that the petitioners had, from some time past, made themselves very objectionable in the neighbourhood and that they had been annoying the villagers in various ways, by kicking at their doors at nights or throwing brickbats on the roof and annoying respectable women, *held*, that these imputations, even if proved, do not constitute conduct so as to render the petitioners liable to give security for good behaviour by reason of their being so desperate and dangerous as to render their being at large without security hazardous

Crim. Pro. Code (Act V of 1898)—*continued.*

to the community. AKHOY KUMAR CHATTERJEE PUNCHANUN BAGIS v. QUEEN-EMPRESS, **5 C.W.N. 249.** [*F.*, 11 C.W.N. 789, 9 O.C. 69 =3 Cr. L.J. 290; *Expl.*, 4 Ind. Cas. 10=10 Cr. L.J. 460=13 C.W.N. 244.]

(750)—S. 111—*See* Nos. 692, 693, *supra.*

——**S. 112 (=1882, s. 112).**

See SECURITY BOND.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

(751)—*S.* 112 (=*Crim. Pro. Code,* 1861, s. 282)—*Report of a Subordinate Magistrate—Credible information.*—The report of a Subordinate Magistrate is "credible information" which will justify the issue of a notice to show cause why the person to whom the notice was issued should not give a recognisance to keep the peace. *In re* NELLIKEL EDATTHIL ITTI PUNGY ACHEN, **2 M.H.C. 240.** [*F.*, 6 B H.C. Cr. 1; *Appl.*, 1 Weir 51.]

(752)—*S.* 112—*Notice under the section without copy of the order.*—Where the requisition contained in the section, with reference to a notice being accompanied by a copy of the order, has not been complied with, the proceedings are invalid. *In re* SUBBA NAICKEN, **17 M.L.J. 438=6 Cr. L J. 332.**

(753)—*S.* 112—*Security for good behaviour—Surety to be able to control the accused—Condition invalid.*—The condition attached to a surety for good behaviour, demanded under s. 112 of the Crim. Pro. Code, that he should be able to control the accused, is not a desirable condition. EMPEROR v. JIVA NATHA, **16 Bom. L R. 138=2 Bom. Cr. C. 188=23 Ind. Cas 476 =15 Cr. L.J. 268.**

(754)—*S.* 112—*Surety—Restriction to local men—Jurisdiction of Magistrate.*—A Magistrate has no jurisdiction to put such a restriction upon the nature of the sureties under s. 112 of the Crim. Pro. Code, as to direct that they should be local; for such a restriction is not contemplated by the section. That is a matter which must be decided subsequently if objection is taken to the sureties on that ground by the Police authorities. ISLAM KHAN v. EMPEROR, **15 Cr. L J. 254=23 Ind. Cas. 206.**

(755)—S. 112—*See* Nos. 340, 415, 432, 570, 572, 573, 574, 638, 639, 692 to 700, *supra.*

(756)—*Ss.* 112, 114 *and* 115 *Application by police for binding over dangerous characters—Procedure.*—Where a general report by the police against a number of persons is made to a Magistrate for the purpose of binding them over, the Magistrate should sift the case against each, and proceed to pass an order against each under s. 112 of the Code. Where a Magistrate, instead of doing this, issued non-bailable warrants wholesale under s. 114 of the Code and they were not accompanied, as required by s. 115, by copies of the order passed

Crim. Pro. Code (Act V of 1898)—*continued.*

under s. 112, *held*, that the proceedings of the Magistrate were illegal. *In re* ABDUL RAHIMAN SAHIB, **2 Weir 55.**

(757)—*Ch.* VII, *ss.* 112, 114 *and* 167—*Power of Magistrate—Writing necessary.*—S. 167, Crim. Pro. Code, which authorizes a Magistrate to remand an accused to police custody pending investigation, does not apply to cases in which action is taken under s. 112, Crim. Pro. Code. A Magistrate acting under Ch. VIII of the Crim. Pro. Code has no power to act until after he has recorded an order in writing under s. 112; and no person is to be called upon to show cause under s. 112 until there is before the Magistrate some information recorded by himself which he has reason to believe. KING-EMPEROR v. RAMESHWAR, **12 A L J. 365=15 Cr. L J. 288=23 Ind. Cas. 496=36 A. 262.** (6 A. 132, 14 A. 45, 10 A.L.J. 351, *R.*)

(758)—*Ss.* 112, 117, 118 (=*Crim. Pro. Code,* 1882, *ss.* 112, 117 *and* 118)—*Order to give security for good behaviour.*—A person acquitted on a charge of dishonestly receiving stolen property, should not be ordered to give security under s. 118, Crim. Pro. Code, on the evidence taken on that trial; an order should be made under s. 112 and proceedings held under s. 117 of the Code. The amount of security demanded should be reasonable; and the Court should state whether the imprisonment in default of security is to be rigorous or simple. QUEEN-EMPRESS v. RAM PATTAN, **S.C. 70, Oudh.**

(759)—*Ss.* 112, 117, 118 (=*Crim. Pro. Code,* 1882, *ss.* 112, 117, 118)—*Order under s.* 118, *when can be supported.*—An order under s. 118 cannot be supported, if the procedure prescribed by ss. 112, 117 of the Code, is not followed. *In re* SAMI AIYANGAR, **2 Weir 56.**

(760)—*Ss.* 112, 117, 118—*Order to show cause terms of, if restricts scope of enquiry—Prejudice.*—The enquiry provided by ss. 117 and 118, Crim. Pro. Code, is not strictly limited by the terms of the order drawn up under s. 112 calling upon the accused to show cause why he should not execute a security bond to keep the peace or for his good behaviour, though, if the person eventually bound down can show that he was misled or prejudiced by the terms of the order, he would be entitled to relief. DEPUTY LEGAL REMEMBRANCER v. KADIR MIRZA, **17 C.W.N. 331=13 Cr. L.J. 784=17 Ind. Cas. 416.**

(761)—Ss. 112, 117 and 242—*See* SECURITY PROCEEDINGS, L.B.R. 1893—1900, 637.

(761-*a*)—*Ss.* 112, 118—*Power of Magistrates to impose restrictions and limitations on sureties.*—In imposing restrictions or limitations on sureties, Magistrates must not act arbitrarily. The circumstances of each case must be considered and any restrictions or limitations must be reasonable. NGA SHWE MYO v. KING-EMPEROR, **U B.R. 1914, 4th Qr., 44=16 Cr. L.J. 422=28 Ind. Cas. 998.** (U B.R. 1897—1901, Vol. I. 228, 20 A. 206, 4 C.W.N. 797, 24 P.R. 1900, *R.*).

Crim. Pro. Code (Act V of 1898)—*continued.*

(762)—*Ss.* 112, 118—*Notice to give security for a certain period—Order to give security for longer period—Validity.*—Where the notice under s. 112, Crim. Pro. Code is to show cause why the defendant should not give security for good behaviour for three months, the order issued under s. 118 cannot require the furnishing of security for more than three months. BELAGAL RAMACHARLU v. EMPEROR, **26 M. 471=2 Weir 56.**

(763)—Ss. 112, 118 and 439—*See* SECURITY FOR GOOD BEHAVIOUR, 11 P.W.R. 1907, Cr.=5 Cr. L.J. 219.

(764)—Ss. 112, 118, 514—*See* SECURITY TO KEEP THE PEACE—FORFEITURE OF SECURITY, 26 P.R. 1894, Cr.

(765)—Ss. 112, 119 and 437—*See* SECURITY FOR GOOD BEHAVIOUR, 6 O.C. 262.

(766)—*Ss.* 112 *and* 122—*Power to reject sureties—Discretion of Magistrate, how to be exercised—Record of reasons—Power of High Court to interfere with the order.*—In determining whether or not a surety is "respectable" within the meaning of that term as used in the order under s. 112, the Magistrate may fairly demand a reasonable degree of social importance and influence, and, if it be found, on proper enquiry, that the income of any surety offered is such as to make it reasonably certain that he does not possess that degree of social importance and influence, such surety may be rejected. What the standard of respectability should be in any particular case must be left to the Magistrate to determine. The Magistrate is justified in using and applying his knowledge of his division when acting under s. 122, and if he knows that the inhabitants generally of a village bear a bad character, he is justified in rejecting as unfit any such inhabitant who may be offered as a surety, provided that he records his reasons for so doing. The duty of the High Court is merely to see that the Magistrate has exercised his authority with reasonable discretion and has infringed no rule of law. IMPERATOR v. DIN MAHOMED, **3 S.L.R. 168, Cr.=4 Ind. Cas. 1153=11 Cr. L.J. 198.**

(767)—Ss. 112 and 122—*See* SURETY, 8 Cr. L.J. 166=1 S.L.R. 46, Cr.

(768) —*Ss.* 112, 122, *ch.* VIII *and sch.* V—*Order under s.* 112—*Nature—Directions to be clear—Requiring sureties to be men of equal standing—Not unreasonable—Sureties not possessed of sufficient land—Being residents of same village and members of same caste—Inability to exercise physical control over accused—Police Officer's opinion of sureties—Not valid grounds for their rejection—Sureties able to watch movements of accused—Sufficiency — Surety bond—Three executants—Joint and several liability—Recovery of sum named in the bond—Whether can be effected more than once—Proceedings under s.* 122—*Nature—How far judicial.*—The object of Ch. VIII is not to consign bad characters to jail, but to prevent them from committing offences and to allay public apprehension. The

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order under s. 112 must be such that, if a suspect have a *bona fide* intention to be of good behaviour, it will not be impossible for him to find sureties, and the order should also be clear in its provisions. It is not unreasonable to stipulate that the surety should be of at least equal standing to the accused. It is unreasonable for a Magistrate to reject sureties as of inferior standing, merely because they are not Zamindars with at least 300 acres of land registered in their name. If the Magistrate considered it necessary to limit the sureties to such a class, he should have so stated in his order under s. 112. When three sureties sign a bond in the form given in sch. V, Crim. Pro. Code, they are jointly and severally liable to pay the amount of the bond, but all three of them cannot be called on to pay the whole amount; the sum named can only be recovered once. It is obviously unfair to an accused person to order him to produce sureties living in his neighbourhood and then to reject the men offered because they live in the same village as the accused. Nor is it reasonable to reject a surety merely because he is of the same caste as the accused, unless the order under s. 112 has imposed such a restriction. Though it is not contemplated and it is not necessary that all proceedings under s. 122 should be of a formal judicial character, yet, where the issue whether or not the accused shall be committed to prison is narrowed down to the question whether a particular person is in the opinion of the Magistrate a fit person to be surety, the Magistrate cannot properly base his order on an adverse opinion formed on statements which no judicial tribunal could accept as evidence. A surety should not be rejected merely because a police officer informs that he is of bad character, when such rejection involves the committal of the person to prison. (4 S.L.R. 18, 37 C. 91, *R.*) A Magistrate cannot reject sureties because they offered themselves unwillingly or out of pity for the accused's children, or because they were not of standing sufficient to restrain the accused from stealing. It is not in itself a disqualification that a person cannot exercise active physical control over the accused. It is no doubt an advantage in a surety to be in a position to send for the accused from time to time, to question and warn him or to put physical restraint on him; but a man may be a satisfactory surety if he is in a position to ascertain how the accused is behaving, and if he is also of such character and standing that he would not hesitate to apply for cancellation of his bond if he saw risk of forfeiture. MAHOMED IBRAHIM WD. MAHOMED HAYAT v. CROWN, **8 S.L.R. 173=16 Cr. L.J. 100=27 Ind. Cas. 148.**

(769)—*Ss.* 112, 123, 406 (=*Crim. Pro. Code, Act* X *of* 1882, *ss.* 112,123,406)—*Security—Order by Sessions Court—Appeal—Transfer to District Magistrate.*—Where a Sessions Judge, to whom an appeal was preferred from an order under s. 112 of the Crim. Pro. Code, passed by a Magistrate which the Judge had made absolute with some modification under s. 123, transferred the appeal to the District Magistrate, *held* that the appeal was virtually from an order of the Sessions Judge and that s. 426 did not apply. *In the matter of the petition of* HARIDAS, **A.W.N. 1891, 219.**

——S. 113 (=1882, s. 113).

(770)—S. 113—*See* Nos. 692, 693, 696, 701, *supra.*

—— S. 114 (=1882, s. 114).

(771)—S. 114—*See* Nos. 432, 692, 693, 697, 698, 756, 757, *supra.*

(772)—Ss. 114 and 496—*See* BAIL, 6 C.P.L. R. Cr. 31.

——S. 115 (=1882, s. 115).

(773)—S. 115—*See* Nos. 692, 693, 756, *supra.*

—— S. 116 (=1882, s. 116).

(774)—S. 116—*See* Nos. 692, 693, *supra.*

(775)—*Ss.* 116 *and* 121—*Scope of s.* 116 —*Applicability of s.* 205.— The Code makes a marked distinction between bonds for keeping the peace and bonds for good bahaviour, and s. 116 is limited to the former. S. 205 is not applicable to proceedings under Ch. VIII-B. Therefore a person called upon to show cause why he should not be bound over for good behaviour cannot be permitted to appear by an agent. *In re* TAYAKAT VASUDEVAN TIRUNAMBU, **2 Weir 54=2 Weir 253.**

——S. 117, paras 1, 2, 3 (= 1882, s. 117); para 4, new.

See SECURITY BOND.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

(776)—*S.* 117.—Under s. 117, Crim. Pro. Code, a Magistrate is bound to inquire into the truth of the information, in the manner prescribed for conducting trials and recording evidence in warrant cases, though the accused may undertake to give security. KING-EMPEROR v. NGA YAN SHIN, **1 U.B R. 1902—1903, Crim. Pro. Code, 1.**

(777)—*S.* 117 (=*Crim.Pro.Code*, 1882, *s.* 117) —*Evidence of general repute.*— Evidence of rumour is mere hearsay evidence of a particular fact. Evidence of repute is a totally different thing. A man's general reputation is the reputation which he bars in the place in which he lives amongst all the townsmen and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute, that is strong evidence that he is a man of that character. On the other hand, if the state of things is that the body of his fellow-townsmen, who know him, look upon him as a dangerous man and a man of bad habits, that is strong evidence that he

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is a man of bad character. But rumours in a particular place that a man had done particular acts or has characteristics of a certain kind are not evidence of general repute. RAI ISRI PERSHAD v. QUEEN-EMPRESS, 23 C 621. [*F.*, A.W.N 1903, 181, 1 L.B.R. 71, 1 L.B.R 90, *R.*; 31 C. 783, 10 O.C 132, U.B.R. 1897—1901, Cr. 228, 10 O C. 168; *D.*, 35 C. 243=7 C.L.J. 177=12 C.W.N. 299=7 Cr. L. J. 146.]

(778)—*S.* 117—*Security demanded—Evidence of co-accused.*—The applicant, with certain others, was called upon to furnish security for keeping the peace. He denied the charge. The Magistrate, relying on the statements of the other accused persons and the police report, ordered the applicant to furnish security ; *held* the Magistrate was bound under s. 117, Crim Pro. Code, to make an enquiry into the truth of the police report, and no such enquiry having been made, the order was bad and must be set aside. MUL CHAND v. KING-EMPEROR, **12 A.L.J. 1262=16 Cr.L.J. 61= 37 A. 30=26 Ind. Cas. 653.**

(779)—*S.* 117—*Proceedings under—Rules of evidence — General repute.*—Enquiries under ch. 8 of the Code of Criminal Procedure are governed by the ordinary rules of evidence and evidence which is not admissible under the Evidence Act cannot be admitted in proceedings under s. 117 of the Code of Criminal Procedure. Evidence of general repute may be either evidence as to the general opinion of the neighbourhood or community in which the person concerned lives or to which he belongs, or the personal opinion of the witnesses who are examined. BECHAI v. KING-EMPEROR, **12 A.L.J. 937=15 Cr.L.J. 705=26 Ind. Cas. 153.**

(780)—S. 117—*See* Nos. 338, 566, 574 to 579, 640, 692, 693, 696, 699, 702 to 710, 748, 749, 758, 759, 760, 761, *supra* and 2572, *infra.*

(781)—Ss. 117 and 145—*See* TRANSFER OF CRIMINAL CASES—TRANSFER BY OTHER COURTS, 2 L.B.R. 80.

(782)—*Ss.* 117 *and* 242—*Proceedings under s.* 117—*Procedure—Failure to conform to provisions of s.* 242—*Revision.*—A Sub-Divisional Magistrate proceeding under s. 117 as nearly as practicable in the same way as under s. 242, Crim. Pro. Code, has to state to the accused the particulars of the matter against them, and ask them if they could show cause why they should not be required to execute bonds. An order of the Sub-Divisional Magistrate who failed to do so, being irregular, should be set aside. *In re* PALANIAPPA ASARY, **7 M.L.T. 304=6 Ind. Cas. 682=11 Cr.L.J. 393=1910 M.W.N. 228.**

(783)—*S.* 117 (3)—*Security for good behaviour —Evidence of general repute.*—The power given by s. 110 is an extensive one, and one which requires to be exercised with discretion and with caution. For the purpose of ascertaining whether a person is an habitual offender, evidence of general repute may be accepted. EMPEROR v. JAGANNATH, **A.W.N. 1903, 181.** (23 C. 621, *F.*).

Crim. Pro. Code (Act V of 1898)—*continued.*

(784)—S 117 (3)—*See* BUR. ACT I OF 1899, s. 17, U.B.R. 1897—1901, Vol. I, 228.

(785)—Ss. 117 (4), 537—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 5 N.L. R. 65=9 Cr.L.J. 560=2 Ind. Cas. 240.

——S. 118 (=1882, s. 118).

See SECURITY BOND.
See SECURITY FOR GOOD BEHAVIOUR.
See SECURITY PROCEEDINGS.
See SECURITY TO KEEP THE PEACE.

(786)—*S.* 118—*Excessive security.*—The second proviso to s. 118 is that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive. Where, although upward of two and a half months had elapsed since the date of the Magistrate's order requiring security, the person asked to furnish security had not been able to do so and was in prison, the High Court reduced the amount of the sureties. QUEEN-EMPRESS, v. RAZA ALI, **23 A. 80=A.W.N. 1900, 204.** (16 B. 372, *F.*).

(787)—*S.* 118 (=*Crim. Pro. Code*, 1882, *s.* 118) —*Order under—Nature of.*—An order under s. 118, Crim. Pro. Code, clearly does not amount to a conviction of an offence. QUEEN-EMPRESS v. PO WIN, **L.B R. 1872-1892, 490.**

(788)—*S.* 118—*Leave to appeal to Privy Council—Order passed by High Court in Criminal revision—Calcutta Letters Patent* (1865), *cl.* 41.—No appeal lies under cl. 41 of the Calcutta Letters Patent to His Majesty in Council, against an order passed by the High Court on the appellate side, under s. 118 of the Code of Criminal Procedure, under which the petitioner was bound down to be of good behaviour for a period of three years and was required to execute a bond with two sureties. CHINTAMAN SINGH v. KING-EMPEROR, **18 C.L.J. 119=21 Ind. Cas. 470=14 Cr. L.J. 598.**

(789)—*S.* 118—*Security for good behaviour—Reasons for rejecting sureties.*—In a case under s. 118, a Magistrate rejected certain sureties on the ground that they did not live within a radius of five miles of the place where the accused person lived. *Held*, that the order was bad and there was no valid ground for rejecting the sureties. HASIN-UD-DIN v. KING-EMPEROR, **10 A.L.J. 354=17 Ind. Cas. 575=13 Cr.L.J. 831.**

(789-*a*)—*S.* 118—*Proceedings pending—Some defence witnesses called upon to show cause why they should not be prosecuted under s* 193, *Penal Code—Accused prejudiced—Order, whether sustainable.*—Where proceedings under s. 118, Crim. Pro. Code, were still pending against an accused, the Magistrate called upon some of the defence witnesses to show cause why they should not be prosecuted under s. 193, Penal Code, whereby the other defence witnesses were frightened and did not give evidence : *Held*, that the action of the Magistrate was highly injudicious and was calculated seriously to hamper and prejudice the accused and the order under

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s. 118 could not be sustained. KEDAR MULLICK v. EMPEROR, **16 Cr.L.J. 114=27 Ind. Cas. 178.**

(790)—S. 118—*See* PENAL CODE, s. 75, L.B. R. 1872—1892, 490.

(791)—S. 118—*See* SURETY, 18 P.R. 1906, Cr. = 14 P.L.R. 1907 = 5 Cr.L.J. 148 = 5 P.W.R. 1907, Cr.

(792)—S. 118—*See* Nos. 338, 574, 576, 580, 581, 617, 641, 642, 643, 692, 693, 698, 705, 711, 712, 713, 714, 715, 716, 758, 759, 760, 762, 763, 764, *supra*, and 814, 859, 3347, 3811, 4045-*a infra.*

(793)—*Ss.* 118, 120, 123—*Order under s.* 123, *when to be passed.*—S. 120 authorises that the period for which security is required in an order under s. 118 shall commence on the expiration of any sentence which the accused may be sentenced to or undergoing at the time when the order is made. But it is premature and illegal to pass against him an order under s. 123 while such imprisonment lasts. The order under s. 123 should not be passed until the expiry of any term of imprisonment which a person may be undergoing. EMPEROR v. RANGYA *bin* HANMAPA, **4 Bom. L.R. 934.**

(793-*a*)—*Ss.* 118, 120, 123—*Security, failure to give—Imprisonment, whether can run concurrently with sentence accused already undergoing.*—S. 120 (1) read with s. 123 (1) of the Code of Criminal Procedure makes it illegal for a Magistrate to pass a sentence of imprisonment to run concurrently with some other sentence the accused is already undergoing. *In re* CHINNASWAMY, **16 Cr. L.J. 272=28 Ind. Cas. 160.**

(794)—*Ss.* 118 *and* 123—*Security for good behaviour—Failure to furnish—Solitary confinement.*—Where a person who has been asked to furnish security for his good behaviour fails to do so, the Magistrate has no power to order solitary confinement. KUNDAN v. KING-EMPEROR, **12 A.L.J. 823=36 A. 495=15 Cr. L.J. 616=25 Ind. Cas. 528.**

(795)—*Ss.* 118, 123—*Order for security for more than one year and imprisonment for two years on failure—Validity.*—Where a Magistrate ordered the accused to give security for a period of more than one year, and by the same order directed that, on failure to give security, he should be imprisoned for two years, *held*, that the order was made without jurisdiction and could not be cured by the District Magistrate reducing the period of security to one year and the period of imprisonment in default of giving security to one year. *In re* SYED AHMED SAHIB, **2 Weir 57.**

(796)—Ss. 118 and 123—*See* APPEAL—CASES WHERE APPEAL DOES NOT LIE, 23 P.R. 1886, Cr.

(797)—*Ss.* 118, 123, 128 (=*Crim. Pro. Code*, 1882, *ss.* 118, 123, 128)—*Award of imprisonment passed in anticipation of failing to give security —Validity.*—S. 118 does not authorize the award of imprisonment in anticipation of the accused failing to give security. QUEEN-EMPRESS v. SHIVRAYA, **Rat. Un. Cr. Cas. 395 =Cr. Rg. 52 of 1888.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(798)—*Ss.* 118, 123, 397 (=*Crim. Pro. Code*, 1882, *ss.* 118, 123, 397)—*Imprisonment in default of giving security—Sentence on offender already sentenced for another offence.*—The imprisonment ordered in default of giving security is not a punishment for another offence. Therefore, when a sentence of imprisonment on conviction for an offence is passed upon a person already imprisoned for default of giving security under s. 123, the commencement of the sentence on the conviction ought not to be postponed until the termination of the imprisonment under the security order. QUEEN EMPRESS v. NGA SHWE BYO, **L.B.R. 1872—1892, 364.**

(799)—*Ss.* 118, 123, 406, 439—*Appeal or revision from orders requiring security for good behaviour—Irregularity.*—Where a Magistrate, acting under s. 118, Crim. Pro. Code, submitted his order requiring the accused to execute a bond with sureties for confirmation to the Sessions Judge, and the Sessions Judge, before whom the accused did not claim any right of appeal under s. 406, Crim. Pro. Code, confirmed the order, *held*, on revision, that orders under s. 118, Crim. Pro. Code, which embrace orders requiring the confirmation of the Sessions Judge under s. 123 and those not so requiring, being appealable under s. 406, Crim. Pro. Code, to the District Magistrate, the accused should have so appealed, and that, as he had been in no way prejudiced by the order of the Sessions Court, revisional interference was not necessary. SUBBA v. CROWN, **2 O.C. 307.** [*R.*, 11 Cr. L.J. 725 = 8 Ind. Cas. 879 = 13 O.C. 354.]

(800)—Ss. 118, 123 (1 to 6 except 4), 438 (1) —*See* REFERENCE TO HIGH COURT, 23 C. 249.

(801)—*Ss.* 118, 406—*Appeal from an order to give security to keep the peace.*—Although s. 406 gives a right of appeal to the District Magistrate from an order to give security for good behaviour, there is no right of appeal from an order to give security to keep the peace. *In the matter of the petition of* CHET RAM, **27 A. 623=A.W.N. 1905, 135=2 A.L.J. 716.** [*R.*, 14 Cr. L.J. 546 = 21 Ind. Cas. 456 = 25 M.L.J. 459 = 14 M.L.T. 28 = 1913 M.W.N. 715.]

(802)—*Ss.* 118, 406 (=*Crim. Pro. Code*, 1882, *ss.* 118 *and* 406)—*Appeal from an order under s.* 118—*Local enquiry.*—A Magistrate hearing an appeal from an order under s. 118, Crim. Pro. Code, made a local enquiry, but did not place on the record the information which he obtained in the course of such enquiry. *Held*, that, as there was room to presume that the results of the enquiry would have influenced the mind of the Court either for or against the appellant, there was sufficient ground for ordering a re-hearing of the appeal. *In the matter of the petition of* KALA, **A.W.N. 1896, 73.**

(803)—Ss. 118, 406—*See* BUR. ACT I OF 1899, s. 17, U.B.R. 1897—1901, Vol. I, 227.

(804)—*Ss.* 118 (3) *and* 562—*Security proceedings—Minor need not execute personal bond —Burma Gambling Act, s.* 17.—Under cl. (3)

Crim. Pro. Code (Act V of 1898)—*continued.*

of s. 118, Crim. Pro. Code, the personal bond of a minor is not required. It is sufficient if the bond is executed by his sureties. The provisions of s. 118, cl. (3) are generally applicable to bonds given in criminal cases, and would apply to bonds given under s. 562, Crim. Pro. Code and under s. 17 of the Burma Gambling Act. KING-EMPEROR v NGA CHON, **2 L.B. R. 168.** [*R.*, 4 L.B.R. 12.]

(805)—*S.* 118, *Prov.* (2)—*Security for good behaviour—Considerations for fixing the amount of security.*—The character and reputation of a suspect are not the sole considerations on which the amount on security should be determined and fixed. The amount should not be excessive or prohibitive, and it should be fixed after considering the station in life of the accused. FIRAL v. EMPEROR, **12 Cr. L J. 110=9 Ind. Cas. 651 =5 S.L.R. 10.** (16 B. 372, *F.*)

(806)—Ss. 118, proviso (3), 562—*See* SECURITY FOR GOOD BEHAVIOUR, 4 L B.R. 12=6 Cr. L.J. 123.

——**S. 119 (=1882, s. 119).**

See SECURITY BOND.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

(807)—*S.* 119—*Discharge of person informed against on ground that Police report of date mentioned in proceedings not in existence—Mistake of date– Second proceeding based on report of real date, if barred.*—Proceedings were drawn up against the petitioners and terminated in their discharge under s. 119 of the Crim. Pro. Code. The proceedings purported to have been based on a Police report dated July 27th, 1912, and the Magistrate discharged the petitioners on the ground that no such report was in existence. The Police report was dated July 29th, 1912, but in the proceedings, by mistake, July 27th, 1912, was put down. Another Magistrate drew up the present proceedings against the petitioners on the Police report of July 29th, 1912. *Held*, that as the present proceedings were based on a Police report which was not the foundation of the former proceedings, these proceedings were not invalid. CHANDAN SAHU v. BHADAI RAI, **14 Cr. L.J. 189=19 Ind. Cas. 189.**

(808)—S. 119—*See* Nos. 574, 577, 578, 582, 693, 765, *supra* and 3933, 3934, 3936, *infra.*

(809)—*Ss.* 119, 209, 253, 259, 437—*Order of 'discharge under s.* 119'—*Jurisdiction of District Magistrate to direct 'further inquiry' under s.* 437—*Scope and applicability of s.* 437—*'Discharge'—Meaning.*—Where a Magistrate, after hearing the evidence adduced on behalf of an accused person, 'discharges' him under s. 119, Crim. Pro. Code, *held*, that a District Magistrate has no jurisdiction to order further inquiry under s. 437 of the Code. S. 437, Crim. Pro. Code, undoubtedly applies to disposals under ss. 253 and 259 and possibly to a disposal under s. 209 also. But the discharge under s. 119 is a different matter. The jurisdiction given by s. 437 should not be applied to cases under ch. VIII, at any rate, to cases where before making an order under s. 119, the Magistrate has called on the person, into whose conduct the inquiry is made, to establish his defence. The term 'discharge' may have two meanings and s. 119 indicates that its meaning in that section is non-technical. The 'discharge' of s. 119 is merely 'a permission to depart.' VELU TAYI AMMAL v. B. CHIDAMBARA VELU PILLAI, **6 M.L.T. 133=33 M. 85=20 M.L J. 137=4 Ind. Cas. 1057=11 Cr. L.J. 162.**

(810)—*Ss.* 119, 437—*Release or discharge—Fresh proceedings.*—An order under s. 119 of the Crim. Pro. Code disposing of a case on a finding that it was not necessary to order security to be furnished, whether it amounts to an order of discharge or release, is no bar, under s. 437, to the institution of a fresh security proceeding against the same person. QUEEN-EMPRESS v. RATTI, **A.W.N. 1899, 203.** [*F.*, 24 A. 148; *R.*, A.W.N. 1900, 206, 6 O.C. 262, 36 A. 147=12 A.L.J. 167=15 Cr. L.J. 39=22 Ind. Cas. 183.]

(811)—*Ss.* 119, 437—*Ch.* VIII — *Order of discharge under s.* 119 *cannot be revised—District Magistrate cannot order further inquiry—May start fresh proceedings on fresh materials.* —S. 437, Crim. Pro. Code, does not apply to proceedings under Ch. VIII of the Code. Therefore, a District Magistrate cannot order further inquiry into the case of a person discharged under s. 119 of the Code, but it is open to him to institute fresh proceedings on entirely fresh materials. It is proper to give notice to the person discharged before an order for further inquiry is made against him. ISMAIL v. A. H. NOLAN, **U B R. (1914) 1st Qr. p. 3=24 Ind. Cas. 843=15 Cr. L J. 531.**

(812)—*S.* 119 (1) (c) (=*Crim. Pro. Code,* 1872, *s* 142)—*Petitions relating to criminal charges transmitted by post.*—It is not incompetent for a Magistrate to receive and to take action on petitions relating to criminal charges when transmitted to him by post. In such a case, the Magistrate must act upon his own discretion. HIGH COURT PROCEEDINGS, 20TH SEPTEMBER, 1879, NO. 1561-*a*, **2 Weir 149.** [*D.*, 2 Weir 467.]

——**S. 120 (=1882, s. 120).**

(813)—S. 120—*See* Nos. 519, 693, 717, 793, 793-*a*, *supra.*

(814)—*Crim. Pro. Code, ss.* 120, *cls.* (1), (2), 110, 118, 123, 327—*Postponement of order for security—Imprisonment in default of security.*—N. K., was, on the 7th April, 1900, ordered to execute a bond for his good behaviour, and, in default, to be rigorously imprisoned for one year. He failed to do so and was consequently imprisoned. On the 3rd May, 1900, N.K. was sentenced to undergo rigorous imprisonment for one year for an offence under s. 451, I.P.C., committed on the 27th December, 1899. The Magistrate ordered that " the unexpired portion

Crim. Pro. Code (Act V of 1898)—*continued.*

of the award under s. 110, Crim. Pro. Code, will, under s. 120 (1), Crim. Pro. Code, be resumed on the expiry of the present sentence." *Held*, that s. 120 (1), Crim. Pro. Code, was inapplicable and that the order directing the unexpired portion of the imprisonment, ordered under s. 110, Crim Pro. Code, to take effect after the substantive sentence or imprisonment, was illegal, as the person in respect of whom an order was made under s. 110, Crim. Pro. Code, was not, when the order was made, sentenced to, or undergoing a sentence of, imprisonment, and cl. (2) of the same section does not enable the Magistrate, who tried the offence under s. 451, I.P.C., to alter the date fixed by the Magistrate who made the order under s. 123, Crim. Pro. Code for commencement of the period of imprisonment. QUEEN-EMPRESS v. NGA KYON, **1 L.B.R. 14.** (L.B.R. 1872—1892, 364, *D.*)

——**S. 121 (=1882, s. 121).**

See SECURITY BOND.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

(815)—*S.* 121—*Bond for security for good behaviour—Subsequent unexplained possession of valuable clothes—Forfeiture.*—Where a person, who was ordered to give security for good behaviour, was found in possession of costly clothes for which he could not satisfactorily account and the police applied for an order for forfeiture of the security bond, *held*, that there was no breach of the bond. *In re* VENKATARATNAM, **2 Weir 57.**

(816)—*S.* 121—*Bonds for good behaviour—Grounds of forfeiture—Section exhaustive.*—Where an accused is not shown to have committed an offence, or to have attempted to do so, or to have abetted such a thing, *held*, his bond for good behaviour could not be forfeited under s. 121, Crim. Pro. Code. S. 121, Crim. Pro. Code, is explicit, and, so far as bonds for good behaviour are concerned, is exhaustive, though it might not be so as regards bonds for keeping the peace. CROWN v JALAL SHAH, **5 P.R. 1910, Cr. = 169 P L.R. 1910 = 8 P.W.R. 1910, Cr. = 5 Ind. Cas. 827 = 11 Cr. L.J. 259.** (2 M. 169, *Diss.*)

(817)—S. 121—*See* Nos. 693, 718, 719, 775, *supra* and 3812, *infra*.

(817-*a*)—*Ss.* 121, 110—*Security for good behaviour—Principal committing offence—Bond of sureties—Liability to forfeiture—Legality.*—M was called upon under s. 110, Crim. Pro. Code, to give security for Rs. 1,000 for good behaviour for one year, and A and B were accepted as sureties. During the period of security M was convicted under s. 325, Indian Penal Code. A and B were thereupon ordered to pay Rs. 500 on their bail bonds. On appeal to the District Magistrate, A and B were ordered to forfeit Rs. 250 each. *Held*, on revision, that there was nothing wrong in the reduced penalty exacted by the District Magistrate from the sureties.

Crim. Pro. Code (Act V of 1898)—*continued.*

The order of confiscation was correct and was not opposed to the ruling in 15 P.R. 1913, (Cr.) CROWN v. SHER SINGH, **10 P.R. 1915, Cr.** (15 P.R. 1913, Cr. *Expl.*)

(818)—Ss. 121 and 367—*See* JUDGMENT, L.B.R. 1893—1900, 626.

(819)—*Ss.* 121, 438, 514 *and* 515—*Forfeiture of security—Appellate Court incompetent to refer to the Chief Court a case in which appeal lies to it.*—*Held*, that, a District Magistrate, while taking cognizance of a case as an appellate Court, has no power to report it to the Chief Court under s. 438 (1) or any other section of the Crim. Pro. Code. He is bound to decide it according to his own discretion, leaving the aggrieved party to take such steps as may appear advisable to get it set aside by the higher authority, but he is incompetent to divest himself of his powers as an appellate Court merely because he either misunderstands or disapproves of certain published rulings. *Held*, also, that the head-note of P.R. No. 15 of 1913 (Cr.) is misleading and it goes beyond the terms of the judgment. In it the Chief Court has not overlooked the provisions of s. 121, Crim. Pro. Code, and has not laid down any hard and fast rule prohibiting the forfeiture of security under certain circumstances. All that the ruling indicates is the necessity for moderation and the reasonable exercise of discretion in determining the extent, if any, to which a conviction would justify the rigorous measure of forfeiture. BEGA SINGH v. CROWN, **7 P.W.R. 1914, Cr. = 62 P.L.R. 1914 = 15 Cr. L.J. 485 = 24 Ind. Cas. 573.** (15 P.R. 1905, Cr., *R*)

——**S. 122 (=1882, s. 122).**

See SECURITY BOND.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

(820)—*S.* 122—*Sureties, grounds for refusing.*—A Magistrate should not refuse to accept as sureties persons otherwise fit, because those persons are relations of the person ordered to give security. On the other hand, it is a most useful qualification in the persons tendered as sureties, if they be in other respects suitable. EMPEROR v. SHIB SINGH, **25 A. 131 = A.W.N. 1902, 197.** [*F.*, 142 P.L.R. 1914 = 6 P.R. 1914, Cr. ; *R.*, 8 Cr. L.J. 166 = 1 S.L.R. 46.]

(821)—*S.* 122—*Sureties for good behaviour.*—The fact that a proposed surety has, on one occasion offended against the law and been punished for an offence under the Indian Penal Code, does not of itself render such person for ever afterwards unfit to be the surety of a party who is required to give security for good behaviour. EMPEROR v. RAGHUNATH SINGH, **26 A. 189 = A.W N. 1903, 220.**

(822)—*S.* 122—*Inquiry as to fitness of surety—Recording evidence on oath.*—A Magistrate holding an enquiry as to the fitness of a surety has power to record evidence on oath in the

exercise of the power and duty conferred and imposed on him by s. 122. EMPEROR v. GHULAM MUSTAFA, 26 **A. 371 = A.W.N. 1904,** 52. (A.W.N. 1898, 154, A.W N. 1903, 36, *R.*) [*R.*, 10 Cr.L.J. 225 = 2 S.L.R. 11.]

(823)—*S.* 122—*Magistrate — Discretion in rejecting sureties—Police report.*—The Magistrate has a wide discretion under s. 122 to accept or reject a certain surety. This discretion can, however, be exercised after a satisfactory enquiry in accordance with law. Where a Magistrate, acting on police report only, refused to accept certain persons as sureties, *held* that, there having been no enquiry, the order was bad. BHAWANI SINGH v. KING-EMPEROR, **12 A.L.J. 1004 = 26 Ind. Cas. 646 = 16 Cr. L.J. 54.** (27 A. 293, *F.*)

(824)—*S.* 122—*Surety— Rejection — Order based on Magistrate's personal knowledge—No enquiry—Illegality—Necessity for enquiry before passing order—Nature of enquiry under s.* 122. —Where a Magistrate refused to accept a person as a surety stating that he knew from magisterial experience that such person's innocence of connection with thieves is far from established. *Held*, that the Magistrate was not justified in relying on his personal knowledge and dispensing with an enquiry and taking no evidence at all, and that he should examine the sureties as to their fitness and take such evidence as the accused may give and base his decision on the evidence so recorded (*a*). (2 S.L. R. 11, 2 S. L. R. 15, 4 S. L R. 18 *R*) An enquiry under s. 122, Crim. Pro. Code, is a judicial enquiry and a Magistrate cannot import his own personal knowledge without giving evidence. CROWN v. PIRU ABDULLA, **7 S.L. R. 94 = 15 Cr. L.J. 378 = 23 Ind. Cas. 746.**

(825)—*S.* 122—*Surety— Good behaviour—Fitness of surety.*—The ground of refusal by a Magistrate to accept a surety for good behaviour under s 122 of the Crim. Pro. Code, must be valid and reasonable and must be dealt with in each case as it arises (*a*). (22 W.R. Cr 37, 6 Ind. Cas. 668 = 14 C.W.N. 666 = 11 Cr. L.J. 392 = 37 C. 446, *F.*) Where a Magistrate refused to accept as sureties, under s. 122 of the Code, the brothers of the person bound down to be of good behaviour, because he considered them unfit for the reason that the person bound down was a notorious dacoit and there was a consensus of opinion that his brothers would not be able to keep him in control :—*Held*, that the reason was a reasonable and valid one. ASIRADDI MANDAL v. EMPEROR, **15 Cr. L.J. 169 = 22 Ind. Cas. 745 = 41 C. 764.**

(826)—S. 122—*See* SURETY, 2 S.L R. 15, Cr. = 10 Cr. L J. 230.

(827)—S. 122—*See* Nos. 644, 645, 693, 720, 721, 722, 723, 766, 767, 768, *supra.*

(828)—*Ss.* 122, 123—*Fitness of surety*—Onus—*Order passed by Sessions Court—Jurisdiction of Magistrate to decide fitness of surety.*—The person required to furnish security should prove to the satisfaction of the Magistrate that the surety is a person fit. The Magistrate should decide this on evidence and on a proceeding which is judicial. But he cannot decide in anticipation, without taking any evidence, that no evidence but that of a particular class of witnesses will satisfy him. The word "Magistrate" in s. 122 implies the Magistrate who made the order of his successor in office who is properly seised of the inquiry. The same is the case with the superior Courts mentioned in s 123. An order made under s. 123 (3) is not an order confirming the Magistrate's order. Therefore, the Magistrate has no jurisdiction to decide on the fitness of sureties on a bond ordered by the Sessions Court. When the order is of the latter Court, the adequacy of the security should be decided by that Court. IMPERATOR v. ALLAHDINO, **12 Cr. L.J. 410 = 1 S L.R 87.**

——**S. 123, paras. 1, 2, 3, 5, 6 (= 1882, s. 123), para 4, new.**

See SECURITY BOND.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

(829)—*S.* 123—*Person imprisoned for failure to give security—When imprisonment begins.*—While a person, who is committed to prison under s. 123, Crim. Pro. Code, for failure to give security to be of good behaviour, is sentenced to imprisonment on conviction of an offence, the term of imprisonment cannot be deferred but must commence at once. EMPEROR v. DURGA BAHIRAV, **6 Bom. L.R. 1098.** [*R.*, 37 B. 178 = 14 Bom. L.R. 965 = 1 Bom. Cr. Cas. 209 = 13 Cr. L.J. 849 = 17 Ind. Cas. 785.]

(830)—*S.* 123 (= *Crim. Pro. Code,* 1882, s. 123)—*Security for good behaviour—Appeal.* —No appeal lies to the High Court from an order by a District Magistrate under s. 123 of the Crim. Pro. Code, confirmed by the Sessions Judge on reference, detaining a person in prison till he should provide security for good behaviour. CHAND KHAN v. EMPRESS, **9 C. 878.** [*F.*, P L.R. 1900, p. 59 = 15 P.R. 1900, Cr.; *Compare*, L.B.R 1893-1900. 381 ; *R.*, 15 Cr. L.J. 372 = 23 Ind. Cas. 740 = 7 S.L.R. 80.]

(831)—*S.* 123 (= s. 123, *Crim. Pro. Code,* 1882)—*Jurisdiction of Joint Sessions Judge.*—A Joint Sessions Judge appointed to try "all cases which may be committed for trial by the Magistrates of the District," has no jurisdiction to pass orders on a reference under s. 123, Crim. Pro. Code. QUEEN-EMPRESS v. DAYARAM RANCHHOD, **Rat. Un. Cr. C. 830, F.B. = Cr. Rg. 73 of 1895.**

(832)—*S.* 123 (= *Crim. Pro. Code,* 1882, s. 123)—*Security to keep the peace or for good behaviour.*—There is nothing in s. 123, Crim. Pro. Code, 1882, which requires a Magistrate when he has ordered an accused person to give security for more than one year, to refer such order for confirmation to the Sessions Judge.

Crim. Pro. Code (Act V of 1898)—*continued.*

The order is perfectly valid without such confirmation. QUEEN-EMPRESS v. NGA SHWE NYO, **L B R. 1872—1892, 279.**

(833)—*S.* 123—*Security, order to furnish—Reference to Sessions Judge—Powers of Sessions Judge.*—The words of cl. 3 of s. 123 of the Code, are wide enough to give discretionary power to the Sessions Judge or the High Court, as the case may be, to deal with the case on the merits and pass such orders as the circumstances of the case, in their opinion, may require. EMPEROR v. AMIR BALA, **13 Bom. L.R 203=10 Ind. Cas. 802=12 Cr. L J. 257=35 B. 271.**

(834)—S. 123—*See* APPEAL—CASES WHERE APPEAL DOES NOT LIE, 9 C. 878.

(835)—S. 123—*See* SENTENCE—IMPRISONMENT —IMPRISONMENT IN DEFAULT OF FINE, ETC Rat. Un. Cr. C. 584=Cr. Rg. 43 of 1891.

(836)—S.123—*See* SESSIONS JUDGE, JURISDICTION OF, 24 C. 155.

(837)—S 123—*See* Nos. 243, 519, 520, 646, 693, 717, 722 to 728, 769, 793 to 800, 814, 828, *supra.*

(838)—*Ss.* 123, 124 (=*Crim.Pro. Code*, 1882, *ss.* 123, 124)—*Default in furnishing security—Term of imprisonment.*—Under s. 123, Crim. Pro. Code, it is not competent to a Magistrate to award a shorter term of imprisonment in default of security than that for which security is required, but if he thinks that the term ought to be shortened, the proper course is to report the matter to the District Magistrate with a view to his taking action under s. 124. QUEEN-EMPRESS v. MOTI, **Rat. Un. Cr. C. 668=Cr. Rg. 25 of 1893.**

(839)—Ss. 123, 193—*See* TRIAL, Rat. Un. Cr. C. 830=Cr. Rg. 73 of 1895.

(840)—*Ss.* 123 *and* 397—*Committal to prison for failure to furnish security—Sentence of imprisonment.*—When a person is committed to prison under s. 123, Crim. Pro. Code, for failure to give security to be of good behaviour, he is not undergoing a "sentence of imprisonment" within the meaning of s. 397, Crim. Pro. Code. EMPEROR v. MUTHUKOMARAN, **27 M. 525.** [*R*, 34 B. 326=12 Bom. L.R. 129=11 Cr. L.J. 271=5 Ind. Cas. 861, 37 B 178=14 Bom. L.R. 965=1 Bom Cr. Cas. 209=13 Cr. L J. 849=17 Ind. Cas. 785, 11 Cr. L.J. 15=4 Ind. Cas. 603=3 S L.R. 114, 31 M. 515=4 M.L.T. 223=8 Cr.L.J. 402, 1914 M.W.N. 500, 6 Bom. L. R. 1098].

(841)—*Ss.* 123, 397—"*Undergoing*" *sentence of imprisonment—Commitment to prison for failure to give security for good behaviour.*—When a person is committed to prison under s. 123, for failure to give security for good behaviour, he is not undergoing a sentence of imprisonment within the meaning of s. 397. CRIMINAL REVISION CASE, NO. 393 OF 1903, **2 Weir 452.** [*R.*, 2 Weir 452.]

(842)—*Ss.* 123, 397—*Detention in prison in default of giving security* — "*Undergoing a sentence of imprisonment* "—*Imprisonment for substantive offence, when should commence.*—"A person who has been committed to prison, or is detained in prison" under s. 123, Crim. Pro. Code, is not "undergoing a sentence of imprisonment" within the meaning of s. 397, Crim. Pro Code. Where a man so committed or detained is convicted and sentenced to imprisonment for a substantive offence, the sentence should run concurrently with the period of detention imposed under s. 123. EMPEROR v. PANDHI WALAD BAKAS, **4 Ind. Cas. 603=11 Cr. L J. 15=3 S.L.R. 114, Cr.**

(843)—*Ss.* 123, 397—*Imprisonment for failure to give security—Sentence of imprisonment for some substantive offence, when to take effect.*—When a person undergoing imprisonment in default of giving security is sentenced to imprisonment for some substantive offence, the sentence for the substantive offence should commence from the date on which it was passed. When a person is committed to prison for failure to give security under s. 123 (1), Crim. Pro Code, he is not undergoing a sentence of imprisonment within the meaning of s. 497. EMPEROR v. EKRIA, **3 N.L.R. 20=13 Cr. L.J. 189=13 Ind. Cas. 1005.** (14 P.R. 1895, 31 M. 515, Bom. Cr. Rul. 33 of 1904, *F.*, 30 A. 334, *Diss.*)

(844)—*Ss.* 123, 397—*A person undergoing imprisonment on failure to find security—Subsequent conviction of theft under s.* 379 *of the Penal Code—Postponement of sentence.*—A person was undergoing imprisonment for failing to find security for good behaviour under s. 123 of the Crim. Pro. Code. He was subsequently convicted of the offence of theft (s. 379, Penal Code), and was sentenced to six months' rigorous imprisonment. The Magistrate, however, ordered that the latter sentence was to take effect on expiry of the first imprisonment:—*Held* that the sentence passed in the theft case could not be postponed to the expiry of the imprisonment which the accused was undergoing for failing to find security, and which was not a sentence of imprisonment. EMPEROR v. VISHNU BALAKRISHNA, **14 Bom. L R. 965=1 Bom. Cr. Cas. 209=13 Cr.L.J. 849=17 Ind. Cas. 785=37 B. 178.** (5 Bom. L.R. 26, 6 Bom. L.R. 1098, 12 Bom.L.R. 129, *F.*) [*F.*, 7 S L.R. 203.]

(845)—*Ss.* 123, 397 — *Person committed to prison under s.* 123—*Not undergoing imprisonment within the meaning of s.* 397.—When a person is committed to prison under s. 123, Crim. Pro.Code, he is not undergoing a sentence of imprisonment within the meaning of s. 397, Crim. Pro. Code. CROWN v. GHULAM ALI, **7 S.L.R. 203=15 Cr.L.J. 592=25 Ind. Cas. 344.** (14 Bom. L.R. 965.)

(846)—Ss. 123, 397—*See* SECURITY FOR GOOD BEHAVIOUR, 30 A. 334=A.W.N. 1908, 133=5 A.L.J. 318=7 Cr.L.J. 427=4 M L.T. 41. F.B.

(847) — Ss. 123, 397 — *See* SENTENCE — GENERAL, Rat. Un. Cr. C. 970=Cr. Rg. 26 of 1898.

Crim. Pro. Code (Act V of 1898)—*continued.*

(848)—*Ss.* 123, 406—*Security for good behaviour—Appeal to District Magistrate—Sessions Judge, submission of proceedings to—Procedure to be adopted by Sessions Judge—Presentation of appeal to Sessions Judge, procedure in case of.*—A person ordered to give security for good behaviour by a Magistrate is entitled to appeal to the District Magistrate, notwithstanding that the proceedings may have been laid before the Sessions Judge under s. 123, Crim. Pro. Code. But the right of appeal is lost as soon as the Sessions Judge has passed orders on the case under sub-s. (3) of s. 123. The Sessions Judge, on receiving a record under sub-s. (2) of s. 123, should at once give notice to the person ordered to give security of the date on which the case will be taken up. If before the last mentioned date the person ordered to give security does not object to the case being taken up by the Sessions Judge on the ground that he has appealed, or the Sessions Judge does not become aware that an appeal has been filed in the Court of the District Magistrate, the Sessions Judge should proceed to dispose of the case. If, on the other hand, the Sessions Judge is informed or becomes aware that an appeal has been filed, he should stay his hand until the appeal has been disposed of. Where the person ordered to give security presented an appeal to the Sessions Judge, *held*, that the Sessions Judge should have returned the memorandum of appeal to him for presentation to the District Magistrate, instead of forwarding the appeal to the District Magistrate directly. PUTTU *alias* GHULAM HUSAIN v. KING-EMPEROR, **13 O.C. 354 = 8 Ind. Cas. 879.**

(849)—*S.* 123, *sub-s.* (2)—*Reference to Sessions Judge under—Disposal of case by Sessions Judge without notice to accused, legality of.*—A District Magistrate submitted a case to the Sessions Judge, under s. 123, sub-s. 2 of the Code, and the Sessions Judge passed orders without giving any notice to the accused. *Held*, that the Sessions Judge was bound to fix a day for the hearing and to give reasonable notice to the accused and to hear him, if he wished to be heard, either personally or by pleader. NGA HNAUNG v. KING-EMPEROR, **3 L B R. 43.** (27 C. 656, 25 A. 375, *F.*) [*R.*, 10 Cr.L.J. 69 = 2 Ind. Cas. 531 = 5 L.B.R. 34].

(850)—*S.* 123 (2)—*Security for good behaviour—Imprisonment in default.*—When the period for which security is demanded exceeds one year, if security is not given, the Magistrate cannot award imprisonment in default. He must direct the detention of the accused pending the orders of the Sessions Judge to whom the proceedings must be submitted. QUEEN-EMPRESS v. NGA PAW, **U.B.R. 1897—1901, Vol. I, 28.**

(851)—*S.* 123 (2 *and* 3)—*Power of Additional Sessions Judge to deal with a reference.*—An Additional Sessions Judge has no power to deal with a reference under s. 123, sub-s. (2) and to pass orders under sub-s. (3). The fact that in the Code of 1898 the Legislature has substituted the words "Sessions Judge" for the words "Court of Session" seems to make it clear that it was the intention to limit the power of dealing with references under the section to the Sessions Judge. KING-EMPEROR v. NGA BA LE, **2 L B R. 16.** (Rat. Un. Cr. Cas. 830, *F.*; L.B.R. 1893—1900, 245, 381, *R.*)

—S. 124, paras 1 and 3 (= 1882, s. 124), para 2, new.

(852)—S. 124—*See* Nos. 613, 838, *supra.*

—S. 125 (= 1882, s. 125).

See SECURITY BOND.

See SECURITY FOR GOOD BEHAVIOUR.

See SECURITY PROCEEDINGS.

See SECURITY TO KEEP THE PEACE.

(853)—*S.* 125—*Power to cancel a bond—District's Magistrate's power to cancel bond for keeping the peace.*—The provisions of s. 125 only gives the power to cancel any bond executed. Therefore, an order for cancelling a bond cannot be made before it has been executed. The jurisdiction conferred by s. 125 is not an appellate or revisional, but an original, jurisdiction. That is, if after a bond has been executed, it is made to appear that, by reason of the circumstances as they exist at the date of the application, that is, circumstances subsequent to the date of the execution of the bond, the continuance of the latter is no longer necessary, the District Magistrate may cancel it. In other words, while a District Magistrate may, in a case of an executed bond, hold, for sufficient reasons, that it is no longer necessary and accordingly cancel it, he has no power to declare that it was never necessary. PARKA CHANDRA DEY v. JANMEJOY DUTT, **32 C. 948 = 9 C W.N. 860 = 2 Cr.L.J. 550.** [*Overruled*, 34 C. 1 = 4 C. L.J. 428 = 11 C.W.N. 25 = 1 M.L.T. 368.]

(854)—*S.* 125—*Jurisdiction—Appeal—District Magistrate whether can set aside order of Magistrate of the First Class.*—P was bound over to keep the peace by a Magistrate of the First Class. He applied to the District Magistrate to cancel the order under s. 125, Crim. Pro. Code. The District Magistrate treated it as an appeal and set aside the order. *Held* that no appeal lay to the District Magistrate against the order, and that under s. 125, he could cancel the bonds only on the ground that they were no longer necessary. BANARSI DAS v. PARTAB SINGH, **11 A.L.J. 16 = 18 Ind. Cas. 351 = 14 Cr. L.J. 63 = 35 A. 103.** [*R.*, 25 M.L.J. 459 = 14 M.L.T. 328 = 1913 M.W.N. 715 = 14 Cr.L.J. 546 = 21 Ind. Cas. 456.

(855)—*S.* 125—*Security to keep the peace—Cancellation of the bond—Power of Magistrate to send accused to jail.*—Under s. 125, Crim. Pro. Code, a District Magistrate may cancel a bond for good behaviour, but he is not competent to send the person so bound to jail. FAKHR-UD-DIN-KHAN v. KING-EMPEROR, **8 A.L.J. 658 = 12 Cr.L.J. 480 = 12 Ind. Cas. 88.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(856)—*S.* 125—*Security to keep the peace—Petition for cancelment of the bond—District Magistrate giving date for hearing—Petition dismissed without hearing petitioner—Dismissal set aside.*—A case was set down to be heard by the District Magistrate on a certain date while he was on tour in his district; intimation of the date so fixed was given to the accused but they were not informed of the place where the case would be heard; they failed to appear at that place and the District Magistrate dismissed their petition without hearing them.—*Held*, that the District Magistrate having given the petitioners a date for appearance should have heard them, and hence the order of dismissal could not be maintained. MEHR BAKSH v. EMPEROR, **53 P.L.R. 1914 = 15 Cr. L.J. 143 = 22 Ind. Cas. 495.**

(857)—*S.* 125— *Security bond for keeping the peace taken under subordinate Magistrate's order —Power of District Magistrate to cancel the same.*—Where the materials before the subordinate Magistrate are found not to be sufficient to justify an order for taking security to keep the peace, the District Magistrate has, under s. 125, Crim. Pro. Code, power to cancel the bond executed in pursuance of the order of the subordinate Magistrate. EMPEROR v. DALLI, **11 N.L.R. 98.** (34 C. 1, *F.*)

(858)—S. 125—*See* Nos. 583, 584, 613, 645, 729, *supra.*

(859)—*Ss.* 125, 107, 118 — *Order under ss.* 107 *and* 118—*Powers of District Magistrate under s.* 125.—A District Magistrate is entitled to entertain a petition under s. 125, Crim. Pro. Code, to cancel a bond to keep the peace executed by a person in pursuance of an order of a First class Magistrate under ss. 107 and 118, Crim. Pro. Code, on the sole ground that the evidence before the Magistrate does not justify him in passing such an order. *Tyabji, J.*—The words "at any time" in the section means 'however early or however late.' MARE GOWD v. EMPEROR, **1913 M.W.N. 715 = 14 M.L.T. 328 = 25 M.L.J. 459 = 21 Ind. Cas. 146 = 4 Cr. L.J. 546 = 37 M. 125.**

(860)—*Ss.* 125 *and* 476—*Power of the District Magistrate to cancel bail bonds under s.* 125—*Sanction to prosecute — Whether Magistrate acting under s.* 124 *has jurisdiction to sanction prosecution under s.* 476.—M and others having been bound down by the Sub-Divisional Magistrate in a proceeding under s. 107, Crim. Pro. Code, at the instigation of the petitioner who filed some rent receipts, the District Magistrate cancelled the bonds executed by them for keeping the peace, and, holding that the rent-receipts were forgeries, sanctioned, under s. 476, Crim. Pro. Code, the prosecution of the petitioner for an offence under s. 471, I.P.C. *Held* that as the District Magistrate acted under s. 125, Crim. Pro. Code, the rent receipts did not come before him in a judicial proceeding, and he had no jurisdiction to sanction prosecution under s. 476, Crim. Pro. Code. DAYA NATH THAKUR v. EMPEROR, **14 C.W.N. 306 = 37 C. 72 = 5 Ind. Cas. 555 = 11 Cr. L.J. 147.**

(860-*a*)—S. 127—*See* No. 4080, *infra.*

(861)—S. 128—*See* No. 797, *supra.*

— **S. 133 (= 1882, s. 133; 1872, s. 521, 1861, s. 308.)**

See MAGISTRATE, JURISDICTION OF.

See NUISANCE UNDER CRIM. PRO. CODE.

(862)—*S.* 133—*Scope.*—The scope of the section is limited to injuries arising or likely to arise to the members of the general unascertained mass of the public whose ordinary avocations may take them to the neighbourhood of a building supposed to be in a dangerous condition. A Magistrate cannot, under the section, order the owner to repair his house standing in its own compound some little distance from the public road. QUEEN-EMPRESS v. JASODA NAND, **20 A. 501 = 18 A.W.N. 141.** (12 M. 475, 13 A. 577, *D.*) [*R.*, 36 A. 185 = 12 A. L.J. 254 = 15 Cr. L.J. 376 = 23 Ind. Cas. 745.]

(863)—*S.* 133—*Section applicable to physical removable nuisances.*—S. 133 is an emergent section framed to deal with evils either existent or imminent. It is clearly applicable only to physical obstruction or nuisance which is capable of being removed; it must be a physical obstacle, and it must be actually *in situ*. Hence, it could not be made use of to put a stop to and prohibit certain objectionable accompaniments to ceremonies practised by a religious sect to the discomfort and annoyance of the majority of their fellow townsmen. KING-EMPEROR v. FAIZUL HASSAN, **A.W.N. 1901, 126.**

(864)—*S.* 133—Bona fide *dispute as to existence of public right—Applicability of section.*—The provisions of s. 133 and the following sections do not apply to cases where there is a *bona fide* dispute as to the existence of a public right; and s. 133 does not contemplate an enquiry into disputed questions of title. *In re* NARAYAN JIVAN MESTRI, **4 Bom. L.R. 687.** (22 B. 988, 11 C 8, 12 C. 137 *R.*) [*R.*, 2 Bom. Cr. Cas. 13 = 15 Bom. L.R. 57.]

(865)—*S.* 133—*Nuisance, what amounts to.*—Any obstruction on a public road is a nuisance, whether in point of fact it causes practical inconvenience or not. The motive, with which a public highway is obstructed, is absolutely irrelevant. QUEEN-EMPRESS v. KEDAR NATH, **23 A. 159 = A.W.N. 1901, 30.**

(866)—*S.* 133—*Public nuisance—Interference of Magistrate proper.*—Where the inhabitants of one village have placed an unlawful obstruction to prevent the flow of water along its natural channel, and the resultant injury affects a large area of cultivated land and a considerable body of persons, the case is one of a public nuisance, and the Magistrate is justified in removing the obstruction. A common nuisance cannot be excused on the ground that it causes some convenience or advantage to one-

Crim. Pro. Code (Act V of 1898)—*continued.*

party. BHAROSA PATHAK v. KING-EMPEROR, 9 **A.L.J. 355 = 34 A. 355 = 13 Ind. Cas. 999 = 13 Cr L.J. 183.** [*R.*, 15 Cr.L.J. 229 = 23 Ind. Cas. 181 = 12 A.L.J. 248.]

(867) – *S.* 133—*Public nuisance—Public right of way.*—The fact that the residents of a particular village had a right to take their cattle across a field was not sufficient to constitute a public right of way. JHUNNU SINGH v. EMPEROR, **A.W.N. 1906, 190 = 4 Cr.L.J. 65.** [*R.*, 36 A. 209 = 12 A.L.J. 248 = 15 Cr.L.J. 229 = 23 Ind. Cas. 181.]

(868)—*S.* 133—*Obstruction to highway—Reference to Jury*—Bona fide *question of title—Power of Magistrate to decide.*—It is not open to any person, illegally causing obstruction to public property, to set up a bogus question of title for the purpose of ousting the jurisdiction of a Magistrate; and, notwithstanding the raising of such a question, the Magistrate is entitled to hear the case sufficiently to make up his mind whether or not a *bona fide* question of title is raised. But, where a *bona fide* question of title is raised, the Magistrate ought not to proceed under s. 133, but should leave the matter to be decided by a Civil Court. EMPEROR v. DOST MUHAMMAD, **28 A. 98 = A.W N. 1905, 202 = 2 A.L.J. 599 = 2 Cr. L.J. 517.** [*Rel.*, 2 Bom. Cr. Cas. 13 = 15 Bom. L.R. 57 = 14 Cr. L.J. 74 = 18 Ind. Cas. 410; *R.*, 13 Cr.L.J. 594 = 16 Ind.Cas. 162 = 25 P.W.R. 1912, Cr.]

(869)—*S.* 133—*Application of—Way or public place.*—S. 133 of the Code of Criminal Procedure empowers the Magistrate to order the removal of an obstruction from any way or public place, and before it can be applied there must be a finding that the obstruction in question is situated in a way which can lawfully be used by the public. CHURAMAN v. KING-EMPEROR, **12 A.L.J. 1024 = 15 Cr. L.J. 724 = 26 Ind. Cas. 172.**

(870)—*S.* 133—*Encroachment on a public way—Obstruction, order directing removal of—Findings necessary to support the order*—Bona fide *claim of title.*—Where proceedings were taken under s. 133 of the Code of Criminal Procedure, and an order was passed by the Magistrate directing the removal of a house which was said to represent an encroachment or obstruction on a public way: *Held*, that the order was liable to be set aside, inasmuch as there was no finding that the claim by the petitioners was not made and put forward in good faith. (15 C. 564, 17 C. 562, 8 C.W.N. 143, *R.*). *Held further*, that the extent of the encroachment of the house upon the public way should have been ascertained and definitely specified in the order; and in the absence of such a specification the order could not be supported. BHAGAT PERSHAD v. KAMRUP KARMAKAR, **21 C.L.J. 116 = 16 Cr. L.J. 160 = 27 Ind. Cas. 224.**

(871)—*S.* 133—*Encroachment on unmetalled portion of Government road.*—Where a person built a wall encroaching upon the unmetalled portion of a Government road, he might be properly proceeded against under s. 133, Crim. Pro. Code. QUEEN-EMPRESS v. UMRAO, **A.W. N. 1901, 25.**

(872)—*S.*133 (= *Crim Pro.Code*, 1882, s.133). —*Encroachment — Public way*—Where there is a *bona fide* dispute between a private individual and the Government as to the right to the ground on which an encroachment is alleged to have been made by the former by building a wall, a Magistrate should not proceed under s. 133, until that dispute is settled. *In re* JEYSANG, **Rat Un. Cr. C. 378 = Cr. Rg. 29 of 1888.**

(873)—*S.* 133—*Public way.*—Where, in proceedings under s. 133, Crim. Pro. Code, it is contended that the way is not a public one, the only issue which arises for the Magistrate's decision is whether the objection so raised is a *bona fide* objection or a mere pretence. He has no jurisdiction, instead of coming to an express finding on this issue, to proceed to determine whether or not there is a public way. RAKHAL CHANDRA SHAHA v. KAILASH CHANDRA SARKAR, **7 C.W.N. 117.** (15 C. 564, *F.*).

(874)—*S.* 133—*Public way.*—This section does not intend that a Magistrate should decide any question of title; it only authorises him to decide whether an obstruction on a public way is unlawful. When a question of title is involved, he should stay proceedings and refer the complainant to the Civil Court. EMPRESS v. SALIGRAM SUKAL, **4 C.P.L.R. 142.**

(875)—*S.* 133—*Procedure.*—A Magistrate acting under s. 133, Crim. Pro.Code, should first of all satisfy himself as to the *bona fides* of the claim, if any, and then determine whether the parties should be referred to the Civil Court. Where the Magistrate, instead of doing so, proceeded to refer the following question to the jury: "Is there a public right of way at the points where the building, whose removal is ordered, stands?" *held*, that it was not a proper reference. MATUK DHARI TEWARI v. HARI MADHAB DAS, **31 C 979 = 9 C.W.N. 72.** [*R.*, 10 C.W.N. 845 = 4 Cr. L.J. 42]

(876)—*S.* 133—*Procedure.*—In proceedings under s. 133 of Crim. Pro. Code, if the opposite party raises the contention that the way alleged to be obstructed is not one, which is or may be lawfully used by the public, the Magistrate should find whether the objection is a *bona fide* one, and if he finds that it is so, he should abstain from further action until the public right of way is determined by a competent Court. The jury, in such a case, is not competent to report that the way obstructed is used by the public, for, the decision of that matter affects the right of the Magistrate to interfere under s. 133. It is only when the Magistrate is competent to pass an order under s. 133, that a jury can be appointed to see whether it is a reasonable and proper order. NASARUDDI v. AKILUDDI, **3 C.W.N. 343.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(877)—*S.* 133, *scope of*—Bona fide *claim of private right by a party—Title—Jury, function of—Procedure, to be followed.*—In a proceeding under s. 133 of the Code of Criminal Procedure, the first party asked for an obstruction of a way to be removed as detrimental to the public interests, and the second party claimed a private right thereto, and the case was submitted to the jury. And the jury collected the evidence and declined to decide the question as it involved the question of private or public right. The matter was referred to the Magistrate who decided upon the evidence that this was a matter for the Civil Courts: *Held*, that the section contemplates only an enquiry as to the existence or non-existence of the obstruction complained of, and not an enquiry into a disputed question of title; and it was beyond the scope of the jury to decide whether the way obstructed was or was not a public way. And the Magistrate, having found that there was a *bona fide* claim of private right raised by the second party, was perfectly justified in leaving the determination of the question to the Civil Court. MAHOMED ASHRAFUDDIN v. SAIKH KARIM BUKHSH, **19 C.L.J. 631 = 18 C.W.N. 1148 = 24 Ind. Cas. 603 = 15 Cr. L.J. 515.** (17 C. 562; 26 C. 870; 12 C. 137; 12 C. 696, *F.*)

(878)—*S.* 133—*Jurisdiction of Magistrates*—Bona fide *claim of title—Duty of Magistrate.*—When the acts complained of against a person amount to a nuisance, it is a *prima facie* case, which a Magistrate has jurisdiction to deal with. Where an obstruction to a public right of way is complained of, if a Magistrate finds that there is a claim of title, which is *bona fide*, he should give an opportunity to the person raising that claim to establish it in a Civil Court. Failing his doing so, the Magistrate is bound to proceed with the case; this limitation or restriction does not apply, when the case is one affecting the public health or safety. BELAT ALI v. ABDUR RAHIM, **8 C.W.N. 143.** (15 C. 564, *R.*) [*R.*, 18 C.W.N. 1086.]

(879)—*S.* 133—Bona fide *claim of right—Jurisdiction of Magistrate.*—It does not follow that, because the land over which a right of way is claimed belongs to any particular person, therefore that person must necessarily be acting *bona fide*, when he denies that there is a right of way over his land. The question of *bona fides* is a matter of fact which has to be inquired into like any other question of fact. Where there is in fact a *bona fide* claim of right in a case in which a person is required to remove a nuisance, the Magistrate's jurisdiction is ousted, and he has no power to make an order under s. 133. NUNDO GOPAL CHATTERJEE v. KUSUM KUMAR BANERJEE, **1 C.L.J. 434 = 2 Cr. L J. 349.** [*F.*, 7 Bur. L.T. 23.]

(880)—*S.* 133—*Magistrate—Inquiry—Jurisdiction*—Under s. 133 *et seq* of the Crim. Pro. Code, the inquiring Magistrate has to consider whether there is or there is not a *bona fide* private claim to title. If he finds that there is such a *bona fide* claim he is debarred from proceeding further. But if he is of opinion that there is no *bona fide* claim of private title, he is to proceed as indicated in the sections of the Code. It is not competent to the Magistrate in such an enquiry to select certain evidence, to discard other evidence on the ground that even if taken by him he would not believe it, and then to proceed to determine the very question of title involved. *In re* DNYANOBA, **15 Bom. L.R. 57 = 2 Bom. Cr. C. 13 = 18 Ind Cas. 410 = 14 Cr. L.J. 74.**

(881)—*S.* 133—*Respective duties of the Magistrate and of the Jury—Conviction under Indian Penal Code, s.* 283, *not conclusive.*—A Magistrate, passing an order against a person under s. 139, Crim. Pro. Code, cannot do so, relying merely upon a conviction of the person under s. 283, I.P.C., in respect of the same matter, but must follow the procedure laid down in s. 133 and the subsequent sections of the Crim. Pro. Code. Prior to the appointment of a jury, the Magistrate should himself determine the question, which is the most important question in proceedings under s. 133, Crim. Pro. Code, and which alone gives him jurisdiction, namely whether the pathway, in which the obstruction is said to have been erected, was in fact a public pathway or not. Where the Magistrate referred the whole case to the jury and the jury returned a verdict that the order was a proper order, but that the road was a private road. *Held*, it was incumbent upon the Magistrate to determine the latter point and not leave it to the jury. RAMA NATH LASKAR v. JALADHAR SHAHA, **3 C.L.J. 360 = 3 Cr. L J. 331.**

(882)—*S.* 133—*Prescriptive right of public to user of way across a ford—Damming the stream by erection of a bund—Desuetude of a right to erect a bund—Competency of Magistrate to pass orders.*—Where the petitioner erected a bund in a fordable stream, thereby causing obstruction and nuisance to the public in the lawful enjoyment of the right of way through the stream, and it was found that the public had been exercising their continued right of way across the stream without obstruction for a period of over 20 years, *held*, that, even if the petitioner had previously a right to obstruct the stream by erecting the bund in question, it could only have been one of easement and the petitioner had lost such right by long desuetude, while the public have acquired a prescriptive right of way across the stream. *Held*, also, that, even if the petitioner had a subsisting right to dam the river, such right should be exercised subject to the maxim *sic utere tuo utalienum non laedas* and not so as to cause unjustifiable obstruction and nuisance to the public. The Magistrate was, therefore, competent to pass an order for the removal of the obstruction. ZAFFER NAWAB v. EMPEROR, **32 C. 930 = 2 Cr.L J. 762.** [*D.*, 36 A. 209 = 12 A.L.J. 248 = 15 Cr.L.J. 229 = 23 Ind. Cas. 181.]

(883)—*S.* 133—*Field over which surplus water flows from adjoining fields—Not a channel which may be lawfully used by the public—Flow of water obstructed.*—A field, which is on a lower level than the adjoining fields and over

Crim. Pro. Code (Act V of 1898)—*continued.*

which the surplus water of those adjoining fields use to flow into a tank, even if it could be described a channel, is not such a channel as had been or could lawfully be used by the public, and action cannot be taken under s. 133, Crim. Pro. Code, for the removal of any unlawful obstruction from it. JAGARNATH SAHU v. PARAMESHWAR NARAIN, **12 A.L.J. 248=15 Cr. L.J. 229=23 Ind. Cas. 181=36 A 209.** 1906 A.W.N. 190, 22 B. 988, *R*; 34 A. 345, 32 C. 930, *D*.)

(884)—*S.* 133—*Dispute as to right of digging and clearing a water-course between two villages.—Held*, that a dispute between two villages in respect of the rights of one to dig and clear a water-course for irrigation purposes, denied by the other, is a dispute to which s. 133, Crim. Pro. Code, is applicable to avoid breach of the peace. BUDHA v. MOHAN LAL, **25 P.W. R. 1912 (Cr.)=16 Ind. Cas. 162=13 Cr. L.J. 594.** (2 P.R. 1903, Cr. 22 B. 988, *Diss.*).

(885)—*S.* 133 — *Outbreak of small pox—Parents inoculating their children—Whether can be said to carry on trade or occupation—Order to stop the practice—Illegality.*—Parents inoculating their own children upon an outbreak of small-pox cannot be said to be carrying on a trade or to be engaged in an occupation, and consequently an order under s. 133, Crim. Pro. Code, to stop the practice is illegal and is liable to be set aside. KING-EMPEROR v. NGA KYAUK LON, **U B.R. 1913, 3rd Qr. 180=15 Cr. L.J. 253=23 Ind. Cas. 205.**

(886)—*S.* 133 (=*s.* 521, *Crim. Pro. Code,* 1872— *Power of stopping proceedings—Revisional powers of High Court.*—Where a Magistrate is satisfied that there was no cause for acting under s. 521, he is at liberty to let the proceedings drop. The propriety of such a finding is not a matter for the consideration of the High Court. SHONAI PARAMANICK v. JOGENDRO SHAHA, **1 C.L.R. 486.** [*F.*, 8 C. 883.]

(887)—*S.* 133—*Magistrate dropping proceedings.*—On a Magistrate satisfying himself that there is no necessity for proceeding further under s. 521 of the Crim. Pro. Code, 1872, he can drop the matter. ISSUR CHUNDER NATH v. KALI CHUNDER NATH, **8 C. 883=11 C.L.R. 235.** (1 C.L.R. 486, *F.*)

(888)—*S.* 133—*Revival of proceedings under, after previous cancellation.*—There is no bar in law to the revival of a proceeding under s. 133 with regard to the same matter, which had been previously dropped, provided there are materials before the Magistrate upon which he could act *prima facie.* ISHAN CHANDRA CHAKRAVARTI v. PRASANNA KUMAR RAI, **5 C.W.N. 173.**

(889)—*S.* 133—*Burial ground, order closing, if can be made under.*—An order prohibiting the use of a grave yard is not such an order as can be made under s. 133, Crim. Pro. Code. SHEO SARAN LAL v. LAL MOHAMED LAL, **12 C.W. N. 70.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(890)—*S.* 133—*Opening a new market by the side of an old market—Order closing the new one.*—A person, who opens a new market close to an old one, cannot be held to be carrying on a trade or occupation that is injurious to the health or physical comfort of the community. Therefore, no order under s. 133 can be passed closing the new market. The mere fact that the people in one market are sometimes forcibly dragged from it to the rival institution will not support an order under s. 133, although the offenders can be prosecuted criminally for such assault. MOIDIN KUTTI v. ABDULLA, **14 M. L.J. 207=2 Weir 62.**

(891)—*S* 133 (=*Crim. Pro. Code,* 1872, *s.* 521)—*Disobedience to order promulgated by a public servant—Penal Code, s.* 188.—Under s. 521, though a Magistrate is authorized to suppress a trade or occupation injurious to the health or comfort of a community, he cannot order pig-styes to be built at a certain distance from the *abadi*, and the disobedience to such an order cannot be punished under s. 188, I.P. C. QUEEN-EMPRESS v. JODHI, **S.C. 60, Oudh.**

(892)—*S.* 133—*Specific Relief Act* (*I of* 1877), *s.* 42—*Claim of private right by plaintiff over land—Claim of public right by defendants—Cause of action—Parties—Persons claiming public right are alone necessary parties—Civ. Pro. Code* (*Act* XIV *of* 1882), *s.* 30—*Irregularity in not recording formal order.*—Where the plaintiff claims a private right upon a certain land, over which a public right of way is claimed by the defendants, who initiated proceedings under s. 133, Crim. Pro. Code, and there has been an order by the Magistrate upon the plaintiff to remove certain structure which the Magistrate found to be an obstruction upon the alleged public right of way: *Held*, that, as a cloud had been thrown upon his title by the proceedings under s. 133, Crim. Pro. Code, the plaintiff had a cause of action to bring a suit for declaration of his title. *Held*, also, that the plaintiff had a right to bring the suit against the defendants alone without impleading any other member of the public. Where notices under s. 30 of the Civ. Pro. Code, 1882, were issued one year before the trial, mentioning the defendants and other residents of the neighbouring villages, and the defendants put in written statement after the service of the notices, and adduced evidence in support of the public right of way, the notices must be considered to be definite enough, and the simple fact that a particular person was not directed, by an express order of the Court before the trial, as authorized to defend the suit, did not affect the result of the case. SHEIK EKHAR ALI v. ANU MANJHI, **6 Ind. Cas. 46.** (17 C. 460 F.B. *F.*; 21 C. 180, 29 C. 100, *F.*; 17 C. 906, *R.*)

(893)—*S.* 133—*Claim of right—Magistrate's duty to decide* bona fides *of—Magistrate bound to refer parties to Civil Court, if such claim is not mere pretence—Steps which Magistrate may take, o suit not instituted in Civil Court*

Crim. Pro. Code (Act V of 1898)—*continued.*

within reasonable time.—Per Sharfudin, J.—(Teunon, J., dubitante).—Sub-s. (3) of s. 133, Crim. Pro. Code, provides that no order duly made by a Magistrate under the section shall be called in question in any Civil Court. From this latter provision it is clear that the provision of s. 133, Crim. Pro. Code, should be sparingly used. Any order passed under the section cannot be questioned in any Civil Court. It is therefore necessary that, if the party against whom the order is contemplated to be passed raises a question that the pathway is not a public property in the sense of the provision of this section, the Magistrate trying the case should be careful not only to decide as to whether the pathway in question is situated on a private land or if it is for public use, but he should, even when the claim of the objection is not substantiated, find whether the claim is *bona fide* or it is set up only to oust the jurisdiction of the Court. If the Magistrate finds that the claim which is set up is a mere pretence, he should then proceed to pass a final order and make the rule issued by him absolute. If however he finds that the claim, although not substantiated, is not mere pretence and is not raised to oust the jurisdiction of the Court, but that it is raised *bona fide*, he should stay his hand and refer the party to Civil Court. And if the party within a reasonable time does not have recourse to Civil Court, the Magistrate may then proceed to make the rule absolute. MANIPUR DEY v. BIDHU BHUSAN SIRKAR, 18 **C W.N. 1086 = 15 Cr. L.J. 698 = 26 Ind. Cas. 146 = 42 C. 158.**

(894)—*S. 133—Jurors nominated by applicant —Validity of—Right of applicant.*—Proceedings were instituted under s. 133 of the Crim. Pro. Code at the instance of H against F. F applied for appointment of jury which was granted. He nominated two jurymen. The Magistrate called upon H to nominate two jurors. H nominated two jurors and the Magistrate appointed a foreman. The Jury by a majority made an order against F. *Held*, that it is not illegal on the part of a Magistrate to address any enquiry to the applicant with a view to ascertaining the names of respectable persons living in the neighbourhood who would be willing to serve on the jury. The Magistrate should see that he does not appoint friends or partisans of the applicant. The criterion in such cases is whether the applicant was allowed to exercise rights not conferred upon him by law. FARZAND ALI v. HAKIM ALI, **12 A.L.J. 1241 = 16 Cr.L.J. 40.** (23 C. 499, 26 C. 869, 1897, P.R. 4, *R.*)

(894-*a*)—*Ch. X and s.133—Scope of section—Abatement of nuisance of privy.*—Where a privy is allowed to remain in such a condition as to be a nuisance to persons lawfully using a public place or way, proceedings to cause the nuisance to be abated can be instituted under ch. X of the Code. S. 133, Crim. Pro. Code, does not empower a Magistrate to order a privy to be removed, because it is only recently made in any locality. *In re* BALAJI NARAYAN CHITALE, **4 Bom. L.R. 882.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(894*b*)—*Ch. X—S. 133—Letters Patent appeal —Order under ch. X of Crim. Pro. Code—Not appealable.*—Orders passed under ch. 10 of the Crim. Pro. Code are criminal orders and no Letters Patent appeal lies therefrom. The fact that in such proceedings the counter-petitioner is a competent witness on his own behalf does not make it a less criminal trial. NISSAHKARA ROW SUBBAYYA v. POOLA RAMAYYA, 1915 **M.W.N. 240 = 16 Cr.L.J. 349 = 28 Ind. Cas. 733.**

(895)—S. 133—Party to proceeding under—*See* ACCUSED PERSON, 2 C.L.J. 149 = 9 C.W.N. 393 = 2 Cr.L.J. 575.

(896)—S. 133—Effect of order under section —*See* ACT I OF 1877, s. 42, 17 B. 293.

(897)—S. 133—*See* BOM. ACT VII OF 1867, s. 33, 6 Bom.L R. 358.

(898)—S. 133—*See* INOCULATION, L.B.R. 1893—1900, 545.

(899)—S. 133—*See* JURISDICTION OF CIVIL COURTS, 11 W.R. 434 = 3 B.L.R. Ap. 43, 4 B.L. R.F.B. 24 = 12 W.R.F.B. 18, 7 W.R. 11, 48, 95, 6 C. 291 = 7 C.L.R. 433.

(900)—S. 133—*See* PENAL CODE, s. 188, L. B.R. 1872—1892, 363, P.L.R. 1900, p. 24, Cr. = 2 P.R. 1900, Cr.

(901)—S. 133—*See* RIGHT OF SUIT, 6 C. 291 = 7 C.L.R. 433.

(902)—S. 133—*See* Nos. 1007 to 1012, *and* 1300, *infra.*

(903)—*Ss. 133, 135, 138—Time for setting up* bona fide *claims to land—Right of bringing civil suit.*—Where a conditional order is passed under s. 133, Crim. Pro. Code, and the person against whom the order is made raises a *bona fide* claim that the subject of contention is private property, the Magistrate is bound to investigate the claim and cannot leave it to a jury appointed under s.138. There is however no authority for holding that, once a jury is appointed, it is open to the person against whom the order is made under s. 133 to set up such a claim and to have it determined by the Magistrate, before the Jury proceeds with the matter (1 C.L.J. 434, *F.*) —*Obiter.*—If the jury decided that the order was reasonable and proper, the appellant would not be estopped from bringing a Civil suit to establish his right to exclusive enjoyment of the land. AH YWAY v. MA GYI, **7 Bur.L.T. 23 = 28 Ind. Cas. 467 = 15 Cr.L.J. 259.** (6 C. 291, *R.*)

(904)—*Ss.* 133, 135, 138, 139, 141 (= *Crim. Pro. Code,* 1872, *ss.* 521, 523).—Where a jury is demanded under s. 523, Crim. Pro. Code, 1872, the Magistrate is bound to appoint one and cannot decide the matter by local enquiry. *In the matter of* MOTHOOR CHUNDER DASS, **2 C.L.R. 509.**

(905)—*Ss.* 133, 136 (= *Crim. Pro. Code,* 1872, *ss.* 521, 525)—*Order under s.* 521, *objection to —Taking evidence—Procedure.*—When the person to whom an order under s. 521 has been issued appears to show cause against it, the Magistrate is bound to take evidence. *In the matter of* MOHUR MANDAR, **8 C.L.R. 431.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(906)—*Ss.* 133, 136, 140 (=*Crim. Pro. Code,* 1882, *ss.* 133, 136 *and* 140)—*Disobedience of order under s.* 133 *and under s.* 140—*Penal Code, s.* 188.—Where an order has been issued under s. 133, and the person on whom it has been served does not perform the act he is directed to do, or do what is open to him, namely, to appear on the date fixed and show cause against the order, or apply for the appointment of a jury, he is treating such order of a competent authority with contempt, and for such contempt, he renders himself liable to punishment under s. 188. If such order has been made absolute, and after the notice contemplated by that section and the refusal still by the person concerned to obey that order, that would be again punishable, and the person making it would have the power to enforce all the remedies mentioned in s. 140. When once an order has been made absolute under s. 136, it is incompetent for the party, against whom it has been made, to go behind it and question its validity in any way. QUEEN EMPRESS v. BISHAMBAR LAL, **13 A. 577 = A.W.N. 1891, 169** (12, M. 475 *Appr.*) [*F.*, 31 M. 280 = 18 M.L.J. 216 = 3 M.L.T. 403 = 8 Cr.L J. 151; *R.*, P.L.R. 1900, p. 24; *D.* 20 A. 501 = A.W.N. 1898, 141.]

(907)—*Ss.* 133, 137 — *Procedure.*—If an accused, against whom an order is issued under the provisions of s. 133, Crim. Pro. Code, appears to show cause, the Magistrate is bound to proceed under s. 137, Crim. Pro. Code, 1898. QUEEN-EMPRESS v. RAMACHANDRA SHAMRAO BAGLE, **1 Bom. L.R. 783.**

(908)—*Ss.* 133, 137.—Merely because there is already one market in a village, a man who opens another market close to it cannot be held to be carrying on a trade or occupation that is injurious to the health or physical comfort of the community; nor does the fact that the people in one market are sometimes forcibly dragged from it to the rival institution, justify an order under s. 133, Crim. Pro. Code. *In re* MOIDIN KUTTI, **2 Weir 62.**

(909)—*Ss.* 133, 137—*Procedure.*—When a jury is claimed and appointed, they have only to try the question whether the Magistrate's conditional order is reasonable and proper. MATUK DHARI TEWARI v. HARI MADHAB DAS, **31 C. 979 = 9 C.W.N. 72.**

(910)—*Ss.* 133, 137—*Procedure.*—Before a conditional order passed under s. 133 of the Code of Criminal Procedure can be made absolute under s. 137, there must be evidence on the record, taken in the presence of the person called upon to show cause against the order, justifying the order. It is not merely necessary to hear the evidence for the defence, but the evidence on which the order is to be based must also be recorded. EMPEROR v. KARAM CHAND. **147 P.L.R. 1901.** (24 C. 396, *F.*)

(911)—*Ss.* 133, 137—*Order without taking evidence—Waiver by party, effect of.*—In a case under s. 133, if the party summoned appears and shows cause, the Court is to apply the provisions of s. 137, the language of which is mandatory, and the only course open to the Magistrate is to take evidence, even if the party agrees to abide by the decision of the Magistrate based, not upon evidence legally received but upon information gathered upon local enquiry, for, no waiver on the part of the party can confer on the Magistrate authority to act in a manner not prescribed by the Legislature. UPENDRA NATH MANDAL v. RAMPAL, **11 Cr. L.J. 1 = 4 Ind. Cas. 436 = 10 C.L.J. 482.**

(912)—*Ss.* 133, 137—*Notice to show cause—Subsequent failure to produce evidence—Final order—Dispute between Government and a private individual.*—If a person to whom a notice has been issued under s. 133 appears and shows cause, his subsequent failure to produce evidence does not justify the final order under s. 137, until the Magistrate has satisfied himself from evidence recorded before him that there is an unlawful obstruction. The proceeding under s. 133 is not the proper procedure to follow when there is a dispute between the Government and a private individual. *In re* RAM SINGH NAROBA, **2 Bom. L.R. 818.** [*R.*, 2 Bom. Cr. Cas. 13 = 15 Bom. L R. 57.]

(913)—*Ss.* 133, 137—*Physical comfort—Circumstances to be considered.*—*Held*, that, s. 133, Crim. Pro. Code, authorises action by the Magistrate, if the trade in question is injurious to the physical comfort of the community. But it is necessary to take all the circumstances into account, to see that the interference with public comfort is considerable, and that a considerable section of the public is affected injuriously, general equitable principles not being lost sight of. FAZAL DIN v. CROWN, **20 P. W.R. 1911, Cr. = 117 P.L.R. 1911 = 12 Cr. L. J. 146 = 9 Ind. Cas. 891** (34 C. 73 = 5 Cr. L. J. 45 = 5 C.L.J. 10, 17 P.R. 1888, Cr., 47 P. R 1888, Cr, 106 P.R. 1888, *R.*)

(914)—*Ss.* 133, 137—*Existence of hayricks on petitioner's premises—Whether a nuisance—Duty of Magistrate to take evidence.*—In this case there were hayricks on the premises of the petitioner, and in consequence of a representation by the respondent that the hayricks were likely to cause conflagration, the Magistrate issued a conditional order under s. 133. The petitioner admitted the existence of hayricks on his premises, but he denied that they were a nuisance. No evidence was let in either for or against the order, but the Magistrate, from his own inspection, decided that the hayricks were a danger to adjoining houses and made the order absolute. *Held*, the Magistrate should not have made the order absolute on his own opinion formed by inspection, but should have called on the respondent to adduce evidence that the hayricks constituted a nuisance, as required by s. 137, Crim. Pro. Code. DORAISWAMY MUDALIAR v. SUDARSANA CHARIAR, **17 M.L.T. 142 = 16 Cr. L J. 207 = 27 Ind. Cas. 767.** (11 B. 375, 31 A 453, *R.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

(915)—*Ss.* 133, 137—*Proceeding if can be dropped without taking evidence when opposite party shows cause*—Res judicata, *applicability of the doctrine of.*—Where in a proceeding under s. 133, Crim. Pro. Code, in respect of an alleged obstruction of a public way, the Magistrate made a conditional order but dropped the proceeding on the opposite party taking the objection in showing cause that the Court had no jurisdiction to proceed with the enquiry on the ground that the identical way had previously been the subject-matter of an enquiry under s. 133, Crim. Pro. Code, by a Court of competent jurisdiction: *Held*, that the Magistrate was bound to follow the procedure prescribed by s. 137, cl. 1, it being open to the Magistrate after taking evidence under that section to consider whether there was a complete answer to the case against the opposite party or whether the case was one where the parties should be referred to the Civil Court for the determination of a matter which the Magistrate considered he could not decide. That on the facts of the case there was no room for the application of the doctrine of *res judicata*. SAROJEBASHINI DEBI v. SRIPATY CHARAN CHOWDHRY, **19 C.W.N. 332 = 28 Ind. Cas. 799 = 16 Cr. L.J. 415.**

(916)—*Ss.* 133, 137 *and* 140—*Removal of nuisance—Cause shown—Complainant to produce evidence first—Practice.*—In a proceeding under s. 133, Crim. Pro. Code, before an order absolute can be passed under s. 140, a complainant, that is the party who has set the law in motion, has to produce evidence and the opposite party is not bound to produce evidence until this has been done. INDAR v. KING-EMPEROR, **11 A.L J. 931 = 22 Ind. Cas. 167 = 15 Cr. L.J. 23.** (6 A.L.J. 685, *R.*)

(917)—*Ss.* 133, 137, 140—*Penal Code* (*Act* XLV *of* 1860), *s* 88—*Conditional order, vague and indefinite—Final order, scope of.*—An order under s. 133, Crim. Pro. Code, must be such that the persons, against whom it is directed, can learn from its terms what it is that they are to do for the purpose of complying with it. Where a conditional order made under s. 133, Crim. Pro, Code, was itself too vague and indefinite, the High Court set aside the final order passed under s. 137, Crim. Pro. Code, and decline to send back the case for re-trial, on the ground that, under the latter section, the Magistrate could only decide on the reasonableness or propriety of the conditional order, and was not competent to go behind it. KALI MOHAN KAR v. NAKARI CHUNDRA DAS, **11 C.L.J. 114 = 5 Ind. Cas. 722 = 11 Cr. L.J. 213.**

(918)—*Ss.* 133, 137, 140—*Conditional order by one Magistrate—Order absolute by another Magistrate with Second Class powers—Notice*—Bona fide *claim of title.*—Where a Deputy Magistrate required the petitioner to appear and show cause before a Second Class Magistrate why a conditional order under S. 133 should not be made absolute, *held*, that the latter Magistrate, and not the Deputy Magistrate, was entitled to make the order absolute and to have the notice under s. 140, issued. Proceedings under ss. 133 to 140 are inapplicable to cases in which there is a *bona fide* claim of title. *In re* VENKANNA, **2 Weir 61.**

(919)—Ss. 133, 137, 437—*See* NUISANCE UNDER CRIM. PRO. CODE, 24 C. 395 = 1 C.W. N. 217.

(920)—*Ss.* 133, 138 (= *Crim. Pro. Code*, 1882, ss. 133, 138)—*Application for appointment of Jury—Duty of Magistrate.*—Where a person against whom an order under s. 133, calling upon him to remove an obstruction, had been communicated, applied for the appointment of a Jury, *held* that the Magistrate had no discretion in the matter and should not make the order absolute without appointing the Jury. CRIMINAL REVISION CASE, No. 747 of 1883, **2 Weir 63.**

(921)—*Ss.* 133, 138 *and* 139—*Obstruction to a pathway*—Bona fide *claim of right, Magistrate to decide the question of—Jury, function of.*—When a complaint is made to the Magistrate of an obstruction in a pathway, alleged to be public and the opposite party appears and claims the pathway to be a private one, it is the duty of the Magistrate, before any proceedings are taken under s. 133, and before any reference is made to a jury appointed under s. 138, to himself determine whether the claim set up by the opposite party is *bona fide*, and whether the road or pathway is a public pathway. The jury appointed under s. 138, are simply persons selected by the parties to determine, in an informal way, whether the order, as passed by the Magistrate, for the removal of an obstruction, is or is not a reasonable order and it is not competent to the Magistrate to leave to the jury the decision of the question whether a pathway is public or not, and whether the claim of private pathway set up is *bona fide* or not. DULALRAM DEB v. BAISHNAB CHARAN DEB **10 C.W.N. 845 = 4 Cr. L J. 42.** [*F.*, 6 Ind. Cas. 271 = 14 C.W.N. 544; *R.*, 19 C.L.J. 631 = 18 C.W.N. 1148 = 15 Cr.L.J. 515 = 24 Ind. Cas. 603.]

(922)—*Ss.* 133, 138, 139—*Verdict of jury given on mere local inspection—Legality—Building encroaching on a public way*—Bona fide *claim of right, effect of, on jurisdiction.*—The verdict of a jury appointed under s. 138, given on mere local inspection, without taking any evidence, is illegal. (26 C. 869, *F*). Where an encroachment is made on what is admittedly a public way, it is not necessary, in order to give jurisdiction to the Magistrate, that there should be a finding as to the *bona fide* character of any claim that might be made by the accused person to any particular piece of ground on which the encroachment is made. ADHORE CHANDRA DEY v. AMBIKA CHURN ROY, **6 C.W.N. 886.** (15 C. 564, 17 C. 562, 25 C. 278, *D.*)

(922-*a*)—*Ch.* X, *ss.* 133, 138, 139—*Obstruction of a pathway—Magistrate's power to refer the matter to a jury*—Bona fide *claim to the pathway as private—Magistrate's duty to decide.*—

Crim. Pro. Code (Act V of 1898)—*continued.*

In a proceeding under Ch. X, Crim. Pro. Code, relating to the obstruction of a way, it is the duty of the Magistrate, before referring the matter to the jury, to decide himself whether or not the claim of right to the land in question is made in good faith, and whether the pathway is a public one or not, and it is only on deciding that there is no such claim that any matter can be referred to the jury. DHARAM MANDAL v. GOSSAIN DAS MONDAL, **14 C.W.N. 544**. (10 C.W.N. 845, *F.*)

(923)—*Ss* 133, 138, 435 (=*Crim. Pro Code*, 1882, *ss.* 133, 138, 435)—*Decision of jury—Power of District Magistrate to call for it under s.* 435.—The decision of a jury, appointed under s. 138 of the Crim. Pro. Code, is not a proceeding in a Criminal Court which the District Magistrate can call for and examine and refer to the High Court under the provisions of s. 435 of the Crim. Pro. Code. CRIMINAL REFERENCE No. 81 of 1887, **Rat. Un. Cr. Cas. 336=Cr. Rg. 25 of 1887.**

(924)—*Ss.* 133, 139—*Conditional order of Magistrate—Reference to jury—Majority of the jury against the order—Order absolute, validity of.*—Where, in showing cause against a conditional order under s. 133 being made absolute, the party against whom the order was made claimed the appointment of a jury, and the majority of them were against the order, *held* that the order of the Magistrate making his conditional order absolute upon the report of the jury, was neither reasonable nor legal. BASANTA BAISTABI v. EMPEROR, **5 C.W.N. 566.**

(925)—*Ss.* 133, 139—*Houses of prostitutes, existence of by the road-side.*—The mere existence of houses of prostitutes by the roadside, and the fact that they ply their trade in them, cannot affect the physical comforts of the passers-by. BASANTA BAISTABI v. EMPEROR, **5 C.W.N. 566.**

(926)—*Ss.* 133 *and* 140 (=*ss.* 133, 140, *Code of* 1882)—*Power of Magistrate to order removal of burning ghat—Acts done by a private proprietor on his property—Notice.*—A Magistrate has no power under s. 133, to direct the removal of a burning ghat. What he has jurisdiction to direct is that the proprietor should "remove the nuisance;" in other words, take such steps as would result in the cremation of corpses at the place ceasing to be a nuisance to the public. That is also the form in which the notice under s. 140, should be drawn up. Although a burning ghat or cremation ground may not in itself be a nuisance within the meaning of cl. 2, s. 133, still a Magistrate will have jurisdiction under that clause, if it is shown that such a ghat or ground is in such an offensive state or that cremation is carried on upon it in such an offensive manner as to be a source of injury, danger or annoyance to persons living in the vicinity. A private owner may be guilty of acts done on his private property, if it may give rise to a public nuisance to those living in the neighbourhood. Therefore, the owner of a cremation ground may fairly be held to create a nuisance, if he allows the cremation of bodies upon that ground to be so performed as to annoy or endanger the lives and properties of persons living in the vicinity. In such cases a Magistrate has jurisdiction to proceed under the second clause of s. 133. INDRA NATH BANERJEE v. QUEEN-EMPRESS, **25 C. 425=2 C.W.N. 113** (19 M. 464, (1862) 31 L.J Q.B. Ex. Ch. 286; *R. and Disc.*; 19 W.R. 309, *D.*) [*R.*, 12 C.W.N. 70.]

(927)—Ss. 133, 141—*See* PENAL CODE, s. 188, Rat. Un. Cr. C. 81=Cr. Rg. 11 6-1874.

(928)—*Ss.* 133, 145, 147—*Proceedings entirely different—Order under s.* 147 *on proceeding under s.* 133, *without jurisdiction.*—An order under s. 147 of the Crim. Pro. Code, is made without jurisdiction, if it is passed on a proceeding under s. 133, Crim. Pro. Code, without any action in accordance with s. 145. The procedure under s. 147 should be as under s. 145, which includes the filing of written statements, taking of evidence and, if necessary, local investigation. Proceedings under s. 133 are under an entirely different chapter of the Code. ABDOOL RACKMAN MIA v. SAFAR ALI, **9 Ind. Cas. 262=12 Cr. L.J. 43=15 C.W.N. 667.**

(929)—Ss. 133, 147—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 M. 121=2 Weir 113=5 Ind. Jur. 637.

(930)—*Ss.* 133, 342 488—*Person against whom proceedings under s.* 133, *Crim. Pro. Code, are taken, whether accused person—Examination on oath—Penal Code, s.* 193. Proceedings under s. 133, Crim. Pro. Code, are more of the nature of civil than of criminal proceedings, and a party to such a proceeding is not an "accused person" within the meaning of s. 342 of the Code. There is nothing, therefore, to prevent his being examined on oath, and if he gives false evidence, he may be prosecuted for an offence under s. 193, I.P.C. HIRA NANDAOJHA v. EMPRESS, **9 C.W.N. 983=2 C.L.J. 149=2 Cr. L J. 575.** (16 B. 661, 23 C. 493, 21 A. 107, *D.*) [*R.*, 13 Cr. L.J. 723=16 Ind. Cas. 755=23 M.L J. 393=1912 M.W.N. 1012.]

(931)—*Ss.* 133 *and* 437 (=*Crim. Pro. Code*, 1882, *ss.* 133, 437)—*Power of District Magistrate to order further enquiry.*—Although a District Magistrate has no power under s. 437, to order a further enquiry in a proceeding under s. 133, the High Court will not set aside the whole of the proceedings upon this ground alone, if it appears that the High Court itself will have directed the Subordinate Magistrate to hold a further enquiry upon the matter being referred to it by a District Magistrate. INDRA NATH BANERJEE v. QUEEN-EMPRESS, **25 C. 425=2 C.W.N. 113.** [*R.*, 17 C.P.L.R. 127.]

(932)—*Ss.* 133, 487 (=*Crim. Pro. Code*, 1882, *ss.* 133, 487)—*Order to remove branches of trees, on police report—Jurisdiction—Disobedience.*—On a police report, a notice was issued by a Deputy Magistrate to the accused to cut down the branches of a tree of his, which overhung a certain house and were thus dangerous in affording facility to thieves. *Held* that the

Crim. Pro. Code (Act V of 1898)—*continued.*

Magistrates had no jurisdiction to make the order under s. 133, Crim. Pro. Code. A Magistrate who makes an order under s. 133, Crim. Pro. Code, for the removal of a nuisance, cannot himself try and convict the person to whom such order was directed and who has disobeyed it. EMPRESS v. HIRAL LAL, **A.W.N. 1883, 222.**

(933)—*Ss.* 133, 556—*Magistrate issuing notice as Chairman of Local Board—Case should not be tried by him.*—It is highly undesirable that a Magistrate should judicially act in a case which he has himself extra-judicially investigated and in which, upon facts so investigated, he has come to conclusions of fact adverse to the party against whom he subsequently initiates proceedings under the criminal law. Therefore where a Magistrate as the chairman of a certain Local Board, issued a notice calling upon the petitioner to remove a certain obstruction, and the petitioner submitted a representation which proved infructuous, and subsequently the Magistrate initiated proceedings against the petitioner under s. 133 of the Crim. Pro. Code. *Held*, that the concern of the Magistrate with the case is not merely in a public capacity so as to take the case out of s. 556 of the Crim. Pro. Code. RAJANI KANTA PANJA v. EMPEROR, **11 Cr. L.J. 2=4 Ind. Cas. 437=10 C.L.J. 484.** (5 A.L.J. 357, A.W.N. 1908, 95, 7 Cr. L.J. 393, *R.*)

(934)—*S.* 133 (3) (=*Crim. Pro. Code,* 1882, s. 133 (3))—"*Trade or occupation*"—*Proprietor of a cremation-ground.*—The proprietor of a cremation-ground cannot be said to be carrying on any " trade or occupation" within the meaning of s. 133 (3), inasmuch as he merely puts his land at the disposal of any one who wishes to cremate a dead body and makes his profit by charging a high rent to a tenant who sells wood to the relatives of the deceased. INDRA NATH BANERJEE v. QUEEN EMPRESS, **25 C. 425=2 C.W.N. 113.**

——S. 134 (=1882, s. 134 ; 1872, s. 522 ; 1861, s. 309).

(935)—Ss. 134, 143, 144—*See* NUISANCE UNDER CRIM. PRO. CODE, 8 A. 99=A.W.N. 1886, 27, 16 C. 9.

——S. 135(=1882, s. 135 ; 1872, s. 523 ; 1861, s. 310).

(936)—S. 135—*See* Nos. 903, 904, *supra.*

(937)—*Ss.* 135, 138—*Reference to Jury.*—A Magistrate should not refer any question to the Jury, under s. 138, until it has been first determined that the place where the obstruction is alleged to have been caused is a public place. He may then require the Jury to determine whether the order is reasonable and proper. *In re* KHAJAH BHOY, **2 Weir 64.**

——S. 136 (=1881, s. 136 : 1872, s. 525 ; 1861, s. 311).

(938)—S. 136—*See* Nos. 905, 906, *supra.*

Crim. Pro. Code (Act V of 1898)—*continued.*

——S. 137(=1882, s. 137 ; 1872, ss. 525, 527 ; 1861, ss. 311, 313.

See MAGISTRATE, JURISDICTION OF.

See NUISANCE UNDER CRIM. PRO. CODE.

(939)—*S.* 137 (=*Crim. Pro. Code,* 1882, s. 137)—*Conditional order made absolute without examining witnesses.*—Where, on cause being shown why a conditional order under s. 133 should not be made absolute, the Magistrate referred the objection to a Subordinate Magistrate for report, and, on the report being favourable to the party concerned, the Magistrate made the order absolute on a personal inspection of the spot, without taking any evidence whatever, *held,* that the procedure was *ab initio* illegal. *In re* KOLANDAVELU CHETTI, **2 Weir 62.**

(940)—S. 137—*See* ACT I OF 1877, s. 42, 15 C. 460, F.B.

(941)—S. 137—*See* Nos. 907 to 919, *supra.*

——S. 138, para 1 (=1882, s. 138 ; 1872, ss. 523, 524) and para 2 new.

See MAGISTRATE, JURISDICTION OF.

See NUISANCE UNDER CRIM. PRO. CODE.

(942)—*S.* 138—*Jury, appointment of—Five persons named as jurors—Report by four, one being ill—Whether report legal.*—Five persons were appointed jurors in accordance with the provisions of s. 138. Of these persons only four jurors dealt with the case, one of them being ill and unable to attend. On the report of the four jurors, the conditional order was made absolute : *Held,* that, notwithstanding that the jury as a body can act by a majority, that act must be by a majority out of a jury of five people who investigated the case, and that in the present case the report was not legal and the order should be set aside. PROMOTHA NATH BOSE v. BASANTA KUMAR BOSE, **6 Ind. Cas. 777=11 Cr.L.J. 402.**

(943)—S. 138—*See* Nos. 903, 904, 920, 921, 922, 923, 936, *supra.*

(944)—*Ss.*138, 141—*Extension of time to jurors for making their report.*—Where an application for extension of time within which to deliver their verdict is made by the jury, no proceedings can be valid, until it has been disposed of. The Magistrate appointing the jury has the discretion whether or not to extend the time to the jurors to give their verdict. Such an exercise of discretion is a condition precedent to the passing of an order under s. 141. The power to extend or refuse to extend time is expressly conferred by the last clause of s. 138. QUEEN EMPRESS v. KEDAR NATH, **23 A. 159=A.W.N. 1901, 30.**

(945)—*Ss.* 138, 141—*Obstruction to highway —Verdict of jury appointed for that purpose.*—Although the verdict of a majority of the jury must be accepted by the Magistrate, this means that the jury should have heard together and tried the matter which had been referred to

Crim. Pro. Code (Act V of 1898)—*continued.*

them; the decision of three of them acting in the absence of the other two is wholly invalid. QUEEN EMPRESS v. KEDAR NATH, **23 A. 159 = A.W.N. 1901, 30.**

(946)—S. 138 (1)—*See* PENAL CODE, s. 188, Rat. Un. Cr. C. 342 = Cr. Rg. 33 of 1887.

——S. 139 (= 1882, s. 139; 1872, ss. 523, 526).

(947)—S. 139—*See* Nos. 904, 921, 922, 924, 925, *supra.*

——S. 140 (= 1882, s. 140; 1872, ss. 525, 526; 1861, ss. 311, 312).

(948)—S. 140—*See* Nos. 906, 916, 917, 918, 926, *supra.*

——S. 141 (= 1882, s. 141: 1872, s. 523, para 4.

(949)—S. 141—*See* Nos. 904, 944, 945, *supra.*

——S. 143 (= 1882, s. 143; 1872, s. 519; 1861, s. 63).

See MAGISTRATE, JURISDICTION OF.

See NUISANCE UNDER CRIM. PRO. CODE.

(950)—*S.* 143—*Penal Code* (*Act* XLV *of* 1860) s. 290—*Working husking machines at night* — When the Magistrate, in a case under s. 290, I. P. C., without recording evidence on the issue whether the use of the husking-machines complained of did or did not cause any common injury, danger or annoyance to the people in general occupying property in the vicinity, ordered the accused under s. 143 of the Crim. Pro. Code, not to continue the use of the machines during the night from 12 midnight to 5 A.M. *held,* that, though the Magistrate's proceedings were not without jurisdiction, they were irregular, as he was not justified in refusing to take the evidence tendered by the parties bearing on the question at issue. PHARAYA MAL v. THE EMPEROR OF INDIA, **34 P.L.R. 1903.**

(951)—S. 143—*See* PENAL CODE, ss. 188, 290, 19 M. 464 = 1 Weir 247 = 6 M.L.J. 181 = 1 Weir 247 = 2 Weir 65.

(952)—S. 143—*See* PENAL CODE. ss. 268, 290, 69 P.L.R. 1904 = 9 P.R. 1904, Cr.

(953)—S. 143—*See* Nos. 359, 935, *supra* and No. 1012, *infra.*

(954)— Ss. 143, 417—*See* PENAL CODE, ss. 188, 290, 7 M.L.J. 33, P.C.

——S. 144 (= 1882, s. 144; 1872, s. 518; 1861, ss. 62 and 63).

See NUISANCE UNDER CRIM. PRO. CODE.

(955)—*S.* 144 (= *Crim. Pro. Code.* 1872, s. 518)—*Scope of the section.*—The application of s. 518 is confined to the particular act from which danger is apprehended, and does not authorize an order prohibiting a course of conduct or an occupation involving a series of acts done at certain intervals and spreading over a period of time. It is expressly stated that the direction authorised is to abstain from a certain act, and that the section is intended to provide for cases when a speedy remedy is desirable, and when the procedure in s. 521 (s. 133) would be ineffective. HIGH COURT PROCEEDINGS, 4TH FEB. 1879, No. 147, **2 Weir 67.**

(956)—*S.* 144—*Order under the section, when can be made*—*S.* 188, *I.P.C.*—Before a Magistrate can take action under s. 144, he must be of opinion that immediate prevention or speedy remedy is necessary, and when he has made up his mind that it is so, he must state the material facts in his order. KAROOLAL SAJAWAL v. SHYAM LAL, **32 C. 935 = 9 C.W.N. 864 = 1 C.L.J. 216 = 2 Cr.L.J. 215.** [*R.*, 11 C.W.N. 223, 14 C.W.N. 234 = 11 Cr. L. J. 49 = 5 Ind. Cas. 154.]

(957)—*S.* 144—*Object of*—*Evasion of the law*—*Arbitrary and successive renewals of order under the section*—*High Court's power to revise*—*Charter Act*, s. 15.—S. 144, Crim. Pro. Code, relates to the passing of provisional orders to tide over temporary emergencies and in cases where 'immediate prevention or speedy remedy is desirable.' The powers given to the High Court under cl. 15 of the Charter Act are sufficient to prevent the evasion of the law as laid down by s. 144, by the Magistrate, who, under the shelter of that section, assumes a jurisdiction to prohibit persons by a permanent injunction from taking processions throughout an indefinite period, by arbitrary and successive renewals of orders under s. 144 (*a*). GOVINDA CHETTI v. PERUMAL CHETTI, **25 M.L.J. 370 = 14 Cr. L. J. 589 = 21 Ind. Cas. 381.** (7 C.W.N. 143, 11 C.W.N. 79 (82), 5 C. 7 (19), 25 C. 852, *R.*)

(958)—*S.* 144—*Breach of peace apprehended*—*Powers of Magistrate.*—If a Magistrate apprehends a breach of the peace, he can restrain temporarily the exercise by any private persons of their lawful rights, to prevent that result, and disobedience to such an order is an offence under s. 188, Penal Code. TEKAIT KUNJ BEHARI NARAN DEO v. BHIKO SINGH, **5 C.W.N. 329.** (10 B.L.R. 443, *F.*)

(959)—*S.* 144 (= *Crim. Pro. Code,* 1872, s. 518)—*To "abstain from a certain act," meaning of the expression.*—Where an order under s. 518 requires the petitioner to abstain from interference with a certain mutt and the property appertaining to it, the order is an order to abstain from "a certain act," within the meaning of the section. ELAVARISU VANAMAMALAI RAMANUJA JEEYARSVAMI v. VANAMAMALAI RAMANUJA JEEYAR, **3 M. 354 = 2 Weir 90 = 6 Ind. Jur. 29.**

(960)—*S.* 144—*Dispute between two sects of Mahomedans as to use of mosque.*—Where, in a dispute between the members of the Hanifi and the Shafi sects about the use of a certain mosque, the Magistrate passed an order addressed to the members of both the sects which was to be observed in regard to the entry of the mosque by the members of the rival sects, *held,* that the order was one to "abstain from a certain act," although it was not so in form

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and the order was therefore within the powers conferred by s. 144, Crim. Pro. Code. QUEEN-EMPRESS v. ABDULLA SAHEB, **24 M. 262**=**2 Weir 611**=**2 Weir 93.**

(961)—*S.* 144 (=*Crim. Pro. Code*, 1861, s. 62)—*Form of order under.*—An order under s. 62 of the Crim. Pro. Code, should be a written order addressed to a particular individual. REG. v. MARDAN HUSEN, **Rat. Un. Cr. C. 30**=**Cr. Rg. 10-3-1870.**

(962)—*S.* 144 (=*Crim. Pro. Code of* 1872, s. 518)—*Nature of order under.*—A Magistrate cannot make an order, under s. 518 of the Crim. Pro. Code (of 1872), which has more than a temporary operation. The grant of what is, in effect, a perpetual injunction is entirely beyond his powers. GOPI MOHUN MULLICK v. TARAMONI CHOWDHRANI, **5 C. 7**=**4 C.L.R. 309, F.B.**=**2 Shome L.R. 217.** (6 B.L.R. 74, F.B. ; 18 W.R. Cr. 47=10 B.L.R. 434, F.B., 2 C. 293, 6 N W.P, 104, *R.*) [*F.*, 4 C.L.R. 410 ; *R.*, 10 A. 115=A W.N. 1888, 25, 8 C. 580, 19 C. 127, 30 C. 155, F.B., 8 N.L.R. 107, 14 Cr. L.J. 589=25 M.L J. 370=21 Ind. Cas. 381.]

(963)—*S.* 144 (=*s.* 521 *of* 1872)—*Nature of order.*—A Magistrate has no power to pass a perpetual injunction under s. 518 of the Code. BRADLEY v. JAMESON, **8 C. 580**=**11 C.L.R. 414.** (5 C. 7, *R.*)

(964)—*S.* 144, *Nature of order under the section.*—A Magistrate is not competent to make an order under s. 144, which is not limited in time, but, on the face of it, purports to be of the nature of a perpetual injunction. REMJIT SINGH v. LUCHMAN PROSAD, **7 C.W.N. 140.** [*R.*, 14 Cr. L.J. 589=21 Ind. Cas. 381=25 M. L.J. 370. *Disc.*, 34 C. 897=6 C.L.J 186=11 C. W.N. 942.]

(965)—*S.* 144—*Temporary orders in urgent cases of nuisance—High Court—Powers of.*—An order passed under s. 144 of the Crim. Pro. Code, restraining a certain body of people, from exercising the rights of Melvaramdar, in relation to certain lands, is a valid one. The Madras High Court is more liberal than the Calcutta High Court in the interpretation of s. 144. The High Court will interfere, if the Magistrate passes a permanent injunction instead of affording a temporary relief in matters of urgency. *In re*, MEYYARU AMMAL **1914 M.W.N. 169**=**15 Cr. L.J. 145**=**22 Ind. Cas. 721.**

(966)—*S.* 144—*Temporary orders—No power to renew for a further period except by notification of Government.*—S. 144, Crim. Pro. Code, applies to all temporary orders in urgent cases of nuisance or apprehended danger, and, except specially extended by a notification of Government, no such order shall remain in force for more than two months. Where an order itself does not set forth the material facts of the case as required by law, and no urgency is indicated, the order is without jurisdiction. Where an order purported to renew a previous order, it is

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in effect an extension and hence one passed without jurisdiction. GOVINDA CHETTY v. EMPEROR, **1913 M.W.N. 1003**=**14 Cr. L.J. 658**=**21 Ind. Cas. 898**=**27 M.L.J. 628.**

(967)—*S.* 144—*Urgent orders in case of danger of breach of peace—Force at disposal of Magistrate insufficient—Procession a luxury—Whether sufficient ground for order under s.* 144.—Where a Magistrate apprehends that, with the force at his disposal he cannot prevent a breach of the peace, he has jurisdiction to pass a temporary order under s. 144, Crim. Pro. Code, stopping a procession. The fact that a procession is a luxury, is not a sufficient ground for passing an order under s. 144. ARUMUGA MOODALI v. S. E. KOO-PERUMALSWAMY CHETTY, **15 Cr. L.J. 30**=**22 Ind. Cas. 174.**

(968)—*S.* 144—Ex parte *order—When can be passed.*—An *ex parte* order under s. 144 can only be passed in cases of emergency or when there is no time to serve notice. VENGATARAYA GOUNDAN v. THE VERY REVEREND N. RONDY, **8 M.L.T. 180**=**7 Ind.Cas. 343**=**11 Cr. L.J. 449.**

(969)—*S.* 144—*Power of Magistrate.*—A Magistrate has no power to make an order under s. 144 directing the petitioners who are cultivating raiyats to refrain from reaping the crops they have sown, unless they paid the rents claimed to be due from them to the Government or the Government farmer. ISAB MONDAL v. EMPEROR, **8 C W.N. 373.** [*F.*, 11 Cr. L.J. 11=4 Ind. Cas. 577=13 C.W.N. 188=5 M.L.T. 92.]

(970)—*S.* 144—*Power of Magistrate to adjudicate upon questions of title.*—A Magistrate, under s. 144 of the Crim. Pro. Code, is to make an order with the object of preventing a breach of the peace if he considered a breach of the peace was imminent. It is not his business, nor has he any jurisdiction, to adjudicate upon any question of title or possession. APPALA NARASIMHULU v. MAHANT HARI NARAYANA DAS BABAJI, **2 Weir 93.**

(971)—*S.* 144—*Object of order—Prevention of pecuniary loss to a party—Remedy in Civil Court.*—S. 144 of the Crim Pro. Code cannot apply to a case where the object of the order under the section appears to have been merely to prevent pecuniary loss to the opposite party. The proper remedy for the party aggrieved lies in the Civil Court. RAM AUTAR SAHU v. KISHNUPUT RAM, **11 Cr. L.J. 11**=**4 Ind. Cas. 577**=**13 C.W.N. 188**=**5 M.L.T. 92.**

(972)—*S.* 144 (=*Crim. Pro. Code*, 1872, s. 518)—*Order under—Protection of property.*—An order under s. 518 of the Crim. Pro. Code, 1872, cannot be made merely for the protection of property. *In the matter of the petition of* PRAYAG SINGH; EMPRESS v. PRAYAG SINGH, **9 C 103.** [*F.*, 11 Cr. L.J. 11=4 Ind. Cas. 577=13 C.W.N. 188=5 M.L.T. 92; *R.*, 19 C. 127.]

(973)—*S.* 144—*Order to hold hat on certain days, whether legal.*—Although a Magistrate acting under s. 144 is empowered to make an

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order prohibiting a person from holding a *hat* on certain specified days of the week, the terms of the law do not empower a Magistrate to make a direction that the *hat* should be held upon certain days, leaving the party no option to hold his *hat* upon some other days than those on which his rival holds his *hat*. SHYAMANAND DAS PAHARAJ v. EMPEROR, **31 C. 990 =8 C.W.N. 781.**

(974)—*S.* 144—*Order prohibiting the holding of a* hat—*Legality.*—The object of s. 144 is not that the orders should be made prescribing the holding of *hats* indefinitely within a certain area for two months. Where an order under s. 144 enjoined the petitioner not to establish a rival market within a quarter of a mile of a certain market place, *held*, that it was not a proper order, as it did not mention any limits of time, and there was nothing in the order to indicate whether the petitioner would be entitled to hold any market at any time within a quarter of a mile. BIDHU RANJAN MAZUMDAR v. RAMESH CHANDRA RAI, **11 C.W.N. 223=5 Cr. L.J. 43.** [*R.*, 34 C. 897=11 C.W.N. 942=6 C.L.J. 186=6 Cr. L.J. 194, F.B.]

(975)—*S.* 144—Hat—*Holding* hat *on one's own property, if unlawful—Whether injunction may issue not to hold* hat—*Duty of Magistrate in case of establishment of rival* hat—*Breach of peace—Order not to molest people attending other* hat.—The holding of a *hat* on a man's own property is not in itself a wrongful act and, therefore, any ulterior consequence which may arise from it cannot give rise to any proceeding against the owner of the land for committing an act likely to cause a breach of the peace, unless those ulterior consequences are made the basis of the proceedings. An injunction cannot be issued to a person restraining him from doing a lawful act upon his own property. Therefore, an order directing a man not to use his property in a lawful manner, for instance, not to establish a *hat* on his own land, does not come within the purview of s. 144 of the Crim. Pro. Code. What the Magistrate in this case ought to have ordered the parties to do was not to obstruct or allow their servants to obstruct any person from attending the other market if he wished to do so. RAKHAL DAS SINGH v. EMPEROR, **13 Cr. L.J. 511=15 Ind. Cas. 655.**

(976)—*S.* 144—*Power to make an order of irrevocable nature.*—The order of a Magistrate directing, under s. 144, the division of crops between the tenants and a rival Zemindar, is an order of an irrevocable nature, and such as the law does not empower him to make. UMATAL FATIMA v. NEMAI CHARAN BANERJEE, **32 C. 154.**

(977)—*S.*144—*Claim of right—Jurisdiction of Criminal Courts.*—Where a Raja applied for an order directing the petitioners to take certain idols in their possession to his house, and to perform the worship of the idol there, *held*, that a Criminal Court had no power to decide the question of any such rights as claimed by the Raja and to pass an order, thereupon, under

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s. 144. KAMAL NARAIN ADHIKARI v. RAJA JOTINDRA MOHAN ROY, **8 C.W.N. 376.** [*R.*, 11 Cr.L.J. 194=4 Ind. Cas. 1128=5 M.L.T. 217.]

(978)—*S.* 144—*Prohibition of collection of rents—Penal Code, s.* 188.—A Magistrate has no power to pass an order, under s. 144, Crim. Pro. Code, directing certain persons to refrain from collecting rents from the tenants. Disobedience to such an order will not constitute an offence under s. 188, Penal Code. PREMCHAND SINGH ROY v. DHARMADAS SINGH ROY, **9 C. W.N. 392.**

(979)—*S.* 144 — *Stopping the erection of an embankment which may cause loss to others—Legality—Executive order—Magistrate's explanation supplementing the order passed.*—An order under s. 144, Crim. Pro. Code, cannot be passed where the object of the order is merely to prevent pecuniary loss to any person. Where the Deputy Commissioner ordered the petitioner to stop the erection of an embankment, on the ground that the erection might cause great loss to the opposite party, and in his explanation to the High Court submitted that his order was an executive order having for its object the prevention of a disturbance of the peace, *held*, that the order was illegal and should be set aside, inasmuch as it could not have been passed under s. 144, Crim. Pro. Code, its object being merely to prevent loss to the opposite party. RAM AUTAR SAHU v. KISHNUPUT RAM CHAUBY, **13 C.W. N. 188=11 Cr. L.J. 11=4 Ind. Cas. 577=5 M.L.T. 92.** (9 C.103, 8 C.W.N. 373, *F.*)

(980)—*S.* 144—*Order directing a person to abstain from management of temple until the eviction of another person.*—Where an order passed under s. 144, Crim. Pro. Code, directed a person not to interfere with the management of a certain "*kovil*" and also directed him to abstain from taking any part in the management until another person should be duly evicted from the management by due course of law, *held*, that the first part of the order was an order to "abstain from a certain act" within the meaning of those words as used in the section and therefore made with jurisdiction. *Held*, further, that the second part contravened the provisions of s. 144, sub-s. 5 and to that extent was made without jurisdiction. RAMANADHAN CHETTI v. MURUGAPPA CHETTI, **24 M. 45=2 Weir 92.** (19 C. 127, *D.*) [*F.*, 15 Cr.L.J. 145=22 Ind. Cas. 721=1914 M.W.N. 169; *R.*, 17 C.P.L.R. 133.]

(981)—*S.* 144 (=*Crim. Pro. Code*, 1861, *s.* 62) —*Order directing removal of embankment.*—An order directing the removal of an embankment whereby the adjacent lands of the complainant are in danger of being flooded, cannot be made under s. 62, by a Subordinate Magistrate. HIGH COURT PROCEEDINGS, 22ND FEBRUARY 1870, **2 Weir 66=5 M.H.C. Ap. 19.**

(982)—*S.* 144 (=*Crim. Pro. Code*, 1882, s. 144)—*Right of public worship.*—Persons of whatever sect are at liberty to erect buildings and therein conduct public worship on their own land provided they neither invade

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the right of property enjoyed by their neighbours nor cause a public nuisance, and are also entitled to conduct religious processions through public streets if they do not interfere with the ordinary use of such streets by the public and subject to such directions as the Magistrate may lawfully give to prevent obstruction of the thoroughfare or breaches of the public peace. PARTHASARADI v. CHINNAKRISHNA, **2 Weir 70=5 M. 304.**

(983)—*S.* 144—*Magistrate's power to restrain the exercise of a legal right—Order of High Court allowing Hindus to pass a* masjid *in procession—Interpretation of the order.*—Although a Magistrate may, on an emergency, restrain temporarily the exercise of a legal right in order to preserve the peace, his authority to do so is co-extensive with such emergency, and when it ceases, he should secure to every person the enjoyment of his legal right, and by means of proper precautions, deter those who seek to invade the right of others. Where the High Court held that the Hindus were entitled to pass or re-pass a *masjid* in procession, attended with music, on all lawful occasions and in a lawful manner, so as not to disturb the respondents or other persons assembled for the performance of religious ceremony, *held*, that the decree ought not to be interpreted so as to mean that the Hindus should be prohibited from passing in procession with music, merely because the respondents and other persons had assembled under the guise of religious worship, in order to prevent the playing of music by the Hindus. *Held*, further, that in such cases the respondents should fix certain hours for worship on those days in which the Hindu procession had to pass the mosque. *In re* PEDDA CHARI, **2 Weir 74.**

(984)—*S.* 144 (=*Crim. Pro. Code*, 1882, s. 144)—*Lawful use of public street.*—No persons have a right to obstruct others when making a lawful use of a public street, and a custom founded on religious intolerance cannot be recognised. If the members of any sect desire to prevent the use of the streets in the neighbourhood of their houses by members of any other sect, they should erect their houses on streets which are private property. *In re* RAMANUJA AIYANGAR, **2 Weir 89.**

(985)—*S.* 144—*Time during which prohibitory order to remain in force, not specified—Order, validity of.*—An order made under s. 144 is not bad, because it omits to state that its operation is confined to two months, or some shorter period from the making thereof. Under the provisions of cl. (5) to s. 144 of the Code, an order under s. 144 only enures for a period of two months, and, therefore, unless there is something to the contrary in the order, it must be presumed that the order is to be limited to the period of two months specified in the Code. RAM NATH CHOWDHRY v. EMPEROR, **34 C. 897=6 C.L.J. 186=11 C.W.N. 942=6 Cr. L.J. 194, F. B.=2 M.L.T. 474.** (2 C.W.N. 422, 7 C.W.N. 140, 11 C.W.N. 223, *Disc.*)

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(986, 987)—*S.* 144—*Extension of period of two months by repeating order—Order issuing notice under subsequent confirmation of the order on cause shown whether extends the period of operation of the first order.*—A Magistrate has no power to extend the period of two months prescribed by s. 144 of the Crim. Pro. Code by repeating the order on a subsequent date. Where the Magistrate made an order issuing a notice under s. 144, Crim. Pro. Code, against a person not to do a certain thing and directed him to show cause on a subsequent day against the order, and, on such cause being shown, refused to withdraw the order, *held*, that the order issuing the notice was an order under s. 144, Crim. Pro. Code, and, as such, could remain in force for two months from its date, and the confirmation of the said order on a subsequent day on cause being shown could not extend the period of its operation beyond these two months. THOMSON v. EMPEROR, **13 C.W.N. 195=5 M.L.T. 96=11 Cr. L.J. 12=4 Ind. Cas. 590.**

(988)—*S.* 144 (=*Crim. Pro. Code*, 1872, s. 518)=s. 144 *of the Code of* 1882—*Order under the section, duration of—Breach of orders some years thereafter — Penal Code*, s. 188.—The Magistrate is not empowered to pass an order under s. 518 of the Code of 1872, which would have more than a temporary operation, and the grant of what would be in effect an order for perpetual injunction is beyond the Magisterial jurisdiction. The Code of 1882 has recognised the principle, and the omission to limit the duration of an order under s. 518 of 1872 has been supplied by s. 144 of the Code of 1882, which limits it to two months. Where an order, under s. 518 of the Code of 1872, passed in 1876, directing the *saraogis* to take the procession of their idol at a particular hour and in a particular direction, was not promulgated again in 1886, the *saraogis*, taking the procession in 1886, contrary to the order of 1876, could not be convicted under s. 188, I.P.C., as the order could have only a temporary effect. QUEEN-EMPRESS v. SHEODIN, **10 A. 115=A.W.N. 1888, 25.** [*R.*, 10 A. 150.]

(989)—*S.* 144 (=*Crim. Pro. Code*, 1872, s. 518)—*Illegal order—Jurisdiction of Civil Courts.*—The powers conferred by the section are large, but they ought, like all other powers of discretion created by law, to be exercised in a reasonable manner; and a Magistrate is bound, before he issues an order, to satisfy himself upon reasonable grounds that his order is likely to prevent a riot or affray. Where a Magistrate fails to exercise reasonable discretion, or satisfy himself that his order is absolutely required for any of the purposes mentioned in the section, and the order made by him deprives a man of the right to deal with his properties in a lawful way for lawful ends, such an order may be set aside by the Civil Court as one that the Magistrate was not entitled to make. KEDAR NATH v. RUGHONATH, **6 N.W.P. 104.** [*R.*, 5 C. 7 F.B.]

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(990)—*S.* 144—*Interdicting exercise of legal right—Penal Code,* s. 188.—The Magistracy may, under s. 144, Crim. Pro. Code, in circumstances where the public tranquillity is in danger, interdict for the occasion the exercise of a legal right, and disobedience to the order is punishable under s. 188, I.P.C. QUEEN-EMPRESS v. KARIGOWDA, **18 B. 758.**

(991)—*S.* 144 (=*Crim. Pro. Code,* 1882, *s.* 144)—*Order made without jurisdiction—High court's power of interference—Charter Act* (24 *and* 25 *Vic., ch.* 104), *s.* 15—"*A certain act,*" *meaning of.*—The High Court can interfere, under s. 15 of the Charter Act, with an order made by a Magistrate, under s. 144 of the Crim. Pro. Code, when the Magistrate has no jurisdiction to make the order. [*F.,* 19 C. 127, 25 C. 852, 26 C. 188; *R.,* 31 C. 990]. The words "A certain act" mean a definite act. Therefore, an order directing a person not to collect rents from the ryots generally, without mentioning any particular ryots, does not come within the terms "a certain act" in s. 144 of the Code, and should, therefore, be set aside. ABAYESWARI DEBI v. SIDHESWARI DEBI, **16 C. 80.** [*F.,* 19 C. 127.]

(992)—*S.* 144—*Order under the section contrary to a decree of Civil Court, effect of.*—Where the landlord of a certain share in an estate had obtained a decree in a Civil Court for arrears of rent and for ejectment of his tenants, and obtained also possession under that decree, *held,* that the mere fact that the landlord was unable to point out the particular lands of which he had obtained possession under the decree, would not justify an order under s. 144, the effect of which would be to deprive the landlord of the lands to which he was entitled, and that it was on the tenants to show what lands they held from the landlord. GOBIND SAHAI v. MESSRS. SIMS AND CARRUTHERS, **6 C.W.N. 466.**

(993)—*S.* 144.—*Renewal of order on the expiry of two months.*—A Magistrate has no jurisdiction to make on order for the renewal of an order under s. 144 an the expiry of two months. REMJIT SINGH v. LUCHMAN PROSAD, **7 C.W.N 140.** [*R.,* 14 Cr. L.J. 589 =21 Ind. Cas. 381=25 M.L.J. 370.]

(994)—*S.* 144 — *Order under the section — Appeal — High Court's Act,* s. 15.—An order which purports to be based upon the legal rights of the parties affected by the order, but which in fact proceeds upon a misconception of those rights, although there is nothing on the face of the order that it is beyond the powers conferred by s. 144 of the Crim. Pro. Code, is an order which ought not to be allowed to stand. The High Court has the power to set aside such an order under s. 15 of the High Court's Act—*Per White, C.J.* It is doubtful whether the High Court, in the exercise of the powers of superintendence given to it by s. 15 of the High Court's Act, has the power to revise an order of a Magistrate passed under s. 144 of the Code. *In re* STRINIVASA RAGHAVA CHARI, **2 Weir 94= 1 Weir 785.**

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(995)—*S.* 144 (=s. 518, *Crim. Pro. Code,* 1872)—*Dispute as to collection of rents—Order prohibiting collection, till the right of any party is adjudged by a competent Court, illegal*—Where there is a dispute between rival parties as to the collection of rents from tenants, a Magistrate is not empowered under s. 518, Crim. Pro. Code, 1872, to make an order prohibiting such collection till such time as the right and title of both parties is established by the order of a competent Court. *In re* PROSUNNO COOMAR, **3 J.G. 44.**

(996)—*S.* 144 (=s. 62, *Crim. Pro. Code,* 1861) —*Holding* hauts—*Magistrate empowered to issue orders of prohibition.*—S. 62, Crim. Pro. Code, 1861, authorizes a Magistrate, or other officer exercising the powers of a Magistrate, to issue an order prohibiting a landholder from holding a *haut* on any particular spot on his estate on particular days, on the ground that such an order is likely to prevent a riot or an affray. ABIDURRIJU v. DOLGOBIND, **1 J.G. 23.**

(997)—*S.* 144 (=*Crim. Pro. Code, Act* X *of* 1882, *s.* 144)—*Killing votive animals in private houses.*—Where a Municipal bye-law provided that killing any cattle in any place not sanctioned by the committee or without the permission thereof was illegal and the Magistrate with a view to prevent breaches of the peace between Hindus and Muhammadans, prohibited the slaughter of even votive animals except in the slaughter-house, *held* that the order was not illegal. ABDULLAH v. NANAK CHAND, **A.W.N. 1885, 258.**

(998)—*S.* 144—*Destruction of stray dogs — Order passed asking public not to remove dogs in carts—Order operating in the whole of city limits and five miles beyond.*—By a notification issued under s.144 of the Crim. Pro. Code, the District Magistrate of Surat ordered "all persons to abstain from removing or causing to be removed or promoting,aiding or abetting directly or indirectly, in any way the removal of any dogs, either in carts, or otherwise, or from preventing or trying to prevent or obstruct directly or indirectly the poisoning of such dogs in any way and from taking possession of or confining such dogs." The order applied to "Surat City and all places within five miles of Surat City." On an application under revisional jurisdiction: *Held,* that the order was made without jurisdiction inasmuch as the order was directed neither to a particular individual nor to the public generally "when frequenting or visiting a particular place." EMPEROR v. BHAGUBAL DWARKADAS, **16 Bom. L.R. 684=2 Bom. Cr. Cas. 249.**

(998-*a*)—*S.* 144 — *Cow-sacrifice — General order.*—Under s. 144, Crim. Pro. Code, a District Magistrate can issue an order to the public generally who in certain particular circumstances cannot be individually addressed. Sub-s. (3) of the section is intended to extend rather than to limit the scope of the order so as to include therein even casual or frequent visitors

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from outside the limits of the particular locality within which the order is to have application. A general order issued by a District Magistrate to the effect that no person should sacrifice or cause to be sacrificed any cow or bullock within a certain specified boundary and period is a legal order. ABDUL GAFUR v. EMPEROR, **16 Cr. L J. 190=27 Ind. Cas. 670=18 O.C 70.**

(999)—S. 144—*See* BREACH OF THE PEACE, 12 C.W.N. 1044=8 Cr. L.J. 230.

(1000)—S. 144—*See* FORGERY, 35 C. 820.

(1001)—S. 144—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 17 A. 485, F.B.=A.W.N. 1895, 96.

(1002)—S. 144—*See* MARKET, A.W.N. 1897, 59.

(1003)—S. 144 — *See* NUISANCE UNDER PENAL CODE, 14 B. 165.

(1004)—S. 144—*See* PENAL CODE, s. 188, 32 C. 793=2 Cr. L J. 760, 14 C.W.N. 234, 36 P. R. 1905, Cr.

(1005)—S. 144—*See* PENAL CODE ss. 295, 379, 1 Weir 430=2 Weir 577.

(1006)—S. 144—*See* Nos. 585, 586, 587, 588, 927, 935, *supra* and Nos. 1175, 1300, 1710, 1896, 3403, 3728, 3741, 3742, 4047, 4574, *infra.*

(1007)—*Ss.* 144, 133 (=*Crim. Pro. Code,* 1861, *ss.* 62, 308)—*Case falling under both sections—Non-observance of the provisions of the latter section—Jurisdiction of Civil Courts.*—If any part of the ground covered by s. 62 also falls within the scope of s. 308, Crim. Pro. Code, 1861, then the Magistrate must conform to the more particular directions of the latter section. If such procedure is not adopted, the Magistrate's order and proceedings can be questioned by a suit in the Civil Court. KHAN CHAND v. THE COLLECTOR OF BOOLUNDSHUHUR, **1 N.W.P. 197.**

(1008)—*Ss.* 144, 133 (=*Crim. Pro. Code,* 1872, *ss.* 518, 521)—*Orders regarding custody and guardianship of children.*—An order regarding the custody and guardianship of children cannot be made under s. 518 or under s. 521. HIGH COURT PROCEEDINGS, 20TH OCTOBER 1880, NO. 2062, **2 Weir 66.**

(1009)—*Ss.* 144, 133 (=*Crim. Pro Code.* 1872, *ss.* 518, 521)—*Scope of the sections.*—S.518 is ancillary to s. 521 and, therefore where s. 521 does not apply, s. 518 also is inapplicable. HIGH COURT PROCEEDINGS, 20TH OCT. 1880, NO. 2062, **2 Weir 66.**

(1010)—*Ss.* 144, 133 (=*Crim.Pro. Code,* 1861, *ss.* 62, 308)—*Public nuisances—Applicability of s. 62.*—Cases specially provided for in s. 308 (s. 133) are, according to a common principle of interpretation, taken out of the general provisions of s. 62 (s. 144). HIGH COURT PROCEEDINGS, 5TH DEC. 1867, **2 Weir 58.**

(1011)—*Ss.* 144, 133—*Excavation of a tank—Injury to adjoining house—No likelihood of breach of peace—No evidence taken by Magistrate or urgency recorded—Order passed by Magistrate on personal apprehension—Legality.* S. 144, Crim. Pro. Code, is ordinarily to be used in cases of urgency, and should not be allowed to take the place of any other provisions of the law which might more appropriately apply. In this case, the petitioner began to excavate a tank near his house, and the police apprehending that, if he continued to do so, the house of the opposite party would sooner or later go down into the bed of the tank, approached the Magistrate to take action under s.133, Crim. Pro. Code. There was no likelihood of a breach of the peace, but the Magistrate made the order under s. 144, Crim. Pro. Code without enquiry and without recording any urgency in the matter. *Held* that the Magistrate's order is illegal and must be set aside. KAMINI MOHAN DAS GUPTA v. HARENDRA KUMAR SARKAR, **38 C. 876.**

(1012)—*Ss.* 144, 143, 133 (=*Crim.Pro. Code,* 1872, *ss.* 518, 519, 521)—*Order prohibiting burials.*—An order prohibiting burials in certain places, on sanitary grounds, cannot be made under s. 521, Crim. Pro. Code. The order should be made either under s. 518 or s. 519 CRIMINAL REVISION CASE NO. 86 OF 1881, **Weir 64.** [*R.*, 19 M. 464=1 Weir 247.]

(1013)—*Ss.* 144, 145—*Charter Act, s.* 15—*Order under s.* 145, *Crim. Pro. Code—High Court's power to interfere—Possession given by Sub-Magistrate to a person with consent of parties—Not a receiver—Nature of possession—Whether held on behalf of person in whose favour order under s.* 145 *is passed.*—Under s. 15 of the Charter Act, the High Court has power to interfere with orders passed under s. 145, Crim. Pro. Code, even if no question of the Magistrate's jurisdiction is involved, provided that there has been a gross miscarriage of justice. (23 M.L.J. 490=1912 M.W.N 1154, 31 M. 318, *R.*) Possession given to a person by a Sub-Magistrate, who has no power to appoint a receiver under s. 144, Crim. Pro. Code, with the consent of parties, is not possession of the receiver of Court, and cannot be said to be possession, on behalf of a person in whose favour an order under s. 145, is passed. PALANI CHETTY v. RATHINA CHETTY, **26 M.L.J. 208=1914 M. W.N. 352=15 Cr. L.J. 509=24 Ind. Cas. 397.** (27 C. 785, 22 M.L.J. 154, 1911 M.W.N. 44, *Doubted.*)

(1014)—Ss. 144 and 145—*See* BREACH OF THE PEACE, 3 M.L.T. 18=30 M. 548=7 Cr. L.J. 28.

(1015)—*Ss.* 144, 145 *and* 107—*Discretion of Magistrate.*—Where the defendant is in actual possession of the land about which the dispute has arisen, the Magistrate has a discretion to proceed under s. 107 or ss. 144 and 145. BELAGAL RAMACHARLU v EMPEROR, **26 M.471=2 Weir 56.** [*R.*, 2 Cr. L.J. 769=10 C.W.N. 288=32 C. 966, 13 Cr L.J. 789=17 Ind.Cas. 533=17 C.W.N. 205=17 C.L.J. 397, 10 Cr. L.J 231=2 S.L.R. 18, 3 Ind. Cas. 64=5 N.L.R. 94 ; 8 Cr. L.J. 170=1 S.L R. 50.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(1016)—*Ss.* 144, 145 *and* 146 (=*ss.* 144, 145, 146, *Code of* 1882)—*Scope of the sections.*—Chap XI of the Crim. Pro. Code, in which s. 144 appears, relates to interference or dealing of some kind with the land itself or with something created or standing upon it; and the section is directed to the prevention or the direction by a prompt order of some definite act on the part of an individual, so that injury or nuisance may not be caused. Ss. 145 and 146, which are in the next chapter, deal with the possession of property, and are sections which may be appropriately referred to where it is desired to prevent interference by one party with the collection of rent by another and matters of similar kind. ANANDA CHANDRA BHUTTACHARJEE v. CARR STEPHEN, **19 C. 127.**

(1017)—*Ss.* 144, 145, 146—*Petition for order under s.* 144—*Notice issued under that section —Action taken under s.* 145—*Petition dismissed —Attachment of land and crops ordered—Legality of proceedings of Magistrate—Judgment of Civil Court whether binding on Magistrate in proceedings under s.* 145.—A dispute arose between S and M regarding the possession of certain land. On 17-1-1914 M filed a petition asking for an order under s. 144 directing S to abstain from interfering with his possession. This petition was forwarded to the Police for enquiry. Meanwhile on 24-1-1914 M put in another petition objecting to the course of the Police enquiry and asking that harvest of the crops by S should be stopped, that the crops already harvested should be taken possession of by the Village Munsif, and that S should be ordered not to interfere with the lands. On this the Magistrate passed the following order on 24-1-1914: "Issue notice under s. 144 forbidding both sides to harvest until the question of possession has been settled by this Court. The crops already harvested shall be taken into the custody of the Village Munsif. Order both sides to produce witnesses before me on 5-2-1914." The notice actually issued to both sides on the same date did not purport to be issued under any particular section. S claimed the land in question under a sale deed from the sons of the admitted original owner K. M claimed as the lessee of K's widow. S filed a judgment of a Civil Court in a suit of 1911 in which it was decided that the widow had no right to lease the disputed lands. S asked for an order declaring him to be entitled to possession and forbidding disturbance by the other side. On 5-3-1914 the Magistrate took up the case under s. 145, Crim. Pro. Code, and dismissed M's petition, stating that he felt himself precluded from deciding the dispute by the judgment of the Civil Court. He also directed the Village Munsif to harvest the paddy and attach all the paddy and the land until an order was obtained from a Civil Court. S applied in revision to the High Court objecting to this portion of the order as illegal and without jurisdiction. *Held* that the Magistrate's order, which must be taken to have been passed under s. 146, was illegal and must be set aside. The proceedings of the Magistrate in so far as they purported to be under s. 145 are void for want of jurisdiction and are void *ab initio* by reason of his failure to comply with the requirements of cl 14 of s. 145. This provision of law is imperative and failure to comply with it destroys the Magistrate's jurisdiction (32 C. 552, *R.*; 36 M. 275, *D.*) S. 146 is a sort of corollary to s. 145 and the legality of an order under it depends on its having been preceded by legal proceedings under s. 145 and on the holding of an enquiry as to the fact of possession ending in the Magistrate's either finding that neither of the contending parties is in possession or being unable to satisfy himself as to which was in possession (40 C. 105, *R.*) The whole proceedings under s. 145 being illegal, the order made in this case under s. 146 cannot stand on a better footing. *Held* also that the existence of the Civil Court judgment did not affect the Magistrate's jurisdiction to take proceedings under s. 145, Crim. Pro. Code. The whole scheme of the ch. XII in the Crim. Pro. Code contemplates an enquiry solely with reference to the fact of actual possession, irrespective of title. SUBBARAMA AIYAR v. MARIYA PILLAI, **16 M.L.T. 52=(1914) M.W.N. 798=15 Cr. L.J. 559=24 Ind. Cas. 967.** (26 C. 625, 32 C. 296, *D.*)

(1018)—Ss. 144, 145, 192 (2) and 529—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 13 C.W.N. 530=36 C. 370=9 Cr. L.J. 399=1 Ind. Cas. 817.

(1019)—*Ss.* 144, 147 (=*Crim. Pro. Code,* 1861, *ss.* 62, 320)—*Right to use a pathway—Right to flow of water—Power of Subordinate Magistrate to try cases under s.* 320.—The right to use a particular pathway is a real right coming under s. 320 of the Code. Therefore, any Magistrate, other than a District Magistrate, has no power to make an order under s. 62. HIGH COURT PROCEEDINGS, 21ST FEBRUARY 1867, NO. 50, **2 Weir 65=3 M.H.C. App. 23.**

(1020)—*Ss.* 144, 147—*Right to flow of water —Order to have sluice demolished.*—A right to a flow of water and to have an order passed to have a sluice demolished comes under s. 320 (s. 147). The person to adjudicate upon this question of public right of user is, therefore, a person having the powers of the Magistrate of the District. The jurisdiction of Subordinate Magistrates is, therefore, barred. HIGH COURT PROCEEDINGS, 18TH FEB. 1867, **2 Weir 65.**

(1021)—*Ss.* 144, 426, 439, 440 (=*Crim. Pro. Code,* 1872, *ss.* 518, 297)—*Interference by High Court—Charter Act, s.* 15.—Orders under s. 518 not being judicial proceedings, the High Court cannot interfere with them under s. 297 of the Code; but the High Court can, under s. 15 of the Charter Act, set aside an illegal order made under s. 518. BRADLEY v. JAMESON, **8 C. 580 =11 C.L.R. 414.** [*Appr.*, 19 C. 127.]

(1022)—*Ss.* 144, 435—*Revisional power of High Court.*—If the orders passed by a Magistrate under s. 144 are within the scope of the

Crim. Pro. Code (Act V of 1898)—*continued.*

section and he has jurisdiction to make them, it is not open to the High Court, as a Court of revision, having regard to the provisions of s. 435 (3), to consider their propriety. ISAB MONDAL v. EMPEROR, **8 C.W.N. 373.** [*R.*, 4 L.B.R. 75 = 6 Cr. L.J. 291.]

(1023)—Ss. 144, 435—*See* HIGH COURT, JURISDICTION OF—GENERAL, Rat. Un. Cr. C. 967 = Cr. Rg. 22 of 1898, A.W.N. 1882, 140.

(1024)—Ss. 144 and 435—*See* NUISANCE UNDER CRIM. PRO. CODE, 18 M. 402 = 2 Weir 91, 2 C.W.N. 572, 27 C. 918.

(1025)—Ss. 144, 435, 439—*See* REVISION—GENERAL PRINCIPLES, 19 C. 127.

(1026)—*Ss.* 144, 435, 476 (= *Crim. Pro. Code*, 1882, *ss.* 144, 435 *and* 476)—*Magistrate making inquiry before passing order under s.* 144—*Stage of judicial proceeding—Power to order prosecution for giving false evidence in such inquiry—Taking evidence before coming to a decision.*—A Magistrate, making an inquiry before the issue of an order under s. 144, is acting in a stage of a judicial proceeding, and has, therefore, jurisdiction to take action under s. 476, if he is of opinion that false evidence has been given before him. Although a Magistrate acting under s. 144 may act on information received or on his own knowledge, yet, the proviso in the third clause of s. 144, which in certain cases authorises the Magistrate to pass an order *ex parte*, seems to contemplate that, ordinarily, an order under the section should not be made, without an opportunity being afforded to the person against whom it is proposed to make it, to show cause, why it should not be passed. This necessarily implies the power to take evidence before coming to a decision, though a Magistrate is empowered to act upon what is not legal evidence in cases of special urgency. QUEEN-EMPRESS v. TIRUNARASIMHA CHARI, **19 M. 18 = 2 Weir 591 = 2 Weir 94 = 5 M.L.J. 249.**

(1027)—*Ss.* 144, 435 (3)—*Order under s.* 144—*Revision.*—A Magistrate, acting under s.144, Crim. Pro. Code, passed the following order :—"I direct the following persons *shevadharis*, *pujairs* and the public generally to abstain from interfering with the *badves* in the performance of the daily *puja* of the God Vithoba at Pandharpur, and direct the *badves* also to perform the same *puja*." *Held*, that the Magistrate had jurisdiction to pass the order, and that under cl. (3), s. 435, of the Code, the High Court had no power to interfere in revision. *In re* VASUDEO APAJI, **4 Bom. L.R. 582.** (19 C. 137, 24 C. 527 = 2 Bom. L.R. 34, *D.*)

(1028)—*Ss.* 144, 435 (3)—*Power of High Court—Revision.*—The High Court ought not to interfere with the order passed by a Magistrate, who had jurisdiction to make such order in case of need, under s. 144. Whether the order made was or was not the best that could have been made is not a question which it has to consider. BANDALAPALLI PEDDA BANGAPPAH v. MOKA SUBBARAYADU, **5 M.L.T. 217.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1029)—Ss. 144, 439, 556—Wounding religious feeling of Mahomedans—Jhatka meat—No intention to injure feelings but for livelihood—Trial by a Mahomedan Magistrate who is personally interested —*See* PENAL CODE, ss. 95, 298, 26 P.W.R. 1912, Cr. = 16 Ind. Cas. 169 = 13 Cr.L.J. 601.

(1030)—*Ss.* 144 *and* 487—*Penal Code, s.* 188—*Trial by Magistrate, who made an order under s.* 144, *of persons who had disobeyed such order.*—A Magistrate, who made an order under s. 144 of the Code of Criminal Procedure, is not competent to try a person for an alleged offence under s. 188, Penal Code, the offence being an alleged breach of the order made under s. 144, Crim. Pro. Code. QUEEN-EMPRESS v. ABDULLA SAHEB, **24 M. 262 = 2 Weir 611 = 2 Weir 93.** (10 B.H.C. 424, *R.*) [*F.*, 15 Cr. L.J. 145 = 1914 M.W.N. 169 = 22 Ind. Cas. 721.]

(1031)—*S.* 144 (2)—*Dispute likely to be settled in Civil Court—No apprehension of breach of peace—Order directing a party to open channel in his own land whether an order under s.* 144 (2).—An order of a Magistrate directing a party to open a channel in his own land is not an order of the kind contemplated by s. 144 (2) of the Code of Criminal Procedure. (4 M. 121, *F.*; 13 Ind. Cas. 1000 = 13 Cr. L.J. 184 = 39 C. 560, *Diss.*) Where a dispute between the parties is likely to be settled by a Civil Court before the cultivation season, and there is no immediate apprehension of a breach of the peace, it is not a case for interference of the Magistrate under s. 144 (2) of the Code. C. A. SUBRAMANIA AIYAR v. MUTHU AMBALAM, **15 Cr. L.J. 291 = 23 Ind. Cas. 499.**

(1032)—*S.* 144 (4)—*Order passed by acting District Magistrate—Petition for rescission, by whom to be disposed of.*—An order passed under s. 144, Crim. Pro. Code, by a Joint Magistrate while acting as a District Magistrate, can be rescinded or altered after his reversion, by the then District Magistrate himself, and the latter cannot transfer an application for rescission or alteration to the former. SUDARSANAM AIYANGAR v. ELAYAVALLI SRINIVASACHARI, **16 Cr. L.J. 74 = 26 Ind. Cas. 666.**

(1032-*a*)—*Ss.* 144 (5), 435—*Time expired order, setting aside of.*—An order, which, on the date on which it is sought to be revised by the High Court, ceased to be in force by efflux of time under s. 144 (5) of the Code, should not be interfered with in revision under s. 435 of the Code. SWAMINADHA MUDALIAR v. GOPALAKRISHNA NAIDU, **16 Cr. L.J. 272 = 28 Ind. Cas. 160.**

——S. 145 (= 1882, s. 145; 1872, s. 530; 1861, s. 318).

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

(1033)—*S.* 145—*Object of the section—Circumstances under which the section becomes applicable—Non-joinder—High Court's powers—Duty of Magistrate.*—Under s. 145, a special

Crim. Pro. Code (Act V of 1898)—*continued.*

jurisdiction is vested in the Subordinate Criminal Courts under special circumstantes and for a special purpose; when either the special circumstances do not exist, or when the order made under s. 145 does not attain the purpose for which the jurisdiction is created, then the special jurisdiction vested under the section falls to the ground. The circumstances under which the jurisdiction springs up are those which give rise to an apprehension of a breach of the peace, and if there is no such apprehension, there is no jurisdiction to make the order. The purpose the Legislature had in view was the prevention of a breach of the peace. If that object is not attained by an order purporting to be made under s. 145, it must be taken to have been without jurisdiction. [*R.*, 6 C.W.N. 101=2 C.L.J. 271=10 C.W.N. 257=2 Cr. L.J. 670=33 C. 33.] Non-joinder of persons concerned in a dispute, whose presence is necessary for the purpose of preventing an apprehended breach of the peace, involves a question of jurisdiction, and the High Court has power to set aside an order made in a proceeding under s. 145, Crim. Pro. Code, in which such persons are not made parties. ANESH MOLLAH v. EJAHARUDDI MOLLAH, **28 C. 446=5 C.W.N. 428.** (27 C. 892, *F.*) [*F.*, 28 C. 709; *R.*, 30 C. 155, F.B; *D.*, 22 A.W.N. 111=24 A. 443.]

(1034)—*S.* 145—*Scope and object of.*—The principal object which a proceeding under s. 145 aims at is the prevention of a breach of the peace. It cannot be achieved, if persons interested in the possession of the land, or at any rate interested in claiming it, are not made parties to the proceeding. (27 C. 892, 4 C.W.N. 613, 5 C.W.N. 428, *R.*) [*R.*, 30 C. 155, 6 Cr. L.J. 113=24 P.W.R. 1907, Cr.=7 P.R. 1907, Cr.=71 P.L.R. 1908.] It is the duty of a Magistrate, before he initiates proceedings under s 145, not only to be satisfied that a dispute exists, but also to ascertain as far as possible, who are the parties concerned in the dispute. MANGAL HALDAR v. NAIMUDDI FAKIR, **6 C.W.N. 101.** (24 C. 55, 1 C.W.N. 3, *F.*) [*R.*, 30 C. 155, 6 Cr. L.J. 113=24 P.W.R. 1907, Cr.=7 P.R. 1907, Cr.=71 P.L.R. 1908.]

(1035)—*Object of s.* 145, *Crim. Pro. Code.*—The object of s. 145 of the above Code is to preserve the public peace by allowing the Magistrate to determine, for immediate purposes, questions of the possession of immoveable property. The respective rights of the parties to the property in question would be for the decision of a Civil Court. CRIMINAL REVISION CASE, NO. 496 OF 1892, **U.B.R. 1892—1896, Vol. I, 23.**

(1036)—*S.* 145—*Enquiry into question of title —Object of section.*—A long and minute enquiry into questions of title, involving the consideration of voluminous documentary evidence necessarily causes an expenditure of time and labour, contrary to the intention of s. 145, Crim. Pro. Code, which is limited to the one issue of possession; the object aimed at is chiefly the immediate prevention of a breach of the public peace. *In the matter of* THAKUR FAZAL ALI KHAN, **S.C. 127, Oudh.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1037)—*S.* 145—*Scope of the section—Order under sub-s.* 1—*Power of Magistrate to stay proceedings—Effect—Powers of High Court.*—The procedure provided by s. 145 is intended solely for the purpose of preventing a breach of the peace, where a dispute exists concerning land, or water, or the boundaries thereof, which dispute, if no proceedings were taken, would be likely to cause a breach of the peace. The institution of such proceedings is a matter entirely within the discretion of the Magistrate. The Magistrate, acting under the provisions of that section, should record an order stating the grounds of his being satisfied that a dispute likely to cause a breach of the peace in fact exists. Any inquiry as to possession, that is made under the provisions of that section, is made, not for the purpose of strengthening the position of the one party or of the other in the dispute between them, but because such an enquiry is necessary for the making of an order under sub-s. 6, declaring the party in possession to be entitled to retain it, until evicted from the property in due course of law, and forbidding all disturbance, until such eviction. A party to a proceeding under s. 145 is not in the position of a plaintiff in a civil suit, who has set the Court in motion, and has a right to require a decision upon the questions raised by him. It is competent to a Magistrate to cancel an order made under sub-s. 1 of s. 145, and to stay proceedings, if he becomes satisfied, whatever the source of his information may be, that the state of things does not exist which alone would give him jurisdiction to proceed with the inquiry. If a Magistrate cancels an order under s. 145, or refuses to make an order at all, no private person has any *status* to contest the propriety of his refusal to make an inquiry into the question of possession. An order striking off proceedings under s. 145 does not amount to an adjudication of the question of possession for the purposes of sub-s. 6 of s. 145. The High Court cannot direct the institution of proceeding under s. 145 or the revival of such proceedings, when they have been stayed by the Magistrate. MANINDRA CHANDRA NANDI v. BARADA KANTA CHOWDHRY, **30 C. 112=6 C.W.N. 417.** (20 C. 867, *R.*; 20 C. 188, 25 C. 559, 22 C. 297, 5 C.W.N. 71, *D.*). [*R.*, 17 C.P.L.R. 133.]

(1038)—*S.* 145—*Scope and object of—Possession.*—S. 145 was intended to provide a speedy remedy for the prevention of the breaches of the peace arising out of disputes relating to immoveable property. The Code contemplates a determination of the question of possession without any reference to the merits of the respective claims of the disputing parties to a right to possess the subject of dispute. The question of possession, moreover, has to be determined with reference to a specified point of time, namely, the date of the initial order, or, in the case of forcible dispossession, a date within 2 months next preceding such order. The Legislature could hardly have contemplated an elaborate and protracted investigation, the result of which might, in many instances, be to defeat the very object in view, *viz.*, an effective

Crim. Pro. Code (Act V of 1898)—*continued.*

prevention of a breach of the peace. The whole object might obviously be defeated, if the Court could be compelled to summon and re-summon witnesses at the choice of the parties. TARAPADA BISWAS v. NURUL HUQ. **32 C. 1093 = 2 C.L.J. 280 = 2 Cr. L J. 679.**

(1039)—*S. 145—Scope and applicability of—Joint possession.*—S. 145 contemplates a dispute between two parties, each of whom asserts the right to hold actual possession of the property as against the other, and not a dispute between parties claiming to hold joint possession and neither contesting such right. KRISTA ALHADINI DASI v. RADHA SYAM PANDAY, **7 C.W.N. 118.** (4 C.W.N. 426, *F.*) [*R.*, 32 C. 249 = 8 C.W.N. 885. 7 C.W.N. 462, 13 Cr. L.J. 583 = 15 Ind. Cas. 999.]

(1040)—*S. 145—Joint possession—Jurisdiction of Magistrate under section.*—Where the lands in dispute are not in the joint possession of the contending parties, the Magistrate has jurisdiction in taking action under s. 145. DENOMONI CHOWDHRANI v. MOZAFAR ALI KHAN. **5 C. W.N. 105.** [*R.*, 32 C. 249 = 8 C.W.N. 885.]

(1041)—*S. 145—Jurisdiction of Magistrate in case of dispute as to joint possession.*—A dispute not relating to possession of a share in the fishery, but to a share in its profits, may be dealt with under s. 145 by force of sub-s. (2). But where the dispute is with regard to possession of a share in the fishery, and the two parties are found to have joint rights in the same, neither of them can be considered as claiming exclusive possession, and therefore s. 145 is inapplicable. BHABANATH CHAKRAVARTI v. PEARY SARMA. **11 C.L.J. 412 = 6 Ind. Cas. 544 = 11 Cr. L.J. 370.** (11 C.W.N. 512, *F.*; 10 C.W.N. 1088, 36 C. 986, 27 C. 259, *R.*)

(1042)—*S. 145—Jurisdiction of Magistrate—No likelihood of breach of peace—Both parties in possession — Joint possession.* — When a Magistrate does not state in his order that a dispute exists which is likely to cause a breach of the peace, he has no jurisdiction to take any action under s. 145, Code of Criminal Procedure. *Held*, further, that, when a Magistrate finds that both parties are entitled to the land, he cannot give exclusive possession of the property to one to the exclusion of the other. DAN PERSHAD v. GANESH, **11 A L.J. 696 = 14 Cr. L.J. 495 = 20 Ind. Cas. 751 = 36 A. 19.** [*R.*, 15 Cr. L.J. 420 = 24 Ind. Cas. 160.]

(1043)—*S. 145—Possession, exclusive or superior, not claimed, but only possession on behalf of both parties' representatives—Jurisdiction.*—A Magistrate has no jurisdiction to pass an order under s. 145 of the Crim. Pro. Code, when he finds that the party in possession does not claim exclusive or superior possession but possession on behalf of the representatives of both the parties. KANDASAMI ASARI v. NARAYANA ASARI, **2 L.W. 107 = 16 Cr. L.J. 52 = 26 Ind. Cas. 644.** (4 C.W.N. 426, *F.*; 31 M. 318, *D.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

(1044)—*S. 145—Disputed land—Pathways thereon—Possession of disputed land found with one party—Order directing pathways to remain intact and remainder of disputed land to remain in possession of successful party—Jurisdiction to make such order.*—Where, in a proceeding under s. 145, Crim. Pro. Code, the Magistrate found that the disputed land was in possession of the second party, but directed that two pathways on the disputed land should remain intact and only the remainder of the disputed land should remain in possession of the second party. *Held*—there is nothing in s. 145, Crim. Pro. Code, which gives a Magistrate power to pass an order of this kind. ASIT MOHAN GHOSH v. SARAT CHANDRA GHOSH, **17 C.W.N. 793 = 14 Cr. L.J. 391 = 20 Ind. Cas. 215.**

(1045)—*S. 145—Possession—Specification of land, when necessary.*—The main question which the Criminal Courts have to determine under s. 145 is as to the possession of the disputed land, and the land should be thoroughly ascertained. But where the parties are not at dispute upon the question as to what the disputed lands are, the real question being which party is entitled to the possession of the disputed land under a Civil Court decree for possession, the want of a proper specification will not vitiate the proceedings. GORDON SIMS v. JOHURRY LAL, **5 C.W.N. 563.**

(1046)—*S. 145, inquiry under—Magistrate, duty of.*—In an enquiry under s. 145, Crim. Pro. Code, it is the duty of the Magistrate to determine who is in actual possession of the property at the time of his preliminary order. *Quære.*—Whether proceedings under s. 145 of the Code can be taken where the two parties are in the position of principal and agent? VAITHIANATHA AIYAR v. SUPPALU AMMAL, **15 Cr. L.J. 703.** (24 A. 443 = A.W.N. 1902, 111, 31 C. 48 = 7 C.W.N. 825, F.B. = 1 Cr. L.J. 49, *R.*)

(1047)—*S. 145—Scope of—Rents and profits of land.*—S. 145 contemplates a dispute as to the possession of a definite piece of land or the rents or profits issuing from a definite piece of land. A Magistrate cannot proceed under s. 145 in the case of a dispute about an undivided share in land or rent or profit issuing from an undivided share, because the subject-matter of the dispute is uncertain and the boundaries of the land are undefined. MON MOHON GHOSE v. RAJENDRA COOMAR GHOSH, **7 C.W.N. 462.** (23 C. 80, 4 C.W.N. 467, 7 C.W.N. 118, *Expl.*)

(1048)—*S. 145—Crops or other produce of land.*—The term "land" in s. 145, Crim. Pro. Code, has a very wide signification and includes crops or other produce of land and even the rents and profits of land. The mere fact that the crops which are the subject of dispute have been removed from the land is not sufficient to oust the jurisdiction of the Magistrate under s. 145. *In re* KRISHNASAMI AIYAR, **2 Weir 108**

(1049)—*S. 145 (= Crim. Pro. Code, 1872, s. 530)—Enquiry as to right of possession—*

Crim. Pro. Code (Act V of 1898)—*continued.*

Powers of Magistrate—Applicability of section to temples— Attachment. — The enquiry under s. 530 (s. 145) is limited, by the terms of the section, to the fact of possession "without reference to the merits of the claims of any party to a right of possession." The Magistrate has no power to decide the question of right, and he cannot restore a party who has been dispossessed except in the case provided in s. 534 (s. 522), where there has been a conviction of an offence accompanied by criminal force and the dispossession has been effected by means of such criminal force. HIGH COURT PROCEEDINGS, 15TH NOV. 1880, NO. 2301, **2 Weir 99.**

(1050)—*S.* 145—*Dispute regarding temple.*—A temple may. for the purposes of s. 530 (s. 145), be wholly or partly private property, or, it may have been dedicated to purposes of public worship as to be no longer private property. HIGH COURT PROCEEDINGS, 15TH NOVEMBER, 1880, NO. 2301, **2 Weir 99.**

(1051)—*S.* 145—*Dispute regarding possession of temple—Attachment.*—A dispute regarding the possession of a temple is a dispute relating to "tangible immoveable property," and is, therefore, within the provisions of s. 145. [*F.*, 2 Weir 112.] To attach property, such as a temple, does not necessarily mean that it must be closed altogether. Where third parties or the general community are interested in it, it is the duty of the Magistrate, when assuming charge of the property in order to preserve the peace, to make the best arrangements possible to preserve the rights of such third parties or the public, and to have the *puja* of the temple performed. SUNDARA PANDARAM v. VALLINAYAKA NADAN, **2 Weir 110.** [*F.*, 2 Weir 112.]

(1052)—*S.* 145—*Pujari's right to worship—Offerings given by worshippers to deity, whether profits arising out of building.*—The offerings given by the worshippers for the worship of any deity are not profits arising out of a building, for they arise out of the deity irrespective of the building, or the land upon which he may happen to dwell. Therefore, a declaration made by a Magistrate under s. 145, to the effect that a certain person is in possession of such offerings, is an order made without jurisdiction. RAM SARAN PATTAK v. RAGHU NANDAN GIR, **9 Ind. Cas. 6=12 Cr. L.J. 3=13 C.L.J. 445=38 C. 387.** (12 C.L.J. 22, 14 C.W.N. 611, 37 C. 578, 6 Ind. Cas. 182, *Relied on.*)

(1053)—*S.* 145—*Initiatory Order—Omission by Magistrate to state the grounds of his being satisfied as to likelihood of breach of the peace.*—If the Magistrate omits, in the initiatory order under s. 145, cl. 1, to state the grounds of his being satisfied as to the likelihood of a breach of the peace, the final order directing one of the parties to be retained in possession is without jurisdiction and must be set aside. Even where a Magistrate acts upon a police report or upon other information, he is still bound to state the grounds upon which he is satisfied that there is a likelihood of a breach of the

Crim. Pro. Code (Act V of 1898)—*continued.*

peace. In cases initiated upon a police report or other information which has been reduced to writing, reference can be made to the materials upon which the Magistrate acted to ascertain whether there were in fact grounds upon which he might have acted, but even then, it is the duty of the Magistrate to state the grounds upon which he was satisfied that there was a likelihood of a breach of the peace. NITTYANAND ROY v. PARESHNATH SEN, **32 C. 771=9 C.W.N. 621=2 Cr. L. J. 342.** (20 C. 513, 20 C. 520, 27 C. 981, 28 C. 416, *F.*) [*R.*, 33 C. 352=9 C.W.N. 1065=2 C.L.J. 259, F.B., 36 M. 275=23 M.L.J. 499=12 M.L.T. 439=1912 M.W.N. 1154=17 Ind. Cas. 65=13 Cr. L.J. 753.]

(1054, 1055)—*S.* 145—*Orders under, nature and effect of—Onus of proof—Appeal—Dispute as to possession—Burden of proof.*—Orders under s. 145 are merely police orders made to prevent breaches of the peace. They decide no question of title; but the person maintained in possession by such an order can only be evicted in a suit by a person who can prove a better right to the possession himself. Where the plaintiff sued for possession of land, which the defendant had been declared to be in possession by an order under s. 145, and has made good his title to the satisfaction of the High Court, it is for the defendant (appellant) to show that the judgment of the Court is wrong. It is not enough for him to show that the plaintiff's title is not free from doubt, but he must give some acceptable explanation of the circumstances which led the Court below to its conclusion. DINOMONI CHOWDHRANI v. BROJO MOHINI CHOWDHRANI, **29 C. 187=29 I.A. 24=6 C.W.N. 386, P.C.=12 M.L.J. 83=4 Bom. L.R. 167=8 Sar. 224.** (19 C. 660=19 I.A. 140, *F.*)

(1056)—*S.* 145—*Dispute as to possession of land—Nature of possession.*—The possession contemplated by s. 145 is actual possession of the subject of dispute. The power or competency of the Magistrate to interfere, depends on the very fact that the possession of the land is in dispute. RAJENDRA NARAIN ROY v. MAHOMED ARZUMAND KHAN, **9 C.W.N. 887=1 C.L.J. 331=2 Cr. L.J. 408.** [*R.*, 27 M.L.J. 169.]

(1057)—*S.* 145 (=*Crim Pro. Code*, 1872, *s.* 530)—*Powers of Magistrate under.*—Where the dispute between two joint owners of land raised no question of possession, but whether one of them was at liberty to make use of the land, against the will of the other in such a manner as to cause annoyance, a Magistrate has no jurisdiction to interfere under s. 530, Crim. Pro. Code, 1872, and award exclusive possession of a portion to one of them. EMPRESS v. RAJCOOMAR SINGH, **3 C. 573=1 C.L.R. 352.** [*D.*, 10 Cr.L.J. 427=3 Ind. Cas. 958=11 Bom.L.R. 849.]

(1058)—*S.* 145—*Parties jointly interested in subject-matter of dispute—Decision as to method of possession—Jurisdiction of Magistrate.*—A Magistrate has no jurisdiction to pass any

Crim. Pro. Code (Act V of 1898)—*continued.*

order under s. 145 of the Crim. Pro. Code in respect of the subject-matter of the dispute in which the parties claim to be jointly interested. He is entitled to decide which of the parties is in possession, but he cannot decide the method by which the possession is to be exercised, or the agency by which the person in possession is to collect the profits. M and K were jointly entitled to a property. K gave an agreement to M authorising him to make collections of the entire property and to divide the share at the close of each year. Subsequently K leased out his share to A who attempted to collect the share leased out to him. Proceedings under s. 145 of the Crim. Pro. Code were then instituted with the result that the Magistrate declared M to be in possession. *Held*, that the Magistrate had no jurisdiction to take proceedings under the section. AKALOO CHANDRA DAS v. MOHESH LALL, **11 Cr.L.J. 28=4 Ind. Cas. 696=36 C. 986.**

(1059)—*S.* 145 — *Procedure under, to be followed by Magistrates.*—An application was made to a Magistrate to take action under s. 145, Crim. Pro. Code. The Magistrate passed an order that the opposite party be summoned and the complainant produce his evidence. On the date fixed, the Magistrate merely examined the putwari and passed the final order. *Held*, that, as the Magistrate had not followed the procedure laid down in chap. XII of the Code, his order was without jurisdiction. BITAN RAI v. BISHESHAR RAI, **5 Ind. Cas. 128.**

(1060)—*S.* 145—*Claim to separate possession —Applicability of section.*—Where a dispute relates to the exclusive possession of land, and not to joint possession, s. 145 is applicable to such a dispute. BIDHU BHUSAN CHATTERJEE v. ANNODA CHURN KANANGUI, **6 C.W.N. 883.**

(1061)—*S.* 145—*Order of Magistrate—Duty of Magistrate to record grounds for holding a likelihood of breach of peace—Opportunity to adduce evidence—Interference by High Court.* —A Magistrate's order, in instituting proceedings under s 145, ought to set out the ground on which he is satisfied that a dispute likely to cause a breach of the peace existed, and he should also give the parties to the proceedings, an opportunity of adducing their evidence. [*R.*, 9 C.W.N. 1065=33 C. 352=2 C.L.J. 259, 2 Cr.L.J. 342=9 C.W.N. 621=32 C. 771, 6 Cr. L.J. 113=24 P.W.R. 1907, Cr. =71 P.L.R. 1908 =7 P.R. 1907, Cr., 13 Cr.L.J. 753=17 Ind.Cas. 65=23 M.L J. 499=1912 M.W.N. 1154=12 M. L.T. 439=36 M. 275]. The High Court has no power of interference with proceedings under ch. XII of the Code, except under the powers of superintendence conferred upon it by Charter Act (24 & 25 Vic., c. 104, s. 15). JAGOMOHAN PAL v. RAM KUMAR GOPE, 28 **C. 416.** [*R.*, 5 O.C. 1, 17 C.P.L.R. 133.]

(1062)—*S.* 145 (=*Crim. Pro. Code*, 1882, *s.* 145)—*Dispute likely to cause a breach of the peace.*—The existence of a dispute likely to cause a breach of the peace is the foundation of the jurisdiction conferred by s. 145. Omission

Crim. Pro. Code (Act V of 1898)—*continued.*

to find the existence of such a dispute is a fatal defect, and a Magistrate's order without such a finding should be set aside. BUDHU v. EMPRESS, **6 P.R. 1885, Cr.**

(1063)—*S.* 145—*Order under the section, effect of, on the powers of a Civil Court—Civ. Pro. Code, ss.* 503, 505.—The Code of Civil Procedure and the powers of Civil Courts under that Code are in no way fettered by an order that may be passed by a Magistrate under s. 145 of the Crim. Pro. Code. The Magistrate's order under s. 145 is only intended to control any period up to the time when the Civil Court takes seisin of the matter and passes such orders as may be necessary for the protection of the property. The powers of a Civil Court to appoint a Receiver in respect of certain immoveable property are, in no way, effected by the order of a Magistrate under s. 145, maintaining possession on behalf of one of the litigants. BARKAT-UN-NISSA v. ABDUL AZIZ, **22 A. 214 =A.W.N. 1900, 22.**

(1064)—*S.* 145—*Application for revision at instance of party not entitled to immediate possession—Maintainability.* — In a dispute for mutation of names between the widow and the daughter's son of the deceased, a compromise was agreed to, whereby it was settled that the widow should be entered in the *khewat* as owner for her lifetime, and that the grandson should be entered as her manager. It was also laid down that the widow had not reserved the right to remove the grandson from his possession. On the widow granting a lease of certain villages of the estate, proceedings were initiated at the instance of the grandson under s. 145. The Magistrate passed no order deciding the possession of either one or the other of the disputants, holding that the grandson had in effect no *locus standi* to claim possession at all, as he was himself only an agent and manager, and had in himself no right to possession whatever. *Held*, that he was not entitled to be heard in revision, as he had then no possible right on his own behalf to present possession. *In the matter of the petition of* BEHARI LAL, **24 A. 443=A.W.N. 1902, 111.**

(1065)—*S.* 145—*Order without jurisdiction.*— It is manifest that, for the making of an order under s. 145, it is essential that the provisions of the section should be complied with. Where a Magistrate has failed to do so, his omission is something more than an irregularity, and his order must be deemed to be an order without jurisdiction. MAHADEO KUNWAR v. BISU, **25 A. 537=A.W.N. 1903, 102.** (26 C. 188, 24 B. 527, 18 M. 41, 27 C. 981, 7 C.W. N. 174, *R.*) [*R.*, 26 A. 144, 8 Cr. L.J. 170=1 S.L.R. 50, 15 Cr.L.J. 424=24 Ind. Cas. 160 ; *D.*, 4 A.L.J. 91=A.W.N. 1907, 50.]

(1066)—*S.* 145—*Penal Code, s.* 434—*Order to set up boundary marks, by means of pillars—Removal of the boundary marks.*—The authority of the public servant, referred to in s. 434, I.P.C., must be understood to mean the lawful authority of a public servant. A Magistrate

has no authority, under s. 145, Crim. Pro. Code, to order the property, the subject of dispute, to be demarcated by boundary pillars, defining the limits of the possession of the respective parties. A person removing the boundary marks is not liable to be convicted under s. 434, I. P. C. EMPEROR v. RAMESHAR, **27 A. 300=1 A.L.J. 619=A.W.N. 1904, 264.**

(1067)—*S.* 145—*Apprehension of a breach of the peace— Order in writing, absence of—Effect.*—Where a Magistrate has recorded no order in writing under s. 145, stating the grounds of his being satisfied that a dispute likely to cause a breach of the peace exists concerning immoveable property, his proceedings are not such as are justified by ch. XII of the Code, and may be set aside in revision as entirely without jurisdiction. BISHAN LAL v. CHAJJU, **2 A.L.J. 272.** [*D.*, 4 A.L.J. 91=A. W.N. 1907, 50=5 Cr. L.J. 117.]

(1068)—*S.* 145—*Grounds for holding existence of likelihood of breach of the peace—Power of High Court to examine the ground—Proceedings founded on Police Report.*—The High Court should not ordinarily examine whether the grounds upon which the Magistrate was satisfied of the existence of a likelihood of a breach of the peace afford a reasonable ground for his conclusions. (22 W.R. Cr. 79, 25 W.R. Cr. 82, 20 C. 513, *Diss.*) It is essential for the assumption of jurisdiction under s. 145, that the Magistrate should be satisfied, either from a police report, or from other information that there is a likelihood of a breach of the peace. He ought not to take action upon a mere expression of opinion by the police, but should have a statement of facts before him so that he may form his own opinion and be satisfied as to the necessity or otherwise for the initiation of proceedings under the section. A reference by the Magistrate in the initial order to a police report, which clearly sets out the likelihood of a breach of the peace, is a sufficient statement of the reasons for his being satisfied of the existence of a dispute likely to cause such breach of the peace. But the police report, upon which the Magistrate bases his initial order, should contain a statement of facts from which the Magistrate may be satisfied of the existence of a likelihood of a breach of the peace. But there is no inflexible rule that the police report must show that the disputing parties are actually assembling men or doing other specific overt acts. No rule can be laid down so as to specify the sufficiency of the materials upon which he takes action, but he must form his own judgment and not proceed upon a mere expression of opinion by the police. KULADA KINKAR ROY v. DANESH MIR, **33 C. 33=10 C. W.N. 257=2 C.L.J. 271=2 Cr. L J. 670, F.B.** (6 C. 835, 28 C. 446, 2 C.L.J. 259, 9 C.W.N. 1065, *F.*)

(1069)—*S.* 145—*Question of possession—Evidentiary value of decrees of Civil Court and orders of Criminal Courts—Action under, when could be taken—Interference by High Court.*—The question of possession under s. 145 has to be determined with reference to a specified point of time; upon this question, every previous decree of a Civil Court or order of a Criminal Court is not conclusive; the evidentiary value to be attached to such decree or order must depend upon the circumstances of each particular case. (26 C. 625, 32 C. 796, 5 C.W.N. 563, 8 C.W.N. 719, *R.*). To justify a Magistrate to institute initiatory proceedings under the section, it is not essential that the dispute should be of a character which renders a breach of the peace imminent. It is sufficient if there be a likelihood of a breach of the peace. (4 C. 650, 28 C. 446, *R.*; 7 C.L.R. 352, 7 C. 385, *F.*) [*R.*, 1 S.L.R. 50, Cr.] The High Court will not interfere under s. 15 of the Charter Act, unless it is satisfied that the person who seeks its interference has been prejudiced by the proceedings of the Courts below. Where an initial order under s. 145 does not set out sufficient facts to justify an apprehension of a breach of the peace, the High Court is not bound to set aside the proceedings under the section, when it is proved that a breach of the peace was likely at the date of the initial order. KULADA KINKAR ROY v. DANESH MIR, **33 C. 33, F.B.=10 C.W.N. 257=2 C.L.J. 271=2 Cr. L.J. 670, F.B.** (6 C. 835, 23 C 557, 8 C.W.N. 590, *Diss.*; 9 C.W.N. 1046, 25 W.R. Cr. 74, 4 C.L.R. 483, 20 C. 520, 23 C. 557, 22 W.R. Cr. 81, 1 Q.B. 552, *R.*)

(1070)—*S.* 145—*Grounds to satisfy Magistrate as to necessity of taking proceedings—Omission to state grounds—Reference in the order to police report whether substantial compliance with law.*—An initial order made by a Magistrate under s. 145, cl. 1, of the Code of Criminal Procedure, is not defective, because it is not self-contained and does not state in express terms the grounds upon which he is satisfied that a dispute likely to cause a breach of the peace exists, when such grounds appear in the police report on which the order is founded and to which it makes reference. [*F.*, 32 C. 1093=2 C.L.J. 280, 17 M. L.J. 449; *R.*, 1 S.L.R. 50, Cr., 5 C.L.J. 611.] It is a substantial compliance with sub-s. 1 of s. 145 of the Code of Criminal Procedure to refer in the initial order to the police report upon which the order is based, when such police report states the grounds of the existence of a likelihood of a breach of the peace KHOSH MAHOMAD SIRKAR v. NAZIR MAHOMED, **33 C. 352=9 C.W.N. 1065=2 C L.J. 259, F.B.=2 Cr.L.J. 637.** (13 C. 175, 20 C. 513, *Appr.*) [*F.*, 33 C. 33=10 C. W.N. 257=2 C.L.J. 271=2 Cr.L.J. 670; *R.*, 4 M.L.T. 213, 8 Cr.L.J. 170; *Disc.*, 36 M. 275=23 M.L.J. 499=12 M.L.T. 439=1912 M.W.N. 1154=17 Ind. Cas. 65=13 Cr.L.J. 753.]

(1071 to 1077)—*S.* 145—*Finding as to possession essential—Civil Court's view, whether conclusive.*—The decision of a Civil Court on the question of possession is not conclusive in proceedings under s. 145, Crim. Pro. Code. The Magistrate must arrive at his own finding. ANNASAWMY AIYANGAR v. MUTHUKUMARA PILLAI, **15 Cr.L.J. 663=25 Ind. Cas. 991.**

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(1078)—S. 145—*Order under, when justified.*—An order under s. 145 is to be justified only when there is an immediate danger of a breach of the peace. JANU MANJHI v. MANIRUDDIN, **8 C.W.N. 590.** [*Diss.*, 33 C. 33=10 C.W.N. 257=2 Cr.L.J. 670=2 C.L.J. 271.]

(1079)—*S.* 145—*Scope of*—Jalkar.—S. 145 gives the Magistrate power to institute proceedings, when he finds that a dispute likely to cause a breach of the peace exists, concerning any land or water or the boundaries thereof within the local limits of his jurisdiction. Where a *jalkar*, the subject of a proceeding under s. 145, is situate partly within and partly without the local limits of a Magistrate's jurisdiction, the order of the Magistrate, with regard to that portion which lies outside it, is *ultra vires.* If the proceedings have been taken with regard to the *jalkar* as a whole, the entire order should be set aside. KORBAN MOLLA v. RAJA SRINATH ROY, **1 C.L.J. 329=2 Cr.L.J. 406.** (29 C. 885, *F.*)

(1080)—*S.* 145—*Reasons for finding of Magistrate, record of.*—A Magistrate, who purports to act under s. 145, Crim Pro. Code, should record a finding that there is a dispute likely to cause a breach of the peace. KOLANDAI NAYAKAN v. KARABUDDA SAVUDRI, **2 Weir 117.**

(1081)—*S.* 145 (=*Crim. Pro. Code*, 1882, *s.* 145)—*Possession.*—The possession referred to in s. 145 means actual possession at the time the proceedings were instituted, and not at the date of the passing of the Magistrate's order. Possession, therefore, though obtained by wrongful means but complete at the time of inquiry, must be treated as actual possession. QUEEN-EMPRESS v. GAUHAR KHAN, **5 P.R. 1897, Cr.**

(1082)—S. 145—*Dispute regarding possession of land—Decree of Civil Court—Duty of Magistrate.*—The object of s. 145 is to enable a Magistrate to intervene and pass a temporary order in regard to the possession of the property in dispute to have effect until the actual rights of one of the parties have been determined by a competent Court. It is consequently his duty, when the right has been declared within a time not remote from his taking proceedings under s. 145, to maintain any order which has been passed by any competent Court; and, therefore, to take proceedings, which necessarily must have the effect of modifying, or even cancelling, such orders, is to assume a jurisdiction which the law does not contemplate. This rule applies, however, where there is no doubt whatever as to what the Civil Court has done, that is, where it cannot be disputed that a certain party has been declared owner and put in possession by Civil Court. *In re* MOTILAL HARGOVIND, **6 Bom L R. 246.** (26 C 625, *F.*; 25 B. 179=2 Bom. L.R. 88, *R.*)

(1083)—*Crim. Pro. Code, s.* 145—*Magistrate, jurisdiction of—Decree of Civil Court—High Court's power of revision.*—A Magistrate is not justified in disregarding the decree of a Civil Court. It is his duty to uphold and carry out that decree so far as lies in him to do so. A Civil Court decreed redemption of a certain share in a zemindari. The mortgagee claimed to remain in cultivatory possession of certain plots of land, contending that the decree of the Civil Court did not affect his rights as a tenant. Upon a dispute for possession arising between the tenant and the mortgagor's representative, *held*, that the Magistrate had jurisdiction to pass an order under s. 145, and that, therefore, the High Court could not revise his order. BALDEO BAKSH SINGH v. RAJ BALLAM SINGH, **2 A.L.J. 274=2 Cr. L.J. 236.** [*R.*, 31 A. 150=6 A.L.J. 113=9 Cr. L.J. 382; *Cons.*, 1 Ind. Cas. 762.]

(1084)—*S* 145—*Decree for possession by Civil Court—Effect of.*—An order of a Magistrate under s. 145 is meant to be only a temporary or tentative order, and is to be operative so long only as the rights of the parties are not determined by a Civil Court. Where the rights of parties have been determined by a Civil Court, the Magistrate is not competent to ignore the decree of the Civil Court. Where delivery of possession was given by a Civil Court to the first party on the 9th September, and proceedings under s. 145, Crim. Pro. Code, were instituted by the second party on the 3rd December and the Magistrate maintained the possession of the second party, *held*, that the Magistrate should have maintained the possession in accordance with the decree of the Civil Court. KUNJA BEHARI DAS v. KHETRA PAL SINGH, **29 C 208=6 C.W.N. 38.** (26 C. 625=3 C.W. N. 461, *R.*) [*R.*, 11 Cr.L.J. 655=8 Ind. Cas. 453=3 Bur. L.T. 74.]

(1085 to 1087)—*S.* 145—*Decree for possession by Civil Court, effect of.*—The duty of a Criminal Court, in a case under s. 145, where there is a decree of a Civil Court for possession in respect of the disputed land, is to find which party held such Civil Court decree, and then to maintain that party in possession. It is not necessary that such decree must be one for possession as between the parties to the proceedings under s. 145. GORDON SIMS v. JOHURRY LAL, **5 C. W.N. 563** [*F.*, 7 C.W N. 118; *D.*, 33 C. 33=10 C.W.N. 257=2 Cr. L.J. 670=2 C.L.J. 271.]

(1088)—*S.* 145—*One party being put in possession by Civil Court, effect of.*—Where one of the party to a dispute regarding a land is actually put in possession of the same by a Civil Court as the result of a sale under the decree, it is the duty of a Criminal Court to uphold the status of that party as established by the Civil Court. KRISTA ALHADINI DASI v. RADHA SYAM PANDAY, **7 C.W.N. 118.** (5 C.W.N. 563, *F.*)

(1089)—*S.* 145—*Possession found by Criminal Court, nature of—Possession given by Civil Courts.*—In proceedings under s. 145, Magistrates have always upheld the possession given by the Civil Courts; otherwise, a person, who had obtained a decree declaring his right to possession and had been put in possession, might find himself again forced to litigate his

Crim. Pro. Code (Act V of 1898)—*continued.*

title. But the possession found by a Criminal Court cannot be treated in the manner in which recent possession given under a decree of a Civil Court is treated in cases, under s. 145 of the Code. KEDAR PRASANNA LAHIRI v. LALIT MANDAL, **2 C.L.J. 147 = 2 Cr. L.J. 572.**

(1090)—*S.* 145—*Purchaser at Court auction—Dispute—Joint Hindu family members.*—In a proceeding under s. 145 with respect to certain property which had been purchased by the petitioner at an execution sale, and of which possession had been given by the Civil Court, the opposite party, who were members of a joint Hindu family subject to the *Mitakshara* law with the person whose property was sold, objected to the decree, on the ground that only the share of the judgment-debtor was affected by the decree. *Held*, that as the writ of possession of the Civil Court showed that the whole property was delivered to the auction-purchaser, it was not open to the Criminal Court acting under s. 145 to adjudicate upon the rights of the second party, and to decide that the shares in it, whatever they may have been, could not have been included in the delivery of possession, because they were not parties to the civil suit. MADHOLAL BITHUL GAYAWAL v. JUG LAL SINGH, **6 C.W.N. 841.**

(1091)—*S.* 145—*Joint family—Property belonging to joint family—Exclusive possession of member—Jurisdiction of Magistrate—Title to possession, joint or separate, foreign to inquiry.*—The question whether the parties have a joint title to the land is one which the Magistrate cannot investigate under s. 145 of the Crim. Pro. Code. The only question for him is whether either party has actual possession, and if he finds that one party has actual possession of a defined area, and the other party has not, he can make an order irrespective of the titles of the parties. Co-sharers in an estate may, by express or tacit arrangement, be each separately in actual possession of specified and demarcated portions of the estate. In that case, there is nothing to prevent the application of s. 145. When property is found as a fact to be, not constructively, but actually in the joint possession of the parties, the section cannot apply. But if it is found that one co sharer is in actual possession and the other is not, the Magistrate may make an order under s. 145. BASANTA KUMARI DASI v. MOHESH CHANDRA LAHA, **14 Cr. L.J. 269 = 19 Ind. Cas. 541 = 17 C.W.N. 944 = 40 C. 982.** (11 C.W.N. 512 = 5 Cr. L.J. 296, *Expl.*)

(1092)—*S.* 145—*Omission to record source of information of a likelihood of a breach of the peace—Effect of—Object of drawing up proceeding prior to notice under section.*—Where a Magistrate holds an inquiry in the presence of the parties and satisfies himself by inquiry that there is a likelihood of a breach of the peace, and then directs proceedings under s. 145 to be taken, they are not invalid, merely because the Magistrate has not stated the source of the information, the parties being already

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aware of that in the course of the inquiry. (27 C. 981, 6 C.W.N. 923, *R.*) The object of drawing up a proceeding prior to the issue of notice under s. 145 can only be to inform the parties of the grounds or the information which satisfy the Magistrate that a dispute exists. SABID MONDUL v. LAKSHMI MONDUL, **7 C W.N. 599.**

(1093)—*S.* 145—*Whether Magistrate can consider dispute on its merits—Magistrate to decide only fact of possession—Parties, if can be required to file written statements.*—A Magistrate is not at liberty to go into the merits of the claim of any of the parties to the dispute to a *right* to possess the subject thereof. He can only decide the *fact* of possession at the date of the order requiring them to put in their statements. The parties cannot be called upon in these proceedings to furnish a statement of their rights, nor can the Magistrate take, as the basis of any action he may finally decide upon, any conclusion at which he may arrive, or at which he may have arrived, as to the respective titles of the parties *In re* PANDURANG GOVIND PUJARI, **25 B. 179 = 2 Bom. L.R. 755.** [*R.*, 3 Bom. L.R. 416, 6 Bom. L.R. 246, 1 S. L.R. 50, Cr.]

(1094)—*S.* 145—*Revision by High Court—Order on merits.*—In a case under s. 145, Crim. Pro. Code, when the Magistrate has, on perusal of the written statements of the parties, decided that the possession of the first party was of an agent and that the second party the principal was entitled to possession, *held*, the decision being on the merits, the High Court will not interfere in revision. VAIDYANATHA IYER v. SUPPALU AMMAL, **1914 M.W.N. 795 = 15 Cr. L.J. 669 = 25 Ind. Cas. 997.**

(1095)—*S.* 145 — *Addition of parties, when can be made—Fresh proceedings, whether necessary—High Court's powers of interference.*—Where parties are added after the initiation of the proceeding under the section, there is no necessity for a fresh proceeding in consequence of such addition, if the party added was concerned originally in the dispute which is the foundation of the proceedings. Up to the time of the beginning of the inquiry, parties may be added. If they are added after it has begun, it would amount to an irregularity. But it would not be necessary, in consequence, to initiate a fresh proceeding, but evidence, previously taken, ought, if the parties so added require it, to be again taken in their presence. (24 C. 55 = 1 C. W.N. 3, *Overruled.*) [*F.*, 10 C.W N. 1095.] Only in cases in which a Magistrate has acted without jurisdiction, or improperly declined to exercise his jurisdiction, the High Court has the right to interfere with proceedings taken by the Magistrate under s. 145 of the Crim. Pro. Code. KRISHNA KAMINI v. ABDUL JUBBAR, **30 C. 155 = 6 C.W.N. 737, F.B.** [*R.*, 2 L.B.R. 239.]

(1096)—*S.* 145—*Adding new party—Power of Magistrate.*—A Magistrate has not the power, after recording the proceeding, as he is required to do under the first paragraph of the section, to

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add, in the course of the investigation, any new party as concerned in the dispute. BENI SINGH v. UMRAO MAHTO, **5 C.W.N. 900.** (1 C.W.N. 3 = 24 C. 55, 3 C.W.N. 329, 4 C.W.N. 613 = 27 C. 892, *F.*)

(1097)—*S.* 145—*Effect of Magistrate's order as to possession on possessory suit before Mamlatdar—Bombay Act* III *of* 1876 (*Mamlatdars' Courts*), s. 10.—The fact that a Magistrate had passed an order as to possession under s. 145, Crim. Pro. Code, does not deprive a Mamlatdar of his jurisdiction to entertain a possessory suit, for, the Magistrate finds who was in possession *on* a particular date and the Mamlatdar decides who was in possession *before* such date. NAGAPPA v. SAYAD BADRUDIN, **26 B. 353 = 3 Bom.L.R. 919.** [*R.*, 7 C.L.J. 647 = 12 C.W.N. 697.]

(1098)—*S.* 145—*Order under section—Reports and maps referred to such orders, admissibility and value of, as evidence—Evidence Act*, s. 13.—Orders of Magistrates under s. 145 are admissible in evidence on general principles as well as under s. 13, Evidence Act, to show the fact that such orders were made. This necessarily makes them evidence of the following facts, all of which appear from the orders themselves, *viz.*, who the parties to the dispute were; what the land in dispute was; and who was declared entitled to retain possession. For this purpose and to this extent, such orders are admissible in evidence for and against every one, when the fact of possession at the date of the order has to be ascertained. If the lands referred to in such orders are described by metes and bounds, or by reference to objects or marks physically existing, these must necessarily be ascertained by extrinsic evidence, *i.e.*, the testimony of persons who know the locality. If the orders refer to a map, that map is admissible in evidence to render the order intelligible; and the actual situation of the objects drawn or otherwise indicated in the map must, as in all cases of this sort, be ascertained by extrinsic evidence. Reports accompanying the orders or maps and not referred to in the order may be admissible as hearsay evidence of reputed possession. But they are not otherwise admissible, unless they are made so by s. 13 of the Evidence Act. DINOMONI CHOWDHRAIN v. BROJO MOHINI CHOWDHRAIN, **29 C. 187 = 29 I.A 24 = 6 C.W.N 386, P.C. = 12 M.L.J. 83 = 4 Bom. L.R. 167 = 8 Sar. 224.** [*R.*, 30 C. 155, F.B.; *D.*, 7 O.C. 122.]

(1099)—*S.* 145—*Persons claiming possession of land or portion of land—Omission to add them as parties when they are not concerned in original dispute—Validity of proceeding.*—Proceedings, under s. 145, are not without jurisdiction because some person claiming to have possession, in some way, of the lands, or of a portion of the lands, in dispute had not been made a party, when he was not one of the parties in the dispute likely to cause a breach of the peace, so far as appeared from the information on which the Magistrate acted, and when such person does not appear and raise any objection.

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Proceedings under s. 145 are not without jurisdiction, because some of the parties are concerned with possession only of a portion of the lands in dispute. KRISHNA KAMINI v. ABDUL JUBBAR, **30 C. 155 = 6 C.W.N. 737, F.B.** (24 C. 55, *Declared obsolete.*)

(1100)—*S.* 145—*Dispute as to land—Report by police officer of a different district—Jurisdiction of Magistrate.*—The Magistrate of one district can properly institute proceedings, under s. 145, on a police report drawn by a police officer of another district in respect of such portions of the land within his jurisdiction. ISHAN CHUNDER DASS v. GARTH, **29 C. 885 = 6 C.W.N. 378.** [*F.*, 1 C.L.J. 329.]

(1101)—*S.* 145—*Property in dispute—Order prohibiting complainant from taking possession—Trespass on the property.*—In the face of the order prohibiting complainant from taking possession, a trespass on the property in his possession cannot be sustained. *In re* SUSAI PILLAY, **8 M.L.T. 283 = 8 Ind.Cas. 397 = 11 Cr. L.J. 644.**

(1102)—*S.* 145—*Proceedings under ch.* XII—*Summons cases—Process against witnesses—Duty of Magistrate— Refusal to summon or examine witnesses—Interference by High Court.*—It cannot be laid down as a rule of law that proceedings under ch. XII of the Code should be regarded, as to procedure, as summons cases. S. 145 of the Code enjoins the Magistrate "to receive the evidence produced" by the parties and to take such further evidence, if any, as he thinks necessary; but this does not mean that the parties shall produce their own evidence, or absolve the Magistrate from the duty of assisting the parties in procuring the attendance of material witnesses, when it is shown that their attendance cannot be enforced without such assistance. (11 C. 762, 21 C. 29. *Expl.*) [*Diss.*, 2 C.L.J. 280 = 32 C. 1093; *F.*, 2 C.L.J. 286 (*n*).] A mere refusal to summon or examine a particular witness or witnesses cited by a party in proceedings under ch. XII, Crim. Pro. Code, is not necessarily a ground for interference by the High Court. Each case must be determined upon its own circumstances. SURJIA KANTA ACHARJEE v. HEM CHUNDER CHOWDHRY, **30 C. 508 = 7 C.W.N. 404.**

(1103)—*S.* 145, *proceedings under—Adjournment, propriety of— Witnesses, processes to enforce attendance of, when may be refused.*—A Magistrate, acting under s. 145 of the Code, should take all the evidence that is produced before him on the day originally fixed by him for the disposal of the proceeding, and, unless he considers it necessary for good reason to require further evidence, should decide then and there, if he can, which of the parties was in actual possession. Where the Magistrate, on the application of one of the parties, on the date originally fixed for the disposal of the proceeding under s. 145, granted an adjournment and issued summons on witnesses named by the party, some of whom did not appear on the

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adjourned date and some of those present were not examined by the party calling them, and the Magistrate on the application of the party issued fresh summons and warrants for the arrest of the absent witnesses, again adjourning the hearing, and none of these witnesses appeared on the date so fixed, and the party applied for fresh adjournment and the issue of fresh processes. *Held*, that, having regard to the previous conduct of the party concerned and also to the circumstance that the witnesses mentioned could not be found, the Magistrate acted rightly in refusing to issue fresh process. *Held* further—That the Magistrate should not have granted any adjournment after the date originally fixed for the disposal of the proceeding, as in the present case no adequate reason appears to exist for granting such adjournment. HARIPADA MANDAL v. SANYASI CHARAN BISWAS, **17 C.W.N. 144=18 Ind. Cas. 264=14 Cr. L.J. 40=17 C.L.J. 610.**

(1104)—*S.* 145—*Witness — Process — Magistrate—Charter Act* (24 *and* 25 *Vict*., *c.* 104), s. 15.—In a proceeding under s. 145 of the Crim. Pro. Code, it is not obligatory on the Magistrate to enforce the attendance of any witness at the instance of the parties. In a case where the Magistrate has acted in accordance with law, it would require very strong circumstances to justify the interference by the High Court under the Charter Act, s. 15, and it would be necessary to show quite clearly that the procedure, though right in law, has in fact amounted to an absolute denial of justice. Where a party, in a proceeding under s. 145 of the Crim. Pro. Code, states that four material witnesses did not appear and complains that the Magistrate did not enforce their attendance, but it does not appear what evidence these witnesses were going to give and there is nothing to show what efforts the party has made to procure their attendance: *held*, that nothing like a case of denial of justice has been made out and that the High Court could not interfere. HARENDRA KUMAR BOSE v. GIRISH CHANDRA MITRA, **7 Ind. Cas. 798=38 C. 24=11 Cr. L.J. 530.** (32 C. 1093, 2 C.L.J. 280, 2 Cr. L.J. 679, *R.*)

(1105)—*S.* 145—*Receiver appointed by Court —Nature of his possession—Party to proceedings under s.* 145 —*Right to collect toll from partitioned half of market, dispute re—Applicability of proceedings under section.*—When a Receiver is appointed by the Court, his possession is the possession of the Court, and he cannot be interfered with except with the leave of the Court. The Receiver can neither sue, nor be sued, without the leave of the Court. He is the officer through whom the Court exercises its powers of management. Such an officer cannot be correctly described as a "party interested in a dispute likely to cause a breach of the peace" within s. 145, Crim. Pro. Code. Even if such officer can be so described, there will be no jurisdiction in the Magistrate to make any order on him under s. 145, without the sanction of the Court appointing him. [*F.*, 30 C. 721.] Where there was a dispute about the exclusive right to collect the entire toll from one partitioned half of the market, which was alleged by one party and denied by the other, *held* that, in such a case, proceedings under s. 145 could be had. DUNEE v. KUMAR CHUNDRA KISORE, **30 C. 593=7 C.W.N. 390.** (L.R. 20 Eq. 282, 3 Mac. & G. 104, 20 Beav. 332, 10 C. 1014, *R.*) [*Rel. on* 13 Cr.L.J. 489=15 Ind.Cas. 489; *D.*, 12 Cr. L.J. 185=9 Ind. Cas. 1009=9 M.L.T. 502.]

(1106)—*S.* 145—*Possession proceedings—Receiver not in actual possession—Whether he is a necessary party.*—In an inquiry under s. 145, Crim. Pro. Code, where the real dispute is between the old tenants on the one hand and the new tenants on the other, to whom the Receiver only granted leases, the Receiver, who is not in actual possession, is not a necessary party. CHINNA VEERANNA v. NARAYANASWAMY NAIDU, **9 M.L.T. 502.** (30 C. 593, *D.*)

(1107)—*S.* 145—*Receiver—Possession of — Nature.*—The possession of the receiver may, for the purposes of s. 145, be regarded as possession, on behalf of the party who should ultimately be found by the Magistrate to be in possession, as for purposes of limitation the possession of the receiver is held to be that of the party entitled to possession. ISMAIL GHAMI AMMAL v. KATINNA ROWTHER, **10 M.L.T. 573=13 Ind. Cas. 215=13 Cr. L.J. 23=22 M.L.J. 154.** (26 M. 410, 27 C 785, *R.*) [*R.*, 15 Cr. L.J. 509=24 Ind. Cas. 597=26 M.L.J. 208=1914 M.W.N. 352.]

(1108)—*S.* 145—*Magistrate, after receipt of information, making as parties persons who are actually in dispute—Omission to add persons interested in the subject matter of the dispute as parties—Jurisdiction of Magistrate—"Parties concerned," meaning of the expression.*—Proceedings under s. 145 would not be without jurisdiction, because the Magistrate, on information before him, has made as parties to such proceedings only those who are actually in dispute and who are likely, by such dispute, to cause a breach of the peace, although, in the course of the proceedings, it is brought to his notice that some other person is interested in the subject matter of the dispute, *i.e.*, is likely to be affected by the order to be passed in respect of the possession of the land in dispute, nor is the Magistrate bound to stay such proceedings. The words "parties concerned in such disputes" in cl. 1, s. 145, are intended to indicate all persons claiming to be in possession at the time of the initial order under cl. (1), and not that all parties interested in, or claiming a right to, the property in dispute are entitled to be or should be made parties to the proceedings. A claim merely to a right to possession, as distinguished from a claim to be in possession, would be outside the scope of the enquiry. KRISHNA KAMINI v. ABDUL JUBBAR, **30 C. 155=6 C.W.N. 737, F.B.** (*R.*, 31 C. 48.)

(1109)—*S.* 145—*Dispute as to possession of land—Manager or agent, if order can be made in favour of.*—There is jurisdiction, under s. 145,

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to make an order in favour of a person who claims to be in possession of the disputed land as agent to, or manager for, the proprietors, when the actual proprietors are not residents within the appellate jurisdiction of the High Court. DHONDHAI SINGH v. FOLLET, **31 C. 48=7 C.W.N. 825, F.B.** (7 C.W.N. 208, *Overruled*; 21 C. 916, Note, 25 C. 423, *D.*) [*R.*, 32 C. 287.]

(1110)—*S.* 145—*Partnership property—Claims of exclusive possession by a partner, as manager.*—Where there are several partners, the claim of one of them to the exclusive possession of the partnership property, as manager, is a question outside the purview of s. 145, Crim. Pro. Code. RADHA RAMAN GHOSE v. BALIRAM RAM, **32 C. 249=8 C.W.N. 885.** [*R.*, 10 C.W.N. 1088.]

(1111)—*S.* 145—*Parties to the proceedings—Manager and not the employer made a party—Validity of the proceeding—Intermittent encroachment, how affects title of superior landlord.*—Where, in a proceeding under s. 145, the Magistrate makes the manager as a party instead of his employer, the zemindar, the course adopted by the Magistrate is a mere irregularity, or, at most, an error of law, which does not affect his jurisdiction. Where a person claims no easement or customary right, any intermittent encroachment on his part does not affect the title or possession of the superior landlord. BHOLANATH SINGH v. WOOD, **32 C. 287.** (31 C. 48, 16 B. 338, 13 App. Cas. 793, 799, *R.*)

(1112)—*S.* 145—*Delegation of questions as to actual possession to arbitrators, whether legal.*—The procedure laid down under s. 145 does not contemplate that the question as to who is in actual possession should be delegated, even by the consent of the parties, to arbitrators The section directs the Magistrate himself to receive the evidence adduced by the parties and, on a consideration thereof, to come to a decision. BANWARI LALL MUKERJEE v. HRIDAY CHAKRAVARTI, **32 C. 552=2 Cr.L.J. 347=1 C. L.J. 432.**

1113)—*S.* 145—*Proceedings under the section—Applicability of procedure prescribed for summons cases—Summons for attendance of witnesses—Duty of Magistrate—High Court's powers of interference—Charter Act* (24 *and* 25 *Vic., c.* 104), *s.* 15.—There is no provision in the Crim. Pro. Code, which makes the procedure laid down for summons cases, applicable to proceedings under s. 145, and the parties cannot claim it as a matter of right that the Magistrate should assist them to produce their evidence by issuing summons or other processes to their witnesses. The powers of superintendence vested in the High Court by s. 15 of the Charter Act should, in cases under s. 145, be exercised with caution, and the High Court ought not to interfere, unless it is satisfied that the party has been prejudiced by the proceedings in the Court below. TARAPADA BISWAS v. NURUL HUQ, **32 C. 1093=2 C. L.J. 280=2 Cr.L.J. 679.** (11 C. 762, 21 C. 29, 30 C. 508,

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note, 30 C. 508, 2 C.L.J. 286, *note*, 31 C. 685, *R*; 9 C.W.N. 1046, *F.*) [*F.*, 11 Cr. L.J. 530=7 Ind. Cas. 798.]

(1114)—*S.* 145—*Omission to publish copy of the initiatory order near the subject of dispute—Jurisdiction of Magistrate—Powers of High Court—Held, by the Full Bench (Ghose, J., dissenting).*—The provision as to the publication of the order mentioned in sub-s. 3 to s. 145 is directory and a matter of procedure only, and an omission to comply with it does not destroy the jurisdiction of the Court, which arises as soon as the provisions of sub-s. 1 have been complied with. The object of publishing a notice on the subject of dispute is to reach all the persons interested therein, and, unless it be shown that some one interested has been materially prejudiced by the omission to serve the notice, the High Court ought not to interfere under s. 15, Charter Act. Such an omission is not an illegality which deprives the Magistrate of his jurisdiction. Per Ghose, J., *dissentiente*:—The procedure laid down in sub-s. 3 is mandatory and a Magistrate acts illegally in the exercise of his jurisdiction by omitting to follow that procedure. The High Court in such a case may interfere under the Charter Act, but it is not obligatory on the High Court to interfere, and it may refuse interference when no prejudice has been occasioned or is likely to be occasioned by the omission. [*F.*, 32 C. 1093=2 C.L.J. 280; *R.*, 33 C. 352=9 C.W.N. 1065=2 C.L.J. 259, 1 S.L.R. 50, Cr.] The power of superintendence, which the High Court possesses under s. 15 of the Charter Act, vests in it a power somewhat analogous to that of the King's Bench Division in the Supreme Court in England to interfere by Mandamus. Such power of interference is discretionary and ought, in relation to cases under s. 145, Crim. Pro. Code, to be exercised with every caution. If the Subordinate Court has proceeded with irregularity, the High Court will not interfere unless some one has been materially prejudiced thereby; if, however, the Subordinate Court has acted without jurisdiction, the High Court will interfere. SUKH LAL SHEIKH v. TARA CHAND, **33 C 68=2 C.L J. 241=9 C.W.N. 1046=2 Cr.L J. 618.** (9 C.W.N. 909=2 Cr. L. J. 569, 8 C.W.N. 590, *Overruled.*) [*R.*, 33 C. 33=2 C.L.J. 271=10 C.W.N. 257, 5 C.L.J. 611.]

(1115)—*S.* 145—*Omission to record preliminary order before summoning opposite party—Omission to affix copy on the property in dispute—Revision—Parties to revision.*—*Held*, that the omission to record preliminary order before issue of summons to the opposite party or to affix a copy of it to a conspicuous place at or near the subject of dispute as required by cls. (1) and (3) of s. 145, Crim. Pro. Code, is not fatal to the jurisdiction of the Court to proceed with the case under s. 145, Crim. Pro. Code, where an order directing the parties to put in written statements has been once recorded and they have understood the nature of the proceedings. *Held*, also that the Chief Court will not

interfere on revision with the order of a Magistrate under s. 145, Crim. Pro. Code, where it is inconvenient and unnecessary to do so, even though such order is based on irregular procedure, as it is not usually the practice of the Chief Court to interfere on revision in a Civil or *quasi* Civil case when the party asking for revision has got a regular remedy at his command. *Held,* further, that the omission to make a joint owner of the property a party to the revision is immaterial, where no mention is made of such joint owner in the order of the Magistrate and only one man has been declared to be in possession. MUHAMMAD SHARIF v. L. DHANPAT RAI, **15 P.W.R. 1914, Cr.=68 P.L.R. 1914=15 Cr.L.J. 27=23 Ind. Cas. 487.** (25 W.R. 47, *R.*)

(1116)—*S.* 145—*Omission of Magistrate to give effect to presumption arising from recently published record-of-rights, if a question of jurisdiction.*—The omission of the Magistrate in making an order under s. 145, Crim. Pro. Code, to give effect to the presumption arising from the entries in a recently published record-of-rights is not a question going to the jurisdiction of the Magistrate, and the High Court cannot interfere on that ground. CHINTAMONI JENA v. JAGANNATH RAMANUJA DASS, **19 C.W.N. 123.**

(1117)—*S.* 145—*Failure of one party to file a written statement—Competency of Magistrate to decide in favour of the party filing the statement—Power of Magistrate to issue warrant.*—In a case under s. 145, a Magistrate cannot, on the failure of one party to file a written statement, summarily pass an order declaring possession with the party who has done so, without taking evidence in proof of such statement. The High Court set aside such order of the Magistrate and directed that the case must be tried in accordance with law. [*D.*, 30 C. 112.] A Magistrate has no jurisdiction to issue a warrant to compel the attendance of a party in a proceeding under s. 145. KEFATULLAH v. FERUZUDDIN MIAH, **5 C.W.N. 71.**

(1118)—*S.* 145—*Joint trial of several matters of dispute—Legality.*—The joint trial, in one proceeding, of several matters of dispute under s. 145 would be at most an irregularity, which, in the absence of prejudice, would not vitiate the inquiry. SADAR ALI v. ABDUL KARIM, **5 C.W.N. 710.**

(1119)—*S.* 145—*Jurisdiction of Magistrate to treat subsequent proceeding as continuation of earlier proceedings in disputes as to immoveable property—Joinder of parties—Duty of Magistrate.*—A Magistrate cannot treat a subsequent proceeding as a continuation of an earlier one, and he cannot refer back to the possession held by one or the other of the parties upon the date of the earlier proceeding, in determining which of them should be declared to be in possession on the date of the subsequent proceeding. In a proceeding under s. 145, Crim. Pro. Code, it is the duty of the Magistrate to find out, in the first instance, which parties

are concerned in the dispute that has arisen, and to serve his order upon such parties, and, when the matter comes before him for trial, he should determine which of such parties, namely, the parties as mentioned in the first paragraph of s. 145, Crim. Pro. Code, is in actual possession. A Magistrate is entitled to allow a third party to come in in the course of the proceeding only for the purpose of shewing that no dispute likely to cause a breach of the peace really existed or exists. *Quære*:—Whether such third party should be made a party to the proceeding. BENI SINGH v. UMRAO MAHTO, **5 C.W.N. 900.**

(1120)—*S.* 145—*Order in favour of persons, some of whom had no claim over the property.*—An order under s. 145 made in favour of four persons, two of whom claim no interest in the property in dispute, is bad for want of jurisdiction. RAJAH RAMESWAR PERSHAD NARAIN SINGH v. HARBANS SINGH, **6 C.W.N. 104.** [*R.*, 30 C. 155.]

(1121)—*S.* 145—*Dispute between tenants—Zemindars whether necessary parties—Separate disputes, how to be dealt with.*—In a proceeding under s. 145 instituted upon a dispute between two sets of tenants, the omission to add the Zemindars as parties to the dispute will not vitiate the proceedings, if the Zemindars, not being concerned in the dispute, do not move in the matter themselves. Although it may be desirable in proceedings under s. 145 to deal with each separate dispute separately, it is impossible to apply to such proceedings the strict rule of procedure observed in civil actions. MANIK MANDAL v. GOVIND MANDAL, **6 C.W.N. 206.** (15 C. 31, 16 C. 513, 10 C.L.R. 523, *R.*).

(1122)—*S.* 145—*Dispute between tenants of joint owners—Jurisdiction of Magistrate to proceed under s.* 145.—Certain land was jointly leased to tenants by two joint owners and the former continued in possession for several years under the lease. One of the joint owners sued for partition of his share and obtained a decree, but he did not obtain possession of his share under the decree, and while the old tenants were in possession as before, some new tenants forcibly entered on the land asserting that they were the tenants of only one of the joint owners. The Magistrate acting under s. 145, Crim. Pro. Code, put the old tenants in possession.—*Held,* that the Magistrate did not act without jurisdiction, and that, though there is no doubt that the Court must give effect to a decree of a Civil Court for partition, yet in this instance the dispute not being between the parties to the decree but between two rival sets of tenants, the Magistrate was right in putting the old tenants into possession of the land. MA E MYA v. MAUNG PO THAUNG, **8 Ind. Cas. 453=3 Bur.L.T. 74.**

(1123)—*S.* 145—*Landlords claiming exclusive possession through tenants—Rival claims set up by other landlords to exclusive possession—Joint co-sharers—Tenant, possession in favour of one, as against others, if good.*—An order

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passed in favour of one tenant as against other persons setting up their tenancy, is a good and valid order, and it does not transgress the principle applied in (11 C.W.N. 512, *Appl.*). Where one set of landlords claims exclusive possession of land through their tenants, and a similar rival claim is set up by a different set of landlords through their tenants, the dispute is one which comes properly within s.145 of the Crim. Pro. Code; and the landlords of the tenant in possession can recover the entire rent from him according to his lease. The presence of the rival tenants is necessary. SRIS CHANDRA v. FAKIR, **15 C.L.J. 184.** (4 C.W.N. 613, *F.*)

(1124)—*S.* 145—*Exclusive possession claimed by each set of landlords through respective tenants—One tenant setting up tenancy against another—Jurisdiction of Magistrate.*—An order under s. 145, Crim. Pro Code, passed in favour of one tenant as against other persons setting up their tenancy, is a good and valid order which does not transgress the principle applied in, as the case is one of exclusive possession claimed by each set of landlords through their respective tenants whose presence is necessary. GURUDAS KUNDU CHOWDHURY v. RAI KEDAR NATH KUNDU CHOWDHURY, **12 Cr. L.J. 408 = 11 Ind. Cas. 592 = 38 C. 889.** (11 C. W.N. 512, 4 C.W.N. 613, *R.*)

(1125)—*S.* 145—*Interference of High Court where necessary—Ejectment of tenant by Revenue authority—Tenant's unlawful obstruction.* — The High Court should not, except for very special reasons, interfere on the revision side in cases under s. 145, Crim. Pro. Code. But, where the order of the Court below is so wide of the mark and so much opposed to law and justice alike, and the respondent's conduct has been so lawless and high-handed, that to leave matters as they are would be an unsound exercise of discretion, revisional power should be put in motion. *Held*, also, that where a competent Revenue Officer rightly or wrongly decides that notice of ejectment has been properly served upon a tenant and actually gives possession of the land to the landlord, thereafter the former's only lawful course is by way of appeal or such other lawful way to seek the remedy. But by obstructing the latter in any unlawful manner, the tenant is guilty of a criminal offence and is liable to be dealt with under s. 145, Crim. Pro. Code. SRI RAM v. FAUJDAR SINGH, **33 P.W R. 1912, Cr. = 193 P.L.R. 1912 = 16 Ind. Cas. 527 = 13 Cr. L.J. 719.**

(1126)—*S.* 145 (= *Crim. Pro. Code*, 1882, *s.*.145)—*Possession of landlord—Tenants.*—The possession of a landlord by receiving rents from his tenants is "actual possession" within the meaning of s. 145. NARAIN DAS v. EMPRESS, **19 P.R. 1884, Cr.** (18 W.R. 13 Cr., *R.*)

(1127)—*S.* 145—*Dispute between two landlords—Receipt of rents—Tenants—Magistrate's discretion to re-summon witnesses at end of enquiry—Dispute between joint owners.*—It is certainly discretionary to the Magistrate to allow witnesses to be re-summoned on a petition presented towards the end of the enquiry in proceedings under s. 145, Crim. Pro. Code. Claims to collect rents can be made the subject of enquiry under s. 145, and in such enquiries the question must always be who was actually collecting rents at the date of the preliminary order. The words "actual possession in dispute between rival landlords" need not be taken to exclude possession by the receipt of rent. The person paying rent cannot, by attorning without notice to another, determine his tenancy or deprive the original man of his right to collect rents. A dispute between joint owners regarding the collection of rent is cognizable under s. 145. BULKIS BIVI v. NAGOOR KANNI RAWTHER, **1915 M.W N. 267 = 17 M.L.T. 225 = 16 Cr. L.J. 284 = 28 Ind. Cas. 332.**

(1128)—*S.* 145—*Successive defective police reports—Maintainability of proceedings under.* —Where proceedings under s. 145 were dropped, because the police report did not contain the boundaries of the lands in dispute and where fresh proceedings were instituted on another report which did not state that there was any apprehension of a breach of the peace, *held*, that the latter report, which was the only report to be considered in the case, did not contain sufficient materials to give the Magistrate jurisdiction under the section. RAI RADHA GOBIND RAI SAHEB BAHADUR v. GOSSAIN MOHENDRA GIR, **6 C.W.N. 340.** [*D.*, 38 C. 933 = 15 C.L.J. 325 = 12 Cr. L.J. 407 = 11 Ind. Cas. 591.]

(1129)—*S.* 145—*Refusal to allow intervention of party claiming interest in and actual possession of land — Charter Act, s. 15.—Per Banerjee, J:*—If the Magistrate refuses to allow the intervention of a party claiming an interest in, and actual possession of, the subject of dispute, not on the ground of his having no such interest, but on the ground of the law not authorising the addition of any such party, he declines a jurisdiction vested in him by law, and his order is open to revision by the High Court under s. 15, High Court's Act (24 and 25 Vic., c.104). KRISHNA KAMINI CHOWDHURANI v. ABDUL JABBAR CHOWDHRY, **6 C.W.N. 737 = 30 C. 155, F.B.**

(1130)—*S.* 145—*Crops cut by Magistrate's order—Deposit of the price in Court—Civil suit for damages—Finding as to the title of the plaintiff—Magistrate's order making the deposit over to the plaintiff—Powers of High Court.*— Where, in a proceeding under s. 145, the Magistrate ordered the cutting of the crops growing on the disputed land, and deposited the price in the Court, and one of the parties suing for damages got his title to the crops recognised by the Court, but was refused damages, as the act of cutting the crops was that of the Magistrate, *held*, that the High Court had no power to interfere with the order of the Magistrate, subsequent to the decision in the Civil suit, making over the deposit to the plaintiff, as the Magistrate was not exercising any judicial power in making the order. ANANDA PERSAD PAL v. KHODA BOX MALLIK, **6 C.W.N. 882.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1131)—*S.* 145—*Revival of proceedings—Fresh materials.*—Where proceedings taken under s. 145 have been struck off, and it is intended to take fresh proceedings upon new materials, it is necessary for the Magistrate to record such materials in his order renewing the proceedings. MANIK v. AZIMUDDI, **6 C.W.N. 923.** (20 C. 687, *F.*) [*D.*, 7 C W.N. 599.]

(1132)—*S.* 145—Ex parte *order in a proceeding under s.* 145—*Taking of evidence—Refusal by Magistrate to grant time for filing written statement.*—Although a Magistrate can proceed *ex parte* in a proceeding under s.145, he should take some evidence to show that the party who is present is entitled to an order in his favour. RAM KRISTA PATRA v. AGHORE NASKAR, **6 C.W.N. 925.**

(1133)—*S.* 145—*Order passed without evidence irregular.*—An order under s. 145, on the written statement of one of the parties and upon the failure of the other party to file it, without some evidence on the part of the party filing the statement in support of it, is without jurisdiction. A Magistrate has a discretion to refuse an application for time to file a written statement. GOBIND CHANDRA CHAKRABUTTY v. NIBARAN CHANDRA BHUTTACHARJI, **8 C.W.N. 642.**

(1134)—*S.* 145—*Order under the section based on a decree, without examination of witnesses.*—Where a Magistrate, considering that a decree in favour of one of the parties was conclusive on the question of possession, refused to receive the oral evidence offered by the other party, *held*, that the Magistrate did not act properly in so doing. LOWSEN SANTAL v. KALI CHARAN SANTAL, **8 C.W.N. 719.**

(1135)—*S.* 145—*Magistrate's order without giving the parties opportunity to produce evidence—Illegality of the order—Revision.*—An application was made to a Magistrate to take action under s. 145, Crim. Pro. Code No preliminary order was recorded by the Magistrate. The Magistrate visited the place in dispute, called upon the parties to put in statements of their cases and, without allowing either side to produce evidence, passed orders. He did not at all decide who was in possession when he started the proceedings: *Held*, that the procedure adopted by the Magistrate was prejudicial to the parties, and his order ought to be set aside. JHABBA v. DALCHAND, **13 Cr.L.J. 296=14 Ind. Cas. 760.** [*R.*, 14 Cr. L.J. 495= 20 Ind. Cas. 751=11 A.L.J. 696.]

(1136) — *S.* 145—*Proof of service of notice—Order under section, when justifiable.*—Where one of the parties to a proceeding under s. 145 denies the service of an order under s. 145 (1), the written return of the serving peon is not a sufficient proof of the service. [*R.*, 33 C. 33=10 C.W.N. 257=2 C.L.J. 271.] Where a Magistrate passed an order under

Crim. Pro. Code (Act V of 1898)—*continued.*

s. 145 in a very summary manner, examining only a person who was not a witness of either of the parties, *held*, that the order was bad. JOGENDRA NATH RAI v. ABU SHAIKH, **8 C. W.N. 719.**

(1137)—*S.* 145—*Refusal of process against witness—Final order without jurisdiction.*—Where, in a proceeding under s. 145, Crim. Pro. Code, the petitioner applied for summons against a witness, a Sub-Inspector of Police, and the Magistrate made an order that the Sub-Inspector was to appear with his diaries, but on the date on which the case was to be heard the witness did not appear, and, on the petitioner again applying for summons against him, the Magistrate rejected the application remarking that the application was vexatious, and ultimately passed the final order under s. 145, Crim. Pro. Code. *Held*, that the order under s. 145, Crim. Pro. Code, was made without jurisdiction. GAIJUDDI HOWLADAR v. AINUDDI HOWLADAR, **18 C.W.N. 94=15 Cr. L.J. 79=22 Ind. Cas. 431.**

(1138)—*S.* 145—*Recording evidence, when necessary—Admission by vakil.*—Although it is necessary, ordinarily, to record evidence in a case under s. 145, before passing final orders, it cannot be said that it is indispensable to do so when the case is completely given up by the opposite party. An admission by the party's legal practitioner is sufficient for that purpose. HURO MOHAN SARDAR v. GOBIND SAHU, **7 C.W.N. 351.** [*D.*, 30 C. 918.]

(1139)—*S.* 145—*Order in favour of a manager—Legality.*—An order under s. 145 in favour of the manager of an indigo concern is without jurisdiction. JHABU SINGH v. RUTHERFORD, **7 C.W.N. 208.** [*Overruled*, 7 C.W.N. 825=31 C. 48.]

(1140)—*S.* 145—*Reference to arbitration—Duty of Magistrate.*—Where, on the request of the parties to a proceeding under s. 145, the Magistrate referred the question of possession for the decision of an arbitrator, *held*, that the Magistrate ought to take the finding of the arbitrator into consideration in bringing the proceedings under s. 145 to their proper legal termination. TARAMONI CHAUDHURANI v. GYANENDRA MOHAN CHAUDHURI, **7 C.W.N. 461.**

(1141)—*S.* 145—*Dispute as to possession of land—Civil suit regarding the same land, effect of—Jurisdiction of Magistrate.*—A Magistrate, under s. 145, has power to intervene and pass a temporary order in regard to the possession of the land in dispute only until one or other of the parties applies for or obtains a determination of his rights in a Civil Court. If one of the parties, by bringing a suit for the recovery of possession admits that the other party is in possession, there is no question to decide in a proceeding under s. 145. If the Magistrate thinks it necessary that he should take steps to

Crim. Pro. Code (Act V of 1898)—*continued.*

preserve the peace, it is open to him to take proceedings under the provision of the law other than s. 145. As a proceeding under s. 145 drawn up by a Magistrate gives him jurisdiction to determine the question of possession of the land in dispute, so, in that proceeding, he is bound to ascertain and define the land in dispute and had no jurisdiction to determine, under that proceeding, a dispute regarding lands which are not covered by it. AMRITESHWARI DEBI v. DARPA NARAIN DAS, **7 C.W.N. 558.**

(1142)—*S.* 145—*Decree of Civil Court not* inter partes—*Possession under such decree—Jurisdiction of Magistrate to declare opposite party's possession.*—Where the first party was put in possession of disputed property under a decree of a Civil Court, which was not one against the second party: *Held*, that a Magistrate had jurisdiction, in a proceeding under s. 145 of the Crim. Pro. Code, to declare the possession of the second party. JOGABANDHU SHAHA v. RAJ KUMAR ROY CHOWDHURY, **13 Cr. L.J. 583 = 15 Ind. Cas. 999.**

(1143)—*S.* 145—*One of the parties not knowing the place of trial—Order under section, validity of.*—Where one of the parties to a proceeding under s. 145 was not able to ascertain, where the Magistrate, who had been moving about from place to place, was holding his camp and so failed to procure the attendance of his witnesses for the trial, *held* that an order directing the other party to continue in possession was bad. KALINATH MISTRI v. ABHOY BEPARI, **7 C.W.N. 705.**

(1144)—*S.* 145—*Notice of proceeding and copy of order drawn up under s.* 145 (1), *service of—Magistrate's duty.*—A Magistrate, before proceeding under s. 145, Crim. Pro. Code, is bound to satisfy himself that the notice of the proceeding and the copy of the order under cl. (1) of that section drawn up by him were duly served upon the party alleging non-receipt of the notice. SRIPATI CHARAN MUNDLE v. RAM KUMAR BAGDI, **8 C.W.N. 76.**

(1145)—*S.* 145—*Costs incurred in giving evidence in proceedings under the section—Suit for such costs.*—The order of a Magistrate refusing to give a witness the costs incurred by him in appearing to give evidence before him in proceedings under s. 145, Crim. Pro. Code, and referring him to a Civil Court, will not operate as *res judicata* in bar of a suit in the Civil Court for such costs. NEMAI CHUNDRA GHOSE v. AJAHAR CHOWDHURY, **8 C.W.N. 178.** [*R.*, (1810) 13 East's Repts. of Cas. 15, (1850) 5 Exchequer Report, 955.]

(1146)—*S.* 145—*Final order—Award of costs—Bill of costs presented by party—Magistrate's direction to tax costs and include the same—Failure of the office to do so—Death of successful party—Application by his son to have the costs taxed—Sustainability- Magistrate's successor in office--Competency to pass order—Legal representative--Magisterial proceedings.*—In proceedings under s. 145, Crim. Pro. Code, the Sub-divisional Magistrate passed a final order directing the

Crim. Pro. Code (Act V of 1898)—*continued.*

counter-petitioners, among other things, to pay the petitioner's costs. Within three days after the order, two memoranda for taxing costs were put into the Court by the petitioner. The Magistrate passed an order directing the inclusion of the costs. But through some negligence in the Magistrate's office, costs were not actually taxed. Nearly three years later the petitioner's son applied to the Magistrate's successor-in-office for costs being assessed, the petitioner having died in the interval. The son's application was rejected. *Held*, that the application by the son is sustainable and he is entitled to have the costs assessed. The Code of Criminal Procedure contains no special provisions for bringing on record representatives of the deceased parties. All that the Court has to see is that the appeal or application has not abated by reason of the death of one of the parties. *Held*, also, that the successor of the Magistrate who decided the case has jurisdiction to assess the amount of costs. (23 C 37, 21 C. 609, 22 C. 334, 387, *R.*) Per *Sadasiva Iyer, J.*—Courts should always lean in favour of that view of the law which would enable a party who has got an order in his favour to obtain the fruits of that order, and not in favour of highly technical objections which render the Court's order infructuous and a mere piece of waste paper. Courts have power within reasonable limits to invent rules of procedure for this purpose, when the legislature has not enacted such rules, unless the legislature prohibits them from doing so. SUBBIAH SERVAI v. CHOKKALINGA THEVAN, **16 M.L.T. 248 = 1914 M.W.N. 790 = 27 M.L.J. 613 = 15 Cr. L.J. 676 = 25 Ind. Cas. 1004.**

(1147)—*S.* 145—*Partition suit—Declaration that property is joint — Order under section, when to be made.*—Where the Civil Court, in which a suit for partition is pending, had declared certain properties to be joint, and ordered partition to be effected, the properties must, until the jointness is disturbed by actual partition in the suit, be treated as having been declared by the Civil Court to be joint properties. No order such as is contemplated by s. 145, Crim. Pro Code, can be made in such a case. DHARANI KANTA LAHIRY CHOWDHURY v. GIRIJA KANTA LAHIRY CHOWDHURY, **8 C.W.N. 485.** [*R.*, 10 C.W.N. 1088.]

(1148)—*S.* 145—*Order by Magistrate under—Omission to expressly state the grounds for the order—Reference by Magistrate to a petition containing such grounds, effect of.*—In an order made under s. 145 (1) of the Code, the Magistrate omitted to state, in detail, the grounds for his conclusion that there was a likelihood of a breach of the peace. It was, however, recorded by the Magistrate that, upon information received by him and upon the petition presented by one of the parties to the proceedings, it appeared there was a likelihood of a breach of the peace and there was no denial of the same by the counter-petitioners. *Held*, that there was substantial compliance with s. 145 (1) of the Code and that there was no

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irregularity which would affect the validity of the order. SAYID MAHOMED GHOUS SAHEB v. SAYID KHADIR BADSHAW SAHEB, **16 M. L.J. 148 = 3 Cr. L.J. 487.** [*R.*, 30 M. 548 = 3 M.L.T. 18 = 7 Cr. L.J. 28 = 36 M. 275 = 13 Cr. L.J. 753 = 23 M.L.J. 499 = 12 M.L.T. 439 = (1912) M.W.N. 1154 = 17 Ind. Cas. 65.]

(1149)—*S.* 145—*Crim. Pro. Code*, 1861, *ss.* 318 *and* 319—*Jurisdiction of Civil Courts as to dispossession.*—Case where the bearing of ss. 318 and 319, Crim. Pro.Code, 1861, with regard to cases of dispossession and the jurisdiction of the Civil Courts illustrated. KHAJAH ENAETOOLLAH CHOWDHRY v. KISHEN SOONDUR SURMA, **8 W.R. 386.**

(1150)—*S.* 145 (=*Crim. Pro. Code*, 1872, *s.* 530)—*Order based upon evidence recorded by another Magistrate—Legality.*—An order under s. 145, in regard to possession, based upon evidence recorded by another Magistrate is illegal. HIGH COURT PROCEEDINGS, 16TH NOVEMBER 1875, NO. 2840, **2 Weir 97.** [*R*, 31 M. 82 = 6 Cr. L.J. 384 = 17 M.L.J. 535 = 3 M.L.T. 108.]

(1151)—*S.* 145 (=*Crim. Pro. Code*, 1882, *s.* 145)—*Indefinite order—Amendment.*—Where the order of a Magistrate under s. 145, deciding that one of the parties was entitled to possession, did not specify by metes and bounds the exact portion of each number of the land to which he was entitled to possession, *held* that a party to the proceeding should apply to have the order amended, and that the High Court would not interfere on revision. BABOO REDDI v. KULLAPPA NATTAN, **2 Weir 107.**

(1152)—*S.* 145—*Power of succeeding Magistrate to cancel order of his predecessor.*—A Magistrate has jurisdiction to cancel the order of his predecessor and to stay further proceedings. He has also the power to order the restitution of the property placed, after attachment, in the hands of a receiver. SWAMINATHA PILLAI v. SWAMI RAYAR, **2 Weir 108.**

(1153)—*S.* 145—*Possession—Order of Criminal Court as to—Non-observance of procedure—Illegality.*—Proceedings under the above section, are without jurisdiction, unless the procedure prescribed therefor is strictly adhered to. Where, therefore, the copy of the initiatory order was neither served on the parties, nor affixed at or near the subject of dispute, and all the parties interested were not heard or evidence taken, *held*, that the proceedings must be set aside. ABDULLA KHAN v. GUNDA, **7 P.R. 1907, Cr = 24 P.W.R. 1907, Cr. = 71 P.L.R. 1908 = 6 Cr.L.J. 113.** (20 C. 520, 27 C. 892, 28 C. 416, 6 C.W.N. 101, 2 P.R. 1899, Cr., F.B. *Rel. on.*) [*F.*, 11 Cr. L.J. 422 = 6 Ind. Cas. 955 = 24 P.W.R. 1910 Cr., 11 Cr. L.J. 61 = 4 Ind. Cas. 860 = 11 P.W. R. 1909, Cr. = 105 P.L R. 1909 = 12 P.R. 1909, Cr.]

(1154)—*S.* 145—*Postponement of case* sine die—Solenamah *deciding right to possession—Whether Magistrate bound to follow.*—A Magistrate has jurisdiction to postpone a proceeding under s. 145 of the Crim. Pro. Code *sine die*, when he expected that settlement proceedings in respect of the land in dispute were soon to commence. When a previous *solenamah* between the parties did not decide possession but the right to possession, the Magistrate is not bound to act in accordance with it in a proceeding under s. 145, Crim. Pro. Code. GURU DAS HAZRA v. G. L. WEATHERAL, **11 Cr. L.J. 7 = 4 Ind. Cas. 537 = 13 C.W.N. 601.**

(1155)—*S.* 145—*Procedure.*—The recording of a proper order under sub-s 1, s. 145, is essential to give the Magistrate jurisdiction under the section. MANIK v. AZIMUDDI, **6 C.W.N. 923.** [*D.*, 7 C.W.N. 599.]

(1156)—*S.* 145 (=*Crim. Pro. Code*, 1872, *s.* 530)—*Death of one of the parties, before the termination of proceedings—Procedure.*—The High Court refused to set aside an order under s. 530, on the death of one of the parties, in whose favour the order had been passed, just before the termination of the proceedings, on the ground that there was another in whose favour that order still remained, the order being in favour of the deceased and another person. The High Court also observed that it would have been more regular, had the Magistrate postponed the case so as to enable some representatives to the deceased to appear. SREEMUTTY RANEE ANONDOMOYEE DEBEE v. LUCHMUN PERSHAD GOGO, **2 C.L.R. 264.** [*R.*, 21 C. 404.]

(1157)—*S.* 145—*Attachment of a forest—Whether an elephant in that forest can also be attached—Who is entitled to the possession of the elephant.*—An elephant cannot be attached under s. 145, Crim. Pro. Code. When a forest has been attached under the said section and the elephant was not removed from the forest at the time of attachment, *prima facie* the person in whose favour the final order under s. 145 will be passed concerning the forest, will be entitled also to the possession of the elephant; until then, the attaching officer will be entitled to take possession of the animal. KOCHUNNY v. MANAVIKRAMA RAJAH, **1912 M.W.N. 540 = 14 Ind. Cas. 318 = 13 Cr. L.J. 222.**

(1158)—*S.* 145—*Order under, without enquiry as to possession—Legality—Suit to set aside the order—S.* 28 *and art.* 47, *Limitation Act* (1877).—An order under s. 145, Crim. Pro. Code, is not *ultra vires*, though passed without taking any evidence on the question of possession, when the person against whom the order is made admits the possession of his opponent. Where the Magistrate's order is not bad for want of jurisdiction, s. 28 and art. 47 of the Limitation Act apply to a suit brought to set aside such an order. GANGADHARAM IYER v. SANKARAPPA NAIDU, **9 M.L.T. 91 = 12 Cr. L. J. 47 = 9 Ind. Cas. 285.**

(1159)—*Ch.* XII, *s.* 145—*Crim. Pro. Code,* (1861), *ch.* XXII (*ch.* XII *of the Code of* 1898)—*Omission to record a preliminary order setting forth grounds of a likelihood of a breach of the peace.*—The failure to record a preliminary

order setting forth the grounds for believing that a dispute likely to cause a breach of the peace exists between the parties cannot operate as invalidating an order under s. 145, unless the party against whom the order is passed has been prejudiced by the order. HIGH COURT PROCEEDINGS, 9TH AUGUST 1870, NO. 1479, 2 **Weir 98.**

(1160)—*Ch.* XII, s. 145—*Crim. Pro. Code* 1861, *ch.* XXII (*ch.* XII *of the Code of* 1898) —*Possession of trespasser.*—The actual possession intended in ch. XXII (ch. XII of the Code of Criminal Procedure) does not include the occupancy of a mere trespasser. HIGH COURT PROCEEDINGS, 9TH JANUARY 1871, NO. 35, **2 Weir 99. Foot-note = 6 M.H.C. App. 13.** [*Overruled*, 2 Weir 98.]

(1161)—*Ch.* XII, s. 145—*Disputes relating to immoveable property—Joint possession—Joint property—Joint family—Proceedings of son against father—Revision—Want of Jurisdiction —Abuse of jurisdiction—Restoration of possession.*—Proceedings under ch. XII of the Crim. Pro. Code are not proceedings which can be sent for under s. 435 of the Code by the High Court, by the Sessions Judge, or the District Magistrate for any of the purposes specified in that section. Nor are the proceedings criminal proceedings in the proper sense of the word. (25 B. 179, *R.*). They can be revised only by the High Court under s. 439 on the ground of want of jurisdiction or grave irregularity in the proceedings or non-compliance with the provisions of the Code amounting to an abuse of jurisdiction. The provisions of ch. XII do not apply to joint possession or joint property, nor to moveable property other than crops or produce of land specified in s. 145 of the Code. (23 C. 80, *R.*) Where the Magistrate misapprehended the meaning of a party's statement and refrained from enquiring into the question of possession imperatively required by s. 145 of the Code, and prevented the party from producing the evidence, *held*, that it constituted a grave irregularity amounting to an abuse of jurisdiction. The object of ch. XII is to prevent breaches of the peace pending a settlement of the rights of the parties in the Civil Court. The Magistrate's jurisdiction is ancillary in a way to that of the Civil Courts; in fact, it is *quasi* civil. In making use of his powers under the section, the Magistrate should be guided by this cardinal principle. For example, he cannot, acting on the mere words of the section, pass an order in respect of any property where the question of the right to it has been decided by a competent Court not long before the time of his taking proceedings. (26 C. 625, *R.*) Under the Hindu Law of the Mitakshara School, the sons have no dominion over the undivided property of a joint family. The father, as the head and manager, has alone that power, and the son's remedy, if he is dissatisfied with the management or is turned out, is a suit for partition. The law allows the son equal rights in joint ancestral property, but saves a deadlock by giving the father the sole dominion until the son obtains partition. (1 A. 77, *R.*) When an order passed under ch. XII is set aside by the High Court as passed without jurisdiction, it is the duty of the Magistrate to restore the parties to the position in which they were before the order was passed, as no man ought to suffer wrong from a Court of justice. DHANI RAM v. BHOLA NATH, **135 P.L.R. 1902 = 23 P.R. 1902, Cr.**

(1162)—*Ch.* XII, s. 145—*Dispute as to possession of immoveable property—Evidence as to title, admissibility of.*—In a proceeding under ch. XII of the Code of Criminal Procedure, the Magistrate may, if necessary, take and consider evidence of title to enable him to decide the question of actual possession, but such evidence should be used only to "supplement" evidence of user. PANANGANTI PARTHASARATHY NAYANIM GARU v. PALLIKAPU VENKATASAMI REDDI, **6 Ind. Cas. 398 = 11 Cr. L.J. 353 = 8 M.L.T. 104.** (7 C. 46, 8 C.L.R. 645, 6 C.L.R. 182, 6 Cr. L.J. 192, *R.*)

(1162-*a*)—*S.* 145—*Dispute likely to cause breach of the peace not mentioned in notice—Parties aware—Magistrate—Jurisdiction—Revision.*—Where there is a dispute likely to cause a breach of the peace and the parties are aware of it, the Magistrate is not ousted of his jurisdiction to act under s. 145, simply because in the notice issued, it is not stated that a dispute likely to cause a breach of the peace exists. RAM BEHARI v MUNESHAR, **16 Cr. L.J. 224 = 27 Ind. Cas. 848.** (5 Ind. Cas. 471 = 7 A.L.J. 53 = 11 Cr. L.J. 141 = 32 A. 132. *R.*)

(1162-*b*)—*S.* 145—*Rent, collection of, dispute regarding, between* lakherajdar *and* putnidar—*Decision in the absence of tenants—Produce rent, applicability of section to.*—The disputed land in respect of which proceedings under s. 145, Crim. Pro. Code, were instituted consisted of several plots all held by tenants on a yearly rent of half the produce. The parties to the proceedings were the *lakhirajdar* and the *putnidar*, the dispute between whom was as to the right to collect rent. It appeared that as regards some of the plots there was a dispute as to what tenants were in possession. *Held*—that, as regards the plots about which there was a dispute as to the tenants in possession, the Magistrate should not have passed any order in these proceedings in the absence of the tenants, because they might be very seriously prejudiced by an order in favour of one or other of the parties to these proceedings. *Held* (as to the argument that s. 145, Crim. Pro. Code, could not refer to a half-share of the produce)—that it was true that, if it was a question of dividing a hitherto undivided share, the section might not apply, but in the present case the section applied, as it was a question of rent and it so happened that the rent was half the share of the produce; but there was no question of shares as between the two parties to the proceeding. HARI DAS SAMANTA v. ABDUL MOTLEB MULLICK, **19 C.W.N. 959.**

(1163)—S. 145—If award under section bars possessory suit—*See* ACT I OF 1877, s. 9, 20 W.R. 12.

Crim. Pro. Code (Act V of 1898)—*continued.*

(1164)—S. 145—*See* ACT I OF 1877, s. 9, 7 C. L.J. 547.

(1165)—S. 145—*See* ACT XV OF 1877, art. 47, 19 C. 646, 19 W.R. 480, Cr.

(1166)—S. 145—*See* BOM. ACT III OF 1876, s. 10, 26 B. 353=3 Bom. L.R. 919.

(1167)—S. 145—*See* CRIMINAL TRESPASS, 2 A. 465, 2 N.W.P. 82.

(1168)—S. 145—*See* EJECTMENT, SUIT FOR, 4 C. 339.

(1169)—S. 145—*See* JOINDER OF PARTIES, 20 C. 520.

(1170)—S. 145—*See* JURISDICTION OF CIVIL COURTS, 12 W.R. 199=3 B.L.R. A C. 305, 5 C.W.N. 71.

(1171)—S. 145—*See* NOTICE, 4 C. 650=3 C. L.R. 551.

(1172)—S. 145—*See* REVISION—GENERAL PRINCIPLES, A.W.N. 1907, 49=2 A.L.J. 272=2 Cr. L.J. 222.

(1173)—S. 145—*See* REVISION — JUDGMENTS, DEFECTS IN, A.W.N. 1905, 260=3 Cr. L.J. 48.

(1174)—S. 145—*See* Nos. 25, 70, 71, 129, 574, 587 to 602, 612, 781, 928 and 1013 to 1018, *supra* and Nos, 3244, 4564, *infra.*

(1174-*a*)—Ss. 145, 107, 526— *Proceedings under s. 145—Not a 'case,' within meaning of s. 526—Application for transfer of such proceedings—No jurisdiction to entertain—Proceedings under s. 107— Transferability.*—A proceeding under s. 145, Crim. Pro. Code, does not constitute a criminal cause or matter, and there is no jurisdiction under s. 526, Crim. Pro. Code, to entertain an application for transfer of such proceeding. (24 B. 527, *F.*; 26 M. 188, 34 A. 533, *Not F.*) *Obiter*—Proceedings under s. 107, Crim. Pro. Code, are 'criminal cases' within the meaning of s. 526. FARID v. PIRU, **8 S.L R. 215=16 Cr. L.J. 249=28 Ind. Cas. 105.** (18 C. W.N. 274, *R.*; 154 P.L.R. 1914, *Not F.*)

(1175)—*Ss.* 145, 144—*Public claiming easement if may be party to a proceeding under s. 145—Declaring the public to be in possession, effect of—Joint possession—Ousting of jurisdiction of the Magistrate—Right of the public to be in possession for one day in the year to perform* puja, *nature of—Easement—Constructive conditional possession—Proceeding not directed to the decision of the absolute continuing possession of either party* ultra vires—*Prevention of breach of peace.*—If the public are declared under s. 145, Crim. Pro. Code, to be in possession of any piece of land, then both parties to the dispute are included in that term, and the possession, therefore, is joint possession, and the jurisdiction of the Court under s. 145, Crim. Pro. Code, is ousted. Where one of the parties to a proceeding under s. 145, Crim. Pro. Code, representing the public claimed only the right to worship on the disputed land on one day in the year, and the right to make due and proper preparations for the holding of that worship by erecting huts for the purposes of holding *puja.* *Held*—the right of such party to be in possession for one day in the year or to take such steps as are necessary to prepare for the *puja* is in the nature of an easement and not in the nature of possession. Proceedings under s. 145, Crim. Pro. Code, are entirely without jurisdiction, unless they are directed to the decision of the absolute continuing possession of either party until they are ousted by the order of the Civil Court. Advisability of taking proceedings under s. 144, Crim. Pro. Code, to prevent disturbance of peace considered. MANIK CHANDRA CHAKRAVARTI v. PREONATH KUAR, **17 C.W.N. 205=13 Cr. L J.789=17 Ind Cas. 533=17 C.L.J. 397.** [*R.*, 27 M.L.J. 169.]

(1176)—*Ss.* 145, 146 (=*Crim.Pro.Code,* 1872, ss. 530 *and* 531)—*Joint possession—Possession of separate rooms in same building—Competency of Magistrate to pass orders under* —Where it was found that each party to the dispute was in possession of separate dwelling rooms in the same house, *held*, that the Magistrate was competent to pass an order that the separate possession of each party should continue. Where a Magistrate found that the parties to the dispute were in joint possession of certain rooms in which the family documents and other valuables were kept and ordered that the rooms should not be opened, except in the presence of certain public officers, *held*, that the order was not sanctioned by s. 531 (s. 146). DEVAJI MANALPAD v. GOTHA SANKARA VALIA RAJA, **2 Weir 108.**

(1177)—*Ss.* 145 *and* 146—*Attachment of cut and stored crops, whether legal.*—The words "crops and other produce of land" in sub-s. 2, of s. 145, mean crops or other produce of land attached to the land and not to crops which have been severed. Therefore, a Magistrate has no jurisdiction under s. 146 to attach crops which have been cut and stored. RAMZAN ALI v. JANARDHAN SINGH, **30 C. 110=6 C.W.N. 881.** [*F.*, A.W.N. 1905, 278=3 A.L.J. 13=28 A. 266.]

(1178)—*Ss.* 145 *and* 146—*Possession delivered by Civil Court—Dispute concerning lands so delivered—Attachment of land by Magistrate, legality of.*—Where the petitioner was put in possession of certain lands in execution of a decree obtained by him in the Civil Court establishing his right to them, *held*, that a Magistrate was not competent to pass an order directing the attachment of those lands under s. 146 and it was the duty of the Magistrate to have found possession in accordance with the decree of the Civil Court. GUBRAJ MARWARI v. SHEIK BHATOO, **32 C. 796=2 Cr. L.J. 761.** [*R.*, 33 C. 33=10 C.W.N. 257=2 Cr. L.J. 670=2 C.L.J. 271; *D.*, 31 M. 416=4 M.L.T. 189=8 Cr. L J. 392.]

(1179)—*Ss.* 145 *and* 146—*Dispute between landlords as to possession of land—Order of attachment of crops belonging to tenants, validity of.*—In a dispute between rival landlords, a Magistrate is not competent to attach the

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crops on the land belonging to the tenants. DENOMONI CHOWDHRANI v. MOZAFAR ALI KHAN, **5 C.W.N. 105.**

(1180)—*Ss.* 145 *and* 146—*Power of Magistrate to make order regarding component parts of the subject-matter of the dispute.*—The subject-matter referred to in ss. 145 and 146 may be read as referring to the whole or to any component parts thereof. If that component part is distinct and separable from the rest, it cannot rightly be held that, because the Magistrate cannot find possession of one of the component parts of the subject-matter in dispute with either party, he is bound to attach the whole, although that component part is distinct and separable from the rest. If the subject-matter in dispute is indivisible, and must be dealt with as a whole, it must be dealt with in such a way as to make, in regard to it, one order either under s. 145, or s. 146 of the Code, as the circumstances may require. SADAR ALI v. ABDUL KARIM, **5 C.W.N. 710.**

(1181)—*Ss.* 145 *and* 146—*Attachment under s.* 146—*Written statements, failure to file in time—Evidence, omission to adduce—Jurisdiction of Magistrate to attach under s.* 146 *when the parties did not adduce evidence on the appointed date.*—Where the parties to a proceeding under s. 145, Crim. Pro. Code, did not file their written statements or adduce evidence, though more than two months had expired from the date the proceeding was drawn up, but applied for time to file the written statements. *Held* that the Magistrate did not act without jurisdiction in refusing to grant time and in attaching the disputed land under s. 146, Crim. Pro. Code, on the failure of the parties to adduce evidence. BEJOY MADHUB CHOWDHURY v. CHANDRA NATH CHUCKERBUTTY, **14 C.W. N. 80=5 Ind. Cas. 40.** (12 C.W.N. 896, *D.*) [*D.*, 40 C. 105=16 C.W.N. 1052=13 Cr. L.J. 486=15 Ind. Cas. 486.]

(1182)—*Ss.* 145, 146—*Order under the section—Applicability to persons not parties to the proceedings.*—Where the tenants of the disputants were directed by the Magistrate, without having made them parties, to vacate the house in dispute which had been attached under s. 146 and were told that any claims they might have should be settled in a Civil Court, *held*, that the order was *ultra vires.* VENKATAPPA v. RAMASAWMI, **2 Weir 106.**

(1183)—*Ss.* 145, 146 (=*Crim. Pro. Code,* 1882, *ss.* 145, 146)—*Dispute regarding the performance of* puja *in a temple—Order for attachment and closing of temple—Validity.*—Where, in a dispute arising between two *pujaries* regarding the right to perform the puja in a certain temple, the Magistrate placed it under attachment and ordered it to be closed, the High Court, setting aside the order relating to the closing of the temple, directed that some provisional arrangements should be made by the Magistrate for the continuance of the public worship. *In re* MUTTUSAMI PILLAI, **2 Weir 112.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1184)—*Ss.* 145, 146—*Dispute likely to lead to breach of peace—Attachment—Appointment of receiver—Legality.*—In this case the Magistrate received information of a dispute likely to lead to a breach of the peace and directed the attachment of the property in dispute and also appointed a Receiver before enquiring into the matter. *Held* that the order of attachment was perfectly legal under cl. 4 of s. 145, but that the appointment of the Receiver was *ultra vires.* SUBHADRAMMA v. SATPAM SWAMI, **8 M.L.T. 314=7 Ind. Cas. 895=11 Cr. L.J. 536=1910 M.W.N. 821.**

(1185)—*Ss.* 145 *and* 146—*Disputes as to immoveable property likely to cause breach of peace—Title, question of, not to be determined—Possession, mere fact of, to be determined—Attachment of property, jurisdiction of Magistrate as to—Evidence to be received and considered.*—The question of title does not arise in proceedings taken under s. 145, Crim. Pro. Code. There the Magistrate has simply to determine with which of the parties possession lies at the time. Under s. 146, Crim. Pro. Code, a Magistrate has got no jurisdiction to issue any order for attachment of property unless and until he has made the inquiry contemplated by s. 145, Crim. Pro. Code, that is to say, unless he has received and considered the evidence produced before him by the parties. INAYAT ULLAH v. AMANAT HUSAIN, **15 Cr. L.J. 470=24 Ind. Cas. 350.**

(1186)—*Ss.* 145 *and* 146—*Attachment order under s.* 146, *without jurisdiction—Evidence, omission to take, when amounts to want of jurisdiction—Jurisdiction.*—Where, in a proceeding under s. 145, Crim. Pro. Code, the Magistrate, without taking any evidence or making any local enquiry, made an order attaching the land in dispute under s. 146, Crim. Pro. Code. *Held*—that the order of the Magistrate was incompetent and without jurisdiction, as the Magistrate did not make the slightest effort to satisfy himself as to the *factum* of possession. SHEO BALAK RAI v. BHAGWAT PANDAY, **16 C W N. 1052=15 Ind. Cas. 486=13 Cr.L.J. 486=40 C. 105.** (12 C. W.N. 896, *Rel.*; 14 C.W.N. 80, *R*).

(1187)—*Ss.* 145, 146—*Possession—Proceedings—Appointment of Receiver before completing inquiry under s.* 145—*Jurisdiction.*—An order by a Magistrate, appointing a Receiver under cl. (2) of s. 146, Crim. Pro. Code, before completing the inquiry under s. 145 of the Code, is *ultra vires* and without jurisdiction. LAKSHMINARAYANA REDDI v. GNANAPRAKASA MUDALIAR, **13 Cr.L.J. 536=15 Ind. Cas. 808.**

(1188)—*Ss.* 145, 146—*Jurisdiction of Magistrate—Disposal of property.*—The "parties" contemplated in s. 146 of the Crim. Pro. Code, are the parties concerned in the dispute relating to land or water. A District Magistrate, in a proceeding between certain parties, passed an order under s. 146 of the Crim. Pro. Code, attaching the land in dispute, the attachment to continue in force until a competent Court had

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determined the rights of the parties to the land. A party applied for produce of the land to be made over to him, but the District Magistrate treated the profits as derelict and held that, since the rights of any of the parties to the land in question had not been determined by any Court, the produce lapsed to Government. *Held*, that the order of the District Magistrate refusing to hand over the value of the produce in question to the petitioner was correct, but the District Magistrate had no power to treat the profits as derelict and as the property of Government. MOHAR SINGH v. CROWN, 123 **P.L.R. 1911 = 18 P.W.R. 1911, Cr. = 11 Ind.Cas. 587 = 12 Cr.L.J. 403.**

(1188-*a*)—*Ss.* 145, 146—*Dispute as to immoveable property—Breach of the peace as to.*—In a proceeding under s. 145 of the Crim. Pro. Code, the preliminary order was made. The statements of the parties as required by cl. 4 of the section were next put in; but thereafter there was no oral examination of the parties or taking of evidence. The Magistrate eventually ordered the applicant not to obstruct, etc. The applicant having appealed to the High Court: *Held*, setting aside the order, that the Magistrate must complete the proceedings as required by s. 145, by hearing the parties, receiving the evidence if any, etc., and make a proper order either under that section or under s. 146 of the Code, if a breach of the peace was apprehended. *In re* DYAWAPPA BASGUNDA PATIL, **17 Bom.L.R. 382 = 3 Bom. Cr. Cas. 45.**

(1188-*b*)—*Ss.* 145, 146—*Magistrate, duty of, to find who is in possession on date of his order —Previous possession, effect of—Order under s.* 146, *when* ultra vires.—Under s. 145, Crim. Pro. Code, a Magistrate should find as to who is in actual possession of the property in dispute on the date of his order, not on any date anterior to that, although previous possession may be a guide to his finding peaceful and actual possession on the date. An order under s. 146, Crim. Pro. Code, would be *ultra vires*, unless the Magistrate records a finding that he is unable to find which party is in actual possession under s. 145, Crim. Pro. Code. THUMBALABED HAMPANNA v. PARISI GANGAMMA, **16 Cr.L.J. 239 = 27 Ind. Cas. 911.**

(1189)—Ss. 145, 146—*See* PENAL CODE, ss. 143, 447, 18 C.W.N. 1245 = 15 Cr. L J. 725 = 26 Ind. Cas. 173.

(1190)—*Ss.* 145 *to* 148, *ch.* XII, *proceedings under—High Court, power of— Revision.*—A High Court has no power to send for the record of a case which, in intention and in fact, has been begun and continued under ch. XII of the Crim. Pro. Code. SHOHRAT SINGH v. DARYAG SINGH, **13 Cr. L J. 495 = 15 Ind. Cas. 495.** (31 A. 150; 1 Ind. Cas. 762, 6 A.L.J. 113, 9 Cr. L.J. 352 and 126 C. 188; 3 C.W.N. 49, *Rel.*)

(1191)—*Ss.* 145, 146, 147, 369—*Review—Crim. Pro. Code, s.* 369, *Court's power under.*—A Magistrate initiated proceedings under s. 145, Crim. Pro. Code, but finding that actual possession of neither party was established, passed an order under s. 146, Crim. Pro. Code, attaching the plots in question until such time as a competent Court determined the rights of the parties thereto. Subsequently, on the report of the Tahsildar that an attachment of the property was not practicable, he cancelled his previous order and in lieu thereof passed an order under s. 147, Crim. Pro. Code, forbidding the parties from cutting the trees from one specified plot, and from exercising any rights over the other plots until they obtained a declaration of their title from a competent Court. *Held*, that s. 369, Crim. Pro. Code, does not permit a review and the Magistrate had no jurisdiction to set aside his previous order. *Held, further*, that s. 147 is intended to apply only to cases where there might be disputes concerning the right of use of any land or water as distinct from disputes as to the title to or possession of the land itself, for which provision is made by ss. 145 and 146 of the Code. RAM DULARE v. AJUDHYA SINGH, **16 O.C. 192 = 21 Ind. Cas. 477 = 14 Cr. L.J. 605.**

(1192)—*Ss.* 145, 146 *and* 435—*Proceedings under ch.* XII, *Crim. Pro. Code—High Court's jurisdiction—Order regarding management of property attached, under s.* 446.—S. 435 places proceedings under ch. XII beyond the powers of the High Court in revision, leaving the parties to their remedies in the Civil Court. The High Court can, however, under the powers conferred by the Charter Act, take cognisance of such matters, if it is shown that the proceedings are without jurisdiction. But, where a Subordinate Magistrate passed an order under s. 146 attaching certain lands, the subject-matter of the proceedings, under s. 145, and in the management of the property granted a lease, and the District Magistrate had cancelled the lease and made another arrangement, *held*, that the High Court could not interefere with an order relating to the management of the property under attachment by reason of an order under s. 146, and that, if anything was done during the attachment, to which a party to the proceedings had any objection, he should have recourse to the Civil Court, which would deal with the whole question and remedy anything done, likely to injure the party who might ultimately succeed in obtaining possession of the property. LOCKNATH SHAH CHOWDHRY v. NEDU BISWAS, **29 C. 382 = 6 C.W N. 469.** [*R.*, 36 M. 275 = 12 M.L.T. 439 = 1912 M.W.N. 1154 = 23 M.L. J. 499 = 17 Ind. Cas. 65 = 13 Cr. L.J. 753 = 17 C.P.L.R. 133.]

(1193)—Ss. 145, 146, 439—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 46 P.L.R. 1903.

(1194)—*Ss.* 145, 147—*Reference by District Magistrate under s.* 147—*Procedure—Right to perform* puja.—Where a District Magistrate, on being satisfied that there existed a dispute likely to cause a breach of the peace, referred the case to a Magistrate for enquiry, *held*, the latter was bound under s. 147 "to enquire into the matter in the manner provided by s. 145" Crim. Pro. Code. Where the subject-matter of a dispute

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is the right to perform a religious ceremony or *puja*, the case comes under s. 147, Crim. Pro. Code. *In re* DNYANESHWAR DADAJI BADVE, **3 Bom. L.R. 416.** (24 B. 527=2 Bom. L.R. 88, 11 M. 323, 8 C 51=11 C.L.R. 113=8 I.A. 123, 25 B. 179=2 Bom. L.R. 755, *R.*)

(1195)—*Ss.* 145 *and* 147—*Dispute as to right to remove and appropriate sandalwood paste on idol, jurisdiction of Magistrate to enquire into.*—The *Badves* of a temple applied to a Magistrate under s. 147, Crim. Pro. Code, saying that the right to take sandalwood paste, when removed from the person of the idol, belonged to them, but, as this right was disputed by the *pujaris*, there was a likelihood of the breach of the peace. The Magistrate held that he had no jurisdiction under the section, as the right in question was already adjudicated upon by a Civil Court; but the Magistrate ordered that the *pujaris* should hand over the sandalwood paste after removing it from the idol, to the *Badves*, who had a right to the same. *Held* (1) that the Magistrate had no jurisdiction to pass the order; (2) that, if the Magistrate was of opinion that the dispute might have occasioned a breach of the peace, he ought to have proceeded under ch. VIII, Crim. Pro. Code; (3) that ss. 145 and 147, Crim. Pro. Code, did not apply as there was no dispute concerning the right of use of any land or water as defined in s. 145 of the Code, or of any right of way or easement over the same; and (4) that the sandalwood paste does not fall within the description given in s. 145 (2), Crim. Pro Code, as forming the profits of immoveable property, as it in no way arises or emanates from the temple building or can in any manner we held to be properly arising from immoveable property. *In re* PANDURANG GOVIND PUJARI, **4 Bom. L.R. 438.**

(1196)—*Ss.* 145 *and* 147—*Order made against one party on written statement by the other—Order under the sections unsupported by evidence—Validity.*—An order under s. 145 or s. 147 cannot be made merely on the written statement of one of the parties, without evidence of facts justifying such order, where the party who, in the ordinary course of things, would oppose the order, does not expressly admit the allegation made by the other party in the written statement. Where the second party, in a proceeding under s. 147, having failed to file a written statement the Magistrate declined to extend the time for filing the written statement and passed an order against him on the written statement of the first party only, and in the absence of an express admission of the second party, *held*, that the order was bad, as there was no evidence in proof of the allegation contained in the written statement. MAHOMED NUR *v.* BIKKAN MAHTON, **30 C. 918=7 C.W.N. 510.** (7 C.W.N. 315, *Expl.*)

(1197)—*Ss.* 145 *and* 147—*Dispute concerning land—Duty of Magistrate—Improper orders under the sections.*—It is the duty of a Magistrate, before he interferes in the exercise of rights, to consider whether he cannot protect

Crim. Pro. Code (Act V of 1898)—*continued.*

persons in the enjoyment of their rights by taking a caution bond from the persons from whom or at whose instigation the breach of the peace may be apprehended. But, if a probability of a breach of the peace is established and a Magistrate, instead of taking security, acts under s. 145 or s. 147, then, although the other course might be the wiser and the more politic, the High Court could not, as a Court of revision, disturb his order on that ground only, if the case was one in which, on other ground, such an order would be legal. Nor would it be a good ground for objection to the Magistrate's order that a Civil Court has refused an injunction. [*R.*, 15 M.L.J. 394=29 M. 97.] Where an order under s. 145 or s. 147 is not made between the parties to the proceeding, or when neither of the parties to the proceeding establishes that he is in possession, *held* that the order is not properly made. SUBBA NAYAK *v.* TRINCAL, **7 M. 460=2 Weir 101.**

(1198)—*Ss.* 145, 147—*Basis of jurisdiction—Imminence of breach of peace — Proceedings under s.* 145—*Arbitration—Failure of arbitration—Revival of proceedings — Jurisdiction.*—The jurisdiction of a Magistrate under ch. XII of the Crim. Pro. Code, is solely based on the imminence of a breach of the peace. What the Crown and the parties want is a decision as to their present rights and a decision—which will be effectual to prevent a breach of the peace. While certain proceedings under s. 147 of the Crim. Pro. Code, were pending, the parties agreed to refer the dispute to arbitration. The Magistrate thereupon made an order to the effect that further proceedings were unnecessary and they were, therefore, stayed. After the arbitration proceedings, which had been pending for about a year, became ineffectual, the Magistrate, without recording a fresh proceeding and without stating the information and the ground on which he was satisfied as to the existence of a dispute likely to cause a breach of the peace, continued the proceedings under s. 147. *Held*, that the Magistrate had no jurisdiction, as there was no allegation of any likelihood of a breach of a peace after the arbitration proceedings ceased, and that the order of the Magistrate staying further proceedings had ousted his jurisdiction to continue the proceedings. KALANAND SINGH *v.* RAMESHWAR SINGH, **8 Ind. Cas. 892=15 C.W.N. 271=11 Cr. L.J. 729.**

(1199)—*Ss.* 145, 147 *and* 439 — *Non-compliance with the provisions of s* 145 (4)—*Evidence not recorded—Order passed without jurisdiction — Revision.*—The District Magistrate of Jaunpur, apprehending a breach of the peace on account of a dispute between one Baijnath and certain Mahomedans as to a burial ground, ordered proceedings to be instituted under s. 145, Crim. Pro. Code. Written statements were filed by both the parties claiming the ownership and possession of the land. During the pendency of the proceedings, the Mahomedans applied that the proceedings be considered

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as taken under s. 147 of the Code, as the real dispute between the parties was not as to the ownership and possession of land but as to the right to bury corpses of the Mahomedans therein. Their application was disallowed, and the Joint Magistrate, before whom the proceedings were pending, without recording any evidence, closed the case and made an order that the Mahomedans should not interfere with the possession of Baijnath and referred the parties to the Civil Court. *Held* that, in closing the proceedings and passing an order to the prejudice of the applicants without taking evidence, the Magistrate acted without jurisdiction and his order was open to revision by the High Court. Under s. 145 (4), the Magistrate was bound to receive and record all the evidence that the parties wanted to produce. Under the peculiar circumstances of the present case, however, the Court did not exercise its discretion in favour of the applicants. JHENGAR v. BIJNATH, **11 A.L.J. 586=14 Cr. L.J. 277=19 Ind. Cas. 709.**

(1200)—*Ss.* 145 *and* 148—*Proceedings under section—Questions of title—Removal of a* bundh *—Jurisdiction of Magistrate to award costs and damages.*—In a case under s. 145, the Magistrate dealt with the matters as if he had to try a question, solely, of title and not one of possession. He also directed that a *bundh* which was in dispute should be removed and that one of the parties should pay to the other compensation for damage done to crops as well as costs in the case. *Held*, that the entire order should be set aside, including the order as to costs. PRAYAG MAHATON v. GOBIND MAHATON, **32 C. 602=9 C.W.N. 862=2 Cr. L.J. 552.**

(1201)—*Ss.* 145, 148 (=*Crim. Pro. Code*, 1882, *ss.* 145 (1, 4, 5, 6), 148)—*Powers of a Magistrate—Delegation of enquiry.*—Under s. 148, Crim. Pro. Code, a Magistrate is at liberty to depute any local enquiry he thinks necessary to a subordinate Magistrate, but should not depute to such Magistrate the whole investigation. On receipt of the report from the latter, the Magistrate should take written statements from the parties and receive the evidence produced and any further evidence he thinks necessary, and conclude the investigation under s. 145. HANUMANTHAPPA v. HUSSAIN SAIB *alias* AIYAH, **2 Weir 118.** [*R.*, 31 M. 82=6 Cr. L. J. 384=17 M.L.J. 535=3 M.L.T. 108.].

(1202)—*Ss.* 145, 148—*Order directing payment of the costs of the other side without specifying the amount—Amount assessed in a separate order—Legality.*—In this case, the Magistrate, in his order under s. 145, Crim. Pro. Code, directed that the petitioners should bear the costs of the other side, but he did not specify the amount. He fixed the amount in a supplementary order, after a memo of costs was filed and both parties heard on the matter. *Held* that this procedure is not illegal. The Magistrate's order directing payment of the costs of the other side was a sufficient compliance with

Crim. Pro. Code (Act V of 1898)—*continued.*

the requirements of the law. There is no reason why the actual amount should not be subsequently assessed, as is done in civil cases. EMPEROR v. MEDAPATI AMMIREDDI, **14 M. L. T. 195=1913 M.W.N. 771=21 Ind. Cas. 170=14 Cr. L.J. 570.** (24 C. 757, *D.*)

(1203)—*Ss.* 145, 148 — *Referring of issues raised in the case to subordinate Court—Illegal.* —Where, in proceedings under s. 145 of the Code of Criminal Procedure, the issues raised were referred to a subordinate Court for enquiry, and the Magistrate acted on the report, *held* that the Magistrate could not refer, under s. 148 of the Code, the only issues raised, and decide the case, without examining any witness, merely on the report of the subordinate Court. PITAMBER LAL v. SARADA PRASAD, **10 A.L J. 465.**

(1204)—*Ss.* 145, 148—*Withdrawal of proceedings by petitioner—Award of costs—Order allowing withdrawal, whether a "decision."*—An order allowing proceedings initiated under s. 145, Crim. Pro. Code, to be withdrawn, is not a "decision" within the meaning of s 148 of the said Code, and an award of costs to the counter-petitioner under s. 148, Crim. Pro. Code is illegal. NARASIMMA CHARIAR v. PILLANNA, **9 Ind. Cas. 289=9 M.L.T. 324=12 Cr. L.J. 49.**

(1205)—*Ss.* 145, 148 (2)—*Local inquiry—Report of person deputed to make local inquiry—Evidence.*—In a case under s. 145, Crim. Pro. Code, an application for time for filing written statements by the parties was rejected. The Magistrate then directed a local inquiry, and on the report of the person deputed to make the enquiry, decided the case: *Held*, that the Magistrate acted within his jurisdiction. PIZIRUDDIN MOLLAH v. TOTAJANESSA BIBI, **14 Cr. L.J. 302=19 Ind. Cas. 958.**

(1206)—*Ss.* 145, 185 — *Application to cases under s.* 145—*Offence.*—S. 185 refers only to cases where some offence is being enquired into or tried. It has no application to proceedings under s. 145 of the Code. RUDRA PRATAB SAHI v. DEWAN SINGH, **12 A.L.J. 390=15 Cr. L.J. 520=24 Ind. Cas. 608.**

(1207)—Ss. 145, 192, 528 and 529 (*b*)—*See* TRANSFER OF CRIMINAL CASES—MISCELLANEOUS CASES, 2 C.L.J. 614—3 Cr. L.J. 83; 4 C.W.N. 821.

(1208)—*Ss.* 145, 192, 529 (*f*)—Bona fide *transfer of a case under s.* 145 *by a Magistrate not so empowered.*—Where a senior Deputy Magistrate, to whom a case under s. 145 was transferred by a District Magistrate, transferred the case to another Deputy Magistrate, and it was contended that he had no such power, *held*, that, as the order was made in good faith, it could not be set aside, merely on the ground that the Magistrate had no power to transfer the case. RAJ MOHUN ROY v. PROSUNNO CHANDRA CHATTERJI, **5 C.W.N. 686.** [*F.*, 2 C.L.J. 614=3 Cr. L.J. 83.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(1209)—*Ss.* 145, 355, 356—*Refusal to issue process for attendance of witnesses in proceedings under Ch.* XII, *Crim. Pro. Code—Arbitrary exercise of discretion—High Court's powers of interference— Charter Act,* 24 *and* 25, *Vic., C.* 104, *s.* 15.—The arbitrary exercise of discretion does not necessarily amount to acting without jurisdiction so as to justify the High Court in interfering in all cases where discretion has been arbitrarily exercised. Where, however, the refusal of a Magistrate to assist one of the parties to a proceeding under Ch. XII, Crim. Pro. Code, in procuring the attendance of his witnesses, deprives that party of hearing on the only question for the determination of the Court, and so amounts to a denial of justice, the Magistrate, in refusing process, acts without jurisdiction. Even if it cannot be said in strictness that the Magistrate, in such a case, has acted without jurisdiction or declined jurisdiction such a case is one in which the High Court ought to interfere in the exercise of the general powers of superintendence vested in it under ss. 24 and 25 Vic., C. 104, s. 15. SURJYA KANTA ACHARJEE v. HEM CHUNDER CHOWDHRY, **30 C, 508=7 C.W.N. 404.** [*R.*, 17 C. P.L.R. 133, 31 C. 685.]

(1210)—*Ss.* 145, 356—*Memorandum of evidence if sufficient in a proceeding under s.* 145—*Applicability of sub-s.* (3), *s.* 356.—Where, in a proceeding under s. 145, Crim. Pro. Code, the Magistrate only made a memorandum of the evidence purporting to act under sub-s. (3), s. 356: *Held* (in seting aside the final order of the Magistrate under s. 145, Crim. Pro. Code)—That the provisions of sub-s. (1), s. 356, are imperative. That the provisions of sub-s. (3) apply only to cases in which the evidence recorded under the first sub-section is not recorded in the Magistrate's own hand. SADANANDA MONDAL v. KRISTA MONDAL, **19 C.W.N. 124.**

(1211)—Ss. 145, 429—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 27 C. 892=4 C.W.N. 613.

(1212)—*Ss.* 145 *and* 435—*Emergent order—Omission of Magistrate to comply subsequently with provisions of s.* 145.—A Magistrate, having made an emergent order for the possession of immoveable property under s. 145 (4), subsequently omitted to follow out the procedure prescribed by the section and make an enquiry, on evidence, into the fact of possession. But the High Court ordered the Magistrate to make such inquiry, holding that the order was not absolutely without jurisdiction, and, therefore, not exempted from the application of s. 435 (3) of the Code. KING EMPEROR v. SRI KISHEN DAS, **A.W.N. 1901, 154.**

(1213)—*Ss.* 145 *and* 435—*Application for revision at instance of party who could not in his own right be entitled to possession.*—A Magistrate, after entertaining proceedings under s. 145, declined to make any order declaring one or other of the contending parties to be in possession. The High Court refused to interfere in revision at the instance of a person who, though apparently the next reversioner to the estate, could, for the time being, have no possible right on his own behalf to represent possession. *In the matter of the petition of* BEHARI LAL, **A.W N. 1902, 111=24 A. 443.** (27 C. 892, 28 C. 446, *D.*)

(1214)—*Ss.* 145, 435—*Revision of proceedings under s* 145—*Duty of Magistrate.*—Proceedings under s. 145 are, by s. 435, expressly excluded from the class of proceedings liable to be dealt with on revision. In all cases in which the High Courts have interfered with proceedings purporting to have been taken under ch. XII, that interference has been justified by the fact that the orders revised were not really orders under that chapter at all, but would have required, to validate them, powers which the Legislature has not seen fit to confer on any one. [*R.*, 5 O.C. 1.] Sub-s. 4, s. 145, provides that a Magistrate is not at liberty to go into the merits of the claims of the parties to the dispute to a right to possess the subject thereof. He can decide only the fact of possession at the date of the order requiring them to put in their statements. The sub-section implies that it is not necessary for him to formulate a decision even on that point if it should present insuperable difficulties. Parties cannot be called upon in these proceedings to furnish a statement of their rights, nor can the Magistrate take, as the basis of any action he may finally decide upon, any conclusion at which he may arrive or may have arrived, as to the respective titles of the parties. *In re* PANDURANG GOVIND PUJARI, **25 B. 179=2 Bom. L.R. 755.** [*R.*, 36 M. 275=13 Cr. L.J. 753=17 Ind. Cas. 65=23 M.L.J 499=12 M L.T. 439=1912 M.W.N. 1154; 3 Bom. L R. 416; 6 Bom. L.R. 246, 15 Cr. L.J. 359=18 C.W.N. 393=23 Ind. Cas. 727, 1 S L.R. 50, Cr.]

(1215)—*Ss.* 145, 435—*Order under—Revision.*—An order under s. 145 of the Code, which merely purports to have been made under it but is not really so, is subject to the revisional powers of the High Court, as the words "proceedings under Ch. XII," in s. 435, Crim. Pro. Code, mean proceedings which are, as a matter of fact, under that chapter, and not those which are really not so and for which there may be no authority in the Code. WAJID ALI SHAH v. ABDUL GHAFUR KHAN, **5 O.C. 1.**

(1216)—*Ss.* 145, 435—*High Courts Act, s.* 15—*Revision.*—Where the proceedings before a Magistrate under s. 145 are in intention, in name and in fact, proceedings under Ch. XII of the Code, by a Magistrate duly empowered under that chapter, the High Court has no power to call for the records of those proceedings either under the Code or under s. 15 of the High Courts Act, as, by the amendment introduced in s. 435, the power of the High Court to call in revision for the records of proceedings under Ch. XII has been curtailed. So the High Court cannot interfere, in revision, with an order under s. 145 passed by a Court having

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jurisdiction. MAHARAJ TEWARI v. HAR CHARAN RAI, **26 A. 144 = A.W.N. 1903, 212.** (26 C. 188, 25 A. 537, *R.*) [*F.*, 31 A. 150 = 6 A.L.J. 113 = 9 Cr. L J. 382, 36 A. 233 = 12 A. L.J. 344, 1 Ind. Cas. 762; *R.*, 36 M. 275 = 13 Cr. L.J. 753 = 17 Ind. Cas. 65 = 23 M.L.J. 499 = 12 M.L.T. 439 = 1912 M.W.N. 1154, 8 Cr.L. J. 170 = 1 S.L.R. 50.]

(1217)—*Ss.* 145, 435— *Revision—Practice.*—The power of revision to be exercised by the Court in proceedings under s. 145, is limited to matters of jurisdiction, *i.e.*, to cases in which it is found that the Magistrate taking proceedings under ch. XII has acted without jurisdiction. *In the matter of the petition of* NATHU MAL, **24 A. 315 = A.W.N. 1902, 74.** (26 C. 625, *F.*) [*R.*, 6 Cr. L.J. 291 = 4 L.B.R. 75.]

(1218)—*Ss.* 145, 435—*Order of the Magistrate, whether final — Revision.*—The High Court has no power to revise an order passed by a Magistrate under s. 145. SYEDA KHATUN v. LAL SINGH, **12 A.L.J. 344 = 36 A. 233 = 15 Cr. L.J. 572 = 25 Ind. Cas. 324.** (31 A. 150, 26 A. 144, *F.*)

(1218-*a*)—*Ss.* 145, 435—*Criminal revision—Judicial Commissioner's Court, powers of—Magistrate's order under s.* 145, *Crim. Pro. Code, power to set aside.*—*Held*, that the Judicial Commissioner's Court having no authority to revise proceedings except the authority given to it by the Crim. Pro. Code, has no authority to set aside an order passed by a Magistrate under s. 145 of the Crim. Pro. Code. IBAD-ULLAH KHAN v. RAHATULLAH KHAN, **18 O.C. 69.**

(1219)—Ss. 145, 435—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 26 C. 188 = 3 C.W.N. 49, 7 Bom. L.R. 475 = 2 Cr. L.J. 451, 27 C 259 = 4 C.W.N. 420, 27 C. 261, note = 4 C.W.N. 421, A.W.N. 1901, 154, A.W. N. 1907, 49 = 2 A.L J. 272.

(1220)—*Ss.* 145, 435, 437—*Failure to comply with procedure.*—Where a Magistrate has adopted none of the procedure required under s. 145, and has passed an order without reference thereto, such order is one really not under the section, and is open to revision under ss. 435, 439, Crim. Pro. Code. DEWAN CHAND v. EMPRESS, **2 P.R. 1899, Cr, F.B.** [*R.*, 71 P. L.R. 1908 = 7 P.R. 1907, Cr. = 6 Cr. L.J. 113 = 24 P.W.R. 1907, Cr., 11 Cr.L.J. 422 = 6 Ind. Cas. 955 = 24 P.W.R. 1910, Cr.]

(1221)—*Ss.* 145, 435, 438, 439, 537—*High Court—Proceedings under s.* 145—*Procedure—Ss.* 435, 438 *and* 439—" *Which otherwise comes to its knowledge* "—*Revisional powers—Powers under Charter Act—Preliminary order under s.* 145, *Crim. Pro. Code—Essentials—Non-compliance—Mere irregularity.*—The language in s. 439 ' the record of which has been called for by itself ' is not used in contradistinction to ' *which otherwise comes to its knowledge* ' but as contrasted with "*which has been reported for its orders,*" and it has reference only to the recognised channels by which the High Court becomes seized of the case, that is to say, either by calling for the record itself or by having the case reported to it under s. 438 by a Sessions Judge or District Magistrate who has himself called for the records under s. 435. In both these cases the High Court is acting of its own motion and on petition. The words " otherwise comes to its knowledge " cannot have reference to petition. Hence the High Court has no jurisdiction to revise proceedings of the lower Courts under s. 145, Crim. Pro. Code, on petition under s. 439. It has been the recognised practice for the High Court to interfere only under the Charter Act. The High Court under the Charter Act has never purported to deal with cases except where there has been an improper exercise of jurisdiction. S. 145, Crim. Pro. Code, requires that the preliminary order shall be in writing and shall state the grounds on which the Magistrate was satisfied that a dispute existed likely to cause a breach of the peace. Failure to do so is mere irregularity and is covered by s. 537, Crim. Pro. Code. It does not affect the jurisdiction of the Magistrate to render all subsequent proceedings null and void. KAMAL KUTTY v. UDAYAVARMA RAJA VALIA RAJA, **12 M.L.T. 439 = 1912 M.W N. 1154 = 23 M.L. J. 499 = 17 Ind. Cas. 65 = 13 Cr. L.J. 753 = 36 M. 275.** [*Expl.*, 1914 M.W.N. 352 = 26 M.L. J. 208.]

(1222)—*Ss.* 145, 435, 526, *cl.* (8)—*Proceeding under s.* 145, *s.* 526 *if applies to.*—A party to a proceeding under s. 145, Crim. Pro. Code, is not entitled to an adjournment of the case under sub-s. 8 of s. 526, Crim. Pro. Code. LAKHAN CHANDRA ROY v. FAKUB MONDAL, **18 C.W. N. 393 = 15 Cr. L.J. 359 = 23 Ind. Cas. 727.**

(1223)—*Chap.* XII, *ss.* 145 *and* 435, *cl.* (3)—*Proceedings under the chapter—Sessions Judge's power of revision or reference.*— Proceedings under Ch. XII of the Code are not proceedings with regard to which a Sessions Judge has any power of revision or reference. There is no provision of law which gives the Sessions Judge the power to call for the record in such proceedings. JAGOMOHAN PAL v. RAM KUMAR GOPE, **28 C. 416.**

(1224)—*Ss.* 145, 437—*Refusal by Subordinate Magistrate to take proceedings under s.* 145—*Power of District Magistrate to take proceedings after such refusal.*—Where, on receipt of a police report to the effect that there was a breach of the peace likely to take place between certain persons in consequence of a dispute concerning land, the Magistrate found that there was no sufficient ground for proceeding under the section, and, therefore, declined to take proceedings, *held*, that the District Magistrate would be competent to institute proceedings under the section, if he was of a different opinion. BAIDA NATH MAJUMDAR v. NIBARAN CHUNDER GHOSE, **29 C. 242 = 6 C.W.N. 290.** (20 C. 729, *D.*)

(1225)—*Ss.* 145, 439—*Preliminary order—Terms—Revision.*—Where a preliminary order in a proceeding under s. 145 of the Crim. Pro. Code stated that the Magistrate had received a

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police report requesting such an order, that a complaint had been given at the police station and that the Magistrate believed there existed a danger of a breach of the peace, and eventually there was a breach of the peace, *held* there was a sufficient compliance within the terms of s. 145 and that the final order in the case was not open to revision on the ground of such want of completeness in the order as might have been possible. A defect in a proceeding under s. 145 of the Crim. Pro. Code which renders it illegal is a ground for revision of the order by the High Court. HAR PRASAD v. PANDURANG, **A.W.N. 1905, 260 = 3 Cr. L.J. 48.** [*F.*, 11 Cr. L.J. 69 = 4 Ind. Cas. 876 = 12 O.C. 400.]

(1226)—*Ss.* 145, 439—*Interference by High Court on revision.*—Where the initial order in writing made by a Magistrate under s. 145 (1), Crim. Pro. Code, is defective, but both sides are fully cognisant of the matter in dispute and there is a danger of the breach of the peace, the High Court will not interfere in revision with the final order passed by the Magistrate. GANGA SARAN SINGH v. BHAGWAT PRASAD, **7 A.L.J. 53 = 32 A. 132 = 11 Cr. L J. 141 = 5 Ind. Cas. 471.**

(1227)—*Ss.* 145, 439—*Revisional powers of High Court—Costs.*—The Court, in dealing as a Court of revision under s. 439, Crim. Pro. Code, with an application to revise proceedings under s. 145 of the same Code, can make no order as to the costs of such application. PARWAN SINGH v. ANANT KUAR, **S C. 227, Oudh.**

(1228)—*Ss.* 145 *and* 439—*Possession—Removal of* Tharra—*Defective inquiry—Revision.*—Under s. 145, Crim. Pro. Code, the Magistrate has no power to remove any superstructure on the disputed land, and is not concerned with the question of title. All that he can do is to maintain possession after due inquiry in strict compliance with its provisions. So where the *lambardars* and others informed a Sub-Divisional Magistrate on tour in a village that certain persons had made a platform (*Tharra*) in front of their houses in the village *Chowk*, and that there was a danger of a breach of peace, and he, without making any proper inquiry as required by law on the subject, ordered removal of the platform within two weeks, his proceedings were set aside on revision under s. 439 of the said Code as illegal. BOGHA v. CROWN, **2 P.W.R. 1913, Cr. = 6 P L.R. 1913 = 18 Ind. Cas. 890 = 14 Cr. L.J. 138.**

(1229)—*Ss.* 145 *and* 439—*Non-compliance with its provisions—Fatal defect—Revision.*—*Held*, that where a Magistrate proceeding under s. 145, Crim. Pro. Code, does not strictly comply with its provisions and fails to find that the dispute between the parties concerning the property in question is likely to occasion a breach of the peace, his order is without jurisdiction and bad in law, and is, consequently, liable to be set aside on revision under s. 439 of the said Code. TEKU v. BUTA SINGH, **9 P.W.R. 1915, Cr. = 92 P.L.R. 1915 = 16 Cr.L.J. 206 = 27 Ind. Cas. 766.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1229-*a*)—*Ss.* 145, 517—*Property attached under s.* 145—*Cancelment of order—Disposal of property — Proper order — Practice* — Where, after attaching certain properties under s. 145 of the Code of Criminal Procedure, the order was on inquiry cancelled on the ground that there was no immediate danger of a breach of the peace: *Held*, that, in such a case, the Magistrate has no jurisdiction to direct that the attached properties should be delivered to one of the parties, as that would be in effect deciding the question at issue between the parties, and that he should keep them or their sale proceeds, if perishable, in deposit until one of the parties establishes his right in a Civil Court. *Quære*:—Whether s. 517 of the Code applies to such cases? CHENGA REDDI v. RAMASAWMY GOUNDEN, **16 Cr. L.J. 104 = 27 Ind. Cas. 152.**

(1230)—*Ss.* 145, 522 — *Infructuous order directing restoration of immoveable property if bar to proceeding under s.* 145.—An infructuous order under s. 522, Crim. Pro. Code, which was never carried out, is no bar to the jurisdiction of the Magistrate taking proceedings under s. 145, Crim. Pro. Code, in respect of the same property. PROBHAT CHANDRA CHATTERJEE v. PROSANNO KUMAR SEN, **18 C.W.N. 1088 = 15 Cr. L.J. 700 = 26 Ind. Cas. 148.**

(1231)—*Ss.* 145, 522 (= *Crim. Pro. Code,* 1872, *ss.* 530, 534)—*Enquiry as to possession, nature of—Possession of wrong-doer—Duty of Magistrate.*—It is the duty of the Magistrate under s. 530 (s. 145), Crim. Pro. Code, to ascertain who, at the time of the enquiry, is in possession. He is to make this enquiry without any reference to the merits of the claim of any party to a right of possession. S. 534 (s. 522), which enables the Magistrate to deprive a wrong-doer of possession, is limited to cases in which possession has been obtained by criminal force attending an offence, and the wrong-doer has been convicted of such offence. CHOCKLINGAM v. AMMALALCHI, **2 Weir 98.**

(1232)—*Ss.* 145, 522 (= *Crim. Pro. Code,* 1872, *ss.* 530, 534)—*Order, after conviction for rioting, for delivery of a land to certain person, when can be made.*—Where a Magistrate, after convicting and sentencing certain persons of rioting, passed an order, in the latter part of his judgment under s. 534, directing that one of the witnesses be in possession until ousted by a Court of competent jurisdiction, *held*, that the order was not one under s. 534, as there was no evidence of dispossession by criminal force, nor was the order one under s. 530 (s. 145), inasmuch as a proceeding under that section should be separate from the trial for riot. *In re* VADAMALAI PALLAVARAYEN, **2 Weir 674 = 2 Weir 100.**

(1233)—*Ss.* 145, 526 — "*Criminal case,*" *meaning of—High Court's power to transfer.*—In the absence of anything to the contrary, every case over which a criminal Court exercises jurisdiction under the Crim. Pro. Code is a *criminal case* for the purposes of that Code. The expression 'criminal case' in s. 526 includes a proceeding initiated under s. 145 of the Code, and

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the High Court under s. 526 has power to transfer it from one Court to another Court, subject to all the conditions under which a transfer can be made. An 'accused person' is one over whom a criminal Court exercises jurisdiction. JAGGU AHIR v. MURLI SHUKUL, **10 A.L.J. 27 = 13 Cr.L J. 452 = 15 Ind. Cas. 84 = 34 A. 533.** (25 B. 179, *Not F.*) [*Cons.*, 15 Cr. L.J. 359 = 23 Ind. Cas. 727 = 18 C.W.N. 393.]

(1234)—*Ss.* 145, 526—*Scope and effect of.*—A criminal case, like a criminal appeal, must arise out of and deal with some crime already committed. It does not include proceedings taken for the prevention of crime. The provisions of s. 526 do not, therefore, confer a power to direct the transfer of any proceedings initiated under s. 145, Crim. Pro. Code. [*Diss.*, 26 M. 188 = 12 M.L J. 391 = 2 Weir 678, 2 C.L.J. 614 = 3 Cr. L.J. 83, 10 O.C. 61; *R.*, 28 C. 709, 5 C.W. N. 749, 23 P.R. 1902, Cr. = 85 P.L.R. 1905 = 2 Cr. L.J. 40, 2 L.B.R. 239; *D.*, 10 C.W N. 1095 = 4 Cr. L.J. 223.] In transferring a case from one Magistrate to another, the Court ought not to be guided by the impression produced in its own mind as to the impartiality of the Magistrate, but must look to the effect likely to be produced in the minds of the parties and their witnesses, by the selection of a Magistrate whose personal antecedents or circumstances have, however unavoidably, connected him with either the one party or the other. *In re* PANDURANG GOVIND PUJARI, **25 B. 179 = 2 Bom. L.R. 755.** [*Diss.*, 34 A. 533 = 10 A.L.J. 27 = 13 Cr. L.J. 452 = 15 Ind. Cas. 84; *Appr.*, 154 P.L.R. 1914 = 5 P.R. 1914, Cr.; *R.*, 6 Bom. L.R. 480.]

(1235)—*Ss.* 145, 526—*Scope and effect of—"Criminal case."*—A case under s. 145, Crim. Pro. Code, is a "criminal case," and the High Court has power to transfer the case under both s. 526, Crim. Pro. Code, and cl. 29, Letters Patent. *In re* ARUMUGA TEGUNDAN, **26 M. 188 = 12 M.L.J. 391 = 1 Weir 788-B = 2 Weir 678.** (25 B. 179, *Diss.*) [*R.*, 34 A. 533 = 10 A.L.J. 27 = 13 Cr. L.J. 452 = 15 Ind. Cas. 84, 154 P.L.R. 1914, 5 P.R. 1914, Cr.]

(1236)—Ss. 145 and 526—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 11 O.C. 61 = 7 Cr. L.J. 423.

(1237)—*Ss.* 145, 526, 435 *and* 439—*High Court's power to transfer cases under s.* 145—*Charter Act, s.* 15—*Letters Patent, s.* 29—*Grounds for transfer—"Criminal case," meaning of.*—*Per Ghose, J.*—Although it may be doubted, whether the Legislature meant to confer on the High Court the power to make a transfer in a case other than strictly criminal, *i.e.*, in a case in which a person is charged with an offence, yet the High Court has the power to make an order for transfer of a case under s. 145 under the provisions of s. 15 of the Charter Act. *Per Taylor, J.*—It is doubtful whether the High Court has power under s. 526, to transfer cases which do not relate to matters which may strictly be described as "criminal," *i.e.*, as relating to crime or offences under the law. But that power exists under s. 29, Letters Patent, for in the Letters Patent, the expression "*criminal case*" appears to be used without the distinction which apparently exists in the Code of Criminal Procedure in respect of cases tried by a Criminal Court has opposed to civil cases. LOLIT MOHAN MOITRA v. SURJA KANTA ACHARJEE, **28 C. 709 = 5 C.W.N. 749.** [*Appr.*, 154 P.L.R. 1914, 5 P.R. 1914, Cr.; *R.*, 34 A. 533 = 10 A.L.J. 27 = 13 Cr.L.J. 452 = 15 Ind. Cas. 84, 14 Cr. L.J. 529 = 14 M.L.T. 200 = 21 Ind. Cas. 129 = 1913 M.W.N. 728; *Cons.*, 15 Cr. L.J. 359 = 23 Ind. Cas. 727 = 18 C.W.N. 393; *Expl.*, 2 C.L.J. 614; *D.*, 2 Cr.L.J. 40 = 85 P. L.R. 1905 = 5 P.R. 1905, Cr.]

238)—*Ss.* 145, 530—*Incompetency of Magistrate to whom case under s.* 145 *was transferred, to make order under that section.*—S. 530 refers only to a case, where a Magistrate is not competent, by virtue of the position he holds or powers vested in him, to try a case of the character mentioned in s. 145. But where a Magistrate is competent to try a case under s. 145, the fact that he has not local jurisdiction over the matter will not make the case come within s. 530. RAJ MOHAN ROY CHOWDHURY v. PROSUNNO CHANDRA CHATTERJI, **5 C.W.N. 686.**

(1239)—*Ss.* 145, 537—*Proceedings in respect of several plots of lands—Separate proceedings, necessity of*—The taking of one proceeding in respect of several plots of lands claimed to be in the possession of different persons, will not be prejudicial to the interest of the parties, if the course taken by the Magistrate does not preclude any of the parties from adducing evidence in the case concerning the different plots of land. ISWAR CHUNDER CHOWDHRY v. AMBICA CHURN MAJUMDAR, **5 C.W.N. 544.** [*F.*, 5 C.W.N. 710.]

(1240)— Ss. 145 and 537—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 A.L.J. 705 = A.W N. 1907, 265 = 6 Cr.L.J. 352 = 30 A. 41.

(1241)—*S.* 145 (1)—*Order not complying with provisions of section—High Court's powers of revision.*—Where an order purporting to be passed under s. 145 (1) gave no information as to the subject of dispute and it left the persons, to whom the notice was issued, quite in the dark as to the property in regard to which they had to set forth their respective claims, merely stating that the Magistrate was satisfied from the evidence that a breach of the peace would occur, *held*, that the order was wholly incomplete and failed to comply with the requirements of the law, and that the High Court had power to interfere in revision and to set it aside. *In the matter of the petition of* T. A. MARTIN, **27 A. 296 = A.W.N. 1904, 234.** (27 C. 981, 30 C. 443, *F.*) [*R.*, 30 A. 41 = 4 A.L. J. 705 = A.W.N. 1907, 265 = 6 Cr.L J. 352, 4 A.L.J. 91 = A.W.N. 1907, 50.]

(1242)—*S.* 145, *sub-s.* 1—*Proceedings under section—Necessity for a formal order under sub-s.* 1.—The making of a formal order under

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sub-s. 1 of s. 145, Crim. Pro. Code, is absolutely necessary to the initiation of proceedings under the section, and an omission to make such an order and to draw up a proceeding under sub-s. 1, is a question of jurisdiction which renders all the proceedings invalid. BANWARI LAL MUKERJEE v. HRIDAY CHAKRAVARTI, **32 C. 552=1 C.L.J. 432=2 Cr. L.J. 347.**

(1243)—*S.* 145 (1)—*Jurisdiction—Order under s.* 145, *provision of cl.* (1), *not complied, effect of.*—Without compliance with the requirements of s. 145 (1) of the Crim. Pro. Code, a Magistrate's order under the section is without jurisdiction and illegal. AUTAR KURMI v. EMPEROR, **15 Cr. L.J. 424=24 Ind. Cas. 160.** (25 A. 537 =A.W.N. 1903, 102, 20 Ind. Cas. 751=11 A.L.J. 696=14 Cr. L.J. 495=36 A. 19, *R.*)

(1244)—*S.* 145, *cls.* 1 *and* 3—*Irregularities in proceedings—Effect.*—A Magistrate, who commits a mistake (1) by not having in his order under s. 145, Crim. Pro. Code, stated the grounds for his belief that there was likely to be a breach of the peace and (2) by not having, under cl. 3 of that section, served a copy on the applicant, does not divest himself of jurisdiction, these being mere irregularities in the proceedings, which do not in the least affect, the jurisdiction. BIDYA DHAR v. JAGDISH PERSHAD, **7 O.C. 334.** (27 C. 981, *Diss.*)

(1245)—S. 145 (1, 4, 5, 6)—*See* HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 2 C. 293, F.B.

(1246)—S. 145 (1, 4, 5, 6)—*See* PENAL CODE, s. 188, 7 C.L.R. 291.

(1247)—Ss 145 (1, 4, 5, 6), 192 and 528 (1, 2, 3)—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 22 C. 898.

(1248)—*S.* 145, *sub-ss.* 1, 4, 6—"*Then,*" *meaning of.*—The use of the word "then" in sub-s. 4, does not render the publication of the order mentioned in sub-s. 1, a condition precedent to the passing by the Magistrate of a final order under sub-s. 6. The word "then" applies only to the time or order of the Magistrate's proceedings, but does not deprive him of jurisdiction, if the notice has not been duly published. SUKH LAL SHEIKH v. TARA CHAND TA, **33 C. 68=9 C.W.N. 1046=2 C.L.J. 241=2 Cr. L. J. 618.**

(1249)—*S.* 145 (2)—"*Crops or other produce of land*"—*Crops severed from the land not within the definition.*—The words "crops or other produce of land" in s. 145 (2), Crim. Pro. Code, do not include crops severed from the land upon which they grew. A Magistrate cannot, hence, attach under s. 146 of the Code a crop of *mahua*, no longer growing on the trees. CHAURASI v. RAMA SHANKAR, **A.W. N. 1905, 278=28 A. 266=3 A.L.J. 13.** (30 C. 110, *F.*)

(1250)—*S.* 145 (2) *and* (3)—*Meaning of* "*then.*"—The word "then" in the 2nd and 3rd paragraphs of s. 145, Crim. Pro. Code, refers to the time when the Magistrate "received the information," which leads him to exercise his

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powers under s. 145, Crim. Pro. Code. *In the matter of* SHAMBHU PARSHAD, **S.C. 115, Oudh.**

(1251)—*S.* 145 (3)—*Failure to publish copy of order—Effect of.*—The failure to publish a copy of the order, in accordance with the provisions of cl. (3) to s. 145, affects the jurisdiction of the Court. JANU MANJHI v. MANIRUDDIN, **8 C.W.N. 590.** [*Overruled,* 33 C. 68 =2 C.L.J. 241=9 C.W N. 1046 ; *Diss.,* 4 Ind. Cas. 876=12 O.C. 400=11 Cr. L.J. 69 ; *F.,* 9 C.W.N. 909.]

(1252)—*S.* 145 (3) (4)—*Inquiry into possession —Publication of notice.*—The publication of a notice locally under sub-s. (3) is a condition precedent to the exercise of a Magistrate's jurisdiction in an inquiry as to possession under sub- s. (4) of that section. NAWAB KHAJAH SOLEMOLLAH BAHADUR v. ISHAN CHANDRA DASS SARKAR, **9 C.W.N. 909=2 Cr. L.J. 569.** (8 C.W.N. 590, *Appr.*) [*R.,* 33 C. 68=2 C.L. J. 241=9 C.W.N. 1046=2 Cr.L.J. 618, 9 Cr. L.J. 226=4 M.L.T. 450=10 Bom. L.R. 973, 11 Cr. L.J. 69=4 Ind. Cas. 876=12 O.C. 400.]

(1253)—*S.* 145 (3) *and* (4)—*Scope of the clauses—Failure to comply with the provisions of cl.* 3—*Effect.*—Cl. 3 of the section was intended to be only supplementary to cl. 1, and it was framed with the object of giving all persons interested in the dispute, notice of the proceedings before the Magistrate, so that they might have an opportunity of appearing and putting in their claims, if they have any; when the requirements of cls. 1 and 3 are complied with, the Magistrate is to take up the enquiry as provided by cl. 4. Cl. 3 further provides for the publication of a copy of the order in a conspicuous place at or near the subject of dispute, probably with the intention of guarding against collusive proceedings, as well as to give to any one interested, who may, through an oversight or otherwise, not have received a summons, an opportunity of coming in with his claim, and also to notify generally to all persons in the locality that a proceeding under the section has been set on foot. But the general invitation was not intended, any more than the power given to the Magistrate of summoning additional parties, to have the effect of altering the character of the enquiry. KRISHNA KAMINI v. ABDUL JUBBAR, **30 C. 155=6 C.W.N. 737, F.B.** [*R.,* 33 C. 68=9 C. W.N. 1046=2 C.L J. 241, F.B.]

(1254)—*S.* 145 (4)—*Procedure.*—Where the Magistrate, in a proceeding under s. 145, refused to examine some witnesses of the first party who were present in Court and declared the possession of the second party, *held,* that the Magistrate's refusal was in direct contravention of the provisions of law contained in cl. (4), s. 145 of the Code and that the order should therefore be set aside. MANMATHA NATH MITTER v. BARODA PROSAD ROY CHOWDHRY, **31 C. 685.** [*F.,* 2 C.L.J. 286 (n); *R.,* 32 C. 1093=2 C.L.J. 280 ; *Expl.,* 3 C.L.J. 478.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(1255)—*S.* 145 (4)—*Practice.*—A Magistrate ought, before entering on an enquiry under cl. 4 of the section, to satisfy himself to the best of his ability on the information before him, as to who are the persons claiming to be in present possession of the subject of dispute, but he is not concerned to ascertain what persons have, or claim to have, mere rights to possession. KRISHNA KAMINI v. ABDUL JUBBAR, **30 C. 155=6 C.W.N. 737, F.B.** (21 C. 29, *Overruled.*)

(1256)—*S.* 145, *cl* (4)— *Jurisdiction—Presumption—Actual possession.*—The jurisdiction of a Magistrate to initiate proceedings under s. 145 is not determined by the date of dispossession of one of the parties claiming the land, but it is determined by an apprehension, based on reliable information, that a dispute likely to cause a breach of the peace exists between two parties. The proviso 4 of cl. 145, merely recites a circumstance under which presumption of possession may be made in favour of one of the disputants. A Magistrate does not act without jurisdiction if he decides the question of actual possession on grounds other than the presumption referred to in the proviso. SHEORAJ SINGH v. KING-EMPEROR, **11 A.L.J. 305=19 Ind. Cas. 319=14 Cr. L.J. 223.**

(1257)—*S.*145 (4)—*Jurisdiction—Jurisdiction, exercise of, defective--Possession, proof of, absence of.*—Where in a proceeding under s. 145 of the Code of Criminal Procedure, instituted in 1913, the Magistrate declared possession in favour of the opposite party as evidenced by certain documents of title relating to a period, 10 years prior to the proceeding, without taking further evidence, oral or documentary, to see whether that possession continued up to the date of the proceeding, the High Court set aside the order of the Magistrate as made without jurisdiction, being contrary to the provisions of cl. (4) of s. 145. JUTHAN SINGH v. RAMNARAYAN SINGH, **19 C L.J. 356=18 C.W.N. 700=15 Cr. L.J. 202=22 Ind. Cas. 986.**

(1258)—*Ss.* 145 (4), 146—*Attachment of lands and crops harvested since the disturbance—Legality of order—Appointment of Receiver—Powers of Receiver—Agent of Magistrate—Administrative order.*—It is competent to a Magistrate, under s. 145 (4), of the Crim. Pro. Code, to order the attachment not only of the land, about the possession of which there is a dispute, but also of "the crops harvested and rents received since the beginning of the disturbance." The appointment of a Receiver under s. 145 (4), Crim. Pro. Code, is not prohibited, but he has not and cannot exercise all the functions that a Receiver appointed under s. 146 can exercise. A Receiver appointed under the former section must be treated only as an agent or servant of the Magistrate, whose order is only an administrative order passed for the management of the property. SRINIVASA PILLAY v. SATHAYAPPA PILLAY, **13 Cr. L.J. 295=14 Ind. Cas. 759.**

(1259)—*S.* 145, *sub-s.* 5 *and s.* 434 (3)—*When an order under s. 145 is final.*—The order, to which finality is given under s. 145, must be an order which not only purports to be, but is in reality an order under the section, and has been passed with jurisdiction. Where the Court has exceeded its jurisdiction in making the order, it is null and void, and the High Court, in the exercise of its revisional jurisdiction, is competent to interfere with it. MAHADEO KUNWAR v. BISU, **25 A. 537=A. W.N. 1903, 102.** (26 C. 188, 24 B. 527, 18 M. 41, 27 C. 981, 7 C.W.N. 174, *R.*) [*R.*, 26 A. 144, 36 M. 275=13 Cr.L.J. 573=17 Ind. Cas. 65=23 M.L.J. 499=12 M L.T. 439=1912 M. W.N. 1154, 8 Cr. L J. 170=1 S.L.R. 50; *D.*, 4 A.L.J. 91=A.W.N. 1907, 50.]

(1260)—*S.* 145, *cls.* 5 *and* 6—*Termination of proceeding—Petition of compromise—Subsequent proceeding if legal.*—The parties to a proceeding under s. 145, Crim. Pro. Code, compromised and filed a petition of compromise, and according to its terms the Magistrate ordered that the lands would be in the possession of both sides as stated in the petition; *Held*, that the order fell under cl. 5 of s. 145 and not under cl. 6, and that, therefore, a subsequent proceeding instituted under s. 145 between the parties in respect of the same lands, is not one made without jurisdiction. SADHU BISWAS v. MAHAMMAD ALI BISWAS, **9 Ind. Cas. 167=12 Cr. L.J. 32=15 C.W.N. 568.**

——**S. 146 (=1882, s. 146; 1872, s. 531; 1861, s. 319).**

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

See POSSESSION.

(1261)—*S.* 146—*Condition essential for order under section—Likelihood of breach of the peace—Jurisdiction of Magistrate.*—A necessary preliminary to an order under s. 146 is that proceedings should have been taken and an order made under s. 145 of the Code. Where, from the record, it appeared that the procedure prescribed by s. 145 was not followed by a Magistrate, no order in writing, as required by that section, having been made by him, *held*, that the Magistrate's order attaching the property was an order without jurisdiction and one which cannot be deemed to have been passed under ch. XII, Crim. Pro. Code, as there was nothing to indicate that there was a dispute likely to cause a breach of the peace. AZIZ-UD-DIN v. EMPEROR, **2 A.L J. 149**

(1262)—*S.* 146—*Power conferred by the section, when exercisable.*—The power conferred by s. 146, Crim. Pro. Code, upon a Magistrate, can only be exercised when the Magistrate decides that none of the parties is in possession, or is unable to satisfy himself as to which of them was in possession. He cannot take action under the section, merely because he is unable to satisfy himself as to which of the parties is entitled to possession or has a right to the property. Inability to decide on the right to the property cannot, therefore, justify the attachment of the property uder s. 146. *In re* SOMNATH MADHAVJI, **6 Bom. L.R. 723.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1263)—*S.* 146— *Power to attach property, when could be exercised.*—A Magistrate can attach property only on the ground that he cannot satisfy himself as to which of the parties is in possession. *In re* SANGANBASAWA *Kom* BASAPPA, **7 Bom. L.R. 18=2 Cr.L.J. 28.**

(1264)—*S.* 146—*Order for attachment, when valid.*—Where each party is found to be in possession of different portions of a disputed land, a Magistrate has no jurisdiction to order attachment under s. 146 (1). RAJENDRA NARAIN ROY v. MAHOMED ARZUMAND KHAN, **9 C.W.N. 887=1 C.L.J. 331=2 Cr.L.J. 408.**

(1265)—*S.* 146—*Effect of attachment—Limitation Act*, 1877, *s.* 28.—Where a Magistrate, acting in due course of law, either because he found neither party was in possession, or because he was unable to satisfy himself as to which of them was in possession, simply attached the property, *held* that such attachment operated in law, for the purposes of limitation, simply as detention or custody of the property by the Magistrate who, pending the decision by a Civil Court of competent jurisdiction, holds it merely on behalf of the party entitled, whether he be one of the actual parties to the dispute before him or any other person. For purposes of limitation, the seizin or legal possession will, during the attachment, be in the true owner and the attachment by the Magistrate will not amount either to dispossession of the owner, or to his discontinuing possession. Under s. 146, Crim. Pro. Code, the Magistrate is bound to continue the attachment and have statutory possession of the lands for the purposes of continuing the attachment, until a competent Civil Court determines the rights of the parties to the dispute before him, or the person entitled to the possession of the lands and he cannot deliver the property to any of the parties or other person without an adjudication by a Civil Court. During the continuance of the attachment, the legal possession for purposes of limitation will constructively be in the person who had the title at the date of the attachment and such title cannot be extinguished by the operation of s. 28, Limitation Act, 1877, however long such attachment may continue. RAJAH OF VENKATAGIRI v. ISAKAPALLI SUBBIAH, **26 M. 410.** [*R.*, 13 Cr. L.J. 23=13 Ind. Cas. 215=22 M.L.J. 154=10 M.L.T. 573.]

(1266)—*S.* 146—*Disobedience to an order under the section—Penal Code, s.* 188.—Disobedience to an order passed under s. 146, Crim. Pro. Code, is not an offence punishable under s. 188, Penal Code. The order under s. 146 is an order to a Police officer to take possession of the lands and not an order to any other person. NAGOJI RAMA CHANDRA v. QUEEN-EMPRESS, **8 M.L J. 253=1 Weir 522=1 Weir 143=2 Weir 112.**

(1267)—*S.* 146 (=*Crim. Pro. Code*, 1882, *s.* 146)—*Object of the section.*—The special provision contained in s. 146 is not meant to relieve the Magistrate from the duty of deciding the case on the merits, but only allows an order for attachment to be made when it is not possible to decide which party is in possession. An order of a Magistrate under s. 146 was set aside on the grounds, first, that, although the petitioner cited a number of witnesses, they were not examined, and, in the second place, the order did not show that it was not possible, on the evidence, to decide as to the fact of possession, but would rather seem to indicate that the Magistrate could not or would not decide, whether the witnesses on the one side or those on the other were to be believed. NEELAMEGAM PILLAI v. MOOROOGAPPA MUDELY, **2 Weir 110.** [*R.*, 11 Cr.L.J. 560=8 Ind. Cas. 63=8 M.L.T. 447.]

(1268)—*S.* 146 (=*Crim. Pro. Code*, 1872, *ss.* 530, 531)—*Jurisdiction.*—A Magistrate is not at liberty to proceed under s. 530, or s. 531, Act X of 1872, unless he is satisfied that a dispute exists likely to produce a breach of the peace, and unless he records a proceedings stating the grounds of his being so satisfied. EMPRESS v. LOCHAN, **A.W.N. 1881, 46.**

(1269)—*S.* 146—*Enquiry as to possession—Conflicting claims based on different titles—Refusal of Magistrate to decide as to possession—Jurisdiction.*—Where, in an enquiry as to possession, the parties put in claims based on different titles, one claiming under a Will, another under a partition, settlement and Will, and the Magistrate, holding that he was unable to decide as to the question of possession, ordered that the property do remain under Court attachment till the parties had settled their differences in a Civil Court: *Held*, that the Magistrate acted without jurisdiction and should have decided on the question of possession. VEYYA MANIKIAYAM v. VENKAIYA, **8 Ind. Cas. 63.** (2 Weir 110, *R.*)

(1270)—*S.* 146—*Both parties found to be in joint possession—Order under s.* 146—*Legality.*—A Magistrate has no jurisdiction to pass an order under s 146, Crim. Pro. Code, on his finding that the contending parties are in joint possession of the disputed property. MOHAMMAD KOOLAYAPPA ROWTHAN v. SHEIK ABDUL KHADIR ROWTHAN, **27 M.L J. 169=15 Cr. L.J. 572=25 Ind. Cas. 324.** (9 C.W.N. 887, 1 C.L.J. 632, 10 C.W.N. 1088, 11 C.W. N. 512, 17 C.W.N. 205, *R.*)

(1271)—*S.* 146 (=*Crim. Pro. Code*, 1882, *s.* 146)—*Attachment of property—Subsequent Civil Court decree—Profits of property during attachment.*—Where immoveable property, the subject of dispute between rival claimants, has been attached by the Magistrate under s. 146, Crim. Pro. Code, and a decree regarding that property has been subsequently passed by the Civil Court, the Magistrate is bound to return the profits, derived from such property during the attachment, to the person who has been successful in the Civil Court. *In the matter of the petition of* AVADH NARAIN LAL, **A.W. N. 1893, 100.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1271-*a*)—*S.* 146—*Attachment under—Duration of attachment—Magistrate when to withdraw attachment.*—An order of attachment of property under s. 146 of the Crim. Pro. Code remains in force until withdrawn, but it is the duty of the Magistrate to withdraw it and release the attachment, as soon as it is brought to his notice that a competent Court has determined the rights of the parties thereto, or the person entitled to possession. MAHARAJA OF VENKATAGIRI v. AMBARKANA SRINIVASA ROW, **17 M.L.T. 392.**

(1272)—S. 146—*See* ACT XV OF 1877, arts. 47, 142, 144, 20 A. 120=A.W.N. 1897, 214.

(1273)—S. 146 —Possession—Lands under attachment by Magistrate—*See* ACT XV OF 1877, art. 144, 1 C.W N. 569.

(1274)—S. 146—*See* PENAL CODE, ss. 188, 447, 8 M.L.J. 253.

(1275)—S. 146—*See* Nos. 601, 603, 1016, 1017, 1176 to 1193, 1258, *supra.*

(1276)—*Ss.* 146 *and* 435—*Attachment under s.* 146, *if valid where Magistrate unable to satisfy himself who was in possession—High Court's power of interference with order under s.* 146, *Crim. Pro. Code.*—The High Court cannot, under s. 435, Crim. Pro. Code, 1898, interfere with orders passed under s. 146 of the Code. But an order, which merely purports to be under s. 146, Crim. Pro. Code, but exceeds the powers given thereby, is one with which the High Court is not precluded, by s. 435, from interfering in revision. The powers given by s. 146, Crim. Pro. Code, would justify attachment only on the Magistrate's inability to satisfy himself as to which of the parties was in possession of the subject of dispute, and would not justify attachment merely because the Magistrate could not decide upon the rights of the parties. For the purposes of s. 146, the Magistrate is neither called upon nor empowered to consider the question of rightful possession. *In re* SANGANBASAWA *kom* BASAPPA, **7 Bom. L.R. 18=2 Cr. L.J. 28.**

(1277)—Ss. 146, 537—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 12 C.L.R. 221.

(1278)—*Ss.* 146 (2), 435 (3)—*Jurisdiction—Ultra vires order—Criminal Revision—Power of Chief Court.*—A Sub-Divisional Magistrate attached certain lands and appointed a Receiver under s. 146 (2), Crim. Pro. Code, till a competent Civil Court would determine the rights of the parties, but refused to make over the possession to the successful party when the District Court determined the rights of the contesting parties, on the ground that the losing party was going to appeal to the Chief Court: *Held*, that the Sub-Divisional Magistrate's order was clearly without jurisdiction, as a Magistrate ceases to have authority to retain the property after a competent Civil Court determines the rights of the parties. The Chief

Crim. Pro. Code (Act V of 1898)—*continued.*

Court has power to annul such orders in revision under s. 435 (3), Crim. Pro. Code. MAUNG THA ZAN v. MAUNG BA GALE *alias* MAUNG BU, **15 Cr. L.J. 500=24 Ind. Cas. 588.**

——S. 147 (=1882, s. 147; 1872, s. 532; 1861, s. 320).

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

(1279)—*S.* 147—*Scope of section—Right to fish—Parties to enquiries under.*—There is nothing in s. 147 to limit its operation only to easements. The words "the right to do anything in or upon tangible immoveable property" includes also the right to fish in a *bhil.* The only reference to easements is in the marginal note to the section, which is no part of the enactment. [*F.*, 23 C. 557.] In an enquiry under s. 146 of the Code, it is sufficient if persons who claim for themselves the right to fish, though that right is derived from others, are made parties. It is not necessary that proprietors in the *bhil* should be added as parties. DUKHI MULLAH v. HALWAY, **23 C. 55** (21 C. 29, 21 C. 727. *D.*) [*R.*, 2 C.W.N. 670.]

(1280)—*S.* 147—*Enquiries under the section—Conditions requisite for them—Parties entitled to notice.*—Magistrates ought not to embark on enquiries under s. 147 of the Code, in which it is certain that injustice may be done from defective procedure, unless they are satisfied that a real danger of the evil, for the prevention of which the procedure is devised, does in fact exist. They would not be acting wisely to use this procedure in a case involving a long and complicated enquiry, and the presence of a great number of people, when such an effective remedy as binding few persons is ready to his hand. [*F.*, 23 C. 557; *R.*, 2 C.W.N. 670.] The enquiry contemplated under s. 147 of the Code is a judicial enquiry and the opinion to be formed must be a judicial one, founded upon the evidence legally before the Magistrate under s. 356 of the Code. The evidence before the Magistrate would not be legally before him, if it had been taken behind the backs of the persons who claimed or denied the right, in the sense that they not only were not represented at the enquiry, but had no notice of it. It could not be held that notice given to servants is notice given to the master, and that servants would sufficiently represent their master in such proceedings. BATHOO LALL v. DOMI LAL, **21 C. 727.** [*F.*, 2 C.W.N. 670; *R.*, 31 C. 48; *D.*, 23 C. 55.]

(1281)—*S.* 147—*Use of public highway.*—It is doubtful whether s. 147, Crim. Pro. Code, applies to a dispute relating to the right to use a public highway. S. 145 does not apply to such a case. KOLANDAI NAYAKAN v. KARABUDDA SAVUDRI, **2 Weir 117.**

(1282)—*S.* 147—*Obstruction to right of way—Order for its removal.*—A Magistrate is competent to direct the removal of an obstruction to a right of way caused by the owner of the land, if there be a likelihood of a breach of the

Crim. Pro. Code (Act V of 1898)—*continued.*

peace in consequence of such obstruction. LALIT CHANDRA NEOGI v. TARINI PERSAD GUPTA, **5 C.W.N. 335.** [*F.*, 39 C. 560 = 13 Ind. Cas. 1000 = 13 Cr. L.J. 184, 15 C.L.J. 267 = 12 Cr. L.J. 319 = 10 Ind. Cas. 615; *D.*, 36 C 923 = 14 C.W.N. 178 = 10 Cr. L.J. 579 = 4 Ind. Cas. 415.]

(1283)—*S.* 147 (= *Crim. Pro. Code*, 1882, s. 147)—*Questions regarding the right to use a highway—Applicability of the section.*—It is open to question, whether s. 147, Crim. Pro. Code, applies to cases of dispute regarding the right of carrying corpses along a public highway. KOLANDAI NAYAKAN v. KARABUDDA SAVUDRI, **6 M L.J. 193.** [*R.*, 11 Cr. L.J. 721 = 8 Ind. Cas. 848 = 21 M.L.J. 486 = 9 M.L.T. 209 = 1911, 1 M.W.N. 44.]

(1284)—*S.* 147 (= *Crim. Pro. Code*, 1872, s. 532)—*Carrying of corpse on a highway.*—Except when danger to the public health is occasioned, the conveyance of a corpse along a highway is not an unlawful use of the highway; but when the conveyance of a corpse by a particular route is unnecessary and is repugnant to the feelings of the inhabitants, a Magistrate may properly exercise his influence to induce the persons concerned to abandon that route. *Held*, that the order of the Magistrate prohibiting Hindus to carry corpses through a certain route on the ground that Mahomedans objected to it and directing that they should be carried by the nearest route to the burning ghat was not a legal order. *In the matter of the petition of* NARAYANA TARAGAN, **7 M. 49 = 2 Weir 115.** [*R.*, 11 Cr. L.J. 721 (722) = 8 Ind. Cas. 848 = 21 M.L.J. 486 (487) = 9 M.L.T. 209 (210) = 1911, 1 M.W.N. 44.]

(1285)—*S.* 147 (= *Crim. Pro. Code*, 1861, s. 320)—*Right of way, dispute regarding.*—A right of way is a right to the use of land within the meaning of s. 320, Crim. Pro. Code, 1861. HIGH COURT PROCEEDINGS, 1ST JUNE, 1868, **4 M.H.C. App 11.**

(1286)—*S.* 147 (= *Crim. Pro. Code*, 1882, s. 147)—*Prohibiting religious procession.*—A Magistrate is not authorised to pass an order prohibiting a religious procession under s. 147 of the Crim. Pro. Code, where he has not found that the right to prevent such a procession exists in the complaining party. QUEEN-EMPRESS v. MADHAVDAS, **Rat. Un. Cr. C. 548.**

(1287)—*S.* 147—*Right to enter temple and officiate at Kumbhabhishekam ceremony whether within the section—Magistrate whether should formally record proceeding that there is danger of breach of peace.*—A right to enter the temple and officiate at the Kumbhabhishekam ceremony whenever it is necessary to perform the same falls within the scope of s. 147. (11 M. 323, 29 M. 237, *F.*; 37 C. 578, 38 C. 387, *Not F.*) The order of a Magistrate under s. 147 is not bad on the ground that he has not formally recorded a proceeding that there is in his

Crim. Pro. Code (Act V of 1898)—*continued.*

opinion danger of breach of the peace. A. CHIDAMBARA GURUKKAL v. SENGODA GOWNDEN, **16 M.L.T. 427 = 27 M.L.J. 587 = 15 Cr. L J. 671 = 25 Ind. Cas. 999.** (2 C.W.N. 670, *R.*)

(1288)—*S.* 147 (= *Crim. Pro. Code*, 1882, s. 147)—*Right to privacy.*—The right to privacy is not a right, in the assertion of which a person can be justified in entering upon the premises of another and closing the windows and doors, nor is it a right to prevent the doing of anything in or upon any tangible immoveable property within the meaning of s 147 of the Crim. Pro Code. *In re* GORDHANDAS, **Rat. Un. Cr. C. 357.**

(1289)—*S.* 147—*Dispute as to easement—Privy—Right to use privy—Magistrate—Jurisdiction.*—Under s. 147 of the Crim. Pro. Code, a Magistrate is restricted to inquiring into disputed rights of the use of "land and water," which expression does not include a "privy." *In re* SHANKAR SADASHIV, **15 Bom. L.R. 329 = 2 Bom. Cr. C. 72 = 14 Cr. L J. 400 = 20 Ind. Cas. 224.**

(1290)—*S.* 147—*Right to irrigate from tank, dispute as to.*—*Held*, that a Magistrate can take action under s. 147, Crim. Pro. Code, if he be satisfied that a dispute regarding the right to irrigate from a tank is likely to cause a breach of the peace. QUEEN-EMPRESS v. MUSSAMMAT RECHAN, **S. C. 64, Oudh.**

(1291)—*S.* 147—*Interference with exercise of a right by a particular class—Interference with the use of a well—Order of Magistrate forbidding interference — Jurisdiction.*— Where the Hindus prevented the Christians from exercising their right to take water from a well: *Held*, that there was nothing in s. 147 of the Crim. Pro. Code, to prevent the Magistrate from passing an order forbidding the Hindus from interfering with the exercise of that right. HINDUS OF KANNAMPALAIYAM VILLAGE v. KAIKOLA CHRISTIANS, **8 Ind. Cas. 848 = 11 Cr. L.J. 721 = 9 M.L.T. 209 = 21 M.L.J. 486 = 1911 M. W. N. 44.** (6 M.L J. 193, 7 M. 49, *D.*) [*R.*, 15 Cr. L J. 509 = 24 Ind. Cas. 597 = 26 M.L J. 208 = 1914 M.W.N. 352.]

(1292)—*S.* 147—*Exercise of right in dispute within the periods mentioned in section.*—Where it is proved that the *thikadar* and zemindar have had an uninterrupted use of water of a *nala* for 20 years, which they have enjoyed as an easement and as of right, and the erection of a bund has led to a dispute, there is then a sufficient finding that the right in dispute has been exercised within either of the periods mentioned in the proviso to s 147. PASUPATI NATH BOSE v. NANDO LAL BOSE, **5 C.W.N. 67 = 28 C. 734.** [*F.*, 39 C. 560 = 13 Cr. L.J. 184 = 13 Ind. Cas. 1000; *F. & R.*, 15 C.L J. 267 = 12 Cr. L.J. 379 = 10 Ind. Cas. 615; *D.*, 36 C. 923 = 14 C.W.N. 178 = 10 Cr. L.J. 519 = 4 Ind. Cas. 415.]

(1293)—*S.* 147—*Dispute regarding a bund—Competency of Magistrate to order its removal—Addition of parties — Effect.* — Where the

Crim. Pro Code (Act V of 1898)—*continued.*

plaintiff had a right to the flow of water for purposes of irrigation from a certain channel passing through a village of the defendant, who obstructed such flow by erecting bunds, *held*, that the Magistrate was competent, under s. 147, to direct the removal of the obstruction. [*F*., 5 C.W.N. 335.] A Magistrate is not competent to add parties to a proceeding under s. 147, any more than he can to proceedings under s. 145. An order made after the addition of parties is null and void only as against the added party, but is binding on those to whom it is properly directed. PASUPATI NATH BOSE v. NANDO LAL BOSE, **5 C.W.N. 67=28 C. 734.** [*F*., 39 C. 560=13 Cr.L.J. 184=13 Ind. Cas. 1000; *F. & R.*, 15 C.L.J. 267=12 Cr.L J. 319=10 Ind. Cas. 615; *D.*, 36 C. 923=14 C.W.N. 178=10 Cr.L.J. 579=4 Ind. Cas. 415.]

(1294)—*S.* 147—*Right of tenant to enclose land by wall—Action under section, if legal—Scope of section.*—The enclosing by a tenant of agricultural land, in his possession, with a wall instead of a hedge, would not *prima facie* interfere with the landlord's right. The case is one in which the High Court ought not to interfere in revision, as the dispute is really a civil suit between the parties, which ought to be settled by a Civil Court. But, in cases like this, it would be proper for the Magistrate to take security from the party from whom a breach of the peace is apprehended, though it is not illegal for the Magistrate to act under s. 147. The words "a dispute concerning the use of any land" cannot be qualified and the section construed as if it contained words that the user to which the dispute relates is a user by a party other than the person in possession. ARUNACHELLAM CHETTIAR v. CHIDAMBARAM CHETTI, **29 M. 97=15 M L.J. 394=3 Cr. L.J. 31.** (4 C.W.N. 779, *Not F.*; 7 M. 461, *R. & F.*)

(1295)—*S.* 147—*Direction to Police to assist party to remove obstruction, whether legal.*—A Magistrate has power to invoke the assistance of the Police in carrying out an injunction made by him under s. 147 of the Crim. Pro. Code, that is, the Police may be ordered to see that an obstruction is removed. AMBIKA PRASAD SINGH v. GUR SAHAI SINGH, **13 Cr. L.J. 184=39 C. 560=13 Ind. Cas. 1000** [*Diss.*, 15 Cr. L.J. 291=23 Ind. Cas. 499.]

(1296)—S. 147—*See* ACT XV OF 1877, art. 47, 1 M. 309.

(1297)—S. 147—*See* EASEMENT, 11 C. 52.

(1298)—S. 147—*See* PENAL CODE, s. 188, 1 Weir 143=2 Weir 118.

(1299)—S. 147, ch. VII—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, Rat. Un. Cr. C. 462=Cr. Rg. 20 of 1889.

(1299-*a*)—S. 147—*See* Nos. 588, 604, 928, 929, 1019, 1020, 1190, 1191, 1194 to 1199, *supra.*

(1300)—*Ss.* 147, 144, 133, 435, 439—*Obstruction to pathway—Prior order under s.* 144—*By a second class Magistrate—Commencement of*

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proceedings under s. 147 *within a week from date of prior order—Order under s.* 147—*Competency to pass—Revision — When open to—Actual obstruction—Direction to remove in proceedings under s.* 147—*Legality—S.* 133 *no bar—Order of single Judge of High Court to interfere under ss.* 435, 439—*Letters Patent appeal—Interference.*—If a Sub-Divisional Magistrate really thought that, notwithstanding the order under s. 144, Crim. Pro Code, passed within a week before his taking steps under s. 147, the likelihood of a breach of the peace still existed, it cannot be stated that the Sub-Divisional Magistrate was legally incompetent to take action under s. 147. The High Court might interfere if it considered that the Sub-Divisional Magistrate's apprehension was quite unreasonable. Even where a person had obstructed a pathway by a fence, a Magistrate has jurisdiction under s. 147, Crim. Pro. Code, to direct such person not to obstruct the pathway. The fact that s. 133, Crim. Pro. Code, expressly provides for an order by the Magistrate directing the removal of obstruction to pathways, does not necessarily imply that a similar order cannot be passed in proceedings taken under s. 147. (4 M. 121 and 1 Weir 143, 144, *Not F.*) S. 147 can be applied when the right of way claimed is a right to public path and not a private path. The terms of the section are wide enough to cover both cases. Revision under ss. 435 and 439, Crim. Pro. Code, is a matter of discretion and it would require a very strong case for a Letters Patent appeal to succeed against the decision of a single Judge of the High Court refusing to interfere in revision. KARUPPANNA KOUNDAN v. KANDASWAMI KOUNDAN, **15 M.L.T. 230=26 M.L.J. 223=1914 M.W.N. 394=15 Cr. L.J. 362=23 Ind. Cas. 730**

(1301)—*Ss.* 147, 148—*Local investigation, how to be made—Easements, whether s.* 147 *confined to—Order for costs, when to be made—Direction to police to assist party to remove obstruction, whether illegal.*—The rule that, in criminal cases, Courts are only justified in holding a local inspection in order to explain the facts appearing in evidence, does not apply to cases under s. 147, Crim. Pro. Code: nor is there anything in the law to prevent the presiding Magistrate from making a local investigation himself, provided he records what he saw and does not act upon hearsay evidence. S. 147 is not confined to mere easements. The right which the first party claimed in this case is the natural right of every landholder to the use and enjoyment of his own land, and among the necessary incidents to such an enjoyment is the right to let off water by the natural course in which it has always flowed and would always flow so as to prevent inundation of his own land. The second party erected a bund on the boundary of the first party's village: *Held*, that the erection of the bund was an infringement of that natural right, and that the case was a fit one for the exercise of jurisdiction under s. 147. An order for costs in a case under s. 147 need not be made at the time

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judgment is delivered. The order to the Police to assist the first party in removing the obstruction was legal and was made within jurisdiction. DOWLAT KOER v. SIVA PERSHAD, **10 Ind. Cas. 615 = 12 Cr. L.J 319 = 15 C.L.J. 267.** (5 C.W.N. 67, 5 C.W.N. 335, *F.*; 36 C. 923, 4 Ind. Cas. 415, 14 C.W.N. 179, 40 Cr. L.J. 579, *D.*) [*F.*, 39 C. 560 = 13 Ind. Cas. 1000 = 13 Cr. L.J. 184.]

(1302)—*Ss.* 147, 203, 437 *and* 438 (=*Crim. Pro. Code*, 1882, *ss.* 147, 203, 437 *and* 438)—*Further enquiry after dismissal of complaint—Reference.*—A District Magistrate ought himself to take action under s. 437, Crim. Pro. Code, if, in his opinion, further enquiry should be made into a complaint that has been dismissed under s. 203, Crim. Pro. Code; and, when a case is reported under s. 438, Crim. Pro. Code, the reference should set forth the points on which orders are required. QUEEN-EMPRESS v. MUSSAMMAT RECHAN, **S.C. 64, Oudh.**

(1303)—Ss. 147, 439—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 105 P.L.R. 1909.

(1304)—*S.* 147 *and proviso*; *sch.* V, *Form* XXIV—*Easement—Dispute concerning easement—Order without finding that right was exercised within three months before inquiry—Jurisdiction.*—An order under s. 147, Crim. Pro. Code, is without jurisdiction, if it is made in the absence of any finding that the right was exercised within three months anterior to the inquiry. GURU PROSAD DHAR v LACHMAN RAM GHOSE, **14 Cr. L.J. 303 = 19 Ind. Cas. 959.**

—— **S. 148** (= 1882, s. 148; 1872, s. 533).

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY.

(1305)—*S.* 148—*Order for costs—Assessment without notice to party effected by Magistrate—Jurisdiction.*—A Magistrate is not competent to make an order for the payment of costs and to assess the same in the absence of, and without notice to, a party who is, by that order, made liable for the same. PROKASH CHUNDER SARCAR v. RAM PRASAD PATTAK, **28 C. 302 = 5 C.W.N. 291.** [*F.*, 10 C.W.N. 1030.]

(1306)—*S.* 148—*Costs—Magistrate's jurisdiction to pass order for damages.*—A Magistrate is not entitled to make an order as to costs other than those incurred for witnesses or pleader's fees or both. He has no jurisdiction to award to a party compensation for damages done to his crops. PRAYAG MAHATON v. GOBIND MAHATON, **32 C. 602 = 9 C.W.N. 862 = 2 Cr. L.J. 552.**

(1307)—*S.* 148, *costs under, when to be assessed—High Court's power of revision as to the amount of costs awarded.*—An order for assessment of costs under s. 148, Crim. Pro. Code, does not become illegal, simply because it was not made at the time of pronouncing judgment in the proceeding under ss. 145, 146, or 147, Crim. Pro. Code. The order will be good if it is made within a reasonable time, while the same Magistrate who decided the proceeding is sitting and the parties are able to appear before him. (22 C. 387, 24 C. 757, *R. & Expl.*). When costs allowed by the Magistrate fall within the scope of s. 148, the High Court will not interfere on the ground that they are either excessive or deficient. BANSI SINGH v. SAYAD MOHAMAD AKBAR ALI KHAN, **15 C.W.N. 811 = 11 Ind. Cas. 144 = 12 Cr. L.J. 376.**

(1308)—*S.* 148—*Inquiry by* Kanungo—*Legality—Kanungo's report and evidence—Report corroborative of sworn testimony—Evidence Act* (I *of* 1872), *s.* 157.—S. 148 of the Crim. Pro. Code is an enabling section, and the deputation of a *Kanungo* to make an inquiry under that section is not bad. Under the general provisions of law, any body who has seen a place may be examined as to what he saw. *Kanungo* making the inquiry may give his deposition, and his report is admissible under s. 157 of the Evidence Act in order to corroborate his sworn testimony. ACHAMBIT DAS v. SARADA PRASAD HOLDER, **12 Cr. L.J. 480 = 12 Ind. Cas. 88.**

(1309)—S. 148—*See* Nos. 1190, 1200 to 1205, 1301, *supra* and No. 2037, *infra.*

(1310)—Ss. 148, 202, 293, 294, 556 — *See* LOCAL INQUIRY, 14 C.W.N 422 = 37 C. 310.

(1311)—*S.* 148 (3)—*Additional costs.*—Additional costs incurred for extra fees and travelling and other expenses of a like nature incurred by reason of bringing pleaders or counsel from a distance ought not to be allowed. RAJENDRA NARAIN ROY v. MAHOMED ARZUMAND KHAN, **9 C.W.N. 887 = 1 C.L.J. 331 = 2 Cr. L.J. 408.** [*Not F.*, 13 M.L.T. 224; *D.*, 13 Cr. L.J. 297 = 14 Ind. Cas. 761.]

(1312)—*S.* 148 (3)—*Order for costs.*—A wide discretion as to costs is given to a Magistrate by s. 148 (3), and the High Court has no power, in revision, to interfere with his exercise of that discretion. RAJENDRA NARAIN ROY v. MAHOMED ARZUMAND KHAN, **9 C.W N. 887 = 1 C.L.J. 331 = 2 Cr.L J. 408.** [*Not F.*, 13 M. L.T. 224; *D.*, 13 Cr.L.J. 297 = 14 Ind.Cas. 761.]

(1313)—*S.* 148 (3), *award of costs under, when could be made*—In the usual course, an award of costs under s. 148 (3), should almost invariably be contemporaneous with the decision of the main question and the order passed thereon under s. 145. But the fact that such an award has not been made at the very time the substantial question in the proceeding is disposed of, does not necessarily render the award invalid, and when the circumstances of a case really required it, the disposal of the question of costs may be postponed; but no order in the matter should be passed except within a reasonable time after the disposal of the principal subject of the proceedings and in the presence of both the parties. VYTHINADA TAMBIRAN v. MAYANDI CHETTY, **29 M. 373 = 4 Cr. L.J. 232.** [*R.*, 11 Cr. L.J. 335 = 5 Ind. Cas. 943 = 13 O.C. 66.]

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(1314)—*S.* 148, *cl.* (3)—*Penalty for document not properly stamped—Inclusion of penalty in costs—Legality.*—Under cl. 3 of s. 148, Crim. Pro. Code, the Magistrate has no jurisdiction to include in costs, the penalty on a document not properly stamped. TUMMALAGUNTA KOTIAH v. POPURI PEDDANNA, **13 M.L.T. 224=19 Ind. Cas. 306=14 Cr. L.J. 210.**

(1315)—*S.* 148 (3)—*Scope of the section—Jurisdiction of Magistrate to award costs not provided for in the section—Stamp Act* (11 *of* 1899), *s.* 44 (3)—*High Court—Revision.*—The jurisdiction of a Magistrate to award costs under s. 148 (3), Crim. Pro. Code, is limited to the costs mentioned therein. The section does not permit him to give any direction in respect of other costs which might be admissible under the much wider provisions of the Crim. Pro. Code, as costs incidental to the proceedings. The Magistrate cannot deal with such other costs by reason of s. 44 (3) of the Stamp Act. (9 C.W.N. 887, 1 C.L.J. 331, 2 Cr. L.J. 408, *D.*) Where a Magistrate awards such other costs it is open to the High Court to interfere in revision. POPURI PEDDANA v. TUMMALAGANTA KOTIAH, **13 Cr. L.J. 297=14 Ind. Cas. 761=13 M.L.T. 224.**

——S. 154 (=1882, s. 154 ; 1872, s. 112 ; 1861, s. 139).

(1316)—*S.* 154—*First information, when should be recorded.*—The law does not contemplate that, when, in the course of investigation, something has been elicited, which shows that an offence has been committed, a first information can be recorded. In every trial, it is important that it should be known to the judicial officer what are the facts given out immediately after the occurrence and reported to the police, and the object of the first information is to render him so acquainted. For that purpose the diary in which the first information is recorded is admissible in evidence, as also any memorandum by the police officer of what the informant said. KING-EMPEROR v. BHUT NATH GHOSE, **7 C.W.N. 343.** [*R.*, 8 C.W.N. 218.]

(1317)—*S.* 154—*First information, nature and use of.*—The first information, if recorded, as directed by s. 154, at the time that it is made, is of considerable value at the trial, because it shows on what materials the investigation commenced and what was the story then told. Any statement, recorded several days after the commencement of the investigation and after there has been some development, is not only no first information, but has very little or no value at all as the original story, because it can be made to fit into the case as then developed. EMPEROR v. KAMPU KUKI, **11 C.W.N. 554=6 Cr. L J. 86.** [*Rel.*, 13 Cr.L.J. 65=16 C.W.N. 145=13 Ind. Cas. 721.]

(1318)—*S.* 154—*Information given to a police officer of a cognizable offence.*—Where oral information is given to a police officer in charge of a station as to the commission of a cognizable offence, and it is reduced to writing by him under s. 154, Crim. Pro. Code, such writing is a "public document" under s. 74, Evidence Act; and its contents may be proved by a certified copy under s. 77, Evidence Act. A police officer is a "public officer" under s. 74. The certified copy should be given by the police officer having the custody of the document as provided in s. 76, Evidence Act. ABDUL RAHMAN v. QUEEN-EMPRESS, **U.B.R. 1893—1896, Vol. I, 24.**

(1319)—S. 154—Admissibility of statement made by dying person—*See* EVIDENCE ACT, 1872, s. 32, 6 C.W.N. 921.

(1320)—S. 154—*See* FALSE CHARGE, 27 M. 127=1 Weir 192=2 Weir 119.

(1321)—S. 154—*See* No. 52, *supra.*

(1322)—*Ss.* 154 *and* 155 (3)—*Informant reproducing statements made by another—Admissibility.*—Where the statement, which was alleged to be the first information, was the re-production by the person making it of the statement said to have been made by another person, *held*, that the statement was inadmissible as the first information and that, although the evidence given by that person who furnished the information to the informant could be contradicted by the evidence of the latter, it could not, under s. 155 (3), be contradicted by what the police recorded as the first information. EMPEROR v. DINA BANDU MOITRA, **8 C.W.N. 218.**

(1323)—*Ss.* 154, 157—*Meaning of information—Procedure where offence committed beyond local limits—Penal Code, s.* 211—*False charge.*—Information received under s. 157 of the Crim. Pro. Code, undoubtedly refers to information furnished and recorded under s. 154, Crim. Pro. Code. Every inquiry which a police officer makes is not necessarily an investigation under s. 157. The Crim. Pro. Code is silent as to the correct procedure to be adopted by a Station-House Officer who receives information of the commission of a cognisable offence outside his station limits. There is nothing in s. 154 to prevent his receiving and recording the information though he has no power under s. 157 to conduct an investigation. Where the accused sent a telegram in general of the occurrence of a dacoity and later on gave a statement implicating a number of persons in the dacoity, and the police took action on the latter and found the charges false, *held* that the person can be convicted under s. 211, I.P.C., for bringing a false charge. NANDAMURI ANANDAYYA v. EMPEROR, **1914 M.W.N. 382=15 Cr.L.J. 622=25 Ind. Cas. 630.**

(1324)—*Ss.* 154, 157, 250—"*Information,*" *meaning of—Compensation — Order, if can be made against servant for information given on behalf of master—Information subsequent to the original complaint.*—The question whether a servant can be held responsible under s. 250, Crim. Pro. Code, for an information lodged on behalf of his master, is a question of fact and depends on the question whether the servant is

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merely the mouthpiece of the master and is merely giving expression to his master's accusation, or whether he joins personally in the accusation himself. In the former case no order of compensation should be made against the servant under s. 250, Crim. Pro. Code. "Information" referred to in s. 250, Crim. Pro. Code, need not necessarily be the information on which the case is instituted. Where a person making a complaint against an accused person subsequently gives information leading to the accusation of others in the case, he may be dealt with under s. 250, Crim. Pro. Code, in respect of his subsequent information. The words "from information received" in s. 157, Crim. Pro. Code, refer to the information given in s. 154, Crim. Pro. Code. JAGDAMI PERSHAD SINGH v. MAHADEO KANDOO, **14 C.W.N. 326.**

(1325)—*Ss.* 154, 162—*Complaint presented to a Village Magistrate and passed on to a Station House Officer—Penal Code, s.* 182—*Giving false information to a Village Magistrate.*—Giving false information of an alleged offence, to a Village Magistrate (a public servant) amounts to an offence under s. 182 of the Penal Code. Such information given to the Village Magistrate, which it was his bounden duty to pass on to a Police Station House Officer, must be considered as having been given to the latter, so that a complaint in writing, subsequently taken by him from the accused, is covered by s. 154, Crim. Pro. Code, and cannot be regarded as having been taken by the police officer under s. 162, Crim. Pro. Code. *Held*, therefore, that the acquittal, by the lower Court, of the accused in the present case, on the ground that, as the false information in question was given in the first instance only to the Village Magistrate, the complaint, subsequently taken from the accused by the Station House Officer, was not admissible in evidence, as recorded under s. 162, and not under s. 154, was erroneous and unsustainable in law. EMPEROR v. JONNALAGADDA VENKATRAYUDU, **28 M. 565 = 3 Cr. L.J. 108.** [*R.*, 32 M. 258 = 5 M.L.T. 269 = 9 Cr. L.J. 170, 31 M. 506 = 18 M.L.J. 573, 1 Ind. Cas. 187, 1914 M.W.N. 382.]

(1326)—*Ss.* 154, 167, 172—*First information, object of—How to be recorded—What is—First information drawn up by Police officer after commencement of investigation and settled by attorney if legal—Special diaries, object of—Explosive Substances Act* (VI *of* 1908), *s.* 5—*Bomb found in joint family house—Whose possession—Liability of managing member—Presumption of liability—How to be rebutted—Jail Code—Rules in Jail Code, whether have force of law—Remand of accused—Accused to be produced before Court—Application for remand, by whom to be made.*—The object of a first information being to show what was the manner in which the occurrence was related when the case was first started, it should always be carefully and accurately recorded. (11 C.W.N. 554, 556, 6 Cr. L.J. 86, *Rel.*) The law requires that the first information should be the statement of the person himself giving the information, and it

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becomes valueless if it is drawn up by some person other than the proper informant. A statement recorded several days after the commencement of the investigation and after there had been some development, is not only no first information, but has very little or no value at all. A first information drawn up by a Police Officer and finally settled by an attorney is not a first information within s. 154 of the Crim. Pro. Code. The object of the special diaries under s. 172 of the Crim. Pro. Code is to enable the Court to have the means of ascertaining what was the information which was obtained from day to day by the Police officer who was investigating the case and what were the lines of investigation upon which the Police officer acted. (19 A. 390, *Rel.*) It is not the law that every person in a joint family should, merely on the ground that a bomb is found in the joint family residence, be liable to be tried for an offence under the Explosive Substances Act. If the article is found in a portion of the house of which one member of the family has the exclusive use, then such member must *prima facie* be held to be liable. But if it is found in a portion of the house of which all the members of the family have the use, then, *prima facie* the managing head of the family is responsible. But in either case it is only a presumption which may be rebutted; and if the Police act on information showing that an article found in a house is in the exclusive possession of one member of the family, and the article is found in a portion of the joint family residence of which all the members of the family have the use, then the head of the family is not liable to arrest merely on the ground that the article is found in a portion of the house, to which all the family can resort. (15 A. 129, *Rel.*) The rules contained in the Jail Code are framed by the Local Government under the powers contained in the Prisons Act and subsequently sanctioned by the Governor-General in Council. Rules when so framed and approved have the same force as the Statute and it is not open to any person to set aside the provisions of such Rules. S. 167 of the Crim. Pro. Code requires that, before a Magistrate remands an accused person to Police custody, the accused must be produced before him and he shall record his reasons for doing so. An application for remand to Police custody must be made personally by the Chief Police officer present to the Chief Magisterial Officer present, unless this is impossible owing to the absence of one of the officers concerned or through some other exceptional cause. PEARY MOHAN DAS v. D. WESTON, **13 Cr.L.J. 65 = 16 C.W.N. 145 = 13 Ind. Cas. 721.** [*R.*, 13 Cr. L.J. 609 = 15 C.L.J. 517 = 16 C.W.N. 1105 = 16 Ind. Cas. 257.]

(1327)—*Ss.* 154, 374—*First information, if substantive evidence — Capital sentence—Circumstances to be considered by the High Court in confirming sentence of death—Delay between passing of sentence in the Sessions Court and final orders in the High Court, if sufficient ground for not confirming sentence of death.*—

Crim. Pro. Code (Act V of 1898)—*continued.*

Six persons were convicted of murder and sentenced to death. The Sessions Judge treated the first information in the case as a piece of substantive evidence. The accused appealed to the High Court. There was a difference of opinion between the Judges who first heard the appeal, necessitating a reference to a third Judge, and nearly six months elapsed before the appeal was finally disposed of. *Held*—(*Per Stephen and Carnduff, JJ.*)—The first information, although a document of great importance which is in practice always and very rightly produced and proved in criminal trials, is not a piece of substantive evidence, and it can be used only as a previous statement admissible to corroborate or contradict the author of it. *Per Carnduff, J.*—As the law stands in India where the alternative sentences of death and transportation are prescribed for murder, the fact that the accused had the capital sentences suspended over their heads for nearly six months is a matter for the consideration of the Judge of the High Court who finally disposes of the appeal, and he ought not to confirm the sentence of death which might have been rightly passed by the Sessions Judge in the first instance, unless he personally thinks that such sentence should be carried out at the time final orders are passed by him, and delay such as in the present case is a sufficient reason for refraining from imposing the extreme penalty. AUTOR SINGH v. EMPEROR, **17 C.W.N. 1213 =14 Cr. L.J. 642=21 Ind. Cas. 882.**

——**S. 155 (=1882, s. 155; 1872, ss. 110, 113; 1861, s. 133).**

(1328)—*S.* 155—*Power of Magistrate to direct police investigation.*—S. 155, Crim. Pro. Code, is conversant only with the powers of police officers. It confers no power or authority on Magistrate to direct a local investigation by the police. *In re* JANKI DAS GURU SITARAM, **12 B. 161.**

(1329)—S. 155—*See* Nos. 26, 1322, *supra* and Nos. 1526, 1636, *infra.*

(1330)—*Ss.* 155, 156, 164, 190, 476—*Magistrate referring a matter to the police for investigation—Report by the police—Examination on oath of the suspected person —Perjury—Sanction to prosecute.*—The complainant appeared before a Magistrate and stated certain circumstances, whereupon the latter referred the matter to the police with authority to investigate and report. The police submitted, in due course, a report as to the result of their investigation. The Magistrate then made a further inquiry and examined S (the suspected person) on solemn affirmation. During the course of his examination, S made certain statements which appeared to the Magistrate to be false. The Magistrate, thereupon, acting under s. 476 of the Code, sent S to another Magistrate for enquiry whether S had committed the offence of perjury in respect of statements made before him. The Sessions Judge referred the case to the High Court, being of opinion that the order passed by the Magistrate was unsustainable, first because the Magistrate had no jurisdiction to refer the matter to the police, there being no complaint before the Magistrate as required by s. 202 of the Code and no examination of the complainant by him; and, secondly, because S was illegally sworn, he being an accused person at the time when he was examined by the Magistrate. *Held*, that the Magistrate was empowered to refer the matter to the police for investigation, under s. 155, cl. 2 of the Code, in cases of non-cognizable offences, and under s. 156, cl. 3 of the Code, in cases of cognizable offences; that the statements taken by the Magistrate were in a stage of the inquiry, which was being conducted under the provisions of the Code; and that he had, therefore, power, under s. 164 of the Code, to administer an oath to S, and a charge of perjury could be framed with regard to the statements made before him on oath. EMPEROR v. VISHWANATH KRISHNA SATHE, **8 Bom. L. R. 589=4 Cr L.J. 183.** (27 C. 455, 16 M. 421, *R.*)

(1331)—Ss. 155, 161—*See* FALSE EVIDENCE, 8 B. 216.

(1332)—*Ss.* 155, 190 (1), (*b*)—*Police report submitted in non-cognizable case—Examination of police officer as if he was a complainant—Legality—Magistrate doubting correctness of report—Proper procedure.*—A police report in a non-cognisable case is a police report within the meaning of s. 190 (1) (*b*), Crim. Pro. Code, and there is no authority in the Code for examining a police officer submitting a police report under s. 190 (1) (*b*) as if he was a complainant. It is open to the Magistrate to order an investigation under s. 155, when he receives a police report in a non-cognizable case and has reason for doubting its correctness. NGA SAW KE v. KING-EMPEROR, **U.B.R. 1914, 2nd Qr., 19, Cr.** (U.B.R. 1904—1906, I, Crim. Pro. p. 25, *R.*)

(1333)—Ss. 155, 202—*See* NON-COGNISABLE OFFENCE, Rat. Un. Cr. C. 77.

(1334)—Ss. 155, 202, 203—*See* COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINT, 12 B. 161.

(1335)—*Ss.* 155 (2), 190, 256, 529 (*b*) *and schs.* III, II (2)—*Jurisdiction of Magistrate to order investigation without taking cognisance under s.* 190—*Procedure—Cross-examination of prosecution and defence witness, whether can be reserved.*—When a police officer receives information of the commission of a non-cognisable offence, he can, instead of referring the informant to a Magistrate under s. 155, cl. (1), report the case to a Magistrate for orders under cl. (2), and the Magistrate can in such circumstances, order an investigation, without first taking cognizance of the offence under s. 190. S. 155 (2), read with s. 529 (*b*) and schs. III, II (2) of the Crim. Pro. Code, leave no doubt on the point. The Court has a discretion, for sufficient reasons, to allow the cross-examina-

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tion of the defence witnesses to be reserved until the chief examination of all of them is over, there being no provision of law to the contrary. The defence has the right under s. 256, Crim. Pro. Code, to recall and cross-examine any of the prosecution witnesses. *In re* ASADULLA HUSSAIN KHAN, 6 M.L.T. 259.

——**S. 156, paras 1, 2 (=1882, s. 156 and para 3, new).**

(1336)—S. 156—*See* Nos. 26, 341, 1330, *supra.*

(1337)—*Ss.* 156, 159, 200, 202 *and* 203—*Dismissal of complaint without examining the complainant and without local investigation—Jurisdiction of Magistrate.*—A complaint was made to a Sub-Divisional Magistrate, who, without examining the complaint, sent the petition of complaint to the police for enquiry under s. 156 (3), Code of Criminal Procedure, and upon receipt of the report of the police, directed a Sub-Deputy Magistrate to make a preliminary enquiry under s. 159, Crim. Pro. Code. Upon receipt of that report, the Sub Divisional Magistrate, not being satisfied with it, cross-examined the complainant and some of his witnesses, examined three witnesses set up by the police, and dismissed the complaint and also ordered the complainant's prosecution under s. 211, I.P.C. *Held*, that inasmuch as there was no local investigation in this case ordered under s. 202, Code of Criminal Procedure, and no examination of the complainant by the Magistrate, the Magistrate had not jurisdiction, on the materials before him, to deal with the case or to dismiss it under s. 203, Code of Criminal Procedure, and that upon receipt of the report of the preliminary enquiry under s. 159, Crim. Pro. Code, he should have proceeded to deal with the case in the same way as he would have dealt with it upon receipt of a report from a police officer. LOKENATH PATRA v. SANYASI CHARAN MANNA, **30 C. 923=7 C.W N. 525.** [*R.*, 15 Cr.L.J. 517=16 C.W.N. 1105=13 Cr.L J. 609=16 Ind. Cas. 257, 9 C.W.N. 199, 12 Cr.L.J. 539=12 Ind. Cas. 515=2 P.R. 1912, Cr.=11 P.L.R. 1912; *Expl.*, 12 Cr.L.J. 463=11 Ind. Cas. 999=10 M. L.T. 120=1911 2 M.W.N. 74.]

(1338)—*Ss.* 156, 190—*Sessions Judge—Jurisdiction to direct an investigation by police.*—S. 156 only gives power to a Magistrate empowered under s. 190 to direct an investigation by the police into cognisable cases. So a Court of Session has no power to order such an enquiry, and such an order, if made, would be *ultra vires.* KING-EMPEROR v. ALI, **11 P.R. 1910, Cr.=184 P.L.R. 1910=16 P.W.R. 1910, Cr.=5 Ind. Cas. 915.**

(1339)—*S.* 156 (3), *ch.* XVI, ss. 200, 201, 202, 203—*Presentation of complaint—Magistrate's duty to proceed under ch.* XVI—*No option to refer to police under s.* 156 (3)—*Direction to strike off case from Police file—Disposal illegal—Ordering police investigations*

Crim. Pro. Code (Act V of 1898)—*continued.*

—*Omission to record reasons as laid down by s.* 203—*Reference to wrong section—Dismissal of complaint—Effect—Dismissal valid under s.* 203.—On the presentation of a criminal complaint, a Magistrate is bound to take cognizance of the same and proceed in the manner prescribed by ch. XVI, and he has no option to refer it to the Police under s. 156 (3), (30 C. 923, *Expl.*) An order simply directing that the complaint might be struck off the Police file is not a legal disposal of the complaint. An omission by the Magistrate to record his reasons as required by s. 202, before ordering a police investigation, or a reference to the wrong section will not invalidate the final dismissal of the case. The order of dismissal might be considered as passed under s. 203 and as constituting a legal disposal of the case. ARULA KOTIAH, **10 M.L.T. 120= 1911 2 M.W.N. 74=11 Ind. Cas. 999= 12 Cr. L.J. 463.**

——**S. 157 (=1882, s. 157; 1872, ss. 114, 116, 177; 1861, ss. 135, 136, 137).**

(1340)—S. 157—*See* POLICE, 4 S.L.R. 38= 7 Ind. Cas. 601=11 Cr. L.J. 498.

(1341)—S. 157—*See* Nos. 1323, 1324, *supra*, and 3026, *infra.*

(1342)—Ss. 157 to 167—Admissibility of previous statements to Police Inspector—Corroborative value of such statements—Meaning of the expression "legally competent to investigate"—Whether an officer of the C.I.D., is "legally competent."—*See* PENAL CODE, s. 121-A., 1912 M.W.N. 207=13 Cr. L.J. 305 =22 M.L.J. 490=11 M.L.T. 1=35 M. 247=14 Ind Cas. 849.

(1343)—*Ss.* 157, 158, 190, 203 (=*Crim. Pro. Code*, 1872, *ss.* 117, 141 *and* 147)—*Police report, effect of, on jurisdiction of Magistrates.*—A police report under s. 117 would give jurisdiction to a Magistrate to enter upon an enquiry. But the Magistrate is not bound to enter upon an enquiry in all cases. He may determine, as he thinks expedient, either to take no further steps, or to entertain the complaint under s. 141 or s. 147, Crim. Pro. Code, 1872. HIGH COURT PROCEEDINGS, 5TH FEB. 1878, NO. 269, **2 Weir 119=2 Weir 150.** [*F.*, 2 Weir 246.]

(1344)—*Ss.* 157 *and* 159—*Inquiry under section, when can be made*—An inquiry can be made under s. 159 only on a report submitted within the terms of s. 157. MOULI DURZI v. NAURANGI LALL, **4 C.W.N. 351.**

(1345)—*Ss.* 157, 159, 169, 170, 173 *and* 190 (1) (*c*)—*Magistrate's power to order prosecution of a person not arrested by the police.*—A was sent up by the police for an offence of criminal trespass before a Magistrate. The Magistrate acquitted A, and, at the end of the judgment stated, that the police will take action against H, who, in his opinion, committed the trespass. H was, thereupon, sent up by the police and convicted. The Magistrate was not empowered under s. 190 (1) (*c*) of the Code to take cognizance of offence of his own motion. *Held*, that

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though the Magistrate was not so empowered, he had the powers, on receipt of information from the police, to order the prosecution of any person, who, in his opinion, ought to be put upon his trial; *a fortiori* he can, after taking evidence, know whom the police ought to put up before him and order such person to be put up before him. HAKIM ALLY v. KING-EMPEROR, **4 L.B.R. 137=7 Cr. L.J. 414.**

(1346)—Ss. 157, 159, 202—*See* FALSE EVIDENCE, A.W.N. 1899, 87.

(1347)—*Ss.* 157, 159, 476—*Police report after investigation that offence has been committed—Further enquiry of Magistrate—Order for prosecution of witnesses examined in Magistrate's enquiry—Penal Code. s.* 193.—Where a Deputy Magistrate held a magisterial enquiry into a case, after the police had made an investigation at the direction of the District Magistrate, and subsequently ordered the prosecution for perjury of the witnesses examined before him, *held*, that the enquiry held by the Deputy Magistrate was without legal sanction, and that the orders for prosecution were consequently without jurisdiction. ABDUL RAHMAN v. KING-EMPEROR, **6 A.L.J. 963=32 A. 30.** [*R.*, 8 A.L.J. 674=11 Ind. Cas. 141.]

(1348)—Ss. 157, 159 and 476—*See* FALSE CHARGE, 4 C.W.N. 351.

(1349)—Ss. 157, 159, 476—*See* FURTHER ENQUIRY, 6 A.L J. 963.

(1350)—*Ss.* 157, 165—*Police officer—House beyond his jurisdiction—Locking of the doors and keeping guard over the same—Not* ultra vires—*Power under s.* 157—*Overpowering constables keeping guard, assaulting them and removal of articles from house—Offence committed—No private defence.*—The Police Inspector of T circle during the investigation of a burglary sent some constables to the house of the accused situate in a village lying within the jurisdiction of another police circle. On reaching the village, the constables locked the house in question and kept guard of the house during the night. In the middle of the night, they were attacked by a number of armed men who overpowered them, broke open one of the rooms closed and took away two bundles supposed to contain some of the stolen articles. The accused were tried, and found guilty and sentenced to various terms of imprisonment. They pleaded that the Inspector of T circle acted *ultra vires* in closing a house outside his jurisdiction, that therefore they had a right of private defence and were justified in assaulting the constables. *Held* that, though the locking of the doors of the house was a step which would facilitate a search, and the actual search was not within the powers of the police of T, yet the locking of the doors of the house and the keeping of guard over the house were also certainly a part of the ordinary duties of the police under s. 157, Crim. Pro. Code, and were not *ultra vires.* In s. 157, there is no provision preventing the police of one police station from acting under that section in the jurisdiction of another police station. NATHA SINGH v. CROWN, **12 P.R. 1915, Cr.**

(1351)—S. 158—*See* Nos. 1342, 1343, *supra.*

——**S. 159 (=1882, s. 159; 1872, s. 115; 1861, s. 135).**

(1352)—S. 159—*See* Nos. 52, 1337, 1342, 1344, 1345, 1346, 1347, 1348, 1349, *supra.*

(1353)—*Ss.* 159, 190, 191, 476.—In this case, A gave information of theft to a police station and the Police, under s. 173, Crim. Pro. Code, reported it mistaken and the Magistrate on reading the report held a preliminary enquiry and sent A for trial before another Magistrate under s. 211, I.P.C. His proceedings purported to be under ss. 159 and 476, Crim. Pro. Code. It was held that those sections do not apply, but that the proceedings were lawful under ss. 190 and 191, Crim. Pro. Code. LACHMANAN CHETTY v. KING-EMPEROR, **U.B.R. 1904, 1st Qr., Crim.Pro. Code, 4.** (14 W.R. 41, 14 C. 707, 26 C. 786, *R.*) [*R.*, U.B.R. 1907, Cr. P.C. 1.]

——**S. 160 (=1882, s. 160; 1872, s. 118; 1861, s. 144).**

(1354)—*S.* 160—*Accused's disobedience to police officer's requisition to appear—Penal Code, s.* 174.—S. 160, Crim. Pro. Code, does not authorise a police officer to require the attendance of an accused person with a view to his answering the complaint made against him. The disobedience to such an order, therefore, cannot fall within s. 174, Penal Code. EMPEROR v. RATAN SATHARAM, **4 Bom. L.R. 644.** (7 M. 274, *R.*)

(1355)—*S.* 160 (=*s.* 160, *Code of* 1882)—*Scope of section—Powers of police officer to require attendance of accused to answer the charge against him*—S. 160 does not authorise a police officer to require the attendance of an accused person with a view to his answering the charge made against him. The intention of the Legislature seems to have been only to provide a facility for obtaining evidence, and not for procuring the attendance of the accused, who may be arrested at any time, if necessary, without a warrant. QUEEN-EMPRESS v. SAMINATHA CHETTI, **7 M. 274, F.B.=2 Weir 120.** [*F.*, 4 Bom. L.R. 644; *R.*, L.B.R. 1893—1900, 317.]

(1356)—*S.* 160 (=*Crim. Pro. Code,* 1882, *s.* 160)—*Scope of the section.*—An order in writing cannot be made under s. 160, requiring the attendance of an accused person, as a person appearing to be acquainted with the circumstances of the case, but the section applies to the case of witnesses or possible witnesses only. Where an order under s. 160 of the Code of Criminal Procedure was issued by the Station House Officer to an accused person charged with kidnapping, and on his failure to obey the order, he was taken into custody by the police, *held*, that the police was guilty of wrongful confinement, although the police would have been

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justified in arresting without a warrant upon the original charge made against the complainant. *In re* LAKSHMIGADU, 2 **Weir 121**.

(1357)—S. 160—*See* ACCUSED PERSON, L. B.R. 1893—1900, 317.

(1358)—S. 160—*See* CRIMINAL INTIMIDATION, Rat. Un. Cr. C. 850 = Cr. Rg. 18 of 1896.

(1359)—S. 160—*See* PENAL CODE, s. 174, 4 Bom. L.R. 644, 1 Weir 86.

(1360)—S. 160—*See* Nos. 378, 1342, *supra.*

(1361)—*Ss.* 160, 161 (= *Crim. Pro. Code,* 1872, ss. 118 *and* 119)—*Proper procedure of police in cases of suspected wrongful confinement—Obstruction.*—The servants of a woman, whom the police suspected to have been wrongfully confined by her servants, obstructed their entry into their lady's house when they went there to enquire into the matter. *Held,* that the obstruction was no offence and that the proper procedure was to obtain an interview by a written order under s. 118 of the Code. POLICE v. RADHAKISHEN, **Colm. Dig. Cr. 72 of 1877.**

(1362)—Ss. 160, 161—*See* PENAL CODE, s. 179, Rat. Un. Cr. C. 92.

(1363)—Ss. 160, 161 and 162—*See* FALSE EVIDENCE, 7 C. 121 = 8 C.L.R. 300, F.B.

(1364)—Ss. 160, 161, 436, 438 (1)—*See* REFERENCE TO HIGH COURT, Rat. Un. Cr. C. 133.

(1365)—Ss. 160, 202, 203—*See* COMPLAINT—DISMISSAL OF COMPLAINT, 9 C.W.N. 199 = 2 Cr.L.J. 51.

——**S. 161 (= 1882, s. 161 ; 1872, ss. 118, 119, 121 ; 1861, ss. 144, 145, 147).**

See CONFESSION.

See EVIDENCE—STATEMENTS MADE TO POLICE.

(1366)—*S.* 151 (= *Crim. Pro. Code,* 1882, s. 161)—*Notes of statements made to police officer, use to be made of.*—The record made by the police officer investigating a case of the statements made to him by various persons, examined in the course of such investigation, can only be used after proper proof of them and of the circumstances under which they were recorded, and under the direct sanction of the District Judge. Copies of such statements should not be made over to the accused or their Counsel without question and as a matter of course. QUEEN-EMPRESS v. NAZIRUDDIN, **16 A. 207 = A W.N. 1894, 57.** [*R.*, 19 A. 390 = A.W.N. 1897, 174, 9 C.P.L.R. 33 ; *Cons.*, 11 Cr.L.J. 117 = 5 Ind. Cas. 357 = 13 O.C 7.]

(1367)—*S.* 161 (= *Crim. Pro. Code,* 1882, s. 161)—*Admissibility of special police diaries in evidence—Held by Edge, C.J., Knox, Blair and Burkitt, JJ.* (*Banerji and Aikman, JJ., dissenting*).—A police officer who is making an investigation under ch. XIV of the Code may lawfully reduce to writing in the special diary the full and unabridged statement made to him by a person whom he is examining or has examined under s. 161 ; when the special diary contains such statements, the record of such statements, being part of the special diary, is as much privileged as any other entry. *Per Burkitt and Banerji, JJ., contra.*—A police officer investigating a case under s. 161, Crim. Pro. Code, is not authorised to record the statements made before him in the special diary. If he does so, such statements are not privileged. But, a mere summary of facts ascertained by the investigating officer from the examination of a number of witnesses is protected. Sessions Judges should not issue a general order directing the police diaries in every case committed for trial to the Court of Sessions, and every criminal appeal, to be transmitted to them simultaneously with the Magistrate's records of the cases. They are only authorised to send for the diaries of cases under trial before them, if they think it necessary in such cases to peruse the diaries, but the order must be one *ad hoc,* confined to cases actually pending before them, and not a general order as to all cases. QUEEN-EMPRESS v. MANNU, **19 A. 390 = A.W.N. 1897, 174.** (8 C. 154, 17 P.R. 1894, Cr., 16 A. 207, 8 C. 739, 16 C. 612, N.; 16 C. 610, 20 C. 642, A.W.N. 1896, 193, 11 B.H.C. 120, *R.*) [*F.*, 4 A.L.J. 811 = A W.N. 1908, 22 = 7 Cr.L J. 3 ; *Rel. on,* 13 Cr.L J. 65 = 16 C.W.N. 145 = 13 Ind. Cas. 721 ; *R.*, 21 A. 159 ; *Cons.*, 11 Cr. L.J. 117 = 5 Ind. Cas. 357 = 13 O C. 7.]

(1368)—*S.* 161 (= *Crim. Pro. Code,* 1882, s. 161)—*Penal Code,* s. 193—*False statement before police officer.*—S. 161, Crim. Pro. Code, binds a person questioned by the Police to tell the truth, though his signature may not be taken to his statement ; and if he fails to tell the truth, he renders himself liable to punishment under the latter clause of s. 193, I.P.C. QUEEN-EMPRESS v. ISMAL *valad* FATARU, **11 B. 659 = 12 Ind. Jur. 152.**

(1369)—*S.* 161—*Statements of a person preliminary to his arrest taken by police officer—Nature of such statement—Evidence Act,* s. 25.—When a police officer has evidence before him, sufficient to justify the arrest of a person, he should not, preliminary to the arrest, examine him and record his statement. Such statement cannot be regarded except as a confession to a police officer, and is inadmissible in evidence under s. 25 of the Evidence Act. QUEEN-EMPRESS v. JADUB DAS, **27 C. 295 = 4 C.W.N. 129.**

(1370)—*S.* 161—*Duty of person examined under this section.*—A person examined under s. 161 of the Crim. Pro. Code, by the police in respect of an offence of which he may himself be charged, is not bound to speak the truth. He cannot be convicted under s. 193 of the Penal Code for not speaking the truth. QUEEN-EMPRESS v. USUPHKHAN, **Rat. Un. Cr. C. 619 = Cr. Rg. 43 of 1892.**

(1371)—*S.* 161—*Statements reduced in to writing under the section—Police officer—Penal Code,* s. 167.—In this case the accused, a police

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sergeant, reduced to writing under the above section the statements of certain witnesses in such a way as to make it appear that the person accused in the case under investigation had committed an offence, although the witnesses in reality had not said what they were represented as saying. *Held* that, if reduction to writing is made, it is not for the mere personal benefit of the investigating police officer, but is an act done in his official capacity; and that the police officer is required to make a true record, if he makes any at all. Hence, a conviction under s. 167, Penal Code, was upheld. NGA PO HMI v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 29.** (16 C. 610, 4 M. 144, *R.*)

(1372)—*S.* 161 (=*Crim. Pro. Code*, 1872, s. 119)—*Penal Code, s.* 182—*Term "information" explained.*—A statement, under s. 119 of the Crim. Pro. Code, is included in the word "information" as used in s. 182 of the I.P.C. QUEEN-EMPRESS v. BHIKAIJI, **Rat. Un. Cr. C. 124.**

(1373)—*S.* 161—*Penal Code, s.* 193, *Expl.* 2—*Investigation by police officer, if a judicial proceeding.*—An investigation by the police, under s. 161, Crim. Pro. Code, is a stage of a judicial proceeding within the meaning of the explanation 2 to s. 193, Penal Code. NGA PO KE v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 31.**

(1374)—*S.* 161—*Statement recorded by the police, consideration of, by Court—Criminal trial—Duty of Judge to record independent findings as to truth or otherwise of evidence.*—Where the Sessions Judge in his judgment gave no finding as to the truth or falsity of each witness's statement, but relied entirely on the difference in what they said in Court and what they said or were alleged not to have said before the police: *Held*, that it is exceedingly dangerous to appeal, from evidence judicially recorded under the sanction of cross-examination, to alleged statements made to the police which are not judicially recorded. It is the Judge's duty to make up his mind, while the witness is before him, whether he is a witness of truth or falsehood, and it is only when the Judge sees any reason to distrust his evidence that omission in a police record can become of any importance. JUNG RAI v. KING-EMPEROR, **19 C.W.N. 217=16 Cr. L.J. 313=28 Ind. Cas. 649.**

(1375)—S. 161—*See* BRIBERY, Rat. Un. Cr. C. 488=Cr. Rg. 57 of 1889.

(1376)—S. 161—*See* CRIMINAL PROCEEDINGS, 6 M.L.T. 133.

(1377)—S. 161—*See* FALSE CHARGE, 1 Weir 193.

(1378)—S. 161—*See* FALSE EVIDENCE, 15 A. 11=12 A.W.N. 141; 16 C. 349, 23 M. 544=1 Weir 112, 23 M. 544, foot-note=1 Weir 166, Rat. Un. Cr. C. 518=Cr. Rg. 40 of 1890.

(1379)—S. 161—*See* INSPECTION OF DOCUMENTS, S.C. 189, Oudh.

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(1380)—S. 161—*See* PENAL CODE, s. 179, 1 Weir 111.

(1381)—S. 161—*See* PENAL CODE, ss. 191, 193, 8 C.L.R. 236.

(1382)—S. 161—*See* PENAL CODE, s. 193, 6 C.L.R. 47.

(1383)—S. 161—*See* Nos. 341, 1331, 1342, 1361, 1362, 1363 and 1364, *supra*, and No. 1524, *infra*.

(1384)—*Ss.* 161, 162 (=*Crim. Pro. Code*, 1872, s. 119)—*Statements of witnesses to police officer during investigation—Evidence—Refreshing memory.*—Documents, wherein statements of persons examined by a police officer during an investigation have been, under s. 119 of the Crim. Pro. Code, reduced to writing, may be used to refresh such police officer's memory, when giving evidence; but the documents themselves cannot be used as evidence in being read out to a jury to point out discrepancies. ROGHUNI SINGH v. EMPRESS **9 C 455=11 C.L.R. 569=5 Shome L.R. 47.** [*R.*, 22 B 596, 7 A.L.J. 468=6 Ind. Cas. 101, U.B.R. 1897—1901, Vol. I, 31, 16 C.P.L R. 122.]

(1385)—*Ss.* 161, 162 (=ss. 161, 162, *Code of* 1882)—*Statement to a police officer investigating the case by a witness—Such statement, how to be used.*—A statement to which s. 162 applies may be proved to contradict a witness called for the defence of the accused, that witness having been first cross-examined on that point. But such a statement should not be used as evidence against the accused. Where, but for the defect that a defence witness was contradicted and discredited by the previous statement which he had made to the police officer investigating the case, the Magistrate would have acquitted the accused, *held*, that the conviction should be set aside as having been made on evidence, which, as against the accused, was excluded by reason of s. 162 of the Code. QUEEN-EMPRESS v. MADHO, **15 A. 25=A.W.N. 1892, 220** (11 B. 657, *Appr.*). [*F.*, 27 A. 469=A.W N. 1905, 64; *R.*, 19 A. 390=A.W.N. 1897, 174, 15 C.L.J. 621=13 Ind. Cas. 678.]

(1386)—*Ss.* 161, 162—*Statement to police officers—Dying declarations.*—Statements, other than dying declarations, made to a police officer, by persons, in the course of an investigation by him, cannot be legally used as evidence against the accused. Such statements can only be used in favour of the accused, when they are legally brought as evidence before the Court, that is to say, a witness having been cross-examined as to a statement, it may be shown by the evidence of the police officer, that he did make a statement favourable to the accused, which the witness denies having made; and, if the statement was at the time reduced into writing by the police officer, the officer would be allowed to refresh his memory by referring to it; but the written statement itself, when it has been reduced into writing (according to the section, it must not be signed by the person making it) cannot be used as direct evidence of what was

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stated by the witness to the police officer. QUEEN-EMPRESS v. TAJ KHAN, **17 A. 57 = A. W.N. 1894, 208** [*R.*, 19 A. 390.]

(1387)—*Ss.* 161 *and* 162—*Statements of witnesses to the police during investigation entered in the special diary—Copies of, when can be granted.*—In the trial of an accused on a charge of criminal breach of trust, the accused applied to the Magistrate for the production of the statements made by certain prosecution witnesses to the police during investigation and entered in the special diary. The Magistrate then ordered the police to produce the statements of those witnesses, but passed the following order: "The statements in no way contradict the evidence given and I return them." *Held*, that the Sessions Judge, who upheld the conviction, ought to send for and consider the statements of the witnesses, and, if he found that there was anything in them, upon which the petitioner would be advantaged by being allowed to cross-examine, he should also re-summon the witnesses and submit them for cross-examination, after supplying copies of their statements to the accused. SALT v. EMPEROR, **36 C. 560 = 2 Ind. Cas. 591**, [*R.*, 26 M.L.J. 182.]

(1388)—Ss. 161, 162—*See* EVIDENCE—REFRESHING MEMORY, 8 C. 154 = 10 C.L.R. 51.

(1389)—Ss. 161, 162—*See* FALSE CHARGE, 31 M. 506 = 9 Cr. L.J. 77 = 18 M.L.J. 573.

(1390)—Ss. 161, 162—False information to police officer—Statements made by persons to corroborate the informant during investigation—Evidentiary value—*See* PENAL CODE, s.182, 35 P.W.R. 1914, Cr. = 227 P.L.R. 1914 = 15 Cr. L.J. 650 = 25 Ind. Cas. 978.

(1391)—Ss. 161, 162, 195, 236 and 437—*See* FALSE EVIDENCE, 1 L.B.R. 101.

(1392)—*Ss.* 161, 162 *and* 476—*Statement made to the Police—Signature on that statement—False denial of signature—Prosecution for false evidence—Legality—S.* 193, *Penal Code.*—The applicant in this case, when examined as a witness, falsely denied that the signature recorded on a statement made before the Police was his own signature. *Held*, that it is contrary to the policy of ss. 161 and 162, Crim. Pro. Code, to prosecute the applicant for so denying his signature. CROWN v. MAHOMED VARIS, **6 S.L.R. 277 = 14 Cr. L.J. 302 = 19 Ind. Cas. 958.**

(1393)—*Ss.* 161, 172—*Police officer making investigation—Statement of witnesses—Right of accused—Police diaries — Privilege.*—Where a police officer, making an investigation under s. 161 of the Crim. Pro. Code, took statements from persons who were afterwards called as witnesses, *held*, that the accused person would be entitled to call for and inspect such documents and cross-examine the witnesses thereon, as such statements would not amount to a portion of the diary. *Held*, also, that an omission to do so would not invalidate the trial, unless it was proved that injustice had been done to the accused by the exclusion of this evidence. BIKAO KHAN v. QUEEN-EMPRESS, **16 C. 610.** [*F.*, 9 C.P.L.R. 33, Cr., U.B.R. 1897—1901, Vol. I, 29; *R.*, 19 A. 390 = A.W.N. 1897, 174, F.B., 20 M. 189 = 7 M.L.J. 167.]

(1394)—*Ss.* 161, 172—*Scope and effect of.*—S. 161 of the Code provides for the taking down of statements of witnesses by the police. Such statements are not privileged, and s. 172 is not intended to include such statements. The mere fact that such statements are inserted in the special diary would not make them privileged. SHERU SHA v. QUEEN-EMPRESS, **20 C. 642.** [*F.*, 16 A.W.N. 193; *R.*, 9 C.P.L.R. 33, Cr.; *Cons.*, 11 Cr.L J. 117 = 5 Ind. Cas. 357 = 13 O.C. 7.]

(1395)—*Ss.* 161, 172.—The statements of witnesses recorded by the police under s. 161 of the Crim. Pro. Code are not privileged. The privilege extends to statements recorded in the diary made under s. 172. SHERU SHA v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 47.**

(1396)—*Ss.* 161 *and* 172 (= *Crim. Pro. Code,* 1882, *ss.* 161, 172).—The statements of witnesses recorded by a police officer, under s. 161 of the Code, form no portion of the police diary referred to in s. 172. There is no enactment protecting such statements and they are admissible in evidence. The mere fact that statements taken under s. 161 are embodied in the diary referred to in s. 172 cannot affect the case in any way. EMPRESS v SADWA TELI, **9 C.P L.R. Cr. 33.** (16 C. 610, 20 C. 642, 16 A. 207, *R.*).

(1397)—*Ss.* 161, 172 (= *Crim. Pro. Code, Act X of* 1882, *ss.* 161, 172)—*Police diaries—Privilege—Practice.*—The privilege given by s. 172 of the Crim. Pro. Code, does not extend to statements taken under s. 161 of the Crim. Pro. Code, but recorded in the diary under s. 172 of the Code. QUEEN-EMPRESS v. RUDR SINGH, **A.W.N. 1896, 193.** 20 C. 642, *F.*) [*R.*, 19 A. 390 = A.W.N. 1897, 174.]

(1398)—*Ss.* 161, 172 *and* 537 (= *ss.* 161, 172, 537, *Code of* 1882)—*Statement made by witnesses before the investigating officer—Right of accused to call for and inspect such statements.*—Under s. 172, a police diary is a privileged document, and neither of the parties has any right to ask for its production. Statements of witnesses taken by an investigating police officer under s. 161 of the Code, and reduced to writing, although misdescribed as "a diary" can be, under certain conditions, used as evidence for the purpose of contradicting those witnesses or the police officer under s. 145 of the Evidence Act. So the accused is entitled to an order for the production of such statements. If a Magistrate refuses to sanction the production of such statements, it is an error on his part which, if it has caused a failure of justice, would make the judgment liable to be set aside. MAHOMED ALI HADJI v. QUEEN-EMPRESS, **16 C. 612, Note.** [*R.*, 19 A. 390 = A.W.N. 1897, 174.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(1399)—*Ss.* 161, 174—*Refusal by witnesses to answer questions put by Police—Whether witnesses punishable for refusal—Penal Code, ss.* 176, 179 *and* 187.—A refusal to answer questions, asked by a Police officer under s. 161, Crim. Pro. Code, is not punishable under ss. 176, 179 and 187, Penal Code. S. 174, Crim. Pro. Code, is intended to be applied to cases in which an inquest is necessary. GUL HASAN SHAH v. KING-EMPEROR, **27 P.R. 1908, Cr. = 9 Cr.L.J. 105 = 40 P.W.R. 1908, Cr.** (23 M. 544, 7 C. 121, F.B., *F.*)

(1400)—Ss. 161, 195—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 11 B. 659.

——**S. 162 (=1882, s. 162; 1872, ss. 119, para 3, 121; 1861, s. 147.)**

See CONFESSION.

See EVIDENCE—STATEMENTS MADE TO POLICE.

(1401)—*S.* 162—*Statements made by witnesses to Police—Corroborative evidence— Evidence Act, s.* 157.—Statements made by witnesses to the Police cannot be admitted as corroborative evidence against the accused. The positive prohibition under s. 162, Crim. Pro. Code, cannot be nullified by reference to s. 157, Evidence Act. IMPERATRIX v. JIJIBHAI GOBIND, **22 B. 596.**

(1402)—*S.* 162—*Statement made by a witness to a Police officer in the course of investigation and recorded by latter--Admissibility in evidence —Evidence Act, s.* 35—*"Record."*—The statement of a witness to a Police officer, under the provisions of s. 162 Crim. Pro. Code, though reduced into writing, is not a public or official document and the writing in question cannot be used as evidence in any proceeding to prove that the statements contained therein were, in fact, made, there being nothing in s. 162, Crim. Pro. Code, which limits the prohibition of the use of such a document as evidence only in the matter of the charge, which is actually under investigation. Such a document is not a "record" within the meaning of s. 35 of the Indian Evidence Act, and the document in question is not, therefore, admissible in evidence under the provisions of that section. ISAB MANDAL v. QUEEN-EMPRESS, **28 C. 348 = 5 C.W.N. 65.** [*R.*, 13 Cr.L.J. 352 = 14 Ind. Cas. 896 = 1912, M.W.N. 549 = 12 M.L.T. 1.]

(1403)—*S.* 162—*Statement made by accused to Police officer—Admissibility.*— A statement made by an accused person to a Police officer is not admissible in evidence against him when he is on his trial for the offence he is charged with. KHUDA BAKSH v. EMPEROR OF INDIA, **11 P.L.R. 1905.**

(1404)—*S.* 162 (=s. 162, *Code of* 1882)—*Statements made to investigating officer — Evidence.*—It is contrary to the provisions of s. 162, Crim. Pro. Code, 1882, to allow the admission in evidence against the accused of a statement made by the chief constable of what the alleged complainant and his wife had said to him. QUEEN-EMPRESS v. HARIBAI, **Rat. Un. Cr. C. 935 = Cr. Rg. 44 of 1897.**

(1405)—*S.* 162—*Police reports—Admissibility in evidence.*—*Held*, that s. 162 of the Crim. Pro. Code, forbids the use of Police reports as evidence against an accused person and prescribes the only way in which they can be properly used. AZAM KHAN v. EMPEROR, **27 P.L.R. 1902.** (71 P.L.R. 1900, Cr., *R.*)

(1406)—*S.* 162—*Bombay City Police Act* (IV *of* 1902), s. 163—*Indian Evidence Act, ss.* 24 *and* 167—*Admissibility in evidence of a statement made by witness to, and taken down in writing by, a Police officer—Confession, admissibility of.*—*Held*, unanimously, that, having regard to s. 162 of the Code of Criminal Procedure (corresponding to s. 63 of the Bombay City Police Act, IV of 1902), a statement, taken down in writing, of a witness for the prosecution, and recorded by a Police officer cannot be admitted or used in evidence against the accused. *Per Russel, Ag. C.J.*—Such a document might be used to contradict the witness, not by putting the statement in as evidence, but by putting it in the hands of the Police officer who has taken down the statement, to refresh his memory therefrom and thereby to enable him to contradict the statement of the witness. *Per Chandavarkar, J.*—The use of the *writing* as evidence against the accused is opposed to the express terms of the section, but the statement contained in the writing could be used to impeach the credit of such witnesses in manner provided by the Indian Evidence Act. *Per Batty, J.*—The writing may be used for the purpose of refreshing the memory of the witness cross-examined as to the fact of the statement either on behalf of the prosecution or on behalf of the defence, provided that it was treated by the prosecution only for the purpose of impeaching the credit or in corroboration of the witness who made it. *Per Beaman, J.*—The statement ought not to have been admitted at all, or its contents to have been allowed to be used by the prosecution, even for the nominal purpose of contradicting the witness. The distinction between the "writing" and the "statement" which is embodied in the writing is a distinction of form rather than of substance. If the "statement" might properly be admitted and used to contradict the prosecution witness who made it, then there is no reason in principle why that statement should not be provable in the usual way and by the best evidence of it, namely, the written record of it. S. 162 plainly constitutes an exception to the ordinary rule of evidence. The proviso engrafts an exception upon the exception. Before the present section was amended, statements made by witnesses to the Police and recorded by the Police might not be used as evidence against the accused, but there was nothing to prevent them from being used in favour of the accused. He can only obtain access to written statements made by the prosecution witnesses to the Police, at the

Crim. Pro. Code (Act V of 1898)—*continued.*

discretion of the Court. It is no longer a matter of right. The proviso is clearly limited to the purpose of this single concession, in derogation of the universal prohibition contained in the body of the section, to the accused. He can get a copy of the recorded statements of the witnesses for the prosecution, for the only purpose of breaking down the evidence of the prosecution witnesses. The proviso does not cover the case of a witness for the defence, whose statement may have been recorded by a policeman, nor allows the prosecution to impeach the credit of such a witness by examining him upon any written statements he may have made to the Police. *A fortiori* the proviso could never have been intended to allow the prosecution to impeach the credit of its own witnesses for its own purposes, and against the wish of the accused, by reference to the Police testimony. EMPEROR v. NARAYAN RAGHUNATHAN PATKI, **9 Bom. L.R. 789, F.B. = 6 Cr. L J. 164 = 2 M.L.T. 414 = 32 B. 111.** [*F.*, 11 Cr. L.J. 117 = 5 Ind. Cas. 357 = 13 O.C. 7; *Rel.*, 11 Cr.L.J. 498 = 7 Ind.Cas. 601 = 4 S.L. R. 38; *R.*, 36 C. 281 = 9 C.L.J. 198 = 13 C.W.N. 197 = 5 M.L.T 97 = 1 Ind. Cas. 970, 35 M. 397 = 13 Cr.L.J. 352 = 14 Ind. Cas. 896 = 12 M.L. T. 1 = 1912 M.W.N. 549, 7 A.L.J. 468 = 11 Cr. L J. 235 = 6 Ind. Cas. 101; 16 Bom. L.R 603; 22 M.L.J. 490 = 1912 M.W.N. 207, 14 Ind. Cas. 849 = 11 M.L.T. Sup, 1 = 35 M. 247 = 13 Cr. L.J. 305.]

(1407)—*S.* 162—*Indian Evidence Act, s.* 157—*Statements made to Police when reduced to writing are not admissible—Police officer can depose to the statements.*—In the course of a Police investigation a witness made a statement to the Police that she saw a boy near the scene of murder immediately after the offence was committed. She denied the presence of the boy when she was examined before the committing Magistrate. At the trial she admitted that she had seen the boy at the scene of the offence. The statement she had made to the Police officer was sought to be proved by the sworn testimony of the Police officer that she had made it to him. This testimony was objected to on the ground that it offended against s. 162 of the Crim. Pro Code. *Held*, that the Police officer could, under s. 162 of the Crim. Pro. Code, be allowed to depose to what the witness had said to him for the purpose of corroborating what she said before the Sessions Judge. Per *Shah, J*—Looking to the plain language of s. 162 of the Crim. Pro. Code, the *writing* only is excluded from evidence, but the right to prove any *statement* to the Police by oral evidence to corroborate the testimony of any witness is not taken away by the section. EMPEROR v. HANMARADDI RAMARADDI, **16 Bom.L R. 603 = 2 Bom. Cr. Cas. 234 = 15 Cr. L.J. 690 = 26 Ind. Cas. 138.**

(1408)—*S.* 162—*Right of accused to get copies of statements made to Police.*—The accused is not entitled, as of right, to be furnished with any copies of statements made to the Police, and it is only if the Magistrate considers it expedient in the interests of justice to grant such copies that the accused can obtain or use such copies. The argument that, unless the Magistrate says that it is *not expedient* in the interests of justice to grant copies to the accused, the accused is entitled to get such copies or use them as evidence, cannot be accepted. *In re* THIRUVENGADA MUDALI. **26 M.L.J. 182 = 15 Cr. L.J. 289 = 23 Ind. Cas. 497 = 1914 M. W.N. 484.** (33 C. 1023, 36 C 560, *R.*)

(1409)—*S.* 162—*Statements not amounting to confession made to Police—Admissibility in evidence—Proof—Scope of s.* 162, *Crim, Pro. Code—Ss.* 21 *and* 27, *Evidence Act, not affected by s.* 162, *Crim. Pro. Code.*—Statements made to the Police which, though reduced to writing, are not confessions within the meaning of s. 25, Evidence Act, are admissible in evidence, on being proved by oral evidence. (3 N.L.R. 51; 13 O.C. 7, 6 B. 34 and 37 C. 467, *Disc.*) The provisions of s. 162, Crim. Pro. Code, do not affect those of ss. 21 and 27, Evidence Act. S. 162, Crim. Pro. Code, refers only to statements made by witnesses, and not to statements made by accused persons as such. Scope of the term "confession" considered. GANPATI v. EMPEROR. **6 N.L.R. 180 = 8 Ind. Cas. 1181 = 12 Cr. L.J. 60.**

(1410)—S. 162—*See* BOM. ACT IV OF 1902, s. 63, 9 Bom. L.R. 789, F.B. = 6 Cr. L.J. 164 = 2 M.L.T. 414 = 32 B. 111.

(1411)—S. 162—Admissibility of, taken by a Head Constable—*See* DYING DECLARATION, 7 C.P.L.R. Cr. 14.

(1412)—S. 162—Dying declaration — Not signed by deponent—Mode of proof—*See* EVIDENCE—DYING DECLARATION, 10 N.L.R. 19 = 15 Cr. L.J. 243 = 23 Ind. Cas. 195.

(1413)—S. 162—Oral evidence of statement to a Police officer under s. 162—Admissibility—*See* EVIDENCE ACT, 1872, ss. 25, 26. 114. *Ill.* (*b*), 133, 157, 1912 M.W.N. 549 = 12 M.L.T. 1 = 13 Cr.L.J. 352 = 14 Ind. Cas. 896 = 35 M. 397.

(1414)—S. 162—Police diaries—Evidentiary value—*See* EVIDENCE ACT, 1872, s. 27, 15 P. W.R. 1913, Cr. = 171 P.L.R. 1913 = 19 Ind. Cas. 190 = 14 Cr. L.J. 190.

(1415)— S. 162—*See* EVIDENCE ACT, 1872, ss. 155, 159, 11 B. 657.

(1416)—S. 162—*See* EVIDENCE ACT, 1872, s. 159, 4 S.L.R. 38, Cr. = 7 Ind. Cas. 38 = 11 Cr. L.J. 498.

(1417)—S. 162—*See* PENAL CODE, s. 211, 20 M.L.J. 132 = 5 Ind. Cas. 908 = 11 Cr. L.J. 286 = 8 M.L.T. 87.

(1418)—S 162— *See* POLICE INVESTIGATION, Rat. Un. Cr. C. 488 = Cr. Rg. 57 of 1889.

(1419)—S. 162—*See* POLICE OFFICER, 15 P.R. 1886, Cr., 5 P.R. 1891, Cr.

(1420)—S. 162—*See* Nos. 1325, 1342, 1363, and 1384 to 1392, *supra.*

Crim. Pro. Code (Act V of 1898)—*continued.*

(1421)—*Ss.* 162 *and* 164—*Authority of police officer to have witness's statement recorded by Magistrate not competent to deal with the case.* —A police officer has no authority to place a witness before a Local Magistrate not competent to deal with the case and to get the statement recorded under s. 164. Such course will defeat the object of s. 162, which declares that a police officer shall not record any statement made to him by a person under examination. Where the police officer has reasons to believe that the witness is likely to be gained over by the accused, the proper course is to send the accused and the witness to the Magistrate having jurisdiction without delay. EMPEROR v. NURI SHEIKH, **29 C. 483=6 C.W.N. 596.** [*R.*, 7 C.L.J. 246=7 Cr. L.J. 315.]

(1422)—*Ss.* 162, 164—*Statements recorded by Magistrate—Right of accused person to have copies of such statements—Evidence Act*, ss. 74, 76.—Before the commencement of the preliminary inquiry against an accused person under remand, he is not entitled, either under the general principles of the common law or under the Code, to copies of statements of various persons recorded by a Magistrate, under ss. 162 and 164 of the Code. The question, whether he is entitled to such copies, cannot be determined with reference to the question, whether the statements are public documents within the definition of s. 74 of the Evidence Act, because s. 76 only provides the means of proof of public documents which any person has the right to inspect; and whether any person has a right to inspect any particular public document is a question not dealt with by the Evidence Act and altogether outside its scope. EMPEROR v. MUTHIA SWAMIYAR, **30 M. 466=17 M. L.J. 471=3 M.L T. 14=6 Cr. L.J. 346.** (20 M. 189, *Dist.*).

(1423)—*Ss.* 162, 172—*Police diaries—Special diary—Witnesses, statements of, recorded in special diary—Effect—Production of statements for cross-examining witnesses—Proper procedure —Police officer, if can be compelled to refresh memory from such statements—Use of diaries by Court—Rioting, abetment of—Penal Code* (*Act* XLV *of* 1860), *ss.* 148, 114.—No oral statements of witnesses should be recorded in the 'special' diary kept by a police officer under s. 172 of the Code of Criminal Procedure. The practice, in the mofussil, of incorporating such statements in the 'special' diary condemned. Whether incorporated or not, in the 'special' diary, records of statements of witnesses taken by the police fall under s. 162, Crim. Pro. Code, and are liable to be produced, but only under the conditions laid down under that section, *i.e.*, the accused may, at the time the witness appears before the Court, ask the Court to refer to them, and the Court may, if it thinks expedient, in the ends of justice, furnish him with copies of such statements for the purpose of impeaching the credit of the witness. But the police officer, who recorded the statements, cannot be cross-examined under s. 145 or s. 161 of the Evidence Act, with regard to such statements, such cross-examination being allowable only with regard to the entries properly recorded in the diary kept under s. 172, Crim. Pro. Code, if the police officer refers to such entries for the purpose of refreshing his memory. It is doubtful whether a police officer can refresh his memory, as to statements recorded by him under s. 162, Crim. Pro. Code, unless the writing is already in and had been put to the witness, who is alleged to have made the statements. In this case, the Court had not been moved, under s. 162, Crim. Pro. Code, when the prosecution witness, whom it was subsequently desired to test by reference to his statements recorded in the special diary, appeared in the box; but, after all the prosecution witnesses had been examined, the defence with the above object, applied to the Court to summon the Sub-Inspector of Police to appear with his diary at a witness for the defence, *Held*, that the application could not be granted and was rightly refused. But in such a case, the Court ought to send for and peruse the statements recorded in the diary. And if, on such perusal, it thinks that it would be expedient in the ends of justice to allow the accused to use such statements for the purpose of impeaching the credit of the witness, it would be open to the Court to furnish the accused with copies of the statements even at such a late stage, and to recall the witness, and permit further cross-examination. But nothing but the clearest conviction in the mind of the Court that a miscarriage of justice would otherwise result would justify the adoption of such an unusual and highly inconvenient step. *Quære* —Whether there can be "abetment of a riot." DADAN GAZI v. EMPEROR, **33 C. 1023=10 C.W.N. 890=4 Cr. L.J. 79.** (8 C. 154, 8 C. 739, *R.*) [*F.*, 11 Cr. L.J. 117=5 Ind. Cas. 357 =13 O C. 7; *R.*, 35 M. 397=1912 M.W.N. 549 =12 M.L.T. 1=13 Cr. L.J. 352=14 Ind. Cas. 896, 22 M.L.J. 490=1912 M.W N. 207=14 Ind. Cas. 849=11 M.L.T. Sup. 1=35 M. 247= 13 Cr. L.J. 305, 15 Cr. L.J. 289=26 M.L.J. 182=23 Ind. Cas. 497.]

(1424)—*Ss.* 162, 172 (=*Crim. Pro. Code*, 1882, *ss.* 162 *and* 172)—*Case-diary, admissibility of statements in.*—Statements of witnesses appearing in the case-diary of the police, cannot be used as corroborative evidence contrary to the provisions of ss. 162 and 172, Crim. Pro. Code. If it is intended to make use of the statements of witnesses as corroborative evidence, the police officer who took them down should be called to give evidence of their purport, and of the time when, and the circumstances in which, they were made, refreshing his memory from the case-diary if he desired to do so. EMPRESS v. SUBHANI, **7 C.P.L.R.Cr. 22.**

(1425)—*Ss.* 162, 172—*Evidence Act, ss.* 157 *and* 161—*Statements made by a witness to a police officer, admission in evidence of—Refreshing of memory by police officer from statements recorded by him—Crim. Pro. Code, s.* 172.—*Held*, that the express provisions of s. 162 of the Code of Criminal Procedure override the general

Crim. Pro. Code (Act V of 1898)—*continued.*

provisions of s. 157 of the Indian Evidence Act. *Held* further, that the written record of statements made by a witness to a police officer cannot be used for the purpose of corroborating the testimony of those witnesses. Nor can the police officer be allowed to depose to the statements made to him by refreshing his memory by reference to the record made by him of such statements. BHULAI SINGH v. KING-EMPEROR, **13 O.C. 7=5 Ind. Cas. 357=11 Cr.L.J. 117.** (32 B. 111, 9 Bom. L.R. 895, 36 C. 281, 33 C. 101, *R.*) [*R.*, 11 Cr. L.J. 235=6 Ind. Cas. 101=7 A.L.J. 468, 12 Cr. L.J. 60=8 Ind. Cas. 1181=6 N.L.R. 180.]

(1426)—*Ss.* 162, 172—*Police diaries, use of, as evidence under ss.* 162 *and* 172.—*Held*, that police diaries are to be used not as evidence but "to aid the Court in an enquiry or a trial." The meaning of this phrase in s. 172, Crim. Pro. Code, is that the Court may see from the police diaries what is the general trend of evidence to be given and what witnesses are important and what not, and whether witnesses produced give evidence as to all the facts which they formerly professed to know. *Held* also, that it is contrary to the intention of the Legislature that conclusions should be drawn from statements recorded in police diaries but not recorded in Court. Statements made to police officers should not be used as evidence except at the request of the accused to impeach the credit of the prosecution witnesses. ASLAM v. KING-EMPEROR, **1 P.W.R. 1914 (N.W.F.P.), Cr.**

(1427)—Ss. 162, 172—*See* POLICE DIARY, 17 P.R. 1894, Cr.

(1428) — *Ss.* 162, 173 — *Statements under s.* 162—*Accused whether entitled to copies of such statements.*—There is no provision similar to s. 173 of the Crim. Pro. Code, which prohibits statements made under s. 162 to be used as evidence; if a witness at the preliminary enquiry has made previously a statement under s. 162, such statement may be put in to contradict him, when it will become part of the record, and the accused will be entitled to a copy after commitment. EMPEROR v. MUTHIA SWAMIYAR, **30 M. 466=17 M.L.J. 471=3 M.L.T. 14=6 Cr. L.J. 346.**

(1429)—*Ss.* 162, 238—*Offence of abduction from lawful guardianship in order to commit murder, whether a minor offence.*—Where a person was charged with the murder of a child, but the evidence disclosed that the accused abducted the child from lawful guardianship in order that it might be murdered, *held* that the accused could not be convicted of the latter offence, as he was not charged with that offence, and as the offence could not be considered a minor offence with the meaning of s. 238, Crim. Pro. Code. *In re* SAVARI AYEE, **2 Weir 302.**

(1430)—*Ss.* 162 *and* 367—*Judgment—Heads of charge to jury when to be recorded—Evidence before Police, if admissible as corroboration—Evidence Act* (I *of* 1872), s. 157—*Misdirection—Depositions, if must be read out to jury.*—The heads of charge to the jury should be written out by the Judge as soon as possible after its delivery and while the facts are still fresh in his mind. S. 377 of the Code does not make it obligatory that the charge should be written out before delivery. S. 162 of the Code does not control s. 157 of the Evidence Act. Oral evidence may be given of the statement made to the Police by a witness, in order to corroborate him at the trial. It is not incumbent on the Judge to read out the whole of the depositions of witnesses to the jury. FANINDRA NATH BANERJEE v. EMPEROR, **36 C. 281= 9 C.L.J. 199=13 C.W.N 197=5 M.L.T. 97=1 Ind. Cas. 970=9 Cr. L.J. 452** (2 C.W.N. 702, *D.*; 32 B. 111, *Diss.*; 11 B H.C. 120, 8 C. 154, *R.*) [*F.*, 11 Cr. L.J. 235=6 Ind. Cas. 101=7 A.L.J. 468; *R.*, 36 C. 659=13 C.W.N. 680=10 Cr. L. J. 186=2 Ind. Cas. 841; 35 M. 247=22 M.L.J. 490=11 M.L.T. 1; Sup.=1912 M.W.N. 207= 14 Ind. Cas. 849=13 Cr. L.J. 305; 35 M. 397= 12 M.L.T. 1=1912 M.W.N. 549=14 Ind. Cas. 896=13 Cr. L.J. 352, 16 Bom. L.R. 603; *Cons.*, 11 Cr. L.J 117=5 Ind. Cas. 357=13 O.C. 7.]

(1431)—Ss. 162 and 537—*See* EVIDENCE—STATEMENTS MADE TO POLICE, 9 Bom. L.R. 366=5 Cr. L.J. 353.

——**S. 163 (=1882, s. 163; 1872, ss. 120, 184; 1861, ss. 146, 98).**

(1432)—S. 163—*See* CONFESSION—CONFESSION TO MAGISTRATES — ADMISSIBILITY—RECORD OF CONFESSIONS, L.B.R. 1872—1892, 289.

(1433)—S. 163—*See* CONFESSION—CONFESSIONS MADE TO POLICE OFFICERS, 8 P R. 1882, Cr.

(1434)—S. 163—*See* EVIDENCE ACT, 1872, ss. 8, 24 to 27, 6 A.L.J. 839, F.B.

(1435)—S. 163—*See* No. 1342, *supra.*

(1436)—*Ss.* 163, 61 (=*Crim. Pro.Code,* 1861, *ss.* 146, 152)—*Remand of accused for more than 24 hours, when allowable.*—Circumstances may exist in which a special order of the nature contemplated in s. 152, Crim. Pro. Code, may properly be passed. For instance, if, in a case, the Police were enquiring into, the suspected or confessing person had voluntarily offered to conduct the Police to a place where the stolen property would be found, and such offer could not be carried into execution within the limited period of 24 hours, the power which the above-mentioned section confers on a Mgistrate could be lawfully exercised. But to return accused persons to the Police, so that they might be forced to give a clue to an offence, is to abuse the provisions of s. 152, with a view to the breach of the injunctions of s. 146. QUEEN v. RUGONATH PERSHAD, **3 N.W.P. 275.**

Crim. Pro. Code (Act V of 1898)—*continued.*

——**S. 164 (=1882, s. 164 ; 1872, s. 122), and Explanation, new.**

See CONFESSION.

(1437)—*S.* 164—*Statements of witnesses recorded under the section, Magistrate, when to record.*—The evidence of witnesses who are sent up by the police for the purpose of having their statements recorded under s. 164, Crim. Pro. Code, and who have been presumably in police custody until their production before the Magistrate, should not be recorded by such Magistrate, unless he has some assurance that their attendance and statements were voluntary. KING-EMPEROR v. BHUT NATH GHOSE, **7 C.W.N. 345.** (4 C.W.N. 49, 4 C.W.N. 129=27 C. 3, *F.*)

(1438)—*S.* 164—*Statements under, admissibility of.*—The dead body of a boy was found buried beneath a wall of the accused. One of the persons suspected of murder absconded. The accused was examined as a witness under s. 164 and deposed that the absconder had committed the crime. The accused and the absconder were subsequently tried, and the former withdrew her statement, saying that she was coerced into making it. *Held*, that her statement was not admissible in evidence against the other accused, nor did that statement amount to a confession of her own guilt. SRI RAM AND CHOTI v. EMPEROR, **2 A.L.J. 100=2 Cr. L.J. 59.**

(1439)—*S.* 164—*Duty of Magistrate to observe the provisions of section.*—Under s. 164, a Magistrate is bound to make a memorandum at the foot of the confession to the following effect :—" I believe that this confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him," and that should be signed by the Magistrate. The Magistrate must, if such confessions are to be received, observe the provisions of the Code. It would not be fair to the prisoners to receive a confession, unless the Magistrate or the Court is perfectly assured that it was voluntarily made. *In re* KUTTUBADI NARASINGA, **2 Weir 140.**

(1440)—*S.* 164 (=*Crim. Pro. Code*, 1872, *s.* 122)—*Procedure to be followed by Magistrate under.*—The proper course for a Magistrate to pursue when an accused person is brought under the above section of the Code before him is to ask him, if he wishes to make any statement or confession. If he says he does not, the Magistrate should not proceed to interrogate him. If he does, the Magistrate should write down the statement or confession (as the case may be) and ask the accused such questions as may be necessary to show clearly or ascertain clearly what his meaning is. The examination of the accused must not be made with a view to eliciting, by constant questions, the truth out of his mouth, as though he were a witness. EMPRESS v. BAJI, **5 C.P.L.R. Cr. 13.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1441)—*S.* 164—*Statement of an accused other than a confession, record of.*—It is neither expressed nor implied in the section that the statement of an accused person cannot be recorded, unless it is a confession. The distinction made in the section is between statements that are confessions and statements that are not, and not between the persons by whom statements of either character are made, the object being to prescribe different modes of recording. It is discretional with a Magistrate to act under s. 164 and prepare a record. LALU v. EMPRESS, **2 P.R. 1893, Cr.**

(1442)—*S.* 164—*False evidence—Penal Code, s.* 193—*Prosecution in alternative in respect of statements made under s.* 164 *of the Crim. Pro. Code, and subsequently as a witness in Court.*—A complaint was made to the police charging T. S. and a third person with having committed an offence under s. 420 of the Indian Penal Code. During the investigation, T was examined on oath by a Magistrate under the provisions of s. 164 of the Code of Criminal Procedure. As the result of the police investigation, S was placed on his trial, and T appeared as a prosecution witness and made a statement which appeared to the Court to be contradictory to his statement previously made under s. 164. *Held* that there was no legal objection, if the two statements were in fact contradictory, to the prosecution of T on a charge in the alternative under s. 193 of the Indian Penal Code. EMPEROR v. TASADDUK HUSAIN, **A.W.N. 1908, 73=7 Cr. L.J. 302.**

(1443)—*S.* 164 (=*Crim. Pro. Code*, 1872, *s.* 122)—*Recording of confession by Magistrate.*—A Magistrate is not debarred from recording the confession of an accused person under s. 122 of the Crim. Pro. Code, by the circumstance that it may afterwards be that Magistrate's duty to hold a preliminary inquiry under Chap. XV of the Code. THANA MAGISTRATE'S LETTER, No. 767, **Rat. Un. Cr. C. 121.**

(1444)—*S.* 164—*Confession—Care necessary in recording confessions—Questions as to ill treatment—Magistrate's satisfaction as to voluntariness of confession—Statements in confession inconsitent with medical evidence.*—Great care and circumspection are necessary in recording a confession under s. 164, Crim. Pro. Code. It is necessary to record the questions put to the accused to ascertain whether the confession was voluntary, to tell him that after his confession he will not have to go back to Police custody, to warn him of the consequence which will ensue if he falsely implicates himself in the hope of release and to ask him whether the Police or any other person has subjected him to any ill-treatment. No hard and fast rule can or should be laid down as to the procedure which should be adopted when an accused person is placed before a Magistrate for the recording of a confession under s. 164, Crim. Pro. Code, but it is not sufficient to put one comprehensive question as to the nature of the confession or to make a note at the commencement of the record of the

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confession that the accused has been warned not to confess through any fear or inducement and that the Police of the *thana* have been removed from the Court room. A Magistrate ought, by putting questions which occur to him, to make himself conscientiously satisfied that the man is a free agent and the confession is voluntary and has not been procured by threats or inducements. Where in a murder case this was not done by the Magistrate recording confessions and they were retracted on trial and the statements in the confessions as to the manner in which the murder was committed were inconsistent with medical evidence, the accused were acquitted. KANDHAI v. EMPEROR, **15 Cr. L.J. 633 = 25 Ind. Cas. 833.**

(1445)—*S.* 164 (=*Crim. Pro. Code,* 1872, *s.* 122)—*Confessions made before a Court outside British India—Admissibility.*—A confession made before a Court outside British India, even if it is certified in accordance with s. 122 of the Code, cannot be used as evidence, unless it is sworn to like confessions made to private individuals. *In re* CHINNA VENKADU, **2 Weir 125.**

(1446)—*S.* 164—*Confession of accused—Accused able to write—When thumb impression is a signature—Act* X *of* 1897 (*General Clauses*), *s.* 3, *cl.* 52.—Under s. 3, cl. 52 of the General Clauses Act, a mark is to be considered a signature only in the case of a person unable to write his name. The confession of an accused person, who is able to write, not signed by him, but having a thumb mark, is not a valid confession under s. 164, as the thumb mark, in such a case, does not amount to a signature. SADANANDA PAL v. EMPEROR, **32 C. 550 = 2 Cr. L.J. 405.**

(1447)—*S.* 164—*Confession made after improper questions by Magistrate.*—Where a Magistrate asked a person who was charged with an offence "what offence are you going to confess," instead of ascertaining whether the accused wished to say anything at all, *held*, that the Magistrate had not acted properly. *In re* CHOLAKEL KOYA, **2 Weir 507.**

(1448)—*S.* 164 (=*Crim. Pro. Code,* 1882, *s.* 164)—*Questions tending to incriminate—Confessions—Duty of Magistrate.*—Certain questions put to the accused persons by the Magistrate, *e.g.*, "so you had better relate what you know about the fact," were held to be improper, on the ground that they tended to incriminate the accused. A Magistrate should ascertain whether a confessional statement is made voluntarily, at the beginning of the statement, and not at the end. *In re* RAYAPPAN, **2 Weir 136.**

(1449)—*S.* 164 (=*Crim. Pro. Code,* 1882, *s.* 164)—*Confession—Improper inducement by a Magistrate—Improper questions.*—Where a Magistrate questioned an accused person thus:—"It appears that you have committed murder and absconded by escaping from custody; you have now come; what have you to say?" *held*, that the question was extremely improper, and the statement made by the accused thereupon was held to be inadmissible on the ground that such a statement could not be treated as voluntarily made. *In re* PISARI TURAKA MADAR SAHIB, **2 Weir 137 = 2 Weir 582.**

(1450)—*S.* 164 (=*Crim. Pro. Code,* 1882, *s.* 164)—*Confession—Improper inducement by a Magistrate.*—Where after the prisoner had made a long confessional statement, he was told by the Magistrate that if he stated all that he knew, he would then be examined as an approver and a witness, *held*, that the conduct of the Magistrate was highly improper. *In re* KOSA GOVINDAN, **2 Weir 137.**

(1451)—*S.* 164—*Oral confession to Magistrate—No provision for admission in evidence of confession not recorded in compliance with law.*—There is no provision for the admission in evidence of a confession made to a Magistrate, unless it is recorded in the manner prescribed by law; and even if such confession may, under special circumstances, be proved otherwise, where the confession of the accused is shown to have been made under inducement, such fact deprives the evidence of its value. A conviction based on such evidence would be reversed. NGA MYAT KYAN v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 41.**

(1452)—*S.* 164—*Recording statement of accused before evidence for prosecution is taken.*—The above section does not empower the Judge to record the statement of the accused before any evidence for the prosecution is taken down, and criminal proceedings should not be commenced by subjecting the accused, who has not offered to make a confession, to a searching cross-examination. CHEDAN v. KING-EMPEROR, **7 O.C. 191.**

(1453)—*S.* 164—*Statement of witness taken behind the back of the accused, admissibility of.*—Where the statements of certain prosecution witnesses were taken by a Tahsildar-Magistrate under s. 164 of the Code of Criminal Procedure behind the back of the accused and in respect of which the accused had no opportunity of cross-examining, *held*, that they could not be used as evidence against the prisoner. They were admissible only for the purpose of contradicting the statements made by the witnesses in Court and were not admissible for any other purpose. PUTTU v. KING-EMPEROR, **17 O.C. 353.**

(1454)—*S.* 164—*Case triable by Court of Session—Third-class Magistrate recording statement under s.* 164—*Contradictory statement before a qualified Magistrate in the preliminary enquiry—False evidence—Alternative charge—Penal Code, ss.* 191, 193.—A third-class Magistrate, not being empowered to commit for trial, cannot deal judicially with any stage of the proceedings in a case exclusively triable by a Court of Sessions. Where the Magistrate records a statement under s. 164 of the Crim. Pro. Code in a case triable exclusively by a Court of Sessions, the statement is not evidence in a stage of judicial proceeding within the

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meaning of ss. 191 and 193, Penal Code. A statement so made and contradicted afterwards, before the Magistrate having jurisdiction and exercising it in the preliminary enquiry, will not furnish a basis for an alternative charge of giving false evidence in a judicial proceeding. EMPEROR v. SHETTEPA SATAPA MUDENAVAR, **14 Bom L.R 753=16 Ind. Cas. 517=13 Cr. L J. 709=1 Bom. Cr. Cas. 167.** (1 B. 702, *F.*)

(1455)—S. 164—*See* ACT X OF 1873, 2 P.R. 1893, Cr.

(1456)—S. 164—*See* ACT X OF 1873, ss. 4, 5, 14, 16 M. 421=1 Weir 175=2 Weir 142=1 Weir 822.

(1457)—S. 164—*See* ACT X OF 1873, s. 5, 10 C.P.L.R. Cr. 16.

(1458)—S. 164—*See* APPROVER, 12 O.C. 418.

(1459)—S. 164—*See* CHARGE TO JURY—MISDIRECTION. 7 C.L.J. 246=7 Cr. L.J. 315.

(1460)—S. 164—*See* FALSE EVIDENCE, A. W.N. 1899, 39.

(1461)—S. 164—*See* Nos. 1330, 1342, 1421, 1422, *supra* and 3026, 4694, *infra.*

(1462)—*Ss.* 164, 103—*Confessions—Magistrate taking part in Police investigation—Duty to record confessions*—Panchnama—*List prepared under s.* 103—*Evidence—Relevancy.*—Under the Code of Criminal Procedure, it is the duty of the Magistrate, who directs a Police investigation or who holds a preliminary enquiry, to record statements under s. 164. It is his duty to see that the accused confessed voluntarily and to record the confessions truly. The fact that the Magistrate took part in the Police investigation does not disqualify him for performing these duties. But the Magistrate's personal relations with the investigating Police should not be such that the accused, who had been forced to make a false confession by the Police, would think it of no avail to tell the truth to the Magistrate. The *panchnama* so far as it is a list of property found and places searched under s. 103, Crim. Pro. Code, should be proved and established as relevant evidence of these matters. IMPERATOR v. MAISRI, **5 S.L.R 81 =12 Ind. Cas. 209=12 Cr. L.J. 489.** (4 S.L. R. 38, *R., and Expl.*)

(1463)—*Ss.* 164, 167, 533 — *Confession—Certificate of voluntariness omitted — Defect cured by evidence of Magistrate — Detention of accused during investigation —Nearest Magistrate to order detention.*—Where a Magistrate inadvertently omits to certify the voluntariness of a confession recorded by him under s. 164, Crim. Pro. Code, the defect may be cured by the evidence of the Magistrate. If detention of an accused person is necessary during investigation, he should be taken to the nearest Magistrate, who, whether he has or has not jurisdiction to try the case, can authorise detention of the accused in such custody as he thinks fit. RAMSANEHI v. EMPEROR, **9 Ind. Cas. 148=12 Cr. L.J. 15.**

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(1464)—*Ss.* 164, 191 (c), 202 — *Magistrate exceeding jurisdiction in recording statements on oath—Deponent occupying the position of an accused—Contradictory statement—Sanction to prosecute for perjury—Legality.*—Where certain statements were wrongly recorded on oath under s. 164, Crim. Pro. Code, and the statements were made as to a matter in which the deponents occupied the position of accused persons, *held* that such irregular proceedings should not form the basis of a prosecution for false evidence by reason of such statements. IMPERATOR v. SHOUKATMAL, **7 S L.R. 73=21 Ind. Cas. 472 =14 Cr. L.J. 600.**

(1465)—Ss. 164, 193 and 537—*See* CONFESSION—RETRACTED CONFESSIONS, L.B.R. 1893—1900, 8.

(1466)—*Ss.* 164, 202 *and* 364—*Enquiry under s.* 202—*Statement of the person complained against—Admissibility.*—Where during an enquiry under s. 202 of the Code, the Magistrate recorded a statement made by a person against whom the complaint was filed, *held* that the statement cannot be regarded as having been recorded under s. 164 or s. 364 of the Code. It was a statement made during an enquiry under s. 20 of the Code when the person was not in the position of an accused person and as such cannot be admitted in evidence against the accused. SAT NARAIN TEWARI v. EMPEROR, **32 C. 1085=10 C.W.N. 51=3 Cr.L.J. 138.**

(1467)—*Ss.* 164 *and* 288—*Recording statement of witnesses with a view to fix them to such statements—Subsequent withdrawal—Effect.*—S. 164 does not enable a Police officer, who has obtained a statement incriminating the accused made by some person, to send such person to a Magistrate, practically under custody, to have him examined and his statements recorded before the judicial enquiry or trial for fixing him down to that statements in the subsequent judicial proceeding ; and the law does not require that, in the case of a witness so examined, there should be a certificate after proper enquiry that it has been voluntarily made. The statement so obtained raises a suspicion that it has not been voluntarily made. If such statement is retracted at the Sessions trial the Sessions Judge is not justified in admitting such evidence, under s. 288, without making some enquiry into the truth of the reasons alleged for retracting from the statement. QUEEN EMPRESS v. JADUB DAS, **27 C. 295=4 C.W.N. 129.** [*F.*, 7 C.W.N. 345.]

(1468)—*Ss.* 164, 289, 342, 364, 367 *and* 533 —*Plea, withdrawal of—Entry of plea—Judgment in Sessions case—Charge to assessors, incorporation in judgment—Legality—Confession of accused—Recording of confession—Narrative form—Language of record—When to be signed by accused—Police officer—Illegality—Irregularity—Examination of accused, in Court of Session, not imperative.*—A Sessions Judge should not incorporate in, and treat as part of, his judgment, his summing up of the case to the assessors ; but if he does so, it is not an

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illegality. It is not absclutely necessary for a Magistrate recording the confession of an accused person to put down all the questions put by him to the accused, if such questions were merely formal. The confession is not rendered inadmissible, if the accused has not been prejudiced, merely because it is taken down in narrative form. The irregularity, if any, is cured by the examination of the Magistrate, under s. 533, Crim. Pro. Code. It is not necessary for the Magistrate to warn the accused that he was speaking to a Magistrate if from the circumstances of the case, the accused must have known that he was speaking before one. S. 164, Crim. Pro. Code, absolutely prohibits the employment of a Police officer to take down the confession of an accused person. A Police officer cannot be employed even as a scribe to take down such a confession. The statement of the Magistrate in his examination under s. 533 must be taken as conclusive that it was impracticable to record it in the language in which it was made. It is not absolutely illegal to take the signature of the accused to his confession *immediately* after it is recorded. It is not obligatory for the Sessions Judge to examine the accused under s. 342, Crim. Pro. Code, more specially where the accused has not challenged the evidence. S. 289 of the Code makes such examination optional with the Judge, not imperative. If, in an examination of the accused by the Magistrate, some of the questions put are considered inquisitorial or in the nature of a cross-examination, that does not make the whole statement inadmissible. *Semble*, where a plea of "guilty" is not accepted, a plea of "not guilty" ought to be entered before the trial is proceeded with. KHUDIRAM BOSE v. EMPEROR, **9 C.L.J. 55.** (2 C.W.N. 702, 8 C.W.N. 22, *D.*; 14 C. 539, *F.*)

(1469)—*Ss.* 164, 342—*Power of Magistrate to examine the accused during a Police investigation.*—Under s. 164, in the course of a Police investgation, the Magistrate is entitled to record any voluntary statement made by the accused person, but he is not entitled to examine the accused person in respect of the facts of the case. GYA SINGH v. MOHAMED SOLIMAN, **5 C.W.N. 864.**

(1470)—*Ss,* 164, 342, 364 *and* 533—*Evidence Act, s.* 80—*Statement of the accused recorded in English and not in Vernacular—Admissibility in evidence of such statements.*—The Sessions Judge, who tried a dacoity case, admitted in evidence statements in the nature of confessions recorded in English by a Joint Magistrate under the provisions of s. 164, Crim. Pro. Code. There was no evidence that it was not practicable to record them in the language in which they were made, and the Joint Magistrate was not examined as a witness, nor was evidence taken that the accused duly made the statements so recorded—*Held* that, as it could not be presumed without some evidence that the statements had to be recorded in English as they could not be recorded in the language in which they were made, there was no justification for their being recorded in English, and no presumption under s. 80 of the Evidence Act could be made in respect of the record made in English; and, as no evidence was taken to prove that the accused had actually made those statements, the Sessions Judge was wrong in admitting such a record of the statements against the accused. BAWA v. KING-EMPEROR, **10 O.C. 112 = 6 Cr.L.J. 94.**

(1471)—*Ss.* 164 *and* 350—*Confession made on inducement—Evidence Act, s.* 24—*Commitment by Magistrate on evidence partly taken by him and partly by another who had not ceased to exercise jurisdiction, irregularity of.*—Under s. 164, Crim. Pro. Code, and s. 24, Evidence Act, a confession made under an inducement to confess is not a voluntary confession, and, as such, inadmissible in evidence. A commitment by a Magistrate on evidence partly taken by him and partly by another, who had not ceased to exercise jurisdiction, is irregular and s. 350, Crim. Pro. Code, is not applicable to such a case. Witnesses for the prosecution examined by the committing Magistrate must be tendered for cross-examination at the trial if their attendance can be procured. QUEEN EMPRESS v. NGA SHWE THE, **L.B R. 1893-1900, 52.**

(1472)—*Ss.* 164, 363, 342, 346 (=*Crim. Pro. Code,* 1872, *ss.* 122, 341, 345)—*Scope.*—S. 122 contemplates two distinct cases; one is that of the person coming forward to state what he knows; the other is that of a person accused by a Police officer of an offence, who comes forward to confess his guilt. With regard to the former, the section provides that the statement made by him shall be recorded in the manner prescribed for recording evidence, that is to say, under s. 341, Crim. Pro. Code; whereas, in the case of an accused person confessing to an offence of which he is accused, the Code, by s. 345, enacts that neither oath nor affirmation shall be administered to him. EMPRESS v. MALKA, **2 B. 643,** [*F.*, 2 C.W.N. 702; *R.*, 16 M. 421, 14 Bom. L.R. 753 = 13 Cr.L.J. 709 = 16 Ind. Cas. 517.]

(1473)—*Ss.* 164 *and* 364 (=*Crim. Pro. Code,* 1882, *ss.* 164, 364)—*Recording of confessions in narrative form— Admissibility.* — Where the confession of a prisoner was taken down in a narrative form by the Magistrate, instead of every question put to and answer given by him being recorded in full, in accordance with law, and where the Magistrate omitted to say whether he believed the confession to have been voluntary, the Court of Sessions was directed to examine the Magistrate as a witness, as to whether he believed the confession to have been voluntary. QUEEN-EMPRESS v. KARIM, S.C. **102, Oudh.**

(1474)—*Ss.* 164 *and* 364—*Confession not recorded according to—Conviction — Legality.*—Where the accused pleads not guilty, a conviction cannot be based on a confession which is not recorded in the manner prescribed in ss. 164

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and 364 of the Crim. Pro. Code. NGA SAN YA v. EMPEROR, **11 Cr. L.J. 41 = 4 Ind.Cas. 759 = U.B.R. 1909, Vol. I, Evidence 3.**

(1475)—*Ss.* 164, 364, 533—*Confession—Record of.*—Confessions made in simple narrative form without showing questions and answers may be allowed in evidence, where it appears that the accused had not been prejudiced by the failure to comply strictly with the law. But, under certain circumstances, such irregularity might be very prejudicial to the accused affected by it, and the Magistrate, who committed it, would incur grave responsibility. It would be possible, for instance, that the whole story in a confession might be constructed by putting questions to the accused, which would suggest every circumstance and particulars entered in the statement, and, in a such a case, the omission of the questions from the record would have the false and misleading effect of making the confession appear as a spontaneous and genuine effusion from the accused's own lips. NGA PO SIN v. QUEEN-EMPRESS, **U.B. R. 1897-1901, Vol. I, 47.**

(1476)—*Ss.* 164, 364, 533 (=*Crim. Pro. Code*, 1882, *ss.* 164, 364, 533).—The error committed by a Magistrate recording a confession under s. 164, Crim Pro. Code, in English, instead of in the language of the accused, although it was not impracticable to record it in that language, was held to be curable by s. 533, which is wide enough to cover a failure to comply with the provision of s. 364 regarding the language in which the accused's statement should be recorded. BINDA v. QUEEN-EMPRESS, **S.C. 277, Oudh.** (A.W.N. 1892, 60, *F.*)

(1477)—*Ss.* 164, 364, 533 (=*Crim. Pro. Code*, 1882, *ss.* 164, 364 *and* 533)—*Defect in certificate to be appended to examination of accused, how curable.*—A defect in the certificate to be appended to the examination of an accused person by a Magistrate cannot be rectified by examining a witness to prove that the confession was in the handwriting of the Magistrate. S. 533, Crim. Pro. Code, provides, that, in such a case, evidence shall be taken that the accused person "duly made the statement recorded," and the proper course is to examine either the Magistrate himself or some other person who was present when the statement was recorded. EMPRESS v. MUSSAMMAT JUGRI, **8 C.P.L.R. Cr. 6.**

(1478)—*Ss.* 164, 364 *and* 533 — *Confession inadmissible owing to incurable defects.* — A Magistrate, who recorded a confession under s. 164, Crim. Pro. Code, did not question the accused under s. 164 (3) as to whether he was confessing voluntarily. The confession was subsequently retracted. *Held*, that the confession was inadmissible in evidence and that the defect could not, under s. 533, be cured by the evidence of the Magistrate that the confession was voluntarily made. MA ON NYUN v. KING-EMPEROR, **1 U.B.R. 1902-1903, Crim. Pro. Code, 13.** (10 B. B.H.C. 175, 17 C. 862, 21 B. 495, 23 B. 221, 25 B. 543, 2 C.W.N. 702; *R.*, U.B.R. 1897—1901, 247, *F.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

(1479)—Ss. 164, 364, 533—*See* CONFESSIONS—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY—RECORD OF CONFESSIONS, A.W.N. 1883, 238; 21 P.R. 1881, Cr., 9 M. 224 = 2 Weir 125, 5 C.L.R. 209, 18 C. 549, 17 C. 862, 15 C. 595, 7 P.R. 1899, Cr., 20 P.R. 1881, Cr., 3 A. 338, 4 C. 696 = 4 C.L.R. 137, 2 P.R. 1909 = 7 P.W.R. 1909 = 1 Ind. Cas. 444, 3 C.W.N. 387, 5 C. 958 = 6 C.L.R. 353.

(1480)—Ss. 164, 364, 533—*See* CONFESSION—RETRACTED CONFESSIONS, 21 B. 495, L.B, R. 1893—1900, 70.

(1481)—Ss. 164, 364, 533 (1)—*See* CONFESSION — CONFESSIONS TO MAGISTRATES—ADMISSIBILITY—RECORD OF CONFESSIONS, 10 B.H.C. 166.

(1482)—*Ss.* 164 *and* 533 (=*Crim. Pro. Code*, 1882, *ss.* 164, 533)—*Omission to record memorandum to a confession—Admissibility of the confession in evidence.*—The failure of a Magistrate to make a memorandum at the foot of a confession as required by s. 164 would not make the confession inadmissible in evidence in the Sessions Court. The Sessions Judge should proceed under s. 533, Crim. Pro.Code, "to take evidence that the accused duly made the statement recorded," and he should then admit the statement, "if the error of the Magistrate had not injured the accused as to his defence on the merits." Where a Magistrate recorded a confessional statement by an accused person, but did not make a memorandum as required by s. 164, and did not file the confession as a part of the record, on the ground (1) that the accused had been in the police lock-up for 5 days before he was produced before him and (2) that there was a proposal on the part of the police to treat the accused as an approver but there was no evidence that the proposal was communicated to the accused, *held*, that the grounds mentioned were not valid grounds and that the Judge, who tried the Sessions case, ought to have proceeded, in the absence of the memorandum, under s. 533, to take evidence whether the confession was duly made. But as the Judge had not done any such thing and the evidence as to the circumstances under which the confession was made was left uncertain, the High Court refrained from expressing an opinion on the admissibility of the confession. QUEEN-EMPRESS v. ANGA VALAYAN, **23 M. 15 = 2 Weir 705 = 2 Weir 333.**

(1483)—*Ss.* 164, 533—*Penal Code*, s. 302—*Murder.*—The provisions of s. 533, Crim. Pro. Code, render it necessary on a Court to take evidence that an accused person has duly made a statement recorded under s. 164, when the provisions of that section (s. 164) have not been complied with by the Magistrate, although the accused may admit making the statement. NGA NYI v. QUEEN-EMPRESS, **U.B.R. 1892-1896, Vol. I, 205.**

(1484)—Ss. 164, 533—*See* CONFESSION—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY—RECORD OF CONFESSIONS, 4 Bom. L.R. 785, 2 L.B.R. 317.

Crim. Pro. Code (Act V of 1898)—*continued.*

(1485)—*S.* 164 (3)— *Confession— Record of confession—"Records," meaning of.*—The word, 'record,' in s. 164. cl. (3) of the Code, must necessarily mean "making a part of judicial record" and not merely writing out. EMPEROR v. KADAR GHULAM MAHAMAD, **8 Bom. L R. 950=5 Cr.L.J. 4.**

(1486)—*S.* 164 (3)—*Duty of Magistrate before recording confession.*—It is the imperative duty of a Magistrate, before recording a confession, to carefully examine the accused person and, to the best of his ability, ascertain that he is not wishing to speak owing to inducement, threat or promise, but that his confession is purely voluntary. The omission of the Magistrate to question the accused, before recording the confession, is a fatal defect rendering the confession inadmissible. SHWE SIN v. KING-EMPEROR, **3 L.B.R. 213=4 Cr.L.J. 385.** (3 L. B.R. 173, *Cited.*)

——**S. 165 (=1882, s. 165 ; 1872, s. 379 ; 1861, s. 142).**

(1487)—S. 165—*See* PENAL CODE, ss. 224, 225, 332, 353, 114 P.L.R. 1903.

(1488)—S. 165—*See* PUBLIC SERVANT, A. W.N. 1892, 1.

(1489)—S. 165—*See* SEARCH, 17 M.L.J. 323 =6 Cr.L.J. 105.

(1490)—S. 165—*See* WITNESS—EXAMINATION OF WITNESSES, 24 C. 288.

(1491)—S. 165 —*See* Nos. 26, 327, 342, 449, 451, 452, 462, 1342, 1350, *supra* and 3821, *infra.*

(1492)—Ss. 165, 102—*See* UNLAWFUL ASSEMBLY, 7 N.W.P. 209.

(1493)—*Ss.* 165, *cl.* 2, 103—*'Conducting in person'—Meaning—Place of search — Officer conducting search remaining outside—Effect—Omission to call inhabitants of locality as witnesses—Effect.*—Where, during the search of a house, the Inspector of Police who conducted the search remained outside the house: *Held*, that the search was not conducted in an illegal manner. (17 M.L.J. 323, *Diss.*) S. 165, Crim. Pro. Code, means that the officer should be present on the spot and exercise a general supervision over the search, in contradistinction to the cases where he is unable to go to the spot, and deputes a subordinate by a written order to conduct the search in his place. That section does not lay down that an officer in charge of the police station or an investigating officer personally conducting a search must himself make the search, *e.g.*, ransack the boxes, examine the roof, dig up the floor, or otherwise seek for the property. The failure of the officer conducting the search to strictly comply with the provisions of s. 103, Crim. Pro, Code, *e.g.*, failure to call inhabitants of the locality as witnesses to the search, will not render the search illegal, when such failure has been satisfactorily explained. SRI SRI NADADURU RAJAGURU SATAGOPALA CHARLU v. SATRUGHNA BEHARA, **23 M.L.J. 445=1912 M.W.N. 111=17 Ind. Cas. 75=13 Cr. L.J. 763.** (21 No. 83, *R.*)

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(1494)—*S.* 165, *sub-s.* (3)—*Public servant acting without authority—Penal Code, s.* 99.—If a constable goes for search without any written authority, he does not, under s. 165, sub-s. (3), lawfully exercise the power of a public servant. To such a case, s. 99, I.P.C., contemplating certain acts against which there is no right of private defence, has no application. IDU MANDAL v. EMPEROR, **6 C.L.J. 755 =6 Cr.L.J. 439.**

(1495)—S. 165 (3)—Head Constable searching under orders of Sub-Inspector—Assault on Head Constable — Applicability of s. 165 (3) — *See* PENAL CODE, s. 353, 8 Ind. Cas. 881=9 M.L. T. 168=11 Cr. L.J. 727.

(1496)—S. 166—*See* Nos. 327, 484, 1342, *supra.*

——**S. 167 (=1882, s. 167 ; 1872, s. 124, paras. 2, 4, 5 ; 1861, s. 152).**

See REMAND.

(1497)—*S.* 167—*Remand of accused to police custody, period.*—The period for which a Magistrate can authorize the detention of the accused in police custody is fifteen days on the whole. *In re* KRISHNAJI PANDURANG JOGLEKAR, **23 B. 32.**

(1498)—*S.* 167—*Scope.*—S. 167 applies to investigations under ch. XIV, and gives no authority to remand an accused person in custody in proceedings under ch. VIII, in order to enable the police to trace other persons to be proceeded against under that chapter. EMPEROR v. BASYA, **5 Bom. L R. 27.**

(1499)—*S.* 167—*Detention in police custody.*—A Magistrate should not sanction the detention of an accused person without recording sufficient reasons as required by law. The fact, that the accused is wanted by the police for individually pointing out the places through which he passed on his way to commit a dacoity, or for the purpose of obtaining his identification in the village, is not a sufficient reason for sanctioning such detention. AMIR KHAN v. KING-EMPEROR, **7 C.W.N. 457.**

(1500)—*S.* 167—*Statement reduced to writing by Police during investigation—Dacoity trial—Identification of stolen property—List of property taken by Sub Inspector, admission of—Misdirection to Jury—Re-trial.*—In his charge the Jury in a Sessions trial for dacoity, the Judge asked the Jurors to attach weight to a list of stolen properties dictated to a Police Sub-Inspector by one of the prosecution witnesses in the course of investigation, and remarked that the material objects before the Jury were identifiable as the property of the witness: *Held*, (1) that the document should not have been admitted in evidence under s. 167, Crim. Pro. Code ; (2) that the Judge's reference to it constituted such a material misdirection that a re-trial of the accused was necessary. YELLAYA ROWTHER v. EMPEROR, **13 Cr. L.J. 244=14 Ind. Cas. 596.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1501)—S. 167—*See* EVIDENCE ACT, 1872, s. 91, 33 M. 413.

(1502)—S. 167—*See* Nos. 757, 1326, 1342, 1463, *supra.*

(1503)—*Ss.* 167 *and* 337—*Remand, limit of —Pardon—Power to withdraw when exercisable—Evidence—Statement of approver when pardon is withdrawn when inadmissible in evidence—Approver to be detained in custody when not on bail.*—S. 167 of the Crim. Pro. Code prescribes a period of fifteen days in all as the limit of time for which an accused person shall remain in custody before his trial is formally begun. When before the trial of the case, on the motion of the District Superintendent of Police, the District Magistrate withdrew a pardon granted to one of the accused persons, after recording a statement by the District Superintendent of Police, and an admission by the accused, which appeared to have been made under pressure, that his previous statement was false, *held*, that the action of the District magistrate was not illegal, though not justified under the circumstances of the case. When the pardon granted to an accused person is withdrawn before the trial of the case, statements made by him as an approver are inadmissible in evidence at his trial. Cl. (3) of s. 337 of the Crim. Pro. Code requires an approver, if not on bail, to be detained in custody till the end of the trial. HARGU LALL v. EMPEROR OF INDIA, **136 P.L.R. 1902 = 24 P. R. 1902, Cr.**

(1504)—*S.* 167 (3)—*Detention of accused by police during investigation.*—By requiring a Magistrate to record his reasons for authorising detention in police custody, the law contemplates that a Magistrate should consider whether, on the facts placed before him, there are good grounds for allowing such detention. There should be at least something to satisfy the Magistrate that the presence of the person arrested, while the police investigation was being held, would assist in some discovery of evidence, and that his presence was indispensable for the purpose. In ordering further detention in police custody, when there are good reasons for such an order, a Magistrate should invariably limit the term as much as possible to what may be necessary for the object in view. EMPEROR v. KAMPU KUKI, **11 C.W.N. 554 = 6 Cr. L.J. 86.**

——S. 168 (=1882, s. 168).

(1505)—*Ss.* 168, 476, 477, 487 (= *Crim. Pro. Code,* 1872, *ss.* 468, 471, 472, 473)—*Offences against public justice—Jurisdiction.*—S. 473 is not intended to include offences, which, under the Penal Code, are classed as offences against public justice, in contradistinction to offences in contempt of the Court's authority. But a Magistrate, before whom an offence under s. 196, I.P.C., has been committed, may not, under s. 271, himself try the accused person for that offence. QUEEN-EMPRESS v. KULTARAN SINGH, **1 A. 129.** [*Overruled,* 1 A. 625 F. B.; *Diss.,* 1 B. 311, 1 B. 339.]

Crim. Pro. Code (Act V of 1898)—*continued.*

——S. 169 (=1882, s. 169; 1872, s. 125; 1861 s. 153).

(1506)—S. 169—*See* ESCAPE FROM LAWFUL CUSTODY, 6 A. 129 = A.W.N. 1883, 257.

(1507)—S. 169—*See* No. 1345, *supra.*

(1508)—Ss. 169, 173—*See* BAIL, Rat. Un. Cr. C. 121.

——S. 170—(=1882, s. 170; 1872, ss. 123, 127, 130; 1861, ss. 151, 155, 158).

(1509)—S. 170 — *See* No. 1345, *supra and* Nos. 1637, 1644, 3163, *infra.*

(1510)—*Ss.* 170, 188—*Offence committed outside British India—Certificate from the Political Agent—Penal Code (Act* XLV *of* 1860), *s.* 328—*Grievous hurt*—The complainant was assaulted by the accused within the Baroda territory, and his leg was completely broken in that territory. He was brought into a hospital within the British territory in consequence of this injury, where he was detained for 57 days, during which period he was unable to follow his ordinary pursuits. He filed a complaint for grievous hurt in a British Court. The Magistrate sought to obtain the certificate from the Political Agent at Baroda, as required by s. 188 of the Crim. Pro. Code. On his failing to obtain it, he ordered the papers in the case to be filed under s. 203 of the Crim. Pro. Code. The complainant, thereupon, applied to the High Court contending that the Magistrate ought to have proceeded with the trial under s. 179 of the Crim. Pro. Code: *held*, that the s. 179 of the Crim. Pro. Code did not apply, since the injury that was done, *viz.*, the fracture of the leg was complete within the Baroda territory. SIRDAR MERU v. JETABHAI AMIRBHAI, **8 Bom. L R. 513 = 4 Cr. L J. 54.** [*F.*, 15 Cr. L. J. 207 = 22 Ind. Cas. 991 = 26 M.L.J. 235; *R.*, 35 A. 29 = 10 A.L.J. 431 = 13 Cr. L.J. 856 = 17 Ind. Cas. 792.]

(1511)—Ss. 170, 191 (c)—*See* COGNISANCE OF OFFENCE, Rat. Un. Cr C. 951 = Cr. Rg. 2 of 1898.

(1512)—*S.* 170 (2) *and* (4)—*Bond from witness, when to be taken—Day fixed in the bond.*—A bond under s. 170, Crim. Pro. Code, can only be taken from a witness when the accused has been arrested and is either being forwarded to a Magistrate or is released on security being given for his appearance. The day fixed in the bond is also to be the day whereon the accused person is to appear, if security for his appearance has been taken, or the date on which he will probably reach the Magistrate's Court. QUEEN-EMPRESS v. KYO SHIN, **L.B. R. 1893—1900, 478.**

——S. 171 (=1882, s. 171; 1872, ss. 130, 131, paras 1 and 2; 1861, s. 159).

(1513)—Ss. 171, 288—*See* WRONGFUL RESTRAINT, 4 C.W.N. 49.

—— S. 172 (=1882, s. 172 ; 1872, s. 126 ; 1861, s. 154).

(1514)—*S.* 172 (=*Crim. Pro. Code*, 1882, s. 172)—*Scope of the section.*—S. 172 of the Code is not exhaustive. It includes a statement by a police officer that he examined certain witnesses and the statement of circumstances ascertained from the examination of the witnesses; but it does not include the actual statements of the witnesses. SHERU SHA v. QUEEN-EMPRESS, **20 C. 642.** [*R.*, 19 A. 390=A.W.N. 1897, 174, 20 M. 189=2 Weir 763=7 M.L.J. 167, F.B.; *Cons.*, 11 Cr. L.J. 117=5 Ind. Cas. 357=13 O.C. 7.]

(1515)—*S.* 172—*Police diaries—Their nature—Admissibility as evidence—When police proceedings could be placed before jury.*—Police diaries cannot be placed before the jury; as provided by s. 172, they are useful, not as evidence, but to aid a Court in the trial so as to enable it to make a thorough enquiry on all material points, and to elicit, in the examination of the witnesses and especially of police witnesses, the real facts of the case. A Sessions Judge cannot rely on police proceedings or put the same to the jury, without examining police officers as witnesses to explain such proceedings. QUEEN-EMPRESS v. JADUB DAS, **27 C. 295=4 C.W.N. 129.**

(1516)—*S.* 172—*Police diaries—Use by Court—Admissibility in evidence.*—Facts and statements written in the police diaries cannot be used as material to help the Court in a criminal trial to come to a finding on the evidence in the case. What the Court should do with the Police diaries is to discover, out of them, any matter of importance bearing upon the case and then call for the necessary evidence to have that matter legally proved. SYED ABDUL RAHIM v. LALHU KHERWAR, **10 C W.N. 600 =3 Cr. L J. 408.**

(1517)—*S.* 172 (=*Crim. Pro. Code*, 1872, s. 126)—*Police diaries and occurrence reports—Their evidentiary value.*—Occurence reports and station reports by the station Officer may be used by the Court for the purposes mentioned in s. 126. They are not evidence of matters stated in them. They will be admissible as evidence, if the persons who wrote them are examined as witnesses as to the facts stated in such report. HIGH COURT PROCEEDINGS, 17th Nov. 1880, No. 2311, **2 Weir 142.**

(1518)—*S.* 172 (=*Crim. Pro. Code*, 1872, s. 126)—*Police diaries.*—Diaries kept by police officers are not original evidence. *In re* NERAVATI NANDAIYA, **2 Weir 143.**

(1519)—*S.* 172 (=*Crim. Pro. Code*, 1882, s.172)—*Police diaries.*—S.172 does not authorise a Court to bring matters contained in police diaries upon a judgment and to treat them as though they were evidence which has to be disposed of one way or another. If the statements in a diary can be used as evidence, they can only be used when they are brought upon the record and properly made evidence in the case. When not so treated, they should not find any place in a trial beyond that which is given them in s. 172, Crim. Pro. Code. QUEEN-EMPRESS v. NAND LAL, **A.W.N. 1894, 155.** [*R.*, 19 A. 390=17 A.W.N. 174.]

(1520)—*S.* 172 (=*Crim. Pro. Code*, 1882, s. 172)—*General order by appellate Court for production of police diaries—Evidence.*—A Court of Sessions has no power to make any general order that police diaries shall be produced before it in criminal appeal. Any order which a Court of Sessions as a Court of criminal appeal considers it necessary to make, for the production before it, in an appeal, of police diaries, must be an order made in and confined to the particular case. The Sessions Judge is not empowered to draw any presumption against the regularity of the procedure of the police from the non-production before him of the police diary or diaries, more specially when he has not specifically called for the same. When a Court, under the authority conferred on it by s. 172, Crim. Pro. Code, uses a police diary to aid it in an enquiry or trial, it must be careful to bear in mind that the diary in itself is not evidence and does not supply in itself any evidence on which a Court can act in such enquiry or trial. ROHAN v. JWALA PRASAD, **A.W.N. 1894, 118.**

(1521)—*S.* 172—*Diary not used to refresh memory, whether evidence—Improper admission of such diary, whether sufficient ground for interference.*—A Magistrate should not refer to such an entry in a diary, not used by a prosecution witness to refresh his memory, as corroborative of his evidence, but an error of the kind is not sufficient ground for interference, when the Magistrate has found the accused guilty after considering the other evidence in the case. *In re* KUTTIALIKUTTI MARAKAR, **15 Cr. L.J. 256 =23 Ind. Cas. 208.**

(1522)—S. 172—*See* WITNESS—MISCELLANEOUS CASES, L.B.R. 1893—1900, 42.

(1523)—S. 172—*See* Nos. 1326, 1393 to 1398, 1423 to 1427, *supra.*

(1524)—Ss. 172, 161—*See* POLICE DIARY, 8 C. 739=12 C.L.R. 233.

——S. 173 (=1882, s. 173 ; 1872, ss. 125, 127 ; 1861, ss. 153, 155).

(1525)—S. 173—*See* Nos. 52, 64, 1345, 1428, 1508, *supra and* Nos. 1638, 1644, *infra.*

(1526)—*Ss.* 173, 155—*Information to police of non-cognisable offence—Order of Magistrate—No report by Police to Magistrate—Prosecution of informants for false information—Pendency of the first case—Penal Code*, s. 211.—The accused gave information to the Police of the commission of a non-cognizable offence. The Police obtained the authority of Magistrate, as required by s. 155 of the Crim. Pro. Code, to investigate the case. The Magistrate directed the Police to report to him. The report was not made. The Police, however, instituted proceedings against the accused under s. 211 of the Penal Code. The accused were convicted and

Crim. Pro. Code (Act V of 1898)—*continued.*

sentenced. The Sessions Judge referred the case to the High Court on the ground that the prosecution of the accused in the absence of sanction by the Magistrate was illegal: *Held*, that the conviction was illegal inasmuch as the first case had not come to an end in the absence of an order of the Magistrate under s. 173 of the Crim. Pro. Code. EMPEROR v. APPA RAGHO BHOGLE, **17 Bom. L.R. 69=3 Bom. Cr. Cas. 2=16 Cr. L.J. 161=27 Ind. Cas. 545.**

(1527)—*Ss.* 173, 190 (1) (*b*), 351—*Police report—Jurisdiction—Magistrate cannot take cognizance of offence in the absence of a Police report under s. 173 if he is not empowered under s.* 190 (1) (*c*).—The report referred to in s. 190 (1) (*b*), Crim. Pro. Code, is the report described in s. 173, *i.e.*, a report made by the Police after the case has been investigated and the facts ascertained and the conclusion arrived at, that there are sufficient grounds to justify the person reported against being forwarded to the Magistrate. Three persons were sent up by the Police for trial under ss. 380 and 457, I.P.C. A remark was added to the Police report that it had been elicited that one A had instigated the commission of the theft and that the Court is at liberty to take action against A, on legal evidence being tendered. At the conclusion of the trial against the three persons, the Magistrate ordered that a non-bailable warrant be issued against A and he be tried under ss. 380, 457 and 109, I.P.C. *Held*, that the Magistrate, who was not empowered to act under s. 190 (1) (*c*), Crim. Pro. Code, had no jurisdiction to issue the warrant, because there being no Police report against A, under s. 173, the Magistrate could not proceed under s. 109 (1) (*b*), nor could he proceed under s. 351, as A was not in attendance in his Court. AHMED KHAN v. EMPEROR, **12 Cr. L.J. 92=9 Ind. Cas. 492=5 S.L.R. 1.** [*Rel* 13 Cr. L.J. 752 =17 Ind. Cas. 64=6 S.L.R. 82.]

(1528)—*Ss.* 173, 200 *and* 202—*Case entered as true, but judicial enquiry declined—Right of accused to be examined and his case tried.*—On an information given to the police that the accused assaulted the complainant and forcibly carried off grain of considerable value, the police investigated and made a report to the Sub-Divisional Magistrate who, thereupon directed the case to be entered as true, recording the offence under s. 147, Penal Code, but declined to order a judicial enquiry, because he was of opinion that there was no chance of a conviction. The complainant then petitioned the District Magistrate, who ordered a judicial enquiry to be held by a Subordinate Magistrate. On receipt of a report from the latter, the District Magistrate recorded that, in his opinion, it was useless to consider the evidence tendered by the complainant and that the Sub-Divisional Magistrate had already passed final orders in the case, namely, "enter true." *Held*, that the complainant was entitled to be examined under s. 200, Crim. Pro. Code, and that, as his complaint had already been recorded as true he was entitled to a process against the accused and for the attendance of his witnesses. KULDIP SAHAI v. BUDHAN MAHTON, **29 C. 410.**

(1529)—*Ss.* 173, 200, 202, 439—*Police report to Magistrate in a cognizable case—Enquiry and report by Subordinate Magistrate, order for, if proper—Quashing of proceedings.*—On receipt of a report under s. 173, Crim. Pro. Code, on an information of theft lodged with the police against the petitioner, the Sub-Divisional Magistrate made over the case to an Honorary Magistrate for enquiry and report. The latter examined witnesses on both sides and reported that the purchase by the petitioner of the subject-matter of the alleged theft was amply proved, and a trial of the petitioner under s. 379, I.P.C., could not be recommended. The Sub-Divisional Magistrate thereupon ordered the issues of summons against the petitioner under s. 379, I.P.C. *Held* that the proceedings of the Sub-Divisional Magistrate were irregular. Under s. 190, cl. (*c*), the Sub-Divisional Magistrate might have taken cognizance of the case on the report under s. 173, Crim. Pro. Code, but as he did not do so but proceeded to make over the case for enquiry and report as though the matter he was dealing with was on a complaint under s. 200, Crim. Pro. Code, the proceedings before the Honorary Magistrate thereafter, so far as they bore on the case based on a police report, were not in consonance with the provisions of the law. Proceedings quashed on a consideration of the merits. ABDULLA MONDAL v. KING-EMPEROR, **17 C.W.N. 1004 =14 Cr. L.J. 297=19 Ind.Cas. 953=40 C. 854.**

(1530)—*Ss.* 173, 437 (=*Crim. Pro. Code,* 1882, *ss.* 173, 437)—*Police report—Striking off case—Review.*—A Magistrate's order directing a case reported to him by the police, under s. 173 of the Crim. Pro. Code, to be struck off, is not a judicial order dismissing a complaint which can be reviewed by the Sessions Judge under s. 437 of the Crim. Pro. Code. QUEEN-EMPRESS v. KAMRU, **Rat. Un. Cr. C. 521=Cr. Rg. 47 of 1899.**

——S. 174 (=1882, s. 174; 1872, s. 133; 1861, s. 161.)

(1531)—S. 174—*See* No. 1399, *supra and* No. 1812, *infra.*

(1532)—Ss. 174, 175—*See* PENAL CODE, s. 180, 8 M.L.T. 198=7 Ind. Cas. 557=11 Cr. L.J. 500.

(1533)—Ss. 174 and 259—*See* DISCHARGE OF ACCUSED, 2 L.B.R. 165.

(1534)—Ss. 174, 435 — *See* REVISION — GENERAL PRINCIPLES, Rat. Un. Cr. C. 843.

(1535)—Ss. 174, 435 (1, 2 and 3)—*See* INQUEST, 3 C. 742.

(1536)—S. 175—*See* No. 1532, *supra.*

——S. 176 (=1882, s. 176; 1872, s. 135.)

(1537)—*S.* 176 (=*Crim. Pro. Code,* 1872, *s.* 135)—*Enquiry and report by Magistrate under the section, whether a judicial proceeding.*—An

Crim. Pro. Code (Act V of 1898)—*continued.*

enquiry under s. 135 is directed more to elucidate the facts of violent and unnatural death, before there is any reasonable suspicion of the commission of any offence. It forms no part of a judicial proceeding. The High Court has, therefore, no power to send for the report of the Magistrate made after an enquiry under s. 135. *In the matter of* TROILOKHONATH BISWAS, 3 **C.L R 59.**

—— S 177 (=1882, s. 177 ; 1872, s. 63. para 1, 1861, s. 26, except proviso).

See JURISDICTION OF CRIMINAL COURTS.

See MAGISTRATE, JURISDICTION OF.

(1538)—S. 177—*See* ACT XIII OF 1859, s. 1, 13 P.W.R. 1910, Cr.=12 P.R. 1910, Cr.=6 Ind. Cas. 618=11 Cr. L.J. 380.

(1539)—S. 177—*See* No. 27, *supra and* No. 1951, 4684, 4688 *infra.*

(1540)—Ss. 177, 178 *to* 189—*Offence committed at a spot in British India—Subsequent formation of it into independent territory—Jurisdiction of Sessions Judge* —Under s. 177, Crim. Pro. Code, every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed, and ss.178 to 189 do not take the case out of that section. Hence, where at the time when the offence was committed by the accused, he was a British Indian subject within the local limits of the jurisdiction of the Magistrate of Mirzapur and had since resided in British Indian territory when produced before him, *held* that the Sessions Judge of Mirzapur has jurisdiction to try him, irrespective of the fact that, since the date of the crime, the spot where he had committed it had ceased to be British territory. KING EMPEROR v. GANGA, **9 A.L.J 696=34 A. 451=15 Ind. Cas. 991=13 Cr. L.J. 175.**

(1541)—Ss. 177, 179—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 7 P.R. 1910, Cr.

(1542)—*Ss.* 177, 182 (=ss. 177, 182, *Crim. Pro. Code,* 1882)—*Different offences committed in the same transaction—Jurisdiction.*—Where two different offences are committed in the course of the same transaction, the case should be tried by a Magistrate who has jurisdiction to try both the offences, and not by a Magistrate who has jurisdiction over one of them only, for it would be highly inconvenient that the two offences should be tried by different officers. *In re* PONNUSAMI NAIK, **2 Weir 144.**

(1543)—*Ss.* 177, 195, 213, 531—*I.P.C.*, s. 468 —*Using forged document as genuine—Party to suit—Prosecution of—Necessity for sanction—Commitment to wrong Court — Illegality.*—Where the offence of abetment of forgery and using a forged document as genuine were committed by a party to a suit, a prosecution is not maintainable without the sanction of the Court which tried the suit. (14 C W.N. 479, *and* 12 B. 36, *F.*) The object of mentioning s. 463, I.P.C., in s. 195 (*c*), Crim. Pro. Code, is to include all cases of forgery, whatever the nature of the fraudulent intention may be. It is not using a forged document as genuine, if the document is produced in obedience to a summons from Court. An involuntary production of a document in Court cannot amount to any user of it. An order of commitment is an order under s 531, Crim. Pro. Code, and would be a mere irregularity, if passed *by* a wrong Court. (8 B. 312, *and* 16 B. 200, *F*) But a commitment to a wrong Court (*e.g.*) a Sessions Court having no jurisdiction, is illegal and must be quashed. (9 A. 191, *and* 18 A. 350, *F.*) The term ' Sessions Court ' in s. 213, Crim. Pro. Code, means one having jurisdiction to try the case under s. 177, Crim. Pro. Code. ASSISTANT SESSIONS JUDGE OF NORTH ARCOT v. RAJAMMAL, **10 M.L.T. 563=1912 M.W N 3=36 M. 385=13 Ind. Cas. 275.** [*F*, 13 Cr. L.J. 46=13 Ind Cas. 286=11 M.L.T. 21=1912 M.W.N. 455=22 M.L.J. 181.]

(1544)—*Ss.* 177, 252—*Arrest in Native State of its subject without intervention of that State.* —Where the subject of a Native State, who, having committed an offence in British India, escaped into the Native State, was arrested by the British police without the intervention of that State, *held*, that the subsequent trial and conviction of the accused were not affected by the irregularity. SOBHA v. EMPRESS, **6 P.R. 1899, Cr.** (6 P.R. 1897, Cr., *D.*)

(1545)—Ss. 177, 488—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 13 P.R. 1885, Cr.

(1546)—Ss. 177, 488 (1 to 6)—*See* MAINTENANCE, 24 C. 638=1 C.W.N. 577.

(1547)—Ss. 177, 531—*See* COMMITMENT TO SESSIONS COURT, 8 B. 312.

——S. 178 (=1882, s. 178; 1872, para 2 of s. 63).

See JURISDICTION OF CRIMINAL COURTS.

See MAGISTRATE, JURISDICTION OF.

(1548)—S. 178—*See* BUR. ACT XVII OF 1875, 10 C. 643.

(1549)—S. 178—*See* TRANSFER OF SESSIONS CASES, L.B.R. 1872—1892, 263.

(1550)—S. 178—*See* No. 1540, *supra* and 4688, *infra.*

——S. 179 (=1882, s. 179 ; 1872, s. 65 ; 1861, s. 27).

See MAGISTRATE, JURISDICTION OF.

(1551)—*S.* 179—*Construction of section—Place of trial where act is done or where consequence ensued.*—In this section, the words "anything which has been done" mean some act constituting the offence, and the words "any consequence which has ensued" mean some consequence modifying or completing the act. Where, therefore, the complaint was that the accused, to whom certain articles were consigned from Fyzabad to the Central Provinces, misappropriated a portion thereof at the latter place, *held* that the charge against them was not, under s. 179, Crim. Pro. Code, triable at Fyzabad. NIRBHAE RAM v. KALLU RAM, **4 O C 376.** [*Diss.*, 35 A. 29=10 A.L.J. 431=17 Ind. Cas. 792=13 Cr. L.J. 856.]

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(1552)—*S.* 179—"*Any consequence has ensued*"—*Loss which ensues on a criminal breach of trust.*—*Held*, that the words "any consequence has ensued" in s. 179, Crim. Pro. Code, mean some consequence modifying or completing the act or acts constituting the offence; and the loss to an employer resulting from criminal breach of trust by a servant is not a consequence of that description. CHINT SINGH v. CROWN, **67 P.L.R. 1901.** (19 A. 111, 6 Agra 46 and 136, *R.*) [*F.*, 18 P.W.R. 1908, Cr.; *R.*, 172 P.L.R. 1910=7 P.R. 1910, Cr.=7 P.W.R. 1910, Cr.=5 Ind. Cas. 830=11 Cr. L.J. 253.]

(1553)—*S.* 179—"*Consequence*"—*Interpretation.*—The consequence referred to in s. 179 must be one of the facts to be proved to establish the offence. It must form an integral part of the offence, but must not be a consequence arising from it. SHWE MYAT V v. M.C.P. SUBRAMANIAN CHETTY, **5 L.B.R. 57 =2 Ind. Cas. 546.**

(1554)—*S.* 179—*Accused triable in district where act is done.*—The mere fact that a person, on whom hurt had been inflicted in one district, was treated in a hospital in another district would not render the offence triable in the latter district. QUEEN-EMPRESS v. NGA MON GAING, **U.B.R. 1897—1901, Vol. I, 53.**

(1555)—*S.* 179—*Criminal misappropriation—Principal firm at Cawnpore—Branch firm at Gauriganj—Offence committed at Gauriganj—Jurisdiction.*—The word 'consequence' in s. 179, Crim. Pro. Code, means a consequence which forms a part and parcel of the offence. It does not mean a consequence which is not such a direct result of the act of the offender as to form no part of that offence. Hence, where an accused misappropriated money belonging to the complainant's branch shop at Gauriganj which money was to be sent to the principal shop at Cawnpore owned by the complainant, *held* that the Courts at Cawnpore had no jurisdiction to proceed with the case. GANESHI LAL v. NAND KISHORE, **10 A.L.J. 45=15 Ind. Cas. 319=13 Cr.L.J. 479=34 A. 487.** [*R.*, 13 Cr.L.J. 856= 17 Ind. Cas. 792=10 A.L.J. 431.]

(1556)—*S.* 179—*Venue of trial—Cheating—Penal Code, s.* 415—*Jurisdiction—Magistrate.*—The accused consigned, in fulfilment of a contract, tins of groundnut oil at Salem (in the Madras Presidency), to the complainant at Dhulia (in the Bombay Presidency); the price of the commodity was paid by the complainant's firm in Bombay. The tins, when opened by the complainant at Dhulia, were found to contain ground-nut oil mixed with rock oil. On these facts, the complainant filed a complaint of cheating against the accused in the Court of the First Class Magistrate at Dhulia. The accused objected to the trial, on the ground that the Magistrate had no jurisdiction to try the case. The Magistrate having overruled the objection, the accused applied to the High Court: *Held*, that the Magistrate at Dhulia had jurisdiction to try the case, for the deception took place at Dhulia where the complainant was the victim of the deceit and led to believe that which was untrue. EMPEROR v. JAMNADAS VASANJI, **17 Bom. L.R. 389=3 Bom. Cr. Cas. 52.**

(1556-*a*)—*S.* 179—*Offence where to be charged — Primary and secondary consequences — Ss.* 406. 409, *Indian Penal Code.*—Where an accused living in Nandyal was appointed agent for the sale of the oil of the complainant living in Madras, and his periodical report showed a certain quantity of oil sold and a certain sum of money received which is to be accounted for deducting the commission due to him, and when called on to account the accused failed to do so, it is not competent to the complainant to prefer a complaint to the Presidency Magistrate at Madras, for an offence of breach of trust. The loss ensues immediately on the conversion, and the existence of dishonest intention alone is not the sole criterion. The ensuing of loss is also an essential element in such offences. S. 179 of the Crim. Pro. Code can be applied only to cases in which the consequence necessary to constitute the offence ensues in some place other than that in which the accused's act is done. In the present case the firm's loss at Nandyal was a primary consequence, and the loss at Madras, the firm's head-quarters where its funds are kept, is a secondary one which is not sufficient to attract the operation of s. 179. KRISHNAMACHARY v. SHAW WALLACE AND COMPANY, **1915 M.W.N 418=18 M.L.T. 25.** (1914 M.W.N. 324, 894, *Cons.*).

(1557)—S. 179—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 19 A. 111= A.W.N. 1896, 191.

(1558)—S. 179—Criminal breach of trust—Offence, essentials of—Jurisdiction—*See* PENAL CODE, s. 405, 1914 M.W.N. 894=16 M.L.T. 505=15 Cr. L.J. 688=26 Ind. Cas. 136.

(1559)—S. 179—*See* Nos. 1540, 1541, *supra and* 4684, *infra.*

(1560)—*Ss.* 179 *to* 184 *and* 188—*Jurisdiction—Criminal Courts—Entrustment of jewel in British India—Pledge outside British India—Conversion—Offence committed—Accused committed to Sessions in British India—No certificate under s.* 188—*Competency of Sessions Court to try.*—The complainant entrusted at V, in British India, certain jewels to the accused R, a Native Indian subject of His Majesty, for sale on commission. R pledged the jewels at B, in a Native State, and converted the jewels for his own use. It was also part of the arrangement between the complainant and R that R should account for the jewels to the complainant at V or return them or their price at V. The accused were charged with the offence of criminal misappropriation and committed for trial to the Court of Sessions in British India. *Held*, that the commitment was not illegal for want of a certificate under s. 188, Crim. Pro. Code. The loss of the jewels, which was the consequence, occurred at V, in British India, and this is sufficient under s. 179, Crim. Pro. Code, to give jurisdiction to the Magistrate to commit the

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case to the Sessions. S. 179, Crim. Pro. Code, is not subject to s. 188, Crim. Pro. Code. (*Per Spencer, J.*) None of the ss. 179 to 184, is subject to s. 188 (*Per Sadasiva Iyer, J.*). ASSISTANT SESSIONS JUDGE OF NORTH ARCOT v. RAMASWAMI ASARI, 26 **M.L.J.** 235=1914 **M.W.N. 324=15 Cr. L.J.** 207=22 **Ind. Cas.** 991. (1910 M.W.N. 143, 13 Cr.L.J. 530, *Diss.*; 19 A. 111, 35 A 29, 8 Bom. L.R. 513, 1 M. 171, 5 B. 338, 28 A. 372, 13 M. 423, 24 A. 256, *R.*)

(1561)—Ss. 179, 181, 182, 183—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 35 P.R. 1880, Cr.

(1562)—*Ss.* 179, 181 (2) *and* 190 (*c*)—*Indian Penal Code, ss.* 409 *and* 477-*A*—*Fabrication of accounts—Criminal breach of trust—Place of inquiry— Jurisdiction.*— S. 179, Crim. Pro. Code, applies only when a person is accused of the commission of any offence by reason of anything which has been done and of any consequence which has ensued. The offence defined in s. 477-A, I.P.C., is complete, when accounts are falsified with intent to defraud ; and a person accused of the falsification of accounts made in one place cannot be tried in another place on account of any offence by reason of any consequence which has ensued within the meaning of s. 179, Crim. Pro. Code. But the offence under s. 409, I.P.C. (criminal breach of trust) can, under s. 181 (2), Crim. Pro. Code, be tried by a Magistrate within whose jurisdiction the property embezzled has been received or retained. *Obiter.*—A Magistrate. not specially empowered under s. 190 (*c*) cannot issue a warrant for the arrest of a person in the absence of a complaint, and on the information contained in a telegram to him from a would-be complainant. SWAMINATHAN CHETTIAR v. ANNAMALAI CHETTIAR, **4 M.L.T.** 481=9 **Cr. L J.** 92.

(1563)—*Ss.* 179 *and* 185—*Jurisdiction—Place where consequence of act ensues—Alleged fraudulent realization of money on hundis.*—Where a complaint was made before a Magistrate at Aligarh, the substance of which was that the person complained against had dishonestly and fraudulently, two days after he had become an insolvent, realized at Calcutta the moneys due in respect of certain hundis which the complainant had purchased, it was *held*, on an application under s. 185 of the Code of Criminal Procedure, that the offence alleged should be inquired into at Calcutta and not at Aligarh. BABULAL v. GHANSHAM DAS, **A W N.** 1908, **115=5 A.L.J.** 333=7 **Cr. L.J.** 394. (19 A. 111, *D.*, [*R.*, 34 A. 487=10 A.L.J. 45=13 Cr. L.J. 479=15 Ind. Cas. 319, 35 A 29=10 A.L.J. 431=13 Cr. L.J. 856=17 Ind. Cas. 792.]

(1564)—*Ss.* 179, 222, 235 *to* 239, 531 *and* 537 —*Jurisdiction—Money recovered from a Bank at Bombay by D on a forged draft of a Bank at Amritsar—I also recovered money on a similar draft from a Bank at Multan with D's help—I resided at Amritsar and D at Lahore—Head Office of Multan Bank at Lahore—No branch of Bombay Bank in the Punjab—Accused tried jointly at Lahore—Misjoinder of charges and accused—Cheating explained—Forgery—Evidence of an expert—Theft—Consequence ensued —Indian Penal Code* (*Act* XLV *of* 1860), *ss.* 109, 379, 411, 415, 420, 463 *and* 467—*Indian Evidence Act* (*of* 1872), *ss.* 45, 46 *and* 47.—On the 2nd October, 1905, one D, of Lahore, presented a forged draft of Rs. 10,000 and got it cashed at the Bombay office of the Mercantile Bank of India having no branch in the Punjab. On 26th October, 1905, one I, of Amritsar, presented another forged draft for Rs. 7,000 and got it cashed with the help of D, at the Multan Branch of the Punjab National Bank. Both these drafts purported to be signed by M, as manager of, and to have been issued by, the Amritsar Branch of the said Punjab National Bank, which has no branch at Bombay and of which the Head office is at Lahore. It was not proved by whom and where the drafts and advices in question were forged or, as alleged by the prosecution, the forms on which these were written were stolen from the Head Office of the said Punjab National Bank. Both the accused D and I were jointly tried by a Magistrate of and sitting at Lahore. As regards the Multan fraud, the Magistrate convicted I under ss. 379/109, 420 and 467, Indian Penal Code, and D under ss. 379/109, 420/109, and 467/109, Indian Penal Code. As regards the Bombay fraud, D's convictions were under ss. 411, 467/109 and 420, I.P.C. On appeal to the Chief Court, Punjab, the conviction of D was only upheld under s. 420, Indian Penal Code, as regards the Bombay case and under ss. 420/109 as regards the Multan case. The conviction of I also was only confirmed under s. 420, I.P.C. It was contended that the trial was bad in law inasmuch as the Magistrate at Lahore had no jurisdiction and that there was misjoinder of charges and accused : *Held*, that, under s. 179 of Crim. Pro. Code, 1898, the Lahore Court had jurisdiction inasmuch as the consequence (*i.e.*, loss to the Bank) contemplated in this section ensued at Lahore where the Head Office of the Punjab National Bank is situate. The loss occurs at the place where the accounts of the Bank are made up and its business as a company is transacted. *Held*, also, that s. 179 applies not only to cases in which the offence is completed by reason of a consequence ensuing within the local limits of another jurisdiction (as *e.g.*, the case of a man being wounded in one district and dying in another), but also to cases in which the fact of a consequence ensuing in another jurisdiction is the cause of the offender being accused of the offence. *Held*, also, that the illustrations to s. 179, Crim. Pro. Code, 1898, are not exhaustive and to hold that all the consequences prescribed by the Legislature in framing the section as conferring jurisdiction are *ejusdem generis* with the consequences specified in the illustration is not justified by the language of the section. *Held*, also, that there is neither misjoinder of charges nor of accused where the offences

Crim. Pro. Code (Act V of 1898)—*continued.*

charged form parts of one transaction and were committed by several persons acting together. *Held*, also, that the offence of cheating as defined in s. 415, Indian Penal Code, contains two parts. *First* comes the main part "whoever by deceiving any person—," words which obviously apply to the whole section. Then comes the first part "fraudulently, or dishonestly induces the person so deceived to deliver any property to any person or to consent that any person shall retain any property." Then comes part 2, which is an alternative to sub-part 1, *viz.*, "or intentionally induces—mind, reputation or property." Then comes the closing words "is said to cheat." The words "and which act or omission—reputation or property" form a portion of part 2 and are not applicable to part 1 at all. *Held*, further, that although the evidence of an expert is relevant and valuable on the question of the identification of the hand-writing, it is dangerous to convict a person of forgery simply on the strength of that evidence. *Held*, further, that where an offender is convicted of several offences in one trial and a joint sentence is passed against him for all the offences with which he is charged and in appeal the conviction for some of the offences is set aside and is upheld as regards the rest, it is not illegal to maintain the sentence in full and it does not amount to an enhancement of the sentence, provided the sentence maintained does not exceed the maximum punishment which could be awarded for the offence or offences for which the conviction is upheld. ISHARDAS v. KING-EMPEROR, **18 P.W.R. 1908**, Cr.=**8 Cr.L.J. 75.** (7 P.R. 1900, 67 P. L.R. 1901=30 B. 49, 20 P.R. 1889, *F.*; 19 A. 111, *Diss.*; 7 M.I.A. 72, 44 P.R. Cr. 1885, 24 P.R. Cr. 1901, F.B., 4 P.R. Cr. 1904, 121 P. L.R. 1901, 30 M. 94, *R.*; 25 M. 61, P.C., *D.*)

——S. 180 (=1882, s. 180; 1872, s. 66, 1861, ss. 28, 31, 31-A.)

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See MAGISTRATE, JURISDICTION OF.

(1565)—*S.* 180—*Penal Code, s.* 411—*Theft within British territory—Retention of stolen articles outside British territory—British Courts if have jurisdiction to try accused for such retention of stolen articles.*—The accused was found in possession of stolen articles at a place outside British territory. The theft of the articles took place within British territory. The accused was placed on his trial before the Court in British territory having jurisdiction over the place where the theft took place: *Held*—that the British Courts had no jurisdiction to try the accused for an offence under s. 411, I.P.C., committed at a place beyond British territory with regard to the stolen properties. MOHESHWARI PRESHAD SINGH v. KING-EMPEROR, **18 C.W.N. 1178=15 Cr. L.J. 537=24 Ind. Cas. 945.**

(1566)—S. 180—*See* ABETMENT, 1 Weir 155.

(1567)—S. 180—*See* KIDNAPPING, A.W.N. 1883, 67.

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(1568)—S. 180—*See* Nos. 1540, 1560, *supra and* 4684, *infra.*

(1569)—S. 180, ill. (*b*)—*See* PENAL CODE, ss. 411, 414, 17 C.W.N. 1129=14 Cr.L.J. 571=21 Ind. Cas. 171.

——S. 181, paras 1. 2, 3 (=1882, s. 181; 1872, s. 67; 1861, s. 32); and para 4, new.

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See MAGISTRATE, JURISDICTION OF.

(1570)—S. 181—*See* PENAL CODE, ss. 392, 411, A.W.N. 1906, 52=3 A.L.J. 146=3 Cr. L. J. 247=28 A. 372.

(1570-*a*)—S. 181—*See* Nos. 1540, 1560, 1561, 1562, *supra and* 4684, *infra.*

(1571)—*S.* 181 (1)—*Person accused of being one of a gang of dacoits—Resident of Native State, arrested in such State—Committal to take his trial at Sessions Court, Gurgaon, in British territory by a British Magistrate—Validity—S.* 400, *Penal Code—Jurisdiction.*—Where a resident of Bharatpur, a Native State, was arrested in that state, and was accused of the offence of belonging to a gang of dacoits, without any allegation being made of the prisoner's participation in any dacoity or association of dacoits in the Gurgaon district in British territory, and where the accused, on such accusation, was committed to the Gurgaon Sessions Court by the First-Class Magistrate of Gurgaon: *Held*, that the committal was proper and legal and that it was justified by the words "may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is" in s. 181 (1), Crim. Pro. Code. CROWN v. GOBINDA, **1 P. R. 1911**, Cr.=**4 P.W.R. 1911=84 P.L.R. 1911.** (17 P.R. 1906, Cr., 6 B. 622, 6 P.R. 1897, Cr., *R.*)

(1572)—Ss. 181 (1 to 3) and 182—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 1 M. 171.

(1573)—Ss. 181 (1 to 3), 182 and 531—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 5 M. 23=1 Weir 1.

(1574)—*Ss.* 181 (2), 188 *and* 12—*Offence committed in Native State—S.* 181 (2) *if applicable to—Political agent's certificate—Necessity of.*—S. 181 (2), Crim Pro. Code, only applies as between Courts of different local areas whose jurisdictions have been limited under s. 12 of the Code and to which the Code applies. It has no application to an offence committed in a Native State, and of such offence the Magistrate cannot take cognisance except on a certificate of the Political Agent under s. 188. IMPERATOR v. TRIBHUN, **5 S.L R. 266= 15 Ind. Cas. 802=13 Cr. L.J. 530.** [*D.*, 22 Ind. Cas. 991=15 Cr. L.J. 207=26 M.L.J. 235.]

(1575)—*Ss.* 181 (2) *and* 531—*Penal Code, ss.* 408, 409—*Criminal breach of trust by servant and agent—Jurisdiction to try—Defect of jurisdiction.*—The Ferozepur Branch of Messrs. McHinch and Co., a firm dealing in grain, with headquarters at Karachi, engaged accused Nos. 1 and 2, as their purchasing agents at Sangala

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in the Jhang District and the agents employed accused No. 3 as their servant. On the accused's failure to pay the balance of their account, accused No. 1 was convicted by the Additional District Magistrate, Ferozepur, of criminal breach of trust as agent, under s. 409, I.P.C., and accused No. 3 of criminal breach of trust as servant, under s. 408, I.P.C. Accused No. 2 had died in the course of the proceedings. *Held*, that the balance claimed being payable at Ferozepur, the offence fell within the provisions of s. 181 of the Crim. Pro. Code, and the Court at Ferozepur had jurisdiction to try the case. *Held*, also, trying a case in a district not within local jurisdiction is not a defect of jurisdiction but only of venue and can be cured by s. 531 of the Crim. Pro. Code. *Held*, further, that accused No. 3 was not guilty of the offence of which he was convicted, as it was not proved that the Ferozepur branch had ever entrusted him with any money in his personal capacity and not as representing the firm of his masters, accused Nos. 1 and 2. UTTAM CHAND v. EMPEROR, **9 P.L.R. 1902=2 P.R. 1902, Cr.** [*D.*, 22 P.W.R. 1908, Cr.=157 P.L.R. 1908.]

(1576)—*S.* 181 (4)—*Penal Code*, 1860, *s.* 3—*Jurisdiction—Kidnapping.*—A girl was enticed away in the Faridkot State from the lawful guardianship of her husband by the accused and was found being conveyed by them by rail from that State to a station in the Bhawalpur State at the Railway Station of Abohar in the British territory. *Held* that, as the act of kidnapping was complete outside British India and there was no concealment or detention in British territory, the British Courts had no jurisdiction to try and convict the accused. The words, 'was conveyed' in s. 181 (4), Crim. Pro. Code, do not import any separate or distinct offence, where the offence of kidnapping is complete previous to such conveying. The 'consequence' contemplated by s. 197, Crim. Pro. Code, is a consequence "modifying or completing the act." JAIMAL SINGH v. EMPRESS, **121 P.L.R. 1901 =1 P.R. 1900, Cr.** (10 B.H.C. 356, 30 P.R. 1889, Cr., 7 P.R. 1894, Cr., *R.*) [*R.*, 18 P.W.R. 1908, Cr.]

(1577)—*Ss.* 181, 182 (=*Crim. Pro. Code*, 1872, *s.* 61)—*Offence committed at sea—Jurisdiction.*—The complainant and the accused sailed from Bombay to Honawar in a boat. The latter threw overboard a box belonging to the former during the voyage within 9 miles of the Janjira State. On arrival at Honawar, the complainant charged the accused before the Magistrate at that place with having committed mischief. *Held* that, under s. 67, Illus. (*a*), Crim. Pro. Code, 1872, the Magistrate at Honawar, through whose jurisdiction the accused passed on the voyage, had jurisdiction to try the offence. QUEEN-EMPRESS v. ISMAL, **Rat. Un. Cr. C. 181=Cr. Rg. 16-3-1882.**

(1578)—Ss. 181, 182, 183—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 5 P.R. 1881, Cr.

Crim. Pro. Code (Act V of 1898)—*continued.*

(1579)—Ss. 181, 188—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, Rat. Un. Cr. C. 870=Cr. Rg. 42 of 1896.

——S. 182 (=1882, s. 182; 1872, s. 67; 1861, s. 29).

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(1580)—S. 182—*See* ABETMENT, 8 P.R. 1894, Cr.

(1581)—S. 182 — *See* COUNTERFEITING TRADE MARK, 25 C. 639=2 C.W.N. 450.

(1582)—S. 182—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 25 C. 858=2 C. W.N. 577, L.B.R. 1893—1900, 81.

(1583)—S. 182— *See* Nos. 1540, 1542, 1560, 1561, 1572, 1573, 1577, 1578, *supra.*

(1584)—Ss. 182, 183, 526—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, A.W. N. 1883, 88.

(1585)—*Ss.* 182, 531—*Jurisdiction—Place at which consequence of act ensues—Criminal breach of trust—Penal Code* (*Act* XLV *of* 1860), *s.* 408. —The accused in the case was employed as an agent by a firm in Mirzapur. Goods were intrusted to him for sale in various districts in Lower Bengal, and from time to time, as he sold goods, he remitted money to his employers at Mirzapur. When called upon to furnish accounts, he offered to furnish Rs. 500 as a deposit, but did not submit any account. The embezzlements complained of occurred at various places in Lower Bengal. *Held* that the Magistrate at Mirzapur had jurisdiction to try the case. *Held* further that, even if there were any irregularity, s. 531, Crim. Pro. Code, covered it, and that the offence was not one of a civil nature, as the conduct of the accused disclosed a dishonest intention. MAHADEO v. KING-EMPEROR, **7 A.L.J. 319=32 A. 397=11 Cr. L.J. 372=6 Ind Cas. 563.** (19 A. 111, *F.*) [*F.*, 35 A. 29=10 A.L.J. 431=13 Cr. L.J. 856 =17 Ind. Cas. 792.]

(1586)—Ss. 182, 531—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 16 C. 667.

——S. 183 (=1882, s. 183; 1872, s. 67, ill (a).)

(1587)—S. 183 — *See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 1 C.L.J. 334 =2 Cr. L.J. 411.

(1588)—S. 183—*See* Nos. 1540, 1560, 1561, 1578, 1584, *supra and* 4684, *infra.*

(1589)—S. 184—*See* Nos. 1540, 1560, *supra.*

——S. 185 (=1882, s. 185; 1872, s. 69; 1861, s. 34).

(1590)—*S.* 185—*Application of—Courts subordinate to two different High Courts—Concurrent jurisdiction to try offence—High Court within whose jurisdiction offender actually is, its power to decide Court of trial.*—Where Courts of two Magistrates subordinate to two different High Courts have jurisdiction to try an offence,

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the High Court, within the local limits of whose jurisdiction the offender actually is, may decide by which Court the offence shall be tried. S. 185 is not restricted to cases in which there is doubt as to whether one Court or another has jurisdiction, but is applicable also to cases in which the doubt is on the point whether the choice between the two Courts, both of which have jurisdiction, should be decided on the ground of public convenience. KING-EMPEROR v. CHAICHAL SINGH, **5 L.B.R. 17=9 Cr. L.J. 581=2 Ind. Cas. 361.**

(1591)—*S.* 185—*High Court if can interfere merely on the ground of convenience.*—Where the petitioners were prosecuted in the Court of the Additional District Magistrate of Lahore under ss. 409, 420, 467, 447, I.P.C., and on the allegations of the prosecution the Courts at Chittagong and Lahore were equally competent to exercise jurisdiction in the case: *Held*—that s. 185, Crim. Pro. Code, does not warrant interference by the High Court merely upon the ground of convenience. The decision of the High Court, within the local limits of whose appellate jurisdiction the offender actually is, can only be sought where a doubt arises as to the Court by which an offence should be enquired into or tried. RAJANI BINODE CHUCKERBUTTY v. ALL INDIA BANKING AND INSURANCE CO., LD., LAHORE, **17 C.W.N. 1207=22 Ind. Cas. 192=15 Cr. L.J. 48=41 C. 305.**

(1592)—*S.* 185—*Power of the High Court under the section to transfer case pending in Court not subject to its jurisdiction—Stay of further proceeding to enable accused to bring civil action— Proceeding which discloses no offence, if to be quashed.*—Where the nominee of a policy-holder claiming payment in respect of a life policy effected at Chittagong, and resident within the District of Chittagong, brought a charge of cheating in the Court of the District Magistrate of Chittagong against the Secretary and other officers of an Insurance Company having its head office at Gujranwalla in the Punjab and a branch office at Chittagong, and the Insurance Company brought a charge of cheating against the nominee and others in the Court of the District Magistrate of Gujranwalla, both charges relating to the payment of the amount secured on the policy: *Held* (on an application by the nominee under s. 185, Crim. Pro. Code)—That the High Court could properly make an order under s. 185, Crim. Pro. Code, to the effect that the offence should be enquired into and tried at Chittagong and transfer the case from the Court of the District Magistrate of Gujranwalla to that of the District Magistrate of Chittagong. Proceedings in the case were, however, stayed for two months to enable the accused to institute a civil suit. *Held* (on the application of the officers of the Insurance Company)—That as, on the face of the record, no offence had been disclosed against them, the proceedings against them should be quashed. HIRAN KUMAR CHOWDHURY v. MANGAL SEN, **17 C.W.N. 761=20 Ind. Cas. 222=14 Cr. L.J. 398.**

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(1593)—S. 185—*See* COMMITMENT TO SESSIONS COURT, 13 P R. 1887, Cr.

(1594)—S. 185—*See* Nos. 1206, 1540, 1563, *supra.*

——**S. 186 (=1882, s. 186; 1872, ss. 157, 174 1861, ss. 74, 88.)**

(1595)—*S.* 186—*Letters Patent, cl.* 29—*Jurisdiction of High Court.*—The High Court has jurisdiction under s. 29 of the Letters Patent to make an order directing a Magistrate to hold a preliminary investigation and in the event of a *prima facie* case being made out, to commit for trial to the Sessions a case which falls within s. 186 of the Crim. Pro. Code. Where a special provision is made in certain circumstances, the procedure must be governed by the special provision and not by the general provision, unless the case is of an extremely exceptional character which would justify the Court in departing from the general rule. THE ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE COMPANY, LIMITED v. MASILAMANY PILLAI, **2 Weir 146=1 Weir 789.**

(1595 *a*)—S. 186—*See* No. 1540, *supra.*

(1596)—Ss. 186, 187—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, Rat. Un. Cr. C. 97=Cr. Rg. 18-11-1875.

——**S. 187 (=1882, s. 187; 1872, s. 175).**

(1597)—S. 187—*See* Nos. 1540, 1596, *supra.*

——**S. 188 (=1882, s. 188).**

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(1598)—*S.* 188 (=*Crim. Pro. Code,* 1882, s. 188)—*Offence committed outside British India —Political Agent's certificate, necessity for.*—A charge of kidnapping committed in Nepal cannot be enquired into in British India without the Political Agent's certificate, as required by s. 188. QUEEN-EMPRESS v. RAM SUNDAR, **19 A. 109=A W.N. 1896, 191.** [*R.*, 24 B. 287 =1 Bom. L.R. 678.]

(1599)—*S.* 188—*Certificate of Political Agent, to be obtained before beginning of inquiry.*—The obtaining of the certificate of the Political Agent, as provided for by s. 188, is a preliminary requisite to the holding of an inquiry in British India of an offence committed outside British India. A commitment made without such certificate before the beginning of the enquiry is illegal, although it is subsequently obtained. EMPEROR v. KALI CHARAN, **24 A. 256=A.W.N. 1902, 45.** [*R.*, 14 Cr.L.J. 298= 19 Ind. Cas. 904=6 S.L.R. 260; *D.*, 15 Cr.L.J. 207=22 Ind. Cas. 991=26 M.L J. 235.]

(1600)—*S.* 188—*Native Indian subjects committing offences outside British India—Jurisdiction of British Courts.*—Where Native Indian subjects of Her Majesty were charged with committing offences under s. 407 and ss. 407 and 109, I.P.C., at a place beyond the limits of British India, *held*, that they could, under the provisions of s. 188, be dealt with in respect of

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such offences, as if they had been committed at any place in British India at which they were found. If there is no Political Agent, no certificate is necessary. QUEEN-EMPRESS v. DAYA BHIMA, **13 B. 147.** [*R.*, 24 B. 287 = 1 Bom. L. R. 678, 14 Cr.L.J 298 = 19 Ind. Cas. 954 = 6 S.L.R. 260, Rat. Un. Cr. C. 773.]

(1601)—*S.* 188 (= *s.* 188, *Code of* 1882)—*Political Agent's sanction.*—If there is no Political Agent in a place outside British India, no preliminary sanction as required by s. 188, Crim. Pro Code, is necessary. QUEEN-EMPRESS v. SHEIK ABDOOL RAHIMAN, N. **14 B. 227.** [*R.*, 24 B. 287 = 1 Bom. L.R. 678, Rat. Un. Cr. C. 773]

(1602)—*S.* 188 (= *Crim. Pro. Code*, 1882, *s.* 188)—*Certificate by Political Agent—Recalling.*—Where a District Magistrate, in the capacity of Political Agent, once grants a certificate, under s. 188, for the trial of a case by a second-class Magistrate of the District, the latter is legally seized of the case, and the Political Agent has no authority, thereafter, to recall his certificate or to issue, as District Magistrate, a warrant for the arrest of the accused on the requisition of the State authorities and to order his removal to the Native State. *In re* HORMUSJEE NASARWANJI, **Rat. Un. Cr. C. 253 = Cr. Rg. 13 of 1886.** [*F.*, 1 Bom. Cr. C. 140 = 14 Bom. L.R. 377 = 13 Cr.L.J. 537 = 15 Ind. Cas. 809.]

(1603)—*S.* 188 — *Offence committed outside British India.*—Where an offence is committed outside British India, a commitment made without the Political Agent's certificate, as required by s. 188, is *ultra vires* and all proceedings taken by the Judge on such commitment are wholly void. *In re* SESSIONS JUDGE OF SOUTH ARCOT, **2 Weir 148.**

(1604)—*S.* 188—*Jurisdiction of Magistrate.*—A Magistrate cannot try a Native Indian subject for an offence committed beyond British territory, without procuring the certificate of the Political Agent of the territory within which the offence was committed to the effect that the charge ought to be inquired into in British India. QUEEN-EMPESS v. MAUNG SHWE TU, **L.B R. 1872—1892, 334.**

(1605)—*S.* 188—*Indian Extradition Act* (XV *of* 1903), *s.* 7—*Political Agent—Warrant—Accused surrendering—Certificate by Political Agent for trial of accused in British India—Recalling the certificate and allowing the Native State to try the accused—Practice and procedure.*—On a requisition made to him by a Native State, the Political Agent, who was also a District Magistrate, issued a warrant, under s. 7 of the Extradition Act, 1903, to arrest the accused. The latter surrendered of his own accord and the warrant was returned unexecuted. The Political Agent then issued a certificate, under s. 188 of the Crim. Pro. Code, that accused should be tried in British India. Subsequently, the State authorities pressed for the accused's surrender, and the Political Agent accordingly ordered the accused to be handed over to the State for trial. *Held*, that it was not open to the Political Agent to re-call the certificate issued by him under s. 188 of the Code, and that the order passed by him allowing the trial in the Native State was unsustainable. *In re* VAZIR SAHEB, **14 Bom. L.R. 377 = 15 Ind. Cas. 809 = 13 Cr. L.J. 537 = 1 Bom. Cr. C. 140.** (Rat. Un. Cr. C. 253, *F.*)

(1606)—*S.* 188—*High Seas—Offence committed by Native Indian subject on—Trial—Sanction under s.* 188, *Crim. Pro. Code, not necessary—Law applicable—Indian Penal Code.*—No sanction of the Local Government under s. 188, Crim. Pro. Code, is necessary for the trial of a Native Indian subject in respect of an offence committed by him on the High Seas. The word 'territory' in the first proviso to s. 188, Crim. Pro. Code, is used in that proviso in reference only to territories of any Native Prince or Chief in India. The word cannot include the High Seas, since they are not part of the territory of any State. *Held*, also, that a Court of Criminal Justice in British India dealing with a Native Indian subject of His Majesty, for an offence alleged to have been committed by him on the High Seas, is bound to apply the provisions of the Indian Penal Code to the act or acts alleged against him. PO THAUNG v. KING-EMPEROR, **5 L.B.R. 221, F.B. = 10 Ind. Cas. 705 = 12 Cr. L.J. 198.**

(1607)—*S.* 188—*Effect of illegal arrest on trial of accused—Crim. Pro. Code (Act* V *of* 1898), *s.* 188—*Extradition.*—Where a man is in the country and is charged before a Magistrate with an offence under the Indian Penal Code, it will not avail him to say that he was brought there illegally from a foreign country. The principle upon which the English cases to this effect are based underlies also s. 188 of the Crim. Pro. Code (Act V of 1898). EMPEROR v. VINAYAK DAMODAR SAVARKAR, **13 Bom. L.R. 296 = 35 B. 225 = 12 Cr. L.J. 356 = 10 Ind. Cas. 956.** [*R.*, 39 C. 164 = 14 Cr. L.J. 375 = 15 C.W.N. 1053 = 12 Cr. L.J. 505 = 12 Ind. Cas. 273.]

(1608)—S. 188—*See* ABETMENT, 19 B. 105.

(1609)—S. 188—*See* ATTEMPT, 24 B. 287 = 1 Bom. L.R. 678.

(1610) — S. 188—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, A.W.N. 1884, 85, 19 B. 105.

(1610 *a*)—S. 188— *See* JURISDICTION OF CRIMINAL COURTS, JURISDICTION OVER NATIVES, 16 B. 178.

(1611)—S. 188—*See* POLITICAL AGENT, 12 Bom. L.R. 667.

(1612)—S. 188 — *See* SESSIONS JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 773 = Cr. Rg. 37 of 1895.

(1613)—S. 188—*See* Nos. 1510, 1540, 1560, 1574, 1579, *supra.*

(1614)—*Ss.* 188, 227—*Offence committed in Nepal territory—Certificate granted by political officer—Penal Code, ss.* 355, 363.—Where a

person is kidnapped in British India and is shoed and beaten at a place within Nepal territory, and the Political Officer at Nepal grants a certificate under s. 188 of the Code of Criminal Procedure with respect to the charge of kidnapping under s. 363, Penal Code, and the accused is acquitted of the charge of kidnapping but is convicted of an offence under s. 355, Penal Code: *Held*, that the Magistrate has jurisdiction to convict the accused of an offence under s. 355, Penal Code. The certificate granted under s. 188 in respect to a certain set of facts will cover every charge with the facts disclosed in the proceedings will suffice to sustain, and the Magistrate is not restricted to the section mentioned in the certificate. KRISHNA NATH TEWARI v. KING-EMPEROR, **8 A.L.J. 525 = 10 Ind. Cas. 959 = 12 Cr. L.J. 359.**

(1615)—Ss. 188 and 532—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 13 M. 423 = 2 Weir 147.

(1616)—*Ss.* 188, 537 — *Accused a Native Indian subject of His Majesty—Offence of criminal breach of trust committed beyond India—Place of trial—Sanction of Local Government whether necessary—S.* 537, *whether can be applied at an intermediate stage of the case.*—The accused was a Native Indian subject of His Majesty the King, and the offence charged against him was that of criminal breach of trust committed in Spain. *Held*, that the accused cannot be tried in British India without the sanction of the Local Government. The proviso to s. 188, Crim. Pro. Code, is universal in its application, and is not restricted to Native States in India. The history of the legislation which led to the amendment of s. 188, Crim. Pro. Code, traced. It was contended that the proceedings held by the Magistrate in British India in contravention of the proviso to s. 188 were irregular, but not illegal, and that a sanction subsequently obtained would cure the defect. *Held*, that s. 537, Crim. Pro. Code, cannot be applied at an intermediate stage of the case, so as to allow the error to remain uncorrected. The proceedings of the Magistrate were therefore quashed and the complaint was ordered to be dismissed for want of sanction by the Local Government. IMPERATOR v. CHELLARAM NARAINDAS, **6 S.L.R. 260 = 19 Ind. Cas. 954 = 14 Cr. L.J. 298.**

(1617)—*Ss.* 188, 537 — *Effect of want of Political Agent's certificate where offence committed in foreign territory.*—An accused person enticed away a married girl under 16 years of age from her father's house in Kashmir territory. He was ultimately arrested with her near Gujrat. He then induced her to file a petition at Gujrat stating that she was without a guardian and was about to settle there to practise prostitution and rented a shop for her. No certificate was obtained from the Kashmir Political Agent as required by s. 188, Crim. Pro. Code, but no objection was taken for the accused in the lower Courts which convicted him under s. 366, Penal Code. A Full Bench *held* that, though the subsequent actions of the girl were voluntary, yet, as her leaving her home and her consent were due to the accused's deceitful persuasions, the accused was guilty under s. 366, Penal Code, and that the defect, due to the want of the Political Agent's certificate not being pointed out at the trial, was cured by s. 537, Crim. Pro. Code, as no prejudice to the accused was either alleged or proved. FATEH DIN v. EMPEROR, **4 P. R. 1902, F.B. = 21 P. L. R. 1902, F.B.** (35 P.R. 1888, Cr., *F.*; 30 P.R. 1889, Cr., *R.*; 11 P.R. 1899, Cr., A.W.N. 1884, 85, 19 A. 109, 13 M. 423, 16 C. 667, 5 C.W.N. 866, *D.*).

(1618)—*Ss.* 188 *and* 537—*Offence committed outside British India—Inquiry before committing Magistrate—Certificate of political Agent.*—In an inquiry, before the committing Magistrate, into an offence committed outside British India, the certificate from the Political Agent required by s. 188 of the Code, was not received until after some witnesses on behalf of the prosecution were examined; but the certificate was received before the commitment was made. It was objected that the commitment was irregular and the trial that ensued was void. *Held*, overruling the objection, that there was nothing to show that the word "charge" was used in s. 188 of the Code in the sense in which it was used elsewhere in the Code. Assuming that it would be more regular for the committing Magistrate to have re-called the witnesses, whom he had examined before the certificate was issued, nevertheless, it had not been shown that the accused had in any way been injured or prejudiced. EMPEROR v. MAHAMAD BUKSH KARIM BUKSH, **8 Bom.L.R. 507 = 4 Cr. L.J. 49.**

(1619)—Ss. 188, 537—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 11 P.R. 1899, Cr., 35 P.R. 1888, Cr.

(1620)—S. 189—*See* No. 1540, *supra.*

——S. 190 (= 1882, s. 191; 1872, Ss. 23, 25, 27, 140, 141, 142, para. (2); 1861, ss. 65, 66, 68).

See COMPLAINANT.

See COMPLAINT.

(1621)—*S.* 190 (= *Crim. Pro. Code,* 1882, *s.* 191)—*Power under section not affected by s.* 82, *Bombay District Municipal Act* (VI *of* 1873).—S. 82 of Bom. Act, VI of 1873, deprives neither a Magistrate of the power conferred by s. 191, Crim. Pro. Code, of taking cognizance of an offence created by the Act upon complaint or upon a police report, or upon information, etc., nor a police officer of the power conferred by s. 28 of the Police Act (Bom. Act VII of 1867). QUEEN-EMPRESS v. MULCHAND, **Rat. Un. Cr. C. 355 = Cr. Rg. 44 of 1887.** [*R.*, Rat. Un. Cr. C. 629.]

(1622)—*S.* 190 (= *Crim. Pro. Code,* 1882, *s.* 191)—*Cognizance of an offence on suspicion—Penal Code, s.* 211—*Prosecution for false charge—Proper procedure—Application for enquiry—Complaint.*—A Magistrate ought not, as a matter of sound judicial discretion, to take cognizance of an offence under s. 191, and direct

Crim. Pro. Code (Act V of 1898)—*continued.*

that the persons suspected should be tried, until some person aggrieved has complained, or until he has before him a police report on the subject based on investigation directed to the offence to be tried; and in cases of alleged false charges until it is clear that the original charge has been either heard and dismissed or abandoned. In order to show conclusively that such a charge has been abandoned, the person who made the false charge should be offered an opportunity of supporting it or abandoning it, before the order to prosecute for the false charge is made. [*F.*, 7 C.P.L.R. 6 Cr.; *F. & Criticised*, 2 C.L.J. 228 = 10 C.W.N. 158 = 33 C. 228; *Applied*, U.B.R. 1904, 1st Qr., Crim. Pro. Code, 6; *R.*, 19 A.W.N. 90, 6 C.W.N. 295, 4 N.L.R. 136 = 8 Cr. L.J. 349.] Where the police, making enquiries upon an information laid before them, reported a case as false, an application by the informant to the Magistrate for the investigation of the case and for summoning his witnesses would be a "complaint" within the meaning of s. 191 of the Crim. Pro. Code, which should be enquired into by the Magistrate. The Magistrate could not avoid the responsibility of making the enquiry by accepting the conclusion of the police on the subject. QUEEN-EMPRESS v. SHAM LALL, **14 C. 707, F.B.** [*Affirmed*, 35 C. 141 = 2 M.L.T. 500 = 7 Cr.L.J. 10 = 7 C.L.J. 49; *F.*, 37 C. 250 = 14 C.W.N. 330 = 10 C.L.J. 564 = 4 Ind. Cas. 710 = 11 Cr.L.J. 37, 5 C.W.N. 254; *R.*, 2 M.W.N. 1911, 9 = 21 M.L.J. 795 = 12 Cr.L.J. 323 = 10 M.L.T. 47 = 10 Ind. Cas. 619, 2 P.R. 1912, Cr. = 12 Cr.L.J. 539 = 12 Ind. Cas. 515, 16 Ind. Cas. 257 = 16 C.W.N. 1105 = 15 C.L.J. 517, 15 Cr.L.J. 369 = 23 Ind. Cas. 737 = 7 S.L. R. 77.]

(1623)—*S.* 190—*Cognizable offence, complaint of—Some of the accused sent up by police—Trial and conviction by Deputy Magistrate — Magistrate of the District, jurisdiction of, to order prosecution of remaining accused—Cognizance of complaint against them—Order, propriety of.*— On a complaint of a cognizable offence, the police sent up some only of the accused persons, who were tried and convicted by a Deputy Magistrate; subsequently, the District Magistrate or Deputy Commissioner, while inspecting the police outpost, made a note that the remaining accused should be sent up; and, thereupon, the remaining accused were sent up for trial and the case was made over to the same Deputy Magistrate. *Held*, that nothing was made over to the Deputy Magistrate at first except the case of some of the accused, who had been previously tried and convicted. *Held*, also, that the proceedings taken against the remaining accused without any one formally taking cognizance of the case were irregularly instituted and should be set aside. JHARU JOLA v. SHUKH DEO SINGH, **3 C.L.J. 87 = 3 Cr. L.J. 209.** [*D.*, 39 C. 119 = 13 Cr. L.J. 433 = 15 Ind. Cas. 65]

(1624)—*S.* 190—*Complaint presented by complainant to a Magistrate who records on it that he has taken cognizance of the case under that s. 190 (c) of the Code—Whether Magistrate has taken cognizance of the case under cl. (a) or*

Crim. Pro. Code (Act V of 1898)—*continued.*

cl. (c) of sub-s. 1 of s. 190—Information received from any person other than a police-officer—Whether it means only such information as does not constitute a complaint or a police report—Whether under the Burma Municipal Act (III *of* 1898) *the Magistrate has no jurisdiction to take cognizance under cl. (c)—Whether he must be deemed to have taken cognizance under cl. (a).*— The question referred was: When a complaint, as defined in s. 4 of the Crim. Pro. Code, is presented by the complainant to a Magistrate, and the Magistrate records on it that he takes cognizance of the case under s. 190 (*c*) of the Crim. Pro. Code, has the Magistrate taken cognizance of it under cl. (*a*) or cl. (*c*) of sub-s. (1) of s. 190? *Per Irwin, O.C.J.*—The Magistrate has taken cognizance under cl. (*a*) of s. 190 (1). The expression "information received from any person other than a police officer" in s. 190 (1) (*c*) clearly means only such information as does not constitute a complaint nor a police report. *Per Ormond, J.*—If the Magistrate had jurisdiction to take cognizance of the offence either under cl. (*a*) or cl. (*c*), he must be deemed to have taken cognizance of the offence under cl. (*c*), as stated by him. Ordinarily when a complaint is submitted, the Magistrate would take cognizance of the offence under cl (*a*). But the fact that a complaint has been submitted to a Magistrate does not preclude the Magistrate from taking cognizance of the offence under cl. (c), provided he exercises a sound discretion. In the present case, the Magistrate, under the Municipal Act, has no jurisdiction to take cognizance of the offence under cl. (*c*). In these circumstances, the Magistrate must be deemed to have taken cognizance under cl. (*a*). MESHIDI KHAN v. RANGOON MUNICIPAL COMMITTEE, **14 Bur. L.R. 250 = 4 L.B R. 300.**

(1625)—*S.* 190—*Written information by police officer, not a police report.*—A written information given by a police officer, who is neither himself a witness, nor examined as a complainant, is not a "police report," such as is meant in s. 190, Crim. Pro. Code. The "police report" is a report made by a police officer in a case which he may investigate under Ch XIV. QUEEN-EMPRESS v. NGA SAW, **1 L.B.R. 59.** [*Overruled*, 2 L.B.R. 146.]

(1626)—*S.* 190 — *Magistrate not empowered under—Issue of summons under s. 61 of Stamp Act—Validity of proceedings.*—In this case, a Magistrate of the second class, not empowered under the said section, issued a summons under s. 61 of the Stamp Act, on receipt of the sanction of the Collector to prosecute given under s. 69. The Magistrate was not acting under the said section of the Code, because there was no police report. *Held*, that he must, therefore, have been acting under cl. (*a*), s. 190 (1), on complaint, and that consequently the Magistrate's procedure should have been regulated by the provisions of s. 200, Crim. Pro. Code, and he ought to have examined the complainant. QUEEN-EMPRESS v. NGA TA YOK PYA, **U.B.R. 1897—1901, Vol. I, 55.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1627)—*S.* 190—*Complaint — Information to Magistrate—Initiation of criminal proceedings —Prosecution in conformity with an* ultra vires *order.*—When a District Judge directed the prosecution of the guardian of a minor, and the District Magistrate ordered the case to be tried by the Additional District Magistrate, the Chief Court on revision set aside the order of the District Magistrate as one passed without jurisdiction, on the ground that the order of the District Judge was illegal and there was no authority for the prosecution. The order of the District Judge could not be regarded as "information" within the meaning of s. 190 (1) (*c*) of the Crim. Pro. Code. SITAL DAS v. CROWN, **87 P.L.R. 1910**=**8 Ind. Cas. 247**=**11 Cr. L.J. 602.** (18 B. 636, 1 B. 340, *R.*).

(1628)—*S.* 190 — *Jurisdiction of District Magistrate C. and M. Station, Bangalore, to take cognizance of offences against European British subjects.*—The District Magistrate of the Civil and Military Station, Bangalore, has jurisdiction to take cognizance of, and try offences committed by, European British subjects in accordance with the provisions of the Crim. Pro. Code. *In re* W.B. LAWRENCE, **9 Ind. Cas. 255**=**12 Cr. L.J. 42**=**9 M.L.T. 322**=**34 M. 346**=1911, **2 M.W.N. 199.**

(1629)—S. 190—*See* ACT I OF 1878, s. 3, Rat. Un. Cr. C. 375=Cr. Rg. 23 of 1888.

(1630)—S. 190—*See* ACT VI OF 1882, s. 82, 1 Weir 720=2 Weir 46=2 Weir 149.

(1631)—S. 190—*See* DISMISSAL OF COMPLAINT, Rat. Un. Cr. C. 491=Cr. Rg. 60 of 1889.

(1632)—S. 190—*See* POLICE REPORT, U.B. R. 1904, 3rd Qr., Crim. Pro. Code, 25, 1 L.B. R. 58.

(1633)—S. 190—*See* BUR. REG. XIV OF 1887, s. 5 (1), U.B.R. 1892—1896, Vol. I, 328.

(1634)—S. 190—*See* Nos. 28, 29, 30, 31, 53 to 58, 244, 272, 273, 274, 359, 382, 412, 445, 700, 1330, 1332, 1335, 1338, 1343, 1345, 1353, 1527, 1562, *supra, and* Nos. 1726, 1999 to 2003, 4199, 4637, 4656, *infra.*

(1635)—Ss. 190, 90, 342—*See* MAGISTRATE, JURISDICTION OF—TRANSFER OF CASES—REFERENCE TO OTHER MAGISTRATES, 7 M. H.C. App. 2.

(1636)—Ss. 190, 155—*See* BEN. ACT II OF 1907, ss. 2, cl. (*b*), 7, 16 C.W.N. 1049=13 Cr. L.J. 691=16 Ind. Cas. 499.

(1637)—*Ss.* 190, 170, 200, 205—*Police report, action under—Knowledge based on complaint—Duty of Magistrate—Object of the Code.*—A 'police report' mentioned in s. 190 (*b*), Crim. Pro. Code, is not limited to a report mentioned in s. 170 of the Code and the preceding sections. Where, on information received by post, a Magistrate sent the case to the police for enquiry and report, and on the report thus received took cognizance of the case, *held* that it must be presumed that the action taken by him was based on the police report. The object of the Code is that, before proceedings are taken against an accused person, such as would bring him to a Court of Justice, a Magistrate must have before him knowledge based either upon a complaint or upon police report. In a case where the Magistrate chooses to take action without such independent report, he is bound to inform the accused that he is entitled to be tried by some Court other than his own. SARFARAZ KHAN v. KING-EMPEROR, **11 A. L J. 331**=**19 Ind. Cas. 314**=**14 Cr.L.J. 218.**

(1638)—*Ss.* 190 *and* 173— *Police report if should set forth the information—Form, defective—Cognizance of a case, taking of. on police report—Accused's right to know the nature of the information against him at the initial stage.*—The police report under ss. 173 and 190, Crim. Pro. Code, should set forth the nature of the information against the accused. Where the police report, on which the Magistrate took cognizance of the case, did not set forth the nature of the information against the accused: *Held* that, in the circumstances of the case, the prosecution instituted against the accused on the police report should be set aside. LEE v. ADHIKARY, **37 C. 49**=**14 C.W N. 304.**

(1639)—*Ss.* 190 *and* 191— *Cognizance of offence in a trial.*—Where a Magistrate who was clearly seized with the trial of an offence of theft found that the accused was not guilty, but another person was, *held*, that the Magistrate could be competent to try him, as he took cognizance of the offence under cl. (*a*) and not cl. (*c*) of sub-s. 1 of s. 190. QUTBA v. EMPEROR, **32 P.R. 1904, Cr.**=**1 Cr. L J. 511**=**68 P.L.R. 1904,** (4 C.W.N 367, 26 C. 786, *F.*) [*R.*, 14 Cr. L.J. 290=9 N L.R. 65=19 Ind. Cas. 946.]

(1640)—*Ss.* 190, 191, *scope of.*—Where a Magistrate takes cognizance of an offence under s. 190 (*c*), he is bound to take further proceedings under s. 191. *In the matter of* AKBAR MOMIN, **6 C.W.N. 202.**

(1641)—Ss. 190 and 191—*See* COMMITMENT TO SESSIONS COURT, 2 S.L.R. 9, Cr.=10 Cr. L.J. 224, 22 M. 148=2 Weir 150.

(1642)—Ss. 190 and 191—*See* CANTONMENT CODE, 1889, s. 167, cl. (*j*), 3 A.L.J. 694=4 Cr. L.J. 374=A.W.N. 1906, 303.

(1643)—Ss. 190 and 191—*See* MAGISTRATE, JURISDICTION OF—TRANSFER OF CASES—REFERENCE TO OTHER MAGISTRATES, ETC., A.W.N. 1907, 93=5 Cr. L.J. 275.

(1644)—Ss. 190, 191, 195, 196, 198, 199, 200, 170, 173, 203, 537—*See* COMPLAINT—INSTITUTION OF COMPLAINT—PRELIMINARIES, 18 A. 465=A.W.N. 1896, 149, 4 C.W.N. 367, 1 C.L.R. 523.

(1645)—*Ss.* 190, 191, 260 *and* 537—*Act* XI *of* 1890, *s.* 5—*Summary trial—No complaint—No evidence—Conviction based on Magistrate's observation, legality of.*—The petitioner was convicted of an offence under s. 6 of Act XI of 1890, after a summary trial. It was found that

Crim. Pro. Code (Act V of 1898)—*continued.*

there was no complaint against the petitioner and that the conviction was based on the trying Magistrate's own observation of the condition of a certain horse belonging to the petitioner and on no other evidence. *Held*, that the conviction was illegal. The omission to follow the procedure prescribed by s. 190 (c) and s. 191 of the Code, and the omission to hear evidence. are both irregularities, which cannot be cured by s. 537. The brevity permitted in a summary trial does not mean that there shall be no trial at all, or that an accused can be heavily fined at a Magistrate's discretion, on a personal knowledge, notwithstanding that the law gives the accused the right of demanding that the case should be tried by another Court. KANHAYA LALL v. KING-EMPEROR, **31 P.L.R. 1905 = 2 Cr. L J. 187.**

(1646)—*Ss.* 190, 191, 351—*Proceedings under s.* 190 *(c)—Non-compliance with the terms of s.* 191—*Effect—Proceedings under s.* 351—*Not controlled by terms of ss.* 190, 191.—*Held*, that the competency of a Magistrate to try a person for an offence of which he has taken cognizance under cl. (c) of sub-s. (1) of s. 190 is contingent on a strict observance of the provisions of s. 191 and that these provisions are mandatory and neglect to conform to them makes the trial null and void. *Held*, that s. 351, Crim. Pro. Code, 1898, is self-contained and complete in itself and quite independent of the provisions of s. 190, and necessarily of s. 191 of the Code; for, the accused against whom action is taken under s. 351, Crim. Pro. Code, has full information as to the source and particulars of the materials upon which the Magistrate acts. He can, if he likes, displace by argument or counter-evidence the probative effect of these materials so far as they affect him injuriously. He is thus not placed under a disability to combat the effect of the suspicious circumstances operating upon the mind of the Magistrate and influencing his judgment, as in the case of a proceeding taking its rise under cl. (c) of sub-s. (1) of s. 190. EMPEROR v. SAKHIA, **5 N.L.R. 113 = 3 Ind. Cas. 568 = 10 Cr. L J. 303.** [*R.*, 9 N.L.R. 65 = 19 Ind. Cas. 946 = 14 Cr. L.J. 290.]

(1647)—*Ss.* 190, 191, 423 (1) (6) *and* 528—*Jurisdiction of appellate Court to try a case itself, instead of ordering a re-trial by subordinate Court.*—Where a second class Magistrate convicts an accused charged by the police, the Sub-Divisional Magistrate, as the Court hearing appeals from the second class Magistrate, has jurisdiction under s. 423 (1) and (6) to reverse the finding and sentence of the second class Magistrate and to " order a retrial by a Court of competent jurisdiction subordinate " to him. These latter words, when read with s. 528, are not to be taken as words of limitation, and do not exclude the appellate Court from itself trying the offender, if the offence is one within the ordinary jurisdiction of the Sub-Divisional Magistrate. The Sub-Divisional Magistrate, so acting, takes cognizance of the case not under s. 190 (1), cl. (c), but under cl. (*b*), as he has before him the police charge-sheet stating all the facts. EMPEROR v. MANIKKA GRAMANI, **30 M. 228 = 16 M.L J. 546 = 2 M.L.T. 46 = 5 Cr. L.J. 104 = 6 Cr. L.J. 133**

(1648)—*Ss.* 190, 191, 528—*Notice to accused before transfer when necessary — Failure to record reasons for transfer, effect of.*—Where a Sub-Divisional Magistrate listened to information given by the police, and ordered them to *chalan* the accused under s. 143, I.P.C. *Held* that the Magistrate really proceeded under s. 190 (*b*) and not under s. 190 (*c*), and so was not bound under s. 191 to give the accused any option as to whether they would be tried by him or not. The mere fact that the Magistrate asked the police to *chalan* the accused is absolutely no ground for any fear that they would not be impartially dealt with. *Held*, also, that, where the District Magistrate *suo motu* transfers a case, no notice to the accused is necessary. Where the reasons for a transfer are not recorded under s. 528 (3), the result cannot be the absolute cancelment of the order; only the superior Court will call for reasons. ABDULLA v. THE KING-EMPEROR OF INDIA, **3 P.R. 1910, Cr. = 35 P.W.R. 1909, Cr. = 164 P. L.R. 1910 = 4 Ind. Cas. 1025.** (24 M. 317, *N. R.*; 22 B. 549, *Appl.*; 28 P.R. 1902, Cr., *Dist.*)

(1649)—*Ss.* 190, 191, 537—*Omission of Magistrate to inform accused of his right to be tried by another Court.*—The meaning of s. 191, Crim. Pro. Code, is that a Magistrate, taking cognizance of an offence under s. 190 (*c*), is not competent to try the case unless and until he has informed the accused, before taking any evidence, that he is entitled to have his case tried by another Magistrate. The omission to inform the accused of his rights is not a mere irregularity. S. 537 was never intended to apply to a case where the Magistrate had neglected to comply with the provisions of s. 191. EMPEROR v. CHEDI, **28 A. 212 = A.W. N. 1905, 258 = 2 A.L.J. 745 = 2 Cr. L.J. 809.**

(1650)—*Ss,* 190, 191 *and* 555—*Duty of Magistrate taking cognizance of an offence on his own personal knowledge.*—A cantonment Magistrate warned the accused that he must not leave his buffaloes in a certain spot. The accused persisted. Finding the place to have been rendered insanitary, the Magistrate sent for the accused and fined him without taking any independent evidence. *Held*, that the conviction and sentence were illegal, the Magistrate not having informed the accused that he was entitled to have the case tried by another Magistrate, and the case being one taken cognizance of on his own personal knowledge. *Held*, also, that, though it was not incompetent for the Magistrate to take cognizance of the offence on the ground of his inspection of the locality, he ought to have acted on independent evidence. KING-EMPEROR v. ABDUL RAHIM, **8 P.R. 1905, Cr. = 170 P.L.R. 1905.**

(1651)—*Ss.* 190, 192, 195, 476—*Submission of record by Assistant Collector to the District Collector for initiation of proceedings under s.*193, *I.P.C.*—An Assistant Collector of the second

Crim. Pro. Code (Act V of 1898)—*continued.*

class trying a rent suit came to the conclusion that the plaintiff had committed an offence under s. 193, I.P.C. He thereupon submitted the record to the District Collector for starting a case under the section. The District Collector ordered the initiation of a case under s. 193, and made it over for decision to a first class Magistrate. *Held*, that the order of the Assistant Collector was not an order under s. 476, but his intention was to make an allegation to the Collector of the District with a view to the latter taking action under the Code of Criminal Procedure, and that the fact that the District Collector took action upon it, not as a Collector, but as the District Magistrate, did not affect his jurisdiction to pass the order which he had passed. EMPEROR v. SUNDAR SARUP, **26 A. 514 = A.W.N. 1904, 90.** (23 A. 249, *F.*) [*F.*, 35 A. 8 = 10 A.L.J. 361 = 13 Cr. L.J. 829 = 17 Ind. Cas. 573.]

(1652)—*Ss.* 190, 192 *and* 254—*Cognizance of case by District Magistrate otherwise than upon complaint—Validity of procedure.*—A certain person, F.M. sent an application to the District Magistrate alleging that the accused had taken Rs. 30 from him with the object of bribing the Magistrate in whose Court F.M. was being prosecuted and that the accused had declared that he had paid the amount to the Magistrate, which he had not really done. The District Magistrate, after recording F.M.'s statement and questioning some of his witnesses, transferred the case under s. 192, Crim. Pro. Code, to another Magistrate for proceedings under s. 162, Penal Code. *Held*, that a District Magistrate could take cognizance of a case otherwise than upon a complaint, ss. 190, 192 and 254, Crim. Pro. Code, clearly validating the proceedings taken, and that the fact, that there was no complaint made before the District Magistrate by some person having a personal knowledge of the fact that a bribe was offered, did not render the proceedings bad. CROWN v. ALLAHWARAYO *wd.* KHUDABAKSH, **1 S.L.R. 119, Cr.**

(1653)—Ss. 190, 192, 435—*See* DISTRICT MAGISTRATE, 30 C. 449.

(1654)—*Ss.* 190, 195, 198 (= *Crim. Pro. Code,* 1872, *ss.* 140 (*c*), 467 *to* 470—*Sanction to prosecute.*—The sanction by a Court, under ss. 467, 468, 469 and 470, signifies that, in the opinion of the Court, a criminal offence has been committed. The complaint of a private person, prosecuting under s. 140, cl. (*c*), must receive special sanction by the Court under the above sections. But the sanction is sufficient to justify the Magistrate in proceeding *proprio motu* on suspicion that an offence has been committed. QUEEN-EMPRESS v. YAMNI BEGAM, **8 C. 45, Oudh.**

(1655)—Ss. 190, 195, 198, 478, 535, 537 (*b*)—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 4 L.B.R. 247 = 8 Cr.L.J. 65.

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(1656)—Ss. 190, 195, 198, 478, 535, 537 (*b*)—*See* SANCTION TO PROSECUTE—WHO MAY APPLY FOR SANCTION, 4 C. 712.

(1657)—*Ss.* 190, 195, 439 *and* 476—*Distinction between sanction and complaint—High Court's power to revise order made under s.* 476.—S. 190 applies to offences mentioned in s. 195 as well as to others, *i.e.*, a Magistrate can only take cognizance of an offence mentioned in s. 195 in one of the three ways specified in s. 190, and s. 195 further declares that, except where the Court or public servant concerned is the complainant, its or his sanction is necessary. The Code does not contemplate a Court or public servant giving sanction where no application for sanction has been made. If a Court or public servant thinks it necessary to initiate a prosecution, the proper course is to make a complaint. As far as Civil, Criminal and Revenue Courts acting in the course of a judicial proceeding are concerned, the procedure to be followed is prescribed in s. 476, and in that case, the Magistrate, who takes cognizance of the offence, is not required to examine the complainant on oath (see s. 200). Other Courts or public servants are not specially provided for. They are in the category of ordinary complainants. Granting sanction implies that some one wishes to prosecute, but cannot do so without the sanction prescribed by s. 195; because no Court will take cognizance without it. Where it is the Court or public servant itself or himself that wishes to prosecute, sanction is not required. All that is wanted is the complaint of that Court or public servant, and the question of sanction does not arise. The distinction between a sanction and a complaint is important, because the provisions relating to revocation of sanction in s. 195 (6) do not apply to complaints. A complaint under s. 476 is clearly an order within the meaning of ss. 435 and 439 read with s. 423, and the Chief Court has power to set it aside in revision, where there is manifest injustice or where the Court acting under s. 476 has not exercised its discretion in a proper way. NGA PAW U v. KING-EMPEROR, **U.B.R. 1907, Crim. Pro. Code 1 = 6 Cr. L.J. 25.** (18 A. 213, 26 A. 249, 26 B. 785, 20 C. 349, 21 M. 124, 26 M. 98, U.B.R. 1904—1906, Cr. P.C., 4, U.B.R. 1904—1906, Evidence, 3, *R*). [*R.*, 4 Bur. L.T. 246 = 12 Ind. Cas. 289, 13 Cr. L.J. 569 = 15 Ind. Cas. 985 = U.B.R. 1912, I, 123, 20 Ind. Cas. 406 = U.B.R. 1913, 166 = 14 Cr. L.J. 422, 10 Cr. L.J. 12 = U.B.R. 1908, 4th Qr., 13.]

(1658)—Ss. 190, 195, 535 and 537 (*b*)—*See* ACT XI OF 1878, ss. 19 and 29, 4 L.B.R. 247 = 8 Cr. L.J. 65.

(1659)—Ss. 190, 197—*See* DEFAMATION, 19 B. 51.

(1660)—*Ss.* 190, 200 (= *Crim. Pro. Code,* 1861, *s.* 66)—*Voluntary appearance of accused—Want of summons or complaint—Ministerial Acts.*—Where the accused appears voluntarily to answer a charge, the want of a summons or of

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a complaint in order to the issue of a summons becomes immaterial. The taking of a complaint and issuing summons are not, however, ministerial acts. REG. v. SUDASEVAPPA, **Rat. Un Cr. C. 8.**

(1661)—Ss. 190, 200—*See* ACT III OF 1877, s. 83, 4 B.L.R. Ap. 69 = 13 W.R. Cr. 21.

(1662)—*Ss.* 190, 200 *and* 202—*Authority to direct previous local investigation by a Subordinate Magistrate.*—In the case of a complaint taken cognizance of by a Magistrate under s. 190, it is competent to him under s. 202 to direct a previous local investigation to be made by a Subordinate Magistrate; but he can do so only if he distrusts the truth of the complaint and before issuing a process compelling the attendance of the person complained against. When cognizance is taken of an offence under cl. (*b*) or (*c*) of s. 119, sub-s. 1, the provisions of s. 200 are not applicable thereto. *In re* RANGA CHARI, **2 Weir 241** = **2 Weir 38** = **2 Weir 149.** [*R.*, 15 C.L.J. 517 = 13 Cr. L.J. 609 = 16 C.W.N. 1105 = 16 Ind. Cas. 257.]

(1663)—Ss. 190, 200, 202—*See* TRIAL, 10 W. R. Cr. Cir. 1.

(1664)—*Ss.* 190 *and* 202—*Dismissal of complaint without examining complainant and sanction to prosecute.*—Where an accusation against a police officer was dismissed by the District Magistrate without examining the complainant on oath and sanction was given to prosecute him, *held*, that the words "may take cognizance of an offence" in s. 190 of the Code, do not mean that a Magistrate is not bound to take cognizance of an offence on receiving a complaint of such facts constituting such offence and that he could treat it as a "miscellaneous application" or as mere "information" of an offence, upon which he could take action or not just as he might choose, and upon which, if he chose to take action, he could take such action as he chose; on the other hand, it is incumbent on the Magistrate under s. 200 of the Code, if he did not transfer the case under s. 192, to at once examine the complainant: he could only order an enquiry or investigation into the case in accordance with the provisions of s. 202, and he could not make over the case to the police for enquiry: *held*, therefore, that the complaint was not tried out, not being dismissed on evidence recorded by the District Magistrate or obtained by him in manner prescribed by s. 202, and that the order sanctioning the prosecution was without jurisdiction. RAM SARUP v. KING-EMPEROR, **4 O.C. 127.** (27 C. 921, *F.*)

(1665)—*Ss.* 190, 203 (= *Crim. Pro. Code*, 1872, *ss.* 141 *and* 147)—*Complaint in the form of police report—Dismissal without examining witnesses.*—A complaint made in the form of a police report or charge sheet may be dismissed without examining the witnesses. HIGH COURT PROCEEDINGS, 24TH JULY, 1875, NO. 1552, **2 Weir 246.** [*F.*, 2 Weir 246.]

(1666)—Ss. 190, 203—*See* CONVICTION, 3 B.H.C. Cr. 34.

Crim. Pro. Code (Act V of 1898)—*continued.*

(1667)—*Ss.* 190, 204 *and* 65—*Cognizance of offence by Magistrate—Arrest of the accused in the presence of the Magistrate.*—Where a Magistrate has not taken cognizance of an offence in one or other of the only three modes according to which he can take cognisance of the same, but merely proceeds upon an oral complaint not recorded under s. 200, the Magistrate is not competent to issue a warrant for the arrest of the accused and to remand the accused to custody. *In re* RANGA CHARI, **2 Weir 241** = **2 Weir 149** = **2 Weir 38.** [*R.*, 15 C.L.J. 517 = 13 Cr.L.J. 609 = 16 C.W.N. 1105 = 16 Ind. Cas. 257.]

(1668)—*Ss.* 190, 253—*Cases initiated by police report—Magistrate's powers.*—A Magistrate is entitled to refuse to initiate proceedings on the report of the police, where there is no complaint. Such an order, if the case is not a warrant case, cannot be made under s. 253. Even if the order is made under s. 253, it should be taken as one under s. 190, and the High Court will not interfere with such order, even if it is wrong. BHIKU BARI v. KING-EMPEROR, **1 A.L.J. 609.**

(1669)—Ss. 190, 260 (1), 355—*See* SUMMARY TRIAL, 6 N.W.P. 254.

(1670)—Ss. 190, 309, 529 (*e*), 530 (*k*), 531—Proceedings wrongly held—When can be set aside—Mode of recording opinions of assessors —*See* JURISDICTION—GENERAL, 39 C. 119 = 15 Ind. Cas. 65 = 13 Cr. L.J. 433.

(1671)—*Ss.* 190, 351 (= *Crim. Pro. Code*, 1882, *ss.* 191, 351)—*Cognizance of an offence against a witness.*—A Magistrate taking cognisance of an offence against a witness in a case, which is pending before him, upon the facts disclosed by the evidence of another witness, does so under s. 191, cl. (c), and not under s. 351, Crim. Pro. Code. KHUDIRAM MOOKERJEA v. EMPRESS, **1 C.W.N. 105.** [*Diss.*, 10 Cr. L.J. 303 = 3 Ind. Cas. 568 = 5 N.L.R. 113; *R.*, 18 C.W.N. 921, 11 Cr. L.J. 489 = 7 Ind. Cas. 461 = U.B.R. 1910, Cr., P.C., 2.]

(1672)—*Ss.* 190, 437—*Jurisdiction of Magistrate to try persons whom the evidence discloses to be offenders.*—The action of a Magistrate is in no way limited in regard to proceedings against persons concerned in an offence by his powers in regard to taking cognizance of the offence, as it may be originally disclosed. Having taken cognizance of the offence, he has jurisdiction to hold judicial proceedings in regard to all persons who, the evidence shows, are the offenders. BISHEN DOYAL RAI v. CHEDIKHAN, **4 C.W.N. 560.** [*D.*, 39 C. 119 = 13 Cr. L.J. 433 = 15 Ind. Cas. 65.]

(1673)—Ss. 190, 497—*See* ACT XVIII OF 1850, 3 B.H.C. A.C. 36.

(1674)—Ss. 190, 528—*See* TRANSFER OF CRIMINAL CASES—GROUNDS FOR TRANSFER —NOTICE, 5 C.W.N. 488.

(1675)—Ss. 190 and 556—*See* RIOTING, 8 O.C. 418(*B*) = 3 Cr. L.J. 27.

Crim. Pro. Code (Act V of 1898)—*continued.*

(1676)—*Ss.* 190 (1), 191.—Where the Magistrate took cognizance of an offence, apparently, of his own knowledge under s. 190, sub-s. (1), cl. (*c*), he was bound by s. 191 to inform the accused that he was entitled to be tried in another Court. QUEEN-EMPRESS v. MI CHIN MA, **U.B.R. 1897—1901, Vol. I, 59.**

(1677)—*S.* 190 (1) (*a*), (*b*), (*c*), *and s.* 4 (*h*)—*Complaint — Person filing need not have personal knowledge of facts—Difference between cls.* (*a*) *and* (*b*) *of s.* 190 (1) *and cl.* (*c*).—The person making a complaint need not himself be a witness nor have personal knowledge of the facts constituting the offence. (13 B. 600, 22B. 112, 14 C. 707, *R.*) The real distinction between sub-cl. (*c*) and sub-cls. (*a*) and (*b*) of s. 190 (1) is that, in the two latter cases, an application is made to the Magistrate to take cognizance of the offence either by a complainant or by the Police, while in the former case the Magistrate takes cognizance *suo motu* either on his own knowledge, or suspicion, or on information received from some person who will not take the responsibility of setting the law in motion. In this case the law, partly out of regard for the susceptibilities of the accused and partly to inspire confidence in the administration of justice, allows the accused the right to claim to be tried before another Magistrate. IMPERATOR v. SHEWAK RAM, **7 S.L.R. 77 = 15 Cr. L. J. 369 = 23 Ind. Cas. 737.**

(1678)—*Ss.* 190 (1) (*a*), (*b*), (*c*), 251, 253, 529, 530—*Irregular proceedings by third class Magistrate effect of—Sub-divisional Magistrate's jurisdiction—"Trial of an offender," meaning of.*—A third class Magistrate, who has no jurisdiction to try a case under s. 411, Indian Penal Code, took cognizance of such a case on a police report, and discharged the accused, but directed the arrest of another, who was present in Court, as he thought from the evidence that he ought to be prosecuted under s. 489, in connection with the same transaction. The Sub-Divisional Magistrate, seeing the irregularities of the third class Magistrate's proceedings, directed the discharged person to be re-arrested and tried; thereupon, the arrested person applied for revision stating that the Sub-Divisional Magistrate took cognizance of the charge against him under s. 190 (1) (*c*) of the Code, and that, as he did not comply with s. 191, his proceedings were void. *Held*, that the irregular proceedings of the third class Magistrate, in reference to the two persons, could not affect the Sub-Divisional Magistrate's jurisdiction. As regards the first person, the order of discharge, even if valid, did not need to be set aside, and its existence was no bar to further proceedings. As regards the second, the Sub-Divisional Magistrate must be held to have taken cognizance of the offence under s. 190 (1) (*b*). When a Magistrate has taken cognizance of an offence on a complaint or on a police report, and finds, from the evidence before him, that certain persons, not already accused, should be tried for being concerned in it, he is justified in making them accused persons in the case, and is not

Crim. Pro. Code (Act V of 1898)—*continued.*

debarred from trying it. It is not necessary that a complaint or a police report should expressly charge an accused person, to give the Magistrate jurisdiction to deal with him under cl. (*a*) or cl. (*b*). "Trial of an offender" is not defined in the Code. The trial seems to begin when the accused is called upon to plead to a charge and a Magistrate's proceedings, before this stage is reached, are in the nature of an enquiry. This view is supported by the language of the ss. 177, 184, 209, 253, 254, 256, 347, 403, 451. If, in this view, a Magistrate's proceedings in a warrant-case, down to the discharge of the accused, do not amount to the *trial* of an offender, the third class Magistrate's proceedings in regard to the first accused are covered by s. 529 (*e*) and being taken in good faith, though erroneously, are not void. If, on the other hand, he is considered to have *tried* the first accused, his proceedings are void under s. 530 (*p*). In either case, there is nothing to interfere with further proceedings against him before the Sub-Divisional Magistrate. As regards the second accused, the third class Magistrate was not competent to try an offence punishable under s. 489, and he was not therefore empowered by s. 65 to arrest him in his presence, but the third class Magistrate must be presumed to have taken cognizance of the charge against him, on the police report, under s. 190 (1) (*b*). NGA KUN v. KING-EMPEROR, **U.B.R. 1905, 4th Qr., Crim. Pro. Code, 41.** (U.B.R. 1897—1901, Vol. I, 56, U.B.R. 1902—1903, Cr. P.C., 21, U.B.R. 1904—1905, Cr. P.C., 19, *R.*)

(1679)—*Ss.* 190, *cls.* (*a*), (*b*) *and* (*c*), 351 (*cl.* 2)—*'Cognizance of any offence'—Trial of person charged with theft before second-class Magistrate—Magistrate finding a witness to be concerned in the offence—Cognizance of case against such witness—Legality—Magistrate acting under s.* 351, *cl.* (*c*)—*Not affected by s.* 191, *cl.* (*c*).—One J was sent up for trial, on a Police report, for the offence of stealing the complainant's cattle, to a second-class Magistrate. In the course of the trial, the Magistrate found that the offence was not committed by J but by L, a prosecution witness, and took cognizance of the case against L, had him arrested, and reported the case for transfer to the Sub-Divisional Magistrate. *Held*, that the Magistrate was empowered to take cognizance of the offence under s. 190, cls. (*a*) and (*b*) and that his proceedings were not *ultra vires*. The expression in s. 190, 'cognizance of any offence' is not equivalent to 'cognizance of any offender.' S. 351, cl. (2), empowers a Magistrate to join as a co-accused any person attending his Court, who seems to him to be implicated in the case under trial. A Magistrate acting as in this case, under this section, if he has already taken cognizance of the offence on a complaint or Police report, is not acting under s. 190 (*c*). IMPERATOR v. LALU *wd.* SABUL, **4 S.L.R. 258 = 11 Ind. Cas. 583 = 12 Cr. L.J. 399.**

(1680)—*Ss.* 190 (*a*), (*c*), *and* 191—*Taking cognisance of offence by Magistrate upon receiving complaint of facts.*—Upon evidence recorded

Crim. Pro. Code (Act V of 1898)—*continued.*

by a Magistrate trying a case of theft, it appeared that the present petitioner was guilty of the offence of theft, and the petitioner, having been tried and convicted of the same by the Magistrate, urged on revision that the Magistrate should not have tried the case himself. *Held*, that the contention had no force. QUTBA v. CROWN, **68 P.L.R. 1904 = 32 P.R. 1904, Cr.** (4 C.W.N. 367, 26 C. 789, *F.*)

(1681)—*Ss.* 190 (*a*), (*c*), 191—*Cognizance of offences by Magistrate on receiving a complaint of facts—Right to claim a transfer.*—Where a person complained against three persons to a Magistrate charging them with having committed certain offences, and the Magistrate, having examined the complainant on oath and some witnesses on her behalf, ordered summonses to be issued against the three persons mentioned in the petition of complaint as well as against a fourth person not named in the petition, for an offence other than those mentioned in the petition, *held*, that the Magistrate took cognisance of the offence as against all the persons under s. 190 (*a*) and not under s. 190 (*c*), and consequently the Magistrate was not by s. 191 debarred from trying the case. JAGAT CHANDRA MOZUMDAR v. QUEEN-EMPRESS, **26 C. 786 = 3 C.W.N. 491.** [*F.*, 32 P.R. 1904, Cr. = 68 P.L.R. 1904; *R.*, U.B.R. 1897—1901, 56, Cr.]

(1682)—Ss. 190, sub-s. (1) (*a*), (*c*), 195, 299—Cognizance of offence upon complaint of person other than the one affected by offence—*See* PENAL CODE, ss. 99, 323, 493, 498, 14 Cr. L. J. 409 = 20 Ind. Cas. 233.

(1683)—S. 190 (1) (*b*)—*See* ACT IX OF 1890, s. 131, U.B.R. 1897—1901, Vol. I, 54.

(1684)—S. 190 (*b*)—*See* ACT XII OF 1896, ss. 36, 37, 45 and 57, 8 P.R. 1901, Cr.

(1685)—*Ss.* 190 (1) (*b*), 4 (1) (*h*)—*Written report from police officer in non-cognizable case, neither a police report, nor report of a police officer—Information and complaint—Police Act, s.* 24—*Burma Gambling Act, s.* 10.—Where a 1st class Magistrate receives a written report from a 1st class constable that gambling, punishable under s. 10, Burma Gambling Act, had taken place, and the Magistrate purporting to act under s. 190 (1) (*a*), issues summonses to the persons named in the report, such report is neither a police report within the meaning of s. 190 (1) (*b*), nor the report of a police officer within the meaning of s. 4 (1) (*h*), Crim. Pro. Code. The expressions "police report" and "report of a police officer," as used in these sections, refer to reports by police officers under ch. XIV, Crim. Pro. Code, and more especially under s. 173. Where, without a reference from a Magistrate, and otherwise than in a report under s. 173, a police officer makes a report on a non-cognizable case, such report may be regarded as an information laid in pursuance of the provisions of s. 24, Police Act, or it may, in certain cases, be treated as a complaint. QUEEN-EMPRESS v. NGA SHWE LIN, **1 L.B. R. 18,** [*Overruled*, 2 L.B.R. 146.]

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(1686)—*S.* 190, *cls.* (*b*) *and* (*c*)—*Cognizance of case not upon first information, but upon a subsequent Police report.*—Where a Magistrate issued warrants against persons not named in the complaint or in the first information, but named in a report subsequently made by the Police after investigation, *held*, that the Magistrate took cognizance of the case under cl. (*b*) and not under cl. (*c*) of the section. RAJANI KANTO CHATTERJEE v. EMPEROR, **8 C.W. N. 864.**

(1687)—*Ss.* 190, *sub-s.* (1), *cls.* (*b*) & (*c*), 191, 537—*Police complaint against one person—Trial by Magistrate—Partial evidence taken—Joinder of another person as accused at Magistrate's instance—Cognizance under s.* 190 (1), *cl.* (*c*)—*Action under s.* 191, *unnecessary—Joint trial—Not begun afresh—Irregularity—Absence of prejudice—Cure under s.* 537.—L was charged by the Police before the Magistrate of T, for having caused grievous hurt to R. The Magistrate, after examining the investigating officer, found that another person S should also be joined as an accused person. Accordingly process was served upon S, and L and S were tried together and both were convicted. During their trial, the investigating officer was not recalled and re-examined, but his deposition was read over to S. who was allowed to cross-examine him. *Held*, that the Magistrate took cognizance of S's offence under cl. (*b*) and not under cl. (*c*) of sub-s. (1) of s. 190, Crim. Pro. Code, and was consequently not bound to act under s. 191, Crim. Pro. Code. *Held*, also, that the trial should have commenced afresh when both L and S were placed before the Magistrate, that the failure to examine the investigating officer was an irregularity, and that, the mistake not having prejudiced S, it may be taken as cured by s. 537, Crim. Pro. Code. SARWA v. EMPEROR, **9 N.L.R. 65 = 14 Cr. L.J. 290 = 19 Ind. Cas. 946.** (26 C. 786, 4 C.W.N. 367, 5 N. L.R. 113, 32 P.R. 1904, *R.*)

(1688)—*S.* 190 (1) (*c*)—*Cognizance of offence upon private information—Duty of Magistrate to record information—Magistrate interested in his capacity as Collector—Competency to issue warrants.*—When a Magistrate takes cognizance of an offence on information from any person other than a police officer, under s. 190 (1) (c) of the Code, he should at least record the information on which he has acted, though it may not be obligatory upon him to disclose the sources of that information. Where the Deputy Commissioner, as Collector and, as such, representing the Court of Wards, which was part proprietor of a bazaar, granted a lease with other co-proprietors on certain terms to one C, and, from certain information lodged to him as Collector, ordered, in his capacity as Magistrate, the issue of warrants against C and others on the ground that there was *prima facie* evidence of an offence under ss. 465 and 468, I.P.C., having been committed by C with respect to the lease and that he was abetted therein by other shareholders in the bazaar: *Held* that the Deputy Commissioner, as Magistrate, was

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not competent to act on that information and to issue the warrants, as, by such action, he was practically making himself a judge in his own case. THAKUR PERSHAD SINGH v. EMPEROR, **10 C W.N. 775=3 Cr. L.J. 473.** (5 B.L.R. 274, 13 W.R. Cr. 1, *F.*) [*F.*, 35 C. 1076 =12 C.W.N. 1075=8 Cr. L J. 235, 37 C. 221= 11 C.L.J. 415=14 C.W.N. 589=11 Cr. L.J. 305=6 Ind. Cas. 276.]

(1689)—*S.* 190 (1) (*c*)—*Institution of proceedings.*—A Magistrate of the Second Class cannot institute proceedings under s. 190 (1) (*c*) of the Code of Criminal Procedure upon his knowledge or suspicion; the Punjab Government Notification No. 99, dated 3rd February, 1883, authorizes Magistrates of the First and Second class to take cognizance of offences upon information, and not on their own knowledge or suspicion. PIYARE LAL v. EMPEROR OF INDIA, **186 P.L.R. 1901=20 P.R. 1901, Cr.**

(1690)—*S.* 190 (1) (*c*)—*Jurisdiction of a Magistrate to act on information transmitted to him in another public capacity—Cognizance of an offence of mischief under s.* 426, *Penal Code —Order of attachment—Legality.—Held, per Stephen, J.—(Carnduff, J., dubitante)* that a Magistrate is not competent to act under s. 190 (1) (*c*), Crim. Pro. Code, on any information which has been transmitted to him in another public capacity. *Held*, also, a Magistrate, who takes cognizance of an offence of mischief by cutting timber from the forest, has no jurisdiction to pass an order of attachment of the trees, which form the subject of the alleged offence. LAKHI NARAYAN GHOSE v. EMPEROR, **37 C. 221=14 C.W.N. 589=11 C.L.J. 415=6 Ind. Cas. 276.** (10 C.W.N. 775, *R.*)

(1691)—*S.* 190 (*c*) (=*Crim. Pro. Code*, 1882, *s.* 191)—*Cognizance of case by Magistrate on personal knowledge — Transfer.*—Where a Magistrate takes cognizance of a case under s. 191 (*c*) on his own personal knowledge, he should, on an application being made by the accused, transfer the case to another Magistrate or commit the accused to the Sessions. QUEEN-EMPRESS v. HOWTHORNE R., **13 A. 345=A. W.N. 1891, 102.**

(1692)—*S.* 190, *cl.* (*c*)—*Cognizance of case against persons not originally complained against.*—Where a complaint is made against some persons, and the Magistrate takes cognizance of the offence, it is the duty of the Magistrate to deal with the evidence brought before him and to see that justice is done in regard to any person who might be proved by the evidence to be concerned in the offence. CHARU CHANDRA DAS v. NOGENDRA KRISHNA CHAKRAVARTI, **4 C.W.N. xlv.** [*F.*, U.B.R. 1897—1901, 56, Cr.]

(1693)—*S.* 190 (*c*)—*Omission by Magistrate to inform accused of his right to have case tried by another Magistrate.*—Where a Magistrate takes cognisance of an offence under s. 190 (*c*), but does not inform the accused that he is entitled to have the case tried by another Court, the omission may be a ground for having the proceedings set aside, but it is no ground for making an order for transfer. *In re* ABDUL ALLY SAHIB, **2 Weir 151.**

(1694)—S. 190 (*c*)—*See* ACT X OF 1873, s. 5, 27 C. 455.

(1695)—*Ss.* 190 (1) (*c*), 191—*Cognizance of a case triable exclusively by Court of Sessions under s.* 190 (1) (*c*)—*Jurisdiction to commit—Duty of Magistrate.*—What s. 191 provides is that, if a Magistrate takes cognizance of an offence under sub-s. (1), cl. (*c*) of s. 190, and if, before any evidence is taken, the accused objects to being tried by such Magistrate, he may either transfer the case to another Magistrate or commit the case to the Court of Sessions. He cannot make a commitment without holding a preliminary enquiry, so that the section distinctly empowers him to hold a preliminary enquiry, even in cases triable by himself. It necessarily follows that he is competent to hold a preliminary enquiry in cases exclusively triable by a Court of Sessions. QUEEN-EMPRESS v. ABDUL RAZZAK KHAN, **21 A. 109= A.W.N. 1898, 186.**

(1696)—*Ss.* 190 (1) (*c*) *and* 191.—When a Magistrate takes cognizance of an offence under sub-s. 1, cl. (*c*) of s. 190 of the Code, he is bound under s. 191 to inform the accused that he is entitled to a transfer or commitment, and shall give effect to any objection which may be raised on his behalf. The jurisdiction of the Magistrate to try the case is contingent, therefore, on the accused being informed of and waiving the right vested in him by the Code. EMPRESS v. AMARSINGH PATWARI, **13 C.P.L.R. Cr. 191.** (13 A. 345, *R.*).

(1697)—*Ss.* 190 (1) (*c*) *and* 191—*Applicability to the appellate Court—Appeal, part of a trial.* —A Magistrate, passing orders for the issue of summons against the accused in a case placed before him by an order of the Collector to the effect that the case should be put up before the Magistrate for the issue of necessary orders, takes cognizance of the case under s. 190 (1) (*c*). A subordinate Magistrate, who took cognizance of a case under s. 190 (1) (*c*), Crim. Pro. Code, could not, after becoming District Magistrate, hear an appeal from a conviction in the case which was tried by another subordinate Magistrate, without following the procedure laid down by s. 191, Crim. Pro. Code, an appeal being part of the trial for an offence. BANSI LAL v. EMPEROR, **12 C.W.N. 438=7 Cr. L.J. 224.**

(1698)—*Ss.* 190 (1) (*c*) *and* 191—*Application for transfer from file of Magistrate who had taken cognisance of case.*—After the institution of a complaint, the names of some more accused persons, which were not in the original complaint, were added by the Public Prosecutor under instructions from the District Magistrate. The accused did not at all appear before the Magistrate. *Held*, that the Magistrate could not act under s. 191 for transferring it to some other Magistrate under him and that the application for transfer was premature. *Held*,

also, that the case against the newly added accused was taken cognisance of by the District Magistrate under s. 190 (1) (c), Crim. Pro. Code, and that s. 191 applied to the case. Neither for the above reason, nor because the District Magistrate entertains a complaint in the face of a standing order in force that all complaints should be presented to the Senior Magistrate of the District, nor again because the District Magistrate appoints a Public Prosecutor to conduct the case, can it be held that he has prejudged it, so as to entitle a party to claim its transfer to a Court outside the District. MAUNG SHWE HLA v. THE CROWN, **14 Bur. L.R. 327 = 9 Cr. L.J. 64.**

(1699)—*Ss.* 190 *(c) and* 191—*Report by the Cantonment Magistrate to the Assistant Commissioner, Murree.* — *Held*, that where a Magistrate received information from another Magistrate that A appears to have committed a crime and after some inquiry the former thinks that B has committed it and prosecutes him for the same, he takes cognizance of the case under s. 190 (c) of the Crim. Pro. Code. Consequently the accused is entitled to have the case transfered to another Magistrate. MAKHAN SINGH v. GUNNER JEPSON, **10 P.W.R. 1914, Cr. = 65 P.L.R. 1914 = 15 Cr. L.J. 261 = 23 Ind. Cas. 469.**

(1700)—Ss. 190 (c), 191—Magistrate acting on his own knowledge of fact—Failure to inform accused of his right to be tried by another Court—*See* BUR. ACT II OF 1876, ss. 18, 19, Rules 51, 52, 68, 69, 13 Cr. L.J. 52 = 13 Ind.Cas. 388 = 4 Bur. L.T. 259.

(1701)—*Ss.* 190, *sub-s.* (1), *cl.* (c), 191, 202—*Information before police reported to be false—Judicial enquiry ordered by Deputy Magistrate disposing of police report—Case made over to another Magistrate—Issue of process by latter after enquiry—Competency of such Magistrate to try accused.*—Where the police reported an information of theft lodged against the petitioners by one S to be false and recommended the prosecution of S, and the Deputy Magistrate in charge, on receipt of the police report, ordered a judicial enquiry although there was no complaint by S, and subsequently recalled that order and made over the case for disposal to another Deputy Magistrate, who, after taking evidence, issued summons against the petitioners. *Held*, that the Deputy Magistrate who issued process against the petitioners did not act either upon a police report or upon a complaint, and although s. 190, cl. (c), may not strictly apply, the petitioners ought to be allowed to have the case tried by another Magistrate. ANANTA RAM TEWARY v. SHEIKH ALTAB SARKAR, **17 C.W. N. 795 = 14 Cr. L J. 425 = 20 Ind. Cas. 409.**

(1702)—*Ss.* 190 (1) (c), 191, 556—*Whether report of* Akunwan *is complaint — Personal interest.*—An *akunwan* submitted a report to his Deputy Commissioner stating that, from the enquiry he was ordered to make, there was a *prima facie* case against a *thugyi*, showing that he had collected revenue in excess of the authorised amount by means of falsified receipts made by him, and had committed offences under ss. 417 and 477-A, Indian Penal Code. The Deputy Commissioner took up the report in his capacity as a Magistrate, and issued a warrant against the applicant under s. 477-A, Penal Code. *Held*, that the District Magistrate's procedure was not correct, as he should have examined the *akunwan* on oath before issuing a warrant. but that this omission was a curable error in procedure. The report of the *akunwan* is a complaint, and the action taken by the District Magistrate was taken under cl. (*a*) and not under cl. (*c*) of s. 190 (1). *Held*, that the fact that the District Magistrate was also the Collector, did not bar him from trying the case, as he had not initiated the proceedings or taken an active part in collecting evidence against the accused, and that the Deputy Commissioner was entitled to accept the report as a complaint, in his capacity as a District Magistrate and to take proceedings under the provisions of Crim. Pro. Code. NGA BA v. KING-EMPEROR, **U. B.R. 1902—1903, Crim. Pro. Code, 21.** (U.B.R. 1900, Crim. Pro. Code. 113, *R.*)

(1703)—*Ss.* 190 (*c*), 192, 195 (*b*), 200, 476—*Proceedings under the Village Act are not judicial proceedings.*—The Commissioner, Pegu Division, in a proceeding under the Village Act, wrote to the District Magistrate requesting him to proceed against the petitioner under s. 476 of the Crim. Pro. Code, for an offence under s. 199, Penal Code; *Held*, that no sanction was necessary under s. 195 (*b*) of the Crim. Pro. Code, and the District Magistrate could take cognizance under s. 190 (*c*) and transfer the case to a Subordinate Magistrate under s. 192 of the Code. MAUNG KYE v. EMPEROR, **8 Ind. Cas. 949 = 11 Cr.L J. 736.**

——S. 191 (= 1882, s. 190, para 4).

See COMPLAINANT.

See COMPLAINT.

(1704)—*S.* 191—*Scope of.*—The terms of the above section are imperative, and disregard of them is a material defect which invalidates the proceedings, not a merely formal irregularity of procedure. NGA PAING v. QUEEN-EMPRESS, **U B.R. 1897—1901, Vol. I, 56.** (U.B.R. 1897—1901, Vol. I, 59, 4 C.W.N. xlv, 26 C. 786, *R.*) [*Affirmed*, U.B.R. 1910, 1st Qr., Cr. 2.]

(1705)—*S.* 191—*Transfer or commitment on application of accused.*—Under s. 191, all that the accused is entitled to is to have the case tried by another Court. The section gives the accused no right to select or determine for himself by what other Court the case is to be tried. *In re* SHRINIVAS KRISHNA SHRIRALKAR, **7 Bom. L.R. 637 = 2 Cr.L.J. 582.**

(1706)—*S.* 191—*Application to transfer a case—Valid grounds—Objection to trial by Magistrate.*—The mere fact that a Magistrate, in stating the grounds on which he took cognizance of a case, mentioned that the general character of the accused was bad, was held not

Crim. Pro. Code (Act V of 1898)—*continued.*

to be a sufficient ground for making an order transferring the case to another Magistrate. A Magistrate, when a valid objection is taken under s. 191 of the Crim. Pro. Code, is not bound to transfer the case, but may elect to commit it to Sessions. *In re* BEYYA REDDI, **2 Weir 150.**

(1707)—S. 191—*See* BEN. ACT III OF 1884, s. 133, 22 C. 131.

(1708)—S. 191—*See* SENTENCE — WHIPPING, Rat. Un. Cr. C. 906 = Cr. Rg. 17 of 1897.

(1709)—S. 191—*See* Nos. 32, 53, 359, 700, 706, 1353, 1464, 1511, 1639 to 1650, 1676, 1680, 1681, 1687, 1695 to 1702, *supra.*

(1710)—Ss. 191 *and* 144—*Oral order by Magistrate to stop nuisance—Magistrate taking action on his own knowledge—Conviction, legality of.*—The accused quarried from a hill for a Railway. Owing to a certain accident, which happened in the quarry, the District Magistrate issued an order, orally, to stop work, which was disobeyed. Thereupon, the District Magistrate, without informing the accused of his right to have the case tried by some other Magistrate, took action on his own knowledge of facts, and convicted the accused under s. 188, I. P.C., after a summary trial. *Held,* that the conviction was illegal. The order directing the accused to stop work should have been in writing under s. 144, Code of Criminal Procedure, and must be duly served or promulgated to the public as required by the section. Where a Magistrate takes action against an accused on his own knowledge of facts, the accused must be informed of his right to have the case tried by another Magistrate under s. 191 of the Code; otherwise, the conviction would be illegal. CROWN v. MULT RAJ, **84 P.L.R. 1905 = 2 Cr.L.J. 365 = 36 P.R. 1905, Cr.**

(1711)—Ss. 191, 193, 195—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 2 A.L.J. 836 = 3 Cr.L.J. 45.

(1712)—*Ss.* 191, 534.—A Magistrate taking cognizance of an offence under s. 190 (1) (*c*), is bound to inform the accused of his right to have the case transferred. If he omits to inform the accused and tries the case himself, the conviction should be set aside and a retrial ordered. GHASI v. EMPRESS, **13 P.R. 1898, Cr.**

(1713)—*Ss.* 191 *and* 537 — *Non-compliance with—Effect.*—The omission of the Magistrate to comply with the imperative rule of law laid down in this section is a defect, which would invalidate the whole trial. QUEEN-EMPRESS v. NGA YA PO, **U.B.R. 1897—1901, Vol. I, 224.**

(1714)—*Ss.* 191 (*c*) *and* 200—"*Police report,*" *meaning of.*—A Magistrate, not empowered under s. 191 (*c*) of the above Code, requires for the hearing of a case, a complaint or a "police report." A "police report" is, as mentioned in ch. XIV of the above Code, a report to a Magistrate arising out of a cognizable case or a case which the police may investigate. The mere fact that a written application or information proceeds from a police officer, does not make it a "police report." When a complaint made by a police officer is not a "police report," it must be on sworn information as in the case of other complaints. QUEEN-EMPRESS v. MA MIN ME, **U.B.R. 1892-1896, Vol. I, 28.**

(1715)—*Ss.* 191 (*c*) *and* 260—*Accused challenged at the instance of the Magistrate—Jurisdiction to try—Summary trial when not expedient.*—Where a Magistrate, at whose instance the accused were challanned under s. 147, Penal Code, tried them summarily and convicted them of an offence under s. 323, Penal Code, the Chief Court set aside the conviction on the ground that, though the cognizance of the offence was apparently taken on the challan, it was really the Magistrate who had originated the proceedings. *Held,* that the Magistrate should not have tried the case summarily, s. 147, Penal Code, being not so triable, though s 323, Penal Code, under which the accused had been convicted, was, and that it was expedient to try the case in the ordinary way, as it was likely to create some sensation. CROWN v. JUMMAN, **116 P.L.R. 1903.**

——**S. 192 (=1882, s. 192; 1872; s. 44; 1861 s. 273).**

See COMPLAINANT.

See COMPLAINT.

See MAGISTRATE, JURISDICTION OF — TRANSFER OF CASES.

See TRANSFER OF CRIMINAL CASES.

(1716)—*S.* 192 — *What cases may be transferred under.*— A Magistrate can, under the above section, transfer to his subordinate Magistrate only such cases as he has taken cognizance of and not others. KING EMPEROR v. PRAG BAKSH SINGH, **5 O.C. 164.** (26 B. 150, *R.*)

(1717)—*S.* 192 (=*Crim. Pro. Code,* 1861, *s.* 273)—*Transfer of case referred by Munsiff to District Magistrate — Validity— Perjury and forgery —Joint trial.*—Where a case had been specially sent by a Munsiff to a District Magistrate for investigation, the District Magistrate was held not to be competent to transfer the case to a Subordinate Magistrate. In respect to a charge of perjury, each of the accused should be separately charged and tried in respect of the alleged perjury; but, with respect to a charge of forgery, or abetment thereof, so many of the accused as are committed on this charge may be tried collectively. QUEEN v. RUTTEE RAM, **2 N.W.P. 21.**

(1718)—*S.* 192—*Transfer of case to Subordinate Magistrate—Dismissal of case against one accused—Summons against other—Cognizance of case — Jurisdiction.* — Where a complaint was lodged against several accused persons and the Magistrate, after examining the complainant, issued summons against one of the accused only and transferred the case for trial to a Subordinate Magistrate. *Held,* that the whole case of

Crim. Pro. Code (Act V of 1898)—*continued.*

the complainant was transferred and the Subordinate Magistrate was quite competent, in discharging the accused before him, to order summons to issue for the attendance of some other accused person against whom the complaint seems to him to be well founded. *Semble.* Under s. 192 of the Crim. Pro. Code, the whole case must be transferred. *In re* AZIM SHEIKH, **7 C.L.J. 249 = 7 Cr. L.J. 318.** (4 C.W.N. 346, *D.*)

(1719)—*S.* 192 (= *Crim. Pro. Code,* 1872, *s.* 44)— *Power of Subordinate Magistrate to refer a case referred to him to another Magistrate.* —S. 44 of the Code of 1872 confers no authority on one Subordinate Magistrate to refer to another Subordinate Magistrate a case referred to him for disposal. HIGH COURT PROCEEDINGS, 15TH JUNE 1874, No. 998, **2 Weir 151 = 7 M.H.C. App. 33.**

(1720)—*S.* 192—*Transfer of a case to Subordinate Magistrate after part-trial — Re-hearing of evidence.*—Where a Magistrate, to whom a complaint of an offence is made, finds, after hearing the evidence, that an offence triable by a Subordinate Magistrate has been committed, he should not transfer the case to a Subordinate Magistrate, but should himself dispose of it. A Magistrate to whom a case has been transferred after having been tried partly, should re hear the evidence and frame a fresh charge. *In re* TOTA VENKANNA, **2 Weir 152.**

(1721)—*S.* 192—*Powers of Magistrate to refer case for trial by village headman—Headman not a Magistrate under the Code—Penal Code, s.* 324.—A Sub-Divisional Magistrate cannot refer a case for trial to a village headman. His powers of transfer under s. 192, Crim. Pro. Code, 1898, permit of reference to a Subordinate Magistrate, and a village headman is not a Magistrate under the Code. Further, a headman has no authority to try an offence under s. 324, Penal Code. QUEEN-EMPRESS v. MAUNG GALE, **1 L.B.R. 59.**

(1722)—*S.* 192—*Case transferred to the Court of a Sub Divisional Magistrate—Latter's power of transfer.*—Where a District Magistrate has referred a case for trial to a Sub-Divisional Magistrate, the latter has no power to transfer it to any other Magistrate subordinate to him and any order to this effect will be *ultra vires.* BASHIR HUSAIN v. ALI HUSAIN, **12 A.L.J. 225 = 36 A. 166 = 15 Cr. L.J. 406 = 23 Ind. Cas. 1006.**

(1723)—S. 192—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 1 N.W.P. 306.

(1724)—S. 192—*See* SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 6 A. 101.

(1725)—S. 192—*See* Nos. 14, 78, 446, 615, 1018, 1207, 1208, 1247, 1651, 1652, 1653, *supra* and 3935, 4900, 4656, *infra.*

(1726)—*Ss.* 192, 190—*Transfer of cases—Application of.*—S. 192, Crim. Pro. Code, refers only to cases of which the transferring Magistrate has taken cognizance, *i.e.*, acted

Crim. Pro. Code (Act V of 1898)—*continued.*

under s. 190 of the same Code. It has no reference to cases which have been transferred to that Court. DARRA v. MUKAT, **12 A.L.J. 277 = 15 Cr. L.J. 357 = 23 Ind. Cas. 725.**

(1727)—*Ss.* 192, 200, 503—Pardanashin *lady, complaint by—Examination of complainant—Issue of process—If complainant is* pardanashin *lady whether she may be examined by Commission—Complainant, whether witness.*—If a *pardanashin* lady makes a complaint to a Magistrate he is entitled to take cognizance of it. But before he takes cognizance he must be satisfied that it is her complaint. It is comparatively unimportant by what means the complaint reaches the Magistrate, if really it is her own complaint. The words "at once" in s. 200 of the Crim. Pro. Code clearly indicate that ordinarily a complaint must be presented in person. A complaint should never be accepted which is not signed by the complainant and is not preferred by a person duly authorized to prefer that specific complaint. Process cannot be issued against an accused person, either by the Magistrate first taking cognizance of an offence, or by the Magistrate to whom the case is transferred under the proviso to s. 200, Crim. Pro. Code unless and until the Magistrate issuing process has first examined the complainant. And this is perhaps more necessary in the case of a *pardanashin* lady than in other cases, to enable the Magistrate to satisfy himself that the complaint is really her own action. A *pardanashin* complainant may be examined by Commission under s. 503, Crim. Pro. Code. The terms of that section are very wide. They refer not only to an enquiry and a trial, but to any other proceeding. The section authorizes the examination of any witness, and a complainant is certainly a witness. ABHOYESWARI v. KISHORI MOHAN BANERJEE, **15 Cr. L.J. 348 = 23 Ind. Cas. 700 = 18 C.W.N. 1020.**

(1728)—Ss. 192, 202, 203 and 204—*See* DISTRICT MAGISTRATE, POWERS OF, 27 C. 798.

(1729)—Ss. 192, 202, 203 and 204—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 27 C. 798.

(1730)—*Ss.* 192, 204 *and* 528—*Transfer of case to Subordinate Magistrate—Refusal to issue process by such Magistrate—Process, whether can be issued by any other Magistrate.*—The police sent up a report in B form to the Joint Magistrate against certain persons, and subsequently on the order of the Joint Magistrate, on an A form against some of them. The case was made over for disposal to the Deputy Magistrate, and the Deputy Magistrate convicted the latter class of persons. An application for processes against the remaining persons mentioned in the original B form was refused by the Deputy Magistrate as unnecessary. *Held,* that a subsequent order by the Joint Magistrate for the issue of processes against these persons was without jurisdiction. *Per Henderson, J.*—The order made by the Deputy

Crim. Pro. Code (Act V of 1898)—*continued.*

Magistrate refusing to issue processes as unnecessary amounted to a discharge. The order making over the case to the Deputy Magistrate was an order making over the whole case mentioned in the original Police report to the Deputy Magistrate. Until the Joint Magistrate, who was acting for the District Magistrate, had withdrawn the case so made over from the file of the Deputy Magistrate to that of his own Court, he had no power to make any order save an order for further enquiry under s. 437, Crim. Pro. Code. *Per Geidt, J.*—The case having been transferred to the Deputy Magistrate, that officer alone had jurisdiction to deal with an application for summons until the case was withdrawn from his cognizance. AJAB LAL KHIRHER v. EMPEROR, **32 C. 783=9 C W.N. 810=2 Cr. L. J. 524**,(27 C. 979, 4 C.W.N. 242, 30 C. 449, *R.*)

(1731)—*Ss.* 192, 349 (=*Crim. Pro. Code.* 1861, ss. 273, 277)—*Reference to Divisional Magistrate under s. 277—His duty.*—In a case referred to a Divisional Magistrate under s. 277, he is bound to form his own judgment and pass sentence. H.C. PROCEEDINGS 8TH NOVEMBER, 1870, No. 1971 ; **2 Weir, 424=5 M.H.C. App. 43** [*F.*, 2 Weir, 424.]

(1732)—*Ss.* 192, 349, 350 (=*Crim. Pro. Code,* 1882, ss. 192, 349, 350)—*Transfer of a case by a Subordinate Magistrate to the District Magistrate—Decision by the latter on evidence recorded by former.*—Where a criminal trial, pending in the Court of a Third Class Magistrate, and which had gone to the length of all the witnesses being examined for the prosecution and for the defence, was sent to the District Magistrate, not because the Third Class Magistrate could not pass a severe sentence, but for a totally different reason, and the District Magistrate convicted the accused on the evidence recorded by the Subordinate Magistrate, *held*, that neither under s. 349, nor under s. 192, was there any transfer to the District Magistrate, that s. 350 was not applicable, and that, therefore, the conviction should be set aside. QUEEN-EMPRESS v. RADHE, **12 A. 66=A.W.N. 1890, 7.**

(1733)—*Ss.* 192, 529 (*f*)—*Transfer of case by Magistrate not authorised under s. 192—Irregularity whether cured by s. 529 (f).*—If a Magistrate had no power to transfer a case from the file of one Magistrate to another, the irregularity in so transferring is one cured by s. 529, cl. (*f*). DASARATH RAI v. EMPEROR, **36 C. 869.**

——**S. 193 (=1882, s. 193 ; 1872, ss. 17, 18, 231 ; 1861, s. 359).**

See COMPLAINANT.

See COMPLAINT.

(1734)—S. 193—*See* APPROVER, L.B.R. 1893—1900, 536.

(1735)—S. 193—*See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT, 6 M.H.C. App. 16.

Crim. Pro. Code (Act V of 1898)—*continued.*

(1736)—S. 193—*See* PENAL CODE, s. 211, 7 A.L.J. 618.

(1737)—S. 193—*See* Nos. 104, 105, 107, 730, 839, 1465, 1711, *supra.*

(1738)—*Ss.* 193, 195, 465, 471, 476—*Offences committed in suit before Assistant Collector—Prosecution directed by District Magistrate—Illegality.*—Where offences under ss. 193, 465, 471, were alleged to have been committed before an Assistant Collector of the First Class in a suit for profits, and the District Magistrate directed the prosecution in respect of those offences, *Held*, that the District Magistrate's order was entirely without jurisdiction, and cannot be justified either under s. 195 or 476, Crim. Pro. Code. TOTA RAM v. EMPEROR, **9 Cr.L J. 180=1 Ind. Cas. 220.**

(1739)—*Ss.* 193, 287, 288, 339 *and* 349 (=*Crim. Pro Code,* 1882, ss. 193, 287, 288, 339, 349)—*Conditional pardon to approvers—Withdrawal of the pardon by Sessions Judge and their trial along with other prisoners—Admissibility of their confessional statements and depositions.*—Certain persons were charged with having committed dacoity. During the pendency of the case before the Magistrate, two of those accused made a confessional statement and the District Magistrate tendered a conditional pardon to them, who were, thereupon, examined by the Magistrate as witnesses. They were sent up to the Sessions Court as witnesses against the other accused, who were committed to the Sessions. In the Sessions, the two persons denied that they had been taken as approvers and the Sessions Judge thereupon placed them in the dock along with the other accused, and called upon them to plead. In the trial, the Sessions Judge refused to admit their confessional statements, but admitted and read out to the jury the deposition given by those persons as approvers. *Held*, that the trial of the two persons, who had not been duly committed to the Court was *ultra vires. Held*, also, that the Sessions Judge committed an irregularity in refusing to place on record their confessional statements. *Held*, further, that the Judge acted improperly in having admitted their depositions as approvers without having given the other accused an opportunity of cross-examining them as to the truth or otherwise of the depositions. QUEEN EMPRESS v. RAMA TEVAN, **15 M. 352=2 Weir 153=2 Weir 376=2 Weir 394.**

(1740)—*Ss* 193, 288, 327 (=*Crim. Pro. Code,* 1882, *ss.* 193, 288, 337)—*Conditional pardon to prisoner—Its withdrawal—Trial with other prisoners—Validity—Statement and deposition made by co-accused turned into approver—Admissibility against co-accused—Evidence Act,* s. 24.—During the preliminary enquiry of two persons on a charge of murder, the Magistrate offered a pardon to one of them under the provisions of s. 337 of the Code and the tender having been accepted, her deposition was recorded, and she was sent up to the Court of Sessions as a witness for the prosecution. In

the Court of Sessions, she was the first witness examined, and as she deviated from the statement made by her to the Magistrate, the Sessions Judge stopped her examination and made an order that she should be tried for the offence in respect of which the pardon was tendered, and placed her on trial with the other accused and the trial proceeded as against both the accused jointly and both were convicted. *Held*, that her conviction was bad as she was never committed to the Sessions by any competent Magistrate and as it was unfair to put an approver, whose conditional pardon had been cancelled, on trial along with the other prisoner, in the course of whose trial such approver had given evidence. [*F*., L.B.R. 1893—1900, 536; *R*., A.W.N. 1907, 178.] The other accused mentioned *supra* was convicted upon statements made by the female accused to the Magistrate and her deposition given before the Magistrate after she was treated as an approver. *Held*, that as her trial in the absence of any commitment was bad in law, her statements were not admissible against the other accused. *Held*, also, that her deposition was not admissible, because, if it be treated as evidence under s. 288 of the Code, it ceased to be evidence as soon as she was withdrawn from the witness-box and placed in the dock, and as no opportunity was given to cross-examine her on the deposition, or, if it be treated as a confession, it was inadmissible for the further reason that it was irrelevant under s. 24 of the Evidence Act, it having been made after the tender of pardon. *Held*, also, that the confession of the accused himself was, under the circumstances of the case, not a free and voluntary admission of guilt. The conviction of this accused was set aside as there was no other sufficient evidence besides those statements to justify the conviction. QUEEN EMPRESS, v. JAGAT CHANDRA MALI, **22 C. 50.** (15 M. 352, *Com.*)

(1741)—Ss. 193, 337, 339, 477 and 537—*See* COMMITMENT TO SESSIONS COURT, 42 P.R. 1884, Cr.

(1742)—*Ss.* 193 *and* 353—*Validity of commitment when accused is not present before the committing Magistrate—Trial by the Sessions Court on such commitment.*—Khanan was one of the accused in a riot case. He had received a gunshot wound in the riot, which had incapacitated him from appearing either before the committing Magistrate or the Sessions Judge when the case against his co-accused was tried and decided. His name was, however, entered in the Calendar and a charge was framed against him. The Sessions Judge considered the commitment valid and tried and convicted Khanan: *Held*, that there can be no commitment unless the provisions of s. 353, Crim. Pro. Code, have been complied with. The mere fact that a charge was framed and the accused's name was entered in the Calendar does not make the commitment valid. By s. 193, Crim. Pro. Code, a Sessions Judge can only take cognizance, as a Court of original jurisdiction, of an offence, when the accused has been duly committed. Where there is no such commitment, he cannot try the case, and his proceedings are void and must be set aside as a mere nullity. KHANAN v. CROWN, **6 P.W.R. 1913, N.W.F.P. Cr.=260 P.L.R. 1913.**

(1743)—Ss. 193 and 423 (1)—*See* COMMITMENT TO SESSIONS COURT, A.W.N. 1907, 178=6 Cr. L.J. 7.

(1744)—Ss. 193, 476, 477—*See* SESSIONS JUDGE, JURISDICTION OF, 4 C. 570=3 C.L.R. 599.

(1745)—*S.* 193 (2)—*Case—Appeal—Transfer of.*—The word "case" used in s. 193 (2) of the Code of Criminal Procedure cannot be extended to appeals or other matters, and a Sessions Judge has no power to transfer an appeal filed in his Court to the Court of the Assistant Sessions Judge. EMPEROR v. ABDUL RAZZAK, **13 A.L.J. 353=16 Cr. L J. 316=28 Ind. Cas. 652=37 A. 286.** (9 B. 165, 7 A. 661, *F.* 2 A.L.J. 575, *Appl.*)

(1746)—S. 193 (2)—*See* SESSIONS JUDGE, JURISDICTION OF, 9 B. 352.

——**S. 195 (=1882, s. 195; 1872, ss. 467, 468, 469, 470; 1861, ss. 168, 169, 170, 171, Presidency Magistrate's Act, 1877, s. 41).**

See COMPLAINANT.

See COMPLAINT.

See SANCTION TO PROSECUTE.

(1747)—*S.* 195 (=*Crim. Pro. Code*, 1872, s. 470)—*Sanction to prosecute—Duty of officer granting sanction.*—The officer whose duty it is to give or refuse a sanction should consider and determine whether or not a prosecution is called for in the interests of public justice, and if he arrives at the conclusion that it is called for, there must be, in however general terms, a distinct sanction for the institution of the proceeding. HIGH COURT PROCEEDINGS, 3RD MAR. 1881, **2 Weir 171.**

(1748)—*S.* 195—*Sanction to prosecute—Superior Court's duty when there is no* prima facie *case.*—Where a sanction to prosecute for any offence specified under s. 195, Crim. Pro. Code, has been granted, the superior Court should see whether the discretion has been properly exercised; and when there is no *prima facie* case for the prosecution, the sanction should be cancelled. JHANDU v. CROWN, **40 P.W.R. 1912, Cr.=13 Cr. L.J. 831=17 Ind. Cas. 575.**

(1749)—*S.* 195—*Sanction under—Nature of proof to award sanction—Court's duty—Object of section.*—It is not the function of the Court that accords sanction for a prosecution to require the same strictness of proof that Courts are wont to demand before they pronounce an accused person to be guilty. The object of the provisions of s. 195 is merely to prevent prosecutions by private persons on their own motion and to secure there being a *prima facie* ground for prosecution by requiring the sanction of the Court. Apart from the existence of a *prima facie* case in cases where sanction to prosecute is

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applied for, the Court should see if there are good grounds for thinking that a prosecution is necessary in the interests of justice. VEERARAGHAVASWAMI NAIDU v. BAGAVATULLA VISWANADHAM, **10 M.L.T. 117=11 Ind. Cas. 790=12 Cr. L.J. 446=1911 2 M.W.N. 172.**

(1750)—*S.* 195 — *Sanction to prosecute—Whether any enquiry is necessary before sanction is given—Enquiry, nature of—"Produced," meaning of in cl.* (6).—In this case the plaintiff filed a suit on a pronote, but withdrew it before summons was served on defendant. The defendant, alleging that it is a forged pro-note applied for sanction to prosecute him under ss. 463, 471 and 475, I.P.C. The District Judge granted sanction on appeal. *Held: — Per Abdur Rahim, J.* —Before granting sanction to prosecute under s. 195, Crim. Pro. Code, there must be some enquiry and the Court must be satisfied on evidence that there is at least a *prima facie* case for prosecution. If the suit had been properly tried and the pro-note found to be forged, there would be no need for a fresh enquiry. But when it was not so tried, sanction should not be granted without its being found, on proper enquiry held for the purpose, that there are sufficient grounds for holding it to be a forgery. (35 C. 820, *R.*) *Per Spencer (contra)*: —"Produced" in s. 195, cl. 6 of the Crim. Pro. Code, should be read apart from the words "given in evidence" which follow. (22 C. 1004, 35 C. 820, *D.*) The section does not require any enquiry as a necessary antecedent to the grant of sanction. (20 C. 474, *R.*) Any enquiry under the section need not be a judicial enquiry. MUTHAVARUPU SESHIAH v. GATRAM RAMIAH, **1911 2 M.W.N. 526=13 Ind. Cas. 211=13 Cr. L.J. 19.** (6 W.R. 41 Cr. *F.*) [*R.*, 13 Cr. L J. 209=14 Ind. Cas. 305=11 M.L.T. 367=1912 M.W.N. 499=22 M.L.J. 419.]

(1751)—*S.* 195—*Sanction to prosecute—Necessity for application by some definite person.*—Sanction under s. 195 should be given only on an application made for it by some person who may desire to complain of the particular offence, and whose complaint could not be entertained without such sanction. DURGA DAS RUKHIT v QUEEN-EMPRESS, **27 C. 820.** [*R.*, 9 C.W.N. 277=32 C. 351=2 Cr. L J. 78; *Diss.*, 1 M.L.T. 47=3 Cr. L.J. 227=8 Bom. L.R. 32.]

(1752)—*S.* 195 — *Sanction to prosecute—Whether application in writing necessary—Inquiry—Sanction after great length of time* — Sanction under s. 195, Crim. Pro. Code, should ordinarily be given only on an application made by some person, who may decide to complain of any of the particular offences specified in the section, but whose complaint cannot be entertained without such sanction. (27 C. 820, 18 A. 213, 20 C. 47, 10 C.W.N. 222, 3 Cr. L. J. 112, 2 C.L.J. 619, *R.*) It must be observed, however, that s. 195 does not expressly provide that an application must be made for the grant of sanction. The rule stated above may be justified to this extent that, before sanction is granted, the Court must be satisfied that there

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is some person who is willing to avail himself of it and carry on the prosecution. An application for sanction need not be made in writing nor need it be made before an inquiry is held under s 195. An application was made to a Munsiff for sanction to prosecute under ss. 209, 210, 193 and 465, Penal Code; the Munsiff refused the application on the ground that it was undesirable to grant sanction to a private prosecutor, and his order was upheld on appeal. *Held*, that, in the circumstances of the present case, it would be improper to grant sanction to the private prosecutor. RAGUNANDAN PROSAD SINGH v. RAM NARAIN SINGH, **13 Ind. Cas. 97.**

(1753)—*S.* 195—*Sanction to prosecute, Grant of—Absence of application.*—The grant of a sanction, under s. 195 of the Crim. Pro. Code, does not presuppose application made to the Court to give the sanction. *In re* SANGAPPA GADIGEPPA, **16 Bom. L.R. 947=2 Bom. Cr. C. 265.**

(1754)—*S.* 195—*Sanction granted to one person—Right of third person to institute complaint on the sanction.*—It is open to a Court to entertain a complaint on a sanction granted to a party other than the complainant under s. 195, Crim. Pro. Code, and it does not matter whether the sanction is accorded to a particular person or is couched in general terms. *In re* MALLIPADDI GOPAYA, **13 Cr. L.J. 206=14 Ind. Cas. 206.** (12 M. 47, *F.*; 32 C. 351=9C.W.N. 277=2 Cr. L.J. 78, 32 C. 469=8 C.W.N. 883=1 Cr. L.J. 845, *Not F.*)

(1755)—*S.* 195—*Sanction to prosecute for perjury — Conditional sanction — Legality — Duty of Magistrate.*—No sanction can be granted of a provisional character in case certain conditions are satisfied in the future. It is the duty of the Magistrate before granting sanction to satisfy himself that there is, at the time of the order, a *prima facie* case against the party concerned. *Re* P. MUNEYYA, **36 M. 471=22 Ind. Cas. 187=15 Cr. L.J. 43.**

(1756)—*S.* 195—*Application for sanction to prosecute—Applicant failing to appear—Dismissal for default—Legality—Proper procedure.*—Where an applicant for sanction to prosecute fails to appear on the date fixed for hearing, an order dismissing the application for default would be bad in law. The application must be disposed of on the merits. RUP NARAIN v. MAHA DAYAL, **4 P.R. 1915. Cr.=16 Cr. L.J. 288=28 Ind. Cas. 336.** (32 B. 203, 22 Ind. Cas. 423, *F.*)

(1757)—*S.* 195—*Civ Pro. Code*, 1908, s. 115 —*Interference when its effect will be to perpetuate wrong order—Dismissal in default.*—A Court has no power to dismiss for default and non-payment of process fees, an application made under s. 195 of the Code of Criminal Procedure. (32 B. 203=10 Bom. L.R. 95=3 M.L.T. 170=7 Cr. L.J. 120, *F.*). Where a Court restores to its file an application so dismissed, the High Court will not interfere, for the order of restoration is the order required to set right what

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was done without jurisdiction. MARUDAPPA GOUNDEN v. BOMMANNA GOUNDEN, **15 Cr.L. J. 71=22 Ind. Cas. 423.**

(1758)—*S.* 195 — *Sanction to prosecute—Application made after four months—Delay, whether excusable.*—An application for sanction to prosecute ought to be made promptly. A delay of four months is too long. SAGARMAN v. EMPEROR, **15 Cr.L J. 698=26 Ind. Cas. 146.**

(1759)—*S.* 195 — *Sanction to prosecute — Delay in applying for sanction, effect of—Discretion of Court.*—Where an application for sanction to prosecute is made after great delay, the Court may well exercise its discretion in refusing the application. RAM BAKHSH v. CHHOTE, **15 Cr. L.J. 577=25 Ind. Cas. 329.** (5 Ind. Cas. 469=7 A.L.J. 50=11 Cr.L. J. 140, 18 A. 203=A.W N. 1896, 31, *R.*)

(1760)—*S.* 195 (=*Crim. Pro. Code*, 1882, s. 195)—*Registrar acting under* s. 73 *of Act* III *of* 1877, *whether a* "*Court.*"—A Registrar acting under ss. 72 to 75 of the Registration Act is not a "Court" within the meaning of the word as used in s. 195. QUEEN-EMPRESS v. RAM LALL, **15 A. 141, A.W.N. 1893, 59.** (15 M. 138, *Diss.*) [*R.*, 10 Cr.L.J. 395=3 Ind. Cas. 886=3 S.L.R. 66, 13 Cr.L.J. 508=15 Ind. Cas. 652=1912 M.W.N. 473=23 M.L.J. 50.]

(1761)—*S.* 195—*Sub-Deputy Collector in proceedings under Lands Registration Act—Judicial proceedings — Court — Penal Code,* s. 193.—*Quœre*—Whether the proceeding under the Land Registration Act is a "judicial proceeding" within the meaning of s. 193, Penal Code; and whether the Sub-Deputy Collector in that proceeding is a "Court" within the meaning of s. 195 Crim. Pro. Code. HIRA NAND OJHA v. EMPEROR, **9 C.W.N. 127** [*R.*, 36 M. 72=23 M.L.J. 393=13 M.L.T. 367=1912 M.W.N. 1012=16 Ind. Cas. 755=13 Cr. L.J. 723.]

(1762)—*S.* 195 (=*Crim. Pro. Code*, 1882, s. 195)—*District Registrar registering a document whose execution is admitted, whether a* "*Court.*"—Although it has been held that a Registrar acting under ss. 72 to 75 of the Registration Act is a Court within the meaning of s. 195, it has never been held, and there seems no reason for so holding, that a Registrar in exercising his ordinary functions of registering a document, the execution of which is not denied, is a "Court" within the meaning of s. 195. MARUDAYYA PILLAI v. RAVUTHA PERUMAL PILLAI, **2 M.L.J. 286.** [*R.*, 13 Cr. L.J. 508=15 Ind. Cas. 652=23 M.L.J. 50=1912 M.W.N. 473.]

(1763)—*S.* 195—*Oaths Act* (X *of* 1873), *s.* 13 —*Omission to record deposition as on solemn oath or affirmation — Presidency Court of Small Causes enquiry by Registrar, as to proper service of summons, if judicial proceedings—Sanction to prosecute for false personation in service of summons.*—Before the Registrar of the Presidency Court of Small Causes at Calcutta, whose duty is to enquire into the proper service of summons and to take evidence in this behalf, it transpired that the petitioner in this case by false representation had returned the summons as properly served, and the Public Prosecutor at the instance of the Chief Judge made an application for sanction to prosecute the petitioner under s. 205, Penal Code, which was granted by the said Registrar under s. 195 of the Crim. Pro. Code, and upon a rule being obtained to question the propriety of the sanction. *Held*, that the procceedings before the Registrar were judicial proceedings and he was a judicial officer, that the sanction given by him to prosecute was properly given, and the fact that it was not stated in the depositions recorded by the Registrar that they were taken on solemn oath or affirmation was a matter covered by s. 13 of the Oaths Act. BALCHAND v. TARAK NATH SADHU, **18 C.W.N. 1323.** (14 B.L.R. 294 F.B., 16 B. 359, *R.*)

(1764)—*S.* 195 — *Sanction for prosecution granted by Presidency Small Cause Courts—Appeal whether lies to the original or the appellate side of High Court—Statement that two persons were partners—Another statement that one of them stood surety to other — Whether contradictory.*—A Bench of the High Court sitting on the appellate side has power to hear an appeal under s. 195, Crim. Pro. Code, from an order granting sanction passed by the Chief Judge of the Court of Small Causes. The power of the High Court to deal with a sanction granted by another Court comes within the purview of its appellate and not original jurisdiction. There is no necessary contradiction between the statement that two persons were partners and that one of them stood surety for the other's borrowings. JAMNA DOSS v. A. M. SABAPATHY CHETTY, **10 M.L. T. 278=1911, 2 M W.N. 259=12 Ind. Cas. 521 =36 M. 138.** (14 C.W.N. 806, *R.*)

(1765)—*S.* 195—*High Court, jurisdiction of—Extension of the period of sanction to prosecute—District Magistrate wishing to take cognizance of offence committed within his jurisdiction can move for extension of period of six months.*—*Held*, that a High Court has jurisdiction to pass an order extending the period of six months for which a sanction granted by a Subordinate Court under s. 195 of the Code of Criminal Procedure may remain in force, even though such order be passed after the period of six months has expired (32 C. 379, *Diss.*; 26 M. 190, 26 M. 480, *F.*) Where sanction to prosecute under s. 195, Crim. Pro. Code, for an offence against public justice has been granted to a private person and the District Magistrate within whose jurisdiction the offence has been committed desires to take cognizance of the offence, *held*, that the latter can move the Court to extend the prescribed period of six months. *Held also*, that upon a complaint being filed on the strength of the sanction as it stands, it will be for the prosecution to satisfy the Court that the sanction is not being taken advantage of by the District Magistrate against the wish or without the authority of the person in whose

favour it was originally granted. HARI PADO MOZAMDAR v. LACHMI NARAIN MARWARI, **15 O.C. 177 = 15 Ind. Cas. 967 = 13 Cr.L.J. 551.**

(1766)—*S.* 195—*Sanction to prosecute — Failure to specify offence— Appellate Court directing Subordinate Court to rectify mistake in form of sanction — Jurisdiction.*—Under Cl. (6) of s. 195 of the Crim. Pro. Code, it is open to a Superior Court either to revoke or grant a sanction, when such sanction has been given or refused by the Subordinate Court; but there is no provision in the Law authorising the Superior Court to direct the Subordinate Court to rectify a mistake in the form of the sanction. Therefore where sanction to prosecute was granted by a Sub-Judge but he failed to specify the offence alleged to have been committed, and the District Judge on appeal sent the case back to the Sub-Judge for an order for sanction to be drawn up in accordance with the observations made by the Judge in his judgment on appeal: *Held*, (1) that the order of the District Judge on appeal must be vacated; (2) that the sanction as granted by the Sub Judge not being in proper form, the application for sanction remained undisposed of. The High Court directed the Sub-Judge to pass a proper order on that application by specifying the offence and other necessary particulars. CHANDRA KUMAR MANNA v. JUGAL CHARAN MONDAL, **14 Cr.L.J. 655 = 21 Ind. Cas. 895.**

(1767)—*S.* 195—*Sanction refused by Sub-Judge—Appeal — Divisional Judge's power to remand application for fresh decision—Courts of Sub-Judges in Punjab—Successor's power to grant sanction.*—S. 195, Crim. Pro. Code, only enables the Appellate Court to grant sanction which has been refused or to revoke sanction which has been granted, but the Divisional Judge, on appeal from a Sub Judge's order refusing sanction, has no power to remand the application for sanction for fresh decision. (33 A. 512, *F.*) A Sub-Judge's Court is not a permanent Court with a perpetual succession of Judges, and consequently a Court presided over by M.L. (Sub-Judge) is not identical with the Court presided over by H.S.R. or C.L. (Sub-Judges), and a Sub-Judge (M.L.) has no power to grant sanction in respect of proceedings which took place before Sub-Judge (C.L.). MOHAMMAD ISHAQ v. MUQIM-UD-DIN, **7 P.R. 1913, Cr. = 19 Ind. Cas. 178 = 14 Cr. L.J. 178 = 207 P.L.R. 1913.** (25 P.R. 1889, Cr. *R.*)

(1768)—*S.* 195—*Magistrate to whom Police subordinate.*—The only Magistrate to whom the District Police are "subordinate" within the meaning of s. 195 of the Code is the District Magistrate. MOHKHAM SINGH v. KING-EMPEROR, **6 O.C. 1.**

(1769)—*S.* 195—*Offences under* ss. 193, 471, *Penal Code—Committed in proceedings before arbitrator—Sanction to prosecute whether necessary.*—A Civil suit was decided between M and C after reference to arbitration, C then lodged a complaint charging M with offences under ss. 193 and 471, Indian Penal Code, alleged to have been committed in the proceedings before the arbitrator: *Held* that sanction under s. 195, Crim. Pro. Code, was required before a Court could take cognizance of such a complaint. MULA MAL v. CHURANJ LAL, **3 P.R. 1914, Cr. = 136 P.L.R. 1914 = 15 Cr. L.J. 358 = 23 Ind. Cas. 726.** (17 M.L.J. 420, *F.*, 6 Cr. L.J. 160, *R.*)

(1770)—*S.* 195—*Sanction to prosecute—Perjury and abetment of perjury during Police investigation—Subsequent trial ending in conviction—Sanction necessary.*—The applicants were charged with having made false statements and abetted the making of them during the police investigation in a theft case. The theft case was subsequently tried by the Magistrate and ended in conviction. The evidence collected during the Police investigation was again laid out before the Magistrate; and the applicants were on that evidence tried for offences punishable under ss. 193, and 109, and 193, Penal Code, without obtaining any sanction. *Held*, that the applicants could not be tried in the absence of a sanction from the Court which tried the theft case, and before which the evidence, which was said to have been fabricated, had been adduced. *In re* MAHADEV YADNESHWAR JOSHI, **14 Bom. L. R. 715 = 17 Ind. Cas. 63 = 13 Cr. L.J. 751 = 1 Bom. Cr. Cas. 164.**

(1771)—*S.* 195—*Sanction to prosecute — Perjury—Omission to specify false statements—Revocation of sanction—Probability of conviction —Withdrawal of suit, effect of.*—Omission to specify statements in respect of which a prosecution is sanctioned is not in itself a sufficient ground for revoking the sanction. The Court before granting sanction must be satisfied that there is reasonable probability of conviction. The withdrawal of a suit by a plaintiff cannot be construed as an admission that the note sued on was not executed by the defendants. It is at most an admission that plaintiff cannot prove execution, which is a very different thing. MUTAYA PILLAY v. MAUNG SHWE BON, **8 Ind. Cas. 996 = 11 Cr.L J. 749.**

(1772)—*S.* 195—*Sanction for prosecution—Perjury—Excise Act* (VII *B.C. of* 1878), *r.* 16—*License, nature of.*—Under the Excise Rules, a person to whom a license is granted is forbidden to sub-let his shop or transfer his license, which is a purely personal one, to any other person or to allow any person to sell liquor under his license. A licensee under the Excise Rules stated in a criminal case that a particular wine shop was exclusively owned by him, but it was found in a Civil suit that he had a partner: *Held*, that, in making the statement, he might have unconsciously deviated into the truth, and it might be that the claim of the alleged partner was without legal justification, and that sanction to prosecute him for perjury should not be granted. RAKHAL CHANDRA SHAH v. DAMODAR SHAH, **9 Ind. Cas. 115 = 15 C.W.N. 169 = 12 Cr.L.J. 11.**

(1773)—*S.* 195—*Sanction — Duty of Court giving—No* prima facie *case necessary—Prosecution of witnesses by Appellate Court for giving false evidence.*—Where certain witnesses had no

control over the conduct of the case in which they gave evidence and had no opportunity to combat the Sessions Judge's inference from the evidence admitted by him and on which the sanction was based, *held* that the sanction for prosecuting them for giving false evidence must be revoked. *Napier, J.*—The proposition in 26 Mad. 116 that a *prima facie* case or a reasonable probability of conviction must be apparent on the evidence before the sanction is accorded is evidently incorrect. There is no reason why the Court to whom an application for sanction is made should perform any of the acts that will fall within the scope of the Magistrate's duty if sanction is accorded, and the case ought not to go to the Magistrate with the opinion of the High Court that there is a *prima facie* case against the accused. V. KRISTNAMMA v. CHITTURI CHINNA PERRAJU, **17 M.L.T. 15=1915, M.W.N. 140=16 Cr.L.J. 115=27 Ind. Cas. 179.** (41 C. 446, F.B.; *F.*, 26 M. 116; *Diss.*, 23 M. 210, *R.*)

(1774)—*S.* 195 — *Sanction to prosecute for giving false evidence—Discretion of Court—Duty of Court—Prosecution when not desirable.*—In this case the accused was a girl of 15 years and the perjury alleged was in her having made contradictory statements about her mother having wordy quarrels with the man who was keeping the witness. *Held*, that the materiality of the statements was only remote as suggesting a motive for the offence, and the interests of justice did not call for a prosecution for perjury in this case. Courts should exercise their discretion in giving sanction to prosecute for giving false evidence. They should not merely see that there is a good prospect of conviction but should also consider whether the circumstances are such as to render a prosecution desirable in the public interests. *Re* NATTAVA PARANKUSAM, **37 M. 564.**

(1775)—*S.* 195—*Sanction to prosecute—Police officer or Sub-Magistrate no subordinate of Sessions Judge—Essentials to grant sanction for contradictory statements.*—To grant sanction for prosecution under s. 182, I.P.C., neither the Police officer nor the Sub-Magistrate to whom the reports were sent is a subordinate of the Sessions Judge within the meaning of s. 195, cl. (7), Crim. Pro. Code. To sanction a prosecution for an offence under s. 193, I.P.C., it is necessary that a Court should be empowered to sanction prosecution in respect of each of the statements said to be contradictory of each other. REDDI RAMA REDDI v. PUBLIC PROSECUTOR OF KURNOOL, **1914 M.W.N. 793=27 M.L.J. 586=15 Cr.L.J. 612=25 Ind. Cas. 524.**

(1776)—*S.* 195—*Application for sanction—Contents—Necessity to set out alleged false statement—Person against whom proceedings are taken—Whether accused — Examination upon oath of such person—Impropriety of prosecution for offence under s. 467 or s. 476, I.P.C.—Previous sanction—Not necessary.*—An application for sanction must set out in detail the

statements alleged to be false (*a*). The order of sanction should not be a vague order leaving the accused in doubt as to the charge which he will be expected to meet, and in the case of a long deposition containing statements alleged to be false, it is particularly desirable that some indication should be given of the portions of the deposition so alleged to be false. As a general rule, proceedings with a view to the prosecution of a witness for giving false evidence should not be taken until a conclusion has been come to by the Magistrate, or Judge conducting the trial in which the false evidence is supposed to have been given, upon the evidence given therein. Although a person, against whom sanction proceedings are begun, is not upon his trial on a criminal charge, in being required to show cause why he should not be criminally prosecuted, he is in the position of a person accused of committing an offence. His examination, therefore, should not be on oath, nor should he be cross-examined, but any questions put to him should be put with the object of enabling him to explain circumstances which appear to require explanation. No sanction is necessary under s. 195, Code of Criminal Procedure, for a prosecution under either s. 467, or s. 476 I.P.C. NGA THA WIN v. NGA SAN, **U.B.R. 1913, 1st Qr., 166=14 Cr L J. 422=20 Ind. Cas. 406.** (18 A. 203, U.B.R. 1907—1909, Crl. Pro. p. 1, *R.*).

(1777)—*S.* 195—*Sanction to prosecute—False charge made to the Police at a Police station—Penal Code, s.* 211.—No judicial sanction is required in order to prosecute a person for laying a false charge at a Police station. There is no necessity in such a case to hold a preliminary magisterial enquiry. EMPEROR v. SHIEKH AHMED, **13 Cr.L.J. 578=15 Ind. Cas. 994=5 Bur. L.T. 129.**

(1778)—*S.* 195—*Penal Code, s.* 211—*False charge — Panchnama, false statement in — Inquiry made by Police officers—Commitment of case to Magistrate—Magistrate regarding the case to be false—Sanction to prosecute—Sanction necessary.*—The petitioner, a policeman, made a *panchnama* in regard to an offence said to have been committed by a certain Talukdar under the Indian Arms Act. The investigation into the offence was made by a village constable, who sent up the case to the Sub-Inspector, who in turn committed it to a Magistrate. The Magistrate discharged the Talukdar on the ground that the charge imputed to him was false, and held that certain recitals in the *panchnama* were false. The Magistrate then made an order directing the petitioner's prosecution under s. 211, Penal Code. On appeal, the Sessions Judge held that the Magistrate's order amounted to sanction under s. 195 of the Crim. Pro. Code, but that no sanction was necessary in the circumstance of the case: *Held*, that, before the petitioner could be prosecuted, sanction was necessary, for (1) the offence imputed to him was the instigation of the false charge against the Talukdar, the charge which in the ordinary course of criminal

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procedure took the form of a trial; and (2) even though the instigation was committed before the proceeding in Court was begun, yet the instigation was an act committed in relation to the proceeding held by the Magistrate against the Talukdar. The test for the necessity of the grant of sanction under s. 195 of the Crim. Pro. Code is not the character of the offender but the character of the offence. Sanction is necessary under the section, when an offence punishable under s. 211, Penal Code, is committed in or in relation to any proceeding in any Court. *In re* KHANDERAO YESHWANT, **14 Bom. L.R. 362 =13 Cr. L.J. 527=15 Ind. Cas. 799=1 Bom. Cr. C. 125.** [*R.*, 1 Bom. Cr. C. 164=14 Bom. L.R. 715=13 Cr. L J. 751=17 Ind. Cas. 63.]

(1779)—*S. 195—Sanction to prosecute—False complaint—Grant of B summary—Penal Code, s. 211.*—The complainant made a complaint of an offence to a Magistrate, who examined the complainant and sent it to the police for investigation. The police reported that the case was false and asked the Magistrate's orders to prosecute the complainant. The Magistrate endorsed as follows, at the foot of the report: " The case is classed as B. You may proceed against the complainant:" *Held*, that the order passed by the Magistrate could not be accepted as a sanction under s. 195 of the Crim. Pro. Code. EMPEROR v. LALLUBHAI, **14 Bom. L.R. 960=1 Bom. Cr. C. 204=13 Cr. L.J. 855=17 Ind. Cas. 791.**

(1780)—*S. 195—Penal Code, s. 211—False information given to Police—Order of Magistrate to remove case from Police file—Sanction.*—Where the information given to the Police was reported to be false, and the Magistrate, in consequence, ordered the Police to remove the case from their file. *Held*, that, in order to initiate proceedings under s. 211, Penal Code, against the informant, the sanction of the Magistrate was not necessary. BHIMRAJ VENKATESWARALU v. MOOVA BAPULU, **13 Cr. L.J. 480=15 Ind. Cas. 320.** (7 M. 292, *R.*)

(1781)—*S. 195 — Sanction to prosecute — Letters Patent, cl. 10, proceeding under — Attorney proceeded against making affidavit—Alleged false statements — Public Prosecutor applying for sanction—What Bench to give sanction—Discretion to be free and untrammelled —Court to see that no abuse of criminal justice takes place—Attorneys, if can make affidavit in answer to rule against him under Court's disciplinary powers—Liability for false statement in affidavit.*—A proceeding under cl. 10 of the Letters Patent against the opposite party was heard by the present Bench. The application failed, but the Court thought that there were matters in the case which called for further inquiry with a view to possible criminal proceedings. The papers were placed before the public prosecutor who applied under s. 195 of the Crim. Pro. Code for sanction to prosecute the opposite party for offences alleged to have been committed by him under ss. 193 and 196 of the Penal Code, in or in relation to the proceeding under cl. 10 of the Letters Patent. *Held*, that the Bench was neither prosecuting nor trying an accused, that it was merely considering whether the bar to the cognizance of the alleged offences, should be removed by according to the required sanction, and that under s. 195 of the Crim. Pro. Code, it was this Bench alone that could give the required sanction. S. 195 is expressed in the widest terms and vests in the Court an absolute and unqalified discretion. Not one jot or one tittle can be taken away from or added to the plain and express provisions of the Legislature by any decision of the Court, nor can this discretion vested by the section in the Court be crystalised or restricted by any series of cases, and it remains free and untrammelled to be fairly exercised according to the exigencies of each case. An application for sanction is not to be conducted on the same lines as the criminal trial which may be its sequel. When a Tribunal is invested by an Act or by rules with a discretion, without any indication in the Act or the rules of the grounds upon which the discretion is to be exercised, it is a mistake to lay down any rules with a view to indicate the particular groves in which the discretion should run. (29 Ch. D 50 (58), 54 L.J. Ch. 762, 52 L. T. 395, 33 W.R. 470, (1897) P. 89 at p. 25; 66 L.J. p. 57, 76 L.T. 330, 45 W.R. 583. *Rel.*) When exercising discretion, the Court will be astute to see that there should be no abuse of the administration of criminal justice. Therefore, no one should be permitted to use a penal law merely to satisfy his own private ends or personal spite. An Attorney can make an affidavit by way of answer to a rule issued against him under the Court's disciplinary jurisdiction, and for a false statement in the affidavit, he is criminally liable. MR. HUME, PUBLIC PROSECUTOR v. PORESH CHUNDER GHOSE, **15 Cr. L.J. 49=22 Ind. Cas. 321=41 C. 446, S.B.**

(1782)—*S. 195—Sanction to prosecute—Penal Code, s. 471—Forgery—Knowledge of applicant that the document was a forgery—Proof.*—Before a conviction can be had under s. 471, I.P.C., it is necessary to prove that the accused knew or had reason to believe that the document was a forgery. Where, therefore, there is no ground for supposing that the accused had any knowledge or belief as to the forgery of a pro-note on which a suit was based, sanction for his prosecution cannot be given. RAMASAWY CHETTY v. MAUNG SHWE BON, **8 Ind. Cas. 993=11 Cr. L J. 749=3 Bur. L.T. 151.** [*R.*, 11 Cr. L.J. 749=8 Ind. Cas. 996=3 Bur. L.T. 152].

(1783)—*S. 195—Forged document—Production in a proceeding—Person not party to such proceeding—Prosecution of such person—No sanction necessary.*—Where a person was not a party to the proceedings in the Court in the case in which an alleged forged document was produced, no sanction for his prosecution is required. THE SESSIONS JUDGE OF CUDDAPAH v. KONDETI OBALESU, **26 M L.J. 220=23 Ind. Cas. 194=15 Cr. L.J. 242.** (25 M. 671, *F.*; 15 C.W.N. 565, *R.*; 6 Ind. Cas. 529, *Not F.*).

Crim. Pro. Code (Act V of 1898)—*continued.*

(1784)—*S.* 195 — *Insolvency proceeding — Official assignee—Using forged document in—Sanction of Insolvency Commissioner—Necessity —Adjudication order—Effect—Official Assignee not a Court.*—Where the accused produced a forged document before the Official Assignee in support of a claim, it is the sanction of the Insolvency Commissioner which is required for the prosecution of the accused on a charge of using a forged document as genuine, and the sanction of the Official Assignee is not enough. The Official Assignee does not become a Civil Court merely because he has a wide discretion in deciding on claims of persons, alleging themselves to be the creditors of the insolvent, or because persons aggrieved by his orders have a right of appeal to the Court. The order of adjudication does not transfer the proceeding from the Court to the Official Assignee. MESSRS. W. A. BEARDSELL & CO v. NILGIRI ABDUL GUNNI SAHEB, **11 M L.T. 391 = 14 Ind. Cas. 593 = 13 Cr. L.J. 241 = 1912 M.W.N. 536 = 37 M. 107.**

(1785)—*S.* 195 (= *Crim. Pro Code*, 1882, s. 195)—*Document given in evidence.*—A document is given in evidence within the meaning of s. 195, Crim. Pro. Code, when it is handed over by the person tendering it to the Court, though the Court may reject it as evidence for insufficiency of stamp or want of registration. QUEEN-EMPRESS v. NAGINDAS, **Rat. Un. Cr. C. 242 = Cr. Rg. 10 of 1886.**

(1786)—*S.* 195—*Order as to costs in proceedings under—Legality.*—An order awarding costs in proceedings under s. 195 is illegal and must be set aside. BISHEN DAS v. RAHMAT KHAN, **5 P.R. 1915, Cr. = 16 Cr. L.J. 281 = 28 Ind. Cas. 329.**

(1787)—*S.* 195—*Application for sanction to prosecute—Rejection by Magistrate—Independent application to Sessions Judge—Procedure, validity of.*—An application for sanction to prosecute the complainant, on dismissal of complaint, was made to a Magistrate, who rejected it. Without preferring an appeal or revision, the applicant made an original application to the Sessions Judge for such sanction. The Sessions Judge refused to entertain the application. On this, the application was renewed in the High Court under s. 195. *Held*, that the High Court could not interfere, as the applicant had not adopted the proper procedure. HARBANS RAI v. CHUNNI LAL AND RAM PRASAD, **25 A. 126 = A.W.N. 1902, 197.**

(1788)—*S.* 195 (= *Crim. Pro. Code*, 1882, s. 195)—*Refusal of sanction by Subordinate Magistrate—Power of District Magistrate to entertain complaint.*—A District Magistrate is not precluded from taking cognizance of offences under s. 193, merely because a Subordinate Magistrate in whose Court the evidence had been given had refused to give sanction to prosecute under s. 195, Crim. Pro. Code. It is not a necessary part of the definition of the word sanction that it is a permission to prosecute given to a private person. As the sanction merely allows operation to the oridnary criminal law, it can, as a matter of law, be given before any complainant or other person applies for it. *In re* KHEMCHAND, **Rat. Un. Cr. C. 683.**

(1789)—*S.* 195—*Forgery, charge of—Sanction to prosecute, whether necessary.*—It is necessary for a party wishing to prosecute upon a charge of forgery committed in respect of a document produced in Court, to obtain sanction of the Court under s. 195 of the Crim. Pro. Code. HARDEO PRASAD v. RAM SARUP, **16 Cr. L J. 203 = 27 Ind. Cas. 763.**

(1790)— S. 195—Sub-Registrar, whether a Court—*See* ACT III OF 1877, s. 34, 11 M. 3.

(1791)—S. 195—Presentation of forged document for registration—Sanction of Sub-Registrar whether necessary—*See* ACT III OF 1877, ss. 34, 35 and 41, 12 M. 201.

(1792)—S. 195—Sub-Registrar acting under s. 41, Registration Act, whether a " Court "—*See* ACT III OF 1877, s. 41, 10 M. 154 = 2 Weir 170 = 11 Ind. Jur. 140.

(1793)—S. 195—Registrar whether a "Court" within the meaning of section—*See* ACT III OF 1877, ss. 72, 73, 74 and 75, 15 M. 138 = 2 M.L. J. 64, F.B.

(1794)—S. 195—Sanction to prosecute for forgery under s. 82, Registration Act, whether necessary—*See* ACT III OF 1877, s. 82, 11 M. 500.

(1795)—S. 195—*See* ACT XV OF 1877, art. 178, 10 A. 350 = A.W.N. 1888, 92.

(1796)—S. 195—*See* ACT I OF 1887, ss. 2 and 7, 22 C. 176.

(1797)—S. 195—*See* BEN. ACT VIII OF 1885, ss. 69 and 70, 17 C. 872.

(1798)—S. 195—False evidence given before District Judge acting under s. 22, Bombay Act III of 1901—Sanction for prosecution—*See* BOM. ACT III OF 1901, s. 22, 15 Bom.L.R. 45 = 2 Bom. Cr. C. 1 = 18 Ind. Cas. 408 = 14 Cr. L.J. 72 = 37 B. 365.

(1799)—S. 195—*See* CRIMINAL PROCEEDINGS, 16 B, 729.

(1800)—S. 195—*See* DISMISSAL OF COMPLAINT, 28 C. 251.

(1801) —S. 195 — *See* DISTRICT JUDGE, JURISDICTION OF, 16 C. 766 F.B.

(1802)—S. 195—*See* FALSE CHARGE, 7 M. 292 = 1 Weir 185 = 8 Ind. Jur. 139.

(1803) — S. 195—Order of High Court — Disciplinary jurisdiction—High Court's power to grant leave to appeal to Privy Council against order under cl. 10 of the Letters Patent — Order granting leave to appeal whether may be reviewed at instance of Public Prosecutor—*See* LETTERS PATENT—LETTERS PATENT, 1865, CALCUTTA, cls. 10, 39, 15 Cr. L.J. 52 = 22 Ind. Cas. 324 = 41 C. 734.

Crim. Pro. Code (Act V of 1898)—*continued.*

(1804)—S. 195—*See* LETTERS PATENT—LETTERS PATENT, MADRAS, 1865 s. 15, 1 Weir 787.

(1805)—S. 195—Incorrect statement in answer to irrelevant question—Whether sanction to prosecute may be given—Intention—Mistake—Effect—*See* PENAL CODE, s. 193, 72 P.L.R. 1911=14 P.W.R. 1911=10 Ind. Cas. 840=12 Cr.L.J. 265.

(1806)—S. 195 — Magisterial proceedings following police proceedings in the same matter—Necessity for sanction—*See* PENAL CODE, s. 211, 6 L.B.R. 50=13 Cr. L.J. 565=15 Ind. Cas. 981=5 Bur. L.T. 111.

(1807)—S. 195—*See* PENAL CODE, ss. 211, 500, U.B.R. 1897—1901, Vol. I. 279.

(1808)—S. 195—Sanction granted to the agent of landlord whose seal was counterfeited—Validity—Sanction by successor of trying Magistrate — Validity—*See* PENAL CODE, s. 471, 16 C.W.N. 623=15 C.L.J. 509=39 C. 463=14 Ind. Cas. 201=13 Cr.L.J. 201.

(1809)—S. 195—Proceeding under—Cost—*See* PENAL CODE, ss. 471, 511, 13 Ind.Cas. 99.

(1810)—S. 195—*See* PERJURY, 10 C.W.N. 220=3 Cr. L.J. 196.

(1811)—S. 195—*See* Nos. 33, 34, 35, 47, 59, 60, 61, 61-*a*, 73, 136, 1391, 1400, 1543, 1644, 1651, 1654, 1656, 1657, 1658, 1682, 1703, 1711, 1738, *supra*, and Nos. 1973, 1974, 2086, 2502, 2573, 3512, 3813, 4199, 4201, 4202, 4203, 4204 to 4207, 4215, 4245, 4259, 4294, 4295, 4676, 4738, 4841, *infra.*

(1812)—Ss. 195, 174—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 5 M.L.T. 355=9 Cr.L.J. 304=1 Ind. Cas. 547.

(1813)—Ss. 195, 197, 215, 526—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 8 M.L.T. 205.

(1814)—*Ss.* 195, 198, 423—*Power of appellate Court to alter finding.*—There are no words in s. 423, limiting the appellate Court's right to alter the finding or prescribing any preliminaries, (such as a sanction, or a complaint by a person aggrieved), to its taking cognizance of an offence other than that of which the Court of original jurisdiction had convicted. On an appeal from a conviction under s. 182, I.P.C., the appellate Court is competent to alter the conviction to one for an offence under s. 500, I.P.C , notwithstanding that there was no complaint by an aggrieved person. EMPEROR v. GUR NARAIN PRASAD, **25 A. 537=A.W.N. 1903, 100.** [*R.*, 3 L.B.R. 232.]

(1815)—*Ss.* 195, 198, 476 (=*Crim. Pro. Code,* 1872, *ss.* 467, 468, 469, 471)—*Trial for offences against public justice—Jurisdiction.*—The Magistrate before whom an offence under s. 193 is committed is himself competent to try the case. QUEEN v. GUR BAKSH, **1 A. 193.** [*Overruled,* 1 A. 625, F.B.]

(1816)—Ss. 195, 198, 487—*See* MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION, 7 M.H.C. App. 17.

Crim. Pro. Code (Act V of 1898)—*continued.*

(1817)—*Ss.* 195 *and* 200—*Scope of s.* 200—*Duty of Presidency Magistrate to record evidence of authority from a person prosecuting under sanction given to another.*—The examination referred to in s. 200 of the Code, and which a Presidency Magistrate is not obliged to reduce to writing, is an examination of the subject-matter of the "complaint," which, as defined in s. 4 (*h*), means the allegation that some person has committed an offence. Where a prosecution is initiated by a person acting under the sanction given to another person, the Presidency Magistrate is bound to place on record the necessary evidence of the complainant's authority from that person. KALI KINKAR SETT v. NRITYA GOPAL ROY, **8. C.W.N. 833 =32 C. 469.** [*D.*, 35 C. 141=7 Cr. L.J. 10=7 C.L.J. 49=2 M.L.T. 500.]

(1818)—*Ss.* 195, 200, 212, 203, 476—*Sanction to prosecute—Jurisdiction—Complaint dismissed by Magistrate of first class—Power of District Magistrate to grant sanction—" Subordinate Court"—Examination of complainant, nature and necessity of—Inquiry and report without specific examination—Notice, when to issue—Sanction when no application before Court—Practice—Cases of imputations against Police Officers.*—A Magistrate of the first class is not subordinate to the District Magistrate for the purposes of s. 195, Crim. Pro. Code. Consequently, the District Magistrate has no jurisdiction to sanction the prosecution of a complainant in respect of a complaint which has been finally disposed of by another Magistrate of the first class. A complainant should be examined specifically in respect of his complaint; in the absence of any such examination, his complaint cannot, in law, be dismissed. Unless a complainant is duly examined, an inquiry and report under s. 202, Crim. Pro. Code cannot be called for and, if made, are made without jurisdiction and cannot form the basis of any further action. A complainant cannot be prosecuted in respect of a complaint, in which he has not been duly examined though the complaint has been dismissed upon inquiry and report ostensibly called for under s. 202, Crim. Pro. Code. A first lodged one complaint and subsequently lodged another. He was never examined specifically in respect of the first complaint. But while being examined with reference to his second complaint, he incidentally made certain statements with reference to the first complaint. *Held* that there was no proper examination of A in respect of his first complaint. A notice calling upon a complainant to show cause why he should not be prosecuted for preferring a false charge ought not to issue, until it has been finally decided that the complaint must be dismissed as false. Sanction to prosecute should not be accorded until there is an application for sanction before the Court. In cases where imputations are made against influential Police Officers, a District Magistrate should, if practicable, retain the cases in his own hands, and should adhere to the procedure laid down by law with more than ordinary

Crim. Pro. Code (Act V of 1898)—*continued.*

strictness. The complainant himself should be examined without delay and should be required to produce his witnesses at the earliest possible opportunity. *Obiter*—S. 202, Crim. Pro. Code, does not apparently contemplate the subordination of a Magistrate of the first class to the District Magistrate. They are both Magistrates of the first class, and it would seem that the District Magistrate, as a Magistrate of the first class, is not competent to direct another Magistrate of the first class to make inquiry under that section. ALY MAHOMMAD v. EMPEROR, **12 Cr. L.J. 539 = 12 Ind. Cas. 515 = 2 P.R. 1912, Cr. = 11 P.L.R. 1912.** (7 P.R. 1902, Cr., 44 P.L.R. 1902, 9 C.W.N. 199, 2 Cr. L.J. 51; 30 C. 923, 27 C. 921, 4 C.W.N. 305, *F.*)

(1819)—Ss 195, 202 and 203—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 2 P.R. 1907, Cr. = 5 Cr. L.J. 491 = 49 P.L.R. 1907 = 18 P.W.R. 1907, Cr.

(1820)—*Ss. 195, 203—Revision—Practice—Matters not urged before first Court of revision, if can be urged in moving High Court—Dismissal of complaint, without recording reasons, bad—Complaint against Police Officer—Government Circular that offence should be inquired into by first class Magistrate—Meaning of Circular—If case may be made over to another Magistrate, that Magistrate to have jurisdiction to decide case finally and order sanction for prosecution—Penal Code, s. 211—Sanction to prosecute.*—Matters which are not urged before the first Court of revision, may be urged in moving the High Court. It is an imperative provision of law that a Magistrate shall briefly record his reasons for dismissing a complaint. There can be no question of irregularity where the provisions of the statute are imperative and are directly disobeyed. Where a Magistrate did not record any reason for dismissing a complaint, but directed that the complainant should be prosecuted under s. 211, Penal Code. *Held*, that the order of dismissal was without jurisdiction and altogether bad, that there must be a further inquiry and that there cannot be any proceeding under s. 211, Penal Code, until such further inquiry has been made. No Circular of the Government can authorize Magistrates to infringe or in any way alter the statute law. The Government Circular directing that, when a Police Officer is charged with a serious offence, the offence should be inquired into at once on the spot by a Magistrate of the first class, does not mean that the Sub-Divisional Magistrate may send the case to a Subordinate Magistrate to hold a local investigation under s. 202, Crim. Pro. Code, and then afterwards treat it as if the matter was still on his file. What the Circular means is that an experienced first-class Magistrate should himself hold the inquiry, and if he is to depute it to another first-class Magistrate, the latter officer should from the first have been seizin of the case and should investigate it and decide it finally. An order for the prosecution of the complainant for bringing a false case should be given by this latter officer; the former officer who deputes the case to the latter officer has no power to grant the sanction. MANIRUDDIN SARKAR v. ABDUL RAUF, **13 Cr. L.J. 482 = 15 Ind. Cas. 482 = 40 C. 41.**

(1821)—Ss. 195 and 203—*See* SANCTION TO PROSECUTE—MISCELLANEOUS CASES, 24 M. 337 = 2 Weir 251.

(1822)—Ss. 195, 215, 476—*See* SANCTION TO PROSECUTE — CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., L.B.R. 1893—1900, 377.

(1823)—Ss. 195, 215, 476—*See* SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 6 A. 98.

(1824)—*Ss. 195, 215, 476, 537—Penal Code, ss. 196, 471—Sanction to prosecute given to serishtadar — No application for sanction—Effect of sanction—Application of s. 537—Defect in procedure—Sanction granted in respect of one offence—Framing charge in respect of another offence disclosed by facts.*—Where there is no application for sanction, the proceeding is virtually a complaint and the procedure enjoined by s. 476, Crim. Pro. Code, should be followed. Where sanction to prosecute was granted to a serishtadar without any application and the procedure laid down in s. 476, Crim. Pro. Code, was not followed, but the complaint against the petitioners was heard and a preliminary inquiry held, which showed that there was a *prima facie* case against the petitioners. *Held*, that the defect in the procedure in granting sanction was cured by s. 537. Though s. 537 applies in terms to orders made in appeal or revision the principles contained therein should guide Courts in dealing with applications under s. 215. Where the inquiry in a case had proceeded far enough to enable the test required by s. 476 to be applied. S. 537 will cure any defect not prejudicing the accused. Where sanction to prosecute has been granted in respect of an offence and thus the bar to the Magistrate taking cognizance of the case has been removed by the sanction, the Magistrate may frame a charge in respect of any other offence referred to in s. 195 and which is disclosed by the facts. EMPEROR v. JHAMANDAS, **10 Ind. Cas. 616 = 12 Cr. L.J. 320.**

(1825)—Ss. 195, 230—*See* SANCTION TO PROSECUTE—WHO MAY APPLY FOR SANCTION, 4 C. 712.

(1826)—Ss. 195, 234, 360, 537—*See* SANCTION TO PROSECUTE—NOTICE OF SANCTION, 9 C.L.J. 690 = 13 C.W.N. 942 = 10 Cr. L.J. 150 = 36 C. 808 = 2 Ind. Cas. 697.

(1827)—Ss. 195 and 235—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 17 M.L.J. 559 = 7 Cr. L.J. 6 = 3 M.L.T. 113 = 31 M. 43.

(1828)—Ss. 195, 250, 254—*See* SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 22 C. 586.

Crim. Pro. Code (Act V of 1898)—*continued.*

(1829)—*Ss.* 195 *and* 256 (=*Crim. Pro. Code*, 1882, *ss.* 195, 256)—*Sanction to prosecute—Recall and cross-examination of witnesses for prosecution.*—On a complaint of theft being dismissed as false, sanction to prosecute the complainant under s. 211, Penal Code, was given by the District Magistrate. *Held*, that the sanction of the Magistrate who took up the complaint of the complainant was perfectly complete and sufficient, but that the Magistrate, who tried the complainant, acted illegally in stopping the cross-examination of a witness, and in refusing to allow the recall for cross-examination of the witnesses for the prosecution as soon as the accused was formally charged. *In the matter of* JAGGAR NATH BARAI, **S.C. 119, Oudh.**

(1830)—Ss. 195, 337, 339—*See* FALSE EVIDENCE, 10 B. 190.

(1831)—*Ss.* 195, 366, 367—*Order under s.* 195—*Applicability of s.* 367.—S. 367, Crim. Pro. Code, is not applicable to an order passed under s. 195, as s. 367 relates to such judgments as are referred to in s. 366, that is to say, to judgments in trials. *In re* NAGAPPA SATYAPPA, **6 Bom. L.R. 897.**

(1832)—Ss. 195, 369—*See* SESSIONS JUDGE, JURISDICTION OF, 23 B. 50.

(1833)—*Ss.* 195, 404—*Limitation Act* (IX *of* 1908), *sch.* I, *Art.* 154—*Application for sanction to prosecute—Proceedings under s.* 195, *cl.* (6), *whether in nature of appeal—Limitation—Appeal.*—S. 195, cl. (6), of the Crim. Pro. Code, gives no right of appeal as laid down in s. 404 (13 Ind. Cas. 1007, 16 C.W.N. 645, 13 Cr. L.J. 191, 39 C. 774, *R.*) . Therefore, the provisions of art. 154 of sch. I of the Limitation Act, 1908, are not applicable to proceedings under s. 195, cl. (6), of the Crim. Pro. Code. It is a matter of revision, and the Court should deal with it as if there was no limitation prescribed for the application. POCHAY MITAY v. EMPEROR, **13 Cr. L.J. 599=16 Ind. Cas. 167=17 C.W.N. 91=40 C. 239.**

(1834)—*Ss.* 195, 404, 439 (=*Crim. Pro. Code*, 1882, *ss.* 195, 404, 439)—*Sanction to prosecute—No appeal—Revision only possible.*—No appeal lies from orders under s. 195, Crim. Pro. Code. Such orders can be interfered with only in the exercise of the powers of revision. MEHDI HASAN v. TOTA RAM, **15 A. 61=A.W.N. 1892, 242.** [*F.*, 23 B. 50; *Appr.*, 40 C. 239=13 Cr. L.J. 599=17 C.W.N. 91=16 Ind. Cas. 167; *R.*, 35 A. 90=11 A.L.J. 11=14 Cr. L.J. 47=18 Ind. Cas. 271; *Disc.*, 26 A. 244=A.W.N. 1904, 10.]

(1835)—*Ss.* 195 *and* 407—*Courts to which appeal ordinarily lies, meaning of.*—*Held* by the Full Bench, (*Benson, J. dissenting*).—A Magistrate, who has been directed and empowered to hear appeals under the provisions of s. 407 (2) of the Crim. Pro. Code, is not the "Court to which appeals ordinarily lie" within the meaning and for the purposes of s. 195 (7) of the Code. EROMA VARIAR v. EMPEROR, **26 M. 656=2 Weir 202, F.B.** [*F.*, 27 M. 124, 3 N.L.R. 50=5 Cr. L.J. 432.]

(1836)—Ss. 195 and 407—*See* SANCTION TO PROSECUTE—WHO MAY APPLY FOR SANCTION, 18 M. 487=2 Weir 165=5 M.L.J. 125.

(1837)—Ss. 195. 407—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 3 N.L.R. 50=5 Cr. L.J. 432.

(1838)—*Ss* 195, 423, 439, 476 (=*Crim. Pro. Code*, 1882, *ss.* 195, 423, 439, 476)—*Jurisdiction of High Court, in revison, to interfere with the orders of Subordinate Courts.*—The High Court is competent, in the exercise of its powers of revision, to interfere with an order under s. 476, as also to interfere with a matter in which a Deputy Magistrate, having tried a case, makes an order sending the record with an invitation to the District Magistrate to prosecute. Under s. 439, the High Court has the power, conferred on a Court of Appeal by s. 423, to alter or reverse an order of the lower Court. KHEPU NATH SIKDAR v. GRISH CHUNDER MUKERJI, **16 C. 730.** [*F.*, 20 C. 349, Rat. Un. Cr. C. 895; *R.*, 16 A. 80, 26 A. 249, F.B., 26 B. 785, 23 C. 610, 21 M. 124, F.B.=2 Weir 593, 5 C.P.L.R 78, 9 C.P.L.R. 27 ; *D.*, 97 P.L.R. 1903.

(1839)—Ss. 195, 423, except. 1 (*d*), 435 (1 to 3), 436, 439 (1 to 4). 476—*See* SESSIONS JUDGE, JURISDICTION OF, 20 C. 633.

(1840)—Ss. 195, 435, 438, 439—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 26 M. 137=2 Weir 196, 26 M. 139=2 Weir 197.

(1841)—Ss. 195, 435, 476, 478—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 15 M. 224=2 M.L.J. 148=2 Weir 174, 15 M.L.J. 489=3 Cr. L.J. 118.

(1842)—Ss. 195, 435, 476, 478—*See* SANCTION TO PROSECUTE—WHO MAY APPLY FOR SANCTION, 11 Bom. L.R. 855=10 Cr. L.J. 431=3 Ind. Cas. 962=34 B. 88.

(1843)—Ss. 195, 435 (1 to 3)—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., A.W.N. 1889, 100.

(1844)—Ss. 195, 435 (1 to 3)—*See* SANCTION TO PROSECUTE — NATURE AND FORM OF SANCTION, 7 M. 560=2 Weir 180.

(1845)—*Ss.* 195, 439—*Civ. Pro Code* (1908), s. 115—24 & 25 *Vict.*, *c.* 104, *s.* 15 — *Order by Civil Court refusing sanction — Jurisdiction of High Court to revise such order—Prosecution undertaken by Government—Delay in applying for sanction—Effect.*—The opposite party brought a suit for the recovery of money in the Court of the Munsif which was dismissed, the claim being found to be false and malicious. An application for sanction to prosecute the opposite party was however rejected by the

Crim. Pro. Code (Act V of 1898)—*continued.*

Munsiff as also by the District Judge in appeal on the ground of delay in making the application. *Held* (on an application by the Local Government against the order refusing sanction) —That it was clear from the decision of the Full Bench in *Emperor* v. *Har Prasad*, (17 C.W.N. 647=40 C. 477, *F.*) That the orders of the Munsif and the Judge are not orders of a Criminal Court and cannot therefore be revised under s. 489, Crim. Pro. Code. The High Court however, in the exercise of its powers under s. 115, Civ. Pro. Code, and s. 15 of the Charter Act, granted sanction for the prosecution of the opposite party, holding that the case being in substance a prosecution undertaken by Government, mere delay could not be taken as suggesting *mala fides.* DY. LEGAL REMEMBRANCER AND PUBLIC PROSECUTOR, BIHAR & ORISSA v. RAM UDAR SINGH, **19 C.W.N. 447=21 C.L.J. 198=16 Cr. L.J. 286=28 Ind. Cas. 334.**

(1846)—Ss. 195, 439—*See* ACT V OF 1861, ss. 5 and 36, 9 P.W.R. 1908, Cr.=7 Cr. L J. 291.

(1847)—Ss. 195, 439—*See* FALSE CHARGE, 9 P.W.R. 1908, Cr.=7 Cr. L.J. 291.

(1848)—Ss. 195, 439 — *See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., A.W.N. 1907, 283= 6 Cr. L.J. 372, 26 A. 1=A.W.N. 1903, 171, A.W.N. 1908, 273=5 A.L.J. 749=31 A. 38 =9 Cr. L.J.39=1 Ind. Cas. 569, 6 O.C. 216, 4 L.B.R. 138=7 Cr. L.J. 416.

(1849)—Ss. 195, 439—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, 2 P.W.R. 1909, Cr., 9 Cr. L.J. 152=37 P.L.R. 1909=1 Ind. Cas. 93.

(1850)—Ss. 195, 439 — *See* SANCTION TO PROSECUTE—REVOCATION OF SANCTION, 23 C. 971.

(1851)—Ss. 195, 439, 476—*See* REVISION—GENERAL PRINCIPLES, 16 A. 80= A.W.N. 1894, 9.

(1852)—*Ss.* 195, 476—*Witness giving false evidence—Power to commit—Procedure.*—S. 476 does not permit a Magistrate to order the arrest of a witness who has, in his opinion, fabricated false evidence, with a view to commit him to the Court of Sessions. The Magistrate, however, must, if the proceeding before him satisfies him that there is ground for enquiry into any offence referred to in s. 195, and if he thinks that no further preliminary enquiry is necessary, send the case to the nearest First Class Magistrate. *In re* ANWARKHA, **3 Bom. L.R. 165.**

(1853)—*Ss.* 195, 476—*Offence under s.* 211, *I.P.C.—Sanction.*—In the course of civil proceedings before the District Judge of Poona, it appeared that a person had committed an offence under s. 211, I.P.C., in the Court of the City Magistrate of Poona. The District Judge considering that there were grounds for enquiring into that offence, sent the case under s. 476 Crim. Pro Code, to the nearest Magistrate of the First Class. When the Magistrate proceeded with the case, it was objected that he was precluded by s. 195 (1), Crim. Pro. Code, from taking cognizance of the offence, in the absence of the valid sanction. *Held* that, as there was neither the sanction nor the complaint of the Court in which the offence was alleged to have been committed or of the Sessions Court to which the Court was subordinate, the offence was not, according to the express provisions of s. 195, Crim. Pro. Code, cognizable at that stage. That the fact that the District Court and the Sessions Court were represented by one and the same individual did not, in the circumstances of the case, make any difference. *In re* BAL GANGADHAR TILAK, **4 Bom. L.R. 750.** [*R.*, 28 A. 142=A.W.N. 1905, 231=2 Cr. L.J. 598.].

(1854)—*Ss.* 195, 476 (=*Crim. Pro. Code,* 1872, *ss.* 470, 471) — *Proceedings different.*— There is a distinction between a sanction given under s. 470 of the Crim. Pro. Code and the institution of proceedings by a Court of its own motion under s. 471. *In the matter of* GYAN CHUNDER ROY v. PROTAB CHUNDER DASS, **7 C. 208=8 C.L.R. 267=4 Shome L R. 128.** [*R.*, 13 B. 109, 10 M. 232, F.B.=2 Weir 183.]

(1855)—*Ss.* 195 *and* 476—*Judicial proceedings—Delivery of possession in execution of decree—Resistance—Jurisdiction of Court passing decree to direct prosecution for the resistance.—Per Harrington and Henderson, JJ.,* (*Pargiter J. dissenting*) :—Delivery of possession of land to the decree-holder by a Nazir in execution of a decree is not a "judicial proceeding" within the meaning of s. 476, Crim. Pro. Code, but is a purely ministerial act; and when the Nazir is resisted, in the course of such delivery of possession, no action can be taken under s. 476 of the Crim. Pro. Code, directing the prosecution of the person under s. 476 by the Court executing the decree, as such act cannot be said to have been brought to its notice "in the course of a judicial proceeding." HARA CHARAN MOOKERJEE v. KING-EMPEROR, **32 C. 367= 9 C.W N. 364=1 C L.J. 161=2 Cr. L.J. 110.** [*Diss.*, 14 Cr. L J. 624=25 M.L.J 593=14 M. L.T. 512=1913 M.W.N. 1002=21 Ind. Cas, 672; *F.*, 35 C. 133=7 Cr. L.J. 159; *R.*, 40 C. 477=17 C.L.J. 245=17 C.W.N. 647=14 Cr. L. J. 197=19 Ind. Cas. 197, 12 C.L.J. 618=12 Cr. L.J. 21=8 Ind. Cas. 1106, 11 Cr. L.J. 90= 5 Ind. Cas. 257=1 P.R. 1910, Cr.=161 P.L.R. 1910=3 P.W.R. 1910, Cr., 13 Cr. L J. 1=13 Ind. Cas 111; *Doubted & D.*, 10 C.L.J. 450=10 Cr. L J. 564=4 Ind. Cas. 368; *D.*, 28 A. 89=2 A.L.J. 717=A.W.N. 1905, 195, 10 C.W.N. 55.]

(1856)—*Ss.* 195 *and* 476—*Order for prosecution—Power of successor-in-office to make order —"Court," meaning of.—Held* by the Full Bench :—It is the Judge who tries the case who alone can exercise the summary power conferred by s. 476, and such power is exerciseable only at or immediately after the conclusion of the trial in which the offence is alleged to have

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been committed. But an application for sanction to prosecute under s. 195 can be made to a Judge who is the successor in office of the Judge who tried the case. The expression "Court" in s. 476 means the particular Judge who tried the case and does not include his successor in office. *Per Geidt, J.*—S. 476 contemplates that the desirability of prosecuting the offender must be present to the mind of the Court during the proceeding in the course of which the offence was committed or brought to the Court's notice. It was not intended that it should be suggested to the Court by an application made after the proceedings had terminated, and passed beyond its ken. The word "Court" in that section need not, however, necessarily mean the same judicial officer. An order under the section would be bad if it were passed after a long time, even if the presiding officer had remained the same. It would not matter if the actual order be passed by his successor in office, if the previous officer had left some indication of his opinion to order a prosecution. BEGU SINGH v. EMPEROR, **11 C.W.N. 568=34 C. 551, F.B.= 5 C L J. 508=5 Cr. L J. 398=2 M.L T. 298.** (9 C.W.N. 859, 33 C. 193, 11 C.W.N. 119, *R.*) [*Diss.*, 32 B. 184=10 Bom. L.R. 28=7 Cr. L. J. 35=3 M.L.T. 116; *Not F.*, 9 Cr. L.J. 219= 6 A.L.J. 392=1 Ind. Cas. 306, 11 Cr. L.J. 438 =7 Ind. Cas. 51=7 A.L J. 991; *F.*, 35 C. 114 =7 Cr. L.J. 134, 31 M. 140=17 M.L.J. 584= 3 M.L.T. 79=7 Cr. L J 54, 10 Cr. L.J. 158= 6 P.R. 1909, Cr.=12 P.W.R. 1909, Cr.=104 P. L.R 1909=2 Ind. Cas. 812, 12 Cr. L.J. 68=9 Ind. Cas. 389=10 P.L.R. 1911=4 P.W.R. 1911, Cr.; *R.*, 35 C. 133=7 Cr. L.J. 159, 40 C. 477= 17 C.L.J. 245=17 C.W.N. 647=14 Cr.L.J. 197 =19 Ind. Cas. 197, 32 M. 49=19 M.L J. 42=4 M.L.T. 404=9 Cr. L.J. 41=1 Ind. Cas. 597, 14 C.L.J. 123=12 Cr. L.J. 209=15 C.W.N. 691= 10 Ind. Cas. 66, 4 M.L.T. 269; *D.*, 4 Bur. L.T. 246=12 Cr. L.J. 521=12 Ind. Cas. 289.]

(1857)—*Ss.* 195, 476—*Penal Code, s.* 211—*Order for prosecution under section on mere Police report.*—A Magistrate does not exercise a proper discretion who, on receipt of a Police report that the complaint is false, forthwith orders the complainant to be prosecuted under s. 211, I.P. Code. The complainant should be given a reasonable time and full opportunity to prove his case before sanction is given for the prosecution. He can then proceed under s. 476, Crim. Pro. Code, and direct a prosecution. LALJI GOPE v. GIRIDHARI CHOWDHURY, **5 C.W.N. 106.** (4 C.W.N. 35 *D.*) [*F.*, 37 C. 250=10 C L J. 564=14 C.W.N. 330=11 Cr. L.J. 37=4 Ind. Cas. 710; *R.*, 2 M.W N. 1911, 9=10 M.L.T. 47=21 M.L.J. 795=10 Ind. Cas. 619=12 Cr. L.J. 323.]

(1858)—*Ss.* 195 *and* 476—*Sanction to prosecute whether can be given for offences in relation to future proceedings* —The words "any offence referred to in s. 195," in s. 476 of the Code do not include the manner in which the offence may have been committed and mean "any offence punishable under any of the sections of the Penal Code mentioned in s. 195." Hence, an offence under s 206 of the Penal Code may be said to be committed "in relation to a proceeding in Court," although it is committed not in relation to a pending proceeding but in relation to a future proceeding. DINA NATH v. KING-EMPEROR, **5 O. C. 46.**

(1859)—*Ss* 195 *and* 476—*Sanction to prosecute.*—The preliminary enquiry referred to in s. 476 of the above Code should be made by the District Magistrate before he orders the prosecution for making a false complaint. MAUNG KYE v. QUEEN-EMPRESS. **U.B.R. 1892—1896, Vol. I, 26.**

(1860)—*Ss.* 195, 476— *Sanction granting, revoking or refusing to grant—Judicial proceeding—Competency of order under s.* 476 *while hearing appeal under s.* 195 (6)—*Sanction to stranger to suit.*—The grant of sanction to prosecute, the revocation of sanction already granted, and the refusal of an application to grant sanction, are all judicial acts. A District Judge, in an appeal under sub-s. (6) of s. 195 of the Crim Pro. Code, affirmed the order of a Munsif and refused to grant sanction to a stranger to a suit, and at the same time made an order under s. 476. *Held*, that it was perfectly open to the Judge to take proceedings under s. 476, inasmuch as the fact of the commission of an offence had been brought to his notice in the course of a judicial proceeding under sub-s. (6) of s. 195 (16 A. 80, *Diss.*; 10 M. 232, 20 M. 383, 23 M. 210, *F.*) *Held*, also that the Judge acted properly in refusing to grant sanction to a stranger to the suit. BALA PASBAN KULDIP LAL v. GURWAR MISSER, **13 Ind. Cas. 111=13 Cr. L.J. 1.**

(1861)—*Ss.* 195, 476—*Judicial proceeding.*—When a case under s. 195 of the Code of Criminal Procedure is taken up to a higher Court in revision, the proceedings in the higher Court relating to sanction are undoubtedly judicial proceedings. The function exercised by the higher Court in upholding the order of the Court below or reversing it, is, beyond doubt, a judicial act. CHADAMMI v LALTA PRASAD, **10 A L J. 174=34 A. 602=16 Ind. Cas. 525= 13 Cr L.J. 717.**

(1862)—*Ss.* 195, 476—*Sanction to prosecute—Forgery—Incompetence of a Court to proceed under s.* 476, *Crim. Pro. Code, in proceedings under s.* 195—*Circumstances for cancelling sanction.*—*Held*, that a Court has no jurisdiction to proceed under s. 476, Crim Pro. Code, in proceedings which have come before it under s. 195: *Held*, further, that where the injured party fails to take action under s. 195, Crim. Pro. Code, for about a year and half after the case had been finally decided in his favour, and proceedings under s. 195 also have been dragged on for a long time, and two competent Courts have declared the case against the accused weak, the order under s. 476, Crim. Pro. Code, is liable to be set aside and should not be converted into an order under s. 195 of the said Code. PIRTHI MAL v. CROWN, **19 P.W R 1911, Cr. =12 Cr. L J. 434=11 Ind. Cas. 618.** (6 P.R. 1909=12 P.W.R. 1909, *R.*)

(1863)—*Ss.* 195, 476—*Sanction to prosecute—Discretion of Court in granting sanction—Evidence—Affidavits.*—Under s. 195 of the Code, there is a discretion vested in the Court granting a sanction. The discretion must be exercised judicially. There must be some ground on which the Court can act in granting sanction. But it is for the Court to determine, in the exercise of its judicial discretion, whether the case is one which calls for an inquiry by a Criminal Court. The Code does not say that in granting sanction under the section the Court must take evidence. Under s. 476 of the Code, the Court before directing prosecution, may or may not make any preliminary inquiry. There is no sanction in the Code of Criminal Procedure which warrants the admission of affidavits as evidence in proceedings for sanction to prosecute. *In re* KARVIRAPPA A. KULKARNI, **14 Bom. L. R. 587 = 13 Cr. L.J. 689 = 16 Ind. Cas. 497 = 1 Bom. C.C. 154.**

(1864)—*Ss.* 195, 476—*Magistrate directing prosecution of witness of his own motion—Effect of order—Revision — Perjury — Contradictory statements explainable—Penal Code, s.* 193.—The Chief Court has power to revise orders passed under s. 476, Crim Pro. Code. (5 P.R. 1908, Cr. = 103 P.L.R. 1908 = 7 Cr. L.J. 281. *F.*) Where a Magistrate of his own motion directs the prosecution of a witness for perjury, he acts under s. 476, Crim. Pro. Code. B purchased certain property from A who subsequently sold it to C. C. brought a complaint of cheating against A. In the course of proceedings in the case, B appeared as a witness. In his examination-in-chief he stated that no other bargain took place in his presence. In cross-examination he stated that A and C were bargaining in his presence: *Held*, that the statement in cross-examination did not necessarily imply that B knew that another bargain had been duly made, and that his explanation, that no bargain was actually effected, though negotiations were going on, was *per se* plausible; his prosecution therefore, for perjury was not admissible. EMPEROR v. BARKAT RAM, **158 P.L.R. 1911 = 10 Ind. Cas. 121 = 12 Cr. L.J. 216 = 38 P.W.R. 1911.**

(1865)—*Ss.* 195, 476—*Sanction to prosecute—Complaint to a District Registrar—Enquiry held departmentally— Judicial proceedings — Penal Code, ss.* 182, 211.—Where a person made a complaint to a District Registrar against the conduct of a subordinate officer, a Sub-Registrar, alleging that the latter had misappropriated a sum of money paid to him on account of fees for a commission, and the District Registrar after holding a departmental enquiry was satisfied as to the falsity of the complaint and made a report to himself as District Magistrate, and in this latter capacity passed the following order: "Read report of District Registrar, Prosecution of E B. under ss. 211 and 182, Penal Code, sanctioned. Summon E.B., ss. 182 and 211, Penal Code." *Held*, it was not clear from the record whether the District Magistrate purported to act under s. 195 or s. 476 of the Crim.

Pro. Code. If he purported to act under s. 195, then the sanction would be without jurisdiction as to s. 182, Penal Code, inasmuch as he was not the public officer concerned or the public officer to whom he was subordinate; and so far as the sanction related to s. 211, Penal Code, it was equally without jurisdiction, as there was no offence committed in or in relation to any proceedings in Court. Nor could the District Magistrate take action under s. 476, Crim. Pro. Code, as the alleged offence or offences cannot be said to have been committed before him or brought under his notice as a Court in the course of a judicial proceeding. ELAHI BUX v. KING-EMPEROR, **11 C.L.J. 111 = 5 Ind. Cas. 721.**

(1866)—*Ss.* 195, 476—*Sanction to prosecute—Grant of—Police report—Findings in previous case—No preliminary enquiry —Legality of sanction—Interference by High Court with orders granting sanction—When to be made—Discretion of subordinate Courts—Not to be interfered with—Interference by way of third appeal—When to be exercised.*—Where a Sub-Magistrate doubting the truth of the complaint presented by the petitioner which was put in at a late stage and appeared to be intended as a counter-charge to the charge of stabbing which was then pending against the petitioner, referred the complaint to the Police for investigation who, after waiting till the petitioner was convicted on the stabbing charge, referred the complaint as false, and where another Sub-Magistrate, who was the successor in office, thereupon dismissed the complaint under s. 203, Crim. Pro. Code, and granted, without holding a fresh inquiry but after making reference to the order dismissing the complaint, sanction under s. 195, Crim. Pro. Code, to prosecute the petitioner for preferring a false complaint, on the ground that the charge was a mere concoction to meet the charge of stabbing of which he was convicted. *Held* that the Magistrate was right in granting the sanction (10 M. 232, F.B., *Expl.*) S. 195 (*b*), Crim. Pro. Code, which relates to sanction for certain offences "committed in or in relation to any proceedings in any Court" does not say by which considerations the Court is to be guided, nor does it prescribe as indispensable that the Court should hold a fresh inquiry and take evidence for the complainant before granting sanction, a proceeding which would be quite unnecessary in cases where the Court has a knowledge of the facts in the course of the proceeding in or in relation to which the offence is alleged to have been committed. (*Per Wallis, J.* A preliminary inquiry is not essential in all cases where the Court grants sanction under s. 476, Crim. Pro. Code. Under s. 195, Crim. Pro. Code, in which there is no reference to 'a preliminary inquiry' such an inquiry is unnecessary (34 A. 267, 26 M. 592, 22 M.L.J. 419, *R.*) (*Per Sadasiva Iyer, J.*). The High Court ought not to interfere with the discretion of the subordinate Courts in the matter of the grant of sanction, unless there is some *prima facie* strong ground for holding that there is no reasonable probability of having a conviction on

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the sanction, or that it is otherwise inexpedient to award the sanction on the facts of the particular case, or that the party against whom the sanction was given was probably innocent. (34 A. 267, 26 M. 592, 22 M.L.J. 419, *R.*) (*Per Sadasiva Iyer, J.*) Though, in sanction matters, a party has a right to come up on a sort of third appeal to the High Court, such petitions by way of third appeal should, as a matter of course, be rejected unless the record show not merely a technical illegality or irregularity but that a palpably innocent man is sought to be prosecuted out of private grudge by his enemies. (*Per Sadasiva Iyer, J.*) When the Crim. Pro. Code says in s. 195, cl. 6, that a sanction given may be revoked by the appellate authority, it cannot be said that it was intended that the higher authority was bound to revoke the sanction whenever some irregularity or even illegality is shown in the proceedings of the lower authority giving sanction. *In re* NARAYANA NADAR, 26 **M.L.J. 486 = 23 Ind. Cas. 479 = 15 Cr. L.J. 271.**

(1867)—Ss. 195 and 476—*See* COMPLAINT—WHAT IS, AND WHO SHOULD INSTITUTE, L. B.R. 1893—1900, 388.

(1868)—Ss. 195, 476—*See* COURT FEES, 5 B.H.C. Cr. 104.

(1869)—Ss. 195, 476—*See* DISCHARGE OF ACCUSED, 5 B.H.C. Cr. 41.

(1870)—Ss. 195, 476—*See* FORGERY, 12 B. 36, Rat. Un. Cr. C. 83, 12 P.R. 1897, Cr.

(1871)—Ss. 195, 476—Complaint by person not party to the case—Dt. Magistrate allowing prosecution for false evidence—Legality—*See* PENAL CODE, s. 193, 13 P.W.R. 1913, Cr. = 68 P.L.R. 1913 = 18 Ind. Cas. 667 = 14 Cr. L. J. 107.

(1872)—Ss. 195, 476—Offence under ss. 471 and 474, I.P.C., committed in course of proceedings in rent suit—Sanction whether necessary—*See* PENAL CODE, ss. 471, 474, 19 C. W.N. 125.

(1873)—Ss. 195, 476—*See* PRACTICE AND PROCEDURE, 4 N.W.P. 86.

(1874)—*Ss.* 195, 476, 90, 342 (= *Crim. Pro. Code,* 1861, *ss.* 171, 273)—*Reference to Magistrate for investigation—Power of the latter to transfer case.*—When a Civil or Criminal Court sends a case for investigation to a Magistrate under s. 171, Crim. Pro. Code, the Magistrate to whom the case is sent must himself hold the investigation. HIGH COURT PROCEEDINGS, 10TH NOV. 1870, 6 **M.H.C. App. 2.**

(1875)—Ss. 195, 476, 90 and 342—*See* MAGISTRATE, JURISDICTION OF, 6 M.H.C. App. 41.

(1876)—*Ss.* 195, 476, 202, 439—*Complaint before District Magistrate—Transfer for inquiry without examining complainant—Irregularity—No application for sanction—Order purporting to be made under s.* 195—*Irregularity—Proper course—S.* 476, *Crim. Pro. Code—Prejudice—Right to object by way of appeal—No revision.*—The sending by a District Magistrate of a complaint for inquiry to a Sub-Divisional Magistrate without examining the complainant is an irregularity contrary to the provisions of s. 202, Crim. Pro. Code. Where the complaint was, on consideration of the proceedings of the Sub-Divisional Magistrate, found to be false by the District Magistrate, it was open to him to proceed thereupon on application under s. 195, Crim. Pro. Code. In the absence of such an application, his order purporting to have been made under s. 195 could not be upheld. The proper course for him would have been to have proceeded under s. 476, Crim. Pro. Code. Where the applicant did not appeal against the order purporting to have been made under s. 195 and the trial appears to have advanced to a late stage, it may be open to the applicant to raise the question of prejudice by way of appeal in case of conviction, but it cannot be interfered with by way of revision under s. 439, Crim. Pro. Code. CROWN *v.* NATHU *wd.* MAHAR, **8 S.L.R. 21 = 15 Cr. L.J. 662 = 25 Ind. Cas. 990.**

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(1876-*a*)—Ss. 195, 476, 435, 537—*Proceedings under s.* 195—*Previous notice or independent inquiry, whether necessary prior to such proceedings—Sanction to prosecute—Omission to address the same to a particular person or to mention time and place of offence—Illegality—Court receiving information on police report—Offence not committed in course of judicial proceedings—Grant of sanction under s* 476—*Illegality—No jurisdiction—Calling up records under s.* 435—*Knowledge of offence thereafter—Insufficiency to give jurisdiction to act under s.* 476—*Notice of offence prior to action under s.* 476—*Necessity.*—S. 195, Crim. Pro. Code, does not require a Magistrate to give any notice to the accused or hold any independent inquiry before giving sanction. (12 C. 58, 18 A. 358, 10 M. 232, 26 M. 592, *D.*) No doubt, a Court acting under s. 195 (*b*) is competent to, and in a proper case, should give notice and make inquiry before granting sanction. (16 C. 661, 20 M. 339, 19 C. 345, *R.*) And, in some cases, the failure to give notice might be a sufficient ground for revoking sanction. (23 M. 210, *R.*) A sanction for prosecution which is not addressed to any one in particular, and does not, as far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed, is not a legal sanction under s. 195, Crim. Pro. Code. Where a District Magistrate directed under s. 476, Crim. Pro. Code, the prosecution of the applicant for an offence which was neither committed before him nor brought to his notice in the course of a judicial proceeding, but only by means of a police report, *held* that the proceedings of the Magistrate were illegal and ought to be set aside. (25 M. 61, 34 C. 551, 32 M. 49, 31 M. 140, 32 B. 184, 6 A.L.J. 392, 8 A.L.J. 240, *R.*) Such illegality cannot be cured by s. 537, Crim. Pro. Code. In respect of an offence already notified to him extra-judicially, he could not have jurisdiction to proceed under s. 476, Crim. Pro. Code. The calling up of a record under s. 435, Crim. Pro. Code, is not a 'judicial proceeding' from which jurisdiction to act under s. 476 could be obtained. (15 M.L.J. 489, *F.*;

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25 M. 659, *R.*) A Court cannot take action under s. 476, for the purpose of obtaining notice of an offence to be dealt with under that section. It must have such notice before it can legally make any inquiry under that section. GOPAL v. EMPEROR, **11 N.L.R. 36 = 16 Cr. L.J. 289 = 28 Ind. Cas. 513.**

(1877)—*Ss.* 195, 476, 487 (= *Crim. Pro. Code,* 1882, *ss.* 195, 476, 487)—*False evidence, offence of, committed before a Sessions Judge — His jurisdiction to try offence.*—Where a Sessions Judge directed the trial of a person for the offence of giving false evidence committed in the course of a judicial proceeding before him of a criminal nature, he cannot try the case himself. QUEEN-EMPRESS v. MAKHDUM, **14 A. 354 = A.W.N. 1882, 32.** (A W.N. 1887, 139, *D.*) [*R.*, U.B.R. 1897—1901, Vol. I, 127.]

(1878)—*Ss.* 195 *and* 477—*Scope of s.* 477—*Procedure to be observed under the section—Necessity for framing a charge.*—S. 477 is an empowering section, and authorises a Court of Session, when an offence referred to in s. 195, Crim. Pro. Code, has been committed before it or brought under its notice as mentioned in the section, to charge the offender and to commit, or admit to bail and try him upon its own charge. The word "may" in s. 477 ought not to be read as "must." Having regard to the phraseology of the section, if a Court of Sessions proceed to take action, under s. 477, it must, in the first instance, frame a charge so as to enable the accused to know the nature of the offence he is alleged to have committed. After framing the charge the Sessions Court may then either commit the accused for trial upon a charge so framed, or admit him to bail for the same purpose. REILY v. KING-EMPEROR, **28 C. 434 = 5 C.W.N. 609.**

(1879)—*Ss.* 195, 477 (= *Crim. Pro. Code,* 1882, *ss.* 195, 477)—*Power of Sessions Court regarding offences mentioned in s.* 195, *committed before itself.*—S. 477, Crim. Pro. Code, enacts that the person charged shall be committed for trial, or held to bail to take his trial, on the charge, and not that the Court of Sessions shall try offences referred to in s. 195 committed before itself summarily. A trial and conviction for having given false evidence, as soon as the trial before the Court of Sessions was concluded, without giving the accused a fair opportunity to prepare his defence was held to be bad as the irregularity occasioned a failure of justice. QUEEN-EMPRESS v. BEHARI, **S.C. 303, Oudh.**

(1880)—*Ss.* 195, 478—*Scope of sections distinguished.*—It is not permissible to a Court to hold, in the course of the same proceedings, a dual kind of enquiry, one under s. 195, and the other under s. 478. Proceedings under s. 195 are distinct from those under s. 478. The former are of a summary character, and a Court proceeding under the section is not bound to hold an enquiry. In the case of the latter, the enquiry has to be as nearly as possible under ch. XVIII of the Code. *In re* SITA RAM SHIVRAMBHAT, **6 Bom. L.R. 578.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1881)—*Ss.* 195, 478 (= *Crim. Pro. Code,* 1882, *ss.* 195 *and* 478)—*False document filed in Court but not given in evidence—Commitment for trial.*—The words 'any such offence' in s. 478 mean an offence referred to in s. 195, and not an offence qualified by the circumstances under which it is committed, that is, as described in cl. (*c*) of sub-s. (1) of s. 195, by a party to any proceeding in any Court, in respect of a document given in evidence in such proceeding. Where a Munsif, suspecting that a certain document filed in a suit pending before him, but not given in evidence, had been tampered with, held an enquiry and committed the petitioner for trial by the Court of Sessions, *held*, that it was a proper commitment under s. 478 of the Code. AKHIL CHANDRA SEN v. QUEEN-EMPRESS, **22 C. 1004.** [*F.*, 37 C. 250 = 14 C.W.N. 330 = 10 C.L.J. 564 = 4 Ind. Cas. 710 = 11 Cr. L.J. 37; *R.*, 15 C.W.N. 565 = 9 Ind. Cas. 577 = 12 Cr.L.J. 101, 13 Cr. L.J. 19 = 13 Ind. Cas. 211 = 2 M.W.N. 1911, 526.]

(1882)—Ss. 195, 480, 482 and 537—*See* CONTEMPT OF COURT, 15 M. 131 = 2 Weir 605 = 1 Weir 218.

(1883)—*Ss.* 195, 487 (= *Crim. Pro. Code,* 1882, *ss.* 195 *and* 487)—*Competency of Magistrate to try offence under s.* 173. *Penal Code, in contempt of his own authority.*—Ss. 487 and 195, Crim. Pro. Code, prohibit a Magistrate from trying an offence under s. 173, Penal Code, committed in contempt of his own authority. *In re* ANANTA KERNAYA, **1 Weir 80.**

(1884)—Ss. 195, 487, 537—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 27 C. 452 = 4 C.W.N. 594.

(1885)—*Ss.* 195, 495—"*Any person,*" *meaning of—Absolute stranger — Sanction — Applicant actuated by personal grudge.*—One U applied for and obtained the sanction to prosecute M on the charge of perjury. U filed a complaint, upon which certain witnesses were examined. Then A applied to the Magistrate asking for permission to continue the prosecution of M on the ground that U had colluded with M and was unwilling to go on with the prosecution. M also applied the same day stating that U was unwilling to continue the prosecution and opposing A's application. It appeared that A was then engaged in a civil litigation against M and wanted leave to continue the prosecution to harass M. *Held*, that it is inexpedient to grant sanction to prosecute under s. 195, when the person obtaining sanction might use it for the purpose of harassing his opponent. *A fortiori*, no permission to continue the prosecution should be granted to such a person. It is doubtful whether the words 'any person' in s. 495, Code of Criminal Procedure, include an absolute stranger who has no connection with the prosecution and whose desire to help the prosecution is based on a personal grudge only. DARSHAN DAS v. ATMA RAM, **11 A.L.J. 313 = 14 Cr. L.J. 389 = 20 Ind. Cas. 213.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1886)—*Ss.* 195, 526—*Effect—Applications for sanction to prosecute—Transfer to what Court to be made.*—Assuming that s. 526 of the Crim. Pro. Code, gives the High Court power to transfer the application for sanction as being a criminal case, the language of s. 195 indicates that any transfer so made would be ineffective and futile, unless the transfer was made to a Court to which the Court before which the application is pending is subordinate ; for no Court could take cognizance of the case on a sanction granted by any Court not mentioned in the section. N. EKAMBARESWARA IYER v. M. VEERABADRA THEVAN, **8 M L.T. 297 = 7 Ind. Cas. 861 = 20 M.L J. 982 = 1910 M.W.N. 459 = 11 Cr. L.J. 534.**

(1887)—Ss. 195 and 528—*See* COMPLAINT—WITHDRAWAL AND REVIVAL OF COMPLAINTS, 3 C.W.N. 490.

(1888)—*Ss.* 195, 537 (=*Crim. Pro. Code,* 1882, *ss.* 195 *and* 537)—*Sanction to prosecute—Prosecution after expiry of period prescribed in s.* 195—*Operation of s.* 537 *of the Code.*—S. 537 of the Code is expressly made subject to the provisions before contained in the Code, and it was not intended to override the provision of s. 195. It cannot refer to a case in which the want of sanction was directly brought to the notice of the Magistrate at the commencement of the proceeding before him, nor can it be said that there has not been a failure of justice in the prosecution of a person after expiry of the period, for which the sanction was in force. RAJ CHUNDER MOZUMDAR v. GOUR CHUNDER MOZUMDAR, **22 C 176.** [*Overruled,* 27 C. 839, F.B.; *Diss.*, 29 M. 149, 31 M. 80 = 2 M.L.T. 493 = 17 M.L.J. 533 = 6 Cr. L.J. 382 ; *R.*, 23 C. 983, 21 A.W.N. 151, 9 C.W.N. 909.]

(1889)—*Ss.* 195 *and* 537—*Sanction to prosecute for false charge—Irregularity—Notice.*—The police finding a charge to be false suggested that the case should be expunged from the crime register and the accused prosecuted under s. 182, I.P.C. The Sub-Divisional Magistrate merely ordered the papers to be filed. But the District Magistrate being further moved, ordered "Expunge ; Sub-Divisional Officer to take cognizance of offence under s. 182, I.P.C.," and the Sub-Divisional Magistrate issued summons to the accused and called upon the Police to produce their evidence. The accused thereupon moved the Sessions Judge to revise this order. *Held* that the Magistrate's order was not a sanction to the institution of proceedings under s. 182, I.P.C , with the requirements of s. 195, Crim. Pro. Code, not having been complied with, that s. 537 was inapplicable as the accused had taken objection to the sanction at the earliest stage, as soon as the summons had been issued against the accused. Notice to the person against whom it is intended to proceed under s. 195, Crim. Pro. Code, may not be absolutely necessary, but it is usual to call upon him to show cause why sanction should not be granted. KING-EMPEROR v. PRAG BAKHSH SINGH, **5 O.C. 164.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1890)—*Ss.* 195 *and* 537 (=*Crim. Pro. Code,* 1882, *ss.* 195, 537)—*Sanction to prosecute—Penal Code, s.* 193—*Alternative charges.*—Where a person is prosecuted on alternative charges of giving false evidence either before the police officer investigating a case under ch. XIV of the Code, or before the Magistrate trying the case, where it is not pending before the Magistrate at the time of the police investigation, and where, therefore, the accused cannot be said to have given false evidence in relation to the proceedings before the Magistrate, s. 195, Crim. Pro. Code, is inapplicable thereto. S. 537, Crim. Pro. Code, would cure the defect in a case in which the complaint by the Court is required by s. 195, but no such complaint is made. BADAL KHAN v. QUEEN-EMPRESS, **S.C. 232, Oudh.**

(1890-*a*) — *Ss.* 195, 537 — *Sanction under s.* 195—*Absence of—Conviction—No failure of justice—Not liable to be reversed.*—The absence of a sanction necessary under s. 195, Crim. Pro. Code, does not entail the reversal of a conviction, unless it is shown to have occasioned a failure of justice. *In re* H. M. ABDUL RAZAK SAHIB, **10 M.L.T. 82 = 21 M.L.J. 753 = 11 Ind. Cas. 590 = 12 Cr. L.J. 406.** (31 M. 80, *F.*) [*R.*, 14 Cr. L.J. 183 = 19 Ind. Cas. 183 = 52 P.L.R. 1913 = 4 P.R. 1913, Cr.]

(1890-*b*)—*Ss* 195, 537—*Sanction to prosecute—Absence of sanction— Sanction losing force by lapse of time—Failure of justice—Penal Code, ss.* 467, 471, 477—*Forgery—Using forged document—Separate sentences.*—A person who is convicted of having forged a document should not, though he makes use thereof, be punished both under s. 467 and under s. 471, Penal Code. (23 A. 84, 26 P.R. 1901, Cr., *F.*) Where the act of the accused which constitutes forgery, is the same as the act which amounts to fraudulent destruction or defacement or cancellation of the document, he cannot be convicted of separate offences under ss. 467, 471 and 477, Penal Code. Absence of the sanction under s. 195 of the Crim. Pro. Code or the sanction having become ineffective under cl. (*b*) of s. 195 does not entail the reversal of a conviction unless it is shown to have occasioned a failure of justice. (11 Ind. Cas. 590 = 31 M. 80, 28 C. 271, *R.*) And the fact that objection was taken at the beginning of the trial before the Magistrate does not of itself indicate that a failure of justice has occurred, though it is a point to be considered as laid down in the explanation to s. 537 of the Crim. Pro. Code. Under s. 195 of the Crim. Pro. Code, sanction to prosecute was granted for perjury and forgery on the 14th August, 1909, complaint was filed on the 20th idem and on the 23rd, warrant of arrest of the accused was issued. On the 27th October, 1909, sanction was revoked on appeal. The accused was discharged on the 2nd November, 1909 On the 15th January, 1910, the Chief Court on revision set aside the order revoking the sanction and ordered re-hearing of the appeal. The appeal was re-heard and on the 4th April, 1910, sanction for perjury was revoked but it was upheld for forgery. On the

Crim. Pro. Code (Act V of 1898)—*continued.*

14th May, 1910, the accused applied to the Chief Court for revision. On the 13th July, 1910, another complaint was filed in the Court of the Magistrate. On the 3rd December, 1910, application for revision was rejected. On the 7th April, 1911, the complainant's pleader appeared before the Magistrate and stated that the complainants wished to proceed with the case. On the 8th June the complainant was examined and warrant was issued for the arrest of the accused. *Held*, that the sanction could not be said to have lost its force on account of the lapse of time occupied in the above mentioned proceedings. PIRBHU DIAL v. CROWN, **52 P.L.R. 1913 = 4 P.R. 1913, Cr. = 14 Cr. L.J. 183 = 19 Ind. Cas. 183.**

(1890-*c*)—Ss. 195, 537—Conviction for offence for which no sanction necessary—Whether can be converted in revision to conviction for offence for which sanction is necessary—*See* PENAL CODE, ss. 177, 182, 193, 199, 15 Cr. L.J. 603 = 25 Ind. Cas. 515 = 278 P L.R. 1914.

(1891)—Ss. 195, 537—*See* SANCTION TO PROSECUTE--CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 28 C. 217 = 5 C.W.N. 291.

(1892)—Ss. 195, 537—*See* SANCTION TO PROSECUTE — EXPIRY OF SANCTION AND LIMITATION, A.W.N. 1901, 151.

(1893)—Ss. 195, 537—*See* SANCTION TO PROSECUTE—MISCELLANEOUS CASES, 13 C. L.R. 117.

(1894)—S. 195 (1)—*See* PENAL CODE, s. 182, 6 A.L.J. 236 = 9 Cr. L.J. 518 = 2 Ind. Cas. 199.

(1895)—S. 195 (1)—Ss. 182, 211, I.P.C.—Sanction whether necessary—*See* PENAL CODE, ss. 182, 211, 10 A.L.J. 61 = 13 Cr. L.J. 7 = 16 Ind. Cas. 510 = 34 A. 522.

(1896)—*Ss.* 195 (1) (*a*), 144—*Sanction—Disobedience of the order of a public servant—Application for sanction, if necessary—Police report.*—Where sanction for a prosecution under s. 188, I.P.C., for disobedience of an order under s. 144, Crim. Pro. Code, was granted by the Magistrate on a Police report setting forth the facts of the disobedience for the order and also containing a request that the petitioner should be prosecuted under s. 188, I.P.C. *Held*, that the order was clearly made under s. 195 (1) (*a*), Crim. Pro. Code. *Per Chapman, J.*—So far as the provisions of s. 195 (1) (*a*) are concerned, there is no necessity of any application for sanction. PANCHU MONDAL v. KING-EMPEROR, **17 C.W.N. 976 = 19 Ind. Cas. 948 = 14 Cr. L.J. 292 = 41 C. 14.**

(1897)—*S.* 195 (*b*)—*Report to police not followed up by complaint to Court—Penal Code, ss.* 182, 211.—S. 195 (*b*), Crim. Pro. Code, does not apply to a case where a person makes a report to the *thana*, but does not follow it up by a complaint to any Court. By making a report, no offence is committed in or in relation to any proceeding. EMPEROR v. TABARAK ZAMAN KHAN, **30 A. 52 = A.W.N. 1907, 288 = 4 A.L.J. 790 = 6 Cr. L J. 396.** (8 A. 38, 29 A. 587, 33 C. 31, *D.*) [*R.*, 5 A.L.J. 74 = A.W.N. 1908, 45.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(1898)—*S.* 195 (1), *cl.* (*b*)—*Penal Code*, s. 193—*Fabricated document— Certified copy filed with plaint as proof—Charge of fabricating false evidence, sanction if necessary.*—The petitioner was said to have fabricated a *kabilnama* which was registered, and he subsequently brought a suit in the Munsif's Court for restitution of conjugal rights and filed a certified copy of the *kabilnama* along with the plaint as proof of marriage and asked the Court to cause the original to be produced. *Held*, under s. 195, cl. (*b*), Crim. Pro. Code, no Court could take cognizance of an offence under s. 193, I.P.C., imputed to the petitioner except with the previous sanction or on a complaint of the Munsif's Court or of some other Court to which the Munsif's Court was subordinate, such offence being committed in relation to a judicial proceeding in the Munsif's Court. ABDUL MAJID KHAN v. MUNSHI NARUL HUQ, **17 C. W.N. 937 = 14 Cr. L.J. 289 = 19 Ind. Cas. 945.**

(1899)—*S.* 195, *cl.* (*b*)—*Penal Code*, s. 211—*Sanction— Grant of B-summary— The B-summary does not amount to sanction — Sanction not necessary where offence under s.* 211 *not committed in Court.*—The accused, a police patil, submitted a report to the police for an offence alleged to have been committed. The police inquired into the matter and found that the report was false. They placed the papers before a Magistrate who wrote the case off and granted a B-summary. The accused was thereupon prosecuted before the same Magistrate for an offence punishable under s. 211, Penal Code. It was contended for the accused that, if the granting of the B-summary amounted to a sanction, the Magistrate was not competent to try the case ; and, that, if it did not amount to a sanction, no prosecution could lie in the absence of sanction for an offence under s. 211, Penal Code. *Held*, (1) that the giving of the B-summary was not tantamount to the grant of a Magisterial sanction for the prosecution of the accused ; because the B-summary was not an order passed under the Code of Criminal Procedure at all but was a mere administrative order made by the Magistrate for the purpose of facilitating police work and police statistics : (2) that no sanction was necessary under s. 195 (*b*) of the Crim. Pro. Code, inasmuch as the offence under s. 211, Penal Code, was not committed in, or in relation to, any proceeding in any Court. EMPEROR v. CHANDABHAI AMARSANG, **14 Bom.L.R. 1160 = 1 Bom. Cr. C. 231 = 13 Cr.L.J. 904 = 17 Ind. Cas. 1000.**

(1900)—S. 195 (*b*)—*See* NOTICE, 30 A. 52 = A.W.N. 1907, 288 = 4 A.L.J. 790 = 6 Cr.L.J. 396.

(1901)—*Ss.* 195 (*b*) *and* 437—*Sanction to prosecute— Lower Court's order upheld by Sessions Judge—No revision against Sessions Judge's order—Revisional powers of the High Court—How to be exercised—Appeal.*—Nothing in s. 195 of the Code of Criminal Procedure justifies the High Court in re-considering the order of the Sessions Judge, refusing under

cl. 6 of s. 195, to grant sanction to prosecute which was refused by the Magistrate. The revisional jurisdiction of the High Court under s. 437, Crim. Pro. Code, can always be exercised in order to prevent gross and palpable failure of justice, but it should not be exercised in such a way that a right of appeal may practically be given in cases where such right is definitely excluded by the Code. AHSAN ULLAH KHAN v. MANSUKH RAM, **12 A.L.J. 511 = 36 A. 403 = 15 Cr. L.J. 598 = 25 Ind. Cas. 350.**

(1902)—Ss. 195, sub-s. 1, cl. (*b*), 503—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 11 C.W.N. 909 = 6 Cr. L.J. 160.

(1903)—*Ss.* 195 (*b*), 537 (*b*)—*Sanction for prosecution—Confirmation by Appellate Court—Six months, time how to be calculated—Sanction by District Magistrate—Appeal to High Court instead of to the Sessions Court—High Court confirming the sanction—Legality.*—In this case the Sessions Court set aside the conviction of the accused on the ground that the complaint was not filed within six months from the grant of sanction in the first instance. The complaint was actually filed within six months of the order of the High Court confirming the sanction for prosecution. *Held*, that the confirmation of a sanction by the appellate authority is a fresh 'giving' of sanction within the meaning of sub-s. (*b*) of s. 195; and as such the six months allowed under the section for filing the complaint must be calculated from the date of the order of the Appellate Court, and not from the date of the grant of sanction in the first instance; so, the Sessions Judge's order acquitting the accused on the ground that the sanction 'given' had expired must be set aside, as there was a sanction 'given' in this case by the High Court within six months before the charge. (2 Weir 202, 30 M. 382, 22 M L.J. 419 = 11 M.L.T. 361 = 1912 M.W.N. 499, F.B., *R.*) *Held*, also that, though the confirmation should have been made by the Sessions Judge as the authority to whom the District Magistrate was subordinate, and not by the High Court, yet the High Court's decision is final between the parties and its legality cannot be questioned. The decision in *Chinnakaruppa Goundan* v. *Muthu Goundan* (2 Weir 202, *R.*) which seems to be against the express provision of s. 537 (*b*) requires re-consideration. (*Per Sadasiva Iyer, J.*) THE PUBLIC PROSECUTOR v. RAVER UNITHRI MARVATHER VITTIL, **26 M L.J. 511 = 15 M.L.T. 403 = 15 Cr. L J. 409 = 24 Ind. Cas. 145.**

(1904)—*S.* 195, *cls.*(*b*) *and* (*c*)—*Court—Income-tax Collector, whether a Court—Sanction to prosecute — Perjury and forgery committed before Income-tax Collector — Penal Code, ss.* 193, 196, 199, 471. — An Income-tax Collector is a Revenue Court within the meaning of that word as used in cls. (*b*) and (*c*) of s. 195 of the Crim. Pro. Code. *In re* PUNAMCHAND MANEKLAL, **16 Bom.L.R. 446 = 2 Bom. Cr. C. 199 = 38 B. 642 = 15 Cr.L.J. 581 = 25 Ind. Cas. 333, F.B.**

(1905)—*S.* 195 (1) (*c*)—*Mamlatdar holding inquiry into record of right—Land Revenue Code* (*Bom. Act* V *of* 1879), *ss.* 189, 197—*Mamlatdar — Revenue Court— Sanction.*—A Mamlatdar holding an enquiry relating to record of rights, under chap. XII of the Land Revenue Code (Bombay Act V of 1879), is a Revenue Court within the meaning of s. 195 (1) (*c*) of the Crim. Pro. Code. EMPEROR v. NARAYAN GANPAYA HAVNIK, **16 Bom.L.R. 678 = 2 Bom. Cr. C. 243.**

(1906)—*S.* 195 (1) (*c*)—*Sanction to prosecute—Forgery—Penal Code* (*Act* XLV *of* 1860), *ss.* 476, 40—*Offence—Interpretation.*—In s. 195 (1) (*c*), the word "offence" occurring as the third word is designedly used in a somewhat abstract manner. It is the "offence" in itself, not any particular offender's offence, which the section aims at; and that is in accordance with s. 40, Penal Code, where "offence" is defined as the thing made punishable by the Code. In other words, the clause deals with the case where there is a substantive offence committed by a party to a suit. *In re* NARAYAN DHONDDEV RISBUD, **12 Bom. L R. 383 = 6 Ind. Cas. 529 = 11 Cr. L.J. 368.**

(1907)—*S.* 195 (*c*)—*Complaint.*—A Munsif found that a document filed in a case before him was tampered with. He wrote to the District Judge, who wrote to the District Magistrate to take action in the matter. *Held* that the letter of the District Judge was a complaint within the meaning of s. 195 (*c*), Crim Pro Code. DEBI PRASAD v. KING-EMPEROR, **10 A.L J 361 = 13 Cr. L.J. 829 = 17 Ind. Cas. 573 = 35 A. 8.** (26 A. 514, *F.*)

(1908)—*S.* 195 (*c*)—*Party—Agent.*—A recognised agent is not a "party to the proceeding" within the meaning of s. 195 (*c*), Crim. Pro. Code. FATIMA BEE BEE v. RAMAN CHETTY, **12 Cr.L.J. 87 = 8 Ind. Cas. 1202.**

(1909)—*S.* 195 (*c*)—*Sanction to prosecute for forgery—Offence before any proceeding—No sanction required.*—By s. 195, cl. (*c*), Crim. Pro. Code, Courts are prohibited from taking cognizance of an offence described in s. 463, Penal Code, when such offence has been committed by a party to any proceeding in any Court, in respect to a document produced or given in evidence in any such proceeding. The section does not remove from the cognizance of criminal Courts an offence described in s. 463, when such an offence has been committed by an ordinary individual. As long as the prosecution is confined to offences connected with a document committed prior to its production in Court, such prosecution is within the law and requires no sanction. Sanction is required for offences committed by a party to a proceeding in any Court in respect to a document produced or given in evidence in such proceeding. LALTV PRASAD v. KING-EMPEROR, **10 A.L.J. 294 = 34 A. 654 = 17 Ind. Cas. 799 = 13 Cr. L.J. 863.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1910)—*S.* 195 (1) (*c*), *cl.* (3)—*Sanction to prosecute—Abetment of an offence specified in s.* 185, *cl.* (*c*)—*Abettor not party—No sanction necessary—Penal Code, ss.* 463, 471, 475, 476.—The offence or offences in which s. 195, cl. (1), sub-cl. (c) read with cl. (3) requires that sanction should be given by a Court with respect to documents produced in Court, must be offences committed by parties to the proceeding, whether the offence be one of the substantial offences described in s. 463 or punishable under ss. 471, 475, or 476 of the Penal Code, or only amounts to abetment of any such offences. CHAUDHRI GHANSHAM SINGH v. EMPEROR, **4 Ind. Cas. 105=6 A.L.J. 983=32 A. 74.**

(1911)—*S.* 195, *cl.* (1) (*c*) *and cl.* (3)—*Sanction to prosecute—Party to proceeding—Witness—Abetment of forgery.*—Under s. 195, cl. (1), sub-cl. (*c*), read with cl. (3), Crim. Pro. Code, sanction of Court for the prosecution of offences in respect of documents produced in Court is only necessary when the offence is committed by *parties* to the proceeding, whether the offence be one of the substantive offences under ss. 463, 471, 475 or 476, I.P.C., or it only amounts to abetment of any such offences. Sanction is not necessary against any person who is not a party to the suit. A witness is not a party to the suit. (3 M. 400, 18 B. 581, 25 M. 671, 32 A. 74, 4 Ind. Cas. 105, 6 A.L.J. 983, 10 Cr.L.J. 497, 30 M. 226, 6 Cr.L.J. 131, 4 Bom.L.R. 268, *F.*) No sanction is necessary to prosecute a witness in respect of the offences mentioned in sub-cl. (*c*) of cl. (1), even where there are other charges against him involving the necessity of sanction ; and the witness may be tried for the first mentioned offences without sanction, even though no sanction is given in respect of the latter offences. (12 C.W.N. 822, 8 C.L.J. 73, 8 Cr. L.J 51, *D.*) DEBILAL v. DHAJADHARI GHOSAMI, **12 Cr. L.J. 101=9 Ind. Cas. 577=15 C.W.N. 566.** [*F.*, 15 Cr. L.J. 242=26 M.L.J. 220=23 Ind. Cas. 194.]

(1912)—*S.* 195 (6)—*Sanction to prosecute—Appeal—Order of single Judge of Chief Court—Power of Division Bench to hear appeal.*—S. 195 (6), Crim. Pro. Code, contemplates that a sanction may be revoked only by a Court which is distinct from and superior to the Court granting sanction. A bench of the Chief Court is not a superior Court as regards a single Judge of that Court but is a section of the same Court specially empowered to hear appeals from a single judge. THAN PE v. BATHAN, **12 Cr. L. J. 469=11 Ind. Cas. 1005=6 L.B.R. 25.**

(1913)—*S.* 195, *cl.* (6)—*Sanction—Limitation—Extension of time.*—The limit of time imposed by cl. (6) of s. 195, Crim. Pro. Code, is not an ordinary rule of limitation. It is an absolute bar applying only to proceedings under s. 195. When a sanction has *de facto* expired by lapse of time, the only authority which can extend the time is the High Court. ANANTA PANDA v. MAHANT BAHAGABAN RAMANUJA, **12 Cr. L.J. 382=11 Ind. Cas. 246.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1914)—*S.* 195 (6)—*Sanction of superior Court—Collector superior to* Tahsildar.—An application was made for sanction to prosecute in respect of a statement made in a mutation proceeding before a *Tahsildar.* The *Tahsildar* refused to grant the sanction. An application was then made to the District Magistrate to set aside the order of the *Tahsildar* : *Held*, that neither the District Magistrate as such nor the High Court had jurisdiction in the matter and that the application to set aside the order of the *Tahsildar* should have been made to the Collector whose Court is superior to that of the *Tahsildar* within the meaning of s. 195 (6) of the Crim. Pro. Code. KULSUM KHANUM v. GHANI AHMED, **12 Cr. L.J. 109=9 Ind. Cas. 635.**

(1915)—*S.* 195 (6)—*Sanction to prosecute—Revision before Judge—Powers of Judge to make a remand.*—One of the parties to a suit applied for sanction to prosecute the plaintiff on the ground that he had instituted a false claim. The Munsiff dismissed the application on technical grounds. The applicant applied to the District Judge under s. 195, cl. 6, in revision. The Judge remanded the case to the Munsiff for trial of the application : *Held*, that assuming the Court exercising its powers of revision to be a Civil Court, in such cases its powers were confined to powers conferred by s. 195, Crim. Pro. Code, and it had no jurisdiction to make the order of remand. BENI PRASAD v. SARJU PRASAD THAKURIA, **8 A. L.J. 429=12 Cr. L.J. 174=9 Ind. Cas. 982.**

(1916)—*S.* 195, *sub-s.* (6)—*Sanction to prosecute application for revocation of—Power of District Judge to transfer application for disposal to Sub-Judge.*—Where an application has been made to a District Judge under s. 195, sub-s. (6), Crim. Pro. Code, for the revocation of a sanction to prosecute granted by a Munsif, the application cannot be transferred by the Judge to a Subordinate Judge for disposal. HARI MANDAL v. KESHAB CHANDRA MANNA, **13 Cr. L J. 296=14 Ind. Cas. 760=16 C.W.N. 903.** (13 Ind. Cas. 1007, 16 C.W.N. 645, 13 Cr.L.J. 191, *Appr.*) [*Appr.*, 40 C. 239=13 Cr. L.J. 599=16 Ind. Cas. 167=17 C.W.N. 91]

(1917)—*S.* 195 (6)—*Sanction to prosecute—Sanction in appeal—Further appeal to third Court not allowed.*—It is not intended that the question of granting or withholding sanction to prosecute should after its decision by two Courts be carried to a third Court. Where a Munsif refused sanction to prosecute and the District Judge before whom the matter was taken up under s. 195 (6), Crim. Pro. Code, granted the sanction, *held*, the High Court should not interfere. BARAM BARAI v. MATA PRASAD, **12 A.L J 821=36 A 469=15 Cr. L.J 616=25 Ind. Cas. 528.** (6 A.L.J. 1, *F.*; 30 M. 382, *Not F.*)

(1918)—*S.* 195 (6)—*Sanction—Application for revocation thereof—Is notice to other party necessary?*—An application for the revocation of a sanction granted by the lower Court should not be disposed of *ex parte* without giving notice

Crim. Pro. Code (Act V of 1898)—*continued.*

to the person obtaining sanction or to the District Magistrate. The Sessions Judge's *ex parte* order setting aside the sanction was set aside and he was asked to dispose of the application after giving notice to the other party. KATAN v. NGA TIN, **7 Bur. L.T. 205 = 15 Cr. L.J. 571 = 25 Ind. Cas. 323.**

(1919)—*S. 195, cl. (6)—Sanction granted to prosecute—Extension of time for instituting complaint—Power of the High Court—S. 148, Civ. Pro. Code.*—The High Court has power to extend the time for the institution of a complaint on sanction, even if the six months mentioned in s. 195, cl. (6), have expired. SECRETARY OF STATE FOR INDIA IN COUNCIL *through the* COLLECTOR OF TINNEVELLY v. SANKARAPANDIAN PILLAI, **1914 M.W.N. 347 = 15 Cr. L.J. 359 = 23 Ind. Cas 727.** (26 M. 190, 26 M. 480, *F.*; 12 C.L.J. 382, *Not F.*)

(1920)—*S. 195 (6)—Application for sanction presented after a year's delay—Whether can be granted—Existence of special circumstances—Limitation Act not applicable to applications under s. 195 (6).*—One year is an unreasonably long time after which to present an application under s. 195 (6), Crim. Pro. Code. When so presented, it should be entertained only under special circumstances. Had it been clear that a serious criminal offence had been committed such as in the opinion of the Court, should not in the public interests, be permitted to go unpunished, the Courts might condone this delay. But, in the present case, the application was disallowed because such special circumstances were not proved. Applications under s. 195 (6) are not governed by the Limitation Act, but they should be made without delay. JIWATRAM JHAMANDAS v. CROWN, **8 S.L.R. 49 = 15 Cr. L J. 654 = 25 Ind. Cas. 982.** (5 S. L.R. 265, 27 M. 223, 32 M. 49, 22 A. 244, *R.*)

(1921)—*S. 195 (6)—Sanction to prosecute—Power of Appellate Court to order a re-trial by the first Court.*—An appellate Court, dealing with an application under s. 195 of the Crim. Pro. Code, has no power to order a re-trial by the first Court. *In re* KAMMA NARAYANAPPA, **8 Ind Cas. 679 = 9 M.L.J 79.** (30 M. 311, 2 M.L.T. 84, 17 M.L J 123, 5 Cr. L.J. 288, 33 M. 90, 7 M.L.T. 128, 20 M.L.J. 102, 5 Ind. Cas. 881, 11 Cr. L.J. 280, *R.*)

(1921-*a*)—*S. 195 (6)—Sanction—Revision—Power of superior Court.*—An application under s. 195, cl. (6) of the Code of Criminal Procedure is not an application in revision and a Court of superior jurisdiction, whose jurisdiction is invoked under that section, has power to reconsider the entire matter on the merits on a complete review of all the facts. RAM RAJA DAT v. SHEO DAYAL, **13 A.L J 685.**

(1922)—*Ss. 195 (6), 407 (2)—Sanction to prosecute—Revocation of sanction by a Court specially authorised to hear appeals under s. 407 (2), whether valid—Scope of the expression "Courts to which appeals ordinarily lie," in s. 195.*—The Court of a First Class Magistrate, who has been specially authorised to hear appeals from the sentence of a Magistrate of the second or third class under s. 407 (2), Crim. Pro. Code, is not the Court to which appeals from such Subordinate Courts ordinarily lie within the meaning of s. 195 (7), Crim. Pro. Code. Where, therefore, a Joint Magistrate in the exercise of the powers conferred upon him under s. 407 (2), Crim Pro. Code, revoked a sanction for prosecution granted by an Assistant Magistrate with second class powers, *held*, that the revocation was without jurisdiction. SADHU LALL v. RAM CHURN PASI, **30 C. 394 = 7 C W.N. 114.** [F., 34 A. 244 = 9 A.L.J. 260 = 13 Cr. L J. 273 = 14 Ind. Cas. 657, 27 M. 124, 3 N.L.R. 50.]

(1923)—Ss. 195 (6), 421 and 440—*See* SANCTION TO PROSECUTE — REVOCATION OF SANCTION, 12 C.W.N. 248 = 9 Cr. L J. 189.

(1924)—*Ss. 195, cl. (6), 429, 439—Application under s. 195 (6) not on appeal—Art. 154, Limitation Act, not applicable to it—Whether sanction must be based on 'legal evidence'—Sanction based on Police Report and complainant's sworn statement, whether legal and valid—Difference of opinion—Whether s. 36, Letters Patent or s. 429 of Crim. Pro. Code applies—Order refusing to revoke sanction, same as one granting sanction—S. 36, Letters Patent, applies.—Per Sundara Iyer and Spencer, JJ.*—An application to a superior Court to revoke a sanction granted by an inferior Court under cls. 6 and 7 of s. 195 of the Crim. Pro. Code, is not an appeal within the purview of Art. 154 of Sch. I to the Limitation Act. (10 A. 350, *R.*) *Per Sundara Iyer, J.*—Sanction not based on legal evidence is illegal. Therefore where the Magistrate granted sanction on the strength of the report made by the Police after investigation and without making any independent judicial enquiry, beyond recording the complainant's statement on oath, *held*, such sanction was illegal and must be set aside. (1911 2 M. W.N. 526, 10 M. 232 F.B., 7 C.W.N. 423, 21 M. 124, 1911 2 M.W.N. 9, 26 M. 116, 23 B. 50, 27 M. 54, *R.*) *Per Spencer, J. (contra).*—*Held*, that all that the F.B. laid down in 10 M. 232, was that the authority according sanction under s. 195 must act on his own judgment and not substitute for it the opinion of others. Since, therefore, in the present case, the Magistrate had before him not only the Police Report but also the sworn statement of the complainant himself, the requirements of the law have been substantially complied with; and no case has been made out to revoke the sanction. (10 M. 232, F.B., 1911 2 M.W.N, 9, 26 M. 116, 23 M. 223, 8 A. 38, 6 C. 496, 20 M. 339, 20 C. 474, 6 M. 29, *R.*) *By the Full Bench.*—An order refusing to revoke a sanction is one granting a sanction. (30 M. 382, F.B., *Affirmed.*) Where, on an application to the High Court under s. 195, cl. (6), to revoke a sanction granted by a lower Court or to give a sanction refused by it, the Judges hearing the application are equally divided in opinion, the case is governed by s. 36 of the Letters Patent and not by s. 429 and

Crim. Pro. Code (Act V of 1898)—*continued.*

s. 449 of the Code of Criminal Procedure. That is to say the opinion of the Senior Judge prevails. BAPU *alias* AUDIMULAM PILLAI v. BABU *alias* KRISHNAYEN, **1912 M.W.N. 499, F.B. = 14 Ind. Cas. 305 = 11 M.L.T. 367 = 22 M.L.J. 419 = 13 Cr. L.J. 209.** [*F.*, 15 M.L.T. 403 = 26 M.L.J. 511 = 24 Ind. Cas. 145 = 15 Cr. L.J. 409, 15 Cr. L.J. 271 = 26 M.L.J. 486 = 23 Ind. Cas. 479]

(1925)—*S.* 195, *cls.* (6) *and* (7)—*Order of Munsif refusing sanction—Revocation by Subordinate Judge, if legal—Appeal to District Judge transferred to Subordinate Judge—Civil Courts Act* (XII *of* 1887), *ss.* 21, 22.—A Subordinate Judge cannot grant or revoke a sanction to prosecute, refused or granted by a Munsif. RAM CHARAN CHANDRA v. TARIPULLA SHEIKH, **16 C.W.N. 645 = 13 Cr. L.J. 191 = 13 Ind. Cas. 1007 = 39 C. 774.** [*R.*, 17 C.W.N. 91 = 13 Cr. L.J. 599 = 16 Ind. Cas. 167, 13 Cr. L J. 296 = 14 Ind. Cas. 760.]

(1926)—*S.* 195, *cls.* (6), (7)—*Notification by Local Government authorizing Sub Courts to hear appeals from Munsiffs—Sanction refused by Munsiff—Appeal whether lies to Sub-Court—Ss.* 209, 471, *Penal Code—Meaning of claim in s.* 209, *I.P.C.—Document produced by a person in obedience to summons — Person whether can be charged under s.* 471, *I.P.C.*—The Madras Government had, by a notification issued under the Madras Civil Courts Act, empowered Subordinate Judges to receive appeals direct in all cases where the Sub-Court is situated in a place different from that of the District Court. *Held*, that, in the Madras Presidency, all the Subordinate Judges, who have been empowered by such notification to entertain civil appeals, will be Courts to which appeals 'ordinarily lie' from orders passed by the District Munsiffs under s. 195, Crim. Pro. Code. (11 B. 438, 27 M. 124, 16 C.W.N. 645, 39 C. 774, *R.*) The word 'claim' in s. 209, I P.C., cannot refer to a document produced in evidence to substantiate the relief asked for in the suit. A person cannot be charged under s. 471, I.P.C., in respect of a document produced by him in obedience to a summons. BODDU RAMAYYA v. CHITTURI SURAYYA, **28 M.L.J. 486 = 17 M.L.T. 446.**

(1927)—*Ss.* 195, *sub-ss* (6) *and* (7), 9, 408, 409, 367, 424—*Additional Sessions Judge—Magistrate—Subordination — Sanction to prosecute—Reasons.*—S. 408 of the Crim. Pro. Code makes sentences of a Magistrate appealable to the Court of Session, and under s. 409 read with s. 9 of the Code, an Additional Sessions Judge has jurisdiction to hear such appeals. For the purpose of s. 195, sub-s. (7), therefore, a Magistrate is subordinate to an Additional Sessions Judge, and consequently an Additional Sessions Judge has jurisdiction to grant sanction refused by a Magistrate. A Court should give reasons for granting or refusing sanction. NISHI CHANDRA CHAUDHURY v. ROMESH CHANDRA SEN, **14 Cr. L.J. 195 = 19 Ind. Cas. 195.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(1928)—S. 195, cl. 7 (3)—*See* BOM. ACT II OF 1906, s. 23, 9 Bom. L.R. 896 = 6 Cr. L. J. 225.

(1929)—*S.* 195, *sub-s.* 7 (*a*) *and sub-s.* 6—'*Ordinarily*'—*Meaning—Sanction by District Court—Divisional Judge—Authority of latter to revoke—Central Provinces Civil Courts Act* (II *of* 1904), s. 15.—The Divisional Judge is the authority to whom appeals ordinarily lie from the District Court and he has power to revoke a sanction granted by that Court. S. 195, sub-s. 7, cl. (*a*), furnishes a complete definition of the term 'ordinarily' in the cases which it covers. (11 B. 438, 22 C. 487, *R.*) Consequently, when a Civil Court in practice tries suits of values so different that under s. 15, Central Provinces Civil Courts Act, appeals from some of its decisions lie to one Court and appeals from other decisions to another higher court, there is no need to consider, for purposes of s. 195 (6), Crim. Pro. Code, which set of values gives it the greater part of its work. RAM KRISHNA PURI v. MOHAN LAL, **8 N.L.R 57 = 13 Cr.L.J. 498 = 15 Ind. Cas. 642.**

(1930)—*S.* 195, (7), *cls.* (*a*), (*b*) *and* (*c*)—*Court to which appeals ordinarily lie—Original Court—Assistant Collector—Execution proceedings in arrears of rent case—Sanction to prosecute refused.*—In a suit for arrears of rent exceeding Rs. 100, a decree was passed in favour of the appellant. In course of execution proceedings, the respondent made certain statements which, according to the appellant, were false. The appellant applied for sanction to prosecute him under s. 195, cl. 7, Crim. Pro. Code. The sanction was refused by the Assistant Collector. The District Judge refused to entertain an appeal against the order on the ground that he had no jurisdiction. *Held*, that the object of sub-s. 7 of s. 195 is to indicate the Court to which a Court giving or refusing sanction to a prosecution should be deemed to be subordinate. The word "case" in cl. (*b*) means the actual proceedings in which the offence is said to have been committed, and not the original case out of which these proceedings arose. The opening words of cl. (*c*) refer to particular cases in which no appeal lies, and not to Courts against none of whose decisions an appeal lies. The nature of the proceedings in which sanction is given or refused is to determine the principal Court of original jurisdiction, and there is no justification for reading these words as if they were 'principal Court of original civil jurisdiction.' The appeal, therefore, did not lie to the District Court, as the 'case' here meant the execution proceedings and not the original suit. AJUDHIA PERSHAD v. RAM LAL, **9 A.L.J. 124 = 13 Ind. Cas. 284 = 34 A. 197 = 13 Cr.L.J. 44.**

——**S. 196 (= 1882, s. 196; 1872, s. 465 : 1851, s. 166).**

See COMPLAINANT.

See COMPLAINT.

See SANCTION TO PROSECUTE.

Crim. Pro. Code (Act V of 1898)—*continued.*

(1931)—*S.* 196—*Scope of section—Sufficiency of order of Government.*—At the trial on the prosecution of an Editor and Publisher of a Newspaper under s. 124-A, an order for the prosecution in the following terms was tendered in evidence. "Under the provision of s. 196, Crim. Pro. Code, M A. Baig, Oriental Translator to Government, is hereby ordered, by H.E. The Governor in Council to make a complaint against Mr. Bal Gangadhar Tilak, the Publisher, Proprietor and Editor of the *Kesari*, and against Hari Narayan Gokhale, Printer of the said newspaper, in respect of certain articles appearing in the newspaper, under s. 124-A, of the I.P.C., and any other section of the said Code which may be found to be applicable to the case." *Held* that the order was sufficient. Though the order be held not sufficient, the High Court had, under s. 532, power to accept the commitment. The object of s. 196 is to prevent unauthorized persons from intruding in matters of State by instituting State prosecutions and to secure that such prosecutions shall only be instituted under the authority of the Government. The section does not prescribe any particular form of order, and does not even require the order to be in writing. QUEEN-EMPRESS v. BAL GANGADHAR TILAK, **22 B. 112.** [*F.*, 35 C. 141=7 C.L J. 49=7 Cr. L.J. 10; *R.*, 32 M. 3=5 M.L.T. 1, 16.]

(1932)—*S.* 196—*Complaint—Sanction—Examination of complainant—Local Government—Presumption—Evidence Act* (I *of* 1872), *s.* 114. —S. 196 of the Crim. Pro. Code, requires that no case under s. 124-A of the Penal Code, shall be taken cognizance of except upon complaint made with the authority of the Local Government. Where the letter of authority did not specify the name of the accused, but he was indicated from the first, and his name was supplied at the commencement of the Police Court proceedings, *held* it was a sufficient compliance with the section. The person who signs the letter of authority is not the complainant, and it is not necessary to take his examination under the law. The person who armed with the authority makes the application to the Court for the apprehension of the accused is the complainant, and his examination is to be taken. A Presidency Magistrate need not at this stage administer an oath to the complainant nor reduce his complaint into writing. The authority under s 196 need not, in the case of Local Government, be signed personally by the Lieutenant-Governor; it is enough if it is signed by one of his accredited and gazetted Officers. It must be presumed that all official acts have been duly performed, and s. 114 of the Evidence Act amply supplies all omissions in the method of communication of the sanction to the prosecuting officer and the Magistrate, where the sanctions, as they originally stood, contained a misdescription of the articles on which the prosecution was based, and this was rectified by a subsequent sanction filed in course of the trial, *held*, the petitioner was not prejudiced and the defect was cured by s. 537 of

Crim. Pro. Code (Act V of 1898)—*continued.*

the Crim. Pro. Code. APURBA KRISHNA BOSE v. EMPEROR, **35 C 141=7 C.L J. 49=7 Cr.L. J. 10=2 M.L.T. 500.** (22 B. 112, *R.*; 32 C. 469, 37 W.R. 143, *D*; 14 C. 707, *F.*) [*R.*, 11 Cr.L. J, 453=7 Ind. Cas. 359=37 C. 467, 13 Cr.L.J. 609=15 C.L.J. 517=16 C.W.N. 1105=16 Ind. Cas. 257.]

(1933)—S. 196—*See* PENAL CODE, s. 121, L.B.R. 1872—1892, 389.

(1934)—S. 196—*See* PENAL CODE, ss. 124-A, 153, 4 S.L.R. 55, Cr.

(1935)—S. 196—*See* Nos. 36, 54, 62, 244, 1644, *supra.*

(1936)—Ss. 196, 204, 537—*See* PENAL CODE, ss. 121-A, 123, 15 C.L.J. 517=16 Ind. Cas. 257 =13 Cr. L.J. 609.

(1937)—*Ss.* 196, 235—*Graver offence not triable for want of sanction—Conviction for minor offence—Validity.*—The accused was committed for trial on a charge under s. 116, I.P.C., of having instigated certain persons to commit dacoity. In the course of the trial, the Assistant Sessions Judge added an alternative charge under s. 511 and convicted the accused of either instigating or attempting to commit dacoity. On appeal, the Sessions Judge reversed the conviction and acquitted the accused, as he was of opinion that the real charge which should have been brought against the accused was an attempt to commit the offence of waging war against the Queen, under s. 122, I.P.C., and that if that charge could not be framed without the sanction of the Government which they refused to give, the accused should not have been brought to trial at all or, at most, should have been bound over to keep the peace. *Held*, on appeal from the acquittal, that because a charge could not be framed for the graver offence it did not follow that no prosecution should be instituted on the minor charges which the evidence was sufficient to prove. The refusal of Government to prosecute under s. 122 did not affect the accused's liability to punishment under other sections. The acquittal was set aside and the accused convicted of investigating or abetting the commitment of dacoity. QUEEN-EMPRESS v. ANANT PURANICK, **25 B. 90=2 Bom. L.R. 653.** (19 B. 51, 19 B. 340, *D.*) [*R.*, 32 M. 3=5 M. L.J. 1=9 Cr. L.J. 103, 1 Ind. Cas. 22.]

(1938)—Ss. 196, 532 and 537—*See* COMMITMENT TO SESSIONS COURTS, 16 P.R. 1890, Cr.

(1939)—Ss. 196 and 537—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 8 P.R. 1908, Cr. =15 P.W.R. 1908, Cr.=149 P.L.R. 1908=7 Cr. L.J. 353.

——**S. 197 (=1882, S. 198; 1872, s. 466, paras 1, 2, 3, 4; 1861, s. 167; Presidency Magistrate's Act, 1877, s. 39.)**

See COMPLAINANT.

See COMPLAINT.

See SANCTION TO PROSECUTE.

Crim. Pro. Code (Act V of 1898)—*continued.*

(1940)—*S.* 197 (=*Crim. Pro. Code,* 1872, *s.* 476)—*Order by Board of Revenue directing an official charged with bribery to be tried by a particular tribunal, validity of.*—A charge of bribery, extortion and criminal intimidation was made against a Sub-Magistrate, and the Collector of the District reported the same to the Board of Revenue. The Board directed him to send the case for trial to some Magistrate, other than the District Magistrate or the Principal Assistant Magistrate. The District Magistrate sent the case for trial to the Senior Assistant Magistrate, Berhampore, who convicted the accused under s. 161, Penal Code. The Sessions Judge reversed the conviction. The Government did not appeal against the acquittal, but the case was referred to the High Court by the District Magistrate under the instructions of the Government. The High Court declined to interfere on the ground, (1) that it had not been shown that the trial by the Senior Assistant Magistrate was without jurisdiction and (2) that the question of jurisdiction was considered by the Sessions Judge and decided adversely to the Government which had not appealed. QUEEN-EMPRESS v. RANGA RAU, **15 M. 36=2 Weir. 218.**

(1941)—*S.* 197—*Accused a public servant—Sanction to prosecute.*—Sanction under s. 197 of the above Code is not necessary for the private prosecution of a person accused of an offence otherwise than in his capacity of a "public servant." CRIMINAL REVISION, NO. 203 OF 1893, **U.B.R. 1892—1896, Vol. 1, 27.**

(1942)—*S.* 197—*Prosecution of sub-overseer, P.W.D.—Sanction not necessary.*—A Sub-overseer of the P W D. can be appointed or removed by the Superintending Engineer without reference to the Local Government, and so sanction is not necessary, under s. 197, Crim. Pro. Code, in case of a complaint against such a Sub-overseer. *In re* REDDY VENKAYYA, **12 M.L.T. 351=17 Ind. Cas 402=13 Cr. L.J. 770.**

(1943)—S. 197—*See* MAD. ACT I OF 1884, s. 341, 25 M. 15=2 Weir. 223.

(1944)—S. 197—*See* PUN. ACT XIII OF 1884, s. 8, 14 P.R. 1890, Cr.

(1945)—S. 197—*See* FALSE EVIDENCE, 23 M. 223=1 Weir. 152.

(1946)—S. 197—*See* MAD. REG. XI OF 1816, 23 M. 540=2 Weir. 222.

(1947)—S. 197—*See* Nos. 105, 244, 1659, 1813, *supra* and 4739, *infra.*

(1948)—Ss. 197, 215, 235, 532—*See* SANCTION TO PROSECUTE — MISCELLANEOUS CASES, 13 C.P.L.R. 126, Cr.

(1949)—Ss. 197, 235—*See* SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, 13 C.W.N. 1062.

(1950)—*Ss.* 197 *and* 423—*Sanction to prosecute Administrator-General of Bengal—Administrator General appointed as Administrator to the estate of deceased person—Prosecution for non-compliance with Municipal rules—Calcutta Municipal Act* (*Bengal Act* III *of* 1899), *ss.* 320 *and* 574.—*Held,* that the sanction of the Government under s. 197, Crim. Pro. Code, was not necessary to prosecute the Administrator-General of Bengal under the Calcutta Municipal Act for non-compliance with the requirements of the Act in respect of certain houses of which he was appointed administrator by an order of the Court on the death of the executors under the will of a deceased person, inasmuch as he was in charge of the premises not by virtue of his office. CORPORATION OF CALCUTTA v. ADMINISTRATOR-GENERAL OF BENGAL, **30 C. 927=7 C.W.N. 750.** (26 C. 852, *F.*)

(1951)—*Ss.* 197, 527 *and* 177—*Power of Local Government to specify Court for trial of public servant irrespective of jurisdictions—Magistrate bound to receive complaint.*—A Magistrate can take cognizance of offences which he is competent to try, subject to the provisions of s 177, Crim. Pro. Code. That section directs that "ordinarily" an offence shall be enquired into and tried by a Court within the local limits of whose jurisdiction it was committed. The use of the word "ordinarily" indicates that this rule is to be read subject to any special provisions of law which may modify it, and the rule is relaxed or modified in several of the succeeding sections of the Code, and it must be read subject to the special provisions of s. 197, cl. 2. The power given in s. 197 (2) overrides the general rule contained in s. 177. *Held,* that the Local Government was entitled to specify any Court for the trial of a public servant, charged with offences under ss. 161 and 164, I.P.C., committed in Upper Burma, within the local jurisdiction of Judicial Commissioner, Upper Burma and that a Magistrate within the jurisdiction of the Chief Court of Lower Burma, who refused to receive a complaint presented by the Government Advocate, Mandalay, erred in holding that he had no power to receive the complaint. KING-EMPEROR v. MAUNG KA, **4 L.B.R. 265=8 Cr. L.J. 70.** (16 M. 468, *R.*)

(1952)—Ss. 197, 532—*See* HIGH COURT, JURISDICTION OF—GENERAL, 9 B. 288, F.B.

——**S. 198 (1882, s. 198 ; 1872, s. 142, Para 2 ; 1861, s. 177.)**

See COMPLAINANT.

See COMPLAINT.

(1953)—*S.* 198—*Bigamy, charge of—Persons competent to complain.*—The brother of the second (bigamous) husband of the accused is not a "person aggrieved," within the meaning of s. 198, Crim. Pro. Code. He is, therefore, not competent to prefer a charge of bigamy. EMPEROR v. IMTIAZAN, **25 A. 132=A.W.N. 1902, 198.** (10 B, 340, *F.*) [*R.*, 3 C.L.J. 38=3 Cr. L. J. 187, 7 Cr L. J. 457=11 O.C. 148.]

(1954)—*S.* 198—*Complaint need not specifically allege under what section of I.P.C., the offence falls.*—S. 198 is intended to prevent

Crim Pro. Code (Act V of 1898)—*continued.*

Magistrates from enquiring into cases coming under ss. 493 to 496, unless the husband or some person aggrieved lodges a complaint. It is not necessary that a complaint should state precisely the section of the Code under which the accused shall be charged. It is sufficient if the complainant lays before the Magistrate matter which, if proved, would be sufficient to warrant a commitment under s. 494, although the complaint alleged facts which seemed to constitute the offence provided for by s. 498. EMPEROR v. ALLI, **25 A. 209 = A.W.N. 1903, 7.** (1 C.L.R. 523, *Appr.*) [*R.*, 3 C.L.J. 38 = 3 Cr. L.J. 187.]

(1955)—*S.* 198—"*Person aggrieved*"—*Defamation of a Hindu widow—Complaint by brother, whether valid.*—Where imputations were made against the character of a Hindu lady, a widow living in her brother's house, *held*, that, having regard to the circumstances and conditions under which people live in that part, the brother was a person aggrieved within the meaning of s. 198 of the Crim. Pro. Code, and it was competent to the Court to take cognizance of the offence of defamation upon his complaint. THAKUR DAS SAR v. ADHAR CHANDRA MISSRI, **32 C. 425 = 8 C.W.N. 515.** [*Expl.*, 3 C. L.J. 38; *D.*, 32 C. 1060 = 9 C.W.N. 847 = 2 C. L.J. 396.]

(1956)—*S.* 198—*Offence relating to marriage —Bigamy—Cognizance of offence—*"*Person aggrieved,*" *meaning of—Person competent to institute and carry on proceeding—Father of a lunatic, whose wife has been married a second time if an aggrieved person in the legal sense—Penal Code, s.* 494.—It is impossible to lay down any inflexible rule for determining, in every case, whether the complainant is a person aggrieved by the offence alleged within the meaning of s. 198 of the Crim. Pro. Code; it must be determined, in each case, according to its own circumstances, whether the complainant can be said to be in a legal sense a person aggrieved. Where the complainant is the head of his family, his son is a lunatic and his daughter-in-law had been living under his protection and an allegation is made that she was taken away to the house of her father and subsequently married to another person, the offence, if true, seriously affects his reputation and status in society and the father-in-law is a "person aggrieved," within the meaning of s. 198 of the Code and is competent to institute the complaint. *Per Mookerjee, J.*—The grievance referred to in the words "person aggrieved" in s. 198 of the Code does not contemplate any fanciful or sentimental grievance: it must be such a grievance as the law can appreciate; it must be a legal grievance and not a *stat pro ratione voluntas reason.* DAEM SARDAR v. BATU DHALI, **3 C L.J. 38 = 3 Cr. L.J 187.** (25 B. 151, 32 C. 425, *R. & Expl.*; 10 B. 340, *Expl.*)

(1957)—*S.* 198—*Imputation of unchastity against wife—Complaint by husband—Penal Code, s.* 499, *Expl.* 1.—Having regard to Expln. 1 to s. 499, Penal Code, the husband is a person aggrieved within the meaning of s. 198, Crim. Pro. Code, in a case in which the imputation of unchastity is made and published in respect of his wife. ANANTHA GOUNDAN v. KING-EMPEROR, **15 M L.J. 224 = 2 Cr. L.J. 381.** [*R.*, 10 Cr. L.J. 263.]

(1958)—*S.* 198—*Complaint under s.* 494, *Penal Code—Aggrieved party—Mother of a minor husband, if aggrieved party.*—The words "some person aggrieved" imply that in some cases there may be more persons aggrieved than one, as for instance, where a number of persons are defamed by a single statement or where a number of persons are equally injured by a criminal breach of trust. But the mother of a minor husband, aged sixteen, is not a person aggrieved within the meaning of s. 198, Crim. Pro. Code, for the purpose of making the complaint under s. 494, Penal Code, SESSIONS JUDGE, GODAVERI, *Petitioner*, **2 Weir 231.**

(1959)—*S.* 198—"*Person aggrieved*"—*Bigamy —Complaint by a brother of the husband—Indian Penal Code, s* 495.—*Held*, that a brother of the husband of the woman who committed bigamy is not, as such, a person aggrieved within the meaning of s. 198, Crim. Pro. Code upon whose complaint the Court could take cognizance of an offence of bigamy. HANUMAN v. KING-EMPEROR, **11 O.C. 148 = 7 Cr. L.J. 457.** (10 B. 340, 25 A. 132, 26 C. 336, *R.*)

(1960)—*S.* 198 (= *Crim. Pro. Code*, 1872, *s.* 468).—An offence committed before or against a Criminal Court within the meaning of s. 468, Crim. Pro. Code does not include a false charge made in a petition presented to the police. POLICE v. NARAYAN GUZARATI, **Colm. Dig. Cr. 28 of 1875.**

(1961)—*S.* 198 (= *Crim. Pro. Code*, 1872, *s.* 468)—*Subordinate Court.*—An officer invested, under s. 16 of the Act XIV of 1865, with the powers of a Deputy Commissioner is a Court, to whom the Tahsildar from whom such officer hears appeals, is subordinate within the meaning of s. 468, Crim. Pro. Code, 1872. RAMA v. ATMARAM, **Colm. Dig. Cr. 60 of 1876.**

(1962)—S. 198—*See* ABETMENT, 8 P.R. 1891. Cr.

(1963)—S. 198—*See* BIGAMY, 26 C. 336, 10 B. 340.

(1964)—S. 198—*See* DEFAMATION, 18 P.R. 1889, 8 P W.R. 1908, Cr. = 7 Cr. L.J. 290 = 112 P.L.R. 1908 = 10 P.R. 1908, Cr.

(1965)—S. 198—*See* FALSE CHARGE, 10 C.L.R. 4.

(1966)—S. 198—Bigamy by minor wife—Complaint—"Person aggrieved"—*See* PENAL CODE, s. 494, 13 Cr. L.J. 204 = 14 Ind. Cas. 204.

(1967)—S. 198—*See* PENAL CODE, s. 494, 7 A.L.J. 10 = 32 A. 78 = 5 Ind. Cas. 176.

(1968)—S. 198—*See* PENAL CODE, ss. 499, ex. (9), 500, 8 Ind. Cas. 220.

Crim. Pro. Code (Act V of 1898)—*continued.*

(1969)—S. 198—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 3 A. 508, Col. Dig. 59 of 1876, 2 B. 384, 2 B. 481, A.W.N. 1882, 84.

(1970)—S. 198—*See* SANCTION TO PROSECUTE CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 4 B. 479, 5 B. 137, 6 M. 29 = 2 Weir 173.

(1971)—S. 198—*See* SANCTION TO PROSECUTE—NATURE AND FORM OF SANCTION, Rat. Un. Cr. Cas. 78 = Cr. Rg. 2-10-1873, 8 C. 435 = 10 C.L.R. 46.

(1972)—S. 198—*See* Nos. 121, 1644, 1654, 1655, 1656, 1814, 1815, 1816, *supra, and* Nos. 2000 to 2003, *infra.*

(1973)—*Ss.* 198, 195 (*Crim. Pro. Code*, 1872, *ss.* 468, 469)—*Revenue Courts, whether Civil Courts.—Held by the Full Bench* (*Spankie, J., doubting*) :—A Revenue Court is a Civil Court within the meaning and intent of ss. 468, 469, Crim. Pro. Code. EMPRESS OF INDIA v. SABSUKH, **2 A. 533 F.B.**, [*F.*, 10 A. 582; *R.*, 97 P.L.R. 1903.]

(1974)—*Ss.* 198, 195 (= *Crim. Pro. Code*, 1872, *ss.* 468, 469)—*Sanction to prosecute granted by Munsiff—Appellate powers of District Judge.*—No appeal lies to a District Judge from a sanction accorded by a Subordinate Court of the first instance to the institution of a prosecution, in cases in which such a sanction is required. *In the matter of the petition of* BULWANTRAI, **6 N W.P 124.** [*D.*, 1 A. 17, F.B.]

(1975)—Ss. 198, 200, 503 (1, 2, 3), 537—*See* COMMISSION, 10 P.R. 1896, Cr.

(1976)—Ss. 198, 345—*See* DEFAMATION, 14 M. 379 = 2 Weir 230 = 1 M.L.J. 242.

(1977)—Ss. 198, 439, 526—*See* DEFAMATION, 3 P.W.R. 1909, Cr. = 9 Cr. L.J. 154 = 1 Ind. Cas. 99.

(1978)—Ss. 198, 476—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 3 A. 62.

(1979)—*Ss.* 198, 476, 487 (= *Crim. Pro. Code*, 1872), *ss.* 468, 471, 473—*Trial for offences against public justice—Jurisdiction.*—The only case where a Criminal Court cannot itself try an offence committed before it, is that described in s. 473, Crim. Pro. Code, which relates exclusively to contempts of Court. A charge under s. 193, I.P.C., not being in contempt of Court, the Magistrate before whom the offence was committed may himself try the case. QUEEN v. JAGAT MAL, **1 A. 162.** [*Overruled*, 1 A. 625, F.B.; *Diss.*, 1 B. 311.]

(1980)—*Ss* 198, 487 (= *Crim. Pro. Code*, 1872, *ss.* 468, 473)—*Offence of preferring a false charge to the police—Jurisdiction.*—Where, on a charge of theft being preferred to the police, they brought it to the notice of the Magistrate, who directed them to investigate the truth of it, and on the police reporting that the charge was false, the Magistrate took proceedings against the person preferring the charge under s. 211, I.P.C., *held*, that the Magistrate was not precluded from trying the case himself, by reason of the provisions of ss. 468, 473, Crim. Pro. Code, as the charge was made to the police and not to the Magistrate, and that neither the Magistrate's sanction nor that of some superior Court was necessary to its trial by another Magistrate. EMPRESS OF INDIA v. BALDEO, **3 A. 322.** [*R.*, 14 C. 707, F.B.]

——S. 199 (= 1882, s. 199; 1872, ss. 478, 479; 1861, s. 178).

See COMPLAINANT.

See COMPLAINT.

(1981)—*S.* 199 (= *Crim. Pro. Code*, 1872, *s.* 478)—*Charge of adultery—Complaint by husband.*—If a criminal charge of adultery is to be preferred, a formal complaint of that offence must be instituted in the manner provided by the law, and if it is not, s. 478 will not have been satisfied. When the husband preferred against the accused a complaint of rape on his wife, but not of adultery, *held*, that the mere circumstance of the husband appearing as a witness in the prosecution for that offence could not be regarded as amounting to the institution of a complaint for adultery in the sense of s. 478. EMPRESS OF INDIA v. KALLU, **5 A. 233 = A.W.N. 1883, 1.** [*F.*, 29 C 415, 27 M. 61 = 2 Weir 236; *R*, 10 A. 39 = 7 A.W.N. 264, 36 A. 1 = 11 A.L.J. 994 = 15 Cr. L.J. 78 = 22 Ind. Cas. 430, 14 Cr. L.J. 284 = 19 Ind. Cas. 716 = U.B.R. 1912, 155, 30 C. 910 = 8 C.W.N. 17, F.B., 5 Cr. L.J. 164 = 9 Bom. L. R. 148 = 31 B. 218.]

(1982)—*S.* 199, *Crim. Pro. Code—Conviction under s.* 498, *Penal Code.*—If no complaint is made by any person of an offence under s. 498, proceedings cannot be initiated on a police charge sheet. *In re* CHIDAMBARA KALINGARAYAN, **2 Weir 235.**

(1983)—*S* 199—*Prosecution for adultery—Minor husband.*—A minor husband cannot be represented by another in a prosecution for adultery. HIGH COURT PROCEEDINGS, 7TH FEBRUARY 1871, No. 250, **2 Weir 235.**

(1984)—*S.* 199—*Jurisdiction to inquire into offence under s.* 498, *Penal Code—Husband filing complaint—Subsequent death of husband—Its effect on jurisdiction—Criminal prosecution, abatement of.*—A Court has no jurisdiction to inquire into an offence under s. 498 of the Indian Penal Code, until a complaint is filed by the husband. Once it is done, the jurisdiction is restored and the death of the husband cannot have the effect of destroying the jurisdiction. There can be no abatement of a criminal prosecution. IMPERATOR v. NURMAHOMED *wd.* KADAN, **1 S.L.R. Cr. 72 = 8 Cr. L J. 190.**

(1985)—*S.* 199—*Complaint under s.* 498, *Penal Code, by nephew—Illness of the husband—Whether amounts to 'absence'—Construction of 'in his absence.'*—Where one K was bedridden with paralysis, and his nephew filed a

complaint against several accused, alleging that they enticed away K's wife with criminal intent, *held*, that the effect of the words, ' in his absence ' in s. 199 of Crim. Pro Code, is a limit to the right of the caretaker, and that, although the wife was in charge of a caretaker, yet the complaint of the caretaker would not give the jurisdiction unless the husband be absent. The ' absence ' must be absence from the place. The Legislature has made no provision for the protection of the lunatic, paralytic or invalid husbands, and the word ' absence ' cannot be taken to include such cases. CROWN v. TIKIOMAL BULOMAL, **3 S. L.R. 15, Cr. = 9 Cr. L.J. 450 = 1 Ind. Cas. 941.**

(1986)—S. 199—*See* ADULTERY, 5 A. 233, 24 W.R. 18, Cr.

(1987)—S. 199—*See* CHARGE—ALTERATION OF CHARGE, A.W.N. 1882, 165.

(1988)—S. 199—*See* MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, A.W.N. 1899, 212.

(1989)—S. 199—Charge of rape—Offence not proved—Conviction for adultery—Illegality — *See* PENAL CODE, ss. 376, 497, U.B.R. 1912, 4th Qr., 155 = 14 Cr. L.J. 284 = 19 Ind. Cas. 716.

(1990)—S. 199—*See* PENAL CODE, s. 498, 23 P.R. 1895, Cr.

(1991)—S. 199—*See* RAPE, 29 C. 415 = 6 C. W.N. 677.

(1992)—S. 199—*See* Nos. 37, 48, 1644, *supra and* No. 2281, 3975, *infra.*

(1993)—*Ss.* 199, 4 (*h*)—*Complaint by husband —Deposition by husband not a complaint—Penal Code*, ss. 366, 379, 498—*Addition of charge—Practice.*—The accused were in the first instance charged with offences under ss. 366 and 379, Penal Code, and were committed to the Sessions Court for trial on those charges. In the Sessions Court, a further charge under s. 498 was added. The learned Judge agreeing with the assessors acquitted the accused on charges under ss. 366 and 379; but differing from them, he convicted the accused of the offence under s. 498. The accused appealed on the ground that the conviction under s. 498 was bad, as the complaint was not initiated by the husband of the woman. *Held*, that the husband not having complained of the offence under s. 498, the conviction could not be sustained; and that the statements made by the husband in his deposition could not be said to be complaint within the meaning of s. 4, cl. (*h*) of the Crim. Pro. Code. EMPEROR v. IMANKHAN RASULKHAN, **14 Bom. L.R. 141 = 1 Bom. Cr. C. 82 = 14 Ind. Cas. 971 = 13 Cr. L.J. 287.**

(1994)—Ss. 199 and 200—*See* COMPLAINT—WHAT IS AND WHO SHOULD INSTITUTE, Rat. Un. Cr. C. 584 = Cr. Rg. 44 of 1891.

(1995)—*Ss.* 199 *and* 238—*Prosecution under s.* 498, *Penal Code, without any complaint by the husband of an offence under s.* 498, *Penal Code.*—S. 199 of the Code says that no Court shall take cognizance of an offence under s. 498 of the Penal Code, except upon a complaint made by the husband of the woman. This means a complaint made by the husband of an offence under s. 498, not any complaint made by the husband. Where a person was charged with kidnapping or with abduction and the Judge convicted the accused on the evidence, merely of an offence under s. 498, *held*, that the conviction was wrong as there was no specific complaint by the husband of an offence under s. 498, of the Penal Code. BANGARU ASARI v. EMPEROR, **27 M. 61 = 2 Weir 236.** [*R.*, 9 Bom. L.R. 148 = 31 B. 218 = 5 Cr. L.J. 164.]

——**S 200 (= 1882, s. 200; 1872, ss. 44, 144; 1861, ss 66, 273.)**

See COMPLAINANT.

See COMPLAINT.

(1996)—*S.* 200 (= *Crim. Pro. Code*, 1861, *s.* 66) —*Prescribed mode of ascertaining the matter of a complaint.*—The prescribed mode of ascertaining what a complaint is, is to examine the complainant and to reduce his examination to writing. It is irregular to endorse and return to a party his petition or complaint alleging an offence. Such papers form part of the records of a Magistrate's Court and should not be returned to the party. What the party is entitled to is an authenticated copy of the Magistrate's order on a proper stamp. HIGH COURT PROCEEDINGS, 10TH JUNE, 1869, **No. 1012, 2 Weir 237.**

(1997)—*S* 200.—The procedure applies also to complaints by Municipal officers. QUEEN-EMPRESS v. BALO TO, **U.B.R. 1892—1896, Vol. I, 131.**

(1997-*a*)—*S.* 200—*Practice—Criminal case—Accused summoned without the complainant being examined—Irregularity—Proceedings not vitiated — Hurt both simple and grievous—Cumulative sentence—Legality of.*—The complainants made a complaint to the police to the effect that the accused beat them causing grievous hurt. The police did not send up the case and the complainants applied to the Magistrate who sent for the police papers and summoned the accused without examining the complainants. On the date fixed, the complainants were absent and the accused were discharged. Later in the day the complainants appeared, explained their delay and the Magistrate again gave them time to produce evidence. He summoned the accused, found them guilty and sentenced them to imprisonment. *Held* that the course the Magistrate adopted was irregular but did not vitiate the entire proceedings. *Held* also that, when several persons are beaten and injured and grievous hurt is caused in one case and simple hurt in another, the Magistrate is competent to pass cumulative sentences. BATESHAR v. EMPEROR, **13 A.L.J. 840.**

(1998)—S. 200—*See* Nos. 30, 32, 58, 63, 244, 382, 1337, 1339, 1528, 1529, 1637, 1644, 1660, 1661, 1662, 1663, 1703, 1714, 1727, 1817, 1818, 1975, 1994, *supra and* 3936, 4656, *infra.*

Crim. Pro. Code (Act V of 1898)—*continued.*

(1999)—Ss. 200, 190 (=Ss. 44, 141, Crim. Pro. Code, 1872)—*See* ACT I OF 1871, ss. 20, 23, 26 P.R. 1879, Cr. F.B.

(2000)—*Ss.* 200, 190, 198 (=*Ss.* 44 *and* 142, *Crim. Pro. Code*, 1872)—Where a Sessions Judge ordered a certain person to be brought to trial, the order was forwarded by the District Magistrate to his Subordinate Magistrate for compliance. The Subordinate Magistrate then committed the person, after holding a preliminary enquiry, to the Court of Sessions for trial. *Held* that the committing Magistrate's proceedings were without jurisdiction, as he was not invested with powers under s. 142 of the Code, as the case was not transferred to him under s. 44 of the Code and the Sessions Judge's order gave him no jurisdiction. POLICE v. TODAR PATEL, **Colm. Dig. Cr. 57 of 1876.**

(2001)—Ss. 200, 190, 198, 253, 426, 439 (1 to 4), 440—*See* DISCHARGE OF ACCUSED, 6 M. 25.

(2002)—Ss. 200, 190, 198, 253, 435 (1 to 3), 436, 438 (1)—*See* MAGISTRATE, JURISDICTION OF, TRANSFER OF CASES—REFERENCE TO OTHER MAGISTRATES, ETC, 2 B. 534.

(2003)—Ss, 200, 190, 198, 258, 438, 436—*See* DISCHARGE OF ACCUSED, Rat. Un. Cr. C. 76 =Cr. Rg. 17-7-1873.

(2004)—*Ss.* 200 *and* 202—*Police report—A. form—Order on Police to submit—Legality.*—On the report of the Police that one W had lodged a false information of theft against the accused, the Deputy Magistrate made an order that W should be called upon to show cause why he should not be prosecuted under s 211, I.P C. Subsequently, on the report of a subordinate Magistrate, who held an enquiry into the matter, the District Magistrate in charge wanted to examine a certain woman, Lochu, before passing final orders; but for some unexplained reasons, on the date fixed for the examination of the woman, the said Deputy Magistrate recorded the following order:—"I have gone through the evidence and find there is a *prima facie* case against the accused. Call for A-form, and Lochu, being a creature of his, need not be examined." *Held*, that the order passed by the Deputy Magistrate directing the Police to send up A-form against the accused was without jurisdiction and must be set aside, inasmuch as the Deputy Magistrate passed the order without having proceeded in accordance with the provisions of s. 200 or s. 202, Crim. Pro. Code, and as moreover, at the time the order was passed, there seems to have been before him no materials, which would have warranted him in either directing the issue of process against the accused or in directing the police to send up the A-form. RAM ADHIN CHOWDHRY v. WAHED ALI, **10 C W.N. 773= 3 Cr. L.J. 471.**

(2005)—*Ss.* 200 *and* 202—*Complaint—Judicial inquiry— Cognizance — Jurisdiction.*— On the complaint of a person, who had no personal knowledge of the matter complained of, a judicial inquiry was directed and on the report thereof, proceedings were taken. *Held* that there was no complaint under s. 200, Crim. Pro. Code, properly so called, on which a judicial inquiry could be directed. The proceedings were quashed. CHAMROO SAHU v. EMPEROR, **11 C.W.N. 170=5 Cr. L.J. 13.** [*R.*, 15 C.L.J. 517=16 C.W.N. 1105=13 Cr. L.J. 609=16 Ind. Cas. 257.]

(2006)—Ss. 200, 202—*Duty of Magistrate—Further enquiry.*—The duty of Magistrate receiving a complaint is set out in s. 200 of the Code of Criminal Procedure, and consists in finding out whether there is any matter which calls for investigation by a Criminal Court. The investigation which he is to make must be conducted by him personally and cannot be passed on to another, and s. 202 is clear on the point. BAIJ NATH v. RAJA RAM, **10 A L J. 79=13 Cr. L J. 704=16 Ind. Cas. 512.**

(2007)—*Ss.* 200, 202, 203—*Powers of Magistrate—Effect of local investigation.*—The examination of a complainant under s. 200, Crim. Pro. Code, is not a matter of form, and when a Magistrate dismisses a complaint without making such an examination himself, the omission is a material one, and he does what he has no authority to do under the Code. A local investigation was not intended by the Legislature to supersede a regular trial. When it is found that there is evidence in support of the complainant's charge, the function of the officer making the local investigation is fulfilled. Process should then be issued and the truth or falsity of the evidence should be determined in a regular manner. The object of s. 202 is to prevent the issue of process where there is some initial ground for doubting the truth of the complaint, and where on a local investigation there appears to be no evidence to support it. NGA THA TU v. KING-EMPEROR, **U.B.R. 1910, 4th Qr., p. 73=11 Ind. Cas. 249=12 Cr. L.J. 385.** (U.B.R. 1904—1906, Crim. Pro. Code, 51, *R.*)

(2008)—Ss. 200, 202, 203, 204, 403, 407—*See* COMPLAINT—DISMISSAL OF COMPLAINT, 13 B. 600, 14 C. 141, A.W.N. 1881, 23.

(2009)—Ss. 200, 202, 303—*See* COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 3 C.W.N. 17.

(2010)—*Ss.* 200, 203—*Applicability to s.* 552.—The provisions of ss. 200 and 203 do not apply to s. 552 where no offence is alleged. THAKOREDAS MUNCHHARAM v. BHAGWANDAS MADHAVDAS, **4 Bom. L.R. 609.**

(2011)—*Ss.* 200, 203, 204 — *Complaint — Examination of complainant by subordinate Magistrate—Order passed by District Magistrate—Order in the absence of the complainant—Directions by District Magistrate.*—A direction by a District Magistrate, that as regards a particular class of cases, subordinate Magistrates taking cognizance of them are not to pass orders under s. 203 or s. 204, Crim. Pro. Code, but to submit them to him, is clearly

Crim. Pro. Code (Act V of 1898)—*continued.*

illegal. The Magistrate, who receives a complaint and examines the complainant, must deal with it himself under s. 203 or s. 204 of the Code and cannot send it to the District Magistrate for orders. It is improper for a Magistrate to dismiss a complaint while sitting in his private room and without giving the complainant or his pleader an opportunity of being heard. FANI BHUSHAN BANERJEE v. F.E. KEMP, **10 C.W.N. 1086 = 4 Cr. L J. 230.**

(2012)—Ss. 200, 243, 244, 252—*See* PRACTICE AND PROCEDURE, U.B.R. 1897—1901, Vol. I, 67.

(2013)—S. 200, 254, 537—*See* FALSE EVIDENCE, P.L.R. 1900, 63, Cr.

(2014)—*Ss.* 200 *and* 488 (= *Crim. Pro. Code*, 1882, *ss.* 200, 488)—*Appearance in open Court of* pardanashin *applicants.—Held* that, although s. 200, Crim. Pro. Code, applies to maintenance cases, yet *pardanashin* applicants need not necessarily appear in open Court out of purdah. *In the matter of* FATTIMA BEGAM, **S.C. 142, Oudh.**

(2015)—*Ss.* 200, 533—*Statement of complainant, defectively recorded.*—There is no provision with regard to complaints analogous to that contained in s. 533, with reference to confessions or other statements of an accused person. BAIJOO MANDAL v. EMPEROR, **6 C.W.N. 840.**

(2016)—*Ss.* 200, 537—*Non-compliance with the provisions of* s. 200, *effect of.*—S. 537 does not apply to a non-compliance with the provisions of s. 200 in the recording of the statement of the complainant. BAIJOO MANDAL v. EMPEROR, **6 C.W.N. 840.**

——**S. 201, para 1 (=1882, s. 201; 1872, s. 145); para 2, new.**

See COMPLAINT.

(2016-*a*)—*S.* 201—*Examination of complainant upon oath.*—When a written complaint made before a Magistrate is obscure or vague, the Magistrate is bound to examine the complainant at sufficient length for the purpose of clearly ascertaining the allegations on which the complaint is based. When, however, the complaint is made in writing and is sufficiently clear, it may frequently be a sufficient compliance with s. 201 if the Magistrate reads it over to the complainant and the latter is asked on oath to subscribe to it. *In re* MIRABAI SHEIK HUSSAIN, **6 Bom. L.R. 662.**

(2017)—S. 201—*See* Nos. 63, 1339, *supra.*

(2018)—Ss. 201, 202, 203—*See* PENAL CODE, s. 211, 12 Bom. L.R. 229.

——**S. 202 (=1882, s. 202; 1872, s. 146, 1861, s. 180).**

See COMPLAINT.

(2019)—*S.* 202—*Ascertaining of the truth of the complaint before issuing process.*—A Magistrate having jurisdiction to ascertain the truth of the complaint may, before issuing the process, under s. 202, take any preliminary steps for finding out whether the complaint is true or not. He may call upon the accused to show cause why a process should not issue against him. Accused may appear or not in obedience to this, whereas, under a process issued under s. 202, the accused is bound to appear. *In re* TUKARAM UDA RAM, **6 Bom. L.R. 91.**

(2020)—*S.* 202 (= *Crim. Pro. Code*, 1882, s. 202)—*Presentation of complaint—Duty of Magistrate.*—It is the duty of a Magistrate, on a complaint being presented to him, to examine the complainant and then either to issue process or make an order under s. 202, Crim. Pro. Code. *In re* BAL KASHI, **Rat. Un. Cr. 368 = Cr. Rg. 17 of 1888.**

(2021)—*S.* 202 (= *Crim. Pro. Code*, 1882, s. 202)—*Public servant as accused—Calling for report—Validity.*—S. 202 does not contemplate that any report can be called for from an accused, if the accused happens to be an officer subordinate to the Magistrate. A dismissal of a complaint on a perusal of such a report is irregular, and the order of the Magistrate refusing to entertain the complaint for such reason will be set aside. BAIDYA NATH SINGH v. MUSPRATT, **14 C. 141.** [*Diss.*, 28 A. 421 = A.W.N. 1906, 76 = 3 A.L.J. 224 = 3 Cr. L.J. 327; *Appr.*, 40 C. 444 = 17 C.W.N. 290 = 14 Cr. L.J. 57 = 18 Ind. Cas. 345; *R.*, 13 Cr. L.J. 609 = 16 Ind. Cas. 257 = 15 C.L.J. 517 = 16 C.W.N. 1105, Rat. Un. Cr. C. 954.]

(2022)—*S.* 202 (= *Crim. Pro. Code*, 1882, s. 202)—*Reference to Police for inquiry and report.*—A reference to the police, under s. 202, can be made only before inquiry begins, and cannot be made after evidence has been taken for the complainant and process issued. In order to make such reference, the section provides that process may be postponed. SADAGOPACHARIAR v. RAGAVACHARYAR, **9 M. 282 = 2 Weir 243 = 2 Weir 430.**

(2023)—*S.* 202—*Postponement of issue of process without recording reasons.*—Under s. 202, a Magistrate distrusting the statement of the complaint may record his reasons when the complainant is examined, and may then postpone the issue of process for compelling the attendance of the person complained against, and inquire into the case himself or direct local investigation by a subordinate officer or by a police officer for the purpose of ascertaining the truth or falsehood of the complaint. The failure of a Magistrate to record the reason is at most an irregularity and it is not a ground for setting aside an order for postponement, unless it has occasioned a failure of justice. KING-EMPEROR v. ALAGIRISAMI PATTAN, **25 M. 546 = 2 Weir 245.**

(2024)—*S.* 202—*Postponement of issue of process and reference to police in petty cases.*—It is an abuse of powers given by s. 202, to refer petty cases, *e.g.*, an assault of a petty character to the police for enquiry; the proper course for the Magistrate is to take action on the complaint at once, unless it is manifestly false, in which compensation can be made to the accused by a summary order. GANESHA v. EMPRESS, **19 P.R. 1894, Cr.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2025)—*S.* 202 (=*Crim. Pro. Code,* 1872, s. 146)—*Discharge of accused on report by Subordinate Magistrate without examining prosecution witnesses.*—In a case sent up by the police, the District Magistrate sent the accused in the custody of police to a subordinate Magistrate for enquiry and on receiving the latter's return, discharged the accused without taking the evidence of witnesses named for the prosecution. *Held,* that the discharge was illegal and the case ought to be re-tried. KUDAN v. SONUN, **8 P.R. 1880, Cr.**

(2026)—*S.* 202 (=*Crim. Pro. Code,* 1898, s. 202)—*Cognizance of case by Magistrate—Reference to police for investigation.*—A Magistrate cannot order a police investigation into a case of which he was taken cognizance, except under the conditions stated in s. 202, Crim. Pro. Code, that is to say, when for reasons stated by him, he distrusts the truth of the complaint. EMPRESS v. AMTA DUBA, **A.W.N. 1902, 195.** (20 M. 387, A.W.N. 1884, 47, *F.*)

(2027)—*S.* 202 (=*Crim. Pro. Code, Act* V of 1898, s. 202)—*Procedure—Local investigation.*—If a Magistrate acts under s. 202 of the Crim. Pro. Code, he is bound to record his reasons. The section does not empower acting being taken after the close of the prosecution case. EMPRESS v. TOTA RAM, **A.W.N. 1900, 187.**

(2028)—*S.* 202 (=*Crim. Pro. Code, Act* X of 1882, s. 202)—*Applicability to proceeding under* s. 117.—S. 202 of the Crim. Pro. Code applies only in cases where no process has been issued to compel the attendance of the accused. It does not apply to a case where a person has been called upon to show cause, under s. 117, why security to keep the peace should not be taken from him. EMPRESS v. KHURRAM SINGH, **A.W.N. 1896, 140.**

(2029)—*S.* 202—*Duty of the Magistrate when investigation by person other than himself ordered by a Magistrate—No further local investigation by himself in the absence of the accused.*—When a Magistrate has once acted under s. 202, and ordered an investigation by a person other than himself, he is precluded from following the latter's local investigation up by an enquiry in the absence of the accused. Duties and powers of Magistrates discussed. RAM PRASAD v. MOTI, **11 A.L.J. 754=14 Cr. L.J. 493=20 Ind. Cas. 749.**

(2030)—*S.* 202—*Issue of process—Magistrate's order to make preliminary inquiry thereafter—Legality.*—After the issue of process to the accused, the case passes the stage at which the Magistrate could exercise the option of holding a preliminary inquiry, and therefore an order made under s. 202, Crim. Pro. Code, after that stage is illegal. GAJI v. JUMANSHAH, **6 S.L. R. 83=17 Ind. Cas. 61=13 Cr. L.J. 749.**

(2031) — *S.* 202—*Preliminary inquiry — "Watching proceedings," meaning of.*—If any person interested in any legal proceedings is admitted to watch or applies to watch such a proceeding, the term "watch" does not mean that of a mere on-looker for idle curiosity, but it means instructing of legal practitioners to watch the case on behalf of the alleged offender and with the leave of the Court to assist the Court in making its preliminary investigation. Therefore, a person with regard to whom a preliminary inquiry is being held under s. 202 of the Crim. Pro. Code, should be admitted to watch the proceedings, and his representative, if an advocate or pleader, should be allowed to act as *amicus curiæ.* SHEIKH AKBAR v. PRANCE, **10 Ind. Cas. 33=12 Cr. L.J. 207.** (8 Cr. L.J. 20, 4 N.L.R. 81, *R.*)

(2032)—S. 202—*See* LEGAL PRACTITIONERS—PLEADER, 8 B.H.C.A.C.J. 202.

(2033)—S 202—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 4 C. W.N. 604.

(2034)—S. 202—*See* POLICE ENQUIRY, 19 P.R. 1894, Cr.

(2035)—S. 202—*See* PRELIMINARY ENQUIRY, 4 C.L.R. 413.

(2036)—S. 202—*See* Nos. 52, 61, 63, 1310, 1333, 1334, 1337, 1339, 1346, 1365, 1464, 1466, 1528, 1529, 1662, 1663, 1664, 1701, 1728, 1729, 1818, 1819, 1876, 2004, 2005, 2006, 2007, 2008, 2009, 2018, *supra* and No. 2087, 4200, 4208, *infra.*

(2037)—*Ss.* 202, 148 *and* 293—*Local investigation—Powers of Magistrate—Whether Magistrate can give evidence in a case tried by him.*—There may be cases, in which it is desirable that a judicial officer should see the place, in which an occurrence which is the subject of a judicial investigation before him has taken place, in order to enable him to understand the evidence which is laid before him; but when an officer visits a place for this purpose he should take care that no information reaches him with reference to the occurrence, which he is to investigate, beyond what he acquires from the view of the place. When there is a dispute as to the exact spot in which the occurrence is said to have taken place, he must defer his visit to the spot until he has heard the whole of the evidence. Where a Magistrate who was trying a case of some complexity arising out of disputed boundaries to land made a very careful and conscientious investigation of the locality, such as would properly be made by a person whose duty it was to get at the facts with a view to lay the same before some tribunal, but the information which he sought and obtained was not guarded by the safe guards, by which statements on which a Judge or a Magistrate exercing judicial functions can act, must be guarded, *held,* that the notes of the Magistrate should not be put on the record, although the Magistrate tendered himself, while trying the case, as a witness to be cross-examined by either the prosecution or the defence. *Held,* also, that the case should be transferred to another Magistrate. [*F.*, 6 M.L.J. 143=19 M. 263=2 Weir 725; *R.*, 19 A. 302.] When a Judge is the sole Judge, both of law and fact, he cannot

Crim. Pro. Code (Act V of 1898)—*continued.*

give evidence before himself. Therefore the suggestion of the Magistrate stated above that he would enter the witness-box and be examined and cross-examined by pleaders of the party on the information acquired by the local enquiry was one which would be impossible and be illegal for him to carry out. HARI KISHORE MITRA v. ABDUL BAKIMIAH, **21 C. 920.** [*F.*, 19 M. 263=6 M.L.J. 143=2Weir 725; *R.*, 27 A. 33=A.W.N. 1904, 157, 37 C. 340=11 C.L.J. 335=14 C.W.N. 422=11 Cr. L.J. 121=5 Ind. Cas. 365.]

(2038)—*Ss.* 202, 203—*Dismissal of complaint on police investigation.*—The dismissal of a complaint, after considering the result of a police investigation directed by a Magistrate under s. 202, is authorised by s. 203. *In re* MIRABAI SHEIK HUSSAIN, **6 Bom. L.R. 662.**

(2039)—*Ss.* 202 *and* 203—*Dismissal of complaint without observing the procedure laid down in the section.*—A Magistrate transferred to his own file a case pending before a Subordinate Magistrate and referred it to the police for inquiry, on the ground that the police who had investigated a charge of misappropriation brought against the complainant and his brother, must know a good deal about the matter. On the receipt of a report from the police, the Magistrate dismissed the complaint. *Held*, that the order of dismissal was not proper, as the Magistrate had not followed the procedure prescribed by ss. 202 and 203. VIRABHADRAYYA v. VYRICHERLA SOORYANARAYANA RAJU BAHADUR, **2 Weir 244.**

(2040)—*Ss.* 202, 203—*Departmental enquiry previous to complaint.*—A departmental enquiry previous to the complaint, in which the person complained against has been exonerated, is no substitute for the enquiry or investigation directed by s. 202, Crim. Pro. Code. RALLIA v. AHSAN SHAH, **33 P.R. 1887, Cr.** [*R.*, 14 P. R. 1891, Cr.].

(2041)—*Ss.* 202 *and* 203—*Complaint, dismissal of, without giving opportunity to the complainant to prove his case.*—After the examination of complainant, the Magistrate should dismiss the complaint at once or elect to hold inquiry under s. 202, Crim. Pro. Code, before issuing process. Where the Magistrate examined the complainant on the 28th April and, without dismissing the complaint then and there, adjourned the case to the 26th May, and then on that date, after making certain enquiries from the solicitor of the accused and looking into papers which had been filed by the defence before the Police, dismissed the complaint. *Held* that the procedure adopted by the Magistrate was irregular, and that, having virtually elected to hold an enquiry under s. 202, Crim. Pro. Code, he should not have dismissed the complaint without giving an opportunity to the complainant to adduce evidence in support of his case, and if, upon such opportunity being given, he still failed to produce his witnesses, then his case might have been dismissed upon that ground. DR. H. P. SANDYAL v. KUNJESWAR MISRA, **16 C.W.N. 143=13 Ind. Cas. 781.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2042)—Ss. 202 and 203—*See* DEFAMATION, 4 P.W.R. 1910, Cr.

(2043)—Ss. 202, 203—*See* FALSE CHARGE, 4 A. 182.

(2044)—Ss. 202 and 203—*See* FURTHER ENQUIRY, 5 A.L.J. 74=A.W.N. 1908, 45=7 Cr. L.J. 157.

(2045)—Ss. 202, 203, 422—*See* FURTHER ENQUIRY, 7 C.W.N. 80.

(2046)—Ss. 202, 203, 437—*See* COMPLAINT—WITHDRAWAL AND REVIVAL OF COMPLAINTS, 9 A. 85=A.W.N. 1886, 307.

(2047)—*Ss.* 202, 293, 437 *and* 439—*Dismissal of complaint by Presidency Magistrate—Power of High Court to direct further enquiry—S.* 15, *Charter Act—Powers of investigating officer.*—The powers of the High Court, under s. 203, to interfere with orders of a Presidency Magistrate, are limited. Where a Presidency Magistrate dismisses a complaint under s. 203, the High Court cannot direct a further inquiry under s. 437, nor can they interfere under s. 439, although the order of the Magistrate, dismissing the complaint, might not be quite proper. They can only act under s. 15 of the Charter Act, but the question of propriety or impropriety of the order does not strictly come within the authority vested by s. 15 of the Charter Act. There is nothing in s. 202 to prevent an investigating officer from making a full inquiry, by obtaining information from the complainant and his witnesses, and the defendant and his witnesses, if any. DEBI BUX SHROFF v. JUTMAL DUNGARWAL, **33 C. 1282=5 Cr. L.J. 83.** [*Diss.*, 36 C. 994=11 C. L.J. 50=13 C.W.N. 1221=10 Cr.L.J. 385=3 Ind. Cas. 861; *F.*, 6 Cr.L.J. 400=6 C.L.J. 705; *R.*, 7 Cr.L.J. 499=12 C.W.N. 678, 14 Cr. L.J. 529=14 M.L.T. 200=21 Ind. Cas. 129=1914 M.W.N. 728, 14 Cr.L.J. 633=21 Ind. Cas. 681 =25 M.L.J. 510.]

(2048)—Ss 202, 203, 437 and 439—*See* FURTHER ENQUIRY, 11 P.W.R. 1908, Cr.=7 Cr. L.J. 347.

(2049)—*Ss.* 202, 203 *and* 441—*Magistrate not recording reasons as required by ss.* 202 *and* 203—*Effect—Effect of statement under s.* 441.—Mere omission by a Magistrate to record his reasons before referring a case under s. 202 for enquiry by the police, and for dismissing a complaint under s. 203 is an irregularity. But a statement filed under s. 441 supplies the omission. So, after the filing of such a statement, such an omission does not call for the interference of the High Court with an order made under those sections. RENGAMMAL v. KRISHNAMACHARI, **5 M.L.T. 79=2 Ind. Cas. 618.**

(2050)—*Ss.* 202, 203, 476—*Order of Magistrate taking cognizance making over case to another Magistrate for disposal after a local enquiry, if legal—Dismissal of complaint—Order for prosecution.*—Where the petitioner laid a complaint before the Magistrate against a

Crim. Pro. Code (Act V of 1898)—*continued.*

police-officer charging him with various offences of wrongful confinement, extortion, mischief, etc., and the Magistrate who took cognizance of the case made it over to another Magistrate with a direction that the latter would make a local enquiry and then dispose of the case, and the Magistrate, to whom the case was so made over, made a local enquiry and after examining witnesses dismissed the complaint under s. 203, Crim. Pro. Code, and made an order under s. 476 for the prosecution of the petitioner under s. 211, I P.C. *Held* that the order of the Magistrate before whom the complaint was laid was bad in directing the latter Magistrate to hold a local enquiry, inasmuch as the Code of Criminal Procedure does not make any provision for such a course by a Magistrate to whom a case is made over for disposal. On a consideration of the circumstances of the case, the High Court set aside the orders under ss. 203, 476, Crim. Pro. Code, and directed a further inquiry into the case. MAHOMED IMAMUDDIN v. DEBENDRA NATH, **18 C.W.N. 95 = 22 Ind. Cas. 422 = 15 Cr.L.J. 70.**

(2051)—Ss. 202, 203, 476—*See* COMPLAINT—DISMISSAL OF COMPLAINT, 27 C. 921.

(2052)—Ss. 202, 203, 476—*See* COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 4 C.W. N. 305.

(2053)—Ss. 202, 203, 476—*See* PRELIMINARY ENQUIRY, S.C. 284, Oudh.

(2054)—Ss. 202, 203 and 476—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, &c., 7 M. 189 = 2 Weir 585 = 8 Ind. Jur. 79.

(2055)—*Ss.* 202, 203, 476 *and* 529 (*f*)—*Deputy Magistrate in charge of office of District Magistrate—Power of such Magistrate to send case under s. 202 of the Code to the Sub Divisional officer for investigation—Legality of investigation and of subsequent orders by the Deputy Magistrate dismissing the complaint and directing the prosecution of the complainant—Government Circular as to charges against the Police, effect of—Nature of judicial investigation thereunder.*—A Deputy Magistrate in charge of the District Magistrate's office, at head-quarters, has no power as such, after taking cognizance of a complaint and examining the complainant on oath, to send the case, under s. 202 of the Crim. Pro. Code, for local investigation by the Sub-Divisional officer to whom he is by law subordinate, nor to dismiss the complaint, and to direct the prosecution of the complainant under s. 476 on the report and investigation by the latter. The effect of s. 529 (*f*) could be only to give the Sub-Divisional Magistrate jurisdiction over the case, but not to empower the Deputy Magistrate to dismiss the complaint, and direct the prosecution of the complainant. The Government Circular with regard to enquiries into complaints against the Police has been misunderstood. It does not refer to local investigations under s. 202, but the investigation

Crim. Pro. Code (Act V of 1898)—*continued.*

it mentions is a full and complete judicial enquiry on the spot after the issue of process, and after hearing witnesses on both sides and taking the Explanation of the accused person. EMPEROR v. BHIKU HOSSEIN. **16 C.W.N. 885 = 15 Ind Cas. 484 = 13 Cr. L.J. 484.**

(2056)—*Ss.* 202, 203 *and* 537—*Failure to comply with the provisions of s 202—Effect of, on dismissal of complaint.*—Failure by Magistrate to record his reasons for doubting the truth of a complaint as required by s. 202, is an irregularity which, under s. 537, unless it occasions a failure of justice, is no ground for setting aside an order of dismissal of complaint under s. 203. VENKATESULU NAIDU v. DURVASA RANGAYEN, **2 Weir 244.** [*F.*, 25 M. 546 = 2 Weir 245.]

(2057)—*Ss.* 202 *and* 204—*Strict procedure to be followed by Magistrate—Evidence—Papers in a previous complaint.*—The District Magistrate, on receiving a complaint and examining the complainant, should follow the strict procedure laid down in ss. 202 and 204 of the Code of Criminal Procedure. He has no power to call for and consider the papers, which resulted from any previous petition for enquiry filed by the complainant and consisted of a local enquiry made in pursuance thereof. BAQAR v. BANSI, **11 A.L.J. 921 = 22 Ind Cas 165 = 15 Cr. L.J. 21.**

(2058)—*Ss.* 202, 204, 242, 244 *and* 439—*Case being tried by a Magistrate who issued process on complaint without inquiry under s. 202—District Magistrate ordering the police subsequently to make independent investigation even as head of Excise Administration illegal—Interference by the Chief Court—Excise Act* XII *of* 1896.—A complaint was filed on behalf of the Collector in the Court of a Magistrate of the first class, against S, under s. 49 of Act XII of 1896. Process was issued under s. 204, Crim. Pro Code, without any inquiry under s. 202 and proceedings under ss. 242 and 244 of the same Code, were also taken by the said Court. Notwithstanding this, the said Collector who also was the District Magistrate ordered the police to make independent investigation in the case. On being asked by the Chief Court, the District Magistrate explained he acted as Head of the Excise Administration. *Held*, that the procedure adopted by the District Magistrate as such or as a Collector, was wholly illegal and *ultra vires*. *Held*, also, that, when an illegal order is passed and action taken which involves matters coming within the purview of Law and Justice and within the scope of authority of the Courts, such authority cannot be ousted by the mere *ipse dixit* of the officer, that he was not acting as a Judicial Officer, but in his executive capacity and the High Court can interfere on revision side. SHIV NATH v. CROWN, **1 P.W.R. 1908, Cr. = 4 P.R. 1908, Cr. = 86 P.L R. 1908 = 7 Cr. L.J. 202.**

(2059)—Ss. 202 and 350—*See* COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 9 M. 282 = 2 Weir 243 = 2 Weir 430.

Crim. Pro. Code (Act V of 1898)—*continued.*

(2060)—*Ss.* 202, 356 (=*Crim. Pro. Code, Act X of* 1882, *ss.* 202, 356)—*Direction by District Magistrate to summon accused after evidence—Legality—Vernacular record.* — Where a District Magistrate, to whom a complaint under ss. 320 and 348 was made against some police officers, made over the case to the Joint Magistrate directing that such Magistrate should hear the complainant and his evidence and then summon the accused if he thought the case was well founded, *held* that the order was illegal under s. 202 of the Crim. Pro. Code. Where such Joint Magistrate, in hearing the evidence of the complainant and his witnesses, made no vernacular record of the evidence and examined witnesses who, the complainant alleged, had been bought over by the opposite party, *held* that the procedure was illegal under ss. 202 and 356 of the Crim. Pro. Code. MATAI LAL v. ANANT RAM, **A.W.N. 1890, 164.**

(2061)—*Ss.* 202, 435 (=*Crim. Pro. Code,* 1882, *ss.* 202, 435)—*Dismissal of complaint—Complainant having no personal knowledge of facts complained of.*—Under s. 202, Crim. Pro. Code, the evidence need not be confined to that of the complainant. The section leaves it in the discretion of the Magistrate to examine such witnesses and make such enquiries as he thinks fit. A complaint should not be dismissed on the ground that the complainant has no personal knowledge of the circumstances alleged by him. The Magistrate should allow the complainant to bring forward evidence to prove them. *In re* KANKUCHAND, **Rat. Un. Cr. C. 669=Cr. Rg. 27 of 1893.**

(2062)—*Ss.* 202, 437 (=*Crim. Pro. Code,* 1882, *ss.* 202 *and* 437)—*Discharge of an accused person—Order for further inquiry by police, validity of.*—S. 202 has application only to a complaint of an offence on which the Magistrate does not deem it fit to issue a process. It does not authorise the police to hold what may be regarded as an inquiry into the propriety of an order of discharge already made by a Magistrate. The proper authority to inquire whether there is ground for reviving the case, is the Magistrate himself who discharges the accused. He must take further evidence and then recommend to the District Magistrate or the Sessions Court or the High Court that the prosecution should be revived, if the further evidence indicated such revival necessary in the interests of justice. *In re* INDUKURI GANGARAZU, **2 Weir 239.**

(2063)—*Ss.* 202, 476—*False complaint sent by post—Absence of notice—Sanction.*—A false complaint sent to the Magistrate by post is duly presented to the Court for the purpose of sanction for prosecution being granted under s. 476 of the Crim. Pro. Code. Where a District Magistrate directed a Deputy Magistrate to inquire into the truth of a complaint, and on receipt of the report from that officer, ordered the prosecution of the complainant for an offence under ss. 182, 211 of the Penal Code, without giving him an opportunity to substantiate the truth of the complaint or show cause against the order, *held* that the order was illegal. EMPRESS v. JETO MAI, **A.W.N. 1900, 189.**

(2064)—*Ss.* 202, 522—*Local enquiry by pleader—Dispossession of immoveable property—Consideration of new ground at hearing of Rule.*—A Magistrate has no jurisdiction to order a local enquiry by a pleader in the nature of a commission in a civil case. An order under s. 522, Crim. Pro. Code, is not sustainable where there is no finding that the complainant has been dispossessed of any immoveable property. Case in which the High Court considered a ground other than those on which the Rule was issued. MOHAR KHAN v. GAYZUDDIN SHEIKH, **18 C.W.N. 399=15 Cr. L.J. 302=23 Ind. Cas. 510.**

(2065)—*Ss.* 202, 555—*See* MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION, 24 C. 167.

(2066)—*Ss.* 202 (1), 340 *and* 526—*Application for transfer of case—Complaint—Examination under s.* 200—*Person complained against not allowed to cross-examine complainant's witnesses in preliminary inquiry held under s.* 202 (1)—*Whether any bias implied by refusal—Person complained against—Accused person.*—A person complained against does not become an accused person, until it has been decided to issue process against him, under Ch. XVI of the Crim. Pro. Code. S. 340 does not, hence, entitle a person complained against to be represented by a pleader during the preliminary inquiry which may be held under s. 202 (1). If he chooses to attend the proceedings, he may of course do so, like any other member of the public; but he has no *locus standi* as a party, the purpose of the law being clearly to exclude him until sufficient ground for joining him has been made out by the complainant. Where, therefore, a Magistrate acting under s. 202 (1) Crim. Pro. Code, refused permission to the person complained against to cross-examine the complainant's witnesses and an application for transfer of the case was made to the Judicial Commissioner's Court on the ground, *inter alia* that the Magistrate's refusing permission to cross-examine the complainant's witnesses gave cause to apprehend some bias in his mind against the person complained against. *Held*, in dismissing the application, that there was no reason to think that the Magistrate was biased against the accused or that the latter had any plausible grounds for apprehending its existence. SHEIKH CHAND v. MAHOMED HANIF, **4 N.L. R. 81=8 Cr. L J. 20.** [*D.*, 12 Cr. L.J. 437=11 Ind. Cas. 621=7 N.L.R. 97.]

——**S. 203 (=1882, s. 203; 1872, s. 147; 1861, s. 67.)**

See COMPLAINT.

See COMPLAINT — DISMISSAL OF COMPLAINT.

See DISMISSAL OF COMPLAINT.

Crim. Pro. Code (Act V of 1898)—*continued.*

(2067)—*S.* 203—*Jurisdiction to entertain fresh complaint, after dismissal of complaint on the same facts.*—A complaint was filed by a woman charging the accused with certain offences, one of them being that her daughter had been wrongfully taken away by the accused. This complaint was dismissed, and thereupon another complaint was preferred by the husband on the same facts, although the offences suggested by the complaints were different. *Held*, that the Magistrate had jurisdiction, and was bound to entertain the second complaint and deal with it according to law. EMPEROR v. MEHRBAN HUSSAIN, 29 **A. 7=3 A L.J. 562= A.W.N. 1906, 245=4 Cr. L.J. 59.** (A.W.N. 1895, 86, *F.*; 28 C. 652, 29 C. 726, *R.*; 22 A. 106, *D.*) [*F.*, 11 Ind. Cas. 132=10 P.R. 1911, Cr.=205 P.L R. 1911.]

(2068)—*S.* 203—*Examination of the complainant.*—When a deposition in the shape of a complaint is made orally or in writing and is sworn to, the requirements of s. 203 in regard the examination of the complainant are sufficiently complied with. THAKOREDAS MUNCHHARAM v. BHAGWANDAS MADHAVDAS, **4 Bom. L.R. 609.**

(2069)—*S.* 203 (=*Crim. Pro. Code*, 1882, s. 203—*Applicability of.*—S. 203 of the Crim. Pro. Code applies only to cases falling within Ch. XVI where there has been no issue of process. Where the accused has been summoned to answer a charge, there is a proceeding within the meaning of Ch. XVII, and the complaint cannot be dismissed under s. 203. QUEEN-EMPRESS v. BUDHANBHAI, **Rat. Un. Cr. C. 544=Cr. Rg. 18 of 1891.**

(2070)—*S.* 203—*Penal Code*, *s.* 211—*Institution of criminal proceedings before Police—Prosecution of the complainant under s.* 211.—According to the decisions of the Calcutta High Court when a person institutes before the police criminal proceedings, which, on enquiry, are found to have no justification, before he can be prosecuted under s. 211 of the Penal Code, he must first have an opportunity afforded him of proving his case against the accused; if he chooses to impugn the correctness of the police enquiry by petition, he is entitled to have the persons complained against tried on the charge, or else, the statement must be recorded by the Magistrate on oath and his complaint dismissed under s. 203, Crim.Pro.Code. JOGENDRA NATH MOOKERJEE v. EMPEROR, **33 C. 1=2 C.L.J. 228=10 C.W.N. 158=2 Cr. L.J. 615.** (15 A. 336, 22 B. 596=7 M. 292, *R.*; 14 C. 707, F.B., *F.*, [*F.*, 37 C. 250=14 C.W.N. 330=10 C.L.J. 564=11 Cr. L.J. 37=4 Ind. Cas. 710; *R.*, 8 Cr. L.J. 349=4 N.L R. 136, 13 Cr. L.J. 578=15 Ind. Cas. 994=5 Bur. L.T. 129.]

(2071)—*S.* 203 (=*Crim. Pro. Code*, 1872, s. 147)—*Penal Code*, ss. 182, 211—*Prosecution for false charge before judicial investigation of the complainant.*—A prosecution may be maintained, in respect of false charges made to the police or contained in a complaint, dismissed under s. 147, Crim. Pro. Code, 1872, although there has been no judicial investigation, though where the accused has been brought before a Court, it is wrong to throw out the charge against him summarily, and not to complete the enquiry set on foot by the issue of a summons or warrant for his appearance. NUSIBUNISSA BIBEE v. SHEIKH ERAD ALI, **4 C.L.R. 413.**

(2072)—*S.* 203—*Dismissal of complaint—Fresh complaint without setting aside the order of discharge.*—Where a complaint is dismissed under s. 203, no fresh proceedings upon a new complaint on the same facts can be taken, unless the order of dismissal is set aside by a competent authority MAHOMAD ABDUL MENNAN v. PANDU RANGA ROW, **28 M. 255 =2 Weir 247 A=2 Cr. L.J. 752** [*D.*, 28 M. 310=2 Weir 325-A=2 Cr. L.J. 758; *Diss.*, 16 M.L.J. 79=1 M.L.T. 81=3 Cr. L.J. 274=29 M. 126, F.B.; *R.*, 11 Ind. Cas. 132=10 P.R. 1911.]

(2073)—*S.* 203—*Dismissal of complaint under—Competency of Magistrate to re-hear the complaint without order for further inquiry from higher tribunal.*—The question in this case was whether it was open to a Magistrate to re-hear a complaint, which has been dismissed under s. 203 of the Code, the order for dismissal not having been set aside by a higher Court. *Held*, by a majority of a Full Bench (*Subrahmania Ayyar and Davies, JJ., dissenting*), that it is competent for a Magistrate, who has once dismissed a complaint under s. 203 to re-hear the complaint, although his order of its dismissal has not been set aside by a higher Court. *Held, per Subrahmania Ayyar, J., dissentiente* (Davies, J, *concurring*):—If it is justice that a person prosecuted on a former occasion upon evidence, which appeared sufficiently strong to warrant his being put on trial and being called upon for defence, should not be vexed again in the matter when the trial terminates in his favour, it must *a fortiori* be so when the evidence, on which his prosecution was initiated, was so weak as to justify the trial being concluded earlier and the accused discharged and saved from even the necessity of entering upon the vindication of his innocence. So, when a Magistrate, after examining the complainant and taking the steps to satisfy himself as to the complaint being well founded or otherwise, dismisses it under s. 203, the complainant should not be permitted to renew his complaint so long as the order against him stands undisturbed. *In re* CHINNA KALIAPPA GOUNDAN AND SUBBIER, **1 M L.T. 31, F.B.=3 Cr. L.J. 274=16 M.L.J. 79=29 M. 126.**

(2074)—*S.* 203 (=*Crim. Pro. Code*, 1882, s. 203)—*Case forwarded by police to Magistrate subsequently to his dismissing it.*—It is not only competent to a Magistrate but it is also incumbent upon him to take upon his file a cognizable case forwarded to him by the police, although he may have previously dismissed the same case under s. 203, on a complaint. CHHEDA v. MUSAMMAT GAURA, **S.C. 230, Oudh.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2075)—*S.* 203 — *Dismissal of complaint whether evidence of want of reasonable cause for prosecution* —The dismissal of a complaint under s. 203 of the Crim. Pro. Code does not necessarily prove the want of reasonable and probable cause for the prosecution as against the complainant or prosecutor. FAGHFUR MIRZA v. MAHARAJA BHAGOWTI PARSHAD, **S.C. 294, Oudh.**

(2076)—*S.* 203—*Complaint—No finding as to its falsity or unsustainability—Dismissal under s.* 203—*Illegality—Discretion—Judicial considerations—Basis of order—High Court—Power to interfere—Charter Act, s.* 15.—In the absence of any finding that the complaint was false or unsustainable on the evidence likely to be available, the passing of an order of dismissal under s. 203, Crim. Pro. Code, by a Magistrate constitutes an irregularity with which the High Court has the power to deal under s. 15 of the Charter Act. (27 C. 126, 33 C. 1282, *R.*). S. 203 authorizes the Magistrate to dismiss a complaint in case he finds no sufficient grounds for proceeding. But the decision whether there is sufficient ground must be reached by the exercise of discretion, based on judicial considerations. That the Magistrate considered the probable result of the proceeding undesirable, or the motives and conduct of the complainant discreditable, are not relevant considerations. GANGU REDDY v. C. SAMARAPATHI MUDALI, **25 M.L.J. 510=14 Cr. L. J. 633=21 Ind. Cas. 681.** (13 B. 590, *R.*)

(2077)—*S.* 203—*Examination of one of prosecution witnesses and complainant—Statement of accused—Complaint dismissed—Dismissal illegal—Procedure—Examination of all prosecution witnesses necessary.* — A Magistrate examined the complainant and only one witness for prosecution, took the statement of the accused and, without examining the rest of the prosecution witnesses, dismissed the complaint making an order for the payment of compensation. *Held* that the procedure of the trying Magistrate was illegal, and he could not, after having heard evidence for the prosecution, pass an order dismissing the complaint, though he could have made an order of discharge. *Held* further that the entire evidence for the prosecution should have been received by the Magistrate, unless for some very strong reasons he considered the evidence unnecessary. GOKUL CHAND v. MAHABIR MISSAR, **11 A.L J. 451=14 Cr. L.J. 412=20 Ind. Cas. 236.**

(2078)—*S.* 203, *revision of order passed under —Notice to opposite party not necessary.—Held* that revision of an order passed under s. 203, Crim. Pro. Code, can be made without notice to the person complained against. GADA HUSAIN v. JANKI, **13 O.C. 289=8 Ind. Cas. 371=11 Cr. L J. 629.** (15 C. 624, *F.*)

(2079)—S. 203—*See* ACT IV OF 1889, s. 2 (c), 17 M.L.J. 490=6 Cr. L.J. 374.

(2080)—S. 203—*See* COMMITMENT TO SESSIONS COURT, 11 C.L.R. 55.

Crim. Pro. Code (Act V of 1898)—*continued.*

(2081)—S. 203—*See* CRIMINAL MISAPPROPRIATION, Rat. Un. Cr. C. 919.

(2082)—S. 203—*See* FALSE CHARGE, 3 C. W.N. 758.

(2083)—S. 203—*See* HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 12 C.W.N. 678=7 Cr. L.J. 499.

(2084)—S. 203—*See* TRANSFER OF CRIMINAL CASES—MISCELLANEOUS CASES, 11 C. W.N. 316=5 Cr. L.J. 112.

(2085)—S. 203—*See* Nos. 30, 38, 61, 63, 1302, 1334, 1337, 1339, 1343, 1365, 1644, 1665, 1666, 1728, 1729, 1818, 1819, 1820, 1821, 2007, 2008, 2010, 2011, 2018, 2038 to 2056, *supra and* Nos. 2503, 2614, 2704, 3937, 3938, 4575, *infra.*

(2086)—Ss. 203, 195, 437—*See* COMPLAINT —INSTITUTION OF COMPLAINT—PRELIMINARIES, 2 Weir 154=6 M.H.C. App. 15.

(2087)—Ss. 203, 202, 204, 403, 436, 437, 438 (1)—*See* COMPLAINT—DISMISSAL OF COMPLAINT, 3 N.W.P. 261.

(2088)—*Ss.* 203, 204 *and* 437—*Conviction by Magistrate under s.* 426, *Penal Code—Power of District Judge to direct further enquiry on offence not charged and against persons not summoned to appear before Magistrate.*—On a complaint made to a Magistrate, he convicted one of the accused of mischief and sentenced him to fine. On application made to the Sessions Judge, he directed a further enquiry to be made by the Magistrate into another offence, *viz.* under s. 144 of the Penal Code in respect of that accused, no charge of any such offence having been made at any time against him. He also directed a further enquiry against the other accused who, apparently, were mentioned in the complaint, but who had not been summoned to appear before the Magistrate. *Held*, that the Sessions Judge was without jurisdiction, not being within the powers prescribed by s. 437, inasmuch as the complaint was not dismissed under s. 203, or s. 204, sub-s. 3, and as none of the accused had been discharged. HAR KISHORE DASS v. JUGAL CHUNDER KABYARATHNA BHUTTACHARJEE, **27 C. 658.**

(2089)—Ss. 203, 204 (3), 253, 437—*See* DISCHARGE OF ACCUSED, 6 C.L.J. 705=6 Cr. L.J. 400.

(2090)—*Ss.* 203, 253, 403, 437, 438, 439—*Revival of prosecution—Complaint dismissed—Petition for revision to the Sessions Judge also dismissed—Fresh complaint on the same facts not allowed.—Held* that a Magistrate cannot entertain a fresh complaint, when a previous one on the same facts has been dismissed and the order of dismissal has been upheld by the Sessions Judge. In such a case, the complainant's only remedy is to apply to the High Court for revising the lower Court's orders. MOHAMMAD YAQUB v. CROWN, **11 P.W.R. 1910, Cr.=5 Ind. Cas. 991.** (68 P.L.R. 1912, **5 A.** 36, **5 A.** 387, **28 C.** 397, *D.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

(2091)—Ss. 203, 253 and 439—*See* DISMISSAL OF COMPLAINT, 26 P.W.R. 1908, Cr. = 8 Cr. L.J. 249.

(2092)—*Ss.* 203, 257, 437—*Order directing the withdrawal of prosecution and of process against accused.*—Where, on the acquittal of a co-accused, the other accused against whom process of arrest had been issued, surrendered before the Deputy Magistrate, and he passed an order directing that the accused should not be proceeded against and that the warrant and other processes issued against him be withdrawn, *held*, that the order was bad in law, as it was not one either under s. 203, of dismissal of a complaint, or an order of discharge of the accused, and that the District Magistrate had, therefore, no jurisdiction under s. 437 to set aside the order and direct the re-trial of the accused. PANCHU GHOSH v. KHOSDEL SARKAR, **12 C.W.N. 68.**

(2093)—*Ss.* 203, 259, 437—*Dismissal of first complaint under s. 259—No ground for refusing to entertain second complaint on same facts—Further inquiry—Discretion of Court—Terms as to security for costs—Power to impose.*—A prior order of discharge does not bar the jurisdiction of the Magistrate to entertain a second complaint on the same facts, and the mere fact that the first complaint had been dismissed under s. 259, Crim. Pro. Code, is not a sufficient ground for refusing to entertain the second complaint and dismissing it under s. 203, Crim. Pro. Code. (28 C. 652, 28 M. 310, 29 M. 126, *R.*). It is purely discretionary with the Court to order further inquiry under s. 437, Crim. Pro. Code, and the Court has power to impose terms on the petitioner regarding expenses and costs before making an order for such inquiry. BULCHAND TAHILRAM v. CHANDOOMAL RAMRAKHIAMAL, **8 S.L.R. 196 = 16 Cr. L.J. 174 = 27 Ind. Cas. 558.**

(2094)—*Ss.* 203 *and* 350 (= *Crim. Pro. Code,* 1882, ss. 203 *and* 350)—*Commencement of trial a fresh.*—A complainant's examination was recorded and the Magistrate, who took it, then sent the case to the Police for enquiry. The Police as the result of their enquiry sent up the accused for trial. The same Magistrate recorded the evidence for the prosecution as well, apparently as that of some witnesses whom he examined of his own motion; he examined the accused, framed a charge, took the defence of the accused and issued process for the attendance of witnesses for the defence. At this stage that Magistrate was succeeded by another, who elected under s. 350, Crim. Pro. Code, to recommence the trial, and, being under the impression that "this brought the case down to the stage at which it was after the complainant's statement had been recorded and the preliminary enquiry made" he dismissed the complaint under s. 203, Crim. Pro. Code. *Held* that it was no longer a question of deciding whether or not proceedings should be taken as on a complaint; the question was of either taking up the proceedings at the point to which they had been brought or recommencing the trial. If the Magistrate elected the latter course he was bound, under s. 350 of the Code, to "resummon the witnesses and recommence the trial." It was certainly not "recommencing trial" to summarily dismiss the complaint under s. 203. BALIRAM v. BALDEO, **7 C.P.L. R. Cr. 36.**

(2095)—*Ss.* 203 *and* 367—*Complaint, dismissal of—Fresh complaint on the same facts, when can be entertained.*—A Magistrate, dismissing a complaint under s. 203, may entertain a fresh complaint upon the same facts. But, if the order of dismissal or discharge should amount to a judgment, within the meaning of s. 367, a fresh complaint cannot be entertained. MAKHATAMBI v. HASSAN ALI, **1 N.L.R. 18.**

(2096)—*Ss.* 203, 435 *and* 437—*Complaint, revival of—Power of the Subordinate Magistrate to revive a complaint dismissed by him after District Magistrate has declined to order further inquiry.*—There is nothing illegal in or *ultra vires* of a Deputy Magistrate reviving a complaint which he had dismissed under s. 203, Crim. Pro. Code, after the District Magistrate has, on an application made to him, declined under s. 437, Crim. Pro. Code, to order further inquiry into the complaint. JYOTINDRA NATH DAW v. HEM CHANDRA DAW, **13 C.W.N. 193 = 5 M.L.T. 95 = 36 C. 415 = 9 Cr. L.J. 563 = 2 Ind Cas. 293.** [*R.*, 11 Ind. Cas. 132 = 10 P.R. 1911, Cr. = 205 P.L.R. 1911.]

(2097)—*Ss.* 203, 435, 437, 528—*Order by Deputy Magistrate amounting to a dismissal of complaint — Fresh complaint disposed of by District Magistrate—Further enquiry ordered by Sessions Judge—Jurisdiction to make such order.*—Where the opposite party filed a complaint against the petitioner before the Deputy Magistrate of Singbhum, who called for a Police report, and, subsequently, on a consideration of that report passed the following order on the 28th November 1911; "Enter mistake of law, s. 406, I.P.C." and the opposite party thereupon filed another complaint before the Deputy Commissioner, who ordered a judicial enquiry by the Deputy Magistrate, and, after considering his report, directed that the case should be entered as false as the outcome of a civil dispute; and then the opposite party moved the Sessions Judge who ordered a further enquiry under s. 437, Crim. Pro. Code. *Held*—that, having regard to the provisions of s. 435, sub-s. (4), Crim. Pro. Code, the Sessions Judge should not have ordered further enquiry into the complaint. The order of the Deputy Magistrate, dated the 28th November 1911, must be regarded as an order dismissing the complaint. (6 C.W.N. 638, 8 C.W.N. 456, *F.*) That, the case having been disposed of by a competent authority, it could not therefore have been withdrawn by the Deputy Commissioner to his own file under s. 528, Crim. Pro. Code. That, when the Deputy Commissioner proceeded to revive the Deputy Magistrate's order and

Crim. Pro. Code (Act V of 1898)—*continued.*

have a further enquiry made, it must be taken that he was acting under s. 435, Crim. Pro. Code. SHAIK SIDDIK v. SHAIK CHAKURI KHANSAMA. 17 C.W.N. 451=18 Ind.Cas. 683 =14 Cr. L J. 123=17 C L J. 693.

(2098)— *Ss.* 203, 437 (=*Crim. Pro. Code,* 1872, *ss.* 147, 298)—*Order of first class Magistrate dismissing complaint—Powers of Sessions Judge.*—Where a Magistrate of the first class passes an order dismissing a complaint under s. 147 of the Code of 1872, the order is subject, under s. 298, to the orders of the Sessions Judge. *In the matter of* CHOOLHAIE TELEE, 2 C L.R. 315. (16 W.R. 44, 25 W.R. 10, *Considered.*)

(2099)—*Ss.* 203 *and* 437 (=*ss.* 147, 298, *Code of* 1872)—*Dismissal of complaint—Power of another Magistrate to receive the same complaint.*—When a complaint has been dismissed under s. 147, another Magistrate of competent jurisdiction cannot, without an order under s. 298, receive the same complaint, and, taking it on his file, dispose of it according to law. HIGH COURT PROCEEDINGS, 28TH MARCH 1878, No. 671, 2 Weir 247. [*F.*, 2 Weir 247, *Note*]

(2100)—*Ss.* 203, 437 (=*Crim. Pro. Code,* 1882, *ss.* 203 *and* 437)—*Dismissal of complaint—Competency of succeeding Magistrate to receive a second complaint on the same facts.*—It is not competent to a Magistrate to entertain, otherwise than under the direction of the District Magistrate a second complaint on the same facts upon which a complaint made to his predecessor was dismissed under s. 203. NARASIMHA HATWARA, 2 Weir 247. *See also*, HIGH COURT PROCEEDINGS. 14TH NOVEMBER 1878. No. 1883, 2 Weir 247.

(2101)—*Ss.* 203, 437 (=*Crim. Pro. Code, Act* X *of* 1882, *ss.* 203, 437)—*Dismissal of complaint—Fresh complaint.*—A Magistrate who has dismissed a complaint under s. 203 of the Crim. Pro. Code, might at the instance of the complainant himself entertain a fresh complaint on the same facts, without any direction to that effect from a superior authority under s. 437. EMPRESS v. UMEDAN, A.W N. 1895. 86. (9 A. 52, 9 A. 85, *R.*) [*F.*, 29 A. 7=3 A.L.J. 562=A.W.N 1906, 245=4 Cr.L J. 59, 36 A. 53 =12 A.L.J. 1=15 Cr.L J 1=22 Ind. Cas. 145, 12 A.L.J. 106=15 Cr. L J. 158=22 Ind. Cas. 734, 11 Ind. Cas. 132=10 P.R. 1911=205 P.L. R. 1911; *R.*, 22 A. 106=A.W.N. 1899, 211, 22 Ind. Cas. 731=18 C.W.N. 668; *D.*, A.W.N. 1899, 201.]

(2102)—*Ss* 203, 437—*Complaint summarily rejected — Further enquiry could be ordered without notice to accused.*—A notice to a person against whom a complaint is made is quite unnecessary, where it is sought to set aside the summary order in a proceeding to which he was actually no party. ANGAN v. RAM PIRBHAN, 10 A.L.J. 531=35 A. 73=14 Cr. L. J. 2=18 Ind. Cas. 146.

(2103)—*Ss.* 203, 437—*Discharge—Order for re-trial—Notice to accused—Whether necessary.*—A complaint was dismissed under s. 203 of the Crim. Pro. Code, 1898. The District Magistrate set aside the order of dismissal and ordered a re-trial without giving a notice to the accused. *Held* that no notice was necessary. DURGA PERSHAD v. EMPEROR, 9 Ind Cas. 277=12 Cr. L.J. 46. (A.W.N. 1907, 288, 4 A.L.J. 790, 6 Cr. L.J. 396, 9 A. 52, 5 A.L.J. 74=A.W.N. 1908, 45=7 Cr. L J. 157, 29 C. 457=6 C.W N. 638, *R.*)

(2104)—Ss. 203, 437 — *See* COMPLAINT—DISMISSAL OF COMPLAINTS, 11 O C. 261.

(2105)—Ss. 203, 437 — *See* COMPLAINT—WITHDRAWAL AND REVIVAL OF COMPLAINTS, 24 C. 286=1 C.W.N. 185.

(2106)—Ss. 203, 437—*See* FURTHER ENQUIRY, Rat. Un. Cr. C. 89

(2107)—*Ss.* 203, 537—*Examination of complainant, not obligatory, when he filed a sworn statement* —*Held*, a Presidency Magistrate is not bound to examine the complainant before dismissing his complaint under s 203, Crim. Pro. Code, A verification on oath of a complaint before a Magistrate is a sufficient compliance with the provisions of s. 203. (Crl. Rev. Case 398 of 1903, 9 A. 666, *F.*) Even assuming that the law required the Magistrate to examine the complainant, the omission to do so, when it has not prejudiced the complainant, amounts only to an irregularity covered by s. 537, Crim. Pro. Code. V. VELU NATTAN v. EMPEROR, 1911, 2 M.W.N. 356=10 M.L.T. 573=12 Cr. L.J. 550.

(2108)—Ss. 203, 537 — *See* COMPLAINT—INSTITUTION OF COMPLAINT—PRELIMINARIES, 9 A. 666=A.W N. 1887, 141.

(2109)—Ss. 203, 537— *See* COMPLAINT—WITHDRAWAL AND REVIVAL OF COMPLAINTS, 23 C. 983=1 C.W.N. 57.

——**S. 204, paras 1 and 2 (=1882, s. 204; 1872, ss. 147, 148 149; 1861, ss. 179, 248, 257, 260); para 3, new.**

(2110)—*S.* 204—*Discretion of Magistrate.*—Magistrates should exercise a reasonable discretion under the above section, as to whether a warrant or a summons should issue, in the case of complaints entertained by them, and should not subject accused persons to the indignity of an arrest, unless there is real need for it. CRIMINAL REVISION CASE, No. 203 OF 1893, U B.R. 1892—1896, Vol. I, 31.

(2111)—*S.* 204 (=*Crim. Pro. Code, Act* V *of* 1898, *s.* 204)—*Sessions case—Duty of Magistrate—Discharge.*—Where, in a Sessions case, in the inquiry before the Magistrate, the evidence discloses a *prima facie* case against the accused, and such evidence stands unrebutted, the Magistrate cannot discharge the accused merely because the evidence appears to be immprobable. In doing so, the Magistrate is really trying the case instead of merely considering whether there are sufficient grounds for a commitment. CHIRANJI LAL v. RAM LAL, A.W. N. 1904, 5. (A.W N. 1899, 61, 135, 11 B. 372, *R.*) [*Disc.*, 26 A. 564=1 A.L.J. 292=A.W. N. 1904, 125.]

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(2112)—S. 204—*See* ACT III OF 1867, ss. 3, 4, 5, 14, L.B.R. 1872—1892, 486.

(2113)—S. 204—*See* Nos. 373, 602, 1667, 1728, 1729, 1730, 1936, 2008, 2011, 2057, 2058, 2087, 2088, 2089, *supra.*

(2114)—*Ss.* 204 *and* 205—*Object of s.* 205—*Substituting summonses for warrants—Exempting accused from personal appearance*—Pardanashin *ladies.* — Where some three female accused applied to the Magistrate for substituting summonses for warrants and for dispensing with their personal appearance on the allegation that they were *pardanashin* ladies, and the Magistrate dismissed the application, finding they were not *pardanashins*, *held*, that it was not a sufficient reason for his refusal to allow them the benefit of s. 205, Crim. Pro. Code. That section is one which should be freely utilized in such a country as Sind, where so much prejudice exists against the appearance of females in public, and where the procedure law is so frequently abused in order to gratify private malice. CROWN v. MAHOMED *wd.* KADU, **3 S.L.R. 167, Cr.** [*F.*, 7 S.L.R. 161, 6 S.L. R. 206, 7 S.L.R. 40.]

(2115)—*Ss.* 204, 205—*Power to substitute summons for warrant.*—The power of substituting summons for warrant is not limited to the case of *pardanashin* women. The power should be freely utilised in the province of Sind, and especially in the case of female accused. Where more is done than ought to be done, the act is valid for the part that ought to be done and is void as to the excess. This principle is recognised in the Crim. Pro. Code. So where a Magistrate wrongly issues a warrant in the first instance instead of a summons, he can, on discovering his mistake, make an order directing the major process of warrant to take effect as the minor process of summons, and may excuse the personal attendance of the accused under s. 205 of the Code. CROWN v. MUSSAMAT ZALIKHAN, **7 S L.R. 40=21 Ind. Cas. 476=14 Cr.L.J. 604.** (3 S.L.R. 167, *R.*)

(2116)—S. 204 (1, 2)—*See* COMPLAINT—DISMISSAL OF COMPLAINT, 4 C.L.R. 534, 7 M.H. C. App. 16.

(2117)—Ss. 204 (1 and 2), 205—*See* PARDANASHIN WOMAN, 21 C. 588.

——S. 205 (=1882, s 205; 1872, s. 151; 1861, ss. 182, 261.)

(2118)—*S.* 205—*Summons case—Non-attendance on service of summons—Appearance by pleader—Penal Code,* s. 174.—In a summons case, an appearance was made on behalf of the accused, on the day fixed for trial, by his *mukhtear* who asked the Magistrate to dispense with the personal attendance of the accused. The Magistrate, however, refused to allow the application and he, regarding his non-attendance as a contempt of Court, called upon him to show cause why he should not be prosecuted under s. 174, Penal Code, for non-attendance on service of summons. *Held*, that the accused did make an appearance, though not a personal appearance, but that he did not personally attend should not, under the circumstances of the case, have been regarded as an offence under s. 174, and the fact that the accused proceeded to Calcutta, instead of attending the Magistrate's Court, to apply to the High Court against the proceedings of the Magistrate, would not make him liable to punishment under s. 174. DURGA DAS RAKHIT v. UMESH CHANDRA SEN, **27 C. 985=5 C.W.N. 131.**

(2119)—*S.* 205 (=*Crim. Pro. Code,* 1872), *s.* 151—*Sentence passed in absence of accused.*—Where the accused, who was arrested on a charge under s 417, I.P.C., was left on bail, and his personal attendance during the trial was neither dispensed with, nor could be dispensed with, *held*, that taking evidence, and passing a sentence in his absence, though in the presence of his agent was not warranted by law. The Chief Court declined to set aside his conviction and sentence on revision, until he had submitted himself before the Magistrate's Court. JIWANBEG v. EMPRESS, **18 P. R. 1880, Cr.**

(2120)—*S.* 205—*Women charged with abetment of bigamy—Vague complaint—No allegation of specific acts—Exemption from personal attendance—Right to be allowed.*—Where three women were charged with having abetted a bigamous marriage, and the complaint against them was couched in the vaguest language, and it was not alleged that they committed any specific acts, and where the prosecution witnesses would have no difficulty in describing them in spite of their absence from Court. *Held*, that the Magistrate should have exempted them, at any rate until a *prima facie* case is made out against them, from personal attendance under s. 205, Crim. Pro. Code. CROWN v. MUSSAMMAT BACHAL, **7 S.L.R. 161=15 Cr. L.J. 539 =24 Ind. Cas. 947.** (3 S.L.R. 167, *F.*)

(2121)—S 205—*See* PARDANASHIN WOMAN, 6 A. 59=A.W.N. 1883, 207.

(2122)—S. 205—*See* Nos. 39, 376, 1637, 2114, 2115, 2117, *supra.*

(2123)—*Ss.* 205, 255, 342 *and* 366 (2)—*Accused exempted from personal attendance—Competency of pleader to answer questions by Court or to refuse to plead to charge—Exemption till judgment or even after it—Discretion under s.* 205—*Liberal exercise in Sind.*—Where an order under s. 205, Crim. Pro. Code, has been made, the provisions of s. 342 are complied with when the pleader for the defence is examined on behalf of his client. S. 205 allows the accused to appear by pleader, and such appearance involves the performance of all acts which devolve upon the accused in the course of the trial, such as answering the examination by the Court under s. 342, or pleading or refusing to plead to the charge under s. 255. The terms of s. 366 (2) support this view, for it contemplates the absence of accused up to the stage of judgment or even after that stage when

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the judgment is one of acquittal or one awarding a sentence of fine. The discretion under s. 205 is one that ought to be liberally exercised in this Province, *viz.*, Sind. CROWN v. JAMAL KHATUN AND KHATIJAM, **6 S.L.R. 206 = 14 Cr.L.J. 272 = 19 Ind. Cas. 544.** (3 S.L.R. 167, *R.*)

(2124)—*Ss.* 205, 435 *and* 439—*Civil and Criminal proceedings together—Stay of criminal proceedings—Further enquiry — Notice—Penal Code, ss.* 417 *and* 420.—Where civil proceedings were started along with criminal proceedings under ss. 417 and 420, I.P.C. *Held*, that criminal proceedings should be stayed till the civil ones are finally terminated. *Held*, also, that an order of further inquiry into a complaint dismissed under s. 203, Crim. Pro. Code, without notice to the accused, though not absolutely illegal, is so unfair and prejudicial to the accused that it should not ordinarily be maintained. PARAS RAM v. THE CROWN, **44 P.W.R. 1911, Cr. = 12 Cr.L.J. 615 = 12 Ind. Cas. 991.** (4 C.W.N. 100, *F.*)

(2125)—*Ss.* 205, 438 *and* 439—Purdah *woman —Her personal attendance when to be enforced —Doubtful complaint.*— A Criminal Court should abstain from compelling a *purdah* woman to attend in person, unless and until the case against her has reached the stage at which her personal attendance is clearly and legally required in the interests of justice. It is a part of the Court's duty to see that the machinery of a criminal trial is not utilised as a means of gratifying petty spite. MUSSAMMAT HABBO v. CROWN, **5 P.W.R. 1909, Cr. = 9 Cr.L.J. 158 = 1 Ind. Cas. 101.**

(2126)—Ss. 205 and 496—*See* RECOGNIZANCE TO APPEAR, 5 B.H.C. Cr. 64.

(2127)—*Ss.* 205, 526—*Penal Code, s.* 326—Purdanashin *lady, dispensing with personal attendance in Court—Transfer.*—The petitioners, who were *purdanashin* ladies, were placed on their trial on a charge under s. 326, I.P.C. The Magistrate refused to dispense with the personal attendance of the petitioners in Court. The High Court in revision made an order allowing the petitioners to appear by pleader before the Magistrate, as also in the Court of Session in case of committal to that Court, subject to the petitioners' having to appear before the Court to hear the sentence in case of conviction. The High Court, on a consideration of the circumstances, transferred the case under s. 526, Crim. Pro. Code. RAJ RAJESHWARI DEBI v. KING-EMPEROR, **17 C.W.N. 1248 = 23 Ind. Cas. 489 = 15 Cr. L J. 28.**

——S. 206 (= 1882, s. 206; 1872, s. 143; 1861, ss. 37, 38).

See COMMITMENT TO SESSIONS COURT.

See MAGISTRATE, JURISDICTION OF.

See SESSIONS JUDGE, JURISDICTION OF.

(2128)—*S.* 206 (= *Crim. Pro. Code,* 1882, *s.* 206)—*Scope—When provisions of Ch.* XVIII *applicable—Second class Magistrate invested with powers under s.* 206—*Discharge of person charged with offence under s.* 392, *Penal Code.* —The powers conferred under s. 206 convey authority to carry into effect any of the provisions of Ch. XVIII of the Code. The procedure to be adopted under Ch. XVIII is not confined to cases exclusively triable by a Court of Sessions, but is also applicable to cases which, in the opinion of the Magistrate concerned, ought to be tried by such Court. Where a Magistrate of the second class invested with the powers described in s. 206, Crim. Pro. Code, enquired into the case of an offence described in s. 392, I.P.C., triable by a Court of Sessions, a Presidency Magistrate and a first class Magistrate, with the idea of committing the case, after enquiry, to the Sessions and eventually discharged the accused, *held*, that his enquiry into that case should be taken to mean, that, in his opinion, the case was one that ought to be tried by a Court of Session and that, his order of discharge was, therefore, legal. RAMSUNDAR v. NIROTAM, **6 A. 477 = A.W.N. 1884, 205.**

(2129)—*S.* 206—*Magistrate — Committal of case—Connection with another case, no ground for committal.*—A Magistrate of the first class drew up, in a case of theft, a charge against the accused, but instead of pursuing the trial himself, committed the accused for trial to the Court of Session, on the ground that the case was connected with another case in which he felt bound by law to commit: *Held*, setting aside the order of commitment, that the connection between the two cases was not of such a character as to embarrass or prejudice the accused if the course prescribed by the Crim. Pro. Code, had been followed. EMPEROR v. ASHA BHATHI, **15 Bom. L.R. 998 = 2 Bom. Cr. C. 165 = 14 Cr.L.J. 657 = 21 Ind. Cas. 897.**

——S. 207 (= 1882, s. 207; 1872, s. 189).

See COMMITMENT TO SESSIONS COURT.

(2130)—S. 207—*See* No. 149, *supra.*

(2131)—Ss. 207, 213, 215—*See* COMMITMENT TO SESSIONS COURT, A.W.N. 1886, 256.

(2132)—*Ss.* 207 *and* 215—*Commitment to the Court of Session—Discretion of the Magistrate—Commitment to be quashed—A point of law.*—A commitment once made by a Magistrate could be quashed by the High Court only on a point of law. A Magistrate has discretion to commit an accused to the Sessions when he is of opinion that he cannot be punished adequately by him (the Magistrate). Where therefore a Magistrate in the exercise of such discretion commits an accused to the Sessions, the High Court cannot interfere. KING-EMPEROR v. BALDEO, **11 A.L.J. 439 = 19 Ind Cas. 960 = 14 Cr. L.J. 304.**

(2133)—Ss. 207, 215, 233—*See* PRELIMINARY ENQUIRY, 7 Bom. L.R. 457 = 2 Cr. L. J. 432.

(2134)—*Ss.* 207, 254—*Magistrate competent to try and adequately punish an offence—Commitment to Sessions—Whether proper—Reasons*

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for committal—Criminal Circular (Sind), r.25, Ch. VI.—If a case be one which a Magistrate is both competent to try and can adequately punish, he has no discretion to commit it to the Court of Sessions. (24 C. 429, 3 Cr. L. J. 94, *R.*) S. 254, Crim. Pro. Code, in mandatory terms imposes on the Magistrate the duty of trying any warrant case which he is competent to try and which in his opinion can be adequately punished by him. He is given a discretion to commit to a Court of Sessions only such of those cases which he is competent to try as, in his opinion, ought to be tried by such Court because the offence cannot be adequately punished by him (*vide* ss. 207 and 254, Crim. Pro. Code). He must comply with the provisions of r. 26, Ch. VI of Criminal Court Circulars and state why the case was not disposed of by himself. DIWANICHAND v. CROWN, **8 S.L.R. 23 = 15 Cr. L.J. 664 = 25 Ind. Cas. 992.**

(2135)—*Ss.* 207, 254, 347—*Words "ought to be tried in Court of Session" in ss.* 207 *and* 347 *explained.*—The words " ought to be tried " (by the Court of Session) in ss. 207 and 347 of the Crim. Pro. Code must be read with s. 254 of the Code ; and a case which ought to be tried by a Court of Session is one which the Magistrate is not competent to try, or in which, in his opinion, adequate punishment cannot be inflicted by him. KING-EMPEROR v. FEMA RANCHOD, **4 Bom. L. R. 85.** [*R.*, 5 Bur. L.T. 239 = 13 Cr. L. J. 877 = 17 Ind. Cas. 813 = 6 L. B. R. 129.]

(2136)—*Ss.* 207, 254, 423 (*B*)—*Penal Code, s.* 326—*Jurisdiction of Magistrate.*—A reference to ss. 207 and 254 of the Crim. Pro. Code shows that it is not only cases which are exclusively triable by a Court of Sessions that ought to be committed for trial by the Sessions Court, but also cases in which the Magistrate cannot give adequate punishment. An offence, under s. 326 of the Penal Code, of cutting off a woman's nose with a knife, should be committed for trial by the Sessions Court. QUEEN-EMPRESS v. ABDUL, **Rat. Un. Cr. C. 577 = 16 B. 580.**

——**S. 208, paras. 1, 3. 4 (= 1882, s. 208; 1872, ss. 190, 357, 362 ; 1861, ss. 186, 198, 207).**

See COMMITMENT TO SESSIONS COURT.

(2137)—*S.* 208—*Case triable by Court of Sessions—Duty of Magistrate.*—A Magistrate inquiring into a case triable by the Court of Sessions is not empowered to frame a charge or make out an order for commitment until after he has taken all such evidence as the accused produces before him for hearing. QUEEN-EMPRESS v. AHMADI, **20 A. 264 = A. W. N. 1898, 52.** [*Diss.*, 36 C. 48 = 12 C.W.N. 1014 = 8 Cr.L.J. 221 = 1 Ind. Cas. 469; *F.*, 26 A. 177 = A. W.N. 1903, 215: *R.*, 36 M. 321 = 13 Cr.L.J. 778 = 23 M L.J. 368 = 13 M.L.J. 116 = 1912 M.W. N. 1243 = 17 Ind. Cas. 410, 13 Cr. L.J. 877 = 5 Bur. L.T. 239 = 17 Ind. Cas. 813 = 6 L B.R. 129.]

(2138)—*S.* 208 — *Duty of Magistrate to examine all witnesses produced by accused in a case triable by Sessions, before ordering committal.*—Where a person charged with an offence under s. 330, I.P.C., applied to the Magistrate inquiring into the case to issue process to compel the attendance of a number of witnesses on his behalf for examination in his Court, *held* that the Magistrate was bound to take all such evidence as the accused was prepared to produce before him, and that an order of commitment without doing so was not valid. EMPEROR v. MUHAMMAD HADI, **26 A. 177 = A.W.N. 1903, 215.** (20 A. 264, *F.*) [*Diss.*, 36 C. 48 = 12 C. W.N. 1014 = 8 Cr.L.J. 221, 1 Ind. Cas. 469 ; *R.*, 36 M. 321 = 13 Cr.L.J. 778 = 17 Ind. Cas. 410 = 23 M.L.J. 368 = 13 M.L.T. 116 = 1912 M. W.N. 1243, 5 Bur. L.T. 239 = 13 Cr.L.J. 877 = 17 Ind. Cas. 813 = 6 L.B.R. 129.]

(2139)—*S.* 208—*Enquiry preliminary to commitment—Evidence which Magistrate is bound to take—Effect of application for summoning witnesses and filing documents on date on which commitment is made.*—In an enquiry preliminary to commitment to the Court of Sessions, after the examination and cross-examination of the witnesses for the prosecution, the Magistrate fixed a date for passing necessary orders on going through the record. On this date an application was filed on behalf of the accused for a reasonable time for filing some documents and summoning some witnesses. This application was rejected. On the same day, the accused were committed to the Sessions. *Held,* that there was no contravention of s. 208. The first paragraph of the section only requires that the Magistrate should have all the evidence produced before him EMPEROR v. SARATH, **19 C.W.N. 335 = 16 Cr.L.J. 415 = 28 Ind. Cas 799 = 42 C. 608.** (20 A. 264, *Appr* ; 26 A. 177, *Expl.*)

(2140)—*S.* 208, *sub-s.* (2)—*Right to reserve cross-examination of prosecution witnesses — Refusal to grant leave to reserve—Revision—Discretion of Magistrate.*—It is impossible to construe s. 208 (2), Crim. Pro.Code, as conferring upon the accused the right, if he thinks fit, to ask for an order and to have an order made that the cross-examination of the witnesses for the prosecution may be reserved until after all the prosecution witnesses have been examined-in-chief. No revision lies against an order refusing to grant leave to the accused to reserve the cross-examination of the witnesses for the prosecution. *Quaere*—Whether the Magistrate has any discretion in the matter at all. *In re* MOHAMED KASIM, **14 M.L.T. 532 = 22 Ind. Cas. 173 = 15 Cr L.J. 29.**

(2140-*a*)—S. 208—*See* No. 2615, 3118, 4740, *infra.*

(2141)—*Ss.* 208, 209, 210, 435, 439—*Case triable exclusively by a Court of Sessions—Duty of committing Magistrate—Order of discharge passed by a Presidency Magistrate—High Court's powers in revision.*—*Per Benson and Bakewell, JJ.* (*Sundara Aiyar, J., contra*).—In a case triable exclusively by the High Court, the duty of a Magistrate is to determine whether the accused should be put upon his trial, and to

Crim. Pro. Code (Act V of 1898)—*continued.*

commit if he is satisfied that there are credible witnesses to facts which, if believed by a jury, would justify the conviction of the accused of the offence complained of. If he proceeds to weigh the evidence, to accept some statements and reject others, to deal with probabilities or to draw inferences as to knowledge or intention, he is in reality dealing with the question of the guilt or innocence of the accused, and is usurping the functions of the trial Court. The Magistrate has undoubtedly to exercise his discretion in the matter; and though it is not possible to fix positively the limits within which the Magistrate should exercise his discretion, the rule may be expressed negatively by saying that he must not in any way encroach upon the functions of a jury. (11 B. 372, 27 B. 84, 9 Bom. L.R. 225, 9 C.W.N. 829, *R.*) *Per Sundara Aiyar, J.* (*contra*).—A Magistrate need not make an order of committal when, in his judgment, the evidence adduced for the prosecution is clearly insufficient to justify the conviction of the accused, or the prosecution evidence is clearly untrustworthy. (7 C.W.N. 77, *R.*) He should no doubt realise that it is not his duty to form a final conclusion, on the evidence for the prosecution, whether the conviction of the accused, if committed, is reasonably certain; but it is his duty, to be satisfied whether there are fair grounds for concluding that the accused is guilty, so far as appears from the evidence put before the Court. It is only then that sufficient grounds can be said to exist for committing the accused for trial. *Per Benson, J.*—No doubt the High Court does ordinarily, when acting in revision, take the facts as found by the Magistrate, but there is nothing in the Code of Criminal Procedure to limit the Court's power of interference to cases where the Magistrate has ignored or contravened an express provision of law. (27 C. 126, 15 C. 608, 26 C. 746, 28 C. 652, 36 C. 994, 33 C. 1282, 12 C.W.N. 678, 33 C. 68, 13 C.L.R. 275, 28 C. 793=5 C.W.N. 749, 4 C.W.N. 613, 6 C.L.J. 705, 27 M. 223, 31 M. 511, 14 M.L.J. 329, 21 M.L.J. 484, *Cons.*) *Per Sundara Aiyar, J*—The High Court has power, under ss. 435 and 439, Crim. Pro. Code, to set aside the order of discharge under s. 209 of the Code, and to pass such appropriate order as seems fit, either directing the commitment of the accused for trial to the Sessions or directing further enquiry into the case. As a rule, the High Court does not interfere with the orders of Criminal Courts in revision, except on the ground of an error of law or a serious irregularity in procedure, which is likely to have affected the conclusion of the lower Court; but this is only a rule of practice based on the undesirability of interference by this Court merely on the ground of misappreciation of evidence; so far as the provisions of the statute are concerned, the High Court has plenary powers of interference, and it would not hesitate to exercise them, wherever the ends of justice require it, whether the error of the inferior Court be on a question of law or not. NATIONAL BANK OF INDIA, LTD. v. G.V. KOTHANDARAMA CHETTI, **14 M.L.T. 200=21 Ind. Cas. 129=14 Cr.L.J. 529=1913 M.W.N. 728.** [*F.*, 15 Cr.L.J. 373 =23 Ind. Cas. 741.]

(2142)—*Ss.* 208, 210, 212, 213, 347—*Court's duty to issue summons to accused's witnesses—Accused's delay in asking for issue of process—Effect.*—In cases of commitment, the proceedings before the Magistrate is only an inquiry preliminary to the trial, and while the law, in order to avoid unnecessary commitments, is careful to require the Magistrate to examine any witness produced before him by the accused, and provides for the Magistrate also summoning and examining witnesses for the defence before a charge is drawn up, and even gives the Magistrate a discretion (s. 212) to examine witnesses for the defence after the charge is drawn up and to then cancel the charge and discharge the accused (s. 213), it does not compel a Magistrate to summon and examine witnesses for the defence after a charge has been drawn up or even before the charge had been drawn up, if the Magistrate, for reasons to be recorded, deems it unnecessary to do so. This distinction between the duty of the Magistrate in regard to evidence *produced* before him by the accused and evidence not produced before him, but which the accused desires him to obtain by the issue of process, has to be borne in mind. An accused cannot delay asking the Magistrate to summon witnesses until the last minute, and the Magistrate is not bound to issue summons merely because the accused applies for the same, if, in his opinion, there are not sufficient grounds for doing so. The discretion in s. 347 to 'stop further proceedings' does not justify a Magistrate in disregarding the directions in ss. 208 to 210, but only requires him to stop proceeding with the case *as a trial*, and instead to commit the case to the Sessions for trial by that Court. SESSIONS JUDGE, COIMBATORE v. KANGAYA. **23 M.L.J. 368=1912 M.W.N. 1243=17 Ind. Cas. 410=13 Cr.L.J 778=13 M L T. 116=36 M. 321.** (20 A. 264, 26 A. 177, *R.*)

(2143)—*Ss.* 208, 212, 215—*Commitment—Case committed to Sessions before examination of defence witnesses—Commitment quashed.*—A charge under s. 302 of the Indian Penal Code was under inquiry by a Magistrate of the First Class. The evidence for the prosecution had been recorded, and certain witnesses for the defence had been summoned, the Magistrate also, at the request of the accused, had consented to make a local inspection, when the Sessions Judge directed the Magistrate to commit the case to Sessions, and he did so, without examining any of the witnesses for the defence and without making the intended local inspection. *Held* that the commitment should be quashed. EMPEROR v. MATHURA, **A.W.N. 1906, 306=4 Cr.L.J. 451 (452)=4 A.L.J. 44.**

(2144)—*Ss.* 208 *and* 215—*Commitment on evidence taken in the absence of accused.*—An order of commitment to Sessions based on evidence recorded, while the accused was not arrested on the charge at all, is not valid. *In re* CHINNAPPAN, **2 Weir 259=2 Weir 253.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2145)—*Ss.* 208 *and* 215—*Power of Sessions Judge to remand a case committed to the Sessions.*—The Code of Criminal Procedure nowhere authorises the return of a case committed to the Sessions to the Magistrate. Where the accused reserved the cross-examination of the prosecution witnesses to the Court of Sessions, *held*, that the Sessions Judge had no power to remand the case to the Magistrate for the cross-examination of the witnesses. *In re* SARADHI NAIKO, **2 Weir 260.**

(2146)—*Ss.* 208, 252 (=*Crim. Pro. Code,* 1872, *s.* 362)—*Scope of the section—Issue of summons for witnesses by prosecution—Discretion of Magistrate to dispense with examination of witnesses summoned.*—S. 362 applies to the course that may be taken before, not after, the issue of summonses. A Magistrate, therefore, has no discretion to dispense, after the issue of summonses by the prosecution, with the examination of the prosecution witnesses. Where the witnesses summoned are in default, the proper course for the Magistrate is to proceed to enforce their attendance in the manner provided in s. 355 of the Code. QUEEN v. PARASURAMA NAIKAR, **4 M. 329.** [*D.*, 12 Cr. L.J. 105 (106)=9 Ind. Cas. 606=9 M.L.T. 302, 1911 1 M.W.N. 149=9 Ind. Cas. 940=12 Cr. L.J. 168.]

(2147)—*Ss.* 208, 252, 344 (=*ss.* 190 *and* 194 *of the Code of* 1872)—*Remand of accused to jail, without examining witnesses.*—S. 194 must be read as a proviso to the provisions of s. 190. It qualifies s. 190 to this extent, that the commencement of the enquiry or the further enquiry, if it is commenced, may be deferred if, from the absence of a witness or from any reasonable cause, it becomes necessary or advisable to defer it, and in that case the Magistrate, in place of immediately examining the complainant and witnesses as required by s. 190, may remand the accused person. MANIKAM MUDALI v. QUEEN, **6 M. 63=2 Weir 409=2 Weir 577=2 Weir 656.**

(2148)—*Ch.* XVIII, XXI, *ss.* 208, 256, 439—*Procedure in cases triable by Court of Session—Revision— Practice — Precedents.*—Ordinarily the High Court is most unwilling to interfere with interlocutory orders in revision, but it will do so where it is abundantly clear that the Court below has not adopted the procedure prescribed by law but has followed a procedure of its own. The practice of a Magistrate, in inquiries into cases triable by a Court of Session, not to allow any cross-examination before he frames a charge-sheet, or till such time that the examination-in-chief of all witnesses for prosecution is over, is contrary to law and must be avoided. A Magistrate has no power to curtail the cross-examination of witnesses except as provided in the Code of Criminal Procedure or the Evidence Act. The wording of s. 208 of the Code of Criminal Procedure makes it clear that the intention of the Code was that, as each witness was examined, he should be then and there cross-examined and re-examined and allowed to go home. The Code has consideration for witnesses and their convenience, but this consideration is not always shared by Magistrates. The procedure prescribed by ch. XVIII of the Crim. Pro. Code, compared with that prescribed by ch. XXI. A Magistrate in the Province of Agra should follow the precedent of the Allahabad High Court. DURGA DATT v. KING-EMPEROR, **10 A.L.J. 144=13 Cr.L.J. 443=15 Ind. Cas. 75.**

(2149)—*Ss.* 208 *and* 347—*Commitment to the Court of Sessions under s.* 347 *not controlled by s.* 208—*High Court's criminal appellate jurisdiction—Power to quash commitment to the High Court Sessions.*—S. 347, Crim. Pro. Code, is not to be read as subject to the provisions of s. 208, Crim. Pro. Code, and it is not imperative on the Magistrate after the prosecution has closed its case and the Magistrate has decided to commit the accused for trial to the Court of Sessions in exercise of his powers under s. 347, Crim. Pro. Code, to allow the accused to cross-examine the witnesses for the prosecution or to call witnesses in his defence. *Quære* :—Whether the High Court in the exercise of its ordinary criminal appellate jurisdiction, has power to quash a commitment made to it for trial under the ordinary original criminal jurisdiction. PHANINDRA NATH MITRA v. EMPEROR, **36 C. 48=12 C.W.N. 1014=8 Cr. L.J. 221=1 Ind. Cas. 469.** (Rat. Un. Cr. C. 975, *F.*; 20 A. 264, 26 A. 177, *Diss.*; 21 C. 642, *D.*) [*R.*, 36 M. 321=23 M.L.J. 368=13 M.L.T. 116=1912 M.W.N. 1243=17 Ind. Cas. 410=13 Cr. L.J. 778, 13 Cr. L.J. 877=17 Ind. Cas. 813=6 L.B.R. 129=5 Bur. L.T. 239.]

——**S. 209 (=1882, s. 209; 1872, s. 195; 1861, s. 225; Presidency Magistrate's Act, 1877, s. 87).**

See COMMITMENT TO SESSIONS COURT.

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

(2150)—*S.* 209—*Sessions case—Duty of Magistrate.*—Simply because a case is a Sessions case, it is not necessary that a Magistrate should, where the evidence for the prosecution discloses an offence, commit the accused for trial. He may examine the accused and his witnesses and decide whether there are sufficient grounds for commitment. EMPRESS v. DUKES, **A.W.N. 1899, 135.** [*R.*, A.W.N. 1904, 125=1 A.L.J. 292; *D.*, A.W.N. 1904, 5.]

(2151)—*S.* 209 (=*Crim. Pro. Code,* 1882, *s.* 209)—*Interpretation of section.*—*Held* that, in interpreting s. 209, Crim. Pro. Code, 1882, the ruling reported in 5 A. 161 should be followed. QUEEN-EMPRESS v. VAJA RAIJI, **Rat. Un. Cr. C. 746=Cr. Rg. 13 of 1895.**

(2152)—*S.* 209—*Duty of Magistrate to examine the accused before committal to the Sessions.*—It is a duty of a Magistrate, before committing an accused person for trial, to examine him for the purpose of enabling him to explain any circumstances appearing in the

Crim. Pro. Code (Act V of 1898)—*continued.*

evidence against him. The effect of s. 209, Crim. Pro. Code, is that it is not left to the discretion of the Magistrate, who intends to commit, to examine the accused. He is bound to examine him, and, if he makes an order of commitment without examining him, the order is irregular. QUEEN-EMPRESS v. PANDARA TEWAN, **23 M. 636=2 Weir 253.**

(2153)—*S.* 209—*Charges against a person of offence exclusively triable by Sessions and also of a minor offence—Procedure to be adopted by Magistrate in case the former offence not being proved.*—The primary object of s. 209 is to make provisions for the procedure in cases triable by Court of Sessions or High Court. If, in the opinion of the Magistrate, there is no evidence to warrant a charge of an offence exclusively triable by a Court of Sessions, he may "discharge" the accused in respect of the alleged offence and, having done so, may proceed as regards the minor offence or offences, under ch. XXI or other appropriate chapter. In fact, a Magistrate cannot proceed to act under the latter part of sub-s. (1) of s. 209 until he has "discharged" the accused under the former part of the sub-section. KRISHNA REDDI v. SUBBAMMA, **24 M. 136=2 Weir 544.**

(2154)—*S.* 209—*Order of discharge by Magistrate, in a case triable exclusively by Court o Sessions, when valid—Order of discharge by Presidency Magistrate—Power of High Court.*—An order of discharge by a Magistrate, under s. 209, in a case triable exclusively by a Court of Sessions or High Court, would be a valid order, although the Magistrate uses in the order words used in s. 253, instead of those in s. 209, if the Magistrate has considered the evidence in the case and is of opinion that no *prima facie* case has been made out. Where a finding of a Presidency Magistrate is one of fact, the High Court has no power to interfere in the exercise of its powers under the Code or the High Courts Act. It would be otherwise, if the Magistrate has ignored or contravened an express provision of the Code or some other provision of the law. But the mere fact, that the High Court might be disposed to take the view that the Magistrate discredited the prosecution evidence for insufficient reasons, is no ground for interference. CHINNASWAMI NAIDU v. VEERIAH NAIDU, **2 Weir 255=2 Weir 551=2 Weir 564.** [*R.*, 31 M. 133=7 Cr. L.J. 267=18 M.L.J. 757=3 M.L.T. 230.]

(2155)—*S.* 209 — *Commitment — Sufficient ground for.*—The words in s. 209 of the Crim. Pro. Code "sufficient ground for committing" mean, not sufficient ground for convicting, but refer to a case in which the evidence is sufficient to put the accused on his trial and such a case arises when credible witnesses make statements which, if believed, would sustain conviction. It is not necessary that the Magistrate should satisfy himself fully of the guilt of the accused before making a commitment. It is his duty to commit when the evidence for the prosecution is sufficient to make out a *prima facie* case against the accused and he exercises a wrong discretion if he takes upon himself to discharge an accused in the face of evidence which might justify a conviction. The Magistrate is entitled to consider the credibility of the evidence and need not necessarily commit because there is evidence which, if believed, would result in conviction, he can neglect that evidence if it is in his opinion incredible. KING-EMPEROR *through* BHAI KHAN v. MALI, **148 P.L.R. 1903.** (11 B. 372, 27 B. 84, *F.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

(2156)—*S.* 209—*Accused, whether can be committed on evidence to be given in future—Magistrate, when bound to discharge.*—A commitment of an accused to the Sessions must depend on evidence actually before the Court and not on evidence that may be given in future. A Magistrate is bound to discharge an accused under s. 209, Crim. Pro. Code, if he believes that he has committed no offence. SREEMANTA CHATTERJEE v. SURENDRA NATH BISWAS, **16 Cr. L.J. 5=26 Ind. Cas. 309.**

(2157)—*S.* 209 — *Committing Magistrate—Committing a case to the Court of Session—Magistrate's discretion to discharge the accused.*—Where a Magistrate finds that there are no sufficient grounds for committing the accused person for trial—either because there is no evidence whatever or because the evidence appears to him to be totally unworthy of credit—it is his duty under s. 209 of the Crim. Pro. Code, 1898, to discharge the accused, since the grounds relied on for a commitment would, in his opinion, be insufficient. Where, however, the Magistrate entertains any real doubt as to the weight or quality of the evidence, the task of resolving that doubt and assessing the evidence should be left to the Court of Session. *In re* BAI PARVATI, **12 Bom. L.R. 923=8 Ind. Cas. 631.** (11 B. 392, 9 Bom. L.R. 225, 5 A. 161, *R.*)

(2158)—*S.* 209—*Power of trying Magistrate to discharge—Scope of his enquiry in a charge triable by the Court of Session.*—In the case of offences which are triable solely by a Court of Session, the Magistrate cannot be considered to have the power to proceed to the trial of the accused in these enquiries, and the chief business of the Magistrate is to see whether the prosecution has adduced such evidence as is not on the face of it absolutely incredible on every ingredient of the offence that is charged. Where, in a charge under ss. 463 and 464 of the Penal Code, the fact of the alteration of the promissory note was proved but no evidence was adduced to prove that either of the accused altered the document in question, *held* that the trying Magistrate has power to discharge the accused. NARASAPPAYA v. NARASAYYA SHANBHOGE, **1915 M.W.N. 233=16 Cr. L.J. 307=28 Ind. Cas. 643.**

(2159)—S. 209 — *See* DISCHARGE OF ACCUSED, 12 Bom. L.R. 923=8 Ind. Cas. 631.

(2160)—S. 209—*See* MAGISTRATE—JURISDICTION OF—COMMITMENT TO SESSIONS COURT, 10 P.R. 1909, Cr., 11 Cr. L.J. 18=4 Ind. Cas. 612=3 P.W.R. 1909, Cr.

Crim. Pro. Code (Act V of 1898)—*continued.*

(2161)—S. 209— *See* Nos. 210, 809 and 2141, *supra*, and No. 3032, *infra*.

(2162)—*Ss.* 209, 210 (=*Crim. Pro. Code*, 1861. *ss.* 225, 226)—*Procedure of Magistrates as to commitment.*—S. 226 provides that if a Magistrate finds that the evidence before him is sufficient for the conviction of the accused person of an offence triable by a Court of Session, he must send the accused person for trial before the Court of Session. S. 225 enacts that when a Magistrate finds that there are not sufficient grounds for committing or for remanding him he shall discharge him. Such a discharge does not amount to an acquittal and the accused would be liable to further proceedings if necessary. If the evidence given before a Magistrate upon a preliminary enquiry relating to an offence exclusively triable by a Court of Session satisfies him that the act or omission charged against the accused is brought within one of the general exceptions of the Penal Code, the Magistrate would be wrong in committing the accused for trial. CRIMINAL CIRCULAR NO. 1 OF 1867, **7 W.R. Cr. Cir. 1.**

(2163)—Ss. 209, 210—*See* DISCHARGE OF ACCUSED, 5 A. 161.

(2164)—Ss. 209 and 210—*See* PRELIMINARY ENQUIRY, 14 P.R. 1908, Cr. = 20 P.W.R. 1908, Cr. = 8 Cr. L J. 263.

(2165)—Ss. 209, 210 — *See* REVISION —GENERAL PRINCIPLES, 5 A. 161.

(2166)—Ss. 209, 210, 436—*See* COMMITMENT TO SESSIONS COURT, 7 C.W.N. 77.

(2167)—Ss. 209, 210, 438 (1), 436—*See* REVIVAL OF CRIMINAL PROCEEDINGS, 4 C. 16.

(2167-*a*)—*Ss.* 239, 210, 212, 439, 526—*Magistrate — Power to discharge — Discretion— Evidence of prosecution disbelieved or defence evidence believed.*—When a Magistrate has heard the evidence of the prosecution with entire disbelief, when he considers himself in a position to show that the prosecution witnesses are totally unworthy of credit, and *a fortiori* when, after examining certain witnesses named on behalf of the accused, he has come to the conclusion that evidence given by them is reliable and disproves that given by the prosecution, he is well within his discretion in discharging the accused. DHARAM SINGH v. JOTI PRASAD, 13 A.L J. 497 = 16 Cr. L J. 429 = 28 Ind. Cas. 1005. (26 A. 564, 9 C.W.N. 829, 35 B. 163, *R.*)

(2168)—Ss. 209, 210, 470, 471 (=Crim. Pro. Code, 1861, ss. 225, 226, 393 and 394)—*See* INSANITY, 8 W.R. Cr. Cir. 3.

(2169)—Ss. 209, 213, 215 and 436—*See* COMMITMENT TO SESSIONS COURT, 7 C.W.N. 327.

(2170)—Ss. 209 and 215—*See* DISCHARGE OF ACCUSED, 2 Weir 258 = 7 M.H.C. App. 40.

Crim. Pro. Code (Act V of 1898)—*continued.*

(2171)—*Ss* 209, 253 (=*Crim. Pro. Code.* 1882, *ss.* 209, 253)—*Right of Magistrate to refrain from proceeding with enquiry.*—The second paragraph of s. 209 and para. 2 of s. 253 of the Code relieve a Magistrate from the necessity of going on with an enquiry or trial when he is reasonably convinced, on what has already been deposed to, that a criminal charge cannot be sustained. The most common case of this kind is when the account given of a transaction by a prosecutor himself is such as to deprive it of a criminal character. In such a case, it would generally be a mere waste of time to go on taking collateral evidence which could have no effect in sustaining a charge virtually contradicted by the person most interested in establishing it. DHANJIBHOY v. PYARJI, **Rat. Un. Cr. C. 201.** [*R.*, 35 B. 163 = 12 Bom. L.R. 923 = 11 Cr. L.J. 692 = 8 Ind. Cas. 631.]

(2172)—*Ss.* 209, 253, 435, 439 (=*Crim. Pro. Code*, 1882, *ss.* 209, 253. 435, 439)—*Grounds for setting aside an order of discharge—Court having jurisdiction to set aside order of discharge.*—The series of ss. 435 to 439 must be read together. Of these s. 435 is the principal section dealing with the grounds upon which revisional jurisdiction may ordinarily be exercised. According to the section, every finding, sentence or order is liable to review, not only on the ground of irregularity, but also on the ground of incorrectness; that is to say, on the ground that it is wrong on the merits. An order of discharge, under s. 209 or s. 253 is no exception to the general rule. The order of discharge may also be set aside, under subsequent sections, on other grounds, such as discovery of fresh evidence. The High Court, the Court of Sessions, and the District Magistrate, all have power, as Courts of revision, to deal with an order of discharge on the merits as well on other grounds. The High Court has power, under s. 439, to deal as a Court of revision with any finding, sentence or order which come under its notice. HARI DASS SANYAL v. SARITULLA, **15 C. 608, F.B.** [*F.*, 21 C. 931, 28 C. 652 = 5 C.W.N. 457, F.B.; *R.*, 40 C. 477 = 17 C.L.J. 245 = 17 C.W.N. 647 = 19 Ind. Cas. 197 = 14 Cr.L.J. 197, 8 Cr.L.J. 51 = 12 C.W.N. 822 = 8 C.L.J. 73, 10 Cr.L.J. 299 = 3 Ind. Cas. 488 = 32 M. 214 = 5 M.L.T. 356, 14 Cr.L.J. 230 = 9 N.L.R. 42 = 19 Ind. Cas. 326, 14 Cr. L.J. 529 = 14 M.L.T. 200 = 21 Ind. Cas. 129 = 1913 M.W.N. 728.]

(2173)—Ss. 209 and 304—*See* CONFESSION —CONFESSIONS TO MAGISTRATES—ADMISSIBILITY—RECORD OF CONFESSIONS, 2 C.W.N. 702.

(2174)—*Ss.* 209 *and* 436 — *Discharge by Magistrate of an accused person charged with offence triable exclusively by Court of Sessions —Acquittal of a charge of offence triable by Magistrate himself—Order by Sessions Judge for further inquiry or committal, legality of.*— A Magistrate framed a charge of theft against three persons. The prosecution also asked that a charge might be framed under s. 477,

Crim. Pro. Code (Act V of 1898)—*continued.*

Penal Code, but this the Magistrate declined to do, there being no direct evidence that the accused had destroyed or secreted the promissory note about which the charges were framed. In the end, after hearing evidence for the defence, the Magistrate acquitted the accused under s. 258 of the Code of Criminal Procedure. The Sessions Court ordered a further inquiry and directed that the accused should be committed to the Sessions Court under s. 477, Penal Code. *Held*, that the order of the Magistrate was in substance an order discharging the accused in respect of an alleged offence under s. 477, Penal Code, and the Sessions Judge was therefore acting within his jurisdiction in having made an order for further inquiry under s. 436, Crim. Pro. Code. KRISHNA REDDI v. SUBBAMMA, **24 M. 136 = 2 Weir 544.**

(2175)—*Ss.* 209, 436, 437—*Case exclusively triable by Court of Sessions — Discharge by Magistrate—Commitment by District Magistrate —Revision—High Court, power of.*—It cannot be said that a Magistrate has no power whatever to pass an order of discharge in a case "exclusively triable by a Court of Session." Where the entire prosecution evidence is quite unworthy of credit and bristles with improbabilities and where it is clear that the case is foredoomed to failure at the Sessions, it is the duty of the subordinate Magistrate to discharge the accused. (21 Ind. Cas. 129 = 14 M.L.T. 200 = 14 Cr. L.J. 529 = 1913 M.W.N. 728, 8 Ind. Cas. 631 = 12 Bom. L.R. 923 = 35 B. 163 = 11 Cr. L.J. 692, *F.*) Where an order of discharge passed by a Magistrate under s. 209, Crim. Pro. Code, is revised by the District Magistrate and a commitment to the Sessions Court is directed, the High Court, acting under s. 437 of the Code of Criminal Procedure, can interfere and can even go into questions of fact to see if the order of the District Magistrate was correct and proper. *In re* DAMAPPA PALAI, **15 Cr. L.J. 373 = 23 Ind. Cas. 741.** (30 M. 224 = 16 M L.J. 529 = 5 Cr. L.J. 100, *F.*)

(2176)—Ss. 209, 436, 437—*See* SESSIONS JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 837 = Cr. Rg. 2 of 1896.

——**S. 210 (= 1882, s. 210 ; 1872, ss. 195, 196, 198, 199 ; 1861, ss. 226, 227, 233).**

See COMMITMENT TO SESSIONS COURT.

See MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

(2177)—*S.* 210—*Magistrate—Commitment to Court of Sessions—Practice as to commitment.*—The High Court deprecated the practice followed by some Magistrates of adding charges apparently for the purpose of enabling them to commit those cases to the Court of Session without any reasonable ground for the addition. EMPEROR v. MAHAMED KHAN, **11 Bom. L.R. 18 = 5 M.L.T. 225 = 9 Cr. L.J. 163 = 1 Ind. Cas. 104.** [*R.*, 1 Bom. Cr.C. 17 = 13 Bom.L.R. 201.]

(2178)—S. 210—*See* ACT III OF 1877, s. 83, 15 W.R. Cr. 58 = 6 B.L R. F.B. 692.

(2179)—S. 210—*See* Nos. 2141, 2142, 2162, 2163, 2164, 2165, 2167 and 2168, *supra.*

——**S. 211 (= 1882, s. 211, 1872, s. 200, paras. 1 and 3 ; 1861, ss. 227, 228).**

See COMMITMENT TO SESSIONS COURT.

(2180)—*S.* 211—*Asking accused to give a list of defence witnesses.*—A Magistrate is, under s. 211 (1) of the Code, bound to require the accused to give a list of witnesses he desires to call. It is not enough to put him the question, "Have you any evidence ?" since the question is ambiguous and might suggest to the accused only an enquiry as to whether he had witnesses ready in Court. EMPEROR v. KONDI RAGHU, **7 Bom. L.R. 723 = 2 Cr.L.J. 601.**

(2181)—S. 211—*See* WITNESS—MISCELLANEOUS CASES, 19 A. 502 = A.W.N. 1897, 134.

(2182)—Ss. 211 and 216—*See* WITNESS—SUMMONS TO WITNESSES, 4 M.H.C. 81.

——**S. 212 (= 1882, s. 212 ; 1872, s. 200, para. 2).**

See COMMITMENT TO SESSIONS COURT.

(2183)—*S.* 212 (= *Crim. Pro. Code*, 1882, *s.* 212)—*Reserving of defence.*—Where an accused person against whom a charge is framed under s. 210 reserves his defence, the committing Magistrate is not precluded from exercising his discretion under s. 212, and from summoning and examining the witnesses named for the defence. The law does not require that he should record his reasons before exercising such powers. He is given a discretion which he may be trusted to use properly, and it will be for the person impugning his order to satisfy the High Court that a judicial discretion has not been used, before that Court can interfere. *In the matter of the petition of* RUDRA SINGH, **18 A. 380 = A.W.N. 1896, 114.**

(2184)—S 212—*See* Nos. 2142, 2143 and 2167-*a*, *supra.*

(2185)—*Ss.* 212, 237 (2), 437—*Committing Magistrate, powers of—Discharge—Further enquiry—Medical evidence—Expert—Opinion of.*—A Magistrate, holding enquiry into a case triable exclusively by a Court of Sessions, is entitled, at any rate to some extent, to weigh the evidence produced before him, and to pronouuce as to its credibility and to discharge the accused if he is of opinion that there is no credible evidence to establish a *prima facie* case against him. The accused was discharged by the District Magistrate. He could only be found guilty, if the medical evidence of the Assistant Surgeon examined by the Magistrate were held incredible. On revision in the Chief Court, notice was issued to the accused to show cause why further enquiry should not be ordered in the case. This was done by the Judge after discussing the case with the Civil Surgeon of Lahore, but no record was made of the opinion given by the Civil Surgeon. At the hearing the accused tendered written opinions of a large number of the leading medical men practising in

Crim. Pro. Code (Act V of 1898)—*continued.*

the Punjab supporting the Assistant Surgeon's opinion. *Held*, that the opinions were not admissible, nor was anything which the Civil Surgeon may have stated. As there were no reasons to suppose that the Assistant Surgeon was corrupted and the injuries described by him were not correct, the rule was discharged. MIR ABDULLAH v. CROWN, **215 P.L.R. 1910 = 8 Ind. Cas. 1044.** (10 P.R. 1909 = 24 P.L.R. 1909, *F.*; 27 B. 84, 14 P.R. 1908 = 107 P.L.R. 1908, *R.*)

(2186)—*Ss.* 212, 347—*Magistrate, power of, to commit to sessions after summoning and examining defence witnesses.*—The discretion given to a Magistrate to commit a case to the Sessions, under s. 347 of the Code of Criminal Procedure, is neither restricted nor taken away merely because he issues summons to the defence witnesses under s. 212 of the Code and examines them. *In re* THE SESSIONS JUDGE, MADURA, **15 Cr. L.J. 704 = 26 Ind. Cas. 152.** (1 Ind. Cas. 469 = 12 C.W.N. 1014 = 8 Cr.L.J. 221 = 36 D. 48, *F.*; 20 A. 264 = A.W.N. 1898, 52, 26 A. 177 = 1 Cr. L.J. 357, *Diss.*)

——S. 213 (= 1882, s. 213; 1872, ss. 198, 200, para 2; 1861, ss. 229, 233).

See COMMITMENT TO SESSIONS COURT.

(2187)—*S.* 213—*Commitment—Discharge of accused without further evidence — Duty of Magistrate.*—S. 213 gives a committing Magistrate power to cancel a charge when he has heard witnesses for the defence. A Magistrate who has framed a charge against an accused with a view to commitment cannot discharge him without taking further evidence. Where credible witnesses make statements which, if believed, would sustain a conviction, the Magistrate ought to commit. KING-EMPEROR v. NGA PO SAW, **2 L.B.R. 140.** (11 B. 372, *R.*)

(2188)—*S.* 213—*Joint charge against several persons—Committal of one of them to Sessions.*—Where several persons are jointly charged with the same offence, and it is considered necessary to commit one of them to Sessions, the most convenient course is that all the prisoners should be so committed. Where a Magistrate adopts a different course, it cannot, however, be held that he has acted in contravention of any provision of law. *In re* KATHU CHENCHUGADU, **2 Weir 258.**

(2189)—*S.* 213—*Magistrate—Committing a case—Reasons for committal—Registration Act, 1908, s.* 83 (2).—A Magistrate duly empowered to try a case under s. 83 (2), Registration Act, committed the case to the Court of Session without giving any reasons: *Held*, that as the case was triable either by the Magistrate himself or by the Court of Session, the Magistrate was bound to record not merely reasons for not discharging the accused, but also reasons for sending him to the Court of Sessions; and that the failure to do so amounted to an illegality. EMPEROR v. NANJI SAMAL, **15 Bom. L.R. 999 = 2 Bom. Cr. C. 166.**

(2189-*a*)—*S.* 213, *sub-s.* 2—*Penal Code, ss.* 408 *and* 477-*A*—*Inquiry into cases triable by the Court of Session—Cross-examination of prosecution witnesses after charge—Order of discharge and acquittal thereafter, if proper*—"*Witnesses for the defence,*" *meaning of.*—Where, in an enquiry under Ch. XVIII of the Code of Criminal Procedure, the Magistrate, after having drawn up a charge against the accused with a view to his commitment to the Court of Session, allowed him to cross-examine the witnesses for the prosecution, and as result cancelled the charge. *Held*—It was open to the Magistrate to take this course. The words "witnesses for the defence" in s. 213, sub-s. 2 of the Code of Criminal Procedure, are wide enough to cover evidence extracted by cross-examination from the witnesses for the prosecution. JOGENDRA NATH MUKHERJI v. MOTI LAL CHAKERBUTTY, **16 C.W.N. 1155 = 39 C. 85 = 17 Ind. Cas. 406 = 13 Cr. L.J. 774.** (5 C.W.N. 110, 112, *R.*)

(2190)—S. 213—*See* Nos. 1543, 2131, 2142 and 2169, *supra* and 3482, *infra.*

(2191)—Ss. 213 to 215, 477, 478, 498—*See* ACT IV OF 1871, ss. 24, 25, 26, 29, 31 C. 1 = 7 C.W.N. 889.

——S. 214 (= 1882, s. 214; 1872, s. 197, without Explanation).

See COMMITMENT TO SESSIONS COURT.

(2192)—S. 214—*See* MAGISTRATE, JURISDICTION OF — COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 110.

(2193)—S. 214—*See* No. 2191, *supra.*

(2194)—*Ss.* 214, 477, 487 (= *Crim. Pro. Code,* 1872, *ss* 197, 472, 473)—*False evidence given before Sessions Court—Committal to same Court—Competency.*—The prohibition contained in s. 473 extends also to the offence of giving false evidence, and consequently, a Sessions Judge cannot try any person for such an offence committed before himself. Where a Magistrate committed a person for trial before the Sessions Court for the offence of giving false evidence before the same Court, and there was no Assistant Sessions Judge or Joint Sessions Judge, *held* that, although the commitment cannot be quashed, as there was no irregularity in it. Sessions Judge should be directed to transfer the case for trial by another Court of Sessions. *Held*, further, that in such cases, the Magistrate should try the case himself, and that, if the sentence which the Magistrate was competent to pass was not sufficient the Sessions Judge should refer the case to the High Court for enhancement of sentence. REG v. GAJI *kom* RANU, **1 B. 311.** [*R.*, 14 A. 354 = 1892 A.W.N. 32, L.B.R. 1872—1892, 256; *D.*, 10 B. 274.]

——S. 215 (= 1882, s. 215).

See COMMITMENT TO SESSIONS COURT.

(2195)—*S.* 215—*Commitment when could be quashed.*—Under s. 215, a commitment once made by a competent Magistrate can be quashed by the High Court only, and that only on a point of law. KING-EMPEROR v. PANDURANG, **3 Bom. L.R. 703.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2196)—*S.* 215—*Commitment to Court of Sessions of a summons case— Commitment quashed.*—Where a Magistrate, finding that there was a *prima facie* case against an accused person, under ss. 352 and 447 of the Indian Penal Code, committed the accused to the Court of Sessions, it was *held* that the commitment was wrong on a point of law, first, because there is no warrant for the commitment of such cases and, secondly, because the maximum punishment under each offence was one which the Magistrate could inflict. KING-EMPEROR v. DHARAM SINGH, **A.W.N. 1906, 28=3 A.L.J. 14=3 Cr. L.J. 94=1 M.L.T. 61.** [*F.*, 6 A. L.J. 989=11 Cr. L J. 54=4 Ind. Cas. 812.]

(2197)—*S.* 215—*Power of Sessions Judge, on commitment, to try a case not triable exclusively by a Court of Session, or to set it aside and refer it back to the Magistrate for trial—Powers of High Court.*—Though the offence of theft in a building is not triable exclusively by a Court of Session, there is nothing to prevent such a Court from trying a person accused of such an offence and duly committed to it for trial. Such committal can be set aside only by the High Court under s. 215 of the Code. The Sessions Judge has no power to set it aside and direct the Magistrate to try the case himself. *In re* BHEEMA, **16 M.L J. 525=5 Cr. L J. 99.**

(2198)—*S.* 215—*Reference to the High Court to set aside a commitment, when to be made.*—After the accused has been put on his trial in the Sessions Court, has pleaded not guilty and has been tried with the aid of assessors, the High Court would not quash the commitment on a reference by the Sessions Judge. The Judge should proceed according to law and dispose of the case under Ch. XXIII (E), or the Public Prosecutor may, with the consent of the Court, withdraw from the prosecution under s. 494. SESSIONS JUDGE OF TRICHINOPOLY v. AROKIA PADAYACHI, **2 Weir 252.**

(2199)—*S.* 215—*Order of commitment—High Court's power to set it aside.*—Where the order of commitment rested upon a misapprehension, and there was no evidence upon which the order could be supported, *held*, that the High Court had jurisdiction under s. 215 to set aside the order. *In re* JAGATHAMBAL, **2 Weir 262.**

(2200)—*S.* 215—*Quashing commitment.*—A commitment to a Court of Sessions cannot be quashed, after the accused has been put on his trial and has pleaded to the charge. CROWN v. HAJI *wd.* ALAMKHAN, **9 Cr. L.J. 250=1 S.L. R. 6, Cr.**

(2201)—*S.* 215—*No evidence to justify commitment—Accused entitled to acquittal—High Court will not quash such commitment.*—When there is no evidence to justify a commitment, it is not open to the High Court to quash it. (6 A. 98, *Not F.*; 10 Ind. Cas. 802=12 Cr. L.J. 256=13 Bom. L.R. 201, *F.*) The accused is entitled to be acquitted even if the case is one for further inquiry. *In re*, SESSIONS JUDGE OF COIMBATORE, **27 M.L.J 593=25 Ind. Cas. 993=15 Cr. L J. 665.** (2 C.L.J. 46=2 Cr. L.J. 383, *R.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

(2202)—S. 215—*See* Nos. 106, 1813, 1822, 1823, 1824, 1948, 2131, 2132, 2133, 2143, 2144, 2145, 2169, 2170, 2191, *supra.*

(2203)—*Ss.* 215 *and* 227—*Expunging charge and substituting another.*—Where an accused person is committed to stand his trial on a specific charge before the Sessions Court, the Sessions Judge has no power to expunge a charge before calling upon the accused to plead to it, as it is practically quashing a commitment in direct contravention of s. 215, Crim. Pro. Code. EMPRESS v. BALIRAM, **10 C.P.L.R. Cr. 13.** (8 B. 200, 9 A. 525, 12 A. 551, 7 C.L.R. 143, *R.*)

(2204)—Ss. 215, 235, 239—*See* COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. Cas. 915, A.W.N. 1885, 53, 1 L.B.R. 88.

(2205)—*Ss.* 215, 346, 347, 349—*Commitment once made can be quashed only on point of law—S. 347 to be read subject to s.* 208.—Where a Magistrate thinks from the first that a case ought to be tried by a Court of Session, the procedure laid down in Chapter XVIII of the Code of Criminal Procedure is *prima facie* obligatory on him, and he must, under s. 208, take all such evidence as may be produced for the prosecution or on behalf of accused and give the accused an opportunity to cross-examine the prosecution of witnesses. S. 347 has no applicability in such a case. The words "stop further proceedings" in s. 347 refer obviously to proceedings of a trial or of an inquiry with a view to a trial by himself when it appears to the Magistrate that the case is one which ought to be tried by the Court of Sessions or the High Court. A commitment made without examining prosecution witnesses and allowing the accused an opportunity to cross-examine is illegal and must be quashed. (*Robinson, J. contra.*) *Per Robinson J., dissenting*:—S. 347 applies to *all inquiries whatsoever.* EMPEROR v. CHANNING ARNOLD, **6 L.B.R. 129=5 Bur. L.T. 239=17 Ind. Cas. 813=13 Cr. L.J. 877, F.B.**. [*F.*, 15 Cr. L.J. 366=23 Ind. Cas. 734.]

(2206)—*Ss.* 215, 347—*Order of committal—Quashing of—Point of law—Practice.*—An order of committal to the Sessions Court cannot be quashed by the High Court on the ground that there is no evidence in the committing Magistrate's record to sustain the charges. The committal can be quashed on a point of law only. EMPEROR v. SULIMAN IBRAHIM NAKHUDA, **13 Bom. L.R. 201=10 Ind. Cas. 802=12 Cr. L J. 256.**

(2207)—Ss. 215, 403, 423, 433, 530—*See* SESSIONS JUDGE, JURISDICTION OF, 29 C. 412.

(2208)—*Ss.* 215 *and* 436—*Offence triable exclusively by Court of Sessions—Discharge by Magistrate.*—The mere fact that a Magistrate discharged an accused person who was charged with an offence triable exclusively by a Court of Sessions would not make the discharge invalid. SANKARAYYA v. KARALA SUBBA AIYA, **2 Weir. 260=2 Weir 551.**

(2209)—Ss. 215, 436—*See* COMMITMENT TO SESSIONS COURT, 6 M. 372=2 Weir 541.

Crim. Pro. Code (Act V of 1898)—*continued.*

(2210)—*Ss.* 215, 436, *Proviso (a)—Commitment without notice to accused—Revision.—Held*, that an order of commitment made in contravention of s. 436 (*a*), Crim. Pro. Code, without allowing the accused an opportunity of showing cause against it, is illegal and liable to be set aside on revision. ANOKHA SINGH *v.* THE CROWN, 28 **P.W.R. 1913, Cr.** =**312 P.L.R. 1913** =**14 Cr. L.J. 605**=**21 Ind. Cas. 477.** (15 M. L.J. 373, *F.*)

(2211)—*Ss.* 215, 436, 439—*Power of Sessions Judge to order commitment—High Court's power of interference.*—S. 215 refers only to a commitment actually made. It is open to the High Court to consider whether the Sessions Judge has or has not exercised a proper judicial discretion under s. 436 in setting aside a Magistrate's order of discharge, and for this purpose, the High Court may consider the facts as well as the questions of law involved. Though the High Court has this power, it will only exercise it, where it is manifest that the Sessions Judge's order is improper, *e.g.*, where there is no evidence to prove the offence charged, or where it is clear that the Court would not act on the evidence. *In re* MUTHIAH PILLAI, **16 M.L.J. 529**=**5 Cr. L.J. 100**=**30 M. 224.**

(2212)—*Ss.* 215, 436 *and* 526—*Quashing of commitments by High Court.*—S. 215 is inapplicable to cases in which the commitment is not one made under any of the four sections therein specified, but is one made under the direction of the High Court under s. 526 (1) (iv). The order of a Sessions Judge or District Magistrate passed under s. 436 directing commitment can be quashed by the High Court in the exercise of its revisional powers, though not under s. 215. But an order passed by the High Court itself under s. 526 cannot be so revised. *In the matter of* KALAGAVA BAPIAH, 27 **M. 54**=**2 Weir 227**=**2 Weir 578**=**2 Weir 263.**

(2213)—*Ss.* 215, 438—*Commitment made without direct evidence.*—A commitment made without direct evidence and merely on presumption, is not erroneous in point of law, and, as such, cannot be quashed under s. 215. EMPRESS *v.* ANANDA KISHORE CHOWDHURI, **4 C.W.N. cxvi.**

(2214)—Ss. 215, 478—*See* COMMITMENT TO SESSIONS COURT, 26 M. 139=2 Weir 197 =2 Weir 577.

(2215)—*Ss.* 215, 494, 537—*Commitment order —Quashing of.*—A commitment order can be quashed only on a point of law under s. 215 of the Code, such as want of territorial jurisdiction in the committing Magistrate. But the commitment would be valid unless a failure of justice had been in fact caused by such commitment (s. 537). A commitment order cannot be quashed merely on the ground that the evidence was doubtful. The proper course would be for the District Magistrate in such a case to instruct the Public Prosecutor to withdraw under s. 494, Crim. Pro. Code. KING-EMPEROR *v.* NGA TAUNG THU, **7 Bur. L.T. 26**=**23 Ind. Cas. 478**=**15 Cr. L.J. 270.**

Crim. Pro. Code (Act V of 1898)—*continued.*

——**S. 216 (=1882, s. 216 ; 1872, ss. 358, 359 ; 1861, ss. 227, 228).**

See COMMITMENT TO SESSIONS COURT.

(2216)—*S.* 216 (=*Crim. Pro. Code*, 1872, s. 359)—*Refusal to summon defence witnesses.*—The only ground on which a Magistrate may refuse to summon a witness for the defence, under s. 359 (s. 216), is when he thinks that the witness has been included in the list for purposes of vexation and delay. He will not be justified in refusing to summon such witness, merely on the ground that his testimony would not be material or reliable. *In re* MARNAGI REDDI, **2 Weir 263.**

(2217)—*S.* 216 (=*Crim. Pro. Code*, 1872, s. 359)—*Refusal to re-summon a witness on failure to attend.*—Where a witness cited on behalf of the accused was summoned to attend on the day fixed for the hearing of the case, and owing to some delay in the service of the summons, the witness did not attend, the Magistrate was bound to make a further attempt to secure the attendance of the absent witness, and the provisions of s. 359 were not applicable to the case. EMPRESS OF INDIA *v.* RUKN-UD-DIN, **4 A. 53**=**A.W.N. 1881, 102.**

(2218)—*S.* 216 (=*Crim. Pro. Code*, 1872, s. 359)—*Construction.*—The meaning of s. 359 of the Crim. Pro. Code, 1872, is that, if, among the persons named by the accused as witnesses, the Magistrate considers that any particular witness is included for the purpose of vexation and delay, he is to exercise his judgment and enquire whether such witness is material. It does not at all enable a Magistrate to enquire, generally, into what the defence of the accused is to be and to consider whether he is absolutely to abstain from summoning the whole of the witnesses cited by the accused. EMPRESS *v.* RAJCOOMAR SINGH, **3 C. 573**= **1 C.L.R. 352.**

(2219)—*S.* 216 (=*Crim. Pro. Code*, 1872, s. 359)—*Refusal to summon witnesses.* — A Magistrate is not at liberty to refuse to summon the witnesses tendered by the accused, except on the grounds specified in s. 359 of the Code. The fact that the accused stated that he did not wish to examine the witnesses, whom he now tendered, at the close of the case, is no reason for refusing to summon them to meet fresh evidence taken by the Magistrate, after hearing the arguments on behalf of the defence. *In the matter of* DEELA MAHTON, **8 C.L.R. 70.**

(2220)—S. 216—*See* WITNESS — SUMMONS TO WITNESSES, 6 C. 714.

(2221)—S. 216, proviso II—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 2 Weir 263=6 M.H C. App. 9.

(2222)—Ss. 216, 291, 540—*See* WITNESS—SUMMONS TO WITNESSES, 8 A. 668.

(2223) — Ss. 216, 428—*See* WITNESS — SUMMONS TO WITNESSES, 19 M. 375=2 Weir 680=6 M.L.J. 195.

Crim. Pro. Code (Act V of 1898)—*continued.*

——S. 217 (=1882, s. 217; 1872, s. 360; 1861, s. 232).

See COMMITMENT TO SESSIONS COURT.

(2224)—*S.* 217—*Plea of guilty, how construed —Case of murder—Penal Code*, ss. 302, 307.—In Burma where there is, as a general rule, profound popular ignorance of law, it is necessary to accept a plea of guilty, particularly in a capital case, with extreme caution. A Burman has usually no clear perception of the distinction between killing which amounts to murder and killing which is only culpable homicide not amounting to murder. NGA SAN DAIK v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 78.** (U.B.R. 1897—1901, Vol. I, 76, *R.*)

(2225)—S. 217—*See* WITNESS— SUMMONS TO WITNESSES, A.W.N. 1883, 37.

——S. 219 (=1882, s. 219; 1872, s. 357, para. 2).

(2226) — S. 219 — *See* WITNESS — MISCELLANEOUS CASES, 14 A. 212=A.W.N. 1892, 63.

——S. 221 (=1882, s. 221; 1872, s. 439; 1861, s. 234.)

See CHARGE.

(2227)—*S.* 221—*Previous conviction, proof of, when necessary—Crim. Pro. Code*, 1872, *s.* 439 (=*s.* 221 *of the Code of* 1898).—Unless a Magistrate considers that an increased sentence should be passed on an accused person, under s. 75, I.P.C., it is not necessary to specify the previous conviction, under s. 75, in the charge. If, although a Magistrate does not think it necessary that the increased punishment provided by s. 75 should be imposed, he, nevertheless, desires to obtain information as to the antecedents of the accused to determine the duration of the sentence to be imposed on him, previous conviction may, if denied, be proved in the ordinary manner. HIGH COURT PROCEEDINGS, 11TH AUG. 1883, No. 2655, **2 Weir 265.**

(2228)—*S.* 221(=*Crim.Pro.Code*, 1872, *s.* 439) —*Charge—Previous conviction— Whipping.*—Where the previous conviction is not stated in the charge, as required by the last paragraph of s. 439 (s. 221), a sentence of whipping in addition to imprisonment is not legal. HIGH COURT PROCEEDINGS, 3RD FEB. 1874, No. 218, **2 Weir 265.**

(2229)—*S.* 221 (=*s.* 439 *of the Code of* 1872) —*Charge of previous conviction.*—Where a person is charged with previous convictions, it is not sufficient to state that the accused is an "old offender," as that does not sufficiently bring home to the accused person the particular offence or class of offences which renders him liable to a more severe sentence than would otherwise be imposed. *In re* YIPPAKA DALIGADU, **2 Weir 266.**

(2230) — *S.* 221* (=*Crim. Pro. Code*, 1872, *s.* 439—*Liability to whipping —Grounds of liability to be stated both in charge and judgment.* —When an accused person is liable to be punished under the Whipping Act, the charge must state the liability, and the judgment should set out the ground of the liability to punishment under the Act, when that punishment is imposed. BADIYA v. QUEEN, **5 M. 158.**

(2231)—*S.* 221 (=*Crim. Pro. Code*, 1872, *s.* 439).—Where a previous conviction is admitted by an accused, no more proof under s. 221 of the Code is necessary. POLICE v. MAHBIR, **Colm. Dig. Cr. 42 of 1876.**

(2232)—*S.* 221 (=*Crim. Pro. Code*, 1872, *s.* 439) — *Charge — Conviction for another offence, after framing charge—Insertion in the charge.*—S. 439 makes no provision for inserting in the charge, after it has been framed, a conviction obtained after that charge was framed. EMPRESS v. SULTANI, **21 P.R. 1879, Cr.**

(2233)—*S.* 221—*Magistrates should be careful to follow the language of the Penal Code in drawing up charges.*—Forms of guidance are given in sch. V of Crim. Pro. Code, 1898. QUEEN-EMPRESS v. NGA KYAW, **U.B.R. 1892—1896, Vol. I, 32.**

(2234)—S. 221—*See* ACT VI OF 1864, L.B.R. 1872—1892, 337.

(2235)—S. 221— *See* EVIDENCE — CHARACTER EVIDENCE, L.B.R. 1893—1900, 352.

(2236)—S. 221— *See* PREVIOUS CONVICTION, A.W.N. 1883, 110.

(2236-*a*) S. 221—*See* NOS. 4742, 4895, *infra.*

(2236-*b*)—Ch. XIX, s. 221—*See* SECURITY FOR GOOD BEHAVIOUR, 4 M.H.C. App. 22.

(2237)—Ss. 221, 222, 223, 225, 227, 232, 233, 234 and 439—*See* PENAL CODE, ss. 147, 332, 38 P.W.R. 1907, Cr.

(2238)—Ss. 221, 222, 223, 225, 537—*See* PENAL CODE, s. 124-A, 5 M.L.T. 393=32 M. 384=9 Cr.L.J. 456=2 Ind. Cas. 33.

(2239)—Ss. 221, 222, 223, 342—*See* PENAL CODE, ss. 464, 465, 467, 17 C.W.N. 354=18 Ind. Cas. 881=14 Cr. L.J. 129.

(2240)—Ss. 221, 222, 238 — *See* PENAL CODE, ss. 34, 147, 149, 325, 16 C.W.N. 1077 =15 Ind. Cas. 646=13 Cr. L.J. 502.

(2241)—*Ss.* 221, 535, 537—*Previous conviction intended to affect punishment—Form of charge—Omission to set out previous conviction in due form—Effect.*— Under s 221, Crim. Pro. Code, if the accused has been previously convicted of an offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction should be stated in the charge. Mere omission to set out the previous conviction is not sufficient reason for interfering in appeal or revision with the sentence passed, unless there has been a failure of justice caused by the omission. (See ss. 535, 537, Crim. Pro. Code). *In re* ABBULU, **7 M.L.T. 77.**

(2242)—Ss. 221 (7), 342, 412 *and* 511—*Identity of accused how provable— Questioning*,

Crim. Pro. Code (Act V of 1898)—*continued.*

accused regarding previous conviction—Scope of s. 342, not intended merely for benefit of accused—Powers of appellate Court regarding plea of guilty of being previous convict.—That a person of the same caste, bearing the same name as the accused, and having a father of the same name as the accused's father, should have been convicted in the same Court or the same district where the accused is under trial, are "circumstances appearing in evidence against the accused," and he may be rightly questioned about them. S. 511, Crim. Pro. Code, does not require identity to be proved by calling witnesses or in any particular way. It is not necessary that identity should be conclusively established before the accused is questioned. If it were so necessary, the questioning would be superfluous. The moment there is some evidence of identity, the accused may be asked to explain it. It has repeatedly been laid down by the various High Courts that the examination of an accused under s. 342, Crim. Pro. Code, should be strictly limited to the purpose of enabling him to explain any circumstance appearing in the evidence against him, and that the Magistrate has no right to attempt to elicit damaging or incriminatory admissions, as to which no previous evidence is on the record. Admissions improperly obtained should be excluded. But s. 342 is not intended merely for the benefit of the accused. It is part of a system for leading the Court to discover the truth; and it constantly happens that the accused's explanation, or his failure to explain, is the most incriminating circumstance against him. The result of the examination may be beneficial, but it may equally be injurious, to him. The principle involved is that contained in the judicial maxim, *audi alteram partem*; and the section does not require that the accused should be heard only on what is *prima facie* proved against him, but on every circumstance *appearing in evidence against him.* Where a charge has been framed against an accused person under s. 221 (7), Crim. Pro. Code, and such person has pleaded guilty to the charge that he is a previous convict, the appellate Court, under s. 412 of the Code, is precluded from opening the question whether the accused is a previous convict. EMPEROR v. KISSAN YESSU, **4 N.L.R. 163**=**9 Cr. L.J. 56.** [*R.*, 9 Cr. L.J. 97=4 N.L.R. 177.]

——**S. 222, para. 1 (=1882, s. 222; 1872, s. 440), and para. 2, new.**

See CHARGE.

See JOINDER OF CHARGES.

See JOINT TRIAL.

(2243)—*S.* 222—*Joinder of more than three charges.*—A charge of cheating relating to the sum total of different items, about twenty-six in number, said to have been taken by the accused on false representations from the complainant, is contrary to law. Such a charge is not justified under s. 222, Crim. Pro. Code. RAJAKHAN v. KING-EMPEROR, **1 A.L.J. 599.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2244)—*S,* 222 (=*s.* 440, *Code of* 1872)—*Liability to whipping under s.* 3 *of Act VI of* 1864—*Charge—Enhanced punishment.*—Whipping, when awardable under s. 3 of Act VI of 1864, is a special form of punishment which may be given in addition to any other punishment to which an accused person may be liable under s. 75, Penal Code. The liability to whipping, as an additional punishment under s. 3 of Act VI of 1864, and the liability to enchanced punishment, under s. 75, Penal Code, are distinct liabilities, and either or both liabilities must be set out in the charge, according as they arise or not in the circumstances of each particular case. HIGH COURT PROCEEDINGS, 21ST OCT. 1878, No. 1737, **2 Weir 267.**

(2245)—S. 222—*See* Nos. 1564, 2237, 2238, 2239, 2240, *supra.*

(2246)—*Ss.* 222, 223 (=*ss.* 222, 223 *of the Code of* 1882)—*Duty of committing Magistrate.*—A committing Magistrate is bound under ss. 222, 223 to insert in the heads of charges sufficient particulars of time, place, person and circumstances as would give each of the accused notice of the matter with which he is charged. QUEEN-EMPRESS v. FAKIRAPA, **15 B. 491.** [*R.*, 16 B. 414, 29 B. 449=7 Bom. L R. 527=2 Cr. L.J. 480, 28 C. 104, 31 C. 1053, 25 M. 61, P.C.=3 Bom. L.R. 540=5 C.W.N. 866=28 I.A. 257=11 M.L.J. 233=8 Sar. P.C.J. 160, 33 M. 502=11 Cr. L.J. 258=5 Ind. Cas. 847=20 M.L.J. 220=7 M.L T. 299=1910 M.W.N. 265, 11 A.L.J. 188=14 Cr.L.J. 116=18 Ind. Cas. 676, 14 Bur. L.R. 242=8 Cr. L.J. 497=4 L.B. R. 294, 4 Cr.L.J. 420=2 N.L.R. 147, 8 Cr.L.J. 191=1 S.L.R. 73, Cr., 10 M.L.J. 147, F.B., 83 P.L.R. 1901, Rat. Un. Cr. Cas. 659, 664.]

(2247)—Ss. 222, 223—Charge defective—*See* CHARGE—GENERAL, 12 Cr. L.J. 483=12 Ind. Cas. 91=23 P.W.R. 1911.

(2248)—*Ss.* 222, 233, 234, 235, 236, 239, 403—*Criminal breach of trust — Trial for — Acquittal—Subsequent trial for another item—Offence committed during same period—No bar to trial—Exceptions to rule in s.* 233—*Nature of exceptions in ss.* 222, 234.—K was tried for the offence of criminal breach of trust in respect of Rs. 12 alleged to have been misappropriated during a certain period, and was, after trial, acquitted. K was subsequently charged with having committed the same offence in respect of another sum of Rs. 19 during the same period and was, after trial, convicted. The Sessions Judge, on appeal, quashed the conviction on the ground of the acquittal of the accused at a previous trial. *Held*, the previous acquittal did not operate as a bar to the institution of any further proceedings in respect of any fresh items covering the same period. The general rule is that contained in s. 233, Crim. Pro. Code, *viz.*, that for every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately. To that rule there are several exceptions which are contained in ss. 234, 235, 236 and 239. S. 234 lays down

Crim. Pro. Code (Act V of 1898)—*continued.*

that, where there have been defalcations in respect of different items, in the course of twelve months, then, the Court can try a person in respect of three offences by selecting different items combining these items into one lump sum and making the selection so as to get at three sums the appropriation of each constituting an offence by itself. S. 222 engrafts another exception upon the rule, but it is not an exception of the same kind as s. 234. It is an exception rather to another general rule, *viz.*, that at a trial for an offence certain particulars must be given in the charge. S. 222, cl. 2, breach modifies that rule as to charges of criminal of trust, etc., but does not restrict in any way the scope and object of s. 234. EMPEROR v. KASHINATH BAGAJI SALI, **9 M.L.T. Suppl. B. 17**

(2249)—*Ss.* 222, 234—*Penal Code, s.* 406—*Criminal breach of trust—More than three acts committed within one year charged* —Where a person was charged with the embezzlement of the sum total of different items, all alleged to have been collected by him within a period of less than one year, and the charge also specified the various items collected, more than three in number, *held*, that the charge was perfectly valid and did not come under the provisions of s. 234. EMPEROR v. GULZARI LAL, **24 A. 254 = A.W.N. 1902, 44.** (25 M. 61 = 5 C.W.N. 866, *D.*) [*F.*, 27 A. 69 = A.W.N. 1904, 165, 33 A. 36 = 7 A.L.J. 897 = 11 Cr.L.J. 442 = 7 Ind. Cas. 186, 31 C. 928 = 8 C.W.N. 897, 29 M. 558 = 5 Cr.L.J. 133; *R.*, 32 C. 1085 = 10 C.W.N. 51, 6 Cr.L.J. 137 = 16 P.W.R. 1907, Cr..]

(2250)—*Ss.* 222, 234—*Charge on three counts, two of them composed of three minor items each.*—Where a charge of criminal misappropriation consisted of three counts, alleging misappropriation on three different occasions, two of those items being made up of three smaller sums of money each, *held*, that such a charge was a valid charge under s. 234. EMPEROR v. ISHTIAQ AHMAD, **27 A. 69 = A.W.N. 1904, 165.** (24 A. 254, *F.*) [*F.*, 33 A. 36 = 7 A.L.J. 897 = 11 Cr.L.J. 442 = 7 Ind. Cas. 186, 29 M. 558 = 5 Cr.L.J. 133; *R.*, 32 C. 1085 = 10 C.W.N. 51.]

(2251)—*Ss.* 222, 234 *and* 235—*Joinder of charges—Criminal misappropration extending over two years.*—The accused was charged with, and tried at one trial for, criminal misappropriation, consisting of as series of acts extending over a period of two years. *Held*, that the joinder of charges was illegal. In this case, such illegality was held to be fatal to the conviction and the accused was acquitted. DHANJIBHOY v. KAIM KHAN, **14 P R. 1905, Cr. = 64 P.L.R. 1905.** (25 M. 61, P.C., *F.*)

(2252)—*Ss.* 222, 234, 239 — *Charges, misjoinder of—Criminal misappropriation or breach of trust, charge how to be framed where several persons are implicated—Joint charge, illegality of.*—Where, in a case, more than one person were jointly charged with the offence of criminal breach of trust under s. 408, I.P.C., with respect to a sum of money. *Held*, that there was a misjoinder of charges in the case.

Crim. Pro. Code (Act V of 1898)—*continued.*

The wording of s. 222, Crim. Pro. Code, refers to a single accused; and it must be so because it is impossible to hold that two persons can be guilty of misappropriation of the same parcel of money. S. 239 therefore has no application to such a case. When two persons are implicated in a case of criminal misappropriation or breach of trust with respect to a certain sum of money, the charges against them must be of misappropriation in one case and of abetment in the other. It is also open to the Court to frame the charges against each of them in the alternative, *i.e.*, of misappropriation or of abetment. GIRWAR NARAIN v. KING-EMPEROR, **16 C.W.N. 600 = 13 Ind. Cas. 650 = 13 Cr.L.J. 506.**

(2253)—Ss. 222. 234, 439—*See* CRIMINAL BREACH OF TRUST, 16 P.W.R. 1907, Cr. = 6 Cr.L.J. 137.

(2254)—Ss. 222, 234 and 439—*See* PENAL CODE, ss. 406 and 408, 16 P.W.R. 1907, Cr. = 6 Cr.L.J. 137.

(2255)—*Ss.* 222, 292, 417—*Acquittal—Appeal from—Appellate Court cannot convict accused of an offence not charged in the grounds of appeal—Practice—Defence putting in a document during cross-examination—Prosecutor's right to reply—Court giving guarantee to a witness to give any evidence without fear of consequences.*—In an appeal from an order acquitting a person of a specific offence, the Court will not convict that person of an offence entirely different from that charged against him in the grounds of appeal. (19 B. 51, *R.*) Where, therefore, the grounds of appeal were clearly directed against the acquittal of the respondent upon a charge of murder, and it was nowhere suggested that he had committed an offence under s. 201, Penal Code, the Chief Court declined to convict him of the latter offence. In the course of the cross-examination of a prosecution witness in Sessions trial, the witness was asked whether or not he was indebted to the accused, and upon his denying the fact, a bond alleged to have been executed by the witness in favour of the accused, was produced by the Counsel for defence. But the witness not admitting even the bond, an expert was summoned, at the instance of the defence, to give his opinion as to the thumb mark on the deed. The Court allowed the expert to be examined as a prosecution witness: *Held*, on these facts, that the defence had adduced evidence within the meaning of s. 292, Crim. Pro. Code, and that the prosecutor was entitled to reply. *Obiter*:—The mere putting in of the bond to impeach the credit of the witness would have amounted to adducing evidence by the defence within the meaning of s. 292, Crim. Pro. Code. While it is unobjectionable on the part of the presiding Judge of a Court to caution a witness to speak the truth, it is wholly wrong to tell the witness that, no matter what evidence he gives, no action would be taken against him. There is no warrant in law that a Court might give a "guarantee" to a witness to say anything he likes, true or false,

Crim. Pro. Code (Act V of 1898)—*continued.*

without fear of consequences. EMPEROR v. MAHNA SINGH, **63 P.L.R. 1911=9 Ind. Cas. 436=12 Cr.L J. 73.**

(2256)—S. 222 (1) — *See* UNNATURAL OFFENCE, 6 A. 204.

(2257)—*S.* 222 (2)—*Charge for total item embezzled—Specific items proved — Joinder of charges—Statute — Construction of.*—Where a man in certain capacity is entrusted from time to time with various sums of money and commits criminal breach of trust in respect thereto, he may be charged with an offence with respect to the gross sum embezzled, and it is not necessary to specify the particular items embezzled or the exact date on which they were so embezzled and the charge so framed shall be deemed to be a charge of one offence, provided the period within which such embezzlement has taken place is not more than one year. Where the language of a Statute is plain and unambiguous, a Court cannot look at extraneous matters and read other language into the Statute, so as to give it a meaning which the Court believes the Legislature intended to give. KING-EMPEROR v. IBRAHIM KHAN, **7 A.L J. 897.** (24 A. 254, *F.*)

(2258)—*Ss.* 222, *sub-s.* (2), 233—*Penal Code, ss.* 409, 477-A—*Charge—Joinder of charges—Criminal misappropriation — Three different defalcations—Falsification of accounts, different.*—S. 222 of the Crim. Pro. Code does not cover two sets of offences, any number of which may be tried together. Sub-s. (2) of the section cannot be applied to s. 477-A of the Penal Code. S. 233 of the Crim. Pro. Code must be strictly followed, save and except where the law itself provides an exception. A joinder of three charges under s. 409, Penal Code, and three charges under s. 477-A, is not covered by any of the exceptions provided in the subsequent sections of the Code. (26 C. 560=3 C.W.N. 412, 30 M. 328=5 Cr.L.J. 341=2 M.L.T. 177 =17 M.L J. 171, *Rel.*) A series of alterations in accounts made to cover a defalcation might all be charged in one charge under the provisions of s. 477-A. It cannot be said that there are three distinct offences committed by an accused person merely by reason of the fact that he makes more than one false entry to cover one defalcation. But a series of false entries referring to three different defalcations cannot be taken in the same trial, although three defalcations or a whole series of falsified accounts may be tried in one charge. Therefore a joinder of three charges under s. 409, Penal Code, and three charges under s. 477-A, is bad and fatal to the trial. (25 M. 61, P.C.=28 I.A. 257=5 C.W N. 866=3 Bom. L.R. 540=11 M L.J. 233=2 Weir 271, *F.*) Where an accused, in making entries which are charged against him, was in reality furthering a fraud that had already been committed, the case falls within the purview of s. 477-A. But it is safer to set out the separate items of falsification in separate charges. RAMAN BEHARY DAS v. EMPEROR, **15 Cr.L J. 153=22 Ind. Cas. 729=18 C.W.N. 1152=41 C.** 722. (35 C. 450=12 C.W.N. 581=7 Cr.L.J. 378, *F.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

(2259)—*Ss.* 222 (2), 234—*Criminal breach of trust of gross sum—Penal Code, s.* 408.—Where a charge against an accused person, which resulted in his conviction under s. 408, Penal Code, recited that the accused realised by certain rent receipts, 23 in number, the sum of Rs. 103, of which the accused misappropriated the sum of Rs, 67 within the period of one year, *held*, that the charge came within s. 222 (2), Crim. Pro. Code, and was properly framed. *Held*, also, that, by specifying the rent receipts, the charge went beyond what was necessary, and was to that extent favourable to the accused, because it gave him an opportunity of meeting the accusation regarding the misappropriation of a gross sum of Rs. 67. SAMIRUDDIN SARKAR v. NIBARAN CHANDRA GHOSE, **31 C. 928=8 C.W.N. 807=1 Cr. L.J. 791.** [*F.*, 33 A. 36=7 A.L.J. 897=11 Cr. L.J. 442=7 Ind. Cas. 186, 32 C. 1085=10 C.W.N. 51.]

(2260)—Ss. 222 (cl. 2), 234, 537—Criminal breach of trust—Gross sum specified in charge—Particulars as to time—Defect in charge amounting to illegality—Whether defect can be cured—Retrial if may be ordered where charge fails, for want of evidence—*See* PENAL CODE, s. 406, 17 C.W.N. 479=14 Cr. L.J. 219=19 Ind. Cas. 315.

——S. 223 (=1882, s. 223 ; 1872, s. 441).

See CHARGE.

(2261)—S. 223—*See* FALSE EVIDENCE, 1 L.B.R. 268.

(2262)—S. 223—*See* Nos. 2237, 2238, 2239, 2246, 2247, *supra.*

—— S. 225 (=1882, s. 225).

See CHARGE.

(2263)—S. 225—*See* Nos. 2237, 2238, *supra.*

(2264)—*Ss.* 225, 232, 233, 537 (=*Crim. Pro. Code,* 1882, *ss.* 225, 232, 233, 537)—*Alternative charges of contradictory statements, one to a public servant, another on oath before a judicial officer—Penal Code, ss.* 182, 193.—Where a person was charged in the alternative with having made two contradictory statements, one to a public servant, and another contradicting the first, on oath before a Magistrate of the first class, and was convicted in the alternative, either under s. 182, or under s. 193, I.P.C., the Magistrate being unable to find which of them was false, *held*, that the charge as framed was not in accordance with the requirements of s. 233, nor could it be so modified as to be brought into the shape of the schedule form, for, upon the facts alleged, there was no way of charging the accused with one distinct offence on the ground of self-contradiction. He could not be successfully charged under s. 193, I.P.C., on contradictory statements, because he only gave one deposition in which there were no discrepancies ; and similarily, he could not be charged under s. 132, I.P.C., for he only once gave information to a public

Crim. Pro. Code (Act V of 1898)—*continued.*

servant. The charge was bad in law, being an alternative charge in a form forbidden by s. 233. *Held*, also, that the accused, having regard to ss. 225, 232, 537, Crim. Pro. Code, should be held to have been prejudiced by the course adopted and that the conviction should, therefore, be set aside. QUEEN-EMPRESS v. RAMJI SAJABA ROW, **10 B. 124**, [*F.*, Rat. Un. Cr. C. 336, Rat. Un. Cr. C. 401, Rat. Un. Cr. C. 503, *R.*, 21 C. 955, 1 L.B.R. 101, Rat. Un. Cr. C. 659, 15 Cr L.J. 79 = 23 Ind. Cas. 747 = 7 S.L.R. 96, 28 B. 533 = 6 Bom. L.R. 379.]

(2265)—*Ss.* 225, 233, 234, 235, 236 *and* 237 —*Joinder of charges—Indian Penal Code, ss.* 124-*A and* 153-*A—Publication in sedition.* —The accused was convicted of offences under ss. 124-A and 153-A of the Indian Penal Code, in respect of each of two articles that appeared in his newspaper. The Magistrate, who tried the case, had framed a charge, with two heads, one bearing on each article, and each head mentioned that the accused was punishable under ss. 124-A and 153-A for publishing the article. It was contended on behalf of the accused, (1) that the receipt of his paper by Government servants in their capacity as such servants was no publication; (2) that each of the offences ought to have been charged separately; (3) that, from the articles, passages which offended against s. 124-A and those against s. 153-A ought to have been distinctly pointed out in separate charges; and (4) that the trial of four offences at one trial was illegal. *Held*, that it is a sufficient publication if a newspaper, containing a seditious article, has been received by a Government servant; that the accused had distinct notice of the charges he had to answer, and the informal mode, if any, in which the charges were drawn up, was cured by s. 225 of the Crim. Pro. Code; (3) that, as each of the two articles taken as a whole brought the act of the accused within each of the ss. 124-A and 153-A, no specification of particular passages was necessary; (4) that, as a charge under s. 124-A in respect of one article could have been legally joined with a charge under s. 124-A in respect of the other article, and as the accused could have been convicted under s. 153-A by the application of ss. 236 and 237 of the Crim. Pro. Code, even though s. 153 A was not the subject-matter of the charge, the addition of s. 153-A in the charge was not illegal. *Per Chandavarkar, J.*—There is nothing in the Crim. Pro. Code which directs that, where an accused person is alleged to have done two or more acts, each of which may fall within the definition of an offence under one or another section of the Penal Code, the section or sections in either case being the same, the joinder of the charges under those sections is illegal. Substantially, the acts amount in such a case to offences punishable under the same sections of the Penal Code and, therefore, they are offences of the same kind. *Per Heaton, J.*—S. 234, Crim. Pro. Code, does not say that, at the most, a trial must be limited to three charges; it says it must be limited to three offences and that the offences must be of the same kind. The "offence" as defined by the Code itself, is the act or omission made punishable. Publication of two seditious articles on different dates amounts to two offences, and these are punishable under the same sections of the Penal Code, and are offences of the same kind. The word "section" in the second clause of s. 234 is not invariably to be read as singular. It is not the intention of the Crim. Pro. Code, either expressed or implied, to exclude from the operation of s. 234 an offence, because it is made the subject of more than one charge. EMPEROR v. TRIBHUVAN DAS PURSHOTTAMDAS MANGROLE VALA, **10 Bom. L.R. 801 = 8 Cr. L.J. 272 = 1 Ind. Cas. 641 = 33 B. 77.** [*R.*, 33 B. 221 = 10 Bom.L.R. 973 = 9 Cr.L.J. 226 = 4 M.L.T. 450, 9 Cr.L.J. 140 = 19 M.L.J. 81 = 5 M.L.T. 24, 1 Ind. Cas. 42.]

(2266)—Ss. 225, 298 (2)—*See* CHARGE TO JURY—GENERAL, 22 C. 276.

(2267)—Ss. 225, 298 (2)—*See* CHARGE TO JURY—MISDIRECTION, 4 C.W.N. 196.

——**S. 226 (= 1882, s. 226).**

See CHARGE.

(2268)—S. 226—*See* No. 521, *supra.*

(2269)—*Ss.* 226, 227 (= *ss.* 226, 227 *of* 1882) —*Power of Sessions Judge to withdraw a charge.* —The Sessions Court is not precluded from withdrawing a charge framed by itself at the commencement of the trial and which it considers to have been an improper charge. The word "alter" in s. 227, Crim. Pro. Code, must be taken to include "withdraw." DWARKA LAL v. MAHEDEO RAI, **12 A. 551 = A.W.N. 1890, 178.** [*R.*, 10 Bom.L.R. 848, 10 C.P.L.R. 13, Cr.]

(2270)—*Ss.* 226, 227 (= *Crim. Pro. Code,* 1882, *ss.* 226, 227)—*Word "alter" in s.* 227 *explained.—Per Sargent, C.J., and Bayley, J.*—Although the word "alter," in s. 227, is taken in the same sense as it is used in s. 226 as including "addition", the addition must be one to some specific charge in the nature of an alteration, and not the addition of a new charge. *Per Scott, J.*—The word "alter" in s. 227 must be taken to be equivalent to the words "add to or otherwise alter" as used in s. 226. Therefore, the addition of a new head of charge is an "alteration" within the meaning of the section. Prejudice to the prisoner is the only test of admissibility or rejection of proposed amendments to a charge. QUEEN-EMPRESS v. APPA SUBHANA MENDRE, **8 B. 200.**

(2271)—Ss. 226, 227—*See* SESSIONS JUDGE, JURISDICTION OF, 32 C. 22 = 8 C.W.N. 784.

(2272)—*Ss.* 226 *to* 231 (= *Crim. Pro. Code,* 1882, *ss.* 226 *to* 231)—*Term "Charge" and "without charge" explained.—Per Sargent, C.J. and Bayley, J.*—The word "charge" in the Crim. Pro. Code, is generally used as the statement of a specific offence and not as the aggregate of all the separate offences for which the prisoner is being tried. There is nothing in

Crim. Pro. Code (Act V of 1898)—*continued.*

the Code to justify the term "charge" having a different meaning given to it in ss. 226, 227, from what it has throughout the other sections of the Code. *Per Scott, J.*—The word "charge" is used in the Code both as indicating the whole series of counts or heads of charges, and, also, as indicating a charge of a specific offence. In s. 227, it is used in the former sense. The words "without a charge" in s. 226 will properly apply not only to a case in which there is "no charge at all" but also to the case in which there is no "charge" in respect of such offence as the Sessions Judge or Clerk of the Crown may think the prisoner ought to be tried for. QUEEN-EMPRESS v. APPA SUBHANA MENDRE, **8 B. 200.** [*Diss.*, 9 A. 525, 12 A. 551, 16 B. 414, 10 C.P.L.R. 13, Cr.; *R.*, 3 L. B.R. 75.]

(2273)—Ss. 226, 236, 237, 537—*See* SESSIONS JUDGE, JURISDICTION OF, 8 A. 665 = A.W.N. 1886, 254.

——**S. 227 (=1882, s. 227; 1872, ss. 444, 445; 1861, s. 244).**

See CHARGE.

(2274)—*S.* 227 (=*Crim. Pro. Code,* 1882, s. 227)—*Addition of charge at Sessions trial.*—The Court has power under s. 227, to add a fresh charge upon which the accused has not been committed for trial. QUEEN-EMPRESS v. GORDON, **9 A. 525 = A.W.N. 1887, 155.** [*R.*, 10 C.P.L.R. 13.]

(2275)—*S.* 227 (=*Crim. Pro. Code,* 1882, s. 227)—"*Return of verdict.*"—*Term explained.*—The words "return of verdict" in s. 227 mean the return of the final verdict which the Judge is bound to record. QUEEN-EMPRESS v. APPA SUBHANA MENDRE, **8 B. 200.** [*Diss.*, 9 A. 525, 12 A. 551, 16 B. 414, 10 C.P.L.R. 13; *R.*, 3 L.B.R. 75.]

(2276)—*S.* 227 (=s. 445, *Crim. Pro. Code,* 1872)—*Amendment of charge.*—S. 445 provides only for amendments and alteration of the charge in those statement of facts which affect the liability of an accused person to punishment; and not to a statement of fact which merely affects the amount of punishment which may be inflicted, if such liability is proved. EMPRESS v. SULTANI, **21 P.R. 1879, Cr.**

(2277)—*S.* 227—*Cancelling of charge under one section and substitution of another when not warranted by law.*—Where, after the complainant was examined and after hearing argument, the Magistrate held that the charge which was originally framed against the accused could not stand and so cancelled the charge and substituted another under a different section, *held* that the Magistrate's action in cancelling the charge under one section and substituting a charge under another section was a procedure not warranted by s. 227, Crim. Pro. Code. NGA O v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 64.**

(2278)—S. 227—*See* ACT I OF 1849, s. 9, M.H.C. App. 13.

(2279)—S. 227—Amendment of charge by Sessions Judge before hearing evidence—*See* PENAL CODE, ss. 392, 411, 395, 16 C.W.N. 238 = 13 Ind. Cas. 783 = 13 Cr. L.J. 127.

(2280)—S. 227—*See* Nos. 1614, 2203, 2237, 2269, 2270, 2271, 2272, *supra and* 3164, *infra.*

(2281)—Ss. 227, 228, 199, 238—*See* CHARGE—ADDITION OF CHARGE, 9 Bom. L.R. 148 = 5 Cr. L.J. 164 = 31 B. 218.

(2282)—Ss. 227, 228, 229—*See* CHARGE—GENERAL, 6 C.W.N. 72.

(2283)—*Ss.* 227, 233, 234, 537—*Charge of more than three offences at one trial—Striking out offences so as to reduce them to three.*—Where a person is charged with, and tried for, four offences committed in the same year, it is not open to a Magistrate, purporting to act under s. 227, to strike out one of the charges, and convict the accused on the remaining three. The words of s. 227 may be wide enough to warrant a Court in altering a charge, by striking out one of the charges, at any time before judgment; but the section does not seem to warrant the striking out of a charge, for the purposes of curing an illegality, which had already been committed. Disobedience to an express provision as to a mode of trial cannot be regarded as a mere irregularity, within the meaning of s. 537. P. MANAVALA CHETTY v. EMPEROR, **1 M L.T. 409 = 29 M. 569 = 5 Cr. L J. 94.**

(2284)—*Ss.* 227, 237 (=*Crim. Pro. Code, Act X of* 1882, *ss.* 227, 237)—*Penal Code, ss.* 411, 380.—S. 237 of the Crim. Pro. Code, does not imply that a person charged under s. 411 of the Penal Code may, without altering the charge, be convicted under s. 380 of the Penal Code. The proper course is to alter the charge under s. 227 of the Crim. Pro. Code. EMPRESS v. KARIM BAKHSH, **A.W.N. 1888, 116.**

(2285)—*Ss.* 227, 537—*Charge—Addition of a further charge by Sessions Judge as to offence committed independent of the charge on which committal is based—Illegality—Dying declaration—Acquittal—Appeal by Government—Evidence of witnesses disbelieved as against some accused not to be believed as regards the other co-accused — Re-trial refused when evidence untrustworthy and discrepant—Penal Code, ss.* 302, 324 *and* 326.—Four persons J., S.S.D., and S.N., were charged with the murder of one J.M. Of these J. was discharged by the committing Magistrate, and the rest committed to the Sessions for an offence under s. 302, I.P.C. In the Sessions Judge's opinon, the whole of the prosecution evidence was untrustworthy and materially discrepant. He accordingly acquitted all three accused of the murder of J.M., but convicted S.D., on the charge under s. 326, Penal Code, added by himself during the course of the trial, of having caused grievous hurt by means of a stabbing instrument to another person A., and sentenced him to transportation. But S.D., had not been committed for causing injury to A. In a note, subsequently added to his judgment, the

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Sessions Judge observed that the injury did not amount to grievous hurt under s. 326, Penal Code, but the offence did amount to one under s. 324, Penal Code, for which he inflicted the maximum punishment awardable under s. 326, Penal Code, because " he was certain that S.D. had had a hand in the killing of J.M." *Held*, that the Sessions Court is not a Court of original jurisdiction, and, though vested with large powers for amending and adding to charges, can only do so with reference to the immediate subject of the prosecution and committal, and not with regard to the matter not covered by the indictment; and, therefore, the conviction of S.D. of an offence under s. 326 alleged to have been committed on A. is illegal and must be set aside; the addition of the second charge was not a mere irregularity but an illegality not covered by s. 537, Crim. Pro. Code; the evidence was untrustworthy and materially discrepant, on which it was not proper to order a re-trial; an accused should not be convicted on the strength of evidence, which is disbelieved so far as the other co-accused are concerned, if the ground for disbelieving it is common to all of them; a dying declaration inconsistent with the other prosecution evidence, full of material contradictions and discrepancies, is as valueless as the evidence itself. In awarding punishment, it is illegal to pay any regard to the offence of which an accused was charged but acquitted. SHAH DIN v. CROWN, 20 **P.W R. 1909, Cr. = 4 Ind. Cas. 993 = 11 Cr. L.J. 131.** (32 C. 26, 25 M. 61 (97), *F.*; 8 A. 665, *R.*)

——S. 228 (=1882, s. 228; 1872, s. 447; 1861, s. 245).

See CHARGE.

(2286)—S. 228—*See* Nos. 2272, 2281, 2282, *supra.*

(2287)—Ss. 228, 229, 231—*See* CONFESSION—CONFESSIONS BY CO ACCUSED—ADMISSIBILITY, 11 B.H.C. 278.

——S. 229 (=1882, s. 229; 1872, s. 448; 1861, s. 246).

See CHARGE.

(2288)—S. 229—*See* Nos. 2272, 2282, 2287, *supra.*

(2289)—*Ss.* 229 *and* 537 (=*Crim. Pro. Code*, 1882, *ss.* 229, 537)—*Addition of new charge.*—Where a new charge was read aloud to the jury, but was not specially explained to the prisoner and he was not called upon to plead to that charge, but his counsel, on being asked, did not require a new trial, *held*, that the accused was not prejudiced by the addition of the new charge, and the omission would not affect the trial. QUEEN-EMPRESS v. APPA SUBHANA MENDRE, 8 **B. 200.** [*Diss.*, 9 A. 525, 12 A. 551, 16 B. 414, 10 C.P.L.R. 13, Cr., *R.*, 3 L. B.R. 75.]

—— S. 230 (=1882, s. 230; 1872, s. 450).

(2290)—S. 230—*See* Nos. 1825, 2272, *supra.*

——S. 231 (=1882, s. 231; 1872, s. 449; 1861, s. 247).

(2291)—S. 231—*See* Nos. 2272, 2287, *supra.*

——S. 232 (=1882, s. 232; 1872, s. 451).

See CHARGE.

(2292)—*S.* 232 (=*Crim. Pro. Code*, 1882, *s.* 232)—*Assessor's list—Gentlemen of rank and status—Refusal to act.*—A gentleman of considerable rank and status should not be placed on the list of assessors, or, if put upon the list, ought not to be summoned to serve as an assessor, unless it were known that he would be willing to act as such. *In the matter of the petition of* RAJA BHUPINDAR BAHADUR SINGH, **A.W.N. 1897, 167.**

(2293)—S. 232—*See* Nos. 2237, 2264, *supra* and 3692, *infra.*

(2294)—*Ss.* 232 *and* 423—*Conviction in absence of charge—New trial, power of appellate Court to order.*—Where the accused was charged under s. 471, Penal Code, for dishonestly using a forged document, but was convicted eventually under s. 500 for defamation contained in that document, *held*, that the Sessions Judge, to whom the case went up on appeal, was wrong to order a re-trial for defamation, if he thought it was necessary, under s. 423, but should have ordered it under s. 232. *Quære.*—Whether an appellate Court has, under s. 423 (*u*), general powers to order a new trial? GOBINDA PERSHAD PANDEY v. G L. GARTH, **28 C. 63 = 5 C.W.N. 819.**

(2295)—Ss. 232, 423—*See* PENAL CODE, ss. 147, 323 and 448, 30 C. 288.

(2296)—Ss. 232 and 423 (*b*)—*See* RE-TRIAL, 7 C.W.N. 301.

——S. 233 (=1882, s. 233; 1872, s. 452).

See CHARGE.

See JOINDER OF CHARGES.

See JOINT TRIAL.

(2297)—*S.* 233—*Distinct offences — Offences under ss.* 411 *and* 489 (*c*), *I.P.C.—Separate trial.*—Offences under ss. 411 and 489 (*c*), Penal Code, are distinct offences and, therefore, can be tried separately. Where an accused was tried by a Magistrate and convicted under s. 411, and the evidence disclosed also the commission of an offence under s. 489 (*c*), triable exclusively by a Court of Sessions, *held*, that the conviction under s. 411 was proper, inasmuch as the offences under ss. 411 and 489 (*c*), Penal Code, were distinctly and separately triable. MOHENDRO NATH DAS GUPTA v. EMPEROR, **29 C. 387 = 6 C.W.N. 550.**

(2298)—*S.* 233—*Distinct offences—Joint trial—I.P.C.* (*Act* XLV *of* 1860), *s.* 215—*Actual thief—Restoration of property—Gratification—Charge.*—The accused was jointly tried and

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convicted of theft (s. 379, I.P.C.), and of receiving gratification for restoring the property stolen (s. 215, I.P.C.). The latter offence, it was alleged, was committed some days after the former : *Held*, (1) that the trial was bad ; (2) that the result of trying the two distinct offences charged together is that a conviction under one involves an acquittal under the other ; (3) that a real thief cannot be charged, with an offence under s. 215, I.P.C. The accused was acquitted of both offences. IMPERATOR v. ALU, 12 **Cr. L.J. 72=9 Ind. Cas. 421.**

(2299)—*S. 233—Charges—Joinder of—Penal Code (Act* XLV *of* 1860), *s.* 411—*Stolen property —Possession of the property stolen from several persons at different times—Charge, defect in.*—Unless it appears that articles for the possession of which the accused is charged under s. 411, I.P.C., came in his possession on different occasions, the trial is not irregular on account of the fact that the articles were stolen from several persons at different times (*a*). When it is not shown that the accused is prejudiced on account of a defect in the charge, the Court of appeal cannot interfere with the conviction. WASAWA SINGH v. KING-EMPEROR OF INDIA, **36 P.L.R. 1910=8 Ind. Cas. 229=11 Cr. L.J. 597.** (10 C.W.N. 520, 11 C.W.N. 1128, 13 C. W.N. 418, 1067, *R.*)

(2300)—*S.* 233 — *One charge including two offences — Illegality — Re-trial.* — Where one charge was framed in respect of two offences. *Held* for each offence a separate charge should have been framed. The inclusion in one charge of several distinct offences is an illegality and the conviction on such a charge must be set aside. The conviction of the accused on a charge so framed was set aside, and it was left to the Magistrate to consider whether the accused should be re-tried. ASGAR ALI BISWAS v. THE KING-EMPEROR, **17 C.W.N. 827=20 Ind. Cas. 609=14 Cr. L.J. 449=40 C. 846.**

(2301)—*S.* 233—*Two accused tried jointly for one offence—Power of appellate Court to convict one of them of different offence.*—Where two persons are tried together and convicted of a certain offence, the appellate Court can acquit one of them of the offence of which he was found guilty by the trial Court and convict him of a different offence found proved against him on the facts. *In re* D. SURYANARAYANA ROW, **15 Cr. L J. 680=25 Ind. Cas. 1008.** (38 P. R. 1905, Cr.=115 P.L.R. 1905=2 Cr. L.J. 694, *Not F.*)

(2302)—S. 233—*See* RIOTING, 1 L.B.R. 56.

(2303)—S. 233 — *See* Nos. 244, 2133, 2237, 2248, 2258, 2264, 2265, 2283, *supra.*

(2304)—*Ss.* 233 *and* 234—*Joinder of charges —Act* II *of* 1890, *s.* 19—*Ferry contractor's servant—Excessive toll—Former's guilty connivance—No presumption.* — Where accused's servant levies toll, without the knowledge of the ferry contractor, his master, no presumption arises as to the latter's guilty connivance. Each individual levy of excess toll constitutes a separate offence, and ss. 233 and 234, Crim. Pro. Code, would apply. EMPEROR v. ARUMUKHAM PILLAI, **1912 M.W.N. 69=13 Ind. Cas. 780=13 Cr. L.J. 124.**

(2305)—*Ss.* 233, 234, 235—*Charges of criminal breach of trust and falsification of accounts committed in separate transactions—Joint trial —Misjoinder—Ss.* 408, 477-*A*, *Penal Code.*—In this case the accused was arraigned on 3 charges. The 1st charge was that, on 1—11—1910, the accused committed criminal breach of trust, punishable under s. 408, I P.C., in respect of Rs 500 entrusted to him by his employer. The 2nd charge was that he, on the same day, falsified his employer's cash-book by making an incorrect entry regarding the said Rs. 500, so as to cloak the breach of trust referred to in the 1st charge, and thus committed an offence under s. 477-A, Penal Code ; the 3rd charge was that, on 9—2—1911, he again falsified his employer's cash book by showing the total on the credit side as less by Rs. 100 than he ought to have shown it, and so committed another offence punishable under s. 477-A, I.P.C. *Held*, the 1st and 2nd charges could be lawfully tried together by virtue of the provision of s. 235 (1), Crim. Pro. Code ; and the 2nd and 3rd charges, each being in respect of an offence punishable under s. 477-A, I.P.C., are made triable together by s. 234, Crim. Pro. Code. But a charge under s. 408, I.P.C., cannot be legally tried together with one of falsification relating to a distinct act of misappropriation committed in a different transaction. EMPEROR v. JIBAN KRISTO BAGCHI, **40 C. 318=20 Ind. Cas. 412=14 Cr. L.J. 428.** (30 M. 328, 25 M. 61=28 I. A. 257, *F.*)

(2306)—Ss. 233, 234, 235—Falsification of accounts—Nine separate falsifications—Legality of charge—*See* PENAL CODE, s. 477-A, 13 Cr. L.J. 251=14 Ind. Cas. 603=1912 M.W. N. 545.

(2307)—*Ss.* 233, 234, 235 *and* 239—*Joinder of charges.*—Where, at a trial, several persons are charged with several offences, punishable under ss. 302 and 323, Penal Code, which do not form part of the same transaction, *held* that the trial was illegal. SHANKAR v. KING-EMPEROR, **11 A.L J. 188=18 Ind. Cas. 676=14 Cr. L.J. 116.**

(2308)—Ss. 233, 234, 236, 239, 537—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 11 C.L.J. 182.

(2309)—*Ss.* 233, 234 *and* 239—*Joinder of charges—Several accused persons, if can be jointly tried for distinct offences of the same kind, committed within twelve months.*—S. 234 of the Code does not apply where several persons are jointly accused, but refers to the case of a single accused person. When, therefore, several

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accused persons were jointly charged with having, on two separate dates, within the space of twelve months, committed two offences of the same kind not forming part of the same transaction, *held*, that the joinder was illegal. BUDHAI SHEIKH v. EMPEROR, **33 C. 292 = 10 C.W.N. 32 = 3 Cr. L.J. 126.** [*F.*, 10 Ind. Cas. 63 = 12 Cr. L.J. 208 = 122 P.L.R. 1911 = 28 P.W.R. 1911, Cr.; 10 Ind. Cas. 331 = 168 P.L.R. 1911 = 37 P.W.R. 1911, Cr. = 12 Cr. L.J. 266, 8 M.L.T. 286 = 7 Ind. Cas. 390 = 11 Cr. L.J. 477; *R.*, 11 C.L.J. 182 = 11 Cr. L.J. 244 = 5 Ind. Cas. 769, 15 C.L.J. 517 = 16 C.W.N. 1105 = 13 Cr. L.J. 609 = 16 Ind. Cas. 257, 11 C.W.N. 54, 6 Cr. L J. 442 = 6 C.L.J. 757, 1 S.L.R. 73, Cr.]

(2310)—Ss. 233, 234, 439, 537—*See* CHEATING—FALSE PERSONATION, 4 L.B.R. 315 = 9 Cr. L.J. 15.

(2311)—*Ss.* 233, 234, 535 (1), 537 *(a)—Three separate complaints of offences of the same kind—Framing of a single charge setting out one offence in respect of three complaints—Irregularity if vitiates trial.*—Where three different tenants laid three separate complaints of cheating against the petitioner, who was an officer of the Bettiah Raj entrusted with the work of collecting rents from the Raj tenants, and the Magistrate tried the three complaints at one trial and framed only one charge, setting out only one offence of cheating in respect of all the three complaints, and the petitioner made no objection at the time of the trial: *Held*—that the trial was not bad merely on the ground of the omission to draw up separate charges for each offence. MUSAI SINGH v. KING-EMPEROR, **18 C W.N. 183 = 41 C. 66 = 22 Ind. Cas. 1008 = 15 Cr. L.J. 224.**

(2312)—*Ss.* 233, 234, 537 (= *Crim. Pro. Code,* 1882, *ss.* 233, 234, 537)—*Joint trial for distinct offences.*—Where the accused, at one and the same trial, were charged with robbery and murder committed in the course of the robbery and also of a robbery committed some hours previously at a place three miles off the scene of the former crime, *held*, that the joint trial of the first robbery and the subsequent robbery and murder was only an error or an irregularity within the meaning of s. 537. QUEEN-EMPRESS v. MULUA, **14 A. 502 = A.W N. 1892, 95.** [*F.*, 29 B. 493; *F. and Expl.*, 20 A. 529 = 18 A.W.N. 152; *R*, 33 B. 221 = 10 Bom. L.R. 973 = 9 Cr. L.J. 226 = 4 M.L.T. 450, 22 C. 50, 27 C. 839, 32 M. 173 = 9 Cr. L.J. 571 = 2 Ind. Cas. 343, A.W.N. 1907, 208 = 6 Cr. L.J. 215, 14 Bur. L.R. 306 = 7 Cr. L.J. 245 = U.B R. 1907, 4th Qr., Cr. P.C. 7 (8), 2 L.B.R. 10, 6 O.C. 236, 7 P.R. 1901, Cr. = 88 P.L.R. 1901.]

(2313)—Ss. 233, 234, 537—*See* JOINT TRIAL, 6 C.L J. 757 = 6 Cr. L.J. 442.

(2314)—*Ss.* 233, 235—*Several dacoities on the same night—Charge, form of.*—Where certain persons are charged with having committed four separate dacoities in the course of the same night, there must be distinct charges for each

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dacoity, although the offences, being committed on one and the same night, formed one series of acts so connected together as to form part of the same transaction and were triable at one trial. EMPEROR v. FATTU, **26 A. 195 = A.W.N. 1903, 231.** (A.W.N. 1902, 42, *R.*) [*R.*, 10 Bom.L R. 848 = 8 Cr. L.J. 281, 10 Bom. L.R. 973 = 9 Cr. L.J. 226 = 4 M.L.T. 450.]

(2315)—*Ss.* 233, 235—*Charges under ss.* 302 *and* 201, *Penal Code.*—Charges under ss. 302 and 201, Penal Code cannot be combined. *In re* SAVARA SANKADU, **2 Weir 301.**

(2316)—*Ss.* 233 *and* 235—*Joinder of charges —Charges framed vaguely and without specification—Objection not taken before Sessions Court or in appeal.*—Where appellant, a Karnam, was charged with fraudulent falsification of Government accounts of his village under s. 477, I.P.C., by making six or nine entries of payments which were subsequently corrected, so as to show less amounts as collected, and thus credited the difference in the amounts to his own puttah, and it was contended that the joinder of charges was illegal and they were framed vaguely and without sufficient specification of the entries charged as false. *Held* that, as no objection was taken before the Sessions Judge until argument and he was not asked to amend the charges, and the said objection was also not taken in the appeal, the accused was rightly convicted, inasmuch as the several false entries were made by the Karnam in the course of one transaction, and he was not hampered in his defence by the defective form of the charge, as to the substance of which there was never any doubt entertained. AYYAGIRI VENKATARAMANAYYA v. EMPEROR, **1912 M.W.N. 545 = 13 Cr. L.J. 251 = 14 Ind. Cas. 603.**

(2317)—*Ss.* 233, 235, 239—*Irregularity in charge—Misjoinder of offences and parties—Charge framed, confusing—Prejudice—Re-trial by a new Magistrate.*—Where the two petitioners were charged under s. 324, I.P.C., with causing hurt to three persons and only one charge was framed against them which was in the following terms:—"that you, on or about the 1st day of February 1906, at M voluntarily caused hurt to B.S. and L. by a dao, a cutting instrument, and thereby committed an offence punishable under s. 324, I.P.C.," and one of the petitioners was convicted under s.324, I.P.C., and the other petitioner was convicted by the lower appellate Court under s. 352, I.P.C., for using a lathi against two of the persons named in the charge. *Held*—that the irregularity in the charge might have prejudiced the accused in their trial, and the conviction should be set aside and the accused should be retried on charges properly framed. Re-trial by a new Magistrate ordered. SITAL CHANDRA MAITRA v. THE EMPEROR, **17 C.W.N. 419 = 19 Ind. Cas. 308 = 14 Cr. L.J. 212.**

(2318)—Ss. 233, 235, 239—*See* PENAL CODE, ss. 34, 141, 142, 147, 149, 11 Cr. L.J. 30 = 4 Ind. Cas. 700 = 6 M.L.T. 17.

Crim. Pro. Code (Act V of 1898)—*continued.*

(2319)—*Ss.* 233 *and* 236 — *Contradictory statements—Charge, nature of — Evidence.*—Where a person is charged with having made two contradictory statements, two separate charges ought to be framed; and such evidence, as is procurable, should be adduced to prove the falsity of one or other of the two statements. PUBLIC PROSECUTOR v. KALI VANNAN, 2 **Weir 299.**

(2320)—*Ss* 233, 236.—If a person is charged with having made two contradictory statements, two charges should be framed, one relating to each statement. If it were found impossible to say which of the two statements is false and that the two cannot be reconciled, the prisoner ought to be convicted accordingly, under s. 236, Crim. Pro. Code. PUBLIC PROSECUTOR v. MUTHU VANNAN, **2 Weir 300.**

(2321)—*Ss.* 233, 236, 535, 537 *(a)—Charge—Rioting—Conviction for hurt—Common object of causing hurt to complainant—Conviction for causing hurt to another, if legal—"Merely on the ground that no charge was framed," meaning of—Penal Code, ss* 147, 323.—Where an accused person is charged with rioting under s. 147, Penal Code, with the common object of causing hurt to the complainant, he cannot be convicted of causing hurt to another person. S. 233 of the Crim. Pro. Code is mandatory, and for every distinct offence, there should be a separate charge which should, except in certain cases specified, be tried separately. The words "merely on the ground that no charge was framed" in s. 535 of the Crim. Pro. Code, mean a case where the offence being a petty one and the evidence being fairly taken, the Court framed no charge at all. But where the Court frames a charge, then it cannot be said that the conviction is invalid merely on the ground that no charge was framed. Such a case does not come under s. 537 *(a)* of the Crim. Pro. Code and s. 236 does not apply to the case. SITA AHIR v. EMPEROR, **13 Cr. L.J. 593=16 Ind. Cas. 161.**

(2322)—*Ss.* 233 *and* 239—*Joint trial of three persons, one for an offence under s.* 457 *and the others for an offence under s.* 411, *Penal Code.*—Three persons were jointly tried and convicted at one trial, one for an offence under s. 457 and the other two for an offence under s. 411, Penal Code. No objection as to the illegality of the trial was taken before the Magistrate or the Sessions Judge. Nor dit it appear that the theft and the receipt of the stolen property were parts of the same transaction. *Held*, under the circumstances, that the joint trial and the conviction were illegal and opposed to the provisions of s. 239 of the Crim. Pro. Code. It is not a mere irregularity curable under s. 537, Crim. Pro. Code. GURDITTA v. EMPEROR, **4 P.L.R. 1905=2 Cr. L.J. 30.**

(2323)—*Ss.* 233, 239—*Joint trial—Meaning of "same offence"—S.* 239 *not applicable where charge against each accused is mutually exclusive.*—Where two accused were tried together on a charge of having caused grievous hurt to a person, and the allegation was that either one or the other committed the crime, and the Magistrate discharged one of the two accused and convicted the other: *Held* that the words "same offence" in s. 239 of the Code of Criminal Procedure implied that both the accused should have acted in concert or association, and did not apply to a case like the present, and that the two accused ought to have been tried separately as required by the provisions of s. 233. AZIM-UD-DIN v. EMPEROR, **14 Cr. L.J. 563=21 Ind. Cas. 163=7 L.B.R. 68=6 Bur. L.T. 191.** (6 M. 396, *F.*)

(2324)—*Ss.* 233, 239—*Distinct offences—Joint trial—Defamatory resolutions—Transmission of resolutions to a newspaper—Concert.*—Where accused Nos. 1 to 3, who were charged with passing and publishing resolutions defamatory of the complainant, were tried jointly with the fourth accused, who was charged with transmitting the resolutions to a newspaper: *Held*, that, in the absence of a concert between all the accused, their joint trial was illegal, as the offences committed by accused Nos. 1 to 3 and the offence committed by the 4th accused were not committed in the same transaction within the meaning of s. 239, Crim. Pro. Code. KRISHNA DASS VITAL DASS v. EMPEROR, **11 Cr. L.J. 135=5 Ind. Cas. 436=7 M.L.T. 127.**

(2325)—*Ss.* 233 *and* 239—*What persons may not be tried jointly—Misjoinder.*—A, B and C passed certain resolutions defamatory of the complainant and published those resolutions, and retransmitted the resolutions to a newspaper. All the four persons were tried together and convicted. But it was not shown that A, B and C instigated D to write the letter to the paper or that they had any common purpose. Nor was there any evidence to show that the offences were all committed in one and the same transaction. *Held*, s. 239 not being applicable to the case, s. 233 prohibits the joint trial of A, B and C along with D. *In re* PURUSHOTTAM MULJI, **7 M.L.T. 127.** (25 M. 61, *Appl.*)

(2326)—*Ss.* 233, 239 *and* 537—*Joint trial—Misjoinder of parties — Re-trial.*—Where two persons were tried together in the same trial, for offences under ss. 411 and 414, I.P.C., each of these persons being charged with the same offence only in respect of a currency note of Rs. 500, but in respect of the charges on two other currency notes of Rs. 100, the charge against each of the accused being separate and distinct and relating only to one of those currency notes, *held*, that there was a misjoinder of parties. [*R.*, 29 B. 449=7 Bom. L.R 527.] An Appellate Court, in discharging the accused on the ground of misjoinder of parties, has power to add to that order a direction that the accused should be re-tried. It cannot be contended that further proceedings should be left to the discretion of the Magistrate. There is no reason at all why the superior Court should not point out to the Magistrate the course which should be taken in such a matter. Misjoinder of parties is not fatal to the proceedings,

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but is an irregularity which requires that the Court should consider whether, under the terms of s. 537, it has, in fact, occasioned a failure of justice. Where no objection was taken before the trying Magistrate for the joint trial of a person charged under s. 411 with a person charged under s. 381, Penal Code, and the evidence was that the former was handling the stolen property only a few hours after the theft, *held*, that the joint trial of him with the person charged with the theft had not occasioned a failure of justice. KUMUDINI KANTA GUHA v. QUEEN-EMPRESS, **28 C. 104.** (14 C. 395, 15 B. 491, 4 A. 147, *R.*) [*Diss.*, U.B.R. 1907, 1st Qr., Cr.P.C. 5=14 Bur. L.R. 38; *R.*, 29 B. 449=7 Bom. L.R. 527, 36 M. 457=10 M.L.T. 506=2 M.W.N. 1911, 576=12 Ind. Cas. 961=12 Cr. L.J. 585=22 M.L.J. 73, 14 Cr.L.J. 230=9 N.L.R. 42=19 Ind. Cas. 326.]

(2327)—*Ss.* 233, 239 *and* 537—*Misjoinder of charges—Joint trial — Offences in different villages on different nights—One accused charged with offences under ss.* 457 *and* 380, *I.P.C, and the other with offences under ss.* 457 *and* 380 *or* 411, *I.P.C.—' Same transaction '—Irregularity or illegality—Whether curable or not.*—S. 239, Crim. Pro. Code, does not permit the joint trial of accused for different offences committed in the course of different transactions. Where, in respect of offences of house breaking and theft committed in two different villages on two distinct nights, the 1st accused was charged with the offences under ss. 457 and 380, I.P.C., and the second accused with those under ss. 457 and 380 or 411, I.P.C., and both the accused were tried at one trial in respect of the above charges; *Held* that the trial was bad. (33 C. 292, 29 B. 449, *F.*) *Held* further that the charge was bad for vagueness as it did not specify the articles stolen or the name of the person whose house was broken into, and the place of offence was given only as Tadigotla whereas the trial was for offences committed both at Tadigotla and at Nallapu Reddi Palli. *Per Seshagiri Iyer, J.*—Disregard of a plain duty cast by law on a Magistrate cannot be condoned with reference to s. 537. S. 233, Crim. Pro. Code, must be strictly applied save where the Code itself provides exceptions. (25 M. 61, 41 C. 722, 30 A. 351, 29 C. 385, 41 C. 66, *R.*) *Quære* :—Whether the two offences may not be said to arise out of the same transaction. MALA MEKALAKATI SUBBADU v. KING-EMPEROR, **2 L.W. 265=28 M.L.J. 381=16 Cr. L.J. 298=28 Ind. Cas. 522.**

(2328)—Ss. 233, 239, 537—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 5 P.R. 1900, Cr.

(2329)—Ss. 233, 239, 537—*See* PENAL CODE, s. 419, 149 P.L.R. 1903=17 P.R. 1903.

(2330)—*Ss.* 233, 242—*Joint trial of several accused in summons case—Applicability of.*—The accused were tried together and convicted for an encroachment on a grazing ground. It was found that each of the accused cultivated a separate piece of land. They did not all join together to cultivate the same piece in common. The question for decision was whether s. 233 of the Code applied to the present case, which was a summons case, in which no formal charge was necessary. *Held*, a charge is an essential element in any trial and if the provisions as to joinder of charges do not apply to summons case, there are no other provisions of law to guide Magistrate. But, in a summons case, a charge need not be embodied in writing. S. 233 of the Code applies to summons cases also. KING-EMPEROR v. SAN DUN, **3 L.B.R. 52. F.B.=2 Cr. L J. 739.** (9 A. 452, *Diss.*; 25 M. 61, 5 M. 20, L.B.R. 1872—1892, 421, 2 L.B.R. 72, *R.*) [*F.*, 41 C. 694=19 C.L J. 53=15 Cr. L.J. 73=18 C.W.N. 486=22 Ind. Cas. 425.]

(2331)—Ss. 233, 251, 252 and 256—*See* JOINT TRIAL, 3 L.B.R. 280=5 Cr. L.J. 417.

(2332)—Ss. 233, 334 and 537—*See* RIOTING, 8 C.W.N. 344.

(2333)—Ss. 233, 410—Misjoinder of charges—Summons case—*See* BEN. ACT V OF 1909, ss. 2, cls. (6), (7), and (14), 46, 48, 19 C.L.J. 53=18 C.W.N. 486=22 Ind. Cas. 425=15 Cr. L.J. 73=41 C. 694.

(2334)—*Ss.* 233 *and* 537—*Misjoinder of parties—Joint trial of persons charged with criminal breach of trust and receiving stolen property—Objection, when to be taken—Penal Code, ss.* 407 *and* 411.—A misjoinder of parties, just as a misjoinder of charges, is not fatal to the proceedings, but is an irregularity which requires that the Courts should consider, under the terms of s. 537, whether it has, in fact, occasioned a failure of justice. Where neither before the Magistrate, who tried the case, nor in the appellate Court was any objection taken to the joint trial of persons charged, under s. 407, Penal Code, with dishonestly receiving and retaining stolen property, which had been taken by criminal misappropriation, with the person charged with the latter offence, *held*, that the objection could not be properly raised before the High Court in revision, and that it could and should have been raised at an earlier stage of the proceedings, and that, therefore, it should be held that, not being so raised, it had not, in fact, occasioned a failure of justice. KALI PROSAD MAHISAL v. QUEEN-EMPRESS, **28 C. 7.** (27 C. 839, *F.*) [*Diss.*, U.B.R. 1907, 1st Qr. Cr. P. C. 5=14 Bur. L.R. 38; *F.*, 28 C. 10.]

(2335)—*Ss.* 233, 537 (=*Crim. Pro. Code,* 1882, *ss.* 233 *and* 537)—*Trial of offences under ss.* 376 *and* 377 *together—Conviction—Validity.*—The mere fact that an accused was tried at the same trial, in contravention of the provisions of s. 233, Crim. Pro. Code, for offences under ss. 376 and 377, I.P.C., is not sufficient to invalidate the conviction for either offence in the absence of evidence that he was prejudiced in his defence. S. 537, Crim. Pro. Code, was applicable to an error of this kind as well as to any other mere error of procedure. EMPRESS v. AMILAL PERDHAN, **9 C.P.L.R. Cr. 23.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2335-*a*)—*Ss.* 233, 537—*Omission to frame two separate charges for two offences if vitiates trial—Distinct offence, meaning of—S.* 537, *irregularity cured by—Scope of section.*—The petitioner was charged with and convicted of having caused hurt to two persons and thereby having committed an offence under s. 323, I.P.C. Only one charge was framed against the petitioner in respect of the hurt caused to two persons. *Held per Sharfuddin and Beachcroft, JJ.*—That the omission to frame two separate charges was an irregularity cured by s. 537, Crim. Pro. Code. The effect of the words "subject to the provisions hereinbefore contained" in s. 537, Crim. Pro. Code, cannot be that the section is to have no application if there has been any departure from any of the previous section of the Code. Those words must be read as having reference only to ss. 529 to 536 and do not refer to the entire Code that precedes that section. That the case of *Subramania Iyer* v. *King-Emperor*, is not an authority for the proposition that failure to observe the first part of s. 233 is fatal to the trial. *Beachcroft, J.*—The observation of the Judicial Committee that "their Lordships are unable to regard the disobedience to an express provision as to a mode of trial as a mere irregularity," is limited in its application to the case where charges are tried together which the law expressly says shall not be tried together in the same trial. The words "mode of trial" in that sentence cannot have reference to the formal defect of drawing up one charge instead of two. The drawing up of the charge is part of trial, but the words "mode of trial" have reference to the constitution of the trial and when their Lordships speak of "disobedience to an express provision as to a mode of trial" they do not refer to a formal defect in the proceedings in a trial which is properly constituted. *Sharfuddin, J.*—In *Subramania Iyer* v. *King-Emperor* the case before the Privy Council was not that any provision of the s. 233 was contravened. The only question before their Lordships was whether the mode of trial in which the indictment contained 41 acts spread over a period longer than 12 months was or was not illegal by reason of the provisions of s. 234 of the Code. What their Lordships of the Privy Council have prohibited is that, if the law expressly provides a particular mode of trial, a disobedience of that vitiates the whole of the trial. It is doubtful if the framing of the charge is a mode of trial, but joint trial of charges as to distinct offences would be a mode of trial, and if an accused is tried jointly on several charges not coming under ss. 234, 235, 236 and 239 that trial would be null and void. When two offences have been committed and they have no connection with each other, they are distinct offences within the meaning of s. 233, Crim. Pro. Code. *Fletcher, J.*:—S. 233, Crim. Pro. Code, provides that, for every distinct offence of which any person is accused, there shall be a separate charge. The causing of hurt to two different persons is obviously two distinct offences, and there ought to have been two separate charges framed against the petitioner of the offences charged under s. 323, I.P.C., and the failure to do so rendered the trial illegal. The whole of s. 537 is governed by the words "subject to the provisions hereinbefore contained." This includes, amongst other provisions, the provisions contained in s. 233, and a neglect of the provisions contained in that section is not cured by s. 537. RAM SUBHEG SINGH v. KING-EMPEROR, **19 C.W.N.** 972. (25 M. 61=5 C.W.N. 866, *R.*)

(2336)—Ss. 233 and 555—*See* FALSE EVIDENCE, 10 C. 937.

—— S. 234 (=1882, s. 234; 1872, s. 453).

See CHARGE.

See JOINDER OF CHARGES.

See JOINT TRIAL.

(2337)—*S.* 234—*Charges under s.* 477-*A*, *Penal Code, of falsification of a book or account, more than* 3 *in number.*—Every act of falsification of a book or account would amount to an offence under the Code under s. 234. An accused can only be charged and tried at one trial for any number of offences of the same kind not exceeding three committed within the space of one year. The explanation appended to s. 477-A does not purport to override s. 234, Crim. Pro. Code. [*Appl.*, 4 Bom. L.R. 433.] The alteration in the law by s. 222 (2) of the Crim. Pro. Code of 1898 does not apply to a charge under s. 477-A of the Penal Code. It applies only to criminal breach of trust or dishonest misappropriation of money. QUEEN-EMPRESS v. MATI LAL LAHIRI, **26 C.** 560=**3 C.W.N. 412** [*Rel. on*, 41 C. 722=18 C.W.N. 1152=15 Cr.L.J. 153=22 Ind. Cas. 729; *R.*, 32 A. 57=6 A.L.J. 977=11 Cr. L.J. 53=4 Ind. Cas. 808.]

(2338)—*S.* 234—*Joint trial for several acts of misappropriation--Separate acts of misappropriation.*—An accused person cannot be charged with, and tried at the same time for, criminal misappropriation of a sum which is not the subject of a single act of misappropriation but which represents a general deficiency consisting of a lengthened series of separate defalcations. Where there have been separate acts of misappropriation, the accused cannot be tried at the same time for more than three of such acts committed within a year; but when it may be properly inferred from the evidence that there has been but one act of misappropriation, although the sum misappropriated may represent the aggregate of sums received by the accused at different times, he may then be charged and tried at one trial in respect of the aggregate sum, or if there be three such acts occurring within a year, then in respect of all of them. EKRAM ALY v. QUEEN-EMPRESS, **2 C.W.N. 341.** (1 Moo. P.C. 447, 8 C. & P. 288, 1 C. & K. 119, 2 Cox. 309, L.R 1 C.C.R. 328, 15 W.R. 5, 24 C. 193, *Appr.*; 17 A. 153, 18 A. 116, *Disappr.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

(2339)—*S.* 234—*Irregularity.*—Charging an accused person with and trying him at one trial for three offences, punishable under ss. 380, 454 and 457, Crim. Pro. Code, was held to be in contravention of s. 234 of Crim. Pro. Code, which defines offences of the same kind as offences punishable with the same amount of punishment under the same section of the Penal Code or of any special or local law. It is not a mere irregularity to disobey an express provision as to a mode of trial. EMPEROR v. BISAHU PANKA, **15 C.P.L.R. Cr. 53.** (L.R. 28 I.A. 257, *R.*) [*R.*, 8 Cr. L.J. 11=4 N.L. R. 71.]

(2340)—*S.* 234—*Section if applies to offences against different persons.*—S. 234, Crim. Pro. Code, is not limited to cases where the offences have been committed against the same person. It applies where the complainants are different persons. *Per Fletcher, J.*—The power given by s. 234 is however one that requires to be used with great care and caution when there are different complainants. CHATTRADHARI MIAN v. KING-EMPEROR, **19 C.W.N. 557=16 Cr. L. J. 332=28 Ind. Cas. 668.**

(2341)—*S.* 234—*Misjoinder of charges—Trial vitiated—Penal Code—Ss.* 409 *and* 477-*A—Criminal Breach of Trust and falsification of accounts.*—Where an accused is convicted of criminal breach of trust of a certain amount made up of five separate sums, and where he is also convicted of five separate falsifications of accounts, each falsification being with regard to one sum misappropriated, the trial was held illegal under s. 234, Crim. Pro. Code. SUBRAMANIA PATTER KRISHNIER v. EMPEROR, **1911 2 M.W.N. 536=13 Cr. L.J. 21=13 Ind. Cas. 213.** (32 M. 328, *R.*)

(2342)—S. 234—*See* Nos. 1826, 2237, 2248, 2249, 2250, 2251, 2253, 2254, 2259, 2260, 2265, 2283, 2304 to 2313, *supra.*

(2343)—*Ss.* 234, 235—*Trial of several offences at same time.*— Difference between separate offences and separate acts done in the course of the commission of a single offence pointed out. NGA PO CHUN v. QUEEN-EMPRESS, **U.B.R. 1892-1896, Vol. I, 33.**

(2344)—*Ss.* 234, 235 (1)—*Various charges of threatening for the purpose of inducing payment of bribes — Single trial — Multiplicity.*— The accused was convicted at one trial of threatening 14 persons with injury, unless they each paid him a bribe. The alleged threat with reference to ten of them was made at one time, and with reference to the rest at another time. But the tenor of the charge was quite different from the facts as above stated. The charge was that two specific individuals were asked, under threat of dismissal in case of non-compliance, to obtain bribes for the accused from other people who were not even named in the charge. *Held*, that, whether the charge be taken as being an instigation to obtain bribes, or as inducing the accused with actual threats, it was bad for multiplicity under s. 234, inasmuch as more than three separate offences were involved, which offences were not committed in one transaction, and that s. 235 (1) did not apply. *In re* VENKATA LAUL, **2 Weir 299.**

(2345)—*Ss.* 234 *to* 236 *and* 537—*Misjoinder of charges—Meaning of transaction—Illegality and no irregularity.*—Where the accused are charged with having entered the house of the third prosecution witness with a view to coerce the deceased person and his brother to deliver certain promissory notes and receipts, and later in the evening obstructed the complainant's party when they proceeded to prefer a complaint in regard to what the accused did in the morning; *held*, that the accused cannot be charged together for their action in the morning and in the evening in one and the same trial. The joinder amounts to an illegality and cannot be cured by the application of s. 537 of the Crim. Pro. Code. Whether a series of acts form a same transaction or not would depend upon the community of purpose and the continuity of aim. The objection as to misjoinder of parties can be taken in the High Court even if the same was not taken before the Sessions Judge. Courts have not to concern themselves with the ultimate object of the offender in determining the nature of the transaction. It is the immediate purpose of the attack that determines the character of the particular transaction. Mere interval of days will not disturb the oneness of of the transaction nor necessarily the fact that different sets of persons were engaged on different occasions. If the aim of the accused on the different occasions was directed towards effecting different purposes, the transactions are different. In each case it is a question of fact whether the acts are so connected together as to form part of the same transaction. The 'transaction' means a completed act. VIRUPANA GOWD v. EMPEROR, **1915 M.W.N. 241=17 M.L.T. 242 =28 M.L.J. 397=16 Cr. L.J. 323=28 Ind. Cas. 569.**

(2346)—Ss. 234, 235 (2), 239—Trial of licensed vendor and his agent who commits the offences —Misjoinder of charges—*See* BENGAL ACT V OF 1909, ss. 54, 56, 15 C.L.J. 692=13 Cr. L.J. 255=14 Ind. Cas. 607.

(2347)—Ss. 234, 235, 480, 482, 537 — *See* JOINDER OF CHARGES—WHEN LEGAL, 7 C. L.J. 63=35 C. 161=7 Cr. L.J. 95.

(2348)—*Ss.* 234, 236 (=*Crim. Pro. Code*, 1872, *ss.* 453 *and* 455)—*Penal Code, ss.* 325, 387, 392. —The trial of an accused in a single trial on two charges of offences under ss. 387, 325, 392, I.P.C. (not of the same kind within the meaning of ss. 453, 455, Crim. Pro. Code), renders the proceedings only fit to be annulled, since the said offences have arisen out of two entirely different sets of circumstances. POLICE v. PARAMANAND, **Colm. Dig. Cr. 55 of 1876.**

(2349)—*Ss.* 234, 239—*Charge—Joint trial of two persons for two distinct offences—Misjoinder —Re-trial of appellant.*—To enable more persons than one to be charged and tried together for more offences than one, the offences must all

Crim. Pro. Code (Act V of 1898)—*continued.*

form part of the same transaction. Where there is a misjoinder of charges, the convictions and sentences must be set aside and a re-trial ordered in the case of the accused who appeals, whether he has been prejudiced by the misjoinder or not. PO MYA v. EMPEROR, **7 L.B. R. 272 = 26 Ind. Cas. 636 = 16 Cr. L.J. 44.**

(2350)—*Ss.* 234, 239 — *Two accused tried jointly for three offences—Validity of trial.*— S. 234, Crim. Pro. Code, refers only to the case of a single accused and is not applicable where more persons than one are tried jointly under s. 239 of the Code (33 C. 292 = 10 C.W.N. 32 = 3 Cr.L.J. 129, *F.*). S. 239, Crim.Pro.Code, is not applicable to a case in which each of two accused persons, tried jointly, throws the blame and responsibility on the other. MAHBUB ALI v. EMPEROR, **168 P.L.R. 1911 = 10 Ind. Cas. 331 = 37 P.W.R. 1911, Cr. = 12 Cr. L.J. 266.**

(2351)—Ss. 234, 537—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 25 M. 61 = 11 M.L.J. 233 = 3 Bom. L.R. 540 = 28 I.A. 257 = 5 C.W.N. 866 = 2 Weir 271 = 10 M.L.J. 147, P.C., 12 M. 273 = 1 Weir 375, 14 C. 128.

——**S. 235 (= 1882, s. 235; 1872, s. 454, Omit ills. (e), (h), (i), (k).)**

See CHARGE.

See JOINDER OF CHARGES.

See JOINT TRIAL.

(2352)—*S.* 235 (= *Crim. Pro. Code,* 1872, s. 454)— *Same offence causing injury to two persons— Separate sentences—Penal Code, s.* 71.— A man who rode a horse furiously and knocked down another man and his child, was convicted under ss. 279 and 326 of the I.P.C., and sentenced under the former to one month's rigorous imprisonment and under the latter to a fine of Rs. 20. *Held* that though the combined sentence was within the limit fixed by s. 71 of the Penal Code, the case fell within s. 454 (2) of the Crim. Pro. Code, which contemplates the passing of a single sentence only, and that the order in appeal substituting a single sentence equal in extent to the combined sentence, was right. QUEEN-EMPRESS v. LALLU, **Rat. Un. Cr. C. 159 = Cr. Rg. 10-3-1881.**

(2353)—*S.* 235 (= *Crim. Pro. Code,* 1872, s. 454)—*Punishment for offences under ss.* 147 *and* 324, *I.P.C.*—Under s. 454, Crim. Pro. Code, the collective punishment awardable for offences under s. 147 and s. 324, I.P.C., must not exceed that which may be given for the graver offence. *In re* JABDAR KAZI, **8 C.L.R. 390.**

(2354)—*S.* 235—*Separate sentences—Distinct offences—Trial to be generally held before District Magistrate with enhanced powers.* — Where a person was convicted and sentenced by a first class Magistrate, to two years' rigorous imprisonment under s. 457 and to another two years' imprisonment for another offence under s. 380, I.P.C., *held*, that, although the separate sentences passed on the accused was legal, yet, it was desirable that such cases should be tried before a District Magistrate with enhanced powers. EMPRESS v. MOHURRAM, **8 P.R. 1888, Cr.**

(2355)—*S.* 235—*Distinct offences committed in the same transaction—Separate sentences.*— A person found guilty of rioting armed with deadly weapon and also of having voluntarily caused grievous hurt by means of that weapon, is guilty of distinct offences punishable separately. JAFIR KHAN v. EMPRESS, **32 P.R. 1885, Cr.** (7 W.R. 13, 12 W.R. 33, 6 A. 121, *Considered.*)

(2356)—*S.* 235 (= *Crim. Pro. Code,* 1882, s. 235)—*Penal Code, s.* 71—*Cumulative sentence.* = If, in pursuance of a common object, several persons attack at the same time and dacoit two houses belonging to different owners in the same village, they are not liable to be punished separately on separate charges of dacoiting each house. They can only be punished for one offence of dacoity. NGA SAN DUN v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 444.**

(2357)—*S.* 235 (= *Crim. Pro. Code,* 1882, s. 235).—Distinction between s. 235, Crim. Pro. Code, 1882, and its corresponding s. 434 of the Code of 1872, pointed out. NGA TUN BYAUNG v. QUEEN-EMPRESS, **L B.R. 1872—1892, 476.**

(2358)—*S.* 235 — *Charges — Misjoinder of charges.*—The accused, by means of personating a Police Officer, obtained from A several sums of money on different occasions and on one occasion attempted to obtain another sum: *Held*—That the trial of the accused on a charge under s. 170, I.P.C., and on three charges of extortion in respect of 3 sums, and, in the alternative, on three charges of cheating in respect of those three sums, and on a charge of an attempt at extortion in respect of another sum, was not illegal by reason of misjoinder of charges, as the offences charged were committed in the same transaction. RAI JAGDISH KUMAR SINHA v. ATMA RAM, **15 C.W.N. 732 = 12 Cr. L.J. 346 = 10 Ind. Cas. 946.** (10 A. 58, *R. & F.*)

(2359)—*S.* 235—*Different acts—Unconnected—Not one transaction.*—Where the accused cut a large number of trees on eight or nine separate occasions, each felling and misappropriation amounted to a distinct offence, and it is illegal to charge and try accused for all these offences at one trial. The various fellings are not so connected together as to form one transaction, under s. 225, Crim. Pro. Code. RAGHAVENDRA ROW v. EMPEROR, **1911 2 M. W.N. 467 = 12 Ind. Cas. 655 = 12 Cr. L.J. 567.**

(2360)—S. 235 — *See* PENAL CODE, s. 71, L.B.R. 1872—1892, 440.

(2361)—S. 235— *See* PENAL CODE, ss. 71, 406, 417, L.B.R. 1872—1892, 492.

(2362)—S. 235—*See* PENAL CODE, ss. 379, 215, 71 L.B.R. 1893—1900, 226.

(2363)—S. 235—*See* PENAL CODE, ss. 379 and 390, 6 C.P.L.R. 36 Cr.

(2364)—S. 235—*See* RIOTING, 12 C. 495.

Crim. Pro. Code (Act V of 1898)—*continued.*

(2365)—*S.* 235, *cl. 1—Charges—Joinder of charges—Same transaction—Penal Code,*ss. 408, 465—*Criminal breach of trust—Falsification of accounts.*—The accused was tried at one trial on two charges, one under s. 408 and the other under s. 465, Penal Code, for having committed criminal breach of trust as a servant, and prepared false accounts for the purpose of committing the criminal breach of trust. He was convicted and sentenced separately on both charges. On appeal, the Sessions Judge confirmed the conviction on the first charge and reversed that on the second charge, on the ground that the accused ought not to be tried for both the offences because they were not of the same kind. The accused applied to the High Court for annulling conviction and sentence on the first charge, contending also that the whole trial was illegal and void because he had been tried for two offences of distinct kinds. *Held,* dismissing the application, that the case fell within cl. 1 of s. 235 of the Code of Criminal Procedure, inasmuch as there was only one act of criminal breach of trust charged against the accused, and the falsification of accounts charged was an offence which formed part of the transaction as to the criminal breach of trust, for the accounts alleged to have been falsified related to the act charged under s. 408, Penal Code, and therefore they were offences connected with one another and arising out of the same transaction. EMPEROR v. LALJI BHANJI, **14 Bom. L.R. 306 = 15 Ind. Cas. 645 = 13 Cr. L.J. 501 = 1 Bom. Cr. C. 115.** (4 Bom. L.R. 433, 30 M. 328, *explained.*)

(2366)—*S.* 235 (1)—"*Transaction,*" *meaning of—See* NGA PO KE v. QUEEN-EMPRESS, **U. B.R. 1897 –1901, Vol. I, 31.**

(2367)—S. 235, cls. 2 and 3—*See* SENTENCE —CUMULATIVE AND SEPARATE SENTENCES, Rat. Un. Cr. C. 79 = Cr. Rg. 11-12-1873, 5 P.R. 1883, 12 C. 495, 9 A. 645 = A.W.N. 1887, 149, 11 C. 349, Rat. Un. Cr. C. 369 = Cr. Rg. 18 OF 1868, 6 C. 718.

(2368)—*S.* 235, *Ill.* (*f*)—*Same transaction—Voluntarily causing grievous hurt—False reports to conceal the offence—Police Officer—Penal Code, ss.* 331, 330, 114, 218.—The accused was charged with having caused grievous hurt to a person for the purpose of extorting from him confession of his guilt and having, after his death from the injuries, prepared false official records to conceal the cause of his death. He was tried at one trial for the offences under ss. 331, 193 and 218 and convicted on all the charges. It was objected that the trial was bad on the ground of misjoinder of charges. *Held,* that there was no misjoinder, as the case fell under the plain words of s. 235 and its Ill. (*f*) of the Crim. Pro. Code. The transaction of making a series of false entries so as to attribute another cause for the death was in continuation of and pursuant to the same transaction of voluntarily causing grievous hurt with the view of extorting confession. EMPEROR v. BALWANT, **14 Bom. L R. 41 = 13 Ind. Cas. 825 = 1 Bom. Cr. C. 72 = 13 Cr. L.J. 137.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2369)—S. 235—*See* Nos. 54, 245, 246, 275, 1564, 1827, 1937, 1948, 1949, 2204, 2248, 2251, 2265, 2305, 2306, 2307, 2314 to 2318, 2343 to 2347, *supra and* No. 2521, 3484, 3485, 3495, *infra.*

(2370)—Ss. 235 and 35—*See* ACT XII OF 1896, ss. 45 and 51, 1 L.B.R. 33.

(2371)—*Ss.* 235, 236 *and* 403 (= *Crim. Pro. Code,* 1882, *ss.* 235, 236, 403)—*Scope of s.* 236—*Previous conviction or acquittal—Subsequent trial when valid.*—S. 236 contemplates a state of facts constituting a single offence, but not where it is doubtful whether the acts involved may amount to one or another of several cognate offences. Where that is the case, the accused may be simultaneously charged with and tried for the commission of all or any of such offences, and after acquittal or conviction cannot again be tried on the same facts either for the specific offence or offences for which he has already been tried, or for any other offence for which he might then have been tried under the provisions of the section. But where the acts of an accused disclose more offences than one and distinct in their character, the fact of his having been charged on a previous occasion with one offence only is no bar to the institution of a separate proceeding in respect of some other offence which was then disclosed. (S. 403, 2nd para). QUEEN-EMPRESS v. CROFT, **23 C. 174.** [*R.*, 12 Cr. L.J. 224 = 10 Ind. Cas. 168 = 5 S.L. R. 16, 1 L.B.R. 104.]

(2372)—Ss. 235, 239—*See* UNLAWFUL ASSEMBLY, 6 M.L.T. 17 = 11 Cr. L.J. 30 = 4 Ind. Cas. 700.

(2373)—*Ss.* 235, 239, *Ill.* (*b*)—*Joinder of charges—Trial for more than one offence — Same transaction—Separate offences committed on a different day being part of the same transaction.* —The case for the prosecution was that on a certain day the accused wrongfully confined some persons, fined them and realized a portion of the fine, and on their promise to pay the balance three days later, they were released, but on their failure to make the payment on the appointed day, they were again wrongfully confined for realizing the balance of the fine and were beaten and otherwise maltreated. The Deputy Magistrate framed separate charges under s. 347 I.P.C., against the accused for each day's offence ; he also framed a separate charge against the accused under s. 352 and s. 352 read with s. 114, I.P.C., as having been committed by the accused persons on the last day. All the charges were tried together. *Held,* that the transaction of the last day was in continuation of what took place on the first day and the beating and other maltreatment alleged to have taken place on the last day were the concluding portion of the same transaction and the charges were rightly tried together. DY. SUPDT. AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. KAILASH CHANDRA GHOSH, **19 C W N. 181 = 27 Ind. Cas. 184.** (30 B. 49, 27 B. 135, *R.*; 33 C. 292, 10 C W.N. 53, *D.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

(2374)—Ss. 235, 239, 403—*See* JOINT TRIAL, 31 C. 1007.

(2375)—*Ss.* 235, 239 *and* 537—*Misjoinder of charges—Offence under s.* 128, *Railway Act IX of* 1890)—*Penal Code, s.* 225.—S. 235, as regards the joinder of different offences, must be read with s. 239, and it is one of the sections mentioned in the latter section. An offence under s. 128 of the Railway Act, and the offence of rescuing the person arrested for the former offence, *i.e.*, an offence under s. 225, Penal Code, are distinct offences. and must be tried separately. The irregularity of trying these offences jointly cannot be cured by s. 537. GOBIND KOERI v. EMPEROR, **29 C 385=6 C. W.N. 468.** (25 M. 61=5 C.W.N. 866=11 M.L. J. 233=3 Bom. L.R. 540=28 I.A. 257=8 Sar. 160, P.C. *F.*). [*R.*, 26 M. 592, 11 Cr. L.J. 293=6 Ind. Cas. 242=7 M.L.T. 367, 15 Cr. L.J. 472=24 Ind. Cas. 352=19 C.L.J. 633, 1 S.L.R. 73, Cr.].

(2376)—*Ss.* 235 *and* 403—Autrefois *convict—Conviction under s.* 452 *of the Indian Penal Code no bar to a subsequent trial for an offence under s.* 365 *of the Code arising out of the same set of circumstances.*—One Merai Curmi, formed an intimacy with one Mussammat Hulla, a widow, and Hulla took up her abode in Merai's house. Some of Hulla's relations attacked the house of Merai, beat him and his brothers, and carried off Hulla. For this they were tried and convicted under s. 452 of the Indian Penal Code. After being removed from Merai's house, Hulla disappeared, and, after all efforts to find her had been unavailing for a space of some two years, the persons, who had been concerned in the attack of Merai's house were put on their trial under s. 365 of the Indian Penal Code. *Held* that their previous conviction under s. 452 was no bar to their being tried under s. 365. EMPEROR v. BALDEO PRASAD, **A.W.N. 1906, 32=3 A.L J. 2=3 Cr. L.J. 93.**

(2377)—Ss. 235 and 403—*See* ACT XXVI OF 1870, s 3, 2 A. 301.

(2378)—*Ss.* 235, 537—*Misjoinder of charges is an illegality.*—Proximity of time between acts does not necessarily constitute such acts parts of the same transaction. A joinder of charges under ss. 454 and 325 of the Penal Code is not warranted by s. 235 of the Code of Criminal Procedure, especially where the offence of house-trespass is clearly distinct from a subsequent attack on the complainant while on his way to inform the police. (2 L.B.R. 19, *R.*) Misjoinder of charges is an illegality and not a mere irregularity which is covered by s. 537 of the Crim. Pro. Code. NGA THA GYI v. EMPEROR, **13 Cr.L.J. 485=15 Ind. Cas. 485.** (25 M. 61, 28 I.A. 257, 11 M.L J. 233, 5 Bom. L.R. 540, 5 C.W N. 866, *F.*)

——**S. 236 (=1882, s. 236; 1872, s. 455; 1861, s. 242).**

See CHARGE.

See JOINDER OF CHARGES.

Crim. Pro. Code (Act V of 1898)—*continued.*

See JOINT TRIAL.

(2379)—*S.* 236—*Scope of the section—Power of Sessions Judge to amend the statement of common object of an unlawful assembly—Alternative charges—Misdirection of jury—Penal Code, s.* 249.—S. 236 of the Code only authorises a charge in the alternative, when it is doubtful which of the several offences the facts which can be proved will constitute, and not when there may be a doubt as to the facts which constitute one of the elements of the offence. Where, on a charge under s. 149 of the Penal Code, the prosecution alleged a certain common object, but the Judge amended the charge and added an alternative common object, considering, possibly, that the common object alleged by the prosecution might be considered not to have been proved, and where it was found that it was impossible to say whether the jury intended to find that the accused acted with the common object alleged by the prosecution, or with that inserted in the charge by the Judge, or with both, or some with one and some with other, *held*, that the Judge had misdirected the jury and the conviction should be set aside. The case was ordered to be retried. WAFADAR KHAN v. QUEEN-EMPRESS, **21 C. 955.** (L. R. 1894, A.C. 57, *R.*) [*Diss* , 19 B. 749, 25 C. 711, 26 M. 1=2 Weir 521; *F.*, 25 C. 230, 11 P.R. 1913, Cr., 14 Cr. L.J. 664=21 Ind. Cas. 904; *Appl.*, 25 C. 561; *R* , 12 Cr. L.J. 224=10 Ind. Cas. 168=5 S.L.R 16, 1 L.B.R. 101; *D.*, 40 C. 367=13 Cr. L.J. 821=17 Ind. Cas. 565; 10 M. L.J. 147, F.B.]

(2380)—*S.* 236—*Scope.*—S. 236 relates not to distinct acts, but to a single act, or series of acts, where the facts being ascertained it is doubtful which of several sections is applicable. SHER SHAH v. EMPRESS, **43 P.R. 1887, Cr.** [*R.*, 9 Cr. L.J. 226=10 Bom. L.R. 973=4 M. L.T. 450.]

(2381)—*S.* 236—*Charge in the alternative—Penal Code, ss.* 193 *and* 423—*False evidence—Entry of false consideration in deed—Sentence.*—The accused in a sale-deed executed by him entered the consideration as Rs. 1,475. When a suit for pre-emption was brought, he gave evidence that the only price was Rs. 900 and that a fictitious price had been entered to defeat pre-emption. *Held*, that the accused was liable to conviction in the alternative under s. 193 or 423, Penal Code. When a conviction is in the alternative only, the sentence cannot be heavier than what is suitable for the less serious offence. SOBHA SINGH v. KING-EMPEROR, **60 P.L.R. 1903.**

(2382)—*S.* 236—*Alternative charges—Charges in the alternative, difference between—Alternative charges for offences under the Penal Code and Special Laws not permissible—Nature of offences for which alternative charges are permissible—Application of s.* 236, *Crim. Pro. Code.*—The accused, a postal peon, was entrusted with certain bearing letters, which it was his duty to deliver and recover the amount of the postage due. He returned bringing neither

Crim. Pro. Code (Act V of 1898)—*continued.*

letters nor money and gave no explanation. At his trial he was charged in the alternative under s. 409, Penal Code, or s. 52 of the Post Office Act, in that he either dishonestly converted to his own use the amount recovered on account of the bearing letters entrusted to him or that he threw the letters away: *Held*, that the charge in the alternative was bad in law. S. 367 (3) of the Crim. Pro. Code, and ss. 40 and 72 of the Penal Code refer only to offences under the Penal Code. Consequently, an alternative charge cannot be framed in respect of an offence under the Penal Code and an offence under a Special Law, nor can a Court inflict any sentence on a person found guilty in the alternative of an offence under the Penal Code and another under a Special Act. *Per Pratt, J. C.* (*Crouch, A.J.C. dissenting*). An alternative charge under s. 236, Crim. Pro. Code, cannot be framed in respect of distinct offences, nor even in respect of cognate offences, when the difference is one of degree, *i.e.*, as to the intention imputed to the accused or as to some circumstances of aggravation. S. 236, Crim. Pro. Code, applies to those cases only in which the prosecution cannot establish exclusively any one offence, but is able, on the facts which can be proved, to exclude the innocence of the accused and to show that he must have committed one of two or more offences. Offences charged in the alternative arise out of the same *delictum* and are, therefore, necessarily cognate offences. The doubt referred to in s. 236, Crim. Pro. Code, can only arise when the legal character of the facts of the accused might be considered ambiguous, and the section authorizes a charge in the alternative when it is doubtful which of several offences the facts which can be proved will constitute, and not in a case where there may be doubt as to the facts which constitute one of the elements of the offence, that is, the *corpus delicti*. The criminal intention imputed to the accused must be specifically determined and not allowed to remain a subject of doubt in an alternative charge. S. 236, Crim. Pro. Code, contemplates a state of facts constituting a single offence, but it is doubtful whether the act or acts involved may amount to one or other of several cognate offences. *Per Crouch, A.J.C.*—S. 236, Crim. Pro. Code, provides for those doubts which may arise as to inferences which may be drawn by the Court from the prosecution evidence, if believed. The essential difference between (1) cumulative charges, (2) alternative charges and (3) charges in the alternative is, that, under the *first* the Court is asked to convict of two or more offences, under the *second* of any one specified offence, and under the *third* of one or other of two offences without specifying which. The alternative offences need not necessarily be offences dealt with under the same Chapter of the Penal Code or "cognate" in any other technical sense, but they must, from the nature of the case, be such that the commission of each can reasonably be inferred from the same facts. GANESH KRISHNA v. EMPEROR, **10 Ind. Cas. 168 = 12 Cr. L.J. 224 = 5 S.L.R. 16.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2383)—*S. 236—Two persons accused of giving false evidence — Same case and same point—Joint trial—Illegality.*—The joint trial of two persons accused of giving false evidence in the same case and on the same point is not permitted by the terms of s. 236, Crim. Pro. Code. (16 W.R. Cr. 47, 4 A. 293, 6 M. 252, 10 C. 405, 4 Bom. L.R. 53, *R.*) The false evidence given by one witness is a transaction complete in itself and not connected with false evidence given by another witness, even though in the same case and on the same point. IMPERATOR v. HAJI ALU, **5 S.L.R. 129 = 13 Ind. Cas. 215 = 13 Cr. L J. 23.**

(2384)—*S. 236 — Charges — Misjoinder of charges and persons—Theft and receiving stolen property—Penal Code, ss. 380, 411, 414.*—Four accused were tried together, the first under s. 380, the second under ss. 380 and 411, the third and the fourth under. ss. 411 and 414, Penal Code. All the stolen property for receiving or disposing of which the four accused were charged was traced to possession of the first accused. *Held*, that the disposal of the property was one and the same transaction and that there was no misjoinder of the charges or of the persons in the case. NGA PO SHAT v. EMPEROR. **13 Cr. L.J 59 = 13 Ind. Cas. 395 = 4 Bur. L.T. 263.** (U.B.R. 1907—1909, Cr. P. C. 5, 14 Bur. L.R. 38, 6 Cr. L.J. 28, *F.*; 25 M. 61, 28 I.A. 257, 30 B. 49, 7 Bom. L.R. 633, 2 Cr. L.J. 578, 29 B. 449, 7 Bom. L.R. 527, 2 Cr. L J. 480, *Dist.*)

(2385)—S. 236—*See* MURDER, 11 P.R. 1887. Cr.

(2386)—S. 236—*See* PENAL CODE, ss. 182, 193, 5 A. 17.

(2387)—S. 236—*See* Nos. 54, 245, 1391, 1564, 2248, 2265. 2273, 2308, 2319, 2320, 2321, 2345, 2371, *supra and* 3485, 3486, 3495, *infra.*

(2388)—*Ss. 236, 237—Accused charged with causing grievous hurt with a da—Conviction for attempt to murder—Penal Code, ss. 326, 307 —Two scales of punishment—Correct course.*—Where an accused person was charged with causing grievous hurt with a *da* under s. 326, Penal Code, but was formally acquitted of that offence and convicted of attempt to murder under s. 307, Penal Code, *held* that, though ss. 236 and 237, Crim. Pro. Code, read together seem to legalize the course taken by the Court of Sessions, still the correct course would have been to amend the charge, or to add a fresh charge of attempt to murder and to call on the accused to plead to this charge. S. 307 contains two scales of punishment, the higher scale being applicable when hurt is caused. Therefore, in the case of a conviction under s. 307, there should be an express finding that hurt was caused. PO YAN v. CROWN, **1 L.B.R. 221.**

(2389)—*Ss. 236, 237* (=*Crim. Pro. Code, 1872, ss. 455, 461*)—*Joinder of charges—Judgment in the alternative.*—S. 455 applies to cases in which not the facts, but the application

Crim. Pro. Code (Act V of 1898)—*continued.*

of the law to the facts, is doubtful. A judgment in the alternative cannot be passed in cases in which it is doubtful whether the accused person is guilty of any one of several offences, but where it is doubtful of which of those offences he is guilty. QUEEN v. JAMURHA, **7 N.W.P. 137.** [*R.*, 14 Cr. L.J. 664=11 P.R. 1913=21 Ind. Cas. 904.]

(2390)—*Ss.* 236, 237—*Offence committed.*—The application of s. 237, Crim. Pro. Code, is restricted to the case mentioned in s. 236. S. 236 applies only to a case in which there is a single act or a series of acts of such a nature that it is doubtful which of several offences is constituted by the criminal act or acts. Hence when there is no doubt as to the offence committed, neither s. 236 nor s. 237 can apply. AKRAM ALI v. EMPEROR, **18 C.L.J. 574=15 Cr.L.J. 41=22 Ind. Cas. 185.**

(2391)—Ss. 236, 237 — Applicability — *See* BEN. ACT V OF 1909, ss. 2 (12), 46, 52, 61, 18 C.L.J. 514=18 C.WN. 309.

(2392)—Ss. 236, 237 — Applicability — *See* PENAL CODE, ss. 147, 323, 18 C.W.N 1276=15 Cr. L.J. 704=26 Ind. Cas. 152.

(2393)—Ss. 236, 237 — Applicability—*See* PENAL CODE, ss. 147, 323, 353, 18 C.W.N. 1274.

(2394)—*Ss.* 236, 237, 238—*Alteration of charge—Irregularity—Penal Code, ss.* 366, 376.—It is not competent to a Judge, in appeal, to alter a charge under s. 376 of the Penal Code to one under s. 366; because a charge under the latter section involves different elements and different questions of fact from a charge under s. 376. EMPEROR v. SAKHARAM GANU, **8 Bom.L.R. 120=3 Cr.L.J. 240.** [*R.*, 41 C. 350=15 Cr. L.J. 385=18 C.W.N. 498=23 Ind. Cas. 985.]

(2395)—*Ss.* 236, 237, 238—*Accused charged by Police under s.* 395, *I.P.C.—Magistrate framing charges under ss.* 392, 382, *I.P.C.—Defence of* alibi *disbelieved—Conviction for offence under s.* 458, *I.P.C.—Legality.*—N was sent up by the Police with two others for trial under s. 395, I.P.C. The District Magistrate charged him under s. 392, I.P.C., with robbery and also with a previous conviction under s. 382, I.P.C. The accused pleaded an *alibi* which was disbelieved by the Magistrate, and was found guilty under s. 458, I.P.C., with house-breaking by night after making preparations to cause hurt. The Magistrate convicted him under s. 458, and observed that, as the defence was an *alibi*, the accused could not have been prejudiced by the change of section. *Held* that this doctrine cannot be received as being correct, except in cases that fall within the purview of ss. 236, 237 and 238, Crim. Pro. Code. NGA KAUNG NYEIN v. KING-EMPEROR, **U.B.R. 1911, 3rd Qr., 98=14 Ind Cas. 973=13 Cr. L.J. 429.** (1 L.B.R. 287, 288, *R.*)

(2396)—Ss. 236, 237, 238, 423—*See* CHARGE—ALTERATION OF CHARGE, 26 C. 863=3 C.W.N. 653.

Crim. Pro. Code (Act V of 1898)—*continued.*

(2397)—*Ss.* 236, 237, 403—*Acquittal under s.* 400, *I.P.C., whether a bar for conviction under s.* 395, *I.P.C.*—The acquittal of an accused on a charge under s. 400, I.P.C., cannot operate, under s. 403, Crim. Pro. Code, as a bar to his being prosecuted again on a charge under s. 395, I.P.C., for committing one of the dacoities in respect of which evidence was given in the previous trial under s. 400. S. 403, Crim. Pro. Code. bars a separate trial on the same basis of facts, only in cases falling within ss. 236, 237 of that Code. QUEEN-EMPRESS v. SUBEDAR KRISHNAPPA, **1 Bom. L.R. 15.** [*R.*, 12 Cr. L.J. 224=10 Ind. Cas. 168=5 S. L.R. 16, 15 Cr. L.J. 460=18 C.W.N. 723=24 Ind. Cas. 340.]

(2398)—*Ss.* 236, 237, 403—*Penal Code, s.* 457—*Rangoon Police Act* (IV *of* 1899), *s.* 31—*Second trial for a graver offence when conviction on the same facts for lesser offence subsisting, whether legal.*—When a man has been convicted of committing an act constituting an offence, and further evidence subsequently comes to light which shows that his act constituted a graver offence than that of which he was convicted, he cannot merely on that ground alone be put upon his trial for the graver offence. Therefore, a person who is convicted under s. 31 of the Rangoon Police Act for being in possession of an article supposed to be stolen cannot be again tried and convicted later on for the offence under s. 457, Penal Code, simply on the ground that the owner of the article is traced and some further evidence is available to constitute an offence under s. 457, Penal Code. NGA SHWE YI v. EMPRESS, **16 Cr. L.J. 267=28 Ind. Cas. 155.**

(2399)—Ss. 236, 237, 403—*See* AUTREFOIS ACQUIT, PLEA OF, 7 N.W.P. 371.

(2400)—Ss. 236, 237, 403 (1)—*See* BOM. ACT III of 1888, ss. 308, 309, 342, 4 Bom. L.R. 575.

(2401)—*Ss.* 236, 237, 537 (=*Crim. Pro. Code, Act* X *of* 1882, *ss.* 236, 237, 537)—*Charge of murder—Conviction for theft.*—Ss. 236 and 237 of the Crim. Pro. Code, refer to cognate offences such as theft and criminal breach of trust, and do not relate to offences of so distinct a character as murder and theft. Where, however, the prisoner was not prejudiced in his defence by the failure to frame a separate charge of theft, *held*, that s. 537 of the Crim. Pro. Code, applied and that the conviction need not be set aside. EMPRESS v. NAROTAM, **A.W.N. 1888, 95.**

(2402)—Ss. 236, 367 (3)—Applicability to cases of doubt as to guilt of accused with regard to one of the offences—Benefit of doubt when to be given—*See* PENAL CODE, ss. 72, 302, 201, 11 P.R. 1913, Cr.

(2403)—*Ss.* 236, 403—*Same facts—Charges under ss.* 302, 201, *I.P.C.—Joinder in the same trial—Legality—Separation of trials as regards charges under ss.* 302, 201—*Error of law*—

Crim. Pro. Code (Act V of 1898)—*continued.*

Acquittal in previous trial under s. 302—*Conviction under ss.* 201, 202, *subsequently—Illegality.*—A and his wife B committed a series of acts in the course of the same transaction, from which acts it could be inferred that both A and B, or either of them committed the offence of murder or that one of them caused the disappearance of the evidence of commission of the offence by burning the dead body. A and B were each of them charged under ss. 302 and 201, I.P.C. The Sessions Judge tried A under both the sections and convicted him under s. 302, I.P.C. As regards B, he separated the trials in respect of the charges under ss. 302 and 201, tried and acquitted her on the charge under s. 302 only. *Held*, that the joinder of charges of murder and of causing disappearance of the evidence of the murder in the alternative was legal under s. 236, Crim. Pro. Code. (1 S. L.R. 73, *F.*) *Held*, that the Sessions Judge committed an error of law in that he separated, as regards B, the trial under s. 302 from that under s. 201. *Held* also that the acquittal of B of the charge under s. 302 operated, by reason of s. 403, Crim. Pro. Code, as a bar to her second trial on a charge under s. 201, I.P.C. CROWN v. BAWA MANGHNIDAS, **4 S.L R. 174 = 8 Ind. Cas. 936 = 11 Cr. L.J. 731.**

(2404)—*Ss.* 236, *ill.* (*b*) *and* 476—*Penal Code*, s. 193—*Perjury—Prosecution of a witness.*—The prosecution of the petitioner was directed by the Sessions Judge under s. 476 of Crim. Pro. Code, for having made three different statements on the same fact at three different stages of the proceedings: *Held*, that, under the circumstances of the case, it was not expedient that the petitioner should be prosecuted. MAUNG THA v. EMPEROR, **8 Ind. Cas. 947 = 11 Cr. L J. 734.** (1894, P.J.L.B. 79, 3 L.B.R. 204, 4 Cr. L.J. 469, *F.*)

(2405)—Ss. 236, 477, 478—*See* SESSIONS JUDGE, JURISDICTION OF, 3 M. 351 = 6 Ind. Jur. 28 = 2 Weir 269.

——S. 237, para 1 (=1882, s. 237; 1872; s. 456; 1861 cf. ss. 56 to 59), and para 2, new.

See CHARGE.

See JOINDER OF CHARGES.

See JOINT TRIAL.

(2406)—*S.* 237 (=*Crim. Pro. Code*, 1861, *ss.* 56 *to* 59)—*Penal Code, ss.* 395, 412—*Charge of dacoity—Conviction under s.* 412—*Legality.*—Persons charged with and tried for dacoity under s. 395 of the Penal Code cannot be convicted of receiving stolen property under s. 412, since there was no charge under the latter section and since the case did not fall within ss. 56 to 59 of the Crim. Pro. Code, 1861. REG v. GOPALA PURSOO, **Rat. Un. Cr. C. 34 = Cr. Rg. 16-6-1870.**

(2407)—*S.* 237—*Scope of the section.*—S. 237, Crim. Pro. Code, does not apply to a case where the true nature of the offence is not open to reasonable doubt. Where a person is charged with a certain offence and the opinion of the assessors is taken on that charge, he cannot be convicted of a different offence, which the evidence in the case points to, if the opinion of the assessors is not taken regarding that offence. *In re* PERUMAL NADAN, **2 Weir 301 = 2 Weir 392.**

(2408)—S. 237—*See* PENAL CODE, ss. 201, 302, 1 P.R. 1904, Cr. = 30 P.L.R. 1904.

(2409)—S. 237—Different offences—Different accused—Joint trial—Legality—*See* PENAL CODE, ss. 379, 411, 1914 M.W.N. 352 = 23 Ind. Cas. 208 = 15 Cr. L.J. 256.

(2410)—S. 237 (1)—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 12 A. 101.

(2411)—S. 237 (1)—*See* PENAL CODE, ss. 28, 195, 232, 235, 43 P.L.R. 1912 = 17 P.W.R. 1912 Cr. = 14 Ind. Cas. 604 = 13 Cr. L.J. 252.

(2412)—S. 237—*See* Nos. 54, 1564, 2185, 2265, 2273, 2284, 2388 to 2400, *supra, and* No. 2466, 3486, 3495, 3665, 3693, *infra.*

(2413)—*Ss.* 237, 238 (=*Crim. Pro. Code*, 1882, *ss.* 237 *and* 238).—A person charged with and acquitted of murder was convicted of having dishonestly misappropriated property possessed by the deceased person at the time of his death. *Held* that, as the latter charge was not framed and the accused was not called upon to plead to it, the conviction was bad. EMPRESS v. DONGRIA GAOLI, **13 C.P.L.R. Cr. 167.** (11 B.H.C. 240, *R.*).

——S. 238 (=1882, s. 238; 1872, s. 457).

See CHARGE.

See JOINDER OF CHARGES.

See JOINT TRIAL.

(2414)—*S.* 238 (=*Crim. Pro. Code*, 1882, *s.* 238)—*Charge of robbery—Conviction for offences under ss.* 380, 457 — *Validity.*—The accused were charged with and tried by the Sessions Court for an offence under s. 397, Indian Penal Code, of committing robbery and using a deadly weapon (a sword) at the time of committing it, and the jury returned a verdict of not guilty of the offence charged, but found accused No. 1 guilty of the offence of house-breaking by night and theft in a dwelling house and accused No. 2 guilty of abetting those offences. *Held*, that all the particulars constituting the minor offence of house-breaking by night and theft in a dwelling house and abetment of those offences were not included in the definition of robbery, the only offence with which the accused were charged; therefore, under s. 238, Crim. Pro. Code, the accused could not be convicted of those offences without a charge being framed; the verdict of the jury finding them guilty of those offences in the absence of such a charge was accordingly bad and should be reversed. QUEEN-EMPRESS v. DALA TALA, **Rat. Un. Cr. Cas. 211 = Cr. Rg. 26 4-1885.**

(2415)—*S.* 238 (=*Crim. Pro. Code*, 1882, *s.* 238)—*Conviction for a minor offence where evidence is not sufficient for grave offence—Penal Code, ss.* 366 *and* 498.—Where the husband is the complainant and brings his complaint under

Crim. Pro. Code (Act V of 1898)—*continued.*

s. 366 of the Penal Code, a conviction under s. 498 of the Penal Code may properly be had, even in the absence of complaint by the husband, under s. 199, Crim. Pro. Code, of an offence under s. 498 of the Penal Code, if the evidence be such as to justify a conviction for the minor offence, and yet insufficient for a conviction for the graver one. Such a case is within the intention of s. 238, Crim. Pro. Code. The intention of the law is only to prevent Magistrate's inquiring of their own motion into cases connected with marriage, unless the husband or other person authorised moves them to do so. JATRA SHEKH v. REAZAT SHEKH, **20 C. 483.** [*Diss.*, 27 M. 61=2 Weir 236, 17 C.P.L.R. 105; *F.*, 12 Cr. L.J. 50=8 Ind. Cas. 1160=32 P.R. 1910, Cr.=39 P.L.R. 1911=51 P.W.R. 1910, Cr.; *R.*, 22 C. 1006, 30 C. 910=8 C.W.N. 17, F.B.]

(2416)—*S.* 238 (=*Crim. Pro. Code*, 1882, *s.* 238)—"*Minor offence*"—*Offences under ss.* 365, 366 *and* 376, *Penal Code.*—The words "minor offence" in s. 238, Crim. Pro. Code, ought to be taken in their ordinary sense and not in any technical sense; if so taken, an offence under s. 365 would be a minor offence as compared with those under ss. 366 and 376, Penal Code. QUEEN-EMPRESS v. SITA NATH MANDAL, **22 C. 1006.**

(2417)—*S.* 238 (=*Crim. Pro. Code*, 1882, *s.* 238)—*Penal Code, s.* 330.—Where the accused had been convicted of an offence, to constitute which an additional particular was necessary over and above the particulars which constituted the graver offence with which he was charged, *i.e.*, the purpose of extorting confession, *held* that a conviction under s. 330, Penal Code, without framing a charge was not correct. EMPRESS v. SHEODAYAL, **7 C.P.L.R. Cr. 17.**

(2418)—S. 238—*See* CONVICTION, 11 B.H.C. 240.

(2419)—S. 238—*See* VERDICT OF JURY, 6 C.L.R. 349.

(2420)—S. 238 (2) — Charge — Rioting — Common object not trespass— Conviction of trespass whether legal — *See* PENAL CODE, ss. 147, 447, 15 Cr. L.J. 188=22 Ind. Cas. 764=18 C.W.N. 992.

(2421)—S. 238—*See* Nos. 54, 1429, 1564, 1995, 2240, 2281, 2394, 2395, 2396, 2398, 2413, *supra, and* No. 2952, 3695, 3693, 4209, *infra*

(2422)—Ss. 238, 303, 307—*See* CHARGE TO JURY—MISDIRECTION, 20 B. 215.

(2423)—Ss. 238, 307—*See* HIGH COURT, JURISDICTION OF—AS A COURT OF REFERENCE, 22 C. 1006.

(2424)—*Ss.* 238, 418 *and* 536—*Offences triable by jury—Acquittal—Jury being of opinion of accused being guilty in respect of minor offence not triable by jury—Conviction—Appeal on facts and on law.*—The accused was charged with robbery under s. 392, Penal Code, and also with the offence of causing grievous hurt at the time of committing robbery under s. 397, both being offences triable by jury. The jury, while returning a verdict of not guilty on both the charges, found the appellant guilty of voluntarily causing grievous hurt, an offence triable by assessors. The Sessions Judge, accepting the verdict of "not guilty" acquitted the accused in respect of the charges under ss. 392 and 397, but convicted him of causing grievous hurt under s. 325, Penal Code. Against this conviction, the accused appealed and claimed to go into the evidence and to show that the offence under s. 325 was not proved. *Held*, by *Benson, J.*—The accused has in fact been convicted of the minor offence by the Judge who treated the finding of the jury in regard to the grievous hurt as the opinion of assessors. It is not correct to say that the conviction under s. 325 was by a jury. It is expressly a conviction by the Judge and the Judge's procedure was correct. An appeal, therefore, lies on the facts of the case. *Per Bhashyam Ayyangar, J.*—The effect of s. 238 is to invest a jury trying an offence triable by a jury with authority to find, as an incident to such trial, that certain facts only are proved in the trial which facts constitute a minor offence, and return a verdict of guilty of such offence though it may not be triable by a jury. And the Sessions Judge may thereupon record a judgment convicting the accused of such minor offence, although he is not charged with it and tried on such a charge by the Sessions Judge with the aid of jurors as assessors. In cases in which, having regard to the charge and the evidence adduced at the trial, it is appropriate to do so, the Sessions Judge in his charge to the jury should draw their attention to the provisions of s. 237 or 238 as the case may be, so that the jury may, if they deem fit to do so, return a verdict of guilty on a cognate or minor offence, though they return a verdict of not guilty of the offence with which the accused has been actually charged. In this case the jury found that the first accused was guilty of causing grievous hurt and the Judge has given judgment convicting him of the same. And, therefore, an appeal will lie from such judgment only on a point of law. PATTIKADAN UMMARU v. EMPEROR, **26 M. 243=2 Weir 463=2 Weir 388.** [*R.*, 37 M. 236=13 Cr. L.J. 739=17 Ind. Cas. 51.]

(2425)—Ss. 238, 423 (*b*) (2)—*See* APPELLATE COURT, Rat. Un. Cr. C. 293=Cr. Rg. 37 of 1886.

——**S. 239 (=1882, s. 239; 1872, s. 458).**

See CHARGE.

See JOINDER OF CHARGES.

See JOINT TRIAL.

(2426)—*S.* 239—*Joinder of charges against several persons.*—Where 62 persons were jointly charged with theft, but there was no joint action on their part, each acting independently of the rest, *held*, that the joinder of 62 separate charges into one charge was a material irregularity by which the accused had been prejudiced. *In re* PORASU NAYAKO, **2 Weir 303.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2427)—*S.* 239 — *Same transaction — Theft and disposal of proceeds.*—Ordinarily theft and the disposal of the proceeds would be parts of the same transaction ; and as proximity of time between two acts does not necessarily constitute them parts of the same transaction, an appreciable interval of time between two acts, otherwise connected, does not prevent them from continuing to be parts of the same series of connected, events ; and, hence, it is not necessary to show that the theft and disposal occurred within a few hours or even a few days of each other. NGA NYO GYI v. KING-EMPEROR, **U. B.R. 1907. Crim. Pro. 5 = 6 Cr. L.J. 28 = 14 Bur. L.R. 38.** (27 C. 839, 28 C. 7, 10, 25 M. 61, 1 C.W.N. 35, 2 L.B.R. 19, U B.R. 1904—1906, Cr., P.C. 2, U.B.R, 1904—1906, Penal Code, 9, *R.*)

(2428)—*S* 239—*Same transaction, determining factor of—Continuity and community of purpose and object.*—In deciding whether offences are so connected as to form one and the same transaction, the determining factor is not so much proximity in time as continuity and community of purpose and object. S. 239 of the Crim. Pro. Code is merely an enabling section and does not in any way trammel the discretion of the Court. SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL v. MANMOHAN ROY, **16 Cr. L.J. 3 = 26 Ind. Cas. 307 = 21 C L J 195 = 19 C W.N. 672.**

(2429)—*S.* 239—"*Same transaction,*" *meaning of—Trespass and on ejection assembling men to force entry, whether part of same transaction—Joint trial, whether legal.*—The act of a trespasser in entering into a factory, and, subsequent to his ejection therefrom, his act in assembling men to force an entry into it, are acts unconnected with each other and do not form part of the same transaction, within the meaning of s. 239 of the Crim. Pro Code, and a joint trial for such offences is illegal. *In re* ANANTHA PADIYARA, **15 Cr. L.J. 695 = 26 Ind. Cas. 143.** (6 Ind.Cas. 242 = 7 M.L.T. 367 = 11 Cr. L.J. 293 = 1910 M.W.N. 541, 29 C. 385 = 6 C.W.N. 485, 25 M. 61 = 11 M.L.J. 253 = 2 Bom. L.R. 540 = 5 C.W.N. 866 = 28 I.A. 257, P.C. = 2 Weir 271, *F.*)

(2430)—*S.* 239—*Joint trial—Same transaction—Distinct offences.* - Three accused persons were jointly tried and convicted of three offences of cheating, punishable under s. 420, Penal Code ; the acts of cheating were wholly distinct. *Held,* that the joint trial was illegal; the offences, in order that they might have been properly tried together, should have been committed in the course of the same transaction. KARM SINGH MALI v. CROWN, **122 P. L.R. 1911 = 10 Ind. Cas. 63 = 12 Cr. L.J. 208 = 28 P.W.R. 1911.** (33 M. 502, 33 C. 292, *F.*)

(2431)—*S.* 239—*Charges, misjoinder of—"Same transaction"—Sentences, separate, whether should be passed for offences committed in the same transaction.*—The petitioner, a ticket-collector, handed over two used tickets to a confederate, who thereupon produced them before a Railway authority and claimed a refund of the fare on the false allegation that the tickets had been purchased by his aunt and had not been used. The petitioner was then charged with criminal breach of trust under s. 408, I.P.C. and with abetment of cheating under s. 402 read with s. 109 and tried at the same trial with his confederate who was charged with attempt at cheating, under s. 420 read with s 511, I.P.C. *Held*—That there had been no misjoinder of charges. The offences charged against the petitioner were committed in the same transaction and his case fell within the purview of s. 239, Crim. Pro. Code. The two clauses of s. 239, Crim. Pro. Code, are not mutually exclusive. If A induces B to cheat and B attempts to cheat in consequence, A and B may clearly be tried together for abetment of and attempt at cheating. If in the course of the same transaction, A commits the separate offence of criminal breach of trust in furtherance of the conspiracy to cheat, A may clearly be charged with that offence at the same trial. That in this case the petitioner committed two separate offences in the same transaction and could be separately punished for these offences, but the sentences passed upon him should be made to run concurrently. KALI DAS CHUCKERBUTTY v. KING-EMPEROR, **15 C W.N. 463 = 9 Ind. Cas. 618 = 12 Cr. L.J 106 = 38 C 453.** (25 M. 61 = 5 C.W.N. 866, 13 C.W.N. 1089, *R. and D.*)

(2432)—*S.* 239 (= *Crim. Pro. Code,* 1882, s. 239)—"*Transaction,*" *meaning of—Fight between two parties.*—The word "transaction" in s. 239 cannot be construed as authorising the trial, at one and the same trial, of opposing parties to a riot, inasmuch as fight between two parties cannot be treated as one transaction within the meaning of that section. QUEEN-EMPRESS v. CHANDRA BHUIYA, **20 C. 537.** [*R.*, 1 L.B.R. 56, 4 Cr. L.J. 75 = 5 P.R. 1906, Cr. = 116 P.L.R. 1907.]

(2433)—*S.* 239—*False statement, charge of, against several persons.*—When several persons are charged with making false statements, they should be charged and tried separately. *In re* PONAGANTI MUSALAYYA, **2 Weir 304.**

(2434)—*S.* 239 (= *Crim. Pro. Code,* 1882, s. 239)—*Charges involving conspiracy between the accused—Joint trial.*—Where the charges involve conspiracy between the accused, they should be tried jointly. QUEEN-EMPRESS v. MOSS, **16 A. 88 = A.W.N. 1894, 23.**

(2435)—*S.* 239—*Joint trial—Conspiracy by accused to procure conviction of innocent person—Several acts done by each all converging to the point agreed upon—Liability of all conspirators—Trial can be joint.*—The accused, five in number, finding that a robbery of property worth Rs. 60,000 was committed, aided and abetted each other in inducing one Tukya, whom they knew to be entirely innocent of the theft, for the consideration of a bribe of Rs. 100, falsely to confess to complicity in the crime and to acquiesce in being prosecuted for it,

Crim. Pro. Code (Act V of 1898)—*continued.*

with the object that the accused or some of them might share the loot with the real thieves. To this end, the accused wrongfully confined Tukya, fabricated false evidence in order to procure his conviction, knowingly instituted a false prosecution against him, and in that prosecution gave false evidence in order to secure his conviction. The first accused was convicted of fabricating and giving false evidence with intent to procure conviction of an offence, and of wrongful confinement, and of causing criminal proceedings to be instituted against a person without just or lawful ground. The accused No. 5 was convicted at the same trial for giving false evidence with intent to procure conviction of an offence. In appeal, it was urged that the joint trial of these two accused was illegal: *Held*, that s. 239, Crim. Pro. Code, was distinctly applicable, inasmuch as there was one sustained and continuous plot for the purpose of screening the real offenders in the robbery and of exposing Tukya to a false charge with a view that the accused or some of them might participate in the stolen property; and to secure that end various means had to be resorted to, one of which was the giving of false evidence. (4 Bom. L.R. 53, *D*) *Held*, further, that the accusation against all the accused persons was that they carried out a single scheme by successive acts done at intervals, but there was complete unity of project, and the whole series of acts were so linked together by one motive and design as to constitute one transaction within the meaning of s. 239. EMPEROR v. GANESH NARAYAN, **14 Bom. L.R. 972 = 1 Bom. Cr. C. 216 = 13 Cr. L J. 833 = 17 Ind. Cas. 705.** (30 B. 49, *R.*)

(2436)—*S.* 239—*Offences under ss.* 3 *and* 4 *of the Gambling Act—Joint trial—Legality.*—In this case 19 persons were convicted under the Gambling Act—one under s. 3 for keeping a gambling den and the rest under s. 4 for frequenting it and gambling there. *Held*, that the joint trial of all the 19 persons was illegal and the convictions should be set aside. (5 P. W.R. 1910, Cr., 25 M. 61, P.C. *R.*) Persons can only be jointly tried, apart from cases of offenders and their abettors, if they are accused of the same offence or of different offences committed in the same transaction. The keeping of a gaming house and the being present in it at the time of a police raid cannot be said to be part of the 'same transaction.' CROWN v. FAZEL DIN, **35 P.R. 1914, Cr.**

(2437)—*S.* 239—*Misjoinder of charges—Dacoity—Offence committed on different days—One trial—Illegality.*— Where four accused were charged and tried together for two offences of dacoity committed on 30th May and 2nd June, 1909, not forming part of the same transaction: *Held*, that the trial was bad and that the convictions should be quashed. SHANMOOGA THEVAN, SINNAN THEVAN v. EMPEROR. **7 Ind. Cas. 390 = 8 M L.T. 286 = 1910 M.W.N. 540.** (33 C. 292, 10 C.W.N. 32, 3 Cr. L.J. 126, *F.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

(2438)—*S.* 239—*Joint trial of principal and abettor—Prejudice—Re trial by another Judge.*—Where there were three charges under ss. 408 and 408/109, I.P.C., against two accused persons in respect of three sums said to have been defalcated on three different dates, and the Sessions Judge tried the two accused jointly in spite of objection taken by them: *Held*, that, under s. 239, Crim. Pro. Code, judicial discretion was given to the Court to try the principal offender and the abettor either jointly or separately, and the manner in which this discretion should be exercised must depend on the facts of each case. The High Court, on a consideration of the circumstances of the case, *held* that the accused should not have been tried on the charges jointly, and set aside the convictions and sentences, and directed that the re-trial, if any, should take place before another Sessions Judge. DWARKA SINGH v. KING-EMPEROR, **19 C.W N. 121.**

(2439)—S. 239—Keeping common gaming house—Gambling—Same transaction — Joint trial—Legality—*See* ACT III OF 1867, ss. 3, 4, 5, 6, 10, 9 N.L R. 68 = 14 Cr. L.J. 293 = 19 Ind. Cas. 949.

(2440)—S. 239—Joint trial of persons separately accused of offences under the Excise Act—Accused raising no objection to joint trial—Effect—Conviction whether may be set aside—*See* ACT XII OF 1896 (EXCISE), ss. 48, 53, 97 P.L.R. 1914 = 15 Cr. L J. 172 = 25 P.W.R. 1914, Cr. = 22 Ind. Cas. 748 = 20 P.R. 1914, Cr.

(2441)—S. 239—*See* COMMITMENT TO SESSIONS COURT, 22 P.R 1881, Cr.

(2442)—S. 239—*See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT, 13 C. 305.

(2443)—S. 239—*See* PENAL CODE, ss. 109, 195, A.W.N. 1882, 64.

(2444)—S. 239—Offences under ss. 215, 379, 411, Indian Penal Code—One trial—Whether misjoinder *See* PENAL CODE, ss. 215, 379, 411, 26 M.L.J. 598 = 15 Cr. L.J. 471 = 24 Ind. Cas. 351.

(2445)—S. 239—Persons committing dacoity—Same transaction—Joint trial—Sentence—*See* PENAL CODE, ss. 395, 396, 400, 68 P.L.R. 1911 = 10 Ind. Cas. 833 = 45 P.W.R 1911 = 12 Cr. L.J. 260.

(2446)—S. 239—*See* WITNESS—EXAMINATION OF WITNESSES, 5 C.L.R. 574.

(2447)—S. 239—*See* Nos. 54, 244, 354, 647, 1564, 2204, 2246, 2252, 2307, 2308, 2309, 2317, 2318, 2322 to 2329, 2346, 2348, 2349, 2350, 2372 to 2375, *supra*.

(2448)—*Ss.* 239, 439 *and* 537—*Joint trial of both parties in a riot, whether merely irregular or altogether illegal and void—Interference by Chief Court on revision entirely discretionary.*—Where two parties are arrayed against each other in a riot, it cannot be said that the offence of rioting was committed by both the parties in

Crim. Pro. Code (Act V of 1898)—*continued.*

the same transaction, within s. 239 of the Code, so as to justify a joint trial of the persons on both the sides. The offence of rioting committed by each side forms a separate transaction and s. 239 will, therefore, be entirely inapplicable. Though, in the light of the Privy Council judgment in *Subramania Iyer* v. *King-Emperor*, it must be held that a trial which is not warranted by the provisions of the Crim. Pro. Code is altogether illegal and void and not merely irregular, within the purview of s. 537, yet it would be entirely inconsistent with the letter and scope of s. 439 to hold that, in every case of illegal trial, the Chief Court is necessarily obliged to interfere without due regard to the circumstances of the particular case. The illegality of a trial is no doubt *prima facie* good and strong ground for the exercise of revisional jurisdiction, but it is not imperative on the Court to take such action in every case, however small and scant may be the necessity or reason for adopting such a course so as to interfere with the conviction in every such case, especially where no prejudice is shown to have been caused by such illegality. ALA DYA v. KING-EMPEROR, **5 P.R. 1906, Cr. = 4 Cr. L.J. 75 = 116 P.L.R. 1907.** (15 P.R. 1882, Cr., 20 C. 537, 25 M. 61, P.C., *R.*)

(2449)—*Ss.* 239 *and* 537 (= *Crim. Pro. Code*, 1882, *ss* 239, 537)—*Counter cases of rioting —Trial of both cases together—Irregularity prejudicing the accused—Examination of accused in one case as prosecution witnesses in another.* —In counter cases of rioting and grievous hurt committed to Sessions separately, the Judge examined, first, the witnesses in one of the cases and then examined the witnesses in the other case. The principal witnesses for the prosecution in the one case were the accused in the other and *vice versa*. The assessors in both the cases were the same. After examination of witnesses in both the cases, the argument in both cases were heard on the same day, and the assessors were invited to give their opinion in the two cases at one time, as the cases were, according to the Judge, inextricably connected, and only one judgment was given in both cases. *Held*, that the mode of trial, although irregular, did not prejudice the accused in their defence and that re-trial was not made necessary by reason of such irregularity. B.L.R. Sup. Vol. 750 = 8 W.R.Cr. 47, 12 W.R.Cr. 75, *Appr.*) [*R.*, 1 C.W.N. 426, 83 P.L R. 1901 = 7 P.R. 1901, Cr., 8 C.W.N. 344, 2 L.B.R. 106.] *Held* also that the examination of the accused in one case as witnesses for the prosecution, as was done *supra* would not affect the validity of a conviction based on such evidence. QUEEN-EMPRESS v. CHANDRA BHUIYA, **20 C. 537.** (14 C. 358, *Diss.*; 6 C. 96, *Cons.* and *D.*)

(2450)—Ss. 239, 537—Illicit possession and transport of opium—Joint trial—Misjoinder of parties—Effect—*See* ACT I OF 1878, s. 9, 15 Cr. L.J. 420 = 24 Ind. Cas. 156.

——**S. 240 (= 1882, s. 240 ; 1872 ; s. 459, 1861, s. 379-A.)**

See CHARGE.

See JOINDER OF CHARGES.

See JOINT TRIAL.

(2451)—*S.* 240 (= *Crim. Pro. Code*, 1882, s. 240)—*Withdrawal of charge.*—The permission to withdraw one of several charges against an accused person, allowed by s. 240 of the Crim. Pro. Code, only applies to charges against the same accused in the same case and not to separate charges of distinct offences in different cases. QUEEN-EMPRESS v. SADIA, **Rat. Un. Cr. C. 362 = Cr. Rg. 5 of 1888.** [*F.*, 9 Cr.L.J. 495 = 6 M.L.T. 90.]

(2452)—*S.* 240 (= *Crim. Pro. Code*, 1882, s. 240).—S. 240 of the above Code applies to cases in which at the same trial more charges than one have been formally drawn up against the same person under the provisions of Ch. XIX of the Code. EMPRESS v. BHANSIDHUR DEORIA, **10 C.P.L R.Cr. 1.**

(2452-*a*)—*S.* 240—*See* No. 4371, *infra.*

(2453)—*Ss.* 240, 297, 303 (= *Crim. Pro. Code*, 1882, ss. 240, 297, 303)—*Trial for several charges—Conviction.*—S. 240, Crim. Pro. Code, applies to cases where more charges than one are made against an accused person. If he is convicted of one of these charges before the other charges are tried, such other charges may be withdrawn. But, when the evidence bearing on all the charges has been recorded and the pleaders heard, it is the duty of the Sessions Judge under s. 297, Crim. Pro. Code, to sum up the whole of the evidence, and the jury should then, under s. 303, be required to return a verdict on all the charges. QUEEN-EMPRESS v. LINGO, **Rat. Un. Cr C. 286 = Cr. Rg. 22 of 1886.**

(2454)—*Ss.* 240, 344, 494—*Stay of trial under s.* 240.—Where the Sessions Judge stayed the trial of the accused in a case, pending appeal against the conviction in another, and purported so to act under s. 240, Crim. Pro. Code, *held*, that s. 240, Crim. Pro. Code, is only applicable to joinder of charges in the same case, and not to separate charges of distinct offences tried separately, and the procedure of the Sessions Judge was illegal. *Held*, also, that the Sessions Judge might have attained the desired object by adjourning the trial under s. 344, Crim. Pro. Code, pending appeal in the other case, or the Public Prosecutor might under s. 494 have withdrawn the case, with the consent of the Court. *In re* MANTRI KAMARAJU, **6 M.L.T. 90 = 9 Cr. L.J. 495 = 2 Ind. Cas. 128.**

(2455)—*Ss.* 240, 403 (1 *to* 4) (= *Crim. Pro. Code, Act* X *of* 1882, *ss.* 240, 403)—*Penal Code, ss.* 193, 204—*Stay of trial.*—A Magistrate trying a person accused of offences under ss. 193 and 204 of the Penal Code, convicted the accused under the former section, but with regard to the latter, the Magistrate, thinking that the facts constituted some other offence, ordered the papers to be placed before the District Magistrate. Later on, the accused was again placed on trial under s. 204. *Held*, that the first disposal did not amount to an

Crim. Pro. Code (Act V of 1898)—*continued.*

acquittal but only to a stay of trial under s. 240 of the Crim. Pro. Code, and that the subsequent trial was not barred by s. 403 of the Crim. Pro. Code. EMPRESS v. RAGHUNANDAN LAL, **A.W.N. 1889, 8.**

—— **S. 241 (=1882, s. 241; 1872, s. 203, para. 1).**

(2456)—S. 241—*See* No. 79, *supra*.

——**S. 242 (=1882, s. 242; 1872, ss. 203, paras 2, 206, para 1; 1861, s. 265).**

See SUMMONS CASES.

See TRIAL.

(2457)—S. 242—*See* ACCUSED PERSON, 1 L.B.R. 308.

(2458)—S. 242—*See* Nos. 273, 761, 782, 2058. 2330, *supra* and 4296 *infra*.

(2459)—Ss. 242, 243 244—*See* PUN. ACT, XIII OF 1884, 2 P.R. 1890, Cr.

(2460)—*Ss.* 242, 244, 342, 364 *and* 537—*Examination of accused.*—S. 342, Crim. Pro. Code, is imperative and requires the accused to be examined after the witnesses for the prosecution have been examined. This applies to all trials, but, in summary trials, the provisions of s. 364 as to the mode of recording such examination do not apply. The answer of the accused recorded under s. 242 in summons cases takes the place of a plea to a formal charge, but when the witnesses for the prosecution are finished, s. 244 requires the Magistrate to hear the accused again and to take such evidence as he produces in his defence. KING-EMPEROR v. KYON BAW, **2 L.B.R. 239.** (2 L.B.R. 115, *R.*; 4 L.B.R. 143, *D.*). [*R.*, 7 Cr. L.J. 422=4 L.B.R. 143.]

(2461)—Ss. 242, 262, 264—*See* SUMMARY TRIAL, Rat. Un. Cr. C 725=Cr. Rg. 50 of 1894.

(2462)—Ss. 242, 344—*See* ACCUSED PERSON, 1 L.B.R. 60.

(2463)—Ss. 242, 437—*See* PENAL CODE, ss. 500, 506, 13 Cr. L.J. 488=15 Ind. Cas. 488.

——**S 243 (=1882, s 243; 1872, ss. 206, para 2, 208.)**

See SUMMONS CASES.

See TRIAL.

(2464)—S. 243—*See* PENAL CODE, s. 290, 1 C.P.L.R. 25, Cr.

(2465)—S. 243—*See* Nos. 79, 273, 415, 2012, 2459, *supra*, and Nos. 2473, 2598, 4296, *infra*.

(2466)—Ss. 243 and 237—*See* MURDER, 5 W.R. Cr. Cir. 2.

(2467)—*Ss.* 243, 244, 246—*Trial of summons case—Summons for criminal trespass—Conviction for assault and mischief—Competency of Magistrate—Procedure to be followed.*—Where certain accused persons had been summoned to nswer a charge of criminal trespass only, it is pen to the trying Magistrate to convict them of the offences of assault and mischief. *Held*, that, on a plain construction of s. 246, the Magistrate is not bound, when he thinks that other offences have been proved, to re open the trial and follow the procedure of ss. 243 and 244. DASARATH RAI v. EMPEROR, **36 C. 869 =4 Ind. Cas. 352=10 Cr. L.J. 557.** (22 W.R. Cr. 40, *R.*)

(2468)—*Ss.* 243, 262, 263 *and* 555 (=*Crim. Pro. Code*, 1882, ss. 243, 262, 263, 555)—*Summary procedure—Accused fined by the Magistrate without notice or summons and proceeding recorded subsequently to trial, validity of.*—Where a Deputy Magistrate, who was also the Chairman of a Municipality, riding on horse back, in his capacity as Chairman, convicted a person under s. 283, Penal Code, describing the trial as summary trial, on the admission of the accused that he had raised the level of the road, without issuing any process or giving any notice to the accused, *held*, that the Magistrate's procedure was illegal on the grounds (1) that the record of the proceeding was not made at the time of the trial (s. 263), but subsequently prepared, after the close of the trial, from memory or from rough notes; (2) that the Magistrate did not record the admission of the accused at the time in the words of the accused as far as possible as required by s. 243 and (3) that the Magistrate was prohibited by s. 555 from trying the case himself. QUEEN-EMPRESS v ERUGADU, **15 M. 83=2 Weir 326=2 Weir 729.**

—— **S. 244 (=1882, s. 244; 1872, ss. 207, 361; 1861, ss. 262, 263, 266.)**

See SUMMONS CASES.

See TRIAL.

(2469)—*S.* 244—*Summons cases—Powers of Magistrate to refuse to compel attendance of witness, already summoned.*—There is no discretionary power given by s. 244 of the Code to refuse, in summons cases, to compel the attendance of a witness upon whom the Court has already issued process. DAULAT SINGH v. BRINDA BELDER, **30 C. 121.**

(2470)—*S.* 244 (=*Crim. Pro. Code*, 1882, s. 244)—*Power of Magistrate to dispense with complainant's witnesses.*—It is not open to the Magistrate, under s. 244, to dispense with any witness whom the complainant wishes to examine. NARANAPIER v. RAMASAWMI AIYAR, **2 Weir 305.**

(2471)—S 244—*See* BOM. ACT IV OF 1887, s. 7, 3 S.L.R. 84=3 Ind. Cas. 895.

(2472)—S. 244—*See* Nos. 180, 2012, 2058, 2459, 2460, 2467, *supra*, and No. 2666, 4756, *infra*.

(2473)—*Ss.* 244 *and* 243—*Procedure when accused does not admit offence.*—If an accused does not admit that he committed the offence of which he is accused, the Magistrate cannot convict him except upon evidence that the accused did commit the offence. The latter part of s. 243 should not be read as distinct and separable from the first part of the section. VADIVELU SWAMY v. CROWN, **1 L.B.R. 93.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2474)—Ss. 244, 245, 247—*See* COMPLAINT—DISMISSAL OF COMPLAINT, 5 M. 160=2 Weir, 305.

(2475)—*Ss.* 244, 250 (=*Crim. Pro. Code,* 1882, *ss.* 244, 250)—*Complaint of assault—Conviction of complainant and accused for affray.*—The complainant charged some persons with assault. The Magistrate, after taking evidence, acting under s. 250, Crim. Pro. Code, and without altering the previous charge or framing a new one, convicted the accused and also the complainant under s. 160, I.P.C.: *Held* that the conviction of the complainant was illegal and that separate proceedings ought to have been taken against him. QUEEN-EMPRESS v. KISSAN MALHARI, **Rat. Un. Cr. C. 403=Cr. Rg. 64 of 1888.**

——**S. 245 (=1882, s. 245; 1872, ss. 211, paras 1 and 2, 221; 1861, s. 272).**

See SUMMONS CASES.

See TRIAL.

(2476)—S. 245—*See* REVISION—ACQUITTALS, 15 M.L.J 225.

(2477)—S. 245 *See* Nos. 79, 149, 2474, *supra, and* No. 2574, *infra.*

(2478)—Ss. 245, 247, 248, 250, 345 and 366—*See* COMPENSATION—GENERAL, 6 C. 581, 14 P.R. 1884, Cr. N., 56 P.R. 1887, Cr.

(2479)—Ss. 245, 247, 248, 250. 345 and 366—*See* COMPENSATION TO ACCUSED, 19 P.R. 1888, Cr.

(2480)—*Ss.* 245 *and* 252 (=*Crim. Pro. Code,* 1882, *ss.* 245. 252)—*Warrant case—Court fees for summoning witnesses.*—Under s. 244, the Magistrate is to summon witnesses on the application of the complainant in summons cases, but in warrant cases the rule is laid down in s. 252. The Magistrate, in the latter case, is to ascertain the names of other persons acquainted with the case, from the complainant or otherwise, and shall then summon them. S. 31 of the Court Fees Act which has reference only to the law as it stood at the time of its enactment, does not itself make the complainant liable to pay fees. The dismissal of complaint in a warrant case, although the offence is a non-cognizable one, for failure of the complainant to pay Court-fees is not, therefore, legal. *In re* PALANNAGARI PITCHIVADU, **2 Weir, 323.**

(2481)—*Ss.* 245, 253, 258, 403, 407 (=*Crim. Pro. Code,* 1882, *ss.* 245, 253, 258, 403, 407)—*Trial of warrant case as summons case—Acquittal—Discharge—Order for re trial.*—The complainant charged two persons before a Tahsildar Magistrate with theft and hurt (ss. 379, 323, I.P.C.), which were warrant cases. The summons was issued for an offence under s. 426, I.P.C. The offence for which the accused was tried was one under s. 323, but the Magistrate did not frame a charge. He treated the case as a summons case, and dismissed the charge under s. 245, Crim. Pro. Code. On the application of the complainant, the Magistrate of the District made an order, under s. 437, Crim. Pro Code, for a new trial before himself, on the ground that the accused had been improperly discharged. *Held* that, as s. 245 did not apply to warrant cases, the so-called acquittal had no effect, and the complaint was not legally disposed of by the Tahsildar Magistrate. The result being that the order of the Magistrate could only operate as a discharge under s. 253, I.P.C., the order of the District Magistrate was good under s 437, Crim. Pro. Code. EMPRESS v. JADU, **A.W.N. 1886, 260.** [*F.*, A.W.N. 1888, 96.]

(2482)—*Ss.* 245, 253, 258, 437 (=*Crim. Pro. Code, Act* X *of* 1882, *ss.* 245, 253, 258, 437)—*Penal Code, ss.* 447, 448—*Acquittal—Effect.*—Where a Magistrate dealt with a warrant case (s. 448 of the Penal Code) as a summons case and acquitted the accused under s. 245 of the Crim. Pro. Code, *held* that the order amounted only to one of discharge under s. 253 of the Crim. Pro. Code, and could be dealt with as such under s. 437. The mere absence of the words "house-trespass" in the Magistrate's judgment do not warrant an inference that the case was dealt with as one under s. 447 of the Penal Code when the facts clearly establish the theory of an offence under the next section. EMPRESS v. LAJJA RAM, **A.W.N. 1888, 96.**

(2483)—*Ss.* 245, 253, 437—*Summons case tried as warrant case—Discharge of accused, effect of—Acquittal.*—If a Magistrate trying a summons case, whatever procedure he adopts, finds no case made out against the accused, and lets him go unconditionally, he acquits him, though he styles his order an order of discharge and tacks on to it the number of some section of the Code which deals with discharges. The accused is, none the less, in law acquitted, for the Code contemplates no other order in summons cases. Under such circumstances, the Sessions Judge has no power to take action under s. 437, Crim. Pro. Code, on the Magistrate's order. THETHARAPPA PILLAI v. VENCATRAMA AIYAR, **6 Ind. Cas. 385=8 M.L.T. 78=11 Cr.L.J. 350.**

(2484)—Ss. 245, 289—*See* ASSESSORS, 7 B.H. C. Cr. 82.

(2485)—Ss. 245, 349 — *See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 2 L.B.R. 285.

(2486)—*Ss.* 245, 438—*Revision—Interference with acquittal on reference by the District Magistrate.*—As the Criminal Procedure Code provides for an appeal against acquittal by Government, the High Court will not interfere under s. 438, The High Court has no power in revision to convert an acquittal into a conviction. SANGILI NAICKEN v. EMPEROR, **8 M.L.T. 380=8 Ind. Cas. 293=11 Cr. L J. 622=1910 M.W.N. 517.**

——**S. 246 (=1882, s. 246; 1872, s. 203, para 1, cl. 2).**

See SUMMONS CASES.

See TRIAL.

Crim. Pro. Code (Act V of 1898)—*continued.*

(2487)—*S.* 246 (= *Crim. Pro. Code*, 1882, *s.* 246)—*Dismissal of complaint made by a Police charge sheet.*—Where a complaint is made by a Police charge sheet, it is not necessary to examine the complainant before dismissing the complaint. *In re* L. M. SOARES, **2 Weir 246.**

(2488)—S. 246—*See* Nos. 79, 2467, *supra.*

——**S. 247 (=1882, s. 247; 1872, ss. 205, 208, 212; 1861, s. 259); and proviso new.**

See COMPLAINANT.

See COMPLAINT.

See SUMMONS CASES.

See TRIAL.

(2489)—*S.* 247 (= *Crim. Pro. Code*, 1872, *s.* 208)—*Failure of complainant to appear on an adjourned date.*—Where a complainant has done all that is necessary for him to do to establish his case, the complaint ought not to be dismissed in default of his attendance on an adjourned date, unless the Magistrate has seen fit, for sufficient reasons, to require his attendance specially on that date. HIGH COURT PROCEEDINGS, 5TH NOV. 1874, NO. 1706, **2 Weir 306.** [*F.*, 7 M. 213 = 2 Weir 477, 2 Weir 306.]

(2490)—*S.* 247—*Failure of complainant to appear on an adjourned date.*—Although a Magistrate has a discretion, under s. 247, to acquit the accused on account of the non-appearance of the complainant on the day to which the case is adjourned, yet, when all the evidence for the complainant has been taken and when he is not specially required to attend, the Magistrate will not be justified in acquitting the accused. *In re* NAGAYYA, **2 Weir 306.**

(2491)—*Crim. Pro. Code, s.* 247—*Non-service of summons to accused—Dismissal of complaint for complainant's default.*—Where summons has not been served on the accused, it is illegal to dismiss the complaint on the ground that the complainant has not appeared on the day fixed for hearing. *In re* KANDAPPA CHETTY, **2 Weir 307.** [*F.*, 18 C.W.N. 1180.]

(2492)—*S.* 247—*Summons case—Absence of complainant—Order of "struck off" by Magistrate—Second complaint—Order of acquittal and discharge — Practice and procedure.*—A summons case was, owing to the absence of the complainant, ordered to be struck off by the Magistrate, under s. 247 of the Crim. Pro. Code. A fresh complaint was filed; but the Magistrate acceded to the argument that he could not entertain it as he had already once passed an order under s. 247 in the case, and acquitted and discharged the accused. *Held*, that neither order was correct in form. The Magistrate was not entitled under s. 247 to record the order "struck off," nor was he in a case which he had not tried, entitled to record the order of acquittal on the second complaint. The most he could do would be to record an order of discharge. *In re* DUBASH, S. E., **10 Bom. L.R. 628 = 8 Cr.L.J. 139.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2493)—*S.* 247 (= *Crim. Pro. Code*, 1861, *s.* 259)—*Dismissal for non-appearance—Nature of offence.*—S. 259 of the Crim. Pro. Code, 1861, does not apply to an offence punishable with imprisonment exceeding six months. A Magistrate cannot, therefore, dismiss complaints of such offences for default of the complainant's appearance. REG v. GOOLAB CHAND, **Rat. Un. Cr. C. 16 = Cr. Rg. 8-7—1869.**

(2494)—*S.* 247 (= *s.* 202 *of* 1861)—*Dismissal of complaint—Irregular proceedings—Effect of dismissal.*—Where the proceedings of a Magistrate are substantially irregular so as to amount to no trial at all, a dismissal of the complaint will not operate as an acquittal. HIGH COURT PROCEEDINGS, 17TH AUG. 1875, NO. 1793, **2 Weir 307.** [*D.*, 2 Weir 308.]

(2495)—*S.* 247—*Failure to dismiss a case for complainant's default—Subsequent dismissal on further default—Validity.*—Where a Magistrate might have disposed of a case under s. 247, at the first hearing, the fact of his not having done so and of his adjourning the case to some other day does not deprive him of the power to acquit under the same section on the latter date, when the complainant has again failed to appear. *In re* LATCHMANA PATRAIKO, **2 Weir 308** [*F.*, 15 Cr.L.J. 236 = 26 M.L.J. 160 = 23 Ind. Cas. 188 = 1914 M.W.N. 273.]

(2496)—*S.* 247—*Appearance of complainant by Vakil.*—The appearance of the complainant's vakil is not equivalent to the appearance of the complainant himself. The mere fact that the complainant is absent on the day fixed for the hearing is a sufficient reason for the dismissal of the complaint. *In re* PONNAGANTI KOTAYYAN, **2 Weir 309.**

(2497)—*S.* 247—*Death of complainant, effect of, in a summons case—Substitution of relative of complainant.*—In a case under S. 352, I.P.C., after the death of the complainant, his nephew applied for substitution of his name in place of the deceased. The Magistrate directed the case to be proceeded with, the ground assigned being that the accused had been guilty of the contempt of the process of the Court: *Held*, that it was not a sufficient ground and the Magistrate should have recorded an order of acquittal under s. 247, Crim. Pro. Code. PURNA CHANDRA MOULIK v. DENGAR CHANDRA PAL, **19 C.W.N. 334 = 16 Cr. L.J. 322 = 28 Ind. Cas. 658.**

(2498)—*S.* 247—*Order of acquittal on account of complainant's absence, passed on a date not fixed for hearing of case, effect of.*—A case was called on by mistake on a date not fixed for hearing and the Magistrate recorded an order of acquittal under s. 247, Crim. Pro. Code, on account of the absence of the complainant. On the date fixed for hearing the mistake was discovered and the Magistrate ignored the order previously passed by him under s. 247, Crim. Pro. Code, and went on with the case which ended in a conviction: *Held*—that an order passed on a date which was not fixed for

Crim. Pro. Code (Act V of 1898)—*continued.*

the hearing of the case and on which date the complainant was necessarily absent is no order at all, and the trying Magistrate had jurisdiction to ignore it and go on with the case and come to the finding which he did. ACHAMBIT MONDAL v. MOHATAB SINGH, **18 C.W.N. 1180.** (2 Weir 307, *F.*; 2 C.L.J. 622, *D.*)

(2499)—S. 247—*See* DISMISSAL OF COMPLAINANT, Colm. Dig. Cr. 91 of 1877.

(2500)—S. 247—*See* Nos. 2474, 2478 and 2479, *supra.*

(2501)—*S.* 247 *and ch.* XX—*Summons case, hearing of, when concludes—Non-appearance of complainant on date fixed for argument and consequent acquittal of accused, if proper.*—Where, in a summons case, after the examination of the witnesses for the prosecution and the defence, the Magistrate adjourned the case for argument for the purpose of the documentary and oral evidence being explained to him, and on that adjourned date the complainant did not appear and the accused was acquitted under s. 247, Crim. Pro. Code. *Held* that, although the Code of Criminal Procedure makes no provision for argument in a case governed by ch. XX of the Code, the hearing of the case did not end with the examination of the witnesses for the parties, and s. 247 had application to the circumstances of the case. RAMJIWAN RAI v. ABILAKH BARARI, **18 C. W.N. 584 = 15 Cr. L.J. 163 = 22 Ind. Cas. 739.**

(2502)—Ss. 247, 195—*See* DISMISSAL OF COMPLAINT, Rat. Un. Cr. C. 137 = Cr. Rg. 31-10-1878.

(2503)—*Ss.* 247, 203—*Complaint by servant on behalf of master—Acquittal under s.* 247 *on death of such complainant out—Complaint of same offence by another servant— Previous acquittal if bar to Magistrate's taking cognizance of second complaint—Penal Code, s.* 426—*Maiming an animal.*—A servant on behalf of his master filed a complaint that an elephant belonging to his master had been maimed by the accused. The Magistrate receiving the complaint issued process under s. 426, I.P.C. On the date fixed for the disposal of the case, finding that the complainant was dead, the Magistrate acquitted the accused under s. 247, Crim. Pro. Code. Thereupon another servant (the petitioner) complained to the Sub-Divisional Magistrate of the same offence of maiming his master's elephant, but the Sub-Divisional Magistrate dismissed the complaint under s. 203, Crim. Pro. Code, on the ground that the previous acquittal was a bar to his taking cognizance of it: *Held*—that the previous acquittal was wholly without jurisdiction and was no bar to the Magistrate's taking cognizance of the second complaint. MADHO CHOWDHRY v. TURAB MIAN, **18 C.W.N. 1211 = 15 Cr. L.J. 726 = 26 Ind. Cas. 174.**

(2504)—Ss. 247, 253—*See* JOINDER OF CHARGES—GENERAL, 11 C. 91.

(2505)—Ss. 247, 369, 432—*See* COMPLAINT —DISMISSAL OF COMPLAINT, 4 C.W.N. 26.

Crim. Pro. Code (Act V of 1898)—*continued.*

(2506)—Ss. 247, 369, 432, 437—*See* COMPLAINT—DISMISSAL OF COMPLAINT, A.W.N. 1885, 43, 13 C.L.R. 303, 4 C.W.N. 346, 7 M. 356 = 2 Weir 309.

(2507)—*Ss.* 247, 403 (= *Crim. Pro. Code,* 1882, *ss.* 247, 403)— *Accused acquitted for default of complainant—Re-trial—Validity.*—Where a person accused of an offence appears on the day fixed for the hearing, but the complainant does not, and the accused is acquitted under s. 247, the accused is "tried" by a Court within the meaning of s. 247. He cannot, therefore, be tried again for the same offence. SURAIYA SASTRI v. VENKATA RAO, **2 Weir 457.** [*F.*, 15 Cr.L J. 236 = 23 Ind. Cas. 188 = 26 M.L.J. 160 = M.W.N. 1914, 273.]

(2508)—*Ss.* 247 *and* 403—*Previous acquittal —Fresh process for offences including the previous one.*—Where a Magistrate issued processes against and summoned certain accused persons for one of several offences alleged against them, and acquitted them of the offence for which they were summoned, no fresh processes could, in view of the provisions of s. 403 (1), be issued against them, in respect of all the offences alleged against them on the previous occasion, including the one for which they were summoned and acquitted. SURESH CHANDRA SINHA v. BANKU SADHUKHAN, **2 C.L.J. 622 = 3 Cr. L.J. 115.** (6 C.W.N. 633, 15 C. 608, *D.*) [*R.*, 36 M. 308 = 24 M.L.J. 463 = 13 M.L.T. 360 = 14 Cr. L.J. 214 = 19 Ind Cas. 310; *D.*, 18 C. W.N. 1180.]

(2509)—*Ss.* 247, 403 (= *Crim. Pro. Code,* 1872 *ss.* 212, 460)—*S.* 277, *I.P.C.—Discharge of accused — Re-trial— Act* V *of* 1861.—An offender, discharged on a complaint under s. 277, I.P.C., cannot, with reference to ss. 212, 460 of the Code, be re-tried on the same facts under s. 34, cl. 7 of Act V of 1861 (Police). POLICE v. DEBI, **Colm. Dig. Cr. 50 of 1876.**

(2510)—*Ss.* 247, 403—*Effect of dismissal under s.* 247—*Accused served with process in summons case—Absence of accused—Effect of —"Tried," meaning of, in s.* 403.—The word "tried" in s. 403 is not confined to decision of the case on the merits, so far at least as proceedings under s. 247 are concerned. There is therefore no reason for saying that an accused, who has been served with process in a summons case and does not appear, is not entitled to the full benefit of an acquittal, when the case against him has been dismissed under s. 247. *In re* GUGGILAPU PADDAYA OF PALAKOL, **9 M.L.T. 93 = 9 Ind. Cas. 253 = 12 Cr.L.J. 41 = 34 M. 253.** (4 C.W.N. 346, 7 C.W.N. 493 and 711, *F.*)

(2511)—Ss. 247, 403—*See* ACT XIII OF 1859, s. 1, 7 L.B.R. 35 = 20 Ind. Cas. 228 = 14 Cr. L.J. 404 = 6 Bur. L.T. 108.

(2512)—*Ss* 247, 403, 417, 435, 439—*Acquittal of accused under s.* 247 *procured by his own trick—Whether a revision or appeal lies against the acquittal—Admission of additional evidence*

Crim. Pro. Code (Act V of 1898)—*continued.*

in appeals—Powers of Court—Grounds for setting aside order of acquittal—English and Indian Law.—In this case the complainant preferred a complaint of mischief against two individuals. Process was issued against them and the complainant was informed of the date of the hearing in person. On the date fixed for the trial, the Magistrate acquitted the accused under s. 247, Crim. Pro. Code, owing to the complainant not being present in Court when the case was called on. It subsequently transpired that the complainant had been kept out of the way by the action of the accused in getting a constable to arrest him on a false charge of committing nuisance after he had come to the place where the Magistrate's Court was situated. The District Magistrate referred the case to the High Court under s. 438, for setting aside the order of acquittal and directing a new trial. *Held*, that the High Court would be prepared to set aside the order of acquittal in this case and order a new trial if the matter had come before it by way of appeal presented by the Local Government under s. 417; but in revision it has always been regarded as a sound rule of practice not to interfere when there is no error in law or on the face of the record, and not to interfere in cases of acquittal in which Government might have appealed under s. 417, but has not done so. (4 B.L.R. 686, 22 C. 998, 7 M. 213, 2 Weir 457, 308, 2 M. 38, 14 M. 363, 25 A. 128, 11 A.W.N. 120, 3 B. 150, *R.*) *Per Spencer, J.*—There is nothing in the language of s. 417, Crim. Pro. Code, to limit appeals against acquittals to cases in which Courts have, owing to some error of law or misappreciation of evidence, come to a wrong decision on the evidence before them. There is no distinction in the Code between the right of appeal against an acquittal and the right of appeal against a conviction, both being governed by the same rules and being subject to the same limitations. (17 C. 485, 20 A. 459, 1914 P.R. p. 15, 2 C. 273, *R.*) S. 241, Crim. Pro. Code, allows additional evidence to be admitted in appeals against acquittals as well as in appeals against convictions, although cases in which this power is exercised will naturally be rare. *Per Miller, J.—Quære.*—Whether the Legislature intended to permit the High Court in appeal or in revision to set aside an acquittal on the ground that fresh evidence is available which could not be produced at the trial, or on the ground that a complainant has shown sufficient reason for the failure to appear and prosecute his complainant before the lower Court. *In re* SINNU GOWNDAN, **26 M.L.J. 160 = 1914 M.W.N. 273 = 15 Cr. L.J. 236 = 23 Ind. Cas. 188.**

(2513)—*Ss.* 247, 404 (=*ss.* 208, 286 (*b*) *of* 1872)—*Dismissal of complaint for default—Appeal.*—No appeal is allowed against an order of dismissal of a complaint for the non-appearance of the complainant. NARAYANASAMI AIYAR v. JANAKI AMMAL, **2 Weir 308.** [*F.*, 15 Cr. L.J. 236 = 26 M.L.J. 160 = 23 Ind. Cas. 188 = 1914 M.W.N. 273.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(2514)—Ss. 247, 426, 439, 440—*See* REVISION—ACQUITTALS, A.W.N. 1882, 229.

——S. 248 (= 1882, s. 248; 1872, s. 210; 1861, s. 271).

See COMPLAINT.

See SUMMONS CASES.

See WITHDRAWAL OF COMPLAINT.

(2515)—*S.* 248 (=*s.* 271 *of* 1861)—*Withdrawal of complaint and stay of proceedings—Penal Code, s.* 498.—"Enticing, etc., a married woman with criminal intent" not being an offence triable under ch. XV, Crim. Pro. Code, 1861, a complaint under s. 498, Penal Code, could not be withdrawn under s. 271, Crim. Pro. Code, 1861; but a husband could stay proceedings under s. 498, Penal Code, by declining to offer any evidence, as he alone could institute a charge under that section. MOHUN v. GUNSHAM, **8 P.R. 1871, Cr.**

(2516)—S. 248—Complaint by Municipal Secretary—Withdrawal by Municipal Council—Acquittal—Legality—*See* MAD. ACT IV OF 1884, ss. 10-A, 39-A, 268, 280, 15 Cr.L.J. 299 = 23 Ind. Cas. 507 = 27 M.L.J. 617.

(2517)—S. 248—*See* COMPOUNDING OFFENCE, 1 B. 147.

(2518)—S. 248—*See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 2 B. 653.

(2519)—S. 248—*See* WARRANT CASE, 13 B. 600.

(2520)—S. 248—*See* Nos. 2478 and 2479, *supra*, and No. 2694, *infra*.

(2521)—Ss. 248, 35, 235—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 1 B. 214.

(2522)—Ss. 248, 250—*See* COMPENSATION—GENERAL, Rat. Un. Cr. C. 462 = Cr. Rg. 21 of 1889, 24 P.R. 1883, Cr.

(2523)—*Ss.* 248, 253, 403—*Charges under ss.* 182, 500, *I.P.C.—Withdrawal for want of sanction—Subsequent institution of complaint with sanction.*—A complaint was made to the Magistrate against the accused of offences under ss. 182 and 500, I.P.C. On the day when the accused appeared before the Magistrate the latter passed the following order:—"As there is no sanction, prosecution withdraws the charge. The accused is discharged." Sanction having been subsequently obtained, a fresh complaint was lodged against the accused for the same offences. The Magistrate ordered the proceedings to be stopped, considering that they could not be taken by reason of the provision of s. 403, Crim. Pro. Code. *Held*, that the order was not legal as the accused had not been previously acquitted by a Court of competent jurisdiction. By reason of there being no sanction, the Court could not take cognizance of the offence under s. 182, and could not, therefore, acquit the accused of that offence. As

Crim. Pro Code (Act V of 1898)—*continued.*

regards the offence under s. 500, I.P.C., which was a summons case, the only legal order he could have passed was under s. 253, and, therefore, there was no acquittal even in that case. *In re* SAMSUDIN, **22 B. 711.** [*D.*, 29 M. 126=16 M.L.J. 79=1 M.L.T. 31=3 Cr. L J. 274.]

(2524)—Ss. 248, 259 and 437—*See* COMPOUNDING OFFENCE, 10 C. 551.

(2525)— Ss. 248, 337, 345 (1 to 4, 6, 7)—*See* EVIDENCE—GENERAL, Rat. Un. Cr. C. 461=Cr. Rg. 18 of 1889.

(2526)—*Ss.* 248, 345 (=*Crim. Pro. Code*, 1861, *s.* 271)—*Withdrawal of complaint triable under ch.* XIV.—S. 271 of the Crim. Pro. Code, 1861, does not apply to offences punishable with imprisonment exceeding six months. The complainant in such cases cannot withdraw his complaint. REG v. JEENKA, **Rat. Un. Cr. C. 17=Cr. Rg. 8-7-1869.**

(2527)—*Ss.* 248, 345 (=*Crim. Pro. Code*, 1861, *s.* 271)—*Compromise.*—Offences triable under Ch. XV of the Crim. Pro. Code, 1861, cannot be compromised under s. 271 of the Code. CRIMINAL CIRCULAR NO. 9, **13 W.R. Cr. Cir. 14.**

(2528)—Ss. 248, 345 (1 to 4 and 6 and 7)—*See* SENTENCE—CONFIRMATION OF SENTENCE, 7 M.H.C. App. 21.

(2529)—*Ss.* 249, 403, 437—*Case challaned by Forest Department— Proceedings stopped by Magistrate, effect of—Further inquiry ordered by District Magistrate—Forest Act* (VII *of* 1878), *s.* 32.—The Forest Department challaned a case of an offence punishable under s. 32 of the Forest Act. The maximum term of imprisonment prescribed for this offence is six months. Acting under s. 249, Crim. Pro. Code, the trying Magistrate stopped the proceedings. The District Magistrate, purporting to act under s. 437, Crim. Pro. Code, set aside the Magistrate's order : *Held*, (1) that the order of the District Magistrate was *ultra vires*, as s. 437 did not apply to the case : (2) that the order under s. 249 would not bar further proceedings in accordance with law. ACHHRU v. EMPEROR, **13 Cr. L.J. 860=17 Ind. Cas. 796=8 P W R. 1913. Cr.=9 P.R. 1913, Cr.=163 P.L.R. 1913.**

——S. 250 (=1882, s. 560 ; 1872, s. 209, paras. 1 and 2 ; 1861, s. 270).

See COMPENSATION.

(2530)—*S.* 250—*Object of.*—The object of s. 250 of the Code is not to punish the complainant, but to award by a summary order some compensation to the person against whom a frivolous or vexatious accusation is brought, leaving it to him to obtain further redress against the complainant, if he seeks for it, by a regular civil suit or by a criminal prosecution.—*Per Banerji, J.* BENI MADHUB KURIM v. KUMID KUMAR BISWAS, **30 C. 123=6 C.W.N. 799.**

(2531)—S. 250 (=*Crim. Pro. Code*, 1872, *s.* 209)—*Scope of section.*—The special provisions of s. 209 are applicable only in the case of original trials under Ch. XVI of the Code. The award of compensation by the appellate Court is illegal. HIGH COURT PROCEEDINGS 27TH FEB. 1875, NO. 488. **2 Weir 314=8 M.H.C. App. 7.**

(2532)—*S.* 250—*Applicability of.*—S. 250, Crim. Pro. Code, 1898, does not apply to a case instituted on a police report or on information given by a police officer. QUEEN-EMPRESS v. SAHAWATH ALI KHAN, **U.B.R. 1897-1901, Vol. I, 68.** (21 C. 984, U.B.R. 1892-1896, Vol. I, 28 *R.*)

(2533)—S. 250—*Case compounded—Award of compensation—Illegal.*—When a criminal case is compounded a Magistrate cannot allow compensation to the accused under s. 250. Cr. P.C. THE CROWN v. SUNDAR SINGH, **30 P.R. 1910=197 P.L.R. 1910=44 P.W.R. 1910=8 Ind. Cas. 387=11 Cr. L.J. 638.** (19 P.R. 1888, Cr., *R.*)

(2534)—*S.* 250—*Compensation, order for payment of, by complainant—Opportunity to show cause.*—The Magistrate after acquitting the accused made the following order—"Accused acquitted, complainant to pay compensation to each of the accused under s. 250, Crim. Pro. Code, and show cause why he should not pay. Complainant is absent. His brother verbally shows cause which is insufficient ; order made absolute." *Held*, that the complainant was in fact given no opportunity of showing cause and the order should be set aside. SUBANS SINGH v. MOHABIR PROSHAD SINGH, **18 C.W.N. 1277=15 Cr. L.J. 707=26 Ind. Cas. 155.**

(2535)—*S.* 250—*Complaint — Accused of an offence.*—By s. 250, Crim. Pro. Code, an order or compensation can only be made in a case instituted by a complaint to a Magistrate or information given to a police officer that certain person has committed an offence, with a view to his taking action. When a complainant filed a petition asking the Court to take security from the accused to keep the peace, but the allegations were found to be untrue, *held* that the complainant could not be required to pay compensation to the accused, inasmuch as he did not charge him with any offence. RAM SUKH RAI v. MAHADEO RAI, **7 A.L.J. 743=7 Ind. Cas. 290=11 Cr. L J. 446.** (25 B. 48, *Appr.*, 15 A. 365, *R.*)

(2536)—*S.* 250—*Compensation awardable—Only if complaint is by the complainant or in his information to the police or Magistrate—Village Magistrate—Not a Magistrate under s.* 250.—In awarding compensation to the accused under s. 250, Crim. Pro. Code, it should appear that the case was instituted by the complainant, or upon information given to a Police Officer or to a Magistrate. A Village Magistrate is not a Magistrate within the meaning of s. 250, although the former is bound to report the information to the police. ARULANANTHAM PILLAI v. EMPEROR, **1911 2 M.W.N. 558=10 M.L.T 550=13 Ind. Cas. 221=22 M.L.J. 138=13 Cr. L.J. 29.** (25 M. 667, 32 M. 258, *D.*) [*D.*, 15 Cr. L.J. 431=24 Ind. Cas. 167.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(2537)—*S.* 250—*Minor complainant—Guardian not responsible—Marriage before Iddat null and void—Penal Code, s.* 498.—*Held*, that, among Muhammadans, a marriage of a woman before expiry of iddat is null and void; consequently enticing her away is not an offence under s. 498, I.P.C. *Held*, also that, under s. 250 of the Code of Criminal Procedure, a guardian or next friend of a minor complainant cannot be ordered to pay compensation to accused. ISA v. RANON, **1 P.W.R. 1912, Cr. =83 P.L.R. 1912=13 Cr. L.J. 136=13 Ind. Cas. 824.**

(2538)—*S.* 250 — *Compensation, order for, when and how to be made*—"*Frivolous and vexatious,*" *meaning of.*—S. 250 requires that a Magistrate, if he wishes to exercise his discretion as to the award of compensation, should do so by his order of discharge or acquittal There is nothing in the Code which authorises him to hold an enquiry on a subsequent date, and make an order under s. 250 on such date. The direction for payment of compensation must be contained in the order of discharge or acquittal. *In the matter of the complaint of* SADUR HUSAIN, **25 A. 315=A W N. 1903. 57.** [*F.*, 3 Cr. L.J. 123=181 P.L.R. 1905=57 P.R. 1905, Cr., 12 Cr. L.J. 6=9 Ind. Cas. 45; *R.*, 8 Bom. L.R. 847, 5 Cr. L.J. 298=U.B.R. 1906, 3rd, Qr., Cr. P.C., p. 51, 13 Cr. L.J. 247=14 Ind. Cas. 599=9 A.L.J. 308, 15 Cr.L.J. 290=10 N. L.R. 8=23 Ind. Cas. 498, 15 Cr. L.J. 504=24 Ind. Cas. 592=7 S.L.R. 123. [*D.*, 36 A. 132=12 A.L.J. 143=22 Ind. Cas. 977.]

(2539)—*S.* 250—*Penal Code, s.* 225-*B—Escape from lawful custody—Report of* chaprasi.—A Civil Court *chaprasi* made a report to the District Judge, that the judgment-debtor, for whose arrest he had a warrant, had escaped from his custody, after having been arrested, by using force to him. The District Judge directed that the papers should be sent to the District Magistrate for formal hearing of a charge under s. 225 (*b*), I.P.C., against the judgment-debtor. A case was instituted accordingly, but the Magistrate acquitted the accused and ordered the Civil Court *chaprasi* to pay compensation to the accused. *Held* that the order for compensation was not legal, as the *chaprasi* neither filed a compiaint nor gave the information upon which the case against the accused was instituted, and the District Judge was the person who instituted proceedings acting on the *chaprasi's* report. *In the matter of the peitition of* RAM PADARATH, **26 A 183=A. W.N. 1903, 216.** (20 C. 481, *F.*) [*F.*, 11 Cr. L.J. 634=8 Ind. Cas. 382=155 P.L.R. 1910=25 P.R. 1910, Cr., 52 P.W.R. 1910; *R.*, 14 Bom. L.R. 1166=1 Bom. Cr. C. 237=14 Cr. L.J. 1=18 Ind. Cas. 145.]

(2540)—*S.* 250—*Report of process server—Prosecution instituted by District Judge on such report—Acquittal of accused—Process server—Liability to pay compensation.*—The process server, on whose report that the accused had obstructed him while executing a warrant in execution of a decree for custody of a wife and

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had removed that woman from his custody, the Court instituted criminal proceedings against the accused, is not a person upon whose complaint or information the accusation was made and is not liable to pay compensation under s. 250, Cr. P C. CROWN v. ABDUL GHANI, **25 P.R 1910. R=8 Ind. Cas. 382=11 Cr. L.J. 634=105 P.L R. 1910.** (26 A. 183, 20 C. 481, *F.*).

(2541)—*S.* 250—" *Vexatious charge,*" *meaning of.*—The expression *vexatious* charge, in s. 250, is sufficiently wide to include a false charge, and compensation may be awarded to an accused, when the accusation against him was deliberately false. EMPEROR v. BINDESHRI PRASAD, **26 A. 512=1 A.L.J. 234=A.W. N. 1904, 116.** (A.W.N. 1896, 180, *Overruled*; 21 M. 237, 30 C. 123, *F.*,) [*R.*, 37 B. 376=15 Bom. L.R. 49=2 Bom. Cr. C. 105=14 Cr. L J. 75=18 Ind. Cas. 411.]

(2542)—*S.* 250 — *Frivolous and vexatious, meaning of.*—S. 250 does not contemplate that compensation shall be awarded because the case is found false, but it can only be awarded if the Magistrate is satisfied that the accusation is frivolous and vexatious. If a Magistrate orders the complainant to pay compensation to the accused on the ground that he has preferred a false complaint, it practically amounts to convicting, in a summary proceeding, the complainant under s. 211, Penal Code, without a proper trial, which is altogether improper and open to serious objection. [*Overruled*, 30 C. 123, F.B., 15 C.P.L.R. 194, 5 Bom. L.R. 128; *F*, 4 Bom. L.R. 645; *R.*, 27 M. 59.] The words "frivolous and vexatious" in s. 250 indicate an accusation merely for the purpose of annoyance, not an accusation of an offence which is absolutely false. PARSI HAJRA v. BANDHI DHANUK, **28 C. 251.** [*Diss.*, 15 C.P.L.R. 194.]

(2543)—*S.* 250—*Frivolous accusation—Award of compensation to accused when to be made.*—When a Magistrate, on finding a complaint to be frivolous, thinks it right to award compensation to the accused, he must do so by his order of discharge or acquittal. An order for compensation made in a separate proceeding, after the accused has been discharged, is without jurisdiction (25 A. 315, *F.*) A Magistrate shall hear the complainant, before making an order for compensation against him, on that aspect of the case, and unless he does this, the whole proceeding as to compensation is bad. HARU TANTI v. SATISH ROY, **9 Ind. Cas. 45 = 12 Cr. L J. 6=13 C.L.J. 425=38 C. 302.** [*F. and D.*, 22 Ind. Cas. 726=18 C.W.N. 702; *R.*, 15 Cr. L.J. 504=7 S.L.R. 123=24 Ind. Cas. 592.]

(2544)—*S.* 250 (=s. 209 *of the Code of* 1872)—*False complaint, whether vexatious.*—A false complaint is also a vexatious complaint. *In re* PONNAMMAL, **2 Weir 313.**

(2545)—*S.* 250—*Charge of bribery—False charge—Compensation—Frivolous or vexatious.*—As long as a case is frivolous, or vexatious, the

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fact that it is also false is no bar to the application of s. 250, Crim. Pro. Code. A charge of bribery may not be frivolous, but, if false, is undoubtedly vexatious. NGO MYO v. NGA KYAN, **U.B.R. 1914, 3rd Qr., 31=26 Ind. Cas. 1004=16 Cr. L.J. 92.**

(2546)—*S.* 250—*False charge — Vexatious charge—Compensation to accused persons—Order sanctioning prosecution of complainant for false charge—Penal Code*, s. 211.—S. 250, Crim. Pro. Code, applies to a false charge, as also to a merely frivolous charge brought with the sole intent of annoying. (5 Bom. L.R. 128, 30 C. 123, *F.*) The provisions of the section may be used to supply one form of punishment for a serious false charge deliberately and maliciously made. The passing of the order of compensation does not prevent the Magistrate from granting a sanction to prosecute the complainant under s. 211, Penal Code. *In re* GOPALA BHAU, **15 Bom. L.R. 49=2 Bom. Cr. C. 5=18 Ind. Cas. 411=14 Cr. L.J. 75=36 B. 376.** (21 M. 237, *F.*; 26 C. 181, *Not F.*)

(2547)—*S.* 250 — *Prosecution under s. 211, I.P.C., sanctioned by Assistant Superintendent of Police—Station House officer presenting charge-sheet through a Constable—Order directing Constable to pay compensation—Illegality.*—Where an Assistant Superintendent of Police sanctioned the prosecution of a person for an offence under s. 211, I.P.C., and the Station House officer prepared the charge-sheet which was presented to the Magistrate by a constable, and the constable was ordered under s. 250, Crim. Pro. Code, to pay compensation to the accused. *Held*, that the order was illegal. The constable was not under the circumstances, 'the person upon whose complaint or information the accusation was made.' SUBRAMANIA PILLAI v. PAKIA NADATCHI, **10 M.L.T. 191 =21 M.L.J. 844=12 Cr. L.J. 482.** (1 B. 175, *Compared.*)

(2548)—*S.* 250—*Award of compensation to accused—Award to be made by order of discharge or acquittal and not by separate order.*—Where a Magistrate acquitted the accused of offences under ss. 343 and 454 of the Penal Code, and on a subsequent date by a separate order directed the complainant to pay compensation to the accused under s. 250, Crim. Pro. Code, *held* (1) that s. 250 of the Code was not intended to meet the case of false accusations; but of frivolous and vexatious accusations; (2) the direction to pay compensation in frivolous cases should be made by the order of discharge or acquittal. RAM SINGH v. MATHURA, **9 A.L. J. 308=14 Ind. Cas. 599=13 Cr. L.J. 247=34 A. 334.** [*R.*, 15 Cr. L.J. 504=24 Ind. Cas. 592=7 S.L.R. 123.]

(2549)—*S.* 250—*Order under the section when can be made—Must be in the order of discharge or acquittal.*—An order for compensation to an accused person under the above section should be made in the order of discharge or acquittal and not subsequently. CRIMINAL REVISION CASE NO. 905 OF 1892, **U.B.R. 1892—1896, Vol. I, 35.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2550)—*S.* 250—*Compensation for vexatious complaint—Order for compensation passed on date subsequent to that of order of acquittal—When valid—Continuation of same proceedings.*—Where a Magistrate, who acquitted the accused, was of opinion that the cases were frivolous and vexatious, and ordered, on the day when he passed the order of acquittal, notice to issue to the complainant who was absent on that day to show cause on a subsequent date why he should not be directed to pay compensation, and where, on the date fixed by the notice, after recording and considering objections, the Magistrate directed payment of compensation to the accused. *Held*, that the final order was not invalid merely because it was not pronounced in the same breath as the order of acquittal, and that it was substantially a continuation of the order of acquittal and part of the same proceeding and valid in law. GHANUMAL NAWALMAL v. CROWN, **7 S.L.R. 123=15 Cr. L.J. 504=24 Ind. Cas. 592.** (25 A. 315, 34 A. 354, 38 C. 302, *R.*)

(2551)—*S.* 250—*Compensation—Separate order calling on complainant to show cause and awarding compensation.*—S. 250, Crim. Pro. Code, makes it quite clear that the reasons for awarding compensation and the actual order so awarding must be contained in the order of discharge or acquittal, and the law contained in the section must be followed strictly. Where a Magistrate acquitted the accused and, having signed and dated his order of acquittal, then recorded a separate order calling on the complainant to show cause why he should not be required to pay compensation, and then having recorded his objection, ordered him to pay compensation: *Held*, that the order was illegal and should be set aside. IMAM DIN v. EMPEROR, **14 Cr. L.J. 48=18 Ind. Cas. 272=16 P.W.R. 1913, Cr.=99 P.L.R. 1913.** (57 P.R. 1905, Cr.=181 P.L.R. 1905=3 Cr. L.J. 123, *F.*; 8 Bom. L.R. 847=4 Cr. L.J. 423, *R. and D.*)

(2552)—*S.* 250—*Compensation to accused—Final order if should be contained in order of discharge or acquittal—Proviso, meaning of—Imprisonment in default of payment of fine, when to be ordered.*—Where, in discharging the accused under s. 253, Crim. Pro. Code, the Magistrate in his order of discharge declared the case to be vexatious and directed the complainant under s. 250, Crim. Pro. Code, to pay compensation to the accused subject to any cause being shown by him, and no cause being shown by the complainant, the Magistrate the day after made his previous order absolute and further directed the complainant to suffer simple imprisonment for 30 days in default of payment of the compensation: *Held*, that the Magistrate's order directing the payment of compensation was in strict compliance with s. 250, Crim. Pro. Code. It is sufficient that the Magistrate fixed the compensation in his order of discharge. The proviso to s. 250 clearly contemplates that the direction in the first paragraph of the section shall be considered as in the nature of a rule and that that rule shall not be made absolute until the

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complainant has shown cause. (38 C. 302, *D.*) So far as the sentence of imprisonment in default of payment was concerned, the High Court held that there was obvious error and ordered it to be amended in terms that the compensation shall be recovered as if it were a fine, and in the event of its not being so recovered there shall be simple imprisonment. LALIT MOHAN SINGHA v. KUNJA BAHARY GHOSE, **18 C.W.N. 702=15 Cr.L.J. 150=22 Ind. Cas. 726.**

(2553)—*S.* 250—*Compensation — Default in payment—Imprisonment.* — Under s. 250 (2) it is only if the compensation ordered to be paid cannot be recovered, that imprisonment can be awarded. PARSHI HAJRA v. BANDHI DHANUK, **28 C. 251.** [*Overruled*, 30 C. 123; *F.*, 17 C.P.L.R. 104; *R.*, 26 M. 127=2 Weir 321.]

(2554)—*S.* 250—*Complaint by police officer in non-cognizable case—Compensation—Police Act (Bombay), Act* IV *of* 1890, *s.* 90.—Where a police officer initiates criminal proceedings in a non-cognizable case by filing a complaint before a Magistrate, the Magistrate has jurisdiction, if he finds the complaint vexatious, to award compensation to the accused under s. 250. KING-EMPEROR v. SADA, **26 B. 150=3 Bom. L.R. 586.** [*F.*, 13 Cr. L.J. 752=17 Ind. Cas. 64=6 S.L.R. 82; *R.*, 32 M. 3=9 Cr. L.J. 108=5 M.L.T. 1=1 Ind.Cas. 22, 5 O.C. 164, 6 O.C. 1.]

(2555)—*S.* 250 (=*Crim. Pro. Code*, 1882, *s.* 560)—*Compensation in frivolous complaint—Power of Sessions Judge to reverse order.*—A Sessions Judge is not competent to reverse, in appeal, an order granting compensation passed by a first-class Magistrate under s. 560, Crim. Pro. Code, 1882. QUEEN-EMPRESS v. BIRU, **1 Bom. L.R. 350.**

(2556)—*S.* 250 (=*Crim. Pro. Code*, 1882, *s.* 560)—*Compensation, nature of— Appeal.*—Though a sum which a complainant may be directed to pay to an accused under the provisions of s. 560 of the Code, is "recoverable as if it were a fine," it is obviously not a fine. Sub-s. 3 of s. 560 gives a right of appeal only in respect of orders for compensation passed by a Magistrate of the second or third class, and such an order would be appealable irrespectively of the amount awarded. Hence, such an order of a Magistrate of the first class under s. 560, whatever might be the amount of compensation awarded, is not subject to appeal. An order, legal in substance but illegal only in form, need not be interfered with. EMPRESS v. BABIA KOSHTI, **8 C.P.L.R. Cr. 13.**

(2557)—*S.* 250 (=*Crim. Pro. Code*, 1872, *s.* 209)—*Compensation, if awardable by appellate Court.*—An appellate Court cannot award any compensation to an accused person under s. 209, and if made, it is illegal. HARPRASAD v. BORAR, **Colm. Dig. Cr. 23 of 1875.**

(2558)—*S.* 250 (=*Crim. Pro. Code*, 1872, *s.* 209)—*Fining the complainant and crediting the amount to Government.*—To fine a complainant under the above section and remit the amount into the Government treasury is illegal. MULLI KORI v. MANDHABA, **Colm. Dig. Cr. 66 of 1877.**

(2559)—*S.* 250 (*proviso*), *nature of— Order for compensation—Objection by complainant* — The proviso to s. 250 is imperative and requires that, before making any direction for payment of compensation, the Magistrate shall record and consider any objection which the complainant may urge against the making of the direction. PANDURANG NARAYAN v. LAXMAN BABAJI, **3 Bom. L.R. 777.**

(2560)—*S.* 250—*Compensation, recovery of—Fines—Imprisonment.*—S. 250 only directs that "compensation shall be recoverable as it were a fine," and s. 386 and the following sections direct by what means a fine shall be recovered. These sections would, therefore, be applicable for realisation of money ordered to be paid as compensation. But in regard to an order for imprisonment in such a case, s. 250, proviso(2) declares that "if the compensation cannot be recovered, simple imprisonment may be awarded for such term not exceeding 30 days." The alternative imprisonment, therefore, can only be awarded *if compensation cannot be recovered.* LAL MAHMAD SHAIK v. SATCOWARI BISWAS, **28 C. 164.** [*F.*, 17 C.P.L.R. 104.]

(2561)—*S.* 250—*Scope of section—Municipal Jamadar arresting person committing offence punishable under s.* 34, *Police Act.*—S. 250, Crim. Pro. Code, is not applicable to the case of a Jamadar arresting a person whom he considered to be committing in his presence an offence punishable under s. 34, Act V of 1861, the person so arrested having been sent up for trial in the usual manner by the police, and having been acquitted. KING-EMPEROR v. HABIB, **A.W.N. 1901, 142.**

(2562)—*S.* 250 (=*Crim. Pro. Code, Act X of* 1882, *s.* 250)—*Complaint.*—Where an amin who was ordered by an Assistant Collector to attach and sell some property, reported that he had been obstructed, and the District Magistrate, on the report of the Assistant Collector, directed the prosecution of the obstructors under s. 186 of the Penal Code, *held* that no compensation could be ordered in such a case since there was no complaint within the meaning of s. 4 of the Crim. Pro. Code. *In the matter of* NAIN SUKH, **A.W.N. 1888, 216.**

(2563)—*S.* 250 (=*Crim. Pro. Code*, 1872, *s.* 209)—*Warrant cases, applicability of the section.*—The offence of theft being a warrant case, s. 209, Crim. Pro. Code, is not applicable. Where a case has been dealt with throughout by a competent Court as a case of theft, and the facts alleged, if true, clearly constitute the offence of theft, a Magistrate, to whom a reference under s. 46, Crim. Pro. Code, 1872, is made, is not competent to pass an order under s. 209, convicting the accused of criminal trespass and recording an order dismissing the charge of theft. *In re* COMPLAINT OF PHULLU, **A.W.N. 1881, 99.** [*R.*, A.W.N. 1881, 161.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(2564)—*S.* 250—*Amends.*—Amends under s. 270, Crim. Pro. Code, cannot be awarded when the offence complained of is punishable with more than six months' imprisonment. Nor can such amends when recovered be credited to Government. JUMNA DASS v. RAMLA, **102 P.R. 1866, Cr.**

(2565)—S. 250—*See* ACT XIII OF 1859, ss. 2, 3, Rat. Un. Cr. C. 617 = Cr. Rg. 40 of 1892.

(2566)—S. 250—*See* APPEAL—CASES WHERE APPEAL DOES NOT LIE, 9 C.P.L.R. Cr. 27, Rat. Un. Cr. C. 409 = Cr. Rg. 75 of 1888.

(2567)—S. 250—*See* CHARGE—FRAMING OF CHARGE, Rat. Un. Cr. C. 734 = Cr. Rg. 2 of 1895.

(2568)—S. 250—*See* SENTENCE—IMPRISONMENT IN DEFAULT OF PAYMENT OF FINE, ETC., 2 Weir 320.

(2569)—S. 250 (paras. 1 and 2)—*See* SENTENCE—POWERS OF APPELLATE COURT—ENHANCEMENT, 8 M.H.C. App. 8.

(2570)—S. 250—*See* Nos. 40, 41, 64, 80, 81, 148, 305 *a*, 306, 577, 578, 605, 1324, 1828, 2475, 2478, 2479, and 2522, *supra* and 3142, 3165, 3166, 3845, 4355 and 4741, *infra.*

(2571)—*Ss.* 250, 30—*Incompetency of Magistrate exercising powers under s.* 30, *Crim. Pro. Code, to award compensation.*—*Held*, that a Magistrate, when exercising his powers under s. 30, Crim. Pro. Code, 1898, in a case triable by the Court of Session, is incompetent to award compensation under s. 250 of the said Code. RAMZAN v. MUSSAMMAT RAJAN, **21 P.W.R. 1910, Cr. = 6 Ind. Cas. 735 = 11 Cr. L. J. 396.** (14 P.R. 1902, *F.*)

(2572)—*Ss.* 250, 117—*Compensation on refusal to take security.*—To justify the application of s. 250, a person must be accused before the Magistrate of an offence triable by a Magistrate. The institution of proceedings under s. 117, Crim. Pro. Code, is not an accusation of an offence triable by a Magistrate, and consequently does not fall within the provisions of s. 250, Crim. Pro. Code. *In re* GOVIND HANMANT, **25 B. 48 = 2 Bom. L.R. 339.** (15 A. 365, *F.*) [*R.*, 7. A.L.J. 743 = 7 Ind. Cas. 290 = 11 Cr. L.J. 446.]

(2573)—Ss. 250, 195 (*b*)—*See* COMPENSATION—GENERAL, 2 Weir 311.

(2574)—Ss. 250, 245 and 366—*See* COMPENSATION—GENERAL, 5 M. 381 = 2 Weir 316.

(2575)—Ss. 250, 255—*See* ACQUITTAL, 1 W. R. Cr. Letters 10.

(2576)—Ss. 250, 262, 345, 386, 387—*See* COMPENSATION — GENERAL, 11 M. 142 = 2 Weir 314, Rat. Un. Cr. C. 611 = Cr. Rg. 32 of 1892.

(2577)—*Ss.* 250, 263 (*g*)—*Summary trial—Award of compensation—Failure to record complainant's objections—Effect—Technical mistake—High Court's powers of revision—No presumption of injustice.*—Reading s. 250, Crim. Pro. Code, along with s. 263 (*g*), it is imperative on a Magistrate to record and consider the objections of the complainant before imposing a fine upon him. *Per Hayward, J.C.*—Where a Magistrate omitted to record the complainant's objections before fining him, his order ought to be set aside. (2 S.L.R. 14, 25 M. 261, 28 B. 533, 566, *R.*) *Per Boyd, A.J.C.*—Mere omission to record what the complainant said is only a small irregularity. From such an omission the Court would not infer the further mistake that he omitted to ask the complainant to show cause and to consider the reply given by him. The High Court ought not to interfere unless some one has been prejudiced, *i.e.*, unless there is some reasonable chance of there having been a failure of justice. An order should not be upset because of a technical mistake of adjective law, if it is a purely technical mistake. There is no presumption that a technical mistake causes injustice. MINHOMAL LILARAM v. CROWN, **8 S.L.R. 25 = 15 Cr. L.J. 666 = 25 Ind. Cas. 994.**

(2578)—*Ss.* 250, 388 — *Imprisonment in default of payment of compensation.*—Imprisonment in default of payment of compensation ordered under s. 250 cannot be awarded at once, unless the person ordered to pay fails to execute a bond under s. 388, Crim. Pro. Code, 1898. QUEEN-EMPRESS v. NGA MYIT, **U.B. R. 1897—1901, Vol. I, 71.**

(2579)—*Ss.* 250, 388, *cl.* 2—*Order for compensation—Inability to pay—Order for imprisonment, validity of.*—Where a person, ordered to pay compensation under s. 250, was ordered to be imprisoned for 30 days by the Magistrate, on the ground that he was unable to produce any sureties or to pay the amount of the compensation, and the order was passed without making any attempt to levy the amount of the compensation, *held*, that the order was invalid both under ss. 250 and 388, cl. 2, Crim. Pro. Code *In the matter of* BYRAVALU NAIDU, **26 M. 127 = 2 Weir 321.**

(2580) — *Ss.* 250 *and* 422—*Appeal against award of compensation—Notice to accused, if necessary—'Audi alteram partem,' the maxim, applicability of—Finding whether the complaint is frivolous or vexatious, if essential.*—In an appeal against an order awarding compensation to the accused under s. 250, Crim. Pro. Code, the latter are entitled to have notice of the appeal given to them, so that they might support the order in their favour. (29 M. 187, *F.*; 33 M. 89, 27 M.L.J. 629, 26 M. 41, 22 B. 549, 3 A. 749, 8 C. 303, *Cons.*; 26 M. 127, *R.*) In the absence of any finding by the appellate Court as to whether a complaint was or was not vexatious, the judgment on appeal reversing the order of the first Court awarding compensation to accused under s. 250, Crim. Pro. Code, on the ground that the complaint was vexatious, cannot be supported. VENKATARAMA AIYER v. KRISHNA IYER, **2 L.W. 200 = 1915 M.W.N. 181 = 28 M.L.J. 204 = 27 Ind. Cas. 192 = 17 M.L.T. 164 = 16 Cr. L.J. 128.** (30 C. 123, 26 A. 512, 34 A. 354, *R.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

(2581)—*Ss.* 250, 422 — *Criminal Rules of Practice, r.* 60—*Order setting aside grant of compensation—Omission of notice to District Magistrate, whether ground for interference by High Court.*—In an appeal against an order granting compensation under s. 250, Crim. Pro. Code, the District Magistrate ought to be served with a notice, but an omission to send him a notice and his consequent non-appearance would not justify the High Court's interference in revision with the appellate Court's order. GURUSWAMI NAIKEN v. TIRUMURTHI CHETTI, **16 M.L.T. 426=25 Ind. Cas. 848=27 M.L.J. 629=15 Cr. L.J. 648.** (29 M. 187=3 Cr. L.J. 452, 1 Ind. Cas. 79=5 M.L.T. 268=9 Cr. L.J. 150=19 M.L.J. 130=33 M. 89, *D.*)

(2582)—Ss. 250 (3), 422—*See* COMPENSATION—GENERAL, 5 M.L.T. 262=9 Cr. L.J. 150=19 M.L.J. 130=1 Ind. Cas. 79=33 M. 89.

(2583)—*Ss.* 250, 423 (1) (*d*)—*Compensation—Appellate Court—' Consequential or incidental order.'*—An appellate Court cannot order compensation such as is contemplated by s. 250, Crim. Pro. Code.—The phrase "make any consequential or incidental order that may be just or proper" in s. 423 (1) (*d*) of the Code, does not embrace any and every ancillary order which is capable of being described as "consequential or incidental." MEHI SINGH v. MANGAL KHANDU, **14 C.L.J. 437, F.B.=16 C.W.N. 10=12 Cr. L.J. 559.** [*R.*, 16 C.W.N. 811.]

(2584)—Ss. 250, 438, 439, 476—*See* COMPENSATION—GENERAL, 24 P.R. 1908, Cr.=9 Cr. L.J. 103.

(2585)—Ss. 250, 438, 439, 476—*See* COMPENSATION TO ACCUSED, 14 P.R. 1888, Cr.

(2586)—*Ss.* 250, 467 — *Proceedings against complainant under both sections simultaneously —Not illegal.*—There is nothing in the Code of Criminal Procedure which makes it illegal for a Magistrate, who has taken proceedings against the complainant under s. 476, to proceed also under s. 250 and to award compensation to the accused. ACHAR v. PIRUSHAH, **7 S.L.R. 10=14 Cr. L.J. 437=20 Ind. Cas. 597.**

(2587)—*Ss.* 250, 476—*Order for prosecution —Power of successor in office to make order— " Court "—Revision—Effect of making no order under s.* 250.—The High Court has power to interfere on revision with an order for prosecution under s. 476, Crim. Pro. Code. (U.B.R. 1907-1909, Cr. 1, 6 Cr. L.J. 25, *F.*) The failure to make an order under s. 250 awarding compensation against a complainant, does not preclude the Magistrate from directing the prosecution of the complainant for perjury. A Magistrate, who succeeds another, may, in pronouncing judgment in a case heard partly by himself and partly by his predecessor order the prosecution of a witness for having given false evidence before his predecessor; as, though the perjury is not actually committed in his presence, yet it is committed in a case he has been trying and has been brought under his notice in the course of a judicial proceeding.

Crim. Pro. Code (Act V of 1898)—*continued.*

The use of the word "Court" instead of either "Judge" or "Magistrate" shows that the legislature intended that, in dealing with cases of this nature, the continuity of jurisdiction should be maintained, though the personnel of the officers was changed. MA MA v. EMPEROR, **12 Cr. L.J. 521=12 Ind. Cas. 289=4 Bur. L. T. 246.** (34 C. 551, 11 C.W.N. 568, 5 C.L.J. 508, 5 Cr. L.J. 398, 2 M.L.T. 298, 32 M. 49, 19 M.L J. 42, 4 M.L.T. 404, 1 Ind. Cas. 597, 9 Cr. L.J. 47, 35 C. 114, 7 Cr.L.J. 134, *D.*; 6 A.L.J. 392, 1 Ind. Cas. 306, 9 Cr. L.J. 219, 8 A.L.J. 240, 9 Ind. Cas. 497, *F.*)

(2588)—*Ss.* 250, 476—*False complaint—Compensation—Order to prosecute granted under s.* 476—*Complaint—Liability.*—K held a decree to execute which his son and a bailiff went with a warrant of attachment. The bailiff subsequently reported to the Court that he had been obstructed in levying the attachment by I. K also applied to the Court to sanction the prosecution of I. The Subordinate Judge inquired into the case, and did not issue a sanction, but himself made an order under s. 476 of the Crim. Pro. Code, for I's prosecution and sent the papers to a Magistrate. The Magistrate acquitted I and ordered K under s. 250 to pay a fine of Rs. 30 as compensation. *Held*, that the order of compensation could not be supported under s. 250, Crim. Pro. Code, inasmuch as there was no information given to the Police Officer or to a Magistrate, and as K was not a person upon whose complaint the accusation was made against I. *In re* KISANDAS HIRACHAND, **14 Bom. L.R. 1166=1 Bom. Cr. C. 237=14 Cr. L J. 1=18 Ind. Cas. 145.**

(2589)—*Ss.* 250, 537—*Order for payment of compensation—When valid—Failure to follow the provisions of law—Irregularity.*—A Magistrate dismissed a complaint as frivolous and vexatious and ordered the complainant to show cause why an order for payment of compensation should not be made against him. Four days later he ordered the complainant, to pay compensation to the accused. *Held*, that an order for paying compensation must form part of the order of acquittal or discharge, and where a Magistrate proposes to pass such an order he should give the complainant an opportunity to show cause and hear and record his representations before finally making the order. In the case in question, it was held that the proceedings were merely irregular as the order of discharge showed that the Magistrate did not conceive himself to have finally disposed of the case. The order of acquittal was only an order permitting the accused to leave the Court. GHURBIN KOERI v. KHALIL KHAN, **12 A.L.J. 143=36 A. 132=15 Cr. L.J. 193=22 Ind. Cas. 977.** (25 A.W.N. 214, 8 Bom. L.R. 847, *F.*; 25 A. 315, *Not F.*)

(2590)—*Ss.* 250, 537—*Compensation to accused —Order for payment of—When to be made— Order passed after discharge—Illegality.*—Where the order for payment of compensation to an accused was not made by the order of discharge, but at a later stage when some other accused

were discharged, *held* that the order of the Magistrate was without jurisdiction and was not a mere irregularity covered by s. 537, Crim. Pro. Code. Under the provisions of s. 250, Crim. Pro. Code, the order for compensation must be contained in the order for discharge and cannot be made subsequently. NANHEYLAL v. MT. RANIBAHU, **10 N.L.R. 8=15 Cr. L J. 290=23 Ind. Cas. 498.**

——S. 251 (=1882, s. 251; 1872, s. 213).

(2591)—*Ch.* XXI, *s.* 251—*Trial of warrant cases.*—In all warrant cases, a charge should be framed against the accused by Magistrates. QUEEN-EMPRESS v. NGA PO KU, **U.B.R. 1892—1896, Vol. I, 37.**

(2592)—S. 251—*See* COMPOUNDING OFFENCE, 1 B. 64.

(2593)—Ch. XXI, s. 251—*See* DISCHARGE OF ACCUSED, 7 N.W.P. 230.

(2594)—S. 251—*See* PENAL CODE, ss. 99, 353, 8 A. 293=A.W.N. 1886, 106.

(2595)—S. 251—*See* Nos. 708, 1678, and 2331, *supra.*

——S. 252 (=1882, s. 252; 1872, ss. 190, 362; 1861, ss. 186, 193, 249).

(2596)—*S.* 252—"*Any remaining witnesses*"—*Prosecution witnesses —Calling of new witnesses not named or summoned—Accomplice—Evidence of accomplice—Conspiracy—Proof.*—The expression "any remaining witnesses" in s. 252, cl (2), is not necessarily limited to the witnesses named by the complainant and summoned by the Magistrate before the framing of the charge. The expression is wide enough to include any witness who, according to the prosecution, is able to support its case, though he has not been summoned, provided, of course, that he is not sprung upon the defence all of a sudden, and sufficient opportunity is given to the latter to prepare for the cross-examination of the witness. An accomplice confesses himself a criminal. No man ought to be treated as an accomplice on mere suspicion, unless he confesses that he had a conscious hand in the crime, or he makes admissions of facts showing that he had such hand. If the evidence of a witness falls short of these tests, he is not an accomplice; and his testimony must be judged on principles applicable to ordinary witnesses. When a conspiracy between several persons is alleged, it is not necessary for the prosecution to prove, before it can be held established, that each conspirator knew and had personal communication with all the rest, because some of them might be intermediaries. EMPEROR v. PERCY HENRY BURN, **11 Bom L.R. 1153=10 Cr. L.J. 530=4 Ind. Cas. 268.**

(2597)—S. 252—*See* Nos. 708, 1544, 2012, 2146, 2147, 2331 and 2480, *supra*, and No. 2615, *infra.*

(2598)—*Ss.* 252, 243—*Warrant-case triable as under s.* 252, *tried by Magistrate as a summons case—Conviction of accused under s.* 243, *illegality of.*—The accused was charged with an offence under s. 9 of the Opium Act (I of 1887). The case was one which ought to have been tried as a warrant-case. The Magistrate, however, without recording any evidence in support of the prosecution, as required by s. 252, called upon the accused to plead to the charge and convicted him on his own admission as under s. 243 without even framing a formal charge. *Held* the procedure adopted by the Magistrate was more than a mere irregularity, that it had occasioned failure of justice to the accused and that his conviction ought, therefore, to be set aside. EMPEROR v. CHINNAPAYAN, **29 M. 372=4 Cr. L.J. 231.** [*R.*, 36 M. 457=22 M.L.J. 73=10 M.L.T. 506=1911 2 M.W.N. 576=12 Ind. Cas. 961=12 Cr. L.J. 585.]

(2599)—Ss. 252, 253—*See* DISCHARGE OF ACCUSED, A.W.N. 1891, 80.

(2600)—Ss. 252, 253, 437—*See* DISCHARGE OF ACCUSED, A.W.N. 1883, 150.

(2601)—Ss. 252, 253, 437—*See* FURTHER ENQUIRY, 7 M. 454=2 Weir 551.

(2602)—*Ss.* 252, 436 *and* 437—*Power to receive a fresh complaint—Necessity for setting aside order of dismissal—Power of Presidency Magistrate to commit accused previously discharged by another Magistrate.*—There is nothing in the Code to the effect that the dismissal of a complaint shall be a bar to a fresh complaint being entertained, so long as the order of dismissal remains unreversed. Hence a commitment by a Presidency Magistrate, on fresh evidence is legal, although the accused may have been previously discharged by another Presidency Magistrate, and the order of discharge was not set aside. QUEEN-EMPRESS v. DOLEGOBIND DASS, **28 C. 211=5 C.W.N. 169.** (23 C. 983, *D.*; 24 C. 528, *Diss.*; 1 C.W.N. 49, *F.*) [*F.*, 28 C. 652, F.B., 2 L.B.R. 27; *R.*, 11 C.L.J. 50=13 C.W.N. 1221=3 Ind. Cas. 861=10 Cr. L.J. 385=36 C. 994, 9 P.R. 1902, Cr.=50 P.L.R. 1902, 29 C. 726, F.B.]

(2603)—Ss. 252, 514—*See* WITNESS—MISCELLANEOUS CASES, 22 P.W.R. 1907, Cr.=6 Cr. L.J. 275.

(2604)—*Ss.* 252, 540—*Summoning of witnesses for prosecution—Magistrate to exercise discretion—Witnesses not to be harassed unnecessarily.*—When a complainant files a list of witnesses to be summoned for proving his case, the Magistrate should see which of the persons desired to be summoned are necessary witnesses. Witnesses should not needlessly be subjected to the inconvenience of attending the Court. S. 540 of the Crim. Pro. Code confers very wide powers upon a Court in the matter of summoning witnesses, but the wider the powers the greater is the exercise of discretion required of the Magistrate. SITAB SINGH v. DALGANJAN SINGH, **14 Cr. L.J. 682=21 Ind. Cas. 1002=12 A.L.J. 15.**

——S. 253 (=1882, s. 253; 1872, s. 215; 1861 s. 250).

See DISCHARGE OF ACCUSED.

Crim. Pro. Code (Act V of 1898)—*continued.*

(2605)—*S.* 253—*Case triable by Court of Sessions—Duty of Magistrate.*—It cannot be laid down as a general proposition that a Magistrate, having before him formally and categorically evidence which discloses a case for trial in some Court to which such Magistrate might in his discretion commit, is bound so to commit, and that he is wrong, in point of law in exercising a discretion and considering the sufficiency of the evidence. *In the matter of the petition of* KALYAN SINGH, **21 A. 265=A.W.N. 1899, 61.** [*F.*, 11 Cr. L.J. 18=4 Ind. Cas. 612=10 P.R. 1909, Cr.=32 P.W.R. 1909, Cr.=155 P.L.R. 1909, Cr.; *R.*, 6 C.L.J. 760=12 C.W.N. 117=5 Cr. L.J. 406.]

(2606)—*S.* 253 (=*Crim. Pro. Code*, 1872, s. 215)—*Discharge—Revival of prosecution.*—A discharge under s. 215, Crim. Pro. Code, does not bar the revival of a prosecution for the same offence when further evidence is available. QUEEN-EMPRESS v. BUDHYA, **Rat. Un. Cr. C., 45.** [*R.*, 1 Cr. L.J. 167=2 L.B.R. 27.]

(2607)—*S.* 253 (=*Crim. Pro. Code*, 1882, s. 253)—*Warrant case—Withdrawal of complaint—Discharge.*—The order of a Magistrate in a warrant case, permitting the withdrawal of a complaint of a non-compoundable offence, is equivalent to an order of discharge under s. 253. QUEEN-EMPRESS v. MOTIDAS, **Rat. Un. Cr. C. 391=Cr. Rg. 47 of 1888.**

(2608)—*S.* 253 (=*Crim Pro. Code*, 1872, s. 215)—*Absence of jurisdiction in Magistrate—His duty.*—Where a Magistrate finds that he has no jurisdiction to try a case, he should not discharge the accused, but should send him before a Magistrate having jurisdiction. *In re* MUNISAMI, **2 Weir 323.**

(2609)—*S.* 253—*Complainant, dismissal of—Complaint* de novo *on same facts, dismissed—Revival of first complaint—Court's discretion.*—M and others were prosecuted by A for robbing A of his mare under cover of levying a debt due to them, and were discharged under s. 253, Crim. Pro. Code Subsequently A prosecuted them for cheating him by refusing to hand over the mare and a receipt for the debt under an alleged agreement. This complaint also was dismissed. On such dismissal, A again filed a complaint of robbing him of his mare against M and others, and process was ordered to be issued against them. *Held*, on revision, that, though the Magistrate had jurisdiction to entertain this renewed complaint, he failed to exercise a sound judicial discretion in proceeding with it on the facts set forth above. MAHOMED HASHIM v. CROWN, **4 S.L.R. 52=8 Ind. Cas. 202=11 Cr. L.J. 582.**

(2610)—S. 253 — *See* COMPLAINT — DISMISSAL OF COMPLAINT, 2 A. 447.

(2611)—S. 253—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 2 C. 405.

(2612)—*S.* 253 (2)—*Discharge of accused without examining all the prosecution evidence available.*—Whatever may have been the law before the passing of the Crim. Pro. Code (Act V of 1898), under s. 253, cl. (2) of the present Code, it is competent to a Magistrate to discharge the accused after examining some only of the prosecution witnesses. NAVANNA CHINNA NARASANNA v. SURESETTI PEDA VENKATRAYADU, **9 Ind. Cas. 606=12 Cr. L.J. 105=9 M.L.T. 302=12 Cr. L.J. 158=1911 1 M.W.N. 149=9 Ind. Cas. 940.** (4 M. 329, *R.*)

(2613)—S. 253—*See* Nos. 247, 574, 708, 809, 1668, 1678, 2001, 2002, 2089, 2090, 2091, 2171, 2172, 2481, 482, 2483, 2504, 2523, 2599, 2600, and 2601, *supra* and No. 2704, 3247, 3356 and 4357 *infra.*

(2614)— *Ss.* 253, 203, 437 — *Complaint, dismissal of — Renewed complaint after long delay—Discretion— Sufficient ground for dismissal under s.* 203—*Proper remedy.*—Where a complainant withdrew the rest of the witnesses after examining one witness and himself on a former complaint, and permitted five months to elapse before filing the renewed complaint, *Held* that his conduct was sufficient for declining under s. 203 to proceed with the complaint. *Held* also that, though the Magistrate had jurisdiction to entertain the renewed complaint, he failed to exercise a sound judicial discretion in proceeding with it under the circumstances set forth above. The appropriate remedy for complaints wrongly dismissed is vested solely in the higher grades of Magistrates and the Sessions Court under s. 437, Crim. Pro. Code. GULU TIRITH v. CHATUNMAL MENGHOMAL, **4 S.L.R. 53=8 Ind. Cas. 203=11 Cr. L.J. 582.**

(2615)—Ss. 253, 208 (1), (3) and (4), 252—*See* DISCHARGE OF ACCUSED, 4 M. 329.

(2616)—*Ss.* 253, 254—*Benefit of doubt before framing of charge—Discharge of accused.*—S. 254 requires a charge to be framed when a Magistrate, after taking evidence, is of opinion that there is ground for presuming that the accused has committed the offence. But, if the evidence recorded does not lead to any such presumption being made, but merely raises a doubt, the Magistrate would not be justified in framing the charge and he would not act contrary to the spirit of s. 254, if he gave the benefit of the doubt to the accused and ordered his discharge. So, if, on the close of the evidence for the prosecution, a Magistrate should come to the conclusion that, although there are reasons for entertaining some doubt against the accused, yet they are not sufficient to establish the charge against him, he will be acting in consonance with the spirit of the section only if he declines to frame a charge. MUL CHAND v. EMPEROR, **2 P.R. 1906, Cr.=3 Cr. L.J. 345=37 P.L.R. 1906.**

(2617)—*Ss.* 253, 254 (=*Crim. Pro. Code*, 1861, s. 250)—*Discharge, whether amounts to acquittal.*—A discharge, under s. 250 of the Code of 1861, does not amount to an acquittal. QUEEN v. HUR PERSHAD, **4 N.W.P. 23.**

(2618)—*Ss.* 253, 258, 350—*Charge framed—Power of succeeding Magistrate to re-hear evidence and discharge accused.*—A second class

Crim. Pro. Code (Act V of 1898)—*continued.*

Magistrate, after hearing the evidence, framed charges against several accused under s. 406, I.P.C., and called on them to produce evidence to clear themselves. The Magistrate was transferred, and the case was sent to his successor, who, at the request of the accused, re-heard the evidence, and subsequently passed an order for their discharge. *Held*, that the order was not proper in form, and should be held to be an order of acquittal. Re-hearing of the evidence under proviso (*a*) to s. 350, Crim. Pro. Code, after a charge has been drawn up, amounts to the re-commencement of the trial as distinguished from a re-commencement of the enquiry. CROWN v. NATHU, **14 P.R. 1903, Cr. = 175 P.L.R. 1903.** (9 M. 282, 12 A. 66, 6 P.R. 1884, Cr., *R.*)

(2619)—Ss. 253, 259—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 10 C. 67 = 13 C.L R. 408.

(2620)—*Ss.* 253, 366, 367, 437—*Order of discharge not "judgment"—Magistrate's competency to initiate subsequent proceedings after order of discharge—Principle of* autrefois acquit *how far applicable?—Exhaustiveness of Code presumed.*—When a Magistrate passes an order discharging an accused under s. 253, Crim. Pro. Code, such order of discharge does not preclude him from taking fresh proceedings and issuing process against the person discharged, in respect of the same offence, without such order being set aside by a higher tribunal. *Per Munro and Pinhey, JJ.* An order of discharge is not a "judgment," although the word "judgment" is not defined in the Crim. Pro. Code, it is sufficiently clear from ss. 366, 367, that the term is intended to apply to the final order in a *trial*, terminating in either the conviction or acquittal of the accused. *Per Pinhey, J.* The principle of *autrefois acquit* can have no application, as it must be assumed that the Code is exhaustive on the subject it deals with, and it is not permissible to add to its provisions. Reading together ss. 253 and 437, it is clear that the Legislature could never have intended that a Magistrate discharging an accused should furnish him with a certificate of immunity from further molestation. The remedy for repeated indiscretions on the part of Magistrates is the provision of better Magistrates by Government, and not the limitation of their powers by judicial interpretation. EMPEROR v. MAHESHWARA KONDAYA, **31 M. 543 = 5 M.L.T. 184 = 9 Cr. L.J. 80** [*F*, 11 Ind. Cas. 132 = 10 P.R. 1911 = 205 P.L.R. 1911.]

(2621)—Ss. 253, 367, 369, 403, 437—*See* FURTHER ENQUIRY, 29 C. 726 = 6 C.W.N. 633, F.B.

(2622)—*Ss.* 253, 403 (= *Crim. Pro. Code,* 1882, *ss.* 253, 403)—*Discharge—Jurisdiction to re-try.*—There is nothing to prevent a Magistrate, after he has discharged an accused under s. 253, Crim. Pro. Code, from enquiring again into the case against him. A discharge not operating as an acquittal leaves the matter at large for all purposes of judicial enquiry. There is jurisdiction still vested in all Magistrates including the one who has made the previous enquiry just as before. But all Magistrates, and especially the one who formerly discharged the accused, are bound to exercise due discretion, to take that discharge into account and to avoid any such oppressive proceedings as may either expose them to punishment under s. 219 or s. 220, I.P.C., or to a civil action on the part of the accused. A case arising on a fresh evidence will generally be best dealt with by the Magistrate already familiar with the facts previously proved. He will, of course, deal discreetly with an instance of a revived prosecution where there is room to suspect that any crooked practice has been resorted to, but his authority to enquire and try is not affected by the previous abortive enquiry. QUEEN-EMPRESS v. BAPUDA, **Rat. Un. Cr. C. 350 = Cr. Rg. 40 of 1887.**

(2623)—Ss. 253, 403—*See* DISCHARGE OF ACCUSED, A.W.N. 1881, 145, A.W.N. 1882, 179, A.W.N. 1883, 150.

(2624)—Ss. 253, 403, 423, exceptn. 1 (*d*), 439 (1 to 4)—*See* COMPLAINT—WITHDRAWAL AND REVIVAL OF COMPLAINTS, 24 C. 528 = 1 C.W. N. 370.

(2625)—*Ss.* 253, 435, 437—*Accused discharged under s.* 253—*Order by District Magistrate directing further inquiry—No notice to accused—Irregularity.*—Where the accused were discharged under s. 253, Crim. Pro. Code, an order directing further inquiry, passed by a District Magistrate, without giving notice to the accused, is irregular. DASARA VENKATA REDDI v. SANJEEVI REDDY, **16 M.L.T. 285 = 15 Cr.L.J. 619 = 25 Ind. Cas. 627.** (26 M. 418, *R.*)

(2626)—Ss. 253, 435, 439—*Re-trial—Discharge after full enquiry—Evidence—Magistrate's personal knowledge and personal inspection of a spot not evidence.*—*Held*, that, where there is a body of evidence which, if believed, justifies conviction, it is far better, as a rule, to draw up a charge and dispose of the case finally. But if a competent Magistrate, after hearing all the evidence for the prosecution and thoroughly discussing it, does dismiss the charge, a High Court should not set aside the order of dismissal and direct further inquiry, unless new and cogent evidence is forthcoming. *Held*, that a Magistrate commits serious irregularities, if he bases any of his findings on his own personal knowledge, and if he treats his own memo. made after the examination of a spot, as evidence in the case, instead of having any facts, brought to light by that examination, duly brought on the record by the testimony of witnesses subject to cross-examination, rebuttal and explanation. RADHI v. PHUL CHAND, **18 P.W.R. 1909, Cr. = 4 Ind. Cas. 990 = 11 Cr. L.J. 110.** [*F.*, 17 P.W.R. 1909, Cr.]

(2627)—*Ss.* 253 437—*Discharge—Revision—Disturbance of findings of fact—Abuse of process—Civil claim—Man of position—Law—Penal Code* (*Act* XLV *of* 1860), *s.* 297—*Construction—' Trespass ' meaning of.*—A very

Crim. Pro. Code (Act V of 1898)—*continued.*

heavy burden lies on those, who seek to disturb on revision, an order of discharge passed by a Magistrate under s. 253, Crim. Pro. Code. In cases of regular appeal, the ordinary rule is that no Court of Appeal will lightly substitute its own view of evidence, for the view of the Court which had the advantage of seeing and hearing the witnesses. An application in revision is on a lower plane than a regular appeal, and unless the petitioner can show some plain reasons against the order of discharge, he can have no chance of succeeding. While it is undesirable that the criminal process of the Courts should be abused with the object of merely furthering a Civil claim, it would be intolerable, if, by reason of the position of any individual whatever, he was allowed to evade the law. S. 297, Penal Code, does not require the prosecution to prove that the trespass had been committed on a place set apart for the performance of funeral rites or as a depository for the remains of the dead. The section is equally satisfied, if the prosecution are in a position to prove that the trespass occurred on any place of sepulchre. But where there have been only a few isolated and secret cases of burial, in the course of many years, on a piece of property, that would not be enough to constitute it a place of sepulchre, within the meaning of the section. *Per Beaman, J.* The trespass contemplated in s. 297 is such a trespass as is defined by the Indian Penal Code. While s. 297 is comprehensively worded, the offence at which it strikes is intimately bound up with the commission of a trespass or, subject to that, of deliberately offering an indignity to a corpse, or causing disturbance to a body of persons assembled for religious purposes. MUSTAFA RAHIM v. MOTILAL CHUNILAL, **2 Ind. Cas. 825=9 Bom. L.R. 742=6 Cr.L.J. 85.**

(2628)—*Ss.* 253, 437 (=*Crim. Pro. Code, Act* X *of* 1882, *ss.* 253, 437)—*Practice.*—It is absolutely necessary that a Magistrate who, professing to act under s. 437 of the Crim. Pro. Code, issues an order for the trial of a person previously discharged under s. 253 of the Crim. Pro. Code, should give the accused an opportunity of showing cause why such an order should not be issued, and should also record his reasons for issuing the order. EMPRESS v. LOKHIA, **A.W.N. 1890, 147.**

(2629)—Ss. 253, 437—*See* FURTHER ENQUIRY, 10 C. 1027.

(2630)—*Ss.* 253, 437 *and* 439—*Revision—Discharge of accused by first Court—Re-trial on the same evidence ordered by District Magistrate if prejudicial to the accused—Power of Chief Court to go into evidence.*—The accused one H was tried by a first class Magistrate for an offence under s. 406, I.P.C., and was discharged on the ground that the prosecution had not made out a case. On appeal to the District Magistrate, he ordered a retrial, by another Magistrate, on the ground that a document for the defence had not been considered. On revision to the Chief Court, that order was confirmed. Then the accused was tried by the other Magistrate and convicted; the Sessions Judge upheld the conviction. On revision to the Chief Court, *held*, that the order of the District Magistrate ordering a re-trial on the same evidence was seriously prejudicial to the accused and was opposed to principle, though not illegal. A Criminal Court cannot review its own order passed with jurisdiction. Where an order for re-trial was prejudicial to the accused, and he was convicted at the re-trial, the correct course for the Chief Court to follow is to hear the case as if an appeal lay to that Court. HIRA v. KING-EMPEROR, **8 P.R. 1909, Cr.** (8 P.R. 1900, Cr., 2 P.R. 1901, Cr., *F.*) [*R.*, 11 Ind. Cas. 132=10 P.R. 1911=12 Cr. L.J. 364=24 P.W.R. 1911, Cr.=205 P.L.R. 1911.]

(2631)—*Ss.* 253, 517 (=*Crim. Pro. Code,* 1872, *ss.* 215, 418)—*Order under s.* 418, *pre-requisites for.*—Where no offence has been proved against the accused, the pre-requisites of an order under s. 418 would be wanting. HIGH COURT PROCEEDINGS, 30TH JUNE 1874, NO. 1081, **2 Weir 665.** [*F.*, 2 Weir 666.]

(2632)—*Ss.* 253 *and* 528—*District Magistrate withdrawing a case to his own file and dismissing the complaint—Validity of procedure.*—A District Magistrate withdrew from the file of a Deputy Magistrate, a case against some policemen for entering the house of a Raja, to his file, when the Deputy Magistrate was about to frame charges against the accused persons, and dismissed it, because he thought the police were protected by their warrants. *Held*, that the case ought to have been left with the Deputy Magistrate to be disposed of, and it would have been for him to determine whether the offence charged was made out, or whether, assuming the facts to be proved, the police were or were not protected by the warrants under which they purported to act. GOPINATH PATNAIK v. NARAIN DAS BANERJEE, **30 C. 693.**

——**S. 254 (=1882, s. 254; 1872, s. 216; 1861, s. 250).**

(2633)—S. 254 — *See* COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 3 Bom. L.R. 675.

(2634)—S. 254—*See* MAGISTRATE, DUTY OF, 7 C.W.N. 521.

(2635)—S. 254—*See* Nos. 149, 708, 1652, 1828, 2013, 2134, 2135, 2136, 2616 and 2617, *supra*, and Nos. 2666, 2685, 3164 and 3247, *infra.*

(2636)—*Ss.* 254, 255, 256, 257, 537—*Warrant case—Trial—Cross-complaints—Evidence for prosecution cannot be treated as defence evidence in the other—Legal procedure to be strictly followed—Practice cannot vary the procedure.*—In trying two cross-complaints, the Magistrate heard the evidence for the prosecution in each case. In conformity with the practice that had grown up in the course of years the prosecution evidence in the one case was treated as defence evidence in the other. No charge was formally framed in either case and the

Crim. Pro. Code (Act V of 1898)—*continued.*

procedure prescribed by ss. 255 and 257 of the Criminal Procedure Code was not followed. The Magistrate then decided the cases without any further evidence. The accused having applied to the High Court :—*Held*, annulling the proceedings, (1) that the trial conducted in a mode so materially different from that prescribed by law was not a proper trial ; (2) that the differences between the procedure followed and the legal procedure were of too fundamental and important a kind to be treated as irregularities cured by any of the sections in ch. XLV of the Crim. Pro. Code. EMPEROR v. DOSABHAL J. DHONDY, **17 Bom. L.R. 490=3 Bom. Cr. Cas. 59.**

(2637)—*Ss.* 254, 255, 258—*Taking evidence for defence without framing charge.*—Where a Magistrate, after examining the prosecution witnesses and the accused, took the evidence for the accused, without framing a charge, and discharged the accused under s. 253, *held* that the order of discharge was not legal and that the order should be treated as an order of acquittal. TABA v. HIRA SINGH, **29 P.R. 1883, Cr.**

(2638)—Ss. 254, 258—*See* TRIAL, 3 C.L.R. 131.

(2639)—Ss. 254, 258, 403 (1 to 4 & Expl).—*See* DISCHARGE OF ACCUSED, 3 C.L.R. 131.

(2640)—Ss. 254, 258, 437—*See* DISCHARGE OF ACCUSED, 3 A. 129.

(2641)—*Ss.* 254, 346 (=*Crim. Pro. Code,* 1882, *ss.* 254, 346)—*Report by second class Magistrate to District Magistrate—Procedure.*—When a Second Class Magistrate reports a case to the District Magistrate as one which he ought not to try since whipping would be an appropriate punishment, the District Magistrate should treat the report as one under s. 346 of the Crim. Pro. Code and make an order as specified in the second para thereof. He should not return the case to the same Magistrate with direction to frame a particular charge, nor should the Second Class Magistrate frame a charge under s. 254. QUEEN-EMPRESS v. FAKIRA, **Rat. Un. Cr. C. 499=Cr. Rg. 10 of 1890.**

(2642)—*Ss.* 254, 346—*Frame of charge by Magistrate though he intended to transfer the case to superior officers—Regularity of procedure*—It is not irregular for a Magistrate of the second or third class to frame a charge against an accused person, in a case which he has jurisdiction to try, even though at the time of framing the charge he intends, if he is of opinion that the accused is guilty, to submit the proceeding to the District or Sub-Divisional Magistrate to pass sentence. KING-EMPEROR v. NGA PO SI, **U.B.R. 1905, Crim. Pro. Code, 33=2 Cr. L.J. 464.** (2 L.B.R. 285, *R.*)

——**S. 255 (=1882, s. 255, 1872, ss. 217, 324, 1861, s. 251).**

See WITNESS.

(2643)—S. 255—*See* PENAL CODE, s. 412, **U.B.R. 1897—1901, Vol. I, 72.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2643-*a*)—S. 255—*See* Nos. 708, 2123, 2575, 2636, 2637, *supra*, and No. 2685, 3164, *infra.*

(2644)—*Ss.* 255, 256 (=*Crim. Pro. Code,* 1872, *ss.* 217, 218)—*Recalling and cross-examining witnesses for prosecution.*—If the accused person desires to recall and cross-examine the witnesses for the prosecution, the time at which he should express such desire is when the charge is read over to him, and he is called upon to make his defence. If it is not expressed then, it is no longer in the power of the accused to insist upon that right although it is in the discretion of the Magistrate to recall them, if he thinks fit. *In the matter of* SHEIKH FAIZ ALI, **8 C L.R. 325.**

(2645)—*Ss.* 255, 342—*Prosecution for false evidence—Admission by accused of having made the statement alleged to be false—Evidence as to identity of accused, if necessary.*—When a person, charged with giving false evidence, has admitted, in his examination and in his defence, that he was the person, who made the statement alleged to be false, further evidence as to identity is unnecessary and his conviction would not be illegal by reason of the absence of such evidence. The accused's defence in this case, having been that what he had stated in his affidavit was true, this involved the admission on his part, that it was he, who made the affidavit, and the rule of evidence, that whatever is admitted need not be proved, would apply, so far as regards the admitted identity of the accused with the person, who made the affidavit. S. 255 of the Crim. Pro. Code requires a Magistrate to make the accused's plea immediately after the charge has been framed and, when stating his plea, facts are voluntarily admitted by the accused, there is no necessity for the prosecution to call evidence to prove such facts. So, in this case the admission in the defence having afforded sufficient proof of identity, the conviction was held not to be illegal merely on account of the absence of evidence of the identity of the accused with the perjurer. ABBAS ALI v. KING-EMPEROR, **3 L.B.R. 208 =4 Cr. L.J. 471.**

(2646)—Ss. 255, 349—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 3 L.B.R. 279=5 Cr. L.J. 416.

(2647)—Ss. 255, 364 and 533 (1) (=ss. 324, 346 of the Code of 1872)—*See* CONFESSION—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY, 3 C. 756=2 C.L.R. 317.

——**S. 256 (=1882, s. 256 ; 1872, s. 218 ; 1861, s. 252).**

See WITNESS.

(2648)—*S.* 256 (=*Crim. Pro. Code,* 1882, *s.* 256)—*Scope of.*—S. 256 of the Code does not prohibit cross-examination before a charge. It merely permits a further cross-examination expressly directed to the case found and embodied in the charge, and would enable an accused person, if he has reserved his cross-examination, to exercise his right at the same time subject to a discretion given to the

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Magistrate by s. 257. QUEEN-EMPRESS v. SAGAL SAMBA SAJAO, **21 C. 642.**

(2649)—*S. 256—Object and scope—'Recall,' meaning of.*—The word 'recall' used in s. 256, Crim. Pro. Code, does not mean 're-summon.' Cross-examination is intended for testing the accuracy and credibility of witnesses, not for building up a case for the defence, and the witnesses should, then and there, after cross-examination and re-examination, have been discharged. Then should follow the evidence of the remaining witnesses for the prosecution who should then and there be cross-examined and re-examined and discharged. The moment the stage has been reached when there is ground for presuming that an accused has committed an offence triable under ch. XXI, the examination of the accused should be taken up and the charge sheet drawn up. After this the accused should be called upon to enter upon his defence and produce his witnesses. MULUA v. SHEORAJ SINGH, **8 A.L.J. 707=11 Ind. Cas. 1007=12 Cr. L.J. 471.**

(2650)—*S. 256—Duty of Magistrate under.*—It is incumbent on a Magistrate, after a charge has been drawn up, to question the accused and to ascertain whether he wishes to cross-examine any, and, if so, which of the witnesses for the prosecution whose evidence has been taken. The fact that there has been already some cross-examination before the charge has been drawn up does not affect this privilege. The record should show that the requirements of the section have been complied with. EMPEROR v. UMRAO PATEL, **14 C.P.L.R. 137.** (4 C.W.N. 241, 27 C. 350, *R.*)

(2651)—*S. 256—Omission to ask accused after framing charge whether he wishes prosecution witnesses re-called for cross-examination.*—The omission, after framing a charge, to ask the accused whether he wished to have the prosecution witnesses or any of them, re-called for cross-examination, and the rejection of the accused's application on the ground that it was too late were held to have prejudiced the accused in his trial. QUEEN-EMPRESS v. HENRY C. KAPS, **A.W.N. 1902, 5.** [*R.*, 11 P. R. 1914, Cr.]

(2652)—*S. 256—Right to cross-examine prosecution witnesses after framing of charge.*—The accused has the right of cross-examining the prosecution witnesses after a charge is framed against him, and the fact that these witnesses may have been fully cross-examined before the charge does not affect the right. QUEEN-EMPRESS v. NASARVANJI EDALJI, **2 Bom. L. R. 542.**

(2653)—*S. 256—Right to cross-examine prosecution—Witnesses after charge is framed.*—Though an accused person cannot be required to cross-examine the witnesses, or, to say whether he will cross-examine them or not, until the charge has been framed, he may, if he wishes to do so, cross-examine each witness at the conclusion of the examination-in-chief. NGA O v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 74.**

(2654)—*S. 256—Right to cross-examine prosecution witnesses—Charge framed—Application to summon witnesses or grant time refused—Not a mere irregularity—Conviction illegal.*—Where an accused person not defended by a pleader and against whom a charge was framed without any previous intimation applies for time and for summons to the prosecution witnesses to cross-examine them, and where the Magistrate refuses to grant both, his proceedings are not merely irregular but illegal, and a conviction, under these circumstances, is one liable to be set aside. ARUMUGAM PILLAI v. EMPEROR, **1911 2 M.W.N. 192=12 Cr. L.J. 548.**

(2655)—*S. 256—Right of accused to cross-examine prosecution witnesses after charge framed—Duty of Magistrates.*—The provisions of s. 256, Crim. Pro. Code, are imperative and it is an illegality to neglect them. The section says that, after the charge has been framed, the accused "shall be required to state whether he wishes to cross-examine any, and if so, which of the witnesses for the prosecution whose evidence has been taken." It is not until a specific charge has been drawn up and explained to the accused that he is in a position fully to cross-examine the witnesses for the Crown, and it is for this reason that the Legislature enacted s. 256. The omission to follow s. 256 involves remand and retrial of the case from the point of the drawing up of the charge, and it is therefore of vital importance that the accused should, in all cases, be asked at the appropriate time if he wishes to recall witnesses for cross-examination. MOOLA v. CROWN, **11 P.R. 1914, Cr.=27 Ind. Cas. 210 =16 Cr. L.J. 146.** (20 C. 469, 22 A.W.N. 5, 27 C. 370, *R.*)

(2656)—*S. 256—Warrant case—Accused pleading not guilty, if must be asked to cross-examine prosecution witnesses immediately—Cross-examination before charge framed, if affects right to cross-examine after charge—Waiver.*—When, on framing charges in warrant case, the accused having pleaded not guilty, the Magistrate called upon them to state whether they wished to cross-examine any of the prosecution witnesses, but they did not reply immediately, but before the close of the trial they applied to be allowed to cross-examine some of them, and the application was refused on the grounds (1) that they had waived their right and (2) that the witnesses have been sufficiently cross-examined before the charges were framed. *Held*, that the order was against the wording and spirit of s. 256, Crim. Pro. Code, and the conviction of the accused must be set aside. INDER RAI v. EMPEROR, **14 C.W.N. 280=11 C.L.J. 418=5 Ind. Cas. 408=11 Cr. L.J. 128 =37 C. 236.** [*R.*, 12 Cr. L.J. 150=9 Ind. Cas. 897=2 M.W.N. 1911, 327=21 M.L.J. 283=10 M.L.T. 84.]

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(2657)—*S.* 256—*Filing of written statements.* —The filing of a written statement is not contemplated by ch. XVIII of the Code, in which s. 209 occurs. The only provision which contemplates a written statement is s. 256 which occurs in ch. XXI. CHINNASAMI NAIDU v. VEERIAH NAIDU, **2 Weir. 255 = 2 Weir. 551 = 2 Weir. 564.**

(2658)—*S.* 256—*Criminal trial—Close of some evidence for prosecution—Accused praying to re-call some witnesses—Examination as regards letter alleged to have been written by prosecution witnesses—Letter showing unreliability of evidence—Court's duty.*—Where an accused presented, after the close of the evidence of some prosecution witnesses, a petition for the admission of a letter alleged to have been written by some of the prosecution witnesses, which would show that the evidence given by the prosecution witnesses was unreliable, and also prayed for permission to re-call these prosecution witnesses to be examined about the letter. *Held* that the Magistrate ought to have allowed the accused to recall those witnesses and examine them. *In re* KRISHNASWAMI UDAYAN, **8 M.L.T. 367 = 7 Ind. Cas. 712 = 11 Cr. L.J. 520.**

(2659)—*S.* 256—*Conviction for less serious offence when facts disclose more serious offence, whether should be set aside—Failure to question accused if he is willing to cross-examine prosecution witnesses, effect of.*—A conviction for a less serious offence need not be set aside merely because the facts disclose a more serious offence, provided the Court has jurisdiction to try the offence which it has convicted. (21 Ind. Cas. 688 = 14 Cr. L.J. 640 = 25 M.L.J. 484, *F.*) A failure to ask the accused, after framing the charge, whether he is willing to cross-examine the prosecution witnesses again, is a mere irregularity and the conviction is not thereby vitiated. MUNIAN CHETTY v. EMPEROR, **16 Cr. L.J. 5 = 26 Ind. Cas. 309.**

(2660)—*S.* 256—*Commencement of inquiry as in a warrant case—Offence disclosed not triable as such—Duty of Magistrate to afford accused opportunity for cross-examination of prosecution witnesses.*—Where an inquiry commenced as in a warrant case and the accused curtailed their cross-examination of the prosecution witnesses under the impression that they could have a further opportunity of cross-examining them, but no offence triable as a warrant case having been disclosed, the Magistrate closed the case and convicted the accused :—*Held*, that it was the duty of the Magistrate to allow the accused an opportunity of completing their cross-examination before proceeding with the case. *In re* APPAVU PADAYACHI, **16 Cr. L.J. 250 = 28 Ind. Cas. 106.**

(2661)—S. 256—*See* Nos. 248, 708, 709, 1335, 1829, 2148, 2331, 2636, 2644, *supra* and Nos. 3245, 3685, *infra.*

(2662)—*Ss.* 256, 257—*Refusal to re-summon Medical Officer for purpose of cross-examination —Irregularity.*—Where a Magistrate refused to re-summon a Medical Officer for the purpose of cross-examination, except on payment of fees for his attendance, on the ground that the accused had declined to cross-examine the officer, when he had the opportunity, *held*, that the accused was entitled under s. 256 to claim that as a matter of right, and that s. 257 did not apply. ISWAR CHUNDER RAUT v. KALI KUMAR DASS, **4 C.W.N. 351.** [*F.*, 13 Cr. L.J. 554 = 15 Ind.Cas. 970 = 8 N.L.R 65; *D.*, 5 C.W.N. 106.]

(2663)—*Ss.* 256, 257 (= *Crim. Pro. Code, Act X of* 1882, *ss.* 256, 257)—*Right of accused to summon prosecution witnesses for cross-examination.*—S. 257 of the Crim. Pro. Code does not apply and relate to the preceding section. S. 256 gives an absolute right to the accused to recall any witness present in the Court precincts for cross-examination at any stage of the defence. S. 257 refers to witnesses not so present, and the accused has no absolute right to have them summoned. The Magistrate can refuse to summon them for reasons to be recorded by him in writing. EMPRESS v. RAM CHARAN LAL, **A.W.N. 1895, 40.**

(2664)—Ss. 256, 257—*See* CROSS-EXAMINATION, 1 C.W.N. 19.

(2665)—Ss. 256, 257, paras 1 and 2—*See* ACCUSED PERSON, 1 C.W.N. 313.

(2666)—*Ss.* 256, 257, 254, 244 (3)—*Recalling prosecution witnesses after charge framed—Payment of expenses of witnesses—Procedure*—The procedure contemplated by the Crim. Pro. Code for warrant-cases is that the prosecution witnesses should be examined in chief, the accused examined, the charge framed and the prosecution witnesses cross-examined at one hearing continued, if necessary from day to day, and the said witnesses should not be discharged until the Court has ascertained whether their cross-examination after the charge will be desired. S. 254 of the Code makes it clear that a charge may be framed before all the evidence available for the prosecution has been recorded. Where, in order to suit the convenience of the Court or for reasons connected with the discharge of other public business, the witnesses for the prosecution are allowed to leave before the charge has been framed or the right conferred by s. 256 exercised, they must be required to attend again, and ordinarily any expenses which may be allowed them on this score should be paid by Government. There is nothing in ch. XXI of the Code which enables the Magistrate to demand even from a complainant the expenses to be incurred by his witnesses, though such a power is conferred by s. 244 (3) where the case under trial is a summons-case. The accused cannot be asked to pay the expenses of such witnesses if the desired cross-examination is postponed under such circumstances. BRIDHICHAND v. LAKHMICHAND, **8 N.L.R. 65 = 15 Ind. Cas. 970 = 13 Cr. L.J. 554.** (4 C.W.N. 351, 12 P.R. 1907, *R.*)

(2667)—*Ss.* 256, 258, 417—*Indian Penal Code, s.* 406—*Appeal by Local Government*

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against acquittal—Powers and duties of the High Court—Order of acquittal passed after cross-examination of prosecution witnesses subsequent to framing of charge.—The accused was placed on his trial for having committed criminal breach of trust in respect of some bales of jute. The accused admitted his liability. The trying Magistrate framed a charge under s. 406, I.P.C., and after cross-examination of the witnesses for the prosecution acquitted the accused under s. 258, Crim. Pro. Code, holding that the case was one of civil dispute. *Held (on an appeal by the Local Government under s. 417, Crim. Pro. Code).*—That, in an appeal from an acquittal, the High Court could not interfere, unless the judgment of the Court below was wrong and perverse or without jurisdiction and based upon obvious errors in procedure, and there being nothing of the kind in the case, the High Court should uphold the decision of the Magistrate even though wrong, because it would be based at the most on a doubtful weighing of facts and not on any irregularity or negligence or other matter going to the jurisdiction or the regularity of the trial. That the order of acquittal having been passed subsequent to the framing of the charge and after the cross-examination of the witnesses for the prosecution was not irregular or without jurisdiction. DEPUTY LEGAL REMEMBRANCER OF BENGAL v. AMULYA DWAN, **18 C.W. N. 666 = 15 Cr. L.J. 160 = 22 Ind. Cas. 736.**

(2668)—Ss. 256, 262—*See* SUMMARY TRIAL, Rat. Un. Cr. C. 768 = Cr. Rg. 31 of 1895.

(2669)—*Ss.* 256 *and* 526—*Re-calling of prosecution witnesses for cross-examination—Accused's right to re-call—Transfer to some Magistrate other than the trying Magistrate—Judgment passed by trying Magistrate—Trial,* de novo.—The accused in a criminal case has a right under s. 256 of the Code of Criminal Procedure, to have the witnesses for the prosecution recalled and cross-examined after charge. Where a Magistrate declined to give the accused such an opportunity to re-call and cross-examine the witnesses for the prosecution and proceeded to judgment in the case against the accused. *Held*, that the conviction should be set aside and the trial held *de novo* by some other Magistrate of competent jurisdiction. GOPAL SHEIKH v. EMPEROR, **7 C.L.J. 240 = 7 Cr. L.J. 313.**

(2670)—*Ss.* 256 *and* 526—*Transfer application to a superior Magistrate—Duty of Magistrate to adjourn—Asking accused to cross-examine—Duty to summon his witnesses.*—There is no duty cast on a Magistrate to adjourn a case because an application is being made to a superior Magistrate for transfer. S. 526 Crim. Pro. Code, confines that duty to cases where application is made to the High Court. Once the requirements of s. 256, Crim. Pro. Code, requiring the accused to state whether he wishes to cross-examine any witness, were complied with, there is no provision requiring the Magistrate to offer an opportunity to the accused to have his witnesses summoned. VAIDINATHA IYER v. KUPPU THEVAN, **1912 M.W.N. 1121 = 13 Cr. L.J. 828 = 17 Ind. Cas. 572.**

(2671)—*Ss.* 256 *and* 537—*Summons case and warrant case, joint trial of—Warrant case dismissed—Summons case proceeded with—Refusal of Magistrate to re-call prosecution witnesses for further cross-examination, if legal—Prejudice to accused—Presumption—Burden of proof.*—Where a summons case and a warrant case are tried together, the procedure to be followed is that prescribed for the trial of a warrant case. (11 C. 91, *F.*) Where a Magistrate, while trying a summons case and a warrant case against certain accused in one trial, dismissed the complaint in respect of the warrant case and proceeded with the complaint in respect of the summons case, and where, on being requested by the accused to re-call the prosecution witnesses for their further cross-examination, refused to do so, *held* that the refusal was illegal and that the accused must certainly have been prejudiced by the same. *Held* further that the privilege conferred by s. 256, Crim. Pro. Code, was a substantial one, and when denied it was for the prosecution to show that there was no prejudice. Issuing summonses and dismissing a complaint for the non-appearance of the complainant are matters within the discretion of the Magistrate. *In re* RALLABANDI SOBHANADRI, **2 L.W. 574.**

(2672)—Ss. 256, 540—*See* WITNESS—EXAMINATION OF WITNESSES, 2 A. 253.

——**S. 257, paras 1 and 2 (= 1882, s. 257; 1872, s. 362, para 2); proviso to para 1** new.

See WITNESS.

(2673)—*S.* 257—*Duty—Magistrate to summon witnesses.* — S. 257 is imperative. A Magistrate has no discretion to refuse to issue process to compel the attendance of any witness, unless he considers that the application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground must be recorded by him in writing. A Magistrate, therefore, must issue summons for each witness named unless he takes the responsibility of recording his grounds for believing that any particular name was entered for the purpose of vexation or delay or for defeating the ends of justice. The case of each witness must be dealt with individually. EMPEROR v. PURSHOTTAM, **26 B. 418 = 4 Bom. L.R 38.** [*F.*, 31 M. 131 = 17 M.L.J 62 (N) = 7 Cr. L.J. 425, 39 C. 781 = 13 Cr. L.J. 218 = 14 Ind. Cas. 314, 2 S.L.R. 5.]

(2674)—*S.* 257—*Grounds for rejecting an application for summoning further defence witnesses.*—It is a sufficient compliance with the requirements of s. 257, if a Magistrate, while rejecting an application for summoning further defence witnesses, states facts which have led irresistibly to the conclusion that the application was to no other purpose than that of

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vexation or delay or of defeating the ends of justice, although he does not say explicitly that it was for that purpose. WAHID ALI KHAN v. EMPEROR, **11 C.W.N. 789=6 Cr. L. J. 1.**

(2675)—*S.* 257—*Grounds for rejecting application for summoning defence witnesses.*—Under s. 257, Crim. Pro. Code, the Magistrate can only refuse to issue process on the ground that the application is made for the purpose of vexation or delay or of defeating the ends of justice. The grounds of refusal must be recorded and the accused must be given an opportunity under cl. (2) of that section of depositing their expenses. This power of refusal should be sparingly exercised, as it creates an impression that the Magistrate is biased in favour of the prosecution. SHWE BWIN v. KING-EMPEROR, **2 L.B.R. 270.**

(2676)—*S.* 257—*Order of Magistrate refusing application for re-calling witnesses.*—The terms of s. 257, Crim. Pro. Code, are peremptory; and the only ground on which a Magistrate can refuse to grant an application to re-call witness for cross-examination is that the application is made for the purpose of vexation or delay, or for defeating the ends of justice, and such ground must be recorded by him in writing. A conviction arrived at in violation of the above section cannot be supported. CROWN v. DABUD *wd.* CHATO, **2 S.L.R. 5, Cr. =10 Cr. L.J. 207.**

(2677)—*S.* 257—*Refusal of Magistrate to adjourn a case to enable accused to cross-examine prosecution witnesses—Right of accused to summon them as defence witnesses and to cross-examine—Evidence Act, s.* 154.—The witnesses for the prosecution were examined, and an application for adjournment, so as to enable the accused to cross-examine them by Counsel, who could not appear on the day fixed, was refused. The accused, not being in a position to cross-examine them, applied for issue of summons to them to appear as defence witnesses. The witnesses being summoned, the Counsel for the accused proceeded to cross-examine them but he was not allowed to do so. *Held*, that the mere fact that the accused had, under the circumstances already stated, been compelled to treat the witnesses for the prosecution as their own witness did not change their character, and that, although the accused were compelled to obtain their attendance as witnesses for the defence, they were really summoned under s. 257 for the purpose of cross-examination, and the Magistrate was wrong in refusing to allow their cross-examination. SHEOPRAKASH SINGH v. W. D. RAWLINS, **28 C. 594.**

(2678)—*S.* 257 (=*s.* 257 *of the Code of* 1882) —*Framing of charge—Application for re-summoning the complainant and his witnesses for cross-examination.*—Where an application by the accused to re-summon the complainant and his witnesses for cross-examination, made one day after the charge had been framed against him, was refused on the ground that it was evidently made for delaying the case, and the accused convicted, *held*, that the trying Magistrate should re-open the case from the stage where he made the formal charge, and should allow the accused such opportunities of calling and re-calling witnesses as the law gives them. QUEEN-EMPRESS v. PURSHOTAM, **Rat. Un. Cr. C. 723=Cr. Rg. 48 of 1894.**

(2679)—*S.* 257—(=*Crim. Pro. Code,* 1882, s. 257)—*Right of accused to re-summon prosecution witnesses.*—An accused has a right to have the prosecution witnesses re-summoned even though they had been summoned previously and had not attended. GOHAR v. EMPRESS, **28 P. R. 1884, Cr.**

(2680)—*S.* 257—*Evidence Act, ss.* 114, *ill.* (*b*), 133—*Cross-examination of prosecution witnesses by accused—Failure to cross-examine before close of prosecution though opportunity given—Subsequent application to do so—Court's discretion— Refusal — Uncorroborated evidence of accomplice—Conviction based on—Whether legal —Scope of the rule regarding admissibility of such evidence.*—It is open to a Magistrate, even after a case has been closed and at any time before judgment has been pronounced, to give an opportunity to the accused to cross-examine the witnesses for the prosecution and to examine witnesses in defence, even if the accused had failed to avail himself of such opportunity which he had at an earlier stage of the proceedings: And it will always depend upon the circumstances of each case whether a belated application should be granted or not. (31 M. 131, 14 C.W.N. 280, *R.*) But where an accused was told that his case would not be committed to the Sessions and yet he would not cross-examine the witnesses for the prosecution, leaving no option to the Magistrate but to close the case, and where the Magistrate refused the application under s. 257, Crim. Pro. Code of the accused to cross-examine the prosecution witnesses, which was presented after the prosecution case was closed. *Held*, that the accused's attitude was deliberately designed to harass the Court and that the application was rightly refused. A conviction based upon the uncorroborated testimony of persons who are undoubtedly accomplices is illegal. (7 Bom.L.R. 969, 5 W.R. Cr. 80, 27 C. 144, 8 C.P. 106, 7 C. P. 272, 25 L.J. M.C. 165, C.P. 326, *R.*). (*Per Abdur Rahim, J., Ayling, J., Diss.*) The evidence of one accomplice is not sufficient corroboration of the evidence of another accomplice, and, upon the same principle, the previous statements made by an accomplice are not such corroboration of his evidence in Court as to satisfy the requirements of the rule. The corroboration needed, must be one by means of untainted evidence. (11 B.H.C.R. 196, *Appr.*) (*Per Abdur Rahim, J.*) The scope of the rule regarding the evidence of an accomplice, contained in ss. 114, ill. (*b*) and 133, *discussed*. Persons who actually pay bribes or co-operate in such payments or are instrumental in the negotiations for the purpose, are accomplices of the person bribed. (14 B. 115, 27 C. 144, *R.*) *Per Ayling, J.*—The

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general rule that an accomplice should be corroborated in material particulars is a mere rule of practice, the application of which is for the discretion of the Court by which the case is tried. Where a person is convicted by the lower Court of an offence on the uncorroborated evidence of accomplices, the High Court cannot be said to be dealing with a point of law conclusive of the impropriety of the conviction, but only with a question of appreciation of evidence, and will not, in revision, interfere with the decision of the lower Court without clear and ample grounds. *Per Sankaran Nair, J.*—Under s. 133, Evidence Act, a conviction, even if based only on the corroborated testimony of an accomplice, is not illegal, provided the lower Courts had, for any special reasons, convicted the accused upon such testimony alone, after having their attention drawn to the rule that such testimony should not be believed without corroboration; and absence of such special grounds is a ground upon which the High Court may, in revision, interfere with the decision of the lower Courts. VYASA RAO v. KING-EMPEROR, **21 M.L.J. 283=9 Ind. Cas. 897=12 Cr.L.J. 150=10 M.L.T. 84=1911 1 M.W.N. 327.** [*F.*, 12 Cr.L.J. 170=9 Ind. Cas. 978=9 M.L.T. 503; *R.*, 35 M. 247=13 Cr.L.J. 305=14 Ind. Cas. 849=22 M.L.J. 490=11 M.L.T. 1=1912 M.W.N. 207.]

(2681)—*S.* 257—*Magistrate—Witnesses for defence—Powers to decline to summon—Procedure—Magistrate cannot arbitrarily decline to examine witnesses.*—It is not competent to a Magistrate to decline to examine witnesses cited for the defence, on the ground that their evidence is unnecessary. He can, however, decline, under the provisions of s. 257, Crim. Pro. Code, to summon the witnesses. EMPEROR v. NANDBASAPPA BASAPPA, **14 Bom. L.R. 360=15 Ind. Cas. 795=13 Cr. L.J. 523=1 Bom. Cr. C. 123.**

(2682)—S. 257 (1 and 2)—*See* JUDGMENT, Rat. Un. Cr. C. 854=Cr. Rg. 20 of 1896.

(2683)—S. 257, paras 1, 2—*See* MAGISTRATE, DUTY OF, Rat. Un. Cr. C. 594=Cr. Rg. 14 of 1892.

(2684)—S. 257—*See* Nos. 522, 2092, 2636, 2662, 2663, 2664, 2665, 2666, *supra.*

(2685)—*Ss.* 257, 254, 255—*Warrant case—Right to inspect documents in custody of prosecution—When arises—Framing of charge—Conditions subject to which inspection can be allowed—Evidence Act*, s. 5.—In a warrant case the accused has no right to call for the production of documents in the possession of the prosecution and to inspect the same until after a charge has been framed and read out to him under ss. 254 and 255, Crim. Pro. Code. This right is given by s. 257. Even after a charge is framed, an application for inspection of documents should be dealt with under s. 257 and subject to the limitations enjoined by that section. *Per Fawcett, A.J.C.*—The Magistrate should satisfy himself that the documents called for have some bearing on the issues in the case and are relevant, before granting a summons for thier production. (*Vide* s. 5, Evidence Act). TAHILRAM LILARAM v. PITAMBERDAS BALABHDAS, **8 S.L.R 267=16 Cr. L.J. 245=28 Ind. Cas. 101.** (5 Bom. L.R. 980, *R.*)

(2686)—Ss. 257, 262—*See* SUMMARY TRIAL, 5 L.B.R. 20=9 Cr. L.J. 583=2 Ind. Cas. 365.

(2687)—*Ss.* 257 *and* 537—*Magistrate refusing to issue process to accused's witnesses without any of the grounds stated in s. 257—Legality of refusal—Whether illegality cured by s. 537.*—Where a Magistrate, in refusing to issue process for the witnesses named by the accused, did not base his refusal in regard to any particular witness, on any of the grounds which, under the provisions of s. 257 of the Code, are sufficient to justify it, *held*, that the order was illegal and was not such as could be cured by s. 537, Crim. Pro. Code. NARAYANA MUDALY v. EMPEROR, **31 M. 131=7 Cr. L.J. 425.** (26 B. 418, *F.*) [*R.*, 12 Cr. L.J. 150=9 Ind. Cas. 897=21 M.L.J. 283=2 M.W.N. 327=10 M.L.T. 84.]

——**S. 258 (=1882, s. 258; 1872, s. 220, I, Expl., 1861, s. 255).**

See ACQUITTAL.

See CONVICTION.

(2688)—*S.* 258—*Acquittal by a Magistrate on the ground of the case being false—Effect of, on persons not sent up for trial.*—Where proceedings were taken against some only of several persons charged with an offence, and the Magistrate acquitted them, on the ground that the case was "doubtful or false," and the District Magistrate, without moving the local Government, and considering that the decision of the trying Magistrate was wrong, ordered the prosecution of the persons who were not tried before, *held* that the District Magistrate should have, in the proper exercise of his discretion, moved the local Government against the order of acquittal, and that no proceedings could be taken against the other persons so long as the trying Magistrate's judgment declaring the case to be false was not set aside. BISHUN DAS GHOSH v. KING-EMPEROR, **7 C.W.N. 493.** [*F.*, 34 M. 253=9 M.L.T. 93=9 Ind. Cas. 253=12 Cr. L.J. 41, 7 C.W.N. 711; *D.*, 37 C. 680=11 Cr. L.J. 541=7 Ind. Cas. 932, 10 C.W.N. 1031=4 Cr. L.J. 173.]

(2689)—*S.* 258 (=*Crim. Pro. Code*, 1872, s. 220).—A Magistrate who convicts an accused person, ought, under this section, to pass a sentence on him according to law, and any omission to do so must be supplied. POLICE v. GANGARAM, **Colm. Dig. Cr. 13 of 1873.**

(2690)—*S.* 258—*Penal Code* (XLV *of* 1860), ss. 104, 504—*Acquittal, order of—Interference by High Court at the instance of a private prosecutor—Acquittal on an erroneous view of the law*

Crim. Pro. Code (Act V of 1898)—*continued.*

—*Using abusive language—Right of private defence.*—Case where the High Court interfered in revision, on the application of a private prosecutor, with an order of acquittal passed on an erroneous view of the law. S. 104, Penal Code, can have no application by way of defence to a charge under s. 504, Penal Code. RAKHAL DAS ROY v. KAILASH BANU, **11 C.L.J. 113=5 Ind. Cas. 721=11 Cr. L.J. 213.**

(2691)—S. 258—*See* COMPLAINT—DISMISSAL OF COMPLAINT, 5 C.L.R. 359.

(2692) — S. 258—*See* SUMMARY TRIAL, 1 L.B.R. 9.

(2693)—S. 258—*See* Nos. 61, 2003, 2481, 2482, 2618, 2637 to 2640, 2667, *supra*, and 4697, *infra*.

(2694)—*Ss.* 258, 248, 345—*Penal Code, s.* 406 —*Order of acquittal—Withdrawal from prosecution by a private complainant—Non-compoundable offence—Warrant case.*—It is not competent to a Magistrate to enter an order of acquittal on a private complainant's offering to withdraw from the prosecution in a warrant case in respect of a non-compoundable offence. EMPEROR v. RANCHHOD BAWLA, **15 Bom. L. R. 61=2 Bom. Cr.C. 17=18 Ind. Cas. 413=14 Cr. L.J. 77=37 B. 369.**

(2695)— *Ss.* 258, 259 (=*Crim. Pro. Code,* 1882, *ss.* 258, 259)—*Warrant case—Complainant not appearing—Procedure.*—A Magistrate, having taken all the evidence for the prosecution and framed a charge against the accused in a warrant case and appointed a day for further hearing, cannot acquit the accused under s. 258 of the Crim. Pro. Code, or discharge him under s. 259 on the mere ground that the complainant does not appear on that day. He should proceed to hear the defence evidence and decide according to law. QUEEN-EMPRESS v. NANAJI, **Rat. Un. Cr. C. 524=Cr. Rg. 54 of 1890.**

(2696)—Ss. 258, 347—*See* COMMITMENT TO SESSIONS COURT, 3 C. 495=2 C.L.R. 2.

(2697)—*Ss.* 258 *and* 350—*Charge—Transfer of Magistrate trying case—Re-hearing of case—Order of discharge by succeeding Magistrate.*—A second class Magistrate, after hearing the evidence, framed charges against several accused persons under s. 406, Indian Penal Code, and called on them to produce evidence to clear themselves. That Magistrate was transferred and the case was sent to another second class Magistrate who, at the request of the accused, re-heard the evidence, and subsequently passed an order for their discharge. *Held*, that the order passed by the succeeding Magistrate must be held to be an order of acquittal. CROWN v. NATHU, **175 P.L.R. 1903=14 P.R. 1903, Cr.** (9 M. 282, 12 A. 66, 6 P.R. 1884, Cr., *R.*)

(2698)—*Ss.* 258, 417, 439—*Acquittal, setting aside of, by High Court in revision, on the application of the complainant.*—*Held* (*by Jenkins, C.J., and Fletcher, J.*)—That the High Court has jurisdiction under s. 439, Crim. Pro. Code, to interfere in revision with an acquittal, but it should ordinarily exercise this jurisdiction sparingly and only where it is urgently demanded in the interests of public justice. The decisions of the different High Courts consistently support the view that, as a general rule, it is expedient not to interfere in revision at the instance of a private person with an acquittal after trial by the proper tribunal, and that applications for that purpose should be discouraged on public grounds. *Per Teunon, J.*—That under s. 417, Crim. Pro. Code, the right to present an appeal against an acquittal is vested in the Local Government, but an alternative remedy against injustice done to injured complainants has been provided in s. 439, Crim. Pro. Code, and the High Court has ample jurisdiction to interfere and remedy the wrong, if wrong has been done. The section is expressed in the widest terms and vests in the Court an absolute and unqualified discretion to which the enactment has set up no bars or limits and which cannot be fettered by judicial decisions. FAUJDAR THAKUR v. KASI CHAUDHURI, **19 C.W.N. 184=27 Ind. Cas. 186 =21 C.L.J. 53.**

(2699)—*Ss.* 258, 439—*Order of acquittal set aside by High Court in revision on merits, on the application of the complainant.*—Where the trying Magistrate in his judgment by which he acquitted the accused, while laying great stress on all considerations that might affect the credibility of the witnesses for the prosecution, omitted to consider what might be advanced in their favour and also failed to appreciate the corroborative value of an important witness for the prosecution, the High Court, on the application of the complainant, set aside the order of acquittal on the merits and directed a re-trial by a new Magistrate. SHAIKH BAGU v. RAIKA SINGH, **18 C.W.N. 1244=15 Cr.L.J. 722=26 Ind. Cas. 170.**

——**S. 259** (1882, s. 259).

See COMPLAINANT.

See COMPLAINT.

(2700)—*S.* 259—*Absence of complainant—Procedure.*—In a warrant case, when the Magistrate believes the prosecution evidence and arrives at the stage to which s. 254 of the Crim. Pro. Code applies, it is his duty to frame a charge, and he should not discharge the accused under s. 259 merely because the complainant was absent on the day of hearing. QUEEN-EMPRESS v. MHATARJI DHARKU, **Rat. Un. Cr. C. 847 =Cr. Rg. 14 of 1896.**

(2701)—*S.* 259—*Absence of complainant at hearing — Discharge of accused—Fresh complaint.*—Where a Magistrate has passed an order discharging the accused under s. 259, his order is no bar to a re-trial of the case on a fresh complaint. CHINNATHAMBI MUDALI v. SALLA GURUSWAMY CHETTY, **28 M. 310=2 Weir 325-A=2 Cr. L J. 758.** [*R.*, 16 M.L.J. 79 =1 M.L.T. 31=3 Cr. L.J. 274=29 M. 126, 18 M.L.J. 561=4 M.L.T. 140.]

(2702)—*S.* 259—*Order saying that the case was "struck off," legality of—Order of discharge*

Crim. Pro. Code (Act V of 1898)—*continued.*

when legal—Sanction of Court, necessity of, in case of fresh complaint.—Where on obtaining sanction to prosecute on a charge under s. 211, Penal Code, a complaint was filed in Court and on a subsequent date after proceedings had started the complainant was absent and the Magistrate passed an order saying that the case was "struck off," *held*, that there was no warrant for passing such an order under the Code of Criminal Procedure. *Held, further*, that the order striking off the case was not tantamount to an order of discharge which the Magistrate was competent to make only in such cases as can be lawfully compounded under s. 259, Crim. Pro. Code. Where the complainant under the above circumstances instituted a fresh complaint and the Court below accepted it, *held*, that a second trial could not be held. *Held also*, that in cases where sanction of the Court in which the false complaint was made is required, a fresh sanction would be necessary if a fresh petition is made. RAMPHAL v. KING-EMPEROR, **17 O.C. 18=23 Ind. Cas. 182=15 Cr. L.J. 230.**

(2703)—S. 259—*See* Nos. 809, 1533, 2093, 2524, 2619, 2695, *supra.*

(2704)—Ss. 259, 253, 203—*See* FRESH COMPLAINT, 4 M.L.T. 140=8 Cr. L.J. 208.

(2705)—*Ss. 259, 437—Discharge of accused in complainant's absence—Magistrate's duty to consider evidence—Presumption from complainant's absence — Complainant prevented from appearing against his will—Order of discharge —Further inquiry — Powers of Court under s. 437—Discretion.*—A Magistrate, in exercising his discretion in discharging an accused under s. 259, Crim. Pro. Code, in complainant's absence, is bound to regard the evidence and to consider whether there is a *prima facie* case against the accused or not. The absence of the complainant raises a presumption that he does not wish to proceed with the prosecution. Where a Magistrate discharged an accused under s. 259, Crim. Pro. Code, the complainant being prevented from appearing by floods, the order of discharge was set aside and further inquiry directed. The powers of a Court, under s. 437, Crim. Pro. Code, are very wide and are not limited to the powers which might be exercised by a Court of appeal. HARUN v. ABDUL SATAR, **9 Ind. Cas. 1007=12 Cr. L.J. 184.**

—— **S. 260, para 1 (=1882, s. 260; 1872, ss. 222, 223, 224); and para 2 new.**

See SUMMARY TRIAL.

(2706)—*S. 260—Charge of offence not triable summarily—Competency to try summarily when facts disclosed only an offence triable summarily.*—Where a Magistrate ascertained from the evidence that the facts alleged to have taken place only disclosed an offence triable summarily, and the aggravating circumstances which rendered the offence not so triable were mere exaggerations, he could dispose of the case summarily, and the mere fact that the complainant charged the accused with an offence not triable summarily did not affect the jurisdiction of the Magistrate. QUEEN-EMPRESS v. VALLABH GOPAL, **1 Bom. L.R. 683.**

(2707)—*S. 260—Complaint of offences, not triable summarily—Summary trial for minor offence—Jurisdiction of Magistrate.*—Where a petition of complaint stated that the accused, with others to the number of some 90 or 100, armed with swords and other deadly weapons came upon the complainant's land and in spite of his remonstrances, threatened him and cut his paddy, and the Magistrate, in examining the complaint, recorded merely the fact that the complainant stated that his paddy had been cut by the accused and convicted him summarily, under ss. 143, 379, I.P.C., *held*, that, as the petition of complaint disclosed the commission of a much more serious offence than the offences for which the Magistrate had held a summary trial, and as the examination of the complainant, which had not been properly recorded, did not show that the offence so complained of was not committed, the Magistrate had acted without jurisdiction in trying the case summarily. BISHU SHAIK v. SABER MOLLAH, **29 C. 409=6 C.W.N. 713.** [*F.*, 21 P.L.R. 1907; *R.*, 36 C. 67=12 C.W.N. 1041=8 Cr. L.J. 227, 20 Ind. Cas. 622=14 Cr. L.J. 462, 1 Ind. Cas. 519.]

(2708)—*S. 260—Charges under ss. 147 and 324, Penal Code—Power of Magistrate, after taking evidence, to try case summarily for offence under s. 323, Penal Code, after discharging accused of offences not triable summarily.*—Where, in the case of a complaint of offences under ss. 147 and 324, Penal Code, the Magistrate, after hearing the evidence, was of opinion that the only offence made out was an offence under s. 323, Penal Code, which was triable summarily and so tried the case, *held*, that tht procedure adopted by the Magistrate was not illegal and did not amount to disregarding that part of the charge, which took the case out of his summary jurisdiction for the purpose of dealing with the case summarily; *held*, further, that, as the effect of strictly confining to the charge before him would be to discharge the accused and not to commit him, the Magistrate was acting properly in trying the case summarily for the offence, which was clearly disclosed by the evidence. QUEEN-EMPRESS v. RANGAMANI, **22 M. 459=2 Weir 254.** (4 C. 18, *Dist.*)

(2709)—*S. 260—Summary trial—Forest Act* (VII *of* 1878), *s.* 31, *offence under.*—*Held*, that the petitioner's conviction under s. 51 of Act VII of 1878 for being in possession of beams belonging to the Government was illegal, where the beams were found concealed in an open field, which it could not be said was in the exclusive possession of the petitioner. The Chief Court remarked that, though the Magistrate had the power to try the case summarily, he had exercised an improper discretion in doing so. NARAIN SINGH v. EMPEROR, **128 P.L.R. 1902.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2710)—*S.* 260—*Summary trial of an offence which cannot be so tried—Conviction—Legality.*—An accused person cannot be convicted in a summary trial of an offence which cannot be tried summarily. QUEEN-EMPRESS v. BUSTIEN, **U.B.R. 1897—1901, Vol. I, 75.**

(2711)—*S.* 260 (=*Crim. Pro. Code*, 1882, *s.* 260)—*Construction of cls.* (*b*) *to* (*k*).—Cls. (*b*) to (*k*) of s. 260 of the Crim. Pro. Code being precisely expressed, are not to be governed by cl. (*a*), but may be given their full effect. QUEEN-EMPRESS v. BHAVDYA, **Rat. Un. Cr. C. 600=Cr. Rg. 18 of 1892.**

(2712)—*S.* 260— *Summary trial—Act* IX *of* 1890, *s.* 121.—An offence under s. 121, Railways Act, is an offence which is summarily triable within the meaning of s. 260, Crim. Pro. Code. KING-EMPEROR v. BINDESARI PRASAD, **A. W.N. 1902, 24.**

(2713)— *S.* 260—*Summary trial — Cattle-lifting—Procedure.*—The offence of cattle-lifting is a serious one and ought not to be tried summarily. CROWN v. ALLAHRAKHIO, **6 S. L.R. 101=17 Ind. Cas. 412=13 Cr. L.J. 780.** [*R.*, 13 Cr. L.J. 771=17 Ind. Cas. 403=6 S. L.R. 120.]

(2714)—*S.* 260, *summary trial—Powers of Magistrate—Case under the Companies Act—Companies Act*, VI *of* 1882, *s.* 74—*Penalty fixed — Lesser penalty.*— S. 260, Crim. Pro. Code, gives the Magistrate a power to try summarily all cases not punishable with death, transportation or imprisonment for a term exceeding six months, and there is nothing in law to restrict the Magistrate in exercising such powers in cases under the Companies Act. Where, therefore, the Directors of a company were put on their trial for not filing the balance sheet with the Registrar of Joint Stock Companies within the time fixed, *held* that the Magistrate could try the case summarily. *Held* further that the penalty laid down under s. 74 of the Companies Act is a fixed penalty, and the Magistrate trying a case under that section is not competent to inflict a lesser penalty. DINA NATH v. KING-EMPEROR, **11 A.L.J. 196=18 Ind. Cas. 665=14 Cr. L.J. 105=35 A. 173.** [*R.*, 15 Cr. L.J. 260=37 P.L.R. 1914=23 Ind. Cas. 468=19 P.R. 1914, Cr.]

(2715)—*Ch.* XXII, s. 260—*Crim. Pro. Code*, 1872, *ch.* XVIII (*ch.* XXII *of the Code of* 1898) —*Charge of theft with previous conviction for the same—Summary trial.*—Where the offence charged is an offence under ch. XVII, Penal Code, with the aggravation of a previous conviction superadded, and it is intended, for the purposes of punishment, to prove the aggravation, the charge must specifically set out the previous conviction. Where this is done, the summary jurisdiction of Magistrates, under ch. XVIII (ch. XXII), Crim. Pro. Code, is ousted. HIGH COURT PROCEEDINGS, 23RD SEPTEMBER 1878, No. 1537, **2 Weir 324.** [*Appl.*, 2 Weir 432.]

(2716)—*S.* 260, *ch.* XXII—*Summary trial—Penal Code*, ss. 451, 452.—Where a complaint is made to a Magistrate under s. 452, Penal Code, and where there is nothing in the complainant's examination on oath to justify the Magistrate in thinking that the offence falls under s. 451, he ought not to follow the procedure of summary trials laid down in ch. XXII of the Crim. Pro. Code, as the offence under s. 452 is not one of those mentioned in s. 260 of the Crim. Pro. Code. R. S. SHARMA IYER v. EMPEROR, **14 Cr. L.J. 462=20 Ind. Cas. 622=6 Bur. L.T. 137.**

(2717)—S. 260—Procedure under—Applicability to proceedings under Act XIII of 1859, s. 2 —*See* ACT XIII OF 1859, s. 2, 6 S.L.R. 165= 14 Cr. L.J. 256=19 Ind. Cas. 512.

(2718)—S. 260—*See* ACT XXVI OF 1870, ss. 47, 48, A.W.N. 1894, 176.

(2719)—S. 260—*See* BEN. ACT XXI OF 1856, s. 49, 3 C. 366=1 C.L.R. 442.

(2720)—S. 260 (1) — *See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, Rat. Un. Cr. C. 670=Cr. Rg. 30 of 1893.

(2721)—S. 260—*See* Nos. 1645, 1669, 1715, *supra.*

(2722)—*Ss.* 260, 262, 263 (=*Crim. Pro. Code*, 1882, *ss.* 260, 262, 263)—*Presidency Magistrate —Warrant case—Procedure.*—The provisions of ch. XXII of the Crim. Pro. Code do not apply to trials before Presidency Magistrates. The procedure to be followed in warrant cases is that laid down in ch. XXI. QUEEN-EMPRESS v. ABDUL, **Rat. Un. Cr. C. 539=Cr. Rg. 12 of 1891.**

(2723)—Ss. 260 (1) and 355—*See* SUMMARY TRIAL, 2 C.L.R. 374.

(2724)—*Ss.* 260, 355, 30, 34 (=*Crim. Pro. Code*, 1872, *ss.* 222, 36)—*Maximum punishment —Summary trial.*—An accused person was tried summarily under s. 222, Crim. Pro. Code, 1872, and was sentenced to rigorous imprisonment for four years subject to the confirmation of the Sessions Judge under s. 36, Crim. Pro. Code, 1872. *Held*, that, under s. 222, two years was the maximum period of imprisonment that can be awarded in a summary trial. POLICE v. RAOJI, **Colm. Dig. Cr. 30 of 1876.**

(2725)—*Ss.* 260, 355 *and* 488 (=*Crim. Pro. Code*, 1882, *ss.* 260, 355, 488)—*Proceedings under ch.* XXXVI — *Application for maintenance — Record of evidence.*— Proceedings, under ch. XXXVI of the Code, cannot be conducted as in a summary trial under ch. XXII. The evidence should be recorded as provided by s. 355 of the Code. KALI DASSI v. DURGA CHARAN NAIK, **20 C. 351.** [*R.*, L. B.R. 1893—1900, 662.]

(2726)—*Ss.* 260, 439—*Summary trial—Case involving question of title and documentary evidence—Revision—Power of High Court to set aside order of acquittal.*—In the exercise of its revisional powers, the High Court has power to

Crim. Pro. Code (Act V of 1898)—*continued.*

reverse an order of acquittal and to direct that further inquiry be made or that the accused be re-tried or committed for trial. (27 A. 320, 4 C.W.N. 311, *F.*) But this revisional jurisdiction will be exercised sparingly, and generally in those cases only where there is an error of law and procedure patent on the face of the judgment. A case involving the decision of a question of title and the production of documentary evidence should not be tried summarily. EMPEROR v. TIRITHDAS, **13 Cr. L.J. 771=17 Ind. Cas. 403.** [*F.*, 15 Cr. L.J. 236=26 M. L.J. 160=23 Ind. Cas. 188.]

——S. 261 (=1882, s. 261 ; 1872, s. 225)

See SUMMARY TRIAL.

(2727)—S. 261—*See* MAD. ACT XXIV OF 1859, s. 48, 13 M. 142=1 Weir 910=2 Weir 327.

(2728)—S. 261—*See* BENCH OF MAGISTRATES, 13 M. 142=1 Weir 910=2 Weir 327.

(2729)—S. 261—*See* No. 128, *supra.*

——S. 262 (=1882, s. 262, 1872, s. 226).

(2730)—S. 262—*See* Nos. 196, 197, 2461, 2468, 2576, 2668, 2686, 2722, *supra.*

——S. 263 (=1882, s. 263, 1872, s. 227).

See JUDGMENT.
See SUMMARY TRIAL.

(2731)—*S.* 263 (=*Crim. Pro. Code,* 1872, *s.* 227 (*h*))—*Record of reasons for conviction by Magistrate.*—Under s. 227 (*h*) of the Crim. Pro. Code, a Magistrate, in recording his reasons for a conviction, should state them therein, so that the High Court, on revision, may judge whether there were sufficient materials before him to support the conviction. EMPRESS v. PANJAB SINGH, **6 C. 579.** [*F.*, 13 C. 272, 18 B. 97, 13 C.P.L.R. 17, 1 L.B.R. 95, 1 L.B.R. 208, 3 L.B.R. 3=2 Cr. L.J. 375 ; *R.*, 21 A. 189, 31 C. 983.]

(2732)—*S.* 263, *strict compliance with—Summary trial—Non-compliance with law, effect of.*—In the case of a summary trial, the provisions of s. 263 of the Code must be fully and strictly complied with, and complied with, in this sense, that the record must be sufficiently exact and sufficiently full to enable the Judges of the Revisional Court to say whether the law has been complied with or not on the points to be recorded. The three things required, under s. 263 of the Code, to be recorded, namely, the offence charged, the offence, if any, proved and the reasons for convicting, must be recorded, and recorded in such a way as to enable the Court of Revision to say, yes or no, from within the four corners of the record itself whether the offence charged is an offence in point of law, whether the offence proved is an offence in point of law, and whether the reasons for the conviction are good and sufficient reasons. KHOSH MAHOMED v. EMPRESS, **2 C. L.J. 565=10 C.W.N. 79=3 Cr. L.J. 178.**

(2733)—*S.* 263 (=*Crim. Pro. Code,* 1872, *s.* 227), *cl.* (*h*)—*Summary trial.*—A summary trial applies only to short and simple cases, where little evidence is needed. The proceedings of a Magistrate thereunder, covering more than 130 pages and occupying seven days, were held to be an abuse of the law. ISSUR CHUNDER MUNDLE v. ROHIM SHEIKH, **25 W.R. Cr. 65.**

(2734)—*S.* 263—*Summary trial—Conviction—Reasons.*— Although a Magistrate is not required in law to record the evidence in a summary trial, yet he is bound to record his reasons for the conviction, and that too in such a manner as to put a superior Court in a position to judge whether there were sufficient materials to support the conviction. JAGAN NATH v. EMPEROR, **14 Cr. L.J. 594=21 Ind. Cas. 466 =16 O.C. 357.** (A.W.N. 1883, 114, 21 A. 189, 191, *R.*)

(2735)—S. 263—Summary trial — Whether formal charge need be framed—*See* PENAL CODE, ss. 456, 457, 16 C.W.N. 696=13 Cr.L.J. 224=14 Ind. Cas. 320.

(2736)—*S.* 263 (*b*)—*Statement of reasons for conviction to be recorded.*—Under s. 263 (*b*) of the Code, a brief statement of reasons for conviction must be given. These reasons should amount to showing that there is evidence to prove the existence of the ingredients necessary to complete the offence. BIJBASI LAL v. KING-EMPEROR, **10 A.L.J. 251=16 Ind. Cas. 516= 13 Cr. L.J. 708.**

(2737)—S. 263 (*h*)—*See* CONVICTION, 6 C.W. N. 40.

(2738)—S. 263—*See* Nos. 2468, 2577, 2722, *supra and* 3269, *infra.*

(2739)—*Ss.* 263, 342—*Warrant case — Examination of accused—Charge of house-breaking with intent to commit theft — Different object proved—Necessary that charge should be altered —Notice to accused.*—In all warrant-cases, there must be an examination of the accused as laid down in s. 342 of the Crim. Pro. Code. S. 263 does not give the Magistrate any discretion whether he will examine the accused or not. The words "if any" in s. 263, cl. (*g*), do not apply to warrant-cases. Where a Magistrate finds that the charge of house-breaking with a view to commit theft has broken down, but also finds that there was another object, it is his duty to give the accused notice of that object by drawing up a charge clearly stating what it is that he is accused of doing. MAHOMED HOSSEIN v. EMPEROR, **15 Cr. L.J. 190=22 Ind. Cas. 766=18 C.W.N. 1247=41 C. 743.**

(2740)—Ss. 263, 367, 537—*See* JUDGMENT, 6 C.L.R. 273.

(2741)—*Ss.* 263, 414, 415, 416 (=*Crim. Pro. Code,* 1872, *ss.* 227, 274)—*Sentence of imprisonment and fine by First Class Magistrate—Appeal —Form of record.*—Where a Magistrate of the First Class passes a sentence of fine and imprisonment, his order is appealable. Therefore, he

Crim. Pro. Code (Act V of 1898)—*continued.*

should record the evidence of the witnesses and his reason for passing the sentence. *In the matter of* SHER MAHOMED, **2 C.L.R. 511.**

(2742)—*Ss.* 263, 417—*Magistrate if may refuse to take evidence at a summary trial—Order of acquittal, if may be set aside on revision.*—S. 263 of the Crim. Pro. Code excuses a Magistrate trying a criminal case according to the summary procedure from recording the evidence of any of the witnesses, but not from hearing the evidence of all the witnesses. Where the accused were acquitted by the Magistrate upon the result of the local inspection and without taking oral evidence: *Held*, that the order of acquittal was without jurisdiction and should be set aside. JABBAR SHEIKH v. TOMIZ SHEIKH, **16 C.W.N. 984 = 39 C. 931 = 17 Ind. Cas. 71 = 13 Cr.L.J. 759.**

——S. 264 (=1882, s. 264; 1872, s. 228).

See SUMMARY TRIAL.

(2743)—*S.* 264 (=*Crim. Pro. Code,* 1872, *s.* 228)—*Record of evidence in appealable cases.*—Under Act X of 1872, s. 228, Magistrates need not record the substance of depositions; but may state generally the substance of the witnesses' evidence. KRISTODHONE DUTT v. CHAIRMAN OF THE MUNICIPAL COMMISSIONERS OF SUBURBS OF CALCUTTA, **25 W.R. Cr. 6.**

(2744)—S. 264—*See* CONVICTION, A.W.N. 1882, 178.

(2745)—S. 264—*See* No. 2461, *supra and* No. 3269, *infra.*

(2746)—*Ss.* 264, 351 (=*Crim. Pro. Code,* 1882, ss. 264, 351)—*Deposition of witnesses taken before the Magistrate in the absence of the accused.*—If, in the course of a trial, the Judge is of opinion that the prosecution has not laid a basis for the reception of the depositions taken before the Magistrate in the absence of the accused, he should adjourn the trial under s. 264, Crim. Pro. Code, and under s. 351, summon such witnesses as he may deem material. EMPRESS v. SAGAMBUR, **12 C.L.R. 120.**

(2747)—*Ss.* 264, 407 (=*Crim. Pro. Code,* 1882, ss. 264, 407) — *Conviction by Bench of Magistrates exercising second and third class powers—Appeal.*—Under s. 407, an appeal lies from a conviction by a Bench of Magistrates exercising second or third class powers, and the Bench is bound to record a judgment under s. 264. QUEEN-EMPRESS v. NARAYANASAMY, **9 M. 36 = 2 Weir 460.**

(2748)—*Ss.* 264, 537 (=*Crim. Pro. Code,* 1872, ss. 228, 283)—*Summary trial—Record in appealable cases—Defective record—Duty of appellate Court.*—A Sessions Judge should not quash a conviction in a summary trial, on the ground that the substance of the evidence was not embodied in the Magistrate's judgment. If the Judge found it impossible to dispose of the appeal because of such defect, he should have required that officer to repair the defect in his judgment, by recording a judgment in which the substance of the evidence should be fully embodied, and, if necessary, re-examining the witnesses for that purpose, or to have ordered a re-trial with that view. EMPRESS OF INDIA v. KANRAN SINGH, **1 A. 680.**

——S. 268 (=1882, s. 268; 1872, s. 232).

(2749)—Ss. 268, 269, 447, 451-A, 451-B, 536—*See* EUROPEAN BRITISH SUBJECT, 18 P.R. 1888, Cr.

(2750)—Ss. 268, 272, 284, 285—*See* ASSESSORS, 15 B. 514.

(2751)—Ss. 268, 285—*See* ASSESSORS, 13 A. 337 = A.W.N. 1891, 93, 6 C.W.N 715.

(2752)—Ss. 268, 537—*See* ASSESSORS, 15 A. 136 = A.W.N. 1883, 50.

——S. 269 (=1872, s. 233, paras 1 and 2; 1861, s. 322); paras 1 and 3 (=1882, s. 269).

(2753)—*S.* 269—*Order by Government revoking previous orders directing certain offences to be tried by jury as regards persons connected with anti-Shanar riots in Tinnevelly and Madura.*—The words "class of offences," referred to in s. 269, are not restricted to the classification recognised by the Legislature, such as is found in the Penal Code, (*e.g.*, offences against the State, against the person), or in the Crim. Pro. Code (*e.g.*, bailable offences, cognisable offences). Offences may also be classified according to the person who commits them, or according to the person or property against whom or which the offences are committed or in regard to the particular occasion in connection with which they are committed. Thus, the fact of offences having been committed by old offenders or members of criminal tribes, or having been committed against women or against public property, would afford reasonable ground for classification. The notification by Government, dated 30th August, 1899, by which the Government, revoking their previous orders providing for trial by jury of certain class of offences, directed the trial of persons concerned in the "anti-Shanar riots and disturbances in Tinnevelly and Madura" should be tried with the aid of assessors and not by jury. *Held*, that the offence connected with the outbreak was rightly treated as a class of offences and that it was competent to the Government, with the consent of the Governor-General in Council, to revoke the previous notification so far as it related to that class. QUEEN-EMPRESS v. GANAPATHI VANNIANAR, **23 M. 632 = 2 Weir 331 = 2 Weir 709.**

(2754)—*S.* 269—*Joint-trial—Accused charged with offence triable by jury and also non-jury offences—Selection of jurors—Choice of some among jurors as assessors—Conviction on non-jury charges—Illegality.*—Where, in the same case, the accused were charged with an offence triable by a jury and also with offences triable with the help of assessors, and were jointly tried, and where five gentlemen were selected to form a jury and two of them were chosen to

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help as assessors, and where, in respect of the latter offences, the Judge, differing from the two assessors, convicted the accused. *Held* that, according to s. 269, Crim. Pro. Code, the Judge was bound to constitute all the members of the jury as assessors for trying the non-jury offences, and that, he not having done so, the conviction was illegal. PINGAI PAHURAPPA v. KING-EMPEROR, **21 M.L.J. 520 = 10 M.L.T. 22 = 10 Ind. Cas. 281 = 12 Cr. L.J. 239.** (26 M. 508, *Appl.*)

(2755)—S. 269—*See* TRIAL BY JURY, 11 Bom. L.R. 350 = 33 B. 423 = 2 Ind. Cas. 480.

(2756)—S. 269 (1 and 2)—*See* JUDGE AND JURY, Rat. Un. Cr. C. 600 = Cr. Rg. 19 of 1892.

(2757)—S. 269 (1 and 3)—*See* VERDICT OF JURY, 9 M. 42 = 9 Ind. Jur. 387.

(2758)—S. 269 — *See* No. 2749, *supra*, No. 2953, *infra*.

(2759)—Ss. 269 (3) and 307—*See* TRIAL BY JURY, 9 Bom. L.R. 1057 = 7 Cr. L.J. 236.

(2760)—*Ss.* 269 (3) *and* 309—*Offences triable both by jury and assessors—Proper procedure.*—In a case where the accused is charged at the same trial, with offences of which some are, and some are not, triable by jury, and where the Judge combines his charge to the jury with the summing up to the assessors, it is desirable that the Judge should explain clearly to the jury and assessors the double capacity in which they were acting. *In re* SIVAGA, **2 Weir 334.**

(2761)—*Ss.* 269 (3), 309 *and* 537—*Charges of theft and administering drug—Trial of the case by Sessions Judge and the jury—Opinion of only two of jurors taken regarding the latter charge—Validity.*—In a trial of an accused person for theft in building, an offence triable by a jury and for administering a stupefying substance with intent to facilitate the commission of an offence, an offence triable by assessors, the Judge took the verdict of the jury regarding the first charge and took the opinion of two of the jurors, as assessors, regarding the second charge, *held*, that he ought, under the provisions of ss. 269, cl. 3 and 309 of the Code of Criminal Procedure, to have taken the opinion of all the jurors as assessors, as regards the second charge. His failure to do that could not be treated as an omission or irregularity to which s. 537 of the Code of Criminal Procedure would apply. RAMA KRISHNA REDDI v. EMPEROR, **26 M. 598 = 2 Weir 333 = 2 Weir 713.**

(2762)—*Ss.* 269, 403 *and* 536—*Acquittal by assessors on charge of abetment of dacoity with murder— Subsequent conviction by jury of receiving stolen property on the same facts as in previous case—Validity.*—The accused person was first charged with abetment of dacoity with murder. He was tried by the Sessions Court with the aid of assessors and was acquitted, but was afterwards charged with the offence of receiving stolen property and was tried by a Sessions Judge and a jury who convicted him of that offence. The facts on which the accused was convicted of the offence of receiving the stolen property did not differ from the facts on which he was acquitted of the offence of abetment of dacoity with murder. It was contended on behalf of the prosecution that, as the charge of receiving stolen property should be tried by a jury, under the rules made under the powers conferred by s. 269 of the Code of Criminal Procedure, the Court, which had acquitted the accused on the charge of abetment of dacoity with murder, was not a Court competent to try the accused on the charge of receiving stolen property. *Held*, that, as the words " was not competent to try " mean " had not jurisdiction to try" and as the provisions of s. 536, cl. 2, Crim. Pro. Code, validate the trial by assessors of a case triable by jury, if no objection has been taken before the Court had recorded its finding, the Court which first tried the accused was a Court " competent to try " the charge of receiving stolen property and that, therefore, the conviction of the accused on the second charge should be set aside. KING-EMPEROR v. KRISHNA AYYAR, **24 M. 641 = 2 Weir 458.** [*R.*, 37 M. 236 = 13 Cr. L.J. 739 = 17 Ind. Cas. 51, 36 M. 308 = 13 M.L.T. 360, 19 Ind. Cas. 310 = 24 M.L.J. 463 = 14 Cr. L.J. 214.]

——S. 270 (= 1882, s. 270 ; 1872, s. 235 ; 1861, s. 360).

(2763)—*S.* 270 (= *s.* 235 *of* 1872)—*Scope of the section.—Per Brodhurst, J.*—S. 235 cannot be limited merely to cases of persons who, in addition to the offence of rioting, have with their own hands committed the further offences of voluntarily causing grievous hurt and of assaulting a public servant, when engaged in suppressing a riot. QUEEN-EMPRESS v. RAM SARUP, **7 A. 757, F.B. = A.W.N. 1885, 195.**

(2764)—S. 270—*See* COMPLAINANT, 5 B.H. C. Cr. 85.

(2765)—S. 270—*See* SESSIONS JUDGE—JURISDICTION OF, Rat. Un. Cr. C. 53.

(2765-*a*)—S. 270—*See* No. 4391, *infra*.

——S. 271 (= 1882, s. 271 ; 1872, s. 237 ; 1861, s. 362).

(2766)—*S.* 271—*Statement by prisoner when called upon to plead—Procedure—Practice.*—In cases where an accused person when called upon to plead to a charge before a Court of Session, instead of pleading guilty, makes a long rambling statement more or less admitting guilt, it would be much safer if the Judge recorded a formal plea of " not guilty" and proceeded to try the case in the ordinary way, recording the evidence. EMPEROR v. DEOKI, **A.W.N. 1908, 54 = 5 A.L.J. 157 = 7 Cr.L.J. 295.**

(2767)—*S.* 271 (= *Crim. Pro. Code*, 1882, *s.* 271)—*Offence charged not proved—Conviction for different offence.*—A charge of murder on which the accused was tried, was not proved, but the Court convicted her of the offence of concealment of birth, which it considered was admitted by her in her examination by the Court. *Held*, that such conviction was illegal,

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and that a charge of concealment of birth should have been framed and the accused tried thereon. QUEEN-EMPRESS v. SARWEL, **Rat. Un. Cr. C. 386 = Cr. Rg. 37 of 1888.**

(2768)—*S.* 271—*Plea of guilty—Discretion of Judge to continue the trial after such plea.*—Under the Crim Pro. Code, the Court is not bound to convict an accused person on his plea of guilty. S. 271 only says that "the plea shall be recorded, and he may be convicted thereon." As a matter of practice in Sessions trials, especially in murder cases, many Judges rightly prefer not to act on the plea of guilty, but proceed to take the evidence just as if the plea had been one of not guilty, and decide the case upon the whole evidence including the accused's plea. When this procedure is adopted, it cannot be said that the trial terminates with the plea of guilty. A trial does not end, strictly speaking, until the accused has been either convicted, acquitted or discharged. QUEEN EMPRESS v. CHINNA PAVUCHI, **23 M. 151 = 2 Weir 747 = 2 Weir 335.**

(2769)—S. 271—*Plea of guilty—Conviction for murder—Penal Code, s.* 302—*Culpable homicide not amounting to murder.*—In this case, the appellant was charged with murder under s. 302, I.P.C. He admitted having killed his wife, but excused his act on the plea of provocation. The Court of Sessions recorded a plea of guilty and convicted the accused thereon. *Held*, that the conviction and sentence should be set aside and a re-trial ordered. The plea obviously was not intended to be and did not amount to plea of guilty under the section charged. Further, the accused was entitled to have an opportunity of establishing the alleged facts, if he could, in order to show such grave and sudden provocation as would reduce the offence committed to culpable homicide not amounting to murder. NGA SHWE KYE v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 76.**

(2770)—S. 271—*See* CHARGE TO JURY—MISDIRECTION, 2 Weir 339.

(2771)—S. 271—*See* CONVICTION, 10 W. R. Cr. Cir. 5.

(2772)—S. 271—*See* EVIDENCE ACT, 1872, s. 30, 15 P. R. 1911, Cr. = 12 Ind. Cas. 981 = 12 Cr. L.J. 605.

(2773)—S. 271—*See* FALSE CHARGE, 7 C. 96 = 8 C.L.R. 471.

(2774)—S. 271—*See* MURDER, Rat. Un. Cr. C. 410 = Cr. Rg. 76 of 1888.

(2775)—*S.* 271 (2)—*Sessions trial—Alternative plea.*—An accused should never be called on to plead in the alternative, but separately to each of the heads of a charge. QUEEN EMPRESS v. LAKSHMAN, **Rat. Un. Cr. C. 327 = Cr. Rg. 15 of 1887.**

(2776)—*Ss.* 271 (2) *and* 342—*Accused pleading guilty—Procedure postponing conviction to allow confession to be considered against co-accused—General examination of the accused.*—When an accused person pleads guilty, the Court should record the confession and forthwith convict him thereon. If there are other persons being tried with him for the same offence, the Court should not postpone his conviction merely for the purpose of allowing the statements he may have made to be considered against the co-accused. It is against the spiriy of law to postpone the conviction so that the person who has pleaded guilty may technicallt be said to be tried jointly for the same offence. The general examination of the accused provided for by s. 342 can be made only for the purpose of enabling the accused to explain the circumstances appearing against him in evidence. The Court should not ask a confessing accused "who were with you in the dacoity?" KHEORAJ v. KING-EMPEROR, **5 A.L.J. 505 = A.W.N. 1908, 241 = 4 M.L.T. 398 = 8 Cr. L.J. 380.** (23 A. 53, *R.*)

(2776-*a*)—Ss. 271 and 342—*See* ACCUSED PERSON, 9 C.L.J. 291 = 13 C.W.N. 552.

(2777)—*Ss.* 271 (2), 342 (1), 439, 494—*Plea of guilty not recorded, effect of—Examination of the accused, whether allowed, when no evidence has been recorded, and whether can be in the nature of cross-examination—Withdrawal of charge by the Public Prosecutor—Right of the accused to an acquittal—Power of the High Court to interfere with, in revision—Practice.*—If the accused pleads guilty on a charge, the plea should be recorded. Where no such plea appears on record, the conviction is bad, and must be set aside and a new trial ordered on the charge. A Sessions Judge is not justified in questioning a prisoner at a stage when no evidence has yet been recorded which the accused could be required to explain; and questions appearing to be in the nature of cross-examination are not justifiable. If the Public Prosecutor withdraws a charge and the Court approves of it, the accused shall be acquitted; and neither the Public Prosecutor nor the Judge is called on to give any reasons for his action. The High Court has no power to interfere with such an order of acquittal. *In re* SADAYAN, **5 M.L.T. 216 = 4 Ind. Cas. 1126 = 11 Cr. L.J. 193.**

(2778)—*Ss.* 271, 465—*Lunatic, trial of—Procedure—Guilty, plea of, not to be accepted in capital offences.*—A plea of guilty should not be accepted in capital offences. The accused confessed having killed his wife, and pleaded guilty at his trial for committing the offence of murder. The Sessions Judge recorded briefly the evidence of two prosecution-witnesses to determine whether the offence committed was or was not culpable homicide amounting to murder. He found that the offence was murder and sentenced the accused to transportation for life on the ground that the accused 'without being actually insane so as not to be aware of what he was doing, appears to be decidedly a man of weak intellect.' On appeal, it was urged that the accused was insane or at any rate incapable of understanding the charge against him. The

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Chief Court set aside the conviction and ordered a re-trial and enquiry under s. 465 of the Code. PALA SINGH v. THE KING-EMPEROR OF INDIA, **169 P.L.R. 1905=54 P.R. 1905=3 Cr. L.J. 80.** (19 A. 119, *F.*)

——S. 272 (=1882, s. 272; 1872, ss. 238, 665; 1861, ss. 347, 363); proviso (=1872, s. 265).

(2779)—*S.* 272 (=s. 363, *Code of* 1861)—*Accused not pleading — Silence — Practice.*—Where an accused, asked to plead, keeps silent, an inquiry should be made as to whether he is obstinately so or *ex visitatione die.* In either case, a plea of not guilty is to be recorded. If he is found insane, the procedure laid down in ch. XXVII of the Crim. Pro. Code should be followed. REG. v. SATTYA, **Rat. Un.Cr. C. 19 =Cr. Rg. 9-8-1869.**

(2780)—S. 272—*See* SESSIONS TRIAL, 6 Bom. L.R. 671.

(2781)—S. 272—*See* No. 2750, *supra* and No. 3487, *infra.*

——S. 273 (=1882, s. 273).

(2782)—*S.* 273 (=*Crim. Pro. Code,* 1882, *s.* 273)—*Unsustainability of a charge—Entry to that effect—Effect.*—Under s. 273 of the Code, in trials before the High Court, when it appears to the Court, at any time before the commencement of the trial of a person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect. Such entry has the effect of staying the proceedings upon the charge or portion of the charge as the case may be. QUEEN-EMPRESS v. SUKEE RAUR, **21 C. 97).** [*F.*, Rat. Un. Cr. C. 962; *R.*, 11 C.P. L.R. 6.]

——S. 276 (=1882, s. 276; 1872, ss. 240, 243; 1861, s. 342.)

(2782-*a*)—S. 276—*See* No. 4092, *infra.*

(2783)—*Ss.* 276, 279 *and* 326—*Jury, selection of.*—The Legislature has taken special precautions to render impossible any intentional selection of jurors to try a particular case. In the first place, the persons who are to be summoned to act upon the jury are drawn by lot; and, then again, when they appear, the jurors who are to try a particular case are chosen in the same manner from amongst the persons summoned. Where, owing to the fact that only three jurors attended the Court, the Judge summoned jurors from among the residents of the town on the day fixed for the trial, *held,* that the jury as constituted was not a proper jury as the procedure adopted by the Judge implied that the persons to be summoned were specially selected and were not summoned after being chosen, as the law required, by lot, from the whole of the persons liable to serve on the jury. Where, instead of choosing jurors by lot and then hearing and deciding objections as provided by ss. 276—279, the Judge proceeded at once to exempt some of the persons present merely on their own representation, *held,* that the procedure was irregular, and the irregularity was not cured by s. 537. BROJENDRA LAL SIRCAR v. KING-EMPEROR, **7 C.W.N. 188.** [*R.*, 33 A. 385=8 A.L.J. 182=12 Cr. L.J. 46 =9 Ind. Cas. 278.]

(2784)—*Ss.* 276, 537—*Jury not constituted by lot—Conviction illegal.*—Jurors are Judges of fact, and in the absence of a properly constituted jury, conviction is illegal. A violation of the imperative procedure laid down in s. 276 of the Crim. Pro. Code, is such as cannot be cured by the provisions of s. 537 of that Code. BRADSHAW v. EMPEROR, **9 Ind. Cas. 278=8 A.L.J. 182=12 Cr. L.J. 46=33 A. 385.** (7 C. W.N. 188, *R.*)

(2785)—Ss. 276, 537—*See* VERDICT OF JURY, 8 C. 739=12 C.L.R. 233.

——S. 277(=1882, s. 277; 1872, s. 243, paras 1 and 2; 1861, s. 343).

(2785-*a*)—S. 277—*See* No. 4092, *infra.*

——S. 279 (=1882, s. 279; 1872, s. 243).

(2786)—S. 279—*See* No. 2783, *supra.*

——S. 282 (=1882, s. 282; 1872, s. 254; 1861, s. 350).

(2787)—*S.* 282 (=*Crim. Pro. Code,* 1882, *s.* 282)—*Order for trial of witness for giving false evidence in Sessions trial*—De novo *trial of Sessions case owing to incompetency of one of the jurors, effect of—Penal Code, s.* 193—*Indian Oaths Act,* X *of* 1873, *s.* 14.—During the trial of a dacoity case, a person was examined as a witness, and the Sessions Judge, considering his evidence to be false, committed him for trial before his own Court under s. 193, Penal Code. Subsequently, the dacoity case was tried *de novo* owing to the incapacity of a juror who was found to be deaf and partly blind. *Held,* that there was nothing in the trial of the dacoity case to absolve the witness from the obligation under which he lay to speak the truth when examined as a witness in the first trial, although such trial became null and void owing to the incapacity of a juror. QUEEN-EMPRESS v. VIRASAWMI, **19 M. 375=2 Weir 680=6 M.L. J. 195.** [*F.*, 6 C.W.N. 717.]

(2788)—*S.* 282—*Juror discharged—New juror added—Fresh trial.*—One of the jurors was discharged after some of the prosecution witnesses were examined and another juror was added in his place. The Judge did not commence the trial afresh, but called the witnesses who had been examined, read out their statements to them and they admitted those statements. Other witnesses were then examined: *held* that the trial was defective and it could not be validated by reading over the depositions of witnesses to them and geting their admissions. KING-EMPEROR v. NARAIN, **12 A.L.J. 802= 36 A. 481=15 Cr. L.J. 538=24 Ind. Cas. 946.**

(2788-*a*)—S. 282—*See* No. 3694, *infra.*

——S. 284 (=1882, s. 284; 1872, s. 239; 1861, s. 342).

See ASSESSORS.

(2789)—*S.* 284 (=*Crim. Pro. Code,* 1882, *s.* 284)—*Scope.*—S. 284 refers, not to the

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illegality of a sentence, but to the invalidity of a conviction by reason of want of jurisdiction in the Court to try the offence. EMPRESS OF INDIA v. KALLU, **4 A. 366 = A.W.N. 1882, 48.**

(2790)—*S.* 284—*Assessors to be chosen from those summoned for any particular session—Legality of trial.*—When a criminal trial is to be held with the aid of assessors, only such persons can be chosen by the Judge to act as assessors as have been summoned as such for the purposes of that trial. When one of the assessors only was an assessor summoned for any particular case, the trial of the accused was illegal. MAN SINGH v. KING-EMPEROR, **11 A.L.J. 930 = 14 Cr. L.J. 654 = 21 Ind. Cas. 894 = 35 A. 570.** (A.W.N. 1894, 207, *R.*)

(2791)—S. 284—*See* No. 2750, *supra* and No. 4092, *infra.*

——S. 285 (= 1882, s. 285 ; 1872, s. 259 ; 1861, s. 353).

See ASSESSORS.

(2792)—*S.* 285 (= *s.* 353 *of the Code of* 1861) —*Case tried with assessors—Incompetency of one of the assessors, effect of.*—Where, at the close of a trial, it is discovered that one of the assessors is so blind and deaf as to render him unfit to discharge the duties required of him, the trial would be irregular and there should be a new trial. HIGH COURT PROCEEDINGS, 22ND JULY 1869, No. 1330, **2 Weir 340.** [*R.*, 24 M. 523 = 2 Weir 340.]

(2793)—*S.* 285 (= *Crim. Pro. Code,* 1882, *s.* 285) — *Assessors.*— An assessor, who was allowed to absent himself under this section during a portion of the trial and was caused or allowed to sit as assessor afterwards, the said portion of the proceedings taken during his absence being read over to him on his return, *Held* that this procedure was not in accordance with law; according to s. 285, Crim. Pro. Code, the trial should proceed with the aid of the other assessors alone. EMPRESS v. GHASIA CHAMAR, **8 C.P.L.R. Cr. 9.**

(2794)—S. 285—*See* Nos. 2750, 2751, *supra.*

(2795)—*Ss.* 285, 295 (= *Crim. Pro. Code,* 1882, *ss.* 285, 295) — *Absence of one of the assessors for one day during trial.*—Where the Sessions Judge allowed one of the assessors to absent himself for one of the days during which the trial proceeded, and to return on the following day, *held* that the procedure was contrary to the intention of ss. 285, 295, Crim. Pro. Code. The Judge ought either not to have given leave or should have adjourned till a day when both the assessors could attend. QUEEN-EMPRESS v. PISO, **Rat. Un. Cr. C. 695 = Cr. Rg. 24 of 1894.**

(2796)—*Ss.* 285 *and* 537—*Valid commencement of trial with aid of two assessors—Absence of one assessor during portion of trial and subsequent resumption of seat — Legality of the trial.*—A murder case was tried by a Sessions Judge with the aid of two assessors. One of the assessors was absent owing to the illness of his mother and subsequently attended the Court for some days only after 1 P.M., after performing the daily obsequies rendered necessary by her death the evidence taken in his absence being shown to, and read by, him. At the end of the trial, the opinion of each of the assessors was taken and duly recorded. The Judge, concurring with the opinion of the assessors, convicted the accused. *Held*, on objection being raised to the procedure followed in the trial, by *Benson* and *Bhashyam Ayyangar, JJ.* (*Davies, J, dissenting*) that, as the assessors are not members of the Court of Sessions, as the trial in this case validly commenced with the aid of two assessors, as one of the assessors attended the trial throughout its termination, and as his status as assessor had not been affected and his opinion recorded by the Judge at the conclusion of the trial, had not been invalidated by the action of the Judge in allowing the other assessor to resume his seat as an assessor and inviting his opinion as such at the conclusion of the trial, the act of the Judge was only an error or irregularity in a proceeding during the trial, which would be cured by s. 537 of the Code. KING-EMPEROR v. THERUMALAI REDDI, **24 M. 523 = 2 Weir 340.**

——S. 286 (= 1882, s. 286 ; 1872, s. 247 ; 1861 *cf.* s. 364).

(2797)—*Ss.* 286, 288 *and* 537 (= *Crim. Pro. Code,* 1882, *ss.* 286, 288, 537)— *Irregularity in examination of witnesses by Sessions Judge.*— Where, on the suggestion of the attorney for the prisoner for the purpose of expediting the trial, that the depositions of certain witnesses for the prosecution, given before the committing Magistrate, should be read, and that he should be permitted to cross-examine, and the Judge, on the Government Prosecutor consenting to the procedure, adopted it in those cases when, on each witness being called, there was nothing to render the procedure inadmissible, *held*, that the procedure adopted was contrary to the Code, but that the prisoner was not prejudiced by it, inasmuch as the course was suggested by prisoner's attorney. SUBBA v. QUEEN-EMPRESS, **9 M. 83 = 2 Weir 356.** [*R.*, 8 Bom. L.R. 538.]

(2798)—*Ss.* 286 *and* 289 — *Examination of prosecution witnesses at a Sessions trial—Validity of questioning them as to the truth of their depositions before the committing Magistrate.*— It is extremely objectionable, in a Sessions trial, to read to the prosecution witnesses their depositions before the committing Magistrate and to ask if what was there recorded was not true. *In re* DUGANNA, **2 Weir 360.**

(2799)—Ss. 286, 292, 293—*See* REPLY, RIGHT OF, 14 A. 212 = A.W.N. 1892, 63.

——S. 287 (= 1882, s. 287 ; 1872, s. 248 ; 1861, s. 366.

See ACCUSED PERSON.

See EXAMINATION OF ACCUSED.

(2800)—*S.* 287 (= *s.* 366 *of* 1861)—*Proper procedure.*—The proper form to be observed

under s. 366 is to read the examination of the accused person as part of the case of the prosecution, before the case for the defence is entered upon, and to mark the same accordingly, and to make a note thereof in the record of the trial. HIGH COURT PROCEEDINGS, 31ST MARCH, 1869, No. 623, 2 **Weir 361.**

(2801)—S. 287—*See* GRAVE AND SUDDEN PROVOCATION, L.B.R. 1893-1900, 207.

(2802)—S. 287—*See* Nos. 36, 1739, *supra and* No. 3118, *infra.*

(2803)—*Ss.* 287, 288, 350 *and* 436— "*Order him to be committed*"—"*Committing Magistrate*"—*Meaning of the expressions.*—The words "Order him to be committed" in s. 436 of the Code do not mean more than "pass an order for his committal" and enable the District Magistrate himself to make a committal, or to direct a subordinate Magistrate to make a committal. The phrase "committing Magistrate" in ss. 287 and 288 is merely a compendious way of referring to the Magistrate or Magistrates, who held the preliminary inquiry on which the committal was made. S. 350 of the Code enables a commitment to be made by a Magistrate, who succeeds to the jurisdiction of another Magistrate, on evidence recorded by that Magistrate. In such a case, the Magistrate actually making the order of commitment need not have himself recorded any of the evidence or the statement of the accused. SESSIONS JUDGE, MANGALORE v. MALINGA *alias* SOMAPPA GONDA, **3 M.L.T. 25=7 Cr L.J. 29 =31 M. 40.**

(2804)—*Ss.* 287, 289, 342 (=*Crim. Pro. Code,* 1882, *ss.* 287, 289, 342)—*Trial before Court of Sessions—Acquittal without taking whole evidence tendered by prosecution—Re-trial.*—In a dacoity case, the Sessions Judge after taking part of the evidence for the prosecution, and considering that the offence against the accused persons, whom he did not examine, was not proved, refused to take further evidence, and after recording the opinions of the assessors, acquitted the accused. *Held,* that the rules of procedure laid down in ss. 287, 289 and 342 of the Code of Criminal Procedure must be followed; and that, under the circumstances, the order of acquittal must be quashed, and the accused re-tried according to law. QUEEN- v. BHUP SINGH, **1 O.C. 85.**

(2805)—Ss. 287, 342—*See* CONFESSION—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY, 4 L.B.R. 244=8 Cr. L.J. 62=14 Bur. L.R. 233.

——**S. 288 (=1882, s. 288; 1872, s. 249).**

See ACCUSED PERSON.

See CONFESSION.

See EXAMINATION OF ACCUSED.

(2806)—*S.* 288 (=*Crim. Pro. Code,* 1872, *s.* 249)—*Scope of.*—S. 249 is intended to provide for the contingency that may arise, when a witness, who is produced before the Court of Sessions, holds back information and evidence, and tells a different story to that which he gave in the preliminary enquiry before the Magistrate. EMPRESS OF INDIA v. MULU, **2 A. 646.**

(2807)—*S.* 288, *Scope of.*—S. 288. Crim. Pro. Code, does not extend to Courts of Magistrates nor to depositions not taken in the presence of the accused; it is a section requiring very careful use by Courts of Sessions, and its real scope is explained in 11 B.H.C. 281. Such statements may be recorded after cross-examination upon them of the witnesses who made them, which would reveal discrepancies, or used under s. 145, Evidence Act, as a basis of cross-examination. QUEEN EMPRESS v. RAMDIN, **Rat. Un. Cr. C. 728=Cr. Rg. 56 of 1894.**

(2808)—*S.* 288—*Scope and effect of.*—S. 288 appears to contemplate that a witness shall be first examined, and that, after that, his evidence before the committing Magistrate may be treated as evidence. It cannot be said that the mere examination of the witness as to his making the deposition before the Magistrate is an "examination" within the meaning of s. 288. The section provides for the exercise by the Sessions Judge of a discretion whether he will treat the evidence of a witness before the Magistrate as evidence in the case. The section does not authorise a Judge to admit the evidence before the Magistrate of all the witnesses or a number of them together, thereby causing a complete change of the course and practice of law especially laid down in s. 286. SUBBA v. QUEEN-EMPRESS, **9 M. 83=2 Weir 356.** [*R.*, 8 Bom. L.R. 538.]

(2809)—*S.* 288 — *Scope of.*—S. 288 of the Code does not limit the production of the evidence given before the committing Magistrate only for the purpose of contradicting the witness at the Sessions trial. It also enables the Court to read the previous evidence as substantive evidence in the case, at the trial, where, for the purposes of justice, the adoption of such a course is found necessary by the Judge. QUEEN-EMPRESS v. DORAISAMY AIYAR, **24 M. 414=2 Weir 377.**

(2810)—*S.* 288—*Scope of.*—There is nothing in the Code which prescribes the value or weight to be attached to the evidence admitted under s. 288, Crim. Pro. Code, 1882. This is a matter entirely beyond the scope of the section, as it is also of the Evidence Act, and is a question in the particular case for the jury or for the assessors, subject to the direction of the Judge in summing up, or for the Judge in cases where he is the judge of fact. UMAR v. EMPRESS, **51 P.R. 1887, Cr.** [*R.*, 14 P.R. 1894, 3 P.R. 1904, Cr.]

(2811)—*S.* 288—*Evidence taken before committing Magistrate, case to be made of.*—S. 288 was never intended to be used so as to enable a Court trying a case to take a witness's deposition bodily from the Magistrate's record, and treat it as evidence before itself. A Court of Sessions may admit in evidence the statements made by witnesses before the committing

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Magistrate, when such evidence is to a certain extent corroborated by independent testimony before itself. If there is no such corroborative evidence, it is not proper to base a conviction solely upon such evidence. QUEEN-EMPRESS v. JEOCHI, **21 A. 111=A.W.N. 1898, 196.** (12 B.L.R. App. 15, 12 M. 123, 7 A. 862, *R.*) [*R.*, 28 A. 863=3 A.L.J. 852=A.W.N. 1906, 187=4 Cr. L.J. 61.]

(2812)—*S.* 288—*Evidence by approver—Statements of witnesses before committing Magistrate—Admissibility before the Sessions Court—Use to be made of such statements.*—Where a person, who, accepting a pardon tendered to him, made a statement as a witness before the committing Magistrate, but subsequently at the Court of Sessions repudiated such statement, *held*, that the statement of the approver before the committing Magistrate was admissible in evidence in the Sessions Court. QUEEN-EMPRESS v. SONEJU, **21 A. 175=A.W.N. 1899, 14.** [*R.*, 2 L.B.R. 214=1 Cr. L.J. 483.]

(2813)—*S.* 288—*Statements before committing Magistrate, subsequently repudiated—Their value at Sessions trial.*—Statements made by witnesses before a committing Magistrate and subsequently repudiated by them are admissible in the Sessions Court, merely for the purpose of contradicting the witnesses. But the substance of such repudiated statements should not be used by the prosecution as substantial evidence of the allegations. QUEEN-EMPRESS v. NIRMAL DAS, **22 A. 445=A.W.N. 1900, 169.** (15 B. 66, *R.*) [*R.*, 28 A. 863=3 A.L.J. 852=A.W.N. 1907, 187=4 Cr. L.J. 61, 1 Cr. L. J. 483=2 L.B.R. 214.]

(2814)—*S.* 288—*Statement against accused withdrawn in Sessions Court, value of.*—In a capital case, certain witnesses, who had stated before the committing Magistrate that they had seen the accused striking the deceased, withdrew their statements before the Court of Sessions and gave evidence exculpating the accused. The Sessions Judge considering the evidence given before him by these witnesses to be untrue, and acting under s. 288 of the Code of Criminal Procedure, admitted in evidence the statements of these witnesses made before the committing Magistrate. *Held*, that such statements were rightly admitted and, when admitted, were on the same footing as the other evidence on the record. EMPEROR v. DWARKA KURMI, **A.W.N. 1906, 187=4 Cr. L.J. 61=3 A.L.J. 852=28 A. 683.** (7 A. 862, 21 A. 111, A.W.N. 1888, 356, 22 A. 445, *R.*)

(2815)—*S.* 288—*Retracted statement, value of.*—Although s. 288, Crim. Pro. Code, allows the evidence of a witness taken before a committing Magistrate to be treated as evidence in the case in the Sessions Court, yet, when the evidence has been retracted in the latter Court, it would be very unsafe to act upon it, unless it is clearly found to be true by some independent evidence. QUEEN-EMPRESS v. MALLAYA SANMUKHAYA, **Rat. Un. Cr. C. 966 =Cr. Rg. 20 of 1898.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(2816)—*S.* 288—*Statement in lower Court repudiated in Sessions Court, not good evidence.*—A Sessions Judge does not show a proper discretion in allowing a statement before a committing Magistrate by a witness to be used as evidence under s. 288, when the witness repudiates it at the Sessions and attributes it to improper influence in the course of the investigation, and when the circumstances are such that the Judge could not rely on it. KING-EMPEROR v. BHUT NATH GHOSE, **7 C.W.N. 343.**

(2817)—*S.* 288—*Statement repudiated in Sessions Court, value of.*—Under s. 288, Crim. Pro. Code, a Court is authorised to take a particular statement made by a witness before the committing Magistrate as the true statement, notwithstanding that it was denied or a statement inconsistent therewith was made by the witness before the Court itself, if the Court could see, from the evidence of the same witness before itself, or of other witnesses before itself, that the original statement was worthy of belief, and should not entirely ignore the evidence of the witnesses before it, and have recourse to the evidence of the same persons before the committing Magistrate. (12 B.L.R. App. 15, *F.*). A Court intending to use the evidence of a witness before the committing Magistrate is bound to put to the witnesses whom it proposes to contradict by their statements made before it, the whole or such portions of their depositions as it intends to rely upon in his decision. QUEEN-EMPRESS v. AHBARAN SINGH, **S. C. 229, Oudh.** (7 A. 862, *F.*)

(2818)—*S.* 288 (=*s.* 288 *of the Code of* 1882).—Where a statement made by a witness in the enquiry before a Magistrate previous to commitment was used as evidence against the accused, notwithstanding that the witness was subsequently convicted along with the accused for the same offence, *held*, that s. 288, Crim. Pro. Code, 1882, did not authorise such a procedure. SAIB DYAL v. EMPRESS, **23 P.R. 1883, Cr.**

(2819)—*S.* 288 (=*Crim. Pro. Code*, 1882, *s.* 288)—*Evidence before committing Magistrate, weight of, in Sessions Court—Conviction on such evidence, if justifiable.*—Though s. 288 of the Crim. Pro. Code allows evidence taken before the committing Magistrate to be treated as evidence at the trial in the Sessions Court, a conviction based on such evidence alone, especially when the witnesses give completely different versions in the Sessions Court would not be justified. QUEEN-EMPRESS v. SUBRAYA, **Rat. Un. Cr. C. 894=Cr. Rg. 8 of 1897.** (21 W.R. Cr. 49, 12 M. 123, 7 A. 862, *R.*).

(2820)—*S.* 288 (=*Crim. Pro. Code*, 1882, *s.* 288)—*Deposition before Magistrate used in Sessions trial—Procedure—Witness in the Court below, cross-examined in Sessions Court—Accused's right to put in previous deposition.*—When a Sessions Judge admits the deposition of a witness taken before the committing Magistrate as evidence in the trial before his Court, under s. 288, Crim. Pro. Code, he should,

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in his proceedings, distinctly note that he has done so and give the deposition a number in his proceedings and translate it, or the material portions of it, in his English minute of the proceedings. When a counsel or pleader cross-examines a witness, with reference to a previous deposition, the parts thereof to which the cross-examination is directed should be set out in the Judge's minute of the proceedings. The deposition itself need not, in such a case, be made a portion of the evidence in the Sessions Court, unless the Government Pleader desires that it should be so recorded or the Sessions Judge adopts it under s. 288, Crim. Pro. Code. The pleader or counsel for the defence of the accused may introduce, as part of his own evidence, a previous deposition made by a witness, and in this case, the depositions must be numbered and translated in the minute of the proceedings. The prosecuting counsel or pleader has a right in such a case to question the witness as to apparent contradictions and discrepancies between the two statements. QUEEN-EMPRESS v. GOVARDHAN; QUEEN-EMPRESS v. DULLABHDAS; QUEEN-EMPRESS v. BHAGWAN, **Rat. Un. Cr. Cas. 343 = Cr. Reg. 34 & 35 of 1887.**

(2821)—*S.* 288 — *Withdrawal in Sessions Court of statement made by witnesses before the committing Magistrate—Conviction— Legality.* —It is unsafe to convict a person on the statements made by witnesses before the committing Magistrate, when such statements are withdrawn before the Sessions Court, and there are no independent circumstances from which it may be inferred that the subsequent statements were false and the original statements were true. *In re* NUKALA SUBBAIYA, **2 Weir, 374.**

(2822)—*S.* 288— *Statement withdrawn in Sessions Court.*— The only direct evidence against an accused person was the deposition given by a witness before the committing Magistrate, but the truth of which was totally denied by the witness when examined at the Sessions. But the deposition of that witness before the committing Magistrate was to a certain extent corroborated by the evidence of another witness. *Held*, that the conviction of the accused based upon the evidence before the committing Magistrate, which was subsequently withdrawn at the Sessions trial, was not improper. *In re* VELLAYA TEVAN, **2 Weir. 375.**

(2823)—*S.* 288 (=*Crim. Pro. Code*, 1882, *s.* 288)—*Transfer of deposition to Sessions record.*—A Sessions Judge should not arbitrarily transfer the deposition of a witness to the record of his own Court, before he has examined him and before he has satisfied himself as to the necessity for the transfer. EMPRESS v. TULARAM BRAHMIN, **9 C.P.L R. Cr. 24.**

(2824)—*S.* 288—*Statements before committing Magistrate, retracted at Sessions trial—Corroboration.*—A statement made to a committing Magistrate, even though subsequently retracted and repudiated, may be used by the prosecution as substantial evidence of the allegations made in it. If the uncorroborated evidence of an accomplice, even when unretracted, requires corroboration, it must still more require corroboration when retracted. SHWE HNIT v. KING-EMPEROR, **2 L.B.R. 214.** (21 A. 175, 22 A. 445, *R.*)

(2825)—*S.* 288 (=*Crim. Pro. Code*, 1872, *s.* 249)—*Admissibility of evidence of accomplice given at enquiry.*—The accused in this case was offered and accepted a pardon and was examined as a witness by the committing Magistrate. Before the Court of Session, he retracted the statement made by him before the Magistrate, asserting that he had been intimidated into making it by the Police and that he knew nothing about the case. The pardon was accordingly withdrawn and his commitment was ordered. His evidence before the committing Magistrate was used and acted upon by the Court of Session. *Held* that, even if s. 249 had any applicability to the case. which was very doubtful, it would have been wiser to discard that statement. The case was not one of a witness giving evidence inconsistent with, or contrary to, a former statement or statements made to the committing Magistrate. On the contrary, the accused admitted his deposition, but declared that it was brought about by the coercion of the Police. At any rate, the proper course would have been to call his attention to the various passages of his deposition *seriatim* before using it to contradict him. EMPRESS v. NAZZARA, **A.W.N. 1881, 74.**

(2826)—*S.* 288 (=*Crim. Pro. Code*, 1872, *s.* 249)—*Former deposition of witness—Evidence Act*, s. 80.—The confession of a person in the shape of a former deposition can be used as evidence against him only if it was duly taken by the committing officer in the presence of that person. QUEEN v. NUSSURIDDEEN, **21 W.R. Cr. 5.**

(2827)—*S.* 288 (=*Crim. Pro. Code*, 1872, *s.* 249)—*Depositions taken before Magistrate.*—Sessions Court cannot base its decision on the depositions taken by the Magistrate without a fresh examination of the witnesses. QUEEN v. MAJOHUR ROY, **24 W.R. Cr. 11.**

(2828)—*S.* 288 (=*Crim. Pro. Code*, 1872, *s.* 249)—*Witnesses before committing Magistrate.* —On the trial of a prisoner for the murder of his wife and child, the witnesses for the prosecution gave evidence contradicting that given by them before the committing Magistrate; and the Sessions Judge, purporting to act under s. 249, Act X of 1872, discarded the evidence taken before himself, and based his decision on the evidence given before the Magistrate, and on this evidence convicted the prisoner and sentenced him to death. On appeal by the prisoner, *held* that s. 249 did not warrant such a course of procedure, that section merely authorized the Court to take a particular statement, made by a witness before the Magistrate as the true statement, notwithstanding that it was denied, or a statement inconsistent with

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it made by the witness before the Judge, only if the Judge should see that the original statement was worthy of belief, and did not mean that the Court should discard wholly the testimony of witnesses before it and have recourse to the testimony of the same persons given before another officer. QUEEN v. AMANULLAH, **21 W.R. Cr. 49=12 B L.R. Ap. 15.**

(2829)—*S. 288—Accomplice—Statement made before Magistrate—Statement retracted before the Sessions Court—Evidence—Value—Identification evidence—Weight to be given to testimony of witness.*—In judging the admissibility and credibility of evidence given by an accomplice, the proper rule to be followed is that the statement given by him before the Magistrate, though retracted in the Sessions Court, can be treated as substantial evidence, on the same footing as any other evidence, on record. (28 A. 683, *R.*) Its reliability, however, is no doubt injuriously, affected by the fact of its being retracted before the Sessions Court and the fact of the deponent being a self-confessed accomplice who had received a pardon, but it does not follow that it is not entitled to any weight or credibility at all. In the case of dacoity, the weight to be given to a particular witness's identification of any of the accused depends more upon the opportunities he had of being in a position to identify him and his general credibility than on any evidence that he actually picked out the accused from a number of other men, though of course this must also be taken into consideration and may entitle his identification to more credence on that account. PUNHU v. CROWN, **8 S.L.R. 203=16 Cr. L.J. 233=27 Ind. Cas. 905.**

(2830)—*S. 288 — Confession — Retracted — Transfer—Identification of dead body based on articles of clothing—Transfer of statements under s. 288—Their value.*—A confession made by an accused before the committing Magistrate which he retracts both before and after commitment is of no value as a piece of evidence against him. A conviction cannot be based upon statements of witnesses transferred to the record of the Sessions Court under s. 288, Crim. Pro. Code, when they came forward after the accused confessed and gave only circumstantial evidence insufficient to connect the accused with commission of the crime. It is not safe to rely upon the articles of clothing when the body itself is not identifiable on account of advanced decomposition. GHANWARA v. CROWN, **15 P.W.R. 1915, Cr.**

(2831)—S. 288—*See* ACCOMPLICE—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, 3 P.R. 1904, Cr.

(2832)—S. 288—*See* APPROVER, 7 C.L.R. 66, 13 C.L.R. 326.

(2833)—S. 288—*See* EVIDENCE—GENERAL, 23 C. 361, L.B.R. 1893—1900, 280, A.W.N. 1886, 256, 11 B.H.C. 281.

(2834)—S. 288—Testimony of witnesses before committing Magistrate, value of—*See*

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SEARCH LIST, 1912 M.W.N. 125=11 M.L.T. 93=22 M.L.J. 270=14 Ind. Cas. 418=13 Cr. L.J. 226=36 M. 159.

(2835)—S. 288—*See* SESSIONS TRIAL, 31 C. 142, F.B.

(2836)—S. 288—*See* WITNESS — MISCELLANEOUS CASES, 7 A. 862.

(2837)—S. 288—*See* Nos. 1467, 1513, 1739, 1740, 2797, 2803, *supra*, Nos. 2888, 3066, *infra.*

(2838)—*Ss.* 288 *and* 289 (=*Crim. Pro. Code,* 1882, *ss.* 288, 289)—*Cross-examination of prosecution witnesses, postponement of—Legality.*—There is no provision of law which authorises, at a Sessions trial, the Judge to allow the witnesses for the prosecution to be examined one day and to permit the cross-examination of these witnesses to be reserved to a subsequent date. *In re* GOTHURI VENKATAPPA, **2 Weir 381.**

(2839)—Ss. 288, 292—*See* REPLY, RIGHT OF, 31 C. 1050=8 C.W.N. 528=1 Cr. L.J. 451.

(2840)—*Ss.* 288, 342 (=*Crim. Pro. Code,* 1882, *ss.* 288, 342)—*Right of accused to cross-examine witnesses before the commitment and to communicate with pleader.* — Where a District Magistrate did not allow a prisoner to communicate with his pleader so as to properly instruct him as to his defence and refused to allow any cross-examination of prosecution witnesses during the judicial enquiry in his Court before commitment, *held*, that that Magistrate had acted arbitrarily and improperly. *Held*, also, that such depositions could not be treated as evidence at the Sessions trial of the accused under s. 288 of the Code, inasmuch as the mere fact that the accused was merely present would not make the depositions "duly taken" in his presence, if the accused was not allowed an opportunity to cross examine such witnesses. [*R.*, 3 P.R. 1904, Cr.] The express provision made in the Crim. Pro. Code of 1872 allowing cross-examination by the accused during an enquiry previous to commitment and its omission in the Code of 1882 must not be taken to show an intention on the part of the Legislature to deprive the accused of such right, seeing that the Evidence Act provides for cross-examination as part of the record of evidence taken in a judicial enquiry. The omission may be explained by taking that the Legislature thought the provision to be redundant, inasmuch as the Evidence Act provides for it. Further, if the law allows (s. 342) a Magistrate to examine an accused in the course of an enquiry or trial so as to explain any circumstances appearing in evidence before him before a charge has been drawn, surely he has a right by cross-examination to show that those circumstances have been improperly made to appear in the evidence given. QUEEN-EMPRESS v. SAGAL SAMBA SAJAO, **21 C. 642.** [*D.*, 36 C. 48=12 C. W.N. 1014=8 Cr. L.J. 221=1 Ind. Cas. 469.]

(2841)—*Ss.* 288, 364, 533—*Evidence Act, s.* 91 —*Confession—Oral evidence not admissible—*

Crim. Pro. Code (Act V of 1898)—*continued.*

Voluntary confessions without pressure—Statement of witness in the absence of accused not admissible—Tahsildar, whether police officer.—The confession of an accused person made to a Magistrate holding an enquiry is a matter required by law to be reduced to the form of a document within the meaning of s. 91 of the Evidence Act, and no evidence can be given of the terms of such a confession except the record, if any, made under s. 364, Code of Criminal Procedure. S. 533, Crim. Pro. Code, has no application to a case where no record whatever has been made of a confession. A confession, in order to be admissible in evidence, must be made voluntarily and without pressure. Where a Tahsildar, having powers of a Magistrate of 3rd class and being invested by the Local Government with power to take cognizance of offences, upon complaint or police report, was conducting an enquiry on complaint received, *held* that he must be deemed to have been doing so as a Magistrate and not as police officer. A statement made by a witness in the absence of the accused was not admissible in evidence under s. 288, Crim. Pro. Code. KING-EMPEROR v. GULABU, **11 A.L.J. 286=14 Cr.L.J. 211=19 Ind. Cas. 307=35 A. 260.**

(2842)—*Ss.* 288, 423 (2) (=*Crim. Pro. Code*, 1882, *ss.* 288, 423)—*Retracted confession—Corroboration—Charge to jury—Omission to point out the nature of confession—Effect.*—A retracted confession must be supported by independent reliable evidence corroborating it in material particulars. An omission to point out this to the jury amounts to misdirection. *In re* SOKKAN, **2 Weir 509.**

(2843)—*Crim. Pro. Code*, 1882, *ss.* 288, 423 (2) — *Retracted confession—Charge to the jury.*—*Held*, that the Judge had misdirected the jury in omitting to tell them that it was necessary that a retracted confession should be corroborated, and that such corroboration should not consist only of depositions given before the Magistrate and proved under s. 288 of the Crim. Pro. Code. *In re* KARRETI VENKATASAMI, **2 Weir 509.**

——**S. 289 (=1882, s. 289 ; 1872, s. 251, Paras 1 and 2 ; 1861, s. 372).**

See REPLY, RIGHT OF.

(2844)—*S.* 289 (=*Crim. Pro. Code*, 1882, *s.* 289)—*Scope of.*—Where the Court considers there is no evidence to lay before the assessors, the usual procedure is for the Court itself to record a finding, under s. 289, to that effect. But this section applies only where there is no evidence and would not cover a case where the Court considers that the charge was in itself improper. DWARKA LAL v. MAHADEO RAI, **12 A. 551=A.W.N. 1890, 178.**

(2845)—*S.* 289 —*Scope of*—"*No evidence*" *meaning of.*—The words "no evidence" in s. 289, Crim. Pro. Code, must not be read as meaning "no satisfactory, trustworthy, or conclusive evidence." If there is evidence on which the jury can judge and not merely conjecture, the trial must go on to its close; in trials by jury, the jury, and, in other trials, the Judge, after considering the opinion of the assessors, have to find on the facts. QUEEN-EMPRESS v. VAJIRAM, **16 B. 414.** [*R.*, 19 B. 749, 9 C.P.L.R. 24, Rat. Un. Cr. 772, Rat. Un. Cr. C. 779.]

(2846)—*S.* 289—*Scope of*—"*No evidence*" *meaning of.*—It is only in a case in which there is no evidence that the accused committed the offence that a Court can acquit under s. 289. Where there was direct evidence which, if believed, would establish the offence, the fact, that the Judge did not himself believe the evidence was no ground for withdrawing it from the consideration of the assessors or from the jury. PUBLIC PROSECUTOR v. NALLI GOUNDAN, **2 Weir 382.**

(2847)—*S.* 289 (=*Crim. Pro. Code*, 1882, *s.* 289, *para* 3)—"*No evidence,*" *meaning of.*—The term "no evidence" in s. 289, Crim. Pro. Code, implies "no legal evidence, or proof" and not "no evidence worthy of belief." Where, in a Sessions trial with the aid of assessors, there was evidence, which, if true, would have sufficed for the conviction of the accused of the offence charged against them, and the Court, disbelieving the evidence, recorded a finding of not guilty, purporting to act under s. 289, Crim. Pro. Code, *held*, that the order of the Sessions Judge was made without jurisdiction and was illegal. JOGA SINGH v. GANESH SINGH, **S.C. 274, Oudh.** (10 A. 414, *F.*; 11 A.W.N. 93, *R.*) [*App.*, 1 O.C. 84].

(2848)—*S.* 289 (= *Crim. Pro. Code, Act* X *of* 1882, *s.* 289)—"*No evidence*"—*Meaning—Discharge.*—The words "no evidence," in the sense of s. 289 of the Crim. Pro. Code, imply that all the evidence, even if true, would not constitute the offence charged. An order of discharge is not proper if there was evidence which, if believed, is sufficient to constitute the offence. EMPRESS v. NANHA, **A.W.N. 1888, 153.**

(2849)—*S.* 289—"*There is no evidence*"—*Meaning of the expression—Consulting assessors—Irregularity.*—The words "there is no evidence" in s. 289 should not be extended so as to mean no satisfactory, trustworthy or conclusive evidence. The meaning of the third paragraph of s. 289, is that if at a certain stage of a Sessions trial, the Court is satisfied that there is not upon the record any evidence, which, even if it were perfectly true, would amount to legal proof of the offence charged, then, the Court has power without consulting the assessors, to record a finding of not guilty. But the Judge, acting with the aid of assessors, has no such power. because only he considers the evidence unsatisfactory, untrustworthy, or inconclusive. A Court acting in this way acts without jurisdiction, and its order in discharging the accused is illegal. Even if it be taken as only a serious irregularity, it will then be necessary to see whether, under s. 537, the irregularity has

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occasioned a failure of justice or not. QUEEN-EMPRESS v. MUNNA LALL, **10 A. 414= A.W.N. 1888, 129=13 Ind. Jur. 76.** (1 A. 610, *R.*) [*F.*, 9 C.P.L.R. 24; *Appr.*, 16 B. 414; *R.*, 24 M. 523=2 Weir 346.]

(2850)—*S.* 289 (= *Crim. Pro. Code*, 1882, *s.* 289)—*Duty of prosecution to produce prosecution witnesses—When a particular witness may be dispensed with.*—It is *prima facie* the duty of the prosecution, especially when it is conducted in the name of the Crown, to call all those witnesses who prove their connection with the matter under inquiry and must be able to give important information. But, if there is a reasonable belief that, if called, any particular witness may not speak the truth, it may be accepted as a sufficient reason for not calling him. *In re* LALA *alias* MAHOMED GHOUL, **2 Weir 378.**

(2851)—*S.* 289—*Duty of prosecution to produce witnesses.*—It is not within the province of the Judge to dispense with the evidence of any of the prosecution witnesses, and if the Public Prosecutor does so, he commits a serious error of judgment. The whole evidence should be put before the Court, and the Public Prosecutor is at least bound to tender the witnesses for cross-examination before the Sessions Court if so required. *In re* ERUVA PERAYYA, **2 Weir 379.**

(2852)—*S.* 289 (=*Crim. Pro. Code*, 1882, *s.* 289)—*Finding of "not proven"—Legality.*—There is no legal warrant for a finding of "not proven." In such cases, the Judge should enter a judgment of acquittal before discharging the prisoner. *In re* KORADA GUMMANNA, **2 Weir 381.**

(2853)—*S.* 289—*Duty of Judge to summon a necessary witness, not sent up by committing Magistrate.*—Although a Sessions Judge has a discretion to summon a necessary witness who has not been sent up, it is not for him, as a general rule, to supplement a defective inquiry on the part of the Magistracy and Police. PUBLIC PROSECUTOR v. NALLI GOUNDAN, **2 Weir 382.**

(2854)—*S.* 289 (=*Crim. Pro. Code*, 1882, *s.* 289)—*Accused's examination at Sessions trial—Duty of Judge.*—Where an accused person, at the close of a case for the prosecution in a Sessions trial, makes any statement in his defence, it should be recorded; if he does not voluntarily make any statement, and refuses to answer any question put to him by the Court, this fact should also be noted. QUEEN-EMPRESS v. MUSSAMMAT HARDAI, **S.C. 95, Oudh.**

(2855)—S. 289—*See* ASSESSORS, 9 C.P.L.R. Cr. 24.

(2856)—*S.* 289 (3)—*In the absence of evidence on prosecution side against him, accused not to be convicted on evidence adduced in defence by co-accused.*—An accused, in the absence of evidence on prosecution side against him, should not be convicted on the evidence given against him by the witnesses called by the co-accused in his defence. *In re* RAGHAVA RAJU, **5 M.L.T. 75=2 Ind. Cas. 525=10 Cr. L.J. 68.**

(2857)—S. 289—*See* Nos. 1468, 2484, 2798, 2804, 2838, *supra and* No. 4391, *infra.*

(2858)—*Ss.* 289, 290 (=*Crim. Pro. Code*, 1872, *s.* 251)—*Procedure—Absence of witnesses for defence.*—If an accused person has not his witnesses present, the Judge should, if he sees grounds for proceeding, first call upon him to enter upon his defence, and then if necessary to postpone the case to give time to the accused to present his witnesses. QUEEN v. JUMIRUDDIN, **23 W.R. Cr. 58.**

(2859)—*Ss.* 289 *and* 292 (=*Crim. Pro. Code*, 1882, *ss.* 289, 292)—*Cross-examination of prosecution witnesses—Documentary evidence put in by accused—Prosecutor's right of reply.*—Where the accused put certain documents in the hands of witnesses for the prosecution, and having proved them by cross-examination, tendered them in evidence, and had them marked as exhibits on his behalf, *held*, that the prosecutor would not be entitled to a reply in the event of no witnesses for the defence being called. QUEEN-EMPRESS v. GREES CHUNDER BANERJEE, **10 C. 1024.** [*Diss.*, 14 A. 212, 11 M. 339=2 Weir 381; *F.*, 14 C. 245; *R.*, 17 C. 930.]

(2860)—Ss. 289, 297, 423 (*d*)—Appellate Court's power to interfere with a verdict of jury — *See* CHARGE TO JURY—MISDIRECTION, 23 C. 252.

(2861)—Ss. 289 and 342—*See* PENAL CODE, s. 396, 1 O.C. 84.

——S. 290 (=1882, s. 290; 1872, s. 251, para 3).

(2862) — S. 290—*See* No. 2858, *supra and* No. 4391, *infra.*

——S. 291 (=1882, s. 291; 1872, s. 363; 1861, s. 375).

(2863)—*S.* 291 (=*s.* 291 *of the Code of* 1882)—*Right of accused to examine as witness any person in Court and use as evidence any document in Court.*—An accused person is entitled to call as his witness any person who is in Court, whether he has summoned him or not, and also he may, so far as the law of evidence permits him to do so, make use of, as evidence, any document which is in Court at the trial: BIKAO KHAN v. QUEEN-EMPRESS, **16 C. 610.**

(2864)—*S.* 291 (=*Crim Pro. Code*, 1882, *s.* 291)—*Application for summons of witnesses before conclusion of Sessions trial—Duty of the Judge.*—The appellant complained, before the trial was concluded, that some of his witnesses had not been served, and requested an adjournment so that their attendance might be secured, which was however refused. The appellant also complained that no opportunity had been afforded him of cross-examining the witnesses for the prosecution and that he had not known at what time it was competent to him to do so. *Held*, that the conviction should be set aside,

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and the trial re-opened, and the remaining witnesses already named by the appellant be summoned and examined and that he should be allowed the opportunity of cross-examining the witnesses for the prosecution. *In re* MUNIAMMAL, **2 Weir 383.**

(2865)—S. 291—*See* No. 2222, *supra.*

——S. 292 (=1882, s. 292; 1872, s. 252; 1861, s. 376).

See REPLY, RIGHT OF.

(2866)—*S.* 292 (=*s.* 292 *of* 1882)—*Defence producing documents for cross-examination of prosecution witnesses—Right of the Crown to reply.*—If, during the cross-examination of one of the witnesses for the Crown, the defence puts a certain document to the witness, which has not been proved by the Crown, the Crown has the right of reply under s. 292, Crim. Pro. Code. QUEEN-EMPRESS v. MOSS, **16 A. 88 =A.W.N. 1894, 23.** [*F.*, 6 Cr. L.J. 115=4 L. B.R. 5.]

(2867)—*S.* 292—*Adducing evidence—Documents put in by counsel for the accused during cross-examination of a witness for the Crown—The prosecution, whether entitled to reply.*—The phrase "adduces any evidence," as used in s. 292 of the Code, applies to and includes, the production and recording of documentary evidence, which the defence places before the Court, as, where during the cross-examination of witnesses for the prosecution, certain documents are put in on behalf of the accused by his counsel. Such documents so put in or tendered and relied upon by the defence, as distinct from the evidence actually tendered by the prosecution and submitted for cross-examination, must be regarded as evidence, adduced by the accused within the meaning of the section. The words of the section adopt the principle laid down by the ruling in *Hurry Churn Chuckerbutty* v. *The Empress*, that each side should have an opportunity of commenting upon the evidence of other side. A right of reply is always to be given to the Crown, whenever, at any stage, evidence is recorded for the defence which is not part of that adduced for the prosecution. EMPEROR v. BHASKAR BALWANT BHOPATKAR, **30 B. 421=8 Bom. L.R. 421=4 Cr. L J. 1.** [*R.*, 11 Bom. L.R. 177, 8 Cr. L.J. 215=1 S.L.R. 91, 15 Cr. L.J. 241=23 Ind. Cas. 193=7 L.B.R. 84 ; *D.*, 10 Cr. L. J. 24.]

(2868)—*S.* 292—*Defence, cross-examination of prosecution witnesses by—Letting in evidence during such cross-examination by accused—Prosecutor's right of reply—Absence of—Meaning of 'any' in s.* 292—*Scope of the section.*—The prosecutor cannot have the right of reply merely because, in the course of cross-examination of the prosecution witnesses, certain documents have been put in on behalf of the defence. The meaning of the word 'any' in s. 292, Crim. Pro. Code, and the scope of the section discussed. THE KING-EMPEROR v. J. S. BERCH, **7 L.B.R. 84=23 Ind. Cas. 193=**

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15 Cr.L.J. 241. (4 L.B.R. 5, *Doubted* ; 31 C. 1050, 30 B. 421, 11 Bom. L.R. 177, 10 C.W.N. cclxvii, *R.*)

(2869)—S. 292—*See* Nos. 2255, 2799, 2839, 2859, *supra and* No. 4391, *infra.*

(2870)—Ss. 292, 298—*See* CHARGE TO JURY —MISDIRECTION, 9 Cr. L.J. 404=1 Ind. Cas. 867=33 M. 46=8 M.L.T. 116.

——S. 293 (=1882, s. 293; 1872, s. 253; 1861, s. 348).

(2871)—S. 293—*See* ASSESSORS, 5 W.R. Cr. 59.

(2872)—S. 293—*See* Nos. 1310, 2037, 2799, *supra.*

——S. 294 (=1882, s. 294; 1872, s. 258).

(2873)—*S.* 294 (=*Crim. Pro. Code*, 1872, *s.* 258)—*Accused person, naming complainant as his principal witness—Complainant evading examination—Acquittal of accused.*—The Magistrate who tried the accused charged with offences under ss. 381 and 408, failing in the first place to procure the attendance of the complainant, a resident of Jaipore, named by the accused as his principal witness, endeavoured to procure his examination by the Political Agent of Jaipore. On being offered by the Jaipore Durbar to examine him themselves instead of allowing him to be examined by the Political Agent, the Magistrate, being of opinion that the accused would not feel satisfied, acquitted the accused. *Held* that the Magistrate should have taken measures for the examination of the complainant before the Durbar, or if the accused did not desire this, he should have pronounced on the evidence upon the record. EMPRESS v. DHAN KISHEN, **A.W.N. 1881, 38.**

(2874)—S. 294—*See* No. 1310, *supra.*

——S. 295 (=1882, s. 295; 1872, s. 260; 1861, s. 378).

(2875)—S. 295—*See* No. 2795, *supra.*

(2876)—Ss. 295, 435, 439 and 476—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 7 P.W.R. Cr. 1908, F.B.=103 P.L.R. 1908= 5 P.R. 1908, Cr.=7 Cr.L J. 281.

——S. 297 (=1882, s. 297, 1872, s. 255, para 1; 1861, s. 379).

See CHARGE TO JURY.

(2877)—*S.* 297—*Charge to jury.*—Where in a trial by jury before a Court of Sessions, the Judge's summary of his charge to the jury consisted merely of these words—"it is for you to say from the evidence you have heard whether you consider the accused guilty or not," *held* that the charge was wholly insufficient, and the conviction and sentence should be set aside, a fresh trial ordered. EMPEROR v. BADAL, **A.W.N. 1902, 201.**

(2878)—*S.* 297—*Charge to Jury.*—A clear and complete statement of facts should appear in

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the charge to the jury, so as to enable the High Court to know what they are without having to call for the evidence. Where the prisoner makes an explanation of the facts appearing against him, it is not for the Judge to tell the jury that it is incredible, without any qualification that it is merely his own opinion, and that the jury are at liberty to draw their own conclusions. *In re* LAXUMANA, **2 Weir. 385.**

(2879)—*S.* 297—*Charge to jury by the Judge —Omission to direct jury to give benefit of doubt to the accused—Misdirection in law.*—A direction by the Judge to the jury that, if they entertain reasonable doubt as to the guilt of any one of the accused, the jury should give him the benefit of the doubt and acquit him, is certainly a usual and most proper direction and it ought, as a matter of practice, to be given in every case; but, it cannot be held that the omission to give it must, in every case, constitute a misdirection of such a character, as to render a conviction invalid. Where, however, the Judge thinks that the evidence is so weak that there are the very greatest doubts as to the guilt of the accused, the omission to direct the jury to give the benefit of the doubt is a misdirection, which prejudices the accused and entitles him to an acquittal. PARA KANDAN v. R. PARA SENNA MOONJI, **1 M.L.T. 350=4 Cr.L.J. 502.**

(2880)—*S.* 297—*Charge to jury, splitting up of—Validity.*—There should be but one charge both on the facts and on the law, and a Judge will be acting illegally in splitting it up into two. In his charge to the jury, a Judge is bound to lay carefully and plainly before the jury the whole of the evidence recorded by him, noting the discrepancies and pointing out generally the way in which it either favourably or unfavourably affects the prisoner. It is irregular to comment merely on certain portions of the evidence, and to omit to point out what discrepancies and improbabilites are to be found in the evidence. *In re* ANCHULA NALLACHARLA NAIDU, **2 Weir. 384=2 Weir. 493.**

(2881)—*S.* 297—*Duty of Judge under the section.*—Under s. 297, the Sessions Judge is bound to sum up the evidence for the defence as well as for the prosecution, this being essential for a proper charge. QUEEN-EMPRESS v. MAHADHU, **Rat. Un.Cr. C. 720=Cr. Rg. 46 of 1894.**

(2882)—*S.* 297—*Duty of Judge under the section.*—It is not open to a Sessions Judge, after hearing one witness, to tell the jury that it would be unsafe to convict and that there is no necessity to hear any further evidence. But unless the Public Prosecutor withdraws the charge with the leave of the Court, the Judge is bound to allow the evidence to be placed before the Jury. HIGH COURT PROCEEDINGS, 13TH MARCH, 1889, No. 344, JUDICIAL, **2 Weir. 384.**

(2883)—*S.* 297—*Jury, trial by—Misdirection —Three persons accused of culpable homicide—Deceased dying of fatal injury received in a fracas—One accused pleading* alibi—*Omission of this fact in summing-up—Judge directing jury to find all accused guilty if injury caused by one—Penal Code (Act* XLV *of* 1860), *s.* 34. —In a trial by jury, the Judge in charging the jury said: "If you hold it proved that the three accused all set upon Gulam Hussain with the intention of beating him and that one of them struck the fatal blow, you will be justified in finding them all guilty of culpable homicide not amounting to murder, even if there is no evidence to show which of the three struck the blow" and then read and explained to them the provisions of s. 34 of the Penal Code: *Held,* that the Judge misdirected the jury in stating that any one of the accused might be found guilty of culpable homicide, even though his individual intention and the common intention was merely to beat. One of the accused denied his presence at the scene and was supported in his statement by evidence. In summing up the evidence, the Judge omitted to make all mention of this fact: *Held,* that the omission of this part of the case constituted a misdirection. EMPEROR v. MURID, **11 Cr. L.J. 15=4 Ind. Cas. 608=3 S.L.R. 125, Cr.**

(2884)—*S.* 297—*Direction to jury—Failure to explain the law to the jury—Omission to explain the definition of robbery.*—When, in a Sessions trial, the accused are charged with robbery, the omission on the part of the Judge to explain to the jury, the meaning of the term *robbery* vitiates the trial, and a re-trial should be ordered in the case. Under s. 297, Crim. Pro. Code, the Judge must explain to the jury the law by which they are to be guided. *In re* SURATTI, 6 **Ind. Cas 14=11 Cr.L J. 222=8 M.L T. 82=7 Ind. Cas. 401=11 Cr.L.J. 482.** (30 M. 44, 5 M L.T. 399, 5 Cr.L J. 78, *F.*).

(2885)—*S.* 297—*Misdirection—Charge to jury —"Dishonestly."*—When the accused was tried for criminal breach of trust by a District Magistrate with the aid of a jury, and the District Magistrate in summing up did not expressly tell the jury that the test they were to apply was whether the circumstances relied upon by the accused showed an intention of causing 'wrongful gain' or 'wrongful loss' and where they were not told what those terms meant. *Held* that there had not been sufficient compliance with s. 297 of the Crim. Pro. Code, and that the verdict could not stand. C. H. BROWNEE v. KING-EMPEROR, **7 Bur. L.T. 20=23 Ind. Cas. 465=15 Cr. L.J. 257.**

(2886)—S. 297—*See* ASSESSORS, 6 B.H.C. Cr. 55.

(2887)—S. 297—*See* Nos. 2453, 2860, *supra.*

(2888)—Ss. 297 and 288—*See* JUDGE AND JURY, 18 M.L.J. 66=31 M. 127=3 M.L.T. 270=7 Cr.L.J. 325.

(2889)—*Ss.* 297, 298 (=*ss.* 297, 298, *Code of* 1882)—*Duty of Judge in summoning up—Charge when defective.*—It is highly important in a charge of murder that the Judge should discuss

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the evidence fully. If it does not appear that anything more was said to the jury than is contained in the record of the heads of charge, or that this was supplemented by reading the depositions of the most important witnesses, the charge is defective. QUEEN-EMPRESS v. REGO MONTOPOULO, **19 B. 741.**

(2890)—*Ss.* 297 *and* 298—*Duty of Judge to explain the law to jury—Omission, whether amounts to misdirection.*—Under s 297, the Judge is bound to lay down the law by which the jury are to be guided. It is immaterial how much or how often jury may have been addressed by the pleader on both sides upon the law. The responsibility of laying down the law for the guidance of the jury rests entirely with the Judge, and a verdict arrived at by the jury, in the absence of any such direction on the law by which they should be guided, cannot be accepted as a valid verdict in the case. MANGAN DAS v. EMPEROR, **29 C. 379 = 6 C.W.N. 292.** [*F.*, 30 M. 44 = 1 M.L.T. 399.]

(2891)—*Ss.* 297, 298 *and* 337—*Charge to jury—Duty of Judge regarding evidence of approver—Misdirection to jury.*—A Sessions Judge, in laying the evidence of an approver before the jury, told them: "if you think that the approver's story is worthy of credit in itself, you have to consider whether it has been corroborated on material points," and then describing what in his opinion were the points of corroboration, told the jury that "the above are the points on which the evidence has been corroborated and that corroboration is full and complete, if you believe it; you have to consider these points and decide whether the approver has been corroborated in material points; and if you find that to be so, then you have in his story sufficient evidence to connect all the 3 accused with the crime." *Held*, that this was not a proper way to place the case before the jury. The Sessions Judge should have told the jury that, although the law permits them to convict on the uncorroborated evidence of an accomplice, it was not the practice of the Courts, which have consistently held that it was not safe or proper to convict on such evidence without some corroboration sufficient to connect each of the accused with the offence committed. With this caution, the Sessions Judge should have laid before the jury the evidence corroborating the statement of the accomplice. JAMIRUDDI MASALLI v. EMPEROR, **29 C. 782 = 6 C.W.N. 553.** (5 W.R. Cr. 80, 8 W. R. Cr. 19, 11 W.R. Cr. 21, *R.*) [*R.*, 35 M. 247 = 11 M.L.T. 1, Sup. = 22 M.L.J. 490 = 1912 M.W.N. 207 = 14 Ind. Cas. 849 = 13 Cr. L.J. 305, 35 M. 397 = 1912 M.W.N. 549 = 12 M.L.T. 1 = 13 Cr. L.J. 352 = 14 Ind. Cas. 896, 9 Cr. L. J. 360.]

(2892)—Ss. 297, 301—*See* JURY, Rat. Un. Cr. C. 288 = Cr. Rg. 27 of 1886.

(2893)—*Ss.* 297, 303, 304, 307—*Sessions trial—Meaning of 'verdict' of jury—Mode of taking verdict—Misdirection to jury—Charge to jury when to be made—Judge when may question jury as to their verdict.*—It is no doubt desirable that the case against each of the several accused should be clearly and distinctly presented to the jury, and the procedure laid down in the Code is quite compatible with this being done. But s. 297, Crim. Pro. Code, specifically enacts that the Judge shall only charge the Jury "when the case for the defence and the prosecutor's reply are concluded," *i.e.*, after all the evidence has been taken on both sides and counsel on both sides have finished addressing the jury. A Judge who charges the jury and takes verdicts as regards some only of the accused, and afterwards hears arguments and takes verdicts as against the remaining accused, will be acting irregularly and contrary to the provisions of s. 297, Crim. Pro. Code. By 'verdict' should be understood the collective opinion of the jury as a body, arrived at after mutual consultation, and ascertained and announced by the foreman. In cases of disagreement among the jury, the individual opinions of members are never intended to be disclosed. Where the jury have delivered a verdict, the Judge cannot again ask them to consider that verdict. The Judge is only entitled to question the jury as to their verdict, where it is ambiguous or incomplete, and may ask the jury only such questions as are necessary to ascertain what their verdict is. PUBLIC PROSECUTOR v. ABDUL HAMEED, **36 M. 585 = 15 Cr. L.J. 197 = 22 Ind. Cas. 981.**

(2894)—*Ss.* 297, 307 (= *Crim. Pro. Code*, 1882, *ss.* 297, 307)—*Withdrawal of a case from the jury, when allowed.*—It is only when there is no evidence, *i.e.*, when the evidence given does not, if believed, show that the legal offence charged has been committed, that a Judge can withdraw a case from the jury or abstain from taking the opinion of assessors. HIGH COURT PROCEEDINGS, 28TH JAN. 1889, No. 102, JUDICIAL, **2 Weir. 388 = 2 Weir. 391.**

(2895)—Ss. 297, 367—*See* CHARGE TO JURY—GENERAL, 25 C. 736 = 2 C.W.N. 484.

(2896)—Ss. 297, 410—*See* CHARGE TO JURY—MISDIRECTION, Rat. Un. Cr. C. 27 = Cr. Rg. 25-11-1869.

(2897)—Ss. 297, 418, 423—*See* TRIAL BY JURY, 3 S.L.R. 102, Cr.

(2898)—*Ss.* 297, 423 (2)—*Jury—Misdirection—Error in summing up—Non-direction, when misdirection—Reference to arguments of pleaders.*—The expression "misdirection," as used in the Crim. Pro. Code, includes not only an error in laying down the law by which the jury are to be guided, but also an error in summing up the evidence. In summing up, it is open to the Judge to refer the jury to the arguments of pleaders; but he should not omit matters of a prime importance. A non-direction is not a misdirection, unless it is on a matter of prime importance, and especially if it tells in favour of the accused. IMPERATOR v. MINHWASAYO, **11 Cr. L.J. 13 = 4 Ind. Cas. 597 = 3 S.L.R. 102, Cr.**

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(2899)—*Ss.* 297, 537—*Charge to jury—Omission of Judge to lay down the law—Incomplete definition of offence—Material irregularity.*—If the direction of the Judge leaves room for doubt as to whether the jury had present to their minds an essential element of the offence with which the accused are charged, it is a misdirection to the jury. So, where, in a charge of dacoity, the Judge said to the jury "the accused are charged with dacoity; dacoity is committed when any number of persons not less than five conjointly committed robbery," but did not explain to the jury what is necessary to constitute the offence of robbery, it is an omission to lay down the law, by which the jury are to be guided, as required by s. 297. It is not merely a misdirection. It is a failure to comply with an express provision of the law, and s. 537 is not applicable to such a case. MARI VALAYAN v. EMPEROR, **1 M.L.T. 399=30 M. 44=5 Cr. L.J. 78.**

(2900)—Ss. 297, 537—*See* CHARGE TO JURY—MISDIRECTION, 30 M. 44=1 M.L.T. 399=5 Cr. L.J. 78.

(2901)—*Ss.* 297, 537 (*d*)—*Charge to the jury—"Laying down the law" what is—Effect of failure—Misdrection—Whether defect cured by s.* 537 (*d*).—Where the Sessions Judge, both before and after summing up the evidence, placed certain questions of fact before the jury and directed them that, if they found certain facts proved, they were to convict, and that, if, on the contrary, they found certain other facts proved, they were to acquit, *held*, (*Ormond, J., dissenting*) there was no laying down of the law as required by s. 297, that the essential elements of the offence with which the accused was charged ought to have been explained, and that there was therefore a grave misdirection which would not be cured by s. 537 (*d*). BRISCOE BIRCH v. KING-EMPEROR, **5 L.B.R. 149=5 Ind. Cas. 981=11 Cr. L.J. 340.** (25 M. 61, 3 L.B.R. 75, *R.*)

——S. 298 (=1882, s. 298; 1872, s. 256).

See CHARGE TO JURY.

(2902)—*S.* 298 (=*Crim. Pro. Code*, 1882, s. 298)—*Duty of Judge—Inadmissible evidence.*—It is the duty of the Judge under s. 298 to see that evidence which is not admissible in itself should not be allowed to go in to the prejudice of the accused, though no objection is taken thereto by the accused. ABBAS PEADA v. QUEEN-EMPRESS, **25 C. 736=2 C.W.N. 484.** [*R.*, 14 Cr. L.J. 316=19 Ind. Cas. 1004=244 P.L.R. 1913=44 P.W.R. 1913, Cr.]

(2903)—S. 298—*See* CONFESSION—GENERAL, 11 Bom. L.R. 332=2 Ind. Cas. 517.

(2904)—S. 298—*See* CONFESSION—CONFESSIONS OBTAINED BY INDUCEMENT, THREAT ETC., Rat. Un. Cr. C. 245=Cr. Rg. 12 of 1886.

(2905)—S. 298—*See* EVIDENCE ACT, 1872, s. 73, Rat. Un. Cr. C. 491=Cr. Rg. 61 of 1889.

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(2906)—S. 298—*See* JUDGE AND JURY, Rat. Un. Cr. C. 730=Cr. Rg. 58 of 1894.

(2907)—S. 298—*See* TRIAL BY JURY, Rat. Un. Cr. C. 840=Cr. Rg. 10 of 1896.

(2908)—S. 298—*See* Nos. 2266, 2267, 2870, 2889, 2890, 2891, *supra.*

(2909)—Ss. 298, 299—*See* JUDGE AND JURY, 6 Bom. L.R. 258.

(2910)—Ss. 298, 299, 537—*See* CHARGE TO JURY—MISDIRECTION, 4 C.W.N. 576.

(2911)—Ss. 298, 302—*See* VERDICT OF JURY, 19 B. 735.

——S. 299 (=1882, s. 299; 1872, s. 257).

See CHARGE TO JURY.

(2912) *S.* 299—*Verdict of jury—Sessions case—Right of jury to return special verdict—Power of Judge to require a verdict of guilty or not guilty.*—The Code of Criminal Procedure does not permit the recording of what is known in English law as a 'special verdict,' *i.e.*, where the jury state their findings on the facts themselves, leaving it to the Judge to apply the law to those facts and himself find the prisoner 'guilty' or 'not guilty.' A Judge is not entitled to ask the jury the reasons for their verdict. He is not entitled to put questions to them to show that the conclusions at which they arrived were not logical or consistent. Any ambiguity in the jury's verdict is the only justification for any question by the Judge. (30 M. 469, 17 M.L.J. 476, 6 Cr. L.J. 373, *Appr.*; 7 W.R.Cr. 22 *D.*; 15 B. 452, 19 B. 735, *not F.*) Where the jury give their findings only on the facts, leaving it to the Judge to apply the law to those facts, the Judge is empowered to require the jury to return a verdict of "guilty" or "not guilty." ARUNACHELLA THEVAN v. EMPEROR, **13 Cr. L.J. 586=15 Ind. Cas. 1002.**

(2913)—S. 299—*See* Nos. 1682, 2909, 2910, *supra.*

(2914)—*Ss.* 299 (*a*), 302, 303, 439, 537 (*d*)—*Misdirections in a charge to the jury—Illegality in dealing with the verdict—Conviction on second verdict—Review under s.* 12, *Lower Burma Courts Act*, 1900.—On the grounds of various misdirections in the charge to the jury and of illegality in dealing with the verdict, application was made, under s. 12 of the Lower Burma Courts Act, 1900, for review of a case tried by the Chief Court, Criminal Sessions. *Held*, that, in a trial on a charge of murder, omission by the Judge to explain to the jury the distinction between murder and culpable homicide and suggestion by the Judge to the jury that a strong inference should be drawn against the accused from his having failed to take steps to bring the real offender to justice must be regarded as material misdirections. Also, as to the illegality in dealing with the verdict, it was laid down that, where a jury returns an ambiguous verdict, the Judge should proceed under s. 303 of the Code and

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not send the jury back again to consider further and return a second verdict and the conviction and sentence on such an irregular second verdict must be set aside as entirely illegal and that, in such a case s. 12 of the Lower Burma Courts Act, 1900, nearly corresponding with s. 26 of the Letters Patent for the High Courts, does not empower the Bench to go into the facts again and decide the case on the evidence. *Per Adamson, C.J.* and *Fox, J. Per Irwin, J.*—The error was an irregularity to which s. 537 of the Code applied. The conviction and sentence might be set aside and a new trial might be ordered, without the accused being acquitted. HLA GYI v. KING-EMPEROR, 3 **L.B.R. 75=3 Cr. L.J. 1** (10 C. 1079, 17 C. 642, 2 C.W.N. 481, 25 M. 61, 8 B. 200, *R.*). [*R.*, 11 Cr. L.J. 340=5 Ind. Cas. 981=5 L.B.R. 149].

——S. 300 (=1882, s. 300 ; 1872, s. 263, para 1; 1861, s. 352).

(2914-*a*)—S. 300—*See* No. 3278, *infra.*

(2915)—Ss. 300, 301, 302—*See* FALSE EVIDENCE, Rat. Un. Cr. C. 26=Cr. Rg. 20-10-1869.

(2916)—Ss. 300, 301, 302, 303, 306—*See* REFERENCE TO HIGH COURT, 2 B. 525.

(2917)—*Ss.* 300, 301, 302, 303, 306, 307 (=*Crim. Pro. Code.* 1872, *s.* 263)—*Judge differing from jury—Reference to High Court.*—The Government may appeal against an acquittal by a jury, where the Judge differed from the jury, but did not consider it necessary for the ends of justice to refer the case to the High Court. IMPERATRIX v. HARI GHANU, **2 B. 526,** Note. [*R.*, 2 B. 525.]

(2918)—Ss. 300, 301, 302, 303, 306, 307—*See* VERDICT OF JURY, 5 C. 871, 2 C.L.R. 1, 1 B. 10, 9 C. 53=11 C.L.R. 169, 1 C.L.R. 275, 2 C.L.R. 518.

—— S. 301 (=1882, s. 301 ; 1872, s. 263, para 1 ; 1861, s. 352).

(2919)—*S.* 301—*Trial by jury—Verdict settled by casting lots—Enquiry thereabout—Evidence of individual jurors if admissible.*—Where it was alleged that the verdict of the jury was arrived at by casting lots and the Sessions Judge held an inquiry into the matter in the course of which he examined, besides other persons, all the jurors : *Held*, that the statement of a juror as to what happened in the jury room is inadmissible. THE KING-EMPEROR v. HARKUMAR BURMAN ROY. **17 C. W.N. 787=40 C. 693=14 Cr. L.J. 392=20 Ind. Cas. 216.**

(2920)—S. 301—*See* Nos. 2892, 2915, 2916, 2917, 2918, *supra and* No. 3270, *infra.*

——S. 302 (=1882, s. 302 ; 1872, s. 263, para 3 ; 1861, s. 352).

(2921)—S. 302—*See* Nos. 2911, 2914 to 2918, *supra and* No. 3270, *infra.*

(2922)—Ss. 302, 303, 304—*See* VERDICT OF JURY, Rat. Un. Cr. 982=Cr. Rg. 44 of 1898.

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(2923)—*Ss.* 302, 303, 307—*Jury—Verdict by majority—Sessions Judge not to put questions under s.*303 *after delivery of verdict—No power to direct reconsideration—Proper Court—Submission to High Court under s.* 307, *Crim. Pro.Code*—S. 302, *I.P.C.*—Where the jury by a majority returned a verdict of guilty against the accused under the first part of s. 304, I.P.C., a Sessions Judge cannot put questions under s. 303, Crim. Pro. Code, to the jury and ask them under s. 302, Crim. Pro. Code, to re-consider their verdict. If he disagreed with the verdict of majority, he should have proceeded under s.307, Crim. Pro. Code, and should have submitted the proceedings to the High Court (10 C. 140, *R.*). Under s. 302, Crim. Pro. Code, the Sessions Judge could have asked the jury to retire for re-consideration when he ascertained that they were not unanimous and before the delivery of their verdict, but could not do so after the actual delivery of the verdict. KYA NYUN v. KING-EMPEROR, **7 L.B.R. 140=25 Ind. Cas. 1006=15 Cr. L.J. 678.**

——S. 303 (=1882, s. 303; 1872, s. 263, para 2).

See JURY.

See TRIAL BY JURY.

See VERDICT OF JURY.

(2924)—S. 303 — *Questioning the jury.*—S 303 limits the power of the Judge to question the jury only to cases in which it is necessary to ascertain what the verdict of the jury is—that is, where the evidence being delivered in ambiguous terms or with uncertain sound, their meaning is not clear. There is no provision in the Code which empowers the Judge to question the Jury as to their reasons for an unanimous verdict, where there is nothing ambiguous in the verdict itself, and no lurking uncertainty in their own minds regarding it. EMPEROR v. KONDIBA DHONDIBA POWAR, **28 B. 412=6 Bom.L.R. 361.** [*R.*, 13 Cr. L.J. 285 =14 Ind. Cas. 669=22 M.L.J. 355.]

(2925)—S. 303—*See* CHARGE TO JURY — MISDIRECTION, 8 Ind. Cas. 52=15 C.W.N. 198 =11 Cr.L.J. 557.

(2926)—S. 303—*See* Nos. 2009, 2422, 2453. 2893, 2914, 2916, 2917, 2918, 2922, 2923, *supra*, No. 2929, 3270, *infra*,

——S. 304 (=1882, s. 304).

(2927)—*S.* 304 — *Jury trial — Verdict of majority given as verdict of jury—No dissent by any juror—Discovery of mistake after some days—Power of Court to disturb verdict and order—Jurisdiction—Criminal cases—Interpretation of statutes—Practice—Reference to Full Bench — Punjab Courts Act* XVIII *of* 1884, s. 11.—Jurisdiction in criminal case is not to be assumed, and in regard to matters for which the Legislature has made express provision, it must not be assumed in excess of the jurisdiction so conferred. Courts in India cannot travel beyond the scope of s. 304, Crim. Pro. Code. The Court

Crim. Pro. Code (Act V of 1898)—*continued.*

will not disturb a verdict openly given in Court, if it is satisfied that all the jurors heard the words of the foreman and expressed no dissent at the time. The power of amendment of verdict, provided by s. 304, Crim. Pro. Code, must be exercised before or immediately after the verdict is recorded and cannot be exercised after the jurors have dispersed. In a trial by jury before a Judge of the Chief Court, the foreman publicly announced the verdict of "not guilty" as the unanimous verdict of the jury, in the hearing of all the jurors and without dissent on the part of any of them. The verdict was recorded and the prisoner was acquitted. From information received some days afterwards, the trying Judge was led to believe that, as a matter of fact, the jurors were not agreed as regards the verdict. The Judge summoned the foreman of the jury and examined him on oath. He deposed that the verdict given as the unanimous verdict was really the verdict of a majority of the jurors and was given as the unanimous verdict owing to a misunderstanding that the opinion of the majority was binding upon all the jurors. The Judge thereupon took action under s. 11 of the Punjab Courts Act and referred for the opinion of the Full Bench the question as to whether any proceedings should be taken in the matter and, if so, what course should be adopted: *Held* (1) that the Full Bench had jurisdiction to give the opinion as the question arose before a Judge, sitting as a single Bench, in a Judicial proceeding; (2) that the Court had no jurisdiction, in consequence of the foreman's subsequent statement, to set aside a verdict given in open Court and in the hearing of all the jurors and the formal order of acquittal that followed thereupon. EMPEROR v. BRIAN BONHAM CARTER, **13 Cr. L.J. 815 = 17 Ind. Cas. 559 = 9 P.W.R. 1913, Cr. = 6 P.R. 1913, Cr. = 175 P.L.R. 1913, F.B.**

(2928)—S. 304—*See* Nos. 2173, 2893, 2922, *supra.*

(2929)—*Ss.* 304, 303—*Unanimous verdict—Power of Judge to question jury—Scope and extent.*—Where a Sessions Judge questioned the jury as to their reasons for returning an unanimous verdict of not guilty, and such questioning led two of the jurors to say they had been misled as to some of the evidence by the notice of the foreman and that they would like to re-consider the case: *Held* that the case was not one in which a wrong verdict was delivered 'by accident or mistake' within the terms of s. 304 and that the procedure adopted by the Sessions Judge was illegal. The Code of Criminal Procedure does not empower a Judge to question the jury as to their reasons for an unanimous verdict, when there is nothing ambiguous in the verdict itself and no uncertainty in minds of jury themselves regarding it. S. 303 limits the power of the Judge to the asking of such questions as may be necessary to ascertain what their verdict is. *In re* RAM NAICKER, **22 M.L.J. 355 = 14 Ind. Cas. 669 = 13 Cr. L.J. 285.** (28 B. 412, *R.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

(2930)—*Ss.* 304, 307—*Mistaken verdict owing to misunderstanding of the law by jury.*—S. 304 Crim. Pro. Code, obviously contemplates cases where the verdict delivered is not in accordance with what was really intended by the jury. But where the jury commit a mistake in understanding the law, and such mistake results in an erroneous verdict, it can be corrected only by the Judge disagreeing with the jury and referring the case under s. 307, Crim. Pro. Code, to the High Court. EMPEROR v. KONDIBA DHONDIBA POWAR, **28 B. 412 = 6 Bom. L.R. 361.** [*R.*, 13 Cr. L.J. 285 = 14 Ind. Cas. 669 = 22 M.L.J. 355.]

(2390-*a*)—S. 305—*See* No. 3487, *infra.*

——S. 306 (= 1882, s. 306; 1872, s. 263, paras 2 and 4).

(2931)—S. 306—*See* Nos. 2916, 2917, 2918, *supra and* No. 3270, *infra.*

(2932)—Ss. 306, 439—Quashing of proceedings —Verdict of not guilty on charge of conspiracy in favour of co-accused at previous trial—Effect on accused in supplementary trial on charge under ss. 34, 307, I.P.C.—Recalling of warrant after acquittal of co-accused—Jurisdiction to issue fresh warrant on same materials—Repugnancy in verdict of jury—Effect—Weight to be attached to opinion of Judge and jury—*See* PENAL CODE, ss. 34, 107, 18 C.W.N. 580 = 15 Cr. L.J. 402 = 41 C. 754 = 23 Ind. Cas. 1002.

——S. 307 (= 1882, s. 307; 1872, s. 263, paras 5 and 6).

See JURY.

See REFERENCE TO HIGH COURT.

See TRIAL BY JURY.

See VERDICT OF JURY.

(2933)—S. 307 (= *Crim. Pro. Code,* 1882, *s.*307)—*Reference by Sessions Judge to High Court under—Duty of High Court.*—Where a Sessions Judge refers to the High Court, under s. 307 of the Crim. Pro. Code, a case in which the Judge disagrees with the jury who returned a verdict of acquittal, the High Court has to consider whether the evidence for the prosecution is so clear as to take the responsibility of differing from the opinion of those to whom the decision of the facts is entrusted by law. QUEEN-EMPRESS v. VITHAL, **Rat. Un. Cr. C. 626 = Cr. Rg. 58 of 1892.**

(2934)—*S.* 307—*Verdict of jury contrary to weight of evidence—Duty of Sessions Judge.*—In a case where the Sessions Judge thinks that the verdict of the jury is contrary to the weight of evidence, it is the duty of the Sessions Judge, in a reference to the High Court under s. 307, to set out on what portions of the evidence or on what facts disclosed by the evidence the accused should have been convicted. KING-EMPEROR v. BHUT NATH GHOSE, **7 C.W.N. 345.**

(2935)—*S.* 307—*Trial of certain offences with jury and of others with jurors as assessors—Difference of Judge in verdict and opinion—Reference to the High Court.*—A Sessions Judge tried the accused with the aid of a

Crim. Pro. Code (Act V of 1898)—*continued.*

jury. The accused were charged with offences, some of which were triable with jury and others were not so triable. At the conclusion of the trial, the Sessions Judge took the verdict of the jury in respect of offences triable with jury; and, with regard to other charges, took the opinion of the jurors as assessors; and, disagreeing with their verdict and opinion, the Sessions Judge referred, under s. 307 of the Code, the whole case to the High Court. The High Court upheld the verdict of the jury; and, with regard to the other charges, returned the case to the Sessions Judge so that he might deal with it according to law, remarking that the Sessions Judge should not have joined them in the reference. EMPEROR v. KALIDAS BHUDAR, **8 Bom. L.R. 599=4 Cr.L.J. 192.**

(2936)—*S.* 307, *reference to High Court under —Practice—Procedure—The term,* " *opinion,* " *meaning of.*—In this case, the jury unanimously found guilty four out of eight persons charged with dacoity, finding the other four not guilty. The Sessions Judge agreed with the jury that one of the latter four persons was not guilty, but he disagreed from their verdict in regard to the three others found not guilty, and referred their case to the High Court under s. 307 of the Code. *Held,* it is the duty of the High Court, on a reference under the section, to consider the entire evidence and form its own opinion upon such evidence and it has been the invariable practice of the High Court, in such references, to deal with the evidence against the accused, treating the so-called verdict of the jury as their "opinion" referred to in this section. There is nothing in cl. (3) of the section warranting the interpretation of the term "opinion" in it to mean anything other than the respective conclusions of the jury and the Judge and the term is not used therein to denote the reasons for such conclusions. *Per Subrahmania Ayyar, Offg. C J.* and *Boddam, J.* In cases of references under s. 307 of the Code, expedient as it may be to have before the High Court the reasons of the jury, when any have been given, for the view taken by them in a particular case, the circumstance that no such reasons have been ascertained does not warrant the High Court to decline to go into the evidence and to arrive at its own judgment after giving due weight to the views taken by the Judge and the jury as to the guilt or innocence of the accused. EMPEROR v. CHELLAN, **29 M. 91=3 Cr.L J. 371.** [*Not F.*, 18 C.L.J. 522=15 Cr.L.J. 31=18 C.W.N. 615=22 Ind.Cas. 175; *Fol.*, 36 C. 629=9 C.L.J. 638=10 Cr.L J. 32=13 C.W.N. 757=2 Ind. Cas. 497.]

(2937)—S. 307 (=*Crim. Pro. Code*, 1882, *s.* 307)—*Verdict of jury—Reference to High Court—Powers of the High Court.*—A bare verdict of 'not guilty' may be as consistent with a belief of a great part of the evidence for the prosecution, as with a total disbelief of every part of it. Where, therefore, there are no specific findings of the jury before the High Court, it will not interfere upon a mere preponderance of evidence, or, unless it is satisfied, beyond reasonable doubt, that the verdict is so distinctly against the evidence, that it may be termed a perverse verdict. *In re* PAMANNA, **2 Weir 388** [*F.*, 2 Weir 390.]

(2938)—S. 307—*Verdict of jury.*—When a case is referred to the High Court under s. 307, the Court may exercise any of the powers which it may exercise on appeal under s. 423. The whole case is before the Court, and it is for it to say whether, upon the evidence, the accused should be acquitted or convicted. Due weight must be given to the verdict of the jury, unless it appears to be not only unsatisfactory and unjust, but also unreasonable as well as to the opinion of the Judge who has heard the evidence. *In re* NAGAN, **2 Weir 390.**

(2939)—*S.* 307—*Verdict of jury.*— The test whether the High Court should interfere with a jury's verdict on a reference under s. 307, is whether reasonable and cautious men might be disposed, on the evidence laid before them in the case, to entertain a doubt as to the accused's guilt. If there should be any doubt, the Court must not interfere with the verdict, even though it should form conclusions different from those drawn by the jury. QUEEN-EMPRESS v. NAZIR HASAN, **S.C. 234, Oudh.**

(2940)—*S.* 307—*Duty of Judge to confine himself to evidence properly given before him.*—In a trial held by a Sessions Judge, he is exactly in the same position as the jury in dealing with the evidence properly given before him, and he is bound to confine himself solely to such evidence. That is the rule which should invariably guide him in making a reference to the High Court under s. 307, Crim. Pro. Code. QUEEN-EMPRESS v. JADUB DAS, **27 C. 295=4 C.W.N. 129.**

(2941)—*S.* 307—*Jurisdiction of High Court exercising jurisdiction under the section to send prisoner to jail outside Presidency Town—Prisoners Act,* III *of* 1900, *ss.* 7, 8 *and* 9.—The jurisdiction, which the High Court exercises in hearing a case submitted to it under s.307, Crim. Pro. Code, is not original jurisdiction in any sense, the hearing not having any of the essentials of an original trial. It hears the case as a Court of Reference, in the exercise of the jurisdiction vested in it by cl. 28 of the Charter Act, which is, by the terms of that clause, co-extensive with its appellate jurisdiction. Therefore, it has power, on conviction and sentence, to send the accused to a jail outside the Presidency Town. *In the matter of* HORACE LYALL, **29 C. 286=6 C.W.N. 254, F.B.**

(2942)—*S.* 307 (=*Crim. Pro. Code*, 1882, s. 307)—*Penal Code*, ss. 395, 396 *and* 412—*Judge trying a case under s.* 396 *with jury instead of with assessors—Disagreement with jury—Reference to High Court—Procedure.*—Ten persons were charged with having committed dacoity and murder in committing dacoity, offences punishable under ss. 395 and 396, Penal Code, and some of them were also charged with having received some of the stolen property under

Crim. Pro. Code (Act V of 1898)—*continued.*

s. 412 of the Code, and were committed to the Sessions. From a perusal of the preliminary register, it was clear that the accused were guilty under s. 396 and not under s. 395. The Sessions Judge, instead of trying the case with assessors for the offence under s. 396, which was only triable by the Judge with assessors, tried the case with a jury. The jury returned a verdict of not guilty, but the Judge disagreeing with the jury referred the case to the High Court under s. 307, Crim. Pro. Code. *Held*, that the procedure adopted by the Judge was wrong and that he should have tried the case with the aid of assessors. *Held*, further, that, under the circumstances of the case the proper course for the High Court to adopt would be to proceed with the case under s. 307, Crim. Pro. Code, as amended by s. 3 of Act XIII of 1896, and to determine whether the accused were guilty of dacoity (s. 395, Penal Code) or not, after considering the entire evidence and after giving due weight to the opinion of the Sessions Judge and the jury, instead of ordering a new trial by the Sessions Judge for the offence under s. 396, Penal Code, which would be attended with inconveniences and was not necessary for the ends of justice. QUEEN EMPRESS v. ANGA VALAYAN, 22 M. 15=2 Weir, 705=2 Weir 333=1 Weir 446. [*R.*, 12 Cr. L.J. 488=12 Ind. Cas. 96=1911, 2 M.W.N. 197, 37 M. 236=13 Cr. L.J. 739=17 Ind. Cas. 51.]

(2943)—*S.* 307— *Evidence Act*, s. 114—*Disagreement between Judge and jury—Duties of the High Court on reference—Murder—Circumstantial evidence—Possession of deceased's bloodstained ornaments and clothes—Presumption of being murderer—Verdict of jury, value of, where presumption of law not explained.*—In the case of a reference to the High Court on a disagreement between the Sessions Judge and the jury, under s. 307, cl. (3), Crim. Pro. Code, the High Court is to give due weight not to the opinion of the jury alone but to that of the Sessions Judge as well. Where, in a case of murder, bloodstained ornaments were found in the room occupied by the accused and the evidence established that those articles belonged to the deceased, and in the Sessions Judge's charge to the jury, there was no direction pointing out that the possession in this case, if believed, was a fact from which the Court might presume not merely theft or receipt of stolen property but also murder with which the accused was charged. *Held*, that this was a serious omission detracting materially from the value of the verdict and opinion of the jurors. It is especially important that a Judge should point out a presumption of this kind, because jurors are often reluctant to act on that which is commonly known as circumstantial evidence. EMPEROR v. SHEIKH NEAMATULLA, **17 C.W.N. 1077=14 Cr. L.J. 356=21 Ind. Cas. 156.**

(2944)—*S.* 307—*Unanimous verdict, due to misdirection, of acquittal on charge of rioting, agreed to by Judge—Verdict of guilty of grievous hurt not charged—High Court, power of, on reference, to reconsider charge of rioting—Distinction between civil and criminal trespass—Criminal trespass, essential element in—Cutting across another man's land to save oneself and family from flood, if criminal trespass.*—Of five accused persons, the jury unanimously found one guilty under s. 304, I.P.C., and the Judge agreeing with that verdict sentenced him to transportation for life. The other four accused persons were charged under ss. 148, 304/149, 326/149, I.P.C., there being no charge under s. 326, I.P.C. The jury unanimously acquitted them of the charge of rioting, and the Judge agreed with them but the jury found them guilty under S. 326, I.P.C. The Judge made a reference to the High Court under s. 307, Crim. Pro. Code, on the ground that the verdict under s. 326, I.P.C., was illegal and unwarranted by the evidence and should be altered to one under s. 326 read with s. 149, I.P.C. *Held*—that, on the reference, the High Court could not consider the question of rioting in respect of which the Judge and the jury were agreed ; *a fortiori* it could not consider any charge made by implication under s. 149, although the verdict of the jury acquitting the accused of the charge of rioting was based on a misdirection, as the Judge did not explain to the jury the distinction between civil and criminal trespass before telling them that the complainants had trespassed into the disputed land. That, there being no charge under s. 326, I.P.C., independently, there could be no verdict given upon it, and the verdict of the jury finding the accused guilty under s. 326, I.P.C., was illegal and void and must be set aside. (16 C.W.N. 1077, 34 C. 698, *R.*) Criminal trespass depends on the intention of the offender and not upon the nature of the act, and when a man's intention is to save his family and property from imminent destruction it cannot be said that because he, with that object in view, commits civil trespass on his neighbour's land and cuts a portion of his neighbour's property (which he ordinarily would not be justified in doing), he is guilty of any criminal offence. KING-EMPEROR v. MADAN MANDAL, **18 C.W.N. 668=15 Cr. L.J. 155=22 Ind. Cas. 731=41 C. 662.**

(2945)—S. 307—*See* APPEAL, CASES WHERE APPEAL DOES NOT LIE, Rat. Un. Cr. C. 691 =Cr. Rg. 14 of 1894.

(2946)—S. 307—Disagreement between Judge and jury—Reference when to be made to High Court—*See* EVIDENCE—GENERAL, 14 Cr. L. J. 660=21 Ind. Cas. 900.

(2947) S. 307—Duty of High Court—*See* PENAL CODE, ss. 299, 300, 304, 15 Cr. L.J. 513=24 Ind. Cas. 601.

(2948) S. 307—*See* REVISION—MATTERS PERTAINING TO EVIDENCE, 15 C. 269.

(2949)—*S.* 307 (*c*)—*Reference, validity of—' Opinion of the jury.'*—The expression "opinion of the Sessions Judge and of the jury" in cl. (*c*) of s. 307 of the Code is equivalent to "opinion

Crim. Pro. Code (Act V of 1898)—*continued.*

of the Sessions Judge and verdict of the jury." EMPEROR v. TARAPADA NASKAR, **18 C.L.J. 522**=**15 Cr. L.J. 31**=**22 Ind. Cas. 175**=**18 C.W.N. 615.** (29 M. 91, *Diss.*)

(2950)—*S.* 307, *sub-s.* 2—*Sessions Judge if bound to refer whole case when disagreeing with verdict regarding some accused only—Confession—Corroboration—Evidence Act, s.* 30.—Sub-s. (2) of s. 307, Crim. Pro. Code, does not intend that when the Judge is not prepared to accept the verdict of the jury in its entirety, the whole case is to be referred to the High Court. It only contemplates a reference to the case of those persons in respect of whom the Judge declines to accept the verdict. When the Judge agrees with the jury in respect of any particular accused, the Judge ought to convict and sentence or acquit that accused as the case may be. The confession of a co-accused can be taken into consideration, but the Court requires corroboration before acting upon such a confession. Where the corroboration consisted of statements of witnesses which though giving rise to suspicion were consistent with the innocence of the accused; *Held*, that the corroboration fell far short of what is required to support a conviction. KING EMPEROR v. BABUR ALI, **19 C.W.N. 584**=**21 C.L.J. 492**=**16 Cr. L.J. 321**=**28 Ind.Cas. 657.**

(2951)—S. 307—*See* Nos. 2422, 2423, 2759, 2893, 2894, 2917, 2918, 2923, 2930, *supra and* Nos. 3270, 3694, *infra.*

(2952)—Ss. 307, 238—*See* HIGH COURT, SUPERINTENDENCE AND POWERS OF, 3 C. 189.

(2953)—Ss. 307 and 269 (3)—*See* VERDICT OF JURY, 9 Bom. L.R. 1057=7 Cr. L.J. 236.

(2954)—Ss. 307, 310—*See* PREVIOUS CONVICTION, 30 M. 134=5 Cr. L.J. 422.

(2955)—*Ss.* 307 *and* 337—*Reference to the High Court by the Sessions Judge when he disagrees with the verdict of the jury—Circumstances justifying reference—High Court's power in the reference to go into evidence—Pardon to the approver—Reasons for granting pardon, omission to state, consequence — Approver's testimony, the corrobaration needed--Confession, facts throwing suspicion on the truth of—Penal Code* (*Act* XLV *of* 1860), *ss.* 114, 302, 392.—Where the facts which led up to the tender of pardon appear on the record, the omission on the part of a Magistrate (other than a Presidency Magistrate) tendering pardon to a would-be approver under s. 337, Crim. Pro. Code, to state reasons is not an illegality or irregularity which vitiates the proceeding under that section and renders the evidence of the approver inadmissible. In dealing with a reference under s. 307, Crim. Pro. Code, the High Court must consider the entire evidence and give due weight to the opinions of the Sessions Judge and jury, including the opinion of the minority of the jury when the verdict is divided. When a Sessions Judge, after the jury have given their verdict, disagrees with the verdict and decides to make a reference to the High Court, he may, after telling the jury his intention to do so, ask the jury to give their reasons for the verdict and record those reasons. But the circumstance that no such reasons have been recorded by the Sessions Judge does not warrant the High Court to decline to go into the evidence and to arrive at its own judgment, after giving due weight to the views taken by the Judge and the jury as to the guilt or innocence of the accused. Facts and circumstances rendering an approver's testimony unreliable, discussed. EMPEROR v. ANNADA CHARAN THAKUR, **13 C.W.N. 757**=**9 C.L.J. 638**=**36 C. 629**=**2 Ind.Cas. 497**=**10 Cr. L.J. 32.** (5 C.L.J. 224, 29 C. 128, 9 C.L J. 432, *F.*; 7 C.W.N. 135, 29 M. 91, *R.*; 2 A.L J. 475, *Diss.*) [*R.*, 41 C. 621=14 Cr.L.J. 660=21 Ind. Cas. 900, 18 C.L.J. 522=18 C.W.N. 615=15 Cr. L.J. 31=22 Ind. Cas. 175.]

(2956)—*Ss.* 307 *and* 369—*Verdict of jury, acceptance of—Power of Sessions Judge to reconsider the verdict, and refer the case to the High Court.*—It is not open to a Sessions Judge, when he has once accepted the verdict of the jury and has postponed the case for passing sentence, to re-consider his order and refer the case to the High Court under s. 307, but he must pass sentence on the persons awaiting sentence on the verdict. QUEEN-EMPRESS v. MOJAHUR RAHMAN, **4 C.W.N. 683.**

(2957)—Ss. 307, 383, 491 and 456—*See* APPEAL—CASES WHERE APPEAL LIE, 29 C. 286=6 C.W.N. 254, F.B.

(2958)—Ss. 307 and 418—*See* VERDICT OF JURY, 4 M.L.T. 483=9 Cr. L J. 93, 14 M. 36=2 Weir 390.

(2959)—Ss. 307, 418, 423—*See* ACT III OF 1884, s. 8 (6), 9 A. 420=A.W.N. 1887, 39.

(2960)—Ss. 307, 429—*See* REFERNCE TO HIGH COURT, 10 B. 497, 13 M. 343=2 Weir, 389, 9 C.L.J. 432=2 Ind. Cas. 593, 11 C.W.N. 715=5 Cr. L.J. 484, 15 B. 452.

(2960 *a*)—S. 308—*See* No. 3487, *infra.*

—— S. 309 (=1882, s. 309; 1872, ss. 255, para 1, 261, 262; 1861, s. 324.)

See ASSESSORS.

(2961)—*S.* 309 (=*Crim. Pro. Code,* 1882, *s.* 309)—*Summing up of evidence by Sessions Judge.*—The power of summing up the evidence should be exercised by the Sessions Judge, under s. 309 of the Crim. Pro. Code, in long and intricate cases; and he should not obtrude on the assessors his own opinion on the worthlessness or otherwise of portions of the evidence. SHADULLA HOWLADAR v. EMPRESS, **9 C. 875**=**12 C.L.R. 506.**

(2962)—*S.* 309—*Case tried with assessors—Judge differing from assessors—Duty of Judge to record the grounds of their opinion.*—Where, in a case tried with the aid of assessors, the Sessions Judge's views differ from the opinions of the assessors and he gives judgment without conforming to their opinions, it is his duty to record, in his judgment, the opinion of the assessors with the reasons given by them for

Crim. Pro. Code (Act V of 1898)—*continued.*

those opinions. GURANDITTA v. KING-EMPEROR, **48 P.R. 1905, Cr. = 192 P.L.R. 1905 = 3 Cr. L.J. 132.**

(2963)—*S.* 309—*Sessions Court—Opinion of Assessors—Assessors are not Judges of fact.*—In a Sessions case, the Assessors are not Judges of questions of fact. The Code of Criminal Procedure does not invest them with the power of appreciating the evidence so as to bind the Judge. Their opinion must have regard paid to it, but after all it is the Judge who is to decide the case on the facts as well as law. EMPEROR v. SHANKAR BALVANT KULKARNI, **14 Bom. L.R. 710 = 16 Ind. Cas. 325 = 13 Cr. L.J. 677 = 1 Bom. Cr. C. 159.**

(2964)—S. 309—*See* PLEA OF GUILTY, 7 Bom. L.R. 731 = 2 Cr. L.J. 609.

(2965)—S. 309—*See* Nos. 1670, 2760, 2761, *supra and* No. 4092, *infra.*

(2966)—*Ss.* 309, 356 (= *Crim. Pro. Code, Act* X *of* 1882, *ss.* 309, 356)—*Imperfect record —Effect.*—Where it appeared from the record in a Sessions case that there were the following defects, (1) that while the record showed the opinion of the assessors was that the accused were guilty while their mainfest intention was to acquit them as the Judge eventually did, (2) that the minutes of the evidence of some witnesses was not made as the examination of those witnesses proceeded, *held* that the provisions of ss. 309, 356 of the Crim. Pro. Code, had not been complied with and that there should be a re-trial. EMPRESS v. BARMAJIT, **A.W.N. 1891, 145.**

(2967)—Ss. 309, 366—*See* JUDGMENT, 20 P.R. 1879, Cr.

(2968)—*Ss.* 309, 403, 423 — *Practice — Assessor's opinions how to be taken—Cross-examining assessors, contrary to law—Right of private defence—Rioting — Right of private defence, if exceeded—Punishment—Conviction set aside—Re-trial.*—A trial is altogether vitiated if the assessors are not asked and are apparently not allowed to give an independent opinion on the case. The cross-examination of the assessors is entirely contrary to law. S. 309 of the Code of Criminal Procedure gives the Judge no power to question the assessors until they have delivered their opinions orally and he has recorded such opinions. If there is anything obscure in their verdicts there is no objection to the Judge asking questions to clear up such obscurity ; but he is bound to allow the assessors to express their own opinions independently in their own words on the whole case, before interfering with them in any way or asking them any question whatever, except "what is your opinion." When a Court finds that an accused had the right of private defence in any case, it ought not to convict any of them of rioting. It is impossible that a man who is acting in the exercise of a legal right can be a member of an unlawful assembly. Any person who exceeds the right of private defence is liable to be punished for the specific offence of culpable homicide or other crime which he may be found to have committed in excess of that right. When a conviction is set aside and a re-trial ordered, the whole case is re-opened, and the accused must be tried again on all the charges originally framed. Having regard to the provisions of s. 423, of the Crim. Pro. Code, the provisions of s. 403, in that respect, cannot apply. NAZIMUDDI v. EMPEROR, **13 Cr. L.J. 497 = 15 Ind. Cas. 641 = 40 C. 163.** (22 C. 377. *Rel.*) [*R.*, 15 Cr. L.J. 385 = 23 Ind. Cas. 985 = 18 C.W.N. 498.]

(2969)—Ss. 309, 494—*See* WITHDRAWAL OF PROSECUTION, Rat. Un. Cr. C. 307 = Cr. Rg. 58 of 1886.

(2970)—*Ss.* 309, 537 (= *Crim. Pro. Code,* 1882, *ss.* 309, 537)—*Case tried with the aid of assessors—Omission to record judgment.*—The omission of a Judge to record a judgment in a case tried with the aid of assessors, is an irregularity ; but it is covered by s. 537 of the Code. *In re* SAVU PASUMBADI, **2 Weir 392.**

——S. 310 (= 1882, s. 310).

See PREVIOUS CONVICTION.

(2971)—*S.* 310—*Verdict of acquittal — No questioning, therefore, of previous conviction—Reference—Procedure.*—The accused was tried by a Court of Sessions on the charge of theft of a cap, but was acquitted by the jury. Owing to this verdict, the Sessions Judge was disabled from asking the prisoner about his previous conviction, with which also the prisoner was charged. Upon a reference to the High Court by the Sessions Judge, *held* that the accused was guilty of the offence of theft and that the case should be remanded to the Court of Sessions in order that it might proceed to finish the trial by applying the procedure prescribed by s. 310. QUEEN-EMPRESS v. GOVIND JHAVRYA, **2 Bom. L.R. 336.**

(2972)—*S.* 310 (= *Crim. Pro. Code,* 1882, *s.* 310)—*Proof of previous convictions.*—In a trial by jury or with the aid of assessors, the record should invariably show that reference to a previous conviction has not been made until the subsequent offence has been found proved against the accused. KRISTO BEHARI DASS v. EMPRESS, **12 C.L.R. 555.**

(2973)—*S.* 310—*Jury being informed of previous conviction before taking their verdict on substantive offence.*—Where a Judge informed the jury, before he took their verdict on the substantive offence that the accused was charged as an old offender, *held* that he acted in direct violation of s. 310 of the Code. *In re* CHUNDI PERUGADU *alias* JILLARIGADU, **2 Weir 393.**

(2974)—*S.* 310 (= *Crim. Pro. Code, Act* X *of* 1882, *s.* 310)—*Penal Code, s.* 75—*Trial by jury —Procedure.*—Where in a trial by a Sessions Judge and jury, one of the witnesses was allowed to state that he had heard that the accused was an old convict, and it appeared that the jury were aware of the previous conviction

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before they gave their verdict, *held* that the accused might have been prejudiced by the contravention of the provision in s.310 of the Crim. Pro. Code, and that there should be a new trial. EMPRESS v. JHINGURI, **A.W.N. 1890, 12.**

(2975)—S. 310—*See* No. 2954, *supra and* No. 3119, *infra.*

(2976)—*Ss.* 310 (*a*), 537 (=*ss.* 310 (*a*), 537, *Crim. Pro. Code,* 1882)—*Material irregularity.*—Where a Sessions Judge had at one and the same examination of the prisoner, after the evidence for the prosecution had been taken, enquired from him what he had to say on the charge of theft and also on the charge of having been previously convicted, *held,* that this irregularity could not affect the conviction of the accused, if it had not occasioned a failure of justice. BEPIN BEHARI SHAHA v. EMPRESS, **13 C.L.R. 110.**

(2977)—*Ss.* 310, 343 *and* 511—*Previous convictions how to be proved—Examination of accused to prove such convictions, whether proper—Evidence Act, s.* 91.—Previous convictions should, regard being had to the provisions of s. 91, Evidence Act, and s.511, Crim. Pro. Code, be proved by copies of judgment or extracts from judgments or by any other documentary evidence of the fact of such previous conviction; and the examination of the accused in respect of those convictions is, having regard to s. 342, Crim. Pro. Code, without legal warrant or justification. A Sessions Judge is, however, justified, under s. 310, Crim. Pro. Code, in passing sentence on the accused on an admission by him of previous convictions, and such sentence should not be interfered with, unless the accused has been prejudiced by the irregularity in the enquiry as to the previous convictions. YASIN v. KING EMPEROR, **28 C. 689=5 C.W.N. 670.** (26 C. 49, *F.*) [*R.,* 28 B. 129, 3 L.B.R. 208.]

(2978)— Ss. 317, 339—*See* APPROVER, 37 C. 845, S.B.

——S. 321 (=1882, s. 321; 1872, s. 400; 1861, s. 329).

(2979)—Ss. 321, 324—*See* ASSESSORS, Rat. Un. Cr. C. 304=Cr. Rg. 52 of 1886.

——S. 322 (=1882, s. 322; 1872, s. 401, para 1; 1861, s. 380, para 1).

(2980)—Ss. 322 and 323—*See* LEGAL PRACTITIONERS — ADVOCATE, L.B.R. 1872 — 1892, 260.

——S. 323 (=1882, s. 323; 1872, s. 401, para 2.)

(2981)—S. 323—*See* No. 2980, *supra and* No. 3574, *infra.*

(2982)—*Ss.* 323, 345 (5), 439, 463—*Appellate Court—Power to sanction compromise.*— The power of an appellate Court to grant sanction to compromise a case arising under s. 323, Crim. Pro. Code, is given to an appellate Court under cl. 5 of s. 345 of that Code. This section is rendered unnecessary if the appellate Court

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be held to have power to grant sanction to compromise under cl. (*d*) of s. 463 of the Code. S. 439 grants certain fixed powers, and does not mention s. 345, cl. (5). NAQI AHMAD v. KING-EMPEROR, **11 A.L.J. 13=18 Ind. Cas. 270=14 Cr. L.J. 46.** (32 A. 153, *Doubted.*)

——S. 324, paras 1 to 5 (=1882, s. 324; 1872, s. 402; 1861, s. 331), and paras 6 and 7, (=1882; s. 325; 1872, s. 403; 1861, s. 332).

(2983)—S. 324—*See* No. 2979, *supra.*

——S. 326 (=1882, s. 326; 1872, s. 407; 1861, s. 336).

(2984)—*S.* 326 (=*Crim. Pro. Code,* 1872, *s.* 407)—*Duty of issuing a precept.*—The duty of issuing a precept, which is imposed on the Court of Sessions by s. 407, Crim. Pro. Code, 1872, cannot legally be performed by a Subordinate Judge in temporary charge of the current duties of the Sessions Judge. KARWAR SUB-JUDGE'S LETTER, No. 646, **Rat. Un. Cr. C. 148.**

(2985)—S. 326—*See* No. 2783, *supra.*

(2986)—*Ss.* 326, 327 (=*Crim. Pro. Code,* 1882, *ss.* 326, 327)—*Appointment of assessors outside persons summoned.*—The Sessions Judge has no power to select any one to act as an assessor who has not been summoned under s. 326 or s. 327, Crim. Pro. Code. EMPRESS v. BADRI, **A.W.N. 1894, 207.**

(2987)—Ss. 326, 537—*See* ASSESSOR, 13 O. C. 337=8 Ind. Cas. 874.

——S. 327 (=1882, s. 327; 1872, s. 410; 1861, s. 338).

(2988)—S. 327—*See* Nos. 814, 2986, *supra.*

——S. 332, paras 1, 2 and 4 (=1882, s. 332; 1872, s. 414; 1861, s. 354); para 3, new.

(2989)—S. 332—*Service of summons on servant of juror—Civ. Pro. Code, Act* XIV *of* 1882, *s.* 70.—On the analogy of s. 70 of the Civ. Pro. Code, a service of summons on a juror, in order to be sufficient to make him liable under s. 332 of the Crim. Pro. Code, cannot, outside the Presidency towns, be effected on his servant. *In the matter of the petition of* BEHARI LAL, **A.W.N. 1899, 13.**

(2990)—*Ss.* 332, 403, 437—*Discharge, order of, by High Court Sessions, if any bar to fresh proceedings*—Nolle prosequi.—An order of discharge by the High Court, in the exercise of its Original Criminal Jurisdiction, is no bar to fresh proceedings being taken before a competent Magistrate upon complaint or upon a Police-report or under s. 190 (*c*) of the Code of Criminal Procedure, (29 C. 726=6 C.W.N. 633, *R.*) Where an accused person was put upon his trial before the High Court Sessions on charges punishable under ss. 363 and 366, Penal Code, and an order of discharge was passed upon the Advocate-General entering a *nolle prosequi* and subsequently the accused being again sent up to take his trial upon the same charges, the Deputy Magistrate held that he could not be so tried: *Held* — That the Magistrate was

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wrong in declining jurisdiction which he undoubtedly had, and he was bound to adjudicate on the charges properly laid before him against the accused. *Held* also—that the order of discharge by the High Court Sessions could not be set aside by any tribunal, and it did not require to be set aside for initiation of fresh proceedings on the same charges. KING-EMPEROR v, SHEIKH IDOO, **16 C W.N. 983= 15 Ind. Cas. 488=13 Cr. L.J. 488.**

(2991)—Ss. 333, 555—*See* JUDGE OF HIGH COURT, 2 C.W.N. 481.

——S. 334 (=1882, s. 334).

(2992)—S. 334—*See* No. 2332, *supra.*

——S. 337 (=1882, s. 337; 1872 s. 347 ; 1861, s. 209).

See ACCOMPLICE.

See ACCUSED PERSON.

See APPROVER.

See PARDON.

(2993)—*S.* 337—*Scope of.*—This section does not contemplate either that the District Magistrate should delegate the tender of pardon to a Subordinate Magistrate who has no concern whatsoever with the case, or that the said Magistrate should record informal statements which are not and could not be admissible as evidence. In a case where the tender of pardon must be regarded as a tender by the District Magistrate, who examined, as witnesses in the case, the persons who had accepted the tender, the District Magistrate was debarred under s. 337 (4) from trying the case himself. The Magistrate's order releasing on bail the persons who had accepted the tender was wrong, because they were not already on bail at the time. EMPRESS v. BODHAN, **13 C.P.L. R. Cr. 7.**

(2994)—*S.* 337—*Pardon tendered—Reasons to be recorded.*—When a Magistrate tenders a pardon under the said section, he is bound to record his reasons for doing so. QUEEN-EMPRESS v. NGA TUN BAW, **U.B R. 1897—1901, Vol. I, 81.**

(2995)—*S.* 337 (=*Crim. Pro. Code*, 1882, s. 337)—*Condition of pardon.*—The only condition on which pardon could be tendered to an accused person is the one specified in s. 337 of the Crim. Pro. Code. It cannot be stipulated that the accomplice should testify to having been present when the crime was committed. QUEEN-EMPRESS v. YAKUB, **Rat. Un. Cr. C. 612=Cr. Rg. 34 of 1892.**

(2996)—*S.* 337 (=*Crim. Pro. Code*, 1882, s. 209)—*Power to tender a conditional pardon.*—The power to tender a conditional pardon under s. 209, extends to cases triable by the Magistracy concurrently with the Court of Sessions. HIGH COURT PROCEEDINGS, 10TH NOV. 1864, **3 M.H.C. App. 2.**

(2997)—*S.* 337 (=*Crim. Pro. Code*, 1861, s. 209)—*Power under the section, when exercisable.*—The power given to a Magistrate, under s. 209 cannot properly be exercised except with a view to the committal of a case for trial before a Court of Sessions. HIGH COURT PROCEEDINGS, 26TH JULY 1866, **3 M.H.C. App. 4.**

(2998)—*S.* 337—*Non-fulfilment of conditions of pardon—Trial of approver.*—Nothing can be done against an approver who has not complied with the condition on which the tender of pardon was made to him, until after the case in the Court of Sessions has been finished ; then his trial should be commenced *de novo.* QUEEN-EMPRESS v. BHAW, **23 B. 493.** [*F.*, 13 C.P. L.R. 123, 4 Bom. L.R. 826, 5 N.L.R. 134 ; *Appl.*, 24 M. 321=2 Weir 396 ; *R*, 3 Bom. L. R. 271=25 B. 675, 52 P.L.R. 1903=4 P.R. 1903, Cr., 6 O.C. 236, U B.R. 1907, 4th Quarter, Crim. Pro. Code, p. 7=14 Bur. L.R. 306=7 Cr. L.J. 245.]

(2999)—*S.* 337—*Conditional pardon—Breach of condition.*—No action can be taken against a person who has accepted a pardon, for breach of the conditions on which the pardon was tendered, until after the case in the Court of Sessions has been finished. EMPEROR v. REVAPPA, **4 Bom. L.R. 826.** [*F.*, 10 Cr. L.J. 418=3 Ind. Cas. 922=5 N.L.R. 134.]

(3000)—*S.* 337—*Tender of conditional pardon—Withdrawal of the pardon by the committing Magistrate without placing the person before Sessions Judge for giving his evidence—Validity—Trial of approver—When pardon to be withdrawn and by whom—Good faith.*—S. 337, cl. (2), Crim Pro. Code, requires that every person accepting a tender of pardon "shall be examined as a witness in the case." The words "in the case" are purposely used so as to include the preliminary inquiry and do not refer to the trial only. Where an approver, when examined in the preliminary inquiry, keeps back material evidence within his knowledge, the Magistrate can withdraw the pardon, and it is not the duty of the prosecution to put him forward as a witness in the Sessions trial. [*F.*, U.B.R. 1907, 4th Quarter, Crim. Pro. Code, p. 7; *R.*, 153 P.L.R. 1905=41 P.R. 1905, Cr.] When a pardon is revoked, nothing should be done against the person who so forfeits it, until after the trial of the other accused is over, and then his trial should proceed *de novo.* [*R.*, 8 Bom. L.R. 740=30 B. 611, U.B.R. 1907, 4th Quarter, Crim. Pro. Code, 7.] When a pardon has been tendered and has been accepted, the utmost good faith must be kept on both sides. Good faith is broken if the witness does not disclose the truth to the Magistrate, and the conditional pardon may be at once withdrawn as soon as good faith is broken. The Crim. Pro. Code does not specify by whom a pardon may be withdrawn. Ordinarily the authority, which makes an offer, has the power of withdrawal. The proper authority therefore, to withdraw a pardon is the authority which granted it, even after the trial has been held in the Sessions Court. QUEEN-EMPRESS v. RAMASAMI, **24 M. 321=2 Weir 396.** [*F.*, 10 Cr.L.J. 418=3 Ind. Cas. 922=5 N.L.R.

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134, 8 Cr.L.J. 153=31 M. 272=3 M.L.T. 407, 13 Cr.L.J. 33=13 Ind.Cas. 273=5 S.L.R. 174; *Appr.*, 11 Cr.L.J. 702=37 C. 845=15 C.W.N. 25=8 Ind. Cas. 721; *R.*, 33 M. 514=7 M.L.T. 121=5 Ind. Cas. 831=1910 M.W.N. 5=11 Cr. L.J. 254, 7 Cr. L.J. 245=U.B.R. 1907, Cr. P.C. 7=14 Bur. L.R. 306; *Considered*, 9 Cr. L.J. 571=32 M. 173=2 Ind. Cas. 343.]

(3001)—*S.* 337—*Revocation of pardon.*—The authority which tendered a pardon has the power to revoke it where there are grounds for it. QUEEN-EMPRESS v. RAJA RAM, **3 O.C. 191.** (A.W.N. 1895, 163 and 24 C. 492, *R.*)

(3002)—*S.* 337—*Pardon—Case not triable exclusively by Court of Session or High Court—Evidence of approver.*—It is only in cases triable exclusively by the Court of Sessions or the High Court that a pardon can be lawfully granted to an accused person. It is illegal to convert an accused person into a witness except when a pardon has been lawfully granted, and the deposition of an accused person, to whom a pardon has been tendered for an offence not exclusively triable by a Court of Session or High Court, cannot be considered against other persons accused of such offence. DURGA v. EMPEROR, **52 P.L.R. 1902.**

(3003)—*S.* 337—*Pardon—Case not triable exclusively by a Court of session or High Court—Accomplice evidence.*—Where the offence is not one triable exclusively by the Court of Session or the High Court, a pardon cannot be granted under s. 337. The evidence of an accomplice who is illegally pardoned and made a witness must be excluded in such a case. NGA THA HLA v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 51.**

(3004)—*S.* 337—"*Such offence*" *meaning of—Pardon.* — *Held* by the Full Bench:—The effect of the words, "such offence" in s. 338, is to restrict the scope of the section to the offences referred to in s. 337, *viz*, offences triable exclusively by a Court of Session or the High Court. A Sessions Judge cannot tender a pardon to an accused, under s. 338 of the Code of Criminal Procedure, when the offences for which he has been committed are not triable exclusively by the Court of Sessions. N.A. SUBRAMANIYA AIYAR v. QUEEN-EMPRESS, **10 M.L.J. 147, F.B.**

(3005)—*S.* 337—*Pardon—Pardon by Local Government outside s.* 337 *of the Crim. Pro. Code—Pardon withdrawn and accused convicted—Acquittal when no breach of condition of pardon is shown.*—When the Local Government sanctioned the pardon of the accused outside the provisions of s. 337 of the Criminal Procedure Code, on condition of his making a full disclosure of all the facts connected with the case within his knowledge, and the pardon was cancelled and the accused was prosecuted and convicted subsequently for the offence with which he was originally charged, *held*, that it was not shown that the accused had failed to act up to the conditions of his pardon, that he was entitled to be acquitted, and that he should not have been prosecuted. KUNWAR SINGH v. EMPEROR, **126 P.L.R. 1902=34 P.R. 1902, Cr.**

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(3006)—*S.* 337—*Pardon, tender of—Evidence Act, ss.* 24 *and* 133—*Confession by an accomplice—Admissibility of evidence—Illegal inducement or threat—Withdrawal of case against co-accused—Discharge.*—S. 337 of the Crim. Pro. Code requires a Magistrate, who tenders a pardon, to record his reasons for so doing. Where, however, the facts, which led up to the tender, appear on the record, the omission to state reasons is, not only not an illegality, but not even an irregularity which vitiates the proceedings. The tender of a pardon by local Government, though of doubtful validity in law, can in no way be regarded as an inducement or threat, illegally held out to an accused person, to disclose or withhold any matter within his knowledge. Where the Public Prosecutor put in a petition under s. 409, Crim. Pro. Code, for withdrawing a case against one of the accused persons and the application was granted: *Held*, such person became a competent witness and his evidence was admissible, even though no formal order of discharge was recorded. DEPUTY LEGAL REMEMBRANCER v. BANU SINGH, **5 C.L.J. 224=5 Cr.L.J. 142.** [*F.*, 36 C. 629=9 C.L.J. 638=13 C.W.N. 757=10 Cr. L.J. 32=2 Ind. Cas. 497.]

(3007)—*S.* 337 (=*Crim. Pro. Code, Act* X *of* 1882, *s.* 337)—*Tender of pardon to accomplice—Authority competent to revoke.*— Where a first class Magistrate has tendered a conditional pardon to an accomplice and examined him as a witness, the only authorities by which the pardon can be formally withdrawn are the Magistrate himself before the commencement of the trial by the Sessions Court and the Sessions Judge who can, if he finds the condition of the pardon not fulfilled, direct the commitment of the accomplice for trial for the original offence. The District Magistrate has no jurisdiction to withdraw the pardon. EMPRESS v. BHOLA, **A.W.N. 1895, 163.** [*Not F.*, 3 O.C. 191.]

(3008)—*S.* 337 (=*Crim. Pro. Code, Act* X *of* 1872, *s.* 347)—*Applicability.*—The tender of pardon is restricted by s. 347 of the Crim. Pro. Code to offences described as triable exclusively by a Court of Session. EMPRESS v. GOPAL, **A.W.N. 1882, 240.**

(3009)—*S.* 337 — *Formal withdrawal and forfeiture of pardon if necessary before proceeding against approver for original offence.*—Under the present Code of Criminal Procedure, no formal withdrawal of a pardon and no formal declaration that a pardon has been forfeited are required before proceeding against a person who accepted a conditional pardon but violated the condition thereof. EMPEROR v. SABER AKUNJI, **19 C.W.N. 179=27 Ind. Cas. 184.**

(3010)—S. 337—*See* BUR. ACT I OF 1899, ss. 6 and 8, 1 L.B.R. 62.

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(3011)—S. 337 — *See* COMMITMENT TO SESSIONS COURT, A.W.N. 1891, 182.

(3012) — S. 337—*See* DISTRICT MAGISTRATE, L.B.R. 1893—1900, 323.

(3013)—S. 337—*See* Nos. 65, 187, 1503, 1740, 1741, 1830, 2525, 2891, 2955, *supra and* No. 3120, *infra*.

(3014)—*Ss.* 337, 338 *and* 339—*When person to whom pardon tendered liable to conviction.*—A person, to whom a pardon has been tendered, cannot again be convicted of the same offence for which the pardon was tendered, unless it has been found that he has not complied with the conditions on which the tender was made. In the absence of such a finding, the conviction is bad, and the Court which has to decide whether he is liable to punishment for the offence, is the proper authority to decide whether such liability has been incurred. QUEEN-EMPRESS v. DEBI, **3 O C. 245.**

(3015)—*Ss.* 337, 339 (=*Crim. Pro Code*, 1882, *ss.* 337, 339)—*Tender of pardon, effect of.*—When a pardon has once been tendered and accepted, the person to whom it is tendered should be examined as a witness in any case arising out of the same transaction, and should not be committed for trial for any offence arising out of the same circumstances, unless he is guilty of the misconduct referred to in s. 339. *In re* KUMARANDY. **2 Weir 394.**

(3016)—*Ss.* 337 *and* 339—*Tender of pardon—Breach of the conditions—Trial —Commitment of person to whom pardon tendered—Penal Code, s.* 194—*Person accepting pardon to be made available as witness.*—It is the intention of the law that a person to whom a tender of pardon has been made should not be tried for an alleged breach of the conditions upon which the pardon was tendered until the original case has been fully heard and determined. No prosecution for the offence of giving false evidence in respect of a statement made by a person who has accepted a tender of pardon should be entertained without the sanction of the High Court. A person who has accepted a tender of pardon by a committing Magistrate ought to be made available as a witness for examination before the Sessions Court. It is therefore wrong to proceed against him for a breach of the condition on which the pardon was granted until after the conclusion of the case in the Sessions Court. QUEEN-EMPRESS v. NATU, **27 C. 137.** [*F.*, 32 M. 173=9 Cr.L.J. 571=2 Ind. Cas. 343; *R.*, 13 C.P.L.R. 123; *D.*, 24 M. 321=2 Weir 296]

(3017)—*Ss.* 337, 339—*Approver — Approver retracting his confession at preliminary inquiry —Procedure — Confession not admissible in evidence.*—When, during a police investigation, a pardon was granted to one of two persons accused of murder, and he made a confession implicating himself and the other accused but retracted it when examined by the committing Magistrate in the course of the preliminary enquiry, *held*, that either of the two courses could have legally been then adopted. Either the approver and the other accused should have been tried of the offence, beginning the trial *de novo* or the other accused should have been tried and the approver examined as a witness, and, in case of his not speaking the truth, his trial must be ordered separately. When a pardon to an approver is revoked at any stage before the final trial, no part of his confession as an approver can be utilised against himself, much less against any one with whom he is jointly tried. GHULAM MAHOMED v. CROWN, **52 P.L.R. 1903=4 P.R. 1903, Cr.** (20 A. 529, 5 P.R. 1889, *F.*; 136 P.L.R 1902, 23 B. 493, *R.*)

(3018)—*Ss.* 337, 339— *Revoking tender of pardon—Accused refusing to make a statement —Commitment—Legality of.*—An accused, who had an opportunity of cross-examining the prosecution witnesses, was tendered a pardon on condition of his making a true disclosure. After accepting that pardon, he refused to make any statement saying that he knew nothing. The Magistrate revoked the pardon and committed him to the Court of Sessions. *Held*, that the commitment was perfectly legal. KING-EMPEROR v. BUDHAN, **3 A L J. 615=29 A. 24=A.W.N. 1906, 258=5 Cr. L J. 144.** [*N F.*, 10 Cr. L.J. 418=3 Ind. Cas. 922=5 N. L.R. 134.]

(3019)—*Ss.* 337 *and* 339—*Approver—Grant of conditional pardon—Disclosure of facts within the approver's knowledge—Recantation of the statement in cross-examination before the Sessions Court—Forfeiture of pardon—Trial of the approver for the principal offence—False evidence—Procedure.*—The accused, under a pardon given to him by the committing Magistrate, under s. 337 of the Code, made "a full and true disclosure of the whole of the circumstances within his knowledge relating to" the offence. He stuck to his story in his examination in-chief before the Court of Session, but, during his cross-examination, he resiled from his statement. At the conclusion of the trial, which ended in the conviction of his accomplices, the accused was sent by the Sessions Judge in custody to the committing Magistrate with an order directing that he should be committed for trial for the principal offence. The Magistrate accordingly withdrew the pardon and committed the accused to the Court of Session, where he was convicted on what was described as his plea of guilty. *Held*, by *Aston, J.* (1) that the Sessions Judge had no authority, under the Code, to order the accused to be committed for trial for the principal offence, in respect of which a pardon had been tendered, and that his trial was conducted with material irregularity, which seriously prejudiced the accused and occasioned a failure of justice: (2) That the question whether the pardon was in fact forfeited should have been enquired into and decided at the trial of the accused before he was called upon to plead to the charge of the principal offence. *Held*, by *Beaman, J.* (1) that the Sessions Judge had no power to pass an order directing the forfeiture of pardon granted to the accused; (2) that the procedure adopted by the Sessions

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Judge was wrong and illegal. *Per Aston, J.*—S. 339 of the Code contemplates a pardon being forfeited under it, but, neither in it nor in any other part of the Code is it enacted that the forfeiture of a pardon depends upon the opinion of the Judge or Magistrate, trying a case in which the occasionally pardoned accomplice has agreed to make a full and true disclosure. It is, therefore, open to a pardoned accomplice, if placed on trial as an accomplice, who has forfeited the pardon already accepted by him, to plead in bar of trial that he did comply with the condition on which the tender of pardon was made, and such plea in bar of trial would have to be gone into and decided before the accused is called on to enter his plea in defence to the charge of having committed the offence, in respect of which the pardon was tendered. The section does not enact that a person who has accepted a tender of pardon, renders himself liable to be tried for the offence, in respect of which pardon was tendered, if he gives false evidence. What the section says is that he renders himself so liable (or forfeits the pardon) if, by giving false evidence, he has not complied with the condition on which the tender was made. *Per Beaman, J.*—A pardon is offered upon two main conditions, first, that an accomplice shall make a full, second a true, disclosure of all he knows, about the crime, and the pardon is forfeited by his failure to comply with these two conditions in two corresponding ways, first by concealing some material fact, that is to say, by not making a full, or by giving false evidence, that is, by not making a true, disclosure. The words "false evidence" must be read subject to the limitations of their context, as defining one of the modes of non-compliance with the conditions of the pardon, and not in their fullest literal sense. At the termination of the trial, in which the pardon is given, the accomplice must be discharged by the Court. Then, if so advised, the Crown may re-arrest and proceed against him for the offence, in respect of which he was given a conditional pardon. When put upon his trial for that offence, he may plead to a competent Court his pardon, in bar. And that is a plea that the Court would be bound to hear and decide upon, before going further and putting him on his defence. In deciding it, the Court would have to raise the issues whether he had or had not complied with the conditions of the pardon; and whether he had or had not made a full, and a true, disclosure of the whole facts, and where, after having admittedly done that, he had at a later stage recanted, whether that recantation amounted to giving false evidence within the meaning of s. 339 of the Code and worked a forfeiture of the pardon. EMPEROR v. KOTHIA NAVALYA BHIL, **8 Bom L.R. 740=30 B. 611 =4 Cr. L J. 346.** [*F.*, 32 M. 173=9 Cr. L.J. 571=2 Ind. Cas. 343. 33 M. 514=11 Cr. L J. 254=5 Ind. Cas. 831=7 M.L.T. 121=1910 M. W.N. 5, 12 Cr. L J. 326=10 Ind. Cas. 622=7 N.L.R. 65; *Appr.*, 37 C. 845=15 C.W.N. 25= 11 Cr. L.J. 702=8 Ind. Cas. 721; *R.*, 14 Cr. L.J. 401=20 Ind. Cas. 225=7 L.B.R. 1.]

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(3020)—*Ss. 337 and 339—Tender of pardon—Fulfilment of condition by witness by making true disclosure—Contradictory statement subsequently made in another case—Forfeiture of pardon—Committal to Sessions—Trial and conviction—Tender of pardon, a plea in bar of trial—Duty of jury in a jury case to decide the issue—Recantation whether amounts to giving false evidence and works a forfeiture of the pardon.*—During the preliminary enquiry into a certain dacoity case, A was tendered a pardon under s. 337. He accepted the pardon and, when examined as a witness in the case, made a full and true disclosure of what was known to him in connection with the dacoity. But a few days afterwards, while he was examined as a witness in another case connected with the same transaction, he made a statement which was totally contradictory of the evidence given by him in the previous case. A was therefore recalled by the Magistrate before whom the first statement was made, and, when further examined, he adhered to the statement made in the other Court. He was then committed to the sessions on a charge of having taken part in the dacoity and was convicted. A appealed on the ground that, the condition on which the pardon was granted having been fulfilled, the pardon could not be subsequently revoked, and that his resiling from the first statement would not work a forfeiture of the pardon, and also contended that, had he been examined at the trial in the Sessions Court, he was prepared to adhere to the first statement, and that opportunity ought to have been given him of doing so. *Held*, that the prosecution was not bound to examine the accused as a witness in the Sessions Court, after he has resiled from his original statement before the Magistrate and thereby shown that he was a witness on whose evidence no reliance could be placed. *Held* also, when a person has been pardoned and has afterwards been placed on his trial for the offence, on an allegation that he has forfeited the pardon, it is open to him to plead the pardon in bar of the trial, and the Court (*i.e.*, the jury in a jury case, and the Judge in other cases) must first try the issue as to whether the accused has, in fact, forfeited the pardon. *Held* further, that a witness who, after accepting a tender of pardon, makes a full and true disclosure, is not at liberty to subsequently contradict his statement or deny its truth, without any fear of forfeiting his pardon; that as A, in the present case, after having made a true disclosure, had at a late stage recanted, the recantation amounted to giving false evidence within the meaning of s. 339 and worked a forfeiture of the pardon. *In re* ALIGIRISAMI NAICKEN, **7 M.L.T. 121=5 Ind. Cas. 831= 1910 M.W.N. 5=33 M. 514=11 Cr. L.J. 254.**

(3021)—*Ss. 337, 339—Pardon, acceptance of, by accomplice—Forfeiture of pardon—Trial of accused for offence for which pardon was accepted—Duty of Court—Trial of preliminary issue.*—Under s. 337, Crim. Pro. Code, pardon had been

Crim. Pro. Code (Act V of 1898)—*continued.*

tendered to, and accepted by, an accomplice. The Magistrate who tried the persons implicated by the accomplice, examined the latter as a witness in that case, and, finding that his evidence was unavailable and that his statement, as approver, was not sufficiently corroborated, cancelled the pardon and ordered him to be tried for the offence of dacoity, in which on his own statement as approver, he had taken part. At his trial thereon, in the present case, he pleaded, before the Magistrate, that his pardon could not be said to have been forfeited under s. 339 of the Code as he had not failed to comply with the conditions on which the tender was made; but the Magistrate convicted him without any reference to the question raised by him. *Held*, following 31 P.R. 1904, Cr., there can be no such thing, under the present Crim. Pro. Code, as cancellation or withdrawal of a pardon once tendered and accepted; but, under s. 339, Crim. Pro. Code, such a pardon can be forfeited by a person who had accepted tender of it, if, either by wilfully concealing anything essential or by giving false evidence, he did not comply with the conditions on which the tender had been made and he may be tried for the offence in respect of which the pardon had been tendered only if the pardon had been so forfeited. The question, therefore, whether the previous pardon to the accused had been forfeited by him is to be tried as a preliminary issue and decided by the Court, before which he is put on his trial, and, until it is disposed of against the accused, he cannot be tried and convicted for the offence for which he received the pardon. BAHADUR v. EMPEROR, **59 P.R. 1905, Cr. = 40 P.L.R. 1906 = 3 Cr. L.J. 342.**

(3022)—*Ss.* 337, 339—*Pardon, forfeiture of —Approver—Statement made by approver, after accepting pardon, if admissible in evidence against him on forfeiture of pardon.*—*Held* by the Full Bench (*Chatterji* and *Johnstone, JJ.*, concurring with the opinion of *Clark, C. J.* as expressed in the order referring the case to the Full Bench), *Kensington* and *Reid, JJ., dissentiente* that, when a pardon has been tendered and accepted by a person under s. 337 of the Crim. Pro. Code and a statement is made by him before a Magistrate, which is materially incomplete or false and he is subsequently tried for the offence of which pardon was granted to him, without being examined as a witness under s. 337 (2) of the Code, the statement made by him is admissible in evidence against him at his trial for the offence. SUBA v. EMPEROR, **153 P.L.R. 1905 = 41 P.R. 1905, Cr., F.B. = 3 Cr. L.J. 55.**

(3023)—*Ss.* 337, 339—*Forfeiture of pardon before committing Magistrate — Joint trial of approver with other accused—Plea of bar on the ground of pardon in the Sessions Court—Preliminary verdict of jury on such plea, propriety of taking—Question of forfeiture of pardon if a question of fact for jury.*—Several persons were charged with having committed dacoity. One of them, S, was tendered and accepted a pardon

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under s. 337, Crim. Pro. Code, while the proceedings were pending before the committing Magistrate. The Magistrate subsequently forfeited the pardon granted to S and re-commenced the enquiry from the stage at which it was interrupted against S by the tender and acceptance of the pardon. All the accused were committed to the Court of Sessions for trial, and S having raised a plea in bar on the ground that he had received a pardon, the Sessions Judge took a special verdict from the jury in the first instance as to whether S had forfeited his pardon. The verdict of the jury was that S had forfeited his pardon and the trial was continued against all the accused. *Held*, that, where an approver has forfeited his pardon in the Magistrate's Court, there is no illegality in proceeding with the enquiry against him and in committing him for trial jointly with the other accused, and the commitment to and trial before the Sessions Court in the present case was not illegal. That the course adopted by the Sessions Judge in the present case in taking a verdict from the jury in the first instance on the plea in bar was correct. *Held, per Beachcroft, J.*—That sub-s. 2, s. 337, Crim. Pro. Code, does not mean that it is compulsory to examine the approver in the Sessions Court, if he has shown by his evidence in the Magistrate's Court that he is an untrustworthy witness. That, under the present Code of Criminal Procedure, there is no provision for withdrawing the pardon. The act terminating the pardon was, under the old law, the withdrawal by the granting authority; under the present law, it is the forfeiture by the approver. It follows as a matter of course that, when the approver is put on his trial, he may plead his pardon and in such case it must be shown that his pardon has been forfeited. The plea should be taken at the commencement of the proceedings before the Magistrate, and it would then be necessary for the Magistrate to consider whether the pardon has been forfeited. But if the Magistrate decides against the approver or even if the plea is not taken before the Magistrate, it does not follow that the plea cannot be pressed in the Sessions Court, and when the case comes before the Sessions Court, that Court ought to try the question whether the pardon has been forfeited, before trying the general issue. That the question whether the pardon was forfeited was a question of fact for the jury. SASHI RAJBUNSHI v. KING-EMPEROR, **19 C.W.N. 295 = 16 Cr. L.J. 65 = 26 Ind. Cas. 657.** (27 C. 137, 37 C. 845, *Cons.*)

(3024)—*Ss.* 337, 339—*Withdrawal of pardon —Forfeiture of pardon—Trial for offence in respect of which pardon was tendered—Procedure—Duty of Magistrate or Judge.*—The present Crim. Pro. Code contains no provision for the withdrawal of pardons. The question whether the pardon has been forfeited is in each case a question of fact, and elementary principles of justice and good faith require that this question of fact should be properly tried and determined before the approver is charged with the offence

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for which he was pardoned. The mere expression of opinion by the Sessions Judge is not enough. The approver should be given an opportunity of meeting the allegation that he has failed to make the full and true disclosure required under s. 337. The proper course is to draw up an order setting forth specifically the alleged breach of the condition or pardon, and to call upon the approver to show cause on a future date why he should not be tried for the offence in respect of which pardon was tendered as provided in s. 339. On the date fixed for the hearing, unless the approver admits the alleged breach of condition, the Magistrate or Judge should hear the evidence relied upon as establishing the breach and any rebutting evidence which the approver may offer and should then record a definite finding as to whether there has been a breach or not. A definite finding arrived at in this manner is essential before the approver can be placed on his trial for the original offence. TO GALE *alias* TO LE *alias* KYAW HLA v. KING-EMPEROR, 7 **L B R. 1 = 20 Ind. Cas. 225 = 14 Cr.L.J. 401 = 6 Bur. L.T. 96.**

(3025)—*Ss.* 337, 339—*Approver—Pardon—Giving true evidence before committing Magistrate—Resiling from such evidence before Sessions Court—Forfeiture of pardon—Offence—Duty, to give evidence in all stages of case—Meaning of the term 'in the case' in s.* 337 (2)—*Approver's evidence before committing Magistrate—Whether a 'statement'—Admissibility in evidence—Sessions Judge—Incompetency to declare pardon forfeited—Termination of trial—Approver kept in custody—Impropriety.*—Where an approver, to whom pardon was granted under s. 337, gave, in compliance with the conditions of his pardon, true evidence regarding the offence before the committing Magistrate but resiled from that evidence before the Sessions Judge. *Held* that the fact that he gave evidence in accordance with the conditions of his pardon before the committing Magistrate does not save him from being treated as a person who has forfeited his pardon within the meaning of s. 339, Crim. Pro. Code. (24 M. 321, 32 M. 173, 20 B. 611, 7 N.L.R. 65, 33 M. 514, 20 A. 529, *R.*) The words 'in the case' in s. 337, sub-s. (2) refer to the preliminary inquiry as well as to the trial, and an approver cannot be held to have complied with the condition by making a full and true disclosure in part of the case only, namely, in the preliminary inquiry, but withdrawing the evidence in the Sessions Court and saying that it was false (24 M. 321, *R.*). The approver's evidence before the committing Magistrate is a 'statement' within the meaning of s. 339, sub-s. (2) and can be used against him in evidence when the pardon has been forfeited (13 C.P.L.R. 7. 5 A L.J. 691, *R.*). The uselessness of the Sessions Judge having declared the pardon forfeited and the impropriety of his having kept the approver in custody after the termination of the trial pointed out. LOCAL GOVERNMENT v. MULLU, **11 N.L.R. 59 = 28 Ind. Cas. 993 = 16 Cr. L J. 417,** (30 B 611, *R.*)

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(3026)—*Ss.* 337, 339 (2) *and* (3), 157, 164—*Offence of murder — Production of approver before District Magistrate—Tender of pardon and recording of statement by District Magistrate—Competency of District Magistrate—Legality—Statement, whether deposition—Whether may be used in evidence of offences other than original one—Scope of s.* 337—*Scope of the term 'Inquiry' —Whether includes inquiry under s.* 157 *or s.* 164, *Crim. Pro. Code.*—A was suspected of murder and produced before District Magistrate. The latter tendered a pardon under s. 337, Crim. Pro. Code, to A. A accepted the pardon and made a statement. It was recorded by the District Magistrate himself and signed by A. Subsequently, in an inquiry before the committing Magistrate who was a Sub-Divisional Magistrate, A was examined as a witness and A denied every statement of facts made by him before the District Magistrate. The High Court was thereupon moved to sanction A's prosecution under s. 339 (3). *Held,* that it is to say that no pardon can be tendered unless wrong the inquiry before commitment under ch. XVIII has begun and then only by the Magistrate holding such inquiry. The word 'inquiry' in s. 337 (1) is not limited to an inquiry under ch. XVIII, but includes also an inquiry under s. 157 held by a Magistrate for the purpose of assisting the Police in the discovery and arrest of the offender. If a District Magistrate can sanction the grant of the pardon although he is not making the inquiry himself, *a fortiori* he can himself grant a pardon in a case where the inquiry is made by himself. The expression "any person supposed to have been directly or indirectly concerned in or privy to the offence under inquiry in s. 337 (1)" is a very wide one and includes others besides an accused who has been sent up for trial by the police: *Held,* also, that the pardon was tendered to the opponent with a view to obtaining his evidence, and that he was for that reason examined on oath and that the statement was not a confession but was a deposition given by the approver as a witness. The fact that the District Magistrate had no jurisdiction to try the offence does not affect his competency to record the deposition (*Vide* Explanation to s. 164). It is not necessary that a person to whom pardon was tendered was not examined as a witness before the Court of Session. To comply with the provisions of s. 337 (2), it is sufficient that the approver had been examined as a witness before the committing Magistrate (24 M. 321, 33 M. 514, *F.*). S. 339 (2), which expressly provides that the statement of an approver who has forfeited his pardon may be used as evidence against him when tried for the offence in respect of which the pardon was tendered, does not prohibit its use when tried for any other offence. Such statement may be used as the basis of a charge of perjury. The proceeding in which the statement of a witness is recorded under s. 164, Crim. Pro. Code, is an investigation directed by law preliminary to the trial and comes within Expl. 2 to s 193, I.P.C., and is therefore a stage of a judicial proceeding. CROWN v.

ANDAL, 5 S.L.R. 174 = 13 Ind. Cas. 273 = 13 Cr. L.J. 33. (29 M. 89, *F.*; 2 A. 260 and 1 B. 610, *Not Appl.*; 16 M. 421 and 22 A. 115, *R.*). [*R.*, 6 S.L.R 143 = 19 Ind. Cas. 508 = 14 Cr. L.J. 252.]

(3027)—*Ss.* 337, 339 (3)—*Pardon—Approver—Sanction of High Court for prosecution of approver how to be obtained—Practice—Motion in open Court.*—Where it is desired to obtain the sanction of the High Court to prosecute an approver for giving false evidence after the grant to him of a pardon, under s. 337, Crim. Pro. Code, the proper procedure is for the Crown to move the High Court by motion in open Court and not by letter of reference. No order can be passed on a letter of reference. CROWN v. RAJA, SON OF ILM DIN, **30 P.W.R. 1912, Cr. = 175 P.L.R. 1912 = 15 Ind. Cas. 83 = 13 Cr. L. J. 451 = 230 P.L.R. 1912.** (10 P.R. 1904 = 1 Cr. L.J. 793, *F.*)

(3028)—*Ss.* 337 (2), 339 (3)—*Pardon, tender of—Approver—False statement— Examination as witness—Sanction to prosecute for perjury—Penal Code, ss.* 193, 194.—Action can be taken by the High Court under s. 339 (3) against an approver in respect of a statement made by him, which is *prima facie*, false, even though the approver has not been examined as a witness in the case in connection with which he made his statement. The High Court can sanction the prosecution of an approver for an offence under s. 193 or s. 194 of the Penal Code in respect of such statement (*a*). EMPEROR v. RAJA, **14 Cr. L.J. 64 = 18 Ind.Cas. 352 = 17 P.W.R. 1913, Cr. = 227 P.L.R. 1913.** (41 P.R. 1905, Cr. = 153 P.L.R. 1905 = 3 Cr. L J. 55, *F.*)

(3029)—*Ss.* 337, 339 *and* 342—*Accomplice to whom pardon has been granted—Competency to give evidence.*—An accomplice, to whom the Local Government has made a promise not to prosecute and by whom the promise has been accepted, after the commencement of the trial, is not a competent witness. Such grant of pardon does not alter the position of the accomplice as an accused person, and make him cease to be an accused person. No oath could be administered to him. ALLADAD v. KING-EMPEROR, **9 P.R. 1906, Cr. = 113 P.L.R 1907 = 4 Cr. L.J. 282.** (21 P.R. 1904, Cr., *D.*)

(3030)—Ss. 337—339, 342—*See* ACCOMPLICE—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, 21 P.R. 1904, Cr.

(3031)—Ss. 337, 339 and 436—*See* APPROVER, 1 P.R. 1898, Cr.

(3032) — *Ss.* 337, *sub-s.* 3, 339, 437, 209 — *Conditional pardon — Approver — Approver breaking the conditions of pardom—Discharge of his co-accused by Magistrate— Subsequent trial of the approver—Committal of the approver to Court of Session—Proceedings against the discharged accused—High Court—Order of fresh enquiry against them—Order committing them to Sessions Court for joint trial along with approver, if the enquiry ended in commitment.*—A conditional pardon having been given to an accused person, he was examined as a witness in the trial of the remaining four accused person before a Magistrate of the First Class. The approver there denied all knowledge of the offence, and in the absence of evidence against the four accused, they were discharged by the Magistrate under s. 209 of the Crim. Pro. Code. Later on, the pardon granted to the approver was withdrawn, he was tried under s. 339 of the Code for the offence and was committed to the Court of Session. The material piece of evidence to be laid against the approver was his confessional statement which incriminated both himself and the other accused. The Sessions Judge referred the case to the High Court, for an order quashing the commitment of the approver and directing his trial *de novo* along with the four accused who had been discharged:—*Held,* (1) that the High Court had the power, under s. 437 of the Crim. Pro Code, to order, in the case of the four accused persons who were discharged, that there should be a fresh enquiry, and that, if that enquiry ended in the framing of a charge, the four accused persons should be committed to the Court of Session, which was seized of the case against the approver: (2) That, as the provisions of sub-s. 3 of s. 337 of the Code were fully carried out at the time when they were applicable, they did not constitute any bar against the HighCourt's ordering that, if the enquiry against the discharged persons ended in a commitment, they should be committed to be tried jointly with the approver. Sub-s. 3 of s. 337 of the Code contemplates only a case where there has been a commitment made by the Magistrate to the Court of Session or the High Court. It omits to consider the case where the Magistrate himself on his own responsibility discharges the accused person. The meaning of the sub-section is that the approver shall not be set at large until the judicial proceedings pending against the accused are finished. It is immaterial, for the purposes of the section, whether the proceedings are finished by a Magisterial order of discharge before trial, or by a Judge's order of acquittal after trial. In the case of the Magisterial discharge, the sub-section will be satisfied if the approver is detained in custody or on bail until the order of discharge is made. EMPEROR v. INTYA, **14 Bom. L.R. 897 = 1 Bom. Cr. C. 193 = 13 Cr.L.J. 842 = 17 Ind. Cas. 714 = 37 B. 146.**

(3033) — Ss. 337, 339, 539—*See* PARDON, 1 P.R. 1898, Cr.

(3034)—Ss. 337, 364, 434—*See* CHARGE TO JURY—MISDIRECTION, 17 C. 642.

(3035)—*Ss.* 337, 494—*Withdrawal of prosecution — Competency to testify.*—A person whose prosecution has been withdrawn under s. 494, Crim. Pro. Code, can be examined as a witness in a case in which he had been accused. A number of accused were charged before a Magistrate with a criminal offence. During the conduct of the trial, the Public Prosecutor, with the consent of the Magistrate, withdrew from the prosecution instituted against two of

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them, and they were discharged by the Magistrate. *Held* that the two persons so discharged were competent witnesses. QUEEN-EMPRESS v. HUSSEIN HAJI, 25 B. 422=2 Bom. L.R. 1095.

(3036)—Ss. 337, 529—*See* PARDON, 20 A. 40 =A.W.N. 1897, 173.

——**S. 338 (=1882, s. 338; 1872, s. 348; 1861, s. 210).**

See ACCOMPLICE.

See ACCUSED PERSON.

See APPROVER.

See PARDON.

(3037)—*S.* 338 (=*Crim. Pro. Code, Act* X *of* 1872, *s.* 348)—*Pardon illegally tendered by committing Magistrate — Effect.*—Where a second class Magistrate tendered pardon to one of the persons accused of murder before him without the sanction of the District Magistrate, and the Sessions Judge, before whom this person was not brought as accused, found on evidence that he was implicated in the murder and also that his evidence was likely to be material to the case, *held* that the Sessions Judge could himself tender pardon under s. 348 of the Crim. Pro. Code. EMPRESS v. KASHIA, **A.W.N. 1882, 241.**

(3038)—S. 338—*See* PRACTICE AND PROCEDURE, A.W.N. 1884, 147.

(3039)—S. 338—*See* Nos. 187, 3014, *supra.*

(3040)—*Ss.* 338, 339 (=*Crim. Pro. Code, Act* X *of* 1878, *ss.* 348, 349)—*Withdrawal of pardon after examining accused.*—Where a Sessions Judge offered a pardon to one of the accused persons, examined him as a witness against the others, then revoked the pardon and tried and convicted him, *held* that the procedure was altogether irregular. EMPRESS v. SAMCHARAN, **A.W.N. 1882, 31.**

——**S. 339 (=1882, s. 339; 1872, s. 349; 1861, s. 211).**

See ACCOMPLICE.

See ACCUSED PERSON.

See APPROVER.

See PARDON.

(3041)—*S.* 339—*Pardon, tender of—Trial of approver—Withdrawal of pardon—Forfeiture of pardon.*—It cannot be laid down as a general rule that a Magistrate who tenders a pardon to an accused person has no jurisdiction to commit him before the close of the trial of the other accused, since the Legislature, by using a general term like "case" in s. 339, Crim. Pro. Code, instead of the word "trial" meant to abstain from laying down any such rule. [*R.*, 14 Bur. L R. 306=7 Cr. L.J. 245=U.B.R. 1907, Crim. Pro. Code. 7, 32 M. 173, 5 N.L.R. 134= 3 Ind. Cas. 922.] In s. 339, the word, "withdrawn" in the Code of 1882 has disappeared and been replaced by the word "forfeited." As the law now stands, the question is whether the accused has forfeited his pardon by some act of his own, not whether the Magistrate has validly withdrawn it. The question is one of fact on which it is clear that the Magistrate may hold one opinion and the Sessions Judge another. The Sessions Court has to determine for itself, on the evidence before it, whether the pardon has been forfeited; for, if not, the accused who has accepted such pardon, cannot be tried. KING EMPEROR v. BALA, **25 B. 675=3 Bom. L.R. 271.** [*F.*,32 M. 173=2 Ind. Cas 343=9 Cr. L J. 571; *R.*, 14 Cr. L.J. 401=20 Ind. Cas. 225 =7 L.B.R. 1, 33 B. 423=11 Bom.L.R. 350=10 Cr. L.J. 30=2 Ind. Cas. 480, 11 Cr. L.J. 724= 8 Ind. Cas. 874=13 O.C. 337, 153 P.L.R. 1905 =41 P.R. 1905, Cr.; *D.*, 37 C. 845=15 C.W.N. 25=11 Cr. L.J. 702=8 Ind. Cas. 721.]

(3042)—*S.* 339 (=*Crim. Pro. Code*, 1882, *s.* 339)—*Withdrawal of conditional pardon.*—Under s. 339, a conditional pardon should be withdrawn by the authority which granted it, and not by the High Court. QUEEN-EMPRESS v. MANICK CHANDRA SARKAR, **24 C. 492.** [*F.*, 37 C. 845=15 C.W.N. 25=8 Ind. Cas. 721=11 Cr. L.J. 702, 24 M. 321=2 Weir 396; 19 P.R. 1901, Cr.; *R.*, 32 M. 173=9 Cr. L.J. 571=2 Ind. Cas. 343, 3 O. C. 191; *D.*, 149 P.L.R. 1901=176 P.L.R. 1905=31 P.R. 1904, Cr.]

(3043)—*S.* 339—*Pardon tendered by Dt. Magistrate and accepted by approver—Sessions Judge ordering commitment of approver on his retracting his statement—Legality of commitment.*—In a case, triable exclusively by the Court of Sessions, an approver was offered pardon on the condition of his making a true statement of facts of the case. The approver accepted the pardon and made a statement which he afterwards retracted. The Sessions Judge, trying the case, ordered the approver to be committed to the Court of Sessions for not fulfilling the condition on which the pardon was granted. It was contended that the pardon could be withdrawn by the District Magistrate only and therefore the commitment by order of the Sessions Judge was illegal. *Held*, that the contention had no force. The Sessions Judge was competent to order the approver to be committed to the Court of Sessions when he was of opinion that he had forfeited the pardon. No withdrawal of pardon is necessary before the approver is ordered to be tried for the original offence in respect of which pardon was granted. CROWN v. KADU, **176 P.L R. 1905=31 P R. 1904, Cr.=1 Cr.L.J. 1082.**

(3044)—*S.* 339—*Pardon forfeited—Power of Judge to direct prosecution.*—A conditional pardon was given to G and he was tendered as a witness in a Sessions trial. The Judge before whom he was examined was of opinion that G had not spoken the truth and acquitting the accused directed the prosecution of G. G did not raise the plea of illegality of the prosecution before the committing Magistrate but raised it before the Sessions Judge who set aside the commitment and discharged the accused. *Held* that G was entitled to raise the plea before the Sessions Judge though he had not raised it before the committing Magistrate. *Held*, also

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that the Sessions Judge, in the former trial had no jurisdiction to direct the prosecution of G on any specific charge, but, if he thought that G had concealed any thing essential, he could have recorded his opinion and invited the attention of the District Magistrate to it. EMPEROR v. GANGUA, **13 A.L.J. 424.** (30 B. 611, 32 M. 173, 33 M. 514, 37 C. 845, *R.*)

(3045)—*S.* 339 — *Forfeiture of pardon — Practice.*—Where an accomplice forfeits the pardon offered to him, it is the duty of the Sessions Judge to record a finding as to the forfeiture. It is not enough that the committing Magistrate does so. *In re* MADIGA POTHUGADU, **16 Cr.L.J. 234**=**27 Ind. Cas. 906.**

(3046)—*S.* 339 (3)—*Trial for murder—Conditional pardon to an accomplice—King's witness — Contradictory statement before Magistrate — Sanction to prosecute.*—B was tendered in evidence as an accomplice giving evidence under a conditional promise of pardon. Before the committing Magistrate he gave evidence that the accused had committed murder. When examined again before the same officer, he said that his previous statement was false. Before the Sessions Judge he again returned to his first statement. *Held* that a witness, who was in any way induced to make a false statement in connection with a capital charge, should be allowed every possible *locus penitentiæ*, and sanction to prosecute him should not be given merely on the ground that he contradicted himself before the committing Magistrate. In this case, however, sanction was given. KING-EMPEROR v. BODHA, **11 A.L.J. 964**=**22 Ind. Cas. 428**=**15 Cr. L J. 76.**

(3047)—*S.* 339 (3)—*High Court, sanction of, under—Necessity for a motion on behalf of the Crown — Prosecution of approver.*—If the sanction of the High Court is desired under s. 339 (3), Crim. Pro. Code, there should be a motion on behalf of the Crown. *In re* MADIGA NALLAVADU, **5 M.L.T. 164**=**32 M. 47**=**1 Ind. Cas. 207**=**9 Cr.L.J. 283.**

(3048)—S. 339—*See* Nos. 1739, 1741, 1830, 2978, 3014 to 3033 and 3010, *supra.*

(3049)—Ss. 339 and 477—*See* APPROVER, 42 P.R. 1884, Cr.

——**S. 340 (=1882, s. 340; 1872, s. 186, paras. 1 and 2; 1861, s. 432).**

See ACCUSED PERSON.

See DEAF AND DUMB PERSON.

See LEGAL PRACTITIONERS—PLEADER.

(3050)—*S.* 340—*Trial of a deaf an dumb man—Summary trial—Reference to High Court.*—Where the accused is deaf and dumb, it is inconvenient to try him summarily. In such a case, an attempt should be made to find out whether the accused has any friends or relatives, who are accustomed to communicate with him. The Magistrate should make inquiries about his antecedents, ordinary mode of life and the manner in which he was communicated with in the ordinary affairs of life. *In re* DEAF AND DUMB MAN, **8 Bom. L.R. 849**=**4 Cr.L.J. 444.**

(3051)—*S.* 340 (=*Crim. Pro. Code*, 1872, s. 186)—*Accused, a deaf and dumb person.*—The High Court, under the circumstances of this case, which came before it under the last clause of s. 186, Crim. Pro. Code, set aside the conviction of the prisoner, a deaf and dumb person, and directed that he be admonished and discharged. DWARKANATH HALDAR v. NODER CHAND KAMTE, **22 W.R. 35, Cr.**

(3052)—*Crim. Pro. Code*, 1898, s. 340 —*Prisoner deaf and dumb.*—Case where the conviction of a deaf and dumb prisoner, who had a further opportunity given him of being heard in defence, was confirmed by the High Court, under the circumstances. THE QUEEN v. BOWKA, **22 W.R. Cr. 72.**

(3053)—*S.* 340 (=*Crim. Pro. Code*, 1861, s. 432)—*Agent of accused in Criminal Court—Appellate Court.*—S. 432 of the Crim. Pro. Code, entitles a prisoner to authorize any person to be his agent in any Criminal Court. REG v. RAMCHANDRA, **Rat. Un. Cr. C. 1.**

(3054)—*S.* 340 (=*Crim. Pro. Code*, 1861, *as amended by Act VIII of* 1869, *s.* 432)—*Mooktears, employment of.*—The terms of s. 432 do not warrant any general rule for the exclusion of Mooktears in all cases, but only allow the exercise by Magistrates of their discretion in each case as it arises. The Magistrates shall not, by indiscriminate exclusion of persons who are invested by law with a distinct professional status in criminal trials, deprive parties of legal aid which they could frequently obtain at a moderate cost. CRIMINAL CIRCULAR ORDER NO. 13 OF 1870, **14 W.R. Cr. Cir. 5.**

(3055)—*S.* 340 (=*Crim. Pro. Code*, 1872, s. 186 (2)—*Unauthorized pleaders.*— Under s. 186 (2), the Criminal Courts are bound, in each case coming before them, to exercise a discretion as to permitting the person nominated to conduct the defence, in cases where such person is not an authorized pleader. HIGH COURT PROCEEDINGS, 11TH JAN. 1875, NO. 53, **2 Weir 400.**

(3056)—*S.* 340 (=*Crim. Pro. Code*, 1872, s. 186)—*Pleaders of District Munsif's Courts—Vakalatnamah in criminal cases.*—A pleader of a District Munsif's Court comes within the category of "authorized pleaders," and, as such is not required to file a vakalatnamah in criminal cases. HIGH COURT PROCEEDINGS, 28TH MARCH 1879, NO. 559, **2 Weir 402.**

(3057)—*S.* 340 (=*Crim. Pro. Code*, 1872, **s. 186)**—***Deaf and dumb accused—Conviction for***

Crim. Pro. Code (Act V of 1898)—*continued.*

house-breaking—Validity.—Where a person aged nearly 16 years, whose understanding was of the most limited kind, and who had been deaf and dumb from his birth, was convicted of house-breaking by night, the High Court, considering the facts already stated and considering also that sheer hunger had driven him to break into the house and that he had never been in arrest before, recommended that he should be made over to his father. QUEEN v. GANGA, **7 N.W.P. 131.**

(3058)—*S.* 340—*Right of counsel to be heard.*—Where a Judge proceeds to hold a preliminary enquiry under s. 476 of the Crim. Pro. Code, the person against whom such enquiry is started is not the accused person; and even if he be an accused person the Court making such enquiry is not a Criminal but a Civil Court. It is a very general practice to hear pleaders on behalf of persons in Civil or Criminal matters, and as *amici curiæ* even in criminal revision RAM NIHORE UMAR v. KING-EMPEROR, **8 A.L.J. 237 = 10 Ind. Cas. 740 = 12 Cr. L.J. 231.**

(3059)—S. 340—*See* LEGAL PRACTITIONERS—ADVOCATE, 2 Weir 402 = 7 M H.C. App. 40.

(3060)—S. 340—*See* Nos. 89, 90, 726, 727, 2066, *supra.*

(3061)—*Ss.* 340, 341 (= *Crim. Pro. Code,* 1872, s. 186)—*Scope of section.*—S. 186 of the Crim. Pro. Code is intended to provide for cases in which the accused person is deaf and dumb, or, from ignorance of the language of the country and the want of an interpreter, is unable to understand or make himself understood; and, in such cases, the High Court would order the prisoner to be detained during Her Majesty's pleasure, QUEEN-EMPRESS v. HUSSEIN, **Rat. Un. Cr. C. 151.**

(3062 & 3063)—*Ss.* 340, 341 (= *Crim. Pro. Code,* 1872, s. 186)—*Reference to High Court*—Under s. 186, it is necessary that there should have been a committal or conviction before a reference is made to the High Court. QUEEN-EMPRESS v. TRIKAM, **Rat. Un. Cr. C. 180.**

(3064)—*Ss.* 340, 341 (= *Crim. Pro. Code,* 1872, *s.* 186).—*Accused, a deaf and dumb person.*—Case where the High Court, under the circumstances, set aside the conviction of the prisoner, a deaf and dumb person, and directed that he be admonished and discharged. DWARKA NATH HALDAR v. NODER CHAND KAMTE, **22 W.R. Cr. 35.**

(3065)—*Ss.* 340, 341 (= *Crim. Pro Code,* 1872, *s.* 186)—*Deaf and dumb person—Trial of—High Court.*—Under s. 186, Crim. Pro. Code, 1872, the discretion vested in the High Court is very wide; though according to the principles of English Common Law proceedings conducted when the accused is unable to understand do not constitute them a fair and proper trial, still the High Court, can, under special circumstances, if it thinks fit, treat the proceedings of the lower Court as a sufficient trial and pass sentence on the prisoner, according to the facts which seemed to be established in the course of and as the result of those proceedings; or the High Court, though it may believe in the guilt of the prisoner, may give him a further opportunity of being heard in the matter of the charge. QUEEN v. BOWKA HARI, **22 W.R. Cr. 35.**

(3066)—*Ss.* 340, 341, 288 (= *Crim. Pro. Code,* 1872. *ss.* 186, 249)—*Cross-examination — Refusal of right of.*—Where the evidence given before a committing Magistrate by certain witnesses was repudiated, and they made entirely different statements before the Sessions Judge, and the Sessions Judge thereupon, under s. 249, Crim. Pro. Code, used the previous depositions of those persons as evidence in the case, and it was objected that those depositions ought not to be so used because they were given without cross-examination, in consequence of the refusal of the Magistrate to allow pleaders to appear before him on behalf of the accused, *held,* that, under the circumstances of the case, the conviction based merely upon such evidence was not improper. *In the matter of* DHAM MUNDUL, **6 C.L.R. 53.**

(3067)—Ss. 340, 341, 464—*See* ACCUSED PERSON, 5 B. 262.

(3068)—*Ss.* 340, 426, 439, 440, 348 *of Crim. Pro. Code,* 1898 (= *Crim. Pro. Code.* 1872, *ss.* 186, 297, 315)—*Accused a deaf and dumb person—Understanding proceedings—Previous convictions—Committal—Sessions Court.*—Where a Deputy Magistrate found the accused deaf and dumb and unable to understand the proceedings but the District Magistrate found from the demeanour and action of the accused that he understood what he was charged with, *held,* that the District Magistrate's finding must be accepted as final, and that the provisions of s. 186, Crim. Pro. Code, 1872, did not apply. Under s. 297, Crim. Pro. Code, 1872, the High Court can, whenever there has been any material error in any judicial proceedings, pass such judgment, sentence or order as it thinks fit. Acting under s. 297, Crim. Pro. Code, the High Court set aside the order of the Deputy Magistrate, and, as the accused had been previously convicted of an offence under Chap. XVII of the Penal Code, punishable with rigorous imprisonment, ordered that he should, under s. 315, Crim. Pro. Code, be committed for trial to the Sessions Court. DOOBRI HULWAI v. A DUMB PERSON, **19 W.R. Cr. 37.**

— **S. 341 (= 1882, s. 341; 1872, s. 186, para 3.)**

See ACCUSED PERSON.

See DEAF AND DUMB PERSON.

See LUNATIC.

Crim. Pro. Code (Act V of 1898)—*continued.*

(3069)—*S.* 341—*Scope of—Deaf and dumb accused—Understanding of proceedings.*—S. 341 does not apply where it is shown that the accused understood the proceedings. EMPEROR v. DADA MAHADU, **3 Bom. L R. 371.**

(3070)—*S.* 341 (=*Crim. Pro. Code*, 1882, *s.* 341)—*Applicability.*—S. 341 of the Crim. Pro. Code becomes applicable only after a conviction, and where the Magistrate finds for good reasons that the accused is unable to understand the proceedings. *In re* DUMB MAN, **Rat. Un. Cr. C. 836.**

(3071)—*S.* 341—*Report to High Court under section when to be made.*—S. 341, Crim. Pro. Code, requires that the Court shall proceed to the end of the trial and then report the result to the High Court, if a conviction follows. It does not empower a Magistrate to make the report in the middle of a trial. *In re* A DEAF AND DUMB MAN, **4 Bom L.R. 825.**

(3072)—*S.* 341—*Reference— Report — Procedure.*—Before a reference is made to the High Court under s. 186, Crim. Pro. Code, 1872, the Judge should proceed to the end of the trial, and report the trial, if a conviction follows. HIGH COURT PROCEEDINGS, 22ND APRIL 1873, NO. 848, **2 Weir 403.**

(3073)—*S.* 341—*Accused being deaf and dumb—Practice.*—The fact of an accused being deaf and dumb is not *per se* sufficient to justify a reference under s. 341, Crim. Pro. Code. An attempt to make such an accused understand the proceedings, and the fact that he could not be made to understand them should appear on the record. EMPRESS v. KONDA, **9 C.P.L.R. 38, Cr.**

(3074)—*S.* 341 (=*Crim. Pro. Code*, 1882, *s.* 341)—*Reference under section—Duty of Magistrate.*—In submitting a case to the High Court under s. 341, Crim. Pro. Code, the Magistrate must state his view of the conduct of the dumb accused in the commission of the offence, and take some evidence regarding the previous history and habits of the accused. There must also be a finding whether the accused was capable of understanding and did in fact understand the nature of the proceedings and whether he understood the purport of the evidence given by the witnesses, and whether he wanted to call witnesses, in his defence. QUEEN-EMPRESS v. REUBIN SAMUEL, **Rat. Un. Cr. C. 696=Cr. Rg. 26 of 1894.**

(3075)—*S.* 341—*Reference under the section—Findings of Magistrate—Power of High Court to pass final order.*—In a case referred under s. 341, the Legislature seems to have contemplated that there should be a finding by the Magistrate, either by what is called a conviction or commitment, that *prima facie*, that is to say, on the evidence for the prosecution, an offence has been committed, and that the accused, though not insane, cannot be made to understand the proceedings, and the High Court is competent to pass sentence in the absence of any defence for the above-mentioned reason. In a case of murder reported to the High Court after commitment to Sessions, the High Court, holding that no benefit was likely to result by his being tried by a Court of Sessions and finding that the accused, though guilty, was not responsible for his actions by reason of the unsoundness of his mind, directed the accused to be kept in the District Jail pending the order of the Local Government. QUEEN-EMPRESS v. SOMIR BOWRA *alias* SOMIR BABA, **27 C. 368=4 C.W.N. 421.** [*Rel.*, 12 Cr. L J. 386=11 Ind. Cas. 250=U.B.R. 1900, 4th Qr., 57; *R.*, 12 Cr. L. J. 613=12 Ind. Cas. 989 =13 P R. 1911, Cr.]

(3076)—*S.* 341—*Power of High Court under—Criminal responsibility of deaf-mutes.*—It is impossible that a deaf-mute should be able to live to maturity without being able to communicate with his relations, and he and his relations must have established some practicable method of inter-communication by signs or otherwise. In modern practice, want of speech and hearing does not imply want of capacity either in the understanding or memory, but only a difficulty in the means of communicating knowledge. The law in India certainly does not expressly provide for a sane deaf-mute, who has never been instructed, being exempted from punishment. If his mind is sound, his inability to hear and speak will not excuse him. S. 341, Crim. Pro. Code, gives the High Court full discretion to do whatever the circumstances of the particular case require. The High Court can, in a case triable by a Magistrate, pass sentence on what is termed a conviction, though it cannot, strictly speaking, be so termed, seeing that the accused cannot in such a case make a proper defence. KING-EMPEROR v. NGA SAN MYIN, **U B.R. 1910, 4th Qr., p. 57=11 Ind. Cas. 250=12 Cr. L.J. 386=4 Bur. L.T. 150.** (22 W.R.C.R 35, 27 C. 368=4 C W.N. 421, P.R. 1885, p. 98, P.R. 1889, p. 139, *Cons.*)

(3077)—*S.* 341—*Action under—Enquiry into lunacy of accused at time of trial or offence—Necessity of—Magistrate's duty to try or to commit for trial—His duty on conviction—Crim. Pro. Code, Ch.* XXXIV.—Before a Magistrate could act under s. 341, Crim. Pro. Code, he should hold an enquiry into the question whether the accused was a lunatic either at the time of the trial or at the time of the commission of the alleged offence. If he finds that he was not a lunatic on either of the occasions, he will then, as required by s. 341, Crim. Pro. Code, try the accused or commit him to the Sessions Court for trial. If he convicts him, he will then make a report to the High Court under s. 343, Crim. Pro. Code. ADALA YERRIVADU, **11 M.L.T. 24=13 Ind. Cas. 216=13 Cr. L.J. 24.**

(3078)—*S.* 341, *proviso—Transfer of case under—Application of s.* 350.—A Subordinate Magistrate, before whom the accused was first placed for trial, took down the evidence of the witnesses for the prosecution and also examined

Crim. Pro. Code (Act V of 1898)—*continued.*

the accused with reference to such evidence. After this, records were put in for previous convictions against the accused Thereon, the case was transferred to the District Magistrate under the proviso to s. 348 of the Code. The District Magistrate acting upon the evidence already recorded, convicted the accused, who called no evidence. *Held*, on appeal, that, as the only section of the Code, which empowers one Magistrate to act upon the evidence recorded by another is s. 350 and that section cannot be held to cover this case of a transfer of a trial from one Court to another, the conviction and sentence by the District Magistrate must be set aside and a new trial ordered. LADYA v. EMPEROR, **1 N.L.R 187.**

(3079)—S. 341— *See* Nos. 3061 to 3066, *supra and* NO. 4887, *infra.*

(3080)—Ss. 341 *and* 465—*Procedure in case of a lunatic not able to understand proceedings in Court.*—The fact that an accused was of weak intellect, and subject to constant epileptic fits, although not insane, was held to be sufficient proof of unsoundness of mind to show the probable cause of his inability to make his defence; and the trial of such a person should be postponed under s. 465 of the Code. QUEEN-EMPRESS v. NGA PO THWE, **U.B.R. 1892—1896, Vol. I, 38.** (5 B. 262, *R.*)

——S. 342 (=1882, s. 342 ; 1872, ss. 193, 250, 342, 343, 345 ; 1861, ss. 202, 204, 273).

See ACCUSED PERSON.

See EXAMINATION OF ACCUSED.

(3081)—*S.* 342 (=*Crim. Pro. Code*, 1882, s. 342)—*Scope of.*—It is not for the purpose of ascertaining what witnesses the accused intends to call, or what evidence they will give, or what his defence is, that a Court is justified or authorized in examining an accused under s. 342. A Court is only authorized to examine him "for the purpose of enabling him to explain any circumstances appearing in the evidence against him." "The evidence" in that section is the evidence already then given at the trial. QUEEN-EMPRESS v. HARGOBIND SINGH, **14 A. 242=A.W.N. 1892, 83.** [*R.*, 4 N.L.R. 163=9 Cr.L.J. 56.]

(3082)—*S.* 342—*Scope of.*—S. 342 permits an examination of the accused to be made solely for the purpose of enabling the accused to explain facts appearing against him. KING-EMPEROR v. BHUT NATH GHOSE, **7 C.W.N. 345.**

(3083)—*S.* 342—*Scope of.*—The language of s. 342 is mandatory, and the omission to comply with its provisions is not a mere error of form. There may, of course, be circumstances in which the omission could not reasonably be held to have prejudiced the accused, and in which, therefore, the interference of the High Court may be discretionary. But where there are grounds for thinking that the omission on the part of the Court to question the accused operated to produce a non-disclosure of the case for the defence and the withholding of evidence material for the defence, the High Court would interfere. *In re* RAJA PADAYACHI, **2 Weir 405.**

(3084)—*S.* 342—*Scope and application of.*—Crim. Pro. Code, 1882, s. 342, says that the Court should question the accused generally on the case before he is called on for his defence, for the purpose of enabling him to explain any circumstances appearing in the evidence against him. QUEEN-EMPRESS v. NGA THA DUN, **U.B.R. 1892—1896, Vol. I, 144.**

(3085)—*S.* 342 (=*Crim. Pro. Code*, 1882, s. 342)—*Object of.*—The object of s. 342 is not to fill up a gap in the evidence for the prosecution, but to enable the prisoner to explain any circumstances appearing in the evidence against him. Where a statement purporting to have been made by the accused in a previous proceeding was not properly in evidence against him, the Judge would not be acting properly in asking the accused about it. BASANTA KUMAR GHATTAK v. QUEEN-EMPRESS, **26 C. 49.** [*F.*, 27 M. 238=2 Weir 408 ; *R.*, 5 C.W.N. 670, 36 M. 457=22 M.L.J. 73=10 M.L.T. 506=1911 2 M.W.N. 576=12 Ind. Cas. 961=12 Cr.L.J. 585, 4 N.L.R. 163=8 Cr.L.J. 56.]

(3086)—*S.* 342—*Object of.*—The object of the examination under the above section is to enable the accused to explain circumstances appearing in the evidence against him. Consequently, the Court cannot cross-examine the accused to elicit admissions. NGA HMUN v. QUEEN-EMPRESS, **L B.R. 1872—1892, 320.**

(3087)—*S.* 342 (=*Crim. Pro. Code*, 1882, s. 342)—*Accused person, examination of—Warrant case.*—Under s. 342, Crim. Pro. Code, an accused person, before he is put on his defence, must be examined by the Court. QUEEN-EMPRESS v. BAVACHELA, **Rat. Un. Cr. C. 227=Cr. Rg. 5 of 1886.**

(3088)—*S.* 342—*Warrant case—Procedure.*—Where, in a warrant case, the accused is examined by the Magistrate before any evidence has been recorded, *held*, that such procedure is illegal, as the power given by s. 342 to examine the accused "for the purpose of enabling him to explain any circumstances appearing in the evidence against him," has not come into play. QUEEN-EMPRESS v. HOWTHORNE, **13 A. 345 =A.W.N. 1891, 102.** [*R.*, 9 Cr.L.J. 56=4 N.L.R. 163, Rat. Un. Cr. C. 679.]

(3089)—*S.* 342 (=*Crim. Pro. Code*, 1882, s. 342)—"*Accused*" — *Term explained.*—By "accused" is meant a person over whom the Magistrate or other Court is exercising jurisdiction. QUEEN-EMPRESS v. MONA PUNA, **16 B. 661.** [*F.*, 23 C. 493, 21 A. 107=18 A.W.N. 185 ; *R.*, 23 B. 213, 15 P.R. 1900, Cr.=P.L.R. 1900, p. 59, 5 C.W.N. 749=28 C. 709, 15 C.P.L.R 112, 24 P.R. 1903, Cr., 21 P.R. 1904, Cr.=135 P.L.R. 1904, 131 P.L.R. 1905=42 P.R. 1905, Cr., 13 C.W.N. 151=36 C. 163=8 C.L.J. 565, 4 N.L.R. 81=8 Cr.L.J. 20 ; *D.*, 9 C.W.N. 983.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(3090)—*S.* 342—*Questioning accused about previous conviction—Legality.*—It is not competent to a Magistrate to question an accused, under s. 342 before his conviction, about his previous conviction, with a view to take into consideration, for the purposes of conviction or with a view to dispense with formal evidence as to the alleged previous conviction and as to the identity of the accused, in the event of conviction. EMPEROR v. ALLOOMIYA HUSAN, **28 B. 129=5 Bom. L.R. 805.**

(3091)—*S.* 342 — *Co accused examined as witnesses after conviction and before sentence.*—The accused, numbering nine persons, were put up for trial on a charge of dacoity. Two of them pleaded guilty and were at once convicted, but their sentences were postponed till the end of the trial. They were then taken from the dock and examined as witnesses against the rest of the accused. *Held* by *Candy, J.*, that they were competent witnesses as they were no longer accused persons but were convicts, but the fact that they have not been sentenced would affect the value of their evidence, as they might naturally think that it would be for their advantage to tell a story as much as possible in favour of the prosecution. *Held* by *Fulton,J.*, (1) that their evidence should be rejected, as the procedure followed was illegal, as it contravened the provisions of s. 342, which provided that no oath should be administered to the accused; (2) that the accused, though solemnly affirmed as witnesses, were still under trial and under examination by the Court; and (3) that the trial of the accused did not end with their conviction. KING-EMPEROR v. ANNYA, **3 Bom. L.R. 437.** (23 B. 213, *R.*) [*R.*, 10 Cr.L.J. 19, 15 C.L.J. 517=16 C W.N. 1105=13 Cr.L.J. 609=16 Ind. Cas. 257].

(3092)—*S.* 342—*Sessions Judge—Trial—Examination of accused—Forms of trial in criminal cases.*—The term "shall," in s. 342 of the Crim. Pro. Code, makes the duty imposed on the Court to question the accused generally on the case, after the witnesses for the prosecution have been examined and before he is called for his defence, mandatory, not discretionary. Having regard to the object of the examination, specified in the section, *viz*, that the legislature intended it to enable the accused to explain any circumstances in the evidence against him, it is clear that the omission by the Court, to perform such duty in a criminal trial, must be presumed to have seriously prejudiced the accused. EMPEROR v. SAVALYA ATMA PASTYA, **9 Bom. L R. 356=5 Cr.L.J. 332.** [*F.*, 9 Bom. L.R. 730.]

(3093)—*S.* 342—*Sessions Judge—Trial—Examination of accused.*— The provisions of s. 342, apply to the case of an accused tried before a Sessions Judge, even when he has been questioned on the case generally by the committing Magistrate. EMPEROR v. RAJU AHILAJI, **9 Bom. L.R. 730=6 Cr.L.J. 74.**

(3094)—*S.* 342 (=*Crim. Pro. Code*, 1882, s. 342)—*Evidence of accused improperly taken—Admissibility—Evidence Act*, ss. 21, 26, 29.—It is not proper to examine the accused under s. 342, Crim. Pro. Code, when no evidence, sufficient to connect him with the crime with which he is charged, has been recorded against him. If the examination takes place contrary to the provisions of s. 342, the statements actually made cannot, if apparently freely and voluntarily given, be rejected as inadmissible, merely on account of this irregularity of procedure; *prima facie*, as admissions, those statements are relevant under s. 21 of the Evidence Act, and there is no other section which excludes them. S. 26 of the Act is inapplicable as the statements are made in the immediate presence of a Magistrate, and s. 29 shows that the mere fact of a statement being made in answer to questions is by itself no ground for its exclusion. QUEEN-EMPRESS v. NARAYAN, **Rat. Un Cr.C. 679=Cr. Rg. 45 of 1893.** [*F.*, 37 C. 467=11 Cr L.J. 453=7 Ind. Cas. 359.]

(3095)—*S.* 342 (=*Crim. Pro. Code*, 1882, s. 342)—*Examination of accused before issue of process.*—A Magistrate should not put persons on oath unless he is satisfied of his authority to do so. Where he examines persons against whom a complaint is laid, before issue of process, the procedure is of very doubtful propriety, and the Magistrate ought not to be influenced by any difference between the statements given by them in such examination and statements made by them as accused persons. QUEEN-EMPRESS v. SHIDLINGAPPA, **Rat. Un. Cr.C. 844=Cr.Rg. 13 of 1896.** (16 B. 668, 13 B. 621, *R.*)

(3096)—*S.* 342—*Examination of prisoner by Judge — Nature of questions permissible.*—A Judge examining a prisoner, under s. 342 of the Crim. Pro. Code, ought not to cross-examine him; the only permissible questions are such as will enable the prisoner to explain any circumstances appearing in the evidence against him. HURRY CHURN CHUCKERBUTTY v. EMPRESS, **10 C 140=13 C L R. 358.** [*R.*, 9 Cr. L.J. 284=11 Bom. L.R. 177=1 Ind. Cas. 280.]

(3097)—*S.* 342 (=*Crim. Pro Code*, 1872, s. 250)—*Examination of accused for what purposes allowed.*—Under s. 250, the Court may, from time to time, at any stage of the case, examine the accused personally. But the Court is not competent to subject the accused to severe cross-examination. The discretion given by the law is not to be used for the purpose of driving the accused to make statements criminating himself; it can only be properly used for the purpose of ascertaining from the accused how he is able to meet facts standing in evidence against him, so that those facts should not stand against him unexplained. *In the matter of* CHINIBASH GHOSE, **1 C.L R. 436.** (1 M. 199, *F.*) [*F.*, 2 C.W.N. 702; *R.*, 6 C. 96=6 C.L.R. 529=3 Shome L.R.Cr.R. 39.]

(3098)—*S.* 342 (=*Crim. Pro. Code*, 1872, s. 250)—*Cross-examination of a prisoner by Court.*—It is not proper for the Court to cross-examine a prisoner with the apparent object of

Crim. Pro. Code (Act V of 1898)—*continued.*

convicting him, out of his own mouth, of false statements, and so making him prejudice himself in respect of the matter with which he is charged. EMPRESS v. BEHARI LAL BOSE, **6 C.L R. 431.** [*R.*, 10 C.P.L.R. 13.]

(3099)—*S. 342—Retracted confession—Duty of Judge to question the accused regarding it.*—Where the only circumstance appearing in evidence against the accused was his retracted confession, and, as to this he was not questioned at all in the Sessions Court, so that he might be given an opportunity to show cause for the jury to hesitate to convict him on that confession alone, *held*, that the procedure was contrary to that described in s. 342 *In re* CHOLAKEL KOYA, **2 Weir. 507.**

(3100)—*S. 342—Statement made by accused under.*—It could scarcely have been intended that, under colour of an examination under s. 342, Crim. Pro Code, an accused person should make statements such as he might make if he were being examined as an approver. SRI KISHEN v. KING-EMPEROR, **6 O.C. 204.** [*Diss.*, 11 O.C. 328 = 8 Cr. L J. 393.]

(3101)—*S. 342—Statement of accused as witness—Evidence.*—*Held* that an accused person cannot be examined as a witness, because no oath or affirmation can be administered to him until he is acquitted, or discharged or convicted. When, at the trial of several accused persons, the Magistrate in a note to the District Superintendent of Police, ordered that a certain accused person should not be put forward as an accused but as a witness, and the Court Inspector applied to the Magistrate that the said accused should be examined as a witness, and the Magistrate examined him as a witness for the prosecution, *held*, that the statement made by him was inadmissible in evidence. NABI BAKHSH v. EMPEROR OF INDIA, **100 P.L.R. 1902 = 12 P.R 1902, Cr.**

(3102)—*S. 342—Duty of Court to question accused before he enters on his defence* —There is no authority in the Code authorising a written defence to be put in at the trial of cases before the Court of Sessions. But, whether such a written defence can or cannot legally be put in and accepted by the Court, it certainly cannot be allowed to take the place of the examination of the accused which s. 342 imperatively orders to be made. EMPEROR v. ANSUIYA, **A.W.N. 1903, 1.**

(3102-*a*)—*S. 342—Evidence of the prosecution —Not implicating accused—Statement of accused—Not admissible against him.*—Where no evidence has been given implicating the accused by the prosecution, the Magistrate has no right under the Code to put questions to the accused or invite him to make a statement. Even if a statement is made by the accused in such circumstances, it is not admissible in evidence against the accused on his subsequent trial. ABIBULLA ROVUTHAN v. KABIB ROVUTHAN, **1915 M.W.N. 413.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3103)—S. 342—Collusion of ship—Examination of Serang—*See* ACT VI OF 1884, ss. 31, 32, 33, 34, 35, 12 Cr. L.J. 577 = 12 Ind. Cas. 841 = 4 Bur. L T. 130.

(3104)—S. 342—*See* ADMISSION, Rat. Un. Cr. C. 769 = Cr. Rg. 34 of 1895.

(3105)—S. 342—*See* AFFIDAVIT, 19 A. 200 = A.W.N. 1897, 23.

(3106)—S. 342—*See* CONFESSION, CONFESSIONS BY CO-ACCUSED—ADMISSIBILITY, 6 B. 124.

(3107)—S. 342—Applicability to all sorts of proceedings in Magistrate's Courts—Statement of accused in answer to questions put by Magistrate — Admissibility in evidence against accused—Magistrate's power to put questions to accused—Questions of inquestional nature not to be put—*See* EVIDENCE ACT, 1872, s. 27, 15 Cr. L.J. 474 = 24 Ind. Cas. 562.

(3108)—S. 342— Examination of accused before completion of prosecution evidence—Legality—*See* PENAL CODE, ss. 99, 105, 147, 378, 15 Cr. L.J. 436 = 24 Ind. Cas. 172.

(3109)—S. 342—*See* PENAL CODE, s. 307, 1 P.W.R. 1910, Cr.

(3110)—S. 342—*See* PREVIOUS CONVICTION, 5 Bom. L.R. 805 = 28 B. 129.

(3111)—S. 342—*See* SUMMARY TRIAL, L.B. R. 1893—1900, 638.

(3112)—S. 342—*See* WITNESS—GENERAL—WHO ARE COMPETENT TO BE WITNESSES, 38 P.R. 1887, Cr.

(3113)—S. 342—*See* Nos. 116, 120, 369, 433, 434, 447, 485, 930, 1468, 1469, 1470, 1472, 1635, 1874, 1875, 2123, 2239, 2242, 2460, 2645, 2739, 2776, 2777, 2804, 2805, 2840, 2861, 2977, 3029, 3030. *supra.*

(3114)—Ss. 342 (1) and 511—*See* ACCUSED PERSON, 1 L.B.R. 8.

(3115)—*S. 342 (2)—When accused can claim exemption under section—Application for transfer of case to another Court—Application supported by false affidavit—Liability for such statements—Penal Code, ss. 182 and 211.*—An accused person, who was under trial in the Court of a Subordinate Magistrate, applied to the District Magistrate for a transfer and filed an affidavit which was false. *Held* that he could not escape liability under s. 342 (2), Crim. Pro. Code, as the statements contained in the affidavit were not made in answer to questions put by the Court and that the statements in the affidavit being false and made with a view to induce the District Magistrate to order the transfer, the accused would be punishable under the first part of s. 182, and not s. 211, Penal Code. IMPERATOR v. KHAN MAHOMED, **1 S.L.R. Cr. 124 = 8 Cr. L.J. 378.** [*R.*, 33 A. 163 = 7 A.L.J. 114 = 7 Ind Cas. 914 = 11 Cr. L. J. 537.]

(3116)—S. 342 (2)—*See* EVIDENCE ACT, 1872, s. 132, 23 B. 213.

Crim. Pro. Code (Act V of 1898)—*continued.*

(3117)—S. 342 (4)—*See* EVIDENCE ACT, 1872, ss. 118, 133, U.B.R. 1906, Evidence, 3= 5 Cr. L.J. 300.

(3118)—Ss. 342, 287, 208 (1, 3, 4)—*See* COMMITMENT TO SESSIONS COURT, Rat Un. Cr. C. 100=Cr. Rg. 10-1-1876.

(3119)—*Ss.* 342, 310 (*b*) (*c*)—*Legal evidence of previous conviction.*—Before asking an accused person, questioned under s 342, Crim. Pro. Code, at the close of the case for the prosecution, whether he had been previously convicted, legal evidence of the previous conviction ought to be put in and read. Legal evidence of previous convictions ought to be obtained before the part of the charge relating to them is framed. Clauses (*b*) and (*c*) of s. 310 indicate in general terms, the preciseness with which charges relating to previous convictions should be tried. NGA TE v. KING-EMPEROR, **1 U. B. R. 1902—1903, Crim. Pro. Code, 23.**

(3120)—Ss. 342, 343, 337—*See* CONFESSION—CONFESSIONS OBTAINED BY INDUCEMENT, THREAT, ETC., 2 A. 260.

(3121)—*Ss.* 342, 346 (=*Crim. Pro. Code,* 1872, *s.* 345)—*Preliminary enquiry—Administering oath to accused.*—The administering of an oath or affirmation to an accused person, although prohibited by s. 345, Crim. Pro. Code, 1872, does not render the statement inadmissible either against him or against a co-accused at the trial. RAJMAL v. EMPRESS, **3 P.R. 1880, Cr.**

(3122)—*Ss.* 342, 349—*Separate trial of a person charged with a substantive offence and of another charged with abetment—Competency to give evidence.*—Where a person charged with an abetment of an offence under s. 403, I.P.C., applied for summoning as a witness, the principal offender, who had been convicted of the substantive offence under s. 403, I.P.C., by a third class Magistrate, but whose case was pending before another Magistrate, having been referred to the latter by the former for a severe sentence under s. 349, Crim. Pro. Code, *held*, that the Magistrate was not competent to refuse to summon him, and s. 342, Crim. Pro. Code, did not apply to the case. QUEEN-EMPRESS v. TIRBENI SAHAI, **20 A. 426=A.W.N. 1898, 102.** [*R.*, 33 C. 1353=10 C.W.N. 962=4 Cr. L.J. 145.]

(3123)—*Ss.* 342 *and* 362—*Evidence, recording of, in petty cases—Magistrate to use discretion—Retrial—Transfer.*—S. 362 of the Crim. Pro. Code does not mean that a Presidency Magistrate can act arbitrarily and record nothing by way of evidence in cases in which he is not bound to take down evidence in the manner prescribed in the section. In such cases, the section merely gives him a discretion to take down the evidence or not, and the discretion should be exercised judicially in a reasonable spirit, and not arbitrarily. There may be no necessity to record any evidence in "morning cases." But where a respectable person is charged with an offence, reflecting on his character and serious alegation are levelled against him, there ought to be some record of evidence to enable him in case of conviction to go to the High Court. Even in a summary case a Magistrate is bound to record a summary of the accused's examination and any statement in the course of that examination. S. 342, Crim. Pro. Code, makes it incumbent upon the Magistrate to examine the accused and to give him an opportunity of explaining away whatever may have been decided against him in the evidence for the prosecution. Where a Presidency Magistrate had made up his mind regarding a case, the High Court, on the case coming under its revisional jurisdiction, transferred it to another Magistrate for re-trial. EMPEROR v. HARISCHANDRA TALCHERKAR, **10 Bom. L.R. 201=7 Cr. L.J. 194.** [*R.*, 35 M. 739=12 Cr. L.J. 451=11 Ind. Cas. 795=22 M.L.J. 114=10 M.L.T. 518=1911 M.W.N. 50.]

(3124)—Ss. 342, 364, 533 (1)—*See* CONFESSION—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY—RECORD OF CONFESSIONS, 5 C. 954=6 C.L.R. 297, F.B.

(3125)—Ss. 342, 485—*See* CONFESSION—CONFESSIONS MADE TO POLICE OFFICERS, 5 A. 253.

(3126)—*Ss.* 342 *and* 539—*Omission to examine the accused—Duty of High Court in revision.*—The accused were tried and convicted of offences under ss. 11 and 12 of the Gambling Act. There was an omission, to examine the accused under s. 342 of the Code. 'They had a right of appeal but did not exercise it. The District Magistrate recommended to the Chief Court, under s. 439, that the conviction might be set aside. From the record of the case, it appeared that the accused had not been prejudiced by the omission of the Magistrate to examine them under s. 342, *held*, it is not imperative on the Chief Court to set aside every void order which comes to its notice, when the person aggrieved does not move the Court to do so. Though the conviction was bad, it was not necessary for the Chief Court to set it aside. EMPEROR v. BA PE, **4 L.B.R. 143=7 Cr. L.J. 422.**

—S. 343 (=1882, s. 343; 1872, s. 344; 1861, s. 203.)

(3127)—S. 343—*See* No. 3120. *supra.*

—S. 344 (=1882, s. 344; 1872, s. 194, para 1, Exp. 208, para 1, 219, 264; 1861, ss. 224, 269, 253, 377, Presidency Magistrate's Act, 1877, s. 124.)

See ADJOURNMENT.

See REMAND.

(3128)—*S.* 344—*Scope and applicability of.*—S. 344, Crim. Pro. Code, relates to proceedings in inquiries and trials and has nothing to do with police investigation, and it contemplates a remand to jail and not to police custody. *In re* KRISHNAJI PANDURANG, **Cr. Rg. 55 of 1897.**

(3129)—*S.* 344, *power of Courts to order payment of the costs of the day on granting adjournments.*—**S. 344 of the Code dealing with**

Crim. Pro. Code (Act V of 1898)—*continued.*

proceedings in prosecutions expressly empowers the Court to postpone or adjourn an enquiry upon such terms as it thinks fit. This clearly entitles the Court to award costs to the party who has been put to unnecessary expenses by the conduct of other side and to order that the same be paid up by the latter in whose favour the order for adjournment has to be made. MATHURA PRASAD v BASANT LAL. **28 A. 207 = 2 A.L.J. 831 = A.W.N. 1905, 256 = 2 Cr.L.J. 803.** (9 C.W.N. 18, *F.*; A.W.N. 1902, 59, *Disc. & Doubted.*)

(3130)—*S.* 344—*Adjournment of criminal cases.*—The reasonable cause intended by s. 344 is some cause which will enable the Court to have before it all the materials relevant and forthcoming, upon which it can come to a decision whether the accused has or has not committed the offence charged. It is not a valid ground for adjourning a criminal case, that issues similar to those arising in the Criminal Court are concurrently the subject of determination by a Civil Court with the possible result of conflicting decisions upon practically the same evidence, especially when the adjournment of the criminal proceedings would necessarily be very prolonged. MATHURA KUAR v. DURGA KUAR, **2 A.L.J. 747 = A.W.N. 1905, 254.**

(3131)—*S.* 344—*Scope—Accused person in custody of Magistrate—Power to remand to police custody.*—S. 344, Crim. Pro. Code, does not empower the Magistrate to remand an accused person in custody of the Magistrate to police custody for the purpose of obtaining information with regard to the offences which the accused may be alleged to have committed. *In re* RAMA KHANDU ZUGRYA, **4 Bom. L.R. 878.**

(3132)— *S.* 344—*Costs of adjournment — Discretion of Magistrate.*—A Magistrate has a discretion to require from the accused the costs of an adjournment, when he is not entitled to the adjournment asked for. SEW PROSAD PODDAR v. CORPORATION OF CALCUTTA, **9 C.W.N. 18.** [*F.*, 28 A. 207 = 2 A.L.J. 831 = A.W.N. 1905, 256; *R.*, 28 A. 209 (*N*) = A.W.N. 1905, 257 (*N*).]

(3133)—*S.* 344 (= *s.* 194, *Crim. Pro. Code,* 1872)—*Remanding of accused person to jail and deferring examination of witnesses and postponing enquiry—Record of grounds.*—Where a Magistrate acts under s. 194, by deferring the examination of witnesses and adjourning the enquiry and remanding the prisoners, he is bound to express clearly on the record "the reasonable cause" from which it becomes necessary or advisable to do so. MANIKAM MUDALI v. QUEEN, **6 M. 63 = 2 Weir 409 = 2 Weir 577 = 2 Weir 656.**

(3134)—*S.* 344—*Stay of criminal proceedings during pendency of a civil suit.*—There is no hard and fast rule that a criminal case should be stayed pending the disposal of a civil suit from which the criminal case has arisen or with which it is intimately connected. If a Magistrate, on a consideration of all the circumstances, exercises his discretion and either stays proceedings in the criminal case pending the disposal of the civil suit, or declines to do so, the High Court, as a Court of Revision, will not, as a general rule, interfere with the exercise of such discretion. If the object of prosecuting criminal proceedings, while a civil suit in relation to the same matter or a matter intimately connected therewith is pending, be in reality to have a preliminary enquiry before the Magistrate into the matter of the suit, and to prejudice the trial of the civil suit, or to coerce the accused into a compromise of the civil suit on terms to be practically dictated by the complainant, the Magistrate should, as a general rule, postpone the enquiry into or trial of the criminal case till the disposal of the civil suit. *In re* SUBRAMANYA CHETTY, **2 Weir 415.**

(3135)—*S.* 344—*Adjournment of Criminal Proceedings, costs of, whether Court may order accused to pay.*—The accused, in this case, was absent on the date of the hearing. He was not represented by any pleader or counsel and the adjournment of the case was altogether necessary since the Court could not proceed with the trial or record evidence in the absence of the accused. It was *held*, that the costs of the adjournment could not be awarded against the accused person and that it would be entirely opposed to the spirit of conducting criminal trials to impose such terms on the accused, even when granting adjournment for his benefit and at his request. BROWNE v. CHANDRA SINGH, **6 P.R. 1906, Cr. = 114 P.L.R. 1907 = 4 Cr. L.J. 78.** (20 P.R. 1904, Cr., *D.*) [*R.*, 10 Ind. Cas. 851.]

(3136)—*S.* 344—*Adjournment of criminal case—Reasons for adjournment.*—The complainant preferred a charge under ss. 406 and 411 of the Penal Code against the accused in respect of certain jewels. He had already instituted a civil suit for the recovery of the same jewels and got a decree in her favor after the institution of the complaint. The accused, defendants in the civil suit, appealed from the decree and applied to the Criminal Court to adjourn the trial on the ground that the same matter was in dispute in the appeal. *Held,* that "reasonable cause" in s. 344 of the Crim. Pro. Code, is some cause which will enable the Court to have before it all the materials relevant for the enquiry, and that the circumstances of the case would not constitute such cause since the decision in appeal would not be relevant for the criminal case and since the adjournment would delay the case for a long time while all the available evidence was forthcoming, and had also been recorded. MATHURA KUNWAR v. DURGA KUNWAR, **A.W.N. 1905, 254 = 2 A. L.J. 747.**

(3137)—*S.* 344—*Orders as to costs on adjournment.*—A Court, under s. 344 of the Crim. Pro. Code, is entitled to award costs as a condition precedent to adjourning a case and make the same payable by the party for whose benefit the

Crim. Pro. Code (Act V of 1898)—*continued.*

case is adjourned. RAM DAYAL v. KARAN SINGH, **A.W.N. 1905, 257, note = 28 A. 209, note.** [*R.*, 28 A. 207 = 2 A.L.J. 831 = A.W.N. 1905, 256.]

(3138)—S. 344—*See* ACCUSED PERSON, 2 Weir 414.

(3139)—S. 344—*See* COMPLAINANT, 4 M.H. C. App. 8.

(3140)—S. 344—*See* COSTS, 20 P.R. 1904, Cr.

(3141)—S. 344—*See* Nos. 2147, 2454, 2462, *supra.*

(3142)—*Ss.* 344, 250—*Order for payment of expenses, by complainant to accused and witness, valid—Notice to complainant necessary before passing an order for compensation under s.* 250.—A Magistrate, in whose Court a complaint was pending for two years, passed an order directing the complainant to pay costs to the accused and a witness. On a subsequent date, he dismissed the complaint, and in that made another order in the absence of the complainant directing him to pay costs to the accused; *held* that the first order was a proper one having regard to the wide provisions of s. 344 of the Code of Criminal Procedure; and that the second order purporting to have been passed under s. 250 was bad, inasmuch as no opportunity was afforded to the complainant of objecting to the order. GULZARI LAL v. GUNGA RAM, **9 A.L J. 170 = 14 Ind. Cas. 652 = 13 Cr. L.J. 268.**

(3143)—*Ss.* 344, 439, 526—*Costs—Adjournment—Revision.*—*Held*, that a Criminal Court's order to an accused person to pay costs of adjournment under s. 344, Crim Pro. Code, on an application made by the former under s 526 of the said Code, is obviously improper and unjustifiable and, though not appealable is liable to be set aside on revision by the High Court. FATTA v. CROWN, **8 P.W.R. 1911, Cr. = 12 Cr. L J. 274 = 10 Ind. Cas. 851.** (6 P.R. 1906, *R.*)

(3144)—*Ss.* 344 *and* 526—*Magistrate declining to postpone hearing of case—Commencement of hearing.*—Where the counsel for the accused made an application for adjournment under s. 344 of the Crim. Pro. Code, and, on this being refused, made an application under s. 526 and the Magistrate holding that the former application was a "commencement of the hearing" refused this application also, *held*, that the action of the Magistrate was illegal and his proceedings were *ultra vires.* It was obligatory on him to postpone the case under s. 526, for an application under s. 344 is an application to postpone the commencement of the enquiry and is not a commencement of the hearing. EMPEROR v. ALI RAZA SHAH, **24 P.L.R. 1904 = 1 Cr. L.J 109.** (15 C. 455, *F.*) [*R.*, 1 P.R. 1913, Cr. = 254 P.L.R. 1912 = 17 Ind. Cas. 58 = 13 Cr. L.J. 746 = 42 P.W.R. 1912.]

(3145)—*Ss.* 344, 526 (8)—*Adjournment—Reasonable cause for postponement—Transfer of case—Commencement of hearing.*—S. 526 (8), Crim. Pro. Code, has no application where the application for transfer is sought to be made, not at the commencement of the hearing, but after the Magistrate has finished the case for the prosecution. The words "commencement of the hearing" mean the commencement of hearing in the Court objected to (8 C.W.N. 77, *F.*). The fact that the accused's Advocate has to fulfil a long standing engagement in a criminal case at another place is *prima facie* a reasonable cause for an adjournment under s. 344 of the Crim. Pro. Code. A Magistrate is not justified in taking the extreme course of deciding without hearing the defence, when the accused's Advocate has an engagement at another place. ESTEVES v. EMPEROR, **12 Cr. L.J. 474 = 12 Ind. Cas. 82.**

——S. 345 (= 1882, s. 345; 1872, s. 188; 1861, s. 271); para 5 of this section new.

See COMPOUNDING OFFENCE.

(3146)—*S.* 345—*Dispute between two sets of persons—Death of one in one set—Compromise with another.*—A person, to whom an injury is caused, is the only person who can compound a case. Where there was a fight between two sets of persons, and one man in one set died in consequence of the injuries received, *held*, that the other members of the same set could not compromise the case on behalf of the deceased, even though the hurt which resulted in his death was simple hurt. KING-EMPEROR v. SULTAN SINGH, **6 A.L.J. 882 = 4 Ind. Cas. 24 = 10 Cr. L.J. 473 = 31 A. 606.**

(3147)—*S.* 345—*Compounding an offence—Accused pleading not guilty—Compromise valid—Intervention of respectable persons.*—In a case, wherein the accused does not plead guilty, and the matter is settled by respectable persons and a compromise entered into, the Court is not concerned to inquire into the nature or value of the consideration; and if the complainant considers that his grievance is redressed, by the fact of respectable persons intervening, even though he may not have received any money payment or even a direct apology from the accused, the complainant is at full liberty to compound the prosecution. CROWN v. LILARAM, **2 S.L R. 16, Cr. = 10 Cr. L.J. 228.**

(3148)—*S.* 345—*Compounding of offences—Court's discretion.*—When a Court gives permission, for an offence (a compoundable one) to be compounded, it should record particulars sufficient to show that it has reasonably exercised its powers of discretion given by law. QUEEN-EMPRESS v. NGA PO SAUNG, **U.B.R. 1892—1896, Vol. I, 43,**

(3149)—*S.* 345—*Compounding offence—Court's permission.*—The Court is bound to exercise a sound and reasonable discretion in granting permission to compound a charge of an offence, under s. 324, Penal Code, of voluntarily causing hurt with a dangerous weapon. QUEEN-EMPRESS v. NGA TUN MYA, **U.B.R. 1897—1901, Vol. I, 83.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3150)—*S.* 345 (=*Crim. Pro. Code*, 1882, *s.* 345)—*Compounding—Acquittal—Retrial.*—A person, charged under s. 324 of the Penal Code, cannot, if the offence has been compounded with the permission of the Court, be again tried on the same facts on a charge under s. 323, I.P.C., if the composition, which has the effect of an acquittal, is still in force. QUEEN-EMPRESS v. WALI ASMAL, Rat. Un. Cr. C. 519=Cr. Rg 43 of 1890.

(3151)—*S.* 345—*Compounding of offences—Proof of compounding not necessary.*—Where the parties to a compoundable offence compound it under s. 345 of the Crim. Pro. Code, and produce a writing signed by them before the Court, the Court is bound to act upon it, and is not at liberty to call upon the parties to prove that the case has been compounded. EMPEROR v GANA KRISHNA WALUNJ, **16 Bom. L.R. 939=2 Bom. Cr. C. 257=26 Ind. Cas. 1000=16 Cr. L.J. 88.**

(3152)—*S.* 345—*Compounding in revision—Not allowed.*—S. 345 allows cases in which appeals are pending to be compounded with the leave of the Court. Cases which come before the appellate Court in revision cannot be compounded. RAM CHANDRA v. EMPEROR, **13 A.L.J. 104=37 A. 127=16 Cr. L.J. 247=28 Ind. Cas. 103.**

(3153)—*S.* 345—*Offence compounded out of Court—Accused pleading composition—Duty of Court.*—Where the accused pleads a composition out of Court, the Magistrate must inquire into the plea, and if composition be proved, the Magistrate has no jurisdiction to go on with the trial. There is no necessity for the composition to be effected in Court. IMPERATOR v. MULO, **6 S L.R. 284=19 Ind. Cas. 948 =14 Cr. L.J. 292.** (21 C. 203, *F.*; 28 B. 326, *R.*)

(3154)—*S.* 345—*Revision, High Court's power in—Offence, compounding of—Penal Code, s.* 325—*Complainant and accused, willingness to compromise by, effect of—Sufficient reason, what does not constitute.*—*Held*, that a High Court in revision may grant permission to compound an offence and allow a case to be compromised (32 A. 152, *F.*). *Held further*, that where in a case under s. 325, Penal Code, the complainant and the accused were willing to compromise, it was no sufficient reason to refuse composition on the ground that a third party, the master of the complainant, who had received no injury from the accused, had refused or was not willing to agree to the composition. LALLA v. KING-EMPEROR, **17 O.C. 92=15 Cr. L.J. 567=24 Ind. Cas. 975.**

(3155)—*S.* 345—*Compromise effected out of Court by parties, pending hearing of rule issued by High Court, if can be given effect to under s.* 345, *Crim. Pro. Code.*—The petitioner was the complainant in a case and the accused in the counter case. The petitioner's complaint was dismissed by the Magistrate and in the other case he was convicted under s. 352, I.P.C. He moved the High Court and obtained a rule in each case, in one for the further enquiry into his complaint and in the other for a reduction of the sentence passed on him. Pending the hearing of the rules both cases were compromised by the parties out of Court: *Held*, that, at the hearing of the rules, the parties had no *locus standi* to ask the Court to treat the compromise as one coming under s. 345, Crim. Pro. Code. ADHAR CHANDRA DEY v. SUBODH CHANDRA GHOSH, **18 C.W.N. 1212=15 Cr.L.J. 728=26 Ind. Cas. 176.**

(3156)—S. 345 — *See* COMPENSATION — GENERAL, 10 Bom. L.R. 1056=9 Cr. L.J. 186.

(3157)—S. 345—*See* PENAL CODE, s. 214, 3 A. 283.

(3158) — S. 345—*See* WITHDRAWAL OF PROSECUTION, Rat. Un. Cr. C. 330=Cr. Rg. 20 of 1887.

(3159)—S. 345 (1 to 4, 6, 7)—*See* CRIMINAL TRESPASS, 22 C. 123.

(3160)—S. 345—*See* Nos. 1976, 2478, 2479, 2525 to 2528, 2576, 2694, 2982, *supra.*

(3161)—*Ss.* 345 (2), 439 (5)—*Accused charged under s.* 325, *I.P.C.—Fight in the course of which a person was killed—Compounding of the offence by relations of the deceased—Order of acquittal—Illegality— Re-trial—Report of the District Magistrate — Revision.* — Where the relations of the deceased who was killed in the course of a fight about a field with the four accused put in a compromise, which was accepted by the trying Magistrate as a compromise of an offence under s. 325, I.P.C., and the accused were acquitted, the order of acquittal was held on the report of the District Magistrate, to be illegal and a re-trial was ordered. *Held*, also, that, on the report of the District Magistrate, the Judicial Commissioner had power to interfere in revision with the order complained against. The party who could have appealed was not the District Magistrate but the Local Government within the meaning of cl. 5 of s. 439, Crim. Pro. Code. CROWN v. RAMZAN BACHAL, **7 S L.R. 200=15 Cr. L. J. 553=24 Ind. Cas. 961.**

(3162)—*Ss.* 345 (*d*), 439—*Revision of criminal case—Compounding of offence after conviction.*—In two cross-cases, the accused persons were convicted under ss. 325 and 147, I.P.C. On appeal the charges of grievous hurt and rioting were eliminated and their conviction under s. 323, I.P.C., was ordered. On revision, an application was made to give effect to the compounding of offences which the accused persons had agreed to in the meanwhile. The Chief Court granted the application. NIDHAN SINGH v. KING-EMPEROR, **67 P.L.R. 1904.**

(3163)—*Ss.* 345, 170 *and* 63—*Compounding of offences by Police officers.*—Under ss. 170 and 63 of the above Code, a Police officer is not empowered to allow the compounding of any offence himself, but should send it to the Court of the Magistrate to be so compounded. CRIMINAL REVISION CASE, MISCELLANEOUS CASE NO. 911 OF 1893, **U.B.R. 1892—1896, Vol. I, 42.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3164)—*Ss.* 345, 227, 254, 255, 367 (1), 403 (1) —*Charge of compoundable offence drawn up —Presentation of petition of composition—Duty of Court—Charge whether can be altered.*—Where a Court has drawn up a charge of an offence compoundable without sanction of Court, and this charge, having been read and explained to the accused, has been pleaded to, the Court should, upon the presentation to it of a petition of composition by the person mentioned in the last column in the table in s. 345, Crim. Pro. Code, at once accept the petition and acquit the accused, and has no power to alter the charge already drawn up. HASTA v. CROWN, 29 P R 1914, Cr., F.B.=16 **Cr.L J. 81=26 Ind. Cas.** 993. (3 C.W.N. 322, 3 C.W. N. 548, 29 C. 726, F.B., *R.*; 4 Bom. L.R. 718, 11 P.R. 1907, Cr. *D.*)

(3165)—*Ss.* 345 *and* 250 (=*Crim. Pro. Code,* 1882, *ss.* 345, 560)—*Penal Code, ss.* 447, 448 *and* 323—*Compounding of offences.*—A Bench of Magistrates directed in a case under ss. 447, 448, 323, I.P.C., which was compounded under s. 345, Crim. Pro. Code, that the complainant should pay one rupee to each of the accused persons as *compensation* under s. 560, Crim Pro. Code, *held*, that the proceedings of the Magistrate were irregular inasmuch as the procedure prescribed by s. 560, Crim. Pro. Code, was not carried out; they were also bad on the ground that the case did not come under s. 560 an order under which can be passed only when there is a discharge or an acquittal *by the Court on a trial of the case.* ALOPI v. BHURA, **7 C.P. L.R. Cr. 2.**

(3166)—Ss. 345, 250—*See* COMPOUNDING OFFENCE, Rat. Un. Cr. C. 700=Cr. R. 29 of 1894, Rat Un. Cr. C. 957.

(3167)—Ss. 345 and 403—*See* COMPOUNDING OFFENCE, L.B.R. 1893—1900, 240.

(3168)—*Ss.* 345, 403 (2)—*Several offences alleged in complaint—Accused summoned for one of such offences—Compromise of such offence with leave of Court—Further prosecution for the other offences if lies—Case if revivable on the ground of non-payment — Compensation for compromise.*—The petitioner was accused of committing house-trespass causing grievous hurt and being member of an unlawful assembly, but was summoned only under s. 325, I.P.C., and the offence under that section was compromised with the leave of the Court. The complainant subsequently filed another complaint and sought to revive the case, alleging that the terms of the compromise had not been carried out: *Held* the petitioner could not be again prosecuted either for grievous hurt or house-trespass or for being member of an unlawful assembly, the common object being to commit offences which had been compromised. SHEIKH BASIRUDDI v. SHEIKH KHAIRAT ALI, **17 C. W.N. 948=20 Ind. Cas 618=14 Cr. L.J. 458.**

(3169)—Ss. 345, 526—*See* TRANSFER OF CRIMINAL CASES—TRANSFER BY OTHER COURTS, **L.B.R. 1893—1900, 392.**

Crim. Pro. Code (Act V of 1898)—*continued.*

——S. 346 (=1882, s. 346; 1872, s. 345, paras 1 and 2; 1861, cf. s. 276).

See COMMITMENT TO SESSIONS COURT.

See MAGISTRATE, JURISDICTION OF.

(3170)—*S* 346 (=*Crim. Pro. Code, Act* X *of* 1882, *s.* 346)—*Reference by second class Magistrate to Sub Divisional Magistrate—Procedure.* Where a second class Magistrate submits a case under s. 346 of the Crim. Pro. Code to the Sub-Divisional Magistrate considering it to be beyond his own jurisdiction, the latter cannot return it on the ground that he had already passed an order that it was only a second class case. He is bound to dispose of the case in one of the ways prescribed by the section. QUEEN-EMPRESS v. PURSHOTAM, **Rat. Un. Cr. C. 554=Cr. Rg. 30 of 1891.**

(3171)—*S.* 346—*Case referred to superior Magistrate.*—A subordinate Magistrate referred a case to the District Magistrate under s. 346 of the Code. The District Magistrate would have had power to try it only under that section. He, instead of trying the case himself, accepted the plea put in before the lower Court, which was not actually a plea of guilty. The plea was neither made before the District Magistrate nor was it recorded by himself. He simply contented himself, with taking evidence of the previous convictions without taking any evidence as to the guilt of the accused. Since the reference was under s. 346 and not s. 349 and the evidence taken by the subordinate Magistrate was not evidence in the trial before the District Magistrate, the procedure adopted by the District Magistrate, was illegal. Conviction set aside and re-trial ordered. INAYAT HUSAIN v. KING-EMPEROR OF INDIA, **106 P.L.R. 1905=2 Cr. L.J. 689.**

(3172)—*S.* 346 (=*Crim. Pro. Code,* 1882, *s.* 346)—*Previous convictions.*—In a charge of stealing after conviction of similar offences, to establish the full charge and to maintain a conviction, it is necessary that the previous convictions be proved, in other words, previous convictions must be proved before conviction for the complex charge. The Magistrate, in such cases, will be justified in taking action under s 346, Crim. Pro. Code. EMPRESS v. CHANDRA BALLAB JOSHI, **A.W.N. 1894, 200.**

(3173)—S. 346—*See* COMPLAINT — PROCEDURE ON RECEIPT OF COMPLAINTS, 4 B.H.C. Cr. 34.

(3174)—S. 346 (2)—*See* TRANSFER OF CRIMINAL CASES—TRANSFER BY OTHER COURTS, 1 L.B.R. 308.

(3175)—S. 346—*See* Nos. 69, 1472, 2205, 2641, 2642, 3121, 3970, *supra.*

(3176)—*Ss.* 346, 347—*Duty of subordinate Courts in dealing with major offences.*—A subordinate Magistrate must refer immediately to a superior Court cases in which there is reason to believe that an offence beyond his own jurisdiction has been committed, and must be careful

Crim. Pro. Code (Act V of 1898)—*continued.*

to avoid taking cognizance of a major offence as a minor. QUEEN-EMPRESS v. NGA LU, **U.B.R. 1897—1901, Vol. I, 84.**

(3177)—Ss. 346, 347—*See* KIDNAPPING, 30 P.R. 1886, Cr.

(3178)—*Ss.* 346, 347 *and* 348—*Proceedings stayed by First Class Magistrate during trial—One of the accused previously convicted—District Magistrate should try case* de novo.—Where a Sub-Divisional Magistrate of the First Class, during the trial of two accused, found that one of them had been previously convicted, and accordingly stayed proceedings and submitted the case to the District Magistrate under s. 348, Crim. Pro. Code, *held* that, under s. 346, the Sub-Divisional Magistrate was at liberty to stay proceedings at any time during the enquiry or trial and submit the case to the District Magistrate. *Held, also*, that what the District Magistrate had to do was to try the case himself *de novo* under s. 346 (2), Crim. Pro. Code, 1898. KING EMPEROR v. NGA AT, **U.B.R. 1897—1901, Vol. I, 85.**

(3179)—*Ss.* 346, 349 (=*Crim. Pro. Code*, 1861, *ss.* 276, 277)—*Jurisdiction of Magistrates in respect of the offence of theft.*—When a theft has been committed, any Magistrate has jurisdiction to try it. But if, in the course of the trial, it shall appear to the Magistrate that an offence has been committed which he is not competent to try, or that a more severe punishment is required than he can inflict, his duty is to submit the case to the Magistrate to whom he is subordinate under s. 276 or s. 277, as the case may be. When, therefore, theft is accompanied with a breaking of a closed receptacle and the case is brought before a second class Magistrate, he ought to act under s. 276, for the offence of breaking a closed receptacle is one which he is not competent to try. The lower tribunal cannot properly clutch at jurisdiction by dealing with theft alone. HIGH COURT PROCEEDINGS, 5TH JANUARY 1866, **2 Weir 420.** [*R.*, 24 M. 675=2 Weir 699.]

(3180)—*Ss.* 346, 349, 350 *and* 537—*Subordinate Magistrate submitting record for severe sentence—Conviction by District Magistrate based on that record, procedure, legality of—Curing of illegalities by consent.*—A subordinate Magistrate having found, after the completion of a trial, that the accused deserved a more severe punishment than he could inflict, sent the case to the District Magistrate. The District Magistrate, treating the case as sent up under s. 346 of the Code, asked the accused whether they wanted the witnesses to be recalled and reheard, and, on their replying in the negative, proceeded to judgment and convicted the accused without trying the case afresh. *Held*, that the procedure adopted by the District Magistrate was illegal. The consent of the accused cannot dispense with compliance with the provisions of the Code; illegalities cannot be cured even by consent. MUHAMMAD v. KING-EMPEROR, **91 P.L.R. 1905=2 Cr. L.J. 369=25 P.R. 1905, Cr.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3181)—*Ss.* 346, 532 — *Commitment made under s.* 346—De novo *trial, necessity for.*—A commitment made to the Sessions by a Magistrate acting under the powers conferred by s. 346 is not illegal, merely because he has not examined *de novo* the witnesses who were examined by the Magistrate who submitted the case under the provisions of that section. To the case of an accused thus committed to the Court of Sessions, s. 532 has no application. KAMINI BAURINI v. FAKIR CHAND SARKAR, **12 C.W.N. 136=6 Cr. L.J. 429.**

——**S. 347 (=1882, s. 347; 1872, ss. 46, para 3, 221, 436, para 3; 1861, s. 256).**

See COMMITMENT TO SESSIONS COURT.
See MAGISTRATE, JURISDICTION OF.

(3182)—*S.* 347 (=*Crim. Pro. Code*, 1861, s. 256)—*Commitment to Sessions.*—S. 256 authorizes a Magistrate, at any stage of the proceedings in a trial before him, to stop further proceedings under Ch. XIV (Ch. XXI of the Code of 1898) and proceed in accordance with Ch. XII (Ch. XVIII of the Code of 1898). Where the trial is not concluded, although it has arrived at a stage not far off from the conclusion, he is fully competent, at that stage, to refrain from concluding the trial and to commit the case to the Sessions. It is not necessary to make an enquiry *de novo* under Ch. XII (Ch. XVII of the Code of 1898). GOVERNMENT PROSECUTOR v. AMEEROOD-DEEN, **1 N.W.P. 307.**

(3183)—*S.* 347—*Right to cross-examine before enquiring Magistrate in a case triable by the Court of Sessions.*—Where, after a Magistrate has made up his mind to commit a case to the Court of Sessions, but before the case for the prosecution has absolutely closed, one witness for the prosecution yet remaining to be examined, the defence applied for cross-examining the prosecution witnesses: *Held*, that they are entitled to the indulgence of cross-examining the prosecution witnesses. FAZARALI v. MAZHARULLA, **16 C.L.J. 45=16 Ind. Cas. 336=13 Cr. L.J. 688.** (12 C.W.N. 1014, *Expl.*) [*R.*, 5 Bur. L.T. 239=13 Cr. L.J. 877=17 Ind. Cas. 813=6 L.B.R. 129.]

(3184 to 3186)—*S.* 347 *and Ch.* XVIII—*Penal Code*, ss. 354, 376 *and* 511—*Trial under s.* 354, *Penal Code—Prosecution and defence witnesses examined and cross-examined—Accused committed to Sessions—Commitment, whether illegal.*—The special power to commit to a Sessions Court, conferred on a Magistrate by s. 347 of the Code of Criminal Procedure, cannot be interpreted as depriving the accused of the benefit of the procedure prescribed in Ch. XVIII of that Code; but where the accused, when tried on a charge under s. 354, Penal Code, denies the charge *in toto* and enjoys the benefit of cross-examining the prosecution witnesses and of examining the witnesses for the defence, it cannot be said that he has been prejudiced, merely because the Magistrate, at the time of delivering his judgment, altered the charge into one under ss. 376 and 511, Penal Code, and

Crim. Pro. Code (Act V of 1898)—*continued.*

committed him to the Sessions, because he was not himself competent to try the accused on the altered charge. A committal order passed under such circumstances is not illegal, and should not be set aside. *In re* CHINNAVAN, **15 Cr. L.J. 366 = 23 Ind. Cas. 734.** (17 Ind. Cas. 813 = 5 Bur L.T. 239 = 13 Cr. L.J. 877 = 6 L.B.R. 129, F.B., *F.*)

(3187)—S. 347—*See* Nos. 181, 2135, 2142, 2149, 2186, 2205, 2206, 2696, 3176, 3177 3178, *supra.*

(3188)—*Ss.* 347, 349 (= *Crim.Pro.Code*, 1872, s. 46)—*Reference to superior Magistrate.*—S. 46 only authorizes a reference to the superior Magistrate, when the subordinate Magistrate considers that the accused should receive a severer sentence than he himself is competent to inflict. But, where a subordinate Magistrate is clearly competent to inflict a severer sentence than he proposed, a reference under s. 46 is not proper. *In the complaint of* PHULLU, **A.W.N. 1881, 99.** [*R*, A.W.N. 1881, 161.]

——S. 348 (=1882, s. 348 ; 1872, s. 350).

(3189)—*S.* 348 (= *Crim.Pro.Code*, 1872, *s.* 315) —*Habitual offender.*—To constitute an "habitual offender" within the meaning of s. 315 of the Crim. Pro. Code, it is necessary that the subsequent offences charged should have been committed by the accused after the previous conviction. QUEEN-EMPRESS v. APPA, **Rat. Un. Cr. C. 143.**

(3190)—*S.* 348—*Old offenders—Procedure.*—Old offenders should ordinarily be charged before a first class Magistrate. *In re* MARI NAICKEN, **2 Weir 422.**

(3191)—S. 348—*See* Nos. 3068, 3178, *supra and* No. 4742, *infra.*

(3192)—*Ss.* 348, 349—*Old offender—Procedure* —The provisions of s. 349 are subject to the express provisions of s. 348. Where the accused is an old offender, a second class Magistrate trying the offender, should commit him to the Sessions under s. 348, unless he is of opinion that he can himself pass an adequate sentence. *In re* DASARI RAMUDU, **2 Weir 423.**

(3193)—Ss. 348 and 349—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 4 L.B.R. 282.

(3194)—Ss. 348, 350—*See* FRESH TRIAL, 15 C.P.L.R. Cr. 66.

(3195)—*Ss.* 348, 403—*Conviction—Subsequent commitment to Sessions.*—Where a Magistrate has to act under s. 348 of the Code of Criminal Procedure, he ought not to find the accused guilty before commitment, but should merely frame a charge and then commit, as otherwise a conviction would bar a fresh trial before the Sessions Court under s. 403 of the Code of Criminal Procedure. *In re* KORA SELLANDHI, **15 Cr. L.J. 188 = 22 Ind. Cas. 764.**

——S. 349 (=1882, s. 349 ; 1872, s. 46 ; 1861, s. 277).

See COMMITMENT TO SESSIONS COURT.

See MAGISTRATE, JURISDICTION OF.

Crim. Pro. Code (Act V of 1898)—*continued.*

(3196)—*S.* 349—*Reference to superior Magistrate for adequate punishment—Procedure* —A Sub-Divisional Magistrate, to whom a case is sent, under s. 349, for severe punishment, by a second class Magistrate, cannot return it to the latter for committal to the Court of Sessions and the committal by the second class Magistrate also is illegal. The Sub-Divisional Magistrate must deal with the case according to law. QUEEN-EMPRESS v. HAVIA, **Rat. Un. Cr. C. 222.**

(3197)—*S.* 349—*Magistrate to whom a case is referred to for higher punishment—Duty of.*—Though a Magistrate, to whom a case is referred for higher punishment, should, as a rule, pass final orders, and should not refer the case back to the referring Magistrate to pass orders which he could pass himself, he is not debarred from committing the case or referring it to an officer of higher powers than himself. CROWN v. SAN E, **1 L.B.R. 141.**

(3198)—*S.* 349 (= *Crim. Pro. Code*, 1872, s. 46)—*Reference to superior Magistrate under —His duty and his powers.*—When the proceedings of a case are submitted, under s. 46 of the Crim. Pro. Code, to the Magistrate of the District, he is bound to pass such judgment, sentence, or order in the case as he deems proper and as is according to law. He has no power to order a new trial by the Court of Session or any other Court, unless he considers that an offence has been committed which was not within the jurisdiction of the Magistrate before whom the trial was held. QUEEN-EMPRESS v. LAKSHMAN, **Rat. Un. Cr. C. 130.**

(3199)—*S.* 349—*Case referred to District Magistrate by Subordinate Magistrate—Procedure.*—Where a case is referred to a District Magistrate under s. 46, by a subordinate Magistrate, it is not competent to him to return the case to the subordinate Magistrate. DULA FAQUEER v. BHAGIRAT SIRKAR, **6 C. L.R. 276.** [*F.*, Rat. Un. Cr. C. 479, A.W.N. 1904, 42 = 26 A. 344.]

(3200)—*S.* 349—*Case sent to superior Magistrate for enhanced punishment—Practice.*—A Magistrate, to whom an accused person has been sent by a subordinate Magistrate for enhanced punishment, has no power to send the case for enquiry to another Magistrate. QUEEN v. VELAYUDAM, **4 M. 233.** (6 M.H C. App. ii, *R.*) [*R.*, 2 L.B.R. 285, F.B.]

(3201)—*S.* 349 (= *Crim. Pro. Code*, 1872, s. 46)—*Transfer of case—Sentence—Commitment to sessions.*—A Magistrate to whom a case is referred under s. 46, Code of 1872, by a subordinate Magistrate for the purpose of awarding a more severe punishment than he is competent to award, may direct the subordinate Magistrate to commit the case to the Sessions Court. A committal made by the subordinate Magistrate, under such circumstances, is legal. *In the matter of* CHINNIMARIGADU, **1 M. 289 = 2 Weir 425.** [*R.*, 13 C. 305, Rat. Un. Cr. C, 472, 2 L.B.R. 285, F.B.]

(3202)—*S.* 349—*Magistrate to whom accused is sent for enhanced punishment—Powers of.*—A Head Assistant Magistrate, to whom an accused is sent up for enhancement of punishment, has no power to send the case for inquiry to another Magistrate. *In re* VELAYUDAM, **2 Weir 424.**

(3203)—*S.* 349—*Sending case for higher punishment—Practice.*—It is in the discretion of a subordinate Magistrate trying a case to send it up to a superior Magistrate under s. 46. But the latter has no authority to direct the subordinate Magistrate to send up the case to him. CRIMINAL REVISION CASE, NO. 389 OF 1882, **2 Weir 427.**

(3204)—*S.* 349 (=*Crim. Pro. Code*, 1882, s. 349), *reference under — Jurisdiction and powers of Magistrate to whom reference is made —Duty of referring Magistrate to record opinion.* —Where proceedings are sent to a Magistrate, under s. 349, the whole case is opened up for him to deal with it according to his discretion. QUEEN-EMPRESS v. BAPUDA, **Rat. Un. Cr. C. 350 = Cr. Rg. 40 of 1887.**

(3205)—*S.* 349—*Power of Magistrate under the section.*—A Magistrate, to whom proceedings are submitted under s. 349, is not at liberty to return the case to the submitting Magistrate but must dispose of it himself. He has the power to commit to Sessions, if necessary. QUEEN-EMPRESS v. VIRANNA, **9 M. 377 = 2 Weir 427.** [*F.*, 26 A. 344 = A.W.N. 1904, 42; *R.*, 2 L.B.R. 285.]

(3206)—*S.* 349—*Power of Magistrate under the section.*—A Magistrate of the second or third class, in submitting his proceedings to another Magistrate for a severer punishment than he can himself inflict, is required to record his opinion only, but cannot legally convict the accused. It is the duty of the Magistrate to whom a case is so referred to pass judgment according to law. QUEEN-EMPRESS v. MAHADU, **Rat. Un. Cr. C. 387 = Cr. Rg. 38 of 1888.** [*R.*, Rat. Un. Cr. C. 479, 564.]

(3207)—*S.* 349—*Jurisdiction of Magistrate.*—A Sub-Divisional Magistrate to whom a case is submitted under s. 349 of the Crim. Pro. Code, cannot send it back to the Magistrate for disposal. He must himself pass such judgment as he thinks fit QUEEN-EMPRESS v. SITARAM, **Rat. Un. Cr. C. 479 = Cr. Rg. 44 of 1889.**

(3208)—*S.* 349—*Power of District Magistrate under the section.*—Where a Magistrate of the second or third class submits a case to the District Magistrate with his opinion, the District Magistrate should not confine himself to considering whether the Magistrate's decision is manifestly opposed to the evidence, but should consider the whole evidence and pass a judgment stating the points for determination and the reasons for his decision. QUEEN-EMPRESS v. APPAJI, **Rat. Un. Cr. C. 636 = Cr. Rg. 13 of 1893.**

(3209)—*S.* 349—*Power of District Magistrate.* —Where a second class Magistrate refers a case to a District Magistrate under s. 349, Crim. Pro. Code, the latter Magistrate is competent to deal with it in his discretion according to law. QUEEN-EMPRESS v. KONDI MALHARI, **Rat. Un. Cr. C. 948 = Cr. Rg. 54 of 1897.**

(3210)—*S.* 349—*Irregular proceedings under — Power of District Magistrate.*—When a Magistrate acts irregularly under s 349, it is open to the District Magistrate to take the case on his own file or to transfer it to that of some first class Magistrate, the proceedings, in either case, being taken *de novo*. *In re* MARI NAICKEN, **2 Weir 422.**

(3211)—*S.* 349 (=*Crim. Pro. Code*, 1882, s. 349)—*Several accused persons—Proceedings against some only, when legal—Procedure—Competency of superior Magistrate to act on evidence recorded by referring Magistrate.*—Where several persons are charged, a second class Magistrate is not bound to proceed against all the accused under s. 349, when only some of them deserve, in his opinion, a more severe punishment than it is competent to him to inflict. But it is desirable, however, to forward all the accused to the superior Magistrate. A superior Magistrate, who deals with the accused under s. 349, is not precluded from acting on the evidence recorded by the subordinate Magistrate or from adopting his opinion. It is in the discretion of the superior Magistrate to re-examine witnesses already examined by the subordinate Magistrate and to take further evidence. Although the latter cannot record a judgment against the accused who are sent up for enhanced punishment, yet he is entitled to record his opinion, and there is nothing illegal in his referring to a judgment recorded by him against some of the accused whom he has convicted, as embodying the opinion he has to record. *In re* RAGHAVA NAIKO, **2 Weir 428.**

(3212)—*S.* 349—*Power of Magistrate under the section.*—In cases where several accused persons are charged before a Magistrate, it is competent for him to convict some of them and send up the rest to a superior Magistrate for enhanced punishment. *In re* NACHIAN, **2 Weir 429.**

(3213)—*S.* 349—*Recording defence evidence and reference under,—to District Magistrate—District Magistrate sending the case for re-trial to another Magistrate—Legality of procedure.*—A third class Magistrate, after he had drawn up a charge of theft against the accused and recorded evidence for the defence, sent the case to the District Magistrate for enhancement of sentence under s. 349, Crim. Pro. Code. The District Magistrate quashed the proceedings and sent the case to a first class Magistrate for re-trial. *Held*, that the procedure adopted by the District Magistrate was illegal. JAWIND SINGH v. EMPRESS, **P.L.R. 1900, p. 37, Cr.**

(3214)—*S.* 349—*Sentence under.*—When a case is sent under the provisions of s. 349 of the Criminal Procedure Code to the District Magistrate, or the Sub-Divisional Magistrate,

Crim. Pro. Code (Act V of 1898)—*continued.*

such Magistrate is not competent to inflict a punishment more severe than he is empowered to inflict under ss. 32 and 33. When the District Magistrate in such a case sentenced the accused under ss. 379, 75, Penal Code, to seven years' rigorous imprisonment, including three months' solitary confinement, the Chief Court, on appeal, reduced the sentence to rigorous imprisonment for two years, including solitary confinement for three months. ALLAH BAKHSH *alias* PIARA *alias* GODI v. EMPEROR, **163 P.L.R. 1903 = 12 P.R. 1903, Cr.** (10 P.R. 1881, Cr., *F.*)

(3215)—*S.* 349—*Reference to the District Magistrate—Order, meaning of—Ante-dating a sentence, illegal.*—Where a third class Magistrate refers a case under s. 349, Crim. Pro. Code, to the District Magistrate recording that the accused should receive a punishment different in kind from what he could inflict, the District Magistrate is bound to pass final orders on such reference and cannot return the case to the third class Magistrate for disposal. The word "order" in s. 349 means a final order disposing of the case. It is not legal to antedate a sentence. QUEEN-EMPRESS v NGA KHAN, **1 L.B.R. 124.** (4 B. 240, 10 B. 196, *F.*) [*R.*, 4 L.B.R. 150 = 7 Cr. L.J. 449.]

(3216)—*S.* 349—*Sub-Divisional Magistrate—Jurisdiction to deal with a case under the section—Sentence—Passing adequate sentence—Transfer.*—The accused was at first tried by a second Class Magistrate for offences punishable under ss. 236 and 452, Penal Code. The trying Magistrate was of opinion that he could not pass an adequate sentence against the accused. He, therefore, sent up the proceedings under s. 349 of the Crim. Pro. Code to the Sub-Divisional Magistrate. The latter transferred the case to a first class Magistrate, who committed the accused to the Court of Session. A question having arisen if the commitment was illegal. *Held*, quashing the commitment, that the jurisdiction to deal with proceedings under s. 349 of the Crim. Pro. Code was conferred upon District Magistrates and Sub-Divisional Magistrates and upon no other Magistrates. EMPEROR v. VINAYAK NARAYAN ARTE, **16 Bom. L.R. 598 = 2 Bom. Cr. Cas 229 = 38 B. 719 = 28 Ind. Cas. 321 = 16 Cr. L J. 273.**

(3217)—S. 349—*See* DISTRICT MAGISTRATE, 12 P.R. 1903, Cr.

(3218)—S. 349—*See* PRISONER, 7 B.H.C. Cr. 31.

(3219)—S. 349—*See* SUMMARY TRIAL, 4 L.B.R. 277.

(3220)—*S.* 349, *cl.* 2—*Order—Meaning of—Final order in the case.*—S 349, cl. 2 of the Code, means that the Magistrate to whom a reference is made may pass such final orders as he thinks fit. He cannot, in his turn, dispose of the case, by sending it back to another. PONNUSWAMY NADAN v. EMPEROR, **1912 M.W.N. 16 = 13 Ind. Cas. 110 = 13 Cr. L.J. 16 = 36 M. 470.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3221)—S. 349—*See* Nos. 181, 182, 183, 188, 522, 523, 524, 1731, 1732, 1739, 2205, 2485, 2646, 3122, 3179, 3180, 3188, 3192, 3193, *supra.*

(3222)—*Ss.* 349, 364, 367 (= *Crim. Pro. Code,* 1872, *ss.* 46, 346, 464)—*Reference to superior Magistrate—Return of proceedings for omission to record statements of accused persons—Power of subordinate Magistrate to record a different finding.*—Where a subordinate Magistrate found that the offence committed by the accused persons before him was a grave one and deserving of more severe punishment than he was competent to adjudge, and submitted the proceedings to the District Magistrate, who, however, returned the proceedings on finding that the subordinate Magistrate had omitted to record in writing the statements of the accused as required by s 346, and directed the Magistrate to supply the defect, *held*, that the District Magistrate was competent to return the proceedings and that the subordinate Magistrate was also competent to come to a fresh and different conclusion as to the guilt of the accused and acquit some of them. HIGH COURT PROCEEDINGS, 15TH JULY 1878, NO. 1024, **2 Weir 426.** [*R.*, 2 Weir 429.]

(3223)—*Ss.* 349, 530—*Transfer of Criminal cases*—Where a case is submitted to a Magistrate under s. 349, he should not transfer it to another Magistrate for disposal. The proceedings of the latter would be void under s. 530 (1). KING-EMPEROR v. NGA PO SI. **U.B.R. 1905, Cr. P.C. 33 = 2 Cr. L.J. 464.**

(3224)—*Ss.* 349 *and* 530 (1)—*Reference under the section—Powers of the Magistrate to whom reference is made*—A Magistrate to whom a case is submitted under s. 349, has no power to send it back to the referring Magistrate. He must dispose of it himself by acquitting or convicting and sentencing the accused or committing the accused for trial. EMPEROR v. THAKUR DAYAL, **26 A. 344 = A.W N. 1904, 42.** (4 B. 240, 9 M. 377, 6 C.L.R. 276, 10 B. 196, *F.*)

——**S. 350 (= 1882, s. 350; 1872, ss. 328, 329).**

See COMMITMENT TO SESSIONS COURT.

See CONVICTION.

See MAGISTRATE, JURISDICTION OF.

See PRACTICE AND PROCEDURE.

(3225)—*S.* 350 (= *Crim. Pro. Code,* 1882, *s.* 350)—*Scope of.*—S. 350 is intended to provide for a case where an enquiry or trial has been commenced before one incumbent of a particular magisterial post, and that officer ceases to exercise jurisdiction in that post, and is succeeded by another officer. QUEEN-EMPRESS v. RADHE, **12 A. 66 = A.W.N. 1890, 7.** [*F.*, 15 C.P.L.R. 66, 17 C.P.L.R. 159, 1 L.B.R. 301, 1 N L.R. 187; *R.*, 39 C 781 = 13 Cr. L.J. 218 = 14 Ind. Cas. 314, 12 C.W.N. 140, 6 Cr. L. J. 434, 14 P.R. 1903, Cr. = 175 P.L.R. 1903, 25 P.R. 1905, Cr.]

(3226)—*S.* 350—*Scope of.*—S. 350 applies only to a case where a Magistrate ceases to

Crim. Pro. Code (Act V of 1898)—*continued.*

exercise jurisdiction and is succeeded by another Magistrate who has and exercises such jurisdiction. HARDWAR SINGH OR LALL v. KHEGA OJHA, **20 C. 870.** [*R.*, U.B.R. 1897—1901, Vol. I, p. 87.]

(3227)—*S.* 350—*Trial by Sessions Judge on evidence recorded partly by another Judge—Applicability of section.*—The Code of Criminal Procedure does not empower a Sessions Judge to try a case partly on evidence not recorded by himself; and the consent on the part of the accused to such a trial cannot vest in him a jurisdiction to do so. S. 350, Crim. Pro. Code, applies solely to Magistrates. KING-EMPEROR v. SAKHARAM PANDURANG, **26 B. 50=3 Bom. L.R. 558.**

(3228)—*S.* 350—*Applicability of the section.*—S. 350, Crim. Pro. Code, applied only to Magistrates and not to Sessions Judges. EMPRESS v. KALU RAM, **7 C.P.L.R. Cr. 1.** (3 M. 112, *R.*)

(3229)—*S.* 350—*Applicability of, to cases transferred from one Magistrate to another—Preliminary inquiry, not a trial and not provided for by proviso* (*a*).—The words of the section are applicable to cases in which the case under inquiry or trial is withdrawn from one Magistrate, who thereupon ceases to exercise jurisdiction *therein*, and is transferred to another, and the latter is not, therefore, bound to re-hear all the prosecution witnesses. A "register case" or preliminary inquiry into an accusation of an offence triable exclusively by a Court of Session is not a trial before the charge is framed, but an inquiry and, therefore, not provided for by proviso (*a*) to s. 350. *In re* PALANIANDY GOUNDAN, **5 M.L.T. 218=9 Cr. L.J. 146=32 M. 218=1 Ind. Cas. 54.**

(3230)—*S.* 350 (=*Crim. Pro. Code*, 1872, s. 328)—*Medical witness, examination of.*—In order to render the examination of a Civil Surgeon or a medical witness admissible in evidence against any individual, without calling that person as a witness, the examination must have been taken by the Magistrate in the presence of the accused. JUBBOO MAHTON v. EMPRESS, **12 C.L.R. 233.**

(3231)—*S.* 350—*Transfer of case—Conviction on evidence partly recorded by the former Magistrate — Validity.*— Where, after several witnesses were examined, the case was transferred to another Magistrate, *held*, that the latter acted irregularly in convicting the accused on evidence partly recorded by the former Magistrate. The irregularity could not be waived by the accused, as s. 350 did not apply to such a case. DEPUTY LEGAL REMEMBRANCER v. UPENDRA KUMAR GHOSE, **12 C.W.N. 140=6 Cr. L.J. 434.** [*Not F.*, 39 C. 781=13 Cr. L.J. 218=14 Ind.Cas. 314; *Diss.*, 35 C. 457=7 C.L.J. 488=7 Cr. L.J. 220=12 C. W.N. 216; *Appr.*, 32 M. 218=5 M.L.T. 218=9 Cr. L.J. 146=1 Ind. Cas. 54.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(3232)—*S.* 350 —*Trial* de novo— *Case of defamation—Final orders should be by Magistrate who examines complainant—Exclusion of documentary evidence — Probative value—Inspection.*—Where, on the transfer of a case, the accused do not apply for a trial *de novo*, the action of the Magistrate, in convicting the accused on the evidence recorded partly by the former Magistrate and partly by himself, is not strictly without jurisdiction. It is most desirable, however, in a case of defamation, that the examination and cross-examination of the complainant should be held in the presence of the Magistrate who has *seizin* of the case, and passes final orders therein. A piece of documentary evidence should not be excluded merely on the ground that it is of little evidentiary value, and without being looked into by the Court. BRINDABAN CHANDER DAS v. ISHAQUDDIN CHOWDHRY, **13 C.W.N. 550=4 Ind. Cas. 67=10 Cr. L.J. 492.**

(3233)—*S.* 350—*Part-heard trial—One Magistrate succeeding another — Procedure of succeeding Magistrate—Right of accused.*—S. 350 of the Crim. Pro. Code gives the second Magistrate an alternative. He can act on the evidence recorded by his predecessor or partly recorded by his predecessor and partly recorded by himself, or he may summon the witnesses and recommence the enquiry or trial. But he cannot do both. The accused may demand that the witnesses or any of them be re-summoned and re-heard. Where an accused demands that all the witnesses are to be re-summoned and re-heard, he compels the second Magistrate to adopt the second alternative course and to recommence the trial or enquiry. When the second Magistrate re-summons none or only some of the witnesses previously examined and acts on the evidence partly recorded by his predecessor and partly recorded by himself, he adopts the first alternative and does not recommence the enquiry or trial. If the second Magistrate recommences the trial, he has full power to deal with the case and can discharge the accused, or, if he thinks fit, frame a charge. He cannot act on the charge, if any, framed by his predecessor, or on any depositions or examination of the accused recorded by him KING-EMPEROR v. NGA PE, **2 L.B.R. 17.**

(3234)—*S.* 350 (=*Crim. Pro. Code*, 1872, s. 328)—*Magistrate cannot decide a case on evidence taken by his predecessor.*— A Deputy Magistrate must, on succeeding his predecessor who had enquired into the case, recall the witnesses *de novo* and examine them himself. He cannot decide the case on the evidence recorded by his predecessor. GURU CHURN SEN v. KALI NATH DASS BISWAS, **23 W.R. Cr. 62.**

(3235)—*S.* 350 (=*Crim. Pro. Code*, 1872, s. 328)—*One Magistrate hearing and another deciding.*—S. 350 of the Code of 1898 would not enable a Magistrate to decide a case on evidence wholly recorded by his predecessor. That section required that at least part of the evidence should be recorded by the

Crim. Pro. Code (Act V of 1898)—*continued.*

Magistrate who decided the case. THAKUR DAS MANGHI v. NAMDUR MUNDUL, **24 W.R. Cr. 12**

(3236)—*S. 350—Re-commencement of trial or enquiry—Discharge or acquittal.*—Where a trial is re-commenced under s. 350 of the Crim. Pro. Code, while a charge had been framed by the predecessor-in-office of the Magistrate, the charge is not cancelled and there can only be an acquittal. It is settled law that proceedings before a Magistrate in a warrant case under Chap. XXI of the Crim. Pro. Code are only an enquiry until the charge is framed and, on a charge being framed become a trial. The Magistrate who re-commenced an enquiry or trial does not thereby modify its nature at the stage at which it has arrived. TUNGUTURI SRIRAMULU v. NALAM KRISHNA ROW, **1914 M.W.N. 646 = 16 M.L.T. 303 = 25 Ind Cas. 1001 = 15 Cr. L.J. 673.**

(3237)—S. 350 — *See* BENCH OF MAGISTRATES, 23 C. 194.

(3238)—S. 350 — Meaning of ' succeeded,' ' ceases to exercise jurisdiction therein '—Trial held partly by one and partly by another Magistrate—Legality — *See* PENAL CODE, ss. 143, 147, 149, 13 Cr. L J. 218 = 14 Ind. Cas. 314 = 39 C. 781.

(3239)—S. 350— *See* SESSIONS JUDGE, JURISDICTION OF, 3 M. 112 = 2 Weir 430.

(3240)—S. 350— *See* TRANSFER OF CRIMINAL CASES —MISCELLANEOUS CASES, 12 C.W.N. 138, 1 L.B.R. 287.

(3241)— S. 350— *See* WITHDRAWAL OF CASE, 1 L.B.R. 139.

(3242)— S. 350—*See* Nos. 70, 131, 132, 1471, 1732, 2059, 2094, 2618, 2697, 2803, 3180, 3194, *supra and* No. 3939, *infra*.

(3243)—Ss. 350, 107 (1)—*See* SECURITY TO KEEP THE PEACE—SUMMONING WITNESSES, 4 C.L.R. 452.

(3244)—*Ss.* 350, 145—*Case under s.* 145—*Enquiry — Evidence partly recorded by one Magistrate and partly by another.* —S. 350, Crim. Pro. Code, is in its terms wide enough to cover every trial or enquiry under the Code, and the proceedings under s. 145 is an enquiry, because in it the Magistrate's duty is to enquire who is in possession of the disputed area. Therefore the terms of s. 350 apply wherever a Magistrate has ceased to exercise jurisdiction therein. ANU SHEIKH v JITU SHEIKH, **7 Ind. Cas. 54 = 11 Cr. L J. 440 = 37 C. 812.**

(3245)—Ss. 350, 256, 356, 357—*See* ACCUSED PERSON, 1 L.B.R. 238.

(3246)—Ss. 350, 437—*See* FURTHER ENQUIRY, 6 A. 367.

(3247)—*Ss.* 350, 437, 254, 253 (2)—*Enquiry commenced by a Magistrate—Framing of charge under s.* 254 *by him—Re-commencement under s.* 350 *of trial by his successor—Discharge under s.* 253 (2), *of the accused by latter—Order by*

Crim. Pro. Code (Act V of 1898)—*continued.*

District Magistrate for further enquiry under s. 437—*Illegality—Nature of proceedings under s.* 350—*Object of s* 350—*Inquiry—Trial, meaning of the terms*—Where the case against certain accused was first begun by a Sub-Divisional Magistrate who went so far as to frame a charge under s. 254, Crim. Pro. Code, to which the accused pleaded not guilty, and the successor-in-office of the Magistrate re-commenced the enquiry under s. 350, Crim. Pro Code, examined the complainant and then passed an order of discharge under s. 253 (2), and the District Magistrate set aside the order of discharge and ordered a further enquiry under s. 437, Crim. Pro. Code. *Held*, that the re-commencement of a ' trial ' under s. 350, Crim. Pro. Code, does not imply a cancellation of the charge framed by the first Magistrate, that the charge remains in force and that the subsequent order must be treated as one of acquittal and not of discharge (1903, 38 P. R. Cr., 35, *Appr.*) The only object of the substantive portion of cl. 1 of s. 350 seems to be to leave it to the discretion of the Magistrate to either act on evidence recorded by his predecessor or to hear it over again for himself. It is settled law that the proceedings before a Magistrate in a warrant case under Chap. XXI, Crim. Pro. Code, are only an ' enquiry ' until a charge is framed, and on a charge being framed become a ' trial '. (32 M. 218, 32 M. 200, *R.*) Where the proceedings re-commenced under s. 350 are only an enquiry, they are re-commenced as an enquiry. Where they have developed into a trial stage, they are re-commenced as a trial, *i e.*, a proceeding in which a charge has been framed. A Magistrate who re-commences an enquiry or trial does not thereby modify its nature or the stage at which it has arrived. (9 M. 282, *R.*) *Held*, also, that the District Magistrate had no power to order further inquiry. TUNGUTOORI SREERAMULU v. K. VEERASALINGAM, **16 M.L.T. 303 = 27 M.L.J. 589 = 1914 M.W.N. 646 = 15 Cr.L.J. 673 = 25 Ind. Cas. 1001.**

(3248)—*Ss.* 350 *and* 528—De novo *trial—Change of trying Magistrate—Applicability of s.* 350.—The provisions of s. 350, Crim. Pro. Code, apply to all cases in which cases are transferred for whatever reasons from the file of one Magistrate to that of another. When a case is transferred under s. 528, Crim. Pro. Code, from the file of one Magistrate to that of another, the former ceases to exercise jurisdiction in the case and is succeeded by the latter in the exercise of the jurisdiction within the meaning of s. 350, Crim. Pro. Code. MOHESH CHANDRA SAHA v. EMPEROR, **12 C.W.N. 416 = 35 C. 457 = 7 C.L.J. 488 = 7 Cr. L.J. 220.** (12 C.W.N 140, *Com.*; 13 W.R.Cr. 40, 14 W.R. Cr. 3, *R.*; 19 W.R.Cr. 28, 23 C. 194, 14 A. 346, *D.*; 24 W.R. Cr., 52, A.W.N. 1889, 130, *F.*) [*F.*, 32 M. 218 = 5 M.L.T. 218 = 1 Ind. Cas. 54 = 9 Cr. L.J. 146, 15 Cr.L.J. 354 = 23 Ind. Cas. 722 = 12 A.L.J. 467]

(3249)—*Ss.* 350, 528—*Scope and application of.*—When a case is withdrawn or transferred

under s. 528, the proceedings should be commenced afresh. Also, the accused should be informed of their option under s. 350. (20 C. 870, 2 W.R. Cr. 53, *R.*) S. 350 does not apply to cases withdrawn under s. 528. QUEEN-EMPRESS v. NGA PO MIN, **U B.R. 1897—1901, Vol. I, 87.** (20 C. 870, 24 W.R. Cr. 53. *R.*) [*D.*, 14 Cr.L.J. 175 = 19 Ind. Cas 175 = U.B. R. 1912, 149.]

(3250)—*Ss.* 350, 528—*Transfer of leases from one Court to another—Evidence recorded by the first Court—Action taken on that evidence by second Court—No prejudice to the accused, effect of.*—S. 350 of the Code of Criminal Procedure is not limited to cases in which one Magistrate succeeds another in office, but applies to all cases transferred under s. 528, Crim.Pro. Code, from the file of one Magistrate to that of another. An order of commitment for trial to the Court of Sessions passed by the Magistrate, to whose Court the case has been transferred, on the evidence recorded by the Magistrate from whose Court it was so transferred, should not be interfered with, particularly where no possible question of prejudice to the accused person could arise. KING-EMPEROR v. NANHUA, **12 A L.J. 467 = 15 Cr. L.J. 354 = 23 Ind. Cas. 722 = 3 A. 365.** (14 A. 348, *D.*; 1889 A.W.N. 130, *Not F.*; 35 C. 457, 32 M. 218, *F.*)

(3251)—*Ss.* 350, 537 (=*Crim. Pro. Code*, 1882, *ss.* 350 *and* 537)—*Meaning of word "trial" —Proper time for re-summoning and re-hearing witnesses—Refusal to re-call witnesses—Effect. —Per Maclean, C.J.* — The word "trial" means the proceeding which commences when the case is called on, with the Magistrate on the Bench, the accused in the dock, and the representatives of the prosecution and for the defence, if the accused be defended, are present in Court for the hearing of the case. The proper time for the accused to ask for the re-summoning and re-hearing of the witnesses, according to s. 350, proviso (*a*), is, as soon as the trial commences before the second Magistrate, and this is the case even though an interlocutory application for enforcing the attendance of certain witnesses may have been previously granted by the Magistrate. *Per Banerjee, J.*—A trial held by a Magistrate presiding in the Court of first instance on evidence not recorded by him, and on evidence of witnesses whose manner and demeanour he had not the advantage of observing, must be considered to be a trial held not according to law and without one of the most important guarantees for a correct decision, and to have occasioned a failure of justice. S. 537 cannot cure such defect. GOMER SIRDA v. QUEEN-EMPRESS, **25 C. 863 = 2 C.W.N. 465.** [*Expl.*, 14 Cr. L.J. 230 = 19 Ind. Cas. 326 = 9 N.L.R. 42; *D.*, 3 P.R. 1903. Cr.]

(3252)—*Ss.* 350, 537—*Omission to enquire from accused whether he wished to exercise his privilege under s.* 350 (*a*)—*Effect—Duty of Magistrate.*—S. 350, Crim. Pro. Code, confers the right on the accused person to demand, and does not actually prescribe that the Magistrate shall ask the accused. In this case, the Magistrate, who examined all the witnesses except the complainant, adjourned the case in order that the complainant might be examined, because she could not appear on the day when she was called, as she was in child-birth at the time. However he charged the accused because he considered the evidence sufficient to support the charge, and fixed the case for hearing to a later date. In the meantime he was succeeded by another Magistrate who examined the complainant and passed orders in the case. There was nothing on the record to show that he either asked the accused if he wished to recall the witnesses or whether the accused asked them to be recalled. But it was on the record that the accused, when charged by the former Magistrate, stated to him that he did not wish the witnesses to be recalled. *Held*, under the circumstances, that, as there was no demand or refusal but only an omission to enquire from the accused whether he wished to exercise the right reserved by proviso (*a*) to s. 350, the accused had not been materially prejudiced, nor was a failure of justice occasioned by the omission, but that the error was one which was curable under s 537 of the Code. NGA PO TEIN v. KING-EMPEROR, **U.B.R. 1912, 149 = 19 Ind. Cas. 173 = 14 Cr. L.J. 175.** (P.R. 1913 p. 8, *F.*; U.B R. 1897—1901, Vol. I, 87, *R.*)

(3253)—*Ss.* 350, 537—*Commencement of trial —Jurisdiction—Change of Magistrate—Irregularity.*—The provisions of s. 350 of the Code of Criminal Procedure are only applicable where a trial has been commenced before one incumbent of a particular magisterial post who ceases to exercise jurisdiction in that post and is succeeded by another officer. EMPEROR v. GOKUL, **17 C.P.L.R, 159, Cr.**

(3254)—Ss. 350, 537—*See* JUDGMENT, 3 P. R. 1903, Cr., 6 P.R. 1884, Cr.

(3255)—*Ss.* 350, 544—*Transfer of Magistrate pending trial—Expenses of prosecution witnesses re-called, whether to be paid by accused.*—Where, on the transfer of the trying Magistrate, the accused claims under s. 350, Crim. Pro. Code, to have the witnesses re-examined by the succeeding Magistrate, the witnesses should be re-summoned without payment of any fees. ELIAS v. EZAKIEL, **15 Cr. L.J. 687 = 26 Ind. Cas. 135 = 8 Bur. L.T. 43.**

—— **S. 351 (=1882, s. 351; 1872, s. 104; 1861, s. 206).**

(3256)—*S.* 351 (=*Crim. Pro. Code*, 1872, s. 104; 1861—1869, *s.* 206) — *Preliminary investigation.*—S. 206, Crim. Pro. Code, 1861, applies to investigations preliminary to commitment for a subsequent trial, and not to cases where the trial is actually being proceeded with. QUEEN v. NARAIN SINGH; QUEEN v. SUTHERLAND, **14 W.R. Cr. 20.**

(3257)—S. 351—*See* Nos. 1527, 1646, 1671, 1679, 2746, *supra.*

Pro. Code (Act V of 1898)—*continued.*

——**S. 352 (=1882, s. 352; 1872, s. 187; 1861, s. 279).**

(3258)—*Ss.* 352, 537 (=*Crim. Pro. Code*, 1882, *ss.* 352, 537)—*Evidence given at previous trial taken as examination in-chief—Evidence Act, ss.* 138, 167, 33.—Where, in a case in which two parties, Hindus and Mahomedans, were accused of rioting, the Magistrate, in the trial of the Hindus, after that of the Mahomedans was over, instead of examining the witnesses, had the copies of the examination-in-chief of the witnesses recorded in the former trial produced in the present trial, and the accused in the second trial cross-examined the witnesses, no objection being taken to the procedure, on the prisoner's behalf, *held*, that the procedure adopted was irregular, but the irregularity was cured by the provisions of s. 537, as the matter elicited in cross-examination was sufficient to sustain the conviction. QUEEN-EMPRESS v. NAND RAM, 9 **A. 609 = A. W.N. 1887, 143.**

——**S. 353 (=1882, s. 353; 1872, s. 191, para 1; 1861, s. 194).**

(3259)—*S.* 353 (=*Crim. Pro. Code*, 1861, s. 194)—*Examination of complainant—Presence of accused.*—Under s. 194 of the Crim. Pro. Code, 1861, it is not enough to read over the deposition of the complainant in the presence of the accused person. The examination must take place in his presence. REG. v. BULDEV GOOMAJEE, **Rat. Un. Cr. C. 24 = Cr. Rg. 23-9-1869.**

(3260)—*S.* 353 (=*Crim. Pro. Code*, 1872, s. 353).—A Magistrate who reads over the evidence of the witnesses to the accused recorded in their absence, the accused being allowed to cross-examine the witnesses, acts irregularly; a Magistrate reading the deposition of a witness previously recorded and asking him if it is true, commits an illegality as the procedure amounts to putting him a leading question and impliedly intimating to him that the same story is expected from him again. If the accused interrupted the Magistrate intentionally with a view to delay the proceedings, he should be dealt with according to law, but nothing would excuse such an illegal proceeding as covering his face by placing a cloth across his mouth while the evidence was being recorded. EMPRESS v. RAMPIARE, **5 C.P.L. R. Cr. 33.**

(3261)—*S.* 353—*Evidence.*—It is irregular to import into a case the evidence given in another case by merely reading over a deposition to a witness and asking him if it was correct. NGA POTUM v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 399.**

(3262)—*S.* 353—*Trial—High Court—Absence of accused on ground of ill-health.*—The High Court has power, under the provisions of s. 353, Crim. Pro. Code, to dispense with the attendance of an accused person during his trial before it in the Sessions on the ground of his

Crim. Pro. Code (Act V of 1898)—*continued.*

ill-health. EMPEROR v. C.W. KING, **14 Bom. L.R. 236 = 15 Ind. Cas. 96 = 13 Cr. L J. 464 = 1 Bom. Cr. C. 111.**

(3263)—S. 353—*See* WITNESS—EXAMINATION OF WITNESSES, S.C. 86, Oudh.

(3264)—S: 353—*See* Nos. 376, 1742, *supra.*

(3265)—*Ss.* 353, 537—*Trial under Ch.* XII—*Failure to take evidence for defence in accused's presence—Irregularity—No miscarriage of justice —Not curable under s.* 537.—Where the accused was present when all the witnesses for the prosecution were examined and disappeared when his own witness was called and examined. *Held*, that the trial was irregular and that the irregularity was not one which can be cured under s. 537, Crim. Pro. Code, even though it led to no miscarriage of justice, (Rat. Un. Cr. C. 325, *R.*) S. 353, Crim. Pro. Code, lays down that all evidence shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader. Evidence for the prosecution as well as for the defence is included in the words 'all evidence.' NGA PO SHEIN v. K. E., **U.B.R. 1912, 4th Qr., 152 = 14 Cr. L.J. 287 = 19 Ind. Cas. 719.**

——**S. 354 (=1882, s. 354; 1872, s. 332).**

(3265-*a*)—S. 354—*See* No. 521, *supra.*

——**S. 355 (=1882, s. 355; 1872, ss. 222, 333; 1861, s. 267).**

(3266)—*S.* 355 (=*Crim. Pro. Code*, 1872, s. 333), *Evidence recorded in memorandum form.*—In a case of theft combined with a charge of previous conviction, the Magistrate should not record the evidence in the form of a memorandum, as such offence is not triable summarily. HIGH COURT PROCEEDINGS, 25TH OCT. 1880, NO. 2110, **2 Weir 432.** [*F.*, 2 Weir 433.]

(3267)—*S.* 355 (=*Crim. Pro. Code*, 1882, s. 355)—*Summons case—Reading over of the recorded deposition—Affirmation of a re-called witness.*—In a summons case, the reading over of the recorded deposition is not prescribed by law, and its omission cannot, therefore, *per se* be regarded as a fatal defect. Where a witness is re-called shortly after the close of his first deposition, the further statement must be deemed to be made under the original affirmation. HIGH COURT PROCEEDINGS, 31ST OCT. 1894, NO. 2078, JUDICIAL, **2 Weir 433.**

(3268)—S. 355—*See* Nos. 1209, 1669, 2723 to 2725, *supra.*

(3269)—*Ss.* 355, 263, 264—*Summary trial—Record, particulars of—Ingredients of offence charged—Substance of evidence must be embodied in judgment—S.* 355, *applicability of.* —After a summary trial, the petitioner was convicted of being in possession of a stolen bundle of clothing. There was no evidence to show that he had any guilty knowledge. *Held*, that the conviction could not stand, as the proceedings did not disclose any offence against the petitioner. *Held*, also, that the Magistrate's

Crim. Pro. Code (Act V of 1898)—*continued.*

record in summary trials, however brief, must show the necessary ingredients of the offence charged. It is not necessary for a record of evidence to be made in summary trials, even where an appeal lies, but s. 264 provides that the substance must be embodied in a judgment as well as the particulars in s. 264. S. 355 merely prescribes a briefer record in summons cases and other cases, which may be tried summarily, when they are, as a matter of fact, tried regularly. KUCHI v. KING-EMPEROR, **3 L. B.R. 8 = 2 Cr.L.J. 375.** [*F.*, 12 Cr.L.J. 280 = 10 Ind. Cas. 921 = 4 Bur. L.T. 117.]

(3270)—Ss. 355, 300, 301, 302, 303, 306, 307 —*See* JURY, 4 C.L.R. 405.

(3271)—Ss. 355 to 364—*See* CONFESSION—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY—RECORD OF CONFESSIONS, 2 C.W N. 702.

(3272)—*Ss.* 355, 356, 357, 537 (=*Crim. Pro. Code*, 1882, *ss.* 355, 356, 357, *and* 537)—*Summons cases—Power of Native second class Magistrate to record memorandum of evidence in English* —There is no provision of law which renders it illegal for a native second class Magistrate to record the memorandum of the substance of evidence of each witness mentioned in s. 355 in English. Even if the procedure were irregular, the irregularity will not vitiate the trial, unless a failure of justice has been occasioned thereby. QUEEN-EMPRESS v. GOPAL GOUNDAN, **19 M. 269 = 2 Weir 433 = 6 M.L.J. 134.**

——**S. 356 (=1882, s. 356 ; 1872, s. 334 ; 1861, s. 195).**

(3273)—S. 356—*See* Nos. 1209, 1210, 2060, 2966, 3245, 3271, 3272, *supra.*

(3274)—*Ss.* 356 *and* 537—*Mode of recording evidence and revision in case of any irregularity, etc.*—A defect in the Magistrate's procedure, *viz.*, recording the evidence of witnesses in English language with his own hand and not in the language of the Court, as required in s. 356 of the Code, is merely an irregularity and not an illegality which would vitiate the trial. The essence of the rule contained in the 1st clause of s. 356 of the Code is the taking down in writing of the evidence of each witness and not the taking down in writing of the same in the language of the Court, as is shown by the provisions of s. 357 of the Code, under which, if the local Government so directs, the evidence may be taken down in the mother-tongue of the Judge or in English. HARBAKHSH SINGH v. KING-EMPEROR, **6 O C. 73.**

——**S. 357 (=1882, s. 357 ; 1872, s. 335 ; 1861, s. 196).**

(3275)—S. 357—*See* PRACTICE AND PROCEDURE, 2 Weir 434 = 5 M.H.C. App. 9.

(3276)—S. 357—*See* Nos. 3245, 3271, 3272, *supra.*

(3277)—*Ss.* 357, 360, 537 *and* 540 (=*Crim. Pro. Code*, 1882, *ss.* 357, 360, 537, 540)—*Omission to interpret evidence to witness.*—By the mere fact of the evidence as recorded by a Sessions Judge not being interpreted to the witnesses, the conviction of the accused did not become illegal, such omission, although amounting to an irregularity, not having prejudiced them. CHURAI v. QUEEN-EMPRESS, **S C. 275, Oudh.** (8 W.R.Cr. 63, 7 C. 393, *R.*)

(3278)—*Ss.* 357, 537 (=*Crim. Pro. Code*, 1882, *ss.* 357, 537)—*Magistrate taking evidence in his own hand-writing not being so authorised —Commitment—Irregularity.*—Where a Magistrate who is authorised to take down depositions in his own hand-writing, while he is in one district, is transferred to another district, his authority remains in force only so long as he remains in the district in which it has been conferred. But, if after such transfer, he takes down depositions in his own hand-writing and makes a commitment, the commitment, although irregular is valid, unless the accused has been prejudiced thereby. *In re* CHATHANADIYIL KELU NAYAR **2 Weir 434.**

——**S. 358 (=1882, s. 358 ; 1872, s. 336 ; 1861, s. 268).**

(3279)—S. 358—*See* No. 3271, *supra.*

——**S. 359 (=1882, s. 359 ; 1872, s. 338 ; 1861, s. 198).**

(3280)—S. 359—*See* No. 3 71, *supra.*

——**S. 360 (=1882, s. 360 ; 1872, s. 339 ; 1861 ss. 198, 199).**

See EXAMINATION OF ACCUSED.

(3281)—*S.* 360 (=*Crim. Pro. Code*, 1882, s. 360)—*Evidence of witnesses.*—S. 360 directs that the evidence of each witness should be read over to him in the presence of the accused, and the accused cannot pay attention to it, if the evidence of the next witnesses is proceeded with. *In re* SINGIRI ERADU, **2 Weir 435.** [*D.* 34 M. 141 = 7 Ind. Cas. 414 = 8 M.L.T. 117 = 11 Cr.L.J. 482.]

(3282)—*S.* 360—*Deposition of witness—Reading it over in the verandah of Court—Illegality —Inadmissibility in evidence—Evidence Act, ss.* 80, 91.—Where the deposition of a witness was read over to him by a clerk in the varandah of the Court-house, though both the witness and the clerk were in view of the accused and his advocate :—*Held* that the procedure was a gross infraction of the plain provisions of s. 360, Crim. Pro. Code, and the deposition was one which was not taken in accordance with law (36 C. 95, 28 M. 308, 12 C.W.N. 848, 14 C.W.N 82, *R.*) and therefore not admissible in evidence. (*Vide* ss. 80 and 91 of the Evidence Act). NGA SAN MYIN v. K. E., **U.B.R. 1912, 1st Qr., 123 = 13 Cr. L J. 569 = 15 Ind. Cas. 985.**

(3283)—S. 360—*See* FORGERY, 36 C. 955.

(3284)—S. 360—False deposition of accused tendered in evidence—Examination of another witness while deposition was being read out

Crim. Pro. Code (Act V of 1898)—*continued.*

to accused—Admissibility of deposition—*See* PENAL CODE, s. 193, 9 Ind. Cas 262=12 Cr. L.J. 44=9 M.L.T. 325=21 M.L.J. 411.

(3285)—S. 360—*See* PERJURY, 12 C.W.N. 845=8 Cr. L.J. 116.

(3286)—S. 360—*See* Nos. 1826, 3271, 3277, *supra.*

(3287)—*S.* 360, *sub-s.* (1), *s.* 476—*Handing over record of deposition to witness for being read by him if sufficient compliance with law—Such deposition if admissible and prosecution for perjury if can be made thereon—Examination of witnesses in enquiry under s. 476, Crim. Pro. Code—Duty of Magistrate to make a record of statements.*—An order under s. 476, Crim. Pro. Code, was made against the petitioner directing his prosecution under s. 193, I.P.C., with reference to a deposition given by him as a witness at a criminal trial. It appeared that, after the deposition had been recorded, the record was handed over to the petitioner who proceeded to read it over himself. The Magistrate held a preliminary enquiry under s. 476, Crim. Pro. Code, before making the order for prosecution and examined witnesses in the course of that enquiry, but made no record of their statements: *Held*—that the provisions of s 360, sub-s (1), Crim. Pro. Code, were not sufficiently complied with, inasmuch as that sub-section requires that the evidence should be read over in the presence, that is, in the hearing of the accused, in order that the accused should have an opportunity of correcting any mistake in it. That the deposition was inadmissible and the order for prosecution must be set aside. That the Code of Criminal Procedure does not contain any provision with regard to the manner in which the evidence in an enquiry under s. 476, Crim. Pro. Code, should be recorded; but for future reference the Magistrate should have made a summary of the statements of the witnesses examined. KING-EMPEROR v. JOGENDRA NATH GOSH, **18 C.W.N. 1242=15 Cr. L.J. 483 =24 Ind. Cas. 571.**

(3288)—*Ss.* 360, 361 (=*Crim. Pro. Code,* 1872, *ss,* 339, 340)—*Witnesses not understanding depositions read over to them.*—S. 339, Crim. Pro. Code, 1872, is for the protection of witnesses. The mere fact that the witnesses did not understand their depositions when read over to them, if they have not required them to be interpreted, does not afford any ground for the accused in the case to have his conviction set aside. *In the matter of* OKHOY KUMAR, **7 C. L.R. 393.** (12 W.R. Cr. 47, *D.*)

——**S. 361 (=1882, s. 361; 1872, s. 340; 1861, s. 200).**

(3289)—S. 361—*See* Nos. 3271, 3288, *supra.*

——**S. 362 (=1882, s. 362; 1872, s. 338; 1861, s. 198).**

(3290)—*S.* 362—*Presidency Magistrate, in what cases bound to record evidence.*—A Presidency Magistrate is not bound to record evidence in any summons cases or warrant cases or cases in which enquiries have to be made as in summons cases or warrant cases, except where he may impose a fine exceeding two hundred rupees or imprisonment for a term exceeding six months. He is bound to record evidence only in cases coming under s. 362 of the Code. But, however, it is desirable that the Presidency Magistrates should keep some record of the statements made by witnesses or that their judgment should indicate what these statements are, so that the High Court, as a Court of Revision, may judge of the propriety or legality of the orders passed by them. SHAIK BABU v. EMPEROR, **33 C. 1036= 4 C.L.J. 408=4 Cr. L.J. 368.** (16 C. 799, *R.*) [*D.*, 9 C.L.J. 439=13 C.W.N. 318=10 Cr. L. J. 122=2 Ind. Cas. 651.]

(3291)—S. 362—*See* Nos. 3123, 3271, *supra.*

(3292)—*Ss.* 362 *and* 370—*Presidency Magistrate—Recording of reasons for conviction—Recording of evidence in appealable and non-appealable cases.*—S. 362 of the Code prescribes that the evidence in appealable cases, that is, in which a Presidency Magistrate imposes a fine exceeding Rs. 200 or imprisonment for a term exceeding six months, shall be duly recorded. There is no obligation in law to record evidence in other cases. In s. 370 it is enacted that, instead of recording a regular judgment, a Presidency Magistrate need only record certain specified particulars (*a*) to (*h*) and (*i*) in all cases in which the Magistrate inflicts imprisonment or fine exceeding Rs. 200 or both, a brief statement of the reasons for conviction. The brief statement of reasons must be such as is sufficient to satisfy the High Court, upon revision that there were sufficient materials before the Magistrate to support the conviction. EMAMAN v. EMPEROR, **31 C. 983= 8 C.W.N. 839.**

——**S. 363 (=1882, s. 363; 1872, s. 341; 1861, s. 249).**

(3293)—*S.* 363 (=*Crim. Pro. Code,* 1882, *s.* 363)—*Untrustworthiness of witness, when to be pronounced by the Judge*—It is always unsafe to pronounce an opinion on the credibility of a witness, until the whole of the evidence has been taken; a Judge may note the demeanour of a witness, but except, where there is very clear proof afforded by his own statements that the witness is unworthy of credit, it is unsafe to assume that it is so till the evidence has been exhausted. *In re* PALANI NADAN, **2 Weir 435.**

(3294)—S. 363—*See* PENAL CODE, s. 420, 9 Cr. L.J. 261=1 S.L.R. 20, Cr.

(3295)—S. 363—*See* Nos. 1472, 3271, *supra.*

(3296)—*Ss.* 363, 417—*Demeanour of witnesses noted by Court—Duty of appellate Court.*—Where a Sessions Judge of experience stated in the most emphatic terms the demeanour of the eye-witnesses was evasive, that they inspired him with no confidence, and that no man

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could be convicted on their testimony. *Held*, that, before the Court of Appeal could justifiably accept their evidence, it must be assured in the most positive and convincing manner that there was no ground for this criticism. The consideration that the Court of Appeal itself would have arrived at a different conclusion, had it tried the accused person as a Court of original jurisdiction, is immaterial. Where the evidence is all oral and its credibility is a mere matter of *opinion*, the opinion of the Court, which heard the witnesses, must be treated as almost conclusive. In such a case, the Court of Appeal should not adopt the view adverse to the accused and believe the evidence as to his guilt, which the lower Court has disbelieved and take upon itself to set aside the verdict of acquittal. The indications of mistake must be obvious or the evidence too strong to be ejected, before the Court should interfere. EMPEROR v. BISHEN SINGH, **125 P.L.R. 1914 = 15 Cr. L.J. 203 = 27 P.W.R. 1914, Cr. = 22 Ind. Cas. 987.** (7 P.R. 1904, Cr. = 1 Cr. L.J. 781 = 97 P.L.R. 1904, *F.*)

——**S. 364 (= 1882, s. 364 ; 1872, s. 346, paras 1 to 4 ; 1861, s. 205).**

See ACCUSED PERSON.

See CONFESSION.

See EXAMINATION OF ACCUSED.

(3297)—*S.* 364 (= *Crim. Pro. Code*, 1882, *s.* 364)—*Right of refusal by accused to disclose witnesses to be examined by him in Sessions Court.*—An accused person is entitled, when before a committing Magistrate, to reserve his defence and to refuse to disclose the names of the witnesses whom he intends to call at the sessions trial. QUEEN-EMPRESS v. HARAGOBIND SINGH, **14 A. 242 = A.W.N. 1862, 83.** [*R.*, 19 A. 502 = 17 A.W.N. 134.]

(3298)—*S.* 364 (= *Crim. Pro. Code*, 1882, *s.* 364)—*Statement of accused—Language—Record.*—A second class Magistrate, before whom a *Bhil* accused person makes a statement in the *Marathi* language, should record the statement in that language and not in English. QUEEN-EMPRESS v. SURMAL, **Rat. Un. Cr. Cas. 633 = Cr. Rg. 4 of 1893.**

(3299)—*S.* 364 (= *Crim. Pro. Code*, 1882, *s.* 364)—*Statement—Signature of accused, how to be made.*—The signature of an accused person to a statement recorded under s. 364 should be made in the immediate presence and under the control of the Magistrate himself. To take the signature of the accused in an adjoining room before a clerk, and not in the immediate presence of the Magistrate, is not a proper compliance with the section. QUEEN-EMPRESS v. BHIKA, **Rat. Un. Cr. C. 687 = Cr. Rg. 8 of 1894.**

(3300)—*S.* 364—*Signing confession.* — The signing of a confessional statement by a prisoner in the form of mark is sufficient under s. 364. *In re* MAJJI CHENDRAMMA, **2 Weir 437.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3301)—*S.* 364 (= *Crim. Pro. Code*, 1861, *s.* 205)—*Examination of accused before a Magistrate—Admissibility in Court of Sessions.*—If the examination of an acccused person before a Magistrate is afterwards read in evidence at the trial before the Court of Sessions, under s. 366, the whole of it should be read out. It must be pointed out to the jury or assessors that the statement is evidence against the author only. HIGH COURT PROCEEDINGS, 11TH NOV. 1869, **5 M.H.C. App. 4.**

(3302)—*S.* 364 (= *Crim. Pro. Code*, 1872, *s.* 346)—*Irregularity in recording confessions—Effect.*—The omission to certify a confession as required by s. 346, and to record the whole of the questions put to the prisoner, although irregular, will not be material, unless the accused has been prejudiced thereby. *In re* KAMALAGADU, **2 Weir 436.**

(3303-4)—*S.* 364 (= *Crim. Pro. Code*, 1882, *s.* 364)—*Confessional statements—Procedure of Magistrate.*—A Magistrate, when he is examining a prisoner or asking him whether he pleads guilty or not, should refrain from assuming that he is guilty of the crime with which he is charged. The proper mode is to tell the prisoner that he is charged with a certain offence and ask him if he has any explanation to give, and whether he wishes to make any statement. *In re* MURTHI NAIKAN, **2 Weir 438.**

(3305)—*S.* 364—*Examination of accused—Improper question.*—In examining an accused person under s. 364 of the Code, it is improper to ask him such a question, as, "If you did not commit the murder, who did". CHEDAN v. KING-EMPEROR, **7 O.C. 191.**

(3306)—*S.* 364—*Right to examine accused—Nature of such examination—Material corroboration, meaning of—Evidence of motive, whether sufficient corroboration.*— All that a Court has the right to do under s. 364, Crim. Pro. Code, is to ask the accused person to explain the circumstances which appear in evidence against him ; where questions were put to the accused person which elicited a statement of a confessional nature. *Held*, that such examination, though purporting to have been made under s. 364, was wholly inadmissible. Material corroboration means such corroboration as shews that an accused had not only some reason to commit an offence, but that he did, as a matter of fact, commit the same ; mere evidence of motive cannot by itself be sufficient to corroborate a statement which requires corroboration in material particulars. TUFANI SHEIKH v. KING-EMPEROR, **15 C.L.J. 323 = 14 Ind. Cas. 667 = 13 Cr. L.J. 283.**

(3307)—S. 364—Confession recorded by Magistrate—Defective statement how to be cured.—*See* EVIDENCE ACT, 1872, ss. 25, 26, 27, 30, 44 P.W.R. 1914, Cr.

(3308)—S. 364—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 24 C. 499 = 1 C.W.N. 435.

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(3309)—S. 364—*See* PENAL CODE, s. 180, 1 Weir 113.

(3310)—*S.* 364 (2)—*Accused person refusing to sign record—S.* 180, *I.P.C., offence under.*—An accused person, who refuses to sign the record, which the Court made of the questions put to and the answers given by him, does not commit an offence punishable under s. 180 of the Penal Code. The procedure indicated by s. 364 (2) of the Crim. Pro. Code, involves the Magistrate offering the record for the accused's signature, but it does not empower the Magistrate to require his signature. It is only when a person refuses to sign a statement which a public servant is legally empowered to require him to sign, that he renders himself liable to punishment. EMPEROR v. BA TIN, **4 Cr. L J. 205=3 L.B.R. 199.**

(3311)—S. 364—*See* Nos. 1466, 1468, 1470, 1473 to 1481, 2460, 2647, 2841, 3034, 3124, 3224, 3271, *supra and* No. 4743, *infra.*

(3312)—Ss. 364, 424—*See* JUDGMENT, 11 C. 449.

—— S. 366 (=1872, ss. 211, para 3, 462).

See JUDGMENT.

(3313)—S. 366—*See* Nos. 1831, 2123, 2478, 2479, 2574, 2620, 2967, *supra.*

(3314)—*Ss.* 366, 367 (=*Crim. Pro. Code,* 1882, ss. 366, 367)—*Necessity for written judgment before pronouncing decision.*—Inasmuch as the sentence in the case of a conviction, and the direction to set aside the accused at liberty in the case of an acquittal, can only follow on the decision and cannot precede it, and inasmuch as the decision must be contained in a written judgment, the sentence is illegal when there is no written judgment when it is passed. QUEEN-EMPRESS v. HARGOBIND SINGH, **14 A. 242=A.W.N. 1892, 83.** [*F.*, 27 M. 237=2 Weir 440; *R.*, 23 C. 502, 1 Bom. Cr. C. 55=13 Bom. L.R. 635=12 Cr. L J. 457=11 Ind. Cas. 993.]

(3315)—*Ss.* 366, 367, 368—*Delivery of sentence before judgment—Irregularity Failure of justice—Interference.*—To deliver sentence before writing reasons for the decision is a procedure neither contemplated nor permitted by ss. 366 and 367, Crim. Pro. Code, and amounts to an irregularity; but where the irregularity has not occasioned a failure of justice, it cannot be treated as a ground for interference. CROWN v. MORIO KHAN DHANGIR KHAN, **5 S.L R. 131=12 Ind. Cas. 986=12 Cr. L J. 610.**

(3316)—Ss. 366, 367, 370—*See* PENAL CODE, ss. 186, 353, 13 Bom. L.R. 635=11 Ind. Cas. 993=12 Cr. L. J. 457.

(3317)—*Ss.* 366, 537—*Loss of material records—Loss of judgment—Conviction and sentence—Validity of—Inherent power of Courts to replace lost records.*—A conviction and sentence cannot be quashed and a new trial ordered because some of the material records of the trial have been lost. S. 366, Crim. Pro. Code, only imposes the condition that the judgment should be pronounced in open Court and imposes a few other conditions, but such conditions do not include the condition that the record should not have been lost, or that, if only a portion of the judgment (that relating to the conviction and sentence alone) is pronounced, the conviction is illegal (2 Weir 711, 1 Bom. L.R. 117, 1 Bom. L.R. 160, *R.*) In cases where the judgment has been lost, the appropriate course for a Judge is to re-write the judgment from memory and from the materials on record and place it on record. S. 537 cures all omissions in proceedings, and the omission to pronounce the judgment before convicting and sentencing is also cured under the new Code, though it might be different if no judgment had been written. (8 C.L.J. 521, 11 C.L.J. 243, *R.*) A Court has inherent power, in the case of loss or destruction of a judicial record to restore such record. KAMAKSHAMMA v. EMPEROR, **14 M L.T. 317=25 M.L.J. 445=1913 M.W.N. 862=21 Ind. Cas. 467=14 Cr. L J. 595.**

—— S. 367 (=1882, s. 367; 1872, ss. 255, last para, 287, para 2, 461, 463, 464; 1861, ss. 380 and 381; cf. ss. 429, 430).

See JUDGMENT.

(3318)—*S.* 367 (=*Crim. Pro. Code,* 1861, s. 429)—*Petitions, applicability of section to.*—S. 429 of the Crim. Pro. Code does not apply to orders on all petitions, but only to final orders made in the trial and investigation of offences. REG v. PANDURANG, **Rat. Un. Cr. C. 61.**

(3319)—*S.* 367—*Accused convicted, but no judgment written—Death of Magistrate—Procedure.*—The accused were convicted by a second class Magistrate, who died suddenly after he had sentenced them, but before he had written his judgment in the case. The District Magistrate, thereupon, referred the case to the High Court with a view to get the conviction quashed and to have a re-trial ordered. The High Court declined to interfere in the matter, holding that it was for the accused either to have moved the High Court or to have exercised their right of appeal. QUEEN-EMPRESS v. CHENDU KALYA, **1 Bom. L.R. 117.** [*R.*, 14 Cr. L.J. 595=21 Ind. Cas. 467=25 M.L.J. 445=14 M L T. 317=1913 M.W.N. 862.]

(3320)—*S.* 367—*Death of Magistrate after passing sentence but before completing judgment—Reference to High Court—Retrial.*—The accused was convicted of theft under s. 379, I.P.C., by a second class Magistrate, who died suddenly after he had sentenced the accused but before he had completed his judgment in the case. The District Magistrate, thereupon, made a reference to the High Court with a view to get the conviction quashed and to have a re-trial ordered. The High Court, after considering the reasons given by the District Magistrate and also the petition of the accused, reversed the conviction recorded against and the sentence passed upon him, and ordered him

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to be re-tried by a competent Court. QUEEN-EMPRESS v. KAMTHIA GIRDHARIA, **1 Bom. L.R. 160** [*R.*, 1 Bom. Cr.C. 55=13 Bom. L.R. 635=12 Cr. L J. 457=11 Ind. Cas. 993, 14 Cr. L.J. 595=21 Ind. Cas. 467=25 M.L.J. 445=14 M.L.T. 317=1913 M.W.N. 862.]

(3321)—*S.* 367 (=*Crim. Pro. Code*, 1861, s. 429)—*Filing of Urdu translation of sentences and final orders by Magistrates in Tirhoot.*—Notwithstanding the fact that the evidence is recorded in the English language alone, it is still necessary that an Urdu translation of all sentences and final orders passed by Magistrates (in Tirhoot) should be filed as enjoined by s. 429. **1 W.R. Cr. Letters, 5.**

(3322)—*S* 367—*Judgment written by predecessor, but dated, signed and pronounced by successor—No irregularity.*—Under s. 367 of Crim. Pro. Code, it is not necessary that the presiding officer of the Court, who wrote the judgment, should be the same person as the presiding officer, who is required to date, sign and pronounce it, in open Court. *In re* SANKARA PILLAI *alias* SANKARA NARAYANA PILLAI, **18 M.L.J. 197=7 Cr.L J. 459.**

(3323) *S.* 367 (=*Crim. Pro. Code*, 1872, s. 464)—*Omission to record a judgment or final order—Effect—Appeal.*—An omission to record a judgment or final order in all the matters required by the Code of Criminal Procedure, Ch. XXXIV (XXVI of the Code of 1898), is an irregularity. If the circumstances of the case render such irregularity unavoidable, and if the irregularity is not one which can seriously prejudice the accused, the last clause of s. 464 cures it. The right of appeal, wherever it exists, is not taken away by the absence of a complete judgment. HIGH COURT PROCEEDINGS, 28TH AUG. 1879, NO. 1351, **2 Weir 438.** [*R.*, 7 Cr.L J. 459=18 M L.J. 197.]

(3324)—*S.* 367—*Omission to state in judgment under which of two sections an offence fell—Effect.*—An omission to state in a judgment in express terms, under which of two sections the offence fell, would amount, at the most, to an irregularity and would not vitiate the judgment. BAYA TAKIRUGADU v. CHATAKONDA SIVAYYA, **2 Weir 440=2 Weir 670.**

(3325)—*S.* 367—*Recording proceedings in pencil—Initialling evidence of witnesses—Writing of judgment.*—*Held*, that pencil writing, though not precluded in so many words by the law, is precluded by common-sense and common usage; that initialling the evidence of witnesses is not signing, and that s 367, Crim. Pro. Code, clearly prescribes in whose handwriting the judgment must be. QUEEN-EMPRESS v. NANHU. **S. C. 192, Oudh.**

(3326)—*S.* 367 (=*Crim. Pro. Code*, 1882, s. 367)—*Capital punishment, reasons for not passing, upon a conviction under s.* 302, *I.P.C.*—The fact that the assessors differed from a Sessions Judge as to the guilt of the accused convicted by him of murder, is not a sound reason for his abstaining from passing a sentence of death. Some of the reasons which appeared to the Court sufficient for not passing a capital sentence on a conviction under s. 302, Penal Code, pointed out. The extreme penalty of the law should be reserved for cases of deliberate murder, for cases where murder is committed to facilitate the commission of some other offence, or to avoid arrest for an offence, and for other heinous cases of murder. MAUNG U v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 112.**

(3327)—*S.* 367—*Charge to jury—Record of head of charge.*—In a trial by a jury, before a Sessions Judge, the record made by the Judge of the heads of his charge to the jury under the proviso to s. 367, Crim. Pro. Code, should include such a statement as will enable an appellate Court to decide whether the evidence has been properly laid before the jury or whether there has been any misdirection in the charge. EMPEROR v. BAIJ NATH, **A.W.N. 1903, 232.**

(3328)—*S.* 367—*Judgment—What to contain.*—Where a judgment of a Deputy Magistrate in appeal contained a long recital of the facts preceding the alleged offence, but no discussion of the evidence or anything to indicate that the Magistrate considered such essential points as the ownership of the grain or the good faith of the accused or the evidence implicating the individual accused persons, *held* that it was not in accordance with law. *In re* BALUSU LAKSHMAYYA, **1912 M W.N. 881=12 M.L.T. 335=13 Cr. L. J. 712=16 Ind. Cas. 520.**

(3329)—*S.* 367 — *Points for determination—Reason for the decision.*—Where the judgment of an appellate Court does not comply with the provisions of s. 367, Crim. Pro. Code, and omits to state the points for determination and the reasons for decision, the case should be returned for re-trial. SURYA v. LACHMI NARAIN, **13 Cr. L J. 48=13 Ind. Cas. 288.**

(3330)—*S.* 367—*Judgment inoperative until pronounced.*—A Bench of Honorary Magistrates tried a case and a judgment was written by them convicting and sentencing the accused. Before pronouncing it, however, they changed their minds and sent the case up to the Pergana officer under s. 349, Crim. Pro. Code. *Held* that a judgment, though written and signed, was inoperative until it was pronounced and must be merely taken as an expression of opinion. RAMDHUN RAI v. KING-EMPEROR, **11 A.L.J. 745=21 Ind. Cas. 162=14 Cr.L J. 862**

(3331)—S. 367—*See* MURDER, 1 L.B.R. 216.

(3332)—S. 367—*See* PENAL CODE, s. 441, 5 P.R. 1886, Cr.

(3333)—*S.* 367 (5)—*Sentence of death—Responsibility of Judge in respect of practice.*—Where a Judge is in doubt whether a sentence of death or a sentence other than death should be passed in a capital case, the doubt, like all the other doubts, should result in favour of the accused. It is quite erroneous and illegal that, feeling reasonable doubt as to whether death alone can be the proper penalty, the Judge should yet pass a sentence of death leaving the

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responsibility to the High Court of commuting it if necessary. There is no authority in law for holding that a Sessions Judge has any right to devolve his responsibility, in respect of sentence in a capital case on a higher tribunal. SHWE CHO v. KING-EMPEROR, **3 L.B.R. 111 =3 Cr.L.J. 25.**

(3334)—S. 367—*See* Nos. 249, 250, 723, 818, 1430, 1468, 1831, 2095, 2402, 2620, 2621, 2740, 2895, 3164, 3224, 3314, 3315, 3316, *supra* and Nos. 3581, 3601, 3607, 3695, 3696, 3723, 3724, 4795, *infra.*

(3335)—*Ss.* 367, 369 (=*Crim. Pro. Code,* 1872, *s.* 464, *para* 1)—*Alteration of illegal sentence.*—A Sessions Judge cannot alter or set aside a conviction and sentence once made and signed by him. The sentence may be altered on reference to the High Court. QUEEN v. PORAN MAL, **23 W.R. Cr. 49.**

(3336)—Ss. 367, 369 — *See* SENTENCE—GENERAL, Rat. Un. Cr. C. 804=Cr. Rg. 62 of 1895.

(3337)—*Ss.* 367, 369, 421, 422, 423—*Dismissal of appeal for default—Jurisdiction of Court to restore—Procedure with regard to appeals.*—A District Magistrate who has ordered the dismissal of a criminal appeal, merely by reason of the non-appearance of the appellant, is competent to set aside such order, and thereafter to hear and decide the appeal according to law, and s. 369 is no bar. The Code does not permit the dismissal of an appeal, upon the ground that the appellant does not appear to support it. If a criminal appeal is not dismissed summarily under s. 421 of the Crim. Pro. Code, its disposal is governed by s. 423, and though the Court *may* select which of the courses therein provided it will follow, it *must* necessarily follow one or more of them. The non-appearance of both parties does not relieve the Court of the imperative duties of sending for the record, perusing it and giving judgment in compliance with ss. 367 and 423, Crim. Pro. Code. Ss. 422 and 423, Crim. Pro. Code, make it imperative in a criminal appellate Court to hear the appeal at the time and place named in the notices of appeal issued by it, and a hearing of which no notice has been given is illegal. RATAN CHAND v. EMPEROR, **5 N.L.R. 76=9 Cr. L J. 553=2 Ind. Cas. 247.**

(3338)—*Ss.* 367, 369, 537 (=*Crim. Pro. Code,* 1872, *s.* 464)—*Scope of.*—The judgment contemplated in s. 464, Crim. Pro. Code, 1872, is the final judgment or order, embracing the sentence as well as the finding. HIGH COURT PROCEEDINGS, 15TH JULY 1878, NO. 1024, **2 Weir 426.**

(3339)—*Ss.* 367, 369, 537 (=*Crim. Pro. Code,* 1872, *s.* 464)—*Magistrate signing judgment when accused is at large.*—A Magistrate cannot pronounce and sign a judgment, as under ss. 367 and 537 of the Code, when the accused is at large. Any paper, therefore, purporting to be a judgment not so signed and pronounced is invalid and without effect as a judgment. POLICE v. LALSING, **Colm Dig. Cr. 7 of 1873.**

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(3340)—*Ss.* 367, 374 (=*Crim. Pro. Code,* 1861, *s.* 380)—*Chemical Examiner's report—Admissibility in evidence.*—The Chemical Examiner's report can be read and acted upon as evidence by Magistrates as well as Sessions Judges. HIGH COURT PROCEEDINGS, 23RD DEC. 1870, **6 M.H.C. App. 11.**

(3341)—*Ss.* 367 *and* 421—*Summary dismissal of appeal—Duty of appellate Court to write out judgment.*—There is nothing in the Code of Criminal Procedure which requires a Court, when dismissing an appeal summarily under s. 427, to write a judgment in conformity with the provisions of s 367. There is nothing in Rule No 7 of the Rules printed at pages 167 to 175, Criminal Rules of Practice, 1896, in conflict with the above principle. The meaning of that rule is that, in all cases other than those dealt with under s. 421, the reason for the decision should be given. KING-EMPEROR v. KRISHNAYYA, **25 M. 534=2 Weir 473.** [*F.*, U.B.R. 1906, 2nd Qr., Crim. Pro. Code, 49=4 Cr. L.J. 284.]

(3342)—*Ss.* 367 *and* 421—*Appeal—Summary dismissal—Judgment.*—A Court is not bound, when dismissing an appeal summarily under s. 421, Crim. Pro. Code, to write a judgment as defined in s. 367 of the Code. It is, however, advisable that it should give reasons for rejecting the appeal, in view of the possibility of its order being challenged by an application for revision. KUNDAN v. EMPEROR, **12 A.L.J. 850=36 A. 496=15 Cr. L J. 512=24 Ind. Cas. 600.** (20 B. 540, *F.*; 21 C. 92, 8 A. 514, 17 A. 241, 19 A. 506. *R.*)

(3343)—Ss. 367, 421, 439 (1 to 4)—*See* REVISION—DELAY, 8 A. 514=A.W.N. 1886, 177.

(3344)—*Ss.* 367 *and* 424—*Appeal—Judgment, contents of—Charges of theft and unlawful assembly—Ss.* 379 *and* 143, *Penal Code—Points for determination.*—The judgment of any appellate Court other than a High Court must, under s. 357 read with s. 424, Crim. Pro. Code contain, among other things, the point or points for determination, the decision thereon and the reasons for the decision. In case of a charge under s. 379, Penal Code, one of the points for determination is, whether there was a dishonest intention on the part of the person taking away the property, especially when the taking away of the property is admitted and the accused sets up a *bona fide* claim of right thereto. And in case of a charge under s. 143, I.P.C., one of the points for determination is, where there was an unlawful assembly, and the judgment should therefore contain a statement as to the presence of the conditions which constitute the unlawful assembly in the particular case. RAM LAL SINGH v. HARI CHARAN AHIR, **37 C. 194=11 C.L.J. 410=11 Cr. L.J. 348= 5 Ind. Cas. 999.** [*R.*, 13 Cr. L.J. 471= 15 Ind. Cas. 311=U.B.R. 1911, 1st Qr., 105.]

(3345)— Ss. 367, 424 — *See* APPEAL—GENERAL, Rat. Un. Cr. C. 772=Cr. Rg. 36 of 1895.

Crim. Pro. Code (Act V of 1898)—*continued.*

(3346)—Ss. 367 and 424—*See* APPELLATE COURT, 18 P. R. 1897, Cr.

(3347)—Ss. 367, 424, 110, 118—Appellate Court—Duty to consider defence evidence—Bad livelihood case. *See* EVIDENCE—GENERAL, 40 C. 376, 14 Cr, L.J. 419=20 Ind. Cas. 403.

(3348)—*Ss.* 367 *and* 537—*Judgment, language and script of a—Irregularity if cured—Going into facts in revision to determine if re-trial necessary.*—Under s. 367 of the Code, the judgment of a Criminal Court should be written in the language of the Court or in English. Where an Honorary Magistrate had written his judgment in Urdu the script used being Persian. *Held*, this was irregular, and that the judgment should have been written in Hindi which was the language of the Court or in English, and the script should have been in the former case, as directed by the local Government, in Kaiti, and Roman in the latter. *Held*, also, that such an irregularity was cured by s. 537 of the Code. Although, ordinarily, the High Court does not go into evidence when exercising its power of revision under s. 439 of the Code, yet it will do so in a particular case, when necessary, for instance, to ascertain whether a re-hearing should be directed. DHANUKDHARI SINGH v. HARI HAR SINGH, **4 C.L.J. 232=4 Cr. L.J. 162.**

(3349)—Ss. 367, 537—*See* JUDGMENT, Rat. Un. Cr. C. 137=Cr. Rg 29-8-1878, 20 C. 553.

(3350)—Ss. 367, 537, 369, 372—*See* JUDGMENT, 6 P. R. 1876, Cr.

—— **S. 368, para 1 (=1882, para 1; 1872, s. 321; 1861, ss. 50, 51, 53); and para 2 (=1882, s. 368, para 2; 1872, s. 319).**

(3351)—S. 368 (p. 1) — *See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 3 M.H.C. App. 29.

(3352)—S. 368—*See* No. 3315, *supra.*

——**S. 369 (=1882, s. 369; 1872, s. 464, para 1).** *See* JUDGMENT.

(3353)—S. 369—*See* REFERENCE TO HIGH COURT, 22 B 949.

(3354)—S. 369—*See* REVIEW, Rat. Un. Cr. C. 791=Cr. Rg. 49 of 1895, 7 A. 672, 14 C. 42.

(3355)—S. 369—*See* Nos. 205, 1191, 1832, 2505, 2506, 2621, 2956, 3335 to 3339, 3350, *supra.*

(3356)—*Ss.* 369, 253—*Review — High Court —Misapprehension of fact—Judgment delivered and not signed—Power of review—Part-heard case—Absence of witnesses—Discharge under s.* 253—*Omission to consider evidence on record —Proper order.*—Where a Bench of the High Court had once delivered a judgment and where, before the same was signed, it appeared that they were under a misapprehension on the facts of the case. *Held*, that the terms of s. 369, Crim. Pro. Code were general, and it was competent for the Bench to review their judgment. (14 C. 42, 21 A. 177, *R.*; 10 B. 176, *Diss.*) Where a Deputy Magistrate withdrew to his own file a case which he had originally sent to a Bench of Honorary Magistrates for disposal, and they had already recorded some evidence, and where, on the day the case was posted before the Deputy Magistrate, no evidence was produced and the Magistrate discharged the accused under s. 253, Crim. Pro. Code. *Held*, that the order of discharge was illegal and that he should have disposed of the case on the evidence already on record. (29 C. 726, *R.*) AMODINI DASEE v. DARSAN GHOSE, **38 C. 828 =13 Ind. Cas. 776=13 Cr. L.J. 120.**

(3357)—*Ss.* 369 *and* 437—*Order for further enquiry—Power of District Magistrate.*— The terms of s. 369 of the Code must be read as controlled by s. 437. The section does not limit the power of a District Magistrate to make further inquiry into a case in which an order of dismissal or discharge may have been passed by a subordinate Magistrate. There is no bar to a District Magistrate making further enquiry himself into a case in which such order may have been passed by himself. BIDHU CHANDALINI v. MATI SHEIKH MONDAL, **28 C. 102.** [*R.*, 12 Cr. L.J. 364=11 Ind. Cas. 132 =10 P.R. 1911, Cr., 17 M.L.J. 153=2 M.L.T. 24=5 Cr. L.J. 132.]

(3358)—*Ss.* 369, 437—*First order refusing interference — Subsequent order for further inquiry—Review—Notice to an accused person to show cause why further inquiry should not be ordered—Recording reasons for such an order—Practice.*— Where a District Magistrate has already dealt with a case in revision and decided that there was no cause for interfering with the order of discharge of the accused, he cannot subsequently order further inquiry under s. 437 of Crim. Pro. Code. Such an order is an order reviewing the earlier one and is prohibited by s. 369 of the Code. (U.B.R. 1903—1904, Crim. Pro. Code, p. 35, 2 Cr. L.J. 465, *R.*) Though s. 437 makes no mention of any notice to an accused person or recording of any reasons, the ordinary practice is that an order should not be passed to the prejudice of an accused person without giving him an opportunity of being heard, and it is necessary that sufficient reasons should be recorded to show that the order is a proper one. NGA THAN v. EMPEROR, **13 Cr. L.J. 301=14 Ind. Cas. 765 =5 Bur. L.T. 37.**

(3359)—*Ss.* 369, 439 (=*Crim. Pro. Code,* 1882, *ss.* 369, 439)—*Review of judgment—High Court Division Bench.*—A Division Bench of the High Court could not review an order which they have already made, as a Court of revision, under s. 439, Crim. Pro. Code. QUEEN-EMPRESS v. C.P. FOX, **10 B. 176.** [*Diss.*, 38 C. 328=13 Cr. L J 120=13 Ind Cas. 776; *F.*, 23 B. 50, 14 C. 42, 9 Cr. L.J. 306=1 P.R. 1909, Cr.; *R.*, 25 B. 675=3 Bom. L.R. 271, 4 Bom. L.R. 55, 4 Bur. L.T. 211=12 Cr. L.J. 473=12 Ind. Cas. 81, 13 Cr. L.J. 710=16 Ind. Cas. 518=23 M.L.J. 371=12 M.L.T. 350=

Crim. Pro. Code (Act V of 1898)—*continued.*

1912 M.W.N. 982, 1 Ind. Cas. 506, Rat. Un. Cr. C. 791, U.B.R. 1905, Cr. P.C., p. 35 ; *D.*, 27 A. 92=1 A.L.J. 495, 10 C.L.J. 80=10 Cr. L.J. 287=3 Ind. Cas. 393, Rat. Un. Cr. C. 659.]

(3360)—*Ss.* 369 *and* 439—*Review of order.*—When the High Court has passed an order in revision under s. 439, it has no power to review its own order. AH LOK v. KING-EMPEROR, **U.B.R. 1905, Crim. Pro. Code, 35=2 Cr. L.J. 465.** [*R.*, 13 Cr. L.J. 301=14 Ind. Cas. 765 =5 Bur. L.T. 37.]

(3361)—Ss. 369, 439 (1 to 4)—*See* REVIEW, Rat. Un. Cr. C. 458=Cr. Rg. 13 of 1889.

(3362)—*Ss.* 369, 480, 481—*Judgment—Interpolation by Magistrate—Contempt of Court—Procedure—Penal Code*, s. 228—*Interruption or insult—Intention.*—No Magistrate can add to or alter the proceedings or judgment in any case after they are signed and published. It is especially irregular when made in the absence of the accused and without notice to him. The directions contained in s. 481 of the Code are mandatory and the omission to record the particulars mentioned in that section in any proceedings taken under s. 480, is fatal to such proceedings. The principal ingredient of an offence, under s. 228, I.P.C., is intentional insult or interruption. *In re* SURENDRA NATH BANERJEE, **10 C.W.N. 1062=4 Cr. L.J. 210=4 C.L.J. 415.** (L.R. 2 P.C. 106, *Rel. on.*)

(3363)—Ss. 369, 537—*See* JUDGMENT, A.W. N. 1898, 11.

——S. 370 (=1882, s. 370).

See JUDGMENT.

(3364) — *S.* 370 — *Recording of reasons for conviction, necessity for — Presidency Magistrates.*—Although s. 370 allows a Presidency Magistrate to record merely the reasons for a conviction, instead of recording a judgment this must be done in such a manner that the High Court, in revision, may be in a position to judge whether there were sufficient materials before him to support the conviction. Where a Presidency Magistrate convicted a person under ss. 67 and 74 of Bengal Act VII of 1878, and there was not in the record any summary of the evidence, nor such a statement of the facts as would enable the High Court to say whether the materials were sufficient to support the conviction, nor anything to show that the accused had been previously convicted, *held*, that the conviction should be set aside. TOOLSEY KAHARIN v. EMPEROR, **8 C.W.N. 587.**

(3365)—S. 370—*See* ACT XIII OF 1859, s. 2, cl. 1 and s. 3, 27 C. 131=4 C.W.N. 201.

(3366)—S. 370—*See* PRESIDENCY MAGISTRATE, 27 C. 461=4 C.W.N. 467.

(3367)—S. 370—*See* Nos. 3292, 3316, *supra.*

——S. 371 (=1882, s. 371).

(3368)—S. 371—*See* COURT FEES, Rat. Un Cr. C. 364=Cr. Rg. 9 of 1888.

Crim. Pro. Code (Act V of 1898)—*continued.*

——S. 372 (= 1882, s. 372, 1872, s. 464 ; para 3).

(3369)—S. 372—*See* No. 3350, *supra.*

——S. 374 (=1882, s. 374 ; 1872, s. 287, para 1 ; 1861, s. 380).

(3370)—*S.* 374 (=*Crim. Pro. Code*, 1882, s. 374) — *Confirmation of sentence of death—Special verdict—Duty of Judge.*—In cases sent up to the High Court for confirmation of sentence of death under s. 374, Crim. Pro. Code, it is the practice of that Court to be satisfied, on the facts as well as the law of the case, that the conviction is right, before it proceeds to confirm the sentence. S. 342, Crim. Pro. Code, imposes on the trying Court the imperative duty of questioning an accused person for the purpose of enabling him to explain any circumstances appearing in the evidence against him. Where, instead of the ordinary verdict in the form of "guilty" or "not guilty," a special verdict stating facts found by them is returned by the jury, and this special verdict is ambiguous or defective in regard to matters forming part of the offence, *e.g.*, intention, knowledge, common design or abetment, it is the duty of the Judge to ascertain its meaning by questioning the jury under s. 303, Crim. Pro. Code. In dealing with a special verdict, the Judge is confined to the facts positively stated in the verdict, and cannot himself supply by intendment or implication any defect in the statement. QUEEN-EMPRESS v. ABDUL RAZAK, **Rat. Un. Cr. C. 710=Cr. Rg. 42 of 1894.**

(3371)—*S.* 374—*See* Nos. 1327, 3340, *supra.*

(3372)—*Ss.* 374, 375, 376 (=*Crim. Pro. Code*, 1882, *ss.* 374, 375, 376)—*Case referred to High Court—Its powers.*—Although the trial of an accused is by a jury, ss. 375 and 376 show that, in a case submitted for confirmation of sentence of death under s. 374, the High Court must deal with the case upon the facts, as well as with reference to any questions of law arising in it, and that its powers are not limited in the way they are in an appeal from a conviction in a trial by jury. QUEEN-EMPRESS v. CHATRADHARI GOALA, **2 C.W.N. 49.**

——S. 375 (=1882, s. 375 ; 1872, s. 289 ; 1861, s. 400).

(3373)—S. 375—Murder— Further evidence in appeal— Inspection of spot — *See* PENAL CODE, s. 302, 16 P.W.R. 1911, Cr.=12 Cr. L. J. 412=11 Ind Cas. 596.

(3374)—S. 375—*See* No. 3372, *supra.*

——S. 376 (=1882, s. 376 ; 1872, s. 288 ; 1861, s. 399).

(3375)—*S.* 376 (=*Crim. Pro, Code*, 1872, *ss.* 288, 287)—*Conviction by verdict of jury—Facts of case.*—In a reference to the High Court under s. 287, Act X of 1872, the Court must, under s. 288, go into the facts of the case, notwithstanding that the conviction was by the verdict of a jury. QUEEN v. JAFFIR ALI, **19 W.R. Cr. 57.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3376)—S. 376—*See* REFERENCE TO HIGH COURT, 1 B. 639.

(3376-*a*)—S. 376—*See* No. 3372, *supra.*

(3377)—Ss. 376, 439—*See* FULL BENCH, 2 A. 218, F.B.

——S. 379 (=1882, s. 379; 1872, s. 301, para 1; 1861, s. 383).

(3378)—Ss. 379, 373 (=Crim. Pro. Code, 1861, ss. 383, 384 and 386)—*See* WARRANT, 7 W.R. Cr. Cir. 2.

——S. 380 (=1872, s. 18).

(3379)—S. 380—*See* SENTENCE—CONFIRMATION OF SENTENCE, 58 P.R. 1887, Cr.

(3380)—S 380—*See* SENTENCE, POWERS OF APPELLATE COURT—ENHANCEMENT, 9 C.P.L.R. Cr. 29.

(3381)—S. 380 — *See* SESSIONS JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 314=Cr. Rg. 59 of 1886.

(3381-*a*)—S. 380—*See* Nos. 208, 211, *supra.*

(3382)—*Ss.* 380 *and* 562—*Reference to superior Magistrate — Power of such Magistrate.*—A second class Magistrate found the accused guilty of an offence under s. 322 of the Penal Code and he sent the record and the accused to the District Magistrate under s. 562 of the Crim. Pro. Code. The District Magistrate sent the case back to the second class Magistrate pointing out s. 562 was inapplicable. *Held,* the District Magistrate's order was illegal inasmuch as s. 380 of the Crim. Pro. Code enacts that such Magistrate may pass such sentence or order as he might have passed or made if the case had originally been heard by him, and he could not have sent the case to the second class Magistrate for the purpose of sentence if he had originally heard it. KING-EMPEROR v. ABDUL LAL SHEIN, **4 L.B.R. 150=7 Cr. L.J. 449.** (1 L.B.R. 124, *R.*)

(3383)—Ss. 380, 562, 563—*See* SECURITY TO KEEP THE PEACE—PERSONS WHO MAY BE REQUIRED TO GIVE SECURITY AND PERSONS OUTSIDE JURISDICTION, 2 L.B.R. 137.

——S. 382 (=1882, s. 382; 1872, s. 306).

(3384)—*S.* 382 (=*Crim. Pro. Code,* 1872, *s.* 306)—*Power of postponing the execution of a sentence of death.*—The High Court is the only judicial tribunal in which the law has vested the power of postponing the execution of a sentence of death passed and confirmed on a woman found to be pregnant. HIGH COURT PROCEEDINGS, 4TH JUNE 1879, EXTRA NO. 10, **2 Weir 441.**

(3385)—*S.* 382 (=*Crim. Pro. Code,* 1872, *s.* 306)—*Capital sentence on pregnant woman.*—Where a woman, who is pregnant, is convicted of murder, capital sentence should be passed on her, notwithstanding her pregnancy, although the execution of the sentence should be deferred, and although it may be a reason for commutation of the sentence by the High Court. MALALI v. CROWN, **34 P.R. 1878, Cr.**

——S. 383 (1882, s. 383; 1872, s. 302-A, cl. 1).

(3386)—S. 383—*See* No. 2957, *supra.*

(3387)—*Ss.* 383, 439 *and* 562—*Receiving stolen property—S.* 411 *of the Indian Penal Code —Illegality of sentence of imprisonment for the period already passed in lock-up—Accused aged* 18 *years—Whipping not proper in the case of an accused of position.*—*Held,* that a sentence of imprisonment for the period passed in lock-up is illegal, but a sentence of imprisonment until the rising of the Court is good in, and fulfils the requirements of the law. *Held,* also, that a sentence of whipping is not appropriate in the case of an accused person of good position in life. The record was accordingly returned to the lower Court for disposal in accordance with law either for passing proper sentence or to be dealt with under s. 562, Crim Pro. Code. BHAGEL SINGH v. CROWN, **9 P.W.R. 1907, Cr.=5 Cr. L J. 217.**

(3388)—*Ss.* 383, 541—*Meaning of 'Jail' and 'prison'—Sentence of imprisonment— Accused whether can suffer imprisonment in police lock-up—S.* 3, *Prisons Act* (1894).—A Magistrate has no power to sentence an accused to suffer imprisonment in a police lock-up. The terms 'prison' and 'jail' do not include any place for the confinement of prisoners who are exclusively in the custody of the police. KING-EMPEROR v. PO THIN, **7 L.B.R. 62=22 Ind. Cas. 154=15 Cr. L J. 10.**

——S. 384 (=1882, s. 384; 1872, s. 303; 1861, s. 222).

(3389)—*S.* 384 (=*Crim. Pro. Code,* 1872, *s.* 303)—*Signature of Magistrate.*—When the law prescribes that a proceeding should be signed by a Judicial Officer, it, ordinarily, intends the signature should be made with a pen and not with a stamp. A warrant of commitment under s. 303 should be signed and not stamped. SUBRAMANYA AIYAR v. QUEEN, **6 M. 396=2 Weir 328=8 Ind. Jur. 35.**

——S. 386 (=1882, s. 386; 1872, s. 307, para 1; 1861, s. 61).

(3390)—*S.* 386 (=*Crim. Pro. Code,* 1861, *s.* 61)—*Attachment and sale—Jurisdiction.*—S. 61 of the Crim. Pro. Code does not authorize the Magistrate to issue an order for attachment and subsequently one for sale. When he has issued a warrant for the levy of fine, he cannot give direction as to the time of the sale. CANARA MAGISTRATE'S LETTER NO. 42, **Rat. Un. Cr. C. 29=Cr. Rg. 18-1-1870.**

(3391)—*S.* 386—*Attachment for fine—Claim by third party—Procedure.*—No provision is made in the Code for inquiring into title, where a claim by a third person is made to property attached for the realization of a fine. But the

Crim. Pro. Code (Act V of 1898)—*continued.*

Courts must stay the sale of the property and allow sufficient time to the claimant to establish his right to the property, unless, by reason of the nature of the property, an immediate sale enures for the benefit of the owner in which case the proceeds should be held over. QUEEN-EMPRESS v. CHHAGAN JAGANNATH, **Rat. Un. Cr. C. 976 = Cr. Rg. 30 of 1898.**

(3392)—*S.* 386 (=*Crim. Pro. Code*, 1861, s. 62)—*Order under the section without notice.*—An order under s. 62 without any notice to the accused is illegal. HIGH COURT PROCEEDINGS, 16TH AUG. 1869, **4 M.H.C. App. 67.**

(3393)—*S.* 386 (=*Crim Pro. Code*, 1872, s. 307)—*Mode of levying pecuniary penalties.*—The mode of levying pecuniary penalties must be strictly confined to the provisions of the law that gives the jurisdiction. S. 307 directs that the warrant for the levy of the fine shall authorize the distress and sale of any moveable property belonging to the offender. The section, therefore, is not applicable to mere rights and interests or shares in joint moveables. HIGH COURT PROCEEDINGS, 16TH FEB. 1876, NO. 521, **2 Weir 442.** [*F.*, 2 Weir 443.]

(3394)—*S.* 386—*Attachment of moveable property belonging to an Alayasantana family.*—The complainant brought a charge of assault against the first accused and others who, with the complainant, formed members of an Alayasantana family. The accused were acquitted and the complainant was ordered to pay compensation. *Held*, that the seizure of moveable property belonging to the family, in execution of the warrant of attachment, was illegal. ACHUMA HEGADE v. RUDRA HEGADE, **2 Weir 443.**

(3395)—*S.* 386 (=*Crim. Pro. Code*, 1872, s. 307)—*Levy in state of fine imposed by British Indian Court.*—A fine adjudged by a British Indian Court cannot be levied in a Native State, as the provisions of the Code are applicable only to procedure within British India. HIGH COURT PROCEEDINGS, 28TH JULY 1879, NO. 1060, **2 Weir 444.**

(3396)—*S.* 386 (=*Crim. Pro. Code*, 1872, s. 307, *moveable property—Growing crops.*—Growing crops are not moveable property for the purposes of s. 307. HIGH COURT PROCEEDINGS, 19TH NOV. 1878, NO. 1947, **2 Weir 444.**

(3397)—*S.* 386 (*Crim. Pro. Code*, 1872, s. 307)—*Dispute regarding the ownership of article distrained.*—Where there is a dispute regarding the ownership of moveable property distrained under s. 307, it would be better for a Magistrate, before proceeding to order a sale, to allow the claimant the opportunity of establishing his title in a Court having jurisdiction to determine civil rights. HIGH COURT PROCEEDINGS, 15TH SEP. 1881, NO. 1899, **2 Weir 445.**

(3398)—S. 386—*See* ACT XXVI OF 1850, s. 7, **Rat. Un. Cr. C. 58 = Cr. Rg. 7-12-1871.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3399)—S. 386—*See* BEN. ACT XXI OF 1856, 17 W.R. Cr. 7.

(3400)—S. 386—*See* MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, 22 C. 935.

(3401)—S. 386—*See* SENTENCE—FINE, 20 C. 478.

(3402)—S. 386—*See* Nos. 97, 205, 427, 2576, *supra and* No. 4046, *infra.*

(3403)—Ss. 386, 144—*See* PENAL CODE, s. 188, Rat. Un. Cr. C. 30 = Cr. Rg. 3-3-1870.

(3404)—Ss. 386, 387—*See* COMPENSATION—GENERAL, 3 L.B.R. 32.

—— S. 387 (= 1882, s. 387; 1872, s. 307, para 2).

(3405)—S. 387—*See* Nos. 205, 2576, 3404, *supra.*

——S. 388, para. 1 (=1882, s. 388); para 2, new.

(3406)—*S.* 388 (=*Crim. Pro. Code*, 1882, s. 388)—*Omission to pass sentence of imprisonment in default of payment of fine—Power to bind over the accused to re-appear in his own recognisance.*—Where a Magistrate omits to pass a sentence of imprisonment in default of payment of fine, he has no power to bind over the accused in his own recognisance to appear. *In re* VENKATRAPRAGADA VENKATRAYADU, **2 Weir 445.**

(3407)—*S.* 388, *cl.* 2—*Scope of the section.*—S. 388, cl. 2, clearly contemplates the issue of a warrant, but the object of the section (which in terms applies to all orders for repayment of money whether by way of fine or compensation, on non-recovery of which imprisonment may be awarded) is to enable the Court to pass sentence of imprisonment without waiting for the return of the warrant, if the person ordered to make the payment fails to execute a bond to appear on the day appointed for the return. *In the matter of* BYRAVALU NAIDU, **26 M. 127 = 2 Weir 321.**

(3408)—S. 388—*See* Nos. 2578, 2579, *supra.*

——S 390 (=1882, s. 390; 1872, s. 302-A, cl. 2).

(3409)—S. 390—*See* ACT VI OF 1864, s. 2, Rat. Un. Cr. C. 906 = Cr. Rg. 17 of 1897.

(3410)—*Ss.* 390 *and* 391 (1)—*Order of Magistrate postponing sentence of whipping—Accused already under sentence of imprisonment in another case—Illegality of such order.*—The direction contained in s. 390, Crim. Pro. Code, that, when the accused is sentenced to whipping only, the sentence of whipping shall be executed at such place and time as the Court may direct is intended for the case where the accused is not already under another sentence and is not at the same time sentenced to imprisonment. When the accused is under a sentence of imprisonment in another case, the Magistrate should, when passing the order required by s. 390, Crim. Pro. Code, follow the analogy of s. 391 (1)

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as far as may be. To postpone the whipping to the end of a considerable term of imprisonment is illegal. QUEEN-EMPRESS v. NGA PO KYE, **1 L.B.R. 53.**

(3411)—Ss. 390, 407 and 413—*See* SENTENCE—WHIPPING, L.B.R. 1893—1900, 310.

—— S. 391, paras 1 and 2 (=1882, s. 391, paras 1 and 2; 1872, ss. 310, 311), para. 3, new.

See SENTENCE.

See WHIPPING.

(3412)—*S.* 391 (=*Crim. Pro. Code*, 1872, s. 310)—*Sentence of whipping, when could be executed immediately.*—Where the punishment of whipping is not awarded in addition to imprisonment, but as a separate sentence for a separate offence, the immediate execution of it would not be illegal. HIGH COURT PROCEEDINGS, 28TH NOV. 1878, NO. 2021, **2 Weir 446.**

(3413)—*S.* 391—*Whipping.*—It is illegal to inflict stripes on the hand in whipping. S. 311, para 1 of the Code of 1872 provides that whipping shall be inflicted on such part of the person as is specified by the Local Government which has not directed that the whipping should be inflicted on the hands. The expression "in the way of school discipline" connotes the degree of severity with which the punishment is to be inflicted. EMPRESS v. SADA GANDA, **5 C.P.L.R. Cr. 31.**

(3414)—*S.* 391 (3)—*Imprisonment for less than three months – Whipping.*—Under cl. (3) of s. 391, a sentence of whipping cannot be passed in addition to imprisonment, when the term of imprisonment is less than three months. QUEEN-EMPRESS v. BHICA TRIMBAK, **2 Bom. L.R. 54.**

(3415)—*S.* 391 (3)—*Whipping Act*, VI *of* 1864, *s.* 3—*Conviction for two offences—Sentence of imprisonment for the one and whipipng for the other—Appeal from first conviction—Postponement of latter sentence—Validity.*—S. 3 of the Whipping Act, as amended by Act III of 1895, is to be read subject to the provisions of s. 391 (3) of the Crim. Pro Code. When an accused is convicted of two offences, for one of which he is sentenced to imprisonment and for the other to whipping, it is not permissible to postpone the whipping merely because the accused appeals against his conviction for the latter offence. EMPEROR v. JAIWANT, **4 Bom. L.R. 436.**

(3416)—S. 391—*See* Nos. 251, 252, 3410, *supra.*

(3417)—*Ss.* 391 (3), 439—*Sentence of whipping.*—The sentence of whipping in addition to imprisonment, the term of which is less than three months, is illegal under s. 391 (3). *In re* SUBBIAN CHETTY, **2 Weir 447 = 2 Weir 577.**

(3418)—*Ss.* 391, 439 (5)—*Sentence of imprisonment and whipping passed by a Magistrate of the first class—Revision by District Magistrate before expiry of period of appeal—Sentence of whipping carried out by order of District Magistrate—Order* ultra vires.—When the accused was convicted by a Magistrate of the first class of the offence of theft and sentenced to rigorous imprisonment for one month and 20 stripes, and, before the period prescribed for an appeal had expired, the District Magistrate took up the case on revision, and, holding that, under s. 391 of the Code of Criminal Procedure, whipping should not have been added to the term of imprisonment which was less than three months in duration, directed the accused to be whipped and submitted the case for the orders of the Chief Court, *held*, that the sentence passed by the trying Magistrate was appealable to the Court of Session and that the District Magistrate acted illegally in taking up the case on revision and ordering the accused to be whipped before the period prescribed for appeal had expired. CROWN v. RURA, **45 P.L.R. 1902.**

——S. 392 (=1882, s. 392; 1872, s. 311, paras 1 and 2).

(3419)—*S.* 392—*Whipping.*—The expression "in the manner of school discipline" finds no place in s. 392 of the Code of 1898. In the case of a person under 16 years of age, whipping is to be inflicted in such mode and on such part of the person and with such instrument as the Local Government directs in the manner directed in Criminal Circular III—3. EMPEROR v. GULAB MUSSALMAN, **14 C.P.L.R. Cr. 64.**

(3420)—S. 392—*See* ACT VI OF 1864, s. 5, L.B.R. 1872—1892, 355.

(3421)—*Ss.* 392, 393—*Scope and application of.*—Under the provisions of ss. 392 and 393, not more than one sentence of whipping and that not exceeding 30 stripes, should be awarded at one time. KING-EMPEROR v. NGA PO KYAN, **U.B.R. 1906, Crim. Pro. Code 47 = 4 Cr. L.J. 281.** (U.B.R. 1897—1901, Vol. I, 247, U.B. R. 1892—1896, Vol. I, 44, 9 W.R. Cr. 41, 14 W.R. Cr. 7, *R.*).

——S. 393 (=1886, s. 393; 1872, s. 312, para 3).

(3422)—*S.* 393—*Whipping.*—It is improper to punish an accused person with whipping, when he has been on the same day sentenced in another case to transportation for seven years, this being contrary to the provisions of s 393 of the above Code. QUEEN-EMPRESS v. NGA KAN SA, **U.B.R. 1892—1896, Vol. I, 44.**

(3423)—S. 393—*See* No. 3421, *supra.*

(3424)—Ss. 393 and 439 (1 to 4)—*See* PENAL CODE, s. 382, Rat. Un. Cr. C. 537 = Cr. Rg. 8 of 1891.

——S. 394 (=1882, s. 394; 1872, s. 312, paras 1 and 2).

(3425)—S. 394—*See* No. 184, *supra.*

(3426)—Ss. 394, 395—*See* SENTENCE—WHIPPING, 17 M.L.J. 555 = 7 Cr. L.J. 5 = 3 M.L.T. 31 = 31 M. 84.

Crim. Pro. Code (Act V of 1898)—*continued.*

——S. 395 (=1882, s. 395 ; 1872, s. 313).

See SENTENCE.

(3427)—*S* 395—*Jurisdiction to revise sentence of whipping.—Held*, that, in the absence of the Magistrate who passed the original sentence, the District Magistrate is "the Court which passed the sentence," within the meaning of s. 395 of the Crim. Pro. Code. CHHAJJU v. EMPEROR, 20 **P.L.R. 1902=33 P.R. 1901, Cr.** (10 P.R. 1889, Cr., *R.*)

(3428)—*S*. 395—*Procedure in case of persons not able to withstand punishment of whipping mentioned in s.* 394.—A sentence of fine in lieu of a sentence of whipping, owing to the inability of the accused to undergo the whipping, is bad. S. 395 of the Code only gives authority to remit altogether a sentence of whipping, or so much of it as has not been executed, or to impose a sentence of imprisonment for a term not exceeding 12 months in lieu. QUEEN-EMPRESS v. NGA E AUNG, **U.B.R. 1892—1896, Vol. I, 45.**

(3429)—*S*. 395 (=*Crim. Pro. Code, Act* X *of* 1882, *s*. 395)—*Whipping—Imprisonment.*—The word "imprisonment" in s. 395 of the Crim. Pro. Code, means a substantive sentence of imprisonment and not imprisonment in default of payment of fine. Where a sentence of whipping cannot be carried out, the only course open to the Court is to remit the sentence of whipping or to order imprisonment in lieu of it. EMPRESS v. SHEODIN, **A.W.N. 1889, 93.**

(3430)—S. 395—*See* Nos. 184, 198, 3426, *supra.*

(3431)—*Ss*. 395, 398—*Charge of graver offence—Conviction of minor offence.*—Where a person is charged with an offence, and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it. There is not, however, any provision of law which allows of a conviction for a major offence on a charge of a minor one. QUEEN-EMPRESS v. DURGYA *bin* RAMAPPA, **1 Bom. L.R. 513.**

——S. 396 (=1882, s. 396 ; 1872, s. 316 ; 1861, s. 47).

(3432)—S. 396—*See* ESCAPE FROM LAWFUL CUSTODY, 1 Weir 203.

(3433)—S. 396—*See* SENTENCE — TRANSPORTATION, Rat. Un. Cr. C. 965=Cr. Rg. 19 of 1898.

(3434)—*Ss*. 396, 398 *and* 426—*Date from which substantive term of imprisonment should run when accused has been released through error in warrant of commitment.*—In this case, the accused was convicted under s. 447, I.P.C., and sentenced to three months' rigorous imprisonment and a certain fine, or, in default, to 20 days' rigorous imprisonment. Through a mistake in the warrant of commitment to the jail, the substantive term of imprisonment was overlooked ; the result being that the accused underwent only the period of imprisonment ordered in default of fine and was released. The error was then discovered, and, five days after the release, the accused was re-arrested and sent back to jail to undergo the substantive term of imprisonment, and the Magistrate directed it to begin on the day on which he was re-arrested. *Held* that the order was legal. KING-EMPEROR v. NGWE GAING, **U.B.R. 1897—1901, Vol I, 89.**

——S. 397 (=1882, s. 397 ; 1872, s. 317 ; 1861, s. 48).

See SENTENCE.

(3435)—*S*. 397—*Concurrent sentences.*—The passing of concurrent sentences is opposed to the provisions of s. 397, Crim. Pro. Code. QUEEN-EMPRESS v. BHAGWANDASS BALDAS, **2 Bom. L.R. 111.** [*R* , 4 Bom. L.R. 876.]

(3436)—*S*. 397 (=*Crim. Pro. Code*, 1872, *s*. 317)—*Sentence—Subsequent sentence before expiry of previous sentence—Reversal of former conviction.*—A Magistrate of the First Class sentenced the accused to two years' rigorous imprisonment on the 6th February on conviction for theft. The Sessions Judge, a month afterwards, sentenced him in another case to three years' rigorous imprisonment, which, he, under s. 317, Crim. Pro. Code, directed, should begin to take effect on the expiration of the sentence passed by the Magistrate. On appeal, the conviction and sentence passed by the Magistrate were reversed. *Held* that the sentence passed by the Sessions Judge must be deemed to have commenced from the time it was ordered to commence, *viz.*, from the expiration of the sentence passed by the Magistrate whether by reversal or by completion of the punishment. KHANDESH SESSIONS JUDGE'S LETTER NO. 420, **Rat. Un. Cr. C. 139.**

(3437)—*S*. 397 (=*Crim. Pro. Code*, 1872, *s*. 317)—*Imprisonment on two separate charges by two different tribunals—Reversal of one of the convictions—Period of imprisonment suffered, whether to be deducted from the other conviction.*—Where a person was convicted and sentenced by two different Magistrates on separate charges and the sentence of one of them was reversed on appeal, *held*, that the imprisonment suffered by him from the date of the conviction to that of reversal of the sentence of one of the Magistrates should be reckoned as the imprisonment in the unreversed conviction. HIGH COURT PROCEEDINGS, 15TH FEB. 1879, NO. 201, **2 Weir 450.**

(3438)—*S*. 397 (=*Crim. Pro. Code*, 1872, *s*. 317)— *Consecutive sentences.*—Where the accused was separately tried and convicted on two distinct charges on the same day, *held*, that the Magistrate, if he intended the two sentences not to be concurrent, should direct that the imprisonment in one case should commence at the expiration of the imprisonment in the other, and this direction should be embodied in the sentence, and not entered as a foot-note. HIGH COURT PROCEEDINGS, 23RD DEC. 1873, NO. 2274, **2 Weir 451.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3439)—*S.* 397 (=*Crim. Pro. Code*, 1882, *s.* 397)—*Term "undergoing" imprisonment explained.*—A person sentenced to imprisonment is "undergoing" that imprisonment within the meaning of s. 397 of the Code from the moment the sentence is passed. When, therefore, the same person is tried, though on the same day, for another offence and sentenced to another term of imprisonment, that imprisonment must, by the terms of s. 397, and independently of any direction given by the Court, commence at the expiration of the imprisonment imposed by the first sentence. *In re* MUTHUSAMI GOUNDAN, **2 Weir 451.**

(3440)—*S.* 397—*Imprisonment for failure to furnish security for good behaviour—Imprisonment for a substantive offence—Order of commencement.*—Where a person, who was ordered to be in imprisonment on failure to furnish security for good behaviour, escaped from the custody of the Police officer, when he was being taken to jail, and was convicted and sentenced to a term of imprisonment, *held*, that the latter sentence should not be postponed to the expiry of the period of imprisonment for failure to give security. *In re* VENKATIGADU, **2 Weir 452.** [*R.*, 31 M. 515=4 M. L.T. 223=8 Cr. L. J. 402.]

(3441)—*S.* 397—*Sentence on offender already sentenced for another offence.*—S. 397 of the Crim. Pro. Code enacts that, when a person already undergoing a sentence of imprisonment is sentenced to imprisonment, etc., such imprisonment, etc., shall commence at the expiration of the imprisonment, etc., to which he has been previously sentenced. But an order of committal to prison in default of security under ch. VIII is not a sentence of imprisonment and therefore s. 397 of the Code does not apply to it. QUEEN-EMPRESS v. NGA SO, **U.B.R. 1892—1896, Vol. I, 46.**

(3442)—S. 397 — *See* APPEAL — CASES WHERE APPEAL LIES, Rat. Un. Cr. C. 18= Cr. Rg. 3-8-1869.

(3443)—S. 397 – *See* TRANSPORTATION FOR LIFE, L.B.R. 1893—1900, 13.

(3444)—S. 397—*See* Nos. 250, 252 to 258, 646, 798, 840 to 847, *supra*.

(3445)—*Ss.* 397, 398—*Scope of s.* 397.—Under s. 397, a Sessions Judge may direct that a sentence of transportation passed on a person already undergoing a sentence of imprisonment, shall commence immediately or on the expiration of the imprisonment to which he has been previously sentenced. S. 398 provides that nothing in s. 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction. *In re* PATTAYIL KOORU, **2 Weir 453.**

——S. 398 (=1882, s. 398 ; 1872, s. 317, proviso).

(3446)—S. 398—*See* Nos. 250, 3431, 3434, 3445, *supra*.

Crim. Pro. Code (Act V of 1898)—*continued.*

——S. 399 (=1882, s. 399 ; 1872, s. 318 ; 1861, s. 433).

See JUVENILE OFFENDER.

(3447)—*S.* 399 (=*Crim. Pro. Code*, 1882, *s.* 399) —*Juvenile offenders—Duty of Magistrates.*—A Judge or Magistrate is not at liberty in estimating the proper sentence to be passed on juvenile offenders to consider the fact that there is no Reformatory. He is bound to pass a sentence of punishment adequate to the offence. *In re* BURRI SUBBADU, **2 Weir 453.**

(3448)—*S.* 399 (=*Crim. Pro. Code*, 1872, *s.* 318)—*Youthful offenders—Confinement in Reformatory.*—Pending the publication by the Local Government of the Notification contemplated in s. 1 of Act V of 1876, s. 318 of the Crim. Pro. Code, 1872, contains the provisions of the Law for the confinement of youthful offenders in Reformatories, but it is only when such an offender is sentenced to imprisonment that the latter section empowers a Magistrate to direct that he shall, instead of being imprisoned in a Criminal jail, be confined in a Reformatory ; and neither the said section nor the corresponding s. 7 of Act V of 1876 gives jurisdiction to a Magistrate to pass a sentence of imprisonment in excess of the powers conferred by s. 20 of the Crim. Pro. Code. QUEEN EMPRESS v. RAVAJI, **Rat. Un. Cr. C. 180.**

(3449)—*S.* 399 (=*Crim. Pro. Code, Act* X *of* 1882, *s.* 399)—*Reformatory Schools Act* (VIII *of* 1897 *and* V *of* 1877),*s.* 8—*Boy of fourteen—Order to be passed.*—S. 399 of the Crim. Pro. Code was repealed by the Reformatory Schools Act of 1876 which came into force in Bombay in 1897. An order passed thereafter, directing the confinement in a Reformatory School for one year, of a boy of fourteen years of age, is illegal under s. 8 of this Act. QUEEN-EMPRESS v. FAKIRA DHARMAPPA, **Rat. Un. Cr. R. 915 =Cr. Rg. 21 of 1897.**

(3450)—*S.* 399 (=*Crim. Pro. Code*, 1882, *s.* 399)—*Section repealed by extension of Act* V *of* 1876 *to the Presidency of Bombay.*—S. 399, Crim. Pro. Code, was repealed when Act V of 1876 (Reformatory Schools) was extended to the Presidency of Bombay. QUEEN-EMPRESS v. HARPRASAD LALTA, **Rat. Un. Cr. C. 929= Cr. Rg. 38 of 1897.**

(3451)—*S.* 399 (=*Crim. Pro. Code*, 1872, *s.* 318)—*Crim. Pro. Code*, 1882, *s.* 319—*Repeal by Act* V *of* 1876.—S. 318 of the Code of 1872 having been repealed by s. 2, Act V of 1876, the corresponding s. 399 of the Code of 1882 must be taken to stand repealed in the provinces including Bengal to which Act V of 1876 had been extended. DEPUTY LEGAL REMEMBRANCER v. AHMED ALI, **25 C. 333=2 C. W.N. 11.**

(3452)—*S.* 399 — *Reformatory Schools Act* (VIII *of* 1897)—*Youthful offender—Detention in Reformatory—Period of detention to be fixed.*—The accused, a boy of thirteen years, was convicted of theft and sentenced to suffer rigorous imprisonment for two months. The trying

Crim. Pro. Code (Act V of 1898)—*continued.*

Magistrate, in view of the age of the accused, ordered him to be detained in a Reformatory School for five years or "until he attains the age of eighteen years" in lieu of the imprisonment: *Held*, that the period of detention in the Reformatory School should be a definite period, and that the alternative period of time expressed in the words "or until he attains the age of eighteen years" should be deleted. EMPEROR v. RAMA SUDAMA, **15 Bom. L.R. 306=2 Bom Cr. Cas. 57=19 Ind. Cas. 512=14 Cr. L.J. 256.** (24 M. 13, *F.*).

(3453)—S. 399—*See* ACT V OF 1876, Rat. Un. Cr. C. 864=Cr. Rg. 28 of 1896.

(3454)—S. 399—Power of second class Magistrate to send youthful offender to Reformatory —*See* ACT V OF 1876, ss. 2 and 7, 12 M. 94=1 Weir 875=2 Weir 11=2 Weir 454.

(3455)—S. 399 (1, 2) — *See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 12 M. 94=1 Weir 875.

——**S. 401, paras 1 to 5 (=1882, s. 401; 1872, s. 322, paras 1 and 2; 1861, s. 54); para 6, new.**

See SENTENCE.

(3456)—*S.* 401 (=*Crim. Pro. Code*, 1882, *s.* 401) —*Penal Code*, s. 84—*Unsoundness of mind —Recommendation to Local Government for lenient treatment.*—In a case, where it was held that the accused committed murder without any apparent sane motive and that the accused was at the time suffering from mental derangement of some sort, the High Court holding that the accused was not entitled to be acquitted under s. 84, Penal Code, recommended the case to the Local Government, under s. 401, Crim. Pro. Code, to be dealt with in such manner as it thought fit. QUEEN-EMPRESS v. KADAR NASYER SHAH, **23 C. 604.** (10 B. 512, 12 M. 459, 22 C. 817, *F.*) [*Diss.*, 40 P.R. 1905, Cr. =148 P.L.R. 1905; *F.*, 4 Ind. Cas. 985=16 P.W.R. 1909, Cr.=94 P.L.R. 1909=6 M.L.T. 101=11 Cr. L.J. 105; *R.*, 14 Cr. L.J. 81=18 Ind. Cas. 641=15 O C. 321.]

——**S. 402 (=1882, s. 402; 1872, s. 322, para 3).**

See SENTENCE.

(3457)—*S.* 402—*Appellate Court, power of —Sentence, power to enhance.*—The District Magistrate, on appeal by an accused against a sentence of fine of Rs. 50 under s. 325, Indian Penal Code, altered the sentence to one of two months' rigorous imprisonment including seven days' solitary confinement. *Held*, that the alteration amounted to an enhancement and that the order of the District Magistrate was illegal. He should have referred the case to the Chief Court for orders. KUNJA v. KING-EMPEROR, **116 P.L.R. 1904.**

(3458)—*S.* 402—*No complaint — Order of acquittal whether bar to a new trial.* UMERUDDIN v. KING-EMPEROR, **6 A.L J. 262=9 Cr. L J. 526=31 A. 317=2 Ind. Cas. 219.**

Crim. Pro. Code (Act V of 1898)—*continued.*

——**S. 403, paras 1 to 4 and Explanation (=1882, s. 403; 1872, ss. 460, 147, para 2, 195, Expl., 215, Expl. 2; 1861, s. 55).**

See AUTREFOIS ACQUIT, PLEA OF.

See AUTREFOIS CONVICT.

(3459)—*S.* 403—*Charge of an offence under s.* 414 *of the Indian Penal Code—Previous conviction under s.* 411 *in respect of other property stolen at the same time and from the same person.*—*Held*, that, where a person had been convicted under s. 411 of the Indian Penal Code, in respect of certain property stolen on a particular occasion from a particular person, he could not, subsequently, be tried for an offence under s. 414 of the Code in respect of other property stolen on the same occasion from the same person. EMPEROR v. MIAN JAN, **A.W.N. 1906, 22=3 Cr. L.J. 207=28 A. 313.** (15 A. 317, *R.*).

(3460)—*S.* 403—Res judicata—*Whether bars any proceedings by general principle or only by special enactment—Dismissal of first application for maintenance—Whether it is a bar to second application on same facts—Where substantial justice has been done by the lower Court—Whether High Court will interfere in revision— Civ. Pro. Code* (*Act* XIV *of* 1882), *s.* 13.—The parties were husband and wife, living apart. The applicant applied to the Sub-Divisional Magistrate for an order against the respondent to pay an allowance for the support of their child. The Magistrate wrote, "Respondent offers to maintain the complainant in a separate house, but she refuses to accept the offer. She alleges no ill-treatment. I have consequently no power to interfere. Case dismissed." This Magistrate was transferred, and the applicant subsequently applied to his successor for an order of maintenance for the child. The case was duly heard and an order made to pay Rs. 5 per month. *Held*, on appeal that *res judicata* does not bar any proceedings by general principle but only by special enactment, as contained in s. 13 of the Civ. Pro. Code, and s. 403 of the Crim. Pro. Code. *Held*, also that, where a Magistrate, to whom an application is made, knows or has reason to believe that a similar application on the same facts has been adjudicated on, he ought not to act on the application without considering the previous decision, but that, when he does so, he is not wrong in law, nor are his proceedings bad and void, regardless of the merits. Where the second Magistrate has done substantial justice, it is a sufficient reason for refusing to interfere in revision. MAUNG PO SO v. MA KYIN MI, **14 Bur. L.R. 259=4 L.B R. 337=9 Cr. L.J. 21.**

(3461)—*S.* 403—*Offence under Forest Act— Legality of trying accused twice on same facts.*— It is the duty of the prosecution to put before the Court true evidence respecting the measurement of the timber, which the accused cut in excess of his license, and failure to do this at the first trial does not entitle the Crown to prosecute the offender again, in respect of the

Crim. Pro. Code (Act V of 1898)—*continued.*

same timber, on the ground that the measurement stated at the first trial was incorrect and below the amount of timber actually cut. S. 403 of the Code applies to such a case. SAN MYA v. KING-EMPEROR, 3 **L.B.R. 253 = 5 Cr. L.J. 412.**

(3462)—*S.* 403—*Resumption of trial after acquittal—Validity*—When once a Sessions Judge had acquitted an accused on a charge for the trial of which he had been committed, the Judge could not take further proceedings in the case, and a second trial on the same facts for the same criminal act, but only under a different section of the Penal Code, would be barred by s. 403, Crim. Pro. Code. There is no provision in the Code which enables a Judge, on a trial for murder, to acquit the prisoner of the murder, refer the case to the High Court and then resume the trial. EMPRESS v. GANESH PRASAD, **2 C.P.L.R.** 66, **Cr.**

(3463)—*S.* 403 (=*Crim. Pro. Code*, 1882, *s.* 403)—*Acquittal on a minor offence—Fresh trial on a major offence, validity of.*—Where, upon a charge of dacoity, the Magistrate split it up and convicted the accused of rioting, using criminal force, and misappropriating the property of a deceased person, and, in appeal, the Sessions Court reversed the conviction, holding that the offence committed, if any, amounted to dacoity, but that, the facts being incredible, there was no occasion to order a committal, *held*, that another Magistrate may try the charge of dacoity on a fresh complaint being lodged and that the order of the Sessions Judge was no bar to further proceeding on the same facts. VIRANKUTTI v. CHIYAMU, **7 M. 557 = 2 Weir 456.** [*R.*, 24 C. 528 = 1 C.W.N. 370; *D.*, 28 C. 211 = 5 C.W.N. 169.]

(3464)—*S.* 403—*Previous trial without sanction where sanction necessary—Subsequent trial after sanction.*—Where the law requires a previous sanction to be given before a charge can be entertained by a Court, that Court is not a Court of competent jurisdiction until the sanction has been obtained. (22 B. 711, *F.*) One M purporting to be one J presented a document for registration and was identified by the accused before the Sub-Registrar. She was convicted of forgery and cheating. The accused was first put upon his trial for aiding and abetting forgery and then for aiding and abetting, cheating but was acquitted. The Registrar, thereupon, sanctioned his prosecution under the Registration Act. *Held*, that the previous trials were no bar to the trial of the accused under the Registration Act. EMPEROR v. JIWAN, **13 A L.J. 4 = 37 A. 107 = 16 Cr. L.J. 144 = 27 Ind. Cas. 208.**

(3465)—*S.* 403 — *Acquittal — Some accused charged with others—Acquitted in previous trial —Whether bars trial of others subsequently captured — Same transaction — High Court—Powers of interference.*—Where some out of several persons charged with offences under ss. 148, 326 and 302, I.P.C., were placed on trial and acquitted, and where subsequently five others implicated in the same transaction were captured and put upon their trial. *Held*, that the acquittal, under s 403, Crim. Pro. Code, of the accused who were tried previously, is no bar for the trial on the same charges of the persons subsequently arrested. Where, in the first trial, the Sessions Judge, having disbelieved the evidence, acquitted the accused and expressed an opinion that the facts and circumstances suggested to him a very strong doubt as to the truth of the prosecution story, but nevertheless came to the conclusion that a riot did take place in which one person was killed, the High Court refused to interfere with the pending prosecution of the persons who were subsequently captured and put upon trial. KOKAI SARDAR v. MEHAR KHAN, **37 C. 680 = 7 Ind. Cas. 932 = 11 Cr. L.J. 541.**

(3466)—S. 403—*See* ACQUITTAL, 1 L.B.R. 340.

(3467)—S. 403—*See* ACT III OF 1877, s. 81, 6 O. C. 153.

(3468)—S. 403—*See* ACT IV OF 1889, ss. 6 and 7, 23 C. 174.

(3469)—S. 403—*See* BUR. ACT III OF 1898, ss. 92 (1, 2, 3), 180, 5 L.B.R. 12 = 9 Cr. L.J. 578 = 2 Ind. Cas. 357.

(3470)—S. 403—*See* PUN. ACT XX OF 1891, s. 164, 63 P.L.R. 1904.

(3471)—S. 403—*See* CONVICTION, 6 M.H.C. App. 7.

(3472)—S. 403—Acquittal under s. 498, I.P.C.—Opposite finding on same evidence under s. 363, I.P.C., illegal—*See* PENAL CODE, ss. 363, 498, 9 Ind. Cas. 511 = 56 P.L.R. 1911 = 12 Cr. L.J. 94.

(3473)—S. 403—*See* PENAL CODE, ss. 409, 424, 1 U.B.R. 1902—1903, Penal Code, 9.

(3474)—S. 403—*See* PUN. REG. IV OF 1873, 30 P.R. 1884, Cr.

(3475)—S. 403—*See* RES JUDICATA, 1 L.B. R. 340, F.B.

(3476)—*S.* 403 (1)—*No complaint—Order of acquittal — Whether bar to a new trial.* — A soldier from Burma (complainant) sent an intimation to the District Magistrate that he had authorised his brother to file a complaint against the accused for enticing away his wife. When the case came on for hearing, it appeared that the brother had no such authority and the Magistrate acquitted the accused. The complainant then filed a complaint personally. *Held*, that the previous acquittal was no bar to the trial of the present complaint, inasmuch as the finding of the Magistrate amounted to this, that there was no complaint before him. UMER-UD-DIN v. KING-EMPEROR, **6 A L.J. 262 = 31 A. 317 = 9 Cr. L.J. 526 = 2 Ind. Cas. 219.** (9 A. 134, F.B., *R.*)

(3477)—S. 403—*See* Nos. 15, 128, 574, 2008, 2087, 2090, 2207, 2248, 2371, 2374, 2376, 2377, 2397 to 2400, 2403, 2455, 2481, 2507 to 2512, 2523, 2529, 2621 to 2624, 2639, 2762, 2968, 2990, 3164, 3167, 3168, 3195, *supra* and No. 3730, *infra.*

Crim. Pro. Code (Act V of 1898)—*continued.*

(3478)—Ss. 403 (1 to 4) and Expln. 436—*See* COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 337=Cr. Rg. 27 of 1887.

(3479)—*S.* 403 (3)—*Conviction for hurt—Re-trial for murder.*—A conviction for simple hurt is no bar to a commitment and subsequent trial for an offence under ss. 302 or 304, I.P C., if the person to whom the hurt is caused dies subsequent to the conviction, from the result of the injuries inflicted upon him. CROWN v. SARBILAND, 3 **P.R. 1901, Cr.**

(3480)—*S.* 403 (4)—*Conviction under s.* 323, *I.P.C., while complaint was for the offence of culpable homicide—Subsequent trial for latter offence not barred.*—Where a Magistrate convicts the accused of the offence of hurt, while the offence complained of by the police was one of culpable homicide, *held*, that the conviction, although it may not amount to a discharge of the accused of the latter offence, is yet, under para 4 of s. 403, no bar to the trial of the accused for an offence under s. 304, which the Magistrate is not competent to try. EMPEROR v. ZUJI MANU DIBRIT, 5 **Bom. L.R.** 125 [*Rel.*, 13 Cr. L.J. 742=17 Ind. Cas. 54=243 P.L.R. 1912=7 P.R. 1912, Cr.=39 P.W.R. 1912.]

(3481)—*S.* 403 (4)—*Acquitting accused on their mere denial without examining witnesses for prosecution—High Court's interference with order of acquittal.*—As a general rule, the High Court will not interfere with an order of acquittal, but it has the power to do so, and this power may be properly exercised in particular cases. (U.B.R. 1897—1901, Vol. I, 91, *R.*) So, where a Magistrate passes orders without even calling the witnesses for the prosecution, though they were ready to be examined, and convicts some of the accused on their own admissions, and lets the others off simply because they denied the charge, without calling any evidence at all, the Magistrate's procedure is illegal, and the High Court will interfere in revision against the order of acquittal and order a re-trial. K. E v. NGA SAN WEIN, **U B R. 1912, 148=19 Ind. Cas. 177=14 Cr.L J. 177.**

(3482)—*Ss.* 403 (4), 213—*Acquittal of accused under ss.* 325, 326, 148, *Penal Code—Subsequent trial under s* 302, *Penal Code—Commitment in pursuance of order by Sessions Judge—Legality.*—*Held*, the subsequent trial of accused for offence of murder under s. 302, I.P.C., is justifiable under s 403 (4), Crim. Pro. Code, notwithstanding the fact that they had been acquitted by the Magistrate of offences under ss. 325, 326, 148, I.P.C , inasmuch as, although the subsequent offence with which they were charged was constituted by the same acts which constituted the offences of which they had been acquitted by him, the Magistrate was not competent to try the offence of murder with which they were subsequently charged. An order of commitment made under s. 208, Crim. Pro. Code, is none the less valid because it was made in pursuance of a direction given by the Sessions Judge. WADHAWA SINGH v. CROWN, **7 P.R. 1912, Cr.=39 P.W.R. 1912, Cr.=243 P.L.R. 1912=17 Ind. Cas. 54=13 Cr. L.J. 742.** (5 B. L.R. 125, *F.*; 20 C. 633, *D.*)

(3483)—Ss. 403 (Expl.) and 437—*See* MAGISTRATE, DUTY OF, 2 L.B.R. 27.

(3484)—*Ss.* 403, 235, *sub-ss.* (1) *and* (2)—*Penal Code, ss.* 210, 202, 176—*Acquittal of offence under s.* 202, *I.P. Code—Subsequent trial for an offence under s.* 176, *I P. Code, on same facts—Legality.*—A person, who has been tried for offences under ss. 201, 202 of the Penal Code and acquitted by the Sessions Court, cannot be tried again for an offence under s. 176 of the Penal Code, based on the same facts, by an inferior Criminal Court, as the case of such a person does not come under sub-s. (1) of s. 235 of the Crim. Pro. Code, but rather under sub-s. (2) of that section. The charge, under s. 176 of the Penal Code might have been framed at the former trial on the very same facts and the Sessions Court, which tried him under s. 202 of the Penal Code, was competent to try him under s. 176, Penal Code. SHARBEKHAN GOHAIN v. EMPEROR, **10 C W N. 518=3 Cr. L J 388.** [*R.*, 36 M. 308=13 M.L.T 360, 24 M.L.J. 463=19 Ind. Cas. 310=14 Cr.L.J. 214, 15 Cr.L.J. 460=24 Ind. Cas. 340=18 C.W.N. 723; *D.*, 37 C. 604=12 C.L.J. 15=14 C.W.N. 839=11 Cr. L.J. 325=6 Ind. Cas. 352.]

(3485)—*Ss.* 403, 236, 235, *cl.* (1) *and* 195—*Charge under s.* 211, *I.P.C.—Acquittal—Subsequent proceedings—Charge under s.* 182, *Penal Code, on the same facts—Bar under s.* 403—*Scope of s.* 403, *cls.* (1) *and* (4)—*Sanction under s.* 195, *Crim. Pro. Code—Nature of—Whether affects competency of tribunal—I P.C., ss.* 182, 211.—Where the accused was charged in a previous case, with having committed an offence punishable under s. 211, I.P.C., on the basis of the following facts, *viz*, that he gave false information on 5th February, 1907 and that, on the 11th February, he repeated this information and stated that he suspected the complainant of the offence of theft disclosed by the information, and where, it being found that there was no theft at all, the accused was acquitted: *Held*, that s. 403 (1), Crim. Pro. Code, constituted a bar to subsequent proceedings against the accused on a charge laid under s. 182, I.P.C. A bar under s. 403, Crim. Pro. Code, operates not only where a person has been tried for an offence and convicted or acquitted of it and is sought to be tried again for the same offence, but also where he is sought to be tried on the same facts for any other offence for which a different charge from the one made against him might have been made on the same facts under s. 236, Crim. Pro. Code, or for which he might have been convicted under s. 237, Crim. Pro. Code. S. 236, Crim. Pro. Code, would be applicable to a case where, on the same facts, it is doubtful whether the accused committed one offence only or both that offence and another. S. 235 (1), Crim. Pro. Code, seems to be inapplicable when the accused is sought to be charged with anothe offence on the identical facts on which he was

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charged before with one offence. (2 C.L.J. 622, 8 M 296, 10 C.W.N. 518, 24 M. 641, *R*) S. 403 (4), Crim. Pro. Code, refers to the character and status of the tribunal when it refers to competency to try the offence, as shown by illustrations (*f*) and (*g*) to the section. A sanction under s 195, Crim. Pro. Code, is not a condition of the competency of the tribunal; it is only a condition precedent for the institution of proceeding before the tribunal. K. GANAPATHI BHATTA v. KING-EMPEROR, **24 M.L.J. 463 = 13 M.L.T. 360 = 19 Ind. Cas. 310 = 14 Cr.L J. 214 = 36 M. 308.**

(3486)—*Ss.* 403, 236, 237—*Previous acquittal of co-accused, if bar to trial—Additional facts ascertained subsequently—Penal Code, ss.* 380 *&* 411.—On a charge of theft under s. 380, I.P.C, against three persons, A, B and C, two of them A and B were placed on their trial and acquitted by a competent Court. Subsequently, some of the stolen properties having been discovered in the house of the third accused, C, C was put upon his trial for an offence under s. 411, I.P. C., and convicted. *Held*, that the previous acquittal of A and B was no bar to the subsequent trial and conviction of C, as there were certain additional facts before the Court, ascertained subsequent to the acquittal, which supported the charge under s. 411, I.P.C. DEPUTY LEGAL REMEMBRANCER v. HATIM MOLLAH, **10 C W N 1031 = 4 Cr.L.J. 173** (4 C.W.N. 346, 7 C.W.N. 493, *D*.)

(3487)—*Ss.* 403, 305, 308, 271, 272—Autrefois acquit—"*Any other offence with which he might have been charged,*" *meaning and effect of—Acquittal on charge of murder if bar to trial on charge of culpable homicide where culpable homicide was charged in the previous trial—Acquittal on charge under s.* 302/34, *I.P.C., if bar to trial on charge under s* 302/114, *or* 302/109, *Penal Code—Discharge of jury under s.* 305, *Crim. Pro. Code, and trial before a fresh jury under direction of Court if a continuation of the first trial on the original plea—Plea of accused if necessary again in second trial—Pleading not guilty and* autrefois cquit *at one and the same time, if proper—English law of criminal pleading, bearing of, on Indian Criminal Procedure—Plea of not guilty not a plea recognized by the Indian Code of Criminal Procedure.*—The accused was indicated in the Calcutta Court of Criminal Sessions under five counts which were, firstly, the murder of one N under s. 302/34, I.P.C. secondly, murder of the same man under s. 302/114, I.P.C., thirdly abetting the murder of the same man under s. 302/109, I.P C., fourthly, the murder of one A, fifthly, culpable homicide of A. The accused pleaded not guilty to all the charges. The jury unanimously acquitted the accused of the first and the fourth charges and differed as to the other counts, there being not as many as six who agreed in opinion. The Judge discharged the jury under s. 305, Crim. Pro. Code, and directed a re-trial. On the re-trial of the accused before a fresh jury on the remaining counts of the indictment, the accused pleaded

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not guilty as also *autrefois acquit* and it was urged in defence (1) that, as the accused had been acquitted of the charge of murder of A, he could not be tried again for committing culpable homicide on him; and (2) that, as he had been acquitted of an offence under s. 302/34, I.P.C., in relation to the murder of N, he could not be convicted of an offence in relation to the same man under s. 302/109 or 302/114, I.P.C. *Held*—that s. 403 protected the accused only against a trial for murder and any other offence for which a different charge from the one made against him "might have been made." But the offence of culpable homicide for which he was tried again was one of the charges actually made against him and on the terms of s. 403, Crim. Pro. Code, the first objection failed. If the accused had been charged with murder alone, a verdict of not guilty would have protected him from another trial for culpable homicide and were he acquitted of culpable homicide he would be protected from a trial for any offence involving hurt; but where a charge was made, the case fell outside the provisions of the law dealing with cases where it might have been made. That, for the purposes of s. 403, the accused was not being tried again but was being tried on the original indictment, and on his first plea of not guilty. S. 308, Crim. Pro. Code, did not affect the construction of s. 403. That s. 403 should not be construed with reference to the English law relating to criminal pleading. Ss. 271 and 272, Crim. Pro. Code, contain all that is necessary as to pleading, and there is no need to supplement their contents by a reference to any other system of judicature. That the plea of 'Not guilty' was one not recognised by the Code of Criminal Procedure, and it was not open to the accused to make any answer to an indictment except guilty or a claim to be tried. S. 403 has nothing to do with pleading, but is in terms of a limitation on the jurisdiction of the Court. A defence under that section may be set up at any time before verdict in any form. That even assuming the case to be governed by the English law of pleading, *autrefois acquit* was not properly pleaded. That the accused had already pleaded 'Not guilty' in the first trial and that plea was still awaiting adjudication and the second plea was therefore unnecessary and of no effect. That, even if the principles of English law were to be applied to the present case, the acquittal for murder was no bar to the re-trial for culpable homicide. Where another person actually killed the deceased, the accused who was stated to have accompanied him and attempted to kill him could not be charged with murder under s. 34 of the Penal Code. S 34, Penal Code, is to be read according to the meaning of its terms, without reference to any doctrines derived from the English Common Law. The construction put on the section in *R.* v. *Mahabit Tiwari* and *Gouridas Nomasudra* v. *Emperor*, (21 A. 263. 13 C.W.N. 680, *R*) (Which is summarised in para 243 of Mayne's Criminal Law) is wider than the terms of the section justify. The finding of

'Not guilty' by the jury on the charge under s. 302/34, I.P.C., under the direction of the Judge for an acquittal on legal grounds did not decide any question of fact and could not be taken as negativing the common intention of the accused and the man who in fact killed N. That there is no reason for saying that a man must be absent in order to abet under s. 109, I.P.C. That, by instigating the unknown murderer by accompanying him to the place and by aiding him in his flight afterwards, the accused would be abetting the murder under s. 109, I.P.C., even if he was not present at the murder; his presence there would make him liable for the murder under s. 114. The effect of s. 109 and s. 114 of the Penal Code is to supersede all the English law relating to principals of the first and second degrees and accessories before the act. EMPEROR v. NIRMAL KANTA ROY, **18 C.W.N. 723=15 Cr. L.J. 460=24 Ind. Cas. 340=41 C. 1072.**

(3488)—*Ss.* 403, 409—Autrefois acquit—*Separate charges—One transaction—Pending trial—Revision.*—The accused along with some others was charged before a Sessions Court with offences under ss. 467, 114 of the Penal Code, in respect of the forgery of six documents under circumstances constituting a single transaction, but the charge in respect of the accused was only in respect of the forgery of three of these documents. The accused was eventually acquitted, but the District Magistrate commenced another prosecution against the accused in respect of the other three statements. *Held*, on an application to stop the proceedings, that the accused was not entitled in law, under s. 403 of the Crim. Pro. Code, to have the proceedings quashed, but that, under the circumstances of the case, it was not expedient to carry the proceedings farther. EMPEROR v. INAM-ULLAH, **A W.N. 1905, 238=2 A.L.J. 673=2 Cr. L.J. 790.**

(3489)—*Ss.* 403, 423, 530, 556—*Powers of appellate Court—Order convicting appealed against—Order of acquittal—Bar to subsequent proceedings—Order not set aside.*—S. 423, Crim. Pro. Code, defines the powers of the appellate Court, and in that section a clear distinction is drawn between the powers which may be exercised in an appeal from an order of acquittal and in an appeal from a conviction. Where two persons are tried by a Magistrate, one of whom was acquitted and the other convicted and the convicted appealed, *held* that the Sessions Judge, in dealing with the appeal, had no jurisdiction to pass any order which affected the acquittal of the other man. Where a man is put on trial and he produces an order of acquittal passed by a Court, which on the face of it is a Court of competent jurisdiction, in respect of the offence charged, the Court before which such order is produced is not entitled to impeach the competency of the Court which passed the order, on the ground that the presiding officer may perhaps have laboured under the disqualification prescribed by s. 556, Crim. Pro. Code. Until such an order is set aside by some competent Court, the man acquitted is entitled to plead it under s. 403 in connection with any other proceeding that may be taken against him. DARBARI MAL v. KING-EMPEROR, **8 A.L.J. 1129=12 Cr. L. J. 575=12 Ind. Cas. 839.**

(3490)—*Ss.* 403 *and* 423 (*b*) (=*Crim. Pro. Code*, 1882. *ss.* 403. 423)—*Trial on several charges—Acquittal on some and conviction on other charges—Appeal from conviction—Power of appellate Court.*—When an act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, an appeal from a conviction for any one of such offences must lay the whole case open to the interference of the appellate Court, notwithstanding any order of acquittal by the first Court in regard to any of the other offences. The interference of the appellate Court in such cases must be directed primarily, not against the acquittal, but against the conviction which is called in question by the accused, though if the interference is to be rational and complete, the appellate Court must deal with the whole case. If the verdict of a jury is found in such cases to be erroneous, owing to a misdirection by the Judge, it must be set aside in its entirety, as the appellate Court cannot go into facts and substitute its own verdict for that of the jury. Where, therefore, the appellate Court reverses the verdict of a jury and orders a re-trial, such re-trial, unless the appellate Court has limited the scope, must be taken to be one upon all the charges originally framed. KRISHNA DHAN MANDAL v. QUEEN-EMPRESS, **22 C. 377.** [*R.*, 23 C. 975, 40 C. 163=13 Cr. L.J. 497=15 Ind. Cas. 641, 5 L.B.R. 241=11 Cr. L.J. 738=8 Ind. Cas. 952=3 Bur. L.T. 124, 12 P.R. 1904, Cr.=110 P.L.R. 1904.]

(3491)—*Ss.* 403, 423 (*b*). 439 (4)—*Appeal against conviction—Acquittal—Re-trial—High Court's power to alter the finding and enhance sentence—Revision—Applicability of s.* 439 (4) —*Construction of statute.*—A High Court, when hearing an appeal against a conviction, may, as a Court of Appeal, under s. 423, cl. (*b*), Crim. Pro. Code, alter the finding, and then as a Court of Revision under s. 439, Crim. Pro. Code, enhance the sentence so as to make it appropriate to the altered finding. In such cases the prohibition of re-trial contained in s. 403, does not apply, as an appeal to a High Court is not a second trial but a continuation of the trial in the Sessions Court and throws open the whole case to the interference of the High Court. (7 Ind. Cas. 861, 34 M. 545, 8 M. L.T. 313, 11 Cr. L.J. 536, 10 Ind. Cas. 372, 21 M L.J. 805, 10 M.L.T. 66, 1911 2 M.W.N. 106, 35 M. 243, 12 Cr. L.J. 269. 23 C. 975, 22 C. 377, 9 A. 144, *R.*)—Sub-s. (4) of s. 439, refers to a case where the trial has ended in a complete acquittal, not to a case where the trial has ended in a conviction but the Court has wrongly applied the law or has wrongly found some fact not proved, and has, in consequence, held that the conviction should be under some

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section of the Code other than the section properly applicable. The sub section cannot be held to limit the powers of a Court of Appeal. It only limits the powers of a High Court when acting, not as a Court of Appeal, but as a Court of Revision. The terms of a statute should not be so construed as to involve an inconsistency between its different parts. KAMBAM BALI REDDY v. EMPEROR, **37 M. 119=22 Ind. Cas. 756=15 Cr. L.J. 180.**

(3492)—*Ss.* 403, 436, 437, 439 (=*Crim. Pro. Code*, 1882, *ss.* 403, 436, 437, 439)—*Power of Presidency Magistrate to refer a dispute to arbitration.*—Where a Presidency Magistrate referred a complaint of extortion to arbitration and discharged the accused, and, on the arbitration falling through, revived the complaint, *held*, that the Magistrate should not have allowed a reference to the arbitration and his order of discharge was, therefore, illegal, and *held*, further, that he could revive the complaint even after the discharge, as the provisions of ss. 426 and 437 would not apply to Presidency Magistrates. OPOORBA KUMAR SETT *and* SREEMUTTY BRAJANGANA DASSI v. SREEMATTY PROBOD KUMARI DASSI, **1 C.W.N. 49.** [*F.*, 28 C. 211=5 C.W.N. 169; *Appr.*, 28 C. 652 =5 C.W N. 457; *R.*, 2 L.B.R. 27; *D.*, 24 C. 528 =1 C.W.N. 370.]

(3493)—*Ss.* 403, 437—*Discharge of accused person—Dismissal of complaint—Fresh proceedings.*—Although the discharge of an accused person or the dismissal of a complaint is no bar to the institution of fresh proceedings otherwise than under s. 437, Crim. Pro. Code, yet, a Magistrate entertaining a complaint under such circumstances is bound to exercise a proper discretion. MI THE KIN v NGA THA, **U B R. 1904, 2nd Qr, Crim. Pro Code, 19.** (28 C. 652, 29 C. 726, L.B R. 1893—1900, 169, L. B.R. 1903, Vol II, 27, U.B R. 1892—1896, Vol. I. 48, *R.*) [*R.*, 11 Cr. L.J. 58=4 Ind. Cas. 827=U.B.R. 1907—1909, II, Workman's Breach of Contract, p. 1.]

(3494)—Ss. 403, 439—*See* TRIAL, 2 A.L.J. 673=A.W.N. 1905, 238=2 Cr. L.J 790.

(3495)—*Ss.* 403, 494, 235, 236, 237, 35—*Scope—Rule of* autrefois acquit and autrefois convict—*First charge under s.* 203, *I.P.C., withdrawn—Subsequent trial on same facts for offence under s.* 177, *I.P.C.—Penal Code, ss.* 71, 177, 203.—S. 235, Crim. Pro. Code, must be interpreted in a broad and commonsense way, and not by a technical dissection of the language employed. There is a clear distinction between the three sub-sections of s 235 Reading the whole section with s 71, I.P C., we get a fourfold result which may be stated thus: *First*:—A repetition in the same transaction of several criminal acts of exactly the same character may constitute *one crime, e g.*, a number of blows on one person, a number of lies in one continuous deposition, or a number of articles stolen at one house-breaking. That is a case covered by s. 71, Penal Code. *Secondly*:—A single transaction may give rise to either, (1) several offences of a different character, each complete in itself and distinct from the other, *e.g.*, criminal breach of trust accompanied by falsification of accounts as a preliminary or a sequel to such breach; or (2) several offences of the same character but affecting different persons, *e.g.*, a single gunshot fired with criminal intent which injures two or more persons; such cases come under the first subsection of s 235, Crim. Pro. Code, aforementioned. *Thirdly*:—The same series of acts may constitute different offences. All may be charged, but only *one* offence can be regarded as committed for the purpose of inflicting punishment, *e g.*, a person who sets fire to a warehouse. Here his act is an offence under s 435, and also under s. 436, Penal Code, and though he may be charged for both, he cannot be punished for more than one of these offences. Here we have a case under sub-s (2) of s. 235, aforesaid, and s. 71, Penal Code. *Fourthly*:—An act, in itself an offence, may become either an aggravated form of that offence, or a different offence, when combined with some other acts, innocent or criminal. Here we have a compound offence, which, as well as its component minor offence, may be *charged* under s. 235, sub-s (3) of the Crim. Pro. Code; but again s. 71, Penal Code, controls the punishment. These provisions of the law must not be confused with provisions laid down in s. 35, Crim Pro. Code; *separable offences* which come under s 71, Penal Code, and may be charged under s. 235 sub-ss. (2) and (3), Crim. Pro. Code, are not *distinct offences* within the purview of s. 35 of the latter Code; while sub-s. (1) of s. 235 seems to refer to distinct offences which are separately punishable. S 403, Crim. Pro Code, embodies the general rule which affirms the validity of pleas of *autrefois acquit* and *autrefois convict*, subject only to the exceptions specified in it. Where a person has been tried and convicted or acquitted for an offence arising out of a particular set of facts, he cannot, while such conviction or acquittal remains in force, be again tried in respect of any offence based on the same facts, unless the case can be brought under one or other of the specific exceptions to the rule provided by the said s. 403, Crim. Pro Code. Where the prosecution is withdrawn after a charge had been framed and it results in an order of acquittal made under s. 494, Crim. Pro. Code, that is a valid acquittal to which s 403, Crim. Pro. Code, applies. U was killed by a shot from the gun of Z. The police patel, though aware of this fact, falsely reported that U died of fever. The patel was prosecuted for an offence under s. 203, I.P.C., on the ground that he gave false information regarding an offence which he knew to have been committed. After a charge was framed against him, the shooting of U by Z was found to be accidental. Thereupon the prosecution of the police patel, under s. 203, I.P.C., was withdrawn, and he was acquitted under s. 494, Crim. Pro. Code. *Held* that the police officer could not afterwards be tried again for an offence under s. 177, I.P.C., on the basis of the

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same false report. MAHADEOGIR v. EMPEROR, **9 N.L.R. 26 = 18 Ind.Cas. 887 = 14 Cr L J. 135.**

(3496)—*Ss.* 403, 530 (= *Crim. Pro. Code,* 1882, *ss.* 403, 530)—*Acquittal by Court having no jurisdiction — Retrial.*— An acquittal by a Magistrate having no jurisdiction is simply void under s. 530. The accused may, therefore, be retried under s. 403, by a competent Court, without having the acquittal set aside. QUEEN-EMPRESS v. HUSEIN GAIBU, **8 B. 307.** [*Diss.*, 4 L.B.R. 49; *R.*, 4 Cr. L.J. 422 = 2 N.L.R. 149, U.B.R. 1897—1901, 91 ; *D.*, 13 B. 502.]

——S. 404 (= 1882, s. 404 ; 1872, 286 ; s 1861, s. 414).

See APPEAL.

(3497)—*S.* 404 (= *Crim. Pro. Code,* 1872, *s.* 286)—*Scope.*—S. 286, by the words "except in the cases provided for by this Act," must include cases in which the power to alter or annul the order of a Magistrate is expressly given. *In re* CAPTAIN MICHELL, **1 C.L.R. 339 = 3 C. 379.**

(3498)—*Ch.* XXXI, *s.* 404—*Rehearing of warrant cases after discharge of accused person,* —*Held*, by the Full Bench (*Ghose, J., dissenting*), that the Presidency Magistrate is competent to rehear a warrant case triable under Ch. XXXI of the Code in which he has discharged an accused person. DWARKA NATH MONDUL v. BENI MADHAB BANERJEE, **28 C. 652 = 5 C.W.N. 457, F.B.** (28 C. 211, 1 C.W.N. 49, *Appr.*) [*F.*, 29 C. 726, 28 M. 310 = 2 Weir 325-A, 29 M. 126 = 16 M.L.J. 79 = 1 M. L T. 31, 7 C.W.N. 527, 1 N.L.R. 18, 5 N.L.R. 76 = 2 Ind. Cas. 247 = 9 Cr. L.J. 553; *R.*, 29 A. 7 = 3 A.L.J. 562 = A.W.N. 1906, 245, 36 C. 994 = 11 C.L.J. 50 = 13 C.W.N. 1221 = 10 Cr. L.J. 385 = 3 Ind. Cas. 861, 40 C. 71 = 13 Cr. L.J. 488 = 15 Ind. Cas. 488, 11 Ind. Cas 132 = 10 P.R. 1911, Cr. 14 Cr., L.J. 529 = 14 M.L.T. 200 = 21 Ind Cas. 129, 2 L.B.R. 27, 50 P.L.R 1902, U.B.R. 1904, 2nd Qr. Crim. Pro. Code, 19.]

(3499)—S. 404—*See* ACT I OF 1871, s. 22, 19 M. 238 = 2 Weir 461.

(3500)—S. 404—*See* HIGH COURT, JURISDICTION OF, AS A COURT OF, REFERENCE, 5 N.W.P. 130.

(3501)—S. 404—*See* Nos. 525, 1833, 1834, 2513, *supra and* NO. 4081, *infra.*

(3502)—*Ss.* 404 *to* 417 (= *Crim. Pro. Code,* 1882, *ss.* 404, 417)—*Appeal from acquittal.*— Where a person is tried on one charge only and is acquitted on it, or is tried on several charges and is acquitted on them all, the acquittal cannot in any way be interfered with, except upon appeal by the Local Government. KRISHNA DHAN MANDAL v. QUEEN-EMPRESS, **22 C. 377.** [*R.*, 37 M. 119 = 22 Ind. Cas. 756 = 15 Cr. L.J. 180.]

(3503)—*Ss.* 404 *and* 406—*Appeal.*—An order to furnish security under s. 106, Crim.Pro.Code being a separate order and no part of a sentence is not appealable. ROUTHA GOUNDAN v. MUTHUSAMY GOUNDAN, **2 Weir 460.**

(3504)—*Ss.* 404, 408 (*b*), 423 (*b*), 439, 518, 519 *and* 520—*Order for disposal of suspected property—Control of superior Courts over such order* — Orders under ss. 517, 518 or 519 of the Code of Criminal Procedure, 1898, are revisable once by any one of the Courts mentioned in s. 520 of that Code, notwithstanding that, in respect of the main case in connection with which such order was passed, an appeal or revision has not taken place in any Court, or could have been entertained by the Court revising the order. *Quære.*—Whether s. 423 (*d*) of the said Code overlaps s. 520. In any case, an appellate Court proceeding under s. 423 (*d*) is only competent to deal with such an order simultaneously along with the appeal before it, and not by any separate proceeding commenced after the disposal of the appeal. If jurisdiction over such an order is exercised by any one Court acting under s. 423 (*a*) or s. 520, the control provided by those sections is exhausted and further revision is only possible under Ch. XXXII of the Code. Orders under ss. 517, 518 and 519 are in their essence orders of an executive nature and s. 520 provides a summary control, also of an executive nature, which is wider and more speedy than the slow process of judicial revision under Ch. XXXII. Revisional jurisdiction under s. 439 or under s. 520, will not be exercised by the High Court except as a Court of last resort. EMPEROR v. HUSSAIN SHAH, **17 C.P.L.R. 107.** (7 C.P.L.R. Cr. 47, *F.*). [*R.*, 8 Cr. L.J. 351.]

(3505)—*Ss.* 404, 522 (= *Crim. Pro. Code,* 1882, *ss.* 404, 522)—*Order restoring possession of immoveable property—Jurisdiction of appellate Court.*—Having regard to the general rule laid down by s. 404, an order directing restoration of possession of immoveable property under s. 522 is not appealable, and it is final so far as the Criminal Courts are concerned. Such order cannot be regarded as an integral part of the judgment appealed from, so as to stand or fall, according as the judgment is upheld or reversed. RAM CHANDRA MISTRY v. NOBIN MIRDHA, **25 C. 630 = 2 C.W.N. 225.** (14 C. 834, 24 C. 499, 1 B. 630, 1871, L.R. 3 P. C. 465, 11 C. 365. *R.*) [*Disappr.*, 14 Cr. L.J. 172 = 19 Ind. Cas. 172 ; *R.*, 36 C. 44 = 13 C.W.N. 77 = 1 Ind. Cas. 202; *D.*, 27 A. 415 = 2 A.L.J. 64 = A.W.N. 1905, 19, 29 C. 724.]

——S. 405 (= 1882, s. 405).

(3506)—S. 405—*See* No. 3502, *supra.*

——S. 406 (= 1882, s. 406 ; 1872, s. 267; 1861, s. 409).

(3507)—S. 406—*See* Nos. 525, 606, 705, 731, 769, 799, 801, 802, 803, 848, 3502, 3503, *supra and* NO. 4045-*a*, *infra.*

——S. 407 (= 1882, s. 407 ; 1872, s. 266 ; 1861, s. 412).

See APPEAL.

See TRANSFER OF CRIMINAL CASES.

(3508)—*S.* 407—*Withdrawal of part-heard appeal by District Magistrate from the file of*

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Sub-Divisional Magistrate — Sub-Divisional Magistrate issuing summons for examination of certain witnesses—Whether District Magistrate is bound to examine such witnesses.—A District Magistrate has jurisdiction to withdraw a part heard appeal to his own file from the file of a Sub-Divisional Magistrate, by whom it has been heard in part. Where such Sub-Divisional Magistrate had issued summons for the examination of certain witnesses as Court witnesses, it is not incumbent on the District Magistrate, on the withdrawal of the case to his own file, to examine those witnesses. The Court, to which an appeal is transferred for disposal, and on which the responsibility for its correct disposal rests, is not bound by any opinion as to the necessity for taking further evidence formed by the Court from which the appeal was transferred, and which is no longer responsible for the decision of the appeal. *In re* ALAGU AMBALAM, **18 M.L.J. 89 = 31 M. 277 = 7 Cr. L. J. 329.**

(3509)—*S.* 407 —*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 412—*Acquittal in appeal by Court without jurisdiction—Re-arrest.*—An accused person acquitted and discharged by a Sessions Judge in an appeal which he had no jurisdiction to hear, may be re-arrested even after the period to which he was originally sentenced to be imprisoned and made to undergo the rest of his term. REG v. GOPALA SHIRU, **Rat. Un. Cr. C. 17 = Cr. Rg. 20-7-1869.**

(3510)—*S.* 407 (2)—*Power of District Magistrate to delegate revisional work.*—A District Magistrate directed that the Assistant Collector under him should perform the "routine work of the Collector's office, including the criminal, appellate and revisional work." *Held* that the order was *ultra vires* as regards the revisional work, but was good so far as the appellate work was concerned. BAI HARKU v. SITARAM KALIAN, **2 Bom. L.R. 536.**

(3511)—S. 407—*See* Nos 79, 1835, 1836, 1837, 1922, 2008, 2481, 2747, 3411, 3502, *supra.*

(3512)—*Ss.* 407, 195—*Sanction to prosecute—Application to Magistrate, first class—Appeal to District Magistrate—Transferred to another Magistrate — Jurisdiction.*—S. 407, Crim. Pro. Code, does not entitle District Magistrate to send appeals under s. 195 of that Code to a Magistrate of the first class subordinate to him. That section deals with appeals from convictions. LAL SINGH v. KING-EMPEROR, **9 A. L.J. 260 = 34 A. 244 = 14 Ind. Cas. 657 = 13 Cr. L.J. 273.** (30 C. 394, *F.*)

(3513)—Ss. 407, 438, 436 (= ss. 266 and 296 of the Code of 1872)—*See* APPEAL—GENERAL, 24 P.R. 1878, Cr.

——**S. 408 (a) and (b) (= 1882, s. 408 ; 1872, ss. 79, 269, 270 ; 1869, s. 445, c. 1861, ss. 409, 422) ; s. 408 (c) new.**

See APPEAL.

(3514)—S. 408—*See* ACT I OF 1859, 2 Weir 461 = 2 M.H.C. 473.

Crim. Pro. Code (Act V of 1898)—*continued.*

(3515)—*S.* 408 (*a*) (= *Crim. Pro. Code, Act* X *of* 1882, *s.* 408, *proviso* (*a*)—*Sessions Judge—Jurisdiction in appeal.*—When a Sessions Judge has confirmed the sentences passed by an Assistant Sessions Judge on some of the accused persons, he has no jurisdiction to hear the appeals preferred by any of the prisoners in the same case, as such appeals lie to the High Court under s. 408, proviso (*a*) of the Crim. Pro. Code. QUEEN-EMPRESS v ALIBAX, **Rat. Un. Cr. C. 655 = Cr. Rg. 19 of 1893.**

(3516)—*S.* 408 (*b*)—*Appeal—Sentences passed by Assistant Sessions Judge.*—Where at a trial some persons were convicted by an Assistant Sessions Judge and sentenced to over 4 years imprisonment and others sentenced to less than 4 years imprisonment, the appeal of the latter also lay to the High Court. RICHHA v. EMPEROR, **13 A.L.J. 272 = 16 Cr.L.J. 353 = 28 Ind. Cas. 737.**

(3517)—*S.* 408 (*b*)—*Cases in which a sentence of transportation or of imprisonment for more than four years is passed—Appeal.*—The intention of proviso (*b*) to s. 408 is that, in a case in which a sentence of transportation or of imprisonment for more than four years is passed, any appeal or appeals in the case shall lie to the High Court. QUEEN-EMPRESS v. NGA TUN BAW, **U.B.R. 1897—1901, Vol. I, 94.**

(3518)—*S.* 408, *cl.* (*b*) *of proviso*—"*Sentence of imprisonment exceeding four years,*" *meaning of.*—The words "sentence of imprisonment exceeding four years" must be taken to mean the substantive sentence of imprisonment, apart from any sentence of fine or imprisonment in default of payment of the fine. An appeal in such cases lies to the Sessions Court. NGA TUN THA v. QUEEN-EMPRESS, **1 L.B.R. 57.** (6 C. 624, *R*)

(3519)—*S.* 408 (3)—*Aggregate sentences—Meaning of—Sentence to run concurrently.*—The words "aggregate sentence" and in fact the whole of cl. 3, s. 408, relate to a case of consecutive sentences. Where, therefore, two sentences have to run concurrently, there is no aggregation of sentences within the meaning of s. 408 (3) of the Code TULSI RAM v. KING-EMPEROR, **11 A.L J. 111 = 14 Cr. L. J. 119 = 18 Ind. Cas. 679 = 35 N. 154.**

(3520)—S. 408—*See* Nos. 102, 185, 186, 188, 259, 266, 1927, 3502, 3504, *supra, and* 4081, *infra.*

(3521)—*Ss.* 408, 409, 413, 415—*Appeal.*—S. 409, Crim. Pro. Code, distinctly lays down that any person convicted on a trial held by a Magistrate of the first class may appeal to the Court of Session. S. 413 is an exception to the general rule laid down in s. 408. S. 415 is explanatory and apparently was entered in the Code to remove all possible doubts which might arise in the cases considered therein. Hence where certain persons were tried by a Magistrate of the first class, convicted of an offence under s. 325, Penal Code, and sentenced to a day's imprisonment and a fine of fifty rupees, but the accused were neither sent to

Crim. Pro. Code (Act V of 1898)—*continued.*

jail nor actually imprisoned, *held*, that an appeal lay to the Sessions Judge. ALAM v. KING-EMPEROR, **8 A.L.J. 524 = 12 Cr. L J. 389 = 33 A. 510 = 11 Ind. Cas. 253.**

(3522)—*Ss.* 408, 413—*Several persons convicted at one trial—Different sentences—Right of appeal.*—S. 413, Crim. Pro. Code, prohibits an appeal against a sentence of less than one month's imprisonment or a fine of less than Rs. 50 passed by a District Magistrate or a Court of Session, and the mere fact that such sentences were passed on some of the accused while heavier sentences were passed on the rest would not give to the former a right of appeal only because there is one consolidated appeal by all convicted persons. *In re* URUMA MUDALI, **15 Cr. L.J. 371 = 23 Ind. Cas. 739 = 16 M.L.T. 33.**

(3523)—*Ss.* 408 *and* 413, *construction of—"Case," meaning of—Joint trial of two or more persons by a Magistrate of the first class—Appealable sentence passed on one of them—Whether others on whom appealable sentence not passed have the right of appeal under* s. 413.—When more persons than one are convicted at one trial by a Magistrate of the first class, and an appealable sentence is passed on any one of them, s. 413 does not take away from the other convicts, their right of appeal conferred by s. 408, even though the sentence passed on any one of such persons may not be an appealable one. The word "case" in s. 413, includes a trial at which two or more persons are convicted, and the grammatical meaning of the section is that there shall be no appeal in a case in which no sentence exceeding any of those described in the section is passed on any of the persons convicted. BA THAW v. KING-EMPEROR, **4 L.B. R. 354 = 9 Cr. L.J. 356.** (7 B.H.C. Cr. 35, *Diss.*) [*R.*, 4 Bur. L.T. 87 = 12 Cr. L.J. 250 = 10 Ind. Cas. 792, 4 L.B.R. 359.]

(3524)—Ss. 408, 413 and 416—*See* ACT III OF 1880, s. 28, 40 P.R. 1884, Cr.

(3525)—*Ss.* 408, 428 (=*Crim. Pro. Code,* 1861, s. 422)—*Order for additional evidence by Sessions Judge—Act* X *of* 1872, s. 282.—Upon an appeal from a sentence passed by a Magistrate, the Sessions Judge remanded the case for the purpose of additional evidence being taken by the lower Court. The Magistrate took such evidence and returned the case to the appellate Court, and the Sessions Judge then disposed of the case in the manner prescribed by s. 419 of the Crim. Pro. Code. *Held,* no appeal lay to the High Court on the merits. *In the matter of* DHANOBAR GHOSE, **6 B.L.R. 483 = 15 W.R. Cr. 33.**

(3526)—*Ss.* 408, 428 (=*Crim. Pro. Code,* 1861, s. 422)—*Judgment of Sessions Judge confirming illegal sentence of Magistrate.*—Where a judgment of the Sessions Judge (though in form confirming the Assistant Magistrate's judgment and sentence) might in substance be an original judgment, an appeal was held to lie from it to the High Court upon the merits under s. 408 of Act XXV of 1861. QUEEN v. MOHESH CHUNDER CHUTTOPADHIA, **2 W.R. Cr. 13.**

(3527)—*Ss.* 408, 562.—A conviction without sentence by a first class Magistrate under s. 562, Crim. Pro. Code, is appealable to the High Court. MI SHWE NYUN v. KING-EMPEROR, **U.B.R. 1904, 1st Qr., Crim. Pro. Code, 7 = 10 Bur. L.R. 321 = 1 Cr.L.J. 543.** [*F.*, 11 Cr.L.J. 152 = 4 Ind Cas. 1027 = 5 L.B.R. 129.]

(3528)—*Ss.* 408, 562 *and* 439 (5)—*Conviction for theft and release under s.* 562 *upon probation of good conduct—Whether appeal lies against—Whether the proceedings can be revised under* s. 439.—Where A was convicted of theft on a regular trial held by a first class Magistrate and was released upon probation of good conduct under s. 562, *held*, an appeal lies under s. 408 against a conviction without a sentence under s. 562 and the proceedings by way of revision cannot be entertained under s. 439 (5). MA CHIT SU v. KING-EMPEROR, **5 L.B.R. 129.** (U.B.R. 1904—1906, 7, 30 P.R. 64, *F.*)

——S. 409 (=1882, s. 409).

(3529)—S. 409—*See* Nos. 3488, 3502 and 3521, *supra.*

——S. 410 (=1882, s. 410; 1872, ss. 80, 270, 271; 1861, s. 408).

See APPEAL.

(3530)—S. 410—*See* Nos. 185, 186, 2333, 2896, 3502, *supra.*

(3531)—*Ss.* 410, 486 (=*Crim. Pro Code,* 1861, ss. 408, 413)—*Conviction by Sessions Judge under s* 228, *Penal Code—Appeal.*—An order by a Sessions Judge under s. 228, Penal Code, imposing a fine on a person for intentional insult to the Judge, when sitting in a stage of a judicial proceeding, amounts to a trial, although by a summary mode, and is, therefore, appealable. *In re* CHAPPU MENON, **4 M H.C. 146.**

——S. 411 (=1882, s. 411; Presidency Magistrate's Act, 1877, s. 167).

See APPEAL.

(3532)—*S.* 411 (=*Crim. Pro. Code,* 1882, s. 411)—*Appeal from sentence of Presidency Magistrate.*—No appeal lies from the decision of a Presidency Magistrate inflicting a sentence of six months' rigorous imprisonment and a fine of Rs. 200 and, in default of payment of the fine, three months' simple imprisonment. SCHEIN v. QUEEN-EMPRESS, **16 C. 799.** [*F.*, 20 B. 145, 33 C. 1036 = 4 C.L.J. 408; *R.*, 33 C. 1036 = 4 C.L.J. 408, 10 Cr.L.J. 122 = 9 C.L.J. 439 = 13 C.W.N. 318 = 2 Ind. Cas. 651.]

(3533)—S. 411—*See* Nos. 260 and 3502, *supra.*

——S. 412 (=1882, s. 412; 1872, s. 273; Presidency Magistrate's Act, 1877, s.167).

See APPEAL.

(3534)—*S.* 412 (=*Crim. Pro. Code,* 1872, s. 273)—*Separate sentences—Appeal.*—Where a person is charged with two separate offences in one trial, the amount of the whole punishment

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awarded for the two offences must be regarded as one sentence, for the purpose of determining whether an appeal lies under s. 273 or not. EMPRESS v. HARADHAN TAMULI, **3 C.L.R. 511.**

(3535)—S. 412—*See* SESSIONS JUDGE, JURISDICTION OF, 22 B. 759.

(3536)—S. 412—*See* Nos. 123, 2242 and 3502, *supra.*

(3537)—*Ss.* 412, 413 (=*Crim. Pro. Code,* 1872, *s.* 273)—*Appeal.*—No appeal lies against a conviction under this section, where a prisoner is convicted on her own plea, even though she may like to withdraw it later on. POLICE v. MUSSAMUT SUMNI, **Colm. Dig. Cr. 31 of 1876.**

——S. 413 (=1882, s. 413; 1872, s. 273; paras. 1 and 2; 1861, s. 411).

See APPEAL.

(3538)—*S.* 413 (=*Crim. Pro. Code,* 1861, *s.* 411)—*Right of appeal in petty cases.*—S. 411 must be construed strictly. If so construed, it will apply only to cases in which either imprisonment or fine has been awarded by the sentence to the extent specified in the section, and it will not apply to a case in which both punishments are awarded. In the latter case, the right of appeal is not barred. CRIMINAL REFERENCE, NO. 271, DATED 4TH MAY, 1869, **1 N.W.P. 302.**

(3539)—*S.* 413—*Sentence of Rs 50 fine only by a first class Magistrate—Appeal.*—No appeal lies to the Sessions Court against a sentence of Rs. 50 fine passed by a first class Magistrate. *In re* CHODE BALAVI RAMASWAMI, **9 Ind. Cas. 340=9 M.L.T. 322=12 Cr. L.J. 63.** (7 B.H.C. Cr. p. 35, *Appr.*)

(3540)—*S.* 413—*Magistrate—Sentence passed which is unappealable—Adding to sentence making it appealable—Appeal—Sessions Judge—Merits of whole appeal to be gone into—Practice.*—A Magistrate trying a case passed at first an unappealable sentence on the accused; but shortly afterwards, at the request of the accused, added to the sentence passed so as to make it appealable. On appeal, the Sessions Judge struck out the added sentence, which being done, he declined to go into the merits of the case, on the ground that the original sentence passed was not open to appeal: *Held* (1) that, when a Magistrate once passed a sentence exceeding one month, an appeal lay to the Sessions Court, under S. 413 of the Crim. Pro. Code, independently of the question whether that sentence was passed legally or illegally; (2) that the Sessions Judge being once seized of the appeal, the whole appeal becomes open to his Court; and he ought, therefore, to have heard the appeal on the merits also. EMPEROR v. KESHAVLAL VIRCHAND, **13 Bom. L.R. 550=11 Ind. Cas. 615=12 Cr.L.J. 431=35 B. 418.**

(3541)—S. 413—*See* ACT V OF 1861, 5 W.R. Cr. 22.

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(3542)—S. 413—*See* ACT VII OF 1870, s. 31, 20 C. 687.

(3543)—S. 413—*See* BOM. ACT IX OF 1863, s. 2, 3 B.H.C. Cr. 12.

(3544)—S. 413—*See* PRACTICE AND PROCEDURE, L.B.R. 1893—1900, 535.

(3545)—S. 413—*See* Nos. 261, 267, 3411, 3502, 3521, 3522, 3523, 3524 and 3537, *supra.*

——S. 414(=1882, s. 414; 1872, s. 274, para. 1).

(3546)—S. 414—*See* CONFISCATION, 1 L.B. R. 3.

(3547)—S.414—*See* Nos. 2741 and 3502, *supra.*

(3548)—Ss. 414, 415—*See* BUR. ACT IV OF 1899, ss. 30, 31-A, 4 L.B.R. 359=9 Cr. L.J. 368.

—S. 415(=1882, s. 415; 1872, s. 274, para 2).

(3549)—S. 415—*See* Nos. 2741, 3502, 3521, and 3548, *supra.*

—S. 416 (=1882, s. 416; 1872, s. 274, para 3).

(3550)—S. 416—*See* Nos. 2741, 3502, 3524, *supra.*

——S. 417(=1882, s. 417; 1872, s. 272; paras. 1 and 2; Presidency Magistrates Act, 1877, s. 168).

See ACQUITTAL.

See APPEAL.

See REVISION—ACQUITTALS.

(3551)—*S.* 417—*Appeals from acquittals by Government.*—The powers conferred by the above section should be exceptionally used. QUEEN v. DUKARAM, **7 N.W.P. 196.**

(3552)—*S.* 417 (=*Crim. Pro. Code,* 1882, *s.* 417)—*Application to Sessions Judge for addition of new charges—Rejection—Appeal to High Court.*—Where an application is made to the Sessions Court on behalf of the Crown for an alteration of the charge under s. 204, I.P.C., by the addition of counts under ss. 423, 424, I.P.C., at the commencement of the trial, the Sessions Judge should not postpone passing any order on the application, especially if it is based on the same facts contained in the depositions recorded by the committing Magistrate. His order rejecting the application, while acquitting the accused of the charge, after hearing the evidence for the prosecution on the original charge without going into the defence and without recording the opinion of the assessors, is not a proper order. Nor is the fact that a complaint regarding the charges proposed to be added was made to and dismissed by the Magistrate, a bar to the Sessions Judge's adding them. But it is not open to the Government under s. 417 to appeal to the High Court on an interlocutory order, *e.g.*, on the ground of the Sessions Judge's refusal to add new charges. QUEEN-EMPRESS v. VAJIRAM, **16 B 414.**

(3553)—*S.* 417—*Appeal by Local Government against acquittal.*—Under the Crim. Pro. Code, the Local Government has the same right of

Crim. Pro. Code (Act V of 1898) —*continued.*

appeal against an acquittal, as a person convicted has of appealing against his conviction and sentence, and there is no distinction between the mode of procedure and the principles upon which both classes of appeals are to be decided. KING-EMPEROR v. PO SAING, **2 L.B.R. 303.** (4 A. 148, 16 A. 212, *Diss.*; 17 C. 485, 20 A. 459, 19 B. 51, *F.*)

(3554)—*S. 417—Acquittal—Revision—Power of High Court.*—When a Sessions Judge acquits an accused on appeal, the High Court has no power on revision to convert the acquittal into a conviction. If the District Magistrate thinks that the accused should have been convicted and not acquitted, his proper course is to apply through the usual channel (not the High Court but the Local Government) to appeal against the acquittal (s. 417, Crim Pro. Code). QUEEN-EMPRESS v. NGA TUN WIN, **U B.R. 1892—1895, Vol. I, 47.**

(3555) —*S. 417—Acquittal—Discovery of fresh evidence.*—The discovery of fresh evidence, after an acquittal, is not a sufficient reason for setting aside an acquittal, and, *a fortiori*, it would be still less a sufficient reason where, by the exercise of due diligence on the part of the prosecution, the evidence might have been produced at the original trial. KING-EMPEROR v. NGA NAING, **U.B.R. 1902 1903, Crim, Pro Code, 9.** (L.G.Cr. Mis. Cir. No. 63 of 1899, *Not F.*)

(3556)—S. 417—*See* HIGH COURT, JURISDICTION OF—REVISION POWERS OF HIGH COURT, 2 Weir 569=7 M H.C. App. 5.

(3557)—S 417—Acquittal—Appeal by Local Government — Interference when justifiable—*See* PENAL CODE, ss. 318, 302, 26 P.W.R. 1913, Cr.=20 Ind. Cas. 1005=14 Cr. L J. 525=328 P.L.R 1913.

(3558)—S. 417—*See* PENAL CODE, ss. 425, 430, 14 P.R. 1909, Cr.=25 P L.R. 1910.

(3559)—S. 417—*See* Nos. 954, 2255, 2512, 2667, 2698, 2742, 3296 and 3502, *supra.*

(3560)—*Ss.* 417, 423 (=*Crim. Pro. Code, Act X of 1872, s 272*)—*Appeal from acquittal.*—The procedure to be adopted by the High Court in appeals by the Local Government from acquitting judgments is that laid down in 1 A.W.N. 1881, 159. EMPRESS v. WALI MUHAMMAD, **A.W N. 1882, 64.**

(3561)—*Ss.* 417, 423 (*a*)—*Riot case—Duty of Police to ascertain guilty party—Duty of Court—Re-trial of appeal, power of High Court to direct.*—It is not the duty of the police to determine in a riot case "which of two mutually destructive stories is the correct one." The police are not called upon, nor is it within their province, to determine in a case of this kind which of the two parties concerned was in the wrong. It is for the Courts to determine upon the evidence on the record which of the two parties has been guilty of the offence charged against them, and none the less so because the record is lengthy and the case complicated and difficult. The fact that a Sessions Judge obviously failed to apply his mind to the determination of questions before him, and declined to adjudicate therein himself, because the Police did not attempt to adjudicate as to the guilt or innocence of persons implicated, is an indication of a complete misconception of the respective duties of the Courts and the police, and the High Court will, in such a case, under the wide powers conferred upon it by s. 423 (*a*) direct a lower appellate Court to re-try an appeal which was before it for determination. EMPEROR v. CHANDA SINGH, **13 Cr. L J. 737=17 Ind. Cas. 49=43 P.W.R 1912, Cr.=2 P.R. 1913, Cr.=7 P.L.R. 1913.** (13 B. 506, *R.*)

(3562)—Ss. 417, 423, 426, 439 (1 to 4), 440—*See* REVISION—ACQUITTALS, 2 A. 448.

(3563)—Ss. 417, 423, 439—*See* APPEAL—APPEAL FROM ACQUITTAL, 2 A. 340, F.B.

(3564)—Ss. 417, 423 and 439—*See* RE-TRIAL, 6 C.P.L R. Cr. 15.

(3565)—Ss. 417, 427—*See* APPEAL—APPEAL FROM ACQUITTAL, 9 A. 528.

(3566) *Ss.*—417, 428—*Appeal from acquittal—Additional evidence discovered whether a ground for the appeal.*—The accused was tried on a charge of culpable homicide not amounting to murder. He was acquitted on that charge convicted of the minor offence under s. 504, I.P.C. Appeal was presented against the order of acquittal under the directions of the Local Government. The main ground of appeal was, however, one that went entirely outside the record. It was that the evidence of the Civil Surgeon examined as a witness in the case was incorrect as to facts. Affidavits were filed in support of the ground. *Held*, the affidavits could not be accepted for the reason that, though under the provisions of s. 428 of the Code an appellate Court is competent to admit additional evidence, yet the necessity for taking such additional evidence must be apparent from something on the record, and cannot be derived from external information and, in an appeal from an acquittal, the fact that fresh evidence against the accused has been discovered subsequent to the acquittal is not a sufficient reason for setting aside the acquittal or ordering a new trial. KING-EMPEROR v. PO GYI, **3 L.B.R. 114.** (1 U.B.R. 1902-1903, 9, *F.*)

(3567)—*Ss.* 417, 439—*Acquittal—Interference of High Court in revision—Power of Court to stop trying the case at any stage.*—The High Court has jurisdiction to interfere on revision with an acquittal, but it should ordinarily exercise this jurisdiction sparingly and only where it is urgently demanded in the interest of public justice. (16 C.W.N. 184, *F.*; 14 M 363, 26 M.L.J. 160, 2 A. 448, 6 A. 484, 25 A. 128, 24 A. 346, 15 B. 349, 8 C. 895, 22 C. 164, 5 C.L.J. 452, 7 C W.N. 521, 11 C L.J. 113, 38 C. 786, 18 C.W.N. 1244, *R.*) The power of the Court to stop the case if it thinks a waste of time to go on is undoubted, though the stage at which it ought to do so may be a matter of opinion. NATESA PADAYACHI v. EMPEROR, **17 M.L T. 457=1915 M.W.N. 411.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3568)—Ss. 417 and 439—*See* ACQUITTAL, L.B.R. 1893—1900, 126.

(3569)—Ss. 417 and 439—*See* REVISION—ACQUITTALS, 2 Weir 570.

(3570)—Ss. 417, 439—*See* REVISION—DELAY, 6 A. 484.

——S. 418 (=1882, s. 418 ; 1872, s. 271, last para).

See APPEAL.

(3571)—*S.* 418—*Scope and application of* —The provisions of s. 418 apply equally to all criminal appeals, whether made by the Government or by accused persons; and, except as provided in s. 423, there is no distinction between the mode of procedure and the principles upon which an appeal by the Government against an acquittal and an appeal by a convicted person against his conviction and sentence are to be decided. EMPEROR v. MUSST. GULBI, **17 C.P.L.R. 75.** (17 C. 485 and 20 A. 459, *F.* ; 4 A. 148 and 16 A. 212, *Diss.*)

(3572)—S 418—*See* VERDICT OF JURY, Rat. Un. Cr. C. 730=Cr. Rg. 58 of 1894.

(3573)—S. 418—*See* Nos. 2424, 2897, 2958 and 2959, *supra.*

(3574)—Ss. 418, 323, 537—*See* CHARGE TO JURY—MISDIRECTION, 1 C.W.N. 301.

(3575)—*Ss.* 418 *and* 423 (=*Crim. Pro. Code,* 1882, *ss.* 418, 423)—*Misdirection by the Judge —Power of High Court to reverse the verdict of a jury.*—In s. 423 (*d*), the word "erroneous" is not to be read as meaning "wrong on the facts," it must rather be read in connection with the words that follow as meaning that the verdict has been vitiated and rendered bad or defective by reason of a misdirection or a misunderstanding of the law. The effect of the clause is, evidently, to prevent the appellate Court from reversing the verdict of a jury on account of any misdirection by the Judge or any misunderstanding on the part of the jury of the law as laid down by him, unless such misdirection or misunderstanding of the law is on a point material to the verdict, so that the verdict can be said to be tainted with the error in the process by which it has been arrived at. It throws on the appellate Court the duty of ascertaining whether the process or method which the Judge directed the jury to follow as to the acceptance or discarding of evidence or as to the view taken of the law was erroneous on any material point, but not certainly the duty of determining for itself whether the verdict, as a conclusion of fact, was right or wrong. To hold otherwise would be tantamount to holding an appeal would lie upon the facts from the verdict of a jury in the face of the provisions of s. 418. WAFADAR KHAN v. QUEEN-EMPRESS, **21 C. 955**

(3576)—*Ss.* 418, 423 (=*Crim. Pro. Code,* 1882, *ss.* 418, 423, *cl.* (*d*)) —It is not open to the High Court, in an appeal against a conviction in a trial by a jury, to go into the facts, and the appeal must only be limited, as laid down in ss. 418 and 423, cl. (*d*), to points of law, notwithstanding the appeal is heard along with a reference made under s. 374, in the case of a co-accused. QUEEN-EMPRESS v. CHATRADHARI GOALA, **2 C.W.N. 49.** (19 W.R. Cr. 57, *Appr.*)

(3577)—Ss. 418, 423 (2)—*See* CHARGE TO JURY—MISDIRECTION, 27 B. 626=5 Bom. L. R. 599.

(3578)—*Ss.* 418, 439, 536—*Trial by jury instead of with the aid of assessors—Appeal.*—No appeal lies on matters of fact where an accused person, who ought to have been tried with the aid of assessors, is tried by a jury. *Per Jenkins, C.J.*—The words "where the trial was by a jury" in s. 418, Crim. Pro. Code, mean "where the trial in fact was by jury" and not where the trial should have been by jury. KING-EMPEROR v. PARBUSHANKAR, **25 B. 680=3 Bom L.R. 278, F.B.,** [*R.*, 33 B. 423=10 Cr. L.J. 30=2 Ind. Cas. 480=11 Bom. L.R. 350, 9 Bom.L.R. 1057=7 Cr. L.J. 236]

——S. 419 (=1882, s. 419 ; 1872, s. 275, 1861, s. 416).

See APPEAL.

(3578-*a*)—S. 419—*See* No. 4269, *infra.*

(3579)—*Ss.* 419, 420 (=*Crim. Pro. Code,* 1882, *ss* 419, 420), *distinguished.*—S. 420 is not derogatory to the rule laid down in s. 419. The latter section applies as much to a prisoner in jail, as to any other appellant, and requires that the petition shall be prepared in a certain form, while s. 420 is only concerned with the question of presentation of appeal from jail. *Per Mahmood, J.* QUEEN-EMPRESS v. POHPI, **13 A. 171=A.W.N 1891, 48.**

(3580)—*Ss* 419, 420 (=*Crim Pro. Code,* 1882, *ss.* 419, 420)—*Presentation of petition of appeal by an appellant in jail to officer in charge of jail—Limitation Act, s.* 12, *sch. II, art.* 154.—Under the provisions of s. 420, Crim. Pro Code, presentation of the petition of appeal, by an appellant in jail, to the officer in charge of the jail is equivalent to presentation to the Court, so far as the requirements of the Limitation Act are concerned. QUEEN-EMPRESS v. LINGAYA, **9 M. 258=1 Weir 789.**

(3581)—Ss. 419, 548, 367, 537—*See* JUDGMENT, Rat. Un. Cr. C. 82.

——S. 420 (=1882, s. 420 ; 1872, s. 277 ; 1861, s. 418).

See APPEAL.

(3582)—S. 420—*See* Nos. 3579 and 3580, *supra.*

(3583)—*Ss.* 420, 421, 422 *and* 423 (=*Crim. Pro Code,* 1882, *ss.* 420, 421, 422, 423)—*Appeal by prisoner in jail—Power to dispose of appeal in the absence of the appellant.*—*Held,* by the Full Bench (*Mahmood, J., dissenting*).—The limitation which s. 423 provides is that the appellate Court, before disposing of the appeal, must peruse the record, and if the appellant is

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present, or is represented by a pleader, the appellant in person or his pleader must be heard. It cannot be contended, under that section, that in the case of an appeal, which has been admitted, the appellate Court, notwithstanding that notice has been properly given under s. 422, notwithstanding that the record of the case has been sent for and perused by the Court, is incompetent to dispose of the appeal, if the appellant who is not represented by a pleader, is not present. *Per Mahmood, J.* (*contra*):—Where an appeal is admitted and is not summarily rejected under s. 421, the appellant must have an opportunity of being heard. On a proper understanding and interpretation of s. 423, it will be seen that the condition precedent for the disposal of the appeal is that either the appellant is heard or at least choice is given to him to appear. QUEEN-EMPRESS v. POHPI, **13 A. 171=A.W.N. 1891, 48.** [*R.*, Rat. Un. Cr. C. 739.]

——S. 421 (=1882, s. 421; 1872, s. 278; 1861, s. 417).

See APPEAL.

(3584)—*S.* 421 (=*Crim. Pro. Code,* 1882, *s.* 421)—*Summary rejection of appeal.*—Although a Judge would be acting within his powers under s. 421, Crim. Pro. Code, in rejecting an appeal without sending for the record, such a course is ordinarily very inconvenient and should not be adopted. EMPRESS v. JUGAL KISHORE, **A.W.N. 1883, 145.**

(3585)—*S.* 421 (=*Crim. Pro. Code,* 1882, *s.* 421)—*Meaning of proviso.*—The proviso to s. 421 is limited to appeals which have not been presented from jail. Therefore a man in jail, whilst on the one hand, he has the privilege of sending his appeal in the manner which s. 420 prescribes, has not, on the other hand, the privilege of insisting that he should be heard, or even his pleader, if he retains one, after sending up an appeal from jail. *Per Mahmood, J.* QUEEN-EMPRESS v. POHPI, **13 A. 171=A.W.N. 1891, 48, F.B.**

(3586)—*S.* 421—*Practice—Appeal—Summary dismissal of—Reasons not recorded—Pleader not heard.*—A convict filed an appeal from jail to the Court of Sessions and also presented a petition of appeal through a legal practitioner; *held* that the Sessions Judge was not competent to dismiss the appeal from jail summarily, but should have heard the convict's pleader. BHAWANI DEHAL v. KING-EMPEROR, **3 A.L.J. 693=A.W.N. 1906, 303=4 Cr. L.J. 373.**

(3587)—*S.* 421 (=*Crim. Pro. Code, Act* X *of* 1882, *s.* 421)—*Dismissal for non-appearance—Appeal.*—It is not competent to a District Magistrate to dismiss a criminal appeal on the ground that no one appeared to support the petition. He must consider the facts and write a judgment. QUEEN-EMPRESS v. DEOSHANKER, **Rat. Un. Cr. C. 593=Cr. Rg. 11 of 1892.**

(3588)—*S.* 421—*Duty of appellate Court—Judgment of appellate Court, contents of.*—S. 421 provides for summary dismissal of an appeal, but not for rejection thereof. It is desirable that an appellate Court, without going to the length of writing an elaborate judgment, should, in deciding an appeal, notice briefly, but clearly, what objections were urged on appeal, and how they were disposed of. EKCOWRI MUKERJEE v. EMPEROR, **32 C. 178=2 Cr. L J. 170.** [*R.*, 13 Cr. L.J. 559=15 Ind. Cas. 975=8 N.L.R. 84.]

(3589)—*S.* 421—*Summary dismissal, reasons for.*—Having regard to the language of s. 421, it is not necessary where an appeal is summarily dismissed under that section, for the Magistrate to give any reason for his decision. It must be taken, if he dismisses an appeal summarily, that he considered there were no sufficient grounds for interfering. NITYA PAL v. BENI MADHAB GHOSE, **9 C.W.N. 623=2 Cr. L.J. 334.**

(3590)—*S.* 421—*Summary dismissal of appeal—Reasonable opportunity of being heard to be given to appellant or his pleader.*—On presentation to a Court, by the party, in person, of a memorandum of appeal signed by the pleader, it is not competent for the Court to summarily reject the appeal, under s. 421 of the Code, without giving a reasonable opportunity to the pleader to appear and without calling for the records of the case, where appellant urges reasonable grounds for discrediting the evidence of the witnesses of the other side. RANGACHARLU v. EMPEROR, **29 M. 236=4 Cr. L.J. 57.**

(3591)—*S.* 421—*Appeal—Summary dismissal—Hearing in support of appeal, whether includes right of reply—Practice.*—S. 421 of the Crim. Pro. Code lays down that the appellant in a criminal appeal or his pleader should have a reasonable opportunity of being heard in support of the appeal. This must be taken to include the possible right of reply if necessary. AMANAT SARDAR v. NAGENDRA BISWAS, **9 Ind. Cas. 65=12 Cr. L.J. 9=38 C. 307.** (Cr. Rev. No. 874 of 1906, Unreported, *Rel. on.*)

(3592)—*S.* 421—*Summary dismissal of appeal—Discretion, exercise of—Circumstantial evidence, conviction based on—Revision by High Court—Evidence Act, s.* 27—*Statements made by accomplice elsewhere than before the Court, admissibility of.*—Although it is not required by law that a Sessions Judge should write a regular judgment when exercising the powers of summary dismissal given to him by s. 421, Crim. Pro. Code, still the matter being one for discretion on the part of the subordinate appellate Courts, it is very important that such discretion should be exercised upon sound and reasonable lines. Where a conviction is based upon circumstantial evidence, the question always remains whether the evidence which has been believed by the Court which heard it is of such a nature that it ought to have been accepted as establishing the guilt of the accused person beyond reasonable possibility of doubt, and that is a question which may be dealt with by a

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High Court upon an application for revision. *Held* further, that s. 27, Evidence Act, is a proviso to the preceding sections which deal with what may or may not be proved as against the person making a confession. It has nothing whatever to do with what may or may not be proved as against other persons, when the person who made the alleged confession is not himself on his trial but is appearing as a witness in the case. *Held* also, that hearsay evidence of any statement whatsoever, made at any time, under any circumstances, by any accomplice, cannot be produced as against the accused before the Court. Statements made by an accomplice elsewhere than before the Court and not in the presence of the accused can be proved only to corroborate, to contradict or to impeach the credit of the accomplice. In no case can they be put forward as substantive evidence of the truth of the facts therein stated. AMAN ALI v. KING-EMPEROR, **13 O.C. 309 = 8 Ind. Cas. 379 = 11 Cr. L.J. 631.**

(3593)—S. 421—*Dismissal of appeal under this section—Alteration of the conviction—Validity.*—Where an appeal is dismissed under s. 421, the appellate Court has no power to alter the conviction. *In re* NAGA, **2 Weir 475.**

(3594)— S. 421—*Judgment if should be written.*—An appellate Court, in dismissing an appeal summarily, is not bound to write a judgment. KING EMPEROR v. NGA SEIN GYI, **U B R. 1906, Cr. P C., 49 = 4 Cr. L.J. 284.** (17 A. 241, 20 B. 540, 21 C. 92, 29 C. 726, 25 M. 534, U B.R. 1905, I, Crim. Pro. Code, 41, Weir 1009, *R.*)

(3595)—S. 421 (= s. 278, Crim. Pro. Code, 1872)—Power of appellate Court rejecting appeal to enhance sentence—*See* ACT XI OF 1874, s. 26, 24 W.R. Cr. 29.

(3596)—S. 421—*See* JUDGMENT, 20 B. 540, 17 A. 241, F. B.

(3597) —S. 421— *See* LETTERS PATENT, LETTERS PATENT, MAD. 1865, s. 15, 1 Weir 788-*a*.

(3598)—S. 421—*See* PRACTICE AND PROCEDURE, 36 C. 385 = 13 C.W.N. 684 = 9 Cr. L. J. 401 = 1 Ind. Cas. 868.

(3599)—S. 421—*See* SENTENCE—POWERS OF APPELLATE COURT— ENHANCEMENT, Rat. Un. Cr. C. 74 = Cr. Rg. 5-6-1873.

(3600)—S. 421—*See* Nos. 90, 1923 3337, 3341, 3342, 3343 and 3583, *supra.*

(3601)—Ss. 421, 367, 531— *See* APPEAL—GENERAL, 31 P. R. 1881, Cr.

(3602)—*Ss.* 421, 422 (= *Crim. Pro. Code,* 1882, *ss.* 421, 422)—*Summary rejection of appeal—Alteration of sentence.*—Where the appellate Court rejects an appeal summarily, acting under s. 421, Crim. Pro. Code, without giving the notices required by s. 422, it is not competent to alter the nature of the sentence QUEEN-EMPRESS v. BANA, **Rat. Un. Cr. C. 384.**

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(3603)—Ss. 421, 422—*See* SENTENCE, POWERS OF APPELLATE COURT— ALTERATION, Rat. Un. Cr. C. 131 = Cr. Rg. 6-9-1877.

(3604)—*Ss.* 421, 423 (= *Crim. Pro. Code,* 1882, *ss.* 421 423)—*Power of appellate Court to direct prisoner's presence.*—If an appellate Court thinks it necessary, for the purpose of disposing of an appeal, to have a prisoner before it, it has the same power to direct that he should be brought before it, as a Court of first instance has when, in pursuance of the direction of an appellate Court, it takes further evidence in the presence of the prisoner. HIGH COURT PROCEEDINGS, 12TH NOV. 1883, NO. 3541, **2 Weir 473.**

(3605)—*Ss.* 421, 423 (= *Crim. Pro. Code,* 1882, *ss.* 421, 423)—*Rejection of appeal and reduction of sentence.*—The accused was charged with voluntarily causing grievous hurt and convicted and sentenced to four months' rigorous imprisonment and a fine of Rs. 30 or in default further rigorous imprisonment for two months under s. 325, I.P.C. The District Magistrate rejected the appeal, but reduced the sentence of imprisonment in default of payment of fine to one month: *Held* that the Magistrate could not, after rejecting the appeal, diminish the sentence, but should either have reported the case to the High Court or have heard the appeal as directed by s. 423, Crim. Pro. Code. QUEEN-EMPRESS v. GOVINDRAO, **Rat. Un. Cr. 304 = Cr. Rg. 53 of 1886.** [*R.*, Rat. Un. Cr. C. 384.]

(3606)—*Ss.* 421, 423, 424 (= *Crim. Pro. Code,* 1882, *ss.* 421, 423. 424)—*Summary rejection of appeal—Rejection of appeal and dismissal, difference between—Grounds of order.*—An order of summary rejection of an appeal under the provisions of s. 421, Crim. Pro. Code, does not amount to a judgment and s. 424 has no application to such an order. A judgment under s. 424 of the Code implies a trial. The essential difference between the rejection of an appeal under s. 421 and its dismissal under s. 423 is that, in the latter case, the appeal is disposed of after trial, whereas, in the former, the Court, by summarily rejecting it, refuses to try it at all. Every order passed in the exercise of judicial discretion should show on the face of it the ground on which it is made. EMPRESS v PATIRAM, **6 C.P.L.R. 24, Cr.**

(3607)—Ss. 421, 423, 424 and 367—*See* APPELLATE COURT, L.B.R. 1893-1900, 606.

(3608)—*Ss* 421, 423, 426 (= *Crim. Pro. Code,* 1861, *ss.* 417, 419, 421)—*Appellant in jail—Appearance in Court.*—Neither ss. 417, 419, 421 of the Crim Pro. Code, nor any other provision of law authorize a Sessions Judge to cause an appellant undergoing sentence of imprisonment to be brought before him at the hearing of the appeal. REG. v. ANTONE JOSE, **Rat. Un. Cr. C. 22 = Cr. Rg. 14 9-1869.**

(3609)—Ss. 421, 423, except. 1 (*d*), 430—*See* REVISION—MATTERS PERTAINING TO EVIDENCE, 4 B. 101.

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(3610)—Ss. 421, 426, 440—*See* APPELLATE COURT, 35 P.R. 1882, Cr.

(3611)—Ss. 421, 430—*See* REVIEW, 19 B. 732.

(3612)—*Ss.* 421, 435 (=*Crim. Pro. Code,* 1872, *ss.* 278, 294, 295)—*Judicial proceedings —Originals to be retained for being supplied to appellate Court — Copies only to be given for Executive Government* —No Court is at liberty to part with its judicial records except when these are called for by an appellate Court or on the demand of a superior Court under s. 294 or s. 295 of the Crim. Pro. Code. They must be retained in order to meet the contingency of such legal requisitions being made. For the purposes of any reference or report to the Executive Government, copies of proceedings are sufficient, but for purposes of appeal to, or revision by, superior Courts, the originals are indispensable. REG v. PADMANABHA, **Rat. Un. Cr. C. 128.**

——S. 422 (=1882, s. 422 ; 1872, ss. 62, 269, 279).

See APPEAL.

(3613)—*S.* 422—*Rules issued by the High Court.*—Rules issued by the High Court are addressed to the District Magistrates as a matter of convenience and in accordance with the practice for appeals followed under s. 422, Crim. Pro. Code, the Local Government having under that section appointed the District Magistrate as the officer to receive notices of appeals. If a rule is granted against the order of a Sessions Judge, he is the proper person to show cause. BEPIN BEHARI DE v. NENDI HARIANI, **7 C.W.N. 80.**

(3614)—*S.* 422—*Disposal of appeal before the date fixed for hearing.*—Where a Magistrate disposed of an appeal before the day fixed for an adjourned hearing, and without giving notice to the appellant or his pleader, *held*, that it was a material error in procedure. SHANMUGAM CHETTIAR v. ALAGIA NUMBIA PILLAI, **2 Weir 475.**

(3615)—*S.* 422—*Criminal appeal—Restrictive order for admission, whether valid—Oaths Act* (X *of* 1873), *s.* 13—*Evidence Act, s.* 118—*Child of tender years—Capacity to understand—Testing of capacity by preliminary examination by Judge—Jury, function of.*—A restrictive order for admission of a criminal appeal is not contemplated by s. 422 of the Crim. Pro. Code and must be deemed *ultra vires.* Therefore, where a criminal appeal was admitted for consideration of the sentence only, *held*, that the whole appeal should be heard and that the appellant could not be restricted to any selected ground out of those specified in his petition. A great divergence of judicial opinion exists on the question, whether s. 13 of the Oaths Act, applies to cases where the omission to take oath or affirmation is the result of the deliberate act of the Court or of the witness. By s. 118 of the Evidence Act, the Legislature has not prescribed an inflexible rule of universal application to

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the effect that, before a child of tender years is questioned, the Court must by preliminary examination test his capacity to understand and to give rational answers, and must form an opinion as to the competency of the witness before the actual examination commences. The mere circumstance, therefore, that a Sessions Judge did not interrogate the witnesses of tender years, before their examination began, with a view to test their capacity, does not invalidate the trial. The question of the capacity of a witness to testify is a question for the Judge himself to decide and not for the jury, although, after he has decided in favour of the competency of a witness, it is for the jury to determine the amount of credit to be given to the statements made by such witness. NAFAR SHEIKH v. EMPEROR, **14 Cr L.J 485=20 Ind. Cas. 741=18 C.L J 582=18 C.W.N. 147=41 C. 406.** (8 W.R. 60, *Rel.*)

(3616)—S. 422—*See* COMPENSATION TO ACCUSED, 29 M. 187=3 Cr. L.J. 452.

(3617)—S. 422—*See* NOTICE, A.W.N. 1881, 46.

(3618)—S. 422—*See* Nos. 90, 185, 2045, 2580, 2581, 2582, 3337, 3583, 3602 and 3603, *supra.*

(3619)—*Ss.* 422, 423—*Summary reversal of conviction by appellate Court.*—Where an appellate Court set aside the convictions of an accused person without giving notice of the appeal to the Prosecuting Inspector, the respondent, and without calling for and perusing the records of the case, *held*, that the Court had acted in contravention of the provisions of ss. 422, 423, that the acquittal should be set aside and that it should be re-heard. *In re* VIRASAMI NAIKAN, **2 Weir 474.**

(3620)—*Ss.* 422, 423 (=*Crim. Pro. Code,* 1882, *ss.* 422 *and* 423)—*Notice to the appellant.* —Where an appeal is disposed of under ss. 422 and 423 of the Code, notice to the appellants is obligatory under s. 422. *In re* VENKATARAMUDU, **2 Weir 475.**

——S. 423, except. 1 (d) (=1882, s. 423 ; 1872, ss. 271, 272, para. 3, 280, 284, 299, para. 3, 1861, s. 419).

See APPEAL.

See APPELLATE COURT.

See COMMITMENT TO SESSIONS COURT.

(3621)—*S.* 423 (=*Crim. Pro. Code,* 1872, *s.* 280)—*Scope of—Trial under Crim. Pro. Code.*—This section does not authorise an appellate Court to order the re-trial of an appellant with reference to matter extraneous to the proceedings before him as an appellate Court. It is not essential to the regularity and completeness of a trial under the Criminal Procedure Code to enquire into previous convictions. A trial properly held does not become an improper one by a sufficient extra-judicial discovery that the accused was a habitual offender. GULRAJ v. WAZIR, **Col. Dig. Cr. 26 of 1875.**

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(3622)—*S.* 423 (=*Crim. Pro. Code*, 1882, *s.* 423 (1) (*b*))—*Scope of the clause.*—The words "Court of competent jurisdiction subordinate to such appellate Court" in s. 423, do not appear to exclude the power of such latter Court to order a new trial before itself. *In re* VEDAKADETH KANARAN, **2 Weir 481.** [*F.*, 30 M. 228=5 Cr. L.J. 104=6 Cr. L.J. 133=16 M.L.J. 546=2 M.L.T. 46.]

(3623)—*S.* 423 (=*Crim. Pro. Code*, 1872, *s.* 280)—*Powers of Sessions Judge under, on appeal—Retrial.*—A Sessions Judge, on appeal, can only enhance, with reference to s. 280 of this Code, the punishment that has actually been awarded, but has no power under it to add another punishment to that which has been awarded by the Magistrate ; for example, fine to an imprisonment. The power "*to alter*" a sentence conferred on an appellate Court under this section is only restricted to the enhancement of any punishment that has been awarded. POLICE v. BEHARI, **Colm. Dig. Cr. 51 of 1876.**

(3624)—*S.* 423 (=*Crim. Pro. Code*, 1872, *s.* 284)—*Sentence beyond jurisdiction—Subsequent investiture of superior power to take effect from a date prior to that of sentence—Effect.*—Where a Magistrate, who had only third class powers awarded a sentence which he was not competent to award, and, between the date of the sentence and the order of the appellate Court annulling the sentence and directing a new trial, the Magistrate was invested, by a Government notification, with second class powers to take effect from a date previous to that of the sentence, *held*, that the notification did not render the sentence valid, and that the order of the appellate Court was a valid one. *In the matter of* MUSSAMMAT SURJEE, **3 C.L. R. 281.**

(3625)—*S.* 423 (=*Crim. Pro. Code*, 1882, *s.* 423)—"*Relating to trial,*" *scope of the expression.*—The words "relating to trial" in the Code of 1882, are used in a sense wide enough to include the trial of appeals as used in ss. 342, 344, 352, and some sections of ch. XXV. QUEEN-EMPRESS v. GANESH KANDERAO, **13 B. 506.** [*F.*, Rat. Un. Cr. C.584; *R.*, 13 Cr.L.J. 737=17 Ind. Cas. 49=7 P.L.R. 1913=2 P.R. 1913, Cr.=43 P.W.R. 1912]

(3626)—*S.* 423—*Power of appellate Court to order re-trial.*—There is nothing in the above section limiting the power of an appellate Court, on an appeal from a conviction, to order a re-trial of the appellant. EMPEROR v. SHAIKH RASUL, **17 C.P.L.R. 97.**

(3627)—*S.* 423—*Powers of appellate Court—Alteration of finding.*—Under s. 423 of the Code, the appellate Court can, in an appeal from conviction, alter the finding of the lower Court and find the appellant guilty of any offence of which he may have been acquitted by that Court, maintaining the sentence of the lower Court, but not enhancing it. QUEEN EMPRESS v. JABANUTLA, **23 C. 975.** [*F.*, 27 C. 172=4 C.W.N. 166, 41 C. 350=18 C.W.N. 498=23 Ind. Cas. 985=15 Cr. L.J. 385; *R.*, 34 A. 115=8 A.L.J. 1239=12 Ind. Cas. 836=12 Cr. L.J. 572, 34 M. 545=8 M.L.T. 313=7 Ind. Cas. 861=11 Cr. L.J. 534=1911 1 M.W.N. 474, 35 M. 243=10 M.L.T. 66=21 M.L.J. 805 =1911. 2 M.W.N. 106=10 Ind. Cas. 372=12 Cr.L J. 269, 37 M. 119=15 Cr.L.J. 180=22 Ind. Cas. 756, 12 P.R. 1904, Cr.=110 P.L.R. 1904, U.B.R. 1911, 4th Qr. p. 100=13 Cr. L.J. 457=15 Ind. Cas. 89, 2 Weir 485, 11 Cr. L.J. 295=6 Ind. Cas. 251 ; *D.*, 26 M. 478=13 M.L. J. 263=2 Weir 483.]

(3628)—*S.* 423 (=*Crim. Pro. Code*, 1882, *s.* 423)—*Reversal of conviction and order for re-trial by a specific Court.*—Where an appellate Court reverses a conviction and sentence, it can, under s. 423 of the Crim. Pro. Code, order the appellant to be re-tried by a specified Court of competent jurisdiction. QUEEN-EMPRESS v. KASTURBHAI, **Rat.Un.Cr.C. 367.**

(3629)—*S.* 423—*Power of appellate Court to reverse finding of acquittal*—The words "reverse the finding and sentence" in s. 423 (1) (*b*) mean reverse the finding upon which a conviction is based, and do not empower the appellate Court (or at any rate an appellate tribunal other than the High Court) to reverse or set aside an acquittal. Where persons were charged with being members of unlawful assembly, rioting, hurt and theft, and were convicted on all the charges except on that of theft, *held*, that the appellate Magistrate was not competent to reverse the acquittal on the charge of theft. SAMI AYYA v. EMPEROR, **26 M. 478=2 Weir 483=13 M L J. 263.** (23 C. 975, *Expl.*) [*R.*, 34 M. 545=8 M.L.T. 313=7 Ind. Cas. 861=11 Cr. L.J. 534=1910 M.W.N. 474, U. B.R. 1911, 4th Qr., p. 100.]

(3630)—*S.* 423 (=*Crim. Pro. Code*, 1882, *s.* 423)—*Meaning of the term "Verdict."*—The term "verdict" in s. 423 (*d*) means the entire verdict on all the charges, and not merely the verdict upon each charge separately. KRISHNA DHAN MANDAL v. QUEEN-EMPRESS, **22 C. 377.**

(3631)—*S.* 423—*Enhancement of sentence, order directing payment of complainant's costs not an—Court Fees Act*, VII *of* 1870, *s.* 31.—An order passed by an appellate Court, directing the accused person to pay the costs of the complainant, under s. 31 of the Court Fees Act, correcting the omission of the Court below to order such payment, does not amount to an enhancement of the sentence, the order under the Court Fees Act forming no part of the penalty or sentence passed in the case. EMPEROR v. KARUPPANNA PILLAI, **29 M. 188=3 Cr. L.J. 460.** (20 C. 687, *Appr.*; 22 M. 153, *Diss.*) [*Appl.*, 11 Cr. L J. 194=31 M. 547 =4 Ind. Cas. 1130=5 M.L.T. 223=9 Cr. L. J. 83 ; *R.*, 12 Cr. L.J. 405=11 Ind. Cas. 589= 8 A.L.J. 925.]

(3632)—*S.* 423—*Accused sentenced to imprisonment by lower Court—Reduction of period of imprisonment on appeal, but with the addition of fine—Alteration or enhancement of*

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sentence—Power of appellate Court.—Where the lower Court convicted an accused and sentenced him to imprisonment for a certain period, and, on appeal, the period of imprisonment is reduced, but a fine is imposed in addition, and, in default, a further period of imprisonment, the fact that a fine is imposed by the appellate Court would not in law be an enhancement of the sentence, if the aggregate period of imprisonment, which the accused may have to undergo, is, to any extent, less than the period of the original sentence. In a case, where such an alteration of the sentence has the effect of rendering it, in the circumstances of the case, excessive or inappropriate, the interference in revision of a superior Court may be called for. BHAKTAVASTALU NAIDU v. EMPEROR, **1 M.L.T. 373 = 5 Cr. L.J. 36 = 16 M.L.J. 560, F.B.**

(3633)—*S.* 423 (=*Crim. Pro. Code*, 1882, s. 423 (1) (*b*)—*Conviction for lesser offence—Procedure to be adopted, when the appellate Court thinks the accused guilty of graver offence—Appellate Court's duty and its powers.*—Where a second class Magistrate, although finding that the facts constituted an offence under s. 211, Penal Code, which was triable by a first class Magistrate, convicted the accused of an offence under s. 182, but, on appeal, the Head Assistant Magistrate acquitted the accused, on the ground that, although the accused had committed an offence under s. 182, Penal Code, he should have been convicted of an offence under s. 211, Penal Code, *held*, that the procedure of the Appellate Magistrate was wrong. He should have confirmed the conviction and he should, then, have considered whether, in all the circumstances of the case, it was desirable that the accused should again be tried for the more serious offence. *In re* KANNACHAMPET PARANGODAN, **2 Weir 482.** [*F.*, 2 M.L.T. 495.]

(3634)—*S.* 423 (=*Crim. Pro. Code*, 1882, s. 423 (1) (*b*))—*Enhancement by appellate Court—Addition of sentence of whipping.*—The addition of a sentence of whipping by the appellate Court, although the sentence of imprisonment is reduced, amounts to an enhancement of the sentence. *In re* APPU *alias* MAHADEVA AIYYAR, **2 Weir 487.**

(3635)—*S.* 423 (=*Crim. Pro. Code*, 1882, s. 423 (2)—*Evidence of convicted co-accused whether corroborative of approver's evidence.*—The evidence given by a co-accused, after he is convicted and sentenced, stands on a different footing from that of an approver or unconvicted accomplice. The Judge is justified in saying that the jury may look to the evidence of such person for confirmation of the story told by an approver. *In re* MARUDAIMUTHU KAVIRAYAN, **2 Weir 520.**

(3636)—*S.* 423 (=*Crim. Pro. Code*, 1872, s. 284)—*Trial by Court without jurisdiction—Duty of appellate Court to order re-trial.*—Where the appellate Court discharged the accused on the ground that the lower Court had no jurisdiction to try him and did not order a re-trial, as it was not satisfied that the charge made by the accused, who was convicted for an offence under s. 211, Indian Penal Code, was a false one, *held*, that the appellate Court should have ordered a re-trial. KISHEN SINGH v. KHAZAN SINGH, **1 P.R. 1879, Cr.**

(3637)—*S.* 423 (=*Crim. Pro. Code*, 1882, s. 423 (2))—*Power of High Court to order a re-trial before a new jury.*—It is open to the High Court to direct, when ordering a new trial, that the accused be tried by a new jury, when it is found that the verdict of the jury is tainted with prejudice, and is based on rumours as to the prisoner's previous conduct. *In re* ANCHULA NALLACHARLA NAIDU, **2 Weir 384 = 2 Weir 493.**

(3638)—*S.* 423 (=*Crim. Pro. Code*, 1882, s. 423 (2))—*Questions of fact—Jury asked to give finding on one question of fact before the conclusion of the charge on the other—Validity.*—*Held*, that the procedure adopted by the Judge, in requiring the jury to give a finding on one of two questions of fact constituting the proof in the case, before he concluded his charge with reference to the other question of fact, was irregular, if not illegal and was certainly calculated to embarrass the jury in arriving at a proper verdict as to the character of the offence, if any, proved. *In re* BADAVA KUNHI, **2 Weir 499.**

(3639)—*S.* 423—*Recording heads of charge to jury.*—The Judge should record the heads of charge to the jury. The mere writing of a judgment is not sufficient, as it will be quite impossible to see from such judgment how the case was left to the decision of the jury. *In re* DARA NARAYANA REDDI, **2 Weir 499.**

(3640)—*S.* 423 (=*Crim. Pro. Code*, 1882, s. 423 (2))—*Retracted confession—Duty of Judge.*—Where a confession is subsequently retracted, and it is not corroborated by independent evidence, the Judge should point out to the jury that it is not safe to rely on the subsequently withdrawn confession, unless corroborated in material respects. *In re* CHOLAKEL KOYA, **2 Weir 507.**

(3641)—*S.* 423—*Retracted confession.*—Although, generally, in the case of a confession made and subsequently withdrawn, corroborative evidence of the truth of it should be required, the real question is whether, owing to the withdrawal of the confession, reasonable doubt must be entertained of the truth of the confession. It was not intended, in the case reported in 10 M. 295, to lay down, as an absolute rule of law, that a retracted confession must, in order to justify a conviction, be supported by independent evidence corroborating it in material particulars. *In re* CHINNA CHENGADU, **2 Weir 510.** [*R.*, 21 M. 83 = 2 Weir 503.]

(3642)—*S.* 423 (=*Crim. Pro. Code*, 1882, s. 423 (2))—*Jury provided by Judge with a paper containing the different counts against*

Crim. Pro. Code (Act V of 1898)—*continued.*

each prisoner and the evidence on them—Validity of procedure—Direction to jury to re-consider verdict.—The act of a Judge in giving the jury, who did not appear to be intelligent men, a paper in which it was noted what were the different counts against each prisoner on which evidence had been offered, and the witnesses whose testimony bore upon each count, is not objectionable. Where the jury appear to be confused and to have failed to understand the remarks of the Judge, he is not acting improperly in telling them to reconsider the verdict. *In re* VEERAPPAN, **2 Weir 514.**

(3643)—*S.* 423 (=*Crim. Pro. Code,* 1882, s. 423)—*Power of Court to deal with case of accused who has not appealed.*—Both the parties to a riot were jointly tried before a Deputy Magistrate and convicted. One of the parties appealed to the District Magistrate, who quashed the convictions and directed that each side should be tried separately. The Sessions Judge, being of opinion that the District Magistrate's order as to the party who had not appealed was made without jurisdiction, reported the case for the orders of the High Court. *Held*, setting aside the orders of the Deputy Magistrate and the District Magistrate, that those persons who had not appealed should be tried by a competent Court according to law. EMPRESS v. JAIMAL, **A.W.N. 1883, 163.**

(3644)—*S.* 423 (=*Crim. Pro. Code, Act* X *of* 1872, *s.* 284)—*Powers of appellate Court.*—Where an appellate Court finds that the appellant has been properly convicted under s. 448 of the Penal Code, but thinks that the Magistrate should have committed for trial under s. 450, the proper procedure is to enhance the punishment or to report the matter to the High Court under s. 296 of the Crim. Pro. Code, and not to annul the conviction and direct a re-trial by a competent Court. EMPRESS v. FAIAZ KHAN, **A.W.N. 1882, 112.**

(3645)—*S.* 423—*Appeal in criminal case—Power of appellate Court—Altering finding of acquittal into one of conviction.*—The appellate Court can, under s. 423 of the Crim. Pro. Code, in an appeal from a conviction, alter the finding of the lower Court, and find the appellant guilty of an offence of which he was acquitted by that Court. SARDARA v. KING-EMPEROR, **8 A.L J. 1239=12 Ind. Cas. 836=12 Cr. L.J. 572=34 A. 115.** (23 C. 975, *F.*) [*R.*, 18 C.W. N. 498=13 Cr. L.J. 385=23 Ind. Cas. 985.]

(3646)—*S.* 423—*Power of appellate Court—Same facts—Conviction on one charge and acquittal on the other—Appellate Judge—Power to change section and conviction under right section.*—A prosecuted M under s. 497, Penal Code, with having committed adultery with his wife F. The Sub-Divisional Magistrate who tried the case acquitted M of the offence under s. 497, but found him guilty of insult under s. 504, Penal Code. On appeal, the Sessions Judge was of opinion that M could not be convicted of an offence under s. 504 and that an offence under s. 497 was proved against him.

Crim. Pro. Code (Act V of 1898)—*continued.*

But he refused to interfere on the ground that he had no right to do so because M was acquitted by the lower Court on the charge of adultery : *Held* that the Sessions Judge had power, under s. 423, Crim, Pro. Code, read with s. 13 of the Schedule of the Criminal Justice Regulation, to interfere, as there was a conviction in the case and the accused was convicted on the same set of facts on which he was acquitted of the other charge. (8 M.L.T. 313, 26 M. 478, 23 C. 975, 1 P.R. 1874, 21 W.R. Cr. 13, U.B.R. 1897—1901, Vol. I, 103, U.B.R. 1897—1901, Vol. I, 91, 14 M. 363, 31 C. 710, 11 C. 293, *R.*) If the acquittal on the one charge and the conviction on the other are based identically on the same facts, the Sessions Judge in appeal has the power to change the section and convict the accused of the right offence. ALI MUDDIN v. MEAH JAN, **U.B.R. 1911, 4th Qr., 100=15 Ind. Cas. 89=13 Cr. L.J. 457.**

(3647)—*S.* 423—*Appeal—Judgment—Requisites of—No legal judgment—Court of revision—Remand—Re-trial—Power to direct.*—*Held*, that no judgment of a Court, other than a High Court, which purports to dispose of an appeal under s. 423, Crim. Pro. Code, is a legal judgment, unless it contains at least (1) the point or points for determination raised by the memorandum of appeal, (2) the decision thereon, and (3) the reasons for the decision (19 A. 506, *Diss.*; 20 C. 353, 11 C. 449, 13 C. 110, 22 C. 241, 23 C. 420, 32 C. 178, 35 C. 138, 15 B. 11, 31 P.R. 1884, *R.*) Where there has been no legal decision of an appeal, the Judicial Commissioner has power to remand the case for re-trial of the appeal and its disposal by a legal judgment. JAIRAM v. EMPEROR, **8 N.L.R. 84=15 Ind. Cas. 975=13 Cr. L.J. 559.**

(3648)—*S.* 423—*Altering the conviction from one under s.* 353, *I.P.C., to one under s.* 183, *I.P.C.—Legality.*—An appellate Court has power under s. 423, Crim. Pro. Code, to alter the conviction from one under s. 353, I.P.C., to one under s. 183, I.P.C. KUNHAMBU v. EMPEROR, **1912 M.W.N. 1110=19 Ind. Cas. 335=14 Cr. L.J. 239.**

(3649)—*S.* 423—*Enhancement of sentence—Sentence altered.*—A subordinate Magistrate sentenced an accused to one month's rigorous imprisonment and a fine of Rs. 5, and in case of default in payment of the fine, to one week's further imprisonment. The District Magistrate on appeal by the accused varied the sentence to one of 3 days imprisonment and a fine of Rs.100 and in default of payment of fine to a further imprisonment of one month. *Held* there was no enhancement of sentence and the order of the District Magistrate was quite legal. MEHAR CHAND v. KING-EMPEROR, **12 A.L.J. 827=36 A. 485=15 Cr. L.J. 519=24 Ind. Cas. 607.** (23 B. 439, 30 M. 103, *Doubted*; 27 C. 175, *Appr.*)

(3650)—*S.* 423—*Accused, how to be questioned.*—The question "what offence are you going to confess" was held to be an improper form

Crim. Pro. Code (Act V of 1898)—*continued.*

of question to an accused person. *In re* CHOLAKEL KOYA, **2 Weir 507.**

(3651)—S. 423—*See* ACT VI OF 1864, s. 3, 3 L.B.R. 112=3 Cr. L.J. 348.

(3652)—S. 423—*See* ACT XI OF 1874, s. 28, 2 C.L.R 511, 24 W.R. Cr. 21.

(3653)—S. 423—*See* CHARGE—ALTERATION OF CHARGE, 27 C. 660, 3 C.W.N. 367.

(3654)—S. 423—*See* PENAL CODE, ss. 109, 417, 457, 468, 471 and 511, 30 C. 822=7 C.W.N. 639.

(3655)—S. 423—*See* PENAL CODE, s. 289, 3 N.L.R. 90=6 Cr. L.J. 100.

(3656)—S. 423—*See* PENAL CODE, ss. 304 (2), 323, 2 P.W.R. 1908, Cr.=77 P.L.R. 1908=7 Cr. L.J. 321.

(3657)—S. 423—*See* RE-TRIAL, 11 P.R. 1879, Cr.

(3658)—S. 423—*See* SENTENCE—POWERS OF APPELLATE COURT—ALTERATION, 30 M. 103=1 M.L.T. 375=5 Cr. L.J. 36=16 M.L.J. 560.

(3659)—S. 423—*See* SENTENCE—POWERS OF APPELLATE COURT—ENHANCEMENT, 10 Bom. L.R. 93=7 Cr.L.J. 119=32 B. 162, 17 A. 67=A.W.N. 1894, 202, 23 B. 439, 23 A. 497 =A.W.N. 1901, 176, 27 C. 175.

(3660)—S. 423—*See* SENTENCE—POWERS OF APPELLATE COURT—REVERSAL, 3 N.L. R. 67=6 Cr. L.J. 43.

(3661)—S. 423—*See* SESSIONS JUDGE, JURISDICTION OF, A.W.N. 1881, 62, 18 B. 751, A.W.N. 1883, 99.

(3661-*a*)—S. 423—*See* Nos. 90, 104, 186, 209, 262, 274, 526, 527, 528, 1647, 1743, 1814, 1838, 1839, 1950, 2136, 2207, 2294, 2295, 2296, 2396, 2425, 2583, 2624, 2842, 2843, 2860, 2897, 2898, 2959, 2968, 3337, 3489, 3490, 3491, 3504, 3560, 3561, 3562, 3563, 3564, 3575, 3576, 3577, 3583, 3604, 3605, 3606, 3608, 3609, 3620, *supra, and* 3757, 4048, 4215, 4251, 4565, 4565-*a infra.*

(3662)—*S.* 423 (*a*) (=*Crim. Pro. Code,* 1872, *s.* 272)—*Discretionary powers of the High Court.*—The discretionary powers of the High Court under s. 272 will be exercised, only when it is satisfied that the case is of sufficient consequence to justify it in acting under this very exceptional section. *In re* GOVERNMENT PLEADER, **2 Weir 476=7 M.H.C. 339.** [*F.*, 7 N.W.P. 176; *R.*, 3 C.W.N. 653=26 C. 863, 17 C.P.L.R. 75.]

(3663)—*S.* 423, *cl.* (*b*) (=*Crim. Pro. Code,* 1882, *s.* 423 (*b*))—*Appellate Court's power to alter a sentence of fine into one of imprisonment and to order a re-trial—Duty of appellate Court.*—A Sessions Judge has no power to enhance a sentence in appeal, by altering a sentence of fine into one of imprisonment. QUEEN-EMPRESS v. DANSANG DADA, **18 B. 751.**

(3664)—*S.* 423 (*b*)—*Sentence of three months' imprisonment—Altered to one month's imprisonment and a fine of Rs.* 100—*Whether amounts to enhancement of sentence.*—The accused in this

Crim. Pro. Code (Act V of 1898)—*continued.*

case was sentenced to undergo three months' rigorous imprisonment: but on appeal, the sentence was altered to one month's rigorous imprisonment and a fine of Rs. 100, or in default, one month's further rigorous imprisonment.—*Held* that, though in some cases an alteration of this kind might be equivalent to an enhancement, *e.g*, where the convict is a poor man to whom the order of fine would be a heavier punishment than the imprisonment, there was no enhancement in this case, as the fine has been paid and the appellant, when asked whether he would like to have the fine refunded and the original sentence restored, gave a decided answer in the negative. KIRPA RAM v. CROWN, **7 P.R. 1915, Cr.=30 Ind. Cas. 155.** (23 A. 497, *R.*).

(3665)—*Ss.* 423 (*b*), 237 *and* 238—*Accused charged with graver and minor offences in lower Court—Conviction on graver offence—Power of appellate Court to alter finding and to convict accused of minor offence—Scope of s.* 423 (*b*)—*Rioting under s.* 148, *I.P.C.—Common object—Not necessary before commencement of fight*—Where the evidence against certain persons convicted of murder, grievous hurt, etc., is discrepant, and the accused were charged by the lower Court also with the offence of rioting and unlawful assembly under s. 149, I.P.C., but acquitted them of that charge, it is open to the appellate Court to alter the finding of the lower Court upon that charge, and convict those against whom there is sufficient evidence of the minor charge, and acquit the rest. (23 C. 975, *F.*). The existence of a common object before the commencement of the fight is not necessary to justify the conviction of the accused of the offence of rioting under s. 148, I.P.C. Under s. 423, cl. (*b*), Crim. Pro. Code, an appellate Court has power to alter the finding of the lower Court, while maintaining the sentence. This provision is not confined only to cases falling under ss. 237 and 238, Crim. Pro. Code. This finding which an appellate Court may alter under s. 423 (*b*) may relate either to an offence with which the accused was separately charged in the lower Court or to one of which he might be convicted without a distinct charge. In cases not falling under ss. 237 and 238, Crim. Pro. Code, no doubt, the appellate Court cannot convict a person of an offence with which he was not charged in the first Court, but where he has been charged and the first Court recorded a finding on the charge, there is no reason to hold that the appellate Court cannot alter the finding. GOLLA HANAMAPPA, **10 M.L.T. 66=10 Ind. Cas. 372=21 M.L.J. 805=1911 2 M.W.N. 106 =35 M. 243=12 Cr. L.J. 269.** (27 C. 172, 23 C. 975, *R*). [*R.*, 41 C. 350=18 C.W.N. 498=15 Cr. L.J. 385=23 Ind. Cas. 985, 37 M. 119=15 Cr. L.J. 180=22 Ind. Cas. 756].

(3666)—*S.* 423 (*b*) (2)—*Alteration of finding, appellate Court's powers of making—Penal Code, ss.* 147, 148 *and* 325—*Power of appellate Court to alter conviction under s.* 325 *to one under s.* 147, *Penal Code.*—Under s. 423 (*b*) (2) of the

Crim. Pro. Code (Act V of 1898)—*continued.*

Code of Criminal Procedure, an appellate Court may alter the finding maintaining the sentence and there is nothing to restrict the finding, which may be altered to a finding of conviction. Where an accused person charged under ss. 148 and 325, Penal Code, was acquitted under s. 148, but convicted under s. 325 by a Magistrate, and the Sessions Judge on the accused's appeal, though of opinion that he should have been convicted under s. 147, Penal Code, thought he could not interfere with the acquittal, *held* that the Sessions Judge was clearly wrong and should rehear the appeal, when, if he should find the accused guilty of rioting, he might consider whether, by virtue of s. 149, Penal Code, the conviction under s. 325, Penal Code, was or was not sustainable. APPANNA v. PITHANI MAHALAKSHMI, **34 M. 545=8 M.L.T. 313=7 Ind. Cas. 861=11 Cr. L J. 534=1910 M.W.N. 474.** (23 C. 975, *F.*; 27 C. 566, *D.*; 26 M. 478, *R.*) [*F.*, 13 Cr. L.J. 457=15 Ind. Cas. 89=U.B.R. 1911, p. 100: *R.*, 37 M. 119 =15 Cr. L.J. 180=22 Ind. Cas. 756, 41 C. 350 =18 C.W.N. 498=15 Cr. L.J. 385=23 Ind. Cas. 985.]

(3667)—S. 423 (*d*)—*See* ACT VII OF 1870, s. 31, 22 M. 153=1 Weir 724, 26 M. 421=2 Weir 488.

(3668)—S. 423 (*d*)—*See* CHARGE TO JURY—MISDIRECTION, 25 C. 561, 25 C. 711=2 C.W. N. 369, 2 Weir 489, 493, 500.

(3669 & 3670)—*Ss.* 423 (*d*), 517—*Order for restoration of property—Powers of appellate Court—Revision.*—It is competent to a Court, in the exercise of appellate or revisional powers, to cancel or modify an order passed by a lower Court under s. 517 of the Code and even to extend such order to property which it did not previously include. EMPEROR v. GOPINATH, **A.W.N. 1906, 256=3 A.L.J. 770=4 Cr. L.J. 570.**

(3671)—*Ss.* 423, *cl.* (*d*), 517, 520—*High Courts, power of interference with order for restoration of property by Court below—Acquittal of accused—Restoration of property to accused.* —The High Court has jurisdiction, under s. 520 of the Crim. Pro. Code, to interfere with, or, under s. 423, cl. (*d*) to amend an order made by a lower Court under s. 517. Certain properties were found in the house of the accused, which the complainant alleged had been stolen from his house. The accused was convicted and his conviction upheld on appeal. An order was passed by the first Court to the effect that the properties, which were then in the custody of the Court, should be made over to the complainant. The High Court in revision acquitted the accused who moved the High Court for the restoration of the properties to him: *Held*, that, as the accused has been acquitted of the offence of theft, the proper order is to direct that the property found in the possession of the accused should be restored to him. HAGU BISWAS v. MANMATHA NATH MITRA, **15 Cr. L.J. 184=22 Ind. Cas. 760=18 C.W.N. 959.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3672)—*Ss.* 423 (*d*) *and* 522—*Power of appellate Court to set aside lower Court's order putting complainant in possession of land.*—*Held*, that under s. 423 (*d*), Crim. Pro. Code, a Sessions Judge had power to set aside an order under s. 522 of the Code, for putting a complainant in possession of a land in dispute and for removing certain fencing which had been erected. SARABDAWAN SINGH v. KING-EMPEROR, **7 O.C. 208.**

(3673)—Ss. 423 (*d*), 522—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 29 C. 724=6 C.W.N. 713.

(3674)—Ss. 423 (*d*), 537—*See* CHARGE TO JURY—MISDIRECTION, 25 C. 230.

(3675)—*Ss.* 423 (*d*) *and* 562—*Powers of the High Court to act under s.* 562 *on appeal.*—The new provisions inserted in s. 423 (*d*) empower the High Court, as a Court of appeal, to exercise the powers conferred by s. 562. EMPEROR v. BIRCH. **24 A 306=A.W.N. 1902, 69.** [*Appr.*, 29 M. 567=5 Cr. L.J. 136; *R.*, 12 Cr. L.J. 213=10 Ind. Cas. 114=16 P.R. 1911, Cr.=15 P.L.R. 1911.]

(3676)—*S.* 423 (1)—*Retrial—Power of Judge in appeal.*—A Sessions Judge has power to order a new trial when the case comes before him in appeal. This power should, however, be sparingly exercised and a re-trial should not be ordered unless there are grave reasons for doing so. EMPEROR v. MOHAN LAL, **13 A.L.J. 477=29 Ind. Cas. 65.** (15 A. 205, *R.*).

(3677)—*S.* 423 (1) (*b*) (=*Crim. Pro. Code*, 1872, *s.* 272)—*Commitment to Sessions, being so directed by Sessions Judge—Preliminary investigation, whether necessary.*—Where a Deputy Magistrate had convicted some persons of the offence of house-breaking by night and of voluntarily causing hurt, but the Sessions Judge, on appeal, being of opinion that the offence committed was that of dacoity, directed a commitment for trial to the Court of Sessions, *held*, that an investigation preliminary to commitment was not necessary. HIGH COURT PROCEEDINGS, 7TH FEB. 1878, No. 290, 2 **Weir. 479.**

(3678)—*S.* 423 (1) (*b*)—*Commitment—Procedure.*—Where a Head Assistant Magistrate, on appeal from a conviction under ss. 323, 379, Penal Code, thought that the offence committed was robbery which the lower Court was not competent to try, and referred the matter to the District Magistrate, *held*, that the procedure adopted by the Head Assistant Magistrate was not legal and his proper course was to follow the procedure laid down in s. 423 (1) (*b*). If there was no Court of competent jurisdiction subordinate to the Head Assistant Magistrate, he should have directed the committal of the accused to the Sessions. *In re* CHINNA MOTTAYAN, **2 Weir 484.**

(3679)—*S.* 423 (1) (*b*)—*Appeal from conviction—Power of appellate Court.*—On appeal from a conviction, the appellate Court has

Crim. Pro. Code (Act V of 1898)—*continued.*

power to alter the finding of the lower Court and convict the accused of a different offence. The only restriction on such power is that it cannot enhance the sentence. *In re* VEERA REDDI, **2 Weir 485.**

(3680)—*S.* 423 (1) (*b*)—*Additional fine in lieu of imprisonment—Enhancement of sentence—Sentence on appeal.*—Where, in lieu of imprisonment, the appellate Court imposed an additional fine, *held*, that it amounted to an enhancement of sentence. An appellate Court cannot pass, on appeal, a sentence which the original Magistrate was not competent by law to pass. *In re* RAMASAMI CHETTI, **2 Weir 487.** [*R.*, 11 Cr. L.J. 727=8 Ind. Cas. 880=9 M.L.T. 167].

(3681)—*S.* 423 (1) (*b*)—*Quashing of conviction on one of three charges—Maintaining sentence in its integrity, validity of.*—Where a Magistrate convicted a person of three offences, and, on appeal, the Divisional Magistrate set aside the conviction on one of them, *held*, that it was not competent to the latter to uphold the sentence that had been given in respect to all the offences. The proper course for the Magistrate was to have referred the case to the High Court for the exercise by it of its powers of revision. *In re* RAMANUJAM PILLAI, **2 Weir 487 A.**

(3682)—*S.* 423 (1) (*b*) (1)—*Powers of appellate Court—Re-trial.*—Where a Magistrate having jurisdiction to try the charge against the accused, committed an error in procedure in convicting the accused upon evidence which was not given in their presence, *held*, that the appellate Court was competent to order a re-trial. *In re* PERA NAICKEN, **2 Weir 481.**

(3683)—*S.* 423 (1) (*b*), (3)—*Powers of appellate Court.*—The appellant was convicted of causing simple hurt and was sentenced to a fine. On appeal, the appellate Court altered the conviction to one of causing grievous hurt under s. 325, Penal Code, and, in order to make the sentence legal under that section, recorded a sentence of one day's imprisonment, which, however, was to be taken to have been already undergone. *Held*, that the appellate Court had no power to enhance the sentence. The proper course would have been to let the conviction stand as one under s. 323, or to have referred the case to the High Court. *In re* CHADALAVADA RAMANAPPA, **2 Weir 486.**

(3684)—*S.* 423 (1) (*b*), (3)—*Powers of appellate Court.*—The appellate Court, in a judgment which did not deal with the pleas in appeal, quashed a conviction and ordered a new trial on the ground that, although the accused were shown by the evidence to have committed some offence, it was clear that they had been convicted under a wrong section. All the facts, on which a conviction for any offence could be sustained, had been put in issue before the trying Magistrate. *Held*, that, before quashing the sentence and directing a new trial, the appellate Court should have come to a certain conclusion as to the offence which the accused were shown by the evidence to have committed; and that it should have considered whether, if the evidence showed that the accused should properly have been convicted of another offence than that charged, they would be prejudiced by amending the conviction. *In re* IYACHIKONE, **2 Weir 480.**

(3685)—*Ss.* 423 (1) (*b*), 256 (1) *and* (4) (*k*)—*Appellate Court—Order of retrial of convicted person—Direction to commence proceedings with proper charge—Legality—Repetition of prosecution—When necessary—Warrant case—Trial—When begins.*—When an appellate Court orders under s. 423 (1) (*b*) that a convicted person be retried, it may, in a suitable case, direct at the same time that the new proceedings should commence with the framing of a proper charge (4 N.L.R. 71, *D.*; 28 C. 104, *R.*) In exceptional cases, a superior Court may be justified in giving orders for repeating the prosecution (25 C. 683, *R.*) It is clear from s. 256 (1), Crim. Pro. Code, that in a warrant case the trial does not begin till a charge has been framed and the accused claims to be tried. In a warrant case, there is, till a charge has been framed, no trial, but only an inquiry as defined by s. 4 (*k*), Crim. Pro. Code. MANNA v. EMPEROR, **9 N.L.R. 42=19 Ind. Cas. 326=14 Cr. L.J. 230.** (32 M. 220, 15 C. 603, *R.*)

(3686)—*Ss.* 423 (1) (*d*), 522—*Order under latter section if may be passed on appeal.*—In confirming a conviction passed by a Subordinate Magistrate, the District Magistrate cannot pass an order for delivery of possession under s. 522, Crim. Pro. Code, when no such order was passed by the trying Magistrate. BHAGBAT SHAHA v. SIDQUE OSTAGAR, **16 C.W.N. 811=16 Ind. Cas. 176=13 Cr. L.J. 608=39 C. 1050.**

(3687)—*S.* 423, *excep.* 1 (*d*)—*Appellate Court, power of.*—An appellate Court has the power to order a case to be retried, if it thinks fit to do so. A Sessions Judge is competent to order the retrial of a case which is before him on appeal. *In the matter of* SHER MAHOMED, **2 C.L.R. 511.**

(3688)—*S.* 423 (2)—*Misdirection to jury.*—Where in a case of dacoity and receiving stolen property there was no evidence except that of possession of stolen property some ten days after the commission of the dacoity, *held*, that the Judge ought to have left it to the jury to decide whether the accused were guilty of dacoity or guilty of receiving stolen property, and that with reference to the latter charge he should have told them to consider whether they were satisfied that the prisoners knew that the property was stolen in a dacoity. *Held* also that the summing up should contain a reference to the lapse of time between the dacoity and the finding of the property. *In re* MAMMADI, **2 Weir 47=2 Weir 515.**

(3689)—*S.* 423 (2)—*Misdirection to jury.*—*Held* that, in a case of theft, the failure on the part of the Judge to call attention to the whole

Crim. Pro. Code (Act V of 1898)—*continued.*

of the evidence telling against the accused and especially his observation as to the case resting wholly on the identification of certain jewels with which the evidence went to show that the accused had dealt, constituted a misdirection. *In re* GOVERNMENT PLEADER, **2 Weir 488.**

(3690)—*S.* 423, *cl.* 2—*Charges of dacoity and dacoity with murder—Charge to jury.*—Where a prisoner was charged with dacoity under s. 395, Penal Code, and also with dacoity with murder under s. 396, Penal Code, *held*, that the Judge should, in the first instance, have placed clearly before the jury the evidence against the prisoner on the charge of dacoity only, and should not, in doing so, have alluded, except in general terms, to the charge under s. 396, Penal Code. When the jury had returned their verdict on the charge of dacoity, the Judge should then have set clearly before them as assessors the evidence connected with the charge under s. 396, Penal Code. DAKSHINAMURTHY v. PUBLIC PROSECUTOR, **2 Weir 517.**

(3691)—S. 423 (2)—*See* DACOITY, 5 M.L.T. 100=32 M. 179=9 Cr.L.J. 567=2 Ind. Cas. 307.

(3692)—Ss. 423, 232, 535, 537—*See* RETRIAL, L.B.R. 1893—1900, 238.

(3693)—*Ss.* 423, 237, 238 — *Alteration of finding—Power of appellate Court under s.* 423 —*How to be exercised—Power to find accused guilty of abetment, on a charge of principal offence.*—No doubt under s. 423, Crim. Pro. Code, the appellate Court has power to alter a finding, but the power cannot be used arbitrarily, but only in accordance with the other provisions of the Code to be found in ss. 237, 238 thereof. It is not open to a Court to find a man guilty of the abetment of an offence, on a charge of the offence itself. *In re* PADMANABHA PANJI KANNAYA, **7 M.L.T. 79=5 Ind. Cas. 145=11 Cr. L.J. 49=20 M.L.J. 84=33 M. 264.**

(3694)—*Ss.* 423, 307, 282 (=*Crim. Pro. Code,* 1882, *ss.* 423 (2), 307, 282)—*Conviction of accused by jury without hearing defence witnesses—Duty of Judge.*—Six persons were charged with dacoity. The Sessions Judge, after the evidence of the prosecution witnesses had been given and the statements of the prisoners read out, thinking that the jury would not be likely to convict upon the evidence which had been given, asked the jury if they desired the case to go further and to hear the defence of the prisoners and the reply of the public prosecutor and his own summing up. To this question the jury, evidently misunderstanding the reason of the question being put to them at that stage, replied that they found some of the accused guilty and others not guilty. The Judge, thereupon dismissed the jury and tried the case *de novo* with a fresh jury. *Held*, that the action of the Judge in recommencing the trial with the aid of a fresh jury was not authorised by law. The proper course would have been for the Judge to have explained to the jury that they had misunderstood the purport of his question, and to have directed them that it was their duty to hear the defence of the persons whom they had found guilty, before either expressing an opinion or definitely making up their minds that they were guilty. *In re* DORAISAMI AIYA TEVAN, **2 Weir 497.** [*D.*, 2 Weir 493.]

(3695)—*Ss.* 423, 367, 537 (=*Crim. Pro. Code,* 1872, *ss.* 284 *and* 464)—*Sessions Judge annulling conviction by Magistrate for want of jurisdiction—Omission to order a re-trial—Subsequent order for re-trial, validity of—Sanction to prosecute.*—Where a Sessions Judge, on appeal, annuls the conviction of the accused on the ground of want of jurisdiction of the Magistrate who tried the case, but omits to order a new trial before a competent Court, the Judge is not precluded from passing such order subsequently. The order annulling the conviction is not an acquittal. No doubt the order is in the nature of a judgment or final order, which, under s. 464, when once dated and signed, cannot be reviewed. But this provision refers to the mode in which the appeal is dealt with, not to direction in regard to ulterior proceedings. Where the conviction of the accused persons for giving false evidence and for making a false charge is annulled by the Sessions Judge on the ground of incompetency of the Magistrate, who tried the case, without passing any order for re-trial, a competent Court may proceed to re-try the case upon the sanction originally given, and still subsisting, and upon which no legal proceedings had been taken. RAM REDDI v. SESHU REDDI, **3 M. 48=2 Weir 756=2 Weir 455=2 Weir 479.**

(3696)—*Ss.* 423, 424, 367—*Summary disposal of appeal, if allowed.*—In dealing with an appeal under s. 423, the District Court has no power to dismiss it summarily, but is bound to comply with the requirements of ss. 424 and 367. QUEEN-EMPRESS v. GOPALA *bin* RAMA, **1 Bom. L.R. 225.**

(3697)—Ss.423, 426, 439, 440—*See* REVISION —SENTENCES, 25 P.R. 1876, Cr.

(3698)—*Ss.* 423, 427, 435, 439—*Powers of High Court in revision—Order of discharge or acquittal by Presidency Magistrate—Charter Act* (24 *and* 25 *Vic., c.* 104), *s.* 15—*Letters Patent,* 1865, *s.* 28—*Appellate Court—Power to direct further enquiry.*—Under the Code, the High Court has not the power to interfere, in revision, with an order of discharge or dismissal passed by a Presidency Magistrate. But it has powers of revision in respect of such orders under s. 15 of the Charter Act, but not under s. 28 of the Letters Patent. S. 15 of the Charter Act has always been interpreted in a very extended meaning so as to give ample powers of superintendence, *i.e.*, to say, powers of revision over proceedings of subordinate Courts. [*R.*, 2 Weir 255, 28 C. 709 ; *Diss.*, 27 B. 84.] S. 423 does not enable a Court of appeal to direct that further enquiry be made into a case, in

Crim. Pro. Code (Act V of 1898)—*continued.*

which an order of discharge or dismissal may have been passed. S. 423 confers a power to direct further enquiry only in respect of a case of an appeal from an order of acquittal, and that this power is so limited is shown by an express enactment in s. 437 to provide for such orders being passed. CHAROOBALA DABEE v. BARENDRA NATH MOZUMDAR, **27 C. 126=3 C.W.N. 601.** (26 C. 746, *Diss.*; 1 C.W. N. 49, *R.*) [*Diss.*, 36 C. 994=11 C.L.J. 50=13 C.W.N. 1221=10 Cr.L.J. 385=3 Ind. Cas. 861; *R.*, 12 Cr.L.J. 50=8 Ind. Cas. 1161=33 P.R. 1910, Cr.=57 P.L.R. 1910, 1913 M.W. N. 728=14 Cr L.J. 529=21 Ind. Cas. 129=14 M.L.T. 200, 25 M.L.J. 510=14 Cr.L.J. 633=21 Ind. Cas. 681; *D.*, 35 C. 1036, *Note*=9 Cr. L.J. 188.]

(3699)—*Ss.* 423, 428 (=*Crim. Pro. Code,* 1882, *ss.* 423 (1) (*b*), 428)—*Omission to examine all witnesses for defence—Power of appellate Court to set aside the conviction.*—An appellate Court is not competent to set aside a conviction, merely on the ground that all the witnesses cited for the defence have not been examined. The proper course for it is to have the evidence taken of the other witnesses before disposing of the appeal. *In re* TURAKA PAKIR SAHIB, **2 Weir 481.**

(3700)—Ss. 423, 428– *See* RE-TRIAL, 28 P. R. 1884, Cr.

(3701)—*Ss.* 423, 428 *and* 430—*Appeal—Power of appellate Court.*—The appellate Court is not competent to pass a fresh sentence. Power to enhance is expressly prohibited. The appellate Court cannot consider and determine a new case disclosed by additional evidence, except in so far as to confirm or modify or set aside the sentence under appeal, or to act as otherwise provided by s. 423 (*b*). The function of the appellate Court is to dispose of the appeal, and s. 430 declares that, save in certain cases, "judgments and orders passed by an appellate Court upon appeal shall be final." QUEEN-EMPRESS v. ISAHAK, **27 C. 372=4 C.W.N. 497.**

(3702)—*Ss.* 423, 435, 437—*Re-trial of accused after conviction—Inapplicability of sections—New trial when properly ordered—Want of jurisdiction—Misjoinder—Superficial enquiry.*—Ss. 435 and 437 do not empower a Court, in an appeal from a conviction, to order a re-trial of the appellant. The power of ordering a re-trial under s. 423 of the Cr.P.C., should be exercised with discretion. A re-trial may properly be ordered, when the original trial is void for want of jurisdiction or for misjoinder or when the enquiry has been obviously superficial and material witnesses have not been examined. A re-trial should not be ordered with the object of enabling the prosecution to fill up deficiencies in the evidence of the prosecution. HAMDU MEAH v. EMPEROR, **8 Ind. Cas. 594=3 Bur. L.T. 9.**

(3703)—*Ss.* 423, 435, 439=(*Crim. Pro. Code,* 1882, ss. 423, 435, 439)—*Revisional powers of High Court—Order for committal—Scope of s.* 423.—The powers of the High Court under ss. 435 and 439 have been extended by the Code of 1882. They can call for records to satisfy themselves of the correctness and propriety of the proceedings. The infliction of an inadequate punishment is an impropriety which the jurisdiction in revision is intended to remedy. S. 423 gives an appellate Court the power to order an accused person to be committed for trial, when it considers that that was the proper procedure to have been adopted. That power can, under the provisions of s. 439, be exercised by the High Court as a Court of revision. [*F.*, 15 A. 205=13 A.W.N. 105.] S. 423, which gives the appellate Court the power to direct a committal, is not limited to persons exclusively triable by a Court of Sessions. QUEEN-EMPRESS v. ABDUL RAHMAN, **16 B. 580=Rat. Un. Cr. C. 577.** [*F.*, 23 C. 350, 27 C. 172; *R.*, 16 P.R. 1895, Cr., 17 C. P.L.R. 97.]

(3704)—*Ss.* 423, 435 *and* 439—*Evidence Act* (I *of* 1872), *s.* 30—*Statement of accused after conviction—Revision—Criminal cases—Interlocutory order.*—Ss. 423, 435 and 439 of the Crim. Pro. Code invest the High Court with power to be exercised, when the Court thinks fit, to correct errors in procedure committed by subordinate Criminal Courts, before the final order of acquittal or conviction is passed by such subordinate Courts. At a joint trial of three accused persons, two were discharged and the third convicted. The conviction was upheld on appeal. The order of discharge was set aside and further inquiry was directed to be made as regards the persons discharged. In the course of further inquiry, the Magistrate declined to record the statement of the other accused who was convicted previously and tendered by the prosecution as their witness, the Magistrate being of opinion that his evidence would be inadmissible. On revision, the Chief Court set aside the Magistrate's order on the ground that the evidence was not inadmissible and that the postponement of the rectification of the error of the Magistrate may very possibly lead to a considerable waste of time or to a miscarriage of justice. CROWN v. SOBHA RAM, **70 P.L.R. 1904=8 P.R. 1904, Cr.** (12 P. R. 1902, Cr.=100 P.L.R. 1902; *D.*, 45 P.R. 1885, Cr., *R.*)

(3705)—Ss 423, 435, 439—*See* HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 26 C. 746=3 C.W.N. 598.

(3706)—*Ss.* 423, 438—*Retrial and recording further evidence, difference between.*—Where an appellate Court passes an order of remand under s. 423, it cannot restrict the evidence to be taken to that mentioned in its order, but it should order the case to be re-tried in view of the instructions contained in its order. In such a case, it is open to the accused person to adduce such additional evidence as he may desire. MIR SARWARJAN v. KING-EMPEROR, **3 C.L.J. 303=3 Cr. L.J. 304.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3707)— Ss. 423, 439—*Reference to High Court.*—When an appellate Court does not dismiss an appeal summarily, it must dispose of it in the manner provided by s. 423, Crim. Pro. Code. It has no power to refer to the High Court for decision a question of law arising in an appeal. EMPEROR v. SULAIMAN, **7 L.B. R. 251 = 25 Ind. Cas. 995 = 15 Cr. L.J. 667.**

(3708)—*Ss.* 423 *and* 439—*Power of High Court to alter finding on revision.*—The Chief Court can, on the revision side, when an accused has been convicted of one charge and acquitted of another, convert the acquittal into conviction. BHOLA v. EMPEROR, **12 P.R. 1904, Cr. = 110 P.L.R. 1904.** (22 C. 164, 9 A. 134, *R.*)

(3709)—*Ss.* 423, 439—*Finding of lower Court whether superior Court could alter on appeal or revision.* — The question in this case was whether the alteration, by the Sessions Judge, of the finding of the lower Court and that of the conviction of that Court, under s. 379 of the Penal Code, to one under s. 392 of the same Code was within the powers conferred on him by s. 423. *Held*, it is competent for a superior Court to alter a finding of the lower Court, provided that the accused is not thereby convicted of a more serious offence than the original one. The ordinary rule applicable to such cases is that, on appeal or revision, an accused person cannot be convicted of an offence of which he could not have been convicted by the Court which tried him. KING-EMPEROR v. PO YIN, **3 L.B.R. 232.** (25 A. 534, *Diss.*; 6 C.L.R. 427 = 8 A. 120 = 3 C.W.N. 367, 653 = 26 C. 863, 27 C. 660, *F.*)

(3710)—Ss. 423, 439—*See* COMMITMENT TO SESSIONS COURT, 15 A. 205 = A.W.N. 1893, 105.

(3710-*a*)—Ss. 423, 439—*See* ACQUITTALS—REVISION, 18 P.R. 1883, Cr., 9 A. 134, F.B. = A.W.N. 1886, 322, 10 P.R. 1900, Cr.

(3711)—Ss. 423. 439—*See* REVISION—COMMITMENTS, 27 B. 84 = 4 Bom. L.R. 779, F.B.

(3712)—Ss. 423, 439—*See* REVISION, GENERAL—PRINCIPLES, 8 B. 197.

(3713)—Ss. 423. 439—*See* REVISION—SENTENCES, A.W.N. 1890, 225.

(3714)—*Ss.* 423, 439 (5), 531—*High Court's power to revise an order of acquittal at the instance of a private party—Practice—Offence under ss.* 143 *and* 379. *I.P.C.—Decision on a point of local jurisdiction and not on the merits —Duty of appellate Court.*—S 439 (5), Crim. Pro. Code, does not bar the High Court's power to interfere with an order of acquittal on an application made at the instance of a private party; the Calcutta High Court can deal with such an order in accordance with the practice of that Court in a series of cases. In a case under ss. 143 and 379, Penal Code, what the appellate Court has to find is whether those offences had been made out, not with reference to any dispute as to jurisdiction, but on the merits and in accordance with the evidence. The appellate Court ought not to overlook the provisions of s. 531, Crim, Pro. Code, and set aside a conviction, on the ground that the place of occurrence was beyond the local limits of the trying Magistrate's jurisdiction. KANGALI SARDAR v. BAMA CHARAN BHATTACHARJEE, **38 C. 786 = 12 Ind. Cas. 985 = 12 Cr. L.J. 609.**

(3715)—Ss. 423 and 492—*See* APPELLATE COURT, 16 P.R. 1895, Cr.

(3716)—*Ss.* 423, 495 (= *Crim. Pro. Code*, 1882, *ss.* 423 *and* 495)—*Vakil instructed to support the prosecution—Right to be heard.*—There is nothing in s. 423 which prevents an appellate Court from hearing a Vakil privately instructed to support the prosecution, and when the Public Prosecutor does not appear on behalf of the Government, it would generally be discreet on the part of the Court to do so. HIGH COURT'S LETTER, 28TH AUG. 1883, NO. 2017, **2 Weir 476.**

(3717)—*Ss.* 423, 537, *cl.* (*a*)—*Rioting—Judgment of appellate Court, absence of finding in, as to common object of unlawful assembly—Penal Code, s.* 147—*Failure of the common object charged—Defective description in the charge —Applicability of s.* 537, *cl.* (*a*) *of the Code.*—The charge against the accused was to the effect that they committed a riot "with the common object of taking possession of some property by means of criminal force, or to enforce a right or supposed right on it." It was found by the lower appellate Court that the opposite party was trying to encroach upon the disputed land, possession of which had been given to the accused by an order under s. 145 and as the accused were thus already in possession of the land, their common object could not have been to take possession of the same by force. Neither the judgment of the lower appellate Court nor that of the Magistrate contained any statement which, even by implication, might be supposed to contain a finding as to what the common object, if any, of the accused was. *Held*, per *Woodroffe* and *Mookerjee, JJ.*, it being essential to sustain a conviction, under s. 147, I.P.C., that the persons forming the unlawful assembly should be animated by a common object and, the common object alleged in the charge in the present case not having been made out, the conviction ought to be set aside and the accused acquitted. The present case is covered by the principle laid down in the case of *Rahimuddy* v. *Asgar Ali*, 27 C. 990, where it was *held* that, if the common object fails and the substantive charge is disbelieved, the accused should be acquitted, and that it is not proper for an appellate Court, while disbelieving the common object of an unlawful assembly, to find out a different common object, regarding which the accused were never called upon to plead nor tried, and to affirm the conviction. Further, the accused in this case have been prejudiced by reason of the omission in the charge to specify the property, in respect of which the riot is alleged to have taken place, and the omission could not be cured by having recourse to s. 537, cl. (*a*) in

Crim. Pro. Code (Act V of 1898)—*continued.*

a case like the present, where the specification in the charge of the property in respect of which the riot is said to have taken place, would alter the whole complexion of the case. *Held*, further, the present case falls within the rule that, if persons are rightfully in possession of land and find it necessary to protect themselves from aggression, they are justified in taking precautions and using such force as is necessary to prevent the aggression and the accused, therefore, merely exercised their right of private defence against the encroachment by the opposite party. PORESH NATH SIRCAR v. EMPEROR, **33 C. 295 = 2 C.L.J. 516** (11 C. 106, 22 C. 276, 3 C.W.N. 605, *F.*; 24 C. 686, 16 C. 206, *D.*) [*R.*, 35 C. 103 = 7 Cr. L.J. 123, 35 C. 718 = 8 Cr. L.J. 203, 12 C.W.N. 384 = 7 Cr. L.J. 256; *D.*, 36 C. 158 = 8 C.L.J. 69 = 12 C.W.N. 944 = 8 Cr. L.J. 129, 1 Ind. Cas. 794.]

——S. 424 (= 1882, s. 424).

See APPEAL.

See APPELLATE COURT.

See JUDGMENT.

(3718)—*S.* 424 (= *Crim. Pro. Code*, 1882, *s.* 424)—*Appellate Court—Imputation on the motives of the lower Court.*—It is improper for an appellate Court to record in its judgment grave imputations on the motives of an officer whose decision is under appeal, when such imputations have no other foundation than suspicion. *In re* YAKOOB SAHIB, **2 Weir 535.**

(3719)—*S.* 424 (= *Crim. Pro. Code*, 1882, *s.* 424)—*Duty of appellate Court.*—It is the duty of an appellate Court in every case to examine the evidence for itself and to give to an accused person, the benefit of any reasonable doubt which it may entertain after such examination. In every case, it is its duty to arrive at an independent opinion. *In re* YAKOOB SAHIB, **2 Weir 535.**

(3720)—*S.* 424—*Appellate Court whether entitled to alter conviction for principal offence into one of abetment—Abettor present at commission of offence, whether can be convicted of principal offence.*—An Appellate Court cannot alter a conviction of an accused into one of abetment. If an accused who abetted an offence was present at the commission of it, he is rightly convicted of the principal offence. *In re* PERUMAL NAIDU, **15 Cr. L.J. 694 = 26 Ind. Cas. 142.**

(3721)—S. 424—*See* HIGH COURT, JURISDICTION OF—GENERAL, 2 Weir 534.

(3722)—S. 424—*See* Nos. 723, 3312, 3344 to 3347, 3606, 3607 and 3696, *supra.*

(3723)—*Ss.* 424, 367 (= *Crim. Pro. Code*, 1882, *ss.* 424 *and* 367)—*Duty of appellate Court.*—The appellate Court should decide both on the sufficiency of the prosecution evidence to warrant a conviction, and on its reliability. SAMSHIR ALI SHAH, *Petitioner*, **2 Weir 536.**

(3724)—*Ss.* 424, 367—*Appellate Court—Judgment of—What it should contain.*—S. 424 read with s. 367, Crim. Pro. Code, requires the judgment in appeal to state the points for determination, the decision thereon and the reasons for the decision. Where the trying Magistrate went very carefully into the circumstances attending a search and the finding of property, and recorded a definite finding that the applicant could not be held responsible for the property found, and where the appellate Magistrate arrives at a different finding and supports his finding by the solitary remark 'I can see no reason to suspect the evidence as regards the finding of the property.' *Held*, that, in the circumstances of the case, there was not a sufficient compliance with the provisions of the Code of Criminal Procedure as to what a judgment should contain. NGA PO HAN v. KING-EMPEROR, **U.B.R. 1913, 2nd Qr., 169 = 21 Ind. Cas. 170 = 14 Cr. L.J. 570.**

—— S. 426 = (1882, s. 426; 1872, ss. 281, 297 1861, s. 421).

See APPEAL.

(3725)—*S.* 426 (= *Crim. Pro. Code*, 1882, *s.* 426) — *Suspension of sentence.*—The only Courts which have power to suspend the execution of a sentence or order, are the Court to which an appeal lies and the High Court. A Sessions Judge has no power, therefore, to suspend the operation of the sentence passed on certain accused persons by a second class Magistrate under s. 426. It is only when the convicted person had been released that the term during which the sentence is suspended shall be excluded. GOVERNMENT PLEADER v. KODU MOIDIN ROWTHER, **2 Weir 536.**

(3726)—S. 426—*See* Nos. 104, 1021, 2001, 2514, 3068, 3434, 3562, 3608, 3610, 3697, *supra*, 3804, 3974, 3975, 4796, *infra.*

(3727)—Ss. 426, 439 (1 to 4), 440—*See* BAIL, 6 M. 63 = 2 Weir 409 = 2 Weir 577 = 2 Weir 656.

(3728)—Ss. 426, 439 (1 to 4), 440 and 144—*See* NUISANCE UNDER CRIM. PRO. CODE, 6 N.W.P. 16.

(3729)—Ss. 426, 439, 400—*See* REVISION—GENERAL PRINCIPLES, 26 P.R. 1880, Cr.

(3730)—Ss. 426, 439, 403—*See* APPEAL—APPEAL FROM ACQUITTAL, Rat. Un. Cr.C. 73.

(3731)—*Ss.* 426, 439, 440 (= *Crim. Pro. Code* 1872, *s.* 297)—*Improper discharge—Powers of High Court.*—The High Court's interference with an improper discharge is not limited to cases where there has been an error in law, the facts having been properly found by the Magistrate, the law has been misapplied and the accused erroneously declared not to have committed any offence. It can set aside the order of discharge and order a re-trial, in cases where the evidence shows sufficient grounds for putting an accused person on his defence. *In the matter of* TROYLOKHYANATH MITTER, **1 C.L.R. 83.**

(3732)— *Ss.* 426, 439, 440 (= *Crim. Pro. Code*, 1872, *s.* 297)—*Improper acquittal—When High Court can interfere.*—(*a*) Under Act X of 1872, provision is made for an appeal by Government in cases of improper acquittal. (*b*) From this, and from the circumstance that s. 297 of the

Crim Pro. Code (Act V of 1898)—*continued.*

Crim. Pro. Code, 1872, while it expressly gives power to the High Court to correct errors in cases of improper discharge, conviction and sentence, says nothing of improper acquittal, the intention of the Legislature seems to have been that there should be no interference with an acquittal, except on a formal appeal. EMPRESS v. MIYAJI AHMED, **3 B. 150.** [*F.*, 15 Cr. L.J. 236=23 Ind. Cas. 188=26 M.L.J. 160 =1914 M.W.N. 273; *R.*,L.B.R. 1872-1892,241.]

(3733)—*Ss.* 426, 439, 440 (=*Crim. Pro. Code,* 1872, *s.* 297)—*Revisional powers of the High Court.*—The High Court exercised its revisional powers by taking judicial notice of a letter from the Government enquiring "whether in the opinion of the High Court the judgment of the Magistrate was legal and equitable" and by disposing of it under s. 297, Crim. Pro. Code. EMPRESS OF INDIA v. FOX, **2 A. 522.** [*F.*, A.W.N. 1887, 144.]

(3734)—Ss. 426, 439, 440—*See* PRACTICE AND PROCEDURE, A.W.N. 1882, 47.

(3735)—Ss. 426, 439, 440—*See* REVISION—ACQUITTALS, 1 A, 139, 6 P.R. 1875, Cr.,1 A.1. F.B.

(3736)—Ss. 426, 439, 440—*See* REVISION—DISCHARGE OF ACCUSED, A.W.N 1881, 63.

(3737)—Ss. 426, 439, 440—*See* REVISION—GENERAL PRINCIPLES, 13 P.R. 1880, Cr., 15 P.R. 1875, Cr.

(3738)—Ss. 426, 439, 440—*See* REVISION—MATTERS PERTAINING TO EVIDENCE, 10 P.R. 1877, Cr.

(3739)—Ss. 426, 439, 440—*See* REVISION—QUESTION OF FACT, Rat. Un. Cr. C. 177= Cr. Rg. 31-8-1881.

(3740)—Ss. 426, 439, 440—*See* REVISION—SENTENCES, 3 A. 545, F.B., 41 P.R. 1880, Cr.

(3741)—Ss. 426, 439, 440, 144—*See* REVISION—MISCELLANEOUS CASES, 17 P.R. 1875, Cr.

(3742)—Ss. 426, 439, 440, 144, 435—*See* REVISION—MISCELLANEOUS, 2 P.R. 1880, Cr.

(3743)—*Ss.* 426, 439, 440, 476 (=*Crim. Pro. Code, Act* X *of* 1872, *ss.* 297, 471)—*District Munsiff—Penal Code, s.* 209.—Where a District Munsiff, after the confirmation of his decree dismissing a suit as false, called on the plaintiff to show cause and eventually sent him to be tried by a Magistrate for an offence under s. 209 of the Penal Code, *held* that the order was one passed under s. 471 of the Crim. Pro. Code, and that, since the enquiry was not one in the nature of a judicial proceeding, the High Court could not revise it under s. 297 of the Crim. Pro. Code. RAM GOPAL v. SHEO KHATIK, **A.W.N. 1882, 92.** [*Disc.*, A.W.N. 1882, 229.]

(3744)—*Ss.* 426, 439, 440, 477 (=*Crim. Pro. Code,* 1872, *ss.* 297, 472)—*Powers of commitment of a Court of Sessions—Revision by High Court.*—Where a Sessions Judge directed the commitment to the Sessions of a person, under s. 472, Crim. Pro. Code, for trial on charges under ss. 193, 195, 211, I.P.C., *held,* that the order of commitment was not bad, merely because it included the charge under s. 193, I.P.C., an offence not exclusively triable by a Court of Sessions. *Held* by Stuart, C J., (Spankie, J., *doubting.*) The High Court has power under s. 297 to set aside the commitment made by a Sessions Judge under s. 472 before the trial. EMPRESS OF INDIA v. LACHMAN SINGH, **2 A. 398.** [*F.*, 12 Cr. L.J. 50=8 Ind. Cas. 1161=33 P.R. 1910, Cr.=57 P.L R. 1911 =50 P.W.R. 1910, Cr.]

(3745)—*Ss.* 426, 439, 440, 523 (=*Crim. Pro. Code,* 1872. *ss.* 297, 416)—*Proclamation under s.* 416—*Judicial proceeding—Quære.*—Whether the issue by the Magistrate of a proclamation under s. 416 of Act X of 1872 is a "judicial proceeding" within the meaning of s. 297 of that Act. EMPRESS OF INDIA v. NILAMBAR BABU, **2 A. 276.** [*R.*, 12 A.W.N. 102,]

(3746)—*Ss.* 426, 514 (=*Crim. Pro. Code, Act* X *of* 1882, *ss.* 426, 514)—*Defect in bail bond —Forfeiture.*—Where a bail bond fixes neither the time for the production of the prisoner nor the place, it cannot be forfeited on the non-appearance of the prisoner. Where the bond is for the appearance of an appellant before the High Court, the District Magistrate has no jurisdiction to order forfeiture. *In the matter of the petition of* CHATTAR SINGH, **A.W.N. 1885, 41.**

——S. 427 (=1882, s. 427 ; Presidency Magistrate's Act, 1877, s. 168).

(3747)—S. 427—*See* Nos. 3565 and 3698, *supra.*

——S. 428 (=1882, s. 428 ; 1872, s. 282, paras. 1, 3, 4 ; 1861, s. 422).

See APPEAL.

(3748)—*S.* 428—*Appellate Court directing further enquiry by police.*—S. 428 of Crim. Pro. Code, does not authorise an appellate Court to send a case to the police for further investigation, the case having been originally started by a complaint in Court. QUEEN-EMPRESS v. MAHESHRI, **A.W.N. 1900, 130.**

(3749)—*S.* 428 (=*Crim. Pro. Code,* 1872, *s.* 282)—*Order for further enquiry.*—When persons accused of an offence are committed to the Court of Sessions under distinctly framed charges, and that Court takes all the evidence produced by the prosecution, and that evidence fails to sustain the charge, the High Court will not, except in very exceptional circumstances, direct that further enquiry should be made or that additional evidence should be taken. EMPRESS OF INDIA v. FATEH, **5 A. 217.**

(3750)—*S.* 428—*Dismissal of appeal after taking additional evidence—Right of accused to appeal to High Court.*—An appellant whose appeal is dismissed by an appellate Court, after it has taken additional evidence, under s. 428, has no right of appeal to the High Court. QUEEN-EMPRESS v. ISAHAK, **27 C. 372=4 C. W.N. 497.**

(3751)—*S.* 428—*Remand by appellate Court for additional evidence and finding—Illegal.*—

Crim. Pro. Code (Act V of 1898)—*continued.*

S. 428 of the Crim. Pro. Code does not empower an appellate Magistrate to call for a fresh finding from a subordinate Magistrate. The appellate Magistrate is not competent to act upon the finding by the Sub-Magistrate on the additional evidence. MUTHUKARUPPAN SERVAI v. VELLAYYA KUDUMBAN, **1914 M. W.N. 778 = 16 Cr. L.J. 79 = 26 Ind. Cas. 671.**

(3752)—*S.* 428 (=*Crim. Pro. Code*, 1872, *ss.* 70, 282) —*Assault—Jurisdiction—Inquiry as to place where assault was committed—Power of appellate Court.*—The petitioner was complainant in a case of assault, in which the Assistant Magistrate of Purneah convicted the defendants, and sentenced them to various terms of imprisonment and fine. They appealed to the Sessions Judge, and the Judge, after ordering a further enquiry as to the place where the assault was committed came to the conclusion that it had taken place within the district of Maldah, and that, therefore the Assistant Magistrate of Purneah had no jurisdiction. *Held*, that the Judge had no jurisdiction, under s. 70, Crim. Pro. Code, to make such an order, the accused not having been prejudiced in his defence; and further that he ought not to have ordered the enquiry as to the place where the assault was committed, that question having no bearing on the guilt or innocence of the accused. SHEIKH MOHAMAD GOLAB v. MOHABEER SINGH, 23 **W.R. Cr. 34.**

(3753)—S. 428—*See* APPELLATE COURT, 31 C. 710.

(3754)=S. 428—*See* ASSESSORS, 15 A. 136 = A.W.N. 1883, 50.

(3755)—S. 428—Appellate Court—When can call for further evidence—*See* LIBEL, 10 M.L. T. 506 = (1911) 2 M.W.N. 576 = 12 Ind. Cas. 961 = 12 Cr. L.J. 585 = 36 M. 457.

(3756)—S. 428—*See* Nos. 2223, 3525, 3526, 3566, 3699, 3700 and 3701, *supra.*

(3757)—*Ss.* 428, 423 — *Duty of appellate Court—Admission of additional evidence—Reliance upon matters not in evidence before appellate Court—Effect.*—The Sessions Judge in appeal, acting under s. 428, might take additional evidence or order it to be taken by the Magistrate, but he must record his reasons for admitting additional evidence and comply with the provisions of Ch. XXV as if the taking of such evidence was an enquiry. An appellate Court should not rely upon matters which are not in evidence before it. *In re* CHINTHALAPUDI KOTIAH, **8 M.L.T. 428 = 8 Ind. Cas. 943 = 11 Cr. L.J. 734 = 1910 M.W.N. 829.**

(3758)—*Ss.* 428, 437, 439—*Power of Sessions Judge or District Magistrate to take, or to direct the taking of evidence supplementary to the evidence given in the lower Court.*—S. 437 does not authorise a Sessions Judge or District Magistrate to take evidence or to direct evidence to be taken supplementing the evidence given in the lower Court. He is authorised to direct a further enquiry, but not to take evidence or direct evidence to be taken. Under s. 428, an appellate Court dealing with an appeal may direct additional evidence to be taken and itself record such evidence. The High Court, under s. 439, has powers as an appellate Court to direct evidence to be taken. No such powers are given to the Session Judge or the District Magistrate under s. 437. MONI MOHUN MONDOL v. ISHWAR CHUNDER MOOKERJEE, **6 C.L.J. 251 = 6 Cr. L.J. 357.** [*R.*, 8 M.L.T. 81 = 6 Ind. Cas. 12 = 11 Cr. L.J. 221.]

(3759)—*Ss.* 428, 537—*Order calling for fresh evidence under s.* 428—*Failure to record reasons —Order calling for finding instead of evidence—Irregularities—Whether cured by s.* 537.—The failure of a Deputy Magistrate to state his reasons for ordering fresh evidence under s. 428, Crim. Pro. Code, is an irregularity that is cured by s. 537. But where he disregarded the provisions of the section by calling for a finding instead of merely calling for the evidence, his order will be set aside and the case will have to be re-tried. KING-EMPEROR v. KARNAM BENU PATNAIK, **9 M.L.T. 406 = 10 Ind. Cas. 290 = 12 Cr. L.J. 240.**

(3760)—*Ss.* 428, 540—*Power of appellate Court to take additional evidence—Penal Code, s.* 411—*Dishonestly receiving or retaining stolen property—Article of small value—Recent possession—Burden of proof—Evidence Act, s.*114 (*a*). —The powers of a Criminal Appellate Court, under s. 428 of the Crim. Pro. Code, are not analogous to those conferred on a Civil Appellate Court under s. 568 of the Crim Pro. Code, 1882. A Court of criminal appeal can take additional evidence at any time; only it must record its reasons for so doing. Where the accused was convicted under s. 411, I.P.C., of having been in dishonest possession of stolen property, *viz.*, a copper vessel, which was discovered seven months after its loss. *Held*, that the conviction was bad, as the *onus* was on the prosecution to prove guilty knowledge, and the failure of accused to account for his possession did not relieve the prosecution of the burden of proving that his possession was dishonest. *In re* BHAMI LUXUMAN SHANBAGA, **8 M.L.T. 418 = 8 Ind. Cas. 145 = 1910 M.W.N. 419.**

——S. 429 (=1882, s. 429; 1872 s. 271-B).

See APPEAL.

(3761)—S. 429—*See* Nos. 1211, 1924 and 2960, *supra.*

(3762)—*Ss.* 429, 439 (=*Crim. Pro. Code*, 1882, *ss.* 429 *and* 439)—*Rule issued by High Court on a Magistrate—Procedure.*—Where a Division Bench of the High Court issues a rule calling upon the Magistrate to show cause why the conviction and sentence should not be set aside on the ground that there was no evidence on the record connecting the accused with the offence, the High Court is not confined to see whether there is any evidence to go to the jury. The rule should be read, with the judgments which were before the Court at the time it was granted, reasonably in favour of the accused. RAKHAL NIKARI v. QUEEN-EMPRESS **2 C.W.N. 81.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3763)—Ss. 429 and 539 — *See* THEFT—GENERAL—WHAT CONSTITUTES THEFT, 27 C. 501=4 C.W.N. 480.

——S. 430 (=1882, s. 430; 1872, s. 285, 1861, s. 428).

(3764)—S. 430—*See* REVIEW, 7 B.H.C. Cr. 67.

(3765)—S. 430 — *See* SESSIONS JUDGE, JURISDICTION OF, 1 M.H.C. 4.

(3766)—S. 430—*See* Nos. 3609, 3611, 3701, *supra*, No. 3846, *infra*.

——S. 431 (=1882, s. 431).

See ABATEMENT OF APPEAL.

See APPEAL.

(3767)—*S.* 431 (=*Crim. Pro. Code*, 1882, s. 431)—*Death of appellant pending appeal—Effect.*—Where one of two appellants who had appealed against their convictions, dies pending the decision of the appeal, his appeal abates under s. 431, Crim. Pro. Code. The matter cannot be considered in the revision side of the High Court, when the case depends on appreciation of evidence. The remedy open to the representatives of the deceased appellant is by application to the Governor-in-Council; and these representatives will, if they so desire, be furnished with a copy of the judgment of the High Court in the appeal of the co-prisoner to support any such application. *In re* CHAND, **Rat. Un. Cr. C. 707=Cr. Rg. 40 of 1894.**

(3768)—S. 431—*See* ABATEMENT OF REVISION, 6 P.R. 1893, Cr.

(3769)—S. 431—*See* REVISION—MATTERS PERTAINING TO EVIDENCE, 19 B. 714=Rat. Un. Cr. C. 707=Cr. Rg. 40 of 1894.

——S. 432 (=1882, s. 432).

See HIGH COURT, JURISDICTION OF.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF.

See REFERENCE TO HIGH COURT.

See REVISION.

(3770)—*S.* 432—*Reference by District Magistrate—Opinion solicited.*—Except in cases where there is a reference under s. 432, a High Court cannot and will not express an opinion upon any question, unless it is brought before it in the ordinary way by application for revision. CROWN v. BAKULI, **9 Cr. L. J. 248=1 S.L.R. 4, Cr.**

(3771)—S. 432 (2)—*See* CHARGE TO JURY—MISDIRECTION, 2 Weir 501.

(3772)—S. 432—*See* Nos. 2505, 2506, *supra*.

——S. 433 (=1882, s. 433).

(3773)—S. 433—*See* No. 2207, *supra*.

——S. 434 (=1882, s. 434; Act X of 1875, s. 101).

See HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT.

Crim. Pro. Code (Act V of 1898)—*continued.*

See REFERENCE TO HIGH COURT.

See REVIEW.

See REVISION.

(3774)—*S.* 434 (=*Crim. Pro. Code*, 1882, s. 434)—*Reserving of question of law on application by prisoner's counsel—Right to begin—Nature of High Court's power under section.*—Where, on the application of the prisoner's counsel, a question of law has been reserved for the decision of the Court under s. 434, the counsel for the prisoner has the right to begin. The power which the High Court exercises under s. 434 is that of review, and the Court is a Court of reference and revision. QUEEN-EMPRESS v. APPA SUBHANA MENDRE, **8 B. 200.** [*R.*, 3 L.B.R. 75.]

(3775)—*S.* 434—*Reservation of points.*—At the close of the summing up by the Judge, the Counsel for the accused asked for a reservation, under s. 434, Crim. Pro. Code, upon the following points:—(1) Whether there is any sufficient order or authority, within the meaning of s. 196, Crim Pro. Code, for the complaint made in this case. (2) Whether the High Court had power, notwithstanding the absence of a sufficient order or authority, to accept the commitment under s. 532, and to proceed with the trial. (3) Whether disaffection means simply want of affection in any degree towards the British rule or its representatives. The Judge refused to reserve them. The Full Bench refused leave to appeal to the Privy Council. QUEEN-EMPRESS v. BAL GANGADHAR TILAK, **22 B. 112.**

(3776)—S. 434—*See* Nos. 1259 and 3034, *supra*.

(3777)—Ss. 434 and 439—*See* SENTENCE—POWERS OF APPELLATE COURT, ENHANCEMENT, 3 M.L.T. 312=7 Cr. L.J. 361.

——S. 435, paras. 1 to 3 (=1882, s. 435; 1872, ss. 294, 295, para. 1, 520; 1861, ss. 405, 434).

See HIGH COURT, JURISDICTION OF.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF.

See REFERENCE TO HIGH COURT.

See REVIEW.

See REVISION.

(3778)—*S.* 435 (=*Crim. Pro. Code*, 1872, ss. 294 *and* 295, *para.* 1; 1861—1869, *s.* 405)—*Power of Joint Sessions Judge.*—A Joint Sessions Judge cannot act where a Magistrate has made an order as to possession of land without judicial enquiry, under s. 295, which applies only to the Sessions Judge of the division. SHOINDOO NOSHYO v. RUNG LALL JHAH, **25 W.R. Cr. 21.**

(3779)—*S.* 435—*Practice.*—The object of the legislature, in s. 435 of the Crim. Pro. Code is to set right some patent defect or error and not to give the High Court a roving commission to look out for some trace of a possible error. EMPRESS v. DUKES, **A.W.N. 1899, 135.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3780)—*S.* 435 (=*Crim. Pro. Code,* 1882, s. 435)—*Scope of.*—The reason for the substitution of the word "inferior" in the Code of 1882 for the word "subordinate" used in the corresponding s. 295 of the Code of 1872 is to meet the rulings, that a District Magistrate is not subordinate to the Sessions Judge, and to provide that, nevertheless, the revisional authority of the latter over the former should remain unquestionable. Of course, other Magistrates of the District are "subordinate" and, therefore, "inferior" to the District Magistrate. OPENDRO NATH GHOSE v. DUKHINI BEWA, **12 C. 473, F.B.**

(3781)—*S.* 435 (=*Crim. Pro. Code,* 1882, s. 435)—*Powers of High Court under—Revision.*—Under s. 435 of the Code of 1882, the High Court has power to call for and examine the record of any proceeding before an inferior Court for the purpose of satisfying itself as to the correctness, legality or propriety of any sentence or order recorded or passed, and as to the regularity of any proceeding of such inferior Court. *In re* GANGAMMA, **2 Weir 538=2 Weir 669.**

(3782)— *S.* 435— *Non-exercise or improper exercise of powers of discretion vested in a Magistrate—High Court's powers of interference.*—S. 435 of the Code gives the High Court ample power to interfere, should it see fit to do so, in any case where a Magistrate has either refused to exercise a discretion vested in him by the law, or has exercised that discretion in an improper manner, or on improper grounds. NIZAM OF HYDERABAD v. A. M. JACOB, **19 C. 52.**

(3783)—*S.* 435 (=*Crim. Pro. Code,* 1872, s. 435)—*Revisional powers of District Magistrate.*—A District Magistrate is justified, under s. 435, Code of Criminal Procedure, 1882, in calling for and examining the proceedings of any Magistrate of whatever class in his own district, even a Magistrate of the first class exercising jurisdiction in the same district. *In the matter of a reference by the* JUDICIAL COMMISSIONER OF BRITISH BURMA UNDER S. 76 OF THE BURMA COURTS ACT OF 1875, **L.B.R. 1872—1892, 387**

(3784)—*S.* 435—*Revisional powers of District Magistrate.*—A District Magistrate is competent to call for and examine the record of the proceedings before a first class Magistrate, situate within the local limits of his jurisdiction. *In the matter of* GANGA PERSHAD, **S. C. 88, Oudh.** (5 A.W.N. 257 and 8 M. 18, *R.*)

(3784-*a*)—*S.* 435 — *Revisional powers of District Magistrate.* — A District Magistrate is competent, under s. 435 of the Crim. Pro. Code, to call for, and deal with, the record of any proceeding before any Magistrate of whatever class in his own district. OPENDRA NATH GHOSE v. DUKHINI BEWA, **12 C. 473, F. B.** (*F.*, **L.B.R. 1872—1892, 387.**]

Crim. Pro. Code (Act V of 1898)—*continued.*

(3785)—*S.* 435—*Reference to District Magistrate—Power of District Magistrate to record evidence.*—The Code does not empower a District Magistrate to record evidence of his own motion in a case which comes before him under s. 435. KING-EMPEROR v. MULLA IBRAHIM ABDUL, **3 Bom. L.R. 677.**

(3786)—*S.* 435—*High Court—Criminal revision jurisdiction—Penal Code,* s. 124-A—*Sedition—Attempt to publish sedition—Intention in sedition is a question of fact.*—It is the settled practice of the High Court to refuse to interfere, in the exercise of its revisional jurisdiction, in regard to findings of fact except on very exceptional grounds, such as mis-statement of evidence by the lower Court or the misconstruction of documents, or the placing by that Court of the *onus* of proof on the accused contrary to the law of evidence. To constitute an attempt punishable under the Penal Code, all that is necessary is some external act, something tangible and ostensible, of which the law can take hold as an act showing progress towards the actual commission of the offence. It does not matter that the progress was interrupted. An attempt to publish sedition is complete as soon as the copy containing it is sold. It is none the less an attempt because something external to the accused happened, which prevented a perusal of the article by the buyers or any other member of the public. In offences punishable under s. 124-A, Penal Code, the question of intention is one of fact. *Held*, on construction of the article in question, that its object and intention was to bring the Government contemplated by s. 124-A into hatred and contempt. EMPEROR v. GANESH BALVANT MODAK, **12 Bom. L.R. 21.**

(3787)—*S.* 435 —*Judgment, contents of—Revision—Criminal cases—Power of Chief Court to expunge passage from judgment.*—It is improper on the part of a Magistrate to record an opinion of the guilt of a person who is discharged, when the evidence for the prosecution does not justify the framing of a charge. When a Magistrate discharged the accused, but, by a passage in the judgment, recommended the police to insert his name in their list of bad characters, and the Sessions Judge, on the authority of Punjab Law Reporter. No. 164 of 1901, sent the case to the Chief Court for orders, the Chief Court directed the recommendation to be expunged from the judgment. MODI SHAH v. CROWN, **80 P.L.R. 1904.**

(3788)—*S.* 435 (=*Crim. Pro. Code,* 1882, s. 435)—*Appeal to District Magistrate by one of several accused—Power of the latter to take cognizance of the sentence passed on another who has not appealed.*—A District Magistrate has no jurisdiction, while dealing with the appeal of one of several accused persons, to take cognizance of the conviction and sentence passed on another accused who has not appealed to him, except by reporting it to the High Court. Where the District Magistrate set aside the conviction and sentence passed on an accused person not appealing and transferred the

Crim. Pro. Code (Act V of 1898)—*continued.*

case to a Sub-Divisional Magistrate, who committed that accused to the Court of Sessions, *held*, that the order of the District Magistrate, with the proceedings taken thereunder, up to and inclusive of the order of commitment, should be set aside. QUEEN-EMPRESS v. SHEIK MOHIDEEN, **Rat. Un. Cr. C. 358 = Cr. Rg. 1 of 1888.**

(3789)—*S.* 435 (= *Crim. Pro. Code,* 1872, s. 295)—*Submission of record of inferior Court to High Court by Sessions Judge—Explanation for order passed.*—A Sessions Judge calling for the record of an inferior Court under s. 295 must, in submitting the records of the case for the orders of the High Court, also obtain and submit an explanation, from the inferior Court, of the order passed by it. MAILAMDI FAKIR v. TARIPULLA PRAMANIK, **8 C. 644.**

(3790)—*S.* 435 (= *Crim. Pro. Code,* 1882, s. 435)—*Inferior Criminal Court, meaning of.*—The words "inferior Criminal Court" in s. 435 of the Crim. Pro. Code mean inferior so far as regards the particular matter in respect to which the superior Court is asked to exercise its revisional jurisdiction. NOBIN KRISTO MOOKERJEE v. RUSSICK LALL LAHA, **10 C. 268 = 8 Ind. Jur. 376.** [*Diss.*, 9 B. 100, 8 M. 18, F.B. = 9 Ind. Jur. 73 = 2 Weir 540; *F.*, 7 A. 134 = A.W.N. 1884, 286, 10 C. 551; *R.*, 36 M. 275 = 12 M.L.T. 439 = 1912 M.W.N. 1154 = 23 M.L.J. 499 = 17 Ind. Cas. 65 = 13 Cr. L.J. 753; *D.*, 12 C. 473, F.B.]

(3791)—*S.* 435—*British Consul in the dominions of Sultan of Muscat—Revisional jurisdiction of Bombay High Court.*—The High Court at Bombay has no criminal revisional jurisdiction over the proceedings of Her Majesty's Consul within the dominions of the Sultan of Muscat. *In re* RATTANSEE PURSHOTAM, **24 B. 471 = 1 Bom. L.R. 840.**

(3792)—*S.* 435—*High Court—Revision—Inferior Criminal Court—District Registrar—Order granting sanction to prosecute.*—The District Registrar not being an "inferior Criminal Court" within the meaning of s. 435 of the Code, an order passed by him granting sanction to prosecute a person for an offence cannot be revised by the High Court under s. 435. *In re* ARDESHR KAVASJI, **14 Bom. L. R. 970 = 1 Bom. Cr. C. 214 = 13 Cr. L.J. 845 = 17 Ind. Cas. 717.**

(3793)—S. 435—*See* ACT IX OF 1890, s. 113, 13 P.R. 1891, Cr.

(3794)—S. 435—*See* BEN. ACT III OF 1889, s. 449, 3 C.L.J. 90 = 10 C.W.N. 182 = 3 Cr. L. J. 211 = 33 C. 287.

(3795)—S. 435—*See* BOM. ACT IV OF 1890, s. 44, 12 Bom. L.R 1029 = 8 Ind. Cas. 747.

(3796)—S. 425—*See* BOM. ACT IV OF 1890, s. 46, Rat. Un. Cr. C. 692 = Cr. Rg. 18 of 1894.

(3797)—S. 435—*See* BOM. ACT III OF 1901, s. 86, 9 Bom. L.R. 1347 = 6 Cr. L.J. 425.

Crim. Pro. Code (Act V of 1898)—*continued.*

(3798)—S. 435—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 A.L.J. 91 = A.W.N. 1907, 50 = 5 Cr. L.J. 117.

(3799)—S. 435—Accused discharged for want of jurisdiction—Appeal—Revision—*See* JURISDICTION—GENERAL, 9 A.L.J. 51 = 13 Ind. Cas. 921 = 34 A. 118 = 13 Cr. L.J. 169.

(3800)—S. 435—*See* SENTENCE—FINE, A. W.N. 1898, 109.

(3801)—S. 435—*See* SENTENCE—POWERS OF APPELLATE COURT—REVERSAL, 22 B. 760.

(3802)—S. 435 (1, 2, 3)—*See* BOM. ACT IV OF 1890, s. 43, Rat. Un. Cr.C. 540 = Cr. Rg. 13 of 1891.

(3803)—S. 435—*See* Nos. 42, 102, 111, 135 to 138, 306, 309, 413, 428, 648, 923, 1022 to 1028 1032-*a*, 1192, 1212 to 1223, 1237, 1276, 1278, 1300, 1534, 1535, 1653, 1839, 1841 to 1844, 1876-*a*, 2002, 2061, 2096, 2097, 2124, 2141, 2172, 2512, 2625, 2626, 2876, 3612, 3698, 3702 to 3705 and 3742, *supra*, and Nos. 4045-*a*, 4049, 4210, 4210-*a*, 4211, 4212 and 4842, *infra*.

(3804)—*Ss.* 435 (1, 2 *and* 3), 426, 439 (1, 2, 3 *and* 4), *and* 440 (= ss. 295 *and* 297 *of the Code of* 1872)—*Remand of dismissed case for re-trial—Procedure of superior Magistrate.*—A District Magistrate cannot remand a case, once enquired into and dismissed, for retrial by a subordinate Magistrate. (20 W.R. Cr. Rul. 47, 1 Cal. 282, p. 2, *supra*, *Referred to*). He can accept a fresh complaint, if fresh evidence be procurable or report the case, in the absence of fresh evidence, for the orders of the High Court under s. 297. *In the matter of the petition of* DIJAHUR DUTT, **4 C. 647.** [*R.*, 29 M. 126 = 16 M.L.J. 79 = 1 M. L.T. 31, 5 C.W.N. 457, 2 L.B.R. 27.]

(3805)—*S.* 435 (3)—*Jurisdiction of High Court.*—The jurisdiction of the High Court not appointed by Royal Charter to interfere on revision in proceedings taken under ch. XII is entirely barred by sub-s. 3 of s. 435 of the Crim. Pro. Code RAJ CHUNDRO v. PO SEIN, **2 L B.R. 239.** (24 B. 527, 27 C. 892, 6 C.W.N. 737, 26 C. 183, 27 C. 259, 30 C. 155, 2 P.R. 1899, Cr. 23 P.R. 1902, Cr., *R.*) [*R.*, 4 L.B.R. 75.]

(3806)—Ss. 435 (3), 449, 476, 537—*See* REVISION — GENERAL, PRINCIPLES, 3 L.B.R. 234, F.B.

(3807)—S. 435 (4)—*See* COMMITMENT TO SESSIONS COURT, 26 M. 477 = 2 Weir 542.

(3808)—*Ss.* 435 (4) 436, 437, 438—*Discharge by inferior Criminal Court—Order for further inquiry by District Magistrate—Sessions Court not competent to report the case under s.* 438 *to Chief Court—Scope of s.* 435 (4)—*Expression "further application" in s.* 435 (4)—*Meaning.*—A Court of Sessions is not empowered to report to the Chief Court under s. 438, Crim. Pro. Code, the order of a District Magistrate that urther enquiry be held by an inferior Criminal Court into the case of an accused person who has been discharged by that inferior Criminal

Crim. Pro. Code (Act V of 1898)—*continued.*

Court. (26 M. 477 and 17 M.L.J. 153, *R.*) S. 435 (4), Crim. Pro. Code, applies to all cases in which either a District Magistrate or a Sessions Judge has taken action, or has refused to take action, under s. 435 or 436, or 437 or 438, the object of the sub-section being the avoidance of a conflict between the orders of the District Magistrate and the Sessions Judge; and the words 'further application' in s. 435 (4) mean any other application in respect of the order in question of the inferior Criminal Court. CROWN v. WARYAM AND RALLA, **10 P.R. 1912, Cr. = 18 Ind. Cas. 886 = 14 Cr. L.J. 134 = 117 P.L.R. 1913.**

(3809) — *Ss.* 435 (4), 437, 528 — *Further enquiry—Dismissal, order of, by subordinate Magistrate—District Magistrate, finding of, on application by complainant—Sessions Judge, order by, directing further enquiry into complaint, if without jurisdiction—Jurisdiction of Sessions Judge, to direct further enquiry when District Magistrate, having co-ordinate jurisdiction, refused to direct further enquiry* —A complaint of an offence under s. 406, Penal Code, was disposed of by the trying Magistrate, with the order "Enter mistake of law, s. 406, Penal Code." The complainant thereupon put in another complaint before the District Magistrate, who sent it to the trying Magistrate for judicial enquiry and report, and after considering his report, he directed that the case should be entered as false and as the outcome of a civil dispute. The complainant then moved the Sessions Judge, who ordered a further enquiry under s. 437, Crim. Pro. Code: *Held*, that the order of the trying Magistrate was an order of dismissal of the complaint. (6 C.W.N. 638, 8 C.W.N. 456, *R.*) The District Magistrate, when he proceeded to revise that order and to have a further enquiry made, must have acted under s. 435, Crim. Pro. Code, as the case having been disposed of by a competent authority, it could not have been withdrawn by the District Magistrate to his own file under s. 528 of the Code, nor could he have directed a further enquiry under any other provisions of the Code. *Held* further, that, having regard to the provisions of s. 435, sub-s. (4) of the Code, the Sessions Judge should not have directed a further enquiry into the matter. SHAIKH SIDHIK v. SHAIKH CHAKARI KHANSAMA, **17 C.L.J. 608 = 17 C.W.N. 451 = 18 Ind. Cas. 683 = 14 Cr.L.J. 123.**

(3810) — *Ss.* 435, 107, 514 (= *Crim. Pro. Code, ss.* 294 *and* 502)—*Forfeiture of security bond—Order for levying the penalty, whether appealable.*—An order levying penalty on forfeiture of a bond for keeping the peace is not appealable, inasmuch as the person held liable to the penalty is not, within the meaning of the Code convicted on a "trial." Where a Deputy Magistrate, deciding that a bond for keeping the peace had been forfeited, levied the penalty under s. 502, and the Sessions Judge on appeal reversed the order, *held*, that the order of the Magistrate was not open to appeal.

Crim. Pro. Code (Act V of 1898)—*continued.*

ANANTHACHARI v. ANANATHACHARI, **2 M. 169.** [*R.*, 5 P.R. 1910, Cr. = 169 P.L.R. 1910 = 6 P.W.R. 1910, Cr. = 5 Ind. Cas. 827 = 11 Cr. L.J. 252.]

(3811)—Ss. 435, 118—*See* REVISION—QUESTION OF FACT, 9 Bom. L.R. 1385 = 7 Cr. L.J. 24 = 3 M.L.T. 53.

(3812)—Ss. 435, 121—Order declaring bond taken under ss. 20, 21—Sind Frontier Regulation, forfeited—Revision—*See* BOM. REG. III OF 1892, ss. 20, 21, 23, 7 S.L.R. 194 = 15 Cr.L. J. 544 = 24 Ind. Cas. 952.

(3813)—Ss. 435 and 195—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 2 Weir 160.

(3814)—Ss. 435 and 436 (*b*)—*See* DISTRICT MAGISTRATE, L.B.R. 1893—1900, 135.

(3815)—*Ss.* 435, 436, 437 *and* 532—*Discharge of accused charged with an offence exclusively triable by Court of Session—Further enquiry—Powers of District Magistrate and Sessions Judge.*—Under s. 436, the Sessions Judge and the District Magistrate have co-ordinate powers, in a case exclusively triable by a Court of Session, either to order commitment upon the evidence already taken or to direct a fresh enquiry, if the Magistrate has improperly discharged the accused person. QUEEN-EMPRESS v. SURENDRA NATH SARKAR, **28 C. 397 = 5 C. W.N. 574.** (10 B. 319, *R.*) [*F.*, 31 M. 40 = 7 Cr.L.J. 29 = 3 M.L.T. 25; *R.*, 107 P.L.R. 1911 = 11 P.W.R. 1910, Cr. = 5 Ind. Cas. 991 = 11 Cr. L.J. 347.]

(3816)—*Ss.* 435, 437 (= *Crim. Pro. Code,* 1882, *ss.* 435 *to* 437)—*Distinction between inferior and subordinate Magistrates—Powers of District Magistrates under s.* 435.—The term "subordinate" in s. 437 is comprised in the term "inferior" in s. 435. The reason for the employment of the latter term in ss. 435 and 436, was that in both those sections, the Court of Sessions and the District Magistrate are combined, and the Magistrates other than the District Magistrate, though subordinate to him are not generally so to the Court of Sessions. It was necessary, therefore, in ss. 435 and 436, to employ a term applicable to the relation of the Magistracy both to the supervising authority and the appellate tribunal. In s. 437, in which the District Magistrate is dealt with separately from the Court of Session, the use of the term "inferior" is no longer necessary and therefore the term "subordinate" is used. [*R.*, 12 C. 473.] Reading ss. 435 and 437 with s. 17, a District Magistrate has jurisdiction to entertain an application to call for and examine the record of a case in which a complaint was dismissed by a First Class Magistrate under s. 203, Crim. Pro. Code. *In the matter of the petition of* PADMANABHA, **8 M. 18 = 2 Weir 540 = 9 Ind. Jur. 73.** (10 C. 268, *Diss.*) [*R.*, 9 Cr.L.J. 104 = 25 P.R. 1908, Cr.]

(3817)—*Ss.* 435, 437—*Revision application dismissed by Sessions Judge for want of prosecution—District Magistrate's power to order*

Crim. Pro. Code (Act V of 1898)—*continued.*

further enquiry into case.—Where, at the time when a District Magistrate exercised his power of revision, there was no application before the Sessions Judge, nor had the latter exercised his power of revision, having merely rejected one before him for want of prosecution, *held,* that the District Magistrate had power to entertain the subsequent application and to order further enquiry into the case. The intention of the Legislature in enacting the last clause of s. 435, Crim. Pro. Code, is to prevent the Sessions Judge and the District Magistrate from simultaneously exercising their powers of revision in such a way as would amount to one of them, as it were, hearing an appeal from, or reviewing an order passed by the other of them. DEBI DIN v. KING-EMPEROR, **4 O.C. 119.**

(3818)—*Ss.* 435 *and* 437—*Charter Act,* s. 15—*Criminal proceedings, pending in subordinate Court—Interference of High Court, if legal—Civ. Pro. Code* (1908), *O.V, r.* 10, *and O.* XVI, *r.* 8—*Service of summons on witnesses, when complete—Process-server, if entitled to a general right of entry—Summons directed to one address — Process server entering without permission another house at a different address, if legal—Owner of house asking the peon to get out, if amounts to an offence—*'*Badava, Rascal,*' *use of, whether evidence an intention to provoke a breach of the peace—Penal Code, ss.* 189 *and* 504, *ingredients necessary to constitute offences under.*—The High Court has jurisdiction to interfere at any stage of criminal proceedings pending before a subordinate Court if it considers that such interference is required in the interests of justice. But this power ought to be exercised with great care and only in rare and exceptional cases. No hard and fast rule can be laid down as regards the class of cases in which the High Court will interfere. (22 C. 131, 25 C. 233, 26 C. 786, 20 B. 543, *F.*) The probability of the accused being eventually acquitted after a protracted trial is no ground for the non-interference of the High Court at an earlier stage to save a man from a groundless and vexatious prosecution. Under O. V, r. 10 and O. XVI, r. 8, Civ. Pro. Code, service of summons is complete when it is tendered to the witness, and his refusal to sign the original is immaterial. The mere entrusting of a subpœna to a process-server does not give him a general right of entry into any house without the permission of its owner or of the person in charge of it. In the absence of anything else to show that the accused intended to obstruct or did as a matter of fact obstruct the service of a summons, merely asking a process-server to go out of a house, accompanied by abuse, without any threat of violence, does not amount to an offence under s. 189, I.P.C. To constitute an offence under s. 189, I.P.C. there must be a threat of injury to a public servant for the purpose of inducing him to do any act, or forbear or delay to do any act, connected with the exercise of his public function. Mere abuse, without an intention to cause a breach of the peace or knowledge that a breach of the peace is likely, does not amount to an

Crim. Pro. Code (Act V of 1898)—*continued.*

offence under s. 504, I.P.C. An intention to provoke a breach of the peace cannot be inferred from the mere use of the expression 'Badava Rascal,' however improper the language may be. *In re* S. KUPPUSWAMI AIYAR, **28 M.L.J. 505=2 L. W. 463=17 M. L. T. 398=1915 M.W.N. 365=29 Ind. Cas 109.**

(3819)—Ss. 435 and 437—*See* FURTHER ENQUIRY, 5 M.L.T. 356=32 M. 214=3 Ind. Cas. 488, 7 A. 134, 6 M.L.T. 157.

(3820)—Ss. 435 and 437—*See* SESSIONS JUDGE, JURISDICTION OF, 17 M.L.J. 153=2 M.L.T. 24=5 Cr. L J. 132.

(3821)—*Ss.* 435, 437, 165 *and* 94—*District Magistrate, power of, to order further enquiry after discharge—House-search by Police officer—General search—Search for specific article—Criminal trespass—Right of private defence—Penal Code, ss.* 97, 99.—Every person has a right, subject to the restriction contained in s. 99, Penal Code, to defend property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling within the definition of criminal trespass. The law does not empower a police officer to search an accused person's house for anything but the specific articles which have been or can be made the subject of summons or warrant to produce. A general search for stolen property is not authorised, and the law cannot be got over by using such an expression as "stolen property relevant to the case," as the law requires the mention of specific things. Where one of the accused in resisting such a search pushed the Sub-Inspector and the latter ordered two constables to climb on his roof and break into the house, whereupon the villagers assumed a threatening attitude and threatened to cut them to pieces if they entered the house, and this empty threat was sufficient to prevent the Police from committing the trespass: *Held*—That the accused had not exceeded the right of private defence and were rightly discharged and there was no ground for further enquiry. PRANKHANG v. KING-EMPEROR, **16 C.W.N. 1078=17 Ind.Cas. 76=13 Cr.L.J 764.** [*Expl.*, 41 C. 261=17 C.W.N. 1209=14 Cr. L.J. 405=20 Ind. Cas. 229.]

(3822)—*Ss.* 435, 438 (=*Crim. Pro. Code,* 1882, *ss.* 435, 438)—*Sessions Judge—Enhancement of sentence—Procedure of District Magistrate.*—A District Magistrate who considers the sentence passed by a Sessions Judge inadequate should, instead of referring the case to the High Court under s. 438 of the Crim. Pro. Code, communicate with the Local Government or with the Public Prosecutor. QUEEN-EMPRESS v. KARSAN. **Rat. Un. Cr. C. 601=Cr. Rg. 20 of 1892.** (9 A. 362, 10 A. 146, *R.*)

(3823)—*Ss.* 435, 438 (=*Crim. Pro. Code,* 1872, *ss.* 295 *and* 296)—*Powers of Sessions Judge to call for records.*—The powers of a Sessions Judge to call for records under s. 295 are powers which are at all times to be exercised; and such powers may be put in force, not

Crim. Pro. Code (Act V of 1898)—*continued.*

merely on matters coming before the Judge, but also on matters coming to his knowledge on reliable information. HIGH COURT PROCEEDINGS, 21ST NOV. 1878, No. 1966, **2 Weir 538.** [*R.*, 2 M. 38 = 2 Weir 566.]

(3824)—*Ss.* 435, 438—*power of District Magistrate to report to High Court under, about an improper decision of a Sessions Judge.*—By the words ' or otherwise' in s. 438 of the Code, the Legislature never intended to give to a Magistrate the power to question the propriety of a judgment or sentence passed by a superior criminal authority. The High Court will, therefore, not interfere in revision with orders passed by a Sessions Judge upon a report submitted by a District Magistrate under the section. Nor is it desirable that a District Magistrate, who is for certain purposes subordinate to the Sessions Judge, should make a report of cases in which he may be dissatisfied with that Judge's decision. EMPEROR v. MAHABIRPURI, **2 N.L.R. 149 = 4 Cr. L.J. 422.**

(3825)—*Ss.* 435, 438 — *Revision — Further evidence not to be taken under s.* 438.—A District Magistrate, while exercising his revisional powers, has no power to take evidence under s. 438 of the Code. MAHAGINIA v. RAM CHARAN, **12 A.L.J. 461 = 15 Cr L.J. 375 = 25 Ind. Cas. 327.**

(3826)—Ss. 435, 438—*See* APPEAL—GENERAL, 5 M H.C. App. 10.

(3827) —Ss. 435, 438—*See* APPEAL—CASES WHERE APPEAL DOES NOT LIE, W.R. 1864 Cr. 23.

(3828)—Ss. 435, 438—*See* DISTRICT MAGISTRATE, 7 W.R. Cr. Cir. 1.

(3829)—*Ss.* 435, 438 (1)—*Power of additional Sessions Judge to revise or to refer to the High Court.*—An Additional Sessions Judge as such has not the powers of a Sessions Judge to call for the proceedings of Magistrates under s. 435 or to refer proceedings to the High Court under s. 438 (1), Crim. Pro. Code. CROWN v. ABDUL GUFFUR, **1 L.B.R. 119.** (5 C.W.N. 71, 9 B. 164, *R.*).

(3830)—Ss. 435, 438, 436—*See* SESSIONS JUDGE, JURISDICTION OF, A.W.N. 1881, 76.

(3831)—*Ss.* 435, 438, 439—*Appeal not preferred by Government from acquittal—Revision.*—Where the Local Government has not appealed from an acquittal, or where the District Magistrate does not move the Local Government to appeal, it is not proper and expedient for the High Court, as a general rule, to exercise the powers of revision, on a reference direct from the District Magistrate. *In the matter of* SHEIKH AMINUDDIN, **24 A. 346 = A.W.N. 1902, 89.** [*F.*, 4 Cr. L.J. 37 = 88 P.L.R. 1906 ; *R.*, 9 Cr. L.J. 211 = 5 N.L.R. 4, 15 Cr. L. J. 304 = 12 A.L.J. 255 = 23 Ind. Cas. 512, 1 Ind. Cas. 238, 2 S.L.R. 25, Cr. = 10 Cr. L.J. 237.]

(3832)—*Ss.* 435, 438 *and* 488 (3)—*Imprisonment on non-payment of maintenance to wife, order of—Reference by Sessions Judge to High Court on point of law.*—*Held*, that an order for commitment to prison for default in payment of a wife's maintenance-allowance cannot be made without proof that non-payment was due to the wilful neglect of the person ordered to pay. *Held*, further, that the Sessions Judge could properly report a case to the Judicial Commissioner's Court, if he was satisfied that the Magistrate's order was illegal, or if he was doubtful as to its illegality, but not if he was satisfied that it was legal. In s. 438, the words " the result of such examination " mean that the Sessions Judge or District Magistrate is to report the incorrectness, illegality or impropriety, if in his opinion such exists, of the finding, sentence or order recorded or passed by the inferior Court, or the irregularity, if in his opinion such exists, of the proceedings of such Court, and not that he is to refer abstract points of law to the High Court. CHOURI v. PUTAI, **5 O.C. 316.** (9 A. 240, 22 C. 291, 25 C. 291, 20 M. 3, *R.*)

(3833)—*Ss.* 435, 439 (= *Crim. Pro. Code,* 1861, *s.* 405)—" *Sentence or order,*" *scope of the expression.*—The words " sentence or order" in s. 405 are wide enough to include an order of discharge. HIGH COURT PROCEEDINGS, 26TH AUGUST, 1869, **4 M.H C. App. 70.**

(3834)—*Ss.* 435, 439—*Powers of High Court—Revision—Per Birdwood, J.*—Under ss. 435, 439, Crim. Pro. Code, the High Court can, in the exercise of its revisional jurisdiction, examine the records of cases for the purpose of satisfying itself as to the correctness or propriety, as well as the legality of any finding, sentence or order ; and where there are exceptional circumstances for its interference, it will, in the interest of justice, exercise the powers of a Court of appeal in dealing with them. *Per Jardine, J.*—The jurisdiction of the High Court to revise findings of facts exists as regards findings of Courts of appeal, as well as original Courts, as may also be inferred from the words of s. 430. The law does not impose any limit to this jurisdiction, except the discretion of the Judges who have regulated the discretion by rules which in practice limit its use. As a rule, while allowing a suitor to come to the revisional jurisdiction of the High Court, the High Court will not interfere (*a*) where, as a rule, the Legislature intended the original or appellate decisions on the facts to be final, (*b*) where the relief sought might be got from a Court of concurrent revisional jurisdiction below, and (*c*) where the lower Court's decision on the facts is not shown to be clearly or manifestly wrong. QUEEN-EMPRESS v. CHAGAN DAYARAM, **14 B. 331.** [*F.*, 34 B. 378 = 12 Bom. L.R. 21 = 5 Ind. Cas. 612 = 11 Cr. L. J. 180, Rat. Un.Cr.C. 708, Rat. Un. Cr.C. 826; *R.*, 16 B. 580 = Rat. Un. Cr. C. 577, 21 B. 567, 28 B. 533 = 6 Bom. L.R. 379, 22 C. 998, Rat. Un. Cr. C. 837, Rat. Un. Cr. C. 903.]

(3835)—*Ss.* 435, 439—*Presidency Magistrate—Discharge, order of—Interference in revision.*

Crim. Pro. Code (Act V of 1898)—*continued.*

—The High Court has power under s. 439 of the Code to order a further inquiry in a case, in which a Presidency Magistrate has discharged an accused person. MALIK PROTAB SINGH v. KHAN MAHOMED, **13 C.W.N 1221=3 Ind. Cas. 861=10 Cr.L.J. 385.** (15 C. 608, 27 B. 84, 7 C.W N. 521, *R*; 6 C.L.J 705, 33 C. 1282, 3 C.W.N. 601=27 C. 126, *Diss*; 5 C.W. N. 457=28 C. 5, *F.*).

(3836)—*Ss.* 435, 439—*Conviction for two offences—Conviction for one offence set aside without reduction of the sentence—Effect.*—*Held* that, where the accused has been convicted for two offences, and on appeal the conviction for one is set aside, there must be a reduction of the sentence, except where the Magistrate did not mean to pass any sentence for the offence, the conviction for which has been set aside. *In re* MARI, **7 M.L.T. 81=11 Cr.L. J. 243=5 Ind. Cas. 754.**

(3837)—*Ss.* 435, 439—*Appeal—Disposal by appellate Magistrate on prosecution evidence only—Legality.*—Where an appellate Magistrate dealt with the prosecution evidence only, and did not even allude to the evidence of the defence or the nature of the defence, *held*, that the Magistrate did not give the evidence the consideration which he was bound to give it, and that his order ought to be set aside. If the appellate Magistrate gives a judgment, which makes it appear probable that he has not fully heard and considered the appeal, his disposal of the appeal ought not to be allowed to stand. *In re* SEPERUMAL UDAYAN, **7 M. L.T. 182=5 Ind. Cas. 928=11 Cr. L.J. 331.**

(3838)—*Ss.* 435, 439—*Administrative circular of a District Magistrate—Prohibiting uncertificated pleaders from practising in the criminal Courts of the District—Procedure for aggrieved party.*—A circular by a District Magistrate, prohibiting uncertificated pleaders from practising in the Criminal Courts in his District, is not open to revision by the High Court. The proper course for the pleader, who has been refused appearance in a particular case by a Magistrate in pursuance of such circular, is to apply for the revision of the illegal or improper order of the Magistrate refusing to allow him to appear. CHINNASAMI IYER v. EMPEROR, **4 Ind. Cas 876=19 M.L J. 566= 11 Cr.L.J 69.**

(3839)—*Ss.* 435, 439—*Revisional powers of High Court — Practice and Procedure.* — Although s. 439 gives the High Court power to call for cases, not only on judicial information, but also "which otherwise come to its knowledge," yet, in most cases, it is the right practice that Judges should be moved in open Court; publicity is thus secured and a fuller hearing of the reasons which move the Government in the interests of public order, or a private individual in his own. It is, therefore, desirable that such motions should be made in the usual manner, however wide the powers of the Judges may be to interfere on knowledge otherwise acquired. QUEEN EMPRESS v. ABDUL RAHIMAN, **16 B. 580=Rat. Un. Cr. C. 577.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3840)—Ss. 435, 439—*See* BEN. ACT II OF 1907, ss. 2, 3, 6, 14 C.W.N. 404=37 C. 287.

(3841)—Ss. 435, 439—*See* MAD. ACT II OF 1907, s. 23 (3), 7 M.L.T. 183.

(3842)—Ss. 435, 439—*See* GAMING, 7 M.L. T. 189=5 Ind. Cas. 934=11 Cr. L.J. 334.

(3843)— Ss. 435, 439 — Defamation — Further enquiry when to be ordered—*See* PENAL CODE, ss. 95, 500, 1911, 2 M.W.N. 8= 10 M.L.T. 96=12 Cr. L.J. 497=12 Ind. Cas. 217.

(3844)—Ss. 435, 439—*See* PENAL CODE, s. 411, 4 P.W.R. 1907, Cr.

(3845)—Ss. 435, 439, 250—*See* COMPENSATION, Cr. Rg. 6 of 1890.

(3846)—Ss. 435, 439, 430—*See* SENTENCE—POWERS OF APPELLATE COURT—MITIGATION, 4 M.H.C. App. 36.

(3847)—*Ss.* 435, 439 *and* 478 (=*Crim. Pro. Code*, 1882, *ss.* 435, 439, 478)—*District Munsiff acting under s.* 478—*Power of Sessions Judge.* —Though certain magisterial powers have been given to a District Munsiff under s. 478, Crim. Pro. Code, for the purpose of investigating cases of contempt of Court, he still remains, while exercising those powers, a Civil Court and is not an inferior Criminal Court within the meaning of s. 435. He is not, therefore, amenable to the jurisdiction of the Sessions Judge. The Sessions Judge, therefore, has no jurisdiction to revise his proceedings. RAMACHANDRA RAJU v. SUBRAMANIA PILLAI, **5 M.L.J. 226.**

(3848)—*Ss.* 435, 476—*Revision of order passed by Civil Court under s.* 643, *Crim.Pro. Code.*—In a civil case, the Court, after delivering judgment, recorded an order which was stated to have been passed under s. 643, Crim. Pro. Code, 1882, sending "the case with the document to the District Magistrate for enquiry. Ss. 193, 199 and 471, I.P.C., relate to the offence committed." There was nothing to show that any enquiry was made by the Subordinate Judge, who recorded the order to satisfy himself that there were sufficient grounds for sending the case under s. 643, Crim. Pro. Code, to the Magistrate for investigation. *Held*, that, although the application was headed as one under s. 435, Crim. Pro. Code, it might be regarded as one made under s. 622, Crim. Pro. Code, that, as the order said to have been passed under s. 643, Crim. Pro. Code, did not contain any of the reasons which led the inferior Court to consider that there were sufficient grounds for sending the charge to the Magistrate for investigation, it was illegal, and that, if the order was to be treated as one passed under s 476, Crim. Pro. Code, it was equally open to the objection that there was no preliminary enquiry by the Court. RAM ADHIM v DURGA, **4 O.C. 96.** [*R.*, 15 Cr. L.J. 217=17 O.C. 25= 22 Ind. Cas. 1001.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(3849)—*Ss.* 435 *and* 476—*Calling for records under s.* 435, *whether a "judicial proceeding"—Action under s.* 476, *when could be taken.*—Where a District Magistrate calls up the record under s. 435, Crim. Pro. Code, his proceeding is not a judicial proceeding within the meaning of s 476. To adopt the procedure under s. 476, immediate action is contemplated, and to take such procedure after the lapse of several months is illegal. *In the matter of* SUBBARAYA VATHYAR, **15 M.L.J. 489 = 3 Cr. L.J. 118 = 2 Weir 601.** [*R.*, 31 M. 140 = 17 M. L.J. 584 = 3 M.L.T. 79 = 7 Cr. L.J. 54.]

(3850)—*Ss.* 435, 476—*Income-Tax Act* (II *of* 1886), *s.* 36—*Collector deciding objections to assessment of income tax as Revenue Court—Prosecution ordered for false statement in declaration.*—S. 435, Crim. Pro. Code, applies to proceedings before inferior Criminal Courts, and an order of a Collector under s. 36 of the Income-Tax Act, arising out of a proceeding pending before another officer, does not fall within the purview of that section. (3 Ind. Cas. 886 = 10 Cr. L.J. 395 = 3 S.L.R. 66, *F.*) A Collector deciding an objection to the assessment of income-tax may possibly be regarded as a Revenue Court. PANDIT GANGA SAHAI v. EMPEROR, **15 Cr. L.J. 2 = 22 Ind. Cas. 146.** (44 P.R. 1905, Cr. = 187 P.L.R. 1905 = 3 Cr. L J. 128, *R.*)

(3851)—*Ss.* 435, 517 (= *Crim. Pro. Code,* 1882, *ss.* 435 *and* 517)—"*Any proceeding,*" *scope of the expression.*—The words "any proceeding" in s. 435 are wide enough to empower the High Court to revise an order made by Magistrates under s. 517. *In re* GANGAMMA, **2 Weir 538 = 2 Weir 669.**

——**S. 436 (= 1882, s. 436 ; 1872, s. 296, paras 2 and 3, 1861, s. 435).**

See COMMITMENT TO SESSIONS COURT.

See HIGH COURT, JURISDICTION OF.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF.

See REFERENCE TO HIGH COURT.

See REVIEW.

See REVISION.

(3852 & 3853)—*S.* 436—*Discharge by Magistrate—Committal ordered by Sessions Judge—Revision.*—S. 436 of the Code of Criminal Procedure gives the fullest discretion to a District Magistrate or a Sessions Judge to order a commitment where he considers an accused person has been improperly discharged. *Per Aikman, J.*—A Magistrate holding an enquiry under chapter XVIII of the Code of Criminal Procedure, into cases triable by the Court of Sessions or by the High Court, is empowered not only to consider whether the evidence for the prosecution, if true, furnishes sufficient grounds for committing the accused for trial, but he can go further and weigh that evidence, *i.e.*, consider whether it is true. This power, however, should be sparingly used. *Per Knox, J.*—The Magistrate holding the enquiry has no power to declare an accused either guilty or innocent of the offence with which he is charged. He is not a Magistrate holding a trial, and cannot write a judgment. FATTU v. FATTU, **26 A. 564 = A.W.N. 1904, 123 = 1 A.L.J. 292 = 1 Cr. L.J. 510.** (A.W.N. 1904, 5, *Disc.*; A.W.N. 1899, 135, *R.*) [*F.*, 11 Cr.L.J. 18 = 4 Ind. Cas. 612 = 155 P L.R. 1909 = 10 P.R. 1909, Cr. = 32 P.W.R. 1909, Cr.; *R.*, 12 A.L.J. 150 = 14 Cr. L.J. 491 = 20 Ind. Cas. 747.]

(3854)—*S.* 436—*Discharge—Commitment by District Magistrate—Case not "triable exclusively by the Court of Session"—Jurisdiction.*—*Held*, that a case does not come within the purview of s. 436 of the Code of Criminal Procedure merely because in the opinion of the District Magistrate the offence alleged to have been committed could not be adequately punished by a Magistrate. EMPEROR v. DEBI PRASAD, **A.W.N. 1908, 189 = 8 Cr. L.J. 47.**

(3855)—*S.* 436—*Discharge of accused person—Fresh evidence—Order for committal, validity of.*—Where, after the order of discharge of an accused person, fresh evidence comes to light, the District Magistrate should not direct a Subordinate Magistrate to commit the accused, for it will amount to committal for trial on the evidence of witnesses whom the accused has not had an opportunity of cross-examining. The proper course for the District Magistrate is to direct a fresh inquiry. *In re* LINGAPPA NAIKER, **2 Weir 550.**

(3856)—*S.* 436 (= *Crim. Pro. Code, Act* X *of* 1882, *s.* 436)—*Absence of notice to show cause.*—It is an essential condition precedent to a valid order under s. 436 of the Crim. Pro. Code, that the accused should have an opportunity of showing cause against his commitment. ASIF KHAN v. FATHU, **A.W.N. 1888, 236.**

(3857)—*S.* 436—*Discretion — Commitment—Power of High Court to interfere.*—The discretion given to a Sessions Judge by s. 436 is very wide and when he, in the exercise of that discretion, commits the accused to Sessions, the High Court should be slow to interfere. MANGAT RAI v. EMPEROR, **13 A L J. 111 = 16 Cr. L.J. 139 = 27 Ind. Cas. 203.** (26 A. 564, *R.*)

(3858)—*S.* 436—*Power to order commitment—District Magistrate—Offences under ss.* 408 *and* 477-*A, I.P.C.*—A Magistrate of the First Class in an inquiry into offences of criminal breach of trust and falsification of accounts punishable under ss. 408 and 477-A, Penal Code, declined to commit the accused to the Court of Session and discharged him. The District Magistrate, acting in revision, reversed the order of discharge and committed the accused to the Court of Session on charges under ss. 408 and 477-A, Penal Code. The accused applied to the High Court contending that the order of committal was bad, as the case against him was primarily under s. 408 which was not triable exclusively by a Court of Session: *Held*, (1) that the District Magistrate had the jurisdiction to make the order he did under s. 436 of the Crim. Pro. Code, because the falsification of accounts was

Crim. Pro. Code (Act V of 1898)—*continued.*

not only a substantial part of the affair, but was so substantial and so necessary that the misappropriation could not have been effected in the way it was done without the falsification. (2) That it was competent to the District Magistrate to add to a charge under s. 477-A the charge under s. 408, Penal Code EMPEROR v. GENDLAL CHIMANBHAI, **16 Bom. L.R. 80 = 2 Bom. Cr. Cas. 179 = 15 Cr. L J. 292 = 23 Ind. Cas. 500.**

(3859)—S. 436—*See* SESSIONS JUDGE, JURISDICTION OF, 23 M. 225 = 2 Weir 543.

(3860)—S. 436—*See* Nos. 137, 189, 411, 1364, 1839, 2002, 2003, 2087, 2166, 2169, 2174, 2175, 2176, 2208 to 2212, 2602, 2803, 3031, 3478, 3492, 3513, 3808, 3814, 3815, 3830, *supra*, *and* Nos. 3971, 3972, 3973, 3974, 3975, *infra*.

(3861) — Ss. 436, 437—*See* FURTHER ENQUIRY, 15 M. 39 = 2 Weir 542 = 2 Weir 255.

(3862)—Ss. 436, 437—*See* MAGISTRATE, JURISDICTION OF — TRANSFER OF CASES, ETC., 18 C. 75.

(3863)—*Ss.* 436, 437, 438 (=*Crim. Pro. Code,* 1861, *s.* 435)—*Act* VIII *of* 1869 — *Reference to High Court.*—S. 435 of the Crim. Pro. Code, having been altered by Act VIII of 1869, it is unnecessary to refer to the High Court in cases where failure of justice has occurred owing to the case not having been committed to the Sessions Court. The Sessions Court has power to direct a commitment. REG. v. KALA *bin* HARI GAMA, *et al*, **7 B.H.C. Cr. 72.**

(3864)—*Ss.* 436, 437, 438 (=*Crim. Pro. Code,* 1861, *s.* 435)—*Conviction by Magistrate in case triable by him—Powers of Sessions Judge on appeal to direct commitment.*—Where a Magistrate competent to try a case under s. 425, I. P.C., tried it and convicted the accused, the Sessions Judge, on the hearing of an appeal by the prisoner, was not competent to direct the Magistrate to commit the accused to the Sessions on the same charge, on the ground that the case was so grievous that it should not have been disposed of summarily. QUEEN v. HIDDUN KHAN, **2 N.W.P. 285.**

(3865)—Ss. 436, 437, 438—*See* ACT XVIII OF 1854, s. 26, 6 M.H.C. App. 41.

(3866)—Ss. 436, 437, 438—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 5 M.H.C. Ap. 32.

(3867)—Ss. 436, 437, 438, (1)—*See* SESSIONS JUDGE, JURISDICTION OF, 3 N.W.P. 90 = 4 N.W.P. 50.

(3868)—*Ss.* 436, 438—*Sessions Case—Meaning of.*—The term, ' Sessions case,' in s. 296 of the Crim. Pro. Code of 1872, meant case triable exclusively by the Court of Session. EMPRESS v. HARY DOYAL KARMOKAR, **4 C. 16.**

N.B.—It may be noted that the term "Sessions case" has now been omitted and the words ' case' triable exclusively by the Court of Session' substituted therefor. (*Vide* s. 436 of Act V of 1898).

Crim. Pro. Code (Act V of 1898)—*continued.*

(3869)—*Ss.* 436, 438—*S.* 296—*Sessions case," meaning of.*—The term "Sessions case" in s. 296 means a case triable by the Court of Sessions only. EMPRESS v. TARACHAND BAGDI, **7 C. L.R. 168.** (1 A. 413 F.B., 21 W.R. 42, *F.*)

(3870)—*Ss.* 436, 438 (=*Crim. Pro. Code,* 1882, *ss.* 436 *and* 438)—*Improper discharge of accused person—Powers of District Magistrate.*—If, in cases not falling under s. 436, a District Magistrate sees reason to think that a Subordinate Magistrate has improperly discharged an accused person by reason of his having misapprehended the law or committed a material error in procedure, the District Magistrate should, under s. 438, report the case for the opinion and orders of the High Court. QUEEN-EMPRESS v. AMIR KHAN, **8 M. 336 = 2 Weir 557.** [*R.*, 1 L.B.R. 311, 4 L.B.R. 233 = 7 Cr. L. J. 493.]

(3871)—*Ss.* 436, 438 (=*Crim. Pro. Code,* 1872, *s.* 296)—*Reasons for submission of report under.*—A Sessions Judge submitting a report under this section must state the reasons on which his opinion leading to the report is founded. POLICE v. GANESH DAS, **Colm. Dig. Cr. 70 of 1877.**

(3872)—*Ss.* 436, 438 (=*Crim. Pro. Code,* 1872, *s.* 296)—*Order directing commitment—Notice to parties.*—Before a Sessions Court can direct the committal of a party against whom a complaint has been dismissed by the Magistrate, that Court is bound to give him notice of the application for such committal, and an opportunity of showing cause why the committal should not be made. *In re* DWARKANATH BHUTTACHARJEE, **1 C. L.R. 93.** (22 W.R. 67, 24 W.R. 70, *F.*)

(3873)—*Ss.* 436, 438 (=*Crim. Pro. Code,* 1872, *s.* 296)—*Discharge of the accused without examining principal witness.*—Where a Deputy Magistrate discharges the accused without examining the principal witnesses in the case, his order is bad and the District Magistrate is competent to revive the proceedings. ISHEN CHUNDER KURMOKAR v. HURRY DYAL KURMOKAR, **3 C L.R. 263.** (2 C. 405, *F.*)

(3874)—*Ss.* 436, 438 (=*Crim. Pro. Code,* 1872, *s.* 296, 1861-1869, *s.* 435)—*Power of a Sessions Court to order committal of accused discharged by a Magistrate.*—An order by a Judge under s. 296 of Act X of 1872, directing a Magistrate to commit an accused person, discharged at a preliminary inquiry, to take his trial in a Court of Session, must specify the particular act constituting the offence charged. The Judge cannot order a committal for offences with which the accused was in no way charged before the Magistrate. QUEEN v. TARUCK NATH MOOKERJEE, **10 B.L R. 285 = 19 W. R. Cr. 30.**

(3875)—*Ss.* 436, 438 (=*Crim. Pro. Code,* 1861, *s.* 435)—*Jurisdiction of Magistrate—Commitment to Sessions.*—The Sessions Judge has no power to commit to the Sessions a case in which persons were convicted by the Deputy

Crim. Pro. Code (Act V of 1898)—*continued.*

Magistrate of an offence under s.457 of the Penal Code: such a case being one triable by the Deputy Magistrate, ss. 427 and 435 of the Code of 1861 do not apply. REFERENCE BY THE OFFICIATING ADDITIONAL SESSIONS JUDGE OF 24 PERGUNNAS, **2 B L.R.S.N. 2=10 W.R. Cr. 35.**

(3876)—*Ss.* 436, 438 (=*Crim. Pro. Code,* 1872, *s.* 296)—*Commitment by Sessions Judge —Offence of cheating.*—An order of commitment by a Sessions Judge would be bad in form where it fails to specify the offence for which the parties are to be committed for trial at the Sessions. JOY KURUN SINGH v. MAN PATUCK, **21 W.R. Cr. 41.**

(3877)—*Ss* 436, 438 (=*Crim. Pro. Code,* 1872, *s.* 296)—*Summoning or giving notice to accused person.*—Although there is nothing in s. 296 with regard to summoning or giving notice to the accused person, no person should be affected in his personal liberty without having an opportunity given him to answer the charge for which he is arrested and locked up. If the accused had no opportunity given them of meeting the charge, the commitment was not a good commitment. *In re* BUNDHOO. **22 W.R. Cr. 67.** (24 W.R. Cr. 70, 1 C.L.R. 93).

(3878)—*Ss.* 436, 438 (=*Crim. Pro. Code,* 1872, *s.* 296)—" *Sessions case,*" *meaning of.*— " Sessions case " in s. 296 means a case triable exclusively by the Court of Sessions. ISHEN CHUNDER KURMOKAR v. HURRY DOYAL KURMOKAR, **3 C.L.R. 263.**

(3879)—Ss. 436, 438—*See* ACT VI OF 1872, s. 5, 21 W.R. Cr. 31.

(3880)—*Ss.* 436 *and* 476—*Order by Sessions Judge to commit a person under s.* 195, *Penal Code, after acquittal under s.* 193, *Penal Code, on the same facts, validity of.*—A Sessions Judge acting under s. 476 sent an accused person to a Magistrate to be tried for an offence under s. 193, Penal Code. But the Magistrate discharged the accused. *Held* that the Sessions Judge was not, thereupon, competent to direct the accused to be committed for trial under s. 195, on the same facts. *In re* SUNDARAM AIYAR, **2 Weir 549.**

——S. 437 (=1882, s. 437; 1872, s. 298; 1861, s. 435).

See FURTHER ENQUIRY.

See HIGH COURT, JURISDICTION OF.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF.

See REFERENCE TO HIGH COURT.

See REVIEW.

See REVISION.

(3881)—*S.* 437 (=*Crim. Pro. Code,* 1882, *s.* 437)—*Scope.*—S. 437, Crim. Pro. Code, contemplates a case, where a superior Court thinks that a further enquiry should be made into any complaint which has been dismissed, or into the case of an accused person who has been discharged; but it does not contemplate a case of such Magistrate directing a subordinate Magistrate to issue warrants for the apprehension of a person. *In the matter of the petition of* GURU CHARAN AICH, **1 C.W.N. 650.**

(3882)—*S.* 437—*Scope of.*—Under s. 437 of Crim. Pro. Code, 1898, a Sessions Judge has no power to order the re-opening of the proceedings, merely because, in his opinion, the Subordinate Magistrate has failed to rightly appreciate the credit due to the witnesses. DARSUN LALL v. JUMUK LALL, **12 C. 522.**

(3883)—*S.* 437—*Scope of.*—*Held,* that unless an order of discharge is perverse or foolish, and in a case in which the Magistrate has dealt at length with the evidence and recorded what appear sound reasons for the discharge, interference under s. 437, Crim. Pro. Code, is improper. Before setting aside an order of discharge notice should ordinarily be given to the accused to show cause why the order should not be set aside. NURA v. EMPEROR OF INDIA, **101 P L.R. 1902.**

(3884)—*S.* 437, *Scope of.*—It is competent to the High Court under s. 437, Crim Pro. Code, 1882, to direct a further enquiry into a complaint which has been dismissed under s. 203, or in which the accused has been discharged, although no further evidence is forthcoming for the prosecution. MUSSAMMAT SAHIB KOUR v. MUHAMMAD KASIM, **14 P.R. 1891, Cr.** (33 P.R. 1887, Cr., 15 C. 608, *R.*)

(3885)— *S.* 437—*Re-opening proceedings against accused*—S. 437, Crim. Pro. Code, 1898, is the only law which authorises a Magistrate to re-open the proceedings in which a person has been released. IMAM MANDAL v. EMPRESS, **6 C.W.N. 163.**

(3886)—*S.* 437 (=*Crim. Pro. Code,* 1882, *s.* 437)—*Further enquiry on the same materials —Notice.*—When a Magistrate has discharged an accused person under s. 253, Crim. Pro. Code, the High Court or the Court of Sssions has, under s. 437, jurisdiction to direct further enquiry on the same materials, and a District Magistrate may, under like circumstances, himself hold further enquiry or direct further enquiry by a subordinate Magistrate. But, in exercising the powers conferred by s. 437, Judges and District Magistrates should, in the first place, always allow the person who has been discharged an opportunity of showing cause why there should not be further enquiry, before an order to that effect is made, and in the next place, they should use them sparingly and with great caution and circumspection, especially in cases where the questions involved are mere matters of fact. As to the mode in which their discretion should be regulated, the remarks of *Straight and Tyrrell, JJ.*, in 4 A. 148, in reference to appeals from acquittals, may appropriately apply and should be consulted. QUEEN-EMPRESS v CHOTU, **9 A. 52=A.W.N. 1886, 281, F.B.** (10 B. 131, *R.*; A.W.N. 1883, 150, 6 A. 367, 10 C. 207, 12 C. 522, 4 A. 148, 10 C. 1027, 8 M. 336, *Diss.*) [*F.*, 8 A.L.J. 45= 9 Ind. Cas. 274=12 Cr.L.J. 45, 14 M. 334=2 Weir 557, 5 C.P.L.R. 20, P.L.R. 1900, 33;

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Appl., 15 C. 608; *Appr.*, Rat. Un. Cr.C. 328; *R.*, 20 A. 339, 459, 21 A. 122, 12 Cr.L.J. 46=9 Ind. Cas. 277, 6 C.P.L.R. 11, L.B.R. 1893—1900, 169, 14 C.P.L.R. 161, 29 P.R. 1885, 17 C.P.L.R. 75, U.B.R. 1897—1901, Vol. I, 100, 102.]

(3887)—*S.* 437 — *Notice—Practice.*—Before any order is made under s. 437, Crim. Pro. Code, 1898, to the prejudice of an accused person, notice should be given to that person to appear and to show cause why the order should not be passed. QUEEN-EMPRESS v. AJUDHIA, **20 A. 339=A.W.N. 1898, 60.** (9 A. 52, *R.*) [*R.*, 35 A. 78=10 A.L.J. 531=18 Ind. Cas. 146, 3 Bom. L.R. 703.]

(3888)—*S.* 437—*Further enquiry—Notice.*—Although no notice to the accused, under the law, is necessary before an order under s. 437 may be passed, yet, a Court would not be exercising a proper discretion in such matter if, before proceeding under s. 437 to order a further enquiry in a case in which an accused person may have been discharged, it did not give him an opportunity, by service of a notice, to show cause against such an order being made. But no notice would be necessary before an order to set aside an order of dismissal under s. 203 could be passed, since, that order was not passed with a notice to the accused person or in his presence, and therefore would, probably, be unknown to him. HARI DASS SANYAL v. SARITULLA, **15 C. 608, F.B.** [*F.*, 5 Bom. L. R. 877, 2 C.W.N. 196, 3 C.W.N. 249, 2 P.R. 1901, Cr., 11 Cr. L.J. 629=8 Ind. Cas. 371=13 O.C. 289; *R.*, 17 P.R. 1895, Cr., U.B.R. 1897—1901, Vol. I, 100, 8 Cr. L.J. 51=12 C.W.N. 822=8 C.L.J. 73, 14 Cr. L.J. 230=9 N.L.R. 42=19 Ind. Cas. 326; *Expl.*, 29 C. 457.]

(3889)—*S.* 437—*Further enquiry—Notice.*—The power conferred by s. 437 of the Code, 1898, to direct a further enquiry, should be used sparingly and with great caution. Though it is not illegal to make an order directing further enquiry under s.437 of the Code, without notice to the accused, it is always desirable that notice should be given. The ordinary rule is that no order should be passed against an accused without notice to him. A question may be very clear to a Court directing further enquiry, but, still, it ought to give an accused, already discharged, an opportunity to be heard. JOY GOPAL BANERJEE v. EMPEROR, **11 C W N. 173=5 Cr. L.J. 16.** [*R.*, 31 M. 133=3 M.L. T. 230=18 M.L.J. 57=7 Cr. L.J. 267.]

(3890)—*S.* 437—*Further enquiry—Notice.*—*Per Aston, J.*—The Code, Crim. Pro. Code, 1898, does not require notice to be given to an accused person before a further enquiry is ordered under s. 437 of the Code. It is a matter dependent on the circumstances of each case. *Per Beaman, J.*—It is true that s. 437 of the Code does not compel a Magistrate to issue notice, and an order passed under that section without having issued notice is not illegal. But it is a fundamental principle of the administration of English justice that no error to the prejudice of an accused person should, ordinarily, be made without giving him an opportunity of being heard in his defence. And the mere omission, from the section, of any direct and positive command to give invariable effect to that principle was never meant to absolve Magistrates from doing so in all ordinary cases. MUKUND BHASKARSHET, *In re*, **8 Bom. L.R. 694=4 Cr.L.J. 329.**

(3891)—*S.* 437—*Further enquiry—Notice.*—Though s.437 does not require notice to be given before directing further enquiry in respect of a complaint dismissed under s. 203, yet, it is exercising a sound discretion if notice of the application to set aside the order of dismissal is given to the party concerned. VENKATESULU NAIDU v. DURVASA RANGAYEN, **2 Weir 244.**

(3892)—*S.* 437—*Notice.*—Though the Legislature did not intend that the issue of a notice under the above section should be indispensable in the case of an order of discharge, still, no Court would be exercising a proper discretion in such a matter, if, before proceeding under the above section to order a further enquiry in a case in which the accused person may have been discharged, it did not first give him an opportunity by service of a notice to show cause against such an order being made. The incorrectness of the order of discharge on the merits may be a sufficient ground for an order for further enquiry under the above section, and a Court should not set aside an order of discharge under this section, unless it has and assigns solid and sufficient reasons for doing so. MUJIBUL RAHIM KHAN v. QUEEN-EMPRESS, **2 O.C. 363.** (15 C. 608, 20 A. 339, *F.*) [*D.*, 11 O.C. 261.]

(3893)—*S.* 437—*Notice.*—In point of law the issue of a notice to an accused is not required, but, it has been constantly held that no Court would be exercising a proper discretion in such a matter, if, before proceeding under s. 437 of the Code to order a further enquiry in a case in which the accused person may have been discharged, it did not first give him a notice to show cause against such an order being made. NAMA KASAR v. LOTAN SINGH RAJPUT, **13 C.P.L.R. Cr. 189.** (15 C. 608, 3 C.W.N. 249, 20 A. 339, 10 B. 131, *R.*)

(3894)—*S.* 437—*Notice.*—A case cannot be tried a second time after an order of discharge has been passed, without the order of the District Magistrate. S. 437, Crim. Pro. Code, 1898, does not expressly require notice to be given to an accused person. But it has been well enough understood that ordinarily notice should be given. The District Magistrate's omission to give the applicant notice before passing his order directing a further enquiry is irregular, but it does not make the retrial illegal. NGA PO GAUNG v. KING-EMPEROR, **U.B.R. 1897—1901, Vol. I, 96.** (U.B.R. 1892—1896, Vol. I, 48, 19 B. 247, *R.*)

(3895)—*S.* 437—*Notice.*—Where further enquiry is made under s. 437 by a Magistrate,

Crim. Pro. Code (Act V of 1898)—*continued*

who has not already dealt with the case, the evidence already recorded cannot be treated as evidence in the further enquiry, but the enquiry must be taken up from the beginning, whether the accused wishes it or not. *Held* also, that it is not legally necessary to give the accused an opportunity of showing cause before taking action under s. 437, but that the Court should usually give the accused an opportunity of being heard. NGA HUNG MYAT v. QUEEN EMPRESS, **U B R. 1897—1901, Vol. 1, 100**, (10 B. 131, 9 A. 52, 20 A. 339, 15 C. 608, 4 C. W N. 100, 2 Bom. L.R. 586, *R.*) [*Rel. on*, 12 Cr. L J. 383 = 11 Ind. Cas. 247 = U.B.R. 1910, Vol. I, 70].

(3896)—*S.* 437—*Notice.*—The Court acting under s. 437, Crim. Pro. Code, 1882, has a discretion to give notice to an accused person and to hear him before passing orders. There is no rule rendering the issue of such a notice obligatory. FAZAL DIN v. EMPRESS, **17 P.R. 1895, Cr.** (16 C. 600, F.B., *R*).

(3897)—*S.* 437—*Retrial—Notice to accused—Further enquiry.*—It is not competent to a Magistrate to order a re-trial, by merely acting upon a resolution passed by the Legal Remembrancer to Government, without giving notice to the accused. [*Cons.*, 6 Bom. L.R. 479; *R.*, U.B.R. 1897—1901, 101]. All that a District Magistrate can do under s. 437, Crim. Pro. Code, is to direct further enquiry, leaving it entirely to the enquiring Magistrate to determine whether or not the evidence justified the accused being charged and put on his trial. QUEEN-EMPRESS v. GAJANKHAN, **2 Bom. L. R. 586**.

(3898)—*S.* 437—*Further enquiry—Additional evidence—Notice.*—On the dismissal of a complaint under s. 203, Crim. Pro. Code, or the discharge of an accused person by a subordinate Magistrate, whether the case is one triable by a Court of Sessions and the order of discharge one under s. 209 or under s. 253, the District Magistrate is competent to direct any subordinate Magistrate to make further enquiry into the complaint dismissed, or into the case of the accused person discharged. It is not necessary, for directing a further enquiry, that there should be further evidence forthcoming or disclosed. It is not also necessary that notice should be given to the party concerned before an order for further enquiry is made. The subordinate Magistrate who is directed to make further enquiry is not competent to question the propriety of the order, but is bound to carry it out. QUEEN-EMPRESS v. DORABJI HORMASJI, **10 B. 131**. [*F.*, 9 A. 52, 14 C. 608, 14 M. 334 = 2 Weir, 557, F B., 3 Bom. L.R. 703; *R.*, 6 Bom. L.R. 856, 14 C P. L.R. 161, L.B.R. 1893—1900, 169, U.B.R. 1897—1901, 100 · *D.*, 6 C.P.L.R. 11, Cr.]

(3899)—*S.* 437—*Further inquiry—Discharge after fully considering the whole evidence—Notice to accused.*—*Held*, that an order of further inquiry under s. 437, Crim. Pro. Code, is improper and is liable to be set aside on revision, if the whole evidence on the record has been duly considered and the order of discharge is not manifestly perverse or foolish, &c. (10 P R. 1911, Cr. = 24 P.W.R. 1911, Cr., *F.*). *Held* also, that, although before directing further inquiry notice to the accused is not absolutely necessary, according to the general principles of criminal jurisdiction, an order to the prejudice of an accused should not ordinarily be passed without giving him an opportunity of being heard. SITA RAM v. CROWN, **4 P W.R. 1915, Cr. = 16 Cr. L.J. 214 = 27 Ind. Cas. 838 = 130 P.L.R. 1915**, (2 P.R. 1901, Cr., 32 C. 1090, *F.*)

(3900)—*S.* 437—*Setting aside order of discharge—Discretion—Hearing accused after notice to him.*—A District Magistrate in setting aside an order of discharge would exercise a sound discretion, if he hears the accused before passing his order, and satisfies himself that there are sufficient grounds for it. *In re* RUXMANI BHOGILAL, **6 Bom. L.R. 479**. [*R.*, 8 Bom. L.R. 694, 9 Cr. L.J. 446 = 3 S.L. R. 7, Cr. = 1 Ind. Cas. 938.]

(3901)—*S.* 437—*Person not named in the complaint nor before the Court—Power to direct further inquiry against him—Order under* s. 437 *without notice to accused—Legality*—Under s. 437, Crim. Pro. Code, a Court has no authority to direct further enquiry in respect of a person, when no complaint has been made against him and no other regular process has been issued against him. An order under s. 437 must not be made without previous notice to the accused, and an order made without such notice is bad. AMBAR ALI v. ANJAB ALI, **39 C. 238 = 14 Ind Cas. 768 = 13 Cr. L J. 304.** (12 C.W.N. 822, *F.*)

(3902)—*S.* 437—"*Further enquiry*," *meaning of.*—The words "further enquiry" in s. 437, Crim. Pro. Code, 1882, mean the taking of additional evidence, and not a mere re-hearing, or a further consideration of the case on the same evidence. HARBHAJ RAI v. JOWALA, **63 P.R. 1887, Cr.**

(3903)—*S.* 437—*Further inquiry, meaning of.*—"Further inquiry" does not mean proceeding on the evidence already taken; that evidence or other evidence, if there be any, should be taken *de novo* by the Magistrate who holds the further inquiry. RAM DIAL v. KING-EMPEROR, **9 A L.J. 310 = 13 Cr. L J. 255 = 14 Ind. Cas. 607.**

(3904)—*S.* 437 (= *Crim. Pro. Code*, 1882, s. 437)—*Naming particular Magistrate to make further enquiry—'Further enquiry,' meaning of.* The further enquiry under s. 437 of the Crim. Pro. Code should not be ordered by a Sessions Judge to be made by a particular Magistrate by name. The discretion as to the selection of such Magistrate vests in the District Magistrate and not in the Sessions Judge. [*Diss.*, 9 A. 52, F.B. = 6 A W.N. 281.] S. 437 contemplates a *further enquiry i.e.*, an enquiry upon further materials or further evidence, not a re-hearing of the matter upon the same evidence which was before the Magistrate, who held the first

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enquiry. CHUNDI CHURN BHUTTACHARJEA v. HEM CHUNDER BANERJEA, **10 C. 207.** [*F.*, 12 C. 522 ; *R.*, 8 M. 336, 7 Cr. L.J. 493 =4 L.B.R. 233 ; *Commented on*, 10 B. 131.]

(3905)—*S.* 437—"*Further inquiry*"—*Practice.*—Where the nature of the case is such that Courts are liable to take different views of the evidence and of the probabilities, the case is not one which calls for any further enquiry under s. 437 of Crim. Pro. Code. CHANDAN v. KALLU, **8 A.L.J. 45=9 Ind. Cas. 274=12 Cr. L.J. 45.** (9 A. 52, F.B., *R.*)

(3906)—*S.* 437—*District Magistrate ordering further inquiry in a case of discharge—Grounds of probability of conviction by another Magistrate—Validity—Course to be adopted.*—Where a District Magistrate (without giving any notice) ordered further inquiry to be made in the case of a discharged accused, on the ground that it was conceivable that another Magistrate might reasonably see the fact and probabilities in other mutual proportions: *Held*, that the foregoing did not amount to any reason at all for ordering further inquiry. Where a District Magistrate decides to take further action under s. 437, he should give notice to the accused and hear his objections, if any, before making an order for further inquiry. LAL v. EMPEROR, **12 Cr. L.J. 110=9 Ind. Cas. 652.**

(3907)—*S.* 437 (=*Crim. Pro. Code*, 1882, *s.* 437)—*Order under the section by the Sessions Court—Contrary order by the District Magistrate, validity of.*—When the Sessions Judge has passed orders under s. 437, the District Magistrate, will not be justified in passing orders of an exactly opposite kind in the same matter. It is open to the District Magistrate, if so advised, to submit to the High Court the orders of the Sessions Judge through the medium of the Public Prosecutor. QUEEN-EMPRESS v. PRITHI, **12 A. 434=A.W.N. 1890, 99.** (9 A. 362, *R.*) [*R.*, Rat. Un. Cr. C. 525, 1 S. L.R. 40=8 Cr. L.J. 161; *D.*, A.W.N. 1895, 38.]

(3908)—*S.* 437 (=*Crim. Pro. Code*, 1882, *s.* 437)—*Discharge by subordinate Magistrate—Powers of District Magistrate—Further enquiry.*—When a District Magistrate considers that a Magistrate subordinate to him has improperly discharged an accused person, under s. 253, Crim. Pro. Code, he need not refer the case to the High Court, but may deal with it under s. 437. *In re* RAOLA VISHTA, **Rat. Un. Cr. C. 218.**

(3909)—*S.* 437 — *Jurisdiction of District Magistrate.*—The question referred to the Full Bench in this case was, "Whether a District Magistrate has jurisdiction under s. 437 of the Code to order a further enquiry, after the discharge of an accused, when such further enquiry entails only a re-hearing on the same materials which were already before the subordinate Magistrate, that is to say, when no further evidence is forthcoming. It was answered in the affirmative, by the Full Bench, which ruled that the authority given by s. 437 to order a further enquiry was unfettered by any other provision of law. KING-EMPEROR v. PO YIN, **3 L.B.R. 97, F.B.=4 Cr. L.J. 490.** (1 L.B.R. 100, *Overruled* ; 2 L.B.R. 27, *Foll.*) [*R.*, 7 Cr. L.J. 493=4 L.B.R. 233.]

(3910)—*S* 437—*Powers of District Magistrate.*—S. 437, Crim. Pro. Code, 1898, confers only on the District Magistrate and the Courts above him, the power of directing a further enquiry in the case of any accused person who has been discharged, and, on the District Magistrate alone, the power of making such an enquiry without such direction. The direct connection of the Police with a case in which they have arrested an accused person is at an end, when they have proceeded under s. 169 or s. 170 and have completed the investigation as required by s. 173, and there is no provision enabling them to make a second arrest or second investigation, except upon the authority of an order of the Magistrate under s. 437. QUEEN-EMPRESS v. NGA PO NYEIN, **U.B.R. 1892—1896, Vol. I, 48.** (19 W R. Cr. 27, *R.*)

(3911)—*S.* 437 — *Jurisdiction of District Magistrate and Chief Court.*—Under s. 437, it will be more convenient that an order directing a subordinate Magistrate to make a further enquiry in the case of a person improperly discharged, should be made in the District Magistrate's Court than in the Chief Court. EMPRESS v. RAHIM ALI, **7 P.R. 1888, Cr.**

(3912)—*S.* 437—*Discharge by subordinate Magistrate—Power of District Magistrate to order re-trial—Notice—Duty of Court ordering re-trial.*—A District Magistrate is competent, under s. 437, Crim. Pro. Code, to deal with a case in which he considers that a subordinate Magistrate has improperly discharged the accused under s. 253, Crim. Pro. Code, though it may only involve the re-consideration of the evidence already taken, without any additional investigation of facts. QUEEN-EMPRESS v. KADAR *valad* AMIR, **1 Bom. L.R. 222.**

(3913)—*S.* 437 — *Further enquiry* — *Reasons for the order—Magistrate, duty of—Revision by High Court.*—An order for further enquiry under s. 437 of the Crim. Pro. Code should give reasons for the order ; the mere opinion of a Magistrate that there should be a further enquiry in a particular case is of no value without a statement of his reasons therefor ; and, in the absence of such reason, it is not possible for the High Court to exercise such supervision over the Magistrate's proceedings as is necessary. The practice of Magistrates not complying with the orders and directions of the High Court condemned. WAHED ALI v. EMPEROR, **3 C.L.J. 43=32 C. 1090=3 Cr. L.J. 120.** [*R.*, 8 C L J. 73=12 C.W.N. 822=8 Cr. L J. 51, 9 Cr. L.J. 446=3 S.L R 7, 1 Ind. Cas. 938.]

(3914)—*S.* 437 — *Revision—Practice—Lower Court having concurrent jurisdiction in revision with the High Court.*—Where the Magistrate of the District dismissed a complaint under the

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provisions of s. 203 of the Code of Criminal Procedure, the High Court declined to entertain an application by the complainant asking for further enquiry under s. 437 of the Code, when no application for that object had been made to the Sessions Judge. GULLAY v. BAKAR HUSAIN, **A.W.N. 1905, 279=3 Cr. L.J. 53=28 A. 268.** (A.W.N. 1904, 232, *F.*) [*F.*, 30 A. 116=A.W.N. 1908, 25=3 M.L.T. 124=7 Cr. L.J. 48.]

(3915)—*S.* 437 (=*Crim. Pro. Code*, 1882, *s.* 437)—*Discharge of accused by one Magistrate—Revisional powers of High Court—Fresh trial by another Magistrate.*—Where a trying Magistrate has arrived at the conclusion that no *prima facie* case had been made out against an accused person, the High Court cannot command him to arrive at a different conclusion on the facts. If the complainant had a good case, according to law, against the accused, he may make a complaint to another Magistrate who will not be prevented from enquiring and adjudging by a mere discharge of the accused in a warrant case. QUEEN-EMPRESS v. KRISHNA, **Rat Un. Cr. C. 209.** [*R.*, 2 L.B.R. 27.]

(3916)—*S.* 437 (=*Crim. Pro. Code*, 1882, *s.* 437)—*Further enquiry when can be ordered after discharge.*—Where a Magistrate discharges the accused after all the evidence against him has been recorded, s. 437 does not empower the Sessions Court to order a fresh trial in order that another Magistrate may consider the same evidence and give his opinion on it. The section is intended to provide for power to order enquiry in cases when a complaint has been dismissed or when an accused person had been discharged, without full enquiry and the examination of witnesses. When a Magistrate takes the whole of the evidence, and completes the enquiry and then discharges the accused in a warrant case, there is only a technical difference between the discharge and an acquittal. An acquittal could not be reversed without hearing the accused, and it never could have been intended that an accused person should be placed in so much worse a position, merely because the Magistrate considered the evidence for the prosecution so untrustworthy that he would not proceed to draw up a formal charge. A discharge does not bar a second enquiry or trial, but, if the District Magistrate who has power to take up the case of an accused discharged by his predecessor were to convict the accused on the same evidence as that on which his predecessor discharged him, he would be acting wrongly. A Magistrate has no power to review the judgment of his predecessor, and, if the Magistrate convicts an accused person on the same evidence as that on which another Magistrate discharged that person, the former Magistrate is reviewing the judgment of the latter. EMPRESS v. BHAGWAN MALEE, **2 C.P.L.R. 82.**

(3917)—*S.* 437—*Ordering further enquiry.*—The accused was sent up by the police for trial for an offence under s. 392, I.P.C. The case was inquired into by a subordinate Magistrate, who, after recording the evidence for the prosecution, discharged the accused. Thereafter the District Magistrate, holding that the accused had been improperly discharged, held a further enquiry into the case, and, after charging the accused and taking his evidence, convicted him of an offence under s. 392. The Sessions Judge acquitted him on the ground that his conviction by the District Magistrate on the same evidence on which the subordinate Magistrate had previously discharged him was wrong. *Held* that the Sessions Judge erred in acquitting the accused on the ground that the action of the District Magistrate in reconsidering the case against the accused and in convicting him on the same evidence on which he had previously been discharged, was illegal. A Sessions Judge or District Magistrate is competent, under s. 437 of the Crim Pro. Code, to direct a further enquiry or a re-hearing upon the same materials which were before the subordinate Magistrate, when no more evidence is available. EMPRESS v. RAMDAYAL, **5 C.P.L.R. 20.**

(3918)—*S.* 437—*Summons cases—Order for further enquiry—Indian Forest Act,* VII *of* 1878, *s.* 25.—In a summons case, when a subordinate Magistrate acquits a person, neither the District Magistrate nor the Sessions Judge has power to direct a further enquiry. A case under s. 25 of the Forest Act, 1878, is a summons case. AMIR KHAN v. EMPRESS, **19 P.R. 1900, Cr=P.L.R. 1900, Cr., 50.**

(3919)—*S.* 437 (=*Crim. Pro. Code*, 1882, *s.*437)—*Order of discharge—Retrial on the same facts.*—Where an order of release by a Magistrate, although irregular because no evidence was taken, amounted to an order of discharge, *held*, that no second complaint could be entertained regarding the same matter, until the previous order has been set aside by a competent authority. JOWAHIR SINGH v. EMPRESS, **33 P.R. 1894, Cr.** [*Overr.*, 12 Cr. L J 364=11 Ind. Cas. 132=10 P.R. 1911=24 P.W.R 1911, Cr., 205 P.L.R 1911.]

(3920)—*S.* 437 (=*Crim. Pro. Code, Act* X *of* 1882, *s.* 437)—*Accused person—Meaning.*—The term "accused person" in s. 437 of the Crim. Pro. Code includes persons against whom proceedings under s. 110 and the following sections of the Crim. Pro. Code have been taken. EMPRESS v. SHEODAYAL, **A.W.N. 1891, 106.**

(3921 to 3925)—S. 437—*See* ACQUITTAL, 1 A. L.J. 415.

(3926)—S. 437—*See* COMPLAINT, DISMISSAL OF COMPLAINT, 4 C.W.N. 242.

(3927)—S. 437—*See* DISCHARGE OF ACCUSED, Rat. Un. Cr. C. 926=Cr. Rg. 31 of 1897.

(3928)—S. 437—*See* DISMISSAL OF COMPLAINT, Rat. Un. Cr. C. 988=Cr. Rg. 46 of 1898.

Crim. Pro. Code (Act V of 1898)—*continued.*

(3929)—S. 437—*See* MAGISTRATE, JURISDICTION OF—TRANSFER OF CASES, ETC., 10 C. 551, 11 C. 236.

(3930)—S. 437—*See* SESSIONS JUDGE, JURISDICTION OF, 14 M. 334=1 M.L.J. 343 =2 Weir 557, F.B.=2 Weir 324, 4 Ind. Cas. 312.

(3931)—S. 437—*See* SUMMARY TRIAL, 1 L. B.R. 9.

(3932)—S. 437—*See* Nos. 25, 38, 138, 190, 366, 374, 411, 582, 716, 732, 733, 734, 765, 809, 810, 811, 919, 931, 1220, 1224, 1302, 1391, 1530, 1672, 1834, 1901, 2046, 2047, 2048, 2062, 2086, 2087, 2088, 2089, 2090, 2092, 2093, 2096, 2097, 2098 to 2106, 2175, 2176, 2185, 2463, 2482, 2483, 2506, 2524, 2529, 2600, 2601, 2602, 2614, 2620, 2621, 2625, 2627 to 2630, 2640, 2705, 2990, 3032, 3246, 3247, 3357, 3358, 3483, 3492, 3493, 3702, 3758, 3808, 3809, 3815 to 3821, 3861 to 3867, *supra*, and 4633, 4843, *infra*.

(3933)—*Ss.* 437, 110, 112, 119—*Application to proceedings under ch.* VIII—"*Release*" *and* "*Discharge*"—*Power of the District Magistrate to direct further enquiry when accused released.*—The accused was called upon to show cause why he should not give security for good behaviour. A Magistrate enquired into the matter and after recording the evidence released him. The District Magistrate examined the record and directed further enquiry under s. 437, Crim. Pro. Code. Another Magistrate then heard the case and after recording evidence, *held* that there was no necessity to bind over the man to be of good behaviour and released him. The District Magistrate without issuing notice to the accused again sent for the record and directed further enquiry under s. 437, Crim. Pro. Code. At the second of the two enquiries the Magistrate drew up a fresh formal order under s. 112 of the Code. *Held*, that s. 437, Crim. Pro. Code (which empowers the District Magistrate to direct further enquiry to be made into the case of an accused person who has been discharged) is wide enough to cover the case of a person who has been called upon to show cause, under s. 110, Crim. Pro. Code, why he should not give security for good behaviour, and in whose case an order of release or discharge (both of which are really to the same effect) has been passed under s. 119, Crim. Pro. Code. *Held*, further that, although a District Magistrate can at any time and for good and sufficient reason institute fresh proceedings under ch. VIII of the Code, there is no bar to the District Magistrate examining the record of any proceedings, under that chapter, had by a Subordinate Magistrate and ordering further enquiry to be made, *held*, further that, after the discharge of the accused by two Magistrates, an order directing further enquiry should not have been passed without giving him an opportunity of showing cause why such order should not be passed. KHARGA v. KING EMPEROR, **12 A.L.J. 167=15 Cr. L.J. 39=22 Ind. Cas. 183=36 A. 147.** (20 A.W.N. 206, 6 O.C. 262, 42 P.R. 1905, Cr., 33 M. 85, 27 C. 662, 33 C. 8, 36 C. 163, 24 A. 148, 21 A. 107, 19 A.W.N. 203, *R.*)

(3934)—Ss. 437 and 119—*See* FURTHER ENQUIRY, 2 L.B.R. 80.

(3935)—*Ss.* 437, 192 (=*Crim. Pro. Code,* 1882, *ss.* 437, 192)—*Order for further enquiry—Power of the Magistrate, so ordered, to transfer the case for trial by subordinate Magistrate.*—A Sub-Divisional Magistrate dismissed a complaint of defamation under s. 203, holding that the offence was not disclosed by the complaint. Holding that the complaint disclosed the commission of other offences and had been dismissed on insufficient grounds, the District Magistrate, under s. 437, directed the Sub-Divisional Magistrate to make further enquiry. The latter then examined the complainant again and referred the complaint for disposal to the second class Magistrate as one of assault under s. 352, I.P.C. *Held*, that the Sub-Divisional Magistrate had not exceeded his power in transferring the case. *In re* KARUPPA ALAGAN KATHAN, **2 Weir 563.**

(3936)—*Ss.* 437, 200, 119—*Power to order re-inquiry—District Magistrate—Re-inquiry of a person discharged by Subordinate Magistrate—Proceedings under Chap.* VIII—*Accused person*—"*Discharged*"—*Interpretation.*—A District Magistrate has jurisdiction under s. 437 of the Code of Criminal Procedure to order a fresh inquiry into the case of a person "discharged" by a Subordinate Magistrate under s. 119 of the Code. The expression "any accused person," as used in s. 437, is not confined to a person against whom a "complaint" has been made under s. 200; but includes as well a person proceeded against under chap. VIII of the Code. The word "discharged" is not defined in the Code, and there is no valid ground for departing in respect of it from the rule of construction that, where in a statute the same word is used in different sections, it ought to be interpreted in the same sense throughout, unless the context in any particular section plainly requires that it should be understood in a different sense. *In re* BABA YESHWANT DESAI, **13 Bom. L.R. 505=11 Ind. Cas. 614=11 Cr. L.J. 430.** (21 A. 107, 24 A. 148, 16 B. 661, *F.*, 27 C. 662, 33 M. 85, *Not F.*)

(3937)—*Ss.* 437, 203—*Accused once tried and discharged—Fresh enquiry on the same charge on a second complaint—Magistrate's jurisdiction.*—A Magistrate who has tried and discharged the accused on a particular charge has jurisdiction to again enquire into the same charge on a second complaint. WILLIAMS CECIL KEYMER v. EMPEROR, **12 A.L.J. 1=15 Cr. L.J. 1=22 Ind. Cas. 145=36 A. 53.** (A.W.N. 1895, 86, *R.*)

(3938)—*Ss.* 437, 203—*Procedure—Complaint dismissed once—Subsequent complaint by another complainant on the same facts—Tribunal, the same—Incumbent, a different*

Crim. Pro. Code (Act V of 1898)—*continued.*

individual—Enquiry ordered by the High Court.—A particular Sub-Divisional Magistrate dismissed a complaint under s. 203, Crim. Pro. Code. A subsequent complaint arising out of the same matter was made before him and he ordered the papers of the first case to be put up with the present complaint on a particular date. The officer was in the meantime transferred and his successor took up the case and ordered process to issue. *Held*, that the successor-in-office of a particular Magistrate, although a different individual, constituted the same tribunal as his predecessor-in-office, and had jurisdiction to entertain a second complaint in the same matter, although the first one had been dismissed by the latter. In this case enquiry was ordered by High Court. RAM BHAROS v. BABAN, **12 A.L J. 106=36 A. 129=15 Cr.L.J. 158=22 Ind. Cas. 734.** (22 A. 106, 25 A.W.N. 86, *R.*)

(3939)—*Ss.* 437, 350 (=*Crim. Pro. Code*, 1882, *ss.* 437 *and* 350)—*Further enquiry—Nature of.*—The further enquiry which a District Magistrate may order is an additional investigation of the facts, or a reconsideration of the evidence by the Magistrate whose order is set aside or a new enquiry before another Magistrate. There is nowhere in the Code any authority for a different Magistrate from the one who originally made the enquiry, taking the record of the evidence recorded by the latter, treating it as recorded by himself, taking a different view of the truthfulness of witnesses whose evidence had been recorded, and then proceeding to try and convict the accused on that evidence. Such a conviction is bad and s. 350 of the Code would, in no way, justify such procedure. EMPRESS v. DULZAHA, **6 C. P.L.R. Cr. 11.** (9 A. 52, *F.*; 15 C. 608, 10 B.131, *Appr.*)

(3940)—Ss 437, 438—*See* DISCHARGE OF ACCUSED, **9 Cr.L.J. 366=1 Ind. Cas. 686.**

(3941)—Ss 437, 438 (1)—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, **Rat. Un. Cr. C. 290=Cr. Rg. 31 of 1886.**

(3942)—*Ss.* 437, 476 (=*Crim Pro. Code, Act* X *of* 1882, *ss.* 437, 476)—*Criminal appeal—Directing prosecution of witness.*—Neither s. 437 nor s. 476 of the Crim. Pro. Code authorise a Judge who hears a criminal appeal and sets aside a conviction, to direct in such judgment the prosecution of a witness in the case. EMPRESS v. NAIPAL, **A.W.N. 1889, 95**

(3943)—*Ss.* 437, 476—*Jurisdiction—Sessions Judge—Further inquiry—Discharge of accused by Magistrate and direction of complainant's prosecution—Sessions Judge to refer matter to High Court.*—A Sessions Judge has no jurisdiction to direct further inquiry in a case in which the Magistrate had not only discharged the accused but, under s. 476 of the Crim. Pro. Code, had directed the complainant's prosecution under s. 211, Penal Code. The Sessions Judge ought to have referred the case to the High Court. ARJUN NAIK v. BIRA BHOI, **15Cr. L.J. 16=22 Ind. Cas. 169.** (22 Ind. Cas. 145=15 Cr.L.J. 1, *F.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

(3944)—*Ss.* 437, 476—*Further inquiry—Prosecution of complainant for subsisting offence—Notice.*—An order for further inquiry is bad during the continuance of an order made under s. 476, Crim. Pro. Code, for prosecution of the complainant for an offence under s. 211, I.P.C. An order for further inquiry ought not to be made without notice to the accused. KANHU NAIK v. NATABAR SHAHA, **15 Cr.L.J. 1=22 Ind. Cas. 145.**

(3945)—*Ss.* 437, 517—*Discharge — Proper order to be passed — Stolen property—Its disposal—Confession in presence of the police—Evidence Act*, s. 25.—*Held*, that an order to the following effect is not contemplated by s. 437, Crim. Pro.Code. "The case therefore is re-opened and the police are now at liberty to re-consider the whole position." The proper course to be adopted in such a case is to direct the Magistrate to make further enquiry into the case. *Held*, also, that a confession made by an accused to a private person in the presence of the Police is inadmissible in evidence against him. *Held*, further that, where an accused person says that the alleged stolen property is not his, the Court is not justified in ordering that it should be given to him. It should be retained by the Court until one or other of the parties has established his right to it. If it has been paid or given to the accused, the Court has power to call upon him to return it to the Court. CHANAN v. CROWN, **37 P.W.R 1913, Cr.=320 P.L.R. 1913=21 Ind. Cas 468=14 Cr. L.J. 596.**

——S. 438, para 1 (=1882, s. 438; 1872, s. 296, para 1 ; 1861, ss. 434, 435); para 2, new.

See HIGH COURT, JURISDICTION OF.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF.

See REFERENCE TO HIGH COURT.

See REVIEW.

See REVISION.

(3946)—*S* 438 (=*Crim. Pro. Code, Act* X *of* 1882, *ch.* XXXI, *s.* 438)—*Procedure.*—Where a Sessions Judge in appeal considers that the sentence in respect of some of the accused is inadequate, that the convictions of some of the accused should be reversed and that an order under s. 106 of the Crim. Pro. Code, in respect of some, should be set aside, *held* that the proper procedure was to dispose of the appeal so far as it could be disposed of by him and to report separately to the High Court as to necessary matters, and not to let the appeal wait for the reference to the High Court. EMPRESS v. DURGA PRASAD, **A.W.N. 1884, 130.**

(3947) *S.* 438 (=*Crim. Pro. Code*, 1882, *s.* 438)—*Scope of.*—S. 438 enables a District Magistrate to report to the High Court for orders the proceedings of any inferior Criminal Court whose records he has examined under s. 435;but the law gives him no power to criticise or refer the proceedings of a Court superior to

Crim. Pro. Code (Act V of 1898)—*continued.*

his own, *e.g.*, the Sessions Court. HIGH COURT PROCEEDINGS, 21ST SEP. 1885, NO. 443, **2 Weir 565.** [*F.*, 2 Weir 566, 2 Weir 565.]

(3948)—*S.* 438—*Scope and object of.*—It is very doubtful, if the framers of s. 438 contemplated references of the proceedings of a superior Court by one subordinate to it. In any case, such a reference would be justifiable, if at all, only in very special cases. HIGH COURT PROCEEDINGS, NO. 388 OF 1890, **2 Weir 566.**

(3949)—*S.* 438—*Scope of.*—A District Magistrate is not warranted by s. 438, Crim. Pro. Code, in referring for the orders of the High Court a case in which the Sessions Judge, on appeal, acquitted and discharged the accused. That section, having regard to s. 435 of the Code, empowers the District Magistrate only to refer to the High Court proceedings before an inferior Criminal Court, which the Sessions Court is not. If the District Magistrate thinks a failure of justice has occurred in such a case, his proper course is to have steps taken for an appeal to be preferred against the order of acquittal by the Sessions Judge. QUEEN-EMPRESS v. BAPU, **Rat. Un. Cr. C. 212.**

(3950)—*S.* 438—*Revision against acquittal.*—Where the object of a reference under s 438, by a District Magistrate, is to induce the High Court to set aside an order of acquittal by an inferior Court, the reference will not be entertained by the High Court. If the Local Government desire to appeal from the acquittal, s. 417 is open to it. EMPEROR v. MADAR BAKHSH, **25 A. 128=A.W.N. 1902, 200** [*F.*, 15 Cr. L.J. 236=23 Ind. Cas. 188=26 M.L.J. 160, 15 Cr. L.J. 304=12 A.L.J. 255=23 Ind. Cas. 512, 1 Ind. Cas. 238=5 N.L.R. 4=9 Cr. L.J. 211]

(3951)—*S.* 438—*Practice—Report by District Magistrate against order made by Sessions Judge.*—It would be contrary to every principle to allow a District Magistrate to report against an order of the Sessions Court to whom he is subordinate. The words, "or otherwise" in s. 438, were not intended to confer upon a Magistrate the power to question the propriety of an order of a Sessions Court and make a reference to the High Court upon that ground. JAMNA BAI v. KING EMPEROR, **2 A.L.J. 589 =28 A. 91=A.W.N. 1905, 198=2 Cr.L.J. 515.**

(3952)—*S.* 438—*Inadequate sentence by subordinate Magistrate—Reference by District Magistrate.*—When a District Magistrate finds that a sentence passed by a Magistrate of the First Class and confirmed on appeal by the Sessions Judge is inadequate, it is only open to him to bring the fact to the notice of the Local Government or to instruct the Government Pleader to move the High Court in the matter. It is not competent to him, in such a case, to report the case for orders of the High Court, under s. 438. EMPEROR v. KRISHNAJI SHAMRAO, **6 Bom. L.R. 1099=1 Cr.L.J. 1115.** [*R.*, 36 A. 378=12 A.L J. 519=15 Cr.L.J. 407=23 Ind. Cas. 1007.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(3953)—*S.* 438 (=*Crim. Pro. Code*, 1872, *s.* 296)—*Power of Sessions Judge to admit a convicted person to bail.*—A Court of Sessions, acting under s. 296, has no power to admit a convicted person to bail. MOHESH MUNDUL v. BOLANATH MUNDUL, **3 C.L.R. 404.** (23 W.R. Cr. 40, *Cited & F.*)

(3954)—*S.* 438—*Reference to High Court against order of Magistrate issuing warrant for attendance of absent party in proceedings under s.* 145, *Crim. Pro. Code.*—On application to the Sessions Judge for redress against the illegality of an order passed by a Magistrate under s. 145, Crim. Pro. Code, issuing a warrant to compel the attendance of an absent party in such proceedings, he should report the matter under s. 438 for the orders of the High Court, if he is of opinion that the order is illegal and without jurisdiction. KEFATULLAH v. FERUZUDDIN MIAH, **5 C.W.N. 71.**

(3955)—*S.* 438—*Offences not exclusively triable by Court of Session, disclosed in preliminary enquiry—Commitment—Whether ought to be quashed.*—The fact that the offences disclosed by the evidence taken at the preliminary enquiry are not exclusively triable by a Court of Session is no ground for quashing a commitment. *In re* SESSIONS JUDGE OF TRICHINOPOLY, **7 M.L.T. 186=5 Ind. Cas. 932=11 Cr.L J. 333.**

(3956)—*S.* 438—*Commitment to Court of Session of some accused—Other accused not arrested—Whether commitment to be quashed.*—The mere fact that the accused who have been committed to the Court of Session were acting in concert with those who have not yet been arrested is no reason for quashing the commitment; nor the inconvenience, if any, which will be caused by the trial in the Sessions Court of the accused already committed, before that of others, is of serious importance. *In re* RAMASAMI SERVAI, **7 M.L.T. 187=5 Ind. Cas. 933=11 Cr. L J. 333.**

(3957)—*S.* 438—*Duty of District Magistrate to report cases of illegal order by subordinate Magistrate to the High Court.*—The District Magistrate should refer to the High Court all cases in which he considers the order of a subordinate Court illegal, as it is for the High Court to determine whether or not the illegality requires correction. HIGH COURT PROCEEDINGS, 27TH OCT. 1880, NO. 2149, **2 Weir 564.**

(3958)—*S.* 438—*Separate appeals by accused persons in one case—Appeal by some of them barred by limitation—Conviction of the other accused set aside on appeal—Practice.*—When separate appeals are filed by several accused persons against the order of conviction in a case passed by a Magistrate and some of them are barred by limitation and the appellate Court sets aside the conviction of the accused whose appeals are within limitation, the Court must refer to the Chief Court the appeals barred by limitation for revision of the order of the Magistrate as regards the appellants whose

Crim. Pro. Code (Act V of 1898)—*continued.*

appeals are barred by limitation. SARDAR v. EMPEROR, **121 P.L.R. 1903.**

(3959)—*S.* 438 —*Power of a Subordinate Magistrate to revise illegal sentence.*—When a Subordinate Magistrate finds that he has passed an illegal sentence, his proper course is to submit the record to the District Magistrate for action under s. 438, Crim. Pro. Code. He has no authority to revise his own order. KING-EMPEROR v. MAUNG CHO, **2 L.B.R. 43.** [*R.*, 14 Bur. L.R. 81=7 Cr. L.J. 479=4 L. B. R. 213.]

(3960)—*S.* 438 (=*Crim. Pro. Code*, 1882, *s.* 438)—*Reporting by District Magistrate of a case to the High Court on letter from complainant—District Superintendent of Police.*—The District Magistrate reported the proceedings of the Second Class Magistrate under s.438 of the Crim. Pro. Code, on representation of the District Superintendent of Police, who had himself been the complainant in the case before the Second Class Magistrate: *Held*, that the District Magistrate should have been guided by the Criminal Circulars, p. 15, s. 42, and that he had acted irregularly in forwarding, with his own incomplete report, the communication addressed to him by the complainant protesting against the Second Class Magistrate's decision. The circumstance that the complainant holds office as District Superintendent of Police can give him no right to make any representation to the District Magistrate in the form of an official letter or memorandum in a case in which he was personally interested; nor can the High Court take such letter or memorandum into consideration when dealing with the case. QUEEN-EMPRESS v. NAGOO, **Rat. Un. Cr. C. 340=Cr.Rg. 31 of 1887.**

(3961)—*S.* 438 (=*Crim. Pro. Code*, 1882, *s.* 438)—*Old offender, conviction of—Procedure under section.*—Where the Presidency Magistrate convicted under ss. 457 and 380, I.P.C., an accused whom he found to be an old offender *held*, that the Magistrate should have acted under s. 438, Crim. Pro. Code, and committed the accused to the High Court. QUEEN-EMPRESS v. GAVDA SING, **Rat. Un.Cr.C. 704 =Cr.Rg. 35 of 1894.**

(3962)—*S.* 438 (=*Crim. Pro. Code*, 1882, *s.* 438)—*Reference to High Court of questions of law.*—Provincial Magistrates are not competent to refer questions of law that may arise before them for the decision of the High Court. QUEEN-EMPRESS v. KALLU, **S.C. 71,** Oudh.

(3963)—*S.* 438—*Proceedings of Court of Session—Power of District Magistrate to refer to High Court—Absence of—Proper course.*—S. 438, Crim. Pro. Code, does not warrant a District Magistrate in reporting to the High Court the proceedings of the Court of Sessions. (28 A. 91, 23 C. 251, *R.*) The District Magistrate should, if he considers the Sessions Judge's order illegal, move the Public Prosecutor to bring it before the High Court. ANGAMUTHU v. VANATHRIAN, **12 M.L.T. 170=1912 M.W.N. 812=16 Ind. Cas. 522=13 Cr. L.J. 714=23 M.L.J. 732.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(3964)—*S.* 438—*Sentence passed by Court of Sessions—District Magistrate's power to refer.—Semble.*—A District Magistrate is not entitled to refer a case to the High Court with a view to getting a sentence passed by a Court of Sessions enhanced. It is extremely inconvenient that the District Magistrate should criticise an order passed by a Court superior to him, and the High Court should not interfere, except for special reasons, with the sentence passed by a Court of Sessions, on a reference made to it by the District Magistrate. KING-EMPEROR v. GANGA, **12 A L.J. 519=15 Cr. L.J. 407=23 Ind. Cas. 1007=36 A. 378.**

(3965)—*S.* 438—*Reference by District Magistrate on point of law in pending case, whether valid.*—A District Magistrate is not competent to refer to a High Court, under s. 438 of the Code of Criminal Procedure, a point of law actually arising in a case pending before him. *In re* PALANI GOWNDEN, **15 Cr. L.J. 472=24 Ind. Cas. 352.**

(3966)—S. 438—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, 30 A. 109=4 A.L.J. 805=A.W.N. 1908, 28=3 M.L.T. 115=6 Cr. L.J. 454.

(3967)—S. 438—*See* SESSIONS JUDGE, JURISDICTION OF, A.W.N. 1898, 12, A.W.N. 1903, 28.

(3968)—S. 438 (1)—*See* MAGISTRATE, JURISDICTION OF—TRANSFER OF CASES, ETC., Rat. Un. Cr. C. 652=Cr. Rg. 18 of 1893.

(3969)—S. 438—*See* Nos. 258, 374, 606, 693, 800, 819, 1221, 1302, 1364, 1840, 2002, 2003, 2090, 2125, 2167, 2213, 2486, 2584, 2585, 3513, 3706, 3707, 3808, 3822 to 3832, 3863 to 3879, 3940, 3941, *supra.*

(3970)—*Ss.* 438, 346 —*Conviction for a minor offence—Facts disclosing a more serious offence which the original Court was not competent to try—Accused not prejudiced nor sentence inadequate—Whether conviction should be quashed.*—Provided the Court had the power to try the offence of which it has convicted the accused, it is not necessary to quash the conviction merely because the facts disclose a more serious offence, which the Court was not competent to try, unless the accused was prejudiced or the sentence was inadequate. In this case, the Sub-divisional Magistrate set aside the conviction of the accused for an offence under ss. 352, 379 and 426, Penal Code, on the sole ground that the facts disclosed in the prosecution evidence amounted to an offence under s. 392, Penal Code, which the original Magistrate, being only of the second class, was not empowered to try. He further proceeded to remand the case to the same Magistrate for re-trial. *Held* that, as the accused was in no way prejudiced and the sentence imposed was prefectly adequate, there was no reason for subjecting the accused to a fresh trial. *In re* MOHIDEEN BATCHA SAHIB, **25 M.L.J. 484.** (13 B. 502, 24 M. 675, *R.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

(3971)—*Ss.* 438, 436 (=*Crim. Pro. Code*, 1872, *s.* 296)—*Applicability of section where term for appeal unexpired.*—Where the term for appeal has not expired, it was held to be be inadvisable to take action under s. 296. CROWN v. BHIKH, **S.C. 2, Oudh.**

(3972)—Ss. 438, 436—*See* COMMITMENT TO SESSIONS COURT, A.W.N. 1882, 105.

(3973)—Ss. 438, 436—*See* SESSIONS JUDGE, JURISDICTION OF, 7 C. 662.

(3974)—Ss. 438, 436, 426, 439, 440—*See* REFERENCE TO HIGH COURT, A.W.N. 1881, 12.

(3975)—Ss. 438, 436, 426, 439, 440, 199—*See* PENAL CODE, ss. 497, 498, A.W.N. 1881, 112.

(3976)—*Ss.* 438 *and* 439—*Acquittal—Revision—Appeal.*—Where no appeal has been preferred by Government, it is very rarely correct to interfere, on revision, with an acquittal. MUNSHI v. CROWN, **13 P W.R. 1907, Cr.=72 P.L.R. 1908=5 Cr. L.J. 438** (13 P.R. 1905, Cr., *Overr.*; 12 P.R. 1906, Cr., *R.*)

(3977)—*Ss.* 438, 439 (=*Crim. Pro. Code*, 1882, *ss.* 438, 439)—*Reference to High Court by District Magistrate of a case decided by Sessions Judge.*—A District Magistrate, if he considers that there has been a miscarriage of justice in an appeal heard by the Sessions Judge, should not report the case to the High Court for orders under s. 438, but should communicate with the Public Prosecutor and invite his attention to it. QUEEN-EMPRESS v. SHERE SINGH, **9 A. 362=A.W.N. 1887, 64.** [*R.*, 2 A.L.J. 589=A.W.N. 1905, 198=28 A. 91, 2 N.L.R. 149=4 Cr. L.J. 422, 8 Cr. L.J. 161=1 S L.R. 40, Cr., 11 Cr. L.J. 327=6 Ind. Cas. 358=8 M.L.T. 88.]

(3978)—Ss. 438, 439—*See* BEN. ACT III OF 1884, ss. 236, 273 (1), 29 C. 491.

(3979)—*Ss.* 438 *and* 439 (5)—*Order of acquittal—Reference by District Magistrate—Right of appeal against acquittal—Revision—Practice of the High Court.*—It is against the practice of the High Court to interfere in revision with orders of acquittal where reference has been made by the District Magistrate. Right of appeal against orders of acquittal is vested in the Local Government and not in the District Magistrate. It is only open to him to move the Local Government to file an appeal. KING-EMPEROR v. GUR DAYAL, **12 A.L.J. 255=15 Cr. L.J. 304=23 Ind. Cas. 512.** (24 A. 346, 25 A. 128, *R.*)

—— **S. 439, paras 1 to 4 (=1882, s. 439; 1872, s. 297; 1861, ss. 404, 405) para 5, new.**

See HIGH COURT, JURISDICTION OF.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF.

See REFERENCE TO HIGH COURT.

See REVIEW.

See REVISION.

Crim. Pro. Code (Act V of 1898)—*continued.*

(3980)—*S.* 439—*Discretion of High Court—Conditions—Practice.*—It is not the practice of the High Court to entertain an application for revision on the criminal side where there exists a lower Court having concurrent revisional jurisdiction, unless an application for revision has been made to the latter Court. EMPEROR v. KALI CHARAN, **A.W.N. 1904, 232.** (A.W.N. 1890, 164, *F.*) [*F.*, 28 A. 268=A.W.N. 1905, 279=3 Cr. L.J. 53, 30 A. 116=A.W.N. 1908, 25=3 M.L.T. 124=1 Cr. L.J. 48.]

(3981)—*S.* 439—*Acquittal — High Court's powers of revision—Motion in Court.*—Although the High Court has power to interfere, in revision, with an original or appellate judgment of acquittal, it will not ordinarily do so QAYYUM ALI v. LAIYAZ ALI, **27 A. 359=A.W.N. 1904, 278.** [*R.*, 9 Cr. L.J. 211=5 N.L.R. 4=1 Ind. Cas 238].

(3982)—*S.* 439—*Crim. Pro. Code, s.* 417—*Revision.*—Though the High Court has power to interfere, in revision, with an order of acquittal, yet, ordinarily, it does not interfere with such an order in the exercise of its revisional jurisdiction, because an appeal can always be made by the Local Government under s. 417, Crim. Pro. Code. HEERA BAI v. FRAMJI BHIKAJI, **15 B. 349.** [*F.*, L.B.R. 1893—1900, 41; *R.*, 23 C. 975, 9 Cr. L.J. 211=5 N.L.R. 4=1 Ind. Cas. 238].

(3983)—*S.* 439—*Practice—Power under the section, how exercised.*—The power under s. 439 ought to be exercised with great care, and, with regard to pending trials, only in the most exceptional cases. INAMULLA v. KING-EMPEROR, **2 A.L J. 673=A.W.N. 1905, 238=2 Cr. L.J. 790.**

(3984)—*S.* 439—*Practice.*—The High Court, in revision, has the power of ordering a re-trial, though it may not convert a finding of acquittal into one of conviction. QUEEN-EMPRESS v. GHOSE, **L B.R. 1893—1900, 41.** (15 B. 350, 6 A. 484, *F.*)

(3985)—*S.* 439—*Practice, old and new law.*—The powers of revision conferred upon the High Court under s. 439 of the Code of 1882 are larger than any exercised by them under the old Act. *In re* GANGAMMA, **2 Weir 538=2 Weir 669.**

(3986)—*S.* 439 (=*Crim. Pro. Code*, 1872, *s.* 297)—Under s. 439, the High Court is not incompetent to interfere in revision as well as to interfere on appeal. But it could not have been the intention of the Code that a person who, as appellant, has had the opportunity of advancing any objection he desires to take to the proceedings of a Court by which he has been convicted, should again have the opportunity of raising any points of law he may have omitted to raise by an application for revision. *In re* VENKATACHALAM, **2 Weir 573.**

(3987)—*S.* 439 (=*Crim. Pro. Code*, 1882, *s.* 439).—S. 439 empowers the High Court, in the case of any proceedings to exercise any of

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the powers given to a Court of appeal under s. 423 (*c*) and, therefore, to alter or reverse such order. The High Court has, therefore, power to set aside or modify the Magistrate's order or to direct further enquiry. SUBBANASARI v. KARUPPAI, **2 Weir 575, F.B. = 2 Weir 634.**

(3988)—*S.* 439.—Though s. 439 of the Crim. Pro. Code, 1882, gives the High Court power to call for cases not only on judicial information, but also when they otherwise come to its knowledge, yet, in most circumstances, the right practice is that Judges should be moved in open Court. QUEEN-EMPRESS v. ABDUL, **Rat. Un. Cr. C. 577 = 16 B. 580.**

(3989)—*S.* 439.—Per *Banerjee, J.*—The last paragraph of s. 439, Crim. Pro. Code, 1882, cannot be held to limit the powers of a Court of appeal. It is intended only to limit, in certain respects, the revisional powers of the High Court, which would otherwise have been competent in revision to convert a finding of acquittal into one of conviction. As to the extent of this limitation on the powers of the High Court as a Court of revision, there is some conflict of opinion. But there is no such restriction imposed under s. 423 (*b*). QUEEN-EMPRESS v. JABANULLA, **23 C. 975.** [*R.*, 40 C. 163 = 13 Cr. L.J. 497 = 15 Ind. Cas. 641.]

(3990)—*S.* 439—*Procedure.*—Under s. 439, Crim. Pro. Code, 1882, although it is not usual for the High Court to interfere with the decision of the lower Court, when the decision is based upon a consideration of the evidence, yet, if the lower Court has not valued the testimony of accomplices as it ought to be, and has admitted, improperly, hearsay evidence on important points, the High Court is justified in going into the facts of the case in exercise of their revisional powers. RAJONI KANT BOSE v. ASAN MULLICK, **2 C.W.N. 672.** [*R.*, 16 C.P. L.R. 171.]

(3991)—*S.* 439—*High Court's power to rectify improper acquittals.*—There is nothing in the last clause of s. 439, Crim. Pro. Code, 1882, to prevent the High Courts from rectifying improper acquittals in the exercise of their jurisdiction under this section; *e.g.*, they may reverse an acquittal and order a re-trial. SAIYID HASSAN RAZA KHAN v. MIR MASHHADI HUSAIN, **S.C. 191, Oudh.**

(3992)—*S.* 439—*High Court—Revision—Acquittal—Practice and procedure.*—Although the High Court does not ordinarily interfere with orders of acquittal in revision, yet it cannot be expected that it would hesitate to do so, where the acquittal is based, not upon an appreciation of doubtful evidence, but upon a manifest error in law appearing on the face of the judgment. It is not open to Courts to question the discretion of public bodies, vested in them by law. THE AHMEDABAD MUNICIPALITY v. MAGANLAL KHUSHALDAS, **9 Bom. L.R. 156 = 5 Cr.L. J. 171.**

(3993)—*S.* 439.—Where, upon the evidence in a case which was not contradicted, and upon the facts admitted, the accused were clearly guilty under s. 504, and one of them under s. 342, Penal Code, neither of them being a summons case, *held*, that the acquittal of the accused was clearly illegal. The High Court set aside the order of acquittal and directed the restoration of the case to the file. SABAPATHY MUDALY v. KUPPUSAMY MUDALY, **2 Weir 572.**

(3994)—*S.* 439 (= *Crim. Pro. Code,* 1882, s. 439)—*Error in law committed by appellate Court—High Court's powers of revision*—The refusal by a Sessions Judge in appeal to consider the depositions of the complainants made on the night of the occurrence, which were contradicted by them in their subsequent evidence before the Magistrate, was held to be such an error in law as would justify the High Court in setting aside the appellate judgment of the Sessions Judge. *In re* APPASAMY DITCHADAR, **2 Weir 573.**

(3995)—*S.* 439—*Practice—Summary rejection of an appeal by the Sessions Judge—Revision of the Judge's order—High Court's practice where evidence found insufficient—Circumstantial evidence—Suspicion—Subsequent conduct of the accused confirming suspicion.*—On an application to the High Court to set aside an order of the Sessions Judge, summarily dismissing an appeal, which the applicants preferred from an order of a Magistrate, convicting them of an offence under the Penal Code, the High Court, finding that the evidence, on which the conviction was based, was insufficient, instead of remanding the appeal for a hearing on its merits, set aside the conviction and sentence and acquitted and discharged the accused. One G., a servant of the complainant, deposited for safe custody a sum of money with I (one of the accused), who put it into a box, locked it and kept the key with himself. The other accused C used the box as a bed during the greater part of the night and the next morning the lock was found to have been forced and the money was missing. Neither I nor C was in continuous possession of the box from the time the money was put into it to the time that it was missed. It was found by the Magistrate that the accused set up a false story to account for the loss of the money and the evidence showed that the accused had opportunities to take away the money unnoticed. On a charge, on these facts, against the accused under ss. 406, 109 of the Penal Code, with respect to the money lost, *held*, that these facts could not support a conviction. Per *Stephen, J.*:—In a case of this kind, where there is no eye witness and where the stolen property has not been found, the possibility of any other person being a culprit must be excluded before the accused can be convicted. ISWAR CHANDRA DASS v. EMPEROR, **10 C.W.N. 446 = 3 Cr. L J. 385.**

(3996)—*S.* 439 (= *Crim. Pro Code,* 1882, s. 439)—*Acquittal on one charge and conviction on another—Power of High Court to change the conviction.*—Where a person, who is charged under ss. 295 and 379, Penal Code, is acquitted under the former section, but is convicted under the latter section, it is doubtful, having regard to the last para of s. 439, Crim. Pro. Code,

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whether the High Court has the power, after setting aside the conviction under s. 379, Penal Code, to alter the conviction to one under s. 295, Penal Code. VEDAGIRI MUDALY v. SAPPANI MUDALY, **1 Weir 430 = 2 Weir 577.**

(3997)—S. 439 (=*Crim. Pro. Code*, 1882, s. 439)—*Conviction without knowledge of the fact of the accused being an old offender—Revision—Previous convictions not proved.*—The fact of the prisoner being an old offender not having been brought to the Magistrate's notice, is no reason why he should be re-tried, with a view simply to enhancement of the punishment, nor should the sentence be revised with reference to such convictions, when they were not proved, nor admitted in the trial. *In re* HYOTH MASTAN, **2 Weir 574.**

(3998)—S. 439.—The Chief Court declined to grant the petition for revision filed on behalf of the Crown under s. 439, Crim. Pro. Code, 1898, praying that a re-trial of the case may be ordered before a Court competent to pass an adequate sentence, having regard to certain previous convictions, of which a detail was given in the application, when it appeared that the prosecution had been given ample opportunity to tender proof of the previous convictions by the trying Magistrate, and the prosecution had neglected to prove them. EMPEROR v. GUL, **144 P.L.R. 1902 = 21 P.R. 1902, Cr.**

(3999)—S. 439.—The accused was convicted and sentenced by a Magistrate for an offence under s. 380 of the Penal Code. When the sentence was passed, there was no suggestion whatever that he was a previous convict. Subsequent enquiry, directed by the District Magistrate on Police report, showed that the accused had a number of previous convictions. On a motion to the Chief Court under s. 439, Crim. Pro. Code, 1898, for an order for re-trial by a competent Court with a view to enhanced punishment, *held*, that it had no power to order a new trial, under the circumstances, except in cases where the omission to take evidence of previous convictions was due to neglect or misconduct on the part of the Magistrate. EMPEROR v. NUR MAHAMMAD, **3 Cr. L J. 341, 43 P.R. 1905, Cr. = 42 P.L.R. 1906.**

(4000)—S. 439—*Revision — Acquittal—Act* XII *of* 1896 (*Excise*), *s.* 46 (*c*).—The accused, licensed sub-contractors for the sale of liquor in a Native State, were found travelling in a train at a station in British territory proceeding to their place of business in the State with liquor which they had purchased in the State under a State pass. As they had failed to obtain a pass from the Collector of the District in which they were found travelling, they were arrested and charged with an offence under s. 46 (*e*) of Act XII of 1896, but acquitted by the trying Magistrate on the strength of remarks on page 106 of the Punjab Excise Pamphlet. The District Magistrate reported the case to the Chief Court for revision under s. 438 of the Crim. Pro. Code. *Held*, that interference on revision would be quite improper, it being open to the Government to appeal, if they so desired. CROWN v. GURDIT SINGH, **1 P.L.R. 1904.**

(4001)—S. 439—*Revision—Limitation.*—An application for the revision of an order of acquittal would be refused when the application was not received till the time allowed by the law of limitation for an appeal from an acquittal had all but expired. MAUNG SEIN v. MAUNG HMO, **U.B.R. 1897-1901, Vol. I, 103.** [*R.*, 13 Cr. L.J. 457 = 15 Ind. Cas. 89 = U.B.R. 1911, 4th Qr. 100.]

(4002)—S. 439—*Appeal against acquittal—High Court's powers.*—The case reported in 14 M. 363, does not lay down that, when no appeal has been preferred by the Government against an acquittal, the High Court has no power to revise. What it lays down is, that revision, in such circumstances, should be discouraged. SESHA AIYANGAR v. LATCHMANA CHETTY, **2 Weir 571 = 14 M. 363.**

(4003)—S. 439—*Sanction to prosecute—High Court—Procedure to be observed.*—In an application for revocation of sanction granted by the lower Court, the High Court is competent to exercise the broad and general powers granted under s. 195 of the Code of Criminal Procedure whether the application be regarded as one under s. 439 of the Code of Criminal Procedure or one under s. 622 of the Code of Civil Procedure of 1882. The High Court must satisfy itself that the case is one in which the sanction was not merely fitly accorded, but accorded with due regard to the procedure which, in the interest of the accused person, ought to be observed. JOY NARAIN JANA v. UPENDRA NARAIN RAY, **13 C.L.J. 216 = 9 Ind. Cas. 706.**

(4004)—S. 439—*Sentence, enhancement of—Defamation—Unjustifiable and calculated to incite resentment between communities—Nature of punishment—Lapse of time—Imprisonment—Not necessary.*—Where the accused, in reply to a private notice to show cause why he should not be excommunicated from the Khoja Panjibhai community, published, in two newspapers conducted by him, a violent attack declaring that excommunication was merely a prelude to the murder and assassination of seceders to the Khoja Pirai community, and where the publication was found by the Courts not only to have been unjustifiable, but also to have been calculated greatly to enhance the fanatical resentment of the Khoja Panjibhai community, against seceders to the Khoja Pirai community, *held* that, on conviction, a sentence of a fine of Rs. 400 was inadequate, and that, in view of the lapse of over three years after the offending publication, a substantive sentence of imprisonment was unnecessary, but that an enhanced fine of Rs. 1,000 would be sufficient. HOOSEINI ALLAHRAKHIO v. JAFFAR FADU, **4 S.L.R. 86 = 8 Ind. Cas. 218 = 11 Cr. L.J. 593.**

(4005)—S. 439—*Revision — Serious discrepancy in evidence for the prosecution—Failure of both Courts to take its notice—Power of High Court to set aside conviction on revision.*—A

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conviction based on evidence having a serious discrepancy therein, of which no notice appears to have been taken by both the lower Courts, is liable to be set aside on revision under s. 439, Crim Pro. Code. SADDA SINGH v. CROWN, 8 **P.W.R. 1912, Cr. = 15 Ind. Cas. 95 = 13 Cr. L.J 463 = 113 P.L R. 1912.**

(4006)—*S.* 439—*Revision—Concurrent findings of two Courts—Strong element of doubt—Track evidence—Value of confession not well proved—Theft of chari—Penal Code*, s. 379.—*Held*, that when a case seems *ab initio* improbable and, on account of enmity between the parties or other causes, the element of doubt is very strong therein, the conviction must be set aside even on revision, notwithstanding concurrent findings of facts by both the Courts below. In such like cases, track evidence amounts to little, and a confession not well proved is of no value. BOORI v. CROWN, 28 **P.W.R. 1912, Cr. = 16 Ind Cas. 520 = 13 Cr. L.J. 712.**

(4007)—*S.* 439—*Order of acquittal—High Court's power to revise—Case involving question of title—Summary trial - Impropriety.* — The High Court has power to revise, under s. 439, Crim. Pro. Code, an order of acquittal, but this revisional jurisdiction will be exercised sparingly and generally only in cases where there is an error of law and procedure patent on the face of the judgment. (27 C. 320, *R.*) Where the case involved the decision of a question of title and the production of documentary evidence, the Magistrate ought not to have adopted a summary procedure in trying the same. CROWN v. TIRITHDAS, **6 S.L.R. 120 = 17 Ind. Cas. 403 = 13 Cr. L J. 771.**

(4008)—*S.* 439—*Revision — Jurisdiction of Criminal Court—Civil dispute—Complaint—Discouragement of.* — Every discouragement should be given to the habit of rushing into the Criminal Courts, where a civil suit is pending; and where the facts stated in a complaint disclosed no criminal offence, it can at once be dismissed by the Chief Court on revision under s. 439, Crim. Pro. Code. ANANT SING v. CROWN, **10 P.W.R. 1913, Cr. = 33 P L.R. 1913 = 18 Ind. Cas. 688 = 14 Cr. L.J. 128.**

(4009) — *S.* 439 — *Revision — Concurrent finding of two Courts—Insufficient evidence.*—*Held*, that, though it is very unusual to interfere on revision on facts, where the evidence is found insufficient, the conviction should not be allowed to stand. *Held*, also, that conviction should be based not upon what the Courts consider the witnesses ought to have said but upon what they actually do say; and if, by reason of a witness having been won over, the evidence against the accused becomes too weak to justify a conviction, the case for the prosecution falls to the ground. LEHNA v. CROWN, **12 P.W R. 1913, Cr. = 66 P.L R. 1913 = 19 Ind. Cas. 148 = 14 Cr.L.J. 148.**

(4010)—*S.* 439—*Doubt—Revision—First report—Concurrent finding, setting aside of.*—*Held* that, where, with reference to the first report at the Thana and other circumstances, the case against an accused person is very doubtful, the benefit of the doubt should be given to the accused, and in such a case even the concurrent findings of facts by the lower Courts are liable to be set aside on revision. KESAR SINGH v. CROWN, **5 P.W.R. 1913, Cr. = 14 Cr. L.J. 320 = 19 Ind. Cas. 1008 = 152 P.L R. 1913.**

(4011)—*S.* 439—*Enhancement of sentence—Discretion of the Chief Court to interfere—Accused undergone the sentence.*—*Held*, that, in the case of recommendations for enhancement of sentences, the Chief Court is not always bound to interfere under s. 439, Crim. Pro. Code, even when the order of the Court below is clearly wrong in law, particularly when the accused has already undergone the sentence of imprisonment or has paid the fine imposed upon him. CROWN v. HARI SINGH, **29 P.W.R. 1913, Cr. = 313 P.L.R. 1913 = 21 Ind. Cas 471 = 14 Cr L J. 599.** (7 P.R. 1889, 19 P.W.R. 1910, Cr., *F.*) [*D.*, 16 P.W.R. 1914, Cr. = 37 P.L.R. 1914 = 19 P.R. 1914, Cr. = 15 Cr. L.J. 260 = 23 Ind. Cas. 468.]

(4012)—*S.* 439 — *Revision of sentence on consideration of fresh facts—Penal Code*, s. 147 —*Rioting over disputed possession of* chur—*Finding of Settlement Officer pronounced after issue of Rule considered by High Court in revising sentence.*—In a case of rioting arising out of a dispute relating to the possession of a *chur* between the zemindar and the talukdar in which both the lower Courts found in favour of the complainant on the question of possession, but the Assistant Settlement Officer, after the judgment of the Sessions Judge in appeal was pronounced and after a Rule was issued by the High Court, found in connection with the preparation of record-of-rights that the culturable area in the *chur* was in the possession of the zemindar whose men the petitioners were, the High Court for the purpose of revising the sentence, considered the judgment of the Assistant Settlement Officer and reduced the sentence. ARAJ SARKAR v. EMPEROR, **18 C. W.N. 646 = 15 Cr. L.J. 473 = 24 Ind. Cas. 561.**

(4013)—*S.* 439—*Revision—Concurrent finding of two Courts—Evidence not convincing—Criminating statement before a constable—Criminal misappropriation—Penal Code*, s. 403.—*Held*, that, when complainant is an enemy of the accused and other circumstances of the case make the case against him doubtful, he is entitled to be acquitted even in revision. RATTU RAM v. CROWN, **28 P.W R. 1914, Cr. = 168 P. L.R. 1914 = 15 Cr.L.J. 591 = 25 Ind. Cas. 343.**

(4014)—*S.* 439—*Misappreciation of evidence — Revision.*—*Miller and Ayling, JJ.* — In revision, it is in the discretion of a High Court to exercise its power of going into the question of appreciation of evidence. (22 C. 998, *R.*) *Sankaran Nair, J. (dissenting).*—Where there has been misappreciation of evidence, and a convicted person claims to be heard to shew that the lower Courts have misappreciated that

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evidence, and that he has been unjustly convicted, it is not open to a Judge to say that it is within his discretion to permit or refuse him to do so or not. No doubt, the sections only say that the High Court may interfere in revision, but "may" is the only word that could be used. *In re* VILLAGE MUNSIFF RAMASWAMI GOUNDAN, **15 Cr.L.J. 285 = 23 Ind. Cas. 493.**

(4015)—*S.* 439—*Revision—Power to interfere with non-appealable orders — Order framing charge against accused—Revisability—Findings by Civil Court—Conviction upon different findings on same facts—Propriety—Duty of Criminal Courts.*—The Chief Court has power, under s. 439, Crim. Pro. Code, to interfere with orders, in respect of which no appeal would lie under the Code, and may, therefore, set aside, if it so thinks fit, the order of a Magistrate charging an accused person with an offence. It would be anamolous to hold that it is open to criminal Courts to go behind the findings of the Civil Courts and to convict of cheating and fraud a person who, upon the very same facts, had succeeded in satisfying the Civil Court *upon the merits of the case* of the legality of his claim. CROWN v. BISHEN DAS, **33 P.R. 1910, Cr. = 8 Ind. Cas. 1161 = 57 P.L.R. 1911 = 12 Cr.L.J. 50.** (27 C. 126, *Diss.*; 45 P.R. 1885, Cr., *D.*; 42 P.R. 1885, Cr., 25 C. 233, 26 C. 786, 22 C. 131, 2 A. 398, 19 A.W.N. 212, 20 B. 543 and 18 P.R. 1904, Cr., *R.*)

(4015-*a*)—*S.* 439—*Findings of fact—Wrong inferences therefrom—Accused found guilty of offences not constituted as such by facts found—Interference by High Court—Revision.*—Where the lower Courts have, in certain of the charges, erred in their inferences from facts as found, and have found the accused guilty of offences which are not constituted by such facts, the High Court will interfere in revision, in exercise of the powers conferred by s. 439, Crim. Pro. Code. LOKUMAL v. CROWN, **8 S.L.R. 199 = 16 Cr.L.J. 230 = 27 Ind. Cas 902.**

(4016)—S. 439—*See* ACQUITTAL, 9 A. 134, F.B. = A.W.N. 1886, 322.

(4017)—S. 439—*See* ACT XVIII OF 1879, s. 36, 21 A. 181 = A.W.N. 1899, 15.

(4018)—S. 439—Criminal case—Revision—Enhancement of sentence—Discretion of Chief Court—*See* ACT VI OF 1882, s. 74, 37 P.L.R. 1914 = 16 P.W.R. 1914, Cr. = 15 Cr.L.J. 260 = 23 Ind. Cas. 468 = 19 P.R. 1914, Cr.

(4019)—S. 439—*See* ACT VI OF 1882, s. 74, 35 P.W.R. 1910, Cr.

(4020)—S. 439—Case of doubt—Concurrent findings of lower Courts whether can be set aside in revision—*See* ACT XII OF 1896, s. 51, 43 P.W.R. 1913, Cr. = 98 P.L.R. 1914.

(4021)—S. 439—*See* ACT VIII OF 1897, ss. 1 and 16, 28 C. 423 = 5 C.W.N. 211.

(4022)—S. 439—*See* ACT XV OF 1903, s. 7, 36 P.W.R. 1908, Cr. = 3 P.R. 1909, Cr. = 9 Cr. L.J. 3.

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(4023)—S. 439—Revision of order of acquittal—*See* BEN. ACT III OF 1899, ss. 3, cl. 35, 361, 416 (1)(5), 419, 17 C.W.N. 1250 = 14 Cr.L.J. 511 = 20 Ind. Cas. 991.

(4024)—S. 439—Enhancement of sentence—District Magistrate can move for enhancement—*See* BOM. ACT V OF 1878, s. 43 (*q*), 13 Bom. L.R. 1185 = 12 Ind. Cas. 980 = 12 Cr.L.J. 604.

(4025)—S. 439—Application to Presidency Magistrate by counter-petitioner to declare that the inclusion of the petitioner as a candidate for the Municipal election by the President of the Madras Corporation was illegal—Order of Presidency Magistrate allowing the application—Revision whether lies—*See* MAD. ACT III OF 1904, s. 413, 16 M.L.T. 128 = 27 M. L.J. 227 = 15 Cr.L.J. 593 = 25 Ind. Cas. 345.

(4026)—S. 439—*See* PUN. ACT XX OF 1891, ss 42 (1) (*f*), 201, 109 P.L.R. 1909 = 23 P.W.R. 1909 = 2 P.R. 1910, Cr.

(4027)—S. 439—*See* CRIMINAL MISAPPROPRIATION, 11 P.R. 1908 = 27 P.W.R. 1908 = 8 Cr. L.J. 250.

(4028)—S. 439—*See* DEFAMATION, 6 P.W. R. 1910, Cr. = 10 P.R. 1910, Cr.

(4029)—S. 439—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, A.W. N. 1905, 260 = 3 Cr.L.J. 48.

(4030)—S. 439—Discrepant evidence—Rioting — Revision—*See* PENAL CODE, ss. 147, 332, 14 P.W.R. 1912, Cr. = 111 P.L.R. 1912 = 15 Ind. Cas. 92 = 13 Cr.L.J. 460.

(4031)—S. 439—*See* PENAL CODE, ss. 302, 304, L.B.R. 1872—1892, 241.

(4032)—S. 439—Unanimous finding of fact by lower Courts—Interference in revision—*See* PENAL CODE, s. 411, 22 P.W.R. 1912, Cr. = 15 Ind. Cas. 971 = 13 Cr.L.J. 555.

(4033)—S. 439—Concurrent findings of fact when may be set aside in revision—*See* PENAL CODE, s. 411, 18 P.W.R. 1914, Cr. = 113 P.L.R. 1914 = 15 Cr.L.J. 521 = 24 Ind. Cas. 833.

(4034)—S. 439—Facts proved not sufficient to support conviction — Evidence gone into in revision—*See* PENAL CODE, ss. 415, 417, 511, 17 C.W.N. 294 = 18 Ind. Cas. 680 = 14 Cr.L.J. 120.

(4035)—S. 439—Case of cheating—Discharge—Revision—Re-trial—*See* PENAL CODE, s. 420, 10 P.W.R. 1912, Cr., 114 P.L.R. 1912 = 15 Ind. Cas. 88 = 13 Cr.L J. 456.

(4036)—S. 439—Finding of fact—Interference in revision—*See* PENAL CODE, s. 498, 36 P. W.R. 1913, Cr. = 319 P.L.R 1913 = 21 Ind. Cas. 467 = 14 Cr.L.J. 595.

(4037)—S. 439—*See* SANCTION TO PROSECUTE—REVOCATION OF SANCTION, 33 P.L. R. 1902 = 8 P.R. 1902, Cr.

(4038)—S. 439—*See* SENTENCE—POWERS OF APPELLATE COURT — ENHANCEMENT, 142 P.L.R. 1902.

(4039)—S. 439 — *See* SESSIONS JUDGE, JURISDICTION OF, 4 N.W.P. 6.

Crim. Pro. Code (Act V of 1898)—*continued.*

(4040)—S. 439 (*b*)—*See* DISCHARGE OF ACCUSED, 8 P.R. 1900, Cr.

(4041)—S. 439—*See* Nos. 79, 104, 209, 258, 306, 413, 425, 428, 584, 602, 692, 693, 735, 736, 763, 799, 1021, 1025, 1029, 1193, 1199, 1221, 1225 to 1229, 1237, 1300, 1303, 1529, 1657, 1838, 1839, 1840, 1845 to 1851, 1876, 1924, 1977, 2001, 2047, 2048, 2058, 2090, 2091, 2124, 2125, 2141, 2148, 2167-A, 2172, 2211, 2237, 2253, 2254, 2310, 2448, 2512, 2514, 2584, 2585, 2624, 2626, 2630, 2698, 2699, 2726, 2777, 2876, 2914, 2932, 2982, 3068, 3143, 3161, 3162, 3343, 3359, 3360, 3361, 3377, 3387, 3417, 3418, 3424, 3491, 3492, 3494, 3504, 3528, 3562, *supra.*

(4042)—Ss. 439 (1 to 4), 488—*See* REVISION—GENERAL PRINCIPLES, 5 B.H.C. Cr. 81.

(4043)—*Ss.* 439 (1 *to* 5), 476—*Stay of criminal proceeding during pendency of civil suit—Discretion of Magistrate.*—The High Court declined to order the stay of criminal proceeding under s. 499, Penal Code, initiated under the provisions of s. 476, Crim. Pro. Code, until the decision of a civil suit regarding the same subject-matter. *Per Rampini. J.*—The High Court has no power to direct that criminal proceedings before a Magistrate should be stayed until the disposal of civil appeal in which the question of dispute in the criminal proceedings shall have been decided. (4 B.L R. F.B., 426, *F.*) *Per Ghose, J.*—Having regard to the large powers the High Court possesses under s. 439 of the Code of 1882, under s. 15 of the Charter Act and ss. 28 and 29 of the Letters Patent, it must be held that the High Court has power to order a Magistrate to stay proceedings in his Court, if a sufficient case, in that behalf, is made out. But inasmuch as the Legislature has given to a Magistrate the power to regulate the proceedings of his own Court, discretion should ordinarily be left to the Magistrate either to stay proceedings or not, as he, in the circumstances of the case, may think it right and proper. It cannot be said that, as a general rule, a proceeding in a Criminal Court should be stayed pending a decision of a Civil suit in regard to the same subject-matter; but ordinarily it is not desirable, if the parties to the two proceedings are substantially the same and the prosecution before the Magistrate is but a private prosecution, and issues in two Courts are substantially identical, that both the cases should go at one and the same time. It is open to the Magistrate, having regard to the facts before him, to consider whether it is not desirable that the proceedings in his Court should be stayed till the decision of the civil suit, or for a limited period of time; and it is also open to him to put the defendant on terms as to appearance or otherwise, if he does stay proceedings. RAJ KUMARI DEBI v. BAMA SUNDARI DEBI, **23 C. 610.** [*R.*, 26 B. 785, 31 C. 858, 35 C. 909=8 Cr. L.J. 435, 15 Cr. L. J. 488=24 Ind. Cas. 576=7 Bur. L.T. 73; *D.*, 30 M. 226]

(4044)—*S.* 439 (5)—*Scope of.*—Clause 5 of s. 439 does not oust the jurisdiction of the High Court to deal with cases on revision reported by the District Magistrate or Sessions Judge of his own motion, and not on the application of the accused. KING-EMPEROR v. APPULSAWMY, **2 L.B R. 209.**

(4045)—*S.* 439 (5)—*Appealable sentence—High Court's power of revision, when no appeal is preferred.*—Although a sentence is an appealable one, and no appeal is preferred, yet s. 439 (5) does not preclude the High Court exercising its powers of revision, otherwise than at the instance of the party who could have appealed. *In re* SUBBIAN CHETTY, **2 Weir 447=2 Weir 577.**

(4045-*a*)—*Ss.* 439 (5), 435, 406. 118—*Order under s.* 118 — *Sureties required to be of particular class—Appeal under s.* 406 *not filed—No revision—Proceedings called for, at applicant's instance—Court precluded from interfering* suo motu.—An order under s. 118, Crim. Pro. Code, calling upon the applicant to furnish sureties, who were required to be landholders in the neighbourhood of the accused either holding 100 acres of land or paying income tax is valid and cannot be interfered with by way of revision under s. 439, Crim. Pro. Code. (3 S.L.R. 239, *F.*), By virtue of s. 406, Crim. Pro Code, an appeal lay against the order under s. 118 to the District Magistrate. But where the petitioner has not approached the District Magistrate, the High Court is precluded by s. 439 (5) from entertaining an application for revision. In a case where the High Court has not acted of its own motion in calling for the proceedings under s. 435, but, at the instance of the applicant, it would be a pure quibble to say that, in spite of the provisions of s. 439 (5), Crim. Pro. Code, the Court could do what the applicant wants, of its own motion. JUMO v. CROWN, **8 S.L.R. 229=16 Cr. L.J. 252=28 Ind. Cas. 108.**

(4046)—*Ss.* 439, 88 *and* 386 — *Revision — Criminal cases — Attachment of accused's property to recover fine—Revision does not lie to set aside—Attachment — Joint Hindu family property, if attachable.*—The petitioners applied for revision of an order directing attachment of certain property to recover fine imposed on the accused, on the ground that the property was not attachable under law, for it was joint Hindu family property of the petitioners and the accused had only a share in it. *Held*, that a revision did not lie (22 C. 935, 20 M. 88, A.W. N. 1898, 173, Rules and orders of the chief Court, Vol. III, p. 133, *R.*) *Quære.*—Whether the attachment was rightly ordered. HIRA LAL v. CROWN, **28 P.L.R. 1915=16 Cr. L.J. 166=27 Ind. Cas. 550.**

(4047)—Ss. 439, 144—*See* HIGH COURT, SUPERINTENDENCE AND POWERS OF, 19 C. 127.

(4048)—*Ss.* 439, 423 (*c*) *and* 515—*High Court's powers of revision—Whether affected by s.* 515.—The powers of revision conferred on the High Court by ss. 439 and 423 (*c*) are not taken away by the power of revision given to the District

Crim. Pro. Code (Act V of 1898)—*continued.*

Magistrate by s. 515. KARAM BAHADIN v. CROWN, **5 S L.R. 179 = 13 Ind.Cas. 223 = 13 Cr. L.J. 31.** (19 W.R. Cr., 1, 3 C. 757, 4 B. 624, *R.*)

(4049)—Ss. 439, 435—*See* SESSIONS JUDGE, JURISDICTION OF, 7 B.H.C., Cr. 73.

(4050)—*Ss.* 439, 464, 466—*Accused, lunatic —Procedure of Magistrate.*—If the Magistrate finds that the accused was of unsound mind at the time when the offence was committed and continues so at the time of the trial, he should proceed under ss. 464 and 466. In the former case, his proceedings are open to revision under s. 439, Crim. Pro. Code, as the final order for detention in an asylum is not appealable. EMPRESS v. CHADAMI LAL, **A.W.N. 1900, 47.**

(4051)—*Ss.* 439, 476—*Revisional jurisdiction of High Court to interfere with orders of subordinate Civil Court under s. 476—Civ. Pro. Code, s.* 622.—The propriety of an order of a subordinate Civil Court under s. 476, Crim. Pro. Code, directing an enquiry into an offence believed to have been committed before that Court, or brought under its notice in the course of a judicial proceeding, cannot be considered by the High Court under its criminal revisional jurisdiction, under s. 439, Crim. Pro. Code. But the High Court has revisional jurisdiction over such proceedings under s. 476, conferred by s. 622 of the Code of Civil Procedure. This jurisdiction is exercisable only in cases where the subordinate Civil Court has acted without jurisdiction or has failed to exercise its jurisdiction, or has acted in the exercise of its jurisdiction, illegally or with material irregularity. *Per Banerji, J., contra*:—The High Court has the power, under s. 439, Crim. Pro. Code, to interfere when a subordinate Court, civil, criminal, or revenue, has taken proceedings under s. 476 of that Code, but it should not exercise its powers where a Court of competent juri diction has held the proceedings, unless in its opinion, a failure of justice has actually taken place. *In the matter of the petition of,* BHUP KUNWAR, **26 A 249 = A W N. 1904, 15 = 1 Cr L. J. 73.** (26 M. 98, 8 C.W.N. 73, A.W.N. 1902, 202, *R.*) [*Diss.*, 37 M. 317, 15 Cr. L.J. 33 = 22 Ind. Cas. 177 = 9 N.L.R. 184; *R.*, 28 A. 551 = 3 A.L.J. 394 = A.W.N. 1906, 103 = 3 Cr. L.J. 400 = 1 M.L.T. 219, 34 A. 267 = 9 A.L J. 231 = 13 Cr. L.J. 141 = 13 Ind. Cas. 829, 37 C. 714 = 14 C.W.N. 806 = 11 Cr. L.J. 357 = 6 Ind. Cas. 473, 40 C. 477 = 17 C.L.J. 245 = 17 C.W.N. 647 = 14 Cr. L.J. 197 = 19 Ind. Cas. 197, 32 M. 49 = 9 Cr. L.J. 41 = 19 M.L.J. 42 = 4 M.L.T. 404, 33 M. 48 = 10 Cr. L J. 420 = 3 Ind. Cas. 934 = 19 M. L.J. 766 = 6 M.L.T. 327, 4 A.L.J. 701 = A.W. N. 1907, 277, A.W.N. 1904, 170, 15 Cr. L.J. 217 = 22 Ind Cas. 101 = 17 O.C. 25, 1 Ind. Cas. 597, 3 L.B.R. 234, 103 P.L.R. 1908 = 5 P.R. 1908, Cr. = 7 P.W.R. 1908, Cr = 7 Cr.L.J. 281, U.B.R. 1907, 1st Qr., Cr. P.C., p. 1 = 6 Cr. L.J. 25.]

(4052)—*Ss.* 439, 476—*High Court's power of revision.*—The High Court, as a Court of revision, has no power under s. 439 of the Code of Criminal Procedure, 1898, to interfere when a Court has taken action under s. 476 of the Code. The reasons for the decision in 21 M. 124 are not applicable to the amended section (s. 476). That decision was passed under the Code of 1882. ERANHOLI ATHAN v. KING-EMPEROR, **26 M. 98 = 2 Weir 576 = 2 Weir 595, F.B.** [*Overruled*, 33 M. 48 = 19 M.L J. 766 = 6 M.L.T. 327 = 10 Cr. L. J. 420 = 3 Ind. Cas. 934; *Diss.*, 15 Cr. L.J. 33 = 22 Ind. Cas. 177 = 9 N.L R. 184; *Not F.*, 103 P.L.R. 1908 = 5 P.R. 1908, Cr. = 7 P.W.R. 1908, Cr., 8 C.W.N. 73; *R*, 26 A. 249 = A.W.N. 1904, 15, U B.R. 1907, 1st Qr., Cr.P.C. 1 = 6 Cr. L.J. 25, 17 M.L.J. 584 = 3 M.L.T. 79, F.B. = 31 M. 140 = 7 Cr. L.J. 54, 4 A.L.J. 803 = A.W.N. 1908, 27 = 7 Cr. L J. 1 = 2 M.L.T. 512, 34 C. 42 = 11 C.W.N. 125 = 4 Cr.L.J. 460, 3 L.B.R. 234, F.B., 7 P.W.R. 1908 = 103 P.L.R. 1908 = 5 P.R. 1908, Cr., 40 C. 477 = 17 C.L.J. 245 = 17 C.W.N. 647 = 19 Ind. Cas. 197 = 14 Cr. L.J. 197, 1 Ind. Cas. 597, 37 C. 714 = 11 Cr. L J. 357 = 6 Ind. Cas. 473 = 14 C.W.N. 806, 32 M. 49 = 4 M L.T. 404 = 19 M L.J. 42 = 9 Cr. L J. 41; *D.*, 9 C.W.N. 1030, 29 M. 100 = 3 Cr. L.J. 376.]

(4053)—*Ss.* 439, 476—*High Court's power of revision.*—The High Court has power in revision to set aside an order passed by a Civil, Criminal or Revenue Court under s. 476 of the Code of Criminal Procedure. But such power should not be exercised where the Court below has arrived at a judicial opinion on evidence that there is ground for inquiring into an offence referred to in s. 195, merely because the High Court disagrees with that opinion. GANDA SINGH v. BISAKHI, **78 P.L R. 1902 = 18 P R. 1902, Cr.**

(4054)—*Ss* 439, 476—*Power of revision of High Court.*—The High Court has power in revision to set aside an order passed by a Civil or Criminal or Revenue Court under s. 476 of the Code. If the Subordinate Court forms a real opinion, which amounts to a judicial opinion, founded on the evidence, to the effect that there are grounds for enquiry into any offence referred to in s. 195, the High Court ought not in revision to interfere merely on the ground that it disagrees with that opinion. Where a Magistrate, having power to make an order under s. 476, misdescribing or misconceiving the authority which he had to make, signed the order as "Magistrate" instead of as "Collector," *held*, that there was not sufficient ground for the High Court to interfere in revision. *In the matter of the petition of* ALAMDAR HUSAIN, **23 A. 249 = A.W.N. 1901, 59.** [*F.*, 26 A. 514 = A.W.N. 1904, 90, 35 C. 909 = 8 Cr. L.J. 435, 3 Cr. L.J. 73 = 163 P.L R. 1905; *Rel.*, 15 Cr. L.J. 33 = 22 Ind. Cas. 177 = 9 N.L.R. 184; *R.*, 26 A. 249 = A.W.N. 1904, 15, 4 A.L.J. 701 = A.W.N. 1907, 277 = 6 Cr. L.J. 350, A.W.N. 1901, 177, 78 P.L.R. 1902 = 18 P.R. 1902, Cr.]

(4055)—*Ss.* 439, 476—*Order passed by Small Cause Court—Provincial Small Cause Courts Act* (IX *of* 1887), s. 25—*Revision.*—An application to revise an order, under s. 476, Crim. Pro. Code, of the Judge of a Provincial Small Cause Court, lies under s. 25 of Act IX of 1887

and not under s. 439 of the Code of Criminal Procedure. The power of revision conferred by s. 25 of the Provincial Small Cause Courts Act is much narrower than under the Code of Criminal Procedure. It is only when some substantial injustice has directly resulted from a material misapplication or misapprehension of law or from a material error of procedure that the High Court intervenes under s. 25 of the Provincial Small Cause Courts Act. GAGGERO FRANCESCO v. EMPEROR, **14 Cr. L.J. 496=20 Ind. Cas 752=7 L.B.R. 76=6 Bur. L.T. 144.**

(4055-*a*)—*Ss.* 439, 476—*Order made by a Civil Court under s.* 476—*High Court's power to interfere under s.* 439 —The High Court has no power under s. 439, Crim. Pro. Code, to interfere with an order made by a Civil Court under s. 476, Crim. Pro. Code. *In re* MANNAR CHETTI, **17 M.L.T. 268=16 Cr.L.J. 232=27 Ind. Cas. 904.** (26 M. 139, 26 A. 249, F.B., 40 C. 477, F.B., *F.*)

(4056)—Ss. 439 and 480 to 481—Contempt of Court—*See* PENAL CODE, s. 228, 23 P.W.R. 1912, Cr., 15 Ind. Cas. 983=13 Cr. L.J. 567.

(4057)—*Ss.* 439 *and* 497—*Release of prisoner on bail—Powers of the High Court.—Per White, C.J.*—Where a prisoner has been released on bail by a Sessions Judge, the High Court will not interfere with the order of the Sessions Judge. *Per Davies, J.*—The High Court has jurisdiction to interfere in revision, if the Judge has pased an illegal order. *Per White, C.J. and Davies, J.*—Where a Sessions Judge, after considering the evidence, thinks that there are no reasonable grounds for believing the accused to be guilty of the offence of which he is accused, and releases him on bail, the High Court will not go behind this finding and cancel the order of the Judge releasing the accused on bail. QUEEN v. THIMMA REDDI, **10 M.L.J. 411.**

(4058)—*Ss.* 439, 503—*Revision—Complaint—Examination of complainant in presence of accused— Practice —* Pardanashin *woman—Daughter of prostitute married to respectable person—Examination on commission—Power of the Chief Court on revision under s.* 439.—Where it is doubtful whether any offence has been committed. having regard to proceedings held previously before another Magistrate, the trying Magistrate must, before any other step is taken, insist on examining the complainant in the presence of the accused, so that the latter may have an opportunity of cross-examining the complainant. The Magistrate must, first of all, be satisfied that the offence actually took place within the local limits of his jurisdiction and that there is nothing in the former proceedings to debar the complainant from prosecuting his complaint. The mere fact that a woman is the daughter of a prostitute is sufficient to show that she is not a *pardanashin* lady. If she has been married to a respectable person, in whose family women observe *parda*, she is entitled to be treated with respect, despite her lowly origin. A complaint was made at Delhi under ss. 363, 442, I.P.C., against the accused residing at Hissar, for kidnapping A. The accused contended that A was his lawful wife and resided at Hissar as a *pardanashin* lady. *Held*, (1) that A should not be compelled to attend the Delhi Court for the purpose of her examination ; (2) that A should be examined upon commission through the District Magistrate, Hissar, arrangements being made to respect her *pardah*. MIRZA ABDUL GHAFUR BEG v. THE CROWN, **11 P.W.R. 1913, Cr.=18 Ind. Cas. 147=14 Cr. L J. 3=43 P.L.R. 1914.**

(4059)—Ss. 439 and 520—*See* REVISION—GENERAL PRINCIPLES, 27 A. 630=A.W.N. 1905, 139=2 Cr. L.J. 331.

(4060)—Ss. 439, 522—*See* RESTORATION OF PROPERTY, 27 A. 415=A.W.N. 1905, 19=2 A.L.J. 64=2 Cr. L.J. 24.

(4061)—*Ss.* 439, 562—*Revision — Criminal cases— Question of fact—Witness—Credibility of —Ground for believing witness, testimony against some of the accused—Security to keep peace.*—There were two cross complaints, one by M, against C, and his son R, and the other by C, against M. and three others. The Magistrate acquitted M, and the three accused, but convicted C, and fined him Rs. 30 and acquitted his son R. The evidence against C. and R, was the same. On appeal the District Magistrate gave a finding which was equivalent to rejecting M's evidence as unreliable, but upheld the conviction and for the fine he substituted an order under s. 562 of the Crim. Pro. Code for security for keeping the peace. On revision, the conviction and the order demanding security were set aside, on the ground that no distinction could be drawn between C and R, and none of the evidence seemed reliable and it was difficult to say which party was the aggressor. CHHAJU MAL v. CROWN, **21 P.L.R. 1914=12 P.W.R. 1914, Cr.**

(4062)—*Ss.* 439, 562—*Revision—Powers of High Court.*—The High Court cannot in revision set aside an order under s. 562 of the Crim. Pro. Code, ordering an accused person to execute a bond to be of good behaviour and substitute in its place a sentence of whipping or imprisonment. KING-EMPEROR v. GHASITE, **12 A.L. J. 1244=16 Cr. L J. 43=26 Ind. Cas. 635.**

——**S. 440 (=1882, s. 440 ; 1872, s. 297).**

(4063)—S. 440=*See* CRIMINAL CASE, 10 C. L J. 80=3 Ind. Cas. 393.

(4064)—S. 440—*See* Nos. 104, 1021, 1923, 2001, 2514, 3068, 3562.-3610, 3697, 3727, 3728, 3731 to 3745, 3804, 3974, 3974, *supra and* No. 4796, *infra.*

(4064-*a*)—S. 441—*See* No. 2049, *supra.*

——**S. 443 (=1882, s. 443 ; 1872, s. 72, paras 1 and 2, 74, para 1.)**

(4065)—S 443 — *See* EUROPEAN BRITISH SUBJECT, 6 C. 83=6 C.L.R. 463.

(4066)—Ch. XXXIII, s. 443—*See* EUROPEAN BRITISH SUBJECT, 27 A. 397=2 A.L.J. 20=A.W.N. 1905, 5=2 Cr.L.J. 17.

Crim. Pro. Code (Act V of 1898)—*continued.*

(4067)—Ss. 443, 446, 453—*See* JURISDICTION OF CRIMINAL COURTS—JURISDICTION OVER EUROPEANS, 4 A. 141.

(4068)—Ss. 443 and 454—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 16 M. 308=2 Weir 579.

——S. 446 (=1882, s. 446 ; 1872, s. 74, para 2).

(4069)—S. 446—*See* No. 4067, *supra.*

——S. 447 (1882, s. 447 ; 1872, ss. 75, para 1, 438, para 2).

(4070)—S. 447—*See* COMMITMENT TO SESSIONS COURT, A.W.N. 1881, 150.

(4071)—S. 447—*See* No. 2749, *supra.*

(4072)—Ss. 447, 449—*See* TRANSFER OF CRIMINAL CASES—GENERAL, 29 B. 575=7 Bom. L.R. 104.

——S. 449 (=1882, s. 449 ; 1872, s. 76).

(4073)—S. 449—*See* No. 4072, *supra.*

——S. 450 (=1882, s. 451).

(4074)—*S.* 450 (=*Crim. Pro. Code,* 1882, s. 451)—"*European*" *explained.*—The word "European" in s. 451 means a person born in Europe. QUEEN-EMPRESS v. MOSS, **16 A. 88 =A.W.N. 1894, 23.**

(4075)—*S.* 450 (=*Crim. Pro. Code,* 1882, s. 451)—*European British Subject—Sesssions trial—Trial by mixed jury.*—Even in cases of trials of European British subjects as accused, trials before Sessions Court must ordinarily be with the aid of assessors, unless they claim to be tried by a jury, when they are entitled to have a mixed jury, and not a jury consisting entirely of Europeans. MULLINEAUX v. EMPRESS, **11 P.R. 1896, Cr.** (18 P. R. 1888, *Not F.*)

——S. 451, paras 1 to 8 (=1882, s. 451-A), paras 9 and 10 (=1882, s. 451-B).

(4076)—*S.* 451 (=*Crim. Pro. Code,* 1882, s. 451-*A*)—*European British subject—Claim for trial by jury—Transfer to another Magistrate.*—Where the proceedings against an European British subject have reached the stage mentioned in s. 451-A, and he has claimed a trial by jury, the District Magistrate is not competent to transfer the trial to a Magistrate, before whom no claim for such a trial could be made, and to deprive him thereby of his right. MACGREGOR v. EMPRESS, **2 P.R. 1896, Cr.**

(4077)—*S.* 451 (1)—*European British subject—Right to be tried by a jury.*—An European British subject charged with an offence under s. 354, I.P.C., a warrant case, when asked at the outset of the proceedings against him, did not wish to be tried by a jury. A charge was framed against him, and at his request certain witnesses who had been examined for the prosecution were ordered to be re-called for cross-examination. At this stage of the trial, before a date had been fixed for the re-appearance of the prosecution witnesses asked for by the accused, an application was presented on his behalf asking that he might be tried by a jury. *Held,* that the mere fact that the accused, before the trial had begun, stated that he did not wish for a jury, did not prevent him altering his mind afterwards, and claiming a jury within the time allowed by the section, and that the Magistrate should have allowed the application. EMPEROR v. SULLIVAN C. I., **24 A. 511=A.W.N. 1902, 142.** [*R.,* 1 P.R. 1908, Cr. =4 P.W.R. 1908, Cr. =7 Cr. L.J. 274=136 P.L.R. 1908.]

(4078)—S. 451 (9)—*See* EUROPEAN BRITISH SUBJECT, 1 L.B.R. 158.

(4079)—S. 451—*See* Nos. 618, 2749, *supra.*

(4080)—*Ss.* 451, 127 (=*Crim. Pro. Code,* 1872, ss. 137, 480)—*Order by officer superior in rank to an officer in charge of police station—Likelihood of breach of peace—Relevancy of opinion of policeman.*—An order by a Deputy Commissioner of Police, who is an officer superior in rank to an officer in charge of a police station, directing the dispersal of an assembly of five or more persons likely to cause a disturbance of the public peace, is an order by a lawful authority within the meaning of s. 480. Whether a disturbance of the peace is likely to be caused must of necessity be very much a matter of opinion, and the police officer, to whose discretion the law leaves the duties of dispersing assemblies, must of course act upon his own opinion, one way or the other ; if his opinion is relevant, the grounds upon which it is based are also relevant. The Magistrate himself must look to the surrounding circumstances and form his own conclusion, whether the acts committed were reasonably likely to lead to a breach of the peace. EMPRESS v. TUCKER, **7 B. 42=7 Ind. Jur. 202.**

——S. 452 (=1882, s. 452 ; Act X of 1875, s. 37).

(4081)—*Ss.* 452, 408, 404 (=*Crim. Pro. Code,* 1882, ss. 452, 408, 404)—*Non-European British subject jointly tried with European British subject—Appeal.*—A British subject, but not an European British subject, jointly tried with a European British subject, is not entitled, under s. 452, to appeal to the High Court on a conviction by the District Magistrate, the right of appeal to the High Court being given only to European British subjects. *In re* JOB SOLOMON, **14 B. 160.** [*D.,* L.B.R. 1893—1900, 516.]

——S. 453 (=1882, s. 453 ; 1872, s. 83).

(4082)—S. 453—*See* No. 4067, *supra.*

(4083)—Ss. 453, 454—*See* JURISDICTION OF CRIMINAL COURT—JURISDICTION OVER EUROPEANS, 12 B. 561.

——S. 454 (=1882, s. 454 ; 1872, s. 84).

(4084)—*S.* 454 (=s. 454, *Crim. Pro. Code,* 1882)—*Cross cases of rioting—Procedure.*—In cross cases of rioting, the Magistrate held the trial on "parallel lines"—the witnesses for the prosecution in each case in turn were examined,

Crim. Pro. Code (Act V of 1898)—*continued.*

in chief, then followed their cross-examination also in each case in turn, and next such re-examination as was necessary—discharged the accused in one case, and called upon the accused in the other case to go into his defence. *Held*, that Magistrate acted improperly, and a new trial should be ordered. CHAKOWRI LALL v. MOTI KURMI, **13 C.L.R. 275.** (7 C. 65=3 C. L.R. 352, *F.*) [*Appl.*, 30 M. 233=2 M L.T. 89 =5 Cr. L.J. 290; *R.*, 8 C.W.N. 344; *D.*, 1 C. W N. 426.]

(4085)—*S.* 454 (=*Crim, Pro. Code*, 1882, s. 454)—*Scope of the section.*—The Magistrate is not bound, by virtue of the provision contained in the last clause of s. 454, Crim. Pro. Code, 1882, to ask an accused person categorically whether he claims his right as an European British subject, much less is he obliged to explain his rights to him as such subject. TOBIN v. EMPRESS, **5 P.R. 1885, Cr.**

(4086)—*S.* 454 (=*Crim. Pro. Code*, 1872, s. 84)—*European British subject—Waiver of right to be tried as such—Appeal.*—An European British subject, who has not claimed to be tried as such, cannot claim to appeal to the Chief Court as an European British subject from his conviction. KEOUGH v. CROWN, **17 P.R 1878, Cr.** [*R.*, 136 P.L.R. 1908, Cr.=1 P. R. 1908=4 P.W.R. 1908=7 Cr.L.J. 274; *D.*, 1 P.R. 1908, Cr.]

(4087)—*S.* 454 (=*Crim. Pro. Code*, 1882, s. 454)—*European British subject.* — Where either the name or the personal appearance of the accused suggests that he may be an European subject, the proper course for the Magistrate is to question the accused as to his status under s. 454, Crim. Pro. Code. QUEEN-EMPRESS v. WILLIAM SHANKS, **L.B.R. 1872—1892, 408.**

(4088)—S. 454—*See* WAIVER, 6 C. 83=6 C. L.R. 463.

(4089)—S. 454—*See* Nos. 68, 4068, 4083, *supra.*

——**S. 456 (=1882, s. 456; 1872, s. 81, para 1).**

(4090)—S. 456—*See* No. 2957, *supra.*

——**S. 460 (=1882, s. 460; 1872, s. 234, para 1, cl. 2, 1861, s. 323).**

(4091)—S. 460—*See* No. 68, *supra.*

(4092)—Ss. 460, 309, 276, 284, 277—*See* SESSIONS JUDGE, JURISDICTION OF, 3 W.R. Cr. Cir. 1.

——**S. 463 (=1882, s. 463; 1872, s. 87).**

(4092-*a*)—S. 463—*See* Nos. 181, 2982, *supra.*

——**S. 464 (=1882, s. 464; 1872, ss. 423, 424, para 3, 1861, s. 388).**

(4093)—S. 464—*See* ACCUSED PERSON, 11 P.R. 1894, Cr.

(4094)—S. 464—*See* INSANITY, A. W. N. 1905, 2.

(4095)—S. 464—*See* Nos. 3067, 4050, *supra.*

(4096)—*Ss.* 464, 466 (=*Crim. Pro. Code*, 1882, *ss.* 464, 466)—*Proceedings against persons of unsound mind.*—Where the Magistrate is of opinion that the accused is of unsound mind and therefore incapable of making his defence, he cannot legally acquit him. But he is bound to postpone further proceedings in the case, and either release him on bail or report the case to Government. *In re* ATCHAMMA, **2 Weir 581.**

(4097)—*Ss.* 464 *and* 466—*Procedure in cases of lunatics.*—The District Magistrate should, as soon as he saw reason to believe that the accused was of unsound mind and consequently incapable of making his defence, proceed according to ss. 464 and 466 of the Crim. Pro. Code. Again, he should take evidence as to his unsoundness of mind *at the time of committing the offence* before he proceeds to acquit him on the ground that he did not know the nature of the act, or that he was doing what was either wrong or contrary to law. QUEEN-EMPRESS v. NGA HAN SHIN, **U.B.R. 1892—1896, Vol. I, 50.**

(4098)—*Ss.* 464, 466—*Lunacy of accused—Procedure.*—A Magistrate who finds that an accused person was of unsound mind both when he committed the offence and at the time of the trial, should not continue the trial but pass order, under ss. 464 and 466 of the Crim. Pro. Code. It is not a trial in which a verdict of guilty or not guilty could be legally pronounced. EMPRESS v. CHADAMI LAL, **A.W. N. 1900, 47.**

(4099)—*Ss.* 464, 466, 470 (=*Crim. Pro. Code*, 1872, *ss.* 423, 424, 429)—*Proceedings against lunatics.*—An order making over an accused person to his brother for safe custody, on the ground of the weak intellect of the accused cannot be passed upon the mere report of the Civil Surgeon. If the order is made under s. 422, the Magistrate should examine the Civil Surgeon as directed in s. 423. If it is made under s. 429 (470), he should detain the accused in custody and report the case to Government. HIGH COURT PROCEEDINGS, 13TH OCT. 1880, No. 1965, **2 Weir 580.**

(4100)—*Ss.* 464, 469, 465, 466 (=*Crim. Pro. Code*, 1872, *ss.* 423, 424, 425, 426)—*Proceedings against person incapable of making defence.*—A person who is incapable of making a defence is not according to ss 423—426 to be tried. Ss. 427, 428 and 432 (ss. 467, 468 and 473 of the Code of 1898) provide for the trial of such an accused person when he is found to be capable of making a defence, and if tried under the former of those sections, he might be acquitted under s. 429 (s. 470). HIGH COURT PROCEEDINGS, 3RD DEC., 1880, No. 2477, **2 Weir 581.**

(4101)—*Ss.* 464, 471 (=*Crim. Pro. Code*, 1861, *ss.* 388 *to* 394)—*Accused person a lunatic—Course to be pursued—Rules embodying ss.* 388 *to* 394.—If a person charged with an offence appear to be of an unsound mind, and incapable of making a defence when brought before a Magistrate, that officer, after ascertaining the *prima facie* truth of the charge, and making the enquiries prescribed in s. 388 of the Crim. Pro. Code, regarding the state of mind of the

Crim. Pro. Code (Act V of 1898)—*continued.*

accused, if he consider the person to be of unsound mind, is to stay all further proceedings. If the offence be bailable, the Magistrate may release the party on sufficient security being given that he shall be properly taken care of, be prevented from doing injury to himself or others, and for his appearance when required. If the offence be not bailable, or if the required bail be not given, the accused must be kept in safe custody in such place as the Local Government shall direct. The Magistrate may at any time, if he has reason for believing that the person is of sound mind, resume the investigation; but if the accused person, when again brought before the Magistrate, shall still appear to be of unsound mind and incapable of making a defence, the Magistrate shall act as provided by ss. 388 and 390; the course taken under s. 390 following, as a necessary consequence, the enquiry held under s. 388. If the offence be one triable by a Magistrate, he should complete the trial. If he determines that the offence was committed by the accused in a sound state of mind, he should pass sentence on him according to law; if not, the Magistrate should retain him in safe custody till the orders of the Local Government be received for his removal to and detention in a Lunatic Asylum. If the offence be not triable by the Magistrate, he must, if the accused is in a fit state of mind to make a defence, complete his investigation and must commit him for trial. If, in the course of the trial, the prisoner appear to be of unsound mind, the Sessions Judge must suspend proceedings, and follow the course prescribed by s. 389. Under no circumstances should a party accused of an offence, being at the time of unsound mind, and incapable of making a defence, be examined by a Magistrate, or committed for trial. CRIMINAL CIRCULAR, No. 14 OF 1864, **1 W.R. Cr. Cir. 1.**

——**S. 465 (=1882, s. 465; 1872, ss. 45, 425; 1861, s. 389).**

(4102)—*S.* 465 (=*Crim. Pro. Code,* 1882, *s.* 465)—*Power of Sessions Judge.*—A Sessions Judge has no power to stay proceedings and to direct an enquiry as to the state of an accused's mind, because it appears to him "problematic" whether the accused is capable of making a defence. In such cases, the proper procedure to be followed is provided for in s. 465. *In re* PISARI TURAKA MADAR SAHIB, **2 Weir 137.**

(4103)—S. 465—*See* Nos. 1738, 2778, 3080, 4100, *supra.*

——**S. 466 (=1882, s. 466; 1872, s. 426; 1861, s. 390).**

(4104)—S. 466—*See* INSANITY, 2 C. 356.

(4105)—S. 466—*See* Nos. 4056, 4096 to 4100, *supra.*

——**S. 467.**

(4106)—S. 467—*See* No. 2586, *supra.*

——**S. 468 (=1882, s. 468; 1872, s. 428; 1861, s. 392).**

(4107)—S. 468—*See* FALSE EVIDENCE, 6 C. 440=7 C.L.R. 330.

Crim. Pro. Code (Act V of 1898)—*continued.*

——**S. 469 (=1882, s. 469; 1872, s. 424, paras 1 and 2).**

(4108)—S. 469—*See* No. 4100, *supra.*

——**S. 470 (=1882, s. 470; 1872, s. 429; 1861, s. 393).**

(4109)—*S.* 470 (=*Crim. Pro. Code,* 1882, *s.* 470)—*Insanity—Medical evidence.*—When the prisoner killed his brother-in-law, there was apparently no enmity or quarrel between them, and the only motive given out by the prisoner was that he might be killed by the authorities and get to heaven, *held,* that the opinion of a medical witness would be necessary. It was directed that the prisoner should be placed under the supervision of the Medical Officer in charge of the jail who was to send report after one month's observation. *Held* by *Turner, C. J.*—If we are to accept the explanation of the motive as truly representing the thoughts of the prisoner at the time he committed the offence, his case does not fall within the legal definition of unsoundness of mind sufficient to excuse a crime. That definition has always been regarded by medical science as excluding cases in which a person of unsound mind ought to be dealt with as a lunatic and not as a criminal. *In re* VENKATESA BHATTA, **2 Weir 583.**

(4110)—S. 470—*See* Nos. 2168, 4099, *supra.*

(4111)—*Ss.* 470, 471 (=*Crim. Pro. Code,* 1882, *ss.* 470, 471)—*Crime committed, while suffering from temporary insanity.*—Where a Magistrate finds, after examination of some of the prosecution witnesses, that the accused committed the offence, while he was suffering from temporary insanity, he should act under ss. 470, 471 of the Code. He is not competent to discharge him under s. 253, if it does not appear that the accused is of unsound mind at the trial. *In re* LANKA CHINNA KAMUDU, **2 Weir 582.** [*R.,* 17 C.P.L.R. 113.]

(4112)—Ss. 470 and 471—*See* UNSOUNDNESS OF MIND, L.B.R. 1893—1900, 630.

——**S. 471, paras 1 and 2 (=1882, s. 471; 1872, s. 430; 1861, s. 394); para 3 (=1882, s. 475-A); para 4 (=1882, s. 475 B.)**

(4113)—S. 471—Deaf and dumb person—Guilty of murder—Proper course to be taken—*See* DEAF AND DUMB PERSON, 13 P.R. 1911, Cr.=39 P.W.R. 1911=12 Ind. Cas. 989=12 Cr. L.J. 613.

(4114)—S. 471—*See* FALSE CHARGE, 2 C.L. R. 315.

(4115)—S. 471—*See* Nos. 1738, 2168, 4101, 4111, 4112, *supra.*

(4116)—Ss. 471, 473—*See* ACT I OF 1877, s. 42, 22 W.R. 329.

——**S. 473 (=1882, s. 473; 1872, s. 432; 1861, s. 395, cl. 2).**

(4117)—S. 473—*See* No. 4116, *supra.*

Crim. Pro. Code (Act V of 1898)—*continued.*

——**S. 474** (=**1882, s. 474; 1872, s. 433; 1861, s. 395, cl. 3).**

(4118)—Ss. 474, 476—*See* PERJURY, 4 A.L.J. 811=7 Cr. L.J. 3=A.W.N. 1908, 22.

——**S. 476** (=**1882, s. 476; 1872, ss. 471, 477; 1861, ss. 171, 176.)**

See HIGH COURT, JURISDICTION OF.

See REVISION.

(4119)—*S.* 476 (=*Crim. Pro. Code*, 1872, *s.* 471)—*Scope of.*—It is only in cases exclusively triable by the Court of Sessions, that the Judge is empowered to commit, or hold to bail and try an accused person charged with the offences mentioned in ss. 467, 469, 471. In cases of a light nature, such as, cases of giving false evidence, not triable by the Court of Sessions exclusively, all that the Judge is empowered to do, is to send the case for enquiry to any Magistrate, having power to try or to commit for trial the accused person under s. 471. The words "commit the case itself" occurring in s. 471, do not mean that the Court of Sessions may commit the case to itself. *In re* FATAIYAH KHAN, **3 C.L.R. 599.**

(4120)—*S.* 476—*Application of section.*—S. 476 applies only to offences referred to in s. 195, when such offences are committed before the Court which makes the order, or are brought to its notice in a judicial proceeding. Where the offence of giving false evidence was committed before a Deputy Magistrate, the District Magistrate could not, on making a local inquiry, order the prosecution of the offender, when the offence was not brought to his notice in a "judicial proceeding." GODAI SHAHA v. KING-EMPEROR, **9 C.W.N. 1030=2 Cr. L.J. 851.**

(4121)—*S.* 476—*Persons competent to pass order under s.* 476.—Orders under s. 476 can be passed only by a civil, criminal, or revenue Court. But an order which purported to be one passed as by a "Divisional Officer," that is to say, by the Deputy Collector to whom a Tahsildar, before whom the alleged false statement was made, was subordinate, was held to be *ultra vires*. *In re* ARUMUGAM PILLAI, **2 Weir 598.**

(4122)—*S* 476—*Order under section when to be made.*—Where a matter has not come within the cognizance of a Magistrate, in the course of any judicial proceeding, an order under s. 476 cannot be made. SARODA CHARAN HALDAR v. KING-EMPEROR, **2 C.L.J. 612=3 Cr. L.J. 81.**

(4123)—*S.* 476—*Necessary conditions for instituting proceedings under the section.*—Before proceedings under s. 476 can be instituted, there must be direct evidence fixing the offence upon the persons whom it is sought to charge, either in the course of the preliminary enquiry held by the Magistrate, or in the earlier proceedings out of which the enquiry arose, It is not sufficient that the evidence in the earlier case may induce some sort of suspicion that these persons had been guilty of an offence; but there must be distinct evidence of the commission of an offence by such person. KHEPU NATH SIKDAR v. GRISH CHUNDER MUKERJI, **16 C. 730.** [*F.*, 23 C. 532; *R.*, 20 C. 474, Rat. Un. Cr. C. 701, 895; *D.*, 20 C. 474.]

(4124)—*S.* 476—*Order under s.* 476, *whether a proceeding.*—An order under s. 476 is a proceeding, and a criminal proceeding, if it is an order made by a Criminal Court. It directs the prosecution of a person after a judicial enquiry. EMPEROR v. GOPAL BARIK, **34 C. 42=11 C.W.N. 125=4 Cr. L.J. 460.** [*R.*, 37 C. 52=5 Ind. Cas. 62=14 C.W.N. 132=11 Cr. L.J. 45.]

(4125)—*S.* 476 (=*Crim. Pro. Code*, 1872, *s.* 471)—*Order under section—Preliminary enquiry—Showing cause against.*—An order under s. 471 is not necessarily bad, because the Court acting under the section, has not held a preliminary enquiry before sending the case to the Magistrate for enquiry. The law requires only such preliminary enquiry as may be necessary. Where a Munsiff sent, under s. 471, to a Magistrate, a proceeding embodying the facts of a case tried before him, and charging both the parties to the suit for giving and producing false evidence and where there was nothing to show that any enquiry the Munsiff could have made would have put the Magistrate in a better position, the omission to hold a preliminary enquiry before sending the case for trial was not bad. EMPRESS OF INDIA v. JUALA PRASAD, **5 A. 62=A.W.N. 1882, 165.**

(4126)—*S.* 476—*Notice—Preliminary inquiry—Revision.*—A High Court can deal with orders passed under s. 476 of the Code in revision, for good cause shown. Where an order was impugned on the ground mainly that the lower Court had not given notice to the applicant or held a preliminary enquiry before passing orders: *Held*, that no notice was necessary under the section nor, in the circumstances of the case, was it desirable that any special notice should be given or a preliminary inquiry held. U PO YELK v. U PO KYIN, **12 Cr. L J. 85=8 Ind. Cas. 1197**

(4127)—*S.* 476—*Order by Magistrate for prosecution under s.* 193 *of the Penal Code—Preliminary inquiry.*—When a Magistrate takes action under s. 476, Crim. Pro. Code, it is not necessary to the validity of his order that he should hold a preliminary inquiry. (15 A. 392, *F.*) Where a Magistrate refused to give persons, whose prosecution had been ordered for committing perjury, an opportunity to cross-examine witnesses, *held*, he did not act illegally or with material irregularity in the exercise of his jurisdiction. ABDUL GHAFUR v. RAZA HUSAIN, **9 A L.J. 231=13 Ind. Cas. 829=13 Cr. L.J. 141=34 A. 267.** [*F.*, 15 Cr. L.J. 271=26 M.L.J. 486=23 Ind. Cas. 479.]

(4128)—*S.* 476—*Witness producing forged receipt — Prosecution ordered by successor of*

Crim. Pro. Code (Act V of 1898)—*continued.*

Judicial Officer, without preliminary enquiry—Legality.— The power to direct prosecution under s. 476, Crim. Pro. Code, is conferred on the Court, and not on the individual Judicial Officer who fills the judicial office at the time of the original trial. A successor of the officer before whom the original trial took place is not bound to hold an independent investigation before making an order under s. 476, Crim. Pro. Code. The holding of a preliminary inquiry in a proceeding under s. 476, Crim. Pro. Code, is discretionary, and a person against whom an order for prosecution has been passed without such an enquiry cannot complain unless he has been prejudiced by the omission. DURPA NARAYAN BERA v. BEPIN BEHARY MITTER, **15 C.W.N 691=14 C.L.J. 123=10 Ind. Cas. 66=12 Cr. L.J. 209.** (14 C.W.N. 799, *Expl.* and *F.*)

(4129)—*S.* 476 — *Order for prosecution — Failure to make preliminary inquiry—Illegality — Action under s.* 476—*No necessity to take action immediately after close of trial—Time for such action—S.* 115, *Civ. Pro. Code* (1908). —Where a lower Court, without making any preliminary inquiry to decide whether there were *prima facie* reasons to suppose that the accused committed perjury, passed an order directing his prosecution for perjury under s. 476, Crim. Pro. Code. *Held* that the failure to make the preliminary inquiry was a material irregularity which was one for correction under s. 115, Civ. Pro. Code (1908). There is no legal necessity to proceed under s. 476, Crim. Pro. Code, immediately after the trial or proceedings and the section does not limit the time within which action should be taken (*a*). JETHMAL v. WADHUMAL, **7 S.L.R. 187=15 Cr. L.J. 541=24 Ind. Cas. 949** (34 C. 351, 31 M. 140, 32 B. 184, 32 M. 49, 37 C. 642, *R.*)

(4130)—*S.* 476—*Penal Code, s.* 182—*Calling for a report from interested party as to truth of complaint, propriety of—Order for prosecution, without sufficient enquiry into truth of complaint.* —The petitioners filed an application before the Sub-Divisional Magistrate praying for proceedings under ss. 144 and 107, Crim. Pro. Code, against several servants of a certain factory, whereupon the Magistrate called for a report from the Manager of the factory, and on receipt thereof required the petitioners to show cause against prosecution under s. 182, I.P.C., and then after examining some witnesses on each side, but without examining the petitioners themselves, made an order under s. 476, Crim. Pro. Code, directing their prosecution for an offence under s. 182, I.P.C. *Held*, that the order of the Magistrate in calling for a report from the Manager of the factory was open to great objection. That the accused being the servants of the factory, the Manager was an interested party, and he ought not to have been asked to make a report in these judicial proceedings. *Held* (in setting aside the order for prosecution), that further enquiry should be made into the truth of the petitioners' complaint, and they themselves should be examined if they

Crim. Pro. Code (Act V of 1898)—*continued.*

chose to give evidence. EMPEROR v. RAFFI RAUT, **19 C.W.N. 127=28 Ind. Cas. 127.**

(4131)—*S.* 476—*Powers of Magistrate under this section.*—A Magistrate has no power to act *suo motu* under s. 476, after the case in which the alleged offence has been committed has been closed by his predecessor without any action being taken under the section. *In re* RAMA KRISHNA ROW, **2 Weir 597.** [*R.*, 31 M. 140 =7 Cr. L.J. 54=17 M L.J. 584=3 M.L.T. 79.]

(4132)—*S.* 476—*Powers of Magistrate after transfer.*—A Magistrate who, after trying a case, has been transferred from the charge of the particular Court in which the case was tried to some other duty in the same district, is not competent to make an order under s. 476 in respect of a case which he tried as a presiding officer of such Court. CHUNNI LAL v. HARBANS RAI, **1 A.L J. 315.** [*N. F.*, 3 A.L J. 825 =A.W.N. 1906, 201=4 Cr. L.J. 140.]

(4133)—*S.* 476—*Opinion of officer ordering prosecution — Superior Court interfering.*— Where a Munsiff, having been directed by the District Judge, sanctioned prosecution of a party under s. 476, Crim. Pro. Code, and it appeared that the case did not come before the Judge in the course of a judicial proceeding, and that the offence was not committed before him, *held*, that the order was without jurisdiction. RIAZUL HASAN v. KING-EMPEROR, **6 A.L.J. 924=10 Cr. L.J. 525=4 Ind. Cas. 260.**

(4134)—*S.* 476—*Order of Subordinate Court, under s.* 476—*Powers of High Court.*—It is competent to the High Court, in the exercise of its revisional jurisdiction, to interfere with an order of a Subordinate Court made under s. 476, directing the prosecution of any person for offences referred to in the section. *In re* BAL GANGADHAR TILAK, **26 B. 785=4 Bom. L.R. 618.** [*Rel.*, 15 Cr. L.J. 33=22 Ind.Cas. 177=9 N.L.R. 184; *R*, 26 A. 249=A.W.N. 1904 15, 35 C. 909, 32 M. 49=9 Cr. L.J. 41=4 M.L.T. 404=19 M.L.J. 42=1 Ind. Cas. 597, 7 Cr. L.J. 143, 15 Cr. L.J. 217=22 Ind. Cas. 1001=17 O.C. 25, 3 L.B.R. 234, 5 P.R. 1908, Cr.=103 P.L.R. 1908=7 P.W.R. 1908, Cr., U.B.R. 1907, 1st Qr. Cr. P.C. 1=6 Cr.L.J. 25.]

(4135)—*S.* 476—*Necessity for notice.*—For the purposes of s. 476, neither notice to show cause why the party should not be sent before a Magistrate for trial, nor a preliminary enquiry, is indispensable. *In re* JIVABHAI KHUSAL, **7 Bom. L.R. 84=2 Cr. L.J. 54.** [*R.*, 12 Cr.L.J. 209=14 C.L.J. 123=15 C.W.N. 691=10 Ind. Cas. 66.]

(4136)—*S.* 476—*Court—Income Tax Collector —Sanction by the Income Tax Collector — Revision by the High Court.*—The Income Tax Collector is not a Court within the meaning of s. 476 of the Code. *In re* KALIDAS REWADAS, **8 Bom. L.R. 477=4 Cr.L J. 34.** [*Diss.*, 10 Cr. L.J. 395=3 Ind Cas. 886=3 S.L.R. 66, 36 M. 72=13 Cr. L.J. 723=16 Ind. Cas. 755=23 M.L.J. 393=13 M.L.T. 367=1912 M.W.N. 1012.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(4137)—*S.* 476 — *Sanction — Prosecution—Complaint to Collector in revenue capacity—Ss.* 211, 409, *Penal Code.*—Where a petitioner petitioned the Collector in his revenue capacity for a refund of the money which he alleged the Reddi had collected and misappropriated, and thereupon the Deputy Collector directed the prosecution of the Reddi under s. 409, I.P.C., *held*, an order under s. 476, Crim. Pro. Code, directing the prosecution of the petitioners for an offence under s. 211 of the Penal Code cannot be sustained. DAPPILI CHANCHU GARI RANGA REDDY v. EMPEROR, **1915 M.W.N. 253=16 Cr.L.J. 252=28 Ind. Cas. 108.**

(4138)—*S.* 476 — *Deputy Collector acting under Land Acquisition Act—Proceedings of the Deputy Collector—Authority to require verified petition—Power to sanction prosecution for perjury.*—A Deputy Collector acting, under the Land Acquisition Act, is not a Judicial Officer, nor can he be regarded as a Revenue Court within the meaning of s. 476 of the Code. The proceedings of the Deputy Collector, under the Land Acquisition Act, are not regulated by the Code of Civil Procedure. He is not entitled to require a petition under the Land Acquisition Act put in before him to be verified in accordance with the Code, so as to make any false statement punishable as perjury. For these reasons a Deputy Collector has no power to pass orders under s. 195, sanctioning the prosecution of certain person for giving false evidence in relation to proceedings taken by him under the Land Acquisition Act. Further, the Deputy Collector is not in a position to pass any final orders in the matters of the value of the land or the right to claim the price fixed. A party dissatisfied can claim a reference to the Civil Court whose duty it is to settle the matter judicially. Therefore to subject parties claiming the right to such reference to a criminal prosecution, when the matters, on which the Deputy Collector had formed an opinion as a Revenue Officer under the Land Acquisition Act, must be submitted for the determination of a Court, is obviously premature and improper and is almost certain to operate very prejudicially towards them in the trial before the Civil Court. DURGA DAS RUKHIT v. QUEEN-EMPRESS, **27 C. 820.** [*F.*, 30 C. 36; *R.*, 38 C. 230=12 C.L.J. 505=15 C.W.N. 87=8 Ind. Cas. 107, 38 C. 368=12 Cr.L J. 411=11 Ind. Cas. 595, 13 Cr.L.J. 4=13 Ind. Cas. 97, 8 O.C. 118; *D.*, 3 Cr.L.J. 128=44 P.R. 1905, Cr.=187 P.L.R. 1905.]

(4139)—*S.* 476—*Indian Penal Code (Act* XLV *of* 1860), *s.* 193—*Examination of accused on oath—Perjury—Sanction to prosecute.*—A complaint was preferred against the petitioners for Criminal Breach of Trust. The Magistrate examined the complainant on oath in support of the allegations made in the plaint. He next examined the petitioners on oath, and, being of opinion that they had perjured themselves, he granted, under s. 476 of the Crim. Pro. Code, a sanction to prosecute the petitioners. *Held*, that the Magistrate was not justified in

Crim. Pro. Code (Act V of 1898)—*continued.*

examining the petitioners on oath; his proceedings were irregular and illegal and his order under s. 476 of the Crim. Pro. Code was *ultra vires. In re* TRIMBAK BALAJI MAHAJAN, **8 Bom. L.R. 587=4 Cr.L.J. 165.**

(4140)—*S.* 476—*Prosecution under s.* 471, *Crim. Pro. Code,* 1872=*Civ. Pro. Code.* 1882, *s.* 643.—A prosecution under s. 471 (Crim. Pro. Code, 1872=s. 476 of the Code of 1898) is quite a different thing from one instituted by a private party on sanction. In the former case, the responsibility is entirely on the Judge sending the case before the Magistrate. The High Court quashed the proceedings in this case in the exercise of its revisional powers. QUEEN v. BAIJOO LALL, **1 C. 450.** (23 W.R. Cr. 39, *F.*) [*F.*, 16 C. 730. 37 C. 250=14 C.W.N. 330=10 C.L.J. 564=4 Ind. Cas. 710=11 Cr. L.J. 37; *R.*, 13 B. 109 and 384.]

(4141)—*S.* 476—*Offence committed before one Munsif—Prosecution ordered by another—Validity.*—An affidavit which was sworn to by the petitioner was filed before an additional Munsif in a suit pending before him. That officer was transferred, and the suit was made over to the second Munsiff; but the miscellaneous proceeding in which the matter contained in the affidavit was the subject of inquiry was continued by the first Munsif who ordered the petitioner to be prosecuted under s. 476, Crim. Pro. Code. *Held*, that such an order can only be passed by the officer before whom the affidavit was filed, and that as the affidavit in this case was filed before the additional Munsiff, the first Munsiff had no jurisdiction to make the order. KARTIK RAM BHAKAT v EMPEROR, **35 C. 114=7 Cr. L.J. 134.** (34 C. 551, *F.*; 29 M. 331. *N.F.*) [*F.*, 10 Cr.L.J. 158=2 Ind. Cas. 812=6 P.R. 1909, Cr.=12 P.W.R 1909, Cr.=104 P.L.R. 1909, 12 Cr L J. 68=9 Ind. Cas. 389=10 P.L. R. 1911=1 P.W.R. 1911, Cr ; *R.*, 12 Cr.L.J. 209=15 C.W.N. 691=14 C.L.J. 123=10 Ind. Cas. 66; *D.*, 12 Cr.L.J. 521=12 Ind. Cas. 289=4 Bur. L. T. 246.]

(4142)—*S.* 476—*Offence before one officer—Prosecution by another.*—An order for prosecution passed by a Munsif, when the alleged offence of perjury was committed before his predecessor in office, does not fall within s. 476 of the Code. *In the matter of* KRISHNA GOBINDA DUTT, **9 C.W.N. 859=4 Cr.L J. 209.** [*Not F.* 6 A.L.J.392=9 Cr. L.J. 219, 1 Ind. Cas. 306; *F.*, 35 C. 551=5 C.L.J. 508=11 C.W.N. 568=2 M.L.T. 298=5 Cr.L.J. 398; *R.*, 5 C.L J. 176, 14 C.L.J. 123=15 C.W.N. 691=12 Cr. L.J. 209=10 Ind. Cas. 66, 12 Cr. L.J. 521=12 Ind. Cas. 289=4 Bur.L.T. 246; *Doubted*, 11 C.W.N. 119=4 Cr. L J. 454; *D.*, 33 C. 193=3 Cr. L.J. 365.]

(4143)—*S.* 476—*"Court"—Successor in office, whether can take action under—Jurisdiction.*—It is only the individual Magistrate, before whom the offence was committed in Court, who can take action under s. 476, Crim. Pro. Code. CROWN v. MUSSAMMAT DAULI, **6 P.R. 1909, Cr.=104 P.L.R 1909=10 Cr. L.J. 158=2 Ind.**

Crim. Pro. Code (Act V of 1898)—*continued.*

Cas. 812. (35 C. 114, *R.*; 34 C. 551, F.B., *F.*; 29 M.331, 25 P.R. 1889, Cr., *R.*) [*F.*, 12 Cr. L.J. 68 = 9 Ind. Cas. 389 = 10 P.L.R. 1911 = 4 P.W.R. 1911; *R.*, 12 Cr. L.J. 434 = 11 Ind. Cas. 618 = 19 P.W.R. 1911, Cr.]

(4144)—*S.* 476—'*Court*'—*Successor in office.*—The expression 'Court' in s. 476, Crim. Pro. Code, includes the successor in office of the officer who decided the civil case. MUHAMMAD IBRAHIM v. KING-EMPEROR, **12 A.L.J. 1003 = 16 Cr. L J. 97 = 27 Ind.Cas. 145.** (37 C. 642, 34 A. 393, *R.*)

(4145)—*S.* 476—*Court—District Registrar.*—A District Registrar is not a Court within the meaning of s. 476 of the Crim. Pro. Code. *In re* MANKU BALA PATIL, **16 Bom. L.R. 946 = 2 Bom. Cr. Cas. 264 = 27 Ind. Cas. 154 = 16 Cr. L.J. 106.**

(4146)—*S.* 476—*Civil Court— Mamlatdars' Courts Act* (*Bombay Act* II *of* 1906).—The Mamlatdar's Court, constituted under Bombay Act II of 1906, is a Civil Court within the meaning of s. 476, Crim. Pro. Code. EMPEROR v. BHAVDU DHONDU, **15 Bom. L.R. 53 = 2 Bom. Cr. C. 9 = 18 Ind. Cas. 416 = 14 Cr. L.J. 80.**

(4147)—*S.* 476—*Madras Estate Land Act* (I *of* 1908), *ss.* 163 *to* 167—*Record of rights, officer preparing, whether a* '*Court*' *for purposes of s.* 476, *Crim. Pro. Code—Court, test for determining what is a.*—A Revenue officer, preparing a record of rights under ss. 163 to 167 of the Madras Estates Land Act, and not authorized by the notification appointing him to administer oath and take evidence, is not a 'Court' within the meaning of s. 476 of the Crim. Pro. Code and he cannot take action under that section for giving false evidence before him (26 A. 382, 3 C.L.J. 133, 28 C. 471, 27 C. 820, 27 M.L.J. 227, 36 M. 72, *F.*; 17 C. 872, 15 M. 138, 24 M. 121, *Cons.*) *Per Seshagiri Aiyar, J.*—Persons exercising *quasi*-judicial functions should not be regarded as Courts, and the mere fact that an enquiry is necessary will not constitute the enquiring officer a Court. The test to be applied for ascertaining whether an officer is a Court or not is to see whether there is a power to record evidence and to come to a judicial determination on the evidence so recorded. *In re* VENKATA HANUMANTHA RAO, **2 L.W. 180 = 1915 M.W.N. 177 = 28 M.L.J. 123 = 16 Cr. L. J. 241 = 28 Ind. Cas.** 97.

(4148)—*S.* 476—"*Brought under the notice of the Court.*" *meaning of—Jurisdiction of Munsif — Decree in accordance with award.*—The words "brought under its notice" in Crim. Pro. Code, s. 476, are wide enough to cover an offence which may have been committed in another *forum* and on some previous occasion. Where a suit was brought to have it declared that a decree passed against the plaintiff was null and void, and to have an injunction staying further proceedings in execution, and the suit was referred to an arbitrator who held that the decree had been fraudulently obtained and the Court passed judgment in accordance therewith, *held*, that the proceedings before the Munsif were judicial proceedings, and the alleged offence was brought to the knowledge of the Munsif in the course of judicial proceedings. KAMTA PRASAD v. KING-EMPEROR, **8 A.L.J. 240 = 9 Ind. Cas. 497 = 12 Cr. L.J. 93 = 33 A. 396.** [*R.*, 4 Bur. L.T. 246 = 12 Cr. L.J. 521 = 12 Ind. Cas. 289.]

(4149)—*Crim. Pro. Code* (*Act* V *of* 1898), *s.* 476 — '*Court,*' *meaning of.* — *Held per Maclean, C. J., Harington, Brett and Mitra, JJ.*—The expression 'Court' in s. 476 of the Crim. Pro. Code means the particular Judge who heard the case, and does not include his successor in office. BEGU SINGH v. EMPEROR, **5 C.L.J. 508, F.B. = 11 C.W.N. 568 = 34 C. 551 = 5 Cr. L.J. 398 = 2 M.L.T. 298.**

(4150)—*S.* 476— *Enquiry by Magistrate—Legal Practitioner's Act* (XV *of* 1879), *s.* 23—*Enquiry under — Whether such Magistrate a Court.*—A Magistrate holding an enquiry under s. 23 of the Legal Practitioners Act is a Court within the meaning of s. 476 of the Crim. Pro. Code. GAURI SANKAR LAL v. KING-EMPEROR, **9 A.L.J. 156 = 13 Cr. L J. 190 = 13 Ind. Cas. 1006.**

(4151)—*S.* 476—*Indian Penal Code, ss.* 114, 119, 193 *and* 210—*Power of Court to order prosecution under s.* 476, *Crim. Pro. Code—Execution-proceedings. whether judicial proceedings* — The powers conferred by s 476, Crim. Pro. Code, can only be exercised if the offences in respect of which a prosecution is ordered, have come to the cognizance of the Court in a judicial proceeding Execution proceedings subsequent to the trial of a suit are not judicial proceedings. KANTO RAM DAS v. GOBARDHAN DAS, **35 C. 133 = 7 Cr. L.J. 159.** (32 C. 367, *F.*; 34 C. 551, 11 C.W.N. 119, 33 C. 193, *R.*) [*F.*, 37 C. 91 = 14 C.W.N. 49 = 11 Cr. L.J. 23 = 5 Ind. Cas. 29, 12 C.L.J. 618 = 12 Cr.L.J. 21 = 8 Ind.Cas. 1106, 5 Ind. Cas. 257 = 11 Cr. L.J. 90 = 1 P.R. 1910, Cr. = 3 P.W.R. 1910, Cr. = 161 P.L.R. 1910; *D.*, 10 Cr. L.J. 564 = 10 C L.J. 450 = 4 Ind. Cas. 363.]

(4152)—*S.*476—*Judicial proceeding—Transfer application—Examination of witnesses after disposal—Prosecution of witnesses not legal.*—During the pendency of a case of riot before a Magistrate, some of the accused applied to the Sub-Divisional Magistrate to transfer the case on the ground, *inter alia*, that the Magistrate had received a bribe in the presence of A and B. The Sub-Divisional Magistrate made an order transferring the case and thereafter recorded the statements of A and B on oath. He then made an order under s. 476, Crim. Pro. Code, directing their prosecution for an offence under s. 193, Penal Code: *Held*, that the proceeding before the Sub-Divisional Magistrate was clearly not a judicial proceeding, as there was no case pending in his Court, for he had already disposed of the application for transfer. (2 M. H.C. 43, *Rel. on.*) *Held*, further, that the statements of A and B, having been made *coram non*

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judice, were not evidence. The act of the Magistrate was not a magisterial act, consequently be had no jurisdiction to administer the oath. (27 C. 455, *Rel. on.*) In the circumstances the Magistrate's order under s. 476, Crim. Pro. Code, was made without jurisdiction. EMPEROR v. KACHRI, **10 Ind. Cas. 622 = 7 N.L.R. 65 = 12 Cr. L.J. 326.** [*R.*, 12 Cr. L.J. 563 = 12 Ind. Cas. 651 = 5 S.L.R. 102.]

(4153)—*S.* 476—*Offence coming to the notice of Court in the course of a judicial proceeding, what amounts to.*—Where a Magistrate, to whom a case had been transferred, ordered the prosecution of a witness for giving false evidence before the original Court, but that deposition was not put in evidence in the trial before the second Magistrate, nor was the person himself examined, *held*, that he could not direct the prosecution of the witness, as the offence did not come to his notice in the course of a judicial proceeding. *In re* SAMI SASTRI, **2 Weir 598.**

(4154)—*S.* 476—*Power of interference of High Court exercising civil jurisdiction—Civ. Pro. Code, s.* 622—*S.* 15, *Charter Act—Considerations to be had in regard to exercising revisional jurisdiction of High Court—Stay of Criminal proceedings pending a civil appeal—Conditions under which stay can be made.*—In a probate case before a District Judge, the present petitioners, among others, opposed the grant of probate. The District Judge, after hearing the evidence of both the parties, held that the will propounded had been duly executed and that the petitioners had conspired to prevent the grant of probate and had given false evidence in furtherance of that conspiracy. He, thereupon, instituted proceedings against the petitioners, under s. 476, Crim. Pro. Code, and directed their prosecution, under s. 193, I.P.C. in respect of the false statements made by them. *Held*, that it was doubtful whether the High Court, exercising civil jurisdiction, could stay the criminal proceedings, that no case had been made out for the interference of the High Court, under s. 622, Civ. Pro. Code, and that the provisions of s. 15 of the Charter Act did not appear to give the High Court power to interfere in the case. *Held*, also that the High Court must have regard to the nature of the revisional jurisdiction and must not, in a case arising under s. 476, any more than in any other case, allow, what would virtually be, an appeal from the order of the Court below. *Held*, further, that where the Court below being asked to postpone passing orders, under s. 476, Crim. Pro. Code, until the disposal of the appeal to the High Court, refused to do so, but thought it fit, in the interests of justice, to take immediate action, the High Court ought not to stay proceedings, merely on the ground that a civil appeal is pending before it. HEM CHANDRA RAY v. ATAL BEHARI RAY, **35 C. 909 = 8 Cr. L J. 435.** (23 C. 610, 23 A. 249, 26 B. 785, *F.*) [*R.*, 40 C. 477 = 17 C.L.J. 245 = 17 C.W.N. 647 = 14 Cr.L.J. 197 = 19 Ind. Cas. 197, 10 C.L.J. 450 = 10 Cr.L.J. 564 = 4 Ind. Cas. 368, 11 Cr.L.J. 4 = 13 C.W.N. 398 = 4 Ind. Cas. 485, 18 M.L.J. 466 = 4 M.L.T. 186.]

(4155)—*S.* 476—*Order for prosecution—Complaint before police proved false—Enquiry by Deputy Magistrate—Order for prosecution by Deputy Magistrate—Jurisdiction—Judicial proceeding.*—A complaint lodged with the Police was reported false. The District Magistrate thereupon directed an enquiry, which was held by a Deputy Magistrate, who also considered the case to be false. The District Magistrate then passed final orders on the Police report, intimating that the complaint was false and directing the prosecution of the person, who had lodged the complaint, for an offence under s. 211 of the Penal Code. *Held*, that the order for prosecution was without jurisdiction as it was passed with regard to a matter, which did not come up to his cognizance in the course of a judicial proceeding. HAIBUT KHAN v. EMPEROR, **10 C.W.N. 30 = 33 C. 30 = 3 Cr.L.J. 125.** [*F.*, 7 C.L.J. 371; *R.*, 14 C.W.N. 330 = 10 C.L.J. 564; *D.*, 30 A. 52 = 4 A.L.J. 790 = A.W.N. 1907, 288 = 6 Cr.L.J. 396.]

(4156)—*S.* 476—*Order for prosecution—Proceeding in execution of decree—Attachment—Obstruction—Judicial proceeding.*—A decree-holder, proceeding to execute a warrant of attachment of the moveable properties of judgment-debtor issued by a Munsif, was prevented by the judgment-debtor and several other persons who beat the decree-holder and threatened to beat the peon. The peon reported the matter to the Munsif and the decree-holder also complained before him. The Munsif, after holding an enquiry, ordered the prosecution of the offenders under s. 183 of the Penal Code. *Held*, that the Munsif had power, under s. 476, Crim. Pro. Code, to direct the prosecution, as the facts did come to his knowledge while he was engaged in a judicial proceeding, namely, in a proceeding in an execution case which had not been finally disposed of. BHOLANATH DEY v. EMPEROR, **10 C.W.N. 55 = 3 Cr.L J. 142.** (9 C.W.N. 364 = 32 C. 367, *D.*) [*F.*, 10 Cr.L.J. 564 = 4 Ind. Cas. 564 = 10 C.L.J. 450, 11 Cr.L.J. 90 = 5 Ind. Cas. 257 = 1 P.R. 1910, Cr = 3 P.W.R. 1910, Cr. = 161 P.L.R. 1910, 12 Cr.L.J. 21 = 8 Ind. Cas. 1106 = 12 C. L.J. 618.]

(4157)—*S.* 476—*Scope and application of—Execution proceeding is judicial proceeding.*—In execution of a decree for money, attempt was made by the officers of the Court to attach and seize the moveables of the judgment-debtor. Resistance was thereupon offered by persons present on the spot. The Court held an enquiry and under s. 476, Crim. Pro. Code, directed the prosecution of the persons who had offered resistance. *Held*, that an execution proceeding is a judicial proceeding, and the resistance having taken place and having been brought to the notice of the Court in the course of such proceeding, the order under s. 476 was made with jurisdiction. DAKHINESWAR MISRA v. HURIS CHUNDRA CHATTERJI,

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10 C.L.J. 450=4 Ind. Cas. 368=10 Cr. L.J. 564. (10 C.W.N. 55, *F.*; 32 C. 367=1 C.L.J. 161, 35 C. 133, *D. & Doubted.*) [*F.*, 12 C.L.J. 618 =8 Ind. Cas. 1106=12 C.L.J. 21; *R.*, 40 C. 477 =17 C.L.J. 245=17 C.W.N. 647=14 Cr. L.J. 197=19 Ind. Cas. 197.]

(4158)—*S.* 476—*Offence of making false statement.*—The offence of making a false statement in a case, regarding the illegal release of cattle brought to the notice of an appellate Magistrate on the revenue side, cannot be said to have been brought to the notice of the Magistrate in the course of a judicial proceeding. *In re* RAMAN, 2 Weir 598.

(4159)—*S.* 476—*False complaint—Sanction to prosecute, when not to be given on motion of the opposite party.*—It is not advisable to give sanction to one party to prosecute another in cases in which there is a dispute over property causing breach of peace, as it is likely that the party who receives the sanction will use it as a means of revenge or extorting from his opponent an admission of his claim. If the Court thinks that, in the interest of the public welfare sanction should be given, it ought to take action under s. 476 of the Code and itself make a complaint. BAGAVATI MISIR *v.* RAM DAYAL, **11 A.L.J. 113=14 Cr. L.J. 127 =18 Ind. Cas. 687.**

(4160)—*S.* 476, *Civ. Pro.Code, Act* V *of* 1908, *s.* 115—*Fabrication of evidence and forgery committed by a* Patwari *in* Tahsil *records*—Patwari *appearing as a witness in District Judge's Court—Departmental inquiry made by District Magistrate—District Judge directing prosecution of* Patwari *on basis of departmental inquiry—Judicial proceedings—No inquiry by District Judge—Material irregularity.*—A *Patwari* appeared as a witness in a civil case in the Court of District Judge. After the decision of the case, the District Magistrate had a departmental inquiry made which went to show that the *Patwari* had fabricated false evidence and had also forged a signature in his diary in the *Tahsil* records. Upon this the District Magistrate applied to the District Judge for sanction to prosecute the *Patwari* for the offences of perjury and forgery and along with his application for sanction forwarded the record of the departmental inquiry. The District Judge on perusal of this record issued notice to the *Patwari*, and after hearing him directed his prosecution on the basis of the departmental inquiry. *Held*, (1) that the District Judge had no jurisdiction to order prosecution in respect of matters which had occurred in the *Tahsil* and not in his Court; (2) that, assuming the matters to have been brought to the notice of the District Judge in the course of a judicial inquiry, as the record of the departmental inquiry was not evidence in the matter of the sanction applied for by the District Magistrate, the District Judge acted with material irregularity in ordering prosecution without having himself made an inquiry. GANESH PERSHAD *v.* EMPEROR, **13 Cr. L.J. 43=13 Ind. Cas. 283.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(4161)—*S.* 476—*Bengal Tenancy Act* (VIII *of* 1885), *s.* 3, *cl.* 16, *s.* 58, *cl.* 3—*Reg.* IX *of* 1833, *ss.* 20, 21—*Government Notification No.* 1579, *T. R. dated* 19*th September,* 1910—*Sub-Divisional Magistrate appointed Collector within the meaning of s. 58 of the Bengal Tenancy Act—Enquiry under that section if can be transferred by, Collector to Sub-Divisional Magistrate—Forged documents filed before Sub-Divisional Magistrate in enquiry so transferred—Jurisdiction of Sub-divisional Magistrate to order prosecution.*—Where a proceeding under cl. 3 of s. 58 of the Bengal Tenancy Act instituted against the petitioner by the District Collector was transferred by that Officer to the Sub-Divisional Officer before whom the petitioner filed some counterfoils of rent receipts which were found by the Sub-Divisional Magistrate to be forged, and the Sub-Divisional Magistrate made an order under s. 476, Crim. Pro. Code, directing the prosecution of the petitioner under s. 193, I.P.C. *Held* that, although, under cl. 16 of s. 3 of the Bengal Tenancy Act and Government Notification No. 1579 T.R. dated the 19th September, 1910, Sub-Divisional Officers are also Collectors within the meaning of s. 58 of the Bengal Tenancy Act, the Collector of the District has jurisdiction under ss. 20 and 21 of Reg. IX of 1833 to transfer Collectorate work to the Sub-Divisional Magistrate who is none the less a Deputy Collector and as such subordinate to the Collector and consequently the action taken by the Sub-Divisional Magistrate under s. 476, Crim. Pro. Code, was within his powers. PHANINDRA SINGH *v.* KING-EMPEROR, **17 C.W.N. 371=14 Cr. L.J. 139=18 Ind. Cas 891=40 C. 465.**

(4162)—*S.* 476—*Perjury—Indian Penal Code* (*Act* XLV *of* 1860), *s.* 193—*Prosecution for perjury—Propriety of order for, by the appellate Court.*—It is an unusual and not a proper procedure for an Appellate Court, which did not hear the evidence, to order the prosecution for perjury of a witness for making false statements in his deposition in the lower Court on materials in support of the prosecution, which were not before the lower Court and which the witness had no opportunity of explaining while in the box. LOKE NATH SAHI *v.* EMPEROR, **10 C.W.N. 1091=4 Cr. L.J. 219.**

(4163)—*S.* 476—*Duty of Criminal Court to give effect to final judgment of Civil Court.*—Where in a suit on a registered bond alleged to have been executed by the defendant, the Munsiff held, notwithstanding the denial of the execution of the bond by the defendant, that the bond was genuine, and directed his prosecution under s. 476, Crim. Pro. Code, for an offence under s. 193, I.P.C., and on appeal the judgment of the Munsiff was reversed by the Sub-Judge who held that the bond was not genuine and the defendant had not executed it. *Held* that the result of the judgment of the Appellate Court must be taken to be, that the order for the prosecution of the defendant was not maintainable, and that the conviction of

Crim. Pro. Code (Act V of 1898)—*continued.*

the defendant by the Criminal Court ought to be set aside by the High Court, although he did not move the High Court to quash the proceedings against him as soon as the judgment of the Sub-Judge was pronounced. KANULLAH v. EMPEROR, **12 C.W.N. 1=6 C.L.J. 703=6 Cr. L.J. 354.** [*R.*, 16 C.L.J. 569=14 Cr. L.J. 32=18 Ind Cas. 176; *Expl. and D.*, 12 Cr. L. J. 323=10 Ind. Cas. 619=21 M.L J. 795=10 M.L.T. 47=1911, 2 M.W.N. 9.]

(4164)—*S.* 476—*Order for further inquiry—Trial, by whom to be held.*—S. 476 requires the Court, after making any preliminary inquiry that may be necessary, to send the case for inquiry or trial to the nearest Magistrate of the first class. NIYAMUT MIAH v. EMPEROR, **1 C.L.J. 630=2 Cr. L.J. 656.**

(4165)—*S.* 476—*Penal Code, s.* 193—*Propriety of taking proceedings under s.* 476, *Crim. Pro. Code, until final orders are passed in the case in which the offence is committed.*—Proceedings under s. 476, Crim. Pro. Code, should not be taken against a person for giving false evidence or fabricating false document under s. 193, Indian Penal Code, until the case, in which the said evidence was given or such document was used, has been finally decided. GENDAN SINGH v. KING-EMPEROR, **3 C.L.J. 302=3 Cr. L.J. 303.**

(4166)—*S.* 476, *power to take proceedings under, given to the Court and not to the individual Magistrate*.—On the discharge of the accused in a criminal case, the Magistrate who tried the same, granted sanction for prosecuting one of the complainant's witnesses for perjury. A complaint, for the offence, was preferred thereon by the accused, but it was rejected as not properly stamped. Subsequently, the Magistrate, who granted the above sanction was succeeded by another, who directed the prosecution of the said witness and certain others under s. 476 of the Code. *Held*, that the new Magistrate was competent to pass the above order, since the power provided for by the above section is one conferred on the Court as such and not on the individual Magistrate presiding. Nor could the fact, that a complaint, presented after the sanction, happened to be rejected as unstamped, in any way, bar the jurisdiction of the Court to proceed under s. 476. RUNGA AYYAR v EMPEROR, **29 M. 331=4 Cr. L.J. 175.** [*Diss.*, 10 Cr. L.J. 158=2 Ind. Cas. 812=104 P.L.R. 1909=6 P.R. 1909, Cr., 12 P.W.R. 1909, Cr.; *R.*, 31 M. 140=17 M.L.J. 584=3 M.L.T. 79=7 Cr. L.J. 54, 35 C. 114=7 Cr. L.J. 134.]

(4167)—*S.* 476—*Order under the section—Time for making such order.*—*Held* (by the Full Bench Miller, J., *dissenting*) that an order under s. 476 of the Code should be made either at the close of the proceeding, or so shortly thereafter, that it may be reasonably said that the order is part of the proceeding. The history of the section and the case-law on it are considered in detail. *In re* RAHIMATULLAH SAHIB, **17 M.L.J. 584, F.B.=3 M.L.T. 79=31 M. 140=7 Cr. L.J. 54.** [*R.*, 9 Cr.L.J. 41=4 M.L.T. 404.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(4168)—*S.* 476, *Taking action—When justifiable.*—To justify action under s. 476, it will suffice if it is taken with reasonable promptitude, *i.e.*, so shortly after the conclusion of the proceedings as to make it practically the continuation of the same proceeding. PICHAI ROWTHAN v. EMPEROR, **1912 M.W N. 1206 =13 Cr. L.J. 825=17 Ind. Cas. 569.**

(4169)—*S.* 476—*Time for making order under the section.*—Although the Full Bench of the Madras High Court has decided in a case reported in 3 M.L.T. 79, that an order under s. 476 should be made either at the close of the proceedings or so shortly thereafter that it may be reasonably said that the order is part of the proceedings yet, the reasons for holding the opposite view are so strong, that it would be desirable that the question is further considered by the Full Bench. *In re* RAMIAH NAIK, **4 M.L.T. 269=8 Cr. L.J. 403.**

(4170)—*S.* 476—*Time for making order under the section.*—An order under s. 476, Crim. Pro. Code, is one made without jurisdiction, in the absence of any thing to show that the order was part of the proceedings in the trial in which the alleged offence was committed. *In re* CHILLASHI NANU NAIR, **6 M.L.T. 92=2 Ind. Cas. 425=10 Cr. L J. 8.**

(4171)—*S.* 476—*Steps taken five months after close of trial—Order without jurisdiction.*—Where a Magistrate acts under s. 476 of the Code of Criminal Procedure, five months after the close of the trial, and there is no explanation for the delay, the Magistrate acts without jurisdiction. *In re* KSHATRI SIVA SINGH, **15 Cr. L.J. 283=23 Ind. Cas. 491.** (1 Ind. Cas. 597=32 M. 49, F.B.=4 M.L.T. 404=19 M.L.J. 42=9 Cr. L.J. 41, *F.*)

(4172)—*S.* 476—*Delay in ordering prosecution—Pending the result of some other enquiry—Fatal to the prosecution.*—Where a Court intends to take steps under s. 476, Crim. Pro. Code, in respect of an offence committed before it in the course of a judicial proceeding, *its action must be immediate*, and should not await the result of some other proceeding against the accused. The delay in such cases is fatal to the legality of the prosecution. CHEDULURE BANGARAYYA v. EMPEROR, **1911 2 M.W.N. 98=10 Ind. Cas. 623=12 Cr. L.J. 327.** (32 M. 49, *F.*)

(4173)—*S* 476—*Order under—Passed by Munsiff after delay and at the suggestion of District Judge—Illegality.*—An order under s. 476, Crim. Pro. Code, passed by a District Munsiff after a delay of 19 days and on the suggestion of the District Judge, is illegal. *In re* RATNA PILLAI, **10 M.L.T 333=12 Ind. Cas. 216=12 Cr. L.J. 496.** [*R.*, 36 M. 72=23 M.L.J. 393=1912 M.W.N. 1012=16 Ind. Cas. 755=13 Cr. L.J. 723=13 M.L.T. 367.]

(4174)—*S.* 476—"*Nearest Magistrate.*"—The word "nearest" in s. 476 must be construed reasonably. The word does not necessarily refer to the Head-quarters of the Magistrate

Crim. Pro. Code (Act V of 1898)—*continued.*

but has reference to the area of his jurisdiction. *In re* PERUMAL NAICKEN, 2 **Weir 590.**

(4175)—*S.* 476 (=*Crim. Pro. Code*, 1882, s. 476)—*Institution of proceedings under section by an officer of Court.*—A Court is empowered by s. 476 to send a case referred to in s. 195 and brought to his notice in the course of a judicial proceeding for inquiry or trial to the nearest First Class Magistrate ; but he is not precluded from sanctioning the institution of a complaint by an officer of his Court. *In re* CHINNA MEERAN, **2 Weir 596.** [*R.*, 32 M. 49=9 Cr. L.J. 41=19 M.L.J. 42=4 M.L.T 409, 1 Ind. Cas. 597, 9 Cr. L.J. 41=4 M.L.T. 404.]

(4176)—*S.* 476—*Civil Court ordering enquiry by Magistrate—Revision—Jurisdiction of Chief Court.*—Where the District Judge, being of opinion that forgery of a document on the record of a civil case before him was committed either by the plaintiff or the defendant, passed an order under s. 476 of the Code, required both the parties to furnish bail and sent them to the Magistrate for enquiry with a view to prosecution of the guilty person and the case was submitted for revision by the Sessions Judge to the Chief Court under s. 438 of the Code. *Held*, that the order was illegal and must be set aside on revision. That the Chief Court is competent to interfere in revision with the order of a Civil Court passed under s. 476 of the Code. CROWN v. PIRBHU DYAL, **163 P.L.R. 1905=3 Cr.L.J. 73.**

(4177)—*S.* 476—*Petition to Collector under s.* 25, *Income Tax Act—Judicial proceedings.*—A Collector acting under Ch. IV of the Income Tax Act is a Revenue Officer, and his proceedings are judicial proceedings within the meaning of s. 476, Crim. Pro. Code. In this respect, the Income Tax Act differs from the Land Acquisition Act. EMPEROR v. RUP SINGH, **3 Cr. L.J. 128=44 P.R. 1905, Cr.=187 P.L.R. 1905.** (24 M. 121, *R.*; 27 C. 820, *D.*) [*R.*, 22 Ind. Cas. 146=15 Cr. L. J. 2.]

(4178)—*S.* 476—*Witness at Sessions trial contradicting evidence given before the Magistrate, when Judge could order prosecution of, for false evidence.*—The accused, when examined as a witness before the Court of Session, stated to that Court that she had given false evidence before the committing Magistrate under threats and coercion, and thus contradicted the above evidence previously given by her. *Held*, it was not competent for the Sessions Court to order, as it did, the trial of accused for perjury, without specifying which of the depositions made by the accused was false, especially because there was nothing on the record to show that the Judge was satisfied that the evidence given before himself was false. DOLABI v. KING-EMPEROR, **3 L.B.R. 204=4 Cr. L.J. 469.** [*F.*, 3 Bur. L.T. 119=11 Cr. L.J. 734=8 Ind. Cas. 947.]

(4179)—*S.* 476—*Stay of criminal proceedings pending civil suit between the parties—Ordinary prosecution under ss.* 182 *and* 211, *Indian Penal Code—Report to police of theft when no theft took place — Suspicion against opposite party.*—The petitioner laid an information to the Police to the effect that there had been a burglary in his house. The Magistrate directed judicial enquiry by a Deputy Magistrate who came to the conclusion that the report of burglary was false and submitted his report to the Magistrate who ordered the prosecution of the petitioner under s. 211, Indian Penal Code. That order was set aside by the High Court, as being made without jurisdiction, and the record was returned to the Deputy Magistrate, who again enquired into the matter and ordered the prosecution of the petitioner under ss. 182 and 211, Indian Penal Code. *Held*, that this order is illegal under s. 476, Crim. Pro. Code. No hard and fast rule can be laid down to the effect that a criminal trial or enquiry should of necessity be stayed simply because a civil suit has been instituted between the parties in which some or all the matters materially in issue in the criminal case would have to be determined, until the civil litigation was finally decided. A Court may well hesitate to give sanction to a private individual to prosecute his adversary for an offence alleged to have been committed during the pendency of a civil litigation. But it is very desirable in the ends of justice that when a competent Court has taken upon itself the responsibility of ordering prosecution under s. 476, Crim. Pro. Code, that that prosecution should be entertained as speedily as possible while the evidence on both sides is fresh. Where the petitioner reported to the Police the fact of a theft having taken place in his house, and although he did not name any one as being the actual offender, yet he stated his suspicion that the opposite party had instigated it, and it was found by the Court that as a matter of fact there was no theft at his house as alleged by him : *Held*, that the Court was quite justified in ordering the prosecution of the petitioner under ss. 182 and 211, Indian Penal Code. EMPEROR v. UMAR *walad* SIDIK, **11 Cr. L.J. 4=4 Ind. Cas. 481=3 S.L.R 136.**

(4180)—*S.* 476 (=*Crim. Pro. Code*, 1872, s. 471) — *Preliminary enquiry — Procedure.*—Under s. 471, Crim. Pro. Code, 1872, the Court must first hold a preliminary enquiry to satisfy itself that a specific charge coming under the sections mentioned in it ought to be preferred against the accused ; and after being so satisfied, it must either commit the case or send it to the Magistrate for enquiry as to whether a committal should be made or not. *In re* KALI PROSUNNO BAGCHEE, **23 W.R. Cr. 39.**

(4181)—*S.* 476—*Appeal—Application asking a Munsif to take criminal action himself against a person—Sanction to prosecute—Appeal to the District Judge—Jurisdiction.*—Where an application was made to a Munsif asking him to take action himself against a certain party and to send him to a Criminal Court to be tried there for various offences, without asking the Court for sanction to prosecute those persons and the Munsif declined to take any action, *held*, that no appeal lay to the District Judge

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against the order of the Munsif. BHAGIRATHI v. SURAJ MAL, **12 A.L.J. 684 = 15 Cr. L.J. 575 = 25 Ind. Cas. 327.**

(4182)—*S. 476—Sanction to prosecute—Different orders—Review.*—Where, in a case of assault, the Magistrate, disbelieving the evidence of the complainant, acquitted the accused, remarking in his order that, although a prosecution for perjury would be a proper punishment, he would leave it to the private party, and where, subsequently, on the application of the accused, the Magistrate accorded sanction, *held*, the latter order amounted to a review of the former, which should be set aside. KULANDAI v. RAMASAMI CHETTY, **10 M.L.T. 389 = 1911, 2 M.W N. 431 = 12 Cr. L.J. 556.**

(4183)—*S. 476—Sanction to prosecute—Not the same proceeding—Order illegal — High Court's power in revision to grant sanction—Execution proceedings are judicial proceedings.*—Execution proceedings are judicial proceedings. (12 C.L.J. 45; *R.*, 32 C. 367, *Diss.*) Where a Munsif disposed of an execution case on the 27th July 1911, and later on, on the 25th of November 1911, in the course of a different judicial proceeding, namely, on an application by the decree-holder for grant of sanction to prosecute counter-petitioners, took action under s. 476, Crim. Pro. Code, *held*, that the District Munsif's order was illegal and should be set aside; (32 M. 49, *F.*) The High Court, as a Court of revision, has power to pass the proper order which the District Munsif ought to have made and has power to grant the necessary sanction. PONNUSAMI PILLAI v. CHOCKALINGAM PILLAI, **25 M.L.J. 593 = 14 M.L.T. 512 = 1913 M.W N. 1002 = 14 Cr. L.J. 624 = 21 Ind. Cas. 672.**

(4184)—*S. 476 — Practice — High Court, powers of, to interfere with orders of District Registrar.*—A District Registrar is not a Court subordinate to the High Court either on the Civil, Criminal or Revenue side, and the High Court has no power to interfere with the order of the Registrar impounding a document and calling upon the applicants to show cause why they should not be prosecuted for forgery. UDIT NARAIN DUBE v. KING-EMPEROR, **11 A.L.J. 55 = 18 Ind. Cas. 896 = 14 Cr. L.J. 144 = 35 A. 109.**

(4185)—*S. 476 — Search-list held false — Sanction given in respect of—No opportunity given to cross-examine witnesses for prosecution or to adduce defence evidence—No particulars given as to how search-list was false—Illegality of order.*—Where a Magistrate's order under s. 476, Crim. Pro Code, was made before the witnesses for the prosecution had been cross-examined on their evidence that the search-list was a 'false' one, and before the defence had any opportunity to show that the search-list was not a false one. *Held*, that the order was premature and wrong, where such order did neither specify nor even indicate in any way, how, or in what respect the search-list was a false one, and that it ought to be set aside as being improper. *In re* KOLLI APPIAH, **11 M. L.T. 191 = 13 Ind. Cas. 832 = 13 Cr. L.J. 144 = 1912 M.W.N. 400.**

(4186)—*S. 476—Suit dismissed* ex parte—*Application by defendant for re-hearing, granted —Proceeding* ultra vires—*Charge not sustainable—Penal Code (Act XLV of 1860), s. 193.*—Where a suit had been dismissed *ex parte* as against a defendant, whose application for re-hearing was granted and the suit re-heard, in the course of which re-hearing the plaintiff made certain false statements and the Munsiff ordered his prosecution thereof, under s. 476, Crim. Pro. Code, *held* that the proceedings of the Munsiff were *ultra vires* and illegal, inasmuch as under O. IX, r. 13, Code of Civil Procedure, the Munsiff could not set aside his decree and grant a re-hearing, and therefore the conviction for perjury could not be sustained. BABU RAM v. KING-EMPEROR, **8 A.L.J. 674 = 11 Ind. Cas. 141 = 12 Cr. L.J. 373.**

(4187)—*S. 476—Proceedings against a person who is neither a party nor a witness—Pendency of civil appeal—No bar to prosecution.*—Under s. 476, Crim. Pro. Code, all that is required is that the offence referred to therein should be either committed before the Court or brought under its notice in the course of judicial proceedings. It is not necessary that the person proceeded against should be a party or a witness in the proceedings. The mere pendency of a Civil appeal is not in itself sufficient ground for staying criminal proceedings under s. 476. *In re* KESHAV NARAYAN MANOLKAR, **14 Bom L.R. 968 = 1 Bom. Cr. C. 212 = 13 Cr. L. J. 848 = 17 Ind. Cas. 720.**

(4188)—*S. 476—Prosecution, order for—Civ. Pro. Code (Act V of 1908), O. 16, r. 7—Document, production of, by person present in Court —Production of document, offer of, next day—Evidence Act (1 of 1872), ss 130, 131—Person, if compellable to produce document.*—Where a person, who is not a party to a cause, being present in Court, was called upon to produce a document which was his own title-deed and alleged to have been in his possession at the time, and stated that the document was not in his possession then but offered to produce the same the next day, and the Court, being of opinion that the person wanted to keep the document out of the reach of the Court, at once drew up proceedings under s. 476 of the Code of Criminal Procedure. *Held*—the proceedings under s 476 could not, upon these facts, be justified. Before any proceedings could be taken, it would be necessary to determine whether the document in question was one which he could be compelled to produce and if the requirements of ss. 130 and 131, Evidence Act, were fulfilled. BHAGABAT PRASAD SINGH v. KING EMPEROR, **14 C.L.J. 120 = 11 Ind. Cas. 794 = 12 Cr. L.J 450.** [*R.* 40 C. 477 = 17 C.L.J. 245 = 17 C.W.N. 647 = 14 Cr. L.J. 197 = 19 Ind. Cas. 197.]

(4189)—*S. 476—Time for ordering prosecution —Whether limited.*—There is nothing in s. 476

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of the Crim. Pro. Code which requires a Court to take action, if at all, immediately after the conclusion of the case in which the offences are said to have been committed or within any period thereafter. (9 A.L.J. 481; 6 A.L.J. 392, *F.*; 32 M. 49, 31 M. 140, *Not F.*: 32 B. 184, 4 Bom. L.R. 778, *R.*). A suit was brought by one M against the applicants for a declaration that she was the daughter of one S and the applicants brought a counter suit for possession of property against M. alleging that she was not S's daughter. The two suits were tried together and M was found to be the daughter of S. The Subordinate Judge waited for a month, and when no appeal was filed ordered the prosecution of the applicants under s. 476 of the Code of Criminal Procedure. *Held* that the Subordinate Judge was entitled to abstain from taking action till the period of appeal had expired and the High Court had no power to set aside his order in revision. TILOK PANDEY v. EMPEROR, **13 A.L.J. 466=29 Ind. Cas. 97=16 Cr. L.J. 465.**

(4190)—*S.* 476—*Execution of decree—Proceedings in—Judicial proceedings—Jurisdiction of Court.*—Proceedings in execution of decree are 'judicial proceedings' and therefore a Court has jurisdiction to pass an order under s. 476, Crim. Pro. Code, with reference to matters which have come to its knowledge in execution proceedings. SHAHAMAT KHAN v. GULAB KHAN, **17 O.C. 309=16 Cr. L.J. 91=26 Ind. Cas. 1003.** (37 C. 642, *R.*)

(4191)—S. 476— Muktear — Suspension by District Magistrate before report to High Court —Legality.—*See* ACT XVIII OF 1879, ss. 14, 40, 15 C.W.N. 269=9 Ind. Cas. 225=12 Cr. L.J. 33=13 C.L.J. 457.

(4192)—S. 476—*See* FALSE CHARGE, 7 C. L.J. 371=7 Cr. L.J. 338.

(4193)—S. 476—*See* FALSE EVIDENCE, 14 C.W.N. 132=5 Ind. Cas. 62=37 C. 52.

(4194)—S. 476—*See* JURISDICTION OF CIVIL AND CRIMINAL COURTS, 6 C.L.J. 713=6 Cr. L.J. 405.

(4195)—S. 476—*See* PENAL CODE, s. 211, 8 A.L.J. 1106=12 Cr. L.J. 433=11 Ind. Cas. 617.

(4196)—S. 476—*See* PERJURY, 6 C. 308, 4 Bom. L.R. 778.

(4197)—S. 476—*See* Nos. 47, 52, 61, 61 *a*, 66, 73, 74, 75, 122, 860, 1026, 1330, 1347, 1348, 1349, 1353, 1392, 1505, 1651, 1657, 1703, 1738, 1744, 1815, 1818, 1822, 1823, 1824, 1838, 1839, 1841, 1842, 1851, 1852 to 1877, 1978, 1979, 2050 to 2055, 2063, 2404, 2584, 2585, 2587, 2588, 2876, 3287, 3743, 3806, 3848, 3849, 3850, 3880, 3942, 3943, 3944, 4043, 4051, 4052, 4053, 4054, 4055, 4055-*a*, 4118, *supra* and Nos. 4259, 4293, *infra*.

(4197-*a*)—S. 476 and Ch. XVI—*See* DISTRICT JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 515=Cr. Rg. 37 of 1890.

(4198)—*S.* 476 (2)—*Order transferring case sent for enquiry or trial under s.* 476 (1).—A Revenue Court, in a proceeding under the Northern India Canal and Drainage Act, passed an order under s. 476, Crim. Pro. Code, sending a case for enquiry or trial to the District Magistrate. The latter transferred the case to a subordinate Magistrate. *Held* that neither the Sessions Judge nor the High Court had any jurisdiction to interfere with the order of the Revenue Court sanctioning the prosecution. EMPEROR v. MUHAMMAD KHAN, **A.W.N. 1902, 202.** [*R.*, 26 A. 249=A.W.N. 1904, 15.]

(4199)—*Ss.* 476, 190 *and* 195—*Presidency Magistrate — Magistrate, First class—Procedure.*—A Presidency Magistrate does not fall within the definition of a Magistrate of the first class as used in s. 476 of the Crim. Pro. Code, 1898. Where, therefore, a Presidency Magistrate has ground for inquiring into any offence referred to in s. 195 of the Crim. Pro. Code and committed before him or brought under his notice in the course of a judicial proceeding, the only course which he can adopt is either to commit the case to the sessions or have the complaint filed under s. 190 read with the provisions of s. 195 of the Crim. Pro. Code. EMPEROR v ADITRAM, EMPEROR v. HUSSAN LATIF, **9 Bom. L.R. 1160=6 Cr. L.J. 326.**

(4200)—*Ss.* 476, 192 *and* 202—*Proceeding under s.* 476—*Competency of Magistrate to whom a case is sent for inquiry and report to institute.*—Where a Magistrate, after taking cognizance of a case on a petition of complaint, sent it to another Magistrate for inquiry prior to the issue of process against the accused, and the latter Magistrate made the inquiry, examined witnesses, and came to the conclusion that the case was false, and then took proceedings under s. 476, Crim. Pro. Code, against the complainant and committed him for trial under s. 211, I.P.C. *Held*, whether the case was transferred to the latter Magistrate under the provisions of s. 492 or s. 202, Crim. Pro. Code, as he, in carrying out the order received with the order of transfer, examined witnesses and recorded evidence on oath, the proceeding conducted by him was a judicial proceeding within the meaning of s. 4, cl. (*m*), Crim. Pro Code, and therefore he was competent to draw up proceedings under s. 476, Crim. Pro. Code, against the complainant for any offence referred to in s. 195, Crim. Pro. Code, and committed before him or brought to his notice in the course of the proceeding. KANCHAN GORHI v. RAMKISHUN MUNDUL, **36 C. 72=13 C W.N. 122=1 Ind. Cas. 103.**

(4201)—*Ss.* 476, 195 (=*Crim. Pro. Code*, 1882, *ss.* 476 *and* 195)—*Scope of the sections—Sanction given on motion of Court.*—Proceedings taken by a Court under s. 476 operate of themselves to set a prosecution in motion without the necessity of any other complaint, the Court itself being the complainant. But it is otherwise with a sanction granted under s. 195 This has no effect at all, unless a complaint is formally made in pursuance of the sanction, and if no complaint is made within six months, the sanction itself expires. The

proceedings of a Court recording a sanction, presumably under s. 195, which has not been granted upon the petition of any person, but on the mere motion of the Court, cannot be viewed as taken under s. 476, when no preliminary inquiry is either taken or dispensed with, when no steps are taken to ensure the attendance of the accused before the Magistrate and when the proceedings are forwarded to the District Magistrate, but not to the nearest Magistrate of the First Class. *In re* NAGESWARA AIYAN, **2 Weir 589.**

(4202)—*Ss.* 476, 195.—If a Sessions Judge is of opinion that there is ground for inquiring into any offence referred to in s. 195, Crim. Pro. Code, committed before himself or brought to his notice in the course of a judicial proceeding, his action must be taken under s. 476, and the accused should be given an opportunity to show cause against such order. HIGH COURT PROCEEDINGS, 1ST SEPTEMBER 1885, NO. 400, **2 Weir 587.**

(4203)—*Ss.* 476, 195—*Held*, by the majority of the Full Bench (*Miller, J., dissentiente*) that an order under s. 476, Crim. Pro. Code, should be made either at the close of the judicial proceedings or so shortly thereafter that it may reasonably be said that the order is part of the proceedings, and that an order passed under s. 476 of the Criminal Procedure Code after the termination of the judicial proceedings was passed without jurisdiction. *In re* AIYACANNU PILLAI, **9 Cr. L.J. 41=4 M.L.T. 404=19 M.L.J. 42=32 M. 49.**

(4204)—*Ss.* 476, 195 (=*Crim Pro. Code*, 1882, *ss.* 476, 195)—*Application for sanction—Duty of Court.*—Where an application for the sanction required by s. 195 is made, the Court should either give or refuse it. It is not open to the Court to act under s. 476 when it is no longer in a position to adopt the procedure prescribed by that section. KUNNATH KUNHAMAYEN v. MURIKOLY KOLANDAN, **2 Weir 596.**

(4205)—*Ss* 476, 195—*Delivery of possession—Obstruction—Jurisdiction of executing Court to make order under* s. 476 *of the Crim. Pro. Code—Enforcement of process of Court—Offence committed – Crim. Pro. Code,* s. 195.—An execution proceeding is a judicial proceeding within the meaning of s. 476 of the Crim. Pro. Code, and consequently, the Court, while engaged in such a proceeding, is competent to make an order under that section, if the fact is brought to his notice that offences have been committed while the process of the Court was attempted to be enforced. KHONDKAR ABDUL BASIR v. PANCHKOWRI, **12 C.L.J. 618.** (10 C.W.N. 55, 3 Cr. L.J. 142, 10 C.L.J. 450, *R.*)

(4206)—*Ss.* 476, 195—*Difference between—Order for prosecution under s.* 476—*High Court's power to interfere in revision—Duty of Magistrate before taking action under* s. 476—*Want of proof of motive whether can defeat charge* —The High Court can set aside in revision an order for prosecution passed by any Court under s. 476, Crim. Pro. Code. (4 N.L.R. 140, *F.*; 26 M. 98, 26 A. 249, 33 M. 48, 37 C. 250, 23 A. 249, 26 B. 785, *R.*). The principles which must guide the Court in an application for revision are clearly laid down in *Alandar Husain's* case (23 A. 249, *F.*). S. 476 requires the Magistrate to form an opinion 'that there is ground for inquiring into any offence referred to in s. 195.' This means that there must be a reasonable prospect of a conviction, because without that there could not be ground for another Magistrate to waste his time in holding the enquiry. But the section does not say that, before a Magistrate orders a prosecution, he must try the whole case and be absolutely satisfied that the accused cannot by any possibility escape a conviction. The scope and distinction between ss. 195 and 476, Crim. Pro. Code, explained. Want of proof of motive cannot of itself defeat a charge. ABDUL HUSEN v. EMPEROR, **9 N.L.R. 184=22 Ind. Cas. 177=15 Cr. L.J. 33.**

(4207)—Ss. 476, 195—*See* JUDICIAL PROCEEDINGS, 12 C.L.J. 618.

(4208)—*Ss.* 476, 202—*Dismissal of complaint under s.* 202—*Sanction for an offence under ss.* 182 *and* 211, *I.P.C.*—*Based on the sworn statement of complainant and unsworn statements of other witnesses—Order illegal.*—Where a Sub-Divisional Magistrate, acting under s. 202, Crim, Pro. Code, dismisses a complaint brought against two Police officers for extortion and bribery, and passes an order directing the complainant to appear before a Magistrate under s. 476 for an offence under s. 182, or 211, I.P.C., and where, on appeal, the Sessions Judge set aside the order dismissing the complaint, and ordered further enquiry without at the same time setting aside the order to appear under s. 476, Crim. Pro. Code, such an order remains good; but where that order was made merely upon a sworn statement of the complainant and the unsworn statement of his other witnesses, it is illegal and must be set aside, for there is no legal evidence on record. *Ayling, J.*—Such order is not illegal merely because it was based upon unsworn statements of the witnesses, but where the complainant was willing to produce evidence and the Magistrate refused, then it is illegal KACHI MADAR LEBBAI v. EMPEROR, **1911, 2 M.W.N. 9=10 M.L.T. 47=10 Ind. Cas. 619=21 M.L.J. 795=12 Cr. L.J. 323.** [*R.*, 13 Cr. L.J. 209=14 Ind. Cas. 305=11 M.L.T. 367=1912 M.W.N. 499=22 M.L.J. 419.]

(4209)—*Ss* 476, 238—*Sanction for prosecution for offence under s.* 211. *I.P.C.*—*Facts disclosing offence under s.* 182, *I.P.C.*—*Jurisdiction under s.* 476, *not deprived*—*Offence under s.* 211. *I.P.C., whether includes one under s.* 182, *I.P.C.*—*Power of trying Magistrate to alter charge into one under s.* 182—*Sanction under s.* 476, *Crim. Pro. Code*—*Charges to be specified clearly.*—Where a Magistrate granted under s 476, Crim. Pro. Code, sanction to prosecute the petitioner for an offence under s. 211, I.P.C., and the facts disclosed an offence under s. 182, I.P.C. *Held*, that the mere fact that no sanction of the Court is required for prosecution under

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s. 182, I.P.C., does not deprive the Magistrate of jurisdiction to order the prosecution under s. 476, Crim. Pro. Code. (15 Bom. L.R. 574, *R.*) The main test whether a person makes a 'charge' within the meaning of s. 211, I.P.C., is 'does the person who makes the statement which is alleged to constitute the charge do so with the intention of setting the criminal law in motion against the person against whom the statement is directed.' (26 M. 640, *R.*) The order under s. 476, Crim. Pro. Code, should specify clearly the exact charges against the accused. *Per Fawcett, J. C.*—The question whether the case falls under s. 211 or s. 182, I.P.C., (if the information given be false), is one which is best left to the trying Magistrate, who can, under s. 238, Crim. Pro. Code, convict under s. 182, I.P.C., though the accused may be charged only under s. 211, I.P.C. (5 C. 184, 32 C. 180, *R.*) An offence under s. 211, I.P.C., includes an offence under s. 182. (15 Bom. L.R. 574, *R.*) *Per Crouch, A.J.C.*—It cannot be stated as a general rule of universal application that an offence under s. 211, I.P.C., includes an offence under s. 182. CROWN v. KHUBOMAL, **8 S.L. R. 179=16 Cr. L.J. 104=27 Ind. Cas. 152.**

(4210)—*Ss.* 476, 435—"*Judicial proceedings,*" *calling for records under* s. 435 *does not constitute a—Order under* s. 476 ultra vires *and illegal.*—A Sub-Magistrate had refused to grant the sanction sought from him to prosecute petitioner, who was a witness in a trial before him, for having given false evidence. The District Magistrate, who called for the records of the case, under s. 435 of the Code, passed an order, under s. 476, sending petitioner for trial by a Magistrate on a charge of perjury. *Held*, on revision, that, in his action under s. 435 of the Code, the District Magistrate was not acting in a "judicial proceeding" so as to have given himself jurisdiction to pass the order that he did under s. 476 of the Code. His calling up the records under s. 435 was not a "judicial proceeding" and he had no power to have acted under s. 476. His order committing the petitioner for trial was, therefore, *ultra vires*, as passed without jurisdiction, and, further, since, in proceedings under s. 476, immediate action is contemplated, such procedure in the present case taken several months after the trial was illegal. *In re* SUBBARAYA VATHYAR, **15 M.L J. 489=3 Cr. L.J. 118=2 Weir 601.** [*R.*, 31 M. 140=17 M.L.J. 584=3 M.L.T. 74=7 Cr. L.J. 54.]

(4210-*a*) *Ss.* 476, 435—*Small Cause Court directing prosecution of a person under s.* 476—*Revision—Civ. Pro. Code,* s. 115—*High Court acting as a Criminal Court, power of, in revision—Order of prosecution, what procedure to adopt in.*—Where a Court of Small Causes had directed the prosecution of certain persons under s. 476, Crim. Pro. Code, *held*, that the order could not be the subject of revision under s. 435, Crim. Pro. Code, but that an application for revision could lie under s. 115, Civ. Pro. Code. *Held also*, that a High Court acting as a Criminal Court has no authority to send for the record of a Civil or a Revenue Court and to interfere in revision with the orders of such a Court. *Held further*, that the lower Court was wrong in ordering prosecution without giving the persons concerned an opportunity of showing cause against such an order. THAKUR DAS v. KING-EMPEROR, **17 O.C. 25=15 Cr. L J. 217=22 Ind. Cas. 1001.**

(4211)—Ss. 476, 435—Jurisdiction of High Court over proceedings of Divisional Officers under the Income-tax Act—*See* CERTIORARI—WRIT OF, 1912 M.W.N. 1012=23 M.L J. 393=16 Ind. Cas. 755=13 Cr. L.J. 723.

(4212)—*Ss.* 476, 435, 439—*Proceedings under s.* 476, *when open to revision by High Court—Departmental enquiry, not a judicial proceeding.*—Orders purporting to have been made under s. 476 of the Code are open to revision by High Court, when they have been made without jurisdiction. A departmental enquiry by an officer is purely an executive matter, and there is no provision of law empowering such officer to issue summonses to persons to compel their attendance before him in connection with the enquiry. Where an accused had been sentenced to pay a fine and the fine has been paid, the pendency of an appeal preferred by him would not give any Court authority or power to arrest him or to take recognizances from him for further appearances. On the presentation of a petition to a Magistrate, containing imputations on him by two vakils in regard to, and in the course of, the illegal detention of their client by the Magistrate, it is not competent for the Magistrate to take action under s. 476 of the Code, because, to warrant an order under that section directing a person to be prosecuted the offence stated to have been committed by, him should have been committed before the Court in the course of a judicial proceeding or should have been brought under its notice in the course of such a proceeding. SURYANARAYANA ROW v. EMPEROR, **29 M. 100=3 Cr. L.J. 376.** (26 M. 98, *R. and Dist.*) [*R.* 10 Cr. L.J. 420=3 Ind. Cas. 934=6 M. L.T. 327, 15 Cr. L J. 217=22 Ind. Cas. 1001=17 O.C. 25, 32 M. 49=4 M.L.T. 409=19 M.L. J. 42=9 Cr. L.J. 41, 1 Ind. Cas. 597, 3 L.B.R. 234.]

(4213)—*Ss.* 476, 439—*Revision — Criminal cases—Jurisdiction of Court—Jurisdiction to order prosecution.*—It is only the individual officer presiding over a Court before whom the offence was committed who can take action under s. 476 of the Crim. Pro. Code. MUHAMMAD MUNIR KHAN v. THE CROWN. **10 P.L. R. 1911, Cr. =9 Ind. Cas. 389=4 P.W.R. 1911=12 Cr. L J. 68.** (34 C. 551, F.B., 35 C. 214, 6 P.R. 1909, Cr. 104, P.L.R. 1909, *F.*; 36 C. 114, *R.*) [*R.*, 12 Cr. L.J. 521=12 Ind. Cas. 289=4 Bur. L.T. 246.]

(4214)—*Ss.* 476, 439—*Jurisdiction — High Court—Order passed by Civil or Revenue Court under s.* 476, *Crim. Pro. Code—Revision—Civ. Pro. Code* (1908), s. 115—*High Courts Act* (24 *and* 25 *Vict., C.* 104), ss. 14, 15.—In the case of

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an order passed under s. 476 of the Code of Criminal Procedure by a Civil or Revenue Court, s. 439 of the said Code has no application, and the High Court can exercise the powers of revision under s. 115 of the Code of Civil Procedure or under s. 15 of the High Courts Act. The Bench exercising criminal jurisdiction, cannot, as such, deal with the matter, but the Judges composing that Bench may do so, if authorised by the Chief Justices under s. 14 of the High Courts Act. (8 C.W.N. 73, 34 C. 42, 15 C. 608, *R.*) An order made under s. 476 of the Crim. Pro. Code by a Settlement Officer dealing with proceedings under Chap. X of the Bengal Tenancy Act, was not, therefore, open to revision under s. 439 of the Crim. Pro. Code, but might be examined under s. 115 of the Civ. Pro. Code or under s. 15 of the High Courts Act. HAR PRASAD DAS v. KING-EMPEROR, **17 C.L.J. 245 = 17 C.W.N. 647 = 19 Ind.Cas. 197 = 14 Cr. L.J. 197 = 40 C. 477, F.B.** [*R.*, 15 Cr. L.J. 217 = 17 O.C. 25 = 22 Ind. Cas. 1001.]

(4215)—*Ss.* 476 (1), (2), 439, 423, 195—*Order under cl.* 1 *of s.* 476—*Proceedings under s.* 476 (2)—*Setting aside of former order—Latter proceedings cease—Revision—Power to make consequential order.*—If an order passed under s. 476 (1), Crim. Pro. Code, directing an inquiry to be made by another Magistrate is set aside, it is just and proper that proceedings under s 476 (2) before that Magistrate shall also cease. S. 439, Crim. Pro. Code, gives the Chief Court power, when acting in revision, to exercise the powers conferred on a Court of appeal by s. 423, and cl. 1 (*d*) of that section gives the power to make any consequential order that may be just and proper. SAN TIN v. KING-EMPEROR, **6 L. B.R. 49 = 13 Cr. L.J. 492 = 15 Ind. Cas. 492.**

(4216)—*Ss.* 476, 439, 537 (= *Crim. Pro. Code,* 1882, *ss.* 476, 439, 537)—*Sanction upon report by bailiff of obstruction.*—Where a Subordinate Judge, acting upon the report of a bailiff, gave sanction for the prosecution of the persons who obstructed him in executing a warrant of attachment, without making an enquiry of his own, *held* that, although the Subordinate Judge would have done well had he complied with the requirements of s. 476, it was not necessary to interfere in revision. QUEEN-EMPRESS v. SADASHIV, **Rat. Un. Cr. C. 701 = Cr. Rg. 33 of 1894.**

(4217)—*Ss.* 476, 477—*Scope of s.* 477—*False evidence given before Magistrate—Power of Sessions Judge, on appeal, to act under s.* 477.—S. 477 deals with cases which transpire before the Sessions Court itself, and in which the Sessions Judge is in a position to declare, without any further inquiry, that the person against whom action is necessary, under that section, has in fact committed an offence under s. 193, I.P.C. Where the evidence given by a witness was not believed by the Deputy Magistrate, as it was in conflict with the statements of certain other witnesses, and the Sessions Judge, on appeal, was inclined to take the same view and committed him to the Sessions, *held*, that there was no fact before him upon which he could come to the conclusion that the offence of giving false evidence had been committed either before him or before the Deputy Magistrate. The only conclusion to which he could come was that the offence of giving false evidence may have been committed before the Deputy Magistrate; and, therefore, the case was not ripe for commitment, until a further inquiry was made on the matter. *In the matter of* UMESH CHANDRA CHAKRAVARTY, **5 C.W. N. 630.**

(4218)—*Ss.* 476, 477—*Preliminary inquiry before ordering the committal of a complainant under s.* 211, *Penal Code.*—A Magistrate cannot order the committal of a complainant under s. 211, Penal Code, for preferring a false charge, without holding a preliminary inquiry. CRIMINAL REVISION CASE, No. 63 OF 1881, **2 Weir 585.**

(4219)—Ss. 476, 477 — *See* REVISION — GENERAL PRINCIPLES, A.W.N. 1882, 229.

(4220)—Ss. 476, 477, 480, 485 and 487—*See* CONTEMPT OF COURT, 13 M. 24 = 2 Weir 610.

(4221)—*Ss.* 476, 478 (= *Crim. Pro. Code,* 1872, *ss.* 471, 474)—*Power of Civil Court to commit a case to Sessions.*—The power of a Civil Court to commit a case to the Sessions is limited to cases triable exclusively by the Court of Sessions, and to such cases only when the offence charged has been committed before the Civil Court itself. *Per F. D. Melvill, J.*—S. 471 merely lays down the procedure that may be followed in certain cases and does not confer any new jurisdiction on a Court. That section does not by itself give to the Civil Court the powers of committal in the cases referred to in that section. *Per Pinhey, J.*:—Although the committal contemplated in s. 471, is undoubtedly a committal for trial before the Court of Sessions, the section merely prescribes the procedure, and does not confer on the Court the power of committal, and that is why s. 474 is enacted. IMPERATRIX v. POPAT NATHU, **4 B. 287.**

(4222)—*Ss.* 476, 478—*Brought under the notice of Court, meaning of—Order under section, when to be made.*—In order to make an order under ss. 476, 478, Crim. Pro. Code, there must be a judicial proceeding before the Court and it is in course of that judicial proceeding that some supposed offence must be brought under its notice. The words "brought under its notice" are wide enough to cover an offence which may have been committed in another *forum* and on some previous occasion, but it must be an offence brought under the notice of the Court holding the enquiry. A civil suit was brought against N and was decreed *ex parte.* N was arrested and put in jail and his application for restoration of the case was dismissed. Another plaintiff then brought a suit and obtained a decree and arrested N in execution. N was rescued. A report was made before the Munsiff who held an enquiry, and in the course of that enquiry, he came to the

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conclusion that both the suits against N were false suits and were brought by G in the names of the plaintiffs. He made an order committing G to Sessions for certain offences. *Held*, that the offences were brought to the notice of the Court in course of judicial proceedings and the Munsiff's order was a valid order. GIRWAR PRASAD v. KING-EMPEROR, **6 A.L.J. 392=9 Cr.L.J. 219=1 Ind. Cas. 306.** (9 C.W.N. 859, 34 C. 551, 34 M. 140, *R. & D.*) [*F.*, 7 A.L.J. 991=11 Cr.L.J. 438=7 Ind. Cas. 51, 12 Cr.L.J. 521=12 Ind. Cas. 289=4 Bur. L.T. 246, *R.*; 33 A. 396=8 A.L.J 240=12 Cr. L.J. 93=9 Ind. Cas. 497, 37 C. 642=12 C.L.J. 45=14 C.W.N. 799=11 Cr. L.J. 407=6 Ind. Cas. 801, 6 A.L.J. 924=10 Cr. L.J. 525=4 Ind. Cas. 260.]

(4223)—*Ss.* 476, 478 (=*Crim. Pro. Code*, 1882, *ss.* 476, 478)—*Power to act under s.* 478, *after acting under s.* 476.—It is clearly stated in s. 478, Crim. Pro. Code, that the procedure therein prescribed is only alternative, that is to say, that the Court itself may proceed under it instead of sending the case to a Magistrate under s. 476, but the section gives no power to a Court on failure of one, that is to say, on the discharge of the accused by the Magistrate, to adopt the other mode of procedure. QUEEN-EMPRESS v. RAOJI MORESHWAR, **Rat. Un. Cr. C. 959=Cr. Rg. 12 of 1898.**

(4224)—*Ss.* 476, 526—*Affidavit, false allegation in—Magistrate's explanation — Statements of persons in support thereof—" Nearest Magistrate of the first class"—Presidency Magistrate not a Magistrate of the first class—Practice—Original side.*—Though, in showing cause to a rule why a conviction should not be set aside, it is not open to the Magistrate to submit observations with a view to supplement or add to his judgment, yet there is nothing to prevent him from sending, along with his explanation in answer to a rule for transfer, statements of persons, who might be in a position to contradict the allegations of misconduct made against the Magistrate by the petitioner in his application. (7 C.W.N. 359, *D.*) S. 476 of the Code does not appear to provide for the case of an offence before a Court in a Presidency town. It empowers a Court to send a case for enquiry or trial to the nearest Magistrate of the first class. The nearest Magistrate, namely, the Presidency Magistrate, is not a Magistrate of the first class. The practice on the original side of the High Court is to lay the papers before the Government Solicitor for him to take action thereon, if he thinks fit. An analogous course, *viz.*, of laying the papers before the Legal Remembrancer, was adopted. KEDAR NATH KAR v. KING-EMPEROR, **3 C.L.J. 357 =3 Cr. L.J. 329.**

(4225)—*Ss.* 476 *and* 537 — *Construction of the expression " Nearest Magistrate, first class" —Directory or mandatory—Trial by another Magistrate, a mere irregularity.*—The word "nearest" in s. 476, Crim. Pro. Code, is merely directory; it does not confer jurisdiction; and the Magistrate to whom an accused person is sent under s. 476 must be a Magistrate of local jurisdiction over the offence. Where, therefore, the Court being of opinion that a person had given false evidence before it, sent him for trial under s. 476, not, as it appeared, to the nearest Magistrate, first class, but to a Magistrate, first class, having local jurisdiction, *held*, that the defect in the order of the Magistrate, who sent the case to the Magistrate having local jurisdiction only, though not the nearest Magistrate, was merely an irregularity curable under s. 537, Crim. Pro. Code. IMPERATOR v. NEWAND *wd.* SADHU, **1 S.L.R. Cr. 84=8 Cr. L.J. 209.**

(4226)—*Ss.* 476 *and* 537—*Notice—Want of notice an irregularity—Ground for reversal.*—S. 476, Crim. Pro. Code, nowhere says that notice in proceedings under that section shall be given to a person who is immediately concerned thereby. Want of notice under that section is an irregularity in procedure. The High Court always looks with disfavour upon an order made under s. 476 without notice being given to the persons immediately concerned. At the same time any irregularity in the proceedings taken under s. 476 is not a sufficient ground for either reversing or altering an order passed by a Court of competent jurisdiction. RAM PIARI RAI v. KING-EMPEROR, **10 A.L.J. 247=13 Cr. L.J. 707=16 Ind. Cas. 515.**

(4227)—*Ss.* 476, 537 (*b*)—*Sanction to prosecute—Order merely directing prosecution without ordering accused to be sent to the nearest First Class Magistrate—Irregularity or illegality—Whether cured by s.* 537 (*b*).—An order under s. 476, Crim. Pro. Code, which merely directs the prosecution of the accused, but omits to direct the accused to be taken before the nearest First Class Magistrate, is at most an irregularity which is expressly cured by s. 537 (*b*) of the Code. *Re* S. SUPPAYA THARAGAN, **37 M. 317=16 Cr. L.J. 39=26 Ind. Cas. 631.** (26 A. 249, *Diss.*)

—— S. 477 (=1882, s. 477; 1872, s. 472; 1861, s. 172).

(4228)—*S.* 477—*Scope of the section.*—S. 477 contemplates that there should be a charge upon which the complaint is based, in other words, the person accused of having committed the offence should know the specific nature of the accusation against him, so as to be able to answer it. MOHIM CHUNDER MOJUMDAR v. KING-EMPEROR, **5 C.W.N. 615.**

(4229)—*S.* 477—*Power of Judge to commit a person on his own charge.*—Where the facts do not make out any case as against the accused which would justify the Judge in committing without further inquiry under s. 477, he ought not to convict him on his own charge. *In re* BOMMU CHETTY, **2 Weir 601.**

(4230)—*S.* 477 (=*Crim. Pro. Code*, 1882, *s.* 477) —*Contradictory statement by witness before committing Magistrate and Sessions Judge—Jurisdiction of Sessions Judge.*—Where

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before a Court of Session, a statement is made by a witness contradicting that made by him before the committing Magistrate, and no evidence is adduced to show which of the statements is true, no offence has been committed within the cognizance of the Court of Session under s. 477, Crim. Pro. Code. QUEEN-EMPRESS v. SEWAK, **S.C. 172, Oudh.** [*F.*, S.C. 206, Oudh.]

(4231)—*S.* 477 (=*Crim. Pro. Code*, 1882, *s.* 477)—*Alternative charges—Jurisdiction of Sessions Judge.*—Nor has a Sessions Judge in such circumstances, jurisdiction under s. 477, Crim. Pro. Code, to charge the witness, in the alternative, with having intentionally given false evidence, either in his evidence before himself, or in his evidence before the committing Magistrate and to commit and try the said witness on such charge. QUEEN-EMPRESS v. KANHAI, **S.C. 206, Oudh.** (4 B.L.R.A. Cr. S. C. 172, Oudh, *F.*) [*R.*, S.C. 232, Oudh.]

(4232)—*S.* 477 (=*Crim. Pro Code*, 1872, *s.* 472)—*Penal Code, s.* 193—*False evidence—Commitment.*—Three things must occur before the Court of Session can legally proceed under s. 472, Crim. Pro. Code, namely, that the offence be committed before the Sessions Court; 2nd, that it must be an offence within the cognizance of that Court; and 3rd, that the offence be one triable by that Court "exclusively". It is clear on referring to the schedule appended to the Criminal Procedure Code that the offence under s. 193 is not an offence exclusively triable by the Sessions Court. *Held* therefore that the committal by the Sessions Judge in this case was without jurisdiction. THE QUEEN v. UNNATH BUNDHOO BANERJEE, **21 W.R. Cr. 37.**

(4233)—S. 477—*See* FALSE EVIDENCE, 6 A. 103.

(4234)—S. 477—*See* Nos. 1505, 1741, 1744, 1878, 1879, 2191, 2194, 2405, 3049, 3744, 4217, 4218, 4219, 4220, *supra*.

(4235)—Ss. 477, 478, 479—*See* CONTEMPT OF COURT, 4 M.H.C. App. 52.

(4236)—*Ss.* 477, 487 (=*Crim. Pro. Code*, 1872, *ss.* 472, 473)—*Sanction by District Judge for prosecution for forgery—His competency to try the case as Sessions Judge.*—Where a District Judge, on appeal, sanctions the prosecution of a party to the suit, for forgery, he, as a Sessions Judge, is not debarred from trying the case himself. EMPRESS v. GASPAR D'SILVA, **6 B. 479.** [*F.*, 2 Bom. Cr. C. 27= 15 Bom. L. R. 104=14 Cr. L.J. 190=19 Ind. Cas. 190, U.B.R. 1897—1901, Vol. I, 127; *Appl.*, 16 C. 766; *R.*, 14 A. 354, 2 C.W.N. 613.]

(4237)—*Ss.* 477, 487 (=*Crim. Pro. Code*, 1872, *ss.* 472, 473)—*Jurisdiction of Sessions Judge under s.* 473, *when arises.*—Where an offence committed before a Sessions Judge in contempt of his authority is not taken up by him under the authority of s. 472, he cannot try it, notwithstanding that it is exclusively triable by a Sessions Court. HIGH COURT PROCEEDINGS, 14TH AUG., 1882, No. 1640, **2 Weir 609.** [*F.*, 2 Weir 609.]

——**S. 478 (=1882, s. 478; 1872, ss. 474, 476; 1861, ss. 173, 175).**

(4238)—*S.* 478 (=*Crim. Pro. Code*, 1872, *s.* 474)—*Power of Civil Court to order commitment.*—A Civil Court cannot order the commitment of persons for offences under ss. 471, 465 and 193 of the Penal Code without making a preliminary enquiry as required by s. 474, Crim. Pro. Code, 1872. QUEEN v. RUNGATOONEE, **22 W.R. Cr. 52.**

(4239)—*S.* 478 (=*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 173)—*Penal Code, Act* XLV *of* 1860, *s.* 199—*District Magistrate refusing to investigate—Act* XXIII *of* 1861, *s.* 16.—Where a District Magistrate refused to investigate a case sent to him by a Subordinate Judge sanctioning prosecution of a person for false verification of a plaint, on the ground that the Subordinate Judge should have committed the case to the Court of Session by which the offence was exclusively triable, *held*, that the Magistrate was wrong and that he was bound, under s. 16 of Act XXIII of 1861, to investigate the case according to law. REG. v. AMRUTTA NATHU, **7 B.H.C. Cr. 29.** [*R.*, 13 B. 109.]

(4240)—*S.* 478 (=*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 173)—*Penal Code, s.* 465—*Small Cause Judge — Commitment — Procedure.*—A Small Cause Judge who, in the course of the trial of a suit, finds that a person has committed forgery, cannot commit him for trial by the Sessions Court, since the offence was not committed before the Court, which could therefore only sanction the institution of criminal proceedings against the person. The complaint is to be preferred before a Magistrate with the sanction of the Civil Court. REG. v. CHOTA LAL JHAVER, **Rat. Un. Cr. C. 31=Cr. Rg. 31-3-1870.**

(4241)—*Crim. Pro. Code*, 1882, *s.*197=(*Crim. Pro. Code*, 1872, *s.* 476)—*Order by Board of Revenue directing an official charged with bribery to be tried by a particular tribunal, validity of.*—A charge of bribery, extortion and criminal intimidation was made against a Sub-Magistrate, and the Collector of the District reported the same to the Board of Revenue. The Board directed him to send the case for trial to some Magistrate, other than the District Magistrate or the Principal Assistant Magistrate. The District Magistrate sent the case for trial to the Senior Assistant Magistrate, Berhampore, who convicted the accused under s. 161, Penal Code. The Sessions Judge reversed the conviction. The Government did not appeal against the acquittal, but the case was referred to the High Court by the District Magistrate under the instructions of the Government. The High Court declined to interfere on the ground, (1) that it had not been shown that the trial by the Senior Assistant Magistrate was without jurisdiction and (2) that the question of jurisdiction was considered by the Sessions Judge and

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decided adversely to Government and Government had not appealed. QUEEN-EMPRESS v. RANGA RAU, **15 M. 36=2 Weir 218.**

(4242)—S. 478—*See* APPEAL — APPEAL—PRACTICE AND PROCEDURE, 6 C.L.R. 427.

(4243) –S. 478—*See* FALSE EVIDENCE, 11 P.R. 1870, Cr.

(4244)—S. 478—*See* Nos. 1655, 1656, 1841, 1842, 1880, 1881, 2191, 2214, 2405, 3847, 4221, 4222, 4223, 4235, *supra.*

(4245)—*Ss.* 478, 195 (=*Crim. Pro Code,* 1882, *ss.* 478, 195)—*Power of Civil Court to commit to Sessions parties and witnesses to civil suit.*—The power given to the Civil Court under Ch. XXXV, Crim. Pro. Code, to take action regarding "any offence referred to in s. 195" is not ordinarily restricted, in regard to offences relating to document, to such offences only when committed by a party to the proceeding in which the document was given in evidence. Although the prosecution of a witness for an offence relating to documents is permissible without sanction, that could not invalidate a prosecution commenced on a sanction which included both a party and a witness. *In re* DEVJI *valad* BHAVANI, **18 B. 581.** [*R.*, 32 M. 49=19 M.L.J. 42=4 M.L.T. 404=9 Cr. L.J. 41, F.B.]

——S. 479 (=1882, s. 479 ; 1872, s. 475 ; 1861, s. 174).

(4245-*a*)—S. 479—*See* No. 4235, *supra.*

—— S. 480 (=1882, s. 480 ; 1872, s. 436, para 1 ; 1861, s. 163.)

See CONTEMPT OF COURT.

See SENTENCE — CONTEMPT OF COURT, SENTENCE FOR.

(4246)—*S.* 480—*Contempt of Court—Punishment by the Court in which the contempt occurred—Penal Code,* s. 228.—Where the Court which deals with the offence of contempt of Court is the Court in which the contempt occurred, it cannot pass the sentence prescribed by s. 228, Penal Code, but should, under s. 480, Crim. Pro. Code, limit the punishment to Rs. 200 with imprisonment in default for 30 days. *In re* DHANAKOTI MUDALI, **2 Weir 603.**

(4247)—*S.* 480 (=*Crim Pro. Code,* 1882, s. 480)—*Inquiry by Magistrate preliminary to recorting to superior officer—Contempt shown to the Magistrate during such inquiry.*—Where a Magistrate was conducting merely an inquiry into a case of a breach of the peace in order to ascertain whether he should make a report to his official superior, and possibly to satisfy himself whether he ought to act under s. 108, Crim. Pro. Code, he could not be considered to be exercising any powers conferred by the Code or conducting any proceeding in the course of which evidence might be legally taken. Therefore, a person behaving insolently towards him in such proceedings could not be proceeded against under s. 480, Crim. Pro. Code. *In re* YERUMAKARAN *alias* PERIANNAN, **2 Weir 605.**

(4248)—S. 480—*See* APPEAL—GENERAL, Rat. Un. Cr. C. 978=Cr. Rg. 35 of 1898.

Crim. Pro. Code (Act V of 1898)—*continued.*

(4249)—S. 480—*See* PENAL CODE, s. 228, 137 P.L.R. 1903.

(4250)—S. 480—*See* Nos. 1882, 2347, 3362, 4056, 4220, *supra.*

(4251)—Ss 480, 423 — *See* CHARGE TO JURY—MISDIRECTION, 25 C. 416=2 C.W.N. 347.

(4252)—*Ss.* 480 *and* 481 - *Procedure in cases of contempt of Court.* It is necessary for the protection of persons dealt with under s. 480, Crim. Pro. Code, to insist upon a strict and careful compliance with the procedure laid down in s. 481 of the above Code. QUEEN-EMPRESS v. NGA THA DUN, **U.B R. 1892-1896, Vol. I, 52.**

(4253)—*Ss.* 450, 481, 482 (=*Crim. Pro. Code,* 1872, *ss.* 435, 436 ; 1861—1869, *s.* 163)—*Sub-Registrar—Offence during judicial proceeding—Penal Code,* s. 228.—A was accused before an Assistant Magistrate by a Sub-Registrar of having committed an offence under s. 228, Penal Code, and fined. *Held,* that the Sub-Registrar should have tried the matter himself under ss. 435 and 436 of the Crim. Pro. Code, 1872, and as the Magistrate acted without jurisdiction, the order must be quashed. *In the matter of the petition of* SARDHARI LAL, **13 B.L.R. Ap. 40=22 W.R. Cr. 10.**

(4254)—*Ss.* 480, 481, 487 (=*Crim. Pro. Code,* 1872, *ss.* 435, 436 *and* 473).—If a contempt is committed in view of the Court, the Magistrate should take action under s. 435 or s. 436 of the Code. Any trial (other than the one under s. 435) conducted by the Deputy Commissioner himself of such an offence is illegal under s. 473 of the Code. DEPUTY COMMISSIONER v. BALWANT RAO, **Colm. Dig. Cr. 45 of 1876.**

(4255)—*Ss.* 480 *and* 437—*Proceedings in contempt cases.*—A Magistrate not following the procedure prescribed by s. 480 is barred by s. 487 from himself trying the offender. ASHU SHOK v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 20.**

(4256)—Ss. 480, 537—*See* CONTEMPT OF COURT, 11 A. 361=A.W.N. 1889, 128.

——S. 481 (=1882, s. 481 ; 1872, s. 435, paras 2 and 3).

See CONTEMPT OF COURT.

(4257)—S. 481—*See* Nos. 3362, 4056, 4252, 4253, 4254, *supra.*

(4258.—Ss. 481, 482—*See* ACT III OF 1877, s. 84, 22 W.R. Cr. 10=13 B.L.R. Ap. 40.

(4259)—*Ss.* 481, 482, 195, 476 (=*Crim. Pro. Code,* 1872, *ss.* 435, 436, 467 to 471)—*Offence under s.* 193, *Penal Code, whether an offence in contempt of Court—Jurisdiction of Magistrates.—Held, by the Full Bench* (*Stuart, C.J., dissenting*) :—An offence under s. 193, Penal Code, committed before a Court, is not only an offence against public justice, but also a contempt of the Court's authority. Therefore, a Magistrate cannot try himself, by reason of the

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provisions of s. 473, Crim. Pro. Code, a charge under s. 193, Penal Code, if the false evidence has been given in his own Court. EMPRESS OF INDIA v. KASHMIRI LAL, **1 A. 625, F.B.**, [*R.*, 14 A. 354; *D.*, 4 A. 322].

(4260)—*Ss.* 481 (2), 537—*Penal Code, s.* 228—*Offence—Record must show stage of interruption—Evidence—Intention.*—Where a person making a noise in Court is charged with an offence under s. 228 of the Penal Code, the record convicting him must show the stage of judicial proceeding interrupted, and the evidence must establish that such interruption was intentional, as such vital irregularities in procedure are not cured by s. 537 of the Code of Criminal Procedure. *In re* KOKATI NARASA REDDI, **15 Cr.L.J. 621=25 Ind. Cas. 629.**

——**S. 482 (=1882, s. 482; 1872, s. 436, paras 1 and 2; 1861, s. 163).**

See SENTENCE—CONTEMPT OF COURT, SENTENCE FOR.

(4261)—*S.* 482 (=*Crim. Pro. Code,* 1872, *s.* 436)—*Contempt of Court—Absence of explanatory statement by accused—Procedure.*—A barrister-at-law, in the course of the trial of a case in which he was the complainant, used insulting language to the Sub-Magistrate. The Magistrate then recorded proceedings required by s. 436, but failed to take any statement from the accused explanatory of his conduct, as he left the Court at once. *Held,* that the case ought not to be dismissed on the ground of the omission to take such statement. HIGH COURT PROCEEDINGS, 23RD APRIL 1879, No. 702, **2 Weir 604.**

(4262)—S. 482—*See* Nos. 1882, 2347, 4056, 4253, 4258, 4259, *supra.*

——**S. 483 (=1882, s. 483).**

(4263)—*S.* 483 (=*Crim. Pro. Code,* 1882, *s.* 483), *scope of*—Although it appears from s. 483, Crim. Pro. Code, that the Local Government may constitute a Sub-Registrar a Court for the purposes of certain sections, as those dealing with contumacious contempts, still, from the fact of authorisation under that section being deemed necessary, it is to be implied that he is not to be considered a Court for ordinary purposes. A provision that a particular officer may, for particular purposes, be deemed a Court, does not warrant the extension of that provision so as by inference to produce a group of rules in conflict with the general system. A provision such as that contained in s. 483 is an excrescence on the general system, and exceptional provisions are not to be drawn out into all their logical consequences. QUEEN-EMPRESS v. TULJA, **12 B. 36.**

(4264)—S. 483—*See* No. 4056, *supra.*

——**S. 484.**

See CONTEMPT OF COURT.

(4265)—S. 484—*See* No. 4056, *supra.*

Crim. Pro. Code (Act V of 1898)—*continued.*

——**S. 485 (=1882, s. 485; 1872, ss. 356, 364; 1861, ss. 192, 365).**

(4266)—S. 485—*See* Nos. 3125, 4220, *supra.*

——**S. 486 (=1882, s. 486; 1872, s. 268; 1861, s. 413).**

(4267)—S. 486—*See* APPEAL—CASES WHERE APPEAL LIES, 16 P.R. 1887, Cr.

(4268)—S. 486—*See* No. 3531, *supra.*

(4269)—Ss. 486 and 419—*See* APPEAL—GENERAL, 8 W.R. Cr. Cir. 7.

——**S. 487 (=1882, s. 487; 1872, s. 473).**

See CONTEMPT OF COURT.

See CONTEMPT OF LAWFUL AUTHORITY.

(4270)—*S.* 487—*Scope of.*—The prohibition under the section extends only to contempts of authority of a Magistrate as such. QUEEN-EMPRESS v. NGO PO PYN, **U.B.R. 1897-1901, Vol. I, 61.**

(4271)—*S.* 487.—The prohibition in s. 473, Crim. Pro. Code, 1872, is a personal prohibition, the mischief to be prevented being that the same person should not decide a matter which he may have already prejudged. It does not refer to the office of the Magistrate or Judge before whom an offence of the class described in the section is committed, but only refers to the person of the Magistrate. *In the matter of* —, **1 M. 305=2 Weir 605.** [*R.*, 1913 M.W.N. 40.]

(4272)—*S.* 487 (=*Crim. Pro. Code,* 1872, *s.* 473)—"*Giving false evidence,*" *nature of the offence of—Trial—"Court," scope of the word.*—Giving false evidence in a judicial proceeding is a contempt of the Court's authority and a Judge, before whom such evidence is given, cannot, under s. 473 of this Code, in his capacity as a Judge of a Criminal Court, try a person accused of giving such evidence. The term "*Court*" in this section refers not only to a Court of a particular class, such as a Civil, Criminal or Revenue Court, but also to a *Judge* constituting a Court. POLICE v. KEMCHAND, **Colm. Dig. Cr. 27 of 1875.**

(4273)—*S.* 487 (=*Crim. Pro Code,* 1872, *s.* 473)—*False evidence—Making contradictory statements before a Magistrate and a Sessions Judge—Competency of Sessions Judge to try accused on a charge of false evidence and to hear appeal from conviction.*—A person charged with having given false evidence in the alternative before a Magistrate or Court of Session, by making contradictory statements on oath, was convicted by the same Court of Session. *Held,* that the Sessions Court was precluded by the terms of s. 473, from trying the charge. SUNDRIAH v. QUEEN, **3 M. 254=2 Weir 607.** [*F.*, 2 Weir 609; *R.*, 14 A. 354.]

(4274)—*S.* 487.—Where the Sessions Judge sanctioned the prosecution of a person for giving false evidence, action not being taken in accordance with either s. 476 or s. 477, Crim. Pro. Code, 1882, and the accused was committed by

Crim. Pro. Code (Act V of 1898)—*continued.*

the same Sessions Judge, *held*, that the Sessions Judge was precluded from trying the case by the provisions of s. 487. *In re* SANTHANAM *alias* ANNAMMAL, **2 Weir 609.**

(4275)—*S.* 487—*Held by Forbes and Innes, JJ.*, (*Kernan, J., dissenting*).—A Sessions Judge before whom an offence under s. 193 was committed is not incompetent to hear the appeal from a conviction for that offence. *In re* KESAVAIYA, **2 Weir 607.**

(4276)—*S.* 487 (=*Crim Pro. Code*, 1882, *s.* 487)—*Judicial proceeding—Hearing of appeal by the Judge who had sanctioned the prosecution.*—The expression "shall try a person," in s. 487 of the Code, includes the trial of an appeal. The hearing of an appeal from an order refusing sanction is a "judicial proceeding" within the meaning of the Code. Where a Judge, reversing the order of a Munsif, sanctions the prosecution of a decree-holder, under s. 210 of the Penal Code, he is not competent to entertain an appeal from the conviction of the decree-holder for that offence. MADHUB CHUNDER MOZUMDAR v. NOVODEEP CHUNDER PUNDIT, **16 C. 121.** [*Overruled*, 16 C. 766.]

(4277)—*S.* 487—*Applicability to Presidency Magistrates—Indian Penal Code, s.* 188—*Retrial, High Court when to order*—Under s. 487 of the Crim. Pro. Code, the Chief Presidency Magistrate has no jurisdiction to try a person for an offence under s. 188, I.P.C., for disobedience of his own order. The terms of s. 487, Crim. Pro. Code, as contained in the Code of 1898, are wide enough to include Presidency Magistrates. It is not ordinarily the duty of the High Court to order a re-trial of a person, whose conviction is set aside by the High Court on account of an illegality in his trial. When the conviction and the sentence passed upon an accused is set aside by the High Court, on the ground that the Magistrate, who tried him, had no jurisdiction to do so, the order of the High Court setting aside the conviction and sentence is no obstacle to the accused being re-tried on the same charge at the instance of the prosecution. LIAKAT HOSSEIN v. EMPEROR, **12 C.W.N. 246=7 C.L.J. 70=7 Cr. L.J. 103=3 M.L.T. 154.** [*R.*, 7 Cr. L.J. 499=12 C.W.N. 678, 8 Cr. L.J. 11=4 N.L.R. 71.]

(4278)—*S.* 487 (=*Crim. Pro. Code*, 1882, *s.* 487)—*Disobedience to summons—Power of the Magistrate issuing summons.*—Under s. 487 of the Code, the Magistrate whose summons was disobeyed has no jurisdiction to try the offence. QUEEN-EMPRESS v. VEERAYA, **3 M. L.J. 241.**

(4279)—*S.* 487—Under s. 487, the Magistrate whose summons was disobeyed has no jurisdiction to try the offence. CRIMINAL REVISION CASE No. 52 OF 1893, **2 Weir 612.**

(4280)—*S.* 487 (=*Crim. Pro. Code*, 1872, *s.* 473)—*Class of cases excepted by the section—Power of Sessions Judge to try such cases, when he has pronounced an opinion prejudicial to the accused.*—The offence of fabricating false evidence is one exclusively triable by a Sessions

Crim. Pro. Code (Act V of 1898)—*continued.*

Court, and is one of the class of cases excepted by s. 473 from the general rule that no Court shall try a person for an offence committed in contempt of its own authority. Where such offence is committed before a Sessions Judge, there is nothing illegal in his trying it, and the fact that the Sessions Judge had expressed an opinion prejudicial to the accused is no ground for the transfer of the case, as that is a circumstance which the law necessarily contemplates when it authorises a Sessions Court to try such cases. HIGH COURT PROCEEDINGS, 4TH AUGUST 1882, No. 1542, **2 Weir 608.**

(4281)—*S.* 487 (=*Crim. Pro. Code*, 1882, *s.* 487)—*Sanction by an officer as a Revenue Officer—Competency of the same person to try the case as Magistrate.*—Where sanction is given by a Deputy Collector and Magistrate, as a Revenue Officer, he is not debarred from trying the case himself as a Deputy Magistrate. *In re* MOULA SAHIB, **2 Weir 613.**

(4282)—*S.* 487 (=*Crim. Pro. Code*, 1872, *s.* 473)—*Penal Code, s.* 174—*Trial of offences under—Legality.*—It is illegal to hold trials of offences under s. 174, I.P.C., by a Magistrate in contempt of his own authority. DEPUTY COMMISSIONER v. FATTO, **Col. Dig. 41 of 1876.**

(4283)—*S.* 487 (=*Crim. Pro. Code*, 1872, *s.* 473)—*Penal Code, s.* 228—*Offence under.*—A Deputy Commissioner, himself trying an offence under s. 228, I.P.C., committed against his own Court commits an illegality under this section. DEPUTY COMMISSIONER v. BALWANT RAO, **Colm. Dig. Cr. 44 of 1876.**

(4284)—*S.* 487—*Procedure in cases of offences affecting administration of justice.*—When an offence referred to in s. 195, Crim. Pro. Code, is committed before a Sessions Judge or Magistrate, or in contempt of his authority, or brought to his notice in the course of a judicial proceeding, the Judge or the Magistrate is precluded by s. 487 from trying it himself, except as provided in ss. 477, 480 and 485. The contrary rule of the old Regulation has been altered by the new Regulation (1892). QUEEN-EMPRESS v. NGA EIK, **U.B.R. 1892—1896, Vol. I. 53.**

(4285)—*S.* 487.—Where the offence charged against the accused was either committed before the Magistrate himself, or brought under his notice in the course of a judicial proceeding, *held*, that he was absolutely precluded by the said section from trying the accused. QUEEN-EMPRESS v. MI CHIN MA, **U.B.R 1897—1901, Vol. I, 59.**

(4286)—*S.* 487 (=*Crim. Pro. Code, Act X of* 1872, *s.* 473)—*Jurisdiction of appellate Court.*—A District Judge, being of opinion that a person had abetted the giving of false evidence in a case before him, sent the case for inquiry by a Magistrate. The latter convicted him and the accused appealed to the District Judge. *Held*, that though it was doubtful whether the offence was one committed in contempt of the District Judge, the latter had jurisdiction to

Crim. Pro. Code (Act V of 1898)—*continued.*

hear the appeal since the term "try" in s. 473 of the Crim. Pro. Code does not apply to appeals. EMPRESS v. HARDIAL, **A.W.N. 1882, 86.**

(4287)—*S.* 487—*S.* 174, *I.P.C.*—A Magistrate is not debarred by law from trying an accused person under s. 174, I.P.C., for disobedience to a summons, issued by him in his capacity of Mamlatdar. QUEEN-EMPRESS v. RAIJI, **Cr. Rg. 28 of 1893.**

(4288)—*S.* 487 — *Applicability to offences under the Registration Act* III *of* 1877, *s.* 82.—S. 487 of the Crim. Pro. Code, does not apply to offences under the Registration Act. A Sessions Judge, who, in his capacity, as District Registrar, sanctioned the prosecution of a person for an offence under s. 82, cl. (*a*) of the Registration Act, is not thereby rendered incompetent to try the case. QUEEN-EMPRESS v. KHOJI RAM, **A.W.N. 1896, 181.**

(4289)—S. 487—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 18 B. 380, F.B.

(4290)—S. 487—*See* PENAL CODE, s 174, 1 Weir 82.

(4291)—S. 487—*See* Nos. 34, 435, 932, 1030, 1505, 1816, 1877, 1883, 1884, 1979, 1980, 2194, 4220, 4236, 4254, 4255, *supra.*

(4292)—*S.* 487, *para* 1 (=*Crim. Pro Code,* 1872, *s.* 473)—*Giving false evidence in judicial proceeding—Power of Magistrate.*—The Magistrate before whom the offence of intentionally giving false evidence in a judicial proceeding is committed may himself try and commit the persons so offending. QUEEN v. RAMLOCHUN SINGH, **18 W.R. Cr. 15.** (10 B.H.C. 73.)

(4293)—*Ss.* 487, *para* 1, 476 (=*Crim. Pro. Code,* 1872, *ss.* 473, 471)—*Jurisdiction of Magistrate—Giving false evidence.*—A witness charged with having given false evidence in a criminal proceeding before a Magistrate of the first class was tried and convicted of that charge by that Magistrate, and the conviction was confirmed on appeal by the Sessions Judge. *Held,* that the jurisdiction of the Magistrate was not barred by the operation of s. 473, Act X of 1872, for the giving of false evidence in the presence of a Court was not an offence committed in contempt of the authority of the Court within the meaning of that section. The Magistrate's jurisdiction in such a case was, however, held barred by s. 471 of the Code, the Magistrate being bound under that section either to commit or to send the case for enquiry to another Magistrate. *In re* SUFATOOLLAH, **22 W.R. Cr. 49.**

(4294)—*Ss.* 487, 195 (=*Crim. Pro. Code,* 1882, *ss.* 487, 195)—*Meaning of s.* 487—*Sanction to prosecute given by District Judge—Trial by same Judge as Sessions Judge—Penal Code, s.* 196.—In s. 487, effect must be given to the words "as such Judge or Magistrate," and the meaning of the section is that, when an offence referred to in s. 195 has been committed before a Judge of a Criminal Court or Magistrate, or in contempt of his authority, or brought under his notice in the course of a judicial proceeding, he cannot himself try such offence. A Sessions Judge has power to try a person for an offence punishable, under s. 196 of the Penal Code, when he has, as a District Judge, given sanction for the prosecution under the provisions of s. 195 of the Crim. Pro. Code. QUEEN-EMPRESS v. SARAT CHANDRA RAKHIT, **16 C. 766, F.B.** (16 C. 121. *Overruled* ; 6 B. 479, *R.*). [*F.*, 18 B. 380, U.B.R. 1897—1901, Vol. I, 61, 127, 7 C.W.N. 708; *R.*, 14 A. 354, 2 Weir 613, 2 Bom. Cr. C. 27=14 Cr. L.J. 190=19 Ind. Cas. 190=15 Bom. L.R. 104.]

(4295)—Ss. 487, 195 —*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, L.B.R. 1893—1900, 190.

(4296)—Ss. 487, 242 and 243—*See* PENAL CODE, s. 172, Colm. Dig. Cr. 38 of 1876.

(4297)—Ss. 487, 556—Crim. Pro. Code, s. 555—Execution of instrument not duly stamped—"Receipt"—Interest of Judge in case— *See* ACT I OF 1879, ss. 61, 69, A.W.N. 1884, 37.

——**S. 488, paras 1 to 6 (=1882, s 488 ; 1872, s. 536 ; 1861, s. 316) ; 7, 8, 9 and proviso to 6, new.**

See BASTARDY PROCEEDINGS.

See MAINTENANCE.

(4298)—*S.* 488 (=*Crim. Pro. Code.* 1882, *s.* 488)—*Application under the section—Its basis—Bastardy proceedings, nature of.*—The basis of an application for the maintenance of a child, under the provisions of s. 488 of the Code, is the paternity of the child, irrespective of its legitimacy or illegitimacy. The fact of the marriage of the parents may be not only strong evidence to show paternity, but also raises a presumption which has a very strong bearing upon the question of paternity. Bastardy proceedings, under s. 488 of the Code, are Civil proceedings within the meaning of s. 120 of the Evidence Act, and the defendant thereto may give evidence on his own behalf. [*F.*, 154 P.L.R. 1914 ; *Appr.*, 5 P.R. 1914,Cr.; *R.*, 18 B. 468, L.B.R. 1893—1903, 662, 168 P.L.R. 1903 =19 P.R 1903, Cr., 17 C.P.L.R. 127.] Where, in a proceeding under s. 488, the Magistrate found that an alleged marriage had not been proved, but held the child was the illegitimate child of the defendant on the ground of the similarity of the features and the name of the child with those of the defendant, who did not appear before the Magistrate during the proceedings, but with whom the Magistrate stated that he was well acquainted, and made an order for maintenance of the child, *held,* on appeal, that the Magistrate was wrong in making use of the similarity in features and in names. *Held,* also, that apart from these circumstances, there was ample evidence in the case, upon which the Magistrate could have made the order of maintenance. NUR MAHOMED v. BISMULLA JAN, **16 C. 781.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(4299)—*S.* 488—*Refusal to allow mukhtyar to appear for applicant*—Ex parte *hearing of case.*—In a proceeding under s. 488, the applicant appeared by a pleader. The hearing was twice adjourned, and, on the adjourned day of hearing the applicant instructed a mukhtyar to appear for him, as his pleader could not remain present on that day. The Magistrate refused to allow the mukhtyar to appear, and thinking that the personal attendance of the applicant was not dispensed with, heard the case *ex parte. Held,* setting aside the order passed *ex parte,* that although the Magistrate might have been fully justified in refusing to allow the mukhtyar to appear, he ought not to have treated the absence of the accused as due to wilful neglect to attend. HORMUZSHAH MANECKJI MODY v. PIROZBAI, **2 Bom. L.R. 700.**

(4300)—*S.* 488 (=*Crim. Pro. Code,* 1882, *s.* 488)—*Offer to maintain wife, sufficiency of.*—A husband's offer to maintain his wife on condition of her living with him, must be an offer to maintain with the consideration due to her position as wife, in order to disentitle the wife to claim a separate maintenance. QUEEN EMPRESS v. MANNATHA ACHARI, **17 M. 260=2 Weir 641=4 M.L.J. 83.** (6 M. 371, *cited.*)

(4301)—*S.* 488 (=*Crim. Pro. Code,* 1882, *s.* 488)—*Wife's refusal to live with husband on the ground of husband's adultery — Maintenance.*—Adultery on the part of the husband, not being such adultery as would justify a conviction under the Indian Penal Code, may, nevertheless, constitute sufficient cause for the wife separating from the husband and enable her to claim maintenance under the provisions of the Crim. Pro Code. GANDAPALLI APPALAMMA v. GANDAPALLI YELLAYYA, AND PERIANAYAGAM v. KRISHNA CHETTI, **20 M. 470=2 Weir 643=7 M L J. 303.** [*R.,* 30 M. 332=5 Cr. L.J. 359=17 M.L.J. 279=2 M.L.T. 166, 3 M.L.T. 269=7 Cr. L.J. 346=18 M.L.J. 150=9 Cr. L.J. 390=1 Ind. Cas. 801=5 N.L. R. 19, Cr.]

(4302)—*S.* 488—*Refusal of wife to live with her husband—Ground for habitual cruelty or adultery.*—The mere fact of the respondents having a chief wife, and having added a third, assuming he was at liberty to take more than one wife at all, does not constitute cruelty on his part, nor entitle the applicant, who had chosen to unite herself to a man already legally married, to object to live with him or claim to live apart. No other ground than habitual cruelty or adultery could be treated as a sufficient reason for the refusal of a wife to live with her husband, under s. 488, Crim. Pro. Code, 1898. MA THE v. MAUNG THA E, **U.B.R. 1897—1901, Vol. I. 104.** (6 N.W.P. 205, 1 B. 164, 11 A. 480, A.W.N. 1888, 217, *R.*) [*R.,* 7 Cr. L.J. 444=4 L.B.R. 146, 9 Cr. L.J. 25=4 L.B.R. 340; *Dist.,* 11 Cr. L.J. 750=8 Ind. Cas. 997=3 Bur. L.T. 154, 13 Cr. L.J. 55=13 Ind. Cas. 391=4 Bur. L.T. 269]

(4303)—*S.* 488 (=*Crim. Pro. Code,* 1861, *s.* 316)—*Imprisonment on default of payment of maintenance, when could be ordered.*—An order for maintenance provided that, in the event of the defendant failing to pay the monthly maintenance, or of there not being sufficient distrainable goods belonging to him, he should be rigorously imprisoned for the term of fifteen days for every breach of the order. *Held,* that the provision was an anticipation of a procedure to take place on a wilful default, if such should occur, and was, therefore, illegal. HIGH COURT PROCEEDINGS, 28TH JULY 1870, NO. 1406, **2 Weir 637=5 M.H.C. App. 34.**

(4304)—*S.* 488—*Claim for maintenance for child—Settlement between father and mother—Evidence.*—In an application under the above section of the Code, in respect of the maintenance of a child, proof of a settlement between father and mother is not conclusive against the claim ; but it is necessary to make enquiry into the present circumstances of the child and the father in accordance with the provisions of the section. MA E SE v. MAUNG THA TU, **U.B.R. 1892—1896, Vol. I, 55.** (17 W.R. Cr. 49, *R.*)

(4305)—*S.* 488.—Where the father makes over certain property to the mother in consideration of her agreement to maintain the child, an order of maintenance would be rightly refused, when the property still exists and furnishes sufficient means for the support of the child. But where the property is not made over for the support of the child, and though it has probably not been all expended when the application for maintenance is made, the mother would be entitled under the section to apply for maintenance. MAUNG MYA v. MA BOK SON, **U.B.R. 1897—1901, Vol I, 108.** (S.J.L B. 145, 362 ; U.B.R. 1892—1896, 55, *R.*)

(4306)—*S.* 488—*Revision of order under—Re-opening of proceedings once disposed of—Legal union—Maintenance, how payable.*—The District Magistrate has no authority to revise a case under the above section of the Code; and a Magistrate of competent jurisdiction having once disposed of the matter, his successor is not at liberty to go into it again. Mere cohabitation does not in Burma constitute a legal union. The maintenance allowed is payable only from the date of the order according to the old Code, and from the date of the application according to the new one. It should not at all be made payable from the date of the child's birth. CRIMINAL REVISION CASE NOS. 43 AND 159 OF 1892, **U.B.R. 1892—1896, Vol. I, 61.**

(4307)—*S.* 488—*Conditions of section to be fulfilled--Maintenance.*--In an application under the above section of the Code, the Magistrate should make a complete enquiry and satisfy himself that the conditions of the section have been fulfilled. As regards costs that may be claimed by the applicant, there is no provision for it in the Code, and the Court cannot go into that question at all. MA SAT v. MAUNG PO KA, **U.B.R. 1892—1896, Vol. I, 62.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(4308)—S. 488—*Effect of dismissal of application for maintenance—Second application, if admissible.*—The effect of the dismissal of an application for maintenance under the above section of the Code, is the same as an order passed for default of the appearance of the complainant in a summons case, *i e.*, an acquittal. If once an application under the above section is dismissed for default, a second application on exactly the same ground is not admissible; but the Magistrate, before rejecting or dismissing a second application, should ascertain whether any change of circumstances or fresh cause has occurred since the first application was thrown out. MA SU v. PAUL SASOON, **U B.R. 1892—1896, Vol. I, 64.** (1 C.L. R. 89, *R*).

(4309)—S. 488—*Maintenance, payment of—Discretion of Magistrate—Enquiries to be made by Magistrate.*—A wife, who first applies for maintenance to herself under the above section, and, seeing that her application is dismissed, again applies a second time for the maintenance of her child, is possibly evading the law by trying to obtain an order for payment to herself of allowance on account of her child. Hence, the Magistrate should be careful and should use his discretion in determining the person to whom an allowance should be made payable. If the father is willing to support the child in his own house, and is not permitted to do so because the mother will not part with it and will not live with her husband, he is not liable for either neglect or refusal on account of the child any more than on account of the mother. MAUNG PWE v. MI NYYN, **U.B.R. 1892—1896, Vol I, 67.**

(4310)—S. 488—*Maintenance—Ability of children to maintain themselves.*—A Magistrate should necessarily enquire as to whether children can maintain themselves. *Quære*:—Whether, under the Buddhist Law, a wife can separate herself from her husband for upwards of a year, and whether a husband can take a second wife contrary to the wishes of the first; whether a father can be made liable for maintaining his child, if his child declines to live with him and insists on living with the mother, who improperly refuses to live with her husband; to whom should the payment be made for maintaining the child, when its mother is not entitled to receive the same. MAUNG MA v. MA CHO, **U.B.R 1892—1896, Vol. I, 68.**

(4311)—S. 488—*Husband, when not liable to maintain wife—Legitimacy of child—Presumption.*—The husband is bound to maintain the wife under the above section of the Code, unless she refuses to live with him without sufficient excuse, or some other of the disqualifications mentioned in the above section applies. Further more, the presumption is that a child born during coverture is the child of both husband and wife, and this presumption may be strengthened by the future conduct of the husband in returning to live with his wife after she denied that he was the father. The

Crim. Pro. Code (Act V of 1898)—*continued.*

Magistrate must not, in considering a case of this kind, pass an order on the general grounds of separation. MA THA TE v. MAUNG YE PU, **U.B.R. 1892—1896, Vol. I, 72.**

(4312)—S. 488—*Maintenance application for, when to be dismissed—S. 112, Evidence Act—Legitimacy.*—An application under the above section of the Code for the maintenance of a child by the father should be dismissed when no neglect or refusal to maintain is proved. S. 112 of the Evidence Act applies to the legitimacy of the children of married persons only. * * * v. MASON, **U B.R. 1892—1896, Vol. I, 74.**

(4313)—S. 488—*Divorce under Buddhist law and Burman custom—Effect of—Questions to be considered.*—Where the parties have been divorced in the usual Burman fashion, it is a question whether provision has not already been made for the maintenance of the children of the marriage by the arrangements concluded at the time of divorce, or by the decree in a subsequent civil suit between the parties; and this matter ought to be considered in dealing with an application under s. 488, Crim. Pro. Code. In an application under the above section, the questions to be considered are whether the husband has sufficient means to support his children, who are infants, and what sum is required for their support. MAUNG SAN v. MA WE, **U.B.R. 1897—1901, Vol. I, 106.** [*R.*, 11 Cr. L J. 40=4 Ind. Cas. 758=U.B.R. 1909, Cr. P.C., 17.

(4314)—S. 488—*Pregnancy by the same man who marries the woman, not a bar to marriage under Mahomedan Law—Husband liable for maintenance of wife and child.*—There is no authority for the assertion that pregnancy is a bar to marriage under the Mahomedan Law. Where a woman is pregnant by fornication with the same man who marries her, the marriage is lawful and connubial intercourse is not forbidden them. Such a person would be liable for the woman's maintenance. MAUNG TUN v. MI DU HLAING, **U.B.R. 1897—1901, Vol. I, 110.**

(4315)—S. 488—*Order under, if can be altered by Civil Court.*—An order under the above section cannot be set aside or modified by a Civil Court. MA KIN v. MAUNG SHAN, **U.B. R. 1897—1901, Vol. I, 112.** (6 W.R. Cr. 57, 20 W.R. Cr. 58, 19 A. 50, *R.*)

(4316)—S. 488—*Arrears of maintenance, payment of, how enforced.*—It is never the intention, as manifested in Ch. 36, Crim. Pro. Code, of the legislature that arrears of maintenance should be allowed to accumulate for a long number of years, and that payments of the accumulated arrears should then be enforced in a summary manner under s. 488, Crim. Pro. Code, MAUNG PO v. MA MYIT, **1 U B.R 1902-1903, Crim. Pro. Code., 3** (10 A. 350, 4 Bur. L.R. 29, 6 M.H.C. App. 22, *R.*) [*F.*, 11 Cr.L.J. 79=4 Ind. Cas. 899=U.B.R. 1907—1909, II, Crim. Pro. Code, 19; *R.*, 4 Ind. Cas. 900=U.B.R. 1907—1909, II, Crim. Pro. Code, 21, 15 Cr. L. J. 434=24 Ind. Cas. 170.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(4317)—S. 488—The levy of accumulated arrears of maintenance by a single warrant is not illegal under s. 536. HIGH COURT PROCEEDINGS, 11TH NOV. 1874, **7 M.H.C. App. 37.**

(4318)—*S. 488—Powers of Magistrate under —Mother's refusal to hand over child to husband, if ground to stop allowance.*—A Magistrate proceeding under s. 488, Crim. Pro. Code, has no authority to determine the question, who is the lawful guardian of the child; and a woman's refusal to surrender her child to the husband is no ground for stopping an allowance previously ordered. MA NYEIN ME v. MAUNG KYAW, **1 U.B.R. 1902-1903, Crim.Pro.Code, 7.** (4 C. 374, U.B.R. 1892—1896, Vol. I, 67, *R.*) [*R.*, 14 Bur L.R. 240=8 Cr. L.J. 422, 11 Cr. L.J. 488=7 Ind. Cas. 460=U.B R. 1910, Crim. Pro. Code, 1, 11 Cr. L.J. 662=8 Ind. Cas. 479=U.B.R. 1910, 34.]

(4319)—*S.* 488 (=*Crim. Pro. Code,* 1872, s. 536)—*Maintenance—Father's liability.*—A father is liable to maintain his children, whether he is a Hindu or Mahomedan or Buddhist, notwithstanding that their mother may have been legally divorced. S. 536, Crim. Pro. Code, 1872, is intended to apply to fathers who are proved to have sufficient means and who neglect or refuse to maintain their children. *In the matter of an application by* MI PYE, **L.B. R. 1872—1892, 145.** (17 W.R. Cr. 49, *R.*).

(4320)—*S.* 488 (=*Crim. Pro. Code,* 1882, s. 488)—*Maintenance—Buddhist Law* (*Divorce*). —A Burmese divorced wife is not barred by the provisions of the fifth paragraph of s. 488, Crim. Pro. Code, from instituting proceedings under that section for the maintenance of a child-born to her, against her former husband, the father of the child. MAUNG LU GYI v. MI SHWE ME, **L.B.R. 1872—1892, 362.**

(4321)—*S.* 488 (=*Crim. Pro. Code,* 1872, s. 536)—*Imprisonment in default of payment of maintenance.*—A Magistrate cannot, under s. 536, Crim. Pro. Code, 1872, order imprisonment, unless he is compelled to issue a warrant for the levy of the amount due. EMPRESS v. MUSTAFA, **A.W.N. 1881, 19.**

(4322)—*S.* 488—*Order for maintenance—Direction to pay wholly or partly in grain—Illegality.*—An order under s. 488, Crim. Pro. Code for maintenance, must be for a sum of money payable as a monthly allowance, and the section does not warrant an order that the allowance be paid wholly or partly in grain or the like. CROWN v. DILSUKH, **19 P.R. 1911, Cr.=13 Ind. Cas. 1004=13 Cr. L.J. 188.**

(4323)—*S.* 488—*Maintenance—"Not exceeding Rs. 50 in the whole"—Total sum allowed for maintenance of wife and children may exceed Rs. 50—Power to award Rs. 50 for wife and each child.*—Where a wife applied for maintenance for herself and her 4 children, and the Magistrate ordered the husband to pay Rs. 50 for the maintenance of the wife and Rs. 10 for each child every month: *Held* that the order was legal. The husband was liable to maintain his wife and each of his children, and the Magistrate might order him to pay as much as Rs. 50 for each of them. CLEMENT v. FLORENCE, **12 Cr. L.J. 583=12 Ind. Cas. 847=4 Bur.L.T. 139.**

(4324)—*S.* 488—*Duty to maintain child—Presumption as to sufficiency of means.*—In maintenance cases under s. 488, Crim. Pro. Code, a mere denial by the man himself of sufficiency of means, when that man is an able-bodied man, is not conclusive proof of want of sufficient means. In Burma where it is easy for any able-bodied man, to obtain work sufficient to support his children, it may be presumed, till the contrary is shown, that he is liable to support his child, and the *onus* lies upon him to show that he has not sufficient means. ME THA v. NAGA SAN E, **U.B.R. 1911, 2nd Qr., 90=13 Ind. Cas. 914=13 Cr. L. J. 162.** (4 A. 123, Cr. Rev. Nos. 298 of 1903 and 479 of 1907, *R.*).

(4325)—*S.* 488—*Application for maintenance by wife—Presence of relations or friends to bear her costs, whether ground for dismissal of application.*—A wife's application for maintenance against her husband should not be dismissed on the mere ground that she has relations or friends willing to maintain her or to bear the costs of the proceedings. CHANDA v RAMA MISARI, **16 Cr.L J. 80=26 Ind. Cas. 672.** (2 Weir 616, Cr , *F.*).

(4326)—*S.* 488 — *Maintenance — Wife — Husband.*—Under s. 488, Crim. Pro. Code, a woman cannot be granted a maintenance order against a man unless she proves herself to be his legal wife according to his personal law. PWA ME v. SAN HLA, **7 B.L.R. 270=26 Ind. Cas. 631=16 Cr.L J. 39.**

(4327)—*S.* 488—*Maintenance of lesser wife marrying without knowledge that husband had a first wife.*—A lesser wife, refusing to live with the chief wife, will not be deprived of her right to maintenance, if, at the time she married, she did not know that the husband had been previously married. MAUNG PO WE v. MA THE HLA, **8 Ind. Cas. 997=11 Cr.L.J. 750.** (U.B. R. 1897—1901, Vol. I, p. 104, *D.*; 4 L.B. R. 7, 340, 8 Cr.L.J. 422, *Appr.*)

(4328)—*S.* 488—*Maintenance—Plea of divorce —Muhammadan Law*—Talak-ashan—Iddat—*Maintenance to be paid till the expiration of* Iddat *where the divorce is valid—Effect of a fresh maintenance order passed through inadvertence.*—A *Talak-ashan* amongst Muhammadans is accomplished by a single pronouncement during the *tahr* of the wife and by the abstention of connubial intercourse for the period of three *tahrs.* The wife must be paid maintenance money until the period of *iddat* elapses. A subsequent order for maintenance was set aside as being nugatory, in view of a previous order ignored by the Magistrate, and the husband was held liable to pay from the date of the first order. MAUNG BA SHWE v. MA NYUN, **12 Cr.L.J. 82=9 Ind. Cas. 457.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(4329)—*S.* 488—*Maintenance — Wife living separately--Absence of habitual cruelty—Amount how to be fixed—Offer to maintain when valid.* —The present Code does not restrict payment of maintenance, where the wife is living separately, to cases in which she has been treated with habitual cruelty. In fixing the amount of maintenance, no luxury should be allowed and necessaries of life should be considered according to the station in life of the applicant and the means of the respondent. An offer to maintain, in order to be a valid defence, must be a *bona fide* offer and not made with the object of escaping the obligation to maintain. J. P. DRAGON v. EMELIE MI TAIK DRAGON, **13 Cr.L.J. 55=13 Ind. Cas. 391.** (U.B.R. 1897—1901, Vol. I, 104, *D.*)

(4330)—*S.* 488—*Neglect or refusal—May be express or implied—Denial of paternity—Neglect inferred—Order for maintenance—Necessity to make.*—Where the opponent has denied his paternity of the child, that is a fact from which the Court may infer neglect to maintain. The neglect or refusal may be by words or conduct. It may be express or implied. (9 Bom.L.R. 359, *R.*) The paternity and neglect being established, the Court should have exercised the discretion the section gives him to make a maintenance order under s. 488. MUSSAMMAT HIDAYUT KHATUN v. MAHOMED HAYAT, **6 S.L.R. 208 =14 Cr.L J. 303=19 Ind. Cas. 959.**

(4331)—*S.* 488—*Order for maintenance of child obtained by wife against husband--Subsequent decree in favour of latter for restitution of conjugal rights—Wife's claim for arrears of maintenance on behalf of child—Maintainability of the claim—Proviso to sub-ss. 3 and 4—Applicability.*—Where N obtained an order under s. 488, Crim. Pro. Code, that M do pay her Rs. 3 per month for the maintenance of their child, and about 4 months later M obtained a decree against N for restitution of conjugal rights, and N sued M thereafter for recovery of arrears of maintenance due to her : *Held* that, as long as there was no decree that M should have the guardianship of the child and as long as the child remained with the mother, the statutory obligation to maintain the child remained binding on him, and that he was liable to pay the arrears of maintenance claimed against him (13 W.R. Cr. 52, 27 A. 483, 23 B. 485, *R.*) The proviso to sub-s. 3 and sub-s. 4 of s. 488, Crim. Pro. Code, would seem to refer to cases where a wife obtains a maintenance order for herself and not where one is made for children. NAN SAW SHWE v. MAUNG HPONE, **6 L.B.R. 127=18 Ind. Cas. 658=14 Cr.L.J. 98 =6 Bur. L.T. 51.** (2 L.B.R, 46, F.B., *R.*)

(4332)—*S.* 488—*Maintenance, order for—Death of person against whom order had been made — Execution of order — Whether order enforceable against estate of deceased.*—An order of a Magistrate passed under s. 488, Crim. Pro. Code, for maintenance, is not enforceable, after the death of the person against whom the order was passed against his estate. EAD ALI v. LAL BIBI, **17 C.W.N. 1130=14 Cr, L.J. 378= 20 Ind. Cas. 138=41 C. 88.**

(4333)—*S.* 488—*Child—Prostitution not to be considered a profession.*—The word *child* in s. 488, Crim. Pro. Code, means one that has not attained the age of majority. Prostitution cannot be treated as a profession by which a girl can earn her livelihood for the purpose of s. 488. A. KRISHNASAMY IYER v. CHANDRA-VADHANA, **1913 M.W.N. 695=14 M.L T. 224 =25 M.L J. 349=14 Cr. L.J. 525=20 Ind. Cas. 1005=37 M. 565.**

(4334)—*S.* 488—*Wife's refusal to attend Panchayat inquiring into charge of adultery against her—No ground for refusing maintenance.*—A wife's refusal to attend a Panchayat convened to consider a charge of adultery against her is no reason for rejecting an application for maintenance made by her under s. 488, Crim. Pro. Code. DASAPPA CHETTY v. CHIKATHA-YEE, **15 Cr. L.J. 52=22 Ind. Cas. 324.**

(4335)—*S.* 488 — *Maintenance of child — Mother's ability to maintain*—Bona fide *offer by father, to maintain if child lives with him.*—*Held*, that the father is bound to maintain his child whatever the position of the mother may be. Merely sending a man to go and ask the child to come and live with the father does not amount to an offer to look after him and cannot absolve the father from his responsibility to maintain him. MI THEIN v. NGA PO NYUN, **7 Bur. L.T. 34=15 Cr. L.J. 278=23 Ind. Cas. 486.**

(4336)—*S.* 488—*Validity of marriage of a Chinese Buddhist with a Burman Buddhist—No maintenance where marriage not according to Chinese Buddhist law.*—Where a Burman Buddhist female applied for maintenance as wife against a Chinese Buddhist who denied that he was ever married according to law. *Held* that the personal law of a Chinese Buddhist would be applicable to such a case. That law is considerably more restricted than the Burmese Buddhist law according to which living together by mutual consent constitutes a valid marriage. Amongst the Chinese Buddhists, the following three conditions are essential, *viz.* :—(1) Consent of the parents, the consent of the parties themselves being unimportant. (2) Certain formalities and ceremonials. (3) The suitability of the parties in the matter of their respective positions. WA FOON v. MA THEIN TIN, **7 Bur. L.T. 71=15 Cr. L.J. 484=24 Ind. Cas. 572.**

(4337)—*S.* 488—*Maintenance — Wife when entitled to maintenance—Husband's father not liable—Father willing to keep child—Rate of maintenance.*— *Held*, that, where husband quarrels with and ill-treats his wife, she is entitled to live apart and claim maintenance, but her husband's father cannot be made liable for it. *Held*, also that, when father is willing to keep the child, no order for the child's maintenance can be passed. RALLA AND KARTARA

v. MUSSAMMAT ATTI, **21 P.W.R. 1914, Cr. = 115 P.L.R. 1914 = 15 Cr. L.J. 529 = 24 Ind. Cas. 841.** (18 P.R. 1894, Cr., *F.*)

(4338)—*S.* 488—*Order against husband's father for wife's maintenance—Legality—Husband marrying second wife—Whether ground for awarding maintenance to first wife.*—A father cannot be made jointly liable with the son for the maintenance of the son's wife. No such arrangement is contemplated by s. 488, Crim. Pro. Code (26 P.R. 1903, *F.*) The fact that the husband has contracted a second marriage cannot alone justify an order under s. 488, in favour of the first wife. CROWN, THROUGH MUSSAMMAT RAM KAUR v. WARYAM SINGH AND SAWAN SINGH, **12 P.R. 1914, Cr. = 245 P.L.R. 1914 = 15 Cr. L.J. 577 = 25 Ind. Cas. 329** (66 P.R. 1887, Cr., *F.*)

(4339)—*S.* 488—*Maximum sentence—Execution for arrears of maintenance for several months—Construction of cl.* 3.—When a Magistrate issues a warrant for arrears of maintenance for more than one month, and when the allowance for more than one month remains unpaid after the execution of the warrant, he is not competent to pass a sentence of imprisonment exceeding one month. The words in the sub-s. 3 "for the whole or any part of each month's allowance remaining unpaid" may mean "for the whole or any part of every month's or all months' allowance remaining unpaid," where the arrears remaining unpaid are for a period exceeding a month. ZAW TA v. EMPEROR, **15 Cr. L.J. 434 = 24 Ind. Cas. 170 = 7 Bur. L.T. 225.** (9 A. 240 = A.W.N. 1887, 54, P.J.L.B. 316, *F.*; 20 M. 3 = 2 Weir 638, 25 C. 291, *Diss.*)

(4340)—*S.* 488—*Maintenance allowance paid by a Mahomedan—Subsequent divorce, effect of.*—Where a Magistrate made an order under s. 488, Crim. Pro. Code, directing a Mahomedan to pay a certain monthly allowance towards the maintenance of his wife, *held* that, on a subsequent divorce of his wife by the husband, that order became *functus officio.* KING-EMPEROR, THROUGH DOULAT v. MUSAMMAT JADI, **17 O.C. 260 = 15 Cr. L.J. 646 = 25 Ind. Cas. 846.**

(4341)—*S.* 488—*Order for maintenance of an illegitimate son—Declaratory suit, maintainability of, where paternity of an illegitimate son is denied.*—Defendant No. 1 brought a claim for maintenance in the Magistrate's Court under s. 488, Crim. Pro. Code, against the plaintiff whom she averred to be the father of her illegitimate son, defendant No. 2. She obtained an order for maintenance. Basing his cause of action upon that order, the plaintiff brought the present suit for a declaration that the defendant No. 2 is not his son and that he had never an illicit connection with the defendant No. 1. *Held*, that the suit for a declaration that defendant No. 2 was not an illegitimate son of the plaintiff was maintainable. KAILASA (MUSAMMAT) v. RAGHUBAR, **17 O.C. 331 = 26 Ind. Cas. 526 = 1 O.L.J. 735.** (18 A. 230, *D*; 50 P.R. 1901, 26 P.R. 1903, 20 M. 48, 30 M. 400, *R.*).

(4342)—*S.* 488—*Meaning of "neglects or refuses to maintain his wife."*—*Held*, that the term "neglects or refuses to maintain his wife" in s. 488, does not apply where the husband states that he is willing to maintain his wife and the wife deposes that she is willing to live with her husband but he refuses to maintain her. PHULA KHAN v. CROWN, **46 P.W.R. 1914, Cr. = 26 Ind. Cas. 998 = 16 Cr.L.J. 86.**

(4342-*a*)—*S.* 488—*Maintenance of children—Mother dissuading children from father's custody to enable her to claim their maintenance—Father, liability of.*—Where a father has custody of his minor children and is maintaining them properly, the mere fact that they go and live with their mother would not make him liable to be charged for maintenance under s. 488, Crim. Pro. Code, though he refuses to maintain them unless they return to his custody. MA SHWE HMYIN v. MG PO CHAT, **16 Cr. L.J. 217 = 27 Ind. Cas. 841.**

(4343)—S. 488—*See* ACT I OF 1868, s. 2 (18), 9 A. 240 = A.W.N. 1887, 154.

(4344)—S. 488—Law relating to marriage among Karens.—*See* BUDDHIST LAW—MARRIAGE, 15 Cr. L.J. 590 = 25 Ind. Cas. 342.

(4345)—S. 488—*See* COMPLAINT—WHAT IS, AND WHO SHOULD INSTITUTE, 13 P.R. 1885, Cr.

(4346)—S. 488—*See* INTERVENOR, 4 C. 650, 3 C.L.R. 551.

(4347)—S. 488—*See* JURISDICTION OF CIVIL COURTS, 158 P.L.R. 1901 = 50 P.R. 1901.

(4348)—S. 488—*See* MAHOMEDAN LAW—MAINTENANCE, L.B.R. 1872-1892, 596.

(4349)—S. 488—*See* REVISION—GENERAL PRINCIPLES, 16 B. 269.

(4350)—S. 488—*See* SENTENCE—IMPRISONMENT—GENERAL, 9 A. 240 = A.W.N. 1887, 54.

(4351)—S. 488.—*See* Nos. 27, 43, 930, 1545, 1546, 2014, 2725, 3832, 4042, *supra.*

(4352)—*S.* 488 (3)—*Mode of enforcement of order of maintenance.*—An order for imprisonment in execution of an order for maintenance, when no order for levying the amount of the maintenance due had previously issued, is illegal, and it is only on account of the amount due after the execution of "the warrant" that imprisonment may be ordered. *Held*, further, that it should have been shown that there had been wilful neglect to comply with the order for maintenance. QUEEN-EMPRESS v. NGA BWA, **U.B.R. 1897—1901, Vol. I, 111.**

(4353)—*S.* 488 (4)—*Parties governed by Marumakkatayam Law—Order for maintenance—Father willing to receive and maintain child—Effect—Meaning of 'unable to maintain'—Effect of tarwad being well-to-do—Person entitled to the custody of the child.*—S. 488,

Crim. Pro. Code (Act V of 1898)—*continued.*

cl. (4), disentitles to maintenance only a *wife* who refuses to live with her husband without sufficient cause, and does not disentitle a child who is living with its lawful guardian. As the parties are governed by the Marumakkatayam law, and not by the Muhammadan law, the father is not entitled to the custody of the boy. Therefore, the father being willing to take the boy and maintain him has nothing to do with his liability to give the boy maintenance when the boy is living with his natural guardian. The inability referred to in the section relates to the absence of sufficient maturity of physical and mental development in the child rendering it in consequence unable to earn its living by its own efforts, and does not refer to inability through poverty or absence of means. The fact of the child belonging to a well-to-do tarwad has nothing to do with the liability of a father who has sufficient means to maintain his child and neglects to do so. *In re* PARATHY VALAPPIL MOIDEEN, **14 M.L.T. 223 = 25 M.L.J 355 = 1913 M.W.N 997 = 21 Ind. Cas. 469 = 14 Cr. L. J 597.** (5 N.W.P. 237, *R.*)

(4354)—*S.* 488, *cl.* (9)—*Settled abode of kept mistress — Occasional visits with intention of continuance — Whether becomes residence of accused.*—For the purposes of s. 488, cl. 9, Crim. Pro. Code, a man may be said to reside with the mother of his illegitimate children, if he visits her only occasionally *at her settled abode*, so long as he has the intention of continuing to so visit her. (31 L.J.C. P. 357, 16 Ch. D. 484, 4 B. and C. 959, 1 A. 51, 5 M. H. C. 101, 25 B. 176, 36 C. 964, *R.*). In the absence of a permanent residence elsewhere, two months was sufficient length of stay to constitute any place, a residence within the meaning of s. 488. HIDAYAT KHATUN v. MAHOMED HAYAT, **5 S.L.R. 220 = 15 Ind. Cas. 794 = 13 Cr. L.J. 522.**

(4355)—*Ss* 488, 250—*Petition for maintenance, not a complaint of an offence within s.* 250 —*Compensation, illegal.*—An application for an order of maintenance is not a complaint or an accusation of an offence, and consequently an order for payment of compensation under s. 250, and imprisonment in default, is illegal. AMBOO v. BABOO, **6 M.L.T. 261 = 11 Cr. L.J. 156 = 4 Ind. Cas. 1045.**

(4356) -*Ss.* 488 *and* 490 (= *Crim. Pro. Code,* 1882, *ss.* 488, 490)—*Mahomedan husband—Objecting to order for maintenance of wife on ground of her divorce.*—A Bench of Honorary Magistrates were held to be bound to enquire into an objection raised by a Mahomedan husband, against an order of maintenance passed by them on the ground of the divorce of his wife, and, if they found that the husband had, in fact, validly divorced his wife, to abstain from enforcing their order. AMIR MIRZA v. MUSSAMMAT IMAMAN, **8.C. 239, Oudh.** (5 C. 558, 7 B. 180, 5 A. 226, 14 C. 276, *R.*)

(4357)—*Ss.* 488, 490—*Imprisonment in default of payment of maintenance—Construction of s.* 488.—A Township Magistrate has jurisdiction under s. 490 to enforce the maintenance order as the section says that "such order may be enforced by any *Magistrate.*" There is a conflict of opinion between the High Courts in India concerning the proper construction of s. 488 with respect to a sentence of imprisonment. It will be safest to treat imprisonment in default of payment under s. 488 of the Code as not an '*offence*' and to award simple imprisonment as a means of coercion. MI TASOK v. NGA TE NAUNG, **U B.R. 1892 -1896, Vol. I, 70.** (9 A. 240, 8 M. 70, 22 C. 291, *R.*)

(4358) — *Ss.* 488, 490 — *Maintenance — Recovery of arrears—Person against whom order was made leaving jurisdiction —Magistrate who passed the order — Magistrate within whose jurisdiction the person resides—Competency of either Magistrate to pass order for recovery of arrears.*—Where a husband who, by an order under s. 488, Crim. Pro. Code, was directed to pay his wife monthly a certain sum of money for the maintenance of herself and her child, ceases to live within the local limits of the jurisdiction of the Magistrate who made the order. *Held* that an application for an order to enforce the recovery of arrears of maintenance may be made by the wife either to the Magistrate who passed the original order or to the Magistrate having jurisdiction over the place where the husband resides. (4 M. 230, *R.*) The provisions of s. 490 cannot be held to derogate from s 488 (3). MA THAW v. KING-EMPEROR, **7 L B R. 116 = 15 Cr. L.J. 701 = 26 Ind. Cas. 149.**

(4359) —*Ss.* 488, 528 —*See* DISTRICT MAGISTRATE, 5 P R. 1905, Cr.

——**S. 489 (= 1882, s. 489; 1872, s. 537; 1861, s. 317.)**

See MAINTENANCE.

(4360)—*S.* 489 (= *Crim. Pro. Code, Act* X *of* 1882, *s.* 489) —*Change in circumstances—Meaning* —The expression "change in the circumstances" in s. 489 of the Crim. Pro. Code means not merely a temporary and accidental change in one of such circumstances (such as salary), but a change in all circumstances connected with the condition of the person. RUKMINI v. PIARI LAL, **A.W.N. 1891, 32.**

——**S. 490 (= 1882, s. 490; 1872, s. 538).**

See MAINTENANCE.

(4361)—S. 490—*Enforcement of order of maintenance.*—When an application is made for the enforcement of an order for maintenance, the general rule laid down in 15 A. 143 should be followed, unless it is shown that the order is no longer in force. MA KIN v. MAUNG SHAN, **U.B.R 1897 -1901, Vol I, 112.** (15 A. 143, *R.*)

(4362)—S. 490—*See* Nos. 4356, 4357, 4358, *supra.*

——**S. 490 (= 1882, s. 491; 1872, s. 82).**

(4363)—*S.* 491—Habeas Corpus—*Mahomedan law—Custody of an infant—Mother entitled to custody as against executor.*— On the

Crim. Pro. Code (Act V of 1898)—*continued.*

death of a Shiah Mahomedan father, the mother becomes entitled to the custody of the person of her minor son as against the executor of the father, unless there is in the will a *specific* appointment of the executor as guardian *Quære* :—Whether a Mahomedan could by his will deprive his widow of the custody of her infant children by appointing by his will some one else as their guardian without any just cause, and whether an arbitrary and capricious direction in the will depriving the mother of the custody of her infant children would be enforced by Courts. *In re* EBRAHIM; M. HASSAM; SHERBANOO v. AJBAI, **11 Bom. L. R. 75 = 9 Cr. L.J. 214.**

(4364)—*S.* 491—*Writ of* Habeas Corpus—*Illegal or improper detention—Powers of father over his daughters—Right to sustain prosecution under s.* 361, *I. P. C.—Power of Court under s.* 491, (2), *Crim. Pro. Code.*—This was an application under s. 491, Crim. Pro. Code, in the nature of a writ of *Habeas Corpus* by a father, M, against his brother N, for the custody of his two daughters in their fourteenth and sixteenth years respectively. M. became a sanyasi and relinquished his rights as head of the family to N in 1901. In 1906 he became Brahmo and again lived with his wife and children till the wife's death in 1910. His sons were all along living with his brother N who educated them. The object of the petitioner in obtaining the writ was to prevent the marriage of his daughters before they complete their sixteenth year; there was no question of morality or corruption. *Held* that the petitioner is quite free to keep his daughters unmarried till their sixteenth year or even after that age, even though he may put his daughters not only to great inconvenience but to danger of excommunication. The fact that he has become a Brahmo does not affect the matter. He will not thereby lose any rights he had before. *Held* also that, if a man *bona fide* goes through the necessary ceremony, renounces his family ties, lives a sanyasi life honestly believing he is a sanyasi, he is not any the less a sanyasi on account of the invalidity of his initiation. *Held* therefore that, as he had previously become a sanyasi, he was not in 1906, when he became a Brahmo, the guardian in Hindu Law of the children. The facts that M was the *de facto* guardian of the children from 1906 till his wife's death would be sufficient to sustain a prosecution under s. 361, I.P.C., and as against strangers would entitle him to an order for restoration to his custody under s. 491, Crim. Pro. Code. *Held* also that s. 491 (1) (*b*), Crim. Pro. Code, does not apply, as the children have not been illegally or improperly detained. Where a man has lost his rights when he became a sanyasi, it is not open to him to resume them The ordinary rule of Hindu Law is that rights once vested are not divested, and he does not regain his status in his natural family he has renounced. MUTHUSAMY SASTRY v. NARAYANA SASTRY, **8 M L. T. 300 = 8 Ind. Cas. 393 = 21 M.L.J. 195 = 1911, 1 M.W.N. 36.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(4365)—*S.* 491—*Writ of* Habeas Corpus—*Bombay High Court Rules, r.* 794—*Court—Discretion—Mahomedan Law—Custody of male children up to seven years—Mother entitled to custody.*—Under Mahomedan Law, the mother is, during the subsistence of marriage, entitled to the guardianship or custody of male children up to the age of seven years. This right of hers survives even separation or divorce. The underlying principle of every writ of *Habeas Corpus* (and proceedings under s. 491 of the Crim. Pro. Code, of 1898) is to ensure the protection and well-being of the person brought before the Court under that writ. The real interest and well-being of the person ought to be not only the determining but the sole consideration. S. 491 of the Crim. Pro. Code, leaves it entirely to the discretion of the Court, whether it should or should not direct the person brought before it to be dealt with according to law: whereas r. 794 of the Bombay High Court Rules, in dealing with a person so brought before it deprives the Court of all further discretion, and commands that, in the absence of cause being shown against the rule, which is a very different thing from allowing the Court to exercise its discretion even where technically the cause is inadequate, it shall pass an order that the person or persons improperly detained shall be delivered to the person entitled to their custody. ZARABIBI v. ABDUL REZZAK NAKSHBANDI, **12 Bom. L.R. 891 = 8 Ind. Cas. 618.**

(4366)—S. 491—*See* HABEAS CORPUS, 15 C.W.N. 1053 = 14 C.L.J. 375 = 12 Cr. L.J. 505.

(4367)—S. 491—*See* No. 2957, *supra.*

——**S. 492 (= 1882, s. 492; 1872, ss. 57, 58, 202).**

(4368)—S. 492—*See* PUBLIC PROSECUTOR, 29 P.R. 1886, Cr.

(4369)—S. 492—*See* No. 3715, *supra.*

(4370)—*Ss.* 492, 494 (= *Crim. Pro. Code,* 1872, ss 57, 202 (2) *and s.* 61)—*Power of withdrawing prosecution.*—S. 61 applies only to Public Prosecutors appointed by Government, and not to a person specially appointed to conduct a case under s. 202, cl. 2 of the Code of 1872. A person so appointed cannot, therefore, withdraw a prosecution. *In re* RAMA KRISHNA NADAN, **2 Weir 653.**

(4371)—Ss. 492, 494 and 240—*See* CHARGE—WITHDRAWAL OF CHARGE, 2 Weir 258 = 2 Weir 652.

——**S. 493 (= 1882, s. 493; 1872, s. 60).**

(4371-*a*)—S. 493—*See* No. 4391, *infra.*

——**S. 494 (= 1882, s. 494; 1872, s. 61).**

(4372)—*S.* 494 (= *Crim. Pro. Code,* 1882, s. 494)—*Withdrawal from prosecution, power of.*—A person appointed by the Magistrate of a District, under the second paragraph of s. 492, Crim. Pro. Code, to be Public Prosecutor merely for the purpose of a particular case, has not the powers of the Public Prosecutor, with regard to withdrawal from a prosecution under s. 494. QUEEN-EMPRESS v. MADHO, **8 A. 291, F.B. = A.W.N. 1886, 94.**

Crim Pro. Code (Act V of 1898)—*continued.*

(4373)—*S. 494—Co-accused—Evidence, when admissible—Conditional pardon—Power of Local Government to tender—Withdrawal of prosecution—Discharge, effect of—Accomplice's evidence, value of.*—A Local Government in India has no power to tender conditional pardon to an accomplice for the purpose of his being examined as a competent witness against others accused with him. An accomplice, if he is not an accused under trial in the same case, is a competent witness and may be examined on oath. So, if the prosecution be withdrawn and the accused discharged under s. 494 of the Code, he would be a competent witness. Where, however, the Court purporting to act under s. 494 of the Code sanctioned the withdrawal of the prosecution, but omitted to record an order of discharge, and, moreover, the accused continued to be kept in custody. *Held* that his position was in no way changed from that of an accused. *Quære* :—Whether the fact that the accused, who was examined on oath, was not actually tried along with the other accused made his evidence admissible? The utmost caution is necessary in admitting or using the evidence of an approver. It not only requires corroboration in material particulars for its use but its evidentiary value depends considerably upon the circumstances under which his evidence is tendered. BANU SINGH v. EMPEROR, **33 C 1353 = 10 C W.N. 962 = 4 Cr.L J. 145.** (1 B. 610, 11 A. 260, 16 B. 661, 23 B. 213, 1 Q.B. 289, 1 C.L.R. 349, 7 W.R. 44, 10 C.L.R. 553, 20 A. 426, 3 B.H.C. 59, Cowp. 331, 10 C.W.N. 847, *R.*) [*R.*, 37 C. 340 = 14 C.W.N. 422 = 11 Cr. L.J. 121 = 5 Ind. Cas. 365, 7 A.L.J. 86 = 5 Ind. Cas. 21, 18 C.W.N. 1212, 5 Cr. L.J. 300 = U. B. R. 1906, Evidence, 3, 9 Cr. L.J. 370 = 4 L. B. R. 362.]

(4374)—*S.* 494 (= *Crim Pro. Code*, 1882, s. 494)—*Permission to withdraw from a case—Failure of complainant to appear—Procedure.*—Where the Sessions Judge allowed the Public Prosecutor to withdraw a case of forgery, on the ground that the complainant was keeping out of the way and could not be served with summons, *held*, that the procedure adopted by the Judge was not proper, but that he should have taken steps to enforce her attendance and avoided a procedure, having the effect of according a recognition to the compounding of a non-compoundable offence. HIGH COURT PROCEEDINGS, 22ND FEB. 1889, No. 240, **2 Weir 655.**

(4375)—*S. 494—Charge withdrawn—Further enquiry—Application for enhancement—Proper course.*—Under s. 494, Crim. Pro. Code, the accused was discharged, and the District Magistrate ordered further enquiry. *Held*, that this order is unsustainable, and that if a sentence passed was inadequate, the proper course is an application for enhancement of sentence. R. SITARAMAYYA v. EMPEROR, **1911 2 M.W. N. 74 = 12 Cr. L.J. 440.**

(4376)—*S. 494—European British subject, rights of, regarding trial—Conviction by a Magistrate not a Justice of the Peace—Omission of Magistrate to inform accused of such rights, if vitiates trial.*—Where a European British subject was placed on his trial before a Magistrate who was not a Justice of the Peace, on a charge under s. 323, I.P.C., and the Magistrate convicted the accused without asking him whether he was a European British subject and without informing him of his rights as a European British subject under the Code of Criminal Procedure: *Held*—that the conviction and sentence should be set aside on account of the error in the procedure of the Magistrate in the trial. BALADEV MISRI v. A. A. M. CLARKE, **18 C.W.N. 385 = 15 Cr. L J. 297 = 23 Ind. Cas. 505.**

(4377)—*S. 494—Prosecution against one of two accused withdrawn—Such accused, if competent witness—Confession and prior statements of such accused if should be produced for cross-examination and contradiction.*—The petitioner along with one M was placed on his trial under s. 411, I.P.C., but the prosecution against M was withdrawn under s. 494, Crim. Pro. Code, although no formal order of discharge was recorded. M was thereupon examined as a witness for the prosecution. It appeared that M had made a confession to a Magistrate and this confession was subsequently verified by the same or another Magistrate to whom M made further statements. The confession and these further statements were not placed on the record and copies of these were refused to the petitioner: *Held*—That, notwithstanding the omission to record a formal order of discharge, M ceased to be on trial with the petitioner as soon as the prosecution against him was withdrawn, and that being so he became a competent witness; but for the purpose of cross-examination and, if necessary, for contradiction, the prior statements of the witnesses should have been made accessible to the accused. SHERATI SHEIKH v. THE KING-EMPEROR, **18 C.W.N. 1213 = 15 Cr. L J. 693 = 26 Ind. Cas. 141.**

(4378)—S. 494 *See* DISCHARGE OF ACCUSED, 12 M. 35 = 2 Weir 457 = 2 Weir 654.

(4379)—*S.* 494 (*b*) —*Charge of robbery—Withdrawal.*—Where during the pendency of a prosecution for robbery against more persons than five, an application was presented to the High Court by the complainant praying that the Magistrate may be directed to charge the accused with dacoity and commit them for trial by the Sessions Court, and before the application was disposed of, the Magistrate permitted the prosecution to be withdrawn, *held*, that no order was required on the application and that the only order the Magistrate could pass was one of acquittal under cl. (*b*) of s. 494 of the Crim. Pro. Code. SHEOBARAN DAS v. SHIBLI, **A.W.N. 1904, 277 = 2 A.L.J. 30 = 2 Cr. L.J. 21.**

(4380)—S. 494—*See* Nos. 2215, 2454, 2777, 2969, 3035, 3495, 4370, 4371, *supra.*

(4381)—*Ss. 494, 495—Withdrawal of a prosecution—Interference of High Court in revision with discharge—Order of Magistrate.*—Under s. 495 of the Crim. Pro. Code, a Magistrate may

Crim. Pro. Code (Act V of 1898)—*continued.*

permit the prosecution to be conducted by any person other than a police officer and may permit the prosecution to be conducted even by a police officer if he is not below the rank prescribed by the Local Government with the previous sanction of the Governor-General in Council Under a notification of the Madras Government all superior police officers above the rank of a first class Head Constable in charge of a police station are generally empowered to conduct, the prosecution without even the permission of the Magistrate under cl. 1 of s. 495. Such officers would be entitled under cl. 2 of the section to withdraw from the prosecution with the permission of the Court as mentioned in s. 494. *Quære*:—Whether the High Court has power to interfere in revision with the discretion of a Magistrate in giving his consent to the withdrawal of the prosecution under s. 494, Crim. Pro. Code? ANANTHARAMA VATHIAR v. MUTHIA THEVAN, **1914 M.W.N. 776=15 Cr. L.J. 614=25 Ind. Cas. 841.**

(4382)—*Ss.* 494, 495 (1)—*Officer entitled to withdraw from the prosecution of a case.*—The officer, who has the power of withdrawing from the prosecution of a case, under s. 494 of the Crim. Pro. Code, is the officer referred to in s. 495, cl. (1). Where, in the course of an enquiry by a Magistrate, an Inspector of Police appeared and said that he withdrew the case against the accused, and the Magistrate thereon discharged the accused under s. 494, Crim Pro. Code: *Held*, that the order of discharge was illegal and liable to be set aside. LAKSHMANA CHETTY v. KEELAN PERIA KARUPPAN, **8 Ind Cas 867, Cr =11 Cr. L.J. 722=9 M.L.T. 203=1911 M.W.N. 106.**

(4383)—*Ss.* 494, 495, *cls.* 1 *and* 2—"*Any such officer,*" *meaning of*—*Withdrawal of prosecution by an Advocate engaged by the complainant, effect of.*—The words "any such officer" in s. 495, cl. 2, of Crim. Pro. Code, refer only to the "Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the local Government in this behalf" mentioned in sub s. (1). If an Advocate, privately engaged by the complainant and permitted by the Magistrate to appear for the prosecution, withdraws from the prosecution, the effect provided in s. 494 does not follow; in other words, the trial proceeds. NGA MAUNG GYI v NGA LU GALE, **U B.R. 1903, 4th Qr, Cr. P.C., 15 =10 Cr. L.J. 14.** (2 L.B R. 165, *Diss.*)

(4384)—Ss. 494, 537—*See* WITHDRAWAL OF CHARGE, 5 Ind. Cas. 21.

——S. 495, paras 1, 3 and 4 (=1882, s. 495; 1872, s. 59); para 2 new.

(4385)—*Ss.* 495—*Order of Magistrate allowing counsel to appear for prosecution—Revisional powers of the High Court.*—When a Magistrate has, after due consideration, exercised the discretion allowed to him by s. 495, and allowed counsel to appear on behalf of the prosecution, the High Court cannot, as a Court of revision, overrule the order of the Magistrate and direct him to refuse to allow counsel to appear. *Per White, C.J., and Moore, J.* The High Court has, in certain circumstances, power to revise an order of a Magistrate passed under s. 495.—*Per Benson, J.* MANGIAH CHETTY v. DAKSHENAMURTHI BATTUDU, **2 Weir 655.**

(4386)—*S.* 495—*Officer appointed to conduct prosecution—Withdrawal of case by Police Inspector not specifically permitted to conduct prosecution—Acquittal of accused—Illegality.*—Criminal Courts have no jurisdiction to acquit accused persons, on a motion for a withdrawal of the case by the Police Inspector, who is not specifically permitted to conduct the prosecution under s 495, Crim Pro. Code. CHOCKANADA GOUNDEN v. SALAMBURA GOUNDEN, **4 Ind. Cas. 132=10 Cr. L J. 501.**

(4387)—S. 495—*See* DISTRICT MAGISTRATE, 6 P.R. 1905, Cr.=70 P.L R. 1905.

(4388)—S. 495 (1, 3, 4)—*See* BOM. ACT VII OF 1867, s. 23, 8 B. 534.

(4389)—*S.* 495 (4)—*Police making investigation—Prosecution, conduct of.*—An Inspector of Police, on information received by him, applied for a warrant and arrested the accused, seized the property found, and named the witnesses to be summoned before the Magistrate; but he did not examine any of the witnesses and his investigation was confined to an inspection of the books and papers which had been seized. *Held* that the Inspector fell within the provisions of s. 495 (4) and was not competent to conduct the prosecution of the person charged. EMPEROR v. TRIBHOVANDAS BRIBHUKHANDAS, **26 B. 533=4 Bom L R. 271.**

(4390)—S. 495—*See* Nos. 41, 574, 1885, 3716, 4381, 4382, 4383, *supra.*

(4391)—Ss. 495, 493, 270, 289, 290, 292—*See* LEGAL PRACTITIONERS—COUNSEL, 11 B.H.C. 102.

——S. 496 (=1882, s. 496; 1872, ss. 128, para 2, 194, para 2 204, para 1, 388, 393; 1861, ss. 258, 216).

(4392)—*S.* 496 (=*Crim. Pro. Code*, 1872, *s.*204)—*Appearance of accused, how to be secured.*—S. 204 confers on a Magistrate, when an accused person has appeared, a discretion to admit him to bail, or to allow him to go at large on his personal recognizance, and empowers the Magistrate to detain the person in custody only, if, being required to furnish bail, he fails to do so. QUEEN v. CHOCHA RAI, **6 N.W.P. 366.** [*F.*, 12 Cr.L.J. 533=12 Ind. Cas. 301].

(4393)—*S.* 496—*Proceedings under the section—Re-arrest of persons appearing before Magistrate and released on bail, whether proper.*—After the enlargement on bail of the petitioners against whom proceedings under s. 107 were instituted, the Magistrate, pending the proceedings, directed the re-arrest of the petitioners and remanded them to custody, until the termination of the proceedings. *Held*, that the remand was illegal, *Held*, also, that the

Magistrate was bound, under s. 496, which is imperative in its terms, to release the petitioners on bail. RAGHUNANDAN PERSHAD v. EMPEROR, 32 C. 80 = 8 C.W.N. 779 [*R.*, 36 M. 474 = 22 M L.J. 357 = 11 M.L T. 253 = 1912 M.W.N. 169 = 15 Ind. Cas. 79 = 13 Cr.L.J. 447.]

(4394)—S. 496—*See* Nos. 701, 772, 2126, *supra.*

(4395)—*Ss* 496 *and* 107, *cl.* 4—*Bail—Right to be released.*—The provision in s. 107, cl. (4) of the Crim. Pro. Code, that a Magistrate before whom a person is sent under that section "may in his discretion detain such person in custody until the completion of enquiry" is not subject to or controlled by s. 496 of the Crim. Pro. Code. The latter section does not give an absolute right to bail to any person who is not charged with a non-bailable offence, and should be read along with other provisions of the Code giving a special right of detention to a Court. NARAINASAWMY NAICKEN v. EMPEROR, **1912 M.W N 169 = 15 Ind. Cas 79 = 11 M.L T. 253 = 22 M L J. 357 = 13 Cr. L J. 447 = 36 M. 474.** (31 M. 315, *R.*; 11 C.W.N. 415, *D*).

——**S. 497 (= 1882, s. 497; 1872, ss. 128, para 1, 194, para 2, 389; 1861, ss. 156, 212).**

(4396)—*S.* 497 (= *Crim. Pro Code*, 1872, *s.* 389)—*Scope of the section.*—S. 389 does not warrant the proposition that unless there is evidence to raise a strong presumption of the guilt of the accused, he must be admitted to bail and cannot be remanded. That section assumes that the evidence has been taken and provides for the release of the accused on bail, if the evidence so taken is not such as to raise a strong presumption of the guilt of the accused person but it does not import that the taking of the evidence may not be deferred. MANIKAM MUDALI v. QUEEN **6 M. 63 = 2 Weir 409 = 2 Weir 577 = 2 Weir 656.** [*F.*, 36 C. 174 (178) = 9 Cr. L.J. 409 (411) = 13 C.W.N. 51 (55) = 4 M.L.T. 432 = 1 Ind. Cas. 910 (911); *R.*, 1 L.B.R. 60.]

(4397)—*S.* 497—*Bail—Grant of—Non-bailable case—S* 497, *Crim. Pro. Code, to be followed—High Court not bound by the section—Duty to follow general law—Statements made to the Police by accused—Admissibility in evidence.*—The question of releasing an accused person on bail must be decided in accordance with what the legislature has enacted in s. 497, Crim. Pro. Code, until that section is altered by the legislature. It is no doubt the case that a High Court is not limited within these bounds, and that it has absolute discretion in the matter, but the legislature having placed the initial stage of dealing with crimes with Magistrates and having in effect enacted that persons accused of non-bailable offences shall be detained in custody except when there are, in the opinion of the Magistrate dealing with the case, no reasonable grounds for believing that the accused has committed the offence charged against him, a High Court is bound to follow the general law as a rule and not to depart from it except under very special circumstances, especially so in the initial stages of the case. No self-incriminating statements made by an accused to a Police officer, such as contradictory statements must tend to be, can be proved against an accused person at his trial. G. W. HENDERSON v. KING-EMPEROR, **6 L B.R. 172 = 19 Ind. Cas. 171 = 14 Cr.L J. 171 = 6 Bur. L.T. 73.**

(4398)—S. 497—*See* TRANSFER OF CRIMINAL CASES, Cr. Rg. 34 of 1896.

(4399)—S 497—*See* Nos. 1673, 4057, *supra and* No. 4409, 4657, *infra.*

(4400)—*Ss.* 497, 498 (= *Crim. Pro. Code*, 1882, *ss.* 497, 498) — *Bail in non-bailable offences.*—S 498 is not controlled by s. 407, and it is open to the High Court to admit a person charged with a non-bailable offence to bail, for good and sufficient cause; the rule, however, is that in respect of a non-bailable offence, bail is not to be taken, except in special circumstances. *In re* KAMA RAJA PANDIA NAICK, ZAMINDAR OF BODINAIKANUR, **2 Weir 657, F.B.**

(4401)—*Ss.* 497, 498—*When accused may be admitted to bail—Powers of High Court and other Courts—Confession of co-accused implicating himself and other applicants for bail—Confession materially corroborated as to the applicants—Right to bail.*—Where one of the accused who was captured at the time of the offence made a long confession implicating himself and the other persons who applied for bail before the High Court, and the confession has been materially corroborated as to the applicants by other evidence taken at the preliminary enquiry, *held* that bail should not be given. The rule laid down in s. 497, Crim. Pro. Code, for the guidance of Courts other than the High Court is a rule founded upon justice and equity and one which should be followed by the High Court as well as by every other Court unless anything appears to the contrary. The extended powers given to the High Court under s. 498 are certainly not to be used to get rid of this very reasonable and proper provisions of the law. ASHRAF ALI v. EMPEROR, **42 C. 25 = 16 Cr. L.J. 215 = 27 Ind. Cas. 839.**

(4402)—*Ss.* 497 *and* 498—*Bail—Re-arrest of accused persons who are granted bail—Under what sections it would be legal—Effect of setting aside an illegal order for such re-arrest.*—A District Magistrate ordered the re-arrest of the applicants who were accused of an offence under s. 304, Penal Code, and had been released on bail by the Sub Divisional Magistrate: *Held*, that such an order was illegal and must be set aside. The District Magistrate's order having been set aside, the applicants, by virtue of the Sub-Divisional Magistrate's previous order, must be released on bail as before, and there will be no reason for them to apply under s. 497 or s. 498, Crim. Pro. Code, that they be so released. MAUNG BA CHIT v. EMPEROR, **12 Cr. L.J. 244 = 10 Ind. Cas. 774.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(4403)—*Ss.* 497, 499, 514—*Powers of officer in charge of Police station when taking action under s.* 497—*Forfeiture of bond—Liability of surety.*—The wordings of ss. 499 and 514. Crim. Pro. Code, make it clear that a Police officer in charge of a Police station, when taking action under s. 497, has power to make it a condition of the bond that the accused person shall attend before the Police at the time and place mentioned in the bond, and that, if he fails to so attend, and a Magistrate of the First Class is satisfied that the bond has been forfeited, any person bound by the bond can be called upon to pay the penalty thereof. CROWN v. KANSAI RAM, **22 P.R. 1913, Cr. = 14 Cr. L.J. 631 = 6 P.L.R. 1914 = 6 P.W.R. 1914, Cr. = 21 Ind. Cas. 679.** (11 C. 77, *R.*)

——**S. 498 (= 1882, s. 498; 1872, ss. 390, 508; 1861, s. 436).**

(4404)—*S.* 498 (= *Crim. Pro. Code, Act* X *of* 1872, *s.* 390)—*Powers of Sessions Court—Bail—Non-bailable offence.*—A Court of Session has power under s. 390 of the Crim. Pro. Code, to admit to bail, before conviction, a person committed for trial for a non-bailable offence, whether the offence be triable by itself or by any Magistrate. EMPRESS v. GULAM MOHI-UDDIN, **A.W.N. 1882, 234, F B.**

(4405)—*S.* 498 (= *Crim. Pro. Code,* 1872, *s.* 508).—The order of a Sessions Court fixing a period of detention under the above section for an accused party refusing to furnish security was held not to be appealable. QUEEN v. ROGHOO DOME, **24 W R. Cr. 12.**

(4406)—*S.* 498—*Bail—Accused tried by elders under Sind Frontier Regulation* III *of* 1892, *s.* 8—*High Court's power to grant bail—Absence of—Non-applicability—Sind Frontier Regulations* V *of* 1872 *and* III *of* 1892—*Not controlled by Crim. Pro. Code.*—No application for revision under s. 498, Crim. Pro. Code, lies to the High Court in respect of proceedings under the Sind Frontier Regulation. An application for bail on behalf of an accused who is being tried by a Jirgah or Council of Elders under s. 8, Sind Frontier Regulation (III of 1892) does not lie under s. 498, Crim. Pro Code, to the High Court. The provisions of the Code of Criminal Procedure cannot be invoked to control those of the Regulation. IMPERATOR v. GHULAM KADIR *wd* FAIZ MAHOMED, **5 S.L.R. 105 = 12 Cr. L J 568 = 12 Ind. Cas. 656.** [*R.*, 7 S.L.R. 194.]

(4407)—S. 498—*See* ACT XIV OF 1908, s. 14 (1), 14 C.W.N. 516 = 37 C. 439.

(4408)—S. 498—*See* Nos. 737, 2191, 4400, 4401, 4402, *supra.*

(4409)—Ss. 498, 497—*See* ACT XIV OF 1908, ss. 12, 14 (1), 14 C.W.N. 512 = 37 C. 412.

——**S. 499 (= 1882, s. 499; 1872, s. 391; 1861, s. 274).**

(4410)—*S.* 499—*Failure to attend Court in pursuance of a verbal order—Forfeiture of bail-bond.*—By the terms of a bail-bond, the defendant bound himself to appear "on the first inquiry or at other times required." He appeared on the first day of the inquiry and was verbally directed to appear on a subsequent date, but failed to do so. *Held*, that the amount secured by the bond could be legally forfeited by reason of such non-attendance. *In re* HASLAVARAM SUBBA REDDI, **2 Weir, 658.**

(4411)—S. 499—*See* No. 4403, *supra.*

——**S. 502 = (1882, s. 502; 1872, s. 395; 1861, s 218).**

(4412)—S. 502—*See* SURETY, 9 Bom. L.R. 1285 = 6 Cr. L.J. 385.

——**S. 503, paras 1 to 3 (= 1882, s. 503; 1872, s. 330, paras 1 and 2) and para 4, new.**

(4413)—*S.* 503 (= *Crim. Pro. Code, Act* X *of* 1882, *s.* 503)—*Resident of Gwalior—Applicability.*—The British Resident at Gwalior is a person to whom the provisions of s. 503 of the Crim. Pro. Code applies, and he should personally execute the commission without delegating the work to some other person. QUEEN-EMPRESS v. N. MAHPAL SINGH, **A.W.N. 1896, 106.**

(4414)—*S.* 503 (= *Crim. Pro. Code,* 1882, *s.* 503)—*Examination of* ghosha *woman.*—S. 503 allows the examination of a *ghosha* woman, who appears as a witness in a case, on commission. *In re* SYED TURUBHDDIN SAHIB, **2 Weir 659.**

(4415)—*S.* 503 (= *Crim Pro. Code,* 1882, *s.* 503)—Pardahnashin *woman—Application for examination by commission, grounds for granting.*—An application under s. 503, by a *pardahnashin* woman summoned as a witness in a Presidency Magistrate's Court, to be examined by commission on the ground that her appearance in the Court would cause degradation to her was allowed on the grounds that she lived near the Court-house, that she had volunteered to pay the expenses of the commission, and that the opposite party did not require her personal attendance. But the Court objected to the word "degradation" used in the petition. [*R.*, 9 A.W.N. 202 = 12 A. 69, 2 Weir 659, 169 P.L. R. 1903 = 19 P.R. 1903, Cr.; *Expl.*, 24 C. 551.] Applications for examination by commission have been granted under s. 503, on the principle that, in matters of procedure, the customs and habits of the people should be taken into consideration. *In the matter of the petition of* DIN TARINI DEBI, **15 C. 775.**

(4416)—S. 503—*See* EVIDENCE—GENERAL, 7 C.W.N. 635.

(4417)—Ch. XL, s. 503—*See* EVIDENCE ACT, 1872, s. 33, 19 B. 749.

(4418)—S. 503—*See* WITNESS—MISCELLANEOUS CASES, 4 Ind. Cas. 400.

(4419)—S. 503 (1,2,3)—*See* EVIDENCE ACT, 1872, s. 33, 6 A. 224 = A.W.N. 1884, 55.

(4420)—S. 503—*See* Nos. 1727, 1902, 1975, 4058, *supra.*

(4421)—Ss. 503 to 507—*See* COMMISSION, 24 C. 551 = 1 C.W.N. 333.

Crim. Pro. Code (Act V of 1898)—*continued.*

(4422)—*Ss.* 503, 505 (=*Crim. Pro. Code*, 1872, *s.* 330)—*Examination of witnesses by commission.*—Although *pardahnashin* women are not of right exempted from personal attendance at Court, the word "inconvenience" in s. 330, Crim. Pro. Code, empowers the Courts to allow examination by commission in criminal cases, where a witness, according to the customs and manners of the country, ought not to be compelled to appear in public. Where the *pardahnashin* woman concerned was not merely a witness, but was the complainant in a case of defamation, *held*, that fact materially altered her position as regards the question whether she should be exempted from personal appearance, and as she, avoiding her civil remedy, set the criminal law in motion, the accused had a right and privilege to have her evidence taken in his presence in such Court. The Magistrate was, however, directed to make such arrangements as may enable her to remain in the Court house and strictly preserve her privacy and subject her to the least inconvenience or annoyance, for the purpose of recording her evidence according to law, in the presence of the accused after identification, by some approved female witnesses. *In the matter of the petition of* FARID-UN-NISSA, **5 A. 92 = A.W.N. 1882, 184.** [*F.*, 12 A. 69 = 9 A.W.N. 202; *R.*, 24 C. 551, 168 P.L.R. 1903 = 19 P.R. 1903, Cr.]

(4423)—Ss. 503, 506—*See* WITNESS—EXAMINATION OF WITNESSES, 2 S.L.R. 8, Cr. = 10 Cr. L.J. 211.

(4424)—Ss. 503 and 506—*See* WITNESS—MISCELLANEOUS CASES, 2 S.L.R. 8, Cr = 10 Cr. L.J. 211.

(4425)—Ss. 503 (1, 2, 3), 507 (1)—*See* COMMISSION, 19 C. 113.

——S. 504 (=1882, s. 504).

(4426)—S. 504—*See* No. 4421, *supra.*

——S. 505 (=1882, s. 505; 1872, s. 330, para 4).

(4427)—S. 505—*See* Nos. 4421, 4422, *supra.*

——S. 506 (=1882, s. 506; 1872, s. 330, para 5).

(4428)—S. 506—*See* PARDANASHIN WOMAN, 9 Cr. L.J. 249 = 1 S.L.R. 5, Cr.

(4429)—S. 506—*See* Nos. 4421, 4423, 4424, *supra.*

——S. 507, para 1 (=1882, s. 507).

(4430)—S. 507—*See* Nos. 4421, 4425, *supra.*

——S. 509 (=1882, s. 509; 1872, s. 323; 1861, s. 368).

(4431)—*S.* 509—*Deposition of medical witness.*—S. 509 does not require that to render the evidence of a medical witness admissible at the trial before the Court of Sessions it should be recorded by the Magistrate who is making the inquiry into the case, but permits expressly the deposition of a medical witness taken and attested by any Magistrate in the presence of the accused to be given in evidence in any inquiry, trial or other proceeding. QUEEN-EMPRESS v. DURGA, **A.W.N. 1893, 180.**

(4432)—S. 509—*See* EVIDENCE—MEDICAL EVIDENCE, 8 C. 739 = 12 C.L.R. 233, 9 C. 455 = 11 C.L.R. 569.

(4433)—S. 509—*See* EVIDENCE ACT, 1872, s. 80, 10 A. 174 = A.W.N 1888, 11.

(4434)—S. 509—*See* EVIDENCE ACT, 1872, ss. 80 and 114, ill. (*e*), 18 C. 129.

(4435)—S. 509—*See* EVIDENCE ACT, 1872, s. 114, ill. (*e*), 9 A. 720 = A.W.N. 1887, 228.

(4436)—Ss. 509, 512 (1)—*See* WITNESS—EXAMINATION OF WITNESSES, Rat. Un. Cr. C. 81.

——S. 510 (=1882, s. 510; 1872, s. 325; 1861, s. 370).

(4437)—*S.* 510 (=*Crim. Pro. Code*, 1861, *s.* 370)—*Chemical Examiner's report.*—The report of a Chemical Examiner is evidence in a criminal trial, if it bear the signature of the Examiner. The original should be produced. QUEEN v. BISWAMBHAR DAS, **6 B L R. App. 122 = 15 W.R. Cr. 49.**

(4438)—*S.* 510 (=*Crim. Pro. Code*, 1882, *s.* 510)—*Report of Chemical Examiner, when admissible in evidence.*—In order that the report of the Chemical Examiner or of the Assistant Chemical Examiner may be used as evidence under s. 510, it must purport to be signed by the officer or officers who detected the poison and who, from personal knowledge, could certify to the correctness of the results embodied in it. *In re* VENKATASAWMI ACHARI *alias* CHINNASAWMI ACHARI, **2 Weir 661.**

——S. 511 (=1882, s. 511; 1872, ss. 326, 515, last clause).

(4439)—*S.* 511 (=*Crim. Pro. Code*, 1882, *s.* 511 (*a*).)—Certified extracts from the punishment register are not sufficient to prove previous convictions. They are not admissible under s. 511 of the Code, nor is there any express provision of law outside that section making them admissible. The certified extract contemplated by cl. (*a*) of s. 511 is "a copy of the sentence or order." EMPRESS v. MUSSAMMAT GOONGEE, **11 C.P.L.R. Cr. 5.**

(4440)—S. 511—*See* FINGER IMPRESSIONS, 3 N.L.R. 1 = 5 Cr. L.J. 220.

(4441)—S. 511—*See* PREVIOUS CONVICTION, 2 L.B.R. 53.

(4442)—S. 511—*See* Nos. 2242, 2977, 3114, *supra.*

——S. 512, para 1 (=1882, s. 512; 1872, s. 327).

(4443)—*S.* 512—*Absconding of accused—Duty of Magistrate to record evidence.*—It is not open to a Magistrate to decline to call for the documents desired by the complainant or to record any evidence on his behalf, on the ground that

Crim. Pro. Code (Act V of 1898)—*continued.*

the accused had absconded and no enquiry was being then conducted; he is bound in such a case by the provisions of s. 512, Crim. Pro. Code. *In re* WASUDEO, **2 Bom. L.R. 707.**

(4444)—*S.* 512—*Preliminary conditions for admissibility of deposition purporting to have been recorded under above section.*—Before a deposition recorded under s 512, Crim. Pro. Code, can be admitted in evidence, it must be proved that the deponent is dead, or incapable of giving evidence, or that his attendance cannot be procured without an amount of delay, expense or inconvenience, which, under the circumstances of the case, would be unreasonable. NGA KYAW ZIN v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 114.**

(4445)—*S* 512 (=*Crim. Pro. Code*, 1882, s. 512)—*Recording evidence in the absence of accused.*—In a case where it is proved that an accused person has absconded, evidence can be recorded against him, under s. 512, in his absence, only if the fact of absconding is alleged, tried and established, before the deposition is recorded. GHURBIN BIND v. QUEEN-EMPRESS, **10 C. 1097.**

(4446)—*S.* 512 (=*Crim. Pro. Code*, 1882, s. 512)—*Applicability of section—Evidence Act, s. 33—Punjab Laws Act, s. 39.*—An accused person was tried for murder, which took place in 1861; the statement of certain persons, since dead, recorded in 1861 by a Magistrate, as well as the evidence now given by two witnesses, which statements were also recorded in 1861, were tendered in evidence. *Held*, that the charge should be under the Penal Code, and not under the Punjab Penal Code, as s. 39, Punjab Laws Act, make the provisions of the Penal Code, excepting Ch. VI, applicable to offences committed before the 1st January, 1862. *Held*, further, that the statements recorded in 1861, were inadmissible under s. 512, Crim. Pro. Code, as the provisions of the section are not to be found in the Punjab Penal Code. The statement could not be used as evidence, under s. 33, Evidence Act, as all the defendants were not examined on oath or affirmation, and as the accused had not the opportunity of cross-examining the witnesses. SADU v. EMPRESS, **26 P.R. 1885, Cr.** [*R.*, 2 P.R. 1886, Cr.]

(4447)—*S.* 512—*Evidence Act, s.* 145—*Statements previously made by witness and recorded in the absence of accused—Admissibility—Penal Code, s.* 302—*Murder—Killing by repeated blows—Husband murdering wife on suspicion of misconduct—Punishment—Transportation.*—Statements previously made by a witness to Magistrates, and recorded in the absence of the accused, cannot be treated as evidence in the Sessions Court, if the witness is living and can be procured. S. 512 of the Crim. Pro. Code, will apply only where the witness is dead or cannot be procured. Although s. 145 of the Evidence Act admits of previous statements being referred to, for purposes of cross-examination, it does not authorise a Court to treat such statements as evidence against an accused. The fact that a person is killed with repeated blows conclusively negatives the plea that there was no intention to kill the deceased or that the deceased was killed by her mistake. A murdered his wife. He alleged that he caught her in the act of adultery with one S whom only he intended to kill. From the evidence it appeared that there was doubt about the immediate circumstances under which the crime was committed and that there was indication of misconduct on the part of the deceased wife: *Held*, that, although the accused should be convicted of murder, the Court was justified in the circumstances in not imposing the capital sentence. RAKHIA v. EMPEROR, **157 P.L.R. 1911=10 Ind. Cas. 119=12 Cr. L.J. 214.**

(4448)—S. 512—*See* ABSCONDING OFFENDER, 21 P.R. 1883, Cr.

(4449)—S. 512—*See* Nos. 413, 426, 4436, *supra.*

——**S. 513 (=1882, s. 513; 1872. s. 399; 1861, s. 437).**

(4450)—S. 513—*See* ACT IX OF 1872, ss. 23, 24, 10 Bom. L R, 553.

(4451)—S. 513—*See* No. 643, *supra.*

——**S. 514, paras 1 to 5 (=1882, s 514; 1872, ss. 396, 397, 398, paras 1 and 2; 502, paras 1 to 5 and 7, 503, 514; 1861, ss. 219, 220, 221, 293, 294, 305).**

(4452)—*S.* 514—*Procedure to be followed for forfeiture of bail bond—Practice.*—This section requires that an order escheating the bail bond shall be made upon evidence duly recorded in the case and not upon evidence taken in other cases. In this case, the applicant was surety for an accused and executed a bail bond in a preliminary enquiry before a police officer for the attendance of the accused at the Magistrate's Court on a certain date. On the date fixed, the accused attended the Court, but found it closed. The next day the case was called, but the accused was not present; whereupon the Magistrate summoned the applicant, and, without hearing any evidence, referred to a statement made by the Superintendent of Police in a former case and summarily ordered the applicant to pay the penalty entered in the bond. *Held*, that the Magistrate's procedure was wrong. Also in this case, the Chief Court, considering the loss of time and the expense that the applicant had been put to in these proceedings, and also the fact that the accused person, for whom he was surety, was produced in Court and duly tried, *held* that it was unnecessary to return the case for further enquiry. Consequently the Magistrate's order was set aside and the sum forfeited was directed to be refunded to the applicant. BINKOLOJEE v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 116.**

(4453)—*S.* 514 (=*Crim. Pro. Code*, 1882, s. 514)—*Construction of security bond.*—Where the security bond of a surety for the appearance of an accused person before a Magistrate does not expressly provide for the appearance of the accused on any day subsequent to a certain

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fixed date of hearing, *held* that the bond must be construed strictly and did not impose on the surety the duty of causing the attendance of the accused on any day other than the one fixed. QUEEN-EMPRESS v. JHODRAJ, **Rat. Un. Cr. C. 547 = Cr. Rg. 22 of 1891.**

(4454)—*S. 514—Bail bond—Guarantee by surety for appearance of accused—Non-appearance of accused before different Magistrate—Forfeiture of bond.*—Where a person stood as a surety for an accused person and executed a bond guaranteeing the appearance of the accused before the Deputy Magistrate before whom the case was pending, and the accused did not appear before the District Magistrate to whom the case was subsequently transferred, *held*, that there was no breach of the condition of the surety bond so as to make the surety liable to pay the penalty. SHAMSUDDIN SIRKAR v. EMPEROR, **30 C. 107 = 6 C.W.N. 885.**

(4455)—*S.* 514 (*Crim. Pro. Code*, 1861, *s.* 294)—*Imprisonment of sureties.*—S. 294 makes no provision for the sureties being imprisoned. HIGH COURT PROCEEDINGS, 20TH AUG. 1869, **4 M.H.C. App. 68.**

(4456)—*S.* 514 (=*s.* 502, *Code of* 1872)—*Liability of surety for a default made on a date other than that specified in bail-bond.*—A surety is not liable for the default made by the accused on a date subsequent to that for which he had rendered himself liable. If the accused attends on the date specified in the bail-bond, the liability of the surety ceases. HIGH COURT PROCEEDINGS, 4TH DEC. 1878, NO. 2078, **2 Weir 663.**

(4457)—*S.* 514—*Enforcement of the penalty of a bond to keep peace—Evidence Act, s.* 43.—A Magistrate proceeding to enforce the penalty of a bond entered into to keep the peace is bound to take evidence himself, and come to a conclusion on that evidence whether or not there had been a breach of the conditions of the bond, before he could take proceedings for the enforcement of the penalty. A judgment of conviction under s. 323, I.P.C., cannot be said to be legal evidence in order to prove, for the purposes of s. 514, Crim. Pro. Code, that a bond to keep the peace has been forfeited. EMPRESS v. DOMA PATEL, **9 C.P.L.R. Cr. 8.** (3 B L.R. App. 155, 12 W.R.Cr. 54, 4 C. 865, 11 B.H C.R. 170, 11 C. 77, *R.*)

(4458)—*S.* 514—*Forfeiture of recognizance to keep the peace on conviction for an offence involving breach of the peace.*—When a Magistrate deciding a case of an offence attended with violence is cognizant of the fact that the person convicted is under a recognizance to keep the peace, it is not necessary that he should proceed at once to take steps to forfeit the recognizance. A Magistrate who passes an appealable sentence on a conviction for a breach of the peace, may very well wait until the period of the appeal has expired, or, if an appeal is filed, till it is decided, before he proceeds to take action under s. 514. EMPEROR v. RAJA RAM, **26 A. 202 = A.W.N. 1903, 237.** (1 C.L.R. 134, 3 C.L.R. 406. [*Diss.*, 14 Cr. L.J. 67 = 18 Ind. Cas. 403 = 39 P.L.R. 1913 = 13 P.R. 1913, Cr. = 7 P.W.R. 1913, Cr.]

(4459)—*S.* 514—*Security bond, forfeiture of.*—One W.S. was ordered to show cause why he should not be required to give security for good behaviour under s. 110 of the Crim. Pro. Code, and the order was made absolute. N. S. and J. S. offered themselves as sureties who, along with W. S., executed a bond by which they bound themselves to pay a certain sum as penalty, if W. S. should commit a breach of the peace or do any act likely to cause a breach of the peace. A form of a bond under s. 107 was by mistake substituted for the form under s. 110. W. S. having been convicted of an offence under s. 430 of the Indian Penal Code for having cut the bank of a canal distributary, which watered a village below his village, the Magistrate passed an order forfeiting the bond executed by W. S., and the sureties. It was contended on revision, (1) that the bond was void, the proceedings having been under s. 110 of the Crim. Pro. Code and W.S., not having been called to show cause under s. 107; (2) that no breach of the peace or act likely to cause a breach of the peace was established; (3) that inasmuch as the Magistrate who convicted W.S., under s. 430 of the Indian Penal Code did not order forfeiture as part of the proceedings in that case, the subsequent proceedings were bad, and (4) that, as against the sureties, the judgment was not conclusive and that evidence should have been adduced in the forfeiture proceedings that the security had been forfeited. *Held*, (1) that the bond executed by W.S. was bad in law, for, the order was that he should be bound over under s. 110, and that the order forfeiting the security furnished by him must be set aside. As the sureties had agreed to comply with the terms of the bond, which was bad in law, the order passed against them was also bad; (2) that, in cutting the bank of the canal distributary, W.S. did an act likely to cause a breach of the peace; (3) that the convicting Magistrate anticipated the forfeiture of the security as a result of the conviction, and no great delay had taken place after the conviction before the order of forfeiture was passed, and (4) that the production of the judgment of conviction, and, if necessary, proof of identity, were sufficient in such cases for the issue of a notice under s. 514 of the Crim. Pro. Code and that it was for the surety to show cause against the forfeiture. WADHAWA SINGH v. EMPEROR, **15 P.L.R. 1904 = 32 P.R. 1903, Cr.** (25 C. 440, *N.F.*)

(4460)—*S.* 514—*Recognizance to keep the peace, liability of, to forfeiture.*—A certain person was bound over to keep the peace or not to do any act which would cause a breach of the peace. He, however, committed an offence of abduction within the period covered by his bond. The question for decision was whether the bond was liable to forfeiture. *Held*, that the bond was not liable to forfeiture, the

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possible consequence of the offence committed being too remote to render the offender liable to forfeit his bond. MUHAMMAD v. EMPEROR, **7 P R. 1906, Cr. =4 Cr. L.J. 278=139 P.L.R. 1906** [*R.*, 22 P.R. 1914, Cr.]

(4461)—*S.* 514—*Imprisonment, when accused is already under recognizance—Forfeiture of recognizance.*—Where a Magistrate has inflicted a sentence of imprisonment with the knowledge that the accused is under a recognizance to keep the peace and has abstained from making any order for the forfeiture of the bond, *held*, that he could not, at a subsequent period, order the forfeiture of the bond. GULKHAN v. EMPEROR, **26 P.R. 1904, Cr.** (3 C.L.R. 406, *F.*) [*F.*, 13 P.R. 1913, Cr.=7 P.W.R. 1913, Cr.=39 P.L.R. 1913=18 Ind. Cas. 403=14 Cr. L.J. 67].

(4462)—*S.* 514—*Past enforcement of penalty—Effect.*—When the penalty of a bond is only partly enforced under this section, part of the penalty being remitted, neither the principal nor the sureties are subject to further liability on the bond. QUEEN-EMPRESS v. NGA HLA, **U.B.R. 1897-1901, Vol. I, 117.** (U.B.R. 1897-1901. Vol. I, 26, *R.*) [*R*, 14 Cr. L.J. 430=20 Ind. Cas. 414, U.B.R. 1913, I Qr., 159.]

(4463)—*S.* 514—*Only one penalty of a bond—Accused and sureties not to be bound in several sums.*—There cannot be more than one penalty of a bond. The accused and his sureties are not to be bound in several sums. KING EMPEROR v. NGA SHWE DAUNG, **U.B.R. 1897-1901, Vol. I. 119.** (U.B.R. 1897-1901, Vol. I, 26, *F.*) [*Relied on*, 13 Cr. L.J. 62=13 Ind. Cas. 398=4 Bur. L T. 270.]

(4464)—*S.* 514—*Surety bond, forfeiture of—Individual and joint liability of prinicpal and sureties—Procedure.*—Where a person enters into a bond for a certain sum to be paid to the Government if he should, within a certain period, commit the criminal offence, and two persons subscribe an undertaking to be sureties for him, the proper procedure for the Magistrate who intends to confiscate the bond is to call upon the Government or its representatives before him to declare against which of the persons liable it elects to proceed and for what amount, and to pass orders accordingly. In no case can an amount in excess of the amount secured by the bond be demanded or recovered from the person bound or his sureties individually or collectively. The record of the conviction of the principal is sufficient evidence even against the surety, and it is not necessary for Government to prove over against the factum of the conviction of the principal, to render the surety liable for the amount of the forfeited security. ALI MAHOMED v. EMPEROR, **12 Cr L.J. 404=226 P L. R. 1911=11 Ind. Cas. 588=35 P.W.R. 1911, Cr.** (25 C. 440, *Not F.*; 21 A. 86, *F.*)

(4465)—S. 514—*See* BAIL BOND, 36 C. 749= 10 Cr. L.J. 251=3 Ind. Cas. 188.

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(4466)—S. 514—*See* FORFEITURE OF BOND, A.W.N. 1891, 183.

(4467)—S. 514—*See* SECURITY TO KEEP THE PEACE—FORFEITURE OF SECURITY, 25 C. 440.

(4468)—S. 514—*See* SURETY, 10 Cr. L.J. 294=3 Ind. Cas. 470.

(4469)—S. 514 (1 to 5)—*See* MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, Rat. Un. Cr. C. 20=Cr. Rg. 6—9—1869.

(4470)—S. 514(1 to 5)—*See* SECURITY BOND, 11 C. 77.

(4471) — S. 514 (1 to 5)—*See* SECURITY TO KEEP THE PEACE — FORFEITURE OF SECURITY, 2 P.R. 1883, Cr., 12 P.R. 1871, Cr.

(4472)—S. 514—*See* Nos. 581, 607, 608, 718, 719, 738, 739, 740, 764, 819, 2603, 3746, 3810, 4403, *supra.*

(4473)—Ss. 514 (1 to 5), 515—*See* APPEAL—GENERAL, Rat. Un. Cr. C. 384=Cr. Rg. 35 of 1888.

(4474)—*S.* 514 *and sch* V, *Form* 10—*Bond to keep the peace—Forfeiture—Breach of the peace to be the probable and not possible result—Attempt to poison a person—Not entailing forfeiture.*—A bond to keep the peace cannot be forfeited except on proof of the commission of an offence involving a breach of the peace and the use of the word 'probably' in Form 10, sch. V of the Crim. Pro. Code, limits forfeiture to cases in which a breach of the peace is the 'probable' and not merely the possible result of the act of the person bound over Thus a conviction for theft or for wrongful confinement and extortion or for the abduction of a woman or, as in the present case, a secret attempt to poison a person, cannot reasonably be regarded as an offence which would probably result in a breach of the peace. AHMED GUL v. CROWN, **22 P.R. 1914, Cr.=262 P.L.R. 1914=15 Cr. L.J. 605=25 Ind. Cas. 517=47 P.W.R. 1914, Cr.** (18 W.R. Cr. 63, 19 W.R. Cr. 48, 7 P.R. Cr. 1906, *R.*)

(4475)—*Ss.* 514, 106 (=*Crim. Pro. Code*, 1882, *ss.* 514 *and* 106)—*Surety—Liability of representative of deceased surety.*—The words "persons bound" in s. 514, Crim. Pro. Code, 1882, do not include the representative of a deceased surety who had bound himself under s. 106. GULAB SHAH v. EMPRESS, **22 P.R. 1894, Cr.**

(4476)—*Ss.* 514, 107—*Failure to take action under s.* 514 *against person forfeiting recognizance to keep the peace, whether bar to fresh proceedings against him subsequently.*—The fact that no immediate action under s. 514, Crim. Pro. Code, is taken against a person under a recognizance to keep the peace or against his surety, on the conviction of the former of an offence involving a breach of the peace, does not bar the taking of such proceedings at a subsequent time, as for example, after the appeal time has expired, or, after an appeal by the principal has been dismissed. EMPEROR v. RAJA RAM, **A.W.N. 1903, 237=26 A. 202.** (1 C.L.R. 134, 3 C.L.R. 406, *Diss.*)

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(4477)—*Ss.* 514, 110—*Surety for appearance 'up to the conclusion of the case'—Failure to appear—Forfeiture of security bond.*—Petitioner stood surety for the appearance in Court, up to the conclusion of the case, of a man who had been called upon under s. 110, Crim. Pro. Code, to furnish security for good behaviour. The Court found the case proved against that man and he was directed to produce his sureties, but he failed to appear. Thereupon the Court ordered forfeiture of the petitioner's bond. *Held*, the order as to forfeiture was correct, as the case was not complete, and the Magistrate's duties in connection therewith were not at an end, until the culprit had appeared with his sureties and executed his bond. It cannot be said that the petitioner's liability ceased when the Court held that the case was proved. ABDUL KARIM v. CROWN, **32 P.R. 1914, Cr. = 16 Cr. L.J. 74 = 26 Ind. Cas. 666.**

(4478)—Ss. 514, 515—*See* SECURITY FOR GOOD BEHAVIOUR, 15 P.R. 1905, Cr. = 2 Cr. L.J. 131.

(4479)—*Ss.* 514 *and* 516—*Surety bond to produce accused before Sessions Court—Proceeding for forfeiture if may be taken by a Magistrate—Delegation of power—Validity.*—Where a surety bond has been executed for the appearance of an accused person before a particular Court under s. 514 of the Crim. Pro. Code, proceedings to have the bond forfeited can be initiated only by that Court. S. 516 of the Code does not authorise the delegation of power to initiate forfeiture proceeding. It is only concerned with the power to direct levy of the amount due on a forfeited bond. HIRA LAL SHAHU v. EMPEROR, **14 C.W.N. 259 = 3 Ind. Cas. 113 = 10 Cr. L.J. 248.**

(4480)—Ss. 514 and 516—*See* SECURITY BOND, 10 Cr. L.J. 248 = 3 Ind. Cas. 113.

(4481)—*Ss.* 514, 529, 531—*Bond for appearance—Forfeiture of bond for non-appearance—Jurisdiction of Court to order forfeiture—Illegality—Irregularity.*—A personal recognizance to appear was taken from the accused by the Magistrate at Karjat. The accused having failed to appear on the day fixed for hearing, the Magistrate at Karjat issued a notice to the accused under s. 514 of the Crim. Pro. Code, to show cause why the recognizance bond should not be forfeited. In the meanwhile, the accused was transferred to the Court of the Magistrate at Khalapur, who forfeited the bond and directed the accused to pay Rs 25. The accused applied to the High Court :—*Held*, that the Magistrate at Khalapur had no jurisdiction to make the order under s. 514, as he was not the Magistrate who had taken the bond or before whom the accused had to appear on the date of the default. S. 531 of the Crim. Pro. Code relates only to proceedings in a wrong place and cures defects as to local jurisdiction. *In re* MIR HUSEN ABDUL RAHMAN, **16 Bom. L.R. 84 = 2 Bom. Cr. C. 183 = 15 Cr. L. J. 295 = 23 Ind. Cas. 503.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(4482)—*Ss.* 514, 545 (= *Crim. Pro. Code*, 1882, ss. 544, 545)—*Provisions of s.* 545, *applicability of, to sums realized under s.* 514.—The provisions for the payment of expenses or compensation under the above s. (545), do not apply to sums realized by forfeiture of the bonds under s 514, Crim. Pro. Code. QUEEN-EMPRESS v. NGA LU MAUNG, **L B R. 1872-1892, 412.**

——S. 515 (= 1882, s. 515 ; 1872, s. 398, penult para).

(4483) *S.* 515 -*Powers of District Magistrate revision.*—The above section says that all orders passed under the section by any Magistrate, other than a Presidency Magistrate or District Magistrate, may be revised by the District Magistrate. Therefore, the District Magistrate has the widest powers of revision and can deal with any order passed by another Magistrate under s. 514, whatever it may be. But, in revising an order, the District Magistrate should give notice to the person likely to be affected prejudicially before altering it against him. QUEEN-EMPRESS v. NGA TE, **U.B R. 1892-1896, Vol. I, 75.**

(4484)—S. 515—*See* Nos. 608, 819, 4048, 4473, 4478, *supra.*

——S. 516 (= 1882, s. 516 ; 1872, s. 398, last para).

(4485)—S. 516—*See* No. 4479, *supra.*

——S 517 (1882, s. 517 ; 1872, s. 418 ; 1861, s. 132-A).

See CONFISCATION.

(4486)—*S.* 517 (= *Crim. Pro. Code*, 1872, s. 418)—*Scope of.*—S. 418 merely authorises Magistrate to declare the ownership of property which is the object of an offence. HIGH COURT PROCEEDINGS, 13TH FEBRUARY 1874, NO. 329, **2 Weir 665.**

(4487)—*S.* 517—*Scope of*—S. 418 does not place the property at the disposal of the Magistrate in the sense of enabling him to bestow it in charity. He is to make such legal disposition thereof as seems right, *i.e.*, to direct its restoration to some one to whom it seems to belong, or permit it to continue in the possession in which it is found or otherwise. HIGH COURT PROCEEDINGS, 20TH JULY 1875, NO. 1498, **2 Weir 666.**

(4488)—*S.* 517—*Object of.*—The object of the section is to enable a Magistrate to direct property to be given to some person to whom it appears to belong, or to allow it to continue in the possession of the person in whose possession it was found, or to make some order of that character. LAKSHMI NARAYAN DUTT v. INSPECTOR UREAGAN, **9 C W.N. 597 = 2 Cr. L.J. 273.** [*F.*, 2 Ind. Cas. 233 = 5 N.L R. 59 = 9 Cr. L.J. 539.]

(4489)—*S.* 517 (= *s.* 517, *Code of* 1882)—*Essential for an order under the section.*—An order under s. 517 may be passed, even though

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there has been no conviction or offence proved, in which the property produced has been used. A Court before which an offence is tried has the power to make orders respecting properties produced before it, if it appears that any offence has been committed, irrespective of the charge or the result of it. MUDALI CHETTY v. VODDA PERIA RANGAN, **2 Weir 666.**

(4490)—*S.517—Order restraining the honouring of a Hundi.*—A Magistrate has no power to direct that a particular firm should not honour a hundi drawn on it, on suspicion that the parties to the hundi had been guilty of some offence. BYAS HARDEO DAS v. KING-EMPEROR, **1 A.L.J. 607.**

(4491)—*S. 517—Order of confiscation of boats.*—A boat cannot be regarded as an instrument for the commission of an offence such as is contemplated in s. 517. JARIP GAZI v. EMPEROR, **8 C.W.N. 887=1 Cr.L.J. 849.** [*F.*, 24 M.L.J. 1=14 M.L.T. 431=1913 M.W.N. 851 =18 Ind. Cas. 171= 14 Cr. L.J. 27, 6 Cr. L.J. 411; *R.*, 34 C. 986=11 C.W.N. 1046.]

(4492)—*S. 517—Order regarding custody of minor children.*—A Magistrate cannot, under s. 517, Crim. Pro. Code, make an order regarding the custody of minor children, inasmuch as children are not "property." *In re* THOWKA RAMALAKSHMI, **1 Weir 348=2 Weir 665.**

(4493)—*S. 517—Order regarding property, the subject of theft—Discharge of accused.*—An order of a Magistrate directing that the money obtained by the Police from the persons to whom the same had been lent by the thief, should be paid over to the complainant, is authorized by the terms of s. 517. BOYA TAKIRUGADU v. CHATAKONDA SIVAYYA, **2 Weir 440=2 Weir 670.**

(4494)—*S.* 517.—Where a person accused of theft has been discharged, the proper order for a Magistrate to pass with regard to the property produced before him in connection with the case, is to direct its return to the person from whose custody it was taken. VADALAPATTA SUBBAYYA v. PONNANGY NARASAYYA, **2 Weir 673.**

(4495)—*S.* 517.—On the discharge of an accused, an order for the disposal of the property produced before the Court must only give it back to the person from whose possession it came. SAON GOUD v. SHEONANDAN LAL, **14 C.P.L.R. Cr. 60.** (17 B. 748, 22 B. 844, 1 C.W.N. 561, *R.*)

(4496)—*S.* 517 (=*Crim. Pro. Code,* 1882, s. 517).—A Criminal Court has no power to make an order respecting the disposal of property, unless it finds that an offence appears to have been committed regarding it or that it has been used for the commission of an offence. When the Court arrives at neither of these findings, the property should ordinarily be delivered to the person by whom it has been produced and, if it is produced by the police, it should ordinarily be returned by the police to the person out of whose possession they have taken it. If, however, there exists a *bona fide* doubt as to the ownership and a person other than the person from whose possession the property is taken makes a claim for it, a Magistrate may impose conditions on the person to whom it is delivered in order that it or its value may be forthcoming, in case the rival claimant establishes a title *In re* SYED MOHIDIN SAHIB, **2 Weir 667.** [*F.*, 2 Weir 668.]

(4497)—*S.* 517.—When no offence has been committed regarding property produced before a Court, it should be returned to the person from whom it has been taken, after taking security from him for its production, when required. *In re* SUBBARAYADU, **2 Weir 668.**

(4498)—*S. 517—Suit to recover money made over wrongly by Magistrate—Provincial Small Cause Courts Act, sch.* II—*Civ. Pro. Code,* 1882, *s.* 586—*Appeal.*—A suit brought to recover money said to have been taken by the police as stolen property from a person suspected of having committed an offence and not returned to him after he had been acquitted of the charge brought against him, but made over wrongly to another person, by order of the Magistrate, presumably under the provisions of s. 517, Crim. Pro. Code, is a suit of the nature cognizable by the Court of Small Causes, and, where the amount claimed does not exceed Rs. 500, no second appeal would lie. MOTI LAL GHOSE v. SECRETARY OF STATE FOR INDIA, **9 C.W.N. 495=1 C.L.J. 355.**

(4499)—*S.* 517 (=s. 517 *of the Code of* 1882) —*Counterfeit coin in possession of a person convicted under s.* 241, *I.P.C.—Disposal.*—A coin which is beyond doubt counterfeit, ought not to be restored to the possession of a person convicted of having passed another like counterfeit coin, merely because it has not been proved that he has attempted to deliver it. The only proper course is to destroy it. *In re* AIYAVAIYAN, **2 Weir 669.**

(4500)—*S.* 517 (=*Crim. Pro. Code,* 1872, s. 418)— *Production of sample, effect of.*—When a portion of an article in bulk is produced and received in evidence as a sample of the bulk, the whole bulk is to be taken to have been produced before the Court within the meaning of s. 418. HIGH COURT PROCEEDINGS, 1ST APRIL 1880, NO. 573, **2 Weir 670.**

(4501)—*S. 517—Exhibits in Criminal cases, return of.*—Property exhibited in criminal case (excepting live-stock and property subject to speedy and natural decay) should not be delivered to the person entitled to it, until the period allowed for the presenting an appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of. QUEEN-EMPRESS v. NGA PAN ON, **L.B.R. 1893—1900, 55.**

(4502)—*S. 517—Contract Act* (IX *of* 1872), *s.* 178, *proviso — Pawnee — Right to goods obtained fraudulently.*—M obtained the loan of a pair of diamond *nagats* worth Rs. 8,000 promising to return them the same day. He did

Crim. Pro. Code (Act V of 1898)—*continued.*

not return them, having pawned them for Rs. 4,000 to a Chetty. M was convicted of criminal breach of trust and the Chetty was directed to return the diamond *nagats* to the owner. The Chetty applied in revision for a reversal of the order, contending that the *nagats* had not been obtained by offence or fraud: *Held*, that the proviso to s. 178, Contract Act, did not apply, and the order of the Magistrate was justifiable in the circumstances of the case. PALANIAPPA CHETTY v. KO SAYE, **12 Cr. L. J. 88 = 8 Ind. Cas. 1204.** (4 L.B.R. 25, 6 Cr. L.J. 135, *D.*; 4 L.B.R. 13, *F*)

(4503)—*S. 517—Money stolen—Rule as to title passing by mere delivery—Not applicable in the absence of* bona fides—*Coins deposited with other coins—Coins ordered to be restored not identical with coins stolen.*—Where N paid a sum of money which was stolen by him to S, a prostitute, who received the same knowing it to be stolen, and S handed over a portion of the money received by her to a shroff who deposited it with other coins: *Held*, that, the rule that title to money passes by mere delivery is limited to cases where the receipt of money is *bona fide*, and that the order of the Magistrate ordering the restoration of money in the present case was proper. The objection that the coins ordered to be restored were not shown to have been the identical coins that were the subject of the theft, is covered by explanation to s. 517. SONI v. CROWN, **4 S L.R. 255 = 11 Ind. Cas. 581 = 12 Cr. L J. 397.**

(4504)—*S. 517—Currency note—Passes by delivery—Person actually entitled.*—Where a person was convicted of theft of currency notes, which he has passed by delivery to other persons, from whom the Police recovered them, the convicting Magistrate should direct that the currency notes should be returned *to the person from whom they were taken*, unless he finds that some other person is legally entitled to them. SUBRAMANIA IYER v. JAVALI ANGADI FARKUDDIN SAHIB, **1911 M.W.N. 370 = 11 Ind. Cas. 584 = 12 Cr. L.J. 400.**

(4505)—*S. 517—Jewels entrusted for sale—Price realised by their sale but not paid to owner—Misappropriation of jewels or money—Contract Act* (IX of 1872), s. 108, *Excep.* 3.—A entrusted certain jewels to B, a broker, for sale. The jewels were found with C, the appellant, who had received them in pawn from D. It transpired that B had sold them to D, who then pawned them to C: *Held*, that B did not misappropriate the jewels, but he did misappropriate the money which he received from D for them. *Held*, also, that C was protected by Excep. 3 to s. 108, Contract Act, and was entitled to have the jewels returned to him under s. 517, Crim Pro. Code. NANALAL BABU v. MAUNG TUN VAN, **12 Cr. L.J. 467 = 11 Ind. Cas. 1003.** (4 L B R 13, 6 Cr. L.J. 125, *D.*; 4 L.B.R. 25, 6 Cr. L.J. 135, *R.*)

(4506)—*S. 517—Explanation—Meaning of "conversion" and "exchange"—Decree on forged note—Sale of property—Review — Practice — Criminal Court.*—In 1906, the accused brought a false case on a forged pro-note against one Kan Gyi, obtained an *ex parte* decree and at a sale in execution of that decree purchased his garden. In 1908, the accused was convicted of forgery and perjury and was sentenced to a long term of imprisonment. The Government, being satisfied of the justness of Kan Gyi's claim to his garden, applied for revision of the criminal case against the accused and contended that the District Magistrate should have ordered the restoration of the garden to Kan Gyi under s. 517 of the Crim. Pro. Code, read with the explanations: *Held*, that the case was not covered by the explanation to s 517 of the Code, and that the Court could not look at the garden as property acquired by the conversion or exchange of the forged pro-note into a decree. The words "*conversion*" and "*exchange*" must be taken in their ordinary sense. They apply to such acts as the melting down of gold and silver ornaments and the exchange of notes for cash. To hold that, in the present circumstance, the pro-note was *converted into or exchanged* for the garden would involve an undue straining of language. The general rule is that a Criminal Court cannot review its own decisions. EMPEROR v. NGA KE MOUNG, **12 Cr. L.J. 473 = 12 Ind. Cas. 8.** (7 A. 672, 10 B. 176 14 C. 42, *R.*).

(4507)—*S. 517—Magistrate—Order for disposal of property—Ownership in the property disputed between the parties.*—A complaint of theft was lodged on behalf of a Talukdar against his tenant who had cut and removed certain trees. The trying Magistrate acquitted the accused; but he ordered the property (the wood) to be returned to the complainant. This order was confirmed by the District Magistrate on the ground that there had been a previous decision of the Survey Officer that the ownership in the trees vested in the Talukdar. The accused having applied to the High Court: *Held*, that the proper order under the circumstances to make was that the wood should be sold and the proceeds retained by the Court until they were shown to be payable to one or other of the parties either in virtue of a decree of Court or in virtue of an agreement among themselves. *In re* VISA SAMTA, **16 Bom. L.R. 951 = 2 Bom. Cr. C. 269 = 16 Cr. L.J. 111 = 27 Ind. Cas. 159.**

(4508)—S. 517—*See* BOM. ACT II OF 1868, s. 14, Rat. Un. Cr. C. 688 = Cr. Rg. 10 of 1894.

(4509)—S. 517—*See* APPEAL—CASES WHERE APPEAL LIES, 14 C.P.L.R. Cr. 60.

(4510)—S. 517—*See* OBSCENE PUBLICATION, 3 A. 837.

(4511)—S. 517—*See* PENAL CODE, ss. 124-A, 131, 37 P.W.R. 1907, Cr.

(4512)—S. 517—*See* STOLEN PROPERTY, 2 A. 276, 2 Weir 664 = 7 M.H.C. 233.

(4513)—S. 517—*See* Nos. 426, 448, 2631, 3670, 3671, 3851, 3945, *supra* and 4575, *infra.*

(4514)—*Ss 517 and 144—Whether disposal of property includes destruction of property.*—An

Crim. Pro. Code (Act V of 1898)—*continued.*

accused person, charged with negligence with regard to his dog, was, on conviction sentenced to pay a fine and the dog was ordered to be shot under s. 517. *Held*, that the Magistrate's order directing the destruction was covered by s. 517, Crim. Pro. Code. In the case of valuable animals which are dangerous, the order should be to direct the owner to take such order with them as will prevent risk of danger to the public. A breach of such order would be punishable under s. 188, Penal Code. Under s. 144, Crim. Pro. Code, the Magistrate can issue orders before mischief occurs. QUEEN-EMPRESS v KYAW ZAN HLA, **L.B.R. 1893—1900, 579.**

(4515)—*Ss.* 517, 518, 520—*Powers of the appellate Court—Parties ordered to establish their claims to property in dispute in a Civil Court.*—The appellate Court has, under s. 520, Crim. Pro. Code, the same powers, as the Court which tried the criminal case originally, to pass an order under s. 517 of the Code, directing the parties to get their claim to any property, produced before it or in its custody regarding which any offence appears to have been committed, established in a Civil Court. AZMAT SHAH KHAN v. KING EMPEROR, **11 A.L.J. 462=35 A. 374=14 Cr.L.J.526=20 Ind. Cas. 1006.**

(4516)—*Ss.* 517, 520 (=*Crim. Pro. Code,* 1861, *ss.* 132-*A*, 132-*B*)—*Order under s.* 132-*A —Power of revision under s.* 132-*B.*—Where no orders are passed under s. 132-A. the appellate Magistrate has no powers of revision under s. 132-B. Where there is no proof of the commission of an offence, orders under s. 132, directing that certain produce should be delivered over to the parties entitled thereto, cannot be passed. HIGH COURT PROCEEDINGS, 29TH MARCH 1870, **5 M.H C. App. 21.**

(4517)—*Ss.* 517, 520 (=*Crim. Pro. Code,* 1872, *ss.* 418, 419)—*Stolen Government currency note, proper order regarding—Disposal by Magistrate.*— Where a stolen Government currency note has been delivered to a *bona fide* holder for value, an order directing its return to the person from whom it was stolen, after the conviction of the thief, is not a proper order. *In the matter of* CAPTAIN MICHELL, **1 C.L.R. 339=3 C. 379.** [*R.*, 73 P.R. 1878, 83 P.R. 1890, 19 C. 52.]

(4517-*a*)—*Ss* 517, 520 (=*Crim. Pro. Code,* 1872, *ss.* 418, 419)—*Order by Magistrate for disposal of property produced before him—Appeal —"Court of appeal," scope of the expression.*—An appeal lies merely against an order passed by a Magistrate, under s. 418 of the Crim. Pro. Code, X of 1872, for the disposal of any property produced before him, independently of whether there has been an appeal or not against the conviction or acquittal in the case, relating to the property. The words, "Court of Appeal" in s. 419, are not necessarily limited to a Court before which an appeal is at the moment pending. Where a stolen Government currency note was cashed with B and on conviction of the thief, the Magistrate ordered the return of the note to B, *held*, that the Sessions Judge was, under s. 419, the proper person to deal with an application made by the owner for the reversal of that order. *In the matter of* CAPTAIN MICHELL, **1 C.L.R. 339=3 C. 379.** [*F.*, 9 M 448=1 Weir 672; *R.*, 2 A. 276, 14 C.P.L.R. 61, 17 C.P.L.R. 107, 1 A.W.N. 150]

(4518)—*Ss.* 517 *and* 520—*Finding as to possession—High Court's powers of revision.*—The High Court cannot, in revision, interfere with the finding of fact by the District Magistrate, as to the person from whose custody the property was taken. VADALAPATTA SUBBAYYA v. PONNANGY NARASAYYA, **2 Weir 673.**

(4519)—*Ss.* 517, 520—*Disposal of property by Magistrate— Revision— Criminal cases* — The words ' Court of appeal ' in s. 520 of the Crim. Pro. Code, merely imply the Court to which appeals would ordinarily lie, and do not mean that an appeal must lie in the particular case in which an order has been passed as to property. A Magistrate of the First Class acquitted the accused of the offence under s. 411, Penal Code, with which he was charged, but ordered the property, subject of the charge, to be delivered to the complainant, and the Sessions Judge agreed with the Magistrate: *Held*, that the finding of fact not being obviously wrong could not be interfered with on revision. *Held*, also, that the order as to delivery of the property also could not be interfered with on revision. In such cases the only effect of the order of the Criminal Court is that it determines which of the parties should be left to sue in the Civil Courts. BHAGAT RAM v. CROWN, **96 P.L.R. 1911=11 Ind. Cas. 584=12 Cr.L.J. 400.** (9 Bom. 131, *Appr.*)

(4520)—*Ss.* 517, 520—*Currency note—Theft —Right of* bona fide *holder—Erroneous disposal under s.* 517 *by lower Court in disregard of— Superior Court's power to set aside.*— Where currency notes, or current coin, have been erroneously disposed of under s. 517, the repayment of an equivalent might, in justice, be ordered. The intention of the legislature, in adding to s. 520, Crim. Pro. Code, was obviously to enable a superior Court to give effect to an order setting aside the order of the lower Court, if that order has been carried out, by directing restitution of the property. Property in a bank-note (or currency note), passes like that in cash, by delivery, and a party taking it *bona fide* and for value is entitled to retain it as against a former owner from whom it has been stolen. BODOMAL KISHINCHAND v. CROWN, **5 S.L.R. 153=13 Cr. L.J. 21=13 Ind. Cas. 213.** (1 S.L.R. 468, *F.*)

(4521)—Ss. 517 and 520—*See* APPEAL—CASES WHERE APPEAL DOES NOT LIE, 30 C. 690=7 C.W.N. 634.

(4522)—Ss. 517, 520—*See* DISPOSAL OF PROPERTY, 9 C.W.N. 549.

(4523)—Ss. 517, 520—*See* RESTORATION OF PROPERTY, A.W.N. 1893, 61.

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(4524)—*Ss.* 517, 522—*Immoveable property—Restoration, order for—Criminal trespass not attended with force—" Property " in s.* 517 *does not apply to immoveable property.*—S. 517 of the Crim. Pro. Code has no application to immoveable property. (1 Ind. Cas. 202=13 C.W.N. 77=36 C. 44=9 Cr. L.J. 294, *F.*) Where the accused dispossessed the complainant of his garden by breaking the padlock of its gate, but used no force or violence and were convicted of the offence of criminal trespass. *Held*, that the Court had no power to order the restoration of the garden to the complainant under s. 522 of the Crim. Pro. Code, nor under s. 517, as the latter did not apply to immoveable property. BISWESWAR SINGH v. BHOLA NATH PATHAK, **15 Cr. L.J. 175=22 Ind. Cas. 751=18 C.W.N. 1146.**

(4525)—Ss. 517 and 522—*See* RESTORATION OF PROPERTY, 13 C.W.N. 77=36 C. 44=1 Ind. Cas. 202.

(4526)—*Ss.* 517, 523 (=*Crim. Pro. Code*, 1882, *ss.* 517, 523)—*Scope of sections—Duty of Magistrate to make enquiry regarding possession.*—S. 523 must be confined to property seized by the Police of their own motion, in the exercise of powers conferred on them by law, which seizure requires to be reported to a Magistrate, for instance, seizure under ss. 51, 54 (4), 165 and 166. S. 523 cannot be held to apply to property which is produced before a Court in the course of an enquiry under a search warrant issued by it. To such property s. 517 alone would apply, and if no offence is found in respect thereof, the Court can make no order; the property must be given back into the possession from which it came. [*Doubted*, 26 B. 552; *F.*, Rat. Un. Cr. C. 981; *R.*, L.B. R. 1893—1900, 324, 22 B. 844, 14 C.P.L R. 60, 28 B. 314, 29 M. 375=4 Cr. L.J. 233.] As the basis of an order under the section, the Magistrate should make a specific investigation touching the rights, not property, but of possession, claimed by the applicants. *In re* RATAN LAL RANGILDAS, **17 B. 748.**

(4527)—*Ss.* 517 *and* 523 (=*Crim. Pro. Code*, 1882, *ss.* 517, 523)—*Property regarding which no offence has been committed, disposal of.*—On general principles, Courts are bound to restore property to the possession of those from whom it is taken for purposes of justice, unless the Court is of opinion that an offence has been committed in respect of that property, or that it has been used for the commission of the offence. QUEEN-EMPRESS v. AHMED, **9 M. 448=2 Weir 672.** [*R.*, 14 P.L.R. 60 (61), 17 C.P.L.R. 107 (110), 14 Cr. L.J. 27=18 Ind. Cas. 171=24 M.L.J. 1=14 M.L.T. 431=1913 M.W.N. 851.]

(4528)—*Ss.* 517, 523 (=*Crim. Pro. Code*, 1882, *ss.* 517, 523)—*Property in regard to which no offence is proved—Proper order.*—Where property is produced from the possession of a person, who is charged with dacoity, but the accused is found not guilty of the offence charged, the proper order regarding it is one

Crim. Pro. Code (Act V of 1898)—*continued.*

to return it to the party from whose possession it has been produced. *In the matter of the petition of* MATI GHOSH, **1 C.W.N. 561.** [*R.*, 14 C.P.L R. 60.]

(4529)—*Ss.* 517 *and* 523, *inapplicability of, in case of death of accused before trial—General rule.*—The accused, in this case, was charged with criminal breach of trust in respect of certain jewels. The jewels were recovered by the Police from the persons, with whom the accused had pledged them and sent to the Court of the Magistrate. The accused died before the date fixed for his trial and the owners of the jewels, alleging that the deceased had borrowed the same from them, applied for an order for the restoration of the jewels to them; while the persons, with whom the accused had pledged the jewels, prayed that they should be returned to them. *Held*, that, of the two ss. 517 and 523, containing the rules as to disposal of property, an order under s. 517 can be made only on the conclusion of an enquiry on trial and that section, therefore, could not be applied to the present case, in which the trial was not only not concluded but was even not begun. Also, on the facts of the case, s. 523 had no application, because there was nothing on the record to show to whom the jewels belonged and there was no obligation on the Magistrate to hold an enquiry, simply for the purpose of deciding whether the property claimed was the property of the petitioner. The present case, therefore, not coming under the classes contemplated by ss. 523 and 517, there is nothing to authorise the Magistrate to depart from the general rule that property taken under the authority of the law for a particular purpose should, on the fulfilment of that purpose, go back to the custody whence it was taken. *In the matter of* KUPPAMMAL, **29 M. 375=4 Cr. L.J. 233.**

(4530)—Ss. 517, 523—*See* CONFESSION—CONFESSIONS MADE TO POLICE OFFICERS, 9 B. 131.

(4531)—Ss. 517, 523—*See* RESTORATION OF PROPERTY, 22 B. 844, Rat. Un. Cr. C. 536=Cr. Rg. 7 of 1891.

(4532)—Ss. 517, 545—Complainant unable to recover substantial compensation in Civil Court—Right to compensation under s. 545 (*b*) or to prosecution expenses—Receiving lottery price by false pretence—Order in revision to refund—Mode of recovery—*See* PENAL CODE, ss. 24, 420, 15 Cr. L.J. 555=24 Ind. Cas. 963.

——S. 518 (=1882, s. 518; 1872, s. 420; 1861, s. 132-C).

(4533)—*S.* 518—*Order to be passed under emergent circumstances.*—In a case under Chap. 39, the Magistrate is bound to base his order upon the finding of the jury. An order under s. 518 should be passed only under special and urgent circumstances calling for immediate action. *In re* DOYARAM, **1 J.G. 11.**

(4534)—S. 518—*See* Nos. 3504, 4515, *supra.*

Crim. Pro. Code (Act V of 1898)—*continued.*

—— S. 519 (=1882, s. 519).

(4535)—*S.* 519 (=*Crim. Pro. Code,* 1882, s. 519)—*Scope.*—The only power conferred by the section, by which a *bona fide* purchaser of stolen property can obtain compensation, is when money has been found in the possession of the thief at the time of his arrest, in which case the whole, or a portion of such money, may be directed by the Court holding the trial to be handed over to the innocent purchaser, at the time of his restoring the stolen property to the true owner. *In the matter of* KARIM BAKHSH, **A.W.N. 1886, 291.**

(4536)—S. 519—*See* No. 3504, *supra.*

(4537)—*Ss.* 519, 545 (=*Crim. Pro. Code,* 1882, *ss.* 519, 545)—*Stolen property—Payment of compensation ordered to mortgagee.*—Where in a conviction under s. 380 of the Penal Code, the Magistrate ordered a portion of the fine imposed to be paid to mortgagee who had in good faith advanced money to the accused on the security of the stolen property, *held* that ss. 519 and 545 did not apply to the case since no injury was caused to the mortgagee by the offence, and since payment could be ordered only out of the proceeds of the property found in the possession of the accused. QUEEN-EMPRESS v RAMA. **Rat. Un. Cr. C. 631=Cr. Rg 55 of 1892.**

(4538)—*Ss.* 519, 545 (=*Crim. Pro. Code,* 1882, *ss.* 519 545)—*Compensation to innocent purchaser of stolen property.*—S. 519 only authorises payment, to a purchaser of stolen property, who buys in ignorance of theft, of compensation out of any money found in possession of the party guilty of theft. Where no money is found in possession of the party convicted, the purchaser cannot be compensated out of the fine imposed upon the accused. *In re* PUYUTHINNI PRAMUTHU, **2 Weir 671.**

(4539)—*Ss.* 519 *and* 545—*Compensation for pledge of stolen property.*—An order for compensation cannot be made in favour of the pledgee of a stolen property, as the theft does not cause any injury to the pledgee or give him a right of action. *In re* SRINIVASA BHATTA, **2 Weir 672.**

(4540)—Ss. 519, 545—*See* STOLEN PROPERTY, 3 Bom. L.R. 764.

——S 520 (=1882, s. 520; 1872, s. 419; 1861, s. 132-B)

(4541)—*S.* 520—*Revisional powers of a District Magistrate.*—A District Magistrate is a Court of Revision as regards all Magistrates in his District, and, as such, has full powers to act under s. 520 regarding orders of subordinate Magistrates under s. 517. VADALAPATTA SUBBAYYA v. PONNANGY NARASAYA, **2 Weir 673.**

(4542)—*S* 520—*Power of appellate Court to pass orders regarding property brought before a Court.*—Where a Sub-Magistrate, who convicts a person of theft, passes no order regarding the property produced before him, the appellate Court, on appeal from the conviction, has no power to make an order under s. 520. LOCANADA IYER v. SEETHAL. **2 Weir 674.**

(4543)—*S.* 520—*Disposal of property—Order passed by first class Magistrate—Sentence confirmed by Sessions Court—District Magistrate varying the order in revision—Jurisdiction—Notice to the other side necessary—Practice and procedure.*—In deciding a case, a trying Magistrate of the first class convicted and sentenced the accused and passed an order disposing of the property produced before him. On appeal to the Sessions Court, the conviction and sentence were confirmed and the orders as to the disposal of property left untouched. Subsequently, the District Magistrate, on an application having been made to him, varied the order without issuing any notice to the other side. *Held* (1) that the District Magistrate had no jurisdiction to interfere under s. 520 of the Crim. Pro. Code, for he could interfere as a Court of revision only where there had been no appeal to the Sessions Court. (2) That the District Magistrate should not have disposed of the matter without giving notice to the other side. *In re* LAXMAN RANGU RANGARI, **13 Bom L R 131=9 Ind. Cas. 947=12 Cr. L J. 169=35 B. 253.**

(4544)—S 520—*See* ACT IX OF 1872, ss. 76, 108, 3 C. 379=1 C.L.R. 339.

(4545)—S. 520—*See* Nos. 3504, 3671, 4059, 4515 to 4523, *supra.*

—— S. 521 (=1882, s. 521).

(4546)—*S.* 521 (=*Crim. Pro. Code,* 1882, *s.* 521)—*Want of sufficient grounds for proceeding under the section.*—Where a Magistrate satisfies himself that there is no sufficient reason for proceeding under s. 521, he is at liberty to let the matter drop. ISSUR CHUNDER NATH v. KALI CHARAN NATH, **11 C.L.R. 235.** (1 C.L. R. 486, *F.*)

(4547)—*Ss.* 521, 526 (=*Crim. Pro. Code,* 1882, *ss.* 521, 526)—*Substitution of member by foreman—Verdict—Disobedience — Penal Code, s.* 188.—Where a member of the jury appointed under s. 521, Crim. Pro. Code, fell ill, and the foreman, unknown to the Court, substituted another man in his place, and the Magistrate, accepting the opinion of the majority, made an order under s. 526, Crim. Pro. Code, *held,* that, as the order was not based on the report of a properly constituted jury, disobedience to such an order would not be punishable under s. 188, I.P.C. EMPRESS v. DHOIRUB CHUNDER DATTA, **10 C L.R. 193.**

——S. 522 (=1882, s. 522; 1872, s. 534).

(4548)—*S.* 522—*Scope and object of.*—The object of the provisions of s. 522 is to enable the Criminal Court, by a summary order, to restore the state of things which existed at the time of the dispossession by the convicted person or persons. It cannot go behind the state of affairs at the time of the forcible ejectment leading to the criminal prosecution. Where an

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auction-purchaser of a mortgaged property was put in possession of the property, the tenant being ejected, and the auction purchaser was forcibly ejected by certain persons, *held*, that, upon the conviction of the latter, the auction purchaser was entitled to be restored to the actual possession which he held of the house at the time of his ejectment, that the tenant had no right to any possession and that he should seek his remedy in the Civil Court. RAMESWAR MARWARI v. BISWA NATH BANERJEE, **5 C. W.N. 374.**

(4549)—*S.* 522—*Order under the section, when could be made.*—In order to justify an order under s. 522, Crim. Pro. Code, the Court must find, *first*, that the offence of which the accused is convicted was attended with criminal force; and, *secondly*, that a person has been dispossessed of immoveable property by the use of such force. CHURAMAN v. RAM LAL, **25 A. 341 = A.W.N. 1903, 59.** (25 C. 434, 27 C. 174. *F.*) [*F.*, 11 Cr.L.J. 594 = 8 Ind. Cas. 219; *R.*, 4 Cr.L.J. 293 = 54 P.L R. 1907 = 12 P.R. 1906 Cr.. 15 Cr.L.J. 275 = 112 P.L.R. 1914 = 14 P.W. R. 1914 = 15 P.R. 1914, Cr. = 23 Ind. Cas. 483.]

(4550)—*S.* 522 — *Order under the section, when can be made.*—The words "an offence attended by criminal force" means an offence in which criminal force forms an ingredient. To support an order under s. 522, Crim. Pro. Code, 1882, it must be found that the dispossession was by the use of "criminal force" as defined in s. 350, Penal Code, and not merely by the show of such force. The offence of being members of an unlawful assembly is one in the composition of which the use of criminal force does not enter, though the show of criminal force may exist. Therefore an order under s. 522 cannot be passed on conviction for being members of an unlawful assembly. RAM CHANDRA BORAL v. JITYANDRIA, **25 C. 434 = 2 C.W.N. 305.** (23 W.R. Cr. 54, 1 C.W.N. cclvi, *F.*) [*Not F.*, 15 P.R. 1914, Cr. = 112 P.L.R. 1914 = 14 P.W R. 1914, Cr. = 15 Cr.L.J. 275 = 23 Ind. Cas. 483; *Diss.*, 26 M. 49 = 12 M.L.J. 447 = 2 Weir 676; *F.*, 25 A. 341 = 23 A.W.N. 59, 27 C. 174 = 4 C.W.N. 307, 5 C.W.N. 250; *R.*, 23 B 494, 4 C.W.N. 308, 4 Cr.L.J. 293 = 12 P.R. 1906, Cr. = 54 P.L. R. 1907, 14 Cr.L.J. 172 = 19 Ind. Cas. 172; *Com.* 5 Cr.L.J. 278 = 11 C.W.N. 467.]

(4551)—*Order under s.* 522, *when legal.*—The rulings of the Calcutta High Court go so far as to say that actual force is necessary and that a show of force is not sufficient under the law to authorise an order under s. 522. *Held*, that, although the High Court is bound by the rulings, it is an anomaly that a person who avoids a breach of the peace by yielding to threats and a show of force should be in a worse position with reference to his land than another who offers forcible resistance, and to whom, in consequence, criminal force is used. CHHAKOO MANDAL v. EMPEROR, **11 C.W N. 467 = 5 Cr.L.J. 278.** (25 C. 434, 27 C. 174, *Doubted.*)

(4552)—*S.* 522—*Criminal force, meaning of.*—The term "criminal force" used in s. 522, Crim. Pro. Code, must be understood as defined in s. 350, Penal Code, and to justify an order for the restoration of possession of immoveable property, under s. 522, Crim. Pro. Code, the dispossession must have been by the actual use of criminal force and not merely by the show of such force. SRI HARI SHOME v. LAL KHAN, **5 C.W.N. 250.**

(4553)—*S.* 522 (= *Crim. Pro. Code*, 1882, *s.* 522)—*Order giving possession —Reversal—Power of Magistrate to order restoration.*—A criminal Court is empowered to restore possession to a party who has been dispossessed under s. 522, Crim. Pro. Code, when such order has been set aside as illegal by superior authority. KIRPAL SINGH v. LABHU, **5 P.R. 1895. Cr. F.B.**

(4554)—*S.* 522—*Dispossession of immoveable property—Criminal trespass—No finding of use of criminal force—Order restoring possession of immoveable property, legality of.*—In this case, the applicants were convicted of criminal trespass. There was no finding or allegation that criminal force had been used in the commission of criminal trespass. Subsequently, the complainant made an application to the Magistrate for restoration of possession of the land in respect of which the trespass was committed. The Magistrate, purporting to act under s. 522 of the Code and without calling on the accused to show cause, ordered possession of the land to be restored to the complainant. *Held*, that, where there is no finding or allegation that criminal force has been used in the commission of criminal trespass, an order under s. 522 restoring possession of immoveable property to the complainant, cannot legally be passed. Although there is no explicit provision of law requiring that a Magistrate, who passes an order under s 522 of the Code, should give the party, against whom it is proposed to make the order, an opportunity of showing cause against it, he should do so as a matter of due exercise of judicial discretion. PAN NYUN v. MAUNG NYO, **3 L.B.R. 20 = 2 Cr. L.J. 377.**

(4555)—*S.* 522—*Restoration to possession—Time when order to be made—Whether to be made simultaneously with order of conviction—Notice to accused if necessary.*—It is not essential in law that an order restoring possession should find a place in the actual judgment. It must be immediate, that is, directly arising out of the judgment of the Court convicting in the case, and without any fresh materials having in the meantime been produced. (4 C.W.N. 308, *Expl.*; 23 B. 494. 23 W.R. Cr. 54, *F.*) Before an order under s. 522 is made, the accused is in law not entitled to any notice. Therefore, such an order passed four days after the conviction of an accused, on the express findings in the judgment, without any fresh materials and without any notice to the accused, is competent and not without jurisdiction. JATINDRA NATH v. EMPEROR, **14 Cr. L.J. 172 = 19 Ind. Cas. 172.** [*F.*, 15 Cr.L. J 275 = 14 P.W.R. 1914, Cr. = 23 Ind. Cas. 483 = 15 P.R. 1914, Cr. = 112 P.L.R. 1914.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(4556)—*S. 522—Civil and Criminal proceedings relating to same cause of action—Jurisdiction—Lapse of time—Cause of delay explained—Illegality of order—Penal Code, s. 447—Complaint under s. 447—Application for possession under s. 522, Crim. Pro. Code.*—K brought a complaint under s. 447, I.P.C. for forcible seizure of his land against G, and G was convicted on 20th November. 1911. G filed a petition for revision in the Chief Court which was rejected. G also filed a Civil suit and K applied for possession under s. 522, Crim. Pro. Code, on the 18th January 1912, which application was consigned to the record room on the 24th September, 1912, as the Civil proceedings were going on in the Chief Court concerning the same land. Just after the Civil proceedings were disposed of in K's favour, he renewed his application by a petition, dated 19th June 1913. The Magistrate allowed the petition and passed the order asked for. G applied to the Chief Court on the ground that the Magistrate had no jurisdiction to pass order for possession, after such a long time between conviction and order for possession. *Held*, that a Magistrate has discretion to pass order for possession under s. 522 of the Crim. Pro. Code, and it is not necessary for him to pass such order simultaneously with the conviction, and that there is no illegality if he passes such order at any time after the conviction, if the cause of delay is fully explained to his satisfaction and the complainant moves the Court promptly after the cause of delay has ceased. A lapse of 20 months was not considered a very long time under the circumstances of the case. GHULAM MUHAMMAD v. KARAM SINGH, **14 P.W.R. 1914, Cr. = 112 P.L.R. 1914 = 15 Cr. L.J. 275 = 23 Ind. Cas. 483 = 15 P.R. 1914, Cr.** (23 B. 494, 14 Cr. L.J. 172, *F.*; 4 C.W.N. 308, *Diss.*; 25 C. 434, 27 C. 174, 25 A. 341, *D.*)

(4557)—*S. 522—Restoration of possession of garden — Criminal trespass unattended with force —Order for restoration to complainant made by Magistrate—Order set aside by High Court—Effect of High Court's order—Whether order empowers Magistrate to re-deliver possession.*—The accused were convicted of criminal trespass into the complainant's garden, unattended with any force The Magistrate ordered that possession of the garden should be restored to the complainant. Accordingly, the possession was restored to him. The accused moved the High Court which set aside the order for restoration. The accused then applied to the Magistrate for re-delivery of the possession of the garden to them, but the Magistrate refused the prayer on the ground that he had no power to direct the Police to re-deliver the possession of the garden to the accused: *Held*, that the order of the High Court, setting aside the order for restoration, carried with it the incident of restoration of the garden to the accused and that the Magistrate had power to direct the Police to restore possession of the garden to the accused. BISWESWAR SINGH v. BHOLA NATH PATHAK, **15 Cr. L.J. 222 = 22 Ind. Cas. 1006 = 18 C.W.N. 1147.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(4558)—*S. 522—Penal Code, ss. 147, 349—Restoration of possession of immoveable property—Criminal force, meaning of—Rioting with the common object of causing violence to inanimate object—Applicability of s. 522.*— When the accused was convicted of rioting for causing violence in the prosecution of a common object, *viz.*, by destroying the complainant's fencing and raising a new fencing on the complainant's land: *Held*—That violence having been caused in this case to the fencing only and not to any person, there was no criminal "force" as defined in s. 349, I.P.C., and no order directing delivery of possession could be made under s. 522, Crim. Pro. Code. SADASIB MANDAL v. EMPEROR, **18 C.W.N. 1150 = 15 Cr. L.J. 720 = 26 Ind. Cas. 168.**

(4559)—S. 522—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 27 C. 174 = 4 C.W.N. 307, 4 C.W.N. 308.

(4560)—S. 522—*See* OBSTRUCTING RIGHT OF WAY, 31 C. 691 = 8 C.W.N. 538, F.B.

(4561)—S. 522—*See* RESTORATION OF PROPERTY, 23 B. 494, 26 M. 49 = 2 Weir 675 = 12 M.L.J. 447, 7 C.L.J. 175 = 12 C.W.N. 269.

(4562)—S. 522 (2), *Scope of.*—What s. 522 (2) evidently contemplates is the case of a person in possession (the complainant) being dispossessed by force by another person (the accused) and the latter being in possession at the date of the conviction. In such a case, it gives the Magistrate power to order the complainant to be restored to possession. In the case of a proper order, third persons could not be affected; if they are, then they are given a remedy by a civil suit, and the order would not on that account be bad. The section evidently contemplates (1) that the offence of which the accused is convicted must be an offence attended by criminal force, and (2) that the Court must be satisfied that the dispossession was due to the use of such force. Mere show of criminal force will not suffice to satisfy the requirements of the section. There must be actual use of force, and of criminal force resulting in the dispossession. NARAYAN GOVIND v. VISAJI, **23 B. 494.**

(4563)—S. 522—*See* Nos. 529, 1230, 1231, 1232, 2064, 3505, 3672, 3673, 3686, 4060, 4524, 4525, *supra.*

(4564)—*Ss.* 522 *and* 145 (=*Crim. Pro. Code*, 1882, *ss.* 522, 145)—*Proper order, when possession is with neither party.*—Where it is found that neither party is in actual possession, an order under s. 522 cannot be made. It is open to the Magistrate, in the event of a probable breach of the peace, to deal with the question of possession under s. 145. BHAIRI SURAYYA v. ALLU RAMAJOGI, **2 Weir 675.**

(4565)—*Ss. 522 and 423—Order for removal of obstruction on conviction under s. 341, Penal Code—Power of appellate Court.*—Where a person is convicted of wrongful restraint in having blocked a private way, along which the complainant has the right of way, the Magistrate is competent to order, although not under

Crim. Pro. Code (Act V of 1898)—*continued.*

s. 522, the removal of the obstruction and non-interference with the complainants' right of way. [*Overruled*, 31 C. 691 = 8 C.W.N. 538, F.B.] Although an appellate Court has, under s. 423, the power of making any amendment or any consequential or incidental order that may be just and proper, the appellate Court could not set aside the order mentioned above, as it would make the entire proceedings infructuous and absurd. DEBENDRA CHANDRA CHOWDHURY v. MOHINI MOHAN CHOWDHURY, **5 C.W.N. 432.** [*Overruled*, 31 C. 691 = 8 C.W.N. 538.]

(4565-*a*)—*Ss.* 522, 423 (*d*)—*Appellate Court, if can set aside order while maintaining conviction—S.* 423, *cl.* (*d*)—*Incidental order.*—An appellate Court has power under s. 423, cl. (*d*), which authorises the appellate Court in appeal to make an incidental order, to set aside an order under s. 522 while affirming the conviction. UJIR SHEIKH v. SYED ALI SHEIKH, **19 C.W.N. 990.**

——**S. 523(=1882, s. 523; 1872, ss. 387, para 2, 415, 416 ; 1861, ss. 130, 131).**

(4566)—*S.* 523 (=*Crim Pro. Code*, 1882, *s.* 523)—*Scope.*—The provisions of s. 523 of the Code of 1882, are wider than those of ss. 415, 416 of the Code of 1872 and allow a Magistrate to order delivery of the property to the person entitled to it, after enquiry, instead of to the person from whom it was taken. QUEEN-EMPRESS v. JOTI RAJNAK, **8 B. 338.** [*R.*, 9 B. 100, Rat. Un. Cr. C. 365 ; *D.*, 22 B. 844.]

(4567)—*S.* 523—*Search-warrant for attachment of property belonging to third person—Disposal.*—Where a third party appears before a Magistrate and alleges that the things seized by the police under a search-warrant are his property and are not the subject of the alleged offence, the Magistrate is bound to hear him and, if necessary, to restore the property to him. There is a power inherent, apart from s. 523, in every Court, to satisfy itself that the things produced before it under a search-warrant are the things which it is necessary or desirable should be kept in its custody. *In re* LAKSHMAN GOVIND NIRGUDE, **26 B. 552 = 4 Bom. L.R. 276.**

(4568)—*S.* 523—*Order under section—Subsequent variation.*—When a Magistrate once passes an order under s. 523, Crim. Pro. Code, it is not open to him subsequently to vary it. SAKHARAM v. JAIRAM, **4 Bom. L.R. 12.**

(4569)—*S.* 523 (=*Crim. Pro. Code*, 1882, *s.* 523)—*Person entitled to possession—Procedure when he is not known.*—Where the person entitled to the possession of property regarding which the offence of theft has been committed is not known, the Magistrate should, under s. 523, detain the sum and issue the proclamation required by the section. The property should be handed over after the lapse of six months to the person who establishes a claim to it. MADULAI MUTTU v. AGENT OF SOUTH INDIAN RAILWAY, **2 Weir 676.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(4570)—*S.* 523—*Disposal of property seized by police.*—In disposing of property seized by the police, if the Magistrate finds that the person entitled to possession is known, he can lawfully adjudicate on the claim of that person, without issuing any proclamation. If he has issued a proclamation, that will not invalidate his order for immediate delivery of the property to such a known person. When the Magistrate finds that a claim, which has been made, is proved, provided no other claimants appear, he should, before passing final orders, wait until the expiry of the six months specified in the proclamation. PO LWIN v. EMPEROR, **4 Cr. L.J. 203 = 3 L.B.R. 197.**

(4571)—S. 523—*See* RESTORATION OF PROPERTY, 4 L.B.R. 14 = 6 Cr. L.J. 126.

(4572)—*S.* 523 (2)—*Inquiry as to title unnecessary—What a Magistrate has to decide.*—S. 523 (2), Crim. Pro. Code, does not require a Magistrate to make any inquiry at all. He proceeds on such materials as are available before him and has to decide the question, not who was in possession at the time the property was seized by the Police, but who was entitled to possession. ASI v. EMPEROR, **12 Cr. L.J. 108 = 9 Ind. Cas. 634.** (17 B. 748, *Not F.*)

(4573)—*S.* 523 (2)—*Gambling on public highway—Public nuisance—Conviction—Currency notes not traced to any person—Ownerless property.*—Where it is found that the accused caused annoyance and obstruction to the public by gambling on a thoroughfare, their conviction for committing a public nuisance is justified. Where the currency notes found in the course of such gambling are not traced to any particular person as owner, the Magistrate is entitled to treat them as ownerless property and deal with them as such. *In re* JUTURI VENKATAPPA, **16 Cr. L.J. 254 = 28 Ind. Cas. 110.**

(4574)—S. 523—*See* Nos. 426, 448, 3144, 3745, 4526 to 4531, *supra.*

(4575)—*Ss.* 523, 517, 203—*Complaint of theft to Police—Seizure of articles in accused's house—Preliminary investigation—Case found false—Articles found to have been foisted with a view to bring false case—Complaint to Magistrate—Dismissal, under s.* 203—*Order directing articles to be forfeited to Government—Validity—Scope of s.* 523, *cl.* 1—'*Disposal*'—*Meaning.*—Certain money and other articles were seized by the Police in consequence of a complaint of theft preferred by one R against one V. The Police, after preliminary investigation, came to the conclusion that the case was false and that the articles seized were probably foisted by R or his men into V's house. Thereupon R made a complaint before the Second Class Magistrate. The Magistrate dismissed the complaint under s. 203, Crim. Pro. Code, and directed under s. 517, Crim. Pro. Code, that the articles seized by the Police should be forfeited to Government, as they were used for concocting a false case against V. *Held*, that the order of forfeiture was valid. (1 Weir 534, 34 C. 986, 8 C.W.N. 887, *Appr*; 9 M. 448, 19 M.L.J. 254, 9 C.W.N. 537, *R.*) Although the Magistrate had

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no jurisdiction to pass the order under s. 517, he had power under s. 523 to pass an order regarding the disposal of property seized by a Police officer, which was 'alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence.' S. 517, Crim. Pro. Code, applies only when an enquiry or a trial in a Criminal Court is concluded. Where a complaint was dismissed under s. 203, Crim. Pro. Code, it cannot be said that there was any trial or enquiry. S. 523, cl. (1), gives the Magistrate power either to deliver the property to the person entitled to its possession, or to pass such order as he deems fit respecting its disposal. If he adopts the first alternative, he has to find out the person entitled to possession, and, if no one succeeds in establishing his title to possession, the property would be at the disposal of Government. If he adopts the second alternative, the section does not specifically state what the nature of the order regarding the disposal should be. If an order that the property should be at the disposal of Government would be proper in the circumstances of the case, there is nothing in the section which prevents him from passing such order. The Court would no doubt be slow to pass an order for forfeiture in cases of mere suspicion under s. 523, but it would have less hesitation in refusing to restore property to the owner who is suspected to have used it for commission of an offence. The power to order restoration is discretionary and the Court is not bound to exercise it. (18 Q B.D. 322, 49 J.P. 264, *R.*) 'Disposal' is a comprehensive word which would include forfeiture. RAMASAMI AIYAR v. VENKATESWARA AIYAR, **24 M.L J. 1 = 18 Ind. Cas. 171 = 14 Cr. L.J. 27 = 1913 M.W.N. 851 = 14 M.L.T. 431.**

(4576)—*Ss.* 523, 524 (= *Crim. Pro. Code*, 1882, *ss.* 523, 524)—*Seizure of property by Police on suspicion—Duty of Magistrate.*—The duty of a Magistrate, to whom a seizure of property by the Police has been reported, under s. 523, as property which they suspect to have been stolen, is to devliver the property to the person entitled to the possession of it, if there is no doubt about such property belonging to him; but if there is any doubt about it, he is to detain it and issue a proclamation to ascertain whether or not there are any claimants to the property. It is not intended by the provisions of s. 523 that any final step should be taken by the Magistrate, or that he is bound to take any final step, until after the expiry of six months; but when the proclamation has been issued and the six months have expired, then the provisions of s. 524 come in and the person in whose possession it was found can come forward and show that it is his own. QUEEN-EMPRESS v. MAHALABUDDIN, 22 C. 761. [*R.*, 3 L.B.R. 197, 10 Cr.L.J. 198 = 2 S.L.R 32, Cr.]

(4577)—*Ss.* 523, 524—*Magistrate — Order for disposal of property—No offence proved.*—In consequence of information as to the applicant having been suspected of having committed theft, his house was searched and some jewellery and money were seized. No offence was brought home to the applicant; and none of the property was identified by anybody as belonging to him. The Magistrate issued a proclamation under s. 523 (2) of the Crim. Pro. Code; and at the end of six months from its date ordered the property to be at the disposal of Government. The applicant having applied in revision: *Held*, that, in the circumstances of the case, the intention and spirit of ss. 523 and 524 of the Crim. Pro. Code had been disregarded; that the order made by the Magistrate was an improper order; and that the property should be returned to the applicant. *In re* KAREPPA CHANBASAPPA. **17 Bom. L.R. 79 = 3 Bom. Cr. C. 12 = 16 Cr. L J. 207 = 27 Ind. Cas. 767.**

(4578)—*Ss.* 523, 524—*Property seized from accused by police—Issue of proclamation—No claimant coming forward for over 6 months from date of—Evidence in support of accused's claim neither satisfactory nor sufficient to show falsity thereof—Presumption in his favour—Evidence Act, s.* 110—*Whether affected s.* 524, *Crim. Pro. Code.*—Where property was seized by the Police under s. 523, Crim. Pro. Code, from the accused and no claimant came forward to claim the same though a proclamation was issued over 6 months ago, and where the Magistrate said that the evidence produced by the accused in support of his claim was suspicious though several items of the property bore his name but no evidence was elicited to show clearly that the accused's claim was false: *Held* that, under the circumstances, the proper and safest course is to follow the presumption laid down in s. 110 of the Evidence Act and to hold that the accused is the owner, in the absence of proof to the contrary. (5 Bom. L.R. 25, *F.*) The words 'is unable to show that it was legally acquired by him' in s. 524, Crim. Pro. Code, do not reverse the presumption under s. 110, Evidence Act. ASLUM *wd* GUL MAHOMED v. CROWN, **8 S.L.R. 141 = 16 Cr. L. J. 138 = 27 Ind. Cas. 202.**

——**S. 524 (= 1882, s. 524; 1872, s. 417; 1861, s. 132).**

(4579)—*S.* 524 (*Crim. Pro. Code*, 1872, *s.* 417) —*Appeal.*—The appeal allowed by s. 417 is an appeal in the full sense of ch. XX and must be governed by its provisions. EMPRESS v. DIN DAYAL, **A.W.N. 1881, 150.**

(4580)—S. 524—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 23 B. 494.

(4581)—S. 524—*See* Nos. 4576, 4577, 4578, *supra.*

——**S. 526, paras 1, 2, 4 to 7 (= 1882, s. 526; 1872, s. 64; 1861, s. 35); para 8 (= 1882, s. 526-A), and para 3 new.**

(4582)—*S.* 526—*Construction.*—The words "commencement of the hearing" in s. 526, Crim. Pro. Code, must mean the commencement of the hearing in the Court objected to, or, in other words, in the Court to which the

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notification subsequently referred to in the section applies or is made. An application to a District Magistrate, on his taking up a case for trial, for the adjournment of it, the trial of which an Assistant Magistrate was prevented from completing owing to his transfer, must be held to have been made at the earliest possible time. KISHORI GIR v. RAM NARAYAN GIR, **8 C.W.N. 77.**

(4583)—*S.* 526—*High Court, powers of, under*—"*Criminal case,*" *scope of expression.*—Under the above section, the High Court has power to transfer proceedings taken under ss. 110, 112 of the Code from the Court of one District Magistrate to the Court of another District Magistrate. The expression "Criminal case" in cl. *e* (ii) of the above section includes proceedings of a criminal nature under the Code other than enquiries into, or trials of, offences. MATHURA PARSHAD v. QUEEN-EMPRESS, **3 O.C. 247.** (16 A. 9, *Diss.*; 19 A. 291, *D.*) [*R.*, 7 Cr. L. J. 423=11 O. C. 61.]

(4584)—*S.* 526—*Grounds for transfer of criminal cases*—"*Criminal case,*" *meaning of expression.*—Where incidents have occurred giving rise to a reasonable apprehension in the mind of the accused person that he would not receive a fair and unprejudiced trial at the hands of the Magistrate, although there may not be any real bias in the latter, the accused is entitled to have a transfer. The mere fact that the District Magistrate is, in his capacity as Collector, concerned in the management of an estate under the Court of Wards, is no ground for the transfer of a case brought against the tenants of the estate, to another District from the file of a Subordinate Magistrate before whom the case was pending. BAKTU SINGH v. KALI PRASAD, **28 C. 297.** (18 C. 247, 23 C. 495, *R.*)

(4585)—*S.* 526 — *Application for transfer under*—*What should Magistrate consider*—*Practice.*—A District Magistrate entertaining an application for the transfer of a case must understand that the impressions produced in his own mind as to the impartiality of the Magistrate, require less consideration than the effect likely to be produced in the minds of the parties and their witnesses, by the selection of a Magistrate whose personal antecedents or circumstances have however unavoidably connected him with either the one party or the other. Such considerations could not altogether be overlooked even by the High Court, if it had to determine whether a transfer should be directed. *In re* PANDURANG GOVIND PUJARI, **25 B. 179=2 Bom L.R 755.** (25 C. 727, 19 A. 64, 23 C. 495, 25 C. 727, *R.*) [*R.*, 6 Bom. L.R. 480.]

(4586)—*S.* 526—*Circumstances under which transfer allowed*—*Grounds for transfer.*—What the Court has to consider in an application to transfer a criminal case is not merely whether there has been a real bias in the mind of the presiding Magistrate against the accused, but also the further question whether incidents may not have happened which, though susceptible of explanation, and which would perhaps pass unnoticed but for the trial he is undergoing, would alarm him and lead him to think that his conviction is a foregone conclusion. Where, therefore, the District Magistrate refuses an interview to an accused person and cancels his license to carry arms, though the circumstances are not enough to show that the Magistrate is prejudiced against the accused, yet are sufficient grounds for transfer from the district. RAM KISHEN DAS v. KING-EMPEROR, **10 A.L J. 357=13 Cr. L.J. 823=17 Ind. Cas. 567=35 A. 5.** (19 A. 64, *F.*) [*R.*, 12 A.L J. 33=14 Cr. L.J. 666=21 Ind. Cas. 906, 12 A.L.J. 365.]

(4587)—*S.* 526—*Transfer of criminal case*—*Grounds of transfer.*—*Per Taylor, J.*—Next to the importance of deciding a case fairly and impartially, is the importance of conducting oneself in such a manner as to inspire in the mind of parties a confidence that nothing but absolute justice would be done to them ; if by reason of the words or conduct of a Magistrate, before whom a case is pending, any party reasonably apprehends that there is a bias against him in the mind of the officer concerned, it would be expedient for the ends of justice to transfer the case from his file to that of some other officer competent to try it, though there may not be any actual bias. *Per Ghose, J.*—The expression "criminal case" in s. 526 may be understood as simply distinguished from a civil case, or, in other words a criminal case is one over which a Criminal Court exercises jurisdiction. *Per Taylor, J.* — The phrase "criminal case" is intended to be used in a limited sense and not to apply to every case cognisable by a Criminal Court. LOLIT MOHAN MOITRA v. SURJA KANTA ACHARJEE, **28 C. 709=5 C.W.N. 749.** (23 C. 495, 25 C. 727, *R.*) [*R.*, 34 A. 533=10 A.L.J. 27=13 Cr. L. J. 452=15 Ind. Cas. 84, 14 Cr. L.J. 529=14 M. L.T. 200=21 Ind.Cas. 129=1913 M.W.N. 728; *Cons.*, 15 Cr. L.J. 359=23 Ind. Cas. 727=18 C.W.N. 393.]

(4588)—*S.* 526—*Transfer of criminal case*—*Grounds for.*—The transfer of a criminal case should not necessarily be ordered simply because an accused person thinks that he would not get an impartial trial, but the real question to be considered is whether, on the facts disclosed in the application for transfer, there arises a reasonable inference that the Magistrate who is seized of the case may be prejudiced willingly or unwillingly against the accused. SUMESHWAR v. EMPEROR, **14 Cr. L.J. 666=21 Ind. Cas. 906=12 A.L.J. 33.** (19 A. 64, 17 Ind. Cas. 567=13 Cr. L.J. 823=10 A.L.J. 357=35 A. 5, *D.*) [*F.*, 22 Ind. Cas. 996=12 A.L. J. 399=15 Cr. L.J. 368.]

(4589)—*S.* 526—*Transfer, grounds for.*—An appeal was preferred to the Sessions Judge from a conviction under ss. 323 and 325 of the Penal Code. The Sessions Judge after hearing arguments came to the conclusion that, if an

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offence was committed at all, it was one under ss. 394 and 397, Penal Code, and that the convicting Magistrate had no jurisdiction to try a case of so grave a nature. He accordingly set aside the convictions and sentences under ss. 323 and 325 and directed the accused to be committed for trial on charges under ss. 395, 394, 397 and 325 of the Code. *Held*, that the circumstances did not justify a transfer of the case from the Court of the Sessions Judge who had directed the commitment and re-trial. RAM SEWAK v. EMPEROR, **15 Cr. L.J. 367=23 Ind. Cas. 735.**

(4590)—*S. 526—Accused under* bona fide *impression of not having fair trial—Ground of transfer.*—*Held* that, where an accused person is under the *bona fide* impression that he may not have an impartial trial before a Magistrate, it is desirable that the case should be transferred from his Court to another Court. JIT SINGH v. CROWN, **4 P.W.R. 1913, Cr.=14 Cr. L.J. 286=19 Ind. Cas. 718=154 P.L.R. 1913.**

(4591)—*S. 526—Transfer of case—Circumstances giving rise to an apprehension in the mind of the accused—Grounds for transfer.*—In proceedings under s. 110, Crim. Pro. Code, the accused was arrested without warrant, an adjournment of the case was refused even on production of medical certificate, his presence was secured under arrest while he was ill, he was not, till a late stage, informed of the charge against him; and his prayer to reserve cross-examination and produce certain documents and witnesses was refused. *Held* that the above facts did not in any way show bias or prejudice in the mind of the Court against the accused, but taken. with the facts of the institution of several criminal proceedings against the applicant prior to the present proceedings would be likely to give rise to an apprehension in the mind of the accused that he is not likely to have a fair and impartial trial in the Court and it is a good cause for transferring the case from that Court. JAFFER HUSAIN v. KING-EMPEROR, **12 A.L.J. 736=16 Cr. L.J. 56=26 Ind. Cas. 648.**

(4592)—*S. 526—Transfer of cases—Applications for—Grounds for transfer—Apprehension of parties—Reasonableness—Test.*—In dealing with applications for transfer of cases, the Court has not only to take into consideration the motives which might be supposed to bias the Judge, but also has to see whether there is anything in the case likely to create in the mind of the accused a reasonable apprehension that they may not have a fair and impartial trial. In deciding what will amount to a reasonable apprehension, the Court must have regard to the degree of their intelligence and their honesty and impartiality both probably fairly low. MACHAL v. MATRU, **10 N.L.R. 15=15 Cr. L.J. 196=22 Ind. Cas. 980.** (1877, 2 Q.B D. 558, *R.*)

(4593)—*S. 526—Transfer of criminal case—Impartiality of Magistrate not doubted—Grounds of transfer.*—N and four other persons were put on their trial, the former under s. 411 and the latter under s. 381, Penal Code. The case of N was subsequently separated from that of the other four accused. The Magistrate proceeded first to dispose of the case under s. 381 which resulted in conviction. The case under s. 411 was then taken up. *Held*, that, as there was nothing to find that the Magistrate would not try the case with perfect impartiality, the case could not be transferred. NATHI MAL v. EMPEROR, **15 Cr. L.J. 253=23 Ind. Cas. 205.**

(4594)—*S. 526—Transfer of case—Fair and impartial trial not expected—Grounds for transfer.*—Where it has not been shown that a fair and impartial trial cannot be had or that an order of transfer is expedient in the interests of justice, a case cannot be transferred from one Court to another. GHANSHIAM DAS v. EMPEROR, **15 Cr. L J. 368=23 Ind. Cas. 736.** (21 Ind. Cas. 906=14 Cr. L J. 656=12 A.L.J. 33, 26 A. 536=A.W.N. 1904, 94=1 Cr. L.J. 338, *R.*)

(4595)—*S. 526—Cross cases of riot before same Court—Opinion expressed by Court in one case rather unfavourable to the accused in the cross case—Whether ground of transfer.*—Where two cross cases of rioting were pending before a Court, and the Court, on the trial of one case, expressed opinions rather unfavourable to the accused in the other case, *held*, this is no sufficient ground for holding that that Court is not competent to try the second case. EMPEROR v. HARGOBIND, **33 A. 583=12 Ind. Cas. 652=12 Cr. L.J. 564.** (1 C.W.N. 426, *R.*)

(4596)—*S. 526 — Transfer — Prejudging a counter case—Sufficient ground for transfer.*—Where a Magistrate in a counter case has clearly formed an opinion strongly against a party, the High Court will, in the interests of justice, transfer the case to some other Court. ABDUL AZIZ SAHIB v. EMPEROR, **8 Ind. Cas. 721=9 M.L.T. 162=1910 M.W.N. 735.**

(4597)—*S. 526—Criminal case—Discharge of cross case between same parties—Whether sufficient ground for transfer.*—The fact that a Magistrate had discharged a cross case between the same parties is not *per se* a sufficient ground for transfer of the case from his file. (1 S.L.R. 37, *R.*) But, if the order of discharge rested on the evidence which he had heard in both cases, there will be a sufficient ground for transfer. CROWN v. MAHRAM DHANIBUX, **5 S.L.R. 264=15 Ind. Cas. 804=13 Cr. L.J. 532.** (36 C. 904, *D.*)

(4598)—*S. 526 — Transfer — Complainant related to a friend of the Magistrate—Increasing of bail during trial—Grounds for transfer.*—*Held*, that the fact of the Magistrate's being a friend of a remote relative of the complainant is not *per se* ground for transferring the case to another. *Held*, also, that a Magistrate is justified in increasing the amount of bail, if by further proceeding the case turns up more serious than the first imagined. Under such

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circumstances also the case is not to be transferred from his Court. SITA RAM v. GOBIND SAHAI, 4 P.W.R. 1912, Cr. =66 P.L.R. 1912 = 15 Ind. Cas. 314=13 Cr.L.J. 474.

(4599)—*S. 526—Stay of proceedings pending —Rule issued by the High Court—Refusal of Magistrate to act on reliable information thereof —Bias—Grounds for transfer.*—Where, after a Rule was issued by the High Court and further proceedings were stayed, a telegram from the Petitioner's Vakil in the High Court intimating the orders of the High Court was filed before the trying Magistrate who refused to stay proceedings: *Held*—that the Magistrate acted injudiciously, and this would justify the Court in transferring the case. *Held* further—that, if the Magistrate had really any suspicion or doubt in the matter, he might have asked the *muktear* who made the application to verify the telegram and satisfy him as to whether the Vakil in the High Court was acting under instructions in the case. HEM CHANDRA KAR v. MATHUR SANTHAL, 16 C.W.N. 1031= 17 Ind. Cas. 78=13 Cr. L.J. 766.

(4600)—*S. 526—Transfer of case—Security for keeping peace—Magistrate acting as private arbitrator—Magistrate if can subsequently try. —Grounds for transfer.*—Where a Magistrate has dealt with a dispute between two parties in an informal manner as a private arbitrator: *Held*, he should not afterwards deal with the same dispute between the same parties as a Magistrate, as it would be inconvenient and embarrassing for him to do so under the strict restrictions of the Procedure Code and the Evidence Act, and as his previous informal knowledge must necessarily hamper him at every turn. GOBINDA CHANDRA RAY v. GOPAL CHANDRA PANDIT, 18 C.L.J. 150=14 Cr. L.J. 602=21 Ind. Cas. 474.

(4601)—*S. 526—Transfer—Magistrate's duty to make enquiries before putting certain questions — Questions prejudicial to accused put on insufficient ground—Ground for transfer.*—On the assurance given by his police *peshi* clerk, a Magistrate asked the witness whether the accused in a case had ever been challenged in any *badmashi* case; *held*, that it was improper for a Magistrate to put such a question unless he had satisfied himself on the highest and best information that there was some real foundation for the facts mentioned in the question, and that an assurance received from a police *peshi* clerk was not a sufficient ground for putting such a question. The conduct of the Magistrate putting the question gave sufficient cause to the accused to apprehend that a fair and impartial trial will not be held by that Magistrate and it was a good ground for the transfer of the case from his Court. SURAJ PRASAD VAISH v. KING-EMPEROR, 12 A.L.J. 50=23 Ind. Cas. 186=15 Cr. L.J. 234.

(4602)—*S. 526—Transfer of case—Proceedings initiated under orders of District Magistrate—Deputy Magistrate of District, where accused is tried, appearing as prosecution witness.*—

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Where the proceedings against an accused were initiated under the orders of a District Magistrate and one of the important witnesses for the prosecution was a Deputy Magistrate of the same District. *Held*, that, under such circumstances, the case ought to be transferred to some other District. BANS GOPAL PANDE v EMPEROR, 15 Cr. L.J. 543=24 Ind. Cas. 951.

(4603)—*S. 526—Case triable by Sessions—Transfer, grounds of — Magistrate making enquiry expressing strong views and going to be produced as a witness—Transfer not allowed.*—Where a case is triable by a Court of Session, it will not be a good ground for the transfer of the case from the Court of the Magistrate holding an enquiry that the Magistrate expressed certain strong views against a party, or that he is going to be produced as a witness. MUNESHAR v. RAGHUBAR, 11 A.L.J. 741=14 Cr. L.J. 555=21 Ind. Cas. 155.

(4604)—*S. 526—Transfer of case—Allegation that Magistrate trying the case is essential witness for the defence—Strict scrutiny—Necessity for —Duty of applicant to show that Magistrate's testimony is essential and likely to aid his case—Burden of proof—Transfer disallowed in absence of such proof.*—An application under s. 526, Crim. Pro. Code, for transfer of a case pending before a Magistrate on the ground that the Magistrate is a necessary witness for the defence must be strictly scrutinized. It cannot be the intention of the Legislature that this latitude should be given to the accused unless there are sufficient grounds for his allegation. In such a case, a very heavy burden of proof that the evidence of the Magistrate is necessary lies on the applicant. (26 A. 536, *Doubted.*) It is not expedient to order a transfer, unless it is clearly shown that the evidence of the Magistrate is really essential for the accused's defence and that there is a likelihood that he would give evidence which would aid the accused in his defence. NABIBUX KHAN AHMED KHAN v. THE CROWN, 8 S.L.R. 170=16 Cr. L.J. 222=27 Ind. Cas. 346.

(4605)—*S. 526—Transfer—Delay in applying.* An application for transfer, under s. 526 of the Code, ought to be put forward at the earliest possible opportunity, after the concurrence of whatever facts or circumstances are alleged as affording reasonable basis for such application. ASHIQ HUSSAIN v. EMPEROR, 15 Cr. L.J. 536=24 Ind Cas. 848.

(4606)—*S. 526—Transfer of criminal case—Practice.*—Ordinarily, the High Court does not transfer a case pending before a Magistrate, unless the party applying for transfer has moved the District Magistrate before coming to the High Court. *In re* D. FONSECA, 6 Bom. L.R. 480. (25 B. 179=2 Bom. L.R. 755, *R*.)

(4607)—*S. 526—Transfer of Criminal case—Failure to give notice of transfer application—Order—Legality.*—Although, as a general rule, notice of the application for transfer of a

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criminal case should be given the failure to give notice does not render an order of transfer illegal. *In re* MASHA SABJEE SAHIB, **8 M. L.T. 222=7 Ind. Cas. 856=11 Cr. L.J. 533.** (26 M. 41, *R.*)

(4608)—*S.* 526 (=*Crim. Pro. Code,* 1882, *s.* 526)—*Powers of Judicial Commissioner in respect of transfer of cases under—Lower Burma.*—The Judicial Commissioner has no power to transfer a case from one Sessions Court to another on the reference of the Sessions Judge, who should proceed by motion under s. 526, Crim. Pro. Code, 1882. QUEEN-EMPRESS v. NGA SHWE GYAW, **L.B.R. 1872 1892, 256.**

(4609)—*S.* 526 (=*Crim. Pro. Code,* 1882, *s.* 526)—*Jurisdiction of Santhal Pergunnahs Courts — European British subject — High Court's jurisdiction to transfer—Bengal Act* XXXVII *of* 1855—*Grounds for transfer.*—A Court of Magistrate in the Santhal Pergunnahs is, as regards the trial of a European British subject, subordinate to the High Court, and the High Court can, under s. 526 of Crim. Pro. Code, direct the transfer of a case in which such subject is concerned. Where there are circumstances which might reasonably lead the petitioner applying for a transfer to believe that the Magistrate has to some extent prejudged the case against him, and that he will in consequence be prejudiced in the trial, the transfer of case should be ordered. *In the matter of the petition of* WILSON, **18 C. 247.** [*R.*, 28 C. 297; 33 C. 1183=10 C.W.N. 793=3 C.L.J. 637.]

(4610)—*S.* 526 (=*Crim Pro. Code.* 1882, *s.* 526)—*Disqualification of Magistrate.*—The mere fact that a Magistrate, in whose Court a criminal case is pending, may be summoned as a witness for the defence, is not of itself a reason for the transfer of the case from the Court of such Magistrate; but it may be a reason for such Magistrate committing the case to the Court of Sessions instead of, in the event of a conviction, passing sentence himself. *In the matter of the petition of* MIRZA ABDULLAH, **A.W.N. 1897, 17.**

(4611)—*S.* 526—*Transfer—Courts of Chief Presidency Magistrate and other Presidency Magistrates—Equal or superior jurisdiction—Meaning of jurisdiction—High Court—Letters Patent, Rule* 29—*Charter Act, s.* 15—*Power of transfer.*—Two Courts are of equal jurisdiction when they are empowered by law to entertain the same class of cases and to dispose of them in the same way. The Court of an ordinary Presidency Magistrate is a Court of equal jurisdiction with that of the Chief Presidency Magistrate. On general principles it is most natural and desirable that the High Court should possess the power of transferring a case from the file of a Chief Presidency Magistrate to that of any other Presidency Magistrate. Where the allegation is not that the Magistrate is prejudiced or unfitted to try the case, but that he does not possess the amount of scholarship in Telugu and Sanskrit which is necessary

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to correctly understand a book in respect of which the charge is lodged, it was *held* there was no good ground for transfer. VENKATESWARA SASTRI v. EMPEROR, **1911, 2 M.W.N. 50=11 Ind. Cas. 795=12 Cr. L.J. 481=10 M.L.T. 518.**

(4612)—*S.* 526—*Appeal, adjournment of—Application for transfer made to High Court at earliest opportunity after receipt of notice of hearing.*—An appeal was presented by some accused to a District Magistrate on the 15th of May 1914, who transferred it on the same day to a Joint Magistrate. The Joint Magistrate issued the notice of hearing of the appeal on the 15th of July 1914, which was served on the 17th July 1914, fixing the 21st of July 1914 as the date for hearing. The High Court being closed on the 18th and 19th of July 1914, the accused applied to the High Court on the 20th July 1914 for transfer of the appeal and thereafter on the 21st they applied to the Joint Magistrate to adjourn the hearing. The Joint Magistrate refused to adjourn on the ground that the accused had had sufficient time to apply to the High Court but delayed and thereafter heard the appeal on merits and dismisssed it:—*Held,* that the hearing of the appeal should have been adjourned as the accused had applied for transfer on the first day they could have applied, after receipt of notice. *In re* VENUGOPAL REDDY, **16 Cr. L. J. 244=28 Ind. Cas. 100.**

(4613)—S. 526—Jurisdiction of High Court to transfer cases from Agent to Governor in Agency Tracts of Ganjam and Vizagapatam—*See* ACT XIV OF 1874, 14 M. 121=2 Weir 7.

(4614)—S. 526—*See* ACT XIV OF 1874, ss. 3, 5, 6, 10 B. 274.

(4615)—*S.* 526—*See* Act XVIII OF 1879, ss. 13 and 14, 41 P.R. 1888, Cr.

(4616)—S. 526—*See* ACT XXI OF 1879, s. 8, 9 B. 333.

(4617)—S. 526—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 12 M.L. J. 391=2 Weir 678=26 M. 188.

(4618)—S. 526—*See* MAGISTRATE, DUTY OF, 5 C.W.N. 110.

(4619)—S. 526—*See* PENAL CODE, ss. 193 and 199, 1 Weir 176 = 1 Weir 822 = 2 Weir 686.

(4620)—S. 526—*See* Nos. 71, 609, 610, 707 741 to 744, 1222, 1233, 1234, 1235, 1236, 1237, 1584, 1813, 1886, 1977, 2066, 2127, 2167 *a*, 2212 2669, 2670, 3143, 3145, 3169, 4224, 4547, *supra.*

(4621)—*S.* 526 (*a*), (*e*)—*Transfer—Grounds for—Fair and impartial trial—Apprehension in the accused's mind—Further evidence—Disallowing questions—Rejection of application to summon witnesses.*—The taking of irrelevant evidence, by a Magistrate dealing with a criminal case, his interference with the cross-examination of witnesses by disallowing questions on the ground that they are indecent or scandalous, his dismissing an application for summoning a

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large number of witnesses on the ground that it was made for the purpose of vexation or delay, are not sufficient to raise in the mind of the accused a reasonable apprehension that a fair and impartial trial will not be had and do not make it expedient for the ends of justice that the case should be transferred. JAGGAN v. KING-EMPEROR, **12 A.L.J. 399=15 Cr. L. J. 212=22 Ind. Cas. 996=36 A. 239.** (12 A.L. J. 33, 6 C. 491. 19 A. 64, 23 C. 495, 1877, 2 Q. B.D. 558, 567, 1899, 43 Ch. D. 366, 384, 1875, 1 Q B.D. 173, 1881, 8 Q.B.D. 383. 1894, 1 Q. B.D. 750, 758, 1864, B. & S. 915, 26 C. 587, *R.*)

(4622)—S. 526 (1, 2, 4 to 7)—Special Court of Burma, appeal to—*See* BUR. ACT XVII OF 1875, s. 35, 4 C. 667.

(4623)—*S.* 526, *sub-s.* 8—*Application for adjournment before commencement of hearing—Duty of Court—Refusal to grant adjournment, effect of.*—The law does not require that an application for postponement, under s. 526, sub-s. 8, or an application to the High Court for transfer, should be made within any particular period before the date fixed for hearing. It requires only that the party should notify to the Court before which the case is pending, before the commencement of the hearing, his intention to make an application for transfer of the case. If such an intention is notified at however short a time before the commencement of the hearing, the Court before which the case is pending is bound to exercise its power of postponement or adjournment without reference to any opportunity that the party might have had of making an application at some earlier time. The refusal to grant such application is illegal and the whole of the proceedings that follow it cannot be supported. SURAT LALL CHOWDHRY v. EMPEROR, **29 C 211=6 C.W.N. 251.** (15 C 455. *F.*; 19 M. 375, *D.*) [*F.*, 8 C.W N. 77, 9 Cr.L J. 274=1 S.L.R. 35, Cr., 10 Cr. L.J. 570=4 Ind. Cas. 379=3 S.L.R. 155, 33 C. 1183=10 C.W. N. 793=3 C.L.J. 637; *R.*, 35 M. 701=10 Ind. Cas. 380=1911, 2 M.W.N. 311=12 Cr.L.J. 271; *D.*, 8 C.W.N. 910=31 C. 715.]

(4624)—*S.* 526 (8) (=*Crim. Pro. Code, s.* 526-*A*) —*Application for adjournment for moving the High Court to transfer the case—Refusal of the application—Effect.*—Under s. 526-A, added by Act III of 1884, the Public Prosecutor, or the complainant or the accused, has the right to notify to the Court, before which a case or appeal is pending, before the commencement of the hearing of the case, that he intends to make an application to the High Court to transfer the case; and if he does so, the Court should grant a postponement or an adjournment. The words of the section make the granting of the adjournment obligatory. A refusal to grant the application is illegal, and the whole proceedings that follow such refusal cannot be supported. QUEEN-EMPRESS v. GAYITRI PROSUNNO GHOSAL, **15 C 455.** [*F.*, 29 C. 211=6 C.W.N. 251, 33 C. 1183=10 C.W.N. 793=3 C.L.J. 637, 3 S.L.R. 155=4 Ind.Cas. 379, 24 P.L.R. 1904; *R.*, 6 C.W.N. 717, 1 S.L.R. 35, Cr.=9 Cr. L.J. 274; *D.*, 31 C. 715; *Expl.*, 19 M. 375=2 Weir 682.]

(4625)—*S.* 526 (8) — *Transfer of case — Adjournment — Accused—Proper place for.*—Though s. 526 (8) only makes it obligatory to postpone a case when notification is made to the Court before commencement of the hearing, yet when it appears that a *bona fide* application for transfer is about to be made, it would usually be well for the Magistrate, at any stage, to grant a reasonable time to enable it to be made. Dock is the accommodation provided in Courts for persons accused of criminal offences, and it is entirely an act of indulgence on the part of a Court to allow an accused person to remain outside it. SARDAR ALLAM SINGH v. BRINDABAN, **13 Cr. L.J. 584=15 Ind. Cas. 1000=5 Bur. L.T. 137.**

(4626)—*S.* 526 (8)—*Transfer of case, accused's intention to apply for, notified where trial about to commence—Adjournment refused by Magistrate—Opportunity of applying to High Court for transfer to be given to accused—Retrial.*—Where the accused notified, when the trial was about to begin, their intention to apply for transfer of the case and asked for an adjournment, and the Magistrate refused to grant it urgently proceeded with a case and convicted. and sentenced the accused, but it was found that the adjournment could not have been asked for earlier: *Held*, that the Magistrate ought to have, under s. 526 (8), Crim. Pro. Code, granted the adjournment so as to allow the accused an opportunity of making an application for transfer before the High Court. *Held*, also, that the case should be sent for retrial to some other Magistrate. RAMANAND SINGH v. EMPEROR, **15 Cr. L.J. 507=24 Ind. Cas. 595.**

(4627)—*S.* 526 (8)—*Sessions trial—Application for adjournment — Application made after reading the charge—' Before the commencement of the hearing,' meaning of.*—For the purpose of s. 526 (8), Crim. Pro. Code, the hearing or trial must be taken to include all the proceedings taken to determine a case, and the first step in the hearing at a Sessions trial is the reading and explaining of the charge to the accused. Where, at a Sessions trial, the accused applied for an adjournment under s. 526 (8), Crim. Pro. Code, to enable him to apply for a transfer of the case, after the charge was read out and explained to him: *Held* that this was not an application made after the commencement of the hearing, and that the Court was not bound to grant the adjournment. KALI MUDALY v. EMPEROR, **10 Ind. Cas. 380=12 Cr L.J. 271=1911, 2 M.W.N. 311.** (29 C. 211, *Not Appr.*)

(4628)—*S.* 526 (8)—*See* ADJOURNMENT, 31 C. 715=8 C.W.N 910, 6 C.W.N. 717.

(4629)—*Ss.* 526 (8), 344 (=*Crim. Pro. Code,* 1882, *ss.* 526-*A and* 344).—Although the words "shall exercise" in s. 526-A of the Crim. Pro. Code, is obligatory, yet the obligation is not, necessarily and under all circumstances, to grant a postponement, but only to give the

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party a reasonable time for obtaining the orders of the High Court. The postponement is no part of the essence of the obligation. By itself a postponement might be either useless, if it were for too short a time, or superfluous, if there was sufficient time without any postponement. The essence of the obligation is that the party should have a reasonable time to move the High Court and obtain its orders. If he has such reasonable time when the application is made, there is no obligation to grant any further time. When there is a sufficient time between the date of the application for postponement and the date fixed for the conduct of the trial to move the High Court for a transfer and to obtain its orders thereon, the refusal to grant an adjournment is not illegal. QUEEN-EMPRESS v. VIRASAWMI, **19 M. 375 = 2 Weir 680 = 6 M.L.J. 195.** [*D.*, 29 C. 211 = 6 C.W.N. 251; *R.*, 31 C. 715 = 8 C.W.N. 910, 1 P.R. 1913 Cr. = 254 P.L.R. 1912 = 17 Ind. Cas. 58 = 13 Cr. L.J. 746 = 42 P.W.R. 1912.]

(4630)—*Ss.* 526, 107—*Transfer—Proceedings under s.* 107—*District Magistrate's power to send them to second class Magistrate.*—The District Magistrate is not competent to transfer a case under s. 107 to a Magistrate of the Second Class who has no jurisdiction to hear the case. GOBIND SAHAI v. KING-EMPEROR. **12 A.L.J. 1136 = 37 A. 20 = 16 Cr L J. 55 = 26 Ind. Cas. 647.** (24 A. 151, *D.*)

(4631)—*Ss.* 526, 110—*Transfer of proceedings under s.* 190 *to another District—Jurisdiction of Court to which case is transferred.*—S. 526 enables the High Court to transfer criminal proceedings instituted under s. 110 of the Code, once they have been properly instituted, from one district to another, to a Court of superior or equal jurisdiction, and the order of the High Court will give jurisdiction to the Court to which such proceedings are transferred. A District Magistrate admitted, in his reply to an application for transfer of a case, that he had taken a keen personal interest in the case and was satisfied of the applicant's guilt; *held*, that this was sufficient to arouse in the minds of the applicant a reasonable apprehension that he would not have a fair and impartial trial in the district. WAHID ALI KHAN v. KING-EMPEROR. **7 A.L J. 813 = 6 Ind. Cas. 374 = 11 Cr.L.J. 412.** (16 A. 9, *Not F.*)

(4632)—*Ss.* 526, 110 — *Proceedings under s.* 110, *Crim. Pro. Code, Chief Court not empowered to transfer—Punjab Courts Act,* s.33 —*Power of general superintendence—Whether enlarges power under s.* 526, *Crim. Pro. Code.* —The Chief Court is not empowered under s. 526, Crim. Pro. Code, to direct the transfer of proceedings under s. 110 from the Court of a Magistrate to the Court of another Magistrate. The general powers of superintendence and supervision conferred upon the Chief Court by s. 33 of the Punjab Courts Act relate to the administrative control which it exercises over

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subordinate Courts, and cannot be interpreted as enlarging the powers which are specifically granted to it for a particular purpose by s. 526, Crim. Pro. Code. CROWN v. AHMAD BAKSH, **5 P.R. 1914, Cr. = 154 P.L.R. 1914 = 24 Ind. Cas. 971 = 15 Cr.L J. 363.** (15 A. 365, 4 P.R. 1896, Cr., 42 P.R. 1905. Cr., 6 P.R 1911, Cr., 25 B. 179, 28 C. 709, 13 P.R. 1885, Cr., 16 C. 781 (787), *Appr.*; 26 M. 188, 2 C.L.J. 614, 34 A. 533, *Diss.*; 1 P.R. 1913, Cr., *D.*)

(4633)—*Ss.* 526, 437—*Complaint dismissed by one Magistrate—Fresh complaint to another —Transfer of case.*—A complaint under ss. 420, 409, Penal Code, dismissed on the complainant's statement that he had come to terms with the accused and did not wish to offer any evidence, can be reinstituted in the Court of another Magistrate who has jurisdiction to entertain it. Where in a case there is a good deal of evidence (both oral and documentary) in English and the Magistrate in whose Court the case is pending does not know English, it may be necessary and perhaps advisable to transfer the case to some Magistrate who knows that language. MOHAMMAD v. ALI RAZA, **16 Cr. L.J. 73 = 26 Ind. Cas. 665.**

(4634)—*Ss.* 526, 527—*Application for transfer of case.*—In an application for the transfer of a case from the Court of a particular Magistrate, the following reasons were set out:—(1) that the applicants who were butchers, had for sometime past had, with other butchers, difficulties with the Municipal Board, of which the Magistrate was a member, (2) that the evidence of the Magistrate would be required in the case. *Held*, that the first ground was not a valid one, but that the transfer ought to be granted on the second ground, inasmuch as the accused had the right to have the Magistrate summoned, unless it was considered that the application should be refused on the ground that it was made for the purpose of vexation or delay, or for defeating the ends of justice, and as it was not proper to leave the decision of such a question to the Magistrate whose evidence was required. EMPEROR v. ABDUL LATIF, **26 A. 536 = A.W.N. 1904, 94.**

(4635)—*Ss.* 526, 531—*Commitment to Court having no territorial jurisdiction—When High Court could order trial to be held by such Court.* —The Sessions Judge of Ratnagiri referred a case committed to his Court to the High Court on the ground that the offences with which the accused was charged were committed, if at all, in Bombay, beyond his jurisdiction. *Held* that, as the order of commitment had been made, the case fell under s. 531, Crim. Pro. Code, and that, as the complainant chose to go to Ratnagiri District and the accused wished to be tried there, the High Court could order that the trial might proceed before the Sessions Judge of Ratnagiri. QUEEN-EMPRESS v. ATMARAM GOVIND, **2 Bom. L R. 394.** [*R.*, 96 P.L.R. 1901 = 24 P.R. 1901, Cr.]

(4636)—*Ss.* 526, 548 (= *Crim. Pro. Code,* 1882, *ss.* 526, 548)—*Right of accused to get copies of pending proceedings of Magistrate.*—In

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an application under s. 526, Crim. Pro. Code, for the transfer of a case under trial to another Court on the ground *inter alia* that the Magistrate refused to grant the accused copies of the depositions and proceedings as the case proceeded, *held* that, though the applicant had not yet been "affected by judgment or order," or the case had not been decided, a Magistrate might give copies even of pending proceedings as far and as speedily as possible, to accused persons, though they may not have a legal right to them then and there. *In the matter of* DIA SHANKAR, **S.C. 141, Oudh.**

(4637)—*Ss.* 526, 556, 190—*Proceedings instituted by Magistrate in another capacity.*—Where a Magistrate initiated the proceedings in his capacity as Collector or Chairman of the Municipal Board, it is a disqualification for his trying the case, under s. 556 of the Crim. Pro. Code. But, if he initiated the proceedings only under s. 190, it is not a disqualification under s. 556. Nor is it a proper ground for transfer under s. 526. *In the matter of the petition of* INAYAT HUSAIN, **A.W.N. 1899, 74.** [*R.*, 32 A. 635=7 A.L.J. 749=7 Ind. Cas. 291=4 Cr. L.J. 447.]

——S. 527 (=1882, s. 527 ; 1872, s. 64-A).

(4638)—S. 527—*See* Nos. 244, 1951, 4634, *supra.*

——S. 528 (=1882, s. 528 ; 1872, ss. 44, last para, 47, para 1, 48 ; 1861, s. 36).

(4639)—*S.* 528—*Order of Sub-Divisional Magistrate transferring case from one Sub-Magistrate to another—Power of District Magistrate to re-transfer.*—Under s. 528, the District Magistrate and Sub-Divisional Magistrate have co-ordinate authority over Magistrates subordinate to the Sub-Divisional Magistrate, and the order for a transfer of a case made by the Sub-Divisional-Magistrate cannot be appealed against to the District Magistrate. It may be that, under s. 528 a case once transferred from one Magistrate to another may be withdrawn from the latter by the District Magistrate or even by the Sub-Divisional Magistrate and he may inquire into or try such case himself or refer it for inquiry or trial to some other competent Magistrate on a substantive application made that it is expedient that the Magistrate to whom it has been transferred or his successor in office should inquire into or try the case. Where a Sub-Divisional Magistrate had directed the transfer of a case from the file of one Sub-Magistrate to another, it would not be competent to the District Magistrate to direct its re-transfer to the file of the Magistrate from whom it was transferred. RAGHUNATHA PANDARAM v. EMPEROR, **26 M. 130=2 Weir 689.** [*Rel.*, 17 Ind. Cas. 414=13 Cr. L.J. 482].

(4640)—*S.* 528 (=*Crim. Pro. Code*, 1872, *s.* 47)—*Power to withdraw cases—Notice.*—(1) The powers given by s. 47 should be most carefully exercised. Magistrates of Districts should use the extensive discretion given to them to divert the course of procedure from its ordinary channel, only when it is absolutely necessary for the interests of justice that they should do so. (2) When an application is made to the Magistrate of the District, for the withdrawal or the removal of a case from the Court of a subordinate Magistrate, by one of the parties to such case, notice of such application should be given to the opposite party, and an opportunity should be afforded, if he is desirous of so doing, to show cause against its being granted. UMRAO SINGH v. FAKIR CHAND, **3 A. 749=A.W.N. 1881, 53.** [*F.*, 6 M.L.T. 14=9 Cr. L.J. 407, 1 Ind. Cas. 889, 14 C.P.L.R. 190, 10 P.L.R. 1903=98 P.R. 1902, Cr.; *R.*, 8 C. 393, 1 L.B.R. 139, U.B.R. 1904, 1st Qr., Cr. P.C., 15]

(4641)—*S.* 528 (=*Crim. Pro. Code*, 1861, *s.* 36)—*District Magistrate—Reference.*—A District Magistrate cannot refer any case for trial to a Full Power Magistrate unless he has withdrawn it from some Court subordinate to him under s. 36 of the Crim. Pro. Code, 1861. TANNA MAGISTRATE'S LETTER OF 14TH JUNE, 1870, **Rat. Un. Cr. C. 34.**

(4642)—*S.* 528 (=*Crim. Pro. Code*, 1882, *s.* 528)—*Magistrate subordinate to Sub-Division Magistrate—Power of District Magistrate.*—A Magistrate, who is subordinate to a Sub-Division Magistrate, is also subordinate to the District Magistrate, within the meaning of s. 528, Crim. Pro. Code. THAMAN CHETTI v. ALAGIRI CHETTI, **14 M. 399=2 Weir 688.**

(4643)—*S.* 528 (=*Crim. Pro. Code*, 1882, *s.* 528)—*Power to transfer cases from the file of Village Magistrates.*—Village Magistrates are not Magistrates under the Code of Criminal Procedure. A joint Magistrate has not, therefore, the power to withdraw a case from the file of a Village Magistrate and transfer it for disposal to a Second-Class Magistrate. MADAVARAYACHAR v. SUBBA ROW, **15 M. 94=2 Weir 692.** [*R.*, 26 M. 394=2 Weir 693, 1 Weir 788 (*B*)].

(4644)—*S.* 528—*Order of transfer—Notice to show cause—Necessity for issue of.*—S. 528, Crim. Pro Code, does not make it incumbent on the Magistrate to issue notice before making an order for transfer, though in many cases it would be improper to take action under the section without issuing notice. DUR MAHOMED *wd.* MITHO v. ALLAHDINO *wd.* ALIMKHAN, **5 S.L.R. 190=13 Ind. Cas. 224=13 Cr. L.J. 32.**

(4645)—*S.* 528—*Order of transfer made by Sub-Divisional Magistrate—Appeal to District Magistrate not maintainable—Jurisdiction.*—A District Magistrate cannot set aside an order of transfer passed by a Sub-Divisional Magistrate. ILTAF HUSSAIN v. EMPEROR, **13 Cr. L.J. 782 =17 Ind. Cas. 414.** (26 M. 130, *Rel.*)

(4646)—*S.* 528—*Magistrate becoming Chairman, Municipal Board—Transfer of cases—Jurisdiction as Magistrate.*—When a Magistrate is gazetted to the office of the Chairman of a Municipal Board and takes charge of that office,

Crim. Pro. Code (Act V of 1898)—*continued.*

he is thereby divested of his jurisdiction as Magistrate. He ceases to be subordinate to the District Magistrate and the latter cannot transfer any criminal case to him for trial. NATHI MAL v. KING-EMPEROR. **12 A.L.J. 890 = 36 A. 513 = 15 Cr.L.J. 693 = 26 Ind. Cas. 141.**

(4647)—*S. 528—Transfer of a case—Dispute about a mosque between Hindus and Muhammadans.—Held*, that it is desirable that a suit relating to a mosque between Hindus and Muhammadans may be tried by District Magistrate or some other European Magistrate. KADIR BAKHSH v. SUNDAR LAL, **1 P.W.R. 1915, Cr. = 16 Cr. L.J. 213 = 27 Ind. Cas. 837 = 127 P.L.R. 1915.**

(4648)—S. 528—*See* ACT XI OF 1874, s. 6, 8 C. 851.

(4649)—S. 528—*See* ACT XIII OF 1889, s. 7, Rat. Un. Cr. C. 849 = Cr. Rg. 16 of 1896.

(4650)—S. 528—Defamatory statement in application for transfer — Bad faith— *See* PENAL CODE, ss. 2, 499, 500, 17 C.W.N. 297 = 14 Cr.L.J. 100 = 18 Ind. Cas. 660 = 40 C. 433.

(4651)—S 528—*See* PENAL CODE, s. 84, 94 P.L.R. 1909 = 6 M.L.T. 101.

(4652)—S. 528—Defamatory statement in application for transfer—Conviction—Legality—*See* PENAL CODE, ss. 499, 500, 17 C.W.N. 449 = 18 Ind. Cas. 349 = 40 C. 441, Note.

(4653)—S. 528—*See* Nos. 110, 181, 359, 1207, 1247, 1647, 1648, 1674, 1730, 1887, 2097, 2632, 3248, 3249, 3250, 3809, 4359 *supra.*

(4654)—*S.* 528 (1)—Ex parte *order—Opportunity to show cause.*—Ordinarily an order under s. 528 (1) ought not to be made on the application of either party, without giving the opposite party, whether he be complainant or accused, an opportunity of showing cause against it. But an *ex parte* order under the section is not illegal simply because it is made *ex parte*. MA HNIT v. MAUNG PE TO, **U.B. R. 1904, 1st Qr, Crim. Pro. Code, 15.** (3 A. 749, 22 B. 549, 8 C. 393, L.B.R. 1893—1900, 392, *R.*)

(4655)—Ss. 528 (1 to 3), 107—*See* MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES, 8 C. 851.

(4656)—*Ss.* 528, 190 (1) (*a*), 192 (1), 200 (c)—*Meaning of the term "case"—District Magistrate's power to transfer cases—Omission to record reasons—Effect.*—The term 'case' has not been defined in the Crim. Pro. Code, but reading together ss. 192 (1), 190 (1) (*a*) and proviso (*c*) to s. 200, it is clear that it includes a proceeding upon a complaint as soon as the complaint has been received by the Magistrate who takes cognizance of the offence complained of. A District Magistrate can, therefore, upon the application of the accused person, withdraw a complaint from one subordinate Magistrate and refer it to another such Magistrate, even before a decision to issue process against the accused has been reached. (4 N.L.R. 81, *D.*)

Crim. Pro. Code (Act V of 1898)—*continued.*

The mere omission to record reasons as required by s. 528 (3), Crim. Pro. Code, does not necessarily invalidate the subsequent proceedings. ASARAM v. BHAGIRATHI, **7 N.L.R. 97 = 11 Ind. Cas. 621 = 12 Cr. L.J. 437.** (14 C. P.L.R. 190, 28 A. 421, 34 C. 918, *R.*)

(4657)—Ss. 528 and 497—*See* TRANSFER OF CRIMINAL CASE—GROUNDS FOR TRANSFER—NOTICE, 22 B. 549.

(4658)—*Ss.* 528 *and* 537—*Withdrawal by District Magistrate of partly tried case to himself—Commencement of trial apart—Irregularity*—A Magistrate, who, acting under s. 528, Crim. Pro. Code, withdraws a case from his subordinate Magistrate after the latter has heard the case partly, should commence his trial afresh. It is not enough to ask the prisoner whether he wished to examine any of the prosecution witnesses again, though the prisoner might consent to such a procedure. The defect consequent on the failure to commence the trial *de novo*, would be an irregularity, curable neither by the prisoner's consent nor by s. 537, Crim. Pro. Code, which was intended to apply to formal defects or irregularities and not to illegal trials. PURAN v. KING-EMPEROR, **6 O.C. 192.**

(4659)—Ss. 528, 556—*See* DISQUALIFICATION OF MAGISTRATES, 2 L.B.R. 220.

——S. 529 (= 1882, s. 529; 1872, ss. 32, 34, cl. 9).

(4660)—*S.* 529 (= *Crim. Pro. Code*, 1872, s. 34 (4))—*Summary jurisdiction.*—No Magistrate is entitled to cut down an offence from that which is established by the evidence in order to give himself summary jurisdiction. Such proceedings are void under s. 34 (4), Crim. Pro. Code. CHUNDER SEEKOR SOOKUL v. DHURM NATH TEWAREE, **1 C.L.R. 434.** [*D.*, 10 A. 55.]

(4661)—S. 529—*See* IRREGULARITY, 20 A. 40 = A.W.N. 1897, 173.

(4662)—*S.* 529 (*f*) (= *s.* 32, *para* 1, *Code of* 1872)—*Power of subordinate Magistrates to transfer cases.*—A taluq second class Magistrate has no power to transfer a case to a Sheristadar, Second Class Magistrate. But such a transfer does not vitiate the subsequent proceedings. *In re* SABHAPATHI MUDALI, **2 Weir 152 = 2 Weir 699.**

(4663)—S. 529—*See* Nos. 128, 1018, 1207, 1208, 1335, 1670, 1678, 1733, 2055, 3036, 4481, *supra.*

(4664)—Ss. 529, 530—*See* SESSIONS JUDGE, JURISDICTION OF, 4 L.B.R. 49 = 6 Cr. L.J. 287.

(4665)—Ss. 529, 530—*See* SUMMARY TRIAL, 2 J.G. 8.

(4666)—Ss. 529, 530, 537—*See* PENAL CODE, ss. 406, 409, 1 Bom. L.R. 27.

(4667)—Ss. 529, 537—*See* ACT I OF 1871, ss. 8, 20, 22, 23 C. 442.

Crim. Pro. Code (Act V of 1898)—*continued.*

——**S. 530 (=1882, s. 530; 1872, s. 34, except. cl. 9.)**

(4668)—*S.* 530—*Trial of non-summary case summarily, validity of.*—If, on the examination of the complainant, there is no reason to believe that the complaint is exaggerated or false and process is issued for the attendance of the accused, the Magistrate is bound to proceed and regulate his proceedings at the trial as for the offence made up of the facts complained of. Where a Magistrate deliberately disregards the offence actually complained of, *viz.*, an offence not triable summarily, and tries it summarily, his proceedings are absolutely void under s. 530, Crim. Pro. Code. KAILASH CHUNDER PAL v. JOYNUDDI, **5 C.W.N. 252.**

(4669)—*S.* 530 (=*Crim. Pro. Code*, 1872, *s.* 34).—The proceedings of the summary trial, under ch. XVIII, Crim. Pro. Code, 1872, of a case not so triable are void under s. 34, Crim. Pro. Code. MUSSAMMUT MAHARAJO v. GHASITA, **Colm. Dig. Cr. 43 of 1876.**

(4670)—*S.* 530—*Conviction by a Bench of five Magistrates, one of whom had not heard all the evidence—Conviction vitiated—Re-trial ordered.*—Where a person is convicted by a Bench of five Magistrates, one of whom had not heard all the evidence, the conviction is vitiated (s. 530, Crim. Pro. Code) and must be set aside and a re-trial should be ordered. *Re* SUBRAMANIA AYYAR, **38 M. 304=29 Ind. Cas. 329.** (20 C. 870, 18 M. 394, 23 C. 195, *F.*)

(4671)—S. 530—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 24 M. 675=2 Weir 699.

(4672)—S. 530—*See* SENTENCE—GENERAL, 4 Bom. L.R. 267.

(4673)—*S.* 530 (*p*) (=*Crim. Pro. Code*, 1882, *s.* 530)—*Cognizance of aggravated offence, by a second class Magistrate.*—Where, on an appeal from a conviction by a Magistrate of the second class for an offence under s. 325, the appellate Court *held* that the offence disclosed by the evidence was that of grievous hurt with a dangerous weapon punishable under s. 326, and beyond the jurisdiction of the Magistrate, and the Sessions Judge referred the case and the appeals to the High Court on the ground that the proceedings were void *ab initio* under s. 530 (*p*), *held* that the Magistrate of the Second Class was not wholly without jurisdiction, and that the High Court would not interfere, if the accused had not been prejudiced or if the sentence was not unduly lenient. QUEEN-EMPRESS v. GUNDYA, **13 B. 502=13 Ind. Jur. 469.** [*F.*, 4 Bom. L.R. 267; *R.*, 25 B. 90, 24 M. 675=2 Weir 699, 1 Bom. L.R. 683, 14 Cr. L. J. 640=21 Ind. Cas. 688=25 M.L.J. 484; *Expl.*, 1 Bom. L.R. 27.]

(4674)—*S.* 530 (*q*)—*Summary proceedings by Magistrates not so empowered.*—A Cantonment Magistrate does not, in virtue of his office, possess summary powers of trial with respect to breaches of Cantonment rules, unless he is specially empowered by the Local Government in that behalf. QUEEN-EMPRESS v. RAZAK, **U.B.R. 1882-1896, Vol. I, 76.**

(4675)—S. 530—*See* Nos. 128, 730, 1238, 1670, 1678, 2207, 3223, 3224, 3489, 3496, 4664, 4665, 4666, *supra.*

(4676)—*Ss.* 530, 195 (=*Crim.Pro.Code*, 1872, ss. 34 *and* 467).—Certain proceedings taken, under s. 188, I.P.C., charging several persons with disobedience to an order forbidding them to catch fish at a certain 'ghat,' were held to be bad, because there was no complaint or Police report and nothing showed how the case began, and no sanction for the prosecution was obtained as required by s. 467. GOVERNMENT v. CHATTAR, **Colm. Dig. Cr. 40, 1876.**

——**S. 531 (=1882, s. 531; 1872, s. 33).**

(4677)—*S.* 531 (=*Crim. Pro. Code*, 1882, *s.* 531)—*Hearing an appeal presented within jurisdiction of a Sessions Court at a place outside the jurisdiction.*—All judicial acts exercised by persons whose judicial authority is limited as to locality should be done within the locality to which such authority is limited. Where a criminal appeal was presented to a Sessions Judge at a place within his jurisdiction, but was heard and disposed of at a place outside the local limits of his criminal jurisdiction, but within the limits of his civil jurisdiction, *held*, that the procedure adopted was an irregularity, but was covered by the provisions of s. 531, and that the finding would not be set aside, unless a failure of justice had been occasioned by it. QUEEN-EMPRESS v. FAZL AZIM, **17 A. 36=A.W.N. 1894, 195.** [*R.*, 26 M. 640=1 Weir 190.]

(4678)—*S.* 531—*Committal by a Magistrate having no territorial jurisdiction.*— S. 531 applies to a case where the Magistrate has authority to commit, but has not territorial jurisdiction in the place where the offence is alleged to have been committed. RAYAN HUTTI v. EMPEROR, **26 M. 640=2 Weir 704=1 Weir 122=1 Weir 190.** [*R.*, 1 M.L.T. 345 =30 M. 94=4 Cr. L J. 500.]

(4679)—*S.* 531—*Want of local jurisdiction—Defect whether curable.*—Trying a case in a district which has not local jurisdiction is not a defect of jurisdiction, but only of venue, and is curable under s 531, Crim. Pro. Code, 1898. UTTAM CHAND v. EMPEROR, **2 P.R. 1902, Cr. =9 P L.R. 1902.** (16 C. 667, 5 M. 23, 44 P.R. 1885, Cr, 35 P.R. 1888, Cr., 24 P.R. 1901, Cr., *R*; 16 B. 200, 17 A. 36, *D.*) [*R.*, 18 P.W.R. 1908, Cr.]

(4680)—*S.* 531—*Want of local jurisdiction—Defect in—If curable.*—The above section covers cases which the Magistrate has power to try, the only defect in the jurisdiction being one of locality. MAUNG WAING v. MA CHIT, **U.B.R. 1904, 1st Qr. Crim Pro.Code, 10.** (L B.R. 1902, 222, 24 C. 638, U.B.R. 1897-1901, 104, *R.*) [*R.*, 11 Cr.L.J. 662=8 Ind. Cas. 479=U.B.R. 1910, 34.]

Crim. Pro. Code (Act V of 1898)—*continued.*

(4681)—S. 531—*See* BUR. ACT IV OF 1899 s. 30, cl. (*c*), 12 Cr.L.J. 280=10 Ind. Cas. 921.

(4682)—S. 531—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 8 C. 985=10 C.L.R. 241, F.B.

(4683)—S. 531—*See* Nos. 118, 1543, 1547, 1564, 1573, 1575, 1585, 1586, 1670, 3601, 3714, 4481, 4635, *supra*, and 4795, 4796, *infra*.

(4684)—*Ss*. 531, 177, 179, 180, 181, 183—*Offence committed in one district—Trial by a Magistrate in another district, not a material irregularity.*—Where an offence is committed within the jurisdiction of a Sub-Divisional Magistrate in one district, but is tried by a Magistrate in another district, the irregularity of the trial is cured by s. 531 of the Code. This section is not limited to cases, where the offence committed, within the jurisdiction of a Court, is tried by that Court, outside the limits of the local area of its jurisdiction. Ss. 177, 179, 180, 181, 183 must be read together with s. 531. The intention of s. 531 is to provide against the contingency of a finding, sentence, or order regularly passed by a Court, in the case of an offence committed outside its local area, being set aside, when no failure of justice has taken place. PUBLIC PROSECUTOR v. DORAISWAMY MUDALI, **1 M.L.T. 345=4 Cr L.J. 500=30 M. 94.** [*R.*, 18 P.W.R. 1908, Cr.]

(4685)—Ss. 531, 532—*See* COMMITMENT TO SESSIONS COURT, 16 B. 200.

(4686)—*Ss*. 531, 532 *and* 537 (=*ss*. 531, 532, 537, *Code of* 1882)—*Commitment to Sessions by a Magistrate having no territorial jurisdiction over the place—Validity of the commitment.*—Where a Magistrate being empowered to commit to Sessions, but having no territorial jurisdiction over the place in which the offence is alleged to have been committed, commits a case to a Sessions Court, which has jurisdiction over the place, the commitment is valid and cannot be quashed under s. 532, Crim. Pro. Code, although the objection to such commitment is taken before the commitment. QUEEN-EMPRESS v. ABBI REDDI, **17 M. 402=2 Weir 704=4 M.L.J. 196=2 Weir 259.** (16 B. 200, *R.*) [*Appr.*, 18 A. 350=16 A.W.N. 96; *R.*, 26 M. 640=1 Weir 190, 30 M. 94=4 Cr. L.J. 500=1 M.L.T. 345, 13 Cr.L.J. 35=13 Ind. Cas. 275=22 M.L.J. 141=10 M.L.T. 563=1912 M.W.N. 3.]

—— S. 532 (=1882, s. 532 ; 1872, s. 33).

(4687)—S 532—*See* Nos. 1615, 1938, 1948, 1952, 3181, 3815, 4685, 4686, *supra*.

(4688)—*Ss*. 532, 5, 177, 178 (=*Crim. Pro. Code*, 1872, *ss*. 33, 63)—*Commitment—Scope of* s. 33.—S. 33 contemplates the contingency of a case, which has been enquired into at the proper place, as indicated by s. 63, being committed to the proper Court of Sessions by a particular Magistrate, not duly empowered by law to make such a commitment. Where a Magistrate inquires into and commits the case of an offence, which has taken place and has been completed in another district, to the

Crim. Pro. Code (Act V of 1898)—*continued.*

Court of Sessions to which commitments from his district are made, the Sessions Judge of that district should not accept the commitment, on the ground, that the accused has not been prejudiced thereby. The proceedings in such a case are illegal *ab initio*. EMPRESS OF INDIA v. JAGAN NATH, **3 A. 258.** [*R.*, 10 B. 274; *Disappr.*, 17 A. 36.]

(4689)—Ss. 532. 537—*See* ACT XI OF 1878, ss. 19 (*f*) and 29, 5 M.L.T. 162.

——S. 533, para 1 (=1882, s. 533; 1872, s. 346, last para).

See CONFESSION.

(4690)—*S*. 533—*Defective record of confession—Parol evidence—Evidence Act, s.* 91—S. 533, Crim. Pro. Code, is intended to apply to all cases in which the directions of the law have not been complied with, without any distinction between omissions to comply with the law and infractions of it. Under that section, if the record of a confession is inadmissible owing to failure to comply with the law, such an omission to obtain the signature or mark of the person confessing to the document, parol evidence, notwithstanding anything contained in s. 91, Evidence Act, may be given of the terms of the confession, and those terms, if and when proved, may be admitted and used as evidence in the case, if the defect is such that it has not affected the merits of the defence. QUEEN-EMPRESS v. RAGHU, **23 B. 221.** [*F.*, 4 Bom. L.R. 785; *R.*, U.B.R. 1903, 1st Qr., Crim. Pro. Code, 13.]

(4691)—*S*. 533 (=*Crim. Pro. Code*, 1882, s. 533)—*Construction of.*—S. 533 is to be interpreted liberally, and though a confession recorded by a Magistrate was in the first instance and by itself inadmissible as not being in the form of question and answer, not being recorded in the vernacular of the accused, and not bearing the signature or mark of the accused, it will become admissible by the taking of the evidence of the Magistrate that the accused duly made the statement recorded. EMPRESS v. TULARAM CHAMAR, **8 C.P.L.R. Cr. 21.** (15 C. 595, 17 C. 862, *Disappr.*; 18 C. 549, *Approved.*)

(4692)—S. 533—*See* EVIDENCE ACT, 1872, ss. 21, 24 to 27, 8 O.C. 395.

(4693) S. 533—*See* Nos. 1463, 1468, 1470, 1475, 1476 to 1480, 1482, 1483, 1484, 2015, 2647, 2841, 3124, *supra* and 4743 *infra*.

(4694)—Ss. 533, 164—*See* CONFESSION — CONFESSIONS TO MAGISTRATES, 8 O.C. 395-B.

——S. 534 (=1882, s. 534 . 1872, s. 85).

(4695)—S. 534—*See* No. 1712, *supra*.

——S. 535 (=1882, s. 535; 1872, s. 216, expls. I and II).

(4696)—S. 535—*See* Nos. 354, 1655, 1656, 1658, 2241, 2311, 2321, 3692, *supra*.

(4697)—*Ss*. 535, 258 (=*Crim. Pro. Code*, 1872, *ss*. 216, 220)—*Omission to prepare charge.*

Crim. Pro. Code (Act V of 1898)—*continued.*

—The explanation to s. 220 is, by its terms, governed by those of Explanation 1 to s. 216, and, by the terms of that Explanation, the omission to prepare a charge does not invalidate a trial, unless, in the opinion of the Court of appeal or revision, a failure of justice has been thereby occasioned. HANUMAN v. AHMAD ALI, **A.W.N. 1881, 142.**

——S. 536 (=1882, s. 536; 1872, s. 233, Expl. 4).

(4698)—*S.* 536, *cl.* 2—*Trial with assessors of offences triable by jury.*—Where a case was triable by jury, but was tried with the aid of assessors and no objection was taken at the trial, *held*, that the mere fact that the assessors found the accused not guilty, but the Judge differing from their opinion had convicted them would not make the trial invalid, inasmuch as no objection was taken at the trial. QUEEN-EMPRESS v. GANAPATHY VANNIANAR, **23 M. 632=2 Weir 331=2 Weir 709.**

(4699)—S. 536—*See* Nos. 2424, 2762, 3578, *supra.*

(4700)—*Ss.* 536, 537 (=*Crim. Pro. Code,* 1882, *ss.* 536 *and* 537)—*Offences triable by assessors tried by jury—Procedure—Penal Code, ss.* 380, 457—*Criminal misappropriation.*—Where a temple trustee was convicted of theft of temple property under ss. 457 and 380, but, on appeal, the High Court held that a temple trustee could not be convicted of theft but could be convicted only of criminal misappropriation by an agent, which was triable only with the aid of assessors, *held*, that the proper procedure would be to allow a re-trial and if such re-trial was not desired, the Court may treat the verdict of the jury as the opinion of assessors and convict the accused for criminal misappropriation. *In re* MUTTUSAMI PILLAI *alias* KUNJU PILLAI, **26 M. 243, note=1 Weir 432=6 M.L.J. 14=2 Weir 709.**

——S. 537 (=1882, s. 537; 1872, ss. 203, 283, 300, 464; 1861, ss. 426, 439), Explanation, new.

See JOINDER OF CHARGES.

See JOINT TRIAL.

(4701)—*S.* 537 — *Irregularity in issuing search-warrant under s.* 537, *Gambling Act, ss.* 5 *and* 6.—The mere fact that a warrant issued under the Gambling Act was defectively worded and was rather a warrant of arrest than a search-warrant had not the effect either (1) of making the particular provisions of ss. 5 and 6 of the Act inapplicable, or (2) of vitiating the trial. The irregularity would be covered by s. 537 of the Crim. Pro. Code. Per *Mahmood, J.*, concurred with dictum (2) but not with dictum (1); *Duthoit, J.* EMPRESS v. MAN SINGH, **A.W.N. 1884, 291.** [*F.*, 12 Cr. L.J. 28=8 Ind. Cas. 1127=6 N.L.R. 168.]

(4702)—*S.* 537 (=*Crim. Pro. Code,* 1882, *s.*537)—"*Court of competent jurisdiction.*"—The words "a Court of competent jurisdiction" in s. 537 must be taken to mean "a Court of competent jurisdiction in respect of the particular offence charged." QUEEN-EMPRESS v. KRISHNAMBHAT, **10 B. 319.**

(4703)—*S.* 537—*Contravention of terms of s.* 495.—The contravention of cl. 4 of s. 495, Crim. Pro. Code, does by itself invalidate a trial altogether when no failure of justice has occurred within the meaning of s. 537. EMPEROR v. TRIBHOVANDAS BRIJBHUKANDAS, **26 B. 533=4 Bom. L.R. 271.**

(4704)—*Scope of s.* 537.—There is a distinction between a case in which the trial itself is contrary to law, in which event it is no trial at all under the Code, and a case in which the trial is one within the jurisdiction of the Magistrate and irregularities occur in the method of conducting it. In the latter case the provisions of s. 537 are applicable, and the finding can only be reversed if the irregularity has in fact occasioned a failure of justice. EMPEROR v. TRIBHOVANDAS BRIJBHUKANDAS, **26 B. 533 =4 Bom. L.R. 271.**

(4705)—*S.* 537--*Scope of.*—A Magistrate who has himself committed an irregularity cannot utilize the provisions of s. 537 to cure such irregularity. But it is competent to the Sessions Judge on the appeal, or to the High Court on revision to consider whether the provisions of that section should be applied. *In re* KOOTHOOR SUBBAYYAR'S ESTATE, **8 M.L.J. 215.**

(4706)—*S.* 537—*Absolute illegality not cured by s.* 537.—S. 537 of the Code, which cures errors, omissions, or irregularities, is not intended to cure an absolute illegality. *In the matter of the petition of* CHANDI SINGH; QUEEN-EMPRESS v. CHANDI SINGH, **14 C. 395.** [*Overruled*, 27 C. 839; *F.*, P.L.R. 1900, 61; *R.*, 25 M. 61=2 Weir 271, P. C., 10 M.L.J. 147, 83 P.L.R. 1901, 13 Cr.L.J. 609=16 Ind. Cas. 257=15 C.L.J. 517=16 C.W.N. 1105.]

(4707)—*S.* 537 (=*Crim. Pro. Code,* 1882, *s.* 537)—*Misdirection to jury—Powers of High Court.*—S. 537 of the Code does not authorise the High Court, in cases where it finds that the lower Court has misdirected the jury, to go into the evidence and to decide upon the fact whether or not the accused have been rightly convicted. The only course it can adopt is to direct a retrial. WAFADAR KHAN v. QUEEN-EMPRESS, **21 C. 955.** [*Diss.*, 19 B. 749, 25 C. 711, 26 M. 1=2 Weir 521; *F.*, 25 C. 230, 25 M. 61=2 Weir 271, P.C., 10 M.L.J. 147.]

(4708)—*S.* 537 (=*Crim. Pro. Code,* 1882, s. 537)—*Omission to set out the guilty intention in a charge.*—An objection as to the omission to set out the guilty intention of an accused in the charge is subject to the provisions of s. 537 of the Code; and before effect can be given to any such objection, it must be shown that the omission complained of has occasioned a failure of justice. BALMAKAND RAM v. GHANSAMRAM, **22 C. 391.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(4709)—*S.* 537 (=*Crim. Pro. Code,* 1882, s. 537)—*Omission to call upon the accused to enter upon his defence whether cured by s.* 537.—The formality of calling upon an accused person to enter on his defence is not a mere formality, but is an essential part of a criminal trial. Omission to do so cannot be cured by s. 537 of the Code, as it cannot be said that the omission has not occasioned a failure of justice. QUEEN-EMPRESS v. IMAM ALI KHAN, **23 C. 252.** [*Appl.*, 2 L.B.R. 115.]

(4710)—*S.* 537 (=*Crim. Pro. Code,* 1882, s. 537)—*Applicability to pending proceedings.*—S. 537 of the Code is not intended to apply to a case which has not been finally disposed of. The test prescribed for determining when an error, omission or irregularity should be a ground for setting aside an order is one which can be properly applied only after the final result of the case is known. NILRATAN SEN v. JOGESH CHUNDRA BHUTTACHARJEE, **23 C. 983=1 C.W.N. 57.** [*R.*, 10 M.L J. 146.]

(4711)—*S.* 537—*Hearsay evidence received as to guilt of accused—Confessions made by accused when in Police custody recorded—Misdirection of jury in important particulars—Re-trial.*—Where the Sessions Judge allowed a prosecution witness to give hearsay evidence as to the guilt of some of the accused, recorded alleged confessions made by them when they were in the custody of the Police, misdirected the jury in telling them that confessions to the Police, if followed by the production of stolen property, were admissible and did not warn them to take the case of each accused separately and that a confession by one accused involving himself alone could not be used against the other accused, their conviction was set aside and their retrial ordered. Confessions of accused persons made by them when they were in Police custody are only admissible in so far as they relate distinctly to the fact thereby discovered, and evidence of such confessions should not be allowed to be given or recorded to any great extent, nor, when such evidence as is properly admissible has been recorded, should the jury afterwards be told generally that the prisoners had confessed. *In re* ACCHABBA BEORI, **3 M.L.T. 263=7 Cr. L.J. 358=18 M.L.J. 250.**

(4712)—*S.* 537 (= *Crim. Pro. Code,* 1872, ss. 283, 300)—*Omission to take the opinion of the jury.*—The omission to take the opinion of the assessors, in a Sessions case tried with their aid, is, although a serious irregularity, not a ground for the revisional interference of the High Court, if it has not affected the conduct of the prosecution or prejudiced the prisoner in his defence. *In the matter of* NARAIN DAS, **1 A. 610.** [*R.*, 10 A. 414, 24 M. 523=2 Weir 346.]

(4713)—*S.* 537 (=*Crim. Pro. Code,* 1872, s. 283)—*Revisional and appellate powers of an appellate Court.*—An appellate Court has no power to reverse a judgment or sentence on the ground that the Magistrate has not reduced a complaint to writing as required by s. 144 (s. 200); nor does its revisional power extend to such a case, as revision is restricted to cases specifically mentioned in s. 297 (s. 439). HIGH COURT PROCEEDINGS, 24TH MARCH 1873, NO. 618, **2 Weir 709=7 M.H.C. App. 25.**

(4714)—*S.* 537—*Omission to pronounce portion of judgment.*—The omission to pronounce a portion of the judgment imposing fine which the Magistrate has written, and his omission to date and sign the judgment at the time of pronouncing it are omissions covered by s. 537. *In re* VENKATARAMANAYYA, **2 Weir 711.** [*R.*, 14 Cr.L.J. 595=21 Ind. Cas. 467=14 M.L.T. 317=25 M.L.J. 445=M.W.N. 1913, 862.]

(4715)—*S.* 537—*Reg.* V *of* 1892 (*U. B. Criminal Justice Regulation*), s. 15.—S. 15, Upper Burma Criminal Justice Regulation, and s. 537, Crim. Pro. Code, do not cover a radical defect such as a want of jurisdiction to try an offender. Their intention is to prevent unimportant irregularities from being set up as a ground for interfering with orders, etc., passed by a Court of competent jurisdiction. NGA PO HAN v. NGA THA LE NI, **U.B.R. 1897-1901, Vol I, 91.** (9 A. 134, 8 B. 307, 8 C. 895, 14 M. 363, *R.*) [*F.*, 13 Cr. L.J. 457=15 Ind. Cas. 89=U.B.R. 1911, I, 100; *Rel. on,* 12 Cr. L.J. 383=11 Ind. Cas. 247=U.B.R. 1910, I, 70, 13 Cr. L.J. 53=13 Ind. Cas. 389=4 Bur. L.T. 268; *R.*, 14 Cr. L.J. 177=19 Ind. Cas. 177=U.B.R. 1912, I, 148.]

(4716)—*S.* 537—*Sanction to prosecute granted—First application dismissed—Second without sanction—Whether only an irregularity.*—S. 537 of the Code of Criminal Procedure is intended to prevent a mere technicality from interfering with the course of justice and not to allow a Magistrate to override the clear provisions of the law. One T obtained a sanction to prosecute three persons and instituted proceedings against them. On the date fixed for hearing, T did not appear and the accused persons were discharged. Sometime afterwards, more than six months after the grant of sanction, T again filed a complaint against only one of them. *Held,* that the application was not a continuation of the previous application and could not be entertained being made beyond time. *Held* also that the want of sanction in this case was not only an irregularity and could not be cured by the provisions of s. 537 of the Code. ZAHIR SINGH v. EMPEROR, **13 A.L J. 345=16 Cr. L.J. 310=28 Ind. Cas. 646=37 A. 283.**

(4717)—*S.* 537—*Provisions of—Conviction without sanction.*—G was arrested in connection with a dacoity and after having remained in custody for sometime was released. He obtained the sanction of the Superintendent of Police to prosecute K and B for having given false information to his prejudice. K and B were found guilty and convicted by the Court of first instance. In appeal the Sessions Judge held that the facts found established an offence under s. 211, Penal Code, and no sanction having been obtained under that section the prosecution could not be maintained. He

Crim. Pro. Code (Act V of 1898)—*continued.*

allowed the appeal without deciding whether an offence under s. 182, Penal Code, was committed. *Held,* that, under the circumstances, the Judge was not justified in ignoring the provisions of s. 537 of the Code of Criminal Procedure which met the requirements of the case. *Semble.*—G was entitled to institute a prosecution for the minor offence under s. 182, even if he was entitled to institute a prosecution in respect of a graver offence under s. 211, Penal Code. GUR BAKSH SINGH v. KASHI RAM, **13 A.L.J. 53 = 37 A. 110 = 16 Cr.L J. 159 = 27 Ind. Cas. 223.**

(4718)—*S. 537—Judgment at variance with directions given by law—Defect not cured.*—S. 537 of the Code does not cure the defects in a judgment which was at variance with the directions given by law and materially prejudiced the appellants at the trial of the appeal. KANHAI SINGH v. KING-EMPEROR, **10 A.L. J. 435 = 13 Cr. L.J. 859 = 17 Ind. Cas. 795.**

(4718-*a*)—*S. 537—Joint trial—Property stolen at one and same theft and separately received by several accused—Irregularity, incurable—Conviction, setting aside of.*—A joint trial of persons separately receiving property stolen at one and the same theft is bad, and this defect is not an irregularity which can be cured under s. 537, Crim. Pro. Code, and a conviction marred by this defect cannot stand. JAGAN NATH v. EMPEROR, **16 Cr. L.J. 270 = 28 Ind. Cas. 158 = 18 O.C. 92.** (29 B. 449 = 7 Bom. L.R. 527 = 2 Cr. L.J. 480, 33 C. 1256 = 3 C.L.J. 412 = 3 Cr. L.J. 391 = 10 C.W.N. 912, *R.*)

(4719)—S. 537—*See* ACT III OF 1867, s. 6, A.W.N. 1884, 59, 286.

(4720)—S. 537—*See* ACT XXI OF 1883, ss. 6, 107, 111, 9 Bom. L.R. 967 = 6 Cr. L.J. 240.

(4721)—S. 537—*See* BOM. ACT III OF 1901, s. 142, 3 S.L.R. 13.

(4722)—S. 537—Mixture of cocaine and another drug found—Search without warrant—Legality of search—Illegality of search whether a bar to conviction—*See* U. P. ACT IV OF 1910, s. 63, 11 A.L.J. 442 = 19 Ind. Cas 332 = 14 Cr. L.J. 236 = 35 A. 358.

(4723)—S. 537—*See* APPEAL—GENERAL, 22 C. 241.

(4724)—S. 537—*See* APPELLATE COURT, 24 M. 523 = 2 Weir 340 = 1 Weir 340 = 2 Weir 712.

(4725)—S. 537—*See* CHARGE TO JURY—MISDIRECTION, 5 M.L.T. 134, 25 C. 561.

(4726)—S. 537—*See* COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 899.

(4727)—S. 537—*See* CRIMINAL PROCEEDINGS, 14 C. 358.

(4728)—S. 537—*See* ILLEGALITY, Rat. Un. Cr. C. 466 = Cr. Rg. 24 of 1889.

(4729)—S. 537—*See* PENAL CODE, s. 201, 8 Bom. L.R. 538 = 4 Cr. L.J. 89.

(4730)—S. 537—Ss. 393, 398, I.P.C.—Alteration of charge—*See* PENAL CODE, ss. 393, 398, 12 Cr. L.J. 468 = 11 Ind. Cas. 1004.

Crim. Pro. Code (Act V of 1898)—*continued.*

(4731)—S. 537—*See* RE-TRIAL, Rat. Un. Cr. C. 530 = Cr. Rg. 1-12-1890 = Cr. Rg. 63 of 1890.

(4732)—S. 537—*See* RIOTING, 2 C.L.J. 516 = 3 Cr. L.J. 153 = 33 C. 295.

(4733)—S. 537—*See* SANCTION TO PROSECUTE—EXPIRY OF SANCTION AND LIMITATION, 2 Weir 202.

(4734)—S. 537—*See* SUMMARY TRIAL, U.B.R. 1906, Crim. Pro. 51 = 5 Cr. L.J. 298.

(4735)—*S. 537 (d)—Trial by jury—Irregularity in charging Jury.*—A conviction obtained on a trial by Jury would not be bad merely because the charge to the Jury was not happily expressed or there was misdirection in the charge if otherwise there has been no failure of justice. S. 537 (*d*) of the Crim. Pro. Code would cover such a case. HOOPER v. EMPEROR, **14 Cr. L. J. 638 = 21 Ind. Cas. 686 = 12 A.L.J. 149.**

(4736)—S. 537—*See* Nos. 32, 35, 36, 44, 45, 54, 354, 375, 382, 414, 416, 445, 571, 611, 699, 785, 1221, 1239, 1240, 1277, 1398, 1431, 1465, 1564, 1616, 1617, 1618, 1619, 1644, 1645, 1649, 1655, 1656, 1658, 1687, 1713, 1741, 1824, 1826, 1876 (*a*), 1882, 1884, 1888, 1889, 1890, 1891, 1892, 1893, 1903, 1936, 1938, 1939, 1975, 2013, 2016, 2056, 2107, 2108, 2109, 2215, 2238, 2241, 2260, 2264, 2273, 2283, 2285, 2289, 2308, 2310, 2311, 2312, 2313, 2321, 2326, 2327, 2328, 2329, 2332, 2334, 2335, 2335 (*a*), 2347, 2351, 2375, 2378, 2401, 2448, 2449, 2450, 2460, 2589, 2590, 2636, 2671, 2687, 2740, 2748, 2752, 2761, 2784, 2785, 2796, 2797, 2899, 2900, 2901, 2910, 2914, 2970, 2976, 2987, 3180, 3251, 3252, 3253, 3254, 3258, 3265, 3272, 3274, 3277, 3278, 3317, 3338, 3339, 3348, 3349, 3350, 3363, 3574, 3581, 3674, 3692, 3695, 3717, 3759, 3806, 4216, 4225, 4226, 4227, 4256, 4260, 4384, 4658, 4666, 4667, 4686, 4689, 4700, *supra and* Nos. 4844, 4895, *infra.*

(4737)—Ss. 537 and 33—*See* COMPENSATION—GENERAL, 6 M. 316.

(4738)—*Ss. 537, 195—Application of—No sanction for prosecution—Question of want of jurisdiction not raised—Omission cured by s. 537.*—S. 537 of the Code contemplates not only cases of irregularities but errors and omissions as well. A District Magistrate, having entertained a complaint for bringing a false charge, made over the case to another Magistrate. The accused was tried there and convicted. There was no sanction for the prosecution, but no objection was taken to the jurisdiction of the trying Magistrate based upon the absence of sanction. The District Judge, upon appeal, affirmed the conviction. *Held,* that the case was covered by the provisions of s. 537, Crim. Pro. Code, the case being one of omission, and that the objection should have been raised at an early stage of the proceedings. OCHHAN v. KING-EMPEROR, **11 A.L.J. 809 = 14 Cr. L.J. 607 = 21 Ind. Cas. 479.**

(4739)—*Ss. 537, 197 (= Crim. Pro. Code, 1882, ss. 537, 197)—Previous sanction required by s. 197—Omission, effect of.*—The saving provisions of s. 537 will not avail, where the

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previous sanction required by s. 197 is wanting. A conviction for an offence committed by a Village Magistrate, in his capacity as such, is not legal, unless previous sanction for his prosecution has been obtained. *In re* PONNUSAMI AYYANGAR, **2 Weir 710.**

(4740)—Ss. 537, 208 (1, 3, 4)—*See* WITNESS—SUMMONS TO WITNESSES, 3 A. 392.

(4741)—*Ss.* 537 *and* 250 (=*Crim. Pro. Code,* 1882, *ss.* 537, 250)—*Omission to make the record required by s.* 250, *proviso* (*a*).—The omission to make the record required by proviso of s. 250, in passing an order for compensation, cannot be held to amount to more than "an omission in the judgment or other proceedings during trial" (s. 537). KATTA RAMUDU v. RAVIPATI RAMAYYA, **2 Weir 711.**

(4742)—*Ss.* 537, 348, 221 (=*Crim. Pro. Code,* 1872, *ss.* 283, 315, 439)—*Previous conviction.*—*Held* that the provisions of s. 439, Crim. Pro. Code, could not be said to have been properly complied with, when the particulars of the previous conviction were not distinctly set out in the charge. But where the charge gave the accused person to understand that it was intended to prove the previous conviction against him, for the purpose of affecting the punishment, and where the accused was at the time lying under sentence of the previous conviction referred to, *held* that the omission to mention the particulars of the previous conviction in the charge had in no way prejudiced the accused, and would not afford a ground for interfering in appeal with the sentence, regard being had to s. 283, Crim. Pro. Code, 1872. EMPRESS v. RAGHIB ALI, **A.W.N. 1881, 32.**

(4743)—Ss. 537, 364, 533 (1)—*See* CONFESSION—MISCELLANEOUS, 11 B.H.C. 237.

——S. 538 (=1882, s. 538).

(4744)—S. 538—*See* No. 1481, *supra.*

——S. 539 (=1882, s. 539).

(4745)—S. 539—*See* Nos. 3033, 3126, *supra.*

——S. 540 (=1882, s. 540; 1872, ss. 192, 351; 1861, ss. 201, 249, 262, 367).

(4746)—*S.* 540 (=*Crim. Pro. Code,* 1882, s. 540)—*Procedure in Sessions trial.*—It is not competent for a Judge to reverse the order of a criminal trial and to place the accused at a disadvantage by having their witnesses called and all that they could say disclosed, before the case for the prosecution is closed. QUEEN-EMPRESS v. HARGOBIND SINGH, **14 A. 242=A.W.N. 1892, 83.**

(4747)—*S.* 540—*Examination of witnesses.*—Under s. 540, the Court is bound to summon and examine any witnesses whose evidence seems to be essential to a just decision of the case. RAM SARUP RAI v. EMPEROR, **6 C.W.N. 98.**

(4748)—*S.* 540—*Cross-examination by parties of Court-witness—Evidence Act, ss.* 137, 138.—Neither the prosecutor nor the accused can, as of right, cross-examine a witness summoned and examined by the Court under s. 540, Crim. Pro. Code, but, should either of the parties or both desire to do so, the Court should generally permit them to do so. CHURAI v. QUEEN-EMPRESS, **S.C. 275, Oudh.** (12 W. R. Cr. 75 and 3 B.L.R. A.C. 145, *R.*)

(4749)—*S.* 540—*Right to summon further witnesses when once the power is exhausted—Power of Magistrate not seized of the case to summon witnesses—Practice—Affidavit, what they should contain and how they should be verified.*—The accused were charged under the Excise Act and placed before Mr. W. for trial. That officer examined the prosecution witnesses and called upon the accused for their defence. After the defence was taken the case was adjourned. Mr. W. being away from the station, an application to summon certain witnesses was put in and placed before Mr. J. P., another Magistrate, who was not seized of the case. He passed an order to summon witnesses. *Held,* that he had absolutely no power to pass the order. The accused, having exhausted the power of summoning witnesses by filing their first list of witnesses, could not summon any other witnesses otherwise than by moving the Court to act under s. 540 of the Crim. Pro. Code. Affidavit should contain nothing but bare facts known to the person who makes the affidavit either personally or upon information from a source which he believes to be a correct source and one on which reliance can be placed, and the contents of the affidavit should be carefully read over to him in the words understood by him and vouched by him to be correct. MANGAL PRASAD v. KING-EMPEROR, **11 A.L.J. 986=15 Cr. L.J. 564=36 A. 13=22 Ind. Cas. 740.**

(4750)—S. 540—Local investigation — Examining prosecution witness after defence closed—Legality—*See* LOCAL INVESTIGATION, No. 1, 9 Ind. Cas. 46=12 Cr.L.J. 7=15 C.W. N. 414.

(4751)—S. 540—*See* LUNACY, Rat. Un. Cr. C. 279=Cr. Rg. 18 of 1886.

(4752)—S. 540—*See* MAGISTRATE—DUTY OF, 1 W.R. Cr. Letters, 12.

(4753)—S. 540—*See* WITNESS—SUMMONS TO WITNESSES, 11 P.R. 1886, 4 P.R. 1892, Cr.

(4754)—S. 540—*See* Nos. 703, 2222, 2604, 2672, 3277, 3760, *supra.*

(4755)—Ss 540, 110—*See* COMPENSATION—GENERAL, 15 A. 365=A.W.N. 1893, 114.

(4756)—*Ss.* 540 *and* 244 *of the Code of* 1898 (=*ss.* 262, 263, 266 *of* 1882)—*Summons cases—Duty of Magistrate to hear defence witnesses not produced.*—S. 262, para 2, and s. 263 (s. 540) provide for the summoning of witnesses in certain cases and the power given by s 263 is entirely at the discretion of the Magistrate. In summons cases the Magistrate is required to hear such witnesses as the accused shall produce in his defence. But he is not bound to examine the witnesses whom the accused does

Crim. Pro. Code (Act V of 1898)—*continued.*

not produce. HIGH COURT PROCEEDINGS, 4TH FEB. 1869, NO. 208, **2 Weir 304=4 M.H.C. App. XXIX.**

(4757)—*Ss.* 540 *and* 253 *of the Code of* 1898 (=*ss.* 351, 215, *Code of* 1872)—*Discharge of accused after examining Court witnesses.*—Where a Magistrate, after the examination of the prosecution witnesses, examined certain persons as Court witnesses, and relying on their evidence, discredited the complainant's witnesses and discharged the accused, *held*, that the procedure was not illegal. INNASIMUTHAN v. MANIKKA MUDALI, **2 Weir 714.**

——**S. 541, para (1) (=1882, s. 541; 1872, s. 88, modified); paras 2, 3 (=1882, s. 541-a).**

(4758)—S. 541 (1)—*See* LOCAL GOVERNMENT, Rat. Un. Cr. C. 827=Cr. Rg. 70 of 1895.

(4759)—S. 541—*See* No. 3388, *supra.*

——**S. 544 (=1882, s. 544; 1872, s. 421; 1861, s. 438).**

(4760)—*S.* 544—*High Court Criminal Circulars, Rule* 11—*Magistrate — Discretion — Expenses of witnesses cited by defence.*—S. 544 of the Crim. Pro. Code and Rule No. 11, made by the Government of Bombay under that section, regulating the payment, on the part of Government, of the expenses of complainants and witnesses in cases coming before the Criminal Courts, invest the Magistrate trying a warrant-case with a discretionary power exerciseable by him within the limits specified in the rule itself. Such discretion, however, must be exercised according to sound judicial principles and reasonably. EMPEROR v. GANESH DAMODAR, **9 Bom. L.R. 353=5 Cr. L J. 329.**

(4761)—S. 544—*See* No. 3255, *supra.*

——**S. 545 (=1882, s. 545; 1872, s. 308; 1861, s. 44).**

See COMPENSATION.

(4762)—*S.* 545 (=*Crim. Pro. Code*, 1872, *s.* 308)—*Compensation, when can be awarded—Compensation to purchaser.*—Compensation, when awardable under s. 308, must be awarded out of the amount of the substantive fine imposed. S. 308 does not in any case authorise the award of compensation to a purchaser. HIGH COURT PROCEEDINGS, 3RD FEB. 1880, NO. 216, **2 Weir 715.**

(4763)—*S.* 545—*Compensation.*—S. 545 of the Code of 1882 has not altered the law, as it existed under s. 308 of the Code of 1872. Under s. 545, compensation cannot be awarded to an innocent purchaser of stolen property, as the injury to the purchaser is not the consequence of the theft, but of the sale without title to pass the property. *In re* MARIYAPPA CHETTY, **2 Weir 716.**

(4764)—*S.* 545—*Compensation.*—A Magistrate found that an accused had sold a stolen horse to a certain person, and sentenced him to one month's imprisonment and a fine of Rs. 10. He also directed that the fine, if levied, should be applied under s. 545, Crim. Pro. Code, to compensate the purchaser of the animal for his loss. *Held*, that such an order was illegal. *In re* DISTRICT MAGISTRATE OF NELLORE, **6 M.L.T. 241=3 Ind. Cas. 437=10 Cr. L.J. 290.**

(4765)—*S.* 545—*Compensation.*—It is no doubt undesirable to encourage frivolous complaints by the grant of compensation under s. 545, Crim. Pro. Code, 1882, but the law intends that compensation should be awarded when there is a substantial cause for it. *In re* LANGOGI GURAIYA, **2 Weir 717.**

(4766)—*S.* 545, *Scope of—Compensation.*—Under s. 545, Crim. Pro. Code, 1898, if an injury is caused by the offence committed, then, some compensation can be awarded to the injured party. But, if the injury is other than one caused by the offence committed, the order of compensation is unwarranted. CRIMINAL REVISION CASE NO. 158 OF 1892, **U.B.R. 1892—1896, Vol. I, 79.**

(4767)—*S.* 545—*Scope of.*—S. 545, Crim. Pro. Code, 1898, lays down that an order for compensation shall be made by a criminal Court, if at all *when passing judgment*, and, in the absence of any special provision on the subject, the analogy of this rule might properly be followed. Hence, it is only when passing judgment that the Court can order the payment of a reward out of a fine, and when once the judgment has been pronounced, the Court is *functus officio*, and has no power to make further orders in the case. QUEEN-EMPRESS v. NGA HLWE, **U.B.R. 1892—1896, Vol. I, 80.**

(4768)—*S.* 545 (=*Crim. Pro. Code*, 1872, *s.* 308)—*Order for forfeiture of property—Compensation to complainant.*—Where a person was, under s. 62 of the Penal Code, sentenced to undergo a term of transportation and adjudged to forfeit to Government the rents and profits of his property during that term: *held*, that it was not competent to the Court, before he was tried and convicted, to award any portion of the said rents and profits as compensation to the complainant, s. 308, Crim. Pro. Code, having no application to orders for forfeiture of property. QUEEN-EMPRESS v. NANA PATLU, **Rat. Un. Cr. C. 146=Cr. Rg. 10-6-1880.**

(4769)—*S.* 545—*Procedure under — Fine.*—The prescribed course, under s. 308, is to impose a fine, and, out of the fine realised, to direct payment to the complainant of such amount as the Court thinks fit, having regard to the provisions of the section. MOHESH MUNDUL v. BOLANATH MUNDUL, **3 C.L.R. 404.**

(4770)—*S.* 545 (=*Crim. Pro. Code*, 1882, *s.* 545)—*Separate order for payment of expenses incurred by complainant.*—When expenses properly incurred in the prosecution of a criminal charge are ordered to be paid by the accused under s. 545 of the Crim. Pro. Code, such expenses should be paid out of the fine imposed; a separate order for such expenses is improper. QUEEN-EMPRESS v. SAOLIRAM, **Rat. Un. Cr. C. 341=Cr. Rg. 32 of 1887.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(4771)—*S.* 545—*Awarding expense of prosecution.*—Under s. 545, Crim. Pro. Code, 1898, it is not competent to a Magistrate to award the complainant the expenses incurred in the prosecution, independently of the fine imposed upon the accused; the expenses may be made payable out of the fine imposed under s. 545 (2). EMPEROR v. TUKARAM SADASHIVA, **4 Bom. L. R. 877.**

(4772)—*S.* 545 (=*Crim. Pro. Code,* 1882, s. 545)—*Expenses of bringing accused before Magistrate.*—S. 545 of the Crim. Pro. Code, does not apply to such expenses as are incurred in bringing the offender before the Magistrate. QUEEN-EMPRESS v. RAMASWAMY, **Rat. Un. Cr. C. 608=Cr. Rg. 25 of 1892.**

(4773)—*S.* 545—*U. Burma Laws Act,* 1886—*Payment of fine to cover loss.*—A Court cannot arbitrarily award payment of a fine to cover a supposed loss, but only for one or other of the objects specified in the above section. QUEEN-EMPRESS v. MA PU, **U.B.R. 1897—1901, Vol. I, 121.**

(4774)—*S.* 545 (=*Crim. Pro. Code,* 1872, s. 308)—*Setting aside of conviction by appellate Court—Refund of money paid as compensation.*—Where a conviction is set aside on appeal, and a refund of the fines levied is ordered, the only remedy, if the person who has received a portion of the money as compensation refuses to refund it, lies in a Civil Court. HIGH COURT PROCEEDINGS, 25TH MARCH 1879, NO. 528, **2 Weir 717.**

(4775)—*S.* 545—*Compensation for injuries to one other than the person injured.*—Where an accused person is fined for injuries caused to one, compensation out of the fines cannot be awarded to another. The latter can receive compensation, only if the fine is inflicted on the accused for an injury caused to himself. THE PUBLIC PROSECUTOR v. VOBANNA, **2 Weir 718.**

(4776)—*S.* 545 (=s. 144 *of the Code,* 1861)—*Order to pay fees under* s. 31, *Court Fees Act—Payment to complainant, when to be made.*—A fee which a Court may order to be re-paid to a complainant under s. 31, Court Fees Act (Act VII of 1870), is an integral part of the sentence and must be treated as a fine imposed by the Court under s. 144; and such fines must be in deposit pending an appeal, where an appeal lies. HIGH COURT PROCEEDINGS, 20TH JULY 1870, NO 1344, **2 Weir 723=5 M.H C. App. 28.** [*F.*, 22 M. 153=1 Weir 724; *D.*, 26 M. 421=2 Weir 488.]

(4777)—*S.* 545 (=*Crim. Pro. Code,* 1882, s. 545)—*Compensation—Necessity of attention to the directions contained in the last paragraph of* s. 545, *Crim. Pro. Code.*—There being no provision in the Code for the refund of money paid away as compensation under s. 545, Crim. Pro. Code, the directions contained in the last para of the section should be strictly observed. QUEEN-EMPRESS v. THAUKRA AUNG, **L.B.R. 1872—1892, 353.**

Crim. Pro. Code (Act V of 1898)—*continued.*

(4778)—*S.* 545 (=*Crim. Pro. Code,* 1882, s. 545)—*Court Fees Act,* s. 31—*Costs and process fees awardable under* s. 545.—When the accused is convicted in a non-cognizable case, the Court is bound to order the re payment of process fees under s. 31 of the Court Fees Act. A Court imposing a fine in any case, cognizable or non-cognizable, should apply s. 545, Crim. Pro. Code, 1882. All legitimate costs as the pleader's fees and the stamp and the power-of-attorney, etc, and not merely process-fees, may be awarded under s. 545, Crim. Pro. Code, as well as compensation for the injury caused. QUEEN-EMPRESS v. MI BAUK, **L.B.R. 1872—1892, 409.**

(4779)—*S.* 545—*Compensation ordered payable out of fine—Full amount of fine not realised—Compensation if payable in the first instance.*—It is quite competent to a Court, when ordering compensation to be paid out of the fine imposed, to provide by its order for the proportionate distribution of the amount realised. In the absence of any such direction, an order providing for payment of compensation out of fine imposed ought not to be construed as meaning that nothing was payable until the full amount of fine was realised. *In re* KHADDAM VENKATA RAO, **2 L.W. 22=16 Cr.L.J. 58=26 Ind. Cas. 650.**

(4780)—*S.* 545—*Injured person—Compensation to the heirs of a person killed by injuries.*—Under s. 545 of the Code of Criminal Procedure compensation can only be given to the person to whom injury has been caused; it cannot be given to the heirs of a person who has been killed. EMPEROR v. WAWNIA DHANGAR, **16 C.P.L.R. 180.**

(4781)—S. 545—*See* ACT XIII OF 1859, Rat. Un. Cr. C. 625=Cr. Rg. 52 of 1892.

(4782)—S. 545—*See* ACT VII OF 1870, s. 31, Rat. Un. Cr. C. 397=Cr. Rg. 56 of 1888, 1 Weir 722, 1 L B.R. 209, 5 M H.C. App. 28=2 Weir 724, 24 M. 305=2 Weir 722=1 Weir 723, U.B. R. 1892—1896, Vol. I, 7.

(4783)—S. 545—*See* FORFEITURE OF PROPERTY, 4 M.H.C. App. 28.

(4784)—S. 545—*See* LETTERS PATENT—LETTERS PATENT, MADRAS, 1865, s. 15, 1 Weir 788-B.

(4785)—S. 545—*See* MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, Rat. Un. Cr. C. 958.

(4786)—S. 545—*See* NEGLIGENCE, 5 C.P. L.R. Cr. 45.

(4787)—S. 545—*See* OBSTRUCTING RIGHT OF WAY, 1 L.B.R. 48.

(4788)—S. 545 — Award of compensation exceeding the loss incurred by complainant—Legality—*See* PENAL CODE, s. 379, 40 P.W. R. 1913, Cr.=335 P.L.R. 1913.

(4789)—S. 545—*See* Nos. 100, 4482, 4532, 4537 to 4540, *supra*

——**S. 547 (=1882, s. 547).**

(4790)—*S.* 547 (=*Crim. Pro. Code,* 1882, s. 547)—*Compensation to complainant out of fine*

Crim. Pro. Code (Act V of 1898)—*continued.*

—*Re-trial and order for refund of portion of fine—Recovery of compensation.*—The accused were tried by a First Class Magistrate and fined Rs. 25 each and it was ordered that half the fine, if recovered, was to be given to the complainant. The conviction and sentence were quashed by the High Court who ordered a re-trial. The Second Class Magistrate, on re-trial, fined each of the accused Rs. 10 and said that "as they had already paid a fine of Rs. 25 each, the result of the sentence will be that Rs. 15 will have to be returned to each of them" The complainant, who had been, previously, given half the fine, on being called upon by the District Magistrate, stated that he had spent the money and was unable to repay. A reference was then made by the District Magistrate as to how the compensation could legally be recovered. *Held*, that the decision of the Second Class Magistrate amounted to an order to the complainant to refund the sum of Rs. 15, and was, therefore, enforceable under s. 547, Crim. Pro. Code. QUEEN-EMPRESS v. RAVAJI, **Rat Un. Cr. C. 213=Cr. Rg. 10-3-1885.**

(4791)—S. 547 — *See* COMPENSATION — GENERAL, 2 P.L.R. 1904.

——**S. 548 (=1882, s. 548; 1872, ss. 201, 276; 1861, s. 230, modified; Presidency Magistrate's Act, 1877, s. 170).**

(4792)—*S.* 548 (=*Crim. Pro. Code, Act* X *of* 1882, *s.* 548)—*Charge—Copies to accused.*—A "charge" is not an order of a Criminal Court by which an accused person could be said to be affected within the meaning of s. 548 of the Crim. Pro. Code, so as to entitle him to copies of depositions where the trial has not advanced beyond the examination of the prosecution witnesses. QUEEN-EMPRESS v. PRAG SAHU, **A.W.N. 1892, 140.**

(4793)—S. 548—Copies of order by, and depositions before, Presidency Magistrate, right to—*See* ACT IV OF 1877, s. 170, 8 C. 166=10 C.L.R. 190.

(4794)—S. 548—*See* Nos. 3581, 4636, *supra.*

(4795)—*Ss.* 548, 367, 531 (=*Crim. Pro. Code,* 1872, *ss.* 276, 464)—*Copy of judgment.*—Ss. 276 and 464 of the Crim. Pro. Code, are wholly distinct. An accused person is, therefore, entitled to a copy of the judgment in his own language unconditionally under s. 464, and also to one in the language in which it is written, under s. 276, under the conditions specified therein. NASICK MAGISTRATE'S REFERENCE, NO. 1181, **Rat. Un. Cr.C. 73.**

(4796)—Ss, 548, 426, 439, 440, 531—*See* REVISION—MATTERS PERTAINING TO EVIDENCE, 31 P.R. 1881, Cr.

——**S. 550 (New).**

(4797)—*S.* 550—*Appeal — Acquittal — Enhancement of sentence—First report—High Court's power to acquit innocent person without appeal.*—*Held*, that the initial report of an offence to the Police is always of great importance in every criminal case. Where it has been made a considerable time after the occurrence and by a person who is in a position to know all the facts and persons concerned, no person should be convicted whose name is not mentioned therein as one of the offenders, particularly when there is no likelihood of his name being omitted. A severe sentence is not called for where an offence has been committed on a considerable provocation caused by an unjustifiable act. Enhancing a sentence is not permissible when the convicted person has duly served the sentence before the application for enhancement is preferred. S. 550 of Act V of 1898, no doubt, gives the Police very wide powers with regard to the seizure of cattle alleged or suspected to have been stolen, but it does not extend to the taking away other cattle, simply because they are mixed up with the stolen ones. The High Courts, when dealing with cases in appeal or revision, are competent to acquit an innocent person, although he has failed to exercise the right of appeal. It is no doubt the duty of the Courts to uphold the acts of the executive and ministerial officers, but it is equally their duty to keep a jealous eye upon these acts and to see that nothing is done contrary to law under the cloak of authority. CROWN v. SADA, **14 P.W.R. 1909, Cr.=4 Ind. Cas. 980=11 Cr.L.J. 99.** (7 P.R. Cr. 1889, *F.*)

(4798)—*S.* 550—*Seizure of property by Police officer—Claim of person in possession.*—The Police seized property on suspicion of its being stolen property under s. 550, Crim. Pro. Code, and the Magistrate issued a proclamation before satisfying himself as to the claim of the person in possession. *Held*, that it was not incumbent on the Magistrate to decide the claim before issuing the proclamation, as the person in whose possession the property was found has an opportunity of making good his claim to the Magistrate even after the issue of the proclamation. IMPERATOR v. GANGARAM, **2 S.L.R. Cr. 32=10 Cr. L.J. 198.**

(4799)—S. 550—Order issued by Police to Station Master to detain goods suspected to be stolen property—Legality—*See* PENAL CODE, s. 188, 16 O.C. 371.

(4800)—S. 550—*See* No. 327, *supra.*

——**S. 552 (=1882, s. 551).**

(4801)—*S.* 552—*Scope.*—The purpose contemplated by s. 552, must not be construed so as to make it include purposes which, although not unlawful in themselves, might only become so when entertained towards a child in opposition to the wishes of its guardian. THAKOREDAS MUNCHHARAM v. BHAWANDAS MADHAVDAS, **4 Bom. L.R. 609.**

(4802)—*S.* 552 (=*Crim. Pro. Code,* 1882, *s.* 551)—*Scope of—Detention of children for purposes of conversion—Unlawful detention for an unlawful purpose—Illegal order of restoration by Magistrate—High Court's power of interference.*—S. 551 of the Code applies to

Crim. Pro. Code (Act V of 1898)—*continued.*

women and female children only. This combination and the exclusion of male children go to show not only that some definite purpose, unlawful in itself, was contemplated, but that the purpose has some special reference to the sex of the person against whom it was entertained. Therefore, it should not be so construed as to make it include purposes which, although not unlawful in themselves, might only become so when entertained towards a child in opposition to the wishes of its guardian, *e.g.*, detention of a female child, against the will of her parents or guardians, for the purpose of being brought up in a religion of which such parent or guardian disapproved. [*F.*, 4 Bom. L.R. 609.] Although the detention of a child against the will of her parent or guardian with a view that she should be brought up in a religion which such parent or guardian disapproved of, and the adoption of which would not only involve a total change in the child's mode of life, but would also deprive the parent or guardian of any control in the education or bringing up of the child, would amount to an unlawful detention, notwithstanding the consent of the girl to such detention, yet, it could not amount to "an unlawful detention for an unlawful purpose." Where, in the above case, the Magistrate makes an order for the restoration of the girl to the parent or guardian, which order he has no power to make, it is very questionable whether the High Court would have the power to take away the child from the parent or guardian and to restore it to the person, who was detaining her against the wishes of the parent or guardian. Even assuming that the High Court has such power, it could only, with propriety, be exercised, if the proper guardian is shown to be in some way disqualified, or if, at the least, the guardian's character is so bad and mode of life so immoral, that it would not be proper to place the child in his or her charge. ABRAHAM v. MAHTABO, **16 C. 487.**

(4803)—*S.* 552, *order under—Custody of wife, application for—No allegation of girl's wish in complaint—Order of restoring wife, passed without inquiry, illegal—Complainant, remedy of.*—Where a husband complained to the District Magistrate that his father-in-law was wrongfully detaining his wife and refused to send her to his house, without alleging that she was being so detained contrary to her own wish, and the District Magistrate passed an order under s. 552, Crim. Pro. Code, directing her restoration to the husband without making any inquiry into the matter of the complaint. *Held*, that on the facts the case was not one to which the provisions of s. 552, Crim. Pro. Code, should be applied, and that, if the husband had any grievance, he should seek his remedy in the Civil Court. NATHU MISTRY v. NARI LAL MISTRY, **15 Cr. L.J. 712 = 26 Ind. Cas. 160.**

(4804)—S. 552—*See* No. 468, *supra.*

——S. 554 (=1882, s. 553; 1872, ss. 442, 493, 509).

(4804-*a*)—S. 554—*See* No. 614, *supra.*

Crim. Pro. Code (Act V of 1898)—*continued.*

——S. 555 (=1882, s. 554).

(4805)—*S.* 555—*Act* I *of* 1878, *s.* 9.—Jurisdiction of the officer in charge of the excise and opium administration of a district to try cases under the Opium Act—Meaning of the term "personally interested." *In the matter of the petition of* GANESHI, **15 A. 192, F.B. = A.W.N. 1893, 79.**

(4805-*a*)—S. 555—*See* ACT I OF 1879, ss. 61, 69, A.W.N. 1884, 37.

(4806)—S. 555—*See* Nos. 1650, 2468, 2991, *supra.*

——S. 556 (=1882, s. 555).

See MAGISTRATE, JURISDICTION OF.

(4807)—*S.* 556 — "*Personally interested,*" *meaning of.*—A Magistrate does not, by reason only of his being a member of the sub-committee of a Municipality, which recommended the prosecution of the accused for an offence against the Municipal Board, become a person "personally interested" within the meaning of s. 556, so as to disentitle him to try the case. EMPEROR v. MOHUN LAL, **27 A. 25 = A.W.N. 1904, 154.** [*R.*, 32 A. 635 = 7 A.L.J. 749 = 11 Cr. L.J. 447 = 7 Ind. Cas. 291, 13 Cr. L.J. 30 = 13 Ind. Cas. 222 = 5 S.L.R. 137.]

(4808)—*S.* 556 (=*Crim. Pro. Code,* 1882, *s.* 555)—"*Personally interested*" *meaning of—Act* I *of* 1879.—In s. 555, Crim. Pro. Code, 1882, the words "personally interested" cannot mean that a public officer whose duty it is to see that the law is obeyed is merely, by reason of that duty, a person personally interested in the prosecution and trial of an offender against the statute law. They cannot refer to any very remote interest in the matter, and must refer to some particular and immediate personal interest in the case and its results. A Magistrate cannot be said to be "personally interested," within the meaning of s. 555 merely by reason of its being his duty as an officer under the Government to see the law relating to the sale of opium enforced and maintained in that part of the District of which he has charge. He is, therefore, not precluded from trying an offence under the Opium Act, I of 1879. *In the matter of the petition of* GANESHI, **15 A. 192, F.B. = A.W.N. 1893, 79.** [*F.*, 27 A. 33 = A. W. N. 1904, 157; *R.*, 22 A. 340, 24 M. 238 = 2 Weir 730, 11 A. L. J. 852 = 15 Cr. L. J. 17 = 22 Ind. Cas. 161, U.B.R. 1897—1901, 127; *D.*, 5 A.L.J. 357 = A.W.N. 1908, 95 = 7 Cr. L.J. 396.]

(4809)—*S.* 556—*Scope of section—Excise Act,* XII *of* 1896.—*Held*, that s. 556 of the Code of Criminal Procedure does not debar an Excise Officer from trying a case under the Excise Act, 1896, in which he himself is responsible for the prosecution. EMPEROR v. JANKI DAS, **A.W.N. 1908, 95 = 5 A.L.J. 357 = 7 Cr. L.J. 393.** (15 A. 192, *R.*) [*R.*, 11 Cr. L.J. 2 = 10 C.L.J. 484 = 4 Ind. Cas. 437.]

(4810)—*S.* 556—"*Interested,*" *meaning of.*—The phrase 'interested,' as used in s. 556 of th

Crim. Pro. Code (Act V of 1898)—*continued.*

Code, does not imply mere intellectual 'interest,' but something of the nature of an expectation of advantage to be gained, or of a loss, or of some disadvantage to be avoided, by the person who is said to be interested in the case. The mere fact that the enquiry was made by the Magistrate is not to be regarded as a disqualifying ground under the section. EMPEROR v. CHOLAPPA MALHARAPPA, **8 Bom. L.R. 947=5 Cr. L.J. 2.** (2 Bom. L.R. 664, *F.*)

(4811)—*S.* 556.—It is essential not only that there should be no personal interest or prejudice on the part of the Judicial Officer, which would disqualify him from trying a particular case, but also that the mere appearance of prejudice should be avoided for the sake of protecting the administration of justice from the possibility of an imputation of partiality or unfairness. NGA THAW v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 123.**

(4812) —*S.* 556—"*Personally interested*"—*Magistrate examined as a witness in the case without any protest from either of the parties.*—An oral complaint was made before a Magistrate, during a vacation, at his private residence. After the re-opening of the Court, the case was put up before the same Magistrate on the written complaint of the complainant. During the course of the trial, the Magistrate found it necessary to record his own evidence, as to the circumstances attending the oral complaint to himself regarding the commission of the offence. He, therefore, examined himself as a witness, recording the statement himself and permitting himself to be cross examined and re-examined and recording those statements also. During all this time and till after the judgment, neither party took any objection to the trial being held by the Magistrate, and the accused was convicted. On appeal by the accused on the ground that the Magistrate was not competent to try the case, *held*, that the Magistrate should not be considered to be personally interested in the matter, and that the plea was only an afterthought in order to escape from the conviction, inasmuch as the objection was put forward for the first time in the appeal, the accused having, at the time of the trial, no suspicion that they would not have a fair and impartial trial at his hands. EMPEROR v. NANHE, **27 A. 33=A.W.N. 1904, 157.** (15 A. 192, *F.*; 21 C. 920, 20 C. 857, 19 M. 263, *R.*)

(4813)—*S.* 556—*Disqualification of Magistrate.*—A Magistrate is not disqualified under s. 556 from trying a case, merely because of the fact that, in the departmental enquiry in the case, he forwarded the papers to the Collector with his opinion that there was apparently sufficient evidence to justify criminal prosecution. EMPEROR v. RAVJI NANAJI KULKARNI, **5 Bom. L.R. 542.** [*R.*, 8 Cr. L.J. 356=1 S.L.R. 98.]

(4814)—*S.* 556 (=*Crim. Pro. Code,* 1882, *s.* 555)—*Explanation to section—Scope of—Ben. Act* V *of* 1876, *s.* 256 — *Order under — Conviction by District Magistrate as Chairman*

Crim. Pro. Code (Act V of 1898)—*continued.*

of Municipal Commissioners—Legality.—The explanation to the section does not apply to a case, in which a Magistrate may have been personally concerned as a Municipal Commissioner which forms the subject of trial before him. It was rather intended to prevent an objection being raised that, from the mere fact that the Magistrate might happen to be a Municipal Commissioner, he was necessarily disqualified from holding a trial in which some Municipal matter was involved. But in a case in which the Magistrate is one of the prosecutors, in his capacity as the Chairman, he will not be competent to try the case. An accused person was tried and convicted, under s. 188 of the Penal Code, of having disobeyed an order of the Municipal Commissioners, under s. 256, Bengal Act V of 1876. The District Magistrate, who tried and convicted the accused, was present, as Chairman of the Municipal Commissioners, at that meeting when that order was passed. *Held* that the conviction was illegal and should be set aside. KHARAK CHAND PAL v. TARACK CHUNDER GUPTA, **10 C. 1030.** (2 Q.B D. 558, *F. & R.*). [*R.*, 15 A. 192, F.B., 23 C. 44, 9 C.P.L.R. 26, Cr.]

(4815)—*S.* 556—*Magistrate who issued process but did not proceed under s.* 190 (1) (c) *or s.* 202—*Competency to hear appeal against conviction.*—*Held*, that a Magistrate who did not take action under s. 190, sub-s. (1), cl. (c) or order a local investigation, was not incompetent to hear an appeal from a judgment ultimately convicting the accused, merely because, he, without expressing any opinion hostile to them, summoned them to answer a charge in his capacity as Magistrate in charge of the criminal business of the *Sudder* sub-division. DASARATH RAI v. EMPEROR, **36 C. 869=4 Ind. Cas. 352=10 Cr. L J. 557.**

(4816)—*S.* 556 (=*Crim. Pro. Code,* 1882, *s.* 555)—*Competency of Magistrate, being also Municipal Chairman, to try Municipal cases.*—The Chairman of a Municipality being an executive officer, who would be the proper person to institute a prosecution for offences against the health and comfort of the town, is disqualified from trying Municipal offences, in his capacity as Magistrate. QUEEN-EMPRESS v. ERUGADU, **15 M. 83=2 Weir 326.** [*R.*, 23 C. 44.]

(4817)—*S.* 556 (=*Crim. Pro. Code,* 1882, *s.* 555)—*Magistrate making local inspection of the scene of alleged occurrence—Competency to try the case.*—Where a Magistrate, trying a case of riot, made a local inspection of the scene of the alleged offence and was influenced by such inspection in arriving at a conclusion in the case, *held*, that, by so doing, the Magistrate had made himself a witness in the case and was incompetent to try the case. QUEEN-EMPRESS v. MANICKEM, **19 M. 263=2 Weir. 725=6 M.L.J. 143.** [*Diss.*, 11 Cr. L.J. 171=5 Ind. Cas. 602=1 P.W.R. 1910, Cr.; *R.*, **19 A. 302, 27 A. 33=A.W.N. 1904, 157, 37 C. 340=11**

Crim. Pro. Code (Act V of 1898)—*continued.*

C.L J. 335=14 C.W.N. 422=5 Ind. Cas. 365=11 Cr. L J. 121, 5 L.B.R. 52=10 Cr. L.J. 80=2 Ind. Cas. 543, 9 Cr. L.J. 355, 9 Cr. L.J. 403, 7 Cr. L.J. 8=17 M.L.J. 560; *D.*, 13 P.R. 1901=89 P.L.R. 1901, 2 Weir. 727.]

(4818)—*S.* 556.—Where a Magistrate inspected the *locus in quo* and stated in his judgment what he saw when he inspected it, *held*, that, having regard to the amendment of the law by the addition to the explanation to s. 556 of the Code, the Magistrate was not incompetent to try the case, and the judgment was not rendered void. *In re* DAVARAJA NAYAGAR, **2 Weir. 728.** [*R*, 37 C. 340=11 Cr. L J. 121=14 C. W.N. 422=5 Ind. Cas. 365.]

(4819)—*S.* 556—*Disqualification of a Magistrate to try a case—Question of fact—Magistrate directing prosecution—Subsequent trial by him—Legality.*—The question whether a given case falls within the provisions of s. 556 is a question of fact to be determined by the circumstances of each case. Illustration to s. 556 of the Code prohibits a Magistrate from trying a case, which he himself institutes or gives order for the institution thereof. An authorisation by a Sub-Divisional to a subordinate Magistrate to prosecute a person on such charges as may be capable of being proved in a Criminal Court does not amount to a "direction within the meaning of the illustration. but merely amounts to an authorisation." The Magistrate, therefore, is not disqualified from trying the case. QUEEN-EMPRESS v. CHENCHI REDDI, **24 M. 238=2 Weir. 730.** [*R.*, 14 Cr. L.J. 385=20 Ind. Cas. 209=9 N.L R. 81.]

(4820 & 4821)—*S.* 556 — *Investigation by Magistrate—Trial by same Magistrate—Validity.*—Where a District Magistrate took an active part in the investigation of a case, he was held not to be competent to have it tried himself. KANK SAING v. KING-EMPEROR, **14 Bur.L R. 335=9 Cr. L.J. 66.**

(4822)—*S.* 556 (=*Crim. Pro. Code*, 1882, *s.* 555)—*Act I of* 1878 (*Opium*), *s.* 9, *offence under—Competency of District Magistrate to try.*—A District Magistrate, who is also a District Collector, is not debarred, by the circumstances of his dual appointment, from trying an offence under s. 9 of the Opium Act, the prosecution of which has not been instituted by himself, as Collector. NGA MYA E v. QUEEN-EMPRESS, **L B.R. 1872—1892, 400.**

(4823)—*S.* 556 — *Competency of Sessions Judge to hear appeal from a judgment passed by himself.*—Under s. 556, a Sessions Judge cannot hear an appeal from a judgment passed by himself. He can, however, under Regulation V of 1895 (amendment to the Upper Burma Criminal Justice Regulation), s XIV-A (1), after adopting the procedure of that section, direct that the appeal be transferred for trial to any other Sessions Judge. JHABROO v. KING-EMPEROR, **U.B.R. 1897—1901, Vol. I, 8.**

(4824)—*S.* 556—"*Personally interested*"—*Want of jurisdiction—Irregularities vitiating proceedings.*—Where, in a prosecution under s. 3 of the Gambling Act, III of 1867 (=s. 12, Gambling Act, 1899), the Magistrate, who tried the case because of information or knowledge possessed by himself, applied for process against the accused, *held*, that he was at the same time prosecutor and Judge, and that it was impossible, therefore, to say that the accused were not, or were not liable to be, prejudiced by such a position of affairs. The conviction and sentence were consequently quashed. QUEEN-EMPRESS v. NGA SOK CHUN, **U.B.R. 1897—1901, Vol. I, 125.**

(4825)—*S.* 556—*Same man must not at the same time be accuser and judge.*—The same person must not at the same time be accuser and judge; he must not be a party or be personally interested, and he must not have prejudged the case before him; but where a Magistrate acts executively throughout without necessarily forming any opinion on the merits, and where the accused has not been substantially prejudiced, it would be unnecessary to interfere in revision. It is manifestly desirable that, when it could be avoided without inconvenience, the trial of an offence should not be had before a Judge or Magistrate who, in another capacity, has had to do with the institution of the prosecution, and it is the general practice to make arrangements accordingly. QUEEN-EMPRESS v. NGA AUNG GYI, **U B.R. 1897—1901, Vol. I, 127.** (14 A. 354, 15 A. 192, 6 B. 479, 3 C. 622, 16 C. 766, *R.*)

(4826)—*S.* 556—*Circumstances under which a Magistrate is debarred under the above section from trying an offence.*—In this case the Deputy Commissioner, as Collector, sanctioned the prosecution of the accused and forwarded the papers to himself as District Magistrate for the necessary orders as regards the prosecution. *Held*—that as the magistrate in his capacity of Collector took an active part in initiating the prosecution, he was disqualified from trying the case under s. 556, Code of Criminal Procedure. RAM RICH PAL v. QUEEN-EMPRESS, **U B.R. 1897—1901, Vol. I, 133.** (18 B. 442, *R.*) *See also* KING-EMPEROR v. NGA KYAW, **U. B R. 1897—1901, Vol. 1, 135.** [*R.*, U.B.R. 1910, 1st Qr., 4.]

(4827)—*S.* 556 (=*Crim. Pro. Code, Act* X *of* 1882, *s.* 555)—*Municipality—Magistrate authorised to institute proceedings.*—Where a Magistrate who had been authorised by a Municipal Council to institute prosecutions for breaches of its bye-laws, directed the prosecution of a person in respect of the infringement of one of the rules of the said bye-laws and himself tried and convicted him, *held* that the Magistrate was debarred by s. 555 of the Crim. Pro. Code, from trying the case. MUNICIPALITY OF CAWNPORE v. NANHE MAL, **A.W.N. 1891, 81.** (A. W.N. 1886, 291, *R.*)

(4828)—*S.* 556 — *Disqualification of Magistrate.*—Where a District Magistrate, who was a member of a Municipal Board, issued orders to the Police to prosecute the accused for driving

Crim. Pro. Code (Act V of 1898)—*continued.*

in a carriage drawn by horses which were galled, and the Police Superintendent, a few days after, saw the carriage being drawn by a different pair, but still more galled, *held* that the District Magistrate was disqualified from trying the case himself, as he was a party interested in these proceedings and came to the trial with pre-conceived views as to the guilt of the accused. MUNICIPALITY OF BENARES v. BISHEN CHAND, **A.W.N. 1886, 291.** [*R.*, A.W.N. 1891, 81; *D.*, 15 A. 1912.]

(4829)—*S. 556—Applicability to appeals.*—S. 556 of the Crim. Pro. Code applies to the hearing of an appeal. *In the matter of the petition of* INAYAT HUSAIN, **A.W.N. 1899, 74.** (23 C. 44, *F.*) [*R.*, 14 Cr. L.J. 385 = 20 Ind. Cas. 209 = 9 N.L.R. 81, 15 Cr. L.J. 17 = 11 A. L.J. 852 = 22 Ind. Cas. 161.]

(4830)—*S. 556—Excise Act* (XII *of* 1896), *s.* 48.—*Held*, that a trial of an offence under s. 48 of the Indian Excise Act (XII of 1896) is liable to be set aside under s. 556 of Act V of 1898, where the Magistrate himself, in the capacity of Tahsildar, had ordered to prosecute and search the house of the accused on the report of an opium contractor who was neither a Collector nor an Excise Officer. MANGAL v. CROWN, **5 P.W.R. 1912, Cr. = 64 P.L.R. 1912 = 14 Ind. Cas. 758 = 13 Cr.L.J. 294.**

(4831)—*S. 556—Excise Act* (XII *of* 1896)—*Magistrate giving information to the police and directing an enquiry—No such connection as ousts jurisdiction.*—Where a Magistrate, under the Excise Act, lays before an Inspector of Police certain information regarding the conduct of the accused in his dealings in opium and directs the said Inspector to make an enquiry on the basis of that information and a prosecution is subsequently instituted in the ordinary course by the investigating police officer, *held*, that the Magistrate cannot be said to have such connection with the proceedings antecedent to the prosecution as would debar him from trying the accused or committing him for trial. BABU RAM v. KING-EMPEROR, **11 A.L.J. 852 = 22 Ind. Cas. 161 = 15 Cr. L.J. 17.**

(4832)—S. 556—*See* ACT V OF 1861, s. 29, 22 A. 340 = A.W.N. 1900, 110.

(4833)—S. 556—*See* BOM. ACT VII OF 1867, Rat. Un. Cr. C. 433.

(4834)—S. 556—*See* PUN. ACT XX OF 1891, s. 188, 3 P.R. 1895, Cr., 5 P.R. 1896, Cr.

(4835)—S. 556—*See* APPEAL—GENERAL, 2 L.B.R. 302, 39 P.R. 1884, Cr.

(4836)—S. 556—*See* BENCH OF MAGISTRATES, 10 C. 194.

(4837)—S. 556—*See* COMMITMENT TO SESSIONS COURT, 2 L.B.R. 209.

(4838)—S. 556—*See* BUR. REG. XIV OF 1887, U.B.R. 1892—1896, Vol. I, 321.

(4839)—S. 556—*See* SESSIONS JUDGE, JURISDICTION OF, 20 A. 181 = A.W.N. 1898, 11,

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(4840)—S. 556—*See* Nos. 933, 1029, 1310, 1675, 1702, 2065, 2336, 3489, 4297, 4637, 4659, *supra.*

(4841)—*Ss.* 556, 195—*Process issued by Cantonment Magistrate in his capacity of a Small Cause Court Judge—Execution by bailiff—Obstruction— Prosecution for— Bailiff not examined—No sanction under s.* 195, *Crim. Pro. Code—Conviction by Magistrate—Magistrate—Not 'personally interested'—Nor 'party to the proceedings'—Legality of conviction—Penal Code, s* 186.—The accused were convicted by a Magistrate under s. 186, I.P.C., of obstructing a bailiff in execution of a process issued by that Magistrate in his capacity as a Judge of a Small Cause Court. The complainant bailiff was not examined but his report was brought on the record through the Nazir. *Held*, that the mere fact that the complainant was not examined would not justify the setting aside of the conviction, because there were other witnesses who gave a full account of the matter. *Held, also*, that the proceedings were not illegal for want of sanction under s. 195, Crim. Pro. Code, and that it was open to the bailiff, a Public officer, to file a complaint without any sanction. *Held*, also, the fact that the Magistrate issued the warrant, in respect of which the obstruction occurred, in his capacity as a Small Cause Court Judge, would not make him 'personally interested' in the matter within the meaning of s. 556, Crim. Pro. Code. *Held* also, that, because there was nothing on the record to show that the Magistrate gave sanction to prosecute or in other words directed the prosecution, he was not 'a party to the Criminal Proceedings' and that the trial was not irregular. MUSO v. CROWN, **8 S.L.R. 41 = 15 Cr.L.J. 649 = 25 Ind. Cas. 977.**

(4842)—*Ss.* 556, 435, 439—*Applicability of s.* 556—*Fact of each case—'Try any case'—Meaning—'Personally interested'—Meaning and effect—District Magistrate—Direction to prosecute in his capacity as Deputy Commissioner—Conviction by a Subordinate Magistrate—Appeal—Competency to hear—Jurisdiction—Revision—Effect of consent or waiver—High Court—Power of Revision.*—Where a District Magistrate, as Deputy Commissioner, on reading the report of a Forest Divisional Officer, formed an opinion that the accused who was a *Muccadam* made a deliberately false report, and directed his prosecution before a subordinate Magistrate, and where the latter convicted the accused and an appeal was preferred before the District Magistrate against such conviction. *Held*, that the District Magistrate was disqualified from hearing the appeal and was deprived of jurisdiction to entertain the appeal. (23 C. 328, *R.*) Consent or want of objection cannot cure a defect in jurisdiction. *Held*, also, that the circumstances justified revisional interference. The implied assent of the accused to the hearing of the appeal by the District Magistrate is of no value. Whether a case falls within the provisions of s. 556, Crim. Pro. Code, is a

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question of fact to be determined with reference to the circumstances of each particular case. The words 'personally interested' in s. 556, Crim. Pro. Code, have been given a very wide interpretation. The illustration to that section makes it clear that the interest need not be pecuniary. The words 'try any case' in s. 556 are wide enough to include the hearing of an appeal. (23 C. 44, 1899 A.W.N. 74, *F.*). Ss. 435 and 439, Crim. Pro. Code, give the High Court power to control the propriety as well as the legality of a finding, sentence or order of any inferior Criminal Court, and that necessarily imports a power to regulate or revise the proceedings leading up to any such finding, sentence or order. If, therefore, a sentence has been passed or confirmed by a Court which could not legally try, or should not properly have tried the case, the High Court has a discretion to interfere. FAIZ MAHOMED v. EMPEROR, **9 N.L.R. 81 = 14 Cr.L.J. 385 = 20 Ind. Cas. 209.** (24 M. 231, *Appr.*; 12 P.R. 1905, *Doubted*; 9 C.P.L.R. 26, and 8 N.L.R. 1, *F.*)

(4843)—*Ss.* 556, 437—*Municipal meeting directing prosecution of accused — District Magistrate presiding over—Personal interest—Incapacity to order further inquiry under s.* 437 —*The words 'try any case'—Whether includes proceedings under s* 437.—A District Magistrate, who himself presided over a meeting of the Municipality which directed the prosecution of the accused who was a servant of the Municipality, has no jurisdiction to make an order for further enquiry under s. 437, Crim. Pro. Code. (32 A. 635, 4 Q.B.D. 332, 9 Q.B.D. 394, *R.*) The expression 'try any case' in s. 556, Crim. Pro. Code, is wide enough to include any stage of the judicial proceeding in which the question of guilt or innocence of the accused is finally adjudicated and includes also a proceeding under s. 437, Crim. Pro. Code. IMPERATOR v. BHOJRAJ CHELLARAM, **5 S.L.R. 137 = 13 Ind. Cas. 222 = 13 Cr.L.J. 30.** (27 A. 25, *R.*)

(4844)—Ss. 556, 537—*See* MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION, 23 C. 328.

——S. 558 (=1882, s. 556; 1872, ss. 3, 539; 1861, s. 444).

(4845)—*S.* 558 (=*Crim. Pro. Code*, 1882, s. 556)—*Personal interest of Magistrate.*—It is generally expedient that a Magistrate who, as an Assistant Collector, had supervised a departmental inquiry against a subordinate, should not try the criminal case against the same person. QUEEN-EMPRESS v. VISHNU, **Rat. Un. Cr. C. 631 = Cr. Rg. 57 of 1892.**

(4846)—*S.* 558 (=*Crim. Pro. Code*, 1882, s. 556)—*Inquiry into a matter by an officer as Revenue Officer—His competency to try the case.*—*Held*, that the conduct of a Deputy Magistrate in directing the Deputy Tahsildar, who had inquired into the matter as a Revenue Officer, to try it as a Magistrate was highly improper, and that his hearing and disposing of the appeal, when the correctness of his own order was in question, was also improper. *In re* KALINGA GOUNDAN, **2 Weir 729.**

(4847)—*S.* 558 (=*Crim. Pro. Code*, 1882, s. 556)—*Municipal Councillor reporting a case for prosecution—His competency to be one of the Bench of Magistrates to try the case.*—A Municipal Councillor who reports a case of breach of Municipal law for prosecution is not interested in the matter, within the principle "*nemo potest esse simul actor et judet.*" Where, in such a case, the Council directs the prosecution, the Municipal Councillor is not debarred from trying the case as one of the Bench of Magistrates. *In re* ADINARAYANA CHETTY, **2 Weir 728.**

——S. 559 (=1882, s. 557).

(4848)—S. 559—*See* PRESIDENCY MAGISTRATE, 23 B. 490.

——S. 560 (=1882, s. 559).

(4849)—*S.* 560—An order for compensation under s. 560 of the Crim. Pro. Code (X of 1882) is not a fine and if passed by a Magistrate of the First Class is not appealable, whatever be the amount awarded. Sub-s. (3) gives a right of appeal only in respect of orders for compensation passed by a Magistrate of the second or third class, and such an order would be appealable irrespective of the amount awarded. EMPRESS v. BABIA KOSHTI, **8 C.P.L.R. 13, Cr.**

(4850)—S. 560—*See* No. 578, *supra.*

——S. 561 (=1882, s. 561).

(4851)—*S.* 561 (*a*) (=*Crim. Pro. Code, Act* X *of* 1882, *s.* 561 (*a*))—*Penal Code, s.* 376—*Investigation by inferior Police officer—Regularity.*—Where an offence to which the provisions of s. 561 (*a*) of the Crim. Pro. Code, apply has been taken cognizance of by a District Magistrate, the fact that it has been investigated by a Police officer below the rank of an Inspector is not a material irregularity which would vitiate the subsequent proceedings. QUEEN-EMPRESS v. MEHRI, **A.W.N. 1895, 9.**

——S. 562 (New).

(4852)—*S* 562—*When applicable.*—Where no previous conviction is proved against an offender, and the offence is one under the Indian Penal Code punishable with not more than two years' imprisonment, the section is applicable, having regard to the youth, character and antecedents of the offender. EMPEROR v. BIRCH, **24 A. 306 = A.W.N. 1902, 69.** [*R.*, 12 Cr. L.J. 213 = 10 Ind. Cas. 114 = 16 P.R. 1911 = 155 P.L.R. 1911.]

(4853)—S. 562 of the Crim. Pro. Code should be used freely in suitable cases. It should not be applied indiscriminately and without due consideration to the cases of all first offenders. The Court must have regard to the incidents specified. Among the most important points for consideration are the character and antecedents of the accused. KING-EMPEROR v. PO THEIN, **2 L.B.R. 314.** (2 L.B.R. 65, *R.*)

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(4854)—*S.* 562—*Applicability of.*—An order under this section is bad if the accused is 35 years of age, *i.e.*, if he is not a person whose youth can be taken into consideration; and if the offence disclosed is one punishable under s. 456, I.P.C., *i.e.*, punishable with more than two years' imprisonment. KING-EMPEROR v. BUBUDIN, **U.B.R. 1897—1901, Vol. I, 139.**

(4855)—*S.* 562, *Limited application of.*—S. 562, Crim. Pro. Code, is carefully limited in its application, and the Courts should not go beyond the plain meaning of its provisions. In cases coming under the section, it is not open to a Court, on proof of youth, to omit regard to the character, antecedents, or to the trivial nature of the offence, or to consider the trivial nature of the offence alone and disregard the age of the offender. QUEEN-EMPRESS v. NGA PO HMAN, **1 L.B.R. 41, F.B.** [*Overruled,* 1 L.B.R. 41.]

(4856)—*S.* 562—*Scope and applicability of section.*—Where the charge was in the alternative either of theft or of retaining stolen property, and the Magistrate, while convicting the accused, did not say of which of these offences he convicted them, *held* that, in the absence of a conviction for theft, the Magistrate was not competent to pass an order under s. 562. QUEEN-EMPRESS v. BHAGWANT GANESH, **1 Bom. L.R. 857.**

(4857)—*S.* 562—*Procedure.*—In dealing with an accused under s. 562, Crim. Pro. Code, it is not competent to a Magistrate to ask him to appear in Court on a day fixed to receive sentence; all he can do is to release the accused on probation of good conduct for a certain period and to direct him to appear and receive sentence when called upon during such period. QUEEN-EMPRESS v. RAMA, **2 Bom. L.R. 702.**

(4858)—*S.* 562—*Procedure.*—The point for decision by a Full Bench, was whether s. 562 of the Code applies to the aggravated form of cheating, under s. 420 of the Penal Code. On the reasoning that the word, 'theft,' as used in s. 562 can only mean simple theft, for, otherwise, it would not have been followed by the words "theft in a building" as well, it was *held* that the word 'cheating' in the same section can mean only simple cheating, as under s. 417 of the Penal Code, and not include the aggravated form of it, under s. 420 of the Penal Code. The words 'theft,' 'dishonest misappropriation' and 'cheating' in s. 562, refer to theft, etc., in their simple form punishable respectively under ss. 379, 403 and 417 of the Penal Code. KING-EMPEROR, v. NGA PYI, **3 L.B.R. 95=3 Cr. L.J. 21, F.B.** [*F.*, 12 Cr. L. J. 213=10 Ind. Cas. 114=155 P.L.R. 1911.]

(4859)—*S.* 562—*Procedure.*—The said section does not give a general power to release first offenders in trivial cases. Regard must be had to the youth, character and antecedents of the offender, to the trivial nature of the offence and to any extenuating circumstances under which it was committed. Apparently only comparatively youthful offenders can be dealt with under this section, though it is not restricted to those who are technically juvenile offenders. QUEEN-EMPRESS v. NGA SAN CHEIN, **U.B.R. 1897-1901, Vol. I, 137.**

(4860)—*S.* 562—*First offender mentioned in section need not necessarily be a youth—Discretion of Magistrates.*—Under s. 562, the first offender, with a past good character and antecedents, need not necessarily be also a youth. The first essential is that the accused must be a first offender, and if he is one, the extenuating considerations which entitle him to the indulgence are his youth, character and antecedents. QUEEN-EMPRESS v. TUKARAM, **2 Bom. L.R. 817.** [*F.*, 24 A. 306.]

(4861)—*S.* 562.—In order to enable a Court to exercise the power conferred by the above section, it is not necessary that the offender should be young, that the offence should be trivial, and that there should be extenuating circumstances. The mention of those conditions and of the character and antecedents of the offender merely indicates generally considerations with regard to which the discretion of the Court should be exercised in dealing with first offenders who are convicted of any of the offences specified in the section. KING-EMPEROR v. NAWTARA SINGH, **U.B.R. 1904, 1st Qr, Penal Code, 7.** (U.B.R. 1897-1901, 137, 139, L.B.R 1903, 65, *R.*)

(4862)—*S.* 562.—In order to give a Court power under s. 562, Crim. Pro. Code, to release an offender on probation of good conduct, it is not necessary that the offender should be young, that the offence should be trivial and that there should be extenuating circumstances. They merely indicate the lines on which the discretion of the Court should be exercised in dealing with first offenders who are convicted of the offences specified in the section. Regard must also be had to the character and antecedents of the accused. KING-EMPEROR v. BA HAN, **2 L.B. R. 65** (1 L.B.R. 41, *Overruled*; U.B.R. 1897—1901, 137, *Diss.*)

(4863)—*S.* 562—"*Court before whom he is convicted*"—*Construction.*—By the use of the words "Court before whom he is convicted" in s. 562, it is not the intention of the Legislature to limit the power of making orders under that section to the Court of first instance. The proviso to the section is inconsistent with the view that this was the intention of the Legislature. NARAYANASAMY NAIDU v. EMPEROR, **29 M. 567=5 Cr. L.J. 136.** (24 A. 306, *Appr.*) [*R.*, 12 Cr. L.J. 213=10 Ind. Cas. 114=155 P.L.R. 1911=16 P.R. 1911, Cr.]

(4864)—*S.* 562—*Joint trial of a boy of 11 years and an aged man—Reference to first class Magistrate of both accused—Validity.*—Where the first accused, aged nearly 50, and the second accused, a boy of 11 years, were charged before a second class Magistrate under s. 379, I.P.C., and the Magistrate sent the case of both the accused to a First Class Magistrate so that the second accused might be dealt with under s. 562, Crim. Pro. Code. *Held,* (1) that the second

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class Magistrate should have disposed of the case of the first accused according to law, without sending his case to the first class Magistrate, that he should have submitted the case of the second accused only, and that the First Class Magistrate should take from the second accused a bond fulfilling the requirements of s. 562. QUEEN EMPRESS v. YESSU, **2 Bom. L.R. 112.**

(4865)—*S.* 562—*Second class Magistrate not specially empowered under s.* 562—*His power—Conviction under ss.* 454, 308, *I.P.C.—Order under s.* 562.—A second class Magistrate, who had not been specially empowered by the local Government to exercise jurisdiction under s.562, cannot act under the first part of the section, although he has been invested under the former Code with all the powers specified in the fourth schedule of that Code which contained no provision corresponding to s. 562 of the new Code. *In re* DORASAMI AIYANGAR, **2 Weir 731.**

(4866)—*S.* 562—*First offenders.*—Where a person is convicted both under ss. 454 and 308, I.P.C., no order can be made under s. 562, Crim. Pro. Code, as a person convicted under s. 454, I.P.C., not coming under s. 562, Crim. Pro. Code, cannot be released on executing a bond, although the other offence is referred to in the section. *In re* KRISHNA AIYANGAR, **2 Weir 731.**

(4867)—*S.* 562—*Power of Court to release first offenders in trivial cases—Procedure.*—In this case the accused was of 40 years of age. The Magistrate gave him the benefit of the above section, because the value of the stolen property was insignificant and this was his first offence. He passed an order requiring the accused to execute a bond to be of good behaviour for six months, or, in default, to suffer twenty stripes. *Held*, that the Court should not pass an order for release on probation and at the same time pass a specific sentence in default. The proper procedure is for the Court to pass the order for release on probation; if the offender does not accept the terms, then sentence should be passed. QUEEN-EMPRESS v. NGA SAN CHEIN, **U.B.R. 1897—1901, Vol. I, 137.**

(4868)—*S.* 562—*Penal Code, s.* 457, *offence under.*—House-breaking by night under s. 457, Penal Code, not being one of the offences mentioned in s. 562, Crim. Pro. Code, an accused, 16 or 17 years of age, convicted under s. 457, cannot, instead of being sentenced to imprisonment, be released upon probation of good conduct. EMPEROR v. MARUTI, **15 C.P.L.R. Cr. 11.**

(4869)—*S.* 562—*Indian Penal Code (Act* XLV *of* 1860), *s.* 420,*offence under—"Cheating" scope of the word, as used in s.* 562.—*Held*, that s. 562, Crim. Pro. Code, is not applicable to convictions under s. 420, I.P.C. The word "cheating" used in s. 562, Crim. Pro. Code, covers only simple cheating, and not the more aggravated forms of cheating for which higher punishments are provided in the I.P.C. CROWN v. NEKI RAM, **23 P.W.R. 1908, Cr=8 Cr. L.J. 455.**

(4870)—*S.* 562—*Criminal breach of trust—Release of accused on security for good conduct.*—A person convicted of criminal breach of trust, which is not one of the offences specified in this section, and which is punishable with more than two years' imprisonment, cannot be released on security for good conduct. QUEEN-EMPRESS v. AH WUN, **U.B.R. 1897—1901, Vol. I, 138.**

(4871)—*S.* 562—*Scope and extent of—Servant stealing master's property, whether can be released on probation of good conduct—Statutes, construction of.*—A servant found guilty, and convicted, under s. 381, I.P.C., of theft of his master's property was held not to be entitled to be released, under s. 562, Crim. Pro. Code, upon probation of good conduct, as theft by a servant is not one of the offences mentioned therein. When an act gives a special power, that power must be limited to the purpose for which it is conferred; and jurisdiction must be exercised strictly in accordance with the provisions of the statute which creates it. It is an evasion of the law to treat an aggravated, as an ordinary offence, and thus introduce a different jurisdiction or a lower scale of punishment. EMPEROR v. BAPU RAO MARATHA, **4 N.L.R. 18 =7 Cr. L.J. 319.** [*F.*, 12 Cr. L. J. 213= 10 Ind. Cas. 114=155 P.L.R. 1911.]

(4872)—*S.* 562—*Conviction — Sentence.*—If the accused is convicted, some sentence must be passed. QUEEN-EMPRESS v. MI BAUK, **L. B R. 1872—1892, 409.**

(4873)—*S.* 562—*Inability to furnish security for good behaviour—Procedure to be adopted—Sentence to be nominal.*—The view that, if an accused person is ordered to give security under s. 562 of the Code and fails to do so, he should be detained in prison till the expiration of the period for which security is to be furnished, is not in accordance with any provision of law. The proper course is for the Magistrate to ascertain, before passing an order under s. 562, whether the accused is likely to be able to give security immediately or within a reasonable time. If he fails to give security within a reasonable time, the Magistrate should pass a sentence which should be nominal. KING-EMPEROR v. TUN GAUNG, **3 L.B.R. 2=2 Cr. L.J. 374.**

(4874)—*S.* 562—*Attempt to commit offences—Applicability of section to.*—A boy, aged 18 years, was convicted of an attempt to cause hurt with a dangerous weapon. The Magistrate ordered him to execute a bond with a surety under s. 562 of the Code. *Held*, the object of s. 562 was to provide a lesser and alternative remedy for a certain class of cases. Though the maximum sentence, under s. 324, I.P.C., is 3 years, an attempt to commit that offence is only punishable with one and a half years. The "term of imprisonment" and not the "nature

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of the offence" being the test as to the applicability of s. 562 in cases like the present, the order of the Magistrate was legal. KING-EMPEROR v. KRA PRU AUNG, 3 L.B.R. 30.

(4875)—*S. 562—Penal Code (Act XLV of 1860), s. 420—S. 562 inapplicable to conviction under s. 420—Practice—Magistrate dealing with accused under s 562 on conviction under s. 420—Re-trial not necessary—Remand of case for passing lawful sentence—Appellate or Revisional Court not competent to pass sentence.*—S. 562 of the Crim. Pro. Code covers only the form of cheating punishable under s. 417, Penal Code, with one year's imprisonment, and not the more serious form punishable under s. 420 with seven years. (23 P W.R. 1908, Cr. = 8 Cr. L.J. 455, 3 L.B.R 95 = 12 Bur. L.R. 91 = 3 Cr. L.J. 21 and 4 N.L.R. 18 = 7 Cr. L.J. 319, *F.*) Consequently, s. 562, Crim. Pro. Code, cannot be used upon a conviction under s. 420, Penal Code. Where a Magistrate convicts a person of an offence under s. 420, but deals with him under s. 562, Crim. Pro. Code, the proper course for the appellate or revisional Court is not to direct a re-trial but to set aside the order under s. 562 and remand the case to the Magistrate to pass a lawful sentence. (4 N.L R. 18 = 7 Cr. L.J. 319, 24 P.R. 1904, Cr, 29 M. 567 = 5 M.L.J. 136, *F.*) An appellate or revisional Court itself cannot pass the proper sentence HARNAM SINGH v. EMPEROR, **155 P.L R. 1911 = 10 Ind. Cas. 114 = 12 Cr. L.J. 213 = 16 P.R. 1911, Cr.**

(4876)—*S. 562—Petty squabbles of young persons—Sentence of imprisonment without choice of fine inappropriate.*—In a petty case arising out of a squabble between two girls of 16 and 14, the younger girl was convicted of slapping the elder's cheek and pulling her hair and was sentenced to seven days' rigorous imprisonment: *Held*, that the sentence of imprisonment without the option of a fine was inappropriate. MA KYWE v. EMPEROR, **12 Cr. L.J. 242 = 10 Ind. Cas. 772.**

(4877)—*S. 562—Applying this section to s. 457 of the Indian Penal Code (Act XLV of 1860)—Revision.—Held*, that, although s. 562, Crim. Pro. Code, cannot properly be used in cases falling under s. 457, I.P.C, yet, where it has been wrongly applied by a Magistrate, it is optional for the High Court on revision side to interfere or not, as it thinks fit upon a consideration of all the circumstances, with the discretion thus used by the Magistrate ABDUL v. CROWN, **19 P W.R. 1910, Cr. = 6 Ind. Cas. 639 = 11 Cr. L J. 389.**

(4878)—*S. 562—First offence—Penal Code, s. 381—Theft by servant—Aggravation of offence—Making imputations on chastity of complainant's wife.—Held*, that s. 562 of the Crim Pro. Code is inapplicable to the case of an accused, who has been convicted of an offence of theft of his master's property, for he is liable to punishment under s. 381 and not s. 380 of the I.P.C. *Held*, also, that the accused had aggravated his offence by making imputations on the chastity of the complainant's wife. CROWN v. BRIJ LAL. **13 P.L R. 1913 = 14 Cr. L.J. 113 = 18 Ind. Cas. 673 = 27 P.W.R. 1913, Cr.**

(4879)—*S. 562—First offender—Criminal misappropriation and cheating in all their forms—Constructions of statute.*—The words "dishonest misappropriation" and "cheating" in s. 562 of the Code of Criminal Procedure apply to and cover the offences of criminal misappropriation and cheating respectively in all their forms. The words of a Statute should be given an extended meaning of which they are reasonably susceptible when a restricted meaning would reduce those words to a mere surplusage. HARNARAIN v. RAMJI DAS, **12 A.L.J. 465 = 15 Cr. L.J. 375 = 23 Ind. Cas. 743.**

(4880)—S. 562 — *See* APPEAL — CASES WHERE APPEAL LIES, 24 P.R. 1904, Cr. = 1 Cr. L.J. 1098.

(4881)—S. 562—*See* PENAL CODE, s. 95, 1 N.L.R 139.

(4882)—S. 562—Conviction under—Power to quash—*See* PENAL CODE, s. 143, 7 P.W R. 1912, Cr. = 67 P.L.R. 1912 = 15 Ind. Cas. 316 = 13 Cr. L.J. 476.

(4883)—S. 562—Procedure to be adopted—*See* PRACTICE AND PROCEDURE, 2 L.B.R. 216.

(4884)—S. 562—*See* RELEASE ON PROBATION OF GOOD CONDUCT, 1 L.B R. 158.

(4885)—S. 562—*See* SECURITY TO KEEP THE PEACE—ON CONVICTION, 4 L.B.R. 277.

(4886)—S. 562—*See* Nos. 804, 806, 3382, 3383, 3387, 3527, 3528, 3675, 4061, 4062, *supra.*

(4887)—*Ss. 562, 341—Magistrate—Conviction by, under s. 304-A, I.P.C.—Passing order under s. 562—Illegality—Proper course—Report to High Court.*—A Magistrate who convicted the accused of an offence under s. 304-A, I P.C., has no power also to pass an order under s. 562, Crim. Pro. Code. Under s. 341, Crim. Pro. Code, he should, on conviction, have merely reported the case to the High Court for orders. ADDALA SERRIVADU v DISTRICT MAGISTRATE OF VIZAGAPATAM, **11 M.L T. 404 = 14 Ind. Cas. 600 = 13 Cr. L.J. 248.**

——**S. 563 (New).**

(4888)—S. 563—*See* No. 3383, *supra.*

——**S. 565 (New).**

(4889)—*S. 565—Penal Code, ss. 457 and 511.—Held*, that, where either the previous or subsequent conviction of an accused person is under s. 511, I.P C., for an attempt to commit an offence punishable for a term of three years or upwards, under any of the sections specified in Ch. XII or Ch. XVII of the I.P.C., the Court trying the case has no power to proceed and pass an order against him under s. 565, Crim. Pro. Code. HARNAM v. KING-EMPEROR, **35 P.W.R. 1907, Cr. = 17 P.R. 1907, Cr. = 6 Cr. L.J. 378.**

(4890)—*S. 565—No previous conviction—Order to notify residence—Legality.*—Where

Crim. Pro. Code (Act V of 1898)—*concluded.*

there is no previous conviction, an order directing the accused to notify his residence is illegal and must be set aside. KOTTAPARAMBIL KUNHAMMAD v. EMPEROR, **8 M.L T. 352** =**8 Ind. Cas. 300**=**11 Cr. L.J. 636**=**1910 M. W.N. 567.**

(4891)—*S. 565—I.P.C. (Act XLV of 1860), s. 75—Whipping Act (IV of 1909)—Sentence of whipping—Order for notifying address of previously convicted offender.*—The order contemplated by s. 565 of the Crim. Pro. Code can only be passed where the convict is sentenced either to transportation or imprisonment. The section does not extend to cases where the Court, instead of passing that sentence, passes a sentence of whipping. EMPEROR v. FULJI DITYA, **12 Bom. L.R. 901**=**8 Ind. Cas. 623**= **11 Cr. L.J. 691.**

(4892)—S. 565—Previous conviction—Subsequent conviction for technical theft—Order under s. 565—Legality—*See* PENAL CODE, ss. 75, 379, 3 P.W.R. 1914, Cr.=4 P.L R. 1914 =15 Cr. L.J. 183=22 Ind. Cas. 759.

(4893)—S. 565, sub-s. 3—*See* PENAL CODE, s. 176, 1 N.L.R. 133=2 Cr. L.J. 745.

(4894)—*S. 565 (4)—Penal Code, s. 176—Omission to inform when punishable.*—Cases under s. 565 (4) of Crim. Pro. Code should be dealt with under the first part of s. 176, Penal Code. *In re* HUSSAIN BEG, **4 M.L.T. 325**=**19 M.L.J. 274**=**31 M. 548**=**8 Cr.L.J. 425.**

(4895)—*Ss. 565, 221, 537—Order under s. 565—Not a 'punishment' under s. 221—Previous conviction—Failure to give details of—Irregularity—Cure under s. 537.*—An order under s. 565, Crim. Pro. Code, is not such a punishment as is meant by the words of s. 221, Crim. Pro. Code. Therefore, the provisions of s. 221 (7), Crim. Pro. Code, do not apply to an order under s. 565, and such an order can be legally passed without the previous convictions on which it is based having been mentioned in the charge. Even assuming that the Magistrate was legally bound to give the details of alleged previous convictions in his charge, before passing any order to the prejudice of the accused under s. 565, Crim. Pro. Code, the irregularity is one that would be cured by s. 537, Crim. Pro. Code. EMPEROR v. JHAGROO, **9 N.L.R. 88**=**14 Cr. L.J. 390**=**20 Ind. Cas. 214.** (25 M. 61, P.C., *R.*)

Criminal Procedure Code, 1882 (Amendment Act).

See ACT IV OF 1891.

Criminal Procedure Code (Amendment).

See ACT III OF 1884.

Criminal Procedure Code (Amendment—High Courts).

See ACT XIII OF 1865.

Criminal Procedure (Supreme Courts Act).

See ACT XVIII OF 1862.

Criminal Proceedings.

See REVIVAL OF CRIMINAL PROCEEDINGS.

See STAY OF CRIMINAL PROCEEDINGS.

(1)—*Criminal proceedings taken on Sunday.*—A Magistrate is not debarred in this country from taking criminal proceedings on Sundays. *In the matter of the petition of* SINCLAIR, E.D., **6 N.W.P. 177.**

(2)—*Crim. Pro. Code, s. 195—Sanction to prosecute — Prosecution not to be conducted during pendency of appeal.*—Criminal proceedings for perjury or forgery arising out of a civil litigation should not go on during the pendency of such litigation. Where a sanction has been granted for the prosecution for perjury of a party to a civil suit, no prosecution could be instituted on such sanction until the appeal from the suit pending in a higher Court has been disposed of. *In re* SHRI NANA MAHARAJA, **16 B. 729.** [*Not F.*, 23 C. 610 ; *R.*, 2 Weir 415, 26 B. 785, 31 C. 858, 34 C. 848=11 C.W.N. 712 =5 Cr. L.J. 480=6 C.L.J. 531.]

(3)—*Stay of criminal proceedings during pendency of civil suit*—Although the High Court has often acted on the principle that criminal proceedings should not go on during the pendency of civil litigation regarding the same subject-matter, it is not an invariable rule. Where, after making enquiries under Chap. XXXV of the Crim. Pro. Code, regarding the genuineness of the transaction put forward by the party who applied to raise an attachment, the Subordinate Judge committed the case to the Sessions on a charge of forgery and perjury, but meanwhile a regular suit had been filed to establish the genuineness of the transaction, *held* that the fact of the institution of the suit would not be sufficient for the High Court to quash the commitment regularly made by the Subordinate Judge to the Sessions Court, or to direct the trial to be adjourned pending the hearing of the civil suit, and possibly of an appeal and second appeal. *In re* DEVJI *valad* BHAVANI, **18 B. 581.** [*R.*, 23 C. 610, 26 B. 785, 31 C. 858, 34 C. 848=5 Cr. L.J 480=6 C.L.J. 531=11 C.W.N. 712; *D.*, 30 M. 226=6 Cr. L.J. 131.]

(4)—*Criminal proceedings—Procedure.*—In a criminal proceeding, an accused person ought to be distinctly made to understand from the beginning what the Court is about, and no laxity ought to be allowed in the procedure prescribed by the Code. *In re* SITARAM SHIVARAMBHAT, **6 Bom. L.R. 578.**

(5)—*Magistrate's power to split up an offence — Summary jurisdiction — Right of appeal, deprivation of—Penal Code, ss. 143, 144.*—No Magistrate is entitled to split up an offence into its component parts, for the purpose of giving himself summary jurisdiction, thereby depriving the prisoner of his right of appeal. If a charge of an offence, not triable summarily (*e.g.*, under s. 144, Penal Code), is laid and sworn to, the Magistrate must proceed with the case, accordingly, unless he is, at the outset, in a position to show, from the deposition of

Criminal Proceedings—*continued.*

the complainant, that the circumstances of aggravation are not to be believed. The proceedings of a Magistrate, acting contrary to the above principle, are void. EMPRESS v. ABDOOL KARIM, *and* EMPRESS v. GOLAM MAHOMED, **4 C. 18=3 C L.R. 44.** [*R.*, 16 C. 715, 1 Bom. L.R. 683, 25 B. 90=2 Bom. L.R. 653; *Expl.*, 13 B. 502; *D.*, 10 A. 55, 22 M. 459=2 Weir 254.]

(6)—*Institution of criminal prosecution, pending appeal in Civil suit.*—As a matter of discretion and propriety, a Judge in a Civil suit may wait, before directing a prosecution for perjury of parties or witnesses upon their own uncontradicted statements, till the disposal of a pending appeal against the suit. *In the matter of* MUTHY LALL GHOSE, **6 C. 308.**

(7)—*Crim. Pro. Code*, s.537—*Counter-charge of rioting—Irregularity.*—Where a Magistrate, in two cases of counter-charges of rioting and assault tried, first of all, one party, and having taken evidence for that party, he had, without giving his decision in that enquiry, proceeded to take evidence for the other party, and in this second enquiry he called as witnesses some of those very persons whose conduct was inquired into at the first enquiry, and as to whose guilt, or innocence he had suspended his judgment, *held*, that such procedure constituted a grave irregularity, but that, under circumstances of this case, the irregularity was cured by s. 537 of the Code. BACHU MULLAH v. SIA RAM SINGH, **14 C 358.** [*R.*, Rat. Un. Cr. C. 331, 1 C.W.N. 426, 8 C.W N. 180, 8 C.W.N. 344, 5 C.L.J. 231, 11 C.W.N. 472=5 Cr. L.J. 197; *Disappr.*, 20 C. 537.]

(8)—*Trial by jury—Duty of Court to examine all the witnesses for the prosecution—Acquittal of the accused without examining some of the prosecution witnesses, validity of.*—No final opinion as to the falsehood or insufficiency of the prosecution evidence is to be arrived at by the Judge or jury until the whole of the evidence is before them, and has been considered, and the jury ought, if need be, to be cautioned by the Judge to this effect. If, however, at the end of the prosecution evidence, the public prosecutor waives to sum up the evidence, where he has such right, and the jury then express an opinion that the evidence is incredible, and the Judge agrees with them, in such a case, it is not necessary for the Judge to go through the formality of summing up the case to jury. Where, in a trial of a person for the offence of dacoity, the Sessions Judge after examining five out of seven witnesses for the prosecution asked the jury whether they wished to hear any more evidence, and, on their stating that they did not believe the evidence and wished to stop the case, he recorded a verdict of acquittal, *held*, that the procedure adopted was illegal and that the Magistrate should have examined all the prosecution witnesses before recording the verdict. QUEEN-EMPRESS v. RAMALINGAM, **20 M. 445=2 Weir 384.**

(9)—*Felonious Act—Civil suit without criminal prosecution.*—Even if it be an established principle of the law of England, that the policy of law will not allow a person injured by a felonious act to seek civil redress, if he has failed in his duty of bringing or endeavouring to bring the felon to justice, as to which there seems to be some doubt, the principle does not apply to a case, where the defendant is not criminally liable for the offence committed by the agent and the suit is not brought against the party, who is alleged to have been guilty of an offence under s. 165 of Madras Local Boards Act (V of 1884). PRESIDENT OF THE TALUQ BOARD OF KUNDAPUR v. BURDE LAKSHMINARAYANA KAMPTHI, **17 M.L J. 537=2 M.L.T. 461.**

(10)—*Crim. Pro. Code*, 1898, *s.* 161—*Answers to questions by a police officer under s.* 161, *whether amounts to institution of criminal proceedings—S.* 211, *Penal Code.*—A person, who answers questions put to him by a police officer making an investigation under s. 161, Crim. Pro. Code, does not institute or cause to be instituted criminal proceedings within the meaning of s. 211, Penal Code, nor does he thereby charge any person within the meaning of that section. *In re* VERUPATTI PENCHALUGADDI, **6 M.L.T. 133=4 Ind. Cas. 1061=11 Cr. L.J. 164.**

(11)—*Magistrate actively employed in prosecution—Judge on appeal.*—A Magistrate took an active part in the prosecution of the prisoners, and recorded the evidence of the witnesses before deciding whether the case should go to trial or not, and by whom it should be tried. *Held* that he could not hear the appeal from the conviction come to in the case. *In re* HET LALL ROY, **22 W.R. Cr. 75.**

(12)—*Trial by Magistrate instituted by him as Collector.*—The District Magistrate is not competent to try a case in which he instituted the prosecution as Collector. QUEEN v. NADI CHAND PODDAR, **24 W.R. Cr. 1.**

(13)—*Crim. Pro. Code*, 1861, *ss.* 250, 439.—Where a Magistrate tried a person without drawing up a charge in writing but gave the accused clearly to understand the nature of the charge made against him, *held*, the irregularity did not occasion a failure of justice, and was cured by s. 439 of the Code of 1861. BHUGWAN v. DOYAL GOPE, **10 W.R. Cr. 7.**

(14)—*Preliminary enquiry—Perjury.*—It is necessary to a proper preliminary enquiry that the accused (or, under certain circumstances, his agent) should be present, that the witnesses whose evidence is to be the foundation of the commitment should be examined before him; and that he should have the opportunity of cross-examining them. It is essential, too, in a case of perjury, that he should know at what period he ceased to be a witness and his position was changed to that of an accused. QUEEN v. KALI CHURN LAHOREE, **9 W.R. Cr. 54.**

(15)—*Omission to comply with formalities before service of summons.*—The omission to comply with the prescribed formalities before

Criminal Proceedings—*continued.*

issuing the summons will not vitiate the proceedings after summons, so as to enable a complainant to re-open the case. EASTERN BENGAL RAILWAY COMPANY v. KALI DASS DUTT, 23 W.R. Cr. 63.

(16)—*Power of High Court—Joint charge—Parties in riot on opposite sides.*—A Magistrate should not send up joint charges to the Sessions Court against persons who take part in a riot on opposite sides, as they have not a common object. But where a person had been so jointly charged and rightly convicted by the Sessions Court, *held* (Macpherson, J., *dissenting*) that, as the prisoner had not been prejudiced by the mistake of the Magistrate, there was no sufficient ground for setting aside his conviction or ordering a new trial. QUEEN v. SHEIKH BAZU, **B.L.R. Sup. Vol. 750=8 W.R. Cr. 47.**

(17)—*Crim. Pro. Code*, 1872, s. 537 (1872, s. 283; 1861-1869, ss. 426, 439)—*Irregularity prejudicing prisoner in his defence.*—An omission by a Magistrate to hold a preliminary inquiry on a charge under s. 307 of the Penal Code of attempting to murder was, on appeal by the prisoner to the High Court, held to be an irregularity which prejudiced the prisoner in her defence and the proceedings were ordered to be quashed, and a new trial held. QUEEN v. MUSSAMUT ITWARYA, **14 B.L.R. 54=22 W.R. Cr. 14.** [*R.*, 7 Cr. L.J. 89 = 10 O.C. 337, 41 C. 406=14 Cr. L.J. 485=20 Ind. Cas. 741=18 C.L.J. 582=18 C.W.N. 147.]

(18)—*Irregular appointment of jurors.*—The appointment, by Magistrates, as jurors of persons who had been appointed by the opposite party, is an error affecting the merits of the case. RAJAH SATYANUNDO GHOSAL v. CAMPERDOWN PRESSING COMPANY LIMITED, **21 W.R. Cr. 43.**

(19)—*Crim. Pro. Code*, 1872, s. 283—*Irregularity in trial before Magistrate.*—When a person summoned to answer to a charge of criminal trespass appeared and filed a written statement, and the Magistrate proceeded accordingly without recording a proceeding under s. 530 of the Code of Criminal Procedure, it was held that the irregularity was covered by s. 283 of the Code, the rule therein laid down being intended to extend to all proceedings before Magistrates. GOUR MOHUN MAJEE v. DOOLLUBH MAJEE, **22 W.R. 81, Cr.**

(20)—*Appellate Court—Failure to fix reasonable time for hearing—Irregularity.*—Where the appellate Court failed to fix a reasonable time for the appearance of the appellant or his counsel as required by s. 278, Act X of 1872, it was held that the error was one that would invalidate the proceedings. *In re* HURIPERSHAD, **24 W.R. Cr. 60.**

(21)—*Crim. Pro. Code*, 1872, s. 283—*Irregularity in trial—Conviction on wrong charge under Act* XXI *of* 1856, *s.* 44.—The accused who held a license for the sale of *imported* liquors, sold *country* spirit, and was charged and convicted by the Assistant Magistrate under s. 44, Act XXI of 1856. The Assistant Magistrate on the same day found that the conviction should have been under s. 48 of the Abkari Law, and recorded a note to that effect: *Held,* that as it was clear from the evidence recorded and from the answer of the accused that he was not misled as to the charge against him, and consequently in no way prejudiced by the erroneous description of the offence contained in the conviction, the conviction should be altered so as to bring it under s. 48, Act XXI of 1856. THE QUEEN v. DIGAMBUR SHAHA, **24 W.R. 3, Cr.**

(22)—*Irregularity in receiving evidence*—The reception as evidence against an accused person of a confession which ought not to have been proved, and which was not in accordance with the law, was held to be an irregularity which must be deemed to prejudice or injuriously affect the accused. QUEEN v. CHUNDER BHUTTACHARJEE, **24 W.R. Cr. 42.**

(23)—*Crim. Pro. Code*, 1872, *ch.* XVIII *and s.* 34—*Trying summarily case which ought not to have been so tried.*—The proceedings of a Magistrate who holds a summary trial for an offence not triable summarily are void, and if he convicts the accused the conviction must be set aside as having been made without jurisdiction. *In re* KHETTER MOHUN CHOWRUNGHEE, **22 W.R. Cr. 43.**

(24)—*Trial without complaint.*—Where there was an irregularity in the preliminary proceedings, there having been no complaint as provided by the Crim. Pro. Code, the Court set aside the proceedings, though the amount of punishment would not be affected by the defect. QUEEN v. MAHIM CHANDRA CHUCKERBUTTY, **3 B.L.R. A. Cr. 67.**

(25)—*Right to institute prosecution—Convicted person.*—There is no rule that a convicted person cannot institute criminal proceedings. QUEEN v. MADHUB CHUNDER GIRI MOHUNT, **21 W.R. Cr. 13.**

(26)—*Suit in Civil Court.*—Civil proceedings do not constitute a bar to a prosecution in a Criminal Court. MADHUB KYBURTHO v. KESHUB SINGH, **9 W.R. Cr. 22.**

Applicability of ss. 8 to 11 of the Oaths Act to criminal proceedings—*See* ACT X OF 1873, ss. 8 to 11, 13 B. 389.

See ACT X OF 1873, ss. 8, 9, 10, 11, 5 S.L.R. 129=13 Ind. Cas. 215=13 Cr. L.J. 23.

See ACT XIV OF 1874, ss. 3, 4, 13 M. 353=2 Weir 1.

Institution of—*See* ACT III OF 1877, s. 83, 10 W.R. Cr. 21=6 B.L.R. 693, note.

False statement of legal practitioner made after being solemnly affirmed—*See* ACT XVIII OF 1879. 6 M. 252=1 Weir 116=1 Weir 156=1 Weir 785=7 Ind. Jur. 247.

Thorough explanation of charge to accused, necessity for—*See* CHARGE—EXPLANATION OF CHARGE, 5 C. 826.

See COMMITMENT TO SESSIONS COURT, 8 B. 312, 16 B. 200.

Criminal Proceedings—*concluded.*

See CRIM. PRO. CODE, 1898. ss. 133, 138(1), 435 (1, 2, 3), Rat. Un. Cr. C. 336=Cr. Rg. 25 of 1887.

Institution of, before police— *See* CRIM. PRO. CODE, 1898, s. 203, 33 C. 1=10 C.W.N. 158=2 C.L.J. 228.

See CRIM. PRO. CODE, 1898, s. 282, 19 M. 375=2 Weir 680=6 M.L.J. 195.

See CRIM. PRO. CODE, 1898, s. 344, 2 Weir 415.

See CRIM. PRO. CODE, 1898, ss. 350, 357, 25 C. 863=2 C.W.N. 465.

See CRIM. PRO. CODE, 1898, ss. 355, 356, 357, 537, 19 M. 269=2 Weir 433=6 M.L.J. 134.

See CRIM. PRO. CODE, 1898, ss. 439 (1 to 5), 476, 23 C. 610.

See CRIM. PRO. CODE, 1898, s. 531, 17 A. 36=A.W.N. 1894, 195.

See CRIM. PRO. CODE, 1898, ss. 531, 532 and 537, 17 M. 402=2 Weir 704=4 M.L.J. 196.

See CRIM. PRO. CODE, 1898, ss. 532, 5, 3 A. 258.

See CRIM. PRO. CODE, 1898, s. 537, 14 C. 395.

See ESCAPE FROM LAWFUL CUSTODY, 11 M. 441=1 Weir 210=2 Weir 304.

See FALSE CHARGE, 5 M.L.T. 269, F.B.=32 M. 258=9 Cr. L.J. 170.

See JOINDER OF CHARGES—MISJOINDER OF CHARGES, 14 C. 128.

See JOINT TRIAL, 5 M. 20=2 Weir 303.

See PENAL CODE, ss. 372 and 373, 12 M. 273=1 Weir 375.

See TRANSFER OF CRIMINAL CASES-GROUNDS FOR TRANSFER—NOTICE, 2 C. W.N. 498.

See WAIVER, 2 C. 23.

Criminal Prosecution.

(1)—*Exclusion from caste—Criminal prosecution for defamation, considerations in a.*—In a civil suit it might be necessary to ascertain whether the action of a caste meeting assembled for the purpose of excommunicating a person was actually legally justifiable or not; but in a criminal prosecution of this nature for defamation, if the communityor meeting had authority to exclude the complainant from the society and used that authority in good faith, then, although they may possibly have erred in law, they are not liable to a criminal prosecution and conviction. QUEEN-EMPRESS v. SHAIK HOOSAR, **1 L.B.R. 4.** (23 B. 122, *F.*)

See BOM. ACT III OF 1852, Rat. Un. Cr. C. 59=Cr. Rg. 14—12—71.

Criminal Rules of Practice (Madras).

Rule 60—*See* CRIM. PRO. CODE, 1898, ss. 250, 422, 16 M.L.T. 426=25 Ind. Cas. 848 =27 M.L.J. 629=15 Cr.L.J. 648.

Criminal Statements.

—*Blank criminal statements.*—Blank criminal statements should not be sent up with quarterly returns. Whenever a statement is blank, a note to that effect must be entered at the back of the statements Nos. 1 to 5 in the column of remarks. CRIMINAL CIRCULAR, No. 3 OF 1868, **9 W.R. Cr. Cir. 5.**

Criminal Trespass.

See HOUSE-BREAKING.

See HOUSE-TRESPASS.

See PENAL CODE, SS. 441—462.

(1)—*Penal Code, s. 447—Trespass upon land used as a pathway—Question of title to the land.*—In a case brought against the accused for trespass upon land used by the complainant as a pathway, when a question of title to the land is raised between the parties, the accused cannot be convicted under s. 447, Crim. Pro. Code, merely on the finding that the complainant has been using the pathway for more than six months, the question of title being left undecided. RABI LOCHAN v. PURNA CHANDRA DEY, **11 C.W.N. 171=5 Cr. L.J. 14.**

(2)—*Penal Code, s. 447—Criminal trespass —Possession given to actual purchaser under s. 318, Civ. Pro. Code.*—When a land has been sold in execution of a money-decree, and actual possession of it given to the purchaser under s. 318, Civ. Pro. Code, without resistance or opposition, and the purchaser has thereafter exercised acts of possession over it, a forcible entry on such land by sub-tenants claiming under a lease of an antecedent date from the judgment-debtor, constitutes criminal trespass. KAILASH GHOSE v. JUGAL LOHAR, **1 C.L.J. 104.** (12 A. & E. 624, 7 B.H.C. A.C. 82, 1 M. & G. 644, 14 M. & W. 442, 10 C.B.N.S. 713, L.R. 1 Q.B. 1, *Disc. and R.*; 16 C. 106, *D.*).

(3)—*Penal Code, s. 447—Claim of right—Explanation of Magistrate—Judgment, supplement to.*—Where the accused acts on a belief of his own right, he cannot be held guilty of criminal trespass. A Magistrate cannot supplement his judgment by his explanation to the superior Court. If there are no material findings in the judgment, the defect cannot be cured by the Magistrate's explanation. JURAKHAN SINGH v. KING-EMPEROR, **7 C.L.J. 238=7 Cr. L.J. 312.**

(4)—*Penal Code, ss. 379, 447—Theft—Criminal trespass.*—Where a person charged with theft of rice plants from a certain land was acquitted on the ground that it did not appear that they were not sown by him and were not his property, he could not be convicted of criminal trespass, inasmuch as if the plants had been sown by him and were his property, he would have been entitled to remove them, and could not be treated as a trespasser for so doing. REG. v. OOMERKHAN, **Rat. Un. Cr. C. 4.**

(5)—*Penal Code, ss. 415, 441—Entry into Exhibition building without ticket.*—A secret entry into an Exhibition building without a

Criminal Trespass—*continued.*

ticket does not amount to the offence of cheating or of criminal trespass, though the person so entering may be liable for damages for trespass in a civil suit. REG. v. MEHERVANJI BEJANJI, **6 B.H.C. Cr. 6.**

(6)—*Penal Code, s. 440—Entering the compound of a house—Criminal trespass.*—When a person unauthorizedly enters the compound of a house, he commits the offence of criminal trespass and not of house-trespass. QUEEN-EMPRESS v. BHOW, **Rat. Un. Cr. C. 122.**

(7)—*Penal Code, ss. 188, 441—Plying boat for hire three miles from a public ferry—Disobedience to order duly promulgated by a public servant.*—The plying ot a boat for hire, three miles from a public ferry leased to the complainant, would not constitute the offence of criminal trespass. But if, in spite of a prohibition from plying a boat for hire at or in the immediate vicinity of public ferries, a person continues to do so, he renders himself liable to punishment under s. 188, Penal Code, for disobedience of such order. MUTHRA v. JAWAHIR, **1 A. 527.**

(8)—*Penal Code, s. 441—Criminal trespass—Encroachment on public road—Bom. Act* V *of* 1879 (*Land Revenue Code*), *s.* 37.—Under s. 37 of Bom. Act V of 1879, all public roads being the property of Government, it must be taken that the public road encroached upon by the accused is in the possession of the Local Government officers on behalf of the Government. Hence, a person who encroaches on such a road is guilty of criminal trespass, if the encroachment is made with such intent as is contemplated in s. 441, I.P.C. QUEEN-EMPRESS v. FAKIRGAVDA, **Rat. Un. Cr. C. 393 = Cr. Rg. 49 of 1888.** [*R.*, 11 Cr.L.J. 57 = 4 Ind. Cas. 826 = U.B.R. 1909, 2nd Qr., Penal Code, s. 25.]

(9)—*Penal Code, ss. 441, 442 and 448—Criminal trespass—House-trespass—Burden of proof of possession—Crim. Pro. Code, s. 345.*—The accused, a rate-payer in a certain Municipality, whose petition for revision against an assessment, was summarily rejected during his absence, entered a room where a committee of the Municipal Commissioners was dealing with appeals and assessment cases. His ostensible object in entering the room was to present a petition of revision of assessment. The Chairman of the Committee ordered him to leave the room, and on his not taking notice of the order, the Chairman turned him out. The accused after having been turned out addressed a crowd in the verandah stating that no justice could be obtained. The accused was charged and convicted of house-trespass under s. 488 of the Penal Code. *Held*, that the conviction was wrong. Whether the charge was made under s. 44 or s. 442, the prosecution must prove that the property trespassed upon was at the time in the possession of a complainant who could compound the offence under s. 345, Crim. Pro. Code, and, as in this case, the complainant was merely sitting in the room with other persons, at the invitation and with the consent of the person, whoever he might be, who had the immediate right to such possession. *Held*, further, that, as it was not shown that the accused entered the room, or remained in it for any of the purposes mentioned in s. 441 or s. 442, the accused was not guilty of an offence under s. 448. Although it might be extremely annoying to be compelled, or even persistently entreated, to reconsider a matter which had been already disposed of, to the best of the ability of the person disposing it, it could not be held a crime or an insult to present a petition of review, even if it was pressed in such a way as to worry and distress the person to whom it was presented, and if the useless consideration of it would prevent him from attending to his other business. CHANDI PERSHAD v. EVANS, **22 C. 123.** [*R.*, 21 B. 536, 12 P.R. 1906, Cr., U.B.R. 1892—1896, Vol. I, 264, U.B.R. 1897—1901, Vol. I, 352.]

(10)—*Criminal trespass—Distraint—Act* VIII *of* 1869 (*B.C.*), *ss.* 72, 74, 76.—Where, upon a landlord's servant preventing the tenant from cutting the crops, the servant was charged with criminal trespass, and the master with abetment thereof, *held* that, to enable them to plead the exercise of the legal right of distraint, it must be shown that a written demand under s. 72 of Act VIII of 1869 (B.C.) had been made for arrears, and that a written authority under s. 76 of the same Act had been given to the servant. In the above case, it was also held that, even if the servant had acted *bona fide*, he could not prevent the tenant from cutting the crops, as the latter could, as cultivator, under s. 74 of the Act, gather the crops, notwithstanding distraint. JHUMUK NONIAH v. SHADASHIB ROY, **7 C. 26.**

(11)—*By co-owners—Penal Code, s. 297—Trespass on burial places.*—Co-owners cannot be held to have committed trespass, unless they have ousted the other co-owners from possession, or have committed some destruction or waste of the common property, as by pulling down a common wall, or by carrying away a portion of the common property, as by digging and carrying away turf, etc. The complainant and the accused were co-owners of a plot of land, and in a portion of that plot they were accustomed to bury their dead. The accused, in defiance of remonstrances on the part of the complainant, opened a sawpit on that portion of the plot, within a few yards of the spot at which some relatives of the complainant had been buried. But the accused did not disturb any of the graves. *Held*, that the accused could not be convicted for an offence under s. 297, Penal Code. *In the matter of the petition of* KHAJA MAHOMED HAMIN KHAN, **3 M. 178 = 1 Weir 286.** [*D.*, 18 A. 395 = 16 A.W.N. 119.]

(12)—*Excommunicated Hindu wife—Right to joint enjoyment of husband's property.*—The law does not recognize the loss of social status arising from excommunication from caste as of itself depriving a wife of the right to joint enjoyment of her husband's property. Where

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a wife, who had been excommunicated and was living separately from her husband, but was not expelled from the house by her husband for any misconduct legally established, *held*, that she had a right as a wife to go to her husband's house and that, as she had never been deprived of joint enjoyment, she could not be regarded as a trespasser, civil or criminal, for entering her husband's house to claim maintenance. QUEEN v. MARIMUTTU, **4 M. 243.** [*R.*, 23 M. 171.]

(13)—*Penal Code, s. 441—Entry into market with intent to evade payment of tolls.*—Evasion of tolls may be a wrong, but it is of itself no offence. Where the accused was found passing through the bamboo fence of the market for the purpose of evading payment of the toll, which he would have to pay if he had entered by the gate where the contractor was waiting to levy it, *held*, that no offence under s. 441 had been committed, as it was not proved that the entry was made with any of the intents mentioned in s. 441. QUEEN v. VARATHAPPA NAYAKAN, **5 M. 382=1 Weir 518=6 Ind. Jur. 576.** [*R.*, 4 Cr. L.J. 293=54 P.L.R. 1907, F.B.=12 P.R. 1906, Cr.]

(14)—*Penal Code, s. 441—Knowledge of likelihood of annoyance to the owner, whether sufficient to convict a person.*—S. 441, defining criminal trespass, is so worded as to show that the act must be done with intent and does not, as other sections do (*e.g.*, s. 425), embrace the case of an act done with the knowledge of the likelihood of a given consequence. A trespasser, though he may have known that, if discovered, his act would be likely to cause annoyance to the owner of the house, cannot be said to have intended, either actually or constructively, to cause such annoyance. QUEEN-EMPRESS v. RAYAPADAYACHI, **19 M. 240=1 Weir 537.** [*F.*, 16 C.P.L.R. 182, 1 L.B.R. 355; *R.*, 35 M. 186=12 Cr. L.J. 30=9 Ind. Cas. 152=21 M. L.J. 161=9 M.L.T. 283, 2 Cr.L.J. 83=13 P.R. 1905, Cr.=81 P.L.R. 1905, 4 Cr. L.J. 293=12 P.R. 1906, F.B., Cr.=54 P.L.R. 1907, 12 Cr.L. J. 148=9 Ind. Cas. 895=11 Ind. Cas. 797=21 M.L.J. 781=10 M.L.T. 118=1911, 2 M.W.N. 71, 10 Cr. L J. 384=3 Ind. Cas. 828=6 M.L. T. 262, 9 Ind. Cas. 895=5 S.L.R. 29; *Expl.*, 26 B. 558.]

(15)—*Penal Code, ss. 104, 353 and 442—Right of police constable to enter houses of suspected persons—Assault on the constable.*—A police officer is not authorised to enter the house of a person at midnight and knock at his door to ascertain whether he is present in his house or not, merely because that the person is of a suspicious character. The constable in entering the house and knocking at his door at midnight is technically guilty of house-trespass under s. 442, Penal Code, inasmuch as the act of the constable is certainly one which is calculated to cause annoyance to the inmates of the house and also to the suspected person. The latter is therefore justified under s. 104, in

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voluntarily causing slight harm to the constable. DORASAWMY PILLAY v. EMPEROR, **27 M. 52=1 Weir 529 and 346=13 M.L.J. 285.**

(16)—*Penal Code, s. 443—Illegal order of Municipal Commissioners.*—The general powers of Municipal Commissioners, as public conservators, will not give them authority to issue an order the breach of which will be criminally punishable. A person driving a cart in violation of an order of Municipal Commissioners prohibiting the driving of carts across an open space, cannot be convicted of criminal trespass. HIGH COURT PROCEEDINGS, 28TH OCT. 1870, **5 M.H.C. App. 38.** [*Rel.*, 11 Cr. L.J. 57=4 Ind. Cas. 826 = U.B.R. 1909, Vol. I, Penal Code, p. 25.]

(17)—*Penal Code, s. 447—Intention specified in section must be found.*—Where the Magistrate found that the intention of the accused was to take possession unlawfully of the land, and convicted the accused on the ground that his act necessarily involved annoyance to the complainant. *Held*, that, to bring the case under s. 447, I.P.C., it must be found that the accused *intended* to commit an offence, or to intimidate, insult or annoy the complainant, —(Conviction set aside). *In re* VENKATA-RAMANUJA REDDY, **6 M.L.T. 262=10 Cr. L.J. 384=3 Ind. Cas. 828.**

(18)—*Penal Code, s. 441—Criminal trespass—Cultivating Government land without permission.*—Cultivating Government land without permission is not an offence under s. 441, unless there is evidence to show that entry upon the land was with any of the intents specified in s. 441. HIGH COURT PROCEEDINGS, 4TH MARCH 1869, No. 440, **1 Weir 512.**

(19)—*Penal Code, ss. 441 and 447—Cultivation of waste lands.*—Where a person cultivated a waste land, the property of Government, devoted to the public use of the village community, after an order by the Sub-Collector prohibiting the cultivation of such land, *held*, that the accused was guilty of criminal trespass because the entry upon the land was with the intention of committing an offence under s. 188, Penal Code. HIGH COURT PROCEEDINGS, 15TH FEB. 1870, No. 370, **1 Weir 513 =5 M.H.C App. 17.** [*R.*, 4 Cr.L.J. 293=54 P. L.R. 1907=12 P.R. 1906, Cr.; *D.*, 15 C. 388.]

(20)—*Penal Code, ss. 441 and 447—Cultivation of a burial ground.*—Where the accused enclosed and commenced to cultivate a portion of a burial ground, *held*, that the accused was guilty of an offence under s. 441. HIGH COURT PROCEEDINGS, 28TH MARCH, 1871, No. 635, **1 Weir 513=6 M.H.C. App. 25.** [*R.*, U B.R. 1892—1896, 264; *D.*, 1 Weir 514=6 M.H.C. App. 26.]

(21)—*Penal Code, ss. 441 and 447—Entry under a legal right.*—The accused, the Ejman of the complainant's family, made an alienation of the family property. The complainant brought a suit, obtained a decree setting aside the alienation, and, in execution of that decree, obtained possession from the alienee. The

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accused entered on the land. *Held*, that the accused could not be convicted of criminal trespass, inasmuch as the accused was legally entitled to the possession as the Ejman, and had been wrongfully put out of possession. HIGH COURT PROCEEDINGS, 10TH FEB. 1871, **1 Weir 514=6 M.H C. App. 19.** [*F.*, 2 Cr. L.J. 83=81 P.L.R. 1905=13 P.R. 1905, Cr.; *R.*, U.B.R. 1892—1896, 264, 12 P.R. 1906, Cr=54 P.L.R. 1907=4 Cr. L.J. 293 ; *D.*, 1 Weir 515.]

(22)—*Entry under a legal right.*—The accused entered on possession of certain lands of which the plaintiff was in possession under an order by the Magistrate. The accused claimed a right of entry under a person against whom the complainant got a decree for possession under which decree the complainant obtained possession. *Held*, that, in the absence of evidence that the accused had a legal right to the possession, the accused was guilty of an offence under s. 441. *In re* KUDAKOLI BURANDIN, **1 Weir 515.**

(23)—*Penal Code, s.* 441— *Criminal trespass —Claim of right.*—The accused entered on the land in the complainant's possession under s. 263, Civ. Pro. Code, and removed the crop standing upon it. *Held*, that, in the absence of a distinct finding as to the intention with which the accused entered on the land and removed the crop, whether they did so in good faith believing that they had a right to cut and carry the standing crop or whether they did so in such manner and with such intent as to intimidate, insult or annoy the persons in possession, the acquittal of the accused was wrong. *In re* OODAYANASARY, **1 Weir 516.**

(24)—*Claim of right—Good faith.*—Where a person, entertaining a belief in good faith that he is entitled to the possession of a land, enters and continues on the land, he is not guilty of criminal trespass but, if he fails to prove his title, he is answerable in a civil suit. If, on the other hand, the circumstances are such that he cannot have entertained such a belief in good faith, it will be a fair inference that he intends the annoyance which his action must cause, and he is guilty under s. 441. *In re* DEVARASETTI GANGAIYA, **1 Weir 516.**

(25)—Bona fide *claim of right.*—The existence of a *bona fide* claim of right very often excludes the presumption of any criminal intent, but it does not follow that it always does so. Where on the accused's failure to pay a certain amount within a specified time, a land belonging to the defendant became the absolute property of the complainant and the defendant, alleging that the default was owing to a refusal by the complainant to account, entered on the land with intent to stop the complainant and his father from ploughing, *held*, that the accused was guilty of an offence under s. 441, as his entry on the land was with intent to commit the offence of causing unlawful restraint. *In re* ARUNACHELLA ACHARI, **1 Weir 520.**

(26)—*Criminal trespass*—Bona fide *assertion of a claim of title—Crim. Pro. Code* (1861), *s.* 318—*Question of possession.*—Where a trespass is not committed with the intent to commit an offence, or intimidate, insult or annoy the persons in possession, but in the *bona fide* assertion of a claim of title, the trespasser is not liable to be convicted of the offence of criminal trespass, although he may be accountable in a civil suit. Where a complainant applies to be restored to possession under s. 318, Crim, Pro. Code, the question of possession will require determination. But on the trial of a person on a charge of criminal trespass, the question of intent is to be determined irrespectively of the question as to the right of possession. GOKUL CHAND v. SEITH ROSHUN LAL, **2 N.W.P. 82.** [*R.*, 12 P.R. 1906, Cr.=54 P.L.R. 1907=4 Cr. L.J. 293.]

(27)—*Penal Code, ss.* 441. 141—*Criminal trespass—Claim of right—Unlawful assembly.*—Where a lessor forcibly re-entered upon the land on the expiry of the lease, *held*, that taking possession of land to which the taker had admittedly a claim of right is not criminal trespass, though unlawful assembly or rioting may be committed by people seeking to enforce a right. RAMCHANDRA v. RATHO, **5 N.L.R. 69=9 Cr. L.J. 561=2 Ind. Cas. 240.**

(28)—*Penal Code, ss.* 425, 441—*Mischief and criminal trespass*—Bona fide *claim of right.*—If a person enters on land in the possession of another in the exercise of a *bona fide* claim of right, but without any intention to intimidate, insult, or annoy the person in possession, or to commit an offence, then, although he may have no right to the land, he cannot be convicted of criminal trespass, because the entry is not made with any of such intent as constitutes the offence. So, also, if a person deals injuriously with property in the *bona fide* belief that it is his own, he cannot be convicted of the offence of mischief, because his act is not committed with intent to cause wrongful loss or damage to any person. But the mere assertion of a claim of right is not in itself a sufficient answer to such charge. It is the duty of the Criminal Court to determine what was the intention of the alleged offender, and if it arrives at the conclusion that he was not acting in the exercise of the *bona fide* claim of right, then it cannot refuse to convict the offender, assuming that the other facts are established which constitute the offence, EMPRESS OF INDIA v. BUDH SINGH, **2 A. 101.** [*F.*, 13 Cr.L.J. 27=13 Ind.Cas. 219=5 S.L.R. 135 ; *R.*, A.W.N. 1882. 236, U.B.R. 1892—1896, Vol. I, 264, 13 P.R. 1905, Cr.=81 P.L.R. 1905=2 Cr. L.J. 83, 12 P.R. 1906, Cr.=54 P. L.R. 1907=4 Cr. L.J. 293.]

(29)—*Penal Code, ss.* 441, 447—*Criminal trespass—Entry on land of the lessor in possession of the lessee.*—The complainants were in possession of certain land as agents of a certain temple, and leased out the land for the purpose of making bricks from it. The accused trespassed on the land, and the reason given for the trespass was that the pits made by the

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lessees were likely to drain water from a channel which irrigated the accused's land. The trespass consisted in the accused's entering the land and obstructing the coolies engaged thereon from carrying on the work. *Held*, that the complainant had such possession as would justify him in prosecuting the accused, and that the accused were properly convicted of criminal trespass, inasmuch as the defendants' entry was found to have been not *bona fide*, but simply to annoy the complainant. *In re* MUNIANDIA PILLAI, **1 Weir 517.**

(30)—*Penal Code*, ss. 441 *and* 447—*Entry into the compound of an unoccupied house.*—Where a person enters into the compound of a house which is locked up, the owner being absent therefrom, without any intention of committing an offence as defined in the Penal Code, he is not guilty of criminal trespass, for his entry cannot be supposed to have been made with the object of "intimidating, insulting or annoying" the owner or any other person in possession. *In re* CHINNA THOYI, **1 Weir 518.**

(31)—*Penal Code*, ss. 283, 441 *and* 447—*Enclosing a foot-path.*—Where the public generally are entitled to the use of a public foot-path, a person enclosing the foot-path is not guilty of an offence under s. 441, but may be guilty of an offence under s 283 HIGH COURT PROCEEDINGS, 25TH MAY 1871, No. 996, **1 Weir 514=6 M.H.C. App. 26.**

(32)—*Penal Code*, s. 447—*Infringement of fishery right.*—Where a river is a public one, nobody has an exclusive right of fishery therein; a right of fishery is not property of such a nature as that a man who unlawfully infringes that right can be said to enter upon property in the possession of another, within the meaning of s. 447 of the Penal Code. EMPRESS v. CHARU NAYIAH, **2 C. 354.** [*Appr.*, 15 C. 388; *D.*, 15 C. 402, 27 M. 551=14 M.L.J. 248.]

(33)—*Penal Code*, ss. 441 *and* 447—*Attempting to fish in a tank over which the owner has no right of fishery.*—Where the accused attempted to fish in a tank belonging to a certain temple, the fish in the tank not being in the possession of the owner of the tank, *held*, that the accused cannot be convicted of theft, nor of criminal trespass, inasmuch as the object of the accused in entering on the property was not to commit an offence, *viz.*, theft, and as, in the circumstances of the case, his object was not to intimidate, insult or annoy. HIGH COURT PROCEEDINGS, 15TH OCT. 1879, No 1789, **1 Weir 519.**

(34)—*Penal Code*, ss. 441 *and* 447—*Fishing in a public tank.*—Fishing in a public tank, to which the general community have access, is not by itself an offence under s. 441. HIGH COURT PROCEEDINGS, 25TH OCT. 1879, NO. 1871, **1 Weir 520.**

(35)—*Penal Code*, ss. 441 *and* 477—*Encroachment upon Government land.*—An encroachment upon Government land, adjoining one's house, by building a pyal thereon, will not amount to criminal trespass, if there is no

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intention to commit an offence or intimidate, insult or annoy. *In re* ERABASAVA TALARI, **1 Weir, 521.**

(36)—*Penal Code*, ss. 441 *and* 447—*Permissive possession of lands.*—Where a person is occupying a land, being so permitted by the owner thereof, then the possession of the land lies with the owner, and a servant of the owner does not commit the offence of criminal trespass by entering upon the land. *In re* DANIEL GROVES, **1 Weir 521.**

(37)—*Penal Code*, ss. 441 *and* 442—*Possession under an inferior title—Ejectment by a person having superior title.*—Superior title in the accused would not by itself convert the complainant into a mere trespasser, so as to justify him in ejecting the complainant, if he was in possession otherwise than as a mere trespasser. PUBLIC PROSECUTOR v. PONNUSAMI PILLAI, **1 Weir 522.**

(38)—*Penal Code*, s. 442—*Lawful entry and unlawful remaining.*—Where the accused entered a house and remained there and committed an assault, and there was no express finding of any of the intents required by s. 441, *held*, that, although the original entry may not be unlawful, the remaining in the house was unlawful, and that, as the accused unlawfully remained in the house and then committed an offence, *viz.*, an assault, he must be held, while unlawfully remaining, to have remained with an intent necessary to constitute the offence under s. 441. *In re* BASHIKA CHARI, **1 Weir 528.**

(39)—*Penal Code*, s. 451—*House-trespass with intent to commit adultery.*—A person making an entry into another's house with the object of having sexual intercourse with the latter's wife is guilty of the offence of criminal trespass. HIGH COURT PROCEEDINGS, 26TH FEB. 1875, **1 Weir 532=8 M.H.C. App. 6.** [*R.*, 2 Weir 308.]

(40)—*Penal Code*, s. 447—*Criminal trespass—Intention.*—A person re-entering land from which he has been ejected in due course of law by order of Court is not guilty of criminal trespass when there is no evidence to prove that his intention was to commit an offence, or to intimidate, insult or annoy the person in possession of the land. CROWN v. JAN MUHAMMAD, **128 P.L.R. 1905=2 Cr L J. 695.** (42 P.R. 1888, Cr., *R.*)

(41)—*Penal Code*, s 441—*Unauthorised entry upon another's property—Criminal trespass, intent to annoy necessary to constitute the offence of—Primary desire to annoy not essential for such intent.*—The question for decision, in this case, was whether the intent to annoy or intimidate or insult any person in possession of the property entered upon must, under s. 441 of the Code, in order to constitute criminal trespass, be the primary intent, or whether an act, intended to assert a *bona fide* right to the property entered upon might constitute criminal trespass by reason of annoyance,

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intimidation or insult to the person in possession, being a natural consequence of the act, *held* (by the Full Bench, *Rattigan, J. dissenting*) that the fact, that the primary intention of the accused was to assert a *bona fide* claim to property, does not necessarily justify his entry on the property which he knows or must be assumed to know, to be likely to annoy the person in possession. So, where a person, without any legal justification, enters upon property in the established possession of another, claiming a title to the property and with the sole object of obtaining possession of it for himself, an intent to annoy is to be presumed, even in the absence of any primary desire so to annoy. *Per* Rattigan, J.—Where the circumstances attending entry of the accused upon another person's property are such as to render it incumbent upon the accused to explain and justify his act, the Court will be justified in inferring that he entered upon the property with one or other of the intents specified in s. 441. But the Court, unless it is satisfied, cannot properly convict the accused, merely on the ground that, though this intent may have been non-criminal, he knew or must have known that the natural and probable consequence of his entry would be annoyance to the person in possession of the property, since the fact, that the mere presence of a particular person may be annoying will not make him a criminal trespasser, unless he be present with the intent to so annoy. RAM SARAN v. EMPEROR, **12 P.R. 1906, Cr., F.B. =4 Cr. L.J. 293=54 P.L R. 1907, F.B.** (2 N.W. P. 82, 24 W.R. Cr. 58, 14 W.R. Cr. 25, 17 W. R. Cr. 47, 7 W.R. Cr. 28, 11 W.R. Cr. 11, 2 A. 101, 13 C.L.R. 212, 5 M.H.C. App. 17, M.H.C. App. 19, 25, 5 M. 382, 2 M. 30, 2 A. 465, 6 C. 579, A.W.N. 1902, 6, 42, 26 A. 194, 27 A. 298, 28 C. 123, 26 B. 558, 9 C. W.N. 974, 16 C. 715. 22 C. 404, 994. 19 M. 240, 1 P.R. 1884, Cr. 29 P.R. 1882, Cr. 18 P.R. 1888, Cr. *R.*; 5 P.R. 1886, Cr., 42 P.R. 1881, Cr 13 P.R. 1905, Cr. 18 P.R. 1905, Cr. *D.*) [*F.*, 32 P.W.R. 1908, Cr.=17 P.R. 1908, Cr.= 8 Cr. L.J. 488.]

(42)—*Penal Code, ss.* 447, 457, *and* 511—*Entry on the roof of a house with house-breaking implements—Attempt to commit house-breaking.*—The accused was found in the roof of the complainant's house, armed with an implement used for the purpose of committing burglary. It was not shown that he had either commenced to dig a hole on the roof, for the purpose of effecting his entrance inside the room, or, had otherwise commenced any act of jumping or getting into any portion of the premises. *Held*, that the mere presence of the accused on the roof of the house could not be construed into an attempt to commit house-breaking, under ss. 457 and 511 of the Code, but that he was merely guilty of criminal trespass, under s. 447 of the Code. In order to apply s. 511 of the Code, it is necessary not merely that there should be an attempt to commit an offence, but likewise that an act was done, as such attempt towards the commission of the offence. WALIDAD v. KING EMPEROR, **15 P.R. 1907, Cr.=44 P.W.R. 1907=6 Cr. L.J. 444=56 P.L.R. 1908.** (9 P.R. 1887, Cr., *F.*) [*R.*, 14 P.R. 1914, Cr.=13 P.W.R. 1914=66 P. L.R. 1914=15 Cr. L.J. 265=23 Ind. Cas. 473.]

(43)—*S.* 441—*Entry into house for having illicit intercourse—Intent to annoy.*—The accused's entry into the complainant's house, with the object of having illicit intercourse with the complainant's sister, amounts to criminal trespass, as the house was not the sister's, but her brother's, and such intercourse was bound to cause great annoyance to the brother. JIWAN SINGH v. KING-EMPEROR, **17 P.R. 1908, Cr.= 32 P.W.R. 1908, Cr.=8 Cr. L.J. 488.** (12 P.R. 1906, Cr., 26 B. 558, *R.*)

(44)—*Presumption of specific intent*—Bona fide *belief of one's right, the real test of intent.*—The real test whether a person charged with criminal trespass entered with the particular intention specified in s. 441, Penal Code, is whether the accused has a *bona fide* belief that he has a right to enter. If he has not that belief, the Courts will presume that he entered with intent to annoy the person in possession. PO KE v. KING-EMPEROR, **2 L.B.R. 319.** [*R.*, 8 Cr. L.J. 60=4 L.B.R. 242.]

(45)—*Penal Code, ss.* 441 *and* 447—*Criminal trespass—Presumption of intent to annoy—No suggestion of any other criminal intention—No criminal trespass.*—In a civil suit, on a registered conveyance, which the complainant won, the defence was that, when the defendants signed the conveyance, they believed it to be a mortgage. This issue of fact never was tried; the suit came to an abrupt conclusion, through a Full Bench ruling that no evidence could be given to support the defence. On the decree thus given, the accused were evicted from a house and the land on which it stood, and after the eviction, the complainant did not leave any care-taker in charge of the house. Two days after the eviction, the accused re-entered the house and lived in it from that time for some 19 months. There was no suggestion that, during that time, the complainant made any attempt to turn them out or to occupy either house or land himself. *Held*, that, considering all the facts, an intent to annoy could not be safely presumed on the part of the accused and that, there being no suggestion of any other criminal intent, the offence of criminal trespass was not committed. There can be no criminal trespass, unless the accused's intent was to commit an offence, or to intimidate, insult, or annoy any person in possession of the property. In cases of this kind, the question of intention is a difficult one. A consideration which would be irrelevant in a Civil Court cannot be ignored in trying a criminal charge, which depends on the intention of the accused, when the criminal intention, if it exists at all, is a secondary one; for example, as when the main intention of the

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accused is to recover possession of the property. PO LU v. SHWE KYO, **4 L.B.R. 242 = 8 Cr.L.J. 60.**

(46)—*Penal Code, s.* 441—*Criminal trespass—Ingredients of offence—Remaining on another's property after conviction for trespass, whether constitutes offence.*—Although s. 441 of the Penal Code contains two clauses, the first relating to an entry with criminal intent, and the second relating to a lawful entry, followed up by remaining with unlawful intent, the intention of the legislature is that only one offence can be committed on each entry. Under the first clause the offence is committed by unlawful entry with certain intent. Under the second clause one offence and one only is committed by remaining for any length of time with unlawful intent after a lawful entry. Thus where an accused, after having been convicted of criminal trespass committed by entering on certain land, was again prosecuted, in spite of the previous conviction, for a further trespass committed by remaining on the same land, it was *held* that a conviction cannot be maintained for such alleged further trespass. MA HLA YA v. KING-EMPEROR, **4 L.B.R. 276 = 8 Cr. L.J. 474.**

(47)—*Penal Code, ss* 447, 426—*Driving loaded cart across Government land—Whether amounts to criminal trespass—Applicability of s.* 426, *I.P.C.*—Driving a loaded cart, over ground said to be Government waste land, in respect of which the Municipality had put up notices prohibiting cart traffic, does not amount to criminal trespass punishable under s. 447, I.P.C. If such driving had caused damage to the ground, the accused might have been charged, and presumably might have been convicted under s. 426, I.P.C., of mischief. KING-EMPEROR v. NGA U THIT, **U.B.R. 1909, 2nd Qr., Penal Code 25 = 11 Cr. L.J. 57 = 4 Ind. Cas. 826.** (5 M.H.C. App. 38, 17, Rat. Un. Cr. C. 393, *R.*)

(48)—*Penal Code, s.* 441—*Criminal trespass—Requsites necessary to constitute the offence.*—S. 441 seems to contemplate the entry into property in the possession of another as a means to another act, and to regard the intention with which it is made in relation to that Act. There may be cases in which the ultimate object may be legal, while the means employed to attain it may be criminal. An offence may be committed in the prosecution of that object, and the entry upon property with intent to commit such an offence in prosecution of a lawful ultimate object would constitute the offence of criminal trespass; similarly, into the methods used in pursuance of the ultimate intent, there may enter a subordinate intent to ntimidate, insult or annoy. *In the matter of* JOTHARAM DAVAY, **2 M. 30 = 1 Weir 525.** [*R.*, U.B.R. 1892—1896, Vol. I, 264 (266)].

(49)—*Penal Code, s.* 441—*Intention.*—In order to constitute the offence of criminal trespass, it is necessary to establish that the entry into another person's property must have been made with one or other of the intents specified in s. 441. Where there is no finding as to any such intent, a conviction is bad and must be set aside. EMPRESS v. PANJAB SINGH, **6 C. 579.** [*F.*, 13 P.R. 1905 = 81 P.L. R. 1905 = 2 Cr. L.J. 83, 16 C.P.L.R. 182, 12 P.R. 1906, F.B.; *D.*, 22 C. 391.]

(50)—*Penal Code, s.* 441—*Intention.*—Every trespass upon the property of another is not a criminal trespass. To constitute criminal trespass, the person trespassing must be found to have either entered on the property or remained there with one or more of the intentions specified in s.441 of the Penal Code. Intent is to be gathered from circumstances; there must be circumstances in the case which afford ground for a reasonable deduction that the accused had atleast one of such intents. Previous warning to the person not to enter the property does not necessarily lead to a conclusion that a subsequent entry was made with one of such intents. VADIVALOO SWAMY v. CROWN, **1 L.B.R. 95.** (4 C. 837, *R.*)

(51)—*Penal Code, s.* 440—*Intention.*—Where there is no proof of the intention specified in s. 440 of the Penal Code, a conviction for criminal trespass is illegal. REG. v. VUJEER, **Rat. Un. Cr. C. 10.**

(52)—*Intention — Possession.*—In order to constitute the offence of criminal trespass with the intention of committing an offence, it is not necessary that the offence should be directed against the person in possession. It is sufficient that the property entered upon is in the possession of another. CHINKWANA v. KING-EMPEROR, **U.B.R. 1897--1901, Vol. I, 352.** (22 C. 123, 2 A. 465, 19 M. 240, 21 B. 536, *R.*).

(53)—*Penal Code, s.* 447—*Intention Possession.*—The person, who is in possession, is generally in peaceful possession under some claim of his own, and is not liable to be ousted save in due course of law, and the person, who attempts under colour of a superior title to take the law into his own hands and to deprive the holder of the land of possession, must run the risk of being convicted under s. 447 of the Penal Code of criminal trespass. To escape criminal liability, it is not enough to show that the claim of the accused was *bona fide*, but it must be shown that there were reasonable grounds for believing that there was a legal right to immediate possession. CROWN v. MYA ZAN, **1 L.B.R. 358.** (1 U.B.R. 1892—1896, 264, *F.*)

(54)—*Innocent person going on land not—Penal Code, s.* 441.—Where persons are prohibited from going on a certain land, a person trespassing on such land for none of the purposes mentioned in s. 441, *viz.*, to commit an offence, or to intimidate or annoy any person in possession of property would not be guilty of the offence of criminal trespass. *In the matter of the petition of* MADHAB HARI, **15 C. 390, note.**

(55)—*Possession.*—In order to sustain a conviction for criminal trespass, it must be shown that the property was in the possession of some

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person other than the alleged trespasser. CROWN v. FOUJDAR, **28 P.R. 1878, Cr.**

(56)—*Person entering another's property for killing deer.*—A person entering into or upon another's property, for the purpose of killing a deer, the pursuit of which was commenced before such entry, is not guilty of criminal trespass under the Penal Code. CHUNDER NARAIN v. J. G. FARQUHARSON, **4 C. 837.** [*F.*, 1 L.B.R. 95.]

(57)—*Pendency of civil suit—Criminal trespass.*—Where, during the pendency of a civil suit, the plaintiff's party went armed to the property of which the defendant was in possession for the purpose of getting materials for an hostile application against the defendant, without his permission, and in his absence, persisted in the trespass even when the defendant's servants objected to their action, *held*, that their action amounted to criminal trespass. GOLAPPANDEY v. BODDAM, **16 C. 715.** [*R.*, 21 M.L.J. 781=10 M.L.T. 118=1911, 2 M.W.N. 71=11 Ind. Cas. 797=12 Cr. L.J. 453, 4 Cr. L.J. 293=12 P.R. 1906, Cr.]

(58)—*Penal Code, s.* 441—*Criminal trespass —Term "annoy" explained—Possession—*Bona fide *assertion of right.*—The word "annoy" in s. 441 must be taken to mean annoyance that would generally and reasonably affect an ordinary person, and not that which would specially and exclusively affect a particular individual. The possession contemplated and intended by s. 441, I. P. C., must be actual in the sense and meaning of s. 530, Crim. Pro. Code, 1872. Re entry into or remaining upon land from which a person has been ejected by civil process, or of which possession has been given to another, for the purpose of asserting rights he may have solely or jointly with the other persons, is not a criminal trespass, unless the intent to commit an offence, or to intimidate, insult or annoy is conclusively proved. *In the matter of* GOVIND PRASAD, **2 A. 465.** [*F.*, 12 A.L.J. 151=14 Cr. L.J. 633 =21 Ind. Cas. 681; *R.*, A.W.N. 1882, 236, 9 Cr. L.J. 561=5 N.L.R. 69=2 Ind. Cas. 240, U.B.R. 1892—1896, Vol. I, 259, U.B.R. 1897 —1901, 352, 13 P.R. 1905, Cr.=81 P.L.R. 1905=2 Cr. L.J. 81, 12 P.R. 1906, Cr., F.B.= 54 P.L.R. 1907.]

(59)—*Criminal trespass—Use of force—When offence.*—Where the accused trespassed upon the land intending to prevent the respondent by force from harvesting the crops which had been grown by the accused, it does not amount to an offence of criminal trespass or criminal force. APPANDA NATHA NAINAR v. EMPEROR, **1915 M.W.N. 275=16 Cr. L.J. 271= 28 Ind. Cas. 159.**

(60)—*Penal Code, s.* 441—*Trespass with intention to do an unlawful act.*—An unlawful act is not necessarily an offence, and an intention to commit an unlawful act, not being one of the acts mentioned in s. 441 does not render the accompanying trespass criminal trespass. Where a Zemindar took possession of certain land in the occupancy of a tenant in his temporary absence, on the pretext that the tenant has abandoned his holding, *held*, that his act, although unlawful, will not make him liable for criminal trespass. EMPEROR v. JANGI SINGH, **26 A. 193=A.W.N. 1903, 230.** (A.W.N. 1902, 42, *D.*) [*R.*, 27 A. 298=A.W.N. 1902, 235, 35 M. 186=12 Cr. L.J. 30=9 Ind. Cas. 152=21 M.L.J. 161=9 M.L.T, 283, 4 Cr. L.J. 293=54 P.L.R. 1907=12 P.R. 1906, Cr., 10 Cr. L.J. 385=3 Ind. Cas. 828=6 M.L.T. 262.]

(61)—*Penal Code, ss.* 441, 448—*Trespass—Presumption of intention.*—Mere knowledge of the possibility of annoyance resulting from an act of trespass is not sufficient to bring the case within the definition, but, at the same time, the word "intent" cannot be read as if it were identical with "wish" or "desire." There may be a wish to annoy, but if annoyance is the natural consequence of the act and if it is known to the person who does the act that such is the natural consequence, then there is an intent to annoy. A decree-holder, when proceeding to execute his decree, found the house of the judgment-debtor shut. He, therefore, effected an entry into the latter's compound by passing through the complainant's house without his consent and notwithstanding his protest. *Held* that the accused was guilty of trespass, because when he trespassed on the complainant's house notwithstanding his protest, he must, as a reasonable man, have known that he would annoy the complainant. EMPEROR v. LAKSHMAN RAGUNATH, **26 B. 558=4 Bom. L.R. 280.** [*R.*, 35 M. 186=12 Cr. L.J. 30=9 Ind. Cas. 152=21 M.L.J. 161=9 M.L T. 283, 12 A.L.J. 790, 12 Cr.L.J. 148=9 Ind. Cas. 895=5 S.L.R. 29, 12 Cr. L.J. 453=11 Ind. Cas. 797=10 M.L.T. 118, 21 M.L.J. 781=10 M.L.T. 118= 1911, 2 M.W.N. 71, 12 P.R. 1906, Cr.=54 P.L.R. 1907=4 Cr. L.J. 293, F.B.)

(62)—*Penal Code, s.* 441—*House-breaking by night — Presumption of intention.*—When a stranger, who uninvited and without any right whatever to be there, effects an entry, in the middle of the night, into the sleeping apartments of two women, members of a respectable household, and who, when the attempt is made to capture him, uses great violence in the effort to make good his escape, a Court should, under such circumstances, presume that the entry was effected with an intent such as is provided by s. 441 of the Code. KOILASH CHANDRA CHAKRABARTY v. QUEEN-EMPRESS, **16 C. 657.** [*F.*, 22 C. 391.]

(63)—*Penal Code, ss.* 441, 456 *and* 457—*Specification of intention in the charge—Proof of intention.*—A conviction under s. 456, Penal Code, would not be bad for want of specification of the intention in the charge, though one under s. 457 could not be sustained without such specification. In a charge under the former section, though the guilty intention should be proved, it is not necessary to prove specifically which of the several guilty intentions the accused had; it will be enough, if it is shown that the intention must have been one

Criminal Trespass—*continued.*

or other of those specified in s. 441, though it may not be certain which it was. The proof of such intention need not be direct, that is, by the confession of the accused, showing that his intention was one of those mentioned in s. 441, or by the evidence of witnesses proving that he admitted to them that such was his intention. It will be enough if it is proved like any other fact by the evidence of conduct and of surrounding circumstances. In order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused, and incapable of explanation upon any other reasonable hypothesis than that of his guilt. Where an accused person was found in the middle of night in the complainant's room, and when detected he meekly submitted to the severe treatment inflicted by the complainant and begged to be excused for the fault he had committed, *held*, that although it was not quite certain what the precise intention of the accused in committing the trespass was, it should have been one or the other of those specified in s. 441. Perhaps the intention was to insult the modesty of the complainant's wife. BALMAKAND RAM v. GHANSAMRAM, **22 C. 391.** (16 C. 357, *Rel. on*) [*F.*, 22 C. 994, 127 P.L.R. 1905=2 Cr. L.J. 279=18 P.R. 1905, Cr.; *Rel on.*, 10 Cr. L.J. 410=3 Ind. Cas. 895=3 S.L.R. 86; *R.*, 29 A. 46=3 A.L.J. 652=A.W.N. 1906, 279=4 Cr. L.J. 291, A.W.N. 1901, 16=23 A. 124, 54 P.L.R. 1907=4 Cr. L. J. 293=12 P.R. 1906, Cr.; *D.*, 4 C.L.J. 169.]

(64)—*Penal Code, s.* 441—*Criminal trespass—Joint owner—Possession.*—A joint owner of property is entitled to have the joint possession restored to him in a Civil Court, but he is not justified to take the law into his own hands to recover the possession, and, if he does so, he becomes liable for criminal trespass. EMPEROR v. GOPAL ROW VENKATESH, **10 Bom. L R. 285=7 Cr. L.J. 309.**

(65)—*Penal Code, ss.* 441 *and* 509—*Intrusion upon privacy of woman—Criminal trespass.*—Where the accused, a stranger though a neighbour, effected an entry into a room occupied by four women, and where the position of the accused and the facts of the case precluded any suggestion that he went there to steal or for any other purpose save his own pleasure, *held*, that there was sufficient evidence of an intent and of an intrusion of privacy within the meaning of s. 509 of the Code and that, therefore, the intent to commit an offence within the meaning of s. 441 was made out. PREMANUNDO SHAHA v. BRINDABUN CHUNG, **22 C. 994.** (22 C. 391, *F.*) [*F*, 2 Cr. L.J. 279=127 P.L.R. 1905=18 P.R. 1905, Cr.; *R.*, 4 Cr.L J. 293=12 P.R. 1906, Cr.=54 P.L.R. 1907.]

(66)—*Penal Code, ss.* 341, 352, 448—*Entry into premises purchased at a Sheriff's sale, whether lawful.*—The entry by a person into premises purchased by him at a Sheriff's sale, for the purpose of acquiring possession, is not an unlawlul entry within the meaning of s. 441, Penal Code. CHAROO CHUNDER MUTTY LAUL v. QUEEN-EMPRESS; SHEIKH HOSSENEE v. SARAT CHUNDER HOLDAR, **4 C.W.N. 47.**

(67)—*Penal Code, s.* 447—*Trespass upon agricultural land after being ejected by due process of law.*—A person who after having been ejected by due process of law from certain agricultural lands, wilfully persists in trespassing upon such lands is liable to be convicted under s. 447, I.P.C. KING-EMPEROR v. TIKA RAM, **A.W.N. 1902, 6.** [*R.*, 12 P.R. 1906, Cr.=54 P.L.R. 1907=4 Cr. L.J. 1907=4 Cr. L.J. 293.]

(68)—*Penal Code, s.* 447—*Criminal trespass—Ouster of mortgagee in possession by third person.*—Where the complainant, the purchaser of the rights of a mortgagee in possession, and his predecessor in title, had been lawfully in possession of certain agricultural lands for some years, and a relation of the mortgagor forcibly ousted the complainant on the plea that he was entitled, under the Hindu Law, to a share in the land, and the mortgagor had no title to make a mortgage thereof with possession, *held* that the action of the dispossessor amounted to a criminal trespass, and of a somewhat aggravated kind likely to lead to a breach of the peace and rioting. KING-EMPEROR v. BINDESARI PRASAD, **A.W.N. 1902, 24.** [*R.*, 26 A. 194, 12 P.R. 1906, Cr.=54 P.L.R. 1907=4 Cr.L.J. 293.]

(69)—*Penal Code, ss.* 441, 448—*Intention of accused.*—Where the intention of the accused in entering the complainant's house was to recover possession of a child whom he had left there, *held*, that this was no criminal trespass though some annoyance might have been incidentally caused to the complainant. EMPRESS v. NAWAB ALI, **A.W.N. 1885, 50.**

(70)—*Penal Code, s.* 441—Bona fide *claim of right.*—Where the accused, a tenant who had some indigo vats on land in his possession, went on the land to repair such vats, on the ground that in the partition proceedings in which the land fell to the share of the complainant no reference was made to the vats, *held* that he did not commit criminal trespass. EMPRESS v. MUHAMMAD HUSAIN, **A.W.N. 1882, 236.** (2 A. 101, 2 A. 465, *R.*)

(71)—*Penal Code, s.* 441—*Criminal offence.*—Where the complainant purchased land at an execution sale, which the accused held as an ex-proprietary tenant, and it was not shown that the complainant took actual possession, *held* that the accused did not commit criminal trespass in obstructing the complainant's attempt to plough the land. EMPRESS v. RANDHIR, **A.W.N. 1882, 228.**

(72)—*Penal Code, s.* 447—*Criminal trespass.*—In trying offences under s. 447, I.P.C., it is necessary that the Criminal Courts should do their duty in protecting against trespass, persons who are in peaceful possession of property, whether they be rightful owners or not. QUEEN EMPRESS v. NGA THA BAN, **U.B.R. 1892—1896, Vol. I, 261.**

Criminal Trespass—*continued.*

(73)—*Penal Code*, s. 441—*Intention to annoy.*—In order to bring the act of trespass within s. 441 of the Indian Penal Code, it must be committed with an actual intent to annoy. The entry upon the land must be according to the express words of the section, with the intent to annoy, which means, with the purpose of annoying the person in possession of the property. *In re* SHIB NATH BANERJEE, **24 W. R. Cr. 58.**

(74)—*Intention to annoy—Forcible entry.*—A person forcibly entering upon property in the possession of another, and constructs a building thereon, or does any other act with intent to annoy the person so in possession, commits the offence of criminal trespass within the meaning of s. 441 of the Penal Code, irrespectively of the question in whom the title to the land may ultimately be found. QUEEN v. RAM DYAL MUNDLE, **7 W.R. Cr. 28.**

(75)—*Land dispute—Title to land, failure to prove.*—*Held* by *Jackson, J.*, (setting aside the order of the Magistrate, *Markby, J., dissenting*) that a Magistrate ought to enquire into a case of criminal trespass under s. 441 of the Penal Code, though the complainant might fail to make out his title to the land; for the offence may be committed in respect of property in a person's possession, even though such possession may not have originated in right. QUEEN v. SURWAN SINGH, **11 W.R. Cr. 11.**

(76)—*Entry in property and cutting trees.*—The entry by one person on the property of another person, accompanied by the felling of the trees on that property, is criminal trespass. QUEEN v. JEENUT BEBEE, **1 W.R.C.R. 46.**

(77)—*Continuing exercise of right of fishery after prohibition.*—An act does not amount to criminal trespass under s. 441 of the Penal Code, unless it was committed with the intention of committing some offence, or of intimidating, insulting, or annoying some one. Where a party had been exercising a right of fishery for a considerable time, alleging a prescriptive right, the mere fact of continuing to do so after a notice of prohibition is not criminal trespass. *In the matter of* SHISTIDHUR PARUI, **9 B.L.R. App. 19=18 W.R. Cr. 25.** [*Not F.*, 7 C. 101.]

(78)—*Entry into family dwelling-house.*—The entry of the member of a Hindu joint family into the family dwelling house is not criminal trespass; nor is the entry of a stranger into a family dwelling-house, with the permission and license of one of the members, criminal trespass. *In the matter of the petition of* PRANKRISHNA CHANDRA, **6 B.L.R. App. 80.** *See also* PRANKRISTO CHUNDER AND JUDUB CHUNDER HALDAR v. BISSONATH CHUNDER, **15 W.R. Cr. 6.**

(79)—*Intention to annoy—Person not in actual possession of house.*—For a legal conviction, under s. 441 of the Penal Code, of criminal trespass, there must be an intention to intimidate, insult, or annoy a person in actual possession. To enter a house where the owner is only in constructive possession is not sufficient. ISWAR CHANDRA KARMAKAR v. SITAL DAS MITTER, **8 B.L.R. Ap. 62=17 W.R.Cr. 47.** [*R.*, 21 B. 536.] *See, also, In re* KALINAUTH NAG CHOWDHRY, **9 W. R. Cr. 1.** QUEEN v. CHOORAMONI SANT, **14 W.R. Cr. 25.**

(80)—*Penal Code*, s. 447—*Criminal trespass*—A person who is in possession of any property is generally in peaceful possession under some claim of his own and is not liable to be ousted save in due course of law, and the person who attempts to take the law into his own hands and to deprive the holder of the land of his possession must run the risk of being convicted under s. 447 of the Penal Code. The natural inference from such conduct must generally be, that there was an intent to commit an offence or to intimidate, insult or annoy the person in possession of the property, unless the contrary can be proved, which, under such circumstances, it must be a difficult thing to do. MAUNG KADO v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 264.**

(81)—*Penal Code*, ss. 447 *and* 457—*Criminal trespass and lurking house trespass by night.*—An accused who did not enter the complainant's house, but was found lurking under it for the purpose of stealing or committing some other offence, was held to have committed only ordinary trespass and nothing more. CRIMINAL REVISION CASE, NO. 267 OF 1893, **U.B.R. 1892—1896, Vol. I, 272.**

(82)—*Penal Code*, s. 447—*Criminal trespass.*—No complaint ought to be dismissed by Magistrates under s. 203, Crim. Pro. Code, without a careful examination of the same. QUEEN-EMPRES v. MAUNG SHUE BAU, **U. B.R. 1892—1896, Vol. I, 270.**

(83)—*Penal Code*, s. 447—*Criminal trespass.*—Whether one person or another is in possession is a question of fact to be determined by evidence in the usual way. It does not follow that, because the Civil Courts have determined the rights of parties, the possession of property is thereby affected; until the orders of the Civil Courts are carried out in due course of law, the party against whom a decree has been given may still be in possession of the property in dispute. If the parties consented to the arbitration after the decree of the Civil Courts was passed and the award was subsequent to the decree; the award, if binding, would probably supersede the decree, and alter the position of the parties accordingly. MI TOK v. MI SHAN MA, **U.B.R. 1892—1896, Vol. 1, 262.**

Abetment of, and theft—Penal Code, ss. 107, 108—Execution of document giving lease over property not belonging to the lessor—Lessor's liability as abettor for criminal trespass and theft of crops by lessee—*See* ABETMENT, 1 Weir 48.

See AUTREFOIS ACQUIT, PLEA OF, 6 W. R. Cr. 51.

Criminal Trespass—*concluded.*

Distinction between civil and criminal trespass—Cutting across another's land to save himself and family from flood if criminal trespass—*See* CRIM. PRO. CODE, 1898, s. 307, 18 C.W.N. 668=15 Cr. L.J. 155=22 Ind.Cas. 731 =41 C. 662.

See CRIM. PRO. CODE, 1898, ss. 517, 522, 15 Cr. L.J. 175=22 Ind. Cas. 751=18 C.W.N. 1146.

See MISCHIEF, 7 Bom. L.R. 86=2 Cr. L.J. 55=15 C. 388.

Trespasser's entry whether gives him juridical possession.—*See* PENAL CODE, ss. 426, 447, 15 Cr. L.J. 723=26 Ind. Cas. 171.

Distinguished from civil trespass—*See* PENAL CODE, s. 441, 16 C.W.N. 1007=13 Cr. L.J. 783=17 Ind. Cas. 415.

Mischief—Damage of one's own property by himself—Intention—*See* PENAL CODE, ss. 447, 442, 7 Ind. Cas. 812=15 C.W.N. 224= 11 Cr. L.J. 532.

See RESTORATION OF PROPERTY, 7 C.L.J. 175=12 C.W.N. 269.

See REVISION—MISCELLANEOUS CASES, A.W.N. 1899, 212.

See RIOTING, 6 M. 245=1 Weir, 68=7 Ind. Jur. 135.

See SECURITY TO KEEP THE PEACE—APPELLATE COURT, 127 P.L.R. 1901.

See SECURITY TO KEEP THE PEACE ON CONVICTION, 7 W.R. Cr. 14.

See THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 15 C. 402.

Criminal Trial.

See CRIM. PRO. CODE, 1898, ss. 205, 438 and 439, 5 P.W.R. 1909, Cr.=9 Cr.L.J. 158 =1 Ind. Cas. 101.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 17 M.L.J. 158=5 Cr. L.J. 343, F.B.

See SANCTION TO PROSECUTE—MISCELLANEOUS CASES, 9 Bom. L.R. 212=5 Cr.L.J. 202.

Criminal Tribes.

See ACT XXVII OF 1871.

Joint trial—*See* SECURITY FOR GOOD BEHAVIOUR, 1 P.R. 1895, Cr.

Crops.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 15 A. 394=A.W.N. 1893, 145.

Division of—Magistrate, jurisdiction of—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 8 C.L.J. 242.

Order allowing one party to reap the, illegal—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 3 C.L.J. 573=3 Cr. L.J. 466.

Cross Cases.

See CROSS COMPLAINTS.

Cross Complaints.

(1)—*Cross complaints, trial of—Magistrate to hear them both before passing judgment in either of them.*—When cross-complaints arising from the same occurrence are made and both the complaints are entertained and a day fixed for their trial, the Magistrate is bound to hear them both out, before passing judgment on either of them. *In re* DAMU, **2 J.G. 35.**

Of rioting—Procedure — *See* CRIM. PRO. CODE, 1898, s. 454, 13 C.L.R. 275.

Of riot before same Court — Opinion expressed by Court in one case rather unfavourable to the accused in the cross-case—Whether ground of transfer—*See* CRIM. PRO. CODE, 1898, s. 526, 33 A. 583.

Discharge in, between same parties—Whether sufficient ground for transfer—*See* CRIM. PRO. CODE, 1898, s. 526, 5 S.L.R. 264=15 Ind. Cas. 804=13 Cr. L.J. 532.

See RIOTING, 8 C.W.N. 344.

Cross-examination.

See CRIM. PRO. CODE. 1898, SS. 255—257.

See WITNESS.

(1)—*Witness for prosecution withheld in Sessions Court—Right of accused to cross-examine.*—When the Judge did not comply with the request of the counsel for the accused to be allowed to cross-examine the witnesses for the prosecution who had been examined by the Magistrate but whom the Public Proesecutor thought it unnecessary to call before the Sessions Court, *held*, that the omission had not prejudiced the accused. REG. v. FATTECHAND VASTACHAND, **5 B.H.C. Cr. 85.**

(2)—*Crim. Pro. Code, 1882, ss. 256, 257—Refusal by Magistrate to allow the accused to further cross-examine prosecution witnsses.*—After a refusal of an application by the accused for re-summoning the prosecution witnesses, for further cross-examination, the accused applied for summoning some of those witnesses as witnesses on his behalf. On their appearing, the Magistrate refused to allow the accused to cross-examine them, and the accused thereupon declined to examine them as his witnesses. *Held*, that the refusal of the Court to allow the accused to cross-examine the witnesses, who were in attendance in Court, had resulted in a mis-trial of the case. MOWLA BUX BISWAS v. DERASATULLA SARKAR, **1 C.W.N. 19.**

(3)—*Right of accused to re-call for cross-examination prosecution witnesses.*—A conviction for offences under ss. 224, 353, Penal Code, was set aside and the case was ordered to be re-tried, on the ground that the Magistrate refused the application of the accused to re-call the witnesses for the prosecution for cross-examination. ABDUL SIKDAR v. MATHU SINGH, **5 C.W.N. 447.**

(4)—*Cross-examination—Its limits.*—No hard and fast rule can be laid down as to the right of counsel to demand in cross-examination that a witness should repeat the story which he has

Cross-examination—*continued.*

told in the examination-in-chief. LAKHA SINGH v. EMPEROR, **89 P.L.R. 1914 = 15 Cr. L.J. 148 = 22 Ind. Cas. 724 = 30 P. W. R. 1914, Cr.**

(5)—*Prosecution witnesses, cross-examination of, before the framing of charge—Further cross-examination.*—A Magistrate is not entitled to refuse the application of the accused, made after the framing of the charge, to re-call the witnesses for the prosecution, on the ground that they have already been cross-examined before the framing of the charge on the understanding that they would not be required for further cross-examination after the charge. The accused should pay the expenses incidental to such re-call. KOKIL GHOSE v. KASIMUDDI MALITA, **6 C.W.N. 424.**

(6)—*Sessions trial for murder—Examination-in-chief of first prosecution witness—Application by defence counsel for postponement of cross-examination till next day—Refusal by Sessions Court—Effect—Accused prejudiced—Re-trial by another Sessions Court ordered.*—The accused in this case were tried and convicted for murder. When the case was taken up in the Sessions Court, the Counsel for the defence asked that he might cross-examine the witnesses on the day following, as he was not prepared to cross-examine that day. The Counsel did not ask for an adjournment of the trial itself. The Sessions Court refused to grant the application. *Held*, by the High Court on appeal, that the application was a reasonable one and one which, under the circumstances, should have been granted, as the appellants have been prejudiced in that they lost the opportunity of cross-examination in the Sessions Court. Though the appellants would not be entitled to such postponement as of right, there is no reason why the Sessions Court, if it thinks the case a proper one, should not show such an indulgence. The conviction in this case was accordingly set aside by the High Court and the case was ordered to be re-tried by another Sessions Judge. SADASIV SINGH v. EMPEROR, **41 C. 299 = 15 Cr. L.J. 596 = 25 Ind. Cas. 348.**

Eliciting admission by cross-examining accused—*See* ACCUSED PERSON, 5 C.P.L.R. 11, Cr.

See ACCUSED PERSON, 8 C.W.N. 838, 7 O. C. 191.

Right of Police officer to examine witnesses—*See* BOM. ACT VII OF 1867, s. 23, Rat. Un. Cr. C. 28.

See APPEAL — CASES WHERE APPEAL DOES NOT LIE, 19 W.R. Cr. 53.

Right of accused to reserve cross-examination of prosecution witnesses — Refusal to grant leave to reserve— Revision—*See* CRIM. PRO. CODE, 1898, s. 208, sub-s. (2), 14 M.L.T. 532.

Defence putting in a document during—Prosecutor's right to reply—Court giving guarantee to a witness to give any evidence without fear of consequences—*See* CRIM. PRO. CODE, 1898, ss. 222, 292, 417, 63 P.L.R. 1911 = 9 Ind. Cas. 436 = 12 Cr. L.J. 73.

Cross-examination—*concluded.*

Examination of the accused, whether allowed when no evidence has been recorded, and whether can be in the nature of—*See* CRIM. PRO. CODE, 1898, ss. 271 (2), 342 (1), 439, 494, 5 M.L.T. 216.

Cross-examination of prosecution witnesses, postponing of—*See* CRIM. PRO. CODE, 1898, ss. 288 and 289, 2 Weir 361.

Defence producing documents for cross-examination of prosecution witnesses—Right of Crown to reply—*See* CRIM. PRO. CODE, 1898, s. 292, 16 A. 88 = A.W.N. 1894, 23.

See CRIM. PRO. CODE, 1888, ss. 340, 341, 288, 6 C.L.R. 53.

See CRIM. PRO. CODE, 1898, s. 342, 6 C.L. R. 431.

Right to cross-examine before enquiring Magistrate in a case triable by the Court of Sessions—*See* CRIM. PRO. CODE, 1898, s. 347, 16 O.L.J. 45 = 16 Ind. Cas. 336 = 13 Cr. L.J. 688.

Of accused in commencing proceedings—*See* CRIM. PRO. CODE, 1878, s. 364, 7 C.C. 191.

Confession and prior statements of accused if should be produced for, and contradiction—*See* CRIM. PRO. CODE, 1898, s. 494, 18 C.W.N. 1213 = 15 Cr. L.J. 693 = 26 Ind. Cas. 141.

See DEFAMATION, 6 A. 220.

Discrepancies between deposition made before Magistrate and that before Judge — *See* EVIDENCE—GENERAL, 6 C.L.R. 390.

Of witness—Scope of—*See* EVIDENCE ACT, 1872, ss. 121, 123, 124, 125, 126, 138, 12 Cr. L. J. 277 = 10 Ind. Cas. 917.

See EVIDENCE ACT, 1872, s. 135, 5 C.W.N. xv.

Essential ingredient of the offence of false evidence—Contradictory statements in—*See* FALSE EVIDENCE, 3 C.W.N. 81.

Onus—Defect in charge—Omission to set out intention in charge—Of accused—*See* PENAL CODE, ss. 464, 465, 467, 17 C.W.N. 354 = 18 Ind. Cas. 881 = 14 Cr. L.J. 129.

Right to reply—Putting in documents in the, of prosecution witnesses does not give the right of reply to the prosecutor—*See* REPLY—RIGHT OF, 11 Bom. L.R. 177 = 9 Cr. L.J. 284 = 1 Ind. Cas. 280.

Order of Magistrate refusing to re-call witnesses for prosecution for — *See* REVISION — MATTERS PERTAINING TO EVIDENCE, 19 W. R. Cr. 53.

See SANCTION TO PROSECUTE— CONDITIONS REQUISITE, 11 Bom. L.R. 1164 = 4 Ind. Cas. 273 = 10 Cr. L.J. 539.

Crown.

(1)—*Prerogatives of the Crown in India.*—Rights which, according to the common law of England, are comprised in the royal prerogatives, may not either be applicable to or have

Crown—*concluded.*

not been introduced into India. On the other hand, it is probably true that the Crown has, according to the common law of India certain prerogatives, which it may exercise in India though not in England, notably the prerogative of imposing by an executive act assessment on lands and varying the same from time to time. The prerogatives of the Crown in India, a country in which the title of the British Crown is of a very mixed character, may vary in different provinces as also in the Presidency towns as distinguished from the mofussil. The determination, with anything like legal precision, of all the prerogatives of the British Crown in India, is by no means an easy task. BELL v. MUNICIPAL COMMISSIONERS FOR THE CITY OF MADRAS, **25 M. 457 = 12 M.L.J. 208 = 1 Weir. 800.** [*R.*, 6 Bom. L.R. 131 = 14 M.L.J. 37, 10 C.W.N. 857 = 33 C. 1040.]

Not bound by Statute—*See* STATUTES, CONSTRUCTION OF, 25 M. 457 = 12 M.L.J. 208 = 1 Weir 800.

Crown Grants.

(1)—*Crown grants, Construction of.*—In respect to Crown grants, upon a question of the meaning of words, the same rule of common sense and justice must apply, whether the subject-matter of construction be a grant from the Crown or from a subject. It is always a question of intention to be collected from the language used with reference to the surrounding circumstances. If these guides to a satisfactory construction fail, but not otherwise the ancient rule is that "If the King's grant can endure to two intents, it shall be taken to the intent that makes most for the King's benefit." *In re* ANTAJI KESHAV TAMBE, **18 B. 670.** [*R.*, 3 Bom. L.R. 603 = 25 B. 714.]

Cruelty.

See CRUELTY TO ANIMALS.

See MAINTENANCE, 11 A. 480, 16 B. 269, 31 P.R. 1887, Cr.

Cruelty to Animals.

Society for the prevention of cruelty to animals, officers of—Public servant—*See* ACT V OF 1861, 3 C.L.J. 475 = 10 C.W.N. 727 = 3 Cr. L.J. 420.

See ACT V OF 1861, s. 34, cl. (2), A.W.N. 1887, 67.

See BOM. ACT VII OF 1867, s. 31, Rat. Un. Cr. C. 183.

Cruelty to Animals (Prevention of, Act).

See ACT XI OF 1890.

Cul-de-sac.

When is it a street—*See* U.P. ACT I OF 1900, s. 3 (4), A.W.N. 1908, 15 = 5 A.L.J. 45.

Culpable Homicide.

See CULPABLE HOMICIDE NOT AMOUNTING TO MURDER.

See MURDER.

See PENAL CODE, SS. 299-304.

Culpable Homicide—*continued.*

(1)—*English and Indian Law—Whether every case of homicide* prima facie *murder—Penal Code,* s. 300.—The Law of British India, differing from the Law of England, does not regard every case of homicide as *prima facie* murder; it throws on the prosecution the burden of proving a certain intent or knowledge constituting an act a murder. HIGH COURT PROCEEDINGS, NO. 1002, 19TH MAY, 1881, **1 Weir 288.**

(2)—*Culpable homicide and murder—Difference—Penal Code,* ss. 302, 304.—A person who causes death by acts done with the knowledge that they were likely to cause such bodily injury as was dangerous to life, is guilty of only culpable homicide (s. 304) and not of murder (s. 302). If the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause death or with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death, the offence is murder. EMPEROR v. CHATRI, **A.W.N. 1884, 289.** (3 A. 777, B.L.R. Sup. Vol. 451, *R.*)

(3)—*Provocation—Beating—Deliberation.*—A person who beats another brutally and continuously, so that death results, is guilty of murder, or culpable homicide not amounting to murder, according as there may or may not have been grave provocation. QUEEN v. TEPRAH FUKEER, **5 W.R. Cr. 78.**

(4)—*Penal Code, s. 300—Provocation required by section—Evidence as to condition of mind of offender—Admissibility.*— The provocation contemplated by s. 300 should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation. EMPRESS v. KHOGAYI, **2 M. 122 = 1 Weir 302.** [*F.*, L.B.R. 1893—1900, 251.]

(5)—*Sudden provocation—Penal Code,* s. 300, *excep.* 1.—For a person to avail himself of the extenuating circumstances provided for in s. 300, Penal Code, Excep. 1, the provocation and its effects must be proved to have been sudden as well as grave; and also the deprivation of the power of self-control must be shown to continue. QUEEN v. BECHOO SAOUT, **19 W.R. Cr. 35.**

(6)—*Grave provocation — Interval between provocation and attack.*—A person suddenly cut his wife's throat; *held* that, in order to prove that the act was not done under grave provocation so as to bring the case under Excep. 1 of s. 300 of the Penal Code, it must be shown not merely that the deceased ceased abusing the prisoner then, but also what interval elapsed between the time when the deceased ceased speaking and the time when the prisoner attacked her. The offence in this case was held to be culpable homicide not amounting to murder. QUEEN v. NOKUL NUSHYO, **7 W.R. Cr. 27.**

(7)—*Unpremeditated assault—Provocation—Penal Code,* s. 300, *excep.* 4.—An unpremeditated assault, ending in an affray in which death

Culpable Homicide—*continued.*

is caused, committed in the heat of passion upon a sudden quarrel, comes within Excep. 4 of s. 300 of the Penal Code. It does not matter which party offered the provocation or committed the first assault. QUEEN v. ZALIM RAI, **1 W.R. Cr. 33.**

(8)—*Grave and sudden provocation—Penal Code, ss.* 302, 304.—Where the accused found his sister having illicit connection with another man and in a sudden passion, killed them both on the spot, *held*, that the accused received very grave and sudden provocation, sufficient to reduce the case to one of culpable homicide not amounting to murder. QUEEN-EMPRESS v. CHUNNI, **18 A. 497 = A.W.N. 1896, 161.**

(9)—"*Grave and sudden*" *provocation—Penal Code*, *s.* 300, *Excep.* 4--*Deceased striking accused first.*-Where there was a fight between the deceased and the accused, but the deceased struck the first blow, and no motive sufficient to induce the accused to deliberately murder the deceased was proved, *held*, that the accused were guilty of culpable homicide only, though the deceased died as a result of the injuries inflicted by the accused. *In re* KITHER KHAN, **5 M.L.T. 207 = 4 Ind. Cas. 1116 = Cr. L.J. 191.**

(10)—*Killing of adulterer taken in act by husband of woman—Sudden provocation— Penal Code*, *s.*304.—The punishment to be inflicted for an offence under s. 304, for the murder of the adulterer caused by sudden provocation by the husband of the woman is discretionary. The principal object in view by which the Courts should be guided is a sufficiently deterrent punishment. NGA LUN MYA v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 213.**

(11)—*Act done with the knowledge that death will probably result—Penal Code, ss.*323 *and* 304 —Where a woman of strong physique sitting upon the chest of her husband, a man in an extremely weak state of health, twisted and squeezed his testicles in such a manner as to reduce them to a pulpy condition and the accused died from the injury caused to the testicles, *held* (by *Subramania Ayyar and Benson, JJ.*,) that the accused was guilty of culpable homicide not amounting to murder inasmuch the accused should be held to have known that the death would at all events be a probable, if not the most probable, consequence of her act. *Held* (by *Davis, J.*) that the death was an unforeseen result of the act and the accused was guilty only of an offence under s 323, Penal Code. QUEEN-EMPRESS v. KALYANI, **19 M. 356 = 1 Weir 313.**

(12)—*Death resulting in fight between contending factions each armed with deadly weapons—Premeditation—Penal Code, s.* 300, *Excep.* 5—*Scope.*—The exception extends to all cases of death occasioned by, or resulting from, premeditated acts, where the party killed, takes the risk of the death with his own consent; the fourth exception, being an independent one and applying to all cases of death occurring in the course of sudden and unpremeditated fight, does not in any way bind the natural operation of the fifth exception. [*Diss.*, 18 C. 485, F.B.; *R.*, 18 C. 485, F.B.] Where the death of an adult occurred in the course of a fight between two bodies of men who were deliberately fighting together, a greater portion of the men on both sides being armed with deadly weapons, and no unfair advantage appearing to have been taken by the one side or the other in the course of the fight, the offence committed is culpable homicide and not murder, SAMSHERE KHAN v. EMPRESS, **6 C. 154.**

(13)—*Rioting armed with deadly weapon—Attempt to commit murder—Premeditated and pre-arranged fight— Penal Code*, *s.* 300, *Except.* 5—*Scope of.*—All the accused persons were guilty of rioting armed with deadly weapons and one of the accused, in the course of the riot, and in prosecution of the common object of the assembly killed or attempted to kill a man belonging to the other party, under such circumstances that his act amounted to attempt to murder, unless that act bore a less grave offence under Exception 5 to s. 300 of the Code, by reason of the fact that the fight was premeditated and pre-arranged, a regular pitched battle or trial of strength between the two parties concerned in the riot. *Held*, that, upon such finding, the case did not fall within that exception. The 5th exception to s. 300 should receive a strict and, not a liberal construction. In applying it, it should be considered first, with reference to the act consented to or authorised, and next with reference to the person or persons authorised. As to each of them, some degree of particularity at least should appear upon the facts proved, before the exception can be said to apply. It cannot be taken as referring to anything short of suffering the infliction of death, or running the risk of having death inflicted, under some definite circumstances not merely of time, but mode of inflicting it, specifically consented to. It does not contemplate a consent to the acts of person not known or ascertained at the time the consent was given. The consent may be inferred from circumstances, and does not absolutely need to be established by actual proof of express consent. *Per O'Kinealy, J.*—Before exception 5 can be applied, it must be found that the person killed, with a full knowledge of the facts, determined to suffer death or to take the risk of death, and this determination continued up to, and existed at, the moment of death. It is difficult to assert that, when two parties armed with lathis and spears go out to fight, the members of each party consent to suffer death, nor can it be predicated, as a general rule, that they consent to take the risk of death. *Per Ghose, J.*—In cases like the one mentioned above no general rule of law can be laid down whether the person killed or wounded suffered death or took the risk of death with his own consent; for it is a question of fact, and not of law to be decided upon the circumstances of each case. There is nothing in the exception to indicate that it would not be applied to a

Culpable Homicide—*continued.*

case where the fight is between two or more persons on either side. In such cases, the question of an applicability of the exception must be determined upon evidence whether the deceased took the risk of death with his own consent. QUEEN-EMPRESS v. NAYAMUDDIN, **18 C. 484.** (6 C. 154, *Observed on*). [*R.*, 11 Cr. L.J. 345 = 5 Ind. Cas. 988 = 5 L.B.R. 160.]

(14)—*Death resulting from a violent attack—Offence, nature of.*—Where death results from a violent attack, the accused should be committed to the Court of Sessions on a charge of culpable homicide not amounting to murder. His conviction for grievous hurt is bad in law. *In the matter of* GOPINATH SAHA, **1 C.L.R. 141.**

(15)—*Branding and beating for the purpose of freeing from bewitchment.*—*Penal Code*, ss. 304, 323.—The accused believing that a woman had bewitched another gave the former a severe beating and branded her in several places. She finally took to her bed and died on the sixth day after the beating. The accused were, on these facts, tried by a Second Class Magistrate who convicted them of offences under s. 323, I.P.C., and sentenced them each to rigorous imprisonment for six months. *Held*, reversing the conviction and sentence, that the accused should be committed for trial on a charge of culpable homicide. EMPEROR v. DUMDYA, **4 Bom. L.R. 879.**

(16)—*Causing death by negligent act—Death by tetanus brought on by fracture of big toe, fracture being caused by accused pushing deceased—Penal Code*, ss. 299, 300 *and* 304-*A*.—In the course of a dispute, the accused gave the deceased a severe push on the back which caused him to fall from the top of the accused's steps to the roads below, a distance of two and a half cubits. In falling the deceased fractured his big toe, and on the fifth day after the fall the deceased died from tetanus brought on by the fracture. *Held*, that the conviction of the accused under s. 304-A was bad; and that the case was not one of culpable homicide not amounting to murder, because there was no likelihood of the result following, and *a fortiori*, no design of causing it. *Held*, also, that, as there was a positive act which directly caused the death, and as the act was not culpable homicide because no proper circumspection would have shown the accused that his act would cause death, the case was simply one of using criminal force as defined in the Penal Code. REG. v. ACHARJYS, **1 M. 224 = 1 Weir 325.**

(17)—*Surgical operation by unskilled medical practitioner—Rash and negligent act causing death—Penal Code*, ss. 53, 88 *and* 304-*A*.—The accused, an ignorant Kobiraj, operated upon the deceased, an old feeble man, for external piles, by cutting them out with a common clasp knife after pulling them down with a hook. The man bled to death. It was proved that the operation, which he performed, was so imminently dangerous that educated surgeons scarcely ever attempt to do it. It was also proved, by the defence, that he had twice before performed similar operations, with successes. *Held*, that the accused was guilty of an offence under s. 304-A. *Held*, also, that, he could not claim the benefit of s. 88, as a patient could not be held to accept a risk of which he was not aware, and as the accused could not be considered to have acted in good faith inasmuch as he had not acted with due care and attention. SUKAROO KUBIRAJ v. EMPRESS, **14 C. 566.** [*R.*, Rat. Un. Cr. C. 603.]

(18)—*Penal Code*, s. 304-*A*—*Death caused by rash and negligent act—Causing death by a criminal act.*—Where the act causing the death of the accused is in its nature criminal, s 304-A of the Penal Code has no application. QUEEN-EMPRESS v. DAMODARAN, **12 M. 56 = 1 Weir 326.** [*R.*, Rat. Un. Cr. C. 453.]

(19)—*Taking persons in old boat—Negligence—Penal Code*, s. 299.—Certain persons whom the accused, a ferryman, was rowing across a river were drowned by the sinking of the boat which was an old one with holes in it over which planks had been nailed. *Held* that the prisoner could not be convicted of culpable homicide not amounting to murder, unless it could be shown that he acted with the knowledge that he was likely, by taking them in the boat, to cause death within the meaning of s. 299 of the Penal Code. *In the case of* MAGENEE BEHARA, **11 W.R. Cr. 3.**

(20)—*Right of private defence—Penal Code*, ss. 97, 99 *and* 104.—An accused, whose property had frequently been stolen, went out with a *lathee* to watch his property, and with the *lathee* struck a thief, who died in consequence of the blows. *Held* (having regard to the nature of the injuries inflicted and to the subsequent conduct of the accused) that the case did not fall within the 4th exception to s. 99, Penal Code, and that the prisoner was not guilty of culpable homicide not amounting to murder, but was protected by ss. 97 and 104 of the Penal Code, and had not transcended the limits of the right of private defence of property. QUEEN v. MOKEE, **12 W.R. Cr. 15.**

(21)—*Voluntarily causing hurt, resulting in death—Penal Code*, ss. 304, 304-*A*, 323.—Where, in the deceased's omission to immediately drive his pigs, that were grazing upon the accused's land, the latter took up a piece of a brick and threw it at the deceased from a distance of five paces, and it struck him over the spleen, which, being in diseased state, was ruptured, and death ensued, *held*, that the accused was guilty only of hurt, and not of causing death by a rash and negligent act. EMPRESS OF INDIA v. RANDHIR SINGH, **3 A. 597** = A.W.N. 1881, 37. [*F.*, 2 Bom. L.R. 613; *R.*, 3 Bom. L.R. 394, 157 P. L.R. 1913 = 5 P.W.R. 1913, N.W.F.P.]

See CONVICTION, Rat. Un. Cr. C. 413 = Cr. Rg. 79 of 1888.

See CRIMINAL FORCE, 21 P.R. 1876, Cr.

See CRIM. PRO. CODE, 1898, s, 403 (4), 5 Bom. L.R. 125.

Culpable Homicide—*concluded.*

Persons acquitted of, but convicted of rioting—*See* PRIVATE DEFENCE, RIGHT OF, 3 W. R. Cr. 41.

See PRIVATE DEFENCE, RIGHT OF, 11 W. R. Cr. 41.

See RIOTING, 3 N.W.P. 174, A.W.N. 1883, 32.

And being member of unlawful assembly. *See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 7 W.R. Cr. 13.

Riot in which a person is killed—*See* UNLAWFUL ASSEMBLY, 7 W.R. Cr. 67.

See UNLAWFUL ASSEMBLY, A.W.N. 1885, 96.

Culpable Homicide amounting to Murder.

See MURDER.

Culpable Homicide not amounting to Murder.

See CULPABLE HOMICIDE.

See MURDER.

See PENAL CODE, Ss. 299-304.

(1)—*Penal Code,* ss. 302, 304—*Murder—Culpable homicide not amounting to murder.*—Where a person struck with a *lathee* and killed a man being at the time under the *bona fide* belief that the object at which he struck was not a human being but something supernatural, but, through terror, having taken no steps to satisfy himself that it was not a human being, *held* that he was guilty of the offence of culpable homicide not amounting to murder. QUEEN-EMPRESS v. KANGLA, **A.W.N. 1898, 163.**

(2)—*Penal Code,* ss. 302 *and* 304—*Murder and culpable homicide not amounting to murder.*—An intention to kill in a case of murder cannot be inferred when that is not proved. That the accused knew he was likely to cause the death may be inferred, and, if the accused knew that he was likely to cause the death, then, his act comes within the definition of of s. 300, I.P.C., and not within that of s. 302 and, therefore, s. 304 is the only section applicable. NGA SO YA v. QUEEN-EMPRESS, **U.B. R. 1892—1896, Vol. I, 211.**

(3)—*Penal Code (Act* XLV *of* 1860), ss. 302 *and* 304 — *Murder — Culpable homicide not amounting to murder.*—The accused, aged forty years, quarrelled with his wife, who was dilatory in the performance of her household duties and abused her, and gave her a blow on the side of the head with the first weapon which came to hand, *i.e.*, a heavy hammer. The wife died in consequence of the blow, and the accused was convicted under s. 302, Penal Code. *Held,* that the accused's offence fell under the second part of s. 304, Penal Code, and not under s. 302, as he did not intend to cause death, or such bodily injury as was likely to cause death, although he must have known that he was likely to cause death. RAHMAT v. EMPEROR, **6 P.L.R. 1903 = 30 P.R. 1902, Cr.**

(4)—*Penal Code,* s. 304—*Culpable homicide not amounting to murder.*—The Judge in this case did not find that the accused intended to

Culpable Homicide not amounting to Murder—*continued.*

cause death, nor was it found that the act was done with the intention of causing any particular bodily injury such as the offender knew to be likely to cause death, nor that the offender knew that this act was so imminently dangerous that it must in all probability cause death or such bodily injury as was likely to cause death. In view of the facts above stated, the offence was held to fall under s. 304, I.P.C. NGA THU DOW v. QUEEN-EMPRESS, **U.B.R. 1892—1896, Vol. I, 215.** (3 A. 776, *R.*)

(5)—*Penal Code,* s. 304-*A*—*Scope.*—Where the accused beat and kicked the deceased, a thief, to such a degree that 141 marks of separate blows were found on his body and several of his ribs had been broken, *held,* that the accused was not guilty under s. 304-A. But as none of the accused intended to kill the deceased, but only to cause such bodily injury as was likely to cause death, *held* that they were guilty of culpable homicide not amounting to murder. QUEEN v. MAN, **5 N.W.P. 235.** [*F.*, 3 A. 776.]

(6)—*Form of conviction—Penal Code,* s. 300—*Exceptions.*—When a Judge convicts on a charge of culpable homicide not amounting to murder, he should state under which of the exceptions in s. 300 of the Penal Code the case falls. GOVERNMENT v. KALIKA MISSER, **1 Agra, Cr. 3.**

(7)—*Culpable homicide and death by negligence—Ss.* 304 *and* 304-*A, Penal Code.*—Where a snake-charmer, exhibiting a cobra with unextracted fangs in public, placed it on the head of one in the crowd to display his own skill and with no intention of causing harm, whereupon the cobra, in being pushed off by the spectator, bit him and caused his death, held that the snake-charmer was guilty of an offence under s. 304 and not merely under s. 304-A of the Penal Code. 12 W.R. Cr., 7 distinguished on the ground that, in that case, the prisoner actually caused the snake to bite the person, who was killed, and thus had clear knowledge of the imminent danger that must, in all probability, cause death. EMPRESS v. GONESH DOOLEY, **5 C. 351 = 4 C.L.R. 580.** [*R.*, Rat. Un. Cr. C. 603, U.B.R. 1897—1901, 293.]

(8) — *Intention to constitute offence.*—The intention which should be found in order to constitute the offence of murder and that of culpable homicide not amounting to murder discussed and explained. EMPRESS v. SHEIKH PYAO, **27 P.R. 1883, Cr.** [*R.*, 9 P.R. 1891, Cr., 1 P.R. 1893, Cr.]

(9)—*Penal Code,* ss. 299, 300 (2), 304—*Murder—Culpable homicide not amounting to murder—Criminal intention or knowledge necessary—Injury, nature of.*—The accused rushed wildly into a house and, without considering the consequences, attacked his mother-in-law, a woman of fifty-five with a *da* and by mistake cut another woman of sixty-one on the arm, who died of the shock caused by the cut. The wound was not such as would ordinarily cause the death

Culpable homicide not amounting to murder —*continued.*

of a woman of that age. Nor did the accused know of any weakness or defect in the person to whom the harm was caused, which would render her likely to be killed by such an act. *Held*, as the accused did not act with the intention specified in the second clause of s. 300 or with the intention in s. 299, but only with a knowledge that he was likely by his act to cause death, he committed only culpable homicide not amounting to murder. BAN U v. KING-EMPEROR, **4 L.B.R. 367=9 Cr. L J. 364.** (3 L.B.R. 122, 4 L.B.R. 306, *R.*)

(10)—*Penal Code*, ss. 299, 300, 304—*Murder —Culpable homicide—Intention to cause injury sufficient in the ordinary course of nature to cause death—Intention to cause injury likely to cause death — Distinction.* — The distinction between the intention to cause injury sufficient in the ordinary course of nature to cause death, and the intention to cause injury likely to cause death, depends upon the degree of probability of death resulting from the act committed. Apart from cases falling within the second clause of s. 300, if, from the intentional act of injury committed, the probability of death resulting is high, the finding should be that the accused intended to cause death or injury sufficient in the ordinary course of nature to cause death, and the conviction should be of murder unless one of the exceptions applies; if there was probability in a less degree of death ensuing from the act committed, the finding should be that the accused intended to cause injury likely to cause death, and the conviction should be of culpable homicide not amounting to murder. PO SIN *alias* PO SIN GYI v. KING EMPEROR, **5 L.B.R. 80=10 Cr. L.J 359 =3 Ind Cas. 710** (3 L.B.R. 122, *R.*) [*R.*, 4 Bur. L.T. 221=12 Cr. L.J. 477=12 Ind. Cas. 82.]

(11)—*Penal Code*, ss. 300 *and* 304—*Absence of intention to cause death or grievous hurt.*—Where, except the fact of death, there was nothing to show that the accused intended to cause death or grievous hurt, the death being caused by kicking the deceased, and no weapon having been used, *held* that, under these circumstances, it would be safer to convict him of cuplable homicide not amounting to murder. *In re* DAUDE GANGADU, **1 Weir 299.**

(12)—*Penal Code*, ss. 299, 304, 321, 323—*Murder—Intention* —Where a person, irritated by the lazy and inefficient manner in which the punkha cooly was managing the punkha, gave him some blows, and the cooly died of the injuries he had received, *held*, that as the evidence in the case showed that the blows were not heavy or severe, and that the spleen of the deceased was in a very deceased condition, the accused could not have had in view the cooly's death as a probable or even possible consequence of his acts, and that he was guilty only of hurt under s. 323. EMPRESS OF INDIA v. FOX, **2 A. 522.** [*F.*, 3 A. 776=A.W N. 1881, 132, A W.N. 1881, 112, L.B.R. 1872—1892, 179; *R*, 157 P.L.R. 1913=5 P.W.R. 1913, N.W.F.P.]

Culpable homicide not amounting to murder —*continued.*

(13)—*Penal Code*, s. 300, *clauses* (2) *and* (3), —*Intention.*— Clauses 2 and 3 of s. 300, I.P.C., are mere amplifications of that part of s. 299, I.P.C., which speaks of an act done "with the intention of causing such bodily injury as is likely to cause death." GAJAN v. EMPRESS, **18 P.R. 1893, Cr.** [*R.*, 17 P.R. 1898, F.B.]

(14)—*Act done with knowledge that it was likely to cause death—Penal Code*, s. 304 (2).—The deceased having enticed away a married woman, the father and the husband of the woman, armed with sticks, waited for him on the road by which he was expected to pass, and gave him blows on the chest and back, but refrained from hitting him above the head; *held*, that the accused was only liable to be convicted under s. 304 (2), I P.C. FAQIR MUHAMMAD v. EMPRESS, **10 P.R. 1890, Cr.**

(15)—*Knowledge of likelihood to cause death —Pre meditation.*— Where a person snatches up a log of heavy wood, and strikes another with it on a vital part, with so much force and vindictiveness as to cause that other person's death almost on the spot, that act must be held to have been done with the knowledge that it was likely to cause death; but if the act is done without forethought, in the heat of passion and on a sudden quarrel, the offence committed is culpable homicide not amounting to murder. QUEEN v. RAJOO GHOSE, **7 W.R. Cr. 70.**

(16)—*Death caused by a single blow.*—The question for solution in cases where death is caused by a single blow, given in anger, on the impulse of the moment, with a weapon not deadly in its nature, is always one of fact, not of law, as to the intention or knowledge with which the striker acted. *Held*, that in the present case, the accused had nothing more than knowledge that death was likely to result from the blow given by him. KARAM v. EMPRESS, **5 P.R 1893, Cr.** [*R.*, 17 P.R 1898, F.B., 30 P.R. 1902.]

(17)—*Arrest—Causing death by violence but not excessive.*—Where, in arresting the deceased who, with others, was attempting to commit theft, the accused struck a blow on the deceased with a stick, *held*, that the accused had not used excessive violence and were not, therefore, guilty of culpable homicide. HIRA SINGH v. CROWN, **26 P R. 1872, Cr.**

(18)—*Death caused by violent beating — Absence of knowledge that act was likely to cause death* —Where the accused, a police constable, caused the deceased's death by violently beating him, in the course of a police enquiry into a theft case, *held* that the accused was not liable to be convicted for culpable homicide, but was guilty of an offence under s. 330, Penal Code. MEEAH MAHOMED v. CROWN, **86 P R. 1866, Cr.**

(19)—*Violent beating.*—The accused, eight in number, beat three persons, one of whom died of injuries resulting therefrom. The accused was convicted by a first class Magistrate, one of

Culpable homicide not amounting to murder —*continued.*

them sentenced to one year's rigorous imprisonment and a fine of Rs. 20 under ss. 148/352, I.P.C., and the rest to four months' imprisonment and to a fine of Rs. 10 under s. 148, I.P.C. *Held*, that the former should be convicted on charges under ss. 304 and 325, I.P.C., and all the rest under ss. 149/304 and 149/325, in respect of the injury to and the death of one of them, and that all the accused on charges under ss. 148 and 149/325, as regards the injury to the other two persons. QUEEN-EMPRESS v. GHAFUR, **8 P.R. 1892, Cr.**

(20)—*Sudden fight.*—In a quarrel between himself and the deceased, the accused gave her a blow on the side of the head with a heavy hammer, which he picked upon the spur of the moment, and caused thereby her death; *held*, that the accused was merely guilty of culpable homicide not amounting to murder. RAHMAT v. EMPEROR, **30 P.R. 1902, Cr. = 6 P.L.R. 1903.** (5 P.R. 1893, Cr., *R.*)

(21)—*Sudden fight.*—A person charged with murder, while smarting under a severe blow from a stick in the midst of a sudden fight, and possibly apprehensive of future violence, finding a knife at hand, took it up, and in the *melee* inflicted the wound which caused the death of the deceased. *Held* that, under the circumstances, the accused was guilty, under the Penal Code, s. 304 of culpable homicide not amounting to murder. QUEEN v. SOMIRUDDIN, **24 W.R.Cr. 48.**

(22)—*Penal Code*, s. 300, *Except.* 4—*Sudden fight.*—Where the accused, seven in number, entered a field in which deceased and his friends were working, with staves, some of them being iron-bound, in order by force to make them desist from cultivating the field, and a fight ensued in which the deceased received a *lathee* wound on the head at the hands of one of the accused, of which he died in a few days, *held*, that as it was not in evidence that the accused desired or premeditated the death of the deceased, and as there was a fight in which the parties became heated with sudden passion, and the weapons used were not unusual and were not applied with unfair advantage or peculiar cruelty, the offence came within except. 4, s. 300, I.P.C EMPRESS v. SHEONANDAN, **A.W.N. 1881, 156.**

(23)—*Sudden fight—Provocation—Sentence, Mitigation of.*—The Chief Court reduced the sentence to one of two or three years' imprisonment, in a case where death was caused on provocation in a sudden fight, the accused not taking any unfair advantage over the deceased. CROWN v. AMEERA, **12 P.R. 1866, Cr.**; KESUR SINGH v. CROWN, **13 P.R. 1866, Cr.**

(24)—*Sentence of death, mitigation of grounds for.*—Want of premeditation, absence of deadly weapon, and a violent altercation between the accused and the deceased, his wife, whose death was caused, were held to be good grounds for commuting a sentence of death into one of transportation for life. CROWN v. SOWAROO, **105 P.R. 1866, Cr.**

(25)—*Penal Code*, s. 304-*A*—*Mitigation of sentence — Unpremeditated blow.*—Where the accused took up a wooden pestle and gave a blow with it to the deceased, killing him, and the circumstances indicated that the blow was the unpremeditated outcome of a sudden quarrel, and that, though a reasonable man must have known that it was likely to cause death, the probability of a fatal result was not present to the consciousness of the accused at the moment, *held*, that the offence amounted to culpable homicide not amounting to murder under the latter half of s. 304, I.P.C. and the sentence of seven years' rigorous imprisonment was reduced to that of three years. KING-EMPEROR v. BEHRAM *walad* CHAKAR, **9 Cr. L.J. 245 = 1 S.L.R. 1, Cr.**

(26)—*Sentence of death, Mitigation of — Absence of premeditation or personal enmity.*—The fact of a murder being committed without premeditation or personal enmity was held not to warrant the Sessions Judge in abstaining from passing the sentence of death. CROWN v. DITTA, **31 P.R. 1869, Cr.**

(27)—*Penal Code*, s. 299—*Culpable homicide—Death accidental—Criminal act.*—Where the accused pushed the deceased into the water accidentally in the course of a struggle consequent on a dispute about a jewel, which resulted in the latter's death, *held* that the offence of culpable homicide was not committed. REG v. RAHEE, **Rat. Un. Cr. C. 6.**

(28)—*Hasty and fatal blow.*—A prisoner, who struck the deceased a hasty but fatal blow with a stick in his hand at the time for abusing his mother, was held guilty of culpable homicide not amounting to murder. QUEEN v. SULEEM SHEIK, **1 W.R. Cr. 23.**

(29)—*Penal Code*, ss. 299, 304, 304-*A*, 322, 325—*Voluntarily causing hurt resulting in death.*—Where the accused struck the deceased on the ribs with a stick and inflicted a hurt which not only endangered his life, but actually caused his death, and which he must have known was likely to break a rib, if not worse injury, *held*, that the offence committed was grievous hurt, but not the offence mentioned in s. 304-A. *Held*, also, that the offence did not amount to culpable homicide, as the act was not done with any of the intentions mentioned in s. 299, I.P.C. EMPRESS OF INDIA v. O'BRIEN, **2 A. 766.** [*R.*, 1 A.W.N. 112, 3 A. 776 = 1 A.W.N. 132, 1 A. W. N. 103.]

(30)—*Penal Code*, s. 304 (2)—*Murder — Grave and sudden provocation.*—The finding by a man of his wife in actual intercourse with another is a provocation grave and sudden enough to reduce the offence of murder, to culpable homicide not amounting to murder, and such an offence must be visited with a light sentence. QUEEN-EMPRESS v. ASHA GOPAL, **Rat. Un. Cr. C. 932 = Cr. Rg. 42 of 1897.**

Culpable homicide not amounting to murder —*continued.*

(31)—*Penal Code, ss.* 299, 300 *and* 304—*Culpable homicide not amounting to murder—Grave and sudden provocation--Husband suspecting conduct of his wife.*— Where a person charged with murder of another person, saw, on the evening preceding the commission of the act charged, the deceased having connection with his wife, and on the following morning he saw his wife eating with deceased and giving him food, while she left him without it, and thereupon the accused killed the deceased on the spot with a bill-hook, *held*, that, if having witnessed the act of adultery, the accused connected the subsequent conduct, as he could not fail to connect it, with that act, the conduct amounted to provocation grave enough and sudden enough to deprive him of self-control and reduced the offence from murder to culpable homicide not amounting to murder, inasmuch as the conduct of the deceased and his wife was of a character highly exasperating to him, implying that all concealment of their criminal relations, and all regard for his feelings were abandoned and that they purposed continuing their course of misconduct in his house. BOYA MUNIGADU v. QUEEN, **3 M. 33=1 Weir 302.**

(32)—*Grave provocation—Husband finding wife in adultery.*—Two persons stated that having caught the deceased in the act of having sexual intercourse with the wife of one of them, they killed him on the spot. *Held*, that the grave provocation given reduced the crime from murder to culpable homicide not amounting to murder. QUEEN v. GOUR CHUNDER POLIE, **1 W. R. Cr. 17.**

(33)—*Penal Code, ss.* 302, 304—*Culpable homicide and murder—Provocation—Husband finding wife in adultery.*—Every killing is *prima facie* murder until the contrary is shown, and it is on the accused to show that his act amounted to a lesser degree of crime. The fact that the accused found his wife whom he killed at midnight in his own house sleeping in the same room with a man whom he had all along suspected and whose company he had forbidden, is a circumstance that raises an irresistible inference of grave and sudden provocation that reduces the offence to man-slaughter. EMPRESS v. DAMARUA N, **A.W.N. 1885, 197.** [*D.*, 8 A. 222, 635.]

(34)—*Grave provocation—Husband seeing wife seduced to adultery.*—The wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantations. The prisoner, armed with a sword, and watching from the roof of the house, saw his wife being actually violated by the deceased. He jumped down from the roof, and struck deceased with his sword in several places, from the effects of which he died. *Held*, that the prisoner's conviction for murder could not be sustained. The offence committed was culpable homicide not amounting to murder. QUEEN v. RAMTAHAL KAHAR, **3 B.L.R A. Cr. 33.**

(35)—*Husband finding wife in adultery—Grave and sudden provocation.*—Where the accused caught the deceased in the act of adultery with his wife and caused his death by strangulation, *held*, that the accused acted under grave and sudden provocation. The sentence of ten years' rigorous imprisonment passed on him was reduced to three years under the first part of s. 304. SAHIB v. EMPRESS, **27 P.R. 1900, Cr.**

(36)—*Husband killing wife found in adultery—Grave and sudden provocation.*—Where the accused killed his wife having caught her in the act of having sexual intercourse with another, *held* that except. I to s. 300, I.P.C., applied, and that the conviction of the accused should be altered to one under s. 304. FAZAL v. EMPRESS, **8 P.R. 1899, Cr.**

(37)—*Husband killing wife—Grave and sudden provocation—Adultery.*—*Held*, that the accused, who struck his wife a violent blow with an axe, which killed her, being so provoked on account of her refusal to cook his food to eat or cohabit with him on being taken back after an elopement, was guilty of culpable homicide not amounting to murder. FUZL SHAH v. CROWN, **87 P.R. 1866, Cr.**

(38)—*Husband killing wife—Grave and sudden provocation.*—The accused, who heard that his wife gave betel-nut or chunam to a certain person, subsequently saw her and that person weeding in a field side by side and their bodies frequently coming in contact. He upbraided his wife for it, but she told him that she would do just as she liked, and that there were thousands of men as good as he. Upon this he killed her in a passion with a *mamoti* which he had with him. *Held*, that the conduct of his wife amounted to grave and sudden provocation of such a character as to reduce the killing to culpable homicide not amounting to murder. *In re* VENKATASAN, **1 Weir 307.**

(39)—*Husband killing wife and her paramour—Grave and sudden provocation.*—Where the accused, who caught his wife in the act of adultery with her paramour and killed them both was awarded the sentence of transportation for life, on the ground that having felled them with a single blow, he followed that up with further blows, *held*, that the sentence should be reduced further, as the act was done on grave and sudden provocation, which deprived him of his power of self-control. SAID ALI v. EMPRESS, **8 P.R. 1890, Cr.**

(40)—*Grave provocation—Husband finding wife in adultery—Husband killing both wife and paramour.*—Where a prisoner stated that he had been married to his wife for ten years that he had no reason to suspect her fidelity; that he left home to collect money due to him; that on his return he saw what convinced him, that

Culpable homicide not amounting to murder —continued.

his wife was not as he had hitherto believed her to be and that maddened at the sight he killed both her and her paramour. *Held*, that he was guilty of culpable homicide not amounting to murder, and that the case was one deserving to be leniently treated. QUEEN v. SHEIKH BOODHOO, 8 **W.R. Cr. 38.**

(41)—*Grave provocation — Brother finding sister in adultery.*—The prisoners found the deceased lying in the same bed with their sister and ill-treated him, from the effects of which ill-treatment he died. *Held*, that the provocation was sufficiently grave to justify a conviction of culpable homicide not amounting to murder. QUEEN v. KASSEEMODDEEN KURREEMODDEEN, **4 W R. Cr. 38.** *See also* QUEEN v. MAITHYA GAZEE, **6 W.R Cr. 42.**

(42)—*Sister found in adultery—Grave and sudden provocation.*—Where the accused caught the deceased in the act of adultery with his married sister and caused his death by fracturing his skull, *held* that the sentence should be reduced to one year's imprisonment, as the accused acted under grave and sudden provocation and on an uncontrollable impulse. FAZAL DAD v. EMPEROR, **4 P.R. 1904, Cr.**

(43)—*Penal Code*, s. 300 —*Causing death by an act done while in a state of intoxication.*—Where the accused, when in a state of intoxication, produced by his own act, struck the deceased with a bamboo, thereby causing fracture of the skull, which resulted in death, *held*, that the accused should be charged with culpable homicide not amounting to murder, and not with grievous hurt. *In re* THIYAGARAYAN, **1 Weir 301.**

(44)—*Death caused under provocation—Intoxication—Penal Code*, s. 304.—If the act by which death was caused was done with the intention of causing such bodily injury as the accused knew to be likely to cause death, the case falls within the second, if not within the first clause of s. 300, Penal Code. The fact the the accused was more or less under the influence of intoxicating liquor does not affect the presumption as to his intention and cannot relieve him of responsibility for his action. The fact that a man is intoxicated may rightly be taken into consideration in estimating the probable effect on his mind of the words or acts of others. An act which might not seriously provoke a sober man, might provoke a drunken man to an extremity of frenzy. Death caused by a drunken person deprived of the power of self-control by grave and sudden provocation amounts to culpable homicide not amounting to murder, and is, therefore, punishable with transportation for life. NGA SAN v. KING-EMPEROR, **2 L.B R 204.** (1 L.B.R 216, *R.*) [*R.*, 11 Cr.L J. 659=8 Ind. Cas. 469=U. B.R. 1910, 17, 12 Cr.L J. 524=12 Ind. Cas. 292 =4 Bur. L.T. 253.]

(45)—*Causing death by branding a thief—Dangerous act.*—Causing death by branding a thief without the knowledge that the act was so

Culpable homicide not amounting to murder —concluded.

imminently dangerous that it would in all probability cause his death, or such bodily injury as was likely to cause death, is culpable homicide not amounting to murder under s. 304, Penal Code. QUEEN v. KHEDUN MISSER, **7 W.R. Cr. 54.**

(46)—*Subjecting person of full age to emasculation.*—When a man of full age (*i.e.*, above 18 years) submits himself to an emasculation, performed neither by a skilful hand, nor in the least dangerous way, and death ensues in consequence, the persons concerned in the act are guilty of culpable homicide not amounting to murder. QUEEN v. BABOOLUN HIJRAH, **5 W.R. Cr. 7.**

(47)—*Right of private defence.*—Where the accused, on being attacked by the deceased armed with a large club, fired at him, without any particular aim, but lowering the muzzle of his gun, so as to hit a vital part, and death ultimately resulted from the wound inflicted, *held*, that the accused had not exercised a legal right of private defence, as he could have escaped by standing back, and that he was, therefore, guilty of culpable homicide not amounting to murder. CROWN v. KUREEM BUKSH, **13 P.R. 1868, Cr.**

(48)—*Murder—Culpable homicide—Right of private defence* —The verdict of the jury in a trial for murder was, that the accused fixed the gun at the deceased under the reasonable apprehension that his own life was in danger or that grievous hurt would be caused to him, but that, though he honestly acted in self-defence, his act was in excess of what a prudent and reasonable man would have done under the circumstances. *Held*, that the accused was guilty of culpable homicide not amounting to murder. EMPRESS v. WHITTAKER, **A W.N. 1882, 172.**

(49)—*Culpable homicide.*—*Held*, that in this case the evidence clearly supported the conviction of appellants. Appeal rejected. SYUD COMUR v. CROWN, **33 P.R. 1866, Cr.**

See ADMISSION, 8 W.R. Cr. 38.

See CHARGE TO JURY—MISDIRECTION, 9 W.R. Cr. 51.

See PENAL CODE, s. 38, A.W N. 1882, 23.

See PLEA OF GUILTY, 3 S.L.R. 581 Cr.=2 Ind. Cas. 372.

See SENTENCE—TRANSPORTATION, Rat. Un. Cr. C. 735=Cr. Rg. 4 of 1895.

See VERDICT OF JURY, Rat. Un. Cr. C. 982=Cr. Rg. 44 of 1898.

Cumulative and Separate Sentences.

See SENTENCE—CUMULATIVE AND SEPARATE SENTENCES.

Currency—Indian Paper Currency.

See ACT XX OF 1882.

Currency Notes.

If goods—*See* ACT IX OF 1872, ss. 76, 108, 3 C. 379=1 C.L.R. 339.

Currency Notes—*concluded.*

Theft of—Pass by delivery—Person actually entitled—*See* CRIM. PRO. CODE, 1898, s. 517, 1911, 1 M.W.N. 370=11 Ind. Cas. 584 =12 Cr. L.J. 400.

Theft of—Right of *bona fide* holder—*See* CRIM. PRO. CODE, 1898, ss. 517, 520, 5 S.L.R. 153=13 Cr. L. J. 21=13 Ind. Cas. 213.

See CRIM. PRO. CODE, 1898, ss. 517, 520, 1 C.L.R. 339=3 C. 379.

See PENAL CODE, ss. 23, 411, 408, 114, 4 S.L.R. 159=11 Cr. L.J. 730=8 Ind. Cas. 929.

Possession of stolen—Guilty knowledge—Presumption—*See* STOLEN PROPERTY, 1912 M.W.N. 362=11 M.L.T. 186=15 Ind. Cas. 315=13 Cr. L.J. 475.

See STOLEN PROPERTY, 2 Weir 664=7 M. H. C. 233.

Custody.

See DETENTION IN CUSTODY.

See ESCAPE FROM LAWFUL CUSTODY.

Of minor—*See* ACT VIII OF 1890, 16 B. 307.

Right of persons in custody to be protected—*See* BOM. ACT IV OF 1890, s. 52, 20 B. 394.

And possession—*See* MASTER AND SERVANT, U.B.R. 1897—1901, Vol. 1, 232.

Custody of Children.

(1)—*Right to custody of children—Custody of mother.*—A mother cannot have a right to the custody of her legitimate children adversely to the father; and the custody of the mother is, ordinarily, the custody of the father and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. *In the matter of the petition of* PRANKRISHNA SURMA; EMPRESS v PRANKRISHNA SURMA, **8 C. 969 =11 C L R. 6=4 Shome. L.R. 280.** [*R.*, 12 Cr. L J. 94=9 Ind. Cas. 511=56 P.L.R. 1911.]

(2)—*Custody of illegitimate chill.* — The mother of an illegitimate child has a natural right to its custody which will be regarded by the Court. *In the matter of* SAITHRI, **16 B. 307.**

(3)—*Father's right to custody—Legitimate children—English Law previous to statute* 2 *and* 3 *Vic.*, *c* 39.—A father, if a proper person, cannot be deprived of his legal right to the custody of his legitimate children of whatever age. 2 and 3 Vic., c. 39, which gives a discretionary power to a Judge in England, has not been extended to this country; therefore, the law applicable to cases which occurred in England previous to the passing of that statute is applicable here. *In the matter of* HOLMES, **1 Hyde 99.**

(4)—*Order by Criminal Court—Question by Civil Court.*—A father applied to a Criminal Court for the custody of his child, who was eleven years old and had always lived with the mother, and the Court ordered it to be delivered

Custody of Children—*concluded.*

to the father. *Held* that the Court was wrong, the question being one that ought to be decided in a Civil Court. KOOLSUM BIBEE v. SHEIKH EDOO, **25 W.R.Cr 35.**

Orders regarding custody and guardianship of children—*See* CRIM. PRO. CODE, 1898, ss. 144, 133, 2 Weir 66.

See CRIM.PRO. CODE, 1898, s. 491, 11 Bom. L.R. 75=9 Cr. L.J. 214.

See HABEAS CORPUS, WRIT OF, 12 Bom. L.R. 891=8 Ind. Cas. 619.

See MAINTENANCE, 4 C. 374, 19 M. 461=2 Weir 621.

Custody of Minor.

See LETTERS PATENT—LETTERS PATENT 1865—BOMBAY, cl. 15, 14 B. 555.

Custody of Wife.

See MAINTENANCE, 4 P.R. 1906, Cr.=4 Cr. L.J. 73.

Custom.

(1)—*Elements of valid custom.—Per Innes, J.*—To constitute a valid custom it must be reasonable as well as certain and ancient, and it is not probable that any Court would hold that to be a reasonable custom, which requires the members of one section of the community to restrict themselves in their ordinary rights in recognition of the reverence due to a religion to which they do not belong and in which they do not believe. SUNDARAM CHETTY v. QUEEN, **6 M. 203, F.B.=2 Weir 77.**

(2)—*Penal Code, s.* 494—*Proof of custom of divorce.*—A custom to the effect that a marriage becomes void, if the husband says that he does not want his wife and she gives him back her *tali*, cannot be considered immoral. Where such a custom is alleged as a defence to a charge under s. 494, the accused should be allowed to tender evidence of such a custom. *In re* THOLASINGAM, **1 Weir 568.**

See BIGAMY, 2 B.H.C. 117.

See BUDDHIST LAW — MARRIAGE, 15 Cr. L.J. 590=25 Ind. Cas. 342

Offence of murder—Baluch custom sanctioning killing for unchastity—No ground for mitigating the sentence—*See* PENAL CODE, s. 300, Exception 1, 7 S.L.R. 118=15 Cr.L.J. 501=24 Ind. Cas. 589.

Khatiks—Low class Sudras—Legality of divorce among them — *See* PENAL CODE, s. 498, 31 P.W.R. 1914, Cr.=181 P.L.R. 1914 =15 Cr. L.J. 539=24 Ind. Cas. 947.

Customary Right.

Penal Code, s. 426—Destruction of carcass against alleged—Right to skin of animals—*See* MISCHIEF, 8 B. 295.

Customs House.

Articles intercepted at the—Effect—Letter intercepted—Admissibility in evidence—*See* EVIDENCE—ADMISSIBILITY OF EVIDENCE, 18 C.L.J. 567.

Customs Officers.

Rawana, endorsement of, by police or customs officers—*See* BEN. ACT VII OF 1864, s. 16, 23 W. R. Cr. 6.

Dacoit.

Harbouring a—*See* PENAL CODE, s. 216, L.B.R. 1872—1892, 174.

Dacoity.

See PENAL CODE, ss. 395, 396.

(1)—*Penal Code*, ss. 24, 147, 391.—*Intention—Dacoity.*—Where the accused forcibly removed an ox and two cows, the property of the complainant (a Muhammadan), in order to prevent the butchery of the cattle, which the Hindu religion held to be a grossly outrageous act, *held*, that the accused was not guilty of the offence of dacoity, as there was no element of dishonesty in his conduct. QUEEN-EMPRESS v. RAGHUNATH RAI, **15 A. 22=A. W.N. 1892, 220.** [*Diss.*, 9 Cr.L.J. 389=5 N.L. R. 17, 1 Ind Cas. 800.]

(2)—*Penal Code*, s. 395—*Dacoity—Hindus taking forcible possession of cows from Muhammadans.*—When Hindus acting under a religious motive attack a party of Muhammadans driving cattle in a public road, and take forcible possession of the cattle, they are guilty of dacoity under s. 395, I.P.C. QUEEN-EMPRESS v. RAM BARAN, **15 A. 299=A.W.N. 1893, 142.** (15 A. 22, *D.*)

(3)—*Penal Code*, s. 396—*Scope.*—S. 396 is not a section creating a separate and distinct offence. It merely provides a particular punishment for those who conjointly commit dacoity in the course of which murder is committed. To establish a liability to the punishment provided by the section, it is necessary to prove that the person said to be liable was one of those who were conjointly committing dacoity and was present when the act of murder in the dacoity was committed. QUEEN-EMPRESS v. UMRAO SINGH, **16 A. 437=A.W.N. 1894, 178.** [*N.F.*, P.L.R. 1900, 44; *F.*, 15 P.R.1901, Cr.; *D.*, 17 A. 86=A.W.N. 1895, 12.]

(4)—*Penal Code*, s. 396 — *Dacoity with murder.*—In order to convict a dacoit under s. 396, I.P.C., it matters not when in the commission of dacoity a murder is committed, whether the particular dacoit was inside, or outside the house, where the dacoity was committed, or whether the murder was committed inside or outside the house, so long only as the murder was committed in the commission of that dacoity. QUEEN-EMPRESS v. TEJA, **17 A. 86=A.W.N. 1895, 12.** (16 A. 437, *D.*) [*F.*, P.L.R. 1900, 44, Cr.; *R.*, 6 Bom. L.R. 248.]

(5)—*Penal Code*, ss 34, 397—*Causing grievous hurt in course of dacoity—Liability of dacoits who have not caused the grievous hurt.*—The words "such offender" in s. 397 include any person taking part in the dacoity, who, though he may not have himself struck the blow causing the grievous hurt, is nevertheless liable for the act by reason of s. 34, Penal Code. QUEEN-EMPRESS v. MAHABIR TIWARI, **21 A. 263=A.W.N. 1899, 76.** [*Overruled*, 28 A. 404 =A.W.N. 1906, 61=3 Cr.L.J. 322, A.W.N. 1899, 186; *R.*, 14 Cr. L.J. 432=20 Ind. Cas. 416=7 L.B.R. 26, 15 Cr. L.J. 460=18 C.W.N. 723=24 Ind. Cas. 340, 1 L.B.R. 232; *D.*, 3 L. B.R. 121.]

(6)—*Penal Code*, s. 396—*Definition—Dacoity with murder—Murder committed while dacoits were escaping.*—Where, after the commission of a dacoity, in which, however, the dacoits being interrupted by the villagers, did not get any plunder, and were attempting to escape, and one or more of them, in order to facilitate the escape, attacked and killed one of the pursuing party, it was *held* that s. 396 did not apply, but only the person or persons, actually taking part in the killing were liable therefor. EMPEROR v. CHANDAR, **A.W.N. 1906, 47=3 Cr. L.J. 294.** [*D.*, 17 M.L.J. 118=5 Cr. L.J. 201.]

(7)—*Penal Code*, s. 397—*Dacoity with use of deadly weapons—Applicability of section.*—*Held*, that s 397 applies only to the actual person or persons, who, at the time of committing robbery, or dacoity, may use any deadly weapon, or may cause grievous hurt to any person, or may attempt to cause death or grievous hurt to any person. EMPEROR v. NAGESHWAR, **A.W.N. 1906, 61=3 Cr. L.J. 322=28 A. 404.**

(8)—*Penal Code*, s. 400—*Wives and mistresses of dacoits—Liability.*—The mere fact that some women are the wives or mistresses of dacoits does not render them liable also as dacoits. QUEEN-EMPRESS v. YELLI *Kom* YELLA, **Rat. Un. Cr. C. 863=Cr. Rg. 26 of 1896.**

(9)—*Penal Code*, s. 400 — *Offence under section, what constitutes.*—In order to sustain a conviction under s 400, I.P.C., evidence must be given of a gang of persons, of their association, and association for the purpose of habitually committing dacoity and robbery. EMPRESS v. NABA KUMAR PATNAIK, **1 C.W. N. 146.** (14 C. 721, *R.*). *See also* MANKURA PASI v. QUEEN-EMPRESS, **27 C. 139=4 C.W. N. 97.**

(10)—*The words "conjointly with five or more persons" redundant in a charge of.*—The words "conjointly with five or more persons" were observed to be redundant in a charge, inasmuch as the fact of five or more persons being concerned is implied in the term "dacoity," as defined in s. 391 of the Penal Code. **2 W.R. Cr. Letters, 1.**

(11)—*Penal Code*, s. 400—*What constitutes "habitually committing dacoity"—Crim. Pro. Code*, s. 423, *cl*, (2)—*Evidence Act*, I *of* 1872, s. 54—*Evidence of other crimes is evidence of bad character and inadmissible.*—In a case under s. 400, Indian Penal Code, it must be proved that the accused belong to a gang which is consciously associated for the specific purpose of habitually committing dacoity. The associating and purpose of association may be proved by direct evidence, *viz.*, that the accused met and determined to join

Dacoity—*continued.*

together for the purpose of habitually committing dacoity. In the absence of direct evidence, the associating and purpose of associating may be established by proof of facts from which they may reasonably be inferred. Before the verdict of the jury can be interfered with, the High Court must, under s. 423, cl. (2), Crim. Pro. Code, be satisfied that the verdict is erroneous owing to the misdirection by the Judge or to a misunderstanding on the part of the jury of the law as laid down by the Judge. *Quære* :—Whether evidence to show that the accused had committed crimes other than dacoities would be relevant to a charge under s. 400, I.P.C. Such evidence is really evidence of bad character and is excluded by s. 54, Evidence Act, and the bad character of the accused is not a fact in issue. If the accused or groups of them had been concerned in a large number of dacoities in a comparatively short space of time, it might be inferred that they were members of a gang associated for the purpose of habitually committing dacoity. PUBLIC PROSECUTOR v. BONGIRI PATTIGADU, **5 M. L.T. 100=32 M. 179=9 Cr. L.J. 567=2 Ind. Cas. 307.**

(12)—*Penal Code, s. 390—Robbery—Claim of right.*—However erroneous a claim of right may be, if in fact the conduct of the accused was solely induced by a *bona fide* belief in such claim, a charge of robbery cannot be maintained. If a person has violated the orders of a Civil Court, or, acting under an erroneous notion of his right, has used force, or otherwise committed a breach of the peace, there are sufficient ways in which the authority of the Civil Court may be vindicated, and the breach of the public peace or the use of force to private persons adequately punished ; but to go further than this, would be to distort every instance of trespass or assault in assertion of the rights of property into a case of robbery or dacoity. *In re* KARAKA NACHIYAR, **1 Weir 443=3 M. H.C. 254.**

(13)—*Penal Code, s. 395—Dacoity—Duty of Judge in cases of dacoity.*—In cases of dacoity, the Judge should explain to the jury with sufficient clearness that, unless they are satisfied that there were five or more persons committing the robbery or that the persons present and aiding in the commission of the robbery numbered five or more persons, there could be no dacoity. Where six persons were charged with dacoity, and the jury acquitted two of them, and they were not distinctly instructed by the Judge that, if they found that the robbery was committed by less than five persons, the conviction should not be for dacoity but for robbery, *held*, that the Judge has misdirected the jury and the conviction on the charge of dacoity should be set aside. *In re* MOOKKANDI MANIAGARAN, **1 Weir 446=2 Weir 519.**

(14)—*Penal Code, s. 396—Dacoity with murder—Form of charge.*—Where, in the commission of dacoity, one of the dacoits commits murder, every one of the persons committing the dacoity should be charged under s. 396 and should not be charged with dacoity and murder. The proper course is to charge the prisoners as follows:—" that you. . . committed dacoity and that, in the commission of such dacoity, murder was committed by one of the numbers, and that you have thereby committed an offence puishable under s. 396 of the Penal Code." *In re* MUTTIRULAPPAN, **1 Weir 447.**

(15)—*Grievous hurt no evidence whether accused actually caused—Conviction, amendment of—Penal Code, ss. 34, 392, 394, 395, 397.*—The prisoner and another attacked a man and beat him with *lathis*. There was no evidence as to which of them it was who struck the blow which broke his finger. The question was whether the prisoner could be properly convicted under s. 397, Indian Penal Code. *Held*, that the punishment provided by s. 397 can be inflicted only on the person actually causing grievous hurt, and not on a person who might be liable for grievous hurt committed by another only in virtue of s. 34 of the Indian Penal Code. *Held*, therefore, that the prisoner was not liable to enhanced punishment under s. 397. S. 397 does not create a substantive offence, and a Court, therefore, should not frame a charge under that section but under s. 392 read with s. 397, or s. 395 read with s. 397, as the case may be. BHAGWANT v. QUEEN-EMPRESS, **3 O.C. 263.**

(16)—*Penal Code, s. 396—Dacoity in the course of which murder is committed.*—If a dacoit in the progress, and in pursuance, of the commission of a dacoity, commits a murder, all of his companions who are participating in the commission of the same dacoity may be convicted under s. 396, Indian Penal Code, although they may have no participation in the murder beyond the fact of participation in the dacoity. CHITTU v. EMPRESS, **P.L.R. 1900, 44, Cr.** (16 A. 86, *F.*; 16 A. 437, *Not F.*)

(17)—*Robbery with murder, when— Penal Code, ss. 37, 111, 149, 396.*—Robbery with murder, when committed conjointly by five or more persons, is more than robbery, and amounts to dacoity with murder and is punishable with death. PATAWPRE v. QUEEN-EMPRESS; QUEEN-EMPRESS v. PATAWPRE; PAKALO v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 194.**

(18)—*Penal Code, s. 397—Only some dacoits armed with deadly weapons.*—The punishment provided in s. 397 of the Penal Code applies only to those persons taking part in a dacoity, who themselves use deadly weapons or cause grievous hurt. The other dacoits who may be liable only by virtue of s. 34 of the Code are not liable under s. 397, but only under s. 392 or 395. QUEEN-EMPRESS v. SENTA, **A.W.N. 1899, 186=28 A. 404, Note.** (21 M. 263, A.W.N. 1899, 76, *Diss.*) [*F.*, 28 A. 404=A.W.N. 1906, 61=3 Cr. L.J. 322, 3 O.C. 263; *R.*, 14 Cr. L.J. 432=20 Ind. Cas. 416=7 L.B.R. 26.]

Dacoity—*continued.*

(19)—*Assembly with object of committing dacoity — Admission.*—The members of an unlawful assembly were held to be guilty of an offence under s. 402 of the Penal Code, on their own admission that they not only knew that the assembly was an assembly for committing dacoity, but also that all the members (including themselves) composing it lived on the proceeds of dacoity, and had no other means of living. QUEEN v. KENDRA KAMAR, 7 **W.R. Cr. 61.**

(20)—*Robbery with violence—Penal Code, s. 395—Creating fear of hurt.*—A body of men who attack and plunder a house by the mere fact of the proprietor's family having been able to make their escape a few minutes before the robbers forced an entrance are not taken out of the purview of s. 395, Penal Code. If the robbers cause or attempt to cause the fear of instant hurt or of instant wrongful restraint, the section will apply. QUEEN v. KISSOREE PATER, **7 W.R. Cr. 35.**

(21)—*Participation in dacoity—Persons found in possession of property.*—Where a prisoner is apprehended eight days after a dacoity with part of the plunder in his possession, there is as good a ground for charging him with the dacoity, as with having received or retained it with guilty knowledge. He ought to be charged in the alternative form. QUEEN v. MOTEE JOLAHA, **5 W.R. Cr. 66.**

(21-*a*)—*Participation in dacoity — Persons found in possession of property.*—The presumption where persons are found within six hours of the commission of a dacoity with some of the plundered property in their possession is that they are participators in the dacoity, and not merely receivers. QUEEN v. CASSY MULL, **3 W.R. Cr. 10**; QUEEN v. MOTEE JOLAHA, **5 W.R. Cr. 66.**

(22)—*House-breaking by night.*—Five armed men were discovered committing an act of house-breaking by night. One of the party was engaged in cutting a hole through the wall, while the others stood on guard. When the alarm was given, the neighbours ran up, and one of the robbers cut down one of the villagers. *Held* that the crime of which they were guilty was house-breaking by night, and not dacoity. QUEEN v. RAVUT RAJWAR, **W. R. 1864, Cr. 39.**

(23)—*Elements of offence.*—In a case of dacoity, the Judge should direct the jury to convict only if they find that all the prisoners had the intention of causing wrongful loss to the prosecutor or wrongful gain to themselves. QUEEN v. BONOMOLLY GHOSE, **W.R. 1864, Cr. 8.**

(24)—*Definition of—Plunder.*—The definition of dacoity in the Penal Code is so wide as to extend to what would have been treated as cases of plunder under the old law. QUEEN v. KHOYRAT ALLY BEG, **3 W.R. Cr. 60.**

(25)—*Deadly weapon used in dacoity or robbery—Penal Code, s. 397.*—A conviction under s. 397, Penal Code, for using a deadly weapon during the commission of robbery or dacoity is good, irrespective of the number of thieves, be it five or under. QUEEN v. DWARKA AHEER, **2 W.R. Cr. 49.**

(26)—*Gang of dacoits—Penal Code, s. 400.*—In a charge under s. 400, Penal Code, the prosecution should establish that there existed, at the time specified, a gang of persons associated together for habitually committing dacoity, and that the accused was one of the gang. QUEEN v. MOOKTARAM SIRDAR, **23 W.R. Cr. 18.**

(27)—*Dacoity, conviction for, if proper when less than five of the accused charged actually convicted—Charge of dacoity if sufficient notice of complicity with others not specified —Verdict of jury—Weight of evidence, High Court, if should discuss — Misdirection.*—Where eight persons were each of them separately charged with dacoity, but the jury acquitted four of them but found the other four guilty, the evidence before them being that there were more than five persons concerned in the offence even if the four who were acquitted were not there: *Held*, that the charge, as against each, of dacoity, was sufficient notice to each of the accused that they were charged with four or more others, and the conviction by the jury of dacoity would import a finding that there were four or more others engaged with each dacoity. The mere fact that the evidence was not sufficient to convict four of the accused actually charged would not in any way affect the question of the number of persons engaged. It is not necessary that the charge should in such cases specify that other persons besides those convicted and acquitted took part in the dacoity or that they should be referred to in the charge. Although in this case the evidence was not perhaps such as would commend itself to minds professionally trained to weigh testimony, for the High Court to express any opinion on its weight would be to usurp the functions of the jury. It had only to see that there had been no error of law in the proceedings and no misdirection to the jury. RASHIDAZZAMAN, *alias* BARA KAZI v. KING-EMPEROR, **15 C W.N. 434 = 10 Ind Cas. 684 = 12 Cr. L J. 193.**

See ABETMENT, 25 B. 90 = 2 Bom. L R. 653.

Identification of accused in case of dacoity —*See* ACCUSED PERSON, 3 O.C. 72.

See ACT VI OF 1864, 3 Bom. L.R. 419 = 25 B. 712, F.B.

See ACT XXI OF 1879, 37 P.R. 1881, Cr.

See APPROVER, 11 W.R. Cr. 21.

Attempt to commit—*See* ATTEMPT, 7 W.R. Cr. 48.

Charge for—No details of offence—Conviction to be set aside—Evidence of other dacoities—Admissibility—*See* CHARGE—GENERAL, 1912 M.W.N. 49 = 13 Ind. Cas. 781 = 13 Cr. L.J. 125.

See CHARGE—GENERAL, 17 B. 369, 7 P.R. 1901, Cr.

Dacoity—*continued.*

See CONFESSION—CONFESSIONS BY CO-ACCUSED—ADMISSIBILITY, 5 B. 63.

Abandonment of charge of, if bar to trial for conspiracy—*See* CONSPIRACY, 16 C.W.N. 1105 =16 Ind. Cas. 257.

Production of stolen property — Other evidence doubtful—Effect—*See* CONVICTION, 31 P.W.R. 1913, Cr.=314 P.L.R. 1913=21 Ind. Cas. 473=14 Cr. L.J. 601.

See CRIM. PRO. CODE, 1898, s. 56, 11 W.R. Cr. 20.

Person said to be of bad character not necessarily a dacoit—*See* CRIM. PRO. CODE, 1898, s. 110, 15 O.C. 263=17 Ind. Cas. 72=13 Cr. L. J. 760.

See CRIM. PRO. CODE, 1898, s. 237 (1), Rat. Un. Cr. C. 34=Cr. Rg. 16-6-1870.

See CRIM. PRO. CODE, 1898, s. 239, 7 Ind. Cas. 390=8 M.L.T. 286=1910 M.W.N. 540.

See CRIM. PRO CODE, 1898, s. 423, cl. 2, 2 Weir 517.

See EVIDENCE—GENERAL, 8 M.L.T. 244= 8 Ind. Cas. 317=11 Cr. L.J. 623.

See EVIDENCE ACT, 1872 s. 32 (1), (3), 7 L.B.R. 33=20 Ind. Cas. 90=14 Cr. L.J 510 =6 Bur. L.T. 183.

And receiving stolen property—Distinct offences — *See* JOINDER OF CHARGES — GENERAL, 13 W.R. Cr. 42.

Joinder of charges of, forgery, using a forged document as genuine and cheating — *See* JOINDER OF CHARGES—WHEN LEGAL, 11 C.W.N. 715=5 Cr. L.J. 484.

Joint trial of three separate— *See* JOINT TRIAL, A.W.N. 1883, 12.

Several—Separate trials—*See* JOINT TRIAL, A.W.N. 1882, 180.

See JURISDICTION OF CRIMINAL COURTS —GENERAL, 9 A. 523=A.W.N. 1887, 131.

Accompanied with murder — Constructive murder—*See* MURDER, 2 Bom. L.R. 325.

Murder by one of the dacoits—Liability of other dacoits—*See* MURDER, 6 Bom. L R. 248.

See MURDER, 4 P.R. 1900, Cr. 2 W.R. Cr. 39.

See PARDON, L.B.R. 1872—1892, 586.

See PENAL CODE, s. 107, A.W.N. 1903, 2.

See PENAL CODE, ss. 391, 392, 7 M.L.T. 340=5 Ind. Cas. 797=11 Cr. L.J. 249.

See PENAL CODE, s. 397, 16 C.P.L.R. 97.

See PENAL CODE, s. 400, 18 P.L.R. 1910, Cr.

See REFERENCE TO HIGH COURT, 10 Bom. L.R. 632=8 Cr. L.J. 143.

See SECURITY FOR GOOD BEHAVIOUR, 11 C.W.N. 129=4 Cr. L.J. 464, 11 Cr. L.J. 36=4 Ind. Cas. 789=6 A.L.J. 961.

See SENTENCE—CAPITAL SENTENCE, L. B.R. 1893—1900, 564.

With murder—Penal Code, s. 396—*See* SENTENCE —CUMULATIVE AND SEPARATE SENTENCES, W.R. 1864, Cr. 30.

Dacoity—*concluded.*

And receiving stolen property — *See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, W.R. 1864, Cr. 27.

See SENTENCE—IMPRISONMENT—GENERAL, 13 W.R. Cr. 27.

See THEFT—MISCELLANEOUS, 5 C.W.N. 372.

Daffadar.

See BEN. ACT VI OF 1870, s. 39, cl. (2), 12 C.W.N. 367=7 Cr. L.J. 188=35 C. 361.

Dagger.

See ACT XI OF 1878, ss. 14, 15, 19 (*f*), 1 Weir 666.

Daily Fine.

Continuing offences likely to be committed after proceeding—*See* BEN. ACT III OF 1885, s. 140, 37 C. 671=7 Ind. Cas. 931=11 Cr. L.J. 540.

Dam.

Daming the stream by erection of a bund—*See* CRIM. PRO. CODE, 1898, s. 133, 32 C. 930 =2 Cr. L.J. 762.

Damages.

See DEFAMATION.

See COMPENSATION.

See MALICIOUS PROSECUTION.

(1)—*Suit for damages for malicious prosecution—Conviction by a Criminal Court bars such suit.*—A conviction by a Criminal Court, even though afterwards reversed on appeal, is evidence that the complainant had reasonable and probable cause for prosecuting the accused; and, when there has been such a conviction, a suit for damages for malicious prosecution will not lie, save in very exceptional circumstances. SOOBRAMONY PILLAY CHETTY v. MAUNG PO LU, **2 L B R. 111.** (13 W.R. 276, 3 M.H.C. 238, 21 A. 26, *R.*)

(2)— *Cheating — Criminal prosecution — Contract for sale—Breach—Suit for damages.*— Where the defendant who had contracted to sell certain goods to the plaintiff, was prosecuted in the Criminal Court, under s. 417 of the Penal Code, convicted and compelled to return the consideration money, the defendant could not again be sued in a Civil Court for the value of the goods and for damages for non-delivery. PROHLAD TEWAR MANJEE v. DEB NARAIN GHOSE, **18 W.R. 247.**

(3)—*Injury to reputation—Malicious prosecution.*—Damages will be given if injury is done to one's reputation by maliciously prosecuting him. RAMJEEBURN MOOKERJEE v. WOOMA CHURN HAJRAH, **7 W.R. 117.**

(4)—*Injury to personal honour—Malicious prosecution—Reasonable and probable cause—Conviction reversed on appeal.*—Where a suit for damages done to personal honour by the defendant maliciously by prosecuting the plaintiff in a case where the plaintiff was convicted by the lower Court, but acquitted on

Damages—*continued.*

appeal, *held* that the plaintiff should allege and prove that the defendant, in making the complaint, had no reasonable or probable cause for making the same. No such allegation could possibly be made, or, if made, could be supported, where there has been a conviction by a Magistrate having jurisdiction. KAZEE KOIBUTOOLLAH v. MOTEE PESHKUR, **13 W. R. 276.**

(5)—*Remoteness of—Suit for trespass—Expenses of criminal proceedings.*—The plaintiffs, as the agents of the hereditary *durmakurtah* of a pagoda, sued the committee of the District, appointed by virtue of Act XX of 1863, and their servants, for a trespass by the defendants, in forcibly dispossessing them of the pagoda and the property therein, and for the wrongful removal and the retention of the property, alleging that the defendants were punished criminally for the trespass by the Magistrate, who, after enquiry under ss. 318 and 319 of the Criminal Procedure Code, restored the possession of the pagoda to the plaintiffs. The damages claimed were, besides other things, the amount of counsel's and vakil's fees in the criminal proceedings. *Held* that the expenses incurred in the criminal proceedings instituted by the plaintiffs were not recoverable as damages, such damages not being directly traceable to the wrong and not being its natural and necessary consequences. VENKATASA NAICKER v. T. SRINIVASSA CHARIYAR AGENT OF SRI SHATAGOPASAMY OF SRI AGOBALA MUTTUM AT TRIVELLORE, **4 M.H. C. 410.**

(6)—*Loss of profits from non cultivation—Magistrate's order as to possession—Disputed possession—Non-cultivation—Crim. Pro. Code,* 1872, s. 531.—In a dispute regarding the possession of certain land, an order was passed under s. 531 of the Code of Criminal Procedure, forbidding both the plaintiff and the defendant, from interfering with the land until either established his title in a Civil Court, in consequence of which it was not cultivated in the succeeding year. *Held*, that the damages did not result from the defendant's act, being the consequence of the order of the Magistrate. AMMANI AMMAL v. SELLAYI AMMAL, **6 M. 426.** [*Rel. on*, 12 Cr. L.J. 14=9 Ind. Cas. 137; *R.*, 10 C.L.J. 226=14 C.W.N. 96=3 Ind. Cas. 12.]

Debt really due—Payment made in the expectation of bond securing the debt being returned—Return of another and a false bond—Money paid available for other existing debt—False pretence—False inducement—Fraud and deceit—, or loss, remote, if contemplated—Conduct of parties— *See* CHEATING —GENERAL, 2 C.L.J. 524=3 Cr. L.J. 160.

Attempt at cheating—False representation to pleader—Damage or harm in mind, reputation—Complainant, position of—*See* CHEATING—GENERAL, 7 C.L.J. 375=12 C.W.N. 750=7 Cr. L.J. 342.

Damages—*concluded.*

See COMPOUNDING OFFENCE, 3 M. 6=5 Ind. Jur. 467.

Suit for—*See* FALSE IMPRISONMENT, A.W.N. 1906, 263=3 A.L.J. 650.

Criminal trespass—Mischief — Damage of one's own property by himself—Intention—*See* PENAL CODE, ss. 447, 442, 7 Ind. Cas. 812=15 C.W.N. 224=11 Cr. L.J. 532.

Dancing Girls.

See PROSTITUTE.

See PROSTITUTION.

See PENAL CODE, ss. 372, 373.

Singing obscene songs—Brothel—*See* BEN. ACT III OF 1906, s. 2, 6 C.L.J. 710=6 Cr. L. J. 423.

Danger.

See ACT IX OF 1890, s. 101, 13 P.R. 1906, Cr.=5 Cr. L.J. 81=59 P.L.R. 1907.

Dangerous Building.

See NUISANCE UNDER CRIM. PRO. CODE, 5 P.R. 1890, Cr.

Dangerous Weapon.

Lathi—Walking cane-stick 4 feet long and one inch thick—Whether dangerous weapon—*See* PENAL CODE, ss. 97, 99, 102, 323, 334, 351, 352, 14 Cr. L.J. 442=20 Ind. Cas. 602.

Dashe-upyat.

whether an arm—*See* ACT XI OF 1878, s. 4, 5 L.B.R. 207=3 Bur.L.T. 91=8 Ind.Cas. 972.

Datura.

Causing death by administration of—*See* PENAL CODE, s. 304, U.B.R. 1897—1901, Vol. I, 296.

Deadly Weapon.

See PENAL CODE, s. 148, 15 A. 19=A.W.N. 1892, 158.

Bamboos, if deadly weapons—*See* RIOTING, 1 Weir 70.

Deaf and Dumb Person.

See ACCUSED PERSON.

See CRIM. PRO. CODE, 1898, SS. 340, 341.

(1)—*Crim. Pro. Code* (1898), s. 341—*Deaf and dumb accused person unable to understand proceedings—Commitment to Sessions—Powers of High Court.*—Where a Deputy Magistrate committed the accused, who had been until recently in a lunatic asylum and who was deaf and dumb and could not be made to understand the proceedings, to the Sessions on a charge of murder and forwarded the proceedings, under s. 341 to the High Court, *held*, that law does not contemplate that the Sessions trial shall necessarily take place. It is discretionary with the High Court in such cases of commitment to order whether the trial should proceed or not, and it should consider whether any benefit will be likely to result especially to the accused by

Deaf and Dumb Person—*continued.*

such trial. QUEEN-EMPRESS v. SOMIR BOWRA *alias* SOMIR BABA, **27 C. 368=4 C.W.N. 421.** [*Rel. on,* 12 Cr. L.J. 386=11 Ind. Cas 250=U.B.R. 1910, 4th Qr. 57; *R.*, 12 Cr. L.J. 613 =12 Ind. Cas. 989=13 P.R. 1911, Cr.].

(2)—*Crim. Pro. Code*, 1872, *s.* 186—*Deaf and dumb accused.*—Where a deaf and dumb accused is charged with an offence, the Judge should proceed with the trial, and if he considered that the accused had not understood the proceedings and the trial resulted in conviction, the case should be reported. EMPRESS v. MATHURIA, **A.W.N. 1881, 15.**

(3)—*Crim. Pro. Code* (1872), *s.* 186—*Deaf and dumb accused.*—*Held* that the inability of the accused, on account of her being deaf and dumb, was not a ground for refraining from passing sentence on her, if there was no reason to doubt the guilt of the accused or that she was criminally responsible for the act by reason of understanding the nature and consequences of it. EMPRESS v. MATHURIA, **A.W.N. 1881, 54.**

(4)—*Deaf and dumb person—Found guilty of murder—Inability to understand proceedings—Proper course to deal with him—Report under s.* 471, *Crim. Pro. Code.*—Where a deaf and dumb person who was unable to understand the proceedings of the trial was found guilty of murder, the proper course to be taken is to treat him as a lunatic and to report his case under s. 471, Crim. Pro. Code, for orders of the Government. CROWN v. DOST MUHAMMAD, **13 P.R. 1911, Cr.=89 P.W.R. 1911=12 Ind. Cas. 989=12 Cr. L.J. 613.** (37 P.R. 1889, Cr., *F.*; 34 P.R. 1885, Cr., 22 W.R. 35 and 72, Cr. and 27 C. 368, *R.*)

(5)—*Evidence—Deaf and dumb witness—Incapable of understanding questions put in cross-examination—Not a competent witness—Trial by jury—Misdirection, what amounts to.*—A witness, who was so deaf and dumb that it was found impossible to make her understand the question put to her in cross-examination, was not a competent witness, and her evidence ought to have been struck out; and a conviction based solely on her evidence must be quashed. Where a prosecution witness, who identified the accused for the first time six weeks after the occurrence of dacoity, said that he did not identify any of them at an earlier identification parade, but there was no other evidence whether they were or were not present at that earlier parade, the District Judge wrongly told the jury that the accused were not present at it. *Held*, that the statement amounted to a misdirection; and there being absolutely no other evidence against the accused, except that of this one witness who identified them six weeks after the dacoity, it is not safe to convict them. Where the Sessions Judge failed to bring to the notice of the jury a fact of great importance elicited in cross-examination, *viz.*, that the only witness, who identified another, accused, was terrified and not in her proper senses on the night of the dacoity. *Held*, that failure to

Deaf and Dumb Person—*concluded.*

to do so amounted to a misdirection. Further, *held*, there being no other evidence against this accused, it is not safe to convict him upon the evidence of such a witness. VEKATTEN v. EMPEROR, **1912 M.W.N. 100=14 Ind. Cas. 653=13 Cr. L.J. 271.**

See CRIM. PRO. CODE, 1898, ss. 340, 426, 348, 19 W.R. 37, Cr.

Deaf Mute.

See EVIDENCE ACT, 1872, ss. 8, 32, 118, 119, 5 O.C. 246.

Possession of stolen property by a—Presumption—*See* EVIDENCE ACT, 1872, s. 114 (*a*), 1914 M.W.N. 821=15 Cr. L.J. 578=25 Ind. Cas. 330.

Death.

See CULPABLE HOMICIDE.

See MURDER.

See RASH AND NEGLIGENT ACT, CAUSING DEATH BY.

See SUDDEN DEATH.

(1)—*Death caused by an act criminal in itself—Subordinate Magistrates not empowered to try without permission case in which death is caused—In case of doubt, Magistrate to commit to Court of Session.*—When death is caused by an act which is criminal in itself irrespective of its consequences, the degree of guilt of the offender depends on the intention or knowledge with which he did the act, and the sections under which he may be convicted are ss. 302, 304, 325, 323 and 352, with variations on account of the weapon or means used, the provocation and so forth, but s. 304-A does not come into the list at all, and ss. 304-A, 338, 337 and 336 apply only to acts done without any criminal intent. As a rule a subordinate Magistrate ought not to try any case in which death is caused, without first obtaining the orders of the District Magistrate to do so. When there is any doubt whether the intention or knowledge of the accused was such that the offence would be culpable homicide, the case should not be tried by any Magistrate, but should be committed to the Court of Session. CROWN v. SAN PE, **1 L B.R. 259.** (4 C. 764, *F.*)

Omission to report sudden—In a house—*See* CRIM. PRO. CODE, 1898, s. 45, 12 M. 92 =1 Weir 102=2 Weir 38.

Death of one of the parties, before the termination of proceedings—*See* CRIM. PRO. CODE, 1898, s. 145, 2 C.L.R. 264.

Sentence of—Delay between passing of sentence in Sessions Court and final orders in the High Court if sufficient ground for not confirming sentence of death—*See* CRIM. PRO. CODE, 1898, ss. 154, 374, 17 C.W.N. 1213.

Death of appellant pending appeal — *See* CRIM. PRO. CODE, 1898, s. 431, Rat. Un. Cr. C. 707=Cr. Rg. 40 of 1894.

Statement by deceased as to the cause of his—Admissibility—*See* EVIDENCE ACT, 1872, s. 32 (1), 6 C.L.R. 278.

Death—*concluded.*

Robbery attended with— *See* GRIEVOUS HURT, 6 W.R. Cr. 16.

Death by Negligence.

See GRIEVOUS HURT, 3 A. 776.

Death of Party.

See ABATEMENT OF APPEAL.

Debt.

Advance in the nature of—*See* ACT XIII OF 1859, 13 Bom. L.R. 548=11 Ind. Cas. 586=12 Cr.L.J. 402.

Really due—Payment made in the expectation of bond securing the—being returned—Return of another and a false bond—Money paid available for other existing debt—False pretence—False inducement—Fraud and deceit—Damage or loss, remote, if contemplated—Conduct of parties—*See* CHEATING—GENERAL, 2 C.L.J. 524=3 Cr.L.J. 160.

Debtor.

See DEBTOR AND CREDITOR.

Arrest of judgment—Going to Court—*See* ARREST, 3 W.R. Cr. 53.

Forging release to screen himself from liability to pay the debt—*See* FORGERY, 11 M. 411=1 Weir 549.

Removal of property without consent to satisfy one's own claim—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 18 A. 88=A.W.N. 1895, 283.

See THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 22 C. 1017, 1 Weir 405.

Creditor taking debtor's property to enforce his claim—*See* THEFT—THINGS IN RESPECT OF WHICH THE OFFENCE OF THEFT CANNOT BE COMMITTED, 22 C. 669.

Debtor and Creditor.

(1)—*Act II of* 1899 (*Stamp*), ss. 62 (1) (*b*), 64 (*c*)—*Entry in account book made by debtor.*—A money-lender and cloth-seller, being illiterate, kept a register divided into columns, in which his customers used to make or caused to be made entries of the loan taken or purchases made by them. They also noted or caused to be noted in the book the payments made by them. A pleader, who owed him a sum of Rs. 90-2-0, paid this sum, and caused his clerk to enter in the column of remarks in the account book with reference to this payment, a note to the effect that the full amount had been repaid, No receipt for money paid was asked for. *Held*, that the money-lender could not be convicted either under s. 62 (1) (*b*), Act II of 1899, as the entry was not made by the accused, or under s. 64 (*c*) of the commission of "any other act calculated to deprive the Government of any duty" under the Act. EMPEROR v. KALLU MAL, **A.W.N. 1903, 173.**

See ACT I OF 1879, art. 52, 11 C. 267.

See CRIMINAL BREACH OF TRUST, 135 P. L.R. 1901.

See FRAUD, Rat. Un. Cr. C. 110.

Debtor and Creditor—*concluded.*

See PENAL CODE, ss. 379, 403, 406 and 411, 6 Bom.L.R. 1093.

Advance to brokers on pro-notes—Loan or trust—Relation of—*See* PENAL CODE, s. 405, 6 L B.R. 62=17 Ind. Cas. 824=5 Bur.L.T. 143=13 Cr.L.J. 888, F.B.

See PENAL CODE, ss. 422, 511, 28 C. 314=5 C.W.N. 174.

See SANCTION TO PROSECUTE—WHO MAY APPLY FOR SANCTION, 26 A. 1=A.W.N. 1903, 171, A.W.N. 1903, 170.

Debts, Collection of, on Succession.

See ACT XXVII OF 1860.

Debutter Estate.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 10 C.W.N. 1088=4 Cr.L.J. 215.

Decision.

Withdrawal of proceedings by petitioner—Award of costs—Order allowing withdrawal, whether a—*See* CRIM.PRO.CODE, 1898, ss. 145, 148, 9 Ind. Cas. 289=9 M.L.T. 324=12 Cr.L.J. 49.

Declaration.

See DYING DECLARATION.

Declaratory Decree, Suit for.

(1)—*Orders of Criminal Court—Order as to nuisance—Suit to set aside order of Magistrate under Act* XXV *of* 1861, *ss.* 308 *to* 315—*Jurisdiction of Civil Court.*—The plaintiff built a bridge over a certain *khal* (canal), which was removed by order of the Magistrate under ch. XX of the Crim. Pro. Code; the defendant, it was alleged, set the Magistrate in motion. The plaintiff now sued the defendant for a declaration of his right to erect the bridge in question, and to have the order of the Magistrate set aside. *Held*, that no such suit would lie. The Judge in the Court below held that a suit would lie to try the plaintiff's right to erect a bridge over the *khal. Held*, on appeal, the suit ought to have been dismissed. MADHAB CHANDRA GUHO v. KAMALA KANT CHUCKERBUTTY, **6 B.L R. 643=15 W.R. 293.**

Declaratory suit to set aside award—*See* ACT I OF 1877, s. 42, 15 W.R. 293=6 B.L.R. 643.

See ACT I OF 1877, s. 42, 5 C. 7=4 C.L.R. 309, F.B., 17 B. 293, 6 M. 376, 17 W.R. 281, 22 W.R. 329.

Decree.

See CONTEMPT OF COURT, 27 A. 380=2 A.L.J. 18=A.W.N. 1905, 10.

Order for maintenance — Civil Court's decree for restitution of conjugal rights—*See* MAINTENANCE, 27 A. 483=A.W.N. 1905, 54=2 A.L.J. 160.

Decree, Construction of.

See CRIM. PRO. CODE, 1898, s. 144, 2 Weir 74.

Decree-holder.

Arrest of judgment-debtor — Judgment-debtor allowed to go by, and process-server —*See* PENAL CODE, s. 224, 7 Ind. Cas. 392 = 11 Cr.L J. 477 = 8 M.L.T. 286.

Decree nisi.

Effect of—*See* PENAL CODE, s. 363, 18 C. W.N. 484 = 15 Cr L.J. 72 = 22 Ind. Cas. 424 = 41 C. 714.

Decree, not inter partes.

Decrees of Civil Court not inter partes—Possession under such decree—Jurisdiction of Magistrate to declare opposite party's possession—*See* CRIM. PRO. CODE, 1898, s. 145, 13 Cr.L.J. 583 = 15 Ind. Cas. 999.

Deeds, Registration of.

See BEN. ACT IX OF 1862.

De-facto Holder.

Acts of *de facto* holder of legal office—Pre-requisites of *de facto* officer—Sanction by *de facto* officer—*See* PENAL CODE, ss. 121-A, 123, 15 C.L.J. 517 = 16 Ind. Cas. 257 = 13 Cr. L.J. 609.

Defamation.

See LIBEL.

See PENAL CODE; SS. 499, 500.

(1)—*Penal Code, ss.* 499 *and* 500—*Defamation, what constitutes.*—The offence of defamation may be committed whether the effect mentioned in s. 499, Penal Code, as intended or probable, is produced or not. HIGH COURT PROCEEDINGS, 12TH MAY 1873, No. 1782, **1 Weir 575.**

(2)—*Penal Code, ss.* 499 *and* 500—*Defamation what constitutes.*—To support a charge of defamation, it is not necessary to show that the character of the person defamed as being actually injured. It is sufficient to show that the person making the imputation intended or has reason to believe that the defamatory words would have that effect. HIGH COURT PROCEEDINGS, 12TH MAY 1883, No. 1785, **1 Weir 575.**

(3)—*Penal Code, s.* 199, *Excep.* 9—*Defamation, what amounts to.*—At a meeting of the villagers held to arrange for the performance of the "Pattabhishekam" ceremony of the reading of a "Puranum," the accused said of the complainant, the spiritual head of the Vaishnava sect in the village that the members of the complainant's house should not be invited to assemblies for being shown religious respect as they were unworthy. *Held*, that the words were not defamatory and that, even if defamatory, the accused was protected by Excep. 9. VINJAMURI SUBRAMANIA AIYAH v. MUDAMBI KRISHNAMACHARLU, **1 Weir 613.**

(4)—*Civil suit for damages - Law applicable —Penal Code, ss.* 499, 500.—The principles embodied in the Penal Code regarding defamation are well adapted, to supply the test by which the liability or otherwise of defendants

Defamation—*continued.*

to civil suits should be decided. Defamatory statements contained in a petition preferred in judicial proceedings are not absolutely privileged. The English Law of defamation should not be applied. ABDUL HAKIM v. TEJ CHANDRA MUKERJI, **3 A. 815 = A.W.N. 1881, 81.** [*F.*, 15 Cr.L.J. 281 = 23 Ind. Cas. 489; *R.*, 6 A. 220 = A.W.N. 1884, 53, 10 A. 425, 22 A. 234, 29 A. 685 = 4 A.L.J. 605 = A.W.N. 1907, 235 = 6 Cr.L.J. 197, 14 B. 97, 23 C. 867, 26 C. 653, 10 M. 28, 36 M. 216 = 1912 M.W.N. 476 = 11 M.L.T. 416 = 14 Ind. Cas. 659 = 23 M.L.J. 39 = 13 Cr.L.J. 275, 3 L.B.R. 265.]

(5)—*Defamation — Proof.* — To sustain a charge of defamation, it is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation made on him by the accused. It is sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant. QUEEN v. THAKUR DAS, **6 N.W.P. 86.**

(6)—*Defamation—Failure to prove making and publishing.*—The omission to prove the making and publishing of an alleged libel by the accused is more than an irregularity. It is a defect which vitiates the conviction. MOHIDEEN ABDUL KADIR v. EMPEROR. **27 M. 238 = 2 Weir 408.**

(7)—*Penal Code, s.* 499—*Defamation—Publication, what amounts to.*—*Held by the Full Bench* (*Duthoit, J., dissenting*).—Where a person sends a notice in closed cover containing defamatory matter about the recipient of the notice, but which is not communicated by the writer to any other person, it is not such a "making" or "publication" as could "harm" the prosecutor in the sense given to that word in Expl. 4. *Per Mahmood, J*—The words "harm the reputation of such person" in the section mean imputation on a man's character made and expressed to others, so as to lower him in their estimation. Anything which lowers him merely in his own estimation does not constitute defamation. But if it could be proved that the publication to the prosecutor only was intended or calculated to provoke a breach of the peace, the libel would amount to a criminal offence, but not defamation. *Per Oldfield, J.*—The essence of the offence of defamation in the Penal Code is the intention to harm the reputation, and that necessarily requires publicity to be given to the imputation. The offence is not dependent on there being provocation to cause a breach of the public peace, that offence being otherwise provided for in the Code. QUEEN-EMPRESS v. TAKI HUSSAIN, **7 A. 205, F.B. = A.W N. 1884, 340.** [*R.*, 11 Cr.L.J. 281 = 5 Ind. Cas. 892 = 6 P.W.R. 1910, Cr. = 10 P.R. 1910.]

(8)—*Penal Code, ss.* 499, 500—*Proof of publication.*—Where a charge was amended on the motion of the accused and the charge, as amended was to the effect that the publication of a defamatory matter was by handing over the manuscript to the printer for being printed,

Defamation—*continued.*

held, that the prosecution had sufficiently proved the publication by the production of the printed copy and such copy was admissible under s. 66 (2) of the Evidence Act, inasmuch as the accused, who should have known that he would be required to produce the original, had not produced it. SOOSAI NAIDU v. REVD. FATHER DURRIENTORT, **1 Weir 579.**

(9)—*Penal Code, ss.* 499, 500 —*Sending notice to complainant containing defamatory matter.*—The mere sending of a notice to a person, albeit, containing matter of a defamatory nature, cannot be held to be equivalent to making or publishing an imputation intending to harm, or knowing or having reason to believe that it will harm the reputation of the person to whom it is addressed. QUEEN-EMPRESS v. SADASHIV ATMARAM, **18 B. 205.**

(10)—*Penal Code, ss.* 499 *and* 500—*Publication—Dictating defamatory letter to another.*—The dictating of a defamatory letter to a third person would amount to publication. VARNAKOTE ILLATH KRISHNA NAMBUDRI v. KOTALMANA KESHAVAN EMBRANTRI, **1 Weir 579.**

(10-*a*)—*Penal Code, ss.* 499 *and* 500—*Publication outside British India.*—Where a letter containing defamatory matter was dictated to the writer in Trivandram, *held*, that the offence was committed in Travancore and not in British India. VARNAKOTE ILLATH KRISHNAN NAMBUDRI v. KOTALMANA KESHAVAN EMBRANTRI, **1 Weir 579.**

(11)—*Penal Code, s.* 499—*Original intention of accused not to publish, materiality of.*—In order to sustain a charge under s. 499, it is not material, whether the accused originally intended to publish the defamatory matter or not. It is sufficient that he ultimately publishes it. *In re* PARIASAMY KOTASAMY TEVER, **1 Weir 580.**

(12)—*Penal Code, s.* 499 — *Defamation—Statement by accused in a criminal case in good faith.*—Where, in an application for the transfer of a criminal case, the accused in the present case (being the accused in that case also) stated that the complaint against him was instituted under the instigation of the complainant in the present case, for the purpose of prejudicing him in the defence to a civil suit which the latter had caused to be brought against him, *held*, that the statement did not amount to defamation, as the imputation was made in good faith for the protection of the interest of the person making it. The English Law would not be applicable to such a case. ISURI PRASAD SINGH v. UMRAO SING, **22 A. 234 = A.W.N. 1900, 46.** (17 B. 573, 19 B. 340, 3 W.R.Cr. 45, 14 W.R.Cr. 27, 3 A. 815, *R.*) [*F.*, 13 Cr. L.J. 25 = 13 Ind. Cas. 217 = 5 S.L.R. 133; *R.*, 29 A. 685 = 4 A.L.J. 605 = A.W.N. 1907, 235 = 6 Cr. L.J. 197, 36 M. 216 = 13 Cr. L.J. 275 = 14 Ind. Cas. 659 = 23 M.L.J. 39 = 11 M.L.T. 416 = 3 L. B.R. 262, 17 C.L.J. 105 = 17 C.W.N. 554 = 18 Ind. Cas. 737.]

Defamation—*continued.*

(13)—*Penal Code, s.* 499—*Defamation—Express malice—Evidence of previous conduct of the complainant similar to the one alleged.*—The accused who wrote a letter to the Government of India, alleging that the complainant, a Sub-Judge, used abusive language to certain respectable native litigants appearing in his Court, and that there were also other instances of similar treatment, was charged with defamation. The prosecution gave evidence to prove that, in making the charges contained in the alleged libel, the defendant was actuated by express malice towards the complainant. *Held*, that the accused was entitled to let in evidence and to elicit that the complainant had, on other occasions, used abusive language to natives who had to appear before him, as it related to the question of the complainant's reputation, which the accused had harmed, and as the malicious intention or otherwise of the accused should be gathered from the document as a whole. LAIDMAN v. HEARSEY, **7 A. 906 = A.W.N. 1885, 272.**

(14)—*Penal Code, s.* 499, *Excep.* 8—*Privileged communication—Good faith — Evidence Act, s.* 105—*Burden of proof—Cross-examination of complainant — Practice.*—Two ingredients are essential to the establishing of the protection under Excep. 8 of s. 499, I.P.C.; (1) that the accusation must be made to a person in authority over the party accused; and (2) that the accusation must be preferred in good faith, that is to say, with such reasonable care and attention on the part of the person making it, in first satisfying himself of the truth and justice of the charge, as an ordinary man should be expected to exercise. S. 105 of the Evidence Act throws upon the accused the burden of proving the existence of circumstances bringing the case within Excep. 8, s. 499, I.P.C. ; the Court, under that section, should presume *prima facie* the absence of such circumstances. [*R.*, 10 A. 425, 17 B. 573.] The counsel for the accused, in a defamation case, when the accused wants to bring in evidence to prove the truth of the defamatory matter, should distinctly and separately cross-examine the complainant on all the matters upon which evidence is intended to be brought. If he fails to do this, it is a subject for serious consideration whether he should be subsequently allowed to tender proof, as to the material incidents of which he has not cross-examined. QUEEN-EMPRESS v. DHUN SINGH, **6 A. 220 = A.W.N. 1884, 53.**

(15)—*Penal Code, s.* 500—*Defamation—Privileged communication—Express malice.*—Where the accused told a friend of his, and subsequently, at his instance, wrote to the superior officer of the complainant, to the effect that the complainant and his friend's wife had been seen behaving on a certain night in such a manner and under such circumstances as to render unavoidable the conclusion that acts of impropriety took place between them, and it was found that the accused honestly believed in the truth of the statements, *held*, that in

Defamation—*continued.*

order to convict the accused, express malice should be proved for the prosecution. GRANT v. EMPEROR, **11 C.W.N. 390 = 5 Cr. L J. 160.**

(16)—*Penal Code, s.* 499, *exceps.* 2 *and* 9—*Privilege—Good faith—Public good.*—The editor of a newspaper in commenting upon the appointment of the complainant, who had not passed the public-service examination, as required, by the rules prescribed by the Collector, made the following remarks "Has his (the complainant's) character been enquired into? Does no one remember that this very man was sent by the Subordinate Judge of Sholapur to be prosecuted? Are not the proceedings instituted by the Subordinate Judge to be found on the record?" Although it was true that the complainant had been charged by the Subordinate Judge before the Magistrate with misconduct in the performance of his duties, yet the District Judge had held that there were no grounds for the prosecution ordered by the Subordinate Judge. The accused was also shown to be aware of the withdrawal of the criminal charge and the reasons for the withdrawal. *Held* that, under these circumstances, the accused was not justified in insinuating that the complainant was a person of doubtful character, because he had been criminally prosecuted, and that he was not entitled to the benefit of the second and ninth exceptions to s. 499. IMPERATRIX v. B. KAKDE. **4 B. 298 = 5 Ind. Jur. 210.**

(17)—*Penal Code, s.* 499, *excep.* 9 — *Good faith.*—The accused, who was watching a civil case on behalf of his partner, the defendant in the suit, informed the Judge that the complainant was tampering with the witnesses, and prayed, therefore, that the complainant might be ordered to sit in the Court. The accused was charged with defamation for this imputation and was fined Rs. 25. *Held*, that the accused was not actuated by malice or bad faith in making the imputation, and that Excep. 9 of s. 499, I.P.C., applied to the case. QUEEN-EMPRESS v. PURSHOTAM KALA, **9 B. 269.** [*R.*, 15 B. 351.]

(18)—*Good faith*—Onus probandi—*Act* XVIII *of* 1862—*Penal Code, s.* 499, *excep.* 9.—Act XVIII of 1862 refers only to the High Court in its original criminal jurisdiction, and does not apply to the Mofussil Courts. S. 27 of the Act requires proof of the existence of the circumstances relied on as a defence, before good faith can be presumed in a case of defamation. The *onus* of proving good faith is on the person making the imputation. Before such a person can claim the benefit of excep. 9, s. 499, I.P.C., he must show that he has exercised due care and caution. MR. SEALY v. RAMNARAIN BOSE, **4 W.R. Cr. 22.**

(19)—*Penal Code, s.* 499, *excep.* 9—*Imputation made in good faith for protection of one's own interest.*—In order to substantiate a defence under the ninth exception to s. 499, I.P.C., it is sufficient for the accused to show that he made the imputation in good faith for the protection of his interest. It is not necessary for him to substantiate his imputation. Any one, in the transaction of business with another, has a right to use language *bona fide*, which is relevant to that business, and which a due regard to his own interest makes necessary, even if it should directly, or by its consequences, be injurious or painful to another; and this is the principle on which privileged communication rests; but defamatory comments on the motives and conduct of a party with whom he is dealing, do not fall within that rule. The complainant and another were the owners of a steamship mortgaged by them to the Bank of Bengal. In March 1890, the complainant desired to send the vessel to Jeddah with pilgrims and freight, and he agreed, with the accused, the Agent of the Bank, that he would have the vessel docked and pay the Bank Rs. 3,000, if the Bank would allow her to go upon this voyage. The complainant was, however, unable to get the vessel docked. Thereupon the accused insisted on payment of Rs. 5,000, instead of Rs. 3,000, before allowing the vessel to go to Jeddah. The complainant and his partner agreed to pay Rs. 5,000 on the 3rd April, 1890. In payment of this sum, the complainant subsequently tendered Rs. 3,000, in cash and a cheque for the balance. The accused refused to accept the cheque, and required the whole amount to be paid in cash on the 9th April, on which the vessel started on her voyage. The sum was to be paid out of freight and passage money collected by the complainant. The payment was, however, not paid as promised, notwithstanding frequent demands for the same. Thereupon, the accused wrote to the complainant's partner to the effect, that the complainant had misappropriated Rs. 5,000 and was keeping out of the way, and that he should recover the money and pay it according to his promise. *Held* that, in writing that letter, he acted in good faith and for the protection of the Bank's interest and that the case, therefore, was covered by the provisions of excep. 9 to s. 499, I.P.C. *Held*, also, that it was not necessary for the accused to substantiate his imputation, and that it was sufficient to prove that he had good reason to believe what he stated to be true. QUEEN-EMPRESS v. E. M. SLATER, **15 B. 351.** [*F.*, 19 B. 340; *R.*, 17 B. 573.]

(20)—*Penal Code, s.* 499, *excep.* 9—*Defamatory statement for protection of one's own interest.*—The head of the caste to which the complainant and the accused belonged had prohibited the other members of the caste from holding intercourse with the complainant, the violation of which might have subjected the offenders to caste penalties, but the complainant was not declared out of caste. The complainant's niece, in ignorance of the prohibition, invited the complainant who was also ignorant of it, to a family ceremony. The accused to whom the sentence of the headmen was known, observing the complainant among the guests, asserted that she had been put out of caste and

Defamation—*continued.*

insisted that she should retire. In making this imputation, they were not influenced by any personal malice towards the complainant. *Held*, that their statement was only inaccurate and not untrue, and that their conduct proceeded from a desire to secure themselves and their fellow-guests from caste inconveniences. *In re* CHALIL KOTHALI, **1 Weir 609.**

(21)—*Penal Code, s. 499, excep. 9, ill. (a)—Defamation—Statement made to protect one's own interest—Action for special damage.*—Where a letter, written by a creditor of a firm and circulated amongst other persons who dealt with the same firm, contained a statement that one of the members of the firm had filed a petition for insolvency, with the object of collecting the outstandings and defeating the creditors of the firm, *held*, that the statement came under exception 9, ill. (*a*) of s. 499, the evidence having shown that the letter was written with the intention of protecting the writer's own interest, and in a manner which was honest and *bona fide*. The libel made against the firm can be far more properly dealt with in the Civil Court, than in the Criminal Court, because it is a specific allegation with respect to the complainant's business, which, it is said, has caused special damage by reason of the injury inflicted on that business. A libel of this kind which is analogous to an action on a case for special damage is far more properly dealt with in the Civil Courts than in a criminal prosecution. CASSEM KURRIM v JONAS HADJEE SEEDICK, **9 C.W.N. 195 = 2 Cr. L J. 47.**

(22)—*Privilege—Penal Code, s. 499, exceps. 8 and 10—Letter written to protect religious interests of writer.*—A letter written by a Brahmin to the Brahmin community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and that of the Brahmin community; if written in good faith, falls within exceps. 8 and 10 of s. 499 of the Penal Code. REG v. KASHINATH, BACHAJI BAGUL, **8 B H C. Cr 168.** [*F.*, 22 C. 46; *D.*, Rat. Un. Cr. C. 474.]

(23)—*Proof of good faith in a complaint for—Penal Code, s. 499, excep. 1 (b).*—In a complaint for defamation of character, whether the imputation is true or not, it is clearly open to the accused in a criminal trial to prove that the allegation he made was true. If found to be untrue, his persisting in the imputation will be evidence of malice and useful to the Court to decide on the proper penalty. If true, the accused might be protected by excep. 1 (*b*), s. 499, Penal Code, which expressly states that the question whether or not it is for the public good that the imputation shall be published is a question of fact. U. WARADAMA *alias* MAUNG NU v. CROWN, **1 L.B R. 139.**

(24)—*Good faith, how determined.*—In an action for defamation, the proper question for the purpose of ascertaining the good faith of the accused is, not whether the allegations made by him are true, but whether he had, after due care and attention, good reason for believing them to be true—*Per Prinsep, J. Quære*:—Whether the state of the law regarding the rule of evidence with respect to general and special exceptions in criminal trials is the same, in the Presidency towns as in the mofussil. *In the matter of the petition of* SHIBO PROSAD PANDAH, **4 C 124 = 3 C.L R. 122.** (14 W.R. Cr. 27, 9 B.H C. 451, *R.*) [*R.*, 15 B 351, 10 Cr. L J. 372 = 3 Ind. Cas. 744 = 11 Bom. L.R. 638.]

(25)—*Defamation — Good faith—Justifying occasion*—Onus —(*a*) Although the *onus* is not on the accused in every case of alleged defamation to prove good faith, still, in a case where the accused imputed to the complainants particular criminal acts, which injurious charges were capable of proof, the accused would have to show affirmatively as a matter of defence, that he came within those exceptions in s. 499, involving good faith. (*b*) Where the occasion is pleaded by way of justification and excuse, the question whether or not the occasion gives the privilege, is one of law for the Judge, but this is, at best, a qualified protection dependent on the question whether the publication has been made in good faith, which is a question of fact. REG v. KIKABHAI PARBHUDAS, **9 B. H C 451.**

(26)—*Penal Code, s. 499—Defamation—Good faith—Publication to more persons than necessary.*—A woman having left her first husband and contracted a secret *pat* marriage with another, the then *Swami* of the community to which the parties belonged, declared the connection adulterous. Some years after, another *Swami* of the community declared the second marriage valid. Certain members of the community, however, disapproved of this action of the *Swami* and addressed to him several communications which elicited no reply from him. Thereupon, twelve of the villagers of the place published in a newspaper a notice which began by saying that "Jingowda (the second husband) having kept a concubine by name Uma (the complainant) has had offspring by her." For these statements, the accused were convicted of defamation. *Held* that the conviction was proper, for, conceding that the allegations were made for the benefit of a portion of the public, still, the accused had no privilege to disseminate them to a circle of readers wider than those who could possibly be interested in the allegations KING-EMPEROR v. SHIVGOWDA, **3 Bom. L.R. 188.**

(27)—*Penal Code, s. 499, excep. 9—Defamatory statements made to accused's solicitor.*—Where a defamatory statement is made by a client to his solicitor, it may be that the same amount of care and attention should not be expected as when the statement is made to a stranger; and in deciding the question of the client's honest belief, that Court should consider whether he made the statement to protect his own interest. Where the charge made, however, is reckless, and the evidence in the

Defamation—*continued.*

case clearly shows that the accused levelled it at the complainant without the slightest ground and without honestly believing that it was true, there is justification to hold that there was no good faith in making the statement. EMPEROR v. MARIANE G. RODRIGUES, **5 Bom. L.R. 122.**

(28)— *Republication of defamatory matter already published—Penal Code, s.* 499.—The Indian Penal Code makes no exception in favour of a second or third publication of a defamatory statement as compared with the first: such an exception would obviously be made a means of defeating the principal provision of the law of defamation. In England it is not allowed to a defendant to prove that a statement similar to the one for which he is indicted, has been previously published by persons who have not been prosecuted; and the repetition of a common rumour, however prevalent, is not received as an excuse for its further promulgation; nor, according to the English law, is the recovery of damages against one journal accepted even as mitigation in an action against another journal for a repetition of the libel. *In re* HOWARD, **12 B. 167.**

(29)—*Penal Code, s.* 499, *exceps.* 3, 6, 9, *ss.* 500 *and* 52—*Defamation — Right of fair comment — Malice—Good faith.* — The word "malice," in the legal use of that term, is not limited to hostility of feeling, but by virtue of its etymological origin, extends to any state of the mind, which is wrong or faulty (whether evinced in action by excess or defect) such as would be unjustifiable in the circumstances, and incompatible with thoroughly innocent intentions. It is not necessary that such impropriety of feeling should in all cases be established by evidence extrinsic to the comment, which is the subject of the complaint. For, whether fair comment is to be regarded as following under a branch of the law of privilege or not, it cannot excuse an injury, arising not from the mere act of criticism, but from a state of mind in the critic, which is in itself unjustifiable. And the excuse may be so forfeited, either by reason of an evil intent in him or by reason of mere recklessness in making an unwarrantable assertion. For, then, the comment would not be fair comment at all. The right of fair comment involves two essentials: first, that the imputation should be comment on the work criticised, and second, that it should be "fair," that is to say, if it professes to be an inference drawn from the contents of that work, it must be an inference, which it is possible to draw therefrom. Good faith requires not logical infallibility, but due care and attention. But how far erroneous actions or statements are to be imputed to want of due care and caution must, in each case, be considered with reference to the general circumstances and the capacity and intelligence of the person, whose conduct is in question. It is only to be expected that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person

Defamation—*continued.*

excited by sectarian zeal and untrained to habits of precise reasoning. At the same time, it must be borne in mind that good faith in the formation or expression of an opinion, can afford no protection to an imputation, which does not purport to be based on that, which is the legitimate subject of public comment. The object of exception 6 to s. 499 of the Penal Code is that the public should be aided by comment, in its judgment of the public performance submitted to its judgment. Comment otherwise defamatory is justified on this ground alone. The comment must, therefore, make it clear to the public that decision is invited, only on such evidence as is applied by the public performance. It follows that an imputation on an author made by a critic, without reference, express or implied, to the work under criticism, if in terms so general as to be capable of conveying an unfavourable impression of him, apart from what appears in his work, cannot be justified by the critic, on the ground that his intention was to base his imputation solely on the work reviewed, and that he had in his mind passages therein supporting the imputation. The responsibility of the critic is to be gauged by the effect, which his comment is calculated to produce, and not by what he says was his intention. It is not enough that he should intend to form his opinion on the work before him; he is also bound, in the words of the exception, to express his opinion with due care and caution, and to give the public no ground for supposing that he is speaking of anything but the performance submitted to its judgment. EMPEROR v. ABDOOL WADOOD AHMED, **9 Bom. L.R. 230=5 Cr. L.J. 237=31 B. 293.**

(30)— *Defamation — Comments on acts of public men—Proof of malice.*—Every subject has a right to comment on those acts of public men which concern him as a subject of the realm, if he does not make his commentary a cloak for malice and slander. A writer in a public paper has the same right as any other person, and it is his privilege, if indeed it is not his duty, to comment on the acts of public men which concern not himself only but which concern the public, and the discussion of which is for the public good. And where a person makes a public conduct of a public man the subject of comment, and it is for the public good, he is not liable to an action if the comments are made honestly and he honestly believes the facts to be as he states them, and there is no wilful misrepresentation of fact or any misstatement which he must have known to be a misstatement if he had exercised ordinary care. Where the publication is of such a nature, or made under such circumstances *prima facie* to entitle it to be privileged, the *onus* of proving malice is on the plaintiff, and the evidence should raise a probability of malice, and be more consistent with its existence than with its non-existence. Malice or want of good faith may be shown either by extrinsic evidence or by the language used in the writings complained of. E. I. HOWARD v. M. MULL, **1 B.H.C. App. 85.**

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(31)—*Penal Code*, ss. 499, 500—*Defamation by caste* punchayat.—Where a caste *punchayat* resolved to put one of its members out of caste, and in order to fully effectuate their decision drew up a letter for communication to the other members, stating that the member excommunicated used to have illicit intercourse with a widow of the same caste, that the woman had become pregnant and that the chowkidar had given information at the police station and he or she or both were accused in the case, *held*, that the *punchayat* would be acting in good faith, if they had contended themselves with announcing their determination and the grounds upon which it was based, and that, as they travelled beyond that and made a false statement about their being prosecuted, the protection to which they would otherwise have been entitled, namely, that they acted in good faith, that is, with due care and caution, had been negatived. The accused were therefore guilty of defamation. EMPRESS OF INDIA v. RAMANAND, **3 A. 664=A.W.N. 1881, 43.**

(32)—*Penal Code*, s. 499—*Defamatory statement made before* punchayat — *Privilege*.—Where, at the instance of the complainant, a *punchayat* was assembled to inquire whether one of the accused persons had any justification for applying an injurious epithet to the complainant and he and the other accused, whom the former alleged to be the person from whom the information was derived, made statements by way of explanation, *held*, that the statements made before the *punchayat* were privileged inasmuch as they were made in good faith for the protection of the persons making them. *In the matter of* GOVINDAPPA NAICK, *In the matter of* ANTONI, **7 M. 36=1 Weir 610.** [*R.*, 1 L.B.R. 84.]

(33)—*Penal Code*, s. 499 — *Defamation — Excommunication from caste—Publication of the sentence to members of caste—Good faith.*—There is a dividing line between the passing of a resolution at a caste meeting, and its communication by the authorities of the caste to its members in the discharge of their social duty. If any member of a caste publish to all its members a caste resolution in such discharge of duties, the law will hold the occasion of the publication to be privileged. The member who publishes it is bound to publish it, and the members of the caste have an interest in hearing it. But, there must be a good faith on the part of the member who publishes, that is, it must be proved that the publication was made with due care and attention. EMPEROR v. VIRJI BHAGWAN, **11 Bom.L.R. 638=3 Ind. Cas. 744.**

(34)—*Penal Code*, ss. 499 *and* 500—*Spiritual head writing a letter outcasting a member of the caste—Privilege.*—The acused, who was the *guru* or spiritual guide of the caste to which the complainant belonged issued to the complainant's fellow villagers an *agna patra* prohibiting any social intercourse with the complainant's wife, inasmuch as she had been caught with a man of lower caste. In the trial of the accused for defamation, it was contended on his behalf that the statement contained in that letter was privileged, it being true and having been made in good faith for the public good. It was admitted by the complainant that the accused had no enmity towards him or his wife, and that is was the custom for the *guru* to settle matters like those that arose in connection with his wife and that the letter was issued after making an enquiry as to the truth of the accusation. *Held* that the statement contained in the letter issued by the accused was made in good faith for the protection of the social and spiritual interests of the community of which the accused was the *guru*, and that, so far as it implied a censure on the conduct of the complainant's wife, it was justified by authority which the accused was vested with as the spiritual head of the community and that the case, therefore, came within the seventh and ninth exceptions to s. 499 of the Code. The conviction of the accused was therefore set aside. BASUMATI ADHIKARINI v. BUDRAM KOLITA, **22 C. 46.** [*D.*, 32 C. 1060=2 C.L.J. 396=9 C.W.N. 847.]

(35)—*Penal Code*, ss. 499, *exceps.* 1 *and* 7, 503, 508—*Sentence of excommunication by spiritual superior—Privilege—Malice in law and in fact.*—The denunciation of an act expressly sanctioned by Legislature, as a widow remarriage is, by Act XV of 1856, cannot be said to conduce to public good within the meaning of first exception to s. 499. The act denounced must be some unpermitted act and the good contemplated must be that of a general public as contradistinguished from what is regarded as a spiritual benefit by a particular sect. A spiritual superior, in pronouncing a sentence of excommunication, may be protected by privilege so long as the publication is not more extensive than is required to effectuate the purpose for which the privilege is conceded to him for the censure of a member of the sect in matters appertaining to religion or for the communication of a sentence he is authorized to pronounce to those who are to guide themselves by it. [*R.*, 22 C. 46.] The complainant was excommunicated by his *Guru* for having attended a Hindu widow re-marriage and the *Guru* issued an *Agna Patra* to his disciples intimating the fact of such excommunication and prohibiting them to associate with the complainant, unless he performed expiatory ceremonies and also communicated, in a post card, the same to the complainant. In consequence of this interdict, the complainant was put to serious inconveniences, and he, thereupon, prosecuted the *Guru* on charges under ss. 500, 503 and 508. *Held*, that the accused was not guilty either under s. 503 or under s. 508, Penal Code, but the communication of the sentence of excommunication to the complainant by a card sent through the post was publication excess of the purpose for which the privilege under excep. 7, was allowed and he was therefore guilty of

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defamation. [*R.*, 11 A. 194, 13 M. 293, 15 M. 214 = 1 Weir 617, 17 M. 222, 19 B. 703, 23 B. 122.] There can be defamation, even without personal ill-will. If there is malice in law, the imputation would be defamatory, though there might be no malice in fact. Malice in law consists in the conscious violation of law to another's prejudice, and for the purpose of deciding whether it exists or not, the Court is bound to consider whether a person has exercised his privilege with due care and attention and to see, from the language employed and the mode of publication, whether they are in excess of the privilege as to indicate a conscious disregard of the legal right of the party on whose character the imputation was made. QUEEN v. SIR VIDYA SANKARA NARASIMHA BHARATTI GURUSWAMULU, **6 M. 381 = 1 Weir 595 = 1 Weir 624.** [*R.*, 33 M. 67 = 3 Ind. Cas. 955 = 19 M.L.J. 714 = 6 M.L.T. 290, 4 Bur. L.T. 48 = 12 Cr. L.J. 129 = 9 Ind. Cas. 775.]

(36)—*Penal Code, s. 499, excep. X—Defamation by a member of caste—Mode of publication—Absence of good faith—Privilege.*—The complainant, who was expelled from caste, was re-admitted by the executive committee of the caste after performing certain expiatory ceremonies. The accused objected to this and they published a statement setting forth the facts of the case, described the complainant as *doshi*, which signified a person unfit to be associated with. This statement was printed and was circulated not only to the members of the caste, but also promiscuously among all classes of people in the bazaar. *Held*, that the accused did not act in good faith in having distributed the statement promiscuously to all classes of people and the mode of publication destroyed the privilege and the accused was therefore guilty of defamation. THIAGARAYA v. KRISHNASAMI, **15 M. 214 = 1 Weir 617 = 2 M.L.J. 127.** [*R.*, 19 B. 703, 33 M. 67 = 3 Ind. Cas. 955 = 19 M.L.J. 714 = 6 M.L.T. 290.]

(37)—*Penal Code, ss. 499 and 500—Defamation—Publication of excommunication.*—The defendant, the *gumasta* of a *Guru* or priest, published an order of his master excommunicating the complainant from his caste. The letter containing the excommunication merely stated that the complainant disobeyed some one and treated him with disrespect. *Held*, that the letter publishing the excommunication contained no expressions defamatory *per se.* HIGH COURT PROCEEDINGS, 20TH DEC. 1871, **1 Weir 574 = 6 M.H.C. App. 46.**

(38)—*Penal Code, ss. 211, 500—Defamatory statement made in official enquiry—Crim. Pro. Code, ss. 191, 197.*—On receipt of petitions charging the complainant, a Magistrate, with receiving bribes, the Government forwarded them to the Revenue and Police Commissioner. This official sent them to the Collector and Magistrate of the District in which the complainant was a Magistrate, for preliminary enquiry and report, with directions to take

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evidence in support of the charges, if the petitioners persisted in them, and to give the complainant full opportunity of rebutting them. The Collector then enforced the attendance of the accused, against his will, by writing to the Police. The accused denied having sent the petition bearing his name, but he went on to state how he had paid the bribe. The Government gave leave to the complainant to prosecute the accused for defamation. The trying Magistrate framed heads of charges under ss. 211 and 500, I P C., and at the end of the trial, struck out the head under s. 500 and convicted and sentenced the accused under s. 211. The Joint Sessions Judge held that s. 211 was inapplicable and that the accused was not liable under s. 500, I.P.C., on the ground that the defamatory statements, though not proved to be true, were made in good faith, so that Excep. 8 applied in his favour. *Held* by the High Court that the statement by the accused would not make a "false charge" under s. 211, that he was only guilty of defamation, that, in the absence of a sanction from Government as required by s. 197, Crim. Pro. Code, the enquiry by the District Magistrate, who was ordered to make the enquiry and report, was not a taking cognizance of the offence of bribery, that the District Magistrate in such enquiry not being a Court, the accused was not a witness in a judicial proceeding, and could not therefore claim absolute protection from prosecution as such witness, and that he was only entitled to the qualified protection provided for in the Exceptions to s. 499 of the I.P.C. QUEEN-EMPRESS v. KARIGOWDA, **19 B. 51.** [*Expl*, 25 B. 90; *R.*, Rat. Un. Cr. C. 844, 2 L.B.R. 285.]

(39)—*Penal Code, s. 499—Defamation in newspaper—Good faith.*—Any exception on the ground of good faith or public good fails if the publication was made in a newspaper. QUEEN-EMPRESS v. LEANDRO MASCARENHAS, **Rat. Un. Cr. C. 769 = Cr. Rg. 34 of 1895.**

(40)—*Penal Code, s. 500—Publication of defamatory matter in a newspaper.*—The accused, the Editor and Proprietor of a newspaper, published in Bombay an issue containing defamatory matter. Copies of the paper used to be sent from the press at which it was published to certain persons in Ahmedabad. *Held* that it should be presumed that the copies had been sent on the accused's account and that he was, therefore, responsible for the circulation in Ahmedabad. In the absence of proof to the contrary, it could not be held that persons connected with the press had acted in the matter otherwise than in pursuance of the instructions received from the accused himself. There was, therefore, a publication in Ahmedabad. QUEEN-EMPRESS v. GIRJASHANKER, **15 B. 286.**

(41)—*Defamation—Newspaper article ambiguous—Interpretation.* — Where a newspaper article is ambiguous and capable of an interpretation making it both defamatory and innocent,

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it should be interpreted in favour of the accused and the more sinister interpretation should not be put on it. C. KARUNAKARA MENON v. Dr. T. M. NAIR, 15 **Cr. L.J. 566=24 Ind. Cas. 974.**

(42)—*Penal Code—Defamation—Fair comment—Bounds of.*—In discussing the claims of a person for Municipal Office, the person is entitled to make remarks, in the interests of the public, so long as he abstained from aspersing the private character of the former. M. SUBROYA IYER v. MOULVI KADAR ROWTHU ABDUL KADAR, **1914 M.W.N. 351=15 Cr.L.J. 357=23 Ind. Cas.** 725.

(43)—*Truth of imputation.*—A defamatory imputation even if it be true is not by itself good ground for making it. GOPALRAO v. MT. PIARI BI, **5 C.P.L.R. Cr. 55.**

(44)—*Penal Code, ss.* 499 *and* 500—*Publication—Privilege—Publisher, liability of.*—The sending of a newspaper, containing defamatory matter, published in Calcutta, by post, addressed to a person in Allahabad, is a publication of the defamatory matter in the latter place. The prosecutor advertised in a newspaper published at Allahabad, for subscriptions to an Eye Hospital, of which he was the Surgeon in charge, stating the number of successful operations performed there. The accused, the Editor, and the Publisher of a Medical Journal at Calcutta, published in it a note, regarding the advertisement to the following effect: "The advertiser is certainly entitled to be congratulated on this marvellous success; but it is hardly consistent with the feelings and usages of the medical profession to herald them forth in this fashion. We are not surprised to find, that the line he has elected to adopt, has not met with the approval of his brother officer serving in the same province, and we have no hesitation in pronouncing his proceedings, in this matter, unprofessional." *Held*, that the accused came, in the circumstances of the case, under the excep. 3, 6 and 9 of s. 499, and were, therefore, not guilty of the offence of defamation. The Publisher of a newspaper must, under all circumstances, answer for the libel imputed to his journal. EMPRESS OF INDIA v. MCLEOD, **3 A. 342.**

(45)—*Publishing a false circular that a person has been put out of caste.*—Where the accused published a circular, purporting to say that, at a *panchayat* held at a certain place, it was resolved that the complainant, who had been to England, was not to be taken into caste, and that those of their community, who associated with him, could be taken into the caste only on their undergoing a penance and on consenting to give up all connection with the complainant, and where it was found that no *panchayat* was actually held and the publication was not made in *good faith, held*, that the accused were rightly convicted of the offence of defamation. The publication of the circular lowered the character of the complainant in respect of his caste, as it represented the complainant to be one whom to associate with would entail excommunication on the members of his brotherhood associating with him. MUKUND RAM v. KING-EMPEROR, **6 A.L.J. 472=9 Cr. L.J. 535 =2 Ind. Cas. 226.**

(46)—*Penal Code, s.* 499, *excep. I—Imputation made for public good—Publisher and maker of defamatory statement.*—S. 499 brings under the criminal law, the person who publishes as well as the person who makes the imputation. The first exception exempts any imputation made or published for the public good, and concludes as follows—"whether or not it is for the public good is a question of fact." Although the imputations are true and made for the public good, yet, on considering the manner of the publication, *i.e.*, in a newspaper, the accused may be held not to have published it for the public good. QUEEN-EMPRESS v. JANARDHAN DHAMODHAR DIKSHIT, **19 B. 703.** [*R.*, 6 Bom. L.R. 131.]

(47)—*Penal Code, s.* 500—*Defamatory poem contributed to a newspaper.*—Where a defamatory peom was contributed to a newspaper and the accused, the Editor, Printer, and Publisher of the newspaper, refused to give up the name of his correspondent, but contended that the poem was a satire on *ultra purists* and did not refer to any individual, *held*, that the jury must look at the whole poem and must take it as a whole, and that they must read the poem as reasonable men, and should see whether it was capable of the construction put by the prosecution. *Held*, also, that it was not necessary that the whole world should read it as libel, but it is sufficient that those who knew the accused would consider it to refer to the complainant by putting a reasonable construction on the poem. EMPRESS v. KALI PRASANNA KABYA BISHARAD, **1 C W.N. 465.**

(48)—*Penal Code, s.* 500—*Defamation by a pleader in pleadings.*—A pleader or Mooktyar is not liable to a charge of defamation, if, relying on the statements of his client, he introduced into a pleading in good faith, a defamatory statement. QUEEN v. CHRISTIAN, **2 N. W.P. 473.**

(49)--*Penal Code, s.* 499--*Defamation--Pleader calling the other side "notorious wrong-doer" in course of letter to the Magistrate—Good faith--Malice.*--When a pleader is charged with defamation in respect of words spoken or written while performing his duty as a pleader the Court ought to presume good faith, and not hold him criminally liable, unless there is satisfactory evidence of actual malice, and unless there is cogent proof that unfair advantage was taken of his position as pleader, for an indirect purpose. A pleader representing a complainant wrote to the trying Magistrate to enquire when the latter would take up the case for trial; and, in the letter, described the accused as a "notorious wrongdoer." A complaint was then filed against the pleader for defamation: and the Magistrate

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finding that the pleader was not then acting as a pleader, convicted him of defamation: *Held*, affirming the conviction, that the imputation was not made by the accused as a pleader. EMPEROR v. PURUSHOTTAM DASS, **9 Bom. L.R. 1287 = 6 Cr.L.J. 387.** (19 B. 340, 10 M. 28, *R.*) [*F.*, 36 C. 375 = 9 C.L J. 259 = 13 C.W.N. 340 = 9 Cr. L.J. 165 = 1 Ind. Cas. 147.]

(50)—*Defamation—Statements in complaint—Absolute privilege.*—Defamatory statements made by one person regarding another in a complaint presented by the former against the latter are absolutely privileged. *In re* MUTHUSWAMI NAIDU, **11 M.L.T. 431 = 14 Ind. Cas. 757 = 13 Cr. L.J. 293 = 37 M 110.** (*Foll.*, 38 C. 880, 6 L.J.Q.B. 727 *and* 1 A.C. 307, *R.*)

(51)—*Penal Code, s. 499—Witness, privilege of—Defamatory statement made in witness-box—S. 132, Evidence Act.*—(Per *Knox, A.C.J. and Aikman, J., Richards, J., dissenting*).—The question of criminal liability of a witness for a defamation for statements made in course of his depositions, must be decided by what is laid down in the Indian Penal Code, without regard to the state of law in England or considerations of what would be desirable in the interest of public policy and administration of justice. When a witness makes remarks, which are defamatory of a third party, he can be convicted of defamation unless he can show that the statement comes within any of the exceptions of s. 499, I.P.C. The remarks in *Baboo Ganesh* v. *Mungee Ram*, 11 B.L.R. 328, P.C. treated as *obiter*. If it had been the intention of the Legislature to extend to communications made by witnesses in the witness-box the privilege of freedom from being made the subject of a Civil or Criminal trial, they could or would surely have amplified s. 132 of Act I of 1872. The absence of the enactment is conclusive that it was omitted from the Code of set purpose. *Per Richards, J., contra.*—The principle is, and public policy requires, that witnesses should give their testimony, free from any fear of being harassed by an action on allegation, whether true or false, that they acted from malice. It would be simply disastrous to the administration of justice in this country, if a prosecution could be instituted against every witness, who gave evidence in a Court of Justice, for defamation. GANGA PRASOD v. BANKE LAL, **4 A L J. 605 = 29 A. 685 = 6 Cr.L.J. 197 = A.W.N. 1907, 235.** [*F.*, 13 Cr. L.J. 25 = 13 Ind Cas. 217 = 5 S,L.R. 133, 13 Cr. L.J. 494 = 15 Ind. Cas. 494 = 244 P.L.R. 1912 = 5 P.R. 1913, Cr. = 31 P.W.R. 1912; *Appr.*, 13 Cr. L.J. 275 = 14 Ind Cas. 659 = 23 M.L.J. 39 = 11 M.L.T. 416 = 1912 M.W.N. 476; *R.*, 36 M. 216 = 11 M.L.T. 416 = 1912 M.W.N. 393, 10 Cr. L.J. 509 = 4 Ind. Cas. 160 = 12 O.C. 308.]

(52)—*Penal Code, s. 500—Defamatory statement by a witness.*—A witness cannot be prosecuted for defamation in respect of statements made by him when giving evidence in a judicial proceeding. QUEEN-EMPRESS v. BABAJI, **17 B. 127.** [*Diss.*, 14 P.R. 1893, Cr., 32 C. 756 = 9 C.W.N. 911 = 2 Cr.L J. 459 = 2 C.L.J. 105; *F.*, 17 B. 573; *R.*, 19 B. 51, 19 B. 340, L.B.R. 1893—1900, 247, L.B.R. 1893—1900, 206, 21 C. 262, 1 L.B.R. 84, 3 L.B R. 265, A.W.N. 1907, 235 = 29 A. 685 = 6 Cr. L.J. 197 = 4 A.L. J. 605.]

(53)—*Penal Code, s. 499—Defamation—Statements made by a witness.*—A witness cannot be prosecuted for defamatory statements made by him when giving evidence in the witness box. But *Telang, J.*, expressed an opinion that according to correct principles of construction, the meaning of the words of the section should not be limited so as to exclude therefrom any evidence given by a witness before a Court of Justice. QUEEN-EMPRESS v. BALAKRISHNA VITHAL, **17 B. 573.** [*Diss.*, 32 C. 756 = 9 C.W.N. 911 = 2 Cr.L J. 459 = 2 C.L.J. 105; *F.*, 27 C. 262; *R*, 19 B. 51, 19 B. 340, 22 A. 234, 1 L.B.R. 84, 3 L.B.R 268, A.W.N. 1907, 235 = 29 A. 685 = 6 Cr. L.J. 197 = 4 A.L.J. 605; *D.*, 19 B. 717.]

(54)—*Penal Code, s. 500—Defamatory statements made by witnesses in a Court of Justice.*—Witnesses in a Court of Justice cannot be prosecuted for defamation in respect of statements made by them in the course of their evidence as witnesses, if such statements are relevant to the issue in the case under enquiry. WOOLFUN BIBI v. JESARAT SHEIKH, **27 C. 262.** [*Diss.*, 13 Cr. L J. 494 = 15 Ind. Cas. 494 = 5 P.R. 1913, Cr. = 31 P.W.R. 1912, Cr., 24 P.L.R. 1912; *R.*, 29 A. 685 = 4 A L.J. 605 = A.W.N. 1907, 235 = 6 Cr. L.J. 197, 13 Cr. L.J. 275 = 14 Ind. Cas. 659 = 23 M.L.J. 39 = 11 M.L.T, 416 = 1912 M.W.N. 476; *D.*, 32 C. 756 = 2 C.L.J. 105 = 9 C.W.N. 911, 40 C. 433 = 17 C.W.N. 297 = 14 Cr. L.J. 100 = 18 Ind. Cas. 660.]

(55)—*Penal Code, s. 500—Defamation—Voluntary statement of witness, irrelevant to the matter of enquiry—Witness, if protected—Evidence Act (I of 1872), s. 132.*—A statement made by a witness under examination, wholly irrelevant to the matter of enquiry, uncalled for by any question put to him, and introduced by the witness voluntarily and maliciously for his own purpose, and in order to injure the reputation of another, is not privileged. HAIDAR ALI v. ABRU MIA, **32 C. 756 = 2 C.L. J. 105 = 9 C.W.N. 911 = 2 Cr. L.J. 459.** (21 C. 392, *F.*; 27 C. 262, *Discussed.*) [*D.*, 14 Cr. L.J. 100 = 18 Ind. Cas. 660 = 17 C.W.N. 297.]

(56)—*Claim before elders—Defendant's witness making defamatory statements about complainant—Statement, if privileged—Penal Code, s. 499, cls. 8 and 9.*—The claim for damages for breach of promise of marriage which a woman preferred before the elders having been dismissed by them in consequence of the defendant's witness deposing that the woman had committed adultery, the latter prosecuted the witness for defamation. *Held* that, though the witnesses' statement was not made in a

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judicial proceeding, it was privileged under Penal Code, s. 499, cls. 8 and 9, as having been apparently made in good faith; the complainant had herself taken her case of breach of promise of marriage before the elders and hence they might be held to have had a lawful authority over her for the purposes of her case; but the defamatory statement having been clearly made in the defendant's interests, his witness was not liable to a prosecution for defamation. CROWN v. MA PEIN, 1 L.B.R. 84. (7 M. 36, 17 B. 127, 573, *R.*)

(57)—*Party to a judicial proceeding – Privilege.*—The ninth exception to s. 499, I.P.C., modifies the principle of the English law that parties to a judicial proceeding cannot be held liable, either civilly or criminally, for defamation on account of statements or imputations made in their capacity as litigants which affect the character of third persons. They are protected only if they show that the imputation is made in good faith, *i e.*, with due care and caution. FATEH MUHAMMAD v. EMPRESS, **34 P.R. 1889, Cr.** [*F.*, 5 P.R. 1913, Cr. = 31 P.W.R. 1912 = 15 Ind. Cas. 494 = 13 Cr. L.J. 494 = 244 P.L.R. 1912, 12 Cr. L.J. 193 = 10 Ind. Cas. 682 = 7 P.W.R. 1911, Cr.; *Appr.*, 14 P.R. 1893, Cr.]

(58)—*Judicial proceeding—Defamatory statement by witnesses.*—No defamatory statement by a witness is protected unless it is made in good faith within the meaning of the exceptions to s. 499, I.P.C. The true test of immunity in the case of witnesses, as of other persons, is whether an exception to that section is established in its entirety. MAYA DAS v. EMPRESS, **14 P.R. 1893, Cr.** (17 B. 127, 11 B. 477, *Diss.*; 34 P.R. 1889, *Appr.*; 11 B.L.R. 321, P.C., *R.*) [*F.*, 5 P.R. 1913 = 31 P.W.R. 1912 = 15 Ind. Cas. 494 = 13 Cr. L.J. 494 = 244 P.L.R. 1912, 12 Cr. L.J. 193 = 10 Ind. Cas. 682 = 7 P.W.R. 1911, Cr.)

(59)—*Penal Code, s. 499, excep. 9—Pending judicial proceedings — Privilege.* — Where a complaint regarding the complainant's management of *Devastanam* was pending, *held*, that it would not, necessarily, amount to defamation to say that the District Judge would not have appointed the complainant to the committee, had he been aware of the fact, and that the statement that the complainant being a member of the Marava caste was the reason for the investigation was also privileged. SIVAN SETHU RAYAR v. SHANMUGAM PILLAY, **1 Weir 611.**

(60)—*Penal Code, s. 499, expl.—Defamatory statements in a statement made by the accused under s. 342, Crim. Pro. Code, privileged.*—Statements of a defamatory character made by an accused person inthe course of the statement which he is invited to make under s. 342, Crim. Pro. Code, are privileged. *In re* PAYINI CHELLAYA, **5 M.L.T. 256 = 9 Cr.L J. 276 = 1 Ind. Cas. 148.**

(61)—*Penal Code, ss. 499 and 500—Defamation—Party to a suit, privilege of.*—Where, when the complainant was cross-examined, the accused's vakil, at the instance of the accused asked the complainant whether he had not been prosecuted for a criminal offence, *held*, that "the principle of English law that no action for libel or slander lies, whether against Judges, counsel, witnesses or parties, for words written or spoken in the ordinary course of any proceedings, before any Court or tribunal recognized by law," applies to India, and that the action of the accused was privileged, and that he is not liable to be prosecuted for defamation under s. 500 of the Penal Code. PUND MARAZU PUNTULU v. VENKATARAMANA AIYAR, **19 M L J. 217 = 9 Cr.L J. 385 = 6 M.L.T. 15 = 1 Ind. Cas. 799.** [*R.*, 36 M. 216 = 11 M.L.T. 416 = 1912 M W.N. 393, 13 Cr. L J. 275 = 23 M L.J. 39 = 11 M.L.T. 416 = 1912 M.W.N. 476 = 14 Ind. Cas. 659.]

(62)—*Penal Code, ss. 499, excep. (9), 500—Defamation—Party to a suit—Privilege—Good faith—Crim. Pro. Code, s. 198—Person aggrieved—Master cannot sue for defamation of servant.*—Plaintiff to a suit is not privileged under excep. 9 to s. 499, Penal Code, unless the allegations made in the plaint were made in good faith. A plaintiff in a rent suit made the following allegation in his plaint:—"In 1310 F. the plaintiff gave evidence in defence of Sub Inspector, G. In consequence of this, defendant M became exceedingly annoyed with the plaintiff and the servants of the defendant began to oppress the plaintiff in all manner of ways......and by threats of confining him and of having him disgraced by beating, realized this amount from him." On the basis of the above allegation M made a complaint under s. 500, Penal Code. *Held*, that the allegation defamed not M but his servants, and action for defamation could not be sustained at the instance of M. TIL KANCHAN v. EMPEROR, **8 Ind. Cas. 220 = 11 Cr.L. J. 594.**

(63)—*Penal Code, s. 500—Defamation — Party to a suit—Indian Oaths Act, ss. 5 and 13 —Giving defamatory and untrue answer without good faith.*—It is opposed to public policy to prosecute a party to a civil suit, who is under an obligation to speak the truth under ss. 5 and 13 of the Indian Oaths Act. in answer to questions put to him by Court, for defamation in respect of such answers, even although such answers are not true and be not made in good faith. But he may be liable to prosecution for false evidence if he spoke falsely. *In the matter of* ALRAJA NAIDU, **30 M. 222 = 6 Cr.L.J 130.** (11 M. 477, *F.*) [*Diss.*, 13 Cr.L.J. 494 = 15 Ind. Cas. 494 = 244 P.L.R. 1912 = 5 P.R. 1913, Cr. = 31 P.W R. 1912, Cr.; *F*, 9 Cr.L J. 385 = 19 M.L.J. 217 = 6 M.L T. 15, 1 Ind. Cas. 799; *R.*, 36 M. 216 = 1912 M.W.N. 393 = 11 M.L.T. 416, 13 Cr.L.J. 275 = 14 Ind. Cas. 659 = 23 M. L.J. 39 = 11 M.L.T. 416 = 1912 M.W.N. 476.]

(64)—*Penal Code, s. 500—Statement made by witnesses to police officers in investigation by police.*— A defamatory statement made in

Defamation—*continued.*

answer to the question by a police officer, in the course of an investigation, is a privileged communication, because such a person is bound by s. 161, Crim. Pro. Code, to answer truly all questions put to him, except such as tend to criminate himself, and is, therefore, entitled to the protection which the law gives to witnesses. QUEEN-EMPRESS v. GOVINDA PILLAI, **16 M. 235 = 1 Weir 587.** [*Diss.*, 13 Cr.L.J. 494 = 15 Ind. Cas. 494 = 5 P R. 1913, Cr. = 244 P. L.R. 1912 = 31 P.W.R. 1912, Cr.; *F.*, 28 C. 794 = 5 C.W.N. 804, 9 Cr.L.J. 385 = 1 Ind.Cas. 799 = 19 M.L.J. 217 = 6 M.L.T. 15 ; *R.*, 36 M. 216 = 13 Cr.L.J. 275 = 14 Ind. Cas. 659 = 11 M.L.T. 416 = 1912 M.W.N. 476, 3 L.B.R. 265, 3 O.C. 80.]

(65)—*Penal Code, s.* 499—*Accused defended by Counsel making defamatory statements about a witness.*—A person, who was being defended by a Counsel, interfered during the cross-examination of the complainant and made grossly defamatory statements respecting his character. The statements were not true and were not made in his defence to the charge. *Held*, that the occasion on which the accused made the statements was not privileged and that the words were not uttered in good faith but maliciously and that the accused was not protected by any of the exceptions to s. 499, Penal Code. HAYES v. CHRISTIAN, **15 M. 414 = 1 Weir 588 = 2 M.L.J. 142.** [*R.*, 17 B. 573, 36 M. 216 = 14 Ind. Cas. 659 = 11 M.L.T. 416 = 13 Cr. L.J. 275 = 23 M.L.J. 39 = 1912 M.W.N. 476, 9 Cr. L.J. 276 = 5 M.L.T. 256, 9 Cr. L.J. 385 = 19 M.L.J. 217 = 6 M.L.T. 15 = 1 Ind. Cas. 799, 3 L.B.R. 255, 1 Weir 589.]

(66)—*Penal Code, ss.* 52 *and* 499, *excep.* 9—*Defamation—Counsel or pleader—Privilege—Questions in cross-examination if to be limited to instructions—Question based on recollection—Good faith, presumption—" Due care and attention "—Wrong inference—Express malice, proof of, necessary.*—A pleader, specially in the mofussil of this country, where instructions are very commonly inaccurate and misleading, would certainly be at least as much justified in acting on his own recollection as on specific instructions in putting questions to a witness in cross-examination; and because he has merely drawn a wrong inference from a fact recollected, that, of itself, in the absence of exprees malice, should not take him out of the ninth exception to s. 499 of the Penal Code. When a pleader is charged with defamation in respect of words spoken to or written while performing his duty as a pleader, the Court ought to presume good faith and not hold him criminally liable, unless there is satisfactory evidence of actual malice, and unless there is cogent proof that unfair advantage was taken of his position as pleader for an indirect purpose. UPENDRA NATH BAGCHI v. EMPEROR, **36 C. 375 = 13 C.W.N. 340 = 9 C.L.J. 259 = 9 Cr. L.J. 165 = 1 Ind. Cas. 147.** (19 B. 340, 9 Bom. L.R. 1287, *F.*) [*F.*, 41 C. 514 = 18 C.W.N. 424 = 14 Cr. L.J. 528 = 20 Ind. Cas. 1008.]

Defamation—*continued.*

(67)—*Penal Code, ss.* 499 *and* 500—*Statement made by a person in answer to a query of his pleader shortly after the disposal of the case, whether amounts to an offence under—Legal adviser and client, relationship of, how long lasts.*—Where the accused, shortly after the disposal of a criminal case against him, brought by one B, stated openly, in answer to a query of his pleader in that case, that the origin of the criminal case was due to the fact that some one of the accused's party had said at a social gathering that B's daughter-in-law had eloped, and he was subsequently prosecuted for an offence under s. 500, I.P.C., for making a statement defamatory of B. *Held*, that the statement of the accused did not constitute an offence of defamation under s. 500, I.P.C., as it was not made with the intention of harming the reputation of any body ; that the statement was made in answer to a natural question put to him by his legal adviser at a time when the relationship of legal adviser and client cannot be said to have ceased. DEBENDRA NATH SHAHA v. BHAGIRATH SHAHA, **13 C W.N. 1087 = 4 Ind. Cas. 27 = 10 Cr. L.J. 475.**

(68)—*Penal Code, s.* 500 — *Privilege of witness.*—Witnesses are free from any other consequences with respect to statements made by them as such, except that of indictment for perjury. They cannot be prosecuted for defamation. The ground of such exemption is that it concerns the public and the administration of justice that witnesses giving their evidence on oath in a Court of Justice should not have before their eyes the fear of being harassed by suits for damages or of prosecution except the prosecution for perjury. MANJAYA v. SESHA SHETTI, **11 M. 477 = 1 Weir 586.** [*Diss.*, 32 C. 756 = 9 C.W.N. 911 = 2 Cr.L.J. 459 = 2 C.L.J. 105, 14 P.R. 1893, Cr.; *N. F.*, 13 Cr. L.J. 494 = 15 Ind.Cas. 494 = 5 P.R. 1913, Cr. = 244 P.L.R. 1912 = 31 P.W.R. 1912, Cr.; *F.*, 17 B. 127, 30 M. 222 = 6 Cr. L.J. 130, L.B.R. 1893—1900, 206 ; *Appl.*, 16 M. 235 = 1 Weir 587; *R.*, 29 A. 685 = 4 A.L.J. 605 = A.W.N. 1907, 235 = 6 Cr. L.J. 197, 17 B. 573, 19 B. 340, 27 C. 262, 36 M. 216 = 13 Cr. L.J. 275 = 14 Ind. Cas. 659 = 23 M.L.J. 39 = 1 M.L.T. 416 = 1912 M W.N. 476, 17 C.L.J. 105, 17 C.W.N. 554, 6 Ind. Cas. 309 = 21 M.L.J. 85 = 8 M.L.T. 55 = 1910 M.W. N. 155, L.B.R. 1893—1900, 247, 3 L.B.R. 265, 1 Weir 589 ; *Expl.*, 15 M. 63 = 2 Weir 794.]

(69)—*Penal Code, s.* 499, *excep.* 9—*Privilege of advocate—Privilege of witness—English law.*—Where a pleader, in addressing a Court on behalf of his client, commented on some of the witnesses on the other side and called them loafers, and was charged with defamation, *held* that, in the absence of express malice (and it ought not to be presumed), a Court having regard to public policy would be extremely cautious before it deprived the advocate of the protection of *excep.* 9. In considering whether there was good faith (*i.e.*, due care and attention) the position of the person making the imputation must be taken into consideration. [*F.*, 36 C. 375 = 13 C.W.N. 340 = 9 C.L.J. 259;

Defamation—*continued.*

R., 25 B. 90=2 Bom. L.R. 653, 22 A. 234, 3 L.B.R. 265, 9 Bom. L.R. 1287. A W.N. 1907, 235=29 A. 685=4 A.L.J. 605.] Without importing into this carefully considered statute the rules of the Common Law of England based on public policy, a witness in India is adequately protected by the *Exceps.* 1 *to* 9 in s. 499, where the defamatory statement is not untrue to the knowledge of the person making it. If it is untrue, the real offence committed is that of false evidence; and the Court will not allow the *onus* of proof to be shifted by the prosecution having recourse to s. 499. *In re* NAGARJI TRIKAMJI, **19 B. 340.** [*R.*, 1 Weir 589.]

(70)—*Penal Code*, ss. 499, 500—*Pleader putting defamatory questions.*—Where a pleader, who was defending the accused, put a question to the complainant whether he had been implicated in a case of robbery, *held*, that the pleader was not guilty of defamation. VENKATA NARASIMMAM v. VENKATASUBARAYUDU, **1 Weir 587.**

(71)—*Penal Code*, s. 499 — *Privilege of litigants making irrelevant and malicious statements in pleadings, evidence, etc.*—It cannot be to the public advantage that litigants should be free to insert any matter they please into their pleadings, applications and affidavits, or to make any statement they like in the witness box, however irrelevant, scurrilous or insulting they may be, and then claim absolute privilege with success; and the question of their innocence or guilt must be decided by reference to the provinces of s. 499, I.P.C. MYA THI v. HENRY PO SAW, **3 L.B.R. 265.** (2 W.R. Cr. 36, 3 W. R. Cr. 45, 14 W.R.Cr. 27, 23 C. 867, 5 C.W.N. 293, 8 C.W.N. 292, 9 C.W.N. 911, 22 A. 234, P.R. 1887, Cr., 41, P.R. 1889 Cr. 129, 131 P. R. 1889, P.R. 1893, Cr. 64, *F.*: 11 B.L.R. 321, 15 C. 265, 14 B. 97, 27 C. 262, 3 A. 815, 17 B. 127, 17 B. 573, 19 B. 340, 28 A. 331, 19 A. 200, 10 M. 28, 11 M. 477, 15 M. 416, 17 M. 87, 16 M. 235, 421 P.R. 1879, *R.*)

(72)—*Penal Code*, s. 500—*Defamation—Statement made in plaint.*—Statements made by the parties to a suit in the pleadings are not privileged and a charge of defamation is maintainable in respect of them. KALINATH GUPTA v. GOBINDA CHANDRA BASU, **5 C.W. N. 293.** (23 C. 867, *F.*, and 14 B. 97, *Diss.*) [*F.*, 40 C. 433=17 C.W.N. 297=14 Cr. L.J. 100=18 Ind. Cas. 660 ; *R.*, 3 L.B.R. 265.]

(73)—*Penal Code*, s. 499, *excep.* 9—*Statement made in an affidavit.*—A defamatory statement made in an affidavit is not privileged, if it was wholly irrelevant to the inquiry to which the affidavit related. GIRIBALA DASSI v. PRAN KRISHTO GHOSH, **8 C.W.N. 292.** (11 B. L.R. 321, *R.*). [*R.*, 3 L.B.R. 265.]

(74)—*Penal Code*, s. 499—*Privilege of accused.*—Witnesses can be prosecuted for giving false evidence, if they make false and defamatory statements while under examination. This course cannot be followed in the case of accused persons. An accused person can claim no special privilege beyond what is provided by the exceptions to s. 499 of the Penal Code. *Per* Moore, J.—In principle, there is no solid distinction between the respective cases of counsel, witness and party, and a person accused of crime is protected in regard to statements made by him in meeting the charge brought against him. *Per* Subbramania Aiyar, J. NADU GOUNDAN v. NADU GOUNDAN, **1 Weir 589.** [*R.*, 13 Cr. L.J. 275=14 Ind. Cas. 659=1912 M.W.N. 476, 36 M. 216=11 M.L.T. 416=1912 M.W.N. 393.]

(75)—*Defamation — Exhibiting effigy and beating it with shoes.*—The making and publicly exhibiting of the effigy of a person, and beating it with shoes, amounts to defamation. PITUMBER DOSS v. DWARAKA PERSHAD, **2 N.W.P. 435.** [*D.*, 10 A. 425.]

(76)—*Penal Code*, s. 500 — *Imputation of adultery to woman—Medical examination of woman.*—An imputation charging a woman of being pregnant by adultery is defamatory. (8 B.H.C. 168, *D.*) There is no law empowering a Court to order the medical examination of the complainant in a case such as the above, with a view to ascertain the truth or otherwise of the imputation. QUEEN-EMPRESS v. PUDMON, **Rat. Un. Cr. C. 474=Cr. Rg. 33 of 1889.**

(77)—*Penal Code*, ss. 499, 500—*Defamation — Statement about the ability of a person working under a photographer.*—Where the complainant published that he was able to take photos as good as the accused, because he had under him a person who had been a servant under the accused, and the latter published a notice to the effect that the employee spoken of was employed by him to clean bottles, cups, glasses and do other things, but had no knowledge of photography and that the complainant could not have improved in business, merely because he had engaged such a boy, *held* that the notice was not defamatory of the complainant. *In re* MADAN SINGH, **1 Weir 593.**

(78)—*Penal Code*, s. 500—*Defamation—Publication of statements that the complainant was convicted of theft and sent to jail.*—Where the trustee of a temple wrote on a post card that the complainant, the *archaka* of the temple, was convicted some years previously and had been sent to jail for theft of idols belonging to the temple, and the card was received by the complainant in the ordinary course of post and the statement was published in order to forestall the complainant from setting up his rights in regard to joint *archaksahip*, *held*, that the accused was not guilty of defamation, inasmuch as the statement was true and as it was no more than the publication of the result of proceedings in a Court of Justice, which is specially declared to be no defamation by s. 499, exception 4. *In re* SINGARAJU NAGABHUSHANAM, **26 M. 464=1 Weir 611.**

(79)—*Penal Code*, s. 499, *excep.* 8—*Reporting immoral conduct of medical officer.*—

Defamation—*continued.*

Bringing to the notice of the Deputy Commissioner the fact that the complainant, a Medical officer in charge of a Hospital, was leading an immoral life and to ask for his removal, is no defamation and comes within the 8th exception to s. 499, I.P.C. JANGELAL v. DEWAJEE PATEL, **7 C.P.L.R. Cr. 20.**

(80)—*Penal Code, ss. 499, 500—Declaration of inferiority of one caste—Defamation.*—An expression of opinion by the members of a caste that their caste is superior to another caste is not such an imputation as would warrant a conviction under s. 500, Penal Code. Where, consequent upon such declaration, the members of the other caste are put to inconvenience by the refusal of the village servants to serve them, the remedy is a suit for damages. *In re* VENKATA REDDI, **1 Weir 575.**

(81)—*Penal Code, s. 499—Complaint of defamation—Dismissal of the complaint on the ground of accused's privilege—Validity.*—Where an imputation on the complainant's character is made and published and it is *prima facie* defamatory, the Magistrate should issue a summons to the accused unless it is distinctly admitted by the complainant that the accused is privileged. Under s. 105, Evidence Act, when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the exceptions contained in the Penal Code is upon that person, and the Court shall presume the absence of such circumstances. *In re* PERIASAMY KOTASAMY TEVER, **1 Weir 580.**

(81-*a*)—*Penal Code, s. 499—Making defamatory statement—Repeating the same subsequently in a judicial proceeding—Merger.*—The doctrine of merger has no place in criminal law. Where a person first makes a defamatory statement and repeats the same as a witness in a judicial proceeding, it cannot be held that the complainant's remedy is limited to prosecuting the accused for perjury. As the offences are distinct and are committed on different dates, the accused is liable to be prosecuted for defamation. *In re* PERIASAMY KOTASAMY TEVER, **1 Weir 580.**

(82)—*Penal Code, ss. 499, 500—Defamation against a public servant to the effect that he borrowed for his superior.*—To make a statement to a superior officer that a Government servant had borrowed for his immediate superior from persons connected with the Department would amount to defamation. KRISHNA RAO v. APPASAMI AIYAR, **1 Weir 585.**

(83)—*Penal Code, s. 499, excep. 10—Statement regarding the complainant's caste.*—The accused along with a great number of other persons held a meeting, and passed a resolution to the effect that 'the Nilagiri people' to which the complainant belonged 'do not belong to the caste' to which the accused and Mahrattas belonged, 'but that they seem to belong to the Rangari caste.' This latter caste was conceded to be a division inferior to that to which the complainant claimed to belong. This conclusion was arrived at after inquiry made at a caste meeting of which the complainant had notice. *Held* that the accused did not act with malice, and that they joined in passing the resolution in good faith, as a caution, for the information of the members of that community. SALER MANNAJI ROW v. C. HEROJEE ROW, **1 Weir 614.**

(84)—*Defendant in civil suit charging Judge with conspiracy with plaintiff.*—The accused, the defendant in a civil suit, in his written petition to the Deputy Commissioner, charged the Munsiff trying the case with conspiracy with the plaintiff to get up a false case, but was not able to prove the charge; *held* that he was rightly convicted of defamation. KRIPA RAM v. EMPRESS, **21 P.R. 1887, Cr.** (16 P.R. 1879, *R.*)

(85)—*Intentionally giving false evidence—Perjury.*—A witness cannot be prosecuted for defamation in respect of statements made by him when giving evidence in a judicial proceeding, though a criminal prosecution would lie for perjury if the evidence so given be intentionally false. QUEEN-EMPRESS v. MI ME SI, **L.B.R. 1893—1900, 206.** (17 B. 127, 11 M. 477, *R.*)

(86)—*Penal Code, s. 499—Merger of defamation in an offence under s. 182.*—A complaint of defamation cannot be dismissed on the technical ground that the offence of defamation charged against the accused merged in an offence punishable under s. 182, Penal Code, for which previous sanction was required under s. 195, Crim. Pro. Code. KRISHNA RAO v. APPASAMI AIYAR, **1 Weir 585.**

(87)—*Penal Code, s. 500, exception 8—Defamation — Privilege — Proof of malice in fact.*—Where a defamatory statement is made on a privileged occasion, the complainant must show malice in fact. BIDHU BHUSAN BOSE v. HARI NATH CHAKRAVARTI, **7 C.W.N. 246.** (5 H. & N. 838, (1860), 21 Q. B.D. 509 (1888), *R.*)

(88)—*Penal Code, s. 499—Defamation — Injury resulting therefrom, consideration of.*—Although a person who defames another may so compose himself that little injury results from his offence, yet, he is not excused from the penalties attached to the offence. SENTHINATHAIYAR v. GNANAMUTHU NADAN, **1 Weir 594.**

(89)—*Penal Code, s. 499—Conviction for defamation—Charge not setting forth the particular occasion of the commission of defamation—Defamation—Publication what amounts to—Presumption of malicious intention—Omission to apologise, whether proof of malicious intention.*—Where a person was convicted of defamation on a charge, which set out that the defamation was committed on, or about, the 12th day of April, and afterwards by describing the complainant as a '*Brithial Bania,*' *held,* that the charge was not a proper one, as it did not set forth the particular occasion on which the defamation was said to have been committed, so

Defamation—*continued.*

as to give the accused person an opportunity of defending himself with reference to the offence alleged to have been committed by him. Where it was alleged that the accused, who was the collecting *punchayat* of his village, had defamed the complainant by giving him a *chowkidari* receipt in which he was described by the designation of '*Brithial Bania,*' *held,* that the delivery of such a receipt to the complainant himself was not a publication such as could make him liable to punishment for defamation. Where, in s. 2, it was found that the people of the complainant's caste has been at first described in the census papers as '*Brithial Bania,*' but that, on the application of his caste fellows, the name was afterwards changed into '*Ghanda Bania,*' *held,* that in the absence of proof that the accused had any information of the alteration so made in the complainant's caste designation in these papers, it was to be presumed that the accused, in describing him as a '*Brithial Bania,*' used the expression in good faith; nor could the subsequent omission to apologise for his inadvertent use of the expression be taken as an indication that the accused used the expression at the time with a malicious intention. BISHWANATH DAS v. KESHAB GANDHABANIK, **30 C. 402=7 C.W.N. 74.** [*R.*, P.R. 1910, Cr.=6 P.W.R. 1910, Cr.]

(90)—*Penal Code, s. 499 — Defamation — Province of Judge and Jury.*—The question of the physical and moral, as distinguished from the legal character of the act of a person accused of an offence under s. 499, I.P.C., is like those which arise under other sections of the Code, one to be determined by considerations and inferences drawn from common experience rather than from rules of legal construction. What the imputation was which a man intended to convey who did not directly express it, and whether he believed or had reason to believe that the imputation should produce a particular sentiment or opinion on the part of those to whom the communication was made are matters of fact, or inference from fact, belonging, where the judicial functions are divided, to the province of the Jury. Whether the imputation thus found to have been made, and whether the harm thus found to have been the expected and probable result were such as to satisfy the definition of the offence of defamation, would be questions for the Judge. If the words of signs employed could have a legally defamatory sense he would, in England, be bound to submit them to the Jury. The Jury instructed as to the law would find whether the language as they understood it constituted a wrong. *In re* PITAMBER, **Rat. Un. Cr. C. 140.**

(91)—*Crim. Pro. Code, s. 198—Defamation of wife—Husband whether an aggrieved party.*—*Held*, by the Full Bench (*Ranade, J., Diss.*) that a husband has a right to lodge a complaint about the defamation of his wife, as he is a person aggrieved by an imputation of unchastity to his wife with whom he is living. CHHOTALAL LALLUBHAI v. NATHABHAI, **25 B. 151=2 Bom. L.R. 665, F.B.** [*Diss.*, 32 C. 425=8 C.W.N. 515; *F.*, 15 M.L.J. 224=2 Weir 231=2 Cr. L. J. 381; *R.*, 3 C.L.J 33=3 Cr. L.J. 187, 9 Cr. L.J. 450=3 S.L.R. 15, 10 Cr. L.J. 263, 1 Ind. Cas. 941.]

(92)—*Crim. Pro. Code* (1882), *ss.* 198, 345—*Defamation of wife—Competency of husband to prefer complaint.*—Where a married woman is defamed by the imputation of unchastity, her husband is a person aggrieved by the defamation, upon whose complaint a Magistrate may take cognisance of the offence under s. 198, Crim. Pro. Code. CHELLAM NAIDU v. RAMASAMI, **14 M. 379=2 Weir 230=1 M.L.J. 242.** [*F.*, 25 B 151, 15 M.L.J. 224=2 Cr. L.J. 381, 10 Cr. L.J. 263.]

(93)—*Defamation of wife—Husband's right to complaint*—Under s. 499, I.P.C., the reputation to be harmed must be the reputation of the very person concerning whom the imputation is made and not of some other person. A husband cannot be considered to have been harmed in his reputation by a defamatory statement about his wife, nor could a father be considered to have been harmed in his reputation by defamatory statements about his daughter. DAUD v. EMPRESS, **22 P.R. 1884, Cr.** [*R.*, 39 P.R. 1887, Cr.] EMPRESS v. IMAM BAKSH, **39 P.R. 1887, Cr.**

(94)—*Who may prosecute for—Crim. Pro. Code* (1882), *ss.* 198, 345—"*Aggrieved*" *to be treated as equivalent to* "*person injured.*"—The reputation of a living person who is an adult and *sui juris* is exclusively within his own protection. If he does not take steps to defend it, no one else can. S. 345, Code of Criminal Procedure shows that the only person who can compound a prosecution for defamation is the person defamed, and indicates clearly the intention of the law to leave to every one the exclusive right of vindicating his own reputation. The word "aggrieved" in s. 198, Code of Criminal Procedure, in cases of defamation must be treated as equivalent to the expression "person injured," the object of the section apparently being to limit the right of complaint to the person who has suffered the injury. QUEEN-EMPRESS v. NGA SHUN, **L.B.R. 1872—1892, 617.**

(95)—*Penal Code, s.* 500—*Defamation—Crim. Pro. Code* (1898), *s.* 198—"*Person aggrieved*"—*Defamation of subordinate officers of the Municipality—Right of President to complain.*—Where a newspaper published statements, which were alleged to be defamatory, of specific acts of negligence on the part of the Health Officer and his subordinates, *held,* that the President of the Municipality was not a person aggrieved within the meaning of s. 198, Crim. Pro. Code, by the statements made against the subordinate officers, merely because he had a control over those officers, and that by the imputation made against his subordinates, his conduct and administration had not been impugned. BEAUCHAMP, H. K. v. C. M. J. MOORE, **26 M. 43=2 Weir 232=1 Weir 593=12 M.L.J. 413.** [*R.*, 11 Cr. L.J. 594=8 Ind. Cas. 220.]

Defamation—*continued.*

(96)—*Penal Code, s.* 499, *exceps.* 9 *and* 10—*Presumption of malice* —Conscious violation of law to another's prejudice is sufficient, though there may be no malice in fact. When defamatory words are *prima facie* libellous, legal malice must be presumed until a case of privilege is made out by the accused. *In re* PALANI ASARI, **1 Weir 613.**

(97)—*Penal Code, ss.* 499, 500 –*Presumption of malice—Rebuttal.*—Although when defamatory words, *prima facie*, are used, malice may be presumed, still that presumption may be rebutted by other circumstances negativing deliberate intention to harm the reputation of the person defamed. *In re* ANTHONY RODGERS, **1 Weir 607.**

(98)—*Penal Code, ss.* 499, 500—*Defamation—Good faith—Absence of reasonable cause.*—The absence of reasonable cause is evidence of the absence of good faith. Where the accused informed the police and other persons that he suspected a respectable shopkeeper and his family of having committed or instigated the commission of a burglary, *held* that the information to the police was privileged, if made in good faith, but that to other people, was not privileged. HIGH COURT PROCEEDINGS, 27TH APRIL, 1880, No. 789, **1 Weir 607.**

(99)—*Penal Code, s.* 499, *excep.* 8—*Accusation preferred in good faith to authorised persons.*—The complainant, who was charged by the accused with having received bribes, prosecuted the latter for defamation. The accused tendered three witnesses to prove that the complainant received bribes, but the Magistrate holding that they stood practically in the position of accomplices, did not give any weight to their evidence. *Held*, that, as it appeared from their evidence that they paid money under some sort of compulsion, they were not accomplices and that the Magistrate should have considered whether the allegation made by the accused was privileged and made *bona fide*. MENTA KONDU BHOTHU v. CHALAMCHERLA SUBBAYYA, **1 Weir 608.**

(100)—*Penal Code, s.* 499, *excep.* 8 —*Accusation preferred to the head of a caste.*—Where a person makes to the head of the caste an accusation against another, the burden of proving good faith in respect of such accusation lies on the accused, and, in determining whether he so acted, it is material to consider who the accused was and whether he had any concern in the matter which would justify him, in making the allegation. The accused must also show that he had reasonable and probable cause for making the same. VENKAPPA RAI v. IBRAHIM BEARY, **1 Weir 608.**

(101)—*Penal Code, s.* 499, *excep.* 9—*Defamatory statement to a Municipal Council.*—The accused charged the complainant with trespass in respect of a certain land before a Magistrate, and in his complaint stated that the complainant was convicted and rigorously imprisoned. He made a similar statement to the Municipal Council. *Held*, that, although it was doubtful whether the statement to the Magistrate was not privileged as privilege of a party in a Court of law, the statement to the Municipal Council was in no way privileged. RAMASAMI NAIDU v. RAMACHENDRUDU, **1 Weir 612.**

(102)—*Penal Code, s.* 499, *excep.* 9—*Defamation made as a defence in a criminal case.*—Where a defamatory statement was made by the accused as an accused in a criminal case for the purpose of his defence, and was relevant as showing the motive of the complainant, and also of some of his witnesses; *held*, that such statement being found to be true was privileged. MURUGESA PILLAI v. PAPATHI AMMAL, **1 Weir 612.** [*R.*, 13 Cr.L J. 275 = 14 Ind. Cas. 659 = 1912, M.W.N. 476, 36 M. 216 = 11 M.L.T. 416 = 1912 M.W.N. 393.]

(103)—*Bribery charged against a Magistrate —Defamation—Sanction to prosecute—Evidence Act, s.* 55—*General reputation—Penal Code, s.* 211.—B, an Honorary Magistrate, prosecuted A for defamation. The matter alleged to be defamatory was a statement made by A to the Commissioner of the division that, in a case where A was tried before B, the latter took a bribe. B, complained under ss. 182, 211 and 500, Penal Code, but as no sanction was given for a prosecution under either of the two former sections, the Magistrate tried A under s. 500, only. *Held*, that as the statement made by A to the Commissioner against B did not amount to a criminal prosecution or a charge within the meaning of s. 211, I.P.C., no previous sanction of the Commissioner was necessary in this case under s. 195 of the Criminal Procedure Code. *Held*, further, that evidence that B took bribes from other persons was irrelevant (*vide* s. 55 of the Evidence Act). The evidence as to general reputation was, if admissible at all, not admissible to show that A's statement did not harm B's reputation. EMPRESS v. CHEDI LAL, **2 C.P.L.R. 198.**

(104)—*Publication—Place of trial.*—When a defamatory petition presented to a superior public officer is sent to a subordinate officer for enquiry, there is a publication of the defamation in the place where the latter may receive the petition. RAJA SHAH v. EMPRESS, **14 P.R. 1889, Cr.**

(105)—*Charge of an offence under s.* 501, *I.P.C.—Conviction for an offence under s.* 500, *I.P.C.—Crim. Pro. Code* (1882), *s.* 198.—A criminal Court is not competent to amend or alter a complaint under s. 501, Penal Code, to one under s. 500 CROWN v. UMA SHANKAR, **18 P.R. 1889, Cr** [*R.*, 8 P.R. 1891, Cr., 35 P.R. 1905, Cr.]

(106)—*Privilege—Communication to a superior officer.*—Where a police officer communicated a statement elicited from a third party in a police enquiry to his superior officer, *held*, that the accused could not be convicted of defamation if those statements were defamatory, as the

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report, having been made in discharge of his duty, was privileged. EMPRESS v. SHER SINGH, **23 P.R. 1880, Cr.** [*Dist.*, 11 Cr. L.J. 205=5 Ind. Cas. 714=4 P.W.R. 1910, Cr.]

(107)—*Crim. Pro. Code* (1898), *ss.* 198, 439 *and* 526—*Defamation—Proceedings without complaint—Creditor's notice on a post card to demand debt—Irregular proceedings—Power of the High Court to quash proceedings altogether on petition for transfer—Indian Penal Code, ss.* 499 *and* 500.—*Held*, that putting forward even a false claim on a post card to the effect that the addressee should pay the addressor a certain sum of money which the former owes the latter, does not *prima facie* amount to defamation as defined in s. 499, I.P.C.; that a Magistrate, to whom such a post card is privately handed over without a complaint as is required by s. 198 of Act V of 1898, commits material irregularity and acts without jurisdiction in starting thereon a criminal prosecution under s. 500, I.P.C.; and that the High Court on the revision side can altogether quash proceedings of such a nature at any stage of the case. ABDULLA v. C. CLARKE, **3 P.W.R. 1909, Cr.=1 Ind. Cas. 99=9 Cr. L.J. 154.**

(108)—*Defamation—Dismissal of complaint—Malicious report by a Police officer—His liability—Accused to prove exception—Privileged communication—How far Magistrate bound to enquire—*Ultra vires—*Indian Penal Code (Act* XLV *of* 1860), *ss.* 77, 499 *and* 500—*Crim. Pro. Code (Act* V *of* 1898), *ss.* 202 *and* 203—*Indian Evidence, Act* I *of* 1872, *ss.* 105, 123, 124 *and* 125—*Act* XVIII *of* 1850—*Act* V *of* 1861, *ss.* 4, 7, 24 *and* 42—*Chief Court Circular No.* 849-*G., dated* 15*th February*, 1900—*Police Rules.*—*Held* that a Police Officer is liable to be prosecuted and convicted under s. 500, Penal Code, if he maliciously makes to his superior a defamatory report against any person, unless he can show that he is protected by some statutory privilege. But there is absolutely no such privilege for a Sub-Inspector of Police. A malicious report intended to result in the entry of a person's name in Police Surveillance Register No. X is in itself defamatory. Such a case is not covered by the maxim—"*Omnia presumuntur rite esse actā.*" *Held*, also, that, where a complaint is based upon some official communication, whether oral or in writing, falling within the scope of either ss. 123, 124 or 125, Evidence Act, and there is no likelihood of proving the communication by primary and direct evidence, the Magistrate is fully justified in dismissing the complaint under s. 203, Crim. Pro. Code, 1898. *Held*, further, that, although the general rule in all the criminal proceedings is that the *onus* of proving every thing essential to the establishment of a charge against an accused lies on the prosecution, yet s. 105 of the Evidence Act constitutes, a departure from that rule and makes it obligatory upon the Courts to presume the absence of such circumstances as may bring the accused within some general or special legal exception, unless or until their existence is shown by the accused or is admitted by the prosecution itself. So, in a defamation case, when once the complainant has proved that the accused has made a *prima facie* defamatory imputation, it rests with the accused to show that he is justified in doing so. *Per Johnstone, C.J.*—The Punjab Chief Court Circular No. 849-G. of 15th February, 1900, is *ultra vires.* It lays down a principle and test which are inconsistent with the Statute Law, s. 202, Crim.Pro. Code, 1898. *Per Williams, J.*—Whether the circular is *ultra vires* or not, the course indicated by it is pre-eminently one which it is desirable and even necessary to adopt in the cases contemplated therein. *Per Johnstone, J.*—Where the facts can hardly be known with precision to the complainant, it is the duty of the Magistrate to explain the facts and in view of that explanation, to call upon him to state precisely what the charge is. *Per Williams, J.*—But there is no such duty of the Magistrate, where the complainant has the benefit of legal assistance and the facts stated by him do not constitute an offence for which the accused may be considered responsible. ABDUR RAZAK v. GAURI NATH, **4 P.W.R. 1910, Cr.=5 Ind. Cas. 714=11 Cr. L.J. 205.** (20 M. 387, *F.*; 36 C. 449, 13 B. 590, 9 C.W.N. 199, *R.*; 23 P.R. 1880, Cr., *D.*)

(109)—*Penal Code, s.* 500—*Defamation—Abatement of prosecution on the death of complainant—Criminal Procedure Code, s.* 198—*Act* V *of* 1881, *s.* 89.—*Held*, that the death of the complainant, during the course of criminal proceedings for defamation, necessarily terminates those proceedings. *Obiter.*—*Held*, also, that s. 89 of the Probate and Administration Act, V of 1881, contains the law on the subject of a cause of action surviving to the representative of a deceased plaintiff, and the principle underlying the rule laid down in the section is applicable to criminal proceedings under s. 500 of the Indian Penal Code, having regard to the narrowness of line between a prosecution and a suit for damages. ISHAR DAS v. KING-EMPEROR, **8 P.W.R. 1908, Cr.=7 Cr.L.J. 290=112 P.L.R. 1908, 10 P.R. 1908, Cr.** (31 C. 993, *F.*)

(110)—*Form of defamation—Penal Code,* s. 499—The using of defamatory expressions for the protection of the interests of the party making them is not privileged, unless the imputation is made in "good faith." QUEEN v. PURSORAM DOSS, **3 W.R. Cr. 45.**

(110-*a*)—*Form of defamation—Written or spoken defamation—Penal Code, s.* 499.—No distinction exists between written and spoken defamation. QUEEN v. MOHUNT PURSORAM DASS, **2 W.R. Cr. 36,** QUEEN v. PURSORAM DASS, **3 W.R. Cr. 45.**

(111)—*Nature of defamation—Penal Code, s.* 499—"*Publishing*" *defamatory matter—Filing petition in Court.*—Filing in Court a petition containing imputations against a person calculated to injure his reputation, with the intention that other persons should read it amounts

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to making or publishing the imputation within s. 499, Penal Code. The Criminal law of this country as to defamation is contained in s. 499 of the Penal Code, and not in the English Law. F.A. GREENE v. MR. F. P DELANNEY, **14 W. R. Cr. 27.**

(112)—*Untrue statement—Penal Code, s.* 499. —The accused, an Inspector of Police, was sent to enquire if it was true that one Brojanath was a leader of dacoits. He reported that it was false, and that the *banias* of the village were trying to get him punished from an ill-feeling. He added: "I learnt from private enquiries that there is scarcely a woman in the houses of the *banias* who has not passed a night or two with the defendant Brojanath." *Held*, that the imputations were neither reckless nor unjustifiable, and were not defamatory, being covered by the 9th exception to s. 499, I.P.C.; but the commitment of the accused for trial for defamation under s. 499 of the Penal Code was supported under the other circumstances of the case. *In the matter of the petition of* RAJNARAIN SEIN, **6 B.L.R. App. 42=14 W.R. Cr. 22.**

(113)—Onus probandi—*Act* XVIII *of* 1862. *s.* 27—*Good faith* —Under s. 27 of Act XVIII of 1862, proof of the existence of the facts relied on as a defence should be given before good faith could be presumed in a case of defamation, and the *onus* lies on the person making the imputation Such a person, to claim the benefit of excep. 9, s. 499 of the Penal Code, must prove that he has exercised due care. MR. SEALY v. RAMNARAIN BOSE, **4 W.R. Cr. 22.**

(114)—*Action for defamation—Words spoken in judicial proceeding—Police officer's report, how far evidence—Good faith*—Onus *of proof.*— A civil Court can take cognizance of an action for damages for defamation of character (*e.g.*, by imputation of a criminal offence) though the words complained of were spoken in a judicial proceeding. The report of a police officer may be treated as evidence that the words complained of were spoken, but it cannot be evidence of the defendant's guilty and malicious intention. MOHENDRO CHUNDER CHUCKERBUTTY v. SURBO KOKHYA DEBIA, **11 W.R. 534.**

(115)—*Penal Code, s.* 499 — *Defamation— Common abuse.*—Where the defamatory statement attributed to the accused consisted of the use of certain abusive terms, *viz.*, "*beti-ki-gali, bahin-ki-gali*" with reference to the complainant's daughter, *held*, that the use of such abuse being common, could not be regarded as conveying any such imputation as could in any way harm the reputation of the person towards whom it was used. EMPRESS v. BEHARI, **A. W.N. 1883, 36.**

(116)—*Penal Code, ss.* 95. 499—*Defamation —Causing of slight harm.*—The accused, a barrister, and the complainant a pleader, were engaged in a criminal case. The latter made a remark conveying an imputation on the former, upon which the former called the latter a "liar." *Held*, that even if the expression made use of by the appellant amounted to defamation in point of law, the case came under the provisions of s. 95, I.P.C. EMPRESS v. VANSITTART, **A.W.N. 1883, 46.**

(117)—*Penal Code, ss.* 499, 500—*Scope.*— Although the language of s. 499, I.P.C., is open to the most elastic application, yet, Magistrates will act wisely in refusing to adapt it to cases in which no real harm has been done, or where a civil remedy might more appropriately be sought. EMPRESS v. AMIR HASAN, **A.W.N. 1883, 167.** [*R.*, 29 A. 685=4 A.L.J. 605=A. W.N. 1907, 235=6 Cr. L.J. 197.]

(118)—*Penal Code, ss.* 499, 500—*Defamation —Letter addressed to a legal practitioner in reply to the notice of a claim on behalf of his client, which contains imputation concerning the client—Publication—Privileged communication —Imputation addressed to the person himself— Defaming husband in wife's presence and* vice versa—*Crim. Pro. Code, s.* 439.—*Held* that:— Where a person, to whom a claim is presented by a legal practitioner on behalf of his client, in replying exceeds the privilege by sending to the legal practitioner a letter containing defamatory statements concerning the client, the publication is complete when the latter is received and read by the legal practitioner. Any one in the transaction of business with another has a right to use language *bona fide*, which is relevant to that business and which a due regard to his own interest makes necessary even if it should, directly or by its consequences, be injurious or painful to another; and this is the principle on which privileged communication rests; but defamatory comments on the motives or conduct of the party with whom he is dealing, do not fall within this rule. In the present case it was enough for the respondent to deny the truth of the petitioner's claim on the ground of enmity, but to go the length of attacking his character and writing the letter, the material portions of which are given below, is *prima facie* defamatory and does not fall within any of the exceptions to s. 499, Penal Code. "Dear Sir,—In reply to the notice dated the 9th February, 1908, I state as follows:—" I inspected the account of Kalka Municipal Office as Senior Auditor. In the course of the audit, embezzlements to the extent of about Rs. 1,000 were committed by Dr. J., the Sanitary Officer at Kalka...All these statements showed dishonesty on the part of the Doctor. I stated in my report that during the last year he must have embezzled about Rs. 6,000. On my report the doctor was transferred from Kalka......My report was subsequently printed and sent to the Local Officers. I discharged my official duties honestly, and this is the reason why Dr. J. is inimically disposed towards me. I owe him no money nor did I borrow any money from him......The Local authorities taking pity on the Doctor on account of his old age were content with his transfer only. In fact, I, in my report, and also the Examiner, recommended that he

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(Doctor) should be criminally prosecuted. *Obiters.* Defaming husband in wife's presence and *vice versa* is sufficient publication within the meaning of s. 499 and is punishable under s. 500, I.P.C. But the uttering of a libel by a husband to his wife is no publication and consequently is not an offence under s. 500, I.P.C. It is settled law that the communication of defamatory matter concerning a particular person to that person only is not publication within the purview of s. 499, Penal Code. DR. J. v. SHER SINGH, **6 P.W.R. 1910, Cr. = 10 P. R. 1910, Cr. = 5 Ind Cas. 892 = 11 Cr. L.J. 281.** (7 A. 205, F.B., 7 C.W.N. 74, 18 B. 205, *F.*)

(119)—*Penal Code, s. 499—Defamation—Privilege of suitor.*—In a criminal prosecution for defamation in respect of the statements made by the accused as complainant in a criminal case, *held*, that a plea of privilege as suitor was bad as the doctrine of absolute privilege of statements made by suitors does not apply to proceedings under the Indian Penal Code, EMPRESS v. GAJADHAR, **A.W.N. 1890, 170.**

(120)—*Penal Code, s. 499—Defamation—Privilege—Wife defamed—Complaint by husband.*—Where the father and the brother of the complainant's wife were accused of defamation in that they stated that somebody had taken hold of her with intent to commit adultery, *held*, that the statement was not privileged under any of the exception in s. 499 of the Penal Code. *Held* also that the husband could complain as the aggrieved person in the above case and not necessarily the wife. EMPRESS v. MAIKU, **A.W.N. 1891, 138.**

(121)—*Penal Code, s. 499—Defamation—Charge instituted by son for defamation against mother.*—For the purpose of instituting a criminal proceeding under s. 499, I.P.C., a mother and son are not in the same position as a husband and wife. MUSURIS DIN v. JAGAN NATH, **A.W.N. 1893, 207.**

(122)—*Crim. Pro. Code* (1882), *s. 198—Complaint of abetment of defamation by sale of printed matter.*—What a complaint alleging the commission of the above-mentioned offence should contain discussed. SARDAR DYAL SINGH v. QUEEN-EMPRESS, **8 P.R. 1891.**

Abetment of sale of printed defamatory matter—*See* ABETMENT, 8 P.R. 1891, Cr.

See ACT XVIII OF 1862, s. 27, 4 W.R. Cr. 22.

See ACT XXV OF 1867, s. 5, 9 M. 387 = 1 Weir 576 = 1 Weir 865.

See APPLICATION TO HIGH COURT, Rat. Un. Cr. C. 480.

See COMPENSATION—GENERAL, 1 W.R. Cr. 6.

See COMPLAINT—INSTITUTION OF COMPLAINT—PRELIMINARIES, 10 A. 39 = A.W.N. 1887, 264.

Defamation—*concluded.*

See COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 3 Bom.L.R. 675.

See CONTEMPT OF COURT, 10 C. 109 = 10 I.A. 171, P.C.

See CRIM. PRO. CODE, 1898, s. 198, 32 C. 425 = 8 C.W.N. 515

Distinct offences—Joint trial—Defamatory resolution—Transmission of resolutions to a newspaper—Concert—*See* CRIM. PRO. CODE, 1898, ss. 233, 239, 11 Cr.L J. 135 = 5 Ind. Cas. 436 = 7 M.L.T. 127.

See CRIM.PRO. CODE, 1898, s. 350, 13 C.W.N. 550.

Unjustifiable and calculated to incite resentment between communities—Nature of punishment— Lapse of time— Imprisonment —Not necessary—*See* CRIM. PRO. CODE, 1898, s. 439, 4 S.L.R. 86 = 8 Ind. Cas. 218 = 11 Cr.L.J. 593.

See JOINDER OF CHARGES WHEN LEGAL, 18 P.R. 1904 = 120 P.L.R. 1904.

Defamatory resolutions—Transmission of resolution to a newspaper—*See* JOINT TRIAL, 11 Cr.L.J. 135 = 5 Ind. Cas. 436 = 7 M.L.T. 127.

See JURISDICTION OF CRIMINAL COURTS —GENERAL, 44 P.R. 1885, Cr.

See LEGAL PRACTITIONERS—ADVOCATE, 10 M. 28, F.B.

See LEGAL PRACTITIONERS—PLEADER AND CLIENT, 4 Ind. Cas. 176.

Doctrine of absolute privilege—English and Indian Law—*See* PENAL CODE, ss. 2, 499, 500, 17 C.W.N. 297 = 14 Cr.L.J. 100 = 18 Ind. Cas. 660 = 40 C. 433.

'Kulabrashta', meaning of the term—*See* PENAL CODE, ss. 95, 500, 1911, 2 M.W.N. 8 = 10 M.L.T. 96 = 12 Cr. L. J. 497 = 12 Ind. Cas. 217.

Statement in petition to Magistrate—*See* PRIVILEGED COMMUNICATION, 1 Agra 38, Cr.

See RECEIVER, 13 Cr.L.J. 491 = 15 Ind. Cas. 491.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 9 M. 439 = 2 Weir 213.

Default.

See COMPLAINT — DISMISSAL OF COMPLAINT.

See DISMISSAL OF COMPLAINT.

See CRIM. PRO CODE, 1898, ss. 367, 369, 421, 422, 423, 5 N.L.R. 76 = 9 Cr.L.J. 553 = 2 Ind. Cas. 247.

See JOINDER OF CHARGES—GENERAL, 11 C. 91.

See PENAL CODE, s. 174, 3 S.L.R. 155.

Default in giving security.

See SECURITY TO KEEP THE PEACE—DEFAULT IN GIVING SECURITY.

Defence.

See FALSE DEFENCE.

(1)—Alibi—*Nature of defence.*—An *alibi* is generally an unsatisfactory way of disproving a claim or charge. REG v. PARBHUDAS, **11 B. H.C. 90.**

See ACT VII OF 1870, s. 19 (17), U.B.R. 1892—1896, Vol. I, 9.

Nature of defence which accused can set up—Duty of Court—Deficiency in prosecution evidence—Defence not bound to fill up—Right of defence to comment on such deficiency—Case of fraud set up by defence—Opportunity of explanation to prosecution—*See* PENAL CODE, ss. 399, 402, 18 C.W.N. 498=41 C. 350=15 Cr. L.J. 385=23 Ind. Cas. 985.

Defence Witness.

See EVIDENCE—STATEMENTS MADE TO POLICE, 18 P.R. 1900, Cr.

Defile.

See PENAL CODE, s. 295, 1 Weir 253.

Defraud.

See PENAL CODE, s. 415, 32 C. 775=9 C. W.N. 807=1 C.L.J. 469=2 Cr. L.J. 368.

Dekhan Agriculturists' Relief Act.

See BOM. ACT XVII OF 1879.

Delay.

See REVISION—DELAY.

(1)—Delay in bringing accused to trial noticed. CROWN v. DIA RAM, **14 P.R. 1867, Cr.**

Effect of—*See* BEN. ACT III OF 1899, ss. 449, 450, 452 and 579, 11 C.W.N. 30=4 Cr. L.J. 408=34 C. 341.

See ADULTERY, 3 C. 688.

Appeal presented out of time—Rejection—*See* APPEAL — APPEAL — PRACTICE AND PROCEDURE, 5 W.R. Cr. 80.

Presentation of appeal — Limitation — Delay in obtaining copies—*See* APPEAL—APPEAL—PRACTICE AND PROCEDURE, 6 M. H.C. 349.

In prosecuting accused after receipt of sanction—Refusal to entertain complaint—*See* COMPLAINT—INSTITUTION OF COMPLAINT—PRELIMINARIES, 2 Weir 154=6 M.H.C. App. 15.

Sanction to prosecute—Application made after four months— Whether excusable—*See* CRIM. PRO. CODE, 1898, s. 195, 15 Cr. L.J. 698=26 Ind. Cas. 146.

See CRIM. PRO. CODE, 1898, s. 195, 13 Ind. Cas. 97.

Application for sanction presented after a year's—Whether can be granted—*See* CRIM. PRO. CODE, 1898, s. 195 (6), 8 S.L.R. 49=15 Cr. L.J. 654.

See CRIM. PRO. CODE, 1898, s. 439, 4 S.L.R. 86=8 Ind. Cas. 218=11 Cr. L.J. 593.

In police investigation—*See* MAGISTRATE, DUTY OF, 2 Bom. L.R. 1092.

Delay—*concluded.*

See PENAL CODE, ss. 154, 155, 7 C.W.N. 245.

Omission by husband to take steps towards prosecuting for adultery for long time—Effect—*See* PENAL CODE, s. 497, 1 C.W.N. 498.

In asking for sanction—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 2 Weir 154.

See SANCTION TO PROSECUTE— CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 11 C.W.N. 119=4 Cr. L.J. 454.

Delay in disposal of case—*See* TRANSFER OF CRIMINAL CASES—GROUNDS FOR TRANSFER-NOTICE, 2 Weir 679.

Delay in claiming maintenance.

See MAINTENANCE, 2 Weir 616.

Delegation of authority of public servant.

See PENAL CODE, ss. 23, 186, 22 C. 789.

Delegation of authority, powers or functions.

Nazir delegating the authority to execute a warrant to peon — Obstruction — Civ. Pro. Code, s. 251—*See* ACT VII OF 1870, ss. 22, 20, 22 C 596.

See ACT XXVII OF 1871, s. 18 (7), r. 13, 23 P.R. 1908, Cr.=9 Cr. L.J. 94.

District Registrar's power to delegate to Sub-Registrar functions prescribed by s. 74, Registration Act, 1877—*See* ACT III OF 1877, ss. 74 and 82, 24 C. 755.

Delegation of powers of District Registrar—*See* ACT III OF 1877, s. 82, 20 C. 719.

See ACT I OF 1878, ss. 5 and 9, 1 S.L.R. Cr. 70=8 Cr. L.J. 188.

Application for allowance for spoiled stamps—Power of Collector to delegate authority—*See* ACT I OF 1879, s. 51, 5 A. 17.

See ACT XV OF 1881, s. 15 (1) (*c*), r. 19, 11 Bom L.R. 12=9 Cr. L.J. 160=1 Ind. Cas. 102.

See BEN. ACT III OF 1884, s. 45, 20 C. 448.

See BOM. ACT IV OF 1887, s. 6, 3 S.L.R. 56 Cr.=2 Ind. Cas. 371.

Power of Municipal Board to delegate generally the authority to institute prosecutions—*See* U. P. ACT XV OF 1883, s. 69, 22 A. 123, F.B.

See CRIM. PRO. CODE, 1898, s. 17, 12 A.L.J. 803=36 A 468=15 Cr. L.J. 584=25 Ind. Cas. 336.

See CRIM. PRO. CODE, 1898, ss. 110, 118, 27 A. 293=1 A.L.J. 601=A.W.N. 1904, 231.

Delegation of questions as to actual possession to arbitrators, whether legal—*See* CRIM. PRO. CODE, 1898, s. 145, 32 C. 552=1 C.L.J. 432=2 Cr. L.J. 347.

See CRIM. PRO. CODE, 1898, s. 407 (2), 2 Bom. L.R. 536.

Surety bond to produce accused before Sessions Court—Proceeding for forfeiture if

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may be taken by a Magistrate—Validity—*See* CRIM. PRO. CODE, 1898, ss. 514, 516, 14 C. W.N. 259=2 Ind. Cas. 113=10 C.L J. 248.

See JOINT TRIAL, 4 N.L.R. 71=8 Cr. L.J. 11.

Power of Judge to delegate to assessors' examination of witnesses—*See* JUDGE, 5 W.R. Cr. 59.

See JURY UNDER NUISANCE SECTIONS OF CRIM. PRO. CODE, Rat. Un. Cr. C. 460=Cr. Rg. 17 of 1889.

Indian Legislature whether can delegate its legislative powers—*See* LEGISLATURE, POWERS OF, 3 C. 63=1 C.L.R. 161, F.B.

Power of Magistrate to delegate to assessors' examination of witnesses—*See* MAGISTRATE, DUTY OF, 5 W.R. Cr. 59.

Signature of prisoner—Police officers—*See* POLICE INVESTIGATION, Rat. Un. Cr. C. 488 =Cr. Rg. 57 of 1889.

See SECURITY PROCEEDINGS, A.W.N. 1898, 154.

Revisional jurisdiction of Sessions Judge cannot be delegated to joint Sessions Judge—*See* SESSIONS JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 210.

Delusion.

Liability of persons subject to—*See* PENAL CODE, s. 84, 15 O.C. 321=18 Ind. Cas. 641= =14 Cr. L.J. 81.

See PENAL CODE, s. 84, 34 C. 686=6 Cr. L. J. 233.

Demeanour.

Of witnesses noted by Court—Duty of Appellate Court—*See* CRIM. PRO. CODE, 1898, ss. 363, 417, 125 P.L.R. 1914=15 Cr. L. J. 203 =27 P.W.R. 1914, Cr.=22 Ind. Cas. 987.

Demon.

Beating child thinking it to be a—*See* RASH AND NEGLIGENT ACT, CAUSING DEATH BY, 11 P.R. 1888, Cr.

Departmental Enquiry.

Into conduct of Tahsildar—Power to issue summons to witnesses—*See* MAD. ACT III OF 1869, 4 M. 393=1 Weir 76=1 Weir 891.

Sanction to prosecute — Complaint to a District Registrar—Enquiry held departmentally—Judicial proceedings—*See* CRIM. PRO. CODE, 1898, ss. 195, 476, 11 C.L J. 121=5 Ind. Cas. 721.

See CRIM. PRO. CODE, 1898, ss. 202, 203, 33 P.R. 1887, Cr.

Not a judicial proceeding—*See* CRIM. PRO. CODE, 1898, ss. 476, 435, 439, 29 M. 100=3 Cr. L J. 376.

Admission of guilt while departmental enquiry was going on—Whether could be proved in judicial proceeding—*See* EVIDENCE ACT, 1872, s. 91, 12 A.L.J. 306=36 A. 222=15 Cr. L.J. 569=25 Ind. Cas. 321.

Departmental Enquiry—*concluded.*

False evidence in departmental enquiry—Court — *See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 22 B. 936.

Departmental Punishment.

How far affects punishment by Courts—*See* ACT V OF 1861, s. 29, 9 Ind. Cas. 831=12 Cr. L.J. 143=15 P.W.R. 1911=184 P.L.R. 1911.

Whether a bar to a prosecution under the Act—*See* MAD. ACT XXIV OF 1859, ss. 10 and 44, 17 M. 278=1 Weir 839.

See AUTREFOIS CONVICT, PLEA OF, Rat. Un. Cr. C. 318=Cr. Rg. 6 of 1887.

Deposition.

See EVIDENCE.

See EVIDENCE ACT, 1872, s. 32.

See WITNESS.

(1)—*Crim. Pro. Code, Act* XXV *of* 1861, s. 198—*Deposition—Practice.*—Before a deposition is closed, a witness should be given an opportunity of explaining and correcting any contradictions it may contain, and only the statement which the witness finally declares to be the true one must be taken to be the statement, he intended to make. REG v. BALKRISHNA, **Rat. Un. Cr. C. 54=Cr. Rg. 17-8-1871.** [*F.*, Rat. Un. Cr. C. 502.]

(2)—*Recording of — Proof of contents of—Prosecution for false evidence.*—When it is intended to prosecute a person for giving false evidence, he should be carefully examined as to the point on which he is supposed to be speaking falsely and the questions and answers should be recorded. Before a deposition is closed, a witness should be given an opportunity of explaining and correcting any contradiction which it may contain and only that statement which the witness finally declares to be the true one must be taken to be the statement which the witness intended to make. Although the contents of a deposition may be proved by a certified copy thereof, it is proper at a trial for intentionally giving false evidence, to produce and record at the trial the original deposition. QUEEN-EMPRESS v. NGA THA DWE, **L.B.R. 1893-1900, 21.** (12 W.R. Cr. 69, *F.*)

(3)—*Deposition of a deceased person.*—S. 369, Crim. Pro. Code, 1861, does not authorise a deposition made by a deceased person in a civil suit being recorded in a criminal trial. *In the matter of* SUBI SANI, **Cr. Rg. 26-8-1869.**

Of recording Magistrate, admissibility of, before committing Magistrate—*See* CONFESSION — CONFESSIONS TO MAGISTRATES — ADMISSIBILITY, ETC., 5 C. 958=6 C.L.R. 353.

Arbitrary transfer of, to the Sessions record —*See* CRIM. PRO. CODE, 1898, s. 288, 9 C. P.L R. Cr. 24.

Handing over record of deposition to witness for being read by him if sufficient compliance with law—Such deposition if admissible and prosecution for perjury if can be made thereon

Deposition—*concluded.*

—*See* CRIM.PRO.CODE, 1898, s. 360, sub-s. (1), s. 476, 18 C.W.N. 1242=15 Cr. L.J. 483=24 Ind. Cas. 571.

See DYING DECLARATION, 7 C.P.L.R. Cr. 14.

See EVIDENCE ACT, 1872, s. 91, 6 C. 762=8 C.L.R. 292.

Contradictory statements in the same deposition—Whether an offence—Witness is entitled to correct before finishing his statement—*See* PENAL CODE, 1898, s. 193, 16 O.C. 81, 14 Cr. L.J. 280=19 Ind. Cas. 712.

Deputy Collector.

Acting as Income-tax officer—Order sanctioning prosecution for offence under s. 195, Penal Code by such officer—*See* LETTERS PATENT—LETTERS PATENT, 1865—MADRAS, cls. 39, 11, 12, 13, 14 M.L.T. 421=25 M.L.J. 565.

Deputy Collector, Jurisdiction of.

See CRIM. PRO. CODE, 1898, s. 476, 27 C. 820.

Deputy Commissioner.

(1)—*Non-Regulation Province — Crim. Pro. Code* (1861), *ss.* 14, 412—*Appeal.*—A Deputy Commissioner in a Non-Regulation Province was, under s. 14 of Crim. Pro. Code, 1861, a District Magistrate and could hear an appeal preferred under s. 412 from the order of a Subordinate Magistrate, who had exercised jurisdiction in a case in which he had none. *In the case of* BARON DHOOM, **16 W.R. Cr. 1.**

Powers of Deputy Commissioner empowered under s. 36, Crim. Pro. Code (1872)—*See* CRIM. PRO. CODE, 1898, ss. 30, 34, 5 N.W. P. 219.

Deputy Commissioner of Police.

See BEN. ACT IV OF 1866, s. 46, 20 C. 670.

Deputy Tahsildar.

See PENAL CODE, s. 174, 1 Weir 97.

Deserter.

From Army — Detention of, in Police custody — Obstruction — Rescue from such custody—*See* PENAL CODE, ss. 225, 225-B, 20 P.R. 1911, Cr.

Destruction of Records.

See CALENDAR, 6 M.H.C. App. 6.

Appeal—Destruction of vernacular records of original Courts—Re-examination of witnesses —*See* WITNESS—MISCELLANEOUS CASES, A.W.N. 1883, 226.

Destruction of Unstamped Document.

See PENAL CODE, s. 477, 12 M. 148=1 Weir 553.

Detective.

Person supplying marked money—*See* ACCOMPLICE—GENERAL, 19 B. 363.

Detective—*concluded.*

Spy, or—Not accomplice—*See* ACCOMPLICE —GENERAL, 19 B. 363.

Spy or—Difference between—Evidence of spy —Corroboration—*See* ACCOMPLICE— ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, 8 Ind. Cas. 119=11 Cr. L.J. 560= 15 C.W.N. 171.

Detention.

Sub-Assistant Conservator of Forests — Seizure and detention of timber—Want of a valid pass—*See* ACT VII OF 1878, ss. 52, 73, 15 B. 229.

Order of, in Reformatory Schools — *See* ACT VIII OF 1897, ss. 1, 2, 3, 8, 25 C. 333=2 C.W.N. 11.

Power of appellate Court to pass order for, in a Reformatory School—*See* ACT VIII OF 1897, ss. 8, 9 and 11, 4 C.W.N. 225.

Substitution of imprisonment for an order of detention in Reformatory Schools by appellate Court—*See* ACT VIII OF 1897, s. 16, 3 C. W.N. 576.

See BAIL, 13 C.W.N. 43=36 C. 166=9 Cr. L.J. 375=1 Ind. Cas. 738, 36 C. 174=13 C.W. N. 51=9 Cr. L.J. 409=1 Ind. Cas. 910=4 M. L.T. 432.

Detention in custody on the mere request of the police—Legality—*See* CRIM. PRO. CODE, 1898, ss. 110, 112, 12 A.L.J. 336=15 Cr. L.J. 696=26 Ind. Cas. 144.

Of accused during investigation — Nearest Magistrate to order detention—*See* CRIM. PRO. CODE, 1898, ss. 164, 167, 533, 9 Ind. Cas. 148 =12 Cr. L.J. 15.

See CRIM. PRO. CODE, 1898, s. 167 (3), 11 C. W.N. 554=6 Cr. L.J. 86.

Detention of Accused by Police.

(1)—*Crim. Pro. Code* (1882), *s.* 61 (1872), s. 124, *para* 1, 1861—1869, *s.* (152).—S. 152 of the Code of Criminal Procedure, 1861, does not apply to cases in which there has not been a continuous detention of twenty-four hours. *In re* INDROBEER THABA, **1 W.R. Cr. 5.**

See CRIM. PRO. CODE, 1898, s. 167, 7 C.W. N. 457.

Detention in Custody.

(1)—*Proceedings against accused in foreign State—Keeping accused in custody in British India, when allowable.*—A British Magistrate is not warranted in keeping people in custody on a mere allegation that criminal proceedings against them are pending in a foreign State. Unless proper steps be taken against the persons detained under the Extradition Act, they must be released. KALADGI MAGISTRATE'S QUARTERLY RETURN, **Rat. Un. Cr. C. 124.**

Devils.

Beating to drive away evil spirits—Death— *See* PENAL CODE, ss. 84, 304, Rat. Un. Cr. C. 603.

Dewan.

May be an 'agent' during absence of his master, but not a *Dewan* who acts only under the orders of his resident master—*See* CRIM. PRO. CODE, 1872, s. 90, 4 C. 603=3 C.L.R. 87.

Dhatura Poisoning.

Death caused by—*See* PENAL CODE, ss. 302, 307, 32 P.L.R. 1911.

Diary.

See POLICE DIARY.

See CRIM. PRO. CODE, 1898, s. 172, 10 C. W.N. 600=3 Cr. L.J. 408.

Police diaries and reports—Inspector's diary —*See* EVIDENCE—NON-ADMISSIBILITY OF EVIDENCE, 10 C.L.R. 54.

Dictionary.

Murray's Dictionary, if can be referred to, to ascertain meaning of words—*See* MAD. ACT IV OF 1884, s. 63 (3), 25 M. 627=1 Weir 727 =12 M.L.J. 393.

Directors.

See PENAL CODE, s. 409, 8 Ind. Cas. 325.

Disabilities Removal, Caste.

See ACT XXI OF 1850.

Disaffection.

See PENAL CODE, s. 124-A, 22 B. 152, F.B.

See PENAL CODE, s. 124-A. 20 A. 55, F.B= A.W.N. 1898, 12 B. 112, 19 C. 35, 5 M.L.T. 393=32 M. 384=2 Ind. Cas. 33=9 Cr. L.J. 456.

See PENAL CODE, ss. 124-A, 153-A, 10 Bom. L.R. 848=8 Cr. L.J. 281.

See SEDITION, 2 Bom. L.R. 286.

Disapprobation.

See PENAL CODE, s. 124-A, 19 C. 35.

Discharge.

Whether amounts to acquittal — *See* COMPLAINT—DISMISSAL OF COMPLANIT, 4 N.W.P. 23.

Order of, by High Court Sessions, if any bar to fresh proceedings—*See* CRIM. PRO. CODE, 1898, ss. 332, 403, 437, 16 C.W.N. 983 =15 Ind. Cas. 488=13 Cr.L.J. 488.

Confession by an accomplice—Admissibility of evidence—Illegal inducement or threat—Withdrawal of case against co-accused —*See* CRIM. PRO. CODE, 1898, s. 337, 5 C.L.J. 224 =5 Cr. L.J. 142.

Power of District Magistrate to order further enquiry after discharge — *See* CRIM. PRO. CODE, 1898, ss. 435, 437, 165, 94, 16 C.W.N. 1078=17 Ind. Cas. 76=13 Cr. L.J. 764.

Definition of the term—*See* CRIM. PRO. CODE, 1898, ss. 437, 200, 119, 13 Bom. L.R. 505=11 Ind. Cas. 614=12 Cr. L.J. 430.

Discharge of Accused.

See CRIM. PRO. CODE, 1898, s. 253.

(1)—*Crim. Pro. Code* (1882), s. 548—*Order of discharge—Copy of proceedings, right of complainant to.*—Inasmuch as every one complaining of an offence by which he is injured is affected by the disposal of his complaint, whether the case has been sent up by a police officer or not, he is entitled to a copy of the Magistrate's order of discharge under s. 253, Crim. Pro. Code. *In re* ABDUL KADRI, **Rat. Un. Cr. C. 305=Cr. Rg. 54 of 1886.**

(2)—*Discharge—Subsequent charge for same offence.*—The Police and the Magistracy are not precluded by an order of discharge from reviving a charge, if the discharge appears to have been made on a wrong view of the facts. QUEEN EMPRESS v. GOVIND, **Rat. Un. Cr.C. 588=Cr. Rg. 3 of 1892.**

(3)—*Improper discharge—Procedure.*—If there has been an improper discharge, the Magistrate ought to report the matter to the High Court, which can order a re-trial—*Per Markby, J.* EMPRESS v. DONNELLY, **2 C. 405.** [*F.*, 10 C. 268.]

(4)—*Crim. Pro. Code* (1872), s. 215—*Discharge of accused without hearing the prosecution witnesses.*—An order of discharge of an accused person without hearing all the prosecution witnesses is irregular. HIGH COURT PROCEEDINGS, 22ND FEB. 1875, **8 M.H.C. App. 4.**

(5)—*Improper discharge—Penal Code*, s. 498. —*Held* that it was improper to discharge a person accused on a complaint of an offence under s. 498, I.P.C., merely because he said that the woman had been made over to him by a *panchayat*. BHOWANI v. RAMCHAND, **Colm. Dig., Cr. 73 of 1877.**

(6)—*Sessions Court if can discharge accused.* —A Sessions Court cannot discharge an accused person ; it must either convict or acquit him. CROWN v. JAMAL KHAN, **3 P.R. 1874, Cr.**

(7)—*Revision by Chief Court.*—The Chief Court will not interfere in revision with an order of discharge passed on a full consideration of the evidence in the case. JAI RAM v. MAKHAN LAL, **8 P.R. 1900, Cr.** [*F.*, 38 P.L. R. 1910=8 P.R. 1909=3 Ind. Cas. 580=17 P. W.R. 1909=10 Cr. L.J. 314 ; *R.*, 205 P.L.R. 1911, 24 P.W.R. 1911, Cr.=10 P.R. 1911, 12 Cr. L. J. 364=11 Ind. Cas. 132.]

(8)—*Crim. Pro. Code* (1872), ss. 216, 220, 298 —*Omission to prepare a charge, effect of, on an acquittal.*—An omission to prepare a charge in writing will not invalidate, unless a failure of justice is occasioned thereby, an order of acquittal, and render such order equivalent to an order of discharge ; the order of acquittal is, therefore a bar to the revival of proceedings, against the person acquitted, for the same offence. EMPRESS OF INDIA v. GURDU, **3 A. 129.**

(9)—*Crim. Pro. Code—Revival of prosecution after discharge — Jurisdiction.*—A Criminal Court in the Punjab discharged a person accused under s. 498, of enticing away a married woman. Subsequently it was found

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that the woman was concealed or detained in a place in the N. W. Provinces. The accused was again charged with the offence of enticing away before a criminal Court of the District in that Province. *Held*, that, although his previous discharge by the Punjab Court did not bar a revival of a prosecution for the same offence, it could only be revived by the Court in the Punjab in which alone it could be legally instituted. EMPRESS OF INDIA v. TIKA SINGH, **3 A. 251.**

(10)—*Crim. Pro. Code*, (1872), *s.* 195—*Power of Magistrate enquiring into a sessions case to discharge the accused.*—The power given to a Magistrate under s. 195 extends to weighing evidence, and the expression "sufficient grounds" must be understood in a wide sense. But this discretionary power should be exercised by the Magistrate with due care and caution, and he should not take upon himself to discharge the accused in sessions cases on the evidence which might justify a conviction. But when the evidence against the accused is such, that, in the opinion of the Magistrate, it cannot possibly justify a conviction, there is nothing in the law, which prohibits the discharge of the accused, even though the evidence against them consists of statements of persons who claim to be eye-witnesses, but whom the Magistrate entirely discredits. LACHMAN v. JUALA, **5 A. 161 = A.W.N. 1882, 223.** [*R.*, 35 B. 163 = 12 Bom. L.R 923 = 11 Cr. L.J. 692 = 8 Ind. Cas. 631, Rat.Un.Cr. C. 746 ; *F.*, 11 Cr.L. J. 18 = 4 Ind. Cas. 612 = 155 P.L.R. 1909 = 10 P.R. 1909 = 32 P.W.R. 1909.]

(11)—*Discharge whether amounts to acquittal*—*Crim. Pro. Code* (1861), *s.* 250.—A discharge under s. 250 of the Code of 1861 does not amount to an acquittal. QUEEN v. HUR PERSHAD, **4 N.W.P. 23.**

(12)—*Warrant cases—Discharge—Crim. Pro. Code* (1872), *ch.* XVII—In warrant cases, the Magistrate should not discharge the accused before the trial as prescribed by ch. XVII (of the Code of 1872) has taken place. *In the matter of* NEWAR, **7 N.W.P. 230.**

(13)—*Crim. Pro. Code* (1861), *ss.* 171, 225—*Reference to Magistrate for investigation of case triable by Sessions Court—Power to discharge.*—Where a case triable by the Sessions Court has been referred to a Magistrate by the Principal Sadar Amin, it is competent to the Magistrate to discharge the accused under s. 225, Crim. Pro. Code, 1861, if he should be of opinion that there were, no sufficient grounds to warrant the committal. REG. v PANDURANG MAYARL, **5 B.H.C.Cr. 41.** [*R.*, 13 B. 109.]

(14)—*Crim. Pro. Code* (1898), *ss.* 253 *and* 367—*Order of discharge—Magistrate—Judgment.*—The legislature does not render the writing of "reasons" necessary, where an accused person is discharged, after the trying Magistrate has heard all the evidence for the prosecution. But it is desirable that the Magistrate should record

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his reasons for discharge, though it is not compulsory. EMPEROR v. NABI FAKIRA, **9 Bom. L R. 250 = 5 Cr.L J. 255.** [*F.*, 11 Ind. Cas. 132 = 10 P.R. 1911 = 205 P.L.R. 1911.]

(15)—*Crim. Pro. Code, Act* X *of* 1872, *s.* 215—*Illegal arrest—Discharge.*—An order of discharge cannot be passed by a Magistrate, under s. 215 of the Crim. Pro. Code, until evidence is taken against the accused. REG v. SANGAPA, **Rat. Un. Cr. C. 73 = Cr. Rg. 21-5-1873.**

(16)—*Crim. Pro. Code, Act* X *of* 1872, *ss.* 44, 142, 215, 296—*Improper discharge—District Magistrate — Procedure.*—Where a District Magistrate finds that a subordinate Magistrate has improperly discharged an accused person under s. 215 of the Crim. Pro. Code, his proper course is, not to refer the proceedings to the High Court under s. 296, but to take up the case under s. 142 or, if need be, to refer it under s. 44 for trial. REG v. SIDYA, **Rat. Un. Cr. C. 76 = Cr. Rg. 17-7-1873.**

(17)—*Crim. Pro. Code* (1872), *s.* 215.—Explanation 3 of s. 215, Crim. Pro. Code, does not prevent the discharge of an accused person, if all the witnesses named for the prosecution, who are forthcoming, have been examined. KALADGI MAGISTRATE'S LETTER, No. 597, **Rat. Un.Cr.C. 121.**

(18)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 437—*Improper discharge—Procedure.*—A Magistrate stopped a case without hearing all the evidence, and discharge the accused, remarking that it was impossible to fix the accused with guilt or to clear up the mystery in which the case was involved. *Held* that, when the Sessions Judge ordered a re-trial of the case, he should not direct the District Magistrate to have the case tried by some Magistrate other than the original one. QUEEN-EMPRESS v. VAMAN HARI SABINS, **Rat. Un.Cr. C. 926 = Cr. Rg. 31 of 1897.**

(19)—*Examination of prosecution witness—Crim. Pro. Code* (1872), *s.* 215 (= *s.* 253 *of the present Code*)—A Magistrate is bound, before discharging an accused person under s. 215 of the Crim. Pro. Code (X of 1872), to examine all the witnesses tendered by the prosecution. EMPRESS v. HEMATULLA, **3 C. 389** [*F.*, 2 A. 447, A.W.N. 1881, 145, A.W.N. 1882, 179.]

(20)—*Crim. Pro. Code* (1898), *ss.* 203, 204 (3) 253, 437—*Order of discharge by Presidency Magistrate—Powers of High Court—Charter Act, s.* 15.—The High Court cannot interfere with an order of discharge made by a Presidency Magistrate. S. 15 of the Charter Act, however, gives it a limited jurisdiction. The High Court can exercise that power only in cases of non-exercise or illegal exercise of jurisdiction. It cannot set aside the order of discharge, merely on a consideration of the evidence in the case. KEDAR NATH SANYAL v. KHETRA NATH SIKDAR, **6 C.L J. 705 = 6 Cr. L.J. 400.** (33 C. 1282, 1 C.W.N. 49, *F.*) [*Diss.*, 36 C. 994 = 11 C. L.J. 50 = 13 C.W.N. 1221 =

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3 Ind. Cas. 861 = 10 Cr. L.J. 385, 12 C.W.N. 678 = 7 Cr.L.J. 499; *R.*, 14Cr.L.J. 529 = 21 Ind. Cas. 129 = 14 M.L.T. 200 = 1913 M.W.N. 728.]

(21)—*Referring a case to police investigation —Duty of Magistrate.*—Where a Magistrate refers a case to the police for investigation, and the police officer arrests some persons, the Magistrate is bound to consider the evidence, if any, on which the persons have been arrested, before he summarily discharges them. BEPUTOOLLA v. NAZIM SHEIKH, **2 C.L.R. 374.** (21 W.R. 89, 22 W.R. 29, *F.*)

(22)—*Crim. Pro. Code* (1872), ss. 216, 220, 460—*Order of acquittal by Subordinate Magistrate—Order for re-trial by District Magistrate.* —When a charge is dismissed by a Subordinate Magistrate, the District Magistrate may, under certain circumstances, proceed under s. 142; but it is quite clear that he cannot do so where there has been a formal acquittal. The terms of s. 460 bar any further trial so long as that acquittal remains in force; and that acquittal could not be set aside by the Magistrate unless he could deal with the case as a Court of appeal. *In the matter of* JOJA PASHAN, **3 C.L.R. 131.**

(23)—*Crim. Pro. Code* (1872), ss. 215 *and* 362 —*Order of discharge without examining prosecution witnesses.*—An order of discharge under s. 215 without examining all the witnesses summoned by the prosecution is not legal. QUEEN v. PARASURAMA NAIKAR, **4 M. 329.** [*D.*, 12 Cr. L.J. 105 (106) = 12 Cr. L.J 168 (169) = 9 Ind. Cas. 606 = 9 M.L.T. 302 = 1911, 1 M.W.N. 149 = 9 Ind. Cas 940.]

(24)—*Crim. Pro. Code* (1872), ss. 44, 142, 215 *and* 297—*Improper discharge of accused person —Jurisdiction of District Magistrate to revive prosecution — Proper procedure.*—A District Magistrate is not legally competent to revive the prosecution in a case in which the accused person has been improperly discharged, under s. 215, by a Magistrate having jurisdiction to try the case. The proper course is to apply to the High Court to exercise the powers conferred in s. 297 (2), which are, however, discretionary powers. QUEEN v. VENGUVAYYANGAR, **6 M. 25.**

(25)—*Crim. Pro. Code* (1882), s. 494 — *Irregular discharge of prisoner by Sessions Judge —Conviction on new trial, validity of.*—Where a prisoner, the charge against whom being withdrawn by the Public Prosecutor, by permission of the Sessions Judge was merely discharged instead of being acquitted under s. 494 and was again committed to Sessions on a second charge for the same offence, though on a new sanction, and was convicted, *held*, that the conviction was bad. A prisoner once committed to sessions on a charge cannot be discharged, but must be acquitted or convicted. QUEEN-EMPRESS v. SIVARAMA, **12 M. 35 = 2 Weir 457 = 2 Weir 654.**

(26)—*Crim. Pro. Code*, ss. 253, 366, 367, 437 —*Order of discharge not "judgment"—Magistrate's competency to initiate subsequent proceedings after order of discharge—Principle of autrefois acquit, how far applicable—Exhaustiveness of Code presumed.*—When a Magistrate passes an order discharging an accused under s. 253, Crim. Pro Code, such order of discharge does not preclude him from taking fresh proceedings and issuing process against the person discharged, in respect of the same offence, without such order being set aside by a higher tribunal. *Per Munro and Pinhey, JJ.* An order of discharge is not a "judgment." Although the word "judgment" is not defined in the Crim. Pro. Code, it is sufficiently clear from ss. 366, 367, that the term is intended to apply to the final order in a *trial*, terminating in either the conviction or acquittal of the accused —*Per Pinhey, JJ.* The principle of *autrefois acquit* can have no application, as it must be assumed that the Code is exhaustive on the subject it deals with, and it is not permissible to add to its provisions. Reading together ss. 253 and 437, it is clear that the Legislature could never have intended that a Magistrate discharging an accused should furnish him with a certificate of immunity from further molestation. The remedy for repeated indiscretions on the part of Magistrates is the provision of better Magistrates by Government, and not the limitation of their powers by judicial interpretation. EMPEROR v. MAHESHWARA KONDAYA, **31 M. 543 = 5 M.L T. 184 = 9 Cr.L J. 80.** [*F.*, 11 Ind. Cas. 132 = 10 P.R. 1911 = 205 P.L.R. 1911.]

(27)—*Acquittal—Discharge from custody.*—A prisoner is entitled to be discharged from custody immediately on the judgment of acquittal being pronounced, when there is no other charge pending against him, and his further detention is illegal. It is for the jail authorities in whose custody a prisoner remains until the trial is concluded to satisfy themselves of the result of the trial; and no formal warrant of release addressed by the Court to the Superintendent of the Jail is necessary. HIGH COURT PROCEEDINGS, 30TH OCT. 1869, **5 M. H. C. App. 2.**

(28)—*Crim. Pro. Code*, (1861), s. 335—*Dismissal of complaint without enquiry—Fresh enquiry by District Magistrate.*—Where a Sub-Magistrate dismisses without enquiry a complaint of theft, the District Magistrate is not prevented from making a fresh enquiry into the charge. HIGH COURT PROCEEDINGS, 17TH JUNE, 1870, **5 M.H.C. App. 31.**

(29)—*Crim. Pro. Code*, ss. 423, 435, 437 *and* 438—*Discharge of accused by second class Magistrate—District Magistrate setting aside order of discharge on the ground of misappreciation of evidence and directing further inquiry by first class Magistrate—Legality—Duty and proper function of District Magistrate when he considers prosecution evidence reliable.*—Where a Court, competent to decide whether the accused is guilty or not, holds that he is not guilty on a consideration of the evidence adduced by the prosecution, that finding should, if at all, be set aside, only by a Court competent to set aside such finding of fact, *i.e.*, by the

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High Court, under s. 431 of the Crim. Pro. Code, read with s. 423. Where a District Magistrate set aside an order of discharge, passed by the second-class Magistrate who tried the accused, on the ground that the second class Magistrate misappreciated the evidence and arrived at a wrong conclusion upon the facts. *Held*, that the order of the District Magistrate was illegal and should be set aside. The District Magistrate, when he has come to the conclusion, as in this case, that *prima facie* the prosecution evidence is reliable, ought to have referred the case to the High Court for orders, instead of setting it aside himself on the grounds formulated by him in his order. The proper function of the District Magistrate is criticism. A power to order what is practically a re-trial, to give a complainant another opportunity of re-examining his witnesses and adducing fresh evidence, ought not to be presumed, as it is unjust to the accused and opens a wide door to perjury and corruption. LAKSHIMINARASAPPA v. MEKALA VENKATAPPAH, **3 M.L.T. 230 = 31 M. 133 = 18 M L.J. 57 = 7 Cr. L.J. 267.**

(30)—*Crim. Pro. Code* (1872), ss. 195, 197 (*ss.* 209 *and* 215 *of the Code of* 1898)—*Discharge of accused—Subsequent cancellation of order of discharge and commitment to Sessions—Validity.*—Where a Magistrate, after examining certain witnesses for the prosecution, discharged the accused under s. 195, and, subsequently, on becoming aware there was another witness present, cancelled his order of discharge, took further evidence and committed the accused for trial to the Court of Sessions, *held*, that the commitment was good. HIGH COURT PROCEEDINGS. 23RD NOV. 1874, **2 Weir 258 = 7 M.H.C. App. 40.**

(31)—*Crim. Pro. Code*, *ss.* 174 *and* 259.—A complainant, who files a complaint of a non-compoundable offence which necessitates a procedure under ch. XXI for the trial of warrant cases and omits to attend on the day fixed, is *prima faice* guilty of contempt under s. 174. Where warrant cases are compoundable, the Magistrate is justified in assuming that the non-appearance of the parties means that the case has been compounded, but he must use his discretion under s. 259, whereas in summons cases, where the complainant does not appear, he is bound to acquit the accused under s. 247, Crim. Pro. Code. KING-EMPEROR v. NGA AUNG NYAN, **2 L B.R. 165.** [*Diss.*, U.B.R. 1908, Crim. Pro. Code, 15.]

(32)—*Crim. Pro. Code* (1898), *ss.* 437, 438—*Powers of revision by District Magistrates—Misappreciation of evidence—Power of committal.*—The District Magistrates have the power, in revising orders of discharge of accused persons by subordinate Courts, to go into evidence and commit the accused for trial. YONLIDI CHINNA SUBBI REDDY v. SOMUDU, **9 Cr. L J. 366 = 1 Ind. Cas. 686.**

(33)—*Improper discharge without enquiry—Charge of false evidence—Crim. Pro. Code* (1872), s. 473.—Where a Joint Magistrate directed a recusant witness in a trial before him to be put on his trial for giving false evidence, and subsequently, on the 19th May, on hearing the statement of the witness confessing that what he had stated was false, and that he had wilfully suppressed what he knew, recorded a proceeding stating that the case would not be proceeded with, and directing the discharge of the accused witness, *held* that, as the Joint Magistrate was incompetent himself to try the case by virtue of s. 473 of the Crim. Pro. Code, his proceeding of the 19th May was either a part of an enquiry into a case triable by a Court of Session, or of some proceeding before a Magistrate other than such enquiry in respect of an offence which the enquiring Magistrate was not competent to try and that in either case the Joint Magistrate could not discharge the accused. QUEEN v. DURAJ DOSADH, **22 W. R. Cr. 83.**

(34)—*Re trial by Magistrate after discharge and acquittal by Deputy Commissioner—Crim. Pro. Code* (1861), *ss.* 202, 207, 225 —A Deputy Commissioner, in a proceeding in which the accused was charged with forgery and using a forged document, after calling on the accused during the enquiry to make a statement, but without requiring him to make any further defence, and after hearing the evidence for the prosecution and for the defence, discharged and acquitted the accused. *Held* that there was no trial, but a proceeding under ch. XII of Act XXV of 1861 ; that, under s. 202 of that Act, the Magistrate had discretion to examine the accused and, under s. 207, to examine witnesses on behalf of the accused and, under s. 225, the Magistrate, finding no sufficient ground for committing the accused to the Sessions, could discharge and acquit him. RAJAH NILMONEE SINGH DEO BAHADOOR v. OOMA CHURN ROY, **19 W.R. Cr. 49.**

(35)—*Omission to draw up charge—Acquittal—Discharge* —Before the charge is drawn up and the accused called upon to plead to it, he can only, be discharged, and not acquitted. If he is erroneoulsy acquitted the acquittal amounts only to a discharge and does not bar re-trial. QUEEN v. ROBERT SHERIFF, **6 W.R. Cr. 13.**

(36)—*Want of evidence—Discharge—Acquittal.*—An accused against whom there is no *prima facie* case, who has not been put on his defence and against whom no charge has been preferred, should be discharged and not acquitted. QUEEN v. BIPRO DOSS, **8 W.R. Cr. 45.**

(37)—*Revival of charge after withdrawal—Crim. Pro. Code*, 1872, s. 210.—The District Magistrate cannot revive a case in which a Deputy Magistrate had permitted the complainant to withdraw the complaint and discharged the accused. QUEEN v. ZUBOORUL HUQ, **25 W.R. Cr. 64.**

(38)—*Power to revive case after discharge—Transfer of case part-heard.*—In a case before a Joint Magistrate, after the prosecution was

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closed and the accused discharged under s. 215 of the Crim. Pro. Code, a petition was presented to the Magistrate of the District by the prosecutor, who remanded the case directing the Joint Magistrate to proceed with it at the stage at which he left it. *Held* that the discharge not being equivalent to an acquittal, the Magistrate might have received a complaint, if sufficient reason existed for doing so, and might have made it over to a subordinate officer for trial, but that he had no power to make the order of remand. KISTORAM MOHARA v. ANIS, **20 W.R. Cr. 47.** *In re* NOOR MAHOMED, **23 WR. Cr. 31.**

(39)—*Power of Magistrate to revive case after discharge.*—A District Magistrate can order a Subordinate Magistrate to revive a case where the accused had been discharged. HARI SINGH v. DANISH MAHOMED, **20 W.R. Cr. 46.**

(40)—*Committal by Magistrate after discharge —Sessions case.—Per Glover, J.—Held* that, in a case triable by Sessions Court a Magistrate had power to commit the accused to the Sessions after once discharging him. QUEEN v. RAMSODOY CHUCKERBUTTY, **20 W.R. Cr. 19.**

(41)—*Crim. Pro. Code* (1861), *s.* 250—*Power of Sessions Court.*—A Magistrate had discharged an accused under s. 250 of the Crim. Pro. Code when the Sessions Judge remanded the case for further enquiry, re-tried it and convicted the accused. The Sessions Judge was held to have no power to make the order of remand, but the conviction was upheld. *In the matter of the petition of* JIAT SAAU, **9 B.L.R. 339 = 18 W.R. Cr. 39.**

(42)—*Crim Pro. Code* (1861), *s.* 250—*Power of Sessions Court.*—On an accused person being discharged by a Magistrate under s. 250 of the Crim Pro. Code after enquiry into the case, the Court of Session could not, under s. 435, remand it for further enquiry. *In the matter of the petition of* CASPERSZ, **9 B.L.R. 337 = 18 W.R. Cr. 39.**

(43)—*Crim. Pro. Code* (*Act* XXV *of* 1861), *ss.* 250, 251, 255, 435—*Act* VIII *of* 1869, *s.* 435 —*Sessions Judge, Power of.*—No formal charge had been drawn up by a Magistrate under s. 250 of Act XXV of 1861, and the accused had not been called upon under s. 251 to plead thereto, and was not tried thereunder. *Held*, that a release by the Magistrate of the accused did not amount to an acquittal under s. 255, but simply to a discharge under s. 250. Under such circumstances, s. 435 Act VIII of 1869, authorizes a Sessions Judge to direct the accused to be committed to take their trial. *In re* JAGABANDHU MYTI v. GOBARDHAN BERA, **4 B L R.A. Cr. 1 = 12 W.R. Cr 65.** *See, also, In re* SHOODUN MUNDLE, **5 W.R. Cr. 58.**

(44)—*Effect of discharge—Crim. Poo. Code* (1861), *s.* 435.—When a person accused of an offence triable, by the Court of Session is discharged, he may be again brought, with a view to commitment, before a Magistrate, who may proceed in such a case without an order from the Judge. S. 435, Code of Criminal Procedure, applies where a Magistrate sees no reason to commit. QUEEN v. TILKOO GOALA, **8 W.R. Cr. 61.**

(45)—*Use by Magistrate of word "acquittal."* —A Magistrate employed the words "acquittal" and "discharge" when he meant only to discharge a person accused of an offence not triable by him. *Held* that the Court of Session could, under s. 435, Crim. Pro. Code. 1861, order the commitment of such accused person. QUEEN v. NEETIE DULAL, **8 W.R. Cr. 41.**

(46)—*Power of Sessions Judge to commit— Crim. Pro. Code* (1861), *s.* 435.— Where a Deputy Magistrate discharged a person charged with an offence triable only by a Court of Session, the Sessions Judge is not precluded from ordering the committal of such person to the Sessions Court under s. 435, Act VIII of 1869. QUEEN v. SREENATH DEY, **15 W.R. Cr. 61.**

(47)—*Discharge without evidence—Crim. Pro. Code* (1872), *s.* 215.—Where, in a warrant case, although the complainant's witnesses and the accused were present, a Deputy Magistrate discharged the accused on a police report, *held* that it was illegal, as the Magistrate was bound to take the evidence of the complainant before discharging the accused. MEER AZEEM ALI v. HURNAM DASS, **24 W.R. Cr. 9.**

(48)—*Complaints sent up by Civil Court and referred by Sessions Judge to Magistrate —Improper discharge.*—A Sessions Judge directed a Magistrate to make an enquiry into some complaints made by a Munsiff against certain persons; the Magistrate being of opinion that there was evidence enough to incriminate one of the accused, dismissed the complaint against him, as the complaint made against him had not been explicit. *Held*, that the Magistrate ought not to have discharged the accused, but ought to have drawn up a charge against him. QUEEN v. THAKOOR RAM, **23 W.R. Cr. 35.**

(49)—*Discharge of accused—Fresh complaint.* —When the trying Magistrate has come to the conclusion that no *prima facie* case has been made out, against the accused, the High Court cannot command him to arrive at a different conclusion. If the complainant has a good case, he may make a complaint to another Magistrate, who will not be prevented from inquiring and adjudging by a mere discharge of the accused in a warrant-case. *In re* DHONDI BOGAR, **Cr. Rg. 3rd Dec. 1884.**

(50)—*Revival of prosecution — Crim. Pro. Code* (1872), *ss.* 215 *and* 297.—If a prisoner has been discharged by a Subordinate Magistrate, and the District Magistrate considers that order improper, he cannot, if no further evidence is procurable, revive the proceedings before such Magistrate, but he may refer such proceedings to the High Court. *In the matter of* HARGOVAN NATHA, **Cr. Rg. 10th Oct. 1878.**

(51)—*Crim. Pro. Code*, 1872, *s.* 215—*Crim. Pro. Code* (1882), *ss.* 252, 253, 437—*Discharge*

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under s. 215 *of Act X of* 1872—*Further enquiry under Act X of* 1882.—Where a subordinate Magistrate discharged the accused in a warrant case, under s. 215, Crim. Pro. Code, 1872, and the Magistrate of the District, after Act X of 1882 had come into force, came to the conclusion that the accused had been improperly discharged and that a further enquiry should be ordered, *held* that the order of discharge made by the subordinate Magistrate should be deemed to have been made under ss. 252, 253 of Act X of 1882, and that it was therefore competent for the Magistrate of the district himself to have ordered a further enquiry instead of reporting the case as he did, to the High Court, first of all assuring himself that fresh evidence was forthcoming, and also giving the accused an opportunity of being heard before him against such order being made. EMPRESS v. BHOLE SINGH, **A.W.N. 1883, 150.** [*Commented on*, 9 A. 52= A.W.N. 1886, 281.]

(52)—*Legality of—Further enquiry when may be made—S.* 437, *Crim. Pro. Code.*—It is not necessarily illegal to undertake a fresh enquiry against an accused person who has been discharged, even where the order of discharge has not been dealt with by higher authority under s. 437, Crim. Pro. Code. It makes no difference whether the further enquiry is held by the Magistrate who passed the original order of discharge or by another Magistrate of co-ordinate jurisdiction. Though such further enquiry is not actually illegal, it should only be undertaken in exceptional cases and for good reason shown. No invariable rule can be laid down, but speaking generally, further enquiry after discharge is improper unless the order of discharge was manifestly perverse or foolish or was based upon a record of evidence which was obviously incomplete. EMPEROR v. KIRU, **10 P R. 1911, F.B.=24 P.W R. 1911=12 Cr. L.J. 364=11 Ind. Cas. 132=205 P.L R. 1911.** (33 P.R. 1894, Cr., *Diss.*; 9 P.R. 1905, Cr., 8 P.R. 1900, Cr., 2 P.R. 1901 Cr., 8 P.R. 1909, Cr., *R.*)

(53)—*Crim. Pro. Code* (1872), *s.* 215—*Discharge in warrant case.*—Where, in a warrant case, the accused person was discharged without taking the evidence of all the witnesses named for the prosecution, *held* that the discharge was improper and a new trial should be ordered. EMPRESS v. SHEO CHARAN, **A.W.N. 1881, 145.**

(54)—*Crim. Pro. Code, Act X of* 1882, ss.252, 253—*Penal Code*, ss. 147, 295—*Evidence taken for defence—Discharge.*—Where a first class Magistrate took evidence in a case under ss. 147, 295 of the Penal Code, examined the accused and also took defence evidence but without framing a charge, and then discharged the accused, *held*, that the order of discharge did not amount to one of acquittal. EMPRESS v. KALLU, **A.W.N. 1891, 80.**

(55)—*Crim. Pro. Code, Act X of* 1882, s. 253—*Applicability—Warrant case.*—A Magistrate has no jurisdiction to discharge an accused person under s. 253 of the Crim. Pro. Code for the non-appearance of the complainant on the date of hearing where the offence complained of is a warrant case. EMPRESS v. KURA, **A.W.N. 1891, 116.**

(56)—*Crim. Pro. Code, Act X of* 1872, s. 215—*Discharge without examining all prosecution witnesses.*—In a warrant case, the Magistrate cannot discharge the accused without examining all the witnesses produced for the prosecution. EMPRESS v. AJUDHIA, **A.W.N. 1882, 179.** (3 C. 389, 2 A. 447, *R.*)

(57)—*Discharge—Order—Not to be set aside without sufficient reasons.*—No Court can properly set aside an order of discharge without having and assigning solid and sufficient reasons for doing so. THIRUKONAM KUPPACHARI v. EMPEROR, **1913 M.W N. 638=14 Cr. L J. 572=21 Ind. Cas. 172=1914 M.W.N. 46.**

(58)—*Discharge without making any judicial investigation into the merits of the complaint—Inquiry into the same charge on a second complaint.*—Where a Magistrate discharged an accused person without making any judicial investigation into the merits of the complaint, *held*, that he was competent to again enquire into the same charge on second complaint. ALAUDDIN KHAN v. KING-EMPEROR, **17 O. C. 273=15 Cr. L.J 638=25 Ind. Cas. 838.**

(59)—*Crim. Pro. Code*, s. 209—*Committing Magistrate—Committing a case to the Court of Session—Magistrate's discretion to discharge the accused.*—Where a Magistrate finds that there are no sufficient grounds for committing the accused person for trial—either because there is no evidence whatever or because the evidence appears to him to be totally unworthy of credit—it is his duty, under s. 209 of the Crim. Pro. Code, 1898, to discharge the accused, since the grounds relied on for a commitment would, in his opinion, be insufficient. Where, however, the Magistrate entertains any real doubt as to the weight or quality of the evidence, the task of resolving that doubt and assessing the evidence should be left to the Court of Session. *In re* BAI PARVATI, **12 Bom. L.R. 923=8 Ind. Cas. 631=11 Cr. L.J. 692.**

By Presidency Magistrate, effect of—*See* ACT IV OF 1877, s. 87, 6 B. 376.

By Presidency Magistrate—*See* ACT IV OF 1877, s. 168, 7 C. 447.

Copies of order, and depositions before Presidency Magistrates, right to—*See* ACT IV OF 1877, s. 170, 8 C. 166=10 C.L.R. 190.

See ACT XII OF 1896, ss. 49, 59, 1 L.B.R. 43.

See COMMITMENT TO SESSIONS COURT, Rat. Un. Cr. C. 899.

See COMPENSATION—GENERAL, 9 Cr. L.J. 502=2 Ind. Cas. 159.

See COMPLAINANT, 4 M.H.C. App. 8.

Discharge of Accused—*continued.*

See COMPLAINT — WITHDRAWAL AND REVIVAL OF COMPLAINTS, 24 C. 528=1 C.W.N. 370, 24 C. 286=1 C.W.N. 185.

See COMPOUNDING OFFENCE, L.B.R. 1893—1900, 240.

Legality of order of discharge where accused not directed to appear at all—*See* CRIM. PRO. CODE, 1898, ss. 107, 112, 117, 118, 119, 145, 253, 403, 495, 36 M. 315=14 Cr. L.J. 559=21 Ind. Cas. 159.

Power of District Magistrate to institute fresh proceedings after discharge of person required to give security—*See* CRIM. PRO. CODE, 1898, ss. 110 and 437, 24 A. 148=A.W.N. 1901, 206.

See CRIM. PRO. CODE, 1898, ss. 119, 209, 253, 259, 437, 6 M.L.T. 133=33 M. 85=20 M.L.J. 137=4 Ind. Cas. 1057=11 Cr. L.J. 162.

Order of discharge under s. 118, Crim. Pro. Code, cannot be revised—Notice to person discharged before ordering further enquiry—*See* CRIM. PRO. CODE, 1898, ss. 119, 437, U.B.R. 1914 1st Qr., p. 3=24 Ind. Cas. 843=15 Cr. L.J. 531.

See CRIM. PRO. CODE, 1898, s. 192, 7 C.L.J. 249=7 Cr. L.J. 318.

See CRIM. PRO. CODE, 1898, ss. 208, 257, 437, 12 C.W.N. 68.

See CRIM. PRO. CODE, 1898, s. 204, A.W.N. 1904, 5.

See CRIM. PRO. CODE, 1898, s. 206, 6 A. 477.

See CRIM. PRO. CODE, 1898, ss. 252, 436 and 437, 28 C. 211=5 C.W.N, 169.

Order saying that the case was 'struck off' —Legality and effect of the order—Order of discharge when legal—*See* CRIM. PRO. CODE, 1898, s. 259, 17 O.C. 18=23 Ind. Cas. 182=15 Cr. L.J. 230.

Discharge—Part heard case—Absence of witnesses—Omission to weigh evidence on record —Legality — *See* CRIM. PRO. CODE, 1898, ss. 369, 253, 38 C. 828.

Charged with an offence exclusively triable by Court of Session—Further enquiry—Powers of District Magistrate and Sessions Judge—*See* CRIM. PRO. CODE, 1898, ss. 435, 436, 437 and 532, 28 C. 397=5 C.W.N. 574.

See CRIM. PRO. CODE, 1898, s. 436, 26 A. 564=A.W.N. 1904, 125=1 A.L J. 292.

See CRIM. PRO. CODE, 1898, ss. 436, 438, 3 C.L.R. 263.

Setting aside order of discharge, reasons for —*See* CRIM. PRO. CODE, 1898, s. 437, 2 O.C. 363.

By Magistrate and illegality of re-arrest by the police without an order from the District Magistrate—*See* CRIM. PRO. CODE, 1898, s. 437, U.B.R. 1892—1896, Vol. I, 48.

See CRIM. PRO. CODE, 1898, s. 437, 2 C.P.L. R. 82.

Discharge of Accused—*concluded.*

Discharge after examining Court witnesses —*See* CRIM. PRO. CODE, 1898, ss. 540, 253, 2 Weir 714.

Because of complainant's absence — *See* DISMISSAL OF COMPLAINT, Colm. Dig. Cr. 33 of 1876.

See FRESH COMPLAINT, 4 M.L.T. 140=8 Cr. L.J. 208.

See FURTHER ENQUIRY, 1 L.B.R. 100=36 C. 994=13 C.W.N. 1221.

See HIGH COURT, SUPERINTENDENCE AND POWERS OF, 5 M.L.T. 233, F.B.=9 Cr. L J. 192=19 M.L.J. 157=32 M. 220=1 Ind. Cas. 228.

Whether discharge of accused bars institution of fresh proceedings on same facts—*See* MAGISTRATE, DUTY OF, 2 L.B.R. 27.

See PENAL CODE, ss 497, 498, 11 C. 81.

Revival of proceedings against accused—*See* REVIVAL OF CRIMINAL PROCEEDINGS, 1 C. 282=25 W.R.Cr. 30.

See SECURITY FOR GOOD BEHAVIOUR, 6 O.C. 262.

See SECURITY TO KEEP THE PEACE—EFFECT OF SIGNING WRONG BOND, ETC., 5 C.L.R. 366.

See SESSIONS JUDGE, JURISDICTION OF, Rat. Un. Cr. C. 837=Cr. Rg. 2 of 1896, Rat. Un. Cr. 922=Cr. Rg. 27 of 1897, 4 L.B.R. 49 =6 Cr.L.J. 287.

See SUMMARY TRIAL, 1 L.B.R. 9.

Discrepancies in evidence.

Revision — Serious — for the prosecution—Failure of both Courts to take its notice—Power of High Court to set aside conviction on revision —*See* CRIM. PRO. CODE, 1898, s. 439, 8 P.W. R. 1912, Cr.=15 Ind. Cas. 95=13 Cr. L.J. 463 =113 P.L.R. 1912.

See EVIDENCE ACT, 1872, s. 59, U.B.R. 1897—1901, Vol. I, 162.

Between the statements of witnesses before the police and Court—*See* EVIDENCE ACT, 1872, ss. 114, 133, 36 P.W.R. 1910, Cr.=8 Ind. Cas. 193=11 Cr. L.J. 580.

Duty of Government Pleader conducting prosecution—of witnesses—*See* GOVERNMENT PLEADER, 20 W.R. Cr. 38.

Discrepancies in oral evidence.

Effect—*See* EVIDENCE—GENERAL, 11 B. H.C. 146.

Discretion.

(1)—*Security to keep the peace—Crim. Pro. Code* (1882), *Ch.* VIII—*Discretionary powers under this chapter, how to be exercised.*—The discretionary powers conferred by the law upon Magistrates, in the interest of preserving the public peace, must not be exercised without care and caution, and never in derogation of the rights of liberty and security to which the people are entitled under British rule. QUEEN-EMPRESS v. ABDUL KADIR, **9 A. 452=A.W. N. 1887, 111.**

Discretion—*continued.*

(2)—*Discretion, how to be exercised.*—When the law throws upon a Magistrate the responsibility of exercising a discretion, he must exercise it to the best of his ability and has no right to pass a decision, simply because it would agree with a decision expressed by the Sessions Judge. CHUNNI LAL v. HARBANS RAI, **1 A. L.J. 315.**

(3)—*Crim. Pro. Code* (1882), *s.* 476—*Order made under the section—High Court's power of revision — Preliminary enquiry.*—The High Court has jurisdiction to interpose in the case of an order made by a Court under s. 476 of the Code. It has, therefore, also the power to determine whether the discretion given by that section has or has not been properly exercised. (16 C. 730, *Rel. on.*) [*F.*, 26 B. 785, 23 C. 532, 18 P.R. 1902, Cr. = 78 P.L.R. 1902 ; *R.*, 26 A. 249 = A.W.N. 1904, 15, 23 C. 610, 14 C.L.J. 123 = 15 C.W.N. 691 = 12 Cr. L.J. 209 = 10 Ind. Cas. 66, 5 M.L J. 226 = 2 Weir 602, Rat. Un. Cr. C. 895, U.B.R. 1907, 1st Qr. Cr. P.C. 1 = 6 Cr. L.J. 25.] The discretion, under s. 476 of the Code, is given by the words "such Court after making any preliminary enquiry that may be necessary send the case for trial." It is, therefore, for the Court acting in the matter to determine, in the exercise of its discretion, whether or not to make such preliminary enquiry. There may be cases in which, at any rate, it is plain that such an enquiry ought to precede the proceedings contemplated by that section. CHAUDHARI MAHOMED IZHARUL HUQ v. THE QUEEN-EMPRESS, **20 C. 349.**

(4)—*Rights of accused persons — Duty of Magistrates—Proper exercise of discretion vested in them by law.*—Magistrates, in dealing with the law relating to the rights of accused persons should construe it in a less technical spirit than they are sometimes used to do. In the inferior Courts, the right principle is occasionally reversed and a person is presumed to be guilty the moment he is accused, and every attempt on his part to prove his innocence is regarded as vexatious. When the law vests in a Court a certain discretion, it should be exercised, so as not to give rise to any reasonable complaint or prejudice or bias. SHEO-PRAKASH v. W. D. RAWLINS, **28 C. 594.**

(5)— *Previous conviction, charge of.*— In deciding whether, for the purposes of punishment, the accused should be charged or not with a previous conviction, a Magistrate should exercise a careful discretion having regard to all the circumstances of the case. HIGH COURT PROCEEDINGS, 23RD SEPTEMBER 1878, No. 1537, **2 Weir 324.**

See BEN. ACT III OF 1899, s. 449, 3 C.L.J. 90 = 10 C.W.N. 182 = 3 Cr. L.J. 211 = 33 C. 287.

See BEN. ACT III OF 1899, ss. 449, 450,452, 579, 11 C.W.N. 30 = 4 Cr. L.J. 408 = 34 C. 341.

Costs of adjournment, of Magistrate—*See* ADJOURNMENT, 9 C.W.N. 18.

See APPEAL—GENERAL, 5 Bom. L.R. 704.

Discretion—*concluded.*

As to commitment—*See* COMMITMENT TO SESSIONS COURT, 10 W.R. Cr. 25.

See COMMITMENT TO SESSIONS COURT, 2 S.L.R. 9 Cr. = 10 Cr. L.J. 224.

See CRIM. PRO. CODE, 1898, ss. 87, 38, 90, 3 L.B.R. 116.

See CRIM. PRO. CODE, 1898, s. 106 and Ch. VIII, 6 Bom. L.R. 34.

Of Magistrate to proceed either under s. 107 or ss. 144 and 145—*See* CRIM.PRO.CODE, 1898, ss. 107, 144 and 145, 32 C. 966 = 10 C.W.N. 288 = 2 Cr. L.J. 769.

Of Magistrate to proceed either under ss. 144, 145 or 107, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 144, 145, 107, 26 M. 471 = 2 Weir 56.

Arbitrary exercise of—*See* CRIM. PRO. CODE, 1898, s. 145, 30 C. 508 = 7 C.W.N. 404.

Tribunal invested with discretion—Discretion how to be exercised—*See* CRIM. PRO. CODE, 1898, s. 195, 15 Cr. L.J. 49 = 22 Ind. Cas. 321 = 41 C. 446.

Statement before committing Magistrate, admission of, in Sessions Court—*See* CRIM. PRO. CODE, 1898, s. 288, 7 C.W.N. 345.

See CRIM. PRO. CODE, 1898, s. 345, U.B.R. 1892—1896, Vol. I, 43.

Discharge of accused person—Dismissal of complaint—*See* CRIM.PRO.CODE, 1898, ss. 403, 437, U.B.R. 1904, 2nd Qr., Crim.Pro.Code, 19.

Non-exercise or improper exercise of powers of discretion vested in a Magistrate—High Court's power to interfere—*See* CRIM. PRO. CODE, 1898, s. 435 (1, 2 and 3), 19 C. 52.

Of Magistrate not always a question of jurisdiction—*See* DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 3 C.L.J. 478 = 3 Cr. L.J. 423.

See FURTHER ENQUIRY, 5 A.L.J. 74 = A. W.N. 1908, 45 = 7 Cr. L.J. 157.

See HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 10 C. 268.

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 27 M. 223 = 2 Weir 208 = 14 M.L.J. 74, 6 C. 440 = 7 C.L.R. 330.

See SECURITY FOR GOOD BEHAVIOUR, A.W.N. 1906, 13 = 3 Cr. L. J. 91, 1 C.L.R. 268.

Magistrate's discretion in taking security for good behaviour, how to be exercised—*See* SECURITY FOR GOOD BEHAVIOUR, 6 O. C. 199.

In awarding punishment—*See* SENTENCE —GENERAL, 22 C. 805.

See SENTENCE—WHIPPING, L.B.R. 1893—1900, 310.

See SURETY, 8 C.L.J. 243 = 13 C.W.N. 80 = 8 Cr L.J. 388 = 4 Ind. Cas. 560, 2 S.L.R. 11, Cr. = 10 Cr.L.J. 225.

Discretion of Magistrate.

Brothel house, removal of—Exercise of discretion by his predecessor — Complaint not addressed to Magistrate—*See* PUNJAB ACT (XX OF 1891), s. 204, 28 P.L.R. 1910=8 Ind. Cas. 223=11 Cr. L. J. 596.

See CRIM. PRO. CODE, 1898, ss. 107, 145, 9 A.L.J. 582=34 A. 449=13 Cr.L.J. 526=15 Ind. Cas. 798.

Disease.

See INFECTIOUS DISEASE.

Diseases, Contagious.

See ACT XIV OF 1868.

Diseases, Epidemic.

See ACT III OF 1897.

Dishonest Intention.

See ACT III OF 1877, s. 82, 3 L.B.R. 222=4 Cr.L.J. 488.

See BOM. ACT II OF 1890, s. 47 (*a*), 28 B. 346=6 Bom. L.R. 93.

Dishonesty.

(1)—*Robbery—Dishonest intention.*—Dishonest intention is the main ingredient in the offence of robbery. HIGH COURT PROCEEDINGS, 28TH OCTOBER, 1870, **5 M.H.C. App. 39.**

See CRIMINAL BREACH OF TRUST, 1 Weir 460=3 M.H.C. App. 6.

See PENAL CODE, s 415, 32 C. 775=9 C.W. N. 807=1 C.L.J. 469=2 Cr.L J. 368.

See PENAL CODE, ss. 417, 468, 511, 25 M. 726=1 Weir 481=12 M.L.J. 68.

Dismissal for Default.

Dismissal in default of appearance.—In a case where a Magistrate dismissed a complaint in default, and fined the complainant under s. 270, the fine was remitted and ordered to be refunded. RAMCHURN DEY v. SHEIKH JAUNU, **17 W.R. Cr. 6.**

Dismissal of Appeal.

See CRIM. PRO. CODE, 1898, ss. 367, 369, 421, 422, 423, 5 N.L.R. 76=9 Cr. L.J. 553=2 Ind. Cas. 247.

Dismissal of Complaint.

See COMPLAINT.

See CRIM. PRO. CODE, 1898, ss. 203, 247.

(1)—*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 269—*Dismissal of complaint—Application for revival.*—A complaint once dismissed under s. 269 of the Crim. Pro. Code, should not, as a rule, be revived. The complainant can have it revived if he gives satisfactory reasons for his absence, in which case he should make his application to the Magistrate who dismissed the complaint and not to any other Magistrate. REG. v. DAYARAGH, **Rat. Un. Cr. C. 56=Cr. Rg. 31-8-1871.**

(2)—*Crim. Pro. Code* (1872), ss. 205, 470—*Dismissal for non-appearance—Applicability to Ch.* XXXV, *Crim. Pro. Code,* 1872.—The direction contained in s. 205 of the Crim. Pro. Code, to dismiss a complaint on the non-appearance of the complainant, is not applicable to cases falling under Ch. XXXV of the Code. Where, therefore, a sanction had been given by a Court to prosecute a person for resisting the authority of one of its bailiffs, it was *held* that the non-appearance of the bailiff did not justify a Magistrate in dismissing the complaint. QUEEN-EMPRESS v. RAMCHANDRA, **Rat. Un. Cr. C. 137=Cr. Rg. 31-10-1878.**

(3)—*Crim. Pro. Code* (1882), s. 191—*Non-payment of process-fees—Dismissal of complaint.*—Where a complainant in a non-cognizable case, being liable under the High Court Rules to pay process-fees, neglects or refuses to pay the same, the complaint should be dismissed unless the Magistrate considers that there should be a prosecution in the public interest to which s. 191 of the Crim. Pro. Code applies. QUEEN-EMPRESS v. BHIKA, **Rat. Un. Cr. C. 491=Cr. Rg. 60 of 1889.**

(4)—*Crim. Pro. Code,* (1898), s. 437—*Dismissal of complaint for default of complainant—Jurisdiction of District Magistrate to deal with case under s.* 437.—Where a complaint is dismissed by a Magistrate owing to the absence of the complainant, the District Magistrate is competent to deal with the case under s. 437, Crim Pro. Code. QUEEN-EMPRESS v. DAJIBA TOTARAM, **Rat. Un. Cr. C. 988=Cr. Rg. 46 of 1898.**

(5)—*Complainant's absence — Crim. Pro. Code,* 1872, *Ch.* XVII.—*Held,* that it was illegal to pass an order dismissing a complaint under ch. XVII, Crim. Pro. Code, 1872, merely because of the complainant's absence and the discharge of the accused was held to be illegal in consequence. POLICE v. RAGUNATH PERSHAD, **Colm. Dig. Cr. 33 of 1876.**

(6)—*Preferring false complaint — Dismissal of complaint—Order for compensation, validity of—Courses open—Penal Code, s.* 211—*Crim. Pro. Code, s.* 195.—Where a Magistrate dismisses a complaint on the ground that it is false, it is not proper that he should order the complainant to pay the accused compensation. It is open to the Magistrate either to institute proceedings as regards an offence under s. 211, I.P.C., or to sanction under s. 195, Crim. Pro. Code, an application by the accused to make a complaint of that offence. PARSI HAJRA v. BANDHI DHANUK, **28 C. 251.** [*Overruled,* 30 C. 123.]

(7)—*Crim. Pro. Code* (1872), *ss.* 205, 208—*Ground for setting aside dismissal.*—Where the complainant or prosecutor in a case was engaged in another Court as complainant or prosecutor at the same time in another case, such absence was held not to be a sufficient ground for setting aside its dismissal for default under ss. 205, 208, Crim Pro. Code. POLICE v. SAKHARAM, **Colm. Dig. Cr. 91 of 1877.**

Dismissal of Complaint—*concluded.*

(8)—*Crim. Pro. Code, ss.* 203, 253 *and* 439 —*Dismissal of complaint under s.* 203, *Crim. Pro. Code—Fresh complaint on same facts allowed without revision—Indian Penal Code* (*Act* XLV *of* 1860), *s.* 417.—*Held*, that a complainant whose complaint has been dismissed under s. 203, Crim. Pro. Code, is competent to make a fresh complaint on the same facts without getting the first order of dismissal set aside by higher Court. BEHARI LAL v. CROWN, **26 P.W.R. 1908, Cr. = 8 Cr. L.J. 249.** (22 A. 106. *R.*)

(9)—*Dismissal of complaint without examination of complainant—Crim. Pro. Code*, (1898), *s.* 203.—Where a complainant files a complaint before a District Magistrate, the District Magistrate has no power to dismiss the complaint, on receipt of the report of the police enquiry ordered by him, without examining the complainant under s. 203, Crim. Pro. Code. CROWN v. NGA YAUNG, **1 L.B.R. 125.** [*R.*, U.B.R. 1907, Penal Code, 5.]

(10)—*Crim. Pro. Code, ss.* 253, 203, 437—*Complaint, dismissal of—Renewed complaint after long delay—Discretion—Sufficient ground for dismissal under s.* 203—*Proper remedy.*—Where a complainant withdrew the rest of the witnesses after examining one witness and himself on a former complaint, and permitted five months to elapse before filing the renewed complaint. *Held* that his conduct was sufficient for declining under s. 203 to proceed with the complaint. *Held*, also, that, though the Magistrate had jurisdiction to entertain the renewed complaint he failed to exercise a sound judicial discretion in proceeding with it under the circumstances set forth above. The appropriate remedy for complaints wrongly dismissed is vested solely in the higher grades of Magistrates and the Sessions Court under s. 437, Crim. Pro. Code. GULU TIRITH v. CHATUNMAL MENGHOMAL, **4 S.L.R. 53, Cr. = 8 Ind. Cas. 203 = 11 Cr. L.J. 582.**

For default after partial hearing by Presidency Magistrate—Institution of fresh proceedings—*See* ACT IV OF 1877, s. 124, 6 C. 523 = 8 C.L.R. 106.

Magistrate giving date for hearing petitioner—Petitioner not informed of place where case would be heard—Petitioner's failure to appear—Dismissal of petition—Legality—*See* CRIM. PRO. CODE, 1898, s. 125, 53 P.L.R. 1914 = 15 Cr. L.J. 143 = 22 Ind. Cas. 495.

See CRIM. PRO. CODE, 1898, ss. 252, 436 and 437, 28 C. 211 = 5 C.W.N. 169.

See FALSE CHARGE, 2 C.L.R. 315.

See FURTHER ENQUIRY, 5 A.L.J. 74 = A. W.N. 1908, 45 = 7 Cr. L.J. 157, 33 C. 1282 = 5 Cr. L.J. 83, Rat. Un. Cr. Cas. 89, 11 P.W.R. 1908 Cr. = 7 Cr. L.J. 347.

See PRELIMINARY ENQUIRY, S. C. 284, Oudh.

Disobedience.

See SUMMONS, DISOBEDIENCE OF.

Penal Code (*Act* XLV *of* 1860), *ss.* 175, 188 —*Disobeying order for production or inspection of documents—Civ. Pro. Code* (*Act* V *of* 1908), *O.* XI, *r.* 21.—A party to a suit failing to comply with an order for production or inspection of documents can be dealt with only in the manner prescribed by O. XI, r. 21, and is not punishable under s. 175, Civ. Pro. Code, 1908, or any other section of the Penal Code. RAM CHAND v. EMPEROR, **6 Ind Cas. 623 = 15 P.W.R. Cr. 1910 = 15 P.R. Cr. 1910 = 11 Cr. L.J. 386.**

Disobedience of Order.

See INSPECTION OF DOCUMENTS, 11 B.H.C. 231.

Disorderly House Act.

See BEN. ACT III OF 1906.

Disposal.

See PENAL CODE, s. 372, 1 Weir 359.

Disposal of Dead body.

See PENAL CODE, s. 318, 13 C.P.L.R. Cr. 188.

Disposal of Property.

See CRIM. PRO. CODE, 1898, s. 517.

See RESTORATION OF PROPERTY.

(1)—*Crim. Pro. Code, ss.* 517, 523—*Discretion to dispose of property produced before Magistrate.*—The discretion granted to the Court by s. 517 for the disposal of property produced before it, is not an arbitrary one, but must be exercised in favour of the person entitled to the possession thereof. So long as there is any one entitled to the possession of the property, Government has no claim. The question whether the property has or has not been used for the commission of an offence seems immaterial, for, in neither case does the section justify confiscation or transfer to Government of the ownership of property originally belonging to some one else. *In re* KHAJAH SAHEB, **2 Bom. L.R. 768.**

(2)—*Crim. Pro. Code, s.* 523—*Disposal of property—Discretion, how to be exercised.*—The discretion given to a Magistrate by the words "such order as he thinks fit respecting the disposal of property" must be judicially exercised, and in the absence of anything to show the title to the property, it should be ordered to be delivered to the person in whose possession it was at the time of the attachment. But when the property has been delivered contrary to the above principle, the High Court has no power to order restitution. EMPEROR v BAHINU, **5 Bom. L.R. 25.** [*F.*, 6 Cr. L.J. 126 = 4 L.B.R. 14.]

(3)—*Crim. Pro. Code* (1898), *ss.* 517, 523—*Disposal of property taken by police as stolen property, before adjudication of the theft case.*—Where in a charge of rioting and theft, the police seized certain property as stolen, and the case of theft had broken down upon investigation by the police, but the case of rioting was

Disposal of Property—*concluded.*

not disposed of, *held*, that the Magistrate was competent to make an order under s. 523 for the disposal of that property on the application of the police, especially when the parties themselves pressed the Magistrate to determine the question forthwith under that section, in order to avoid the risk of serious loss to that property. NASIB ALI MAJUMDHAR v. RUKHMINI MOHAN ENDA, **5 C.W.N. 415.**

(4)—*Crim. Pro. Code* (1898), *ss.* 517, 520—*Acquittal on a charge of criminal misappropriation—Delivery of property.*—Where a person charged with the offence of criminal misappropriation of an elephant denied the ownership of the complainant, claimed the animal, and was acquitted, *held*, that the elephant, although found to belong to the complainant, should be delivered to the accused person in whose possession it was found at the time the criminal proceedings were instituted. BALORAM GOGAI v. CHINTRAM KOLITA, **9 C.W.N. 549 = 2 Cr. L.J. 269.** (7 C.W.N. 634, *Doubted and D.*) [*F.*, 35 A. 374 = 11 A.L.J. 452 = 14 Cr. L.J. 526 = 20 Ind. Cas. 1006.]

See ACT VII OF 1878, s. 55, 5 Bom. L.R. 124.

Dispute as to Possession of Immoveable Property.

See CRIM. PRO. CODE, 1898, ss. 144-147.

See MAGISTRATE, JURISDICTION OF.

See SECURITY TO KEEP THE PEACE — LIKELIHOOD OF BREACH OF THE PEACE.

(1)— *Crim. Pro. Code*, (1861), *ch.* XXII (*ch.* XII *of the Code of* 1898)—*Nature of the enquiry.*—The enquiry contemplated by ch. XXII (XII) of the Code is a personal enquiry before the Magistrate who makes the order. An order passed upon the report made after enquiry by a Subordinate Magistrate under s. 318, Crim. Pro. Code, 1861, (s. 145 of the Code of 1898) is illegal. HIGH COURT PROCEEDINGS, 13TH NOV. 1868, No. 149, **2 Weir 97 = 4 M.H.C. App. 20.** (9 W.R.Cr. 64, *R.*) [*R.*, 31 M. 82 = 6 Cr. L.J. 384 = 17 M.L.J. 525 = 3 M.L T. 108.]

(2)—*S.* 144—*Order under the section, when to be made.*—Before making an order under s. 144, Crim. Pro. Code, the Magistrate should hold an enquiry and determine which party has the legal right contended for by both the parties and then protect the party he finds entitled in the exercise of that right. QUEEN-EMPRESS v. KAZI FAJLODDIN, **Rat. Un. Cr. C. 967 = Cr. Rg. 22 of 1898.**

(3)—*Cases which Magistrate can decide as to possession—Dispute as to property of which each of two persons claimed the whole without allegation of joint possession.*—It is competent to a Magistrate to enter into the question as to who was in possession and to maintain in possession the person whom he finds to be in possession. BYJNATH SAHOO v. RUGOONATH PERSHAD, **25 W.R. Cr. 16.**

(4)—*Crim. Pro. Code* (1882), *ss.* 145, 146—*Scope of s.* 146—' *Tangible immoveable property,*

Dispute as to Possession of Immoveable Property—*continued.*

scope of the expression—When action under s. 145 *could be taken.*—S. 146 does not give jurisdiction to pass an order of attachment in a dispute between parties whose rights would have to be determined by a Revenue Court. The term " tangible immoveable property " in s. 145 includes standing crops. A Magistrate must be satisfied of the existence of a dispute likely to cause a breach of the peace, before he can take action under s. 145. The record also must show that he was satisfied of the existence of a dispute likely to cause a breach of the peace. GANGA PRASAD v. NARAIN, **15 A. 394 = A.W.N. 1893, 145.** (14 A. 30, 11 M. 193, *F.*) [*R.*, 14 C.L J. 515 = 16 C.W.N. 540, 11 Ind. Cas. 729.]

(5)—*Decision of Magistrate as to possession—Crim. Pro. Code* (1872), *s.* 530—*Tangible immoveable property—Real right to possession.*—The possession in regard to which the Magistrate's jurisdiction under s. 530 of the Code of Criminal Procedure should be exercised, must be of a real and tangible character. BEJOY NATH CHATTERJEE v. BENGAL COAL COMPANY, LTD., **23 W.R. Cr. 45.** [*App.*, 12 C. 539.]

(6)—*Fishery rights*— Julkar— *Not tangible immoveable property.*—Where the subject of dispute is merely the right of fishing in a *julkur* it is not a dispute concerning any "tangible immoveable property" under s. 145 of the Crim. Pro. Code. KRISHNA DONE DUTT v. TROILOKIA NATH BISWAS, **12 C. 539.** (23 W. R. Cr. 45, 11 C. 413, *F.*)

(7)—*Crim. Pro. Code, s.* 145—*Dispute concerning* julkar, *not one concerning tangible immoveable property.*—A dispute concerning a *julkur* right is not one concerning "tangible immoveable property" so as to give a Magistrate jurisdiction to enquire into under s. 145 of the Crim. Pro. Code. ANUND MOYI DABIA v. SHURNOMOYI, **13 C. 179.**

(8)—*Ss* 144 *and* 145—*Scope of section—High Court's criminal revisional jurisdiction.* — S. 144 has reference to temporary orders in urgent cases of nuisance; it gives jurisdiction where urgency exists independently of dispute. An order under the section has to be directed to particular individuals or to the public generally enjoining particular acts or abstentions, and it is in its very nature a temporary order. [*R.*, 4 Bom. L.R. 582.] An order under s. 145 pre-supposes a dispute likely to cause a breach of the peace, and in making it, a Magistrate may take action on the report of the police or on other information. The order must set forth the grounds on which he is satisfied that there is a dispute likely to cause a breach of the peace. Notice should be issued to all parties concerned so that they may have an opportunity to put in their respective claims. The order should not interfere with the rights of the parties concerned as determined by the decision of a Civil Court. A claim to perform a religious ceremony in a public temple, when it

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is the subject of an apprehended dispute, falls under s. 145. [*R.*, 3 Bom. L.R. 416, 25 A. 537 = 23 A.W.N. 102, 6 Bom. L.R. 246.] The High Court has, ordinarily, no jurisdiction to interfere with an order under ch. XII of the Crim. Pro. Code, which is not a proceeding within the meaning of s. 435, *but* where the Magistrate exceeds his jurisdiction under ss. 144, 145 the High Court has power to interfere in its extraordinary jurisdiction to set the order aright. *In re* PANDURANG GOVIND, **24 B. 527 = 2 Bom. L.R. 84.** [*R.*, 25 B. 179, 2 L.B R 239, 25 A. 537 = 23 A.W.N. 102, 17 C. P.L.R. 133, 5 O.C. 1, 33 C. 68 = 9 C.W.N. 1046 = 2 C.L.J. 241, 1 S.L.R. 50 Cr. = 8 Cr. L.J. 170, 6 A.L.J. 113 = 31 A. 148.]

(9)— *Jurisdiction under the section* —The jurisdiction given by s. 320, Crim. Pro. Code, 1861, to decide for a time the right to enjoyment of property, should not be exercised except on clear and satisfactory proof. Where the only evidence offered is that of user, it should be such as to show satisfactory acts of enjoyment exercised as a matter of right and permitted uninterruptedly for some considerable length of time. HIGH COURT PROCEEDINGS. 4TH JAN. 1869, **4 M.H.C. App. 24.**

(10)—*Crim. Pro Code* (1882), *ss.* 145 *and* 146 —*Possession to be looked at under the section—Enquiry into the nature of possession.*—Where a Joint Magistrate made no inquiry as to the actual possession of the parties at the time the question came before him, but relied on an order passed by the Collector six months previously, *held*, that the order was irregular, as the issue before the Magistrate was which of the contending parties was in actual possession at the time of his proceedings. *In the matter of the petition of.* JAI LAL, **13 A. 362 = A.W.N. 1891, 115.** [*R.*, 18 M. 41 = 2 Weir 100.]

(11)—*Crim. Pro. Code. s.* 145—*Scope of section—Inquiry into the nature of the possession.* —S. 145 of the Crim. Pro. Code, 1882, requires a Magistrate to decide which of the parties is in possession of the subject of dispute *at the time* when the Magistrate decides the question of possession, and not at any time *previous* thereto. *In the matter of* HUCHAPPA AND SHIVA GANGAVA, **15 B. 152.** [*F.*, 18 M. 41.]

(12)—*Attachment of property—Crim. Pro. Code* (1872), *s.* 531—Ijmali *property—Nature of possession.*—The possession to be determined is possession at the time the dispute arose, *i.e.*, at the time the Police reported that a breach of the peace was likely to take place. RAKHAL DAS SINGH v. RAJAH SHEO PERSHAD SINGH, **24 W.R. Cr. 73.** [*D.*, 5 C.W.N. 710.]

(13)—*Decision of Magistrate as to possession—Nature of required possession—Crim. Pro. Code* (1872), *s.* 530—*Possession at time of dispute.*—The possession which parties are required to establish in a case under s. 530, Act X of 1872, relating to a dispute as to the possession of immoveable property is possession at the time of the institution of the proceedings, and not

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possession at the time the Magistrate comes to his decision. *In re* PIRTHIRAM CHOWDHRY RAI BAHADOOR, **20 W.R. Cr. 51.** [*R.*, 24 W. R. Cr. 73, 21 C. 404.]

(14)—*Inquiry into the nature of the possession—Possession at the time of enquiry.*—Unless he is satisfied that there is likelihood of a breach of the peace being committed, a Magistrate acting under s. 318 of the Crim. Pro. Code, 1861, has only to see who is in actual possession at the time of the inquiry, and he cannot restore possession to any other person though the latter had been previously illegally dispossessed by the person in possession at the time of the inquiry. *In re* GIRDHAR DHANJEE, **Rat. Un. Cr. C. 27 = Cr. Rg. 1-12-1869.**

(15)—*Crim. Pro. Code, s.* 145—*Procedure under—Possession at the time of the enquiry.*—Under s. 145 of the Code, the Magistrate has only to determine which of the parties before him is *de facto* in possession of the disputed property, at the time when he is enquiring into the matter, which is, in the contemplation of the law, identical with the time of the institution of the proceedings, and not at any time previous thereto. [*F.*, 12 C. 521; *Appl.*, 21 C. 404; *R.*, 16 C. 281, 22 C. 297, 25 C. 630.] Under s. 145, the Magistrate's simple duty is to maintain the party in possession, although he might be of opinion that such party is in wrongful possession. He has no power to oust the party, whom he considers, in wrongful possession, and maintain in possession the party, whom he considers, rightfully entitled to possession. AMBLER v. PUSHONG, **11 C. 365.** [*R.*, 29 C. 187 = 29 I.A. 24 = 12 M.L.J. 83, P.C.]

(16)—*S.* 145, *Crim. Pro. Code—Procedure under—Possession at the time of enquiry.*—Under s. 145 of the Code, the Magistrate has only to determine which of the parties before him is *de facto* in possession of the disputed property, at the time when he is enquiring into the matter, which is, in the contemplation of the law, identical with the time of the institution of the proceedings, and not at any time previous thereto. CHUNDER KOOMAR PODDAR v. CHUNDRA KANTA GHOSE, **12 C. 521.**

(17)—*Possession at the time when proceedings were instituted.*—Enquiries, under s. 145 of the Crim. Pro. Code, should be directed to the question as to which party has been in possession of the subject of dispute before any proceedings in Court have been taken, and anything which occurs subsequently should not be taken into account. KRISHNA DONE DUTT v. TROILOKIA NATH BISWAS, **12 C. 539.** [*F.*, 18 M. 41.]

(18)—*Crim. Pro. Code, s.* 145—*Scope of—Inquiry as to possession just before the dispute.*—Under s. 145 of the Code, in a dispute regarding forest lands, the right to possession of which was exercised by cutting timber from time to time, and removing that timber upon a certain price being paid for, the Magistrate

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came to the conclusion that the second party was in possession at the time of the institution of proceedings, on the grounds (1) that the first party had admitted that, just before the time of initial proceedings under the section, they were driven away by the men of second party; and (2) that they were unable to enter the forest and to remove the timber cut by them, and that the timber so cut was removed by the second party. *Held*, that, having regard to the nature of the property, these two facts, found in favour of the second party, could not constitute legal possession of the second party at the time the proceedings were instituted. *Held*, also, that it was necessary to enquire who was in the undisturbed possession of the land in dispute by felling timber and removing the same without objection on the occasion immediately preceding the one in which the dispute arose; and whichever party be found to have been in possession on that occasion, should be presumed to have possession at the time when the proceedings commenced. JAGAT KISHORE ACHARJYA CHOWDHURI v. KHAJAH ASHANULLAH KHAN BAHADUR, **16 C. 281.**

(19)—*Crim. Pro. Code, s.* 145—*Possession contemplated by—Possession at the time of the institution of the proceedings.*—The possession to be inquired into, before making an order under s. 145 or 146, is the possession at the time of the institution of the proceedings. It is obvious that the words in s. 145, Crim. Pro. Code, "the fact of actual possession" must have reference to some fixed point of time. It cannot have reference to some date long anterior to the date of proceedings being instituted, nor can it refer to a point of time subsequent to the commencement of the inquiry. The time to be taken is obviously the date of the Magistrate being satisfied that there is ground for his intervention under s. 145, in other words, the date of the institution of the proceedings. In considering the question of possession, there is a general presumption that when a vendor sells part of a property, he retains all that he does not sell. AGRA BANK v. LEISHMAN, **18 M. 41=2 Weir 100.** [*R.*, 25 A. 537=23 A.W.N. 102, 24 B. 527.]

(20)—*Inquiry into question of possession—No adjudication on title.*—A Magistrate, acting under s. 144, Crim. Pro. Code, is to make an order with the object of preventing a breach of the peace, if he considered a breach of the peace was imminent. This would be the only question for him to consider. It is not his business to adjudicate upon any question of title or possession. APPALA NARASIMHALU v. MAHANT HARI NARAYANA DAS BAVAJI, **11 M.L.J. 122.**

(21)—*Crim. Pro. Code* (1882), *s.* 145—*Manager or proprietor, if a proper party to proceeding under s.* 145.—A person, having no interest in the land, but merely in possession of the land as manager for the actual proprietor, is not a proper party to proceedings under s. 145. BROWN v. PRITHIRAJ MANDAL, **25 C. 423.** (21 C. 915, *F.*) [*D.*, 31 C. 48=7 C.W.N. 825.]

(22)—*Crim. Pro. Code* (1882), *s.* 145—*Order under the section, nature and effect of.*—Orders under s. 145 are merely Police orders made to prevent breaches of the peace. They decide no question of title; but the person maintained in possession by such an order can only be evicted by a suit by a person who can prove a better right to the possession himself. DINOMONI CHOWDHRANI v. BROJO MOHINI CHOWDHRANI, **29 C 187=29 I.A. 24=6 C.W.N. 386, P.C.=12 M.L.J. 83=4 Bom. L.R. 167 =8 Sar. 224.**

(23)—*S.* 145—*Order under the section, nature and effect of.*—Under s. 145, Crim. Pro. Code, 1882, an order must be made, not upon the merits of the claims put forward on either side, but upon the view of the fact of actual possession of the land in dispute, declaring the proper person to be in actual possession of the lands in dispute and to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction. MAUNG PO SU v. MAUNG PAN AUNG, **L.B.R. 1893—1900, 149.**

(24)—*S.* 145—*Order under the section nature and effect of.*—An order passed by a Magistrate under s. 145 (4), Crim. Pro. Code, should embody a clear finding as to which of the parties was in possession at the date of his order under s. 145 (4). It is not enough to find who was in possession a year before the date of the proceedings under the section. MUNDLAMUNY ELLAMANDU v. GADIPUDI CHINNAH VENKIAH, **9 Cr. L.J. 503=2 Ind. Cas. 159.**

(25)—*Crim. Pro. Code* (1882), *s.* 145—*Order under s.* 145, *on whom binding.*—An order passed under s. 145 of the Code is binding only on the actual parties to the case in which it was passed. The fact of a person being examined as a witness in such a case does not make him a "party" bound by the order. Any inconvenience, which might result from restricting the scope of the section in this manner, can be avoided by care being taken to include as parties all persons interested in, or claiming a right to, the property in dispute. QUEEN-EMPRESS v. KUPPAYYAR, **18 M. 51=2 Weir 103.**

(26)—*Crim. Pro. Code* (1898), *s.* 145, *cl.* (4)—*Question of possession—Jurisdiction of Magistrates.*—In considering the question of possession, in proceedings under s. 145 of the Code, the Magistrate has to decide the question of possession without reference to the merits of the claims of any of the parties to a right to possess the subject-matter of dispute. If he goes into the merits, he exceeds his jurisdiction. RAM DYAL MAHTON v. KEDARNATH, **6 C L J. 182=6 Cr. L J. 192.** [*Diss.*, 11 Cr. L.J. 69=4 Ind. Cas. 876=12 O.C. 400; *R.*, 34 M. 138=6 Ind. Cas. 398=11 Cr. L. J. 353=8 M.L.T. 104.]

Dispute as to Possession of Immoveable Property—*continued.*

(27)—*Decision of Magistrate as to possession—Question for decision — Possession—Title.*—In a case of disputed possession of land, the Magistrate should look to possession, not to right, *i.e.*, he must maintain in possession the party in possession, forbidding disturbance of such possession. GRIJAMONEE v. ISHUR CHUNDER, **W.R. 1864, Cr. 2.**

(28)—*Land dispute—Proceedings under s.* 318, *Crim. Pro. Code* (1861) (=*s.* 145, *Crim. Pro. Code*, 1898).—It is enough if the proceeding required by s. 318, Crim. Pro. Code, 1861, be simply recorded, there being no necessity to record it in a particular form or on a separate sheet. JOYRAM SINGH v. JUGNARAIN DOOBEY, **10 W.R. Cr. 16.**

(29)—*Land disputes—Crim. Pro. Code*, s. 318—*Sundays.*—Where there is a dispute about the possession of land, the Magistrate ought to record the proceedings required by s. 318, Crim. Pro. Code and look to possession, not to right, *i.e.*, maintaining in possession the party in possession, and forbidding disturbance of possession. Sunday is a recognized holiday throughout the country; and on that day judicial business is suspended in all the Courts. GRIJAMONEE v. ISHUR CHUNDER, **W.R. 1864, Cr. 2.**

(30)—*Crim. Pro. Code*, 1861, *s.* 318—*Land dispute.*—A Magistrate cannot, under s. 318, Code of Criminal Procedure, decide as to the respective claims or rights to actual possession, nor act upon former decisions to prove previous title or possession. All that he has to do is to find which party is in actual possession. GOVERNMENT v. SREEPUTTEE ROY, **17 W. R. Cr. 59.**

(31)—*Land disputes—Possession—Evidence of title.*—In land disputes under s. 318, Crim. Pro. Code, 1861, *held*, that the Magistrate was wrong, in not recording a sufficient proceeding showing the grounds upon which he was satisfied that the dispute was one which would lead to a breach of the peace. If the parties consented to waive that point by consenting to go into the whole question, the Magistrate was wrong in taking the title of one person as *prima facie* evidence of his possession, and throwing the *onus* on the other, and precluding that other from proving his title. AMRITHNATH JHA v. AHMED REZA, **6 W.R. Cr. 61=1 Ind. Jur. N.S. 399.**

(32)—*Nature and effect of decision—Fouzdari Court, jurisdiction of—Possession—Question of title.*—The jurisdiction of the Fouzdari Court was confined to cases of possession, and it was beyond its province to inquire into and ascertain titles to landed property. MOHARAJAH MOHESHUR SINGH v. GOVERNMENT OF INDIA, **3 W.R.P.C. 45=7 M.I.A. 283.**

(32-*a*)—*Crim. Pro. Code, ch.* XII—*Dispute as to possession of immoveable property—Evidence as to title, admissibility of.*—In a proceeding under ch. XII of the Code of Criminal Procedure, the Magistrate may, if necessary, take and consider evidence of title to enable him to decide the question of actual possession, but such evidence should be used only to "supplement" evidence of user. PANANGANTI PARTHASARATHY NAYANIM GARU v. PALLIKAPU VENKATASAMI REDDI, **6 Ind. Cas. 398 =11 Cr. L.J. 353=8 M.L.T. 104=1910 M.W. N. 400.**

(33)—*Order of Criminal Court as to—Nature and effect of decision—Question of title.*—In a simple question of possession, all that a Criminal Court can dispose of is the necessary right, not the proprietary title. KASHEE NATH KOER v. DEB KRISHTO RAMANOOJ DOSS, **16 W.R. 240.**

(34)—*Attachment of property — Dispute as to boundaries—Contiguous estates.*—When the dispute is as to a common boundary between two contiguous estates, the Magistrate, instead of attaching the boundary land, should find for one party or the other, with reference to the point of possession. HARVEY v. MR. BRICE, **4 W.R. Cr. 26**; REG. v. OMIRTO NAUTH JHA, **6 W.R. Cr. 61=1 Ind. Jur. N S. 399.** [*App.*, 7 C. 385=18 W.R. Cr. 11, 22 W.R. Cr. 81; *Ref.*, 25 W.R. Cr. 74.]

(35)—*Disputes as to right of way, water, etc.*—*Obstructing a road.*—Where A merely complained to the Magistrate that "a certain road had been obstructed by B and others," *held* that the Magistrate was not bound to inquire into the matter under s. 320 of Act XXV of 1861. QUEEN v. RASSUL NUSHY, **2 B.L.R. Ap. 9= 11 W.R Cr. 3.**

(36)—*Decision of Magistrate as to possession — Nature of order—Illegal dispossession.*—A Magistrate has no authority to restore to possession a person who has been illegally dispossessed. RAMJEEBUN DOOBEY v. LUCHMONEE DEBEA, **W.R. 1864, Cr. 5.** *See also* DOORJUN SINGH v. SHIBBA, **3 N W.P. 171**; QUEEN v. IMAMBANDEE, **7 W.R. Cr. 26.**

(36-*a*)—*Crim. Pro. Code*, 1861, *s.* 318 (=*s* 147 *of the Code of* 1898)—*Duty of Magistrate.*—A Magistrate, having satisfied himself that a breach of the peace is likely to ensue, may enquire which party is in possession of immoveable property, and after satisfying himself on that point, he may record a proceeding, declaring that the party he holds to be in possession is entitled to retain possession, until ousted in due course of law, and forbidding all disturbance of possession. He may not go on to enquire into the rights of parties in possession and forbid the exercise of any right by such parties. DOORJUN SINGH v. SHIBBA, **3 N.W. P. 171.**

(36-*b*)—*Crim. Pro. Code*, 1861, *s.* 318—*Land disputes—Possession.*—Under s. 318, Crim. Pro. Code, 1861, a Magistrate can only try the question of possession without reference to the right of possession. QUEEN v. MUSSAMUT IMAM BANDEE, **7 W.R. Cr. 26.**

Dispute as to Possession of Immoveable Property—*continued.*

(37)—*Crim. Pro. Code* (1898), s. 145—*Title—Possession—Handing over profits to party.*—In a case under s. 145, the Magistrate has no jurisdiction to enquire into the rights of the parties. What he has got to look to is the fact of possession only. A Magistrate in a case under s. 145 passed the following order:—"I further order that, if any fruit has been gathered on any of the said land attached by order of this Court, the proceeds of such fruit, *minus* expenses, shall be handed over to A." *Held*, there is no authority in s. 145 or any other section to justify such an order. ARJU MEA v. ARMAN MEA, **7 C.L.J. 369 = 7 Cr. L.J. 336.**

(38)—*Crim. Pro. Code* (1898), s. 145—*Division of crops—Magistrate, jurisdiction of.*—A Magistrate has no jurisdiction to order a division of the crops on the land, the subject-matter of proceedings under s. 145, Crim. Pro. Code, between the parties. RAM NARAIN SAHU v. KAILASH SINGH, **8 C.L.J. 242.**

(39)—*Competency of Magistrate to enquire—Crim. Pro. Code*, 1861, s. 318—*Land dispute.*—When both the disputing parties are examined, and state that men were collected by their opponents for the purpose of committing a breach of the peace, a Magistrate is justified, without inquiring who was the aggressor or the aggrieved party, to proceed under s. 318 of the Code of Criminal Procedure, and to take whatever steps are in his opinion necessary to prevent a breach of the peace. GUNGA NARAIN MITTER v. GOUR SOONDER CHOWDHRY, **15 W.R.Cr. 85.** [*R.*, 17 W.R.Cr. 33.]

(40)—*Cases which Magistrate can decide as to possession—Dispute as to alluvial land—Land left by drying up of river.*—A Magistrate had jurisdiction, under s. 318, Code of Criminal Procedure, 1861, to prevent breaches of the peace in places where the rivers had dried up. The jurisdiction that was once there, under s. 30, was not taken away by reason of the land having appeared, and the water disappeared. EMAMBANDEE BEGAM v. TEK BAHADOOR, **17 W.R.Cr. 53.**

(41)—*Cases which Magistrate can decide as to possession—Dispute regarding joint property—Crim. Pro. Code* (1861), s. 318.—The decision of a Deputy Magistrate was quashed, because the property in dispute being *ijmali*, he had no jurisdiction to try the dispute under s. 318, Code of Criminal Procedure, 1861, but ought to have proceeded in the manner laid down in Circular Order No. 10, dated 16th April, 1863. 17 W.R.Cr. 9. GOLUCK CHUNDER ROY v. RAJ MOHUN BOSE, **17 W.R. Cr. 33.**

(42)—*Crim Pro. Code* (1872), s. 530—*Burial ground, proprietary right over—Manager in joint possession—Question for Civil Court.*—A Mokhtar holding and managing a burial ground for several joint proprietors is not in possession for one more than for another. It is not for one who is a mooktar or manager or servant to constitute himself a judge of the rights of the parties who have put him in possession and under whom he holds, and he cannot keep out one party, because he thinks that they are not doing what they ought to do. A case in which several persons dispute about the proprietary right in a burial ground is really not one in which any order can properly be made under either ss. 530 or 532, Crim. Pro. Code, for the matter in dispute is one exclusively for the decision of a Civil Court. KASSIM HASSIM SOORTY v. ABRAHIM SOLEMAN, **25 W.R.Cr. 24.**

(42-*a*)—*Crim. Pro. Code*, s. 145—*Dispute between tenants of joint owners—Jurisdiction of Magistrate to proceed under* s. 145.—Certain land was jointly leased to tenants by two joint owners and the former continued in possession for several years under the lease. One of the joint owners sued for partition of his share and obtained a decree, but he did not obtain possession of his share under the decree, and while the old tenants were in possession as before, some new tenants forcibly entered on the land asserting that they were the tenants of only one of the joint owners. The Magistrate acting under s. 145, Crim. Pro. Code, put the old tenants in possession. *Held*, that the Magistrate did not act without jurisdiction, and that, though there is no doubt that the Court must give effect to a decree of a Civil Court for partition, yet in this instance the dispute not being between the parties to the decree but between two rival sets of tenants, the Magistrate was right in putting the old tenants into possession of the land. MA E MYA v. MAUNG PO THAUNG, **8 Ind. Cas. 453 = 11 Cr. L.J. 655 = 3 Bur. L.T. 74.**

(42-*b*)—*Crim. Pro. Code*, s. 145—*Jurisdiction of Magistrate in case of dispute as to joint possession.*—A dispute not relating to possession of a share in the fishery, but to a share in its profits, may be dealt with under s. 145 by force of sub-s. (2). But where the dispute is with regard to possession of a share in the fishery, and the two parties are found to have joint rights in the same, neither of them can be considered as claiming exclusive possession, and therefore s. 145 is inapplicable. BHABANATH CHAKRAWARTHI v. PEARY SARMA, **11 C.L.J. 412 = 6 Ind. Cas. 544 = 11 Cr. L.J. 370.** (11 C.W.N. 512, *F.*; 10 C.W.N. 1088, 36 C. 986, 27 C. 259, *R.*)

(42-*c*)—*Whether provisions of Ch.* XII, *Crim. Pro. Code*, 1898, *apply to joint possession of joint property.*—The provisions of Ch. XII, Crim. Pro. Code, 1898, do not apply to joint possession or joint property, nor to moveable property other than crops or produce of land specified in s. 145, Crim. Pro. Code. DHANI RAM v. BHOLA NATH, **23 P.R. 1902, Cr. = 135 P.L.R. 1902.** (23 C. 80, 4 C.W.N. 426, *R.*; 27 C. 259, *D.*) [*F.*, 11 Cr. L.J. 61 = 4 Ind. Cas. 860 = 11 P.W.R. 1909, Cr. = 105 P.L.R. 1909 = 12 P.R. 1909, Cr., 115 P.L.R. 1903, Cr.; *R.*, 11 Cr. L.J. 422 = 6 Ind. Cas. 955 = 24 P.W.R. 1910 Cr., 8 Ind. Cas. 453 = 3 Bur. L.T. 74.]

Dispute as to possession of immoveable property—*continued.*

(43)—*Crim. Pro. Code* (1872), *s.* 530—*Scope of—Joint possession.*—The section contemplates disputes between owners as well as occupiers of lands. When a Zemindar has let his lands or a portion of them in farm, he, his farmers, and the occupying ryots are all, in their degree, concerned in any dispute as to possession which may arise, and they may, and ought to be, respectively maintained in possession of the interests which they severally enjoy. HARAK NARAIN SINGH v. LUCHMI BUX ROY, **5 C.L.R. 287.** (18 W.R. 11, *Cited* ; 3 C. 320, *Com.*) [*R.*, 11 C. 413, 15 C. 527, 4 C.W.N. 753.]

(44)—*Symbolical possession.*—Although symbolical possession is not entitled to weight as against a party proved to be in possession, yet, in the absence of evidence, it in itself deserves to be taken into consideration. SHEIKH MUNGLO v. DURGA NARAIN NAG, **25 W.R.Cr. 74.** [*Appl.*, 4 C.L.R. 483 ; *D.*, 7 C 46 ; *R.*, 7 C. 385, 23 C. 557, Ex. 33 C. 33 = 10 C.W.N. 257 = 2 C. L J. 271.]

(45)—*Crim. Pro. Code* (1872), *s.* 530—*Possession by raiyats.*—In a case of dispute regarding land of a considerable area in which both parties contended that they held possession of the area through raiyats, it was held that the Magistrate, instead of making an order under s. 530 of the Criminal Procedure Code that the land should remain in the possession of one of the parties until the decision of a competent Civil Court, should have proceeded to consider the question which party was in possession of the constituent portions of the land, piece by piece, in the hands of his raiyats. MUDHOOSOODHUN SHAHA v. BEJOY GOBIND CHOWDHRY, **21 W.R. Cr. 55.**

(46)—*Crim. Pro. Code* (1872), *s.* 530—*Parties in possession through raiyats.*—Under Act X of 1872, s. 530, the Criminal Court has jurisdiction to determine questions of contested possession between parties who are not in immediate possession of the subject-matter of dispute, but claim rent from tenants who actually occupy it. NOBIN CHUNDER KOONDOO v. JOGENDRONATH BHUTTACHARJEE, **25 W.R. Cr. 18.**

(47)—*Crim. Pro. Code* (1882), *s.* 145—*Possession of tenant, when not possession of landlord.*—The rule that the possession of the tenant is the possession of the landlord does not apply in cases in which there is a dispute between the tenant and the landlord as to the fact of possession. BABOO REDDI v. KULLAPPA NATTAN, **2 Weir 107.**

(48)—*Breach of the peace—Actual possession—Recognizance to keep peace—Landlord and tenant.*—The possession of a master by his servant, of a landlord by his immediate tenant, the person who pays rent to him, of the person who has the property in the land by the usufructuary, come within the meaning of the words "actual possession" in s. 318 of the Code of Criminal Procedure, 1861. Their meaning is not limited to bodily possession. But a person is not in "actual possession" where the rents are paid by the actual occupier, not to him, but to an intermediate holder. *In the matter of* J. D. SUTHERLAND, **9 B.L.R. 229 = 18 W.R. Cr. 11.** [*F.*, 5 C.L.R. 287, 7 C. 385, 15 C. 527 ; *R.*, 25 W.R.Cr. 74 = 11 C. 413, 31 C. 48 ; *Expl.*, 19 W.R. Cr. 10 ; *D.*, 14 C. 649.]

(49)—*Attachment of property—Power to attach land—Crim. Pro. Code* (1861), *s.* 318—*Zemindari in possession by raiyats.*—The power of attaching land regarding which there is a dispute, conferred on a Magistrate by s. 318 of the Code of Criminal Procedure, extends to disputes as to possession of land of which rival zemindars are in possession by their raiyats. *In the matter of* J.W. MASEYK, **15 W.R. Cr. 1.**

(50)—*Attachment of property—Dispute between rival raiyats—Attachment of estate—Crim. Pro. Code* (1861), *s.* 319.—Where there was a dispute as to the actual possession of land, not between two co-proprietors, but between rival raiyats, *held* that, instead of attaching the whole estate, under s. 319 of the Code of Criminal Procedure, 1861, the Magistrate ought to have settled the dispute as between the raiyats. RAM DYAL v. CHINTA MOONEE, **W.R. 1864, Cr. 28.**

(51)—*Crim. Pro. Code* (1872), *s.* 531—*Order of attachment, when to be made.*—It is the duty of a Magistrate, before he passes an order attaching the property, to enter into the question as to who has been, or has not been in possession of the land in dispute, to take evidence on the point, and to record a proceeding thereon. It is only when he is unable to determine the fact of actual possession, that he is competent under s. 531, to attach the land. *In the matter of* RAM SOONDARI DEBEE, **1 C.L R. 86.**

(52)—*Attachment of property—Power to deal with land under attachment—Power to lease—Crim Pro Code* (1861), *s.* 319 —A Magistrate may lease land attached under s. 319 of the Crim. Pro Code, 1861. *In re* GREESH CHUNDER DOSS, **17 W.R. Cr. 38.**

(53)—*Crim. Pro. Code*, 1872, *s.* 531—*Procedure under—Sham proceedings — Attachment under s 531—Stranger without notice subsequently alleging actual possession—Magistrate's duty.*—It is obvious that orders under s. 531, Crim. Pro. Code, 1872 might easily be turned to the prejudice of the party in actual possession, as in a sham dispute arising between A and B, if they failed to offer any evidence, the Magistrate might proceed to attach the property, and the person actually in possession might thereby be prejudiced Where a Magistrate after issuing notice under s. 530 to two parties finding himself unable to determine possession, attached the property under s 531 and where thereafter a third party represented that he, as landlord, stepped into actual possession, it was held, that it was the Magistrate's duty to withdraw the attachment, unless he shall see reason to find that the third party was not in actual possession. *In re* JOYKISSEN MOOKERJEE, **24 W.R. Cr. 40.**

Dispute as to possession of immoveable property—*continued.*

(54)—*Proceedings under* s. 530, *Crim. Pro. Code—Breach of the peace—Attachment.*—Where a Magistrate, being in doubt as to which of two persons was rightful owner of some disputed property, attached it in order to prevent a breach of the peace, and released it on their coming to an agreement, but subsequently re-attached it on the appearance of a third claimant, from whose attempt to obtain possession a breach of the peace was apprehended: *Held* that the Magistrate was only competent to order a fresh attachment after taking the preliminary steps under s. 530, if, on completion of enquiry, he found himself in the position described in s. 531; and that, if there was any new dispute, he ought to have proceeded *de novo*; but that the best course to pursue would be to exert his powers under ch. XXXVII. QUEEN v. KALY KISHORE ROY, **25 W.R. Cr. 68.**

(55)—*Crim. Pro. Code* (1872), s. 530—*Order of Magistrate, nature of—What kind of possession, the Magistrate should maintain.*—It is not the intention of s. 530 to give a Magistrate power to declare a person should have possession up to a certain period not yet arrived. He has simply to see whether or not he is in possession and entitled to retain it; if so, his possession may be terminated in due course of law, but not by the order of a Magistrate. If a person has been turned out of possession and submits to the ouster, and the other party, whether rightfully or wrongfully, is in peaceable possession, a Magistrate will not go behind the period where possession may be found to have become peaceable; but the mere fact of seizure and occupation, while complaints are being made to the Police, and proceedings are being held in the Criminal Court, cannot be said to be such peaceable possession as the Magistrate is bound to look to and maintain. BUNWARI LAL MISSER v. RAJAH RADH PERSHAD SINGH, **1 C.L.R. 136.**

(56)—*Crim. Pro. Code* (1872), ss. 530, 531—*Doubtful possession—Decision of Civil Court, effect of—Enquiry into possession.*—The doubt upon which a Magistrate can act under s. 531 must be the result of his inability to determine upon the evidence offered by both parties, and thereupon he may proceed to attach. The decision of a Civil Court is no ground for the determination of a Magistrate under the section. He is bound to enquire into possession and that alone. *In the matter of* RAJA LEELANUND SINGH BAHADOOR, **1 C.L R. 273.**

(57)—*Crim. Pro. Code* (1872), s. 530—*Dispute among joint owners—Order under section how far valid.*—Where the parties were admittedly in joint possession of certain property and the only question in dispute was whether one of them, being a joint owner, was at liberty to make use of the land in such a manner as to cause what the joint owner chose to consider an annoyance, and against the will of that joint owner, *held,* that a Magistrate cannot determine the question under s. 530, Crim. Pro. Code, 1872. An order under s. 530 is only valid until the person to whom possession is given is ousted by due course of law. *In the matter of* RAJ COOMAR SINGH, **2 C.L.R. 62.**

(58)—*Crim. Pro. Code* (1872), ss. 530, 531—*Possession of agent.*—In an enquiry under s. 530, the sole point is to determine the fact of actual possession, without reference to the merits of the claims of any party to a right of possession. Where a person is in possession, he is entitled to be declared to be in possession, irrespective of the fact that his possession is only that of an agent. *In the matter of* JUGGODESHARY CHOWDHURAIN, **3 C.L.R. 94.**

(59)—*Crim. Pro. Code* (1872), ss. 530, 533—*Question of possession—Local enquiry by subordinate Magistrate—Scope of local enquiry.*—In a proceeding under s. 530, the Magistrate must decide the question of possession on the evidence taken before himself. He should not direct a local enquiry by a subordinate Magistrate unless both the parties have assented to such an enquiry. [*R.*, 3 M.L.T. 108 = 6 Cr. L.J. 384 = 31 M. 82 = 17 M.L.J. 535.] The local enquiry to which s. 533 refers should be restricted solely to some question relating to the feature of the property about which the dispute has arisen. It should not be directed to any matter which can be proved before the Magistrate by oral evidence, such as the question of actual possession. *In the matter of* BAIKANT KUMAR, **3 C.L.R. 134.** [*F.*, 13 Cr. L.J. 777 = 17 Ind. Cas. 409 = 10 A.L.J. 465; *R.*, 37 C. 340 = 11 Cr. L.J. 121 = 14 C.W.N. 422 = 5 Ind. Cas. 365.]

(60)—*Local inquiry—Effect of inquiry as evidence—Right to rebut evidence—Crim. Pro. Code* (1872), s. 533.—When a local inquiry under s. 533 of the Crim. Pro. Code is instituted, it becomes part of the proceedings in the case, and the party affected by it is entitled to be acquainted with the results of it, and to have an opportunity of rebutting the deputed Magistrate's report, if he thinks it necessary so to do. MIR DHUNOO v. THOMAS BROWN, **21 W.R. Cr. 25.**

(61)—*Crim. Pro. Code* (1872), s. 530—*Proceedings under, when to be initiated—Examination of witnesses.*—In order to initiate a proceeding under s. 530, it must be shown that a breach of the peace is imminent. CHUNDER MADHAB GHOSE v. JUGGUT CHUNDER SEN, **4 C.L R. 483.** [*R.*, 23 C. 557, 33 C. 33 = 10 C.W.N. 257 = 2 C.L.J. 271.]

(61-*a*)—*Crim. Pro. Code*, s. 145—*Witness—Process—Magistrate—Charter Act* (24 *and* 25 *Vict.*, c 104), s. 15.—In a proceeding under s. 145 of the Crim. Pro. Code, it is not obligatory on the Magistrate to enforce the attendance of any witness at the instance of the parties. In a case where the Magistrate has acted in accordance with law, it would require very strong circumstances to justify the interference

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by the High Court under the Charter Act, s. 15, and it would be necessary to show quite clearly that the procedure, though right in law, has in fact amounted to an absolute denial of justice. Where a party, in a proceeding under s. 145 of Crim. Pro. Code, states that four material witnesses did not appear and complains that the Magistrate did not enforce their attendance, but it does not appear what evidence these witnesses were going to give and there is nothing to show what efforts the party has made to procure their attendance: *held* that nothing like a case of denial of justice has been made out and that the High Court could not interfere. HARENDRA KUMAR BOSE v GIRISH CHANDRA MITRA, **7 Ind. Cas. 798 = 11 Cr. L.J. 530 = 38 C. 24.**

(62)—*Likelihood of breach of the peace—Inquiry—Crim. Pro Code* (1861), *s.* 318.—Unless a dispute is likely to cause a breach of the peace, no inquiry should be made, nor order passed giving possession to one side or the other under s. 318 of the Code of Criminal Procedure. QUEEN v. SONAOOLLAH, **2 W.R. Cr. 44.**

(63)—*Crim. Pro. Code* (1872), *s.* 533 —The object of Act X of 1872, s. 530, is to prevent a breach of the peace by retaining in possession the party already there, until such time as the Civil Court can pronounce on the two conflicting claims. RANEEGUNGE COAL ASSOCIATION v. HEM LALL GHATIVAL, **24 W.R. Cr. 17.** [*F.*, 7 C.L.R. 516, 7 C. 385; *R.*, 25 W.R. Cr. 74.]

(64)—*Nature and effect of decision—Prevention of breach of peace—Adjudication of title — Crim. Pro. Code* (1861), *ch.* XXII, *ss.* 318—321.—The object of ch. XXII of the Crim. Pro. Code, 1861 (ss. 318—321), is to prevent breaches of the peace likely to be occasioned, and not the adjudication of title. *In re* RAM DUTT MISR, **1 Agra 29. Cr.** GOVERNMENT v. GHOLAM MAHOMED, **1 Agra Cr. 33.**

(65)—*Disputes as to right of way, water, etc.—Crim. Pro. Code* (1872), *s.* 532.—In order to find the jurisdiction of a Magistrate to take action under s 532 of the Crim. Pro. Code, it is necessary that a dispute should exist between two persons concerning the right to the use of any land or water, or any right of way; the jurisdiction is intended for the purpose of preserving the public peace. ROSIK LALL NUNDI v. KARTIK SHAUT, **22 W.R. Cr. 48.**

(65-*a*)—*Crim. Pro. Code, s.* 147—*Interference with exercise of a right by a particular class—Interference with the use of a well—Order of Magistrate forbidding interference—Jurisdiction.*—Where the Hindus prevented the Christians from exercising their right to take water from a well: *Held*, that there was nothing in s. 147 of the Crim. Pro. Code, to prevent the Magistrate from passing an order forbidding the Hindus from interfering with the exercise of that right. HINDUS OF KANNAMPALAIYAM VILLAGE v. KAI KOLA CHRISTIANS, **8 Ind. Cas. 848 = 1911 1 M.W.N. 44 = 9 M.L.T. 209 = 11 Cr. L.J. 721 = 21 M.L.J. 486.**

(66)—*Order for removal of wall—Crim. Pro. Code*, 1861, s. 62.—In the absence of evidence showing that a breach of the peace is likely, a Magistrate cannot, on a police report, summarily order a party to remove a wall he has built. The report of the police is not evidence on which the Magistrate can rely. RADHA KISHORE v. GIRIDHAREE SAHEE, **13 W.R. Cr. 19.**

(67)—*Private dispute as to pathway—Crim. Pro. Code*, 1861, *s.* 62.—S. 62 does not apply to disputes between parties about a private path, and a Magistrate has no jurisdiction to order the removal of a shed from a private path. NIL KOMUL MOOKHOPADHYA v. ANUND CHUNDER LUSHKUR, **19 W.R. Cr. 6.**

(68)—*Order as to immoveable property—Crim. Pro. Code* (1861), *s.* 62—*Likelihood of breach of the peace.*—The power of issuing orders to prevent breaches of the peace, etc., conferred on a Magistrate by s. 62 of the Code of Criminal Procedure, extends only to immoveable property of the description set forth in ch. XXII of that Code. QUEEN v. GOLUCK CHUNDER GOOHO, **12 W.R. Cr. 33.**

(69)—*Crim. Pro. Code*, 1872, *s.* 530—*Cases which Magistrate can decide as to possession—Dispute as to right to collect rents—Order of Criminal Court as to—Report of police officer.*—A dispute, not concerning land or its boundaries or houses, water, fisheries or produce of land, but simply as to the collections made by one of the parties and as to what he is entitled to, under a decree, does not come under s. 530, Crim. Pro. Code, 1872. If a case falls under the above section, and the Magistrate proceeds on the report of the police which does not state that there was any collection of men on the part of the opposite party, the proceeding is not a sufficient proceeding under that section. PUDDOMONEE DASSEE v. JUGGODUMBA DASSEE, **25 W R. Cr. 2.** [*Diss.*, 33 C. 33 = 10 C.W.N. 257 = 2 C.L.J. 271.]

(70)—*Practice—Examination of witnesses as to actual possession.*—Before recording proceedings under s. 318, the Magistrate is bound to examine any witnesses tendered in support of the respective claims to actual possession of the land in dispute. HIGH COURT PROCEEDINGS, 28TH NOV. 1870, **6 M H.C. App 4.**

(71 & 72)—*Practice and procedure in case of.*—In disputes as to immoveable property under s. 145, Crim Pro. Code, 1882, a Magistrate has no jurisdiction to make an inquiry as to possession, still less to pass any final order, unless and until he is satisfied of the likelihood of a breach of the peace; it is absolutely essential that the fact and the ground of his being so satisfied should appear in his first order directing the issue of notice. The intention of the law is not to provide a rough and ready way of

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righting a wrong by enabling a Magistrate to exercise in a rude and summary fashion the function of a Civil Court, but to prevent the breaches of the peace likely to arise from disputes concerning tangible immoveable property. MUSSAMMAT PAIKABAI v. JAGANNATH AND RAJARAM, **6 C.P.L R. Cr. 21.**

(73)—*Likelihood of breach of the peace—Crim. Pro. Code* (1861), *s.* 318—*Grounds for belief in likelihood of breach of peace.*—Under the provisions of s. 318 of the Code of Criminal Procedure, the Magistrate should specify the nature of the information received by him, and state the principal facts which, by the exercise of a judicial discretion, he derives therefrom and which, in his judgment, constitute grounds for believing that a dispute concerning certain land exists which is likely to induce a breach of the peace. *In re* KISHORE MOHUN ROY, **19 W.R. Cr. 10.** [*R.*, 21 C. 404.]

(74)—*Judicial determination of—Magistrate, opinions of. regarding.*—An order made by a Magistrate in a case of disputed possession, to maintain one side in possession, and to restrain the other side, without any judicial determination of the fact of possession, is illegal. As to the question of possession, the law contemplates not the opinions of the Magistrates on such questions, but their judicial decisions arrived on proper materials in regular proceedings. GOPINATH PARYAH v. EMPRESS, **2 C. L.J. 555 = 10 C W.N. 82 = 3 Cr. L.J. 169.**

(75)—*Likelihood of breach of the peace—Order not made after judicial inquiry—Crim. Pro. Code* (1872), *s.* 530.—An order of a Magistrate retaining parties in possession of land can only be passed after judicial inquiry, as required by the Code of Criminal Procedure. s. 530. SHOINDOO NOSHYO v. RUNG LALL JHAH, **25 W.R. Cr. 21.**

(76)—*Grounds on which breach of peace is apprehended should appear from the order.*—Prior to the institution of proceedings under s. 145 of the Code of 1882, a Magistrate should be satisfied on reasonable grounds of the existence of a dispute likely to cause a breach of the peace. Further, the grounds stated by the Magistrate must be such as to satisfy a Court of Revision, before which the case might be brought by any of the parties concerned. TULARAM SAO v. BHEORAM, **12 C.P L.R. Cr. 2.**

(77)—*Practice—Evidence, Mode of taking, etc.*—It appears not to be absolutely necessary to examine witnesses at all. *Semble*—If examined, the evidence should be on oath. QUEEN v. BALLABH KANT BHUTTACHARJEE, **7 B L R 324, Note = 11 W.R. Cr. 36.** [*Doubt.*, 16 W.R. Cr. 17.]

(77 *a*)—*Eivdence, mode of taking evdience, etc.*—In an inquiry under s. 530, Act X of 1872, as a preliminary to an order relative to land about which there is a dispute likely to cause a breach of the peace, the evidence should be recorded by the Magistrate in the manner provided by s. 334. KHETTER MOONEE DASSEE v. SREENATH SIRCAR, **11 B.L.R. Ap. 5.**

(78)—*Evidcnce on oath.*—In a proceeding under s. 318 of the Crim. Pro. Code, 1861, to determine the right of actual possession, it is necessary that the evidence should be taken upon oath. QUEEN v. KALI CHANDRA SHAH, **7 B.L.R. 322 = 16 W.R. 13.**

(79)—*Oral evidence in determination of question of possession.*—Oral evidence has always been and must be the principal matter upon which Magistrates can go in deciding a question of possession under the Code of Criminal Procedure. MAHARAJAH GOBIND NAUTH RAI v. RAJAH AMIND NAUTH RAI, **5 W.R. Cr. 79.** [*F.*, 9 W.R. Cr. 64.]

(80)—*Omission to record evidence—Inquiry.*—Taking the statements of both the parties without recording evidence in proof of either is not an "inquiry." QUEEN v. SONAOOLLAH, **2 W.R Cr. 44.**

(81)—*Taking evidence in two cases together—Right to separate inquiry.*—Under s. 404, Crim. Pro. Code, 1861, the parties kept out of possession were held to be entitled to a full inquiry. WATSON & CO. v. RANEE SURNOMYEE, **8 W.R. Cr. 63.**

(81-*a*)—*Crim. Pro. Code, ss.* 350, 145—*Case under s.* 145—*Practice—Enquiry — Evidence partly recorded by one Magistrate and partly by another.*—S. 350, Crim. Pro. Code, is in its terms wide enough to cover every trial or enquiry under the Code, and the proceeding under s. 145 is an enquiry, because in it the Magistrate's duty is to enquire who is in possession of the disputed area. Therefore, the terms of s. 350 apply wherever a Magistrate has ceased to exercise jurisdiction therein. ANU SHEIKH v. JITU SHEIKH, **7 Ind. Cas. 54 = 11 Cr. L. J. 440 = 37 C. 812.**

(82)—*Neglect to obey order to put in statements—Crim. Pro. Code* (1861), *s.* 318.—When, in a case under s. 318, Code of Criminal Procedure, a Magistrate had taken any evidence, he is not justified in refusing to proceed with the case because the parties neglected to file written statements on the day fixed for filing the statements. The Magistrate is wrong in saying that he has nothing before him to decide. He ought to proceed with the enquiry. *In the case of* GOLUCK CHUNDER MYTEE, **11 W R Cr. 9.**

(83)—*Order of Criminal Court as to—Likelihood of breach of the peace—Requisite evidence.*—There is nothing which defines on what grounds the Magistrate shall be satisfied, or limits him to being satisfied by the evidence given before him *In the matter of* J. D. SUTHERLAND, **9 B L.R. 229 = 18 W.R Cr. 11.**

(84)—*Penal Code, s.* 143—*Unlawful assembly—Dispute regarding possession of land*—Onus *of proof.*—Where persons, charged with having

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caused mischief to some indigo plants, put in a road-cess return filed by the complainant showing that the accused were at the date the return was filed, in possession of a large plot of land in the village of which they claimed the land in dispute to be a part, *held*, that the presumption as to the possession of the land was in favour of the accused and that the prosecution should prove the discontinuance of possession by the accused, or that they held some other land in the same village answering to the land mentioned in the road-cess return. BIKU KOER v. MARSHMAN, 5 C.W.N. 368.

(84-a)—*Crim. Pro. Code*, s. 146—*Enquiry as to possession — Conflicting claims based on different titles—Refusal of Magistrate to decide as to possession—Jurisdiction.*—Where, in an enquiry as to possession, the parties put in claims based on different titles, one claiming under a Will, another under a partition of the settlement and Will, and the Magistrate, holding that he was unable to decide as to the question of possession, ordered that the property do remain under Court attachment till the parties had settled their differences in a Civil Court: *Held*, that the Magistrate acted without jurisdiction and should have decided on the question of possession. VEYYA MANIKIYAM v. VENKAIYA, 8 Ind. Cas. 63=11 Cr L.J. 560 =8 M.L.T. 447.

(85)—*Nature and effect of decision - Suit in Civil Court for possession—Proof of title—Crim. Pro. Code* (1861), s. 318.—S 318 of the Code of Criminal Procedure, 1861, does not mean that any party who can show in the Civil Court a possession prior to the Magistrate's award shall be entitled to have the award set aside and to be put in possession, but only that the party out of possession must prove title. SHIB PERSHAD ROY v. RUGHOO NATH SINGH, W. R. 1864, 295.

(86)—*Crim. Pro. Code* (1872), s. 530—*Delivery of possession by Civil Court Nazir—Duty of Magistrate.*—For the purpose of preventing a breach of the peace, the Magistrate declares, under s. 530, one party to be entitled to retain possession, until the Civil Court declares which party has the better right and puts that party in possession. Where a Nazir, acting under the authority of the Civil Court, puts the auction-purchaser into possession of a *haut* as appurtenant to a certain *mouzah* sold in execution of a decree, the Magistrate is not competent to direct the judgment-debtor, who raises the plea that the property is *debutter*, to be retained in possession until ousted by a Civil Court, but should see that the possession as given by the Nazir is maintained, leaving it to the debtor to substantiate his claim as *shebait* in a Civil Court. *In the matter of the petition of* CHUTRAPUL SINGH, 5 C.L.R. 200.

(87)—*Crim. Pro. Code* (1872), s. 530—*Order against one as servant of another—Validity.*—No order, in a proceeding under s. 530, should be made against one person acting as the servant of another who claims to have possession of the land in dispute, unless both the master and the servant are made parties to the proceeding. JITBAHHAN v. BANSRUP DOBI, 6 C.L R. 193. [*R.*, 21 C. 404, 31 C. 48=7 C.W. N. 825.]

(88)—*Crim. Pro. Code* (1872), s. 530—*Resistance to execution of decree—Procedure.*—A Criminal Court may properly enquire into and punish a riot or an unlawful assembly if proved. But it altogether oversteps its province when, under s. 530, Crim. Pro. Code, it interferes in cases where a purchaser under a decree is resisted in getting actual possession of the property which he has bought. Ss. 334, 335 of the Crim. Pro. Code prescribe the procedure to be adopted in such case. PRAYAG SINGH v. PUZOOL HOSSEIN, 6 C.L.R. 206.

(89)—*Crim. Pro. Code* (1872), s. 530—*Communication of order under the section.—Quære.*—Whether an order under s. 530 could be directed to any persons other than the unsuccessful parties in the proceeding, or whether it could be properly directed to the public at large. *In the matter of* NOBO KISHORE CHUCKERBUTTY, 7 C L.R. 291.

(90)—*Crim. Pro. Code* (1872), ss. 530, 533—*Breach of the peace, likelihood of, at a future time—Jurisdiction.*—Where there is no present danger of a breach of the peace, but only a likelihood of it at a future time, a Magistrate will not be justified in making an order under s. 530. [*Appr.*, 33 C. 33=2 C.L.J. 271=10 C.W.N. 257=2 Cr. L.J. 670; *Appl.*, 26 A. 190 =23 A.W.N. 229; *R.*, 23 C. 557.] The duty of making an enquiry under s. 533 should be deputed to a Magistrate and not to a *canungoe.* UMA CHURN SANTRA v. BENI MADHUB ROY, 7 C.L.R. 352. *See also* QUEEN v. MOHESH CHUNDER ROY, 24 W.R. Cr. 67.

(90-a)—*Crim. Pro. Code* (1872), ss. 491, 530—*Scope—Procedure—Jurisdiction of Magistrate.*—In a dispute concerning a piece of land, likely to induce a breach of peace but not an imminent one, the Magistrate should proceed under s. 530, Crim. Pro. Code, 1872, and not under s. 491. QUEEN v. MOHESH CHUNDER ROY, 24 W.R. Cr. 67.

(91)—*Crim. Pro. Code* (1872), s. 530—*Decision of Civil Court, how affects the Magistrate's jurisdiction to pass orders.*—Where the rights of parties have been determined by a Civil Court, and the question of possession of the disputed land has also been settled by it, the Magistrate should not proceed under s. 530, to decide afresh the question of possession. BHOLANATH GHOSE v. MOTHOOR MUNDLE, 7 C.L.R. 516. [16 W.R. 24, 24 W.R. 17, *F.*]

(92)—*Crim. Pro. Code* (1872), s. 530—*Effect of order under section*—Onus *of proof.*—The effect of an order under s. 530 is to throw the burden of proof upon the person to whom it was adverse, in an ejectment suit, but such an order

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can decide nothing as to how possession was obtained or as to antecedent possession. NOBO COOMAR DASS v. GOBIND CHUNDER ROY, **9 C.L.R. 305**. (7 W.R. 212, *Commented on.*)

(93)—*Crim. Pro. Code* (1872), s. 530—*Dispute concerning several plots of land—Separate proceedings, if necessary.*—Where the dispute concerning the possession of a number of different plots of land between the ryots of one village and those of another, was covered by the same state of circumstances, *held*, that the Magistrate had exercised a sound discretion, in having included all the plots in one proceeding, and in having relied upon the evidence adduced in respect of all of them together. AZIM MOLLAH v. SATTOO PORAMANICK, **10 C.L.R. 523.** [*R.*, 6 C.W.N. 206 ; *D.*, 15 C. 31]

(94)—*Crim. Pro. Code* (1872), *ss.* 283, 531—*Proceedings under s* 531—*Initialling the* rubokari.—Although the signing of the *rubokari* by a Magistrate, in a proceeding under s. 531, with his initials only, may be irregular, the High Court is precluded by s. 283 of the Code from setting aside the proceedings, on that ground. DEO SARUN SINGH v. TULSI KANT, **12 C.L.R. 221.**

(95)—*Crim. Pro. Code* (1898), *s.* 145—"*Concerned in the dispute,*" *meaning of.*—The words "concerned in the dispute" as used in s. 145, Crim. Pro. Code, are not limited to the parties actually concerned in the subject-matter of the dispute, who would be affected by the Magistrate's order maintaining the possession of any third party in their absence. GANESH JALIA v. AYU BALI CHOWDHURI, **4 C.W.N. 753.**

(96)—*Crim. Pro. Code* (1861), *ch.* XVIII—*Proceedings under ch.* XVIII, *when allowable.*—In the absence of any evidence of a dispute as to the fact of actual possession of either the land or crop, no proceeding under ch. XXII is allowed. HIGH COURT PROCEEDINGS, 13TH JULY, 1868, **4 M.H.C. App. 12.** [*F.*, 4 M.H.C. App. 49.]

(97)—*Crim. Pro. Code* (1861), *ch.* XXII—*Possession — Occupancy of trespasser.*—The actual possession intended by the Code does not include the occupancy of a mere trespasser. HIGH COURT PROCEEDINGS, 9TH JAN. 1871, **6 M.H.C. App. 13.** [*D.*, 6 M 245=1 Weir 68.]

(98)—*Crim. Pro. Code* (1872), *s.* 530—*Possession of trespasser.*—The recent occupation of a trespasser is not a possession which a Magistrate can direct the party to retain under s. 530, Crim. Pro. Code, 1872. RAM SINGH v. DALLA, **8 P.R. 1876, Cr.** [*R.*, 6 P.R. 1885, Cr]

(99)—*Crim. Pro. Code, s.* 145—*Property in dispute—Order prohibiting complainant from taking possession—Trespass on the property.*—In the face of the order prohibiting a complainant from taking possession, a trespass on the property in his possession cannot be sustained. *In re* SUSAI PILLAY, **8 M.L.T. 289=8 Ind. Cas. 397=11 Cr. L.J. 644.**

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(99-*a*)—*Crim. Pro. Code* (1882), s. 145—*Inquiry as to possession— Time of possession—Magistrate's power under the section— High Court's powers to set aside orders of Magistrate and pass proper order.*—No hard and fast rule can be laid down as to the exact point of time to which an enquiry under s. 145 of the Code must be directed. The Magistrate must decide the time at which possession of the disputing parties should be taken into consideration according to the facts of each case. To hold that a Magistrate is precluded from enquiring into anything before the date when he recorded his own proceedings might, in some cases, amount to allowing a person who has been acting in an unwarrantable manner to misuse the process of law to enable him to carry out his high handed and improper scheme, which could never have been the intention of the Legislature. [*R.*, 1 C.L.J. 331.] A Magistrate has no power under s. 145 to place either party in possession of the subject-matter in dispute, or any part of it, but only to find who is in possession of it as a whole, and if that is impossible, to make an order under s. 146. [*D.*, 5 C.W.N. 710.] The High Court has power not only to set aside an order of a Magistrate under s. 145 of the Code, but has also power itself to pass the order which should have been made by the Magistrate, upon the facts as proved at the enquiry. In this case, the High Court substituted an order of attachment under s. 146. KATRAS-JHERRIAH COAL COMPANY v. SIBKRISHTA DAW AND COMPANY, **22 C. 297.** [*D.*, 30 C. 112, 11 C.W.N. 743.]

(100)—*Crim. Pro. Code* (1882), *s.* 145—*Parties to the proceedings under the section, who are.*—Where the person in whose favour an order under s.145 of the Code was made, regarding a dispute as to the right to dig for coal in a certain *mouza*, was merely the manager of the coal company claiming the property, *held*, that the possession of such person was not one as was contemplated by that section and that the order was bad and should be set aside, as the parties really interested were not before the Court. BEHARY LAL TRIGUNAIT v. DARBY, **21 C. 915.** (21 C. 916, Note, *R.*) [*F.*, 24 B. 527, 25 C. 423, 7 C.W.N. 208; *R.*, 31 C. 48.]

(101)—*Parties to proceedings relating to.*—Where, in a dispute regarding possession of land, the person who was made a party to the proceeding was the *kurpuradaz* of a Mahomedan lady and her children, but these latter persons were not made parties, although the dispute was really between them and another, *held*, that the proceedings were void *ab initio*. NEWAZ ALI v. RAM BALLABH CHAKRAVARTI, **21 C. 916, Note.** [*F.*, 7 C.W.N. 208 ; *Expl.*, 31 C. 48.]

(102)—*Crim. Pro. Code* (1861), s. 318 (=s. 145 of the Code of 1898) — *Duty of Magistrate — Validity of—Magistrate's action on police report —Notice—Rights of parties.*—A Magistrate, having satisfied himself that a breach of the peace is likely to ensue, may enquire which

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party is in possession of immoveable property, and after satisfying himself on that point, he may record a proceeding, declaring that the party he holds to be in possession is entitled to retain possession, until ousted in due course of law, and forbidding all disturbance of possession. He may not go on to enquire into the rights of parties in possession and forbid the exercise of any right by such parties. DOORJUN SINGH v. SHIBBA, **3 N.W.P. 171.**

(103)—*Crim. Pro. Code, s.* 145—*Procedure.*—Before taking proceedings under s. 145 of the Crim. Pro. Code, a Magistrate must satisfy himself of the existence of a dispute likely to cause a breach of the peace, and of the suggested apprehension of a breach not being merely colourable and made to induce him to deal with matters properly cognisable by the Civil Courts. OBHOY CHANDRA MOOKERJEE v. MOHAMED SABIR, **10 C. 78=13 C.L.R. 410.** [*R.*, 8 Cr. L.J. 170=1 S.L.R. 50.]

(104)—*Crim. Pro. Code, s.* 145—*Order under the section, when can he made—Police report.*—Before proceeding under s. 145 of the Crim. Pro. Code, a Magistrate is bound to satisfy himself, on grounds which are reasonable, that a breach of the peace is imminent, in regard to properties of the description specified in that section, and that a dispute likely to cause a breach of the peace exists concerning them. The grounds stated by him must be such as to satisfy a Court of Revision before which such case may be brought by any of the parties concerned. [*F.*, 20 C. 520, 12 C.P.L.R 2 Cr.; *R.*, 23 C. 557.] Where a Magistrate proceeds under s. 145 of the Code on a police report which sets out, sufficiently, substantial reasons for believing that a dispute likely to cause a breach of the peace relating to certain lands exist, the proceedings of the Magistrate will not be irregular. For the purpose of notice to parties, it is also sufficient for the Magistrate to cite, as the ground of his proceeding, the police report on which he is satisfied that a dispute within the term of s. 145 does exist. [*Approved*, 9 C.W.N. 1065=33 C. 352=2 C.L.J. 259; *R.*, 33 C. 33=10 C.W.N. 257=2 Cr. L.J. 670=2 C.L.J. 271, 32 C. 771=2 Cr. L.J. 342=9 C.W.N. 621.] In proceedings under s. 145, it is open to the parties, if they dispute the necessity for such proceedings, either to show, under the last clause of s. 145, that no dispute likely to cause a breach of the peace exists or has existed, or, if they are so advised, to move the Court of revision that the Magistrate has proceeded on grounds which are not reasonable, or which cannot be held to be sufficient to satisfy him that such a dispute exists. DHANPUT SINGH v. CATTERPUT SINGH, **20 C. 513.** [*Diss.*, 33 C. 33=10 C.W.N. 257=2 Cr. L.J. 670=2 C.L.J. 271; *R.*, 8 Cr. L.J. 170=1 S.L.R. 50, Cr.]

(105)—*Police report.*—Unless a Magistrate complies strictly with the terms of s. 145, by stating in his written order all the particulars necessary to enable him to act under that section, his proceedings are without jurisdiction. It is not sufficient that the Magistrate should have before him a police report, and that he should have given orders thereon that a written order be drawn up within the terms of s. 145. It is his duty to draw up or have drawn up an order which, in all respects satisfies the requirements of the law. It is absolutely necessary that the written order should be correct and complete in its terms. MOHESH SOWAR v. NARAIN BAG, **27 C. 981.** [*Diss.*, 7 O.C. 334; *F.*, 25 A. 537=A.W.N. 1903, 102=27 A. 296=A.W.N. 1904, 234; *R.*, 32 C. 771=9 C.W.N. 621=2 Cr. L.J. 342=33 C. 852=2 C.L.J. 259=9 C.W.N. 1065, 6 Cr. L.J. 113=7 P.R. 1907, Cr.=71 P.L.R. 1908=24 P.W.R. 1907, Cr., 36 M. 275=13 Cr. L.J. 753=17 Ind. Cas. 65=23 M.L.J. 499=12 M.L.T. 439=1912 M.W.N. 1154; *D.*, 7 C.W.N. 599]

(106)—*Police report.*—Where the police stated in their report that, though there was nothing to show that there was a likelihood of a breach of the peace, yet it was not impossible that there could be a breach of the peace, *held*, that the police report was not sufficient for the institution of a proceeding under s. 145. MAHARAJ BAHADUR SINGH v. RAJAH RANJIT SINGH BAHADUR, **11 C.W.N. 835=6 Cr.L J. 36.**

(107)—*Likelihood of breach of the peace—Police report.*—A police report was held, both under that Code and under the Code of 1872, not to be sufficient evidence. *In the matter of the petition of* BHADRESWARI CHOWDHRANI, **7 B L. R. 329=16 W.R.Cr., 17;** DEWAN ELAHEE NEWOZ KHAN AND ABTALONISSA v. SUBURUNNISSA, **5 W R Cr. 14;** *In re* SHAMASHANKAR MAZUMDAR, **9 B L.R. App. 45=18 W.R. Cr. 64;** ABHAYA CHOWDHRY v. T. BRAE, **6 B. L.R. App. 148=15 W. R.Cr. 42;** THE QUEEN v. BHYRO DAYAL SINGH, **3 B.L.R. A. Cr. 4=11 W.R.Cr. 46;** PUDDOMONEE DASSEE v. JUGGODUMBA DASSEE, **25 W.R.Cr. 2.**

(108)—*S. 530, Crim. Pro. Code* (1872)—*Likelihood of breach of the peace—Sufficiency of ameen's report for passing order.*—A Magistrate cannot take only the written report of an amin, directed to make a local enquiry, as proof sufficient on which to base his order maintaining a party in possession; such order should be passed on evidence. QUEEN v. SOUMBER AHIR, **20 W.R.Cr. 57.**

(109)—*Crim. Pro. Code* (1882). *s.* 145—*Proceedings under the section—Sufficient grounds—Notice to parties—Power of Sessions Judge to order proceedings under section—Proceedings taken in the absence of police report or other information.*—To initiate a proceeding under s. 145 of the Code, it is not sufficient that, in the course of a trial, it should appear from the statement of witnesses examined that a breach of the peace is likely to ensue in consequence of dispute regarding certain lands. Before taking action, the Magistrate is bound to be satisfied from a police report or other information on the point, and he is also bound to make an order in writing, stating the grounds of his being so

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satisfied, and this order must be served on the parties to the dispute. The intention of the law seems to be not only that Magistrates should have sufficient grounds for proceeding under s. 145, but that they should inform the parties concerned of the grounds on which they are proceeding. [*See* 9 C.W.N. 1065=33 C. 352=2 C L.J. 259, 32 C. 771=2 Cr.L J. 342 =9 C.W.N. 621, 33 C. 33=10 C.W.N. 257 =2 C.L.J. 271=2 Cr.L.J. 670; *R.*, 23 C. 557, 24 B. 527, 6 Cr. L.J. 113=24 P.W.R. 1907, Cr.=7 P.R. 1907, Cr.] A Sessions Judge is not competent to order a Magistrate to take action under s. 145. He should rather draw the Magistrate's attention to the nature of the dispute in trial before him, so that the Magistrate may exercise his own discretion and determine whether proceedings under s. 145 are necessary. [*F.*, 24 C. 391.] Proceedings under s. 145, when there is nothing in the police report or no other information, fall within the terms of s. 530 of the Code and will be void. QUEEN-EMPRESS v. GOBIND CHANDRA DAS, **20 C 522.** (22 W.R. Cr. 81; *Diss* , 20 C. 513, *F.*) [*R.*, 8 Cr. L.J. 170=1 S.L.R. 50, Cr.]

(110)—*Notice to parties—Service of notice—Crim. Pro. Code* (1861), *s.* 318—*Service of notice to attend.*—The mere serving of a notice upon a mofussil naib who takes no steps whatever to consult his employer or act under his directions is not such a notice as is contemplated by s. 318, Code of Criminal Procedure. RAMRUNGINEE DOSSEE v. GOOROO DOSS ROY, **17 W.R. Cr. 9.** [*R.*, 17 W.R. Cr. 33.]

(111)—*Notice to parties—Right to notice—Parties to proceedings—Service of notice—Co-sharers.*—In a proceeding under s. 318, Act XXV of 1861, there is nothing in the law which makes it necessary for the Magistrate to serve a notice on all the co-sharers of an estate which may form the subject of the dispute. *In the matter of the petition of* GOBINDA CHANDRA GHOSE, **9 B.L.R. Ap. 39=18 W.R. Cr. 54.** [*R.*, 8 C. 756.]

(112)—*Crim. Pro. Code* (1882), *s.* 145—*Effect of striking off proceedings under—Ground for believing likelihood of breach of the peace—Cessation of likelihood of breach of the peace—Order cancelling proceedings.*—The effect of an order striking off proceedings under s. 145, is to destroy the proceedings, and anything done after that under the section must start afresh and not stand upon the basis of the earlier proceedings. [*F.*, 6 C.W.N. 923.] Before a Magistrate can proceed under s. 145 of the Code, he must state the information upon which he has reason to suppose that a breach of the peace is probable or imminent [*R* , 33 C. 352=2 C.L.J. 259=9 C.W.N. 1065, F.B.] Where parties show to the Magistrate that no dispute exists, and if the likelihood of a breach of the peace has ceased to exist before the proceedings under s. 145 have terminated, the Magistrate may stay the proceedings. TARANI CHARAN CHOWDHRY v. AMULYA RATAN ROY, **20 C. 867.** [*R.*, 30 C. 112.]

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(113)—*Crim. Pro. Code* (1882), s. 145—*Term "parties concerned"—Construction—Duty of Magistrate—Notice—Object of section — When proceedings to be discontinued—Improper procedure under section.*—The words "parties concerned" in s. 145 of the Code do not necessarily mean only the persons who are disputing. They also include persons who are interested in, or claim a right to, the property in dispute. It is the duty of the Magistrate, on the materials before him, to ascertain, so far as he can, who are the persons interested in, or claiming a right to, the property in dispute and to give notice to them all, so that the whole matter so far as his Court is concerned, may be disposed of in one proceeding. [*F.*, 24 B. 527, 4 C.W.N. 753, *Appr.*, 27 C. 892, *R.*, 18 M 51= 2 Weir 106 ; 6 C.W.N. 290=29 C. 242, 30 C. 155, F.B., *Discussed*, 24 C. 55, F.B. ; *D* , 6 C.W.N. 206.] Although in proceedings under s. 145, the evidence is to be recorded as in summons cases, it is the duty of the Magistrate to issue processes to witnesses, unless he shows good reasons to the contrary. [*R.*, 32 C. 1093= 2 C.L.J. 280; *Expl.*, 30 C. 508=7 C.W.N. 404.] The primary object of s. 145 is the preservation of peace. If it is found during the proceedings that there is no likelihood of the peace being disturbed, there is no necessity for the continuance of the proceedings. Where, in a proceeding under s. 145 of the Code, the owners or proprietors claiming an interest in the subject-matter of dispute were not made parties, but only their servants were made parties, and where the Court refused an application for summons to witnesses without any proper grounds, the High Court set aside the order of the Magistrate under s. 145 of the Code. RAM CHANDRA DAS v. MONOHUR ROY, **21 C. 29.** (11 C. 762, *F.*) [*D.*, 23 C. 55.]

(114)—*S.* 147—*Effect of judicial decision on the right of parties.*—Where an enquiry under s. 147 was started on a police report, which afforded sufficient grounds for supposing or, at any rate, conjecturing that at that time a dispute existed as to the use of the land in question that might lead to a breach of the peace, and, after the enquiry was postponed until the decision of a second-class Magistrate in a mischief case arising out of the same dispute, the latter ascertained judicially the rights of disputants, *held*, that there was no necessity for holding the enquiry under s. 147. *In re* BALAKRISHNA AMRIT PRADHAN, **11 B. 584.**

(115)—*Crim. Pro. Code*, s. 147—*Proper order under—Order prohibiting a party from taking part in temple ceremonies.*—An order under s. 147, Crim. Pro. Code, is bad in form, if it contains no restriction of time for which it is to operate. [*D.*, Rat. Un. Cr. C. 708.] Where the High Court has held, regarding a suit, that the Civil Courts will not determine trivial questions of mere dignity and privilege, a Magistrate is not competent to interdict one of the parties to such suit, by an order under

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s. 147, from taking part in ceremonies in the temple, which were in dispute in the civil suit. *In re* ATMARAM NARAYAN PARAB, **14 B. 25.**

(116)—*Crim. Pro. Code* (1872), s. 530 (=*s.* 145 *of Crim. Pro. Code,* 1898)—*Constructive possession—Powers of Magistrate under section—Nature of such powers.*—In a case of disputed possession between two rival zemindars, constructive possession, through intermediate holders, to whom the rent is paid, is not such as is contemplated by s. 530 of the Crim. Pro. Code. EMPRESS v. THACOOR DYAL SING, **3 C. 320.** [*Commented,* 5 C.L.R. 287 ; *D.,* 11 C. 413.]

(117)—*Dispute between joint owners—Jurisdiction of Magistrate.*—Where the dispute between two joint owners of land raised no question of possession, but whether one of them was at liberty to make use of the land against the will of the other in such a manner as to cause annoyance, a Magistrate has no jurisdiction to interfere under s. 530 of the Crim. Pro. Code (of 1872) and award exclusive possession of a portion to one of them. EMPRESS v. RAJCOOMAR SINGH, **3 C. 573=1 C.L.R. 352.** [*D.,* 10 Cr. L.J. 427=3 Ind. Cas. 958=11 Bom. L.R. 849.]

(118) — *Jurisdiction of Magistrate.*— The power given to a Magistrate to make a binding declaration as to the possession of property is an exceptional one ; s. 530 of the Crim. Pro. Code (of 1872) limits the exercise of this power to cases, in which a Magistrate is satisfied that a dispute, likely to induce a breach of the peace, exists, and it is this likelihood, with the consequent necessity for immediate action, which alone warrants action by the Magistrate, who must record the grounds for his belief as to the existence of such likelihood. *In the matter of the petition of* KUNUND NARAIN BHOOP, **4 C. 650=3 C.L.R. 551=2 Shome L.R. Cr. 26.** (3 B.L.R. Cr. 76, *R.*) [*R.,* 33 C. 33=2 C.L.J. 271 =10 C.W.N. 257=2 Cr. L.J. 670, 9 C.W.N. 1065=2 C.L.J. 259, F.B.]

(119)—*Crim. Pro. Code, s.* 147—*Scope and effect of the section—Jurisdiction of Magistrate.*—The dispute enabling Magistrates to interfere, under this section, must be some substantial dispute necessitating the interference, in some way or other, of the criminal authorities. A mere discussion or verbal altercation between persons claiming rights of the kind described is not enough. There must be an actual dispute. The section does not enable a Magistrate to make a purely declaratory order. It enables him to prevent arbitrary interruption, by any person, of rights actually enjoyed, which have been exercised by the public or a person or class of persons. MAHARAJA OF BURDWAN v. CHAIRMAN OF THE DARJEELING MUNICIPALITY, **5 C. 194=4 C.L.R. 324=2 Shome L.R. Cr. 31.**

(120)—*Crim. Pro. Code* (1872), s. 530—*Breach of the peace — Interference by Magistrate—Record of preliminary proceeding, if necessary.*—A Magistrate should, to justify his interference under s. 530 of the Crim. Pro. Code, be satisfied of the existence of a dispute *likely to induce a breach of the peace,* rendering it necessary for him to take immediate steps for its prevention ; it is not enough if it is *probable* that a breach *may* occur if proceedings be not taken. [*Appr.,* 33 C. 33=2 C.L.J. 271 =10 C.W.N. 257=2 Cr. L.J. 670 ; *R.,* 23 C. 557, 1 S.L.R. 50]—*Quære.*—Is it necessary that a preliminary proceeding should first be recorded to give the Magistrate jurisdiction ? DAMODUR BIDDYADHUR MOHAPATRO v. SYAMANUND DEY, **7 C. 385=8 C.L.R. 514.**

(121)—*Crim. Pro. Code,* (1872), s 530—*Butwara proceedings possession under nature of.*—The possession given by an ameen, in butwara proceedings, is possession as owner, and not as occupier, and hence, could not oust tenants holding lands previous to such delivery of possession. MACKENZIE v. SHERE BAHADOOR SAHI, **4 C. 378.** [*R.,* 20 C. 285.]

(122)—*Crim. Pro. Code* (1872), s. 530—*Proceedings under— Ouster of person in peaceful possession.*—In proceedings under s. 530 of the Crim. Pro. Code (of 1872), the Magistrate must look to possession that may be termed peaceful. He must go back to the time when the dispute, that occasioned his interference, originated. If two parties came forward - one being lawfully in possession and the other struggling for it—and the latter succeeds in ousting the former, the Magistrate is not to recognize the stronger and successful party as the one to be maintained in possession under the section. *In re* MOHESH CHANDRA KHAN, **4 C. 417.** [*Not F.,* 15 B. 152.]

(123)—*Crim. Pro. Code* (1872), s. 530, *proceedings under— Essential particulars to be stated—" Dispute," meaning of.*—A Magistrate, acting under s. 530 of the Crim. Pro. Code, must first record a proceeding, setting forth that he is satisfied that a dispute likely to induce a breach of the peace exists concerning land, &c., and this proceeding must state the grounds upon which he is so satisfied. The proceeding itself ought to contain all the particulars essential to give the Magistrate jurisdiction, and reference to any other document, *e.g.,* a police report, ought not to be necessary in order to the ascertainment of those essential particulars. (33 C. 352=2 C.L.J. 259=9 C.W.N. 1065, F.B., 8 Cr. L.J. 170=1 S.L.R. 50, 7 C. 46, *D.*) The term "dispute," in s. 530 of the Crim. Pro. Code, means a reasonable dispute, a *bona fide* dispute, a dispute between parties, who have each some semblance of right or supposed right. *Per Field, J.* GOBIND CHANDER MOITRA v. ABDUL SAYED, **6 C. 835 =8 C.L.R. 217.**

(124)—*Crim. Pro. Code* (1882), s. 145—*Dispute as to the right to collect rents—Dispute as to incorporeal rights.*—A dispute as to the rights to collect rents is one "concerning tangible immoveable property" under s. 145 of the

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Code. [*F.*, 5 A W.N. 299, 15 C. 527; *R.*, 5 M.L.J. 95; *D.*, 23 C. 80.] The introduction of the word "tangible" before the words, "immoveable property" in s. 145 shows that incorporeal rights are excluded from the operation of the section. PRAMATHA BHUSANA DEB ROY v. DOORGA CHURN BHATTACHARJI, **11 C. 413.** [*F.*, 12 C. 539.]

(125)—*Attornment by tenants to stranger.*—A dispute as to the right to collect rents is a dispute concerning "tangible immoveable property" under s. 145 of the Code. (5 C. L.R 287, 18 W.R. Cr. 11=9 B.L.R. 229. 11 C. 413, *F.*) [*F.*, 16 C. 513; *R.*, 12 C.W.N. 16; *D.*, 23 C. 80.] In a dispute as to the right of collecting rents of certain land, the tenants were paying rents to one of the parties, up to the commencement of the dispute which led to the proceeding under s. 145, and, upon the dispute taking place, they attorned to the other party by real or pretended payments. *Held*, that such attornment by the tenants did not put an end to the tenancy and to the right of the person, who was collecting rents up to the time of the dispute, to collect the rents. *Held*, also, that such proceedings by the tenant could not deprive him of recourse to s. 145, in case of danger to the peace, to have possession of the right to collect rents maintained pending civil proceedings. SARBANANDA BASU MOZUMDAR v. PRAN SANKAR ROY CHOWDHURI, **15 C. 527.** [*F.*, 16 C. 513.]

(126)—*Dispute as to right to collect rent of land.*—A dispute about the right to collect the rent of lands from the tenant in possession is a dispute concerning tangible immoveable property within the meaning of s. 145, Crim. Pro. Code. RAMASAMI v. DANAKOTI AMMAL, **12 M. 88=2 Weir 100.** [*R.*, 5 M.L.J. 95.]

(127)—*Dispute as to collection of rents.*—*Held*, that, where there is no dispute between the parties as to the extent of their respective shares in a village, such extent having been declared by the Civil Court, or as to the fact of their being in possession, but the dispute is only as to who is entitled to collect the rent from the tenants, the Criminal Courts have no jurisdiction to take proceedings under s. 145, Crim. Pro. Code, 1898, inasmuch as a dispute about the collection of rent from the tenants is not a dispute about the rents or profits of land within the meaning of s. 145. MOHAMMED FAZIL v. MOHAMMED ABDUL SAMAD, **10 O.C. 89=5 Cr.L.J. 394.**

(128)—*Crim. Pro. Code, s.* 145—*Dispute as to the right to collect rents—Extent of the property in dispute—Possession by receipt of rent—Payment of rent to the other party three months anterior to the institution of proceedings.*—A proceeding, under s. 145, is not limited to disputed possession between parties in immediate occupation of a tangible immoveable property, but is intended, also, to apply where the disputed possession consists of receipts of rents from tenants in actual possession. Similarly, the operation of the section cannot be limited by any rule which would depend upon the area of the property in dispute. [*R*, 6 C.W.N. 206; *D.*, 23 C. 80] Where one of the parties to a dispute, under s. 145 of the Code, admitted that the other party was in possession of the property by receipt of rent up to a period some three months anterior to the institution of the proceedings under s. 145, the act of the Magistrate in declining to examine more than a limited number of witnesses on the point of possession from that period up to the date of institution of proceedings would not account to such irregularity as to justify the intervention of the High Court, inasmuch as payment of rent to the other party for that short time would not amount to dispossession of the party, previously in possession. ABHAYESSARI DEBI v. SHIDHESSARI DEBI, **16 C. 513** (15 C. 527, *F.*)

(129)—*Crim. Pro. Code* (1882), *s.* 145—*Proceedings under, nature of—Process to enforce attendance of winesses.*—Proceedings under s. 145 of the Crim. Pro. Code should, from their nature, be regarded, on all points of procedure, as summons cases. Although it is discretional with a Magistrate to issue summonses on witnesses cited in such a case, yet, when an application for the issue of processes to secure the attendance of witnesses is made at a proper time, the Magistrate should not arbitrarily refuse his assistance. Such an application for summons ought not to be refused simply because a large number of witnesses is mentioned therein. HURENDRO NARAIN SINGH CHOWDHRY v. BHOBANI PREA BARUANI, **11 C. 782.** [*Diss.*, 32 C. 1093=2 C.L J. 280=2 Cr L.J. 679; *F.*, 21 C. 29; *Expl.*, 30 C. 508=7 C.W.N. 404.]

(130)—*Crim. Pro. Code* (1882), *s.* 145—*Joint trial of different claims—Legality.*—In a dispute regarding possession of 708 bighas of land belonging to a zemindar, the parties to the dispute being persons interested as tenants under the zemindar, and persons claiming under the same zemindar, to be interested in various portions of the land as their maurasi jote in different quantities and under interests acquired at different times, the Magistrate tried the case together and passed an order in favour of the former directing that they as a body should remain in possession until evicted therefrom, by the order of a Civil Court. *Held*, that the procedure adopted by the Magistrate was prejudicial to the maurasi tenants, and that the order was open to the objection that it would render necessary the making, as defendants in the civil suit, of a multitude of persons who were, by the terms of the order, held to be in possession. The proceedings were set aside. KUTUBUL SINGH v. UMA SINGH, **15 C. 31.** [*R.*, 6 C.W.N. 206.]

(131)—*Crim. Pro. Code* (1882), *s* 145—"*Parties concerned in the dispute*"—*Substitution on the death of one of the parties—Validity.*—*Held by Petheram, C.J., and Trevelyan, J.* (*Rampini, J., dissenting*). Since the possession to be enquired into under s. 145 of the Code is the

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possession at the time of the initiation of the proceedings, the words " parties in such dispute " must mean also parties concerned at the time of the initiation of the proceedings. There is no power to introduce father to son, or in any way introduce parties not concerned in the original dispute. *Per Rampini, J.*:—The preliminary proceedings referred to in s. 145 may, and in many cases must, partake of the character of a general citation to the parties concerned in the dispute to appear before him, and it is not necessary for the Magistrate to confine his final order to the parties whom he may have named in his preliminary proceedings. BECHU SHEIKH v. DEB KUMARI DASI, **21 C. 404**. [*R.*, 18 M. 41.]

(132)—*Crim. Pro. Code* (1882), ss. 145 *and* 148—*Order for costs—Amount not specified—Right of successor in office to assess the costs—Order for costs not made for a long time after decision—Notice—Revision by High Court.*—Under s. 148 of the Code, only the Magistrate who passes the decision is authorised to make an order as to payment of costs. Where a Magistrate who passed an order under s. 145 of the Code awarded costs, but did not specify the amount, *held*, that his successor in office had no power to pass an order assessing such costs, when the application for such assessment is made more than two years after the order for costs had been made by his predecessor. BHOJAL SONAR v. NIRBAN SINGH, **21 C. 609**. [*Diss.*, 23 C. 37; *R.*, 22 C. 387, 10 C.W.N. 1030, 11 Cr. L.J. 335=5 Ind. Cas. 943=13 O.C. 66; *D.*, 22 C. 384]

(133)—*Proceedings relating to—Order as to costs.*—Where a Magistrate, in giving a decision under s. 145 of the Code, made also an order for costs under s. 148, *held*, that the assessment of the costs may be made by his successor, on an application made within a reasonable time. The award of costs under s. 145 is of a *quasi* civil character and indeed the language of the section appears to have been borrowed from s. 219 of the Code of Civil Procedure, and it is not necessary in civil cases that the costs should be assessed or taxed at the time of the decision, or by the same officer who decided the case. GIRIDHAR CHATTERJEE v. EBADULLAH NASKAR, **22 C. 384**. (21 C. 609, *D.*) [*F.*, 23 C 37 ; *R.*, 29 M. 373, 13 O.C. 66=11 Cr. L.J. 335=5 Ind. Cas. 943]

(134)—*Order to as to costs.*—The award of costs under s. 148 of the Code is a *quasi* civil proceeding, and should be made by the Magistrate at the time of passing the decision, (compare s. 218 of the Code of Civil Procedure). Where the order for costs was not made for a long time after the decision owing to delay arising from the action of the objectors, the High Court declined to interfere with the order so made, under s. 437 of the Code, as there was no suggestion that the order was unjust or improper on the merits. BINODA SUNDARI

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CHOWDHURANI v. KALI KRISTO PAL CHOWDHURY, **22 C. 387**. [*R.*, 29 M 373, 10 C.W.N. 1030, 13 O.C. 66=5 Ind. Cas. 943=11 Cr. L.J. 335, 15 C.W.N. 811=12 Cr. L.J. 376=11 Ind. Cas. 144.]

(135)—*Order for payment of costs.*—When an order for the payment of costs under s. 148 has been made by the Magistrate deciding the case, another Magistrate has jurisdiction to assess the amount of costs. MAHOMED ERSHAD ALI KHAN CHOUDHRY v. SARODA PROSAD SHAHA, **23 C. 37** (22 C. 384, *F.*; 21 C. 609, *R.*) [*R.*, 10 C.W.N. 1030, 11 Cr.L.J. 335=5 Ind. Cas. 943=13 O.C. 66.]

(136)—*Order as to costs.*—Proceedings under ss. 145 and 148 are *quasi* civil in their nature. The intention of s. 148 would seem to be that an order for, and the assessment of, costs should be made at the time in the presence of the parties. Therefore such costs should not be ordered and assessed by the Magistrate after a long interval and without allowing all the parties affected, an opportunity to appear and show cause. QUEEN-EMPRESS v. TOMIJUDDI, **24 C. 757**. [*R.*, 29 M. 373, 11 Cr. L.J. 335=5 Ind. Cas. 943=13 O C. 66, 12 Cr. L J. 376=11 Ind. Cas. 144=15 C.W.N. 811; *D.*, 21 Ind. Cas. 170=14 M.L.T. 195=1913 M.W.N. 771=14 Cr. L.J. 570.]

(137)—*Crim. Pro. Code* (1882), ss. 147, 107—Julkur *right—Jurisdiction of Magistrate—Evidence of imminent danger of breach of the peace—Dispute concerning easement—Proper procedure.*—Although a Magistrate is not entitled to proceed under s. 145, when a dispute arises before him concerning the exercise of a *julkur* right, still he might take action when such dispute arises under s. 147, and the words " the right to do or prevent the doing of anything in or upon any tangible immoveable property " cover such a case. (23 C. 55, *F.*) In order to give jurisdiction to a Magistrate under s. 147, he must be satisfied from Police report, or other materials, that there is an imminent danger of a breach of the peace resulting from a dispute between the parties concerned. Where the materials before the Magistrate do not disclose the existence of such a dispute, the order made by him under the section would be entirely void, and the defect is not remedied, even if it appears from the evidence, taken in the course of the trial, that there was, at the date of the initiation of the proceedings, a dispute likely to cause a breach of the peace. (20 C. 520, *R.*) [*Diss.*, 10 C.W.N. 257=2 Cr. L.J. 670=2 C.L.J. 271=33 C. 33; *R.*, 9 C.W.N 1046=2 Cr. L.J. 618=2 C.L.J. 241=33 C. 68.] The proper course for a Magistrate to follow in a case under s. 147 is to bind down such of the persons as are likely to disturb the peace under s. 107, if the case involves a long and complicated inquiry and the presence of a great number of people. KALI KISSEN TAGORE v. ANUND CHUNDER ROY, **23 C. 557**. (21 C. 727, *F.*) [*R.*, 46 P.L.R. 1903.]

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(138)—*Crim. Pro. Code* (1898), *s.* 145—*Dispute as to possession of* julkur—*Civil Court decree—Duty of Magistrate.*—Where proceedings are taken under s. 145, regarding a dispute as to the boundaries of a *julkur* right, subsequent to a Civil Court's decree, defining such boundaries, the trying Magistrate is to follow that decree and not to attempt to an explanation of it. FANI BHUSHAN v. JAMIRRUDDIN MUNDAL, **6 C.W.N. 161.**

(139)—*Crim. Pro. Code* (1882), *s.* 145—"*Parties concerned*"—*Addition of parties subsequent to the initial proceedings—Joint trial of three cases under section, validity of.*—A Magistrate's duty, before he initiates proceedings, is not only to be satisfied that a dispute exists, but to ascertain, as far as possible, who are 'concerned in the dispute' so that they may be required to attend, in order that the question of possession may be, as far as possible, settled. There is no power during the course of the proceedings to add parties unless, in the initial proceeding, the Magistrate is satisfied that they are concerned in the dispute, any more than there is a power to substitute parties. If in the course of the proceedings, it appears to the Magistrate that it is absolutely necessary that other parties should be required to attend and he is satisfied that they are concerned in the dispute, the only course open to him is, if he be empowered in that behalf and he is satisfied that danger of the breach of peace still exists, to initiate a new proceeding. PROTAB NARAIN SINGH v. RAJENDRA NARAIN SINGH, **24 C. 55=1 C.W.N. 3, F.B.** (21 C. 29, *Disc.*) [*Overruled*, 30 C. 155, F.B.; *F.*, 27 C 892, 5 C.W.N. 900, 6 C.W.N. 101; *R.*, 24 B. 527; *D.*, 25 C. 423, 4 C.W.N. 753.]

(140)—*Crim. Pro. Code*, 1898, s. 145—*Procedure under—Joint trial of three cases.*—A Magistrate must deal with a case under s. 145, Crim. Pro. Code, 1898, as it is originally instituted. If he finds that he cannot do so in respect to one side, because they are not parties to the dispute or because it has been shown that no breach of the peace is likely to occur from any action of theirs he should put an end to the case. He is not competent to add parties after the institution of the proceedings. Where parties in three cases under s. 145 are not the same, the Magistrate is not competent to try all the three cases together, although the parties consent to the adoption of such a procedure. Evidence already taken may be accepted in one of these cases, but the other cases must be tried separately. RAJKUMAR SINGH v. MAHADEO SINGH, **4 C.W.N. 748.**

(141)—*Crim. Pro. Code* (1882), *ss.* 144 *and* 145—*Power of District Magistrate over subordinate Magistrate to direct institution of proceedings under s.* 145.—Where a Sub-Divisional Magistrate, having regard to the circumstances of a case before him, held that proceedings should be taken under s. 144 and made an order accordingly, *held*, that a District Magistrate had no authority to direct the Sub-Divisional Magistrate to take proceedings under s. 145 and that there was nothing in the Code of Criminal Procedure, or in any other law, authorising the District Magistrate in such a case to direct proceedings to be taken under s. 145. KAILASH CHANDRA PAL v. KUNJA BEHARI PODDAR, **24 C. 391=1 C.W.N. 393.** (20 C. 520, *F.*)

(142)—*Crim. Pro. Code* (1882), *ss.* 107 *and* 145—*Dispute regarding land likely to cause breach of peace—Proper proceedings.*—In a dispute regarding a piece of land likely to cause a breach of the peace the procedings should be instituted under s. 145 and not under s. 107. The effect of passing an order in such a case under s. 107 would have the effect of binding down only one of the parties to the dispute, leaving the other party free, without any adjudication upon the question as to which of the two parties is in possession. DOBGOBIND CHOWDHRY v. DHANU KHAN, **25 C. 559.** [*Diss.*, 26 M. 471=2 Weir 56, 5 N L.R. 94=3 Ind. Cas. 64=10 Cr. L.J. 221; *F.*, 35 C. 117=6 C.L J. 697=6 Cr. L.J. 393, 6 C.W.N. 883; *R.*, 39 C. 150=14 C.L.J. 429=16 C W.N. 83=12 Cr.L.J. 569=12 Ind. Cas. 833; *D.*, 30 C. 112, 2 S L.R. 18, Cr.=10 Cr. L J. 231.]

(143)—*Crim. Pro. Code* (1898), *s.* 145—*Proceedings under section—High Court's powers of interference—Order of Magistrate—Decision of Civil Court—Duty of Magistrate.*—The power of revision to be exercised by the High Court in proceedings under s. 145, is limited to matters of jurisdiction, *i e.* to say, to cases in which it is found that the Magistrate, by taking proceedings under s. 145, has acted without jurisdiction. [*F.*, 22 A W N. 74=24 A. 315, 4 L.B.R. 75; *R.*, 5 O C. 1, 33 C. 68=2 C L.J. 241=9 C.W.N. 1046, F.B =2 Cr. L.J. 618.] The object of s. 145 is to enable a Magistrate to intervene and to pass a temporary order, in regard to the possession of the property in dispute, having effect until the actual right of one of the parties has been determined by any competent Court. It is, consequently, his duty, when that right has been declared within a time not remote from his taking proceedings, to maintain an order which has been passed by any competent Court; and, therefore, to take proceedings which, necessarily, must have the effect, of modifying or even cancelling such an order, is to assume a jurisdiction which the law does not contemplate. DAULAT KOER v. RAMESWARI KOERI, **26 C. 625=3 C.W.N. 461.** [*F.*, 5 C.W.N. 563, 29 C. 208, 2 A.L.J. 274; *F. & Expl.*, 6 Bom. L.R. 246; *R.*, 23 P.R. 1902, Cr.=135 P.L.R. 1902; *D.*, 10 C.W.N. 257=2 C.L.J. 271=2 Cr. L.J. 670=33 C. 33, 15 Cr. L.J. 559=16 M.L.T. 52=24 Ind. Cas. 967=1914 M W.N. 798.]

(144)—*S.* 145—"*Parties concerned*" *meaning of the term—Omission to add necessary party, effect of—Dispute as to collection of rents, necessary parties to—Zamindar and tenant—Alteration of character of proceedings by succeeding*

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Magistrates—Revisional powers of High Court—Charter Act, s 15.—The expression "parties concerned" in s. 145 does not necessarily mean only the parties who are disputing, but includes also persons who are interested in or are claiming a right to, the property in dispute. The section contemplates one proceeding against all the parties known to be concerned in the dispute so as to conclude the matter definitely and finally, so far as the Criminal Courts are concerned. The question of leaving out parties or instituting proceedings against wrong parties is not a mere irregularity but is a question affecting jurisdiction. [*F.*, 5 C.W N. 429=28 C. 446; *R.*, 5 C W.N. 900, 6 C.W.N. 101, 30 C. 155, 24 P.W.R. 1907, Cr.=6 Cr.L.J. 113=7 P. R. 1907, Cr.=11 P.L.R 1908; *D.*, 22 A.W.N. 111=24 A. 443] Where in a dispute concerning the ownership of land between certain Zemindars and their tenants on one side, and other Zemindars and their tenants on the other, the dispute not being confined to the rights of the rival Zemindars to collect the rents, the Zemindars were made parties, but the tenants were not, *held* (by *Amir Ali and Stanley, JJ.*) that the presence of the tenants was essentially necessary for the proper and effectual decision of the case and that the omission of the Magistrate to join them as parties was illegal and without jurisdiction. *Per Prinsep, J. contra.*—The omission to join the tenant could not vitiate an order as between the Zemindars, on an objection that it is without jurisdiction, and that no question of jurisdiction arose in this matter. Where, upon a report of the police that a dispute was likely to lead to a breach of the peace and was one concerning the actual possession of land, a proceeding under s. 145 was taken, and subsequently upon the same material this proceeding was revised by a succeeding Magistrate and one of the alterations made was, that the dispute as regards possession of land was changed into dispute relating to collection of rent, *held*, that the recording of the subsequent order was an abuse of jurisdiction, especially when the report on which it rested did not give any information as to any dispute regarding the collection of rent, but simply had a reference to the actual possession of a piece of land by two rival sets of tenants claiming to hold under two rival sets of Zemindars. *Per Prinsep, J.*—A case, under s. 145, is not one with which the High Court can deal as a Court of revision under the Code of Criminal Procedure. Such cases are expressly excluded from its cognisance, as a Court of revision under that Code. Its powers are under the Charter Act and these can be exercised only in respect of jurisdiction. *Per Amir Ali, J.*—Where there is an abuse of jurisdiction, in a proceeding under s. 145, the High Court has the power to interfere both under its revisional jurisdiction as also under cl. 15 of the charter. LALDHARI SINGH v. SUKDEO NARAIN SINGH, **27 C. 892=4 C.W. N. 613.** (26 C. 188, 21 C. 29, *F.*; 24 C. 55, *R.*) [*F.*, 28 C. 446=5 C.W.N. 429; *Appl.*, 38 C. 889 =12 Cr. L.J. 408=11 Ind. Cas. 592; *R.*, 24 A. 443=A.W.N. 1902, 111, 28 C. 709, 30 C. 155, 33 C. 68=2 C.L.J. 241=9 C.W.N. 1046, 5 C.W. N. 900, 6 C.W.N. 101, 6 Cr. L.J. 113=7 P.R. 1907, Cr.=11 P.L.R. 1908=24 P.W.R. 1907, Cr., 2 L.B.R. 239, 5 O.C. 1, 23 P.R. 1902, Cr. =135 P.L.R. 1902.]

(145)—*Crim. Pro. Code* (1898), s. 145—*Refusal of Magistrate to issue process for attendance of witnesses.*—Where, in a proceeding under s. 145, one of the parties was unable to procure the attendance of any of the witnesses cited by him, and his opponent was, consequently, declared, upon the unrebutted evidence produced by them, to be in possession of the land in dispute, *held*, the Magistrate acted without jurisdiction in refusing to issue process for the attendance of the witnesses cited by that party. MADHUB CHANDRA TANTI v. MARTIN, **30 C. 508, Note.** [*Diss.*, 32 C. 1093=2 C.L.J. 280, 30 C. 508, 31 C. 685.]

(146)—*Crim. Pro. Code* (1898), s. 145 (1)—*Omission of Magistrate to state his ground for apprehending breach of peace—Reference by Magistrate to the Police report containing such grounds, sufficiency of.*—The question referred to the Full Bench in this case was "whether an initial order by a Magistrate, under s. 145, cl. (1) of the Code, is defective because it is not self contained and does not state in express terms the grounds upon which he is satisfied that a dispute likely to cause a breach of the peace exists, when such grounds appear in the police-report on which the order is founded and to which it makes reference." *Held* there has been substantial compliance with sub-s. (1) of s. 145 and the question must, therefore, be answered in the negative in accordance with the view taken in the cases of *Goluck Chandra Pal* v. *Kali Charan De*, 13 C. 175, and *Dhanput Singh* v. *Chatterput Singh*, 20 C. 513. *Per Ghose, J.*—The proceeding drawn up by the Magistrate refers, in express terms, to the Police-report which sets out sufficient grounds showing that there was a likelihood of a breach of the peace and the Magistrate expressly states that he is satisfied upon such Police-report that there is an imminent danger of a breach of the peace. In this view, therefore, there has been a substantial compliance by the Magistrate with the requirements of cl. (1), s. 145 of the Code. KHOSH MAHOMAD SIRKAR v NAZIR MAHOMED, **33 C. 352=9 C.W.N. 1065=2 C. L.J. 259, F.B.=2 Cr.L.J. 637.** [*F.*, 32 C. 1093 =2 C.L.J. 280, 17 M.L.J. 449; *R.*, 5 C.L.J. 611, 4 M.L.T. 213, 8 Cr. L J. 170, 1 S.L.R. 50, Cr.; *Disc.*, 36 M 275=23 M L J. 499=12 M.L.T. 439=1912 M.W.N. 1154=17 Ind. Cas. 65=13 Cr. L.J. 753.]

(147)—*Crim. Pro. Code*, s. 147—*Record of grounds for being satisfied of the existence of a dispute likely to cause a breach of the peace—Parties to proceeding under.*—Though s. 147 requires that a Magistrate must be satisfied upon materials before him that a dispute likely to cause a breach of the peace exists concerning

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the right to do or prevent the doing of anything in or upon any tangible immoveable property, before he can institute proceedings under that section, it does not require, as s. 145 does, that he must formally record a proceeding stating the grounds of his being satisfied as to the existence of a likelihood of a breach of the peace. The proper parties to a proceeding under s. 147 are the persons, who are claiming a proprietary right in the tangible immoveable property in question. An order under the section made against a manager of a Coal Syndicate is not an order made against the proper party, when it is proved that he has no interest in the land in dispute. MILLAR v. RAJENDRA NATH CHOWDHRY, **2 C.W.N 670.** (21 C. 727, *F.*; 23 C. 55, *R.*) [*R.*, 31 C 48.]

(148)—*Crim. Pro. Code* (1898), *s.* 145 (5)—*Power of Magistrate to add parties to the proceeding—Final order under s.* 146—*Proper parties.*—Cl. (5) of s. 145 does not enable a Magistrate to add parties to the proceeding. It merely enables a stranger to come in and show that no such dispute likely to cause a breach of the peace concerning any land, etc., exists or has existed. He does not become, nor can he be made a party to the dispute which he seeks to show has never existed. [*F.*, 5 C.W.N. 900; *R.*, 27 C. 892.] Judicial proceedings cannot bind a person who is not a party to them. A final order under s. 146, Crim. Pro. Code, cannot be made against persons not made parties to a proceeding under s. 145 or not regarded as such by the Magistrate. Persons who are found from the Police report to be concerned in a dispute regarding lands, and who are brothers of the original party living in joint mess and belonging to a joint undivided family, ought to be made parties to the proceedings under s. 145. JANOKI NATH ROY v. QUEEN-EMPRESS, **3 C.W.N. 329.**

(149)—*Crim. Pro. Code* (1898), *ss.* 107, 145—*Likelihood of breach of the peace resulting from wrongful act of the aggressing party.*—Where a Magistrate had found that persons who attempted to do *bastu puja* on a waste land were not entitled to perform it, *held*, that, if the persons opposing it acted properly and within their rights, there was no reason to suppose that any breach of the peace was likely to be committed, but that, if the Magistrate were to find that there was likely to be some dispute regarding the possession of the waste land, the proper course for him to take would be to institute proceedings under s. 145. BEJOY SINGHA NEOGI v. EMPRESS, **3 C.W.N. 463.** [*R*, 35 C. 117=6 C L J. 697=6 Cr. L.J. 398]

(150)—*Crim. Pro. Code, s.* 145—*Complaint of offences not involving breach of the peace—Dispute regarding lands.*—The mere fact that a person complains of being dispossessed of his land is no reason for the institution of proceedings under s. 145, Crim. Pro. Code, if the petition made by the complainant refers only to the commission of various offences, none of which necessarily involves a breach of the peace. KESU *alias* KESHWAR SINGH v. MOTI MOLLAH, **4 C.W.N. 57.**

(151)—*Crim. Pro. Code, s.* 522—*Order under the section, when can be made.*—An order under s. 522 must be made simultaneously with the order of conviction. MOHAN THETA v. RAICHAND BASUI, **4 C.W.N. 308.** (2 C.W.N. 305 =25 C. 434, *R.*) [*Disappr.*, 15 Cr. L.J. 275= 23 Ind. Cas. 483=15 P R. 1914, Cr.=112 P.L. R. 1914=14 P.W.R. 1914, Cr; *Expl.*, 14 Cr.L. J. 172=19 Ind. Cas. 172]

(152)—*Crim. Pro. Code* (1898), *s.* 145—*Dispute regarding land in joint possession.*—An order under s. 145 should merely declare whom the Magistrate finds to be in actual possession of the property in dispute. It does not apply where two parties are in joint possession of that property and one of them tries to evict the other. [*F.*, 23 P.R. 1902, Cr.=135 P.L.R. 1902, 7 C.W.N. 118, 10 C.W.N. 1088; *R.*, 8 C.W.N. 885; *Expl.*, 7 C.W N. 462; *D.*, 6 C.W.N. 883.] S. 145 of the Code contemplates a dispute between two parties, each of whom asserts the right to hold actual possession of the property as against the other, and not a dispute between a party claiming to hold joint possession and another contesting such right. TARUJAN BIBEE v. ASAMUDDI BEPARI, **4 C W.N. 426.** [*R.*, 36 C. 986=11 Cr.L.J. 28=4 Ind. Cas. 696.]

(153)—*S.* 145—*Crim. Pro. Code—Practice—Dispute between two parties having joint right.*—Proceedings under s. 145 cannot be instituted with respect to a dispute between two parties having joint right to the lands in dispute, each claiming exclusive possession thereof. In such a case, if any steps are necessary for the prevention of a breach of the peace, the Magistrate should proceed under s. 107 MAKHAN LAL ROY v. BARODA KANTA ROY, **11 C W.N. 512 =5 Cr. L J 296.** [*R.*, 3 Bur. L T. 74=11 Cr. L.J. 655=8 Ind. Cas. 453, 11 C.L.J 412=11 Cr. L.J. 370=6 Ind. Cas. 544, 15 C.L.J. 184, 27 M.L.J. 169; *D.*, 38 C. 889=12 Cr. L.J. 408=11 Ind. Cas. 592; *Expl.*, 40 C. 982=17 C.W.N. 944=14 Cr. L.J. 269=19 Ind Cas. 511.]

(154)—*Crim. Pro. Code,* (1898), *ss* 145 *and* 147—*Summary disposal of a case under s.* 147, *after local inspection—Scope of s.* 147.—In a matter under s. 147, as under s. 145, the Magistrate is bound to hear the evidence tendered by the party. He cannot summarily deal with it after an inspection of the locality. [*R.*, 30 C. 112.] The right of use of land contemplated by s. 147 is one of an entirely different description resembling a right of easement, not one arising from the terms of a contract between landlord and tenant. A dispute between the landlord and his tenant regarding the right of the latter to reconstruct a *gola* is not a matter properly coming under s. 147. The settlement of such a dispute will involve issues of right which can only be

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properly determined by a Civil Court. EMPRESS v. GANPAT KALWAR, **4 C.W.N. 779.** [*Diss*, 29 M. 97=15 M.L.J. 394.]

(155)—*Crim. Pro. Code* (1898), ss. 107, 144, 145—*Dispute relating to possession—Findings as to possession without instituting proceedings under s.* 145—*Proceedings under s.* 107, *validity of.*—In a dispute relating to the possession of land, the Magistrate is not competent to arrive at a finding as to possession, except in a judicial inquiry under s. 145; nor can he rely on a previous order passed under s. 51 of the Bengal Chowkidari Act. In a dispute relating to the possession of land likely to cause a breach of the peace, proceedings under s. 107 cannot be properly instituted. SORODA PROSAD SINGH v. EMPEROR, **7 C.W.N. 142.** [*Diss*, 32 C. 966=10 C.W.N. 288=2 Cr. L.J. 769; *Not F.*, 10 Cr. L.J. 221=3 Ind. Cas. 64=5 N.L.R. 94; *F.*, 25 A. 537=23 A.W.N. 102.]

(156)—*Crim. Pro. Code* (1898), *s.* 145—*Local enquiry by trying Magistrate—Decision based thereon—Jurisdiction.*—Where, in a proceeding under s. 145, the Magistrate discarded the evidence on record as unreliable and decided the case upon what he saw, heard and inferred at a local enquiry held by himself, *held* that the Magistrate had erred materially in his jurisdiction and his order should be set aside. LAL BEHARI SHAHA v. BEJOY SANKAR SIKDAR, **10 C.W.N. 181=3 Cr. L.J. 193.** [*R.*, 37 C. 340=11 C.L.J. 335=14 C.W.N. 422=11 Cr. L.J. 121=5 Ind. Cas. 365.]

(157)—*Crim. Pro. Code* (1898), *ss.* 145 *and* 148 (3)—*Costs, order assessing—Notice to party ordered to pay—Jurisdiction of Magistrate to set aside his own orders assessing costs.*—A Magistrate may have jurisdiction to make an order as to the costs of a proceeding under s. 145 of the Code, even though the order under s. 145 of the Code was passed by another Magistrate. Where a Magistrate has passed an order assessing costs against a party to a proceeding under s. 145 of the Code, without any notice to that party, he has no jurisdiction to set aside that order. Where a Magistrate passed an order, by which he set aside his own order, assessing costs against a party to a proceeding under s. 145 of the Code, on the ground that it was made without notice to the party ordered to pay the costs, *held*, that both orders of the Magistrate must be set aside and the Magistrate directed to proceed afresh to assess costs after due notice to both the parties. DILBASI KOER v. DEORATI KOER, **10 C.W.N. 1030=4 Cr. L.J. 171.** (28 C. 302, *F.*)

(158)—*Crim. Pro. Code, s.* 145—*Debutter estate—Dispute among* Shebaits *regarding management* — Shebait *entrusted with sole management—Possession as agent—Joint possession—Jurisdiction of Magistrate.*—Possession, that can be pleaded in a proceeding under s. 145 of the Code, must be possession based on a claim of right possession. The possession of an agent or a servant, which is permissive, cannot give a party to a proceeding a *locus standi* as against his principal or master. The possession of one of several *co-shebaits*, who, for convenience, has been entrusted with the sole management of the *debutter* estate is, as regards the *shebait* right of his *co-shebaits*, that of an agent. The agency can be withdrawn. A dispute between such a person claiming sole management and his *co shebaits*, who have withdrawn the agency and claim to have joint management with him, is not a fit subject for a proceeding under s. 145 of the Code. *Debutter* property, being by nature impartible and inalienable, the possession of *co-shebaits* must, necessarily, be always joint and as such beyond the scope of an order under s 145 of the Code. NRITTA GOPAL SINGH v. CHANDI CHARAN SINGH, **10 C.W.N. 1088=4 Cr. L.J. 215** [*F.*, 36 C. 986=11 Cr. L.J. 28=4 Ind. Cas. 696; *R.*, 11 C.L.J. 412=11 Cr. L.J. 370=6 Ind. Cas. 544, 27 M.L.J. 169.]

(159)—*Crim. Pro. Code* (1898). *s.* 145—*Transfer by a District Magistrate—Local jurisdiction throughout the District—S.* 12 (2)—*Amended proceedings.*—The jurisdiction to make a final order, under s. 145 of the Code, is not personal to the Magistrate, who initiates the proceedings, and a District Magistrate may, of his own motion, transfer a case under ch. XII of the Code to a Magistrate of the First Class subordinate to him. A Magistrate of the First Class, holding his Court at the headquarters, has local jurisdiction throughout the district. Where the Magistrate added parties and issued fresh copies of the original proceedings. *Held*, that the Magistrate was within jurisdiction. RAM KISSARE ROY v. DWARAK NATH SEN, **10 C.W.N. 1095=4 Cr. L.J. 223.** (22 C. 898, 6 C.W.N. 737=30 C. 155, *F.*; 26 M. 189, 28 C. 709, 2 C.L.J. 614, 6 C.W.N. 552=29 C. 389, *R.*) [*F.*, 37 C. 91=14 C.W.N. 49=5 Ind. Cas. 29=11 Cr. L.J. 23.]

(160)—*Crim. Pro. Code, s.* 144—*Jurisdiction of Magistrate—Interlocutory orders—Rule issued by High Court—Seisin of case—Extension of time—Rival* hats.—A Magistrate cannot, by passing successive orders under s. 144, Crim. Pro. Code, extend the operation of an order indirectly beyond the time limited by sub-s. 5 of s. 144. Where the first and initial order passed by a Magistrate was in substance and form an order under sub-s. 2, and forbade certain persons from establishing a *hat* at a certain place and gave a vague direction to them forbidding interference with the trade of another *hat*, *Held*—the order was irregular and vague and could not stand. As long as an order under s. 144 has legal operation, no intermediate or interlocutory order not contemplated by sub-s. 4 can be passed. When the High Court has issued a rule in any case, it takes full *seisin* of the case, and it is the High Court alone that can pass *ad interim* orders in the case. The Magistrate against whose order the rule is issued has no such jurisdiction. The most appropriate section of

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the Code to deal with cases of rival *hats* which may cause a breach of the peace is s. 107. SATISH CHANDRA ROY v EMPEROR, **11 C W. N. 79 = 4 Cr. L J. 433.** [*R.*, 14 Cr. L.J. 589 = 21 Ind. Cas. 381 = 25 M.L.J. 370.]

(161)—*Penal Code*, s. 143—*Dispute amongst joint owners—Unlawful assembly with armed men—Force not actually used—Sentence—Crim. Pro. Code (Act V of 1898), s. 106—Order against one joint owner—Proceeding against the other owner under s. 107, desirable.*—Where two parties were entitled to joint possession of a property, but one party having been out of possession, their servants (the petitioners), with 30 or 40 other persons, went armed with *lathies* to take forcible possession of the property and succeeded in getting possession without having had to use any force; *held*, that the petitioners were rightly convicted of an offence under s. 143, I.P.C., but as the masters of the petitioners had a right to possession and as what the petitioners did, though not warranted by law; did not actually lead to a breach of the peace, the sentence ought not to be too severe. That an order under s 106, Crim. Pro. Code, directing the petitioners to execute bonds to keep the peace for one year, was, in the circumstances, justifiable, but as that order would have the practical effect of preventing the petitioners and their masters from taking possession of the property, it was desirable that the other side should also be bound down in a proceeding under s. 107, Crim Pro. Code. BEPIN BEHARI GUHA v PRANAKUL MAJUMDAR, **11 C W N. 176 = 5 Cr L J. 19.** [*R.*, 7 C L.J. 359 = 12 C. W.N. 334 = 35 C. 368 = 3 M.L.T. 385 = 7 Cr. L.J. 256.]

(162)—*Crim. Pro. Code* (1898), *ss.* 145, 147—*Subject matter of the dispute—Claim for trees.*—Before a proceeding is drawn up under s 145, the subject matter of the dispute must be clearly determined. *Quære*:—Whether a proceeding under s. 145 or under s. 147 is proper in a case where only trees are claimed and not the land? MAHARAJA SURJA KANTA ACHARJA BAHADUR v. MAHARAJA JAGADINDRA NATH ROY BAHADUR, **11 C.W N. 198 = 5 Cr L J. 32.**

(163)—*Crim. Pro. Code* (1898), *ss.* 144 145—*Disputed question of possession—Proper order.*—In a dispute regarding land, when the question of possession is disputed between the parties, the proper procedure to be adopted by the Magistrate is to pass an order in a proceeding under s. 145, deciding the question of possession on evidence, and not an order in a proceeding under s. 144 Where, in a proceeding under s 144, the Sub Divisional Magistrate, holding that the first party was in possession, directed the second party to refrain from interfering with that possession, but the District Magistrate, on revision, directed the first party to refrain from interfering with the possession of the second party, *held*, that both the orders were bad in law PARKAR MAHTON v. RAM KHELWAN, **11 C.W.N. 271 = 5 Cr L.J. 76.**

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(164)—*Crim. Pro. Code* (1898), *s.* 145—*Jurisdiction of Magistrate to maintain parties in separate possession of shares of land.*—Where, in a proceeding under s. 145, in respect of a dispute concerning some land, the Magistrate finds that one party has been in possession of a portion of the land in dispute, and the other party in possession of the rest, and the possession of the one is not likely to interfere with the enjoyment of the other party's possession, the Magistrate can, in the exercise of the jurisdiction vested in him under s. 145, maintain both the parties in possession of their respective portions. KANGADI DAS BAIRAGI v. MUTI LAL BAGDI **11 C W.N. 743 = 5 Cr. L.J. 490.** (22 C. 297, *R. & D.*)

(165)—*Crim Pro. Code* (1898), *s.* 145—*Omission to examine witness and inquire into the question of possession—Absence of a party—Signature of the judicial officer in a judicial order.*—Where in a proceeding under s 145, Crim. Pro. Code, one of the parties being absent though served with notice the Magistrate on the written statement of the other party declared them to be in possession. *Held*, that the order of the Magistrate was without jurisdiction. It was his duty to inquire into the question of possession and in the absence of the parties, he would have been well advised to abstain from passing any order under s. 145, Crim. Pro. Code. A Magistrate should sign his name in full in a judicial order made under s. 145, Crim Pro. Code, and should also note his official position. NOJEM MIRDHA v. JAMALALI KHALIFA, **12 C.W.N. 771 = 8 Cr. L J. 27.**

(166)—*Crim. Pro. Code, s.* 145—*Trial as in a civil suit Settlement proceeding, order in, if to be given effect to.*—The Magistrate should not deal with proceeding under s. 145, Crim. Pro. Code, as if it is a civil suit. Where the Magistrate tried a case under s. 145, Crim. Pro. Code, as if it was a civil suit, framed several issues and discussed them at length, but did not deal with the question of possession except that in only one passage in his judgment he observed that the oral evidence as to actual possession was in favour of the second party, but in his final order declared the first party to be in possession in order to give effect to a certain order of the Settlement Department: *Held*, that the Magistrate's order was without jurisdiction. The only question the Magistrate had to decide in the case was who was in actual possession of the land in dispute and as he had not done so, his order was entirely without jurisdiction. KOCHAI FAKIR v. ROMESH CHANDRA BISWAS, **35 C. 795 = 12 C W.N. 773 = 8 Cr L J. 28.**

(167)—*Crim. Pro. Code, s.* 145—*Limitation Act, sch II, art 47—Suit to recover property, the subject of order under s 145, Crim. Pro. Code—Limitation—Starting point—Rule issued by High Court against Magistrate's order—"Final order."*—For a suit to recover property in respect of which an order under s. 145 of

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the Crim. Pro. Code has been made, the period of limitation runs from the date of the order of the Magistrate and not from the date on which a rule issued by High Court under s. 15 of the Charter Act against the Magistrate's order was finally disposed of. JAGANNATH MARWARI v. ONDAL COAL COMPANY LTD., **12 C.W.N. 840.**

(168)—*Crim. Pro. Code* (1898), *s.* 145—*Information regarding breach of peace—Refusal by Magistrate to hear evidence to show unlikelihood of a breach of the peace—Clubbing together various subjects of dispute in one enquiry—Revisional power of High Court.*—In order that a Magistrate may have jurisdiction to act under s. 145, he must be satisfied, from a Police report or other information, that a dispute likely to cause a breach of the peace exists, concerning any land, etc. A mere petition, by an officer in the employ of one of the interested parties, is not such information, on which the Magistrate can act, without receiving further evidence. The section also lays down that nothing shall preclude any party, required by a preliminary order to attend the Magistrate's Court, from showing that no dispute likely to cause a breach of the peace existed, and it is not open to the Magistrate to refuse to receive the evidence tendered to him. Such a refusal on the Magistrate's part is *ultra vires* and the Magistrate's action is liable to be set aside by the High Court on revision. Where the dispute is alleged to exist in 230 villages, each village stands on its own footing and the Magistrate will be acting *ultra vires*, if he clubbed together 230 subjects of dispute, and treated them as one. The legislature does not contemplate wholesale proceedings of this sort, in cases under ch. XIV of the Code, the object of which is to provide prompt action to avert breaches of the peace. On the question of possession, the Magistrate should decide which party, at the date of his order, was in actual possession of this or that village and confirm that possession, instead of arbitrarily finding that one party was in possession of all the villages. SREEMAN KUMARA THIRUMALA RAJA BAHADUR, RAJA OF KARVETNAGAR v. SOWCAR LODD GOVIND DOSS KRISHNA DAS, **29 M. 561=16 M.L.J. 419=1 M.L.T. 405=5 Cr. L.J. 291.**

(169)—*Likelihood of breach of the peace.*—An order under either s. 145 or s. 147, Crim. Pro. Code, cannot be passed, unless the Magistrate is of opinion that there is a likelihood of a breach of the peace. KOLANDAI NAYAKAN v. KARABUDDA SAVUDRI, **6 M.L.J. 193.**

(170)—*Crim. Pro. Code, s.* 145—*Order under section not affecting persons not parties to the proceeding.*—The owner of a property made a gift of a half of his property to one of his sons and the other half to his wife. After his death disputes arose regarding the property and an order under s. 145 was made declaring the property to be in possession of a third person.

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The son to whom the gift was made was a party to the proceeding, but not the mother. *Held*, that the order under s. 145 to which the mother was not a party would not be binding on her children with regard to her half share of the property, although the donee of the other half (one of the sons) was a party. JAKE v. SANKAYYA, **2 M.L.J. 277.**

(171)—*Crim. Pro. Code*, s. 145 (1), *order by Magistrate under—Omission to expressly state the grounds for the order—Reference by Magistrate to a petition containing such grounds, effect of—Jurisdiction of Court.*—In an order made under s. 145 (1) of the Code, the Magistrate omitted to state in detail the grounds for his conclusion that there was a likelihood of a breach of the peace. It was however recorded by the Magistrate that upon information received by him and upon the petition presented by one of the parties to the proceedings it appeared there was such a likelihood and there was no denial of the same by the counter-petitioners. *Held*, that there was substantial compliance with the said s 145 (1) of the Code and no irregularity which would affect the validity of the order. SAYID MAHOMED GHOUS SAHIB v. SAYID KHADIR BADSHAW SAHEB, **16 M L J. 148=3 Cr. L J. 487.** [*R.*, 30 M. 548=3 M.L.T. 18=7 Cr. L.J. 28, 36 M. 275=13 Cr. L.J. 753=17 Ind. Cas. 65=23 M.L.J. 499=12 M.L.T. 439=1912 M.W N. 1154.]

(172)—*Crim. Pro. Code*, s. 145—*Procedure prescribed by the section to be strictly followed.*—In order that a proceeding under s. 145, Crim. Pro. Code, may be valid, all the procedure prescribed in that section must be strictly followed. There must be a preliminary order of the kind specified in para (1) of the section, and the copy of the order must be served upon the parties or affixed to some conspicuous place at or near the subject of dispute, and all the parties interested in the land must be heard and evidence taken. Where a District Magistrate found, on the ground stated by him, that one of the respondents was ploughing the *abadi-deh* land, in order to annoy the complainant, who had a right to use the land for religious service, *held*, that would amount to a preliminary order. But the other provisions of the section not having been satisfied, the proceedings of the District Magistrate were set aside for want of jurisdiction. ABDULLA KHAN v. GUNDA, **7 P.R 1907, Cr =6 Cr. L.J. 13=24 P.W R. 1907, Cr.=71 P.L.R. 1908.** (20 C. 520, 27 C. 892, 28 C. 416, 6 C.W.N. 101, 2 P.R. 1899, Cr., F.B.) [*F.*, 11 Cr. L.J. 422=6 Ind. Cas. 955=24 P. W.R. 1910, Cr., 11 Cr. L.J. 61=4 Ind. Cas. 860 =11 P.W.R. 1909, Cr.=105 P.L.R. 1909=12 P.R. 1909, Cr.]

(172-*a*)—*Procedure prescribed to be strictly followed.*—Before an order under s. 318, Crim. Pro. Code, 1861, is passed, the Magistrate must observe the forms prescribed by the section. *In re* SABHEE SINGH, **6 W.R. Cr. 50.**

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(172-*b*)—*Crim. Pro. Code* (1898), *ss.* 145, 435—*Formalities required by s.* 145 *not observed—Result.*—S. 145 of the Crim. Pro. Code gives the Magistrate very extensive powers, but, as a protection to the public, requires him to conform to certain formalities. If the formalities are not observed, that is, if the Magistrate passed no order in writing as is required by sub-s. 1, does not call on the parties to put in written statements and does not cause a copy of the order to be served in the prescribed manner, he acts without jurisdiction and the High Court can interfere with the final order in revision. CRIMINAL REFERENCE NO. 189 OF 1903, **A.W N. 1907, 51, note.** [*R.*, 32 A. 132=7 A.L.J. 53=5 Ind. Cas. 471=11 Cr. L.J. 141; *D.*, A.W.N. 1907, 50=4 A.L J. 91=5 Cr. L.J. 117.]

(173)—*Letters Patent, cl.* 15—*Order passed in revision under s.* 145 *of the Crim. Pro. Code—Appeal.*—Although the authority, invested with power to decide a dispute under s. 145, Crim. Pro. Code, is not a Court of civil jurisdiction but a Criminal Court, an order passed, on revision, by a single Judge of the High Court of an order under s. 145 is not one made in a "Criminal trial." So, an appeal lies from such a judgment under cl. 15 of the Letters Patent. RAJA OF KALAHASTI v. P. NARASIMHA NAYANI VARU, **17 M.L.J. 158=5 Cr. L.J. 343. F.B.**

(174)—*Crim Pro. Code* (1898), *s.* 145—*Defective initial order—Omission to state grounds in the initial order—Jurisdiction.*—A Magistrate's omission in his initial order made under s. 145 of the Code, to state the grounds, on which he is satisfied of the existence of a dispute likely to lead to a breach of the peace, although defective, does not affect the jurisdiction of the Court. POSUKA KULLA v. TANDALAGARA CHIKKA HINA, **17 M.L J. 449=6 Cr. L J 345.** [*R.*, 23 M.L.J. 499=12 M.L.T. 439=1912 M.W.N. 1154.]

(175)—*Omission to state grounds in the preliminary order.*—If the Magistrate, in his preliminary order under s. 145 (1), does not clearly state the grounds on which he is satisfied that there is likelihood of breach of peace, his order is materially defective, and he acts without jurisdiction. POSUKHA KULLA v. TANDALAGARA CHIKKA HIRIA, **4 M.L.T. 213=8 Cr. L. J. 399.**

(176)—*Crim. Pro. Code, s.* 145, *cl.* 4—*Magistrate directing subordinate Magistrate to take evidence—Validity of order passed on such evidence.*—Where a Magistrate, dealing with a case under s. 145, Crim. Pro. Code, omits to take evidence, as required by s. 145, cl. 4 of the Crim. Pro. Code, but refers it to a subordinate Magistrate to take the evidence in the case and to report thereon, his order based on such evidence only, is made without jurisdiction and must be set aside. The Magistrate must be directed to take the case again on his file and hold a fresh inquiry. ARUMUGA GOUNDEN v. VENKATA SUBBIER, **17 M.L J. 535=6 Cr. L J 384=3 M.L.T. 108=31 M. 32.** [*R.*, 3 M. L.T. 402.]

(177)—*Crim. Pro. Code* (1898), *ss.* 145, 147—*Jurisdiction to make order under s.* 145, *where notice was given under s.* 147.—A Magistrate gave notice under s. 147. Objection was taken that the cases did not fall under s. 147. The Magistrate, without deciding that the case fell under s. 145 and without giving notice to the parties of his intention to proceed under s. 145, eventually passed an order purporting to be under s. 145. *Held*, that the Magistrate acted without jurisdiction in passing an order under s. 145, Crim. Pro. Code, without first making an order under the first paragraph of that section. SUBRAMANIYA PILLAI v SANNASIA PILLAI, **5 M.L T. 103=19 M.L.J. 18=9 Cr. L. J. 565=2 Ind. Cas. 310.**

(178)—*Crim. Pro. Code* (1898), *s.* 145—*Order based upon police report—No notice to the parties, and no institution of proceedings—Legality of order.*—Where a Magistrate, stating that the Police report showed that the counter-petitioners admitted that the petitioner was in possession of the property in dispute, passed an order declaring the possession of the petitioner, without instituting any proceeding and giving notice of the same to the parties, and hearing them. *Held*, that the order was illegal, and must be set aside, and that the Magistrate can declare one of the contending parties to be in possession of the property in dispute, only after trying the question in Court according to the procedure laid down in the Crim. Pro. Code. PASUPATHI MUDALI v. A. SUBRAMANYA GURUKKAL, **6 M.L.T. 91=2 Ind. Cas. 428=10 Cr. L.J. 6.**

(179)—*Crim. Pro. Code* (1872), *s.* 530—*Decision of question of possession by Magistrate.*—A Magistrate can, under s. 530, declare all the contesting parties to be in possession, should he find that all of them are actually in such possession. Where, on a consideration of the written statements put in under this section, and in the presence of the parties or their agents putting them in, a Magistrate determines which party is in possession, he might be deemed to have decided the question of possession on evidence taken as required by the explanation. MUSSAMMAT SETHANI v. DALCHAND, **Colm. Dig. Cr. 17 of 1874.**

(180)—*Crim. Pro. Code* (1898), *ss.* 107, 145—*Validity of proceeding - Power of High Court to direct Magistrate to take proceedings under s.* 145—*Meaning of the word "shall."*—Where there is a dispute between the accused as to the partition of land, and there is a likelihood of the occurrence of a breach of the peace, the Magistrate may take proceedings under s. 107, Crim. Pro. Code, and it is not incumbent on him to take action under s. 145. The use of the word "shall" in s. 145, Crim. Pro. Code, is not mandatory. In matters of procedure, the word is generally construed as directory. As

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the High Court has no power to revise orders under s. 145, Crim. Pro. Code, *a fortiori*, it has no power to direct a Magistrate to initiate proceedings under that section. IMPERATOR v. LAKHANO, 2 S.L.R. 18, Cr. = 10 Cr. L J. 231.

(180 *a*)—*Crim. Pro. Code*, ss. 145, 146—*Dispute likely to lead to breach of peace—Attachment—Appointment of receiver—Legality.*—In this case the Magistrate received information of a dispute likely to lead to a breach of the peace and directed the attachment of the property in dispute and also appointed a Receiver before enquiring into the matter. *Held* that the order of attachment was perfectly legal under cl. 4 of s. 145, but that the appointment of the Receiver was *ultra vires*. SUBHADRAMMA v. SATYAM SWAMI, **8 M.L.T. 314 = 7 Ind. Cas. 893 = 11 Cr. L J. 536 = 1910 M.W.N. 811.**

(180 *b*)—*S.* 145, *cls.* 5 *and* 6—*Termination of proceeding—Petition of compromise—Subsequent proceeding, if legal.*—The parties to a proceeding under s. 145, Crim. Pro. Code, compromised and filed a petition of compromise, and according to its terms the Magistrate ordered that the lands would be in the possession of both sides as stated in the petition. *Held*, that the order fell under cl 5 of s. 145 and not under cl. 6, and that, therefore, a subsequent proceeding instituted under s. 145 between the parties in respect of the same lands is not one made without jurisdiction. SADHU BISWAS v. MAHAMAD ALI BISWAS, **9 Ind. Cas. 167 = 15 C W N. 568 = 12 Cr. L.J. 32.**

(180-*c*)—*Crim. Pro. Code* (1898), ss. 145, 147—*Base of jurisdiction—Imminence of breach of peace—Proceedings under s. 145—Arbitration—Failure of arbitration—Revival of proceedings—Jurisdiction.*—The jurisdiction of a Magistrate under ch. XII of the Crim. Pro. Code is solely based on the imminence of a breach of the peace. What the Crown and the parties want is a decision as to their present rights and a decision which will be effectual to prevent a breach of the peace. While certain proceedings under s. 147 of the Crim. Pro Code were pending, the parties agreed to refer the dispute to arbitration. The Magistrate thereupon made an order to the effect that further proceedings were unnecessary and they were, therefore stayed. After the arbitration proceedings, which had been pending for about a year, became ineffectual, the Magistrate, without recording a fresh proceeding and without stating the information and the ground on which he was satisfied as to the existence of a dispute likely to cause a breach of the peace, continued the proceedings under s. 147. *Held* that the Magistrate had no jurisdiction, as there was no allegation of any likelihood of a breach of the peace after the arbitration proceedings ceased, and that the order of the Magistrate staying further proceedings had ousted his jurisdiction to continue the proceedings. KALANAND SINGH v. RAMESHWAR SINGH, **8 Ind. Cas. 892 = 15 C.W.N. 271 = 11 Cr. L.J. 729.**

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(181)—*Crim. Pro. Code* (1898), ss. 145 *and* 147—*Disputes regarding ferry.*—S. 145, as amended by the Code of 1898, does not limit the action of a Magistrate to disputes relating to the possession of "tangible immoveable property," but it empowers him to take cognizance of a dispute likely to cause a breach of the peace "concerning any land or water or the boundaries thereof," and the section gives an explanation of the meaning of the expression "land or water." The right to a ferry, *i.e.*, the right to carry passengers to and fro, cannot be treated apart from the possession of the land used on either side of the stream for the purpose of landing them. Therefore, a dispute regarding a ferry including the land and the water upon which the right is exercised, properly comes under s. 145. HURBULLUBH NARAIN SINGH v. LUCHMESWAR PROSAD SINGH, **26 C. 188 = 3 C.W.N. 49.**

(182)—*Dispute as to ferries.*—Questions relating to disputes regarding ferries come within the scope of s. 147 and not within that of s. 145. MAHARAJA HARBULLABH NARAIN SINGH BAHADUR v. BAJRANG DASS, **3 C.W.N. 148.**

(183)—*Crim. Pro. Code* (1882), s. 145—*Dispute as to right to collect a share of rent of undivided property—Duty of Magistrate.*—To bring a case under s. 145, the property, which is the subject of dispute, must be capable of being accurately defined; the words are "tangible immoveable property or the boundaries thereof," and the whole scope and object of the section point to the same conclusion. The Magistrate, without reference to the rights of the parties, is to determine which party is in actual possession of the subject-matter of dispute, that is to say, the tangible immoveable property, and he is to maintain in possession the party found to be in possession and forbid all disturbance of possession until he is evicted in due course of law. The section, therefore, does not apply to a case in which the dispute is as to the right to collect a share of the rent of an undivided property. SURB NARAIN SINGH v. BIRJ MOHUN THAKUR, **23 C. 80.** [18 W R. Cr. 36, 5 A. 607. *Appr.*; 11 C. 413, 15 C. 527, 16 C. 513, *D.*) [*Appl.*, 10 C.W.N. 1088; *R.*, 35 C. 120 = 12 C.W N. 16 = 8 C.L.J. 245, 23 P.R. 1902, Cr. = 135 P L.R. 1902; *Expl.*, 7 C.W.N. 462]

(184)—*Crim. Pro. Code* (1882), ss. 145, 147—*Dispute concerning an undivided share in immoveable property.*—A dispute between a co-sharer of an undivided property and the lessee of another co-sharer, as to the right of the lessee to collect the rents of the share of the lessor, does not come under the provisions of Ch. XII. BENI NARAIN v ACHARJ NATH, **5 A. 607 = A.W N. 1883, 163.** [*Appr.*, 23 C. 80; *Appl.*, 10 C.W.N. 1088; *R.*, 1 S. L.R. 50 = 8 Cr. L J. 170]

(185)—*Crim. Pro. Code* (1898), ss. 145, 147—*Dispute regarding right to take sandalwood paste from an idol.*—The Badves of a temple

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applied to a Magistrate under s. 147 saying that the right to take sandalwood paste removed from the person of the idol belonged to them, but as this right was disputed by the Pujaris, there was a likelihood of a breach of the peace. The Magistrate held that he had no jurisdiction under the section as the right in question was already adjudicated upon by a Civil Court; but he ordered that the Pujaris should hand over the sandalwood paste after removing it from the idol to the Badves, who had a right to the same. *Held*, (1) that the Magistrate had no jurisdiction to pass the order; (2) that, if he was of opinion that the dispute was likely to occasion a breach of the law, he ought to have proceeded under Ch. VIII of the Code; (3) that ss. 145, 147 did not apply, as there was no dispute concerning the right of use of any land or water as defined in s. 145 or of any right of way or easement over the same; and (4) that the sandalwood paste did not fall within the description given in s 145 (2) as forming the profits of immoveable property, as it in no way arises or emanates from the temple buildings or can in any regard be held to be properly arising from immoveable property. *In re* PANDURANG GOVIND PUJARI, **4 Bom. L.R. 438.**

(185 *a*)—*Crim. Pro. Code*, *s.* 145—*Pujari's right to worship—Offerings given by worshippers to deity, whether profits arising out of building.*—The offerings given by the worshippers for the worship of any deity are not profits arising out of a building, for they arise out of the deity irrespective of the building, or the land upon which he may happen to dwell. Therefore, a declaration made by a Magistrate under s. 145, to the effect that a certain person is in possession of such offerings, is an order made without jurisdiction. RAM SARAN PATTAK v. RAGHU NANDAN GIR, **9 Ind. Cas. 6 = 13 C.L J. 445 = 38 C. 387 = 16 C.W N. 574 = 12 Cr. L.J. 3.**

(186)—*Crim. Pro. Code* (1898), *ss.* 145 *and* 537—*Parties present—Notice not pasted—Irregularity—Effect of order.*—Where parties to a proceeding under s. 145 of the Code had notice of the proceedings, and had their cases fully heard by the Magistrate, the order should not be set aside in revision, even though the provisions of the section were not strictly complied with, and the parties were not personally served, and no notice was fixed at the disputed property. The object of the section is merely to prevent a breach of the peace by maintaining one or other of the parties in possession. DEBI PRASAD v. SHEODAT RAI, **4 A.L.J. 705 = 30 A. 41 = A.W.N. 1907, 265 = 6 Cr. L.J. 352.** [*R.*, 11 A.L.J. 586 = 14 Cr. L.J. 277 = 19 Ind. Cas. 709.]

(187)—*Crim. Pro. Code* (1898), *s.* 145—*Specific Relief Act* (I *of* 1877), *s.* 9—*Suit for possession—Criminal proceedings—Effect of—Revision by High Court.*—Criminal proceedings, if any, taken under s. 145 of the Crim. Pro. Code, in no way interfere with the plaintiff's right, under s. 9 of the Specific Relief Act which accrued so soon as his possession was interfered with by the defendant. The High Court will not interfere in revision where other remedies are open to the aggrieved party. JWALA v. GANGA PRASAD, **5 A.L.J. 297 = A.W.N. 1908, 142 = 30 A. 331.** (10 A. 119, *R.*)

(188)—*Crim. Pro. Code* (1898), *ss.* 145 *and* 435—*High Court's Act of* 1861 (24, 25 *Vic., Ch.* 104), *s.* 15—*Order under s.* 145, *Crim. Pro. Code—Revision—High Court's power to interfere.*—Where a Magistrate empowered to take proceedings under Ch. XII of the Crim. Pro. Code, takes such proceedings and passes an order, the High Court has no power to interfere in revision, either under the Crim. Pro. Code, s. 435 or the High Court's Act, s. 15. JHINGAI SINGH v. RAM PRATAP, **6 A.L.J. 113 = 31 A. 150 = 9 Cr. L.J. 382 = 1 Ind. Cas. 762.** [*F.*, 36 A. 233 = 12 A.L.J. 344; *Rel.*, 13 Cr. L J. 495 = 15 Ind. Cas. 495; *R.*, 36 M. 275 = 13 Cr. L.J. 753 = 17 Ind. Cas. 65 = 23 M.L.J. 499 = 12 M L.T. 439 = 1912 M.W.N. 1154, 11 A.L.J. 305 = 14 Cr.L.J. 223 = 19 Ind. Cas. 319.]

(189)—*Crim. Pro. Code* (1898), *ss.* 145 *and* 439—*Order respecting possession of immoveable property—Revision.*—Where a Magistrate passed an order under s. 145 of the Code of Criminal Procedure under circumstances in which the passing of such order was proper, the High Court declined to interfere in revision upon the ground merely that the preliminary order did not set forth, as explicitly as it might have set forth, the reasons which satisfied the Magistrate that there was a likelihood of a breach of the peace, there being a substantial compliance with the requirements of s. 145 of the Code. HAR PRASAD v. PANDURANG, **A.W.N. 1905, 260 = 3 Cr. L.J. 48.** [*F.*, 11 Cr. L.J. 69 = 4 Ind. Cas. 876 = 12 O.C. 400.]

(190)—*Crim. Pro. Code* (1898), *s.* 145—*Definition—"Crops or other produce of land"—Crops severed from the land not within the definition—Jurisdiction.*—*Held* that the words "crops or other produce of land" as used in s. 145 (2) of the Code of Criminal Procedure do not include crops which have been severed from the land upon which they grew. A Magistrate has therefore no jurisdiction to attach under s. 146 of the Code a crop of *mahua* no longer growing on the trees. CHAURASI v. RAMA SHANKAR, **A W.N. 1905, 278 = 3 A.L J. 13 = 3 Cr. L.J. 52 = 28 A. 266.** (30 C. 110, *R.*)

(191)—*Crim. Pro. Code* (1898), *s.* 145—*Disputes likely to cause a breach of the peace—Magistrate's order—Order binding upon all concerned.*—The provisions of s. 145 make it clear that the parties whom the Magistrate has to deal with are not merely the actual parties to, but all persons who may be concerned in the dispute, the object being to prevent a breach of the peace. Therefore, it is not the actual parties, but all parties who may have notice of the proceedings, that are bound by the order. *In re* NATHUBHAI, **11 Bom. L.R. 377 = 2 Ind. Cas. 517 = 10 Cr. L.J. 64.**

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(192)—*Crim. Pro. Code* (1861), s. 318—*Absence of record of proceedings—Adjudication—Legality.*—A Magistrate cannot decide a question of possession under s. 318 of the Crim. Pro. Code without having recorded a proceeding stating the grounds of his being satisfied that a breach of the peace was likely to result from a dispute as to land. REG. v. AMIRCHUND, **Rat. Un. Cr. C. 39=Cr. Rg. 18-8-1870.**

(193)—*Absence of record as to grounds of likelihood of breach of the peace—Effect.*—An omission on the part of the Magistrate to conform to the provisions of s. 318 of the Crim. Pro. Code, in stating the grounds of his belief as to the likelihood of a breach of the peace, renders the proceedings null and void. REG. v. NATHU, **Rat. Un. Cr. C. 51=Cr. Rg. 15-6-1871.**

(194)—*Crim. Pro. Code* (1882), s. 145—*Attachment of moveables.*—There is no such power of attachment of moveables as is given about immoveable property by s. 145 of the Crim. Pro. Code. QUEEN-EMPRESS v. RAMACHANDRA SHIVJIRAM, **Rat. Un. Cr. 891.**

(195)—*Crim. Pro. Code* (1872), s. 530 (=s.145 *of Code of* 1898)—*Decision of title to land by Revenue Court in registration-proceedings—Jurisdiction of Magistrate to interfere.*—Where the question of title to certain lands had been definitely determined in proceedings under the Land Registration Act, *held*, a Magistrate was not competent to take action under s. 530 of the Crim. Pro. Code, and proceed to consider the question of possession as between the parties. GOBIND CHANDER MOITRA v. ABDUL SAYED, **6 C. 835=8 C.L.R. 217.** (16 W.R. Cr. 24, *Appl.*)

(196)—*Crim. Pro. Code* (1872), s. 530 (=s. 145, *Crim. Pro. Code* (1898), *proceedings under—Incorporation of Police report—Final order, character of—Evidence of title and possession.*—A Magistrate's order under s. 530 of the Crim. Pro. Code, though it might not contain within itself all which the law requires to be recorded, is not necessarily defective, if sufficient grounds for apprehending a breach of the peace appear from the Police report incorporated by reference. It ought to be based upon evidence of possession and not of title. Evidence of title can only be allowed to have a corroborative value. KALEE KRISTO THAKUR v. GOLAM ALI CHOWDHRY, **7 C. 46=8 C.L.R. 245=4 Shome. L. R. 119.** (6 C. 835, *D.*) [*R.*, 34 M. 138=6 Ind. Cas. 398=11 Cr.L.J. 353=8 M L. T. 104, 11 Cr.L.J. 69=4 Ind. Cas. 876=12 O. C. 400.]

(197)—*Crim. Pro. Code* (1882), s. 145—*Inquiry as to possession—Order by Magistrate—Disobedience thereto by persons not parties to the inquiry—Penal Code, s.* 188—*Sufficiency of—Reference to Police report.*—Where, after an inquiry under s. 145 of the Crim. Pro. Code, a Magistrate ordered that possession of certain lands was to remain with one of the parties, until evicted in due course of law, the order not only forbidding all disturbance with the possession so maintained, but referring the opposite party to a Civil Court for a determination of the claim to possession set up by him, *held*, that where certain persons at the instance of the unsuccessful party attempted subsequently to disturb such possession, they were guilty of disobedience to an order duly promulgated by a public servant (Penal Code, s. 188), though none of them was a party to the inquiry by the Magistrate, so long as they were aware of the order. [*F.*, 33 C. 352=2 C.L.J. 259=9 C.W.N. 1065.] *Semble.*—Where a Magistrate, in an enquiry under s. 145 of the Crim. Pro. Code, refers to a Police report, which clearly sets out the probability of a breach of the peace, it will be a sufficient statement of the reasons for the Magistrate's being satisfied of the existence of a dispute likely to cause a breach of the peace under the section. GOLUCK CHANDRA PAL v. KALI CHARAN DE, **13 C. 175.** [*R.*, 11 Cr.L.J 26=5 Ind. Cas. 40=14 C.W.N. 78.]

(198)—*Crim. Pro. Code* (1882), s. 146—*Enquiry into questions of title—Presumption of possession—High Court's powers on revision.*—A Magistrate, inquiring under s. 145 into a question of possession, may consider the question of title and discuss it, if, in his opinion, it is material upon the question of possession. The mere fact that he considers and discusses it, does not invalidate his decision on the question of possession, provided there is evidence as to who is in possession. When it is proved that a property was purchased at an execution sale, and that subsequently the peon of the Court went through the form of giving possession to the purchaser, there is some evidence that the purchaser took possession, although it may be that slight evidence would suffice to rebut that presumption. In a criminal revision from the orders of a Magistrate under s. 145, the only question which the High Court can consider is whether there was evidence on which the Magistrate could come to the conclusion which he had arrived at. RAJA BABU v. MUDDUN MOHUN LALL, **14 C. 169.** [*Expl.*, 14 C. 361.]

(199)—*Crim. Pro. Code*, ss. 145 *and* 146—*Difficulty of finding out the party in possession—Proper order—Power of High Court on revision.*—Where it is difficult for a Magistrate, trying a case under s. 145 of the Code, to come to a conclusion as to the fact of possession, the wise and proper course to be adopted is to pass an order under s. 146 of the Code. Where a Magistrate, in such a case, passes an order under s. 145 of the Code, the High Court, on revision, has the power to make the order which the lower Court ought to have made, and to alter the order under s. 145 to one under s. 146 of the Code. REID v. RICHARDSON, **14 C. 361.** [*R.*, 24 B. 527, 22 C. 297, 36 M. 275=12 M.L.T. 439=1912 M.W.N. 1154=23 M.L.J. 499=17 Ind. Cas. 65=13 Cr. L.J. 753.]

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(200)—*Crim. Pro. Code* (1882), ss. 145, 192 *and* 528—*Power of a District or Sub-Divisional Magistrate to transfer or withdraw proceedings under s.* 145.—A proceeding under ch. XII is an enquiry within the meaning of s. 4 of the Code and therefore, a District or Sub-Divisional Magistrate has power to transfer a proceeding under s. 145 to a Magistrate subordinate to him or transfer it from one subordinate Magistrate to another, when such Magistrate is duly empowered to deal with such matter. The words of s. 192 are wide enough to include cases under ch. XII. SATISH CHANDRA PANDAY v. RAJENDRA NARAIN BAGCHI, **22 C. 898.** [*F.*, 2 C L.J. 614, 10 C.W.N. 1095; *R.*, 28 C. 709=5 C.W.N. 749, 31 C. 350, Rat. Un. Cr. C. 838, 2 L.B.R. 80, 7 Cr. L.J. 423=11 O.C. 61.]

(201)—*Crim. Pro. Code* (1898), ss. 143, 144, 145 *and* 435—*Orders passed without jurisdiction under* ss. 143, 144—*Charter Act, s.* 15—*Setting aside of the orders.*—Matters under ch. XII of the Code, *i e.*, under s. 145, are by s. 435 placed in the same category as orders under ss. 143 and 144, in respect of which s. 435 of the Code of 1898 is expressed in the same terms as in the same section of the Code of 1882. As regards an order under s. 143 or 144, it has been held, that though the powers, as a Court of revision, cannot be exercised, still, if an order is challenged to be without jurisdiction. *i.e.*, if it be outside those sections, the mere fact of the order purporting to be passed under the exempted sections will not debar the exercise of the powers under s. 15, Charter Act, to set it aside as null and void and without jurisdiction. Therefore an order under ch. XII (s. 145), may also be set aside if it is made without jurisdiction. HURBULLUBH NARAIN SINGH v. LUCHMESWAR PROSAD SINGH, **26 C. 188= 3 C.W.N. 49.** (16 C. 80, 19 C. 127, 2 C.W.N. 572, 25 C. 852, *F.*; 4 C. 172=5 I.A. 178. *R.*) [*Diss.*, 26 A. 144; *F.*, 27 C. 892; *Appl.*, 27 C. 259; *R.*, 25 A. 537=23 A.W N. 102, 33 C. 68= 2 C.L.J. 241=9 C.W.N. 1046, 12 Bom. L.R 1029=11 Cr. L.J. 705=8 Ind. Cas. 747, 13 Cr. L.J. 495=15 Ind. Cas. 495, 36 M. 275=13 Cr. L.J. 753=17 Ind. Cas. 65=23 M.L J. 499=12 M.L.T. 439=1912 M.W.N. 1154, 2 L.B.R. 239, 5 O.C. 1 (3); *D.*, 30 C. 112, 17 C.P.L.R. 133.]

(202)—*Crim. Pro. Code*, s. 522—*Order directing restoration of possession of immoveable property, when can be made—Penal Code*, s. 350.—To support an order under s. 522, for restoration of possession of immoveable property there must be a finding that the dispossession was by the use of criminal force as defined in s. 350 of the Penal Code. ISHAN CHANDRA KALLA v. DINA NATH BADHAK, **27 C. 174=4 C.W N. 307.** (25 C. 434, *Appr.*) [*F.*, 25 A. 341 =A.W.N. 1903, 59, 5 C.W.N. 250; *F & Comm.* 11 C.W.N. 467=5 Cr. L.J. 278; *R.*, 4 Cr. L J. 293=12 P.R. 1906, Cr.=54 P.L.R. 1907; *D.*, 15 P.R. 1914, Cr.=112 P.L.R. 1914=14 P.W. R. 1914, Cr.=15 Cr. L.J. 275=23 Ind. Cas. 483.]

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(203)—*Crim. Pro. Code* (1898), ss. 145, 435 (3)—*Dispute as to collection of rent between two joint owners of Mitakshara family—Jurisdiction of Magistrate—Appointment of receiver subsequent to order under section—Power of High Court to set aside order under the section.* —There is no want of jurisdiction in a Magistrate to take proceedings under s. 145, where the dispute is one regarding the collection of rent between joint owners governed by the Mitakshara Law. [*R.*, 2 L.B.R. 239, F.B.; *D.*, 10 C.W.N. 1088; *Diss.*, 23 P.R. 1902, Cr. =135 P.L R. 1902.] The appointment of a Receiver to a joint estate subsequent to an order under s. 145 does not affect the jurisdiction of the Magistrate in having made the order. An order under s. 145 cannot be set aside by the High Court in its revisional jurisdiction, except under the provisions of the Charter and on the ground of want of jurisdiction. SRI MOHAN THAKUR v. NARSING MOHAN THAKUR, **27 C. 259=4 C.W.N. 420.** [*R.*, 11 C.L.J. 412=11 Cr. L.J. 370=6 Ind. Cas. 544; *D.*, 36 C. 986=11 Cr. L J. 28=4 Ind. Cas. 696.] *See also* ANONYMOUS, **27 C. 261, Note=4 C.W.N. 421, Note.**

(204)—*Crim. Pro. Code*, ss. 144, 145, 146—*Order under s.* 144, *when can be made—Validity of order under s.* 144, *prohibiting either parties from exercising right of possession —Evidence of possession—Order under s.* 144, *forbidding parties to exercise acts of possession.*—An order under s. 144 is declared to be only of temporary operation, and can be passed only on an emergency to prevent an imminent breach of the peace. S. 146 was intended to apply to a case in which, on the evidence before him, a Magistrate could not find possession with either of the parties. A Magistrate in taking proceedings to prevent breach of the peace in disputes concerning the possession of land should proceed under s. 145 and when necessary attach the land under cl. (4) thereof, instead of issuing an injunction under s. 144 prior to taking such proceedings. Where, in a proceeding under s. 145, no evidence could be offered to shew the possession of either party by reason of a previous order under s. 144, forbidding the parties to exercise any act of possession, the Magistrate may ascertain the possession immediately before the order under s. 144, and regard his intervention under s. 144, as an attachment suspending the previous possession. JOYANTI KUMAR MOOKERJEE v. MIDDLETON, **27 C. 785=4 C.W.N. 562.** [*R.*, 13 Cr. L. J. 23=13 Ind. Cas. 215=22 M.L.J. 154=10 M. L.T. 573, 15 Cr. L.J. 509=24 Ind. Cas. 597= 26 M.L.J. 208=1914 M.W.N. 352.]

(205)—*Crim. Pro. Code*, ss. 145 (1), (4), 146 —*Order based on written statements without taking evidence—Jurisdiction of Magistrate—High Court's power of interference.*—It is not the contravention of the provisions of sub-s. 1 of s. 145 alone that affects the jurisdiction of the Magistrate and gives the High Court power to interfere. Where a Magistrate in

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contravention of the provisions of s. 145 (4) of the Code, omitted to receive the evidence produced by a party but merely on a consideration of the written statement of the parties passed an order attaching the disputed property under s. 146, it was held that the omission to take the evidence had prejudiced the petitioner and that the order should be set aside. KOLHA KOER v. MUNESWAR TEWARI, **34 C. 840=6 Cr. L.J 452.** (30 C. 508, *F.*; 33 C. 68, *Expl.*) [*R.*, 3 M.L.T. 108=17 M.L.J. 535=6 Cr. L.J. 384=31 M. 82.]

(206)—*Crim. Pro. Code* (1898), s.145—*Review of order under—Jurisdiction—Legality.*—There is no authority for holding that a Magistrate can review a final order passed by himself under s. 145 of the Code. PARBATI CHARAN ROY v. SAJJAD AHMAD CHOWDHURY, **35 C. 350=12 C.W.N. 605=7 Cr. L J. 401.** [*R.*, 14 Cr. L.J. 605=21 Ind. Cas. 477=16 O. C. 192.]

(207)—*Crim. Pro. Code* (1898), s. 147—*Dispute relating to use of water—Order by Magistrate to remove bund—Injunction by Civil Court restraining removal—Subsequent order by Magistrate directing the police to remove the bund—Validity—Jurisdiction.*—In proceedings under s. 147, Crim. Pro. Code, one party obtained an order from the Magistrate, directing the removal of a bund across a pyne, and restraining the other party from erecting any obstruction until they obtained the decision of a competent Court adjudging them entitled to do so. The latter party subsequently obtained a temporary injunction from the Civil Court, restraining the former party from demolishing the bund. But the Magistrate, considering the case imminent, directed the removal of the bund by the police. *Held*, that the Magistrate had no jurisdiction to make an order directing the bund to be removed by the police. There is nothing in s. 147, Crim. Pro. Code, to indicate that the Magistrate can carry out an order under the section through the agency of the police. The section clearly contemplates orders directed to the persons who are parties to the dispute. DALMIR PURI v. KHODADAD KHAN, **36 C. 923=14 C.W.N 179=4 Ind. Cas 415=10 Cr. L J 579.** (5 C.W.N. 67, 335, *D.*) [*D.*, 39 C. 560=13 Cr. L.J. 184=13 Ind.Cas. 1000; *Expl.*, 15 C L.J. 267=12 Cr. L.J. 319=10 Ind. Cas. 615.]

(208)—*Crim. Pro. Code* (1898), s. 145—*Dispute as to collection of tolls in a market—No dispute as to possession—Collection by agent tantamount to possession by the principal—Jurisdiction of Magistrate.*—Under an agreement executed by K's predecessor in-title, M was to make the collections of the whole of the tolls from a market, and at the close of the year the collections were to be divided between M and K according to their respective shares. M was accordingly collecting and paying over K's share to him. K gave a lease to A, and A attempted forcibly to collect K's share. *Held*, that the collection by M as agent of K constituted K's possession. *Held*, also that, as K was thus in possession, and the only dispute that existed related to the machinery by which K exercised his possession, the Magistrate had no jurisdiction to pass orders under s. 145, Crim. Pro. Code. The Magistrate cannot decide, under that section, the method by which the possession is to be exercised or the agency by which the person in possession is to collect the profits. AKALOO CHANDRA DAS v. MOHESH LAL, **36 C. 986=4 Ind Cas 696=11 Cr. L J. 28.** (10 C.W.N. 1088, *F.*, 27 C. 259, *D.*; 4 C.W. N. 426, *R.*) [*R.*, 11 C.L.J. 412=11 Cr. L.J. 370=6 Ind. Cas. 544.]

(209)—*Crim. Pro. Code* (1898), s. 145, *cl.* 3—*Notice on spot, omission to issue—Jurisdiction—Irregularity—Charter Act* (24 *and* 25 *Vic., Ch* 104), *s.* 15—*Superintendence, power of, when and how to be exercised—S.* 145, *cl.* 4—*'Then,' meaning of.*—The provision as to publication of the order mentioned in sub-s. 3 of s. 145 of the Crim. Pro. Code is directory and is a matter of procedure only and omission to comply with it does not destroy the jurisdiction of the Court, which arises as soon as the provisions of sub-s. 1 of the section have been complied with. The object of publishing a notice on the subject of dispute is to reach all persons interested therein and unless it be shown that some one interested has been materially prejudiced by the omission to serve the notice, the High Court ought not to interfere under s. 15 of the Charter Act. The omission to publish a notice, under s. 145, cl. 3 of the Crim. Pro. Code, at some conspicuous place at or near the subject of dispute is not an illegality which deprives the Magistrate of his jurisdiction. The power of superintendence, which the High Court possesses under s. 15 of the Charter Act, vests in it a power somewhat analogous to that of the King's Bench Division in the Supreme Court in England to interfere by *mandamus*. Such power of interference is discretionary and ought, in relation to cases under s. 145 of the Crim. Pro. Code, to be exercised with every caution. If the subordinate Court has proceeded with irregularity, the High Court will not interfere unless some one has been materially prejudiced thereby; if, however, the subordinate Court has acted without jurisdiction, the High Court will interfere. The term 'then' in sub s. 4, s. 145, Crim. Pro. Code, has reference only to the time or order of the Magistrate's proceedings. SUKH LAL SHEIKH v. TARA CHAND TA, **2 C L J. 241=33 C. 68=9 C.W.N. 1046=2 Cr. L.J. 618, F.B.** [*R.*, 33 C. 352=9 C.W.N. 1065=2 C.L.J. 265, 1 S.L.R. 50. 33 C. 33=10 C.W.N. 257=2 C.L. J. 271=5 C.L.J. 611.]

(210)—*Crim. Pro. Code*, s. 145—*Police report, contents of—Breach of the peace, likely imminent—Possession—Decree of Civil Court, not necessarily conclusive.*—A police report, upon which the Magistrate found his initial order under s. 145 of the Code, should contain

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statement of the facts, from which the Magistrate may be satisfied of the existence of a likelihood of a breach of the peace. But there is no inflexible rule that the police report must show that the disputing parties are actually assembling men or doing other specific overt acts. No rule can be laid down so as to specify the sufficiency of the materials upon which he takes action, but he must form his own judgment and not proceed upon a mere expression of the opinion of the police. A Magistrate is entitled to take proceedings, under s. 145 of the Code, when a breach of the peace is likely; it is not necessary that it should be imminent. If the police report is defective, it is not obligatory upon the High Court to interfere, when it is proved, at the trial, that a breach of the peace was likely at the date of the initial order. The question of possession, in a proceeding under s. 145, has to be determined with reference to a specified point of time; upon this question, every previous decree of a Civil Court or order of a Criminal Court is not necessarily conclusive; the evidentiary value to be attached to such document must depend upon the circumstances of each particular case. KULADA KINKAR ROY v. DANESH MIR, 2 **C.L.J. 271=2 Cr. L.J. 670=10 C W.N. 257=33 C. 33, F.B.** [*R.*, 1 S.L.R. 50, Cr.]

(211)—*Crim. Pro. Code, ss.* 145, 146, 192, 528, 529 *(f)—Criminal case, if a proceeding under s.* 145—*Magistrate, power of, to transfer such a case.*—A proceeding under s. 145 of the Code is a criminal case and a Magistrate has power to transfer it under ss. 192 and 528 of the Code. There is therefore no illegality in a Magistrate transferring a case, under s. 145, to a subordinate Magistrate and even if there was any, it is cured by s. 529 (*f*) of the Code. GURUDAS NAG v. GAGANENDRA NATH TAGORE, 2 **C.L.J. 614=3 Cr. L.J. 83.** (22 C. 898, 26 M. 188, 28 C. 709, *F.*; 31 C. 350, 28 C. 709, *R.* and *Expl.*; 25 B. 179, *Diss.*) [*Diss.*, 154 P.L.R. 1914=5 P.R 1914, Cr.; *F.*, 37 C. 91= 14 C.W.N. 49=11 Cr. L.J 23=5 Ind. Cas. 29; *R.*, 34 A. 533=10 A.L.J. 27=13 Cr. L.J. 452= 15 Ind. Cas. 84, 10 C.W N. 1095=4 Cr.L.J. 223; *Cons.*, 18 C.W.N. 393=15 Cr. L.J. 359=23 Ind. Cas. 727.]

(212)—*Crim. Pro. Code* (1898), *s.* 145—*Immoveable property, dispute relating to—Fees paid by pilgrims for performing* Sradh *ceremony at Gaya, are not profits of immoveable property —Jurisdiction to institute proceedings under s.* 145 *for dispute with regard to such fees.*—Proceedings under s. 145 of the Code cannot be instituted in respect of a dispute between two parties relating to the distribution of fees paid by pilgrims at Gaya for performing *Sradh* ceremony, although there may be a likelihood of a breach of the peace in consequence of such dispute. Such fees can, in no sense, be said to be profits, which issue out of land. NARAYAN MISSER v. BHUGWAN MISSER, 3 **C. L.J. 137=3 Cr. L.J. 214.**

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(213)—*Crim. Pro. Code, s.* 145, *cl.* (4)—*Refusal to examine witnesses—Discretion of Magistrate not always a question of jurisdiction.*—A Magistrate acting under s. 145, has a discretion in the matter of examination of witnesses. He is not bound to examine all the witnesses adduced by the parties, but may limit the number for good and sufficient reason. In *Manmatha Nath Mitter* v. *Barada Prasad Roy Chowdhury*, 31 C. 685, it was not intended to lay down such a broad rule that the Magistrate had no discretion but was bound, under all circumstances, to examine every witness produced in a proceeding under s. 145, and that if he omitted to do so, he acted without jurisdiction. The discretion, however, is one which must be exercised with due care and caution and with a careful regard to the circumstances of each particular case. SAMIR SHEIKH v. JAHED SHEIKH, **3 C.L.J. 478=3 Cr. L.J. 423.** (31 C. 685, *Expl.*)

(214)—*Crim. Pro. Code, ss.* 145, 517, 520—*Cancellation of proceedings under s.* 145, *Crim. Pro. Code—Order allowing one party to reap the crops, illegal.*—When a Magistrate cancels proceedings under s. 145, on the ground that there is no likelihood of a breach of the peace, he has no jurisdiction to allow one of the parties to reap the crops to the exclusion of the other. Such an order, if passed under s. 517, is fit to be set aside under s. 520. KARIMUDDI FAKIR v. NAIMUDDI KAVIRAJ, **3 C.L.J. 573= 3 Cr. L.J. 466.**

(215)—*Crim. Pro. Code, s.* 145—*Institution of proceedings without apprehension of breach of the peace, without jurisdiction—Instituting fresh proceedings in spite of and during pendency of the Rule issued by the High Court to set aside order passed in previous proceedings, highly improper.*—A District Magistrate, having on the 5th September, 1905, passed an order purporting to have been under s. 145, Crim. Pro. Code, the High Court on 21st December, 1905, issued a rule upon him to shew cause why the said order should not be set aside. The said rule came on for hearing and was made absolute on the 2nd February, 1906. In the meantime, however, on the 12th January, 1906, a Deputy Magistrate, subordinate to the said District Magistrate, on a petition by the opposite party to the said rule and without any enquiry as to whether there was an apprehension of a breach of the peace or not, instituted another proceeding under s. 145, Crim. Pro. Code, in respect of the same subject-matter. *Held*, that during the pendency of the rule in the High Court, proceedings in the lower Court with reference to the matter in dispute must be considered to have been stayed, and it was not only irregular but highly improper to institute fresh proceedings. *Held further*, that while the order of the District Magistrate was yet in force, there was no reason to suppose that there was any apprehension of a breach of the peace. When a rule is issued by the High Court on the District Magistrate staying further proceedings,

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all subordinate Magistrates are bound to obey the orders of the High Court, and no subordinate Magistrate would be justified in carrying on proceedings with reference to the property in dispute which is the subject-matter of the rule or institute fresh proceedings. PRAN BALLAV MITTER v. RASH BEHARI MITTER, **4 C.L J. 418=4 Cr. L.J. 397.**

(216)—*Crim. Pro. Code, s. 145—Symbolical possession in execution of a foreclosure decree, not effective against a lessee who was not a party to the mortgage suit—Actual possession, to be considered in s. 145, Crim. Pro. Code.*—It is a settled rule of law that no decree for foreclosure could be effective against a person interested in the property, if he was not made a party to the suit. Where, therefore, S had executed in 1890 a mortgage by conditional sale in favour of G, and had in 1893 leased the properties covered by it to B for 25 years, and G in 1902 instituted a suit against S upon the mortgage without making B a party and obtained symbolical possession in execution of the decree for foreclosure passed therein. *Held*, that such delivery of possession could not affect the possession of B. BLOOMFIELD v. GANAGDHAR KUNDU, **4 C L.J 562=4 Cr. L.J. 503.** [*R.*, 13 Cr. L.J. 583=15 Ind. Cas. 999.]

(217)—*Crim. Pro. Code, s. 145—Irregularity amounting to want of jurisdiction—Interference by the High Court.*—A Magistrate drew up a proceeding under s. 145, Crim. Pro. Code, but he did not serve any notice upon the first party in accordance with sub-s. (3) of s. 145, Crim. Pro. Code, nor did he fix a notice on some conspicuous place at or near the subject of dispute, nor receive a written statement from either party before he passed his final order under s. 145. There was no appearance on behalf of the first party and no opportunity was given to cite witnesses or to put in any documentary evidence. But on examining one witness on behalf of the second party the Magistrate held that there was a likelihood of a breach of the peace and declared the second party to be in possession. *Held*, that the proceedings of the Magistrate were very irregular and must have prejudiced the first party and that the irregularities were so great as to amount to a want of jurisdiction and to justify the interference of the High Court to set aside the proceedings. AHMED CHOWDHRY v. PARBĀTI CHARAN ROY, **35 C. 774=8 C.L.J 71=12 C.W.N. 848=8 Cr.L J. 119.**

(218)—*Crim. Pro. Code (1898), ss. 145, 146 and 148—Refusal to grant time for regular proceedings to be followed—Attachment under s. 146, when the parties did not file written statements or produce evidence—Illegality.*—In a proceeding under s. 145, Crim. Pro. Code, the parties appeared on the day of hearing but did not file any written statements, or produce any evidence. They prayed for time which the Magistrate did not grant. He then heard the parties and, being unable to satisfy himself

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as to which of them was in possession, attached the subject of dispute under s. 146. *Held*, that the Magistrate in so doing refused to exercise jurisdiction. He ought to have granted time to allow regular proceedings to be followed or he might have informed himself of the facts of the case either by local inquiry under s. 148, Crim. Pro. Code, or in other ways. As he did neither, his order under s. 146 is bad in law and ought to be set aside. SHEIKH MANSAR ALI v. MATIULLAH, **12 C.W.N. 896=8 Cr. L. J 202.** [*F.*, 40 C. 105=16 C.W.N. 1052=15 Ind. Cas. 486=13 Cr L.J. 486; *D.*, 11 Cr. L.J. 27=14 C.W.N. 80=5 Ind. Cas. 40.]

(219)—*Crim. Pro. Code, s. 145, sub-s. (5)—Transfer of a proceeding under s. 145—Power of Magistrate to quash proceeding upon transfer.*—Where a proceeding under s. 145, Crim. Pro. Code, drawn up by a Deputy Magistrate was transferred by the District Magistrate to his own file and then summarily quashed, *held*, that the District Magistrate could only quash the proceeding in accordance with the provisions of sub-s. (5) of s. 145, Crim. Pro. Code, on facts being brought to his notice which were sufficient to satisfy him that no dispute likely to cause a breach of the peace existed, and that his order quashing the proceeding on the sole ground that he thought that the letter addressed to him by one of the parties contained an admission that the other party was in actual possession of the land in dispute was without jurisdiction and should be set aside. *Semble.*—If the District Magistrate after transferring to his own file a proceeding under s. 145, Crim. Pro. Code, drawn up by a subordinate Magistrate, quashed the proceeding on a full consideration of all the facts and after hearing the objections, if any, of the parties, the High Court would not interfere with the order quashing the proceeding. TARA CHARAN SARKAR v. BENGAL COAL COMPANY, LTD, **13 C.W.N. 125=4 Ind. Cas. 354=10 Cr.L.J. 560.**

(220)—*Crim. Pro. Code (1898), ss. 144, 145, 192 (2) and 529—Proceedings under s. 145, if may be instituted during the pendency of a suit under s. 9 of the Specific Relief Act (I of 1877)—Prohibitory order under s. 144, how far invalidates finding of possession, under s. 145—Transfer of proceedings under s 145 by subordinate Magistrate—Legality—S 529—Curing of defect in transfer.*—A Magistrate is not incompetent to proceed under s. 145, Crim. Pro. Code, with regard to properties which form the subject-matter of a pending suit under s. 9 of the Specific Relief Act. A prohibitory order under s. 144, Crim. Pro. Code, was passed against certain landlords with respect to certain lands in a proceeding to which the tenants were not parties. Subsequently in a proceeding under s. 145, Crim. Pro. Code, the Magistrate found that the landlords were in possession of the lands through their tenants at a date when the prohibitory order was still in force. *Held*, that, as the tenants were not parties to the proceeding in which the prohibitory order under

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s. 144, Crim. Pro. Code, was made, the subsequent finding in the proceeding under s. 145, Crim. Pro. Code, that the landlords were in possession through the tenants was not bad in law. A subordinate Magistrate cannot be empowered under s. 192 (2), Crim. Pro. Code, to transfer proceedings under s. 145. Crim. Pro. Code. But a transfer of such proceedings made by a subordinate Magistrate empowered under s. 192 (2) is a legal defect, curable by s. 529, Crim. Pro. Code. KISHORI LAL ROY v SRINATH ROY, 36 C. 370 = 13 C.W.N. 539 = 9 Cr. L.J. 399 = 1 Ind. Cas. 817. (4 C.W.N. 821, *F.*)

(221)—*Crim. Pro. Code* (1898), *ss.* 145, 146 *and* 344—*Proceeding under s.* 145—*Postponement* sine die, *whether legal—Attachment pending disposal*— Solenama, *previously executed and confirmed by decrees, how far binding—Regulation* VII *of* 1822, *s.* 34.—A Magistrate has jurisdiction to postpone *sine die* a proceeding drawn up under s. 145, Crim. Pro. Code. Where a Magistrate, after drawing up a proceeding under s. 145, Crim. Pro. Code, issued an order for attachment of the disputed land till the disposal of the case, and subsequently he postponed the proceeding *sine die*. *Held*, that the postponement *sine die* did not operate as a withdrawal of the order of attachment, which continued in force till the disposal of the case. How far the Magistrate, in passing final orders in a proceeding under s. 145, Crim. Pro. Code, was bound to act in accordance with a *solenama* previously executed by the parties and confirmed by the decrees of Civil Courts, considered. GURU DAS HAZRA v. G. L. WEATHERAL, 13 C.W.N. 601 = 4 Ind. Cas. 537 = 11 Cr. L J. 7.

(222)—*Jurisdiction of Magistrate—Postponing proceeding* sinedie.—A Magistrate has no jurisdiction to pass an order postponing *sine die* a proceeding under s. 145, Crim. Pro. Code, at the same time retaining under attachment the property covered by those proceedings, on the ground that the estate or area in which the land in dispute is situate is under settlement by the Revenue authorities under the provisions of Reg. VII of 1822, there being nothing whatever to show either this, or that the Magistrate followed the instructions in s. 34 of the Regulation. ABDUL RAUF MIA v. RAHOMUDDIN BHUIA, 13 C.W.N. 104 = 8 L.J. 564 = 9 Cr. L J. 35.

(223)—*Crim. Pro. Code* (1890), *s.* 147—*Rights contemplated by the section, not merely easement—Form of final order in a proceeding under s.* 147—*Limitation Act* (XV *of* 1877), *s.* 26.—Where the Magistrate, in a proceeding under s. 147, Crim. Pro. Code, disposed of the case by his final order which ran thus: "*Srimanta Bera* claims a prescriptive right to pass the water of his tank over the paddy land on the south. He has entirely failed to prove exercise of the right uninterruptedly for twenty years. His claim is therefore disallowed." *Held*, that, by his order, the Magistrate has not decided

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the case one way or the other, and that the case must be sent back to him to pass a proper order on concluding his enquiry. that the Court, in passing orders under s. 147, Crim. Pro. Code, should adopt the Form No. 24 in Sch. V of the Crim. Pro. Code, and that the right, contemplated by s. 147, Crim. Pro. Code, is certainly of a more elastic description than the right which has to be strictly proved in terms of s. 26 of the Limitation Act. SRIMANTA BERA v. INDRA NARAYAN PRODHAN, 13 C.W.N. 859 = 3 Ind. Cas. 468 = 10 Cr. L.J. 292.

(224)—*Crim. Pro. Code, s.* 145—*Magistrate if may take proceeding by way of execution of the final orders in a proceeding under—Police delivering formal possession to a party whose possession was declared by the Magistrate, legality of.*—After passing final order declaring a party to a proceeding under s. 145, Crim. Pro. Code, to be in possession, the Magistrate has no jurisdiction to take any proceedings in the nature of execution of that order. Where, after the Magistrate, in a proceeding under s. 145, Crim. Pro. Code, has declared the first and third parties to be in possession of the property in dispute, the police gave formal possession to those parties by planting bamboos, but, disputes still not ceasing, the Magistrate held a local enquiry and again declared the possession of the first and third parties, and a further inquiry was held to determine whether the property of which possession had been declared was identical with the subject of the proceeding under s. 145, Crim. Pro. Code. *Held* that all the proceedings after the final order passed by the Magistrate in the proceeding under s. 145, Crim. Pro. Code, were *ultra vires*. There is no specific provision in the Code authorising a Magistrate to take proceedings in the nature of execution after passing orders under s. 145. KUMAR RONENDRA NARAIN ROY v. KISHORI LAL ROY CHOWDHURI; KUMAR RONENDRA NARAIN ROY v. RAJA SREENATH ROY. 14 C.W N. 78 = 5 Ind. Cas. 40 = 11 Cr. L.J. 26.

(225)—*Crim. Pro Code* (1898), *ss.* 145 *and* 146—*Attachment under s.* 146—*Written statements, failure to file in time—Evidence, omission to adduce—Jurisdiction of Magistrate to attach under s.* 146, *when the parties did not adduce evidence on the appointed date.*—Where the parties to a proceeding under s. 145, Crim. Pro. Code, did not file their written statements or adduce evidence, though more than two months had expired from the date the proceeding was drawn up, but applied for time to file the written statements. *Held*, that the Magistrate did not act without jurisdiction in refusing to grant time and in attaching the disputed land under s. 146, Crim. Pro. Code, on the failure of the parties to adduce evidence. BEJOY MADHUB CHOWDHRY v. CHANDRA NATH CHUCKERBUTTY, 14 C.W.N. 89 = 5 Ind. Cas. 40 = 11 Cr. L J. 27. (12 C.W.N. 896, *D.*) [*D.*, 40 C. 105 = 16 C.W.N. 1052 = 13 Cr. L.J. 486 = 15 Ind. Cas. 486.]

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(226)—*Crim. Pro. Code* (1872), *ss.* 521 *and* 532 - *Right of way—Obstruction—Denial of the right—Competency of Magistrate to pass an ex parte order under s.* 532—*Order for removal of obstruction, validity of.*—S. 532 authorises the Magistrate to exercise the jurisdiction it confers only when the subject of the dispute is open to the use of the public. The Legislature, in conferring on the Magistracy power to intervene for the temporary settlement of disputed civil rights, is careful to direct the preservation of the *status quo* existing at the time the proceedings are instituted. Having imposed on the exercise of jurisdiction, the condition that the subject of the dispute is open to the public, the Legislature, in declaring that the Magistrate is competent to pass under this section, have refrained from empowering the issue of directions for the removal of an obstacle. In a case, where it appeared from the complaint, that the subject of dispute was not open to the use of the public and the complaint prayed for the removal of an obstruction, *held*, that the provisions of s. 532 were not applicable and even if they had been applicable, the order for removal of the obstruction could not be made. *Held*, also, that the Magistrate was not acting properly in having passed an *ex parte* order, under s. 532, directing the parte in possession not to retain possession of the land until he obtained the decree or order of competent Court adjudging him to be entitled to exclusive possession. Such an order could be passed under s. 521, as it would, then, have been competent to the person, to whom the order was directed, to appear and to show cause against it, and to have demanded the submission of question of right to the decision of a jury. *In the matter of* ALFRED LINDSAY, **4 M. 121 = 2 Weir 113 = 5 Ind. Jur. 637**. [*Not F.*, 39 C. 560 = 13 Ind. Cas. 1000 = 13 Cr. L.J. 184, 15 M.L.T. 230 = 26 M.L.J. 233 = 1914 M.W.N. 394 ; *F.*, 23 Ind. Cas. 499 = 15 Cr. L.J. 291.]

(227)—*Crim. Pro. Code* (1882), *ss.* 145, 147—*Dispute concerning land—Duty of Magistrate—Validity of order not made between parties.*—It is the duty of a Magistrate, before he interferes in the exercise of a right, to consider whether he cannot protect persons in the enjoyment of their rights by taking a caution bond from the person from whom or at whose instigation the breach of the peace may be apprehended. But, if a probability of a breach of the peace is established and a Magistrate, instead of taking security, acts under s. 145 or s. 147, then, although the other course might be the wiser and the more politic, the High Court could not, as a Court of Revision, disturb his order on that ground only, if the case was one in which, on other grounds, such an order would be legal. Nor would it be a good ground for objection to the Magistrate's order that a Civil Court has refused an injunction. Where an order under either s. 145 or s. 147 is not made between the parties to the proceeding or when neither of the parties to the proceeding establishes that he is in possession, *held*, that the order is not properly made. SUBBA NAYAK v. TRINCAL, **7 M 460 = 2 Weir 101**. [*F.*, 29 M. 97 = 15 M.L.J. 394.]

(228)—*Crim. Pro. Code* (1882), *s.* 147 —*Dispute concerning the right to perform religious worship in* mosque.—Where a dispute likely to cause a breach of the peace is shown to exist concerning the right to perform a religious service in a *mosque*, a Magistrate is competent to pass an order under s. 147, Crim. Pro. Code. MUHAMMAD MUSALIAR v. KUNJI CHEK MUSALIAR, **11 M. 323 = 2 Weir 117**. [*Diss.*, 14 C W N. 611 = 6 Ind. Cas. 182 ; *F.*, 29 M. 237, 238 = 4 Cr.L.J. 58 ; *R.*, 24 B. 527, 3 Bom. L.R. 416, 46 P.L.R. 1903.]

(229)—*Crim. Pro. Code, s.* 147 — *Dispute between persons claiming to be entitled to officiate as* Kazis *in a* mosque, *applicability of the section to.*—A dispute as to a right to user of a *mosque* by persons claiming to be entitled to officiate as *Kazis* therein, is a dispute coming within s. 147 of the Code and an order, under the section, declaring the possession of the subject of dispute to be with the counter-petitioners, cannot be maintained, where there has been no previous inquiry as to whether any and which of the parties was in possession of the said subject. KADER BATCHA v. KADER BATCHA ROWTHAN, **29 M. 237 = 4 Cr.L.J. 58.** [*Not F.*, 37 C. 578 = 12 C L. J. 22 = 11 Cr L.J. 292 = 14 C.W.N. 611 = 6 Ind. Cas. 182.]

(230)—*Crim. Pro. Code, s.* 147—*Scope of section—User of land by a person in possession —Dispute likely to induce breach of the peace—Procedure of Magistrate — Security to keep peace.*—A tenant, in possession of agricultural land, enclosed it with a wall instead of a hedge. The act was one likely to induce a breach of the peace. The question was whether the case was one falling under s. 147. Though the High Court refused to interfere in revision, *held*, as regards the construction of the section, that it is not confined only to cases in which the user of the land, giving rise to the dispute, is by a person not in possession. It is wide enough to include a case like this, where the user is by the person in possession. It was pointed out that, in a case like this, it would be proper for the Magistrate to take security from the party from whom a breach of the peace is apprehended, though it will not be illegal for him to proceed under s. 147. ARUNACHELAM CHETTIAR v. CHIDAMBARAM CHETTI, **15 M.L.J. 394 = 29 M. 97 = 3 Cr. L.J. 31.**

(231)—*Crim. Pro Code, s.* 145—*Dispute between manager of joint Hindu family and other members.*—A Manager of a joint Hindu family is entitled to be protected in his possession by proceedings under s. 145, Crim. Pro. Code, as against any other member of the family. BHASKARUNI KESAVRAYUDU v. BHASKARUNI CHALAPATI RAYADU, **18 M L J. 343 = 31 M. 318 = 8 Cr. L.J. 205 = 4 M.L.T. 301.**

Dispute as to possession of immoveable property—*continued.*

(232)—*Crim. Pro. Code* (1898), *s.* 145—*Execution sale confirmed and sale certificate issued —No delivery of possession, actual or symbolical — Certificate-holder.*—Where the petitioners bought the lands belonging to the counter-petitioners' family in execution-sale, and the sale was duly confirmed and the sale certificate issued, *held*, that there being no delivery of possession whatever, actual or symbolical, to the petitioners, their rights were not protected by proceedings under s. 145. RAGAVA AIYANGAR v. KRISHNASAWMY AIYAR, **4 M. L.T. 189 = 31 M. 416 = 8 Cr. L.J. 392.**

(233)—*Crim. Pro. Code* (1898), *ss.* 145 *and* 526—*Transfer of case under* s. 145, *Crim. Pro. Code*—" *Criminal cases.*"—*Held*, that proceedings under s. 145 of the Code of Criminal Procedure are "criminal cases" within the meaning of the words as used in s. 526 of the Code, and therefore s. 526 applies to such proceedings. SARDAR KARAM SINGH v. HEARSEY, **11 O. C. 61 = 7 Cr. L.J. 423.** (26 M. 188, *F.*)

(234)—*Crim. Pro. Code* (1898), *s.* 145 —*Jurisdiction of Magistrate — Initiatory order, omission to publish—Procedure when the local area within which land in dispute is situate is doubtful—Revision by High Court.*—An omission to publish the order under s. 145 (3) does not deprive the Magistrate of jurisdiction to deal with the case. Where a Magistrate was satisfied that a breach of the peace was imminent, *held*, that, although his initiatory order was not as explicit and clear as it might have been, yet his proceedings could not be held to be without jurisdiction. *Held*, further, that, in proceedings under Ch. XII of the Code of Criminal Procedure, where there is any doubt as to the exact local area within which the land in dispute is situate, inquiry can be made by a Magistrate having jurisdiction in either of the areas in which the land might be situate. *Held* also that, when a Magistrate has jurisdiction under s. 145 and comes to a decision as to possession within the meaning of s. 145 (4), that decision as to possession, whether right or wrong, cannot be questioned in revision. IKLAS KUNWAR v. RAGHURAJ BAHADUR SINGH, **12 O.C 400 = 4 Ind. Cas. 876 = 11 Cr. L J. 69.**

(235)—*Crim. Pro. Code* (*Act* V *of* 1898), *ss.*145, 146, 439—*Dispute relating to immoveable property—Attachment of* mosque—*Revision.*—Where a Magistrate passed an order under Ch. XII of the Crim. Pro. Code attaching a *mosque*, *held*, upon revision, that the order was made without jurisdiction. CROWN v. MUBARAK ALI, **46 P.L R. 1903.**

(236)—*Crim. Pro. Code* (1898), *ss.* 147, 439—*Dispute relating to immoveable property—Right of way—Jurisdiction of Criminal Court—Procedure—Revision—Criminal cases.*—Where an order was passed under s. 147, Crim. Pro. Code, without complying with the procedure prescribed and giving notice to the party concerned, to show cause why an order against him should not be passed, the Chief Court on revision set aside the order as passed without jurisdiction. A person against whom proceedings are instituted is entitled to produce evidence to prove that the case does not fall within the section. No order under the section can be passed to remove an obstruction from a public way, when it is not shown that the right of way was exercised within three months of the institution of proceedings. BHANA v. CROWN, **105 P.L.R. 1909 = 12 P.R. 1909, Cr. = 11 P.W.R. 1909, Cr. = 4 Ind. Cas. 860 = 11 Cr.L.J 61.** (23 P.R. 1902 = 28 P.L.R. 1902, 7 P.R. 1907 = 104 P.L.R. 1907, *F.*)

(237)—*Crim. Pro. Code* (1898), *ss.* 145 *and* 435 —*Order* ultra vires—*Revision—Joint trial—Illegality of—Possession what.*—S. 435, Crim. Pro. Code, does not exclude the jurisdiction of the High Court to revise an order of the Magistrate which is illegal and irregular, though it purports to have been made under s. 145, Crim. Pro. Code. Where several accused persons were found to be in possession of different and separate pieces of land alleged to be the property of the complaint, the accused could not be tried jointly under s. 145, Crim. Pro. Code, and the order passed thereon was, therefore, illegal. Where the Magistrate finds that the dispute was between the owner and the occupant of the land or, in other words, between the persons in actual and in constructive possession, the Magistrate should maintain the person in actual possession. CROWN v. JAMAL *wd.* PIRMAHOMAD, **9 Cr L J. 265 = 1 S.L R. 25, Cr.,**

(238)—*Crim. Pro. Code* (1898), *s.* 146—*Magistrate holding no inquiry — Interference in revision.*—Where a Magistrate, without making any inquiry as to the rights of the parties, passed an order, attaching the property in dispute, pending the decision of a competent Court of civil jurisdiction, *held*, that the order of attachment was erroneous and must be set aside. CROWN v. ISAKHAN, **9 Cr. L.J. 272 = 1 S.L.R. 33, Cr.**

(239)—*Crim. Pro. Code* (1898), *s.* 145—*Proceedings under, not criminal proceedings—Civil Court's power to stay proceedings in Criminal Court.*—A Civil Court has no right to issue an injunction which would have the effect of staying proceedings in a Criminal Court. But proceedings under s. 145, Crim. Pro. Code, cannot be said to be criminal proceedings within the meaning of that principle, and a Civil Court's action cannot possibly be fettered by any action, which one of the parties to the suit may choose to take before the Magistrate under the provisions of that section. BEGAM v. SETH DOOLI CHAND, **2 Ind. Cas. 266.**

(240)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 145 —*Likelihood of breach of peace.*—Where neither the preliminary nor the final order of a Magistrate under s. 145 of the Crim. Pro. Code, disclosed that he was satisfied of the likelihood of the disputes leading to a breach of the peace, the order was set aside as illegal. BAKHSHULLAH v. LATAFAT-UN-NISSA, **A.W. N. 1884, 317.**

Dispute as to possession of immoveable property—*continued.*

(241)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 145—*Right to collect rent of immoveable property.*—A dispute about the right to collect the rent of immoveable property is a dispute in which a Magistrate can proceed under s. 145 of the Crim. Pro. Code. DURGA KUAR v. PHULZARI LAL, **A.W.N. 1885, 299** (11 C. 413, *F.*)

(242)—*Crim. Pro. Code, Act X of* 1882, *s.* 147—*Defective in essentials.* — An order passed under s. 147 of the Crim. Pro. Code, which does not contain a statement that the Magistrate is satisfied that a dispute likely to induce a breach of the peace exists and which does not state the grounds on which he is so satisfied, is illegal. *In re* MAHABIR PRASAD, **A.W.N. 1885, 302.**

(243)—*Crim. Pro. Code, Act* XXV *of* 1861, *s.* 318—*Question of possession only to be considered.*—Under s. 318 of the Crim. Pro. Code, the Magistrate has to inquire only into the fact of actual possession and not the question how possession was obtained. DASTUR HUSANG JAMASJI v. R. L. FELL, **6 B.H C. Cr. 30.**

(244)—*Crim. Pro. Code, s.* 145—*Dispute as to right to collect rent—Attornment by tenants to stranger.*—In a dispute as to the right of collecting rents of certain land, the tenants were paying rents to one of the parties up to the commencement of the dispute which led to the proceeding under s. 145, and, upon the dispute taking place, they attorned to the other party by real or pretended payments. *Held*, that such attornment by the tenants did not put an end to the tenancy and to the right of the person who was collecting rents up to the time of the dispute, to collect the rents. *Held*, also, that such proceedings by the tenant could not deprive him of recourse to s. 145 in case of danger to the peace to have possession of the right to collect rents maintained, pending civil proceedings. SARBANANDA BASU MOZUMDAR v. PRAN SANKAR ROY CHOWDHURY, **15 C. 527.** [*F.*, 16 C. 513.]

(245)—*Crim. Pro. Code, s.* 145 (5)—*Dispute concerning land—Person interested as tenant, not required to attend as party—Application for addition of party—Practice.*—Under s. 145 (5) any person claiming to be interested in the land in dispute as a tenant of part of it, who is not required to attend as a party, should be heard, if he makes an application to be added as a party, in order to show that no dispute likely to cause a breach of the peace exists or has existed. HARAN MANDAL v. MOHIM CHANDRA PRAMANICK, **37 C. 285=6 Ind. Cas. 545=11 C.L.J. 414=14 C.W.N. 708=11 Cr. L.J. 371.**

(246)—*Crim. Pro. Code* (1898), *s.* 147—*Right to perform* puja *in a temple, whether falls within the scope of*—"*Land,*" *meaning of.*—A dispute concerning the right to perform *puja* by entering into a certain temple is not a dispute concerning the right of use of any land within the meaning of s. 147, Crim. Pro. Code. *Semble*,—The expression "land" in s. 147, Crim. Pro. Code, does not necessarily include buildings. GUIRAM GHOSAL v. LALBEHARI DAS, **37 C. 578=12 C.L.J. 22=11 Cr. L.J. 292=6 Ind. Cas. 182=14 C.W.N. 611.** (29 M. 237, *Not F.*) [*R.*, 38 C. 387=13 C.L.J. 445=12 Cr. L.J. 3=9 Ind. Cas. 6.]

(247)—*Crim. Pro. Code* (1898), *ss.* 145, 146—*Receiver, accretions to property, if rests in—Accretion, title to, prevails against all persons not claiming under prior title*—Bona fide *tenant under a* de facto *proprietor, if acquires raiyati rights—Non occupancy raiyat, if entitled to possession of accretions—Receiver appointed under* s. 146, *rights of.*—As a general rule, a Receiver takes no title in property acquired by the person formerly in possession. But a Receiver is entitled to any accretion to the property vested in him, upon general principles and the policy of the law by which a proprietor acquires a title to accessions to his property. Where a Receiver has been appointed under s. 146 of the Crim. Pro. Code in respect of any property in dispute, the Receiver is entitled, unless some special circumstance is established not only to the subject-matter of the proceedings under s. 145, but also to the accreted land, and gives good title to a tenant under him. Such title will prevail against a trespasser but not against a person who establishes a title to the accreted land acquired prior to the vesting of the lands in the Receiver. *Semble*:—Whether a tenant, who enters upon a land held under a *de facto* proprietor, can acquire a raiyati interest therein, even though the *de facto* possessor ultimately turns out to be no real owner, in case the tenant should have entered on the land in good faith. Where a tenant has acquired the status of a non-occupancy raiyat in respect of any land, he is entitled to possession of land which has accreted to his holding. MADHU v. SABAR ALI, **14 C.W.N. 681=6 Ind. Cas. 177=11 Cr. L.J. 288.** (20 C. 708, 8 C.W.N. 315=5 C.L.J. 9, 21 C. 233, 4 C.L.J. 63=33 C. 444, 13 C.W.N. 269=8 C.L.J. 537, 13 C.W.N. 267=8 C.L.J. 538, 8 C.L.J. 541, 10 C.L.J. 55, *R.*).

(248)—*Crim. Pro.Code* (1898), *ss.* 145, 146 *and* 147—*Costs of proceedings under ss.* 145, 146 *or* 147—*Amount of costs, assessment of—Time for making order for costs.*—*Held*, that only the Magistrate who passes an order under ss. 145, 146 or 147 of the Code can decide by whom the costs of the proceedings are to be paid, but the amount of the costs may be assessed by his successor. *Held*, further, that an order for costs should as a rule be made at the time of passing the order under ss. 145, 146 or 147, when the facts are fresh in the mind of the Magistrate. IKLAS KUAR v. RAJA RAGHURAJ BAHADUR SINGH, **13 O.C. 66=5 Ind. Cas. 943=11 Cr. L.J. 335.** (21 C. 609, 22 C. 384, 23 C. 37, 22 C. 387, 24 C. 757, 29 M. 273, *R.*)

(249)—*Crim. Pro. Code* (1898), *ss.* 145, 146—*Order of attachment, without written statement and evidence—Jurisdiction of Magistrate.*—Although it is not beyond the jurisdiction of a Magistrate to make an order under s. 146, Crim. Pro. Code, without written statements and

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without evidence, yet, if he makes such an order, without making any attempt to investigate the question in the light of evidence and of written statements, he acts without jurisdiction. ASFANDYAR KHAN v. IRSHAD KHAN, **11 Cr. L.J. 90=5 Ind. Cas. 249.**

(250) — *Crim. Pro. Code* (1898), s. 145—*Failure to decide effect of Civil Court decree between parties — Refusal of jurisdiction.*—Neglecting to decide what effect a Civil Court decree between the parties to a proceeding under s. 145 of the Crim. Pro. Code may have had on the question of possession, is omission to deal with a material part of the case made before the Magistrate and a refusal of jurisdiction by him. GOPALA CHANDRA CHOWDHRY v. UMA CHARAN GHOSH, **11 Cr. L.J. 184=5 Ind. Cas. 646.**

(251)—*Crim. Pro. Code* (1872), s. 531—*Order of attachment when to be made—Summary order illegal.*—A Magistrate is not competent summarily to order attachment, without recording a proceeding under s. 530, Crim. Pro. Code, and without taking evidence. It is only when he is unable to determine the fact of actual possession that he is competent, under s. 531, to attach the land. *In the matter of* RAM SOONDARI DEBEE, **1 J. G. 16.**

(252)—*Crim. Pro. Code* (1872), s. 518—*Order under the section not to be directed to the owner not in actual possession.*—An order under s. 518, Crim. Pro. Code, cannot be directed to an owner of property who has sublet it to others and who is not in consequence in actual possession or management of it. *In the matter of* SREENATH SEIN, **1 J. G. 30.**

(253)—*Crim. Pro. Code* (1872), s. 530—*Joint owner erecting edifice—Magistrate incompetent to order exclusive possession.*—A joint owner of land erected on it an edifice against the will of the joint owner. The Magistrate made an order under s. 530, Crim. Pro. Code, awarding exclusive possession of that portion of the land on which the edifice was erected to the person who erected it. *Held* that s. 530 did not apply to the case. *In the matter of* RAJ COOMAR SINGH, **1 J.G. 45.**

(254)—*Crim. Pro. Code* (1872), s. 530—*Proceedings based upon insufficient grounds—Jurisdiction of the Magistrate.*—Where the proceedings recorded by a Magistrate under s. 530 were based upon materials which did not disclose sufficient ground for considering that a breach of the peace was imminent, *held*, the Magistrate had no jurisdiction to make an order calling upon the parties concerned in the dispute to attend in Court and give in a written statement of their respective claims in respect of the fact of actual possession of the subject of dispute. CHUNDER MADHAB v. JUGGUT CHUNDER, **2 J.G. 4.**

(255)—*Crim. Pro. Code* (1872), ss. 530 *and* 533 — *Question of possession—Local enquiry to be made by Magistrate himself—Local enquiry by subordinate Magistrate legal with parties, consent—Scope of such enquiry.*—In a proceeding under s. 530, Crim. Pro. Code, the Magistrate must decide the fact of possession on evidence taken by himself and not according to the result of a local enquiry made under s. 533, unless the parties have consent to be bound thereby. *Per Prinsep, J.* The local enquiry referred to in s. 533 should be restricted solely to some question relating to the features of the property about which the dispute has risen, and should not be directed to any matter which can be proved before the Magistrate by oral evidence. *In the matter of* BAIKUNT KUMAR, **2 J.G. 16.**

(256)—*Crim. Pro. Code* (1872), s. 530—*Execution of decree for ejectment—Power of Magistrate—Effect of ejectment.*—In the execution of a decree for ejectment, a Magistrate has power only to bind down any party whom he might consider as putting forward a wrong claim to the property to keep the peace under s. 530, Crim. Pro. Code. But he has no power to order the cutting up of standing crops and make them over to the party entitled to them. The effect of an ejectment under the rent law is to dispossess the ryot not only of the land, but also of the crop standing thereon. *In the matter of* DURJUN MAHTON, **2 J G. 23.**

(257)—*Crim. Pro. Code* (1872), s. 530—*Power of Magistrate under.*—It is the likelihood of a breach of the peace, with the consequent necessity for immediate action, which alone warrants action by the Magistrate under s. 530. *In the matter of* KUNUND NARAIN, **2 J.G. 27.**

(257-*a*)—*Crim. Pro. Code* (1872), s. 530—*Form of notice under the section—Right of intervenor to come in.*—The notice shall be addressed to known individuals and not be in the form of a public proclamation or citation. The Crim. Pro. Code contains no provision for allowing an intervenor to come in, in the middle of the proceedings held by a Magistrate under this section. *In the matter of* KUNUND NARAIN, **2 J.G. 27.**

(257-*b*)—*Crim. Pro. Code* (1872), s. 530—*Power of Magistrate under section.*—A Magistrate has no power to decide a question of possession under s. 530, until he has recorded a proceeding stating the grounds of his being satisfied that the dispute for possession is likely to induce a breach of the peace. *In the matter of* KUNUND NARAIN, **2 J.G. 27.**

(258)—*Crim. Pro. Code* (1872), s. 532—*Actual dispute essential for an order under the section—Verbal altercation not enough—Nature of power under section.*—A person claiming to be the sole proprietor of a private road placed gates at one end of it to prevent its use by the public between sunset and sunrise. On the motion of the Deputy Commissioner of Darjeeling, the Magistrate made an order under s. 532 "that possession of the private road be not taken until the claimant shall have obtained the decision of a competent Civil

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Court as to exclusive possession." *Held* that there being no evidence of any one having exercised the right of passing over the road between sunset and sunrise, there was no dispute under s. 532. A Magistrate can interfere only when there is an actual dispute. A mere discussion or verbal altercation between parties claiming rights of the kind described is not enough. The section does not enable a Magistrate to make a purely declaratory order, but it enables him to prevent arbitrary interruptions by any person of rights actually enjoyed which have been exercised by the public, or a person, or class of persons. *In the matter of* MAHARAJA OF BURDWAN, **2 J.G. 31.**

(259)—*Crim. Pro. Code* (1872), *s.* 530—*Possession through* tikkadar—*Nature of possession —Per Jackson, J.*—Where a Zamindar has let his farm, he, his farmers and the occupying ryots, are all in their degree concerned in any dispute as to possession which may arise and they ought to be maintained in possession of the interests which they severally enjoy. HARAKH NARAIN v. LUCHMI BUX, **3 J.G. 18.**

(260)—*Crim. Pro. Code* (1872), *s.* 530 —*Decree of Civil Court—Duty of Magistrate as to enforcement of— Magistrate not competent to proceed afresh.*—Where a Civil Court has passed a decree determining the rights of the parties to the suit in respect of a certain land, the Magistrate is bound to uphold that decree. He cannot, as between the parties, proceed under s. 530, Crim. Pro. Code, to decide afresh upon the question of possession. BHOLANATH v. MOTHUR, **3 J.G. 45.**

(261)—*Crim. Pro. Code, Act* X *of* 1872, *s.* 530—*Question of possession—Evidence.*—No order as to possession under s. 530 of the Crim. Pro. Code, can be passed without taking evidence. GOBIND v. JAGHESHAR, **A.W.N. 1882, 18.**

(262)—*Crim. Pro. Code* (1882), s. 145—*Test of possession.*—Where in a dispute about some villages, it appeared that none of the parties were in actual possession but one of them was the *lambardar* (collecting rents and paying revenue) of the villages, *held* that the person was to be considered the one in possession for the purpose of s. 145 of the Crim. Pro. Code. RAM DAI v. PARBATI, **A.W.N. 1890, 178.**

(263)—*Crim. Pro. Code* (1898), *ss.* 145, 435 —*Emergent order under* s. 145—*Subsequent omission by Magistrate to comply with provisions of section—Revision.*—Where a Magistrate made an emergent order for possession of immoveable property under s. 145 (4), but subsequently omitted to follow the procedure prescribed by the section and make an enquiry into the fact of possession, the High Court ordered the Magistrate to make such enquiry, holding that the order was not absolutely without jurisdiction, and therefore not exempted from the application of s. 435 (2) of the Code. KING-EMPEROR v. SRI KISHEN DAS, **A.W.N. 1901, 154.**

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(264)—*Crim. Pro. Code, Act* V *of* 1898, *s.* 145—*Preliminary order—Terms.*—Where a preliminary order in a proceeding under s. 145 of the Crim. Pro. Code stated that the Magistrate had received a police report requesting such an order, that a complaint had been given at the police station and that the Magistrate believed there existed a danger of a breach of the peace, and eventually there was a breach of the peace, *held* that there was a sufficient compliance with the terms of s. 145 and that the final order in the case was not open to revision on the ground of such want of completeness in the order as might have been possible. HAR PRASAD v. PANDURANG, **A.W.N. 1905, 260 = 3 Cr. L.J. 48.** [*R.*, 32 A. 132 = 7 A.L.J. 132 = 5 Ind. Cas. 471 = 11 Cr. L.J. 141, 11 Cr. L.J. 69 = 4 Ind. Cas. 876 = 12 O.C. 400]

(265)—*Likelihood of breach of peace.*—In order to give a Magistrate jurisdiction under s. 318, Crim. Pro. Code, 1861, regarding the possession of land, he must be first satisfied that there exists a dispute likely to induce a breach of the peace and he must record the grounds which must be based upon evidence, and not derived merely from his own moral consciousness. HIGH COURT PROCEEDINGS, 15TH MAY 1869, **4 M H.C App 49** *See also* TARAFDI MUNDUL v. CHUNDER BHOOSUN BANERJEE, **16 W R. Cr 64** *In the matter of the petition of* J.D. SUTHERLAND, **9 B.L.R. 229.**

(265-*a*)—*Likelihood of breach of the peace— Crim Pro. Code,* 1861, *s* 318.—Before instituting proceeding under s. 318, Crim. Pro. Code, 1861, a Magistrate must first satisfy himself on legal evidence that there exists a likelihood of a breach of the peace and must also record a proceeding stating the grounds of his being so satisfied. TARAFDI MUNDUL v. CHUNDER BHOOSUN BANERJEE, **16 W.R. Cr. 64.**

(266)—*Crim. Pro. Code* (1872), *s.* 533—*Security to keep peace.*—The taking of security for keeping the peace, in a dispute as to the possession of immoveable property is a matter within the discretion of the Magistrate, provided that he has materials upon which to proceed. *In re* KALI PROSUNNO ROY, **23 W.R. Cr. 58.**

(267)—*Decision of Magistrate as to possession —Power to decide question of possession— Recognizance to keep peace.*—If a Magistrate is satisfied that the circumstances require it, he may make an order under s. 318 of the Code of 1861, notwithstanding that he has taken recognizance under s. 282. *In the matter of* J. D. SUTHERLAND, **9 B L R. 229 = 18 W R Cr. 11.** *See also In re* RAJAH ANUNDNATH ROY, **4 W.R. Cr. 12.**

(267-*a*)—*Dispute as to possession—Magistrate's duty—Crim. Pro. Code, s.* 318.—In a case relating to dispute as to possession, the Magistrate instead of merely binding down the parties to keep the peace and declining to interfere further, must inquire into the question

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of possession under s. 318, Crim. Pro. Code. *In re* RAJAH ANUNDNATH ROY, **4 W.R.Cr. 12.**

(268)—*Disputes as to right of way, water, etc.—Crim. Pro. Code,* 1861, *s.* 320.—S. 320 of Crim. Pro. Code does not require that there should be an apprehended breach of the peace before the authorities can interfere to decide a right of way. QUEEN v. TOYLUCKONAUTH SIRCAR, **2 W.R.Cr. 64.**

(269)—*Disputes as to right of way, water, etc.—Dispute as to use of land—Order to fill up ditch—Crim. Pro. Code* (1861), *s.* 320.—A Deputy Magistrate has no jurisdiction, under s. 320 of the Code of Criminal Procedure, 1861, to order a ditch, which was once a pathway, but afterwards filled up, to be opened out, and a wall to be pulled down which had been built upon it before any complaint was made about filling up the ditch. Even if he had jurisdiction, no such order should be passed without legal proof that the ditch and pathway had been opened to the use of the public and of the prosecutor. SREEMUNTO DULOVI v. RAMACHAND ADUCK, **5 W.R. Cr. 57 = 1 Wym. Cr. 50.**

(270)—*Dispute as to right of way, water, etc.—Procedure—Dispute as to right of water.*—In deciding a dispute as to a right of water, the Magistrate must follow strictly the course pointed out by Ch. XXII of the Code of Criminal Procedure, 1861. QUEEN v. RAMNATH, **7 W.R. Cr. 45.** QUEEN v. MADHO CHURN, **13 W.R.Cr. 51.**

(271)—*Dispute as to right to water—Chs.* XX, XXII, *Crim. Pro. Code,* 1861.—In a case of dispute as to the right to the use of water, the Magistrate should not proceed as for a nuisance under Ch. XX, Crim. Pro. Code, 1861. QUEEN v. MADHO CHURN, **13 W.R. Cr. 51.**

(272)—*Disputes as to right of way, water, etc.—Right of way, dispute as to—Crim. Pro. Code* (1861), *s.* 320—*Obligation of Magistrate in case of right of way.*—A Magistrate is bound to investigate a case in which the complainant alleged that his right of way had been interfered with, and ought not to refer the complainant to the Civil Court. *In the case of* BHOIRO MUNDUL, **14 W.R. Cr. 28.**

(273)—*Nature and effect of Civil Court's decision—Duty of Magistrate—Crim. Pro. Code* (1861), *s.* 318—*Execution of decree by Civil Court.*—When a Civil Court decree has been passed regarding the whole or any portion of the disputed land, it is the Magistrate's duty to maintain that decree, and he cannot again institute, under s. 318, proceedings regarding the land covered by it. RAI MOHUN ROY v. MR. J. P. WISE, **16 W.R. Cr. 24.** [*App.*, 5 C.L.R. 200, 6 C. 835; *F.*, 7 C.L.R. 516; *R.*, 25 W.R. Cr. 17.]

(274)—*Crim. Pro. Code,* 1872, *s.* 532—*Right of use of certain pyne water—Limitation.*—In a dispute between the 1st and 2nd parties concerning the use of a certain pyne water, s. 532

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would authorize the Magistrate to enquire into the matter. When it was also found that the subject of dispute *viz.*, the pyne water was open under certain restrictions to the use of a person, namely, the 1st party, the Deputy Magistrate was justified in restraining the 2nd party from a course of action which had the effect of keeping that water exclusively in his own possession, provided the right of use had been exercised within three months, if capable of being exercised throughout the year; or during the last season, if it existed at particular seasons. CHOWDHREE ZUHOORUL HUQ v. KURUM CHAND SINGH, **24 W.R.Cr. 15.**

(275)—*Nature and effect of Civil Court's decision—Delivery of possession in execution of decree of Civil Court—Power of Magistrate.*—The act of a process peon, delivering over possession of the disputed land to the purchaser as part of a tenure sold in execution, does not take away the power of a Magistrate to inquire into the question of possession between the parties. NOBIN CHUNDER KOONDOO v. JOGENDRO NATH BHUTTACHARJEE, **25 W.R. Cr. 18.**

(276)—*Nature and effect of Civil Court's decision—Decree of Civil Court for possession.*—A Magistrate ought not to interfere under s. 318, Code of Criminal Procedure, 1861, with the execution of a decree of the Civil Court. SHAMA SOONDERY DEBBIA v. JARDINE, SKINNER & Co., **6 W.R. Cr. 10.**

(277)—*Nature and effect of Magistrate's decision—Effect of order as to possession—Right and title of party under order.*—The effect of the order of the Criminal Court giving possession of real estate is merely to prevent the occupation being disturbed by violence, and confers no right or title on the party put in possession. KADIR BUKHSH KHAN v. MUSSUMATAIN KUSSEEBOON-NISSA, **5 M.I.A. 413 = 1 Sar. 461.**

(278)—*Nature and effect of decision—Third parties—Disobedience of order.*—Where an order under s. 318 of the Crim. Pro. Code, 1861, was made between A on the one side and B and the three tenants of B on the other, declaring that A was in possession of the property in dispute, *held* that this order was only binding on the actual parties to the case before the Magistrate, and that subsequent tenants of B could not be criminally punished for disobeying the order in question. *In the matter of* GOPAL BURNAWAR, **3 B.L.R. A. Cr. 13.** [*F.*, 18 M. 51.]

(279)—*Nature and effect of decision—Suit for declaration of title.*—A plaintiff in a civil suit brought for confirmation of his possession by a declaration of his title to certain land obtained, pending his suit, an order from the Magistrate under s. 318 of the Crim. Pro. Code, 1861, that he should be maintained in possession until ousted in due course of law. The suit was dismissed, the plaintiff failing to prove his title; and the defendants then applied to the High Court under s. 404 of the Crim. Pro. Code to set aside the Magistrate's order

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and put them in possession. *Held* that their proper course was by a suit in the Civil Court for possession, and the application under the Criminal Procedure Code was rejected. JUGGESH PRAKASH GANGULI v. NILKAMAL MOOKERJEE, **3 B L R. A.C. 57=11 W.R. Cr. 43.**

(280)—*Nature and effect of decision—Obstructing road -Suit for exclusive possession.*—The Magistrate had, on the complaint of the defendant, passed an order under s. 320 of the Crim. Pro. Code, 1861, forbidding the plaintiff to retain possession of a piece of land to the exclusion of the public until he had obtained the decision of a competent Court adjudging him to be entitled to such exclusive possession. The plaintiff accordingly brought his suit in the Munsiff's Court to recover possession of the land. The Munsiff gave him a decree for exclusive possession of the land. On appeal, the Judge held that the Munsiff had no jurisdiction to try the question whether the public had a right of way over the land. The Judge's decision was reversed on special appeal, and the case remanded to the Judge to try the issue whether the plaintiff was entitled to the exclusive use of the land. MAHESH CHANDRA MOOKERJEE v. RAMUTAM PALIT, **5 B.L.R. Ap. 68=14 W R. 163.**

(281)—*Nature and effect of Magistrate's decision—Order under Ben. Act IV of 1840 as to possession, omission to set aside.*—*Held* that the plaintiff having failed to set aside an award as to possession made by the Criminal Court under Act IV of 1840 within the limitation period, his claim in opposition to that award was not maintainable. GOPAL NATH v. ABDOOL GANNY, **1 Agra 120.**

(282)—*Adverse possession.—Possession under Magistrate's order*—Possession under the order of a Magistrate, which is set aside by a decree of a Civil Court, is of no effect against a plea of limitation. FIRINGEE SAHOO v. SHAM MANJHEE, **8 W.R. 373.** [*R.*, 28 M. 338.]

(283)—*Adverse possession—Possession under erroneous order—Limitation.*—Possession under an erroneous order of a Magistrate does not constitute such a *bona fide* possession as will prevent the law of limitation from running. MOOKTAKASHY v. LUCKEE, **2 Ind. Jur. O.S. 4.**

(283-*a*)—*Crim. Pro. Code, s. 145—Order under, without enquiry as to possession—Legality—Suit to set aside the order—S. 28 and art. 47, Limitation Act* (1877).—An order under s. 145, Crim. Pro. Code, is not *ultra vires*, though passed without taking any evidence on the question of possession, when the person against whom the order is made admits the possession of his opponent. Where the Magistrate's order is not bad for want of jurisdiction, s. 28 and art. 47 of the Limitation Act apply to a suit brought to set aside such an order. GANGADHARAM IYER v. SANKARAPPA NAIDU, **9 M.L.T. 91=9 Ind. Cas. 285=12 Cr. L.J. 47.**

Dispute as to possession of immoveable property—*continued.*

(284)—*Crim. Pro. Code, 1872, s. 491—Breach of the peace—Decision of Magistrate as to possession—Duty of Magistrate to maintain possession even when contrary to former order of another Magistrate.*—A Magistrate, finding that two years previously his predecessor in office had made an order under s. 318, Crim. Pro. Code, 1861, regarding the possession of certain land and that the same had not been complied with, enforced the same and changed the possession in accordance with the order, *held*, that the Magistrate ought, under s. 491, Code of Criminal Procedure, to have maintained the possession which he found, even if it was inconsistent with his predecessor's order, and that he ought not to have taken any steps in the matter, unless some one actually in possession, and guaranteed possession by that order, came to complain to him that his possession was threatened, or that he had just been forcibly turned out, and asked, in pursuance of that order, to be maintained in possession. QUEEN v. PROTAB CHANDRA BAROOAH, **21 W.R. Cr. 2.**

(285)—*Crim. Pro. Code*, 1872, *s. 534, order under.*—The foundation of an order under s. 534 should be the finding of the Court, to the effect that the person in whose favor the order is made has been dispossessed of specific immoveable property by the use of criminal force, which force formed a material ingredient in the matter of a criminal conviction. And when such a finding has been arrived at, the order should be in terms to restore the person, who had been so dispossessed to the property from which he had been dispossessed. MOHUNT LUCHMI DASS v. PALLAT LALL, **23 W.R. Cr. 54.**

(286)—*Crim. Pro. Code* (1898), *ss.* 144, 145, 435—*Revisional powers of the High Court.*—Where there exists an order passed under s. 145 (1) and in substantial compliance with the requirements of the section, the High Court has no power in revision to interfere with the proceeding under ch. XII. BABBAN SINGH v. BALDEO SINGH, **4 A.L.J. 91=A W.N. 1907, 50=5 Cr. L.J 117.** (2 A.L J. 272, A.W.N. 1903, 102, A.W.N. 1904, 234, *D*) [*R.*, 14 Cr. L.J. 605=21 Ind. Cas. 477=16 O.C, 192.]

(287)—*Crim. Pro. Code, ss.* 145, 435 (3)—*Jurisdiction—Revision—Powers of High Court.*—Notwithstanding the provisions of s. 435 (3) of the Code of Criminal Procedure, the High Court has jurisdiction to call for the records of proceedings, purporting to be proceedings under ch. XII of the Code, if, in fact, no order in writing, such as is required by section 145 (1) of the Code, has been passed by the Magistrate. BIHARI LAL v. CHAJJU, **A.W.N. 1907, 49=2 A.L.J. 272=2 Cr. L.J. 222.**

(288)—*Crim. Pro. Code* (1898), *ss.* 145, 435—*Revision by High Court of order under s.* 145.—Where the proceedings before a Magistrate are really within the purview of s. 145, the High Court cannot under s. 435 interfere in revision.

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But it can interfere where the proceedings merely purport to be under the section and disclose an exercise of powers not conferred by it. *In re* RASAL JAMAL, **7 Bom. L.R. 475=2 Cr. L.J. 451.**

(289)—*Crim. Pro. Code,* 1898, ss. 145, 537—*Parties present—Notice not pasted—Irregularity—Effect of order.*—Where parties to proceeding under s. 145 of the Code of Criminal Procedure had notice of the proceedings and had their cases fully heard by the Magistrate, the order should not be set aside in revision even though the provisions of the section were not strictly complied with and the parties were not personally served and no notice was fixed at the disputed property. The object of the section merely is to prevent a breach of the peace by maintaining one or other of the parties in possession. DEBI PRASAD v. SHEODAT RAI, **6 Cr. L.J. 352=4 A.L.J. 705=A.W.N. 1907, 265=30 A. 41.** (27 A. 296, *R.*) [*R.*, 11 A.L.J. 586=14 Cr. L.J. 277=19 Ind. Cas. 709.]

(290)—*Crim. Pro. Code,* 1898, ss. 145, 526, *Letters Patent, cl.* 29—*Power of High Court to transfer a case under s.* 145.—A case under s. 145 of Crim. Pro. Code is a criminal case and the High Court has power to transfer the case under both s 526, Crim. Pro. Code, and cl. 29 of the Letters Patent. *In re* ARUMUGA SEGUNDAN, **12 M.L.J. 391=2 Weir 678=26 M. 188.**

See ACT XXVII OF 1860, 11 W.R. Cr. 23=2 B.L.R. A. Cr. 27, 25 W.R Cr. 16.

See ACT I OF 1877, s. 9, 7 C.L.J. 547.

See CRIMINAL TRESPASS, 2 N.W.P. 82.

See HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 2 C. 293, F.B.

See PENAL CODE, s. 188, Rat. Un. Cr. C. 904=Cr. Rg. 14 of 1897.

See SECURITY TO KEEP THE PEACE—GENERAL—POSITION OF PARTIES REQUIRED TO FURNISH SECURITY, ETC., 12 C.W.N 606=7 Cr.L J. 403, 6 C.L.J. 697=6 Cr.L J. 398=35 C. 117=12 C.W.N. 487, 5 N.L.R. 94=3 Ind. Cas. 64=10 Cr. L.J. 221.

See SECURITY TO KEEP THE PEACE—APPELLATE COURT, 3 C.W.N. 297.

See SECURITY TO KEEP THE PEACE—EVIDENCE AND PROCEDURE, A.W.N. 1906, 61=3 Cr. L.J. 323=28 A. 406.

Disqualification of Magistrates.

See MAGISTRATE, JURISDICTION OF.

(1)—*Crim. Pro. Code,* ss. 528, 556.—The fact that a Magistrate applies to prosecute the petitioner for making false charges against himself is a disqualification within the meaning of s. 526, Crim. Pro Code, preventing him from going on with the criminal charge under s. 506. S. 556 personally disqualifies a Magistrate, who, at the time he convicts the accused, applies for leave to prosecute him for applying for a transfer on false grounds. RAM LAL v. KING-EMPEROR, **2 L.B.R. 220.**

See CRIM. PRO. CODE (1898), s. 556, A.W.N. 1908, 95=5 A.L.J. 357=7 Cr. L.J. 393.

See JURY, 7 C. 42=8 C.L.R. 273.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 14 B. 572.

Distance.

Of ten miles, how to be measured—*See* BOM. ACT VII OF 1873, ss. 35, 37, Rat. Un. Cr. C. 138=Cr. Rg. 20-2-1879.

Distinct Offences.

See JOINDER OF CHARGES.

See JOINT TRIAL.

See CRIM. PRO. CODE, 1898, s. 35, 11 A. 393=A.W.N. 1889, 152.

See CRIM. PRO. CODE, 1898, s. 233, 29 C. 387=6 C.W.N. 550.

Punishment how passed in respect of—*See* SENTENCE—CUMULATIVE AND SEPARATE SENTENCES, 13 C.P.L.R. Cr. 124.

Distraint.

See DISTRESS.

See ACT VIII OF 1873, s. 45, 27 A. 499=A.W.N. 1905, 74=2 A.L.J. 219=2 Cr.L.J. 183.

See MAD. ACT II OF 1864, s. 8, 16 M. 364=1 Weir 422=3 M.L.J. 178.

See MAD. ACT IV OF 1884, ss. 103, 111, 9 M. 429.

See COMPENSATION—GENERAL, 21 C. 979.

See MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, 22 C. 935.

Power of Village Munsiff to distrain property outside his jurisdiction for arrears of revenue in respect of land within jurisdiction—*See* PENAL CODE, s. 183, 1 Weir 127.

Removal of property already distrained no offence under s. 206, Penal Code—*See* PENAL CODE, ss. 206, 406, A.W.N. 1888, 237.

See PENAL CODE, s. 424, 25 M. 729=1 Weir 57.

Obstruction to a distraint by a landholder, when rent is not in arrears—*See* RIOTING, 1 Weir 44=1 Weir 56=8 M.H.C. App. 11.

Unlawful distraint of cattle — *See* RIOTING, 13 M. 148=1 Weir 67.

See SENTENCE—FINE, 20 C. 478.

See WRONGFUL DISTRAINT, 8 C.L.R. 204.

Distress.

See DISTRAINT.

(1)—*Crim. Pro. Code* (1861), s. 61—*Distress of immoveable property.*—The law has provided for the distress and sale of immoveable property only for realising a fine, and there is no provision by which immoveable property may be made liable. REG v. LALLU KARWAR, **5 B. H.C.Cr. 63.** [*F.*, 20 C. 478; *R.*, 2 B. 564.]

See MAD. ACT II OF 1864, s. 8, 16 M. 364=1 Weir 422=3 M.L.J. 178.

Distress—*concluded.*

See MAD. ACT IV OF 1884, ss. 103, 111, 9 M. 429.

Recovery of arrears of tax by, and sale of moveable property belonging to defaulter—Duty of Magistrate—*See* U. P. ACT XV OF 1883, s. 46, 22 A. 111=A.W.N. 1899, 202.

See COMPENSATION—GENERAL, 21 C. 979.

See MAGISTRATE, JURISDICTION OF—MISCELLANEOUS, 22 C. 935.

Levy of fine by—and sale—*See* SENTENCE, FINE, 9 W.R. Cr. 50.

Distress of joint moveable property and immoveable property—*See* SENTENCE—FINE, 20 C. 478.

District Board.

Acquisition of right by, over land adjacent to road how to be made—*See* BEN. ACT III OF 1885, 15 Cr. L J. 267=23 Ind. Cas. 475=19 C. L.J. 635.

Proprietary right of the—Over road-side land —*See* BEN. ACT III OF 1885, s. 140, 37 C. 671 =7 Ind. Cas. 931=11 Cr. L.J. 540.

District Cesses and Rural Police.

See BUR. ACT II OF 1880.

District Judge, Jurisdiction of.

(1)—*Crim. Pro. Code* (1882), *s.* 476 *and ch.* XVI—*Penal Code, s.* 411—*District Judge—Jurisdiction.*—A District Judge cannot order the arrest and prosecution of a person under s. 411 of the Penal Code, since such an order is not sanctioned by ss. 195 and 476 of the Crim. Pro. Code. If during the trial of a case, it appears to him that some one should be proceeded against under s. 411, he can make a complaint under ch. XVI of the Crim. Pro. Code, if the Police have not already proceeded under ch. XIV. *In re* VENKATARAMANA, **Rat. Un.Cr. C. 515=Cr. Rg. 37 of 1890.**

(2)—*Crim. Pro. Code, s.* 195—*Penal Code, s.* 196.—A Sessions Judge has power to try a person for an offence punishable under s. 196, I.P.C., when he has, as District Judge, given sanction for the prosecution under the provisions of s. 195, Crim. Pro. Code. QUEEN-EMPRESS v. SARAT CHANDRA RAKHIT, **16 C. 766, F. B.** [*F.*, 18 B. 380, 7 C.W.N. 708, U. B.R. 1897—1901, Vol. I, 61, 127; *R.*, 14 A. 354, 2 Weir 613.]

Report of process-server—Prosecution instituted by District Judge on such report—Acquittal of accused—Process-server—Liability to pay compensation—*See* CRIM. PRO. CODE, 1898, s. 250, 25 P.R. 1910, Cr.=8 Ind. Cas. 382=11 Cr. L.J. 634=195 P.L.R. 1910.

See CRIM. PRO. CODE, 1898, s. 487, 16 C. 121.

See FALSE EVIDENCE, 6 A. 103.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 2 B. 481, 10 Bom. L.R. 95=32 B. 203=3 M.L. T. 170=7 Cr. L.J. 120, 19 A. 121=A.W.N. 1897, 2.

District Judge, Jurisdiction of—*concluded.*

See SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 6 A.L.J. 796=6 M.L.T. 98, 16 A. 80= A.W.N. 1894, 9.

See SANCTION TO PROSECUTE—REVOCATION OF SANCTION, 6 A.L J. 231=9 Cr. L.J. 504=31 A. 313=2 Ind. Cas. 182.

District Magistrate

See ADDITIONAL DISTRICT MAGISTRATE.

See CRIM. PRO. CODE, 1898, s. 435.

(1)—*Crim. Pro. Code, s.* 438 — *Report by District Magistrate against order made by Sessions Judge.*—It would be contrary to every principle to allow a District Magistrate to report against an order of the Sessions Judge to whom he is subordinate. The words "or otherwise" in s. 438 were not intended to confer upon a Magistrate the power to question the propriety of an order of a Sessions Court and make a reference to the High Court upon that ground. EMPEROR v. JAMNA BAI, **28 A. 91=2 A.L.J. 589=2 Cr. L.J. 515=A.W N. 1905, 198.** (9 A. 362, 10 A. 146, 23 C. 249, *R.*) [*F.*, 13 Cr. L.J. 714=16 Ind. Cas. 522=23 M.L.J. 732=12 M. L.T. 170=1912 M.W.N. 812; *R.*, 36 A. 378=12 A.L.J. 519=15 Cr. L.J. 407=23 Ind. Cas. 1007, 8 Cr. L.J. 161=1 S L.R. 40.]

(2)—*District Magistrates and Sessions Judges —Their position.*—There is nothing in the Crim. Pro. Code which either authorises a District Magistrate to call upon a Sessions Judge for explanations or which justifies a Sessions Judge in furnishing them. BINDA v. KING-EMPEROR, **1 A.L.J. 395.**

(3)—*Power of, to pass enhanced sentence, on appeal.*—Where the Deputy Magistrate sentenced an accused to 15 days' rigorous imprisonment and a fine of Rs. 10, or, in default, to a further term of one week, and the District Magistrate, on appeal, altered the sentence to a fine of Rs. 50, or, in default, to one month's rigorous imprisonment, *held*, that the District Magistrate's sentence was an enhanced one which he had no power to do. EMPRESS v. MADA, **A.W.N. 1887, 100.**

(4)—*District Magistrate—Jurisdiction to dispose of case outside British India.*—A District Magistrate cannot legally dispose of a criminal case at a place not in British India. QUEEN-EMPRESS v. MANEKLAL, **Rat. Un. Cr. C. 376 =Cr. Rg. 25 of 1888.**

(5)—*Crim. Pro. Code, ss.* 190, 192 *and* 435 —*District Magistrate transferring case to subordinate Magistrate—Power of District Magistrate to pass order relating to such case.*—When once the District Magistrate makes over a case for disposal to a subordinate Magistrate, the case is out of his hands and he is not competent to pass any order relating to it other than an order such as might have been made by him under ch. XXXII of the Code. RADHABULLAV ROY v. BENODE BEHARI CHATTERJEE, **30 C. 449.** [*R.*, 32 C. 783=9 C.W.N. 810; *D.*, 39 C. 119=13 Cr. L.J. 433=15 Ind. Cas. 65.]

District Magistrate—*continued.*

(6)—*Powers of, to call for and examine the record of any Magistrate within his district—"Immediately subordinate," meaning of, in s. 434 Crim. Pro. Code.*—The words "immediately subordinate" have no reference to the judicial powers vested either in the Courts described as subordinate, or in the Court to which they are described as subordinate. All Magisterial officers in a district, except the Magistrate of the District, are, within the meaning of s. 434, "immediately subordinate" to the Magistrate of the District. The Magistrate of the District has power to call for and examine the record of any Magistrate within his district, for the purpose of satisfying himself as to the legality of any sentence or order passed, and as to the regularity of proceedings of such Magistrate. If he is of opinion that the sentence or order is contrary to law, he should forward the case, through the Sessions Judge, for the orders of the High Court. CRIMINAL CIRCULAR NO. 2 OF 1867, **7 W R.Cr. Cir. 1.**

(7)—*Power of District Magistrate to direct a subordinate Magistrate to dispose of a case in a particular manner.*—Although a District Magistrate may call up a case that is being tried by a subordinate Magistrate to his own file or direct its transfer to the file of any other Magistrate, he has no authority to order a subordinate Magistrate to dispose of a case pending in the Court of such subordinate Magistrate in a particular manner. HIGH COURT PROCEEDINGS, 19TH MAY 1881, NO. 1002, **1 Weir 288.**

(8)—*Power of, to give general instructions to subordinate Magistracy—Refusal of permission to pleader to conduct prosecution.*—It is competent for the District Magistrate, in his capacity of a principal Court of original criminal jurisdiction in the District, to supervise the Courts subordinate to him and give general instructions as to procedure, punishments and other matters of discretion. It is not improper for him to issue, if he considers that the too frequent appearance of pleaders for the prosecution in petty criminal cases is detrimental to the interests of justice, general instructions to the subordinate Magistracy on the subject of allowing pleaders to appear for the prosecution. RALA RAM v. BUTA, **6 P R. 1905, Cr=70 P.L. R. 1905=2 Cr. L J. 43.** [*R.*, 34 P.W.R. 1908, Cr.=16 P.R. 1908, Cr.=8 Cr. L.J. 486.]

(9)—*Revisional power of—Improper discharge—Further inquiry—Crim. Pro. Code* (1882), ss. 435, 436 (*b*).—When a District Magistrate considers that an accused person has been improperly discharged, he can direct a further enquiry into such offence as appears from the evidence to have been committed. QUEEN-EMPRESS v. GAUNG ZAUK KE, **L.B.R. 1893—1900, 135.**

(10)—*Cases which District Magistrates should refrain from trying under their higher powers—Crim. Pro. Code* (1882), *ss.* 30, 34.—As a general rule, the cases which District Magistrates should refrain from trying under their higher powers are those in which a sentence more severe than a District Magistrate can inflict under s. 34, Crim. Pro. Code, 1882, appears to be called for, if the offence charged be established, and secondly those cases in which the issues are so complex, or the difficulty of ascertaining the true facts or of correctly applying the law to them so considerable, as to make a trial before a Sessions Judge with the aid of assessors clearly more appropriate than a trial before a District Magistrate. SAW KADU v. QUEEN-EMPRESS, **L B R. 1893-1900, 219.**

(11)—*Tender of pardon by a District Magistrate to an accomplice—Trial of the case by the same Magistrate — Crim. Pro. Code* (1882), s. 337.—In Lower Burma, a District Magistrate, who tenders pardon to an accused person and examines him as a witness under the provisions of s. 337, Crim. Pro. Code, cannot himself try the case. NGA SAW WA v. QUEEN EMPRESS, **L.B.R. 1893—1900, 323.**

(12)—*Crim. Pro. Code, Act* X *of* 1872, *ss.* 295, 296—*Acquittal by Sessions Judge — District Magistrate's report to High Court.*—A District Magistrate has no power, under ss. 295, 296 of the Crim. Pro. Code, to report to the High Court a case which he considers as an improper acquittal by the Sessions Judge in an appeal from a conviction. EMPRESS v. GUMANI, **A. W.N. 1882, 135.**

(13)—*Application for disclosure of name of informant.*—*Held* that an application that the District Magistrate may be ordered to give up to the applicant the name of the person who supplied information which led to the applicant's prosecution, would not lie. *In the application of* MAKHAN LAL, **A.W.N. 1887, 301.**

(14)—*Power of, to withdraw a maintenance case from a subordinate Magistrate.*—S. 528, Crim. Pro. Code, applies to proceedings under s. 488, Crim. Pro. Code, and a District Magistrate is, therefore, competent to withdraw such proceedings from a Magistrate subordinate to himself. GHULAM RUKIA v. NIAZ ALI, **5 P. R. 1905, Cr.=85 P.L.R. 1905=2 Cr. L.J. 40.** (19 P.R. 1903=25 B. 179=28 C. 709, *R.*)

(15)—*Reference under s.* 346, *Crim. Pro. Code*, 1898—*His powers to convict on evidence recorded by the referring Magistrate—Crim. Pro. Code* (1898), *ss.* 346, 350.—Where a first-class Magistrate who heard a case was of opinion that the accused deserved a more severe punishment than he was competent to inflict, and submitted the proceedings to the District Magistrate under s. 346, *held*, that the District Magistrate could not convict the accused on the evidence recorded by the first class Magistrate, even though the accused waived their right reserved to them under proviso (*a*) to s. 350. MUHAMMAD v. EMPEROR, **25 P.R. 1905, Cr.=2 Cr. L.J. 369=91 P.L.R. 1905.**

(16)—*Reference under s.* 349, *Crim. Pro. Code*, 1898—*Powers.*—S. 349 governs the powers of a District Magistrate to whom a case has

District Magistrate—*continued.*

been referred by a second class Magistrate for awarding a severe punishment. ALLAH BAKHSH v. EMPRESS, **12 P.R. 1903, Cr.=163 P.L.R. 1903.** (10 P.R. 1881, Cr., *R.*)

(17)—*Crim. Pro. Code* (1861), ss. 427, 434—*Illegality committed by subordinate Magistrate—Duty of District Magistrate to refer case to High Court.*—Where, on an appeal from a conviction, the District Magistrate is of opinion that the Magistrate who tried the case had no jurisdiction to try it, and that an illegality has, therefore, been committed, he should refer the case to the High Court, under s. 434, Crim. Pro. Code. He is not competent himself under s. 427, to annul the conviction and sentence, and direct the commitment of the accused. REG. v. CHANVERAYA *bin* CHANBASAYA, **5 B.H.C. Cr. 65.** [*D.*, 7 B.H.C. Cr. 72.]

See ACQUITTAL, U.B.R. 1892—1896, 11.

Withdrawal of case by—*See* ACT XI OF 1874, s. 6, 8 C 851.

Illegal practising by a pleader—Jurisdiction of District Magistrate to punish—*See* ACT XVIII OF 1879, ss. 10, 32, 4 A 375.

Trial by, of European British subject with a jury—Power of, to refer case to High Court on, dissenting from verdict of jury—*See* ACT III OF 1884, s. 8 (6), 9 A. 420=A.W.N. 1887, 39.

See ACT XIII OF 1889, s. 7, Rat. Un. Cr. C. 849=Cr. Rg. 16 of 1896.

See ACT IX OF 1894, s. 52, 32 M. 303.

See BOM. ACT VII OF 1867, s. 16, Rat. Un. Cr. C. 478=Cr. Rg. 41 of 1889.

See BOM. ACT II OF 1890, s. 52, 4 Bom. L. R. 459.

Religious procession—Exhibition of an emblem—Vyasantol emblem—Lingayats—District Magistrate—Order permitting the carrying of emblem—High Court—Reversionary powers—*See* BOM. ACT IV OF 1890, s. 44, 12 Bom. L.R. 1029=8 Ind. Cas. 747.

See PUN. ACT IV OF 1872, s. 45, 9 P.R. 1907, Cr.=36 P.W.R. 1907=6 Cr.L.J. 379=42 P.L.R. 1908.

Position of—*See* U.P. ACT XV OF 1883, s. 69, 8 A. 677=A.W.N. 1886, 267.

See APPEAL, GENERAL, 5 B.H.C. Cr. 8.

See CHARGE—WITHDRAWAL OF CHARGE, 2 Weir 258=2 Weir 652.

See COMMITMENT TO SESSIONS COURT, 9 Bom. L.R. 225=5 Cr. L.J. 213, 15 M.L.J. 373=2 Cr. L.J. 744, Rat. Un. Cr. C. 899.

Jurisdiction of District Magistrate to transfer case sent to him—*See* COMPLAINT—PROCEDURE ON RECEIPT OF COMPLAINTS, 4 B.H.C. Cr. 30.

See CRIM. PRO. CODE, 1898, ss. 10, 12, 32 M. 303.

See CRIM. PRO. CODE, 1898, ss. 10 (2), 12, 528, 34 C. 918=6 Cr. L.J. 360.

District Magistrate—*continued.*

See CRIM. PRO. CODE, 1898, ss. 17 (1) and 5, 13 M.L.J. 272.

See CRIM. PRO. CODE, 1898, ss. 30 and 436, 60 P.L.R. 1904.

Powers of—*See* CRIM. PRO. CODE, 1898, s. 104, 1 A.L.J. 607.

Jurisdiction of District Magistrates to transfer proceedings to subordinate Magistrates—*See* CRIM. PRO. CODE, 1898, s. 107, 31 C. 350.

Power to transfer security case against person residing outside district—*See* CRIM. PRO. CODE, 1898, ss. 107 (2) and 192, 24 A. 151=A.W.N. 1901, 203.

Sentence of imprisonment by—Subject to confirmation by Sessions Judge—Confirmation by latter—Legality—Proper procedure under s. 123, cls. 2 and 3—Gist of s. 123, cls. 2 and 3—Reference under s. 123—Duty of Sessions Judge to weigh evidence—*See* CRIM. PRO. CODE, 1898, ss. 110, 123, 29 P.R. 1910, Cr.=196 P.L.R. 1910=8 Ind. Cas. 385=11 Cr.L.J. 637.

Whether District Magistrate can cancel surety-bond accepted by subordinate Magistrate—*See* CRIM. PRO. CODE, 1898, ss. 110 and 125, 29 C. 455=6 C.W N. 291.

District Magistrate's power to cancel bond for keeping the peace—*See* CRIM. PRO. CODE, 1898, s. 125, 32 C. 948=9 C.W.N. 860=2 Cr. L.J. 550.

Power of, to take proceedings under s. 145, Crim. Pro. Code, after such refusal by subordinate Magistrate to act under same—*See* CRIM. PRO. CODE, 1898, ss. 145 and 437, 29 C. 242=6 C.W.N. 290.

See CRIM. PRO. CODE, 1898, ss. 193, 195, 465, 471, 476, 9 Cr. L J. 180=1 Ind. Cas. 220.

Is only Magistrate to whom police are subordinate—*See* CRIM. PRO. CODE, 1898, s. 195, 6 O.C. 1.

Power of — to order further enquiry — *See* CRIM. PRO. CODE, 1898, ss. 369, 437, 28 C. 102.

See CRIM. PRO. CODE, 1898, s. 417, U.B.R. 1892—1896, Vol. I, 47.

See CRIM. PRO. CODE, 1898, ss. 428, 437, 439, 6 C.L.J. 251=6 Cr. L.J. 357.

Power to order commitment—*See* CRIM. PRO. CODE, 1898, s. 436, 26 A. 564=A.W.N. 1904, 125=1 A.L.J. 292.

See CRIM. PRO. CODE, 1898, s. 437, Rat. Un. Cr. C. 213, 12 A. 434=A.W.N. 1890, 99.

See CRIM. PRO. CODE, 1898, s. 438 (1), 2 Weir 564, 6 Bom. L.R. 1099.

See CRIM. PRO. CODE, 1898, s. 515, U.B.R. 1892—1896, Vol. I, 75.

See CRIM. PRO. CODE, 1898, s. 528 (1 to 3), Rat. Un. Cr. C. 34.

Power of District Magistrate to order further enquiry—*See* FURTHER ENQUIRY, 2 L. B.R. 80.

See FURTHER ENQUIRY, 10 C. 268.

District Magistrate—*continued.*

See HIGH COURT, SUPERINTENDENCE AND POWERS OF, 5 M.L T. 233, F.B.=9 Cr. L.J. 192=19 M.L.J. 157=32 M. 220=1 Ind. Cas. 228.

Jurisdiction to try charge of murder—*See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT, 5 C.P.L.R. Cr. 38.

See MAGISTRATE, JURISDICTION OF — COMMITMENT TO SESSIONS COURT, 2 N.W. P. 132.

See MAGISTRATE, JURISDICTION OF — TRANSFER OF CASES — REFERENCE TO OTHER MAGISTRATES, ETC., 10 C. 551, 18 C. 75.

Withdrawal of case by District Magistrate — *See* MAGISTRATE, JURISDICTION OF — WITHDRAWAL OF CASES, 8 C. 851.

See MAINTENANCE, 9 B. 40.

See PARDON, 149 P L.R. 1901.

See PWES, L.B R. 1872—1892, 620.

Power of, to reconsider evidence or to direct new enquiry— *See* REFERENCE TO HIGH COURT, 1 L B R 311.

See REFERENCE TO HIGH COURT, Rat. Un. Cr. C. 133.

Revisional powers of Sessions Judge and District Magistrate—*See* REVISION—MISCELLANEOUS CASES, 151 P.L R. 1903.

See REVISION—MISCELLANEOUS CASES, Rat. Un. Cr. C. 499=Cr. Rg. 11 of 1890.

Power of, to order revival of proceedings against discharged accused—*See* REVIVAL OF CRIMINAL PROCEEDINGS, 1 C. 282=25 W.R. Cr. 30.

Revocation of sanction by the Sessions Judge—Granting of fresh sanction by, validity of—*See* SANCTION TO PROSECUTE—GRANT OF FRESH SANCTION, 1 A.L.J. 395.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., Rat. Un. Cr. C. 511=Cr. Rg 35 of 1890, 27 C. 452=4 C.W.N. 574, 3 N.L.R. 50=5 Cr. L.J. 432.

Sanction by, as head of the police—Powers of the High Court—*See* SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 27 A. 292=1 A.L.J. 597=A. W.N. 1904, 231.

See SANCTION TO PROSECUTE—REVOCATION OF SANCTION, 24 P.W.R. 1908, Cr.

See SECURITY FOR GOOD BEHAVIOUR, 12 C.W.N. 299=7 C L.J. 177=35 C. 243=7 Cr. L.J. 146.

Jurisdiction of, to make second enquiry against discharge in security case—*See* SECURITY FOR GOOD BEHAVIOUR, 6 O.C. 262.

See SECURITY TO KEEP THE PEACE—CANCELLING ORDER AND DISCHARGING SECURITY, 12 P.W.R. 1908, Cr.=7 Cr. L.J. 348.

District Magistrate—*concluded.*

See SESSIONS JUDGE, JURISDICTION OF, 17 M.L.J. 153=2 M.L.T. 24=5 Cr L.J. 132.

See TRANSFER OF CRIMINAL CASES — GROUNDS FOR TRANSFER—NOTICE, Rat. Un. Cr. C. 460.

See TRANSFER OF CRIMINAL CASES — TRANSFER BY OTHER COURTS, 8 C.L.J. 241, 2 L.B.R. 80.

See TRANSFER OF CRIMINAL CASES—MISCELLANEOUS CASES, 11 C.W N. 316=5 Cr. L.J. 112.

District Magistrate and Collector.

(1)—*Duties and responsibilities of—Executive acts, legality of.*—The Magistrate and Collector of the district, being for most purposes the principal representative and administrator of the law in the eyes of the people of the District, a position of great power and great responsibility, it is of supreme importance that his acts should be examples of equal justice, rigid impartiality and obedience to the law. GOPINATH PARYAH v. EMPRESS, **2 C.L J. 555=10 C.W.N 82=3 Cr. L.J. 169.** [*R.*, 10 C.W.N. 322, 12 C.W.N. 727].

District Magistrate, Jurisdiction of.

See DISTRICT MAGISTRATE.

See DISTRICT MAGISTRATE, POWERS OF.

District Magistrate, Powers of.

(1)—*Crim. Pro. Code*, ss. 192, 202, 203 *and* 204—*Power of District Magistrate to interpose in trials before subordinate Magistrates without transfer to his own Court.*—Where the complaints were not made to the District Magistrate, nor had the cases based on those complaints been withdrawn to his Court by any order, but they were in the Court of the Joint Magistrate, *held*, that the District Magistrate had no authority to interpose in the trial of these cases, and therefore could not direct judicial enquiry by another Magistrate before the issue of processes, so as to postpone the trials. *Held*, also, that it was very questionable whether such order could be passed, even if the cases had been withdrawn to his Court for trial. JHUMUCK JHA v. PATTUK MANDAL, **27 C. 798.** [*D.*, 39 C. 119=13 Cr. L.J. 433=15 Ind. Cas. 65.]

(2)—*Criticising decision of a superior Court—Procedure where Sessions Court's decision may require revision.*—It is irregular for a District Magistrate to criticise the decisions of a superior Court. He should, if he considers that any decision of a Sessions Court needs revision by the Court of the Judicial Commissioner, take the necessary steps to get the Government Advocate to move the Court of the Judicial Commissioner to call for the case in revision. QUEEN-EMPRESS v. NGA SHWE THAUNG, **L.B.R. 1893—1900, 311**; QUEEN-EMPRESS v. NGA KYA BU, **L.B.R. 1893—1901, 311.**

(3)—*Power of District Magistrate to direct a Subordinate Magistrate to dispose of a case in a particular manner.*— Although a District

District Magistrate, Powers of—*concluded.*

Magistrate may call up a case that is being tried by a subordinate Magistrate to his own file or direct its transfers to the file of any other Magistrate, he has no authority to order a subordinate Magistrate to dispose of a case pending in the Court of such subordinate Magistrate in a particular manner. HIGH COURT PROCEEDINGS, 19TH MAY 1881, No. 1002, **1 Weir, 288.**

Power of District Magistrate to revise order granting bail—*See* BAIL, 22 B. 549.

See FURTHER ENQUIRY, 6 M.L.T. 157.

Whether District Magistrate can refer to High Court on rejection of appeal by Sessions Judge —*See* REFERENCE TO HIGH COURT, 18 C. 186.

See REFERENCE TO HIGH COURT, 8 Cr. L.J. 161=1 S.L.R. 40, Cr.

See BOM. REG. XII OF 1827, s. 19, Rat. Un. Cr. C. 490=Cr. Rg. 59 of 1889.

See BOM. REG. XXI OF 1827, Rat. Un. Cr. C. 62=Cr. Rg. 18-1-1872.

See SANCTION TO PROSECUTE—AUTHORITIES COMPETENT TO GRANT SANCTION, ETC., 19 A. 121=A.W.N. 1897, 2, 9 Cr. L.J. 181=1 Ind. Cas. 220.

See SENTENCE—POWERS OF APPELLATE COURT—ALTERATION. Rat. Un. Cr. C. 131=Cr. Rg. 6-9-1877.

See TRANSFER OF CRIMINAL CASES—TRANSFER BY OTHER COURTS, Rat. Un. Cr. C. 963=Cr., Rg. 18 of 1898.

District Municipal Improvements Act.

See BEN. ACT III OF 1864.

District Municipalities Acts.

See BEN. ACT V OF 1876.

See BEN. ACT III OF 1884.

See BOM. ACT VI OF 1873.

See BOM. ACT II OF 1884.

See BOM. ACT III OF 1901.

See BUR. ACT XVII OF 1884.

See BUR. ACT III OF 1898.

See C.P. ACT XI OF 1873.

See C.P. ACT XVIII OF 1889.

See MAD. ACT IV OF 1884.

See MAD. ACT III OF 1897.

See PUN. ACT IV OF 1873.

See PUN. ACT XX OF 1891.

See U.P. ACT XV OF 1873.

See U.P. ACT XV OF 1883.

See U P. ACT I OF 1895.

See U.P. ACT I OF 1900.

District Municipalities Amendment Acts.

See BOM. ACT II OF 1884.

See MAD. ACT III OF 1897.

See U.P. ACT I OF 1895.

District Munsiff.

See CRIM. PRO. CODE, 1898, ss. 426, 439 (1 to 4), 440 and 476, A.W.N. 1882, 92.

District Police Act.

See BOM. ACT VII OF 1867.

See BOM. ACT IV OF 1890.

See MAD. ACT XXIV OF 1859.

District Registrar.

Complaint to District Registrar — *See* SANCTION TO PROSECUTE—CONDITIONS REQUISITE FOR GRANT OF SANCTION, ETC., 2 C.L.J. 619=10 C.W.N. 222=3 Cr.L.J. 112.

Disturbance.

What constitutes—*See* PENAL CODE, s. 296, **1 Weir**, 259.

Divisional Court.

Powers of—to direct rule to be issued against an advocate—*See* LETTERS PATENT—LETTERS PATENT, 1865, MADRAS, s. 10, 10 M. 28, F.B.

Divisinnal Magistrate.

Crim. Pro. Code (1861), ss. 273, 277 (=ss. 192, 349 *of the Code of* 1898)—*Reference to Divisional Magistrate under* s. 277—*His duty.*—In a case referred to a Divisional Magistrate under s. 277, he is bound to form his own judgment and pass sentence. HIGH COURT PROCEEDINGS, 8TH NOVEMBER, 1870, NO. 1971, **2 Weir 424=5 M.H.C. 43, App.** [*F.*, 2 Weir, 424.]

Division Bench.

See HIGH COURT, JURISDICTION OF.

See ACT XVIII OF 1879, s. 36, A.W.N. 1908, 279=6 A.L.J. 22=31 A. 59=9 Cr. L.J. 59=1 Ind. Cas. 143.

See FULL BENCH, 2 A. 218, F.B.

See REFERENCE TO HIGH COURT, 15 B. 452.

See REVIEW, Rat. Un. Cr. C. 791=Cr. Rg. 49 of 1895.

Divorce.

See BUDDHIST LAW—DIVORCE.

See MAHOMEDAN LAW—DIVORCE.

See MAINTENANCE.

(1)—*Divorce on mere caprice of party.*—There is no right of divorce on the mere caprice of a Burman Buddhist husband or wife. NGA NWE v. MI SU MA, **L.B.R. 1872—1892, 391.**

Deed of—, a valuable security—*See* FORGERY, 11 W.R. Cr. 15.

See HUSBAND AND WIFE, 7 B. 180.

Registration of false—*See* PENAL CODE, s. 419, 17 C. 606.

See PENAL CODE, s. 494, 6 B. 126.

Khatiks—Low class Sudras— Legality of divorce among them—*See* PENAL CODE, s. 498, 31 P.W.R. 1914, Cr.=181 P.L.R. 1914=15 Cr. L.J. 539=24 Ind. Cas. 947.

Petition for—Allegations made in petition —Defamation— English Law—*See* PENAL CODE, s. 499, excep. 9, 5 S.L.R. 133=13 Ind. Cas. 217=13 Cr. L.J. 25.

Document.

See FALSE DOCUMENT.

See FORGERY.

See INSPECTION OF DOCUMENTS.

See OFFENCES RELATING TO DOCUMENTS.

See PRODUCTION OF DOCUMENT.

See PUBLIC DOCUMENT.

(1)—*Documents found in possession of accused —Admissibility.*—In order to render documents found in the possession of a person admissible against him as proof of their contents, it is necessary to show that such person has in some manner *identified himself* with, or in other words, has, by any act, speech or writing, manifested an acquaintance with, and knowledge of, the contents of all or any of the documents. The rule would apply more strongly where, as in this case, some of the papers and letters were received by, and others written by, the person against whom they are sought to be used. LALIT CHANDRA CHANDA CHOWDHRY v. EMPEROR, **39 C. 119 = 15 Ind. Cas. 65 = 13 Cr. L.J. 433.** (1838, 5 Cl. and Fin. 670, 702, 37 C. 467, *F.*).

Not formally exhibited, though in possession of Court—Duty of Court —*See* BOM. ACT IV OF 1887, s. 7, 3 S.L.R. 84 = 3 Ind. Cas. 895.

Person present in Court—If compellable to produce documents—*See* CRIM. PRO. CODE, 1898, s. 476, 14 C.L J. 120 = 11 Ind. Cas. 794 = 12 Cr. L J. 450.

Making of document, meaning—*See* PENAL CODE, s. 464, 7 C. 352 = 8 C.L.R. 572.

Fact that person filing document is interested in establishing its contents does not raise presumption that he filed it knowing it to be forged—*See* PENAL CODE, ss. 465, 466, 471, 474, 13 Cr.L.J. 449 = 15 Ind. Cas. 81 = 17 C. W.N. 94.

See PENAL CODE, s. 477, 12 M. 148 = 1 Weir 553.

Putting in, in the cross examination of prosecution witnesses does not give the right of reply to the prosecutor—*See* REPLY, RIGHT OF, 11 Bom.L.R. 177 = 9 Cr.L.J. 284 = 1 Ind. Cas. 280.

Document, Inspection of.

See INSPECTION OF DOCUMENTS.

Document, Production of.

See PRODUCTION OF DOCUMENT.

See CONTEMPT OF COURT, 12 B. 63.

Domestic Servants.

See ACT XIII OF 1859, 1 Weir 688.

See ACT XIII OF 1859, s. 2, 1 Weir 689.

Dominoes.

See BUR. ACT I OF 1899, s. 4, 8 Ind. Cas. 451 = 3 Bur.L.T. 66.

Doors.

Attachment of—of houses, validity of—*See* MAD. ACT IV OF 1884, s. 103, 13 M. 518 = 1 Weir 730.

Double Conviction.

See CONVICTION.

(1)—*Penal Code, ss.* 471, 474—*Convictions under both sections.*—An accused should not be convicted both under s. 471, I.P.C., for using certain forged documents, and under s. 474 for having the same documents in his possession. QUEEN v. NUZUR ALI, **6 N.W.P. 39.** [*F.*, 15 Ind. Cas. 81 = 13 Cr. L.J. 449; *Appl.*, 6 N.W.P. 293; *Cited*, 111 P.L.R. 1904 = 14 P.R.1904, Cr.]

(2)—*Penal Code, ss.* 380 *and* 215—*Double conviction for theft and receiving illegal gratification for the restoration of stolen property, validity of—Crim. Pro. Code* (1898), *s.* 235.—A man committed a theft of bulls, was in possession thereof and afterwards received illegal gratification from the owner of the bulls under the pretence of getting back the stolen bulls and did return the stolen bulls to the owner. He was convicted of offences under ss. 380 and 215 of the Penal Code. *Held per Fox, C. J.*. and *Hartnoll, J.*, that the convictions both for theft and the receipt of illegal gratification were illegal, inasmuch as, a man who is convicted for the latter offence cannot be said to be guilty of the former offence, because he would not hand himself up to justice. for the offence of theft. He can be charged alternatively, either with the offence of theft or receipt of illegal gratification or only with theft or receipt of illegal gratification as the case may be. *Per Irwin, J., contra* :—A thief, who returns the stolen property in consideration of a payment, is legally liable to a double conviction under ss. 379 and 215, Penal Code, although such conviction may be opposed to natural justice. In such cases, although the double convictions may be legal, double sentences are improper and unjust. NGA TWET PE *alias* SHAW GALE v. EMPEROR, **14 Bur. L.R. 67.**

See ACT XI OF 1878, s. 19 (*e*), 3 L.B.R. 218, F.B.

See ACT XXII OF 1881, ss. 39 and 41, L.B. R. 1872—1892, 350.

See BUR. ACT I OF 1899, ss. 11, 12, 1 L.B. R. 178.

Where offence made up of parts — *See* PENAL CODE, ss. 71, 379 and 457, Book Cir. 2 of 1864, Oudh.

See PENAL CODE, ss. 379 and 429, L.B.R. 1893—1900, 633.

Doubt.

See BENEFIT OF DOUBT.

(1)—*Lenient sentence when accused's guilt doubtful.*—A Magistrate in doubt as to the guilt of the accused should not compromise his doubts by passing a lenient sentence. His best attention must be given to the question whether the doubt, after a consideration of all the evidence, is a reasonable doubt. QUEEN-EMPRESS v. MI SHU KADIR, **L.B.R. 1893—1900, 198.**

Drain.

Obstruction of—by tree blown down—*See* BEN. ACT III OF 1864, s. 57, 3 W.R.Cr. 33.

Drain—*concluded.*

Obstruction to—Removal—Limitation.—*See* BEN. ACT III OF 1884, ss. 218, 353, 1 C.W.N. 492.

Drainage.

See BEN. ACT III OF 1899, ss. 299, 574, 8 Ind. Cas. 706=13 Cr. L.J. 327=15 C.W.N. 412.

Drainage, Northern India Canal.

See ACT VIII OF 1873.

Drainage Water.

Right to—*See* PENAL CODE, ss. 425, 23, 1913 M.W.N. 179=19 Ind. Cas. 305=14 Cr. L. J. 209.

Dramatic Performances.

See ACT XIX OF 1876.

Driving.

Reckless or negligent driving—Rule of the road—*See* BOM. ACT II OF 1904, s. 2, 13 Bom. L.R. 126=9 Ind. Cas. 945=12 Cr. L.J. 167.

Drug.

Administering drug without due care and caution—Effect—*See* PENAL CODE, ss. 304, 304-A, 15 C.L.J. 512=13 Cr. L.J. 195=14 Ind. Cas. 195=16 C.W.N. 1055=39 C. 855.

Drunkenness.

See INTOXICATION.

Imputation of knowledge to voluntary drunkard—*See* PENAL CODE, ss. 85, 86, 387, 398, 6 L.B.R. 100=5 Bur L.T. 193=17 Ind. Cas. 800=13 Cr. L.J. 864, F.B.

Effect of—*See* PENAL CODE, ss. 302, 304 (first part), 12 Cr. L.J. 524=12 Ind. Cas. 292=4 Bur. L.T. 253.

See PENAL CODE, ss. 322, 325, U.B.R. 1911, 4th Qr. 105=15 Ind. Cas. 211=13 Cr. L.J. 471.

See UNSOUNDNESS OF MIND, 29 C. 493=6 C.W.N. 506.

Dumb Person.

See DEAF AND DUMB PERSON.

Dunlop's Proclamation.

See KHOTI KHASGI LAND, 18 B. 670.

Duress.

(1)—*Imprisonment—Avoidance of contract.*—In England, the mere fact of imprisonment is not deemed sufficient to avoid an agreement made by one who is in lawful custody under the regular process of a Court of competent jurisdiction, where no undue advantage is taken of the situation of the party making the agreement. But in a country in which there is no settled system of law or procedure, and where the Judge is invested with arbitrary powers, imprisonment may in itself amount to duress such as will avoid a contract entered into by the prisoner with the view of obtaining release. MOUNG SHOAY ATT v. KO BYAW, **1 C. 330=3 I.A. 61=3 Sar. 597.**

Duress—*concluded.*

(2)—*Contract made under threat of criminal complaint.*—Where a defendant pleads that a contract was executed under compulsion and intimidation, it is not sufficient for him to prove that it was executed from fear of a criminal complaint, as that might have been a proper fear, and not simply a bodily fear imposed on him, in order to his doing that which he would not of his own free will have done. KUMOLANATH SEIN v. BEHAREE KANT ROY, **11 W.R. 314.**

Duty of Magistrate.

See MAGISTRATE, DUTY OF.

Duty on Opium and Spirits.

See BOM. REG. XXI OF 1827.

Dying Declaration.

See EVIDENCE.

See EVIDENCE ACT, 1872, s. 32.

(1)—*Dying declaration—Record of, by Magistrate—Not proved by statement of Magistrate—No evidence—Evidence Act, s. 32*—A dying declaration recorded by a Magistrate cannot be accepted in evidence, when it has not been proved by taking the statement of the Magistrate. GHAZI v. CROWN, **17 P.R. 1911, Cr. =239 P.L.R. 1912=14 Cr. L.J. 131=18 Ind. Cas. 883.**

(2)—*Dying declaration—Fuller than the evidence of witnesses who heard the statement—Retrial—Mode of proof of dying declaration—Admissibility in evidence of statement in writing made by deceased—S. 32, Evidence Act.*—Where the dying statement of the deceased, as heard by the witnesses who speak to it, was apparently much fuller than what the record of their depositions would show, and where apparently the Sessions Judge had not recorded all that they said on the point, *held* that a retrial must be ordered. It is of the utmost importance that evidence as to the dying declaration should be as exact and as full as possible. When what is sought to be proved is the verbal statement of a dying person, the proper and legal mode of proving it is by eliciting from the person, who heard the deceased make the statement, what the deceased said. If the statement was taken down in writing by the witness or by some one in the presence of the witness, the witness would be entitled to refresh his memory, if he so wanted, by referring to such writing ; otherwise the writing itself is not relevant unless it is in the nature of a deposition taken in the presence of the accused. Where the deceased dictated his statement and it was taken down and he then signed the statement after being satisfied as to its accuracy such writing may be regarded as a statement of the deceased in writing admissible under s. 32, Evidence Act. But even if what was stated was taken down by some one in writing and signed by the deceased, that would not debar a witness who heard the statement from proving it independently of the writing. And ordinarily it would be desirable to have on record what the witness is able to

Dying Declaration—*concluded.*

reproduce from memory what he heard the deceased stated, in addition to the writing in which the statement was taken down. PUBLIC PROSECUTOR v. BALA NAGI REDDI, 11 M. L.T. 214 = 1912 M W.N 405 = 22 M.L.J. 453 = 13 Cr. L.J. 463 = 15 Ind Cas. 308.

(3)—*Evidence Act*, s. 33—*Deposition—Proof of dying declaration—Crim. Pro Code* (1882), s. 162.—Where the dying declaration of a deceased person taken down in writing by a Head Constable is admissible in evidence under s. 162, Crim. Pro. Code, the proper course is to put in the document itself and have it formally proved by that officer and not to allow him to give evidence orally as to its purport. The deposition of a Constable which was taken by a committing Magistrate and was admitted in evidence at the trial before the Court of Sessions, under s. 33 of the Evidence Act, should be placed with the Sessions record like the deposition of the Civil Surgeon, and formal evidence of the circumstances that rendered the deposition admissible under s. 33 should be recorded. EMPRESS v. THAKURIA, 7 C.P.L. R. Cr. 14. [*F.*, 15 Cr. L.J. 243 = 10 N.L.R. 19 = 23 Ind. Cas. 195.]

(4)—*Dying declaration — Proof of.*—When what purports to be the dying declaration of a deceased person is not taken down by the committing Magistrate it cannot be admitted in evidence without proof of solemn affirmation that the deceased person actually made such a declaration. CROWN v. HAIDAR ALI, S. C. 29, Oudh.

Earth.

Dishonest taking away of—*See* PENAL CODE, ss. 22, 378 and 379, 10 M. 255 = 1 Weir 413.

—Severed from earth or land to which it is attached — Moveable property — Theft—*See* THEFT—THINGS WHICH MAY BE THE SUBJECT OF THEFT, 15 B. 702.

Easement.

(1)—*Crim. Pro. Code* (1882), s. 147. — The right to restrain another from exercising ordinary proprietary rights over his own land, by refraining from cutting a *bund*, which will have the effect of giving a liberal supply of water to his land, is of the nature of an easement different from ordinary rights of owners of land. To obtain such an order under s. 147 of the Code, persons claiming such right must satisfy the Court on the existence of such right. *Quære*:—Whether the proviso to s. 147 applies to a case of this kind. HARI MOHUN THAKUR v. KISSEN SUNDARI, 11 C. 52. [*R.*, 2 P.R. 1903, Cr., 29 M. 97 = 15 M.L.J. 394 = 3 Cr. L.J. 31.]

(2)—*Scope of the term.*—The Legislature of this country has not used the term "easement" in the restricted sense in which it is used in the English law so as to exclude profits *a prendre*. DUKHI MULLAH v. HALWAY, 23 C. 55.

Nuisance—Building wall to prevent neighbour from acquiring, if nuisance—Duty of Court in

Easement—*concluded.*

abating nuisance—*See* BEN. ACT III OF 1899, s. 3, cl. 29, and s. 632, 8 Ind. Cas. 530 = 15 C. W.N. 316.

Right of public to be in possession for one day in the year to perform puja—Nature of right—Public claiming easement if may be party to proceeding under s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, ss. 145, 144, 17 C.W.N. 205 = 13 Cr. L.J. 789 = 17 Ind. Cas. 533 = 17 C.L.J. 397.

Dispute as to—Right to use privy—Jurisdiction of Magistrate—*See* CRIM. PRO. CODE, 1898, s. 147, 15 Bom. L.R. 329 = 2 Bom. Cr. C. 72 = 14 Cr. L.J. 400 = 20 Ind. Cas. 224.

Whether s. 147, Crim. Pro. Code, confined to—*See* CRIM. PRO. CODE, 1898, ss. 147, 148, 10 Ind. Cas. 615 = 12 Cr. L.J. 319.

Dispute concerning easement—Order without finding that right was exercised within three months before inquiry— Legality —*See* CRIM. PRO. CODE, 1898, s. 147 and proviso; sch. V, form XXIV, 14 Cr. L.J. 303 = 19 Ind. Cas. 959.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 23 C. 557.

See PENAL CODE, s. 425, Rat. Un. Cr. C. 387.

Easements Act.

See ACT V OF 1882.

Eastern Bengal and Assam Disorderly Houses Act.

See BEN. ACT II OF 1907.

Ecclesiastical Jurisdiction.

Exercise of—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 8 M. 140 = 2 Weir 249 = 2 Weir 22 = 1 Weir 624.

Effigy.

Exhibiting effigy and beating it with shoes—*See* DEFAMATION, 2 N.W.P. 435.

Ejectment, Suit for.

Reasonable notice to quit—Criminal proceedings cannot constitute notice to quit.—A ten days' notice to quit is not sufficient for the maintenance of an ejectment suit against a yearly tenant. (2 C. 146, *followed.*) [*R.*, 12 C. 82.] Criminal proceedings, under s. 530 of the Crim. Pro. Code (X of 1872), cannot constitute a notice to quit in an ejectment suit. RAM RUTTON MUNDUL v. NETRO KALLY DASSEE, 4 C. 339.

Theft—Tenant's right to cut standing crop—Tenant not paid price of crop—*See* PENAL CODE, s. 379, 13 Cr. L J. 298 = 14 Ind. Cas. 762 = 11 A.L.J. 270.

Ejusdem Generis.

See MAD. ACT IV OF 1884, ss. 75, 23, 6 M. L.T. 16 = 9 Cr. L.J. 496 = 2 Ind. Cas. 84 = 33 M. 83.

See CRIM. PRO. CODE, 1898, ss. 179, 222, 235 to 239, 531, 537, 18 P.W.R. 1908, Cr. = 8 Cr. L.J. 75.

Ejusdem Generis—*concluded.*

See PENAL CODE, s. 318, 13 C.P.L.R. 188, Cr.

Elephant.

Attachment of a forest—Whether an elephant in the forest can also be attached—Who is entitled to the possession of the—*See* CRIM. PRO. CODE, 1898, s. 145, 1912 M.W.N. 540=14 Ind. Cas. 318=13 Cr. L.J. 222.

Elephant Driver.

If an artificer—*See* ACT XIII OF 1859, s. 2, 8 C.L R. 254.

Emasculation.

Subjecting persons of full age to—*See* CULPABLE HOMICIDE NOT AMOUNTING TO MURDER, 5 W.R. Cr. 7.

Embankment.

See BEN. ACT II OF 1882, s. 76, cls. (*a*) and (*b*), 12 Cr. L.J. 65=9 Ind. Cas. 360=13 C.L.J. 333=38 C. 413.

See BEN. ACT II OF 1882, s. 76, cl. (*b*), 11 C. 570.

See BEN. ACT II OF 1882, ss. 76 (*a*), 79, 30 C. 481=7 C.W.N. 284, F.B.

Order directing removal of—*See* CRIM. PRO. CODE, 1898, s. 144, 2 Weir 66=5 M.H.C. App. 19.

Endangering safety of river—Intention—*See* MISCHIEF, 25 W.R. Cr. 69.

Embankments Act.

See BEN. ACT II OF 1882.

See BUR. ACT XIII OF 1877.

Embezzlement.

Embezzlement—Distinction between criminal and civil liability—*See* APPEAL—APPEAL TO PRIVY COUNCIL, 18 C.W.N. 98.

Emergent Order.

See CRIM. PRO. CODE, 1898 ss. 145, and 435, A.W.N. 1901, 154.

Emigrant.

Watchman preventing an—from leaving the Emigration Depot—Offence—*See* PENAL CODE, s. 341, 21 M.L.J. 439=10 Ind. Cas. 107=12 Cr.L.J. 212=1911, 1 M.W.N. 369.

Emigration Act.

See ACT XXI OF 1883.

Emigration, Assam Labour Act.

See BEN. ACT VI OF 1901.

Emigration of Native Labourers Act.

See ACT XIII OF 1864.

Encroachment.

(1)—*Cantonment Rules, Rule* 59 (3)—*Encroachment—Declaration—Sanction by Committee, if enough.*—Before a person can be convicted under r. 59 (3) of the Cantonment Rules for encroachment on the public road, it is necessary that the Cantonment Magistrate, with the sanction of the Cantonment Committee, should have made the declaration specified in

Encroachment—*continued.*

the rule. The omission to make it cannot be cured by a sanction given by the Committee after the trial. QUEEN-EMPRESS v. FAKEERA, **Rat. Un.Cr C. 505**=Cr.Rg. 19 of 1890.

(2)—*Prosecution for encroachment on grazing grounds—Report of Revenue Officer—Procedure to be adopted by Magistrate in trial—Ignorance of fact, good ground of excuse.*—The Crim. Pro. Code does not place the reports of Revenue Officers on the same footing as those of Police Officers. In taking cognizance of an offence on the report of a Revenue Surveyor, the Magistrate must proceed either under cl. (*a*) or under cl. (*c*) of s. 190, sub-s. (1) of the Crim. Pro. Code. If he proceeds under cl. (*a*), he must examine the complainant thoroughly and ascertain from him the full particulars of the complaint and all necessary details. The Magistrate can proceed under cl. (*c*) only if he is specially empowered to do so and he is then bound by the imperative provisions of s. 191 of the Code. Before issuing process, the Magistrate should endeavour to ascertain whether the grazing ground has been finally demarcated and whether its boundaries are defined by visible marks or are otherwise well known. A plea of the accused that he did not know that the land which he cultivated was in a grazing ground is a good ground of defence. The statement of the accused is not sufficient, but the plea must be investigated. KING-EMPEROR v. PO CHON, **2 L B R. 311=1 Cr. L J. 118.** [*R.*, 13 Cr. L.J. 52=13 Ind. Cas. 388=4 Bur. L.T. 259, 14 Bur. L.R. 250=4 L.B.R. 300.]

What is an—*See* BEN. ACT III OF 1885, s. 139, 15 Cr. L.J. 187=22 Ind. Cas. 763=18 C.W.N. 1120.

Erection of a fence on the roadside land—Passage along the road not impeded—Offence—*See* BEN. ACT III OF 1885, s. 140, 37 C. 671=7 Ind. Cas. 931=11 Cr. L.J. 540.

On a public street by raising pillars—Obstruction, removal of, notice for—*See* BEN. ACT III OF 1899, cl. (18) of ss. 559, 561(*b*), 631, 10 C.L.J. 623=14 C.W.N. 614=4 Ind. Cas. 259=10 Cr. L.J. 522=37 C. 545.

Police patel—Not reporting—Conviction of police patel—Legality—*See* BOM. ACT VIII OF 1867, s. 9, 7 B.H.C. Cr. 88.

On public street—Order for its removal—Disobedience—*See* PUN. ACT XX OF 1891, ss. 87, 95, 164, 165, 11 P.R. 1904, Cr.

Upon Municipal land—Evidence—Blyth's map of Amritsar Municipality—*See* PUN. ACT XX OF 1891, s. 95, 31 P.W.R 1908, Cr.

See CRIM. PRO. CODE, 1898, ss. 133, 138, 139, 6 C.W.N. 886.

Upon Government land — *See* CRIMINAL TRESPASS, 1 Weir 521.

On unmetalled portion of Government road —*See* NUISANCE UNDER CRIM. PRO. CODE, A.W.N. 1901, 25.

Encroachment—*concluded.*

Disobedience of order by kurnam to desist from constructing a pyal—On public road—*See* PENAL CODE, ss. 186, 188, 1 Weir 132.

See PENAL CODE, ss. 268, 290, 7 M.L.J. 95.

Endowments, Religious Act.

See ACT XX OF 1863.

Engine.

Person driving engine—*See* ARTISAN, 9 Bom. L.R. 1059=32 B. 10=7 Cr.L.J. 238.

Engineer.

See PUBLIC SERVANT, 6 B.H.C. Cr. 64.

English Decisions.

See BAIL, 13 C.W.N. 43=36 C. 166=9 Cr. L.J. 375=1 Ind. Cas. 738.

Applicability of—*See* FALSE EVIDENCE, 7 A. 44=A.W.N. 1884, 258.

English Law.

(1)—*English cases on evidence—Applicability to India.*—Though, as the rules of evidence which were in force at the passing of the Evidence Act, were repealed, the English decisions on the subject cannot be regarded as authorities, they may still serve as valuable guides. REG. v. NAVROJI DADABHAI, 9 B.H.C. 358.

Conspiracy under—and Indian Law—*See* ABETMENT, 24 M. 523=2 Weir 340=1 Weir 340=2 Weir 712.

See ACCOMPLICE — ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, 8 A. 306=A.W.N. 1885, 311; 1 M. 394=2 Weir 799=2 Ind. Jur. 600.

See CONFESSION—RETRACTED CONFESSIONS, 25 B. 168=2 Bom. L.R. 761.

Bearing of English Law of criminal pleading on Indian Criminal Procedure—*See* CRIM. PRO. CODE, 1898, ss. 403, 305, 308, 271, 272, 18 C.W.N. 723=15 Cr. L.J. 460=24 Ind. Cas. 340=41 C. 1072.

See CULPABLE HOMICIDE, 1 Weir 288.

See DEFAMATION, 19 B. 340.

Applicability of—*See* EVIDENCE ACT, 1872, ss. 11, 14, 15, 16 B. 414.

See EVIDENCE ACT, 1872, s. 33, 19 B. 749.

See EVIDENCE ACT, 1872, ss. 133, 114, illus. (*b*) Rat. Un. Cr. C. 102=Cr. Rg. 17-1-1876.

—Applicability of—*See* FALSE EVIDENCE, 1 Weir 156=4 M.H.C. 51.

See FALSE EVIDENCE, 1 Weir 146=1 M.H. C. 38.

Applicability of English Common Law to the Indian Mofussil—*See* PENAL CODE, ss. 2,499, 500, 17 C.W N. 297=14 Cr. L.J. 100=18 Ind. Cas. 660=40 C. 433.

High seas—Murder by a British Indian on a British vessel bound for Calcutta—Jurisdiction —Applicability of Indian or English Law—*See* PENAL CODE, s. 4, 16 C.W.N. 471, 39 C. 487=14 Ind. Cas. 598=13 Cr. L.J. 246.

English Law—*concluded.*

See PENAL CODE, ss. 85, 86, 387, 398, 6 L. B.R. 100=5 Bur L.T. 193=17 Ind. Cas. 800=13 Cr. L.J. 864, F.B.

As to conspiracy—*See* PENAL CODE, s. 109, 24 M. 523=2 Weir 340.

Running water, Law as to—English and American law—Not subject of larceny—*See* PENAL CODE, s. 378, 1912 M.W.N. 119=13 Ind. Cas. 819=13 Cr. L.J. 131.

Difference between—and Indian Law—*See* PENAL CODE, s. 489-D., 10 M.L.T. 108=11 Ind. Cas. 241=21 M.L.J. 766=12 Cr. L.J. 377.

Indian Law based on—Mode of construction —*See* PENAL CODE, s. 499, (1912) M.W.N. 476 =14 Ind. Cas. 659=13 Cr. L.J. 275=23 M.L. J. 39.

Petition for divorce—Allegations, made in—No defamation—Not applicable—*See* PENAL CODE, s. 499, excep. 9, 5 S.L.R. 133=13 Ind. Cas. 217=13 Cr. L.J. 25.

See THEFT—GENERAL—WHAT CONSTITUTES THEFT, 1 Weir 407.

See TRIAL BY JURY, 3 S.L.R. 102, Cr.

Englishmen.

And Indians constitute two separate classes.— — Englishmen and Indians constitute two separate classes. JASWANT RAI v. KING-EMPEROR, **14 P.W.R. Cr. 1907=6 Cr. L.J. 439 =2 M.L.T. 272=10 P.R. 1907, Cr.**

English Practice.

As to evidence of accomplice—*See* EVIDENCE ACT, 1872, ss. 114 (*h*), 133, A.W.N. 1882, 13.

English Translation.

Record of confession to be accompanied by—*See* CONFESSION—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY—RECORD OF CONFESSIONS, 18 W.R. Cr. Cir. 9.

Enhancement of Sentences.

See SENTENCE—ENHANCEMENT OF SENTENCES.

See SENTENCE—POWERS OF APPELLATE COURT—ENHANCEMENT.

Enquiry.

See FURTHER ENQUIRY.

See INVESTIGATION.

See JUDICIAL ENQUIRY.

See LOCAL ENQUIRY.

See POLICE ENQUIRY.

See PRELIMINARY ENQUIRY.

By a registrar's clerk—*See* ACT III OF 1877, ss. 80, 82, 23 W.R. Cr. 55.

Under Legal Practitioners Act, if a judicial proceeding—*See* ACT XVIII OF 1879, 6 M. 252 =1 Weir 116=1 Weir 156=1 Weir 785=7 Ind. Jur. 247.

See COURT, 12 B. 36.

Enquiry—*concluded.*

Order for preliminary enquiry without recording reasons for distrusting truth of complaint—Preliminary enquiry in the presence of accused condemned—*See* CRIM. PRO. CODE, 1898, ss. 4 (*h*), 195, 202, 203, 258, 476, 17 C. W.N. 290=14 Cr. L.J. 57=18 Ind. Cas. 345=40 C. 444.

See CRIM. PRO. CODE, 1898, ss. 4, 476, 28 A. 89=A.W.N. 1905, 195=2 A L.J. 717=2 Cr. L.J. 454.

See CRIM. PRO. CODE, 1898, ss. 4 (*k*), 145 and 350, 13 C.W.N. 420=9 Cr. L.J. 278=1 Ind Cas. 336.

Investigation in a case under s. 145, whether an, in a Criminal Court—*See* CRIM. PRO. CODE, 1898, ss. 4, cl. (*k*), 145 and 526, 28 C. 709=5 C.W.N. 749.

As to sufficiency of surety, by whom to be made—*See* CRIM. PRO. CODE, 1898, ss. 110 and 118, 25 A. 272=A.W.N. 1903, 36.

Delegation of functions to a subordinate officer to inquire into sufficiency of security—*See* CRIM. PRO. CODE, 1898, ss. 110 and 118, 27 A. 293=1 A.L J. 601=A.W.N. 1904, 231.

Recording evidence in inquiry as to the fitness of surety—*See* CRIM. PRO. CODE, 1898, s. 122, 26 A. 371=A.W.N. 1904, 52.

Enquiry by Magistrate of case triable by Court of Sessions—Annulling conviction—Commitment on the same evidence—*See* MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT, 2 A. 910.

See RESTORATION OF PROPERTY, 4 L B.R. 229=7 Cr. L.J. 490.

Enticing away Married Woman.

See PENAL CODE, ss. 497, 498.

(1)—*Penal Code, s. 366 — Enticing away minor girl with intention of seducing her to illicit intercourse—Offence committed in Native State —Trial in British territory without certificate from the Political Agent—Objection taken too late.*—The accused enticed away a married girl under the age of 16 years from the house of her father, where she was temporarily staying, in the dominions of the Maharaja of Kashmir. The accused took her to various places and was ultimately captured while asleep with her in the same cot at a village near Guzarat, in the British territory. Although the girl was made to leave her home on a deceitful message, she was persuaded to go away with the accused. Her subsequent movements were not against her will but with her consent due to the persuasions of the accused. The accused also induced her to file a petition at Guzarat to the effect that she was without a guardian and was going to settle there in order to practise prostitution, and to make a similar statement at the Sadar Thana. He also rented a shop for her in order to carry on prostitution. He was convicted under s. 366, I P.C. Upon the hearing of the appeal against the conviction, it was contended on his behalf that the offence having been committed in Kashmir territory, the trying Magistrate had no jurisdiction to enquire into it without a certificate by the Political Agent for the Kashmir State. *Held*, by the Full Bench, that the objection was made too late and was at all events not fatal to the conviction which was accordingly maintained. FATEH DIN v. EMPEROR, **21 P.L.R. 1902, F.B.=4 P.R. 1902, Cr.** (35 P.R. 1888, Cr., 11 P.R. 1896, Cr., A.W. N. 1884, 85, 19 A. 109, 13 M. 423, 19 C. 667, 5 C.W.N. 866, *R.*)

Enticing away Married Woman—*continued.*

(2)—*Penal Code, s. 498— Enticing away a married woman—Jhanjrara marriages valid in the Kangra District—Divorcing and selling a wife illegal—No offence in the absence of lawful marriage.—Held*, that a complainant is incompetent to prosecute another man under s. 498, Penal Code, for enticing away a woman, unless he establishes that he is her lawful husband. Jhanjrara (Chadar Andazi) marriage with a widow is no doubt valid according to the custom prevailing generally in the Kangra District, but there is no custom (and even if there be any, it cannot be enforced) allowing a husband to divorce and sell his wife to another on receipt of pecuniary compensation. Such a connection between the woman and the purchaser does not create any legal relationship of husband and wife which can be recognised by any Civil or Criminal Court. NIHALA v. CROWN, **22 P.W.R. 1909, Cr.=12 P L R. 1910 =4 Ind. Cas. 1042=11 Cr. L.J. 155.** (98 P.R. 1890, *F.*)

(3)—*Penal Code, s. 498—Enticing away a married woman—Crim Pro. Code (Act V of 1898), s. 345—Compounding of offence before Police.*—The complainant, a man of some 50 years of age, had a wife of some 16 years of age. On 2nd September 1907, he brought a case against one K and his mother, under s. 498, I.P. Code. On the 18th January he compounded the case. On the 18th December 1908 he instituted a case against the present petitioner under ss. 497, 498 and 363, I.P.C., asserting that, on 1st February 1908, the petitioner had taken away his wife and child after removing the hinges of her door. In the proceedings that ensued, he stated that his wife had left him in his absence, and simply mentioned his suspicions that petitioner had got hold of the woman through the agency of the third person. On the 18th March 1909 a compromise was effected before the Inspector of Police, when the case was under investigation by the police, and the same was withdrawn. On 7th May 1909 the complainant asserted that he had been forced into the compromise and wished to go on with his case against the petitioner. The Magistrate ordered a warrant to be issued against the petitioner for an offence under s 498, I.P.C. *Held*, that, as the offence had been compounded, the proceedings before the Magistrate were *ultra vires*. That, as to the charge of kidnapping, it was impossible under the circumstances of the case to prove it. CROWN v. HARNAM SINGH, **22 P.L.R. 1910, Cr.=6 Ind. Cas. 497=11 Cr. L. J. 366.**

(4)—*Penal Code, s. 498 — Enticing away married woman—Evidence of marriage.*—In

Enticing away Married Woman—*concluded.*

order to sustain a conviction under s. 498, I.P.C., it must be strictly proved that the woman said to have been enticed away was married to the complainant. QUEEN-EMPRESS v. SANTOK SINGH, **A W.N. 1898. 186.** (5 A. 233, 5 C 566, 20 A 166. *R.*) [*R.*, 31 B. 218=9 Bom. L.R. 148=5 Cr L J. 164, 36 A. 1=11 A.L.J. 994=15 Cr. L.J. 78=22 Ind. Cas. 430.]

See ABDUCTION, 1 W.R. Cr. 45.

See ADULTERY, 5 M.H.C. App. 22.

See COMPOUNDING OFFENCE, 1 M. 191.

See KIDNAPPING, 10 W.R. Cr. 33.

See TRIAL, 5 M.H.C. App. 16.

Entry.

See FALSE ENTRY.

Epidemic Diseases Act.

See ACT III OF 1897.

Epilepsy.

Homicide or death from.—*See* MEDICAL JURISPRUDENCE, 13 C.W.N. 622.

Erratum.

In Circular No. 19, *dated* 21*st July*, 1863.—S. 67 may be substituted for s. 367 in para 4 of Circular No. 19, dated 1st July 1863, the latter figure being a clerical error. CRIMINAL CIRCULAR NO. 6, DATED 17TH APRIL 1866, **6 W. R. Cr. Cir. 1.**

Error.

See CHARGE—GENERAL, 15 M.L.J. 224=2 Cr. L J. 381=2 Weir 231.

Escaped Prisoner.

Case of, not to be returned as pending—*See* PRISONER, 9 W R Cr. Cir. 1.

Escape from Lawful Custody.

See PENAL CODE, SS. 223—226.

(1)—*Escape from lawful custody—Penal Code*, s. 223, *scope of—Arrest under civil process.*—S. 223 of the Penal Code applies only to cases, where the person, who is allowed to escape, is in custody for an offence, or has been committed to custody, and not to cases where such person has simply been arrested under civil process. QUEEN-EMPRESS v. TAFAULLAH, **12 C. 190.**

(2)—*Penal Code*, ss. 224 *and* 226—*Essential of the offence under s.* 226—*Escape while undergoing sentence of transportation.*—To constitute an offence under s. 226, it is essential that the convict should have been actually sent to a Penal Settlement and have returned before his term of transportation had expired or been remitted; but where a prisoner escapes from the custody of the police, when under sentence of transportation and whilst on his way to undergo such sentence, *held*, that the accused was punishable under s. 224 and not under s. 226. *In re* RAMASWAMI, **1 Weir 213=4 M.H.C 152.**

(3)—*Penal Code, s.* 224—"*Offence,*" *meaning of—What facts to be proved.*—The word 'offence' in "whoever escapes from any custody, in which he is lawfully detained for any such offence" is any offence, with which the accused is charged, or of which he has been convicted. The question, whether he is guilty of such offence, is immaterial. The facts to be proved, are that he was charged with an offence, that he was lawfully detained in custody for that offence, and that he escaped from that custody. KING-EMPEROR v. PO HLA, **3 L.B.R. 221=4 Cr. L.J. 389.** (21 C. 337, *D.*; 28 C. 253, *Ref.*)

Escape from Lawful Custody—*continued.*

(4)—*Penal Code,* s. 225-*B*—*Escape from custody—Unlawful detention — Liability.*—In order to obtain a conviction under s. 225-B of the Penal Code, it is necessary for the prosecution to prove that the custody from which the accused escaped was a lawful custody, *i.e.*, that the accused person was lawfully detained. KING-EMPEROR v. RAMARA, **4 L B.R. 103=7 Cr. L.J. 74.**

(5)—*Penal Code,* s. 224—*Meaning of term* "*any such offence*"—*Arrest for cognisable offence—Escape from lawful custody.*—The words "for any such offence" in s. 224, Penal Code, mean "for any such offence with which a person is charged or of which he has been convicted." Therefore, it is an offence for a person to escape from custody after he has been lawfully arrested on a charge of having committed an offence, although he may not be convicted of such latter offence. If a person is lawfully arrested, the subsequent detention of that person is also lawful, even if he may not be convicted of the offence for which he was arrested. DEO SAHAY LAL v. QUEEN-EMPRESS, **28 C. 253=5 C.W.N. 289.** (21 C. 337, *D.*) [*R.*, 3 L.B.R. 221.]

(6)—*Apprehension without warrant—Penal Code*, s. 224.—If a person apprehended on a charge of a cognisable offence escapes from lawful custody, the circumstance that a competent Court determines his offence to be other than that with which he has been charged will not affect his liability to punishment. But if charged with a non-cognizable offence, the Police officer arresting him without warrant does not have him in lawful custody, and his escape is not punishable under the Penal Code, s. 224. QUEEN v. RAM SARAN TEWARY, **24 W.R. Cr. 45.**

(7)—*Penal Code*, s. 224—"*Lawfully detained in custody,*" *construction of.*—In construing the term "lawfully detained in custody" in s. 224, regard must be had to the nature of the custody itself as well as to the circumstances under which the authority to arrest and keep in custody arises. Detention in stocks of a person, who is not so sentenced for any offence, but who is detained in that manner simply as a convenient mode, is not legal custody. HIGH COURT PROCEEDINGS, 23RD SEPTEMBER 1878, No. 1533, **1 Weir 199.** [*R.*, 5 M. 22=1 Weir 200.]

(8)—*Crim. Pro. Code* (1882), s. 167—*Detention in custody—Escape from custody owing to negligence of Police officer—Penal Code*, ss. 222 *and* 223.—A complaint by a private person was

Escape from Lawful Custody—*continued.*

presented to a Magistrate that a certain person was concerned in a murder, and the Magistrate arrested him, and, after hearing the complainant and such person, sent him to the Superintendent of the Police. He, in turn, sent him to a Sub-Inspector. *Held*, that the Magistrate's order might be held to have been passed under s. 167, Crim. Pro. Code, and the Sub-Inspector was bound to detain him in custody, until released by due course of law, and that he was guilty of an offence under s. 222, I.P.C., by negligently suffering him to escape from his custody. EMPRESS v. ASHRAF ALI, **6 A. 129 = A W.N. 1883, 257.**

(9)—*Crim. Pro. Code* (1882), *ss.* 55, 110, 117, 118—*Order requiring security for good behaviour—Nature of the order—Arrest of person—Penal Code, ss* 40, 224, 225.—A person required to furnish security for good behaviour is not charged with an offence within the meaning of s. 44, I.P.C. Therefore, if such person, with the help of others, evades and resists his apprehension under s. 55, Crim. Pro. Code, and escapes, no offence made punishable by s. 224 or s. 225, I.P.C., is committed by him. QUEEN-EMPRESS v. KANDHAIA, **7 A. 67 = A. W.N. 1884, 267.** [*F.*, 9 A. 452.]

(10)—*Penal Code, ss.* 224, 411—*Escape from custody—Thief arrested by private person with possession of stolen property—Legality of the arrest.*—The retention by the thief of the stolen property is not an offence within the meaning of s. 411. Where a private person, whose bullock was lost, traced the bullock to the house of the accused, who was the actual thief, arrested him and made him over to the police *chaukidar*, from whose custody he escaped, *held*, that the arrest was not lawful, as the offence of theft was not committed in the presence of the private person arresting him, and, therefore, the custody being illegal, his escape was not an offence under s. 224. Where a qualified person having made an arrest and handed over the person arrested to the custody of an agent, such custody continues to be, what it was originally a lawful custody. KING-EMPEROR v. JOHRI, **23 A. 266 = A.W.N. 1901, 77.** (11 M. 480, *R.*) [*F.*, 29 A. 575 = 4 A.L.J. 483 = A.W. N. 1907, 179 = 6 Cr. L.J. 10; *R.*, 29 A. 377 = A.W.N. 1907, 94 = 5 Cr. L.J. 277; *D.*, 28 A. 372 = 3 A L.J. 146 = A.W.N. 1906, 522 = 3 Cr. L.J. 247.]

(11)—*Penal Code, s.* 225-*B*—*Escape from custody—Defaulter for payment of Government revenue— Rules of Board of Revenue, r.* 9, *cl.* (2)—*Land Revenue Act* (III *of* 1901), ss. 142, 143, 149.—The use of the word "ordinarily" in r. 9, cl. 2, Rules of the Board of Revenue, relating to the recovery of arrears of revenue, shows that the intention of the Board was that in every case process should issue against the *lambardar* in the first instance, but that occasion may arise when it is found expedient to issue process in the first instance against the defaulter. Under s. 142, Land Revenue Act, all the proprietors are jointly and severally

Escape from Lawful Custody—*continued.*

responsible to Government for revenue, and the arrears may be realised, under s. 146, by the arrest and detention of the defaulter, as defined in s. 143. The writ of demand and the writ of arrest and detention may issue simultaneously against the defaulter, the words of s. 146, Land Revenue Act, are wide, and there is nothing to limit the order in which they should issue. Hence, where a co-sharer had made default in the payment of Government revenue and under a writ of detention was confined in the lock-up wherefrom he escaped, *held* that he was guilty of an offence under s. 225-B, Penal Code. KING-EMPEROR v. GULABSINGH AND OTHERS, **7 A L J. 21 = 32 A. 116 = 5 Ind. Cas. 449 = 11 Cr.L.J. 137.**

(12)—*Warrant in execution of decree—Escape from custody—Indian Penal Code, s.* 174.—S. 174 of the Indian Penal Code does not apply to the case of a defendant escaping from custody under a warrant in execution of a decree of Civil Court. REG v. SARDAR PATHU, **1 B.H. C. Cr. 38.**

(13)—*Warrant in execution of decree—Escape —Penal Code, s.* 174.—Escape from custody under a warrant in execution of the decree of a Civil Court is not an offence punishable under s. 174, I.P.C. CROWN v. DHOLA, **27 P.R. 1870, Cr.** [*Diss.*, 1 P.R. 1871, Cr.]

(14)—*Warrant in execution of decree—Escape —Penal Code, ss.* 174, 186.—A person escaping from custody under a warrant in execution of the decree of a Civil Court is punishable under s. 174. A revenue defaulter escaping from the custody of peon is punishable under s. 186, I.P.C. CROWN v. HEERA SINGH, **1 P.R. 1871, Cr.**

(14-*a*)—*Penal Code, ss* 174, 186 *and* 224—*Escape from arrest on civil and revenue process.*—A process-peon went with a warrant to the village of the accused and told him that he was a process-peon of the Court, with a warrant for him and took him before the Village Magistrate. The Village Magistrate, then, read out the warrant to the accused and the process-server informed him that he must pay the amount or go before the District Munsiff. The accused offered to pay a less sum than that named in the warrant which the process-server refused to take and the accused then ran away. *Held*, that the accused was duly arrested and that he was in the custody of the process-server at the time he made his escape. *In re* VENKATACHALA SAMBAN, **1 Weir 206.**

(15)—*Convict escaping from custody—Trial in the district in which he escaped.*—A convict escaping from custody must be tried for that offence in the district within which he escaped; a Magistrate of another district has no jurisdiction to try him for the offence. REG. v. DOSSA SERA, **1 B.H.C. 139.**

(16)—*Penal Code, s.* 223—*Escape from custody of village policeman.*—A village policeman is nowhere required or authorized to take

Escape from Lawful Custody—*continued.*

charge of convicted prisoners; hence, if a convicted prisoner escapes from his custody, the village policeman is not guilty of an offence under s. 223, I.P.C. QUEEN-EMPRESS v. JAGLIA, **1 Bom. L.R. 349.**

(17)—*Penal Code, s. 224—Escape from custody of village watchman—Crim. Pro. Code* (1872), s. 105.—Village *Talayari* and *Totti* are not Police Officers. Escape from their custody by a person wanted by the Police on a charge of theft is not an escape from lawful custody, if the offence of theft is not committed in the presence of either of them. QUEEN v BOJJIGAN, **5 M. 22=1 Weir 200.** [*D.*, 11 M. 480=1 Weir 200=1 Weir 201=17 M. 103.]

(18)—*Escape from custody while being taken before Magistrate—Penal Code, ss.* 224 *and* 225-*A, convictions under.*—A person, who escaped from custody, while being taken before a Magistrate for the purpose of being bound over for good behaviour, cannot be convicted under s. 224 or s. 225-A of the Penal Code. EMPRESS v. SHASTI CHURN NAPIT, **8 C. 331=10 C.L.R. 290.** [*F.*, 7 A. 67=4 A.W.N. 267.]

(19)—*Penal Code, s. 224—Arrest of a person under the belief that he was an offender—Acquittal—Escape.*—A person arrested by a police constable under the belief that he was a man who had been charged with an offence, escaped from custody. He was subsequently brought to trial, and acquitted on the ground that he was not the person who was charged with that offence, but was another person bearing the same name as the real accused person. *Held*, that he was not liable to punishment under s. 224, Penal Code, for his escape from police custody, as he was not lawfully detained for any offence. GANGA CHARAN SINGH v. QUEEN-EMPRESS, **21 C. 337.** [*R.*, 3 L.B.R. 221=4 Cr. L.J. 389; *D.*, 28 C. 253=5 C.W.N. 289.]

(20)—*Crim. Pro. Code* (1898), *ss.* 56 *and* 80—*Arrest in accordance with an order in writing under s.* 56—*Police Officer making the arrest, whether bound to notify the authority of arrest.*—S. 80 should not be extended to an arrest made by the police on an order in writing under s. 56 so as to require that any information must be given to the person arrested in order to make it an arrest warranted by law. The order in writing is an authority to a subordinate police officer to make an arrest which the superior police officer, if present, could himself make on his own responsibility. It may be desirable or even obligatory that, if called upon, the police officer making such an arrest should show the person arrested the authority under which he is acting; but to hold that he is bound to do so before he can properly arrest and detain in custody such a person so as to make the arrest and the detention lawful, would be to extend the law beyond what the Legislature has thought proper to declare it. QUEEN-EMPRESS v. BASANT LALL, **27 C. 320=4 C.**

Escape from Lawful Custody—*continued.*

W.N. 311. [*F.*, 5 N.L.R. 4=9 Cr. L.J. 211=1 Ind. Cas. 238, 6 S.L.R. 120=13 Cr. L.J. 771=17 Ind. Cas. 403.]

(21)—*Crim. Pro. Code* (1898), *s.* 79—*Warrant of arrest, without endorsement of any name.*—Under the terms of s. 79, the endorsement should be regularly made by name to a certain person in order to authorise him to make the arrest. If not, the person resisting the arrest and escaping is not liable to be punished under s. 224, I.P.C. DURGA TEWARI v. RAHMAN BUKSH, **4 C.W.N. 85.**

(22)—*Crim. Pro. Code, ss.* 59, 239, 535 *and* 537—*Joint trial of two cases of theft and rescuing from lawful custody the person accused of theft—Penal Code, s.* 225—*Nature of custody to support a conviction under.*—Where a person was charged with theft and two others were charged with rescuing the former from lawful custody and the Magistrate tried both the cases together and convicted all the accused in one trial, *held* that, although it was irregular to try both cases together, the accused, under the circumstances of the case, were not prejudiced by the irregularity. [*R.*, 83 P.L.R. 1901=7 P.R. 1901, 27 C. 839=4 C.W.N. 656, F.B.] It is not necessary that the custody from which a person is rescued should be the custody of a police officer to support a conviction under s. 225 of the Indian Penal Code. It is sufficient that the custody is one authorised by law. QUEEN-EMPRESS v. KUTTI, **11 M. 441=1 Weir 210=2 Weir 304.**

(23)—*Penal Code, s.* 224—*Arrest by private person on suspicion of theft—Accused handed over to village servants—Escape—Liability to punishment—Crim. Pro. Code* (1882), *s.* 59.—The intention of s. 59, Crim. Pro. Code, is to prevent arrest by a private person on mere suspicion or information and not to impose on him the obligation of taking the party arrested in person to a police station. Where an accused person was arrested by a person in whose view the offence of theft was committed and was handed over to the Village Magistrate, who sent him in the custody of two village servants to a police station, and the accused escaped on the way, *held*, that the accused was guilty of an offence under s. 224, Penal Code. QUEEN-EMPRESS v. POTADU, **11 M. 480=1 Weir 200=1 Weir 38.** [*F.*, 29 A. 575=4 A.L.J. 483=A.W.N. 1907, 179=6 Cr. L.J. 10; *R.*, 23 A. 266=21 A.W.N. 77, 17 M. 103=1 Weir 201.]

(24)—*Penal Code, s.* 224—*Escape from the custody of a Village Magistrate—Madras Reg.* XI *of* 1816, *s.* 5.—By s. 5, Reg. XI of 1816, heads of villages are authorised and directed to apprehend all persons charged with committing crimes and to forward them to the police officer of the District. Where a person, who had been apprehended on a hue and cry being raised as he was running away after committing a robbery, was handed over to the Village Magistrate and was by the latter placed in charge of the *taliyaries* for detention till next morning, when he was to be taken to the police

Escape from Lawful Custody—*continued.*

station, and the person escaped in the meanwhile from the custody of the *taliyari*, *held*, that the accused was rightly convicted of an offence under s. 224, Penal Code, inasmuch as the arrest was legal. QUEEN-EMPRESS v. FAKIRA, **17 M. 103 = 1 Weir 201.** (5 M. 22, *R.*)

(25)—*Penal Code, s. 224 — Accused left unguarded—Escape.*—Where a person, who was legally arrested for an offence, was left unguarded, the Police officer, in whose custody the accused was, having absented himself for a few minutes, and escaped, *held*, that the accused was guilty of an offence under s. 224, Penal Code. QUEEN-EMPRESS v. MUPPAN, **18 M. 401 = 1 Weir 203.** [*F.*, 8 Cr. L J. 200 = 31 M. 271 = 18 M. L. J. 540; *D*, 7 Ind. Cas. 392 = 11 Cr. L. J. 477 = 8 M. L. T. 286.]

(26)—*Penal Code, s. 224—Custody for an offence committed against special or local laws—Escape.—Held by the Full Bench, Innes, J., dissenting.*—A man who escaped from lawful custody in which he has been detained for an offence committed against special or local laws can be punished for such escape under s. 224, Penal Code. HIGH COURT PROCEEDINGS, 22ND DEC. 1866, **3 M.H.C. App. 11.**

(27)—*Penal Code, s 224—Custody for inability to give security, nature of.*—A person in custody owing to his inability to give security is not in custody for an offence with which he has been charged or of which he has been convicted. HIGH COURT PROCEEDINGS, 19TH JAN. 1867, **3 M.H.C. App. 23.**

(28)—*Person detained in custody for the purpose of giving security for good behaviour.*—A person, who is detained in custody for the purpose of giving security for good behaviour, is not in custody for an offence, although his detention may be lawful. HIGH COURT PROCEEDINGS, 28TH OCT. 1874, NO. 1614, **1 Weir 198 = 7 M.H.C. App. 41.**

(29)—*Penal Code, s. 224—Punishment under the section to be an addition to the original sentence—Crim. Pro. Code, s.* 316 (= *s.* 396 *of the Code of* 1898).—Under s. 224, Penal Code, the punishment prescribed for escape from lawful custody is to be in addition to the original sentence. The Court, in passing the sentence, must comply with the provisions of s. 316 (s. 396 of the Code of 1898). *In re* CHINNA MADAKUDAMBAN, **1 Weir 203 = 2 Weir 450.**

(29-*a*) *Penal Code, s. 224—Person in charge of a prisoner in jail becoming insensible.*—Where a prisoner was in a part of the jail, *held*, that the mere fact that the constable in charge of him became insensible could not determine the lawful custody of the prisoner. *In re* SAUDEYA GOUNDAN, **1 Weir 203.**

(30)—*Constable in charge of the prisoner becoming insensible* — Where a constable, in charge of a prisoner, who was taken out from the prison, became insensible, and the prisoner walked off, *held*, that the prisoner was not guilty of an offence under s. 224, Penal Code, inasmuch as the prisoner, when he escaped, was not in custody, the constable being insensible. *In re* SARABAIYA, **1 Weir 202.** [*D.*, 1 Weir 203.]

(31)—*Penal Code, s. 224—Sentence of detention under a tree by a Village Magistrate—Madras Reg.* XI *of* 1816.—Reg. XI of 1816 does not authorise a Village Magistrate to order the detention, under a tree, of a person convicted before him. Such detention being illegal, the accused, if he escapes, cannot be said to have escaped from a lawful custody. *In re*, PANDARAM THULKANAM, **1 Weir 205 = 1 Weir 923.**

(32 & 33)—*Penal Code, s. 224—Escape from custody—Identity of person—Procedure.*—Where a person believed to be an escaped convict is brought before a Magistrate, the proper course is to charge and try him for an offence under s. 224 of the Penal Code, when his identity will have to be established by the prosecution. His identity cannot be the subject of an independent inquiry. EMPRESS v. AMAN, **A.W.N. 1882, 77.**

(34)—*Penal Code, s. 224—Escape of convict under sentence of death.*—Where an escaped convict under sentence of death was found and convicted under s. 224 of the Penal Code, the Court ordered the previous sentence to be carried into execution. EMPRESS v. AMAN, **A.W.N. 1882, 164.**

(35)—*Penal Code, s 225—Arrest by private person—Person arrested handed over to* chaukidar—*Escape.*—A private person arrested a person whom he saw committing theft, and made him over to a village *chaukidar*. While in custody of the *chaukidar*, the person who committed the theft was rescued by the accused. *Held*, that they were lawfully convicted of an offence under s. 225, the original custody was lawful custody, and this custody did not become unlawful by associating the village *chaukidar*. EMPRESS v. MURLAI SINGH, **A.W.N. 1883, 214.**

(36)—*Penal Code, s. 224—Arrest on suspicion—Escape from custody.*—A person who has been arrested on suspicion (s. 54 of the Crim. Pro. Code) and escapes from such custody is guilty of an offence under s. 224, though it may be that he may happen to be acquitted of the offence of which he was suspected. QUEEN-EMPRESS v. CHAKUA, **A.W.N. 1896, 151.**

(37)—*Right of entry in pursuit of prisoner escaped—Entry into lodging house.*—A prisoner who has escaped from the custody of Court peons may be pursued into the yard of a lodging house, the door leading into which is open. DUKHOO PEIN v. CHUNDRO KANT CHOWDRY, **3 W.R. Cr. 68.**

(38)—*Rescue from lawful custody—Penal Code, s. 225.*—For a conviction under s. 225, Penal Code, it must be established that the person whom the accused are charged with having rescued was in lawful custody at the time. QUEEN v. DEGUMBER AHEER, **21 W, R. Cr. 22.**

Escape from Lawful Custody—*concluded.*

(39)—*Penal Code, s.* 225.—A Police officer duly appointed under Act V of 1861, and engaged in the discharge of his duty as such Police officer at a time when an unlawful assembly took place, was held to be competent to apprehend any of the members of such unlawful assembly; and a person who rescued the persons apprehended was held to be guilty of rescuing from lawful custody within the meaning of s. 225, Penal Code. QUEEN v. ASSAN SHURREFF, **13 W.R. Cr. 75.**

See ACT XXVI OF 1870, 4 N.W.P. 4.

Of judgment-debtor arrested without warrant, whether punishable—*See* ACT XIV OF 1882, s. 651, 5 A. 318.

See BOM. ACT XLVIII OF 1860, s. 8, 6 B.H.C. Cr. 15.

See CONTEMPT OF COURT, 1 B.H.C. Cr. 38.

See JOINDER OF CHARGES—MISJOINDER OF CHARGES, 3 L.B.R. 221=4 Cr. L.J. 389.

See PENAL CODE, ss. 23, 186, 22 C. 759.

See PENAL CODE, s. 186, 2 B.H.C. 128.

See REVISION—SENTENCE, 25 W.R. Cr. 1.

See SENTENCE—GENERAL, 8 W.R. Cr. 85.

See SENTENCE—TRANSPORTATION, Rat. Un. Cr. C. 965=Cr. Rg. 19 of 1898.

Estates Partition Act.

See BEN. ACT VIII OF 1876.

Estoppel.

See RIGHT OF SUIT, 6 C. 291=7 C.L.R. 433,

European British Soldier.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 13 B.L.R. 474=22 W.R. 20.

European British Subject.

See CRIM. PRO. CODE, 1898, ss. 443 to 463.

See JURISDICTION OF CRIMINAL COURTS—JURISDICTION OVER EUROPEANS.

(1)—*Crim. Pro. Code* (1872), *s.* 72 (*=s.* 44 *of the Code of* 1898)—*Offence by an European British subject under Act* I *of* 1859—*Jurisdiction.*—No Magistrate, who is not a Justice of the Peace and also a European British subject, has jurisdiction to enquire into a complaint and try a charge under Act I of 1859, against a European British subject. H.C. PROCEEDINGS, 18TH DECEMBER, 1872, NO. 2243, **2 Weir 578 =7 M.H. C. App. 32.**

(2)—*Crim Pro. Code, s.* 454 — *European British subject- Right to be tried as such—Waiver — Revocability of waiver.* — Where a European British subject waived his right to be tried as such, *held* that his waiver was not, under the circumstances, irrevocable, and that, if the withdrawal of the waiver was made promptly shortly after the waiver had been made, and if substantially nothing had been done in the interval on the abandonment of the privilege, the withdrawal of the waiver

European British Subject—*continued.*

should be allowed. KING-EMPEROR v. STERLING. **1 P R 1908, Cr.=4 P.W.R. 1908=7 Cr. L.J. 274=136 P.L.R. 1908.**

(2-*a*)—*Claim to be tried as—Waiver—Jurisdiction of Judicial Commissioner's Court over—Crim Pro. Code, ss.* 4 (*j*), 346, *ch.* XXXIII.—A claim to be tried as an European British subject can be waived. (12 B. 561, *R.*) In every case of this nature, his right as an European British subject should be carefully explained to the accused, so as to enable him to exercise his choice and judgment as to whether he should claim those rights or waive them. (6 C. 83, *R.*) The jurisdiction of the Judicial Commissioner's Court at Nagpore, not being a High Court within s 4 (*j*), Crim. Pro. Code, is not ousted, unless and until the accused have definitely claimed to be tried as European British subjects, and that Court can exercise its powers of revision in the case. There is nothing in ch. XXXIII of the Crim. Pro. Code which excludes the application of s. 346 of the Code to European British subjects. EMPEROR v. F. M. C. NULTY, **7 N.L.R. 93=11 Ind. Cas. 620=12 Cr. L.J. 436.**

(3)—*Power of local Legislature to confer jurisdiction on Magistrate over European British subject for a newly created offence.—Quære.*—Whether the local Legislature has the power to render European British subjects punishable by a Magistrate on a summary conviction for an offence newly created by them. REG v. DONOGHUE, **5 M.H.C. 277.**

(4)—*Penal Code, s.* 56—*Penal servitude.*—The punishment of penal servitude is only applicable to Europeans and Americans. QUEEN-EMPRESS v. DINA BAIDYA, **19 M. 483=1 Weir 298.**

(5)—*European British subject—Offence in Native State—Jurisdiction—Penal Code.*—S. 44 of the Charter of the Supreme Court of Bombay gave to that Court jurisdiction over offences committed by European British subjects in Native States in alliance with the British Government, if the acts would be offence if committed in British territory. The High Court has, therefore, jurisdiction to try such offences on charges framed under the Penal Code. REG. v. CHILL, **8 B.H.C.Cr. 92.** [*R.*, 19 B. 105.]

(6)—*European British subjects in Mysore—Offence not punishable with death or transportation for life — Committal to Madras High Court.*—Inasmuch as the High Court of Madras has been duly constituted a Court of Original Criminal Jurisdiction to take cognizance of offences committed by European British subjects being Christians, it may be that, in the absence of any special direction, a commitment to the High Court of such person charged with an offence not punishable with death or transportation for life, committed in Mysore Province, would be a good commitment. WARD v. QUEEN, **5 M. 33=1 Weir 7.**

(7)—*Crim. Pro. Code* (1882), *ss.* 197, 532—*Commitment without previous sanction, of*

European British Subject—*continued.*

European British subject, who is also a public servant.—A European British subject, who was a public servant within the meaning of s. 197, was committed by the Judicial Superintendent of Railways in H. H. the Nizam's Dominions, without obtaining a previous sanction. *Held* that the proceedings were irregular and a subsequent sanction would be of no use. But the Judge had power, in his discretion, under the provisions of s. 532, to accept the commitment and to proceed with the trial. QUEEN-EMPRESS v. MORTON, **9 B. 288, F. B.** [*N.F.*, 16 P. R. 1890, Cr.; *F.*, 22 B. 112; *R.*, 37 C. 467 = 14 C.W.N. 1114 = 11 Cr. L.J. 453 = 7 Ind. Cas. 359, 40 C. 360 = 13 Cr. L.J. 826 = 17 Ind. Cas. 570, 5 Bom. L.R. 868; *D.*, 10 Bom. L.R. 1053.]

(8)—*Crim. Pro. Code*, 1872, *s.* 72, *Scope and effect of.*—The provisions of s. 72 of the Crim. Pro. Code of 1872 constitute a privilege in favour of a European British subject, *i.e.*, they do not so much take away jurisdiction entirely from Magistrates as confer on the accused a right to be tried by a certain class of Magistrates and by no others, which right the Code enables them to give up. No person can by waiver or consent enable a Magistrate or a Judge to try a case which he is disqualified to try by some circumstance not personal to the accused. *In the matter of the petition of* QUIROS, EMPRESS v. ALLEN, **6 C. 83 = 6 C.L R. 463 = 3 Shome L.R. Cr. 35.** (2 C. 23, *D.*) [*F.*, 37 C. 467 = 14 C.W.N. 1115 = 11 Cr. L.J. 453 = 7 Ind. Cas. 359; *R.*, 136 P.L.R. 1908 = 1 P.R. 1908, Cr. = 4 P.W.R. 1908, Cr. = 7 Cr. L.J. 274; *Cons.*, 12 B. 561, 12 Cr. L.J. 436 = 11 Ind. Cas. 620 = 7 N.L.R. 93.]

(9)—*Crim. Pro. Code, ch.* XXXIII—*Rights and privileges of European British subjects—Crim. Pro. Code* (1872), *s.* 72.—An European British subject, when tried by a District Magistrate, enjoys the following privileges:—*firstly*, that the Magistrate's powers of punishment are restricted and, *secondly*, that the accused can claim trial by jury. But, where the privilege of trial by jury is not claimed and the sentence passed is legal, the appellate Court has no right to order a new trial by a jury, but must dispose of the appeal on its own merits. EMPEROR v. GEORGE POWELL, **27 A. 397 = 2 A.L.J. 20 = A.W.N. 1905, 5 = 2 Cr.L.J. 17.**

(10)—*Opportunity to plead being European British subject.—Plea not taken till too late—Waiver.*—A prisoner ought not to be allowed to plead that he is a European British subject. The mere statement of a prisoner that he is a European British subject made before a Deputy Magistrate after the completion of the trial cannot be acted on. CLARK v. W. BEANE, **5 W.R. Cr. 53.**

(11)—*Trial of, by jury where there was no notification under s.* 269, *Crim. Pro. Code—Validity.*—Where a European British subject in the Punjab was tried with a jury instead of assessors, there being no notification under s. 269 of the Code in the Punjab, the Chief Court, under s. 536, Crim. Pro. Code, treated the jurors as assessors and considered the appeal on the merits of the conviction. SKILLING v. EMPRESS, **18 P.R. 1888, Cr.** [*Diss.*, 11 P.R. 1896, Cr.]

(12)—*Power to try or to commit European British subject to Sessions Court not taken away from Magistrates—Lower Burma Courts Act, s.* 8 (1) (*a*) *and* (*b*).—The provisions of s. 8 (1) (*a*) and (*b*) of the Lower Burma Courts Act, 1900, do not mean that all commitments that are made of European British subjects must be made to the Chief Court of Lower Burma, but that, where, under the Code of Criminal Procedure, a commitment is made to a High Court, it is to be made to the Chief Court of Lower Burma. The power to try the case or to commit it to a Sessions Court is not taken away from Magistrate. CROWN v. HODGSON, **1 L.B.R. 158.**

(13)—*Mode of procedure — Charge against European British subject.*—Procedure with regard to European British subjects accused of an offence before a Magistrate. QUEEN v. ROBERT SHERIFF, **6 W.R. Cr. 13.**

(14)—*Commitment to Sessions Court—Security proceedings—Power of Magistrate to commit—Power of Court of Session to proceed on such commitment—Crim. Pro. Code* (1898), *s.* 107.—A Magistrate instituting proceedings under s. 107, Crim Pro. Code, against an European British subject, requiring him to show cause why he should not execute a bond for keeping the peace, has no power to commit him to the Court of Session, and the Court of Session has no power to proceed on such a commitment. CROWN v. **R. J.** CHAPMAN, **1 L.B.R. 275.**

(15)—*Appeal against conviction by Court of Session — Judicial Commissioner's power to entertain such appeal—High Court, meaning of, in reference to proceedings against European British subjects—Crim. Pro. Code, ss.* 4 (*j*) *and* 110.—The appellant, whose claim to be dealt with as a European British subject was admitted both by the committing Magistrate and the Court of Session, was convicted under ss. 417 and 474, I.P.C. He filed an appeal against his conviction in the Court of the Judicial Commissioner of Oudh. *Held*, that the appeal in this case, under s. 410 of the Crim. Pro. Code, lay to the High Court. The "High Court," in reference to proceedings against European British subjects in Oudh means the High Court of Judicature for the North-Western Provinces. THOMAS BRADSHAW v. KING-EMPEROR, **13 O.C. 335 = 8 Ind. Cas. 873 = 11 Cr. L.J. 723.**

See ACT I OF 1859, s. 83 (4), 2 Weir 578 = 7 M.H.C. App. 32.

See ACT I OF 1859, s. 83 (5), 4 M.H.C. App. 23.

See ACT V OF 1861, s. 29, 3 N.W.P. 128.

See ACT IX OF 1861, 3 W.R. Rec. Ref. 5.

In Native States—*See* ACT XXI OF 1879, s. 8, 9 B. 333.

European British Subject—*concluded.*

See ACT XXI OF 1879, s. 8, 26 M. 607=1 Weir 13=1 Weir 757.

See ACT III OF 1880, s. 28, 40 P.R. 1884, Cr.

See ACT III OF 1884, s. 8 (6), 9 A. 420= A.W.N. 1887, 39.

See BOM. ACT VII OF 1867, 7 B.H.C. Cr. 6.

Mode of commitment of European British subjects and Native subjects, together charged with an offence — *See* COMMITMENT TO SESSIONS COURT, 5 W.R. Cr. Cir. 1.

See COMMITMENT TO SESSIONS COURT, A.W.N. 1881, 150.

Son of an Indian subject born at Constantinople—Whether a—Failure to claim privilege—Relinquishment—*See* CRIM. PRO. CODE, 1898, ss. 4 (*i*), 454 (*i*), 460, 13 Cr. L.J. 197 =14 Ind. Cas. 197=24 P.W.R. 1912, Cr.=6 P. R. 1912, Cr.

Jurisdiction of District Magistrate, C. and M. Station, Bangalore, over—*See* CRIM. PRO. CODE, 1898, s. 190, 9 Ind. Cas. 255=12 Cr. L.J. 42=9 M.L.T. 322=34 M. 346=1911 2 M.W.N. 199.

See CRIM.PRO.CODE, 1898, ss. 452, 408, 404, 14 B. 160.

Rights of—*See* CRIM. PRO. CODE, 1898, s. 494, 18 C.W.N. 385=15 Cr. L.J. 297=23 Ind. Cas. 505.

See CRIM. PRO. CODE, 1898 s. 526, 18 C. 247.

In Native States — *See* HIGH COURT, JURISDICTION OF—GENERAL, 9 B. 288, F.B.

See HIGH SEAS, OFFENCES COMMITTED IN, 21 C. 782.

See JUDICIAL COMMISSIONER OF MYSORE, 5 M. 33=1 Weir 7.

See JURISDICTION OF CRIMINAL COURTS—GENERAL, 7 B.H.C. Cr. 1, 14 B.L.R. 106=22 W.R. 54, Cr.

Proof of status — Question of fact—*See* JURISDICTION OF CRIMINAL COURTS — GENERAL, 10 W.R. Cr. 6.

See JUSTICE OF THE PEACE, 6 B.H.C.Cr. 14.

See LOCAL GOVERNMENT, 5 M.H.C. 277.

See MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION, 16 M. 308=2 Weir 579.

See SECURITY TO KEEP THE PEACE—GENERAL, 36 C. 163=13 C.W.N. 151=8 C.L. J. 565=9 Cr.L.J. 36=9 Cr.L.J. 359=1 Ind. Cas. 737.

See ST. 28 AND 29, VIC., C. 15, 5 Bom. L.R. 869.

See WAIVER, 6 C. 83=6 C.L.R. 463.

Europeans.

See EUROPEAN BRITISH SUBJECT.

See JURISDICTION OF CRIMINAL COURTS—JURISDICTION OVER EUROPEANS.

Jurisdiction over, in the State of Sandoor—*See* JURISDICTION OF CRIMINAL COURTS—GENERAL, 3 M.H.C. 354.

European Soldier.

See ACT III OF 1880, s. 14, S.C. 104, Oudh.

Sale of liquor in breach of license to—*See* ACT XXII OF 1881, s. 49, U.B.R. 1897—1901, vol. I, 184.

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Evidence.

1.—GENERAL.
2.—ADMISSIBILITY OF EVIDENCE.
3.—NON-ADMISSIBILITY OF EVIDENCE.
4.—CHARACTER EVIDENCE.
5.—DYING DECLARATION.
6.—EXPERT EVIDENCE.
7.—GENERAL REPUTE.
8.—HEARSAY EVIDENCE.
9.—MEDICAL EVIDENCE.
10.—REFRESHING MEMORY.
11.—STATEMENTS MADE TO POLICE.

See ACCOMPLICE—ACCOMPLICE EVIDENCE—JUDGE'S CHARGE TO JURY.

See ACCOMPLICE -ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION.

See ACCUSED PERSON.

See CIRCUMSTANTIAL EVIDENCE.

See CONFESSION.

See CRIM. PRO. CODE, 1898, ss. 154, 287, 288, 289.

See EXAMINATION OF ACCUSED.

See FALSE EVIDENCE.

See RECORD OF EVIDENCE.

See REVISION—MATTERS PERTAINING TO EVIDENCE.

See SECURITY TO KEEP THE PEACE—EVIDENCE AND PROCEDURE.

——1.—General.

(1)—*Meaning of the term "Evidence".*—The term "evidence" in its ordinary sense signifies that which makes apparent the truth of a matter in question. It is no doubt more frequently applied to proof before a judicial tribunal, but it is not necessarily confined to this sense; it is used with equal correctness to express the intimation acquired by any person, who undertakes an enquiry on any matter in question. SRINIVASA IYENGAR v. THE QUEEN, **4 M. 393=1 Weir 76=1 Weir 891.**

(2)—*Rules of evidence, value of.*—Since, on the rules of evidence, the property, the liberty and the lives of men depend, it is of high importance that no security for truth, especially in criminal cases, should be weakened. QUEEN-EMPRESS v. RAMCHANDRA GOVIND HARSHE, **19 B. 749.**

(3)—*Circumstantial evidence—Its nature and effect.*—In India, evidence entirely circumstantial is frequently the most satisfactory evidence, though, in appreciating such evidence, a Court ought to see that each of the facts, from which

Evidence—continued.

——1.—**General**—*continued.*

the guilt is inferred, must be proved beyond reasonable doubt, and that there is a complete link of evidence leaving no reasonable ground for any conclusion consistent with the innocence of the accused. CROWN v. GOOLA, **15 P. R. 1867, Cr.** [*F.*, 4 Ind. Cas 941=136 P.L.R. 1909=36 P.W.R. 1909, Cr.=11 Cr.L.J. 82; *R.*, 36 P.W.R. 1909, Cr., 14 Cr.L J. 316=244 P.L. R. 1913=19 Ind. Cas. 1004.]

(4)—*Evidentiary value of absconding.*—Absconding is but slight evidence of guilt usually. QUEEN v. SOROB ROY, **5 W.R. Cr. 28.**

(4-a)—*Circumstantial evidence, conviction based on—Revision by High Court.*—Where a conviction is based upon circumstantial evidence, the question always remains whether the evidence which has been believed by the Court which heard it is of such a nature that it ought to have been accepted as establishing the guilt of the accused person beyond reasonable possibility of doubt, and that is a question which may be dealt with by a High Court upon an application for revision. AMAN ALI v. KING-EMPEROR, **13 O.C. 309=8 Ind. Cas. 379=11 Cr. L.J. 631.**

(5)—It is not necessary that there should be direct evidence of an act of adultery nor that the adulterer should know whose wife the woman is, provided he knew she was a married woman. QUEEN v. MADHUB CHUNDER GIRE MOHUNT, **21 W.R. Cr. 13.**

(6)—But the Chief Court declined to confirm a sentence of death on a conviction for murder, which rested on circumstantial evidence or a violent presumption of guilt. CROWN v. ADALUT, **69 P.R. 1866, Cr.**

(7)—*Circumstantial evidence—Conviction—Facts to be inconsistent with innocence of accused—Reference—Disagreement between Judge and Jury—Reference when to be made to High Court—Crim. Pro. Code, s.* 307.—In cases of circumstantial evidence, the facts found should be inconsistent on a reasonable hypothesis with the innocence of the accused, before a conviction is pronounced. It is not in every case of doubt nor in every case in which a view different from that of the Jury can be entertained on the evidence, that a reference under s. 307 of the Crim. Pro. Code is to be made to the High Court; the verdict of the Jury should be manifestly wrong before such a reference is made. EMPEROR v. SURNAMOYEE BISWAS, **14 Cr. L.J. 660=21 Ind. Cas. 900=41 C. 621.**

(8)—*Direct and indirect proof, distinction between.*—The Indian Evidence Act contains no reference to a distinction between direct proof and indirect proof or proof by circumstantial evidence. NATHA SINGH v. EMPRESS, **44 P.R. 1888, Cr.**

(9)—*Of witness—Its admissibility and credibility distinguished—Crim. Pro. Code* (1882), *s.* 288.—Under s. 288 of the Crim. Pro. Code, the evidence of a witness duly taken in the presence of the accused before the committing Magistrate, may, in the discretion of the presiding Judge, if such witness be produced and examined, be treated as evidence in the case. But there is a manifest distinction between the admissibility and the credibility of evidence. As the Legislature, which has enacted what evidence is admissible, has never attempted the impossible task of enacting what witnesses should be believed by Courts of Justice, all that can be said is that a provision, which makes the evidence of a witness before a committing Magistrate admissible as evidence at the Sessions trial, does not in any way relieve the Court of the duty of applying well-ascertained and well-established judicial principles as to sifting, scrutinizing, and weighing evidence before it accepts any particular evidence of a witness as true or most probably true. NGA KU DE v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 280.**

(10)—*Recording of evidence in regular trial—Summary trial.*—In regular trials, the evidence has to be recorded in a narrative form and in the witness's own words, unlike summary trials where the evidence has not to be recorded and notes thereof may suffice. NGA NGYIN BYU v. QUEEN EMPRESS, **L.B.R. 1893-1900, 626.**

(11)—*Evidence of a convict, value of.*—The evidence of a person who has been convicted of perjury, or of a person who has been convicted of a criminal offence, can hardly be regarded as entitled to the same credit, as would be accorded to the testimony of a person against whom no such imputation could be brought. DOONGUN RAI v. DOORGA RAI, **2 N.W P. 97.**

(12)—*Evidentiary value of* kabuliyats, chittas, *accounts, receipts and survey maps—Kabuliyats, chittas*, accounts and receipts are valueless without proper oral evidence regarding them. DINOMONI CHOWDHRANI v. BROJO MOHINI CHOWDHRANI, **29 C. 187=29 I A. 24=6 C W. N. 386, P.C.=12 M.L.J. 83=4 Bom.L.R. 167=8 Sar. 224.**

(13)—*Survey map—Evidence.*—A survey map is not direct evidence of title, in the same way as a decree in a disputed cause is evidence of title, for the survey officers have no jurisdiction to enquire into or to decide questions of title. But it is good evidence of possession according to the boundary demarcated. NOBO COOMAR DASS v. GOVIND CHUNDER ROY, **9 C.L.R. 305.** [*R.*, 8 C.W.N. 849.]

(14)—*Sessions trial—Right of accused to have his witnesses examined.*—The Sessions Judge has no option either to examine or not to examine the defence witnesses, and the accused is entitled as of right to have them examined. AHMUD KHAN v. EMPRESS, **118 P.R. 1866, Cr.**

(15)—*Depositions given in a former trial—Conviction thereon — Validity.*—Where, in a Sessions trial, the depositions of certain witnesses given at a former trial were read to them,

Evidence—continued.

——1.—General—*continued.*

and they were asked if they were true, a conviction based upon such evidence was not valid. QUEEN v. HALUNDAR DASS, **2 N.W.P. 100.**

(16)—*Deposition of witness in a former trial—Admissibility.*—The deposition of a witness in a former trial is not admissible, unless he is examined, where he is available for examination. REG v. JENKOO, **Rat. Un. Cr. C. 5.**

(17)—*Previous statements of witnesses incriminating the accused—Admissibility—Crim. Pro. Code* (1882), *s.* 288.—Former statements made by witnesses, in a different case, incriminating the accused in his absence, can only be used for the purpose of contradicting the statements now made by them, and they cannot be treated as independent evidence of the guilt or innocence of the accused for the simple reason that they were not made in the presence of the accused; and the mere fact that those statements have been put to the witnesses and referred to in the course of the evidence given before the committing Officer would not make them evidence against the accused. ALIMUDDIN v. QUEEN-EMPRESS, **23 C. 361.**

(18) —*Cross examination—Discrepancies between deposition made before Magistrate and that before Judge.*—In a Sessions trial, the attention of the Jury may be called to the differences between the evidence given by witnesses in such Court, and that given before the committing Magistrate, without putting in the deposition taken before the committing Magistrate. EMPRESS v. HARAN CHUNDER MITTER, **6 C.L.R. 390.** [*Overruled*, 31 C. 142, F.B.]

(19)—*Crim. Pro. Code* (1882), ss. 107, 117, 118—*Nature and* quantum *of evidence required before passing order for security to keep the peace.*—Although a Magistrate may initiate proceedings under s. 107, upon such information as may satisfy him as to the likelihood of a breach of the peace being committed, and although, in holding the enquiry under s. 117, the nature or *quantum* of evidence need not be as conclusive as in trial for offences, yet, the Magistrate should not proceed purely upon an apprehension of a breach of the peace, but is bound to see that substantial grounds for such an apprehension are established by proof of facts against such person implicated, which would lead to the conclusion that an order for security is necessary. When the nature of the information requires it, overt acts must be proved, before the Magistrate can make an order under s. 118 of the Code. QUEEN-EMPRESS v. ABDUL KADIR, **9 A. 452 = A.W.N. 1887. 111.** [*R.*, 15 A.W.N. 241, U.B.R. 1893—1900, 16, Cr.]

(20)—*Crim. Pro. Code* (1861), ss. 295, 296—*Evidence, recording of.*—Both under s. 295 and under s. 296 of the Crim. Pro. Code, evidence should be recorded to the effect specified in the sections, before security is ordered. REG v. BUDHYA QURYA, **Rat. Un. Cr. C. 44 = Cr. Rg. 13-12-1870.**

Evidence—continued.

——1.—General—*continued.*

(21)—*Partly heard case—Power of one Magistrate to use evidence recorded by another Magistrate.*—Where a case was decided by the Magistrate of the District after the trial had been commenced before a subordinate Magistrate, and after a portion of the evidence had been recorded by that Magistrate, and the Magistrate utilized that evidence in his judgment, *held*, that such procedure was not legal. QUEEN v. KULLIAN SINGH, **2 N.W.P. 468.**

(22)—*Crim. Pro. Code* (1872), ss. 27, 280—*Admission of improper evidence—Power of High Court.*—If, in a case tried by a jury, the High Court finds that inadmissible evidence had been received, and if there was no evidence to go to the jury on which a conviction would reasonably be based, the High Court would simply reverse the conviction and sentence. If, on the other hand, the Court is satisfied that, independently of the evidence improperly admitted, there was sufficient evidence to justify the decision, or, in other words, that the prisoners had not been prejudiced by the admission of the illegal evidence, then, having regard to the provisions of s. 167, Evidence Act, 1872, the High Court should not interfere. But, where the evidence remaining after the exclusion of the inadmissible evidence, on which a jury might not unreasonably find the accused or some of them guilty, does not appear to be conclusive as to their guilt, the proper course should be to order a new trial. REG v. AMRITA GOVINDA, **10 B.H.C. 497.** [*R.*, 19 B. 749, Rat. Un. Cr. C. 245, 452.]

(23)—*Discrepancies in oral evidence—Effect.*—Discrepancies are not less infirmative of testimony, because greater sagacity on the part of the witness would have avoided them. REG v. KALU PATIL, **11 B.H.C. 146.**

(24)—*Evidence, greater part of which found to be false, propriety of relying on—Penal Code*, ss. 330, 348.—Where, in a case under ss. 348 and 330, I.P.C., the Sessions Judge disbelieved all the witnesses in the case, but selected without any corroboration certain passages from the evidence which he believed gave the correct story and, on his own estimate as to whether that story was true or not, convicted the accused: *Held*, that the conviction could not be sustained. HARE KRISHNA v. KING-EMPEROR, **19 C.W.N. 330 = 28 Ind. Cas. 795 = 16 Cr. L.J. 411.**

(25)—*Accused, if bound to produce any evidence—Evidence for the prosecution—Duty of accused to rebut it—Effect of the evidence not being rebutted.*—Although the accused is not "bound" to call any evidence at all whether the evidence for the prosecution was true or not, the Court is bound by well-ascertained principles and rules in dealing with evidence. If evidence stands unrebutted, it gains weight from the very fact of its being unrebutted, unless the circumstances are such that evidence

Evidence—continued.

——1.—General—*continued.*

in rebuttal can hardly be expected to be forthcoming. *Per Aston, J.* EMPEROR v. BAJI KRISHNA, 6 **Bom. L.R. 481.**

(26)—An accused person is under no obligation whatever to produce any evidence; and, until a strong case has been made out against him, no inference can be drawn from non-production of such evidence. QUEEN-EMPRESS v. NARAYAN NATHU, **Rat. Un. Cr. C. 779 = Cr. Rg. 43 of 1895.**

(27)—*Identification of thing containing poison in cases of murder by poisoning.*—Judges, who try cases of murder by poisoning, should invariably put beyond the possibility of doubt the identification of every single thing that is suspected to contain any poison. The evidence should be complete as to the history of such articles and it should be shown that they have been kept in proper custody throughout, if they are to be relied on as supporting a conviction, and there should be no possibility of any question being raised as to the identity of any such article EMPEROR v. SHRIDHAR, **7 Bom. L. R. 640 = 2 Cr. L.J. 585.**

(28)—*Evidence of identification—Practice.*—Evidence of identification is not necessarily untrue, because it was not given immediately after the occurrence. But when such evidence is withheld for a time, the Court should endeavour to obtain from the witnesses an explanation of the reason. NGA TAIK PYU v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 142.**

(29)—Panchnama—*Proof—Practice.*—It is necessary, if a *Panchnama* is to be put in, that it should be legally proved, for, it does not prove itself. EMPEROR v. MOTE DONGARSHET GUJAR, **7 Bom. L.R. 978 = 3 Cr.L J. 41.**

(30)—*Evidence given before the Magistrate—Use in Sessions Court, when such evidence is retracted.*—The only use that can be made of the evidence given against the accused by witnesses before the committing Magistrate, when such witnesses retract such statements in the Sessions Court, is to render the latter evidence valueless. The Sessions Court cannot convict the accused disbelieving the evidence given before it and believing the evidence given before the committing Magistrate. REG v. HIROO CHIMA, **Rat. Un. Cr. C. 39 = Cr. Rg. 15-9-1870.**

(31)—*Respective duties of the Police and the Magistrate.*—The police perform their duty in *collecting evidence* and it is the function of the Magistrate alone to decide upon the sufficiency or credibility of this evidence when collected. GOVERNMENT v. KARIMDAD, **6 C. 496 = 7 C L. R. 467 = 3 Shome L R. Cr. 48** [*R.*, 11 M.L. T. 367 = 1912 M.W.N. 499 = 22 M.L.J. 419 = 14 Ind. Cas. 305 = 13 Cr. L.J. 209, 10 Cr. L.J. 225 = 2 S.L.R. 11.]

(32)—*Statement made to Police officer, admissibility of.*—A statement by a Police officer to the effect that certain persons made certain statements to him is not admissible in evidence unless it is evidence of general repute. CHAINSUKH v. EMPEROR, **16 Cr. L.J. 221 = 27 Ind. Cas. 845.**

(33)—*Record of evidence for defence before case for prosecution closed—Effect on decision.*—The fact of a Deputy Magistrate having recorded some evidence for the defence, before the close of the case for the prosecution, would be no ground for reversing his decision. *In the matter of the petition of* KALI CHURN CHUNARI, EMPRESS v. KALI CHURN CHUNARI, **8 C. 154 = 10 C.L.R. 51.**

(34)—*Option of prisoner to offer evidence or not.*—A prisoner is at liberty to offer evidence or not, and no inference, unfavourable to him, can be drawn, if he takes one course in preference to another. HURRY CHURN CHUCKERBUTTY v. EMPRESS, **10 C. 140 = 13 C.L.R. 358.**

(35)—*Evidence disbelieved in some parts and accepted in others.—Validity of conviction based on such evidence.*—Where the evidence for the prosecution is disbelieved in parts, as to which the jury thought that the witnesses had committed perjury, it is not safe to accept their evidence in other parties and to convict the prisoner. JASPATH SINGH v. QUEEN-EMPRESS, **14 C. 164.**

(36)—*Penal Code, s. 159—Affray—Nature of evidence.*—The Court does not expect in an affray to find specific evidence as to the acts of each fighter. General evidence as to the accused taking part in it will be sufficient. MOHER SHEIKH v. QUEEN-EMPRESS, **21 C. 392.**

(37)—*Evidence of dacoity — Conviction of accused.*—The evidence of a witness who knew the accused previously and who had ample opportunity of observing him at the dacoity, and who immediately named him to the other villagers as one of the dacoits and also named him to the Police some few hours after the dacoity, is admissible. *In re* RAMA MUPPAN, **8 M L.T. 244 = 8 Ind. Cas. 317 = 11 Cr.L J. 623.**

(38)—*Judgments in civil and criminal cases—Their admissibility in evidence in criminal prosecutions and civil cases respectively.* — *Per Rampini, J.*—A judgment in a criminal case cannot be received in a civil action to establish the truth of the facts upon which it is rendered. Similarly a judgment in a civil action cannot be given in evidence for such a purpose in a criminal prosecution, and the Magistrate ought to decide the question of the accused's criminality for himself, without reference to the decision of the Civil Court. *Per Ghose, J.*—The decision in a civil suit may be admissible in evidence in a criminal case, if the main issue in both the cases is identically the same. RAJ KUMARI DEBI v. BAMA SUNDARI DEBI, **23 C. 610.**

(39)—*Circumstantial evidence, conviction on—Validity.*—In the absence of direct evidence

Evidence—continued.

——1.—**General**—*continued.*

a person may be convicted solely on circumstantial evidence. EMPRESS v. ANANDA KISHORE CHOUDHURY, **4 C.W.N. cxvi.**

(40)—It is not safe to pass the extreme sentence of death in a case based on circumstantial evidence only. It is safer to pass a sentence of transportation for lie. (*Per Kernan, J., Brandt, J., dissenting*). *In re* VENULADA JANAKI, **2 Weir 736.**

(41)—*Circumstantial evidence strongly against accused— Conviction — Medical evidence.*—Though the circumstantial evidence in a case of murder may throw great suspicion on the accused, he should not be convicted in the absence of direct evidence connecting him with the crime. And where the medical evidence suggests suicide, the medical witness ought to be examined on the point. QUEEN-EMPRESS v. DHARMANGAL SINGH, **S.C. 159, Oudh.**

(42)—*Crim. Pro. Code* (1898), *s.* 503—*Evidence taken on commission in Nepal—Admissibility—General Clauses Act* X *of* 1897, **s.** 3 (27). —Where evidence of certain witnesses in Nepal is taken on commission, the *onus* lies on those who rely on that evidence to approximately establish that Nepal comes within India as defined by s. 3 (27) of the General Clauses Act, SINGBIR LAMA v. EMPEROR, **7 C.W.N. 635.**

(43)—*Inconsistency between first information and the theory of the prosecution—Circumstantial evidence.*—The inconsistency of the first information with the theory of the prosecution is a very weak feature of a case depending on circumstantial evidence. NAZIR JHARUDAR v. EMPEROR, **9 C.W.N. 474=2 Cr. L.J. 255.**

(44)—*Evidence distrusted in part whether should necessarily be rejected altogether—Right of counsel to demand in cross-examination, repetition of story told in examination-in-chief.* —Where the Court distrusts the evidence produced in a case in one particular, or as regards one accused, it does not necessarily follow that it should reject the evidence altogether. No hard and fast rule can be laid down as to the right of counsel to demand in cross-examination that a witness should repeat the story which he has told in the examination-in-chief. LAKHA SINGH v EMPEROR, **89 P.L.R. 1914 =15 Cr. L J. 148=22 Ind. Cas. 724=30 P.W. R. 1914, Cr.**

(45)—*Evidence—Witnesses produced by accused in defence—Evidence not believed—Accused convicted - Witnesses tried for perjury acquitted —Conviction of accused set aside for irregularity --Fresh trial -Accused applying for consideration of defence evidence formerly produced without producing witnesses — Application refused — Exercise of discretion by Magistrate.*—D was tried for an offence under s. 395, Penal Code. He pleaded an *alibi* and produced six witnesses to prove it. The Magistrate thought that all this evidence was false. D was convicted and proceedings were taken against the witnesses for perjury. On appeal by D, his conviction was set aside on the ground of serious irregularity in the trial and it was left to the District Magistrate to see if any fresh trial of D was advisable. The witnesses tried for perjury were also acquitted some by the Sessions Judge, and others by the Chief Court. D was, however, again tried for the same offence, and in defence he said that he would not produce these witnesses again though he wished their evidence already taken to be considered. The Magistrate declined to consider the previous defence evidence unless the men were again produced in Court: *Held*, that, under the circumstances, the Magistrate exercised a wrong discretion in refusing to consider the evidence. DAIM v. EMPEROR, **41 P L.R. 1914= 17 P.W.R. 1914, Cr.=15 Cr. L J. 62=22 Ind. Cas. 334.**

(46)—*Trial for kidnapping, robbery and murder—Offences constituting parts of the same transaction—Verdict of jury in charge of robbery, admissibility of in the charge of murder —Recent and unexplained possession of stolen property. whether evidence of murder.*—The accused who were charged on three counts, namely, of kidnapping, robbery and murder, were tried on the second count by a Sessions Judge and a Jury, and on the first and third counts by the Sessions Judge and Assessors, the charge relating to a boy who was alleged to have been enticed away, robbed and murdered. The accused were convicted of robbery by the Jury and of kidnapping by Assessors and of murder by the Sessions Judge, who dissented from the verdict of 'not guilty' by the Assessors on the charge of murder. On appeal, *held*, that the accused were not prejudiced by the joint trial on all the three charges and that the verdict of the jury could not be taken into consideration, in the appeal, on the question whether the evidence justified the conviction for murder. In cases in which murder and robbery have been shown to form parts of one transaction, the recent and unexplained possession of the stolen property, while it would be presumptive evidence on the charge of robbery would similarly be evidence against accused on the charge of murder. QUEEN-EMPRESS v. SAMI, **13 M. 426=1 Weir 290.** [*F*, 12 Cr.L. J. 564=12 Ind. Cas. 652=21 M.L J. 1071= 1911, 2 M.W.N. 478, 4 Ind.Cas. 1051=6 M.L. T, 123; *R.* 6 Ind. Cas. 51=11 Cr.L.J 222= 20 M.L.J. 657=7 M.L T. 314=1910 M.W.N. 77; *D.*, 13 Cr.L.J. 249=14 Ind. Cas. 601.]

(47)—*Magistrate, duty of, to consider whole evidence*—In a case of breach of trust, the prosecution examined some witnesses and then produced a receipt with an affidavit by the complainant. The Magistrate, thereupon, passed an order :—"According to the affidavit and the receipt filed this day the case has become one of a civil nature." *Held*, the Magistrate ought, without confining himself to the affidavit and the receipt alone, to form his opinion on

Evidence—continued.

——1.—General—*continued.*

the whole evidence produced by the prosecution. CHINNAPPA BUTHEN v. RUTHNA GRAMANY AND MANIKARUTNAMMAL, **3 M.L.T. 324=7 Cr. L.J. 397.**

(48) —*Identification of accused—Duty of Court.*—In serious cases triable by the Court of Sessions, the witnesses, should not be allowed to identify the numerous prisoners in a body and such statements as, "I identify all the prisoners as having taken part in the dacoity" are inadmissible. The witness should be called on to identify each individual prisoner and the identification of each should be separately recorded. Moreover, when the witness has pointed out each individual prisoner to the Judge, it is not sufficient for the Judge to make a note that the witness has done so. He should record the words in which the witness identifies the prisoner, as part of the witness's deposition. SHANKAR v. QUEEN-EMPRESS, **3 O.C. 72.**

(49)—Where cases depend upon the identification of the accused with the offender, the Courts should narrowly scrutinize the evidence. KASHEE RAM v. CROWN, **27 P.R. 1868, Cr.**

(50)—*Evidence — Accused absconding after occurrence—Identification of accused—Statement not made to police at early stage of the investigation.*—The accused was convicted of murder. It was found proved that the deceased was shot by the accused at night by a gun or a pistol while he was sleeping in the roof of the house adjoining his own. The principal witness was the wife of the deceased who was sleeping close by. She stated that when the shot was fired she awoke, opened her eyes and by the flash of the fire-arms recognized the accused who ran away. She at once raised her cries to the effect that the accused had killed her husband. The husband of a sister of the deceased, who was sleeping on his roof on the other side of the lane, stated that he heard a shot and then cries of deceased's wife and then going down from the roof of his house he recognized the accused. Another witness by name Jafar, who lived at a distance of 500 *karams*, deposed that having heard the cries he was going to the spot when he met the accused on the way. Other evidence was to the effect that after the occurrence the accused absconded from the village. *Held*, that the evidence as to indentification was insufficient and the fact of accused's absconding was not inconsistent with his innocence knowing that an incorrect accusation had been brought against him. That the evidence given by witness Jafar was open to suspicion as he had not made the statement to the Police till third day of the investigation which he could have made at once. CROWN v. AHMAD, **4 P.L.R. 1915=2 P.W.R. 1915, Cr. =16 Cr. L.J. 155=27 Ind. Cas. 219.**

(51)—*Evidence of Judge—Personal knowledge.*—A Judge cannot, without giving evidence as a witness in the usual way, import into a case his own knowledge of particular facts. NARAIN DAS v. KING-EMPEROR, **5 O.C. 37.**

(52)—*Medical opinion as to insanity insufficient for quashing conviction.*—A conviction should not be set aside on the mere written opinion of a medical man that the convicted prisoner was insane at the time of his trial. QUEEN EMPRESS v. BHOLA KHAN, **S.C. 58, Oudh.**

(53)—*Trial of several prisoners and a number of articles in evidence — Procedure.*—Where there is a number of prisoners under trial and a number of articles of property in evidence, the greatest care and precision are called for in taking the evidence, and it is essential to a proper trial of the case that it should be made to appear as clearly as possible what is the exact evidence against each person. The proper procedure, in such cases, described. EMPRESS v. BARWAR, **10 C.P.L.R. Cr. 23.**

(54)—*Admissibility in, of insufficiently stamped document in criminal trials—Stamp Act, s. 61.*—The ruling laid down in 16 C. 432 that, in determining whether a document is sufficiently stamped for the purpose of deciding upon its admissibility in evidence, the document itself as it stands must be looked to, and not any collateral circumstances which may be shown in evidence, is not applicable to a criminal trial under s. 61, Stamp Act. It it only applicable to cases where the sufficiency of stamp appears on the face of the document, *e g.*, a cheque or a promissory note purporting to be payable on demand. QUEEN-EMPRESS v. NGA LU GALE NGE, **L.B.R. 1893—1900, 119.**

(55)—*Duty of the prosecution, in a criminal case, to procure—Of all persons connected with the transactions alleged.*—The accused, in this case, were charged with having abducted the complainant with the intention or knowledge that she would be forced or seduced to illicit intercourse. The whole case for the prosecution hinged on the question whether complainant, who was not a minor, was taken away *by force* against her will, or whether the apparent compulsion was only a show of force, a mere pretence done with her consent. According to the prosecution, about the time of the alleged offence, the complainant was living in a respectable house; and, whether such evidence would be favourable to the prosecution or not, it was the duty of the prosecution to let in the evidence of people, who lived in the house, for the purpose of proving the conditions under which she was residing there, so as to enable one to infer whether she was a free agent or a person acting under compulsion. The absence of this evidence was held to raise a strong presumption against the allegations made by the prosecution. The only witness called by the prosecution was the complainant herself; and it was, therefore, *held*, that the prosecution failed in its duty, in not producing the independent evidence, that could have been produced, since it is the duty of the prosecution to call

Evidence—continued.

——1.—General—*continued.*

all the persons, who are shown to be connected with the prosecution and who from such connection, must be able to give material evidence; and the only thing that can relieve the prosecution from calling such witnesses is the reasonable belief that, if called, they would not speak the truth. KING-EMPEROR v. MAUNG E, **3 L.B.R. 133.**

(56)—*Adultery—Proof of marriage.*—In an offence like adultery, where the existence of marriage is an essential ingredient of the offence, it is incumbent on the prosecution to prove the *factum* of marriage strictly. The mere statement by the husband that he is married to the complainant is not sufficient proof of marriage. AKBAR KHAN v. EMPRESS, **40 P.R. 1882, Cr.** [*R.*, 5 P.R. 1894.] *See also* WADHAWA v. FATTEH MUHAMMAD, **5 P.R. 1894, Cr.** PIRAN DITTA v. EMPRESS, **23 P.R. 1895, Cr.**

(57)—*Conviction—Reference for confirmation of sentence passed—Accused committing violent act—Medical evidence—Whether such evidence afforded sufficient reason for altering original sentence.*—*Held*, that, though the medical evidence, proving that the accus d committed the violent act proved against him, whilst in a trance arising from epilepsy, and that, at the time, he did not know the nature of his act, or that he was doing wrong, did not afford the real explanation of the cause of the accused's act, it afforded sufficient reason for altering the sentence originally passed. KING-EMPEROR v. NGA PAN, **14 Bur. L.R. 169.**

(58)—*Evidence partly recorded by one Magistrate and partly by another—Conviction—Validity.*—*Held*, that a conviction by a District Magistrate based on evidence partly recorded by a subordinate Magistrate, was not illegal. EMPRESS v. RAMDAYAL, **5 C.P.L.R. 20, Cr.**

(59)—*Previous conviction—Evidence.*—The extract from a calendar, recording a previous conviction, is not evidence of that conviction without proof of identity, and in no case, will it amount to proof of alleged earlier convictions. *In re* CHUNDI PERUGADU *alias* JILLARIGADU, **2 Weir 393.**

(60)—*Books, reference to during trial.*—Well-known treatises (*e.g.*, Taylor's Medical Jurisprudence) may be referred to in the course of a trial. HURRY CHURN CHUCKERBUTTY v. EMPRESS, **10 C. 140=13 C.L.R. 358.**

(61)—*Doubtful cases—Admissibility of evidence.*—In cases of doubt, the Judge should decide in favour of the admissibility of the evidence under consideration rather than of non-admissibility. *Per Straight, J.* COLLECTOR OF GORAKHPUR v. PALAKDHARI SINGH, **12 A. 1.** (6 C 171, *R.*) [*R.*, 25 A. 546=A.W.N. 1903, 137, 24 B. 591=2 Bom. L.R. 386 =6 A.L J. 693, 14 Ind. Cas. 66=142 P.L.R. 1912=105 P.W.R. 1912.]

(62)—*Summing up of evidence by Sessions Judge, record of—How to be made.*—If the Sessions Judge is not able to record the substance of his summing up of the evidence in the case, he should employ an independent person to record it and not ask the Public Prosecutor to do it. SHADULLA HOWLADAR v. EMPRESS, **9 C. 875=12 C.L.R. 506.**

(63)—*Statements by accused.*—Statements by accused persons can only be received as evidence against themselves, and not in corroboration of the evidence of an approver as against his co-accused. QUEEN v. HURGOBIND, **2 N.W.P. 336.**

(64)—*Crim. Pro. Code* (1882), ss. 248, 337, 345—*Theft—Co-accused—Evidence—Admissibility.*—Where the Magistrate, having issued a warrant against A on a complaint of theft, allowed the complaint to be withdrawn as against her and examined her as a witness against another co-accused person, *held* that the evidence was inadmissible, the offence being one which could not be compounded under s. 345 or withdrawn under s. 248 of the Crim. Pro. Code, and not one in which pardon could be tendered under s. 337, and the Magistrate not having discharged A under s. 253. QUEEN EMPRESS v. LILLADHUR, **Rat. Un.Cr.C. 461 =Cr. Rg. 18 of 1889.**

(65)—*Evidence of Police Inspector regarding approver's confession.*—The deposition of a Police Inspector that a person since dead, had, in the capacity of an approver, made a statement implicating the present accused, was held not to be admissible in evidence against the accused. EMPRESS v. JITA SINGH, **A W.N. 1881, 164.**

(66)—*Crim. Pro. Code* (1882), s. 288—*Admissibility of evidence given at preliminary enquiry at Sessions trial—Rumours—Hearsay evidence.*—Before a Judge presiding at a criminal trial can use, as evidence, on which, in whole or in part, to form his judgment, the deposition of a witness taken before the committing Magistrate, he is bound to let his intention, or the possibility that he may do so, be known to the accused and to the prosecution, in order to afford the accused and the prosecution an opportunity for testing such statement by cross-examination or otherwise dealing with such statement as part of the case which may be taken into consideration by the Judge. Otherwise, it is impossible for the prosecution or the defence to deal with the matters which may influence the Judge's mind in coming to a decision. [*R.*, 28 A. 683=3 A.L.J. 852= A.W.N. 1906, 187=4 Cr. L.J. 61.] A Judge should be most careful not to allow his judgment to be influenced by mere rumour or hearsay evidence, which, from not being objected to, possibly gets before him, particularly when persons whose statements are spoken to could be called as witnesses and have not been called. EMPRESS v. JAWAHIR, **A.W.N. 1886, 256.**

(67)—*Crim. Pro. Code, Act* X *of* 1872, *amended by Act* XI *of* 1874, s. 249—*Depositions in preliminary inquiry.*—Under s. 249 of the

Evidence—continued.

—— **1.—General**—*continued.*

Crim. Pro. Code, 1872, as amended by s. 20 of Act XI of 1874, depositions made in a preliminary enquiry are evidence in the Sessions Court, only when the Sessions Judge determines in his discretion to use them as such. It is his duty to use them as evidence when there is material discrepancy between such deposition and the evidence given by the witnesses in his Court. When he fails to do it, the appellate Court either orders a new trial or the further examination of the witnesses with reference to the previous depositions. REG. v. ARJUN MEGHA, **11 B.H.C 281.** [*R.*, 31 C. 142, F.B., Rat. Un. Cr. C. 728.]

(68)—*Report made at a* thana—*Deposition of witnesses in another case—Evidence.*—Although a report of the commission of an offence, made at a *thana*, or the deposition of a witness previously made in another case in which the accused is a different person, may be used in a criminal case to corroborate or cross-examine a witness, such reports or depositions are no evidence of the existence of facts of which they may make mention. QUEEN-EMPRESS v. RAM SUKH, **A.W.N. 1897, 47.**

(69)—*Judge and jury—Evidence—Appreciation of* —A Judge is not right in discarding the whole of the direct evidence of credible and unimpeached witnesses who state on oath that they saw a thing being done, on the strength of the opinion of a medical witness to the effect that such a thing could not have been done. QUEEN-EMPRESS v. WAZIR ALI, **A.W.N. 1889, 74.**

(70)—*Judge and jury—Character of accused.* —A jury should not be told that the prisoners had previously been bad characters. It is a fact to be taken into consideration by a Sessions Judge after conviction and when awarding sentence. QUEEN v. KULUM SHEIKH, **10 W.R. Cr. 39.**

(71)—*Judge and jury — Approver—Previous conduct and character.*—It is unsafe to convict on the uncorroborated testimony of the approver, and the Judge in his charge to the jury should take care to state this and also that the evidence of the approver was given on conditional pardon. Evidence of previous conduct and character of the accused, is irrelevant and ought not to be placed before the jury. QUEEN v. BYKUNT NATH BANERJEE, **10 W.R. Cr. 17.**

(72)—*Records of former trial—Depositions in former case.*—The power of Civil Courts to call for and inspect the records of a previous trial ought to be exercised with the greatest caution, and does not extend to criminal proceedings. QUEEN v. JUMDEM SINGH, **12 W.R.Cr. 73.**

(73)—*Documents not on record before Sessions Judge.*—Case where certain documents on the record sent up by the Magistrate, but which were not put in evidence before the Sessions Judge, were looked at because they told in favour of the prisoner. QUEEN v. SOOBJAN, **10 B.L. R. 332.**

Evidence—continued.

—— **1.—General**—*continued.*

(74)—*Documents tendered in civil case—False evidence, trial for giving.*—Documents filed in a civil suit, if adduced in evidence in a prosecution for giving false evidence, must be proved in the Criminal Court before they can be admitted in evidence. QUEEN v. KARTICK CHUNDER HOLDAR, **9 W.R. Cr. 58.**

(75)—*Written reports of depositions—Crim. Pro. Code* (1861), *s.* 369.—Written reports of depositions, except under s. 369 of the Code of Criminal Procedure, 1861, are no evidence. QUEEN v. KALLY CHURN GANGOOLY, **6 W.R. Cr. 92.**

(76)—*Deposition of dead witness.*—The deposition of a witness alleged to be dead must be preceded by strict proof of the death, unless it is admitted on the other side, and the reading of the deposition is not objected to. QUEEN v. GAGALU MAGLU, **4 B.L.R. Ap. 50 = 12 W.R. Cr. 80.**

(77)—*Deposition of absent witnesses—Act* I *of* 1859, *s.* 111.—The deposition of a merchant-seaman alone and of no other is admissible in evidence under s. 111 of the Merchant Shipping Act (I of 1859). QUEEN v. RAMCOMAL MITTER, **1 Hyde 195.**

(78)—*Depositions taken before Civil Court—Crim. Pro. Code* (1861), *s.* 369—*Evidence Act* (II *of* 1855), *s.* 67.—When a Civil Court, authorising a criminal prosecution in cases of offences against public justice simply refers the proceedings and leaves it to the Magistrate to commit or not, the depositions taken before the Civil Court are not relevant as depositions taken before the Magistrate are, in certain cases under s. 369, Code of Criminal Procedure. But under s. 57, Act II of 1855, the improper admission of such evidence is no ground for the reversing a Sessions Judge's sentence, when, apart from that evidence, there is sufficient evidence to justify the decision. QUEEN v. NUJUM ALI, **6 W.R. Cr. 41.**

(79)—*Crim. Pro. Code* (1861), *s.* 369.—Where a deposition is admitted in evidence under s. 369, Code of Criminal Procedure, at a Sessions trial, the record must contain distinct proof of the existence of such a state of things as makes the deposition legal evidence. QUEEN v. BHEEKUN DOSS, **7 W.R. Cr. 78.**

(80)—*Depositions taken by Collector.*—A prisoner's evidence taken by a Collector was held inadmissible against him on his trial before a Magistrate. QUEEN v. SOOKMY GHOSE, **10 W. R. Cr. 23.**

(81) — *Deposition of witnesses taken in the absence of accused.*— Where the evidence of witnesses taken in the absence of the prisoner at a former trial was read out to them, and put in on their assenting to it, as a true record of the facts, *held* that the proceeding was irregular and prejudicial to the prisoner ; that such witnesses should have been subjected to a fresh oral examination ; and that then the former depositions might have been put in not

Evidence—continued.

——1.—**General**—*continued.*

to add to their testimony, but to corroborate it. A new trial was ordered. QUEEN v. BISHONATH PAL, **3 B.L.R. A. Cr. 20 = 12 W.R. Cr. 3.**

(82)—*Deposition of witnesses taken down in the absence of accused.*—A Magistrate took the depositions by reading over to the witnesses depositions made by them in another case, at the hearing of which the prisoner was not present, and by procuring them to affirm the truth of the same. *Held* that the depositions were illegally taken and, therefore, could not sustain a charge. QUEEN v. RAJ KRISHNA MITTER, **1 B.L.R. O. Cr. 37.**

(83)—*Deposition taken down in the absence of the accused.*—The prisoners were convicted under s. 154 of the Penal Code, upon evidence taken in another case to which the prisoners were not parties. The conviction was set aside. *In the matter of the petition of* C.G.D. BETTS and MAHOMED ISMAIL CHOWDHRY, **6 B.L.R. Ap. 83 = 15 W.R. Cr. 6.**

(84)—*Deposition of a witness at a former trial.*—The deposition of a witness in a previous case is not relevant in a subsequent case in which he is examined, except to contradict him. QUEEN v. NOBO KISTO GHOSE, **8 W.R. Cr. 87.**

(85)—*Depositions in previous case.*—Sworn statements of witnesses previously made are not evidence in a subsequent trial. QUEEN v. KISTO MUNDUL, **7 W.R. Cr. 8.**

(86)—*Depositions of witnesses taken by Magistrate—Admissibility on appeal.*—One condition which must be fulfilled before using on appeal the depositions of witnesses taken before a Magistrate is that, either in the depositions or elsewhere, the evidence must be shown to have been read over or interpreted to the respective witnesses. QUEEN v. PARBUTTY CHURN CHUCKERBUTTY, **14 W.R. Cr. 13.**

(87)—*Deposition of witness in a former trial of the accused.*—In a case where the accused was bound down to keep the peace, the Magistrate admitted in evidence the depositions of witnesses in cases in which the accused was tried on a charge of being a member of an unlawful assembly and of rioting, and was acquitted. *Held* that this evidence ought not to have been admitted. QUEEN v. DINA BUNDHOO ROY, **24 W.R. Cr. 4.**

(88)—*Wrongful admission of evidence.*—Case where the evidence taken on the trial of one prisoner wrongly admitted as evidence on the trial of another. QUEEN v. ZULFUKAR KHAN, **8 B.L.R. Ap 21 = 16 W.R. Cr. 36.**

(89)—*Mode of recording depositions—Evidence of prisoner.*—Where a writer in the Judicial Commissioner's Office deposed to the effect that "the document shown to him was a deposition taken before the Assistant Commissioner, taken in due form upon solemn affirmation and attested by the signature of the Assistant Commissioner," *held,* it was not sufficient evidence of the prisoner having duly deposed. QUEEN v. MEATI KHOWER, **3 B.L.R. A. Cr. 36 = 12 W.R. Cr. 31.**

(90)—*Mode of recording depositions—Crim. Pro. Code* (1882), *s.* 355—*Crim. Pro. Code* (1861), *s.* 195—*Memo of depositions of witnesses.*—A memorandum by a Judge that the deposition of certain witnesses was the same as that of the former witnesses contravenes the requirements of s. 195, Code of Criminal Procedure. QUEEN v. MUTTEE NUSHYOO, **W.R. 1864, Cr. 18.**

(91)—*Dying declaration—Procedure.*—For a dying declaration to be received in evidence, there must be a finding that the person who made the declaration knew or believed at the time he made it that he was dying or was likely to die. A Sessions Judge who observes from the Magistrate's record that there is evidence which could prove that the declaration was a dying declaration should call for that evidence. Where dying declarations are made, a Magistrate should examine the complainant on the point, and record the question as well as the answer to it upon the record of the examination. *In the case of* SHEIKH TENNOO, **15 W.R. Cr. 11.**

(92)—*Dying declaration—Crim. Pro. Code* (1861), *s.* 371.—Before admiting in evidence a dying declaration under s. 371, Code of Criminal Procedure, a Sessions Judge should consider whether the declarant believed himself to be in danger of approaching death. The evidence of persons who cannot depose to their own personal knowledge of such a declaration is irrelevant, and, in deciding whether the accused is guilty of the charge of murdering the deceased declarant, the Court should only enquire into the facts which occurred on the day of the murder. QUEEN v. ZUHIR, **10 W. R. Cr. 11.**

(93)—*Police evidence, diaries, papers and reports—Evidence of Police Officer—Act* II *of* 1855, *s.* 31.—The practice of not examining a police officer who investigates a case condemned. The statements made to him might be proved by him in the witness-box, and would be admissible to corroborate the evidence of other witnesses on the same point given in Court before the Magistrate and the Sessions Judge under s. 31, Act II of 1855. QUEEN v. AHMED ALLY, **11 W.R. Cr. 25.**

(94)—*Police diaries—Corroborative evidence.*—Police diaries cannot be legally used as corroborative evidence under s. 154, Code of Criminal Procedure, 1861. QUEEN v. THAKOOR CHAND SURMA, **13 W.R. Cr. 22.**

(95)—*Police diaries—Evidentiary value of.*—Police diaries cannot be legally used as substantive evidence or read to the jury. QUEEN v. HURDUT SURMA, **8 W.R. Cr. 68.**

(96)—*Use of portion of police diary—Crim. Pro. Code* (1861), *s.* 154.—Where certain portions of a police officer's diary are used as

Evidence—continued.

——1.—General—*continued.*

evidence against him, s. 154 of the Code of Criminal Procedure does not bar the admission of other portions of the diary as explaining the portions so used. QUEEN v. NOBO KISTO GHOSE, **8 W.R. Cr. 87.**

(97)—*Police papers—Judicial notice.*—Police papers ought not to be taken judicial notice of as evidence, nor consulted in order to test the evidence in the case. QUEEN v. BUSSIRUDDI, **8 W.R. Cr. 35.**

(98)—*Police reports.*—Police reports are not evidence, except against the reporting Police officer. GOVERNMENT v. MADUN DASS, **6 W.R. Cr. 52.**

(99)—*Statements to Police officers—Admission of guilty knowledge—Crim. Pro. Code* (1861), s. 150—*Dacoity.*—To make a prisoner's admission of guilty knowledge of the means by which money supposed to have been acquired by dacoity was obtained, evidence under s. 150 of the Code of Criminal Procedure, it must be shown that the admission was antecedent to the discovery of the money. QUEEN v. KAMAL FUKEER, **17 W.R. Cr. 50.**

(100)—*Statements to Police officers — Statement of accused overheard by Police officer.*—The evidence of a Policeman who overheard a prisoner's statement made in another room, and in ignorance of the Policeman's vicinity and uninfluenced by it, is not legally inadmissible. QUEEN v. SAGEENA, **7 W.R. Cr. 56.**

(101)—*Breach of the peace, likelihood of—Report of Police officer.*—The report made by a Police officer that there was likelihood of there being a breach of the peace was held not to be legal evidence to prove the existence of any dispute likely to cause a breach of the peace. ABHAY CHOWDHRY v. T. BRAE, **6 B.L.R. Ap. 148=15 W.R Cr. 42.** *See also* QUEEN v. BHYRO DAYAL SING, **3 B.L.R. A. Cr. 4=11 W. R. Cr. 46**; *In the matter of the petition of* BHADRESWARI CHOWDHRAIN, **7 B.L.R. 329**, *In the matter of the petition of*, SHAMASUNKAR MAZOOMDAR v. RANEE ANUNDMOYEE DASAYA, **9 B.L.R. App. 45=18 W.R. Cr. 64.**

(102)—*Statements not made in Court—Evidence Act*, II *of* 1855, s. 31 —It is not competent to a Court of Session to inspect an original report from the office of the Superintendent of Police, and to make it evidence against the prisoners. Statements made otherwise than before the Court and officers specified in s. 31, Act II of 1855, may be given in corroboration of the testimony; but such statements must be regularly proved by the person who received them or by some one who heard them given. QUEEN v. BISSER NATH, **7 W.R. Cr. 31.**

(103)—*Crim. Pro. Code, Act* XXV *of* 1861, s. 205.—A Deputy Magistrate committed certain prisoners for trial on a charge of dacoity. Some of the prisoners had confessed before the Deputy Magistrate, but he failed to record the examination of the prisoners, or to attest it, as required by s. 205 of the Code of Criminal Procedure. The Sessions Judge, therefore, refused to admit the examination of the prisoners by the Deputy Magistrate in evidence, and also refused to postpone the trial for the purpose of summoning the Deputy Magistrate, and taking his evidence in the matter. *Held* that the examination of the prisoners was inadmissible in evidence. QUEEN v. RADHU JANA, **3 B.L.R. A. Cr. 59=12 W.R. Cr. 44.**

(104)—*Character — Evidence.*—Evidence as to the prisoner's previous conviction and bad character and of the bad character of his relations is not admissible. QUEEN v. PHOOLCHAND, **8 W.R. Cr. 11.**

(104-*a*)—*Previous convictions—Admissibility of evidence.*—Previous convictions are inadmissible in evidence. QUEEN v. THAKOORDAS CHOOTUR, **7 W.R. Cr. 7.**

(105)—*Evidence of previous conviction necessary for awarding whipping.*—As a rule, before flogging is given as an additional punishment, there ought to be formal evidence upon the record of the previous convictions relied on. The conviction and the identity of the prisoner ought to be proved in the regular way. A mere Kyfeut is no evidence whatever. QUEEN v. NUZEE NUSHYO, **15 W.R. Cr. 52.**

(105-*a*)—*Previous convictions—Report from Record Office.*—A *kaifeut*, or report from the Record Office, that A had been convicted of a crime, is no evidence of a previous conviction. There should be sworn testimony to the fact and also to the identification of the prisoner before the Court. QUEEN v. SHEIKH RAMZAN, **6 B.L.R. Ap 15=15 W.R. Cr. 53.** *See also* QUEEN v. NUZEE NUSHYO, **15 W.R. Cr. 52.**

(106)—*Letters—Letters implicating prisoner found in his house.*—Letters, etc., found in a man's house after his arrest and while he was in custody, though not admissible in evidence generally, are subject to the exception that, if the previous existence of the letters found is established, either by direct proof or strong presumptive evidence, that is, if their previous existence has been proved, they will become admissible. QUEEN v. AMIR KHAN, **9 B L.R. 36=17 W.R. Cr. 15.** [*R.*, 11 Cr. L.J. 453=7 Ind.Cas. 359=37 C. 467, 39 C. 164=15 C.W.N. 1053=14 C.L.J. 375=12 Cr. L.J. 505=12 Ind. Cas. 273.]

(107)—*Handwriting, knowledge of.*—The knowledge by the Sessions Judge of the handwriting of the Judicial officer before whom the statement was made is no evidence of the statement having been made before that officer. QUEEN v FATIK BISWAS, **1 B.L.R. A. Cr. 13=10 W.R. Cr. 37.**

(108)—*Murder cases—Officer preparing* "surat hal," *examination of.*—The officer who prepares the "*surat hal*" should be examined in cases

Evidence—continued.

——1.—General—*continued.*

where culpable homicide is charged, when decomposition leading to obliteration of marks of injury has set in between the date of the preparation of the "*surat hal*" and the *post mortem* examination. GANJA v. EMPRESS, **9 P.R. 1888, Cr.**

(109)—*Joint trial—Re-trial of one of the accused ordered—Convict, whether can depose in new trial.*—Where the conviction of one of two persons jointly tried and convicted is set aside and a re-trial is ordered, the other person can be lawfully examined as a witness in the new trial. MAHAMMAD ALI v. CROWN, **23 P. R. 1878, Cr.**

(110)—*Joint trial—Re-trial ordered as against some of the accused—Convict, whether can depose in re-trial.*—Where one only of three persons jointly tried was convicted and the appellate Court ordered the re-trial of the acquitted person, confirming the conviction of the accused who was convicted by the lower Court, *held*, that the latter was competent to be examined in the retrial of the other two accused, as he was in no sense an accused person. KING-EMPEROR v. SOBHA RAM, **8 P.R 1904, Cr.** (12 P.R. 1902, 45 P.R. 1885, Cr. *D.*) [*F.* 12 Cr.L.J. 50=8 Ind. Cas. 1161=33 P.R. 1910, Cr. 50 P.W R. 1910.]

(111)—*Dishonest possession of stolen property—Guilty knowledge to be proved—Recognition of things not before witnesses not evidence against accused.*—In order to establish the offence of dishonestly retaining stolen property, it must be proved that the accused had a guilty knowledge and that the property had been stolen. Recognition of things not before the eyes of the deposing witnesses is not evidence against a prisoner, accused of having been in possession of those things. QUEEN v. MUSSAMUT JOOMNEE, **8 W.R.Cr. 16.**

(112)—*Sessions trial—Opinion of assessors given—Further evidence.*—In a sessions trial, after the opinion of the assessors is given, no further evidence can be taken, as the trial ends with the opinion of the assessors. SOOJAWUL v. CROWN, **14 P.R. 1870, Cr.**

(113)—*Notes on inquiry by registering officer.*—The notes of an inquiry held before a registering officer are not admissible as evidence of what the prisoner said on that occasion. QUEEN v. PURMANUND BARICK, **11 W.R. Cr. 13.**

(114)—*Criminal trial—Duty of prosecution.*—The prosecution in a criminal case is bound, notwithstanding the fact that it is for the accused to establish in his defence any exception on which he relies, to throw all the light within its power upon all controverted facts relevant to the main issue. The Police is bound to test the truth or falsity of any exculpatory statement made by the accused without delay and to lay before the Court any evidence which tends to establish its truth or falsity. ALIA BAKHSH v. EMPRESS, **1 P.R. 1888, Cr.** [*R.* 30 P.R. 1889, Cr.]

(115)—*Comparison of Native seals—Evidence Act*, 1855, *s.* 48.—S. 48, Act II of 1855, is applicable to criminal trials. The test of comparison of Native seals is at best but a fallible one, and must always be received with extreme caution. QUEEN v. AMANOOLLAH MULLAH, **6 W.R. Cr. 5.**

(116)—*Statement under promise of pardon.*—Where a statement is made under a promise of pardon it is not relevant against a prisoner. To admit such would be contrary to the policy of s. 203, Crim. Pro. Code. QUEEN v. RADANATH DOSADH, **8 W.R. Cr. 53.**

(117)—*Admission by husband of having kicked his wife—Causing death.*—A husband admitting in the presence of several witnesses that he had kicked his wife, and that she died after it, was held to furnish direct evidence against himself. QUEEN v. BYSAGOO NOSHYO, **8 W.R. Cr. 29.**

(118)—*Confession of prisoner made to Magistrate or to private person.*—Where a confession is made to the Joint Magistrate of a District in charge of the Sudder Sub-division, it is admissible in evidence, even if the Joint Magistrate is not specially empowered, under Act VIII of 1869, to receive the confession of the prisoners. A confession before a private individual may be relevant against the prisoner if proved by the person before whom it was made. QUEEN v. GOPEENATH KOLLU, **13 W.R. Cr. 69.**

(119)—*Statements of prisoners—Depositions before Magistrate.*—The bare statements of prisoners are inadmissible in evidence; so are depositions before the Magistrate except to contradict the evidence of the same witnesses as given before the Sessions Court. QUEEN v. BHEKOO SING, **7 W.R. Cr. 72.**

(120)—*Statement of prisoner before Magistrate—Attestation of Magistrate.*—The properly attested confessions of the accused before the Magistrate is evidence against the accused in the Sessions trial, and it is not necessary to read out the confessions to the accused and specifically to ask them whether they had any objection to the reception of those confessions. QUEEN v. MISSER SHEIKH, **14 W.R. Cr. 9.**

(121)—*Attestation of Magistrate.*—The attestation of a Magistrate stating why he could not proceed with the further examination of a witness is *prima facie* proof of the fact, and may be laid before a jury. QUEEN v. RASOOKOOLLAH, **12 W.R. Cr. 51.**

(122)—*Crim. Pro. Code* (1861), *s.* 205—*Statement of accused, record of—Attestation of Magistrate.*—A statement made by a prisoner before a Magistrate, though signed by the Magistrate, but without the certificate required by s. 205 of the Code of Criminal Procedure does not of itself constitute *prima facie* evidence of his examination, within the meaning of s. 366 of

Evidence—continued.

——**1.—General**—*continued.*

that Code ; and not giving other proof to show that the statement was made by the prisoner before the Magistrate will make the statement inadmissible as evidence at the Sessions. QUEEN v. PETAMBER DHOOBEE, **14 W.R.Cr. 10.**

(123)—*Statement of accused—Attestation of Magistrate.*—If the attestation of the Magistrate is affixed to a statement made by the accused before such Magistrate, it is *prima facie* proof of such statement having been made, and it is to be presumed that the proceedings were regular. QUEEN v. JAGA POLY, **11 W.R. Cr. 39=7 B L R. 67, Note;** *See also* REG v. TIMMI, **2 B H.C. 125**.

(123-a)—*Crim. Pro. Code, ss.* 205, 366, 399 —*Attestation of Magistrate — Accused not properly examined—Admissibility of his statements —Evidence of bad character.*—*Held* that the examination of the accused before the Magistrate, put in evidence before the Court of Sessions, not having been recorded according to the provisions of s. 205, Crim. Pro. Code, 1861, was not admissible as evidence in the case, and that, considering that the evidence was insufficient to sustain a conviction, the prisoner should be acquitted under s. 399, Crim. Pro. Code. It is improper to allow prosecution witnesses to state that the accused was not of good character. REG. v. TIMMI, **2 B H C. 125.** [*Com.*, 2 B.H.C. 395 *R.*, 10 B.H.C. 166.]

(124)—*Examination of accused—Crim. Pro. Code* (1861), *ss.* 205, 366—*Attestation of Magistrate.*—For the examination of a prisoner in the presence of the committing officer to be used as evidence against him under s. 366, Crim. Pro. Code, the requirements of s. 205 of that Code should be complied with, and the attestation of the committing Magistrate affixed in full to the examination. QUEEN v. CHUPPUT KHYRWAR, **15 W.R. Cr. 83.**

(125)—*Evidence Act, s.* 91—*Crim. Pro. Code* (1872), *s.* 339—*Prosecution for false evidence.*—Where, in a case of giving false evidence, the English record written by the Magistrate was put in to prove what the accused had stated before him and the document was not interpreted to the accused in the language in which it was given or which he understood ; not read over in accordance with the requirements of s. 339, Code of Criminal Procedure, in the presence of the person then accused, *held* that the English record of the Magistrate was irrelevant, under the Evidence Act, s. 91, to prove what the prisoner said before the Magistrate. The exact words which are used by the person who is charged with perjury must form the basis for charges of perjury ; and no evidence which does not purport to give those exact words can alone suffice for a conviction. QUEEN v. MUNGUL DASS, **23 W.R. Cr. 28.**

(126)—*Omission to make memorandum of evidence by Civil Court in case of perjury.*—A Civil Court in a case of perjury omitted to make a memorandum of the evidence of the accused when examined before it. *Held* that the omission did not vitiate the depositions, if the evidence itself was duly recorded in the language in which it was delivered in such Court. *In re,* BEHAREE LALL BOSE, **9 W.R. Cr. 69.**

(127)—*Statement of accused before Magistrate — Mode of recording—Evidence Act,* 1872, *s.* 80 —*To support alternative charge proof to be given of the truth of each branch of charge—When alternative charge justified.*—Under s. 80, the memorandum, endorsed upon the deposition of a witness given in Hindustani and recorded in English, may be taken as evidence of the facts stated in the memorandum itself and as affording some evidence that the translated deposition was correct. To support a finding upon an alternative charge of perjury, there must be legal evidence of the truth of each branch of the charge. The only justification for the alternative charge is that, on the evidence, it is uncertain which branch of the charge is true. QUEEN v. GONOWRI, **22 W.R. Cr. 2.**

(128)—*Examination of accused person—Mode of recording evidence.*—The examination of an accused person should be recorded by the courts in the language in which it is delivered and as far as possible in his own words. QUEEN v. MOONSAI BIBEE, **24 W.R. Cr. 54.**

(129)—*Gazette of India—Calcutta Gazette—Act* II *of* 1855, *ss.* 6 *and* 8—*Official letters.*—The Gazette of India or the Calcutta Gazette, containing official letters on the subject of hostilities between the British Crown and Mahomedan fanatics on the frontier, was rightly admitted in evidence under ss. 6 and 8 of Act II of 1855 as proof of the commencement, continuation, and determination of such hostilities. Similarly under s. 6, a printed letter from the Secretary to the Government of the Punjab, to the Secretary to the Government of India, was properly resorted to by the Court for its aid as a document of reference. It was not necessary that these documents should be interpreted to the prisoner. It was sufficient that the purposes for which they were put in were explained. QUEEN v. AMIRUDDIN, **7 B.L.R. 63=15 W.R. Cr. 25.**

(130)—*Admissibility of wife's evidence for or against husband or person charged jointly with him.*—Upon a criminal trial in the mofussil, the evidence of a wife was held to be admissible for or against her husband or persons charged jointly with him. QUEEN v. KHYROOLLA, **B.L.R. Sup. Vol. App. 11=6 W.R. Cr. 21.** *See also* REG. v. KADIR, **7 B H.C. Cr. 50.**

(131)—*Evidence of person bribing.*—The evidence of the person who bribes is admissible against the person bribed. QUEEN v. OBHOY CHURN CHUCKERBUTTY, **3 W.R. Cr. 19.**

(132)—*Crim. Pro. Code* (1861), *ss.* 205, 211 *and* 366.—A person who, in the opinion of a Sessions Judge has infringed the conditions

Evidence—continued.

——1.—General—*continued.*

under which a pardon has been extended, ought not to be tried by the Sessions Judge in the exercise of the power given him under s. 211, Crim. Pro. Code, along with the prisoners in whose case he has already given testimony. QUEEN v. PETAMBER DHOOBEE, 14 W.R.Cr. 10.

(133)—*Evidence Act, s.* 34—*Evidence of payment—Entries in books.*—Independent primary evidence of the payment to which the entries refer, in factory books, is not afforded by the books themselves. QUEEN v. HURDEEP SAHOY, 23 W R. Cr. 27.

(134)—*Record of proceedings of Small Cause Court—Summons book.*—The summons book of the Small Causes Court, Calcutta, was held to be admisslbe in evidence, though not signed by the presiding Judge. QUEEN v. NAKUR SIRKAR, 6 B.L.R. 729.

(135)—*Authentication of record.*—The record of proceedings in the Small Causes Court is not admissible in evidence unless authenticated by the signature of the presiding Judge. QUEEN v. SHIB CHANDRA DAS, 6 B.L.R. 730, Note.

(136)—*Burden of proving exemption from criminal liability.*—The absence of all circumstances constituting either a special or a general exception is to be presumed, and the burden of proving them lies upon the accused, and it is not for the prosecution to negative such circumstances. KHUDA BAKHSH v. EMPRESS, 27 P.R. 1887, Cr.

(137)—*Copy of translation of Magistrate's order in English—Evidence of admission.*—Evidence of an admission is not afforded by a copy of the translation of what a Magistrate is supposed to have said in English in a proceeding under Act IV of 1840. RAMJEE LAL v. MR. GEORGE ANDERSON, 7 W.R. 141.

(138)—*Plan, proof of.*—A witness's statement that a plan was prepared in his presence and bears his signature is not a sufficient reason for admitting the plan in evidence. The witness should depose to his knowledge that it is correct. REG. v. JORA HASJI, 11 B.H.C. 242.

(139)—*High Court—Records of the case in committing Magistrate's Court—Credibility of witness—High Court's power to look into such records.*—The High Court may look into the records of the case in the committing Magistrate's Court to arrive at a decision as to the credibility of a witness, when the cross-examination of the witness was not full in the Court of Sessions. *In re* KITTA VALAYAN. 10 M.L.T. 82=12 Ind. Cas. 223=12 Cr. L.J. 503.

(140)—*Practice—Appellate Court—Failure to consider defence evidence—Judgment—Defect—validity—Crim. Pro. Code, ss.* 367, 424, 102 *and* 118.—Where, in an appeal, the District Magistrate did not think it necessary to deal with the evidence adduced by the defence in the case, because no reference to that evidence was made by the counsel for the appellant, and that evidence was practically ignored by him. *Held*, that it was the duty of the Appellate Court to look into that evidence and, after dealing with it, to come to a decision. FIDOI-HOSSEIN v. EMPEROR, 40 C. 376=14 Cr. L.J. 419=20 Ind. Cas. 403.

(141)—*Defamation—Defamatory statement in affidavit—Privilege—Suit for damages—Maintainability.*—There is no difference between evidence given in the box and the evidence on affidavit, in that they are both absolutely privileged, and no suit for damages will lie in respect of evidence given therein. ADAPALA ADIVARAMMA v. RABALA RAMACHANDRA REDDY, 6 Ind. Cas. 309=8 M.L T. 55=1910 M.W.N. 155.

(142)—*Charge.*— Causing disappearance of evidence of an offence committed. MOSST BHAGUN v. CROWN, 22 P.R. 1866, Cr.

(143)—*Murder—Insufficiency of evidence.*—In this case it was held that the legal evidence admissible against one of the accused was insufficient to convict them of murder; and hence he was acquitted. MOMUNDEE KHAN v. CROWN, 24 P.R. 1866, Cr.

(144)—*Murder.*—Although the Chief Court, if it should itself consider the evidence may pronounce it to be suspicious, yet, where the Sessions Judge pronounced it credible, the Chief Court would not take upon itself to say that it it was not so. DULLEE v. CROWN, 57 P.R. 1866, Cr.

Acquittal on charge cf conspiracy—Subsequent trial of others on identical charge—Evidence in latter trial of what acquitted prisoner had said or done, if admissible—*See* ACQUITTAL. 15 C.W.N. 646=11 Ind. Cas. 580=12 Cr. L.J. 396.

To justify removal of Mooktear from profession—*See* ACT XX OF 1865, 9 W.R. Cr. 29.

See ACT III OF 1867, ss. 4, 5 and 6, A.W.N. 1905, 257=28 A. 210.

Notes of—*See* ACT X OF 1875, s. 147, 15 B.L.R. App. 14.

Serial written information, if evidence — *See* ACT I OF 1878, ss. 14, 15, 16, 4 L.B.R. 121=14 Bur.L.R. 202=7 Cr. L.J. 87.

Arms found in house occupied by a Hindu joint family—Evidence of possession—*See* ACT XI OF 1878, s. 25, 15 A. 129=A.W.N 1893, 48.

Admissibility of personal knowledge of Judge—*See* ACT XVIII OF 1879, s 36, 120 P. L.R. 1909=29 P.W.R. 1909, Cr.=3 Ind. Cas. 982.

See ACT XVIII OF 1891, ss. 2 and 4, 4 C. W.N. 433, F.B.

See BOM. ACT IV OF 1887, 5 Bom. L. R. 1047.

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See PUN. ACT XX OF 1891, s. 95, 31 P. W.R. 1908, Cr.

Appeal—Additional evidence—Admissibility. *See* APPEAL—GENERAL, 9 Ind. Cas. 251=12 Cr. L.J. 40=9 M.L.T. 323=(1911) 1 M.W.N. 136.

See APPEAL—GENERAL, 11 O.C. 360=9 Cr. L.J. 55.

See APPEAL—APPEAL FROM ACQUITTAL, 2 A. 386.

See APPEAL—CASES WHERE APPEAL DOES NOT LIE, 6 B.H.C. Cr. 64.

See APPROVER, 4 M.H.C. App. 21.

Recording evidence in the absence of assessors—*See* ASSESSORS, 15 A. 136=A.W.N. 1883, 50.

See ASSESSORS, 15 W.R. Cr. 3, 9 C. 875=12 C.L.R. 506.

See BAIL BOND, 55 P.L.R. 1902.

Necessary for conviction under the section —*See* BIGAMY, 7 C.L.R. 354.

Complaint by accused in previous trial—Admissibility without proof of presentation of it by him—*See* CHARGE TO JURY—MISDIRECTION, 26 C. 49.

Improper reception of evidence — *See* CHARGE TO JURY—MIS-DIRECTION, 17 C. 642.

See CHARGE TO JURY—MISDIRECTION, 7 W.R. Cr. 72=2 Ind. Cas. 434.

Accused pleading guilty, admissibility of —*See* CO-ACCUSED, 10 M.L.J. 147, F.B.

See COMPOUNDING OFFENCE, Rat. Un. Cr. C. 331=Cr. Rg. 22 of 1887.

See CONSPIRACY, 9 Bom. L.R. 347=5 Cr. L.J. 323.

Production of stolen article—Other evidence doubtful—Effect—*See* CONVICTION, 31 P.W. R. 1913, Cr.=314 P.L.R. 1913=21 Ind. Cas. 473=14 Cr. L.J. 601.

Circumstantial evidence — *See* CONVICTION, 136 P.L.R. 1909=36 P.W.R. 1909, Cr.= 4 Ind. Cas. 911.

Penal Code, s. 239—Delivery of counterfeit coins—*See* COUNTERFEITING COIN, 8 B. 223.

See CRIM.PRO. CODE, 1898, ss. 30, 337, 338, 10 C.W.N. 847=4 Cr. L.J. 44.

See CRIM. PRO. CODE, 1898, s 103, 11 Cr. L.J. 136=5 Ind. Cas. 438=7 M.L.T. 362.

Security for keeping the peace—Evidence as to probability of breach of the peace—*See* CRIM. PRO. CODE, 1898, s. 107, 8 A.L.J. 1080 =12 Cr. L.J 493=12 Ind. Cas. 213.

Mode of taking evidence as to the likelihood of a breach of the peace—*See* CRIM. PRO. CODE, 1898, s. 107, Colm. Dig. Cr. 15 of 1874.

Of general repute in security proceedings —*See* CRIM. PRO. CODE, 1898, ss. 107, 117, 25 A. 273=A.W.N. 1903, 36.

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——1.—General—*continued.*

Evidence to prove charge against habitual offenders—*See* CRIM. PRO. CODE, 1898, s. 110, 29 C. 779

See CRIM. PRO. CODE, 1898, ss. 110, cl. (*f*), 117, 5 C.W.N. 249.

Evidence required in security for good behaviour cases—*See* CRIM. PRO. CODE, 1898, ss. 110 and 118, 2 A.L.J. 174=A.W.N. 1905, 41.

See CRIM. PRO. CODE, 1898, ss. 133, 136, 8 C.L.R. 431.

Opportunity to adduce evidence in cases under s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 145, 28 C. 416.

Recording, in disputes about land, when necessary—*See* CRIM.PRO CODE, 1898, s. 145, 7 C.W.N. 351.

Evidentiary value of decrees of Civil Court and orders of Criminal Courts on question of possession—*See* CRIM.PRO.CODE, 1898, s. 145, 33 C. 33=10 C.W.N. 257=2 C.L.J. 271=2 Cr. L J. 670.

Omission to take evidence when amounts to want of jurisdiction—*See* CRIM. PRO. CODE, 1898, ss. 145, 146, 16 C.W.N. 1052=15 Ind. Cas. 486=13 Cr. L.J. 486=40 C. 105.

Validity of order under s. 147, Crim. Pro. Code, unsupported by—*See* CRIM. PRO. CODE, 1898, ss. 145 and 147, 30 C. 918=7 C.W.N. 510.

First information, when should be recorded —Admissibility—*See* CRIM. PRO. CODE, 1898, s. 154, 7 C.W.N. 345.

Evidentiary value of first information—*See* CRIM. PRO. CODE, 1898, ss. 154, 374, 17 C.W. N. 1213.

See CRIM. PRO. CODE, 1898, s. 162, 11 P. L.R. 1905.

Statements to Police entered in case diary not relevant in evidence—*See* CRIM. PRO. CODE, 1898, ss. 162 and 172, 7 C.P.L.R. Cr. 22.

See CRIM. PRO. CODE, 1898, ss. 164, 289, 342, 364, 367, 533, 9 C.L J. 55.

Confession of accused—Inducement to confess —Admissibility of—*See* CRIM. PRO. CODE, 1898, ss. 164, 350, L.B.R. 1893—1900, 52.

Police diaries and occurrence reports — Their evidentiary value—*See* CRIM. PRO. CODE 1898, s. 172, 2 Weir 142.

See CRIM. PRO. CODE (1898), s. 172, 10 C. W.N. 600=3 Cr. L J. 408, 27 C. 295=4 C.W. N. 129.

Admissibility of confessional statements and depositions.—*See* CRIM. PRO.CODE, 1898, ss. 193, 287, 288, 339 and 349, 15 M. 352=2 Weir 394=2 Weir 153=2 Weir 396.

See CRIM PRO. CODE, 1898, s. 195, Rat. Un. Cr. C. 242=Cr. Rg. 10 of 1886.

Identification evidence —*See* CRIM. PRO. CODE, 1898, ss. 221 (7), 342, 412 and 511, 4 N.L.R. 163=9 Cr. L.J. 56.

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Defence putting in a document during cross-examination —Prosecutor's right to reply—Court giving guarantee to witness to give any evidence without fear of consequences—Legality —*See* CRIM. PRO. CODE 1898, ss. 222, 292, 417, 63 P.L.R. 1911=9 Ind. Cas. 436=12 Cr. L.J. 73.

See CRIM. PRO CODE, 1898, s. 252, 11 Bom. L.R. 1153=4 Ind. Cas. 268=10 Cr. L.J. 530.

See CRIM. PRO. CODE, 1898, ss. 253, 435 and 439, 18 P.W.R. 1909, Cr.

Inadmissibility of illegally pardoned accomplice's evidence—*See* CRIM. PRO. CODE, 1898, s. 337, L.B R. 1893—1900, 51.

See CRIM. PRO. CODE, 1898, ss. 337, 339, 52 P.L.R. 1903.

Evidence of co-accused—*See* CRIM. PRO. CODE, 1898, s. 342, 3 Bom. L.R. 437.

Partly recorded by one Magistrate and partly by another—*See* CRIM. PRO. CODE, 1898, ss. 350, 145, 7 Ind. Cas. 54=11 Cr. L.J. 440=37 C. 812.

See CRIM. PRO. CODE (1898), s. 353, 5 C.P.L.R. 33, Cr., L.B.R. 1872—1892, 399.

Failure to take evidence for defence in accused's presence—Effect—*See* CRIM. PRO. CODE, 1898, ss. 353, 537, U.B.R. 1912, 4th Qr., p. 152=14 Cr. L.J. 287=19 Ind. Cas. 719.

See CRIM. PRO. CODE, 1898, s. 355, 2 Weir 432.

Power of Native Second Class Magistrate to record memorandum of evidence in English—*See* CRIM. PRO. CODE, 1898, ss. 355, 356, 357, 537, 19 M. 269=2 Weir 433=6 M.L.J. 134.

Mode of recording evidence of witness—*See* CRIM. PRO. CODE, 1898, ss. 356 and 537, 6 O.C. 73.

Examination of accused before a Magistrate, admissibility in Court of Sessions—*See* CRIM. PRO. CODE, 1898, s. 364, 5 M.H.C. App. 4.

Power of Sessions Judge or District Magistrate to take, or to direct the taking of evidence supplementary to the evidence given in the lower Court—*See* CRIM. PRO. CODE, 1898, ss. 428, 437, 439, 6 C.L.J. 251=6 Cr. L.J. 357.

See CRIM. PRO.CODE, 1898, s. 437, U.B.R. 1897—1901, Vol. I, 100, 10 B. 131.

Case involving production of documentary evidence — Summary trial — Legality — *See* CRIM. PRO. CODE, 1898, s. 439, 6 S.L.R. 120=17 Ind. Cas. 403.

Conviction upon what should be based—Insufficient evidence— Revision — *See* CRIM. PRO. CODE, 1898, s 439, 12 P.W R. 1913, Cr. =66 P.L.R. 1913=19 Ind. Cas. 148=14 Cr. L. J. 148.

Discrepancy in evidence for prosecution—Failure of both Courts to take its notice—Revision—*See* CRIM. PRO. CODE, 1898, s. 439, 8 P.W.R. 1912, Cr., 15 Ind. Cas. 95=13 Cr.L.J. 463=113 P.L.R. 1912.

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——1.—General—*continued.*

Track evidence, value of—*See* CRIM. PRO. CODE, 1898, s. 439, 28 P.W.R. 1912, Cr.=16 Ind. Cas 520=13 Cr.L.J. 712.

Misappreciation of—Whether ground for interference in revision—*See* CRIM. PRO. CODE, 1898, s. 439, 15 Cr.L.J. 285=23 Ind. Cas. 493.

See CRIM. PRO. CODE, 1898, s. 512 (1), 10 C. 1097.

Verdict of jury—High Court if should discuss weight of evidence—*See* DACOITY, 15 C.W.N. 434=10 Ind. Cas. 684=12 Cr.L.J. 193.

Of previous conduct—*See* DEFAMATION, 7 A. 906=A.W.N. 1885, 272.

See DEPOSITION, Cr. Rg. 26—8—1869.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 14 C.W.N. 80=5 Ind. Cas. 40, 7 B.L.R. 324-N.=11 W.R.Cr. 36.

English cases on—*See* ENGLISH LAW, 9 B. H C. 358.

Of marriage—*See* ENTICING AWAY MARRIED WOMAN, A.W.N. 1898, 186.

Summary trial—Oral evidence admissible to prove depositions of witnesses—*See* EVIDENCE ACT, 1872, s. 91, Rat. Un. Cr. C. 334=Cr. Rg. 24 of 1887.

Proof of guilt by circumstantial evidence—Nature of evidence required—*See* EVIDENCE ACT, 1872, s. 122, 244 P.L.R. 1913=19 Ind. Cas. 1004=14 Cr.L.J. 316=44 P.W.R. 1913, Cr.=27 P.R. 1913, Cr.

Conviction upon same evidence on which accused discharged previously—*See* FURTHER ENQUIRY, 6 A. 367.

Misappreciation of evidence, if a ground for interference—*See* HIGH COURT, SUPERINTENDENCE AND POWERS OF, 5 M.L.T. 233, F.B.=9 Cr.L.J. 192=19 M.L.J. 157=32 M. 220=1 Ind. Cas. 228.

Judge's notes of evidence and proceedings —Right of accused—*See* HIGH COURT, JURISDICTION OF—REVISIONAL POWERS OF HIGH COURT, 1 M.H.C. 138.

Wife's evidence against husband— *See* HUSBAND AND WIFE, 7 B.H.C. Cr. 50.

See INSANITY, Rat. Un. Cr. C. 10.

Medical certificate not sufficient evidence—Medical Officer to be personally examined—*See* INSANITY, 9 W.R. Cr. 23.

See JUDGE, 10 B.H.C. 75.

Evidence of handwriting—*See* JUDGE AND JURY, Rat. Un. Cr. C. 452.

See JUDGMENT, 4 M.H.C. App. 42.

Circumstantial—What is—Value of— *See* JURY, 12 Cr.L.J. 329=10 Ind. Cas. 929.

Taking evidence in the absence of Jury—*See* JURY, 7 Bom. L.R. 979=3 Cr. L.J. 42.

See KIDNAPPING, A.W.N. 1902, 143.

Of kidnapped girl—*See* KIDNAPPING, 7 W. R. Cr. 104.

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——1.—General—*continued.*

Statement made out of Court—*See* MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 14 B. 572.

See MAGISTRATE JURISDICTION OF — GENERAL JURISDICTION, 7 C.L R. 193.

Theory of case should succeed collection of evidence—*See* MEDICAL JURISPRUDENCE, 13 C.W.N. 622.

Evidence of mental state in determining nature of provocation—*See* MENTAL STATE, L.B.R. 1893—1900, 249.

Evidence of a girl of 10 years requires corroboration, when she had made previous inconsistent statement—*See* MURDER, 6 M.L.T. 123.

Charge of murder—Dead body not forthcoming — Strongest evidence essential — *See* MURDER, 11 C. 635.

Charge of murder—Complaint to the police—Of prosecution witnesses— Contradictory—*See* MURDER, 1911, 2 M.W.N. 14=12 Cr. L J. 497=12 Ind. Cas. 217.

What should guide Judge in convicting an accused of murder—*See* MURDER, 6 C.P.L.R. Cr. 3.

See PARDANASHIN WOMAN, 2 Weir 432.

See PENAL CODE, ss. 34, 141, 142, 147 and 149, 11 Cr.L.J. 30=4 Ind. Cas. 700=6 M.L.T. 17.

Of conspiracy — Associations for music—Lathe play, etc.—Evidence of conduct, value of, when other evidence sufficient and when insufficient—*See* PENAL CODE, s. 121-A, 15 C. W.N. 593=11 Ind. Cas. 582=12 Cr.L.J. 286.

Admissibility in evidence of notes of speeches —*See* PENAL CODE, s. 124-A, 5 M.L.T. 393=32 M. 381=9 Cr.L.J. 456=2 Ind. Cas. 33.

Intention of editor and publisher—Contributions to the paper, admissibility of to know intention—*See* PENAL CODE, s. 124-A, 22 B. 112.

See PENAL CODE, s. 124-A, 5 M.L.T. 415=32 M. 338=9 Cr.L.J. 506=2 Ind. Cas. 193.

Of a woman of loose character—Value of—*See* PENAL CODE, ss. 142, 299, 302, 304, 325, 366, 12 P.W.R. 1911, Cr.=193 P.L.R. 1911=12 Cr.L.J. 393=11 Ind. Cas. 577.

First report based on information received from another person—Evidentiary value—*See* PENAL CODE, ss. 147, 304, 35 P.W.R. 1913 Cr.=318 P.L R. 1913=21 Ind. Cas. 593=14 Cr.L.J. 593.

Mode of weighing evidence—Value of expert medical opinion—*Post mortem*—*See* PENAL CODE, ss. 161, 304, 330-A, 26 P.W.R. 1911, Cr.=12 Cr. L.J. 485=12 Ind. Cas. 93.

See PENAL CODE, s. 193, 6 C.L.R. 47.

Causing disappearance of, of murder—*See* PENAL CODE, s. 201, 2 A. 713.

Consideration of, by the High Court in revision—*See* PENAL CODE, s. 280, 15 C.W.N. 835=12 Cr. L.J. 362=11 Ind. Cas. 130.

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Evidence merely amounting to grave suspicion, but not justifying conviction—*See* PENAL CODE, ss. 300 and 302, 29 C. 483=6 C.W.N. 596.

Circumstantial evidence—*See* PENAL CODE, s. 302, 11 C.W.N. 1085=6 Cr. L.J. 304.

Murder—Further evidence in appeal—Inspection of spot—*See* PENAL CODE, s. 302, 16 P. W.R 1911, Cr.=12 Cr. L.J. 412=11 Ind. Cas. 596.

Suspicion of guilt—Inadmissible and hearsay evidence admitted and used to the prejudice of accused—Absence of reliable evidence—Evidence of motive however strong if can take the place of reliable evidence—Approver's evidence —Retracted confession—Corroboration—Evidence not reliable against co-accused if may be relied on for conviction of an accused for abetment—*See* PENAL CODE, ss. 302, 109, 17 C.W.N. 1110=14 M.L.T. 263=1913 M.W.N. 806=15 Bom.L.R 910=25 M.L.J. 518=2 Bom. Cr. C. 123=18 C.L.J. 265=14 Cr. L.J. 577=21 Ind. Cas. 369=11 A.L J. 881=36 M. 501.

Gang, belonging to a—Of previous conviction —Evidence—*See* PENAL CODE, s. 401, 14 Bom. L.R. 373=15 Ind. Cas. 811=13 Cr. L.J. 539=1 Bom. Cr. C. 136.

Demeanour of witness—*See* PENAL CODE, s. 420, 9 Cr. L.J. 261=1 S.L.R. 20, Cr.

Of adultery—*See* PENAL CODE, s. 497, A.W.N. 1883, 129.

Proof of marriage — *See* PENAL CODE, s. 498, 3 O.C. 342.

Value of first report to the Police—Admission of its certified copy in revision—Report falsifying prosecution story—Acquittal—*See* PENAL CODE, s. 498, 29 P.W.R. 1911, Cr.=224 P. L.R. 1911=12 Cr. L J. 500=12 Ind. Cas. 220.

See PENAL CODE, s. 498, 2 S.L.R. 22, Cr. =10 Cr.L.J. 235.

See POLICE REPORT, Rat. Un. Cr. C. 23=Cr. Rg. 17-9-1869

Proof of previous convictions—*See* PREVIOUS CONVICTION, Colm. Dig, Cr. 12 of 1873.

Suspicion insufficient for conviction — *See* PROSECUTION, 5 C.P.L.R. Cr. 11.

See REVISION — ACQUITTALS, 5 M.L.T. 258.

Supplementary evidence — Recording—*See* SANCTION TO PROSECUTE — CONDITIONS REQUISITE FOR GRANT OF SANCTION ETC., Rat. Un. Cr. C. 629=Cr. Rg. 54 of 1892.

See SANCTION TO PROSECUTE—NOTICE OF SANCTION, 9 C.L.J. 690=13 C.W.N. 942=10 Cr.L.J. 150=36 C. 808=2 Ind. Cas. 697.

Duty of Magistrate to record evidence on which order for security based—*See* SECURITY FOR GOOD BEHAVIOUR, Colm. Dig. Cr. 20 of 1874.

See SECURITY PROCEEDINGS, 6 A. 132.

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——1.—General—*concluded.*

Recorded by Assistant Sessions Judge—Judgment by Sessions Judge — Legality—*See* SESSIONS TRIAL, 10 A.L.J. 473=13 Cr.L.J. 861=17 Ind. Cas. 797=35 A. 63.

Change of Judge—Evidence recorded by one Judge and orders passed by another—Validity—*See* SESSIONS TRIAL, 8 C.L.J. 59=4 M.L.T. 148=8 Cr.L.J. 121.

See STOLEN PROPERTY, 5 N.W.P. 120.

Substance of evidence, meaning of — *See* SUMMARY TRIAL, 4 L.B.R. 338=9 Cr.L.J. 23.

Evidence recorded by Magistrate on the order of officer initiating the prosecution—Conviction based thereon—Legality—*See* TRIAL, 7 S.L.R. 82=15 Cr. L.J. 375=23 Ind. Cas. 743.

See WITHDRAWAL OF CHARGE, 5 Ind. Cas. 21.

——2.—Admissibility of Evidence.

See EVIDENCE ACT, 1872, SS. 5, 55.

(1)—*Evidence, admissibility of.*—Evidence, otherwise admissible, cannot be excluded at a trial merely on the ground that the evidence shows that the prisoner against whom it is given has committed some other offence with which he was not charged at the trial. QUEEN-EMPRESS v. MULUA, **14 A. 502=A.W.N. 1892, 95.**

(2)—*Notes of evidence taken by a Magistrate at trial—Sufficiency thereof as ground of transfer of case.*—*Held*, that the notes of evidence taken by a Magistrate at the trial were sufficient materials to decide the question of the advisability of transferring a case. QUEEN v. HADJEE JEEBUN BUX, **1 C. 354.**

(3)—*Deposition of accused—Admissibility in evidence against him in subsequent proceeding, condition of.*—A deposition by an accused person is inadmissible in evidence against him in another proceeding without proof of his identity. QUEEN-EMPRESS v. DURGA SONAR, **11 C. 580.** [*F.*, L.B.R. (1893—1900), 70; *R.*, 26 A. 108. P.C.=6 Bom. L.R. 233=8 C.W.N. 241; *D.*, 3 L.B.R. 208.]

(4)—*Evidence of co-accused.*— Where two persons were jointly accused of theft, but the Magistrate issued process against one of them only, the evidence of that person, against whom process was not issued, adduced on behalf of the accused who was on his trial, was held to be admissible in evidence. MOHESH CHANDRA KOPALI v. MOHESH CHUNDER DASS, **10 C.L.R. 553.** (6 W.R. Cr. 91, 1 B. 610, *D.*) [*Appr.*, 4 N.L.R. 81=8 Cr. L.J. 20; *R.*, 16 B. 661, 33 C. 1353=4 Cr. L.J. 145=10 C.W.N. 962, 100 P. L.R. 1902=12 P.R. 1902, Cr.]

(5)—*Report of Chemical Examiner—Crim. Pro. Code* (1861), *s.* 370.—The report of a Chemical Examiner is evidence in a criminal trial, if it bear the signature of the Examiner. The original should be produced. QUEEN v. BISWAMBHAR DAS, 6 **B.L.R. App. 122=15 W.R. Cr. 49.**

Evidence—continued.

——2.—Admissibility of Evidence—*continued.*

(6)—*Report of Chemical Examiner.*—The Chemical Examiner's report can be read and acted upon as evidence by Magistrates as well as Sessions Judges. HIGH COURT PROCEEDINGS, 23RD DECEMBER, 1870, **6 M.H.C. App. 11.**

(7)—*Dacoity—Damages—Suit against approver—Confession and evidence at criminal trial, if admissible—Crim. Pro. Code* (*Act* V *of* 1898), *s.* 339—*Sessions Court's finding, if binds Civil Court—Civil Court suit, if barred—Merger of tort in felony, rule of—Applicability in India—Civ. Pro. Code* (*Act* XIV *of* 1882), *s.* 11.—*Held*, that the confession and sworn evidence of an approver in a criminal trial for dacoity are admissible in evidence against him in a suit for damages brought against him by the complainant for having instigated the dacoity. *Held*, further, that the Civil Court could act upon such statements, even though the Sessions Judge did not think it safe to convict the accused upon such statements. "The conditions for receiving and acting on evidence in Civil Courts are very different to those governing the procedure of Criminal Courts. Especially is this the case with respect to the statements of accused persons and accomplices." Having regard to the provisions of s. 11 of the Civ. Pro. Code, the fact that the criminal trial had not resulted in a conviction of the accused was no bar to the institution of the civil suit against him. KESHAB NATH BHATTACHARYA v. MANIRUDDIN SARKAR, **13 C.W.N. 501.**

(8)—*Evidence of absent witness, admissibility of.*—The evidence of absent witnesses, as recorded by the Magistrate, is admissible only under exceptional circumstances, and. in such cases, the Sessions Judge should satisfy himself that the witness is either dead or that, for any sufficient cause his attendance cannot be procured. **1 W.R. Cr. Letters, 6.**

(9)—*Evidence of improved circumstances—Admissibility of.*—Evidence of the improved circumstances of an accused person, after the commission of the offence of which he has been convicted, is admissible, and evidence on this very important point must be produced before the Sessions Judge. **1 W.R. Cr. Letters, 7.**

(10)—*Medical evidence.*—In a charge of voluntarily causing hurt with a dangerous weapon, *held*, that medical evidence should be recorded to ascertain the nature and extent of the hurt caused. QUEEN-EMPRESS v. NGA SEIK, **U. B.R. 1897—1901, Vol I, 318.**

(11)—*Circumstantial evidence—Conviction—Process of elimination—Statements of accused in Police custody—Their inadmissibility—Homicidal mania—Proof of.*—A conviction based upon circumstantial evidence, in the absence of direct evidence, is good. And when two persons are suspected of having committed a crime and when attendant circumstances show that one cannot have committed the deed, the Court may infer that the other must have committed it. *Sankaran Nair, J.*—Statements by accused

Evidence—continued.

——**2.—Admissibility of Evidence**—*concluded.*

persons made while in Police custody are notoriously untrustworthy and no reliance can be placed on such statements. *Sadasiva Iyer, J.* —Homicidal mania need have no motive to perpetrate the crime; and the chief evidence of the existence of insanity appears to be in the act itself. VAITHINATHA PILLAI, **1912 M.W.N. 825=14 Cr. L.J. 465=20 Ind. Cas. 721.**

(12)—*Admissibility — Letter self-disserving—Letter intercepted—'Import'—Bengal Excise Act V (B.C. of 1909), ss. 2 (12), 46, 61—Articles intercepted by Customs House, if brought into Bengal.*—A letter written by an accused person, when self-disserving, is *prima facie* evidence against him, if it relates distinctly to a relevant point; it is not necessary that it should be signed; it is enough if it is traced to the writer, and it is admissible, though it may have been intercepted or surreptitiously detained and opened and never in fact reached the addressee. (2 C. and P. 418, *F*; (1875) 1 Q.B.D. 19, *R.*) The fact that a reply from Porter & Co. posted immediately after the telegram purporting to be sent by C. Barker and referring to the telegram, was addressed to the accused, is a relevant fact under s. 11. Evidence Act, and cogent evidence to show that the accused was the sender of the telegram. The term 'import' as used in the Bengal Excise Act has a very wide significance. Though an article may be actually within the geographical limits of Bengal, it cannot be said to have been brought into Bengal, if it has been intercepted at the Customs House. C. H. BOOTH v. EMPEROR, **18 C.L.J. 567=18 C.W.N. 386=22 Ind. Cas. 179=15 Cr. L.J. 35=41 C. 545.**

Extract from Gazetteer—Admissibility in—*See* CRIM. PRO. CODE, 1898, s. 110, 16 C.L.J. 467=18 Ind. Cas. 149=14 Cr. L.J. 5=17 C.W.N. 238.

Documents found in possession of accused—Admissibility—*See* DOCUMENTS, 39 C. 119=15 Ind. Cas. 65=13 Cr. L.J. 433.

Using forged document—Production of copy of document—Evidence given before Civil Court when inadmissible in evidence — Improper admission of evidence when a ground for revival of conviction—*See* FORGERY, 6 W.R. Cr. 41.

Statement by accused (sepoy) in answer to question by Commanding Officer when in custody, if admissible—*See* SS. 53, and 54, VIC. C. 37, 18 C.W.N. 705=15 Cr. L. 326=23 Ind. Cas. 678, P.C.

——**3.—Non-admissibility of Evidence.**

(1)—*Whether evidence, not admissible, can be received as corroborative proof.* — Evidence, which is not admissible, cannot be received as corroborative proof. CROWN PROSECUTOR v. SHAM SUNDER, **1 N.W.P. 310.**

(2)—*Evidence of previous information about offence — Admissibility.*—A statement by a police constable that he had previous information that the particular offence was about to be committed should not be admitted as evidence against the accused. REG. v. CHIND, **8 B.H.C. Cr. 164.**

(3)—*Evidence of general reputation in a charge of defamation.*—Where the question of the truth of definite charges was in issue in a case of defamation, the Court would not be wrong in law in rejecting evidence of general reputation and also in refusing consideration to what had been published on former occasions. REG. v. KIKABHAI PARBHUDAS, **9 B.H.C. 451.**

(4)—*Prosecution based on hearsay evidence—Admissibility of evidence.*—In a certain case, the evidence for the prosecution consisted of the information given by one N to an Inspector of Police, which information was reproduced by the Inspector on behalf of the prosecution. The defence objected to the admissibility of such evidence on the ground that N was not examined as a witness in the case. The Magistrate, however, disposed of the objection by saying that "the information received from N was so complete as to bring all the circumstances of the case to light without any further evidence being called by the prosecution," that "the facts elucidated by the Police Inspector in his evidence are neither disputed nor disproved by the defence" and that "N seems to be one of the keepers of a common gaming house and, as a general rule, very little can be expected from such a witness." *Held*, that the reasons given by the Magistrate were not sufficient for admitting the evidence of the Police Inspector, and that it lay on the prosecution to prove, by legally admissible evidence the facts which were alleged to constitute the offences charged. QUEEN EMPRESS v. VIJUBHAI PARMANDAS, **1 Bom. L.R. 433.**

(5)—*Hearsay evidence—Admission.*—Necessity of caution in receiving evidence of admissions and of excluding hearsay evidence illustrated. QUEEN-EMPRESS v. NGA TA LOK, **L.B.R. 1872—1892, 350.**

(6)—*Evidence of surgeon from notes of another surgeon, if permissible.*—A Sessions Judge is not authorised to allow a surgeon to describe the *post mortem* appearances of the deceased merely from knowledge acquired by him from the perusal of the notes prepared by another surgeon. QUEEN-EMPRESS v. SAVLA, **Rat. Un. Cr. C. 549.**

(7)—*Evidence upon commission taken upon order by committing Presidency Magistrate — Trial before High Court—Admissibility.*—Evidence taken upon commission, by an order of the Presidency Magistrate that committed the case to the High Court, would not be admissible in the trial before the High Court; for such to be admissible, it must be shown that it was so taken upon an order by the High Court itsel

Evidence—continued.

——**3.—Non-admissibility of Evidence**—*ctd.*

or that it is admissible under s. 33 of the Evidence Act. EMPRESS v. DABEE PERSHAD, 6 **C. 532.** [*R.*, 19 C. 113.]

(8)—*Reports of* post mortem *examination—No evidence.*—The report of a medical man on his *post mortem* examination, though it may be used to refresh his memory when giving evidence, cannot be treated as evidence, and no facts can be taken from it. ROGHUNI SINGH v. EMPRESS, **9 C. 455 = 11 C.LR. 569.** [*R.*, 16 C.P.L.R. 122.]

(9)—Post mortem *report* —A *post mortem* report is not admissible as evidence except to contradict the officer who made it, and it may be used by that officer, when under examination, for the purpose of refreshing his memory. QUEEN-EMPRESS v. JADUB DAS, **27 C. 295 = 4 C.W.N. 129.**

(10)—Post mortem *report.*—The *post mortem* report could not be used as evidence in the Sessions trial, except by way of refreshing the memory of the person who made it, or to contradict him. RAM SARUP RAI v. EMPEROR, **6 C.W.N. 98.**

(11)—*Report in* post mortem *register.*—The report made by a Civil Surgeon in the *post mortem* register of a *post mortem* examination held by him and the statements made by the Assistant Surgeon about the correctness of the entries without personal knowledge thereof are inadmissible in evidence. U WE v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 39.**

(12)—*Crim. Pro. Code* (1882), *s* 510—*Report of "Additional Chemical Examiner.*—S. 510 of the Code enacts that a document purporting to be a report under the hand of the "Chemical Examiner or Assistant Chemical Examiner" may be used as evidence in an enquiry; but a certificate signed by a person styling himself "Additional Chemical Examiner" does not come under the section, and cannot be received in evidence. QUEEN-EMPRESS v. AUTAL MUCHI, **10 C. 1026.**

(13)—*Depositions before committing Magistrate, statement of* Muktear *as to faultiness of—Refusal by Sessions Judge to admit, propriety of.*—Where a Sessions Judge, relying upon a general statement made by a *Muktear* that certain depositions were not properly taken by the committing Magistrate, refusal to allow them in evidence to contradict the statements made by these witnesses before the Sessions Court, although, no objection to their admission was taken on behalf of the Crown, and the trial resulted in the conviction of the accused, *held*, that the conviction must be set aside and a retrial ordered. ADYAN SINGH v. QUEEN-EMPRESS, **13 C. 121.**

(14)—*Proposals of compromise, no evidence of guilty knowledge against the accused.*—Evidence relating to proposals of a compromise during the pendency of the case ought not, in the exercise of a proper discretion, to be allowed to go in as evidence of guilty knowledge against the accused. ABBAS PEADA v. QUEEN EMPRESS, **25 C. 736 = 2 C.W.N. 484.** [*R.*, 44 P.W.R. 1913. Cr. = 19 Ind Cas. 1004 = 14 Cr. L. J. 316 = 244 P.L R. 1913.]

(15)—*Crim. Pro. Code* 1872, *s.* 126, *s.* 172 *of Crim. Pro. Code* (1898)—*Police diaries and reports—Inspector's diary.*—The diary of a Police Inspector is not evidence. *In the matter of* ABDUL GUFFOOR, **10 C.L.R. 54.**

(16)—*Police diary.*—Diaries kept by police officers are not original evidence. NERAVALI NANDAIYA, APPELLANT, **2 Weir 143.**

(17)—*Police reports.*—Police reports are not evidence and should not be treated as such, though some of the Subordinate Courts are too fond of doing so; it is a practice to be condemned and avoided. KALANDAR v. EMPRESS, **P.L.R. 1900, p. 71, Cr.**

(18)—*Evidence before committing Magistrate, not used at trial—Admissibility in appeal.*—Evidence taken before a Magistrate, but used at the trial, cannot be referred to on appeal. QUEEN v. WAZIRA, **8 B.L.R. App. 63 = 17 W. R. Cr. 5.**

(19)—*Finding of criminal court—Effect on civil court—Practice.*—*Held*, that the evidence of assault taken in the Criminal Court was no evidence on which the judge of the Civil Court was in this case entitled to rely, that he had jurisdiction to determine the fact of assault and was bound therefore to take the evidence on record in his own Court on either side, and come to a determination upon that evidence. ALI BUKSH DOETOR v. SHAIKH SUMEEROODDEEN, **12 W.R. 477 = 4 P.L.R.A.C. 31**

(20)—*Available evidence not given at trial—Admissibility of such an appeal.*—The High Court would not, on appeal, receive evidence which was available on the trial in the Court below, when the prisoner deliberately elected not to give evidence in reply to the case made against him. QUEEN v MADHUB CHUNDER GIRI MOHUNT, **21 W.R. Cr. 13.**

(21)—*Evidence taken in one proceeding—Admissibility in another proceeding.*—Where evidence has been given in one case upon the issue raised in that case, nothing can be more dangerous than to take that evidence and apply it in another case in which other issues arise. Where a legal practitioner was charged with certain acts of professional misconduct in connection with a case, in which he had been engaged, and the records in that case and in some other proceeding were put in their entirety and treated as evidence in the proceeding, *held*, that the proceeding was irregular. *In re* HENRY LEWIS LUBECK, **15 M.L J. 432 = 1 M L.T. 17 = 7 Bom. L.R. 894 = 2 A.L.J. 800 = 2 C.L.J. 421 = 10 C.W.N. 67 = 33 C. 151, P.C.**

(22)—*Inference drawn from evidence in one case, whether can be precedent in another.*—

Evidence—continued.

——3.—**Non-admissibility of Evidence**—*ctd.*

The finding of fact and the inferences drawn from it upon the evidence given in one case form no precedent for another case, in which the evidence is different and another mind is occupied with drawing inferences from it. UMAR DIN v. EMPRESS, **12 P.R. 1891, Cr.**

(23)—*Dying declarations—Their admissibility—Manner of proving them.*—Dying declarations are not admissible in evidence, unless they are proved by the Magistrate who recorded them. Although recorded by a Magistrate, in the absence of the prisoner, the mere production of them is not proof that they were made, so as to make them legal evidence against the prisoner. *In re* SINGA, **2 Weir, 339.**

(24)—*Dying declaration.*—The statement of a deceased person though recorded by a Magistrate must be proved in the usual way by calling the Magistrate or clerk who took it down. The law does not provide that the mere signature of a Magistrate shall be a sufficient authentication of such a document, and it is obviously desirable that the person who took the statement should be subject to cross-examination as to the dying man's state of mind when he made it, and as to the other circumstances. RAM LOOCHUN v. QUEEN-EMPRESS, **L.B.R. 1872-1892, 157.**

(25)—*Statements made before a Magistrate other than the committing officer.*—In a Sessions trial, receiving in evidence the statements of persons made before a Magistrate, who was not the committing officer, is illegal in the absence of any proof that they were so made; the mere signature of a Magistrate is not sufficient in law to authenticate such statements, as these are not the records of the evidence given by a witness in a judicial proceeding. CROWN v. KAMTA, **S. C. 30, Oudh.**

(26)—*Relevancy of statement of accused who were previously tried.*—The statements made by accused persons who were previously tried are irrelevant; if their evidence was required, it should have been taken in the presence of the accused, or, on commission, if such a procedure were under the circumstances permissible. EMPRESS v. DHANLIA BHILL, **5 C.P.L.R. 3, Cr.**

(27)—*Panchnama—Statement of accused contained in panchnama—Panchnama not admissible in evidence.*—The Court should exclude from the record of a case, panchnamas containing statements by an accused which are clearly inadmissible or which are of doubtful admissibility. EMPEROR v. RANCHHOD GOKAL, **13 Bom. L.R. 499 = 11 Ind. Cas. 643 = 12 Cr. L.J. 429.**

(28)—*S. 411, I.P.C.—Offence under—Statement made to Police.*—A statement made by an accused to the Police as to how he came by the goods, which are alleged to be stolen property, cannot be used in evidence against him, when he is being tried for an offence under s. 411 of the Penal Code. KHUDA BAKSH v. EMPEROR OF INDIA, **11 P.L.R. 1905 = 2 Cr. L.J. 128.**

Evidence—continued.

——3.—**Non-admissibility of Evidence**—*ctd.*

(29)—*Evidence—Evidence of public officer refusing cross-examination—Evidence Act* (I of 1872), *ss* 35—45, 65 (*a*) *and* 74.—The accused was convicted of having forged a bond purporting to have been executed on the 31st July 1884. The main evidence in the case was that of the store-keeper in the office of the Superintendent of Stamps, Calcutta, to the effect that the stamp paper on which it was written was not manufactured till February 1st, 1890. The witness deposed that his knowledge was based on papers received from the India Office, and that he was unable to give a copy of the papers without authorisation from his superiors, that there were marks on the paper by which he could form an opinion as to the year in which the paper was manufactured, but that the marks were private and that he was prohibited by his superior officer from pointing them out. It was objected that this evidence was inadmissible, and, if admissible, was worthless as the witness could not be cross-examined. *Held*, that the evidence was not admissible, and, even if it were, it was very inconclusive, owing to the refusal of the cross-examination. The witness was not giving evidence as an expert, for he was not stating an opinion on any of the points referred to in paragraphs 45-50 of the Evidence Act; and his knowledge was based on the papers received from the India Office, and those papers were not produced. Granting that those papers were admissible as public records under ss. 35 and 74 of the Evidence Act, yet they could only be proved by the production of the papers themselves, or, by secondary evidence of the nature described in s. 65 (*a*) and they could not be proved by the oral evidence of the witness. GANGA RAM v. EMPEROR OF INDIA, **66 P.L.R. 1903 = 5 P.R. 1903, Cr.**

(30)—*Penal Code, s. 498—Proof of—Marriage.*—In a case of enticing away a married woman, the mere denial of the marriage by the woman is not sufficient evidence to discharge the accused. The evidence given in a Civil suit is not admissible as proof of marriage in a case under s. 498, I.P.C. EMPRESS v. ALI BAKSH, **3 P. R. 1881, Cr.**

——4.—**Character Evidence.**

See EVIDENCE ACT, 1872, SS. 52—55.

(1)—*Evidence of bad character.*—Where a man is being tried upon a specific charge, unless within the four corners of the law, proof of a previous conviction is allowed for the purpose of proving guilty knowledge, or whatever it might be, no question ought to be permitted and no evidence allowed to show that he is a man of bad and dishonest character. But if the accused, at his trial, chooses to put in issue the question of his good character, it is then competent to rebut such evidence by giving evidence of general evil reputation. QUEEN-EMPRESS v. HUGHES, **14 A. 25 = A. W.N. 1891, 170.**

Evidence—continued.

——4.—**Character Evidence**—*continued.*

(2)—*Evidence of good conduct.*—No importance can be attached to evidence of good character when the case against the accused is clear. When it is doubtful, some weight must be given to it. QUEEN EMPRESS v. NURMAHOMED, **8 B. 223.**

(3)—*Evidence of bad character, as affecting the sentence—Evidence of departmental punishments, admissibility of — Evidence Act, ss. 54 and 55 — Evidence of previous conviction, exception in case of.*—Upon the conviction of an accused, the Court has to determine what punishment to award, and, to do this, should take into consideration, not only the nature and gravity of the offence committed, but also the character of the accused. The bad character of the accused then becomes a fact in issue. Evidence of bad character being admissible as affecting the sentence, evidence may be given only of general reputation and general disposition and not of particular acts by which reputation or disposition is shown. Evidence as to previous convictions is an exception to this rule. Evidence of departmental punishment is inadmissible for the above purpose. NGA PO THAUNG v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 352.**

(4)—*Bad character, evidence of.*—Evidence of bad character should not be put before the jury; but is only for the consideration of the Judge in determining the sentence to be awarded. QUEEN v. MAHIMA CHANDRA DAS, **6 B.L.R. App. 108=15 W.R. Cr. 37.** *See also* QUEEN v. BEHAREE DOSADH, **7 W.R.Cr. 7**; QUEEN v. PHOOLCHAND *alias* PHOLEEL, **8 W.R. Cr. 11**; QUEEN v. GOPAL THAKOOR, **6 W.R. Cr. 72.**

(4-*a*)—*Bad character - Evidence of.*—Evidence as to the prisoner's previous conviction and bad character and of the bad character of his relations is not admissible. If a person is before the Court as a witness, his evidence must be recorded as the law directs; if he is not a witness, and is not examined as such, the Judge has no right to allude to his having made any statement. QUEEN v. PHOOLCHAND, **8 W.R. Cr. 11.**

(4-*b*)—*Character—Evidence—Remarks as improper admission.*—As to the remarks on the improper admission, at a Sessions trial with the aid of Assessors, of a Chowkeedar's statement as to the previous bad character of the accused. QUEEN v. GOPAL THAKOOR, **6 W.R. Cr. 72.**

(5)—*Evidence of bad character.*—It is improper to allow prosecution witnesses to state that the accused was not of good character. REG. v. TIMMI, **2 B H C. 123.**

(6)—*Bad livelihood—Criminal Procedure Code (Act V of 1898), s. 110, cls. (d) and (f)—General repute, evidence of, admissibility of—Evidence if must be of neighbours—Evidence of misconduct committed long ago, value of—Joinder of charges in a proceeding under s. 110 — S. 257 (1), Criminal Procedure Code, sufficient compliance with.*—In s. 110, cl. (*f*), Criminal Procedure Code, a man of desperate and dangerous character means a man who has a reckless disregard of the safety of the person or the property of his neighbours, and under that clause evidence of general repute is not admissible in evidence. Evidence of acts of extortion committed by a person, unless those acts were accompanied by acts causing danger to the person and properties of other persons, is not sufficient to bring his case within cl. (*f*) of s. 110, Criminal Procedure Code. The law as to the joinder of charges against a person accused of definite offences has no application to an inquiry under s. 110 cl. (*d*). On an enquiry whether the defendant is a habitual offender, evidence of acts of misconduct committed by him years ago is admissible in evidence as indicating the formation of the habit, but such evidence unless supplemented by evidence of misconduct committed by the defendant within a year or so before the institution of the proceeding under s. 110, Cr. P.C., cannot justify the making of the order under s. 118, Cr. P.C. When the person against whom proceeding under s. 110, Cr. P.C., is instituted for being a habitual offender is a well-known resident of a city, his fellow-citizens though not living in his immediate neighbourhood are competent witnesses to prove his general repute. It is a sufficient compliance with the requirements of s. 257 (1), Cr. P.C., if a Magistrate while rejecting an application for summoning further defence witnesses states facts which have led him irresistibly to the conclusion that the application was for no other purpose than that of vexation or delay or defeating the ends of justice although he does not say expressly that the application was for that purpose. WAHID ALI KHAN v. EMPEROR, **6 Cr. L.J. 1=11 C. W.N. 789.**

See CRIM. PRO CODE, 1898, s. 110, 8 M.L. T. 246.

See EVIDENCE ACT, 1872, ss. 14 and 54, U. B.R. 1908, 2nd Qr., Evidence 1.

Evidence of bad character—*See* HABITUAL OFFENDER, 5 O.C. 203.

See PENAL CODE, ss. 34, 141, 142, 147, 149. 11 Cr. L.J. 30=4 Ind. Cas. 700=6 M.L.T. 17.

Of bad character — *See* PENAL CODE, s. 401, 27 C. 139=4 C.W.N. 97.

Trial of offence under s. 401, Penal Code —Previous conviction for theft or in bad livelihood cases, when admissible—Evidence of character if admissible.—*See* PENAL CODE, s. 401, 15 C.W.N. 461=9 Ind. Cas. 555=12 Cr. L.J. 97=38 C. 408.

See SECURITY FOR GOOD BEHAVIOUR, 3 M. 238=2 Weir 54.

Good character of the accused—Mitigation of punishment—*See* SENTENCE—GENERAL, 16 C. 310.

See UNLAWFUL ASSEMBLY, 6 M.L.T. 17= 11 Cr. L.J. 30=4 Ind. Cas. 700.

Evidence—continued.

——5.—**Dying Declaration.**

See DYING DECLARATION.

See EVIDENCE—GENERAL.

See EVIDENCE ACT, 1872, ss. 8, 32.

(1)—*Dying declarations, admissibility of—Grounds—Penal Code*, s. 396.—The admission of dying declarations is not limited to cases in which the death of the injured party is the sole object of the inquiry. It is admissible in evidence in all criminal cases. The ground on which dying declarations are admitted in evidence is that, when they are made, the declarant is in a condition in which, according to the experience of mankind, it is not less likely that what he says is true than if it had been said before a Magistrate under the sanction of an oath, and in the presence of the prisoners. Before a dying declaration can be received in evidence, it must be distinctly found that the person who made the declaration knew or believed that at the time he made it he was dying or likely to die. The Magistrate recording a dying declaration should put, on the record of the statement, the answer of the declarant to a question touching his knowledge or belief regarding his approaching death. QUEEN v. UJRAIL, **3 N.W.P. 212.**

(2)—*Dying declaration—Admissibility of.*—A dying declaration recorded, in the absence o the accused, by a Magistrate, other than the Magistrate who held the enquiry preliminary to commitment to the Court of Sessions, is not admissible in evidence, unless and until it has been proved by the Magistrate, who recorded it. A note on the order sheet that the document was admitted without any objection on the part of the accused does not make any difference. PANCHU DAS v. EMPEROR, **34 C. 698 = 11 C. W.N. 666 = 5 Cr. L.J. 427.**

(3)—*Dying declaration, admissibility of, in evidence.*—Where the declaration of a person wounded by the accused in committing dacoity was made on the 13th August 1899, and he died on the 20th of that month, and there was no other evidence to prove that the death was caused or accelerated by the wounds received at the dacoity, or that it was the transaction which resulted in his death, the High Court *held* that his declaration ought not to have been admitted in evidence. IMPERATRIX v. RUDRA, **25 B. 45 = 2 Bom. L.R. 331.**

(4)—*Dying declaration, admissibility of written record of, when recorded in absence of accused—Evidence Act* (I of 1872), s. 32 (1).—The written record of a dying declaration is not inadmissible in evidence, because it was recorded in the absence of the accused person. Such writing is admissible under s. 32 (1) of the Evidence Act but must be proved in the ordinary way. ABDUL JALILY v. EMPRESS, **13 P.R. 1886, Cr.**

(5)—*Dying declaration—Document containing it not signed—Mode of proof—Evidence of person who heard it—Necessity—Evidence Act*, s. 32, *Crim. Pro. Code*, s. 162.—Where the document containing the dying declaration was not signed by the deponent and the Police officer was not bound by law to take it down in writing:—*Held*, that the proper method of proving the oral statement of a dying man was by the oral evidence of any person who heard it, that person being allowed to refresh his memory by reference to the notes he made or read at the time. (7 C. P. L. R. 14, *D.*) The document by itself cannot be admitted in evidence unless it was signed by the person making the declaration. With his signature the document would become a written statement of the kind mentioned in the beginning of S. 32, Evidence Act. BAGWAN v. EMPEROR, **10 N.L.R. 19 = 15 Cr. L.J. 243 = 23 Ind. Cas. 195.**

(6)—*Crim. Pro. Code* (1898), s. 512—*Dying declaration, how to be proved—Evidence Act*, s. 32—*Declaration elicited by questions put to the deceased—Retrial.*—A dying declaration was reduced to writing under the supervision of a police patel who questioned the dying man, and was attested by the *panch*; at the trial, it was duly proved by the patel and one of the *panch*, and was not objected to by the pleaders who defended the prisoners. *Held* that it was not necessary to order a new trial in order that the *kulkarni*, who reduced the statement to writing, might be called or that the *panch* and patel might repeat the words used by the dying man, after refreshing their memory by looking at the statement reduced to writing at the time. QUEEN-EMPRESS v. SHETTYA, **2 Bom. L.R. 1129.**

(7)—*Dying declaration—Admissibility—Mode of proof—Practice.*—Dying declarations taken in the absence of the accused and not falling under the provisions of the conditions prescribed by s. 512, Crim. Pro. Code, should be proved by the oral evidence of some witnesses who heard it made, they being at liberty to refresh their memory by referring to the notes made by them or read over by them at or about the time the statement was made. Witnesses should not be allowed to prove a dying declaration, as if it were a substantial piece of evidence in the case. The relevant fact to be proved is the statement by the deceased, and that statement is not the document made by the Magistrate, but the verbal statement made by the deceased person. Where the statement made by a dying person was not a continuous statement, but was elicited in answer to one or more questions, the document, to be really of use, should clearly set out the exact questions put and the answers made to them. A declaration made by a dying person could not be admitted as evidence in the case, if it is not recorded in the language in which it was made, and if it is not proved as required by law. KING-EMPEROR v. MATHURA THAKUR, **6 C.W.N. 72.** [*F.*, 36 C. 659 = 13 C.W.N. 680 = 10 Cr. L.J. 186 = 2 Ind. Cas. 841.]

(8)—*Evidence of dying statement—Record in the presence of the accused, or judicial officer.*—

Evidence—continued.

——5.—**Dying Declaration**—*continued.*

The dying statement of a deceased person, if not recorded in the presence of the accused, cannot be admitted in evidence to prove the statement; the statement may be proved only in the ordinary way by one who heard it, with recourse to the writing to refresh the witness's memory if necessary. *In the matter of the petition of* SAMIRUDDIN, EMPRESS v. SAMIRUDDIN, 8 C. 211 = **10 C.L R. 11.** [*F.*, 36 C. 659 = 13 C.W N 681 = 10 Cr.L J. 186 = 2 Ind. Cas. 841, 6 C.W.N. 921; *Not Appl*, 9 Cr.L.J. 156 = 4 P.W R. 1909, Cr. = 1 Ind. Cas. 100; *Expl*,, 2 Weir 753.]

(9)—*Dying declaration—Record of* —Though a dying declaration may be made in the absence of the accused or of a judicial officer, yet, whenever it is possible, the declaration should be taken by a judicial officer as a guarantee of its authenticity. CROWN v. GHAZEE, **3 P.R. 1870, Cr.**

(10)—*Dying declaration, record of.*—Where a statement made by the deceased as a dying declaration had been used as evidence against the accused, though the Magistrate who recorded it was not the committing Magistrate, and though it was not recorded in the accused's presence, s. 80, Evidence Act, was held to have no bearing on the question of the admissibility of the statement, and the document was held to be inadmissible to prove the truth of the facts stated therein. HASHIM v. EMPRESS, **9 P R, 1900, Cr.** [*Not Appl.*, 1 Ind. Cas. 100; *D.*, 4 P.W R. 1909, Cr.]

(11)—*Dying declaration, record of.*—Where the written record of a dying declaration was made when the accused was absent, *held*, that such writing was admissible under s. 32 (1), Evidence Act, but that it must be proved in the ordinary way. EMPRESS v. GURDITTA, **18 P.R. 1886, Cr.**

(12)—*Admissibility of statements in police reports or made to another person in police enquiry.*—Where the police recorded certain statements relating to the cause of the death, made by the deceased during the investigation of a criminal case, *held*, that they were admissible in evidence. BAHAWALA v. EMPRESS, **17 P.R. 1886, Cr.**

(13)—*Statement by deceased mentioning infliction of wound by accused to another deceased —Admissibility.*—Where the deceased, who had not himself charged the accused with having wounded him stated that another who had died was stabbed by the accused, *held*, that such statement was not admissible under s. 32 (1) Evidence Act. FAKIR v. EMPRESS, **17 P.R. 1901, Cr.** (2 B.C. 605, 8 Cox, 300, *R.*) [*R. and Dist.*, 67 P.L.R. 1905.]

(14)—*Taken by a Magistrate—Attestation not mentioning accused's presence—Proof.*—A dying declaration was taken down by a Magistrate other than the committing Magistrate. The Magistrate had not recorded in his attestation

Evidence—continued.

——5.—**Dying Declaration**—*continued.*

that the statement was taken in the presence of the accused. *Held*, that, before such a statement could be used against the accused, it was necessary to summon the Magistrate to attest in Court the deposition recorded by him, and that he should be examined, in the presence of the accused, as to the circumstances under which the statement was recorded. ZARDAD v. EMPRESS, **29 P.R. 1887, Cr.**

(15)—*Weight to be attached to dying declarations.*—A Court should receive a dying declaration with caution. The details of the violence referred to by the deceased might have occurred under circumstances of confusion and surprise, tending to prevent their being correctly observed. The deceased might have stated his inferences from events regarding which he might have arrived at a wrong conclusion. Before the dying declaration is received in evidence, any enmity between the accused and the deceased should also be taken into consideration. SHERA v. CROWN, **117 P.R. 1866**; SHER ALI v. CROWN, **8 P.R. 1868, Cr.**

(16)—*Evidence Act, s. 32, sub-s. (1)—Dying declaration—Value of trustworthy—Murder—Plea of voluntary drunkenness—Indian Penal Code, ss. 85, 86 and 302.*—*Held*, that a trustworthy dying declaration alone, made by a deceased person in full possession of the faculties, and proved by the clearest and most reliable evidence to be exact words of the person making it, and corroborated by the surrounding circumstances, is sufficient to support a conviction for murder under s. 302, I.P.C. *Held*, also, that, under the terms of ss 85 and 86, I.P.C., voluntary drunkenness in no excuse for committing a crime. KARIM KHAN v. CROWN, **4 P.W.R. 1909, Cr. = 9 Cr. L J. 156 = 1 Ind. Cas. 100.** (9 P.R. Cr. 1900, *D.*)

(17)—*Dying declaration made by signs—Procedure.*—Where a dying declaration is made by signs in response to questions put, it is admissible in evidence. In such cases, however, the statement should be a true record of what, in point of fact, occurred, and should bear on its face the questions put, and the nature of the gesticulations made in response. Also the officer who recorded the statement should be called as a witness. BUTA v. EMPRESS, **2 P. R. 1886, Cr.** (26 P.R. 1885, Cr. *R.*)

(18)—*Dying declarations — Statement of deceased — Rape.*—The dying declaration of a deceased person held relevant on a charge of rape. QUEEN v. BISSORUNJUN MOOKERJEE, **6 W R. Cr. 75.**

(19)—*Dying declarations—Statement made by deceased—Evidence Act, s. 32, cl. 1—Murder.*—A case of murder where the statement made by the deceased before his neighbours and in the presence of a head constable was admitted as evidence under s. 32, cl. 1, Act I of 1872, that section providing that such statement is relevant, whether the person who made the statement was or was not, at the time it was made,

Evidence—coutinued.

——5.—**Dying Declaration**—*concluded.*

under expectation of death. QUEEN v. DEGUMBER THAKOOR, **19 W.R. Cr. 44.**

(20)—*Sessions Court—Record of.*—The dying declaration of a deceased person is admissible as part of the Sessions record. QUEEN v. SOYUMBER SINGH, **9 W. R. Cr. 2 11 W.R. Cr. 2**

(21)—*Procedure.*—For a dying declaration to be received in evidence there must be a finding that the person who made the declaration knew or believed at the time he made it that he was dying or was likely to die. A Sessions Judge who observes from the Magistrate's record that there is evidence which could prove that the declaration was a dying declaration should call for that evidence. Where dying declarations are made, a Magistrate should examine the complainant on the point and record the question as well as the answer to it upon the record of the examination. *In the case of* SHEIKH TENOO, **15 W R. Cr. 11.**

(22)—*Evidence Act, s. 32—False deposition by dying men, value of.*—Cases are not uncommon in this country of false deposition being made by dying men. *In re* MADAPPA KONE, **5 M.L.T. 217=4 Ind. Cas. 1127=11 Cr. L.J. 193.**

See JUDGE, P.L.R. 1900, p. 69, Cr.

See PENAL CODE, ss. 34, 302, 326, 13 C.W. N. 680=36 C. 659=2 Ind. Cas. 841=10 Cr. L. J. 186.

When to be believed to be true and acted upon.—*See* PENAL CODE, ss. 147, 299, 325, 1911 2 M.W.N. 188=12 Ind. Cas. 296=12 Cr. L.J. 528.

——6.—**Expert Evidence.**

See EVIDENCE—GENERAL.

See EVIDENCE ACT, 1872, ss. 45, 51.

(1)—*Evidence of expert.*—Evidence of an expert should be approached with considerable caution, especially where much depends upon such evidence. PANCHU MONDAL v. EMPEROR, **1 C.L.J. 335=2 Cr. L.J. 311.** [*F.*, 13 Cr. L.J. 563=15 Ind. Cas. 979=147 P.L R. 1912 =18 P.W.R. 1912, Cr ; *R.*, 9 P.R. 1914, Cr.]

(2)—*Experts, opinion of.*—The opinions of experts are not binding on the jury, for, it is with the jury, and not with the experts, that the determination of the case rests. The weights due to their testimony is a matter to be determined by the jury, and it will be proportionate to the soundness of the reasons adduced in its support. EMPRESS v. KALI PRASANNA KABYABISHARAD, **1 C.W.N. 465.**

(3)—*Opinion of experts how elicited.*—The proper mode of eliciting expert evidence of a medicial witness of the latter class is to put to the witness, hypothetically, the facts, which the evidence of the other witnesses attempts to prove, and to ask the witness's own opinion on

Evidence—continued.

——6.—**Expert Evidence**—*continued.*

those facts. ROGHUNI SINGH v. EMPRESS, **9 C. 455=11 C.L.R. 569=5 Shome L.R. 47.**

(4)—*Handwriting — Expert evidence.*—To base a conviction upon the opinion of an expert in handwriting is, as a general rule, very unsafe. SRIKANT v. KING-EMPEROR, **2 A L.J. 444=2 Cr. L.J. 353.** [*F.*, 6 A.L.J. 184=9 Cr. L.J. 498=2 Ind. Cas. 154, 11 Cr. L.J. 114=5 Ind. Cas. 355=13 O.C. 1, 13 Cr. L J. 563=15 Ind. Cas. 979=147 P.L.R. 1912=18 P W.R. 1912, Cr. ; *R.*, 36 M. 159=13 Cr. L.J. 226=14 Ind. Cas. 418=22 M.L.J. 270=11 M.L.T. 93 =(1912) M.W.N. 125, 22 M.L.J. 125=11 M. L.T. 93.]

(5)—*Expert in handwriting, evidence of—Conviction based on opinion of expert—Circumstantial evidence, conviction based on.*—In the case of a prosecution based upon circumstantial evidence, it is incumbent on the prosecution to show that it is impossible to explain the circumstances otherwise than upon the hypothesis of the accused being the guilty person. *Held* that, as a general rule, it is very unsafe to base a conviction upon the opinion of an expert in handwriting. Where according to the opinion of the expert there was no marked peculiarity in the handwriting of the accused, nor anything rare in style : *Held*, that in such a case a conviction could not be based upon the opinion of the expert. LALTA PRASAD v. KING EMPEROR, **13 O.C. 1=5 Ind. Cas. 355=11 Cr. L.J. 114.** (2 A.L.J. 444, 6 A.L.J. 184, *R.*)

(6)—*Proof of previous conviction—Identification of accused—Certificate of officers in charge of Finger Print Bureau, admissibility of.*—The accused was convicted of theft. He had three previous convictions. The previous convictions were denied by the accused, and, in order to prove them, the prosecution produced certain finger impression slips, and the finger print instructor at Rangoon was called. He took impressions of the accused's fingers in Court, and after having compared them with finger impressions, on sheets he produced from the finger impression bureau, he declared that the accused must be the man whose finger impressions were on the sheets he produced and whose previous convictions were entered on those sheets. He did not personally know the accused and had not himself taken the impressions on the sheets he produced. *Held*, the previous convictions of the accused stated on the slips were not proved by the mere production of such slips. HULOST v. KING-EMPEROR, **4 L.B.R. 125=7 Cr.L.J. 406.**

(7)—*Expert opinion of thumb impressions—Evidentiary value—Power of jury to reject the expert evidence.*—Where the thumb impressions on a document were blurred, and many of the characteristic marks were far from clear, rendering it difficult to trace the marks enumerated by an expert witness as demonstrating the correspondence between the thumb impressions in the document and those made by the accused

Evidence—continued.

——6.—**Expert Evidence**—*concluded.*

in Court: *held*, that, under the circumstances of the case, the evidence was not reliable and the jury were right in not accepting the evidence of the expert as conclusive. *Per Henderson, J.*—Where the evidence to corroborate the testimony of an expert witness is of an unreliable character it is not proper to accept his evidence. Though the evidence afforded by the correspondence of thumb impressions is ordinarily of great value, it would be unsafe to convict on the mere result of a critical examination of the thumb impressions made by an expert. *Per Geidt, J.*—A jury is not bound to accept the opinion of an expert upon thumb impressions without corroboration of their own intelligence as to the reasons which guided him to his conclusion. EMPEROR v. ABDUL HAMID, **32 C. 759=9 C.W.N. 520=2 Cr. L J. 259.** [*R.*, 9 P.R. 1914, Cr.]

See CHARGE TO JURY—GENERAL, 1 C.L.J. 385=2 Cr. L.J. 311.

Issue of commission to examine expert—*See* COMMISSION, 15 C.P.L.R. Cr. 66.

See CRIM. PRO. CODE, 1898. ss. 179, 222, 235 to 239, 531, 537, 18 P.W.R. 1908, Cr.=8 Cr. L.J. 75.

See CRIM. PRO. CODE, 1898, ss. 212, 237 (2), 437, 215 P.L.R. 1910.

See FINGER IMPRESSION, 3 N.L.R. 1=5 Cr. L.J. 220.

See FURTHER ENQUIRY, 215 P.L.R. 1910.

Expert evidence—Admissibility—Comparison of handwriting out of Court—*See* PENAL CODE, s. 124-A, 16 C.W.N. 812=39 C. 606 =13 Cr. L.J. 289=14 Ind. Cas. 753.

Two thumb markings exactly agreeing—Value of opinion of experts—*See* PENAL CODE, ss. 415, 419, 9 P.R. 1914, Cr.

Forgery — Government expert — Value of expert evidence—*See* PENAL CODE, ss. 467,477, 18 P.W.R. 1912, Cr., 147 P.L.R 1912=15 Ind. Cas. 979=13 Cr. L.J. 563.

Expert evidence—Comparison of handwriting —Value to be attached—*See* SEARCH LIST, 1912 M.W.N. 125=11 M.L.T. 93=22 M.L.J. 270=14 Ind. Cas. 418=13 Cr. L.J. 226=36 M. 159.

See WITNESS—EXAMINATION OF WITNESSES, 11 W.R. Cr. 25.

——7.—**General Repute.**

See EVIDENCE ACT, 1872, ss. 52—55.

See CRIM. PRO. CODE, 1898, ss. 110—117.

(1)—*Crim. Pro. Code* (1898), *s.* 110, *cl.* (*f*) —*Evidence of general repute, admissibility of—"Man of desperate and dangerous character"* —*Acts of extortion.*—In s. 110, cl. (*f*), a man of desperate and dangerous character means a man who has a reckless disregard of the safety of the person or the property of his neighbours; and under that clause evidence of general repute is not sufficient. Evidence of acts of extortion unaccompanied by acts causing danger to the person and properties of other persons, is not sufficient to bring the case within cl. (*f*), s.110. WAHID ALI KHAN v. EMPEROR, **11 C.W.N. 789=6 Cr.L.J. 1.** [*F.*, 38 C. 156= 15 C.W.N. 366=12 Cr.L.J. 164=9 Ind. Cas. 916; *R.*, 34 M. 255=21 M.L.J. 488=8 M.L.T. 347=8 Ind. Cas. 493=1911 1 M.W.N. 34=11 Cr. L.J. 663, 10 Cr.L.J. 460=13 C.W.N. 244= 4 Ind. Cas. 10.]

(2)—*Of general repute, if admissible in prosecutions under s.* 12 *of the Burma Gambling Act.* —Evidence of general repute is not admissible in a trial under s. 12, Burma Gambling Act. Offences under s. 12 of the Act should be tried regularly and not by way of a summary trial. NGA HINAN v. CROWN, **1 L.B.R. 92.**

See ACT XII OF 1896, ss. 45 and 51, 2 P.W. R. 1907, Cr.

See BUR. ACT I OF 1899, s. 17, 1 L.B.R. 145, U.B.R. 1897-1901, Vol. I, 228.

See CRIM. PRO. CODE, 1898, s. 55, 3 L B.R. 94=3 Cr. L.J. 20.

See DEFAMATION, 2 C.P.L.R. 198.

See HABITUAL OFFENDER, 5 O.C. 203.

Judge not to import personal knowledge of facts into case—*See* JUDGE, L.B.R. 1893—1900, 445.

See SECURITY FOR GOOD BEHAVIOUR, 8 M. L.T. 347=8 Ind. Cas. 493=11 Cr. L.J. 663, 9 O.C. 69=3 Cr. L.J. 290, 12 C.W.N. 299=7 C.L.J. 177=35 C. 243=7 Cr. L.J. 146, 13 C. W.N. 244, 11 C.W.N. 413=5 Cr. L.J. 191.

——8.—**Hearsay Evidence.**

(1)—*Hearsay evidence.*—A statement by a witness that he heard another person say, in the absence of the accused, that he has paid a sum of money to the accused, as a bribe, is hearsay evidence and is not admissible. RAJONI KANT BOSE v. ASAN MULLICK, **2 C.W.N. 672.**

(2)—*Evidence of rumours, reports, etc., inadmissible as evidenee of general repute.*—Evidence of rumours, reports, and information given is mere hearsay evidence, and as such, wholly inadmissible as evidence of general repute. Evidence of repute is a totally different thing. A man's general reputation is the reputation which he bears in the place in which he lives amongst all the townsmen, and if it is proved that a man who lives in a particular place is looked upon by his fellow-townsmen, whether they happen to know him or not, as a man of good repute that is strong evidence that he is a man of that character. On the other hand, if the state of things is that the body of his fellow-townsmen, who know him, look upon him as a dangerous man, and a man of bad habits, that is strong evidence that he is a man of bad character; but to say that, because there are rumours in a particular place among a certain class of people that a

Evidence—continued.

——**8.—Hearsay Evidence**—*concluded.*

man has done particular acts or has characteristics of a certain kind, those rumours are in themselves evidence under ss. 110, 112, Crim. Pro. Code, is to say what the law does not justify us in saying. NGA SHWE YWE v. CROWN, **1 B.L.R. 71.** (23 C. 621, *F.*)

(3)—*Hearsay evidence — Hearsay evidence, inadmissibility of.*—The admission of hearsay evidence prohibited. QUEEN v. KALI CHURN GANGOOLY, **7 W.R. Cr. 2.**

See also QUEEN v. PITTAMBUR SIRDHAR, **7 W.R. Cr. 25.**

(4)—*Witness offering hearsay evidence—Duty of Court.*—The moment a witness commences giving evidence which is inadmissible, he should be stopped by the Court. It is not safe to rely on a subsequent exhortation to the jury to reject the hearsay evidence, and to decide on the legal evidence alone. QUEEN v. PITAMBUR, **7 W.R. Cr. 25**

(5)—*Statements made by accomplice elsewhere than before the Court, admissibility of.*—*Held* also, that hearsay evidence of any statement whatsoever, made at any time, under any circumstances, by any accomplice, cannot be produced as against the accused before the Court. Statements made by an accomplice elsewhere than before the Court and not in the presence of the accused can be proved only to corroborate, to contradict, or to impeach the credit of the accomplice. In no case can they be put forward as substantive evidence of the truth of the facts therein stated. AMAN ALI v. KING-EMPEROR, **13 O. C. 309 = 8 Ind. Cas. 379 = 11 Cr. L J. 631.**

See CHARGE TO JURY—MISDIRECTION, 10 W.R. Cr. 57.

See CRIM. PRO. CODE, 1898, s. 106, ch. VIII, 6 Bom. L.R. 34.

See CRIM. PRO. CODE, 1898, s. 537, 3 M.L.T. 263 = 7 Cr. L.J. 358 = 18 M.L.J. 250.

See HOUSE TRESPASS, 29 P.W.R. Cr. 1907 = 7 Cr. L.J. 230.

See SECURITY FOR GOOD BEHAVIOUR, 6 Bom. L.R. 34.

——**9.—Medical Evidence.**

(1)—*Deposition of medical witness—Admissibility against individual accused, condition for —Crim. Pro. Code (Act* X *of* 1872), *s.* 323.—The examination of a medical witness taken and duly attested by a Magistrate, though it may be given in evidence in any criminal trial under s. 323 of the Crim. Pro. Code, must, in order to be admissible against any individual accused person, have been taken in the presence of the accused person—*Per Field, J.* EMPRESS v. JHUBBOO MAHTON. *In the matter of the petition of* JHUBBOO MAHTON, **8 C. 739 = 12 C.L.R. 233.**

(2)—*Medical witness, evidence of—Grounds of admissibility — Medical witness examined before Magistrate may be examined at Sessions trial—Crim. Pro. Code* (1872), *s.* 323.—The evidence of a medical man, who has seen a corpse and made its *post mortem* examination, is admissible in an enquiry regarding the death, to prove the nature of the injuries observed by him and as expert evidence as to the manner of the infliction of the injuries and as to the cause of death; whereas a medical man, that has not seen the corpse, can give only expert evidence. [*Appr.*, 15 C. 589.] S. 323 of the Crim. Pro. Code does not preclude a Sessions Judge from calling and examining the medical witness, that has been examined before the Magistrate, and especially where the deposition, before the Magistrate, is deficient or calls for further elucidation, such witness should be re-called and examined by the Sessions Judge. ROGHUNI SINGH v. EMPRESS, **9 C. 455 = 11 C.L.R. 569.**

(3)—*Medical certificate as to cause of death, effect of—Necessity for the examination of medical man.*—The certificate of a Medical Officer as to the cause of the death of a person and of the fatal character of the wounds is no evidence. He should be examined regarding these points, and some evidence should be taken to identify the wounded body with that of the person whose murder is the subject of charge. Where the deposition of the medical witness who has given a certificate did little more than attest its accuracy as to the nature of the wounds, *held*, that such deposition would not be sufficient. *In re* K. VENKATROYADU, **2 Weir 659.**

(4)—*Medical evidence—Evidence of the medical man before Magistrate, whether sufficient.*—In a Sessions case, depending almost entirely on the medical evidence, the examination of the Surgeon before the Magistrate should not be tendered or accepted as sufficient. *In re* MANTAPAMPALLA PANIGADU, **2 Weir 660.**

(5)—*Report of Subordinate Medical Officer—Concurrence of superior officer.*—The substance of a report from a Subordinate Medical Officer, with an expression of concurrence by his superior, cannot be read in evidence under s. 368 of the Code of Criminal Procedure. *In re* CHINTAMONEE NYE, **11 W.R. Cr. 2.**

(6)—*Letter from Medical Officer—Letter expressing opinion.*—The letter of a Medical Officer expressing an opinion is not evidence under ss. 368 and 370 of the Code of Criminal Procedure. QUEEN v. KAMINEE DOSSEE, **12 W. R. Cr. 25.**

(7)—*Medical witness—Scope of his evidence.*—It is not the business of a medical witness to state whether the injuries he is speaking of amount to grievous hurt or not, but only to describe the nature of the injuries. EMPRESS v. BALWANT, **A.W.N. 1885, 296.**

(8)—*Criminal Lunatics.*—It is irregular to find that an accused person is of unsound mind merely upon the report of Medical Officer. KEEMA v. RAMOO, **49 P.R. 1866, Cr.**

Evidence—continued.

——9.—**Medical Evidence**—*concluded.*

See CRIM. PRO. CODE, 1898, ss. 212, 237 (2), 437, 215 P.L.R. 1910.

See CRIM. PRO. CODE, 1898, s. 350, 12 C.L.R. 233.

See CRIM. PRO. CODE, 1898, s. 470, 2 Weir 583.

See CRIM. PRO. CODE, 1898, s. 510, 2 Weir 661.

See PENAL CODE, s. 326, L.B.R. 1872—1892, 292.

——10.—**Refreshing Memory.**

See EVIDENCE ACT, 1872, ss. 159—161.

(1)—*Memorandum by police officer—Refreshing such officer's memory during examination—Crim. Pro. Code* (*Act* X *of* 1872), *s.* 119.—An accused is not entitled to insist upon a police officer refreshing his memory, during his examination in Court, by referring to certain notes prepared by such officer under s. 119 of the Code. *In the matter of the petition of* KALI CHURUN CHUNARI; EMPRESS v. KALI CHURN CHUNARI, **8 C. 154=10 C.L.R. 51.** (11 B.H.C. 120, *D*) [*F.*, 11 Cr. L.J. 235= 6 Ind. Cas. 101=7 A.L.J. 468; *R.*, 19 A. 390=A.W.N. 1897, 174, F.B., 33 C. 1023=10 C.W.N. 890=4 Cr. L.J. 79, 36 C. 281=9 Cr. L.J. 452=13 C.W.N. 197=5 M.L.T. 97=9 C.L.J. 199=1 Ind. Cas. 970.]

(2)—*Evidence—Writing to refresh memory, right of opposite party to inspect—Grounds—Neglect of opposite party to use such right at proper time.*—The grounds upon which the opposite party is permitted to inspect a writing and to refresh the memory of a witness are three-fold :—(1) to secure the full benefit of the witness's recollection as to the whole the facts, (2) to check the use of improper documents and (3) to compare his oral testimony with his written statement. (*Per Field, J.*) Counsel (on the opposite side) having a right to look at a particular writing before or at the moment when the witness uses it to refresh his memory in order to answer a particular question, and not then exercising this right, does not continue to retain the right throughout the whole of the subsequent examination of the witness.—*Per Field, J.* EMPRESS v. JHUBBOO MAHTON, *In the matter of the petition of* JHUBBOO MAHTON, **8 C. 739=12 C.L.R. 233.**

See CRIM. PRO. CODE, 1898, ss. 161, 162, 9 C. 455=11 C.L.R. 569.

Diary not used to refresh memory whether evidence—Improper admission of such diary whether sufficient ground for interference—*See* CRIM. PRO. CODE, 1898, s. 172, 15 Cr. L.J. 256=23 Ind. Cas. 208.

See TRADE MARK, 4 C.L.J. 268=10 C.W.N. 107.

Evidence—continued.

——11.—**Statements made to police.**

See CONFESSION.

See CRIM. PRO. CODE, 1898, ss. 161-164.

See EVIDENCE ACT, 1872, s. 157.

(1)—*Crim. Pro. Code* (1898), *ss.* 162 *and* 537—*Police investigation—Statements made before the police—Use of such statements by the Magistrate—Prejudice—Procedure—Practice.*—A Magistrate, in trying a case against several accused persons, confined his attention only to those, whose names were mentioned before the Chief Constable, during the police inquiry. He used the statements, made before the Chief Constable, without complying with the provisions of s. 162 of the Crim Pro. Code. Those of the accused, whose names were not mentioned during the police investigation, were acquitted by the Magistrate : and the Magistrate considered the case against the rest and convicted and sentenced them. It was contended that, though the procedure adopted by the Magistrate was irregular, the accused were not prejudiced thereby. *Held*, that the prejudice to the accused was clear, when, as a result of the perusal of the statements made to the Chief Constable, some of the accused were acquitted, because their names did not appear in them and the rest were convicted. The necessary inference was that, as to the latter, the Magistrate was influenced by the fact that the statements of the witnesses examined before him were corroborated by the statements made before the Chief Constable, whereas the law directs that they cannot be used in evidence unless they are admitted in accordance with the provisions of the Indian Evidence Act and of the Crim. Pro. Code. Therefore, having regard to the explanation to s. 537 of the Code, the Court was bound to presume, under the circumstances of the case, that there was a failure of justice, so far as the trial before the Magistrate was concerned. EMPEROR v. BABAJIGIRGAUDA, **9 Bom. L.R. 366=5 Cr. L.J. 353.** [*R.*, 16 Bom. L.R. 603.]

(2)—*Crim. Pro. Code* (1898), *s.* 162—*Statements of prosecution witnesses before police—Their depositions before Magistrate—Comparison of two statements—Conviction based upon the comparison — Trial — Illegality.* — It is illegal for a Magistrate, trying an accused person, to use as evidence against him the statements made by the prosecution witnesses before the police, by comparing them with their depositions, and as a result of that comparison to convict him. EMPEROR v. LAXMAN SUBHANA, **9 Bom. L.R. 895=6 Cr. L J. 224.** [*Cons.*, 11 Cr. L.J. 117=5 Ind. Cas. 357=13 O.C. 7.]

(3)—*Crim. Pro. Code, Act* X *of* 1882, *s.* 423—*Statement of witnesses before police—Weight of.*—A conviction based merely on the statements made by witnesses before the police at the time of the occurrence, is illegal where the witnesses give an entirely different story at the trial. QUEEN-EMPRESS v. FULA DHANA, **Rat. Un. Cr. C. 833=Cr. Rg. 75 of 1895.** (21 W.R. 49, Cr., *R.*

Evidence—continued.

——11.—**Statements made to police**—*contd.*

(4)—*Evidence—Person in custody of police—Statement made to police as complainant while in such custody.*—Where a person, as a complainant in a case of rioting, gives information to the police while he was in custody as an accused in a counter-case of rioting, such information is on no better footing than a statement made by an accused person to a police officer while in custody, and is no evidence at all against him on his trial for rioting. MOHER SHEIKH v. QUEEN-EMPRESS, 21 C. 892.

(5)—*Statements to police officers — Evidence Act, s. 27—Theft of jewels from murdered woman.*—The accused, charged with the murder of a woman, made a confession to a Police Inspector, part of which related to the concealment of certain jewels which belonged to the deceased woman, and, in consequence of the information so received, the jewels were discovered. *Held* that, under s. 27 of the Evidence Act, that part of the accused's confession which described his assault on the deceased and her consequent death, and the way in which he became possessed of the jewels, related distinctly to the fact of the discovery of the ornaments and might be proved against the accused. QUEEN v. PAGAREE SHAHA, **19 W.R. Cr. 51.**

(6)—*Statements to police officers—Statement made to Magistrate by party in custody.*—A statement, which a man in the custody of the police volunteers to one in the position of a Magistrate, can be used as evidence against the man who makes it. QUEEN v. MONMOHUN ROY, **24 W.R Cr. 33.**

(7)—*Statements to police officers—Answers given by prisoner to police constables or Magistrate.*—G.D. presented a Government promissory note at the Bank of Bengal bearing a forged endorsement, and was arrested. A police constable asked N, if he knew G.D. N replied that he knew him as a common man. The police constable then asked N if he knew anything about the note. N replied that he did not. No threat or inducement was held out, nor was any caution administered to N. *Held* that the statements made by N in answer to the questions of the police constable were admissible. N was afterwards brought before R, the Deputy Magistrate of Serampore, who told him, before any depositions were taken, that he (N) was charged with having received a stolen promissory note, and R asked him if he wished to say anything. N replying in the affirmative, R, without administering any caution to him, asked him where or how he had obtained the note, and other questions, the answers to which were taken down. N was again brought up before R, and was asked whether a promissory note then produced was the one he had delivered to G.D , to take to the Bank. R told N that he was not bound to answer the question, but if he did, the answer would be taken down, and that, if he objected to answer, that would also be noted. R committed N to take his trial before the High Court. *Held* that on the trial the answers of N to the question of R, whether R acted as a Justice of the Peace for Bengal or as a Magistrate, were admissible. QUEEN v. NABADWIP CHANDRA GOSWAMI, **1 B.L.R.O. Cr. 15 = 15 W.R. Cr. 71, note.**

Evidence—concluded.

——11.—**Statements made to police**—*concld.*

(8)—*Statements to police officers—Statement obtained by persuasion and promise of immunity —Crim. Pro. Code* (1861), *s.* 146.—An admission obtained from a prisoner by persuasion and promises of immunity by the police ought not to be received in evidence, as being in direct contravention of s. 146, Code of Criminal Procedure. The deposition of the police officer, moreover, should be taken before the admission can at all be used against the prisoner under the Code of Criminal Procedure. *In re* BISHOO MANJEE, **9 W.R. Cr. 16.**

(9)—*Statements to police officers Statement extorted by police officer by inducement.*—A police officer acts improperly and illegally in offering any inducement to an accused person to make any disclosure or confession. No part of his evidence as to the discovery of facts in consequence of such a confession is legally admissible. QUEEN v. DHURUM DUTT OJHA, **8 W.R. Cr. 13.**

(10)—*Statements to police officers—Admission to police officer* —Admissions made by prisoners to police officers while in their custody are not admissible in evidence. QUEEN v. BUSHMO ANENT, **3 W.R.Cr. 21.**

(11)—*Statement of defence witnesses to the police.*—Under s. 162, Crim. Pro. Code, a statement made by a defence witness to the police should not be read out at the trial. He can be asked whether he made that statement before the police. If no sufficient explanation is given for not stating at the first opportunity what he knows of the fact, the value of his evidence is materially decreased. HASHAM ALI v. EMPRESS, **118 P R. 1900, Cr.**

See PENAL CODE, s. 193, Rat. Un. Cr. C. 503.

See PERJURY, 4 A.L.J. 811 = 7 Cr. L.J. 3 = A.W.N. 1908, 22.

See SANCTION TO PROSECUTE — CONDITIONS REQUISITE FOR GRANT OF SANCTION, 11 B. 659.

Evidence Act.

See ACT II OF 1855.

Evidence Act (I of 1872).

[REP. IN PT., ST. 44 & 45 VICT., C. 58, S. 127; ACT X OF 1897. AM., ACT., XVIII OF 1872; ACT III OF 1887; ACT III OF 1891, SS. 1 TO 8; ACT V OF 1899. S. 33 OVERRIDDEN, ACT XIV OF 1908, S 13; DECLARED IN FORCE—IN THE SONTHAL PARGANAS, REG. III OF 1872, S 3, AS AMENDED BY REG. III OF 1899, S. 3; IN THE ANGUL DISTRICT, REG I OF 1894, S. 3; IN THE CHITTAGONG HILL TRACTS, REG. I OF 1900, S. 4; IN THE ARAKAN HILL DISTRICT, REG. IX OF 1874,

Evidence Act (I of 1872)—*continued.*

S 3; IN KACHIN HILL-TRACTS, AS REGARDS HILL-TRIBES, REG. I OF 1895, S. 3; IN CERTAIN TRACTS IN THE CHIN HILLS, REG. V OF 1896, S 3; IN UPPER BURMA, EXCEPT THE SHAN STATES (WITH AN ADDITION), ACT XIII OF 1898, S.4; IN BRITISH BALUCHISTAN (WITH AN ADDITION), REG. I OF 1890, SS 3, 4.]

(1)—Ss. 2, 78, 86—Act whether exhaustive—Authentication of foreign records — Hearsay evidence admitted by foreign Court if admissible—Copy of document proved in foreign Court if admissible—*See* HABEAS CORPUS, 15 C.W.N. 1053=14 C.L.J. 375=12 Cr. L.J. 505.

(2)—*S. 3—Fact, when can be said to be proved—Doubt, nature of, to justify acquittal,—Pathans of Peshwar.*—The Pathans of the Peshwar district, being always disposed to exaggerate and add two charges against the guilty and totally false ones against the innocent Peshwar murder cases, invariably introduce into the evidence an element of doubt of a very intangible character. But an acquittal cannot be based on this kind of doubt. S. 3, Evidence Act, lays down what degree of certainty is sufficient to hold that a fact is proved. ABDUL KARIM v. CROWN, **32 P.R. 1873, Cr.**

(3)—*S. 3—Proof of fact—Degree of proof required in criminal and civil proceedings—Duty of the prosecution in criminal proceedings—Benefit of the doubt.*—Under s. 3, a fact is said to be proved, when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. A much stricter degree of proof is required in criminal proceedings than in civil ones, and, in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the minds of the tribunal as reasonable men, beyond all reasonable doubt. It is the business of the prosecution to bring guilt home to the accused, to the satisfaction of the minds of the jury, but the doubt, to the benefit of which the accused is entitled, must be such as rational, thinking, sensible men may fairly and reasonably entertain, not the doubts of a vacillating mind, that has not the moral courage to decide, "but shelters itself in a vain and idle scepticism." There must be doubts, which men may honestly and conscientiously entertain. Where two people were convicted of being in possession of bundles of cocaine, and it was urged that the labels affixed to the bundles were not sufficient evidence that the contents were an intoxicating drug, for the purposes of conviction, and it appeared that the bundles were never sent to the chemical examiner for analysis, *held*, considering the degree of proof required in criminal cases, and it being within the knowledge of Court that the Burmese do sometimes put false labels, that it was not conclusively proved that the bundles really did contain cocaine and that the accused

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were entitled to the benefit of the doubt. AH LOK v. KING-EMPEROR, **3 L.B.R. 216=4 Cr. L.J. 382.**

(4)—*S. 3—"Court"—Registration Act (VIII of 1871), s. 82—Sub-Registrar—Penal Code, s. 228.*—By s. 82 of the Registration Act, a Sub-Registrar is a public officer, and proceedings before him are judicial proceedings within the meaning of s. 228 of the Penal Code; and, as he is legally authorized to take evidence, he is a "Court" as defined by the Evidence Act, s. 3. *In the matter of petition of* SARDHARI LALL, **13 B.L.R. App. 40=22 W.R. Cr. 10.** *See also* QUEEN-EMPRESS v. NANA, **14 B. 250.**

(5)—S. 3—*See* ACT X OF 1873, ss. 4, 5 and 14, 16 M. 421=1 Weir 175.

(6) S. 3—*See* COURT, 12 B. 36.

(7)—S. 3—"Proved"—"Matters before Court"—*See* LOCAL INSPECTION, 16 C.W.N. 426=15 C.L.J. 403=15 Ind. Cas. 844=13 Cr. L.J. 156.

(8)—S. 3, ill. (*d*)—Misrepresentation as to intention is a misrepresentation of a 'fact'—*See* PENAL CODE, ss. 90, 366, 36 M. 453.

(8-*a*)—S. 3—*See* No. 222, *infra*.

(9)—*Ss. 3, 34, 114 (b), 133—'Books regularly kept in the course of business' meaning—Evidence of accomplices— Admissibility and value thereof—Bribery — Evidence of persons from whom money was extorted—Credibility.*—If books are kept in pursuance of some continuous and uniform practice in the current routine of the business of the particular person to whom they belong, they are 'books of account regularly kept in the course of business' within the meaning of s. 34, Evidence Act. The rule of evidence contained in s. 133, Evidence Act, and in s. 114 (*b*) amounts to nothing more than a direction to all Judges and Magistrates that a fact cannot reasonably be held proved within the meaning of s. 3, if there be no other evidence of it than the statement of an unreliable witness. All accomplices are not condemned by the law as wholly unworthy of credit. Where, as in the present case, a bribe was practically extorted, it is possible for those paying it to be credible witnesses, in spite of their being technically accomplices, and where a fact is deposed to by credible witnesses, the Cout is justified in believing it to be true. CROWN v. RAMCHAND, **6 S.L.R. 195=14 Cr. L.J. 262=19 Ind. Cas. 534.**

(10)—Ss. 3, 133 and 30—*See* ACCUSED PERSON, L.B.R. 1893—1900, 368.

(11)—Ss. 4 and 114—*See* BURDEN OF PROOF, L.B.R. 1893—1900, 276.

(12)—*Ss. 4, 114, ill. (b), 133—Accomplice—Evidence—Corroboration—Rule of Law—Rule of guidance— Presumption—Bribery—Corroboration, of what kind required.*—S. 133 of the Evidence Act is the only absolute rule of law as regards the evidence of accomplices. But there is a rule of guidance to which the Court also should have regard; that rule of guidance is

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to be found in ill. (*b*) to s. 114 of the Evidence Act. S. 114 of the Evidence Act enacts a rule of presumption: and, read with s. 4 of the Act, it indicates that this is not a hard and fast presumption, incapable of rebuttal, *a presumptio juris et de jure*. The right to raise this presumption as to an accomplice is sanctioned by the Act; and it would be an error of law to disregard it; what effect is to be given to it must be determined by circumstances of each case. The evidence of the accomplice requires to be accepted with a great deal of caution and scrutiny, because, among other things, he is likely to swear falsely in order to shift the guilt from himself. But this consideration hardly applies to the evidence of one, who testifies that he has bribed the accused; for, by his own testimony, so far from shifting the offence from himself, he, in fact, thereby fastens it upon himself, for it is by making himself out to be a briber that he shows another has been bribed. The corroboration of the evidence of an accomplice, when required, should be such corroboration in material particulars, as would induce a prudent man, on the consideration of all the circumstances, to believe that the evidence is true not only as the narrative of the offence committed but also so far as it affects each person thereby implicated. EMPEROR v. SHRINIVAS KRISHNA, **7 Bom. L R. 969 = 3 Cr. L.J. 33.** [*Rel. on*, 12 Cr. L J. 170 = 9 M.L.T. 503 = 9 Ind. Cas. 978; *R.*, 35 M. 397 = 13 Cr. L J. 352 = 14 Ind. Cas. 896 = 12 M.L T. 1 = 1912 M.W.N. 549, 11 Cr.L J. 71 = 4 Ind. Cas. 884 = 12 O.C. 418, 12 Cr.L.J. 150 = 9 Ind. Cas. 897 = 21 M. L.J. 283 = 10 M.L T. 84 = (1911) 2 M W.N. 327, 22 M.L.J. 490 = 1912 M.W.N. 207.]

(13)—*S. 5—Exclusion of evidence.*—Under the Evidence Act, admissibility is the rule and exclusion is the exception, and circumstances which, under other systems, might operate to exclude are, under the Act, to be taken into consideration only in judging of the value to be allowed to evidence when admitted. QUEEN-EMPRESS v. MONA PUNA, **16 B. 661.**

(14)—*S. 5—See* SENTENCE — SENTENCE AFTER PREVIOUS CONVICTION, L.B.R. 1872—1892, 574.

(15)—*Ss. 5—14—Receiving illegal gratification—Subsequent, but unconnected receipt, evidence of—Admissibility.*—Where a person was charged with having received illegal gratification under s. 161 of the Penal Code, on three specific occasions, in a certain year, from a firm, *held*, evidence of similar, but unconnected instances of receiving illegal gratification from the same firm in subsequent years is inadmissible under ss. 5—13 of the Evidence Act. Nor would it be admissible under s. 14 of the Evidence Act— Per *Garth, C.J.* (*Maclean, J. concurring*). If the receipt of illegal gratifications mentioned in the charges be considered to have been proved to the satisfaction of the Court by *other* evidence, and if it be necessary to ascertain whether the accused *received* them as a *motive* for showing favour in the exercise of his official functions, the alleged subsequent transactions would be relevant under s. 14. But they are not relevant for the purpose of establishing the *fact* of receiving such gratification in an earlier transaction.—*Per Mitter, J.* [*R.*, 15 B. 491.] S. 14 applies to cases where a particular act is more or less criminal or culpable, according to the state of mind or feeling of the person who does it; but the operation of the section must not be extended to other cases, where the question of guilt or innocence depends upon *actual facts* and *not upon the state of a man's mind or feeling*—Per *Garth, C.J.* EMPRESS v. VYAPOORY MOODELIAR, **6 C. 655 = 8 C.L.R. 197 = 4 Shome L R. 125.** [*F.*, 34 A. 93 = 8 A L.J 1269 = 12 Cr.L.J. 611 = 12 Ind. Cas. 987, U.B.R. 1897—1901, Vol. 1, 144; *R.*, 28 B. 129]

(16)—*Ss. 5, 11, 153—Witnesses to contradict statement of other witnesses.*—Where witnesses have been examined by the prosecution to state that they saw the accused at a particular place at a particular time, *held* that evidence of other witnesses could be let in to prove that the former witnesses could not have seen the accused as stated by them. Such evidence is admissible under ss. 5, 11, 153 of the Evidence Act. It is not to impeach the credit of witnesses that such evidence is let in, but to contradict evidence as to relevant facts. REG. v. SAKHARAM MUKUNDJI, **11 B.H C. 166.**

(17)—*S. 6—Commission of criminal breach of trust—Confession—Relevancy.*—Where a prisoner, a booking clerk of a Railway Company, committed criminal breach of trust as a servant in respect of certain sums, his confession before the Traffic Manager of the Company would be a relevant fact under s. 6. REG. v. NAVROJI DADABHAI, **9 B.H C. 358.**

(18)—*S. 6, Illus. (a)—Murder*— Res gestæ —*Statement of eye-witness shortly after occurrence, if relevant—Hearsay evidence—Admissibility—Same transaction Interval of time—Physical and mental condition of person making statement.*—Hearsay evidence of the statement of a by-stander as to an occurrence would be admissible in evidence as a part of the *res gestæ*, only if it was made at the time the transaction was taking place or so shortly before or after it as to form part of the transaction. If the transaction had terminated when the statement was made, it would be irrelevant. In this case a *chowkidar* deposed that one G ran up to him and stated that he had seen the accused persons murder his mistress whom he had met by assignation and that he had run away from the place of occurrence to save his life. What interval of time passed between the murder and the alleged statement did not appear. G seemed to be quite sensible when he made the statement and the condition of his mind did not appear to be such as to exclude the supposition of his fabricating evidence or being tutored: *Held*, that the statement was inadmissible in evidence. CHAIN MAHTO v. EMPEROR, **11 C.W.N. 266 = 5 Cr. L.J. 71.** (10 C. 302, *D.*)

Evidence Act (I of 1872)—*continued.*

(19)—S. 6—*See* No. 15, *supra.*

(20)—*Ss.* 6, 8, *ill.* (*g*)—*Statement by injured person to third party.*—A statement made by an injured person, in the presence of the prisoner who caused the injury, to a third party, immediately after the offence, would be admissible in evidence, when the prisoner did not deny having done the act. *In the matter of the petition of* SURAT DHOBNI, **10 C. 302.** [*D.*, 11 C.W.N. 266=5 Cr. L.J. 71.]

(21)—*Ss.* 6, 14 *and* 54—*Evidence of bad character—I.P.C.*, s. 401.—In a trial of persons for an offence under s. 401, where the character of the accused is not in issue, evidence of bad character or reputation is not admissible, and therefore evidence of previous convictions cannot be adduced. MANKURA PASI v. QUEEN-EMPRESS, **27 C. 139=4 C.W.N. 97.**

(22)—Ss. 6, 80, 91—*See* FALSE EVIDENCE, 25 P.R 1890, Cr.

(23)—*Ss* 6, 122—*Evidence as to what a by-stander said some time after the transaction—Communications between husband and wife—Disclosure by wife — Admissibility.*—S. 6, Evidence Act, gives statutory recognition to a well-known rule of the law of evidence that facts which form part of the *res gestæ* are admissible in evidence. But this rule only applies when the facts are so connected together as to form part of the same transaction. In order to make the statement of a by-stander admissible, it must have been made, as contemplated by s. 6 and illus. (*a*) to it, at the time the transaction was taking place or so shortly before or after it as to form part of the transaction. If the transaction has terminated and then the statement is made, the statement is irrelevant. The admissibility is dependent on continuity. In this case the murder took place the previous night. After the transaction had terminated and the murderers had left the place, a by-stander told the witnesses in the next morning that he had seen the accused commit the murder, and the witnesses testified to this statement of the by-stander. The bystander was also produced, but he denied all knowledge of the occurrence. *Held*, that any evidence as to what the by-stander said in the morning was inadmissible as hearsay and that the statement cannot be regarded as forming part of the same transaction as the murder and cannot be used against the accused. (11 C.W.N. 266, *Appr.*) *Held*, also that evidence given by the wife of one of the accused as to certain communications between her and her husband was inadmissible under s. 122 of the Evidence Act. JOWALA SAHAI v. CROWN, **34 P.R. 1914, Cr.=27 Ind. Cas. 664= 16 Cr. L.J. 184** (27 P.R. 1913, Cr., *R.*)

(24)—S. 7—*See* No. 15, *supra.*

(25)—*S.* 8—*Answers given to official superior in official enquiry.*—The answers to his superior officer, given by an accused person in explanation of an official irregularity, can be proved against him, if subsequently ascertained to be false. The subordinate is under no legal obligation to attend an official enquiry, but if he does attend and answers the questions put to him, the answers that he gives fall under the category of statements which accompany and explain acts other than statements. KING-EMPEROR v. GANESH, **4 Bom. L.R. 284.**

(26)—S. 8—*See* REVISION—QUESTION OF FACT, 25 P.W.R. 1910, Cr.

(27)—S. 8, expl. 2—Informer's statement—Admissibility—*See* CRIM. PRO. CODE, 1898, s. 103, 12 Cr. L.J. 479=12 Ind. Cas. 87.

(28)—*S.* 8, *ill.* (*k*)—*Admission—Confession.*—A prisoner was indicted for theft and dishonestly receiving stolen property. The prosecutor, while travelling by train to Calcutta, discovered the loss of the property, and stated his loss to a Railway Police Inspector at the first station at which the train stopped after he became aware of the theft, the prisoner not being then present. This statement was tendered in evidence, and admitted under s. 8, ill. (*k*), of the Evidence Act. Evidence was also tendered of a statement, made by the prisoner to the constable who arrested him, to the effect that some of the property had been given him, and that he had bought the rest, and this was admitted; the Court remarking that there was a distinction in the Evidence Act between "admission" and "confession." QUEEN v. MACDONALD, J., **10 B.L.R. App. 2.** [**R.**, 11 Cr. L.J. 453=7 Ind. Cas. 359=37 C. 467, 12 Cr. L.J. 60=8 Ind. Cas. 1181=6 N.L.R. 180.]

(29)—S. 8—*See* Nos. 15, 20, *supra.*

(30)—*Ss.* 8, 9 *and* 32—*Statements by deceased as to cause of his death given by signs in answer to questions, admissibility of.*—When a witness is called for the purpose of deposing to his having put certain questions to a person shortly before his death, who, being unable to speak, although conscious, made signs by way of reply, the questions being as to the cause of his death, *held, Per Oldfield and Brodhurst, JJ., concurring*:—The signs cannot be regarded as conduct within the meaning of s. 8, as these signs, taken alone without the questions, cannot be connected with the cause of death. The questions cannot be proved either under expl. 2 of s. 8 or under s. 9, for, before they can be admitted, the conduct which they are also alleged to affect should be proved to be relevant. In this case until the questions are admitted, the conduct is not relevant, and, therefore, the questions cannot be let in because the condition precedent to their admissibility has not been satisfied. Where a statement is made merely in response to some question or suggestion, it shows a state of things introduced, not by the fact in issue, but by the interposition of something else, and it does not, therefore, amount to "conduct" under s. 8 of the Evidence Act. But the questions and signs in response are admissible under s. 32 of the Evidence Act, as they amount to "verbal statements" under that section, made by a

Evidence Act (I of 1872)—*continued.*

person as to the cause of his death. *Per Straight, J.*—The questions taken with the dying person's assent or dissent in response to them, clearly proved, constitute a "verbal statement" as to the cause of the death, within the meaning of s. 32. Statements by the witnesses as to their impression of what these signs meant, are inadmissible, and should be eliminated, but assuming the questions put to the deceased were responded to in such a manner as to leave no doubt in the mind of the Court as to the meaning, then, it is not straining the construction to hold that the circumstances are covered by s. 32. *Per Mahmood, J.*—S. 32, cl. (1) can only apply to "statements" written or verbal. The word "verbal" cannot mean more than "by means of a word or words." As nodding the head or waving the hand is not a word, the questions and the signs in response are not admissible under s. 32. But the signs made by the deceased, being the conduct of a person, an offence against whom is the subject of a proceeding, are relevant under s. 8, of the Evidence Act, inasmuch as the word "conduct" as used in s. 8, does not mean only such conduct as is directly or immediately influenced by a fact in issue or a relevant fact. The questions put to the deceased are admissible either under expl. 2 of s. 8, or under s. 9, by way of explaining the meaning of the signs. QUEEN-EMPRESS v. ABDULLAH, **7 A. 385, F.B. = A.W.N. 1885, 78.**

(31)—Ss. 8, 14, 43, 54—*See* BAD CHARACTER, 7 P.R. 1895, Cr.

(32)—*Ss.* 8, 24, 25, 26, 27—*Accused pointing out articles stolen — Conduct—Admissibility of evidence—Application of Evidence Act — S. 27, an exception to preceding sections—Crim. Pro. Code, Act* V *of* 1898, s. 169.—M was charged with the murder of a girl. On the hope of pardon being given to her, she took the police to a place and pointed out and produced certain ornaments, which the deceased was wearing at the time of her death. *Held*, that evidence was admissible to show that the accused did go to a certain place and there produced certain ornaments. It is the Evidence Act and not the Crim. Pro. Code that must be looked to as to whether the evidence in point is or is not admissible. S. 27 of the Evidence Act is an exception to the preceding sections, and its object is to provide for the admission of evidence which, but for the existence of that section, could not be admitted. So much of the information, even if it amounted to a confession, made to a police officer, may be proved, as related to the discovery of the articles stolen. The conduct or acts of the accused are not dealt with by s. 27 and are relevant under s. 8. MUSSAMMAT MISRI v. KING EMPEROR, **6 A. L J 839, F.B = 31 A. 592 = 10 Cr. L J. 212, 439 = 3 Ind. Cas 26, 975.** [*F.*, 12 Cr. L.J. 119 = 9 Ind. Cas. 718 = 4 S.L.R. 209.]

(33)—Ss. 8, 25, 26, 27—*See* CONFESSION—CONFESSIONS MADE TO POLICE OFFICERS, 14 B. 260, F.B.

Evidence Act (I of 1872)—*continued.*

(34)—*Ss.* 8, 32, 118, 119—*Signs made by deaf mute—Admissibility in evidence*—The gesticulations of a deaf mute at the place where a dead body was found during the police enquiry, and subsequently in Court cannot be used in evidence against an accused person, as he is not a competent witness under s. 118, Evidence Act; nor are they admissible against the accused as conduct under s. 8, Evidence Act; and, if they are regarded as statements, they are equally inadmissible under s. 32 (1). SAMAIDIN v. KING-EMPEROR, **5 O.C. 246.**

(35)—S. 9—*See* Nos. 15, 30, *supra.*

(36)—*Ss.* 9, 11, *cl.* (2), *and* 45—*Comparison of thumb impression.*—A comparison of thumb impressions is admissible, under s. 9 of the Evidence Act, if the similarity of those impressions can establish the identity of a person, who is charged with having forged a document purporting to have been executed by another, with the latter, or under cl. (2) of s. 11 of the Act, if their dissimilarity makes such identity improbable. Though the comparison of thumb impressions is allowable, such comparison must be made by the Court itself; the opinion of an expert as to the similarity of such impressions is not admissible under s. 45 of the Evidence Act. QUEEN-EMPRESS v. FAKIR MAHOMED SHEIKH, **1 C.W.N. 33.** [*R.*, 3 N.L.R. 1 = 5 Cr. L. J. 220.]

(37)—*S.* 10—*Scope of section.*—The operation of s. 10, Evidence Act, is strictly conditional upon there being a reasonable ground to believe that two or more persons have conspired to commit an offence. BARINDRA KUMAR GHOSE v. EMPEROR, **37 C. 467 = 14 C.W.N. 1114 = 7 Ind. Cas. 359 = 11 Cr. L.J. 453.**

(38)—S. 10—*See* ABETMENT, 4 C.W.N. 528.

(39)—S. 10—*See* CONSPIRACY, 28 C. 797, 5 O.C. 321.

(40)—S. 10—*See* PENAL CODE, ss. 109, 114, 124-A, 5 M.L.T. 16 = 32 M. 3 = 1 Ind. Cas. 36 = 9 Cr. L.J. 130.

(41)—S 10—*See* PENAL CODE, ss. 121 (*a*), 122 and 123, U.B.R. 1892—1896, Vol. I, 148.

(41-*a*) S. 10—*See* No. 15, *supra.*

(42)—*Ss.* 10, 30—*Evidence—Circumstantial evidence—Wife not pulling on well with husband and mother-in-law—Putting white substance at instance of paramour into food served to husband, mother-in-law and two other persons also to whom she was affectionately disposed—Statement of wife that substance was administered being assured by paramour that it would bring about good feeling of husband and mother-in-law—Denial of complicity by paramour—Grave suspicion—Not inconsistent with innocence of accused—Statement of female accused if admissible against male accused.*—A, a young girl of 16 and of rather weak intellect, was married, but as she and her husband could not agree, she was not well treated by him and his mother. The result was that she frequently ran away from the house of her husband. Finally, she went to reside with her paternal uncle; and

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while there, she contracted criminal intimacy with B, an unmarried youth of 20. In a short time, the fact of this intimacy became known, so her uncle sent her back to the house of her husband. On the day of her return, there was a feast in the house, and she put into the food cooked by her a white substance given to her by B. Her story was that she was assured by her paramour that, if she administered the drug to her husband and mother-in-law, they would become submissive to her, would love her and no longer ill-treat her. A belief was current amongst women in that part of the country that persons can be brought under control if certain drugs were administered to them. She served the food mixed with the substance not merely to her husband, and his mother, but to some other persons also to whom she was affectionately disposed. As soon as the guests had taken the food, several of them were taken ill and one subsequently died. A and B was charged with murder. B denied complicity in the transaction: *Held*, that, though the case against both the accused was one of grave suspicion, yet the circumstances were not inconsistent with their innocence, that the self exculpatory statement made by A could not be used as evidence against B under s. 30 of the Evidence Act, as the inherent quality of the statement was not a confession, and that the statement of A could not be used against B, as it had not been established that there was a conspiracy between the two persons to poison the husband and the mother-in-law of the girl. KUSIR BAP v. EMPEROR, **14 Cr. L.J. 586 = 21 Ind. Cas. 378 = 18 C.L.J. 590.**

(43)—*Ss.* 10, 30—*Penal Code* (*Act* XLV *of* 1860), *s.* 121-A— *Conspiracy— Confession of co-accused—Evidence—Confession of prisoner, evidence against himself.*—S. 10 of the Evidence Act is intended to make evidence communications between different conspirators, while the conspiracy is going on, with reference to the carrying out of the conspiracy. It is not intended to make evidence the confession of a co-accused and put it on the same footing as a communication passing between conspirators, or between conspirators and other persons, with reference to the conspiracy. But such confession can be looked at under s. 30 of the Evidence Act, though its value is discounted by the fact that it cannot be tested by cross-examination. No higher value can be put upon it than upon the statement of an accomplice, and the Court should not be influenced by the statements, except where they are corroborated by independent testimony implicating the accused persons in the design with which they are charged. With regard to the prisoner who confessed, the confession, and the other statement which he has made in verification, and the depositions which he has given before the Magistrate, are all evidence against him. EMPEROR v. ABANI BHUSAN. **8 Ind. Cas. 770 = 15 C.W.N. 25 = 11 Cr. L J. 710 = 38 C. 169.**

(44)—Ss. 10, 73, 114, 133—*See* CONSPIRACY, 16 C.W.N. 1105 = 16 Ind. Cas. 257.

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(45)—S. 11—Professional misconduct—Judgment and proceedings in Civil Court out of which charge arises—Admissible in evidence—*See* LEGAL PRACTITIONERS — PLEADER AND CLIENT, 37 M. 238 = 23 M.L J. 447 = 1912 M. W.N. 1029 = 12 M.L.T. 615 = 13 Cr. L.J. 800 = 17 Ind. Cas. 544.

(46)—S. 11—*See* SECURITY FOR GOOD BEHAVIOUR, 14 C.W.N. 49 = 37 C. 91 = 5 Ind. Cas. 29.

(47)—S. 11—*See* STOLEN PROPERTY, A. W.N. 1885, 27.

(48)—S. 11—*See* Nos. 15, 16, 36, *supra.*

(49)—*Ss.* 11, 13, 43—*Judgment of Criminal Court—How far relevant.*—In a suit for damages for malicious prosecution, the judgment of the Criminal Court acquitting the plaintiff is relevant only as showing that he was declared innocent by that Court. The Civil Court is not to use it as a record of the facts found or as establishing the plaintiff's claim for damages. GULABCHAND v. CHUNILAL, **9 Bom. L. R. 1134.**

(50)—*Ss.* 11, 14 *and* 15—*Scope—Applicability of English law—Practice.*—The words of s. 11 of the Evidence Act are very wide, and, under it, all evidence which would be properly held admissible under English law, would be properly admitted under the Evidence Act. Evidence touching circumstances and transactions which are connected with the special subject-matters of the charges as parts of one and the same transaction, is not inadmissible. The Courts are justified in looking to English decisions to elucidate the meaning of the Evidence Act, and the evidence which Judges in England have admitted and juries have acted upon, must be held to be clearly within the terms of ss. 11, 14 and 15. QUEEN-EMPRESS v. VAJIRAM, **16 B. 414.**

(51)—*Ss.* 11, 21—*Crime committed between A and C—Relevancy of the fact that it has not been committed by C—Inference of guilt of A drawn from incriminating circumstances.*—M gave birth to an illegitimate child. It was alive at bed time, it was attended during the night by M, its mother, and B, midwife, and was found lifeless next morning. The medical evidence proved that its death was due to strangulation. There was no other evidence except the statements of B and J, a *Chowkidar*, to the effect that M admitted, before each of them, that she (M) killed the child and begged them to keep it secret. These statements, however, were not considered conclusive. *Held*, that M was guilty of causing the death of the child mainly on the principle that, where the guilt lies between A and C and there is no reason for believing that C has any concern with the commission of the crime, while the motive and other surrounding circumstances are too incriminating against A, the irresistible inference is that A has committed the crime. But the Chief Court, thinking it was probable that M committed the crime in a distracted state of

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mind, etc., directed that a copy of this judgment be laid before his Honour the Lieutenant-Governor, in order that His Honour might exercise his prerogative of mercy with respect to the sentence, if His Honour thinks fit. MT. MEHRO v. CROWN, **8 P.W.R. 1907, Cr. = 5 Cr. L.J. 182.**

(52)—Ss. 11, 30—*See* CONFESSION—RETRACTED CONFESSIONS, 38 P.W.R. Cr. 1910 = 24 P.R. 1910 = 193 P.L.R. 1910 = 8 Ind. Cas. 250 = 11 Cr. L.J. 604.

(53)—*Ss.* 11, 43 *and* 153—*Proof of possession of other completed or inchoate forged documents—Admissibility—Evidence of execution of similar documents.*—In a charge of forgery, evidence of possession by the accused of other documents suspected or even proved to be forged, is inadmissible under s. 11 of the Evidence Act. [*R.*, Rat. Un. Cr. C. 312, 15 B. 491, U.B.R. (1892—1896), 158, 10 Bom. L.R. 907 ; *D.*, 8 B. 223, 16 B. 414.] Where, on the denial by the complainant in a prosecution for forgery of ever having executed a pro-note, evidence that he had executed a pro-note similar to the one in question in the charge or even that a judgment had been obtained on another note is inadmissible under s. 43 or s. 153 of the Evidence Act. REG v. PARBHUDAS, **11 B H.C. 90.** [*R.*, 10 Bom. L.R. 973 = 9 Cr. L.J. 226 = 4 M.L.T. 450.]

(54)—Ss. 11, 54—*See* BOM. ACT IV OF 1887, ss. 4, 5, 6, 7, 28 B. 129 = 5 Bom. L.R. 805.

(55)—S. 12—*See* No. 15, *supra.*

(56)—S. 13—*See* CRIM. PRO. CODE, 1898, s. 145, 29 C. 187 = 29 I.A. 24 = 6 C.W.N. 386, P.C.

(57)—S. 13—*See* Nos. 15, 49, *supra.*

(58)—S. 14—*See* CHARGE TO JURY—MISDIRECTION, 8 W.R. Cr. 60.

(59)—S. 14—Complaint as to previous incident—Admissibility—*See* PENAL CODE, ss. 365, 366, 18 C.L.J. 578.

(60)—S. 14, ill. (*a*)—*See* PENAL CODE, ss. 379, 411, 9 Bom. L.R. 27 = 5 Cr. L. J. 63.

(61)—S. 14—*See* Nos. 15, 21, 31, 50, *supra*, and No. 217, *infra.*

(62)—*Ss.* 14 *and* 15—*Evidence admissible under the sections.*—Where a person was charged with having made three transfers on a certain day with the intention of evading the execution of a decree, evidence of other such transfers on the same day was held to be admissible under ss. 14 and 15, Evidence Act, to show that all the transfers were in one and the same transaction in question, and were made with a fraudulent intent. QUEEN-EMPRESS v. VAJIRAM, **16 B. 414.** [*F.*, 36 C. 573 = 9 C.L.J. 610 = 13 C.W.N. 973 = 2 Ind. Cas. 601 ; *R.*, 33 M. 502 = 5 Ind. Cas. 847 = 11 Cr. L J. 258 = 20 M.L.J. 220 = 7 M.L.T. 299 = M W.N. 1910, 65, 11 A L.J. 188 = 14 Cr. L.J. 116 = 18 Ind. Cas. 676. 11 Cr. L J. 428 = 6 Ind. Cas. 964 = 12 P.R. 1913, Cr. = 26 P.W.R. 1910, Cr.]

(63)—*Ss.* 14, 15—*Evidence of previous convictions when relevant.*—In a prosecution for theft, it cannot be assumed, as a matter of course that a previous conviction for the same offence is relevant in establishing the guilt of the accused. In order that it may be relevant under s. 15, it must be strictly shown that that section applies. NGA SHWE HMAN v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 144.** (6 C. 655, *R.*)

(64)—*Ss.* 14, 15—*Intention—State of mind—Evidence of intention—Evidence as to previous or subsequent acts forming one series of transactions—Admissibility of evidence—Penal Code, s.* 420—*Cheating.*—Accused was charged with deceiving one B by leading him to believe that he could secure an employment for him and with thereby inducing B to give him some money. Evidence was given to show that this transaction with B was one of a series of similar frauds practised by the accused upon various other persons. *Held*, (on a review of the English decisions) that such evidence was admissible. S. 15 of the Evidence Act is an application of the general rule laid down in s. 14, and it is not necessary under the section that all the acts should form part of one transaction, but, if they form part of a series of similar occurrences, such acts may be proved. Where the particular transaction is one of a series of similar frauds, evidence of the other frauds is admissible to prove the intention of the accused in the particular case. EMPEROR v. DEBENDRA PROSAD, **36 C. 573 = 13 C.W N. 973 = 9 C.L J. 610 = 2 Ind. Cas. 601 = 10 Cr. L.J. 91.** (Bell C.C. 290, *Disc. & D.*; L.R. 2 C.C.R. 128, 1 Q.B. 77, 2 Q.B. 758, 1 K.B. 188, 2, K.B 389, A.C. 1894, 57.) [*R.*, 11 Cr. L.J. 428 = 6 Ind. Cas. 964 = 26 P.W.R. 1910, Cr.; *D.*, 34 A. 93 = 8 A.L.J. 1269 = 12 Ind. Cas. 987 = 12 Cr. L J. 611]

(65)—Ss. 14, 15—Charge for dacoity—Evidence of other dacoities—Admissibility—*See* CHARGE—GENERAL, 1912 M.W.N. 49 = 13 Ind. Cas. 781 = 13 Cr. L.J. 125.

(66)—Ss. 14, 15—Evidence showing that accused had cheated other persons—Admissibility—*See* PENAL CODE, s. 415, 8 A.L.J. 1269 = 12 Ind. Cas. 987 = 12 Cr. L.J. 611.

(67)—Ss. 14, 15—Cheating—Previous and subsequent conduct of accused—Admissibility. *See* PENAL CODE, s. 420, 269 P.L.R. 1914.

(68)—Ss. 14, 15, 54—Cheating—Evidence of the previous and subsequent conduct of accused when and in what cases relevant—Principle of civil law when applies to a criminal case—*See* PENAL CODE, s. 420, 26 P.W.R. 1910, Cr.

(69)—*Ss.* 14, 43, 53—*Offence under s.* 400, *I.P.C.*—*Evidence of previous convictions.*—As regards an offence under s. 400, I.P.C., previous commission of dacoity by the same accused is relevant under s. 14 of the Evidence Act. Convictions previous to the time specified in the charge, or previous to the framing of the charge are relevant under expl 2 of s. 14, Evidence Act. But convictions subsequent to the time specified in the charge and to the framing

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of the charge itself are not admissible in evidence. EMPRESS v. NABA KUMAR PATNAIK, **1 C W.N. 146** [*Appl.*, 28 B. 129=5 Bom. L. R. 805; *R.*, 27 C. 139=4 C.W.N. 97, 38 C. 408 =15 C.W.N. 461=9 Ind. Cas. 555=12 Cr. L. J. 97, 11 Cr. L J. 364=6 Ind. Cas. 492=18 P. L.R 1910, 63 P.W.R. 1910, Cr., 13 P.R. 1914, Cr.]

(70)—*Ss.* 14, 54—*Evidence of previous convictions under, when and for what purpose admissible.*—Although evidence of previous convictions is ordinarily irrelevant under the above sections for the purpose of affecting the opinion of the Court as to the guilt or innocence of the accused in respect of the charge against him, it may be admissible after conviction for the purpose of affecting the punishment imposed. QUEEN-EMPRESS v. NGA YAN GON, **U. B.R 1892—1896, Vol. I, 82.**

(71)—*Ss.* 14 *and* 54—*Evidence as to general dishonesty of character, whether admissible for raising presumption of dishonesty in any particular case.*—Evidence as to general dishonesty of character is not admissible under the Evidence Act for the purpose of raising a presumption of dishonesty in the particular case under trial. NGA PO SO v. KING-EMPEROR, **U.B.R. 1908, 2nd Quarter, Evidence 1=8 Cr.L J 411.**

(72)—S. 15—Evidence—Intention—Series of acts—Burden of proof—Assumption of facts—*See* PENAL CODE, ss. 302, 307, 32 P.L.R. 1911 =9 Ind. Cas. 731=12 Cr. L.J. 125.

(73)—S. 15—*See* Nos. 50, 62 to 68, *supra.*

(74)—*S.* 21—*Statement of accused persons.*—The statements of an accused person, from which his guilt may be inferred are admissions and may be proved under s. 21. RAJ MAL v. EMPRESS, **3 P.R. 1880, Cr.**

(75)—S. 21—*See* No. 51, *supra.*

(76)—*Ss.* 21, 24, 25, 26 *and* 27—*Confession made to a person not a police officer and when accused not in police custody—Confession made under inducement held out by one who is not a person in authority—Proof of so much of confession as relates to facts thereby discovered—Admission—Evidence of Magistrate to prove confession recorded by him—Crim. Pro. Code,* s. 164—*Murder.*—The appellant who was accused of murder made a statement during the course of police investigation to certain men of influence in the neighbouring villages when no police official was present. In consequence of the accused's statement some money and other things belonging to the deceased were found at the places mentioned by him. The accused also made a statement before the Magistrate of the District. The District Magistrate refused to make the memorandum referred to in s. 164, Crim. Pro. Code, because it appeared to him that the statement was not the accused's free and spontaneous statement but was made by him in consequence of certain hopes which a constable had held out to the accused which he thought might possibly be realized. In the

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Court of the Committing Magistrate when the statement made by the accused before the District Magistrate was read out to him, he stated that some constables had given him bhang and liquor to drink and he did not remember what he stated. The Sessions Judge held both statements to be inadmissible, the former on the ground that the accused not having been in the custody of the police at the time when the statement was made, it was inadmissible in evidence under s. 27 of the Evidence Act, the latter on the ground that it did not contain the memorandum required under s. 164, Crim. Pro. Code. On appeal the Court of Judicial Commissioner directed the Sessions Judge to examine the District Magistrate as to the statement made by the accused before him and to give an opportunity to the accused of explaining how he came to make it. The District Magistrate was examined and he proved that the accused appeared to be in perfect possession of his senses when he made the statement and that there was absolutely nothing to suggest that he was under the influence of any intoxicant. *Held*, (*per Ryves*, O A.J.C.) that the confession of the accused made to the residents of the neighbouring villages was admissible in evidence against him. A confession made not to a Police officer and not improperly obtained as laid down in s. 24 of the Evidence Act is always admissible against an accused. In the same way any fact discovered in consequence of an admissible confession can also be admitted against him. *Held* (*per Scott, J. C.*), that having regard to the provisions of s. 21 of the Evidence Act the confessions made by the accused to the residents of the neighbouring villages and to the District Magistrate were admissible in evidence. The former confession although having been made when the accused was not in Police custody proof of it was not prohibited by ss. 25 and 26 of the Evidence Act and it was relevant under s. 24 if inducement held out to him did not proceed from "person in authority"; and the latter was admissible under s. 533, Crim. Pro. Code, as the evidence of the District Magistrate who recorded it was taken to prove that the said statement was made voluntarily. HARBANS v. KING-EMPEROR, **8 O.C. 395=2 Cr. L.J. 811.**

(77)—Ss. 21, 26, 29—*See* CRIM. PRO. CODE, 1898, s. 342, Rat. Un. Cr. C. 679=Cr. Rg 45 of 1893.

(78)—Ss. 21, 27—Not controlled by s. 162, Crim. Pro. Code—*See* CRIM. PRO CODE, 1898, s. 162. 6 N.L.R. 180=8 Ind Cas. 1181= 12 Cr.L.J. 60.

(79)—Ss. 21, 29—*See* ACCUSED PERSON, Rat. Un. Cr. C. 679=Cr. Rg. 45 of 1893.

(80)—*Ss.* 21 *and* 30—*Confession of co-accused when relevant—Suspicious confession to be rejected altogether—Ss.* 114 *and* 202, *I P.C.*—*Held*, that (*a*) it is settled law that, before the confession of the accused can be taken into consideration against others jointly tried with him for the same offence, it must appear that

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the confession implicates the confessing person substantially to the same extent as it implicates those against whom the confession is to be used; (*b*) a confession cannot be expanded or extended to make it available for incriminating persons other than the confessing accused; (*c*) where a confession is a suspicious one and grossly improbable in certain parts, it must altogether be set aside, and (*d*) where it is admissible, it is even then necessary that there should be its corroboration, which must be furnished by independent evidence and should incriminate each accused individually, in respect of the offence charged. *Held also*, on the above principles, that K's following statement is neither a confession of guilt of murder, nor is it admissible against the other accused. "M asked him to get her a chicken and he did so. He was asked to come in the evening and he came and shouted from outside the house that he had come. After some time, M and her husband appeared and gave him a bundle to carry and they all went to Ramidass' house, where he put down the bundle under the portico and, when the incantations were performed, he carried the bundle into the *jungle* and threw it down. He never saw what the bundle contained and was, in fact, told to run away on putting it down, lest something come out of it and catch him. *Held further*, that the following confession of S does not make him an abettor of murder under s. 114 of the Indian Penal Code, but may make him guilty of concealment of the offence after it was committed, which is a minor offence under s. 202 of the Indian Penal Code, and this confession is also admissible against the other co-accused. "I was brought by L to the house of P and M. I saw the boy. I was told to come next day and I did so, and began to repeat my incantation when the boy was throtted to death by P and M and his blood was drawn off with the sweeper's knife and caught in a vessel and thereafter, the boy was taken over the roofs of houses by P and K, while I and the others, proceeded by the road to R's house, where the incantations were performed, and then, they went out into the garden where M bathed and K took the corpse and threw it away." PRABHU v. KING-EMPEROR, **17 P.W. R. 1907, Cr.=6 Cr.L.J. 141.**

(81)—Ss. 21, 30—Confession of co-accused—Retracted confession — Effect —*See* PENAL CODE, s. 121-A, 15 C.W.N. 593=10 Ind. Cas. 582=12 Cr.L.J. 286.

(82)—*Ss.* 21, 30, 32—*Admissibility of evidence of accomplice—Admissibility of confessions of accused against co-accused.*—S. 30 merely enacts a special exception to the general rule that a confession (admission) can be proved (only) against the person who made it. It does not limit the operation of s. 32. Illustration (*b*) to s. 30 cannot be construed to have this effect. Therefore, the confession of an accused who is dead, implicating himself and an accomplice in a crime, is admissible under s. 32 (3) as a statement, which would expose him to a criminal prosecution. Not only that part of the statement, which is against interest, is admissible, but all those parts of it, which relate to connected facts, including the share taken by others in the crime. NGA PO YIN v. KING-EMPEROR. **U.B R. 1906, Evidence 3 =5 Cr.L J. 300.** (10 C.W.N. 962, 11 C. 635, 12 M. 153, 14 B. 260, 25 C. 413, U B.R. 1893 —1896, I, 83, *R.*)

(83)—*Ss.* 21, 157—*Crim. Pro Code* (*Act* V *of* 1898), *ss*, 162, 288—*Admissible evidence —Statements made by witness to the Police and to Panch—Statements made by the witness as accused before the committing Magistrate —Use of these statements for corroborative purposes—Statements made by co-accused.*—In the course of the trial of an accused person, the trying Judge admitted into evidence against the accused (1) statements made by a witness to the Police implicating the accused; (2) statements made by the witness to the Panch; (3) statements made by the witness as an accused person before the committing Magistrate; and (4) statements made by the co-accused to the Police. When the trying Judge in the Court of Session found that the witness had completely changed his statement No. 3 while deposing in his Court, he used statements Nos. 1 and 2 as corroborative of statement No. 3 which he believed. Relying upon these statements Nos. 1 —4, the Judge came to the conclusion of the accused's guilt:—*Held*, reversing the conviction and sentence, that the Judge was wrong in admitting into evidence statements Nos. 1 and 2 in the way he had done. Previous statements might be used to corroborate or contradict statements made at the trial; not to corroborate statements made prior to the trial. The object of referring to such statements should have been to see whether they contained anything which could be used for the purpose of cross-examining on behalf of the accused, the witnesses examined for the prosecution. *Held*, also that statement No. 4 was altogether inadmissible as evidence of the accused's guilt, for it could at most be regarded as an admission by the co-accused which could possibly be used against himself, but could not be proved and used against the accused EMPEROR v. AKBAR BADU, **12 Bom. L.R. 663=7 Ind. Cas. 933=11 Cr. L.J. 542= 34 B. 599.**

(84)—*S.* 24—*Confession—Inducement to confess, by Police constable.*—Where a Police constable told the prisoner that he would ask the Magistrate to pardon him, if he told all he knew about the offence for which he (the prisoner) was under arrest, and confessed to the Magistrate, *held* that s. 24 of the Evidence Act applied, and that the confession could not be admitted in evidence. NGA PO KYAW v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 396.**

(85)—*S.* 24—*Confession caused by threat.*—For a threat by the Magistrate to come under this section, it must be such as to give the accused grounds for supposing that, by making the confession, he would gain an advantage. In this case, before the accused confessed, the

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Magistrate said to him. "It is no use your trying to get out of it. You were seen with the pair of shoes." *Held*, though the language used might be considered to overcome the mind of an uneducated and inexperienced boy, yet, it was not sufficient to overcome the mind of a man of the age, experience, education, and position of the accused, so as to induce him to make a confession, and that it, therefore, did not invalidate the confession. MUKERJI v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 147.**

(86)—*S. 24—Suggestion to confess, made by superior officer.*—The suggestion that it would be better to confess made by a superior officer renders the confession inadmissible under s. 24 of the Act. NGA PYE v. KING-EMPEROR, **2 L.B.R. 316.**

(87)—*S. 24—Confession made before a* Punchayat.—A *Punchayat* is not a Police officer, but only a person in authority within the meaning of s. 24 of the Evidence Act. Therefore, a confession made by an accused before a *Punchayat* is admissible in evidence, if the *Punchayat* does not make use of any inducement to admit his guilt. EMPEROR v. JASHA BEWA, **11 C.W N. 904=6 Cr. L J. 154.** [*F.*, 12 Cr. L.J. 448=11 Ind. Cas. 792=U.B.R. 1911, 87.)

(88)—*S. 24 — Inducement to confess proceeding from member of panchayat—Confession.*—Where an inducement to confess a crime proceeds from a member of the *Panch*, the confession made in virtue of such inducement is not bad under s. 24, Evidence Act, the member of the *Panch* not being a person in authority. EMPEROR v. PHILIP JUZE FERNAND, **4 Bom. L.R. 785.**

(89)—*S. 24—Confession by accused.*—A confession by an accused person is not made irrelevant, if otherwise relevant, merely because the accused person has been sworn or affirmed. RAJMAL v. EMPRESS, **3 P.R. 1880, Cr.**

(90)—*S. 24—Penal Code, s. 302—Murder—Confession—Admission of guilt — Statements made by accused to Zaildar on promise of benefit.*—*Held*, that admissions made by the accused, to the Zaildar were not admissible in evidence; for it appeared that the Zaildar had told the accused, before the statements were made, that they would get some benefit from Government if they spoke the truth. MUTSADDI v. CROWN, **221 P.L.R. 1911=12 Ind Cas 642 =12 Cr. L.J. 554.**

(91)—*S. 24—Murder—Confession to* Thugyi *on inducement to confess, whether admissible—Questions and answers based on such confession, admissibility of.*—The *thugyi* or headman of a village is a person in authority within the meaning of s. 24 of the Evidence Act. Therefore, the confession made by an accused to the *thugyi* on being sent for by him after he was told that he would not be punished if he had not taken part in the offence, is irrelevant and inadmissible in evidence, as what the *thugyi* told the accused was an inducement to make a statement. Other questions and answers in the examination of the accused based on this inadmissible statement are also inadmissible. NGA KYA THIN v. EMPEROR, **15 Cr. L J. 681 =26 Ind. Cas. 129.**

(92)—S. 24—*See* ACCOMPLICE — ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, 4 P.R. 1903, Cr.

(93)—S. 24—*See* CRIM. PRO. CODE, 1898, ss. 164, 350, L.B.R. 1893—1900, 52.

(94)—S. 24—*See* CRIM. PRO. CODE, 1898, ss. 193, 288, 337, 22 C. 50.

(95)—S. 24—*See* JUDGE AND JURY, Rat. Un. Cr. C. 730=Cr. Rg. 58 of 1894.

(96)—S. 24—*See* PRIVILEGED COMMUNICATIONS, 15 W.R. 340.

(97)—S. 24—*See* Nos. 32, 76, *supra.*

(98)—Ss. 24, 25—Confession made to Jaildar or nominally to third party in the presence of Police—Effect—*See* MURDER, 14 P.R. 1911, Cr.=12 Ind. Cas. 973=12 Cr. L J. 597.

(99)—*Ss. 24, 25 and 26—Confession—Magistrate on leave and outside jurisdiction—Accused ignorant of Magistrate's existence—Value of evidence—Blood stains and injuries on the persons of* Chhachh *people.*—*Held*, that, the evidence is inadmissible to prove a confession made while an accused person is in police custody, except in so far as any fact is discovered in consequence of the information so received from him. *Held*, also, that a Magistrate, though on leave and not in the district in which he has been exercising jurisdiction, is a "Magistrate" within the meaning of s. 26 of the Evidence Act. A confession made in the presence of such a person is admissible and relevant. *Held*, further, that very little value can be attached to such a confession, when the fact that a Magistrate was present at the time the confession was made was not known to the accused, who was under the impression that he made the statement in the presence only of the police and their friends. *Held*, further, that the presence of certain injuries of the nature of scratches on an accused's hands and detection of blood colouring matter on his *kurta* had *pyjama* count for little in a country such as *Chhachh* tract, particularly when he is a carpenter by trade and the other evidence of murder against him is very weak. FAIZ ULLAH v. CROWN, **8 P.W.R. 1914, Cr.=38 P. L.R. 1914=15 Cr. L J. 6=22 Ind. Cas. 150.**

(100)—Ss. 24, 25 and 26—*See* CRIM. PRO. CODE, 1898, s. 164, 7 C.W.N. 345.

(101)—*Ss. 24, 25, 26 and 27—Confessions, admissibility of under—Crim. Pro Code, s. 164.*—When a fact is deposed to as discovered in consequence of information received from a person accused of an offence in the custody of a police officer, proof of such fact must be strictly confined to so much of the information as relates distinctly to that fact. Police officers are clearly prohibited from offering any inducement or threat to the prisoner and extract

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confessions from him, and s. 164 of the Crim. Pro. Code declare such confessions so obtained to be illegal. If the identification of prisoners in police custody is to be of any value, it should be prompt and clear and free from suspicious circumstances. NGA SAN BWIN v. QUEEN-EMPRESS, **U.B.R. 1892—1896 Vol. I, 83.** [*F.*, 11 Cr.L J. 41=4 Ind. Cas. 759=U.B.R. 1909, Vol. I, Evidence, 3.]

(102)—*Ss.* 24, 25, 26, 27 — *Confession to zamindars—Promised to save from consequence of crime — Inadmissible — Confession before Magistrate—Impression caused by promise to save, not removed—Inadmissibility—Confession made when not under police custody and while under custody—Admissibility—S.* 27, *proviso to ss.* 24, 25, 26.—D. a person accused of murder, made a confession to some Zamindars, who induced him to do so by a promise to save him from the consequences of his crime, and produced certain ornaments. He was thereafter taken into police custody. He made a statement before the police and produced the body of the murdered girl. He also made a confessional statement before the second-class Magistrate which he retracted before the Court of Sessions: *Held*, that the zamindars must be considered as persons in authority, they having investigated the offence as if they were policemen, and that the confession made before them was inadmissible under s. 24 of the Evidence Act: *Held*, also, that, there being nothing whatever to show that the impression caused by the promise of the zamindars had been fully removed so as to render this confession admissible under s. 28, Evidence Act, the confession made to the second class Magistrate must also be excluded. S. 27 of the Act is a proviso to s. 24 as well as to ss. 25 and 26. When a fact is discovered in consequence of a confession which has been improperly induced, or which has been made to a Police Officer, so much of such confession as relates to the fact discovered will be admissible in evidence, provided that, at the time the confession was made, the accused was in police custody, but not otherwise. (31 A. 522 F.B., *Appr.*) *Held*, therefore, that what D stated before the zamindars about the production of the ornaments is not admissible in evidence as he was not then in police custody, and that what he stated about the production of the body is admissible because he was then in police custody. IMPERATOR v DABUD, **4 S.L.R. 209=9 Ind. Cas. 718=12 Cr. L.J. 119.**

(103)—*Ss.* 24, 25, 26, 27—*General rule—Exception contained in s.* 27—*Scope and extent of the exception—Place of murder—Statement by accused relating to discovery of—When not admissible in evidence.*—Where the accused stated to the Police 'I will point out the spot where I committed the murder' and thereafter he conducted the police to a spot where the earth was found saturated with blood. *Held*, that the words 'where I committed the murder' did not in themselves *distinctly relate* to the discovery of that spot and that the words were not admissible in evidence against the accused. The exception contained in s. 27 of the Evidence Act to the general rule must be very strictly confined within its legitimate limits. TARA SINGH v. CROWN, **11 P.R 1915, Cr.** (3 B. 17, 11 B.H.C. 242, 10 B. 597, 12 M. 153, 13 P.W R. 1913, Cr., *R.*)

(104)—*Ss.* 24, 25, 26, 27 *and* 28—*S.* 27 *not a proviso to s.* 24—*Confession made by illegal inducement.*—S. 24 of the Act contains an absolute rule which is not affected by the proviso, made for a different purpose in s. 27. When the Legislature wished to make an exception to the absolute rule, it did so by a separate section, namely s 28, which declares under what circumstances a confession rendered irrelevant by s. 24, may become relevant. Statements that are irrelevant under one section of the Act may be relevant under some other section of the Act. No confession made under inducement, threat or promise can be relevant, except in the circumstances provided for by s. 28. KING-EMPEROR v. NGA PO MIN, **2 L.B.R. 168.** (8 W.R. 13, Cr., 3 B. 12, 4 A. 198, 6 A. 509, 14 B. 260, *R.*) [*F.*, U.B.R. 1909, Evidence, p. 3.]

(105)—*Ss.* 24, 25, 26, 27, 28—*Confession caused by illegal inducement*—*Held*, that a confession caused by illegal inducement is irrelevant under s. 24, Evidence Act, and the question of its truth is immaterial, and that s. 27 is not a proviso to s. 24. NGA SANYA v. KING-EMPEROR, **U B R. 1909, 1st Qr., Evidence 3=11 Cr. L.J. 41=4 Ind. Cas. 759.** (2 L.B.R. 168, U.B.R. 1892—1896, Vol I, 83, *F.*)

(106)—*Ss.* 24, 25 *and* 27—*Admissibility of confession—Corroboration.*—A confession to be admitted at all in evidence must be proved to have been made voluntarily; and, when it is admitted in evidence, it has to be dealt with like any other piece of evidence and acted on only if it be believed to be true. QUEEN-EMPRESS v. BALYA DAGDU, **Rat. Un. Cr. C. 952=Cr. Rg. 3 of 1898.**

(107)—*Ss.* 24, 25, 27—*Confession to be free from corrupt influences.*—Confessions, to be of value as evidence, should be free from reasonable suspicion of corrupt influences, and also require some kind of extrinsic corroboration. NGA SHWE TAT v. QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 152.**

(108) *Ss.* 24 *and* 27 — *Confession — Facts deposed as discovered in consequence—Admissibility—Dacoity and burial—Trial partly with aid of Jury—No necessity.*—Confession four days after the offence and the fact of the accused pointing out the place of the burial of the body are admissible in evidence. In a case of dacoity and burial of the corpse, the Sessions Judge need not have tried it partly with the aid of the jury. NAGAMUTHU KAVUNDAN v. EMPEROR, **1911, 2 M.W N 197=12 Cr. L J. 488=12 Ind. Cas. 96.** (22 M. 15, *F.*)

(109)—*Ss.* 24, 30, 133—*Confession not relevant against the maker whether relevant against a co-accused—Statement—Confession — Accomplice.*—A house was broken into at night and

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certain property stolen. During the police investigation, one K stated that he and U had committed the burglary. On search some stolen property was recovered from U's possession. U alone was sent up for trial and K appeared as a witness for the prosecution. K in his evidence gave the same story, implicating himself and U. On this the Magistrate transferred K from the witness box to the dock, and trying them jointly convicted both of them. It was found on appeal that K's statement, which amounted to a confession, had been induced in one of the manners specified in s. 24 of the Evidence Act. *Held*, that as K's confession could not be used against himself, as being irrelevant under s. 24 of the Evidence Act, it could not be taken into consideration against U a co-accused. *Held*, also, that K was not an accused person when he made his statement as a witness before the Magistrate, but K was an accused person with U when his statement was used against both, and consequently it was a confession. *Held*, further, that, as an accomplice is a witness and not an accused person, s. 133 of the Evidence Act did not affect the question in the case. EMPEROR v. UMDA, **166 P.L.R 1911 = 10 Ind. Cas. 340 = 9 P.R. 1911, Cr. = 22 P.W.R. 1911, Cr. = 12 Cr. L.J. 267.**

(110)—Ss. 24, 133—*See* CRIM. PRO. CODE, 1898, s. 337, 5 C.L.J. 224 = 5 Cr. L.J. 142.

(111)—Ss. 24 and 167—*See* BOM. ACT IV OF 1902, s. 63, 9 Bom. L.R. 789, F.B. = 6 Cr.L.J. 164 = 2 M.L.T. 414 = 32 B. 111.

(112)—*S.* 25—*Confession made before an investigating police officer.*—Where a confession was made before an investigating police officer, who joined the prosecutor in questioning the accused, it should in fact be held to have been made to a police officer, though actually taken down by the prosecutor, and it is hence inadmissible under s. 25, Evidence Act. EMPRESS v. BANKO BIHARI, **10 C.P.L.R. Cr. 16.**

(113)—*S.* 25—*Confession to a village headman —Act II of* 1880 (*Burma Rural Police*) *and Lower Burma Village Act*, 1889.—A confession to a village headman or *gaung* appointed under the Burma Rural Police Act, is inadmissible under s. 25 of the Evidence Act. LU BEIN v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 479.**

(114)—*S.* 25—*Confession to village headman.* —S. 25 of the Act does not forbid the proving in evidence of a confession made to a *ywathugyi* or village headman under the Lower Burma Village Act, 1889. CROWN v. NGA PO HLAING, **1 L B.R 65.** (L.B.R. 1893—1900, 22, *Diss.*)

(115)—*S.* 25—*Lower Burma Village Act—Ten-house* gaung *is a police officer—Admission to him inadmissible.*—A ten-house *gaung* appointed under the Lower Burma Village Act, 1889, is a police officer within the meaning of s. 25 of the Evidence Act, and an admission to him of the accused's guilt is inadmissible in evidence under the section. PO SIN v. KING-EMPEROR, **3 L.B.R. 283 = 5 Cr. L.J. 421.** (1 L.B.R. 65, *R.*)

(116)—*S.* 25—*Statement voluntarily made to a police officer by accused, not in custody, not admissible—Police officer's evidence as to conduct and condition of the accused while making the statement, admissible.*—A person, who had committed a murder, voluntarily went to a police station, and made a statement to a police officer that he had done the deed, and that the instrument of murder was in a place named. He was subsequently arrested; *Held*, that the statement was a confession and was not admissible under s. 25 of the Evidence Act. Evidence of the police officer, however, was admissible to prove the conduct and condition of the murderer at the time when the statement was made. REX v. SHEIKH TALEB, **10 C.L.J 13 = 10 Cr. L.J. 193 = 2 Ind. Cas. 951.**

(117)—*S.* 25—*Confession to Police Officers—Admission amounting to confession—Admissibility—Admissions made by a person before he was accused of an offence—Admissibility against co-accused- Admissibility in favour of co-accused.* —A was convicted on the evidence of two Excise Sub-Inspectors, who stated that he offered them Rs. 10 per ball of opium as a bribe to let him land unmolested a large quantity of illicit opium from the steamer *Kattoria*. These Excise Officers had been also enrolled as Police Officers. *Held*, that the alleged offer by the accused amounted to an admission that he had a large quantity of contraband opium in his possession and, being an admission of an offence under the Opium Act, amounted to a confession and was thus inadmissible under s. 25 of the Evidence Act. The test which has to be applied in deciding whether s. 25, Evidence Act applies, is the position of the person at the time when it is proposed to prove the admission not his position at the time when he is alleged to have made it. A confession, therefore, made to a Police Officer by a person when he is not accused of any offence is inadmissible in evidence against him when he is accused of an offence. A confession made by an accused person to a Police Officer might be admissible *in favour* of a co-accused but not *against* him. SAN PAW AUNG v. EMPEROR, **13 Cr. L.J. 465 = 15 Ind. Cas. 305 = 5 Bur. L.T. 92.**

(118)—*S.* 25—*First report, statement in, made by complainant—Admissibility in evidence—* Chaukidars—*Police Officers—Confession made to some person in presence of Police Officers, admissibility of—Admission of offence just after commission, effect of—Presumption.*—Any statement made by a complainant in his first report at the Police Station is not admissible as proof of the facts therein mentioned, and cannot be used as evidence against the accused in his trial. Village *Chaukidars* are Police Officers within the meaning of s. 25 of the Evidence Act. An accused's confession to some person, although made in the presence of a Police Officer, is nevertheless admissible in evidence. Where it

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is satisfactorily proved that, immediately after the commission of an offence, the accused made a statement incriminating himself, the reasonable inference from such a statement, in the absence of any rebutting evidence, is that the statement is a true representation of the actual facts DAL v. EMPEROR, **16 Cr. L.J. 62 = 26 Ind. Cas. 654.**

(119)—*S. 25—Confession—Police, confession made to—Co-accused, admissibility of confession against* —The confession made to a police officer by an accused is not admissible against him under s 25, Evidence Act; *a fortiori* it is inadmissible against a co-accused. EMPEROR v. HARISINGH GANPATSINGH, **12 Bom. L.R. 899 = 8 Ind. Cas. 622 = 11 Cr. L.J. 690.** (2 B. 61, *R.*)

(120)—S. 25—*See* CRIM PRO. CODE, 1898, 161, 27 C. 295 = 4 C.W.N. 129.

(121)—S. 25—Confession made to a private person in the presence of the Police—Admissibility—*See* CRIM. PRO. CODE, 1898, ss. 437, 517, 37 P.W.R. 1913, Cr. = 320 P.L.R. 1913 = 21 Ind. Cas. 596 = 14 Cr. L.J. 596.

(122)—S. 25—*See* PARDON, 10 P.R. 1895, Cr.

(123)—S. 25—One accused can prove on his own behalf a co-accused's confession to a police officer—*See* PENAL CODE, ss. 241, 243, 12 Cr. L.J. 79 = 9 Ind. Cas. 449.

(124)—S. 25—*See* SECURITY FOR GOOD BEHAVIOUR, 3 N.L.R. 51 = 5 Cr. L.J. 434.

(125)—S. 25—*See* Nos. 32, 33, 76, 98 to 107, *supra* and No. 169, *infra*.

(126)—*Ss 25, 26—Statements made by accused to police constable, not amounting to admission of guilt.*—A statement made by the accused to the police, which does not amount directly or indirectly to an admission of any criminating circumstance, is admissible in evidence; hence, where the accused was found carrying away a box at night and, when asked by a policeman on duty about the ownership of the box, stated that it belonged to him, the statement was held admissible against him in a trial for theft of the box. EMPEROR v. MAHOMED, **5 Bom. L. R 312.** [*R.*, 37 C. 467 = 11 Cr. L.J. 453 = 7 Ind. Cas. 359, 12 Cr. L.J 60 = 8 Ind. Cas. 1181 = 6 N.L.R 180, 14 Cr. L.J. 252 = 19 Ind. Cas. 508 = 6 S.L.R. 143.]

(127)—*Ss. 25 and 26—Confession made to* chowkidar—*Confession to a Magistrate subsequently retracted — Bengal Act, I of 1892, (Village* chowkidars) — *Village* chowkidar, *whether a police officer.*—Where a person, charged with murder, made a confession, while in the custody of a *chowkidar*, in the presence of another person, who was considered by the Judge not to be a satisfactory witness, and the accused, a few hours later, made also a confession to the Magistrate which was subsequently retracted, *held*, that, although it would not be safe to act upon the confession made to the *chowkidar*, the second confession to the Magistrate was, under the circumstances of

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the case, reliable. A *chowkidar*, although he is not a police officer under Act V of 1861, is one under Reg. XX of 1817 and Act I of 1872, and a confession made to him is inadmissible. EMPRESS v. INDRA CHUNDER PAL, **2 C.W.N. 637.** (2 C.W.N. 71, *Diss*)

(128)—*Ss. 25 and 26—Admission by first accused—Second accused questioned on information given by first accused—Recovery of stolen property from second accused.*—The only evidence against the first accused was that, in consequence of information given by him, the second accused was questioned and the stolen property was produced. The first accused was also said to have admitted the theft before the police. *Held*, that the evidence was too insufficient to justify the conviction of the first accused for theft. The confession was irrelevant, as it did not lead directly to the recovery of the property. *In re* IPPARI RAMALINGAM, **3 M.L.T. 333 = 7 Cr. L.J. 398.**

(129)—*Ss. 25, 26—Explanatory statement by the accused to the Police—Admissibility in evidence—Indian Penal Code, s. 203—The term 'gives information,' meaning.*—An explanation offered to the police by the accused in order to exculpate themselves is admissible in evidence, although such explanation was subsequently used against the accused to show guilty knowledge. (6 B. 34, 14 B. 260, 5 Bom. L. R. 312, *R.*) The expression 'gives information' found in s 203, I.P.C., means 'volunteers information.' CROWN v. AKHTIAR *walad* SANWAN, **6 S.L.R. 143 = 14 Cr. L J. 252 = 19 Ind. Cas. 508.** (20 W.R. 66 and 5 S.L.R. 174, 179, *R.*)

(130)—*Ss. 25, 26—Police officer—Meaning—Confession before French Police officer—Inadmissibility of.*—The words 'Police officers' in ss. 25 and 26 of the Evidence Act include also Foreign Police Officers. (1 C. 207, 22 B. 235, *F.*) A confession made to a Police officer in French Territory is inadmissible in evidence. PUBLIC PROSECUTOR v. VEERARAGHAVA PILLAI, **11 M.L.T. 407 = 15 Ind. Cas. 800 = 13 Cr L.J. 528.**

(131)—*Ss. 25, 26—Accused person in jailor's custody—Statement made in the presence of police—Admissibility in evidence.*—A confession contained in a statement made by an accused person to a stranger in the presence of a Police Officer while he was in the custody of a jailor does not fall within the purview of s. 25 or s. 26 of the Evidence Act, and is admissible in evidence. NADIR v. CROWN, **8 P.R. 1914, Cr. = 214 P.L.R. 1914 = 15 Cr. L.J. 480 = 24 Ind. Cas. 568.** (20 B. 795, *R.*)

(132)—Ss. 25 and 26—*See* POLICE OFFICER, 1 C. 207 = 25 W.R. Cr. 36.

(133)—*Ss. 25, 26, 27—Statements made by accused to police—Admissibility in evidence.*—In a case in which three persons B, M, T were charged with the murder of one H, the following statements made by T to a Police Superintendent on the day next to the day of the occurrence, while M was arrested, but neither

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of the other two accused was suspected of having had any hand in the murder, and was not then under arrest, were sought to be given in evidence for the prosecution. Of these, some were held to be admissible, and others inadmissible. The Police Superintendent deposed that the following took place in answer to his question whether T had seen H the previous day. "T remained silent, and on my repeating the question, he said H had come to the premises (where H was alleged to have been murdered) on the day of the occurrence." *Held*, that evidence of this statement of the accused was admissible. The Police Superintendent then proceeded to depose that he went with T into a godown, and on telling T to empty his box, T produced a Bengalee bill (which it was alleged H had taken with him to the place where he was alleged to have been murdered, for the purpose of payment of moneys due to him from M) and stated "Sir, I have something to give you. M gave me this paper yesterday evening to keep for him." *Held*, that the statement was admissible in evidence as it was perfectly innocuous. The further statement, "that the deceased H had called the previous day, was taken with cholera, was purged three times, after which a dispute arose regarding the Bengalee bill; that H had abused M's wife, on which M had given H a push in the throat when H fell backwards and became insensible; that they tried to get a box and to put the corpse into the box; that as the body was too big, they had to tie the body to make it fit into the box; that they then put the lid after placing a sheet on the body; that they lowered the box with a gunny and then tied it up with a rope; that they left the box till evening; and that, at 6 P M. M got a cooly and had the box removed," was held to be inadmissible. QUEEN EMPRESS v. MEHER ALI MULLICK, **15 C. 589.** [*F.*, 5 L.B.R. 131 = 4 Ind. Cas. 1028 = 11 Cr. L.J. 153; *R.*, 37 C. 467 = 14 C.W.N. 1111 = 7 Ind. Cas. 359 = 11 Cr. L.J. 453, L.B.R 1893—1900, 42.]

(134)—*Ss.* 25, 26 *and* 27—*Confessions by accused while in custody of police.*—A witness ought not to be allowed to describe a 'confession' made by the accused, if the fact was deposed to as discovered in consequence of information received from the accused while in the custody of the police. QUEEN-EMPRESS v. BHAGWANDIN, **S.C. 81, Oudh.**

(135)—*Ss.* 25, 26, 27, 30—*Confession—Plea of guilty—When it can be withdrawn—Incriminating statement made in Police custody and before Magistrate—Admissibility against the maker and accused jointly tried—Curing defective statement with regard to the provisions of s.* 364, *Crim. Pro. Code.*—*Held*, by the Full Bench that:—An answer to the following effect to a charge under s. 376, Penal Code, constitutes a plea of guilty. "I did not commit rape, I only held the lady's hands." But, when the accused at the time of making such a statement, is enfeebled by illness and is undefended, withdrawal of the plea can be allowed if the accused wishes to withdraw it. No part of a criminating statement whether amounting to a confession or not, written by an accused person himself while in Police custody, is admissible either against him or against the person jointly tried with him, unless it has led to the discovery of any fact within the terms of s. 27, Evidence Act. A deposition (not amounting to a confession) of a person recorded on solemn affirmation by a Magistrate is admissible against the deponent only but not against the person jointly tried with him. A statement made by an accused person before a Magistrate who subsequently commits him to the Court of Session must be recorded in the form prescribed by s. 364, Crim. Pro. Code, but any defect therein can be cured by proving it by the evidence of the Magistrate recording the same. A confession of an accused is not admissible under s. 30, Evidence Act, against a co-accused, if the former is convicted on his own plea of guilty. CROWN v. SHULDHAM, **44 P.W.R. 1914, Cr., F B.** (5 C. 954, 5 A. 253, *R.*)

(136)—*Ss.* 25, 26, 114, *ill.* (*b*), 133, 157—*Letters Patent—Cls.* 22, 24, 25 *and* 26, *scope of—Indian Criminal Law Amendment Act*, 1908—*Trial thereunder, subject to cl.* 26. *Letters Patent—Points not raised in Advocate General's certificate not allowed to be argued at the hearing—Crim. Pro. Code, s.* 162—*Oral evidence of statement to a Police officer under s.* 162, *admissible—Evidence Act—Ss.* 25, 114, *ill* (*b*), 133 *and* 157—*Evidence of accomplices and presumption of untrustworthiness—Whether corroboration necessary—Extent and nature of corroboration—Former statements of accomplices whether they legally amount to corroboration—"Legally competent to investigate" in s* 157, *Indian Evidence Act, meaning of—Confession, meaning of—Whether approver witness' statement to police officer incriminating himself and the accused inadmissible under s.* 25, *Evidence Act.*—The Indian Criminal Law Amendment Act of 1908 does not lay down complete rules of procedure. The ordinary procedure has to be followed except in so far as it is modified by the Act. There is nothing in the Act to modify the ordinary procedure with respect to the power of the High Court under cl. 26, Letters Patent, to review on the Advocate-General's certificate in every case mentioned in cl. 25 of the Letters Patent, *i.e.*, in "any criminal trial before the Courts of original criminal jurisdiction which may be constituted by one or more Judges of the High Court." The present trial satisfies these conditions and is therefore open to review on a certificate granted by the Advocate-General. At the hearing of a review under cl 26, Letters Patent, it is not open to the accused to argue any question of law not raised in the certificate of the Advocate General. Cl. 26 of the Letters Patent does not open up the whole case as though on appeal. Oral evidence of a statement made to a Police officer under s. 162 of the Crim. Pro Code, and reduced by him to writing, may be given, though the writing itself may not be used in evidence,

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(fifth point in the certificate). First point in the certificate :—*Benson, J., Wallis, J. and Miller, J.*—There is nothing in the ill. (*b*) to s. 114, Evidence Act, which overrides, or renders nugatory, the plain and explicit declaration contained in s. 133, or which requires us to hold that the evidence of an accomplice must always, and in all circumstances, be regarded as unworthy of credit unless it is corroborated in material particulars, or which requires us to hold that it is not open to the Court to act on such evidence, even when the Court believes it to be perfectly true. It is impossible consistently with the Indian Evidence Act to hold that, as a matter of law, the presumption must be raised and rebutted by special circumstances or by corroboration. *Abdur Rahim J.*—My conclusion is that it is well-established law that, except in circumstances of an especial nature, it is the duty of the Court to raise the presumption that accomplices' evidence is unworthy of credit as against the accused persons, unless it is corroborated in material particulars, and the failure of the Judge to direct the jury to that effect is an error in law. It will none the less in my opinion be an error in law if the trial was held without a jury and the Judge or the Magistrate misdirected himself on this point and treated an accomplice's evidence like that of any other witness. I do not perceive any principle on which the two cases may be distinguished. The next proposition which is also well recognized is that, if there are any special circumstances which would justify a disregard of this rule, those circumstances, in a trial by a jury, must be clearly set out in the directions of the Judge, and the appellate Court is entitled to consider as a matter of law whether those circumstances are such as to justify the exceptional treatment. If, in the opinion of the appellate Court, the facts in this connection are such that they in no sense negative the danger of acting upon the uncorroborated testimony of the accomplice, but the Judge told the jury otherwise, the verdict must be set aside as being due to an error in law; if the special facts, however, are such as may reasonably be considered to take the case out of the rule even though it is possible to hold a different view, the verdict cannot be interfered with by a Court of error. A similar rule would hold good in cases tried by a Judge alone; *Sundara Iyer, J.*—There can be no doubt that s. 114 should be read along with s. 133 in order to determine the manner in which the testimony of an accomplice should be dealt with before basing the conviction on his evidence alone. It is impossible to hold that the Court is in all cases bound to make a presumption of untrustworthiness without regard to the particular facts and circumstances of each case; for in that case the legislature would have said that the Court "shall presume" the untrustworthiness of an accomplice. But the Judge is of course bound to exercise his judicial discretion to presume or not to presume the untrustworthiness of an accomplice in a judicial

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and legal manner. On an appeal from his decision it would be open to the Court of appeal to consider whether he was right or wrong in not making the presumption in the circumstances. If the question be whether there is an error of law in his judgment, the Court is entitled to consider whether the rule embodied in s. 114 was present to his mind and whether he exercised his discretion after considering the materials on record. If he has not made the presumption and has given no reasons for not doing so, it would be open to the Court of review or revision to arrive at the conclusion that the discretion has not been exercised in a legal manner. It would be right to require that a Judge should ordinarily presume the untrustworthiness of accomplices. But I would not put it as suggested in the Advocate-General's certificate that it should be made in all cases and that the conviction without independent corroboration could be sustained only where the presumption is rebutted by special circumstances. Second point in the certificate:—*Benson, J., Wallis, J.*, and *Miller, J.*—The former statements of accomplices are legally admissible to corroborate their testimony at the trial, and may be considered for what they are worth, though the weight to be attached to them depends entirely on the facts of each case. The express rule of law stated in s. 157, Evidence Act, cannot be limited by a maxim embodied in ill. (*b*) to s. 114 of that Act, which is not of universal application. *Abdur Rahim, J.*—As a general rule the previous statements of an accomplice do not legally amount to such corroboration as is required to rebut the presumption as to the unreliability of an accomplice's evidence. *Sundara Iyer, J.*—The previous statements of an accomplice cannot legally amount to corroboration within the meaning of ill. (*b*) to s. 114, Evidence Act. The question whether it is admissible to all as corroborative evidence under s. 157 for any other purpose is not free from doubt. The safer rule in my opinion would be to hold that s. 114, ill. (*b*) requires the rejection of the previous statement altogether. I am clear that at any rate it cannot be relied on as corroborative evidence of truth of the statements made by him at the trial. Third point in the certificate :—*Benson, J., Wallis, J.* and *Miller, J.*—Police Inspector, Veeraraghava Iyer was an officer "legally competent to investigate the fact" under s. 157, Evidence Act, and therefore the statements made to him by the approvers are admissible under that section *Abdur Rahim, J.* and *Sundara Iyer, J.*—Inspector Veeraraghava Iyer was not an officer legally entitled to investigate the fact of conspiracy within the meaning of s. 157, Evidence Act. Therefore the statements made to him by the approvers are inadmissible in evidence. Fourth point in the certificate: *Benson, J., Wallis, J.* and *Sundara Iyer, J.*—The statements of the approvers to the Police Inspector are inadmissible by reason of the provisions of s. 25, Evidence Act. *Miller, J.* and *Abdur Rahim, J.*—As s. 26 of the Evidence

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Act applies only to the proof of a confession as against his maker, so it should be held that s. 25 has a similar scope; and both these sections were intended to prevent the use, as evidence against the maker, of confessions made actually or in effect to Police officers. S. 25, Evidence Act, was not concerned with the statements of witnesses. MUTHUKUMARASWAMI PILLAI v. EMPEROR, **1912 M.W.N. 549 = 12 M.L.T. 1 = 13 Cr. L.J. 352 = 14 Ind. Cas. 896 = 35 M. 397.**

(137)—Ss. 25, 27—Pointing out places where stolen articles were concealed—If evidence of guilt—*See* PENAL CODE, ss. 392, 411, 395, 16 C.W.N. 238, 13 Ind. Cas. 783 = 13 Cr.L. J. 127.

(138)—Ss. 25, 30, 114 (*ills.*), 133, 157—Approver's evidence—Necessity for corroboration—Kind of corroboration required—Admissibility of previous statements to Police Inspector—Corroborative value of such statement—*See* PENAL CODE, s. 123-A. 1912 M.W.N. 207 = 13 Cr. L.J. 305 = 22 M.L.J 490 = 11 M.L.T. 1 = 35 M. 247 = 14 Ind. Cas. 849.

(139)—*Ss.* 25, 33—*Statements made by accused to police officers—Admissibility in evidence—Exclusion of confessions—Admissions and confessions — Distinction between — Exculpatory statements—Statements leading to discovery of guilt—Admissibility of—Witness not found—Absence not accounted for—Previous deposition of such witness—Inadmissibility.*—The law as laid down in s. 25, Evidence Act, does not say that all statements made to the police are inadmissible, but it excludes only confessions made to them: there being a distinction between mere admissions and confessions which are statements either directly admitting the guilt of the accused or statements which suggest the inference that he committed the crime with which he is charged. Further, the general rule is subject to that which admits statements leading to discovery, whether such statements amount to a confession or not. Statements made by the accused to the police pointing out the place where the alleged dacoity was committed by others, the place where after the dacoity he concealed himself in the paddy field, and also the houses where, he said, he went for assistance, may be regarded as information leading to discovery or as statements made by the accused as part of his defence. In either view no objection can successfully be taken to the admissibility of those statements in evidence. Statements made by the accused as to what according to his case actually happened or statements exculpating himself and put forward by way of defence are also admissible, notwithstanding that by other evidence it may be shown that they are inconsistent with truth. A useful test as to admissibility of statements made to the police is to ascertain the purpose to which they are put by the prosecution. If the prosecution rely on the statement of the accused as being true, then they may, and probably in many cases will be found to, amount to confessions. If, on the other hand, the statements of the accused are relied on not because of their truth but because of their falsity, they are admissible. They are in such cases brought forward to show what the defence of the accused is, and that as the defence is untrue this is a circumstance tending to prove the guilt of the accused. Where to a police officer the accused first said that the marks on his *dhoti* were tobacco stains, then he said they were stains of betelnut and lastly he said it was blood. Though this statement was of an incriminating character from which an inference might be drawn as to the guilt of the accused, yet, having regard to the fact that the attack was made at some distance from the accused, and that the *dhoti* might have been stained in an attack by others, and having regard also to other circumstances in the case, *held* that this statement of the accused should be excluded as not being admissible in evidence. Where there was no satisfactory evidence to prove that a witness could not be found, where no warrant said to have been issued for the production of the witness was produced and there was no evidence on record to *show* that an attempt was made to serve the warrant and the person who said that a search was made, did not say that he himself made the search for witness, *held* that, under these circumstances, no sufficient ground was made for the admission of a previous deposition of the witness under s. 33, Evidence Act, and that such deposition should have been excluded from consideration. In order to justify the inference of guilt, the prosecution must show that the inculpating facts are incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. EMPEROR v. KANGA MALI, **41 C. 601 = 15 Cr. L. J. 713 = 26 Ind. Cas. 161.**

(140)—*Ss.* 25, 91—*Confession to police, of having given false information—Ss.* 182 *and* 211, *I.P.C.*—Confession to a police officer of having given false information cannot be proved against the person making it charged under s. 182 or s. 211, Penal Code. QUEEN-EMPRESS v. NGA THET, **U.B.R. 1897—1901, Vol. I, 156.** (U.B.R. 1892—1896, Vol. I, 24, *R.*) [*F.*, 11 Cr.L.J. 489 = 7 Ind. Cas. 461 = U.B R. 1910, Cr. P.C. 2; *R.*, 5 Bur. L.T. 92 = 13 Cr.L.J. 465 = 15 Ind. Cas. 308.]

(141)—*Ss.* 25, 167—*Trial by jury—Misdirection—Improper admission of evidence—Retrial.*—Three persons were tried jointly for rioting. During the trial, an information lodged by one of them with the police was proved, and, in his charge to the jury, the Judge said "It (the information) contains an admission that all three accused persons were present at the occurrence." *Held*, the information was not a confession under s. 25 of the Evidence Act, and, as against the persons other than the informant, it amounted to an improper admission of evidence against them. "When a case has been tried before a jury, and the conviction has been set aside on the ground of misdirection, the accused

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is entitled to have his case retried by a jury, and, as a matter of procedure and in justice to the accused, this course should be adopted." Acting on this principle, the Court declined to exercise its powers under s. 167 of the Evidence Act, and sent the case back for retrial. SHEIKH HAZIR v. KING-EMPEROR, 11 **C L.J. 301 = 5 Ind. Cas. 315 = 14 C.W.N. 593.** (4 C.W.N. 576, *R.*)

(142)—*S. 26—Statement made by accused, during temporary absence of police—Police custody—"Magistrate and police officer," scope of the expressions.*—Where a woman charged with the murder of her husband was taken into the custody of the police, a friend of hers also accompanying her, and the policeman in charge of the woman left her with her friend for the purpose of procuring a fresh horse, *held*, that any confession made to the friend accompanying her, while the policeman was away, would not be admissible in evidence, as the prisoner should be regarded to have been in the custody of the police, notwithstanding the temporary absence of the policeman. EMPRESS v. LESTER, **20 B. 165.** [*R.*, Rat. Un. Cr. C. 855.]

(143)—*S. 26—Statement by accused—"Police officer or Magistrate"—Scope of the expression.*—Where an accused person is brought to a Magistrate for recording a confession, while the police officer, in whose custody he had been, remained outside ready to capture him if he ran away, the accused should be treated as still being under police custody. (20 B. 165, *R.*) The words "police officer and Magistrate," in s. 26 of the Evidence Act, include police officers and Magistrate in Native States. QUEEN-EMPRESS v. LAKSHMYA *bin* BHIMA, **Rat. Un. Cr. C. 855 = Cr. Rg. 22 of 1896.**

(144)—*S 26*—Chowkidar, *whether a police officer—Quære.*—Whether a *chowkidar* is a police officer within the meaning of s. 26. NAZIR JHARUDAR v. EMPEROR, 9 **C.W.N. 474 = 2 Cr. L.J. 255.**

(145)—S. 26—*See* ACT I OF 1868, s. 1, cl. 13, 2 M. 5 = 2 Weir 123.

(146)—S. 26—*See* Nos. 32, 33, 76, 77, 99 to 105, 126 to 136, *supra* and No. 169, *infra.*

(147)—*Ss. 26 and 27—Statements made by accused persons, while in police custody—Discovery of stolen property by one of them.*—Two accused persons admitted the offence imputed to them to the persons who assisted the police in the investigation. The first accused accompanied the police and others to his house, where certain of the stolen property was discovered. The second accused was not taken there till after the discovery. *Held*, that the conviction of the second accused was not sustainable, as an admission of the accused made while in police custody, was inadmissible under s. 26, and the admission of the first accused was inadmissible against the second under s. 27. QUEEN-EMPRESS v. JAI SINGH, **12 P.R. 1900, Cr. = P.L R 1900, 56, Cr.** [*F.*, 10 Ind. Cas. 278 = 161 P.L.R. 1911 = 12 Cr.L.J. 236.]

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(148)—*Ss. 26, 27—Statement by accused that he stole property and that it will be found in a rubbish heap—Former part—Inadmissibility in evidence—Production of property from that place by accused—Whether latter part of statement relates to discovery—Admissibility in evidence.*—An accused person made the following statements, *viz.*, that he and another accused stole the missing money from a *dabbi* and that the stolen money will be found in a heap of rubbish close to his house. Immediately after making these statements, he went to that rubbish heap in the presence of two police constables and of witnesses who made the search in his house, and took out certain coins and metal plates similar to the one kept in the *dabbi*. *Held* that, on the above facts, the accused was rightly convicted. The statement that the accused himself committed the offence is not admissible in evidence (31 M. 127, *R.*). But the portion of the statement signifying that the property stolen from the *dabbi* about which the police were then making an investigation, will be found in the rubbish heap, is a statement which is distinctly related to the discovery of the stolen property and is therefore clearly admissible. MANJUNATHAYA v. KING-EMPEROR, **26 M.L. J. 352 = 15 Cr. L.J. 533 = 24 Ind. Cas. 845.** (14 B. 260, *F.*)

(149)—*Ss. 26 and 45 to 51—Confession made to a police officer — Recording opinion of police officer as evidence.*—A confession made to a police officer, but not in the immediate presence of a Magistrate, is inadmissible. Recording the opinion of a police officer as evidence regarding the points in the case under enquiry, which he considers to establish the guilt of the accused person is an irregularity. QUEEN-EMPRESS v. ALI BAKHSH, **S.C. 98, Oudh.**

(150)—*S. 27—Scope of.*—*Held* further, that s. 27, Evidence Act, is a proviso to the preceding sections which deal with what may or may not be proved as against the person making a confession. It has nothing whatever to do with what may or may not be proved as against other persons, when the person who made the alleged confession is not himself on his trial but is appearing as a witness in the case. AMAN ALI v. KING-EMPEROR, **13 O.C. 309 = 8 Ind. Cas. 379 = 11 Cr. L.J. 631.**

(151)—*S. 27—Fact not directly discovered from information given to the police—Inadmissibility of such information.*—A fact discovered in consequence of the information which an accused person gives the police must be directly discovered in consequence of the information given by the accused to make evidence as to the information admissible under s. 27, Evidence Act. MAUNG THAYA v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 363.**

(152)—*S. 27—Confessions to police officer, when admissible under.*—In order that a statement in the nature of a confession made by an accused person to a police officer at the time of producing property may be admissible under s. 27, it must be information in consequence

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of which a fact is discovered and does not include an explanatory statement made at the time, or after discovery, of the fact. EMPRESS v. GANGARAM SONAR, **10 C.P.L R. Cr. 25.**

(153)—*S. 27—Confession — Admissibility.*—Where, in a case of murder, on searching the accused's house, an axe was found by the police, which the accused then admitted to the police was the instrument with which he committed the murder; *held*, that the statement was inadmissible in evidence under s. 27 of the Evidence Act and that the fact discovered by such a statement must be a material thing, and not a mere mental state induced in another person by that statement EMPEROR v. CHAITU GAHERA, **16 C.P.L.R. 122.** (10 C.P. L.R. 75, *F.*)

(154)—*S. 27—Crim. Pro. Code* (1882), ss. 380 *and* 408—*Statement by accused in police custody—Appeal.*— *Held*, that under s. 408, Crim. Pro. Code, 1882, an appeal against a sentence passed by a District Magistrate exercising powers under s. 30, Crim. Pro. Code, lay to the Chief Court, in a case in which the District Magistrate passed a sentence against any of the accused, which was subject to the confirmation of the Court of Session. *Held*, also, that s. 27, Evidence Act, does not permit statements made by an accused person, while in police custody, to be proved, when he gave no clue which led to the discovery of the stolen property. QUEEN-EMPRESS v. JAI SINGH, **P.L.R. 1900, Cr. p. 56=12 P.R. 1900, Cr.**

(155)—*S. 27—Information to police—Admissibility*—Where the police were enabled to go to a place where stolen property was discovered on account of certain information given by the accused *held*, that so much of the information as related to the facts discovered could be proved notwithstanding that the information was given while the accused was in police custody. GANGU v. EMPRESS, **30 P.R. 1885, Cr.** [*R.*, 28 P.R. 1894, Cr.]

(156)—*S. 27—Statements by prisoner under police custody*—The provision in s. 27 of the Evidence Act for the admission of a certain class of statements made by prisoners while under police custody, is an exception to the general rule excluding all statements made while in such custody, and as such, its operation must be confined to only such statements as properly fall within the description therein given. If they amount to confessions, they ought to be excluded. REG. v JORA HASJI, **11 B.H C. 242** [*R.*, 3 B. 12, 6 C. 530=7 C. L.R. 541, 4 A. 198. 6 A. 509, F B., 10 B 595, Rat. Un. Cr. C. 285, 12 M. 153, 14 B. 260, F. B , Rat Un. Cr. C. 829, 833, 952, L.B.R. 1893—1900, 363.]

(157)—*S. 27—Discovery of property by accused after inducement by police officer.*—The pointing out of the jewels of a child, with whose murder the accused was charged, after an inducement improperly held out to her by a constable, was held to be a relevant fact, legally admissible in evidence. *In re* VEMULADA JANAKI, **2 Weir 736.**

(158)—*S. 27—Confession—Accused pointing out stolen property concealed in a pond.*—The accused pointed out the place in the pond whence the bundle of stolen ornaments was recovered. The prosecution alleged that the accused had said to the police that he had buried the things in the pond. *Held*, that the statement of the accused was inadmissible in evidence. KAKA SINGH v. THE KING EMPEROR, **155 P.L R. 1908=21 P.W.R. 1908, Cr. =8 Cr. L J. 460.**

(159)—*S. 27— Property discovered in consequence of information—Indian Penal Code, s.* 395 *— Dacoity—Cash — Identification —Number of men concerned—Severity of sentence* —Cash is generally incapable of identification; but the coincidence that each and every one of a number of accused was found in possession of a considerable sum in cash, along with other things which were undoubtedly stolen from the complainant, and that a very large sum in cash was actually taken away by the dacoits, and that the accused can give no satisfactory account as to how they came to be in possession of so much cash, leads to the inevitable conclusion that the cash also formed the subject of the dacoity. As regards the discrepancy between the number of men alleged by the complainant to have actually entered the house and the number of men concerned in the dacoity, it must be assumed that there must have been many more dacoits than those who actually entered the house. Guard is always kept outside to prevent surprise and keep away any villager who may attempt to interfere. Having regard to the wording of s. 27, Evidence Act, the admission by the accused that their share of the proceeds of the dacoity would be found with men whom they named, can be legally proved against them. In awarding punishment, two matters are to be considered: —(1) What punishment does the individual deserve having regard to the gravity of his offence. (2) Is an unusually heavy sentence necessary in any particular case to protect the interests of the public at large by acting as a deterrent to others. Where all the accused (19 in number) were sentenced to transportation for life, *held* that, so far as the individual accused were concerned, a much lighter sentence would suffice, as there was no allegation that any of them had been previously convicted, and as by their wholesale transportation for life, a large number of innocent beings—the members of their families—will suffer directly or indirectly. As regards the other reason that the prevalence of dacoities in Upper Sind necessitated exemplary punishment, *held* that sentences, on 19 men, in one case, of seven years' rigorous imprisonment, would have the desired effect. CROWN v. HUZURI, **2 S.L R. 27, Cr.=10 Cr L J. 239.**

(160)—*S. 27—Accused making detailed statement to Magistrate—No subsequent discovery—*

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Description of manner in which offence committed not relevant.—Where an accused person made a statement to a Magistrate describing *in extenso* the occurrence of the crime, but there was no discovery of the articles subsequent to the making of the statement, the description of the manner in which the crime was committed was held to be not relevant. A confession of murder made to a Police constable is not at all confirmed by the prisoner saying "that is the place where I killed the deceased," and when, starting from the pointing to a ditch or tree, a long narrative of transactions, some of them altogether remote from any connection with the spot indicated, is allowed to be deposed to as confessed by a prisoner, the intention of the Evidence Act is not fulfilled but defeated. EMPRESS v. RAMA BIRAPA, **3 B. 12.** [*R.*, Rat. Un. Cr. C. 286=10 B. 595.]

(161)—*S.* 27—*No proof of discovery having been made.*—Where an accused person made a statement to the Police of facts which were already within their knowledge, *held*, that, as it did not previously appear whether anything was discovered in consequence of the information, the statement could not be used against him under s. 27, Evidence Act. PIARA SINGH v. EMPRESS, **11 P.R. 1900, Cr.** [*F.*, 12 Ind. Cas. 981=15 P.R. 1911, Cr.=12 Cr.L.J. 605.]

(162)—*S.* 27—*Confession—Inducement from person in authority—Magistrate recording confession—Duty of Magistrate trying case—When confession retracted.*—Accused A, on the 23rd April, made certain disclosures to the Police and pointed out certain articles to them. On the 25th April, he told them that he had taken part in the crime (dacoity) and on his statement one B was arrested next day. A continued to remain in company of the Police but unarrested and went about from place to place with the Inspector for three days. Then he was formally arrested and sent to a Magistrate who took down his confession and to whom the accused candidly expressed his hope that, by confessing, he might secure a pardon, and the Magistrate acquiesced in the idea and even confirmed it. *Held*, that the confession was inadmissible as it was quite impossible to hold that it did not appear to have been caused by some inducement from some person in authority. SHWE HMON v. EMPEROR, **14 Cr. L.J. 417=20 Ind. Cas. 401=6 Bur. L.T. 109.**

(163)—*S.* 27 — *Incriminating statement of accused in Police custody while pointing out or producing instrument with which or the spot where the offence is alleged to have been committed—Blood stains on a zemindar's clothes—Police Diaries to be used in the interests of the accused—Crim. Pro. Code, s.* 162.—Incriminating statements by way of confession, made by an accused person while in Police custody, when producing or pointing out articles connected with the commission of a crime, are inadmissible under s. 27 of the Evidence Act. The statement of an accused that he buried the weapon of the offence in a certain place is relevant, but not that part of the statement that it was the weapon with which he had committed the crime. So also the statement that he would point out a certain spot and the evidence that at the spot indicated blood stains would be found would be admissible, but not that part of the statement that it was at this spot that he had committed the crime. Where the accused produces the article himself, though the fact that he actually produced it at a particular place may be proved, the accompanying statement to the effect that he buried it there is inadmissible in evidence. (10 B. 595, *F.*) Where an accused person has throughout consistently refused to make any confession before a Magistrate and there is practically no evidence at all against him, his incriminating statement under s. 27 of the Evidence Act must necessarily be received with the greatest caution and suspicion, although deposed to by the respectable Police Officers and the village authorities. The Police Diaries, &c., should be referred to under s. 162, Crim. Pro. Code, in the interest of the accused person, for checking the evidence of the prosecution witnesses, to see how far their statements can be relied upon. Blood stains on a Zemindar's clothes are very seldom incriminating. SANTA SINGH v. CROWN, **15 P.W.R. 1913, Cr.=19 Ind. Cas. 190=14 Cr. L.J. 190=171 P.L.R. 1913.**

(164)—*S.* 27—*Statements after discovery of stolen article—Not relevant — Production of stolen property—Effect—Presumption of guilt.*—Under s. 27 of the Evidence Act, a statement made after the production and discovery of the stolen property, and not leading to the discovery of the same, is not relevant. The question whether the mere production of a stolen article raises a presumption of guilt is one of fact. CROWN v. PHOTO, **5 S.L.R. 257 =15 Ind. Cas. 801=13 Cr.L J. 529.**

(165)—*S.* 27—*Information given by accused to Police Officer, how far admissible in evidence—Admission by accused of his guilt before Sub-Inspector—Crim. Pro. Code, s.* 342—*Statement of accused in answer to questions put by Magistrate admissibility of, in evidence against accused — Confession — Magistrate, power of, to put questions to accused—Questions of inquisitorial nature not to be put.*—Where a Police Sub-Inspector, the investigating officer in a murder case, was *inter alia* informed by the accused of the fact that the latter had committed the murder, and the Sub Inspector was allowed to depose to regarding this information: *Held*, that such information not being admissible in evidence under s. 27 of the Evidence Act, the Sub-Inspector should not have been allowed to state in Court that the accused said that he had committed the murder. The provisions of s. 342, Crim. Pro. Code, apply to all sorts of proceedings in Magistrates' Courts, whether the case is one triable by a Court of Sessions or otherwise. Under s. 342, Crim. Pro. Code, a Magistrate is empowered at any time and without any previous warning to put questions

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to the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, and under sub-s. (3) of the same section the answers which the accused gives to the questions so put may be used in evidence against him. The admissibility of the accused's statement thus made is not necessarily governed by those sections of the Evidence Act which relate to the admission of confessions, as the statement is not made *extra*-judicially. But under s. 342, Crim. Pro. Code, a Magistrate is not justified in putting to the accused questions of an inquisitorial nature. MALIK HUSSAIN v. EMPEROR, **15 Cr. L.J. 474=24 Ind. Cas. 562.**

(166)—S. 27—Fact already discovered by other means—Accused's subsequent statement relating to same fact—Admissibility—*See* APPROVER, 9 Ind. Cas. 232=12 Cr. L J. 35=3 P.W.R. 1911, Cr.

(167)—S. 27—*See* JOINDER OF CHARGES—MISJOINDER OF CHARGES, 11 C.L J. 182.

(168)—S. 27—*See* Nos. 32, 33, 76, 78, 101 to 108, 133, 134, 135, 137, 147, 148, *supra.*

(169)—*Ss.* 27, 25 *and* 26—*Applicability of s.* 27 *to ss.* 25 *and* 26.—S. 27 of the Evidence Act applies to s. 25 as well as to s. 26. QUEEN-EMPRESS v. NANA, **14 B. 260, F.B.**

(170)—Ss. 27, 30—*See* CONFESSION—CONFESSIONS BY CO-ACCUSED—ADMISSIBILITY, 9 C.P.L.R. Cr. 37.

(171)—Ss. 27 and 30—*See* JUDGE AND JURY, 18 M.L.J. 66=31 M. 127=3 M.L.T. 270=7 Cr. L.J. 325.

(172)—S. 28—*See* NOS. 104, 105, *supra.*

(173)—*S.* 29—*Inadmissibility of evidence of discovery made by several persons—Theft—Tracks compared several days after the occurrence.*—*Held*, that, where more than one accused person in custody of the Police point out this or produce that jointly, it is usually impossible to be sure which of them really does the pointing out or the production and which simply follows the other. Consequently such an evidence of joint discovery is inadmissible against any of the accused persons, particularly where the witnesses on this point are not precise and trustworthy. (8 P.W.R. 1909, Cr., *F.*) *Held*, also, that track evidence is not of any value whatever, where the comparison has been made 8 or 9 days after the affair. PATHANA AND WALLI v. CROWN, **9 P W.R. 1914, Cr.=63 P.L.R. 1914=15 Cr. L.J. 499=24 Ind. Cas. 587.**

(174)—S. 29—*See* MURDER, 3 Ind. Cas. 622 =8 P.W.R. 1909, Cr.

(175)—S. 29—*See* Nos. 77, 79, *supra.*

(176)—*S.* 30, *scope of.*—S. 30 of the Evidence Act only relates to *confessions* made by accused persons who are being jointly tried for the same offence. EMPRESS v. NAGIA, **5 C.P.L.R. Cr. 9.**

Evidence Act (I of 1872)—*continued.*

(177)—*S.* 30—*Confessions of co-accused—Admissibility—Value.*—In order that the confession of a co-accused may be admissible under s. 30 of the Act, it must implicate himself (the confessing person) substantially to the same extent as it implicates the persons against whom it is to be used, in the commission of the offence for which the prisoners are being jointly tried. QUEEN EMPRESS v. DUBAR, **S C. 153, Oudh.**

(178)—*S.* 30—*Confession of co-accused, value of as against other accused.*—Where a person admits his guilt to the fullest extent, and exposes himself to the pains and penalties provided for his guilt, there is a guarantee for his truth, and the Legislature provides that his statement may be considered against his fellow prisoners charged with the same crime. EMPRESS v. DAJI NARSU, **6 B. 288=6 Ind. Jur. 480.** [*R.*, Rat. Un. Cr. C. 436.]

(179)—*S.* 30—*Confession by co-accused.*—A confession which does not amount to such an admission of guilt as is contemplated in s. 30 of the Evidence Act, though it may be accepted for what it is worth against the accused making it, cannot be taken into consideration against other accused persons. REG v. SADOO, **Rat. Un. Cr. C. 84.**

(180)—*S.* 30—*Confession by co-accused.*—A confession duly made, at any time, by one of several accused persons under trial jointly for the same offence, can be used under s. 30 of the Evidence Act. The section is not to be read as though the words "at the trial" were inserted after "made" and the word "recorded" substituted for "proved." QUEEN-EMPRESS v. TANGA, **Rat. Un. Cr. C. 510=Cr. Rg. 30 of 1890.**

(181)—*S.* 30—*Confession by co-accused.*—Confessions made by an accused person may be considered against persons who are tried with him, but they cannot be accepted as evidence of any fact necessary to constitute the offence. *In re* KALIYAPPA GOUNDAN, **2 Weir 741.**

(182)—*S.* 30—*Confession by co-accused.*—In order that a confession of an accused person may be admissible as against the other accused tried with him, it is not necessary that the confession should have been made in the latter's presence. HIGH COURT PROCEEDINGS, 31ST JULY 1885, NO. 313, JUDICIAL, **2 Weir 745.**

(183)—*S.* 30—*Confession by co-accused.*—The confession of a prisoner affecting himself and another person, who was being tried with him for the same offence, is, when duly proved, admissible *as evidence* against both; but a confession, unsupported by other testimony, is evidence of the weakest kind against a co-accused. The Court must, in each case, decide what weight should be attached to it. RAGHBIR *alias* BIRU v. KING-EMPEROR, **11 O.C. 328=8 Cr.L.J 393.** (4 C. 483, 22 A. 445, A.W.N. 1884, 38, 15 B. 66, 29 A. 434, *R.*; 4 O.C. 69, 6 O.C. 204, *Diss.*) [*R*, 11 Cr. L.J, 71=4 Ind. Cas. 884=12 O.C. 418.]

Evidence Act (I of 1872)—*continued.*

(184)—*S.* 30 — *Statement by co-accused—Its evidentiary value as against the other accused —" Taken into consideration," meaning of the expression.*—The words " taken into consideration " in s. 30 of the Indian Evidence Act mean " taken into consideration " for the purpose of arriving at a conclusion of fact, and though a co-accused's statement is not *technically evidence* within the definition given in s. 3 it may still be used *quantum valeat* for the basis of a reasonable inference and, if a jury think it sufficiently supported by a partial or qualified admission of guilt on the part of the accused himself and by admitted physical facts pointing to his connection with the crime imputed to him, they are not precluded by law, any more than by reason, from a finding of guilty thus sustained. QUEEN-EMPRESS v. BAYAJI, **Rat. Un. Cr. C. 311=Cr. Rg. 64 of 1886.** [*R.*, 2 Bom. Cr. C. 143=15 Bom. L.R. 975.]

(185)—*S.*30—*Confession by co accused—"Court may take into consideration," meaning of.*—The meaning of the words "the Court may take into consideration" such confession as against such other persons as well as against the person who makes such confessions is that, if there is other evidence which, if true, would if establish the charge, the confession of a person being tried jointly for the same offence may be taken into consideration by the Court and may be used for the purpose of corroborating the other evidence KHANJAN v. QUEEN-EMPRESS, **4 O.C. 69.** [*R.*, 8 Cr. L.J. 393=11 O.C. 328.]

(186)—*S.* 30—" *Being tried jointly," meaning of.*—The words " are being tried jointly " which occur in s. 30 of the Evidence Act refer to the initiation of the proceedings before the particular judicial officer who deals with the case under ch. XXI of the Crim. Pro. Code. To hold otherwise might result in the exclusion of confessions by one of the accused before him, as s. 253, Crim. Pro. Code, seems to contemplate that the accused should be examined before the charge is actually framed. PAT THA U v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 642.**

(187)—*S.* 30—" *Offence" in section whether includes abetment of offence also—Penal Code, s.* 108, *expl.* (4)—*Abetment.*—It is very improbable that the Legislature having before it the definition contained in s. 108, expl. (4), Penal Code, should, in enacting s. 30, Evidence Act, have omitted to explain that the term " offence " contained in the latter section included the " abetment of an offence " also, if the intention really was that s. 30 was to be so understood. But, if the offence abetted is committed as the result of an abetment and the abettor is present at its commission, the abettor must be held to have committed the substantive offence. QUEEN-EMPRESS v. KALIDIN, **S.C. 143, Oudh.**

(188)—*S.* 30—*Joint trial of abettor and principal offender—Confession by one of them.*—In a joint trial of two persons for the same offence, a confession by one of them implicating the other in acts which amount to abetment of the offence cannot be considered as against him. TEJA v. EMPRESS, **39 P.R. 1885, Cr.**

(189)—*S.* 30—*Confession of co-accused—Its value—Approver's evidence, corroboration of.*—Though under s. 30, confessional statements of co-accused implicating the other accused may be taken into consideration as against the latter, they are not evidence on which a conviction can be based. The utmost value that can be claimed for them is, that, if there is other untainted evidence against the accused, they may be considered together with such evidence. When the other evidence is not untainted, it is no legal corroboration of the tainted evidence of the approver. They are of less value, for, while a prisoner under trial has the advantage of cross examining the approver, the statement of his fellow-prisoner is subject to no such test; nor is it given under the sanction of a solemn affirmation. An approver's evidence should be corroborated not only as to the general facts, but also as to the individual prisoners charged. *In re* ALAGAPPAN BALI, **2 Weir 742.**

(190)—*S.* 30—" *Court," scope of the word.*—The word " Court," in this section means and includes, in a trial by jury, both Judge and Jury. EMPRESS v. ASHOOTOSH CHUCKERBUTTY, **4 C. 348=3 C.L.R. 270, F.B.=1 Shome L.R. Cr. 79.** [*F.*, Rat. Un. Cr. C. 452.]

(191)—*S.* 30—*Statement of co-accused—Consideration—Duty of Judge in trials by jury—Self-exculpatory statement — Weight.* — The statement of a fellow prisoner jointly tried is by itself evidence of the weakest kind and it is the duty of the Judge to point this out to the jury. Where an accused person makes a confession exculpating himself and inculpating the other accused, the confession must be taken together and it is evidence both for and against the prisoner. The jury may, if they think proper, believe one part of it and disbelieve the other. QUEEN-EMPRESS v. JHINA VALI, **Rat. Un. Cr. C. 436.**

(192)—*S.* 30—*Confession of co-accused—Same offence—I P.C., ss.* 304 *and* 325.—The confession of one accused cannot be taken into consideration as against another unless they are tried for the same specific offence. Offences under ss. 304 and 325 of the Penal Code do not constitute "the same offence" though they arose out of the same facts. QUEEN EMPRESS v. MALLAPPA, **Rat. Un. Cr. C. 450=Cr. Rg 9 of 1889.** QUEEN-EMPRESS v. SHIDDA, **Rat. Un. Cr. C. 450=Cr. Rg. 9 of 1889.**

(193) — *S.* 30 — *Confession of co-accused—Accomplice—Value of evidence.*—A confession of a co-accused person, is not even of the same probative value as the evidence of an accomplice taken on oath. It is wrong to treat the former as testimony. QUEEN-EMPRESS v. GANAPABHAT, **Rat. Un. Cr. C. 456=Cr. Rg. 11 of 1889.** [*R* , 2 Bom. Cr. C. 143=15 Bom. L.R. 975.]

Evidence Act (I of 1872)—*continued.*

(194)—*S.* 30—*Retracted confession by co-accused, value of—Meaning of s.* 30—*Per Knox, J.*—A prisoner may be convicted on his own confession without any corroborating evidence, even when such confession is retracted. If a Judge believes that the confession contains a true account of that prisoner's connection with the crime, he is bound to act, so far as that prisoner is concerned on the confession which he believes to be true. The law does not anywhere forbid the Courts in this country from considering against persons tried jointly for the same offence a confession made by one of such persons affecting himself and the persons who were being tried jointly, when such confession has been subsequently withdrawn. To introduce such a qualification would be not to follow the law as it stands in s. 30, Evidence Act, but to legislate. *Per Richards, J.*—The meaning of the legislative enactment in s. 30 of the Evidence Act that a confession may be taken into consideration by the Court is that the Court may treat the confession, in the circumstances provided for by the section, as evidence. A conviction of an accused person even on the unsupported evidence of a co-accused would not be illegal. But, in all cases, the Court should approach the consideration of such evidence with the greatest caution and with at least the caution with which the Courts have always approached the consideration of the evidence of an accomplice or an informer. If the Court believes the confession, it is not unlawful to convict. EMPEROR v. KEHRI, **29 A. 434=4 A.L.J. 310=A.W.N. 1907, 140=5 Cr.L J. 360.** (20 A. 183, *F.*; 4 C. 483 *Disc.*; 19 W.R. Cr. 16, *R.*). [*F.*, 12 Cr.L.J. 276=10 Ind. Cas. 857=91 P L.R. 1911=5 P.R. 1911, Cr.=27 P. W.R. 1911; *Appr.*, 6 Bur. L.T. 47=14 Cr.L.J. 179=19 Ind. Cas. 179, 2 Bom. Cr. C. 143=15 Bom. L.R. 975, 8 Cr.L.J. 393, 11 Cr.L.J. 71=4 Ind. Cas. 884=12 O.C. 418, 14 Cr L.J. 566=U.B.R. 1913, p. 170=21 Ind. Cas. 166, 11 O.C. 328].

(195)—*S.* 30 — *Retracted confession of co-accused—Value of.*—The retracted confession of accomplices may be taken into consideration under s. 30, Evidence Act, where there is evidence tending to conviction, but they cannot form the basis of a conviction when there is no evidence whatever. REG. v. TIMAVA, **Rat. Un. Cr. C. 103.** [*R.*, 15 Bom. L.R. 975=2 Bom. Cr. Cas. 143.]

(196)—*S.* 30—*Statement of co-accused—Value of—Motive.*—Statements of accomplices, co-prisoners who may not be cross-examined and who may have motives for telling lies against the other co-prisoners, cannot be accepted as a criterion of guilt or innocence, especially in a capital case, and where they have retracted their stories. QUEEN-EMPRESS v. SAHADU LAKSHMAN, **Rat. Un. Cr. C. 771=Cr. Rg. 35 of 1895.**

(197)—*S.* 30—*Confession—Joint trial—Plea of guilty by one of the accused—Use of confession against the rest—Crim Pro. Code, ss* 271 *and* 342.—Where an accused person has pleaded guilty and the Court is prepared to convict on that plea, it is contrary to the spirit of the law to postpone the conviction so that the person who has pleaded guilty may technically be said to be tried jointly for the same offence with the other co-accused, and any statement in the nature of a confession that he may make used against them. EMPEROR v. KHEORAJ, **A.W N. 1908, 241=30 A. 540=5 A.L J. 505=4 M L.T. 398=8 Cr L.J. 380.** (23 A. 53, *F.*) [*R.*, 9 C.L.J. 291=13 C.W.N. 552=10 Cr. L.J. 484=4 Ind. Cas. 57.]

(198)—*S.* 30—*Statement by prisoner in absence of jointly charged co-prisoners—Conviction—Validity.*—A conviction of each of the prisoners, jointly charged with the same offences based chiefly upon the statements made by his co-prisoners during his absence from Court, is untenable. EMPRESS v. CHANDRA NATH SIRKAR, **7 C. 65=8 C L R. 352=4 Shome L.R. 108.** [*F.*, 6 B. 124, 13 C.L.R. 275.]

(199)—*S.* 30—*Uncorroborated confession of co-accused, Conviction—Validity.*—A conviction cannot be based merely on uncorroborated statements contained in the confession of a co-accused. NGA PO MYA v. QUEEN-EMPRESS, **L.B.R. 1872–1892, 388.** [*R.*, 21 Ind. Cas. 166=U.B.R. 1913, 170.]

(200)—*S.* 30—*Admission by co-accused — Admissibility—Trial by jury—Misdirection*—Statements made by some of the accused persons which do not amount to a confession, nor incriminate the person making them are not admissible in evidence against any person other than those making them. An omission to point out this to the jury amounts to a misdirection. TAJU PRAMANIK v. QUEEN-EMPRESS, **25 C. 711=2 C.W.N. 369.**

(201)—*S.* 30—*Co-accused pleading guilty—Admissibiilty of his confession against the other accused.*—The first and the second accused were committed for trial charged with murder and abetment of murder respectively, The former pleaded guilty *Held*, that the confession of the former could not be used against the *latter*, as the former was no longer on his trial. PIARA SINGH v. EMPRESS, **11 P R. 1900, Cr.** [*F.*, 12 Ind. Cas. 931=15 P.R. 1911, Cr.=12 Cr. L.J. 605.]

(202)—*S.* 30—*Evidence of co-accused.*—Where two persons were jointly accused of theft, but the Magistrate issued process against one of them only, the evidence of that person against whom process was not issued adduced on behalf of the accused who was on his trial was held to be admissible in evidence. MOHESH CHANDRA KOPALI v. MOHESH CHUNDER DOSS, **10 C. L R. 553.**

(203)—*S.* 30—*Confession by one accused—Admissibility against co-accused—Corroboration—Value of such confession.*—A retracted confession may be taken into consideration under s. 30, Evidence Act, as against persons tried jointly with the confessing accused for the same offence, but as a general rule, such confession should not be considered as supplying sufficient evidence for the conviction of co-accused, unless

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it is corroborated by independent testimony in material particulars affecting such co-accused. No hard and fast rule can be laid as regards the weight to be attached to such a confession, and it must vary in each case with special reference to its particular facts and to the intrinsic value of the confession. ATAYA v. CROWN, **5 P.R. 1911, Cr.=91 P.L.R. 1911=27 P.W.R, 1911 =12 Cr. L.J. 276=10 Ind. Cas. 857.** (29 A. 434, *F.*; 28 P.W.R. 1907, Cr., *R.*)

(204)—*S.* 30—*Confession—Joint trial—Plea of guilty by co-accused—Removal from dock—Trial -Statements of co-accused—Not admissible.* —Where five persons were charged with dacoity, of whom four pleaded guilty and one not guilty, and where, after removing the four, whose plea of guilty was accepted, from the dock, the trial was proceeded with against the one: *Held*, that the statements made by those who pleaded guilty cannot under s. 30 of the Evidence Act, be proved and taken into consideration against the one who pleaded not guilty. EMPEROR v. KERAMAT SIRDAR, **38 C. 446= 12 Ind. Cas. 87=12 Cr. L.J. 479=16 C.W.N. 49.**

(205)—*S.* 30—*Co-accused pleading guilty—Confession by — No evidence against other accused—S.* 271, *Crim. Pro. Code.*—Where a co-accused pleaded guilty and his plea was accepted by Court, a confession made by him is one made by one who was not tried along with the other co-accused and cannot be taken into consideration against them. KANHAYA v. CROWN, **15 P R. 1911, Cr. =12 Ind. Cas. 981= 12 Cr. L.J. 605.** (25 M. 61, P.C., 19 B. 195, 23 M. 151, 11 P.R. 1900, Cr., *F.*)

(206)—*S.* 30—*Confession of co-accused—Independent corroboration — Court may take into consideration— Evidence.—Per* Macleod, *J.*—There is nothing in s. 30, Evidence Act, which prevents a Court from convicting after taking the confession of a co-accused into consideration. But the High Courts in India have laid down a rule of practice, which has all the reverence of law, that a conviction founded solely on the confession of a co-accused cannot be sustained. The term "confession" in s. 30, Evidence Act, is not restricted to an unretracted confession, as once, a confession is proved it may be taken into consideration. The confession of one co-accused cannot be said to be corroborated by the confession of the other co-accused. A Judge sitting with assessors ought never to convict an accused solely on the confession of a co-accused, since he has no materials before him to enable him to decide whether as against the accused it is true or false. If he is sitting with a jury he has a discretion either to withdraw the confession from the jury or to put it before them with the direction that they ought to acquit unless it is corroborated in material particulars by independent evidence. *Per Beaton, J.*—The confession of a co-accused falls within the definition of evidence in the Evidence Act. The words "may then be taken into consideration against the person implicated as well as against the person making it," in S. 30, make the confession, which is already evidence in the case, evidence against the person implicated as well as the other accused. *Per Shah, J.*—The confession of a co-accused may be taken into consideration under s. 30, Evidence Act, along with other *evidence* in the case; but if there is no evidence in the case outside these statements, no conviction based only upon the confessions of the co-accused is good in law. Obvious considerations of justice require that a Court, before acting upon such statements, should insist upon independent corroboration from other evidence in the case in material particulars, particularly as to identity. EMPEROR v. GANGAPA KARDEPA, **15 Bom L.R. 975=2 Bom Cr. C. 143=21 Ind. Cas. 673=14 Cr. L.J. 625=38 B. 156** [*F.*, 15 Cr. L.J. 417 =24 Ind. Cas. 153=1914 M.W.N. 363.]

(207)—*S.* 30—*Prosecution of* 18 *accused before a Magistrate—Accused called on to enter upon their defence—Two of the accused then pleading guilty and implicating all the accused—Trial of all together—Value of the confession of the two accused as against the rest.*—In this case 18 accused were prosecuted before a Magistrate, and after the close of the prosecution evidence and the framing of the charge and after the accused were called upon to enter on their defence, two of them pleaded guilty to the charge and implicated all the accused. The trial proceeded against all of them together, and the Magistrate acted on the confessional statements of the two accused and convicted all the 18 accused. *Held*, the two accused were 'jointly tried' with the others within the meaning of s. 30 of the Evidence Act, and the confessions of the former could be taken into consideration against the rest. *In re* YEMPALLI BALI REDDY, **14 M.L.T. 453=22 Ind. Cas. 157= 15 Cr. L.J. 13.** (22 M. 491, 17 A. 524, 19 B. 195, *R.*)

(208)—*S.* 30 — *Confession made before a Magistrate in a Native State—Admissibility of confession—Magistrate must prove the confession.*—A confession made by an accused before a Magistrate in a Native State cannot be admitted into evidence under s. 30 of the Evidence Act. The Magistrate recording the confession must be examined to prove the confession, before it can be used as evidence. EMPEROR v. DHANKA AMRA, **16 Bom. L R. 261=2 Bom. Cr. C. 197=15 Cr. L.J. 433=24 Ind. Cas. 169.**

(209)—*S.* 30—*Confession under— Admissibility.—Held*, (*a*) that a confession in order to be admissible under s. 30 of the Evidence Act, must implicate the confessing prisoner substantially to the same extent, as it implicates the person against whom it is to be used; (*b*) that, since the amendment of the section, confession which implicates its author merely of abetment, may nevertheless be used as a confession against the other co-accused who is therein charged with being the principal offender; but a statement alleging that the confessing prisoner was forced by threats of death, to remain an impassive agent in the

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crime, is not a "confession" within the meaning of, and for the purposes of, s. 30 of the Evidence Act. Where the Court was not satisfied that accused's statement, subsequently retracted, correctly represented facts, but which, even if accepted as true, did not amount to a confession of guilt of the offence or its abetment, the statement was not admitted in evidence against the accused himself, and there being no other evidence, the accused was acquitted. GUL HASSAN v. KING-EMPEROR, **24 P.R. 1910, Cr.=193 P.L.R. 1910=38 P.W.R. 1910, Cr.=8 Ind Cas. 250=11 Cr. L.J. 604.**

(210)—S. 30—*See* ABETMENT, 3 P.R. 1879, Cr.

(211)—S. 30—*See* ACCOMPLICE—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, 31 P.R. 1866, Cr.

(212)—S. 30—*See* ACCUSED PERSON, 9 C.L.J. 291=13 C.W.N. 552.

(213)—S. 30—*See* CRIM. PRO. CODE, 1898, s. 164, 2 A L.J. 100=2 Cr. L.J. 59.

(214)—S. 30—*See* CRIM. PRO. CODE, 1898, ss. 423, 435, 439, 70 P.L.R. 1904.

(215)—S. 30—*See* RE-TRIAL, L.B.R. 1893—1900, 111.

(216)—S. 30—*See* Nos. 10, 42, 43, 52, 80, 81, 82, 109, 135, 138, 170, 171, *supra.*

(217)—*Ss.* 30, 14, 113—*Accomplice—Confession—Retracted confession—Value of.*—There is nothing in law to prevent the conviction of an accused on the uncorroborated and retracted confession of an accomplice, if it be believed against him. Such a confession should, however, be approached with the greatest caution and care and should be subjected to the most anxious scrutiny in deciding on its truth or falsity so far as it incriminates any person other than him who made it. Yet, if, after applying every test to it that is available, and remembering that it cannot be sifted by cross-examination, that by it one criminal is incriminating another and all other similar considerations, the Judge still believes it to be true as against that other or others, it is the duty of the Judge to act upon it. NGA TUN E v. EMPEROR, **14 Cr. L J. 179=19 Ind. Cas. 179=6 Bur. L.T 47** (4 C. 483=3 C.L.R. 270, *Diss.*; 29 A. 434= A.W.N. 1907, 140=4 A.L.J. 310=5 Cr. L.J. 360, *Appr.*)

(218)—Ss. 30, 113, 114, 157—*See* CONFESSION — CONFESSIONS BY CO-ACCUSED—ADMISSIBILITY, 11 B.H.C. 196.

(219)—*Ss.* 30, 114—*Joint trial of two accused —Charge under s.* 411, *I.P.C., against one and charge under s.* 457, *I.P.C., against the other—Confession of one of such accused—Not to be used against the other.*—The confession of one co-accused, who was being tried under s. 411, I.P.C., along with another who was being tried under s. 457, I.P.C., cannot be considered against the latter. Offences under ss. 411 and 457, I.P.C., are distinct offences within the meaning of s. 30, Evidence Act. NGA PO TOK v. K. E., **U.B.R. 1912, 4th Qr., 158= 20 Ind. Cas. 136=14 Cr. L.J. 376.**

(220)—Ss. 30, 114—*See* CONFESSION—CONFESSIONS BY CO-ACCUSED—ADMISSIBILITY, 22 M. 491=2 Weir 746.

(221)—*Ss.* 30, 114, illus. (*a*) (*b*)—*Accomplice —Confession— Corroboration— Witness being relation of accused—Effect.*—It is an established principle of law that it is not safe to convict an accused person on the uncorroborated testimony of an accomplice. The corroboration should be by reliable witnesses The mere fact of the witness being father or brother of the accused is not sufficient. HIRA v. CROWN, **19 P.L.R. 1911=1 P.W.R. 1911, Cr.=9 Ind. Cas. 39=12 Cr. L.J. 5.**

(222)—*Ss.* 30, 114 (*b*), 133 *and* 3—*Joint trial —What constitutes—Test—Co-accused—Confession—Conviction of other accused—Value to be given to the confession.*—The question whether an accused who pleads guilty was being jointly tried with the other accused who did not plead guilty, so that his evidence could be taken into consideration against them under s. 30, Evidence Act, appears to depend upon whether the Judge accepted the plea of guilty or not. The test to be applied would seem to be whether, in fact, the trial proceeded as against the accused who had pleaded guilty as if he had not done so, *i.e.*, whether, for instance, he cross-examined or was given the opportunity of cross-examining the witnesses, whether he was examined himself (and, in a case where there are assessors, whether their opinion was taken as to the guilt). (23 M. 151, 19 B. 195, *R.*) Where therefore an accused who pleaded guilty did not as a fact cross-examine any of the witnesses and also declined to call any witnesses, though he was given an opportunity to do so, and where the Sessions Judge preferred not to act upon his plea of guilty, but proceeded to take the evidence just as if the plea had been one of not guilty, ultimately deciding the case upon the whole evidence including the accused's plea. *Held* that, under the circumstances, there can be no doubt that the trial was a joint trial within the meaning of s. 30 of the Evidence Act. Ordinarily, a confession does not, and should not, carry the same weight as the evidence of the same accused would carry if he were examined as a witness. The general rule would seem to be that each case must be considered on its merits and that the Court must decide, after the most careful consideration of the effects of a confession coupled with the other evidence on the record, whether the degree of proof referred to in s. 3 of the Evidence Act has been reached or not. (L B.R. 1872—1892, Vol. I, p. 388, 4 C. 483, 29 A. 434, *R.*) KING-EMPEROR v. NGA PO THA, **U. B. R. 1913, 2nd Qr., 170=21 Ind. Cas. 166=14 Cr. L.J. 566.**

(223)—Ss. 30, 133 — *See* CONFESSION—CONFESSIONS BY CO-ACCUSED—ADMISSIBILITY, 9 C.P.L.R. Cr. 35.

Evidence Act (I of 1872)—*continued.*

(224)—*S. 31—Admission made before the Registrar—Rebuttable presumption.*— An admission made before the Registrar or contained in a deed of sale that the consideration has been received by the vendor, raises only a rebuttable presumption, the weight of which varies with the circumstances of each case. SHEORATAN v. ABDUL KARIM, **A.W.N. 1889, 142.**

(225)—S. 31—*See* No. 30, *supra.*

(226)—*S. 32—Dying declarations, against whom admissible.*—Where, in committing a dacoity, the dacoits caused the death of a person, the latter's dying declaration, as to what was done by those concerned in the dacoity, in which the murder was caused, was held to be not only relevant against the person who actually caused the death, but also against those concerned in the dacoity. *In re* P. SUBBU TEVAN, **2 Weir 750.**

(227)—*S. 32—False deposition by dying men, value of.*—Cases are not uncommon in this country of false depositions being made by dying men. *In re* MADAPPA KONE, **5 M.L.T. 217 = 4 Ind. Cas 1127 = 11 Cr. L.J. 193.**

(228)—*S. 32—Statements in Police reports—Statements made by one witness to another in Police enquiry.*—Statements embodied in the first report to the Police, or statements made by a witness to another person in the course of a Police enquiry, are not ordinarily admissible in proof of the facts stated, though they may be admissible to rebut the suggestion of the recent fabrication of a case, or though they may be admissible under s 32, Evidence Act. SAMAIDIN v. KING-EMPEROR, **5 O.C. 246.**

(229)—*Evidence Act, s. 32 (1)—Dying declarations, credibility of.*—Though dying declarations are, in some respects, deserving of a great degree of consideration and of credence to which ordinary statements are not, they are not subject to the test of cross-examination, and, if not substantially borne out by independent evidence and the probabilities of the case, or admitted facts, are worth little or nothing. *In re* DABBUKOTA SUBBADU, **2 Weir 753.**

(230)—*S. 32 (1)—Statement by deceased as to the cause of his death—Admissibility.*—In a case of culpable homicide, where the question was whether the deceased had died from the effects of a beating, the deceased's statement that the prisoner gave him a certain blow, from the effect of which he undoubtedly died, might reasonably be admitted, under s. 32 of the Evidence Act, although he might not be conscious of impending death. EMPRESS v. BLECHYNDEN, **6 C.L.R. 278.**

(231)—*S. 32 (1)—Statement of deceased as to cause of his death.*—The commission of a violent assault, by several accused persons, upon two persons, caused their death. *Held*, that the statements of a deceased person, made prior to his death, as to the cause of his death or as to any of the circumstances of transaction which brought about his death, are relevant as against all the accused. KHANA v. CROWN, **67 P.L R. 1905 = 2 Cr. L J. 237.**

(232)—*S. 32 (1)—Statement of deceased as to cause of his death.*—Statements made by a deceased person as to the cause of his death, where the cause of that person's death is in question, need not be made in the presence of the accused, in order to be admissible in evidence. But they are not admissible without legal proof, that is to say, it will not be enough to simply put them in. *In re* P. SUBBU TEVAN, **2 Weir 750.**

(233)—*S. 32 (1)—Dying declaration, not recorded in writing—Oral evidence if admissible.*—Although a dying declaration is not recorded in writing, oral evidence of what the deceased said is receivable. *In re* HANUMADU, **2 Weir 755.**

(234)—*S. 32 (1)—Statement made by the dying person, when admissible—Crim. Pro. Code, s. 154.*—Where, upon information received from the *chowkidar* of an offence, the Sub-Inspector had gone to the hospital to see the wounded man and had there recorded a statement made by him, *held*, the writing containing the statement so recorded and attested by the witnesses cannot be regarded as evidence. The statement may be proved only in the ordinary way by one who heard it, with recourse to the writing to refresh the memory, if necessary. KING-EMPEROR v. DAULAT KUNJRA, **6 C.W.N. 921.** (20 C. 867, *F.*) [*R.*, 8 C.W.N. 218.]

(235)—*S. 32 (1)—Evidence of dying statements.*—The dying statement of a deceased person, if not recorded in the presence of the accused and subject to his cross-examination, cannot be admitted in evidence to prove the statement; the statement may be proved only in the ordinary way by one who heard it, with recourse to the writing to refresh the witness's memory, if necessary. KUSAL SINGH, *Prisoner*, **2 Weir 753.**

(236)—*S. 32 (3)—Dacoity—Person present among the dacoits in his capacity of assistant to the Police—Such person mortally wounded by the Police—His dying declaration incriminating certain persons as the dacoits—Admissibility.*—A band of dacoits were engaged in committing dacoity, and P. who had previously given information to the Police that a dacoity was about to be committed, was also present with dacoits in his capacity of assistant to the Police. P was shot by the Police who were waiting for the dacoits and subsequently died of his injuries. He made certain statements incriminating certain persons as his companions. *Held* that such statements are inadmissible under s. 32 (1), Evidence Act, in the trial of his companions for dacoity. Sub-s. 1 of s. 32 rests on the doctrine of necessity, *i.e.*, that the injured person is dead and is generally the principal witness and so is likely to know more or as much about the circumstances of his death than or as any other person. In the present instance, such doctrine

of necessity did not apply as the object of the trial was to ascertain whether certain persons were the dacoits or not—a matter which had nothing to do with the circumstances of P's death. In this case, the causes of his death came into question only indirectly and incidentally. *Held* also that the statement could not be admitted under sub-s. 3 of s. 32, as, when he made the statement, he could not have had the slightest idea that he was going to be prosecuted, and so the conditions in his mind that are contemplated by the sub-s. (3) were non-existent. NGA TE v. KING EMPEROR, **7 L.B.R. 33 = 20 Ind. Cas. 90 = 14 Cr. L.J. 510 = 6 Bur. L.T. 183.**

(237)—*S.* 32, *cl.* (2)—*Letter of advice.*—On the trial of a person charged with forging a railway receipt or bill of lading for the purpose of obtaining possession of certain goods which had been sent from Delhi to Calcutta, a letter from the consignee at Delhi to his partner in Calcutta, advising the despatch of the goods, was tendered in evidence under s. 32, cl. 2, of Act I of 1872 (the Evidence Act), but the Court refused to receive it, and intimated a doubt whether it fell within the instances specified in the section. QUEEN v. TARINICHARAN DEY, **9 B.L.R. App. 42.**

(238)—*S.* 32, *cl.* (5)—*Statements relating to existence of relationship.*—Statements of the kind referred to in s. 32, cl. 5 of the Evidence Act may be evidence, but they must be received with great caution, since they are always open to the objection that the parties making them are not subject to any cross-examination ; the caution is all the more needed especially when the parties making them could not have had any very certain knowledge of the matters regarding which they made the statement. SANGRAM SINGH v. RAJAM BAI, **D.C.R. Part X, 65.**

(239)—*S.* 32, *cl.* 8, *meaning of—Repetition of collected information inadmissible in evidence—Jurors or assessors to be men of judgment and experience.*—The meaning of the clause is that when a number of persons assemble together to give vent to a common statement expressing the feelings or impressions made in their minds at the time of making it, that statement may be repeated by the witnesses and is evidence. Consequently the statement of a Police officer based on the information collected from persons of different places and afterwards put in second hand before the Court cannot be received as evidence under the clause. The persons composing the jury ought to be persons of independent condition in life, men of judgment and of experience. QUEEN v. RAM DUTT CHOWDHRY, **23 W.R. 35, Cr.**

(240)—S. 32—*See* Nos. 34, 82, *supra* and No. 350, *infra.*

(241)—*Ss.* 32 (1) 33—*Dying declaration—Common intention must be looked to where it is doubtful which accused caused mortal injury—Murder—Grievous hurt.*—The statement of a deceased person was recorded in the absence of the accused. Subsequently in the presence of the accused, the statement was read over and the accused were allowed to cross-examine the dying person : *Held*, that the statement was not a dying deposition under s. 33, Evidence Act, and was not admissible under s. 32 (1), unless it was proved by examining the Magistrate who recorded it or some one who heard it made. Where, in a sudden fight, a person is stabbed while in a fit of uncontrollable rage and annoyance and while in all probability the accused were in liquor, and it was not clear which of the accused inflicted the wound but the two accused were, nevertheless, sentenced to death: *Held*, altering the conviction for murder to one under s. 326, that it could not be held that the accused who did not give the stab had the common intention of murder, and that these accused must be held to have the common intention to cause grievous hurt. NGA PO v. EMPEROR, **14 Cr. L.J. 396 = 20 Ind. Cas. 220 = 6 Bur. L.T. 68.**

(242)—Ss. 32 (1), 91—*See* PENAL CODE, ss. 34, 302, 326, 13 C.W.N. 680 = 36 C. 659 = 2 Ind. Cas. 841 = 10 Cr.L.J. 186.

(243)—*Ss.* 32 *and* 157—*Dying declaration, use to be made of, when the person making it chances to be alive.*—Where a person making a dying declaration chances to live, his statement cannot be admitted in evidence as a dying declaration under s. 32 of the Evidence Act, but it may be relied on, under s. 157 of the Act, to corroborate his testimony when examined in the case. EMPEROR v. RAMA SATTU, **4 Bom. L.R. 434.**

(244)—*Ss.* 32, 157—*Letter by a third person containing a statement of what the witness had written to him—Admissibility—Statement by third person to a witness.*—Where a letter written by a witness to a third person was missing, and the witness wrote another letter to which he got a reply containing a statement of what that witness had written previously to such person, *held*, that the reply was not admissible in evidence to corroborate the evidence of the witness. *Held* also that the oral testimony of such person, if he was alive, may be admissible under s. 157, Evidence Act. Evidence of the fact that a statement was made by a third person to the witness is admissible, but evidence of the terms of the statement is inadmissible. *In re* SUBRAHMANYA, **2 Weir 323.**

(245)—*S.* 33—*Evidence of absent witness when admissible in Sessions Court.*—Under s. 33 of the Evidence Act, the evidence of an absent witness taken in the Magistrate's Court cannot be received in the Sessions Court without proof of the circumstances rendering admissible. Such circumstances should be proved like any other fact by the evidence of witnesses and a mere report that the witness is dead or absent is not sufficient. QUEEN-EMPRESS v. NGA PO BYWE, **L.B.R. 1872—1892, 134.**

Evidence Act (I of 1872)—*continued.*

(246)—*S* 33—*Sessions trial—Evidence given at preliminary enquiry, admissibility of.*—It is only in extreme cases of expense or delay that the personal attendance of a witness should be dispensed with, and his evidence given in the preliminary enquiry referred to. EMPRESS OF INDIA v. MULU, **2 A. 646.** [*F.*, A.W.N. 1881, 38.]

(247)—*S.* 33—*Evidence of witnesses taken on commission—"Opportunity to cross-examine"—Crim. Pro. Code, ch.* 40.—The deposition of a witness, obtained by a commission issued by the committing Magistrate and forming part of the record of the enquiry, is admissible under s. 33 of the Evidence Act, provided that the requirements of that section are satisfied, notwithstanding ch. 40, Crim. Pro. Code. The words "opportunity to cross-examine" include the method of cross-interrogatories, which, for many years, were the chief mode of cross-examination in the Courts of Equity and the Admiralty Courts of England, and for which provision is made in the Common Law Procedure Acts. An opportunity to administer cross-interrogatories under a commission is sufficient to render the evidence elicited by the cross interrogatories relevant under s. 33, Evidence Act. The words do not imply that the actual presence of the cross examining party or his agent before the tribunal taking evidence is necessary. To require such presence would be to put a strain on the words of s. 33 and lead to inconvenience, and much difficulty would be found in getting evidence under this enabling section, where a party is in police custody. The fact that an accused person had full opportunity of cross-examining, if not admitted, must be proved, before evidence can be admitted under s. 33. QUEEN-EMPRESS v. RAMACHANDRA GOVIND HARSHE, **19 B. 749.**

(248)—*S.* 33—*Evidence taken before a committing Magistrate, when admissible in sessions trial—Crim. Pro. Code* (1882), *s.* 503—*Examination of witnesses on commission.*—Where two principal witnesses for the prosecution, in a case under s. 411, I.P.C., were examined, in the preliminary enquiry, on commission, and the Sessions Judge admitted their evidence taken before the committing Magistrate under s. 33 of the Evidence Act, and also issued a supplementary commission to one of them, on the ground that the attendance of the witnesses could not be procured without an expense of Rs. 500, which he considered to be unreasonable and would inconvenience them, *held*, that, as the whole case rested on their evidence, as the question of the identification of the stolen property to which they deposed was a most material one in the case, and as the accused had not cross-examined them, nor could he arrange for their cross-examination, the Judge had acted improperly in admitting their evidence, and was not justified, under s. 503, Crim. Pro. Code, in issuing the commission. QUEEN-EMPRESS v. BURKE, **6 A. 224 = A.W.N. 1884, 55.** [*R.*, 19 C. 113, 19 B. 749, 15 C.P. L.R. 66.]

Evidence Act (I of 1872)—*continued.*

(249)—*S.* 33—*Powers of British consul to take down evidence.*—A prisoner being charged with having committed murder at Zanzibar, the British Consul there held a preliminary enquiry and sent the prisoner for trial before the Bombay High Court. The Consul, having no power to require witnesses to attend to give evidence at Bombay, transmitted the depositions taken by him during the enquiry. Objections were raised, *inter alia*, that the depositions were inadmissible, as the Consul had no power to take them in a case of murder. *Held*, that the Consul was authorised by law to take the depositions of witnesses in this case, and that they were admissible in evidence at the trial under s. 33, Evidence Act. EMPRESS v. DOSSAJI GULAM HUSSEIN, **3 B. 334.** [*R.*, 19 B. 749.]

(250)—*S.* 33—*Evidence before committing Magistrate—Death of witness—Admissibility in Sessions Court.*—The deposition of a witness who was not cross-examined before the committing Magistrate and who died before the trial, is admissible in evidence under s. 33, Evidence Act, because the accused had the right and opportunity of cross-examining him, notwithstanding the omission of their pleader to avail himself of that right. QUEEN-EMPRESS v. BASVANTA, **25 B. 168 = 2 Bom. L.R. 761.**

(251)—*S.* 33—*Statement by a witness in criminal proceeding, whether admissible in subsequent proceeding against same accused.*—Where there are two or more charges arising out of the same allegations made by an accused, the testimony of a deceased witness in a previous proceeding against the accused is admissible in evidence in a subsequent proceeding against the same accused, although the prosecutor in the second case is the widow of the prosecutor in the first. QUEEN-EMPRESS v. BHABHUTGAR, **Rat. Un. Cr. C. 347 = Cr. Rg. 38 of 1887.**

(252)—*S.* 33—*"Incapable of giving evidence"—Nature of incapacity.*—The incapacity to give evidence mentioned in s. 33 of the Evidence Act need not be a permanent one; something short of permanent incapacity might satisfy the words of the section "incapable of giving evidence." *In the matter of the petition of* ASGUR HOSSEIN, EMPRESS v. ASGUR HOSSEIN, **6 C. 774 = 8 C.L.R. 124.** (4 C.L.R. 504, *Diss.*)

(253)— *S.* 33 —"*Incapable of giving evidence*" *meaning of—Deposition of witness.*—The words "*incapable of giving evidence*" in s. 33, Evidence Act, denotes an incapability of a permanent kind. The Court has no discretion under s. 33 as to admitting a deposition, when the witness is proved to be "incapable of giving evidence." But where the absence of a witness is due to temporary causes, the Court has a discretion to admit the deposition of a witness, if it is proved to be either actually impossible to produce him, or to be so difficult to do so, or if it is unreasonable to insist on his production. *In the matter of* PYARI LALL, **4 C.L.R. 534.** [*Appl.*, 21 C. 955; *Diss*, 6 C. 774 = 8 C.L.R. 124.]

Evidence Act (I of 1872)—*continued.*

(254)—*S.* 33—*Proviso to section, applicability of.*—The question whether the proviso to s. 33 is applicable—*i.e.*, whether the questions at issue are substantially the same—depends upon whether the same evidence is applicable, although different consequences may follow from the same act. *In the matter of the petition of* ROCHIA MOHATO, EMPRESS v. ROCHIA MOHATO, **7 C. 42 = 8 C.L.R. 273.**

(255)—*S.* 33—*Evidence given in proceedings* coram non judice—*Admissibility in subsequent proceeding—"Questions," meaning of—Identity of matter at issue—Previous deposition whether relevant against person not party to it.*—The evidence of a witness given in a proceeding subsequently pronounced to be one *coram non judice* is not admissible under s. 33, on the death of the witness, in a subsequent proceeding regarding the same matter. Although the section, by using the word "questions" in the plural, seems to imply that it is essential that all the questions shall be the same in both the proceedings to render the evidence admissible, that is not the intention of the law. The principle involved in requiring identity of the matter in issue is to secure that in the former proceedings the parties were not without an opportunity of examining and cross-examining on the very point on which their evidence is adduced in the subsequent proceeding. Though separate proceedings may involve issues, of which some only are common to both, the evidence to those common issues given in the former proceedings may, on the conditions mentioned in s. 33 arising, be given in the subsequent proceedings. Where a person charged another with breach of trust, and, the complaint being dismissed, the complainant and one of his witnesses were tried on the charges of making a false charge and giving false evidence respectively, *held*, that the deposition of the witnesses given in the former proceedings would, on the conditions mentioned in s. 33 arising, be admissible as against the former in the subsequent proceeding, but not as against the latter, notwithstanding the fact that there was in the second case the additional question whether the complainant in the former proceeding knew, or had reason to believe that the charge was false, beside the question whether there has been the breach of trust alleged by the complainant, which was common to both the cases. RAM REDDI v. SESHU REDDI, **3 M. 48 = 2 Weir 756 = 2 Weir 455 = 2 Weir 479.**

(256)—*S* 33—*Evidence of gosha woman—Personal attendance.*—In a case in which a gosha woman is not exempted from appearance in Court, her evidence, not given in presence of the accused, cannot be received as the evidence of an absentee witness, as the personal attendance of the deponent can be procured by the process of the Court. HIGH COURT PROCEEDINGS, 19TH AUGUST 1868, NO. 1157, **2 Weir 755 = 4 M.H.C. Ap. 15.**

(257)—*S.* 33—*Evidence in a former judicial proceeding.*—Admitting evidence given in a former judicial proceeding under s. 33, Evidence Act, without explaining reason for so doing, is an irregularity. EMPRESS v. FATEH ALI, **A.W.N. 1881, 38.**

(258)—*S.* 33—*Recording of facts making section applicable.*—When a case arises in which s. 33, Evidence Act can be applied, the circumstances rendering the section applicable should be recorded. In the absence of such record, the Judge was held to be wrong in applying the section, and the High Court declined to consider the evidence of witnesses taken before the Magistrate. QUEEN-EMPRESS v. RAM SARUP, **A.W.N. 1898, 22.**

(259)—*S.* 33—*Depositions of an absent witness when admissible—Law laid down in Crim Pro. Code* (1872), *different from that laid down in Crim. Pro. Code* (1861).—Under Crim. Pro. Code, 1861, as well as under the Evidence Act, s. 33, the depositions of an absent witness are only admissible when the prisoner has had the right and the opportunity to cross examine. But s. 327 of the Crim. Pro. Code, 1872, permits the depositions of a witness to be taken in the absence of the accused who has absconded, and, even in such cases, it is necessary to establish that, when the former deposition was taken, the accused had absconded, and, after due pursuit, could not be arrested. QUEEN v. ETWAREE DHAREE, **21 W.R. Cr. 12.**

(260)—*S.* 33—*Deposition of absent witness, grounds for its admission, to be stated fully and clearly.*—When the evidence of an absent witness is admitted under s. 33, the grounds for its admission should be stated fully and clearly so as to enable the High Court to judge of the propriety of its admission. In order to make a deposition admissible under the section, there must be something to show that, by ordinary care and the use of ordinary means, the witness could not be produced, and there must be evidence that the accused person did, in fact, have an opportunity to cross-examine. QUEEN v. MOWJAN, **20 W.R. Cr. 69.**

(261)—*S.* 33—*Deposition of an absent witness—Ground for non-production of witness—Trial to be adjourned.*—Before a Sessions Judge can, under s. 33, admit the depositions of witnesses, given in a former judicial proceeding, instead of, and in place of, the oral testimony of the witnesses themselves, it ought to appear that the presence of the witnesses could not be procured without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable, consequently where there is nothing of a special nature to stand in the way of the postponement of the trial, the case should be adjourned to the next Sessions to procure the attendance of the witnesses. QUEEN v. LUKHUN SANTHAL, **21 W.R. Cr. 56.**

(262)—*S.* 33—*Evidence of deceased witness—Evidence Act,* I *of* 1872, *s.* 33—*Crim. Pro. Code, Act* X *of* 1882, *s.* 512.—The only provisions of law under which the evidence of a deceased witness is made admissible in evidence are s. 33

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of the Evidence Act, in cases between the same parties or their representatives in interest, and s. 512 of the Crim. Pro. Code, under which it must be proved that the accused was absconding and there was no immediate prospect of arresting him. QUEEN-EMPRESS v. SAHIB SINGH, **A.W.N. 1896, 182.**

(263)—*S. 33—Use in Sessions Court of evidence taken before Magistrate — Meaning of "cannot be found."*—" Where a Sessions Judge, seeing that some of the witnesses examined before the Magistrate were absent on the day fixed for hearing in the Sessions Court, ordered fresh summons for the next hearing at which also they were not present, and thereupon used the evidence they had given before the committing Magistrate as evidence in the case, *held* that the provisions of s. 33 of the Evidence Act did not apply, since it could not be held that the witnesses "could not be found." The Judge should have issued warrants to enforce their attendance in Court. EMPEROR v. NANHE KHAN, **A.W.N. 1905, 202 = 2 Cr. L.J. 518.**

(264)—*S.33—"Opportunity to cross examine," meaning of—Whether an accused in a Sessions enquiry had the opportunity to cross-examine a prosecution witness.*—In an enquiry under ch. XVIII of the Crim. Pro. Code, a witness was examined by the prosecution but he was not cross-examined by the accused ; in the Sessions trial, the witness having died, his deposition was put in under s. 33, Evidence Act. *Held*—It is doubtful whether the evidence is admissible under s. 33, Evidence Act ; even if it is admissible, its evidentiary value is very small indeed. Having regard to the practice at Sessions enquiries not to cross-examine the prosecution witnesses unless, at the conclusion of the enquiry when the charge is drawn up, the accused thinks it worth while to defend himself in the first Court, it could hardly be said that the accused had the opportunity to cross-examine a witness examined by the prosecution, where the accused did not cross-examine any of the prosecution witnesses, and was not asked by the enquiring Magistrate to exercise his right of cross examination. IBRAHIM v. KING-EMPEROR, **17 C. W.N. 230 = 18 Ind. Cas. 406 = 14 Cr. L.J. 70.**

(265)—S. 33—*See* COMMISSION, 19 C. 113.

(266)—S. 33—*See* CRIM. PRO. CODE, 1898, s. 512, 26 P.R. 1885, Cr.

(267)—S. 33—*See* WITNESS—EXAMINATION OF WITNESSES, Rat. Un. Cr. C. 81.

(268)—S. 33—*See* Nos. 139, 241, *supra* and No. 535, *infra.*

(269)—*Ss. 33, 157—Crim. Pro. Code (1882), s. 512—Evidence of witnesses recorded before committing Magistrate—Admissibility, after death of witnesses, during the subsequent sessions trial of an absconding accused—Scope of s. 33.*—Out of six persons accused of murder, five were arrested, and, after an enquiry by a Magistrate, were committed to the Court of Sessions by which they were convicted. The sixth accused absconded at the time of the enquiry by the committing Magistrate. In that trial, some of the witnesses deposed before the committing Magistrate that the absconding person was also a participator in the crime. In the Sessions trial, the Judge did not record that the sixth accused person had absconded, and the evidence was recorded against the prisoners then under trial only. Two years afterwards, the absconding person was arrested and tried before a Sessions Judge who admitted the evidence given by the witnesses in the former case before the Magistrate and the Sessions Judge, because those witnesses excepting one, were dead then. The deposition of the surviving witness given in the former case was also admitted in this case, in addition to her deposition in the case also. *Held*, that the depositions given before the committing Magistrate in the previous case were admissible under s. 512, Crim. Pro. Code, but not under s. 33, Evidence Act, but that the depositions of the deceased witnesses given before the Sessions Judge were not admissible. *Held*, further, that the deposition of the surviving witness in the previous Sessions trial was admissible under s. 157, Evidence Act. [*R.*, 16 A.W.N. 182.] In order to render the depositions, given in any proceedings by persons who are now proved to have died, admissible in evidence, the proceedings in which the same evidence was given must have been between the same parties or their representatives in interest, and the person against whom such depositions could be heard must have had an opportunity of cross-examining the witnesses. QUEEN-EMPRESS v. ISHRI SINGH, **8 A. 672 = A.W.N. 1886, 257.**

(270)—*S. 34—Entries in account books, when admissible.*—Entries to be admitted as evidence by way of corroboration of other testimony must be made in the regular course of business. It is not sufficient to prove that the entries were taken from books which were regularly and correctly kept. QUEEN EMPRESS v. SAYAD SURFUDDIN, **Rat. Un. Cr. C. 344 = Cr. Rg. 37 of 1887.**

(271)—*S. 34—Absence of entry in account book.*—Although s. 34 of the Act makes an entry in a book of account relevant, such a book is not, by itself, relevant to disprove an alleged transaction by the absence of any entry concerning it. QUEEN-EMPRESS v. GREES CHUNDER BANERJEE, **10 C. 1024.** [*F.*, 3 Ind. Cas. 291 ; *R.*, 25 A. 90 = A.W.N. 1902, 207, 15 C.L.J. 621 = 13 Ind. Cas. 678 ; *Expl.*, 15 C.L.J. 7 = 13 Ind. Cas. 120 = 17 C.W.N. 108.]

(272)—S. 34—*See* ACCOUNTS, 1 B. 610.

(273)—S. 34—*See* No. 9, *supra.*

(274)—*S. 35—Official public book, whether evidence of absence of entry.*—S. 35 only provides that " any entry in an official book, which is duly made by a public servant in the execution of his duty, is of itself a relevant fact." But it is no evidence for the purpose of proving

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the absence in them of any particular entry. *In the matter of* JUGGUN LALL, **7 C.L.R. 356.** [*R.*, 22 A.W.N. 207 = 25 A. 90.]

(275)—S. 35—*See* CRIM. PRO. CODE, 1898, s. 162, 28 C. 348 = 5 C.W.N. 65.

(276)—S. 43—*Judgment in civil suit giving rise to criminal trial—Admissibility in evidence.*—The judgment of a Munsiff who, disbelieving the genuineness of the signature of the executants of a bond on which a suit had been brought, directed the prosecution of the plaintiffs in the case for forgery, is not legally admissible in evidence in a trial for the offence. GOGUN CHUNDER GHOSE v. EMPRESS, **6 C. 247 = 7 C.L.R. 74 = 3 Shome L.R.Cr. 31.** [*Cons.*, 23 C. 610.]

(277)—*S. 43—Record and judgment in a trial in which principal was convicted of breach of the peace—Admissibility as evidence against surety—S. 514, Crim. Pro. Code (1898).—Per Wilkins, J.*—The mere production of the original record or of its certified copy of the trial in which the principal has been convicted of breaking the peace within the period covered by the bond, would not be conclusive, if indeed it would be any evidence, against the surety in a proceeding under s. 514, Crim. Pro. Code, 1898. *Per Banerjee, J.*—Where a bond is given by a surety, and the condition on the bond is that it shall be forfeited, not if the principal party is convicted of a breach of the peace, but if he commits a breach of the peace, the judgment convicting the principal of a breach of the peace is no evidence under the Evidence Act, (s. 43) against the surety who was no party to it, to prove that the party bound down to keep the peace has really committed a breach of the peace. Such fact must be proved by evidence taken in the presence of surety, unless it is admitted by him. QUEEN-EMPRESS v. HAR CHANDRA CHOWDHURY, **25 C. 440.** [*Diss.*, 32 P.R. 1903, Cr.; *Not F.*, 12 Cr. L.J. 404 = 11 Ind. Cas. 588 = 226 P.L.R. 1911 = 35 P.W.R. 1911, Cr.]

(278)—S. 43—*See* CRIM. PRO. CODE, 1898, s. 514, 9 C.P.L.R. Cr. 8.

(279)—S. 43—*See* Nos. 31, 49, 53, 69, *supra.*

(280)—*S.* 45—*Expert medical evidence—Cause of death.*—A medical man, who had not seen the dead body and who had not been present at the *post mortem*, could be asked to give his opinion about the cause of death, after placing before him the appearance of the body as spoken to by the medical man who made *post mortem* examination, together with the signs spoken to by him as having been noticed by him when making the *post mortem* examination. QUEEN-EMPRESS v. MEHER ALI MULLICK, **15 C. 589.**

(281)—*S. 45—Expert evidence—Evidence to prove handwriting—Sufficiency of.*—To base a conviction on the evidence of an expert in handwriting, as a general rule, is very unsafe. There may be cases in which the handwriting is of such a peculiar character that the conclusion as to identity of the writer is irresistible. In this case, two anonymous threatening letters were sent to the Government of India. The Government expert in handwriting was examined and he deposed that, having regard to the movement, execution, style, direction, curve and pen-pressure of certain letters, the writing of the exhibits resembled the admitted handwriting of the accused. *Held*, that, that evidence was not enough to prove beyond reasonable doubt that the accused was the writer of the anonymous letters. KALI CHARAN MUKERJI v. KING EMPEROR, **6 A.L.J. 184 = 9 Cr. L.J 498 = 2 Ind. Cas. 154.** (2 A.L.J. 444, *F.*) [*F.*, 11 Cr.L.J. 114 = 5 Ind. Cas. 355 = 13 O.C.1; *R.*, 36 M. 159 = 13 Cr. L.J. 226 = 14 Ind. Cas. 418 = 22 M.L.J. 270 = 11 M.L.T. 93 = 1912 M.W.N. 125.]

(282)—*S. 45—Expert in thumb-marks—Sub-Registrar.*—It is not right to assume that a Sub-Registrar is an expert in the matter of thumb-marks. *In re* THIMMU REDDI, **2 Weir 760.**

(283)—*S. 45—Comparison of handwriting.*—Comparison of handwriting is permissible in criminal no less than in civil cases. HIGH COURT PROCEEDINGS, 30TH MARCH 1868, NO. 544, **2 Weir 759.**

(284)—S. 45—Illus. (*c*)—Expert evidence—Admissibility—Comparison out of Court—*See* PENAL CODE, s. 124-A, 16 C.W.N. 812 = 39 C. 606 = 13 Cr. L.J. 289 = 14 Ind. Cas. 753.

(285)—S. 45—*See* Nos. 36, 149, *supra.*

(286)—Ss. 45, 47—Forgery—Value of expert evidence — Government expert—*See* PENAL CODE, ss. 467, 477, 18 P.W.R. 1912, Cr. = 147 P.L.R. 1912 = 15 Ind. Cas. 379 = 13 Cr. L.J. 563.

(287)—Ss. 45, 74 and 78—*See* FINGER IMPRESSIONS, 3 N.L.R. 1 = 5 Cr. L.J. 220.

(288)—Ss. 45, 165—*See* LUNACY, Rat. Un. Cr. C. 279 = Cr. Rg. 18 of 1886.

(289)—S. 46—*See* No. 149, *supra.*

(290)—S. 47—*See* Nos. 149, 286, *supra.*

(291)—S. 48—*See* No. 149, *supra.*

(292)—S. 49—*See* No. 149, *supra.*

(293)—*S. 50—Scope of.*—The scope of s. 50 of the Act, leaving the exception out of consideration, seems to be that the person himself is not to be called to state his own opinion, but that, when he is dead or cannot be called, his conduct may be proved by others. The section appears to afford an exceptional way of proving a relationship, but by no means to prevent any person from stating a fact of which he or she has special means of knowledge. A husband or wife is not, therefore, precluded from proving his or her marriage. QUEEN EMPRESS v. SUBBARAYAN, **9 M. 9 = 1 Weir 572 = 9 Ind. Jur. 464.**

Evidence Act (I of 1872)—*continued.*

(294)—*S.* 50—*Proof of marriage.* — Under the proviso to s. 50, Evidence Act, in proceedings of the kind therein specified, opinion relevant under that section is not by itself sufficient to prove marriage which must, in consequence, be proved in some other way. MADHAWA v. FATTEH MUHAMMAD, **5 P.R. 1894, Cr.**

(295)—S. 50—*See* ADULTERY, 5 A. 233, 5 C. 566=5 C.L.R. 597, F.B.

(296)—S. 50—*See* PENAL CODE, s. 498, 9 M. 9=1 Weir 572=9 Ind. Jur. 464.

(297)—S. 50—*See* No. 149, *supra.*

(298)—S. 51—*See* No. 149, *supra.*

(299)—S. 53—*See* No. 69, *supra.*

(300)—*S.* 54—*Scope of.*—This section has no bearing whatever upon the question of the relevancy of a previous conviction after an accused has been convicted of the offence with which he has been charged, and for the purpose of enhancing the sentence to be passed upon him. It refers solely to the relevancy of a previous conviction as evidence to prove that the accused is guilty, and should be convicted of the particular offence with which he is charged. NGA OK GYI v. QUEEN-EMPRESS, **L.B.R. 1872—1892, 449.** (14 C. 721, *D.*)

(301)—*S.* 54—*Previous conviction, as evidence of character.*—The Evidence Act gives the Court a discretion to admit previous conviction as evidence of character, at any stage of the trial, in all cases in which there is such a conviction between the act of which the prisoner was found guilty on the previous conviction and the facts to be proved, as bears upon the probability of the prisoner having committed the act charged, and in those cases where the previous conviction is of a kind falling within any of the classes of connection with the facts to be proved, stated in ss. 6 to 16. HIGH COURT PROCEEDINGS, 1ST OCTOBER, 1877, NO. 2236, **2 Weir 760.**

(302)—*S.* 54—*Previous conviction—Character, evidence of.*—A Judge's direction to the jury to consider the proof of previous convictions as evidence giving rise to an inference regarding the character of the prisoner amounts to a misdirection, such evidence (of bad character) being irrelevant and inadmissible under s 54 of the Evidence Act. ROSHUN DOOSADH v. EMPRESS, **5 C. 763=6 C.L.R. 219.** [*R.*, 14 C. 721, F.B., 28 B. 129.]

(303)—*S.* 54—*Previous conviction* —Under s. 54 of the Act, previous convictions are in every case admissible against an accused person. QUEEN-EMPRESS v. KARTICK CHUNDER DAS, **14 C. 721.** [*R.*, 28 B. 129, 1 C W.N. 146, L. B.R. 1872—1892, 449, 574, L.B.R. 1893—1900, 93.]

(304)—*S.* 54 — *Previous conviction when relevant—Penal Code, s.* 75—*Enhanced sentence.* —A trying Magistrate ought not to take any previous conviction into consideration for the purpose of establishing the charge, upon which the accused was tried, and deciding as to the guilt of the accused in respect of the offence for which he was tried. But the trying Magistrate is not debarred by s. 54 or by any other of its provisions, from using any previous conviction for the purpose of aiding him in determining the amount of punishment to be awarded on the prisoner being convicted of a fresh offence. "Enhanced sentence" under s. 75, Penal Code, explained. QUEEN-EMPRESS v. NGA PYI PON, **L.B.R. 1893—1900, 93.** (L.B. R. 1872-1892, 449, *R.*)

(305)—S. 54—*See* BAD CHARACTER, 15 P. R. 1888, Cr.

(306)—S. 54—*See* PREVIOUS CONVICTION, 5 Bom.L.R. 1034, A.W.N. 1886, 47.

(307)—S. 54—*See* Nos. 21, 31, 54, 68, 70, 71, *supra* and No. 422, *infra.*

(308)—*Ss.* 54, 136 *and* 157—*Evidence of bad character elicited by defence, whether can be admitted — Evidence to corroborate witness, whether can be admitted before witness himself is examined.*—Under s. 54, the fact that the accused has a bad character is irrelevant, and so, the evidence that the accused was reputed to be a thief is irrelevant, and cannot be admitted, whether elicited by the prosecution or by the defence. It is doubtful whether s. 136 gives the Court any discretion to allow evidence to corroborate a witness to be given under s. 157, before the witness himself is examined. But, in any case, such evidence can be admitted only very rarely and for special reasons to be recorded by the Judge. MI MYIN v KING-EMPEROR, **5 L.B.R.4=9 Cr. L.J. 576=2 Ind. Cas 349.** (3 L.B.R. 240, *F.*)

(309)—*Ss.* 54, 165—*Previous conviction—Relevancy of—Enhancing punishment—Penal Code, s.* 75.—The proof of a previous conviction not contemplated by s. 75, Penal Code, may be adduced after the accused is found guilty, provided the previous conviction is relevant under the Evidence Act. EMPEROR v. ISMAIL ALIBHAI, **16 Bom. L.R. 934=2 Bom. Cr. C. 252=16 Cr. L J. 83=26 Ind. Cas. 995.**

(310)—S. 55—*See* DEFAMATION, 2 C.P.L. R. 198.

(311)—*S.* 57—*Judicial notice.*—The statement by H. M's Commissioner and Consul-General for Uganda is sufficient for the Court's taking judicial notice, under s. 57, Evidence Act, of the existence of hostilities between Kaberga, the King of Unyoro, and Her Majesty the Queen, and the Protected State of Uganda. IMPERATRIX v. JUMA *bin* FAKIR, **22 B. 54.**

(312)—*Ss.* 57, 60—*Reference to books of science.*—Under the provisions of the penultimate paragraph of s. 57, and the first proviso of s. 60 of the Evidence Act, the Courts can refer to books of science. The Court in this case referred to Taylor's Medical Jurisprudence for learning the effect of a sudden blow on the abdomen. *In re* HATIM, **12 C.L.R. 86.** [*F.*, 10 C. 140.]

Evidence Act (I of 1872)—*continued.*

(313)—Ss. 57 and 78 (2)—*See* LIBEL, 14 C. W.N. 713=37 C. 760=6 Ind. Cas. 81.

(314)—S. 58—*See* ADMISSION, Rat. Un. Cr. C. 769=Cr. Rg. 34 of 1895.

(315)—*S.* 59—*Discrepancies in evidence to be reconciled, if possible.*—Discrepancies in evidence must be carefully considered and their effect allowed for, but when they can be fairly reconciled by explanation or can be naturally and reasonably accounted for, evidence, otherwise trustworthy, cannot be put aside, although its value may be *pro tanto* impaired, solely because of their occurrence. NGA PO KYAW v QUEEN-EMPRESS, **U.B.R. 1897—1901, Vol. I, 162.**

(316)—*S.* 60—*Improper admission of hearsay evidence—Setting aside of conviction.*—Where information was given to the Police that the first three accused were collecting in the house of the fourth accused with the intention to commit dacoity, and the person who gave the information was not produced before the Court, *held* that the Judge had wrongly admitted the hearsay evidence of the Police officers as to the intention of the accused to commit dacoity, although the Judge was not wrong in allowing the officers to name the persons who told them that they would find the first three accused in the house of the fourth. The conviction was set aside on the ground that the jury may have been influenced by the mistake of the Judge. *In re* VAITHILINGA PILLAI, **2 Weir 762.**

(317)—S. 60—*See* ADULTERY, 13 C.L.R. 125.

(318)—S. 60—*See* No. 312, *supra.*

(319)—*S.* 63—*Secondary evidence—Letter lost—Newspaper in which published—Whether secondary evidence.*—No secondary evidence can be given of a document, which is not proved to have been written by the accused or to have ever existed. A defamatory letter was published in a newspaper. The accused was prosecuted as being the writer. The letter could not be found and no one deposed to such a letter ever having been written by the accused. *Held* that the copy of the newspaper was not secondary evidence of the original letter. RAMLAL BALARAM v. KING-EMPEROR, **8 A.L.J. 302=12 Cr. L.J. 259=10 Ind. Cas. 852.**

(320)—S. 65 (*e*)—*See* PUBLIC DOCUMENT, 5 P.R. 1903, Cr.=66 P.L.R. 1903.

(321)—Ss. 65, 74—Letter of village *Nikah Khawan* to the Moharir regarding a marriage —Document whether a public document—Secondary evidence of its contents—Admissibility—*See* PENAL CODE, ss. 192, 196, 1 P.R. 1914, Cr.=139 P.L.R. 1914=15 Cr. L.J. 344=23 Ind. Cas. 696.

(322)—*S.* 73—*Proof of handwriting — Procedure.*—In matters expressly provided for by the Evidence Act, such as proof of handwriting under s. 73, the correct procedure is to start from the Act and not deal with it as a mere modification of the Law of Evidence prevailing in England. QUEEN-EMPRESS v. LALSING, **Rat. Un. Cr. C. 452.**

(323)—*S.* 73—*Crim. Pro. Code* (1882), s. 298 —*Document for comparison by jury—Duty of Judge.*—Before a Judge allows documents to go to the jury for the purpose of comparison of handwriting under s. 73 of the Evidence Act, it is his duty, under s. 298 of the Crim. Pro. Code, to find whether these documents are admitted or proved. The record of the case should contain a note of such finding. QUEEN-EMPRESS v. TULSAJI, **Rat. Un. Cr. C. 491= Cr. Rg. 61 of 1889.**

(324)—*S.* 73—*Document — Handwriting — Comparison of handwriting—" Purports," interpretation of.*—Under s. 73, Evidence Act, it is not necessary that the writing which is in dispute must itself in terms express or indicate that it was written by the person to whom the writing is attributed. The word "purports" in the section means "alleged." When an anonymous writing is produced and ascribed by the prosecution in a particular person, then the case for the prosecution must be taken to be that, having regard to the admitted documents, and the comparison between them and the disputed writing, the prosecution alleges that the disputed document purports to have been written or made by the accused. EMPEROR v. GANPAT BALKRISHNA RODE, **14 Bom. L.R. 310=13 Ind. Cas. 649=13 Cr. L.J. 505=1 Bom. Cr. C. 119.** (14 C.W.N. 1114 at p. 1138, *Not F.*)

(325)—S. 73—*See* JUDGE AND JURY, Rat. Un. Cr. C. 452.

(326)—S. 73—*See* No. 44, *supra.*

(327)—*S.* 74—*Census Register—Public document.*—Census Registers are not public documents within the meaning of s. 74 of the Evidence Act. EMPEROR v. BHAVAN RAO VITHALRAO, **6 Bom. L.R. 535.**

(328)—S. 74—*See* Nos. 287, 321, *supra.*

(329)—Ss. 74, 76—*See* CRIM. PRO. CODE, 1898, ss. 162, 164, 30 M. 466=17 M.L.J. 471= 6 Cr. L.J. 346=3 M.L.T. 14.

(330)—Ss. 74, 76, 77—Public document and certified copies thereof—*See* CRIM. PRO. CODE, 1898, s. 154, U.B.R. 1892—1896, Vol. I, 24.

(331)—Ss. 74, 80—*See* CONFESSION—CONFESSIONS TO MAGISTRATES — ADMISSIBILITY, ETC., 12 A. 595=A.W.N. 1890, 199.

(332)—*S.* 76—*Right of private persons to inspect public documents.*—Neither in the Crim. Pro. Code, nor in the Evidence Act is there any provision declaring or limiting the right of private persons interested in criminal proceedings to inspect documents in the hands of third parties. A right to inspect public documents is, however, assumed in s. 76 of the Evidence Act. It may be inferred that the Legislature intended to recognize the right

Evidence Act (I of 1872)—*continued.*

generally for all persons, who can show that they have an interest for the protection of which it is necessary that liberty to inspect such documents should be given. *Per Sheppard, J.* QUEEN-EMPRESS v. ARUMUGAM, **20 M. 189=2 Weir 763, F.B.=7 M L.J. 167=2 Weir 120.** [*F.*, 31 C. 284=8 C.W.N. 125; *R.*, 30 M. 466=6 Cr. L.J. 346=17 M.L.J. 471=3 M.L.T. 14.]

(333)—S. 76—*See* Nos. 329, 330, *supra.*

(334)—S. 77—*See* No. 330, *supra.*

(335)—S. 78—*See* PENAL CODE, s. 121, L.B.R. 1872—1892, 389.

(336)—S. 78—*See* Nos. 1, 287, 313, *supra.*

(337)—Ss. 78 (5), 114, ill. (*e*)—Proceedings of Municipal bodies how to be proved—Presumption as to the regular performance of official acts if applies to supply deficiency in proof—*See* BEN. ACT III OF 1884, ss. 261, 273, cl. 2, 17 C.W.N. 531=14 Cr. L.J. 91=18 Ind. Cas. 651.

(338)—*S.* 80, *Scope of.*—The statements as to which s. 80 of the Evidence Act says that certain presumptions shall be drawn, are statements or confessions taken in accordance with the law. The section does not render admissible any particular kind of evidence, but only dispenses with the necessity for formal proof in the case of certain documents taken in accordance with law. S. 80 dees not operate to render it admissible. The section merely gives legal sanction to the maxim "*Omnia præsumuntur rite esse acta*" with regard to documents taken in the course of a judicial proceeding. *Per Parker, J.* QUEEN-EMPRESS v. VIRAN, **9 M. 224=2 Weir 125.**

(339)—*S.* 80—*Presumption under—Requisites for raising the presumption.*—Under s. 80 of the Act, the Court presumes certain facts concerning a document purporting to be a record of the evidence. But it must purport to be signed by a Judge or Magistrate, and where the person taking the deposition omits to claim the position of a Judge or Magistrate, the presumption that he is so, does not arise. The defect may be supplied by oral evidence. The certified copy should also show on the face of it that it is a copy of part of the record in a specified proceeding. CROWN v. MI SHWE KE, **1 L.B.R. 268.**

(340)—*S.* 80—*Admissibility of confession by accused under.*—A confession by an accused, recorded by a Magistrate, is admissible under s. 80, Evidence Act, even though the Magistrate, who recorded it, ultimately came to the conclusion that he had no jurisdiction to try the case. EMPRESS v. BANKO BIHARI, **10 C.P.L.R. Cr. 16.**

(341)—*S.* 80—*Crim. Pro. Code* (1882), *s.* 509—*Deposition of medical witness before committing Magistrate when admissible in a Sessions trial—Presumption.*—Although a Magistrate should take and attest a deposition of a witness in the presence of the accused, and should also, by the use of apt words, on the face of the deposition, make it apparent that he has done so, yet, there is no provision of law which makes the attestation of the deposition by the Magistrate, in the presence of the accused, obligatory, and the provisions of s. 80 cannot, therefore, apply to it. S. 509, Crim. Pro Code, does not enact that a deposition of a medical witness shall be taken and attested by the Magistrate in the presence of the accused. What it provides is that the deposition, if so taken and attested, may be put in evidence in the Sessions trial. Therefore, that the deposition was taken and attested by the Magistrate in the presence of accused cannot be presumed under s. 80 of the Evidence Act. QUEEN-EMPRESS v. POHP SINGH, **10 A. 174=A W.N. 1888, 11.** (9 A. 720, *R.*) [*Appr.*, 18 C. 129.]

(342)—*S.* 80—*Dying declaration—Admissibility of the document.*—*Held*, that s. 80, Evidence Act, had no bearing on the question of the admissibility of a statement made by the deceased as a dying declaration, the Magistrate who took the statement, being other than the committing Magistrate and the statement not being taken in the presence of the accused; *Held*, also, that the document itself was not relevant to prove the truth of the facts stated therein. HASHIM v. EMPRESS, **9 P.R. 1900, Cr.=P.L.R. 1900, p. 59.** [*Not Appl.*, 1 Ind. Cas. 100; *D.*, 4 P.W.R. 1909, Cr.]

(343)—S. 80—*See* ACT X OF 1873, s. 5, 10 C.P.L.R. Cr. 16.

(344)—S. 80—*See* CONFESSION—GENERAL, 2 P.R. 1893, Cr.

(345)—S. 80—Presumption as to confessions—*See* CONFESSION—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY, ETC., 1 L.B.R. 340, 7 C.W.N. 220.

(346)—S. 80—*See* CONFESSION—MISCELLANEOUS, 1 B. 219.

(347)—S. 80—*See* CRIM. PRO. CODE, 1898, ss. 164, 342, 364 and 533, 10 O.C. 112=6 Cr. L.J. 94.

(348)—S. 80—*See* FALSE EVIDENCE, P.L.R. 1900, Cr. 63.

(349)—S. 80—*See* Nos. 22, 331, *supra.*

(350)—*Ss.* 80, 32—*Dying declaration—Proof.*—A dying declaration is not admissible in evidence without proof that the deceased actually made the declaration. Even if it bears a Magistrate's attestation, it is not admissible under s. 80, where the Magistrate was not the committing Magistrate. The person who took the statement should be subject to cross-examination as to the dying man's state of mind when he made it, and as to other circumstances. REG. v. FATA ADAJI, **11 B.H.C. 247.** [*R.*, L.B.R. 1872—1892, 157.]

(351)—Ss. 80, 91—Deposition of witness—Not read over in accused's presence—Inadmissibility in evidence—*See* CRIM. PRO. CODE, 1898, s. 360, U.B.R. 1912, 1st Qr., 123=13 Cr. L.J. 569=15 Ind. Cas. 985.

Evidence Act (I of 1872)—*continued.*

(352)—*Ss.* 80 *and* 114, *ill.* (*e*)—*Crim. Pro. Code* (1882), *s.* 509—*Admissibility in evidence of deposition of medical witness—Magistrate's statements as to circumstances under which deposition was taken—Effect.*—To render the deposition of a Civil Surgeon or other medical evidence admissible in evidence under s. 509 of the Crim. Pro. Code, it must be shown to have been taken and attested by the Magistrate in the presence of the accused. These facts may be proved by calling the committing Magistrate or any other person who was present at the enquiry before him and is able to testify thereto. But the Court, in the absence of such evidence, is not bound to presume, either under s. 80, or s. 114, ill. (*e*) of the Evidence Act, that the deposition was so taken and attested. (9 A. 720 and 10 A. 174, *Appr.*) S. 80 of the Evidence Act will be of no assistance in a case, under s. 509, Crim. Pro. Code, where there are no "statements as to the circumstances under which the deposition was taken purporting to be made by the person signing it;" but if the Magistrate records a statement at the foot of the deposition to the effect that the deposition was taken and attested by him in the presence of the accused and signs such statement, the Court would be bound, under s. 80 of the Evidence Act, to presume that such statement was true, and to admit the deposition under s. 509, Crim. Pro. Code. KACHALI HARI v. QUEEN-EMPRESS, 18 C. 129. (10 A. 174, *Appr.*)

(353)—Ss. 80, 132—*See* BRIBERY, 15 M. 63 =2 Weir 794.

(354)—S. 81—Scope of presumption as to printing and publication of newspaper—*See* LIBEL, 10 M L T. 506=1911 2 M.W.N. 576= 12 Ind. Cas. 961=12 Cr. L.J. 585=36 M. 457.

(355)—S. 84—*See* CONFESSION—CONFESSIONS TO MAGISTRATES — ADMISSIBILITY, ETC., 9 C.L.J. 663=13 C.W.N. 861=2 Ind. Cas. 681.

(356)—S. 86—*See* No. 1, *supra.*

(357)—S. 88—*See* TELEGRAMS, 4 Ind. Cas. 240.

(358)—S 91—*Summary trial—Oral evidence admissible to prove depositions of witnesses.*—In ordinary cases, a Magistrate trying a criminal charge must take down the evidence, and then the record thus made is the only admissible proof of what was said, but in a summary trial, the Magistrate need not generally record the evidence, and where no obligation is laid upon the Judge or presiding officer by law to reduce depositions or statements to writing, they may be proved by the presiding officer or by persons who heard them, in order to establish the fact that they were made. HOWARD v. RUSTOMJI DADABHAI, Rat. Un. Cr. C. 334 =Cr. Rg 24 of 1887.

(359)—*S.* 91—*Statement before constable—Admissibility—Deposition before Magistrate—Oral evidence.*—The accused was charged in the alternative with having given false evidence either before the chief constable in a police investigation or before a Magistrate in a criminal trial. *Held*, that the statement made to the chief constable by the accused, and reduced by him to writing, was not admissible in evidence against the accused; the only evidence as to such statement that would be admissible for the purposes of such a case as the present being the oral testimony of the constable, who could, however, refresh his memory by referring to the statement reduced by him to writing; and that the oral evidence of the contents of the accused's deposition at the trial before the Magistrate was inadmissible under s. 91, Evidence Act. The deposition itself ought to have been put in, and the proceedings in the case in which it was taken ought also to have been put in, to show the nature of the proceeding in which the evidence was taken. QUEEN-EMPRESS v. BAPU NARAN, Rat. Un. Cr. C. 401=Cr. Rg, 62 of 1888.

(360)—*S.* 91—*False evidence in judicial proceeding—Deposition of accused when inadmissible—Civ. Pro. Code,* 1877, *ss.* 182, 183—*Other evidence of such deposition.*—Where, with respect to a deposition in a judicial proceeding, the provisions of ss. 182 and 183 of the Crim. Pro. Code of 1877 were not complied with, such deposition would be inadmissible in evidence on a charge of giving false evidence based on such deposition. No other evidence of such deposition would be admissible under s. 91 of the Evidence Act. EMPRESS v. MAYADEB GOSSAMI, 6 C. 762=8 C.L.R. 292. [*Not F.*, 25 P.R. 1890, Cr.; *R.*, 9 M. 224=2 Weir 128.]

(361)—*S.* 91—*Confessions—Secondary evidence, if admissible.*—Where statements made by an accused person are inadmissible in evidence, secondary evidence of the contents of those statements are inadmissible also, under s. 91, Evidence Act. *Per Parker*, J. QUEEN-EMPRESS v. VIRAN, 9 M. 224=2 Weir 125.

(362)—*S.* 91—*Search list, value of—Oral evidence.*—A search list is not evidence of the facts stated therein and s. 91 has, therefore, no application to it. It is simply a declaration, not an oath or affirmation or subject to cross-examination, made by a police officer and the persons present at a search, that certain formalities were observed and certain events took place. Oral evidence may, therefore, be given as to what took place at the time of the search. PUBLIC PROSECUTOR v. SARABU CHENNAYA, 2 Weir 776. [*F.*, 11 Cr. L.J. 136=5 Ind. Cas. 438=7 M.L.T. 362.]

(363)—*S.* 91—*Admission of guilt while departmental enquiry going on—Whether could be proved in judicial proceeding.*—One S stated to a Bench of Magistrates that he was willing to compromise a case pending in their Court if the opposite party paid him Rs 9, seven of which were paid to their Peshkar. The Peshkar was sent for and admitted having received Rs. 5 from S, but when he was prosecuted he

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denied the receipt of money. One of the Magistrates was examined and proved the confession. *Held*, that the statement of S. was not a complaint but a confession of guilt punishable under s. 161, Penal Code, and should have been recorded like a confession. *Held*, further that the statement of the Peshkar being recorded when departmental enquiry was going on was not a matter required by law to be in writing, and s. 91 of the Evidence Act had no application. The Magistrates therefore were competent to prove the confession. HAIDAR RAZA v. KING EMPEROR, **12 A.L J. 306=36 A. 222=15 Cr.L.J. 569=25 Ind. Cas. 321.**

(364)—*S. 91—Applicability of, when writing is not evidence of matter recorded—Search list—Whether excludes oral evidence as to matters recorded therein—Confession—Non-compliance with Government order—Weight to be attached to Government order—Question whether confession was voluntary—Oral evidence to prove—Admissibility—Crim. Pro. Code, s* 167.—S. 91, Evidence Act, pre-supposes that, where a certain matter is required by law to be reduced to writing, the writing is itself evidence of the matter so reduced, and the section does not apply if the writing is not evidence of the matter. A search list is not evidence of the matter stated therein and it does not therefore exclude oral evidence of such matter. As regards a confession, the only question to be determined is whether the confession was voluntary or not. A Government order prescribing rules as to the mode of recording any confession or statement under s. 167, Crim. Pro. Code, has not the force of law, and failure to comply with its provisions, though it might be a circumstance to be considered in deciding the question whether a confession was made voluntarily or not, does not preclude admission of evidence to prove the character of the confession. PUBLIC PROSECUTOR v. SARABU CHINNAYYA, **33 M. 413=8 Ind. Cas. 809=11 Cr. L.J. 716.**

(365)—S. 91—*See* ASSAULT, 3 L.B.R. 128.

(366)—S. 91— *See* COMPLAINT — PROCEDURE ON RECEIPT OF COMPLAINTS, L.B.R. 1872-1892, 572.

(367)—S. 91—*See* CONFESSION—CONFESSIONS TO MAGISTRATES—ADMISSIBILITY, ETC., 10, B.H.C. 166, 9 M. 224=2 Weir 125.

(368)—S. 91—*See* CRIM. PRO. CODE, 1898, s. 103, 2 Weir 47=2 Weir 515.

(369)—S. 91—*See* CRIM. PRO. CODE, 1898, ss. 103, 166, 8 Ind. Cas. 178=8 M.L.T. 451=11 Cr. L.J. 576=21 M.L.J. 281.

(370)—S. 91—Confession—Oral evidence not admissible—*See* CRIM. PRO. CODE, 1898, ss. 288, 364, 533, 11 A.L.J. 286=14 Cr. L J. 211=19 Ind. Cas. 307=35 A. 260.

(371)—S. 91—*See* CRIM. PRO. CODE, 1898, ss. 310, 343, 511, 28 C. 689=5 C.W.N. 670.

(372)—S. 91—*See* FALSE EVIDENCE, 1 L.B.R. 268, 54 P.R. 1887, Cr.

Evidence Act (I of 1872)—*continued.*

(373)—S. 91—*See* PENAL CODE, s. 193, 9 Ind. Cas. 262=12 Cr. L.J. 44=9 M.L.T. 325=21 M.L.J. 411.

(374)—S. 91—*See* Nos. 22, 140, 242, 351, *supra.*

(375)—Ss. 91, 157—*See* POLICE, 7 A.L.J. 468=6 Ind. Cas. 101.

(376)—*S. 92—Application of the section to criminal cases.—Fox, C.J.*—Where a party to a written contract institutes a criminal proceeding against another party to such contract which involves consideration and determination of what the contract between the parties was, no evidence of any oral agreement or statement is admissible in such proceeding for the purpose of contradicting, varying, adding to or subtracting from the terms of the written contract, unless such oral evidence is admissible under one or more of the provisos to s. 92 of the Evidence Act. *Hartnoll, J.*—S 92 of the Evidence Act should not be held to apply to criminal proceedings in that the real prosecutor in all such proceedings is the King-Emperor who is the head of the State. To hold otherwise would lead to anomalies and injustice. *Twomey, J.*—Where there is a private prosecutor, he also must be regarded as a party for the purposes of s. 92 of the Evidence Act. REID v. SO HLAING, **8 Ind. Cas. 952=11 Cr.L. J. 738=3 Bur. L.T. 124.**

(377)—S. 92—Promissory note—Representation of intention to deliver goods—Not embodied in pro-note—Oral evidence — Admissibility—*See* PENAL CODE, S. 420, 6 L.B.R. 38=13 Ind. Cas. 386=13 Cr. L.J. 50=4 Bur. L.T. 79.

(378)—S. 101—*See* BURDEN OF PROOF, Rat. Un. Cr. C. 779=Cr. Rg. 43 of 1895.

(379)—*S.* 105 — *Right of private defence—Evidence.*—Under the provisions of s. 105, an answer, setting up the right of private defence, must be supported by evidence, giving a full and true account of the transaction from which the charge against an accused person arises. No accused person can, at the same time, deny committing an act and justify it. The law does not admit of justification by putting forward hypothetical cases; it must be by proof of actual facts. *In re* JAMSHEER SIRDAR, **1 C.L.R. 62.**

(380)—*S.* 105—*Penal Code, s.* 300 —*Exceptions under Penal Code—Plea.*—Unless a plea that the acts with which an accused person is charged as constituting an offence came within one of the exception named in the Penal Code, is distinctly taken by the accused, the Court is not competent to infer from the evidence in the case that any such exception exists in favour of the accused. QUEEN-EMPRESS v. CHAKAURI, **A.W.N. 1898, 209**; QUEEN-EMPRESS v. SUKHA **A.W.N. 1898, 210.**

(381)—*S.* 105—Onus — *Statement of witness and of accused person made to Police Officer during investigation cannot be taken in evidence —Admissibility of evidence — Special diary—*

Evidence Act (I of 1872)—*continued.*

Presumption—Crim. Pro. Code, s. 162.—The burden of proving the existence of circumstances bringing a case within any special exception or proviso contained in any part of the Penal Code is upon the person accused, and the Court shall presume the absence of such circumstances. Statements made to a Police Officer by witnesses during investigation and reduced to writing cannot be used as evidence against the accused. Nor can the statements of accused persons under arrest made to a Sub-Inspector of Police and reduced to writing and put in a special diary be used against the accused. EMPEROR v. CHANDAN SINGH, 8 **Ind. Cas.** 259=**11 Cr. L.J.** 612.

(382)—S. 105—*Onus* that game is game of mere skill—*See* BEN. ACT, II OF 1867, ss. 10, 11, 15 Cr. L.J. 276=23 Ind. Cas. 484.

(383)—S. 105 — *See* BURDEN OF PROOF, Rat. Un. Cr. C. 820=Cr. Rg. 66 of 1895, 4 C. 124=3 C.L R. 122.

(384)—S. 105—*See* DEFAMATION, 6 A. 220.

(385)—S. 105—*See* GRAVE AND SUDDEN PROVOCATION, L.B.R. 1893—1900, 207.

(386)—S. 105—*See* INSANITY, A.W.N. 1901, 132.

(387)—S. 105—*See* PENAL CODE, s. 76, 7 A. L.J. 438.

(388)—S. 105—*See* PENAL CODE, s. 325, 8 C.W.N. 714.

(389)—S. 105 — *See* PRIVATE DEFENCE, RIGHT OF, 11 C.L.R. 232, A.W.N. 1904, 113.

(390)—Ss. 105 and 106—*See* ACT XII OF 1896, ss. 3 (1) (*n*), 30, 51, 5 L.B.R. 52, F.B.= 2 Ind. Cas. 543.

(391)—Ss. 105, 114—*See* PENAL CODE, ss. 11, 34, 294-A. 15 Cr. L.J. 243=23 Ind. Cas. 195 =7 Bur. L.T. 187.

(392)—Ss. 105, 123, 124 and 125—*See* DEFAMATION, 4 P.W.R. 1910, Cr.

(393)—S. 106—*See* C.P. ACT, XVIII OF 1889, s. 84, 16 C.P.L.R. 63.

(394)—S. 106—*See* PENAL CODE, s. 402, 23 A. 124=A.W N. 1901, 16.

(395)—*S.* 106, *ill.* (*a*)—*Presumption arising out of character and circumstances of an act—Burden of rebutting such presumption—Penal Code, s.* 373.—Where the character and the circumstances of an act committed by an accused, charged under s. 373 of the Code, proved that the accused, a prostitute, bought two girls, about a year old, with the intention mentioned in the section, *held*, that it was for the accused to prove that the intention was something other than that which would evidently be suggested by the character and circumstances of the act, and that she intended to put off the employment of the girl for the purpose of prostitution until the completion of the sixteenth year, as was argued on her behalf. DEPUTY LEGAL REMEMBRANCER v. KARUNA BAISTOBI, **22 C. 164.** [*R* , 23 A. 124=A.W. N. 1901, 16 C.P.L.R. 171.]

(396)—S. 106—*See* NO. 390, *supra.*

(397)—*S.* 112—*Legitimacy—Presumption—Non-access — Impotence— Question of paternity, one of evidence only.*—The presumption created by s. 112 of the Evidence Act can only be rebutted by proof of non-access, and to prove non-access, the evidence must be such as to exclude all doubt. If the husband has had access, adultery on the wife's part will not justify a finding of illegitimacy. Proof of impotence would be equivalent of proof of non-access. Where the point for decision is one of evidence, (*e.g.*, paternity) only the case would be governed by s. 112 and not by the personal law of the parties. The question of a child's paternity is not one of succession, inheritance, marriage, or caste or any religious institution or usage, within the meaning of s. 13 of the Burma Laws Act, 1898. NGA TUN E v. MI CHON, **U.B.R. 1914, 3rd Qr. 23=26 Ind. Cas. 996=16 Cr. L.J. 84.**

(398)—S. 112—*See* CRIM. PRO. CODE, 1898, s. 488, U.B.R. 1892—1896, Vol. I, 74.

(399)—S. 112—*See* MAINTENANCE, 18 B. 468.

(400)—*Ss.* 112, 132, 133 *and* 146—*Discharged co-accused, whether competent to testify—Value of his evidence—Crim. Pro. Code* (1898), *s.* 209 (2) — *Discharge of accused before recording evidence and without recording reasons therefor, whether legal—Practice.*—Where two persons were sent up by the police on a charge of murder, and the Magistrate discharged one of them even before recording evidence and without recording any reasons therefor, but subsequently examined him as a witness in the trial of the other, it was contended that the discharge so made was illegal and consequently the evidence of such discharged co-accused was inadmissible. *Held*, the evidence of such person, whether his discharge was legal or not, was admissible, though it was of little value. *Per Irwin, J.*—The Magistrate certainly had power to discharge the accused as he did, but he should have then and there recorded his reasons for so doing, under s. 209 (2) of the Crim. Pro Code. It is difficult to say that the omission to record reasons makes the order of discharge illegal. But in any case such a defect would not make the evidence inadmissible. AUNG MIN v. KING-EMPEROR, **4 L.B.R. 362=9 Cr. L.J. 370.** (23 B. 213. *F.*; 33 C. 1353, *R.*)

(401)—S. 113—*See* No. 218, *supra.*

(402)— *S.* 114—*Presumption, value of—Duty of pleader, presumption in respect of.*—It cannot be accepted as a rule of law that any presumption, however weak, is sufficient to sustain the conviction of an accused person unless such person be able to give direct evidence to rebut such

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presumption. It may no doubt be said that it is the duty of a pleader carefully to examine all applications presented by him in Court, and it may fairly be presumed that a pleader will generally do so. But it is manifest that the strength of such a presumption depends upon many considerations. REG. v. YESHWANT, **Rat. Un. Cr. C 113.**

(403)—*S.* 114—*Evidence of accomplice, credibility of—Conviction—Validity.*—By s. 114, the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. Where the statement of an accomplice is not only not corroborated, but is distinctly contradicted by the evidence in the case, it is not worthy of credit. QUEEN-EMPRESS v. LAKSHMAYYA PANDARAM, **22 M. 491=2 Weir 746.**

(404)—*S.* 114—*Possession of stolen property —Presumption.*—From the possession of stolen property soon after the theft, the Court may presume that the person in possession is either the thief or the receiver of the goods knowing them to be stolen. A most important, if not the most important circumstance to be considered in dealing with the presumption, is the length of time which has elapsed between the loss of the property and the finding of it. No definite rule can be laid down as to the precise time which is too great to make it necessary for the prisoner to account for his possession. *In re* PUTHENVITTIL *alias* KARUMAN KUZHI KRISHNA NAYAR, **2 Weir 489=2 Weir 777.**

(405)—*S.* 114—*Possession of stolen bullock—Presumption as to.*—A bullock was stolen from a pen underneath a house during the night. On the following day, the accused offered to find it, if he were given Rs. 8. On receipt of the money, the accused told the complainant where the bullock was to be found. The bullock was just tied up in the place indicated by the accused. *Held* that it must, from the circumstances spoken to, be presumed that the accused was in possession of the bullock when it was tied up in the jungle, from which possession, it might undoubtedly be presumed that he was the person who stole the animal. DON BE v. CROWN, **1 L.B.R. 332.**

(406)—*S.* 114—*Penal Code, ss.* 379, 411—*Presumption of law arising from possession of stolen property.—Evidence Act, s.* 114 (*a*).—The prisoner had been convicted of theft, on the ground that he had been found in possession of the stolen property, a cooking utensil, fourteen months after the theft. *Held* that the long interval between the theft and the discovery of the utensil was sufficient to dissipate the ordinary presumption against the prisoner (s. 114, Evidence Act). EMPRESS v. KESHUB DAT, **A.W.N. 1881, 155.**

(407)—*S.* 114—*Presumption—Discovery of stolen property—Theft or receipt of stolen property.*—When stolen property is traced to the possession of an accused person three

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weeks after the theft took place, the proper presumption is, not that he was one of those who committed the theft, but that he received the stolen property knowing or having reason to believe it to be such. Whether a presumption of theft or of receipt of stolen property should be drawn would depend on the circumstances, the length of time that has elapsed after the theft, how much of stolen property is found in the possession of the person in question, the circumstances which led to the recovery and other facts connected with the discovery of the property. The discovery of stolen property in the possession of an accused is sufficient without more to raise the presumption that he received the property knowing it to be stolen. SESSIONS JUDGE OF VIZAGAPATAM v. GORLE KANDUNGADU. **1912 M.W.N.97=13 Ind. Cas. 828=13 Cr. L.J. 140.**

(408)—*S.* 114—*Presumption—Stolen property found in possession of the accused next morning —Thief and receiver of stolen property—Legality of joint trial.*—Where burglary was committed at night and stolen property was found in possession of the accused next morning, there was a presumption that he was one of the men who committed the theft.—*Observation*:—Where the receiving of stolen property is a totally separate transaction from the burglary in which the property is stolen, the trial of the receiver of stolen property with the thief would be illegal. BAIJU v. KING EMPEROR, **11 A.L.J. 94=18 Ind. Cas. 684=14 Cr. L.J. 124.**

(409)—*S.* 114—*Uncorroborated testimony of accomplice—Value and effect—Statement by a deceased person who was himself an accomplice—Admissibility.—Per Abdur Rahim, J.*—When there is no sufficient corroboration of the testimony of an accomplice, a conviction should not be based on such evidence. (14 B. 115, *Rel. on*). *Per Abdur Rahim and Ayling, JJ.*—A statement of a deceased accomplice (not cross-examined), which was not made in the presence of the accused, can add little or nothing to the other evidence in the case. *Per Ayling, J.*—While the discredit involved in the character of an accomplice is a point which should always be borne in mind by a Court in appraising the evidence of such a person, yet the degree of discredit will vary enormously in different cases according to the nature of the offence, and of the witness's complicity therein. It is only one of several factors which have to be considered in deciding whether his evidence should be believed or not; where a Court, after giving full weight to this, and other considerations, decides that the evidence is true, it is not only open to it to convict on that evidence, but it is its duty to do so. (9 Ind. Cas. 897, *F.*; 5 W.R. 80, Cr., 9 A. 528, 7 Bom. L.R. 969, 27 M. 127, *Rel. on*). Per *Sankaran Nair, J.*—A conviction based on the uncorroborated testimony of an accomplice is not illegal, though it should not be accepted unless for special reasons. *Per Ayling, J.*—The payment of a bribe to a public official must always be wrong act, but the circumstances of

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a case may be such as to render the immorality of a very venial description. *In re* TALARI NARAINSAWMI, **9 M.L.T. 503 = 9 Ind. Cas. 978 = 12 Cr.L.J. 170.**

(410)—*S.* 114—*Accomplice—Suspected participator in crime appearing as prosecution witness, statement of, weight of—Presumption—S.* 302. *Penal Code.*—A prosecution witness, against whom there is, apart from his own statement, ground for suspicion that he was himself a participator in the very crime for which the accused are on their trial, though, strictly speaking, not an "accomplice," stands, in view of the provisions of s. 114 of the Evidence Act, practically on the same basis as an "accomplice." Therefore a conviction ought not to be based on the sole uncorroborated testimony of such a witness. (17 C. 642, *R.*). The principle laid down by s. 114 of the Evidence Act is one of a very wide application, which covers not merely the particular instances given in the illustrations to the said section, but all sorts of the analogous cases in which the actual facts are distinguishable from the facts presumed by any one of the illustrations, but are equally amenable to the general principle enunciated by the section itself. RUSTOM SINGH v. EMPEROR, **15 Cr.L.J. 410 = 24 Ind. Cas. 146.**

(411)—S. 114—*See* ACT III OF 1867, S. 6. A.W.N. 1884, 291.

(412)—S. 114—*See* CRIM. PRO. CODE, 1898, s. 196, 7 C.L.J. 49 = 7 Cr. L.J. 10 = 35 C. 141 = 2 M.L.T. 500.

(413)—S. 114—Possession of deceased's blood-stained ornaments and clothes—Presumption of being murderer—Value of circumstantial evidence.—*See* CRIM. PRO. CODE, 1898, s. 307, 17 C.W.N. 1077 = 14 Cr. L.J. 556 = 21 Ind. Cas. 156.

(414)—S. 114—*See* PENAL CODE, s. 225-B, 6 C.W.N. 845.

(415)—S. 114—Judge's knowledge of notorious facts of social life of particular communities—Presumption.—*See* PENAL CODE, ss. 372, 373, 13 M.L.T. 131 = 24 M.L.J. 211 = 14 Cr. L.J. 33 = 18 Ind. Cas. 257.

(416)—S. 114—*See* PENAL CODE, s. 457, A.W.N. 1882, 224.

(417)—S. 114—*See* STOLEN PROPERTY, A.W.N. 1887, 281, 3 M.L.T. 30 = 7 Cr. L.J. 30, 6 C.P.L.R. 29. Cr., 12 C.P.L.R. 5 Cr., 6 A. 224 = A.W.N. 1884, 55.

(418)—S. 114—*See* THEFT—MISCELLANEOUS, L.B.R. 1893—1900, 279 and 507.

(419)—S. 114—*See* TRIAL BY JURY, Rat. Un. Cr. C. 840 = Cr. Rg. 10 of 1896.

(420)—S. 114 (*a*)—Power of Appellate Court to take additional evidence—Penal Code, s. 411—Dishonestly receiving or retaining stolen property—Article of small value—Recent possession—Burden of proof.—*See* CRIM. PRO. CODE, 1898, ss. 428, 540, 8 M.L.T. 418 = 8 Ind. Cas. 145 = 1910 M.W.N. 419.

Evidence Act (I of 1872)—*continued.*

(421)—S. 114—*See* NOS. 9, 11, 12. 44, 136, 138, 218 to 222, 337, 352, 391, *supra, and* Nos. 525, 526, 527, *infra.*

(422)—*Ss.* 114 *and* 54—*Penal Code, ss.* 411, 414—*Husband and wife—Presumption.*—The two accused in this case were husband and wife, and both were in possession of the stolen property within such a short time of the theft as to raise the usual *prima facie* presumption against them of being concerned in such theft, *Held*, that the general presumption that a wife acts under the influence and control of her husband was applicable to the present case, and that consequently the guilt of the wife must be confined to the offence of assisting her husband by dishonest possession or dishonest disposal of the stolen property under ss. 411 or 414, I.P.C. MI MYIT v. QUEEN-EMPRESS, **U.B.R. 1897-1901, Vol I, 171.**

(423)—*Ss.* 114, 133—*Evidence of accomplice—Corroboration—Practice—Evidence of persons bribing public servants—Its nature.—Per Birdwood, J.*—A conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. Such evidence, being admissible, furnishes as legal a basis for a conviction as any other evidence which is admissible. The omission to follow the established rule of practice as to the corroboration of such evidence does not constitute an error in law. But where the character of the evidence relied on by the prosecution was not of a kind to warrant the refusal of the Judge to apply to the case the maxim enunciated in illus. (*b*) of s. 114, Evidence Act, a conviction on the uncorroborated testimony of an accomplice is not legal. *Per Jardine, J.*—So long-established a rule of practice as that which makes it prudent, as a general rule, to require corroboration of accomplices, cannot, without great danger to society, be ignored by the Magistrates and Sessions Judges, simply because s. 133, Evidence Act, declares that a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. The Courts should give proper effect to the provision of s. 114, illus. (*b*). The rule in s. 114, illus. (*b*) and that in s. 133 are part of one subject and both are found in most of the great judgments; and neither section is to be ignored in the exercise of judicial discretion. The illus. (*b*) to s. 144 is the rule, and when it is departed from, the Court should show, or it should appear that, the circumstances justify the exceptional treatment of the case. Evidence of persons who subscribed to a fund for the purpose of bribing certain public servants is only evidence of accomplices in a charge of bribery against the public servant. QUEEN EMPRESS v. CHAGAN DAYARAM, **14 B. 331.** [*R.*, 19 B 51, 20 B. 394, 26 B. 193 = 3 Bom. L.R. 694, 33 C. 649 = 10 C.W.N. 669, 35 M. 247 = 13 Cr.L.J. 305 = 14 Ind. Cas. 849 = 22 M.L.J. 490 = 11 M.L.T. 1 = 1912 M.W.N. 207, 13 Cr.L.J. 352 = 14 Ind. Cas. 896 = 12 M.L.T. 1 = 1912 M.W.N. 549 = 35 M. 397, L.B.R. 1893—1900, 70, 1 L.B.R. 29, Rat. Un. Cr. C. 720, 746, 750, 806, 844; *D.*, 27 C. 144.]

Evidence Act (I of 1872)—*continued.*

(424)—*Ss.* 114, 133—*Evidence of accomplice—Corroboration.*—Although under ordinary circumstances, corroboration of an accomplice must be afforded by independent evidence, the substantive rule of law is that a conviction is not illegal merely because it is based on the uncorroborated evidence of an accomplice. QUEEN-EMPRESS v. NGA TUN BAW, **U.B.R. 1897–1901, Vol. I, 173.** (21 W.R. Cr. 69, 9 A. 528, 554, *R.*)

(425)—*Ss.* 114, 133—*Limitation to rule as to accomplice evidence.*—The general rule under which the evidence of accomplices is discredited, must, as the illustration given in the Evidence Act shows, be subject to the qualification that the less heinous the offence disclosed, the less liable would the evidence of the accomplice be to suspicion and discredit. Gambling is not an offence so grave as entirely to deprive the evidence of an accomplice therein of credibility. EMPEROR v. LAKHAMSI, **6 Bom. L. R. 1091=29 B. 264.**

(426)—*Ss.* 114, 133—*Evidence of accomplice — Corroboration.*— Although, as a matter of law, corroboration is not necessary to convict an accused person on the evidence of an accomplice, an accomplice should, as a rule, be presumed to be unworthy of credit, unless he is corroborated in material particulars, except where there are special circumstances in a particular case to disregard the rule. ILAHI BAKHSH v. EMPRESS, **16 P.R. 1886, Cr.**

(427)—*Ss.* 114, 133—*Evidence of accomplice uncorroborated—Value of such evidence—Conviction based on such evidence—Truth of evidence to be tested.*—In a case of kidnapping followed by murder, the uncorroborated evidence of an accomplice, whose share in the crime was almost as bad as that of any of those who took part in it, was the only evidence against those implicated in the crime: *Held*, that a conviction based on such evidence is not illegal, if the Court is satisfied after mature consideration that the accomplice has spoken the truth: *Held*, also that, though the terms of s. 133 of the Indian Evidence Act suggest that a conviction based upon evidence of the kind above referred to is to be regarded as exceptional, and though according to illus. (*b*) in s. 114, the Court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars, the Court must carefully test the truth of the uncorroborated evidence of an accomplice and must search for the motives which have prompted him to say what he said and for the circumstances which led up to his disclosures, and that the evidence must be subjected to the most rigid tests in the endeavour to ascertain the true facts. NGA PO CHIT v. EMPEROR, **9 Ind. Cas. 778=12 Cr. L.J. 132.**

(428)—*Ss.* 114, 133—*Evidence—Accomplice—Corroboration—Murder—Evidence Act, ss.* 114, *Illus.* (*b*) *and* 133—*Discrepancies between the statements of witnesses before the Police and Court.*—*Held*, that it is an established principle of law and practice that no accused can be convicted on the bare testimony of an accomplice, unless it has been corroborated by independent reliable evidence in material particulars directly connecting the accused with commission of the crime. So where material discrepancies occur between the statements of the corroborating witnesses before the Police and their depositions in the Court, either of inquiry or trial, there is no corroboration and consequently the prosecution must fail. AMAR DAS v. CROWN, **36 P.W.R. 1910, Cr.=8 Ind. Cas. 193=11 Cr. L.J. 580.**

(429)—*S.* 114 (*a*)—*Possession of stolen property—Presumption.*—The Court may presume, from the possession of stolen property, that the possessor is either the thief or has received it knowing is to be stolen property, unless the possession is accounted for. Where the possession of property, stolen some years before, is reasonably and circumstantially explained, such explanation should not be rejected merely because it is unproved. TABU v. EMPRESS. **15 P.R. 1891, Cr.** (31 P.R. 1879, Cr., 18 P. R. 1884, Cr., 46 P.R. 1887, Cr., 39 P.R. 1881, Cr., 25 P.R. 1883. Cr., 13 P.R. 1867, Cr., and 15 P.R. 1875, Cr., *R.*)

(430)—*S.* 114 (*a*)—*Uncorroborated evidence of accomplice, conviction based upon.*—As a rule it is unsafe to convict on the uncorroborated evidence of one accomplice, and the evidence of one accomplice is not sufficient corroboration of that of another to justify a conviction. But there may be circumstances, such as where previous concert by the informers is highly improbable, in which the agreement in their stories together with corroboration which is afforded by the circumstance that those stories cannot have been arranged between them beforehand, must be taken into account. QUEEN-EMPRESS v. NINGAPPA, **2 Bom. L.R. 610.**

(431)—*S.* 114, *Illus.* (*a*)—*Presumption—Possession of stolen ornaments, six months after dacoity—No explanation, effect of.*—Where, more than six months after the dacoity, some ornaments (consisting of a pair of bangles, a frontlet and ear-rings) were found in the possession of the accused, *held*, that, having regard to the nature of the ornaments, which were of common description, and were likely to pass from hand to hand, the case was not covered by s. 114, illus. (*a*) of the Evidence Act, and the accused should not have been called upon to explain their possession. EMPEROR v. SUGHAR SINGH, **3 A.L J. 808=A.W.N. 1906, 314=4 Cr.L.J. 436=29 A. 138=1 M.L.T. 449.** (6 A. 224, 11 C. 160, *R.*)

(432)—*S.* 114 (*a*)—*Possession of stolen property by a deaf-mute—Presumption.*—Where a deaf-mute was found in possession of stolen property a week after the theft, *held* in the special cir cumstances of the case, the presumption autho rised in s. 114 (*a*) of the Evidence Act canno be applied. COMYAN v. EMPEROR, **1914 M W.N. 821=15 Cr.L.J. 578=25 Ind. Cas. 330**

Evidence Act (I of 1872)—*continued.*

(433)—*S.* 114 (*b*)—*Evidence of accomplice—Admissibility—Corroboration—Accomplices, who are—Witness to payment of bribe—Bribery—Indian Penal Code* (*Act* XLV *of* 1860), *s.* 161.—It is generally unsafe to convict an accused person on the testimony of his accomplices, unless they are corroborated in material particulars connecting the accused with the offence. But this rule does not apply to all persons, who technically come within the category of accomplices. The particular circumstances of each case will affect its application and no general rule can be laid down on this point. When the accomplices were persons, who paid the bribe to a public servant, accused under s. 161, Indian Penal Code—not of their free will but rather of necessity—and particularly when they did not strive to save themselves by throwing the blame for the offence upon the accused and, furthermore, it appeared that their guilt, such as it was, was not used as an instrument to induce them to give evidence; *held*, that their testimony, even without corroboration, might justify the conviction of the accused. At any rate, their evidence would require a much slighter degree of corroboration to establish their credit than would be the case, if they were entirely voluntary accomplices in the offences which they spoke to. Witnesses to the payment of bribes are not accomplices, unless they co-operated in the payment of the bribes or were instrumental in the negotiations for the payment. DEONANDAN PERSHAD SINGH v. EMPEROR, **10 C.W.N. 669=33 C. 649=3 Cr. L.J. 452.** (26 B. 193, *Appr.*; 27 C. 925, *R.*; 27 W.R. Cr. L. 55, *D.*; 27 C. 144, *F.*) [*F.*, 12 C.W.N. 140=6 Cr.L.J. 434.]

(434)—*S.* 114, *Illus.* (*b*)—*Accomplice evidence—Presumption in illus.* (*b*) *when not applicable—Revision.*—In cases where the act of the accomplice imports no great moral delinquency, the presumption enacted in s. 114, illus. (*b*), does not apply. This is recognised as a consideration controlling or rebutting that presumption in the second explanatory illus. (*b*) to that section. The rule as to corroboration being necessary to accomplice evidence being only one of practice, a Court of revision will not, unless under exceptional circumstances, interfere in cases where the rule has not been adhered to. CROWN v. ISARDAS. **6 S.L.R. 106=17 Ind. Cas. 79=13 Cr. L.J. 767.**

(435)—*Ss.* 114 (*b*), 133—*Scope and applicability of.*—Illustration (*b*) to s. 114 directs attention to the general principle that it is unsafe to convict on the evidence of accomplices, unless corroborated in material particulars. But along with this principle must be borne in mind the qualifications contained in the further illustration which the Court is directed to consider when determining whether the general maxim does or does not apply to a particular case. They show that all persons coming technically within the category of accomplices cannot be treated as on precisely the same footing; and no general rule on the subject can be laid down. KING-EMPEROR v. MALHAR, **26 B. 193=3 Bom. L.R. 694.** [*R.*, 33 C. 649 =10 C.W.N. 669=3 Cr. L.J. 452, 35 M. 247 =13 Cr.L.J. 305=14 Ind. Cas. 849=11 M.L.T. 1=1912 M.W.N. 207=22 M.L.J. 490=35 M. 397=13 Cr. L.J. 352=14 Ind. Cas. 896=12 M. L T. 1=1912 M.W.N. 549=6 Bom. L.R. 443.]

(436)—*Ss.* 114, *illus.* (*b*), 133—'*Accomplice,*' *meaning of the word—Person helping the accused in disposing of the corpse of person murdered, whether an accomplice—I.P.C.*, ss. 201, 202—*Accomplice evidence — Practice.*—The term "accomplice" signifies a guilty associate in crime; or, when the witness sustains such a relation to the criminal act that he could be jointly indicted with the accused, he is an accomplice. *Per Subrahmania Ayyar, J.*—The evidence of a witness, who has helped the accused to conceal the corpse of the person murdered or has omitted to give information of the murder of which he was aware, should not be regarded and tested as that of an accomplice and need not be corroborated in material particulars for acting upon it. The case against an accused person who was convicted by a Sessions Judge of murder entirely depended upon the evidence of the first prosecution witness, a young man of 18, who said he was present when the accused committed the murder of a cooly woman, and saw him in disposing of the body by throwing it into a *cholam-pit*, where it was found some 16 days later, upon information given by him 15 days after the murder. He deposed that he worked for the accused and that the deceased woman, also a servant, become *enciente* by him. She had been frequently asking the accused for money and would not leave, unless money was given her. On the date of the murder, the deceased came to the accused's garden and asked for money and threatened to complain to the *Pattagar* and his relations and disgrace him if he did not pay her. On the evening of that day the accused took a crow-bar from the witness. At night, the witness heard a cry, hid himself in *cholam* and saw the accused beating the woman and striking her on the head with the crow-bar. The witness having refused to help the accused in disposing of her dead body, the latter dragged it alone to the *cholam-pit* and threw it into the pit. Next morning the accused came to the place where the witness was lying and threatened that, if he disclosed the murder, he would be murdered. A quarrel, subsequently, arising between the witness and the accused, the former reported the fact to the brother of the deceased and also to the Station-House Officer. *Held*, by *Subrahmania Ayyar* and *Bhashyam Ayyangar, JJ.* (*Boddam, J.* contra), that the witness could not be regarded as an accomplice in the crime of murder, and the fact that he helped the accused in disposing of the dead body after murder would make him only liable to be convicted under ss. 201 and 202, Penal Code, but would not make him an accomplice in the murder. What is laid

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down as to the untrustworthiness of uncorroborated accomplice testimony is not a presumption, in the strictly legitimate sense of the term, in the law of evidence; in other words, it is not a rule of law which throws upon the party, against whom it works, the duty of going forward with the evidence, but is only a precept of caution, followed indeed by constant practice in charging juries and never to be lost sight of in estimating the weight due to such tainted testimony. To claim for it a greater potency, in the face of s. 133 of the Evidence Act, would be to introduce an artificial scale of credit—*Per Subrahmania Ayyar, C.J.*—The presumption allowed by ill. (*b*) of s. 114 that an accomplice is unworthy of credit unless he is corroborated in material particulars, has become a rule of practice of almost universal application. Judges now in their charge usually tell a jury that, under ordinary circumstances, it is unsafe to convict on such evidence without the substantial corroboration of independent evidence. A Judge who combines the functions of Judge and jury is equally bound to scrutinise accomplice evidence with great care and to consider whether there is any corroborating evidence when the main evidence is of an accomplice character.—*Per Boddam, J.*—In regard to the testimony of accomplices or *participes criminis*, there is no doubt of the maxim that an accomplice is unworthy of credit, unless he is corroborated in material particulars; this rests, not on any rule of law, but only "on a rule of practice which has become so hallowed as to be deserving of respect." But there is no authority whatever in English Law which warrants the extension of the maxim to persons who are not accomplices. A Judge, when there is no special circumstance which would induce him to give credit to the evidence of an accomplice and convict the accused on his sole uncorroborated testimony, may, under s. 298 (2), Crim. Pro. Code, express such opinion to the jury and in that sense advise them to acquit the prisoner. —*Per Bhashyam Ayyangar, J.* RAMASAMI GOUNDAN *v* EMPEROR **27 M. 271 = 2 Weir 803 = 14 M.L.J. 226.** [*R.*, 8 Cr. L.J. 191, 13 Cr. L.J. 305 = 14 Ind. Cas 849 = 1912 M.W.N. 207 = 22 M.L.J. 490 = 11 M.L.T 1 = 35 M. 247, 35 M. 397 = 1912 M W.N. 549 = 12 M.L.T. 1 = 13 Cr. L.J. 352 = 14 Ind. Cas. 896, 9 Ind. Cas. 978, 10 M.L.T. 84 = 21 M.L J. 283 = 1911 M.W.N. 327 = 9 Ind. Cas. 897, 1 S.L.R. 73.]

(437)—*Ss.* 114, *ill* (*b*), *and* 133—*Evidence of accomplice—Corroboration—S.* 161, *I.P.C.—When High Court would interfere in revision.*—By the law both of India and England, the evidence of an accomplice is admissible, and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. But the presumption that he is unworthy of credit unless he is corroborated in material particulars, has become a rule of practice of almost universal application. In the present case, *Scott, J.*, differed from *Jardine and Bayley, JJ.*, and *held* that the testimony of persons who gave bribes to a public officer was sufficient to convict the public officer, as the ordinary ground for doubting the evidence of an accomplice—to wit, that they will try to throw the guilt upon others—did not apply to the case, as they were not subject to any accusation whatever. *Held by Jardine and Bayley, JJ.*—The conviction of the accused was illegal, as there was no evidence to corroborate the testimony of the accomplice, and the accused was prejudiced by the course adopted by the Magistrate, and that there was such a failure of justice as would justify the interference of the High Court in revision. QUEEN-EMPRESS *v.* MAGANLAL, **14 B. 115.** [*R.*, 14 B. 331, 26 B. 193 = 3 Bom. L.R. 694, 33 C. 649 = 10 C.W.N. 669, 27 M. 271 = 14 M L.J. 226 = 2 Weir 803, 35 M. 247 = 22 M.L.J. 490 = 11 M L.T. 1 = 1912 M.W.N. 207 = 13 Cr. L.J. 305, 35 M. 397 = 13 Cr. L.J. 352 = 14 Ind Cas. 896 = 12 M.L.T. 1 = 1912 M.W.N. 549, 12 Cr.L J. 150 = 9 Ind. Cas. 897 = 21 M.L.J. 283 = 10 M.L.T. 84 = 1911 M.W.N. 327, 12 Cr L.J 170 = 9 Ind. Cas. 978 = 9 M.L.T 503, Rat. Un. Cr. C. 750, Rat. Un. Cr. C. 844.]

(438)—*Ss.* 114, *illus.* (*b*), 133—*Self-incriminating portion of accomplice evidence, credibility of—How accomplice evidence to be dealt with.*—There is no rule of law or practice that the self-incriminating portion of the evidence of an accomplice is unworthy of belief unless corroborated. The credibility of a witness who says that he and another joined in committing an offence stands *per se* so far as his self-accusation is concerned, on the same footing as that of a witness who says that he alone committed an offence, though in the latter instance there would be a narrowed basis for cross-examination to test his own self-accusation. What must first be decided is whether the witness in question is in truth an accomplice or merely posing as an accomplice. When it is once established that he is an accomplice, then, the next practical question arises as to who are the other accomplices, and it is at that stage, when his evidence implicating others has to be weighed, that there comes into application the maxim that it is unsafe to convict upon the evidence of an accomplice unless he is corroborated in material particulars, both as to the circumstances of the offence and the identity of the person whom he implicates. EMPEROR *v.* HANMUNT, **6 Bom. L R. 443.** [*R.*, 6 Bom. L.R. 481, 22 M.L.J. 490 = 1912 M.W.N. 207.]

(439)—*Ss.* 114 (*b*), 133—*Evidence of accomplice—Corroboration, as to identity of accused.* —*Per Crowe, J.*— However convincing the testimony of an accomplice may be of the facts necessary to be proved, it has become a settled course of practice not to convict an accused person on the uncorroborated testimony of an approver, and the corroboration ought to consist in some circumstances that affect the identity of the accused. *Per Chandavarkar, J.* —The corroboration required of the testimony of an accomplice should go to some circumstances affecting the identity of the accused as

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participating in the transaction. Such corroboration ought to be that which is derived from unimpeachable or independent evidence as distinguished from that derived from the earlier statements of the same accomplice or the statements of other accomplices. *Per Aston, J. (dissenting)*:—There is no rule of law or practice that the corroboration of the accomplice's evidence must be as to all details, or so complete as, in itself, to establish guilt. To set up such a rule would be to nullify the provisions of the law which admit of pardon to approvers in order to secure evidence for the Crown. EMPEROR v. BAJI KRISHNA, **6 Bom. L.R. 481.** [*R.*, 22 M.L.J. 490=1912 M.W.N. 207.]

(440)—*Ss.* 114, *ill.* (*b*) *and* 133—*Accomplice Evidence — Corroboration — Revision by High Court.*—It is not a rule of law but one of mere practice and prudence that an accomplice is unworthy of credit, unless he is corroborated in material particulars. A conviction will not be disturbed by the High Court under its revisional jurisdiction, on the mere ground that the said rule of practice has not been adhered to by the Court which has convicted, unless there are exceptional circumstances calling for the exercise of that jurisdiction in the interests of justice. EMPEROR v. LALLUBHAI PRANUBHAI, **11 Bom. L.R. 858=3 Ind. Cas. 963=10 Cr. L.J. 433.**

(441)—*Ss.* 114 (*b*) *and* 133—*Evidence of pardoned accomplice—Conviction—Validity.*—The evidence of a pardoned accomplice taken with the statements of unpardoned co-prisoners is not sufficient by itself to warrant the conviction of those who never confessed. QUEEN-EMPRESS v. BHAGYA, **Rat Un. Cr. C. 750.**

(442)—*Ss.* 114, *ill.* (*b*), *and* 133—*Admissibility of evidence of accomplice—Corroboration—Accomplices by implication or in a secondary sense —Duty of Court.*—Although a conviction is not illegal, merely because it proceeds upon the uncorroborated testimony of an accomplice, the evidence of an accomplice, ordinarily speaking, should be corroborated in material particulars, and such evidence should be accepted with a great deal of caution and scrutiny. The amount of criminality is a matter for consideration, and when a person is only an accomplice by implication or in a secondary sense, his evidence does not require the same amount of corroboration as that of a person, who is an actual perpetrator with the principal offender. [*R.*, 7 Bom. L.R. 969.] In dealing with the question what amount of corroboration is required in the case of testimony given by an accomplice, the Court must exercise careful discrimination and look at all the surrounding circumstances in order to arrive at a conclusion whether the facts deposed to by the person alleged to be an accomplice are borne out by those circumstances, or whether the circumstances are of such a nature that the evidence purporting to be given by the alleged accomplice should be supported in essential and material particulars by evidence *aliunde*, as to the facts deposed to by that accomplice. KAMALA PRASAD v. SITAL PRASAD, **28 C. 339=5 C.W. N. 517.** [*R.*, 13 Cr. L.J. 305=14 Ind. Cas. 849=1912 M.W.N. 207=22 M.L.J. 490=11 M.L.T. 1 Sup.=35 M. 247. 13 Cr. L.J. 352=14 Ind. Cas. 896=1912 M.W.N. 549=12 M.L. T. 1=35 M. 397.]

(443)—*Ss.* 114, *ill.* (*b*), 133—*Accomplice—Evidence—Corroboration—Amount of corroboration.*—The testimony of an accomplice is not required by law to be corroborated. The rule of practice which lays down the requirement should be applied with due regard to the varying circumstances of each particular case. The corroboration needs be not only *quoad* the incidents and circumstances of the crime, but also *quoad* the identity or the personality of the offender. The law does not require that every detail of the approver's story must be fortified by a similar story told by an independent witness; the effect of any such principle would be to rule out the accomplice's evidence as altogether inadmissible. It is only necessary that the accomplice's evidence should, in the circumstances of each particular case, receive that corroboration which it seems to require. There is no rule either of law or of practice which seeks to furnish an inflexible canon as to the precise degree of corroboration which in all cases should be demanded for an accomplice's evidence. EMPEROR v KUBERAPPA, **15 Bom. L.R. 288=2 Bom. Cr. C. 39=19 Ind. Cas. 321 =14 Cr. L.J. 225.** (8 A. 306, *Expl.*)

(444)—*Ss.* 114, *ill.* (*b*), 133 — *Accomplice, corroboration of—Agreement between statement of approver and confessions of accused made at different times and places without collusion —Confession by an accused to a private person immediately after the occurrence before the arrival of the police, but retracted afterwards, value of, as corroboration of an approver as against the makers and against the co accused—Approver's evidence credited by the Judge and assessors—Conviction on uncorroborated evidence of accomplices, legality of.*—A confession made to a private person, immediately after the occurrence and before the arrival of the Police, which was repeated two days later to a first class Magistrate, but was retracted four months after—the story told at the retraction being disbelieved by the Court—was held sufficient corroboration of the approver as against the maker. Under s. 133 of the Evidence Act, a conviction is not illegal merely because it proceeds on the uncorroborated testimony of an accomplice. To justify the High Court in setting aside the conviction, it is necessary to show not only that there is no corroboration, but that the Judge, taking all the evidence together, was wrong in acting on it. Where, immediately after a dacoity and before the arrival of the police, one of the accused who had been caught made a confession to a private person, naming the other persons concerned in it except two, one of whom he named two days after in this confession to the Magistrate which agreed

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with the evidence subsequently given by the informer, both the confessions being afterwards retracted, and another accused made a confession naming all the persons mentioned by the approver, the two accused and the latter having been arrested at different times and places, and there was evidence that some of the dacoits were seen in company together shortly before the dacoity and that they were absent from their homes shortly after it. *Held*, that the confessions of the two accused and the other facts were sufficient corroboration of an approver, who had been believed by the Judge and assessor, as against the co-accused who had not made confessions. LALAN MALIK v. KING-EMPEROR, **16 C.W.N. 669 = 15 Ind. Cas. 987 = 13 Cr. L.J. 570.**

(445)—*Ss.* 114, *ill.* (*b*) *and* 133—*Involuntary accomplices—Value of their evidence.*—Where a Police Inspector was charged with having extorted money by a threat of implicating the witnesses in a charge of murder and by handcuffing and imprisoning them, unless they paid money, *held*, that, although the witnesses were to be treated as accomplices, yet they were more involuntary than voluntary accomplices and, in that light, their evidence was not tainted as much as it would otherwise be. NARAYANASWAMI NAIDU v. EMPEROR, **2 Weir 809, foot note.** [*F.*, 2 Weir 803 = 27 M. 271.]

(446)—Ss. 114, ill. (*b*), 133—Testimony of accomplices — Admissibility and value—*See* CRIM. PRO. CODE, 1898, s. 257, 21 M L J. 283 = 9 Ind. Cas. 897 = 12 Cr. L.J. 150 = 10 M.L.T. 84 = (1911) 1 M.W.N. 327.

(447)—*S.* 114, *ill.* (*e*) — *Crim. Pro. Code,* 1882, *s.* 509—*Deposition of medical witness before committing Magistrate—Admissibility in Sessions Court—Presumption.*—Before the deposition of a medical witness given before the committing Magistrate can be admitted in the sessions trial, it must either appear in the Magistrate's record or must be proved by the evidence of witnesses, to have been taken and attested in the prisoner's presence. It should not be merely presumed under s. 114, ill. (*e*), to have been so taken and attested. QUEEN-EMPRESS v. RIDING, **9 A 720 = A.W.N. 1887, 228.** [*F.*, 18 C. 129; *R.*, 10 A. 174 = 8 A.W.N. 11.]

(448)—S. 114 (*e*)—Warrant—Search—Complaint on oath—*See* BOM. ACT IV OF 1887, ss. 6, 7, 9 Ind. Cas. 895 = 12 Cr. L.J. 149 = 5 S. L.R. 40.

(449)—*Ss.* 114 (*h*), 133—*English practice as to evidence of accomplice.*—Though, under s. 133 of the Indian Evidence Act, a conviction based merely on the uncorroborated testimony of an accomplice is not illegal, the English rule of practice, requiring corroboration in material particulars should be observed also in India. EMPRESS v. GAMBIRA, **A.W.N. 1882, 13.**

(450)—*S.* 118—*Competency to testify.*—Where, in a murder case, a small boy, who was an eyewitness to the murder, was not examined in the Sessions Court on the ground of his youth, *held*, that the Sessions Judge, especially considering the importance of the witness, ought not to have refrained from examining him, unless, under the words of s. 118 Evidence Act, he considered that the boy was prevented from understanding the questions put to him, or from giving rational answers to those questions, by reason of tender years. QUEEN EMPRESS v. RAM SEWAK, **23 A. 90 = A.W.N. 1900, 211.**

(451)—*S.* 118—*Evidence of witness illegally pardoned by police, admissibility of.*—During the course of a police investigation into a case of house-breaking and theft, several persons were arrested, and one of whom made certain disclosures to the police and pointed out several houses which had been broken into by his accomplices. Thereupon, the police discharged him and made him a witness. At the trial he gave evidence against his accomplices, who were all convicted. *Held*, that such evidence was admissible, though he had been illegally discharged by the police, as he was never brought before the Magistrate as an accused person. QUEEN-EMPRESS v MONA PUNA, **16 B. 661.** [*R.*, 19 B. 363, Rat. Un. Cr. C, 776, 100 P.L. R. 1902 = 12 P R. 1902, Cr., 10 C.W.N. 962 = 33 C. 1353 = 4 Cr. L.J. 145.]

(452)—*S.* 118—*Police officer as witness.*—A police officer or advocate conducting a prosecution should never be sworn, unless he is called as a witness, and, if so called, he should be allowed to depose only to those facts which he knows and of which he is, in accordance with the provisions of the Evidence Act, a competent witness. EMPRESS v. KONDU, **6 C.P.L.R. Cr. 1.**

(453)—*S.* 118—*Oaths Act,* 1873, *ss.* 5, 6 *and* 13—*Competency to testify but inability to understand oath—Oath or affirmation, evidence recorded without administering — Admissibility of evidence so recorded against the accused.*—*Held* (*per Greevan, A.J.C.*), that, where a person is competent to testify according to the provisions of s. 118 of the Evidence Act, but is unable, owing to his tender age, to comprehend the nature of an oath or affirmation, s. 13 of the Oaths Act relieves the Court of the necessity of administering an oath or affirmation to him; and the evidence of such a person recorded without oath or affirmation may be admitted. RAM SAMUJH v. EMPEROR, **10 O.C. 337 = 7 Cr. L.J. 89.** (14 B.L R. 54, 295, note, 294, 16 B. 359, *F.*, 10 A. 207, 11 A. 183, 16 M. 105, S.C, No. 221, S.C. No. 242, *Disappr.*)

(454)—*S.* 118—*Affirmation of competent witnesses—Oaths Act, s.* 13—"*Omission,*" *meaning of.*—*Held* that, a Sessions Judge, who had no doubt as to the competency of certain boy witnesses, ought to have administered an affirmation to them. The word "omission" in s. 13, Oaths Act, includes any omission and is not limited to accidental negligent omissions. EMPRESS v. SAMBHIA MAHAR, **11 C.P.L.R. Cr. 16.** (11 A. 183, *Appr.*; 14 B.L.R. 294, 16 B. 359, *F.*; 10 A. 207, *Not F.*; 16 M. 105, *R.*)

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(455)—S. 118—*See* ACCOMPLICE—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, 8 P.R. 1904, Cr.=70 P.L.R. 1904 =1 Cr. L.J. 514.

(456)—S. 118—*See* ACT XV OF 1869, Rat. Un. Cr. C. 776=Cr. Rg. 41 of 1895.

(457)—S. 118—*See* ACT X OF 1873, s. 5, S. C. 242, Oudh.

(458)—S. 118—*See* ACT X OF 1873, ss. 5, 6, 7, 13, 16 M. 105=1 Weir 823, 11 A. 183=A.W.N. 1889, 65, 10 A. 207=A.W.N. 1888, 86.

(459)—S. 118—Child witness—Failure to administer oath—Evidence whether inadmissible—Plea of insanity of accused—Time—*See* ACT X OF 1873, ss. 5, 13, 15 Cr. L.J. 161=22 Ind. Cas. 737.

(460)—S. 118—*See* ACT X OF 1873, s. 13, 22 W.R. Cr. 14=14 B.L.R. 54, 24 W.R. Cr. 1= 14 B.L.R. 295, note.

(461)—S. 118—Child of tender years—Capacity to understand—Testing of capacity—Province of Judge and Jury—*See* CRIM. PRO. CODE, 1898, s. 422, 14 Cr. L.J. 485=20 Ind. Cas. 741=18 C.L.J. 582=18 C W.N. 147.

(462)—S. 118—*See* WITNESS—GENERAL—WHO ARE COMPETENT TO BE WITNESSES, 38 P.R 1887, Cr., 11 C.W.N. 51=4 Cr. L.J. 412, 16 B. 359.

(463)—S. 118—*See* No. 34, *supra.*

(464)—*Ss.* 118, 133—*Crim. Pro. Code*, 1898, *s.* 342 (4)—*Separate trial of co-accused — Accomplice testimony.*—Under ss. 118 and 133, Evidence Act, an accomplice is a competent witness, and the only limitation imposed on the general rule there stated is that involved in the application of s. 342 (4), Crim. Pro. Code. If the accused and the accomplice were being tried jointly, the accomplice could not be sworn and, therefore, could not be a witness against the co-accused. But if they were being separately tried, this prohibition would not apply. Therefore, an accomplice is a competent witness against a co-accused tried separately. NGA PO YIN v. KING-EMPEROR, **U.B.R. 1906, Evidence 3=5 Cr. L J. 300.** (10 C.W.N. 962, 11 C. 635, 12 M. 153, 14 B. 260, 25 C. 413, U.B.R. 1892—1896, vol. I, 83, *R.*)

(465)—S. 119—*See* No. 34, *supra.*

(466)—*S.* 120—*Crim. Pro. Code* (1882), *s.* 488 — *Bastardy proceedings — Their nature.* — Bastardy proceedings, under s. 488, Crim. Pro. Code, are civil proceedings within the meaning of s. 120 of the Evidence Act, and the defendant thereto may give evidence on his own behalf. NUR MAHOMED v. BISMULLA JAN, **16 C. 781.** [*F.*, 154 P.L.R. 1914; *Appr.*, 5 P.R. 1914, Cr.; *R.*, 18 B. 468, L.B.R. 1893—1900, 662, 168 P.L.R. 1903=19 P.R. 1903, Cr., 17 C.P.L.R. 127.]

(467)—S. 120—*See* BASTARDY PROCEEDINGS, 16 C. 781.

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(468)—*S.* 121—*Scope of—Held by the Full Bench.*—The privilege given by s. 121 of the Evidence Act is the privilege of the witness, *i.e.*, of the Judge of whom the question is asked. If he waives such privilege, it does not lie in the mouth of any other person to assert it. *Per Spankie, J.*—A committing Magistrate, who is cited as a witness in the Sessions Court, cannot be compelled to answer questions as to his own conduct in Court, except under the special orders of the Court to which he is subordinate. If he does not object to answer such questions, there is no prohibition to his doing so. EMPRESS OF INDIA v. CHIDDA KHAN, **3 A. 573=A.W.N. 1881, 37.**

(469)—*S.* 121—*Exemption of judicial officers from giving evidence.*—Judicial officers are not exempted from giving evidence upon matters which they saw, when sitting as Judges, unless they arrive at such knowledge by virtue of an investigation which they were making as Judges. A Munsiff should not be called upon to depose to what took place before him in the course of a trial which he was conducting as a Munsiff. HIGH COURT PROCEEDINGS, 27TH NOV. 1871, **2 Weir 777=6 M.H.C. App. 42.**

(470)—*Ss.* 121, 123, 124, 125, 126, 138—*Transfer of case—Grounds—Discretion to refuse bail—Improper exclusion of evidence—Distinction between questions, which witness cannot be compelled to answer and those which witness cannot be permitted to answer—Admissibility of the answers where the witness waives his right of not replying—Cross examination of witness, its scope—Police papers.*—A Magistrate has discretion to refuse bail, and the fact that he has refused bail will not constitute a ground for transferring a case from his board. An error in disallowing certain questions in the cross-examination of a witness does not afford sufficient ground for the transfer of the case. The question of improper exclusion of evidence is not one which should ordinarily be gone into during the pendency of a case. A distinction should be drawn between questions which a witness cannot be compelled to answer and those which he cannot be permitted to answer. The latter class of questions might properly be forbidden, but questions of the former class are in no way barred; a witness has merely the right of refusing to answer such questions, without any hostile inference being drawn from his refusal. The most, therefore, that a Magistrate can do, in the case of a witness who is ignorant of his privilege, is to warn him that he need not answer; but if the witness elects to waive his privilege of refusing to answer, his answer is admissible in evidence. Cross-examination need not be confined to matters raised elsewhere in the evidence. The right of cross-examination given by the Evidence Act is not fettered by the fact that police papers are in existence but have not been referred to. S. 138 of the Evidence Act gives the defence the right to cross-examine prosecution witnesses at the conclusion of their examination-in-chief,

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and such cross-examination may be on all points and by means of all questions not disallowed by the Evidence Act. Though the defence have the further right to re-call and cross-examine prosecution witnesses after the charge has been framed, they cannot be compelled to so defer all or any of the cross-examination which they are by law entitled to make. To do so is to deprive them of part of the means available for obtaining an order of discharge. MAHOMED ALLY v. EMPEROR, **12 Cr.L.J. 277 =10 Ind. Cas. 917.**

(471)—*S. 122—Letter from husband to wife taken from wife's house on search being made—Admissibility in evidenee.*—A document, even though it contains a communication from a husband to a wife or *vice versa*, in the hands of third persons, is admissible in evidence; for, in producing it, there is no compulsion on, or permission to, the wife or husband to disclose any communication. S. 122 protects the individuals, and not the communication, if it can be proved without putting into the box for that purpose the husband or the wife to whom the communication was made. Where a person was tried on a charge of criminal breach of trust, a letter from him to his wife in another place which had been found by the Police when searching her house under a search warrant was admitted QUEEN-EMPRESS v. DONAGHUE, **22 M. 1=2 Weir 778.**

(472)—*S. 122—Communications between husband and wife—Death of husband—Disclosure by widow—"Representative in interest"—Consent.*—Where a statement to which a widow deposed was a communication made to her by her deceased husband during marriage, not only could she not be compelled to disclose that communication, but she could not be permitted to disclose it, if there was no one who did or could consent to the disclosure. The discolure of such a communication must therefore be excluded from consideration. The widow is not the 'representative in interest' of her deceased husband for the purpose of giving such consent. The prohibition enacted by the section rests on no technicality that can be waived at will, but is founded on a principle of high import which no Court is entitled to relax. NAWAB HOWLADAR v. EMPEROR, **40 C. 891= 23 Ind. Cas. 511=15 Cr. L.J. 303.**

(473)—*S. 122—Communication between husband and wife not to be disclosed without consent of the other party.*—Statements alleged by the wife of an accused person to have been made to her in respect of the offence with which he is charged, without the accused or his representative-in-interest consenting to these statements being disclosed, are inadmissible under s. 122, Evidence Act. MILKHI v. EMPEROR, **218 P. L.R. 1913=19 Ind. Cas. 705=24 P.W.R. 1913, Cr.=14 Cr. L.J. 273.** [*R.*, 44 P.W.R. 1913, Cr.=244 P.L.R. 1913=19 Ind. Cas. 1004=14 **Cr. L.J. 316=10 P.R. 1914, Cr.**

Evidence Act (I of 1872)—*continued.*

(474) — *S. 122 — Communication between husband and wife—Disclosure not to be permitted except with consent — Consent cannot be implied—Duty of Court to ask whether consent given or not—Proof of guilt by circumstantial evidence—Nature of evidence required.*—Under s. 122 of the Evidence Act, no communication between husband and wife can be disclosed by the one against the other without consent of the party concerned. The consent cannot be implied. It is incumbent upon the Court to ask the party, against whom the evidence is to be given, whether he or she would consent to the evidence being given, and not to admit it unless such consent is given. (10 B.H.C. 497, *R.*) Where it is sought to prove an offence on circumstantial evidence only, there must be a chain of evidence, or series of established facts, so far complete as to leave no reasonable ground for a conclusion therefrom consistent with the innocence of the accused. BISHEN DAS v. EMPEROR, **244 P.L R. 1913=19 Ind. Cas. 1004 =14 Cr. L J. 316=44 P.W.R. 1913, Cr.=27 P.R. 1913, Cr.** (15 P.R. 1867, Cr., 8 C.W.N. 278=1 C.L.J. 124, *R.*)

(475)—*S. 122—Wife charged with murder of stepson — Admission of confession by wife to husband—Confession by the woman in Police custody—Confession retracted—Effect—Meaning of 'offence.'*—In this case F, wife of A, was convicted of murdering her stepson on the strength of a confession by her to her husband and the pointing out by her to him alone of the body of the stepson floating in a pond. *Held*, that such evidence is not admissible, as the crime was not committed by the wife against the husband within the meaning of s. 122, Evidence Act (24 P.W.R. 1913, Cr., *R.*) An offence 'against' a person is an offence calculated to injure his person or property or reputation, as in cases of defamation, and does not include an offence against a son, though such offence may cause to the father grief in mind. A confession by a woman in Police custody, to which she had been relegated by her own husband and to which she was remanded after the confession was made, is of little value, when the confession is retracted only five days later before the same Magistrate. MUSSAMMAT FATIMA v. CROWN, **10 P.R. 1914, Cr.= 261 P.L.R. 1914=15 Cr. L.J. 613=25 Ind. Cas. 525.** (18 A. 78, *R.*)

(476)—S. 122—*See* No. 23, *supra.*

(477)—S. 123—*See* Nos. 392, 470, *supra.*

(478)—*Ss. 123, 124—Production of records not protected by the sections.*—Any officer having the custody of records, not being records of which the production may, on special grounds, be refused, is bound to produce them on receiving a summons to that effect. The summons should properly be addressed to the Judge or presiding officer of the Court. The Magistrate has no power to call for the records without the issue of a summons, but when the summons has been issued to the record-keeper, the production of the record should not be refused

Evidence Act (I of 1872)—*continued.*

by the District Judge. HIGH COURT PROCEEDINGS, 24TH OCTOBER 1879, No. 1857, 2 **Weir 781.**

(479)—*Ss.* 123, 124, 125, 155, 162, 163—*Privilege—Departmental enquiry into conduct of Police officers, statements made by witnesses at—Trial of Police officers on charge of taking illegal gratification—Court's duty to send for the statements and allow accused to cross-examine thereon.*—Statements made by witnesses in the course of a departmental enquiry into the conduct of Police officers, who were subsequently put upon their trial on charges of taking illegal gratification are not privileged under ss. 123, 124 or 125 of the Evidence Act, and the accused are entitled to cross-examine the witnesses under s. 153 of the Evidence Act on the statements made by them at the departmental enquiry. HARBANS SAHAI v. EMPEROR, **16 C.W.N 431 = 13 Cr. L.J. 445 = 15 Ind. Cas. 77.** (2 Bom. L.R. 329, *F.*)

(480)—*S.* 124—*Communication made to a person in his official capacity.*—S. 124 follows the English Law and makes the public officer the judge as to whether a communication made to him in his official confidence should or should not be disclosed. If he thinks that the public interest would suffer by such disclosure, he is entitled to refuse to disclose the communication. The mere fact that the publication of the communication might cause a scandal in the office will not justify a refusal to disclose it. BIDHU BHUSAN BOSE v. HARI NATH CHAKRAVARTI, **7 C.W.N. 246.**

(481)—S. 124—*See* Nos. 392, 470, 478, 479, *supra.*

(482)—*Ss.* 124, 125—*Refusal by Government officer to give name of informant.*—The accused was convicted of criminal breach of trust in respect of three gold bangles. The evidence went to show that the accused insured a parcel in the Post Office as containing these gold bangles, but, shortly after delivery to the addressee the parcel was found to contain only a piece of steel. One of the witnesses deposed to having sold the steel to the accused. Accused's counsel asked the Superintendent of Post Offices the name of the person who had informed him about the sale of steel to the accused, but the Sessions Judge refused to allow the question to be put as he was of opinion that the Superintendent was protected by ss. 124 and 125 of the Indian Evidence Act, because he had evidently regarded the communication as made to him in official confidence, more especially as, at the time, the case was being investigated as an attempted fraud on the public revenue. *Held* that the Sessions Judge was wrong in disallowing the question, as neither s. 124 nor s. 125 of the Indian Evidence Act had any application to the case. QUEEN-EMPRESS v. RAMADHAN, 2 **Bom. L.R. 329.** [*F.*, 16 C.W. N. 431 = 15 Ind. Cas. 77.]

(483)— *S.* 125 — *Section construed.*— The words, "information as to the commission of any offence," in s. 125, Evidence Act, only enact the rule which, as said by *Eyre, C.J.*, in *Hardy's case* (24 How. St. Tr. 808) has universally obtained, on account of its importance to the public for the detection of crimes, that those persons, who are the channel by means of which the detection is made, should not be unnecessarily disclosed. QUEEN-EMPRESS v. DYAMA IRAPPA, **Rat. Un. Cr. C. 937 = Cr. Rg. 47 of 1897.**

(484)—S. 125—*See* BOM. ACT VII OF 1873, Rat. Un. Cr. C. 183 = Cr. Rg. 20-7-1882.

(485)—S. 125—*See* Nos. 392, 470, 479, 482, *supra.*

(486)—*S.* 126—*Solicitor and client—Professional communication, what amounts to—Privilege.*—The law in India relating to professional communications between a solicitor and a client is the same as in England, and in interpreting s. 126 of the Evidence Act, the High Court may rightly refer to English cases. The use of the word "disclose" in s. 126 shows that the communication to be privileged must be of a confidential character between the solicitor and the client. It is not everything that the solicitor learns in the course of his dealings with the client that is privileged from disclosure. It must be a matter communicated to him confidentially for the purpose of obtaining his professional advice, The solicitor claims the privilege as that of his client. He must, then, state the name of the person for whom he claims the privilege. Where one client mentions the name of another client in a communication made to the solicitor in the course and for the purpose of professional employment by him, and the latter consults the solicitor afterwards on business relating to his own affairs, then, unless the name of the latter is communicated to the solicitor confidentially for the purpose of being advised by him, on the express understanding that it should not be communicated to the rest of the world, the solicitor is bound to disclose the name of the client. A solicitor is not at liberty without his client's express consent, to disclose the matter of the employment. S. 126 protects from publicity not merely the details of the business, but also its general purport, unless it be shown *aliunde* that such business or the communication made in respect of it, fall within proviso (1) or (2). Where in an interview between a solicitor and his client, a third person in his client's company makes a statement to him in the course and for the purpose of his professional employment, the solicitor is not privileged from disclosing the name of the person making the statement, unless the name was made the subject of a special confidence, and it was stipulated by or on behalf of his client that it was not to be disclosed. FRAMJI BHICAJI v. MOHUNSING DHANSING, **18 B. 263.**

(487)—*S.* 126—*Pleader disclosing communication by client—Communication inadmissible in evidence.*—A pleader is prohibited from disclosing any communication made to him, in

Evidence Act (I of 1872)—*continued.*

the course and for the purpose of his employment as such pleader by his client, without the client's express consent; any such communication volunteered by the pleader is inadmissible in evidence, even if offered upon oath. MA PAW v. MAUNG KYIN, **L.B.R. 1893—1900, 358.**

(488)—*S. 126—Nature of consent required—Pleader and client.*—The consent required by s. 126 of the Evidence Act should be given on each occasion when a communication of the kind described is sought to be made admissible in evidence. A consent given to the disclosure of some privileged matters in a civil suit is not sufficient authority for the disclosure of the same matters in a criminal case arising out of the suit. QUEEN-EMPRESS v. GUL KHAN, **A.W.N. 1890, 172.**

(489)—*S. 126—Relevancy of evidence, how to be determined—Evidence—Counsel appearing as witness for his client—Evidence recorded—Duties of the counsel.*—On a letter addressed by the accused to the legal adviser of the complainant, criminal proceedings for defamation were started by him and he was represented at the trial by the same legal adviser. The latter offered himself as the principal witness in the case and his evidence was recorded. The Magistrate before whom the trial was had while writing judgment was of opinion that the evidence of the counsel for the complainant was inadmissible and dismissed the complaint for want of proof. *Held*, that, inasmuch as the evidence of the counsel for the complainant was admitted on the record and was ruled out by the Magistrate only when he came to pass judgment, there was no trial of the case on the merits; and it would not be improper for the High Court to exercise its revisional powers. (9 Bom. L.R. 1044, *D.*) *Held*, further, that, in determining the relevancy or otherwise of any evidence, the Court is precluded from considering matters outside the purview of the Evidence Act, and the Magistrate was in error in ruling out as inadmissible the evidence that had already been recorded, on the ground that the witness was appearing as counsel in the case. It is an error of judgment on the part of a counsel, and against his professional obligations, to appear on behalf of a party in a case in which he is to appear as a witness for his client to prove certain facts which are known to him. W.A. HEARSEY v. EVA FORSTER, **12 A.L.J. 285 = 15 Cr. L.J. 429 = 24 Ind. Cas. 165.**

(490)—S. 126—*See* LEGAL PRACTITIONERS—PLEADER AND CLIENT, 4 Bom. L R. 460, 5 Bom. L.R. 122.

(491)—S. 126—*See* No. 470, *supra*.

(492)—*Ss. 126, 127—Mukhtear and his clerk—Privilege in respect of statement made to them by client—Crim. Pro. Code, s. 4 (n)—Pleader, definition of.*—S. 126, Evidence Act, must be construed as applying to all persons who come in within the category of "pleader" as defined in Crim. Pro. Code, s. 4 (*n*), and includes therefore, a mukhtear. Communications made to a mukhtear, when acting as pleader for a client, are privileged communications. The same is the case with communication made to his clerk. ABBAS PEADA v. QUEEN-EMPRESS, **25 C. 736 = 2 C.W.N. 484.** [*R.*, 14 Cr. L.J. 316 = 19 Ind. Cas. 1004 = 244 P. L. R. 1913 = 44 P. W.R. 1913, Cr]

(493)—S. 127—*See* No. 492, *supra*.

(494)—Ss. 130, 131—Person present in Court—If compellable to produce document—*See* CRIM PRO. CODE, 1898, s. 476, 14 C.L J. 120 = 11 Ind. Cas. 794 = 12 Cr. L.J. 250.

(495)—S. 131—*See* No. 494, *supra*.

(496)—*S. 132 — Incriminating questions — Objection to answer them.*—Where, on the evidence given by certain witnesses in a murder case to the effect that they assisted the accused in concealing the dead body after murder, they were prosecuted under s. 201, the only evidence being their depositions, *held*, that their conviction was not illegal, as they had omitted to object, perhaps owing to the want of legal advice, to answer the questions, on the ground that the answers would criminate them. *In re* NALLA RAMUDU, **2 Weir 792.**

(497)—*S. 132 — Incriminating answers — Proof.*—Where a person is charged with an offence with which he is alleged to have incriminated himself in his deposition in a case, the fact that he was the person who gave the deposition should be proved. *In re* RAMAYYANGAR, **2 Weir 794.**

(498)—*S. 132—Defamatory matter in the evidence of witness — Privileged statement*—A statement containing defamatory matter against another, made by a witness in a judicial proceeding, is a privileged statement under s. 132 of the Act, for which such witness could not be proceeded against criminally. If the statement were false, he might be prosecuted for giving false evidence. MATADIN v. QUEEN-EMPRESS, **3 O.C. 80.** (11 B.L R. P.C. 321, *D.*) [*D.*, 10 Cr.L J. 509 = 4 Ind. Cas. 160 = 12 O.C. 308].

(499)—*S. 132—Statements made in examination in chief contradictory to those made in cross-examination—Incriminating questions put in cross-examination—Object.*—When incriminating questions are put from the Bench to a witness, who has become already entangled by self-contradictions, such questions should be put with the object of furthering the ends of justice in the judicial proceeding, in which such questions are put for elucidating the truth, and not with a view to simplify any future proceedings which may possibly be taken against the witness in another Court. The position of such a witness under s. 132 should, as a rule, be explained by the Court, before any incriminating question is put in the above circumstances. MI ME MA v. QUEEN-EMPRESS, **L.B.R. 1893—1900, 91.**

Evidence Act (I of 1872)—*continued.*

(500)—*S.* 132—*Term "compelled" explained—Indian Companies Act* (VI *of* 1882), *ss.* 162, 163—*Inquiry under.*—The word "compelled" in s. 132, Evidence Act, only applies to a case where the Court has compelled a witness to answer a question, and not to a case in which the witness has not excused himself from answering the question, but gives his answer without any claim to have himself excused. Where the accused had made, in a previous enquiry under ss. 162, 163 of Act VI of 1882, depositions on oath, without raising any objection to answer questions put to them under s. 132 of the Evidence Act, *held*, that the deposition of each of the accused was admissible in evidence against himself, but should not be taken into consideration against the other accused persons. QUEEN-EMPRESS v. MOSS, **16 A. 88 = A.W.N. 1894, 23.** [*R.*, 3 O.C. 80.]

(501)—*S.* 132—*Privilege of witness under—Act* X *of* 1873, *s.* 14—"*Compelled to give,*" *meaning and scope of the expression.*—*Held* by *Bayley, C.J.*, and *Parsons, J.* (*Birdwood, J.*, dissenting).—S.132 makes a distinction between those cases in which a witness voluntarily answers a question and those in which he is compelled to answer, and has given him a protection in the latter of those cases only. The words "be compelled to" clearly show that protection is afforded only to answers which a witness has objected to give or which he has asked to be excused from giving, and which then he has been compelled by the Court to give. *Per Birdwood, J.*—It is not only when a witness asks to be excused from answering a criminating question, and his request is refused, that he is "compelled to give" the answer within the meaning of the proviso. The compulsion is operative whether he asks to be excused or gives answers without so asking. QUEEN-EMPRESS v. GANU SONBA, **12 B. 440 = Rat. Un. Cr. C. 360 = Cr. Rg. 2 of 1888.** (3 M. 271, *F.*) [*F.*, 21 C. 392; *R.*, 13 376, 13 B. 600, 10 Cr. L.J. 237 = 2 S.L.R. 25, Rat. Un. Cr. C. 776.]

(502)—*S.* 132—*Witness—Criminatory answer—Protection given only on witness raising objection to answer—Duty of Court when irrelevant questions put to witness.*—*Held by the Full Bench* (*Kernan and Muthuswami Iyer, JJ.*, dissenting):—Where an accused person has made a statement on oath voluntarily and without compulsion on the part of the Court to which the statement is made, such a statement may be used against him on his trial on a criminal charge, assuming it to be relevant. The term "shall be compelled" in s. 132 appears to be the correlative of the term "shall be excused" and they pre-suppose the rule that every person giving evidence on any subject, before any Court or person authorized to administer oaths and affirmations, shall be bound to state the truth, and an authority competent at the time, to excuse or compel compliance with this rule. They also suggest that the witness has objected to the question, and has sought and been refused excuse, and even constrained to answer. The terms of s. 132, when read with the rest of the Act, affords protection only to answers to which a witness has objected or has been constrained by the Court to give. *Per Muthuswami Iyer and Kernan, JJ.*—S. 132 abolishes the law of privilege and creates an obligation in a witness to answer every question material to the issue, whether the answer criminates him or not, and gives him a right, as correlated to that duty, to claim that the answer shall not be admitted in evidence against him in a criminal prosecution. In order to claim the benefit of the proviso to the section, it is not necessary that the witness should have first claimed to be excused from answering the criminating question, and must have been compelled by the Judge to answer it. [*F.*, Rat. Un. Cr. C. 360, 12 B. 440, 15 M. 63 = 2 Weir 794, 21 C. 392, 2 Weir 792.] The section does not in terms deal with all criminatory questions which may be addressed to a witness, but only with questions as to matters relevant to the matter in issue. Irrelevant questions should not be allowed, and it may be implied by the limitation in this section that a witness should be excused from answering questions tending to criminate as to matters which are irrelevant. QUEEN v. GOPAL DOSS, **3 M. 271 = 2 Weir 781, 782.** [*F.*, Rat. Un. Cr. C. 360, 12 B. 440 (443), 15 M. 63 (65) = 2 Weir 794 (795), 21 C. 392 (399), 2 Weir 792 (793), 39 C. 348 (351) = 16 C.W.N. 503 (504) = 15 C.L.J. 399 (400) = 13 Ind. Cas. 925 (926) = 13 Cr. L.J. 173 (174); *Expl. & D.*, 37 C. 878 (883) = 11 Cr. L. J. 403 (404) = 6 Ind. Cas. 782 (784) = 14 C.W.N. 957 (960); *R.*, 11 Cr. L.J. 274 (275) = 3 Ind. Cas. 344 = 19 M. L. J. 504 = 6 M. L. T. 253 (254).]

(503)—*S.* 132—*Incriminating statements made without compulsion.*—The mere subpœnaing of a witness or ordering him to go into the witness-box does not compel him to give any particular answer or to answer any particular question. The words "which a witness shall be compelled to give" in s. 132 of the Act are not a mere surplusage, but apply to pressure put upon witness after he is in the box and when he asks to be excused from answering a question. But if a person makes such a statement without any compulsion and voluntarily, it may be, if relevant, used against him in his trial on a criminal charge. MOHER SHEIKH v. QUEEN-EMPRESS, **21 C. 392.** [*F.*, 32 C. 756 = 9 C.W.N. 911 = 2 Cr. L.J. 105; *R.*, 37 C. 878 = 6 Ind. Cas. 782 = 14 C.W.N. 957 = 11 Cr. L.J. 403, 39 C. 348 = 16 C.W.N. 503 = 15 C.L.J. 399 = 13 Ind. Cas. 925 = 13 Cr L.J. 173, 3 O.C. 80.]

(504)—*S.* 132 — *Proviso, inapplicable to voluntary statements.*—The proviso to s. 132 does not apply to voluntary statements. HAIDER ALI v. ABRU MIA, **32 C. 756 = 2 C.L. J. 105 = 2 Cr.L.J. 459 = 9 C.W.N. 911.**

(505)—*S.* 132—*Crim Pro. Code* (1898), *s.* 342 (2)—*Accused person calling as witnesses, persons charged with him and awaiting separate trial.*—

Evidence Act (I of 1872)—*continued.*

The word "accused" in s. 342 must mean the accused then under trial and under examination by the Court. It cannot include an accused over whom the Court is exercising jurisdiction in another trial. A European British subject was charged, along with certain natives of India with conspiring to commit extortion. The former claimed to be tried by a mixed jury under s. 450, Crim. Pro. Code. The other accused then claimed to be tried separately under s. 452. The trial of the former then proceeded, and he proposed, to call as witnesses the natives who were charged with him, and. who were awaiting their trial. They objected to be called. *Held* that he was entitled to call them as witnesses and to examine them on oath. EMPRESS v. DURANT, **23 B 213**. [*F.*, 4 L.B. R. 362 = 9 Cr L J. 370; *R.*, 3 Bom. L.R. 437, 15 C.P L.R. 112, 33 C. 1353 = 10 C.W.N. 962 = 4 Cr. L.J. 145.]

(506)—*S.* 132—*Incriminating questions.*—*Held* by *Bayley, C.J.*, and *Parsons, J.* :—The Legislature has, by s. 132, Evidence Act, made a clear distinction between those cases in which a witness voluntarily answers a question and those in which he is compelled to answer, and has given him protection in the latter of these cases only. If protection was to be allowed in every case in which a witness gives an answer, the words "be compelled" in the proviso would be quite superfluous. The insertion of those words clearly shows that protection is afforded only to answers which a witness has objected to give or which he has asked to be excused from giving and which then he has been compelled by the Court to give. *Per Birdwood, J*, *contra* :—It is not only when a witness asks to be excused from answering a criminating question and his request is refused that he is "compelled to give" the answer within the meaning of the proviso. The compulsion is operative whether he asks to be excused or gives the answer without so asking. QUEEN-EMPRESS v. BHIKAJI HARI, **Rat. Un. Cr. 360 = Cr. Rg. 2 of 1888.**

(507)—S. 132—*See* ACCUSED PERSON, 23 B. 213.

(508)—S. 132—*See* ACT XVIII OF 1879. ss. 13, 40, 6 M L.T. 253, F.B. = 19 M.L.J. 504 = 3 Ind. Cas. 344 = 11 Cr.L.J. 274.

(509)—S. 132—*See* DEFAMATION, 32 C. 756 = 2 C.L.J. 105 = 2 Cr.L.J. 459 = 9 C.W.N. 911.

(510)—S. 132—*See* FALSE EVIDENCE, 2 C.L.R. 181, 1 Weir 153 = 3 M.H.C. App. 29.

(511)—S. 132—Applicability of English rule of absolute privilege in India—*See* PENAL CODE, s. 499, Excep. 9, 5 S.L.R 133 = 13 Ind. Cas. 217 = 13 Cr. L.J. 25.

(512)—S. 132—*See* REVISION —GENERAL PRINCIPLES, 2 S.L R. 25, Cr. = 10 Cr.L.J. 237.

(513)—*S.* 132, *proviso*—*Thumb impression, taking of, by Court*—*Relevancy against the person making it.*—Taking a thumb impression of a witness by the Court is not equivalent to asking a question and receiving an answer within the purview of the proviso to s. 132, Evidence Act, and, therefore, such a thumb impression may be proved against the person giving it in a criminal trial. Taking of a thumb impression is merely observing a characteristic feature of a man's body. The proviso to s. 132 of the Evidence Act does not apply, unless the witness objected to answer the question (3 M. 271, 21 C. 392, *Rel. on.*) It applies again only to questions asked in the course of the trial. TUNOO MIAH v. KING-EMPEROR, **16 C.W.N. 503 = 15 C.L.J. 399 = 13 Ind. Cas. 925 = 13 Cr. L.J. 173 = 39 C. 348.**

(514)—S. 132—*See* Nos. 353, 400, *supra.*

(515)—*Ss.* 132, 148—*Incriminating questions*—*Objection overruled by Court*—*Witness compelled to answer*—*Answer not to be proved against him.*—The accused verified and filed a written statement in a certain suit. Subsequently in another suit, in which he was the defendant, he gave evidence and was cross-examined with a view to show that certain statements, which he had made in the written statement filed in the first suit were false. His pleader objected when the questions were put, but the objection was overruled, and the accused admitted that those statements were false, and on the strength of that admission he was prosecuted and convicted of perjury: *Held*, that the accused was "compelled to answer" the questions within the meaning of the proviso to s. 132 of the Evidence Act, and that the answers could not be proved against him on a charge of having made false statements in the verified written statement filed by him in the first suit, and that the conviction was bad. DEPUTY SUPERINTENDENT v. PROMOTHA NATH SEN, **6 Ind. Cas. 782 = 14 C.W.N. 957 = 11 Cr. L.J. 403 = 37 C. 878.**

——**S. 133.**

See ACCOMPLICE.

See APPROVER.

See CHARGE TO JURY.

(516)—*S.* 133— *Accomplice, why held to be untrustworthy.*—Accomplice evidence is held untrustworthy for these reasons .—(1) because an accomplice is likely to swear falsely in order to shift the guilt from himself; (2) because an accomplice, as a participator in crime, and consequently as an immoral person, is likely to disregard the sanction of an oath, and (3) because he gives his evidence, under promise of a pardon, or in the expectation of an implied pardon, if he discloses all he knows against those with whom he acted criminally; and this hope would led him to favour the prosecution. *Per Scott. J.*—There is often danger that, for the purpose of saving themselves rather than stating the truth, the accomplice will make out a stronger case against the prisoner and more favourable to themselves than the real truth will warrant. They do not give their evidence under an absolute certainty of impunity; and probably some of them hope, not only to avoid

Evidence Act (I of 1872)—*continued.*

prosecution, but to retain their appointments in the Government service. *Per Jardine, J.* QUEEN-EMPRESS v. MAGANLAL, **14 B. 115.**

(517)—*S.* 133—*Evidence of accomplice—Corroboration—Practice.* — Under s. 133 of the Evidence Act, a conviction is not illegal simply because it proceeds upon the uncorroborated testimony of an accomplice. But such evidence must be received with great caution, and it is the practice of the Courts to require corroboration of such evidence. QUEEN-EMPRESS v. KALLU, **7 A 160=A.W.N. 1884, 314.**

(518)—*S.* 133—*Corroboration of accomplice evidence.*—It is the invariable practice of Courts to require corroboration by an independent witness of so much of the evidence of an accomplice as goes to identify the accused person as the offender. EMPEROR v. KOSTAL KHAN, **4 Bom. L.R. 431.**

(519)—*S.* 133—*Conviction on evidence of accomplice—Corroboration, nature of.*—A person cannot be convicted upon the evidence of witnesses, who are no better than accomplices, if their evidence is not corroborated in material respects by other independent evidence in the case. JOGENDRA NATH BHAWAMIK v. SANGAP GARO, **2 C.W.N. 55.** [*D.*, 27 C. 144.]

(520)—*S.* 133—*Accomplice evidence—Corroboration.*—It is only under very exceptional circumstances that a conviction based only on the uncorroborated evidence of an accomplice could be sustained.—The corroboration of an accomplice must be on a point material to the issue, it must be on some material circumstance, such circumstance connecting and identifying the accused with the offence. When the offence under s. 457 of the Indian Penal Code, with which the accused were charged, was committed about midnight, and the corroborative evidence was to the effect that the accused and the accomplice were seen together during the day proceeding together near the spot of the crime about sunset, *held*, that the corroborative evidence did not directly connect the accused with the offence, and was no corroboration of any part of the story regarding the actual crime. The accused were accordingly acquitted. WAZIR KHAN v. EMPEROR, **57 P.L.R. 1902=5 P.R. 1902, Cr.**

(521)—*S.* 133—*Accomplice evidence—Corroboration.*—It is unsafe to convict on the testimony of an approver, unless he is confirmed by independent corroborative evidence not only as to the circumstances of the crime, but also as to the identity of the accused persons. The evidence of another accomplice cannot amount to sufficient corroboration. NGA SHWE v. QUEEN-EMPRESS, **L.B.R. 1872—1892,** 322.

(522)—*S.* 133 — *Accomplice, evidence of—Corroboration.*—There is no rule of law that an accused person cannot be convicted on the uncorroborated evidence of an accomplice. It entirely depends on whether the evidence of the accomplice is or is not believed. QUEEN-EMPRESS v. TIPRU, **A.W.N. 1898,** 28.

Evidence Act (I of 1872)—*continued.*

(523)—*S.* 133—*Accomplice— Uncorroborated testimony of—Conviction on— Rule regarding the legality of.*—The evidence of an accomplice must be regarded as *prima facie* unsafe to convict any one on, unless it is corroborated in material particulars by the evidence of witnesses whose evidence can be relied on ; but bearing in mind that a person may be convicted on the uncorroborated evidence of an accomplice, every endeavour must be made to test the truth of such evidence by the Judge who has to come to a decision on it, and keeping before his mind the possibility of the accomplice speaking falsely, he should, as far as possible, search for the motives which have prompted the accomplice to say what he had said, and for the circumstances which have led up to his disclosures, and give the evidence generally the most rigid test possible in his endeavour to ascertain the true facts. If, after a thorough test of the evidence, the Judge is satisfied that the accomplice has spoken the truth, and his evidence brings home a crime to an accused person, then the Judge should convict the accused of the crime. The above is the effect of the rule laid down in s. 133, Evidence Act. PO CHIT v. KING-EMPEROR, **6 L.B.R. 4=9 Ind. Cas. 778 =4 Bur. L.T. 50.**

(524)—S. 133—*See* Nos. 9, 10, 12, 44, 109, 110. 136, 138, 222, 223, 400, 423 to 428, 435 to 446, 449, 464, *supra.*

(525)—Ss. 133, 114—*See* CONFESSION—RETRACTED CONFESSIONS, 25 M. 143=2 Weir 800.

(526)—*Ss.* 133, 114, *illus.* (*b*)—*Accomplice—Evidence—Corroboration—Nature of—English and Indian Law.*—The Indian Law on the subject of the testimony of the evidence of accomplices as embodied in ss. 133 and 114, illus. (*b*), is substantially identical with the law of England. There must be corroborative evidence not only as to the identity of the persons spoken of as the accused but also as to the *corpus delicti.* Letters found in the possession of an accomplice, which, without accepting the interpretation of the accomplice, point to no guilt against the accused, cannot be treated as corroborative evidence. REG. v. CHATUR, **Rat. Un. Cr. C. 102=Cr. Rg. 17-1-1876.** REG. v. NANKUKHAN, **Rat. Un. Cr. C. 102=Cr. Rg. 17-1-1876.**

(527)—*Ss.* 133, 114, *illus.* (*b*)—*Evidence of approver.*—The testimony of an approver ought to be corroborated in some material circumstances, such circumstances connecting and identifying the prisoner with the offence. Where the evidence of an approver implicating a number of persons in a murder was supported by the confessional statements of one of the accused persons and was also corroborated by other witnesses in material particulars, *held*, that the accused were properly convicted. *Held* further, that the confessional statement one of the accused could be taken into consideration against the other prisoners, although it would not be evidence in the strict sense of the word

Evidence Act (I of 1872)—*continued.*

and could not be held to afford corroboration of the tainted evidence of the accomplice. KING-EMPEROR v. MOHIUDDIN SAHEB, **25 M. 143 = 2 Weir 800.** [*R.*, 13 Cr. L.J. 305 = 14 Ind. Cas. 849 = 1912 M.W.N. 207 = 22 M.L.J. 490 = 11 M.L.T. 1 = 35 M. 247, 35 M. 397 = 1912 M.W.N. 549 = 12 M.L.T. 1 = 13 Cr. L.J. 352 = 14 Ind. Cas. 896.]

(528)—*S.* 135—*Order of examination of witnesses.*—The Court is very slow to interfere with the discretion of counsel as to the order in which witnesses should be examined. The ordinary practice is that the witnesses should be cross-examined at the conclusion of the examination-in-chief. KEDAR NATH GHOSE v. BHUPENDRA NATH BOSE, **5 C.W.N. XV.** [*R.*, 3 L.B.R. 109 = 3 Cr. L.J. 23.]

(529)—S. 136—Pleader refusing to disclose professional communication on being questioned by Court—Whether professional misconduct—*See* ACT XVIII OF 1879, s. 13, cls. (*b*) & (*f*), 14 Cr. L.J. 438 = 20 Ind. Cas. 598.

(530)—S. 136—*See* No. 308, *supra.*

(531)—*Ss.* 136 *and* 157—*Admissibility of corroborative evidence before evidence sought to be corroborated is given—Discretion of Court.*—Ordinarily, before corroborative evidence is admissible, the evidence sought to be corroborated must have been given. The Court has no doubt a discretion to allow evidence to be given under s. 157 out of the regular order, but such discretion should be rarely used and only for very special reasons. To allow a witness to be corroborated, before he is examined, is not only inconvenient, but likely to cause the Judge or Jury to give undue weight to the hearsay statements of the corroborating witness. It is not clear that such a discretion is given by s. 136, Evidence Act. SHWE KIN v. KING-EMPEROR, **3 L.B.R. 240 = 5 Cr. L.J. 411.** (5 C.W.N. xvi, *R.*) [*F.*, 9 Cr. L.J. 576 = 5 L.B.R. 4 ; 2 Ind. Cas. 349 = 5 N.L.R. 4.]

(532)—*S.* 137—*Witnesses called by a co-accused—Right of accused to cross-examine.*—An accused person must be allowed to cross-examine witnesses called by another co-accused for his defence, if the case of the latter is adverse to that of the former. RAM CHAND CHATTERJEE v. HANIF SHEIKH, **21 C. 401.**

(533)—*Ss.* 137 *and* 138—*Cross-examination by parties of witness called by Court—Crim. Pro. Code* (1882), s. 540.—A witness summoned and examined by the Court under s. 540 of the Code of Criminal Procedure cannot, as of right, be cross-examined either by the prosecutor or by the accused. The Court should, as a general rule, however, allow the parties to cross-examine the witness if they desire to do so. CHURAI v. QUEEN-EMPRESS, **S.C. 275, Oudh.** (12 W.R. Cr. 75 and 3 B.L.R. A.C. 145, *R.*)

(534)—S. 138—*See* Nos. 470, 533, *supra.*

(535)—Ss. 138, 167, 33—*See* CRIM. PRO. CODE, 1898, ss. 352, 537, 9 A. 609 = A.W.N. 1887, 143.

Evidence Act (I of 1872)—*continued.*

(536)—S. 144—*See* SANCTION TO PROSECUTE, NATURE AND FORM OF SANCTION, 7 C.L.J. 49 = 7 Cr. L.J. 10 = 35 C. 141 = 2 M.L. T. 500.

(537)—*S.* 145—*Depositions before committing Magistrate—Use in Sessions Court.*—Where the Sessions Judge wishes to use depositions taken before the committing Magistrate, he should record them as exhibits in his own Court, and not read them to the jury without reading them to the witness or exhibiting them. QUEEN-EMPRESS v. SOMA DALJI, **Rat. Un. Cr. C. 924 = Cr. Rg. 29 of 1897.**

(538)—S. 145—*See* CRIM. PRO. CODE, 1898, s. 288, Rat. Un. Cr. C. 728 = Cr. Rg. 56 of 1894.

(539)—S. 145—Statements previously made by witness and recorded in the absence of accused—Admissibility—*See* CRIM. PRO. CODE, 1898, s. 512, 157 P.L.R. 1911 = 10 Ind. Cas. 119 = 12 Cr. L.J. 214.

(540)—S. 145—*See* PENAL CODE, s. 193, 9 C.L.J. 378.

(541)—Ss. 145, 161—*See* CRIM. PRO. CODE, 1898, ss. 162, 172, 10 C.W.N. 890 = 4 Cr.L.J. 79 = 33 C. 1023.

(541-*a*)—S. 146—*See* No. 400, *supra.*

(542)—*Ss.* 146 *and* 151—*Scandalous questions.*—There is nothing in the provisions of the Evidence Act to prevent the prosecution of a person for defamation, if he puts defamatory questions, not in good faith, but knowing that the imputation they convey is false and with the sole object of defaming the person questioned, although such question may be relevant as shaking the credit of the witness. HIGH COURT PROCEEDINGS, 17th JANUARY, 1877, No. 119, **2 Weir 819.**

(542-*a*)—S. 148—*See* No. 515, *supra.*

(543)—*S.* 151—*Exemption of Judges from giving evidence—Competency of Magistrate to testify—Preliminary enquiry.*—It has been held in England, on grounds of public policy, that Judges of Courts of Record ought not to be compelled to give evidence of matters which have come to their knowledge judicially, and the same may be considered a sound rule in regard to the Judges of some Courts in the mofussil. But, Magistrates are not incapacitated to give evidence of matters in the course of a preliminary inquiry into a criminal charge, and which are otherwise admissible. RAMASAMI AYYAN v. RAMU MUPAN, **3 M.H.C. 372.** [*R.*, 6 M.H.C. App. 43 = 2 Weir 777.]

(544)—S. 151—*See* No. 542, *supra.*

(545)—S. 152—*See* WITNESS—EXAMINATION OF WITNESSES, Rat. Un. Cr. C. 344 = Cr. Rg. 37 of 1887.

(546)—S. 153—*See* Nos. 16, 53, *supra.*

(547)—S. 154—*See* CRIM. PRO. CODE, 1898, s. 257, 28 C. 594.

Evidence Act (I of 1872)—*continued.*

(548)—*S.* 155—*Statements before police officer by witness — Examination of police officer.*—It is not illegal to examine a police officer for the purpose of impeaching the credit of a witness who gives evidence in favour of an accused at his trial, having previously given a statement to the police officer different from and inconsistent with, his subsequent statement at the trial. EMPEROR v. JAGARDEO PANDE, **27 A. 469 = A.W.N. 1905, 64.**

(549)—*S.* 155, *cl.* 3—*Statements previously made by witnesses.*—Two persons complained to their employer that the accused and another person had assaulted them and that they had been forced to give up money that was in their possession. But they stated at the trial of the accused that he was not the man who assaulted them. A record made by the Police Head Constable of the complaint of one of them was filed as evidence, and a letter from their employer setting out the complaint was also filed, and in both the accused was named. Neither the Head Constable nor the employer was called as a witness. *Held*, that the former statements made by the two persons implicating the accused could be used only under s. 155, cl. (3) of the Evidence Act, for discrediting their evidence given in the case, but, in themselves, they could not be used as substantive evidence against the accused by converting and regarding the same as the evidence given on oath by the witnesses subject to cross-examination. EMPEROR v. CHERATH CHOYI KUTTI, **26 M. 191 = 2 Weir 820.**

(550)—S. 155—*See* No. 479, *supra*.

(551)—*Ss.* 155, 157—*Former statement of witness not on oath — Value as evidence.*—A statement made by a person at an inquest can only be used to corroborate or to contradict a subsequent statement of the same person admissible as evidence. But when the subsequent statement is itself unworthy of credit, it cannot be materially strengthened by showing that the witness had previously (at the inquest) made a statement partly in agreement, and partly in direct material disagreement with it. *In re* BAYANNA, **2 Weir 821.**

(552)—Ss. 155, 157—*See* POLICE REPORT, 17 P.R. 1886, Cr.

(553)—*Ss.* 155, 159—*Crim. Pro. Code, s.* 162—*Statement reduced to writing by police officer, use to be made of.*—A statement reduced to writing by a police officer under s. 162, Crim. Pro. Code, cannot have the effect of a deposition; but though it is not evidence, the police officer, to whom it was made, may use it to refresh his memory under s. 159 of the Evidence Act, and may be cross-examined upon it by the counsel against whose cause the testimony aided by it has been given. The person making the statement may properly be questioned about it; and, with a view to impeach his credit, the police officer himself, or any other person in whose hearing the statement was made, can be examined on the point under s. 155 of the Evidence Act. QUEEN-EMPRESS v. SITARAM VITHAL, **11 B. 657.** [*F.*, 27 A. 469 = A.W.N. 1905, 64; *Appr.*, 15 A. 25; *R.*, 19 A. 390 = A.W.N. 1897, 174, F.B., 11 B. 659, 22 B. 596, 7 A.L.J. 468 = 11 Cr.L.J. 235 = 6 Ind. Cas. 101, Rat. Un. Cr. C. 503, U.B.R. 1897—1901, 31.]

(554)—*Ss.* 155, 159—*Crim. Pro. Code, Act X of* 1872, *s.* 119.—The effect of s. 119 of the Crim. Pro. Code, is to allow police officers conducting an investigation to reduce to writing statements made by witnesses, and such writing, though it may not be used as evidence to prove the guilt of the accused, may be used under ss. 155, 159 of the Evidence Act. Where the statement is not reduced to writing, the officer may be examined to impeach the credit of a witness who made such a statement, under s. 155, and the officer may refer to the writing, if he has reduced to writing, for refreshing his memory under s. 159. REG v. UTTAMCHAND KAPURCHAND, **11 B.H.C. 120.** [*F.*, 7 A.L.J. 468 = 11 Cr. L.J. 235 = 6 Ind. Cas. 101; *R.*, 19 A. 390, 1 Ind. Cas. 970, 36 C. 281 = 9 C L.J. 199 = 9 Cr. L.J. 452 = 13 C.W.N. 197 = 5 M.L.T. 97; *Diss.*, 8 C. 154 = 10 C.L.R. 51.]

(555)—*S.* 157—*Corroborative evidence when to be let in.*—Before corroborative evidence is admissible, the evidence sought to be corroborated must have been given. NISTARINEE DASSEE v. RAI NUNDO LALL BOSE, **5 C.W.N. XVI.** [*R.*, 3 L.B.R. 240 = 5 Cr. L.J. 411.]

(556)—*S.* 157—*Statement of witness before police—Relevancy—Sufficiency of such statement to support conviction.*—A statement made by a witness to a Chief Constable can only be used under s. 157 of the Evidence Act to corroborate the evidence of the first witness at the trial. Such a statement, standing by itself, can furnish no legal basis for a conviction. QUEEN-EMPRESS v. YAKUB, **Rat. Un. Cr. 508 = Cr. Rg. 26 of 1890.**

(557)—S. 157—*See* ACCOMPLICE—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, 3 P.R. 1904, Cr.

(558)—S. 157—Inquiry by *Kanungo—Kanungo's* report and evidence—Admissibility—*See* CRIM. PRO. CODE, 1898, s. 148 = 12 Cr. L.J. 480 = 12 Ind. Cas. 88.

(559)—S. 157—Statements made to Police when reduced to writing are not admissible—Police officer can depose to the statements—*See* CRIM. PRO. CODE, 1898, s. 162, 16 Bom. L.R. 603 = 2 Bom. Cr. C. 234 = 15 Cr. L.J. 690 = 26 Ind. Cas. 138.

(560)—S. 157—*See* CRIM. PRO. CODE, 1898, s. 162, 22 B. 596.

(561)—S. 157—*See* CRIM. PRO. CODE, 1898, ss. 162 and 367, 13 C.W.N. 197 = 5 M.L.T. 97 = 9 C.L.J. 199 = 36 C. 281 = 9 Cr. L.J. 452 = 1 Ind. Cas. 970.

Evidence Act (I of 1872)—*continued.*

(562)—S. 157—*See* UNLAWFUL ASSEMBLY, 6 M.L.T. 17=11 Cr. L.J. 30=4 Ind. Cas. 700.

(563)—S. 157—*See* Nos. 83, 136, 138, 218, 243, 244, 269, 308, 375, 531, 551, 552, *supra.*

(564)—Ss. 157 and 161—*See* CRIM. PRO. CODE, ss. 162, 172, 13 O.C. 7.

(565)—*S.* 159 — *Crim. Pro. Code* (1898), s. 162—*Mashirnama—Evidentiary value.*—The "Mashirnama" is, at best, a statement to the Police; and such a writing cannot, under s. 162, Crim. Pro. Code, be admitted as corroborative evidence. Such writing may, however, be used for the purpose of refreshing the memory under s. 159, Evidence Act. CROWN v. BALOCH KHAN *wd.* KANDERO, **4 S.L.R. 38, Cr.=7 Ind. Cas. 38=11 Cr. L.J. 498.** (32 B 111, *R.*) [*Expl*, 12 Cr. L.J. 489=12 Ind. Cas. 209=5 S.L.R. 31.]

(566)—S. 159—*See* Nos. 553, 554, *supra.*

(567)—*Ss.* 159, 160—*Examination of Magistrate taking down a confession—Refreshing memory.*—A Magistrate, who took down a confession, may, while being examined as a witness, be allowed, under s. 159 or s. 160, Evidence Act, to refresh his memory by referring to his record of that confession. EMPEROR v. CHAITU GAHERA, **16 C.P.L.R. 122.** (9 C. 455, *Appr.*, 23 B. 221, 15 C. 595, 17 C. 862, 13 C.P.L.R. 107, *R.*)

(568)—*Ss.* 159 *and* 160—*Refreshing memory.*—A witness who was present at an arbitration, and had compared the draft and fair copy minutes made by the clerk and had found the latter to be correct, was allowed to refresh his memory as to what occurred at the arbitration, by reference to the fair copy minutes made by arbitrator's clerk. NISTARINEE DASSEE v. RAI NUNDO LALL BOSE, **5 C.W.N. xvi.**

(569)—Ss. 159, 160 — *See* PENAL CODE, s. 124-A, 5 M.L.T. 393=32 M. 384=9 Cr. L.J. 456=2 Ind. Cas. 33.

(570)—S. 160—*See* Nos. 567, 568, 569, *supra.*

(571)—*S.* 161—*Right to inspect writing used to refresh memory—Grounds.*—The grounds upon which the opposite party is permitted to inspect a writing used to refresh the memory of a witness are threefold:—(1) to secure the full benefit of the witness's recollection as to the whole of the facts; (2) to check the use of improper documents; and (3) to compare his oral testimony with his written statement. The opposite party may look at the writing to see what kind of writing it is, in order to check the use of improper documents. But it is doubtful whether he is entitled, except for this particular purpose, to question the witness as to other and independent matters contained in the same series of writings. If the right to look at the writing is not exercised before or at the moment, when the witness used it to refresh his memory in order to answer a particular question, it cannot be retained throughout the whole of the subsequent examination of the witness. JHUBBOO MAHTON v. EMPRESS, **12 C.L.R. 233.**

(572)—S. 161—*See* Nos. 541, 564, *supra.*

(573)—S. 162—*See* No. 479, *supra.*

(574)—S. 163—*See* No. 479, *supra.*

(575)—*S.* 165—*Irrelevant questions—Refusal to answer—Penal Code,* s. 179.—Under s. 165 of the Evidence Act, a Judge has power to ask any question he pleases about irrelevant facts, if he does so in order to discover or obtain proper proof of relevant facts. But where the question is asked with a view to criminal proceedings being taken against the witness, the witness is not legally bound to answer it, and he cannot be punished under s. 179, I.P.C., for refusing to answer. QUEEN-EMPRESS v. HARI LAKSHMAN, **10 B. 185.** [*R.*, 13 B. 600.]

(576)—*S.* 165—*Examination by Court—Right to cross-examine.*—When the prisoner has examined or declined to cross-examine a witness, and the Court examines him of its own motion, the witness cannot then, without the special permission of the Court, be subjected to cross-examination. REG. v. SAKHARAM MUKUNDJI, **11 B.H.C. 166.**

(577)—*S.* 165—*Judge's power to put irrelevant questions.*—Under s. 165, a Judge has the power of asking irrelevant questions to a witness, if he does so in order to obtain proof of relevant facts; but if he asks questions with a view to criminal proceedings being taken against him, he is not bound to answer him and cannot be punished under s. 179, I.P.C. *In re* HARI LAKSHMAN, **Cr. Rg. 14-10-1885.**

(578)—S. 165 — *See* WITNESS—EXAMINATION OF WITNESSES, 5 C. 614=5 C. L.R. 364.

(579)—S. 165—*See* Nos. 288, 309, *supra.*

(580)—*S.* 167—*Applicability of.*—The section is applicable to criminal as well as to civil cases. QUEEN v. HURRIBOLE CHUNDER GHOSE, **1 C. 207=25 W.R. Cr. 36.** [*F.*, 9 Bom. L.R. 789=6 Cr. L.J. 164=2 M.L.T. 414=32 B. 111.]

(581)—*S.* 167—*Scope of.*—S. 167, Evidence Act, applies to criminal as well as to civil cases, *and to criminal cases,* whether or not the trial has been had before a jury. The expression in that section, "the Court before which such objection is raised," includes the reviewing of appellate Court. IMPERATRIX v. PITAMBER JINA, **2 B. 61** [*R.*, 19 B. 749, 32 B. 111=9 Bom. L.R. 789=6 Cr.L.J. 164=2 M.L.T. 414, 10 M.L.J. 147.]

(582)—*S.* 167—*Scope and applicability of.*—*Per Green, J.*—S. 167, Evidence Act, applies as well to the High Court sitting as a Court of original jurisdiction as to the same Court sitting for the consideration of a reserved point. *Per Sargent, C.J.*—The provisions of s. 167 are made applicable by the clearest possible words to all judicial proceedings in or before any Court, and are, therefore, applicable to the

Evidence Act (I of 1872)—*concluded.*

High Court, sitting under s. 26 of the Letters Patent, "to determine the point of law reserved and pass such judgment and sentence as to this Court shall seem right." *Per Bayley, J.* (*dissenting*).—S. 167 is inapplicable to trial by jury in the Presidency towns and was never intended to alter the constitution or vary the powers of the High Court as a Court for deciding points of law reserved for its consideration. The term "decision" is inapplicable to trial by a Judge and Jury. REG. v. NAVROJI DADABHAI, 9 B H.C. 358. [*R.*, 1 C. 207, 25 W.R. 36, 2 B. 61, 19 B. 749, 10 M.L.J. 147, 32 B. 111 =9 Bom. L R. 789=6 Cr. L J. 164=2 M.L.T. 414.]

(583)—*S.* 167—*Scope and applicability of.*—The section applies to criminal trials by jury in the High Court. REG v. NAVROJI DADABHAI, **9 B.H.C. 358.**

(584)—*S.* 167, *irrelevant evidence, admission of, in trial by jury—High Court's powers.*—The words "in any case" in s. 167, Evidence Act, are wide and include criminal trials by jury. The English law with reference to the granting of new trials when evidence has been improperly admitted, does not apply to India. Where part of the evidence which has been allowed to go to the jury is held to be inadmissible, it is open to the High Court in appeal either to uphold the verdict upon the remaining evidence on the record, or to quash the verdict and order a new trial. QUEEN-EMPRESS v. RAMCHANDRA GOVIND HARSHE, **19 B. 749.** [*F.*, Rat. Un. Cr. C. 855 ; *R.*, 10 M.L.J. 147, F.B., 25 M. 61=2 Weir. 271, P. C.]

(585)—*S.* 167—*Crim. Pro. Code* (1872), s. 256—*Duty of Judge.*—Though s. 167 of the Evidence Act implies that the improper reception of evidence is not generally to be made a ground for the reversal of a judgment, unless it was objected to by the party prejudiced by such reception, yet, s. 256 of the Crim. Pro. Code, lays down that it is the duty of the Judge in his discretion to prevent the production of inadmissible evidence whether it is objected to by the parties or not. REG. v. DAYA ANAND, **11 B. H. C. 44.**

(586)—*S.* 167—*Powers of appellate Court.*—Where no objection was raised to the reception of improper evidence in the lower Court and the appellate Court finds, that there is sufficient evidence, discarding the improper evidence admitted, to sustain a conviction, *held* that the appellate Court should not interfere with the conviction. REG. v. PARBHUDAS, **11 B.H C. 90.**

(587)—S. 167—*See* APPELLATE COURT, 24 M. 523=2 Weir 340=1 Weir 340=2 Weir 712.

(588)—S. 167—*See* LETTERS PATENT—LETTERS PATENT, 1865, (BOMBAY), s. 26, 9 B.H.C. 358.

(589)—S. 167—*See* VERDICT OF JURY, 8 C. 739=12 C.L.R. 233.

(590)—S. 167—*See* Nos. 111, 141, 535, *supra.*

Evidence, Bankers Books Act.

See ACT XVIII OF 1891.

Evidence of Prisoners.

See ACT XV OF 1869 (PRISONER'S TESTIMONY).

Evil Spirits.

(1)—*Beating inflicted with the object of curing an illness casting out an evil spirit resulting in death—What offence committed—Measure of punishment.*—The accused, under the genuine belief that they were acting for the benefit of a young woman, and with her consent and that of her relatives, inflicted a severe beating with the object of curing her of an illness by casting out an evil spirit. As they acted without due care and attention the woman died. *Held*,—that there was neither the intention nor the knowledge that death would be the result, requisite to bring the act within the definition of culpable homicide, and that the offence committed was one under s. 304-A of the Indian Penal Code. NGA PO KYAW v. KING-EMPEROR, **U.B.R. 1902—1903, Vol. I, Penal Code, 1.**

Beating to exercise evil spirits—Death—*See* PENAL CODE, Ss. 84, 304, Rat. Un. Cr. C. 603.

Exaggeration.

Of facts—*See* FALSE CHARGE, L.B.R. 1893—1900, 443.

Examination.

See MEDICAL EXAMINATION.

Admission to University, on false personation and signing answers papers in another's name —*See* CHEATING—GENERAL, 12 M. 151=1 Weir 480=1 Weir 541=13 Ind. Jur. 53.

Examination of Accused.

See ACCUSED PERSON.

See CONFESSION.

See CRIM. PRO. CODE, 1898, ss. 164, 342, 364.

(1)—*Crim. Pro. Code* (1882), *s.* 342—*Nature of, provisions of.*—The provisions of s. 342 of the Crim. Pro. Code as to the examination of an accused person are imperative. QUEEN-EMPRESS v. MANCHI, **Rat. Un. Cr. C. 625=Cr. Rg. 50 of 1892.**

(2)—*Crim. Pro. Code, s.* 342— *Scope — Examination of accused under the section, nature of.*—The examination of the accused person for which the section provides is an examination touching the matter on which he is being tried. It does not apply to an examination in another case in which the person who is being examined is not himself an accused person. QUEEN-EMPRESS v. TIRBENI, **20 A. 426=A.W.N. 1898, 102.** [*R.*, 33 C. 1353=4 Cr. L.J. 145=10 C.W.N. 962.]

(3)—*Crim. Pro. Code* (1882), *s.* 342—*Statement of accused, how to be taken.*—In taking down the statement of an accused under s. 342, a Magistrate should record in full the questions

Examination of Accused—*continued.*

put to, and the answers given by the accused, and the whole must be made conformable to what the accused declares to be the truth; he must certify that his examination of the accused contains a full account of the statement made by the accused. EMPEROR v. NAGAR PURSHOTAM, **4 Bom. L.R. 461.**

(4)—*S. 342, Crim. Pro. Code—Procedure under.*—S. 342, Crim. Pro. Code, does not permit a Magistrate to submit the accused to an embarrassing and cruel series of questions intended rather to puzzle him than to elucidate the case, or to enable him to furnish an explanation to the circumstances appearing in evidence against him. EMPEROR v. ANANT NARAYAN, **6 Bom. L.R. 94.**

(5)—*Crim. Pro. Code* (1898), *s. 364—Defect in the recording of a statement, how to be cured —Statement by accused to a Magistrate deputed to verify, admissibility of.*—Where, in recording the examination of the accused, which was taken on two several occasions, the Magistrate made the certificate required by s. 364, on the first page of the record only, although the record of the examination taken on the first day alone extended over two pages, and that taken on the second day was written entirely on the second page, *held* that the defect was cured by the evidence of the Magistrate. Where, on the accused stating before the committing Magistrate that the deceased had fallen from a terrace and his respiration stopped and that he had buried his ornaments under a tree, another Magistrate deputed to verify these statements took the accused to the place of occurrence, and was shown a place on the roof of his house from which he said the boy had fallen, and the place where he admitted he had buried the body of the boy, *held*, that the statements made to the latter Magistrate were not admissible in evidence. KING-EMPEROR v. RAJANI KANTO KOER, **8 C.W.N. 22.** (9 M. 224, 2 C.W.N. 702, *F.*) [*R.*, 9 Cr.L.J. 56 = 4 N.L.R. 163; *D.*, 9 C. L. J. 55 = 10 Cr.L.J. 325 = 3 Ind. Cas. 625.]

(6)—*Crim. Pro. Code, s. 366—Examination of accused under, how to be used at the trial.*—The examination of an accused person, which is directed by s. 366 of the Crim. Pro. Code to be given in evidence at the trial, should be put in, and read as part of the case for the prosecution before the accused person is called upon to enter on his defence. CRIMINAL CIRCULAR, No. 11 OF 1867, **8 W.R.Cr. Cir. 6.**

(7)—*Crim. Pro. Code* (1898), *s. 342—Filling up gap in prosecution evidence by questioning the accused.*—A gap in the evidence for prosecution cannot be filed up by any statement made by the accused in his examination under s. 342, Crim. Pro. Code. An omission to prove the making and publishing of an alleged libel cannot be made up by the statements made by the accused in answer to questions put to him under s. 342. MOHIDEEN ABDUL KADIR v. EMPEROR, **27 M. 238 = 2 Weir 408.** [*R.*, 29 M. 372 = 4 Cr.L.J. 231, 3 L.B.R. 208 = 4 Cr.L. J. 417, 9 Cr.L.J. 56 = 4 N.L.R. 163, 36 M. 457 = 10 M.L.T. 506 = 1911 M.W.N. 576 = 12 Ind. Cas. 961 = 12 Cr. L.J. 585 = 22 M.L.J. 73.]

(8)—*Capacity of accused to testify—Person arrested by police as accomplice.*—A person arrested by the police as an accomplice and sent up for trial is an accused person, and could not be examined as a witness, unless he is discharged or acquitted. NABI BUKSH v. EMPEROR, **12 P.R. 1902, Cr. = 100 P.L.R. 1902.** (38 P.R. 1887, Cr., 1 B. 610, 2 A. 160, 10 B. 190, *R.*; 16 B. 661 = 10 C.L.R. 553, *D.*) [*F.*, 9 P.R. 1906 Cr.; *R.*, 21 P.R. 1904, Cr.; *D.*, 8 P.R. 1904, Cr.]

(9)—*Purpose of examination of accused—Calling accused for his defence—Omission to comply with law invalidates trial—Crim. Pro. Code, ss. 342, 289, 537.*—The terms of s. 342, Crim. Pro. Code, are imperative and require the Court to question the accused generally on the case, after the witnesses for the prosecution have been examined and before he is called upon for his defence, for the purpose of enabling him to explain any circumstances appearing in the evidence against him. But, under s. 289, the examination of the accused is optional, if there are no circumstances for the accused to explain. Again under s. 289, if the Court considers that there is evidence that the accused committed the offence, the Court must call on the accused to enter on his defence. Obviously the record must show that this requirement of the law has been fulfilled; and the substance of the accused's defence should be recorded. The omission to call upon the accused to enter on his defence is not cured by s. 537, Crim. Pro. Code, as such omission occasions a failure of justice. NGA THET U v. KING-EMPEROR, **2 L.B.R. 115.** (23 C. 252, *R.*)

(10)—*Act* XXV *of* 1861, *s.* 205—*Act* X *of* 1872, *s.* 346—*Attestation of Magistrate.*—Under s. 205 of the Crim. Pro. Code, it is not necessary for the Magistrate to state in the body of the examination that the statement comprised every question put to the accused and every answer given by him, and that he had liberty to add to or explain his answers. Attestation at the foot of the examination is sufficient; but in case of doubt, oral evidence should be admitted to prove the regularity of the proceedings. QUEEN v. GOSHTO LAL DUTT, **7 B.L.R. App. 62 = 15 W.R. Cr. 68.**

(11)—*Crim. Pro. Code* (1872), *s.* 248—*Examination of accused before committing Magistrate.*—The fact that an accused person, who has been examined by the committing Magistrate, makes other and different statements in his examination before the Court of Sessions, does not make his statement before the committing Magistrate no evidence. EMPRESS v. BHAGUA, **A.W.N. 1881, 89.**

(12)—*Crim. Pro. Code* (1872), *s.* 250—*Examination of accused person.*—A Sessions Judge should examine an accused person, whether defended or undefended, before he is called on

Examination of Accused—*continued.*

for his defence, the terms of s. 250, being in this respect mandatory. In the event of non-responsion on the part of the accused, that fact should be recorded before proceeding with the trial. EMPRESS v. BAIJA, A.W N. 1881, 99.

(13)—*Murder case—Examination of accused at commencement of inquiry.*—It is most improper in a Magistrate, if not illegal, to begin a murder case with the examination of the accused who comes fresh from the hands of the police who made the inquiry. Any confessional statements made by the accused in such examination are of little value. EMPRESS v. KURA, **A.W.N. 1882, 166.**

(14)—*Crim. Pro. Code, Act* X *of* 1882, *ss.* 342, 364—*Examination of accused at the commencement.*—It is improper if not actually illegal, to examine an accused person at the commencement of the inquiry or trial, often with a view to extract damaging admissions from him. EMPRESS v. BUDHA, **A.W.N. 1884, 106.**

(15)—*Crim. Pro. Code* (1861), *ss.* 205, 366, 399—*Accused not properly examined—Admissibility of his statements.*—*Held* that the examination of the accused before the Magistrate, put in evidence before the Court of Sessions, not having been recorded according to the provisions of s. 205, Crim. Pro. Code, 1861, was not admissible as evidence in the case, and that, considering that the evidence was insufficient to sustain a conviction the prisoner should be acquitted under s. 399, Crim. Pro. Code. REG. v. TIMMI, **2 B.H.C 125.** [*Com.*, 2 B.H.C. 395; *R.*, 10 B.H.C. 166, F.B.]

(16)—*Crim. Pro. Code* (1861)—*Examination of accused not properly taken—Procedure.*—Where the alleged confession by an accused before the Magistrate was inadmissible, because not taken as prescribed in s. 205, Crim. Pro. Code, the High Court remanded the case in order that the Magistrate may take any evidence that may be forthcoming to prove the alleged confession. Where the witness says that the confession by an accused person was given freely, and was not elicited by any threat or promises, the form of the questions is immaterial, even although it assumes the prisoner's guilt. REG. v. PEVADI *bin* BASSAPPA, **2 B. H.C. 397.** [*R.*, 2 B H.C. 395, 10 B.H.C. 166, F.B.]

(17)—*Crim. Pro. Code* (1861), *ss.* 205 *and* 366—*Examination of accussd—Admissibility in evidence.*—The examination under s. 205, to be admissible as evidence under s. 366, must be taken in the form of questions and answers, and certified as required in s. 205. But if it be not so taken, the Court can order the confession to be proved by the evidence of the writer of the examination, or other person who was present. But, where the evidence, exclusive of the inadmissible evidence, is sufficient to support the conviction, it may be affirmed by the High Court without remanding the case; and the admission of such an examination by the Court of Sessions does not invalidate the trial and

Examination of Accused—*concluded.*

conviction under ss. 426, 439. REG v. VITHOJI *valad* APPA, **2 B.H.C. 398.** [*R.*, 2 B.H.C. 395, 10 B.H.C. 166, F.B.]

(17-*a*)—Where the confession of an accused before a Magistrate is inadmissible in evidence, not being taken as prescribed in s. 205, Crim. Pro. Code, the Sessions Judge should take any evidence forthcoming to prove the alleged confession and to certify the result of such inquiry and evidence to the High Court. REG. v. GANU BAPU, **2 B.H.C. Cr. 398.** [*R.*, 10 B.H. C. Cr. 166, F.B.]

See CRIM. PRO. CODE, 1898, s. 209, 23 M. 636=2 Weir 253.

See CRIM. PRO. CODE, 1898, ss. 242, 244, 342, 537, 2 L.B.R. 239.

See CRIM. PRO. CODE, 1898, ss. 287, 289, 342, 1 O.C. 85.

See CRIM. PRO. CODE, 1898, s. 289, S.C. 95, Oudh.

On oath, if regular—*See* CRIM. PRO. CODE, 1898, s. 476, 8 Bom. L.R. 587=4 Cr. L.J. 165.

See EVIDENCE—GENERAL, 15 W.R. Cr. 83.

Examination of Complainant.

See COMPLAINANT.

See CRIM. PRO. CODE, 1898, ss. 200, 201.

See CRIM. PRO. CODE, 1898, s. 201, 6 Bom. L.R. 662.

See CRIM. PRO. CODE, 1898, s. 353, Rat. Un. Cr. C. 24=Cr. Rg. 23-9-1869.

See PRACTICE AND PROCEDURE, U.B.R. 1897—1901, Vol. I, 67.

Examination of Witness.

See CROSS-EXAMINATION.

See EVIDENCE.

See WITNESS.

(1)—*Evidence of witnesses, Record of—Adjournment.*—The evidence of witnesses should invariably be recorded as soon as possible after their attendance. If, from unavoidable causes, an adjournment is indispensable, there should be no unnecessary delay. Witnesses remaining over from one day should, as a rule, be examined at the first sitting of the Court on the following day. By this means the public will be put to no inconvenience, and justice will be administered in a prompt and satisfactory manner. CRIMINAL CIRCULAR, No. 12, 27TH NOVEMBER, 1865, **4 W.R Cr. Cir. 1.**

(2)—*Examination of medical witnesses—Record of—Proof of—Crim. Pro. Code, ss.* 368, 369.—The examination of a medical witness, which, under s. 368, Crim. Pro. Code, 1181, the Court is directed to receive as *prima facie* evidence, should be put in and read as part of the case for the prosecution. It must be in proper form and duly attested or otherwise strictly proved. Under s. 369, the examination cannot be read as evidence, unless it is proved that the witness is dead or the Court is satisfied that

Examination of Witness—*concluded.*

for sufficient cause his attendance cannot be procured CRIMINAL CIRCULAR, No. 11 OF 1867, 8 W.R.Cr. Cir. 6.

(3)—*Crim. Pro. Code* (1861), s. 195—*Examination of witness.*—Under s. 195, Crim. Pro. Code, a Sessions Judge is bound to take a note of each witness's deposition as the examination proceeds. It is not a sufficient compliance with the section to merely state that a witness "deposes as last witness." REG. v. BYHA *valad* SURJIM, **1 B.H.C. 91.**

Refusal to examine witness of a party to dispute about immoveable property—*See* CRIM. PRO. CODE, 1898, s. 145, 31 C. 685.

Of witnesses—*See* CRIM. PRO. CODE, 1898, s. 540, 6 C.W.N. 98.

Power of Judge to delegate to assessors—*See* JUDGE, 5 W.R. Cr. 59.

See SECURITY FOR GOOD BEHAVIOUR, 2 N.W.P. 406.

Examination Papers.

See ACT XV OF 1889, ss. 3 and 4, 1 L.B.R. 133.

Exchange.

See CRIM. PRO. CODE, 1898, s. 517, 12 Cr. L.J. 473.

Excise.

(1)—*Act* XXI *of* 1856, s. 71—*Information—Jurisdiction when Magistrate was also Collector.*—Under s. 71 of Act XXI of 1856, forfeitures and penalties prescribed for certain offences against the provisions of the Act could be adjudged by the Magistrate only on the information of the Collector or an Abkari Officer. CHOWETH RAM v. CROWN, **15 P.R. 1870, Cr.**

Excise cases—Accomplice evidence—Corroboration—*See* ACCOMPLICE—ACCOMPLICE EVIDENCE—NECESSITY FOR CORROBORATION, U.B.R. 1911, 3rd Qr. 96=14 Ind. Cas. 968=13 Cr. L.J. 424.

Excise Act.

See ACT XIII OF 1857.

See ACT X OF 1871.

See ACT I OF 1878.

See ACT XXII OF 1881.

See ACT XII OF 1896.

See BEN. ACT XI OF 1849.

See BEN. ACT XXI OF 1856.

See BEN. ACT VII OF 1878.

See BOM. ACT III OF 1852.

See BOM. ACT V OF 1878.

See MAD. ACT III OF 1864.

See MAD. ACT VI OF 1871.

See MAD. ACT I OF 1886.

Excise (Amendment) Act.

See BEN. ACT IV OF 1881.

Excise Collector.

Whether a Court — *See* PERJURY, 10 C.W.N. 220=3 Cr. L.J. 196.

Excise Officer.

See ACT XXII OF 1881, ss. 34-A, 36, 47, 15 P.R. 1887, Cr.

Police officer invested with powers under s. 44, Excise Act, whether—*See* ACT XII OF 1896, ss. 36, 37, 38, 44, 57, 49, 52, 13 P.R. 1910, Cr.=27 P.W.R. 1910=6 Ind. Cas. 717=11 Cr. L.J. 394.

See ACT XII OF 1896, ss. 44 (2), 48 and 57, A.W.N. 1908, 157=5 A.L.J. 444=30 A. 377=8 Cr. L.J. 5.

Police officer whether an—*See* ACT XII OF 1896, ss. 44, 57, 36, 37, 38, 2 P.R. 1914, Cr.=138 P.L.R. 1914=15 Cr. L.J. 336=23 Ind. Cas. 688.

Exclusion of Time.

In obtaining copy of judgment—*See* ACT XV OF 1877, s. 12, 10 C. 642.

Excommunication.

See CASTE.

Threat of—*See* CRIMINAL INTIMIDATION, 8 M. 140=2 Weir 249=2 Weir 22=1 Weir 624.

See CRIMINAL TRESPASS, 4 M. 243.

See DEFAMATION, 11 Bom. L.R. 638=3 Ind. Cas. 744, 6 M. 381=1 Weir 595=1 Weir 624, 1 Weir 574=6 M.H.C. App. 46.

See HOUSE TRESPASS, 1 Weir 523.

Execution.

(1) *Execution—Meaning—Absence of signature.*—"Execution" does not seem necessarily to involve signing a document, though the expression is commonly understood in that sense. Under the Burmese law and practice, executing instruments without signature should be recognised by the Court. QUEEN-EMPRESS v. MI NAN THA, **U B.R. 1892—1896, Vol. I, 303.**

Execution of Decree.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 6 C.L.R. 206.

See ESCAPE FROM LAWFUL CUSTODY, 1 B.H.C. Cr. 38.

Bailiff breaking open doors in—Assisting the bailiff—Intention—*See* MISCHIEF, Rat. Un. Cr. C. 949.

See PENAL CODE, ss. 99, 186, Rat. Un. Cr. C. 380=Cr. Rg. 33 of 1888.

Effect of endorsement by Nazir—*See* PENAL CODE, s. 147, 17 C.W.N. 941=14 Cr. L. J. 274=19 Ind. Cas. 706.

See PENAL CODE, s. 183, 15 B. 564.

Application for—False verification—Omission to certify for amounts received—False evidence—Offence against public justice—Intention to defraud whether material—*See* PENAL CODE, ss. 191, 193, 7 S.L.R. 25=14 Cr. L.J. 456=20 Ind. Cas. 616.

See PENAL CODE, s. 206, 28 C. 217=5 C. W.N. 291.

Execution of Decree—*concluded.*

See PENAL CODE, ss. 209, 210, 9 M. 101=1 Weir 183.

Decree-holder realizing more than is due to him—Duty of executing Court to find out amount due—Decree-holder when punishable. *See* PENAL CODE, s. 210, 11 P.W.R. 1914, Cr. =23 Ind. Cas. 471=15 Cr. L.J. 263.

Fraudulent execution—Sanction to prosecute —*See* PENAL CODE, s. 210, 59 P.L.R 1911= 12 Cr. L.J. 189=10 Ind. Cas. 646.

See PENAL CODE, s. 210, 4 M. 325.

See PENAL CODE, s. 323, 5 Bom. L.R. 977.

Judgment-debtor raising money on the mortgage of his house already sold in—Cheating—*See* PENAL CODE, s. 420, 10 P.W.R. 1912, Cr. =114 P.L.R. 1912=15 Ind. Cas. 88=13 Cr. L.J. 456.

See SUPERINTENDENCE OF HIGH COURT, 7 W.R. 430.

Execution of order for Maintenance.

See CRIM. PRO. CODE, 1898, s. 488.

See MAINTENANCE.

Execution Proceedings.

See EXECUTIVE PROCEEDINGS.

(1)—*Execution proceedings are judicial proceedings.*—PONNUSAMI PILLAY v. CHOCKALINGAM PILLAY, 23 M.L.J. 593=14 M.L.T. 512=1913 M.W.N. 1002.

Whether 'Judicial proceedings'—*See* CRIM. PRO. CODE, 1898, ss. 4 (*m*), 195, 476, 10 N.L. R. 177.

See CRIM. PRO. CODE, 1898, s. 476, 10 C.L. J. 450.

Executive Order.

Of District Magistrate—*See* REVISION — MISCELLANEOUS CASES, A.W.N. 1902, 175.

Executive Officers.

Powers of Executive or Judicial Officers from what source derived — *See* MAGISTRATE, JURISDICTION OF—GENERAL, 17 O.C. 263= 15 Cr. L.J. 668=25 Ind. Cas. 996.

Executive, Powers of the.

Power of Courts to question legality of executive orders under Crim. Pro. Code—*See* JURISDICTION OF CRIMINAL COURTS — GENERAL, 6 C. 88.

Executive Proceedings.

(1)—*Judicial proceedings and executive proceedings distinguished.*—The essence of a judicial proceeding is a declaration of the law on the particular case which has to be arrived at as a decision of certain legal relations. The essence of an executive proceeding is an act done under such and such circumstances and enquired into when necessary with a view to determine whether in the particular case they call for or justify such act. REFERENCE No. 62 OF 1877, **Rat. Un. Cr. C. 129.**

Exemption from Personal Attendance.

Women charged with abetment of bigamy—Vague complaint—No allegation of specific acts—Right to be allowed—*See* CRIM. PRO. CODE, 1898, s. 205, 7 S.L.R. 161=15 Cr. L.J. 539=24 Ind. Cas. 947.

Exercising Evil Spirits.

See EVIL SPIRITS.

Beating to exercise evil spirits—Death—*See* PENAL CODE, ss. 84, 304, Rat. Un. Cr. C. 603.

Exhibits.

In criminal cases, return of — *See* CRIM. PRO. CODE, 1898, s. 517, L.B.R. 1893—1900, 55.

Exparte Order.

(1)—*Crim. Pro. Code, s. 144—Exparte Order —When can be passed.*—An exparte order under s. 144 can only be passed in cases of emergency or when there is no time to serve notice. VENKATARAYA GOUNDAN v. THE VERY REVEREND N. ROUDY, 8 M.L.T. 180=7 Ind. Cas. 343=11 Cr.L.J. 449.

Order in a proceeding under s. 145, Crim. Pro. Code—*See* CRIM. PRO. CODE, 1898, s. 145, 6 C.W.N. 925.

See DISPUTE AS TO POSSESSION OF IMMOVEABLE PROPERTY, 4 M. 121=2 Weir 113 =5 Ind. Jur. 637.

Proceedings for maintenance—Exparte order, validity of—*See* MAINTENANCE, 1 C.L.J. 102.

See NUISANCE UNDER CRIM. PRO. CODE, 8 A. 99=A.W.N. 1886, 27.

Exparte Proceedings.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION, 2 Weir 38=7 M.H. C. App. 43.

Expenses of Witnesses.

Recalling prosecution witnesses after charge framed—Payment of—Procedure—*See* CRIM. PRO. CODE, 1898, ss. 256, 257, 254, 244 (3), 8 N.L.R. 65=15 Ind. Cas. 970=13 Cr. L.J. 554.

Expert.

See EVIDENCE—EXPERT EVIDENCE.

See EVIDENCE ACT, 1872, ss. 45-47.

(1)—*Evidence — Expert witness— Material witness—Examination on commission.*—Where an expert witness appears to be the principal witness in the case, his examination on commission should not be granted. MCGRATH v. C. BRACHIS, 9 Ind. Cas. 347=9 M.L.T. 334, =12 Cr.L.J. 64=1911 1 M.W.N. 97.

Expert Evidence.

See EVIDENCE—EXPERT EVIDENCE.

Expiry of Sanction.

See SANCTION TO PROSECUTE—EXPIRY OF SANCTION AND LIMITATION.

Explanation of Charge.

See CHARGE—EXPLANATION OF CHARGE.

Explosives Act.

See ACT IV OF 1884.

Extension of Time.

See CRIM. PRO. CODE, 1898, s. 195, cl. (6), 12 Cr. L.J. 382 = 11 Ind. Cas. 246.

See SANCTION TO PROSECUTE—EXPIRY OF SANCTION AND LIMITATION, 8 C.W.N. 797.

Extortion.

See PENAL CODE, ss. 383—389.

(1)—*Penal Code, ss.* 71, 170, 383—*Personating a public servant and committing extortion thereby—Separate convictions and separate sentences.*—Where the evidence showed that the accused falsely personated a public servant, and through it, committed an act of extortion, *held*, that the first and second paragraphs of s. 71, I.P.C., did not apply, that the third paragraph did not apply, as the offence of personating a public servant could not be dealt with as a constituent element of the offence of extortion, and as the offence under s. 170 was complete before the latter had begun, and could not therefore merge into the offence of extortion, of which offence personation as a public servant formed no necessary ingredient, and that separate sentences should therefore be awarded, irrespective of the provision of s. 71, I.P.C., but with due regard to the provisions of s 35, Crim. Pro. Code. QUEEN-EMPRESS v. WAZIR JAN, **10 A. 58 = A.W.N. 1887, 274.** [*R.*, 27 A. 294 = 1 A.L.J. 604 = A.W.N. 1904, 232.]

(2)—*Penal Code, s.* 384—*Exacting payment of money from owners of trespassing cattle on threat of impounding the cattle.*—A payment taken from the owners of trespassing cattle under the influence of a threat that the cattle would be impounded, if the payment was refused, was held not to amount to an extortion because the payment was made under threat of what was a proceeding which was lawful and which did not furnish ground for a civil action. HIGH COURT PROCEEDINGS, 12TH JANUARY 1880, No. 66, **1 Weir 438.**

(3)—*Penal Code, s.* 384—*Trespass of cattle on accused's land—Accused receiving money payment on threat of impounding the cattle.*—The complainant's sheep trespassed on the field of the accused, during the night, and caused damage to his crops. On his attempting to drive the sheep to the pound, certain mediators intervened and advised the complainant to pay for the damage, and the complainant, on payment of the sum demanded by the accused, brought back his sheep. *Held*, that the accused had not committed extortion inasmuch as the complainant was not put in fear of an injury as defined by the Penal Code, and as the accused's intention was not dishonest. *In re* PETHIREDLA VIRAPPA, **1 Weir 440.**

(4)—*Penal Code, s.* 383—*Extortion—Threat by a joint vakil to withdraw from a case, unless additional fee is paid.*—The accused, a junior vakil for the complainant, in the absence of his

Extortion—*continued.*

senior, and when his senior's instructions were simply to obtain an adjournment of the case, threatened that he would withdraw from the case unless an additional fee was paid, and, on such payment conducted the case; *held*, that the accused had not committed extortion, as the threat was not a matter giving rise to a civil action. HIGH COURT PROCEEDINGS, 14TH JANUARY 1870, No. 91, **1 Weir 438 = 5 M.H.C. App. 14.** [*F.*, 1 Weir 438.]

(5)—*Penal Code, s.* 384—*Absence of dishonest intention.*—Where a toll-keeper proceeded to collect the tolls from certain cartmen, in a manner which he believed to be lawful, and the cartman unfastened the bullocks and left the cart there, *held* that the toll-keeper was not guilty of extortion, inasmuch as the element of dishonesty was entirely wanting. *In re* PADATI CHENCHU REDDI, **1 Weir 440.**

(6)—*Penal Code, s.* 384—*Threat to use process of law for enforcing payment of more than one's due.*—Though to threaten to use the process of the law is perfectly lawful, to do so for the purpose of enforcing payment of more than is due is illegal and such a threat made with such an object must be held to be threat of injury sufficient to constitute the offence of extortion. The fact that the offence, with which the complainant was liable to be charged was compoundable would make no difference regarding the offence of the accused. *In re* SAKIREDDI APPALASAWMI, **1 Weir 441.**

(7)—*Levying money without authority under cover of a hookumnamah, not extortion—Nature of the offence—Essential of extortion.*—A Deputy Inspector entrusted the Head Constable with a *hookumnamah* issued with the object of collecting certain statistical information as to rates, etc. The constable levied small sums without authority under the cover of the said *hookumnamah*, and misappropriated them. *Held*, that the constable was not guilty of extortion, but of cheating, as the merchants paid those sums more in consequence of their credulity than in consequence of any personal fear. To amount to an offence of extortion, property must be obtained by intentionally putting a person in fear of injury to that person, and thereby dishonestly inducing him to part with his property. Further, the mere issue of a *hookumnamah*, however inexpedient and not unlikely to lead to extortion, is no legal ground for a conviction of abetment of cheating or of extortion. QUEEN v. MEAJAN, **4 W.R. Cr. 5**

(8)—*Delivery of property by the person put in fear—Essential to extortion.*—Where a person, through fear, offers no resistance to the carrying off of his property, but does not deliver any of the property either to the prisoners or to any one else, the offence committed is robbery and not extortion. Delivery by the person put in fear is essential in order to constitute the offence of extortion. QUEEN v. DULEELOODDEEN SHEIK, **5 W.R. Cr. 19.**

Extortion—*continued.*

(9)—*Terror of criminal charge, a fear of injury—Threatened charge true or false immaterial.*—The terror of a criminal charge is a fear of injury within the meaning of s. 383. Extortion may be equally committed whether the charge is false or true. QUEEN v. MOBARRUK, **7 W.R. Cr. 28.**

(10)—*Obtaining money under threat of loss of situation.*—The making use of oral or supposed influence by a member of a certain establishment to induce the other members of that establishment to give him money against their will, threatening in case of refusal the loss of their situations, is extortion within the meaning of s. 384, Penal Code. MEER ABBAS ALI v. OMED ALI, **18 W.R.Cr. 17.**

(11)—*Feigning attempt to commit offence—Penal Code, s.* 387.—The feigning of an attempt to commit suicide in order to extort money is an offence under s. 387 of the Penal Code. REG. v. GREGORY, **1 Ind. Jur. N. S. 423.**

(12)—*Penal Code,* s. 384—*Extortion, what constitutes.*—In order to constitute the offence of extortion, it is not necessary that the threat should be used, and the property received, by one and the same individual. It may be matter of arrangement that the threat should be used by some, and the property received by others ; and they would be all guilty of extortion. It would not, under such circumstances, be necessary to charge the receivers with abetment, although that might be done ; but then, under the provisions of the Code, the punishment would be the same as for extortion. REG. v. SHANKER BHAGVAT, **2 B.H.C. 394.**

(13)—*Penal Code, Act* XLV *of* 1860, s. 383—*Extortion—Fear of injury*—Bona fide *claim of right.*—Where there was no proof that any such fear of injury was caused as is contemplated in s. 383 of the Penal Code, or that payment of money was induced thereby, and it was shown that the accused might have demanded the payment under a *bona fide* claim of right, *held* that a conviction for extortion was not sustainable. REG. v. ABDUL KADAR, **3 B.H.C. Cr. 45.**

Extortion—*concluded.*

See ABETMENT, 31 C 710.

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